

**WOMEN IN GOVERNMENT AS A PREDICTOR OF HUMAN
DEVELOPMENT:
AN ANALYSIS OF DESCRIPTIVE REPRESENTATION AND
SUBSTANTIVE OUTCOMES**

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ABSTRACT

This Comment explores the effects of women's legislative representation on their socio-economic development.¹ While the literature has outlined the theoretical arguments for increasing women's legislative representation as a means of reducing gender

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¹ There are far more than two genders; however, for the purpose of clarity and efficiency, this Comment will largely use the terms "men" and "women." The usage of these two terms does not presume to be an exhaustive list. This Comment will also refer to "female" legislators. This term is intended to encompass any individual who identifies as a woman, regardless of their gender assigned at birth. The fact that there are so few legislators who openly identify as any gender other than male or female only serves to demonstrate the lack of gender diversity present in elected politics. Because there are so few openly nonbinary people, it is unclear whether the data on female-identifying people would extrapolate to gender minorities. As society grows to be more accepting of gender diversity, my hope as a nonbinary person is that the makeup of our legislature will grow to reflect the large range of genders.

inequality, little work has been done to examine how these arguments play out in practice. Therefore, this Comment explores the theory behind women's representation and provides case studies to determine the exact nature of the link between representation and development. While the literature claims that women's representation *should* promote women's development, statistical analyses have shown little support for that hypothesis. To address this apparent gap, I examine two case studies: Chile and Argentina. They reveal several confounding factors, including women's support within the executive and legislative branches, the strength of women's movements, the varying effects of legislative gender quotas, and the impact of international law. All point to the need for scholars and policymakers to focus on the barriers that prevent women in government from enacting their policy preferences and making meaningful change.

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I. INTRODUCTION

In the modern world, women are subordinate to men in nearly every facet of life. From government to the labor force, education, and healthcare, women tend to be chronically underrepresented and undervalued. Consequently, there have been significant efforts from a variety of sources to ameliorate this gender inequality. One approach in the political arena is to improve women's lives by increasing the proportion of female representatives in government. However, it remains unclear whether this approach has merit. While one could infer that having more women in government would produce a stronger voice for their female constituents, as well as policies more responsive to their needs and aspirations (defined here as "substantive representation"), it is not clear that this is the case in practice or that this relationship extends beyond the policy level. Accordingly, this Comment will attempt to determine if countries with a higher proportion of women in their national legislature (defined here as "descriptive representation") do in fact exhibit further socio-economic development for women (defined here as "substantive outcomes").² The questions driving this investigation are as follows: Does women's descriptive representation bring about substantive outcomes? If so, how? If not, why?

As the case studies of Chile and Argentina demonstrate, the nature of the descriptive-substantive link is complex and non-linear; several other confounding factors (*e.g.*, women's support within executive and legislative branches, the strength of women's movements, legislative gender quotas, and international law) affect whether women in the legislature can translate their presence into socio-economic development.

As a preliminary matter, it is important to note the difficulty inherent in defining what constitutes substantive representation or substantive outcomes. While one might consider a particular policy to be "female-friendly," others may disagree. The same is true of certain measures of socio-economic development. For example, the UN has attempted to measure women's development by creating

² See HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* 89 (1967) (describing descriptive representation and explaining its limitations). *But see generally*, MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* 5 (2000) (arguing for a "capabilities approach" to international human development, which focuses on "what people are actually able to do and to be," rather than outcomes).

the Gender Development Index (GDI)—an aggregate variable that compares women’s life expectancy, expected years of schooling, mean years of schooling, and GNI per capita to that of men. Similarly, the Gender Inequality Index (GII) aggregates several measures including maternal mortality ratios, adolescent birth rates, the female population with at least a secondary education, the proportion of women in government, and labor force participation.³ However, these measures contain normative judgments as to what is, and is not, good for women—a determination that varies across countries and cultures. Despite this lack of consensus, this Comment proceeds under the assumption that there is one universal and objective definition of what constitutes improvement in women’s lives, while bearing in mind the presumptions that are made (often on the basis of Western, democratic ideals) when certain policies or outcomes are deemed female-friendly.

It is also important to note the relationship between substantive outcomes and gender equality. Though one can imagine a country where men and women are relatively equal in terms of substantive outcomes (*e.g.*, life expectancy, education rates, etc.), such outcomes may be relatively low as compared to other countries or global averages. Likewise, men and women of a certain country may be vastly unequal in terms of substantive outcomes, yet relatively high as compared to other countries or global averages. Despite these complexities, this Comment proceeds under that assumption that gender equality and improvements in women’s substantive outcomes are both worthwhile—and virtually similar—ends.

Ultimately, the data shows that there is far more to representation than sheer numbers; having women present in national legislatures *does* matter, but they must overcome numerous obstacles for their election to translate into outcomes. Therefore, this Comment is intended to promote a new discussion around legislative dynamics and what constitutes good and fair representation, as well as how to ensure that female representatives are able to legislate freely. Consequently, the implications of this Comment go beyond gender politics and into the realm of racial, sexual orientation, and other identity politics.

This Comment proceeds in four Parts: Part II discusses the theory behind women’s representation in government by exploring qualitative questions about gender quotas, political parties, and the

³ U.N. Development Programme, 2020 Human Development Report Technical Notes, at 1 (2020).

specific dynamics of national gender politics, as well quantitative analyses of the descriptive-substantive link; Part III uses the cases of Chile and Argentina to examine the relationship between women in the legislature and women's development and isolate the factors that impact this relationship; and Part IV briefly concludes, offering limitations and suggestions for further research.

II. THE THEORETICAL RELATIONSHIP BETWEEN WOMEN IN GOVERNMENT AND SOCIO-ECONOMIC DEVELOPMENT

It may seem axiomatic that when more women are present in the political arena, more female-friendly policies will be enacted into law, and as a result, women will enjoy better substantive outcomes in terms of a greater presence in politics and the workforce, improved access to education and healthcare, and overall increases in well-being. This causal relationship presumes that female legislators do, in fact, promote the passage of female-friendly policies and that female-friendly policies, when and if they are successfully implemented, bring about a higher level of socio-economic development for women. At the very least, increasing women's representation is "[a] shot in the dark: far more likely to reach its target than when those shooting are predominantly male."⁴ If this is true, then increasing women's representation in government can be considered a viable solution to at least some forms of gender inequality.

It is possible, however, that descriptive representation does not translate into substantive outcomes. While it would appear that having more women in government does produce a stronger voice for female constituents as well as more responsive policies, it is not clear that this necessarily leads to further socio-economic development for women. The benefits of having a greater level of descriptive representation may be limited to the political arena. Policies may be misguided or poorly implemented, or they may fail to produce tangible improvements in women's lives. The relationship between women's descriptive representation and substantive outcomes—in terms of social, economic, *and* political development—must be studied to determine if increasing the presence of women in government can effectively address gender inequalities throughout society.

⁴ ANNE PHILLIPS, THE POLITICS OF PRESENCE 83 (1995).

a. *Qualitative Literature Review of the Theoretical Relationship*

To determine whether having more women in a national legislature will produce better outcomes for women, one must first examine the arguments both for and against this proposed relationship. “Difference-blind” representation—that is, representation which disregards the representative’s affiliation with a certain social group—is the global norm; representation based on identity—that is, group-based representation—is therefore subject to debate.⁵

i. *Arguments in Favor of Women’s Descriptive Representation*

There are four primary arguments in favor of increasing women’s legislative representation as a means of producing better substantive outcomes for women. First, equal representation implies that women’s rights are as important as men’s and creates a sense of social justice. Second, women in politics act as role models, creating a cycle of empowerment that continues into the future. Third, including women further guarantees that their particular needs, interests, and concerns—which emerge from their shared female experience—will not be overlooked by a male-dominated legislature. Finally, women act as unique politicians, bringing certain behaviors and values to politics that may otherwise be absent and thereby adding to the diversity of the legislature.⁶

Lani Guinier takes issue with what she sees as a harmfully powerful majority and uses this as the basis for her theoretical plea for increased female representation. The emphasis in the U.S. and other Western democracies on equal political opportunity has produced a “tyranny of the majority” that marginalizes the voices of

⁵ MELISSA S. WILLIAMS, *VOICE, TRUST, AND MEMORY: MARGINALIZED GROUPS AND THE FAILINGS OF LIBERAL REPRESENTATION* 4 (1998).

⁶ PHILLIPS, *supra* note 4, at 62-75; Joya Misra, *Women, Politics, and Gender Inequality*, 42 W. NEW ENG. L. REV. 397, 407 (2020); see also Nancy Millar, *Envisioning a U.S. Government That Isn’t 84% Male: What the United States Can Learn from Sweden, Rwanda, Burundi, and Other Nations*, 62 U. MIAMI L. REV. 129, 130 (2007) (“Regardless of whether political representation leads to women’s improved status or women’s improved status leads to increased representation, the result is the same: Women (both politicians and voters) benefit from this symbiosis, and the level of women’s political representation serves as an indicator of women’s status in society generally.”).

minorities.⁷ In U.S. society, there is an underlying belief that hard work guarantees personal advancement.⁸ The result is policy that allows minorities to vote, but which structurally prevents them from holding office or benefitting from substantive outcomes.⁹ In this way, formal representation via the “one person, one vote” mindset proves insufficient.¹⁰ The basis for fairness and equality is not simply being allowed to vote, but having the opportunity to choose one’s representatives and share in the substantive political outcomes they produce.¹¹ Fairness must be measured at the substantive level; equality spans all the way from the vote to the representative, to legislation, and finally, to outcomes.¹²

Fairness aside, others question whether men can act as authentic representatives of women. While this may not seem problematic in principle, it fails in practice.¹³ Male-dominated legislatures tend to produce gender-neutral policies,¹⁴ which perpetuate the patriarchy that leaves women in a position of inferiority relative to their male counterparts. Moreover, male legislators are significantly less likely to fight for women’s interests.¹⁵ There must be women present in the legislature to produce substantive outcomes for women.¹⁶ This is because women have a significantly different set of constituents, attitudes, policy priorities, issues, voting patterns, bill sponsorships,

⁷ LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY* 12 (1994). Note that here the term minority is used to mean any group that is not traditionally thought of as being socially, economically, or politically powerful. A minority is not necessarily a numerical minority, but rather, a group whose power – social, economic, or political – is not proportional to the size of that group. Therefore, women constitute a minority in this sense. *Id.*

⁸ *Id.* at 24.

⁹ *See id.* at 24-25 (explaining the contradictions involving legislation to ensure that protected racial and linguistic minorities enjoy the right to vote, enacted during the Reagan Administration, and the Reagan Administration’s choice to protect incumbent, white elected officials regardless of the interests of Black voters).

¹⁰ *Id.* at 32-34.

¹¹ *Id.* at 40.

¹² *See id.* at 40, 70 (arguing that, in the case of Black voters, political fairness means “a fair opportunity to choose their representatives . . . and a fair share of substantive, legislative policy outcomes,” and that “fair system[s] of political representation would provide mechanisms to ensure that disadvantaged and stigmatized minority groups also have a *fair chance* to have their policy preferences *satisfied*”).

¹³ PAMELA PAXTON & MELANIE M. HUGHES, *WOMEN, POLITICS, AND POWER: A GLOBAL PERSPECTIVE* 4 (2d ed. 2014).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 11.

and legislative styles from male legislators.¹⁷ Using data collected from the U.S. Congress, Pamela Paxton and Melanie M. Hughes find that female legislators are more likely than men to claim women as a specific constituency.¹⁸ Additionally, they are more likely to prioritize, introduce, and sponsor bills that are directly related to women's interests.¹⁹ Consequently, men and women in Congress agree that having more women present changes the way the legislature works.²⁰

Even if women do not act differently from their male counterparts in the legislature, they still deserve equal representation based upon principles of equity and justice.²¹ In the U.S., women deserve 50% of the representation—descriptive *and* substantive—on account of making up roughly 50% of the population.²² Regardless of arguments against what Anne Phillips calls a “politics of presence” (*i.e.*, based on the presence of diverse groups), she, too, claims that a greater emphasis on group-based representation is necessary to create a fairer political system, and, as a result, a fairer society.²³ Beyond fairness, a legislative body that is representative of the population as a whole will be viewed by society—and especially by historically marginalized groups—as more legitimate in the decisions and policies it produces.²⁴

¹⁷ *Id.* at 199.

¹⁸ *Id.* at 199–200.

¹⁹ *Id.* at 206.

²⁰ *Id.* at 214. It remains difficult to determine, however, if this is a result of partisanship or gender. See Patrick E. Shea & Charlotte Christian, *The Impact of Women Legislators on Humanitarian Military Interventions*, 61 J. CONFLICT RESOL. 2043, 2048 (2017). Moreover, the relationship may not be linear. A critical mass of women may be necessary to produce substantive results, although evidence for this theory is mixed. See *id.* at 2051–52; Misra, *supra* note 6, at 407; PAXTON & HUGHES, *supra* note 13, at 216–18.

²¹ PAXTON & HUGHES, *supra* note 13, at 198.

²² *Id.* at 9. Some have even made the argument that the Equal Protection Clause of the U.S. Constitution guarantees a right to descriptive representation. See, e.g., Stacy Hawkins, *Diversity, Democracy & Pluralism: Confronting the Reality of Our Inequality*, 66 MERCER L. REV. 577, 579 (2015).

²³ PHILLIPS, *supra* note 4, at 25.

²⁴ Sveinung Arnesen & Yvette Peters, *The Legitimacy of Representation: How Descriptive, Formal, and Responsiveness Representation Affect the Acceptability of Political Decisions*, 51 COMPAR. POL. STUD. 868, 869, 879–81, 884, 888–889 (2017).

ii. Arguments Opposed to Women's Descriptive Representation

Several arguments exist that push back on the notion that increasing the representation of a particular group will inherently benefit members of that group. Critics point to four main problems with arguments for group-based descriptive representation. First, essentialism—the belief that all members of a group share the same interests. Second, group proliferation—the belief that allowing one group fair representation necessitates doing so for all groups. Third, legislative marginalization—the belief that legislative presence will automatically translate into policy. Finally, accountability—the belief that just because a representative is from a group, they will accurately represent that group.²⁵

Not every member of a certain group will share the same beliefs on every topic.²⁶ No one woman can speak for all women, as women's interests can be as varied as the women themselves.²⁷ Nonetheless, identity is important to political ideology, at least to the extent it provides a shared social perspective.²⁸ It is not that women have a unified, collective interest so much as they have distinct interests unique from men.²⁹ This shared experience often translates into policy preferences.³⁰ Even in a legislature where representatives are given considerable autonomy, their identities and experiences underlie their personal politics.³¹

What then qualifies a group as deserving greater legislative presence and how can this be balanced against the risk of excessive group proliferation? A group must first be marginalized. Furthermore, membership within the group must be involuntary, immutable, and dichotomous; that is, members do not choose it, cannot leave it, and experience the world differently because of it.³² In the case of gender, women have a unique perspective that is inherently different from a male perspective, due to their different

²⁵ WILLIAMS, *supra* note 5, at 5-7; PHILLIPS, *supra* note 4, at 21-24.

²⁶ PHILLIPS, *supra* note 4, at 55.

²⁷ Misra, *supra* note 6, at 410-11.

²⁸ PHILLIPS, *supra* note 4, at 53.

²⁹ *Id.* at 68.

³⁰ Shea & Christian, *supra* note 20, at 2048.

³¹ See PHILLIPS, *supra* note 4, at 53. This relationship is made even more complex in the case of multiple, intersecting identities, as factors such as race, class, and religion may be more salient to one's political behavior than gender.

³² WILLIAMS, *supra* note 5, at 116.

social upbringing. Having a shared history of marginalization creates a collective memory among women and builds negative images and stereotypes into everyday society.³³ The result is that women are connected by past inequality and share a certain perspective because of it.³⁴ Consequently, women's political equality requires self-representation within the legislature.³⁵

Descriptive representation is useless, however, unless privileged groups are open to the perspectives of marginalized groups.³⁶ Merely electing a candidate, no matter how accountable and authentic, is not guaranteed to produce substantive outcomes as microaggressions and biases within the legislature may prevent minority representatives from being effective.³⁷ Furthermore, structural barriers may prevent female legislators from producing substantive change. Even if a female representative is willing and able to devote special attention to the interests of her female constituents, political institutions may prevent her from doing so. The "masculine model" of norms, rules, and standards (often discriminatory towards women), combined with the lack of party support for female candidates (as selection tends to favor male attributes) creates an institutional bias against women as legislators.³⁸ Furthermore, "institutions may change women before women can change institutions."³⁹ Because national legislatures are almost universally male-dominated, traditionally male behavior is considered the norm.⁴⁰ Women in politics are consequently forced to adopt the behaviors of their male counterparts to fit more neatly into the current system.⁴¹

³³ *Id.* at 183.

³⁴ *Id.* at 188.

³⁵ *Id.* at 137.

³⁶ *Id.* at 221.

³⁷ GUINIER, *supra* note 7, at 63.

³⁸ See Nadezhda Shvedova, *Obstacles to Women's Participation in Parliament*, in *WOMEN IN PARLIAMENT: BEYOND NUMBERS* 33, 35-38 (Julie Ballington & Azza Karam eds., rev. ed. 2005) (describing these obstacles in greater detail).

³⁹ PAXTON & HUGHES, *supra* note 13, at 14.

⁴⁰ See *id.* at 210 (discussing how male-gendered institutions reward qualities typically associated with males and how a "male legislating style" has predominated during the course of history).

⁴¹ This phenomenon can be seen in the case of the Brazilian national legislature, where, despite the fact that men and women have distinctly different

Furthermore, male legislators may actively seek to undermine their female counterparts for fear of losing political power.⁴² Crucial to the effectiveness of any legislator is the support they receive from their colleagues. Bills sponsored by female legislators face more scrutiny and have lower passage rates than male-sponsored bills, as male legislators are less supportive of, and at times, verbally aggressive toward their female counterparts.⁴³ Representation is a zero-sum game; dramatically increasing the representation of women in the legislature can cause backlash from male legislators, thereby producing negative consequences for female-friendly policy.⁴⁴ Without male support, it can be almost impossible for women to act as effective legislators.

Related to this legislative marginalization is a lack of support within civil society. “[W]omen’s movements outside of formal government are an important piece of the puzzle,” given their ability to put pressure on policymakers.⁴⁵ Globally, mobilization around reducing gender inequality has proven to have a tremendous effect on increasing descriptive representation.⁴⁶ Furthermore, the

leadership styles, they do not differ significantly in their legislative approaches. Kendall D. Funk, *Gendered Governing? Women’s Leadership Styles and Participatory Institutions in Brazil*, 68 POL. RSCH. Q. 564, 565, 570-71 (2015). Presumably, this is because the female legislators have assimilated into a traditionally male institution, which explains the lack of empirical support for the notion that women act fundamentally different from men. *See id.* at 570-71 (stating that one explanation for this result could be that women feel obligated to convey masculine traits because society typically expects leaders to have those traits); Misra, *supra* note 5, at 410 (stating that approaches that emphasize women and men as being guided by separate instincts enjoy less empirical support than approaches that embrace a more nuanced perspective).

⁴² PAXTON & HUGHES, *supra* note 13, at 210.

⁴³ Pamela Paxton et al., *Gender in Politics*, 33 ANN. REV. SOCIO. 263, 274 (2007); *see also* Funk, *supra* note 39, at 565 (citing one study that found men can become more verbally aggressive as the proportion of women in a group increases).

⁴⁴ Karen Beckwith & Kimberly Cowell-Meyers, *Sheer Numbers: Critical Representation Thresholds and Women’s Political Representation*, 5 PERSPS. ON POL. 553, 554 (2007); Ester Del Campo, *Women and Politics in Latin America: Perspectives and Limits of the Institutional Aspects of Women’s Political Representation*, 83 SOC. FORCES 1697, 1702 (2005) (describing how men feel threatened by inclusion of women into already scarce leadership or representation positions).

⁴⁵ Misra, *supra* note 6, at 411.

⁴⁶ Yvonne Galligan, *Bringing Women in: Global Strategies for Gender Parity in Political Representation*, 6 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 319, 333-35 (2006). *Cf.* Irene Tinker, *Assumptions and Realities: Electoral Quotas for Women*, 10 GEO. J. INT’L AFFS. 7, 8 (2009) (citing a study concluding that the most important catalyst for women’s increased participation is the operation of women’s organizations in an open and receptive political system).

presence of an active feminist movement, the absence of a countermovement, and a positive public opinion around women's issues all tend toward women's substantive representation.⁴⁷ When descriptive representation is combined with a female-friendly environment, both within the legislature *and* within civil society, substantive outcomes are more likely.⁴⁸

Even if the perspectives of marginalized groups are welcomed in the legislature, they must be authentic to merit their inclusion. A shared group identity is not necessarily enough to ensure effective representation. To guarantee substantive representation, there must be accountability.⁴⁹ Although one may assume a representative will advocate for their identity group, politicians may pursue their personal or party preferences instead.⁵⁰ Furthermore, women may simply not have the desire to act for their female constituents.⁵¹ Focusing exclusively on descriptive representation overlooks the fact that representatives may choose to act contrary to the interest of their identity group.⁵²

Beyond marginalization or accountability issues *within* a legislature, the legislature itself may be structurally unable to produce effective policy. Transforming descriptive representation into substantive representation can pose an "unrealistically high standard."⁵³ Male or female, passing legislation can be tremendously difficult, let alone translating such legislation into meaningful outcomes. Despite the belief that a legislature can create policy that will affect civil society, a nation's legislative branch may be too weak or ineffective to fulfill this role. In some countries, the executive branch holds the power to set policy and implement it

⁴⁷ See Galligan, *supra* note 46, at 333-34 (highlighting the connection between organized feminism and movements to increase women's political representation).

⁴⁸ Beckwith & Cowell-Meyers, *supra* note 44, at 558 tbl.2.

⁴⁹ WILLIAMS, *supra* note 5, at 230.

⁵⁰ PAXTON & HUGHES, *supra* note 13, at 12; see also Donald P. Haider-Markel, *Representation and Backlash: The Positive and Negative Influence of Descriptive Representation*, 32 LEGIS. STUD. Q. 107, 111 (2007) (describing how context, individual preferences, and individual characteristic constrain an official's policymaking).

⁵¹ For example, former British Prime Minister Margaret Thatcher proved to be particularly disinterested in representing her female constituency. PAXTON & HUGHES, *supra* note 13, at 14.

⁵² See Erin Tolley, *Do Women "Do Better" in Municipal Politics? Electoral Representation Across Three Levels of Government*, 44 CAN. J. POL. SCI. 573, 581 (2011) (discussing criticisms of the 'mirror or descriptive representation' view).

⁵³ Susan Franceschet & Jennifer M. Piscopo, *Gender Quotas and Women's Substantive Representation: Lessons from Argentina*, 4 POL. & GENDER 393, 400 (2008).

effectively.⁵⁴ In these countries, substantive change results from centralized, top-down legal reform.⁵⁵ Ultimately then, the institutional power that the legislature has relative to other government branches affects women's presence and power within the legislature itself.⁵⁶

b. Quantitative Literature Review of the Theoretical Relationship

Despite the theoretical arguments for and against descriptive representation, the question remains as to what *actually* happens when more women are present in a legislative body. The link between descriptive and substantive representation is complex and non-linear; there are several factors that affect one or both forms of representation, making it difficult to isolate any correlation between the two. Consequently, quantitative research on the effects of increasing women's representation in government has not gone beyond the policy level. Little research has been done on the effects that increasing women's descriptive representation has on substantive outcomes. This Comment examines this gap in the literature.⁵⁷

⁵⁴ See Shan-Jan Sarah Liu & Lee Ann Banaszak, *Do Government Positions Held by Women Matter? A Cross-National Examination of Female Ministers' Impacts on Women's Political Participation*, 13 POL. & GENDER 132, 138-39 (2017) (discussing how cabinet members have the ability to determine how regulations are implemented and initiate legislation, while legislators are more constrained with respect to these functions). One should not ignore the power that the judicial branch holds, as well, especially in common law jurisdictions. To truly guarantee women's substantive representation, attention must be given not only to the legislature, but also to the executive and the judiciary. Carolyn A. Dubay, *Beyond Critical Mass: A Comparative Perspective on Judicial Design and Gender Equality in Iraq and Afghanistan*, 24 FLA. J. INT'L L. 163, 166-68, 170 (2012) (emphasizing a "holistic strategy" that incorporates women's perspectives into the judiciary, in addition to the legislature).

⁵⁵ Galligan, *supra* note 46, at 321.

⁵⁶ Leslie Schwindt-Bayer & Peverill Squire, *Legislative Power and Women's Representation*, 10 POL. & GENDER 622, 623 (2014).

⁵⁷ One reason for the lack of quantitative studies that go beyond the policy level is the difficulty associated with the statistical analysis. Defining substantive outcomes is an inherently imperfect exercise. Not all outcomes can be included, let alone measured and reported. Even aggregate indices, such as the GDI and GII, leave out certain measures. Moreover, any definition of substantive outcomes will be fraught with normative judgments and influenced by social, political, and cultural ideals. Once such a definition exists, correlating it with the proportion of women in a country's national legislature can be daunting. To prove that women in government are, in fact, bringing about improvement in the lives of women requires careful consideration of control variables and local circumstances.

i. *Prior Statistical Analyses*

In her 2007 study of the German national government, Christina V. Xydias measured the relationship between descriptive representation and the number of times women were mentioned in the legislative process.⁵⁸ Ultimately, Xydias found that female legislators advocated on behalf of their female constituents' interests to a greater extent than their male counterparts.⁵⁹ Yet Xydias does not discuss whether this advocacy translates into policy.

S.J. Kakuba's 2015 study of the Ugandan Parliament presented similar results.⁶⁰ Specifically, Kakuba found that female Members of Parliament were more likely to raise women's issues (*e.g.*, women's health, women's education, sexual violence, and sexual harassment) during parliamentary debate.⁶¹ Kakuba assumes that these mentions translate into female-friendly policies, but that assumption is not explicitly proven.⁶²

Accordingly, in their 2005 study, Leslie A. Schwindt-Bayer and William Mishler measured the relationship between descriptive representation and substantive policies.⁶³ Ultimately, they found that descriptive representation had a significant effect on the policy responsiveness of a given legislature, in terms of women's issues; female legislators *did* successfully implement female-friendly policies.⁶⁴ They claim that descriptive representation is, in fact, the "keystone" of women's representation, arguing that substantive representation necessarily requires a greater proportion of women in government—though descriptive representation alone may be insufficient.⁶⁵ Yet Schwindt-Bayer and Mishler do not explore

⁵⁸ Christina V. Xydias, *Inviting More Women to the Party: Gender Quotas and Women's Substantive Representation in Germany*, 37 INT'L J. SOCIO. 53, 53 (2007).

⁵⁹ *Id.* at 64.

⁶⁰ S. J. Kakuba, *Women in the Parliament of Uganda (2001-2011): Issues and Legislations to Improve the Status of Women*, 5 INT'L J. ADVANCED LEGAL STUD. & GOVERNANCE 20, 21 (2015).

⁶¹ *Id.* at 45.

⁶² *Id.* at 21-23, 45.

⁶³ Leslie A. Schwindt-Bayer & William Mishler, *An Integrated Model of Women's Representation*, 67 J. POL. 407, 407 (2005). Note also that defining what constitutes female-friendly policy is not a straightforward process. See Andrew Reynolds, *Women in the Legislatures and Executives of the World: Knocking at the Highest Glass Ceiling*, 51 WORLD POL. 547, 549-50 (1999).

⁶⁴ Schwindt-Bayer & Mishler, *supra* note 63, at 419.

⁶⁵ *Id.* at 422.

whether descriptive representation leads to improvements in women's development.

Moving beyond policy responsiveness, Liam Swiss, Kathleen M. Fallon, and Giovanni Burgos used substantive outcomes—namely, child health—as their dependent variable.⁶⁶ Theoretically, an increase in women in the legislature should lead to a greater focus on healthcare and social policy spending.⁶⁷ Consequently, they studied the relationship between the proportion of women in government and infant mortality to determine if there is a link between descriptive representation and substantive outcomes. They found that, when the proportion of women in government was high (greater than 20%), child health indicators improved.⁶⁸ They did not, however, determine if this relationship holds for other substantive outcomes, particularly those that are of direct relevance to women.

In my 2018 honors thesis, I attempted to fill the aforementioned gap in the literature by measuring the relationship between descriptive representation and fifteen different substantive outcomes—including life expectancy, expected years of schooling, maternal mortality rate, and labor force participation, among other things.⁶⁹ Despite some weak relationships within certain country groups and at certain time periods, there were very few substantive outcomes that seemed to be singularly affected by an increased proportion of women in the legislature.⁷⁰ These results add to the lack of evidence to support the hypothesis that descriptive representation directly and positively affects substantive outcomes.⁷¹

That said, the lack of statistical evidence does not rule out the existence of a causal relationship; case studies are a necessary next step in the investigation. To discover how women work through the legislature, one must take an in-depth look at every case to

⁶⁶ Liam Swiss et al., *Does Critical Mass Matter? Women's Political Representation and Child Health in Developing Countries*, 91 SOC. FORCES 531, 531 (2012). It is important to note here the normative judgments inherent in defining child health measures as indicative of women's development.

⁶⁷ *Id.* at 532.

⁶⁸ *Id.* at 542.

⁶⁹ Celina C. Antonellis, *Women in Government as a Predictor of Human Development: An Analysis of Descriptive and Substantive Representation* 21, 24-25 (May 9, 2018) (B.A. thesis, Bucknell University) (on file with author).

⁷⁰ *Id.* at 41.

⁷¹ *Id.*

determine why female representatives are or are not producing positive outcomes for their female constituency. It is for this reason that this Comment turns, in Part III, to a case study of two countries, Argentina and Chile.

ii. *Confounding Factors*

Several confounding factors further blur the descriptive-substantive link. Quotas, political parties, and gender ideology often affect a female legislator's tendency to represent women, as well as the likelihood that their representation will translate into substantive change.

Legislative gender quotas act as catalysts for women's descriptive representation, though they sometimes fail to achieve their intended purpose.⁷² In fact, despite their massive popularity, quotas may not even guarantee descriptive representation.⁷³ Beyond the effect quotas have on the proportion of women in a legislature, however, they may also impact *substantive* representation by increasing a female legislator's likelihood to act for women—a phenomenon known as the “mandate effect.”⁷⁴ Conversely, quotas may lead to backlash against female legislators, as their election may be viewed as a result of their gender rather than their own merits.⁷⁵ Of the different types of gender quotas, those that reserve seats in the legislature, rather than those that reserve spots on electoral lists, tend to be more problematic in that reserved seats are not viewed as politically legitimate and the women holding those seats are viewed

⁷² See Paxton et al., *supra* note 41, at 269; Drude Dahlerup, *Increasing Women's Political Representation: New Trends in Gender Quotas*, in *WOMEN IN PARLIAMENT: BEYOND NUMBERS* 141, 143-44 (Julie Ballington & Azza Karam eds., rev. ed. 2005) (listing the pros and cons of legislative gender quotas); see also Bethany Conner, *You Made a Mistake – You Selected Women: The Implementation of Political Gender Quotas in Postconflict African Nations*, 17 *TUL. J. INT'L & COMP. L.* 203, 208 (2008) (discussing the effect of the type of quota on its ability to increase descriptive representation, noting that constitutional quotas tend to be the most successful); Tinker, *supra* note 44, at 8 (discussing the effect of political party leadership on candidate selection).

⁷³ See Kathleen M. Fallon et al., *Resolving the Democracy Paradox: Democratization and Women's Legislative Representation in Developing Nations, 1975 to 2009*, 77 *AM. SOCIO. REV.* 380, 384 (2012) (“Despite increasing enthusiasm for gender quotas in the world polity, scholars caution that quota implementation does not guarantee greater political representation for women.”).

⁷⁴ Franceschet & Piscopo, *supra* note 53, at 394.

⁷⁵ Kathleen A. King, *Representation of Women: Constitutional Legislative Quotas in Rwanda and Uganda*, 1 *CHARLESTON L. REV.* 217, 225, 227 (2007).

as tokens.⁷⁶ When quota women are viewed as symbolic, rather than legitimate and authentic representatives of women's interests, they lack power in the legislative process.⁷⁷ Consequently, quotas may have a neutral or even negative effect on substantive representation.⁷⁸

The presence of certain political parties can also affect women's descriptive and substantive representation. In particular, the legislative presence of further left-leaning parties tends to promote increased representation of women, as well as the implementation of female-friendly legislation.⁷⁹ Relatedly, however, party loyalty may diminish substantive representation, as female legislators feel obligated to represent their party platform more than their female constituency. Political parties are the "gatekeepers" to elected office and hold tremendous power over candidate selection.⁸⁰ Aside from the fact that party leaders may not select female candidates in the first place,⁸¹ when they do, they may demand strict adherence to their platform, thereby restricting a female legislator's ability to authentically represent her female constituency.⁸² In fact, studies of the U.S. Congress have shown that there is no significant difference between the voting records of men and women within the Republican and Democratic parties.⁸³

⁷⁶ Galligan, *supra* note 46, at 327-29.

⁷⁷ *Id.* at 329; King, *supra* note 75, at 232, 235.

⁷⁸ King, *supra* note 75, at 227, 234; Dubay, *supra* note 54, at 170, 176. While quotas are treated here as a confounding factor in the relationship between descriptive representation and substantive outcomes, it is important to note that quotas, themselves, vary tremendously in their impact, depending upon factors such as electoral systems, the type of quota, political and social culture, and women's movements. See Tinker, *supra* note 46, at 7.

⁷⁹ Paxton et al., *supra* note 43, at 270 (observing that further left-leaning parties are more likely to endorse egalitarian principles and support minority representatives, including women); Beckwith & Cowell-Meyers, *supra* note 42, at 557 (recognizing that left-leaning parties tend to promote legislation favorable to women's interests more than right-leaning parties); Denise M. Walsh, *Does the Quality of Democracy Matter for Women's Rights? Just Debate and Democratic Transition in Chile and South Africa*, 45 COMPAR. POL. STUD. 1323, 1326 (2012).

⁸⁰ Galligan, *supra* note 46, at 330.

⁸¹ Shvedova, *supra* note 38, at 37.

⁸² See Richard E. Matland, *Increasing Women's Political Participation: Legislative Recruitment and Electoral Systems*, in WOMEN IN PARLIAMENT: BEYOND NUMBERS 93, 94-97 (Julie Ballington & Azza Karam eds., rev. ed. 2005) (discussing the gatekeeping function that party platforms play in choosing candidates); see also King, *supra* note 75, at 226-27, 233 (discussing the effect of candidate selection on accountability, power, and women's substantive representation).

⁸³ Misra, *supra* note 6, at 409.

Perhaps the most important factor in determining the number of women in a national legislature is gender ideology.⁸⁴ Cultural norms—largely the result of geography and religion—have an even greater effect on descriptive and substantive representation than socio-economic factors.⁸⁵ The relationship works simultaneously in both directions, however; having more women in government may alter gender stereotypes, thereby shifting cultural attitudes and, ultimately, leading to more women in government.⁸⁶ In particular, the belief that men are more suited for politics simply because they are more present in politics is challenged when more women are present.⁸⁷

Of course, the aforementioned factors do not have the same, predictable effects in all cases. In particular, the forces that drive women's descriptive and substantive representation interact quite differently in developed countries than they do in developing countries.⁸⁸ This is due, in part, to the fact that developing governments may not have the same political stability and strength as developed governments have.⁸⁹ Development leads to the breakdown of traditional (and often patriarchal) values, an increase in women's participation in education and in the workforce, and a changed perspective of women's role in society. As a result, women become more politically active and descriptive representation increases.⁹⁰

Even when these confounding variables are appropriately isolated and controlled for, the question remains whether there is a relationship between women's descriptive and substantive representation. Despite the lack of statistical evidence in favor of a descriptive-substantive link, it remains viable, albeit largely unclear. Therefore, I use a mixed-methods approach, coupling the

⁸⁴ Pamela Paxton & Sheri Kunovich, *Women's Political Representation: The Importance of Ideology*, 82 SOC. FORCES 87, 90-91 (2003).

⁸⁵ *Id.* at 91; Fallon et al., *supra* note 73, at 382.

⁸⁶ Yann P. Kerevel & Lonna Rae Atkeson, *Reducing Stereotypes of Female Political Leaders in Mexico*, 68 POL. RSCH. Q. 732, 738 (2015).

⁸⁷ *Id.* at 734.

⁸⁸ Fallon et al., *supra* note 73, at 382; Shvedova, *supra* note 38, at 33.

⁸⁹ Fallon et al., *supra* note 73, at 399.

⁹⁰ Shvedova, *supra* note 38, at 40.

aforementioned statistical analyses with a case study of Argentina and Chile to better understand the nature of the relationship.⁹¹

III. THE RELATIONSHIP BETWEEN WOMEN IN GOVERNMENT AND SOCIO-ECONOMIC DEVELOPMENT IN PRACTICE

The Latin American region is often recognized as being a global leader in terms of women's descriptive representation.⁹² However, Latin America has not seen women's well-being increase in proportion with their participation in formal politics.⁹³ Moreover, there are huge disparities in the level of women's development between individual Latin American nations.⁹⁴ Because of the different levels of development across countries, Latin America offers a range of useful case studies to help illuminate the relationship between descriptive representation and substantive outcomes.

I examine two countries, Argentina and Chile, one with a low level of women in government but a higher degree of substantive outcomes (Chile) and the other with a high level of women in government but a lower degree of substantive outcomes (Argentina).⁹⁵ Argentina and Chile present a particularly useful comparison because of their similar political and cultural histories, and similar levels of economic development.⁹⁶ The average GDP per capita between 2000 and 2019 (in current U.S. dollars) was \$9,271 in

⁹¹ See GARY KING, ROBERT O. KEOHANE & SIDNEY VERBA, *DESIGNING SOCIAL INQUIRY: SCIENTIFIC INFERENCE IN QUALITATIVE RESEARCH* 69 (1994) (advocating for inclusion of case studies to supplement statistical analyses).

⁹² In 2008, the average proportion of women in the single or lower house of Latin American nations was 20%, second only to the Nordic countries. LESLIE A. SCHWINDT-BAYER, *POLITICAL POWER AND WOMEN'S REPRESENTATION IN LATIN AMERICA* 3 (2010).

⁹³ Jennifer M. Piscopo, *Female Leadership and Sexual Health Policy in Argentina*, 49 *LAT. AM. RSCH. REV.* 104, 105 (2014).

⁹⁴ SCHWINDT-BAYER, *supra* note 92, at 33.

⁹⁵ Here, substantive outcomes are the fifteen dependent variables I used in my 2018 honors thesis – primarily, the constituent elements of the GDI and the GII. See Antonellis, *supra* note 69, at 86.

⁹⁶ SCHWINDT-BAYER, *supra* note 92, at 34 (recognizing cultural and historical similarities among countries in Latin America); Tricia Gray, *Electoral Gender Quotas: Lessons from Argentina and Chile*, 22 *BULL. LATIN AM. RSCH.* 52, 52 (2003).

Argentina and \$10,992 in Chile.⁹⁷ Given the correlation between economic development and gender equality, this similarity is crucial in establishing a valid comparison between the two countries.⁹⁸ Furthermore, both countries have ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), albeit with reservations, and have been democracies since the 1980s.⁹⁹

The differences lie in their descriptive representation and substantive outcomes. While Argentina boasts a relatively large percentage of women in its legislature (over 40% in 2020), Chile has only a modest proportion (about 23% in 2020).¹⁰⁰ In terms of substantive outcomes, however, Chile outperforms Argentina in nearly all the constituent elements of the Gender Development and Gender Inequality Indices.¹⁰¹ These cases and the differences between them help to illuminate the nuances of the descriptive-substantive link that go undetected by quantitative study alone. Chilean women have been particularly successful in achieving substantive outcomes due to effective women's organizations, a consensus-driven legislature, and a female-friendly executive. In contrast, Argentinean women have been less successful due to a fragmented and politically disconnected women's movement, a lack of critical actors within the legislature, an immensely strong party-system (though this is also the case in Chile), and discrimination against female legislators who occupy their seats due to gender quotas.

⁹⁷ GDP per capita (current US\$) - Chile, Argentina, WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2019&locations=CL-AR&most_recent_value_desc=true&start=1999 [<https://perma.cc/8B3X-H9JV>]; DataBank: Gender Statistics, WORLD BANK, <http://databank.worldbank.org/data/reports.aspx?source=gender-statistics> [<https://perma.cc/3XCW-P33B>].

⁹⁸ See SCHWINDT-BAYER, *supra* note 92, at 43-44 (examining the connection between socioeconomic factors and descriptive representation of women).

⁹⁹ United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13; Chile, *Period of Democratic Transition: 1988-1989, Pro-Democracy Civic Movement: Present*, FREEDOM HOUSE, https://freedomhouse.org/sites/default/files/inline_images/Chile.pdf [<https://perma.cc/PPC8-LGUM>]; Argentina, *Period of Democratic Transition: 1982-1983, Pro-Democracy Civic Movement: Present*, FREEDOM HOUSE, https://freedomhouse.org/sites/default/files/inline_images/Argentina.pdf [<https://perma.cc/2EY5-QY6A>].

¹⁰⁰ *Gender Statistics*, WORLD BANK, *supra* note 97.

¹⁰¹ Antonellis, *supra* note 69, at 86.

a. Historical Background

Argentina and Chile, like their Latin American neighbors, have a highly comparable political and social history.¹⁰² Colonial legacies in both countries have left severe inequalities on the basis of race, class, geography, and gender.¹⁰³ Twentieth century legal codes made it so that husbands held immense power over their wives, effectively separating the public from the private, the men from the women, and the political from the apolitical.¹⁰⁴ From cultural norms to bouts of military dictatorship, several factors are common to both countries, making them ideal cases to compare. That said, no two countries have the same history, and while Argentina and Chile are indeed quite similar, they are different in ways that are exceedingly important to the relationship between descriptive representation and substantive outcomes.

The prominence of religious doctrine and the political strength of the Catholic Church are characteristic of both countries.¹⁰⁵ Christian fundamentalism is often associated with conservative, right-wing values.¹⁰⁶ In the case of women's development, this means a resistance toward gender equality.¹⁰⁷ Consequently, the Church has posed a significant barrier to both legislatures' ability to promote substantive outcomes.¹⁰⁸ Policies contrary to religious

¹⁰² See generally SCHWINDT-BAYER, *supra* note 92, at 33-37, 41-45 (discussing the similar socioeconomic and cultural backgrounds of Latin American countries).

¹⁰³ Susan Franceschet et al., *Supermadres, Maternal Legacies and Women's Political Participation in Contemporary Latin America*, 48 J. LAT. AM. STUD. 1, 5 (2015).

¹⁰⁴ *Id.* at 6.

¹⁰⁵ Schwindt-Bayer, *supra* note 89, at 42 ("[T]he Catholic Church is a strong influence in society and politics in all Latin American countries, with only minimal variation across countries.").

¹⁰⁶ Ruud Koopmans, *Religious Fundamentalism and Hostility Against Out-Groups: A Comparison of Muslims and Christians in Western Europe*, 41 J. ETHNIC & MIGRATION STUD. 33, 38 (2015).

¹⁰⁷ See SCHWINDT-BAYER, *supra* note 92, at 41 ("[C]ertain religious denominations with more restrictive views of women's equality, such as Catholicism, have fewer women in office than those with more accepting views of gender equity . . ."). *Contra* RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT 226-28 (Victoria González & Karen Kampwirth eds., 2001) (discussing how certain religious women's groups in South America pursued actions increasing gender equality)

¹⁰⁸ See SUSAN FRANCESCHET, *WOMEN AND POLITICS IN CHILE* 105 (2005) (discussing the implications of the conservative moral and social climate in Chile for women's substantive representation and how the Catholic Church informs that climate).

doctrine, (e.g., legalizing abortion or divorce) have proven near-impossible to pass.¹⁰⁹ Organizations like the Sisters of the Sacred Heart in Chile, the League of Chilean Ladies, and the League of Argentine Catholic Ladies emerged with the goal of upholding morality by taming women and resisting leftist movements.¹¹⁰

In Argentina, the rhetoric of Church officials historically emphasized the family as being the foundation of society, with women, acting as the chief moral agents, remaining in the private sphere.¹¹¹ In Chile, too, the allure of religious conservatism manifested itself in right-wing political groups which promoted women as mothers and models of domesticity.¹¹² This relegation of women to the private, moral realm has been accompanied by an ideology of anti-politics, or the belief that government and politics are corrupt, immoral, and unfit for women.¹¹³ In both countries, there remains a split between the public sphere (*i.e.*, the economic and political arenas) and the private sphere (*i.e.*, the home). With more of an emphasis on family-life and women as homemakers, and

¹⁰⁹ See Virginia Guzmán et al., *Democracy in the Country but Not in the Home? Religion, Politics and Women's Rights in Chile*, 31 THIRD WORLD Q. 971, 972 (2010) (highlighting the political influence of the Catholic Church in Chile); see also Walsh, *supra* note 79, at 1326 ("In Chile, the commitment of the leading party to Catholic dogma did not bode well for legalizing abortion or divorce."); Ligia M. De Jesus, *Abortion in Latin America and the Caribbean: A Comparative Study of Domestic Laws and Relevant Jurisprudence Following the Adoption of the American Convention on Human Rights*, 20 INT'L L. STUDENT ASS'N J. INT'L & COMPAR. L. 1, 43 (2013) (noting that Chile is one of seven Latin American and Caribbean countries that, until recently, had adopted a full abortion ban).

¹¹⁰ RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT, *supra* note 107, at 226-27 (highlighting how aristocratic women in Chile organized labor unions "designed to Christianize and tame working women—and thus preserve the Ladies' position at the top of the class hierarchy."). See generally María de los Angeles Crummett, *El Poder Feminino: The Mobilization of Women Against Socialism in Chile*, 4 LATIN AM. PERSP. 103, 107-09 (1977) (describing a Chilean women's movement that was staunchly anti-Marxist); Paul H. Lewis, *The 'Gender Gap' in Chile*, 36 J. LAT AM. STUD. 719, 735 (2004) (explaining that women in Chile have tended to vote more conservatively).

¹¹¹ See Ana María Marini, *Women in Contemporary Argentina*, 4 LATIN AM. PERSPS. 114, 116 (1977) (highlighting how family was praised as the foundation of society and the media constantly chastised parents to keep a close eye on their children).

¹¹² RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT, *supra* note 107, at 238-41.

¹¹³ See *id.* at 226, 238-40 (discussing how women's admission into right-wing political organizations was conditioned on their participation being non-political); *id.* at 273-75 (discussing "antipolitics" and women's movements); see also SCHWINDT-BAYER, *supra* note 92, at 41 (highlighting a perception that women belong in the 'private sphere' and men belong in the 'public sphere').

less of an emphasis on equality and women as individuals, Argentina and Chile share cultural history.

Even as society progressed during the late-1900s and early-2000s, women in both countries were still viewed primarily as mothers.¹¹⁴ The terms “supermadre” and “militant mother” refer to women’s taking advantage of their caring roles as a tool to participate in the public sphere—a characterization that has both helped and hurt women’s access to formal politics.¹¹⁵ During the military dictatorships in Argentina and Chile, women tended to utilize this traditional “supermadre” frame to protest human rights abuses, emphasizing their motherly role to legitimize their political activity.¹¹⁶ As recently as the early-2000s, however, when both countries were led by female presidents, maternalistic frames—and consequently, gender inequality—remained.¹¹⁷

b. Case Study: Chile

i. Women in Culture and Society

As a result of the economic downturn under President Salvador Allende during the early-1970s, political opposition painted the government as the cause of economic hardships to mobilize women against the government.¹¹⁸ One women’s organization, Poder Feminino, was instrumental in ousting Allende and making way for the regime of Augusto Pinochet.¹¹⁹ When the military took over in 1973, Pinochet dissolved Poder Feminino and forced its members to return to the domestic sphere.¹²⁰ Despite the support for Pinochet

¹¹⁴ Franceschet et al., *supra* note 103, at 7.

¹¹⁵ *Id.* at 2; SCHWINDT-BAYER, *supra* note 92, at 35.

¹¹⁶ Franceschet et al., *supra* note 103, at 9.

¹¹⁷ *See id.* at 11, 14, 31 (discussing how maternalism’s legacy has persisted for women in politics); *see also* Alice Colón & Sara Poggio, *Women’s Work and Neoliberal Globalization: Implications for Gender Equality*, in *WOMEN’S ACTIVISM IN LATIN AMERICA AND THE CARIBBEAN: ENGENDERING SOCIAL JUSTICE, DEMOCRATIZING CITIZENSHIP* 56-57 (Elizabeth Maier & Nathalie Lebon eds., 2010) (arguing that gender equity cannot be achieved without “breaking down stereotypes that define power and scientific and mechanical capacities as masculine traits,” specifically by redistributing domestic responsibility between men and women).

¹¹⁸ de los Angeles Crummett, *supra* note 110, at 111.

¹¹⁹ *RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT*, *supra* note 107, at 274.

¹²⁰ *Id.* at 305; de los Angeles Crummett, *supra* note 110, at 112.

amongst women's organizations, women were not given authentic leadership positions within his regime.¹²¹ The underlying message was that it was acceptable for women to be politically active so long as they remained outside the realm of formal politics. Women's support for Pinochet therefore reinforced the limited role of women's political engagement.¹²²

Throughout the Pinochet-era, women were seen as unique in their ability to rise above partisan politics, which were especially strong in Chile. And while Argentina was also home to anti-political ideology, the staunch belief in nonpartisan, apolitical unity was unique to Chilean women.¹²³ Consequently, women were responsible for uniting the Chilean people, protecting the home, and resisting the corruption of government. Despite their prominence in this regard, however, the women-as-apolitical rhetoric has remained a barrier to women's formal participation in politics today. It is partly for this reason that Chilean women have been relatively unsuccessful in increasing their descriptive representation, even since the transition to democracy in the 1980s.¹²⁴ By mobilizing against partisan politics, women effectively solidified the notion that they were apolitical, and therefore, unfit for office.¹²⁵ Nonetheless, women maintained a strong, albeit private, political consciousness throughout the Pinochet-era.¹²⁶

In 1988, the people of Chile voted to end the regime of Pinochet, replacing him in 1990 with the first democratically elected president since 1973, Patricio Aylwin.¹²⁷ Though women were far more likely than their male counterparts to have supported Pinochet in the 1988 plebiscite, a slight majority of the female population voted against

¹²¹ When Pinochet took power, he appointed a number of women (many from within Poder Feminino) to government positions. However, they were largely used as pawns in his anti-political agenda, not as authentic representatives of the female community. See RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT, *supra* note 107, at 284, 295.

¹²² See *id.* at 309 (highlighting a speech wherein a public figure identified herself as an apolitical woman but nonetheless called for women's support of Pinochet's regime in an upcoming referendum).

¹²³ *Id.* at 276.

¹²⁴ See *id.* at 282 (contending that women's ability to reach nonpartisan solutions solidified a dominant view that women had no place in politics). But see *id.* at 282 (describing how some leaders of non-partisan movements translated their "participation in the movement into electoral capital for female candidates").

¹²⁵ *Id.*

¹²⁶ *Id.* at 322; de los Angeles Crummett, *supra* note 110, at 112-13.

¹²⁷ RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT, *supra* note 107, at 321.

him and – as with the overthrow of the Allende presidency – played a significant role in ending his regime.¹²⁸ In fact, women's rejection of Pinochet demonstrated that they were not necessarily staunch conservatives and were a key electoral group, capable of influencing the upcoming democratic election.¹²⁹ Women had re-organized against Pinochet to protest the violence and human rights abuses that Chileans faced under the dictator.¹³⁰ It is from these anti-Pinochet, pro-democracy organizations that the women's movement emerged.¹³¹ The massive and widespread support for this pro-human rights platform made it so that women's issues pervaded all classes and parties.¹³²

During the 1980s, the women's movement was united across identities, which made it particularly powerful.¹³³ Whether women were protesting on behalf of human rights, feminism, or economic equality, they were united in their desire for democracy, their rejection of Pinochet, and their belief that women's concerns deserved a place in formal politics.¹³⁴ Therefore, around 1987, when calls for democracy were strong and the 1988 plebiscite was approaching, the women's movement, led by the Coalition of Women for Democracy, shifted its focus from protest to policy.¹³⁵ The fact that significantly more women had voted to keep Pinochet in power than men was used strategically by women's organizations to force political parties to incorporate women's demands into their platforms.¹³⁶ That said, some of their demands were considered too

¹²⁸ *Id.* at 320; Lewis, *supra* note 110, at 726.

¹²⁹ Walsh, *supra* note 79, at 1337.

¹³⁰ RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT, *supra* note 107, at 286.

¹³¹ *Id.* at 292; *see also* Walsh, *supra* note 79, at 1336 (citing various women's organizations in Chile that were at the ideological forefront of the women's movement).

¹³² RADICAL WOMEN IN LATIN AMERICA: LEFT AND RIGHT, *supra* note 107, at 292-93.

¹³³ LISA BALDEZ, WHY WOMEN PROTEST: WOMEN'S MOVEMENTS IN CHILE 147 (2002); *see also* Walsh, *supra* note 79, at 1327 (offering more context on women's movements in Chile).

¹³⁴ BALDEZ, *supra* note 133, at 149, 162-67; *see also* Walsh, *supra* note 79, at 1327, 1333-34 (discussing Chilean political history in the late twentieth century with an emphasis on women's movements).

¹³⁵ BALDEZ, *supra* note 133, at 161, 175; Walsh, *supra* note 79, at 1327; *see also* Misra, *supra* note 6, at 411 (noting the ability of women's movements, generally, to put policy pressure on legislators and other government agents).

¹³⁶ BALDEZ, *supra* note 133, at 174-175.

radical and were therefore ignored in the formal political sphere.¹³⁷ Despite the dismissal of certain issues, however, the strength and prominence of the women's movement made it so that nearly every party paid attention to women's issues.¹³⁸

Political parties had been forced underground during the Pinochet-era, thereby closing the avenues of formal politics.¹³⁹ This made it so that the informal political arena—where women's organizations thrived—became the primary site of political activism.¹⁴⁰ Later, when democracy returned and the party system regained its strength, many women's organizations united with these formal parties, rather than attempting to remain autonomous.¹⁴¹ By cooperating with political parties—a phenomenon known as “double militancy”—the women's movement helped to put women's issues on the map.¹⁴² The Concertación de Partidos por la Democracia, a powerful coalition of political parties established in 1988 and led by Patricio Aylwin, was particularly amenable to women's rights.¹⁴³ Specifically, Aylwin's platform included the creation of a ministry for women, positive discrimination to increase representation, relief programs for poor women, and legislation on domestic violence and equal pay.¹⁴⁴ Ultimately, women were able to leverage their power to lobby for

¹³⁷ FRANCESCET, *supra* note 108, at 75-78. The Coalition of Women for Democracy lobbied for a 30% quota, much like the one Argentina would later adopt, but this attempt to interfere in candidate selection was infuriating to party leaders. Walsh, *supra* note 79, at 1335.

¹³⁸ FRANCESCET, *supra* note 108, at 78; *see also* Walsh, *supra* note 79, at 1324, 1333 (arguing that when women can speak out in the leading institutions in the public sphere, women's rights will be better represented in politics; this was the case in Chile).

¹³⁹ FRANCESCET, *supra* note 108, at 58.

¹⁴⁰ Walsh, *supra* note 79, at 1333 (“Pinochet's military regime committed massive human rights violations, banned political parties, cracked down on labor unions, put the Church under surveillance, censored the media, and closed parliament. Yet grassroots organizations emerged in the 1980s and demanded democracy. Initially, women's organizations led the charge, and openness and inclusiveness were impressive.”).

¹⁴¹ *Id.* at 1334-36.

¹⁴² FRANCESCET, *supra* note 108, at 81. This phenomenon by which women's organizations ally with pro-democracy forces and thereby increase their political influence has been seen in several other cases, including Brazil, Spain, and South Africa. *Id.*

¹⁴³ Walsh, *supra* note 79, at 1326.

¹⁴⁴ BALDEZ, *supra* note 133, at 178; Walsh, *supra* note 79, at 1338.

the inclusion of concrete demands into party platforms – which has helped to promote substantive outcomes.¹⁴⁵

Despite this progress, women remained in traditional roles even after democracy was reinstated.¹⁴⁶ Women were protesting *as mothers*, a phenomenon known as “maternalistic politics,” by which women enter the political sphere because of their motherly duty to protect their families.¹⁴⁷ Because their protests revolved primarily around human rights abuses, women largely disappeared from the public sector as soon as these abuses ceased. Post-Pinochet, women therefore reverted back to life within the private sphere.¹⁴⁸ By basing their political activity on their duty as mothers, women fell into a cycle of “crisis politics” whereby they became active to protest injustice and withdrew back to the private sphere when justice was realized.¹⁴⁹

While embracing their motherly role had allowed women to thrive as human rights activists, it severely limited their ability to be included in formal politics.¹⁵⁰ Women’s organizations attempted to use their fight for democracy as a segue towards their call for women’s representation; however, the notion that a woman was more than just a mother did not resonate within Chilean society.¹⁵¹ Furthermore, the female community itself exhibited a lack of interest in certain measures designed to promote descriptive representation, specifically gender quotas.¹⁵² Most women instead saw their place as existing within informal social movements and felt electing women was not part of their objective.¹⁵³ Nonetheless, women in Chile have been able to exist as strong, albeit informal, political

¹⁴⁵ BALDEZ, *supra* note 133, at 172; Walsh, *supra* note 79, at 1326-27, 1337; SERENA COSGROVE, LEADERSHIP FROM THE MARGINS: WOMEN AND CIVIL SOCIETY ORGANIZATIONS IN ARGENTINA, CHILE, AND EL SALVADOR 123 (2010); Gray, *supra* note 96, at 65. Women were able to lobby Pinochet himself to amend the Civil Code, granting women full civil rights, and ratify the CEDAW in 1989 as part of a last-ditch effort to regain women’s electoral support. BALDEZ, *supra* note 133, at 178-179; Walsh, *supra* note 79, at 1337.

¹⁴⁶ FRANCESCHET, *supra* note 108, at 59.

¹⁴⁷ Betilde V. Munoz, *Where Are the Women? The Case of Chilean Women: 1973-1989*, 74 INT’L SOC. SCI. REV. 3, 11 (1999).

¹⁴⁸ *Id.* at 17.

¹⁴⁹ Rita K. Noonan, *Women Against the State: Political Opportunities and Collective Action Frames in Chile’s Transition to Democracy*, 10 SOCIO. F. 81, 107 (1995).

¹⁵⁰ FRANCESCHET, *supra* note 108, at 64.

¹⁵¹ *Id.* at 72-73.

¹⁵² *Id.* at 99-100.

¹⁵³ *Id.* at 76; BALDEZ, *supra* note 133, at 187.

actors—despite their low descriptive representation—due to the strength of the women’s movement and the unity of the female community, which made them a large and valuable electoral constituency.¹⁵⁴

ii. Women in Politics and the Law

The relatively low proportion of women in the Chilean legislature seems odd given the fact that Chile has had several, significant policy achievements for gender equality.¹⁵⁵ There are many countries, however, where female-friendly legislation has passed, despite a lack of women in the legislature—Chile being one of them.¹⁵⁶ Several factors contribute to this relatively low level of descriptive representation. First, the binomial majoritarian electoral system in Chile has made it difficult for women to gain access to formal politics. Parties outside of the two main coalitions (essentially, the center-right and the center-left) do not win legislative seats, which leads to a conflation of the nonpartisan with the nonpolitical. Because women’s organizations largely operate outside of the major party coalitions, women’s issues are seen as existing outside of politics entirely.¹⁵⁷

Second, unlike Argentina, Chile does not have any form of a gender quota to increase descriptive representation within its legislature. Parties have played a large role in this, resisting any sort of mechanism to increase the presence of female legislators.¹⁵⁸ Candidate selection therefore remains up to the parties and women are largely left off party lists.¹⁵⁹ Even outside the formal political realm, there has not been a unified desire for a quota, as many see it as unnecessary to democracy.¹⁶⁰ Ultimately then, Chile’s electoral system, plus the strength of its parties and resistance to quotas, has

¹⁵⁴ FRANCESCET, *supra* note 108, at 81.

¹⁵⁵ *Id.* at 85; Gray, *supra* note 96, at 69.

¹⁵⁶ Mala Htun & S. Laurel Weldon, *When Do Governments Promote Women’s Rights? A Framework for the Comparative Analysis of Sex Equality Policy*, 8 PERSPS. ON POL. 207, 208 (2010).

¹⁵⁷ FRANCESCET, *supra* note 108, at 89.

¹⁵⁸ Walsh, *supra* note 79, at 1335.

¹⁵⁹ *Id.*; Galligan, *supra* note 46, at 330.

¹⁶⁰ FRANCESCET, *supra* note 108, at 99; *see also* Walsh, *supra* note 79, at 1335 (noting that while the Coalition of Women for Democracy lobbied for a quota, they were unsuccessful).

artificially deflated its descriptive representation, effectively making it lower than it “should” be.¹⁶¹

For the few women who have successfully earned a position in public office, the perception of them as mothers or caretakers has limited their political capacity in a way that is more pronounced than in other countries.¹⁶² The belief that women are apolitical and of a superior moral character than men furthers the belief that women belong in politics only during crisis situations. Female legislators, therefore, have no part in the day-to-day administration of government.¹⁶³ Furthermore, their perceived differences as compared to men (*i.e.*, their morality and caretaking ability) have been construed as a disadvantage and have effectively led to a tendency of male politicians to disregard their female colleagues.¹⁶⁴ With few women in its legislature and a lack of power among those few, women’s development seems unlikely.

How is it, then, that Chile has produced such a high degree of substantive outcomes?¹⁶⁵ Again, several factors contribute. First, much of Pinochet’s influence remains in the wake of his dictatorship. However distant in the past, military dictatorship is a political crisis that creates enduring pressures.¹⁶⁶ In the case of Chile, this has meant a lasting effect on the tendency of certain women’s issues to be addressed in the formal political arena. Throughout the legislature, there is a prevailing fear of conflict that prevents lawmakers from proposing radical legislation. So, while the Chilean legislature tends to put forward fewer bills than does Argentina’s—largely as a result of their aversion to conflict—they are more successful in getting bills passed as a result of the broad-based support that bills typically have amongst the parties.¹⁶⁷ This “pathological search for consensus” has made it so that divisive issues—notably, abortion and divorce—are avoided in legislative

¹⁶¹ SCHWINDT-BAYER, *supra* note 92, at 60.

¹⁶² FRANCESCHET, *supra* note 108, at 36.

¹⁶³ *Id.* at 2.

¹⁶⁴ *Id.* at 7.

¹⁶⁵ To be sure, women in Chile have not achieved gender equality—a fact that is particularly obvious within the political arena. *Id.* at 1.

¹⁶⁶ Dursun Peksen, *Foreign Military Intervention and Women’s Rights*, 48 J. PEACE RSCH. 455, 456 (2011).

¹⁶⁷ BALDEZ, *supra* note 133, at 183; Susan Franceschet, *Gendered Institutions and Women’s Substantive Representation: Female Legislators in Argentina and Chile*, in GENDER, POLITICS, AND INSTITUTIONS: TOWARD A FEMINIST INSTITUTIONALISM 58, 80 (Mona Lena Krook & Fiona Mackay eds., 2011).

debate.¹⁶⁸ The result is a lack of bills that challenge traditional gender norms and an abundance of “role-based” bills—those that seek to improve women’s lives *as mothers*, rather than as individuals.¹⁶⁹

Second, the belief in the existence of some fundamental difference between the sexes has actually helped women. Due to their inherently non-maleness, women are seen as deserving of special attention from the political process. In this way, male legislators have promoted women’s rights as a way of protecting their female constituents.¹⁷⁰ Though non-ideal in terms of long-term gender equality, this dynamic has led the Chilean legislature to produce numerous female-friendly pieces of legislation and, ultimately, better substantive outcomes.¹⁷¹ Between 1990 and 1997, half of the proposed bills pertaining to gender equality passed the Chilean legislature—a relatively high passage rate, let alone for gender equality issues. As is to be expected, however, these laws have largely been based on the family and women’s role as mothers, rather than on their rights as individuals.¹⁷² Effectively, women have succeeded in getting numerous gender equality measures on the agenda, despite their failure to enter political office.¹⁷³

Third, Chile has a history of moderately progressive women’s politics, despite the fact that it is one of the most politically conservative countries in Latin America.¹⁷⁴ For example, women have had the legal right to take maternity leave since 1919, nearly three decades before they were even able to vote.¹⁷⁵ However, as previously mentioned, this and other progressive policies have been enacted largely for the purpose of protecting mothers, not

¹⁶⁸ FRANCESCHET, *supra* note 108, at 31; *see also* Wash, *supra* note 79, at 1335 (noting that the Coalition of Women for Democracy itself excluded far left or right-wing groups, instead opting for more pragmatic gender policies so as not to exacerbate tension between parties).

¹⁶⁹ Merike H. Blofield & Liesl Haas, *Defining a Democracy: Reforming the Laws on Women’s Rights in Chile, 1990-2002*, 47 *LATIN AM. POL. & SOC’Y* 35, 41 (2005).

¹⁷⁰ FRANCESCHET, *supra* note 108, at 11.

¹⁷¹ Blofield & Haas, *supra* note 169, at 64.

¹⁷² BALDEZ, *supra* note 133, at 183. Chile’s abortion ban provides further evidence of this observation. *See generally* De Jesus, *supra* note 109 (arguing that abortion prohibitions and exceptions in Latin America and the Caribbean ignore the rights of women).

¹⁷³ FRANCESCHET, *supra* note 108, at 94.

¹⁷⁴ *Id.* at 13.

¹⁷⁵ Lidia Casas & Tania Herrera, *Maternity Protection vs. Maternity Rights for Working Women in Chile: A Historical Review*, 20 *REPROD. HEALTH MATTERS* 139, 139 (2012).

empowering women as individuals. That is to say that, in Chile, female-friendly legislation has been role-based rather than rights-based.¹⁷⁶ In this way, Chile has successfully passed a number of female-friendly bills, despite having a relatively low level of women in its national legislature.¹⁷⁷ Things like maternity leave and women's health have been particularly easy to legislate given the importance that is placed on mothers and families in Chilean society. Maternal health laws in Chile have been tremendously successful in reducing maternal mortality, infant mortality, and fertility rates.¹⁷⁸ Historically, women have been seen as deserving of their rights and government services only when they have conformed to their proper social role as mothers.¹⁷⁹ In Chile, this has been successful because so many women (willingly or not) maintain this traditional role; women's rights tend to correlate with mother's rights.

Fourth and perhaps most important to Chile's success in terms of women's socio-economic development is the support for women's issues within the executive branch.¹⁸⁰ This began with the creation of a women's ministry in 1991, after Patricio Aylwin came to power.¹⁸¹ The National Women's Service (SERNAM) has often been criticized for its exclusion of women's movements and popular feminism, but it nonetheless retains near-unilateral control of women's issue legislation because of its place within the executive branch.¹⁸² SERNAM has been notably successful in its efforts to lobby for gender equality legislation.¹⁸³ Furthermore, while the strength and unity of the women's movement in Chile has declined since the late-1900s, the role of SERNAM has expanded, making it so that the presence of women's issues in formal politics has

¹⁷⁶ For examples of legislation aimed at protecting aspects of motherhood but not necessarily protecting women themselves, *see id.* at 140. *Cf.* Blofield & Haas, *supra* note 169, at 41 (reporting that "more rights-based bills than role-based bills have been introduced" in Chile).

¹⁷⁷ Casas & Herrera, *supra* note 175, at 141.

¹⁷⁸ *Id.* at 142. Here, it is again important to note the normative judgments involved in deeming certain outcomes to be positive. A lower fertility rate, for example, is not universally thought of as being a desirable outcome.

¹⁷⁹ *Id.* at 145.

¹⁸⁰ FRANCESCHET, *supra* note 108, at 102.

¹⁸¹ BALDEZ, *supra* note 133, at 182.

¹⁸² FRANCESCHET, *supra* note 108, at 129.

¹⁸³ COSGROVE, *supra* note 145, at 125; Blofield & Haas, *supra* note 169, at 41; TORILD SKARD, WOMEN OF POWER: HALF A CENTURY OF FEMALE PRESIDENTS AND PRIME MINISTERS WORLDWIDE 227 (2014).

remained constant.¹⁸⁴ In fact, a number of women chose to join SERNAM as the women's movement began to wane post-Pinochet.¹⁸⁵ Having more women in ministerial positions can have a substantial effect on women's development.¹⁸⁶ In terms of helping to produce female-friendly legislation, women's agencies, like SERNAM, have been found to be even more effective than women's descriptive representation, especially when combined with a strong women's movement.¹⁸⁷

Moreover, specific members of the executive branch have been able to exert their influence on the legislative process. Because Chile's executive branch determines the legislative agenda, and because it has more resources with which to influence legislation,¹⁸⁸ female-friendly executives—e.g., former-President Michelle Bachelet—have effectively outweighed any lack of support for women's issues in the legislature and helped promote gender equality.¹⁸⁹ Former-President Michelle Bachelet has had a great deal of influence on Chile's incorporation of international norms into domestic law, as well. Chile has been historically open to international pressure and Bachelet, as former Director of UN Women and current High Commissioner for Human Rights, has been a highly effective advocate for international law in Chile.¹⁹⁰ For example, Bachelet explicitly referenced the CEDAW when introducing an abortion decriminalization bill, which passed in 2017.¹⁹¹

Chilean women's lack of descriptive representation is therefore effectively negated by the presence of progressive legislation aimed

¹⁸⁴ FRANCESCET, *supra* note 108, at 147.

¹⁸⁵ COSGROVE, *supra* note 145, at 125.

¹⁸⁶ Egle Iturbe De Blanco, *Women: Power and Development in Latin America*, 5 U. ST. THOMAS L.J. 675, 690 (2008).

¹⁸⁷ Piscopo, *supra* note 93, at 107; Misra, *supra* note 6, at 411.

¹⁸⁸ FRANCESCET, *supra* note 108, at 104-05

¹⁸⁹ See SKARD *supra* note 183, at 230 (discussing some of the advancements in gender equality that came about during Former-President Bachelet's administration).

¹⁹⁰ See Kelsey Zorzi, *The Impact of the United Nations on National Abortion Laws*, 65 CATH. U. L. REV. 409, 422-23 (2015) (describing actions by President Bachelet); Caroline Davidson, *Nunca Más Meets #Niunamemos: Accountability for Pinochet-Era Sexual Violence in Chile*, 51 COLUM. HUMAN RTS. L. REV. 100, 172 (2019) (discussing the impact of a figure who worked under President Bachelet); Walsh, *supra* note 79, at 1326 (highlighting the impact of international actions and pressure on women's rights in Chile).

¹⁹¹ Cosette D. Creamer & Beth A. Simmons, *The Dynamic Impact of Periodic Review on Women's Rights*, 81 L. & CONTEMP. PROBS. 31, 63-65 (2018).

at protecting mothers, as well as support within executive branch from both SERNAM and former-President Michelle Bachelet. However, the dedication to women's interests that can be seen within Chilean politics is also a result of factors *outside* of the political arena—namely, a strong and united women's movement that successfully lobbied for the inclusion of women's issues into formal, party politics.¹⁹² Ultimately, Chile has a perfect combination of the elements of the “triangle of empowerment”—a women's movement, a women's agency, and women legislators.¹⁹³

c. Case Study: Argentina

i. Women in Culture and Society

Juan Perón was one of the few Argentinean presidents to realize the value of women's support for his administration, given that they comprised such a massive, cross-class coalition.¹⁹⁴ Perón's popularity amongst Argentinean women was largely due to the following gained by his then-wife, Eva Perón.¹⁹⁵ When he was first elected in 1946, Perón put Eva in charge of promoting women's development. Her first success came in 1947 when women earned the right to vote and hold office—despite opposition from the feminist movement, which saw suffrage as a façade.¹⁹⁶ Later, at Eva's urging, Perón added marriage equality to the Argentinean Constitution, greatly improving women's legal position in doing so.¹⁹⁷ Moreover, the first women elected to Argentina's Chamber of Deputies in 1951—twenty-four of them—were all Peronistas.¹⁹⁸ Eva

¹⁹² See *supra* Section III.b.i.

¹⁹³ Misra, *supra* note 6, at 412.

¹⁹⁴ MARIFRAN CARLSON, ¡FEMINISMO!: THE WOMAN'S MOVEMENT IN ARGENTINA FROM ITS BEGINNINGS TO EVA PERÓN 186 (2005).

¹⁹⁵ *Id.* at 187.

¹⁹⁶ See *id.* at 189. While Perón himself played a crucial role in fighting for women's suffrage, he likely did so as a way to increase his popularity by making women an instrument for his own political power. See *id.* (noting that Eva Perón marketed women's suffrage as a means of joint political participation with their partners to support the Peronist agenda).

¹⁹⁷ *Id.* at 190-91.

¹⁹⁸ *Id.* at 193. During the same year, Inés Enriquez Frödden became the first woman elected to Chile's national legislature. MART MARTIN, THE ALMANAC OF WOMEN AND MINORITIES IN WORLD POLITICS 78 (2000).

captured the hearts of working-class women, helping to garner support for Peronism by fighting for improvements in their daily lives.¹⁹⁹ Despite the improvements she made, however, Eva was vehemently anti-feminist, opting instead for the traditional view of women as responsible for upholding morality within society. She believed that women were to follow men, especially Juan Perón, in their political activism.²⁰⁰

After two terms as president, Perón was exiled by a military government in 1955. When democracy returned in 1973, he was elected for a third term. Perón later died during his presidency in 1974, leaving his then-wife, Isabel Martínez de Perón, to take over. Largely illiterate and lacking education, she struggled as president; the economy crashed, inflation spiked, and terrorism broke out during her term, leading to another military coup in 1976.²⁰¹ Her failure was largely seen as having been a result of her gender and consequently delegitimized women as formal political actors.²⁰²

The military ruled with brutal force, murdering and disappearing tens of thousands of Argentines.²⁰³ Consequently, the Mothers of Plaza de Mayo were established to search for disappeared persons.²⁰⁴ As in Chile, women in Argentina united against the military dictatorship under the broad goal of human rights.²⁰⁵ The difference between the women's movements in Argentina and Chile, however, lies in their aftermath—specifically, the transition from military dictatorship to democracy.²⁰⁶ Women's organized activism allows women's voices to be heard in a politically relevant setting and is therefore one of the “most important mechanisms” for promoting substantive outcomes.²⁰⁷ In Argentina, the women's movement was unable to demand concrete policies due to internal weakness and a lack of broad-based power. In fact, while Argentina had many women participating in civil

¹⁹⁹ CARLSON, *supra* note 194, at 191-92.

²⁰⁰ *Id.* at 195.

²⁰¹ MARTIN, *supra* note 198, at 10.

²⁰² Marini, *supra* note 111, at 116.

²⁰³ WOMEN'S ACTIVISM IN LATIN AMERICA AND THE CARIBBEAN, *supra* note 117, at 95.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Gray, *supra* note 96, at 53.

²⁰⁷ American Society of International Law, *Women's Rights Internationally: Mainstreaming Versus Backsliding*, 93 PROC. ANN. MEETING AM. SOC'Y INT'L L. 82, 83 (1999).

society organizations, few organizations were dedicated solely to women or gender equality.²⁰⁸ Formal political forces must work together with civil society organizations in the fight for women's equality.²⁰⁹ Without popular, bottom-up support, women's development in Argentina did not receive attention from those who had the power to promote it.

One exception to the inability of the women's movement to translate protest into policy is the gender quota. Unlike in Chile, Argentinean women's organizations were united in their desire for a quota.²¹⁰ When pressure from these organizations combined with strong support from then-President Carlos Menem, the quota passed in 1991, making it mandatory for party lists to include women in 30% of electable positions and making Argentina the first Latin American nation to adopt such a law.²¹¹ As a direct result, the proportion of women in Argentina's national legislature increased by more than 30%, making Argentina a leader in the region.²¹² During the time that the quota was being debated, however, there arose two very different justifications for its passage. The first saw it as a tool to promote gender equality and democratic ideals. The second saw it as a tool to promote morality in the legislature by way of women's femininity.²¹³ The latter of the two explanations proved more compelling to male voters and legislators, despite detracting from the law's legitimacy as promoting gender equality.²¹⁴

Because the law was framed around traditional conceptions of female behavior, women elected as part of the quota were expected to uphold this feminine ideal. That said, while Argentina has historically seen women primarily as mothers, rather than individuals, they have progressed further past the maternalistic

²⁰⁸ See WOMEN'S ACTIVISM IN LATIN AMERICA AND THE CARIBBEAN, *supra* note 117, at 167 (noting that many civil society organizations shared common objectives that did not necessarily center women's issues).

²⁰⁹ Kavita Krishnan, *Sacred Spaces, Secular Norms and Women's Rights*, 41 *ECON. & POL. WKLY.* 2969, 2969 (2006); Galligan, *supra* note 44, at 333.

²¹⁰ Gloria Bonder & Marcela Nari, *The 30 Percent Quota Law: A Turning Point for Women's Political Participation in Argentina*, in *A RISING PUBLIC VOICE: WOMEN IN POLITICS WORLDWIDE* 183, 187 (Alida Brill ed., 1995).

²¹¹ Aili Mari Tripp, *Creating Collective Capabilities: Women, Agency and the Politics of Representation*, 19 *COLUM. J. GENDER & L.* 219, 243 (2010).

²¹² Iturbe De Blanco, *supra* note 186, at 684.

²¹³ Bonder & Nari, *supra* note 210, at 189.

²¹⁴ *Id.* at 190.

politics that remain so strong in Chile.²¹⁵ Women in Argentina are viewed as individuals, equal to their male counterparts.²¹⁶ And while that may seem desirable from a liberal individual rights perspective, it has actually been prohibitive in terms of the country's ability to achieve substantive outcomes for women.²¹⁷

Furthermore, Argentina is one of few nations that has directly incorporated the CEDAW into its Constitution.²¹⁸ Argentina's verbatim replica of the treaty is unique, making it the only country to grant it constitutional standing.²¹⁹ As a result, domestic laws are subject to the international norms set forth in the Convention.²²⁰ Consequently, "every right, every privilege, every guarantee, that the anointed human rights treaties grant are part of Argentina's Constitution."²²¹ Chile's Constitution, on the other hand, is far more ambiguous in terms of the deference it grants to international law.²²² Consequently, one might think that, at least in terms of compliance with the CEDAW, Argentina would be doing exceptionally well. On the ground, however, Argentina's "constitutionalization" experiment has turned out to be a hollow promise.²²³ This positive legal change has not triggered a corresponding social or cultural change.²²⁴ While Argentina has done many things "right," from a social policy perspective, these policies have not translated into outcomes.

²¹⁵ Compare Tripp, *supra* note 211, at 242 (noting that Argentine politics have moved beyond collectively identifying women as mothers or wives), with FRANCESCHEIT, *supra* note 108, at 36 (identifying Chilean women's movements as persistently invoking notions of maternalism).

²¹⁶ Tripp, *supra* note 211, at 242 ("Women are not conceived of as a collective body or thought of as mothers or wives. Instead, the Constitution seeks to put them on an equal footing with men and to be seen as peers (*se equiparan*).").

²¹⁷ See *id.* at 221 ("Interestingly, many of the countries with the largest gaps in political equality between genders have tended to treat women's rights through a liberal individual rights frame.").

²¹⁸ Janet Koven Levit, *The Constitutionalization of Human Rights in Argentina: Problem or Promise?*, 37 COLUM. J. TRANSNAT'L L. 281, 291 n.44 (1999).

²¹⁹ *Id.* at 292.

²²⁰ *Id.* at 310.

²²¹ *Id.* at 312.

²²² *Id.* at 305.

²²³ *Id.* at 313.

²²⁴ See *id.* at 344 (claiming in part that the constitutional change did not precipitate social or cultural change because of the weakness of law as an institution in Argentina).

ii. Women in Politics and the Law

While it may be true that progress can be made without a strong female presence in the legislature, representation at least increases the probability of women's voices being heard within the formal political arena.²²⁵ Why, then, is this not the case in Argentina, where more than a third of the national legislature is female? Unlike Chile, Argentina boasts an extremely high proportion of women in its national legislature but has a lower level of substantive representation. This is due to a variety of factors that weaken the descriptive-substantive link.

First, having women in a legislature is not sufficient to produce outcomes—the type of woman matters. While some authors have emphasized the necessity of a critical mass of women in the legislature, others have found little evidence of a critical mass's effect on women's legislative effectiveness.²²⁶ Critical mass theory states that when descriptive representation reaches a certain threshold, women are more likely to demonstrate authentic leadership that differs from that of men, rather than conform to the normal, male behavior.²²⁷ Below that threshold, the relationship between descriptive and substantive representation is thought to be weaker.²²⁸ According to the UN, when the proportion of women in a governing body is below 30%, women may be unable to garner the support they need to pass female-friendly legislation and may not even have the power to propose such legislation in the first place.²²⁹ As more women enter a legislature, however, the coalitions they form grow larger and more influential.²³⁰ Consequently, a critical mass may present a more threatening sub-group to male legislators, causing a backlash of increased scrutiny and competition for political power.²³¹ Furthermore, institutional constraints and party

²²⁵ PHILLIPS, *supra* note 4, at 83; *see supra* Section II.a.

²²⁶ PAXTON & HUGHES, *supra* note 13, at 217-18.

²²⁷ Funk, *supra* note 41, at 572.

²²⁸ Schwindt-Bayer & Mishler, *supra* note 63, at 413.

²²⁹ Swiss et al., *supra* note 66, at 531; Paxton et al., *supra* note 43, at 274 (noting disagreement as to the necessary "critical mass" for women to influence policy, with some activists insisting that 30% is the minimum threshold); Iturbe De Blanco, *supra* note 186, at 691 (identifying an inability to add women's issues to the development agenda without a critical mass of support).

²³⁰ Shea & Christian, *supra* note 20, at 2049.

²³¹ PAXTON & HUGHES, *supra* note 13, at 220; *see also* Haider-Markel, *supra* note 50, at 108 (citing scholars who make similar claims about backlash).

structures may only select women who are unwilling to promote women's interests or may hinder women candidates from promoting women's interests.²³² Ultimately then, several authors emphasize the need for legislators who are dedicated to representing women – critical actors – rather than a critical mass.²³³

Gender quotas factor into the presence of critical actors. Since quota women are elected partly because of their gender, representing their female constituents becomes a necessary part of their work. This “mandate effect” makes it so that female legislators elected as a result of a quota are more likely than their male counterparts to represent women's issues.²³⁴

That said, quotas can also lead to a perception of female legislators as being undeserving of their office. The mere presence of a gender quota implies election due to gender rather than political merit or popular support, thereby potentially causing further marginalization by male legislators.²³⁵ Furthermore, quota women might see little incentive to accurately represent their female constituents, as they may find themselves in office again, regardless of their performance in general elections. In this way, the presence of a gender quota appears to contribute negatively to substantive outcomes. Though Argentina's quota made it easier to pass certain types of women's issue bills – as can be seen in the influx of role-based, female-friendly provisions after the quota was implemented – these bills were largely ineffective and have not been

²³² See King, *supra* note 75, at 233-34 (discussing the gender quota system in Uganda and arguing that “[t]he women that are selected by the predominantly male Electoral College are usually chosen because they are not vigorous advocates for women's rights or aggressive backers of gender equality. Thus, the female representatives tend to be more passive individuals and loyal primarily to the Electoral College.”); PAXTON & HUGHES, *supra* note 11, at 204 (discussing how, after the election of a more conservative congressional leadership, Republican female legislators shied away from focusing on women's issues due to threat of intraparty sanctions).

²³³ For a discussion on the value of having critical actors who are women rather than a critical mass of women, see, for example, PAXTON & HUGHES, *supra* note 13, at 221; SCHWINDT-BAYER, *supra* note 92, at 16; Shvedova, *supra* note 38, at 41.

²³⁴ SCHWINDT-BAYER, *supra* note 92, at 18.

²³⁵ See, e.g., Drude Dahlerup, *Increasing Women's Political Representation: New Trends in Gender Quotas*, in WOMEN IN PARLIAMENT: BEYOND NUMBERS 141, 143 (Julie Ballington & Azza Karam eds., rev. ed. 2005); Franceschet & Piscopo, *supra* note 53, at 402 (citing comparative literature that argues quotas may foster a belief that certain “quota women” are undeserving of their office or underqualified for the position).

executed in practice.²³⁶ Effectively, the quota brought about quantitative change, but qualitative change in terms of substantive outcomes remains to be seen.

Second, the ability of a legislator to pass meaningful legislation regarding a certain issue may have little to do with their willingness to do so. Women have a much harder time turning their preferences into legislation than their male counterparts.²³⁷ This is largely due to the set of informal (and male-dominated) rules and norms which make female legislators' jobs even more difficult.²³⁸ This is only truer where quotas are in effect, as men tend to see female legislators as tokens rather than legitimate political colleagues, thereby reinforcing male dominance and minimizing women's power and legitimacy.²³⁹ So, while the women are present, and while they may intend to be critical actors for women's interests, their male colleagues may effectively prevent them from making any sort of meaningful difference in the lives of their female constituents.

Marginalization of female legislators also comes as a result of Argentina's immensely strong party-system.²⁴⁰ In fact, much of the reason why quota women have been ineffective in bringing about substantive changes in the lives of Argentinean women is that individual legislators hold relatively little power in the legislative process. Party strength is further intensified by women who—in Argentina's case—tend to place a higher importance on party loyalty than their male counterparts.²⁴¹ When parties do select a female candidate, it is up to the party to determine the policy preferences and legislative action of the legislator—regardless of whether it is conducive to women's socio-economic development.²⁴² In Argentina, where female candidates are placed on party lists by male party leaders, they are effectively tied to the platform of that

²³⁶ Bonder & Nari, *supra* note 210, at 191 (noting that women had to resort to litigation achieve some level of compliance with the law); WOMEN'S ACTIVISM IN LATIN AMERICA AND THE CARIBBEAN, *supra* note 117, at 159.

²³⁷ SCHWINDT-BAYER, *supra* note 92, at 21.

²³⁸ See Iturbe De Blanco, *supra* note 186, at 688, 690, 692 (offering insights into how these rules and norms function as barriers); SCHWINDT-BAYER, *supra* note 92, at 21, 35 (“[M]arginalization of women by the male-dominated legislative environment is a primary obstacle that female legislators face when trying to turn their political preferences into legislative action.”).

²³⁹ SCHWINDT-BAYER, *supra* note 92, at 26; Galligan, *supra* note 46, at 328-29.

²⁴⁰ SCHWINDT-BAYER, *supra* note 92, at 37; Bonder & Nari, *supra* note 210, at 185.

²⁴¹ SCHWINDT-BAYER, *supra* note 92, at 68.

²⁴² *Id.* at 70.

party and the demands of those leaders.²⁴³ As such, they tend to lack the commitment to women's issues necessary to produce substantive outcomes.²⁴⁴ According to some, the women who are elected to political office undergo a change whereby they lose interest in gender equality, thereby compromising their status as women in exchange for acceptance into the legislature.²⁴⁵ Ultimately, despite their high representation, few of the women in Argentina's legislature are committed to gender equality.²⁴⁶ The corresponding belief that these women are disconnected from women's interests shows that descriptive representation does not guarantee substantive outcomes.²⁴⁷

Third, the quota system does not apply to leadership positions – particularly those within committees and parties – which are often extremely important to achieving substantive representation.²⁴⁸ Committees are where bills are drafted and rules are written. Therefore, having women represented is crucial, particularly on stronger, more prestigious committees, rather than those focusing on the “soft,” social issues, typically associated with women's politics.²⁴⁹ In Argentina, the president of the Chamber of Deputies (the lower house of the national legislature) has the power to set the legislative agenda and make committee appointments. But, as of 2021, there had not been a single female Chamber President.²⁵⁰ Even the position of Vice President, which is much weaker and occupied by three separate individuals at one time, has only been held by four women in nearly 30 years.²⁵¹ Women are further relegated to positions of weakness by being appointed exclusively to social issue

²⁴³ Bonder & Nari, *supra* note 210, at 192; María Del Carmen Feijoó, *From Family Ties to Political Action: Women's Experiences in Argentina*, in *WOMEN AND POLITICS WORLDWIDE* 59, 68 (Barbara J. Nelson & Najma Chowdhury eds., 1994).

²⁴⁴ Bonder & Nari, *supra* note 210, at 193.

²⁴⁵ See *WOMEN'S ACTIVISM IN LATIN AMERICA AND THE CARIBBEAN*, *supra* note 117, at 101 (noting that some female legislators are perceived to have abandoned interest in gender issues once elected).

²⁴⁶ Gray, *supra* note 96, at 63.

²⁴⁷ Feijoó, *supra* note 243, at 68.

²⁴⁸ Azza Karam & Joni Lovenduski, *Women in Parliament: Making a Difference*, in *WOMEN IN PARLIAMENT: BEYOND NUMBERS* 187, 195-97 (Julie Ballington & Azza Karam eds., rev. ed. 2005) (highlighting the importance of women in leadership positions for the advancement of women's interests); see also Iturbe De Blanco, *supra* note 186, at 690 (discussing the need to include women in the “inner circles of decision-making” as a means of producing substantive outcomes).

²⁴⁹ Karam & Lovenduski, *supra* note 248, at 197; Tinker, *supra* note 46, at 14.

²⁵⁰ SCHWINDT-BAYER, *supra* note 92, at 107.

²⁵¹ *Id.* at 108.

committees.²⁵² So, while Argentina has a committee for women's issues (the Family, Women, Children, and Adolescents Committee), which it has packed with female members and leaders, it is regarded as lesser than most other legislative committees.²⁵³ Due to the lack of support outside of social issue committees, female-friendly legislation rarely makes it past the early stages of debate.²⁵⁴

The parties are also male dominated, with women holding very few leadership positions. This has resulted in little effort on behalf of the major political parties to support women's issues. On the few occasions that male party leaders have supported women's issues, it has been as a means to achieve their own political goals.²⁵⁵ Even before reaching the legislature, women's political experience tends not to include positions in the executive branch, which are more prestigious than legislative positions and are crucial in terms of establishing clientelism.²⁵⁶ Moreover, Argentina has had few women in ministerial positions—which are viewed similarly to executive positions in terms of their prestige.²⁵⁷ Without access to these and other “elite political networks,” women are deprived of the resources and status necessary to produce substantive change.²⁵⁸ In this way, the quota has been insufficient in transforming the gendered power dynamics within Argentinean politics.²⁵⁹ Women's representation has grown over time, yet representation in positions of power and leadership has not.

Fourth, female legislators can only effect change to the extent provided by their legislative environment. In the case of Argentina—where broad party coalitions have fostered disunity and conflict within the parties themselves—legislative output is dismal.²⁶⁰ Moreover, the passage rate for bills dealing with women's

²⁵² Feijoó, *supra* note 243, at 64; Tinker, *supra* note 46, at 14 (noting that new female legislators are relegated to less influential committee assignments).

²⁵³ SCHWINDT-BAYER, *supra* note 92, at 112.

²⁵⁴ See Franceschet, *supra* note 167, at 72-73 (noting that legislation introduced by women is unlikely to receive consideration without support from party leadership).

²⁵⁵ Feijoó, *supra* note 243, at 63.

²⁵⁶ Susan Franceschet & Jennifer M. Piscopo, *Sustaining Gendered Practices? Power, Parties, and Elite Political Networks in Argentina*, 47 *COMPAR. POL. STUD.* 85, 86, 89-90 (2014).

²⁵⁷ Iturbe De Blanco, *supra* note 186, at 685-86; Franceschet & Piscopo, *supra* note 256, at 90, 95.

²⁵⁸ Franceschet & Piscopo, *supra* note 256, at 86, 95.

²⁵⁹ *Id.* at 86, 95.

²⁶⁰ Piscopo, *supra* note 93, at 105-06.

issues is even lower than that of other issues.²⁶¹ Argentina's relatively low passage rate comes also as a result of their weaker executive branch. Whereas the Chilean executive has immense control over the legislative process, in Argentina, that power is concentrated within the legislative branch.²⁶² Furthermore, what power the executive branch does hold has not been used to lobby for female-friendly legislation, eliminating a key critical actor in the fight for gender equality.²⁶³ In the case of women's sexual health bills in Argentina, resistance from former-President Carlos Menem, and later from former-President Cristina Fernández de Kirchner stalled the passage and successful implementation of important female-friendly legislation.²⁶⁴ When a set of sexual health bills finally passed, Argentina's federal system effectively made it so that implementation was out of the legislature's hands.²⁶⁵ The presence of a supportive executive can make up for a lack of support for women's issues within the legislature. In Argentina, its absence exacerbates women's legislative ineffectiveness.

Ultimately, descriptive representation does not contribute to substantive outcomes as much as the presence of critical actors who have the power to legislate on behalf of women's interests.²⁶⁶ Though they are present in much higher numbers than in Chile, women in Argentina's legislature lack meaningful influence over the legislative process.²⁶⁷ This is primarily due to a lack of critical actors, marginalization by a male-dominated legislative process and a strong party system, exclusion from leadership positions, and an ineffective legislative branch.

²⁶¹ Franceschet & Piscopo, *supra* note 53, at 416 ("Although the Argentine legislative process is such that bill failure is common, the success rates for approving women's rights bills is lower than average.").

²⁶² SCHWINDT-BAYER, *supra* note 92, at 87.

²⁶³ See Franceschet, *supra* note 167, at 75 (discussing how the absence of an ally in the executive branch has served as an impediment to female legislators as they attempt to pursue certain legislative initiatives).

²⁶⁴ Piscopo, *supra* note 93, at 111, 122.

²⁶⁵ *Id.* at 119.

²⁶⁶ SCHWINDT-BAYER, *supra* note 92, at 16.

²⁶⁷ *Id.* at 128.

IV. CONCLUSION

While some find it inevitable that having higher descriptive representation will produce greater substantive outcomes, this Comment calls that relationship into question. The cases of Chile and Argentina give a glimpse into the factors that affect the descriptive-substantive link. By analyzing the political, social, and cultural climates of these two countries and examining how they factor into the given causal mechanism, I hope to have provided greater insight into the realm of global gender politics. Legislative marginalization, restrictive party platforms, exclusion from leadership positions, unsupportive executives, and weak women's movements all actively prevent women from realizing their legislative goals. Relative to men, women must overcome several barriers in order to translate their political preferences and identities into outcomes.