

# Sex and the State

*Abortion, Divorce, and the Family Under  
Latin American Dictatorships  
and Democracies*

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## Sex and the State in Latin America

One of the more contentious developments of modern politics is the claim of the state to regulate family life and gender relations. How and on what grounds should states organize the rights of parents over children, allocate property within marriage, offer the possibility of and grounds for divorce, and allow women the choice to terminate a pregnancy? In most countries around the world, laws on these issues historically conformed to religious and patriarchal models. State policy granted men almost complete power in the family and limited citizen discretion over decisions about marriage and reproduction. Between the 1960s and the 1990s, the rise of the feminist movement brought new ideas about women's roles, while changes in social practices and the consolidation of democratic politics put pressure on old laws. Lawyers, feminist activists, and liberal and socialist politicians organized to demand reform of laws on family equality and divorce; many also favored decriminalizing abortion. Some states introduced major liberalizing changes in what Glendon has called "the most fundamental shift since family law had begun to be secularized at the time of the Protestant Reformation" (1987: 63). Other countries continued to uphold restrictive laws, often stressing the importance of traditional gender norms to cultural integrity and national identity.

This book studies the experiences of Argentina, Brazil, and Chile during the last third of the twentieth century to understand how and why states make decisions about policy on gender issues. Through comparative analysis, it assesses how the transition from dictatorship to democracy, relations between Church and state, the mobilization of liberal and feminist reformers, and international norms shaped state policy on abortion, divorce, and gender equality in the family. The book reaches some surprising conclusions, and proposes a new, disaggregated approach to studying gender policy and the state. All three countries in this study modified laws to grant women greater rights in marriage. By contrast, only two out of three legalized divorce and none liberalized abortion. This suggests that differences among

gender issues are politically consequential. Rather than treating “women’s rights” or “feminist policies” as a single issue area, we should disaggregate gender issues. The book also stresses how political institutions, including the expert policy-making commissions of military dictatorships and the party systems of democratic polities, shaped the ability of elite reformers to enact policy changes. We also see that, in spite of their vociferous opposition to divorce and abortion, under certain circumstances Roman Catholic bishops can be defeated. Armed with the disaggregated approach, this book explores the conditions in which the partisans of reform “hooked into” state institutions, including the institutions of the military authoritarian state, to bring about change in abortion, divorce, and gender equality in the family.

The last third of the twentieth century witnessed significant economic and political transformations in Latin America. Argentina, Brazil, and Chile experienced military coups in the mid-1960s to early 1970s, prolonged periods of military rule, and transitions to democracy in the 1980s. They passed through state-led economic growth in the 1960s and 1970s, economic crises in the early 1980s, and market-oriented reforms in response to their respective crises. In the 1990s, the three countries together shed their authoritarian and statist pasts and embraced democracy and freer markets. These changes affected the power of the Roman Catholic Church and the status of Catholic values, and altered the role of women in society and the place of the family in citizens’ lives. Argentina, Brazil, and Chile thus provide interesting territory to explore how countries in transition and countries with hegemonic religious institutions negotiate complicated questions about abortion, divorce, and gender equality in the family. The conclusions reached here may have a broader meaning as well, for Latin American experiences mirror the dilemmas faced by many societies in the last decades of the twentieth century. The greater embrace of principles of individual rights and citizen equality produced a tension with models of family life and gender relations upheld by religious doctrine, patriarchal traditions, and conservative and nationalist movements. These conflicts over gender and the state are prominent in national politics, and their outcomes have profound implications for people’s lives.

In the civil law countries of Latin America, laws on abortion, divorce, and family relations are embedded in civil and criminal codes. They are not short-term policies introduced and withdrawn by each incoming government but weighty tomes passed from one generation to the next. The historical institutions of the civil and criminal codes are decades, and often centuries, old. Most predate the imposition of military rule in the region and some date from the nineteenth century. Historically, these codes have provided a continuous framework for the administration of justice amidst coups, constitutional changes, and chaotic economic conditions. Like other institutions, the civil and criminal codes structure social action over time and serve as transmitters of common values, providing “moral or cognitive

templates for interpretation and action” (Hall and Taylor 1996: 939). The law “tells stories about the culture that helped to shape it and which it in turn helps to shape: stories about who we are, where we came from, and where we are going” (Glendon 1987: 8). The civil and criminal laws of Latin America thus have a strong ethical component, making ideas an important part of debates about legal change.

This book shows that liberalizing reforms on gender and the family may come about in surprising ways. Between 1960 and 1990, conservative military governments in Latin America introduced liberalizing reforms to laws on gender and the family. In Argentina in the late 1960s, the military government of General Juan Carlos Onganía promulgated major changes to the civil and criminal codes to grant married women more property rights, permit couples to obtain judicial separations by mutual consent, and make it clear that abortion was permitted for women who had been raped.<sup>1</sup> In Brazil in the 1970s, the military government legalized divorce, altered the marital property regime to grant women more rights, and liberalized laws on family planning. Brazil’s military rulers introduced a national women’s health program, designed, in part, by feminists, in 1983. In Chile, on the eve of its departure from power in 1989, the Pinochet government introduced changes to the civil code, granting married women full civil capacity and erasing the requirement that wives owe their husbands unconditional obedience.

By contrast, though we might expect democratic governments committed to citizen equality and human rights to respect women’s equal rights, the freedom to divorce, and the choice to terminate a pregnancy, this did not occur. Latin American democracies uniformly failed to change old laws on abortion. Argentina and Brazil introduced changes to family law, including, in Argentina, the legalization of divorce. But in Chile, even twelve years after the democratic transition, laws remain restrictive. Chile presents a puzzling combination of economic modernization and social conservatism. It has enjoyed the region’s most rapid rates of economic growth and is considered a model of successful economic reform, rational state institutions, and pioneering social programs. But Chile is the only country in the world (besides Malta) where divorce is not legal and is among the small group of countries where abortion is banned under all circumstances, even to save the mother’s life.

Until now, virtually no scholarly work on Latin American politics has explored these puzzles. Various studies have documented the rise of

<sup>1</sup> As Chapter 6 explains, the Argentine Criminal Code of 1922 was ambiguous on the point of whether abortion was permitted in the event of the rape of *all* women or only the rape of mentally handicapped or mentally ill women. Differing interpretations of the code gave way to a vigorous debate among criminologists. Reformists working under the Onganía regime attempted to give closure to this debate by redrafting the law.

second-wave feminist activism in the region, the multiplication of feminist and feminine groups, and the relationship between these groups, political parties, and the state (Alvarez 1990; Baldez 2002; Charlton, Everett, and Staudt 1989; Craske 1999; Friedman 2000; Gonzales and Kampwirth 2001; Jaquette 1994; Jaquette and Wolchik 1998; Luciak 2002; Matear 1996; Navarro and Bourque 1998; Pitanguy 1996; Rodriguez 1998; Waylen 1994, 2000). More historical analyses have studied the achievement of suffrage and documented early legal reforms expanding women's rights (Dore and Molyneux 2000; Lavrín 1995; McGee Deutsch 1991; Miller 1991). These studies have proposed useful conceptual frameworks for analyzing the genesis of women's activism, and the effects of the democratic transition on women's political participation and women's groups in civil society. There are fewer works that engage in comparative historical analysis of the state and its approach to gender issues.<sup>2</sup> To be sure, there are several studies of gender-related public policies in Latin America, though most focus on a single country (Alatorre 1999; Baldez 2001; Friedman 2000; Haas 1999; Schlueter 2000; Stevenson 1999) or have a descriptive character (Htun 2001a). A few works explore the influence of international norms and treaties on local policy on domestic and sexual violence, women's political participation, and the formation of state agencies on women in different countries (Htun 1998; Htun and Jones 2002; Keck and Sikkink 1998). Yet no one has adopted a comparative, macrohistorical approach to explain variation in gender policy<sup>3</sup> changes across Latin American countries making transitions from dictatorship to democracy.

In this book, I introduce an approach that stresses the distinctiveness of different gender issues. Issues differ in how they are processed politically, the groups that weigh in on policy debates, and the ideas at stake in change. Some policy issues provoke rhetorically charged public debate informed by clashing world views, principled beliefs, and religious and ethical traditions. Other policy issues occupy small groups that spend days arguing over details of syntax and sequence. The prospect of change on some issues threatens the status of Catholic values, prompting bishops to defend the Church's position

<sup>2</sup> One study with an approach similar to this book is Mounira Charrad's *States and Women's Rights: The Making of Postcolonial Tunisia, Algeria, and Morocco* (Berkeley: University of California Press, 2001). Charrad proposes that the relationship between states and tribes was the decisive variable influencing different approaches to family law in the three Maghribi countries.

<sup>3</sup> From this point on, this book uses the terms "gender policies" and "gender rights" to refer to laws and policies on divorce, abortion, and gender equality in the family. In general, however, "gender policies" and "gender rights" may refer to a broader range of policy issues than those considered in this book. "Gender rights" are not the same as "women's rights," for they also involve men. Though gender is frequently used as a synonym for women (Scott 1988), it is better understood to refer to the social organization and cultural interpretation of sexual differences. Gender policies and rights are thus the legal regulations, obligations, and privileges that refer to or reinforce sex relations and sex differences.

in the public sphere. The Church is disinterested in other issues and neglects to flex its muscles in policy debates. These differences among issues stem in large part from how policies are framed (Yishai 1993: 208). “Absolutist” policies tend to be seen in symbolic terms, provoke gut responses and value clashes, and “more likely deal with policy ends than means” (Carmines and Stimson 1980: 80). Religious institutions are likely to weigh in on changes to an absolutist agenda. “Technical” policies, by contrast, demand expert knowledge and provoke little public controversy. Change on technical issues is less likely to put religion on the defensive. In short, “gender rights” is not one issue but many. Opportunities for reform on one issue may not lead to reform on others. To explain policy change, we must disaggregate gender issues.

The book emphasizes the role of “issue networks” – elite coalitions of lawyers, feminist activists, doctors, legislators, and state officials – in bringing about policy change. These issue networks, inspired by ideas of modernity, equality, and liberty; changes in other countries; and international treaties constituted the impetus behind reform. The growth of the second-wave feminist movement, in particular, helped put gender equality and reproductive rights on the policy agenda in many countries. Feminist movements in all three countries raised public awareness about questions of gender, lobbied state officials, and worked with or within the state to help formulate state policy. Yet many members of issue networks were not feminist activists but middle-class male lawyers. These lawyers, who played decisive roles in early abortion reform, the legalization of divorce, and changes promoting equality in the family, have been the unsung heroes of much of gender law liberalization in Latin America. Their activism on gender rights serves as important evidence that gender, far from being a “woman question,” involves and affects all of society.

The possibilities for policy change depended on whether and how these elite issue networks were able to hook into state institutions. Institutional features of military and democratic regimes and the relationship between Church and state shaped this “fit” between issue networks and the state (the notion of “fit” comes from Skocpol 1992: 54–7). Military governments created technical commissions charged with modernizing the civil law, opening a privileged window of influence for lawyers to bring cosmopolitan legal theories to bear on domestic policy. The closed nature of these governments insulated technical decisions from societal input, thus expediting change. As a result, military rulers in Argentina, Brazil, and Chile presided over important reforms advancing gender equality in the family. Under democratic rule, the success of issue networks was more varied, for it depended on the weight of the authoritarian legacy, the political party system, and the strength of executive and partisan commitment to women’s rights. Not all democratic governments were able to complete an agenda of gender equality, renegeing on promises made during the transition and contributing to the trend

toward illiberal democracy in the region (Diamond 1999; O'Donnell 1994; Zakaria 1997).

The other major factor shaping issue network success was the relationship between Church and state. For partisans of legal divorce to succeed, the bishops had to be overpowered and defeated. The eruption of Church-state conflict over human rights, economic policy, and authoritarian rule performed this function, opening a window of opportunity for liberal issue networks to promulgate divorce.

Abortion is a special case in this book, because it provoked considerably more moral conflict than other issues. Even when citizens in Latin America came to accept divorce, they remained deeply ambivalent about abortion. Though the practice is widespread, abortion laws are rarely enforced. Since middle-class women generally have access to safe abortions in private clinics, many see little reason to press for the liberalization of abortion laws. It is primarily poor women who suffer the consequences of clandestine abortions. At the same time, the political clout of abortion opponents grew, particularly after John Paul II became Pope of the Roman Catholic Church and anti-abortion movements organized at the global level. Whereas abortion was once considered a technical issue of interest to criminologists and health practitioners, by the 1970s the abortion debate became polarized around a clash of absolutist values, frustrating political compromise over abortion legislation.

By studying three issue areas in three countries across two time periods (pre- and postdemocratization),<sup>4</sup> the book has a total of eighteen observations with which to test hypotheses and draw conclusions about the causes of policy change (see Table 1.1).<sup>5</sup> Table 1.1 shows that, in spite of their superficial similarities, the timing and content of gender policy in Argentina, Brazil, and Chile differed significantly. This variation is striking across countries and across issues. Brazil started to change its laws first, and these changes continued throughout the period of military rule. Argentina introduced major civil law reforms during military rule, though most of its changes came after the 1983 democratic transition. Chile, by contrast, which waited until 1989 to grant married women full civil status (also under military rule), has still not legalized divorce, and abortion remains illegal under all circumstances. In fact, no Latin American country has liberalized its laws on abortion since the 1940s.<sup>6</sup>

<sup>4</sup> For the most part, the book studies the period between the early 1960s and the end of 1999.

<sup>5</sup> Including several issue areas and distinct time periods in the analysis is one way to multiply observations and minimize the small-number problem in qualitative research (King, Keohane, and Verba 1994).

<sup>6</sup> One exception must be mentioned here. In 2000, the legislature of Mexico City approved changes to the city's criminal code to expand the conditions of legal abortion. Based on a bill introduced by then mayor Rosario Robles, the reforms granted women permission to abort if the pregnancy threatened their health (not just their life), or in the event of fetal abnormalities.

TABLE 1.1. *Dates of Major Gender-Related Legal Reforms in Three Countries*

Country	Issue	Time period	
		Predemocratization	Postdemocratization
Argentina	Family equality	1968 law granted married women full civil capacity and equal property rights	1985 law granted mothers equal parental rights
	Divorce	No change	1987 law legalized divorce
	Abortion	No change	No change
Brazil	Family equality	1962 married women's statute granted married women full civil capacity <sup>a</sup> 1977 law granted married women equal property rights	1988 Constitution upheld principle of sex equality in the family, including parental rights
	Divorce	1977 constitutional amendment permitted legal divorce	
	Abortion	No change	No change
Chile	Family equality	1989 law granted married women full civil capacity	1998 law granted mothers equal parental rights
	Divorce	No change	No change
	Abortion	1989 law withdrew permission for therapeutic abortion	No change

<sup>a</sup> Brazil's 1962 reform came at the end of a democratic period (1946–64), but still preceded the major wave of democratic transitions of the 1980s.

How can we make sense of this variation? This book discerns four patterns in the timing and content of gender policy. Using a common set of variables, each pattern is described in one of the four empirical chapters of the book. Chapter 3 addresses the question of why military governments alleged to be patriarchal and conservative initiated civil law reforms to expand women's rights in Argentina, Brazil, and Chile. It shows that military governments seeking to modernize state and society turned to experts to advise them on legal reform. By creating small, official commissions where experts could deliberate about the law, modernizing military leaders opened a window of opportunity for liberalizing policy changes. Influenced by international trends and the ideas circulating in cosmopolitan legal circles, these experts proposed reforms that in some cases brought about major modifications to women's civil status and property rights.

Chapter 4 focuses on divorce. Opposition from Roman Catholic bishops can pose an enormous obstacle to divorce, particularly when no other civil society institutions can act as countervailing influences to Church power. As a result, restrictive laws may endure in spite of social changes, international pressures, and widespread acceptance of new ideas about gender and the

family. Argentina, Brazil, and Chile were among the last Latin American countries to legalize divorce.<sup>7</sup> Yet the patterns of change differ significantly in the three countries. In Brazil, a military government approved a divorce law in 1977. Argentina legalized divorce following the return to democracy in 1983. In Chile, divorce remained illegal in 2002, twelve years after the transition. The chapter shows that conflict between Church and state creates an opportunity for change, while Church-state cooperation precludes it. In Argentina and Brazil, governments clashed with the bishops over education, human rights, and economic policy. Triggered by the political repression and human rights abuses of military dictatorships, these moments of Church-state conflict enabled liberal and feminist partisans of divorce to defeat the Church. In Chile, Church-state collaboration posed an obstacle to divorce. Chile's progressive Church helped usher in the transition to democracy and was seen to play a crucial role in the consolidation of democratic rule and the protection of human rights. Having built ties to democratic parties and politicians during the struggle against military rule, the Church took advantage of its clout by vetoing the legalization of divorce under democratic governance. In this way, the same Church that helped bring about the fact of democratization later curtailed the extension of democratic rights and liberties.

Chapter 5 analyzes the varied success of democratic governments in completing the family equality reforms begun under military rule. After the political transition, feminist activists joined with male lawyers and officials in state women's agencies to see that married women and mothers had equal rights with men. They were inspired by changes to family law in European countries and a growing body of international agreements such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Though an emerging national and international consensus favored reform, the configuration of national political institutions shaped patterns of policy. In Argentina, strong parties in Congress and a commitment from actors in the Executive helped the cause of reform. In Brazil, the formulation of a new constitution in 1988 provided an opportunity to advance gender equality, but it took thirteen more years to change the civil code because of the weakness of the party system and the state women's agency. In Chile, policy making was more affected by an authoritarian legacy than in the other two countries, as agreements made at the time of transition preserved the power and prerogatives of the military and its allies. There, "authoritarian enclaves" in the political system and coalitional dynamics among governing parties delayed and thwarted family equality reform.

<sup>7</sup> Other countries where the legalization of divorce was delayed include Colombia, where divorce was legalized for non-Catholics in 1976 and for Catholics in 1991, and Paraguay, where divorce was legalized in 1991.

Chapter 6 considers the question of abortion. In spite of the growing influence of feminist reproductive rights movements, Latin American countries have failed to loosen abortion restrictions. Much of the resistance to change comes from the Roman Catholic Church and antiabortion movements, who have redoubled their efforts to fight abortion at home and at United Nations conferences. Yet most politicians show little enthusiasm to confront conservative forces; consequently, big coalitions backing reform, so important in the case of divorce, have not yet materialized. Though illegal abortion is prevalent and disastrous for women's health, punitive abortion laws are almost never enforced and there is little public support for major changes. Beyond the general failure to decriminalize, however, there are differences in abortion politics in the three countries. Argentina and Brazil permit abortions in the event of rape or when the pregnant woman's life is at risk; Chile forbids abortion under all circumstances. Brazilian feminists have organized a legal abortion movement to see that rape victims have access to free abortions (though abortion is *legal* in the case of rape, it may not be *available*), and the Ministry of Health responded by requiring all public hospitals to perform those abortions permitted by law. By contrast, due to the antiabortion posture of most of the political elite, Argentine and Chilean feminists have been unable to provoke serious debates about legal abortion and have focused instead on reproductive health and family planning legislation.

These chapters make propositions about the causes of change on individual issues; these propositions are summarized in the conclusion. Chapter 2 continues the theoretical background begun in this chapter by sketching the evolution of ideas about gender and the family in Roman Catholicism, liberalism, feminism, and socialism. After offering some brief background on Latin American legal systems, the remainder of this introductory chapter introduces the main causal variables used in the rest of the book: issue differences, the role of elite issue networks, and the factors determining the "fit" between these networks and the state, such as military technical commissions, democratic political institutions, and Church-state relations. Reform on each gender issue was a shared process, but national specificities sometimes generated dissimilar outcomes.

### Latin American Legal Systems

Two aspects of Latin American civil law systems will be unfamiliar to readers who know the common law tradition of the Anglo-American world. The first is the mechanism of legal change. The power of the judicial branch to issue binding interpretations of existing laws is more circumscribed in Latin American civil law systems than in common law countries (although Latin American high court judges have historically been invested with the power of judicial review). In civil law systems, most judges have the authority to

decide only individual cases; their decisions are not binding on later cases or on the lower courts.<sup>8</sup> Reformers seeking legal change must direct their energies to the national legislature and not the courts.<sup>9</sup> In the common law system, by contrast, judges are far more empowered to make law by issuing interpretations that are binding on subsequent judicial decisions. These precedents are as much a source of law as the original laws crafted by the legislature (Glendon, Gordon, and Osakwe 1982). As a result, reformers in the Anglo-American system exert pressure not only on the legislature responsible for enacting statutory changes but also on the various federal and state courts.

The second distinguishing feature of Latin American laws is their hortatory nature. Gender rights conflict everywhere may assume dimensions of a cultural struggle among competing world views. The thick normative content of Latin American civil and criminal codes increases the symbolic stakes in legal reform. That the law should have a role in enforcing the moral order is an idea more deeply rooted in continental European and civil law than in the Anglo-American common law. Civil law has preserved an older Platonic tradition that invests laws with a rhetorical and pedagogical function. As Plato wrote in the *Laws*, the objective of the law is not merely to control social behavior but, through powers of persuasion, to “lead the citizens toward virtue, to make them noble and wise” (Glendon 1987: 6). As Glendon puts it, “the civil law systems retain vestiges of the classical view of law as educational. The great codifications, especially those modeled on the French, kept alive a certain rhetorical tradition of statutory drafting and a certain story-telling aspect of law that is notably absent from the Anglo-American legislative tradition.” Lawmakers in Europe “took from Montesquieu and his followers an awareness of how culture shapes law, and from Rousseau and his followers a belief that law can help to shape society and the individuals who compose it” (1987: 130–1). In the Anglo-American common law system, by contrast, legal positivist notions of the law as a set of rules that impose duties and confer powers are dominant (Hart 1994). Common law consists of a slow accretion of judicial decisions, while civil laws reflect the strenuous efforts of legal scholars to apply reason to the meticulous ordering of human affairs. The content of the law establishes not merely the hedges constraining individual freedom but the moral rules by which people live and the symbols that shape their social identities.

<sup>8</sup> According to Glendon, Gordon, and Osakwe (1982), however, several civil law systems have mitigated this rule in practice, and judges have at times exercised vast discretion in developing the law.

<sup>9</sup> Although Argentina and Brazil are federal systems, civil and criminal law is established at the national level. Mexico is the only Latin American federal system where each state has its own civil and criminal code.

Due to the hortatory nature of civil and criminal laws in Latin America, gender-related legal reform involves more than a mere policy shift. It can represent a transformation in the social and moral norms governing an important sphere of human behavior. When gender rights change, so do definitions and understandings of gender roles and relationships. Liberals who favor the legalization of divorce seek to replace the traditional image of marriage as an indissoluble and sacred relationship with a modern notion of a civil contract rooted in the will of individuals. Conservatives who resist divorce insist that marriage is not a contract but a bedrock institution of the social order. Prochoice groups favoring the decriminalization of abortion aim to make motherhood elective, not compulsory. Antiabortion groups maintain that an ethic of life in the post-Holocaust era requires the unconditional defense of the weak and innocent, including the unborn. As so much is at stake, government officials, elected representatives, and other policy experts take change in gender rights very seriously. They do want not to impose one vision of gender on the rest of society but to convince other citizens that it is the appropriate vision for the times. Gender-related legal reform is not usually imposed through executive decree or party discipline, but evolves through prolonged deliberation. Legislative decision making on divorce and abortion, for example, usually follows the principle of *voto de consciencia*, according to which parties free each legislator to vote her or his conscience on the issue.

The importance of deliberation has been highlighted in recent literature in normative political theory by scholars such as Jürgen Habermas, Seyla Benhabib, Amy Gutmann, and Dennis Thompson. Although these scholars begin from different philosophical premises, they converge in the conviction that the legitimacy of collective decisions lies in the extent to which they result from “processes of collective deliberation conducted rationally and fairly among free and equal individuals” (Benhabib 1996: 69). Deliberation is particularly appropriate to modern democracies characterized by a “pluralism of ultimate value orientations.” Habermas’s discourse theory of morality and democracy identifies deliberative argumentation as the way to reach consensual agreements among peoples with different views of justice and of the good life (Habermas 1990, 1996b). As Benhabib puts it: “Agreements in societies living with value pluralism are to be sought for not at the level of substantive beliefs but at that of procedures, processes, and practices for attaining and revising beliefs” (1996: 73). Gutmann and Thompson argue that deliberation is the best means to deal with persisting moral conflict in politics. Even when citizens’ views prove incompatible, “deliberation promotes an economy of moral disagreement in which citizens manifest mutual respect as they continue to disagree about morally important issues in politics” (1996: 43).

These claims about norms suggest that deliberation about policy changes allows reformers and their opponents to persuade, not just impose. Latin

Americans involved in major changes in gender rights often believed that the legitimacy of legal reforms would be enhanced through ethical deliberation. Some recent literature in the field of international relations similarly highlights the role of moral argumentation and persuasion in human rights policy changes. While not denying that many states initially conform to international human rights norms for instrumental reasons, this literature maintains that states eventually get caught in moral discourses and rational argumentation about human rights, and are then socialized into the norms governing the society of “civilized nations” (Risse and Sikink 1999).

To be sure, domestic political deliberation over the reform of the civil code, the legalization of divorce, and the decriminalization of abortion merely approximated the ideal deliberative conditions posited by democratic theorists such as Jürgen Habermas and Seyla Benhabib. For the most part, participants were not mass democratic publics but educated elites with access to policy makers. In the 1990s, as Argentina, Brazil, and Chile have grown more democratic, the deliberative circle on gender rights has widened beyond elites to include a broader set of organizations, or, as Benhabib aptly puts it, “a public sphere of mutually interlocking and overlapping networks and associations of deliberation, contestation, and argumentation” (1996: 74). As we see below, however, the democratization of deliberation did not always prove conducive to liberalizing reforms.

### Issue Differences

In his classic 1964 *World Politics* article, Ted Lowi argues that different types of public policies involve distinct structures of power, systems of group relations, and policy processes. As a result, different models of politics characterize decision making on different types of policies. Decision making on *distributive* issues, or pork barrel programs such as public works, defense procurement, and research and development, occurs through the formation of “log-rolling” coalitions whose members have nothing in common and operate under a principle of “mutual non-interference” (1964: 693). Power elite models apply to *redistributive* issues where conflicts tend to occur along class lines, while pluralist models more accurately describe *regulatory* issues where groups united by shared, though temporary, interests bargain for relative advantage. One of the key insights of the article is that by disaggregating policies in this way, we can expand the explanatory power of political theories. Lowi argues that the “relevance” of a theoretical approach “becomes stronger as the scope of its application is reduced and as the standards for identifying the scope are clarified” (ibid.: 715). Power elite and pluralist models fail as *general* theories of politics, but succeed when applied to *specific* types of issues.

This book applies Lowi’s insights to the realm of gender policy. Like Lowi’s distributive, redistributive, and regulatory policies, different gender policy issues may engender distinct types of politics. Specifically, policies differ in

terms of the involvement of the Roman Catholic Church and whether they are treated as “technical” or “absolutist.” Roman Catholic bishops opposed policy change on divorce and abortion,<sup>10</sup> but did not contest, and sometimes even supported, advancing gender equality in the family. As Chapter 2 describes, Church doctrine began to change in the 1960s. From its earlier support of a patriarchal household, the Church came to endorse men and women’s equal rights in family matters. The presence or absence of Church opposition was highly consequential for the politics surrounding policy change. Gender equality, moreover, was often treated as a technical issue of civil law. One had to have legal training (and considerable patience) to understand the nuances of marital property arrangements. Divorce and abortion, by contrast, were policies that invoked gut responses from novice and expert alike. Divorce and abortion called on people to assume absolutist moral positions; with rare exceptions, these two issues were never treated as technical matters.

Lowi’s analysis points out that the locus of decision making may differ across policy types. Decisions on *distributive* issues tend to be taken in congressional committees and sometimes in specialized government agencies. Executive and peak associations make the relevant decisions about *redistributive* issues, while the policy process on *regulatory* issues tend to be centered in Congress (1964: 713). On gender issues as well, decision making venues vary. Decision making on technical policies could often be delegated to small commissions of experts. These commissions applied specialized knowledge to issues such as marital property and parental rights and the conditions under which abortion should be legally permitted. Working out the details of these reforms often took years, for it involved organizing studies, consulting data, and revising numerous drafts. Significantly, even when they closed Congress, military governments did not shut down expert commissions; in fact, military rulers frequently created such commissions to formulate state policy. Absolutist policies, by contrast, were decided in Congress. Decision making on these policies was preceded by principled deliberation among elected representatives, policy experts, activists, members of the media, and so on. While some ended up convinced by the views of their opponents, many continued to disagree. Resolving conflicts over an absolutist agenda thus required a congressional vote. After the 1970s, no president – not even a military president – was willing to impose radical changes to divorce and abortion law by executive decree on the recommendations of a small group of experts.<sup>11</sup> Table 1.2 summarizes some of the differences among gender issues.

<sup>10</sup> Before *Roe v. Wade*, however, the Church declined to contest some reforms that exempted from criminal punishment abortions performed on women who had been raped.

<sup>11</sup> A partial exception must be mentioned here. In 1989, the outgoing Chilean military government modified the country’s Health Code to make therapeutic abortions (performed in case of grave risks to the mother’s life or health) illegal. This reform was supported by military elites but not preceded by deliberation among regime officials or society at large. I

TABLE 1.2. *Differences among Gender Issues*

Issue	Bishops contest change	Nature of issue	Decision venue
Civil code (civil capacity, property rights, parental rights) Conditions of legal abortion (early twentieth century)	No	Technical issue: expert knowledge required	Small expert commissions
Divorce	Yes	Absolutist issue: symbolic, invoking “gut” response	Congress
Liberalization of abortion			

Issue differences need to be taken into account by theories of change. To be sure, the gender policy issues considered in this book share some common features. Laws on gender are normative as opposed to merely distributive, redistributive, or regulatory. As argued earlier, the normative power of the law enhances the role of deliberation, emotion, and the weight of principled ideas in policy change. But it would be a mistake to assume that all normative policies follow the same logic. Just because ideas are at stake doesn't mean they are the same ideas. Emotional investment, too, can vary in degree. For example, though divorce and abortion both engendered ethical conflict, the degree of moral polarization surrounding abortion made the issue far more politically intractable than divorce. By disaggregating gender issues, we may, as Lowi suggests, reduce the scope of the application of causal theories and thereby enhance their explanatory power. Though we may never have a *general* theory of gender and the state, we may be able to arrive at *specific* theories of the politics surrounding different gender issues.

### Issue Networks

New paradigms of gender rights became politically salient in Latin America when they were debated within elite “issue networks” of lawyers, feminists, and reformist politicians. The concept of “issue network” was coined by Hugh Hecló (1978) to describe “specialized subcultures of highly knowledgeable policy watchers.” Issue networks involve people at many levels, such as interest groups who directly lobby policy makers, knowledgeable individuals

call this a “partial” exception because the criminal code, which criminalized abortion under all circumstances, was not modified.

who publish and offer expert advice, professional associations, grassroots movements circulating information about social conditions, and state officials with particular policy interests or competencies (Berry 1989; Hecló 1978; for the related concept of “policy communities,” see Baumgartner and Jones 1993). This concept usefully captures the range of actors and interests who have contributed to gender-related reform in Latin America in the last third of the twentieth century. Feminist activists interested in women’s emancipation participated in gender-related issue networks, and so did jurists influenced by legal changes in other countries and rational principles of law, liberal and socialist politicians interested in social reform, doctors, and representatives of the media. Issue networks were the key advocates for gender rights reform. These networks, which mobilized around specific issues such as divorce, abortion, or family law reform, brought issues to the public agenda, circulated information and recommendations, and mobilized public opinion.

“Issue networks” may be influenced by, or even grow out of, social movements. Yet “social movements” is a much broader term, which can be understood to refer to sequences of collective action among social actors seeking a variety of goals. These goals may be instrumental (such as the desire to influence state policy), normative (the assertion of collective identity or common values), or defensive (resistance to encroachment or “colonization” by the market economy or the state) (Cohen and Arato 1992: 526; Tarrow 1998: 2). Issue networks, by contrast, mobilize around specific policy issues, and may involve actors from both state and society. What links members of issue networks is interest in a particular policy area, not collective identity, occupational category, place of residence, shared values, or ideological orientation (though members of issue networks may share these things). For example, the mobilization of the second-wave feminist movement in the mid-to late 1970s contributed to the growth of issue networks favoring liberal policy changes. Many activists from the feminist movement joined with others to mobilize support for change on gender equality, divorce, and abortion. Yet the goals of feminist movements may include consciousness raising, empowerment, and cultural transformation, not merely policy change. A lot of the force behind change on gender equality and the family and divorce came from middle-class male lawyers. These lawyers, motivated by the social problems they encountered in their legal practices, changes in other countries, and international norms, played a central role in issue networks. Yet until now, these unsung heroes have not received much attention in the scholarly literature on gender and the state.

Issue networks were the mechanism through which international developments influenced domestic political changes. International conferences, interstate agreements, and demonstration effects generated ideas and proposals within domestic issue networks. In the first few decades of the twentieth century, for example, participants in criminology conferences in Europe and

Latin America debated the legalization of “compassionate” abortions performed on women who had been raped. By approving proposals based on these new legal theories, promoted most notably by Spanish criminologist Luis Jimenez de Asúa, Argentina and Brazil became among the first countries in the world to permit “compassionate” abortion. Beginning in the 1940s, lawyers attending the annual meetings of the Inter-American Bar Association (IABA) deliberated civil law reforms to grant married women more rights in family matters. For IABA delegates, who passed several resolutions pertaining to married women’s civil capacity and property rights, modern law meant law based on principles of equality. Lawyers who attended these conferences came home armed with proposals for domestic policy reform. In this way, many members of domestic issue networks were simultaneously participants in transnational advocacy networks (Keck and Sikkink 1998).

Later, international agreements such as the Inter-American Convention on Women’s Civil and Political Rights (1949) and the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, endorsed by the General Assembly in 1979 and ratified by the vast majority of Latin American countries in the 1980s and 1990s) helped consolidate global norms of gender equality that helped issue networks to pressure local governments for change. In theory, the CEDAW has the force of law in ratifying countries. This boosts the standing of gender equality advocates, who may make the argument not that their government change its policies, but that it comply with already existing law. Liberal issue networks were also inspired reforms in other countries. After the vast majority of North American and European states reformed laws on divorce, family relations, and abortion in the 1970s and 1980s, many members of Latin American issue networks argued that their countries had to adopt similar reforms in order not to lag behind the rest of the “civilized world.”

International influences were also channeled through conservative issue networks. United Nations conferences in Cairo in 1994, Beijing in 1995, and New York in 2000 provided a focal point for antiabortion groups and created an opportunity for Latin American antiabortion activists to build connections and acquire skills and resources. These groups mobilized to prevent the consensus documents produced by U.N. meetings from endorsing broad definitions of reproductive rights, which they argued legitimized the legalization of abortion (Franco 1998; Shepard 1999a). Antiabortion transnational advocacy networks also fed domestic political mobilization. Abortion reforms in Western Europe and the United States left behind disgruntled opponents who took an interest in preventing similar reforms in other countries. Human Life International, a U.S. antiabortion group that mobilized in the wake of the *Roe v. Wade* decision, has affiliates around the world that played active roles in opposing the liberalization of abortion in

Latin America. Meanwhile, studies about the pernicious consequences of divorce law liberalization in the United States motivated Latin American conservatives to contest divorce reform at home (Díaz Vergara 1997). High rates of teenage pregnancy in the United States, interpreted as the result of liberal state policies on reproductive issues, shored up the arguments of Latin Americans opposed to sex education, family planning, and abortion (e.g., Santa Cruz 1996: 20).

Though they were the central actors in gender rights reform, policy change required more than the mobilization of issue networks. Gender rights reform was not a reflex of societal and elite demands. The possibilities for change depended on whether and how elite issue networks were able to hook into state institutions. As Skocpol puts it, “degrees of success in achieving political goals – including the enactment of social legislation – depend on the relative opportunities that existing political institutions offer to the group of movement in question (and simultaneously deny to its opponents and competitors)” (1992: 54). To explain reform, we need to direct our attention to the “fit” between elite issue networks and the state (*ibid.*). This project employs a middle-level, polity-centered approach, proposing that institutional features of military and democratic regimes as well as the relationship between Church and state shaped this “fit” between actors demanding reform and state agencies with the power to make changes.

### **State Institutions**

A key insight of an institutionalist perspective on politics is that the configuration of governing institutions and political party systems shapes the relationships among political actors and the possibility for policy change (Hall and Taylor 1996; Pierson 1994; Skocpol 1992; Thelen and Steinmo 1992). For many years, major works of Latin American studies had used regime type and transition as proxies for the institutional configurations that mattered for political outcomes. Yet as we have seen, liberalizing reforms on gender and the family occurred under both military and democratic regimes, before and after democratic transitions. This lack of correspondence between forms of political regime and liberalizing gender policies caused scholars to call for a more complex analysis of the relationship between institutions and gender-related reform (Alvarez 1990; Jaquette 1994; Molyneux 2000; Waylen 1998). The field of economic policy making has arrived at a similar conclusion. In an earlier era, scholars relied on regime type and transition to explain the adoption of market-oriented economic policies. The conventional wisdom was that authoritarian regimes were better able to implement liberal economic policies than democracies because of “executives that could operate with limited institutional restraints and . . . extensive bureaucratic or coercive control of popular sector protest” (Kaufman

TABLE 1.3. *Regime Types in Argentina, Brazil, and Chile since 1960*

Country	Democratic	Military	Democratic
Argentina	1962–6 1973–6	1966–73 1976–83	1983 to present
Brazil	1946–64	1964–85	1985 to present
Chile	1925–73	1973–90	1990 to present

and Stallings 1989: 207).<sup>12</sup> In the 1990s, a wave of studies cast doubt on this conventional wisdom, finding that authoritarian governments did not implement deeper market-oriented reforms than democracies (Remmer 1990), that social groups expected to oppose reform did not behave as anticipated (Geddes 1995), and that democratic governments with neoliberal policies were rewarded at the ballot box (Domínguez 1998). As a result, economic policy-making scholars turned their focus away from regime type and transition to intraregime characteristics such as the interests of state officials and the relationship between politicians and bureaucrats (Geddes 1995). In this spirit, the present study analyzes how middle-level features of military and democratic governments and the relationship between Church and state shaped the prospects for reform.

### *Military Governments*

Military coups and military governments have been a recurrent feature of Latin American politics in the twentieth century. In Argentina, the armed forces overthrew elected civilian governments in 1930, 1943, 1955, 1962, 1966, and 1976. The Brazilian armed forces staged coups d'état in 1930, 1937, 1945, 1954, and 1964. In Chile, armed force intervention has been more infrequent: Following the 1924 coup, the armed forces did not seize power until 1973. Not until the 1960s, however, did military rule become a long drawn-out affair. After seizing power in the 1964 coup, the Brazilian military remained in control of the national government until 1985. In Argentina, the military ruled from 1966 to 1973, and then again from 1976 to 1983. The Chilean coup of 1973 initiated a period of military governance that lasted until 1990 (see Table 1.3).

The military coups of the 1960s and 1970s differed from their predecessors in one central way. Whereas earlier coups lacked any defined programmatic goals beyond restoring order or saving the fatherland, later coups were backed by a specific political ideology elaborated by senior military leaders.

<sup>12</sup> Kaufman and Stallings argued that not only authoritarian regimes, but also established democracies, were better able to implement adjustment policies than transitional democracies. Still, of the countries considered in their sample, the authoritarian regimes of Chile and Mexico handled the debt crisis of the early 1980s better than the established democracies of Costa Rica, Colombia, and Venezuela (1989).

Coups of the 1960s and 1970s were organized and executed by the military acting as an institution and aiming to reorder state and society (Cardoso 1979). Military rulers developed a national security ideology that justified their seizure of power to avert threats posed by politically mobilized popular classes and leftist movements; they also felt that military governance would create the political stability necessary to encourage investment for the “deepening” of import substituting industrialization (O’Donnell 1979; Stepan 1978, 1988).

Military discourse had a significant gendered component. “Gender is a primary way of signifying relationships of power,” notes Joan Scott (1988: 42). Many of the world’s political regimes have expressed authority relations in polity and society through gendered imagery. Conservative, fascist, and fundamentalist governments, for example, upheld the patriarchal family as the basis of public order. Regimes from Nazi Germany and Vichy France to Afghanistan under the Taliban have emphasized male power in the household, traditional motherhood, and a rigid sexual division of labor (McGee Deutsch 1991; Pollard 1998; Scott 1988). Latin American military governments similarly expressed their right and reason to rule in gendered terms, and appealed to traditional virtues of feminine care and devotion (Chuchryk 1989, 1994; Filc 1997; Kirkwood 1990; Munizaga and Letelier 1988; Tabak 1983; Valenzuela 1987). Military ideologies thus reinforced traditional gender roles and identities, presenting a seeming obstacle to liberalizing change on gender rights. Indeed, some Latin American feminists have seen military authoritarianism as the “highest expression of patriarchal oppression” and argued that stability of military authoritarianism depends on authoritarian patriarchy in the household (quoted in Alvarez 1990). Political democratization is therefore a precondition for advances in family law and women’s rights. As Chilean feminist theorist Julieta Kirkwood argued: “There is no democracy without feminism, and no feminism without democracy” (1990). To be sure, the patriarchal military project was not seamless. Latin American militarism produced contradictory effects on gender relations and women’s positions. In spite of their conservative discourse, military economic policies pushed unprecedented numbers of women into the work force, breaking down public-private distinctions and creating social dynamics that challenged traditional gender roles (Alvarez 1990; Jaquette 1994; Waylen 1996).

Given these conservative ideologies, how could military governments preside over important reforms on married women’s civil rights and, in the Brazilian case, legalize divorce? To understand why, we need to look at the policy-making institutions created by military governments as well as how Church-state relations developed under military rule (this latter point is dealt with in the next section). Military governments overhauled national laws, constitutions, state bureaucracies, economic policy, and state-owned enterprises in line with principles of technical efficiency and cosmopolitan

standards of modernity. The infamous “technocrats,” exemplified by the “Chicago Boys” working in the Chilean Ministry of Finance during the Pinochet dictatorship, executed many of these policies. Though we commonly think of technocrats working on economic reforms, the legal field also had its fair share. Legal technocrats included lawyers, legal scholars, and judges who published in professional journals and participated in national and international legal conferences. When they decided to modernize the law, military rulers created small commissions of legal technocrats to draft proposals for change based on the newest ideas and approaches. For example, the Argentine government of General Juan Carlos Onganía organized dozens of legal commissions to overhaul the country’s civil, commercial, and criminal legislation. The existence of these commissions provided a window of opportunity for elite issue networks to influence state policy, even under authoritarian conditions.

One important difference between military governments that affected their policy-making capacity was the existence of Congress. Brazil, which Juan Linz aptly calls an “authoritarian situation” as opposed to an “authoritarian regime,” did not follow the usually military pattern and close its Congress (Linz 1973). To be sure, the military government circumscribed the activities of the legislature and continually rigged electoral rules to privilege the party aligned with the government (ARENA, later PDS) (Lamounier 1999; Skidmore 1988). But Congress continued to debate and approve legislation throughout most of the period of military rule. The existence of this policy-making arena enabled prodivorce coalitions to gain force during authoritarian conditions in Brazil, something that did not occur in the other two countries.

### *Democratic Governments*

Latin American countries commonly made the transition to democracy in the 1980s and 1990s. Yet the political institutions of democratic governance – electoral rules, federalism, presidentialism, legislative procedures, party systems, and so on – contain important variations that have proven consequential for democratic stability, political practice, and policy outcomes (Ames 1995a, b, 2001; Baldez and Carey 2001; Carey 1997, 2002; Figueiredo and Limongi 1999, 2000; Jones 1997a, 2002; Jones, Saiegh, Spiller, and Tommasi 2002; Mainwaring 1999; Mainwaring and Scully 1995; Mainwaring and Shugart 1997; Morgenstern 2002; Samuels 2003; Siavelis 2002). Mainwaring and Scully show that the region’s party systems vary from the highly institutionalized to the inchoate (1995). Parties in institutionalized systems, such as Chile, Costa Rica, and Uruguay, have clear internal structures and relatively stable political support, and are seen as legitimate and important political actors. Parties in inchoate systems, including Bolivia, Brazil, Ecuador, and Peru, rank low on these criteria. Parties and party systems, in turn, are significantly affected by electoral rules. Ames (1995a, b), Carey

(1997, 2002), Jones (2002) and Mainwaring (1999), among others, identify the ways that different electoral systems shape party unity by influencing the degree of nomination control exercised by party leaders and the incentives for personalistic or party-oriented activity by politicians. Meanwhile, the contributors to Mainwaring and Shugart find that variation *among* Latin America's presidential systems of government is often greater than variation *between* presidentialism and parliamentarism (1997), while contributors to Morgenstern and Nacif (2002) explore intercountry variation in executive-legislative relations, internal legislative organization, and the legislature's role in policy making.

These institutional differences help to account for distinct patterns of policy making across countries. In Brazil, a combination of a fragmented party system, weak party discipline, and "robust federalism" thwarted the executive's attempts to fight inflation and reform the state during three administrations in the mid- to late 1980s and early 1990s (Mainwaring 1999). Problems with the party system can be largely attributed to Brazil's electoral rules, which combine an extreme form of proportional representation (a low threshold and high district magnitude) with a preference-voting system that encourages personalistic behavior. Historically, moreover, Brazilian legislators have enjoyed the automatic right to stand for reelection, further reducing the leverage of party leaders. Lamounier, one of the most prominent critics of Brazil's combination of presidentialism and fragmented multipartyism, argues that the country suffers from a "hyperactive paralysis syndrome" which thwarts significant attempts at reform on gender as well as other issues (1999). Nonetheless, there is evidence that this traditional pattern may have changed as parties became more disciplined throughout the 1990s. Whereas some attribute this evidence of increased party unity in roll-call voting to the legislative powers of the president and the strength of party leaders (Figueiredo and Limongi 2000), others argue that pork-barrel expenditures, constituency structure, popularity, ideology, and other factors are better predictors of how deputies vote and that party unity in Brazil is considerably lower than in other countries (Ames 2001).<sup>13</sup>

In Argentina, by contrast, a two-party-dominant system and moderate to high degree of party discipline in the legislature contributed to the country's *relative* policy success, particularly its ability to weather a severe economic crisis at the end of the 1980s. Electoral rules, including a closed-list proportional representation system, relatively low district magnitude (an average of five deputies per district), and plurality elections for senators and governors, helped maintain the two-party system and party discipline, as did the ability of party leaders in Congress to affect, by determining committee memberships and allocating budgetary resources, legislators' ability to deliver goods to their constituencies (Jones 2002). Compared with their counterparts

<sup>13</sup> For a good review of this debate, see Amorim Neto (2001).

in Brazil, moreover, Argentine legislators are more likely to focus on national policy issues than on pork-barrel projects for their constituents. Only 14 percent of the bills introduced in 1994, for example, could be classified as pork (Jones 1997a: 277–8). To be sure, Argentine democracy has its problems, including lack of judicial independence, limited provincial autonomy, and the excessive use of presidential decree powers, though many of these issues were addressed in the 1994 constitutional reforms (ibid.). The relative inclination of Argentina's parties and institutions toward policies of national importance is reflected in the Radical Party's championing of liberal changes to family law, and of a multipartisan advocacy of divorce, in the mid-1980s. Argentine liberal lawyers and feminist activists found common ground with liberal parties in Congress and actors in the executive branch committed to reform.

Chile's democratic political institutions have been far more affected by an authoritarian legacy than counterparts in Brazil or Argentina. Democrats agreed to respect the constitution promulgated by military rulers in 1980, which established, among other problematic features, the presence of eight "institutional" senators appointed by Pinochet (the so-called *designados*). The presence of the *designados* increased the power of the socially conservative voting bloc in the Senate, frustrating reform on even mildly controversial gender issues (Londregan 2000). Military rulers also changed the electoral norms to create incentives for a de facto two-party system by creating sixty two-member districts to elect the lower house and requiring that a party or coalition receive twice as many votes as the runner-up in order to capture both seats (Rabkin 1996; Siavelis 1997). These rules required Chile's historic multiparty system essentially to squeeze itself into a two-coalition framework. The two coalitions have proven durable and unified throughout the 1990s (Carey 2002). Nonetheless, to maintain unity and their hold on power against opposition from the right-wing coalition, members of the governing coalition, comprised of Christian Democratic, Socialist, and Democratic (PPD) parties, have sought to avoid potentially divisive issues such as divorce and abortion. Coalition politics in Chile has generally impeded policy changes favored by feminists (Baldez 2001). In short, though Latin American democratic governments rhetorically committed themselves to an agenda of liberal rights on family law and gender equality, not all were able to deliver. The authoritarian legacy in the political system, coalitional dynamics, party systems, and electoral rules affected the prospects for reform on gender issues.

### Church-State Relations

The final variable affecting the "fit" between issue networks and the state is Church-state relations. Seen most broadly, the process of gender law liberalization described in this study involved the replacement of laws inspired by

traditional Roman Catholic ethics on male authority, indissoluble marriage, and the crime of abortion with new laws inspired by feminism and liberalism. Though this makes the Church an integral part of the story, it is important to bear in mind that Roman Catholic bishops did not contest all gender-related policy changes. By the 1960s, Roman Catholic doctrine had replaced a traditional model of male authority with acceptance of sex equality within marriage. As a result, the bishops did not act to oppose reforms advancing family equality. Church doctrine on divorce and abortion did not change. The Church always opposed the legalization of divorce and the decriminalization of abortion. Yet historically the Church acted to oppose divorce more vehemently than abortion because of the threat to its values posed by pro-divorce movements. Issue networks of lawyers, socialists, and liberals had mobilized to demand divorce since the nineteenth century. A large movement proposing alternative ideas about abortion, however, emerged only in the late twentieth century. The general social consensus that abortion was morally wrong assured the Church that its position was safe, and it chose not to contest some early, liberalizing reforms to abortion laws. After the middle of the twentieth century, the diffusion of feminist liberal ideas about elective abortion compelled the Church firmly to defend the sanctity of embryonic life under all circumstances.

The evolution of Church doctrine and the perceived threat to core Church principles shaped the Church's decision on whether or not to contest reforms. Yet even when the Church contested reform, it could still be defeated (see Fig. 1.1). Cracks in the Church-state relationship opened a window of opportunity for liberal issue networks to defeat the Church. How did this come about? Though the Latin American Church had historically allied itself with the conservative oligarchy and the military, many bishops transferred their allegiances in the 1970s and 1980s. Latin American bishops influenced by liberation theology condemned the human rights abuses of military governments, introduced new participatory structures, and worked

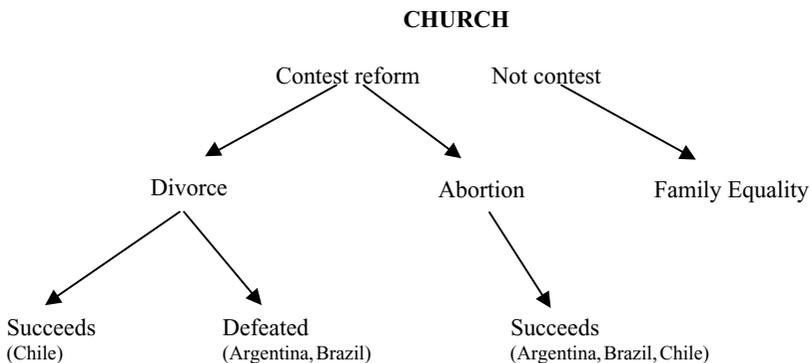


FIGURE 1.1. The Church and gender policy reforms.

with social movements and labor unions to demand social justice (Gilfeather 1979; Levine and Mainwaring 1989; Mainwaring and Wilde 1989; Moreira Alves 1984; Smith 1982). In many countries, the Church hierarchy formally opposed the military government and supported social movement networks struggling to bring about an end to authoritarian rule (Mainwaring 1986; Smith 1982).

These shifting relationships between Church and state produced by military rule and democratic transition were consequential for Church influence over policy issues it cared about. During periods of Church-state cooperation, state leaders realized benefits from the Church's political support and were unwilling to make moves that would incur episcopal wrath. When the Church turned against the state, opportunities emerged for opposing coalitions to step in and produce shifts in gender rights legislation. When national governments clashed with the Church over policy issues such as human rights, economic development, and education, liberal issues networks could overpower the Church. At other times, the Church elected to contest reform and succeeded.

In summary, differences among issues, political institutions, and Church-state relations shaped the ability of issue networks to produce policy change. Figure 1.2 illustrates how these variables affect the "fit" between issue networks and the state (cf. Skocpol 1992: 54). Large coalitions of feminists, middle-class male lawyers, and liberal and socialist politicians endorsed change on gender equality in the family and divorce. Under military rule, the creation of expert policy-making commissions opened a window of opportunity for these coalitions to produce policy change on gender equality in the family. Under democratic conditions, the possibility for change turned

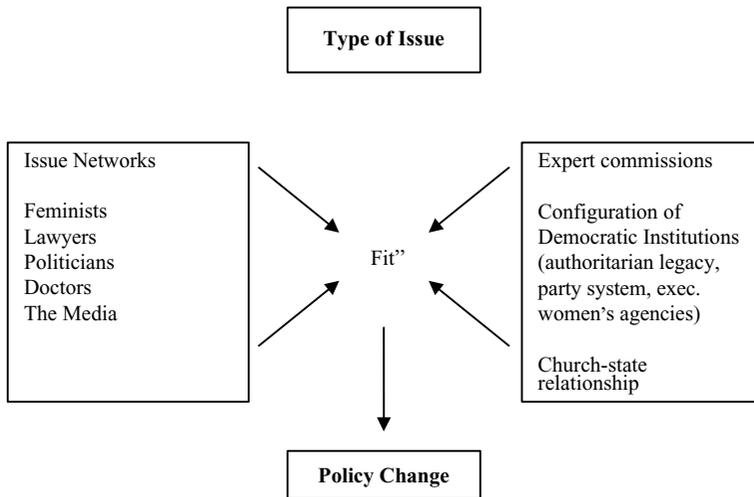


FIGURE 1.2. The fit between issue networks and the state.

on the military legacy, the party system, and executive commitment. For divorce to be legalized, however, the Church needed to be defeated. Cracks in the Church-state relationship allowed the liberal partisans of divorce to overpower the Church. On abortion, fewer people supported change, and fierce opposition grew over time. Partisans of liberal abortion have been unable to defeat the Church and antiabortion movements. At the same time, they also have been unable to persuade average citizens – who offer moral support to restrictive abortion laws, while undermining them in practice – to come to terms with the inherent contradictions of such a position.

### **Other Hypotheses: Modernization and Culture**

At this point, the skeptical reader may be wondering, Why focus on issue differences, issue networks, and political institutions? Couldn't the legal changes in question merely be a function of socioeconomic development or a transformation in cultural values? After all, economic development involves the incorporation of women into the work force, a rise in women's education, and a drop in fertility, trends that transformed family structures and gender roles in many countries. As women's social and economic status has increased, they have become less dependent on men, altering marriage dynamics as well as traditional sexual mores. The law must respond to these social changes. Moreover, theories maintaining that developmental trajectories are best explained by a country's culture, attitudes, and values are enjoying a renaissance in political science (Fukuyama 1995; Grondona 1999; Harrison and Huntington 2000; Inglehart 1997). Even if one doesn't buy the proposition that culture accounts for political and economic performance (Jackman and Miller 1996), it seems plausible that culture would exert a major influence on state decisions to regulate family life and intimate relationships. A central theme of most cultures is "the sphere of personal, sexual, and reproductive life," and the enforcement of rules governing intimate behavior is a crucial indicator of the cohesiveness and survival of cultural groups (Okin 1999: 13). To make the analysis of this book more convincing, we should pause and evaluate the merit of modernization and cultural explanations for policy change.

If modernization arguments are correct, we would expect indicators of national wealth, women's labor force participation, and fertility to correspond to policy outcomes on gender and the family in Latin America (see Tables 1.4–1.6). Argentina had the highest overall level of economic development and the least inequality, and Chile the fastest economic growth. Brazil lagged both. If *levels* of modernity explain policy, then laws on gender in Argentina and Chile should be the most "progressive." Argentina granted women equal property rights in 1968, but waited until 1987 to legalize divorce. Chile, meanwhile, waited until 1989 to change a law stating that women owe obedience to their husbands, and has failed to legalize divorce or

TABLE 1.4. *Economic Indicators*

Country	GDP per capita, 1998 (\$)	Average growth of GDP per capita, 1989–98 (%)	Gini coefficient, latest available data (measure of income inequality)
Argentina	6,720.40	2.4	0.46
Brazil	3,195.60	0.4	0.63
Chile	4,047.00	5.9	0.57

Source: Inter-American Development Bank.

TABLE 1.5. *Women as Percentage of the Labor Force*

Country	1950	1960	1970	1980	1990	2000
Argentina	20	21.2	24.8	28	29	33
Brazil	15.4	17.8	20.4	28	35	36
Chile	25.2	22	22.2	26	30	34

Source: FLACSO (1995); World Bank (2002).

TABLE 1.6. *Changes in Fertility (number of children born per woman)*

Country	1950–5	1970–5	1980–5	1990	2000
Argentina	3.2	3.2	2.8	2.9	2.5
Brazil	6.2	4.7	2.8	2.7	2.2
Chile	5.1	3.6	2.7	2.6	2.2

Source: FLACSO (1995); World Bank (2002).

make the marital property regime fully equal. Brazil – the poorest and most unequal country of the three – was the first to legalize divorce and the first to grant married women full legal agency. These differences in the timing and approach of policy persisted even though levels of women’s labor force participation and fertility were similar in the three countries (in 2000, women accounted for 33 to 36 percent of the labor force in all three countries and fertility rates were 2.2 to 2.5 children per woman).

A hypothesis linking the *rate* of modernization to legal outcomes might be more promising. Karl Deutsch, for example, argued that people experiencing dislocations in their daily lives would increase the demands on governments, prompting major changes in political practice and institutions (1971: 390–1). By implication, we might expect to see legal reform in countries such as Brazil that underwent extensive modernization within a short time period. Until 1970, Brazil lagged behind Argentina and Chile in women’s labor force participation and fertility. By the 1990s, Brazil had pulled ahead. A “rate of modernization” hypothesis thus might explain why some of Brazil’s laws changed before those of the other two countries. However, a “rate of

modernization” hypothesis cannot account for the differences between Argentina and Chile, where the rates of change are more similar, but legal outcomes different.

Does state policy on gender and the family reflect more liberal or more conservative cultures? If cultural arguments are correct, we should see a correlation between national cultural variables (such as religious values, beliefs about gender roles, and public opinion) and policy changes.<sup>14</sup> Yet in Latin America, cultural arguments have limited predictive power. The intensity of religious beliefs does not correspond to the course of gender rights reform. The World Values Survey data indicate that religious devotion is strongest among Brazilians and weakest among Argentines, with Chile occupying a middle ground.<sup>15</sup> However, it is in Brazil where the debate about the decriminalization of abortion has advanced the farthest and divorce was first legalized. Nor do patterns of reform correspond to public attitudes toward gender roles and relationships. Based on data about gender role beliefs in the World Values Survey, we would expect married women to have more, or at least as many, rights in Chile as in the other two countries. In reality, Chile’s laws were the last to change and as of 2002 remained more inegalitarian than laws in Argentina and Brazil.<sup>16</sup> Finally, the pace of reform does not

<sup>14</sup> To study culture systematically and cross-nationally, political scientists long ago decided to take political culture to mean “attitudes toward the political system and its various parts, and attitudes toward the role of the self in the system” (Almond and Verba 1963). Other social scientists find such an approach too limited, agreeing with Clifford Geertz that culture is not subjective but “public.” In Geertz’s view, culture lies not in the beliefs we hold inside our heads but in the intersubjective “webs of significance” collectively spun by societies (1973). Geertz’s approach (which is, in my view, the best way to think about culture) makes it methodologically impossible to study culture as a causal variable. Conceived as “webs of significance,” culture is both an independent and a dependent variable – there is no way to step outside of it. At any rate, the purpose of this section is not to adjudicate competing definitions or approaches to culture, but merely to evaluate the analytical plausibility of hypotheses based on the operational political science definition of culture as subjective attitudes and values.

<sup>15</sup> The World Values Survey provides data on church attendance, one indicator of religious devotion. On a scale of one to eight (one the lowest attendance and eight the highest), the country means are 3.71 in Argentina, 4.68 in Brazil, and 4.36 in Chile (Blofeld 1998: 10). The values on the survey range from 1 (never attend church), 2 (less than once a year), 3 (once a year), 4 (holidays), 5 (Christmas/Easter), 6 (once a month), 7 (once a week), and 8 (attend church more than once a week).

<sup>16</sup> The World Values Survey shows that attitudes toward women’s work are most “liberal” in Brazil and Chile and least “liberal” in Argentina, while attitudes toward motherhood are most “liberal” in Argentina and Chile and least “liberal” in Brazil. Seventy-three percent of Brazilians and 70 percent of Chileans agreed that having a job is the best way for a woman to be an independent person, compared with 58 percent of Argentines. Ninety-three percent of Brazilians and 86 percent of Chileans agree that both a husband and wife should contribute to household income, compared with 75 percent of Argentines. When asked whether a working mother can establish just as warm and secure a relationship with her children as a mother who does not work, 71 percent of Chileans and 72 percent of Argentines agreed or

always correspond to the extent of public support for new laws and policies. In Chile, for example, national public opinion polls demonstrate overwhelming public support for the legalization of divorce, yet divorce remains illegal. On the other hand, the failure of public opinion to endorse elective abortion more enthusiastically makes the issue unattractive to politicians, helping to account for the lack of change in abortion politics, as Chapter 6 discusses. In short, though socioeconomic modernization and cultural transformation are important shapers of the context of gender policy, explaining change requires that we turn to politics.

strongly agreed, compared with 62 percent of Brazilians. World Values Survey (available at the Harvard-MIT Data Center: <http://data.fas.harvard.edu/>).