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The Conservative Resistance Against Women's Bodily  
Integrity in Latin America; The Case of Chile

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Birkbeck, University of London

Thesis submitted for the degree of  
Doctor of Philosophy

I declare that the work presented in this thesis is my genuine and original work.

## **Abstract**

This research analyses the conservative resistance to women's women's bodily integrity, specifically women's sexual and reproductive rights in Chile, responding to the questions (1) How are policies on sexual and reproductive rights contested and blocked in Chile? and (2) What drives this resistance? Using empirical analysis and qualitative research, it explores the historical legacies of the dictatorship (1973 - 1989) and its implications for current policy making and the history, strategies and influence of the Catholic Church. It also looks in detail at three current policy processes: sexuality education, access to emergency contraception and decriminalization of therapeutic abortion. It concludes that women's sexual and reproductive rights challenge core conservative principles and generate fear of social change. They are contested by principles institutionalized by the dictatorship, based on conservative ideas about naturalized gender roles and the roles of institutions within a perceived organic and natural society. Institutional legacies include the political and economic system, the subsidiary role assigned to the state limiting its reach and giving space to conservative private businesses to influence policy making. Progress is slow because political institutions and political parties are vulnerable to conservative influence, evidenced by the role of the Catholic Church in the transition to democracy, and in the shift to a conservative agenda in the 1990s. The political power and influence of the Chilean conservative elite has also been key. The resistance is driven by committed conservatives using a range of strategies, convinced of the need to maintain a natural order in the family and gender relations, where reproductive rights challenge this order. The resistance is also facilitated by politicians and authorities at local level.

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## List of Acronyms

**AUGE** *Acceso Universal con Garantías Explícitas* (Universal Access with Explicit Guarantees)

**APROFA** *Asociación Chilena de Protección de la Familia* (Chilean Association for the Protection of the Family)

**BPfA** Beijing Platform for Action

**CEDAW** The Convention on the Elimination of all Forms of Discrimination Against Women

**CEMA** *Centros de Madres* (The Mother's Centres)

**CRC** Convention on the Rights of the Child

**DC** *Democracia Cristiana* (Christian Democrats)

**DHS** Demographic and Health Surveys

**EC** emergency contraception

**ECLAC** Economic Commission for Latin America and the Caribbean

**FIDE** *Federación de Instituciones de Educación Particular* (Federation of Private Education Institutions)

**HDR** Human Development Report

**HDI** Human Development Index

**ICMER** *Instituto Chileno de Medicina Reproductiva* (Chilean Institute of Reproductive

Medicine)

**ICPD** International Conference on Population and Development - Cairo

**ISAPRES** *Instituciones de Salud Previsional*

**IPPF** International Planned Parenthood Federation

**ISFEM** Investigación, Formación y Estudios de la Mujer

**ISP** *Instituto de Salud Pública* (National Public Health Institute)

**IUD** Intrauterine devices

**JOCAS** *Jornadas de conversación sobre afectividad y sexualidad* (Conversation Workshops on Relationships and Sexuality)

**LOCE** *Ley Orgánica Constitucional de Enseñanza* (Organic Constitutional Law on Education)

**MINEDUC** Ministry of Education

**MINSAL** Ministry of Health

**NGOs** Non-Governmental Organizations

**ODEPLAN** *Oficina de planificación nacional* (National Planning Office)

**OECD** Organisation for Economic Co-operation and Development

**PAHO** Panamerican Health Organization

**PPD** *Partido por la Democracia* (Party for Democracy)

**PRSD** *Partido Radical Socialista Democrático* (Radical Party)

**PS** *Partido Socialista* (Socialist Party)

**RN** *Renovación Nacional* (National Renewal)

**SERNAM** *Servicio Nacional de La Mujer* (National Women's Service)

**TFP** *Tradicón, Familia y Propiedad* (Tradition, Family and Property)

**UDI** *Unión Democrata Independiente* (Independent Democratic Union)

**UN** United Nations

**UNAIDS** Joint United Nations Programme on HIV/AIDS

**UNDP** United Nations Development Programme

**UNFPA** United Nations Population Fund

**UNICEF** United Nations Children's Fund

**WB** World Bank

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# Chapter 1

## Introduction

This research aims to contribute to the understanding of the dichotomy between the continuous efforts to advance women's human rights and gender equality and the pervasive resistance to this advancement. It focuses on examining the resistance against women's bodily integrity, specifically to policies on women's sexual and reproductive rights in Chile. The two research questions that guide it are: (1) how are policies on sexual and reproductive rights contested and blocked in Chile? And (2) what drives this resistance? By using empirical analysis and qualitative research, I hope to contribute to the gender equality project, exploring the conditions and processes that result in a resistance to gender equality policies, understanding social change as a non-linear process where some areas may advance, some lag behind and some may retreat. My aim is to analyse the advocacy efforts and perception of practitioners and advocates in Chile; explore the status of institutional efforts on policies on sexual and reproductive rights and consider how the range of resistance effectively hinder progress. This goes hand in hand with an effort to understand conservatism in Chile using conceptual framework that looks at gender and institutions, institutional legacies, and conservatism.



This research sets out to contribute to feminist scholarship. I have embarked on this task because there is a need to understand what is hindering the progress of gender equality and women's human rights, and to do that we must explore and unravel the conservative resistance to this agenda in detail. My research is situated in a context of social change, however, I move from deterministic ideas on social progress and look at progress as a sometimes contested process, focusing on policies about reproductive rights and in particular exploring the forms of resistance to policy changes in the areas of sex education, access to emergency contraception and abortion. I not only deal with social processes and institutional responses, but also with the interpretations and actions of relevant actors. Although I explore problems in our interpretation of social progress, I situate my research in a context of social justice to interpret my findings. In addition, this research contributes by looking at conservatism in Chile from a gender equality and feminist perspective. To analyse this process from this angle, a perspective that has been insufficiently explored before, provides interesting evidence. The interviews show that conservative sectors in Chile see the struggle against sexual and reproductive rights as a process where they are at a disadvantage and that the progress that has been seen as slow and piecemeal by feminist academics and scholars has been a blow to conservative advocates. The slow success to introduce sexuality education in school, access to emergency contraception and introducing a bill to decriminalize abortion is perceived by conservative activists as a loss in areas that are viewed as fundamental to their understanding of how societies should function.

The thesis will shed light on the influence of the conservative elite, the elements of the Catholic doctrine used by this elite to oppose progress, the strategies used by conservative advocates and the policy legacies that ground the opposition to change. A overall analysis of my data shows that these elements are connected and must be taken into account to understand the slow progress on sexual and reproductive rights in the country. The analysis

reveals the interplay between conservative actors and political and economic power, while also unraveling the complex relation between conservatism and the state in Chile. The analysis will show that the power of the conservative elite goes beyond the traditional political arena, and can be seen through the use of informal institutions and the use of the economic power and the market to impose their agenda. For example, one of the key findings is to highlight the importance of free market regulations and the opportunities these bring to the conservative business elite to hamper reform by hindering access to services, information and key products such as emergency contraception.

This research also shows the need to further explore and understand the drivers and power of conservative agents. My data show that these are based on a narrow understanding of the Catholic doctrine, in particular as it relates to ideas of an social organic order, the family, gender relations and reproduction. The interviews with conservative elites show the conviction and commitment of conservative advocates to principles linked to natural law ideas and a conservative understanding of organic societies based on a natural order given by god. This commitment is important as an explanatory factor to the tenacity of conservative resistance to sexual and reproductive rights. This is not novel information per se, but my research shows how these ideas can also be linked to a belief in a natural order that can be invoked using the current legal and constitutional framework, for example in the concept of the subsidiary role of the state.

Finally, the conservative policy legacies on the dictatorship that left key element in this the legal and constitutional framework will shed light on the formal institutional elements that make change slow. An closer look at the policy process during the dictatorship shows how conservative actors were able to imprint their views into these policies. I will show that progress in sexual and reproductive rights challenges conservative ideologies at their core and institutional conservative legacies of the dictatorship (1973-1989) are still influencing Chile's

policy process. These legacies draw from religious dogma, that are used by conservative Catholics to combat policies on sexual and reproductive rights such as sexuality education, access to emergency contraception (EC) and the decriminalization of abortion. The analysis of the legacies also sheds some new light on the problem. In particular the lack of coherence of the 1973-1989 *junta's* position on abortion, and the internal discussion that shows how conservative catholic individuals like Jaime Guzman, admiral Merino and Miguel Kast were able to tie their conservative agenda into the regime's, despite internal resistance within the *junta*. By unravelling the conservative discourse and advocacy in this way, I will look beyond the analysis of progressive actors, a view that is more common in the literature, and shed light on the motivations, strategies and failures of the conservative resistance.

## 1.1 Justification

Globally, there is ample evidence that due to uneven power relations and gender discrimination, women tend to be worse off than men and their socially constructed roles limit their autonomy and participation in decision-making. Unequal gender relations are deeply rooted, and are strengthened by social systems that constrain women's access to power and resources, giving them a lower status (Sen & Grown 1988, Chafetz 1988, Moore 1994, Walby 1989, Molyneux & Razavi 2002, West & Zimmerman 1987, UNIFEM 2008, United Nations 2010, UNDP 2011, Connell 2002). Despite this societies change, and in the last centuries social movements have struggled to dismantle systems of oppression and have many times succeeded. This struggle is now part of the international and national development agenda, which under the framework of social justice and social progress has committed to advocate for more just, equal and sustainable nations (United Nations 2000).

Since the 1970s scholars and activists have succeeded in pushing governments and

international agencies to develop international principles, policies and instruments that take into account gender equality and women's human rights. The Beijing Platform for Action (BPfA), the The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), International Conference on Population and Development - Cairo (ICPD) and other international declarations and conventions are a reflection of these efforts (Kabeer 1994, Connelly et al. 2000, Molyneux 2001, 2010). However, there are persistent gaps between these development principles and real life outcomes in women's - and men's - lives. This gulf has been discussed by Molyneux & Razavi (2002) in the context of the application of global principles into national settings, and by Cornwall et al. (2007) who discusses the general problems in the translation of legislative reforms into political and economic realities. This suggests that the social changes needed to dismantle gendered power structures encounter systematic resistance. There is also evidence that this resistance translates into a backlash and that this non-linear characteristic of social change needs attention (Bunch 1995, Long 2005, Momsen 2001, Oakley & Mitchell 1997, Cudd 1995, Mansbridge & Shames 2008).

This resistance to gender equality is relevant globally, across societies and in different cultural settings. Latin American countries have some interesting particularities: increasing development and economic growth with high development indicators in many areas, and persistent inequality and discrimination with low indicators in other areas, particularly with regard to women's reproductive health and prevalence of gender based violence. Moreover, changes in gender relations linked to modernization and democratization processes still carry the weight of conservative and traditional social relations. The region is a particularly fertile ground to understand the contradictions of societies moving away from traditional or authoritarian societies to modern democratic states, and the effects of the resistance to these shifts.

Moreover, the colonial past, authoritarian regimes and later neoliberal policies have affected Latin American progress on gender equality. In some parts of the region demographic trends have changed dramatically in three generations. With an exceptionally rapid decrease in fertility and mortality rates, countries have entered the second demographic transition (de Barbieri 2000, Chant & Craske 2003). Educational levels have risen for the population as a whole and women have increased their access to employment, in an increasingly urban population. The structure of families has also changed with an increase in divorces and cohabitation, a delay in marriages, an increase in female-headed households, a reduction in the size of families and an increase in teenage pregnancies. For example, according to figures of the Economic Commission for Latin America and the Caribbean (ECLAC) regional fertility rates are on average 2.1 per woman. The highest is 3.7 in Guatemala and the lowest is 1.5 in Cuba. Chile has a rate of 1.8 (2011). Participation of women in the labour force is on average 56.7% with the highest participation in Bolivia with 62.7%, and Chile with 43.4% (2011). The educational gap between men and women has been eliminated since the 1990s, but the gender wage ratio is 74.9% in Peru and 80.1% in Chile. The highest percentage is of women's earnings compared to men which is 98.0% in Costa Rica (2011) (CEPAL 2012).

Nevertheless, indicators of sexual and reproductive rights are lagging behind with high levels of teenage pregnancies and unmet needs in the access to contraception and safe abortion. To illustrate, Figure 1 shows that Latin American countries have much higher rates of teenage pregnancies compared to the Organisation for Economic Co-operation and Development (OECD) countries (X axis), but have some overlap on labour force participation (Y axis). Violence against women is widespread, for example, 41% of women in Peru have been victims of violence by their partners, 40% in Nicaragua and 43% in Brazil (CEPAL 2007, CEPAL - UNFPA 2010). Furthermore, Latin American states, are highly unequal and some aspects of modernity have reached just a few (Hoffman & Centeno 2003, Korzeniewicz

& Smith 2000, Karl 2003, Portes & Hoffman 2003). Indigenous, black, rural communities and women have been on the front line against a mestizo/white, urban and male-dominated state in the struggle for inclusion (Jelin et al. 1990, Karl 2003). Indicators used at national level hide significant inequalities amongst and within countries, amongst social groups and geographic locations. The region's average Gini Coefficient of 0.486 is quite high, and schooling and maternal mortality rates tend to be significantly worse amongst poor, rural and indigenous populations (CEPAL 2014, 2010).

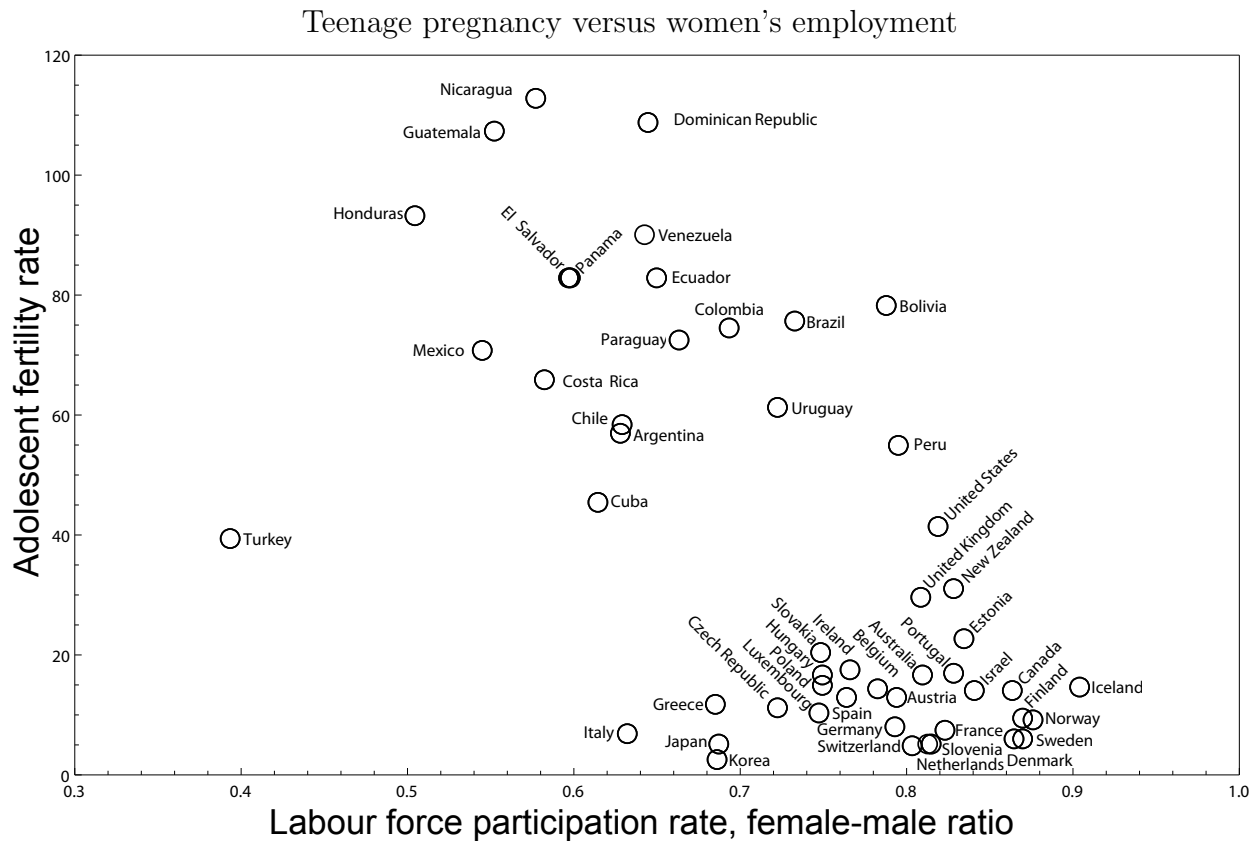


Figure 1.1: Ratio of female to male of the population (ages 15 to 64) that actively engages in the labour market by adolescent fertility rates in Latin America and countries belonging to OECD (UNDP-HDR 2012)

Current democratic governments in the region have approved extensive legislation to advance gender equality in an effort to secure their place in the democratic and modern international community, in many cases breaking with an authoritarian past (Alvarez 2000,

Craske & Molyneux 2002). These political reforms address discriminatory laws and remove some gender-differentiated elements of divorce laws, adjusting national legislation to international instruments and commitments (Chant & Craske 2003). However, these efforts have met the resistance of conservative groups that have been successful in restricting women's - and men's - reproductive choices (Molyneux 2010, Kampwirth 2006, Amuchástegui et al. 2010, Guzmán et al. 2010, Htun 2003, Blofield 2006), and states have been ineffectual in protecting women from violence, despite legal provisions and policies in place (CEPAL 2007, García-Moreno 2000, García-Moreno et al. 2005, Olavarrieta & Sotelo 1996, Pick et al. 2006, Rivera-Rivera et al. 2004, Valdés 2010). This challenges common assumptions that with industrialization and the creation of modern democratic states, social change will push towards democratic and inclusive access to resources, decision-making and empowerment for both men and women.

## **1.2 The case**

There is a need to contribute to the analysis of women's rights in middle income countries in general and Latin America in particular, as a way to unpack the assumption that progress on gender equality is an automatic process of increasing national income. Chile is an interesting case. Compared to many other countries in Latin America it has high development indicators. In 2011, Chile had a ranking of 44 in the Human Development Index (HDI), considered Very High Human Development, and ranked 58 in the Gender Equality Index (GEI) with a value of 0.374. To compare, Bolivia is number 108 in the HDI ranking, Guatemala 133 and Peru 77 (UNDP 2011). These indicators imply high levels of education, low poverty levels, general access to health and stable democracies, yet the areas of gender equality are lagging behind, setting the scene for the puzzle that this research will try to unravel. Chile is a country

that has specific forms of conservative restraints on women's bodily integrity. Evidence and previous research show that there are serious constraints on women's sexual and reproductive rights in Chile (Casas 2009, 2014, Casas & Dides 2007, Dides et al. 2007, Schiappacasse et al. 2003, Guzmán et al. 2010, Htun 2003, Blofield 2006, Haas 2006, 2010, Morgan & Roberts 2012, Franceschet & Piscopo 2012, Shepard 2000). All forms of abortion are criminalized, there are high levels of teenage pregnancies, inadequate sexuality education and there was an extended battle between the government and conservative groups to block the distribution of emergency contraception (EC) from the late 1990s to 2010. In general there is an intentional process to restrict women's rights and the state has been unable to guarantee compliance with international principles (CEDAW Committee 2012*b*).

The gaps in access to sexual and reproductive rights in Chile have been highlighted by the CEDAW Committee in its comments on the country's periodic reports. The Committee has made several recommendations to decriminalize abortion. In 2012 it also commented on gaps in access to contraception and information on sexuality and reproduction. Teenage pregnancies are causing high school dropout rates, pregnant girls are still expelled from their schools while few complaints are filed on these cases. Eighty percent of teenage mothers drop out of their studies and there is a disproportionate number of teenage mothers below the poverty line. The Committee also commented on the lack of systematic sexuality education in schools and on stereotypical content in two of the seven existing programmes. In addition, there are cases of involuntary sterilization of women with HIV/AIDS and mandatory HIV/AIDS testing for pregnant women. There are gaps in access to reproductive and sexual health, contraceptive methods and family planning services, in particular emergency contraception. This is despite the fact that the law guarantees access to this kind of contraception to any woman older than 14 years who requires it. The CEDAW Committee commented that the law does not provide a regulation mechanism and a substantial part



of the distribution of contraceptives is at the discretion of the municipal public health system (CEDAW Committee 2012*a*, Instituto Nacional de Derechos Humanos 2012, CEDAW Committee 2012*a*).

I have selected a country like Chile, where there is a lack of progress in policies on sexual and reproductive rights that have significantly hindered access to these rights, but that also has significant progress in other areas, such as education and access to employment, decision making and resources. In doing so, my aim is to unpack progress in gender policies and understand why there are some areas that are heavily contested. This case is significant in that it provides a clear and defined area to look at this resistance, with identifiable actors, historical processes and institutions. The general progress that the country has made towards becoming a high middle income country, member of the OECD and with a female head of state twice, is in contrast with the lack of progress and the influence of reactionary and conservative sectors in some areas defined as the “moral agenda”. This fact provides a good opportunity to understand how gender equality can, and has been, contested, challenging linear assumptions about social progress and social change.

### **1.3 Outline**

The current chapter discusses the main research questions, aims and justifications, along with a brief situation analysis to contextualize the research. Chapter 2 will set out the general conceptual framework, focusing on three interlinked issues: bodily integrity and sexual and reproductive rights, and the conservative ideology and its resistance to women’s sexual and reproductive rights. I argue that not only must we consider sexual and reproductive rights as individual choices but we must also consider the social and economic conditions that enable these choices (Corrêa & Petchesky 1994, Corrêa et al. 2008, Corrêa & Reichmann

1994). These rights challenge doctrines that are central to conservative ideology, and are therefore resisted by conservative groups. Conservative ideologies protect the institution of the patriarchal family, the sexual division of labour and social and gender inequalities. I take on board Htun & Weldon (2010)'s proposal to look at sexual and reproductive rights as a distinct sub-set of policies to advance gender equality, threatening what they call "doctrinal positions and therefore triggering particularly ferocious resistance. I then explore the history and strategies of conservative groups in Latin America and Chile, situating the resistance to progress in specific historical and social contexts. Chapter 3 explains the research methods, the analytical framework used to process the data and information, as well as the rationale of the selection of qualitative data collection methods, including interview selection and analysis of other documents and sources. It also explains the modest use of quantitative indicators. Finally, I address some of the challenges of researching policy processes and conservatism in Chile, in particular the challenge of addressing contentious issues with high status conservative individuals, from a feminist standpoint.

Chapter 4 broadly situates the research. It starts with an analysis of the context, in particular the transition from dictatorship to democracy and the role of women's organizations during these processes, showing that their capacity to influence the agenda was limited by institutional constraints with the result that progress in advancing sexual and reproductive rights was limited (Ríos 2003, Waylen 1994, Angell 2007, Siavelis 2014*b*). This is followed by an exploration of current political institutions and political parties, with an emphasis on the right-wing parties and confessional parties in Chile. This chapter also analyses previous research on sexual and reproductive rights in Chile, starting with Chilean scholars that drew attention to social and cultural structures and practices (Valdés 1990, Vidal 2002*b*, Valdés & Gysling 1994), and identified the influence of the Church and other conservative groups (Guzmán et al. 2010, Dides 2003, Araujo 2005). In addition, comparative research exploring

policy outcomes in this area and the factors that influence their success is reviewed (Blofield & Haas 2005, Haas 2006, Htun 2003, Blofield 2006, Waylen 2010). This chapter ends with a regional analysis which shows the historical and social trends that affect social change and progress in gender equality: social inequality and exclusion; a traditional idea of family and gender roles; and women's roles constrained to motherhood combined with a culture of male domination or *machismo*.

Chapter 5 explores the institutional legacies influencing contemporary policies on sexual and reproductive rights in Chile. In particular the inherited institutions enshrined during the dictatorship (1973 - 1989) and their view of the state, family and gender roles which have constrained future policy practices and legal reforms. To do this I will look in detail at the National Development Plan of 1974 (ODEPLAN 1979); the process of drafting the Constitution of 1980 (Comisión Ortúzar 1974, Junta de Gobierno 1976) and the legal process to criminalize all forms of abortion in 1989 (Congreso Nacional de Chile 2010*b*). I also analyse the regime's principles of subsidiarity of the state and the new education policies and the effects of the general push to privatization and decentralization of the health and education systems. The chapter shows that a "conservative synthesis" (Cristi & Ruiz 1992) of neo-liberal economic policies and the regime's authoritarian policies implied a dismantlement and restriction of access to sexual and reproductive rights. However, I also show that the position on these issues within the regime, in particular on abortion, was not as homogeneous as might be expected. Chapter 6 shows evidence of the increasing secularization in Chilean society. Following this, it provides some background on the Catholic Church and its position on gender roles and sexual and reproductive rights. I show the variations and historical processes within the Church globally, in Latin America and in Chile. This chapter also addresses the conservative turn of the Vatican in the 1990s that privileged a particular interpretation of the biology of the sexes, women and men's roles and gender relations.

They come from a specific moral agenda, among others, from the encyclicals *Humanae Vitae*, *Evangelium Vitae* and *Familiaris Consortio*, that are at odds with the ideas of social justice first embedded in the Second Vatican Council (1962) (Paul VI 1968, John Paul II 1981*a*, 1995, Casanova 2009, Hagopian 2008). Finally, this chapter looks into the conservative turn in Vatican policy and its effect on the conservative Catholic elites in Chile.

In chapter 7 I begin to explore a specific policy issue using the data collected during my fieldwork. Here I start by addressing the high levels of teenage pregnancies and the recommendations to manage the problem. I look at the policies proposed by the *Concertación's* government to address the issue: a norm - and later a law - to ensure the right of pregnant girls to remain in schools (and not be expelled), and the policy to provide universal sexuality education. I look into the discussions, arguments and policy processes relating to the sexuality and reproductive choices of young people. The chapter explores how public officials have navigated the political scenarios and the conservative resistance that these policies have raised. I critique the conservative discourse on young people's sexuality, arguments based on the legal framework inherited from the dictatorship and the strategies used by conservatives to block the policies, including the media and informal advocacy mechanisms.

Chapter 8 analyses the process to approve and implement a regulation to guarantee access to information and EC from the early 2000s to 2014. I explore the judicial process to block the approval of a policy to ensure universal access to EC in the public health system, and later legislative process to approve Law 20,418 on the Standards for Information, Guidance and Services for the Regulation of Fertility (*Fija Normas sobre Información, Orientación y Prestaciones en materia de regulación de la Fertilidad*). This law guarantees the provision of EC in public health centres to any woman over the age of 14 and puts in place the provision to ensure access to information on sexual and reproductive matters in public health and education systems. As the law was approved, I analyse its implementation by

looking at delivery and availability of EC in municipal health systems. This chapter explores the barriers and resistance presented by conservative groups and the arguments used to oppose these policies. I also explore the role of political parties, and the strategies of lawyers and other professionals in addition to political negotiations. This chapter introduces the role of conservative business elites in blocking access to EC in the market. The battle against EC was spearheaded by a network of conservative lawyers and medics, where medics provided lawyers with medical evidence to support their claims. I explore the implications of the use of this evidence to strengthen conservative claims. This chapter ends with a brief reflection on the implications of this process on the discussion that follows, the law to decriminalize therapeutic abortion.

Chapter 9 analyses the situation regarding abortion rights in Chile and public opinion on the issue. Quantitative indicators are used to show that public opinion is increasingly more open to a relaxation of abortion restrictions and, as individual income and education increases, people are more likely to have a more tolerant perspective on abortion. This is followed by an analysis of the legislative negotiations over the laws on abortion that have been presented in Congress, in particular looking at conservative arguments against abortion on both sides of the political coalitions, as well as the approval of the law that establishes the Day of Adoption and the Unborn Child in 2010 (Congreso Nacional de Chile 2013). I also use current literature and my interviews to analyse and unpack the philosophical and religious arguments opposing abortion in detail, to understand the rationale and the strengths of committed conservative advocates. Finally this chapter explores the various strategies used by conservative groups including use of sympathetic media, advocacy practices that mimic those of social movements and NGOs and the incursion of conservative business elites threatening to oppose access to abortion in the private health system.

The concluding Chapter 10 takes stock of the main findings in each section of the thesis.

From that information I conclude how progress on sexual and reproductive rights in Chile challenges conservative perspectives on gender roles, the patriarchal family and hierarchies in societies. I also explore how Catholic dogma has permeated policy making, in particular the legacies of the dictatorship and the influence of privatization and decentralization on the state's capacity to ensure access to rights.

# Chapter 2

## Theoretical Framework

### 2.1 Introduction

This chapter will set out the general conceptual framework used in this research. The approach I take analyses how progressive institutional change is resisted from within and how policy making institutions are susceptible to external and internal conservative pressures. Initially the work by Capoccia (2016) sheds light to the process by which policy change is counteracted within institutions. In addition, and because sexual and reproductive health and rights are a particularly contested field in the policy arena, I focus on the analysis of bodily integrity and specifically sexual and reproductive rights and what we can draw from conservative ideologies to understand the resistance to women's sexual and reproductive rights. I will argue that these issues are interlinked. Sexual and reproductive rights challenge doctrines that are particularly relevant to conservative ideologies and are heavily resisted by conservative groups protecting the institution of patriarchal family and because sexual and reproductive rights challenge the *status quo*, some conservative groups, will protect existing

discriminatory institutions.

To begin with, scholars are increasingly examining the gendered nature of institutions to help our understanding of the formal and informal practices that shape institutional practices, rules, norms and processes of change. Because this research deals with what is hindering policy progress, a useful analysis to understand these processes more broadly and unpack how institutional structures can constrain the process of reform is looking at them as “gendered” (Chappell & Waylen 2013, Kenny 2007). From this starting point we can see which gendered institutional barriers - if any - constrain gender policies and limit long-term reform, because, in fact, many progressive projects were either stopped or dissipated in Chile. In general, institutions are governed by a range of gendered norms and rules, part of these are historically constructed, and these gendered policy legacies have remained relatively unchallenged in Chile (Waylen 2016) as we will see in Chapter 4. As result, women’s roles have been essentialized to that of reproduction, often manifest in lack of acceptance of progressive policies on sexual and reproductive rights by decision makers. This conclusion also borrows form the historical institutional analysis attempt to understand political struggles as modeled by the institutions, and by other variables including political forces, ideas, and actors’ interests (Steinmo & Thelen 1992).

Using a historical institutional analysis framework, Capoccia (2016) proposes that institutional change is affected by the strong institutionalization of cultural categories that pre-empt the reinterpretation of formal rules, and therefore hinders change. Conservative agents - in this case - can counter the bottom-up processes of change. As we will see in the analysis of the data in the chapter to come, progressive change is also hindered by powerful actors within institutions due to what Capoccia (2016) calls “ideational factors”, that drives them to resist change due to “an expression of moral disapproval (Capoccia 2016, p. 8). When policies are based on inconsistent cultural categories, endogenous institutional change



is more likely. However, the reactionary sectors within institutions are the ones driving institutional stability and resisting change. In the case of the resistance to bodily integrity in Chile, we will see how these reactionary actors stop progress and how a historical institutional analysis explains the development of gender policies in Chile and the lack of progress in sexual and reproductive rights to some extent. Capoccia is opening the space to look at the exogenous factors that drive policy and institutional change. I will use this space to analyze the ideological factors that drive the conservative resistance to sexual and reproductive rights, while also understanding sexual and reproductive rights within the broader political and economic context that left the institutional legacies affecting change today.

To better understand the cultural categories that explain the resistance to progressive policies on sexual and reproductive rights, in the following sections I will analyse the notions of bodily integrity and in particular of sexual and reproductive rights, its normative framework and the gaps that have been identified. I will then look at the conceptual framework that situates sexuality and reproduction as both biological fact - subject to individual decisions - and inserted into social and economic relations. These social and economic contexts determine and influence decisions on sexuality and reproduction, while also allowing or hindering the free fulfilment of said choices. Then, I will analyse Htun & Weldon's proposal to look at sexual and reproductive rights as a distinct subset of policies to advance gender equality. The final section will analyse the conservative ideology prevalent in Chile in relation and in reaction to issues of women's bodily integrity. I will unravel general trends in the ideology that drive this resistance to gender equality and women's human rights and look at the history and strategies of conservative groups in Latin America and Chile, situating the resistance to progress in specific historical and social contexts.

## **2.2 Women’s bodily integrity**

### **2.2.1 Normative framework and existing gaps**

To start it is important to conceptually define sexual and reproductive rights, and situate these ideas within the framework of what is understood by the feminist scholarship as social progress or advances in gender equality. The global normative framework on sexual and reproductive rights is based on several international human rights instruments. At the core of these is the International Conference on Population and Development - Cairo (ICPD) held in 1994. The Programme of Action signed by United Nations (UN) Member States in Cairo guaranteed the basic right of couples and individuals to “decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence” (UNFPA 1994). The normative framework also includes the 1995 Beijing Platform for Action (BPfA) that, drawing from the document signed in Cairo, states “[the] right [of women] to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence” (United Nations 1995).

This blueprint however does not necessarily translate into improvement in the lives of women on the ground. Through a review of available evidence Germain et al. (2015) show the remaining gaps in the achievement of sexual and reproductive rights globally. These include: inequalities in access to services and information that leave the poorest women and adolescents far behind; poor quality services that do not comply with human rights and public health standards; and lack of accountability mechanisms to track progress (Germain et al. 2015, Snow et al. 2015). Fathalla (Fathalla et al. 2006, Fathalla 2015) also takes stock

of the progress since the signing of the ICPD, and argues that sexual and reproductive rights should be considered a “package” that includes access to services; sexuality education; and the protection of sexual and reproductive rights. “People cannot be healthy if they have one element of the package but miss others” (Fathalla 2015, p. 135). Moreover, Sen & Govender (2014) show evidence that the protection of women’s and girls’ sexual and reproductive rights is key to improve general health outcomes. This holistic notion of sexual and reproductive rights is a call to states to take an active role in ensuring efficient and adequate provision of services. The challenges in Latin America are identified by an ECLAC and United Nations Population Fund (UNFPA) (2010) review of the implementation of the ICPD in the region. According to this report, despite some advances, key issues such as sexuality education and access to confidential services for girls - including HIV prevention - are ideologically contested, while condom use and emergency contraception generate strong conservative reactions in some countries. Moreover, in some countries, reproductive rights recognized in the international and national legal frameworks have been challenged in court decisions, setting back principles of international law in national legislation. In other cases, general principles must be translated into laws and policies; there are problems with implementation and funding; and laws are not translated into real services, particularly for adolescents and young people (CEPAL - UNFPA 2010).

### **2.2.2 Conceptual framework**

The resistance to progress in the area of sexual and reproductive rights relates to what they represent and how they relate to women’s autonomy and their capacity to make choices about their bodies and reproduction. The lack of progress in policies cannot be analysed in a vacuum, without understating what is contested. The ideologies that drive the resistance at institutional level are based on concepts, ideas and imaginings about reproduction, gender

and sexual relations and families. That is why I will delve deep in order to understand the idea(s) of sexual and reproductive rights and how they are linked to notions of bodily integrity. There are two ways to understand bodily integrity in general. One, as defined by Nussbaum (2000), comes from the intellectual tradition of the capabilities approach that provides a philosophical base to principles that are part of the minimum required for human dignity. In this context, bodily integrity is to “be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction” (Nussbaum 2000). The second approach comes from the human rights framework and is part of the international instruments cited above. The mainstream human rights discourse has understood bodily integrity as part of civil and political rights, specifically, the right to life, liberty and security of a person, including the right to not be subjected to torture. According to Reilly (2009), a feminist critique to this approach, notes that for women, bodily integrity must include protection against invasive physical violations, such as sexual violence and humiliations and interventions to control women’s sexual and reproductive lives. This approach calls for attention to wider social and cultural power dynamics and cultural practices that facilitate or hide such abuses (Reilly 2009). Similarly, Sen (2014) argues that sexual and reproductive rights go beyond the right to health services and includes rights to bodily autonomy, integrity and choice in relation to sexuality and reproduction.

Corrêa & Petchesky (1994) define the framework of sexual and reproductive rights in terms of power and resources. Power to make informed decisions about childbearing, sexuality and reproduction and resources “to carry out these decisions safely and effectively”. They situate bodily integrity, or the control over one’s own body, in relation to other people: children, partners, community, etc., and the social conditions that enable individual choices to be enacted. According to Corrêa & Petchesky these conditions are in fact also social

rights, encompassing welfare, security and political freedom. Moreover, Corrêa & Petchesky frame sexual and reproductive rights within an ethical framework of equality and respect for diversity, linking sexual and reproductive rights with development efforts and moving beyond a reductive legalistic notion of individual rights (Corrêa & Petchesky 1994, p. 107-108). They address the social and relational nature of how sexual and reproductive choices are made, respecting individual decisions, but recognizing the social and economic conditions that might affect or force these decisions. In this approach, states and other institutions have the responsibility to ensure that these rights are enabled. As Corrêa et al. state in a later publication:

“Sexuality cannot be understood in isolation from the social, political, and economic structures within which it is embedded - or without reference to cultural and ideological discourses that give it meaning. Problems related to both sexual health and sexual rights are never evenly distributed across territories, countries, and population groups. On the contrary, they are systematically shaped by multiple forms of structural violence - social inequalities, poverty and economic exploitation, racism and ethnically based exclusion, gender and sexual oppression, discrimination and stigma, age differentials, disabilities, and other manifestations of disempowerment” (Corrêa et al. 2008, p.4).

In her book on abortion in the USA, Petchesky (1986) shows that the struggle for abortion in particular - but also for sexual and reproductive rights - is in itself a broader struggle where the meanings of family, the state, motherhood and young women’s sexuality are contested. This is the only way, according to Petchesky, that we can understand the ferocity of the resistance and attacks on these issues (Petchesky 1986, p. vii). Petchesky’s analysis recognizes that this broader framework, which includes the political economy of patriarchy, shows the tension between western feminism’s liberal tradition and the feminist

third world and socialist-radical tradition. She recognizes that the liberal tradition emphasizing self-determination and associating bodily integrity with property rights can include personal autonomy and the control of our own bodies as a precondition for full participation in society. However, it is the radical feminist view that highlights that although reproduction is a biological fact, it is also social and individual. I would add that reproduction should also be viewed as involving decisions affecting economic status. Reproduction and sexuality is mediated by social and cultural institutions and processes. It operates in social life and in women's - and men's - bodies. For example, pregnancy is mediated by the material conditions that may limit or allow the reproductive process. These conditions are determined by social relations, including with institutions such as the church and the state. Petchesky also shows that throughout history, as reproduction has been determined by women's relationship with society, gender inequalities have had a direct influence on fertility control and birth rates. In conclusion, these scholars make the link between the individual and biological reality of reproduction and sexuality and the broader social systems that determine and influence them. These must be understood not only as a representation of women's choices, but also in the institutional and structural factors that determine these choices, and the social and economic conditions that enable these choices to be made.

Although globally the language of reproductive rights originated in the women's health movement in the Global North of the 1970s and 1980s, the language has now been influenced by the analysis and demands of women from non-western countries, enlarging the concept to include reproductive health. Feminists from the Global South questioned not only the restriction of women's reproductive choices but also the coerciveness of the 1970s and 1980s policies that limited women's fertility (Petchesky & Judd 1999, Petchesky 2003). In Latin America, the demands of women's health organizations for access to quality reproductive and health services has been part of their agenda as citizens. This is because, historically, policies

on sexual and reproductive rights in the region have been embedded within demographic planning policies to a great extent, at least during the early twentieth century. These policies either followed or reacted to global population strategies. During the first stage - up to the 1970s - Latin American countries reacted to global development policies to control fertility in third world countries by promoting pro-natalist policies targeting women. Later on, countries embraced the anti-natalist discourse and encouraged fertility control as a path to development (de Barbieri 2000, Corrêa & Reichmann 1994, Chant & Craske 2003).

Demands for a gendered view of bodily integrity also come from the feminist critique of the conservative tendency to naturalize reproduction, sexuality and the family (Corrêa & Reichmann 1994). Corrêa & Reichmann (1994) poses that fundamentalism - as a political phenomenon - has constantly used women's bodies as a battlefield in the struggle for state power, manipulating religious, racial/ethnic and nationalist loyalties and interfering with the debate on reproductive rights at international level (Corrêa & Reichmann 1994). In a similar argument Cornwall et al. (2008) show that debates on sexuality are commonly hijacked by conservative ideologies, particularly at international level and in UN debates. To Cornwall et al. this is not exclusive to current times. When there is a shift in the economy, the state and private and public limits, conservative ideologies on these issues re-emerge. Currently, as globalization and late capitalism have made a change in the gender order, there has been a resurgence in conservative discourses on sexuality (Cornwall et al. 2008). Moreover, Corrêa, Petchesky & Parker (2008) argue that "religious revivalism systematically targets emerging new 'sex' and gender orders as a strategy to re-create 'tradition' and to allow space for dominant heteronormativity and sexism to regain a sense of control. Sexual and gender hierarchies deeply rooted in ancient religious doctrines and pre-modern cultures reappear strongly in the discourse of dogmatic religious voices (Corrêa et al. 2008, p.19).

At a global level, Reilly (2009) and Long (2005) have shown that women's human

rights in general - and sexual and reproductive rights in particular - have become subject to a backlash in UN, regional and national policy. Conservative governments and NGOs have been mobilized to contest them, claiming to defend culture, tradition and religion (Long 2005). Reilly (2009) links this to the influence of fundamentalist projects and to a neoliberal resistance to rights-based approaches that are viewed as a threat to the free market and global economy. In addition, the report of Pathways of Women's Empowerment (2011), a policy-related research programme based at the University of Sussex, shows evidence from a multi-country analysis that conservative reactions to women's sexual and reproductive rights can be caused by the breaking of social expectations of women's sexuality affected by globalization, moral conservatism and fundamentalism, particularly when there is a disruptive change that may trigger a retreat to tradition (Hawkins et al. 2011). Other authors that have identified a resistance to women's bodily integrity at international and national level include Ruibal (2014), Ilkcaracan (2015), Sen (2005), Corrêa & Slatter (2000), Sandler & Rao (2012) and Corrêa et al. (2008).

### **2.2.3 A differentiated analysis of sexual and reproductive rights**

My approach will use Htun's recommendation that to understand progress (or lack of progress) in gender equality policies, these policies must not be treated as if they are all the same type of intervention (Htun & Weldon 2010, Htun 2003). By disaggregating and distinguishing different types of gender equality policies, we are able to see the variation in conditions for policy effectiveness that are not possible to see when gender issues are aggregated. The authors argue that this is because different issues challenge different aspects of the relations between the state, the market and religious or cultural groups. Any gender equality policy aims to dismantle power hierarchies that privilege men and the masculine, combating the sexual division of labour that devalues women and challenging the institutionalization of



normative heterosexuality (Htun & Weldon 2010, p.207-208). However, because a gender equality policy can address many issues, and different actors and types of conflicts, some actors may be more relevant in certain areas than others. Actors have different effects and powers according to the contexts, and this influences how policies are framed and their “fit” into particular processes (Htun & Weldon 2010, p.209).

Htun & Weldon (2010) propose that this analysis can be divided in two dimensions “whether [gender policies] improve the status of women as a group or alleviate gender-based class inequalities, and whether or not they challenge the doctrine of organized religion and the codified tradition of major cultural groups”. Some policies try to remedy the harm inflicted on women as women, regardless of their social status. Practices rooted in institutions and cultural patterns privilege masculinity and deny women recognition and dignity as human beings. Policies to remedy such harm are “status policies”, according to the authors, and include policies to permit abortion and other reproductive freedoms to allow women to make their own choices about their bodies. “Class based policies” address inequalities amongst women, and - for example - include state funding for abortion and other reproductive services. In addition Htun & Weldon divide policies according to whether they “contradict the explicit doctrine, codified tradition, or sacred discourse of the dominant religion or cultural group”. These are defined as “doctrinal”, where religious organizations are more heavily involved. This characterization is not based on how issues are framed by actors, but on how they are related to religious and other structures in a given context. The policies may or may not include sexual and reproductive issues; whether sexuality and reproduction are perceived as challenging doctrinal interests will depend on the national and historical contexts (Htun & Weldon 2010, p. 210). My research, however, will address policies that are perceived as doctrinal in the Chilean and Latin American context: access to abortion, sexuality education and emergency contraception. In the following chapters I will clarify the specific Catholic

doctrines that these policies are challenging. I will also use the authors' proposal to look at the contextual factors that affect the relationship between actors, as well as their advocacy and power to influence or stop change. These factors include the capacity of the state to develop and implement policies; the institutional legacies that shape contemporary policies; and vulnerability to international pressure (Htun & Weldon 2010).

In sum, the idea of bodily integrity and specifically sexual and reproductive rights as used in this conceptual framework is that the issue must be understood within the broader social and economic framework that both determines people's sexual and reproductive choices and enables these choices to be enacted or not (Corrêa & Petchesky 1994, Corrêa et al. 2008, Corrêa & Reichmann 1994). This context is currently one where patriarchal structures and gender discrimination have created considerable obstacles to the fulfilment of internationally agreed standards. The gaps are linked to women's discrimination, limiting their access to choices and to quality services, while class and ethnic inequalities continue to diminish women's health outcomes in general (CEPAL - UNFPA 2010, Fathalla 2015, Germain et al. 2015, Snow et al. 2015). To understand the resistance to the policies and processes that aim to strengthen women's health and reproductive rights, Htun & Weldon (2010) provide a useful framework. They suggest that reproductive rights are both status policies and class based policies, i.e. they challenge both institutions and cultural patterns that deny women dignity as human beings and they might address inequalities amongst women. I argue that the policies analysed here mainly challenge doctrinal beliefs of the dominant religious and elite interests in Chile. This section also shows that scholars have noted the particular resistance to the policies and initiatives on sexual and reproductive rights globally, regionally and at national level.

## 2.3 Conservatism

Conservatism is a positional ideology, an ideology that is not defined by an ideal - no social system is the conservative utopia - but by a resistance to changes in current social systems in an effort to protect current institutions and the *status quo* (Honderich 2005, Muller 1997, Nisbet 2008, Huntington 1957). The conservative US thinker Samuel Huntington defined conservatism as “not just the absence of change. It is the articulate, systematic, theoretical resistance to change.” (Huntington 1957, p. 461). In the West and Europe, the conservative tradition was born as a reaction to the development of the French Revolution as expressed by Edmund Burke (1729-1797). Burke’s reaction to the potential of the French Revolution to break with established institutions and inequalities led to the philosophy that grew into conservative political thinking. The conservative traditions in the US and UK use Burke as the basis to develop the justification for the relevance of institution, history, social inequalities, some freedoms and private property (Robin 2011, Scruton 2007, 1984, Kirk 2001, Huntington 1957, Nisbet 2008, Honderich 2005).

As conservatism is by its own definition a resistance to change, the institutions and systems it protects are defined by national and historical realities (Huntington 1957, Scruton 2007, Nisbet 2008). The understanding of conservatism should be located in national and historical settings. There are, however, some overarching characteristics of conservative thinking. Firstly, as said above, conservatives defend institutions and are sceptical about the benefits of social change in general because they believe that institutions serve a purpose rooted in social customs and traditions. Moreover, institutions are not only important to sustain tradition, but also to protect the *status quo* and the organic functioning of societies (Nisbet 1952, Muller 1997). This is because conservatives are convinced that societies are organic and “if not broken by revolution or harmed by lesser interference, [there] is a kind of

great natural growth in accordance with a kind of natural law that is of no human contrivance, a natural law” (Honderich 2005, p. 193).

This natural or organic order is relevant for the conservative understanding of families. Family is a key institution. It is the place where people are socialized, and an idealized form of the patriarchal family has been - and still is - an important part of the conservative agenda. With its hierarchical relations amongst genders and age groups, conservatives protect the family from changes that would democratize relations between parents and their children, destabilize the sexual division of labour and equalize relations amongst genders (Scruton 1984, Muller 1997, O’Hara 2011). The contemporary conservative philosopher Roger Scruton argues that the family is an institution that is non-contractual, that is born, “not out of choice but out of natural necessity”. The family is based on a transcendental bond, nothing, according to Scruton, rests on explicit contract or consent in the family (Scruton 1984, p. 31). As such, families are an integral part of the organic society. Moreover, according to the conservative sociologist Robert Nisbet, conservatives are convinced of the “the primacy of society [and the family] to the individual - historically, logically, and ethically” (Nisbet 1952, p. 169). I would argue that the emphasis that conservatives place on protecting the patriarchal family comes from this conviction: that individual family member’s interests are secondary to maintaining the family as an institution. Conservative ideology therefore is particularly resistant to gender equality and women’s human rights. The family, with its hierarchical structure and internal power relations, does not leave room for changes that would follow the feminist project of ending exclusion and discrimination in the private sphere. Conservatives see the patriarchal family as part of the “organic and natural” way social relations should be structured.

In addition, conservatives in general believe in the need for elites and in the legitimacy of social inequalities. Analysing the ideas of Burke and other early conservatives, Nisbet

(1952) argues that according to “the principle of hierarchy and status[,] [t]he revolutionary and rationalist emphasis upon equality must lead quickly [...] to a leveling of social differences which will obliterate the natural channels of transmission of human value. Without hierarchy in society, there can be no stability” (Nisbet 1952, p. 172). Conservatives like Burke resisted the emphasis on rationality of the Enlightenment and understood human behaviour as being mainly guided by emotions and irrationality, with an emphasis on human imperceptibility (Hall 2011). This then became an emphasis on human imperfections. Because humans are imperfect, they need other members of society and institutions, including social hierarchies and power structures, to guide their actions. Moral imperfections will lead to bad behaviour if humans were to follow their impulses and passions. This is also related to the religious notions of original sin (O’Sullivan 1976, Scruton 1984, Muller 1997).

I would argue that these last two characteristics are relevant in order to understand the conservative resistance to gender equality. Women’s restrictions and discrimination in the private sphere are justified by the protection of the family as an institution and the male and adult privilege. Discrimination and inequalities amongst women and men in the public sphere are based on the belief that social inequalities are needed. Although conservative scholars argue that there is no fixed conservative agenda, and institutions that conservatives protect depend on national and historical realities, the defence of the family and the efforts to perpetuate gender and social inequalities thread across all conservatism. Conservatism has been identified by feminist scholars as one of the main forces opposing women’s human rights and gender equality.

### 2.3.1 Conservatism, religion and politics

Not all conservatives are religious, but religion has an important place in their framework. According to Muller (1997), even agnostic conservatives believe that religion has social utility as an institution. It provides a framework for authority and moral guidance. The conservative sociologist Robert Nisbet stated that the conservative reliance on religion is based on the “well-founded belief that human beings, once they have got loose from mayor orthodoxy, are likely to suffer some measure of derangement, of loss of equilibrium” (Nisbet 2008, p. 83). In Latin America, including Chile, conservatism has been close to the Catholic Church. During the creation of nation states after independence, church-state issues were central to the agenda of conservative parties. As liberals wanted to constrain the Catholic Church’s prerogatives acquired during the colony, conservative parties sided with the Church, and many of them have maintained a religious content in their programmes and as part of their identities (Middlebrook 2000*a*, p. 11). In Chile, the now disappeared Conservative Party maintained close relationships with the Catholic Church, a commitment that was overtaken by the *Unión Demócrata Independiente* (Independent Democratic Union) (UDI) in the 1980s (Salazar 2009, Correa 2011, Garretón 2000) (more on page 74). As I will show in the following chapters, these political parties have also assumed the agenda against sexual and reproductive rights, and the Catholic Church has also been quite adamant in its opposition.

Conservative ideas have also been core to the formation of conservative political parties, mostly right wing neoliberal parties in the USA and Latin America, and even some libertarians in the US. However, not all conservatives are right wing, and in some countries the Christian Democrats emerged from conservative parties, but then evolved towards being closer to the centre/left (Simpson 1987, Correa 2011, Montes et al. 2000). In Latin America, conservatives have been close to the Right. In general, the scholarship on conservatism in the region has focused on the analysis of the conservative political Right (Romero 1970, Luna &

Kaltwasser 2014, Middlebrook 2000*a*, Pollack 1999, Cristi & Ruiz 1992, Correa 2011, Cristi & Ruiz 2014). Romero, writing in the 1970s, identified the conservative groups in Latin America as socioeconomic elite groups with a common idea of the correct social order with roots in the Spanish and Portuguese colonial periods. Conservatives acted as pressure groups that used their power through political parties. They had the monopoly of power and assumed the defence of the *status quo* in which they had - and still have - a privileged position. Romero argued that conservatives used their power - even authoritarian political power - to prevent change, establishing dictatorships or oligarchies and denying the right to political participation of a, many times poor, majority (Romero 1970).

In Chile, Cristi & Ruiz (2014) identify the creation of the conservative intellectual movement in the work of the Chilean historian Alberto Edwards (1874 - 1932) in the early 1900s. They argue that the ideas of Chilean conservatism are quite homogeneous, guided by “historical continuity, tradition, authority, order and the state.” (Cristi & Ruiz 2014, p. 28). However, they identify two lines of argumentation amongst early Chilean conservatives. One was in line with the conservative German tradition that believed in the authority of medieval noble men, and the second believed in the importance of the guilds and evolved into cooperativism. Intermediate institutions - union-guilds and professional associations and other cooperatives - balanced the power of the state and replaced some of its productive functions. In Chile this cooperativism also has roots in traditional Catholicism and is in line with the papal encyclical *Quadragesimo Anno* (1931). The original representative of cooperativist conservatism in Chile was the lawyer Jaime Eyzaguirre (1908 - 1968). He elaborated the principle of subsidiarity based on these religious notions (Cristi & Ruiz 2014, p. 30). This principle would, in later years, influence the 1980s vision of the state through Jaime Guzmán, who was an admirer and had been a disciple of Eyzaguirre (Cristi 1999). The other line of argument was based on the Romanist school that defended absolute monarchies. In

Chile, it favoured authoritarian systems of government with total political power. “Nationalism and social corporatism thus constitute the two major thrusts which form the basis of conservative arguments against Chile’s liberal tradition” (Cristi & Ruiz 2014, p. 29). After the defeat of fascism in 1945, Chilean cooperativists realized the limits of their model. Conservatives collaborated with each other, providing theories of history, the perceived value of the legacies of the Spanish colony, Spanish philosophy based on Saint Thomas and theories of natural law (Cristi & Ruiz 2014).

During the 1960s and 1970s conservatives found themselves in agreement, epitomized in their embrace of Hayek’s liberal individualistic philosophy of the neo-liberal Chicago school of economics (Cristi & Ruiz 2014, p. 29) (Cristi & Ruiz 1992). As a reaction to the menace to right wing parties by the socialist turn in the 1960s and 1970s, conservatives allied themselves with the military; and through a military coup in 1973 and later on during the dictatorship, they ensured the permanence of the *status quo*. According to Garretón (2000) this was a pivotal point. The defence of the dictatorship and its institutional legacy has driven the agenda of the Chilean Right since. Cooperativists - or the *Gremialistas*, as they emerged in the 1960s - united with the *Chicago Boys*, followers of Hayek and neo-liberalism, and both groups found themselves working in the authoritarian state apparatus (more in Chapter 5). The *Nacionalistas* dissolved their party - *Partido Nacional* - to support the authority of the military regime.

This “conservative synthesis” (Cristi & Ruiz 1992) combined dogmatic Catholicism with a *laissez-faire* capitalism. They embraced the neoliberal rejection of constructivism based on the belief in the limits of human knowledge, and believed in the negative effects of the states’ “artificial” redistributive policies. This would go against the natural, or spontaneous, order (Hayek 2012). The rejection of an “artificial order” - managed by the state - is where both cooperativist and neo-liberals coincide, combined with an interpretation of



the principle of subsidiarity that extends to market transactions. A free market and private property require the protection of the state, but not its control (Cristi & Ruiz 1992). The “conservative synthesis” has also been effective in privileging the autonomy of intermediate institutions, such as the family. These intermediate institutions fall outside the realm of the state, according to the principle of subsidiarity. Moreover, the conservative agenda of the 1980s called for the protection of the traditional patriarchal Catholic family, with a clear division of labour and hierarchies, constraining women to traditional gender roles, promoting maternalistic policies, and protecting unequal gender and class relations and the *status quo* (more in Chapter 5) (Htun 2003, Pieper-Mooney 2009, Kirkwood 1986, Araujo 2009, Grau et al. 1997).

Middlebrook (2000*b*) writes a contemporary analysis of conservatism in Latin America. He argues that conservative right wing parties are comprised of upper socio-economic classes that have the ability to mobilize support from multiple classes. The analysis of conservative parties in Latin America shows the “significance of conservative parties [...] as the avenues for elite interest representation [that] may vary from country to country and over time” (Middlebrook 2000*b*, p. 4-5). The elites have not restricted their channels of influence to political parties. Middlebrook identifies three other channels: (1) party mediated clientelism; (2) participation of “conservative forces in neoliberal policy coalitions”; and (3) “conservative hegemony exercised through non-party organizations and civil society (Middlebrook 2000*b*, p. 41). Similarly, Eaton (2014) argues that Latin American conservative groups have used “nonpartisan strategies” to “substitute or complement party building (Eaton 2014, p.77). Conservatives use business chambers to influence; and the Right use alliances with business elites that had, and still have, the same interest in maintaining power relations and privilege, stopping redistributive policies. As in Chile elites may have media outlets at their disposal, trade and civil associations and members of the elite may contact policy makers

directly as an effective way to ensure that their interests are protected. In Chile, conservative groups have economic power, they invest in private educational institutions and the media - key to influencing policy-making. These channels have sometimes been more effective than traditional political partisan activities (Middlebrook 2000b, Garretón 2000). Eaton (2014) also identified the conservative right's use of decentralization policies to keep their interests protected from the national state. These include sub-national strategies used to protect elite interests and market oriented projects in regions and municipalities in Cochabamba, Bolivia and in Venezuela, for example. According to Eaton, this sub-national strategy has also been central to the conservative right's success in maintaining a conservative agenda against women's human rights and gender equality, through the local governors and mayors' defiance of the national government's progressive policies, such as the resistance to legalize abortion by state governors in Mexico. However, this identification between conservative thinking and the political right can be misleading, as leftist male political leaders have also been adamant in opposing and restricting gender equality and women's sexual and reproductive rights. Cases such as the conservative discourse of Correa in Ecuador, Ortega in Nicaragua and Taveré Vázquez in Uruguay show that the region's conservative ideologies on women's rights and the role of the family are also entrenched within the male dominated left.

In conclusion, the concepts relevant to the current research are the conservative rejection to change and the maintenance of the *status quo*; the belief in the principle of an organic society, where institutions such as the family are based on non-contractual social relations, where hierarchies and inequalities are part of a natural order that should not be forcefully altered by the state or society. In Chile and Latin America, these ideals have been protected with the support of religion, in particular the Catholic Church. Conservatives have also supported traditional Catholic teachings about the family and women's and men's roles and gender relations, appealing to a natural order that goes beyond the will or interest

of the individuals within these relations. Conservatism in the region has traditionally been the ideology of the economic elites. They have been quite successful in using both partisan strategies through right wing political parties, as well as other channels of influence such as the market, business associations, personal connections with the state and the media and decentralized sources of power at local level. In Chile, since the 1980s, the conservative synthesis which unites neoliberal policies and conservative ideals in the moral agenda, is currently spearheaded by the right wing parties, in particular the UDI.

## **2.4 Conclusion**

This research aims to understand how sexual and reproductive rights are contested and blocked in Chile and what drives this resistance, under the dichotomy of continuous efforts to advance women's human rights and gender equality and the pervasive lack of progress. These issues have faced a particular resistance in a country that has made important advances in other areas of gender equality and women's human rights. Capoccia (2016) proposes that progressive institutional change is resisted, even when social change is happening. This is due to strong institutionalization of cultural categories that drive conservative agents to counter the bottom-up processes of change. To move a step forwards in the analysis, I propose to unpack the sexual and reproductive rights issues and the challenges they pose that warrant such resistance.

There is evidence that although there are important international and regional agreements such as the ICPD and the BPfA, the rights enshrined in these instruments are not necessarily transformed into improvements in women's and men's lives and there are still important gaps, globally and nationally (CEPAL - UNFPA 2010, Fathalla 2015, Germain et al. 2015, Snow et al. 2015). Although the control of women's sexuality and reproduction

has always been present, the last decades have seen the emergence of a conservative religious opposition to women's reproductive rights (Craske & Molyneux 2002, Shepard 2000, Corrêa & Reichmann 1994). Moreover, the above discussion shows that scholars and activists have identified that sexual and reproductive rights are being particularly resisted at national and international level by conservative sectors and groups (Reilly 2009, Long 2005, Ilkkaracan 2015, Sen 2005, Corrêa & Slatter 2000, Sandler & Rao 2012, Corrêa et al. 2008, Petchesky 1998, Hawkins et al. 2011). This evidence provides the justification to look more closely into the issues discussed in this chapter and summarized in the following paragraphs.

Firstly, the advice from Htun & Weldon is to look at different policies on gender equality with different lenses, as they can be either status policies or class based policies, and they may or may not challenge doctrinal beliefs (Htun & Weldon 2010). My research on sexual and reproductive rights will deal with both status policies and class based policies, and importantly with policies that challenge doctrines, which makes them particularly relevant to conservative groups. This is because in Chile, conservatism has been historically allied with the Catholic Church and has been quite effective in maintaining the *status quo*, and is not just based on a rejection of social change. This implies following the conservative mandate to protect the patriarchal family as an institution, with its unequal power relations and hierarchical structure.

As advancement in women's sexual and reproductive rights challenge the *status quo*, there are groups that have an interest in combating this advancement based on both a fear of social change and a need to protect institutions. These conservative groups not only oppose the liberation potential of the feminist agenda, but also fight to maintain the socio-economic order. In particular in Chile and Latin America, conservatism has traditionally been the ideology of the economic elites who have succeeded in using both political power - through right wing political parties, as well as other channels of influence - and their

economic leverage to push the conservative agenda. In Chile, the “conservative synthesis” unites neoliberal policies and a conservative moral agenda that has been opposed to progress in women’s sexual and reproductive rights since the 1980s.

# Chapter 3

## Research Methods

This research is situated in a framework of social justice and social development, exploring key processes in order to unpack the conservative resistance to sexual and reproductive rights in general. I analyse policy process on sexual and reproductive rights and the strategies and rationale of the resistance against these. Based on this aim, in this chapter I will show how the data was collected, the interpretative and analytical framework for data collection, and the rationale for the selection of the interviewees and other sources of information. Primarily, I conducted qualitative based research that allowed me to see the meanings, strategies and rationale behind these processes, and identify the key contentious issues. The methodological approach required gathering information from advocates and officials involved in these processes from a broad political and ideological spectrum. This would not only give me the information about their perspectives, but also allow me to map the key moments and issues that caused contention.

As explained more extensively below, I used several qualitative methods: (1) 50 in-depth interviews and *in-situ* observation; (2) analysis of key law proposals and legislative

discussions; (3) analysis of press clippings and press releases. This data provided the information to identify, trace and understand key processes. To a minor degree, I also used pre-existent quantitative indicators publicly available to show evidence of: (a) the alliance to the Catholic Church in Chapter 6, and (b) the situation of teenage pregnancy *vis-à-vis* human development indicators in Chapter 7. In Chapter 9 I also conducted a further analysis of the UNDP Human Development report 2010 database to understand class and age-based opinions on abortion.

### 3.1 Analytical framework

This research is about the resistance to policy processes. It looks at legal reforms, internal government norms, the sometimes quite intricate evaluation commissions, and other governmental processes. All these are situated in a broader social and economic context, where I bring in public opinion and media coverage. The threads throughout the analysis are the conservative justification of resistance to these processes, and the strategies used to move the conservative agenda forward. My methodological approach sometimes required working with opinions. However, my epistemological approach is that “there is a social reality beyond people’s [...] interpretations of it” (Oakley 1998, p. 722) and Miller et al.’s (2006) view, and that it is possible to gather information about the social world through qualitative interviewing. These authors state that the information obtained in interviews is the social world external to the interview process itself, and that we can “capture elements of these worlds in our scholarship, from intersubjective depth and mutual understanding” (Miller et al. 1997, p.137).

I took the interviews as an opportunity to rigorously examine people’s narrative accounts and to collect accounts of events and activities that are contradictory to the collective

narratives (Miller et al. 1997). Following this idea, my interviews tapped into the multiple views of the same issues. I did not include individual narratives of victims and women constrained in their reproductive rights (more on participants below), but I analysed official and unofficial positions.

To select the key policies and processes to be analysed in detail, I followed Giddens' (1993) advice to use critical understanding, analysing social problems and contradictions while looking for critical points (Giddens 1993). During the literature review and when designing the research, I had selected and mapped some key processes that I knew were relevant for the research: access to EC and the decriminalization of abortion. However, by critically analysing the contents of my first interviews and other primary data such as law proposals, I realized that there were other critical points that were important for my research. My interviews with feminist activists and academics drove me to look more closely at the legacies of the dictatorship (Chapter 5) and the sexuality education campaigns of the late 1990s and early 2000s (Chapter 7). The interviews with conservative advocates drove me to look closely at the rationale and relevance of the Catholic Church. Here I moved beyond the previous, and good, research on the role of the Church in these issues (Waylen 2010, Htun 2003, Blofield 2006, Haas 2006, 2010, Morgan & Roberts 2012, Araujo 2009, Dides 2003, Guzmán et al. 2010), towards an effort to unpack the Catholic Conservative dogma itself, and the historical processes that have driven the Church to adopt the position it currently has (Chapter 6). This is because my conservative interviewees were quite adamant in making me understand that their position was part of a broader religious drive, and many felt that this was reduced and unrepresented, or wrongly represented, in current analysis. The process of guiding the analysis of Chapter 6 by issues raised during the interview process and looking at the effect of religion on concrete policy making, resulted in this chapter focusing on the most conservative aspects of the Catholic doctrine and leaving out the analysis of Evangelical



and other churches.

I also used my own biography and identity as a “research tool”. According to Burgess (2002), what the researcher brings from her own story, values and social position is relevant, particularly as we all have a biography that gives us an insider/outsider status in social situations. We have multiple identities from our own biographies and as researchers. But our corresponding field identity is not static and dichotomous. The researcher can play with it and use it as a tool to gain entrance to difficult social settings and to create rapport with interviewees (Srivastava 2006). Cousin (2010) argues that although the researcher must reflect on her own bias based on her biography, it is useful to bring our own experiences to the research through explicit reflexive processes mediated by language. According to her, researchers should not attempt to be completely detached from their research. This is impossible, as we look at things always “from within” and we are invested in the research process (Cousin 2010, p. 10). This framework situates my research both as an insider and outsider. I engage in familiar scenarios. My work in international development organizations with women’s rights and gender equality in Latin America, my status as researcher in a UK establishment, development practitioner in a UN agency, and my nationality and upbringing in Chile are all part of my research biography, and not only my personal story.

The advantages and disadvantages of the researcher as an insider have been amply analysed by scholars. Burgess (2002) takes account of researchers as insiders, arguing that they have a better interpretation and intimate knowledge of things that outsiders cannot learn. Researchers that are familiar with the cultural setting may have the ability to blend in and understand the demands and expectations of participants, and because they share frames of reference, interaction might be more natural. The challenge is not taking things for granted or overlooking familiar situations. In my case, my previous experience working in an NGO in Chile, and later on in an international agency, opened many doors to advocates

and civil servants. However, it also brings about my history to my interviews and sometimes assumptions about my previous knowledge of the issues. When interviewing conservative advocates and civil servants in Sebastián Piñera's government, my strategy was to expose my position frankly, looking for ideas that were common to both, from where I could create rapport. This also implied taking a closer look into my own bias when approaching the field research, making an effort to confront the interviewees when needed, but also making sure that I understood and was able to represent their perspective. Among the disadvantages of the researcher as insider is that the position as outsider gives "stranger's value"; if a situation is strange for the researcher, she might raise questions and analyse how members of the community see it (Burgess 2002, p. 23). There might also be problems in recognizing patterns, attaching meaning to events and selecting what to observe in settings that are too familiar, some issues might appear irrelevant and the researcher may lose the opportunity to pose questions to informants. Recognizing these problems, Burgess' advice is to "separate observation from feeling"; total objectivity is impossible in any case, both for outsiders and insiders. The "stranger's value" can be used by researchers working in their own societies, forcing themselves to look at familiar situations with new eyes and engaging reflexively in the analysis of the events and evidence obtained through observation (Burgess 2002, p.22). In my case, the "stranger's value" appeared concretely when confronting conservative ideas that I knew existed from the literature, but had never faced directly.

According to Burgess (2002), all social research takes place in a political context, including the micro-politics of interpersonal relationships. In my case, the research involved engaging with people from a broad ideological spectrum with different views on women's rights, sexuality and reproduction. Not only women's organizations, technocrats and advocates that might have familiar views, particularly on sexual and reproductive rights, but also with people at the more conservative end of the spectrum. This posits some issues when

approaching and interpreting people's views. Back (2004) addresses the challenges and contradictions in studying people that use ideologies to empower themselves. In his research on racist extreme right-wing politicians, he states that the social realities of both researcher and the researched are at play in the research process. The quality of each encounter must be addressed, we should not assume that real communication only happens when the social background is shared. These types of research processes show us that there is a relationship between social science and values and "writing about highly politicized issues like racism in itself means being drawn in political alignments, not a neutral place" (Back 2004, p.272). The conundrum - according to Back - is solved using a combination of dialogue and critical judgment. The power relations when interviewing conservative actors might always be imbalanced, but in my case, power and status probably lay with the interviewees. In Chile, conservatism is the ideology of the elite, and institutions such as the Catholic Church, which can be conservative and has been used by conservatives, are powerful players. In my case, the micro-politics of the interview shifted according to the issues, sometimes with the subject initially being quite patronizing and using their power and status to make a point (this happened particularly with conservative medics), then shifting to a place where I had some power in questioning their "truths" from a rational and critical perspective. The advantage of this scenario is that the dialogue then turned into a more honest dialogue amongst peers. They wanted to "convince" me, and I had free rein to question them. This sparked many of my conservative subjects' interest, some interviews went past the allocated time and ended in very amicable terms. They did not fear that the questioning was a menace to their status and power. That was beyond my opinion. The challenge is then to represent the situations and scenarios in a fair way when writing up the findings. The literature has mainly addressed the power imbalances and differences in world view in cases where the researcher comes from a more privileged background (Burgess 2002, Srivastava 2006). In my research this was not the case, many interviewees shared my socio-economic background and many were more

powerful. It is also my opinion that any interviewee has some advantage over the researcher, as they have the power over the information that we want as researchers. It was therefore critical to use my background - personal and professional - to understand and respond to the social context of the interview, the interviewee's expectations, and understand the language of their disciplines.

## 3.2 Data Collection

I spent a period of eight months in Chile, divided into four months (October - January) in 2013 and four months (October - January) in 2014. I conducted 50 interviews in Santiago and attended a series of events on abortion and gender policies. The timing of the periods is relevant. I conducted the first fieldwork during the last months of Sebastián Piñera's government (*Renovación Nacional* (National Renewal) (RN)), the first right wing elected president in more than 45 years. The public discussion was biased by a possible re-election of Michelle Bachelet and her agenda for gender equality and Piñera's lack of capacity to govern the country. Even the more conservative interviewees were disappointed with Piñera's leadership, in what they saw as weak, liberal policy making. Progressive interviewees highlighted the administration's lack of technical capacity and the lack of competence of its officials, particularly in the *Servicio Nacional de La Mujer* (National Women's Service) (SERNAM). They did not expect great advancements in sexual and reproductive rights during Piñera's administration and were not disappointed by the lack of progress. I timed my second fieldwork to coincide with the possible discussion of a law to decriminalize abortion. The law was discussed in the media, but Bachelet's government was being extra cautious and the process is taking longer than expected. Michelle Bachelet's second term has been immersed in criticism and lack of trust in the political system in general, and corruption scandals have

seriously tarnished politicians from all sides of the political spectrum (including Bachelet herself by her son's corrupt practices), damaging people's trust. This meant that lack of progress in sexual and reproductive rights started to appear as part of the failing of democracy and Chilean political institutions in general.

### 3.2.1 Interview process

I conducted 50 in-depth interviews until I reached saturation (Small 2009). The interviewees included (a) government officials from the *Concertación* and the *Alianza*; (b) the international community; (c) civil society: conservative foundations and think tanks, pro-life and feminist organizations; (d) academics (conservatives and progressives); (e) medics and lawyers (conservatives and progressives); and (f) local government officials (complete list in Appendix B).

I selected the interviews through three processes: (1) the first involved a non-probabilistic purposive selection by reading the media and current documentation, including legislative proposals. There, I identified advocates and activists involved in the issues. I started by selecting people that I knew beforehand that could give me a general idea of the situation and help me identify possible subjects. This initial sample included feminist activists, former government officials and international organization officials. I also used my personal connections to reach conservative academics that could open the doors to more conservative sectors; (2) using the first batch of interviewees, I used snowball sampling to include more relevant actors suggested by the interviewees; this was particularly relevant to identify government officials from the first governments of the *Concertación*, Piñera's government and young conservative activists; (3) I used non-probabilistic purposive sampling again when I had identified some key issues for which I needed information, this selection included the

conservative journalist involved in the article in *El Mercurio* about the JOCAS; conservative medics and lawyers; key people in the Ministry of Education and some feminist activists that were involved in EC and sexuality education initiatives.

The contact with my interviewees generally started with an e-mail. In the case of some feminist advocates and NGO professionals that I knew previously, the correspondence was quite informal. When contacting someone that I did not know beforehand, I sent a template of the correspondence that I had prepared. It included the purpose of my research, contact information and I always stressed the importance of the time and opinion of my correspondent. I explained my research and offered confidentiality to all interviewees, even those that are my long-term acquaintances and former colleagues. After the interview I sent a thank-you note by e-mail and they all signed a participation agreement.

The Chilean elite is quite small, and sometimes I encountered former acquaintances when recommended by an interviewee, and that enabled me to contact them more easily, drawing on our common background. In some cases, not only is this important as an entry point to getting the interview, but also because these common stories allow your interviewee to “situate you” more easily, opening channels of trust and rapport. For example, the head of a foundation was out of town and suggested I interview a person from her team instead. I knew this person from my time in Chile, and we had colleagues and friends in common. During the interview, because we had this shared history, she was quite open and frank about complex issues and provided information in “short hand”, meaning that she knew she did not need to explain some issues, that I would get the point with just a phrase or a reference. The same situation happened when someone suggested I interview a researcher at an international organization, I did not know this person, but we studied in the same department at university with only a couple of years’ difference, she therefore knew that I would understand the language of her discipline.

When contacting conservative advocates, I approached the interviewee taking care to show the required formality, but soon realized that many of them were quite open to me and that the interviews ended on quite good terms and with a kiss in the cheek - the more informal greeting in Chile - and not a handshake, with the exception of the priest of the Opus Dei that I interviewed. He was very polite and pleasant and we ended on amicable terms. He even put me in touch with some other interviewees and personally introduced them to me. However, in this case, I faced a challenge in the interview process that would never be the case with a progressive activist. I had to be quite attentive to the nuances of body language that alerted me to the restricted life this person had. He was preoccupied with having a window and the door open, even though it was not hot in the office. I suspect this was to show that he was not doing or discussing anything inappropriate. Mid-interview we were interrupted by his senior, an older, austere-looking priest, who wanted to ask for some keys, but was also quite inquisitive about me and I felt quite observed in the few minutes this other person was in the office. I realized the effects of the strict discipline on the life of Opus Dei members (Mönckeberg 2003) and understood that if his life is policed at that level, the information he gave me was probably also in strict alignment with a set of ideas and norms, without much space for critical thought. The common trend in my conservative interviews is that I was surprised by their openness and goodwill towards me. Many told me at the end of the interview that they appreciated our conversation, and two of them said that this was the first time they could have a “rational” discussion about these issues with a progressive person, and that was quite refreshing for them. I did not have any impolite rejections, but a couple of people did not respond. The most unpleasant experience I had was with an official of the Piñera government that scolded her secretary in front of me for not adding the interview to her calendar.

The interview process was loosely structured with open questions characteristic of

semi-structured interviews. I had a set of topics and questions to guide the interview that I had identified in advance. I approached some interviews to specifically discuss one process or policy, and these interviews were tailored to that discussion. In other cases I used a standard template that I had prepared to start the discussion. I had a different template for progressive and conservative interviewees (template in appendix B). A qualitative in-depth interview is useful to collect complex stories that are not easy to put into categories (Arksey & Knight 1999). In addition, a qualitative approach was important as I could adapt the data collection to the interviews themselves, and the data I gathered was informative for future encounters. The interviews gave me access to power struggles and negotiations involved in policy making. It also provided the rationale behind policy making and the resistance to progress, access to political and advocacy practices and in-depth knowledge of the complexities of policy implementation.

Miller et al. (1997) give some concrete and practical advice that is worth mentioning on how to create rapport. They advise establishing trust, showing genuine interest, assuring confidentiality and not being judgmental. These last two were particularly important when working with policy makers and advocates, as they must often follow an institutional discourse and only after ensuring total confidentiality can trust be built. The work of interviewing in such cases was facilitated by creating some type of complicity with the interviewee, not being judgmental and showing respect for their difficult position in regard to some topics. In fact, two of my interviewees requested that their interviews not be recorded for confidentiality reasons, and one recorded the interview for himself, to ensure accuracy. I offered the transcript of the interview to all my subjects, and explained that I was available for any follow-up needed.

I recorded and transcribed all the interviews and coded the contents in NVivo. A first analysis showed me the common trends and from there I could identify the broad sections



that would then form chapters of this document. These I coded again with the common trends amongst interviewees, creating a series of sub-themes. I also coded the interview according to type of interviewee and have cross-cutting themes (complete list of codes and frequency in appendix B.2). The interviews were all done in Spanish, and I have translated the sections used in the text.

### **3.2.2 Other data sources**

During my first fieldwork I realized the limitations of the interviews. The problems have to do - firstly - with the general limitations of people's accounts of events. Humans can be unreliable and tend to remember some issues and forget others. Human perception is in general biased, and memory is imperfect. As this was not research mainly on people's perceptions and subjective accounts - although I recognize that the qualitative research will mainly give you this type of data - I solved this by triangulating and asking for as many accounts as possible of facts and processes. I also looked at available documentation, including in the media. The other problem was that I could not find interviewees for some processes. For example, on the legal reforms in chapter 5. I solved this by looking at primary documentation such as the dictatorship's national development plan (1978-1983) (ODEPLAN 1979), the notes for the records of the *junta*'s legal discussions on abortion (Congreso Nacional de Chile 1989), the notes for the record of the 1970s constitutional commission (Comisión Ortúzar 1974), etc. In addition, the records of the law approval procedures maintained by the national congress were useful to gather information about relevant actors, politicians' positions and strategies. These documents provided information on processes that were not remembered or known by many of my interviewees, such as the approval of the law that created the national day of the unborn child (Congreso Nacional de Chile 2013). I also used media and press reports to support data gathered by other means.

This does not constitute a traditional press analysis. The press in Chile is managed by the corporate interests of two giant media conglomerates and is quite biased and unreliable as a unique source of data. I also used internet searches and corporate public relations pages to gather information about the private sector: pharmacy chains, national pharmaceutical and private health conglomerates, and Chilean billionaires (for Chapters 8 and 9). In addition, I looked closely at the corporate pages of universities linked to the Opus Dei (*Universidad de Los Andes* in Chile and *Universidad de Navarra* in Spain (Universidad de Navarra n.d., Universidad de los Andes n.d.g)) and to the Legionaries of Christ (*Universidad Finis Terrae*). To analyse the links between businesses and these universities, I requested the list of donors per an official access to information request to the Ministry of Education. This information allowed me to link some business families with the universities.

### **3.2.3 Quantitative data**

This research also makes modest use of quantitative data. Indicators are useful to measure concepts and test the assumptions drawn from my research. The use of internationally agreed upon indicators can also help validate findings, i.e. whether my research data shows that I am observing correctly and in agreement to the understanding of the interviewees (Peräkylä 1997). I use this type of information mainly: (1) to support the situation analysis and show empirical evidence of some broader phenomena that the qualitative research showed, such as the case of Church allegiance. (2) I also introduced some indicators to measure the issue in comparative terms and get a sense of the situation looking at how Chile compares to other countries, like the analysis of teenage pregnancies. Comparative data was quite important in my research, as interviewees - and Chileans in general - do not tend to look at their situation in comparative terms, and instead see their situation as unique, when it is not necessarily so. Chilean media is mainly focused on national events and fairly superficial without much

historical perspective, therefore information available to the public tends to be limited to Chilean current affairs, and not very in-depth. (3) Finally, I also introduced some unbiased measures that I could only get by analysing quantitative data, for example, public opinion on abortion.

Specifically, I used pre-existent quantitative indicators that are publicly available. In Section 6.1.1 on Church allegiances, I used indicators already analysed by the World Value Survey and formatted into percentages. I made the graphs and the tables from that information. In the section on teenage pregnancies, I show indicators from other sources and previous literature, and created Table 7.1 with the Human Development Index (HDI) (Chapter 7). In Chapter 9, I use data from the World Value Survey and constructed tables from that information. In that section I also conducted my own analysis of the 2010 Chilean UNDP Human Development Report survey database. The UNDP requested an opinion survey to assess Chileans' perception of gender equality. The random sample was of 3150 individuals that were asked a fixed set of questions (UNDP 2010). I downloaded the database from the UNDP website and worked with it. I cleaned the data, and selected a set of four independent variables: gender, age, income and education to test against the dependent variable, measuring if the respondent considered that abortion is ever justified. The independent variable was a dummy, yes/no variable, therefore I conducted a logistic regression that provided the likelihood of respondents answering that abortion is never justified. The model is presented in Table 9.2.

### **3.3 Challenges**

There are several analytical challenges in this research. One is the aim to understand social process in a framework of social justice and development, with findings based on qualitative

evidence and approached with as little bias as possible. As a development practitioner, the mandate of the discipline drives me to generate useful conclusions that stand up to the scrutiny required in the application of findings in a broader development context. As a social scientist, the challenges are similar, but not the same. My findings must be reliable, i.e. similar to the findings of others using the same methods; and valid, i.e. my interpretations of the events must correspond to what I want to measure (Drost 2011, Peräkylä 1997). And finally, as I want to contribute to feminist scholarship, my research must be sensitive to power structures, situations of exclusion, silences and the multiple interpretations and interest that different social positions imply (Oakley 1998, Ramazanoglu 1992). These drivers shape not only the data gathering but also its interpretation.

To respond to these challenges, I devised several systems. The challenge as a development practitioner led me to analyse the CEDAW Committee recommendations for Chile, and to look at the situation in Chile with a regional and global perspective through the HDI and other available data. I have also been able to connect the qualitative information in some cases to the role of international cooperation, but to a lesser degree than other actors. To ensure reliability, the data collection that I devised allowed me to look at a process from several perspectives. Although triangulation was not always possible, such as with the case of processes that had happened during the dictatorship, I made an effort to analyse the information from several data sources, and with interviewees with radically different perspectives. The final challenge gave me concrete reasons to be quite reflective, in particular during the interview process. As a feminist researcher, the problem was not to get the information needed to sustain a feminist critique of conservatism's view of social and political processes, but to understand the conservative discourse and its rationale, and convey them in a rational and balanced manner, without bias. This posed several problems, mainly to ensure real communication in topics that not only are not neutral, but are also highly contested.

In this scenario, facts can be distorted to convey a message, power relations are salient and the social place that the researcher and interviewees have, acquire meanings of their own.

There are also some substantive challenges when analysing conservatism from a feminist perspective, and even one that is based on social justice. The principles of conservatism are only grasped if reading the subtext of the conservative discourse. The starting point for the conservatives that I interviewed is not irrational fear of change or belief in social hierarchies, but a conviction that social change in the direction they think is wrong would be harmful for all. The challenge is then how to convey the problematic assumptions of this discourse while also being true to “the good intentions” of conservative advocates. For a feminist researcher like me, bias is sometimes close to a moral definition of what is right and what is wrong, and that is uncomfortably close to a judgement of the subjects’ moral values.

When addressing the reliability of my findings, a similar problem arises. Many conservative advocates are adamant that feminists, the media and the public in general distort their principles and elaborate a caricature that does not correspond to reality. The challenge is then to represent the effects of conservative advocacy and carefully use empirical evidence to assess these effects. However, it might be the case that the conservative interviewees will never agree with the findings. On the other hand, I had the experience of subjects moving away from the truth to make a point, or not wanting to recognize the problems with hierarchies in the family for example, and being completely biased in the understanding of the family as an organic well-functioning institution without conflict, power or violence. In these cases, my critical perspective and my firm standpoint on social justice guided the analysis of the information that was conveyed, but it does not guarantee that all interviewees will agree with it.

# Chapter 4

## Gender and Women's Rights in Latin America and Chile

### 4.1 Introduction

The purpose of this chapter is twofold. Firstly, I will introduce part of the relevant historical and political context that situates the research within the broader framework of the Chilean political process and the influence of the women's movement before, during and after the transition to democracy. Secondly, the chapter gives an overview of how gender and women's rights have been played out in Latin America and Chile in particular. I have looked closely at Latin American and Chilean scholars and activists' analysis of the gaps in women's access to sexual and reproductive rights; the understanding of social and cultural processes hindering progress and their analysis of the historical processes that influence current policy making. I have also analysed the contribution of global scholars in the understanding of progress on gender equality and women's rights in Chile. The regional analysis shows historical and

social trends that affect progress in gender equality in the region, as in the rest of Latin America.

## 4.2 Context

This section will situate my research within historical and political developments, serving as relevant context. For the purposes of this section only, the relevant historical moments start in September 1973, when a *coup d'état* against the democratically elected socialist government of Salvador Allende froze and dissolved democratic institutions, such as the parliament and democratic elections, and installed a brutal authoritarian regime that lasted until 1989. Headed by General Augusto Pinochet with the three commanding generals of the armed forces, the military *junta* took complete control over the country. The dictatorship left a mark that is still relevant today (as will become more apparent in chapter 5). Of course, this is not the start of the legacies that influence progress - or its lack thereof - in sexual and reproductive rights, but the dictatorship did leave concrete legacies that I will discuss in the following chapters and that are useful to situate the Chilean political context. I will start with a reflection on the role of women's organizations during the transition to democracy and the limitations of the transitional and current democratic periods. A brief description of political parties and their role in Chilean politics will follow. In this section I will place more emphasis on the history and practices of the political right, as the evidence shows that they have been the strongest in opposing sexual and reproductive rights, and because of the role the Chilean political right has had in the conservative agenda as seen in the above chapter.

### 4.2.1 Women and the democratic transition

There has been ample coverage of the role of the women's movement in Chile during the dictatorship and also during and post-transition to democracy. By looking at institutions we can - to some extent - understand what is hindering policy progress. Gendered institutional barriers can constrain gender policies and limit long-term reform and progressive projects can be stopped. During the transition, the institutions that were created and strengthened in the process followed the historically constructed gendered norms and rules and their gendered legacies remained (Chappell & Waylen 2013, Kenny 2007, Waylen 2016).

Chilean feminists have understood the importance of women's active exercise of citizenship, not only to get their demands in the political agenda, but also to fight for broader human rights and democracy. The work of the Chilean activist and sociologist Julieta Kirkwood (1986) has been influential. Kirkwood analysed the history of feminism in Chile and the political vision of Chilean feminists, since the early 1900s to the dictatorship. It is partly her own reflections as an activist and it also shows the increasingly important role that the women's movement acquired in the struggle against the dictatorship. Kirkwood's work still has a prominent role in Chilean feminist scholarship and activism. It was a recognition of the feminist struggle and a call for action to push the feminist agenda along with the struggle against the *junta*, and her work is a precursor to the important role feminists would have in overcoming the dictatorship.

Women have been organized since the early 1980s, both around what Molyneux (1985) names as strategic and practical gender interest, and as groups affected by human rights violations (Ríos 2003, Ríos et al. 2003, Waylen 1994, Pieper-Mooney 2007). Waylen (1994) attributes this increased mobilization to - amongst other factors - the political space that the dictatorship had left for women; where cultural traits and the location of women's identities



were only as mothers and carers, and therefore not threatening; left a (relatively) safer space to participate, at least in the beginning. In fact, the *Concertación de Mujeres por la Democracia* (Coalition of Women for Democracy) had a pivotal role during the democratic transition. Organizing women from all over the country, united in the slogan “democracy in the country and the home” (*democracia en el país y en la casa*) (Frohmann & Valdés 1993), they introduced a series of feminist demands for the new democracy explained in the book *Tramas para un nuevo destino: propuestas de la Concertación de Mujeres por la Democracia* (Montecino & Rossetti 1990). During and after the transition itself, activists had to decide which path to follow: either get on board with official politics, engage with political parties and participate in the bureaucracy of the new democratic government, and risk losing autonomy, or maintain their activism working within civil society and academia. Feminists in Chile decided on a case by case basis to go either way, and be either an *autónoma* or a *política*, as is the nomenclature amongst Chilean activists. According to Ríos (2003), this started to weaken the feminist movement as a political actor after the transition. Many organizations disappeared, in some cases due to lack of funding, or because they were co-opted by the government and lost their feminist agenda. citeWaylen1994a agrees that the transition strengthened the conventional party system and the conventional political scenario that excluded social movements in general.

Moreover, the problems with representation and reform in democratic Chile is broad, and what explains it in part is that the transition to democracy was strongly negotiated and the outgoing military regime was in a good position to exert its influence. The generals ensured that their vision of key institutions was maintained and protected by the Constitution of 1980. The institutions that remained, such as a bi-nominal electoral system, allowed an overrepresentation of the political right and the total exclusion of smaller parties, while the party and bi-nominal electoral systems left few opportunities for women. Further-

more, a series of binding laws (*leyes de amarre*), ensured that main legacies either remained untouched, or were difficult to change. A strong presidential system with undemocratic institutions, such as veto power for the armed forces and appointed senators, further compromised democratic processes (Waylen 2000, Angell 2007, Fuentes 2014, Garretón 2003). These institutional legacies are what Siavelis (2009, 2014*b*, 2010) and Garretón (2003) call “authoritarian enclaves”, and they have interfered with the functioning of the democratic system post-transition. Although there have been some efforts to change these enclaves and broaden democracy (Angell 2007, Fuentes 2014), the political scenario in Chile was and still is managed by an elite that has made efforts to ensure stability by the politics of consensus (*política de consenso*). This elite domination is not exclusive to the transitional period, but part of the history of politics and social processes in Chile (Correa 2011, Zeitlin & Ratcliff 2014, Salazar 2009). The social expectation, however, during and after the transition, was for more democratic processes. After several decades of these formal and informal institutional practices they have become problematic, and Sehnbruch & Siavelis (2013) argue Chileans see these as “a process of government by negotiation and horse trading” (Sehnbruch & Siavelis 2013, p. 3). To maintain the transition, the elite has stopped hearing and meeting the demands of the population, including civil society and the women’s movements. In addition, in line with Capoccia (2016), conservative actors resisted bottom-up progressive demand for institutional change, following their own “ideational factors” and sense of moral priorities. The regime also ensured the protection of conservative gender relations, for example with changes in the Sanitary Code prohibiting abortion, as I will show in the following chapters (Waylen 2000).

By using a gendered analysis of institutions, Waylen (2000) argues that political institutions can shape the women’s movements’ strategies, outcomes and goals. It is not enough to only look at whether the women’s movement had an impact on political institutions and

practices. In Chile, the transition itself and the institutions that shaped the democratic government have moulded civil society's - including the women's movement's - capacity to influence policy processes. She shows that although not all the feminist demands were fulfilled, gender equality outcomes after the transition are mixed. The women's movement did have some influence by engaging with political parties and progress has been limited but nevertheless real (Waylen 2000, p. 338). Immediately after the transition, women had very low levels of political representation in the legislature and in the executive, but the *Servicio Nacional de La Mujer* (National Women's Service) (SERNAM) was established as a response to feminists' demands, and has been the focus of feminist political demands since. In addition, there were some positive legislative and policy outcomes in the area of domestic violence and a more inclusive constitutional language. Reproductive rights, however, remained off the agenda. (I will analyse this paper by Waylen in more detail on page 84). The moral agenda limited cross-party alliances. Issues such as divorce and reproductive rights have been highly politicized and areas that threaten the gender *status quo* are traditionally excluded (Waylen 2000). Moreover, Angell (2007) argues that moral issues such as abortion, sexual education and same sex marriage divide political parties in Chile more than economic and foreign policy (Angell 2007, p. 126) (Valenzuela et al. 2007, also).

I would argue however, that although less public, there have been some advances in sexual and reproductive rights. The latest *Concertación* governments have implemented a series of policies: a norm to ensure that students who are mothers or are pregnant remain in the education system; the regulation on voluntary sterilization, allowing women to be sterilized without any requirements other than their own will and granting men and women access to sterilization in public health services; standards on birth control and sexuality education programmes for adolescents; norms protecting children victims of sexual offences; an internal norm that ensures confidentiality for women requesting health services after an

abortion; the National Institute of Youth has made efforts to study and hear the demands of young peoples' sexual practices; the health reforms like the *Acceso Universal con Garantías Explícitas* (Universal Access with Explicit Guarantees) (AUGE) and the law covering the *Instituciones de Salud Previsional* (ISAPRES) made efforts to diminish health gaps in women in public and private health systems; and finally access to EC in 2010 and information on sexuality was made mandatory by law (Gideon 2014, Díaz & Schiappacasse 2010, Congreso Nacional de Chile 2010a). Nevertheless, these policies have been highly controversial and deemed insufficient both by public opinion and by international review committees, as the following chapters will show.

#### 4.2.2 Political parties

Siavelis (2014b) argues that post-transition politics, and in particular the *Concertación's* political practices, such as the *política de consenso* and the resulting *democracia de los acuerdos* (democracy of agreements), left the country with a set of “transitional enclaves”. These are the informal and formal institutional rules translated into mechanisms developed by the ruling *Concertación* to ensure a perceived stability. According to Siavelis, they include the control - and assignment - of candidate selection (*cuoteo* from the word *cuota*, were every party gets its share); a strong and rigid party system; extra-institutional policymaking, where the political elite negotiated with external powerful actors without a democratic process; and the permanence of the economic model inherited from the dictatorship. These enclaves also brought about elite domination and unrepresentative political processes. Due to the bi-nominal system, the Chilean political scenario is about building consensus amongst two broad coalitions: the *Alianza por Chile* - that is currently the *Coalición por el Cambio* - representing the right, and the *Concertación de Partidos por la Democracia* - currently the *Nueva Mayoría* - for the centre left. Since the return to democracy, the *Concertación* has

been in government, except for the 2010-2014 period, when Sebastián Piñera was president representing the *Alianza*. The parties in the *Nueva Mayoría* include a broad spectrum of centre left parties, from the *Democracia Cristiana* (Christian Democrats) (DC) to - since 2015 - the Communist Party, including the *Partido Radical Socialista Democrático* (Radical Party) (PRSD), the *Partido Socialista* (Socialist Party) (PS) and the *Partido por la Democracia* (Party for Democracy) (PPD).

The *Alianza* has traditionally included the right wing parties, the *Unión Demócrata Independiente* (Independent Democratic Union) (UDI) and the *Renovación Nacional* (National Renewal) (RN). Siavelis (2014a) argues that the Chilean Right is based on the groups' belief in the inevitability of inequality as natural and outside the realm of state. He also argues that Chile has two Rights, the *Renovación Nacional* (National Renewal) (RN) and the *Unión Demócrata Independiente* (Independent Democratic Union) (UDI). The RN is the party that derived from the *Partido Nacional*, and is a more liberal and open, appealing to the broader classically liberal constituency. It supported the dictatorship and had representation in the regime's government structures, but also includes some more moderate members, and has tended to drift towards a more modern, liberal and secular agenda than the UDI's (Scully 1995, Luna & Rovira Kaltwasser 2011). The UDI has remained a conservative party, not only protecting the legacies of the dictatorship, including the 1980 Constitution and its principles, but also on the "moral agenda" on women's rights and gender equality. The relationship between views on sexuality and gender equality and political membership is not monolithic. Although on average right wing politicians are more conservative than their colleagues in the *Concertación*, this conservatism is not absolute. The DC has continually pushed for a more conservative agenda within the *Concertación*. There is also a process of internal negotiation in the *Alianza* that sometimes drives the agenda towards more liberal views than what the UDI members would want.

To draw the analysis back to the conservative resistance to sexual and reproductive rights, I will look at the relationship between religion and political parties in the following paragraphs. The analysis of survey data conducted by Valenzuela et al. (2007) show that religion continues to be an important factor in Chileans' political alignments, were irreligious and agnostic Chileans tend to identify themselves with the left, while religious Catholics have more probability of identifying with the right. The Chilean Right is also more influenced by the Church. This can be traced back to the early development of political parties, when the Catholic Church wanted to maintain their influence, as I will return to in Chapter 6. However, both the UDI (1983) and the DC (1957) are confessional parties that maintain a public and institutionalized link with the Catholic Church. In addition, both emerged from the Conservative Party. The Christian Democrats emerged from a progressive fraction that made the split in the 1960s (Mainwaring 2003), influenced by the social reform within the Church inspired by the Second Vatican Council. Since the return to democracy, it has been a key player within the *Concertación*. Two of the four presidents have been members of the party. Originally a reformist party, it has had an ambivalent role, pushing for the strengthening of democracy and - to some extent - the control of the neo-liberal model imposed in the 1980s. But, due to their allegiance to Catholic religious morale, it has opposed progressive reforms (Luna et al. 2013, Haas 2006).

The UDI was founded in the 1980s under the leadership of Jaime Guzmán, the ideologue of the dictatorship. Guzmán founded the party to protect the legacy of the regime during an eventual return to democracy. The UDI was inspired by a corporatist political movement that originated in the *Universidad Católica* in the 1960s - the *Gremialistas* - and was aligned with the conservative turn in the Catholic Church under Karol Wojtyła (John Paul II from 1978 to 2005). It is the party that represents the neo-liberal economic view combined with social conservatism, in particular of the Chilean economic elite (Huneus

2001). According to Luna et al. (2013), during the last decades, its leadership has had strong influence from the Opus Dei and the Legionaries of Christ (more on these groups in section 6.4). Siavelis argues that the leadership of the UDI is a “homogenous group of young, technocratic, and neo-liberally oriented elites” that share the same background in Catholic universities (Siavelis 2014*a*, p. 251).

Both the UDI and the Christian Democrats have been officially influenced by the Catholic Church’s prescriptions, pushing for conservative ideas about reproduction and sexuality on both sides of the political spectrum. This has allowed for a Catholic presence across the board, and I would argue (and the data will show) that it has facilitated the resistance to a progressive agenda as the divide does not follow the left and right in absolute terms, something that is key in an electoral system that strengthens two main coalitions, leaving almost no influence to smaller parties.

### **4.3 Previous research on sexual and reproductive rights in Chile**

This section will begin by analysing the perspectives on sexual and reproductive rights in Chilean scholarship, and will then look into comparative studies that have addressed the situation in Chile and Latin America. To start, Chilean academics and activists have studied the situation extensively. Lidia Casas, lawyer and academic, has a significant list of publications about the situation in Chile, providing an empirical analysis that gives an overview of the issues of sexual and reproductive rights (Casas 2009, 2014, Casas & Dides 2007, Dides et al. 2007, Schiappacasse et al. 2003); abortion and its legal and social consequences (Shepard & Casas 2007, Casas 1997, 2010, 1998, Casas & Vivaldi 2014*a*) and legal possibilities (Ca-

sas & Vivaldi 2013, 2014b); sexual education (Casas et al. 2008, Casas & Ahumada 2009); and emergency contraception (Casas 2004, 2008). The physician and activist María Isabel Matamala has also written extensively, analysing the situation in Chile (Matamala 2010, 2011, Correa et al. 1994, Matamala 2001b, Gómez 2014, Matamala 2001a). These scholars, and others such as Díaz & Schiappacasse (2010), Jiles & Rojas (1992), Dides (2006), Dides et al. (2012, 2010) and Hurtado et al. (2004), have not only provided evidence for the situation in Chile, but these texts have also been widely used for advocacy purposes. Moreover, due to the role they have played in civil society, many of the studies provide an account of advocacy initiatives to promote sexual and reproductive rights, I will therefore be using them in the following chapters of data analysis.

However, the scholarship in Chile has also looked at the broader social transformation that has affected how Chileans live their sexuality and reproductive practices, and the policy making and legal framework. Vidal's volume from 2002 deals with the social changes that have affected sexual and reproductive practices in the last decades in Chile. The author shows evidence that sexual practices have changed, with an increase in early sexual initiation, and more flexibility and variability in sexual behaviours. The changes are a manifestation of "modern sexuality, the Chilean way" (*a la chilena*) and they do not challenge traditional age and gender hierarchies (Vidal 2002b, p. 24). This - according to Vidal - can be traced to the effect of the policies implemented by the military regime, that explain why younger and more affluent people live their sexuality differently - and more freely - from their parents, as they did not live through the oppressive policies of the regime. Vidal (2002b) also argues for a "economic dimension of sexuality" (Vidal 2002b, p. 25. Author's translation.), where upper and middle class people are transforming their sexual practices, while lower class Chileans are still constrained by traditional models. For my research, the evidence of changing sexual and reproductive practices is important to consider, as practices change, but policies and



law move slower than expected, as the following chapters will show.

The sociologist and feminist activist, Teresa Valdés (1990) has been influential amongst Chilean feminists and academics, not only by researching women's human rights, but also by linking the research with advocacy and activism. She started the research on sexual and reproductive rights in the late 1980s and early 1990s. Following the Latin American feminists' tradition, she situates the struggle on sexual and reproductive rights within the extension of women and men's citizenship (Valdés 2002). In the early 1990s, she identified the barriers to women's rights in Chile, arguing that the patriarchal and elite structure of Chilean society was forcing women to comply with domestic roles and traditional feminine stereotypes. In this context, being a woman was firstly about the feminine body, as a source of sexuality and reproduction, and secondly, women were a source of affection. This structure left women in the private sphere with the emotional task of reproducing human beings. The transformation of these social arrangements required both a collective and individual change, she argues. The challenge was assumed by the women's movement in Chile, a new social actor that began as a reaction to the repressive policies during the dictatorship and took the feminist struggle on board (Valdés 1990).

A few years later, Valdés & Gyslling (1994) discuss the role of the state in gender policy developments in Latin America, part of what they identify as a modernization process. They argue that the modernizing trend to rationalize child-bearing and reproduction coexist with a model with profound cultural roots, where the ideas of motherhood and women's identities are guided by coexisting notions of Mother Nature - from the indigenous tradition - and the Virgin Mary, that have historically given sense to women's experiences, creating some conflicting and contradictory symbols (Valdés & Gyslling 1994, p.194). They draw from the anthropological and historical analysis of Montecino (1993) that argues for the importance of the (lone) mother figure in the construction of the Chilean identity. However, Valdés

& Gyslling recognize that the cultural, historical and social context has been shifting and these shifts have been reflected in women's reproductive practices. They show evidence that women have been changing their expectations on reproduction, and an increasing number of women are relating to a modern ideal, with less and more planned children, and more equal relations with their partners. These changes have not affected the mandate of motherhood, where women are not "complete" unless they are mothers, and where motherhood is not an option, but has the strength of "existential identity" (Valdés & Gyslling 1994, p.182).

Similarly, Dides (2003) argues for a cultural transformation in Chilean society, where reproductive practices have changed and there are two coexisting interpretative frameworks: the Catholic conservative view that opposes the advancement of sexual and reproductive issues, and a majority that support progressive initiatives. The state, in this scenario, often delays the implementation of progressive policies fearing a confrontation with the Church. Dides therefore, identifies the existence of two contradictory powers (*fuerzas*) the "conservative power of tradition and the progressive modernizing powers" (Dides 2003, p. 90. Author's translation). This author represents the increasing concern amongst scholars and activists about the conservative advocacy that will be analysed in the following chapters. Guzmán et al. (2010) have also identified the power of the Catholic Church as a moral authority that has opposed the advancement in key areas of women's rights. They identify the progressive sector's fear of an authoritarian setback that leads to broad agreements and compromises. They show that right wing political parties have allied with integralist Catholics, supported by a network of conservative think tanks, that have put a stop to progressive reforms (Guzmán et al. 2010).

Araujo (2009, 2005) is an academic who has also studied the Chilean sexual and reproductive discourse and access to rights. In Araujo's work from 2009, she aims to understand the post-dictatorial Chilean state's discourse on sexuality. She argues that the dictatorial

regime's discourse on the family, which made a strong connection between sexuality and reproduction, right to life and Christian values, did not disappear during the transition. These ideas continued in the conservative discourse, in particular from the right and the Catholic Church. She argues that this conservative argument is presented as an expression of Chilean culture, used by conservatives that argue that it is a fundamental part of social cohesion. Moreover, the Catholic Church have used its informal power (*poder fáctico*), to oppose the progressive demands of the feminist movement. According to Araujo, state and Church filled the space in the media and public discussion, excluding the dialogue with social movements, even though other sectors - such as parents, young people, trade unions - did participate in some way in the informal debate. Furthermore, analysing some state policies and documents, she argues that what she calls the dictatorial text, inherited from the dictatorship, is used by conservatives to limit the discussion and to counterbalance the adoption of a discourse on sexuality based on notions of sexual and reproductive rights.

Like Guzmán et al. (2010) and Dides (2003), Araujo (2005) argues that the success of conservative strategies in Chile - in particular in the early 2000s with the sexuality education campaign (more in Chapter 7) - can be found in the authoritarian practices left by the dictatorship, and in the democratic response of building "political consensus" (*política de consenso*), that in an effort to avoid conflict has limited the public debate and the participation of legitimate political actors, such as the women's movements. However, Araujo argues that this is not enough to explain why the Church had been so successful in gaining the position and the leverage it had. She argues that this is due to the role it has traditionally had in the "moral tutelage" (*tutela moral*) of the Latin American population. This takes on board Nugent's argument that the Church has historically assumed the moral orientation of the people, acquiring an uncontested and naturalized role in the public sphere (Nugent 2010).

Chilean scholars and activists have identified the cultural and social elements that have spearheaded the conservative resistance to modern practices and policies on sexual and reproductive rights. Several comparative studies have looked at women's sexual and reproductive rights in Latin America and Europe, including Chile. These have looked at policy outcomes on gender issues in general, and in particular uneven results in changing legislation on sexual and reproductive rights (Htun 2003, Blofield 2006, Haas 2006, 2010, Morgan & Roberts 2012, Franceschet & Piscopo 2012). Shepard (2000) studied the developments in sexual and reproductive rights policies in Latin America, including Chile. Her main argument is that a double discourse system – one that is both political and cultural – provides an outlet and mechanism for social accommodation where the public discourse remains unaltered and traditional, while private practices are expanded but not discussed, maintaining the *status quo*. This system allows for a gap between public norms and private practices. She also links the resistances in Chile to broader political developments, such as the global increase in religious fundamentalism and cultural globalization that exacerbate pre-existing cultural divisions. The author discussed how in a country where a majority identifies with the Catholic Church, the Church is also the main power against sexual and reproductive rights. However, the “double discourse” allows some space, and not all Catholics follow the official Catholic dogma (Shepard 2000).

In a later work, Shepard (2006) analyses the backlash that followed important global policy changes in sexual and reproductive rights. She identifies a bureaucratic resistance within the state as officials may defend their interest against new policies or be uncertain on how to implement international principles set in the ICPD. In Latin America – Shepard argues – some small scale projects organized and driven by feminist activists in the 1980s and 1990s followed the principles of international agreements, however, they were short-lived and small-scale. Due to the influence of conservative sectors and the Church, the political cost of

changing policies was too high, and rather than implementing substantive initiatives, governments tolerated unofficial and illegal practices that expanded private choices, in particular for middle and upper classes. This has led to inequality in access, like the cases of abortion and divorce in Chile and Colombia (Shepard 2006). Morgan & Roberts (2012) use the notion of “moral regimes of reproduction” to analyse the changes in reproduction and population policies in Latin America. By using Foucault’s notion of biopower, the authors argue that these moral regimes of reproduction position the biological body, i.e. the reproductive and sexual body, as a critical site of contention, disciplined through a system of “reproductive governance”. These regimes act through institutions such as the state, churches and civil society, to “produce, monitor and control reproductive behaviours and practices” (Morgan & Roberts 2012, p. 242-243). By analysing the situation in a set of Latin American countries, including Chile, they conclude that the struggle between conservative and progressive actors has been mainly about the inclusion of sexual and reproductive rights in legal instruments and through judicial channels, and also that the processes have highlighted the fact that neoliberal economic policies have undermined the capacity of the state to provide access and have shifted demands to people as consumers with freedom of choice (Morgan & Roberts 2012).

Haas (2006) analyses the political and institutional environment to explain outcomes of legislative proposals on women’s human rights or gender equality. By looking at several factors such as ownership of the proposal and the contests of the proposal itself, she concludes that the proposals presented by the government through the SERNAMEG are the most successful. She argues that this is due to the institutional structure of the Chilean political system, which is not conducive to institutional cooperation amongst parliamentarians and the executive, because losing a proposal to the SERNAMEG means losing control over it. Haas also argues that the conservative opposition to women’s human rights exerts disproportional

power within the political system. Even when overcoming institutional obstacles, feminist proposals must overcome this “larger cultural opposition” by accommodating the contents to be less threatening to the *status quo*. Haas argues that feminists have learnt to navigate the system and other factors such as party membership and the personality of the head of the SERNAM, are also relevant (Haas 2006). Similarly, and using the same method of analysis, Blofield & Haas (2005) study gender legislative proposals in Chile. They show that proposals that are successful are the ones that: are written and spearheaded by the executive; are not threatening to existing gender roles; and do not require economic redistribution. They argue that one explanatory factor lies in the Chilean legislative system, where the executive power influences the policy making process. The system allows the executive to give urgency to some proposals and determine an important part of the legislative agenda and officials of the executive can participate in committee meetings (Siavelis 2002, Fuentes 2014). It also has more resources - according to Blofield & Haas - to draft high quality legal proposals. Blofield & Haas argue that the presidential system itself is not conducive to a reformist agenda, and that the executive play a key role in legislative outcomes, drawing from Siavelis’ (2002) evidence that the executive is the most important legislator in Chile. Haas’ analysis is useful to understand legislative outcomes and how particular bills are accepted or blocked, and the internal pulls and pushes that guide the success of laws. However, it does not respond to the drives of the resistance in parliament and how the external pressures influence politicians’ positions (Siavelis 2002). In my view, a narrow look at political processes is not sufficient to explain the drives of historical legacies and the influence of neoliberal legacies, as shown in Chapter 5.

Htun’s (2003) cross-national study takes an approach that examines policy processes on gender issues and its outcomes by looking at progressive issue networks and their capacity to “hook” their agenda into policy initiatives. By disaggregating the types of gender issues to be

studied, Htun is able to understand how political institutions shape the capacity of elites - or progressive issue networks - to reform policy, and why it is that under certain circumstances “Catholic bishops can be defeated”. According to Htun, the lack of progress in Chile on legislating abortion is partly because Chile’s democratic government has been affected by the undemocratic legacies of the dictatorship. These have prevented the discussion of decisive issues and inherited undemocratic institutions have affected policy goals, while the coalition politics (the politics of consensus) have also hindered policy change. For Htun, timing is also affecting policy outcomes. Following path dependence, earlier events have influenced the conditions of newer ones. In the case of Chile, early liberal policies on abortion (from the 1930s onwards) generated a conservative reaction which resulted in more restrictive policies and awakened the Church to act more strongly. Htun also discusses the fact that the modernization processes and cultural and social changes have not been sufficient to explain policy change. For example, she discusses the dictatorship in Chile where - on the contrary to other authoritarian governments like Brazil and Argentina - there was no space for progressive reforms. Here, the resistance to change was particularly strong as the dictatorship pushed for the patriarchal family, in the belief that it was a defence against Marxism, and powerful Chilean conservative ideologues, like Jaime Guzmán, stepped in to stop reforms (more on page 103) (Htun 2003, p. 74). Moreover, the transitional process that could have opened a space for reform on abortion coincided with a global anti-abortion movement, the Church had shifted into a more conservative position, the cost of pro-choice advocacy increased and political parties avoided the issue (Htun 2003). Htun’s analysis is very useful in that it situates the lack of progress in policies within external trends, combined with the historical factors that allowed the resistance to be successful. I will use this as a starting point, but I will also look at the internal drivers within conservative activism, by also exploring how these processes need committed individuals that rely on institutions and structures to make their mark.

Blofield (2006) conducted a cross-national study looking at policies on divorce and abortion. Blofield asks why modernizing trends to liberalize and secularize society have been resisted in Chile. She proposes an analysis that includes socio-economic variables that explains the lack of class solidarity in spearheading advocacy on abortion (because middle and upper class women have access to paid illegal abortion); and the fact that in Chile the political conservative elite - in particular the Catholic Church and integralist Catholics - have access to more resources than progressive groups. Blofield's main argument is that lack of progress is the result of the Catholic Church's political influence and conservative networks' access to economic resources (Blofield 2006, p.5). Blofield's research, by focusing on the success of conservative political actors, however, misses the weight of historical legacies, something that can only be understood when looking directly at the internal negotiations and contradictions of the conservative agenda, that I will further analyse in Chapter 5. In addition, by looking mainly at political processes, Blofield mistakenly does not unpack the commitment of conservative actors and their influence in the market and in hindering access to services in other institutions such as public and private health clinics, schools, and commerce. In my view, by looking at the political economy of sexual and reproductive rights, and understanding the conservative synthesis inherited from the *junta*, we can better see why conservative actors have been so influential, where the conservative economic elite have protected the moral agenda. With more resources, as identified by Blofield in the Church's case, but also, I would argue, by the complete commitment of part of the conservative business elite that is sustained by instructional legacies and free market policies, as I will show in the Chapters to follow.

Waylen (2010) compares policy outcomes on domestic violence and abortion in South Africa and Chile by using an institutional analysis and looking at how gender issues were articulated and placed before and during the transition (Waylen 2010, p. 338). As seen in the



previous section (page 68), the women's movement had been an active political actor during the dictatorship and the transition, ensuring the inclusion of gender demands in the new democratic agenda. The success of this, according to Waylen, not only lay in the strategies used by the movement, but also in the opportunity structure within the transition (Waylen 2010, p. 340). However, only a small number of women gained seats in the first democratic election. The demands of the broad women's network, the *Concertación de mujeres por la democracia*, were incorporated to some extent into the new agenda. The transition itself, led by the military and a small elite, did not leave much space to include the women's demands. In addition, the *Concertación* was at the time dominated by the *Democracia Cristiana* (Christian Democrats) (DC), with strong links with the Catholic Church, and as such, more conservative and less amenable to reproductive rights. As a result, the influence of feminists in the reform processes was limited. Due to the political structure and the high cost involved in addressing issues such as abortion, they were left out of the discussion and any progress in sexual and reproductive rights remained limited (Waylen 2010).

#### **4.4 The context in Latin America and Chile**

Latin America is moving away from traditional/authoritarian societies to modern/democratic states. This has created resistance to the move towards social justice and equalitarian societies. A colonial past, authoritarian regimes and neoliberal economic policies still affect Latin America. Some of the resistance to policies on gender equality and sexual and reproductive rights can be inserted in these trends and traced historically. To support this argument, this section will firstly analyse the main social and cultural trends that, in my view, are important to understand the state of advancement in areas of women's bodily integrity in Latin America, and Chile specifically. It will focus on three areas: inequality and exclusion;

families and gender roles within families; and the influence of ideas of motherhood and a culture of *machismo*.

Latin America is at a crossroads; with increasing development and economic growth and high development indicators in many areas, but persistent inequality and discrimination and low indicators in other areas, particularly in women's reproductive rights and a prevalence of gender-based violence. Moreover, although there have been significant changes in gender relations that are linked to processes of modernization and democratization in the overall social context, the weight of conservative and traditional social relations is still present (Valdés 2009, 2007*a*, Valdés et al. 2006, Araujo 2009, Oyarzún 2005, Martínez & Palacios 2001). In addition, social and economic inequality and social exclusion is widespread (Hoffman & Centeno 2003, Korzeniewicz & Smith 2000, Karl 2003, Portes & Hoffman 2003); and a society centred on family and kinship relations is prevalent in all Latin American countries (Jelin et al. 1990). These elements are part of a framework that allows us to understand how and why gender inequality and discrimination is so persistent in the region and the lack in progress in some areas of women's human rights. Moreover, a historical look at these processes show how entrenched they are. This is not to say that Latin American societies have not changed significantly in the last century, but that important social changes have been accompanied by legacies that to some extent clarify the persistence of inequalities and exclusions in the region.

The traits detailed above have long lasting effects in Latin American gender relations. Molyneux (2000) shows that the region's conservative society, influenced by the Catholic Church, has historically made efforts to control women's bodies, hindering progress on reproductive rights. During the early twentieth century, this regulation was part of the process of state-making in many Latin American nations. States wanted to regulate a new emerging class of working women that demanded - and enjoyed - more freedom than previous genera-

tions. Moreover, despite early liberal states having some modern reforms, they still protected masculine authority and privilege. Early liberal states were concerned with a decline in birth rates and used maternalistic cultural traits to construct women's identities, promoting the "duty" of women to provide the nation with more citizens. For example, she argues, Chile introduced a prohibition to sell breast milk and regulations against wet nursing in this period. I would agree that maternity and fertility became resources to regulate women's bodies, and for the purposes of this research I will link it to the resistance to the protection of women's bodily integrity. This trend has continued throughout history. During the 1970s and 1980s, authoritarian states controlled women's bodies and sexuality with conservative policies and in some cases sexual torture of political prisoners. Currently it is manifested in the limited access to abortion and contraception in many countries (Molyneux 2000).

A second trend that I would highlight is the idea of families, how they should be and their important role influencing social relations. Skolnick & Skolnick (1977) make a critique of the universalization of certain characteristics attributed to families in modern societies, drawing from the idea of an "ideology of the nuclear family" as a complex set of ideas and semi-myths that define how families should be constituted and interact: families as having bonds that are universal, the same in all societies; families as natural, unchangeable and fully happy and harmonious institutions. These fixed characteristics of families make it difficult to accommodate conflict and power relations amongst families and changing family structures. Bourdieu (1998) looked into the mechanisms that reproduce these ideas. Using the notion of the family discourse, he understands the institution as a construction and a series of representations that people have about the family, a private place where the personal interest is suspended. These notions are then collectively constructed and universally accepted. To Bourdieu, the state is then responsible for the construction of official categories and favour determined ways of family organization, through fertility and housing policies for example.

Scholars have argued that Latin America has family-centric societies, where the family guides how women and men construct their identity and gender relations (Jelin et al. 1990, Oyarzún 2005, Valdés & Valdés 2005). According to Jelin et al. (1990), the ideology of a strong cohesive patriarchal family is basic to the social system. This idea of family is assumed to be natural and involves daily life completely, and the subordination of women is rooted in it. This means that relations amongst genders and generations are deeply hierarchical with a clear division of labour between members, women responsible for domestic tasks and the maintenance of the family in the private sphere, and men participating in the social and political life of the public sphere (Pieper-Mooney 2009, Jelin 1994, 2005, Sunkel 2006). Despite the persistence of some of the characteristics described, societies are not monolithic and social arrangements in Latin America - as in the rest of the world - change and shift. In general, modern industrialized states have moved towards more equal relations amongst individuals, transforming gender relations and relations amongst generations in families and in the public sphere (Beck-Gernsheim 1998, Giddens 1991). In the context of Latin America, some scholars like Chant & Craske (2003) show that traditional ideas of femininity and masculinity, in particular *machista* ideas that were hegemonic, have declined during the last decades. In Chile, Valdés et al. (2005) argue that two linked historical processes spearheaded deep changes in family relations: the increasing incorporation of women into the labour force; and the involvement of men in private life, implying a reinvention of private life and a redesign of family relations. Similarly, Oyarzún (2005) argues that two conflicting projects coexist in post-dictatorial Chile. An authoritarian and a neoliberal globalized ethos that are united by the persistence of gender and sexual discrimination. Oyarzún argues that in Chile, modernization itself was based on an authoritarian government, where the vertical and hierarchical family was strengthened. The subsequent *Concertación's* government has not been able to revert this trend, where “market fundamentalism coexists with moral fundamentalism” (Oyarzún 2005, p. 284. Author’s translation). The family, there-

fore, is transformed into a space that changes according to productive shifts, responding to the demands of power. It is a symbol that has been reduced and reutilized by conservative sectors, transformed into a static construct, where any transformation is seen as challenge to morality and without history and variations (Oyarzún 2005).

Historically, according to Valdés et al. (2005), the social protection systems in place in the first half of the twentieth century created the ideal of an industrial family, with a sole main breadwinner in a nuclear family (also Roseblatt 2000, Pieper-Mooney 2009). Later on, the neo-liberal policies and the privatization of labour of the 1980s saw the emergence of a new type of family with a “relational model”, with the slow disappearance of the “industrial father” as the sole breadwinner, pushing women into the labour force (Valdés et al. 2005, Oyarzún 2005). This has not meant a complete change in family relations, however, and women are now torn between family life and life at work. Many women take on board both productive and reproductive labour, and the involvement of men is sometimes quite limited to the more rewarding chores of child-care. However, to some scholars, the shifts in gender relations imply a crisis of masculinity, a clash between men’s culturally attributed roles and women’s adaptation to social changes that creates a gap (Vigoya 2001), where changes in women’s roles change gender relations and men resist these changes, creating grounds for conflict (England & Farkas 1986, García & De Oliveira 2011). Evidence from Chile (Valdés et al. 2006) also shows that these changes have been driven by the availability of a modern discourse allowing more equalitarian and non-hierarchical relations. As said previously, qualitative evidence shows that women’s access to employment and spaces outside of the household changed gender relations, allowing for the coexistence of modern and traditional conceptions of the feminine and the masculine (Valdés et al. 2006, Valdés 2007b). Scholars such as Chant & Craske (2003) argue that men still have an advantage over women in most domains, but some feel that they are losing out by perceived

or actual advances in women's situation and resist the imposed changes.

However, the traditional "normative/industrial family" is still the ideal (PNUD 2002), Valdés et al. (2005) argue that this is because families adapt to changes in a pragmatic manner that does not necessarily involve profound cultural changes. Their data show that there are persistent pockets of conservatism in the working classes and amongst people with high human capital, but this conservatism has been transformed and has become a "selective tradition" (Williams 1973), with the majority of women remaining as housewives and the widespread use of domestic service when economically possible. According to the data collected by Valdés et al. (2005), working class women still define motherhood as the most important aspect of their lives, with a strong imperative to be a "good mother", and children have a central place within families. Middle class women are increasingly working outside the household, but are still guided by the imperative of "good motherhood", with women then overwhelmed by responsibilities, tired and with guilt. Higher classes tend to be more modern, liberal and individualistic. In general, fathers still have the traditional authority, but women - as mothers - are given authority within households (Olavarria 2001).

In third place, ideals of femininity and masculinity shaped by *motherhood* and *machismo* create a gender order where the control of people's bodies is at the centre of gender identities. To start, scholars have argued that motherhood - as a social construct - has been naturalized, and women's identity has been equated to that of mother (Valdés & Gysling 1994, Corrêa & Reichmann 1994, Craske & Molyneux 2002). Moreover, Pieper-Mooney (2009) argues that motherhood is the "most important signifier of womanhood in Latin America", at the core of the gender system defining women's responsibilities. For many women, to be a mother, and its consequent self sacrifice and subordination, has shaped how women see themselves and how they are seen by the rest of society (Jelin 1994, Chant & Craske 2003). Many see children as a gift from god and motherhood as a source of pride,

respect and social status. The fact that motherhood has been used by women as source of power, political participation, resistance and transformation highlights the complexities of these cultural stereotypes. Motherhood or maternalistic politics have been used by some of the most powerful women's movements in the region. Women's private virtues as mothers provided the route to a "militant motherhood" and to political life and - to a certain degree - protected some organized women against the violence of authoritarian states (Jaquette 1994, Navarro 1989, González & Kampwirth 2001, Chant & Craske 2003, Pieper-Mooney 2009). These trends, according to Chant & Craske, signal an alternative perspective on motherhood and women's subordination. However, no matter how strong the centrality of motherhood in women's organizations and in the construction of women's identity in Latin America is, the fact remains that these conceptions have a significant role in subordinating women. They drive women to act according to religious stereotypes - Catholic in particular - and traditional gender relations, and by pushing women to centre their life around the family and the domestic sphere (also p. 77 for situation in Chile). On the other hand, ideas of masculinity have been driven by *machismo*. Profoundly studied by scholars interested in gender relations in the region (Vigoya 2001), Chant & Craske (2003) have defined it as a "cult of exaggerated masculinity" that drives the assertion of power and control over women and other men and reinforces virility. These characteristics result in competition amongst men and have negative outcomes for women, driving men's domination of women in the region (Chant & Craske 2003). Although not homogeneously, *machismo* has driven the construction of a masculine identity that is strengthened by control and violence (Vigoya 2001, Munck 2008, Bunster-Burotto 1994, Olavarría 2001).

## 4.5 Conclusion

In order to broadly situate this research, I started this chapter with a brief description of the position of women's organizations and the feminist movement during the transition and the return to democracy. Women had an active role in bringing democracy back to the country in 1989, but their capacity to influence the agenda of the transitional period was limited by institutional constraints of the transition itself and progress in sexual and reproductive rights was limited. The relevant context also includes an analysis of the current political institutions and political parties, with an emphasis on the right wing parties and the confessional parties that have strongly opposed progress to sexual and reproductive rights.

Previous research on sexual and reproductive rights in Chile has addressed the lack of progress in the country, despite significant advances in other areas (Casas 2009, 2014, Casas & Dides 2007, Dides et al. 2007, Schiappacasse et al. 2003, Díaz & Schiappacasse 2010, Jiles & Rojas 1992, Dides 2006, Dides et al. 2012, 2010, Hurtado et al. 2004). Chilean scholars have also highlighted the social and cultural structures and practices that have hindered progress (Valdés 1990, Vidal 2002*b*, Valdés & Gysling 1994), and have identified the influence of conservative actors, mainly the Catholic Church, in its advocacy efforts to maintain the *status quo* (Guzmán et al. 2010, Dides 2003, Araujo 2005). International research has mostly looked at policy outcomes, and, mainly political scientists, have analysed the factors that increase the likelihood of a policy to succeed, looking at the role of the state as the legislator (Blofield & Haas 2005, Haas 2006); the capacity of issue networks to fit into policy discussion (Htun 2003); the influence of inequality and the economic power of the Church and conservative advocates (Blofield 2006); and the role of institutions (Waylen 2010).

Finally, the regional analysis shows that as with the rest of Latin America, there



are historical and social trends that affect social change and progress in gender equality, social and economic inequality and exclusion; a normative and traditional idea of family and gender roles within families; and the persistence of restricting women to their role as mothers combined with a general culture of *machismo*.

# Chapter 5

## The legacies of the Dictatorship

### 1973-1989

#### 5.1 Introduction

A long term perspective is useful to understand historical legacies. Moreover, as remarked by Htun & Weldon (2010), by using a path dependency analysis one can observe that institutions reflect previous political conflicts and shape contemporary processes, these are the institutional legacies. In this chapter I will highlight the longitudinal trends affecting progress on sexual and reproductive rights in Chile. I will identify some key institutions and the ideologies that still affect legislative discussions and policy making in the country. Following a blueprint similar to Ewig's (2010) analysis of policy legacies in Peru's health sector, the case of Chile shows that these legacies, to some extent, block contemporary reforms. This is particularly relevant when reforming policies on sexual and reproductive rights. The resistance is still framed under a discourse that is similar to the one used by the dictatorship,

which restricted general liberties. Policy practices and legal reforms are constrained by the inherited view of the state, the family and the roles of women and men's reproduction.

The starting point is the years of dictatorship (from 1973 to 1989), I will highlight the legacies that are basic to the processes analysed in Chapters 7, 8 and 9. In doing this, I connect current processes to the drafting of the Constitution of 1980 and the neo-liberal economic reforms that constitute the current economic framework. The dictatorship is also the moment when the conservative sector was most influential on policy decisions. The conservative agenda was a fundamental part of the idea of the nation. The ideology of the family, motherhood and the belief in a natural order in gender relations resisted progressive public policies. Family planning, access to contraception and availability of abortion were affected. Ewig (2010) argues that political legacies defend class, race and gender interests and are about the maintenance of power and privilege. In the case of Chile, the power was key to reinforcing a patriarchal and maternalistic view of policy making and power relations within the family, as will be shown in the analysis of the discussion of the drafting of the 1980 Constitution and the 1974 National Development plan. This period is also significant because it introduced a dual discourse: the (allegedly) rational policy and economic reforms and the irrational practices of state violence, curtailment of political freedoms and gross violations of human rights (Huneus 2000, Bunster-Burotto 1994). Both aspects of the discourse had gendered dimensions affecting women's bodily integrity.

Even before the dictatorship, policies on women's reproductive health show how ideas of family, motherhood and women's roles were used to promote national agendas, in particular since the 1930s, when some contraceptive methods became available in the country for the first time. During the 1960s and 1970s, the state spearheaded access to contraception and family planning. Under the leadership of progressive medics and *Asociación Chilena de Protección de la Familia* (Chilean Association for the Protection of the Family) (APROFA),

a branch of International Planned Parenthood Federation (IPPF) - who were concerned with the high levels of maternal deaths due to unsafe abortions - the government implemented a policy to reduce the number of abortions and maternal mortality. It implemented a plan on fertility regulation, financially backed by the World Bank (WB) and the USAID. Despite some resistance from conservative and progressive sectors that saw the policy as an imperialist imposition to diminish national population, the policy was effective and adopted on a mass scale (Zárate 2008, McGuire 2010, Jiles & Rojas 1992, Jiles 1994). These policies were sustained, to some extent, during the socialist government of the 1970s. Allende's government expanded the policies to include a more holistic approach to maternal and child health. Access to birth control, however, was only provided in state-controlled clinics, and one of Allende's Ministers of Health - Oscar Jimenez - was quite emphatic in rejecting family planning because he considered it an imperialistic policy, and arguing that Chile needed population growth (Pieper-Mooney 2009) (Jimenez had been part of the Chilean Nazi Party in his youth). This did not mean that family planning services were cut, they reached 90% of women in fertile age at the time (Jiles 1994). McGuire (2010) shows evidence that in 1972, Chile had one of the strongest family planning efforts in Latin America, just behind Costa Rica and Panama.

## 5.2 The Dictatorship

During the years of military dictatorship, the regime used a rhetoric that constrained women to their maternal roles and domesticity, while also highlighting women's importance in maintaining the traditional family, sacrificing their lives for "the good of the nation". Pieper-Mooney (2009) argues that the regime emphasized sexual differences and the control of women through domesticity. The regime linked patriotism to family values, and Pinochet,

using the image of himself as the nation's father, requested the cooperation of "patriotic mothers" to carry this idea forward. The dictatorship not only allowed the persistence of discriminatory practices and gender stereotypes, but these were also the basis of the regimes' idea of nationhood (Pieper-Mooney 2009, Araujo 2009). This was - in part - a reaction to the increased private freedoms that had emerged up to 1973, and was an effort to reconstruct the perceived loss of a "moral order" during the previous socialist government. For example, several scholars have documented the use of organizations like the *Centros de Madres* (The Mother's Centres) (CEMA) - managed by supporters of the regime and headed by the wife of the dictator - and the National Women's Secretariat for propaganda and to discipline the mothers of the nation. These institutions reached an important number of women in communities and offered free courses, charitable work and in general guided women to housework and to what were considered feminine activities, such as sewing, knitting and painting (Montecino 2006, Valdivia Ortiz de Zárate 2013, Lechner & Levy 1984, Kirkwood 1986, Baldez 2002, Araujo 2009). Right wing women also had an important role in the resistance to the socialist government of Salvador Allende in the early 1970s, and the idea of the mother asking the military to save their nation was central to the regime's propaganda (Power 2004, 1973).

At a macro level, the regime managed to combine the religious traditional ideology of the family and traditional gender relations with neo-liberal ideas and policies in the "conservative synthesis", as seen in the sections above (pages 44 and 74). O'Donnell (1979, 1978), has characterized the authoritarian regimes of the 1970-1980 period in Latin America - including Pinochet's Chile - as *Bureaucratic Authoritarian* states, states that emerged as a reaction to the political liberties of the 1960s and early 1970s. These states based their interventions on heavy repression, domination and violent coercion of the popular political sector that had had an active role in the previous political arena, and the government

in the case of Chile. To achieve this they suspended - and in Chile in fact eliminated - the institutions that embed popular democracy, such as political parties and parliament. The *Bureaucratic Authoritarian* state wanted to ensure the normalization of the economic crisis. Specialists in coercion were put in charge of the violent and repressive control of the population, as well as technocrats to spearhead the normalization of the economy, basic to the state's actions (O'Donnell 1979, 1978).

In the case of Chile, scholars have shown that the triumph in combining neoliberal and traditional authoritarian policies - at political level, the violent repression was in the hands of the military and police - was due to the influence of two groups of young right wing men, the *Chicago Boys* and the *Gremialistas*. The first was a group of neoliberal economists, educated at the *Universidad Católica*, and then in the USA, primarily but not exclusively at the Department of Economics of the University of Chicago. The group was able to exert influence and educate new generations of economists through an agreement between the *Universidad Católica* and the University of Chicago and were the men behind the neoliberal policies implemented by the regime. The second group are the *Gremialistas*, a conservative right wing political group created in the 60s in the *Universidad Católica* by Jaime Guzmán, in reaction to the DC government of Eduardo Frei (1964-1970). This group is the root of the current right wing party UDI, also created by Guzmán. The group was also highly influential during the regime, and in particular Guzmán was the brains behind the political and institutional reforms, including the 1980 Constitution (Cristi & Ruiz 1992, Cristi 2000, Huneus 2000, Pollack 1999, Moulián & Vergara 1981)

The blend between the ideas of *Gremialistas* and the *Chicago Boys* was the basis of the regime's "conservative synthesis". It resulted in neo-liberal economic policies that spearheaded privatization, decentralization and a diminishing role of the state in controlling the economy, and provided the conservative ideology that inspired the regime's authoritarian

social policies. They shared the principle of a subsidiary state, respectful of the autonomy of intermediate bodies - such as the family - and the need for defending the principle of authority, order and discipline, and a strong anticommunist sentiment (Valdivia Ortiz de Zárate 2006, p. 61). This framework provided an essentialist idea of the “Christian nation” rooted in a traditional view of families. They had the mission of reinstating the natural moral order, and an ideology that understood gender roles, and particularly women’s roles, as coming from the “natural” place they occupied in society, with the resulting effect of constraining access to sexual and reproductive rights (Valdivia Ortiz de Zárate 2006). Oyarzún (2005) argues that the regime started a process of “conservative modernization”, neo-liberal policies in the labour market and a conservative religious discourse, that combined “sexophobia”, heterocentrism and “familio-centrism” (Oyarzún 2005).

This was not only a discursive tool, but also implied a dismantlement of the incipient access to sexual and reproductive rights of the previous decades. Pro-natalist policies were backed by medics supportive of the regime. For example, there is anecdotal evidence of Intrauterine devices (IUD) being removed from women without their consent (Jiles & Rojas 1992, Jiles 1994, Pieper-Mooney 2009, Casas 2014). Casas (2014) reports that at the beginning of the regime, a group of conservative medics tried to stop the use of IUDs completely. Jiles (1994) also reports that the research on contraception stagnated and access to reproductive health suffered. The regime controlled the institutions working on family planning, and they were mandated to report their actions, in particular if they worked with international organizations (ODEPLAN 1979). Casas (2014) reports that the regime’s population policy prompted public health institutions to stop advertising family planning services. In 1975, the regime issued a resolution on voluntary sterilization in quite strict circumstances: the woman had to be over thirty two, have four living children and the husband had to give his consent in writing (Casas 2014, Jiles 1994, Shallat 1995). Moreover, the health

policies at the time put family planning at the bottom of the priority list; and the changes in healthcare policies from preventive care to curative care implied a shift from family planning to maternal and health services (Pieper-Mooney 2009). However, due to the maternalistic focus of the National Development Plan, maternal and child health was a top primary health care priority, and the regime managed to improve indicators on maternal and child mortality (McGuire 2010, Raczynski 1994, 1988). The privatization of health services spearheaded by the regime meant that the private health providers, ISAPRES, could implement discriminatory policies, including health care plans “without uterus”, i.e. with no coverage in case of pregnancy (Gideon 2014). The regime also policed young peoples’ sexuality. They banned pregnant students from attending regular daytime classes, forcing them to go to evening schools (Montecino & Rossetti 1990). In addition, women were used to absorb the negative consequences of the decrease in access to services by providing unpaid care work within their families (Pieper-Mooney 2009). Finally, in 1989, the regime criminalized abortion in any circumstance.

To trace the framework that guides these policies, I will look closely at three key moments: (1) the regime’s foundational population document, the 1970’s National Development Plan; (2) the discussion on the right to life in the 1980 Constitution; (3) and the discussion that led to the reform of the Sanitary Code and the criminalization of all forms of abortion. A closer analysis of these documents shows the internal division on these issues within the *junta*, in particular on the issue of abortion where the criminalization was not only contested by members of the *junta*, but was also not dealt with concretely for nine years, and even then, the approval did not come after a general consensus amongst the *junta*, but by pressures and backstage negotiations by *Almirante* Merino.



### 5.2.1 Kast's National Development Plan

The *junta*'s 1970s National Development Plan, by the *Oficina de planificación nacional* (National Planning Office) (ODEPLAN), exposed the regime's plans to develop the nation. It is based on authoritarian ideas of the state, Christian values and a strong doctrine of nationalism and militarism. The document was drafted in ODEPLAN, an office that had acquired importance and influence over the *junta* after the coup in 1973, when it was quickly taken over by the regime and placed at the forefront of the development of the new neoliberal economic transformation. ODEPLAN had the support of the navy through Admiral Merino, who was in charge of economic issues within the *junta*. Under the leadership of an ex-navy man and personal friend of Merino, Roberto Kelly, ODEPLAN was transformed into the stronghold of the *Chicago Boys*. From there, they ensured control and influence of the rest of the state's apparatus (Silva 1991, Huneus 2000).

The National Development Plan conveyed ideas of nationhood that relied on the essentialist notion of women primarily as mothers, while it used demographic concerns and national security to argue for a population increase. The regime's foundational document put Christian ideas at the base of national identity, guiding its population policies a "natural consequence of said elevated ideas of the reality of man" (ODEPLAN 1979, p.1). Breaking with the strong fertility control policies of the two previous decades, and in line with neoliberal precepts, the regime argued for a less interfering role for the state, declaring that it should not be the state's role to increase or diminish the "natural" population rate. However, it contradicted itself later by arguing for an increase in the national population to ensure national security. It stated that Chile needed a younger population to be able to defend it against possible enemies and that Chile had extensive territories that needed to be populated. In fact, arguing a mandate from a natural order based on Christian religiosity, the document was emphatic in prohibiting sterilization and condemning abortion. The policies

it proposed included informing the government of all initiatives - private or public - on family planning, while all research on the issue carried out in Chile had to be shared with national scientific societies before being published abroad (ODEPLAN 1979, p.8). Araujo (2009) states that with this document, the *junta* pushed issues of sexuality and reproduction back into the private sphere, where the family assumed the control in the regulation of fertility. This might be the official discourse of the regime, however, the push for maternalistic policies had concrete effects on women and men's access to information and services, as can be seen above.

Although at the time ODEPLAN was headed by Kelly, the plan was drafted under the leadership of Miguel Kast, one of the regime's star economists and golden boy. A committed Catholic belonging to the Schoenstatt movement, Miguel was deeply religious and his attitude to public service was based on his commitment to the teachings of the Catholic Church. He was part of the *Chicago Boys* and a member of the *Gremialistas*, quite active politically before the coup during his undergraduate degree in Economics at the *Universidad Católica* (Huneus 2000). He was a close friend of Francisco Javier Cox (Lavin 1986), the priest that would block the Sexual Education Programme decades later (Shepard 2006) (more on Cox on page 167) and was the brother of Juan Antonio Kast, the deputy that spearheaded the trial in the Constitutional Tribunal against the delivery of EC in the public health service in 2006 (page 196) (Schiappacasse & Díaz 2012, Martínez 2013). Miguel died in 1983 and has been transformed into a mythical figure for the Chilean Right, along with Jaime Guzmán, who was killed in 1991.

## 5.2.2 Guzmán's Constitution of 1980

When the military overthrew the democratic government in 1973, it was decided that the country needed a fundamental change in its normative framework, including the Constitution of 1925. This would enable the regime to legitimize its power and the economic and political changes that it had embarked on, as well as to delineate the limits of power amongst members of the *junta* and plan the transition to democracy. The regime created a commission - *Comisión Ortúzar* - made up of lawyers and jurists tasked with preparing a draft of a new constitution that was later discussed and presented to the regime for approval and for public vote (Barros 2001, 2002, Valenzuela 1997). The current normative framework on abortion in Chile is linked to the Constitution of 1980's Article 19 n.1 that protects the life of the unborn. The constitution is the blueprint that was used to abolish all forms of abortion in the country, but the ban on abortion did not start there. This article coexisted for 9 years (1980 to 1989) with the provision in the Sanitary Code that detailed the requirement to provide therapeutic abortion in the case of risk to the mother's life and unviability of the foetus.

The commission that drafted this section of the constitution in 1974 was composed of Enrique Ortúzar Escobar; Jaime Guzmán Errázuriz; Alejandro Silva Bascuñán; Jorge Ovalle Quiroz and Gustavo Lorca, all appointed by the regime. The notes for the record of this commission show that the members of the committee were not in agreement in banning abortion in all circumstances. To start, it seems that commissioners were faced with the initial proposal to include "The right to life, abolition of death penalty, or constitutional regulation of cases where it should be applied. Protection of the unborn. Therapeutic abortion" in the new constitution's text (Comisión Ortúzar 1974, p. 105). However, the notes also show that this push to include a prohibition of all forms of abortion came exclusively from Jaime Guzmán. A well known conservative and integralist Catholic, Guzmán wanted

a provision against any form of abortion enshrined at constitutional level. He saw the new constitution as a foundational document, a way to reinstate the social order and the legitimacy of the state with a strong presidential authoritarian government based on his intergralist Catholicism (Colorado 2010, Guzmán 1991, Cristi 2000, Valdivia Ortiz de Zárate 2006). He argued that the complete ban on abortion was based on the already agreed provision of the protection of the life of the unborn, a “logical product of the right to life that is being prescribed” (Comisión Ortúzar 1974, p. 119. Author’s translation). The matter was of constitutional interest, and should not be left to be determined by the law, as it could raise a complex discussion about the reach of the right to life and abortion, he argued. Guzmán, in one of his most deeply felt statements, defends his position in these terms:

“the moment the son [sic], the child, is conceived, he has a soul and is now a human being. Life does not start at the moment of birth, it starts at the moment of conception [...] Abortion is murder and [in his opinion] as tragic as the mother’s situation is, it is undeniable - within moral principles that she is always obliged to have the son, in all circumstances, as a part [...] of the cross that God gives human beings to bear. She should have the baby even if he is abnormal [sic], even if he is not desired, even if he is the result of rape, and even if as result of having him, she dies. A person can never legitimately carry out an abortion, because it is murder. All negative or painful consequences that follow by assuming the outlined responsibilities are simply part of the duty to always adhere to the moral law, whatever pain it entails, as it is precisely what God has imposed on human beings.

There are people for whom the line between heroism or martyrdom on the one hand, and moral failure on the other, narrows until it is impossible. Most

humans live much of their lives in a wide intermediate area between the two, but many times Providence permits, requires or imposes that the gap is narrowed and the person is forced to face a dilemma in which nothing remains but moral failure on the one hand, or heroism on the other, in which case one needs to opt for heroism, martyrdom or anything [...]” (Comisión Ortúzar 1974, p. 120. Author’s translation).

This flowery language was not commonly used in the commission, and this long statement by Guzmán was not his usual way of addressing his colleagues. Some members of the commission stated that they agreed in principle with the Christian orthodoxy behind Guzmán’s position but they did not agree on one hand that this position could be imposed in a pluralistic society (commissioner Evans), and on the other, that the life of the mother should be sacrificed for that of the baby (commissioner Ortúzar). Commissioner Ovalle - self defined as not religious - did not agree with Guzmán’s position in principle and asked the colleagues not to impose their beliefs on a pluralistic society. Commissioner Silva Bascuñán agreed with Guzmán, however, and in also quite florid language, he stated that he would prefer not to include language of abortion in the constitution. Later in the discussion, and probably taking on board the critiques that suggested that Guzmán was imposing a religious doctrine on the constitution, he now argued that his position was not based on religion, but on “natural moral law” and that this was an exclusive product of reason, where the indissolubility of marriage and the prohibition of all forms of abortion are norms that have validity independently of any religion, while clarifying that even if he was profoundly religious, he was not a sectarian man. In this statement, he seems to have forgotten all the rhetoric about martyrdom and the cross of god used before (Comisión Ortúzar 1974, p. 125).

Ovalle, however, did not forget the previous statement by Guzmán and reminded him that his moral doctrine was based on his religious doctrine, “First, because the justification

of [Guzmán's] views was very clear, as he referred to god in which he believes and which has clearly positioned itself as inspiring these norms [...]” he even added “that to the extent that this morality is a direct projection of a religious idea, there must be no pretence to impose it in the constitution that will govern all Chileans.” (Comisión Ortúzar 1974, p. 127). Moreover, the other Catholic commissioners Evans and Ortúzar agreed that their position on abortion was based on their religion, and Ortúzar, who considered himself a “Catholic, not an integralist Catholic like Mr. Guzmán”, asked himself “would he be less Catholic if he agreed with therapeutic abortion? The truth is that he would accept abortion under specific circumstances” (Comisión Ortúzar 1974, p. 129). Later on, Guzmán argued that his position was based on the idea that the life of a human being starts at the moment of conception, and that this was a medical argument.

Guzmán was clearly in a minority position in this discussion and the final text of the constitution guarantees the right to life and the protection of the life of the unborn, but does not mention abortion. Moreover, in the discussion of the language in the article, Guzmán wanted the phrase “protect the being that will be born” because it validated his argument that life starts at the moment of conception, but the final text is “the law protects the life of the unborn”. In keeping the language of abortion out of the text of the constitution, some commissioners read it as a way to allow the legislator to regulate therapeutic abortion. Guzmán, fighting until the end, is quoted as stating:

“Mr. Guzmán - in any case - wants to leave a record of his conviction and opposition to the precept that has been approved, and of his deep disappointment that, in fact, the constitution will not have a definition in this matter that, in his opinion, is the only one in agreement with human rights, that today are unfortunately quite deteriorated in the world [...]

He states that he would want to record that he does not follow any of the

interpretations that have been given, because it is not in the predicament of the majority of the commission, and only regrets being in a minority on such an important point, but does not want to insist anymore” (Comisión Ortúzar 1974, p. 208. Author’s translation).

The final text of the constitution approved by a referendum in 1980 created a space for interpretation for the legislator. Therapeutic abortion was legal and available until 1989 when *Almirante* Merino - member of the *junta* - proposed changes to the article in the Sanitary Code that established the norms for therapeutic abortion. Guzmán managed to abolish abortion in the end, through direct influence on members of the *junta*, even though the notes of the commission clearly show that he was in the minority. In fact, in 1974, he was the only commissioner wanting to ban all forms of abortion at constitutional level. The record notes of the revision process of the work of the *Comisión Ortúzar* with the *junta* in 1976 also show that the generals - including Pinochet - were not in agreement with Guzmán (except *Almirante* Merino). This later discussion shows that the intention of the constitutional commission was in fact to leave the possibility of therapeutic abortion in the law, and to the discretion of the legislator (Junta de Gobierno 1976). However, in practice, policies on abortion were more restrictive during the dictatorship; and although therapeutic abortion was allowed, according to data collected by Casas (1997) in the criminal courts, there was an increase in prosecutions for illegal abortions of an average of one thousand court cases per year during the mid-1980s that appears to correspond to a regime policy (Casas 1997, p. 30).

Guzmán was a powerful player in the regime, and Pollack (1999) argues that Pinochet did not make him president and leader of the constitutional process only to give the impression of a more democratic process. A review of the commission’s discussion reveals the ideological position of Guzmán and his capacity to include the issues that were dear to him,

the protection of private property, the need to restrain the right to unionize and to carefully restrict freedom of speech and movement and to congregate in public meetings. He insisted on positioning the family as the nucleus of society, on the insolubility of marriage and on guaranteeing the power of the father in the family. In the discussion of equal rights between men and women he stated: “It is evident that the head of the family should be the man, the father or the husband.” (Comisión Ortúzar 1974, p. 305). In this matter commissioners agreed, with commissioner Evans stating that in the family, there must never be equality between man and woman.

### **5.2.3 *Almirante Merino’s changes to the Sanitary Code***

The third moment that would set the foundation for the legacies to still permeate the legal and constitutional discussion on abortion up until 2015, is the process that led to changes in the Sanitary Code in 1989. It derogates the article that allowed therapeutic abortion, criminalizing all forms of abortion. In June 1988, *Almirante Merino* - member of the *junta* for the navy, presented the *junta* with a technical report and a proposal to change this article 119. Lagos Lira (2001) argues that it was done at this point because Merino feared that the upcoming transition to democracy would allow for a moral debacle, similar to the *destape* in Spain after the death of Franco.

The technical report had been prepared by three navy men, Rodolfo Camacho, Aldo Montagna and Armando Sánchez. It drew upon the constitutional principles explained above to declare that the article was against the principle of protecting the life of the unborn. To elaborate their report they consulted with a Polish priest, Bruno Rychlowski Palczynski, Juan Antonio Widow, a philosopher and academic, and the medic Alejandro Seroni from the *Universidad Católica*. The latter sent his report some months after the first two. This



may be because his inclusion was in response to Rychlowski's suggestion that "[f]or further study of the question of therapeutic abortion, the opinion of enlightened Catholic doctors could be asked for" (Congreso Nacional de Chile 1989, p. 50. Author's translation).

The record notes of this process show that this hurried, closed-door proposal was questioned by the members of the II Legislative Commission - led by *junta* member General Adolfo Matthei - where it was presented. Matthei requested more research and a broader consultation process. Several medics and lawyers were consulted (all men) and some dissenting voices appeared. This second round of consultation included, for the first time, the opinions and assessment of the Minister of Health. This commission finally rejected the legislative proposal in January 1989. Merino insisted on sending the proposal for approval again in March 1989, now to the Ministry of Justice and Health. He had the support of the then Bishop of Rancagua, Jorge Medina, who sent a letter of support stating that:

"Not wanting that Chile reach the situations occurring today in developed countries, which are an attack against the human person and against the most basic values of Western Christian culture inherited from our ancestors, I have allowed myself to write, to avoid - in our beloved country - one of the most horrendous evils that degrade the world today, honouring the principles the Supreme Government has declared since 1973". (Congreso Nacional de Chile 1989, p. 166. Author's translation)

This new round of consultations included reports with the opinion of the Lutheran and Anglican Churches, the Evangelical Pentecostals, Universities of Chile and *Católica*, and the Catholic Church through another report from Bishop Medina. In August 1989, the II Commission finally decided to derogate article 119 of the Sanitary Code, approving Merino's proposal. The document was signed by General Matthei, head of the commission. The record notes tell the story behind the approval of this law, and show that the proposal

was quite heavily opposed both by Matthei and General Rodolfo Stange (another member of the *junta*).

For example, Merino, in his efforts to press for a quick reform, presented a unanimous opinion from the three experts selected. The dialogue between Matthei and one of the navy men behind the proposal shows the tension that the initiative provoked in Merino's colleagues. The discussion on the issue of medical opinions about the need for therapeutic abortion goes as follows:

*Captain Sanchez:* that is why, my General [Matthei], when the study was proposed, initially, it was thought that there was a need to maintain a limited therapeutic abortion. And the unanimous opinion of the...

*General Matthei:* That is not correct, it depends on the doctors that were consulted. The ones from my commission tell me they do not agree with the initiative. Like Francisco Quesney, whose opinion is as legitimate as any other doctor's that participated in the project."

(Congreso Nacional de Chile 1989, p. 177. Author's translation).

As shown by the notes, Matthei's attitude in favour of therapeutic abortion was based on a personal experience. During the early years of their marriage, his wife had an abortion to save her life. Also, Stange and Matthei are Lutherans, and therefore not as susceptible to Catholic influence. Stange was able to stop the approval of the second proposal, and was quite adamant in the need to further study the matter. The process shows the power of the generals amongst their military and civil subordinates. Stange questioned the proposal at several levels. In particular when discussing the need for some provision of abortion in the case of rape. He immediately got a positive reaction from the Ministry of Health, even though the minister had supported Merino's original proposal:

*“The General Mr. Stange:* I wanted something intermediate: to appoint medical ethics committees to establish when some of these abortions have to be carried out, for example, in the case of rape.

*The Minister of Public Health:* My General, by way of Presidential Decree, I could, if you choose to, with your Excellency, promote an amendment to the regulations of the Health Service to create ethics committees.”

(Congreso Nacional de Chile 1989, p. 178. Author’s translation)

The dynamics of the meeting show that the generals were the decision makers and the ministers and military officials in place provided the opinions, as well as the mechanisms and formulas to realize them. Amongst the generals, the tension between Matthei, Stange and Merino is evident. In the following dialogue at the end of the first commission session, we can clearly see the tense dynamics, and the power of the generals to discuss and decide amongst themselves:

*“Admiral Merino:* Is there agreement to sign the initiative? I agree.

*General Mr. Stange:* I am in favour of going over it again Admiral. No, not like this - so categorical - no.

*Admiral Merino:* We have been on this since last year...

*General Mr. Matthei:* I consider that it is justified to let General Stange think and not push him. Personally, I signed the report and therefore I agree, but you cannot pressure General Stange.

*Admiral Merino:* I am only asking...

*General Mr. Stange:* I do not want to go against your opinion, but I have a reasonable doubt and it was not well clarified.”

(Congreso Nacional de Chile 1989, p. 178. Author’s translation)

Unfortunately there is no clear indication of what made Matthei - and Stange - change

their votes in favour of the initiative. However, the notes clearly show that although Matthei did change his vote, he did not change his opinion. The proponents of the proposal, although Merino is quite silent during the meetings, argue that therapeutic abortion was not medically needed and had not been practiced in public clinics. They argue that the cases of abortion managed in the public health system were complications of voluntary illegal abortions that the law did not cover. To this effect, Matthei questioned even the importance and relevance of the proposal:

*“The General Mr. Matthei: So this would have no practical effect. If you are hereby removing therapeutic abortion, which has not been practiced in Chile for eight years, we are suppressing something that is not done. This law proposal does not have any significance in practice. At the end, it will be a law without any practical importance.”*

(Congreso Nacional de Chile 1989, p. 180. Author’s translation)

The commission agreed that the problem they wanted to tackle was voluntary abortion, and the provision in the Sanitary Code was used to practice abortions that were not medically needed, particularly in private clinics. Moreover, the law was impractical in that it was impossible for the system to charge the over 20,000 women that reportedly arrived in public hospitals every year with complications of illegal abortions. In this quote of the notes, we can see Matthei’s conflicting views:

*“General Mr. Matthei: For the prestige of the junta, I am very concerned that we will do what a loved and respected our friend of ours did, the Archbishop of Valparaiso, when he banned bikinis: the girls went - laughing - to the next beach. So I am greatly worried that we are doing here what the Archbishop of Valparaiso did and with the same result: people will laugh and continue doing the same. When laws are enacted and they are not respected, the entire legal*

system is discredited. That is what worries me. If you say that therapeutic abortion has not been practiced for twenty years, and we want to pass a law that suppresses something that does not exist, and yet we still have 20,000 or 100,000 [sic] abortions per year and this will not affect that, we are making a law that is not protecting anything [...]

*General Mr. Matthei:* I am willing to sign it, but I do not like it.

*Admiral Merino:* We do not always like everything, but there are some things that have to be done for the good of the country”

(Congreso Nacional de Chile 1989, p. 185. Author’s translation).

Although the long-lasting effect of the ban on therapeutic abortion is undeniable, the analysis above shows that there is a certain fragility to the regime’s conservative pro-life discourse. In particular in the opposition we see to Guzmán’s and Merino’s drastic proposals. Scholars that have studied the period and its effects on the current democratic institutions, recognize the imprint of Guzmán’s authoritarian conservatism in the policies of the regime (Cristi 2000, Pollack 1999). The above analysis illustrates that what looked like a long-lasting and permanent homogeneous pro-life discourse, when unpacked, is in reality different voices within the regime. This is particularly relevant in the current case, as the hegemonic homogeneous discourse of Guzmán has been re-appropriated by the current resistance to advances on sexual and reproductive rights, not only on abortion, but also on sexual education and access to emergency contraception, as I will try to convey in the following chapters. The different positions within the regime also help us to make sense of the different positions within the right, in particular the emergence of a liberal right, exemplified by Evelyn Matthei, the daughter of General Matthei. A member of UDI, she negotiated her position on abortion in her presidential candidacy in 2014, and while accepting the possibility of legalizing therapeutic abortion before her candidacy, rejected the idea of any law proposal

when she became candidate. The negotiation process also shows the authoritarian power of the generals and their civilian public officers. Unexpectedly, the technocrats did have a secondary role, in particular in the drafting of the law that modified the Sanitary Code. The first law proposal was drafted without the official stamp of the Ministry of Health or Justice and the decisions were ultimately taken by the generals.

Finally, although looking closely at the negotiations above might show a more nuanced view of the regimes' policy making in this matter, this does not mean that there were progressive forces within it, the fact is that nevertheless, the ideas that drove the *Comisión Ortúzar* in 1974 and the II Commission in 1989 were still based on conservative and patriarchal ideas of the role of the family, of women and men's relations and roles based on biological determinants and maternalistic imperatives. There was no question of tackling inequalities and exclusions, or to change women's main role as mothers and wives. It is clear the generals operated in a hierarchical, authoritarian and male-dominated dynamic. For example, not one woman presented an opinion during the constitutional discussion or the discussion on therapeutic abortion.

#### **5.2.4 Subsidiarity of the state and the new education policies**

The legacies of the dictatorship that have affected the realization of sexual and reproductive rights in Chile stem from the historical maternalistic and male breadwinner biases that were strengthened during these times, and the legal and institutional constraints that followed the 1980 Constitution. Furthermore, the effects of the general push to privatization and decentralization, in particular of health services and education, have had long-lasting policy legacies. Coming back to the influence of Jaime Guzmán, one of the cornerstones of the regime's normative frameworks, enshrined in the constitution, was the principle of

the subsidiarity of the state. This principle was based on the Catholic doctrine of the 1931 encyclical of Pope Pius XI *Quadragesimo Anno* and the 1929 letter *Divini Illius Magistri* (on education) (Valdivia Ortiz de Zárate 2008, Colorado 2010, San Francisco Reyes 1992). As seen in section 2.3.1, the principle was basic to the “conservative synthesis” of the 1970s and 1980s. According to Guzmán in a 1969 text, this principle implies that:

“If man [sic] is the purpose and at the centre of all society, the associations in which he will participate will only concern the fields of action that man cannot develop on his own. By analogy, this law applies amongst groups or associations. Thus the state is a subsidiary not only for man himself, but also for the family, municipalities, unions and ‘intermediate societies’.” (Fontaine 1991, p.256. Author’s translation)

From there, he argues for the right to private property and free enterprise that he attributes to a “faithful expression of human nature and safeguard of his own freedom” (Fontaine 1991, p.257). In 1969, this was a direct critique of the socialist idea of the state and a reaction to what Guzmán feared, the menace of Marxism and communism. The principle enshrines a view of the role of the state, that in latter years was a perfect fit for the combination of Guzmán’s politics and the neoliberal ideologies of the *Chicago Boys*. This principle is the backbone of the policies of the dictatorship and the Constitution of 1980, and it continues to have an effect in the Chilean normative system and in the rationale of the conservative discourse.

The subsidiarity of the state is quite relevant on informing the regime’s view on education. During the preparation of the Constitution of 1980 in the *Comisión Ortúzar*, Guzmán was quite adamant about respecting the principle of the subsidiarity of the state in article 19 n. 10 on the Right to Education. The commission wanted to guarantee the freedom of education at constitutional level, protecting the parents’ right to educate their children while

subscribing the state to a subsidiary role. Here again, Guzmán led the discussion towards his authoritarian conservative philosophy and insisted that the commission hear the view of the Catholic Church, particularly since the Church had traditionally maintained educational establishments. The Episcopate did in fact send a detailed report and a representative to present to the commission. Moreover, commissioner Silva Bascuñán wanted to include the Church as an institution with a function in education (*función educativa*) in the text, but the proposal was rejected by the other commissioners. Guzmán was silent on this matter, but ensured that the constitution recognized the rights of parents to educate their children and the need for the state to protect that right. However, in line with an authoritarian perspective of the state, freedom of education could be limited in cases where initiatives were against good morals (*buenas costumbres*), public order or morality (Congreso Nacional de Chile 1980).

In addition, in 1979 the regime transferred the administration and oversight of educational establishments from the Ministry of Education to municipalities (Congreso Nacional de Chile 1996, Latorre et al. 1991), limiting the reach of the central government's oversight and control. Finally, following the principles set out in the constitution, in March 1990, the regime enacted the *Ley Orgánica Constitucional de Enseñanza* (Organic Constitutional Law on Education) (LOCE), one of the "*Leyes de Amarre*" (binding laws), so called because they are quite difficult to reform and set the framework of the regime's authoritarian and neoliberal policies. LOCE was about the regulation of private, semi-private and public education systems, and it limited the state's role to developing a set of minimum objectives that then would be adapted or taken on board freely by educational establishments. This limited the Ministry of Education's control over the content of educational programmes, and was in line with the constitutional principle of freedom of education as expressed in the *Comisión Ortúzar* (Congreso Nacional de Chile 1990). As the following chapter on sexuality education



will show (Chapter 7), this made it quite difficult for the democratic government to ensure a universal sexuality education programme and hindered young peoples' access to information.

In parallel, the privatization of health, although managing to ensure universal coverage, had an effect on women's access to health. Gender inequalities were deepened by the process of health care commercialization, as well as by the precarization and an increase in informal employment. Neoliberal economic reforms affected women's access to services in their own right, focusing attention on women's reproductive health, while leaving behind access to reproductive rights, such as access to information and contraception (Gideon 2014, 2007, Staab 2012, Ewig & Kay 2011). The following chapters will show that the privatization of services opened up a space for the private sector's influence. This has had negative consequences, as some groups within business have focused on resisting and blocking improvements. In addition, reproduction was penalized in the private health system. Private insurers - ISAPRES - using a gender biased risk analysis table, charged women of reproductive age two or three times more than their male counterparts, gave them lower levels of coverage, and offered alternative "without uterus" health plans, meaning without coverage in case of pregnancy and childbirth (Gideon 2014).

### **5.3 Conclusion**

The policies that were put in place by the regime not only had an effect on women's bodily integrity at the time, but some trends would still have an effect during the democracy. The macro level policies that privatized the health care system, as well as the decentralization and privatization of education, all influenced the reach of policies ensuring universal access to services or information; as can be seen in the case of EC and sexuality education (to be analysed in Chapter 8), and in the criminalization of abortion in 1989, where the country

was left with one of the harshest abortion policies in the world that is only recently being debated, as I will also show in the next chapters.

The regime's "conservative synthesis" was successful in imposing restrictive policies that put the patriarchal family and gender roles at the centre of women's role in building the nation. The strong reaction to the political and social liberties of the 1970s constituted an orchestrated backlash against women's access to reproductive rights. Based on conservative ideas supported by the Catholic dogma, the most reactionary members of the establishment, such as Jaime Guzmán, were able to slowly draw the agenda towards restrictive policies. This section shows that the regime's position was not monolithic. Many officials in the regime's state apparatus did not want to further criminalize all forms of abortion. However, the resistance to this conservative agenda was not based on women's human rights or equality, but on a call to not be against the tide of social change, the realities of people's practices and so as not to "make fools of themselves", as Matthei argues on page 112.

The dictatorship and its ideologues, such as Guzmán and Kast, provided the coherent conservative discourse that is used today. Institutional legacies such as the Constitution of 1980, the modified Sanitary Code, a privatized health system and a decentralized educational system, have been used to further curtail access to sexual and reproductive rights. The regime also provided a platform for the current conservative discourse, the neo-liberal policies where the state protects private property, but leaves the family out of the realm of state influence because of the principle of subsidiarity.

What this chapter is showing, and where its main findings, is that the role of the *junta* in restricting women's access to sexual and reproductive rights is not without internal struggles and contradictions. The fact that several of the generals and members of the constitutional commission opposed the creation of a more restrictive normative on abortion show that the gains made by the reactionary sector were based on the personal commitment

of people like Guzmán and Merino (and others). It shows the start of some of the fractures that would spread through the Chilean right during the democracy, in particular between RN and UDI. The second important factor is the institutional legacy in the economic and normative sphere that was the brainchild of the *Chicago Boys* and the authoritarian thinking of Guzmán. I would therefore argue that to understand the influence of the *junta* in the lack of progress on sexual and reproductive rights, it is not enough to look at the political process that led to the criminalization of abortion and the fight that followed in parliament, as has been the focus of political scientists up until now (Morgan & Roberts 2012, Haas 2006, Blofield & Haas 2005, Siavelis 2002, Blofield 2006, Waylen 2010); but also at how the articulation of these political and normative processes with economic and governance institutions - such as decentralization and the subsidiary role of the state - protect the legacies of the *junta* at a deep level.

# Chapter 6

## The Catholic Church

### 6.1 Introduction

There is evidence that the Roman Catholic Church (referred to as the Church in this text) has an important role in manipulating and driving the public and private agendas on women's human rights, gender equality, and peoples' sexual and reproductive rights in Chile and Latin America in general (Guzmán & Seibert 2010, Guzmán et al. 2010, Blofield 2006, Blofield & Haas 2005, Htun 2003, Shepard & Casas 2007, Casas 2004, Pecheny & Dehesa 2011, Vaggione & Morán Faúndes 2012, Nugent 2010). In this section, I will explore the Catholic doctrine and the Church's role in promoting and resisting social change in Chile and the region. The chapter examines how the conservative arm of the Church has gained space within the political and economic right wing elite, basic to the power and influence of the Catholic conservative actors and ideas that will then be relevant to the analysis of the resistance to policies on sexuality education, access to emergency contraception and abortion.

To achieve this, the chapter will look more closely into the Catholic Church as an actor,

and the role, strategies and arguments it has used in Chile. It starts by questioning why has the role of the Church been so predominant in Chile. To understand this, I explore the current conservative trends in the global Catholic Church that influence policy and legislative outcomes (Casanova 1994, 2009) (Guzmán & Seibert 2010, Hurtado et al. 2004, for Chile), and its influence in the state and state policies. In Chile, the Church maintained a close and formal relationship with the state up until the separation between Church and state, following the adoption of the Constitution of 1925. After that, however, the Church did not lose its political influence. It acted through political parties, preaching about political issues and using its contacts in the political elite. It also exerted its social influence, investing heavily in education and making statements on moral issues, including issues with political implications (Sigmund 1986).

The premise is that the Catholic Church's teachings on gender roles and sexual and reproductive rights are linked to a particular interpretation of the biology of the sexes that had been adapted, many times unsuccessfully, to a modern discourse of rights and principles of non-discrimination. This doctrine would become part of the "ideational factors" (Capoccia 2016) used to resist policy change in sexual and reproductive rights during and after the transition to democracy. The Church's interpretation of the desired and correct behaviour of men and women, including their sexual conduct, comes from a specific doctrine - the moral agenda - exemplified by the encyclicals *Humanae Vitae* and *Evangelium Vitae*; and also *Familiaris Consortio*, that are in fact at odds with the ideas that pushed the agenda of social justice first embedded in the Second Vatican Council (1962) (Paul VI 1968, John Paul II 1981*a*, 1995, Casanova 2009, Hagopian 2008). Furthermore, in Chile, after the return to democracy in particular, despite the progressive attitudes of some members of the Church between 1960 and 1980, this was the most successful moral agenda in influencing state policies and legislative processes.

### 6.1.1 Regional comparative data on religious identification

The influence of the Catholic Church in Chile could be explained by the high levels of commitment of Chileans to Catholicism and other conservative religions that share their beliefs in key areas of family life and reproduction. Therefore, let us situate religiosity and formal religions in Latin America with help of the available empirical evidence. The World Value Survey provides a database that can be compared both longitudinally and amongst countries. Through a simple statistical analysis available on their web page, based on their national surveys, Figure A.1 shows that only 23.8% of people in Chile agree that religion is very important in their lives, the lowest in the Latin American countries surveyed, followed by Argentina with 24.1% (Brazil is 51.5%; Colombia 58.9%; Ecuador 67.1%; Mexico 58.4%; Peru 49.9% and the regional average is 50%). Moreover, 13% of Chileans say that religion is not important at all in their lives, compared to a regional average of 6.1%. These numbers show that religion is not as influential for Chileans as it is for the rest of the surveyed Latin Americans.

In terms of religious practices, the World Value Survey shows that only 6.4% of Chileans attend religious services more than once a week and 17.1% attend once a week, compared to a regional average of 28.5%. Only the second lowest number after Argentina with 12.4%. Chile has the second highest number of people that say they practically never attend a religious service at 28.8% (regional average of 15.3%). Figure 6.1.1 represents these trends graphically (For tables with all numbers see Appendix A).

Regarding religious affiliation, Table 6.1.1 shows that 63.8% of Chileans define themselves as Catholic, a number only slightly below the regional average of 64.6%. However, it also shows that the number of people that define themselves as having no religion is amongst the highest in the region, at 23.1% (regional average of 18.2%). The number of Protestants

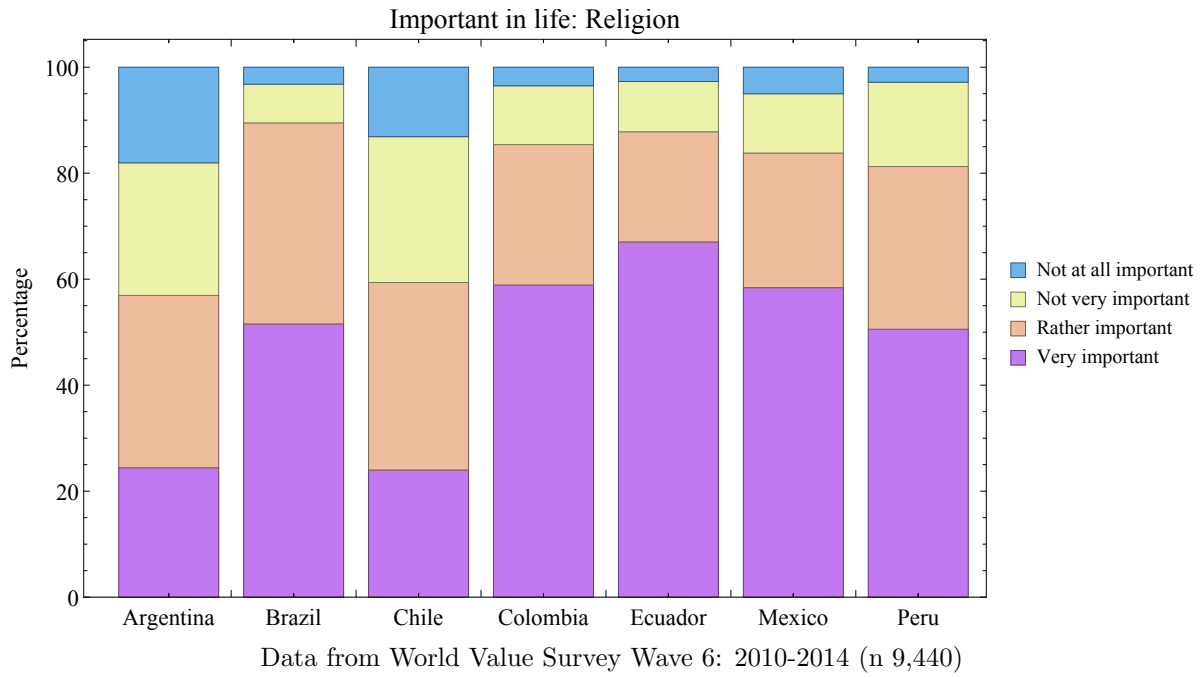


Figure 6.1: How important is religion in your life?(percentages)

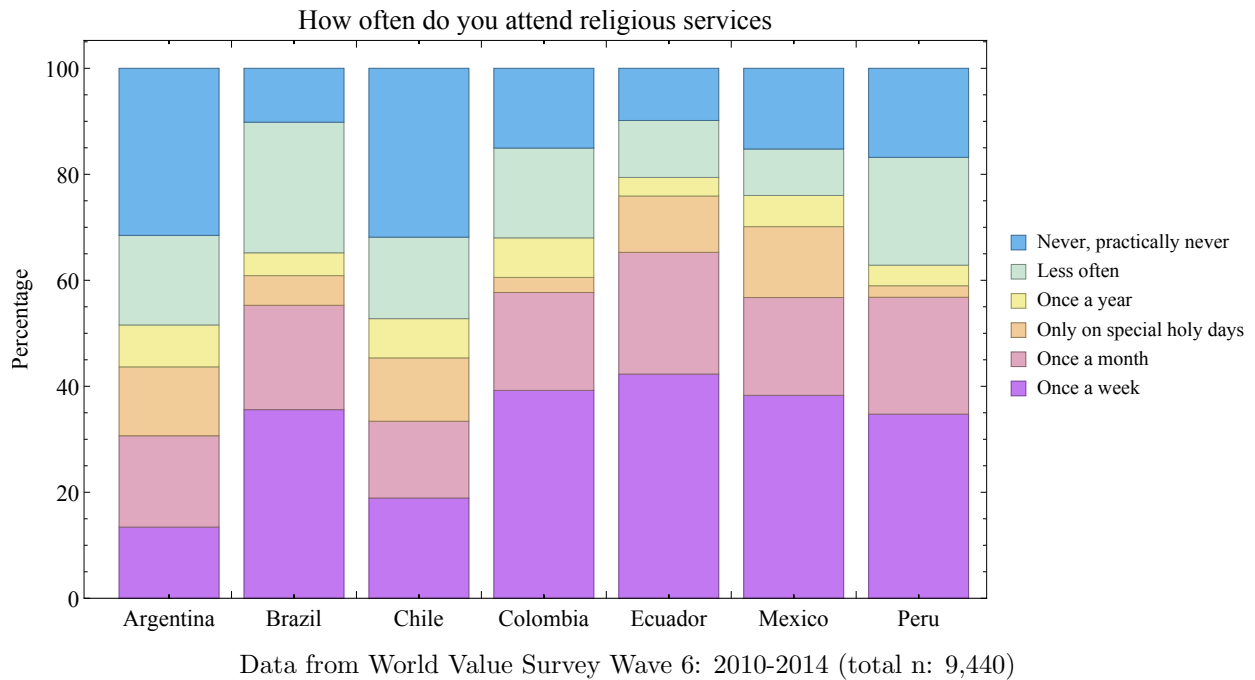


Figure 6.2: How often do you attend religious services?(percentages)

in Chile - that in this table includes Pentecostals, Protestants and Evangelicals - is relatively low in comparison with other countries at 11.2%. The regional figure is 12.7%, but this figure is biased by the effect of Argentina's low number of 1.2%. A caveat is needed for the analysis of this table. I have aggregated responses to show the general trends, as well as combining the "Protestant" responses because the questionnaire was not consistent across countries (the complete table is in Appendix A).

Table 6.1: Religious denomination(Percentages)

	Total	Argentina	Brazil	Chile	Colombia	Ecuador	Mexico	Peru
None	18.2	16.9	15	23.1	21.4	23.5	18	10.1
Roman Catholic	64.6	69.6	52.8	63.8	61.3	62.6	69.6	73.4
Protestants*	12.7	1.2	26	11.2	15.8	11.4	9.4	10.5
Other Religions†	4	11.3	5.7	0.2	1.1	2.4	2.9	4.6
Dont know	0.2	-	0.3	1.2	-	-	-	0.2
No answer	0.5	0.9	0.3	0.5	0.3	0.1	0.2	1.3
<b>(n)</b>	<b>9440</b>	<b>1030</b>	<b>1486</b>	<b>1000</b>	<b>1512</b>	<b>1202</b>	<b>2000</b>	<b>1210</b>

\*Christian, Pentecostal, Protestant and Evangelical

†Buddhist, Hindu, non-specific, Jehovah witnesses, Other/Brazil, Jew, Mormon, Muslim, Orthodox, Seven Day Adventist, Spiritista

Source: World Value Survey Wave 6: 2010-2014

The numbers above show that Chile is amongst the most secular countries in the region. The data of the World Value Survey can also be analysed longitudinally. Those numbers show that there is an increasing trend amongst Chileans who identify themselves as having no religion: 17% in wave 1989-1993 to 23% in wave 2010-2014. Also, Protestants have increased from 1% in wave 1989-1993 to 11% in wave 2010-2014. Catholic affiliation, however, has decreased from 68% in wave 1989-1993 to 64% in wave 2010-2014. Figure 6.1.1 shows these trends visually (Full numbers in appendix A table A.4).

In conclusion, the data shows that there is a slight increase in secularization in the country, and that Chile is amongst the less religious countries in Latin America. In addition, the number of Evangelicals and Protestants is not high when compared to Brazil, for example.



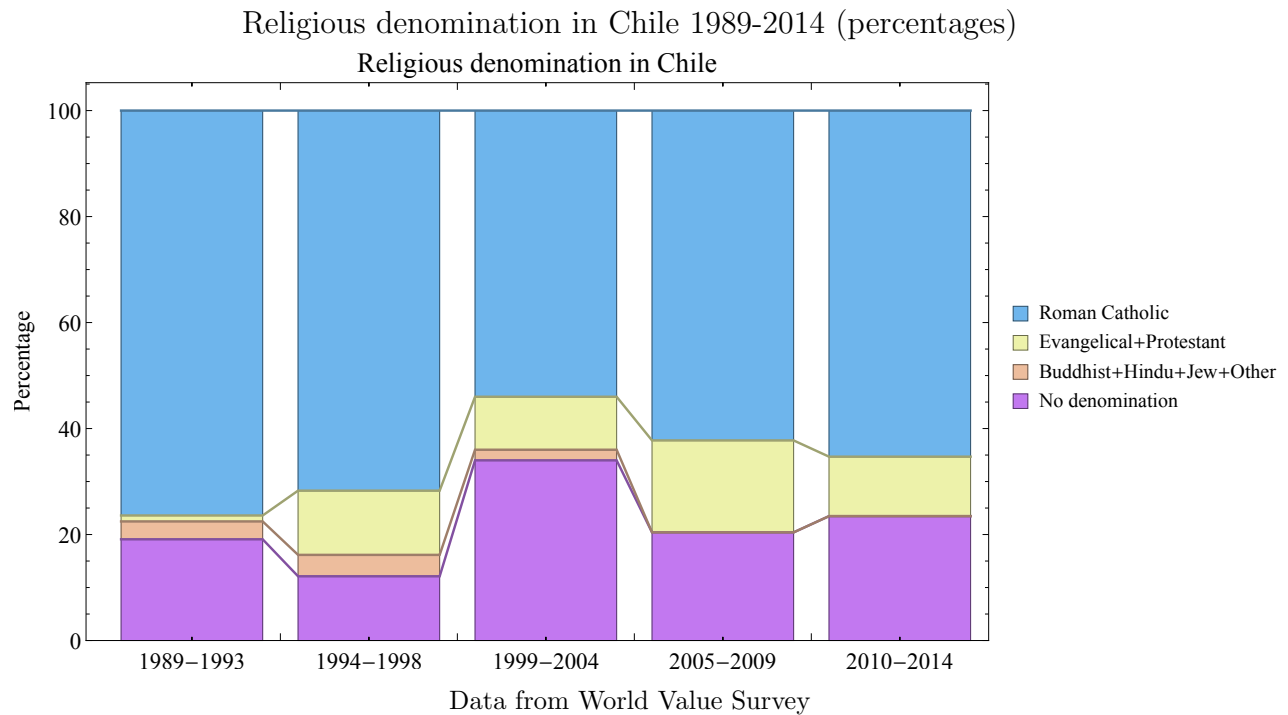


Figure 6.3: Religious denomination in Chile 1989-2014 (percentages)

The question of how the Catholic Church has been able to exert such influence is quite relevant in this case. To answer this question, the next sections will go into detail on the discourses, history and strategies of the Catholic Church to further understand this issue.

## 6.2 History: social justice versus the moral agenda in the Catholic Church

Vallier (1970) argues that the Church has always aspired to social control, preoccupied with creating universal norms and ensuring that these are respected (Vallier 1970, p. 17). In Latin America, the Church has historically had a strong connection with the state and political elites. During its inception in colonial times, it had no organizational autonomy, only being allowed patronage of the Spanish Crown, with the clergy being a part of the

Crown's control apparatus. It was scattered, created with haste, dispersed and had inefficient internal communications. In this context, in order to achieve its goals, it had to create political alliances and it survived by putting political and immediate practical matters above theological principles and ethical codes (Vallier 1970, p. 25). With this strategy, the Church was quite effective in creating ties with higher classes and elites. For example, in Chile, in the period from 1860 to 1935, the Church was dependent on charity donations and subsidies and was therefore allied with the political and economic elites and the Conservative Party (Sigmund 1986, Fleet & Smith 1997, Correa 2011). It gained access to power and channels of influence, and it still remains the most dominant private institution in all countries of Latin America with the capacity to build and orient future elites (Vallier 1970, p. 57).

In the last century, the Catholic Church reached a turning point with the Second Vatican Council in 1962, called the *aggiornamento* or "bringing up to date". Progressive sectors within the Church made an attempt to change its reputation for rigidity. The movement questioned the central doctrine: moral laws thought of as eternal truths (closed to any debate) and the bureaucracy that put the Roman Curia - the administrative apparatus of the Vatican (or the Holy See) - at the core (Vallier 1971). The reforms spearheaded by the Council led to a progressive movement based on community activism and a push to work with the poor, adopting the language of human rights that the Church had rejected before (Casanova 1994).

In Latin America, this was fronted by the Liberation Theologians, who postulated that the main duty of the Church, its priests and its nuns was to work with the poor, improving human dignity in general. This demanded an economic and political change, many times linked with leftist ideals and political movements. Latin American theologians and bishops were at the forefront of the movement in the Conference of Latin American Bishops in Medellin (1968) and Puebla (1979). These conferences drove the agenda regionally

and within the framework of a general political transformation and a “preferential option for the poor” (Krumviede 1971). In some countries, including Chile, the Church opposed the Latin American dictatorships of the 1970s and 1980s, they denounced human rights violations committed by authoritarian states and the inhumane living conditions of the poor, supporting social change and democratic reforms. During these times, the Chilean Church was considered one of the most progressive in the continent. It spearheaded internal initiatives, such as land reform of Church owned properties, supported and promoted family planning clinics and housing cooperatives, and in general inserted itself into modernization processes and social change; and later on, during the years of dictatorship, it played a key role against the regime (Vallier 1970, Fleet & Smith 1997).

Writing at the time of these transformative processes, Krumviede (1971) shows that although it is true that the Medellin Conference recognized the need for a social transformation, the Church members’ response was not homogeneous. Different groups understood it differently and developed different strategies. Three main groups emerged: conservative reactionaries, progressives and radical progressives. In Chile, the progressives were mainly Jesuits linked with the Christian Democrats. The radical progressives were the radical priests living in shanty towns and poor rural villages, working with leftist - and sometimes revolutionary - parties towards profound social change. Conservative groups defended tradition and the Church’s internal structures and vertical hierarchical model. They acted against the perceived “dangers” of socialism, allied themselves with conservative political parties while focusing on charity work. A classic conservative reactionary group of this time is *Tradición, Familia y Propiedad* (Tradition, Family and Property) (TFP), founded by Plinio Corrêa de Oliveira in Brazil in 1960, with a section in Chile spearheaded by their magazine *Fiducia* published at the *Universidad Católica* (Acción Familia n.d., Navarro 2012). Currently, the TFP is *Acción Familia* (Family Action) and has a lower profile and no longer publishes

*Fiducia*. But during the 1960s and early 1970s, *Fiducia* was a major voice for the protection of “Chilean moral values and family life” (Ruderer 2012). Jaime Guzmán was regular contributor to *Fiducia* (Fontaine 1991). In a series of articles, it publicly attacked the land reforms of the 1960s that were supported by progressive sectors of the Church’s hierarchy at the time.

Conservative Catholic organizations like these were quite active in the *junta* and with the technocrats, acting against the Chilean Episcopate led by the progressive Cardinal Raúl Silva Enríquez. As mentioned, the Chilean Church played an important role in denouncing human rights violations and in negotiating the democratic transition. Silva Enríquez was a key figure in this period, as a progressive he maintained a permissive attitude to family planning policies of the 1960s (Godoy 2005, Jiles & Rojas 1992), he also supported the progressive economic policies and was quite hostile to the Pinochet regime. *Fiducia* accused the Episcopate of abandoning the traditional doctrine and its commitment to the Vatican hierarchy. Moreover, conservative sectors of the Church had access to the press and shortly after the coup, thanked the armed forces for saving the nation from socialism. This was followed by an internal struggle between the Church’s progressives and conservatives, who demanded the endorsement of the dictatorship and supported its repressive measures. The main conflict started in 1974 when Silva Enríquez assumed a leadership role in denouncing human rights abuses, and established the *Vicaría de la Solidaridad* in 1976 (the Vicariate of Solidarity) as part of the Church’s efforts to report and stop human rights abuses (Godoy 2005, Cancino 1997).

From the 1980s onwards, the position of the Church changed globally. The Vatican responded to a perceived crisis of modernity in an increasingly pluralistic society by putting emphasis on a moral agenda based on ideas of a natural order, focusing on the traditional family and naturally given relations amongst genders. This process can be traced in part to

the Church's opposition to artificial birth control by the encyclical *Humanae Vitae* in 1968 (Paul VI 1968). Written during the times when contraceptive pills were increasingly being used as birth control and some weeks after the student movements of 1968, this encyclical was a milestone. It is still used by conservative sectors of the Church to justify the use of natural methods of birth control, as we will see in Chapter 9. However, the encyclical was highly controversial outside and within the Church. On one side, the contents of *Humanae Vitae* and its prohibition of any form of artificial birth control emerged at a time when the discussion of population control and responsible parenthood had already reached some sectors of the Church, while on the other hand, as a Vatican document presented under Pope Montini's (Paul VI from 1963 to 1978) sole authority, *Humanae Vitae* created a discussion on the decision making process within the Church. I will analyse both these aspects below, beginning with the rationale behind the encyclical to better understand its reach and implications.

The encyclical's core goal was to make an unbreakable connection between the biology of sex and procreation, based on natural law derived from human nature or divine inspiration. The encyclical states that "the Church [is] urging men [sic] to the observance of the precepts of the natural law, which it interprets by its constant doctrine, teaches that each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life" (Paul VI 1968). Because the encyclical was based on this idea of a natural order, it was targeted not only at Catholics but "[t]o the clergy and faithful of the whole Catholic world, and to all men of good will" (Paul VI 1968, Altling von Geusau 1970) (no mention of women, I use the masculine language used in *Humanae Vitae* and in Catholic texts in general). *Humanae Vitae* stresses that "man" does not have the liberty of owning his own sexuality, as it comes directly from god and "[j]ust as man does not have unlimited dominion over his body in general, so also, and with more particular reason, he has no such dominion

over his specifically sexual faculties, for these are concerned by their very nature with the generation of life, of which God is the source” (Paul VI 1968). It therefore concludes that any methods of artificial birth control are against nature:

“Neither is it valid to argue, as a justification for sexual intercourse which is deliberately contraceptive, that a lesser evil is to be preferred to a greater one, or that such intercourse would merge with procreative acts of past and future to form a single entity, and so be qualified by exactly the same moral goodness as these. [...] [I]t is a serious error to think that a whole married life of otherwise normal relations can justify sexual intercourse which is deliberately contraceptive and so intrinsically wrong.” (Paul VI 1968)

As I indicated above, *Humanae Vitae* caused great controversy within the Church. The total ban on any artificial contraceptive method stirred up reactions in the worldwide Episcopal Conferences. Bishops in western countries rejected the principles of the encyclical in general, leaving the use of contraception up to the individual conscience of the faithful that had a better idea how to fulfil the role of responsible parenthood. Latin American bishops generally approved of *Humanae Vitae*, but during the Medellin Conference they expressed concerns over population and responsible parenthood and, the Chilean episcopate in particular, questioned the fundamentals and raised the issue of individual conscience. Latin American theologians stated that the encyclical could be fallible and the issues should be left to the conscience of the married couple, citing lack of biblical evidence to back the encyclical (Alting von Geusau 1970). According to the contemporary account of De Kadt (1968), *Humanae Vitae* was quite untimely. It came just a year and a half after *Populorum Progressio*, the encyclical on the development of peoples (Paul VI 1967), which supported the progressive agenda, including demographic issues. The world was already starting to adopt family planning methods (Keely 1994), while in countries such as Chile and Colombia,

priests had already accepted government sponsored family planning initiatives and artificial methods of birth control. To De Kadt (1968), *Humanae Vitae* strengthened the Latin American double standards with *machista* attitudes towards sex; men engaging in pre- and extra-marital sex, procreating a large number of children with women in “chastity unable to get help to limit their child-bearing” (De Kadt 1968, p. 388). He also correctly predicted that *Humanae Vitae* would widen the increasing gap between progressives and conservatives within the Church.

*Humanae Vitae* also created some internal controversy as a document proclaimed under the sole authority of Pope Montini. The Pope appointed a pontifical commission to analyse problems with family planning and birth control in 1963, but the group did not reach a consensus. In 1966, the commission included a higher number of experts that viewed birth control methods favourably, however, the final document did not include their suggestions, as the Pope banned them from the final text. It was because the commission did not reach a consensus that the encyclical was proclaimed under Pope Montini’s own authority and against the commission’s majority opinion. In 1969, the Pope convened a Synod of Bishops in response to problems raised internally on the matter of the authority of the document. It concluded that, in fact, these issues should not be decided without consulting the Episcopal Conferences (Alting von Geusau 1970, p. 9). These negative reactions were against the strengthening of a centralized authority in the person of the Pope within the Church, as progressive bishops had been pushing for more collegial decision making processes. Now, the problem was deciding how binding the encyclical was, as some members of the Church advocated for the final decision on contraception to lie with individual Catholics according to their conscience. Keely (1994) argues that the Church then adopted a tactic of silence and restraint regarding *Humanae Vitae* until the establishment of a more centralized authority by the Pope.

In fact, Karol Wojtyła's (John Paul II from 1978 to 2005) papacy strengthened not only the vertical hierarchy of the Vatican but also the conservative moral agenda. Wojtyła inaugurated the Pontifical Council for Culture in 1982, which pushed for a transformation of cultural values by integrating them into Christianity and embedding Christianity within cultures. Under these principles, the Church developed a strategy to reclaim the public sphere for religious morality, the Evangelization of Culture, by acting through civil society. The encyclical *Laborem Exercens* (John Paul II 1981b) had already reconciled the Church with technology and scientific progress, and it was time to integrate the social world into the realm of faith (Ghio 1992, Vaggione 2012). Wojtyła's conservative agenda weakened progressive efforts within the Church in both social justice and moral issues. Lernoux (1989) argues that Wojtyła made an effort to undo progressive reforms, being personally influenced by the Polish Catholic Church and its respect for hierarchy, obedience and discipline - producing a narrow, fundamentalist religion (the Pope was Polish). He had strong anti-communist feelings and viewed those who opposed anti-communist dictatorships - such as the progressive bishops in Chile - with suspicion. He had a close relationship with conservative groups such as Opus Dei and elevated the group to a personal prelate in 1982 (The Prelature of the Holy Cross and Opus Dei).

Daudelin & Hewitt (1995) show that, during the 1990s, this shift back to the *status quo* was a strategic response to realities within the Church and the wider political context. The political orientation of bishops and the clergy pushed them to practices such as those of Opus Dei and the Charismatic Renewal (Daudelin & Hewitt 1995, p. 225). In Latin America, the bishops embraced the new Evangelization of Culture agenda in the Conference in Santo Domingo (1992). Latin America was considered a prime region to implement the agenda due to the Church's historical influence over the state. Moreover, the Pope used his prerogative to nominate bishops to implement the conservative agenda, and in 15 years,



he nominated conservatives or moderates at the head of almost 50% of dioceses in Latin America. This was a significant increase considering the previous strength of progressive bishops. However, they also argue that this shift was due to the inability of the progressive Church to redirect the institutional agenda, and the need for Church leaders to respond to an increase in religious pluralism. The aim of the Church in Latin America had always been the maintenance of societal influence; and the radicalization of the Church during the 1960s and 1970s was not a result of the radicalization of the whole hierarchy, only a small minority of bishops and priests defined themselves as progressives. It was the activism and strength of the intellectuals of the Liberation Theology movement that produced the impression of a progressive hegemony, but Daudelin & Hewitt qualify it more as a social movement that acted within the bounds of the Church (Daudelin & Hewitt 1995, p. 228).

In sum, under Pope Wojtyła, the sector that drove the Church's progressive agenda for social change gave way - or was forced to give way - to the conservative efforts to maintain the *status quo* and strengthen papal authority. The Vatican reinstigated the struggle for the traditional family and the protection of life, embedded in a natural order. It was given by god and based on an understanding of human biology - or nature - which intrinsically links sexuality with reproduction. The document that consolidates Wojtyła's views on this is the 1995 *Evangelium Vitae* (John Paul II 1995). The document reinforces the prohibition of artificial contraception, while also clarifying the position of the Church on abortion:

“It is frequently asserted that contraception, if made safe and available to all, is the most effective remedy against abortion. The Catholic Church is then accused of actually promoting abortion, because she obstinately continues to teach the moral unlawfulness of contraception. When looked at carefully, this objection is clearly unfounded. It may be that many people use contraception with a view to excluding the subsequent temptation of abortion. But the negative values in-

herent in the ‘contraceptive mentality’ - which is very different from responsible parenthood, lived in respect for the full truth of the conjugal act - are such that they in fact strengthen this temptation when an unwanted life is conceived. Indeed, the pro-abortion culture is especially strong precisely where the Church’s teaching on contraception is rejected. Certainly, from the moral point of view contraception and abortion are specifically different evils: the former contradicts the full truth of the sexual act as the proper expression of conjugal love, while the latter destroys the life of a human being; the former is opposed to the virtue of chastity in marriage, the latter is opposed to the virtue of justice and directly violates the divine commandment ‘You shall not kill.’” (John Paul II 1995).

Wojtyła linked *Evangelium Vitae*’s strong rejection of abortion to the principles of the Second Vatican Council on human dignity. But he also strengthened the unbreakable link between sexuality and reproduction. It accused the modern world of “widespread moral uncertainty [and a] veritable structure of sin. This reality is characterized by the emergence of a culture which denies solidarity and in many cases takes the form of a veritable culture of death” (John Paul II 1995). The encyclical goes on directly to condemn the modern world, opposing a culture of death identified with a “contraception mentality” to a culture of life, where abortion and contraception are fruits of the same tree. According to Vaggione (2012), *Evangelium Vitae* was a direct reaction to feminist movements and the activism of sexual diversity movements that had made strides and were able to include their agendas, or part of their agendas, in international instruments such as CEDAW, ICPD and other international and regional documents (Vaggione 2012). In fact, *Evangelium Vitae* was, and is, widely used by the Vatican to negotiate at international level, like during the Beijing International Women’s Conference in 1995 (Neale 1998, Chappell 2006, Buss 1998, Vaggione 2005, Sjørup 1999). With *Evangelium Vitae*, conservative sectors of the Church started mobilizing and

the conservative front was strengthened. This had concrete effects on the Vatican's power to showcase a moral conservative agenda and influence legislative and policy level processes, as we will see below.

The doctrine not only related to sexuality and reproduction, but in 2004, under the leadership of the then Cardinal Joseph Ratzinger, the Congregation for the Doctrine of the Faith directly condemned gender theory and feminist studies, in an effort to protect the traditional family from what they perceived as an "ideology of gender":

"A second tendency emerges in the wake of the first. In order to avoid the domination of one sex or the other, their differences tend to be denied, viewed as mere effects of historical and cultural conditioning. In this perspective, physical difference, termed *sex*, is minimized, while the purely cultural element, termed *gender*, is emphasized to the maximum and held to be primary. The obscuring of the difference or duality of the sexes has enormous consequences on a variety of levels. This theory of the human person, intended to promote prospects for equality of women through liberation from biological determinism, has in reality inspired ideologies which, for example, call into question the family, in its natural two-parent structure of mother and father, and make homosexuality and heterosexuality virtually equivalent, in a new model of polymorphous sexuality." (Ratzinger & Amato 2004).

The effects of these documents in the Latin American Church have been quite clear. Hagopian (2008) analysed documents and Episcopal Messages in the region and concludes that after the democratic process during the 1980s and 1990s, the Catholic Church has strategically chosen to put emphasis either on the social justice agenda or on the new agenda emphasizing moral concerns around reproduction, sexuality and family life. This is an effort to influence the public sphere and respond to their concern over the increase of Pentecostalism

and other rival religions. In Chile, despite having one of the lowest popular adhesions regionally, the Church has been successful in keeping a conservative agenda on reproductive rights. Hagopian shows that this is precisely because the decreasing attachment of Catholics to the Church's hierarchy has left it with the freedom to generate alliances with conservative businesses and right wing elites that are quite empathetic to the Church's moral teachings (Hagopian 2008).

In addition, I would argue that, historically, Catholic ideas of women's sexual and reproductive rights were made into policies and legislation during the years of military dictatorship (1973 -1990) with the influence of the conservative sectors of the Church (as seen in Chapter 5), despite the role the Church also had in confronting the regime's violation of human rights. I will show a small and final example of this process. The record notes of the results discussion of the Constitutional Commission with the *junta* show that there was a general agreement to not include the prohibition of abortion in the Constitution, and to allow for therapeutic abortion by law, as had been the case until then (and continued to be the case up until 1989). However, the intergralist Catholic Jaime Guzmán wanted a total ban on abortion at Constitutional level and addressed the *junta* in the following terms:

“One aspect I address as mere background for the President and the Honourable Members of the *junta*, be it useful or not, the truth is that it is bittersweet. The commission announced it as an idea [to mention abortion in the Constitution], and this awoke great interest in the Holy See through the Nuncio, a great enthusiasm. Because it seemed like this was one of the few countries - at a time when there was a general tendency towards abortion - ratifying that this rule was included, that it was given Constitutional status. They even asked for a summary of the debate to send it to the Holy See. And you might say that it could be an invaluable asset that we can use in our relation with the Holy See. I

am not talking about the national hierarchy, because I think there is little we can progress on here, but the Holy See is an important element.” (Junta de Gobierno 1976, p. 62-63. Author’s translation)

Lies (2006), also argues that due to the lack of adhesion by the Catholic rank and file to the Church’s moral teachings, the Church has been compelled to act strongly in the legislative process, pressuring parliament to move the moral agenda. Moreover, the actions of Wojtyła in Chile were particularly strong because some sectors of the national hierarchy had “betrayed its pastoral responsibilities” during the dictatorship (Lies 2006, p.65). It should be remembered that Wojtyła viewed the progressive Catholic Church in Chile with suspicion. Lies (2006) states that the stance within the Church during democracy is clear: a systematic campaign of the hierarchy in defence of family and life. Since the beginning of the transition, in the 1989 Episcopal Conference’s message *Certeza, Coherencia y Confianza* (Certainty, Consistency and Confidence), the Church showed their concern for moral values as a crisis of modernity, warning democratic officials of passing laws against its teachings. Based on *Humanae Vitae*, *Evangelium Vitae* and *Familiaris Consortio* and natural law arguments on the sanctity of life from the moment of conception (Vaggione 2012); the Church in Chile has opposed abortion; contraception, including the morning after pill; condom use and sexuality education in schools with some success. Paradoxically, the success has been attributed to an increase in the Church’s reach by calling on the role it had in the struggle for democracy, condemning human rights abuses during the Pinochet regime, which enabled informal lobbying and advocacy with progressive and conservative sectors. This conversation with a researcher at the ECLAC on the role of the Church in Chile illustrates this:

“I think there, we can observe the Catholic Church’s position. I think many things get mixed, I think that the issue of abortion and the Catholic Church was super difficult because we were trying not to disturb the priests... [ironically]

‘because the priests were cool’ [*buena onda*]. They behaved so well during the dictatorship, why would you disturb them with these issues?’ I think that now with the generational change, this stopped.” (Researcher CEPAL on sexual and reproductive rights issues. 16)

In sum, the shift within the Catholic Church itself has a role in understanding the process in Chile. The division within the Church has positioned the groups alongside progressive or conservative political actors. Despite its role in fighting for democracy and denouncing human rights violations, the conservative Catholic Church maintained a niche with conservative politicians during the regime, allowing it to imprint religious conservative ideas into the regime’s institutional reforms.

### **6.3 The influence of religion in the secular sphere**

Modern scholars such as Marx, Durkheim and Weber were convinced that globally, modernity and secularization were embedded processes. As modern societies emerged, the secular spheres of the state, the economy and science would differentiate themselves from religious institutions. This would imply a decline in religious beliefs and the privatization of religion as a precondition to democratic politics. As Norris & Inglehart (2011) put it “conventional wisdom in the social sciences during most of the twentieth century; indeed it has been regarded as the master model of sociological inquiry, where secularization was ranked with bureaucratization, rationalization, and urbanization as the key historical revolutions transforming medieval agrarian societies into modern industrial nations” (Norris & Inglehart 2011, p.3). Casanova (1994) however, states that since the 1980s and with the rise in fundamentalism, the world has seen a deprivatization of religion. Religious institutions have assumed a public role, refusing to be restricted to the pastoral caring of individuals, “connecting private

and public morality”. This implies a double process: the re-politicization of the private religious/moral spheres and the re-normativization of the public economic and political spheres, and a push on the boundaries between legality and morality (Casanova 1994, p. 5-6). In this context, the Catholic Church has made efforts to connect its beliefs with secular arenas like science, capitalism and the state. It started this process with the democratizing reforms of the 1962 Second Vatican Council, which accepted religious freedoms and the legitimacy of the modern secular age.

However, Casanova (2009) argues that the Second Vatican Council did not include issues of family structures and gender roles, even though religions have, in fact, been invested in regulating sexuality and reproduction. As seen above, to the Church, family and relations between women and men are of natural origin, sacred and divine, and it is challenging to maintain these ideas in a world that has tended towards a fundamental change in gender relations and gender roles (Casanova 2009, p.15). Gender and sexuality is one of the most challenging dimensions to current religions. Vaggione (2005) argues that in reaction, the Church has been revitalized by trying to reinforce the traditional family. The fight against new ideas, gendered practices and sexual identities - perceived as threat to the family - is used as a justification for public interventions, and conservative advocates embarked in strong advocacy embedding the patriarchal family with gender relations. As my discussion with a young professional about the advocacy efforts in a right wing think-tank shows:

“[We want to consider] each family member and the woman. But not only understood as an isolated individual, of course, but in relationship with the family. Because we think [...] that basically in society an individual is always in relationship with others. First of all, with the family. And therefore any public policy, social policy which wants to focus on women - help women - must have a family perspective. In general the women’s problems are not so much about

them as individuals, but in their relationships with the rest...

Interviewer: where does this come from? Where do they get the foundation to say that the family is the core of social relations?

257: Well, we start with the classical tradition of ethics, from Aristotle forwards, also with a solid Christian vision, a Christian anthropology.” (Young Historian/ works in conservative think-tank. 257)

Vaggione (2005) argues that strategies like these are the result of the Church’s fight against the success of feminist and sexual minorities, who have advanced their agenda at national and international levels. Conservative Catholics hold them responsible for a perceived crisis of the family. Four decades of antagonism between patriarchal religions and feminism have led the Church to mirror the strategies of feminist and sexual minorities, acting now as civil society organizations in what Vaggione calls “reactive politicization” (Vaggione 2005, p. 233 - 234). In Latin America, the Church has organized itself to prevent change, creating networks and strengthening alliances to ensure that the traditional family prevails. It has also become global and modern, mobilizing and reacting to the incorporation of feminist and sexual minorities’ agendas in legislation. The Church now acts as part of civil society, defending family values as a matter of survival, as they feel that the traditional family is threatened. This was quite clear in my conversation with an activist in a conservative religious secular group. We were discussing the group’s strategies with congress and he conveyed that they formally lobby parliamentarians and make presentations on legislative projects that catch their interest:

“Actually what happens is this. In a few - more or less 10 to 15 years - Chile has begun a process of fairly rapid cultural reform, mainly promoted by the successive governments that have ruled Chile since about 1990. The first two governments not as much, but definitively from the government of Lagos. So we



are talking about 1998, if I recall it correctly. It is a clear policy of expanding the margins - as they call them - of cultural policies that incorporate what they call sexual and reproductive rights. In this framework we pay much attention because it is not a neutral framework. It is an ideological concept that considers that freedoms in this area are part of democracy, and governments need to facilitate them for the enjoyment of all people. In our view, this is totally contrary to the Christian natural concept of family. We select the projects or public policies that hurt the family most, not all, but the ones that seem more serious.” (President of Catholic Concervative Foundation. 259)

The Church has politicized access to abortion and homosexuality in the belief that the “liberation” of gender and sexuality would encourage these practices. However, rank and file support for the moral teachings of the Church on these issues has been decreasing, in particular since *Humanae Vitae*’s restrictions on contraception and the alleged unbreakable link between biological reproduction and sexuality, and *Evangelium Vitae*’s conservative position on abortion. These efforts to regulate sexuality, reproduction, family structures and gender roles according to principles posed as natural and of divine inspiration can be resented by Catholics - in particular women - who act according to their own conscience, even though they may not be following the Church’s mandates (Casanova 2009). This goes to the core of the conflicts with religious doctrines that are not in tune with social changes. As this discussion with a progressive medic shows:

“Society is extremely secular, it is the Powers that are not secularized. The Powers tend to think that the Church has more authority on people’s consciences than it really has. They are deceiving themselves because - returning to the issue of sexuality - I see here and I have seen I am not doing clinic now but I did it every day for 40 years. A lady came here, she had an intrauterine device. She

wanted to discuss its mechanism of action, because the priest said she could not use it, but she wanted to continue using it - obviously - but needed information to calm her conscience. It is remarkable. The power of the pulpit is understood differently by different consciences. Some come to inquire, and you talk to them, telling them that it is not abortive, and one lady said: 'take it out because the girl will have her First Communion this weekend', and I asked: 'what will you do?', she replied: 'I will put it in again on Monday'." (Progressive medic: active member of the coalition for access to EC. 12)

Moreover, Catholic practices are not a homogenous, non-conflicting whole. As the section above has shown, even the Church and its paradigms have contradictions. They are products of negotiation processes. The internal conflicting views within the Church are sometimes not solved, as this conversation with a young Catholic advocate that follows the Jesuit/Ignacian tradition highlights:

"If one follows the letter of the law, the encyclical *Humane Vitae* prohibits any method of contraception for Catholics. It is - though not entirely - explicit enough to persuade any Catholic not to use any. And that is it! But I, as a Catholic, as a representative of more than the doctrine, of the human diversity within the Church, do not particularly care what the consensus in the Church was in the past. But rather, I hope for the consensus that it could be in the future. [...] I think there is something more powerful... and I also do not care what *Humane Vitae* said in vocational terms, because it responded to a logic of another time and another culture. And similarly, while it is true that the Church's tradition is of enormous importance in Catholic practice [...], what theology calls the *Sensus Fidelis* is of the same importance as the Church's tradition. The 'sense of the faithful'. The faithful, the Catholic rank and file [*el católico de a pie*],

the popular Catholic masses that have walked the Church's paths in the time they lived. They have already spoken, they have solved the problem, they use contraceptives and that is the end of it. There is nothing more to say about it."

(Catholic Advocate: member of a Catholic network. 258)

This statement is in contrast with interviews I conducted with more conservative activists. Members of Opus Dei and *Acción Familia* spoke quite passionately about the need to follow *Humanae Vitae* and its sisters *Familiaris Consortio* (John Paul II 1981a) and *Evangelium Vitae*. Not only to promote the real teachings of the Vatican, but also to respect human nature and the transcendental aspirations of humans (Gynecologist: member of the Opus Dei. Teaches at a private university. 260, Lawyer: member of the Opus Dei and academic at private university. Active against EC. 255, President of Catholic Conservative Foundation. 259, Priest: Member of the Opus Dei with pastoral duties at Universidad de Los Andes. 256), as this extract from a conversation shows:

"Well, we are guided by a concept that was clearly taught in Catholic doctrine from the encyclical *Humane Vitae* in [19]68 by Pope Paul VI, that states that there must be a connection between the unitive effect and the procreative in the union of the spouses, and therefore there should be no chemical mechanism that interrupts or affect this process.

Interviewer: I know I'm going to ask a question that is a bit unfair because it is hypothetical, but would it have been in the interest of the organization to file an opposition to legislation that would allow any type of contraceptive method?

259: What happened is the following: contraception movements in Chile in particular, began massively - from the state in the year [19]67. Therefore, we have more or less 50 years of contraceptive mentality, whose fruits - whose bad fruits - we are seeing today. We have a country that does not grow, a country

that diminishes, a country that is aging and is increasingly impoverished, and we are in this situation. And this is the result of 50 years of birth control policies that we are against and will remain against. It is different when the state clearly violates the constitutional provision such as the right to life with mechanisms like these [contraceptives].” (President of Catholic Concervative Foundation. 259)

As this quote shows, the most integralist Catholics defend and promote this encyclical as a way to defend society as a whole from the damages of the disturbance in the natural order that leads to chaos. It is this discourse that has been able to reach the public discussion. Conservatives are fighting in secular spheres such as the political and economic arenas, as well as in medical and legal arenas (as in Chapters 8 and 9) and in fora where education and the distribution of resources are discussed (Chapter 7).

## **6.4 The conservative Catholic elites**

The influence of the Catholic Church’s conservative views on sexual and reproductive practices has been well documented, by the section above and by several studies in Chile and Latin America (Godoy 2005, Blofield 2006, Blofield & Haas 2005, Htun 2003, Shepard & Casas 2007, Casas 2004, Pecheny & Dehesa 2011, Vaggione & Morán Faúndes 2012, Nugent 2010). However, as discussed, the Church is not a completely homogeneous entity, and although it has a vertical mechanism of control and its pastoral role is set within a coherent structure (Neale 1998), Catholics live their religiosity in different ways and interpret religious teachings according to their own conscience and history. Furthermore, general affiliation to the Church is continuously decreasing. In this context, it is legitimate to question how it has managed to be so effective in limiting and resisting progress on sexual and reproductive rights. This section will examine one of the aspects that could explain it and the way

religiosity, and in particular Catholicism, has been used by political and economic elites in Chile. A progressive lawyer and advocate who has extensive experience in pushing for sexual and reproductive rights, advocating in parliament, in the judicial system and in academia, argues that:

“[The problem] is not because there is a Church, people tend to reduce this to ‘it is not approved because there is a Church’, and no, I think that there are political circles, political elites, that have a conservative view of the world, and they do not even need the dialogue with the Church. They act as if they *are* the Church. And that is what has brought difficulties. The refusal to open the debate.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

The Chilean elite has some characteristics that makes it quite effective and successful in protecting particular agendas. There is a small, coherent group of people that has been able to link financial/commercial capitalism with rural landholding, while also creating kinship networks that encompass both political and economic areas. There is controversy amongst Chilean historians about how cohesive the elite was in the past, but nevertheless, it was and still is a small group with some common interests (Salazar 2009, Zeitlin & Ratcliff 2014, Correa 2011). Conservative economic elites have stepped in when the government has succeeded in introducing progressive reforms, such as in the case of Emergency Contraception. Political elites have also been successful in stopping reforms within political parties, in policy proposals of the executive and in congress. In particular, conservative economic elites belonging to conservative groups within the Church, such as Opus Dei, the Legionaries of Christ or the Schoenstatt Movement (Thumala 2007), have been quite successful in getting into the elite and managing elite educational facilities, clinics, foundations and upper class spiritual groups and community churches. Groups like Opus Dei are not only successful in their reach,

but also in their hold over members' work and family life, transforming elite members into committed and active advocates with access to resources and power (Mönckeberg 2003).

These conservative Catholics have been traditionally allied with right wing politics. Thumala (2007), has carried out one of the few sociological studies on the business elite in Chile. According to her analysis, there are three Catholic movements that have a strong presence amongst the economic elite: Opus Dei, the Legionaries of Christ and the Schoenstatt Movement. Three of the most conservative secular movements in the Church. Opus Dei was founded by the Spanish saint Josemaría Escrivá de Balaguer in the 1930s and cooperated with the regime of Francisco Franco (Casanova 1983). The Legionaries were founded by the controversial Mexican priest Marcial Maciel in 1941. Maciel was requested to step down from his pastoral duties by Pope Ratzinger (Benedict XVI from 2005 to 2013) after there was proof of his sexual abuse against members of his congregation. Both groups have focused on recruiting people from the upper classes in Latin America. In Chile, the Legionaries are strong within the business sector (Insunza & Ortega 2008). Although Opus Dei have a similar constituency, they differ in their spirituality. Opus Dei has quite strict rules and a structured and disciplined constituency, where devotion to the Church goes hand in hand with a total commitment to Opus Dei and the teachings of Escrivá.

These movements were quite popular with the Chilean economic and political elite during the 1970s and 1980s, as they filled a gap left by the national hierarchy's shift towards progressive policies that addressed social inequality, poverty reduction and were critical of the economic system. As some bishops grew more progressive, the elites got closer to these conservative movements. Thumala's analysis shows that, in particular Opus Dei, has been quite effective in disseminating its ideas through discreet but constant proselytism influencing the elite. They base their religiosity on the education of the will and a belief in natural law with allowances for professional and economic success amongst its members.

Moreover, Thumala's data shows that being Catholic can be a pre-requisite to belonging to the elite, expressed not only in the participation of the Church's rituals and activities, but also quite importantly, in having children educated in a select group of Catholic schools belonging to Opus Dei, the Legionaries and to a lesser extent the Jesuits and other traditional congregations. This economic elite is also educated in private Catholic universities such as the *Universidad de Los Andes* (Opus Dei); the *Universidad Finis Terrae* (Legionaries of Christ); the *Universidad Católica*, and also in the *Universidad de Chile* due to its high quality. The universities are, however, not as important as primary and secondary education in private traditional religious schools.

Thumala (2007) argues that what characterizes elite members is their defence of the non-liberal economic model, their participation in charity organizations and the defence of the Catholic model of family: monogamous, with many children and married for life by the Church. The ethos of the Catholic groups to which they belong allows understanding money making and hard work as part of their religious duties, for Opus Dei members by the sanctification of everyday life through work, and in the case of the Legionaries by giving value to entrepreneurship. Their role in public life is about the protection of the economic model and defence of family values and is not necessarily political, or explicitly political (Thumala 2007).

A conversation with a right wing Catholic academic and lawyer showed me the importance of religiosity to some upper class Chileans. He expressed it in terms of the challenges of the Chilean right to reach its constituency, discussing the 2010 parliamentary elections in particular:

“Let's see. I will give you an example. Why do you think Ossandón won? There are a lot of reasons, but for the conservative Catholic electorate - because I think there is one thing you have to include - I think religion is more important

here, religion is more important than the political affiliation between RN and UDI. I know a lot of people voted for Ossandón because of these issues. While the other [candidate] was the successful businessman that had the corporate appeal, there is a right that cares more about these issues, this guy declared ‘I will defend life, I am a Catholic’, and ‘this other guy is agnostic, this guy is not strong on these issues’ and that cost him [the other candidate] a big chunk of the votes.” (Lawyer/Catholic Right Wing Academic in Private University. 33)

The elite is not homogeneous, and Thumala’s characterization is applicable to a sector of the elite, but not all of it. It is nevertheless quite an important sector and it has been able to influence and block policy making on women’s rights and in particular on matters of sexuality and discrimination. In the case of Emergency Contraception (EC), owners of pharmaceutical laboratories and pharmacies were influenced by anti EC advocates and pro-life groups and some of the most conservative members of the business elites showed their power by blocking access to the product (chapter 8). The link between elites - in particular economic elites - and conservatism is almost taken for granted and is entrenched in Chilean power relations. One interviewee reflected on the barriers faced in her advocacy work to allow access to EC: “we made few [ironically] friends in this country, because people who have money in this country are so reactionary [*momia*]!” (Progressive medic: active member of the coalition for access to EC. 12)

## 6.5 Conclusions

This section has shown that Chile is amongst the less religious countries in Latin America and that this trend is increasing (section 6.1.1). However, the role and the ideas of Catholicism are important to understand policy making on gender and sexual and reproductive rights. To



begin with, the chapter showed that there have been significant shifts in the Church. In Chile, it has had different political positions historically, from the alliance with the conservatives during the early life of the Chilean Republic, the brief shift to a progressive agenda in 1960-1980, to a new conservatism from the 1990s onwards. The constant has been the attempt to influence Chilean politics. Global changes in the Church have affected this scenario. During the internal transformations of the 1960s, Catholics divided into groups amongst which are the conservative reactionaries and progressives. Because of the shift in the hierarchy to social progressive reforms in the 1960s, the Chilean economic elites came close to the conservative, sometimes intergralist sectors of the Church like Opus Dei, TFP and later the Legionaries of Christ. As a result, the Church has been able to benefit from its alliances. Due to its role in fighting for democracy, not only have the democratic governments been tolerant of the bishops' intromissions, but conservative Catholics and right wing politicians also imprinted religious conservative ideas into the regime's institutional reforms, which are still part of the inheritance today.

The progressive trend in Latin America - and to some extent in the Vatican - was short-lived. Pope Wojtyła's papacy moved the Vatican towards traditional dogmas enshrined in *Humanae Vitae* and *Evangelium Vitae*, among other Vatican documents. The documents constrain peoples' access to contraception and abortion and embeds sexuality with reproduction. They are based on the religious notion of human nature as a gift from god, where families and gender relations must be based on traditional religious prescriptions. This shift towards the moral agenda was combined with efforts to influence secular spheres, and the Catholic Church used new strategies to influence policy making. This had concrete effects, pushing the Chilean Church to ensure that access to sexual and reproductive rights remains limited. Catholic practices are not homogenous. Catholics live their religiosity according to their own conscience. The Chilean elite have embraced the Vatican's conservative shift and

it has been quite effective in protecting their agendas. Integralist Catholics are committed advocates with access to power and personal resources. They defend and promote dogmas in the belief that they are defending the *status quo* from a disturbance in the natural order with negative consequences for institutions they hold dear, like the patriarchal family and natural relations between genders and age groups.

The analysis of the Catholic doctrine and the Church's influence and practices show the complexities of its role in promoting and resisting social change in Chile and the region, in gender issues, but also in the more broad ideas of change and progress. I explore how the current conservative trend can be situated historically within the papacy of Wojtyła, and to the set of encyclicals that grounded the ideology of sexuality and reproduction as a god given/natural mandate. These are related to the ideas presented in Chapter 5 and the legacies that were imagined and safeguarded by people like Guzmán within the *junta* and the conservative Catholic doctrine. These are then transformed into the “ideational factors” that Capoccia (2016) has identified as resisting change within institutions, and - I would argue - also drive conservative interests within the broader society. The main strength of the conservative arm of the Church has been to use political and social opportunities to keep and gain a space within the political and economic elite, in particular within the right, where it has not only been active in the resistance to progress at institutional level, but also in influencing the elite's view of the world and gender relations. Over time, this has had an effect in access to services and sexual and reproductive rights in education, health and in the market, as the following chapters will show.

# Chapter 7

## Sexuality education in schools and the control of young people's sexuality

### 7.1 Introduction

In this chapter I will explore the policy processes relating to the sexuality and reproductive choices of young people, mainly adolescents. The debates surrounding the policy processes to ensure access to education of pregnant teenagers and to universal sexuality education will demonstrate that the resistance to these policies still uses the 1980s constitutional principles of freedom of education and the subsidiary role of the state, while promoting conservative Catholic ideas of sexuality, family and reproduction (Casas & Ahumada 2009, Conferencia Episcopal de Chile 1996, Figueroa Silva 2012, Guzmán & Seibert 2010). Progressive policies to increase young people's access to sexual and reproductive rights are particularly problematic for conservative sectors, while the Chilean state has - since the 1990s - been increasingly involved in ensuring access to sexuality education. The push is seen as threatening to conser-

vative advocates, who above all want to control young people's sexual practices, link them to their ideas of reproduction and to link sexuality with morality and affectivity, as seen in Chapter 6. This chapter will unravel the processes and the tactics of both the government and conservative advocates in selecting policies to increase young people's access to information and sexual and reproductive rights. It starts with an analysis of the current situation on teenage pregnancies. This will be followed by a detailed analysis of the process to ensure pregnant students' right to remain in school and to implement sexuality education programmes. It will also examine the principles and tactics used by the government, the Catholic Church and other stakeholders, and the internal processes within the Ministry of Education and the Ministry of Health. I will analyse the conservative discourse on young people's sexuality and sexuality education, the arguments that use the legal framework of the 1980 Constitution, and the media and informal advocacy to block public policies.

### **7.1.1 Presenting the problem: young people's access to sexual and reproductive rights**

There is evidence of the negative effects of teenage pregnancy on girls' educational outcomes, and therefore their future access to resources and health. In Latin America in particular, this problem has been addressed repeatedly by researchers and policy makers as the number of teenage pregnancies tends to remain stubbornly high, despite progress in other areas: a general decline in fertility and an increase in the use of contraception (Gogna et al. 2008, Rodríguez & Hopenhayn 2007, Rodríguez 2010, Olavarría & Molina 2012, Rodríguez 2011). Scholars and international organizations have provided a response this problem on several occasions: ensure confidential and accessible sexual and reproductive health services for adolescents, as well as comprehensive and evidence based sexuality education programmes (Santhya & Jejeebhoy 2015, Unesco 2010, United Nations 1989, Rodríguez 2011, Rodríguez

& Hopenhayn 2007). However, there are still continuous efforts to undermine or stop the fulfilment of these recommendations in Chile, as this chapter will show.

Looking at the situation globally, and using data from the Demographic and Health Surveys (DHS) from 55 countries and an extensive review of the available evidence, Santhya & Jejeebhoy (2015) analysed the situation of sexual and reproductive health and rights of adolescent girls in low income and middle income countries. Their findings show that despite some progress, there are high numbers of early marriage and childbearing globally, and unplanned pregnancies amongst adolescents. Services and sexuality education must be expanded and access to approachable and non-judgmental services is still to be ensured. Sexual and reproductive health for adolescents must guarantee the right to “make safe and informed decisions that affect their health and wellbeing” (Santhya & Jejeebhoy 2015, p.190). The authors show that progress has been slow and wide regional gaps remain, where “[u]nmet needs are often concentrated among adolescents residing in rural areas, with limited education, and belonging to economically disadvantaged households or socially excluded ethnic groups” (Santhya & Jejeebhoy 2015, p.191). Their data shows that the percentage of early marriage (girls married before the age of 18) was 23.6% in the Latin American countries; 10.6% in Eastern and Southern European countries, 44% in South Asia and 39.1% in Sub-Saharan Africa. The Latin American region showed the highest global percentage of girls aged 15 to 19 who have experienced pre-marital sex at 27.7% (11.7% in Eastern and Southern Europe, 24.6% in Sub-Saharan Africa), also 55.9% of pregnancies of women under 20 years old were unplanned (23% in Eastern and Southern Europe, 26.8% in sub-Saharan Africa). Moreover, a longitudinal analysis shows that Latin America is the only region where this percentage has increased since the times of the ICPD, from 41% in the 1990s to 55.9% from 2005 onwards (Santhya & Jejeebhoy 2015).

Data analysed by Rodríguez (2011), using United Nations projections based on inter-

national demographic surveys, vital statistics and censuses, shows that in Latin America, the fertility rate of girls between 15 and 19 years of age is higher than would be expected from the total fertility rate. In the last 40 years, the total fertility rate in the region has been falling significantly, but the rate from the 15 to 19 age group has remained almost constant. For example in Chile, although adolescent fertility has decreased since the 1960s, it is currently 80% of the 1960 rate, while the total fertility rate is only 40%, of the 1960 rate. In Uruguay and Argentina, the adolescent fertility rate is even higher now than in the 1960s. The evidence also shows that pregnancies in adolescents are increasingly not planned nor expected and that there are “lower levels of desirability for births during adolescence compared to all births in most countries” (Rodríguez 2011, p. 11). This evidence puts into question previous notions that early pregnancies in Latin America could be explained by the desire of teenage girls in the region to have children. Rodríguez’s analysis also shows that access to contraception is highly unequal amongst socioeconomic groups. In Chile, the use of contraceptives during first intercourse is approximately 75% amongst adolescents in high and very high income groups, 38% in very low income groups, 58% in middle income groups and 50% in low income groups (Rodríguez 2011, p. 15).

In 2010, according to the Human Development Report (HDR), the number of births per 1,000 women aged 15 to 19 in Chile was 58.5, one of the lowest in Latin America after Cuba with 45.2, Peru with 54.7 and Argentina with 56.9. The highest are Nicaragua with 112.7 and Guatemala with 107.2. However, the Chilean rate is high in comparison to other countries with very high human development, which have an average rate of 23.2. A country with the same HDI as Chile is Portugal, and it has a rate of 16.8 (the rate for the UK is 25.8. Full figures in Table 7.1). Eighty per cent of teenage pregnancies in Chile are amongst the three poorest quintiles, while in the poorest quintile, there were 10 times more teenage mothers than in the highest income quintile (Instituto Nacional de Derechos Humanos 2014).

Table 7.1: Births per 1,000 women ages 15 to 19 for selected Latin American countries  
(HDR 2010)

<b>HDI Rank*</b>	<b>Country</b>	<b>Rate</b>
44	Cuba	45.2
82	Peru	54.7
49	Argentina	56.9
41	<b>Chile</b>	58.5
50	Uruguay	61.1
68	Costa Rica	65.6
71	Mexico	69.3
98	Colombia	74.3
79	Brazil	75.6
113	Bolivia	78.2
115	El Salvador	82.7
98	Ecuador	83.5
65	Panama	84.6
67	Venezuela	89.9
111	Paraguay	72.3
129	Honduras	93.1
125	Guatemala	107.2
132	Nicaragua	112.7
168	Haiti	46.4
Very high human development		23.2
High human development		28
Medium human development		54.9
Low human development		100.1

Source: UNDP (2014)

Given the above described situation, several international organizations and scholars have recommended taking steps to prevent teenage pregnancies globally and in the region. These recommendations include appropriate sexuality education, as well as provision and access to contraceptives and information according to their needs and interests (Santhya & Jejeebhoy 2015, Unesco 2010, United Nations 1989, Rodríguez 2011, Rodríguez & Hopenhayn 2007) (Olavarría & Molina 2012, Casas & Ahumada 2009, Rodríguez 2005, for Chile). However, progress in this area is still insufficient. A report by CEPAL (2013) shows that there are still barriers to access to sexual and reproductive health services, including a lack of confidentiality; and despite some advances, integral sexuality education programmes are still infrequent. Moreover, in 2012, the CEDAW committee, commenting on the government of Chile's progress report, expressed its concern with the lack of systematic sexuality education in schools, the comparatively high rates of teenage pregnancy causing school dropouts and the persistent expulsions of pregnant girls from schools (CEDAW Committee 2012a). A report by the Instituto Nacional de Derechos Humanos (2011) (*National Human Rights Institute*) shows that in 2010, there were 65 complaints to the section of the Ministry of Education in charge of overseeing this issue of pregnant students being expelled from schools and 42 of these cases in the first semester of 2011. This was despite the general consensus that teenage pregnancies must be reduced, and that pregnant students have a right to remain in schools. A report from 2014 by the *Instituto Nacional de Derechos Humanos* shows that 29.9% of people between 14 and 17 years of age that did not study did so because of pregnancy or motherhood. This is problematic for a country that prides itself on having an average of 15.1 expected years of schooling (UNDP 2014), has closed the gender gap in education and has a literacy rate of 98.9 (15-24 years old) (United Nations 2013).

Since the return to democracy in Chile, the government has addressed these two issues following a logic that is entrenched in the politics of the role of family versus the subsidiary



role of the state, enshrined in the 1980 Constitution (Cristi 2000) and has been controversial since the early 1990s (Shepard 2006, Araujo 2005, Casas & Ahumada 2009). Moreover, the initial efforts to provide countrywide sexuality education go back to those in the 1960s and 1970s described in Chapter 5. These efforts stopped during the dictatorship and no public policy on sexuality education in schools was introduced until the return to democracy, in a process I will describe below (Jiles & Rojas 1992). A useful conceptual starting point is Petchesky's (1986) understanding of teenage sexuality and pregnancies in a framework of the heterosexual culture prevalent in the USA in the 1980s. She argued that sexual culture posed a series of dilemmas for women, in particular for adolescent girls that were pushed to define their sexual identity in the dominant culture. Petchesky proposed that relations and norms that guide people's sexuality are full of conflict and differences of power. Combined with the weight of traditional morality, they determine the probabilities of the use of contraception and unwanted pregnancies. Sexuality is historical, defined by the particular moment in which people live, it is not only specific to gender, but also to age and class (Petchesky 1986).

## 7.2 Pregnant teenage students

The government that managed the Chilean transition after the end of the dictatorship in 1990 justified the introduction of sexuality education in schools as a measure to address the problem of teenage pregnancies. In doing so, it responded to the proposal of the organized women's movement, which after a consultative process in 1989, elaborated an advocacy document - *Tramas para un nuevo destino* (Weaves for a new future) - that addressed the need to reduce teenage pregnancies through sexuality education and early pregnancy prevention (Montecino & Rossetti 1990). The document shows the organization's concern not only with the number of pregnant teenagers in the country - the number of women giving birth under

the age of 20 did not vary much, being 14.2% in 1970 and 14.3% in 1985 - but also with the fact that they could not continue with their education as regular students. A norm of the Ministry of Education imposed during the dictatorship had prohibited pregnant students attending schools during the day, limiting them to evening classes (Montecino & Rossetti 1990).

This norm was eliminated internally during the Lagos' tenure as Minister of Education (1990-1992) with the enactment of *Circular 247* of 1991 that guaranteed pregnant and breastfeeding students' right to stay in their previous schools, calling on educational institutions not to expel them and allowing these teenagers flexible schedules so that they could comply with academic requirements (Casas & Ahumada 2009, Congreso Nacional de Chile 2000). According to one of Ricardo Lagos' ministerial advisers, the Ministry made a strategic choice when they reverted the norm enacted during the times of Pinochet:

“Amongst the things that we, the Women for Democracy, put forward after gathering to draft the demands to the *Concertación*, was the issue of teenage pregnancies. [...] [T]here was a norm from the Ministry of Education that reached all schools saying that pregnant students could not attend daytime schools and they were forced to go in the evenings. As a consequence, school dropout rates were higher, and the girls faced more risks, forced to go out at night with their bellies... That norm was very, very negative, it was issued during the dictatorship, because it did not exist before. Then someone - I do not remember who it was - came to these meetings, and raised the concern that the norm of the Ministry of Education had to be repealed.” (Former Gender Adviser-Ministry of Education during the *Concertación*. 251)

According to this adviser, the policy was supported - and even highlighted - by sectors of the progressive Catholic Church at the time, in particular by the *Vicaría de la Esperanza*

*Joven* (Vicariate of Young Hope).

The problem was that the Ministry did not have the attributions to set mandatory regulations that would also apply to private education institutions. In consequence, the Ministry of Education and SERNAM sent a bill to parliament (*Ley N 19.688*) in 1994, sponsored by deputies from the left and right, in the spirit of ending discrimination against teenage mothers. The approval of this law, however, took six years because the legal norms that regulate the educational system are part of the “binding laws” that require a Constitutional Quorum (part of the “authoritarian enclaves”). Therefore, the formal process was quite long, and the hierarchy of the Church had already starting to change and become more conservative. The bill was signed and published in 2000, when Ricardo Lagos was president (Casas & Ahumada 2009, Congreso Nacional de Chile 2000) (more about this law in page 169).

Where did the opposition to ensuring teenage mothers’ permanence in schools come from, and what were the arguments? By analysing the discussion of the law in parliament it is clear that the opposition came mainly from conservative sectors of the Church and right wing politicians committed to the principles set up by Jaime Guzmán in the 1980 Constitution, in particular freedom of education. Some members of the Catholic hierarchy saw it as problematic, as it had the potential to legitimize teenage pregnancies and have a multiplier effect that could put “the family” at risk (Grau et al. 1997). The legal argument - in principle - was to defend the freedom of education. The commission that discussed the law in parliament in 1994 invited the Catholic priest Faustino Huidobro, the Director of Education of the Catholic Bishops Conference, to share his views. His argument, although nuanced, highlighted the resistance of the Church to lose control as educators:

“[T]he proposed initiative is a simple statement. It will not address the complexity of the problem of teenage pregnancy. There is no reference to the possible contradiction with the right to freely manage a school and the existence of educa-

tional projects inspired by some ideas responsibly chosen by the entire educational community. [The Bishops Conference is of the opinion] that the Ministry of Education's current regulations are enough." (Congreso Nacional de Chile 2000, p. 11. Author's Translation)

The resistance to pass this law came from the discomfort of the state intervening with private schools' educational projects, and has parallels with the conservative sector's protection of their view of the family and the role of parents in protecting young adolescents from ideas about sexual mores that could be contrary to their views. During the discussion in parliament about this law, the *Unión Demócrata Independiente* (Independent Democratic Union) (UDI) was the only voice raising some concerns, as articulated in UDI deputy Bartolucci's statement:

"I have many doubts about this project. I understand its principles and there are arguments that I find very valuable. However, I believe that to include this situation in the regulations for educational establishments - including the private ones - is, from my perspective, a way to force them into making decisions that should not be a legal requirement, but based on the project of each educational institution. I have the feeling that this project is against freedom of education as enshrined in Article 19, Number 11, of our Constitution." (Congreso Nacional de Chile 2000, p. 74. Author's translation)

But because the approval of the law took such a long time, and the public was aware of the matter, discussion in parliament was quite nuanced and centred on the apprehension of some right wing politicians towards regulation that would affect private schools, where freedom of education was based on the capacity to select - and pay - for a school that reflects parents' principles. There is an idea that public education should be under the scrutiny of the state, while private middle class education must be left to the discretion of parents and

families. In the words of UDI deputy Paya:

“We can enforce the criteria - broadly supported in parliament - in all municipal schools, ensuring that girls who become pregnant continue their studies without interruption. But I reiterate that I am referring to public schools, where the state determines what, how and who is taught. We cannot apply it to private schools. So the logical question is what we can do at this point to not violate the freedom of education.” (Congreso Nacional de Chile 2000, p. 22. Author’s translation)

The law was approved by Congress, despite a few dissenting voices from the right. The Ministry of Education created a unit in charge of following up complaints by teenagers expelled from their schools. But as seen above, there is still a high number of pregnant adolescents who drop out of school and the level of teenage pregnancies in Chile remains one of the highest amongst OECD countries. These numbers are an opportunity to look into the second arena of contention regarding young people’s sexuality and reproductive choices: universal sexuality education in schools. These two areas were part of a continuum. The policy on sexuality education was deliberately developed once the issue of teenage pregnant students was solved internally in the Ministry with *Circular 247* and public opinion was more sensitive and open to discussion (Former Gender Adviser-Ministry of Education during the Concertación. 251).

The Constitution of 1980 prescribes that families and parents have the primary responsibility of their children’s education, something that is not problematic per se, but becomes seriously problematic with the decentralization and privatization of education. In practice this meant that through the Ministry of Education, the central government had quite a limited role and only provided basic objectives that must be achieved by schools, and this had serious effects on the capacity of the state to ensure that all young people in

Chile had the information needed to make choices related to their sexuality and reproduction. This problem can be seen both in the discussion of adolescent girls' right to remain in their schools and in the resistance to include sexuality education in school curricula, which I will introduce next.

### **7.3 Sexuality education in schools: *Jornadas de conversación sobre afectividad y sexualidad* (Conversation Workshops on Relationships and Sexuality) (JOCAS)**

The efforts to include sexuality education in schools started after the transition in 1990, with a nationwide sexuality education programme in Chile, *Jornadas de conversación sobre afectividad y sexualidad* (Conversation Workshops on Relationships and Sexuality) (JOCAS). The Ministry of Education had committed to a sexuality education programme during the tenure of Ricardo Lagos, responding to the recommendations of the *Concertación de Mujeres por la Democracia* and aimed specifically at reducing teenage pregnancies . In addition, the country had ratified the Convention on the Rights of the Child (CRC) in 1990, that prescribed preventive health care and family planning education and services (Canales et al. 1997, Shepard 2006). To develop this programme, the Ministry of Education called stakeholders to a working group in the early 1990s to discuss it. The committee included representatives from the Ministry of Health, the National HIV/AIDS Council, SERNAM, Non-Governmental Organizations (NGOs), academics, human rights groups, Catholic and Masonic groups and the UNFPA. Once finalized, the programme was financed by UNFPA and reached 600 public schools, until it stopped in 2000 (Shepard 2006).

The process to agree on the programme was eventful, and the planning and negotiation took two years. During the second year, the committee was adjourned after the aforementioned norm to allow pregnant girls to remain in their schools (*Circular 247*). The people in the Ministry selected the participants with careful consideration, experts with political influence but who would also not create too much conflict in the process.

“It was a group who were all friends. I mean, not enemies, but friends that looked for common ground with their peers, that would understand. Because they had such diverse language, such different worlds”. (Former Gender Adviser-Ministry of Education during the Concertación. 251)

The organizers invited and consulted allies from the Catholic Church in this committee. It took time and a great deal of knowledge about the workings of the Church. Different sectors in it felt more or less strongly about sexuality education. The alliance with progressive priests and bishops was key at this time. The support of people like bishop Carlos González, and the guidance of progressive and respected Catholic priests, helped them understand sensitive areas that needed to be negotiated. The result was a Plan on Sexuality Education (MINEDUC 2001) and the JOCAS was the methodology to implement it. It was targeted at schools and involved educators and primary health care personnel. The workshops included a representative of the Church - to ensure that there was a holistic perspective on sexuality - and parents, following recommendations of Catholic academics and priests who believed that the primary responsibility in guiding young people’s sexuality should lay with the family (this negotiation was criticized by some sectors of the left). After the long and strenuous negotiations, the programme was piloted in two provinces, with the public support of the bishops (Former Gender Adviser-Ministry of Education during the Concertación. 251) (Shepard 2006).

The problems in the implementation of the programme started quite specifically. When

conducting the JOCAS in Santiago, the Ministry did not manage to involve the hierarchy of the Church, and they did not provide the priest that needed to be present (Former Gender Adviser-Ministry of Education during the Concertación. 251) (Guzmán & Seibert 2010). Also, and more importantly for public opinion, in September 1996, the newspaper *El Mercurio* published a piece on the JOCAS. The article created quite a scandal. It portrayed some workshops in working class neighbourhoods in Santiago, and although not criticizing the initiative directly, it managed to create concern, with pictures of young boys with condoms in their hands and photographs of students' drawings made at the end of the workshop, including one showing different sexual positions. The narrative of the article depicted midwives interacting with the adolescents and responding to their questions. It created the idea that they were guiding the young, maybe through the wrong path, portraying the facilitators discussing condoms, sexual practices, contraception and masturbation with the youngsters, as in this extract from the article:

“[The midwife] reads a question made by the students the day before: ‘What do you think about abortion?’, and then asks for opinions. The majority say they are against it. She states: ‘there are several positions on abortion. It is true, as you have said, that it is about a life and that it has consequences for women, but this is because in our culture it leaves women with a feeling of guilt. And I would ask you if you if you still think abortion is wrong when a woman has been raped’.” (Molina 1996, p. 25. Author’s translation)

Some researchers argue that the journalist responsible for this belonged to Opus Dei (Guzmán & Seibert 2010)(Former Gender Adviser-Ministry of Education during the Concertación. 251). This is possible, since she did her masters at the University of Navarra (the main University of Opus Dei in Spain). In a later interview I had with someone involved in writing the article, this person recounted a feeling of discomfort with introducing sex to



adolescents, feeling that there was a disconnect between the public discourse of the government and what it was really doing. The perception was also of a sense of unfairness, because the programme was mainly conducted in public schools, with poor children, as it could not be done in private schools.

“[I]t was [like] a montage to not disturb the conservatives who were in the government, the President himself - Frei - who was a Christian Democrat and was quite conservative [...]; there was manipulation behind it. Once you do it you cannot go back. When you introduce contraception into society it is irreversible, when you introduce sexuality education into society it is irreversible. I mean, the kids go to the health centres, and that was the push, to link health centres with schools and transform sexuality education into a degradation of sexuality. To take it away from procreation, from love and family. Make it into something like eating a hamburger. Children repeated like parrots that to have sex you must use a condom or the pill or wear a ring. It was all explained mechanically, as if it were an airplane checklist to see if all was approved, that sex can be anal, vaginal, oral. Everything was check, check, check. Everything equal, all blank, all worth the same.” (Conservative Journalist: worked in *El Mercurio*. 265)

The concerns also echo the ideas behind the debate about pregnant students, the need to protect young people from “dangerous information”. It is a claim to confine information about sexuality and reproduction to the family and protect the relationship between adolescents and their parents. This is basic to the conservative opposition. My interviewee involved in the preparation of the article in *El Mercurio* was concerned about the lack of power the parents had to be involved in the workshops, the feeling was that it was “quite coercive because it was from the point of view of the state” (Conservative Journalist: worked in *El Mercurio*. 265). This article in *El Mercurio* created quite a controversy, and support

came quickly from conservative sectors, who expressed their outrage against the way sexuality education was being addressed by the government (Former Gender Adviser-Ministry of Education during the Concertación. 251) (Shepard 2006, Grau et al. 1997). However, it received the public support of president Frei and the article was publicly denounced as a montage by the Minister of Education at the time, Sergio Molina. He argued that condoms were in fact not distributed to students during the workshops and only high school students attended (one of the controversial photographs depicts two primary school students with condoms in their hands). Both the students in the photo and their parents confirmed that the photographer gave the students the condoms, not the facilitators. The parents, students and the mayor of the municipality of Puente Alto, a lower/middle income municipality, announced that they would sue the newspaper, but the threat does not seem to have been carried out (González 1996, Lagos Lira 2001, La Epoca 1996*a*, Guzmán & Seibert 2010, Shepard 2006, Valdés & Weinstein 1996).

The article was promptly supported by the hierarchy of the Church. Only one bishop made a declaration of support for the programme, the then bishop of Talca Carlos Gonzáles, stating that it was indeed relevant, highlighting that the “government should collaborate with parents in sexuality education (La Epoca 1996*a*). González had been the president of the Conference of Bishops during the initial period when the JOCAS were negotiated and agreed upon with the Ministry (Former Gender Adviser-Ministry of Education during the Concertación. 251) (Conferencia Episcopal de Chile n.d.*b*). However, the rest of the hierarchy endorsed the article, including the representatives of Opus Dei (Guzmán & Seibert 2010). Jorge Medina, the then bishop of Valparaiso, was the main public critic of the initiative. A known conservative, he accused the programme of degrading sexuality to “less than animal behaviour, and not even animals can do whatever they want on sexual issues” (Vidal 2002*a*, p. 2); he even accused the Minister of Education, Sergio Molina, of being

amoral (Lagos Lira 2001). Medina was close to the Pope Wojtyła, who named him Pro-Prefect of the Congregation for the Divine Cult and Discipline of the Sacraments in the Vatican the same year. He became cardinal in 1998 and announced the selection of Pope Ratzinger (Conferencia Episcopal de Chile n.d.a). He stated the following in an interview with *El Mercurio* a few years later:

”There was a programme called JOCAS [...] the version of it that I knew was absurd. That is not sexuality education, it is teaching young people how to have licit or illicit sex without the consequences of a pregnancy. That - to me - is not sexuality education because, as was stated by the Episcopate, it is information lacking in values. Among those values is the respect for the individual, modesty, purity of customs, the use of sexuality in the context for which God created it.”

(El Mercurio 2001a, Author’s translation)

One high level official of the Church accused the WHO and industrialized countries of using sexuality education to promote contraceptives and sell their leftover condoms to undermine the family and to maintain their political hegemony (Guzmán & Seibert 2010, La Epoca 1996b). Another vocal critic to the programme was Francisco Cox. A member of the Schoenstatt Movement, Cox initially supported the workshops when they were implemented in La Serena where he was bishop (Former Gender Adviser-Ministry of Education during the Concertación. 251), but after the article in *El Mercurio*, he criticized the programme publicly and vocally in the media (Lagos Lira 2001, Shepard 2006). The Conference of Bishops disseminated an official declaration rejecting the programme and “respectfully request [it] to be removed and thoroughly revised, framing it under a clear education of values” (Conferencia Episcopal de Chile 1996). Conservative sectors in the right also criticized the programme. Some parliamentarians threatened not to approve its budget for the following year (Shepard 2006, Lagos Lira 2001).

The controversy caused by the article was felt by the organizers in the Ministry of Education. Their reaction was to support and confront the critiques until the controversy was over. This was a step back for the team that had fostered a careful relationship with the Church. They had to renegotiate and change the programme's structure. After discussing it directly with the hierarchy, the programme was implemented until the end of the year (1996) and the regional offices of the Ministry implemented 40 workshops in 3 provinces (Former Gender Adviser-Ministry of Education during the Concertación. 251). The programme was scaled up in 1997 and by 2000 it had been implemented in approximately 600 schools, more than half the high schools in the country (Shepard 2006). However, the resistance of the Church continued, until finally the programme lost its internal funding and by 2001, it was no longer an official initiative (Former Gender Adviser-Ministry of Education during the Concertación. 251) (Casas & Ahumada 2009, El Mercurio 2001*e*).

## **7.4 The Evaluation Commission of JOCAS**

Despite the resistance, the JOCAS were effective and are still remembered as opening the discussion about sexuality education in schools, and taking sexuality education “out of the exclusive remit of public health, into the field of culture [...], aimed at opening the conversations about sexuality that had been closed by the dictatorship” (Psychologist: Feminist academic at Universidad de Chile. 45). Some schools continued applying the model even though they were not mandated by the Ministry. However, the initiative lost momentum and up until 2009, only a few public schools had sexuality education programmes (Casas & Ahumada 2009). In 2004, the then Minister of Education Sergio Bitar created a commission to evaluate JOCAS. The idea was to analyse lessons learned and good practices. It was led by an ex-minister of SERNAM, Josefina Bilbao - perceived by some as com-

ing from the more conservative side of the *Concertación* and therefore less threatening to conservatives - and included NGOs, the Ministry of Health, academics, the United Nations Children's Fund (UNICEF), representatives of public and private schools, student unions, a theologian, physicians and parent associations. It was financed by UNFPA, with support from the United Nations Development Programme (UNDP) and the Joint United Nations Programme on HIV/AIDS (UNAIDS). It started with an assessment of the programme and made a series of recommendations, and concluded with a positive assessment of the JOCAS (Comisión de Evaluación y Recomendaciones sobre Educación Sexual 2005).

The discussion about sexuality education in schools is framed by the legal and financial outlook of the Chilean educational system. For participants in this commission, the issue had “to do with the intromission of the state in the projects and aspirations - the mission - of education providers” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226). Early on, members of the commission realized that one of the problems of ensuring universal access to sexuality education was the LOCE. This law was approved quickly and without much publicity at the end of the regime in March 1990 (more on page 116). As a quasi-constitutional act it requires a 4/7th majority in both chambers of Congress in order to be changed or amended (Casas & Ahumada 2009). In the words of a participant of the commission:

“[W]e realized that with the LOCE, it was impossible to do anything. In the second meeting of the commission, we realized that it does not matter what we say, the Ministry cannot even enter the classrooms without asking. All it can do is go and see if the toilets are working. Toilets and [school] attendance is all that the Ministry of Education can control.” (Feminist activist: Researcher on gender issues. 1)

The commission therefore analysed the consequences of the principle of subsidiarity of

the state in depth, looking at the limits and faculties of the state. After much deliberation with the theologian that participated in it (Feminist activist: Researcher on gender issues. 1), the commission concluded that although the principle implies that the families are the first providers of sexual guidance for their children, they might not have the tools, knowledge or inclination to do so. The state must be able to guarantee access [to sexuality education], in the name of equality and non-discrimination (Comisión de Evaluación y Recomendaciones sobre Educación Sexual 2005). This touched upon issues of unequal access, as a member of the committee conveyed: “the poor could not have sexuality education, it was unacceptable” (Feminist activist: Researcher on gender issues. 1).

After the impasse with the JOCAS, this Evaluation Commission faced the Church’s resistance to adopt a new sexuality education plan again. The Church acted and advocated on several fronts; formally through the theologian participating in the commission, through official declarations in the media (that could have a powerful effect as seen in the article in *El Mercurio* in 1996), by informal pressures directed to high level officials and ministers and directly by means of the Church’s historical role as educator. The Church owns and runs a large share of private schools, in particular - but not exclusively - where high and middle class parents send their children. Conservative sectors of the Catholic Church, in particular the Jesuits (Company of Jesus), Schoenstatt Movement, Legionaries of Christ and Opus Dei, have made it their business to have a strong reach in education (Thumala 2007), not only creating and managing schools and universities, but also influencing policy making in education when possible. As such, it is organized in the *Federación de Instituciones de Educación Particular* (Federation of Private Education Institutions) (FIDE) (Crino Tassara 2010). In this role, Carlos Pellegrin, the then representative of the FIDE - and current bishop of Chillan (Conferencia Episcopal de Chile n.d.c) - participated in the hearings held by the commission and presented a document with their concerns. A comment made by the

priest, as remembered by one of the members of the commission, illustrates the position of the Church as education entrepreneurs:

“A priest [representative of FIDE] - basically because he was not invited to be part of the commission - told us in good Chilean: ‘what you do is useless, because we do not have to do anything that you decide in this commission [...]. You, state, can only demand what is required by law, on this or that you can give guidance, but once the educational project is approved, I can do what I want’.” (Feminist activist: Researcher on gender issues. 1)

The Church, through the presence of the FIDE in the commission, managed to polarize it, driving the debate to opposite positions with not much space to negotiate: “there was a terrible quartet on this table that represented the different voices [...] and the truth is that the priest [head of FIDE] misbehaved, and so did [x (a feminist)], because they polarized the debate, and [we were discussing] a systemic question that should transcend personalities. As the priest became more intransigent, so did [x]” (Academic at Jesuit Private University: involved in Sex Ed. policy evaluation. 252). In this context, doubts about the legitimacy of these sectors also arose, while the tolerance of certain power groups in politics to the Church’s manipulations and the lack of sensitivity of politicians towards having a broader spectrum of religious representatives was put into question (Academic at Jesuit Private University: involved in Sex Ed. policy evaluation. 252).

In fact, Education Minister Bitar declared in an interview to a newspaper that the Church’s voice was important and that “[he would] listen to their opinion, because he was Catholic”. Minister Bitar met with the hierarchy to discuss his plans for sexuality education (Zuñiga 2003). Later on in the commission’s work, the position of conservative sectors of the Church made it difficult to create a dialogue, and the more progressive Catholics were trapped in the battle trying to reach a meaningful consensus:

“What happened to me is that - systemically - I was in the middle of a game [...] trying to deal with the interests of two sectors that always trouble the progressive [sector of the] Church. [I was] [t]rying to join the doctrine - the rigid ideas with [...] the radical discourse of [x]. So, although I was agreeing with issues, I was like a little Jiminy Cricket (*Pepe Grillo*), I felt like that was my role. There were some difficult times, quite difficult.” (Academic at Jesuit Private University: involved in Sex Ed. policy evaluation. 252)

Despite the pressures, the internal disagreements and the resignation of some members, the commission drafted a final document with a series of recommendations to improve the sexuality education programme. It highlighted the need to consider the Rights of the Child, also calling for more training for teachers and for respect for sexual diversity, stepping in when the parents did not have the tools or knowledge to guide their children, with a five year plan to make this happen (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226) (Comisión de Evaluación y Recomendaciones sobre Educación Sexual 2005, Casas & Ahumada 2009). Yet even though the policy was rights based and respectful of international human rights instruments signed by Chile, its inclusion was not easy:

“And perhaps for me, the time to bang my fist on the table (*golpe en la mesa*) - because there was some recognition that this was a problem - was when in the final document [...] the [theologian] wanted to relativize the mandatory nature, or how binding the concepts of the International Convention on the Rights of the Child and the General Recommendations on autonomy, information, HIV education, sexual and reproductive health, were. Then [he] - who I think is also a lawyer - tried to say that they were not binding. And I sort of banged my fist on the table and said, ‘you know what? I think we are past Pinochet, we



overcame that stage, and international human rights instruments are binding in this country.’ [...] And I insisted, I mean, I think the tension was always there. And they were like: ‘do not force me, normatively’.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

The results of the commission however, did not have the expected strength. The final document was not launched as an official plan of the Ministry, but as an “un-official document of MINEDUC” (Comisión de Evaluación y Recomendaciones sobre Educación Sexual 2005, p. 3). There were also informal pressures from the Church’s high level hierarchy who, according to government officials’ testimonies, have the habit of calling the ministers directly when public policies in areas of interest to them are negotiated (Former Gender Adviser-Ministry of Education during the Concertación. 251, Academic at Jesuit Private University: involved in Sex Ed. policy evaluation. 252). This practice hinders accountability and gives the Church an area of influence that goes beyond public discussion. In the case of the commission’s work, this closed-door lobbying affected members’ trust and the value of their work, as one member put it: “I felt that we had advanced somehow, but when the document was released as un-official, that was quite heavy. Something happened there, in between” (Academic at Jesuit Private University: involved in Sex Ed. policy evaluation. 252). This was disheartening for the members, who felt the new minister’s lack of commitment was a lack of respect to their work:

“I left that commission in anger, because Bitar had had us working full time on this for three months [...]. Three full months, drafting, working, fighting. And then the minister at the time published a: ‘non-official document of the Ministry of Education’, that was the document he published. It was so disrespectful that, when I was called two months later for another commission, I said I was really sorry but I would not work in a government commission again.” (Academic at

Jesuit Private University: involved in Sex Ed. policy evaluation. 252)

“We have been involved in all these commissions we, the ones who are more experienced, participate in committees - and then nothing happens. The truth is that we made some progress, the issue was raised. Then Michelle [Bachelet] came and appointed a minister who was DC and from the south. Obviously he did not like this at all [...]. So, this thing of political agreements and the DC at the time [...], they destroyed everything we had done, some things were included, but they took out the most important thing, it did not have the same strength.”

(Feminist activist: Researcher on gender issues. 1)

The negotiation within the commission shows the difficulty in ensuring a rights perspective that would be acceptable to progressive sectors of the Church, not stir up too much controversy with conservative sectors and move within the constraints of the legal and constitutional frameworks on one side, and the political negotiations and barriers of high level officials and ministers on the other side. A member of the commission regretted the absence of references to sexual and reproductive rights - only the CRC and children's rights were appealed to. She highlighted the lack of real criticism to the subsidiary role of the state. The lack of stronger language, for this interviewee, was the result of a negotiation between the Christian Democrats and academics linked to the PS and PPD, showing how “agreements are discussed at political level within the government coalition [...], you have academics on two levels: working on political negotiations, and having to adjust their feminist proposals - badly” (Psychologist: Feminist academic at Universidad de Chile. 45). This process shows the problems in promoting a rights based programme with political compromises. The technical work of the commission faced its own problems in creating a consensus with quite diverging ideas of the state's role in regulating and guiding the school curricula. In addition, when the difficult agreement was reached within the group, the content of the recommendations

was compromised even more by informal negotiations of high level officials and the political pressures imposed over the ones with political loyalties to the Church.

## 7.5 Lavín's outsourced sexuality education plans

Once the commission's report was out, initiatives continued, but with a lower profile. The Ministry mainstreamed sexuality and gender education through the Mainstreaming Unit (*Unidad de transversalidad*) created during Bitar's tenure (Zuñiga 2005) and some schools taught sexuality education according to their own educational projects. The most long-lasting, effective initiative was the sexuality education training for teachers sponsored by the Ministry under Bachelet's administration (Casas & Ahumada 2009, Palma et al. 2013). Although sexuality education was not mandatory, the discussion left a legacy behind. Law N. 20.418, approved in 2010, draws from the sexuality education processes and sets out mandatory requirements for both the Ministry of Health (MINSAL) and the Ministry of Education to provide information on sexuality and reproduction and sexuality education in schools. These efforts are part of the contested, but continuous, push to ensure equality in access, explored in Chapter 8. However, what the next events show is that for sexuality education, the core conservative arguments - specifically the emphasis on freedom of choice - had prevailed:

“[The conservatives] fought hard to ensure that if there was to be compulsory sexuality education, they could choose the model. And that is finally what is left. To choose amongst a set of programmes according to the big blueprint of the Institutional Educational Projects.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

This interviewee is referring to the final phase that I will examine. The right wing government of Piñera (2010-2014) and his then Minister of Education, Joaquín Lavín, had to implement a provision in Law N. 20.418 that instructed educational establishments to include sexuality education programmes for high school students “according to their principles and values, [and] to the educational project, and the convictions and beliefs that each educational establishment has” (Congreso Nacional de Chile 2010*a*, p. 270. Author’s translation). The discussion of this law was hijacked by the issue of access to Emergency Contraception, and the fact that sexuality education was mandatory for all schools did not catch much of the public’s or parliamentarian’s attention. Once the law was approved, its implementation was in the hands of the incoming first right wing government since the transition to democracy.

The government decided to externalize the contents of the sexuality education curriculum by issuing a call for proposals. Minister Lavín from the Ministry of Education and Carolina Schmidt from SERNAM organized an expert commission that selected seven programmes available to schools, which could choose any one of them according to their preferences. The ministers justified the initiative by criticizing the previous approaches and highlighting the new focus on pluralism and free choice (SERNAM 2011, La Tercera 2013, Dides et al. 2012, Palma et al. 2013). To ensure pluralism, proposals were divided into secular and religious, and schools were free to choose any of them or develop a programme according to their own internal institutional plans. Palma et al. (2013) argue, however, that to ensure plurality and respect for diversity in a proposal for sexuality education, these concepts must be included within the proposals. The path should not be to make schools choose one pedagogical programme or another based on a religious binary concept - Christian or secular. This centres the choice on morality, and in the end forces schools to have only one focus, creating internal homogeneity (Palma et al. 2013, p. 21).

These seven proposals were available to schools, they had to contact the providers

directly and pay for the service. The problem was that there was no funding available for schools to pay for them, and in a context of competing demands and general lack of resources in public and semi-private education, it was not easy to purchase the service. Realizing this gap, the Ministry then set up a grant mechanism in 2012 to help schools pay the external contractors (Staff at Mainstream Unit MINEDUC. 22, SERNAM Advisor Maternity Programme/Piñera. 29) (Palma et al. 2013). This was not the biggest problem, that one came when in 2012, the Chilean government presented their report to the CEDAW Committee in Geneva. The committee expressed concern with the lack of systematic sexuality education in school curricula and the existence of stereotypical bias in the teaching content of two of the seven existing programmes on sexuality education (CEDAW Committee 2012a). The Instituto Nacional de Derechos Humanos (2012) had drawn attention to the fact that two of the sexuality education programmes selected by the government failed to comply with human rights standards. These programmes emphasize self-control, i.e. abstinence, in reproductive health within a heteronormative framework, with the family unit based on heterosexual relations, which could lead to discrimination based on sexual or gender orientation (Instituto Nacional de Derechos Humanos 2012, p. 9). For example, in the programme of the University of San Sebastián “Programme for education on values, emotional health and sexuality” item two on identity formation addresses “Sexual identity disorders: homosexuality and lesbianism”. The situation was worsened by the fact that the cheapest programmes were the two that did not comply. This mishap was quickly managed cosmetically, and the Ministry asked the contractors to amend this “and they agreed to change some titles that were too discriminatory” (Staff at Mainstream Unit MINEDUC. 22).

Although following the law, the programmes did not follow the internal mandates of the Ministry. The Mainstreaming Unit had been supporting schools in developing their programmes on sexuality education and training teachers to deliver the contents (Staff at

Mainstream Unit MINEDUC. 23)(Palma et al. 2013). According to professionals working in the Unit at the time when Piñera's programmes were selected, the decision making and selection process was made directly by the minister and his cabinet, without consulting them. The critique from the CEDAW Committee put them in a tight spot:

“That strategy did not pass through this Unit. These were decisions of the cabinet authorities. We did not have much to do with it, not even in the selection of programmes. And I say this with full responsibility, because afterwards, in 2011 [*it was 2012*] in October, a commission went to Geneva to give an account of the Chile's advancements on gender and the advice on gender to the Ministry of Education. One of the observations they made constantly was that one of these programmes was absolutely discriminatory on issues of homosexuality and some other issues. So, obviously we were not there technically. Because it is one of our issues, we cannot approve something that is discriminatory.” (Staff at Mainstream Unit MINEDUC. 22)

Piñera's seven programmes were not a “successful path” (Staff at Mainstream Unit MINEDUC. 22) and the Mainstreaming Unit decided to create some alternative technical materials and offer them to schools for free. With these, schools could create their own plans on gender, sexuality and affectivity (MINEDUC 2012) (Staff at Mainstream Unit MINEDUC. 23, 22). The officials also identified a problem with the externalization of Piñera's programmes. They were not owned by the Ministry, and the agreement was made directly by the school with the contractor, leaving Ministry of Education (MINEDUC) marginalized. Internally, the incoming government did not know - or take into account - the previous work of the Ministry, “they did not reject the [previous] policy, but they did not take it on board either” (Staff at Mainstream Unit MINEDUC. 23). The Unit continued with the work they had been doing, developed the new materials and just let the seven new programmes end

naturally as the funds ran out.

“I think what happened with the seven programmes was a reflection of them [the problems between political and technical decisions]. Because these were political decisions of the cabinet. What happens then? The advisers get to the cabinet and they have no connection with the things that were there before. So they say ‘look, we have to talk about this, there is this university, this institution’, but they really had no knowledge that there was a technical team in place. They did not know, were not told or did not want to hear...” (Staff at Mainstream Unit MINEDUC. 23)

In the end, the administration failed to apply the purest form of freedom of education. Freedom of choice was curtailed, because choice had to be paid for, and lacking resources, public schools did not have the funds to choose. The technical oversight within the Ministry was inadequate, driven by the impulse to showcase the failures in the previous administrations, without taking care, or having the capacity, to apply a human rights approach. Minister of Education Lavín and Schmidt of SERNAM could not transform their vision into a workable and effective policy. In principle, the policy was focused on the prevention of teenage pregnancy, on a race to improve indicators quickly and show better results than the *Concertación’s* administrations (Health Ministerial Adviser on Gender/Piñera. 30). The government was under pressure by conservatives and pro-life sectors close to the administration to deliver a more family centred, pro-life agenda (Lawyer: feminist academic working in Private University. 27, SERNAM Advisor Maternity Programme/Piñera. 29, Staff at Mainstream Unit MINEDUC. 22). This agenda failed to resonate with the broader global approach to adolescent sexuality enshrined in documents such as the CRC, ICPD and CEDAW; and also failed in its local implementation, by not considering that these policies would need a substantial and technical understanding of sexuality, education and how to

implement principles of non-discrimination in real life, in a bureaucracy that needed some power to oversee and ensure compliance.

## 7.6 Interministerial relations between the Health and Education Ministries

Shepard (2006) shows that during the JOCAS, the multisectorial nature of the process, in particular the relationship between the Ministry of Health (MINSAL) and Ministry of Education (MINEDUC), was a source of persistent tensions. The health sector had a reputation for a matter of fact, no-nonsense approach to sexuality education, and after the controversial article in *El Mercurio* (see page 164) it was under attack from Catholics who successfully limited the role of MINSAL within the committee. Key participants of MINSAL resigned - the person in charge of the gender focus and the person in charge of the HIV/AIDS programme. The reason for this opposition, which has been maintained by the Church beyond the JOCAS, was the fear of a sexuality education strategy based on the biological nature of sexuality, detached from the “spiritual”, centred on values and “character formation” (Conferencia Episcopal de Chile 1996, 2004*b*, *El Mercurio* 2001*e*). This argument goes deep into the religious conception of human sexuality, based on Vatican teachings about reproduction and sexuality and the nature of human relationships, as seen in Chapter 6.

However, it was not only the pressure of the Church and conservative sectors that highlighted the problematic relationship between MINSAL and MINEDUC. The different traditions between the health and education disciplines drove the approach and strategies of the Ministries. The intersection of both Ministries “was one of the hardest areas of dispute. And it was with a great deal of intensity because the Ministry of Health spoke from scientific



evidence, hard data; and in [the] Education [Ministry] you could see the direct intervention of the Church.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226).

The noise generated by the different approaches was captured at political level. The agendas of the Ministries were influenced by their political affiliation. When MINEDUC was led by a more progressive minister, such as Bitar and to some extent Lagos, the issue was introduced to policy discussion (JOCAS during Lagos, and the Evaluation Commission during Bitar’s Ministry). There are also problems with local level implementation. The Ministry of Health is in charge of public hospitals and has concrete oversight of primary health clinics. However, the Ministry of Education has some oversight of schools, but administration and accountability lies with the municipalities for public schools and in private hands for private education. Lines of accountability and control are different, as a local mayor that deals with both Ministries explains: “[W]hat is the difference between the Ministries of Health and Education? Health has very clear indicators. Health says ‘look, you have to reduce this or that, you have to serve the chronically ill, decrease x per cent, achieve your goals or I will not pay’.” (Christian Democrat Mayor of a Municipality in Santiago. 20). On the ground, the implementation of the sexuality education programme had to be done hand in hand with both sectors. At high level policy making, the discussion was targeted by the Church and negotiated by politicians; local level implementation mirrored the contradictions, but was more effective in delivering results:

“I think education was too overshadowed by a conservative outlook, but not the whole education sector. I think [the] health [sector], because health has a more raw approach. I worked with midwives in the primary health sector and in health services. They see the reality and the harshness of teen pregnancy, of abortions done outside the system and their consequences, they see the almost

fatal consequences of abortions. They had far less patience with silencing things that must be discussed. Education however... what happens is that there is a whole confessional education sector that must be considered. However, my experience in Ancud, Purranque, places where I went to, [...] in the school of El Pilar for example, I would go to conduct workshops on sexual and reproductive health to El Pilar and the nuns never entered the room where I was doing the workshop. I could say everything that I wanted to in that space". (Former SERNAM official/member of Bachelet's government. 262)

Different approaches within the state apparatus can hinder access to sexual and reproductive rights. In this case, the epidemiological and less politicized approach of the Ministry of Health provoked reactions in the Church, which succeeded in marginalizing top level health officials during the elaboration and implementation of the JOCAS. The implementation at local level however, could take a less controlled path, as local level officials are the ones who are met with the realities of young people's sexuality and the concrete problems they faced in accessing information and services.

## **7.7 The principles used in the sexuality education debate**

The debates around sexuality education in Chile are articulated in two broad clusters. One cluster of arguments relates to the dichotomy between freedom of education and the right to education. The other set of concepts is philosophical, and for many advocates, based on religious beliefs. These link the biological facts of human sexuality/reproduction to particular metaphysical or religious notions about love, family and sexuality. These two ideas go hand

in hand. Freedom of education is invoked to ensure that schools - and parents - have control and choice over the contents of sexuality education programmes and to guarantee that existing programmes reflect their view of sexuality and procreation. The principle of freedom of education, as mentioned previously, can be traced back to the Constitution of 1980 and a view of the state's role. As said by a member of the Evaluation Commission of JOCAS:

“[A] lot has to do with the state's interference in the project, the aim and the mission of educational entrepreneurs. So, the state telling them what the content should be, that was hard to fight against. Private institutions' freedom of education and parents choosing educational models, that came into play by compulsory sexuality education. And that was constantly there in the quite harsh discussions, very, very harsh discussions...” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

This problem goes directly to the role of the state. The neoliberal project was implemented, pushing for the privatization of education and decentralization of schools at municipal level. The lack of state oversight in this institutional context made it difficult for it to guarantee universal access to sexuality education. According to some of my interviewees, the controversial idea of a subsidiary state is at the root of this problem. The Evaluation Commission identified it as blocking any attempt to make sexuality education in schools universal:

“[S]ubsidiarity had been applied, favouring private action in the field of economics, with emphasis on a free market society, restricting state interference and inhibiting its task to spearhead wellbeing of all. This minimization of the role of the state has spread to many other areas beyond the economic sphere. It has happened, for example, in the fields of education and health.” (Comisión de

Evaluación y Recomendaciones sobre Educación Sexual 2005, p. 31. Author's translation)

In general, the conservative arguments are not against sexuality education per se (Conservative Journalist: worked in El Mercurio. 265, Pro-life NGO activist and lawyer. 11, President of Catholic Conservative Foundation. 259), but are about these two elements. The arguments about freedom of education were not articulated in terms of access to a free market economy, but as protecting families and particular parents' rights to select the education they wanted for their children. Freedom of choice is protecting sometimes religious and sometimes patriarchal and traditional ideas that are based on a particular ideology of the family (Bourdieu 1998) and echoes what Valdés (2009) has linked to the concept of a selective tradition. Chilean conservatives strategically select the neoliberal policies that allow them to protect specific ideas of sexuality and reproduction. A lawyer who identifies himself as conservative and who is not convinced by the reduced role of the state criticizes sexuality education programmes based on the protection of religious and metaphysical ideas:

“I am in favour of sexuality education, I think it should exist. I also believe in the freedom of parents to define how they guide that sexuality education. But above all, I wished it integrated the two dimensions of man [sic] we pursue. The spiritual and material dimensions. I believe that behind all this, there is the idea of dualism between body and soul, and that we are a consciousness inside a body [...], that there is a connection between body and spirit - a soul - a religious concept. There is something extra-material.” (Pro-life NGO activist and lawyer. 11)

It is not only about these metaphysical ideas of body and spirit, but also about protecting parents' right to be their children's first educators, that is “directly linked to the values and moral ideas of the parents” (Pro-life NGO activist and lawyer. 11). The legal

framework does in fact support this freedom of education, and was identified by experts as a barrier to ensure universal access. In practice, this translates into conflicting ideas about young people's sexuality, and a *laissez-faire* approach that does not tackle the fact that many times parents do not have the tools - or the will- to handle sexuality education with their children (Rodríguez 2005, Olavarría & Molina 2012, UNESCO 2009). For example, Casas & Ahumada (2009) analysis of school bylaws in 2008 in Chile shows that around "80% of school bylaws made no mention of pregnancy or HIV and over 60% ignored sexual behaviour" (Casas & Ahumada 2009, p. 63). In 35% of schools, regulations of pupils' sexuality was against privacy rights. The authors conclude that sexuality was being either denied or punished in educational settings. The system did not recognize adolescents as rights holders, while "at the judicial level, sexuality is viewed through a moral lens, and is restricted solely to adults" (Casas & Ahumada 2009, p. 94)(Casas et al. 2008).

Moreover, a study requested by the Evaluation Commission shows that only 15.7% of parents asked said that sexuality education was the sole responsibility of the parents, and 78.1% said that it is the parents' responsibility supported by the schools (unfortunately the study did not ask if the schools are responsible with support from the parents, or if responsibilities should be equal) (Comisión de Evaluación y Recomendaciones sobre Educación Sexual 2005). The conservative discourse is not connected with the technical knowledge on adolescent sexuality, or with the empirical evidence that supports the policies aimed at equality in access and ideas that have been proven to be ineffective in addressing issues, such as teenage pregnancy (UNESCO 2009). In the words of a member of the Mainstreaming Unit of the Ministry of Education, the materials that they provide might have a limited application:

"The logic - or the approach or emphasis - of these training programmes is in the hands of the of each establishment's educational project. For example, on the issue of teen pregnancy prevention, if any of the programmes proposes

abstinence that would depend on the educational institution and its project. It assumes an agreement with the family, the parents who enrol their children on the approach they want to address sexuality education with, and it is accepted because there is freedom.” (Staff at Mainstream Unit MINEDUC. 23)

Moreover, the Evaluation Commission identified the problems in centring sexuality education within Chilean families, stressing the need for state support in this task. (Comisión de Evaluación y Recomendaciones sobre Educación Sexual 2005, p. 14). Also, the pressures on parents to ensure a quality education that guarantees success in the future is measured through standardized tests that do not include life skills; and parents, particularly working and lower class parents, select the schools available to them according to academic criteria. They might not know, or would not prioritize, the schools’ stand on moral issues, sexuality and religion (Staff at Mainstream Unit MINEDUC. 22, 23, Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226).

In the eyes of the camp opposing a universal approach to sexuality education, the battle is against an ideologically driven state that pushes for “cultural policies that include sexual and reproductive rights” (President of Catholic Conservative Foundation. 259), a conservative Catholic advocate told me. The problem goes to the core of democratic co-existence, because to them, the framework is not neutral, and it “is completely against our ideas of a natural Christian model of the family” (President of Catholic Conservative Foundation. 259). Note the use of an idea of a natural order, an order that is value-neutral, according to my interviewee, because it does not depend on humans, ontologically, but is received from nature, and ultimately from god. These ideas have a legal backing in the notion of the *patria potestad*, parents’ legal authority over the affairs of their children. This interviewee told me that the *patria potestad* was of special concern to his organization, for example in educational matters and because he is worried that current legislation might limit

parents' capacity to choose what is taught in their children's school (President of Catholic Concervative Foundation. 259).

## 7.8 Conclusions

The debate around young people's sexuality in the policy processes to ensure access to education of pregnant teenagers and to universal sexuality education, demonstrates the basic resistance of conservative sectors to the introduction of mandatory rules in the educational private sector, a sector where a major share has traditionally been in the hands of religious orders and the Church. The push for access to sexuality education has implied several internal political negotiations amongst conservative sectors of the *Concertación*, in particular with the presence of the DC in the Ministry of Education, and to a lesser degree in the Ministry of Health; and externally with the Church.

In this scenario, the government has been tactical in its involvement, and has selected the policies according to the temperature of public opinion and has negotiated intensely before implementing policies, as the resistance to increase young people's access to sexuality education has been constant up until the recent government of Piñera (2010-2014). It is in this area of analysis that we can feel the internal shift of the Catholic Church in Chile more clearly. The initial negotiations in the 1990s with more progressive Conferences of Bishops was slowly dismantled during the late 1990s/early 2000s, when more conservative bishops started to be appointed by Pope Wojtyła, and public engagement and declarations from Church representatives started to criticize the sexuality education programmes publicly and angrily.

The final results have been paradoxical. On one side, social changes and general atti-

tudes to sexuality have driven an approach where sexuality education as part of the school curricula is taken for granted. This approach also responds to changes in young people's sexual behaviours and attitudes to sexuality (Molina 2004, INJUV 2012, González et al. 2007). However, with the rise in power of Piñera's right wing government, the ideas of freedom of choice were also taken to the extreme and the policy failed to ensure quality universal access to sexuality education within a human rights framework. The conservative argument of protecting parents' rights to select a model had won, even when in practice, parents' choices in matters of education are not driven by these issues. In the area of education, the neoliberal policies that decentralized education to municipal level and created a publicly funded, privately run educational sector (besides a fully public and private sector), had limited the state's and the Ministry of Education's capacity to ensure educational practices that do not discriminate against pregnant students and contents of sexuality education programmes that promise a healthy, non-discriminatory approach to sexuality (Palma et al. 2013, Comisión Interamericana de Derechos Humanos 2002, Casas & Ahumada 2009). This analysis has highlighted the link with the neoliberal policies of the 1980s, the privatization and decentralization of education, and has shown how these processes, which are the authoritarian enclaves discussed in the analysis of the legacies of the dictatorship, have a concrete effect in protecting conservative interests and protecting the private "values" of the conservative elite against the intromission of the state. We can also see that the resistance in this sphere goes beyond policy process, to influencing public opinion against the state, such as *El Mercurio* with the JOCAS and the influence of the Church as the owner of an important part of the education system.



# Chapter 8

## The struggle to stop access to Emergency Contraception (EC)

### 8.1 Introduction

The design and implementation of policies to ensure access to emergency contraception in Chile was entangled in a long judicial, political and public controversy. The normative part of it culminated in the approval of Law 20,418 on Standards for Information, Guidance and Services for the Regulation of Fertility (*Fija Normas sobre Información, Orientación y Prestaciones en materia de regulación de la Fertilidad*) in 2010, that guarantees the provision of EC in public health centres to any woman over 14 years of age that requests it. I will explore the barriers and resistance before the signing of the law, and afterwards in the delivery of EC in public health systems, focusing on the resistance and the ideational factors used by conservative sectors, in order to unpack what lies behind the slow progress in this area. From an institutional change perspective, by shifting the gaze to the conservative

actors, their ideas and strategies, we can achieve a more full understanding of the influence of the external variables in institutional change. The legacies of the 1980 Constitution are important, but so is the influence of committed conservative elites that spread beyond political institutions to the market, the press and into the politics of local level service delivery. This shift in gaze also evidenced that the conservative sector's drive on these issues is due to their perception of these processes as a lost battle in a continuous struggle to protect their moral views on reproduction and sexuality. Moreover, to understand the resistance to social change in advances on women's sexual and reproductive rights in Chile - and I would assume that this is applicable to the rest of the region - it is important to not only look at policy outcomes and how policies and laws are negotiated and created, but also how they are - or not - implemented and transformed into access to services, and women and men's choices in matters of reproduction. Gideon (2014) has shown that even when new health policies are put in place, universal coverage does not necessarily imply universal access to services. For example in Chile, access is still mediated by income, ethnicity, gender and place of residence. Moreover, Ravindran (2012) argues that to provide universal access, policy makers must go beyond universal coverage and tackle the specific barriers that impede the enjoyment of services that are taken for granted in other social groups.

Since 1995, the CEDAW Committee has made comments to the government of Chile about the insufficient access to contraception (CEDAW Committee 1995, 1999, 2006). In 2012 the Committee went deeper, mentioning the persistent problems women faced in accessing emergency contraception (CEDAW Committee 2012*a*). This comment came after the Chilean government approved Law 20,418 in the final stages of a legal battle involving aggressive strategies; on one side by conservative groups trying to block the distribution of emergency contraception, and on the other side, NGOs and part of the government during the presidencies of Ricardo Lagos and Michelle Bachelet pushing for the free and unhindered

access to EC in public health services. The process as a whole started in 1997 and the judicial part ended in 2010 (with some judicial processes still happening in 2014).

Scholars have analysed the process extensively, they have looked at the social mobilization process and its implications (Casas 2004, 2008, Brito Peña et al. 2012, Schiappacasse & Díaz 2012, Sotomayor 2012, Martínez 2013, Casas & Dides 2007, Sepúlveda Zelaya 2014); at preliminary research on the acceptability of EC amongst Chileans (Díaz et al. 2003); at the discourse of conservative and progressive activists through the written media and discourse analysis of the debate (Dides 2006, Alvarez 2007). Legal scholars have looked at the implications of legal decisions and the several rulings involved (Fermendois 2004, Vivanco 2008, Díaz de Valdés 2008, Alvear & Cisterna 2008, Nogueira 2008, Bascuñán Rodríguez 2004, Bordalí Salamanca & Zúñiga Añazco 2011, Jiménez & Marshall 2010, Aguilar Cavallo 2008, Mac-clure 2011), and research has been done on the delivery of EC in municipal clinics (Dides et al. 2010, 2011). I will look into this process to unveil, in part, the practical and concrete ways of resistance that block women's access to sexual and reproductive rights in two spheres. Firstly, during the legal battle, looking at how the resistance works when the executive has the will to guarantee access and to comply with international standards, and secondly, when the access is guaranteed by law, looking at the implementation of policies at local level.

In order to do this, this chapter will first go into some detail to explain the legal process that led to the approval of Law 20,418 and the more than seven trials in Common Courts and the Constitutional Tribunal. I will also look at the problems with the implementation of the law, in particular the resistance by some mayors to delivering EC in their municipal clinics. I will explore other barriers that hinder access to EC at municipal level as well, such as the lack of availability and problems with the municipal health system in general. The chapter will analyse the arguments used by conservative groups, to unveil how religious

and moral arguments are easily translated into legal arguments based on the Constitution of 1980. I will then look at how the resistance to the delivery of EC worked at political level, looking at the influence of Catholic confessional parties in the left and right. I will also analyse how the resistance to EC was effective in blocking access to it in the market, involving the laboratories that distributed EC and pharmacies that sold it to the public. In addition, I will touch upon the role of medical and scientific evidence and its use during the trials, as well as the role of media and its use by conservative groups. Finally, I will look into the implications of the process, in particular for social movements and for the future national debate about decriminalizing therapeutic abortion.

## **8.2 The legal battle to ensure access to emergency contraception**

In 1996, the *Instituto Chileno de Medicina Reproductiva* (Chilean Institute of Reproductive Medicine) (ICMER) started research on the acceptance of EC in Chile. Their data showed that EC had high levels of acceptability, but that some people believed it had an effect post fertilization and could be micro-abortive. The researchers highlighted that this could lead to negative reactions - in particular from religious groups - if a policy that introduced EC into national standards of care was implemented, (Díaz et al. 2003, Schiappacasse & Díaz 2012). This conclusion was fairly accurate. The institution, however, did move forward and used the results of the research to develop a strategy to introduce EC in Chile's public health system. The plan was implemented by the Chilean Emergency Contraception Consortium, formally established in 2002 and which was comprised of NGOs and health organizations. It involved increasing awareness amongst health personnel, politicians, lawyers, academics and journalists, as well as the dissemination of information on the biomedical and legal

implications of EC. The coalition provided the Ministry of Health with technical support to include EC in the national norms that regulate the assistance for sexual violence victims and regulation of fertility. ICIMER also did scientific research and identified partnerships within the pharmaceutical industry to register the EC compound as a product (Schiappacasse & Díaz 2012).

As a result, in 1997, the Ministry of Health published the guidelines to manage child and adolescent victims of sexual violence that incorporated EC into its standards. However, in 1998, after receiving pressure from conservative groups, the Ministry withdrew the section that allowed the use of EC for underage victims of rape in an erratum to the document (Meirik 2001). This was one of the first signs of the resistance that would come. Coalition members managed to revert the situation and in 2004 a new set of guidelines was introduced that included access to EC for victims of sexual violence. Furthermore, since 2002, ICIMER and APROFA - both members of the coalition - worked with the Ministry of Health to incorporate EC into the guidelines regulating the delivery of contraceptives by the public health system. However, the controversy surrounding EC (that I will analyse in more detail below) delayed their publication to 2006 when Bachelet assumed the presidency. These norms expanded access to EC to all women in public services, not only to victims of rape (Schiappacasse & Díaz 2012).

In 2001, the *Instituto de Salud Pública* (National Public Health Institute) (ISP), registered the first emergency contraceptive product (Postinal) and shortly after came Postinor-2, then TACE in 2003, Pregnon in 2007 and Poslov in 2009. In 2004, the government bought 35,000 doses to be provided in public health services to women victims of rape. ICIMER, APROFA and some university services also provided them free of charge. The government included some EC products under the essential medicine list (*Formulario Nacional*) and pharmacies were mandated to carry them (Schiappacasse & Díaz 2012).

The inclusion of EC in public health policies stirred remarkable controversy. The first lawsuit sponsored by pro-life groups was in 2001 through the regular courts. It was against the registration of Postinal, based on the compound Levonorgestrel 0.75 mg. It was successful in banning it. The court ruled that Postinal could “endanger the life of the unborn” (Vivanco 2008, p. 551). This first lawsuit was against the ISP, the Minister of Health, María Soledad Barría and the Salesia laboratory, which commercialized the pill. A week before the ruling, ISP had registered Postinor-2. The suing party was the organization *Centro Juvenil AGES*, presenting the claim on behalf of “the unborn, their parents and every woman” (Casas 2008). Women’s organizations and medical and health organizations reacted by criticizing both the nature of process and its scientific rigour. The government appealed and the Appellate Court ruled that the previous ruling only applied to Postinal, rejecting the lawsuit due to lack of identification of the person whose rights were being threatened or denied (Congreso Nacional de Chile 2010*a*, Schiappacasse & Díaz 2012, Casas 2008).

The plaintiffs - *Centro Juvenil AGES* - proceeded with a new lawsuit in 2002 against ISP Resolution 7224 that registered Postinor-2. In this case, the tribunal demanded access to the scientific evidence of the effects of EC (mainly the compound Levonorgestrel 0.75 mg). Scientific organizations and women’s groups presented evidence of the effects of EC. According to representatives of the coalition, lawyers were better informed and prepared (Schiappacasse & Díaz 2012). The first ruling, in the Common Court, stated that there was no medical consensus on the abortive effects of Levonorgestrel 0.75 mg. However, according to the justice (a woman), there were convincing arguments on the danger to the life of the unborn, therefore annulling the resolution that registered Postinor-2 (Congreso Nacional de Chile 2010*a*, p.23-24). The Appellate Court ruled against this decision again, stating that there was no scientific consensus on the effects of EC, and moreover that it was not the courts’ role to solve scientific issues, but of ISP, who is mandated to consider the effects and

the convenience of its distribution (Congreso Nacional de Chile 2010*a*). Later on, in 2005, the Supreme Court issued a unanimous ruling stating that the ISP had not committed any illegal or unconstitutional act by registering any EC compound (Casas 2008). The rulings stated - again - that there was no proof that the pill was abortive, therefore it did not contravene the constitutional principle that protects the life of the unborn, and moreover, there was no scientific proof that Levonorgestrel 0.75 mg was abortive, allowing registration of any product that contained it (Congreso Nacional de Chile 2010*a*).

In response, in 2006, the Ministry of Health issued the National Norms on Fertility Regulation (*Normas Nacionales sobre Regulación de la Fertilidad*). As said, this document was prepared by the Ministry with ICMER and APROFA, and it followed the health outcomes for the 2000-2010 decade. It aimed to overcome existing inequalities in the control and exercise of reproductive and sexual health. One of the principal arguments behind the norm was that decisions on sexual and reproductive matters should always be free, autonomous and informed, and health personnel should provide current and accurate information on the issue. The aim of the policy was to solve inequality in access and targeted the most vulnerable groups, with a special focus on adolescents in order to prevent teenage pregnancies (Castro et al. 2006, Congreso Nacional de Chile 2010*a*).

In 2006, two more lawsuits were presented in the Appellate Court against the Minister of Health. One was presented by some mayors unwilling to comply with the norm; and the other by parents who claimed that the norm infringed on the constitutional right protecting families and in particular the right of parents to educate their children. The court rejected both claims, arguing that the matter could not be decided by religion, morals or opinion, which were the plaintiffs' main arguments. Moreover, the court decided that the norm did not infringe on the right of parents to educate their children. It argued that it was not directed at influencing or preventing behaviours, and it did not prevent parents educating their children

in matters of sexuality and regulation of fertility, or even educating them against the use of EC if they so decided. The court also decided that giving free medication to adolescents in public health services guaranteed the right to equality because the pill could be bought in pharmacies (Casas 2008, p.16-17). As a way to counteract these conservative efforts, a group of people - including a high school student - presented a judicial complaint against a mayor who had stated she was not willing to provide EC (the mayor in office was Jaqueline van Rysselberghe, more about her on page 200). This claim was rejected by the court because the plaintiffs had not actually gone to a public health service in the municipality and denied EC.

Finally, a group of 36 parliamentarians belonging to the opposition to the government of Michelle Bachelet - UDI and RN - went to the Constitutional Tribunal to dispute Resolution 584 of the Ministry of Health (full list in appendix C). They argued that not only did it not adhere to constitutional principles, but also that the norm should have been approved by presidential decree, signed by the president, and not a resolution, signed by the Minister of Health. Formally, the tribunal agreed that the resolution should have come from the president, as it had all the characteristics of a Supreme Decree (*Decreto Supremo*), because it could affect the right to life and the right of parents to educate their children (Congreso Nacional de Chile 2010a, Casas 2008). In consequence, the Ministry of Health issued Supreme Decree N. 48 approving the National Norms on Fertility Regulation in February 2007. Immediately, the same parliamentarians disputed the norms in the Tribunal. This new claim included other widely used contraceptive methods i.e. IUD, and argued that health personnel should not have the power to advise and provide contraception for adolescents without their parents' consent (Casas 2008). The final Constitutional Tribunal's decision was to declare some sections of the norms that refer to emergency contraception without effect. The argument was that it could not be shown that EC did not lead to an abortion when the egg was fertilized,



therefore the norms were against constitutional principles (Schiappacasse & Díaz 2012).

Two of the ministers of the Constitutional Tribunal - Raúl Bertelesen Repetto and Enrique Navarro - were requested to excuse themselves from the case for conflicts of interest. They both had presented expert reports for AGES, the pro-life group during the first stages of the judicial battle, (Tribunal Consititucional 2008). Only one of the ministers excused himself, Enrique Navarro - while Raúl Bertelesen Repetto remained in his position (more on Bertelesen on page 238). This fact - and the general lack of transparency of the Tribunal - was criticized amongst the progressive activists I interviewed. Discussing the process with me and the several steps involved to reach the approval of the law, a progressive parliamentarian told me that she and several other deputies had presented a petition to the tribunal to counteract the claim from the right wing parliamentarians:

“The right submitted a request to the Constitutional Tribunal, you know that story. Then we - I moved more than 32 parliamentarians - and filed a dissent in the Constitutional Tribunal. It was quite unbelievable, because we were censored by the media. It did not appear anywhere [...]. I think the right was terrified by what the conservatives had presented. Because they wanted to remove all contraceptives. This group of parliamentarians was led by José Antonio Kast. There was a great silence [...], but we participated as parliamentarians, I moved all that, like 60 parliamentarians, contrary to Kast’s thing. My name is not even in the records of the Constitutional Tribunal.

Interviewer: Yes, because I read them and there is nothing.

263: I complained about it with the President of the Constitutional Tribunal: ‘I took all that and I presented it and left’, I was omitted in the proceedings of the Constitutional Tribunal” (Deputy: feminist member of the PPD. 263).

The ruling of the tribunal did not exclude the possibility of legislating on this matter

and Bachelet's government had made a heavy political investment to ensure the provision of emergency contraception in public health services. Therefore, in 2009, only two weeks after the ruling by the Constitutional Tribunal, it presented Law 20,418 on Standards for Information, Guidance and Services for the Regulation of Fertility. The law deals with standards of birth control information, counselling and services; it establishes the government's policy on sexuality education and the provision of free access to emergency contraceptives in the public health system. The aim of the law was to equip individuals to decide for themselves about birth control methods and, in particular, to prevent teenage pregnancies, sexually transmitted diseases and address the consequences of sexual violence. (Congreso Nacional de Chile 2010a, p.34). The law was adopted on the 28th of January 2010 and the norm to implement the law was put in place in 2011, but it was published in March 2013.

Legal scholars in Chile have analysed the implications of the judicial procedures quite extensively. With a possibility of being overly simplistic, the main issue covered in this literature is whether the several rulings comply or not with the constitutional principles of protection of the life of the unborn, if that principle applies at the moment of conception and the legal implication of the Constitutional Tribunal's ruling against the delivery of EC. In this sense, on one side there is a group of constitutional scholars, mainly from the *Universidad Católica*, that argue that the rulings against EC are adequate, as they align themselves with the Constitution (Fermandois 2004, Vivanco 2008, Díaz de Valdés 2008, Alvear & Cisterna 2008, Nogueira 2008). On the other side are legal scholars that are critical to this interpretation (Bascuñán Rodríguez 2004, Bordalí Salamanca & Zúñiga Añazco 2011, Jiménez & Marshall 2010, Aguilar Cavallo 2008, Mac-clure 2011). The two sides of this discussion show that EC opened a discussion not only on sexual and reproductive rights, but also on constitutional principles and the reach of the Common Courts and the Constitutional Tribunal (Díaz de Valdés 2008).

### 8.3 The implementation of the law

The approval of the law was a milestone, however, its implementation and the access to EC in the public health system was filled with further controversies and difficulties. The analysis of the implementation of the law shows that even when a law is in place, if it does not provide a regulation mechanism, a substantial part of the distribution can be at the discretion of the municipal public health system. In this case, this meant that in 2011, 10.9% of the municipalities did not provide the emergency contraceptive pill, and only 9.3% provided it to any person who requested it (Dides et al. 2011, Instituto Nacional de Derechos Humanos 2012). It is important to note, however, that there are three ways EC can be accessed: through public hospitals, local municipal clinics or by buying EC directly in pharmacies and private clinics. The problems that I will analyse here refer to the local municipal clinics that are decentralized and depend directly on local authorities. These public clinics receive funding and follow regulations of the Ministry of Health and are also accountable to the central government.

Dides et al. (2011) did extensive research on availability of EC in local clinics. They argue that one of the problems with the delivery has to do with the opposition of part of Piñera's administration of allowing midwives to provide written notes to patients for contraception including EC. In 2010, the Regional Director of the Ministry of Health in Coquimbo appointed by Sebastián Piñera, sent a norm prohibiting midwives from expending contraception based on the compound Levonorgestrel (Congreso Nacional de Chile 2010*b*). The measure was rejected by the Association of Midwives and several medical associations and organizations, but was confirmed by Piñera's Minister of Health (Escuela de Obstetricia 2010, La Nación 2010, La Tercera 2010). The problem was solved by some members of the Chamber of Deputies with a law proposal to amend the Sanitary Code allowing midwives

to hand out contraception, hormonal and not hormonal, including emergency contraception. The law was approved in 2011 (Congreso Nacional de Chile 2010*b*). The other problem identified by Dides et al. (2011) in municipal public health clinics was the lack of stock; 45.7% of municipalities that did not deliver EC claimed that they were out of stock or did not have the human resources to deliver. In 5.2% of them (2 cases - both UDI) the mayor had not authorized the delivery of EC. However, a significant part of the study sample were non-respondents, so the numbers are not very reliable.

The problems with the distribution of EC at municipal level were evident even before the approval of the law. Decentralization of primary health care clinics limited the central government's capacity to implement policies that were against mayors' moral beliefs, and the resistance to this "imposition" was open and confrontational. Manuel Ossandón, one of the most outspoken mayors against EC, member of the right wing party *Renovación Nacional* (National Renewal) (RN), and at the time mayor of a municipality with 583,471 inhabitants, declared to a major media outlet: "If the law is against my principles, I am not willing to comply with it" (El Mercurio 2011*a*) (Ossandón is also mentioned in the quote on page 147). The mayor of Concepción, Jacqueline van Rysselberghe (UDI), also stated that she could not allow the distribution of EC in her municipality (Casas 2004). Both mayors are recognized Catholics, van Rysselberghe is a member of Opus Dei (El Mercurio 2012) and Ossandón is not a member, but he did his primary education in Colegio Tabancura, which belongs to Opus Dei (his mother and sister belong to Opus Dei). The mayor Pablo Zallaquet (RN) presented a case against the norm in 2007 (El Mercurio 2007*a*). Before entering politics, Zallaquet co-founded *Generación Empresarial*, the foundation for business people of the Legionaries of Christ in Chile (Insunza & Ortega 2008, *Generación Empresarial* n.d.). His lawyer, Mauricio Cisternas Morales, studied in the *Universidad Católica* and obtained a Masters from the *Universidad Finis Terrae* and teaches at the same university,

which belongs to the Legionaries (Insunza & Ortega 2008, Universidad Finis Terrae n.d.). This shows that the most outspoken mayors against EC share a religious conservative ethos, and as with the lawyers involved in the judicial process, the network is linked by secular religious organizations.

The resistance to implementing this aspect of the law and providing EC in primary health care centres not only had to do with the ideological and religious beliefs of some mayors, but also with the lack of information and clarity on what the legislation did or did not say, as well as with the lack of compliance control mechanisms by the executive. A former high level official in SERNAM who worked there during the process of getting the policy on EC out discussed the barriers with me. As a lawyer, she was quite involved in the legal aspects of the policy, and reflected on the failures on implementation in the following terms:

“Laws, in general, in recent years - if you analyse them - are within the international framework of human rights, but they are declarative. [So] what happens is that you neither have resources nor control [...]. When you monitor, when ICIMER monitors if they are delivering EC, they realize that the mayors decide if they deliver or not [...], so you have legislation that commits to a public policy, but the execution of this public policy is non-existent” (Former High Level Official SERNAM during Concertación. 25).

The lack of monitoring systems gives mayors space to make political calculations, evaluate the effect of their decisions with their constituency and - in real or perceived fear of retaliation from the public - to not go ahead with the distribution. This political calculation was discussed with me by a researcher who had hands-on experience with local level distribution of EC:

“[Some] mayors are extremely fearful of the consequences, and not the consequences of transgressing the law, but the consequences of doing things that are not popular and are not backed by legislation. So, the guy who is not familiar with the law will say: ‘Oh, they will say that I am pro-abortion, and besides saying that I am pro-abortion, where does it say that I can do this and it is not abortion? I will not do it, because it is more comfortable.’” (Researcher CEPAL on sexual and reproductive rights issues. 16).

This same idea was discussed with me with a concrete example when talking to the Head of Primary Health Care in a municipality near Santiago. He was explaining the reasons why EC was not delivered in his clinics:

“The emergency services [in the hospital] do have it, absolutely and openly, and there is no problem and that’s it. The municipal clinics [*Consultorios*] at that time had to decide, and the mayor at the time requested caution. And you can understand caution as ‘ok, we err on the side of caution, we do not deliver.’ What happened? What happened is that the drug itself, as it started to be bought, became much more expensive.” (Local Public Health Official: Municipal staff. 14)

Party politics also play a role, and common sense would indicate that it is the right who is not providing access, and also some members of the DC, following the Church’s lead. The role of some members of the DC has been quite controversial, in particular because the government of the *Concertación* had invested so much politically in the approval of the distribution of EC. We can see this tension in this statement by a high level member of the DC:

“But if you see - and this is a fact - in what municipalities the morning after

pill is distributed, I can assure you, I think that there is no DC mayor who is not distributing it. That first, a concrete fact. Because if you ask where it is distributed and if you analyse the 345 municipalities, you'll find that it is mainly municipalities from the right who are not distributing it." (Christian Democrat Mayor of a Municipality in Santiago. 20)

But the resistance to providing EC in primary health care services is not only amongst right wing mayors; by triangulating the information and consulting with researchers on the area, it is clear that it is more complex than that. Amongst the right wing alliance (*Alianza por Chile*), 10.8% do not deliver EC and amongst the coalition, 9.2% do not deliver it. Eight of the 53 UDI mayors (15.1%) and five of the 54 from *Renovación Nacional* (9.3%); 10.9% of DC mayors that belong to the coalition (6 of 55); two of the 25 socialists mayors (8%); two of the 34 PPD (5.9%); and two of the 10 radicals (20%) do not deliver EC. One of the four communist mayors does not deliver it (at the time not members of the coalition) (Dides et al. 2011). To confirm, the aforementioned researcher conveyed to me her experience in dealing with each municipality and the central government:

"EC was not given in municipal services, [that is what] our findings [showed] - and some got angry with us - it was like a caricature: 'the mayors of the *Alianza* do not deliver and the ones of the *Concertación* do'. False, because [with] these issues - it is interesting - because we have the weight of culture, and they do not deliver it. Neither Christian Democrats nor Radicals, or even the PPD sometimes does not deliver. We made a spreadsheet, we delivered to the Ministry and they did not take any notice. And we have a problem [now], a sort of tension." (Researcher CEPAL on sexual and reproductive rights issues. 16)

However, the problems are not only to do with the political will of the mayors or the lack of control in the implementation of the law, but also the difficulties and inefficiencies

that are part of the public health sector. Access is not only about political wills and policies and norms in place, with corresponding monitoring systems, it also has to rely on a system that works, where the bureaucracy is able to provide the needed service on time and of good quality. The Head of the Primary Health System at municipal level was quite clear, and talked extensively about the link between access to sexual and reproductive health in a system that many times lacks the understanding of what it really entails, in the context of maternalistic policies. He reflected:

“[...] I can tell you that last month here in the hospital emergency ward we had waiting times of 12 hours some days. So, if I would see that I have to wait for 12 hours to ask for the morning after pill, I would leave.” (Local Public Health Official: Municipal staff. 14)

In sum, the problems with the implementation of the policy to guarantee access to EC at municipal level are echoing the barriers found to achieving the policy outcome, in particular the weight of conservative groups and individuals - mayors in this case - linked to confessional political parties. Politics play an important role at municipal level, where mayors' perception of voters' views can stop implementation quite pointedly by not allowing the distribution of EC in public services.

## **8.4 How did the resistance work?**

### **8.4.1 The main arguments used**

Both conservative and progressive actors mobilized during the battle for universal access to EC. Groups opposing the delivery of EC organized an effective strategy at judicial and



advocacy levels, as seen above. Their main argument was drawn from the constitutional principle to protect the life of the unborn according to their interpretation of the Chilean 1980 Constitution. Because the executive wanted to provide access to EC to all women over 14 years of age, the conservative opposition also argued based on the constitutional right of parents to educate their children (Article 19 Number 10 of the Constitution). It was not only about the control of women's reproduction and the role of motherhood, but also the control of young people's sexuality and reproductive choices.

The government had the will to guarantee women's access to reproductive choice and allied itself with the progressive organizations that had been leading advocacy strategies to guarantee the provision of EC to all women who demanded it. They advocated for free and confidential access to EC, following WHO's recommendations on the potential of emergency contraception to prevent teenage pregnancy - in particular unwanted pregnancies of victims of rape - to prevent illegal abortions and provide equal access to contraceptives to all women, as EC could be bought in pharmacies. Analysing the rationale behind the government efforts to guarantee EC, a former official of the Ministry of Health during Michelle Bachelet's presidency spoke of the policy as situated within the government's social protection efforts in line with ideas of social redistribution, equality in access to services and strengthening of reproductive rights:

“In 2006 [...], we found that the sale of the morning after pill in affluent municipalities was 50 times that of the sales in poor ones, and the reality is that [poor neighbourhoods] had a very small number of pharmacies. So, we decided to look at everything that had to do with rights, with family planning - so to speak - and include changes that ensured that services had respect for people, because authoritarianism is not only expressed in issues of sexual rights, but also in the possibility of having the choice of one method or another, or in the ability

of the health system to give people alternatives [...]. So we decided to update all that has to do with family planning, and a review was done, which included issues of counselling, etc. and it was established that the day after pill must be delivered.” (Official of MINSAL/Bachelet: active for access to EC. 19)

Interviews with people who participated in the process show that the government worked closely with a handful of health centres, some universities and progressive lawyers, medics and activists who provided the technical expertise and the link with women’s rights (Progressive medic: active member of the coalition for access to EC. 12, Lawyer: member of the Opus Dei and academic at private university. Active against EC. 255, Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226, Former High Level Official SERNAM during Concertación. 25, Official of MINSAL/Bachelet: active for access to EC. 19) (Schiappacasse & Díaz 2012, Casas 2004, 2008). This alliance was threatened by the influence of Catholic conservative sectors, which were quite effective. Their strategy involved putting pressure on politicians and policy makers. When discussing the process with a EC advocate who worked closely with Bachelet as President and Minister of Health, she mentioned the importance of the personal commitment of Bachelet and María Soledad Barría - her Minister of Health - to the policy, but also spoke about the problems with other members of the administration:

“ I cannot talk much... [but] in fact I know that the Health Minister who sent the norm against EC - I mean, to eliminate EC when attending cases of adolescent victims of rape - the Catholic Church pressured him. All this is known underhand [*bajo cuerda*] because this country is quite small [*un pañelo*], we know that there were underhand pressures: ‘how was it possible that a Catholic could accept those things’.” (Progressive medic: active member of the coalition for access to EC. 12)

The quote above serves to introduce two elements, one is that anti-EC pressures were closely linked with Catholic conservative ideas about sexuality and reproduction. The second is that this pressure was quite open, and in a small political and intellectual elite like the Chilean one, the key actors could be immediately identified.

The arguments against the delivery of EC in the public health system had to do with the possibility of EC being abortive and the fear of the debate being a precursor to discussions about abortion resulting in its decriminalization, and about parents' right to educate their children. The legal arguments were based on the constitutional principle of protecting the life of the unborn and morally on the "protection of life". The Catholic officials were also harvesting from the role they played during the dictatorship and the transition to democracy. The official documents made a clear reference to the Church's defence of human rights while justifying their position against EC, as this official document says: "Also, in consequence with the permanent position of the Church in Chile, who once risked lives in defence of human rights" (Conferencia Episcopal de Chile 2004c). The official position of the Catholic hierarchy - at the highest level - was made clear as soon as the discussion began (El Mercurio 2001c, Cooperativa 2007, Conferencia Episcopal de Chile 2001). The Chilean Conference of Bishops (*Conferencia Episcopal de Chile*) disseminated eight official documents and eleven communications by its bishops that were amply covered in the media (Conferencia Episcopal de Chile 2005, Ibáñez Langlois 2000, Conferencia Episcopal de Chile 2006a, El Mercurio 2001c, Cooperativa 2007). The core of the position is delineated in this public statement to the press by Cristián Contreras Villarroel, the Conference's Secretary General:

"I think that at the core, we have the scientific discussion about the possibility of [EC] being abortive. And dealing with the life of a human person from its conception, I would like to assume that we are all sensitive to the right to life, and

no one will use euphemisms like ‘interruption of pregnancy’ to refer to ‘abortion’, as I suppose no one will confuse ‘euthanasia’ with avoiding therapeutic cruelty [sic].

I think that the argument about ‘equity’ in this context is certainly questionable because the line drawn is eminently socioeconomic and it does not consider the potential and dignity of the human person.

If it is about equity, and if the aim is to present it as [equity in] access to the pill for girl of a wealthy neighbourhood versus a girl in a poor neighbourhood, I think there are other health needs of citizens that should be the object of the authorities’ attention. For example, the scandalous discrimination between rich and poor patients with serious illnesses. That seems like a basic issue to deal with, as are the many situations of real injustice. Equity should be sought after in situations that are good for human beings” (Conferencia Episcopal de Chile 2006*b*, Author’s translation)

This quote clarifies that, according to the Bishops, there is no question that life begins at the moment of conception and that abortion is evil, following the ideas presented in Chapter 6. Note that Contreras Villarroel argues that equity (equality) is not relevant for the discussion on access to EC. The priest does not question the fact that the pill can be bought in pharmacies. This was in response to the government’s proposal that the distribution of EC was a matter of equality. Under the leadership of their cardinal Francisco Javier Errázuriz (Errázuriz Ossa 2004), the Church emphasised the protection of life guided by the doctrine of *Evangelium Vitae* (Conferencia Episcopal de Chile 2004*a*). As the previously cited public official of the Ministry of Health put it:

“I mean, the pill was sold in pharmacies, it had been authorized in Chile. The drama was to make it available for people who needed it, you understand? This

had a brutal, brutal, brutal reaction that forced the legislative measures. I think there is a problem with the reaction of the Church that has to do with ideologies and some self-censorship of the most progressive groups regarding the role the Catholic Church played in society.” (Official of MINSAL/Bachelet: active for access to EC. 19)

Finally, the argument on sexuality and reproduction is at the core of the issue. As said, it is about the hierarchy’s conviction that EC is abortive, and therefore the decision and distribution is not a matter of choice but an argument that positions human reproduction within the “public interest”, as stated by a member of the Conferencia Episcopal de Chile (2001) in this statement to the press:

“Some believe that each person has absolute ownership of his/her body and can use the products of technology according to their own interests and values, whatever they may be. Therefore, the public authority should not take into account ethical and social considerations to guarantee their use, but be limited to certify the technical quality of the products.

We do not agree that these ideas are appropriate. They involve shifting such fundamental matters as those concerning human procreation from the public to the private, leaving the most defenceless human beings that emerge from the fertilization of the female egg by the male sperm without social protection. The defence of human life and the strengthening and protection of marriage and the family are duties of society and the state that represents it.” (Conferencia Episcopal de Chile 2001, Author’s translation)

However, later on in 2004, in the middle of the legal conundrum, there was a ruling favourable to the government, which required the distribution of EC in public health services and therefore the state (the public) would have a clear position on the availability of EC. It

prescribed that personal opinions of health professionals and public officials are not a reason for not delivering EC. The Church - through a statement by Antonio Moreno Casamitjana, Archbishop of Concepción - now defines this intromission from the public, i.e. the state, as “totalitarian [...] where the essence of totalitarianism is the control of consciences” (Conferencia Episcopal de Chile 2004*d*). This shows that the arguments are versatile and adapt to the situation. What matters in the end are the opinions of the hierarchy of the Church, and the public and private divide is moulded or trespassed on in order to protect the ideas behind these opinions. When public norms and policies are against the arguments of the Church, the right of conscience and individual beliefs do not prevail. Because what is important is not if the decision has to be made by society or by the individual, what is important is that it follows the doctrine of protection of the unborn, and the Catholic belief that life starts at the moment of conception.

Both sides of the controversy, however, agreed on the potential of EC to open the discussion about abortion. During the parliamentary debate, Juan Antonio Montes, a member of an ultraconservative Catholic organization *Acción Familia*, had time to speak during the discussion in Congress (more on *Acción Familia* on page 127). In his address to Congress, Montes talks about the dangers of approving EC - and sexual and reproductive rights in general - to Chilean morality. To him, policies on sexual and reproductive rights are an imposition from a state that does not take Catholic and Christian values into consideration. The approval of the law would imply a “demolition of the family as society’s core” (Congreso Nacional de Chile 2010*a*, p. 191-194) (full list of speakers in Appendix C Table C.2). His views are extreme, but the fear of EC opening the door to the discussion on abortion resonates both with anti-EC and some pro-EC arguments. Montes declared that “It is important to understand how this legislative project opens the door to abortion, through the establishment of three principles for therapeutic abortion” (Congreso Nacional

de Chile 2010a, p. 194).

On the other side of the debate, an activist lawyer also sees the link between the debate on EC and abortion, in somehow more sophisticated terms:

“Why was the legal process on the pill so important? Because the pill is the closest you can get to discussing abortion, because you discuss the meaning and scope of the right to life in the Chilean constitution. And it opened the doors to say ‘the foetus is not a person’, and it involved an opening [to discuss] abortion. That is the point, there is the existence of the norm in the context of a victorious dictatorship, and then there is the norm as the beginning and end of a discussion. So no one can go beyond Article 19 Number 1 [of the Constitution]. I mean, we can never get to the point of the empowerment of women, to equality. Women’s rights are non-existent in this discussion, because the beginning and the end of the discussion is on Article 19 Number 1. Beyond this context, we must understand that this is part of a much older ideological project, where the right [to life] has been systematic, consistent and persistent. This was the ideological exercise of Jaime Guzmán, which incorporates some elements he wanted, but not all. But it somehow closes the door, and he succeeded when the law on therapeutic abortion was revoked.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

From both sides of the debate, the discussion was about abortion by proxy, and it is true that the debate afterwards has been on the decriminalization of abortion in cases of rape, unviability of the foetus and in cases where the mother’s life is at risk (more in Chapter 9). This more moderate Catholic activist puts the debate in these terms:

“I would say that [...] sexuality education and contraception in general, and

abortion and emergency contraception [...], I have the impression that some people saw that as a milestone, a kind of intermediate barrier, ‘contraception has already escaped us, but we can put a block here before we reach to abortion’.” (Catholic Advocate: member of a Catholic network. 258)

The second argument of conservative resistance to the distribution of EC was the matter of parents’ right to educate their children. The policy pushed by the government stipulated that any person over 14 years of age should have access to EC in public health clinics and hospitals, without needing consent from their parents. If the girl is less than 14, an adult of the girl’s choosing should be informed after she has been given the pill. This matter created a longer controversy than the provision of EC per se, and was still disputed in some way up to 2014, in particular in relation to the access of EC to girls under 14 without the consent of their parents. The religious argument drew on the view that sex is only fulfilling its natural function if conducted between a married woman and man as per *Humanae Vitae*. It also drew its legal arguments against the provision of EC to underage girls from the articles in the Constitution that protect the right of parents to educate their children, and gives the state only a subsidiary role in matters of education (page 116). As the representative of a conservative secular Catholic organization explained to me:

“One of the fundamental aspects of the family is the right of parents to educate their children, and that means parents are responsible for educating their children until they come of age at 18. And what the state is proposing [is] confidential access, i.e. not informing the parents about the consultations and the treatments that are recommended to underage patients. That - in our opinion - seriously violates the parents’ rights. Because on one hand, the state has a huge propaganda project of their contraceptive services with a lot of resources, and on the other hand leaves the family completely aside.” (President of Catholic



Concervative Foundation. 259)

Moreover, when having a discussion with a young pro-life activist involved in the litigation against providing EC to underage girls, he used legal and philosophical arguments to defend his position in these terms:

“That is the conflict we have had on the issue of access to the morning after pill. Basically because we believe that simply being able to give it to minors without the knowledge of the parents... what is achieved - recognizing that this not only implies a legislative effort, but involves a social, cultural effort - if the state allows a minor to access contraception without her parents knowing about it, it breaks down a channel of communication, it eliminates the possibility of a father assuming it, and this is something that we do not agree with.” (Pro-life NGO activist and lawyer. 11)

The rational and mild language of the quote above shows that the arguments appeal to the promotion of “good parenthood” where the protection of the family is at the core. This secular Catholic activist is not using a religious discourse on purpose. He conveyed this to me when I asked about the role of his religion in his arguments. He wants a rational discourse that is - however - based on the doctrine of natural law that appeals to a natural order within families, where children are under the protection of benevolent parents. This allows him to appeal to the non-religious and people with other beliefs, drawing from the idea of social wellbeing, which according to him, goes beyond religion.

In contrast, Ibáñez Langlois (2000) a well-known priest, journalist and columnist and a regular voice in the *El Mercurio* newspaper, a well-known member of *Opus Dei* and chaplain at the *Universidad de Los Andes* (Mönckeberg 2003, Universidad de los Andes n.d.c), provides less nuanced arguments that do not go beyond the idea of conveying one valid and

undisputable truth. In the following quote published in *El Mercurio*, he is appealing to the conservative religious idea of sin and sexuality:

“Public authorities should ensure the health of children and their parents, but not block the already difficult task of parents with those suspicious, intimate and almost clandestine counselling sessions to their young girls [*mocitas*]. Who does not help to clean, must at least not tarnish the adolescent soul.” (Ibáñez Langlois 2000)

Arguments against the provision of EC are legally framed to protect constitutional principles, as seen above. These principles bring the institutional weight of the dictatorship to the democratic process. However, they also appeal to conservative ideas that go beyond the normative framework of the Constitution. The protection of the institution of the family is clearly articulated in the case of teenagers’ access to EC. The battle for this principle was even a longer than the one for access to EC in public health services.

#### **8.4.2 The politics involved in the process of access to EC**

Several scholars have analysed gender equality political processes in Chile by looking at the feminist and women’s movement involvement in the political discussion, with parties and in institutional scenarios (Franceschet 2010, Blofield 2006, 2001, Htun 2003, Waylen 2000, 2006, 1998, 1993, Haas 2010, Baldez 2002, 2001, Ríos 2003, Ríos et al. 2003). I agree with these scholars about the importance of looking at the political processes, but would like to turn the gaze from the important role of the feminist movement and feminists in government to looking more at how the agenda is constrained by the influence of conservative parties and party members.

The process that led to the law that allows the distribution of EC and its implementation is useful in order to look deeper into the role and influence of the two religious parties, the Christian Democratic Party (DC), part of the *Concertación*, and the Independent Democratic Union (UDI), part of the right wing coalition *Alianza por Chile*. When interviewees referred to the political scenario in which the EC was debated amongst politicians foremost and later on amongst political parties, the analysis would suggest that high level members of political parties, parliamentarians and government officials have a privileged position to make their ideologies and opinions heard, and they might or might not respond to parties and their coalitions instructions or loyalties. This is the case with the *Concertación* and in particular within the Christian Democrats. The quote that follows, speaks of the difficulties in creating a progressive agenda for women's access to reproductive rights within the coalition, even when there is some political will and some institutional mechanisms have been used, in this case the presentation of a bill on Sexual and Reproductive Rights in Congress. A progressive lawyer that was directly involved in the litigations to ensure access to EC, reflects:

“The *Concertación* never did have the political will, not even to discuss the law on sexual and reproductive rights that was presented in 2001. It did not move, it was never discussed. And the issue that emerged through the courts, the great debate that happened popular, strong - was in 2001. The most important judicial history was related to the EC pill in the Constitutional Court in 2006. And in that we can see that public discussion is the difficulty - even though it's Bachelet's government - in reaching a consensus within her coalition. No, no, there was no consensus with the Christian Democrats.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

The quote above shows that there was an expectation of coalition discipline, and the

DC is mentioned by many as the main challenge for a process that required a united front, as it would deal with some constitutional principles which the conservative right held dear, i.e. Article 19 Number 1 of the Constitution. Here, we can also see that individuals within parties were blocking the issues, as the same respondent continues:

“In fact, one of the advisers of the Christian Democrats was the one who included this small phrase in the law [...]: ‘the delivery of any contraceptive method will be ensured as long as it is not an abortive.’ And that little phrase was included by one of the Christian Democrats’ advisers.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

I would argue that there are several layers to this negotiation process. One is amongst coalition parties, where some interviewees argue that issues which are controversial and belong to the moral agenda, such as abortion, divorce and sexuality education, are always stopped, forgotten or watered down in the *Concertación's* proposals, as seen in the quote above on page 215. The other layer of the political debate comes into play when policies and agendas have already been decided and are being negotiated with actors outside the coalition. Here, individual politicians might hinder the process by separating themselves from the coalition agenda, for example mayors of the *Concertación* creating barriers for the access to EC in public health services (on page 203 of this Chapter); health ministers editing and delaying the norms on sexuality education and access to contraception (in page 206); or parliamentarians who are members of the *Concertación* voting against a law proposed by their own coalition government (on page 218). This could be a sign of a healthy democracy, where government and party accountability even works amongst allies; but it is also a sign of fractures that appear in the government's agenda when it moves beyond the conservative consensus, where the influence of the conservative elite adds to the immobility of some coalition members. The same lawyer reflects on the discussion in Congress about the law,

where the tensions amongst those pro and against EC acquired their most public political face:

“I was quite politically incorrect during the discussion of the law [...], when I said that what had happened was very strange, because the paradox is that some of my colleagues from the Christian Democrats in the health committee said it was terrible that the executive tried to force the regulation on the delivery of emergency contraception ‘through the window’, when it should have been done through a legal norm, not an administrative rule. [...] And my answer was that Congress always had the option to do it, but all of them, sitting there, never had the political courage to do it [...], and that’s what happened. It is not that it was judicialized because it occurred to someone to judicialize, but because ‘[they] made the decision, as politicians, to say ‘we are not dealing with this’. And all of them participated.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

The *Concertación’s* fragility in aligning the agenda on sexual and reproductive rights is not only due to the DC, as the quote above suggests. As a medic and activist agreed and remembered when confronted with the fact that it was not only the Christian Democrats who hindered the process within the coalition: “one of the lawyers who attacked EC in one of the trials was a socialist...” (Progressive medic: active member of the coalition for access to EC. 12). This shows that conservatism is entrenched within the political elite, and that blaming only the religious parties is not enough to understand the whole process. One of the elements that I discovered is that there could be other reasons in some sectors of the *Concertación*, which are not necessarily related to individual ideology or beliefs, but with the ideas politicians have about public opinion and voters’ loyalties, as seen in the quote on page 201.

However, some DC members that I spoke to were quite reluctant to take all the responsibility. The following quote is from a mayor in a populous, lower/middle class municipality in Santiago. As a young female member in the high echelons of the DC, she was keen to make it clear that the party's agenda is aligned to the *Concertación's* and that - in fact - the DC has a progressive agenda on gender issues and women's rights. The problems, according to her and another more progressive female member of the DC whom I interviewed, are with one sector of the party. The older generation of mainly - but not only - men, did not have a clear understanding and were resistant not only to women's rights, but also to other issues that had to do with local governments and citizen participation. However, as the quote will show, the great divide, according to her, is on abortion, something that I will come back to in Chapter 9.

“But what I mean is that I do not know if [the barriers are] necessarily linked to the DC. That is why I tell you, I assure you, that the DC mayors I know, at least the ones in Santiago [are not the ones creating barriers]. I do not know about the regions [...] and there may be some [mayors] out there, but it is not widespread within the DC. Now, if the DC is putting the caps? I would say no, that is a bit of a caricature. [...] but obviously with abortion, then yes [they are stopping it].” (Christian Democrat Mayor of a Municipality in Santiago. 20)

Law 20,418 on Standards for Information, Guidance and Services for the Regulation of Fertility was approved in the Senate by 21 votes for and 12 against. On average, the voting reflected the left (*Concertación*)/right (*Alianza*) divide; however, of the 21 votes for, five belonged to the *Alianza*, including the vote of Senator Matthei. Senator Allamand, the president of *Renovación Nacional*, expressed the following in his intervention on the discussion on the law:

“Sebastián Piñera [head of party] has clearly expressed that he came to the

conclusion that the pill is not abortive, therefore favouring distribution. The same position I and other senators have.” (Congreso Nacional de Chile 2010a, p. 260)

While the Senator Juan Antonio Coloma, the president of UDI stated:

“As president of my party, I had to touch on this point and explain to the public that my party representatives were entitled to vote differently, because there was doubt around it. If it were scientifically proven that the pill is abortive - believe me - no one in my party would vote for the bill.” (Congreso Nacional de Chile 2010a, p. 262)

These statements show that the discipline within the right is also hard to keep, and the emergence of some liberal members, in particular of *Renovación Nacional* has had a bigger impact in more democratic spaces, such as Congress, compared to the judiciary.

In my conversations with pro-life activists, as I will show in more detail in the analysis of abortion, there is a sense of disappointment with the traditional right, it was claimed that the ambiguous position of some members, in particular of Evelyn Matthei, implied a reluctance to talk about and discuss abortion in depth and a stronger pro-life position. This ambivalence might also imply a political calculation as public opinion is shifting towards a relaxation of the legal framework that constrains access to sexual and reproductive rights. As an example, the quote below is a report by a young Chilean pro-life activist, member of Idea País ([www.ideapais.cl](http://www.ideapais.cl)), for a pro-life organization based in the US. The piece was written with the input of Hernán Corral Talciani, a Professor of the *Universidad de Los Andes*, PhD. in Law from the *Universidad de Navarra* and a great admirer of Escrivá de Balaguer (Corral n.d.), he is also close to or a member of Opus Dei:

“Although it seems that most legislators from *Coalición por el Cambio* [ex

*Alianza*] seem to be against establishing abortion - which is evidenced by the support given to a demand to the Constitutional Court based on the debate about the so called 'Morning-After Pill' - the fact that legislators of the majority party (UDI) have stated their willingness to sponsor legislative bills to decriminalize abortion is symptomatic of an increasing tendency within Chilean conservatives. In other words, they are gradually convincing themselves that negotiating some issues, such as respect for life, is a reasonable way of enlarging their electoral base. Besides, there are already several political, parliamentary and municipal authorities who openly claim to be in favour of different types of abortion.” (Schalper Sepúlveda 2012, p.210)

In sum, the political scenarios that influenced the process to make EC available in public services is better understood by cross-analysing the left (*Concertación*) and right (*Alianza*) divide, as well as the existence of political parties aligned with the Catholic Church within these coalitions (UDI and DC). Under the effect of the discussion on abortion, political parties defined their position on EC, seemingly not reaching an agreement. In consequence, some members of the *Concertación* blocked the policy driven by its own government, but also, some members of the right did not block the policy in parliament; and to the disappointment of some pro-choice conservative groups, did not take a stronger stand on sexual and reproductive matters.

### **8.4.3 The influence of the market and economic elites**

The reaction against universal access to EC was not only targeted at the progressive sector of civil society, but also against the government, in some cases at its highest level. As analysed above, the reaction ignited a restless strategy in the courts, and involved highly



committed Catholic lawyers (Lawyer: member of the Opus Dei and academic at private university. Active against EC. 255). It also involved the business elite, as this section will show. Some of the conservative sectors involved come from quite a specific social background, linked to economic power, political elites and religious conservatism. During the whole battle for access of EC in the public health system, EC was available to buy in pharmacies and private clinics could provide the pill. Casas (2008) shows that the legal battle in the courts that was aimed at eliminating the availability of EC was also directed at providers of EC, such as laboratories; and aimed at blocking the pharmacies' distribution channels. AGES, the same organization that challenged the government because of the National Institute of Health's (ISP) registry of EC, sued the Grünenthal laboratory (Novofarma Service S.A. is the representative in Chile) in 2006 for registering Postinor-2, which ended with the laboratory voluntarily withdrawing the sanitary registry of the component (ISP Registry F-8527/02). This provoked a monopoly in the EC market.

Later, the laboratory that distributed TACE Recalcine laboratory, parent company CFR - recalled the product after being sued by the same organization for deceptive advertising (Morales 2010). According to a article in the newspaper *La Nación* (2007b), this effectively blocked the distribution channels (Morales 2010). The Recalcine laboratory was part of CFR Pharmaceuticals (Recalcine n.d.) and owned mainly by the Weinstein Group (CFR n.d.). Alejandro Weinstein Manieu was the CEO and is also the director of the charity *Educa UC*, part of the *Universidad Católica*, where he got his degree as a commercial engineer and accountant. *Educa UC* aims to promote quality education amongst disadvantaged populations (Pontificia Universidad Católica de Chile 2010). In the year 2000, he was appointed to manage the merger between companies Salco and Brand into Salcobrand, a company which will appear again in this controversy (page 223) and he was accused of hiding his own commercial interests in Brand (he recognized he had interest in it through

other firms) (Qué Pasa 2010). According to one of my interviewees, the process was quite unorthodox, as Recalcine had a formal contract with the Ministry to provide TACE and, moreover, it was planning to train midwives in the use of the compound and the company was going to pay for this service. Not only did they not go ahead with the training but they also retired TACE from the market. In 2010, once the law allowing the distribution of EC was approved, Recalcine had informal conversations with the Ministry of Health to allow the sale of EC without the need for a prescription, and according to a newspaper report, was waiting for that decision to bring TACE back to the market (Morales 2010). In 2014, the US-based company Abbot bought CRF for 2,900 million US\$ (Cortez & Thomson 2014, CERET 2014).

Casas (2008) argues that providers were being pressured. In fact, the vice-president of ACNOR, an organization of consumers comprised of 68 organizations of the pro-life network, stated that they had sent letters and e-mails to laboratories who distributed EC (La Tercera 2007*b,c*). This increased prices and made availability difficult (Casas 2008, p.5). The news source *La Tercera* claimed that ACNOR also sent a letter to the Tecnofarma laboratory. Tecnofarma then abstained from providing EC to the Ministry of Health, with the excuse that they did not have it in stock, even though they had previously responded positively to a call for tenders to provide EC (Tecnofarma is an Italian company). In 2007, ACNOR also sent a letter to the London headquarters of ICON laboratory, the provider of Optinor for APROFA, stating that the product could be abortive and that if they continued to sell the product in Chile, they could face legal action. It is interesting that the letter was signed by a pro-life activist, Patricia Gonnelle (Casas 2008, p.7), and that the vice-president of the organization is Juan Jara Opazo, AGES' representative in the legal actions already taking in place in the courts (La Tercera 2007*b*).

Casas (2008) also argues that the strategy not only included stopping the availability of

EC through laboratories, but also blocking the distribution channels through pharmacies at the final end of the commercial chain. Three pharmacies, Salcobrand, Fasa and Cruz Verde - that combined have 95% of the market according to La Tercera (2007*d*) or 90% according to La Nación (2007*c*) - stopped having EC in their stock, although they had sold it from 2001 to 2006 (Casas 2008, p. 8). One of them - Salcobrand - refused to sell it, pleading conscientious objection, arguing that the pill could be abortive and exercising a “legitimate right of opinion of the company representatives, conscientiously objecting the mandate to commercialize a product that could have that effect” (Casas 2008, La Nación 2007*b*, p. 10). However, both Salcobrand and FASA continued to sell the product in Peru where they have subsidiaries (La Nación 2007*b*).

Salcobrand is owned by the Yarur family. The president is Luis Enrique Yarur, who is worth circa 1.5 billion US\$ and is also a member of the holding company that controls 55% of the *Banco de Crédito e Inversiones*, the country’s third largest bank (Forbes 2014). There are reports of his association with the Catholic conservative group Opus Dei (Forbes 2014), something that is quite likely due to the fact that he has close links to the *Universidad de los Andes* and obtained his law degree from the *Universidad de Navarra* (BCI n.d.), the Spanish University of the Opus Dei (Universidad de Navarra n.d.). Moreover, the *Banco de Crédito e Inversiones* donated 57,018,850 Chilean pesos to the *Universidad de Los Andes* in 2013 (approximately 102,718 US\$); 55,858,975 Chilean pesos in 2012 and 43,834,640 Chilean pesos in 2011 (according to records I obtained from the Ministry of Education through the Law on Access to Information). The *Universidad de Los Andes* have a quite unique view of business, providing a course on Family Business named “*Empresas de Familia Jorge Yarur Banna*”, after Luis Enrique’s dead uncle (he died with no children and left his extensive fortune to Luis Enrique and his siblings). This course is targeted at rich business families and has a module on “Wealth Management Education: how to educate children living in abundance”

(Universidad de los Andes n.d.f). Luis Enrique is married to Anne Miren Arrasate, a member of the directorate of the *Fundación Nocedal*, an educational foundation for the less privileged that, according to their webpage, emerged after being inspired by the work of “San Josemaría Escrivá, founder of Opus Dei” (Nocedal n.d.). The people formally involved in foundations linked to the Opus Dei are all members (Mönckeberg 2003).

Cruz Verde pharmacy is owned by the Harding family (Cruz Verde n.d.). Its current president - Guillermo Harding Alvarado - also has close links with the *Universidad de Los Andes*. Guillermo is president of *Empresas Socofar S.A.*, the holding company that owns Cruz Verde. *Socofar S.A.* donated 45,709,260 Chilean pesos in 2013 to *Universidad de Los Andes*; 45,254,720 Chilean pesos in 2013 and 43,619,680 Chilean pesos in 2012 (approximately 78,764 US\$ each year). The university organized the Guillermo Harding Estay Conferences (Harding Estay is Harding Alvarado’s father) to commemorate Harding Estay’s centenary (Universidad de Los Andes n.d.e). It is a practice of the university to make these gestures to generous donors (Mönckeberg 2003). Harding Alvarado was present in the lecture given by the critic of *El Mercurio* and professor of the *Universidad de Los Andes*, Valdemar Sommer, member of the Opus Dei and great admirer of Escrivá de Balaguer (Revista Capital 2013, Sommer n.d.).

At the time, FASA was owned by José Codner and managed by his son-in-law Alejandro Rosemblatt (Businessweek n.d., La Tercera 2009, Qué Pasa 2010), who are both Jewish. In sum, the details I have given above show that two of the three pharmacy chains that did not have EC in stock have connections with Opus Dei, and their owners are rich Catholic conservatives. Salcobrand was the boldest one in making a stand and clearly positioning itself on moral grounds, being able to almost eliminate access in the market. However, there were some smaller pharmacies that had the compound. The conscientious objection of pharmacies was heavily debated, even in parliament, and caused a political dispute against members of

the DC and a law proposal by some UDI parliamentarians (La Segunda 2007a). The Church supported - or instigated - this objection, and used the Pope Ratzinger's statement in the Vatican during a speech for the "XXV International Congress of Catholic Pharmacists; The new frontiers of pharmaceutical practice", inviting pharmacists to stop administering products that presumed an immoral choice, such as abortion and euthanasia (EFE 2007, La Segunda 2007b, La Tercera 2007e).

The influence of economic powers and the informal and formal pressures on private companies highlight the nature of Chilean conservative elites and the influence they have. A former official of the Ministry of Health discussed the involvement of pharmacies in depth with me:

"But gender is not isolated, it is also linked to economic powers, to a patriarchal view linked to other powerful tools that are very hard to fight. The pill [...] is a good example of what happened, it was available in the market, but only to economic elites and that did not bother anyone; it was for [ironically] 'people like us' [*gente como uno*]. When you want to make it on a mass scale and available to everyone, disaster strikes. There are all sorts of legal challenges, [challenges] in the market and there are pressures on laboratories and pharmacy chains.

Interviewer: And who creates that pressure?

019: Ah... [sigh] we would have to ask them. But the reality is that it is not for nothing that [EC] disappeared from the counters - I mean - that the laboratories stopped importing the morning after pills is no coincidence [...].

Interviewer: You know, that is striking because it goes against their economic interests, they are interested in selling...

019: No, not true. What they are interested in is to maintain an ideology of

power, yes? They put their economic interests below their ideological interests. One should not be confused.” (Official of MINSAL/Bachelet: active for access to EC. 19)

The economic and ideological power made its mark, but the government did not retract and confronted the lack of availability with an aggressive strategy of monitoring availability in pharmacies, and ended up fining pharmacies that did not have EC in stock. According to the press, the fines were around 59,400 US\$ per store (per store, not per chain) (La Nación 2008). It also ensured the availability in the country through the direct import of EC, in partnership with APROFA, who also imported a batch. As the ex-official of the Ministry explains:

“The pill disappeared from the market. I mean, we are speaking of such power that it exceeds economic power, because there was purchasing power. So, the laboratories stopped producing it, importing it, the pharmacies no longer had it, and we started to issue fines, because this was in the essential medicine list (*Formulario Nacional*), and the pharmacies were mandated to have it in stock. But they could also excuse themselves by claiming that it was not available in the market, which was true. We had to import it and the director of central supply went abroad to purchase it, it was available in Colombia, in different places, to import the morning after pill to supply the market.” (Official of MINSAL/Bachelet: active for access to EC. 19)

Two of the three pharmacies - Cruz Verde and Ahumada - claimed that the reason for not having the pill in stock had to do with availability and the illegality of buying EC from somewhere that was not a laboratory. They met with the Minister of Health, María Soledad Barría, “clarified the situation” and committed to having EC in stock. The third pharmacy, Salcobrand, did not meet the Minister, according to the press and again reached out to the

public with an insert in several newspapers claiming that they were obliged to sell EC or they would face “serious measures” (La Nación 2008, El Mercurio 2007*b*, La Tercera 2007*a*, La Nación 2007*a*).

There is no discussion that economic elites are influential. With this section, I have made an attempt to show how the link with Catholic conservatism amongst Chilean elites had a concrete effect on blocking the policy on emergency contraception distribution, in this case, elite businessmen linked to Opus Dei. The strategy by anti-EC advocates was twofold: by tackling laboratories through the recently created organization of consumers - ACNOR - and threatening and taking legal action to impede the distribution to pharmacies (page 221). Also, conservative pharmacy chain owners such as the one from Salcobrand stepped up and made EC disappear from their counters. The pill was not available in the market, showing the effectiveness of links between power, money and conservatism and the religious commitment of the elite. As I have attempted to show, even only a few well-placed conservative members of the business elite can have a big influence.

## 8.5 Media coverage and the role of evidence

The media and other informal means also played an important part in the process. The coverage in main national newspapers shows an orchestrated and aggressive strategy by the pro-life consortium in close partnership with the Church, as analysed in Part 8.4.1. Dides (2006) has identified the role and the arguments used by both bands by analysing mainly newspaper reports. The weight of op-eds and columns - mainly in *El Mercurio* - were so valuable to the pro-life defenders that they even presented them as evidence in the courts (Casas 2004, p. 191). The media was purposely used by reactionary groups - with the language of life and death - to press the point. I spoke to a medic that was on the receiving

end of the attack in the media, as a member of *Instituto Chileno de Medicina Reproductiva* (Chilean Institute of Reproductive Medicine) (ICMER), the public face of pro-EC scientists. She reflected on the battle that took place in the main newspapers, through letters to the editors, op-eds and articles:

“We were even accused of being murderers in a newspaper. I mean, they were quite veiled critiques, in the sense that they were directly aimed, but were addressed [to] ‘the ones that promote emergency contraception’ - [...] the few of us that are here. [They said] ‘they do not want to be called murderers, but they are murderers’; [...] No, they did not constrain themselves in op-eds, comments and letters to the editor, letters which we replied to.” (Progressive medic: active member of the coalition for access to EC. 12)

Although the press coverage did not favour pro-life groups per se, and there are several newspaper articles that directly criticized the role of the anti-EC activists (La Tercera 2007*f*, La Nación 2007*b,a*), the process however gave them a platform to present their reservations and their willingness to use any means available to stop universal access to EC (La Tercera 2008, El Mercurio 2001*b,d*). According to the former official of the Ministry of Health, it also applied constant pressure on the government, who had to confront journalists during every step of the process:

“No, it was quite hard, during the times of the pill. I have never - in all my time - seen as many journalists as on those occasions. I was surrounded by 50, 60 journalists, because the Episcopal Conference had just issued a press release. It was hard.” (Official of MINSAL/Bachelet: active for access to EC. 19)

This pressure from anti-EC advocates also worked on concrete, not as well known, practical levels, as a medic and advocate in a private community-based reproductive health



clinic that was quite active during the legal battle to approve EC conveys:

“Spies came. Yes of course! During the most troubled times we had quite a number of patients - or supposed patients - who came to see what we were doing, to see if we did abortions. Clients with innocent faces who came to see if we could help them with an abortion...” (Progressive medic: active member of the coalition for access to EC. 12)

The debate about EC was not only a discussion about rights and constitutional principles. Arguments from detractors appealed to morality and a sense of social order and tradition linked to religious beliefs. A significant share of the time and energy from both sides of the discussion was also spent invoking the scientific evidence to determine if EC - in particular the compound Levonorgestrel 0.75 mg - was abortive or not. In very simplistic terms, the biological discussion was about the effects of Levonorgestrel in inhibiting the implantation of the fertilized egg in the endometrium. If the compound inhibits the implantation, to some this demonstrated that it was abortive because for them, life starts at the moment of conception. If this was the case, it was easier to make the claim that EC should not be provided, as the Constitution protects the life of the unborn. If that is established, the discussion that follows is on the reach of the constitutional principle of the protection of the unborn or “nasciturus” (Tribunal Constitucional 2008, Congreso Nacional de Chile 2010*a*).

Both parts of the controversy used medical and scientific evidence to feed this legal discussion, and it acquired a prominent role convincing some anti-EC, pro-life sectors. If it was proven that EC was not abortive, then there was no problem distributing it. For feminists and pro-EC advocates, the scientific evidence on the effects of Levonorgestrel 0.75 mg was important as a means to achieve the desired outcome and to rationally convince the opposite side. This was not only relevant to the legal process, but also for changing public

opinion and even opinions within the state. A feminist medic who was part of the process defends the use of current and robust scientific evidence to make a claim that could stand the test of a moral judgement. She was convinced that the data that was generated and used during the whole process was important to create alliances with sectors that might have otherwise been reluctant to work for the provision of EC, as the following quote shows:

“The other Minister [...], I spoke with him afterwards and he said ‘at that moment I was convinced, now you have convinced me with scientific evidence that contraception is not abortive and I have no problem’. In fact, he participated in some Catholic forums advocating for the incorporation [of EC], a year after being a Minister. But apparently it took longer for him to recognize the scientific evidence, until he was convinced, and when he was convinced, he changed his mind. [Interviewer: is he a medic?] Yes, an obstetrician. He changed his mind. It was slow process of persuasion. But I think people - on the one hand - were loyal to the DC, who collectively was not [in favour] of these changes, for accepting this method, and it was in part due to their - I’d say - Catholic militancy; and to go from that to ‘I was convinced that it is not abortive’, was a process.” (Progressive medic: active member of the coalition for access to EC. 12)

This shows how relevant it was for both progressive and conservative advocates to show - or deny - that Levonorgestrel 0.75 mg has an effect on the endometrium and could inhibit implantation. Nevertheless, for advocates promoting EC, the relevant evidence was not only about the effects of Levonorgestrel 0.75 mg - although the medical side was also important - but it was also about public health and the data on access to contraception, unwanted pregnancies and the inequality in access. As a feminist advocate and academic states:

“The right - in the debate on abortion - draws from two badly done studies

which reach the same conclusion ‘the science shows, the science shows’ [...]. I don’t know if us feminists have done it or not, there is a whole story, there are several layers to this. Because the language of rights that is being included comes from below in this country - clearly - and we have been able to advance with the argument of science and public health. So it is not that we want to do it, it is the only way we have been able to address a series of issues. So, Horacio Croxato and ICMER have been key in the issue of emergency contraception. Without that, without the research by the Panamerican Health Organization (PAHO) ... we could not have said a word.” (Feminist activist: Researcher on gender issues. 1)

This quote shows that a confrontation only based on rights would not have been successful. As another interviewee conveyed to me, this point was initially hard to make with the lawyers, and could be the cause of the EC advocates’ first trial’s failure. Later on, the trials involved the revision of biological evidence and both sides brought medical studies on the effects of Levonorgestrel 0.75 mg to the courts.

A point in case is the trial in the Constitutional Tribunal. It received 44 medical papers (Tribunal Consititucional 2008, p. 233) and presentations from medics of the *Universidad de Chile*, the *Universidad Católica de Chile*, the *Universidad Católica de la Santísima Concepción*, ICMER, APROFA, medics from the “Network for Life”, the *Universidad de los Andes* and the “Institute of Evangelical Studies” foundation. As expected, the evidence from the religious universities and the *Universidad de los Andes* claimed that Levonorgestrel 0.75 mg had an effect on the implantation of the fertilized egg and was therefore abortive, while the evidence from the *Universidad de Chile*, ICMER and APROFA showed that it did not have that effect. However, this scientific evidence-based judicial process was not usually used in Chilean tribunals and required an understanding of the biological process by the

lawyers, and the capacity to convey that information to the judges. As an interviewee a medic - who was part of the process of building that capacity in the lawyers remembers:

“[Lawyers in court] showing a study of monkeys, a photograph of the monkeys, and the data from the Catholic [University], lawyers using power point. I think this was also important, people who participated got involved and were willing to learn new things.” (Progressive medic: active member of the coalition for access to EC. 12)

The research she is referring to as “the monkeys” is an experimental study that showed that when controlling the ovulation at the moment of EC intake in rats and monkeys, Levonorgestrel 0.75 mg did not have any effects on the implantation of the fertilized egg in the uterus, and was therefore not abortive (Ortiz et al. 2004, Müller et al. 2003). This research was conducted by Horacio Croxato, a key figure amongst EC advocates, and mentioned in the quote on page 231. The scientific peer-reviewed papers like the one the interviewee is referring to were not the norm for presenting evidence; and the idea that the robustness of a paper - and the evidence in it - is to some extent validated by the revision of peers and the publication in specialized journals, is something that was relevant only to some.

For example, the Constitutional Tribunal ruled against the distribution of EC with four dissident votes out of nine. The dissident position of the ministers is extensively expressed in the ruling, and it is quite interesting as an object of analysis. The Ministers Jorge Correa Sutil and Francisco Fernández Fredes presented a joint statement, rejecting the requirement of the Constitutional Tribunal in its entirety. They state that they do not agree with the ruling and that they vote for the validation of the government’s norm in all its parts. They are convinced that EC is not a violation of the life of the unborn nor is it against human dignity. The opinion of the ministers is relevant to this section because it is based on the science and data available to the tribunal. They do touch upon the discussion on the

reach of the constitutional principle of protecting the life of the unborn, and moreover, they highlight that, even if the tribunal decides that EC is a violation of the right to life, the same contraceptives are available in pharmacies, however that fact was beyond the reach of the ruling (Tribunal Consititucional 2008, p.207).

The ministers argue that the effect of EC on women's bodies is a factual one that cannot be responded to by ethical, moral or judicial criteria. The only criteria to establish the truth is empirical evidence, and opinions - even opinions of renowned scientists - do not constitute proof. They list all the scientific documents received by the tribunal, analysed the nature of each, i.e. type of paper, if published and where, and type of evidence they showed. They eliminated the ones that were not published and that did not test directly for the effects of Levonorgestrel in the implantation of the fertilized egg, leaving only four papers which test for the effect of Levonorgestrel on females who have ovulated Landgren et al. (1989), WHO (1998), Novikova et al. (2007) and Croxatto et al. (2004). The Landgren et al. (1989) paper was used by the medic Patricio Mena from the *Universidad de Los Andes* (admirer of Escrivá de Balaguer (Mena 2002)) to prove that EC was abortive, as Levonorgestrel could have an effect on preventing the implantation of the egg. The study however did not reach that conclusion, as it only tested the effects of Levonorgestrel on the endometrium and ovulation, and not on the fertilized egg. The paper by the WHO (1998) was also presented by the *Universidad Católica* to claim that Levonorgestrel did have a possible effect on the implantation of the egg. The ministers show that the study did not reach that conclusion, as stated by the university. The papers by Novikova et al. (2007) and Croxatto et al. (2004) however, reached the conclusion that Levonorgestrel did not have an effect on the implantation of the fertilized egg. They continue with a detailed revision of both the statements of medical and scientific experts in the tribunal, and the papers and research presented, until finally reaching the conclusion that there is no evidence to

support that Levonorgestrel has an effect on the implantation of the fertilized egg (Tribunal Consititucional 2008, p.212 - 270).

According to some of my sources (mainly lawyers), the argument should not be about evidence, but about the woman's right to decide over her own pregnancy. An example of an argument of this sort can be seen in the quote on page 211 and in the arguments posed by the dissident position of Minister Hernán Vodanovic Schnake in the Constitutional Tribunal. Vodanovic only based his arguments on the rights of the pre-implantation embryo and on the potential conflict between a constitutionally protected interest and other fundamental rights, such as reproductive and sexual rights. He concludes that the unborn child does not hold fundamental rights recognized in the Constitution, and that the Constitution does not prohibit abortion. Reproductive rights are recognized in the Constitution and in cases of conflict, the preponderant interest rights should be the ones of women (Tribunal Consititucional 2008, p.185). This argument has been and is held by other legal scholars in Chile (Bascuñán 2009, 2004, Undurraga 2011, Casas 2010).

Vodanovic Schnake's point is that the discussion is not about whether the pill is abortive or not, but about women's right to choose. This argument was also pushed by the lawyers representing the government during the trial in the Constitutional Tribunal. The document with the observations of the demand in the Constitutional Tribunal analyses the scientific evidence and argues that the pill is not abortive, and also discusses the evidence which questions if life begins at conception or implantation, and clarifies that "the Constitution [...] does not say - as the plaintiff argues - that life begins at conception. It is not excluded, but it is left to the legislator who - in any case - must decide the course to protect the life of the unborn." (Bachelet et al. 2007, p. 101-102). The same discussion was sustained during the debate that led to the approval of Law 20,418 in parliament. The argument about rights, however, did not convince the opposition of EC. Some conservative sectors, as quoted

on page 218, are only willing to accept the distribution of EC because the evidence could not prove that it is abortive. Moreover, the final ruling of the Constitutional Tribunal was against the distribution of EC, because it upheld the idea that life starts at the moment of conception and, according the ruling, the evidence did not convince the ministers that EC did not have an abortive effect.

The interface between science and religion is not straightforward, and during my interviews with conservative medics, scientific rigour and empiricism is interlinked with a moral discourse. One of my interviewees, a neonatologist from the *Universidad de Los Andes*, told me “I think that in these discussions, the ones that have to do with values, the discussion must be based on values and on facts. I am convinced that the facts must sustain the values, as I am an academic; [and as] a scientist, I base [my work] on facts” (Neonatologist and Pro-life activist. 264), and he then resolved that there is no evidence that EC is not abortive. However, when discussing this with another Catholic advocate, this time a biologist, he analysed the evidence available on EC in these terms:

“[I]n the case of emergency contraception, I - as a biologist - told everyone in my Catholic network from the beginning, I sent letters and said: ‘do not make fools of yourselves because Levonorgestrel is not abortifacient. Do not make fools of yourselves with the idea of reasonable doubt, that stuff [*huevada*] does not exist in science, because complete certainty does not exist in science. In that case I do not understand how you are not discussing the abortifacient effect of buns with mustard. ‘Because we are not confident that their level of fatty acids cannot cause potential damage to the embryo’. Moreover, it is very unlikely for it to be micro-abortive, in fact, all available evidence says with overwhelming clarity that it is not micro-abortive. [...] I swear that my speech was ‘do not to make fools of yourselves, save yourselves’ [...]. I told [the medic quoted above] to his

face ‘this is devoid of seriousness [*es poco serio*]’.” (Catholic Advocate: member of a Catholic network. 258)

The few paragraphs above show the importance of scientific evidence in debating the effects of EC, and implications for its legality. During these conversations, I was made aware of the importance of the medical profession, its status and the expectations of the judicial system for the medics to provide concrete and authoritative evidence on which to base their rulings. Witz (1990) draws attention to the gendered nature of professional outcomes, where the dynamics of professional projects are located within patriarchal structures (Witz 1990, p. 676) (Witz 2013). Pro-life medics in particular are quite homogeneously upper and middle class male doctors, who use the professional paraphernalia like white coats and stethoscopes and clearly draw from their perceived authority to strengthen their arguments. For example, in the interview with the medic mentioned above (Neonatologist and Pro-life activist. 264), in addition to his words, this interviewee used his white coat to assert his authority with me. I realized this as follows. When I arrived at the interview in the cafeteria of the private clinic he works in, I recognized him sitting at a table speaking with a person in his “normal” garments (he did not know or see me). As the time of the interview approached, he left the cafeteria and came back wearing his white coat, looking the part of a medic.

### **8.5.1 The Lawyers involved in the judicial process against EC**

The other relevant profession in this process are the lawyers. The backgrounds of the lawyers who advocated and worked to prevent emergency contraception from being broadly available reveal the interest groups behind this advocacy campaign. I would argue that as important as their current membership to parties and pro-choice organizations, are the universities where they studied and maintain professional links with. The *Universidad Católica* and the



*Universidad de Los Andes* are quite prominent in their backgrounds.

In 1981, the Pinochet regime implemented a series of higher education reforms that did away with the concept of the teaching state (*estado docente*) that had been prevalent before. The regime authorized the creation of new private universities, according to Bernasconi (2005), to “reduce and control the potential for political activism of the University of Chile and the State Technical University”. This reform was part of the overall neoliberal agenda. As a result, in 2005, public funding was only one fourth of the expenditure on higher education and the country had one of the highest private funding systems for higher education globally. Bernasconi (2005) states that “Chile exhibits one of the world’s most private, and exposed to the markets, systems of higher education” (Bernasconi 2005, p. 250-251). This has made the higher education system quite fragmented and reflective of the class and ideological division within Chilean society. According to Larrondo (2007), the commercialization of higher education in Chile had generated a quite diverse academia with sometimes “conflicting imageries”. What this means in practice is that ideological tendencies within universities and class division have transformed universities into institutions serving different social groups.

The *Universidad Católica*, although privately owned by the Church, is what is considered a traditional university, as it existed almost a century before the 1980s reforms and it is part of the Council of Deans. It is the university where Jaime Guzmán studied and taught. The University’s law department has a focus on natural law and has not only been the breeding ground of conservative lawyers, but also of right wing political parties. The *Universidad de Los Andes* is the university founded by members of the ultraconservative secular Catholic movement, Opus Dei (Universidad de los Andes n.d.i). It is a fully fledged private university, formed post-neoliberal reforms, and serves the conservative upper/middle class, and the business and right wing elite. The university is quite explicit in its focus on

religious inspiration and amongst its guiding principles is the belief of “the right to life of all humans, from the moment of conception to their natural death” (Universidad de los Andes n.d.h, p.8). Both these institutions are elite universities, but the *Universidad Católica* is a traditional university that has a more heterogeneous group of students due to its quality and the need to have quite good grades to be able to study there. It also provides a broader range of degrees, and in general has a higher status amongst progressive sectors (Cruz-Coke 2004, Bernasconi 2005). The departments of law and medicine, however, are quite conservative.

To see the connection between these institutions and the groups leading the anti-EC strategy, the lawyers are good indicators. For example, Juan Enrique Jara Opazo, the president of AGES who presented the first demands against ISP, has a law degree from the *Universidad de Los Andes* and was a member of the political party UDI. The lawyer Francisco Chahuán, who also represented pro-life groups during some of the trials, did not go to either the *Universidad Católica* or the *Universidad de Los Andes*, is a member of RN and later was a deputy amongst the parliamentarians suing the government in the Constitutional Tribunal. Jorge Reyes, the lawyer that spearheaded the case against EC in the Constitutional Tribunal, did a Masters at the *Universidad Católica* and is a prominent and quite controversial and conservative public figure (La Tercera 2007f). Alejandro Romero - the fourth lawyer involved in the case - is Dean of the Faculty of Law of the *Universidad de Los Andes*, and teaches a theology course. He also has a PhD in Law from the *Universidad de Navarra* in Spain, which also belong to Opus Dei (Universidad de los Andes n.d.a). More controversially, one of the ministers who was requested to remove himself from the Constitutional Tribunal during the trial was Bertelesen Repetto. He did step down and was part of Constitutional Tribunal’s ruling against EC. Note that Bertelesen is the founder of the *Universidad de los Andes* (Universidad de los Andes n.d.g), member of the board (Universidad de Los Andes n.d.d) and professor in the School of Law at the university.

He has a Doctorate from the *Universidad de Navarra* (Universidad de Los Andes n.d.b), has published papers on his experience and admiration of Josemaría Escrivá de Balaguer (Bertelsen Repetto 2003) and is a recognized member of Opus Dei (Mönckeberg 2003). This is a network of politicians, business people, medics and lawyers linked by religious beliefs, in particular Catholic conservatism, and also to higher education institutions. The *Universidad de los Andes* not only provided two of the lawyers on the case, but also the medical evidence that was presented by the group during the trials. The evidence was also provided by the *Universidad Católica*, and in particular by medics belonging to their Bioethics Group (Congreso Nacional de Chile 2010a, p. 29, 30).

## 8.6 The implications

Schiappacasse & Díaz (2012) show that the process of introducing emergency contraception in Chile involved public health concerns, legislation, politics, group interests and women's rights. The process was full of controversies and emergency contraception became a symbol of abortion on the conservative side, and of women's sexual autonomy amongst more progressive sectors. According to participants in this process, the case offers evidence that broad coalitions, evidence-based advocacy, and scientific integrity can prevail (Schiappacasse & Díaz 2012, p.108). The experience with the debate on EC mobilized a series of advocacy groups. Although a group of advocates were involved since the beginning, the trial in the Constitutional Court provided an opportunity for ample mobilization, and an unprecedentedly large march called "*El Pildorazo*" (march in support of the morning after pill) gathered more than 35,000 people in the streets (Sotomayor 2012). This movement was broad, and included students, labour unions and feminists. The *Pildorazo*, and the social mobilization behind it, was important for advocates on both sides, and spearheaded organizing amongst

feminist in alliance with other social movements. During my conversations with feminist advocates, I gathered that the *Pildorazo* and the process that led to the enactment of Law 20,418 opened up new possibilities, as one activist who participated in the process as a feminist explains:

“We emerged as a group during the defence of the morning after pill. We discussed the wide birth control movement, [it was] very wide, it involved students, workers, women, everybody, it was very opportune. It was in defence of the pill, because the issue in the Constitutional Court that wanted to outlaw it. In some sense there was a reason to end it, but we continued because we’d known each other for many years, we represented different organizations and in some cases we were just individual women.” (Activist: Member of a feminist network. 44)

This goes to show that the process itself, although riddled with blocks and barriers, had some lasting effects, and gave momentum to some feminist activists to continue mobilizations in a changing social scenario. The following quote from a feminist activist speaks of the momentum that the *Pildorazo* built to tackle traditional power groups, something which reappeared in other interviews:

“When the *Pildorazo* happened in 2004, for example, that was an interesting milestone of popular expression. Feminists started with the idea of ‘let’s do this’ and they launched the campaign of the morning after pill. It became a hugely impressive, massive march. Well, I think that showed... there was a strong signal that said, ‘yes, we support this!’ And you had the Church, the politicians, the judiciary, I mean all the spaces of power, [who were] quite conservative, against the pill. There were some heavy fights.” (Activist: Member of a feminist network. 15)

The effect of the process on EC was also a way of consecrating people's notions of bodily integrity, and testing the limits of conservative interference on individual choices. The massive support of EC in the *Pildorazo* is evidence that some sectors of public opinion were willing to fight back, and in the streets. Rationally, it was only about the possibility of the distribution of a compound in the public health system, a pill that was available to buy in pharmacies, but it acquired a significance that went beyond the pill to matters of body autonomy, critiques of the interference of the Church and to the power relations that came to the fore during the judicial process. As a feminist activist reflects:

“A notion of rights was settling in, it did not appear in full until the last marches on the morning after pill, when they said ‘my body is mine’. Some years have passed, but that created, it built - I want to say ‘my body is mine!’ - one of the most difficult issues.” (Feminist activist: Researcher on gender issues. 1)

One of the activists I spoke to referred to the EC process as “unlocking” the debate, not only about abortion, but also about people's sexual choices, being more confrontational to the meddling and moral disapproval. We were discussing the changes in young women's sexual behaviours, when she reflected:

“[I] have the impression that it has changed: ‘Yes, I am taking the pill and what is it to you old [goat]’ and that is quite good and I believe that today, emergency contraception is also perceived as a right amongst these people” (Researcher CEPAL on sexual and reproductive rights issues. 16).

The fact that acceptance of the pill, as times have passed, is almost not contested anymore shows that the political calculations of power holders can benefit access in some cases. When analysing the trends amongst the public, some advocates think that the political elite has no other option but to follow, otherwise they will face political consequences, and

that this has unlocked the debate, as I have said above. One activist who has followed the EC debates since their beginnings in the early 2000s, states:

“It is slow, but something has happened. And something has happened, because if you look at the acceptance of emergency contraception surveys and [there is] approximately 80% [acceptance] in surveys. And all presidential candidates in the previous election, all [emphasis], approved the emergency contraception, even Piñera. So, there is a change. And at this moment the debate over abortion for health reasons is [being discussed] in the presidential debate, and some issues have been unlocked. I do not know if the practices have been unlocked, but at least the issues have been unlocked.” (Progressive medic: active member of the coalition for access to EC. 12)

This mobilization did not fail to attract the attention of conservative sectors, and might have influenced the support of Law 20,418 from sectors of the right. Moreover, after the change in government, the administration of Piñera was in charge of implementing the law and drafting all the instructions and norms needed. The right’s reaction to this expression of public acceptance and demand for social and reproductive rights did catch the attention of pro-life activists. The quote below from the pro-life publication (also mentioned on page 219) commenting on the social mobilizations that occurred during the EC campaign shows the distrust that pro-life movements have of international standards and women’s rights advocacy networks. It also tackles the - perceived - lack of arguments from their own pro-life advocacy groups and the - also perceived - need for an in-depth debate of real pro-life alternatives:

“[I]t is important to point [out] that the organizations in favour of establishing abortion are generally better organized and have a larger number of affiliated or subgroups and greater international support than their counterparts. Further-

more, many times pro-life groups' strategies do not find their way out of the mere opposition to contrary approaches, when what public opinion actually demands is an agenda with varied proposals explaining how safeguarding life, strengthening motherhood and fostering a society more generous with the underprivileged (like pregnant young women, mothers who abort or elderly people bearing oppressive loneliness) are essential for genuine human development." (Schalper Sepúlveda 2012, p.209)

## 8.7 Conclusions

This chapter has analysed the main arguments used by activists for and against public policies to distribute emergency contraception in the public health system in Chile. By looking at the resistance and strategies followed by conservative sectors, this analysis advances our overall understanding of what lies behind this resistance; and by unpacking the details and going deeper into the process from a conservative perspective, we can observe the complexity of the process. This has evidenced that, contrary to much of the analysis done before (Brito Peña et al. 2012, Sotomayor 2012, Martínez 2013, Sepúlveda Zelaya 2014), the conservative sector is viewing these processes as a battle they have lost, and as part of a continuous struggle to protect the family and their moral view of reproduction and sexuality where they are losing terrain. In this chapter I also contribute by showing how the ideational factors protected by the legacies of the Constitution are at play at political/institutional levels, but also that we cannot understand the process by only looking at policy change within institutions, but must include the analysis of the influence of very committed conservative elites in the market, the press and in the politics of local level service delivery. The ideology that drives the resistance is also affecting professional circles, where conservative - mainly Opus

Dei - lawyers and medics use the power of their status to drive the conversation to a place where they feel comfortable, sometimes to the detriment of evidence.

The groups who reacted against these policies used arguments in line with religious - and in particular Catholic - ideas about the nature of sexuality and the origins of human life. The Church's dogma that life starts at the moment of conception implied that emergency contraception should not be distributed because it could be abortive. This was the position of some members of the higher political and economic elites. They had influence and access to the media, and their ideas were amply disseminated. The arguments also relate to religious views of human reproduction, and the control of women's bodies in the name of the public good and the family. On the other hand, the conservative view of sexuality, and in particular of young people's sexual activity, also drove the discussion to the role of parents and their authority over young girls' sinful sexual behaviour; in the background is the idea of the family and the roles and responsibilities of its members. Both arguments can be backed by the Chilean legal framework and the Constitution of 1980, which protects the right to life of the unborn and the rights of parents to educate their children.

As stated in the introduction, it has been my aim to look at the political and legal process that led to the approval of Law 20,418 on the regulation of fertility, and its implementation at local level. This is because after a judicial and legal process that took several years, the implementation of the law still faced barriers. The policy to provide emergency contraception in the public health system was a result of the commitment from both the government and advocates working in coordination and ensuring that the barriers that continuously appeared were overcome. From the government's side, the policy was part of a broader social protection agenda that had Bachelet's political investment. The process was resisted and blocked, not only by the Church and the political opposition, but also from members of Bachelet's own coalition.



The strategy of conservative sectors also included a component that tackled private companies and the blocking of the market for EC through pressures and threats of lawsuits to laboratories; and owners of pharmacy chains aligning with the conservative agenda. The conservative medical establishment also played an important role by legitimating the idea that EC was abortive by providing medical evidence and expert opinions (however, this evidence proved not to be conclusive). By looking at these different actors, I would argue that the evidence shows that groups and networks linked to religious universities such as the *Universidad de Los Andes* and the *Universidad Católica*, as well as people belonging to secular Catholic organizations such as Opus Dei appear prominently amongst conservative activists. The fact that the *Universidad Católica* appears so much in the education of advocates and politicians who are anti-EC is no coincidence. This university was the breeding ground of the right wing party UDI, a party which was founded by Jaime Guzmán, the Catholic, neoliberal brain behind the Constitution of 1980 and the political and economic reforms of the dictatorship. What this means is that the Catholic belief in natural law with its implications for family and gender relations, which are at the base of Guzmán's political thought, have also permeated the legal framework and can easily be rescued by conservative sectors when they oppose progressive reforms. On the other hand, the *Universidad de Los Andes* has been quite influential within the Catholic economic elite in Chile, and by identifying people with links to the university in the process at different levels i.e. lawyers Jara and Romero, Minister Bertelsen, business owners Yarur and Harding and medics Illanes and Mena, we can assume that the university is somehow over-represented in the opposing side of the emergency contraception debate.

Politicians against EC were across the right/left divide. This could be evidence of the weight of confessional political parties on both sides of the Chilean political spectrum (*Unión Demócrata Independiente* (Independent Democratic Union) (UDI) and *Democracia Cristiana*

(Christian Democrats) (DC)). Religious arguments were consistently used by politicians in the parliamentary debate, while the Church was represented in the various steps of the process. Politicians speaking openly and leading the processes tended to be closely linked with religious groups (i.e. Ossandón, Chahuán and Katz). However, there is also an element of political calculation from the perspective of pro-life advocates, and due to this calculation, right wing politicians are not taking a stronger anti-EC and anti-abortion stand, as they are influenced by a change in public opinion towards more progressive attitudes (page 219).

Finally, the debate on EC was closely linked to discussing the legitimacy of abortion. Both sides of the debate were conscious of this. In fact, the debate on abortion was opened and it was part of the electoral campaign in 2014. Bachelet's government promised to push for a law on abortion in cases of rape and health of the mother and foetus. In a sense, despite the effectiveness of the anti-EC campaign and the long duration of the process, it was not successful in either blocking access to EC in the public sector, or in stopping the debate on abortion, even considering that there could have been an political opportunity to strengthen the pro-life position during the four years of Sebastián Piñera's government.

# Chapter 9

## The conservative view and strategies on abortion

### 9.1 Introduction

During the last decades Chile, public opinion has increasingly shifted to a more open and tolerant view on abortion. However, it is still a highly contentious issue. This chapter will expose how and why abortion is one of the most important struggles for conservative advocates. It will start by analysing the situation on abortion in Chile, the strategies and social and institutional processes, public opinion and the drive of the resistance to legislate on this issue. I will also look at the legislative negotiations of the several laws on abortion that have been presented in Congress and their results. Then, I explore the philosophical and religious arguments opposing abortion, and the conservative strategies, including the use of sympathetic media, novel advocacy practices and the resistance of conservative groups within the private health system. One of the key findings in this section is that ideational

factors on abortion are linked to transcendental beliefs about the nature of humans and their relationship with god, and how for many within the pro-life sector, this should not be compromised. In this process, and within the debate around access to contraception, it is useful to look beyond the political processes and explore the role of business elites in the market of private health, and to the strategies of conservative actors who have increased their proactive and public roles with strong and aggressive communication campaigns.

### **9.1.1 Abortion in Chile**

Women's access to safe and legal abortion varies globally. According to global indicators analysed by Sedgh et al. (2012), abortion rates were up to 28 abortions per 1000 women aged 15 to 44 years in 2008; and estimates of unsafe abortions - i.e. abortions conducted outside the law in countries with no law or limited legal access or without adequate medical attention where there is a law - constituted 49% of abortions globally in 2008. Because of the restrictive laws in Latin America, the rate in the region is of 32 per 1000, with only two of them considered safe, i.e. a 95% of all abortions in the region in 2008 were considered unsafe (the same number for Europe is 9%, 40% in Asia and 97% in Africa). Moreover, abortion rates are lower in places that have liberal abortion laws, and while there is a general decline in abortion rates, the proportion of unsafe abortions has increased globally (Sedgh et al. 2012). In Latin America, unsafe and illegal abortions affect all women, but it is particularly complex for poor women who do not have the means to access quality illegal services, and are exposed not only to unsafe conditions, but also to being reported to the police when they seek help in public hospitals when there are complications (Lamas 2008). The official figures for Chile estimate that from 2001 to 2012, there have been 395,905 hospitalizations for cases of abortion before the 22<sup>nd</sup> week, an average of 32,992 per year (Gobierno de Chile 2015).

The legal framework also varies, from countries which prohibit any form of abortion to the ones that allow free access, like Cuba, in Latin America. In 2015, Chile was one of the few countries that did not allow it under any circumstance. This puts the country within a minority. Ninety-seven per cent of countries in the world allow abortions - at least when the mother's life is at risk - and only 3% of countries have completely criminalized abortion. These countries encompass only 1% of world population (González Vélez 2011). Despite restrictive laws and a slow pace to address the issue in the region, Lamas (2008), argues that the right to choose has been a struggle for Latin American feminists, that since the beginnings of the women's movements, they have demanded voluntary motherhood, a stop in sexual violence and respect for sexual choices. The struggle has been fruitful in countries such as Mexico, Colombia and Uruguay, where the feminist movement has pushed for legal and constitutional reforms, which have guaranteed free access to abortion (Abracinskas & López Gómez 2007, Brown 2004, Belgrano Rawson 2012, Amuchástegui et al. 2010, Jaris Mujica 2007, Molyneux 1988, Reuterswärd et al. 2011). However, there have also been some backlashes, for example in El Salvador and Nicaragua which previously accepted therapeutic abortion, it has been completely banned. In both countries, the political parties - Ortega's government in Nicaragua and parliament in El Salvador - accepted the political demands of the Catholic Church, and restricted abortion laws even further. Similar efforts have been made at federal level in Mexico after the change in legislation in the federal state of Mexico City (Amuchástegui & Flores 2013). According to Lamas (2003), Mexico has a more advanced legislation because the separation of Church and state in the country is stronger and older. However, despite the advances, legal frameworks continue to restrict women's choices, forcing them to listen to counsellors who will try to dissuade them, or otherwise restrict the right by requesting the authorization of parents or husbands (Lamas 2003, p. 145). As we will see in the case of Chile in this chapter, the Vatican and the Catholic Church have constantly resisted and blocked attempts to liberalize legislation in the region, and it is

due to the strategic advocacy of women's organizations that some legislations have advanced.

In Chile, the fact that all forms of abortion have been criminalized has been extensively commented on by several international human rights mechanisms. In 2006, the CEDAW Committee recommended the Chilean state remove the criminal punishments imposed on women who underwent an abortion, and ensure access to quality services for women who went to the hospital for abortion complications. The problem of illegal and unsafe abortions does not only affect women's access to treatment, but there have also been reports of medics and health personnel demanding women's confession before providing care. Therefore, in 2004, the United Nations Committee Against Torture requested the creation of a norm to deem testimonies of women who underwent illegal abortions inadmissible in court (Committee against Torture 2004). The Chilean government took some time to react, and in 2009, under the administration of Michelle Bachelet, the Ministry of Health enacted an internal norm instructing medical and health personnel not to extract confessions, as it infringes professional secrecy and confidentiality (Erazo 2009). Finally, in 2012, the CEDAW Committee requested that the state revise the legislation "with a view to decriminalizing it in cases of rape, incest or threats to the health or life of the mother" (CEDAW Committee 2012*a*, p.9).

Despite the restrictive legislation, public attitudes towards abortion in Chile have increasingly become more accepting of it. The World Value Survey shows that attitudes towards abortion in Chile have changed significantly since the 1990s, from 75% who responded that abortion was never justifiable in the 1989-1993 series, to 43% who did not consider it justifiable under any circumstance in the 2010-2014 series (Table 9.1.1).

In addition, a national survey shows that in 2012, 59.9% of respondents agreed that abortion should be legal if the mother's life was at risk, 67.3% in 2013 and 70% in 2014. If the foetus was unviable, 56.6% agreed in 2012, 68% in 2013 and 67.8% in 2014. In case of rape the percentages are 51.5%, 61.3% and 61.9%. In other cases, such as the mother being

Table 9.1: Is abortion justifiable? (Scale) (Percentages)

	1989-1993	1994-1998	1999-2004	2005-2009	2010-2014
Never justifiable	75	68	66	58	43
2-3	9	11	11	12	17
4-5	10	12	9	13	18
6-7	3	4	5	7	8
8-9	0	1	3	4	4
Always justifiable	1	3	3	3	6
No answer	1	1	2	3	5
<b>(n)</b>	<b>1500</b>	<b>1000</b>	<b>1200</b>	<b>1000</b>	<b>1000</b>

Source: World Value Survey

under 14 years of age, it varies between 21% and 33%, if the couples decided not to have more children it is between 22% and 27%, if the woman decided not to have children the figures are similar and between 14.5% and 21.3% approve of abortion for economic reasons (Universidad Diego Portales n.d.). The figures show that Chileans in general are favourable to a change in legislation, and public opinion is moving. The paradox is, however, that legislators have been slower in following these trends, and some senators have even said that they “do not vote according to surveys” but according to their conscience (Senado de Chile 2012).

To unpack public opinion and look deeper into the characteristics of respondents who are against any form of abortion, I conducted a logistic regression with the database obtained from the UNDP Human Development Report 2010 for Chile. The report was focused on gender equality and the survey conducted included a question on the justification for abortion on a scale from one to ten. The regression looked at the likelihood of respondents answering that abortion is never justified, and controlling for sex, age, income and educational level of the respondents. The results in Table 9.2 show that as respondents’ income and education increases, they are less likely to agree that abortion is never justified; however, as respondents’ age increases, they are more likely to agree that abortion is never justified. Respondents’ sex

Table 9.2: Abortion is never justified (logistic regression: dummy)

(1)	
Abortion is never justified	
Man	0.958 [0.743,1.235]
Age	1.011* [1.002,1.019]
Income	0.896*** [0.846,0.950]
Education	0.882*** [0.820,0.949]
<i>N</i>	2690

Exponentiated coefficients; 95% confidence intervals in brackets

\* $p < 0.05$ , \*\*  $p < 0.01$ , \*\*\*  $p < 0.001$

Source database from PNUD (2010)

is not statistically significant to predict a response to the question. This shows a paradox, as conservatism in responding to this question is therefore higher in lower income respondents than higher income ones. To understand the influence of class in conservative attitudes is therefore complex, as conservative elites might represent a defined group with little resonance amongst broader upper/middle classes. If we also remember the figures in Section 6.1.1 that show that Chileans are progressively less Catholic, the success of the resistance to sexual and reproductive rights cannot be fully explained by Chileans' conservatism.

## 9.2 Historical analysis of the law proposals

The Pinochet regime criminalized all forms of abortion in Chile just a few months before the start of the official transition to democracy in 1989, as we saw in Chapter 5. The fact that it was done so quickly and without a broader public discussion, indicates that although the issue



is at the core of conservative and Catholic beliefs, the policies on abortion are contentious (Lagos Lira 2001, Htun 2003). Several scholars agree that there has been a general lack of progress and interest to promote legislative reforms on abortion in Chile (Blofield 2001, 2006, Blofield & Haas 2005, Htun 2003). However, since the early 2000s, 13 law proposals have been presented in Congress by parliamentarians; ten to reinstate therapeutic abortion and three to criminalize it even further. All of them were either rejected or filed, except two presented by parliamentarians in 2013, which have not been reviewed. Proposal 6522-11 had 18 votes against and 15 for; proposal 6591-11 had 22 votes against, 9 for (Senado de Chile 2012, Casas & Vivaldi 2013). The latest law proposal was presented in 2015 by the executive and is currently being discussed. This last proposal has possibilities of being approved, and was part of Bachelet's campaign promises.

Currently, the main legal argument used to oppose any effort to decriminalize - even therapeutic - abortion is Article 19 Number 1 of the 1980 Constitution on the protection of the life of the unborn. The fact that this article coexisted with therapeutic abortion for nine years does not dent the conservative argument, as we will see below. In 2012, the Senate discussed and rejected three laws presented from 2009 to 2010 (projects numbers 7373-07, 6522-11 and 6591-11), one of them presented by Senators Rossi of the *Partido Socialista* (Socialist Party) (PS) and Matthei of the *Unión Demócrata Independiente* (Independent Democratic Union) (UDI) in 2010 to allow abortion on medical grounds (Rossi & Matthei 2010). The discussion, which I will go into in some detail below, shows that the rationale of the opposition was grounded in the defence of the protection of life from the moment of conception, based on the constitutional principle mentioned above and replicated during my interviews. The discussion in parliament, however, introduced the principles of the American Convention on Human Rights (Pact of San José) article: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of

conception”. The senators opposing the laws did not acknowledge the fact that the Pact has the caveat “in general” and that the Inter-American Court on Human Rights, based on the American Convention, has a progressive interpretation of the article, reinforcing the right to decide the number and spacing of children and recommending the state of El Salvador allow therapeutic abortion (Corte Interamericana de Derechos Humanos 2012, 2013, Casas & Vivaldi 2013). The senators rejecting the bill also presented themselves as defenders of life and moreover, of the innocent and voiceless, defending the principle of non-discrimination. This also echoes the interviews conducted (Senado de Chile 2012).

Politically, the most interesting proposal was the one presented by Rossi and Matthei in 2010, because it was cross-partisan, did not include rape and was discussed during Piñera’s presidency. The authorship of the proposal shows that the positions on abortion do not necessarily follow the left/right divide. For example, the Christian Democrat Senator Frei, who had been President from 1994 to 2000 and was considered a conservative, declared his support for the law, but some of this fellow party members, such as Senator Soledad Alvear, rejected it. The *Concertación* did not present a united vote, and even senators from the left, such as Ruiz-Equide (PPD), voted against it and made strong remarks against the proposal using arguments similar to those of his right wing colleagues. His statement helps to understand the cross-party nature of the positions on abortion:

“Several colleagues from the right have been very hard with the *Concertación* and with some of us. But they must be careful, because the co-author of the worst project submitted on this issue was a member of the right, and is now an important member of the current [right wing] government. So beware when you make accusations.” (Senado de Chile 2012, p. 155)

According to my data, abortion is the issue where alliances were broken. The *Concertación’s* “politics of agreement” (*la política de los acuerdos*) kept legislative reforms on

this issue out of the official agenda up until the early 2000s. This was followed by inaction when the right pushed for more restrictive laws on abortion, which were rejected by a very small minority of sometimes only two votes (Sehnbruch & Siavelis 2014, Waylen 2010)(Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226). Later on, when the several laws were presented by parliamentarians, the *Concertación* was not able to reach the agreements needed to approve them. I would argue, based on the evidence, that the debate around abortion is highly personal and breaks the consensus within political groups, while public opinion was increasingly accepting of some grounds for abortion and reforms on other issues were already in place. As one interview puts it:

“[T]here is a breaking point to this idea of ‘we are together, but we have different opinions’ - perhaps it is the project authored by Marco Enriquez-Ominami [*in 2007*] with René Alinco and the others - which spoke about decriminalization on some grounds; where their own fellow members of the *Concertación*, including the President of the Chamber Antonio Leal - a progressive guy of the PPD, said they would not proceed with the project because they believed it was unconstitutional. That marks a strong break within the coalition.” (Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. 226)

This break can also be seen in the right. The position of Piñera’s government was publicly and openly “pro-life” but with some complexities that I will go into below. Although Piñera had appointed Matthei as his Minister of Labour (Piñera and Matthei are known rivals within the right), he did not share her liberal stand and declared that he would use his veto power if Congress approved the law on therapeutic abortion (Senado de Chile 2012, Cooperativa.cl 2011).

On the more conservative side of legislative proposals, Piñera’s government also sponsored and gave urgency to a law proposal to declare the 25<sup>th</sup> of March as the “Day of Adoption

and the Life of the Unborn”, presented by UDI’s Senator Jaime Orpis. In the preamble and justification of the law, Orpis stated that the 25<sup>th</sup> of March is celebrated globally as the Day of the Unborn to “protect the value of life and condemn the genocide against defenceless human beings, while reversing the laws that allow abortions” (Orpis Bouchon 2010, Author’s translation). Because the law was sponsored by the government, it was presented by the then Minister of SERNAM - Carolina Schmidt - to Congress. Her arguments are more subtle, based on her government’s priorities to promote and protect motherhood and the life of the unborn. Moreover, she declared that it was a coincidence that this law was being proposed at the same time the laws to allow therapeutic abortion were also being discussed (see above). Defenders of the law fail to mention that the 25<sup>th</sup> of March was introduced as the Day of the Unborn by international pro-life groups globally. This date follows the Catholic calendar, as it is the same day as the Day of the Annunciation when the angel Gabriel informed Mary that she would give birth to Jesus (Congreso Nacional de Chile 2013). I would argue that this omission responds to the effort amongst pro-life groups to use arguments that could appeal to rational and humanistic values. The religious background of that particular date could be perceived - and was by some deputies - as a breach of the separation between Church and state, or even as an effort to impose a religious doctrine in a pluralistic state (Congreso Nacional de Chile 2013, p. 78).

According to a parliamentarian who was part of the discussion, the proposal was spearheaded by the organization Investigación, Formación y Estudios de la Mujer (ISFEM), a well-known pro-life group. It was unanimously approved and not discussed in the Senate, and senators “did not realize what they were approving” (Deputy: feminist member of the PPD. 263). She remembers:

“[The proposal] arrived to the Chamber [of Deputies] and we saw... So, the Family Commission proposed changing it to the Day of the Pregnant Woman,

but they won. As a consequence, it was established by law and approved by Congress. The first time will be now in March. And I told them ‘this is an anti-abortion law’ and we were not able to stop it. The determining factor was the approval of the Christian Democrats, because - [ironically] blessed souls, even though I do not believe in god at the same time Piñera’s Minister of Education was being accused [of something] in the Constitutional Tribunal and Zabaj [DC] was troubled about his vote, so he - Zabaj - renounced his vote for the approval of this law. So many of the Christian Democrats who are with us today [for the decriminalization of abortion] approved this law. They made a political deal.” (Deputy: feminist member of the PPD. 263)

These political negotiations, where public attitudes towards abortion shift according to internal negotiation within coalitions, are not only part of the parliamentary debate. During the government of Piñera, the government’s position in the debate had to be decided. As the government gathered people to work in key ministries such as *Servicio Nacional de La Mujer* (National Women’s Service) (SERNAM), shareholders within the right pushed for their own agendas and the “Women and Motherhood” programme in SERNAM was established, but as one official recounts:

“It took a while for the programme to start. It did not have a clear focus, initially it was thought to be part of the [pro-life] network of those ‘committed to life’, where it was going to deal with issues of abortion, for example. That changed, maybe because of political issues, and it ended up being a centre in support of motherhood.” (SERNAM Advisor Maternity Programme/Piñera. 29)

This does not imply that the government did not have a pro-life discourse, but, that according to one interview, Schmidt - as minister of SERNAM - wanted to keep some distance between her administration and some pro-life groups which were part of the stakeholder group

with whom the minister consulted, who had shown lack of expertise and suggested policies to SERNAM that were highly criticized in the media and the public (Biobio 2011, El Mercurio 2011*b*). In fact, SERNAM had a strong focus on women's access to work at this point, and policies spearheaded by SERNAM had the mark of allowing women to work and fulfil their traditional role as mothers and caregivers, following the Chilean right's tradition of combining liberal views of the economy and the market with traditional ideas of family and gender relations. Not having a stronger pro-life stand would give way to some criticism from pro-life groups. As one of my interviewees said, the government was expected to not only have a discourse that said "no" to abortion, but also a "positive response", meaning public policies to support women who have decided not to abort despite difficult circumstances (Pro-life NGO activist and lawyer. 11, Young activist member of a pro-life NGO/network. 17). This is a direct critique of the right, it was assumed that this coalition should push for an anti-abortion agenda, but it was incapable of moving it forward, as my interviewee accuses:

“[The problem is that] in the end, [for the right] pregnancy is a private matter. Again, that is denying the public interest that we all have in it. And [...] they are not willing to give an answer, because it means costs, it means money, it means creating new programmes. I and those who work on the break with this paradigm [do so] radically - if the state does not give a complete answer, you have to look for it.” (Pro-life NGO activist and lawyer. 11)

Michelle Bachelet, as a presidential candidate and also when elected in 2014, during the annual speech in commemoration of the 21<sup>st</sup> of May, announced that she would put a law to decriminalize abortion on three grounds forward during her government. The mention of the law in the speech of the 21<sup>st</sup> of May was a public declaration on the importance that the government was willing to give to the issue, even though some members of the Concer-

tación thought that it was not necessary to mention it (Former SERNAM official/member of Bachelet's government. 262). The government, led by SERNAM, began the proposal to decriminalize abortion in three cases: (1) when the life of the mother is at risk; (2) cases where the embryo or foetus has congenital or genetic disorders incompatible with life outside the womb; (3) when the pregnancy is the result of rape, with a limit of 12 weeks gestation, and 18 weeks in children under the age of 14 (Gobierno de Chile 2015).

### **9.3 Conservative principles against abortion**

The positions on abortion on both sides of the debate - particularly relevant when listening to pro-life discourse - are a set of three linked arguments: (1) empirical, (2) normative, and (3) metaphysical/religious. They might be used indistinctly in the debate and might generate an unfruitful dialogue, as the principles they draw from belong to different spheres. Firstly, there is a deep metaphysical/religious or philosophical root in pro-life beliefs. This goes beyond the protection of the life of the unborn - or "the innocent" as it is frequently referred to - to a particular understanding of the natural order in which humans live that regulates their behaviour. This then relates to a normative framework that is there to protect and promote this order. To justify these ideas sometimes empirical evidence and data is used, particularly medical evidence, but also epidemiological and even sociological evidence in some cases, for example to describe the negative effects of abortion on societies. Secondly, the voices that speak in these terms - in general - emphasise the rationality of the argument, in an effort to appeal to non-believers, so even if one does not believe in the transcendental side of the pro-life argument, one should do so because it is the rational thing to do. Of course this is the case of the more sophisticated and educated positions I gathered from my interviewees; there is also a sector of the movement that is confrontational and unapologetic

about the religious origin of their morality, such as some evangelical Christian groups and a campaign that uses confrontational methods, such as showing photos of dead babies and fetuses in buses in the capital anytime there is a public seminar or discussion on the issue (Francisca Rivas 2015).

The anti-abortion discourse is quite consistent, and the principles that underline it are easily linked, as the same rhetoric reverberates across activists and advocates. This has been the case with my interviewees. Lake (1986), argues that the consistent anti-choice discourse is the product of a system of “meta-ethical assumptions” based on a set of beliefs about the nature of morality and ethical judgements, making compromise unthinkable and anti-ethical. He argues that the anti-abortion position is based on deontological principles that emphasize the “ethics of duty” and moral obligations that define ethical behaviours, with a clear threshold between right and wrong (opposing teleological ethics, which is aspirational and identifies goals that should be aspired to). This position is particularly intransigent and rigidly based on a single moral rule: to not kill. Abortion in this case is always wrong because the embryo is a person from the moment of conception (more on this below). The most conservative pro-life side believe that ethical principles and moral obligations exist apart from the individual, that they are discovered but not created by people, and therefore are intrinsic to human nature (Lake 1986).

In the interviews, these are linked to a transcendental human aspiration and a god given ordered nature. This principle is fundamental to human endeavour. Transcendental aspirations, in particular religious ones, show the presence of god in human nature (President of Catholic Conservative Foundation. 259). The presence of a natural order prompts conservatives to see the family as an institution that is fixed and based on the reproductive heterosexual couple. It is the biological, or “natural” side of reproduction that guides roles and relationships within families. This family is understood as the most fundamental and



basic for human organization, family is a “second uterus” destined to protect the young offspring (Gynecologist: member of the Opus Dei. Teaches at a private university. 260). This is also fundamental in the resistance to the state’s and society’s interference with young people’s sexuality, protecting parents’ right to control not only the actions of their children, but also the information available to them (Young Historian/ works in conservative think-tank. 257, President of Catholic Concervative Foundation. 259, Pro-life NGO activist and lawyer. 11).

There is an almost obsessive fixation with the heterosexual nuclear family, and it has been part of the many concessions to advance policies on sexuality and reproduction. This model of family has however not been the exclusive practice of Chileans across history, and is more of an ideal type than the norm (Montecino 1993, Salazar 2006, Salazar & Pinto 2002). The model does not recognize the power dynamics and struggles within families, and following the conservative tradition, sees it as an oasis of altruism and love (Pro-life NGO activist and lawyer. 11, Gynecologist: member of the Opus Dei. Teaches at a private university. 260). This principle also guides the conservative understanding of motherhood and the maternal roles within women’s own reflexivity. Mothers’ roles are fixed as a self-sacrificing source of affectivity and care, and it is therefore complex to accommodate women’s rejection of children, in particular to understand abortion (Neonatologist and Pro-life activist. 264). Luker (1984), found in her interviews of pro-life women in the US (and this is also something that echoes amongst my interviewees), that because the embryo is a full human being, women should subordinate other parts of their life to that central aspect of their social and biological mandate. Moreover, Chia (2012) argues that the control and punishment of abortion can be traced to an effort to control women’s sexuality in ancient Catholic texts. Morán Faúndes & Peñas Defago (2013) maintains that in the conservative anti-abortion discourse, hegemonic traditional cultural mandates such as mandatory motherhood, heterosexuality, and the re-

production of the monogamous traditional family are in a sort of tension. Abortion is not only about biological reproduction, but also about power over sexualities and women's bodies, it implies a conflict over women's status, their autonomy and the possibility to question the heterosexual mandate. In sum, the anti-abortion discourse opposes women's autonomy and is strengthening the rigid rules of the traditional family (Morán Faúndes & Peñas Defago 2013).

The presence of god in human nature is translated into a moral order, where sexuality, love and procreation are intrinsically linked. If reproduction is taken out of the sexual act, it loses its true nature and therefore does not reach all its potential (Gynecologist: member of the Opus Dei. Teaches at a private university. 260, Lawyer: member of the Opus Dei and academic at private university. Active against EC. 255, Priest: Member of the Opus Dei with pastoral duties at Universidad de Los Andes. 256). An interpretation of this principle - it is argued - promotes respect within the couple and protects women in their true nature, avoiding the objectification and commodification of sexuality (and of women). This is because if there are no consequences of the sexual act, it can be trivialized, negatively affecting women (Gynecologist: member of the Opus Dei. Teaches at a private university. 260). This is where the opposition to any artificial means of contraception comes from, as conveyed by this conservative physician who belongs to Opus Dei:

“I think contraception goes against physical unity, against the couple and their affections, because contraception is focused on individuals. It gives me great sorrow [that] women have been so blind not to realize the male interest in this. I see it in my patients in [x] hospital, simple people, how do they not realize what they are doing? I'm much more of a feminist because I defend them, [...] women, of course. He tells her something and they cohabit, and she lives with him or has sex [with him], without any commitment, they give them all the rights

without any obligation, without any accountability.” (Gynecologist: member of the Opus Dei. Teaches at a private university. 260)

One of the basic principles of the conservative discourse, as said, is the protection of life. This principle divides the waters, according to the conservative rhetoric. Dworkin (1993) divides this principle into two narratives: (1) the need to protect the foetus because it has interests of its own like any born human being, and as such, has rights of its own (this is what Dworkin calls a derivative argument); (2) human life has an intrinsic value that does not depend on any particular right or interest, i.e. a detached argument. Although Dworkin correctly argues for a conceptual division between these two arguments, the interviews show that both are used indistinctly by the interviewees. However, the main question is still whether an embryo is a person from the moment of conception. The interviews strengthen the idea that the Catholic, pro-life discourse sees biological life within fixed - temporary - limits, starting from the moment of conception and ending in a fixed moment: death. It is therefore binomial and not a continuum. This is also linked to the idea of personhood; what is a person and when does he/she start to be a person? The answer to that, according to the interviewees, is from the moment the egg is fertilized, therefore all attempts to stop that life from realizing its full potential are murder (Young activist member of a pro-life NGO/network. 17, Neonatologist and Pro-life activist. 264, President of Catholic Conservative Foundation. 259, Pro-life NGO activist and lawyer. 11, Gynecologist: member of the Opus Dei. Teaches at a private university. 260) (Morán Faúndes & Peñas Defago 2013, Luker 1984).

Nevertheless, the Church has not had a monolithic position towards the embryo, and the discussion about the ensoulment of the foetus has preoccupied Catholic scholars since the time of Augustine, including Thomas Aquinas, who drew his theories from Aristotle. The positions range from the ensoulment during months after conception when a fully formed

little person could be identified, to the current position that posits that the ensoulment, or in more modern language, that the existence of an independent human is at the moment of conception (Petchesky 1986, Dworkin 1993, Chia 2012, Morán Faúndes & Peñas Defago 2013). In 1974, the official doctrine of the Church used available scientific data, in particular genetics, which showed that the embryo had a unique genetic code - except in the case of identical twins - and the fertilized egg, therefore, was entitled to all the protections and rights of a fully independent human individual. According to Morán Faúndes & Peñas Defago (2013), at this moment, the Church gave more importance to genetic arguments than to theological conclusions. Science enters the stage as a way to legitimize religious doctrine.

Narrowly following the religious doctrine, on the most conservative end of the interviews' spectrum, the argument is that the fertilized egg, and in its later development stages, is an innocent human being that should be protected, where the emphasis is on *innocent* (Pro-life NGO activist and lawyer. 11, President of Catholic Conservative Foundation. 259, Young activist member of a pro-life NGO/network. 17, Neonatologist and Pro-life activist. 264). The innocence of the forming human being is quite relevant when discussing cases where there is a conflict between the life of the mother and the foetus. However, the opposition to abortion is not a homogeneous field, and there is a communitarian tradition within the Catholic Church that justifies the opposition in more sophisticated terms. Here, the normative argument is grounded in the promotion of a communitarian perspective, where bonds of solidarity and community enhance life in general. This communitarian ethic is broader and more profound than the normative moral imposition of some conservative groups. This is clearly articulated by a young advocate, follower of the Jesuit tradition, when talking about the problems with the Chilean pro-life strategies at the time:

“We are reacting to an agenda that is already in place. [We are] making use of

some ethical principles, instead of proposing a broad ethical discussion, instead of taking positions in a wider ethical debate and then applying those principles to unique problems. If you ask me what I propose as a strategy, I would try to promote a community perspective at all levels and in all debates. One, because it makes more sense, and is more complementary to the Church's position on the broader ethical discussion, and secondly, if I had always presented communitarian ethics, when we got to the broader discussion of social [and] reproductive rights [and] education, people would easily understand why I endorse what I endorse and they would not read controlling or normative intentions into it." (Catholic Advocate: member of a Catholic network. 258)

In this context, the dilemma is translated into a struggle between the collaborative communitarian ethic and autonomy and individual liberties, "that is the gap, the community and the individual, what is important to preserve autonomy, and what is relevant to ensure solid communities" (Catholic Advocate: member of a Catholic network. 258). The question is then resolved with the intrinsic value given to human life:

"For example, my defence of life and the framing I am willing to use has to do with human dignity, which emerges from the community, the value of the unique human life in the community, the substrate of the community is the individual human life and you cannot ask the community to give up this substrate, it is the minimum for the community, the absolute protection of these substrates. That puts me together with other pro-life people, I also believe that the dignity of human life is of the highest value, but it is high because the community is based on it." (Catholic Advocate: member of a Catholic network. 258)

In general, the principle of sanctity of life, or Dworkin's *detached argument*, is translated into very concrete practices and norms. In Chile, the legal arguments are based on

the school of natural law. Dworkin's *derivative argument* draws from the principle of respect to all human life and arguments about non-discrimination, borrowing a human rights discourse, which will resonate with broader public opinion (Neonatologist and Pro-life activist. 264, Pro-life NGO activist and lawyer. 11). The interviews show that the fundamental question is what science can tell us about the nature and beginnings of life. If the fertilized egg is a human individual, it should not be discriminated against and should be protected as any other human life. These two principles are backed by a conservative interpretation of the Constitution's Article 19 Number 1. Moreover, these ideas are sometimes based on the interpretation of data and scientific evidence to give weight to the reasons provided. The use of legal and scientific arguments is an attempt at producing a truth detached from human political and power struggles (Morán Faúndes & Peñas Defago 2013). The problem here is that the conservatives' use of science sometimes does not consider that scientific arguments and models must change if the evidence contradicts them, and are not fixed according to deontological and moral principles. This *Universidad de Los Andes*-affiliated physician's arguments show the linkages between an interpretation of scientific evidence, the metaphysical ideas of the sanctity of human life and the normative principles against discrimination:

“The evidence shows that [the fecundated human egg] is an individual of the human species, [so you] have to justify why you will or will not discriminate against that individual of the human species. If you tell me ‘it is an individual of the human species, but the personality is acquired later, when he is able to communicate with the people’, well, you must provide arguments for why you think personality is acquired later; but what we cannot ignore is the biological evidence that says that it is an individual of the human species. What happens when individuals of the human species are not recognized as such? You discriminate.” (Neonatologist and Pro-life activist. 264)

The contribution of data, however, does not end there. There is an ongoing debate about evidence on the consequences of the criminalization of abortion on public health, the effects of unsafe abortion on maternal mortality, the effects of abortion on women's lives, the real number of abortions carried out in the country, the epidemiological need for decriminalizing therapeutic abortion, the health effects of using contraception, etc. The list does not end there. In this case, there are some dialogues with the interviewees that convey this type of discussion. A physician and I were discussing the law presented in 2015 to decriminalize abortion on three grounds. We both agreed that the first two grounds are medically based, and should be based on medical evidence. The problem is then to justify the restriction of voluntary abortion in cases of rape using medical data and not a normative argument:

“Rape? That is a very complex issue where we need to clarify [certain things], we must answer four questions before discussing it. The first question is: who gets pregnant when raped? To understand whether the law will favour people who are raped. Who gets pregnant? First of all. The second is, what is the percentage of pregnancies that are a result of rape? The third is to have evidence that aborting will help women who become pregnant due to rape, fourth, because without that evidence it is difficult to answer the question.” (Neonatologist and Pro-life activist. 264)

He then went on to propose that there are two sets of evidence against the need for the law. The first is that there is proof that abortion would have far more negative mental health consequences for women than the burden of raising a child that is not wanted. This was conveyed to me with absolute conviction, but a review of the current literature shows that if not wrong, this proposition is at least contested (Charles et al. 2008). The second, and more surprising argument, is that he argued that the data shows that women who are raped

do not get pregnant, mentioning a study done in Chicago with a sample of the total cases of rape in a given year. Pressed by me to justify this argument, he said that in Chile it was true that in cases of abuse and repeated rape by family members or a person known to the victim, women many times got pregnant. But if abortion was to be allowed in these cases, it would be used by the perpetrators to force the women and girls to abort and these crimes would remain in impunity. It would promote impunity and not protect women. In cases of rape committed by strangers, he argued that the evidence showed that women do not get pregnant because of the effective prophylactic treatments done in hospitals and health clinics to prevent it and of the low rates of fertility amongst rapists and “sexual perverts”. A review of the literature again showed me that the evidence did not support this argument (Stewart & Trussell 2000, Gottschall & Gottschall 2003, Holmes & Resnick 1996).

## **9.4 Conservative strategies against abortion**

In response to the last (2015) legislative proposal to decriminalize abortion, several actors and stakeholders have taken their positions and public debates show that some arguments tend to resonate with the discussion on sexual education and the access to emergency contraception. Vaggione (2012) argues that pro-life and conservative foundations have learned to mimic progressive NGOs and women’s organizations in their advocacy strategy and framing. This is true in the case of Chile, where conservative foundations have increasingly used open advocacy and lobbying strategies, combined with the more traditional informal and covert practices, such as calling on government officials directly or using power in the market (as shown in the case of sexual education and access to emergency contraception Chapters 7 and 8). Both pro-life and pro-choice groups have manifested themselves in the streets. MILES, a national women’s network, is spearheading the support to the law with public appearances



and advocacy. There are many smaller organizations also advocating and a more radical network that is pushing for free access to any type of abortion. Pro-life advocates have organized themselves in a network *Red por la Vida y la Familia*, and there are many smaller groups belonging to this organization. Some think tanks have been quite vocal and have given philosophical and rational arguments to the groups. These include the traditional right wing conservative organizations such as *Fundación Jaime Guzmán* and the *Instituto Libertad y Desarrollo*; and newer ones led and managed by young professionals, which use an aesthetic and a language that appeals to younger audiences (IdeaPaís n.d., Instituto Res Publica n.d., IES n.d.) with easy to read, simple documents justifying their opposition to therapeutic abortion (IES 2013*a,b*).

The current mobilization of pro-life groups includes some innovative strategies. For example *Mujeres de Blanco* (Women in White), has put on “performances” in front of *La Moneda* (the government building), the parliament and even the Vatican. Young and middle-aged women of middle and upper class backgrounds dress in white and stand silently, with small white cardboard boxes in their hands representing the little coffins of all the unborn and innocent that will be killed if a law on abortion is approved. The demonstrations are quite successful amongst right wing parliamentarians, who do not hesitate to take a picture for the press, with the little “coffins” in their hands (El Mercurio 2015, Mujeres de Blanco 2015, Cooperativa.cl 2015, Puranoticia.cl 2015). These performance are not altogether distasteful in comparison with another campaign which shows the mutilated bodies of fetuses, and they demonstrate the increased assertiveness of upper and middle class conservative groups in manifesting publicly against abortion.

In addition, a younger sector of committed advocates has also been quite vocal in their struggle against the legislation on abortion. These are organizations of young people, men and women, such as *Siempre por la Vida* (Always for Life), who have also mobilized, staging

public manifestations in *La Moneda*, and across the country. They can be identified by their use of red as a staple colour in their shirts and banners. These are also middle and upper class youngsters, high-school and university students, who with an upbeat and positive attitude, defend the life of the innocent unborn baby (Siempre por la Vida 2015). These organizations have strong links with new right wing conservative think tanks who provide documents, videos and promotional materials (Instituto Res Publica 2015, IES 2013*a,b*), and in some cases are the housing organization for the advocacy groups, such as *Chile Siempre* (Chile Always) for *Siempre por la Vida*. There is an interesting connection here between pro-life groups and the political ideas of the right in Chile, which is not necessarily the traditional right, but a younger generation who is reproducing the old dynamic of neoliberal policies and traditional views of family and gender relations. There is no doubt that these groups follow the neoliberal tradition of the Chilean elite, and some were in fact founded as a reaction to the progressive social mobilization that spearheaded the current educational reforms. As a member of *Siempre por la Vida* conveys:

“*Siempre por la Vida* grew out of another foundation. In 2006, there was a student movement, the March of the Penguins. Because of that, a sister organization called *Jóvenes por Chile* (Youth for Chile, later named *Chile Siempre*) was created. They are concerned with education, also based on the principles of freedom and human dignity. They started to gather people, to think and realized that there are many issues that are not being addressed in Chile, abortion for example [...]. And they said ‘there is something important to defend here, something so important [that it needs to be] debate[d]’ and *Siempre por la Vida* was created around 2009.” (Young activist member of a pro-life NGO/network. 17)

The foundations still place a fundamental weight on the family, and follow the 1980

Constitution's ideas of the subsidiary role of the state (Ortúzar 2015). They also have a conflicting relationship with gender equality and feminist ideas, conflicting because there is a definitive push towards neoliberal justifications to include women in the labour market, but also an effort to push for policies that protect and promote women's role as mothers. As such, IES for example, was lobbying and advocating to keep the focus on motherhood in the debate and parliamentary discussion for the creation of the Ministry of Women in 2014 (Young Historian/ works in conservative think-tank. 257). They follow the religious tradition of posing gender roles within the natural remit of sex differentiation, but at the same time, particularly in the case of young women interviewed, looking for women's space in the public sphere and the labour market (Siles & Delgado 2014)(SERNAM Advisor Maternity Programme/Piñera. 29, Young Historian/ works in conservative think-tank. 257).

Conservative business elites have also made their power felt in this discussion. In particular, a sector of private health providers have been quite vocal in condemning the 2015 legal initiative to decriminalize therapeutic abortion. The President of the *Universidad Católica* declared that if therapeutic abortion was decriminalized, his hospitals and clinics would not provide any abortions, arguing conscientious objection. This was followed by similar declarations from other clinics such as the *Clínica de la Universidad de lo Andes*, *Hospital San Bernardo* and the private health network *Red Salud* (with 17 hospitals and clinics). The link between the conservative business elites and their influence on policy making is clearly articulated, as with the role of pharmacies in access to emergency contraception. *Red Salud* is majority owned by *Inversiones la Construcción S.A.* (ILC) (Red Salud 2015), controlled by the *Cámara Chilena de la Construcción* (Econstruccion.com 2011). They not only own a significant share of the private clinics, but also one private health insurer (*Isapre Consalud*) and private schools (*Pumahue*, *Manquecura* and *Nahuelcura*) (Larroulet 2012). According to press reports, *Red Salud* (through *Megasalud*, the network of hospitals and clinics) and

the *Universidad Católica* through their *Red de Salud UC Christus* - are amongst the five corporations that received the majority of public funds through the public health system of free election (the total amount of public funds disbursed to private entities is 633,494 million Chilean pesos, around 977,398,887 US\$) (Urquieta 2015, González et al. 2015). Ricardo Silva, the CEO of *Red Salud*, declared that the negative response to providing abortions does not correspond to a one-time decision, but to a long term strategy addressing health issues. For example, they have always opposed in vitro fertilization, and in general have not provided full access reproductive services based on “ethical choices”. He described the public discussion and the legal initiative as “idle, it seems to have more to do with a bit of indulgence in provoking the Catholic and conservative sectors” (Cristino 2015). This discourse has also been part of some op-ed pieces by businessmen, for example by Francisco Pérez Mackenna, CEO of Quiñenco, another mega business conglomerate, who published a column in *La Tercera* against the law proposal (Pérez 2015).

The media has been covering the discussion of the law proposal of 2015 extensively, and *El Mercurio* again had a similar strategy to the one in 1996 with the JOCAS. On the 11<sup>th</sup> of January 2015, they published a series of notes about the record of the meetings held between SERNAM, the Ministry of Health (MINSAL) officials and several stakeholders - such as public and private health officials and NGOs - from the 27<sup>th</sup> to the 29<sup>th</sup> of November 2014. The documents were confidential and were leaked by someone in SERNAM. They do not show any unexpected or openly controversial conversation, just technical conversations about the drafting of the law, agreements between sectors and some future actions, quite anodyne to an international observer. However, the article caused quite a controversy, particularly amongst conservative sectors and the Christian Democrats, who were outraged because SERNAM was taking the lead on the initiative, and not the Ministry of Health. Parliamentarians in the DC accused SERNAM of being ideologically driven, leaving the decision ultimately to the

mother. Of course the Church also reacted and several bishops made declarations against the contents of the minutes. A government speaker announced publicly that the notes did not show the government official position and the critics should consider that negotiations were still taking place (ACI Prensa 2015, Paul 2015, Valenzuela 2015).

## 9.5 Conclusions

Public attitudes towards abortion have changed significantly in the last two decades. In general, Chileans are now more tolerant and openly accepting of abortion. Moreover, as class and income increases, so does the likelihood of justifying abortion. However, the politics of abortion have been contentious since the complete ban imposed during the dictatorship. Shepard (2006) explores this through the lens of the “double discourse”, where private practices on sexuality are less constrained than the public moral discourse. Public attitudes however are changing, and conservatives use all available means to maintain the control over the public discourse. This chapter shows that, when taking stock of the work on the issue in Congress, there has been no lack of proposals, even if they have not been successful. Voting and discussion in parliament show how politicians present their positions. The left/right divide is not consistent with a particular position on abortion and this is the issue where both coalitions lost the discipline of their members of parliament. The debate is highly personal and breaks the consensus within political groups. I have gone into some detail about the principles and philosophical discussions involved in the pro-life arguments, I have done this not only to clarify the arguments, but also because these types of discussions were quite important to my interviewees. They presented themselves as coming from a particular ethical perspective and wanted to clarify their specific position on sexuality and reproduction. More than just a pedagogical tool, these discussions invited me to understand that their

opposition was not only about the voluntary interruption of a pregnancy, but an attempt against life and morality itself, against justice and the ordered nature of human relations, a profoundly personal belief, as one of my interviewees conveys:

“It is a personal choice, I have to say, it is for justice, I am convinced that the discussion on abortion is about the stability of the modern world.” (Pro-life NGO activist and lawyer. 11)

From this perspective, the analysis of the parliamentary debate takes a more nuanced view. Not rejecting the idea conveyed by scholars such as Blofield (2006) that politicians respond to pressures from the public, power elites and in particular the Church, politics around abortion also respond to politicians' view of the world and their religious convictions, in particular when they align themselves with the pro-life discourse unpacked above, implying a quite narrow and definitive deontological distinction between right and wrong. Therefore, alliances within coalitions are easily broken and parties are emphatic in leaving the voting to each parliamentarian's individual conscience. The same principle can be applied to business elites, who driven by these beliefs, are willing stop access in services they manage.

In this context, my view is that it is hard to find a critical analysis of evidence and data in the conservative discourse, where the use of evidence by conservative lawyers and doctors in particular is unfortunately quite dogmatic, sometimes maybe even willingly misleading, or - giving them the benefit of the doubt - unconsciously biased. Moreover, the feminist discourse about rights becomes irrelevant from this perspective. Because the conservative pro-life discourse is aligned (or believed to be aligned) to the voice of “reality” and of evidence, that no matter how mistaken or wrong, confirms their views of human life and its beginnings and end, any rights discourse that contradicts these views is not only morally and ethically wrong, but does not reflect “the truth”. This can be seen in the many presentations and documentations of pro-life campaigning, with a trend of phrasing arguments in terms of

telling the public the real facts and realities about abortion, accusing the opposition of hiding and manipulating facts, with language such as “the ones who want to legalize therapeutic abortion show evidence that [...]” and “the fallacy of clandestine abortions” (IES 2013*a*, p.6), and in presenting arguments like the one I discussed on page 266.

Petchesky (1986) situates the discussion on abortion within the larger political and economic system. Here, reproduction is integrated into social relations, and is not only a biological question, but a political issue. In looking at this, we can better understand the involvement of business elites and the investment of conservative politicians. Also, Petchesky draws our attention to reproduction as mediated by the material conditions of pregnancy and social relations, including the relation with Church and state, in particular through history, where motherhood has determined women’s relationship with society. Applying this to this case, the discussion on abortion involves a particular view of the family and of gender relations within it, where changes in reproductive choices, such as the availability of abortion, goes against gender relations understood as “natural” in families. At the core is the conservative emphasis on the biological differentiation of the sexes and their dismissal of gender theory as an ideology (Ratzinger & Amato 2004, Siles & Delgado 2014).

In sum, what this analysis has contributed to is, first of all, to situate the issue of abortion as the one of the most important struggles for conservative advocates, and a struggle that has been divisive even within the right. In addition, I have shown that the ideas and beliefs about abortion are linked to transcendental beliefs about the nature of humans and their relationship with god for many within the pro-life sector, and therefore is part of a core set of issues that they are not willing to compromise on. I have also shown that, as in the case of emergency contraception, the conservative business elite have made their opinion heard, and the business elite resistance to implement any law allowing for therapeutic abortion will have concrete consequences, as the privatization of the health sector has left them with wide

room to manoeuvre as owners of private clinics and private health insurers.



# Chapter 10

## Conclusions

By asking the research questions: “how are policies on sexual and reproductive rights contested and blocked in Chile?” and “what drives this resistance?”, this thesis enriches our understanding of the contention around women’s sexual and reproductive rights and illuminates the complexity of social change and progress towards gender equality. By understanding conservatism in Chile - and overall - more deeply, this research moves us closer to answering these questions. Specifically, by examining gender within institutions and institutional legacies using a conceptual framework that looks at sexual and reproductive rights and conservatism, this thesis provides new knowledge about why and how progressive policies are resisted in the areas of sexuality education, access to emergency contraception, and abortion. Overall, the analysis reveals the interplay between conservative actors and political and economic power, while also unravelling the details of the complex relations between conservatism and the state in Chile. Additionally, it indicates the need for those who are interested in women’s rights and gender equality to further explore and understand the drivers and power of conservative agents. Resistance to sexual and reproductive rights in Chile has been uneven. Some progressive policies have partially succeeded, as is the case with sexuality

education. Others, such as access to emergency contraception, have succeeded as a result of a strong push from the executive. Further policies are still being debated, as is the case of access to abortion. However, in each of these cases, conservative resistance has been there, grounded on coherent principles based on conservative ideology about society, natural law, the family, the sexual division of labour, and gender relations.

This concluding chapter synthesizes and compares the findings from the cases covered in the 5, 7, 8 and 9 chapters and highlights the contributions of the thesis to ongoing research. The chapter starts by looking at the effects of the institutional legacies across the cases and the use of these by conservative advocates. It will then explore the conservative actors and their strategies across the cases, and will finalize with a reflection on the main contributions and relevance of trying to understand what is hindering progressive policies by analysing conservatism.

## **The effective use of institutional legacies to hinder change**

This research demonstrates that key political and economic moments and institutional decisions in the last century are still affecting policy change in Chile today. In particular, the institutional legacies of the dictatorship still partially drive resistance to changes in sexual and reproductive rights through the legacies of institutional norms and rules, such as the subsidiarity role of the state combined with what Capoccia (2016) has called the institutionalization of cultural categories. In the Chilean case, these are conservative cultural categories preventing the redefinition of formal institutional rules and blocking change. In addition, by understanding institutional change as gendered and unravelling the conservative discourse and the policy legacies left in Chile, this research has allowed for a deeper understanding of what drives the resistance to change, including elements outside institutions, such as the

ideological drivers of conservative actors and the influence of the market, and therefore is able to go beyond what Capoccia (2016) and the institutional analysts have done.

However, a historical institutional analysis is useful for understanding the institutional legacies used to revert or block progressive change in sexual and reproductive rights. During the dictatorship, the backlash to gender policies in general, and to sexual and reproductive rights, not only reinstated conservative policies and the *status quo*, but it also left behind legacies that slowed progress during the transition and democracy (Waylen 2010). In particular, the economic and normative institutions, brainchildren of the *Chicago Boys* and the authoritarian thinking of Guzmán, i.e. the subsidiary role of the state and consequent privatization and decentralization of services. Furthermore, Waylen (2010) discusses the political institutional legacies that have determined the capacity of the women's movement to influence the transition and democratic periods of the late 1980s and 1990s; and how the inherited view of the state, the family and gender roles, and sexuality and reproduction has constrained future policy practices and legal reforms. Building on this, this thesis makes a further link between the neoliberal policies of the 1980s (particularly the privatization and decentralization of education), policies that are part of the authoritarian enclaves (Siavelis 2009), and the protection of conservative interests and the values of the conservative elite. The “conservative synthesis” (Cristi & Ruiz 1992) of neoliberal economic policies that spearheaded privatization, decentralization, and a diminishing role for the state and the regime's authoritarian policies, dismantled the incipient access to sexual and reproductive rights of the previous decade. I argue that these legacies, linked with political and normative processes, have made the conservative influence more effective in maintaining the institutional *status quo*, even in a society where social change is imminent. The democratic government inherited some of the state's limitations on their ability to ensure access to rights. In fact, current conservative advocates defend conservative ideas by invoking the principles estab-

lished during the dictatorship, as evidenced by the process to introduce sexuality education by the new democratic governments, where conservative actors argued against it because they saw it as an attempt against the freedom of education enshrined in the Constitution of 1980, and supported by the principle of the subsidiary role of the state. In order to unravel the processes behind this conservative resistance to change, this research has explored the motivations and the points of view of conservative advocates that drive the strategies opposing progressive change. Based on the evidence and data obtained during this research, I argue that the conservative resistance during the democratic period was part of a continuous effort to return to the situation of the 1980s, where gender inequality and restrictive access to sexual and reproductive rights were part of the state policy, supported by the regime's nationalistic and militaristic discourse, and where conservative ideas were well protected. Conservative interviewees used arguments that were, in some cases, quite similar to the ones used by the *junta*. They spoke about decreasing the population and the need to protect the Chilean identity against the increase in migration, while using nationalistic rhetoric to justify the sexual division of labour.

The institutional legacies are also important for understanding the capacity of the economic elite to block change. The system has set a subsidiary role for the state, limiting its ability to act in certain realms, such as the family; and has also given space to conservative private business to influence and implement policies on education and health, limiting the state's capacity to design and implement policy. Chile's slow progress on sexual and reproductive rights can be explained in part because political institutions, in particular political parties, are vulnerable to conservative influences due to the role of the Catholic Church during the transition to democracy; but also because the resistance is spearheaded by committed networks of conservatives driven by a strong conviction on the need to maintain the natural order in societies, in the family, and in gender relations. Policies on sexual and reproductive

rights challenge this order. Blofield (2001) argues that the success of conservative policymaking in Chile is due to the Church's greater access to resources when compared to those of women's organizations and progressive groups. Based on the research for this thesis, I would look at this from a different angle and argue that the success of conservative policymaking has more to do with the religious conservatism of the Chilean economic elites', than with out without the Church's support, successfully drive the integralist agenda. For example, well-placed conservatives, like Jaime Guzmán or Kast, were able to imprint the conservative Catholic dogma onto the reforms of the dictatorship, even though the Catholic Church was more progressive at the time. This tendency has continued, with conservative business elites protecting their interests and imposing their dogmas.

The "conservative synthesis" (Cristi & Ruiz 1992) has left a series of institutional legacies behind that have allowed conservative sectors to ensure their principles are protected not only by authoritarian legacies, but also by decentralization and privatization policies that limit the state's ability to promote redistributive policies to ensure equal access. All the policies analysed in this thesis challenge the Catholic doctrines that made them particularly relevant to conservative groups. The advantage for Chilean conservatives is that some of these principles can be recognized in normative institutions, such as the 1980 Constitution and the laws that regulate the education and health systems. A comparative analysis of the cases here is also useful. During the discussion on sexuality education in schools, the legacies allowed resistance to the policy based on the subsidiary role of the state, as well as on the principles of freedom of education enshrined in the 1980 Constitution, combined with the decentralization and privatization of the educational system. During the discussion about emergency contraception, the debate again was based on the 1980's constitutional discussion on the rights of the unborn, the 1989 criminalization of all forms of abortion, and the decentralization of local health provision, although with less success than with the

resistance to sexuality education. In the case of abortion, the discussion was driven by the fundamental principles of the constitutional understanding of when life begins and the rights of the foetus versus the rights of the mother.

In the theoretical framework (Chapter 2), I explored the idea that sexual and reproductive rights are embedded in the broader social and economic framework that determine people's choices and enable these choices to be enacted. Institutions, such as the Church, can both enable or hinder access to these rights (Corrêa et al. 2008, Corrêa & Petchesky 1994, Corrêa et al. 2008, Corrêa & Reichmann 1994). The analysis of the three cases has shown that the socioeconomic framework can obstruct the access of the general population by curtailing state expenditure and therefore blocking access to sexual and reproductive services. However, the neoliberal framework and its emphasis on the protection of private "liberties" in Chile is also linked to conservative ideas about the patriarchal family. Therefore, conservative advocates in Chile have a problem when the state wants to regulate institutions - such as the family - that they see as critical to their doctrine. This is manifested, for example, in conservative advocates' protection of the private education system, where - specially for upper/middle-class sectors - a big share of the provision has traditionally been in the hands of religious orders, the Church - and now - conservative religious secular groups (like Opus Dei). They protect the *status quo* amongst the elite by placing limits on state action in private schools, with the idea that lower-class public education can be under the scrutiny of the state, but upper/middle-class private education must be spared.

## **Conservative actors and networks across the cases**

This thesis started with the ambition to unravel the details of how conservative actors have succeeded in consolidating a conservative position within institutions, and how they have

blocked and resisted progressive change, as well as how this resistance is constructed and understood by conservative advocates. How did actors and their strategies vary between the cases? The evidence shows that the strategies have varied according to the political and social climate. For example, the historical analysis showed how powerful actors within the *junta*, such as Jaime Guzmán and *Almirante* Merino, were successful in using formal and informal rules to imprint a conservative ethos onto policy processes during the dictatorship. The effectiveness of these actors is revealed in my analysis by evidencing the internal struggles and contradictions during the *junta's* decision making process and discussion that restricted women's sexual and reproductive rights, and the leverage and personal commitment of these extremely conservative members of the establishment when decisions were made. The actors defending the *status quo* and pushing a conservative agenda during the dictatorship were not under the scrutiny of democratic practices. This can be seen in the close analysis of the regime's policy design, in particular on the issue of abortion, where the criminalization was not only contested by members of the *junta*, but was not dealt with for nine years, and even then, the approval to criminalize abortion did not come after a general consensus amongst the *junta*, but by probable pressures and back-stage negotiations by *Almirante* Merino and Jaime Guzmán. One of my key findings is that what appeared to be an enduring and homogeneous pro-life discourse epitomized in the 1980 Constitution invoked by conservatives, was not the case. It was the result of an internal and closed-door discussion among the higher echelons of the *junta*, internally controversial and imposed by a few members. By making this evident, the thesis encourages a deeper, but also a more nuanced understanding of the legacies of the dictatorship, and the power of the actors within these institutions.

The weight of conservative politicians and thinkers allied with a powerful conservative elite is explored further in the cases of restriction to universal sexuality education and access to emergency contraception (Chapters 7 and 8). Here again, we can see the effective

strategy of conservative agents countering change. In both these cases, the effectiveness of conservative networks comes to the fore. Some sectors within the Catholic Church used their networks within formal institutions, such as the planning and evaluation commissions on sexuality education, and also the informal rules inherited from the dictatorship, driving the government to consult with them for every step of the design and implementation of the sexuality education campaign. I demonstrate that the political negotiations to advance these policies were, in part, to convince conservative sectors within the *Concertación* not to reject policy change due to moral disapproval. This process manifests how different approaches and formal institutions within the state apparatus are important and can enable regressive advocacy and resistance. For example, the Ministry of Health, in general, has a more epidemiological and less politicized approach to policy making than the Ministry of Education, at least in some cases; and with more institutional power to oversee and regulate municipal service provision, progressive actors in the health system are more likely to ensure implementation of gender policies (as seen in the case of municipal hospitals versus municipal schools) and conservative local actors have less power to make their resistance felt.

The strategic choices of conservative actors within the state apparatus, as well as their use of institutional processes and legacies to avoid change in sexuality education and in the regulation of young people's sexuality, runs in parallel with increasingly targeted and strong alliance-building. This research has shown that in contrast with the negotiations of the *junta* - behind closed doors and heavily influenced by the generals and their most trusted advisors - negotiating policy design and approval in democratic times, for example in the case of sexuality education, was done with conservative actors within civil society and the private sector, through the Church as an education entrepreneur, or through the influence of the conservative media. The interest that these sectors take in gender-related policies is symptomatic of a change in how policies are decided. Although the authoritarian



government was able to leave important policy legacies behind, from the conservative actors' perspective, they were left with a series of democratic governments that did not represent their conservative and nationalistic ideology. This means that conservative actors that had seen their interests represented and protected directly by the authoritarian regime must now be more proactive in pushing their moral agenda into the public sphere and decision making fora, such as parliament.

In addition, conservative political and economic elites and conservative professionals, medics and lawyers have made their influence increasingly felt. They have taken an active role in resisting progressive policies, through their links to conservative think tanks and Catholic universities. Vested interest groups have also taken part, and Chilean billionaires use their economic power to promote the conservative agenda, either through their companies or by financing conservative universities and foundations. For example, as I outlined in chapter 8, conservative Catholic businessmen had an important role in the efforts to block access to EC. A detailed analysis of the linkages between these business elites and conservative Catholic groups with religious universities, such as the *Universidad de Los Andes* and the *Universidad Católica*, and people belonging to secular Catholic organizations, such as Opus Dei, shows that the conservative networks are increasing in representation and reach. Moreover, by making these connections, this thesis reinforces the idea that in order to understand the success of conservative actors in hindering change, one must look beyond the traditional political arena and state institutions approving, designing, and implementing policies, to the market, economic elites, professional networks, and key educational institutions that host these networks and spearhead conservative ideologies. The analysis of the cases of emergency contraception and abortion also shows that a younger generation of conservative advocates have joined, but that they are also more critical of the traditional right. Committed and educated, these young people are finding their space in conservative agenda-setting.

A comparative exercise is instructive in discerning the different roles and strategies of conservative advocates. In general, the proactive public role of conservative advocates has grown. What started as a closed-door discussion on abortion and the role of the state in times of the dictatorship has become a movement that mimics a social mobilization. For example, the debate on sexuality education was managed as a technocratic and internal discussion amongst experts, with some reach in the press; the emergency contraception debate was a very public battle in the courts and the media; and finally, for the abortion debate, different sectors are using all available means to influence public opinion and even use the market to hinder change. These networks use a plethora of means to maintain control over the public discourse. Lately, with the discussion on access to abortion, Catholic and pro-life organizations and think tanks are appealing to a broader and younger audience. They have started to learn and mimic traditional NGO mobilization with marches and demonstrations in the streets, as was the case with *Mujeres de Blanco* and *Siempre por la Vida*. Conservative elites use their usual strategies, lobbying in Congress and using the sympathetic media to stir the debate. As with emergency contraception, business elites have also made their opinion felt, and private health providers are in a good position to block access to their system if a law on therapeutic abortion is approved.

## **Why analyse the conservative drivers and discourse? Re-directing the feminist gaze**

This thesis is based on the argument that social change can only be understood by also looking at conservative drivers in detail and listening to the narratives of conservative advocates. This ambition differentiates my research from more traditional analyses of gender policies in Latin America, that traditionally look at the effectiveness of the feminist movement and feminist policy making. My approach has proven useful, and through the data gathered in

conversations with conservative advocates; some of them participating directly in the process targeted at blocking the government's will to ensure access to emergency contraception (EC) in the public health system, and some involved in the advocacy to stop a possible decriminalization of abortion; I was able to see that - contrary to much of the analysis done before (Brito Peña et al. 2012, Sotomayor 2012, Martínez 2013, Sepúlveda Zelaya 2014) - the conservative sector view these struggles as largely lost. Their continuous fight to protect the family and their view of reproduction and sexuality is threatened by a state that no longer protects their interests and by a society that is moving rapidly towards more progressive and liberal social norms and practices. Moreover, conservative sectors in Chile believe that they are at a disadvantage. The slow and piecemeal success of progressive sectors in introducing sexuality education in school, access to emergency contraception, and introducing a bill to decriminalize abortion, are perceived by conservative advocates as processes where progressive actors have more means and support from political actors in areas that, for them, are fundamental to their view of humans, religion and of how societies should function.

This research was also able to unpack the history of these conservative ideas and understand the efforts to maintain the *status quo* on sexual and reproductive rights within the broader conservative ideology. The conservative doctrines that move conservative resistance have been amply discussed above (Chapters 2 and 6), but in sum; they relate to ideas on the beginning of life from the moment of conception, the protection of a natural organic social order and - within this - fear of social change; and the mandate to protect the patriarchal family as an institution, with its unequal power relations, hierarchical structures, and imperatives around motherhood and gender relations, which should not be influenced or touched by the state (Scruton 1984, Muller 1997, O'Hara 2011). These ideas influenced the view of the state as subsidiary to intermediate institutions, such as the family. Important sectors of the Chilean economic elites are following these conservative integralist Catholic

ideas through prelates and religious groups like Opus Dei, TFP, and the Legionaries of Christ that are championing these perspectives (Thumala 2007). These integralist Catholics, like some of my interviewees, are committed to the ideas that resist sexual and reproductive rights and gender equality as challenges to true human nature. A nature that is given by god and is beyond any current discourse of rights or equality. They believe that by defending and promoting their dogmas, they protect the *status quo* and the wellbeing of society as a whole. This elite is committed and convinced that they are embarking on a crusade against a social evil. Fundamentally, by unpacking these motivations, we can understand conservative advocacy in a way that does not position conservatives in a reductive framework, simply defending their economic or status interests.

Htun & Weldon (2010) argue that exploring different policies on gender equality with different lenses allows us to find causal links that might otherwise be hidden. By exploring sexual and reproductive rights as status and class-based policies from the perspective of conservative actors and by analysing the resistance to these policies in detail, I was able to unveil various issues. For example, the contentions around public versus private education, as proxy to the discussion of the state's role in issues of sexuality and reproduction in the case of pregnant students' access to education and universal sexuality education, and to emergency contraception in the case of underage girls. I was also able to highlight the role of vested interest groups within the Chilean elite and of the professional conservative groups, such as medics and lawyers, in maintaining the *status quo* when looking at the case of emergency contraception and analysing the private health sector's role in the discussion on abortion in detail.

The analysis of the discussion around the decriminalization of abortion situates it as one of the most important struggles for conservative advocates and it has been divisive even within the right, because beliefs on abortion are linked to transcendental ideals, and

for many in the pro-life sector this is part of a core set of issues that they are not willing to compromise on. Furthermore, the metaphysical/religious justification for being anti-abortion is fundamental to my conservative interviewees. As analysed by Lake (1986), this draws from the nature of morality and ethical judgments, a deontological position does not see an alternative to a moral judgment. Abortion contravenes the prescription not to kill. From this perspective, the analysis of pro-life attitudes in Chile, including those of some politicians and conservative elites, shows that these are linked to their internal moral and religious convictions, a quite narrow and definitive distinction between right and wrong where there is no room for a democratic debate. That is why political alliances are broken on issues of abortion, and parties have to leave voting to parliamentarians' own consciences. This is further evidenced by the finding that amongst the most conservative pro-life advocates, there is a feeling of distance from right wing political parties that are not taking a stronger stand in the anti-abortion debate.

This thesis has demonstrated how important the conservative right has been in resisting and re-shaping public policy around reproductive rights in Chile. In part, my argument has been that the unique combination of historical context and contemporary institutional structures have facilitated this resistance. There are elements that are unique to the Chilean context, such as the internal processes during the dictatorship and the actors that shaped them, leading to the legacies that affected policy change in democracy. But these lay within a more generalizable framework and a conservative ideology advocated by national and transnational conservatives who share an ethos with a global movements, such as the Catholic Church and the pro-life movements. The regional effects of the dictatorship on women's rights have been dissimilar (Htun & Weldon 2010, Htun 2003, Blofield 2008, 2006), but there is space to further explore the similarities or differences within the conservative movements themselves, and unpack the conservative principles manifested not only in policy outcomes,

but also in the drive of the conservative elites and advocates.

By looking closely at the conservative resistance to progress on sexual and reproductive rights, my aim has been to contribute to the feminist scholarship, examining a field that has not been sufficiently explored from a feminist perspective. By unpacking the principles challenged by progressive policies and how and why conservative sectors resist these policies, this research has highlighted links, strategies, and actors that contribute to our understanding of social change. By listening to and scrutinizing conservative groups I understood, amongst other things, that they are so committed to these strategies because they think they are losing the battle, and that progressive and feminist agendas have more support and resources than they have. Feminist advocates also informed me that progress has been slow in Chile, but that there is progress nevertheless, and that Chileans are increasingly more aware of their rights. I had to conclude this research before the final vote on the proposal for a new law to decriminalize therapeutic abortion. This will be the moment that will prove whether Chilean conservatives still have the power to block progress.

# Appendices

# Appendix A

## Religion

Table A.1: How important is religion in your life? (Percentages)

	Total	Argentina	Brazil	Chile	Colombia	Ecuador	Mexico	Peru
Very important	50	24.1	51.5	23.8	58.9	67.1	58.4	49.9
Rather important	29.3	32.1	37.9	35.1	26.5	20.8	25.4	30.3
Not very important	14.1	24.7	7.3	27.3	11.1	9.5	11.2	15.7
Not at all important	6.1	17.8	3.2	13	3.5	2.7	5	2.8
No answer	0.3	0.7	0.1	0.7	0.1	0	0	0.7
Don't know	0.2	0.7	0.1	0.1	0	0	0	0.5
<b>(n)</b>	<b>9440</b>	<b>1030</b>	<b>1486</b>	<b>1000</b>	<b>1512</b>	<b>1202</b>	<b>2000</b>	<b>1210</b>

World Value Survey Wave 6: 2010-2014



Table A.2: How often do you attend religious services?(Percentages)

	Total	Argentina	Brazil	Chile	Colombia	Ecuador	Mexico	Peru
More than once/week	12.9	7.6	22.6	6.4	15.2	11.5	13	9.3
Once/week	28.5	12.4	27.3	17.1	33.1	37.4	33.2	30.4
Once a month	16.4	15.9	15.1	13.1	15.6	20.3	16	19.3
Only/special holy days	7.4	12	4.3	10.8	2.4	9.4	11.6	1.9
Once/year	5	7.3	3.3	6.7	6.3	3.1	5.1	3.4
Less often	13.5	15.6	18.9	13.9	14.3	9.5	7.6	17.8
Practically never	15.3	29.1	7.8	28.8	12.7	8.7	13.2	14.7
No answer	0.7	0	0.2	2.3	0.3	0.1	0.2	2.7
Dont know	0.3	0	0.6	0.9	0.1	0	0	0.6
<b>(n)</b>	<b>9440</b>	<b>1030</b>	<b>1486</b>	<b>1000</b>	<b>1512</b>	<b>1202</b>	<b>2000</b>	<b>1210</b>

World Values Survey Wave 6: 2010-2014

Table A.3: Religious denomination

	Total	Argentina	Brazil	Chile	Colombia	Ecuador	Mexico	Peru
None	18.2	16.9	15	23.1	21.4	23.5	18	10.1
Buddhist	0.1	0.5	0.2	-	0.1	-	-	-
Hindu	0.1	0.2	0	0.1	-	-	-	0.2
Other	1.8	9.7	1.2	-	0.9	0.3	0.8	1.4
Jehovah witnesses	0.5	0	0	-	-	1.2	1.2	1
Other, Brazil*	0.1	-	0.5	-	-	-	-	-
Jew	0.1	0.3	0.1	0.1	-	-	-	-
Mormon	0.2	-	-	-	-	0.5	0.5	-
Muslim	0.1	0.2	0.1	-	0.1	-	-	0.1
Orthodox	0.1	0.4	0.1	-	-	-	-	-
Seven Day Adventist	0.4	0	-	-	-	0.4	0.4	1.9
Spiritista	0.5	0	3.5	-	-	-	-	-
Total	4	11.3	5.7	0.2	1.1	2.4	2.9	4.6
Christian	2.2	-	-	-	13.4	-	-	-
Pentecostal	0.4	-	-	-	-	0.4	1.6	0.4
Protestant	3.2	1.2	3.6	11.2	0.1	-	-	10.1
Evangelical	6.9	-	22.4	-	2.3	11	7.8	0
Total	12.7	1.2	26	11.2	15.8	11.4	9.4	10.5
Roman Catholic	64.6	69.6	52.8	63.8	61.3	62.6	69.6	73.4
Don't know	0.2	-	0.3	1.2	-	-	-	0.2
No answer	0.5	0.9	0.3	0.5	0.3	0.1	0.2	1.3
<b>(n)</b>	<b>9440</b>	<b>1030</b>	<b>1486</b>	<b>1000</b>	<b>1512</b>	<b>1202</b>	<b>2000</b>	<b>1210</b>

\*Espiritista, candomblé, umbanda, esoterism, occultism

World Value Survey Wave 6: 2010-2014

Table A.4: Religious denomination Chile 1999-2014 (percentages)

	1989-1993	1994-1998	1999-2004	2005-2009	2010-2014
No religion	17	12	34	20	23
Buddhist	0	0	0	0	0
Evangelical	0	9	8	0	0
Hindu	0	0	0	0	0
Jew	0	0	0	0	0
Orthodox	9	0	0	0	0
Other	3	4	2	0	0
Protestant	1	3	2	17	11
Roman Catholic	68	71	54	61	64
No answer	1	0	0	1	0
Dont know	0	0	0	0	1
<b>(n)</b>	<b>1500</b>	<b>1000</b>	<b>1200</b>	<b>1000</b>	<b>1000</b>
World Value Survey					

# Appendix B

## Interviews

Table B.1: List of interviewees

Name	Code	Male/ female
1. Feminist activist: Researcher on gender issues. She was part of <i>Concertación de Mujeres por la democracia</i> has been part of many government commissions and done extensive research on women and gender issues in Chile. She is well known amongst feminist and the traditional political left.	001	F
2. Staff of Lutheran Foundation, experience in managing shelters for women survivors of domestic violence	002	F
3. Feminist Activist: former member of women's NGO. She was part of a feminist collective in the 1990, with extensive experience in working with women's grassroots organizations	005	F

- |   |     |   |
|---|-----|---|
| 4. Anthropologist, feminist advocate, former NGO sub-director also part of the women's movement to return to democracy, founded a women's NGO after the transition.                   | 006 | F |
| 5. Political scientist, working in international development agency, feminist advocate, part of many government commissions during the <i>Concertación</i> .                          | 007 | F |
| 6. Sociologist, feminist academic. Has set a gender discussion group in the University of Chile   | 008 | F |
| 7. Progressive Catholic and Activist, member of Catholics for a Free Choise   | 009 | F |
| 8. Feminist activist with links with the new left, currently member of a feminist network for EC and active in the social mobilization on support of EC.                              | 010 | F |
| 9. Pro-life NGO activist and lawyer.. Young conservative activist, founder of a conservative legal foundation that lobbies and litigates cases against sexual and reproductive rights | 011 | M |
| 10. Progressive medic: active member of the coalition for access to EC.   | 012 | F |
| 11. Former SERNAM official. currently staff of a liberal foundation for women's empowerment   | 013 | F |
| 12. Local Public Health Official: Municipal staff. In charge of municipal health clinics and hospitals in suburb near Santiago.   | 014 | M |
| 13. Activist: Member of a feminist network. Former staff of SERNAM, currently retires and was part of the movement supporting access to EC  | 015 | F |

14. Researcher CEPAL on sexual and reproductive rights issues.	016	F
15. Young activist member of a pro-life NGO/network. Active in the mobilizations in rejection of a law to decriminalize abortion	017	M
16. Gender Advisor at an international organization	018	F
17. Official of MINSAL/Bachelet: active for access to EC. As member of the Ministry of Health, she was one of the main proponents of the policy on universal access to emergency contraception	019	F
18. Christian Democrat Mayor of a Municipality in Santiago.	020	F
19. Former Gender Advisor International organization, she also was staff in SERNAM and is currently active in feminist networks	021	F
20. Staff at Mainstream Unit MINEDUC.	022a	F
21. Staff at Mainstream Unit MINEDUC.	022b	F
22. SERNAM Advisor on the Violence against women programme during the Piñera administration	023	F
23. Former High Level Official SERNAM during Concertación. member of the Christian Democrats.	025	F
24. Lawyer: feminist academic working in Private University.	027	F
25. Activist: Member of a feminist network	028	F
26. SERNAM Advisor Maternity Programme/Piñera. Young professional former staff and volunteer of charity foundation Un Techo para Chile	029	F
27. Health Ministerial Adviser on Gender/Piñera.	030	F

28. Lawyer/Catholic Right Wing Academic in Private University., considers himself a moderate within the catholic right	033	M
29. Feminist activis: director of women's rights NGO. Part of the few women's NGOs still active in Chile	043	F
30. Activist: Member of a feminist network. Journalist and activist currently member of a feminist network for EC, was part of a regional network for sexual and reproductive rights	044	F
31. Pscyologist: Feminist academic at Universidad de Chile. Member of several commissions during the <i>Concertación</i> , including on sex education	045	F
32. Director of Foundation on women's empowerment in Chile. She is a billionaire, business oriented and member of the non-conservative elite	046	F
33. Local Public Health Official, works in the department of health in the municipality in a suburb of Santiago	050	F
34. Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC.	226	F
35. Former Gender Adviser-Ministry of Education during the <i>Concertación</i> .	251	F
36. Feminist academic, written on sexual and reproductive rights	253	F
37. Academic at Jesuit Private University: involved in Sex Ed. policy evaluation.	252	F
38. SERNAM high level official/Bachelet	254	F
39. Lawyer: member of the Opus Dei and academic at private university. Active against EC.	255	M

40. Priest: Member of the Opus Dei with pastoral duties at Universidad de Los Andes.	256	M
41. Young Historian/ works in conservative think-tank., has written against the “gender ideology”.	257	F
42. Catholic Advocate: member of a Catholic network. Identified with the Jesuit tradition, speaks habitually in pro-life events	258	M
43. President of Catholic Concervative Foundation. His foundation can be traced to back to the early 1960s. Outspoken against any progressive policy in parliament.	259	M
44. Gynecologist: member of the Opus Dei. Teaches at a private university. Researcher on “natural” methods of pregnancy control and firm critic of any artificial method of contraception	260	M
45. Academic <i>Universidad Finis Terrae</i> , with close links to the liberal right	261	F
46. Former SERNAM official/member of Bachelet’s government. Currently part of Bachelet’s Cabinet	262	F
47. Deputy: feminist member of the PPD.	263	F
48. Neonatologist and Pro-life activist. Member of the Opus Dei, vocal critic of EC and abortion, one of the spokespersons of the pro-life movement	264	M
49. Conservative Journalist: worked in El Mercurio.	265	F
50. Gender advisor MINSAL/Piñera	266	F
51. UNFPA official	267	F

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## B.1 Interview Schedule

### B.1.1 Progressive interviewees

#### 1. Areas

- Issues that are difficult to work?
- Why is it important to work on SRR?
- Personal reasons to work in SRR?

#### 2. Changes

- How has the situation changed?
- Do you see changes in the future?
- How?
- Why?
- Relation with other processes of social change

#### 3. Strategies and actors

- Main actors or groups working in the area
- What position do they represent?
- How do they relate to other positions?
- How much influence, why?

#### 4. Resistances

- What are the main resistances?

#### 5. Strategies

- what strategies do you use?
- successes and failures

### **B.1.2 Conservatives**

#### 1. Areas

- Issues that are difficult to work?
- What areas or processes have you work with?
- Personal reasons to care about the issues?

#### 2. Changes

- How has the situation changed?
- Do you see changes in the future?
- How?
- Why?
- Relation with other processes of social change

#### 3. Strategies

- what strategies do you use?
- successes and failures

Table B.2: Interview codes

Name	Sources	References	Name	Sources	References
Academia	11	22	Maternity	22	59
Influence	5	12	Media	24	54
Agenda	15	38	Michelle	22	63
Debate	21	60	Opus Dei	5	12
failure	7	16	Personal	34	76
Negotiate	10	17	Security forces	6	11
Push	6	9	Politics	35	148
Success	8	13	Alianza	0	0
Public opinion	11	17	Concertacion	20	50
Bodies	10	15	DC	17	64
Bussines	8	15	Left	14	19
Carolina Schmidt	10	21	Nueva Mayoría	1	2
Civil society	10	12	Piñera	30	88
Activism	4	4	Political parties	6	8
LGBT	2	3	Right	30	82
NGOs	6	6	Socialist	8	12
Social Movements	17	29	UDI	11	18
Women Organizations	23	84	Power	10	23
Class	16	31	Pro Life	14	46
Concervatism	32	109	Progress	6	8
Data	16	48	Public policy	26	91
Develpmt policies	1	2	Decentralization	14	50
Discrimination	18	40	Local Government	16	71

Divorce	9	11	MINEDUC	16	60
Economic order	0	0	MINSAL	21	59
Market	1	1	Public Service	18	58
Model	13	18	SERNAM	31	127
Neo-liberalism	9	12	Religion	23	61
Privatization	8	15	Catholic	33	159
Education	20	40	Research	3	7
JOCAS	9	51	Resistance	37	204
Role Schools	3	6	Fundamentalism	4	4
Schools	1	3	Reactions Negative	5	21
Sexual education	13	49	Tradition	7	7
Elites	19	36	Resources Pub. Policy	18	61
evidence	7	20	Rights SRH	34	164
Family	24	60	SSR versus VAW	8	15
Feminism	28	86	Types SRR	1	1
Funding	19	36	Abortion	39	224
Gender mainstreaming	10	13	Abortion Rates	7	15
Health	23	92	Therapeutic	2	2
History	7	14	Tres Causales	1	1
Allende	1	2	Contraceptives	15	28
Dictatorship	20	37	Fertility rates	0	0
Frei	1	3	MMR	1	2
Transition	15	26	EC	25	87
Ideology	16	38	EC and Abortion	5	8
Ineficiency Piñera	14	29	Pildorazo	4	5
Inequality	6	12	Teenage pregnancy	20	56

Inqual. acces services	12	17	Risk	5	8
Judiciary	10	24	Role state	22	58
Justice	1	2	Practices state	1	1
Oppresion	2	2	Social change	26	79
Values	2	3	Conflict	6	8
Legislative	2	3	Men resistance	4	8
Laws	31	80	Modern discourse	19	38
Parliament	23	46	Practise v/s Discourse	12	16
Link Global	11	18	Rural Urban	5	8
International AID	4	8	Strategies	24	111
International org.	12	42	Youth	19	36
International Inst	19	42	VAW	32	100
Beijing	1	1	WHR	4	4
Belen do Para	1	4	empowerment	10	15
Cairo	5	7	W. ec empowerment	19	39
CEDAW	1	1			
CRC	2	2			

Sources: Number of interviews mention code. References: Number of times mentioned

# Appendix C

## List of parliamentarians and speakers

Table C.1: List of deputies that signed the petition against the delivery of EC and other contraceptive methods in the Constitutional Tribunal

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1. Claudio Alvarado (UDI)	2. Ramón Barros (UDI)
3. Gonzalo Arenas (UDI)	4. Eugenio Bauer (UDI)
5. Sergio Bobadilla (UDI)	6. Alberto Cardemil (UDI)
7. Sergio Correa (UDI)	8. María Angélica Cristi (UDI)
9. Francisco Chahuán RN)	10. Roberto Delmastro (RN)
11. Andres Egaña (UDI)	12. Enrique Estay (UDI)
13. Marcelo Forni (UDI)	14. Pablo Galilea (RN)
15. René Manuel Garcia (RN)	16. Alejandro García Huidobro (UDI)
17. Javier Hernandez (UDI)	18. Amelia Herrera (RN)
19. José Antonio Kast (UDI)	20. Juan Lobos (UDI)
21. Rosauro Martinez (RN)	22. Juan Masferrer (UDI)
23. Patricio Melero (UDI)	24. Cristián Monckeberg (RN)
25. Nicolás Monckeberg (RN)	26. Iván Norambuena (UDI)

- |                                  |                            |
|----------------------------------|----------------------------|
| 27. Carlos Recondo (UDI)         | 28. Roberto Sepúlveda (RN) |
| 29. Marisol Turren (UDI)         | 30. Jorge Ulloa (UDI)      |
| 31. Gonzalo Uriarte (UDI)        | 32. Ignacio Urrutia (UDI)  |
| 33. Alfonso Vargas (RN)          | 34. Germán Verdugo (RN)    |
| 35. Gastón Von Mühlenbrock (UDI) | 36. Felipe Ward (UDI)      |
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Table C.2: List of speakers in discussion in Congress on Law 20,418

Pro	Against
Hearing in Health Commission	
1. Universidad de Santiago de Chile Horacio Croxatto Avoni	Conferencia Episcopal de Chile Monseñor Alejandro Goic Carmelic; Enrique Palet Claramunt
2. Instituto Nacional de la Juventud: Juan Eduardo Faúndez Molina; Claudio Coloma Rojas; Carola González Gallinato; Heidi Fritz Horzella	Universidad Católica de Chile: Patricio Ventura Juncá del Tobar
3. Colegio Médico: Pablo Rodríguez Whipple; Hugo Rivas Lombard	Fundación Jaime Guzmán: Jorge Jaraquemada Robles; Francisco López Díaz
4. Sociedad Chilena de Obstetricia y Ginecología Infantil y de la Adolescencia: Pamela Oyarzún Gomberoff	Acción Familia: Juan Antonio Montes Varas; Mathias von Gersdorff Tromel
5. Corporación Humanas: Camila Maturana Kesten; Paulina Maturana Vivero	Corporación Unidos por la Vida: Carmen Croxatto Ovando.



6. Observatorio Género y Equidad: Teresa Valdés Echeique	Asociación del Consumidor Organizado, la Patricia Gonnelle Zauschkevich
7. Sociedad Chilena de Obstetricia y Ginecología Infantil y de la Adolescencia: Ramiro Molina Cartes	Corporación Calcuta Chile: Enrique Estay Cuevas; Eduardo Montalva Pérez; Marianka Egaña Cerda
8. Sociedad de Pediatría, Comité de la Adolescencia: María Eugenia Henríquez Canessa	Facultad de Medicina de la Universidad de Chile: Elard Koch Cabezas
9. Mesa Ampliada de Entidades Evangélicas de Chile: Pastor Francisco Javier Rivera Mardones; Obispo Alberto Villalón Becerra.	
10. Foro Red de Salud de Derechos Sexuales y Reproductivos: Rosa Yáez Sols.	
Speaker in the Chamber of Deputies	
1. Universidad de Santiago de Chile: Horacio Croxatto	Pontificia Universidad Católica de Chile: Patricio Ventura Juncá
2. Sociedad Chilena de Obstetricia y Ginecología Infantil y de la Adolescencia: Ramiro Molina	Universidad de Los Andes: Sebastián Illanes
3. Universidad Diego Portales: Lidia Casas Becerra	Universidad Católica de Chile: Miguel Ángel Fernández González
4. Universidad Diego Portales: Jorge Correa Sutil	Derecho de la Universidad Miguel de Cervantes: Francisco Cumplido Cereceda

5. Mesa Ampliada de Entidades Evangélicas: Obispo Emiliano Soto Valenzuela; Francisco Javier Rivera	Universidad Católica, Patricio Zapata
6. Rabino de la Comunidad Israelita de Val- paraíso Viña del Mar, Efraím Rosenzweig Gran Logia de Chile: Juan Antonio Bocáz	Conferencia Episcopal de Chile: Alejandro Goic Karmelic; Monseñor Chomalí
7. Centro de Cultura Islámica: Fuad Musa	Pastor Gobernante de la Catedral Evangélica de Santiago, Eduardo Durán Castro
8. Corporación Humanas: Camila Maturana	Fundación Chile Unido: María Cristina de la Sotta F.
9. Sociedad Chilena de Medicina Repro- ductiva: Ricardo Pommer.	
Speaker in the Senate	
1. Programa Nacional de Adolescentes y Jvenes del Ministerio de Salud: Paz Robledo	Conferencia Episcopal de Chile: Monseñor Alejandro Goic Karmelic
2. Government: José Antonio VieraGallo; Laura Albornoz; Alvaro Erazo	Universidad Católica de Chile, Patricio Ven- turaJuncá; Manuel Santos
3. Universidad de Santiago de Chile: Horacio Croxatto	Asociación Accin Familia: Juan Antonio Montes.
4. Colegio Médico de Chile: Pablo Rodríguez	Universidad de Chile: Elard Koch.
5. Instituto Nacional de la Juventud: Juan Eduardo Faúndez; Heidi Fritz	Asociación de Consumidores Organizados (ACONOR): Patricia Gonnelle Zauschkevich
6. Sociedad Chilena de Ginecología Infantil y de la Adolescencia: Pamela Oyarzún	Corporación Calcuta Chile: Enrique Estay.

7. Corporación Humanas, Paula Maturana	Corporación Investigación, Formación y Estudio sobre la Mujer (ISFEM): Carmen Croxatto.
8. Coordinadora del Observatorio Género y Equidad: Teresa Valdés	Fundación Jaime Guzmán: Jorge Jaraquemada
9. Sociedad Chilena de Obstetricia y Ginecología Infantil y de la Adolescencia: Ramiro Molina	
10. Sociedad Chilena de Pediatría, Comité de la Adolescencia: Mra Eugenia Henrquez	
11. Comisión Jurdica de la Mesa Ampliada de Organizaciones Evangélicas, Francisco Javier Rivera.	
12. Presidenta del Foro de Salud de Derechos Sexuales y Reproductivos: Rosa Yáñez	

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- Young activist member of a pro-life NGO/network. (17), 'Interview 017'.
- Young Historian/ works in conservative think-tank. (257), 'Interview 257'.

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# Interviews

Academic at Jesuit Private University: involved in Sex Ed. policy evaluation. (252), 'Interview 252'.

Activist: Member of a feminist network. (15), 'Interview 015'.

Activist: Member of a feminist network. (44), 'Interview 044'.

Catholic Advocate: member of a Catholic network. (258), 'Interview 258'.

Christian Democrat Mayor of a Municipality in Santiago. (20), 'Interview 020'.

Conservative Journalist: worked in El Mercurio. (265), 'Interview 265'.

Deputy: feminist member of the PPD. (263), 'Interview 263'.

Feminist activist: Researcher on gender issues. (1), 'Interview 001'.

Feminist Lawyer and Academic: member of Sex Ed. evaluation and coalition to access EC. (226), 'Interview 226'.

Former Gender Adviser-Ministry of Education during the Concertación. (251), 'Interview 251'.

Former High Level Official SERNAM during Concertación. (25), 'Interview 025'.

Former SERNAM official/member of Bachelet's government. (262), 'Interview 262'.

Gynecologist: member of the Opus Dei. Teaches at a private university. (260), 'Interview 260'.

Health Ministerial Adviser on Gender/Piñera. (30), 'Interview 030'.

Lawyer: feminist academic working in Private University. (27), 'Interview 027'.

Lawyer: member of the Opus Dei and academic at private university. Active against EC. (255), 'Interview 255'.

Lawyer/Catholic Right Wing Academic in Private University. (33), 'Interview 033'.

Local Public Health Official: Municipal staff. (14), 'Interview 014'.

Neonatologist and Pro-life activist. (264), 'Interview 264'.

Official of MINSAL/Bachelet: active for access to EC. (19), 'Interview 019'.

President of Catholic Conservative Foundation. (259), 'Interview 259'.

Priest: Member of the Opus Dei with pastoral duties at Universidad de Los Andes. (256), 'Interview 256'.

Pro-life NGO activist and lawyer. (11), 'Interview 011'.

Progressive medic: active member of the coalition for access to EC. (12), 'Interview 012'.

Psychologist: Feminist academic at Universidad de Chile. (45), 'Interview 045'.

Researcher CEPAL on sexual and reproductive rights issues. (16), 'Interview 016'.

SERNAM Advisor Maternity Programme/Piñera. (29), 'Interview 029'.

Staff at Mainstream Unit MINEDUC. (22), 'Interview 022'.

Staff at Mainstream Unit MINEDUC. (23), 'Interview 023'.

Young activist member of a pro-life NGO/network. (17), 'Interview 017'.

Young Historian/ works in conservative think-tank. (257), 'Interview 257'.