

# GENDER, LAW, AND CULTURE IN THE LEGAL WORKPLACE: A CHILEAN CASE STUDY

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*“What has to change is the model of work. It can’t be that in order to be a partner in a law firm, a woman has to learn to renounce her children. It is the men who have to renounce this work model and take equal responsibility for their children. It is very difficult for a society to do this.”\*\**

*How do law and culture affect the behavior of actors on the ground? If culture and law interact, how does this interaction occur? This Article examines how gender and law affect lawyers working in a Latin American country—Chile—with a strong neoliberal ethic, a traditional approach to gender roles, and progressive legal regulation intended to protect female workers and their families.*

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\*\* Interview with CHI6, [female judge], in Santiago, Chile (Feb. 2, 2017). The translation is mine.

*Chile's labor laws protect dignity rights of private and government employees. Chile provides generous paid parental leaves and forbids the firing of pregnant women, absent serious cause. Given these and other family-oriented laws, one would expect that female lawyers in Chile would thrive. The story is mixed, however. While women represent the majority of law students, and female lawyers and judges are making advances in government jobs, women represent a very small minority of partners in most law firms. And women are often not assigned equal work.*

*To study how law and culture affect labor relationships of male and female lawyers, the Author moved to Chile to interview Chilean lawyers, law professors, judges, prosecutors, and law students. The study found that stereotypes about women's weaknesses as leaders and workers prevail in Chile; these attitudes, combined with mothers' near exclusive responsibility for family, harm women's careers even when they do not have children. Although mothers may share their six-month postnatal leaves with fathers, fathers rarely take long leaves largely because of societal and employer disapproval. This Article concludes that culture appears to have an even greater effect than law on the gendered conditions of lawyers' work. Culture is not static, however, and the interaction of law with culture enables change; lawmakers must consider the effects that legal reforms have on rights and their unintended consequences and propose new legislation to correct inequities.*

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### INTRODUCTION: LAW VS. CULTURE IN CHILEAN LEGAL CIRCLES

How does law affect the behavior of actors on the ground? Does law or culture determine behavior? If culture and law interact to affect behavior, how does this interaction occur?<sup>1</sup> This Article examines these questions in context: it studies how gender and law affect lawyers working in a Latin-American country—Chile—with a strong neoliberal ethic, a traditional approach to gender roles, and progressive legal regulation intended to protect female workers and their families.<sup>2</sup>

Chile has had a two-term female president and a *tutela laboral* (a cause of action that protects dignity rights of private and government employees).<sup>3</sup> Chile provides generous, paid pre and postnatal parental leaves and forbids firing women who are pregnant, absent serious cause. It requires businesses with 20 or more female workers to subsidize infant care.<sup>4</sup> Given these family-oriented laws that far exceed U.S. protections, if law governs employers' behavior, female lawyers in Chile should thrive unless a culture of discrimination dominates or the law has an unintended consequence.

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1. The interrelationship between law and culture is complicated. Even the definitions of “culture” and “legal culture” are contested. Law and culture are not distinct realms that are only marginally related to one another. Naomi Mezey, *Law as Culture*, 13 *YALE J.L. & HUM.* 35, 35–38 (2001) (seeing law and culture’s interaction as “an unstable synthesis between the two, formed by a continuous recycling and rearticulation of legal and cultural meanings”).

2. For more information about this approach and its theoretical underpinnings, see Tracey E. George, Mitu Gulati & Ann C. McGinley, *The New Old Legal Realism*, 105 *NW. U.L. REV.* 689, 689–96 (2011) (describing an empirical study of the effects of an appellate case on the casino industry in Nevada).

3. In March 2018, Sebastián Piñera replaced Michelle Bachelet as Chile’s President. Piñera ran as a conservative who will dismantle some of Bachelet’s progressive initiatives. See *El rojerío de luto: Piñera gana en segunda vuelta*, *EL MOSTRADOR* (Dec. 17, 2017), <http://www.elmostrador.cl/noticias/pais/2017/12/17/el-rojerio-de-luto-pinera-gana-en-segunda-vuelta/>; Pascale Bonnefoy & Ernesto Londoño, *Sebastián Piñera Wins Chile’s Presidential Election*, *N.Y. TIMES* (Dec. 17, 2017), [https://www.nytimes.com/2017/12/17/world/americas/chile-presidential-election.html?\\_r=0](https://www.nytimes.com/2017/12/17/world/americas/chile-presidential-election.html?_r=0).

4. See *infra* notes 101–104 and accompanying text.

The story is mixed. While women represent the majority of law students,<sup>5</sup> and female lawyers and judges are making considerable advances in government jobs, female lawyers represent only a minuscule minority of partners in most law firms.<sup>6</sup> And although some argue that time will cure the low percentages of women on the Chilean Supreme Court and as law-firm partners, many disagree that time alone will solve the problem. They argue that in private-sector and some public-sector jobs, female lawyers are seldom recognized as leaders, receive inferior work assignments, and are often tapped to perform menial tasks.<sup>7</sup> A recent survey demonstrates that although Chilean law firms increased their percentage of female partners between 2006 and 2013 from 2% to 11%, female lawyers in Chile still lag behind the vast majority of their Latin-American counterparts.<sup>8</sup>

Contradictions in Chile are stark. Chileans say that their society is *machista*,<sup>9</sup> but they have twice elected President Michelle Bachelet—a socialist, single mother, and doctor who has focused on the rights of women and families.<sup>10</sup> In contrast to President Bachelet’s supporters, the upper classes in Chilean society that are mostly based in Santiago are classist and conservative, with a few families, the Catholic Church, and Opus Dei—a conservative lay Catholic organization—wielding significant power.<sup>11</sup> These conflicting strands may explain why legal

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5. Emiliano Mellino, *Women’s Lawyer Organisation Launches in Chile*, LATIN LAW. (Mar. 10, 2011), [http://www.citybarjusticecenter.org/wp-content/uploads/pdf/LL%20WIP\\_March%202011\\_Womens%20lawyer%20organization%20launches%20in%20Chile.pdf](http://www.citybarjusticecenter.org/wp-content/uploads/pdf/LL%20WIP_March%202011_Womens%20lawyer%20organization%20launches%20in%20Chile.pdf).

6. A 2009 study by *Latin Lawyer* of the ten largest law firms in Argentina, Brazil, Chile, Colombia, México, and Peru found that women represented only 3.3% of the partners in large law firms in Chile, the lowest of all the countries studied. *Id.*

7. See *infra* notes 149–153, 343–356 and accompanying text.

8. See Rosie Cresswell & Lulu Rumsey, *Women in Law 2013*, 12 LATIN LAW. no. 9, Mar. 2014, at 7–9. By comparison, the average percentage of female associates in the region is 49% and female partners is 20%. *Id.* at 6. In the United States, women represented 15% of the equity partners and 26% of nonequity partners in 2012. *Id.* at 10. Generally, in Latin America, few women have broken into the most powerful ranks of partners, members of managing committees, and other management structures. *Id.* One study found that in 2010, women represented 58% of Chilean lawyers. See Ethan Michelson, *Women in the Legal Profession, 1970–2010: A Study of the Global Supply of Lawyers*, 20 IND. J. GLOBAL LEGAL STUD. 1071 (2013) (featuring a table showing the proportion of lawyers who are female in more than 200 countries). With 58% of the country’s lawyers being female, Chile is well ahead of the worldwide average (36%) and the United States (32%), but behind other South-American countries such as Brazil (66%), Argentina (62%), and Venezuela (61%). *Id.* at 1115–19. Of course, the percentage of lawyers does not give information about the type of work female lawyers practice.

9. *Machista* in Spanish means “sexist” or treating women as inferior. See *Machista*, REVERSO DICCIONARIO, <http://diccionario.reverso.net/espanol-definiciones/machista> (last visited Aug. 31, 2018).

10. See *infra* notes 39–44.

11. The recent election of Sebastián Piñera for president confirms this conservative strand. See Antonio de la Jara & Fabian Cambero, *Chile’s Pinera, at inauguration, vows to end ‘stagnation,’* REUTERS, <https://www.reuters.com/article/us->

reforms alone have not propelled equal percentages of women to leading positions in prosecutor offices, law firms, and appellate courts.

At least on its face, Chilean law is protective of working women and their families, yet there remains a significant gap between the percentages of successful female and male lawyers in a number of legal settings in Chile. This gap, although narrowing somewhat, is not closing as quickly as expected given that the majority of law students are female.

This is where culture comes in. Culture, as defined here, occupies three different spaces. First is the overall macroculture of Chile. Second is the mesoculture of the legal profession in Chile, which includes a number of different subcultures: government services, courts, law schools, and law firms. Third is the microculture of individual law offices. All of these different aspects of culture—macro, meso, and micro—and any corresponding subcultures that may exist, affect a woman's ability to succeed as a lawyer, and a male lawyer's ability to buck gender norms at work and home.

To examine how law and culture interact to affect labor conditions of male and female lawyers, I moved to Chile for nearly 12 weeks. While there, I studied the law on the books and observed how the law operates on the ground by interviewing Chilean lawyers, law professors, judges, prosecutors, and law students. The interviews convey how Chileans perceive their culture and how gender operates in the milieu in which they live and work. This Article incorporates these interviews in examining how law operates on the ground and how culture interacts with the law.

Part I of the Article analyzes the historical, political, and legal background of Chile—a constitutional democratic republic that has recently recovered from the brutality of a dictatorship. Parts II, III, IV, and V discuss the methodology and results of the study. Part VI analyzes alternative solutions and offers suggestions for legal reform that may interact with macro, meso, and microcultures to effect change. The Article concludes that law's operation on the ground varies considerably from the law on the books, at least when it comes to lawyers' working conditions. Law has some effect, but culture appears to have an even greater effect than the law on the gendered conditions of lawyers' work. But culture is not static, and the interaction of law and culture can produce change; lawmakers must study how legal reforms affect rights and propose new legislation to correct inequities. Simultaneously, Chileans should embark on educational and other cultural initiatives that emphasize the equality of women and men and the importance that all parents, male or female, heterosexual or not, be involved in raising their children.

One caveat: in arriving at these recommendations, I do not conclude that Chilean popular or legal culture is inferior to or more sexist than that of many other countries in the world, including the United States. In fact, Chile is ahead of the United States when it comes to much pro-family legislation. But it was in Chile

where my detailed research began, and therefore, the Article's praise, criticism, and recommendations are directed at Chile alone.

## I. UNDERSTANDING CHILEAN HISTORY AND LEGAL CULTURE

### A. Historical and Political Background

Once a Spanish colony, Chile gained its independence from Spain in 1818.<sup>12</sup> Historically, Chile was, and still is, a class-based society.<sup>13</sup> The original *criollos* (Spaniards and Spanish Americans) had economic and social power, while the *mestizos* (persons of mixed Indian and Spanish descent) lacked social class and power.<sup>14</sup> After gaining independence, Chile was primarily an oligarchic state; mine owners and *latifundistas* (rich landowners) dominated.<sup>15</sup> In the late 19th century, Chile won the War of the Pacific against Peru and Bolivia and gained important mineral resources by seizing the Atacama Desert in the north.<sup>16</sup> Growth of Chile's copper-mining industry in the Atacama Desert weakened oligarchic domination while causing the expansion of the state and the emergence of a new middle class.<sup>17</sup>

In 1932, Arturo Alessandri of the Liberal Party dealt a blow to the oligarchs when he was reelected president.<sup>18</sup> His administration ushered in significant changes, which led to four decades of increasing democratization.<sup>19</sup> A new constitution established a strong executive with a bicameral legislature. Although the interests of the middle and working classes were protected, there was little support for Chilean peasants or the urban poor living in shantytowns surrounding Santiago.<sup>20</sup> The State provided jobs and welfare, but it did not grow the economy enough to create sufficient wealth to support peasants and the urban poor.<sup>21</sup> President Eduardo Frei Montalva—a Christian Democrat who served as president from 1964 to 1970—began a significant agrarian-reform project, but the reform was not a rapid success,<sup>22</sup> and inflation outpaced growth so that a second Frei term became impracticable.<sup>23</sup> Severe polarization between the poor and the

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12. SUSAN FRANCESCHET, WOMEN AND POLITICS IN CHILE 20 (2005); *Chile*, INFOPLEASE, <https://www.infoplease.com/country/chile> (last visited Apr. 15, 2017).

13. SIMON COLLIER & WILLIAM F. SATER, A HISTORY OF CHILE, 1808–2002, at 89–90 (2d ed. 2004).

14. *Id.* at 8.

15. FRANCESCHET, *supra* note 12, at 20.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 21–22.

21. *Id.*

22. Lewis H. Diuguid, *Edwardo Frei Dies*, WASH. POST (Jan. 23, 1982), [https://www.washingtonpost.com/archive/local/1982/01/23/eduardo-frei-dies/cf3ad0e9-24a9-46fc-963e-d47055b182ed/?utm\\_term=.b40aadd2039](https://www.washingtonpost.com/archive/local/1982/01/23/eduardo-frei-dies/cf3ad0e9-24a9-46fc-963e-d47055b182ed/?utm_term=.b40aadd2039); *Former Chilean President Eduardo Frei, Latin America's First Christian . . .*, UPI (Jan. 22, 1982), <https://www.upi.com/Archives/1982/01/22/Former-Chilean-President-Eduardo-Frei-Latin-Americas-first-Christian/3165380523600/?spt=su>.

23. *See* COLLIER & SATER, *supra* note 13, at 313–20.

upper classes ultimately led to the narrow victory of Salvador Allende, the socialist candidate for President in 1970, with 36.2% of the vote. Although his coalition advocated reforms that would benefit the poor, Allende's opponents in Congress refused to support his legislative proposals.<sup>24</sup> Allende nationalized mining and other industries and continued the agricultural reform begun by President Eduardo Frei, but many did not support the reforms.<sup>25</sup> Allende's coalition of socialists and militant *ultras* soon broke down,<sup>26</sup> and some of his natural constituents—the unions—opposed him.<sup>27</sup> Allende began to govern by executive action, which led to conflict among the various classes.<sup>28</sup> Perhaps even more importantly to the Chilean “person on the street,” significant economic problems plagued the Allende Administration.<sup>29</sup> Even today, people speak of bread lines and the scarcity of food and other necessities during Allende's presidency; consequently, many welcomed the ultimate military takeover of the government.

The U.S. Central Intelligence Agency fomented unrest and economic scarcity before and during Allende's administration and spent millions of dollars to destabilize the democracy.<sup>30</sup> Ultimately a military *coup d'état* occurred on September 11, 1973: the Chilean military bombed *La Moneda* (the Chilean President's offices), and President Allende gave an eloquent speech and committed suicide.<sup>31</sup> General Augusto Pinochet grasped tight control of the government. He was voted out of power in a plebiscite in 1988<sup>32</sup> but remained in office until the Coalition of Parties for Democracy (CPD)—composed of the center and left

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24. FRANCESCHET, *supra* note 12, at 22.

25. See COLLIER & SATER, *supra* note 13, at 334–43.

26. *Id.* at 331–32.

27. *Id.* at 336. For example, after the nationalization of the mines, miners went on strike 85 times in 1971. *Id.*

28. FRANCESCHET, *supra* note 12, at 22.

29. See COLLIER & SATER, *supra* note 13, at 344–52.

30. See ZITA CABELLO-BARRUETO, IN SEARCH OF SPRING: A SISTER'S QUEST TO UNEARTH THE TRUTH ABOUT HER BROTHER'S ASSASSINATION BY CHILE'S CARAVAN OF DEATH (2014); TANYA HARMER, ALLENDE'S CHILE AND THE INTER-AMERICAN COLD WAR 60 (2011) (stating that the CIA had permission to spend \$10 million or more to “save Chile” from Allende's government); COLLIER & SATER, *supra* note 13, at 355;. The value of \$10 million in 1973 was more than \$56 million in 2017. See *Value of \$1 in 1973*, SAVING.ORG, <https://www.saving.org/inflation/inflation.php?amount=1&year=1973> (last visited July 13, 2018); see also Peter Kombluh, *Chile and the United States: Declassified Documents Relating to the Military Coup, September 11, 1973*, NAT'L SECURITY ARCHIVE, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB8/nsaebb8i.htm> (last visited July 13, 2018) (demonstrating that American policy was overthrowing Allende, funding economic unrest during the Allende regime, and supporting the dictatorship of Pinochet).

31. COLLIER & SATER, *supra* note 13, at 357–58.

32. For an interesting view of the plebiscite, see Olga Khazan, *4 Things the Movie 'No' Left Out About Real-Life Chile*, ATLANTIC (Mar. 29, 2013) <https://www.theatlantic.com/international/archive/2013/03/4-things-the-movie-no-left-out-about-real-life-chile/274491/> (reviewing the movie, “No”).



parties<sup>33</sup>—took the reins in 1990.<sup>34</sup> Patricio Aylwin, a Christian Democrat, was the first president of the newly created democracy.<sup>35</sup>

From 1973 to 1990, Pinochet used violence to control the citizenry—killing or “disappearing” more than 2,000; imprisoning more than 30,000; exiling more than 200,000 opponents of the new regime; and using systematic torture to maintain control.<sup>36</sup> Chileans today describe their suffering at the hands of the military dictatorship.<sup>37</sup> The *Museo de la Memoria y los Derechos Humanos* (Museum of Memory and Human Rights) documents the findings of the Truth and Reconciliation Commission that was appointed by President Aylwin: it catalogues the brutal tactics, torture, and murders that occurred during the Pinochet Dictatorship.<sup>38</sup>

Since the reestablishment of democracy in 1990, liberal and moderate leaders have served in important government positions.<sup>39</sup> Female leadership includes President Michelle Bachelet, a member of the Socialist Party, who served two nonconsecutive terms,<sup>40</sup> and Senator Isabel Allende, current president of the

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33. FRANCESCHET, *supra* note 12, at 29.

34. COLLIER & SATER, *supra* note 13, at 382.

35. *Id.*

36. See CABELLO-BARRUETO, *supra* note 30; U.S. INST. PEACE, REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION, U.S. INST. PEACE 6–17, 1122–26 (2002), [https://www.usip.org/sites/default/files/resources/collections/truth\\_commissions/Chile90-Report/Chile90-Report.pdf](https://www.usip.org/sites/default/files/resources/collections/truth_commissions/Chile90-Report/Chile90-Report.pdf); Khazan, *supra* note 32.

37. I met a lawyer whose spouse spent years in a Chilean prison, and another whose parents were sent to an isolated part of the country in virtual interior exile. Others were not so lucky. See generally CARMEN HERTZ, LA HISTORIA FUE OTRA: MEMORIAS 97–103 (2017) (describing the disappearance and murder of her husband); CABELLO-BARRUETO, *supra* note 30 (describing the death of her brother at the hands of the “caravan of death” and her attempt to find out the truth); Ariel Dorfman, *Remembering the Disappeared*, N.Y. TIMES (Sept. 11, 2017), <https://www.nytimes.com/2017/09/11/opinion/remembering-the-disappeared.html?mcubz=0&r=0> (discussing the pain of having a loved one disappear without any evidence). Many Chileans, however, are convinced that the *coup d'état* was necessary. The Truth and Reconciliation Commission argues that it is fair to debate the *coup's* necessity, but that human-rights violations should be condemned. See *Report of the Chilean National Commission on Truth and Reconciliation*, *supra* note 36, at 7.

38. See MUSEO DE LA MEMORIA Y LOS DERECHOS HUMANOS, <https://ww3.museodelamemoria.cl> (last visited July 13, 2018).

39. For an analysis of lawyers' importance to the history of Chile, including the move from dictatorship to democracy, see generally Cath Collins, *Lawyers & Transition in Chile*, in LAWYERS, CONFLICT & TRANSITION (2015), <http://uir.ulster.ac.uk/32925/1/LAWYERS%20AND%20TRANSITION%20IN%20CHILE%2C%20%20MARCH%202015.pdf> (demonstrating that Chilean lawyers have played key roles in responding to the dictatorship and in postdictatorship reforms).

40. See *Michelle Bachelet*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Michelle-Bachelet> (last visited Aug. 31, 2018). The Chilean Constitution forbids consecutive terms for the presidency. See *Constitutional*

Socialist Party and daughter of former President Salvador Allende.<sup>41</sup> Both Michelle Bachelet and Isabel Allende have roots in the Allende government: Bachelet's father was a general and the head of the *Dirección Nacional de Abastecimiento y Comercialización* (National Commission of Supply and Marketing) under Salvador Allende; during the Pinochet era, General Bachelet was imprisoned and tortured; he died of a heart attack in prison without receiving medical attention.<sup>42</sup> Michelle Bachelet and her mother were also imprisoned, tortured, and eventually exiled to Eastern Europe.<sup>43</sup> Michelle Bachelet returned to Chile and later was appointed Minister of Health (1999) and Defense (2002) by President Ricardo Lagos, the first socialist president after the democracy was reinstated.<sup>44</sup>

Today, many female judges are active members of the *Asociación de Magistradas Chilenas*, or *MACHI* (Chilean Association of Women Judges),<sup>45</sup> and women represent at least one-half of the students studying law at the university.<sup>46</sup> There is a *Ministerio de la Mujer y la Equidad de Género* (Ministry of Women and Gender Equity),<sup>47</sup> which designs policies, plans, and programs that further equality, gender equity, and human rights.<sup>48</sup> Its most recent victory is a statute that decriminalizes abortion.<sup>49</sup> Before passage of the *Ley de Aborto en Tres Causales*

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*History of Chile*, CONSTITUTIONNET, <http://www.constitutionnet.org/country/constitutional-history-chile> (last visited July 13, 2018).

41. Senator Isabel Allende is not the novelist of the same name, who is a distant relative of Salvador Allende. See *Isabel Allende Backtracks, Won't Run for President of Chile*, TELESUR (Oct. 30, 2016), <http://www.telesurtv.net/english/news/Isabel-Allende-Backtracks-Wont-Run-for-President-of-Chile-20161030-0008.html>.

42. PATRICIA POLITZER, *BACHELET EN TIERRA DE HOMBRES* 33 n.6 (2010).

43. RICHARD WORTH, *MICHELLE BACHELET* 13–14 (2008).

44. *Id.* at 14.

45. See *MACHI: Asociación de Magistradas Chilenas*, <http://www.magistradaschilenas.cl/> (last visited Sept. 5, 2018). *Machi* is a play on words in that the *machi* in *Mapuche* (Chilean Indigenous) culture is a wise, elderly, female witch doctor. Thanks to Sergio Gamonal for this information; see also *Mapuche Culture, Legends, Music, Art, Language, History, Tourism, Mapundungu, Machi, Chile*, S. AM. TRAVEL GUIDE, <http://www.southamerica.cl/Chile/Mapuche.htm> (last visited Sep. 6, 2018).

46. See Mellino, *supra* note 5.

47. See MINISTERIO DE LA MUJER Y LA EQUIDAD DE GÉNERO, <http://www.minmujeryeg.gob.cl> (last visited July 13, 2018).

48. Joint Interview with CH47 and CH48, in Santiago, Chile (Mar. 24, 2017).

49. See *TC aprueba proyecto de aborto, pero anula norma que obligaba a clínicas a practicarlo*, EL MERCURIO (Aug. 22, 2017), <http://impresa.elmercurio.com/Pages/NewsDetail.aspx?dt=2017-08-22&PaginaId=1&BodyId=1>; *TC aprueba last tres causales que despenaliza el aborto: recordamos los argumentos más importantes de las audiencias*, EL MOSTRADOR BRAGA (Aug. 21, 2017), <http://www.elmostrador.cl/braga/2017/08/21/tc-aprueba-las-tres-causales-que-despenaliza-cl-aborto-recordamos-los-argumentos-mas-importantes-de-las-audiencias/?v=desktop>. The Constitutional Court (TC) found, 6–4, that the law is constitutional. The TC also voted to approve an amendment that would permit doctors and hospitals to refuse to perform abortions (the “conscience clause”). *Id.*

(law permitting abortion for three reasons), Chile did not permit abortion under any circumstances. This prohibition was a legacy of Pinochet's dictatorship.<sup>50</sup>

Women, however, have had a slow start in participatory democracy in Chile. They first voted in municipal elections in 1932<sup>51</sup> but did not have the right to vote in national elections until 1949.<sup>52</sup> Women voted between 1949 and 1973 when Allende was deposed, but once the dictatorship grabbed power there were few free elections until the plebiscite of 1988.

Chilean women, however, have not been docile.<sup>53</sup> Progressive women joined mass organizations to defend the Allende government, and conservative women mobilized against it.<sup>54</sup> During the Pinochet dictatorship, "certain aspects of the gender ideology were reinforced and manipulated to form part of the doctrine of national security, in which women were cast as" the people who bore responsibility to teach and pass on the values of the *patria* (Fatherland).<sup>55</sup> Women also played a key role in mobilizing for "human rights, economic survival, and eventually, the return of democracy."<sup>56</sup>

Today, Chilean women have more rights than ever before. President Michelle Bachelet completed her second term in March 2018.<sup>57</sup> There are important women in other branches of the government, including the Senate and the Chilean Supreme Court, and besides the Ministry of Women, there is the *Servicio Nacional de la Mujer* ("SERNAM" or the National Women's Service), created in 1991 to bridge the gap between women who participate informally and those who are in policymaking positions.<sup>58</sup> Chile has *Ley de Quotas* (a new representation system) where at least 40% of candidates for Parliament should be women; individual parties that meet this goal receive monetary incentives; those that do not cannot continue to register candidates.<sup>59</sup> Given the recent election of a

50. See *Chile Court Lifts Complete Ban on Abortion*, ALJAZEERA (Aug. 21, 2017), <http://www.aljazeera.com/news/2017/08/chile-court-lifts-complete-ban-abortion-170821174541491.html>.

51. Sara Miller Llana, *Chile Presidential Election: Why Women Vote Separately from Men*, CHRISTIAN SCI. MONITOR (Jan. 15, 2010), <https://www.csmonitor.com/World/Global-News/2010/0115/Chile-presidential-election-Why-women-vote-separately-from-men>.

52. See FRANCESCHET, *supra* note 12, at 4.

53. See *id.* at 19.

54. *Id.*

55. *Id.* at 25.

56. *Id.* at 19.

57. See Eva Vergara, *Chile's Bachelet Presents Gay Marriage Bill*, ASSOCIATED PRESS (Aug. 29, 2017), <https://www.apnews.com/5bd71f27c2d54856aa3f5bd988e2a125>.

58. See FRANCESCHET, *supra* note 12, at 111–14. The percentages of women in the *Cámara de Diputados* (House of Representatives) and the Senate rose significantly over the past 20 or 30 years. See RENATO GARIN GONZÁLEZ, *LA FRONDA: CÓMO LA ELITE SECUESTRÓ LA DEMOCRACIA* 103 (2017). In 1989, women represented 5.8% in the *Cámara de Diputados*, whereas their percentage was 15.8% in 2013. *Id.* In the Senate, the percentages of women rose from 5.3% to 20%. *Id.*

59. See *Chile Endorses Women's Leadership in Politics and Aims for Women to Direct 40 Per Cent of Public Enterprises by 2018*, UN WOMEN,

conservative, Sebastián Piñera, to replace Bachelet,<sup>60</sup> we can expect, however, that some of the more recent advances for women will slow or be reversed.

Women have also had mixed success in the private sector. Chile has a goal that 40% of members of the board of publicly traded companies will be women by 2018.<sup>61</sup> When President Bachelet took over, only four percent of board members of these companies were women, but this number is improving.<sup>62</sup> Despite a complete absence of female CEOs and CFOs, about 70% of Chile's publicly traded companies have boards with at least one woman; women's presence on boards in Chile has grown by 15% from 2012 to 2016.<sup>63</sup> Nonetheless, in the 40 *Empresas Ipsa* (businesses with the most highly traded stocks in the Chilean market), women represent only 6.5% of members of the boards of directors.<sup>64</sup>

Women are not yet equal in Chilean society. In fact, as is the case in most of the world, women in Chile are culturally bound to gender roles as primary caregivers of the family.<sup>65</sup> As we shall see, my interviewees emphasized the power of these gendered expectations and how they affect women's career success as lawyers. And, ironically, many of the family-friendly advances most likely helpful to women in nonprofessional positions may harm female lawyers who seek to advance in their careers.

### *B. Legal Education in Chile*

Law is a five-year undergraduate degree in Chile. The course of study is traditional, and while there are clinics to acquire practical experience, students do not ordinarily argue motions or try cases before the courts.<sup>66</sup> Many students,

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<http://www.unwomen.org/en/get-involved/step-it-up/commitments/chile> (last visited July 13, 2018).

60. See Bonnefoy & Londoño, *supra* note 3.

61. Joint Interview with CH47 and CH48, *supra* note 48 in Santiago, Chile (Mar. 24, 2017).

62. *Id.*

63. Chile has not yet reached its goal of 40%, and will not do so in the near future. See EGON ZEHNDER, 2016 GLOBAL BOARD DIVERSITY ANALYSIS, 8, 10, 19–20 (2017),

[https://30percentclub.org/assets/uploads/UK/Third\\_Party\\_Reports/2016\\_GBDA\\_DIGITAL\\_FINAL.pdf](https://30percentclub.org/assets/uploads/UK/Third_Party_Reports/2016_GBDA_DIGITAL_FINAL.pdf).

64. Gabriela Villalobos, *Mujeres son sólo el 6,5% de total de directores de las empresas IPSA*, PULSO, <http://www.pulso.cl/empresas-mercados/mujeres-solo-65-total-directores-las-empresas-ipsa/> (Dec. 5, 2017). In contrast, in the United States, women represent 19.9% of directors in the S&P 500. *Id.*; see also GARIN GONZÁLEZ, *supra* note 58, at 102–03 (stating that there were only 23 women of the 347 directors, and that 57% of the largest firms had no female directors in 2016).

65. See *Human Development in Chile 2010 Gender: The Challenges of Equality*, PNUD CHILE 3, 10 (2010), <http://desarrollohumano.cl/idh/informes/2010-genero-los-desafios-de-la-igualdad/> (English synopsis).

66. Interview with CH24, in Santiago, Chile (Mar. 1, 2017).

however, work as *procuradores*<sup>67</sup> in their fourth and fifth years of school at law offices to acquire practical experience.<sup>68</sup> Students must then pass an *examen de grado*, a comprehensive examination similar to the bar examination in the United States. The *examen de grado* is given by the individual university and comprises both a rigorous oral examination by a panel of expert professors and a written examination.<sup>69</sup> Many students study for up to two years before they take and pass the exam. Graduates must also complete a six-month *práctica* (internship) with the *Corporación de Asistencia Judicial*, a governmental organization that places graduates in poor communities to represent lower-income persons before tribunals.<sup>70</sup> Once graduates pass the *examen de grado*, complete the *práctica*, and write a thesis, they may be *titulado* (licensed to practice) and sworn in as practicing lawyers by the Supreme Court of Chile.

Besides the undergraduate law degree, Chilean lawyers may earn *diplomados* (certificates) and master's degrees in specific subject areas.<sup>71</sup> A master's degree earned abroad is more prized in Chile than one earned locally, and lawyers travel abroad—most often to Spain or the United States—to earn LLM degrees.<sup>72</sup> Moreover, a position at a top international firm in Chile requires a command of English and, in some cases, additional languages.

### C. Chilean Law, Employment, and Gender

#### 1. Antidiscrimination Law—The Zamudio Law and the Tutela Laboral

In 2006, Chile's labor code incorporated a *tutela laboral*, a process that permits a plaintiff to redress violations of dignity rights that occur in the workplace.<sup>73</sup> A plaintiff who is still working can request injunctive relief and compensatory damages under Article 495 of the Chilean Labor Code.<sup>74</sup> If, however, the plaintiff is no longer working, there is a schedule of damages linked to the employee's seniority, and the court may award the equivalent of an

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67. A *procurador* is ordinarily a law student who works in a law office. This position is similar to that of a paralegal or law clerk in the United States, but it takes on a more practical role, especially in small Chilean law firms.

68. Interview with CH08, in Santiago, Chile (Jan. 24, 2017).

69. See, e.g., Alejandra Zúñiga C., *Exámenes del grado: entre la tradición y el cambio*, EL MERCURIO (Aug. 5, 2011), <http://www.elmercurio.com/legal/movil/detalle.aspx?Id=900499&Path=/0D/BD/>.

70. Interview with CH02, in Santiago, Chile (Jan. 18, 2017).

71. See, e.g., *id.*

72. See, e.g., Interview with Focus Group CH68–72, in Santiago, Chile (Aug. 23, 2017).

73. Cód. TRAB. art. 485–95.

74. Article 495 of the Chilean Labor Code directs what should be in the labor court judges' opinions, and it permits compensatory damages in cases brought for violation of fundamental rights where the employee is still employed. See BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE, [www.leychile.cl](http://www.leychile.cl) (last visited Sept. 26, 2017); see also E-mail from Professor Sergio Gamonal Contreras, [Profesor Titular and Director of the Master's Degree Program in Labor and Social Security Law], Universidad Adolfo Ibañez, to Ann C. McGinley, William S. Boyd Professor of Law, University of Nevada, Las Vegas (Sept. 25, 2017, 15:18) (on file with author).

additional 6–11 months of pay. Under certain conditions, compensatory damages are available under the *tutela laboral* in addition to the scheduled amount.<sup>75</sup>

Although the 2012 Zamudio’s Law—named after a gay man murdered by homophobes—prohibits discrimination based on race, color, sex, gender identity, sexual orientation, disability, age, political affiliation, and other categories,<sup>76</sup> it has few remedies.<sup>77</sup> Many lawyers consider Zamudio’s Law ineffective because it generates a long trial and does not allow for compensatory damages.<sup>78</sup>

## 2. *The Tutela Laboral*

In 2006, Chile amended its labor laws—Articles 485 to 495—which make constitutional protections of fundamental rights applicable to labor contracts.<sup>79</sup> These changes in the labor code limit employers’ power, protect employees’ dignity rights, and create a special process for workers to vindicate their rights: the *tutela laboral*.<sup>80</sup> The legislation is broader than American antidiscrimination law and the Equal Protection Clause of the Fourteenth Amendment. Title VII of the U.S. Civil Rights Act of 1964 prohibits discrimination and harassment in employment based on membership in protected classes and retaliation for asserting one’s rights.<sup>81</sup> U.S. courts interpreting this statute, however, emphasize that these prohibitions are exceptions to the underlying employment-at-will doctrine.<sup>82</sup> This doctrine permits an employer to

75. Interview with CH10, in Santiago, Chile (Jan. 30, 2017). See E-mail from Professor Sergio Gamonal Contreras, *supra* note 74; see Sergio Gamonal Contreras, *Moral Damages for Employment Contract Termination under Chilean Law*, 2012–13 REVUE DE DROIT COMPARÉ DU TRAVAIL ET DE LA SÉCURITÉ SOCIALE 96, 101–02 (2012). *Daños morales* (moral damages) is the term used to refer to what Americans would call “compensatory damages.”

76. Law No. 20.609 art. 2, Ley de Zamudio, Julio 24, 2012, BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE, <https://www.leychile.cl/Navegar?idNorma=1042092>. Thanks to Sergio Gamonal for clarifying the language of the law.

77. Zamudio’s Law was passed in 2012 after a notorious case in which a group of young men murdered a gay youth. See *4 Guilty in Chile Gay Murder That Led to Hate Law*, CBS NEWS (Oct. 17, 2013), <https://www.cbsnews.com/news/4-guilty-in-chile-gay-murder-that-led-to-hate-law/>; Law No. 20.609 art. 2, Ley de Zamudio, Julio 12, 2012, BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE, <https://www.leychile.cl/Navegar?idNorma=1042092>.

78. Interview with CH10, *supra* note 75. According to Professor Sergio Gamonal, “[I]t is an ineffective law, without a lightening of the burdens of proof, and without compensatory damages.” See E-mail from Professor Sergio Gamonal González, *supra* note 74.

79. Cód. TRAB. art. 485–95.

80. See *supra* note 75.

81. 42 U.S.C. § 2000(e) to 2000e-17 (2016).

82. See, e.g., Ann C. McGinley, *Rethinking Civil Rights and Employment at Will: Toward a Coherent National Discharge Policy*, 57 OHIO ST. L.J. 1444, 1460–62 (1996) (discussing *Visser v. Packer Engineering Associates, Inc.* as an example of the limited exception that the Age Discrimination in Employment Act poses to the employment-at-will doctrine).

fire an employee—who does not have a contract or a collective bargaining agreement to the contrary—for any legal reason or no reason.<sup>83</sup>

In contrast, Chilean law protects the integrity and dignity of the individual.<sup>84</sup> Moreover, it applies to actions of private and public employers. Unlike a counterpart in the United States, an employee in Chile may bring a *tutela laboral*<sup>85</sup> against a private employer for encroaching upon her dignity rights.<sup>86</sup> The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution protects only *government* employees against unequal treatment based on gender and other protected characteristics.<sup>87</sup>

Moreover, while U.S. statutes such as Title VII, the Age Discrimination in Employment Act (ADEA),<sup>88</sup> and the Americans with Disabilities Act (ADA)<sup>89</sup> protect most public and private employees<sup>90</sup> from discrimination based on race, color, national origin, sex, religion, age, and disability, U.S. courts emphasize that the antidiscrimination laws are not a “general civility code.”<sup>91</sup> Unlike the Chilean labor laws, the U.S. Constitution and federal laws do not protect the dignity of employees or applicants for employment unless the dignity interest is linked to their protected characteristics.

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83. See generally *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (standards ensure that Title VII will not become a “general civility code”); *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998) (same); *McGinley*, *supra* note 82.

84. This is a typical human-rights focus. See generally RUBEN GARCIA, MARGINAL WORKERS: HOW LEGAL FAULT LINES DIVIDE WORKERS AND LEAVE THEM WITHOUT PROTECTION 113–41 (2012) (arguing for a human-rights approach to protect U.S. employees).

85. Cód. Trab. art. 485; see Law No. 20.974, Ley de Zamudio, Julio 24, 2012, BIBLIOTECA DEL CONGRESO NACIONAL DE CHILE, <https://www.leychile.cl/Navegar?idNorma=1042092>; see also *Vulneración de derechos fundamentales con ocasión del despido: Requisitos de configuración; Maltrato verbal al momento del despido configure una vulneración a la honra del trabajador despedido*, 1 REV. DE DERECHO Y SEGURIDAD SOCIAL 331, 354–55 (2013) (labor-court opinion setting forth requirements of the *tutela* in a wrongful-firing case in which the plaintiff alleges that her employer violated her rights to honor and dignity).

86. Article 1 of the Chilean Constitution states: “People are born free and with equal dignity and rights.” CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 1. Article 19, Number 2 of the Chilean Constitution guarantees equality of men and women before the law. *Id.* art. 19. Sections 2 and 485 of the Chilean Labor Code incorporate these provisions to establish workplace protections. Cód. Trab. §§ 2, 485.

87. *United States v. Morrison*, 529 U.S. 598, 620 (2000).

88. 29 U.S.C. § 621–634 (2016).

89. 42 U.S.C. § 12101–12213 (2016).

90. The ADA does not protect federal-government employees. Depending on the statute, the employer must have either 15 (Title VII and the ADA) or 20 (ADEA) employees to be covered by the statute. 42 U.S.C. § 12101; 29 U.S.C. § 621.

91. See, e.g., *Oncala v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998).

3. *Pregnancy, Maternity, Paternity, and Family Medical Leaves*

Chilean law provides significant benefits to families. Women have six weeks of paid prenatal leave and six months of paid postnatal leave.<sup>92</sup> If they choose, women may share the final three months of postnatal leave with the father of the baby, but this is rarely done. Men independently have five days of paid paternity leave, but, despite the rights granted by the law, even taking five days off is a taboo in many offices.<sup>93</sup> The government pays for the prenatal and postnatal leaves, but because there is a *tope* (cap), a lawyer whose salary exceeds the cap will either be paid less than salary, or the firm may pay the difference between the cap and the person's salary. Payment of the difference must be negotiated individually by the lawyer before beginning the job. Of course, it is important to realize that the government's subsidy of prenatal and postnatal leaves covers the salaries of 90% of Chilean workers.<sup>94</sup> Lawyers, however, are an elite group when it comes to salaries, and the government subsidy often does not cover their entire salaries.<sup>95</sup>

Pregnant women are also protected by a *fuero*, which prohibits the employer from firing a woman from early in her pregnancy until after she returns from her postnatal leave unless the employer can prove serious misconduct.<sup>96</sup> When an employer wishes to discharge a pregnant woman, it must prove good cause.<sup>97</sup> If an employer cannot meet its burden or if it fires the employee without bringing a lawsuit, the employee may be reinstated.<sup>98</sup> Chilean pregnancy protection is far superior to that afforded by the Pregnancy Discrimination Act in the United States, where pregnant women who need an accommodation to work must prove that other persons who have similarly debilitating conditions but are not pregnant have been accommodated.<sup>99</sup> Even so, American women have no right

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92. Cód. TRAB. arts. 195, 197. While many of the female lawyers take the entire six months, a few told me that they took much shorter leaves. See Interview with CH03, in Santiago, Chile (Jan. 19, 2017); Interview with CH52, in Santiago, Chile (Aug. 18, 2017). Permitting an employee to return before the end of the first three months, however, is illegal in Chile because labor rights are not waivable. Thank you to Macarena Saez for this insight; see also Rodrigo Alamos M., *Labor Market Modernization*, ESTUDIOS PUBLICOS, 26 Autumn 1987, at 5.

93. Cód. TRAB. art. 195.

94. Thanks to Professor Sergio Gamonal Contreras for this information; see also *Profile of the Health Service System: Chile*, WORLD HEALTH ORG., [http://www.who.int/ageing/projects/intra/phase\\_one/alc\\_intra1\\_cp\\_chile.pdf](http://www.who.int/ageing/projects/intra/phase_one/alc_intra1_cp_chile.pdf) (last visited Sep. 6, 2018).

95. Thanks to Professor Sergio Gamonal Contreras for this information. See E-mail from Professor Sergio Gamonal Contreras, [*Profesor Titular* and Director of the Master's Degree Program in Labor and Social Security Law], Universidad Adolfo Ibáñez, to Ann C. McGinley, William S. Boyd Professor of Law, University of Nevada, Las Vegas (Sept. 8, 2018) (on file with the author).

96. Cód. TRAB. art. 201; Interview with CH10, *supra* note 75.

97. Interview with CH36, in Santiago, Chile (Mar. 14, 2017).

98. Interview with CH10, *supra* note 75.

99. See Ann C. McGinley, *Young v. UPS, Inc.: A Victory for Pregnant Employees?*, HAMILTON & GRIFFIN RIGHTS (Mar. 29, 2015), <http://www.hamilton->



to paid leave.<sup>100</sup> Chilean mothers also have *alimentation rights*, which allow breastfeeding mothers to take off one hour a day in order to breastfeed their babies without loss of pay.<sup>101</sup> Mothers, or fathers at the election of the mother, may not be fired for missing work to care for their minor children.<sup>102</sup> The employer pays this time as vacation time.<sup>103</sup> Mothers have rights to paid daycare or a childcare subsidy if they work for an employer with 20 or more female employees.<sup>104</sup> Fathers do not have the same rights.<sup>105</sup>

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griffin.com/2015/03/29/guest-blog-ann-mcginley-young-v-ups-inc-a-victory-for-pregnant-employees/. There is some authority to assume that the ADA will grant rights to women that go beyond the Pregnancy Discrimination Act. *Id.*

100. *See id.*

101. Cód. TRAB. art. 206. The right is called the “right to alimentation.” The mother may take time off during the workday, arrive one hour late for work, leave work one hour early, or she may split the time to one-half hour in the morning and one-half hour in the afternoon. *See* SERGIO GAMONAL CONTRERAS, *EL ABC DEL CONTRATO DE TRABAJO*, 64–65 (2013).

102. Cód. TRAB. art. 199.

103. Thanks to Sergio Gamonal for this information; *see also* Interview with CH06, in Santiago, Chile (Jan. 23, 2017). There is also a movement to make this benefit available for parents of older children. *Id.*; Sergio Gamonal Contreras, *Discriminación femenina y part-time o trabajo tiempo parcial*, *REVISTA LABORAL CHILENA*, Jun. 2005, at 1 (advocating that rights that mothers have apply fully to fathers as well).

104. Marcela Salazar, *Childcare in Chile: A Right for All Working Women*, *LUS LABORIS* (May 14, 2018), <https://www.iuslaboris.com/en-gb/resources/insights/a/childcare-chile-right-all-working-women/>.

105. Cód. TRAB. art. 206; *see* GAMONAL CONTRERAS, *supra* note 101, at 65. Chile has a private pension system that draws 10% from employees’ paychecks. *See* Benedict Mander, *Chile pension reform comes under world spotlight*, *FIN. TIMES* (Sept. 12, 2016), <https://www.ft.com/content/b9293586-7680-11e6-bf48-b372cdb1043a>. Chile also has private and public health-insurance systems. *Id.* Women in their fertile years have up to four times more deducted from their salaries than men to pay for their health insurance. *Id.*; Interview with CH06, *supra* note 103. Chilean complainants may go to the *Dirección del Trabajo* (also known as the *Inspección del Trabajo*) or directly to the labor courts to complain about violations in the employer’s workforce. The *Dirección* will investigate and impose fines on the employer, if necessary. If there is an allegation of a deprivation of fundamental rights, there will be a more thorough investigation and a mediation with the employer. If there is no settlement, the complainant can go to court, or the *Dirección* may file the case in court, but the *Dirección* does not represent the complainant against the employer. A complainant of limited income may go to the *Defensoría Laboral* (Labor Defense Counsel) for representation; otherwise, the employee may get a private lawyer. Interview with CH11, in Santiago, Chile (Jan. 30, 2017); Interview with CH36, *supra* note 97. The *Dirección* does not have jurisdiction over the matter if the employee has been fired in violation of fundamental rights. *Id.* If that happens, the plaintiff goes directly to court with a lawyer. *Id.*; *see also* Gamonal Contreras, *supra* note 103, at 1 (advocating that mothers and fathers have the same rights to postnatal leave and that employers of 20 employees, men or women, have the responsibility to provide childcare).

## II. METHODOLOGY<sup>106</sup>

### A. *The Interviews*<sup>107</sup>

I interviewed lawyers, judges, prosecutors,<sup>108</sup> law professors, and law students and conducted focus groups of law students. In total, there were 72 interview subjects. Because the vast majority of these interviewees have worked in more than one legal position, the sample includes lawyers who have worked in more than 200 law offices. All of the interviews were conducted and transcribed in Spanish.<sup>109</sup> All interviewees signed consent forms. All were assigned identifying numbers; their names were not used in the interviews and do not appear on the tapes or in the transcripts. Some individuals were interviewed in their workplaces, while others were more comfortable meeting in neutral locations, such as coffee shops or university conference rooms.

### B. *Profile of the Interviewees and their Experiences*

Between January and August 2017, I interviewed 56 Chilean lawyers and 2 law students,<sup>110</sup> and I conducted three focus groups of 14 additional Chilean law students. This study was initiated with the help of professors at the *Universidad Adolfo Ibañez* (Adolfo Ibañez University, or “UAI”) in Santiago and in particular, Sergio Gamonal C., *Profesor Titular*<sup>111</sup> and Director of the Master’s Degree Program in Labor and Social Security Law.<sup>112</sup> Since 2012, I have served as a

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106. The project was characterized as “exempt” by the UNLV Social/Behavioral Institutional Review Board, Las Vegas, Nevada in December 2016, after reviewing the package of information submitted by the Principal Investigator, Ann C. McGinley. Document on file with the author.

107. All interviews are on file with the author. All support for assertions regarding the impressions of interviewees can be found in the interview materials that are on file with the author. Additionally, support for assertions regarding the general legal history and culture in Chile can be found in the same interview materials.

108. The prosecutor in the criminal process is a *fiscal*, but the word also means the general counsel of a company. I use the word in both senses throughout this Article. I interviewed both prosecutors and general counsel. Chileans ordinarily distinguish between *abogados* (lawyers) and *fiscales* (prosecutors), but in the United States we do not make this distinction; therefore, I included prosecutors in my project.

109. The translations in quotations in this Article are mine.

110. I use the term “lawyer” broadly to mean a person who has graduated from the university with a degree in law and who is using that degree to work as a lawyer in litigation, consulting, as a prosecutor, as a general counsel in a business, or as a judge or justice. I also include law professors who had previously practiced law, or continue to do so, and *relatores* (similar to law clerks in the United States, but who, in addition to law degrees, have also graduated from the Judicial College and served as judges in trial-level courts). Some trial judges are asked to *relate* either in one of the Courts of Appeals or the Supreme Court of Chile.

111. A *Profesor Titular* is similar to a U.S. “Professor of Law.” The title is reserved for the person who not only has tenure but also has a distinguished research and publishing career.

112. See UNIVERSIDAD ADOLFO IBÁÑEZ, <http://www.uai.cl/pstgrados-y-diplomas/magister-en-derecho-laboral-y-seguridad-social> (last visited July 14, 2018).

*Profesora Extranjera* (Visiting Foreign Professor) at UAI's master's degree program, and I travel annually to Santiago to deliver lectures on sexual-harassment law in the United States. This affiliation offered me access to the first interviewees and to the students who participated in the focus groups. However, the interviewees were not limited to those who attended UAI or who were known to Professor Gamonal, but instead a snowball study was conducted that reached a wide variety of subjects in Santiago.<sup>113</sup>

The subjects were 38% male and 62% female; they work in various legal settings: trial courts with jurisdiction over family, civil, criminal, and labor law; the Court of Appeals in Santiago and the Supreme Court of Chile; small and large private law firms; large, multi-professional international firms; public-service organizations including those that specialize in representing and investigating employment-discrimination claims as well as the *Ministerio de la Mujer y la Equidad de Género* (Ministry of Women and Gender Equity); for-profit companies; nongovernmental (nonprofit) organizations; various universities; and the Chilean legislature. Interviewees practice in civil, criminal, energy, intellectual-property, international, labor-and-employment, legislative, and real-estate law in private firms and government offices. The university professors teach

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113. A snowball study starts small and becomes larger as it progresses. The interviewer asks the interviewee to recommend others who would voluntarily participate in the study and to contact them to encourage them to interview with the interviewer. A snowball study was appropriate because it sought qualitative rather than quantitative responses, and earning the trust of the subjects was crucial to the success of the study. Without earning the trust of the subjects, I would not have been granted interviews with the judges and justices from the appellate courts or with partners in the large international firms. The first group of master's degree students was selected out of convenience (a "convenience sample"), but as the study grew I asked interviewees to broaden the study by considering lawyers of all different specialties, in different kinds of workplaces, with different roles in their workplaces, of different ages, and of different genders. It was also necessary to interview university professors and to ask them to consider referring lawyers they knew to interview for the project. This latter approach led to a number of new chains that reached out broadly into the legal community (a "judgment sample"). Finally, it became clear that it would be useful to add the focus groups of law students to consider concerns that some older lawyers voiced about generational differences. A theory began to emerge that a look at the generational differences might lead to innovative solutions to the problems identified by the interviewees. This last group was a theoretical sample. See Martin N. Marshall, *Sampling for Qualitative Research*, 13 FAM. PRAC. 522, 523–24 (1996) (explaining the benefits of a snowball approach and the three different types of samples); Patrick Biernacki & Dan Waldorf, *Snowball Sampling: Problems and Techniques of Chain Referral Sampling*, 10 SOC. METHODS & RES. 141, 143–48 (1981) (explaining that snowball sampling requires the control of the researchers to assure proper samples).

I chose to limit my study to Santiago because, as a city of more than six million people, it is home to more than one-third of the Chilean population, and it serves as the center for law, policy, government, and business in Chile. See *Chile*, *supra* note 12. Moreover, all of the firms classified as "Big Law" in Chile are located in Santiago. See Iñigo de la Maza Gazmuri et al., *Big Law in Chile: A Glance at the Law Firms* 83, 92–93 in *BIG LAW IN LATIN AMERICA & SPAIN: GLOBALIZATION AND ADJUSTMENTS IN THE PROVISION OF HIGH-END LEGAL SERVICES* (Manual Gómez & Rogelio Pérez-Perdomo eds. 2018).

antitrust, business, constitutional, criminal, family, insurance, and labor-and-employment law, and legal clinics in university settings. A number of the practicing lawyers and judges also teach law as adjuncts.

All interviewees have undergraduate degrees in law. Many also have *diplomados*<sup>114</sup> or *Magister*<sup>115</sup> degrees. A few have Ph.D. degrees. Interviewees graduated from various universities in Chile and abroad. Some speak English and other languages besides their native Spanish. The lawyer interviewees ranged from 25 to 55 years old, with a mean age of 38.

The students in the focus groups are third- and fifth-year law students, ranging from 20 to 24 years of age. I was the moderator of the focus groups. I began with an explanation that I had spoken with a number of lawyers in both Chile and Spain,<sup>116</sup> and that many of the middle-aged lawyers and even some younger lawyers mentioned that law students and new lawyers do not have the same ambition as their elder counterparts do.<sup>117</sup> I asked focus-group members to respond to this statement. As students responded, other students broke in and explained their views, and I asked all of them what their plans—family and career—were for the future. Many of the questions echoed those of the interviews but were questions relating to the future.<sup>118</sup> Every member of the three focus groups participated equally in the discussion.

I conducted an extended 90-minute interview of two students who attend a branch of a Chilean university in Viña del Mar. These students are 21 and 30 years-old and are in the fourth year of their legal educations.

Twelve of the sixteen undergraduate students were women; four were men.

### C. Locating the Subjects

The project started with eight volunteer interviewees: students from UAI's Labor and Social Security Law Master's Degree Program, all of whom are practicing lawyers or judges. From there a snowball study began. During each interview, subjects were asked to recommend other potential subjects. I monitored areas of practice, gender, age, and experience of potential subjects to assure that a

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114. A *diplomado* is a postgraduate certificate in a specialized area of law.

115. *Magister* is the term used by Chileans for a master's degree and is the equivalent of an LLM degree in the United States. To earn a *Magister*, students study the course material in a specialized area of law, are tested on it, and write an original thesis in an area of their choice. A *Magister* is often pursued so that the lawyer may engage in more specialized work and be more attractive to employers. See, e.g., Interview with CH26, in Santiago, Chile (Mar. 6, 2017).

116. After leaving Chile, I went to Spain to conduct a similar study. I then returned to Chile later in the summer to conduct focus groups. These studies are part of a broader multinational research project on gender and lawyers.

117. Interview with CH33, in Santiago, Chile (Mar. 13, 2017).

118. I asked students what they expected their careers to be, where they would work, whether they planned on marrying or having a life partner, whether they planned on having children, and if so, who in the couple would take time off to care for the children, etc.

representative group was interviewed. When the study needed more interviews of law-firm partners, professors helped locate subjects, and so began another chain or snowball. When additional subjects in a particular demographic were needed, interviewees recommended volunteers in this demographic.

The snowball method has the advantage of reaching a broad range of individuals: male and female lawyers of all ages who graduated from various universities, who have diverse specialties, types of jobs, and law practices. Professors at UAI advertised and collected names of student volunteers who participated in the focus groups.

Every tape was transcribed in Spanish by native Spanish speakers from Chile. When the transcripts were finished, I read through them multiple times, categorized and coded different concepts that arose frequently, and annotated each transcript. Once this was completed, I reread the transcripts and the annotations and began to outline my findings and analysis. This was a time-consuming process, but it yielded a comprehensive understanding of the information in the transcripts.

### III. THE SETTING: PRECONDITIONS TO INEQUALITY

#### A. *The Legal Community in Santiago: Private Law Firms*

Santiago's private legal community generally comprises seven different types of private law firms. The categories are overlapping and the lines between them porous, but it is useful to have a general understanding of the market. The types of law firms are the following:

- solo/independent or very small firms;
- family firms: some small and some large; some have joined with large international firms but still maintain small- or medium-sized branches in Santiago or other cities in Chile;
- small- or intermediate-sized firms that are not family firms and that specialize in Chilean or local law;
- small- or intermediate-sized "boutique" firms that are not family firms and that specialize in specific areas with international practices;
- small- or medium-sized branches of international law firms whose main offices are in other countries such as England, Spain, the United States, or other Latin-American countries;
- large Chilean law firms with their main offices in Santiago, and branch offices in other parts of Chile; and
- large international, multi-professional firms where lawyers, accountants, engineers, and other professionals serve clients; these firms have large offices in Santiago, as well as many other locations worldwide.

1. *Solo, Independent, Small, and Family Firms*

Traditionally, Santiago lawyers completed undergraduate universities with law degrees and joined relatively small firms that were owned and operated by family members. Today, family firms continue to exist as do solo practices. Many sole practitioners have office-sharing arrangements with other independent lawyers. Some independent lawyers work with office mates on some matters, but generally their finances and cases are separate. The family firms may or may not be slightly larger.

There are also small firms that do not have familial affiliations but that specialize in litigation, consulting, or a particular substantive area of Chilean law. These firms typically have two or three partners and three or four associates. There are also “boutique” law firms—relatively small firms that do high-quality international work in a particular subset of areas.<sup>119</sup> Generally, small firms and family firms offer no expectation that associates who are not family members will become partners; lawyers work for experience and plan to leave and open their own firms.<sup>120</sup> At least one of the “boutiques” is developing opportunities for career growth and expectations for partnership.<sup>121</sup>

“Family firm” connotes something more than and different from size. For critics, the term describes a firm that operates unprofessionally. Some say that family firms hire and promote less qualified family members (usually male) over more qualified, more diligent lawyers who are not members of the family.<sup>122</sup>

2. *Chilean Branches of International Firms: Still Family Firms?*

Some small family firms have recently joined large European, North-American, or Latin-American firms as their Chilean branches. Although these firms have merged with well-known international foreign firms, some continue to operate more like family firms, lacking procedures for associate evaluation and growth.<sup>123</sup> Other family firms that have merged with large international law firms produce good work product in what they consider a professional atmosphere, even if there is no general expectation for associates to become partners. One family-

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119. See generally Interview with CH20, in Santiago, Chile (Feb. 7, 2017); Interview with CH21 in Santiago, Chile (Feb. 9, 2017).

120. Interview with CH02, *supra* note 70; Interview with CH42, in Santiago, Chile (Mar. 21, 2017).

121. Interview with CH20, *supra* note 119.

122. *Id.*; Interview with CH44, in Santiago, Chile (Mar. 22, 2017). In fact, a former associate noted that she worked very long hours, but the family members did not. *Id.* A partner of a boutique international firm saw family firms as doing inferior work, having few procedures in place for associate evaluation and growth, and generally not operating professionally. Interview with CH20, *supra* note 119; see also Interview with CH27, in Santiago, Chile (Mar. 8, 2017) (stating that family firms generally favor male family members because the women “will likely be destined to other things such as raising the children”).

123. A female associate at a large U.S. firm that operates in Chile as a family firm decided to open her own practice because she believed that the firm lacked professionalism and discriminated against female lawyers. Interview with CH44, *supra* note 122.

member partner in a firm that is now a branch of a large international firm attributes a friendly atmosphere to the family background.<sup>124</sup> This firm, however, has no female lawyers—associates or partners.<sup>125</sup>

### 3. Large Law Firms

In addition to the smaller branches of large, global law firms, Chile has a few large firms whose principal offices are in Santiago, with branches in other Chilean cities. Some of these firms have familial affiliations, but others do not. These top law firms generally hire students who graduate at the top of their class from the most prestigious universities in Santiago. Most of these firms expect applicants to earn master's degrees—preferably outside of Chile—and *diplomados* in particular specializations, and to be proficient in English.<sup>126</sup>

### 4. Multi-Professional Firms

Santiago also has a few large branches of very large global firms that combine accountants and lawyers and other professionals to serve multiple needs of the clients. Because forming partnerships with other professionals violates the applicable rules of professional responsibility in the United States, these large international, multi-professional firms exist in the United States, but they do not have practicing lawyers. There is no ethical barrier in Chile to lawyers forming partnerships with other professionals; therefore, these firms have many lawyers.<sup>127</sup> A partner in one of these multi-professional firms explained that these firms are more meritocratic than the “family firms” and other law firms in Santiago in that family name and gender do not matter.<sup>128</sup>

## B. The Legal Community in Santiago: Government Work

### 1. Ministry of Women, the Legislature, Fiscalías, and Other Public Services

Male and female lawyers work in various government jobs, known as *servicios públicos*. My interviews included lawyers who worked for the *Ministerio de la Mujer y la Equidad de Género* (Ministry of Women and Gender Equity), the Chilean legislature, various *fiscalías* (prosecutor offices) and public defender offices, the *Dirección del Trabajo* (an office similar to the Equal Employment Opportunity Commission in the United States, but having jurisdiction over working conditions in addition to discrimination), the *Consejo del Estado* (which defends the State), the *Defensoría Laboral* (an organization that provides representation to low-income workers in suits against their employers), and *Corporación de Fomento de la Producción* (a government organization that creates opportunities for business development).

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124. Interview with CH56, in Santiago, Chile (Aug. 22, 2017).

125. *Id.* (a partner stating that he felt no pressure to hire a female lawyer).

126. Interview with CH43, in Santiago, Chile (Mar. 21, 2017).

127. One interview subject noted that his firm is not a law firm, but a firm in which lawyers, engineers, accountants, and other professionals work. Interview with CH30, in Santiago, Chile (Mar. 11, 2017).

128. Interview with CH27, *supra* note 122.

## 2. *The Judiciary*

I also spoke to a number of trial judges and *ministros* (appellate judges). I interviewed additional trial judges who were serving as *relatores* and *relatoras* for the Court of Appeals of Santiago or the Supreme Court of Chile, and many more judges who had served previously as *relatores* and *relatoras* earlier in their careers.<sup>129</sup> The court system in Chile has undergone substantial reform—moving from deciding cases on nearly exclusively written submissions to using oral hearings, in which the trial judges observe the witnesses' testimony and decide the cases. The judges and lawyers uniformly agree that the oral system is far superior to the older method.<sup>130</sup> There are no juries; the trial judges write *sentencias* (opinions) to explain their decisions. All of the trial courts are specialized, and the criminal courts are divided into the courts of *garantías* (deciding the pretrial motions alleging constitutional violations) and the courts of *juicio* (trying the cases).<sup>131</sup>

### C. *The Legal Community in Santiago: Academia, NGOs, and In-House Counsel*

I interviewed four full-time law professors who teach at schools ranked in the top-five law faculties in Santiago and who serve as visiting professors in other universities in Chile, as well as judges and lawyers who teach as adjuncts in universities in Santiago. I also interviewed law students in individual interviews and in focus groups, in-house counsel, and lawyers working in nongovernmental organizations.

### D. *The Chilean Schedule*

Chileans work long days.<sup>132</sup> Chile's work hours rank fourth in the world in the number of hours worked per year.<sup>133</sup> Among members of the Organization for Economic Cooperation and Development, Chileans work the most hours—2,050 annually as of 2013.<sup>134</sup> Some interviewees said that although Chilean workdays are very long, Chileans do not work efficiently and their productivity is

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129. See, e.g., Interview with CH25, in Santiago, Chile (Mar. 2, 2017). For an explanation of the role of the *relatores*, see *supra* note 110.

130. See, e.g., Interview with CH25, *supra* note 129; Interview with CH29, in Santiago, Chile (Mar. 11, 2017).

131. For an interesting discussion of the gendering of expertise that occurred when the criminal courts were reformed in Chile, see Maria J. Azocar & Myra Marx Ferree, *Gendered Expertise*, 29 GENDER & SOC'Y 841, 853–57 (2015) (finding criminal law and practitioners were considered intellectual and masculine in character, and family law was seen as the feminine work of therapists, not intellectual lawyers).

132. See *Chile es el cuarto país con más horas de trabajo por año*, COOPERATIVA (Feb. 23, 2016), <http://www.cooperativa.cl/noticias/pais/trabajo/chile-es-el-cuarto-pais-con-mas-horas-de-trabajo-por-ano/2016-02-23/070206.html>.

133. *Id.*

134. *Chile, uno de los países de la OCDE con mayores jornadas laborales del mundo*, COOPERATIVA (Sept. 25, 2013), <http://www.cooperativa.cl/noticias/economia/crecimiento/chile/chile-uno-de-los-paises-de-la-ocde-con-mayores-jornadas-laborales-del-mundo/2013-09-25/165742.html>.



low.<sup>135</sup> Chileans begin fairly early in the morning and work until at least 7 p.m., often 8 p.m. Many Chileans take a long lunch—up to two hours—and then return to work. At law firms, the vast majority of lawyers work at least until 7 p.m. or 8 p.m., and many work much later each evening—often until 11 p.m. or later.<sup>136</sup> Because this is a punishing schedule, many lawyers leave the large firms.<sup>137</sup> Chileans value face time at work over accomplishment.<sup>138</sup> One lawyer explained that employers would prefer to hire a male lawyer who is available until late in the evening, even if he spends his evenings at work reading the sports page of the paper, over a woman who works harder than the man so that she can finish her work and go home to be with her children.<sup>139</sup>

In the public sector many lawyers work shorter days—leaving at 6 p.m. or 7 p.m. Chilean judges hold hearings and trials in the mornings, and some are available to go home as early as 3 p.m. or 4 p.m., but those who leave early write their opinions from home and do not take time off for long lunches. Moreover, court of appeals judges (Santiago, particularly) and supreme court justices have other administrative responsibilities, including investigations and reports to do in the afternoon. However, many judges—mostly men—who are not responsible for children, take a leisurely lunch and stay in the office to finish their opinions and leave around 6 p.m. or 7 p.m. The *relatores* and *relatoras* are responsible for keeping the files of the cases, doing the research, making presentations at the hearings, sitting in on judicial conferences after hearings, and in most cases, writing the panel's opinions.<sup>140</sup> The *relatores* and *relatoras* work many hours a day and often on weekends—a schedule that appears to exceed that of many trial and appellate judges.<sup>141</sup>

#### IV. CULTURAL NORMS: EFFECTS ON INEQUALITIES AND PERCEPTIONS OF DISCRIMINATION

##### A. *Machismo*<sup>142</sup> and Female Lawyers' Unequal Careers

Notwithstanding the emergence of women in politics and the predominance of female students in law faculties, female lawyers lag behind their

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135. See, e.g., Interview with CH43, *supra* note 126.

136. Interview with CH03, *supra* note 92; Interview with CH44, *supra* note 122; Interview with CH10, *supra* note 75; Interview with CH22, in Santiago, Chile (Feb. 10, 2017).

137. Interview with CH21, *supra* note 119.

138. Interview with CH43, *supra* note 126; Interview with CH03, *supra* note 92.

139. Interview with CH43, *supra* note 126.

140. Interview with CH25, *supra* note 129. At least some *ministros* (appellate judges and justices) believe that they should write their own opinions and do so. See, e.g., Interview with CH51, in Santiago, Chile (Mar. 27, 2017).

141. Interview with CH25, *supra* note 129.

142. *Machismo* in Spanish is an attitude of discrimination toward women in which men consider women inferior. See *Machismo*, REVERSO DICCIONARIO, <http://diccionario.reverso.net/espanol-definiciones/machismo> (last visited Apr. 15 2017); *supra* note 9 and accompanying text.

male counterparts in private law firms and some government offices in attaining equal work opportunities, leadership positions, and promotions.<sup>143</sup>

Male and female interviewees universally agree that Chile is a traditional (many say *machista*) society that sees women as caretakers and men as providers, but opinions diverge regarding how the cultural norm affects female lawyers in the workplace.<sup>144</sup> Some believe that women are not discriminated against in the workplace. They note that female lawyers are hired in approximately the same numbers as male lawyers, and they believe that women voluntarily choose to leave the workplace or reduce their work and career opportunities when they become mothers.<sup>145</sup>

Some lawyers go further: they defend a firm's right to hire men over women of childbearing age because of the added cost that a female associate may become pregnant and take leave during her tenure at the firm. In fact, my interviews suggest that many law firms are doing just that. Legal employers admitted that they consider women's roles as caregivers when deciding whether to hire or promote them.<sup>146</sup> They argue that it is not discrimination to consider the statistical reality that most Chilean women become mothers, take long maternity leaves, and return to work only to become pregnant again.<sup>147</sup> This revolving door, according to some interviewees, makes it difficult for employers to rely on female lawyers to do the same work as their male counterparts.

Female lawyers said repeatedly that in job interviews at law firms they are questioned about their plans to get married and have children—a taboo in human-resources departments in the United States.<sup>148</sup> And, while Chilean law prohibits these types of questions in job interviews, according to experts, “it is a

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143. Interview with CH10, *supra* note 75; Interview with CH13, in Santiago, Chile (Feb. 1, 2017); Interview with CH15, in Santiago, Chile (Feb. 2, 2017).

144. A recent study of female participation in the Chilean labor market concludes that *machista* culture affects women's labor-market participation. See Dante Contreras & Gonzalo Plaza, *Cultural Factors in Women's Labor Force Participation in Chile*, 16 FEMINIST ECON. 27, 31 (2010) (concluding that women who have greater education have greater participation in the labor market, while women who have internalized *machista* views have lower participation rates).

145. Interview with CH30, *supra* note 127.

146. Interview with CH27, *supra* note 122.

147. Interview with CH07, in Santiago, Chile (Jan. 24, 2017) (noting that a greater connection between mother and child is “natural”); Interview with CH53, in Santiago, Chile (Aug. 18, 2017) (noting that women in Chile have many children, and there is consequently a loss of years of work if women take maternity leave for each child).

148. This is a taboo because these questions could be used by a future plaintiff in a lawsuit against the firm to help prove sex discrimination in hiring. Pregnancy discrimination is sex discrimination according to U.S. law. Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (2016); Interview with CH37, in Santiago, Chile (Mar. 14, 2017) (noting that she was asked regularly when she would have children). One interviewee noted that there are advertisements in the newspaper stating, “looking for a good-looking young single woman.” *Id.*

dead letter law.”<sup>149</sup> Even lawyers with hiring responsibilities at the firms admitted that interviewers raise the issues of marriage and childbirth behind the scenes with regard to female applicants; no similar discussion occurs concerning male applicants of the same age.<sup>150</sup> It is only rational, some lawyers argue, for law offices to treat fertile, young women less favorably in hiring and promotions.<sup>151</sup> The managing partner of a medium-sized firm explained that his firm has consciously begun to hire more male associates because leave laws make it difficult to get the work done: at one point, he noted, ten percent of the lawyers in his firm (all women) were on parental leave simultaneously.<sup>152</sup>

To the contrary, other lawyers believe that taking a woman’s plans to have children into account in hiring and promotion is sex discrimination that harms women’s careers. In essence, they assert that many mothers work a reduced schedule but continue to produce work that is equal to or greater than that of their male counterparts. In exchange for the reduced hours, mothers give up raises, a percentage of their salaries, and opportunities for promotions and partnerships.<sup>153</sup>

A third group of interviewees believes that whether or not they are or will become mothers, female lawyers suffer discrimination. Legal employers and coworkers devalue the work women do and emphasize their lack of leadership abilities, affecting women’s assignments and credit for their work, and they often require female lawyers of equal status to perform more menial tasks than their male colleagues. A middle-aged, male lawyer stated that the idea that women fail because of motherhood is a myth: he blames Chileans’ *machista* views that law is

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149. Cód. Trab. art. 194. Thank you to Sergio Gamonal for this information. It is his view that the law is a “dead letter.”

150. See Interview with CH04, in Santiago, Chile (Jan. 19, 2017) (female manager in law firm stating that hiring women is complicated because men on the hiring committee speculate whether female applicants will have children; therefore, a woman must be better than male applicants).

151. Interview with CH13, *supra* note 143, (stating that based on her experience as a consultant and advisor for private companies and government entities, public entities generally do not discriminate as private companies do; private companies steer away from hiring women of childbearing age because of the costs involved).

152. Interview with CH53, *supra* note 147. Under American law these would be admissions of illegal discrimination. Title VII requires that employers treat employees as individuals, not as members of their group. See, e.g., *Price Waterhouse v. Hopkins*, 400 U.S. 228, 250-3 (holding that the defendant may not refuse partnership to a woman because she did not conform to feminine stereotypes even though most women may conform to these stereotypes). Even if it is a statistical reality that more women than men have childcare responsibilities and that a large percentage of women become mothers, U.S. law does not permit employers to hold this statistical stereotype against an individual woman. *Id.* Moreover, U.S. law does not permit employers to refuse to hire or promote an individual woman for conforming to or deviating from the stereotype of a woman’s role, dress, or behavior. See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 256–58 (1989).

153. See, e.g., Interview with CH03, *supra* note 92; Interview with CH22, *supra* note 136.

a masculine endeavor and that women without a masculine style are “left behind.”<sup>154</sup>

Many male and female interview subjects agree that blaming motherhood for female lawyers’ failure to achieve equal success to their male counterparts is a canard. Women do not necessarily choose to work in lower-paid or less-interesting jobs because they are mothers, but often the demands of work make it impossible for women to succeed or their choices to remain in the positions are not supported. Interview subjects believe that women are treated differently from men because they are women and that even single women who have no children face difficulties in rising to the top of firms and some public offices such as *fiscalias*.<sup>155</sup>

Interview statements about differential treatment of men and women in private law firms, *fiscalias*, and public-defender offices regarding work assignments and promotions seem to confirm the perception that female lawyers are not merely choosing to pull out of the workforce in order to care for their families, but are forced to leave or cut back on their work because of the conditions in various workplaces.<sup>156</sup> Moreover, the findings suggest that women (mothers and nonmothers) are assigned work that is different from, and less prestigious than, the work assigned to men in the *fiscalia* and public-defender offices;<sup>157</sup> even female partners in large firms may suffer discrimination at the hands of their partners.<sup>158</sup>

Women who are successful lawyers note the differential treatment. A woman who heads her division in a boutique law firm and tries sophisticated cases for large international companies, believes that she is treated like a second-class citizen: even though she tries cases for clients, law-firm partners do not permit her to meet alone with clients.<sup>159</sup> Likewise, a female prosecutor with a supervisory role in a top prosecutor’s office noted that her male colleagues often expect her to do the “secretarial” work when they try cases together.<sup>160</sup> Other male and female lawyers stated that women, despite their family situations, are assigned less important work.<sup>161</sup> All women, even those who do not wish to marry or have children, seem to be treated similarly, although mothers may have a particularly bad time.<sup>162</sup> One middle-aged, male lawyer stated:

I must insist again that [maternity] is not the issue; the issue in our case is still a culture governed by work environments where the important positions are always occupied by men; I believe

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154. Interview with CH42, *supra* note 120.

155. Interview with CH33, *supra* note 117.

156. *See, e.g.*, Interview with CH24, *supra* note 66; Interview with CH19, in Santiago, Chile (Feb. 7, 2017).

157. Interview with CH33, *supra* note 117; Interview with CH49, in Santiago, Chile (Mar. 25, 2017); Interview with CH46, in Santiago, Chile (Mar. 23, 2017).

158. Interview with CH12, in Santiago, Chile (Jan. 31, 2017).

159. Interview with CH03, *supra* note 92.

160. Interview with CH49, *supra* note 157.

161. Interview CH33, *supra* note 117; Interview with CH20, *supra* note 119.

162. Interview with CH20, *supra* note 118; Interview with CH33, *supra* note 117.

that the best proof of this . . . is that there are [in Chile] many incompetent male bosses, and, in general, few incompetent female bosses.<sup>163</sup>

### *B. Influence of the Catholic Church and Opus Dei*

The findings stressed that Chile is a class-conscious society and that the Catholic Church and Opus Dei—a conservative, international, secretive lay Catholic organization—wield significant power over the government and society.<sup>164</sup> These forces affect lawyers. Many lawyers working in Santiago today are graduates of the Universidad de los Andes, a private university that is linked to Opus Dei.<sup>165</sup>

Interviewees noted that certain law firms are dominated by partners who are members of Opus Dei.<sup>166</sup> In these firms with a traditional view of the family, the treatment of women is double-edged. Because of the emphasis on the family, there is more respect for women and support for women's role as mothers. In contrast, at least some women feel constrained in these firms. One young female lawyer said that she could never openly express support for living with a boyfriend (rather than marrying one), and she was warned not to mention the issue at work.<sup>167</sup> Another, who had attended the University of the Andes, said that a law-school dean told her to wear slacks because when she dressed in short skirts people would believe that she had not earned her high grades.<sup>168</sup> When she worked for a law firm that was dominated by Opus Dei, she was reprimanded by older female

163. Interview with CH33, *supra* note 117.

164. Opus Dei is an international organization, characterized by many as a “secret society” within the Catholic Church, that was founded by a Spanish priest, Josemaría Escrivá de Balaguer, on October 2, 1928, near Madrid, Spain. See MICHAEL WALSH, OPUS DEI: AN INVESTIGATION INTO THE POWERFUL, SECRETIVE SOCIETY WITHIN THE CATHOLIC CHURCH 7–19 (2004). The organization has very conservative values, including a very traditional view on the roles of women and men. *Id.* at 67, 109–10. In Chile, many believe that Opus Dei opposed Salvador Allende and supported the dictatorship of Augusto Pinochet. *Id.* at 131–32. Opus Dei has opened a number of universities worldwide; it focuses on the upper classes and how they can incorporate God into their daily lives. See, e.g., *id.* at 60–66, 149–52. The University of the Andes is the Opus Dei university in Santiago. MARIA OLIVIA MONCKEBERG, EL IMPERIO DEL OPUS DEI IN CHILE 579–81 (2d ed. 2016). In Chile, Opus Dei has gained significant wealth and power. *Id.* For more information, see also *What is Opus Dei?*, OPUS DEI AWARENESS NETWORK, [http://www.odan.org/what\\_is\\_opus\\_dei.htm](http://www.odan.org/what_is_opus_dei.htm) (last modified June 9, 2006); Interview with CH52, *supra* note 92; Maria Olivia Mönckeberg, *El imperio del Opus Dei en Chile*, CLINIC (Dec. 18, 2016), <http://www.theclinic.cl/2016/12/18/el-imperio-del-opus-dei-en-chile/> (describing the increasing power of Opus Dei in Chile). Chilean members of the upper classes are generally Catholic, and the lay organizations such as Opus Dei come primarily from the upper classes. The Evangelical churches and Jehovah's Witnesses are more popular with the lower classes. Interview with CH28, in Santiago, Chile (Mar. 8, 2017).

165. Interview with CH31, in Santiago, Chile (Mar. 11, 2017). Many of the women working at *Universidad de los Andes* are *numerarias*. *Id.*

166. See *supra* notes 164–165.

167. Interview with CH12, *supra* note 158.

168. Interview with CH44, *supra* note 122.

lawyers for “inappropriate” clothing.<sup>169</sup> She described her clothing as a suit with a jacket that covered her arms and a skirt that was above the knee but not exceedingly short—an outfit that appears appropriate for a female lawyer.<sup>170</sup> She said that female attorneys were generally more sexist than male attorneys and that if an unmarried woman was sexually active, the other women would consider her to be a *puta* (slut).<sup>171</sup>

A female former associate of a large firm dominated by Opus Dei agreed: she liked the firm’s meritocratic selection system—the firm did not hire new associates based on familial relationships.<sup>172</sup> She concurred that male lawyers treated her better than female lawyers did.<sup>173</sup> Unfortunately, while male lawyers took a fatherly approach, they had a sexist, protective view of women. Female associates did not get along well with female superiors because women in superior positions imposed rules on young female associates<sup>174</sup> and treated them more harshly than male associates.<sup>175</sup> The interviewee concluded that because of these dynamics, it is very difficult for women to advance their careers in the Opus Dei firm where she worked: women become very competitive with one another in this environment.<sup>176</sup> As a result, she left the firm and joined a new firm.<sup>177</sup>

Twenty years ago, female students in interviews for law firms were asked if and when they would have children and what type of birth control they used. If the interviewer was a member of a firm dominated by Opus Dei, only a natural method of birth control would pass muster.<sup>178</sup>

A less doctrinally conservative university than Universidad de los Andes is Universidad Católica, which has professors from different ends of the political spectrum.<sup>179</sup> Universidad Católica is considered one of the two top law schools in the country along with the Universidad de Chile. But despite the relatively moderate faculty at Universidad Católica, the Church itself generally takes

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169. *Id.*

170. *Id.*

171. *Id.*

172. Interview CH21, *supra* note 119.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.* A male managing partner noted that in at least one Opus Dei firm in Santiago there are 40 lawyers with only 3 female lawyers. Interview with CH53, *supra* note 147.

178. Interview with CH50, in Santiago, Chile (Mar. 27, 2017).

179. Currently, the university has banned hospitals and clinics in the university network from performing abortions, leading to protests and disagreement in the university community. See *Estudiantes desafían al rector Sánchez en la UC: preparan consulta por objeción de conciencia*, EL MOSTRADOR (Sept. 7, 2017), <http://www.elmostrador.cl/noticias/pais/2017/09/07/estudiantes-desafian-al-rector-sanchez-en-la-uc-preparan-consulta-por-objecion-de-conciencia/>. This ban and the reaction by students and professors demonstrate not only the conservative nature of the university administration, but also the diversity of opinion on the university campus.

conservative positions on social issues and operates *colegios* (elite Catholic grade schools and high schools). The Church's influence is conservative and class-based. Thus, religion and class seem to meld into one another.<sup>180</sup>

### C. Social Class and its Effects on Lawyers in Chile

It is nearly universally accepted in Chile that social class imposes a heavy burden on outsiders and grants important advantages to insiders.<sup>181</sup> Many interviewees believe that class may be even more important than gender in hiring lawyers, especially for jobs at the prestigious law firms in Santiago.<sup>182</sup> A large percentage of law students who graduate from the Universidad de Chile, Universidad Católica, and other prominent law schools—Universidad de Adolfo Ibañez, Universidad de los Andes, and Universidad de Diego Portales—have attended *colegios*; some, if not many, are operated by Catholic organizations. In fact, Chilean lawyers universally explain that the *colegio* a person attends—much more than the university—determines whether doors will open to top law-firm jobs.<sup>183</sup> A lawyer's attendance at a particular *colegio* is less important, however, to a government job.<sup>184</sup>

180. Interview with CH03, *supra* note 92.

181. To illustrate the importance of class, a local judge directed me to a news article criticizing class consciousness in Chile. The article focuses on wealthy families who vacation at the exclusive beachside resort, Zapallar, and require their maids to wear crisply-pressed uniforms with aprons, even while caring for children at the beach. See José Luis Ugarte, *Las nanas de Zapallar*, EL MOSTRADOR (Mar. 4, 2011), <http://www.elmostrador.cl/noticias/opinion/2011/03/04/las-nanas-de-zapallar/>.

182. The *colegio* one attends is important for hiring by prestigious law firms, but it is not an issue for those who are applying for judicial positions. Interview with CH25, *supra* note 128.

183. Iván Weissman, *Hijitos de papá: investigación de Chicago boy revela que familias y colegios de origen siguen siendo determinantes para acceder a la elite*, EL MOSTRADOR (Dec. 16, 2016), <http://www.elmostrador.cl/noticias/pais/2016/12/10/hijitos-de-papa-investigacion-de-chigago-boy-revela-que-familias-y-colegios-de-origen-siguen-siendo-determinantes-para-acceder-a-la-elite/> (finding that attending one of eight *colegios* significantly increases the probability a Chilean will be in the top 1% of income). A 2013 study demonstrates that half of Chile's CEOs of the 100 largest businesses graduated from five *colegios* in Santiago. See *La mitad de los presidentes de las 100 empresas más grandes de Chile viene de 5 colegios privados*, EL MOSTRADOR (Aug. 3, 2013), <http://www.elmostrador.cl/noticias/pais/2013/08/03/la-mitad-de-los-presidentes-de-las-100-empresas-mas-grandes-de-chile-viene-de-5-colegios-privados/>; see also Interview with CH38, in Santiago, Chile (Mar. 15, 2017) (stating that large firms hire from certain *colegios* because they know who the applicants' parents are, and if a lawyer is from the provinces, it is very difficult to get a job in a major law firm in Santiago); Natacha Ramírez, *Estudio desvela a los colegios de élite en Chile: Dan formación "gerencial" y hacen competir a sus alumnos*, CLINIC (Oct. 20, 2016), <http://www.theclinic.cl/2014/07/31/donde-se-educan-las-familias-mas-poderosas-de-chile-los-luksic-y-su-devocion-por-the-grange-school/> (explaining that private schools in Chile are very expensive and accept only students with high test scores from the upper classes, and once in private school, students do not have access to other children from lower classes); Ivonne Toro Agurto, *Dónde se educan las familias más poderosas de Chile: Los Luksic y su devoción por The Grange School*, CLINIC (July 31, 2014),

One female lawyer who attended public school noted that in law firms, the lawyers with the “strange or foreign last names”—the “Von something” names—who graduated from the same *colegios* stay together.<sup>185</sup> They marry one another and have children who are raised the same way as their parents.<sup>186</sup> Besides the “Von somethings,” Chile has a number of Basque families that emigrated to Chile from the 18th through the 20th centuries.<sup>187</sup> Basques have a distinct language and culture; they are well represented in the wealthy families in Chile, and many of the country’s presidents have been of Basque origin.<sup>188</sup> These families’ names are recognizable in Santiago: they adorn streets, parks, businesses, and important law firms in Santiago.

Interviewees stated that some important law firms hire mediocre, young male lawyers from prominent families,<sup>189</sup> but women who make it to top jobs must be exceptional. Interviewees complained that the concept of merit only emerged as women began applying for jobs in male-dominated careers, and it is used to keep women, but not men, from appointments or promotions.<sup>190</sup> As one prominent female lawyer told me, “[W]e will have real gender equality when mediocre women become bosses.”<sup>191</sup>

Likewise, a person’s name or manner of speech that reveals lower-class origins may disqualify applicants from positions in the most prestigious law firms. Interviewees emphasized that European appearance is preferred in hiring lawyers in Chilean law firms. Law professors said that the partners of a large firm refused to hire a young woman, who was by far the most qualified for the job, because she was from a lower class and did not dress “sufficiently elegantly.”<sup>192</sup> Partners do not want to hire lower-class applicants, they say, because their clients will not be comfortable with them.<sup>193</sup>

Even today, large corporate firms hire young, good-looking women as lawyers to defend large corporations. There is a great deal of appearance

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<http://www.theclinic.cl/2014/07/31/donde-se-educan-las-familias-mas-poderosas-de-chile-los-luksic-y-su-devocion-por-the-grange-school/> (explaining that one of the richest families in Chile, the Luksic family, sends its boys to the prestigious Grange School and to a business college in the United States).

184. Interview with CH06, *supra* note 103.

185. Interview with CH11, *supra* note 105.

186. *Id.*

187. The Basque families hail from the Basque Provinces in Northern Spain. *See The Basques in Chile*, O’HIGGINS TOURS, <http://www.ohigginstours.com/eng/basques> (last visited Aug. 31, 2018).

188. *Id.*

189. Interview with CH49, *supra* note 157; Interview with CH50, *supra* note 177.

190. Interview with CH49, *supra* note 157.

191. *Id.*

192. Interview with CH38, *supra* note 183.

193. *Id.* There is, however, an exceptionally successful female lawyer who has Arabic surnames. *Id.* Many Arabic/Palestinian peoples went to Chile to escape persecution. Generally, they are Christians who fled from the Turks in different eras. *Id.*



discrimination—especially against overweight female lawyers.<sup>194</sup> Applicants with English, Irish, German, and Italian names have an advantage.<sup>195</sup> The Castilian-Basque students are preferred; talented applicants with other Spanish last names will not be discriminated against, but those with *Mapuche* names will not get jobs.<sup>196</sup>

A partner in a large international firm noted, however, that practices are changing in the large firms.<sup>197</sup> In those firms, she noted, unlike in earlier days, hiring is meritocratic. But she acknowledged that certain *colegios* grant a significant advantage because they teach children a second language and how to express themselves well in Spanish; moreover, these children have broadening experiences, such as travel to other countries.<sup>198</sup>

While some of the social restrictions are gender-based, interviewees say that men, too, suffer as a result of the rigid social-class system. One man left a large, prestigious firm because he does not come from “a very elegant family from high society” and would never be made partner.<sup>199</sup> Another male lawyer claimed that he had difficulty finding a job in Santiago because he is from a small town, and the interviewers did not recognize the *colegio* he attended.<sup>200</sup>

Class issues merge with gender to have a particularly negative effect on women’s opportunities. One female lawyer stated:

And in this firm, which is one of the most elite, in general people who come from wealth work here . . . [W]hat I have seen during these years is a world that is a majority of men who relate to one another; they come from the same schools, the same universities. It is all very inbred, and in that world, it is difficult [for women to advance]. Of course, they hire many women because the popular belief is that women are more responsible, more dedicated; then in general the females are the most junior lawyers, . . . but you start to see who goes to the trials, and they are all men.<sup>201</sup>

One interviewee explained that often the personal relationships between male and female lawyers fit a pattern.<sup>202</sup> Women, who are better students, marry male lawyers from their *colegios* or universities, and they work in different law firms.<sup>203</sup> The husband works long hours and does not see the children much, and ultimately, the wife leaves work and raises the children.<sup>204</sup> Finally, the wife, who has at least one nanny, spends her days going to the gym and waiting for her

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194. *Id.*

195. *Id.*

196. Interview with CH50, *supra* note 178.

197. Interview with CH52, *supra* note 92.

198. *Id.*

199. Interview with CH37, *supra* note 148.

200. Interview with CH42, *supra* note 120.

201. Interview with CH03, *supra* note 92.

202. Interview with CH31, *supra* note 165.

203. *Id.*

204. *Id.*

husband to return home from work.<sup>205</sup> Many male lawyers in large firms work until 10 p.m. or 11 p.m. every evening, even though it may not be necessary.<sup>206</sup> According to some interviewees, working long hours occurs in part to avoid work at home, in part for the acclaim, and it becomes a bad habit.<sup>207</sup>

#### D. Female Lawyers—Popular Perception and Visibility

Perhaps due to the *machista* culture that is predominant in Chile and in many other countries, female lawyers and political leaders are treated differently by the press and the public, a treatment that reflects and affects the popular perception of women in nontraditional roles. One of the leading newspapers in Santiago, *El Mercurio*, publishes a list of Chilean law-firm lawyers (partners, associates, and other individuals) who have been ranked favorably by the *Chambers and Partners Latinoamérica 2018 Guia*. In 17 different categories and 4 subcategories of practice, this guide lists the names of the leading lawyers.<sup>208</sup> In the most recent list, male lawyers are listed 605 times, but female lawyers represent only 68 of the listings—only ten percent of the names listed.<sup>209</sup> This number is remarkably low, given that the listings include “star associates,” “up-and-coming individuals,” and “associates to watch,” as well as partners.<sup>210</sup> In the nonpartner categories women do better but not well: they represent only 22% of the total, rather than approximately 50% as would be expected by their majority representation in graduating law classes at the universities and their tendencies to be better students than their male colleagues.<sup>211</sup> One female lawyer believes that a closed circle of lawyers with unstated criteria do the rankings; she noted that she has never gotten a survey for one of the rankings.<sup>212</sup>

A senior, female government lawyer explained that when *El Mercurio*, the Santiago newspaper, profiles prosecutors, the paper focuses on different things for men and women. The paper emphasizes a man’s educational preparation—that he is a good litigator, that he is sharp, and that his investigations are very deep. When a woman is profiled, the paper describes her as studious and organized but does not mention how deep her investigations are.<sup>213</sup>

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205. Interview with CH33, *supra* note 117.

206. *Id.*

207. *Id.*

208. Some lawyers’ names may be listed more than once if they practice in more than one area. See *¿Cuáles fueron los mejores estudios y abogados chilenos según Chambers and Partners Latinoamérica 2018?*, EL MERCURIO (Sept. 20, 2017), <http://www.elmercurio.com/Legal/Noticias/Noticias-y-reportajes/2016/01/01/Chambers-and-Partners.aspx#14>.

209. *See id.*

210. *See id.*

211. *See id.*

212. Interview with CH36, *supra* note 97.

213. Interview with CH49, *supra* note 157.

Moreover, interviewees commented that the press treats women in politics in a stereotypical manner.<sup>214</sup> The press praises women for stereotypically feminine characteristics—physical appearance and personality traits such as empathy, kindness, and carefulness—but it treats them brutally if they do not conform to the stereotype.<sup>215</sup> Men are treated differently. The press criticizes a woman’s dress and hair but does not complain that a male politician wears an ugly tie or has hair in his ears.<sup>216</sup> Michelle Bachelet is criticized for being overweight,<sup>217</sup> but overweight male politicians—Alan Garcia or Evo Morales—are not treated the same way.<sup>218</sup> If former President Bachelet got angry, she was “hysterical.”<sup>219</sup> When former President Lagos got upset, the press did not criticize him for his anger.<sup>220</sup>

In contrast, the commentary about women does not focus on the qualities that make a woman a good political leader—intelligence, analytical ability, and leadership ability<sup>221</sup>—but on qualities that are considered masculine.

#### *E. Accommodating Families*

Although it is not only family care that creates problems for working female lawyers, there is no question that once women become mothers they assume, in the majority of cases, the laboring oar in caring for their families.<sup>222</sup> This added responsibility conflicts with many women’s career aspirations. Some work part-time schedules; others move to jobs that will accommodate their familial responsibilities.<sup>223</sup> Others leave the workplace altogether.<sup>224</sup> Men, in contrast, do not step back from their careers upon becoming fathers, and thus they enhance

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214. This is not uncommon in the United States either. *See generally* Ann C. McGinley, *Hillary Clinton, Sarah Palin, and Michelle Obama: Performing Gender, Race, and Class on the Campaign Trail*, 86 DENV. U. L. REV. 709 (2009).

215. Interview with CH49, *supra* note 157.

216. *Id.*

217. Interview with CH51, *supra* note 140; *Presidente Bachelet, “Yo era la gorda”*, CLINIC (Sept. 23, 2016), <http://www.theclinic.cl/2016/09/23/presidenta-bachelet-yo-era-la-gorda/>.

218. Interview with CH49, *supra* note 157. Similarly, Donald Trump criticized Hillary Clinton’s and other women’s looks, but few spoke of Trump as ugly or overweight. *See, e.g.*, Sophie Tatum, *Trump: Clinton ‘Doesn’t Have the Stamina’ to be President*, CNN (Sept. 27, 2016, 1:06 AM), <http://www.cnn.com/2016/09/27/politics/donald-trump-hillary-clinton-stamina/index.html>; Claire Cohen, *Donald Trump’s sexism tracker: Every offensive comment in one place*, TELEGRAPH (July 14, 2017, 9:03 AM), <http://www.telegraph.co.uk/women/politics/donald-trump-sexism-tracker-every-offensive-comment-in-one-place/>.

219. Interview with CH51, *supra* note 140.

220. *Id.*

221. Interview with CH49, *supra* note 157.

222. Interview with CH21, *supra* note 119.

223. Interview with CH03, *supra* note 92; Interview with CH04, *supra* note 150; Interview with CH10, *supra* note 75.

224. Interview with CH03, *supra* note 92; Interview with CH04, *supra* note 150.

their career opportunities vis-à-vis their female colleagues.<sup>225</sup> Moreover, as family is so important in Chile, female lawyers who continue in the workforce lean heavily on their *nanas* (babysitters) and their mothers or mothers-in-law to make their lives run as smoothly as possible, but the situation is not ideal.<sup>226</sup>

### 1. Part-Time Work and Job Changes

Some mothers in large firms negotiate shorter work hours, but they often bill as many hours as their male counterparts who do not reduce their schedules.<sup>227</sup> Some of these women who leave work at 5 or 6 p.m. do not receive a pay cut.<sup>228</sup> Others have their salaries reduced because they are working fewer hours, even if they are as efficient as their male, full-time counterparts.<sup>229</sup> In one firm, women who have children and who work a reduced schedule receive a 25% reduction in salary, even though they work nearly the same amount and bill the same hours as those who have no reduction.<sup>230</sup> Other women leave firms for in-house-counsel jobs that are less demanding.<sup>231</sup>

One female lawyer in her early 30s said that she and her female friends who have children talk about their futures a great deal.<sup>232</sup> Their concern is how they will live personal and professional lives.<sup>233</sup> Many of her female friends with children look for jobs that allow them to work fewer hours and give them more time with their husbands and children.<sup>234</sup>

### 2. Men with Children: Fathers and Parental Leaves

Many male lawyers with small children have wives with less demanding jobs and more responsibility for the children, but fathers tend to do more with their children than their own fathers did.<sup>235</sup> A recent study of men who graduated from the most prestigious schools in Santiago found that young professional men are

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225. Interview with CH10, *supra* note 75; Interview with CH12, *supra* note 158 (the men do not even take the five days off when their babies are born because they are afraid of what their bosses will say); Interview with CH14, in Santiago, Chile (Feb. 2, 2017) (female judge has to leave to take children to the doctors because her husband can't get off of work); Interview with CH15, *supra* note 143 (female judge notes that men are still *machista* and women who make more than the men are still responsible for the familial responsibilities).

226. Interview with CH12, *supra* note 158.

227. See, e.g., *id.*

228. *Id.*

229. Interview with CH03, *supra* note 92.

230. Interview with CH21, *supra* note 119.

231. Interview with CH22, *supra* note 136.

232. *Id.*

233. *Id.*

234. *Id.*

235. See Macarena García Lorca, *El doble discurso sobre la paternidad de exalumnos de los colegios más cuicos de Chile*, CLINIC (Aug. 29, 2017), <http://www.theclinic.cl/2017/08/29/doble-discurso-la-paternidad-exalumnos-los-colegios-mas-cuicos-chile/> (studying men who graduated from the most prestigious high schools in Chile).

more involved with their children than their own fathers were.<sup>236</sup> But these young men are “weekend dads”: they work long hours during the week and do not sacrifice their workdays for their families.<sup>237</sup> Unlike their own dads, these men are more connected to their children because of their attitudes and the time spent with their children on weekends.<sup>238</sup>

In contrast, Chilean, male lawyers may have more free time than the mothers of their children. A number of interviewees noted that even when men have familial responsibilities they either do not take them as seriously as women do, or they rely on their wives to pick up the slack.<sup>239</sup>

A few male interviewees have wives who are lawyers with substantial practices. In these cases, the mother’s work adapts to the presence of children in the home. The mothers, unlike the fathers, either work part-time—meaning often eight to nine hours a day—or have less-demanding or more-flexible jobs. One of these men protested that he likes to work with women and has hired a number of female lawyers, but he acknowledged that his wife (a busy lawyer) bears most of the responsibility for caring for their children because his bosses, who are from an older generation, would not approve if family responsibilities affected his work.<sup>240</sup> Other male interviewees seconded this observation.<sup>241</sup> Bosses seem to expect female lawyers to work fewer hours, to leave early to be with their kids, or to take the kids to the doctors, but male lawyers are judged harshly for doing so.<sup>242</sup> In contrast, mothers are at a disadvantage because, even if they accomplish more and do a better job than their male colleagues, they lag behind the fathers in pay, status, and experience.<sup>243</sup>

The attitudes toward fathers also appear to affect whether they take parental leave. As noted above, fathers have five days paid paternity leave, and mothers have six-weeks before the birth and six-months of parental leave after the birth.<sup>244</sup> Mothers have the option of giving the last three months of their paid parental leaves to the baby’s father.<sup>245</sup> Fathers, therefore, could conceivably have

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236. *Id.*

237. *Id.*

238. *See id.*

239. Interview with CH35, in Santiago, Chile (March 14, 2017) (stating that 90% of men have hobbies like cars and horseback riding, but only about 10% of women have hobbies).

240. Interview with CH05, in Santiago, Chile (Jan. 20, 2017) (noting that he has a theory that women are more professional and committed, but says that the market punishes them because of motherhood).

241. *See, e.g.*, Interview with CH10, *supra* note 75.

242. *Id.*

243. Interview with CH05, *supra* note 240.

244. *See supra* notes 92–93 and accompanying text.

245. *See supra* notes 92–93 and accompanying text.

ten weeks of paid parental leave. Most lawyers said, however, that fathers do not take extended parental leaves, and many of them take only a few days.<sup>246</sup>

A male associate who specializes in labor law told me that 99% of men do not know that it is possible for a mother to share her last three months of leave with the baby's father.<sup>247</sup> One male associate said that men do not take extended paternity leave and would not do so unless it were mandatory.<sup>248</sup> He added that men often relinquish their very short paternity leave, five days, to their wives.<sup>249</sup>

Whether a father takes a three-month leave may depend on finances. The State pays up to a cap, and the employer may supplement the difference between the cap and the employee's salary.<sup>250</sup> If both parents' employers pay the difference, it does not matter economically which one uses the second three months of the leave. But if one does and the other does not pay the difference between the cap and the salary, this fact will likely influence which parent takes the leave.<sup>251</sup> If neither parent's employer pays the difference, both parents have an incentive to return to work for the second three months.<sup>252</sup> Moreover, interviewees told me that a female executive or professional may be at serious risk of undermining her career if she does not return to work three months after the baby's birth.<sup>253</sup> Often, women in high positions return to work as soon as possible, and if the father does not stay home for the second three months, the parents leave the baby with the grandmother.<sup>254</sup>

All this assumes, however, that finances determine leave-taking. The interviews strongly suggest that the fathers' decisions are more likely influenced by cultural disapproval of fathers' leave-taking.<sup>255</sup> It is very difficult socially for fathers to take leave; one interviewee's husband relinquished his job because it took too much time when his second child was born.<sup>256</sup> His coworkers were

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246. Interview with CH52, *supra* note 92; Interview with CH18, in Santiago, Chile (Feb. 7, 2017). In the first year, only .025% of leaves were taken by fathers (262 of 104,930). See MERIKE BLOFIELD & JULIANA MARTÍNEZ FRANZONI, ARE GOVERNMENTS CATCHING UP?: WORK-FAMILY POLICY AND INEQUALITY IN LATIN AMERICA 15 (2015), <http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/work%20family%20policy.pdf?la=en&vs=1639>.

247. Interview with CH29, *supra* note 130.

248. Interview with CH10, *supra* note 75.

249. Interview with CH10, *supra* note 75; *see also* Interview with CH29, *supra* note 130 (noting that if a man seeks to take a three-month paternity leave, his colleagues will look at him with "an ugly face").

250. Interview with CH35, *supra* note 239.

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *See, e.g., supra* notes 240–243 and accompanying text.

256. Interview with CH41, in Santiago, Chile (Mar. 20, 2017).

incensed that his resignation letter said that one reason for leaving the post was the birth of his child.<sup>257</sup>

A lawyer who works in a labor-related law office noted that there are three reasons why fathers do not take leave: (1) women believe it is their responsibility, not the father's; (2) mothers breastfeed; and (3) men are *machista* and do not think they should take leave.<sup>258</sup> Even if men want to take paternity leave, it is easier to do so in a government job than in a private-law job; with public jobs, there are systems for replacement of employees on leave, but these systems do not generally exist in private law firms.<sup>259</sup> Moreover, men fear they will be treated badly if they take leave.<sup>260</sup>

### 3. Grandmas and Nanas

Many mothers who are lawyers hire *nanas* (babysitters) who care for their children when the parents are at work.<sup>261</sup> Some of the *nanas* are *puertas adentro* (live in the homes with the families), while others are *puertas afuera* (commute to work).<sup>262</sup> Even when they do not have children, some upper-class Chilean families have *nanas* who clean and cook.<sup>263</sup>

Chilean families also have very close extended-family relationships, and it is common that grandparents and in-laws play a key role in childcare.<sup>264</sup> Very few lawyers use daycare.<sup>265</sup> Ordinarily, it is the grandmother who enables her daughter or daughter-in-law to work by taking significant childcare responsibilities.<sup>266</sup> This may be changing, however, as a number of lawyers whose mothers cared for their children do not plan to be as active in their grandchildren's care.<sup>267</sup>

### F. Gendered Success in Private vs. Public Jobs

Although there are exceptions, female lawyers tend to advance better in public-law jobs than in private law-firm jobs. While there are some private firms that have fewer female associates—or in some cases, only one or none—in large and small private firms it is common to find an equal number or majority of women at the associate level and a very small minority of women or no women at

257. *Id.*

258. Interview with CH36, *supra* note 97.

259. *See* Interview with CH27, in Santiago, Chile (Mar. 8, 2017).

260. *Id.*

261. *See, e.g.*, Interview with CH09, in Santiago, Chile (Jan. 25, 2017); Interview with CH14, *supra* note 225.

262. Interview with CH09, *supra* note 261. Not all families have *nanas*; for those who can't afford *nanas*, grandmas care for the children. Interview with CH07, *supra* note 146.

263. Interview with CH24, *supra* note 66.

264. *See, e.g.*, Interview with CH33, *supra* note 117; Interview with CH47, *supra* note 48.

265. None of the lawyers I interviewed take their very small children to *jardines infantiles* (daycare).

266. *See, e.g.*, Interview with CH33, *supra* note 117.

267. *Id.*; Interview with CH16, in Santiago, Chile (Feb. 2, 2018).

the partner level.<sup>268</sup> In many of the government, public-service jobs, women do fairly well.<sup>269</sup> One reason is that the public-service jobs have rules and processes for hiring and promotions that do not permit discrimination.<sup>270</sup>

*1. Private Firms: Large Chilean or International Law Firms*

A few large Chilean law firms have developed expectations or career paths for their associates. Some of these firms have traditionally had only male partners, but there is some pressure to make at least a few women partners because the international legal and business communities expect to see female partners.<sup>271</sup> One firm of greater than 100 lawyers, and only 10% partners, has recently established a 12-year career path.<sup>272</sup> In the eighth year, associates are informed whether they have the potential to become partners.<sup>273</sup> While those who “don’t cut the mustard” do not have to leave, an associate who will not make partner but who stays beyond the eighth or ninth year creates difficulties.<sup>274</sup> Typically the associate will leave to establish an independent firm because a lawyer who has practiced for many years is considered too old for the market.<sup>275</sup>

Large firms have few female partners; one large firm has only 1 female partner, out of 15, and they hired her as a partner from another, smaller firm.<sup>276</sup> Moreover, at least one associate in this firm believes that the female partner is not equal to the other partners and suffers discrimination.<sup>277</sup> According to this associate, women are valued at the associate level because they are good workers, but they have great difficulty making partner.<sup>278</sup> In its study of female lawyers in Latin-American countries, *Latin Lawyer* ranked Chile at the bottom of the list of 18 countries for the percentage of female partners in law firms.<sup>279</sup> While in 2016, the top country, Uruguay, had 46% female partners, Chilean law firms had only 9% female partners; the average of all countries was 21%.<sup>280</sup> Perhaps even worse, the study found that Chile’s percentage of female partners has remained static over the past three years.<sup>281</sup> The author concludes that gender diversity is not a priority for many Chilean law firms, in part because Chile is a conservative country, and in part because it is the most isolated country geographically.<sup>282</sup>

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268. See *supra* notes 5–7 and accompanying text.

269. Interview with CH06, *supra* note 103.

270. *Id.*

271. Interview with CH12, *supra* note 158.

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. *Women in Law; The highs and the lows*, LATIN LAW. (Feb. 21, 2017), <https://latinlawyer.com/benchmarking/women-in-law-2016/1099853/women-in-law-the-highs-and-the-lows>.

280. *Id.*

281. *Id.*

282. *Id.*



In one large firm in Santiago, the traditional career path is two or three years as a junior associate, an LLM from either a European or North-American university, three or four years as a senior associate at the firm, and finally, consideration for partner.<sup>283</sup> This firm does not have an “up or out” policy if the senior associate is denied a promotion to the partnership, but in reality, if someone is not a partner by age 45, there is a general sense that the associate is not that good, and the individual leaves to open up his or her own firm.<sup>284</sup>

A former female associate of another large firm described well-qualified women who were bitter because they were not made partner.<sup>285</sup> While refusing to make females partners, the firm promoted a number of men to the partnership.<sup>286</sup> The interviewee has 12 years of experience, an LLM degree, and fluency in English.<sup>287</sup> But when the firm decided to bring in a male lawyer who was younger than she, did not speak English, and had less experience to supervise her, she left the firm knowing that she had two choices: either get angry and bitter, or leave.<sup>288</sup> She knew she would never become a partner.<sup>289</sup>

The interviews are consistent with results of a survey of 221 lawyers in private Chilean firms in 2011.<sup>290</sup> The survey demonstrated a stark difference in the number of partners who are women and men.<sup>291</sup> Moreover, when asked about equality in promotions among men and women, there were marked differences between the perceptions of partners and associates and between female and male associates.<sup>292</sup> Only 29% of female associates believed that male and female associates had equal opportunities for promotions; whereas 73% of male associates thought that promotion opportunities were equal.<sup>293</sup> Associates saw significantly more failures in policies guaranteeing equality than partners did,<sup>294</sup> and female associates saw significantly more problems with equality in policies and opportunities for promotions.<sup>295</sup> Female associates emphasized equality issues with regard to the long hours required, maternity, a generally *machista* atmosphere, and a failure of partners’ commitments to equality.<sup>296</sup> They also agreed that female

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283. Interview with CH21, *supra* note 119.

284. *Id.*

285. Interview with CH44, *supra* note 122.

286. *Id.*

287. *Id.*

288. Interview with CH44, *supra* note 122.

289. *Id.*

290. See Power Point Presentation from Verónica Undurraga, *Universidad Adolfo Ibáñez*, Abogad@s 2011, Adimark GfK (on file with the author).

291. *Id.* at slide 5 (whereas less than 10% of the women participating were partners, over 50% of the men participating were partners).

292. *Id.* at slide 10.

293. *Id.*

294. *Id.* at slide 20.

295. *Id.* at slide 21.

296. *Id.* at slide 29.

associates may have different priorities than their male colleagues, a factor that contributes to lack of equality in jobs.<sup>297</sup>

## 2. Private, Multi-Professional Firms

The gender composition of different departments of multi-professional firms varies, but in some departments the number of women in managerial and partner positions is notable. For example, the tax group in one multi-professional firm is approximately 40% female.<sup>298</sup> Nonetheless, a male lawyer in the same firm claimed that gender equality exists at the lower levels but breaks down in manager and partner positions.<sup>299</sup> At the higher levels there are “clearly many more men than women.”<sup>300</sup> He attributed the difference to “cultural themes surrounding motherhood”<sup>301</sup> and stated that women lose ground as they have children.<sup>302</sup> They can’t work all night, and they want to take their children to school.<sup>303</sup> He opined that a complete cultural change—to shift responsibility from mothers to fathers—would be necessary for a change to occur in the workplace.<sup>304</sup> Even though female partners lag behind their male counterparts, there are many more female lawyer partners than there are female accountants and engineers who are partners.<sup>305</sup>

A former female manager at a multi-professional firm explained that the firm removes clients that require travel from the caseloads of female lawyers who have become new mothers without asking the lawyers and gives the clients to other firm lawyers.<sup>306</sup> She believes that the firm discriminates against female lawyers but masks removal of clients as a benefit.<sup>307</sup> At one point, she had a number of young male lawyers working under her supervision who did not accept her as their boss.<sup>308</sup> She had to praise them excessively in exchange for the ability to criticize their work, if necessary, in the future.<sup>309</sup>

When her boss restructured the division, he openly advocated creating a more masculine unit and stated that all lawyers in the unit needed to be *hombres de negocios* (businessmen).<sup>310</sup> Without consulting her, he merged with another unit and brought in one male and one female manager above her.<sup>311</sup> The interviewee

297. *Id.* In general, in Chile there has been increased participation of women in the labor force, but the percentages of women still fall significantly below the Latin-American average. Moreover, women’s salaries in Chile are significantly lower than men’s. See, e.g., Gamonal Contreras, *supra* note 103, at 1.

298. Interview with CH27, *supra* note 122.

299. Interview with CH30, *supra* note 127.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. Interview with CH45, in Santiago, Chile (Mar. 23, 2017).

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

stated that her new female superior played coquette and made sexist jokes, molding her personality to please the men.<sup>312</sup> Once the interviewee's unit was merged and took on a very masculine style, the unit followed the "masculine" orientation of giving quick but dubious advice to clients.<sup>313</sup> The group became more "salesman like," but with little analytical rigor, according to this interviewee.<sup>314</sup>

### 3. *Small and Intermediate-Sized Private Firms*

Many of the interviewees worked in relatively small private firms. These interviewees had no expectation that they would become partners but hoped to gain experience and eventually open their own practices.<sup>315</sup> In these firms there were very few female partners.<sup>316</sup> In most of the firms a handful of male partners existed, some related to one another, with a fairly equal ratio of male to female associates.<sup>317</sup> In some of these firms, the female associates noted that there was bullying of female associates and gender-based harassment, mostly yelling and mistreatment.<sup>318</sup>

### 4. *Government Offices and Public Services*

By and large, government lawyers expressed satisfaction with their jobs. Female lawyers stated that there was little or no discrimination against women, unlike, they said, in the private sector.<sup>319</sup> Some emphasized that the work was rewarding but manageable.<sup>320</sup> They do not live to work but work to live.<sup>321</sup> One male government lawyer stated that he works 45 hours a week and does not work on weekends.<sup>322</sup> When he goes on vacation his employer blocks his email.<sup>323</sup>

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312. *Id.*

313. *Id.*

314. *Id.*

315. Interview with CH02, *supra* note 70; Interview with CH04, *supra* note 150; Interview with CH19, *supra* note 156.

316. *Id.*

317. *Id.*

318. Interview with CH02, *supra* note 70.

319. Interview with CH06, *supra* note 103 (claiming that there is much less discrimination in public-service jobs because there are objective systems for promotions, including public-application processes); Interview with CH13, *supra* note 143 (stating that, based on her experience as a consultant and advisor for private companies and government entities, public entities generally do not discriminate as private companies do; private companies steer away from hiring women who are of childbearing age); Interview with CH11, *supra* note 105 (stating that the *Dirección del Trabajo* is a good place to work for mothers: besides all of the benefits required by law, mothers or pregnant women cannot be moved from their jobs, and they have free daycare until the child is six years old).

320. *See, e.g.*, Interview with CH06, *supra* note 103.

321. I heard this expression or similar ones, like "I want a life," over and over. *See e.g.*, Interview with CH13, *supra* note 143; Interview with CH06, *supra* note 103 ("I feel that every person has to have a life, whether that person be a man or a woman.").

322. Interview with CH32, in Santiago, Chile (Mar. 13, 2017).

323. *Id.*

Public-service jobs have more women than men in leadership positions because many promotions result from a *concurso* (competitive application process) that has two steps: an objective test and an interview process.<sup>324</sup> In some interviews, however, women are asked whether they plan to have children; men are not asked this question.<sup>325</sup> And in promotions to high-level government jobs where trust is key, women tend to suffer.<sup>326</sup>

Government jobs generally do not require a lawyer to work long hours as some private firms do, but government compensation ultimately is lower.<sup>327</sup> Government lawyers may earn more earlier in their careers than firm associates, but partners earn significantly more than their government-lawyer colleagues.<sup>328</sup> Benefits of government work include the following: (1) reduced importance of family and social class to hiring and promotion; (2) more equal hiring, compensation, and promotional practices for men and women; (3) more time to spend with family or on one's outside interests; and (4) equal opportunities to work on interesting matters and to try cases despite one's gender, race, or class. Government lawyers explained that their friends who are lawyers in private firms work much longer hours, and the working conditions in firms are not equal for men and women.<sup>329</sup>

A serious drawback of government lawyering, however, is lack of job security. While some government lawyers cannot be fired absent good cause, the number of workers in this category is fixed by law, and the majority of workers are either hired on annual contracts or categorized as *honorarios* (similar to independent contractors).<sup>330</sup> Those on annual contracts, unlike employees of private firms who have a right to up to 11 months of severance pay,<sup>331</sup> do not have a right to any compensation if they are let go.

Recently, the Supreme Court of Chile has deemed that some *honorarios* may collect payments established by the Labor Code.<sup>332</sup> As do U.S. courts in considering whether workers are independent contractors, the Supreme Court of Chile looks beyond the label attributed to the worker's status and into the type of

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324. Interview with CH49, *supra* note 157.

325. *Id.*

326. *Id.*

327. At least one interviewee who works in the public sector told me that she works from 9 a.m. to 9 p.m. daily. See Interview with CH11, *supra* note 105.

328. Interview with CH06, *supra* note 103.

329. Interview with CH07, *supra* note 147 (noting that "women are left behind" in the private firms because of maternity; "[t]hey stop being competitive"). He also stated, "[P]rivate firms function using the North American logic here in Chile, which is competition, competition, competition; it isn't like that in the government offices, where the people are calmer." *Id.*

330. Interview with CH06, *supra* note 103; Interview with CH07, *supra* note 147.

331. Interview with CH06, *supra* note 103.

332. Interview with CH13, *supra* note 143. Like all government employees, the *honorarios* may go before the *Controloria* (Administrative Law Court)—a State administrative entity that decides the legality of acts of the State. Courts decide the law applicable to individual cases, while the *Controlaria* interprets the law for all public entities.

work performed, how it is performed, and who has control of the employee's work.<sup>333</sup> Where the employees are independent contractors in name only, they are designated employees and granted the rights of employees.<sup>334</sup>

#### **a. Prosecutors and Defenders: Exceptions to Less-Demanding Schedules**

There are notable exceptions to the generally less-demanding work schedules in government offices. Prosecutors and public defenders work very long hours.<sup>335</sup> One prosecutor noted that women generally do not have important jobs within the prosecutor's offices, perhaps because of the exhausting schedule.<sup>336</sup> He explained that replacing employees on leave from the *fiscalia* is more complicated than replacing judges because the *fiscal* (prosecutor) is a much more specialized position.<sup>337</sup> Normally the *fiscalia* reassigns the absent lawyer's cases to other lawyers in the office, rather than hire a temporary replacement.<sup>338</sup> He mentioned, however, that employers in the public sector may not refuse to hire an applicant because they fear she will become pregnant.<sup>339</sup> He also concluded that the discrepancy between men and women in leadership positions at the *fiscalia* is not solely attributable to maternity.<sup>340</sup> Single women without children, too, have problems moving up in the *fiscalia*.<sup>341</sup>

When asked whether the stereotype of a woman as not sufficiently masculine for the job of *fiscal* may hurt women, the interviewee agreed that work with police occurs in a very masculine atmosphere.<sup>342</sup> However, he asserted, a good prosecutor needs to be empathic, kind, sympathetic, and well-liked by the judges.<sup>343</sup> A prosecutor needs emotional intelligence.<sup>344</sup> Ironically, although much of the job would require stereotypically feminine characteristics, the persons who ascend to the top of the *fiscalia* are, in large part, male.<sup>345</sup>

#### **b. Promotions and Work Assignments: Female Prosecutors**

A female head prosecutor stated that most of the managers in the *fiscalia* are men and that prosecutors' work assignments vary based on gender stereotypes.<sup>346</sup> While men cover economic crimes, women prosecute domestic-

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333. See *Vizcaino v. Microsoft Corp.*, 97 F.3d 1187 (9th Cir. 1996); Interview with CH13, *supra* note 143.

334. *Id.*

335. Interview with CH33, *supra* note 117; Interview with CH46, *supra* note 157.

336. Interview with CH33, *supra* note 117.

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. Interview with CH49, *supra* note 157.

violence cases.<sup>347</sup> Domestic violence in Chile is not recognized as an important violent crime, and even today, women who are victims of domestic violence face questions about their personal lives as a defense to the violence perpetrated upon them.<sup>348</sup> In fact, very good male prosecutors are stigmatized for doing “women’s work” when prosecuting sex crimes.<sup>349</sup>

### c. Treatment of Female Prosecutors

A sophisticated female prosecutor of economic crimes explained that business executives invariably try to explain to her what a balance sheet is.<sup>350</sup> Because she is a woman, the men presume she knows nothing.<sup>351</sup> Moreover, when she tries cases with male prosecutors they expect her to organize the files and take notes, and they reserve the interesting, creative work for themselves.<sup>352</sup> Many female prosecutors who work in teams with men do not get credit for the work they do.<sup>353</sup>

### d. Work Assignments of Female Public Defenders

The work at the public defender’s office is demanding and time-consuming.<sup>354</sup> A former public defender stated that, generally, work assignments follow gender stereotypes.<sup>355</sup> Women defend those accused of crimes against children or of intra-family violence, while men represent defendants accused of robberies and other property crimes.<sup>356</sup> Often, male clients reject their female lawyers at the beginning of the representations, and bosses do little to support female public defenders.<sup>357</sup> The *fiscales* are excellent litigators, one interviewee says, but very sexist; female *fiscales* are even more aggressive than the men.<sup>358</sup> For these reasons, a female former public defender noted that female public defenders have much more challenging work than their male counterparts.<sup>359</sup>

## 5. Chilean Judges

Judges in Chile have a different education and appointment process than their counterparts in the United States. In the United States, some states elect judges, and others allow governors to appoint them; federal judges are appointed

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347. *Id.*

348. *Id.* (describing a case where the victim’s boyfriend beat her in the head with a rock and removed her eyes, and the boyfriend’s defense was that the woman was sexually active with other men).

349. *Id.*

350. *Id.*

351. *Id.*

352. *Id.*

353. *Id.*

354. Interview with CH46, *supra* note 157.

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*

by presidential nomination and congressional approval, and all judges (state and federal) ordinarily have experience as practicing lawyers.<sup>360</sup> There is no judicial college required for U.S. judges.

In Chile there are no elected judges.<sup>361</sup> Moreover, all judges attend the Judicial Academy, which is a long (currently 12-month), full-time course that includes theory, practice, and a number of internships working with judges in the courts.<sup>362</sup> There is no practice requirement for entry into the Judicial Academy.<sup>363</sup> Because law-school records are an important requirement for entry into the Judicial Academy, and women have better university records, many young women are accepted into the Judicial Academy.<sup>364</sup> Once they graduate from the Judicial Academy, judges are assigned to temporary positions to replace other judges who are on maternity or disability leave.<sup>365</sup> Through these temporary appointments graduates acquire experience on the bench that allows them to move into permanent judicial positions as they become vacant.<sup>366</sup>

A judicial career is a realistic goal for women who are good law students and who hope to work in interesting, well-paid positions that may afford them flexibility in their schedules.<sup>367</sup> While women represent a majority of judges on the trial-level courts in Chile,<sup>368</sup> they are not as plentiful on the courts of appeals and the Supreme Court of Chile. On the Court of Appeals of Santiago, the most prestigious appellate court, women represent 14/33 (42%) *ministros* (judges); there is one vacancy.<sup>369</sup> The percentage of women *ministras* on the appellate courts in other parts of the country is higher in some courts and lower in others.<sup>370</sup>

While men predominate in the Court of Appeals of Santiago, women, especially those who have been serving as *relatoras* for a long time, have a good chance of appointment to the Court of Appeals in Santiago.<sup>371</sup> The odds for

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360. Occasionally, a judge will be plucked from academia to serve on federal or state courts in the United States, but the vast majority of these appointees come from practicing lawyers. See Russell Wheeler, *Changing Backgrounds of U.S. District Judges: Likely Causes and Possible Implications*, 93 JUDICATURE 140, 141 (2010).

361. Interview with CH09, *supra* note 261; Interview with CH14, *supra* note 225 (explaining the process of becoming a judge).

362. *Id.*

363. The exam for entry into the Judicial Academy benefits younger people who have recently graduated from law school and may disadvantage lawyers who practice for a long time before taking the exam. See Interview with CH18, *supra* note 246.

364. Interview with CH25, *supra* note 129.

365. Interview with CH14, *supra* note 225.

366. Interview with CH09, *supra* note 261.

367. Interview with CH14, *supra* note 225; Interview with CH09, *supra* note 261.

368. Interview with CH15, *supra* note 143.

369. See *Corte Apelaciones*, PODER JUDICIAL REPUBLICA DE CHILE, <http://www.pjud.cl/corte-de-apelaciones> (last visited August 17, 2018).

370. In other parts of the country, women's representation on the court is as follows: Concepción, 9/19; San Miguel, 15/19; Rancagua, 0/7; Valparaiso, 7/16; Arica, 1/7 (with one vacancy); Talca, 1/7; Copiapo, 1/4; and Antofogasta, 4/7. See *id.*

371. Interview with CH25, *supra* note 129.

women, even the *relatoras*, to receive Supreme Court appointments are low.<sup>372</sup> There are 5 women of 20 members (25%) of the Supreme Court of Chile, with two vacant seats.<sup>373</sup> Although the appointments process depends more on merits of the candidates than it has in the past, it is still politicized.<sup>374</sup>

Some trial judges complain about lack of independence because sitting appellate judges are involved in the selection of new appellate judges.<sup>375</sup> Appellate judges make a list of the candidates they prefer from the applicants in the *concurso* (contest); the list is submitted to the Supreme Court of Chile, which submits a shorter list to the Ministry of Justice and the President for selection.<sup>376</sup> Under this “career model,” the same appellate judges who decide whether to affirm or reverse a lower-court judge’s opinions screen applicants to the appellate courts.<sup>377</sup> Some female judges told me that until recently only conservative women were appointed to the Supreme Court of Chile.<sup>378</sup> This is changing with the most-recent appointments, they say, but female justices should form a critical mass on the Supreme Court—a goal that has not yet been reached.<sup>379</sup> Although some believe that women will catch up,<sup>380</sup> at least a few judges disagree: one argued for affirmative action for female judges; others disagreed, arguing against affirmative action because it causes a backlash.<sup>381</sup>

One female judge argued that “merit” is used dishonestly to deny women jobs; people talk about merit only when it comes to appointing women.<sup>382</sup> She states that appellate judges tend to list judges like themselves: conservative men vote for conservative men, Catholic men vote for Catholic men, and Masons vote for other Masons.<sup>383</sup> This interviewee concludes that everyone focuses on women’s maternity as a reason for female judges’ failures to ascend to the Court of Appeals and the Supreme Court, but she does not agree with this explanation; the true reason, she believes, is discrimination—explicit and implicit.<sup>384</sup>

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372. *Id.*

373. *See Corte Suprema*, PODER JUDICIAL REPUBLICA DE CHILE, <http://www.pjud.cl/corte-suprema> (last visited August 17, 2018).

374. Interview with CH15, *supra* note 129.

375. Interview with CH16, *supra* note 267; Interview with CH41, *supra* note 256. *See generally* LISA HILBINK, *JUDGES BEYOND POLITICS IN DEMOCRACY AND DICTATORSHIP: LESSONS FROM CHILE* (2007) (positing that the Chilean judiciary did not challenge the Pinochet dictatorship’s human-rights abuses because lower-court judges lacked independence).

376. Interview with CH16, *supra* note 267.

377. *Id.*

378. *Id.*

379. *Id.*

380. Interview with CH18, *supra* note 246.

381. *Id.*; Interview with CH16, *supra* note 267.

382. Interview with CH16, *supra* note 267.

383. *Id.*

384. *Id.*



### 6. Universities and Female Professors

Interviews with law professors yielded important information regarding the employment opportunities and conditions of female professors as well as employers' hiring practices. All of the professors interviewed acknowledged that women lag behind men in hiring and promotions in academia.<sup>385</sup> While there is more equality regarding hiring and promotions of female professors than in the past, there are ongoing concerns regarding appointments to academic positions.<sup>386</sup>

One professor stated that, even today, universities need more women, but that, when there is a *concurso*, often the majority of applications are from men.<sup>387</sup> *Titulares* (full professors) are nearly all men, and few women are associate professors.<sup>388</sup> Most of the women who teach in universities are assistant professors.<sup>389</sup> One female professor noted that men raced to compete for full-professor positions ahead of the women, and now there is no room for the women at the top, even for those who are very accomplished.<sup>390</sup> She also noted that many neutral policies have a disparate impact on female professors.<sup>391</sup> For example, in the past, a professor could take a sabbatical leave only by doing research abroad, but many female professors had children and could not leave Chile for a sabbatical.<sup>392</sup>

One change noted by professors is the stereotype of the female law professor. While in the 1990s female professors were considered masculine and bad dressers, today there are women with feminine traits and women with masculine traits in leadership positions in the law faculty and other parts of the university.<sup>393</sup>

## V. COMMON PERCEPTIONS AND REALITIES ABOUT GENDER AND LAWYERS

Interviews are useful because they reveal the individuals' perceptions, which, even if not totally accurate, can highlight how people think about particular questions. Some perceptions are stereotypes that are inaccurate. Others reflect statistical stereotypes that are true, in that they accurately describe the majority of the people in a particular category. However, they do not account for individual variation. Because statistical stereotypes are not universally accurate they can be harmful if used to justify decision-making about individual careers. Lawyers

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385. See generally Interview with CH50, *supra* note 178; Interview with CH40, in Santiago, Chile (Mar. 20, 2017); Interview with CH38, *supra* note 183; Interview with CH31, *supra* note 165.

386. Interview with CH50, *supra* note 178.

387. *Id.*

388. *Id.*

389. *Id.*

390. Interview with CH40, *supra* note 385.

391. *Id.*

392. *Id.*

393. Interview with CH50, *supra* note 178.

voiced many common perceptions in the interviews. The following views, whether stereotypes or realities, were commonly repeated in the interviews.

*A. Women Are More Organized and Better Workers than Men*

A universally held stereotype about lawyers, among those interviewed, is that women are more organized and hardworking than men.<sup>394</sup> Many male supervisors hire female lawyers because they say their work is good.<sup>395</sup> But, although male lawyers praise the work of subordinate female lawyers, the relationships between men and women are not equal: women are generally the associates who perform legal tasks for more-senior male associates, partners, or in-house counsel.<sup>396</sup>

The attitude that women are better workers is a double-edged sword. “Women are more organized” may be code that places women in the “helper” role but sees women as inappropriate for promotions to more powerful positions. Hiring women as associates who are directed by male supervisors is not inconsistent with discrimination against female lawyers in assignments, pay, or promotions. The praise that women are better workers may stereotype women as not fitting the norm of the male lawyer in charge and communicate that a boss can rely more heavily on women to do menial tasks. It also may affirm decisions not to promote women to positions with greater responsibility. Even if it is true statistically that female lawyers work harder and are more organized than male lawyers, these traits do not disqualify women from leadership positions. But they may justify a male coworker’s insistence that the female lawyer organize files or take notes, while her male counterpart does the more creative work.<sup>397</sup>

In fact, a number of female lawyers noted that few women have the opportunity to be “in charge,” lead a group, question witnesses, try cases,<sup>398</sup> or lead business deals.<sup>399</sup> A male partner reportedly told a female associate:

You know that we are going to hire another lawyer . . . if you do your work well, the clients will feel afraid to see you, such a small girl, in charge of their trials, and they’ll ask me if there is a man who can supervise you, who can direct you, so we are going to hire a male lawyer so that the clients can calm down.<sup>400</sup>

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394. See Interview with CH05, *supra* note 240; Interview with CH08, *supra* note 68.

395. See, e.g., Interview with CH24, *supra* note 66; Interview with CH29, *supra* note 129; Interview with CH43, *supra* note 125; Interview with CH05, *supra* note 240; Interview with CH08, *supra* note 68. See also Interview with CH36, *supra* note 97 (female lawyer stating that if she can’t be available she gives her cases to female colleagues because women get better results).

396. See, e.g., Interview with CH30, *supra* note 127.

397. See Interview with CH49, *supra* note 157.

398. See *id.*; Interview with CH21, *supra* note 119.

399. Interview with CH35, *supra* note 239.

400. Interview with CH03, *supra* note 92.

***B. Women with Children Work Efficiently While Men with Children Work Longer Hours and Less Efficiently***

A related view is the near-universal perception among women that mothers work very hard both at home and at work. Mothers must be more productive than fathers to get their work done and fulfill their familial responsibilities.<sup>401</sup>

Many accomplished female interviewees described a double bind.<sup>402</sup> They yearn not to sacrifice their careers, but they also want to spend time with their children. An example is one woman who is thankful to go home to her children at 6 p.m. but distressed about her stalled career.<sup>403</sup> In two hours, she completes the amount of work that male colleagues take five hours to finish,<sup>404</sup> and she runs all day at work without stopping for coffee or bathroom breaks.<sup>405</sup> She passes up lunch with colleagues, dinner meetings, and international conferences so she can be with her young children.<sup>406</sup> Despite her leadership of a division at a prestigious firm and her heavy workload, she can never be a partner in her firm because she has made the choice to work reduced hours.<sup>407</sup>

Women complain that men work much less efficiently.<sup>408</sup> One woman said she worked regularly until 8 p.m. but that her male colleagues stayed at work until midnight or 1 a.m.<sup>409</sup> The men, she said, finish their work at the last minute because they go out for long lunches and only begin to work hard at 9 p.m.<sup>410</sup> She believes that there are many men who intentionally escape childcare and home responsibilities by working late and going home late.<sup>411</sup>

***C. Men Define What Work Is: Presence vs. Productivity***

Sociologist Patricia Yancey Martin observes that men's superior positions in the workplace give them the power to define their own behaviors at work while claiming that behaviors of women and other outgroups do not constitute work.<sup>412</sup> This phenomenon occurs in a number of situations in Chilean legal workplaces.

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401. Interview with CH52, *supra* note 92.  
 402. See, e.g., Interview with CH03, *supra* note 92; Interview with CH07, *supra* note 147; Interview with CH10, *supra* note 75; Interview with CH15, *supra* note 143.  
 403. Interview with CH03, *supra* note 92.  
 404. *Id.*  
 405. *Id.*  
 406. *Id.*  
 407. *Id.*; see also Interview with CH04, *supra* note 150 (stating that women who have reduced schedules have the same amount of work).  
 408. See, e.g., Interview with CH03, *supra* note 92; Interview with CH19, *supra* note 156.  
 409. Interview with CH19, *supra* note 156.  
 410. *Id.*  
 411. Interview with CH19, *supra* note 156.  
 412. Patricia Yancey Martin, "Said and Done" versus "Saying and Doing": Gendering Practices, Practicing Gender at Work, 17 GENDER & SOC'Y 342, 342-66 (2003).

In Chile, physical presence of workers in the workplace is still very important.<sup>413</sup> There is fear that without physical presence there will be no control over the quality of the lawyer's output.<sup>414</sup> Firms especially value physical presence for lawyers who regularly counsel clients.<sup>415</sup> This is a cultural value that supports and justifies the traditional arrangement of the woman in the home and the man at work.

There is a difference, however, between how female and male subjects see their work. Female interviewees believe that women work harder than men and get more done in a shorter period of time.<sup>416</sup> The men do not dispute this fact.<sup>417</sup> Women say that they do not "waste" work time talking, drinking coffee, or having lunch with their work colleagues because they see these activities as leisure, not work.<sup>418</sup> Male interviewees, in contrast, see time spent with colleagues as part of the job because they believe that building relationships through informal experiences is crucial to the workplace.<sup>419</sup> If an employer values presence over productivity, men define what work is, and women who race to get their work done more efficiently are at a great disadvantage.

In essence, both men and women might be right. At the ends of the spectrum, it seems clear that daily lunches and trips to bars with colleagues are not part of a person's workday. By the same token, time with colleagues, whether at lunch or in the halls of the office, may help create relationships that are valuable to work. Moreover, when a client is present, some extracurricular activities—such as lunches—may be valuable to building work relationships. But men should not have the exclusive privilege of defining what work consists of, and many activities serve no purpose other than to waste time or to build homosocial, male friendships that may be peripheral to work and exclude female colleagues.

#### ***D. Women Lack Ambition***

##### *1. Female Students and Lawyers: What Ambitions?*

Besides the stereotype that women are better workers and the reality that mothers who are lawyers work extremely hard on work and family matters, there exists a somewhat-contradictory belief that women lack ambition.<sup>420</sup> This stereotype apparently justifies giving women less challenging work assignments and not promoting them.

The view that female students and lawyers may be less ambitious than their male counterparts is contested and may depend on social class. A handful of

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413. Interview with CH30, *supra* note 127.

414. *Id.*

415. *Id.*

416. Interview with CH19, *supra* note 156; Interview with CH03, *supra* note 92.

417. *See, e.g.*, Interview CH05, *supra* note 240.

418. Interview with CH03, *supra* note 92; Interview with CH05, *supra* note 240.

419. *See, e.g.*, Interview with CH03, *supra* note 92; Interview with CH05, *supra* note 240.

420. Interview with CH43, *supra* note 126.

young female lawyers told me that they merely want to have interesting jobs.<sup>421</sup> They do not want to dedicate long hours to their careers.<sup>422</sup> A law student in a private university noted that some women in her class assume that they will work part-time in the future when they have children.<sup>423</sup> In contrast, she observed that female students in the public university where she began her education were very ambitious.<sup>424</sup> A 27-year-old female lawyer spoke candidly about the views of her female friends who are practicing law: they conclude that the possibility of becoming partner is so remote that they do not even attempt to reach that goal.<sup>425</sup> Most respondents, however, believe that female students and lawyers are as ambitious as their male counterparts.<sup>426</sup> A female student in an extensive interview did not agree that female students lack ambition, even in her private university.<sup>427</sup>

Female students who participated in focus groups expressed a deep desire for careers and voiced views that were consistent with the men's views regarding ambition.<sup>428</sup> Of course, those who self-selected to participate in focus groups may be the more progressive students, but it appears that there is a contingent of young women in the law faculty that continue to espouse beliefs in the stereotypically appropriate roles of men and women. There are many young women who believe that their careers will not differ from those of their male counterparts.<sup>429</sup>

The perceived difference among women's ambition appears to relate to social class: many in the upper classes are raised in a "bubble" and may have absorbed the society's stereotypes of women's roles, but most female students from public and private universities appear to have strong ambitions.<sup>430</sup> Those ambitions, like those of their male counterparts, may be expressed differently from those of the older generations. Today's students hope to travel, work, earn advanced degrees, and learn languages.<sup>431</sup>

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421. See, e.g., Interview with CH17, in Santiago, Chile (Feb. 7, 2017).

422. I use the term "ambition" in the positive sense here. A female division head in the *fiscalía* defined "ambition" as positive for women if they aspire to do better and disdain mediocrity. Interview with CH49, *supra* note 157. Negative ambition leads to stepping on the heads of others in order to move up. *Id.*

423. Interview with CH28, *supra* note 164.

424. Interview with CH28, *supra* note 164.

425. Interview with CH24, *supra* note 66.

426. See, e.g., Interview with CH40, *supra* note 385; Interview with CH38, *supra* note 183; Interview with CH28, *supra* note 164.

427. Interview with CH54, in Santiago, Chile (Aug. 21, 2017).

428. See generally Interview with Focus Group CH59–64, in Santiago, Chile (Aug. 23, 2017); Interview with Focus Group CH65–67, in Santiago, Chile (Aug. 23, 2017); Interview with Focus Group CH68–72, *supra* note 72.

429. See Interview with Focus Group CH59–64, *supra* note 428; Interview with Focus Group CH65–67, *supra* note 428; Interview with Focus Group CH68–72, *supra* note 72.

430. Interview with CH28, *supra* note 164; Interview with CH40, *supra* note 385; Interview with CH46, *supra* note 157 (noting that women who graduate from the more religious universities, such as *Universidad de los Andes* and *Universidad Católica*, are reported not to be ambitious, but she did not know any women like that at *Diego Portales*).

431. See *infra* notes 510–515 and accompanying text.

## 2. Failure to Apply for Concurros

A few subjects noted that when there are *concurros* (application processes) for positions in the judiciary, academia, or other public jobs, women apply at a much lower rate than do men.<sup>432</sup> According to at least one lawyer, very few women apply while men, some of whom are not qualified, apply in significant numbers.<sup>433</sup> He asserted that even President Bachelet had trouble filling her cabinet posts with her goal of 50% women.<sup>434</sup>

Research demonstrates that women often make choices for their careers that are constrained by their employers.<sup>435</sup> These are not choices, but realistic decisions that are framed by their employers.<sup>436</sup> But women may also underestimate their abilities as men overestimate their own. This tendency likely results from women's deflated sense of self and is caused by prevailing societal stereotypes.<sup>437</sup> It may be that many women do not have ambition, but there are also many women with ambition who have difficulty rising, given the culture of Chile, lawyers, and the law firms themselves.<sup>438</sup>

### *E. Women Who Lead Are Aggressive, Masculine, Bad Bosses, and Harder on Female Subordinates*

Male and female interviewees often stated that women are aggressive bosses and have difficulty working together.<sup>439</sup> One female judge raised the issue to refute it.<sup>440</sup> Chileans say that working with women is “fatal” because there is a

432. Interview with CH50, *supra* note 178.

433. Interview with CH43, *supra* note 126.

434. *Id.*

435. See, e.g., Vicki Schultz, *Telling Stories about Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1815–39 (1990) (explaining that research shows that women do not arrive at work with lower expectations or ambitions, but employers limit and mold those expectations through their actions and treatment of women); Vicki Schultz & Stephen Petterson, *Race, Gender, Work, and Choice: An Empirical Study of the Lack of Interest Defense in Title VII Cases Challenging Job Segregation*, 59 U. CHI. L. REV. 1073, 1095–1100 (1992) (finding that in both race- and sex-discrimination cases the courts wrongfully accepted lack-of-interest defenses).

436. See, e.g., Schultz, *supra* note 435, at 1815–39; Schultz & Petterson, *supra* note 435, at 1073.

437. See, e.g., Julia B. Bear et al., *Performance Feedback, Power Retention, and the Gender Gap in Leadership*, 28 LEADERSHIP Q. 721, 730 (2017); Scott N. Taylor et al., *Underestimating One's Leadership Impact: Are Women Leaders More Susceptible?*, 45 ORGANIZATIONAL DYNAMICS 132, 133 (2016).

438. Interview with CH31, *supra* note 165. One male interviewee highlighted the problem that some female lawyers face: their mothers, mothers-in-law, sisters, and other family members police their ambitions by criticizing them for working too hard and pressuring them to work less in order to spend more time with their children. See Interview with CH53, *supra* note 147. There appears to be no equivalent pressure on fathers. See *id.*

439. Interview with CH06, *supra* note 103; Interview CH18, *supra* note 243; Interview with CH43, *supra* note 126.

440. Interview with CH09, *supra* note 261.

great deal of infighting or controversy, but the interviewee has never had that experience.<sup>441</sup> She has, however, experienced serious problems with some of her male colleagues—a few of the male judges have narcissistic, superior, authoritarian attitudes.<sup>442</sup>

Other interviewees agreed with prevailing attitudes. A male lawyer who represents corporations in employment-related matters observed that female managers discriminate against pregnant employees more than male managers do.<sup>443</sup> A female government lawyer noted that women are tougher on pregnant colleagues than men are.<sup>444</sup>

A male subject argued that “the feminine” is more discriminated against than women themselves, and female lawyers who adopt masculine leadership styles of competition and aggression are more successful than those with feminine styles.<sup>445</sup> Similarly, one interviewee explained that a woman who directed a national organization of judges was praised by male judges for using a reasonable, “masculine” style.<sup>446</sup>

A female lawyer said that female family-court judges are harder on female litigators than male litigators.<sup>447</sup> She believes this behavior is conscious, in order to toughen up and teach female lawyers.<sup>448</sup> A male lawyer noted that ten years ago female judges on the Court of Appeals of Santiago were tougher on female lawyers.<sup>449</sup> The behavior seemed conscious, he said, because the female judges believed that women have to show more ability to succeed.<sup>450</sup> Because there are more women on the court of appeals now, he believes that this behavior has changed.<sup>451</sup>

Some opined that successful female lawyers are aggressive and difficult, bad dressers, and even ugly, but this perception—or reality—is changing.<sup>452</sup> A male judge opined that 30 years ago, female lawyers had *bigotes* (mustaches) and were ugly and masculine; today, law is no longer considered a masculine

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441. *Id.*

442. *Id.*

443. Interview with CH29, *supra* note 130.

444. Interview with CH36, *supra* note 97.

445. Interview with CH31, *supra* note 165; *see also* Interview with CH39, in Valparaiso, Chile (Mar. 17, 2017) (stating that women who adopt masculine demeanors and leadership styles are more respected than women who don't).

446. Interview with CH16, *supra* note 267.

447. Interview with CH26, *supra* note 115.

448. *Id.*

449. Interview with CH34, in Santiago, Chile (Mar. 14, 2017).

450. *Id.*

451. *Id.*

452. Interview CH18, *supra* note 246; Interview with CH50, *supra* note 178 (noting that female law professors were masculine, dressed poorly, and did not make themselves up).

profession, and women can dress in a feminine manner, act femininely, and be lawyers and judges.<sup>453</sup>

A male lawyer noted that women have the reputation for being bad bosses, perhaps because they overcompensate and act aggressively.<sup>454</sup> He had three female bosses: two were good and the third was “hell.”<sup>455</sup> Another male lawyer in his early 40s stated that he had “super” relationships with his female bosses.<sup>456</sup> Finally, a number of interviewees told stories of female bosses who were hyper-aggressive and made work very unpleasant.<sup>457</sup>

These attitudes toward professional women at work have seeped into the personal lives of single women. A single female judge in her late 30s said that when she goes to a dance club, men ask her, “What do you do?”<sup>458</sup> When she says she is a judge they refuse to dance with her.<sup>459</sup>

Studies demonstrate that female leaders experience a double bind.<sup>460</sup> They are considered either likeable and bad leaders, or good leaders and too aggressive.<sup>461</sup> In essence, leadership is not consistent with the stereotype of how a woman should act. Some women have been able to walk the fine line between “bitch” and incompetent, but it is a very difficult endeavor to achieve.<sup>462</sup> In Chile, I found an interesting contradiction: many interviewees volunteered that women who are more masculine—or aggressive—are accepted more as leaders than those who are not.<sup>463</sup> Many proclaimed the difficulty they had with their female bosses or colleagues.<sup>464</sup> Research in the United States demonstrates that male professionals expect their female counterparts to act in relational, feminine ways, but when women act in feminine ways their male colleagues criticize them for doing so.<sup>465</sup> On the other hand, women are criticized for exhibiting aggressive or assertive behavior that would be considered acceptable from men.<sup>466</sup> It appears that the same phenomenon may also exist in Chile. Of course, in individual cases, it is impossible to assess whether the women who were criticized by interviewees actually were more aggressive than men whose behaviors seem acceptable, or if the women are judged as being “too aggressive” because they do not conform to

453. Interview CH18, *supra* note 246.

454. Interview with CH32, *supra* note 322.

455. *Id.*

456. Interview with CH42, *supra* note 120.

457. Interview with CH13, *supra* note 143.

458. Interview with CH39, *supra* note 445.

459. *Id.*

460. See ANN C. MCGINLEY, MASCULINITY AT WORK: EMPLOYMENT DISCRIMINATION THROUGH A DIFFERENT LENS 150–52 (2016).

461. *Id.*

462. See *id.* at 150.

463. See, e.g., Interview with CH31, *supra* note 165.

464. See, e.g., Interview with CH13, *supra* note 143; Interview with CH36, *supra* note 97; Interview with CH32, *supra* note 322; Interview with CH18, *supra* note 246.

465. See MCGINLEY, *supra* note 460, at 150–52 (describing the research on the different judgments made of men and women engaged in the same behaviors at work).

466. *Id.*



gendered expectations. Furthermore, it could be that when faced with attitudes that women should not serve in leadership positions, some women actually do act more aggressively in an attempt to gain respect and recognition: a strategy that will doom them to failure. I suspect, based on the research, that both of these phenomena occur in Chile.

***F. Real Men Do Not Take Parental Leave; Real Women Take Primary Responsibility of Children***

Interviewees universally reported that men who take extended parental leave after the birth of a child are scarce because not only the bosses, but also the children's mothers have concerns about the fathers' leaves. It is the mother's privilege and responsibility to be the primary caregiver.<sup>467</sup> Bucking this cultural norm comes at a high cost for mothers and fathers.<sup>468</sup> Chilean society harshly judges mothers who do not take responsibility for their children's homework, school programs, etc.<sup>469</sup> Chile is *super subdesarrollado* (very underdeveloped), according to a female judge, when it comes to issues of gender, and women reinforce the gender divide in how they raise their children.<sup>470</sup>

A female judge said that a man who takes paternity leave will be called a *mamón* (mamma's boy).<sup>471</sup> A female law partner explained that the first father who dared to take a five-day paternity leave at her firm was shunned: everyone thought his leave-taking showed a lack of respect for the firm and that he couldn't be relied upon.<sup>472</sup>

Nearly every interviewee used the term *mal visto* (poorly looked upon) to describe society's views of a father's prolonged paternity leave.<sup>473</sup> One lawyer said that it was abusive and not manly for a father to take leave.<sup>474</sup> A young male lawyer laughed when asked whether he would take leave and said his colleagues would make fun of him for being vomited upon and changing diapers.<sup>475</sup> Colleagues would consider a man who takes a long leave to be henpecked, he said.<sup>476</sup> A male government lawyer with two children said that he would take a paternity leave if he could; he wouldn't care if his colleagues and bosses would "look at him funny."<sup>477</sup> Nonetheless, he had two young children, and his wife took

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467. See, e.g., Interviews with CH03, *supra* note 92; Interviews with CH04, *supra* note 150; Interview with CH07, *supra* note 147.

468. Interview with CH19, *supra* note 156.

469. Interview with CH15, *supra* note 143.

470. *Id.*

471. Interview with CH39, *supra* note 442.

472. Interview with CH52, *supra* note 92. A female lawyer heard a male judge express shock in court when a male lawyer who was to appear in court was on postnatal leave. Interview with CH06, *supra* note 103.

473. See, e.g., Interview with CH24, *supra* note 66.

474. *Id.*

475. Interview with CH58, in Santiago, Chile (Aug. 22, 2017).

476. *Id.*

477. Interview with CH07, *supra* note 147.

the full six months both times; he did not take a long leave, and he doesn't know any man who has.<sup>478</sup>

A female associate at a large firm said it is *mal visto* for fathers to take even five days of leave, but "it is totally accepted" for mothers to take long maternity leaves.<sup>479</sup> According to a male partner, women can miss work because of their children because women in Chile are much more connected to their children than men are.<sup>480</sup> If a man takes a leave, bosses say to him, "Why are *you* taking leave? . . . I need you here—let your wife take care of the baby."<sup>481</sup>

Gender roles impose burdens on both mothers and fathers. Male lawyers are under pressure to work long hours, whereas female lawyers can leave the office early without judgment.<sup>482</sup> Mothers may work fewer hours more efficiently, but fathers may not.<sup>483</sup>

Even a strong feminist, who plans to have children and take only the first three months of her postnatal leave, laughed when asked if her husband would take the other three months of the leave.<sup>484</sup> It would be "complicated" because men don't negotiate during job interviews for the employer to pay the difference between the cap and their salaries when they take leave because they would be discriminated against in hiring.<sup>485</sup>

Although in some legal workplaces the employer pays the difference between the cap and the employee's salary as a regular cost of doing business, in many law firms the necessity to negotiate this gap payment at the time of hiring is problematic for both men and women.<sup>486</sup> It requires women to raise the issue of their "difference[s]," which presumably deflate their bargaining power with the prospective employers.<sup>487</sup> Because it is so out of the norm for men to take an extended paternity leave, it is especially problematic. Men feel intimidated and do not negotiate in advance of entering into the contract.<sup>488</sup> Therefore, there is a good financial reason for a father not to use the postnatal leave left over by the mother. The financial loss creates a conflict with the man's masculine identity as the provider for his family and reinforces the role of the mother as primary caregiver.<sup>489</sup>

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478. *Id.*

479. Interview with CH12, *supra* note 158.

480. Interview with CH27, *supra* note 122.

481. *Id.*

482. Interview with CH04, *supra* note 150.

483. *Id.*

484. Interview with CH19, *supra* note 156.

485. *Id.*

486. *Id.*

487. *Id.*

488. *Id.*

489. For an analysis of a U.S. case in which the father, a lawyer, alleged gender discrimination based on the masculine stereotype that he should not take care of his children, see MCGINLEY, *supra* note 460, at 158–71.

### *G. Women Are Too Sensitive*

A handful of middle-aged men stated that some women are too vocal about their concerns about sexism.<sup>490</sup> One explained that activism, such as joining *MACHI* (the women judges' association) does not help women's cause.<sup>491</sup> Another noted that women support extreme laws that harm their interests.<sup>492</sup> These men believe that Chile has changed a great deal, women's complaints may be counterproductive, and time will solve any inequalities that exist because women represent more than a majority of law students.<sup>493</sup> While female lawyers disagree among themselves about the question of affirmative action, some women strongly argue that society must take affirmative steps to eliminate discrimination and put women on an equal footing with men because structural conditions harm female lawyers' opportunities.<sup>494</sup>

### *H. Women Must Work Harder and be Better to Convince Men of Their Competence*

Female lawyers lamented the extra work women must do in "men's jobs."<sup>495</sup> Besides their usual work, women, unlike men, must demonstrate their competence.<sup>496</sup> A former public defender explained: "Because you have to do the secondary work of convincing the client, the court, and the prosecutor (of your competence). . . . You have to be more aggressive, you have to be like a bitch . . ."<sup>497</sup>

### *I. Structural Issues Impede Female Lawyers from Doing Their Jobs*

Because the work of lawyers is arranged around the traditional schedule of a man who has no familial responsibilities, many female lawyers—especially those with childcare responsibilities—explained that it is very difficult for them to thrive in the structurally masculine environment.<sup>498</sup> For example, female lawyers who work for a government ministry explained that, with no advance notice, government commissions schedule meetings to take place between 7 p.m. and 10 p.m.<sup>499</sup> When that happens, these young mothers scramble to find childcare.<sup>500</sup> An impromptu evening meeting is a "tsunami" for a single mother: she must arrange for her babysitter to drop off her child at her parents' home and assure that her

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490. Interview with CH27, *supra* note 122; Interview CH18, *supra* note 246.

491. *Id.*

492. Interview with CH34, *supra* note 449.

493. *Id.*; Interview with CH27, *supra* note 122; Interview CH18, *supra* note 246.

494. Interview with CH16, *supra* note 267; Interview with CH41, *supra* note 256.

495. Interview with CH47, *supra* note 48; Interview with CH48, *supra* note 61.

496. Interview with CH47, *supra* note 48; Interview with CH48, *supra* note 61.

497. Interview with CH46, *supra* note 157.

498. *See, e.g.*, Interview with CH03, *supra* note 92.

499. Interview with CH47, *supra* note 48; Interview with CH48, *supra* note 61.

500. Interview with CH47, *supra* note 48; Interview with CH48, *supra* note 61.

parents will be there to take her child.<sup>501</sup> If her parents are not available, she must find someone else to care for her child.<sup>502</sup>

Even a mother who is married to her children's father encounters serious difficulties because of her husband's demanding job and his colleagues' assumptions that he has domestic support.<sup>503</sup> She explains that her mother takes care of her children on short notice, when necessary.<sup>504</sup> Without her mother's help, she would be in deep trouble.

Beyond the Chilean schedule—a long day with a long lunch—and working inefficiently into the evenings, there are many structural barriers to the success of lawyers, namely women, who have familial responsibilities. One example is the structure that places emphasis on the work accomplished during the first 10–15 years after graduating from law school, exactly the time frame when women begin to have children and reduce their work hours.<sup>505</sup> This schedule places a serious burden on mothers, which is exacerbated by the practice of refusing to make part-time employees partners or, in many firms, prohibiting a mother who has worked reduced hours to return to work full-time to earn a promotion to partnership.

*J. Students and Young Lawyers' Views on Child-Rearing and Careers Differ from Those of Older Generations*

Young male and female lawyers, who are not contemplating having children soon, nearly unanimously expect to have equal responsibilities for parenting their children.<sup>506</sup> Even women who have doctors, lawyers, and businessmen for partners fully expect equal participation of their partners in

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501. Interview with CH48, *supra* note 61.

502. *Id.*

503. Interview with CH47, *supra* note 48.

504. *Id.*

505. In the large firms, for example, the structure dictates that if you are not a partner by about age 40, you will likely not have a future in the firm. *See* Interview CH19, *supra* note 156; Interview with CH12, *supra* note 158.

506. *See, e.g.*, Interview with CH02, *supra* note 70 (29-year-old female lawyer stating she and her boyfriend will have equal responsibility for children; she expects to continue working when she has children, but she would never leave her children with a stranger; her mother will take care of her children; she hopes to get a different job with hours from about 8:30 a.m. to 6 p.m.); Interview with CH04, *supra* note 147 (stating that her boyfriend is a doctor, and whoever has less work when a child gets sick will stay home with the child).

parenting their children.<sup>507</sup> Young male lawyers without children answered remarkably similarly to their female counterparts.<sup>508</sup>

Likewise, male and female students in focus groups agreed that men should have equal responsibility for childcare and take long parental leaves.<sup>509</sup> Students see their careers as nonlinear.<sup>510</sup> They intend to work a few years to gain lawyering experience, then earn graduate degrees (often in foreign countries), learn languages, and travel.<sup>511</sup> They see themselves as ambitious, but their ambition differs from how generations of older lawyers define “ambition.”<sup>512</sup> Students stated that, in a world where everything is moving very quickly, there is no expectation that they will work in a given institution for a lifetime.<sup>513</sup> Given their ability to work efficiently and productively using the Internet, they expect to find success by reacting nimbly to their environments.<sup>514</sup> Unlike their slightly older counterparts, female and male students are not concerned with setting themselves up in particular jobs so they can take on childcare responsibilities in the future.<sup>515</sup>

## VI. LAW, CULTURE, AND ALTERNATIVE SOLUTIONS

### A. *The Predominance of Gender Roles in Macroculture*

Chilean macroculture has traditionally maintained exacting views of men’s and women’s roles at work and home. Women carry the laboring oar on familial responsibilities. Men, in contrast, provide the family’s income. Both men and women acknowledge these expectations; some call them *machista*, but others use the less-judgmental term, *tradicional*.<sup>516</sup>

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507. See, e.g., Interview with CH06, *supra* note 103 (noting that if she were married she would want equal responsibilities, but there are also single women who decide to have children alone); Interview with CH12, *supra* note 158 (noting that she wants a “super-evolved” man, one who is not sexist and who considers children the equal responsibility of mother and father); Interview with CH11, *supra* note 105.

508. See generally Interview with CH20, *supra* note 119 (expressing general sentiment that men and women are equal, noting that women need to be empowered in law firms, and that empathy is important to practicing law).

509. See, e.g., Interview with Focus Group CH68–72, *supra* note 72.

510. See *id.*; Interview with Focus Group CH65–67, *supra* note 428 (describing their ambitions to study, work, and travel).

511. See Interview with Focus Group CH65–67, *supra* note 428; Interview with Focus Group CH68–72, *supra* note 72.

512. See Interview with Focus Group CH59–64, *supra* note 428; Interview with Focus Group CH65–67, *supra* note 428; Interview with Focus Group CH68–72, *supra* note 72.

513. See Interview with Focus Group CH59–64, *supra* note 428; Interview with Focus Group CH65–67, *supra* note 428; Interview with Focus Group CH68–72, *supra* note 72.

514. See Interview with Focus Group CH68–72, *supra* note 72.

515. See *id.* (discussing how they can work quickly because of their technical expertise and that work is only a tool for living their lives in a complete way).

516. See *supra* Section I.A.

Even those who consider the constraints *machista* find it difficult to escape tradition in their own lives.<sup>517</sup> Many female and male subjects stated that a mother who is a lawyer does a larger percentage of the family-related work and exclusively takes extended leave when the children are infants.<sup>518</sup> Mothers who voice egalitarian views explain that their spouses have more demanding jobs than they do or that the husband's employers would not accept the father's equal participation in childcare if it meant reduced work time.<sup>519</sup>

While a few fathers stated that it is more natural for mothers to stay with children for an extended parental leave, and others pointed to the difficulty of breastfeeding for mothers who return to work and leave their infants with the fathers,<sup>520</sup> many fathers acknowledged that it is more socially acceptable for women to take leave than it is for men, and that employers and coworkers would harshly judge a father who takes an extended parental leave.<sup>521</sup> Some fathers also admit that even after postnatal leaves are over, the mother who has returned to work continues to bear the brunt of family responsibilities.<sup>522</sup> Both mothers and fathers acknowledge the difficulties in insisting upon egalitarian practices in the family and the workplace, given the macroculture of Chile, the mesoculture of lawyers in Chile, and the microculture of particular law offices.<sup>523</sup>

History and politics have also played a role in Chilean attitudes toward gendered family responsibilities. Due to reduced freedom during the Pinochet dictatorship from 1973 to 1990 and the emphasis the dictatorship placed on gender roles, the Women's Movement in Chile lagged behind its North-American contemporaries, but at the same time, women played a crucial role in bringing about democracy.<sup>524</sup> While the dictatorship witnessed female activists on both sides of the debate, it prohibited abortion and divorce and emphasized the caretaker roles that women play in Chilean families.<sup>525</sup>

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517. See, e.g., Interview with CH03, *supra* note 92.

518. *Id.*

519. *Id.*

520. Interview with CH32, *supra* note 322; Interview with CH31, *supra* note 165.

521. See Interview with CH05, *supra* note 240.

522. See *id.*

523. See Interview with CH03, *supra* note 92; Interview with CH05, *supra* note 240.

524. See Alyssa McGary, *The Impact of Women's Movements of the Democratic Transition in Chile and Argentina*, PEACE & CONFLICT MONITOR, [http://www.monitor.upeace.org/archive.cfm?id\\_article=646](http://www.monitor.upeace.org/archive.cfm?id_article=646) (last modified Sept. 7, 2009).

525. Claudia Dides & Tessa Maulhardt, *A Debt of Democracy: Abortion in Chile*, CHURCH & STATE, <http://churchandstate.org.uk/2015/12/a-debt-of-democracy-abortion-in-chile/> (last visited Aug. 31, 2018). Divorce was illegal in Chile until 2004; many married people lived with other persons, and many children were born out of wedlock. See STEPHANIE HEPBURN & RITA J. SIMON, *WOMEN'S ROLES AND STATUSES THE WORLD OVER* 50–51 (2006). But the upper classes found a way around the problem. From 1940 on, it was accepted that people of the upper classes could annul their marriages by mutual agreement by declaring that they had married in a municipality that did not have jurisdiction to marry them because neither the husband nor the wife had residence there. Everyone knew it was a

Chile's postdictatorship democracy is only 28-years-old and has made significant progress in human and civil rights.<sup>526</sup> The courts now decide cases through transparent trials where parties' and witnesses' rights are observed.<sup>527</sup> The *tutela laboral* process allows workers to assure their fundamental rights to dignity in both government and private employment.<sup>528</sup> These rights have grown along with a dedication to greater gender equality.<sup>529</sup>

Chilean women now have career aspirations, and a majority of students studying in universities are female.<sup>530</sup> Given the strong traditional culture of the gendered division of labor, female lawyers often confront waters that are difficult to navigate.<sup>531</sup> Even those Chilean women who do not choose the traditional path of being a wife and mother suffer from the expectation that they will or should have families.<sup>532</sup> Both conforming and failing to conform to the stereotype of what a woman should be cause problems for working women. Many interviewees believe that the stereotype that women are not good leaders harms female lawyers who seek to advance in their positions.<sup>533</sup> This result is consistent with the research

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lie. The problem was that these marriages, now annulled, produced children, and the children were now considered illegitimate. A law from the 1940s cured this problem, saying that even if the marriage was null and void, the children were legitimate. Once these problems were cured, members of the former couple were free to remarry. Thanks to Sergio Gamonal for this insight. See also Hector Tobar, *Where Divorce Is Illegal, Many Live a Double Life*, WASH. POST (Jan. 11, 2004), [https://www.washingtonpost.com/archive/politics/2004/01/11/where-divorce-is-illegal-many-lead-a-double-life/c6c34307-0239-4c48-b265-69667e517dd9/?noredirect=on&utm\\_term=.52e4a453cba1](https://www.washingtonpost.com/archive/politics/2004/01/11/where-divorce-is-illegal-many-lead-a-double-life/c6c34307-0239-4c48-b265-69667e517dd9/?noredirect=on&utm_term=.52e4a453cba1).

526. Ruth E. Dominguez, *Human Rights in Chile: Remembrance and Reckoning*, INQUIRIES J.: STUDENT PULSE (2009), <http://www.inquiriesjournal.com/articles/38/human-rights-in-chile-remembrance-and-reckoning>.

527. See generally Alexandra Huneus, *Judging from a Guilty Conscience*, 35 LAW & SOC. INQUIRY 99 (2010) (discussing how Chilean judges, who decided cases in a way that was complicit in illegal acts during the Pinochet regime, have begun to recognize human rights to atone for their past decisions).

528. Interview with CH09, *supra* note 261. See *supra* Section I.C.2.

529. See *supra* Section I.C.1-3 (description of legal reforms aimed at greater gender equality).

530. See *Archive: Chile-EU Statistics on Education*, STATISTICS EXPLAINED (July 2014), [https://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Chile-EU\\_-\\_statistics\\_on\\_education#Tertiary\\_education](https://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Chile-EU_-_statistics_on_education#Tertiary_education).

531. See *supra* Part IV.

532. See Interview with CH15, *supra* note 143; Interview with CH39, *supra* note 445; Interview with CH05, *supra* note 240.

533. See Interview with CH40, *supra* note 385 (female academic stating that male colleague told her that other male colleagues don't think women are as good as men); Interview with CH33, *supra* note 117 (stating that maternity might cause some of the problems but is not the determining factor for women's lack of equality in prosecutors' offices; the real cause is the masculine atmosphere); Interview with CH05, *supra* note 240 (noting that one of his female bosses was like Meryl Streep in *The Devil Wears Prada*); Interview with CH18, *supra* note 246 (noting that work is more complicated when there are women colleagues because women don't get along with one another); Interview with CH04,

done in the United States on stereotypes of women as leaders. The research demonstrates that women leaders, outside of the stereotypical roles attributed to women, are criticized as being either too aggressive or bad leaders.<sup>534</sup> There are two types of gender norms: descriptive and prescriptive.<sup>535</sup> Descriptive norms describe how the majority of women behave.<sup>536</sup> The prescriptive norms establish rules for how women should behave that are consistent with the descriptive norms.<sup>537</sup> When women violate the prescriptions—for example, women should not be aggressive and should be caring and friendly—they are judged more harshly than men for the same behavior.<sup>538</sup>

The greater culture is still invested in the roles of men and women in different spheres. This makes female lawyers outsiders who do not belong at work and who are expected to conform to stereotypes of being hardworking and organized. Even if they have no interest in becoming mothers, female lawyers are judged through the lens of the roles expected of women.<sup>539</sup> Women who choose not to have children are considered “odd.”<sup>540</sup> An unmarried, childless female judge in her late 30s told me that when she began as a family-court judge her fellow judges repeatedly asked her why she didn’t have children.<sup>541</sup> The older lawyers asked, “Where did she come from?”<sup>542</sup>

As in the United States and other countries, Chilean mothers have adapted their careers to cultural demands that accord them primary responsibility for their families. Women from the upper classes, even those who have not worked outside of the home, have traditionally had the help of low-cost paid labor—women who clean, cook, and at times, care for the children.<sup>543</sup> Chilean professionals who are mothers benefit from the labor of these *nanas*.<sup>544</sup> Because upper-class families from Santiago tend to live near one another, grandparents do significant amounts of childcare as well.<sup>545</sup> But even this help may not be sufficient for many female

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*supra* note 150 (stating that women are considered to be conflict-oriented and aggressive); Interview with CH16, *supra* note 267 (noting that male colleagues do not take female judges seriously, and that male judges told her she was not like the other women, which means that she is not “hysterical” and is more reasonable).

534. See Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 109–12 (explaining the social-science research of gender roles and how they affect expectations and judgments of women in leadership positions).

535. *Id.*

536. *Id.*

537. *Id.*

538. *Id.*

539. See, e.g., Interview with CH04, *supra* note 150.

540. Interview with CH39, *supra* note 445.

541. *Id.*

542. *Id.*

543. Kate Rodriguez, *Golden, Lazy Days With a Chilean Nana*, TELEGRAPH (May 3, 2007, 12:00 AM), <http://www.telegraph.co.uk/expat/4203818/Golden-lazy-days-with-a-Chilean-nana.html>.

544. See Interview with CH09, *supra* note 261.

545. See Interview with CH02, *supra* note 70 (explaining that her mother who lives ten minutes from her will take care of her baby when she is at work); Interview with



lawyers to meet the dual demands of a full-time legal career and a family. Especially the large, private, and international firms, *fiscalia*, and public and private criminal defense offices require very long hours.<sup>546</sup> Many consider daycare in Chile to be sub-par, and most of the parents interviewed stated that they did not use daycare for their children.<sup>547</sup>

Moreover, the Chilean schedule—a long work day with a long lunch, late arrival at home from work, and a late dinner—reflects and reinforces the traditional gender roles of men as providers and women as caregivers. The work of law offices is organized around the traditional roles and schedules of men as workers who have the benefit of a woman who cares for their children and takes care of other familial responsibilities. This is particularly harmful to the careers of female lawyers who are mothers or caregivers.<sup>548</sup>

Furthermore, the Catholic Church, Opus Dei, and Catholic *colegios* reinforce traditional gender roles, especially in the Chilean upper classes.<sup>549</sup> Graduates of Catholic *colegios* and other private schools work as lawyers in the most-prestigious law offices.<sup>550</sup> According to a number of the interview subjects, some firms that are connected to Opus Dei hire female lawyers as associates but do not support their promotions into the partnership.<sup>551</sup> Even those firms—large, small, family, and other—that are not connected to Opus Dei have low rates of promotion of female lawyers into partnerships.<sup>552</sup>

While a large percentage of female lawyers—mothers or not—appears to encounter gender-based difficulties in private law firms and prosecutors' and public defenders' offices, the interviews suggest that female lawyers' problems are exacerbated by pregnancy and motherhood.<sup>553</sup> Many young women stressed that it will be impossible for them to fulfill their responsibilities as lawyers and mothers.<sup>554</sup> As a result, some of these young women leave their firms and move to in-house counsel and other jobs or attempt to work part-time.<sup>555</sup>

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CH03, *supra* note 92 (explaining that her mother cares for her children while the *nana* does other work in the home); Interview with CH04, *supra* note 150 (noting that her mother will help her with her children); Interview with CH06, *supra* note 103 (stating that when she has children her mother will help her).

546. *See supra* Section I.F.

547. One judge noted that it is necessary for the State to step in and guarantee improved infant and childcare so that mothers can succeed in their work. *See* Interview with CH51, *supra* note 140.

548. *See supra* Section IV.E.

549. *See supra* Section IV.B.

550. *Id.*

551. *See supra* notes 166–177 and accompanying text.

552. *See supra* notes 154–163 and accompanying text.

553. *See* Interview with CH22, *supra* note 136.

554. *Id.*

555. *Id.*

Unfortunately, many private firms generally do not permit a person who has worked part-time to become a partner.<sup>556</sup> There are few exceptions. Occasionally, firms have permitted women to work part-time or flexible hours and then return to full-time status and be considered for partnership.<sup>557</sup>

This study demonstrates that the working conditions of female lawyers in most government offices are significantly more equal to those of male lawyers than they are in private firms. Nonetheless, there are a few exceptions. Interviewees who have worked in prosecutors' and defenders' offices claim that female lawyers generally receive differential work assignments and promotions at a lower rate than male lawyers.<sup>558</sup>

### *1. Changing Legal Requirements and Gendered Responses*

Law is shaped by culture. Soon after the defeat of the dictatorship, democracy emerged from a pent-up demand for freedom and equality.<sup>559</sup> While even before the dictatorship there were rights to pre- and postnatal leaves, after the dictatorship, President Piñera lengthened the right to leave, and the focus switched to protecting not only the babies' health, but also the mothers' rights.<sup>560</sup> As noted above, now mothers have six weeks prenatal leave and three months mandatory postnatal leave.<sup>561</sup> They have another three months optional parental leave, which they can choose to share with the child's father.<sup>562</sup>

This study suggests that these reforms have mixed effects on female lawyers' opportunities. Mothers should have adequate maternity leaves that allow them to recover from childbirth, bond with their babies, and establish a feeding routine that benefits the baby and the mother. But a leave that makes only maternity—and not paternity—leaves mandatory reinforces the cultural norm that it is the mother's—and not the father's—role to care for their children. Other laws also appear to disadvantage women's careers. There exists a prohibition against firing a pregnant or postbirth woman, but not the father of the child, during the mother's pregnancy and maternity leave.<sup>563</sup> Employers of more than 20 female, but

556. See Interview with CH19, *supra* note 156 (stating that this female associate believes that when she has children in this small firm she can cut back on her work when they are young and then go on to be a partner in the firm, but this is unusual and would not be possible in a large firm).

557. See, e.g., Interview with CH52, *supra* note 92 (a female partner in a Santiago branch of a large European firm who, as an associate, had flexible hours when raising her children and ultimately became a partner). This interviewee was the only female partner whom I interviewed who had this opportunity, and she emphasized that her husband, also a lawyer, was very involved in caring for their children. *Id.*

558. See *supra* notes 336, 346–360.

559. See generally LOIS HECHT OPPENHEIM, *POLITICS IN CHILE: DEMOCRACY, AUTHORITARIANISM, AND THE SEARCH FOR DEVELOPMENT* 162–216 (2d. ed. 1999).

560. See Lidia Casas & Tania Herrera, *Maternity Protection vs. Maternity Rights for Working Women in Chile: A Historical Review*, 20 *REPRODUCTIVE HEALTH MATTERS* 139, 144 (2012).

561. *Id.*

562. *Id.*

563. Interview with CH05, *supra* note 240.

not male, employees must pay to support childcare.<sup>564</sup> Clearly, these provisions make it more expensive and inconvenient for employers to hire women. Because of the culture and the statistical reality that most women are caregivers, all young women are considered to be “potential mothers,” which means that they will be expensive to employ—especially because of the new reforms.<sup>565</sup> While some employers mention the cost of paying the difference between the government subsidy and the employee’s salary when she is on leave, some are more concerned about the potential serial nature of the missed time at work.<sup>566</sup> Chilean women rarely have only one child, they say, and the leaves can add up to years of missed work and interrupted career development.<sup>567</sup>

Many female lawyers are asked in job interviews about their plans to marry and have children; male lawyers are not asked the same questions.<sup>568</sup> Moreover, many lawyers confirm that potential family plans of female applicants are taken into account when determining whether to hire applicants.<sup>569</sup> These lawyers admit that, in part, the new reforms make them cautious about hiring women of childbearing age.<sup>570</sup> If this is true, it may be that the law that was intended to help women and families has been successful because it requires longer, paid maternity leave. By the same token, combined with the Chilean culture that strictly segregates women’s and men’s roles, it also appears to have unintended consequences that may harm women’s legal careers. The law’s defects create a significant cost differential between hiring and promoting of men and women. These defects include failures: (1) to require employers to protect fathers against dismissal during the child’s gestation and postnatal leave; (2) to require subsidized childcare of infants—regardless of the number of female employees; and (3) to mandate fathers’ postnatal leave.

In response to my question regarding why women do not sue, the subjects stated that the law will not protect the applicant because the legal community is very small, and as soon as one sues a potential employer everyone will know it.<sup>571</sup> A professor noted that strong unions could mitigate this problem, but the unions in Chile are weak.<sup>572</sup> Moreover, *tutela laboral* for loss of dignity does not incorporate a right to fair treatment in the hiring process. The Labor Code, in turn, prohibits discrimination in hiring, but it offers few remedies. Thus, the failure to sue results from both legal and cultural issues.

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564. See Casas & Herrera, *supra* note 560, at 140 (noting that this right has existed since 1931).

565. See Interview with CH53, *supra* note 147.

566. See *id.* In reality, Chilean women have an average number of 1.8 children per woman; virtually the same as the rate for U.S. women. See *The World Factbook*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2127.html> (last visited Aug. 31, 2018).

567. *Id.*

568. See *supra* notes 146, 148–152, 155–158 and accompanying text.

569. See *supra* notes 146, 148–152, 155–158 and accompanying text.

570. See *supra* notes 146, 148–152, 155–158 and accompanying text.

571. Interview with CH51, *supra* note 140.

572. Interview with CH50, *supra* note 178.

*B. Mesoculture: Lawyers, Masculinity, and Tradition*

The mesoculture of the profession of lawyers is traditional and masculine.<sup>573</sup> Law offices in Chile, as in the United States, rely on masculine, “lawyerly” traits of aggression, adversarial behavior, and hard work that freeze into place the gender roles of men as providers and women as caregivers.<sup>574</sup> One interviewee described two law firms in Santiago that have statues of bulls in their offices—which he claims are symbols of the fight—to show that they are good litigators.<sup>575</sup> But, this interviewee noted bulls are brutish, and litigation is an art, not a brutish exercise.<sup>576</sup> The bull is useless, he said, when it is necessary to understand when to reach a settlement agreement or continue to trial.<sup>577</sup> The bulls are a visual example of the importance of masculinity to these litigation firms.

Especially in the large firms, hard work, long days, and the need to respond rapidly to clients without delay and to sacrifice one’s personal life for the “cause” constitute a masculine, neoliberal way of practicing law.<sup>578</sup> The work schedule of these law offices assumes no familial responsibilities and support of a person at home who cares for the lawyer’s family and home.

During the Pinochet Era, a group of Chilean economists studied economics at the University of Chicago under Milton Friedman.<sup>579</sup> The scholars, steeped in neoliberalism and known as the “Chicago Boys,” returned to Chile and were appointed by Pinochet to important government posts.<sup>580</sup> A number of interviewees mentioned that the neoliberal concept of competition, lauded during the Pinochet Era and found in U.S. law firms, is prevalent in Chilean, large law firms, especially those with U.S. affiliations.<sup>581</sup>

Even in some offices where there is not an oversupply of work, the Chilean schedule that values face-time over productivity, taking long lunches, and working late into the evening poses a barrier to lawyers who need to spend time with their families. Interview subjects acknowledged that partners prefer a less productive associate who is available in the office until late at night over an associate who gets work done and goes home early.<sup>582</sup>

Chilean law firms, like those in the United States, build their schedules and expectations around the lifestyle of the traditional male lawyer, who has few

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573. See MCGINLEY, *supra* note 460, at 158–70.

574. See *id.* at 160–69.

575. Interview with CH20, *supra* note 119.

576. *Id.*

577. *Id.*

578. See Richard Collier, *Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work-Life Balance in Large Law Firms*, 13 NEV. L.J. 410, 426–32 (2013).

579. Orlando Letelier, *The ‘Chicago Boys’ in Chile: Economic Freedom’s Awful Toll*, NATION (Sept. 21, 2016), <https://www.thenation.com/article/the-chicago-boys-in-chile-economic-freedoms-awful-toll/>.

580. *Id.*

581. See, e.g., Interview with CH07, *supra* note 147.

582. See *supra* note 413–415.

family obligations during the week other than to earn a good living.<sup>583</sup> Female lawyers with parental responsibilities work hard and take few breaks at work so that they can get their work done and go home to spend time with their children.<sup>584</sup> If these mothers are considered less effective than their male colleagues, it is male lawyers who determine exactly what work is.<sup>585</sup>

The office that follows the traditional Chilean schedule is the locus not only of a man's work, but also of homosocial friendships among male colleagues that build connection and masculine self-esteem.<sup>586</sup> But in large part, female lawyers are excluded from this fraternity.<sup>587</sup> The question is to what extent these long lunches form part of the work itself. This is an issue upon which male and female interview subjects disagree.<sup>588</sup> Certainly, if work dominates lunch all lawyers involved in the work should be present. But if long lunches occur to maintain male, homosocial relationships that are only marginally work-related, presence at many of these outings should not determine whether an associate succeeds.

Another structural issue that harms mothers is that important meetings are scheduled beginning at 7 p.m. or 8 p.m., often with little or no warning.<sup>589</sup> These meetings make it extremely difficult for workers who have primary childcare responsibilities because their babysitters often leave by 7 p.m.<sup>590</sup> One mother reported that it creates a "tsunami" in her life when an unexpected late meeting is scheduled.<sup>591</sup>

Many firms consider women to be more organized and better workers.<sup>592</sup> Although these attitudes are seen as complimentary, they portray women as better

583. See, e.g., Martin, *supra* note 412, at 344–45 (noting that workplaces are organized around men and shaped by gendered conceptions and that the "so-called empty position" in organizations assume the "body and life of a man, not a gender-free person"). This means that one envisions a man in an open position (that is considered managerial or professional) and that gendered concepts such as leadership and competence are "conflated with practicing of gender in ways that differentially affect women and men." *Id.* at 345.

584. See *supra* notes 222–226, 403–407 & accompanying text.

585. See, e.g., Martin, *supra* note 412, at 45 (noting that men's superior power at work allows them to define what they do as "work").

586. For a discussion of homosociality and masculinity, see Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity* 81–91 in RACE, GENDER, AND CLASS IN THE UNITED STATES: AN INTEGRATED STUDY (Paula S. Rothenberg ed., 6th ed. 2004) (explaining that men prove their masculinity through homosocial relationships; relationships between men are dangerous because they could be interpreted as homosexual, thus leading to hyper-masculine behaviors).

587. See, e.g., Interview with CH03, *supra* note 92 (describing how the male partners in the firm meet with the male clients for whom she will be trying cases, call her into the client meeting to talk about the case, and then dismiss her).

588. Interview with CH05, *supra* note 240.

589. See, e.g., Interview with CH48, *supra* note 61.

590. Interview with CH47, *supra* note 48; Interview with CH48, *supra* note 61.

591. Interview with CH47, *supra* note 48; Interview with CH48, *supra* note 61.

592. See *supra* Section I.A.

workers when it comes to lower-level, organizational work.<sup>593</sup> Women are not, however, considered to be potential leaders or partners, especially if and when they become mothers.<sup>594</sup> Although it is unclear what the exact motives are, it appears that firms benefit from women who work hard their first few years, give birth, and either leave or work a reduced schedule. In either case, the firm does not have to worry about making these mothers partners. In many cases, the reduced schedule comes with a reduced salary even though the woman does as much work as her full-time counterparts, and in most cases part-time work precludes the mother from becoming a partner.<sup>595</sup>

### C. Proposed Legal and Cultural Solutions

Predetermined roles based on gender lead to power differentials that harm individuals, families, and societies. People thrive if all adult members may, with equal decision-making, pursue their interests, develop their abilities, and take equal responsibilities for family members who need care. Gender should limit neither women nor men as lawyers, members of their families, or members of society. Nor should society pass legislation that has the effect of freezing gendered cultural stereotypes into law. While well-intentioned and perhaps effective for a different set of employees, the new family-friendly parental-leave laws may, in some legal workplaces, harm the careers of female lawyers, and in turn, lock in disadvantage for women in their careers, and for men in their familial relationships.

The solutions are both legislative and cultural at the macro, meso, and microlevels. First, overall leave time should expand so both parents will take leave. Second, legal offices need to change their cultures to recognize that they can earn significant income and practice law well if they work more efficiently and permit lawyers to work on different schedules. They also need to expand the now-limiting definitions of what a lawyer's career looks like. These definitions are outdated and based on traditional norms of gender roles, which continue to exist because of the difficulty of breaking out of those roles and the rigidity of workplaces as well as the law. Unfortunately, these definitions harm not only women, but also men who fail to develop robust relationships with their children and families.

#### 1. Flexibility

The word I heard most during interviews with female lawyers with children was "flexibility."<sup>596</sup> Parents want and need flexibility so that they can pursue their careers and take care of their families.<sup>597</sup> But in Chile, although the labor code provides flexibility, there is a rigid mentality about male and female

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593. *Id.*

594. *Id.*

595. I met only one woman who had a reduced schedule and subsequently became a partner. *See* Interview with CH52, *supra* note 92.

596. *See, e.g.*, Interview with CH23, in Santiago, Chile (Feb. 11, 2017).

597. Interview with CH24, *supra* note 66.

roles and work, which leads to a lack of flexibility.<sup>598</sup> One 30-year-old, female lawyer stated:

[I]n Chile it's hard to find flexible jobs. It's hard to find places where someone can work fewer hours, or be remotely connected. Then, in a certain sense, this closes a lot of doors, because here the philosophy that there is in Chile with respect to lawyers, is that the world does not move, is that he who works more is the better lawyer, in the sense of hours, he who stays at the office later, etc.<sup>599</sup>

Another female, 27-year-old lawyer explained how young women think about future success as potential mothers: "One has to look for certain types of work that give you flexibility because in jobs like working for a firm, it doesn't exist. Simply, they will replace you."<sup>600</sup>

Lawyers with familial responsibilities need work flexibility; jobs that provide flexibility permit lawyers to flourish as both parents and workers. One example is the judiciary. Women, many of whom are mothers, are thriving on the trial bench in Chile in large part because of the flexible work schedule.<sup>601</sup> Trials take place in the mornings, and depending on the court parents may, if necessary, pick their children up from school, take them to the doctor, or attend a school play, and write their opinions at home while their children play or do their homework, or after the children are in bed. Judges' work is not that different from lawyers' work. Because of technology, lawyers can do much of their work from home. Meetings with clients, partners, and associates that cannot occur over the phone can take place in the office in the mornings (or the afternoons), and lawyers could work from home on briefs, research, drafting, etc., so long as they have access to Internet research and office files. The goal is to change the norm so that it is not considered "cheating" to work from home, but rather is a normal part of a worker's day.<sup>602</sup>

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598. See Gamonal Contreras, *supra* note 103, at 5 (arguing that the law is sufficiently flexible, but cultural attitudes interfere with the important use of flexibility in work schedules).

599. Interview with CH19, *supra* note 156.

600. Interview with CH24, *supra* note 66.

601. See *supra* Sections I.F.5 & I.C.1.

602. While the working conditions of female judges appear to be superior to those of female lawyers, a recent survey of judges conducted in 2016 found that judges do not believe that all discrimination has been eliminated from the judiciary. The survey found a difference between female and male judges' views of the importance of gender equality in the judiciary, and the amount of discrimination each experienced based on gender, including sexual harassment. There were also many responses—both male and female—that demonstrated stereotypes about women's roles and their gender. See Dirección de Estudios Corte Suprema, Poder Judicial: *Resultados del estudio diagnóstico de la perspectiva de igualdad de género en el poder judicial chileno* (Apr. 4, 2016) (providing nonpublished results of a survey of judges about gender difference in the courts) (on file with the author).

## 2. *Part-Time Work*

Even with the flexibility of working from home on certain days or portions of days, some workers will at times need to reduce their work schedules to accommodate their families or their other interests.<sup>603</sup> Law offices should act flexibly in permitting reduced schedules—defined as reductions in productivity and the hours a lawyer spends in the office. Law offices need to have vision to imagine how lawyers will work in the future. The pay rate of part-time workers should be the same as that of full-time employees. Lawyers should not be paid less for working fewer hours, but the measure of their pay should be productivity. If they are as productive as employees who work longer hours, they should still be paid the same amount.<sup>604</sup>

## 3. *Recognizing Different Career Paths*

Many interviewees explained that once a mother works part-time, or takes a leave of absence of any length, it is usually impossible for her to pick up her career in a law firm and succeed in the future.<sup>605</sup> This response reflects a rigid view of career paths that is based on the model of the traditional family and that suffers from a lack of imagination. This model harms caregivers (usually women) and families.

Because the structure of legal careers is based on the traditional *man with a wife at home*, the trajectory for men (and lawyers in general) is rapid.<sup>606</sup> The first 10 or 15 years are important in determining whether the lawyer's career will flourish.<sup>607</sup> But this is exactly the time that biology dictates that a woman will give birth and children will need attention.<sup>608</sup> Because women are generally not only the child bearers but also the caregivers, the career paths of women would have different trajectories than those of their male colleagues who have fewer familial responsibilities.

After raising their children, women have more time than earlier in their lives to dedicate to their careers and develop their skills as lawyers. Interestingly, as people age, women begin to do many more things in the outside world, while

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603. When asked about flexibility of working hours, this partner stated that there may be too many hours of work to get done to accommodate someone who is caring for children, even if that person is working at home using *teletrabajo* (working remotely using technology). Interview with CH30, *supra* note 127.

604. For a discussion of part-time work in Chile, see generally Gamonal Contreras, *supra* note 103.

605. See, e.g., Interview with CH10, *supra* note 75 (explaining that there are no female partners in the firm even though some of the female associates have been there for 30 years); Interview with CH12, *supra* note 158.

606. Compare this idea with the assertion in MCGINLEY, *supra* note 460, at 180–83 (explaining why “up or out” systems disparately impact women).

607. *Id.*; see also, e.g., Interview with CH53, *supra* note 147 (explaining that in Chile, mothers have many responsibilities to the family even once the children grow up, so it may not be fruitful to change the structure to permit women to return to work after raising their children).

608. *Id.*



men dedicate themselves more to their homes and families.<sup>609</sup> This is likely not gender-based but role-based. But to the extent that law careers are structured on the man's biology and timetable, they discriminate against women. They also harm men who would like more time with their families. Certainly, these reforms should apply to all lawyers—male or female—who bear familial responsibilities.

#### 4. Legislation

Babies and children need care, and the Chilean legislature deserves respect for creating parental leaves that are far superior to those required by parental-leave laws in the United States. Most families are likely better off as a result, but it is important to consider how laws operate on the ground once they are in effect and how they affect women's careers. Here, I want to emphasize that the vast majority of women's salaries are covered by the government when women are on leave.<sup>610</sup> Only the "elite" female employees, such as lawyers, who encounter problems with the cap on government-provided leave salaries.<sup>611</sup> While the Chilean parental-leave law likely does not affect employers if the salaries are low and paid entirely during the leave by the government, the Chilean parental-leave law may have the unintended consequences of making it more difficult for women to be hired as lawyers, to continue working once they have children, and to compete for promotions and partnerships.<sup>612</sup> Unfortunately, because of strong cultural beliefs and antipathy toward fathers who take leaves, generally, fathers do not take parental leaves for more than a few days.<sup>613</sup> The difficult conflict is this: given Chilean traditions and values, mothers are largely responsible for their children's care. The law needs to protect the interests of these women and families. On the other hand, by doing so, law must strive to avoid perpetuating sexism and reinforcing stereotypes about men and women. Thus, the law should create incentives for mothers *and fathers* to take leaves and disincentives for employers to refuse to hire or promote either parent because the parent has taken or may take leaves. The law should enable both parents to pursue their careers and care for their families.

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609. Interview with CH41, *supra* note 256.

610. Thank you to Sergio Gamonal for this insight. See E-mail from Professor Sergio Gamonal Contreras, [*Profesor Titular* and Director of the Master's Degree Program in Labor and Social Security Law], Universidad Adolfo Ibañez, to Ann C. McGinley, William S. Boyd Professor of Law, University of Nevada, Las Vegas (Sept. 8, 2018) (on file with the author).

611. Thank you to Sergio Gamonal for this insight. See E-mail from Professor Sergio Gamonal Contreras, [*Profesor Titular* and Director of the Master's Degree Program in Labor and Social Security Law], Universidad Adolfo Ibañez, to Ann C. McGinley, William S. Boyd Professor of Law, University of Nevada, Las Vegas (Sept. 8, 2018) (on file with the author).

612. See, e.g., Interview with CH55, in Santiago, Chile (Aug. 22, 2017) (noting that women continue to pursue their careers after their first child, but they eventually "throw in the towel" after they have more children).

613. See, e.g., Interview with CH53, *supra* note 147; Interview with CH40, *supra* note 385; see also Casas & Herrera, *supra* note 560 (stating that as of 2012 only 23 fathers had taken the three months paternity leave).

Although it is beyond the scope of this Article to propose specific legislation, Chile could explore legislation that would grant to both parents the right not to be fired during the pregnancy and parental leaves; expand the right to parental leave to 12 months total, with leaves of 6 months each for mother and father after the child's birth; and mandate leaves of equal length for both parents. The legislature should simultaneously permit some flexibility in the postnatal leave so that both parents could work part-time during the leave. Moreover, employers with more than 20 total employees, rather than 20 *female* employees, should be responsible for childcare support. This provision should reduce the disincentive for certain employers to hire female employees.<sup>614</sup> Additionally, the leave policy needs to take into account circumstances of nontraditional families: single parents, same-sex parents, and unmarried parents. An improvement in the *tutela laboral* would also cover employer behavior in hiring and would make it illegal for an employer to discriminate against an applicant on the basis of gender, age, childbearing capacity, pregnancy, caregiving responsibilities, parental status, or probability of having children in the future.

In essence, the law should recognize the importance of both a father's and mother's role in childcare and create incentives for fathers to take leave and disincentives for employers that refuse to hire employees based on their gender or the possibility that they will have children. The law should also require employers to cover the difference in all employees' salaries between the statutory cap and the individuals' salaries if it covers the difference in some employees' salaries. This should prevent employers from deciding that they will pay the difference only to female employees or employees who negotiate payment of the difference before working for the employers.

One serious problem with the mandatory paternity leave is its "one size fits all" quality. It presumes an intact, traditional family. The policy should consider different types of families—single parents with children and lesbian and gay couples with children.<sup>615</sup>

Moreover, one interviewee argued that the breakdown of the Chilean family makes applying this law difficult: "Chile is a country . . . of bad fathers and a great deal of abandonment [of the family by fathers]."<sup>616</sup> Without cultural change, he says, a law requiring a man to take paternity leave would not

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614. Labor lawyers who represent companies told me that their clients try to avoid hiring female employees to avoid subsidizing childcare. *See, e.g.*, Interview with CH30, *supra* note 127.

615. Interview with CH41, *supra* note 256. Very few interview subjects raised the issue of gays and lesbians in the workplace. Gay men and women are not as open about their sexual orientation as they are in the United States. In Chile, gay and effeminate men are discriminated against in hiring. Interview with CH26, *supra* note 115. Lesbians are also discriminated against. *Id.* One male interviewee with gay lawyer friends said they must present themselves as masculine (and straight) in order to develop their legal careers. Interview with CH42, *supra* note 120. Gay men do not dare tell their clients that they are gay. *Id.* Another lawyer said that gays suffer serious discrimination in Chile. Interview with CH43, *supra* note 126.

616. Interview with CH43, *supra* note 126.

succeed.<sup>617</sup> This view is consistent with that of another interviewee who emphasized that education must precede cultural and policy change.<sup>618</sup> Popular culture, however, such as television programming, often has an ability to effect change in cultural norms and educate citizens.<sup>619</sup> But the rewards of giving fathers as well as mothers the opportunities to know and spend time with their children should, with public education and proper labor policies, create lifestyles that benefit fathers, mothers, and children.

##### 5. *Law-Office Mesoculture*

For men, women, children, and families to flourish, the business of law must abolish the masculine concept that real men work all of the time and spend little or no time with their children. In fact, a real man (and a real lawyer) has empathy and gives time to his family, while also representing his clients in a competent, reasonable way. The same is true for a real woman. Given that women give birth and nurse their babies, good maternal pre and postnatal leave, as well as good childcare, are necessities for women and families. Any suggested policies and laws should assure that the law continues to support families, but it should do so without harming women's career options, while simultaneously encouraging fathers' relationships with their children.

##### 6. *Going Beyond the Maternal Wall: Masculinity and Law*

Most interviewees described Chile's "maternal wall"—the difficulty that female professionals face when they have children.<sup>620</sup> While the maternal wall clearly exists, female lawyers also experience problems unrelated to motherhood.<sup>621</sup> Because law is considered a masculine endeavor, expectations of lawyers are that they perform masculine traits and use masculine styles.<sup>622</sup> Thus, many interviewees stated that women with masculine traits were more successful.<sup>623</sup> At the same time, at least some women with these traits were considered to be hyper-aggressive and difficult to work for.<sup>624</sup> Given the expectation that women are not leaders nor creative, female lawyers suffer from the need to perform masculinity, a perceived over-performance of masculinity, and

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617. *Id.*

618. Interview with CH30, *supra* note 127.

619. Esther Hauk & Giovanni Immordino, *Parents, Television, and Cultural Change*, VOX CEPR POL'Y PORTAL (Oct. 16, 2014), <https://voxeu.org/article/parents-television-and-cultural-change>.

620. JOAN C. WILLIAMS & RACHEL DEMPSEY, *WHAT WORKS FOR WOMEN AT WORK* 127–76 (2014).

621. *See, e.g.*, Interview with CH33, *supra* note 116; Interview with CH05, *supra* note 237.

622. *See* Collier, *supra* note 578, at 426–27.

623. *See* Interview with CH31, *supra* note 165 (noting also that this may be changing as some feminine women are rising).

624. *See, e.g.*, Interview CH05, *supra* note 240.

stereotypes that they are more organized and better workers, but not creative or risk-takers.<sup>625</sup>

Some men also suffer from these stereotypes.<sup>626</sup> A few interviewees noted that gay-male friends must hide their orientation and perform masculinity in ways that are conventional to gain acceptance at work.<sup>627</sup> Research shows that the fear of appearing feminine creates pressures on men to denigrate women and other men who do not perform their masculinity in acceptable ways.<sup>628</sup> The same fears likely encourage men to depreciate parental leaves and childrearing by men. Legal change alone would likely not solve this problem: cultural change spurred by education will permit men and women to achieve their full potential as members of the community, a profession, and their families, without regard to preestablished, gender-based limitations. Nonetheless, legal change in conjunction with education is necessary to achieve success.

#### 7. *Young People May Have the Solution*

One possibility for Chilean culture is to listen to the young people. Focus-group interviews with law students revealed important issues that legislators and educators should consider. Students explained that law is becoming a much more competitive career than it has been in the past.<sup>629</sup> Law firms today are very hierarchical, but students hope to recontextualize work.<sup>630</sup> They have no expectation that they will work for 30 years in one place, but they hope to develop skills by working in Chile and other countries, attending graduate school, traveling, and learning languages so they can compete in the global workplace.<sup>631</sup> Because they are part of the first generation to grow up using the Internet, they can perform work in many settings very efficiently.<sup>632</sup> These abilities, combined with the changing nature of work, should increase flexibility in what they do, when they do it, and how they do it. This flexibility will create more opportunities to acquire even more skills, develop their interests, and raise their families in egalitarian ways as they develop their careers.

Students believe that members of older generations are much more sexist than they are, but students are optimistic that their generation will change things.<sup>633</sup> Nonetheless, they note that Chile is a class-based country, and the upper-class leaders of law firms teach class-based discrimination to their children, who may be

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625. See Ann C. McGinley, *Masculine Law Firms*, 8 FLA. INT'L U.L. REV. 423, 428–32, 439–40, 443–44 (2013).

626. See Interview with CH26, *supra* note 115; Interview with CH43, *supra* note 126; Interview with CH42, *supra* note 120.

627. See Interview with CH26, *supra* note 115; Interview with CH43, *supra* note 126; Interview with CH42, *supra* note 120.

628. See MCGINLEY, *supra* note 460, at 23–33.

629. Interview with Focus Group CH68–72, *supra* note 72.

630. *Id.*

631. *Id.*

632. *Id.*

633. *Id.*

the future leaders of the firms.<sup>634</sup> The students say it is necessary to break up class-based discrimination so that Chile can become an egalitarian country along class and gender lines.<sup>635</sup> One student summed up:

[T]he only way to generate this change is to educate new generations in feminism, in diversity, in innovation, to mix the social classes, so that rich children can study with poor children. I believe that with all of the information that there is, we have the responsibility of doing it when we arrive at important jobs and work . . . . [W]e have to generate the environment, discuss it, and yes, it ought to be our responsibility to do it from now on.<sup>636</sup>

### CONCLUSION

The interviews suggest that culture is largely determinative of how the law works on the ground. In Chile, the macro, meso, and microcultures affect the interpretation and operation of the law that deals with women's rights in employment, especially for lawyers. There is no question that, even though the law prohibits sex discrimination, sex discrimination against female lawyers occurs commonly. Women are assigned work and benefits based on stereotypes of women's abilities. Moreover, expectations that young women will soon become mothers affects hirings and promotions of female lawyers. The postnatal-leave law is progressive in that it permits mothers to give three months of their paid leave to the fathers of the infant, but fathers rarely take leave because of the disapproval of the macroculture, the mesoculture, and in most cases, the microculture of lawyers.

Chilean law prohibits discriminatory hiring under the Labor Code, but proof mechanisms are more difficult, and the remedies are inferior to those granted in the *tutela laboral* process. Unfortunately, the *tutela laboral* does not protect employment applicants from discrimination. This lack of protection, combined with parental-leave laws, creates an incentive not to hire fertile young women.<sup>637</sup>

Response to law and culture does not occur in a straight line, however. Without a modicum of cultural readiness, progressive law will not be enacted. Once enacted, a progressive law or portions of it can be ignored, ineffective, or have unintended consequences, or the law can have a modernizing effect on the macro, meso, and microcultures. In reality, it appears that when it comes to the Chilean legal community all of the above may have happened simultaneously. The solution seems to be to move forward with educating the populace at the same time as policymakers work on legislation. After the legislation is promulgated, educators and policymakers should study the effects of the law, both positive and negative, and react accordingly.

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634. *Id.*

635. *Id.*

636. *Id.*

637. *See supra* note 149 & accompanying text.

