

## Abstract

*This article examines how political controversies affect citizens' ability to exercise sexual and reproductive rights in Latin America. The article argues that societies accommodate conflicting views on sexuality and reproduction with a "double discourse system," which defends repressive or negligent public policies while privately tolerating unofficial and often illegal mechanisms that expand private sexual and reproductive choices. The examples of divorce policy in Chile and abortion policy in Colombia and Chile are highlighted to illustrate how this breach between public discourse and private actions operates in practice, and who is harmed by it. The article concludes by discussing the implications of this system for rights advocacy.*

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*Cet article analyse comment les controverses politiques affectent la capacité des citoyens à exercer leurs droits sexuels et génésiques en Amérique latine. Il insiste sur le fait que les sociétés s'accommodent de vues contradictoires sur la sexualité et la reproduction à l'aide d'un « double système de discours », lequel défend des pratiques publiques répressives ou négligentes tout en tolérant en privé des mécanismes non officiels et souvent illégaux étendant le choix privé dans les domaines de la sexualité et de la reproduction. Les exemples de la politique du divorce au Chili et de celle de l'avortement en Colombie et au Chili sont mis en évidence pour illustrer comment cette divergence entre le discours public et les actions privées fonctionne en pratique, et à qui elle nuit. Cet article s'achève par une discussion des implications de ce système pour le plaidoyer des droits.*

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*Este artículo examina cómo las controversias políticas impactan la capacidad de los ciudadanos de ejercer sus derechos sexuales y reproductivos en América Latina. El artículo declara que la sociedad acomoda perspectivas opuestas sobre los derechos sexuales y reproductivos usando un "sistema de doble discurso" que, por un lado, defiende las políticas públicas represivas o indiferentes mientras que, por el otro, secretamente tolera mecanismos extraoficiales y a menudo ilegales que amplían las opciones sexuales y reproductivas del individuo. Las políticas sobre el divorcio en Chile y el aborto en Colombia y Chile se realzan a fines de ilustrar como esta brecha entre el discurso público y las acciones privadas funciona en la práctica y quienes son sus víctimas. El artículo termina discutiendo el impacto de este sistema sobre la promoción de derechos.*

# THE “DOUBLE DISCOURSE” ON SEXUAL AND REPRODUCTIVE RIGHTS IN LATIN AMERICA: The Chasm between Public Policy and Private Actions

*Bonnie Shepard*

**T**he international policy arena today is marked by strong clashes of values with regard to sexuality and reproduction. This article will examine how political controversies affect citizens' ability to exercise sexual and reproductive rights in Latin America, with examples from several countries, but focusing mainly on Chile. This is not a comprehensive overview of the variety of sexual and reproductive rights abuses in the region, but rather an analysis of the social and political dynamics associated with contested policy issues in sexual and reproductive rights. The article will argue that societies accommodate conflicting views on sexuality and reproduction via a “double discourse system,” which maintains the status quo in repressive or negligent public policies while expanding private sexual and reproductive choices behind the scenes. Two specific examples—divorce law in Chile and abortion advocacy in Colombia and Chile—will highlight how this breach between public discourse and private actions operates in practice, and who is harmed by it. The article will conclude by discussing the implications of this system for rights advocacy.

In Latin America and worldwide, general consensus exists among governments on the now-standard phrases

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*Bonnie Shepard is a visiting fellow at the David Rockefeller Center for Latin American Studies, Harvard University. Please address correspondence to Bonnie Shepard, David Rockefeller Center for Latin American Studies, Harvard University, 61 Kirkland Street, Cambridge, MA 02138, USA or to [bshepard@fas.harvard.edu](mailto:bshepard@fas.harvard.edu).*

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that summarize reproductive rights in the Programme of Action of the International Conference on Population and Development (ICPD), held in Cairo in 1994:

. . . the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children, and to have the information and means to do so, and the right to attain the highest standard of reproductive and sexual health. [Reproductive rights] also includes [couples and individuals'] right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.<sup>1</sup>

In Latin America, as in many other regions, certain concrete implications of these principles of consensus are vehemently disputed at all levels, from the family to the central government. Do these rights extend to adolescents—that is, do adolescents count as “couples and individuals”? In the recent UN meetings on Cairo+5, many delegations argued that parents’ rights supersede those of adolescents. Also, if women have the right to decide freely on the number and spacing of their children, doesn’t that entail the right to safe abortion services? This is certainly the most publicized conflict in the reproductive rights field, so much so that all too often the term “reproductive rights” is reduced to the issue of abortion in the public mind. Finally, the term “sexual rights” has never made its way into any conference document or international convention. For the purposes of this article, sexual rights include the right to sexual health, “which is the enhancement of life and personal relations, and not merely . . . care related to reproduction and STDs,” as well as the “individual’s right to have control over and decide freely in matters related to his or her sexuality, free of coercion, discrimination, and violence,” provided that one’s sexual behaviors do not harm others.<sup>2</sup> It should also be noted that, while there finally appears to be some consensus that sexual violence and coercion are violations of basic human rights, many conservative groups remain opposed to the term “sexual rights,” which they believe will lead to recognition of freedom of sexual orientation as a right.

## **Repressive Public Laws and Expanded Private Options: Sexual and Reproductive Rights in Latin America**

The political climate surrounding sexual and reproductive rights is characterized by a worldwide increase in religious fundamentalism on the one hand and cultural globalization on the other, which has exacerbated preexisting political and cultural divisions. In Latin America, the majority of citizens identify as Roman Catholic, and the Church is the main force against full recognition of sexual and reproductive rights. As in European countries with a dominantly Catholic tradition and among Catholics in the United States, most studies show that in practice Latin American Catholics do not follow the official teachings of the Church on the use of contraception and abortion.<sup>3</sup> The increasing strength of hard-line factions over the past 20 years has resulted in growing rigidity in the Church positions on these issues and increasing repression of dissident views within Catholic institutions.<sup>4</sup> While the channels through which the Roman Catholic hierarchy exercises its political influence are often hidden from public view, the visible result is policies that deny reproductive and sexual rights to citizens—policies that seem to become ever more deeply entrenched in a polarized political climate.

How do Latin American countries accommodate the sharp divisions in public opinion on these issues and the universal and often pressing need for individuals and couples to exercise freedom of decision-making in sexuality and reproduction? In many cultures, escape valves allow private accommodations to repressive policies, leaving the official legal and/or religious norms untouched while reducing the social and political pressure for policy advances.

This type of societal rift between public stands and private actions also operates at the level of the individual. In a recent book, Rosalind Petchesky discusses women's private strategies to expand their reproductive choices:

As our fieldwork progressed, . . . we found that the two extremes of outright resistance and passive accommodation are much rarer than the kinds of complicated, subtle

reproductive and sexual strategies that most of our respondents adopt in order to achieve some degree of autonomy and at the same time maintain their place in the family and community. . . . [A woman] may see no contradiction whatsoever in both acting against a particular norm and speaking in deference to it. Indeed, accommodation in practice often means a nonconfrontational or conciliatory way of achieving one's wishes or sense of right.<sup>5</sup>

A recurrent theme within the Latin American countries with which the author is most familiar—Colombia, Peru, Chile, and Argentina—is the “double discourse” (*doble discurso*).<sup>6</sup> This phrase, usually applied to individuals, is widely understood to signify the art of espousing traditional and repressive sociocultural norms publicly, while ignoring—or even participating in—the widespread flouting of these norms in private. I expand the use of the term “double discourse” in this article to signify a political and cultural system, not just an agglomeration of individuals privately “sinning.” Thanks to the ubiquity of the double discourse, in most Latin American countries the reproductive and sexual choices open to citizens are much wider than the official policies would lead one to believe. At the heart of this system lies the chasm between public discourse, upholding traditional religious precepts that limit individual choices, and unofficial private discourses—in conversations, interior monologues, and the confessional—that rationalize or ask forgiveness for transgressions. These private individual discourses are complemented by social and political mechanisms—laws or interpretations of laws providing escape valves, common practices, clandestine services, etc.—that make expanded choices possible. The primary features of the double discourse system, then, are the following:

- For historical and political reasons, the hierarchies of a hegemonic religion exercise considerable influence over state policies, imposing the religion's moral codes on legal norms. The distinction between immorality and criminality is blurred.

- The official discourse and policies uphold highly restrictive norms, based in religious doctrine, which violate citizens' sexual and reproductive rights. These norms assume a sacred and inviolable character.
- There are always political costs attached to espousing a change in the norm, which is sacred. Public officials and civil society organizations come under attack when they publicly defend the legitimacy of the sexual or reproductive right in question or when they attempt to reform the policies. There may or may not be political costs attached to publicly recognizing the ubiquity of infractions of the law (as in the case of abortion) or the use of legal loopholes that subvert the intent of the law (as in the case of annulments).
- Individual practices that flout the norm are widespread, as are the social and political mechanisms that make them possible. These mechanisms constitute an escape valve that expands citizens' sexual and reproductive choices, but because they are makeshift, illegal, or unofficial, neither availability, safety (in the case of services), nor protections of basic rights are guaranteed.
- The worst consequences of the restrictive policies fall on low-income sectors and on groups that are disadvantaged, discriminated against, or marginalized in other ways, e.g., ethnic minorities, single mothers, inhabitants of rural areas, and homosexual men and women. Political elites usually do not suffer the worst consequences of the restrictive laws.
- The combination of high political costs attached to efforts for reform and the political disenfranchisement of the groups that feel the worst consequences of the restrictive policies leads to a lack of political will for reform. Public debate can lead to increased repression and limits on the informal mechanisms that expand choice, creating ethical dilemmas for advocates of reform.

Clearly, this chasm between public norms restricting individual rights and private discourses and mechanisms

expanding them is not limited to the area of sexual and reproductive rights. So many sociocultural taboos and restrictions lie in this realm, however, that in Latin American popular usage *el doble discurso* generally refers to sexual and reproductive matters. In fact, the term “double discourse” is somewhat misleading, because its essence is that private actions deviating from the norm, even if they are almost universally practiced, are not favored with any *public* discourse at all that defends their legitimacy. The *private* discourse does not usually defend the sexual and reproductive rights that contravene these traditional norms; rather, it rationalizes individual actions or explains them in terms of weakness and sin.

*Doble discurso* is a fitting non-judgmental label arising from these predominantly Catholic cultures, since the closest words in English for this phenomenon—for example, “hypocritical,” “deceptive,” “two-faced,” and “duplicious”—are harsh in their judgments. The polarized debates that often coexist with double discourse systems beget severe judgments. For example, in the debates about sex education in Chile, the reformers believe that they are simply recognizing the reality and risks of adolescent sexual behavior, while their opponents are “hypocrites” who hide their heads in the sand. Likewise, those opposing the public health approach to sex education accuse the reformers of being “permissive” and promoting “promiscuity.”<sup>7</sup> It might be fair to say that a double discourse system is built into Catholic cultures in those countries where for a variety of historical and political reasons the Church has great influence on the state. In these countries, many of which are in Latin America, public officials often feel compelled to uphold the Church’s teachings publicly although they know that actions at variance with the teachings are common.<sup>8</sup> Catholics view this attitude not as hypocritical, but rather as upholding an ideal to which many, including oneself, fail to measure up, for reasons that God will understand and forgive.

Like the women described above in the IRRRAG studies, both Catholic women and the clergy make their personal peace with private choices that flout official norms. Clergy at the grassroots level are often more empathetic and

flexible than the hierarchy. Since the hierarchy often “silences” clergy who speak out publicly against the Church’s repressive norms on sexuality and reproduction, their support for individuals’ forbidden reproductive and sexual behaviors usually takes place in the private realm of conversations and the confessional.<sup>9</sup> A little-known study in Colombia on the attitudes of Catholic women and Catholic priests on abortion showed that most priests give absolution in the confessional to women who have had abortions, despite recent edicts urging priests to excommunicate women who have had abortions. For their part, Catholic women interviewed in abortion clinics made a de facto distinction between the public notion of mortal sin and the private spiritual notion of an understanding deity. While they recognized that abortion is a sin, they stated that their relationship with God was not in any way ruptured by their actions, which arose from extreme hardship and necessity.<sup>10</sup>

### **Examples of the Double Discourse System**

The examples of divorce law in Chile and abortion advocacy in Colombia and Chile will demonstrate these features of the double discourse system. Both illustrate how policy-makers are willing to turn a blind eye to private actions and social institutions that flout the official norm, despite a perceived obligation to defend the norm. In both cases, disadvantaged groups have suffered disproportionately from the current policies, and individuals and groups advocating for reform have encountered multiple roadblocks.

### **The Catholic Church and Divorce Law in Chile<sup>11</sup>**

During the 17 years of military dictatorship from 1973 to 1990, the Catholic Church played a progressive role in Chile as the main proponent of respect for human rights and social justice. The Church’s *Vicaría de Solidaridad* (Vicariate of Solidarity), which defended victims of human rights abuses during the years of the military dictatorship, saved the lives of countless opposition politicians and activists who are now officials in the civilian government and leaders in the center-left government coalition, the *Concertación*. Furthermore, historically the Church has



been an important wellspring and source of support for efforts to increase socioeconomic justice in Chile. The progressive origins of the Christian Democratic Party, the majority party in the *Concertación*, have their roots in liberation theology movements in the Catholic Church. For these reasons, the Church now enjoys a great deal of political influence in Chile, more than in most Latin American countries.<sup>12</sup>

Coincident with this increase in the Church's political influence has been the worldwide growth in power of the conservative wing of the Church, noted above. The Church's increasingly repressive focus on sexual and reproductive rights issues intensified during the 1990s in Chile, strengthening partnerships with the socially conservative opposition parties.<sup>13</sup> The Church is thus in the enviable position of having strong alliances with socially conservative politicians of all political tendencies—both from the *Concertación* and from the rightist opposition parties—on policies related to the family, gender, reproduction, and sexuality. As a result, the public discourses in the Congress and in the media regarding proposed legal reforms on issues such as adultery, divorce, same-sex sexual relationships, new reproductive technologies, and abortion are all remarkably uniform in Chile in comparison with other Latin American countries.<sup>14</sup> There is a notable lack of lively public debate on these policies, although most Chileans acknowledge that the private flouting of the policies is widespread. The *doble discurso* is nowhere so amply recognized and commented on as in this socially conservative country.

The countries without a divorce law can be counted on the fingers of one hand, although there is no official United Nations convention that explicitly sanctifies the right of individuals to separate definitively from their spouses and remarry.<sup>15</sup> The powerful influence of the Church on the two civilian governments of the '90s may explain why Chile is one of these countries, although, according to a recent survey, 70% of Chilean women are in favor of a divorce law.<sup>16</sup> As in most modern industrialized countries, Chilean couples separate and pair up with new partners quite frequently.

Many people simply live with a new partner and remain legally separated; others take the precaution of never getting married in the first place. During the 1990s, the courts granted almost 7,000 annulments per year.<sup>17</sup> Most analysts recognize that the Chilean legal framework for civilian annulment is a fraudulent safety valve that allows for the absence of a divorce law. The ground most frequently used is that one of the spouses (backed up by two witnesses) swears that s/he gave the wrong address at the time of the wedding ceremony and thus did not fall under the jurisdiction of the official who performed the ceremony.<sup>18</sup> Unfortunately, lawyers' fees make this option unavailable to most low-income people. Certainly one could argue that the lack of the option of divorce results in many second unions—especially for low-income families—that are never formalized, thus violating the recognized human right to contract marriage and form a family. One clear result of this situation is a high and increasing rate of births out of wedlock, which has climbed from 30% in 1985 to 46% in 1999.<sup>19</sup> The annulment means that legally the marriage never existed, and any division of marital assets is completely up to negotiations between the couple.<sup>20</sup>

Therefore, the annulment leaves the custodial parent—usually a woman with fewer assets than her husband and no independent income—without the usual protections regarding rights to assets accumulated during marriage that are incorporated into legal divorces in most countries. While biological fathers are supposed to pay child support (*pensión alimenticia*), the inefficient justice system cannot guarantee compliance, so that the mothers and children often suffer economically under this arrangement.<sup>21</sup> In this sense, the lack of a divorce law can be argued to constitute discrimination against women, as well as a violation of equality of rights in marriage.<sup>22</sup>

It is clear, then, which social sectors are harmed by the lack of a divorce law. It is less clear why there is so little political will to lead efforts for reform, although there have been several attempts. First of all, it is emotionally and politically possible for Chilean legislators with annulled marriages or legal separations to be vehement opponents of

the passage of a divorce law, in the name of the Chilean family and Catholic values. Private transgressions and public defense of norms coexist quite peacefully in a double discourse system. Second, the punitive power of the Catholic Church is probably a major factor in the failure of legislative efforts for reform. The Church is willing to throw its considerable influence behind successful campaigns to elect socially conservative legislators, and to unseat legislators who lead the efforts to pass divorce laws and other laws expanding sexual and reproductive rights. The label of "*divorcista*" has been attached to reformers.<sup>23</sup> A divorce law did pass the Chamber of Deputies in 1997, however, thanks to a rare coalition of supporters that included an influential faction within the majority Christian Democratic Party and three legislators from the rightist parties. The bill passed the Chamber with 10 votes from rightist parties.<sup>24</sup> While the bill was defeated in the more conservative Senate, additional legislative developments since then give some cause for hope that the political will to act on contentious social issues related to sexuality and reproduction is increasing.<sup>25</sup>

One factor that may weaken the political will to push for reform is that professionals with political influence come primarily from middle-class and upper-class backgrounds and can afford the lawyer's fees for an annulment. Although all classes certainly suffer inconveniences and difficulties from the lack of a divorce law, those in a position to affect political decisions do not suffer personally from the most negative consequences of the current laws.

The lack of strong civilian pressure to pass a divorce law is more puzzling. Even from the women's movement, there has been little active pressure on legislators. One feminist legislator who helped lead recent efforts to push a divorce law through Congress remarked sadly that there were no supporters in the galleries during discussions of the bill. "It seems that [the women's movement] is extremely demobilized, and sometimes I feel very isolated in my efforts," she said.<sup>26</sup>

One study hypothesized that a factor in the relative failure of Chilean feminists to address such issues might be the dispersion of Chilean feminists into NGOs that depend on

government contracts for a substantial portion of their income. This dependence would lead to “self-censorship” regarding family law and those sexual and reproductive rights issues that cannot be addressed by the government due to Church opposition.<sup>27</sup> Finally, there is widespread recognition, especially among NGOs that engage in community-level work, of the decreased level of mobilization of popular-sector women’s organizations since the advent of democracy.<sup>28</sup>

As we have seen, the case of divorce law reveals some of the main features of the double discourse system. Because of the escape valves in marriage laws, most of those Chileans who might have any influence on the political process are able to secure an annulment, thus weakening political will for reform. So long as the rule of official silence is respected, political equilibrium is maintained. This equilibrium, however, is also profoundly inequitable toward low-income couples who cannot afford annulments and mothers with custody of their children who are not able to privately negotiate a fair settlement regarding marital assets with their spouse.

### **Abortion Advocacy in Colombia and Chile: When to Break the Silence?<sup>29</sup>**

As mentioned in the introduction, there is perhaps no issue related to reproductive rights so hotly contested as the right to safe and legal interruption of unwanted pregnancies. Most reproductive rights advocates hold that this right derives logically from “the right of couples and individuals to decide freely and responsibly the number, spacing and timing of their children.”<sup>30</sup> While there are many other arguments in favor of this right, the most widely used are public health and equity arguments, which recognize that the practice of abortions is widespread and that illegality causes maternal morbidity and mortality through unsafe abortions, mainly among low-income women.<sup>31</sup> Middle- and upper-income women generally can pay for access to relatively safe clandestine abortion services, so that the clandestine mechanisms to expand reproductive choice discriminate against the poor. In UN forums and in Catholic

countries, public health and equity arguments are gaining ground, but the double discourse system mandates that abortion cannot be officially made legal, even if it is widespread.

El Salvador and Chile share the dubious distinction of being the only countries in the world where all abortions, even to save the mother's life, are illegal and penalized, a legal situation that can be seen to violate the mother's right to life.<sup>32</sup> These laws are even stricter than the Canonical Code of the Catholic Church, which allows abortions in cases of ectopic pregnancies and reproductive cancers.<sup>33</sup> Because of the clandestine nature of induced abortions, the statistics on its prevalence are based on hospital data. The 1994 studies by the Alan Guttmacher Institute estimate that there are about 288,400 abortions annually in Colombia and 159,650 in Chile (with total populations of roughly 36 million and 14 million respectively).<sup>34</sup> Other estimates for Colombia range as high as 400,000 per year.<sup>35</sup> A nationwide Colombian urban household survey by Lucero Zamudio of the Universidad Externado found that one out of three women who had ever been pregnant had had an abortion.<sup>36</sup> In Chile, 35 of every 100 pregnancies end in abortion. In Colombia, it is estimated that almost 600 women a year die from complications of abortion, which account for 67% of all hospitalizations for gynecological causes.<sup>37</sup> In both countries, it is mainly low-income women who end up in public hospitals due to complications of unsafe abortions. Health providers in the public hospitals who disapprove of abortion often take punishing attitudes toward these patients. There are many accounts not only of hostile remarks, but also of providers performing D&Cs without anesthesia on women with incomplete abortions and forcing women to take medications designed to halt spontaneous abortions.<sup>38</sup>

Nevertheless, in both countries, public opinion regarding abortion is much more progressive than the official policies. A 1997 poll of Colombian women in union (married or in a permanent relationship) found that 20% of the respondents had had an abortion, and 48% thought that it should be legal under certain circumstances. Much larger majori-

ties thought that abortion should be legal “if the mother was in danger” (88%), if the fetus had severe physical or mental defects (78%), or in cases of rape (76%).<sup>39</sup> The electorate in Chile is perhaps only slightly more conservative on this issue. A 1999 national survey found that high percentages of women favored legal abortion in cases of rape or incest (59%), danger to mother’s life (78%), and fetal problems (70%). Fully 30% of women thought that abortion should be available “upon the woman’s request.”<sup>40</sup> These results in Chile are remarkable given the almost complete lack of media coverage of rights-affirming views on abortion.

Despite these similar results, however, the public reactions to the Alan Guttmacher studies in the two countries were startlingly different. There is generally less public debate on the issue of abortion in Chile than in Colombia. In Chile, the publicity surrounding the publication of the Alan Guttmacher statistics was seen to be an intolerable flouting of the *doble discurso* system, according to which infractions are tolerated so long as they remain out of the public view. “*De eso no se habla*” (one doesn’t speak of such matters) is the key phrase applied to topics such as abortion. In this case, considerable media coverage and debate following the release of the study made the findings impossible to ignore. While progressive Catholic legislators and officials responded by advocating increased support for family planning services to prevent abortions, conservative legislators revived their attempts to increase the criminal penalties for abortion. In fact, the most tangible result was an unusually comprehensive crackdown on clandestine abortion clinics that continued sporadically over the next few years. Not even the best-known high-cost clinic in the upper-class neighborhood of Providencia was exempt from the police raids. Those who publicized the study did so to point out the futility of penalizing such a widespread practice and the public health consequences of its continued illegality. The consequences of the publicity, however, seem to have been mainly negative and punitive, depriving many women of access to needed services.<sup>41</sup>

Colombian society, on the other hand, is less conservative, and the Catholic Church has less influence on public

policy there than in Chile. Colombian law provides for legal divorce, freedom of religious instruction in the schools, and mandatory sex education in the schools; the new Health Law 100 guarantees the right to family planning methods.<sup>42</sup> However, in both countries public officials still feel compelled to espouse the Catholic norms, while the Church publicly exercises influence to block changes in the abortion laws and to censor AIDS prevention television messages that include condom use.

Abortion services, a few of which are operated safely and ethically, are generally much more available in Colombia than in Chile. In the mid-1990s, the author saw full pages of ads in the daily papers advertising clinics where women could go if they were nervous about "menstrual delays."<sup>43</sup> In addition, many clinics legally provide treatment for incomplete abortions, which are generally started by women in their homes through unsafe methods. Nevertheless, these (or other similar) clinics are raided periodically by the police and shut down. The public reaction to the findings of the Alan Guttmacher study was much more muted in Colombia than in Chile, which may reflect a more widespread knowledge and acceptance of the availability of abortions. The Zamudio study, however, which was released at a regional conference for abortion researchers in Bogotá in November 1994, gained much more media attention, perhaps because the conference itself was a high-profile event attended by legislators throughout the region. Furthermore, the findings were firmer than the estimates in the Guttmacher study, and therefore less easily ignored. It is not clear whether this media attention was causally linked to a subsequent increase in raids and shutdowns of abortion clinics or whether the raids resulted from other dynamics in the political establishment. At any rate, many of the clinics reopened after a prudent lapse in time.

One Colombian official spoke frankly to the media about how the double discourse system (also called "*doble moral*" or double morality in Colombia) operates with regard to abortion in Colombia: "Abortion is not a problem of legal sanctions, but of collective double morality. There is not a single person who doesn't know where at least one

of these medical centers operates, and probably has had occasion to recur to their services. Abortion is an egregious case of clandestine practices that won't disappear."<sup>44</sup>

One explanation for the differences in the level of repression exercised against clandestine providers in the two countries may be the differences in the rule of law. Chile is renowned for its legalistic culture and is known as "the Switzerland of Latin America." Throughout Chilean history, laws and rules in general have been taken very seriously.<sup>45</sup> However, this legalism is selective and arbitrarily applied in the case of laws such as those on abortion that are generally viewed as repressive or as requiring a breach of medical ethics by health providers. While there are a significant number of women who have been in jail in Chile for having undergone an abortion, as documented in a study by lawyer Lidia Casas, most of these women were not caught in raids, but rather denounced by a small minority of health providers.<sup>46</sup> Providers are enjoined by law to turn over to the authorities women who come to hospitals with complications from induced abortion, thus ostensibly forcing them to breach the confidentiality of the health provider/client relationship. The Casas study, however, suggested that most health providers in Chile respect the confidentiality of this relationship, since the bulk of the denunciations come from a handful of public hospitals serving low-income populations. Furthermore, they tend to cluster on days when certain doctors are on duty.<sup>47</sup> In this instance, the double discourse system operates by creating a public policy that is privately disregarded, thus saving most women from one of the worst consequences of the policy. However, the unlucky few who fall into the hands of providers who obey the letter of the law are imprisoned. Furthermore, both the risk of mortality/morbidity and the risk of imprisonment fall inequitably on low-income women, who disproportionately end up in public hospitals with complications from unsafe abortions. Middle and upper class women, who have access to safer private services, usually escape with impunity. One could argue, as in the case of divorce, that this escape valve weakens the will of political actors in both official and civil society to address this issue in an effective and unified manner.



Colombia, on the other hand, is renowned for widespread impunity for a variety of legal infractions due to its fragile, disorganized, and ineffective system of justice and citizen security/policing.<sup>48</sup> In this country, there is more tolerance for provision of abortion services than in Chile, so long as it remains private and behind-the-scenes, with occasional crackdowns that give a nod to the rule of law and the official discourse condemning abortion. As with other double discourse mechanisms that expand choice, there are no guarantees of accessibility and safety. There seem to be proportionately fewer women who end up in jail in Colombia for abortions than in Chile, although there are no definitive statistics.<sup>49</sup>

The women's and reproductive rights movements in Colombia have suffered from divisions about the best strategy to pursue to decriminalize abortions. Whether the crackdowns that followed the 1994 Zamudio study were coincidental or not, in recent years, nearly every time the issue of abortion has gained prominence in public debates, the repression and crackdowns on clandestine clinics increase, thus incurring negative consequences for women seeking abortions.<sup>50</sup> Thus, there are real advantages to continuing the silence. Furthermore, networks on reproductive rights understand that it is not to their advantage to be solely identified in the public mind with the issue of abortion, which is much more controversial than other sexual and reproductive rights issues in equal need of attention. Like legislators, they run political risks if they identify too strongly with this issue.<sup>51</sup>

Unfortunately, another source of division on the issue of abortion in Colombia comes precisely from the efforts of the reproductive rights movement to expand its reach beyond explicitly feminist organizations. There is some evidence that the level of disagreement on the issue of abortion rises as membership in sexual and reproductive rights networks expands to include grassroots low-income women's organizations, which tend to have a much more diverse social base than the feminist NGOs.<sup>52</sup>

Faced with these divisions, the Colombian Sexual and Reproductive Rights Network, which operates in six cities,

decided to focus its campaigns in 1997–98 on the issue of sexual violence, in particular on inequities in the laws and the culture and in the judicial treatment of victims. Through this campaign, the network addressed the issue of abortion in the context of advocating for elimination of criminal penalties in cases of rape. In this way, they managed to forge a broader coalition, momentarily solving the problems of dissension on abortion within their ranks. In general, the network had more success in gaining coverage in the local media than in national organs.<sup>53</sup> One could hypothesize that in a double discourse system, the more national (and therefore semi-official) the media outlet, the harder it is to gain exposure for alternative viewpoints that flout semi-sacred norms on reproduction and sexuality.

In Chile, the silencing of those who are in favor of depenalizing abortion, or introducing exceptions under which abortion would not be penalized, is much more thorough.<sup>54</sup> Abortion for health reasons or in case of severe fetal defects was legal until 1989, when one of the last acts of the military government was to make it illegal. Yet groups and legislators wishing simply to restore the civil code to its pre-1989 state are vilified in the conservative press. Early in the democratic period, when Congresswoman Adriana Muñoz proposed to restore the clauses allowing therapeutic abortion, she was branded an “abortionist” and defeated on that basis in her re-election campaign in 1993.<sup>55</sup> In general, socially conservative politicians take the lead on this issue, having introduced repeated initiatives since 1990 to increase the criminal penalties for women who undergo induced abortions. Fortunately, there is just enough awareness in the legislature of the inequitable burden of the criminal penalties for low-income women, and these proposals have all been defeated.

Lately the women’s movement has helped to defeat these proposals, although the overall dynamic is still defensive. The Open Forum on Reproductive Rights and Health has been especially active. Formed in 1991, it is a network of organizations in several provinces that has slowly gained more legitimacy, and is valued by feminists as the only entity within the Chilean women’s movement that dares to

openly advocate less repressive laws on abortion.<sup>56</sup> Despite this strength, the outreach and effectiveness of the Forum are hampered by several factors. The self-censorship among women's NGOs in Chile in the case of divorce operates even more strongly in the case of abortion advocacy, so that some of the major women's NGOs are not willing to join the Forum or its campaigns. Furthermore, as in Colombia, the Forum has encountered diversity of opinion within its ranks on the topic of abortion as their network expands to provincial cities and to more diverse and grassroots women's organizations. In practice, the network is forced to maintain a policy of voluntary adherence to its campaigns on this issue. For example, only some regional chapters participate in the Forum's main public strategy on abortion, which is to stand with banners advocating decriminalization of abortion and hand out educational materials in the main city plaza on one Friday of every month. In the tradition of the human rights movement during military dictatorships (most notably the Mothers of the Plaza de Mayo in Argentina), this is a symbolically public statement, bringing a prohibited and ostracized discourse into the most officially public space in the city. It brings citizen disagreement with official policies on taboo topics having to do with reproduction and sexuality out into the open, breaking the logic of the double discourse system. Recently, the Forum has complemented this strategy, which mainly targets public opinion, with alliances with other NGOs and communications with legislators or government officials when urgent needs for political action arise, as in the case of the most recent bill that proposed increases in the criminal penalties for abortion.<sup>57</sup> It is puzzling indeed that there is more political activity among Chilean women's NGOs on the much more taboo issue of abortion than on the continuing legislative efforts to pass a divorce law.

The dynamics affecting advocacy for safe and legal abortions in these two countries demonstrate the main features of the double discourse system: the heavy influence of religious dogma on public policy; the violation of women's reproductive rights to voluntary maternity; the existence of informal or illegal mechanisms to expand private choices;

the discrimination against low-income women, both in access to these mechanisms and in the arbitrary and haphazard application of punitive laws and practices; divisions within the political class and citizen movements on the issue; and the lack of sufficient political will among both legislators and the women's movement to provide redress.

### **Implications for Advocacy: A Discussion**

The above examples demonstrate how semi-official, clandestine, and private mechanisms subvert the limitations on exercise of sexual and reproductive rights imposed by repressive policies and deep societal polarization of opinion. One can only applaud human ingenuity in finding so many circuitous ways to expand individual choices in such contexts. The disadvantages of such a system, however, cannot be ignored, because the consequences lead to irreparable harm to so many individuals and families. When solutions that expand sexual and reproductive choices are unofficial, clandestine, and/or dependent on the judgment of professionals such as health providers, no one is guaranteed access to these solutions, no one can oversee their quality, and the health and legal risks fall disproportionately on low-income or marginalized individuals. The informal mechanisms that expand choice generally are safer and more commonly available as one climbs the socioeconomic ladder, thus softening the consequences of repressive policies for members of those very sectors that influence policy decisions, whether from the side of the state or of civil society. This mitigation of consequences, along with the political risks associated with advocacy for sexual and reproductive rights, is linked to the lack of political will to defend these rights. This article has pointed out the risks for legislators. The risks are also considerable for NGOs and those within Catholic institutions.

### **Political Costs**

Those within Catholic institutions who believe in the principle of free conscience in sexual and reproductive matters suffer disproportionately from repression. The regional network of Catholics for Free Choice has many clandestine

supporters who would lose their jobs if they openly declared themselves to be members. The increasing repression of dissident voices within the Church has crippled attempts to foster dialogue among the hierarchy; between the hierarchy and clergy (including nuns), who are generally much more flexible and progressive on these issues; and between lay believers and the hierarchy. Several brave clergy who have voiced their pro-rights views publicly in publications and in the media have been “silenced,” with well-known examples in Colombia and Brazil.<sup>58</sup> Recently, a prominent endocrinologist from the Catholic University in Chile lost his professorship when he published an article in the newspaper *El Mercurio* using arguments from Catholic theology to oppose the Larrain bill, which would have increased criminal penalties for abortion.<sup>59</sup> In the face of this repression, Catholics for Free Choice has used research (for example, using focus groups of Catholic women on these issues) and public opinion polls to demonstrate the mismatch between the private reality and opinions of lay Catholics and the public discourse of the hierarchy. Through publications and speaking tours, they have publicized the views of dissident Catholic theologians to legitimate their point of view. Unfortunately, the Catholic Church is not a democracy, and these strategies have less power to sway Church leaders than they would when used by lay advocates to influence elected legislators. Nevertheless, such research and media exposure still serves a key purpose by helping to legitimize a pro-rights discourse in countries whose public policies are heavily influenced by the Church.

Citizen advocacy groups, many of whom are women’s NGOs, are often unable to be as persistent and as effective as anti-rights activists. In the cases cited above in Chile and Colombia, citizen activists were insufficiently mobilized on these issues for a variety of political, economic, and cultural reasons. On the economic side, due to dramatic decreases in foreign aid, many Latin American NGOs have been suffering from such a precarious financial situation that their ability to be a consistent and independent voice in public debates is in peril. Not only are the few remaining staff completely overextended, but in such precarious situations,

it is a big risk to make an organizational decision to carry the banner for controversial issues. Lacking foreign aid and private national donors for often-controversial programs, the NGOs have begun to depend on local and national government contracts, or on bilateral and multilateral contracts that must be approved by governments, for a significant portion of their funding. In several cases in the region, opposing the government's official position on sexual and reproductive rights issues has made an NGO persona non grata with some government agencies. As a result, the NGO is then unofficially excluded from winning government contracts or consulting jobs, no matter how unrelated to the NGO's stand on sexual and reproductive rights.

### **Possible Strategies**

An analysis of the logic of the double discourse system leads to three possible strategies to increase the political will for change: using both public health and ethical arguments, decreasing the political risks for various political actors, and eliminating the safety valves. The latter path would be greatly mistaken and would only increase suffering and harm. It would produce the same effects as the Chilean crackdowns on illegal abortion providers, narrowing the choices for thousands of desperate women and couples and probably leading them to take more unsafe measures to end their pregnancies.<sup>60</sup> The safety valves exist because there is a demand for them that will not be denied, no matter what the official policies.

How then can advocacy strategies address the double discourse system? On issues from divorce to abortion, the main strategies have been to point out the obvious epidemiological facts in lobbying efforts: adolescents are sexually active, women are having abortions, mothers are dying, and couples are separating. Armed with information on the negative consequences for public health of rights-denying policies, advocates lobby behind the scenes and in professional conferences to sway policymakers.

In all advocacy strategies, it is important to study one's audience and to tailor approaches to diverse groups within the ranks. There is a more or less hidden diversity within

the corps of legislators and public officials on these issues in most countries. The most vehement defenders of rights, on the one hand, and of semi-sacred norms limiting rights, on the other, are only the most visible and obvious audiences. Using audience analysis, there is a key flaw in the strategy that depends on public health and equity arguments with regard to the subset of legislators who strongly defend limits to rights on religious grounds: the epidemiological facts will not sway someone who is defending a sacred norm. In Christian religious thinking, the fact that people transgress or sin does not mean that the Ten Commandments should be thrown out the window. In this view, suffering as a result of transgression does not constitute an injustice. Morality is conflated with the law, so that making divorce or abortion or adultery legal is tantamount to giving them moral approval.

Besides the public health and equity arguments, there is another argument that may be more effective with these most intransigent opponents of sexual and reproductive rights, and more compelling to believers in all religions: the principle of religious diversity. A group of religious leaders from all of the world's major religions, including a representative from the socially conservative sector of the Catholic Church hierarchy, was convened before the ICPD to discuss reproductive rights issues. A key principle that they all agreed on was that no religion should have the power, through the state or by other means, to impose its precepts on the believers of any other religion. Religious diversity has increased significantly in Latin America and in most traditionally Catholic countries, making this an important argument for advocates.<sup>61</sup> One complementary advocacy strategy would thus be to forge alliances with believers in religions other than Catholicism to demand that state policies not be linked to the doctrines of any one religion.<sup>62</sup>

Advocates of sexual and reproductive rights do not face arguments based only in religious doctrine. Increasingly, opponents of reform are also using the discourse of human rights, citing the fetus's right to life, or the parents' right to control the education of their adolescent children. Unfortunately, this type of argument falsely pits rights

against rights, resulting in stalemated discussions: adolescents' rights against those of parents, and women's rights against those of fetuses. In Latin America, however, the Catholic doctrines of human life and rights beginning at conception and the inadmissibility of premarital sex are embedded in these arguments, so that it is useful for sexual and reproductive rights advocates to deconstruct them to show their basis in one dominant religion's doctrines.

While it is important to understand the belief system of the most committed opponents of sexual and reproductive rights, the use of public health information and equity arguments is still an effective strategy with other policymakers who may be more open to rights perspectives. This discussion will focus on two less visible audiences present in many legislatures and government agencies: (1) those who have not given the issues much attention and take the traditional stance as the path of least resistance, and (2) those who are already in favor of sexual and reproductive rights but voice these opinions only behind the scenes.

The first audience may not have seriously examined the issues or may have little information; being politicians, they have taken the safe road, which is usually to espouse the traditional norms. This group may be more open to persuasion by information on the inequitable and public health consequences of repressive laws and norms, especially if public opinion seems to be leaning in the direction of reform. One advocate discussed this group as follows:

Lack of information plays an important role among decision-makers with regard to reproductive issues in many countries. I have interviewed legislators who have no idea of the implications of passing restrictive laws and have never heard different points of view on abortion. . . . The Catholic Church steps into this information vacuum, bringing their lobbyists to the Congress with sensationalist videos on abortion. Unfortunately, the women's groups don't have the same capacity for reaction and mobilization in any [Latin American] countries.<sup>63</sup>

In this quotation may also be seen the importance of the role of the media in airing diverse points of view and the imbalance in the mobilizing capacity between anti-rights



and pro-rights lobbyists. The second audience consists of those legislators and public officials who take rights-affirming stances on sexual and reproductive health issues in private. There are fierce behind-the-scenes disagreements within governmental agencies, political parties, and committees, too often resulting in bland and meaningless consensus statements, or simply in inaction. Anecdotes about these controversies in private conversations are as common as weeds, but how rare it is that such disagreements come into the public light so that the citizenry can somehow weigh into the debate! Within most agencies and political parties, the appearance of public consensus is an unquestioned value. As a result, the "legitimate" discourse with guaranteed access to the media is still that of the Catholic Church hierarchies or public figures who agree with them, while the proactive voices in defense of sexual and reproductive rights rarely reach the public eye and ear except when the Church is attacking them. This dynamic accords unequal footing to pro-rights discourses in policy debates, perpetuates the political marginalization of rights advocates, and keeps disagreements among political actors safely behind the scenes.

As long as the political costs of espousing controversial pro-rights proposals remain so high, the most effective short-term political strategy for advocates is to obey the logic of the double discourse system by conducting all negotiations and lobbying behind the scenes, out of the public eye. In both Colombia and Chile, most current advocacy efforts for abortion law reform are low-key and effectively out of sight. Advocates defend this strategy on ethical grounds: in both countries, public debates on abortion have resulted in increased repression of clandestine clinics. This strategy might result in some legal gains, but in the long term it fails to solve the problem of the perceived illegitimacy and immorality of pro-rights stances on these controversial issues in the public realm.

How can the political culture be changed so that bringing these debates into the public view is less costly, both for the advocates and for the men and women who most suffer from the double discourse system? How can the defensive

dynamic be turned around, so that the pro-rights forces could play a proactive role in national debates, rather than responding to initiatives that would erode rights even further? It is clear that various advocacy strategies must focus on reducing political risks for potential advocates. One such strategy could be to present rights-affirming voices in the mass media, bringing hitherto private opinions into the open. Increased exposure to the arguments on both sides helps to legitimize the debate itself as well as pro-rights positions, and to reduce the political costs of engaging in debate and taking such positions publicly.

With the same aim, groups in Colombia, Peru, and Chile have used public opinion surveys to legitimize rights perspectives. Surveys can help to persuade politicians that defending rights accords with the views of their constituents and thus might come with fewer political costs than they fear.<sup>64</sup> Complementing these surveys with those conducted by Catholics for the Right to Free Choice might be doubly effective in showing politicians the extent of the distance between the laity and hierarchy within the Church.

In both countries, one of the sources of division within the women's movement on abortion has been precisely their effort to broaden their social base by including more grassroots and low-income women's organizations. Broadening the coalition that is pro-rights, however, is indeed a promising strategy for civil society groups. The more diverse and broad-based the groups that are supporting rights, the lower the political risk of defending those rights. Although such organizations are much more apt to be ideologically diverse than the feminist NGOs, it is precisely these low-income sectors that suffer the brunt of the negative consequences of rights-denying policies and have the most to gain from policy reform. Therefore, it would be advantageous to create partnerships with subgroups within these organizations, if not with the organization as a whole. In the last six years, many women's organizations and pro-rights public officials have followed the strategy of using the language of consensus documents and conventions signed by the leaders of their country and monitoring the country's progress towards

the implementation of the accords. While the Programme of Action from the ICPD and the Platform for Action from the UN Conference on Women in Beijing reflect compromises on some sexual and reproductive rights issues, their recommendations have still proved to be invaluable instruments for advocacy. This strategy is so useful precisely because it legitimates sexual and reproductive health and rights as key policy issues, thus reducing the political risks of advocacy.

For all potential advocates for sexual and reproductive rights, whether in government, civil society, or the Church, the political risks of publicly defending these rights are probably the key obstacle to attaining a critical mass of supporters. It is one thing to agree privately that sexual and reproductive choices should be a matter of personal conscience rather than law and to privately avail oneself of all of the mechanisms to expand such choices. It is a completely different thing to take on the political costs associated with committing oneself wholeheartedly to advocacy on behalf of controversial issues such as depenalization of abortion. Before designing strategies, an important exercise for advocates is to analyze the nature of the risks, as well as the sources, the arguments, and the tactics of attacks. Multifaceted strategies that use a combination of tactics to reduce these risks and effectively counter attacks—e.g., public opinion polls, alliances on other issues, international agreements, partnerships with media, and education of policymakers—are most effective, since such tactics are mutually reinforcing. Analyzing the differences among potential allies is also important in order to approach each of them appropriately. While the double discourse system poses important obstacles to advocacy efforts on behalf of sexual and reproductive rights in many Latin American countries, progress has still been made on key issues such as violence against women and sexual violence. It is to be hoped that rigorous analysis of the nature of political risks, adapting approaches to the diverse audiences for advocacy, and determined outreach to potential partners will bring successes in protecting the full range of sexual and reproductive rights. In the long run, as modern societies become ever more diverse in belief systems and in cultural/religious

traditions, there may be less and less acceptance of the undue influence of one religious doctrine on the State. The blurring of the distinction between what is considered immoral and what should be illegal greatly hampers efforts in Latin America to protect sexual and reproductive rights. Acceptance of diversity of opinions and belief systems among citizens of a country, and indeed among the believers in any religion, is one cornerstone of defense of sexual and reproductive rights. Respect for human rights is the other. Sexuality and reproduction are key aspects of human life and welfare, in relation to which governments should carry out their positive duty to promote comprehensive physical, emotional, and social health and well-being. As democratic cultures deepen and take hold, states may not be able to sustain repressive norms that deny essential choices to an ever-diversifying citizenry. In the long run, in democracies, policies that deny the sexual and reproductive rights of all citizens are not sustainable.

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1. Programme of Action of the International Conference on Population and Development, Report of the International Conference on Population and Development, 5–13 September 1994, UN Doc. A/CONF.171/13, para. 7.3. The reservations expressed by Argentina in the recent “Cairo+5” meetings coordinated by UNFPA represent an exception to the general consensus in Latin America.
2. The first quotation is from the ICPD Programme of Action (see note 1), para. 7.3. The second is draft “bracketed” language for the Platform for Action of the Fourth World Conference on Women, September 1995, UN Doc. A/CONF.177/20 (October 17, 1995), note 22, para. 97.
3. Catholics for Free Choice, *Catholics and Reproduction: A World View* (Washington, DC: CFFC, 1994).

4. L. Haas, "The Catholic Church in Chile," in C. Smith and J. Prokopy (eds), *Latin American Religion in Motion* (New York and London: Routledge, 1999); M. Htun, "Democracy, Dictatorship and Gender Rights: Divorce, Abortion and Women's Rights in Argentina, Brazil and Chile," unpublished Ph.D. dissertation, Harvard University, 1999. See also Htun's chapter on divorce in Chile and M. Blofield, *The Politics of Abortion in Chilean and Argentina: Public Opinion, Social Actors and Discourse, and Political Agendas*, presented at Latin American Studies Association conference, Chicago, September 1998.
5. R. Petchesky, and K. Judd (eds) for the International Reproductive Rights Action Group (IRRRAG), *Negotiating Reproductive Rights* (New York and London: Zed Books, 1998), p. 17.
6. The author worked in these countries from 1992 to 1998 as the Program Officer in charge of the Ford Foundation's Sexual and Reproductive Health Program, based in the Andean Region and Southern Cone office in Santiago, Chile.
7. I am indebted to Mari Luz Silva, Director in the 5th Region of the Ministry of Education in Chile and one of the designers of the government's sex education program, for her thoughts on Catholic cultures and the double discourse.
8. The Philippines and the Vatican are other notable examples of states heavily influenced by Catholicism. It would be interesting to analyze whether the double discourse system operates in other countries with a hegemonic religion as well.
9. From the author's conversations with members of *Católicos por el Derecho a Decidir* (Latin American affiliates of Catholics for Free Choice) in six Latin American countries.
10. Koinonia [organization of theologians], *Problemática Religiosa de la Mujer que Aborta* (Bogotá: Universidad Externado de Colombia, 1996). Also presented at a World Health Organization meeting of Latin American researchers on abortion at the Universidad Externado de Colombia, Bogotá, Colombia, November 1994.
11. For an excellent in-depth analysis of the issue of divorce in Chile, see M. Htun (note 4).
12. L. Haas (see note 4) describes how Church officials "collect the bill" (*cobran la cuenta*) in their lobbying of representatives of the Left who received protection from the Church (p. 60).
13. John Paul II's conservative appointments of bishops started during the military dictatorship, strengthening the faction of the Church that was allied with the military government even as progressive sectors of the Church led the efforts to protect human rights. See L. Haas (note 4) and M. Htun (note 4) for a full discussion.
14. The ownership of Chilean newspapers and television stations is concentrated in two large conglomerates and the Catholic Church, all of which tend to have socially conservative editorial policies. See M. Blofield (note 4), p. 22. Uca Silva of *Sur Profesionales*, Santiago, also analyzes the effect on public debates of this concentration in an unpublished 1996 report to the Ford Foundation's Andean and Southern Cone office.
15. Chile, Malta, and Andorra are the only countries with no divorce law.

See M. Htun (note 4).

The Universal Declaration of Human Rights, G.A. Res. 217A (III), UN GAOR, Res. 71, UN Doc. A/810 (1948), art. 16.1 states that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution," thus implicitly recognizing dissolution as part of the right to marriage. Articles 23.2 and 23.4 of the International Covenant on Civil and Political Rights, G. A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, UN Doc. A/6316 (1966) contain similar language. Applying the logic of implicit recognition, the most recent report of the UN Committee on Human Rights on Chile (CCPR/C/79/Add.104, para. 17) said that the lack of a divorce law might constitute a violation of Article 23. Thanks to Luisa Cabal of the Center for Reproductive Law and Policy and Gaby Oré Aguilar of the Ford Foundation for thoughts and references.

16. Grupo Iniciativa Mujeres, "Encuesta Nacional: Opinión y Actitudes de las Mujeres Chilenas sobre la Condición de Género," January 1999, carried out by Quanta Sociología Aplicada, using a nationally representative urban sample of 1,800 women in 22 cities.

17. M. Aylwin and I. Walker, *The Chilean Family: Aspirations, Realities, and Challenges* (1996), p. 121, quoted in M. Htun (see note 4).

18. This provision has its basis in canon law, in which it was assumed priests would know the situation of couples residing in the same neighborhood well enough to prevent them from being married if there were important impediments, such as too close a relation or an existing spouse. The opinion in the Supreme Court case of Sabioncello con Haussman (March 28, 1932) reads: "It is legitimate to prove the lack of competence of the Official of the Civil Registry by means of the witnesses' testimony [that neither of the spouses lived within the jurisdiction of that official] during the annulment proceedings." Quoted in H. Corral, "Iniciativas Legales sobre Familia y Divorcio," in *Controversia sobre Familia y Divorcio* (Santiago: Ediciones Universidad Católica de Chile, 1997), p. 172.

19. This high rate is explained by both nonformalized unions and adolescent pregnancies. A new law giving children born inside and outside of marriage equal rights and benefits took effect in 1999; see C. Gutierrez, "46% de niños chilenos nacen fuera del matrimonio," 27 October 1999, *La Tercera* [newspaper].

20. M. Htun (see note 4).

21. Meeting with Instituto de la Mujer in Chile in 1996, reporting on research on pensión alimenticia.

22. As established in Article 23.2.4 of the ICCPR (see note 15).

23. There is definitely less stigma attached to advocating for a divorce law, however, than for a law on "therapeutic" abortion, which in current debates in Chile would include legality of abortion in cases of rape, incest, and severe fetal problems.

24. L. Haas (see note 4), p. 60, and M. Htun (see note 4). Htun's chapter on divorce in Chile provides an in-depth analysis of the "reformist coalitions" promoting divorce in the 1990s and of the dynamics within the

corps of Christian Democrat legislators.

25. See C. Kraus, "Victoria Would Not Be Amazed by Chile Today," 24 October 1999, *New York Times*. The new law abolishing legitimacy and a resolution abolishing the law against sodomy were both passed recently. L. Haas (see note 4) also agrees with this assessment, quoting several rightist deputies to document her perception that members of the political right are defecting from their formerly uniform support for the Church's lobbying efforts.

26. María Antonieta Saa, deputy to the Congress, quoted in an unpublished 1997 study by Peruvian sociologist Maruja Barrig, "De Cal y Arena: ONGs y Movimiento de Mujeres en Chile," p. 17.

27. M. Barrig (see note 26), p. 16.

28. Many personal communications from Chilean colleagues between 1992 and 1999.

29. The main sources for this section on Colombia and Chile are the NGO shadow reports for the 20th session of the CEDAW Committee for both countries. Both are available in English and Spanish. For Colombia, see Center for Reproductive Law and Policy (CRLP) and Corporación Casa de la Mujer, *Derechos Reproductivos de la Mujer en Colombia: Un Reporte Sombra* (New York and Bogotá: CRLP and Corporación Casa de la Mujer, 1998). The Chilean NGO shadow report, *The Rights of Women in Chile* (New York and Santiago, 1999) was co-written by CRLP, the Comité Latinoamericano y del Caribe para la Defensa de los Derechos de la Mujer (CLADEM), the Foro Abierto de Salud y Derechos Sexuales y Reproductivos, and the Corporación de la Mujer, La Morada.

30. ICPD Programme of Action (see note 1), para. 7.3.

31. Although hospital data on abortion are widely acknowledged to be under-reported, abortion still figures in official data as the first cause of maternal mortality in seven Latin American Countries, including Chile. See FLACSO (Chile) and Instituto de la Mujer (Spain), *Mujeres Latinoamericanas en Cifras: Tomo Comparativo* (Santiago, Chile: FLACSO, 1995), p. 131.

32. The list of countries and restrictions is available from the Center for Reproductive Law and Policy at <http://www.crlp.org/icpdabortion1.html>. In this list, Colombia is counted as a country allowing abortion in cases of threat to the woman's life or physical health, but in fact the law is ambiguous. No. 5, Article 29 in the Colombian Penal Code can be interpreted as depenalizing interruptions of pregnancy in "estado de necesidad" (state of necessity) to protect the life or health of the mother. Protection in these cases is open to interpretation by individual judges and thus is not guaranteed. For a full discussion of the legal situation of abortion in Colombia, see D. Arcila, "El Aborto Voluntario en Colombia: Urgencia de un Abordaje Jurídico Integral," in *Perspectivas en Salud y Derechos Sexuales y Reproductivos* (Medellín: CERFAMI, 1999), pp. 14-22.

33. Personal communication from Dr. José Barzelatto, Center for Health and Social Policy.

34. Alan Guttmacher Institute, *An Overview of Clandestine Abortion in Latin America* (New York: Alan Guttmacher Institute, 1996).

35. "Aborto: Informe Especial," *Cambio* 16, February 1997, 20–23, quoted in D. Arcila (see note 32).
36. L. Zamudio, presentations to the Meeting of Researchers on Induced Abortion in Latin America and the Caribbean at the Universidad Externado, Bogotá, November 1994, and the Latin American and Caribbean Parliamentarians' Meeting on Abortion, Bogotá, October 1998.
37. D. Arcila (see note 32), p. 8.
38. D&C stands for dilation and curettage—that is, the scraping of all remains of the fetus from the uterus in cases of incomplete abortion. The account of forced medication comes from a conversation with the Medellín, Colombia chapter of the National Network for Sexual and Reproductive Rights in the mid-1990s. In the author's experience, the accounts of hostile remarks are almost universal when talking with researchers and activists who work with the health sector and community groups on the issue of abortion.
39. January 29, 1997 survey by the Centro Nacional de Consultoría, quoted in D. Arcila (see note 32), p. 22.
40. See Grupo Iniciativa Mujeres (note 16).
41. I was first alerted to this issue in a conversation with anthropologist Monica Weisner, the researcher for the Alan Guttmacher study. Most informants in the Chilean women's movement believe that safe clandestine abortion services became scarcer after 1994 than they were previously, and now the clandestine referral networks often have no referrals to offer.
42. In Chile, the author's personal experience shows that a course on Catholic religion is mandatory in all schools, public and private, and can only be taught by instructors certified by a Catholic institute. Parents of children of other faiths must request to be excused from the class and cannot organize an alternative class on, say, world religions.
43. Examples of these ads can also be found in the article "Aborto: ¿Hora de legalizar?" *Semana*, 9–16 February 1993, 41.
44. "Aborto: ¿Hora de legalizar?" (see note 43).
45. The glaring exception to this trend has been the amnesty for the human rights abuses committed during the dictatorship. This amnesty is now, however, subject to serious legal challenges both within Chile and from abroad—most notably in England, where legal proceedings to extradite General Pinochet to Spain have set new precedents in the enforcement of international human rights standards.
46. Lidia Casas, *Women Behind Bars* (New York: Center for Reproductive Law and Policy and Santiago: Open Forum on Reproductive Health and Rights, 1998). A Spanish language edition is also available.
47. Personal communication from José Barzelatto.
48. 98% of all court cases do not result in a sentence. In cases of homicide, 95% of the cases are never solved. Source: Mauricio Rubio, *Crimen sin sumario. Análisis Geoeconómico de la Justicia Colombiana* (Bogotá: Centro de Estudios para el Desarrollo de la Universidad de los Andes (CEDE), 1996). The *Consejo Superior de Judicatura* disputes this figure and estimates impunity at 60%, which is still extremely high. Personal communication from Carmen Posada, lawyer and Executive Director of



CERFAMI (Center of Integrated Resources for Families) in Medellín.

49. In 1991, there were 137 court cases and 29 people imprisoned for abortion in Colombia; see "Aborto: ¿Hora de legalizar?" (note 43). In comparison, the Chilean study (see note 46) shows that 57% of the women who had abortions and whose cases were reviewed spent time in prison, and 36% were held for more than two weeks. The study also reports that 22 women in the small provincial city of Puerto Montt were in jail for abortion at the time of a visit by the Open Forum, a reproductive health NGO network (p. 21). Given that Colombia has 2.6 times the population of Chile, the level of repression in Chile is clearly much higher. Given the high levels of impunity for other crimes in Colombia, however, it is telling that so many women end up in jail for abortion.

50. Many personal communications from Colombian colleagues over the years, most recently from Carmen Posada (see note 48).

51. Author's personal experience through meetings with reproductive and sexual rights groups in Colombia, 1992–1998.

52. Preliminary finding from the author's study of reproductive and sexual rights networks.

53. This campaign took many forms in different cities, since the network is decentralized. The network in Medellín achieved much national press coverage and an outpouring of support from diverse sources for their campaign on the case of Alba Lucia, a poor peasant woman and the victim of a rape that was never proved in court, who accidentally killed her newborn while giving birth in a latrine. Unfortunately, the case suffered a defeat in the higher court, partially because she had never had access to a proper lawyer until the later stages of her case, and also because it was legally a homicide rather than an abortion or rape case. (Personal communications from the network members and Carmen Posada.)

54. Current proposals would allow abortion to save the woman's life and health or in cases of severe fetal defects or rape and incest, under the misnomer of "therapeutic abortion."

55. She regained her seat in the next elections in 1997, however. Mala Htun (personal communication) notes that other sponsors of the bill were not defeated. It would be interesting to analyze what circumstances made her more vulnerable.

56. M. Barrig (see note 26).

57. This was known as the Larrain bill. Personal communication from Josefina Hurtado of the Forum, October 1999.

58. The best-known example from Brazil is that of Sister Yvone Gerbara, who gave an interview to the national magazine *Veja* in which she advocated depenalization of abortion. In Colombia, Alberto Munera, a prominent Jesuit theologian, was deprived of his teaching post in 1995 after he defended ICPD principles on a national television program.

59. This was Dr. Horacio Croxatto from the Instituto Chileno de Medicina Reproductiva (ICMER). Personal communications from Dr. José Barzelatto and several other Chilean colleagues.

60. It would be important to conduct a follow-up study to the 1994 Guttmacher study to verify whether in fact there are fewer providers than before and whether, as a consequence, abortion-related morbidity and mortality has risen.

**61.** I am indebted to Dr. José Barzelatto for consistently pointing out the importance of this agreement. See “World Religions and the 1994 UN International Conference on Population and Development: A Report on an International and Interfaith Consultation” (Chicago: Park Ridge Center for the Study of Health, Faith, and Ethics, 1994). For a full discussion of increased religious diversity in Latin America, see C. Smith and J. Prokopy (note 4).

**62.** According to the 1992 census, about 13.4% of the Chilean population are Evangelical/Protestant, while 76.7% are Catholic. Atheists make up 5.8% of the population, and “other religions” (probably mainly Jewish and Muslim) make up 4.24%. See F. Kamsteeg, “Pentecostalism and Political Awakening in Pinochet’s Chile and Beyond,” in C. Smith and J. Prokopy (note 4). More recent studies show an increase in the percentage of Evangelicals to 16% and a decrease in the percentage of Catholics to 72%. See *Diario El Segundo*, 17 December 1998, quoted in a personal communication from Josefina Hurtado.

**63.** Personal communication from Luisa Cabal, staff attorney, Center for Reproductive Law and Policy.

**64.** Calandria, a communications NGO in Peru, promoted this strategy, which has also been adopted by the Grupo Impulsora in Peru and the Grupo Iniciativa in Chile, two post-Beijing NGO networks.