Latin American Research Review (2025), 1–19
doi:10.1017/lar.2024.72

LARR Latin American Research Review

ARTICLE

Gendering Justice in the Chilean Courts: Institutional Developments and Legal Actors' Perspectives

Karime Parodi

UCLA, Los Angeles, California, US
Email: karimeparodi@ucla.edu

(Received 21 September 2022; revised 12 June 2024; accepted 06 July 2024)

Abstract

This article examines how, why, and with what limitations judges have adopted a gendered perspective (*perspectiva de género*) in Chile. It addresses why the Supreme Court's Secretariat of Gender and Nondiscrimination advocates for a particular understanding of the concept, how judges understand and apply it, and the barriers they perceive to its implementation. Drawing on interviews, ethnographic fieldwork, and analysis of court rulings, the study identifies four ways in which judges understand a "gendered perspective": as a method to detect stereotypes, a tool to analyze context, an instrument to reach a fair result, and a rejection of the notion of loosening evidentiary standards. The article argues that in contemporary Chile, different legal cultures shape disparate understandings about a gendered perspective. There is significant contestation between understandings endorsed by the dominant textualist legal culture and those favored by the emerging interpretive legal culture. By illuminating the limitations Chilean judges face in this evolving area of the law, the study contributes insights of relevance for our understanding of the factors that affect gender and judging in Latin America and beyond.

Keywords: gendered perspective; Chile; judiciary

Resumen

Este artículo examina cómo, por qué y con qué limitaciones juezas y jueces han incorporado una perspectiva de género en Chile. El trabajo aborda cómo la Secretaría de Género y No Discriminación de la Corte Suprema promueve un entendimiento particular del concepto, cómo juezas y jueces lo comprenden y lo aplican, y las barreras que existen para su implementación. A partir de entrevistas, trabajo de campo etnográfico y análisis de sentencias, el estudio identifica cuatro formas en que juezas y jueces entienden el concepto de perspectiva de género: como un método para detectar estereotipos en el proceso judicial, una herramienta para analizar el contexto en que suceden los hechos, un instrumento para producir un resultado justo y un rechazo de la noción de rebaja de estándar de prueba. El artículo argumenta que en el Chile contemporáneo existen distintas culturas legales que generan distintas conceptualizaciones de la perspectiva de género. Respecto de la perspectiva de género existe un pronunciado debate entre ideas sostenidas por la cultura textualista dominante y aquellas favorecidas por la emergente cultura interpretativa. Al iluminar las limitaciones que juezas y jueces en Chile encuentran en esta área en desarrollo del derecho, el estudio contribuye ideas de relevancia para nuestro entendimiento de los factores que afectan el juzgamiento con perspectiva de género en América Latina.

Palabras clave: perspectiva de género; Chile; poder judicial

Over the past several decades, there has been global concern about the ways in which legal institutions treat various groups, particularly women and LGBTQIA+ individuals. In response, a number of international tribunals have incorporated provisions and practices to improve such groups' access to justice. This awareness of how the law has an impact on disadvantaged groups has gradually permeated the judiciaries in Latin America. International institutions such as the Inter-American Court of Human Rights (IACHR) and the Ibero-American Judicial Summit have promoted a "gendered perspective" (*perspectiva de género*) in Latin American judiciaries. Furthermore, over the past two decades, multiple Latin American supreme courts have developed processes to advance such a perspective.

Since 2014, the Supreme Court of Chile has conducted a series of efforts to promote a gendered perspective in the Chilean judiciary. Inaugurated with the appointment of a Supreme Court justice in charge of the gender affairs of the Court, such efforts have included, for example, the creation in 2017 of the Technical Secretariat of Gender and Nondiscrimination (the Secretariat), the publication in 2018 of a Good Practices Handbook (*Cuaderno de Buenas Prácticas*) to incorporate a gendered perspective into adjudication, and the design and execution of gender-sensitive training for judges on the bench. The Secretariat defines a gendered perspective as a "a method or tool of analysis designed to study the cultural constructions and social relations between men and women, identifying all those forms of interaction that create gender inequality and discrimination" (Secretaría 2020b, 60). This definition of a gendered perspective, which is also described in conferences and online materials as a method to identify stereotypes and biases in the judicial process, is the one predominantly circulated by the Secretariat, although other understandings are also held by Chilean judges.[1]

In this article, I examine how these efforts are shaping current thinking and practice with regard to a gendered perspective in the Chilean legal system. I address the following questions: Which understanding of a gendered perspective does the Secretariat promote in Chile, and why? How do judges understand the concept of a gendered perspective, and why do they hold those views? Which obstacles do judges encounter when incorporating a gendered perspective? Drawing on interviews, ethnographic fieldwork, and analysis of court rulings, I make contributions to three distinct bodies of literature that rarely interact with one other: judicial politics, legal anthropology, and feminist institutionalism. Central to my arguments—and putting these three literatures in conversation—is Ansolabehere, Botero, and González's (2022) concept of legal culture as a series of professional norms that shape judges' hermeneutical routines and their understandings of which practices are acceptable within their judicial role.

This article argues that there are coexisting legal cultures in Chile that shape the meaning that judges assign to a gendered perspective in the adjudication process. There is significant contestation between understandings endorsed by the dominant textualist legal culture and those favored by the emerging interpretive legal culture. Thus, ideas of what a gendered perspective should be are varied and contested in the Chilean context, as judges understand and apply the concept in different ways that ultimately are filtered through and bounded by certain entrenched aspects of the legal culture. The Secretariat is a key factor in this context of contestation about the meaning of a gendered perspective, as it predominantly promotes a particular notion palatable to the dominant legal culture, namely a gender perspective as a method to identify gender stereotypes and biases.

Following Ansolabehere, Botero, and González (2022) and their conceptualization of legal culture, I show how Chilean judges belong to different legal cultures, particularly in

[1] In other documents the Secretariat emphasizes other aspects of a gendered perspective such as legal interpretation, the importance of international human rights treaties, and structural inequality (Secretaría 2018, 57; Muñoz 20).

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

relation to a key aspect that shapes understandings of a gendered perspective: the practice of "strong" conventionality control, which entails the use of international human rights treaties with the effect of sidelining domestic law, to some extent. This view has implications for how judges understand their relationship to the executive and legislative branches, or their role in the political system, as judges who engage in strong conventionality control do not feel bound by the laws approved by them. Judges who follow this doctrine are also not deferential to the judicial hierarchy, or higher court preferences, as Appeals Court judges reject the practice of strong conventionality control. The argument that there are coexisting legal cultures in Chile has implications for a plural judiciary in which debate within the legal and judicial community is a feature of a more democratic setting (Hilbink 2019) where different perspectives coexist, and debate around them is ongoing in a dynamic context.

My argument unfolds in three parts. First, drawing on Sally Merry's (2006) concept of vernacularization, I argue that a fundamental factor that explains the choice by the Secretariat to promote a gendered perspective mostly as a method to remove stereotypes is rooted in Chilean legal culture, as the Secretariat vernacularizes the most palatable understanding for an audience who adheres to a textualist legal culture. Second, I argue that judges primarily understand the concept of a gendered perspective in one of four ways. While feminist legal theorists tend to conceptualize a gendered perspective in a single definition loosely as a method of analysis to identify stereotypes and biases, Chilean judges understand and apply the concept in different ways with important implications. Finally, drawing from feminist institutionalism (Mackay, Kenny, and Chappell 2010), I show through a longitudinal analysis how institutional change regarding a gendered perspective has occurred in Appeals Courts to some degree during a five-year span, even as these spaces continue to be conservative milieus featuring adherence to a predominantly textualistic legal culture. My findings reveal both continuities and changes in legal culture three decades after the transition from military rule (Couso and Hilbink 2011; Hilbink 2007; Huneeus 2010) and show a process of changing legal visions (González-Ocantos 2016).

Gender and judging on a global scale

Within the past thirty years, gendered concerns within international, regional, and ad hoc adjudication have proliferated and, considering gains and setbacks (Chappell 2016), have shaped debate and practice. International criminal tribunals have historically neglected crimes that disproportionately affect women and girls, such as sexual and gender-based violence. Yet since the 1990s, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and, to some extent, the International Criminal Court (ICC) have implemented "gender justice" (Grey and Chappell 2019). This notion involves indicators such as examining crimes that seem neutral through a gendered lens and recognizing the credibility of victims of sexual violence even if there are inconsistencies in their accounts.

In the Latin American context, there has been a paradigm shift in the jurisprudence of the Inter-American Court of Human Rights (IACHR) since the early 2000s. Scholars have referred to the court's new standards as "evidentiary breadth" (Di Corleto 2018) and "feminization of evidentiary standards" (Zelada and Ocampo 2012). For example, the court's new standards grant greater value to victims' testimony, such that it alone can secure a conviction in certain circumstances, and also center the relevance of indirect evidence (Di Corleto 2018). The IACHR has played an important role in promoting a gendered perspective in Latin American judiciaries. For example, two cases that came before the IACHR—*González y Otras (Caso Algodonero) v. México* and *Atala Riffo y Niñas*

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

v. Chile—established obligations for Mexico and Chile to incorporate a gendered perspective into legal institutions.

Several Supreme Courts in Latin America have developed policies, published good practices handbooks, and created institutions to promote a gendered perspective in the courts (CEJA 2021). These processes are characterized by limited funding, institutional instability, and the feminization of personnel and leaders. Argentina, Colombia, and Mexico's processes have benefited from significant constitutional change by enshrining international human rights treaties and conventionality control in the constitution and assigning them constitutional status. More than a decade ago in Argentina, a series of gender-sensitive institutions (*institucionalidades de género*) at different levels of the judiciary and the legal system were established; many of them were created by the first women to reach the Supreme Court and other institutions. Early examinations suggest a patchwork of consolidation of these institutions, as many of them show a somewhat precarious organizational and funding situation (Bergallo and Moreno 2017).

The 1991 Colombian Constitution ushered in a rights-centered era with a framework amicable to gendered concerns. Since then, the Constitutional Court has had a central role in developing gender-sensitive jurisprudence that radiates throughout the entire judicial system due to the court's doctrine of binding precedent. An intensive process of legal mobilization has been fundamental in promoting such ideas within the context of a neoconstitutionalist legal culture (Buchely 2014), and a gendered perspective has been included in the special jurisdiction of the peace and in several laws as a principle. However, judges do not always apply it, even when mandated by law (Pabón-Mantilla and Cáceres-Rojas 2021). Similarly, a constitutional reform in 2011 and the increased relevance of IACHR jurisprudence have been fundamental in Mexico for promoting a gendered perspective, yet the many gender offices at the federal and state judicial level are underfunded and do not always have specialized personnel (EQUIS 2017). As these changes that relate to the constitutionalization of international human rights treaties and conventionality control have not taken place in Chile, the implementation of a gendered perspective has been more limited and characterized by contestation.

There is a broad scope to what a gendered perspective can entail in the courts. Approaches can encompass substantive, procedural, and evidentiary changes as well as the incorporation of victim-centered approaches, the representation of women in the courts, and a series of aspects beyond adjudication to improve underrepresented groups' access to justice. For instance, court buildings can be redesigned to have a separate entrance for defendants and victims of violence against women (VAW). However, while the concept of gendered perspective is malleable and potentially all-encompassing, in this article, I take an empirical approach, seeking to document how judges understand and apply the concept in their adjudicative practices.

Chilean legal cultures, circulation of transnational ideas, and institutional change

In this section, I offer an interdisciplinary theoretical framework drawn from three bodies of scholarship: judicial politics, legal anthropology, and feminist institutionalism. I put them in conversation through the analytic of legal culture, which, following Ansolabehere, Botero, and González (2022), encompasses three aspects: (1) judges' hermeneutical practices and attitudes, (2) their understandings of their role within the political system, and (3) their ideas about their role within the judicial hierarchy. While textualist legal cultures have historically been dominant in Latin America, there is a continuum from textualist to interpretive legal cultures in the region, and these can sometimes coexist (Ansolabehere, Botero, and González 2022).

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

Ansolabehere, Botero, and González's (2022) first component of legal culture, hermeneutical routines—the one I predominantly focus on—concerns which sources of law are understood as legitimate to draw upon within adjudication, as they entail "shared understandings of what is possible, permissible and appropriate in legal interpretation" (Ansolabehere, Botero, and González 2022, 3). Textualist legal cultures tend to constrain the legal framework to domestic law while skewing the application of international instruments. Conversely, interpretive legal cultures embrace international human rights law, emphasize the open-ended character of the law, and center the role of judges in constructing legal meaning. The second component relates to how judges understand their role in the political system. Textualist-leaning judges defer to the legislature and tend not to expand on rights as constrained by the letter of the law, whereas interpretive-leaning judges take into consideration the social impact of their decisions and perceive the judiciary as having the power to "redefine the contours of citizenship" (Ansolabehere, Botero, and González 2022, 8). The third component, judges' perceptions of their role within the judicial hierarchy, relates to whether judges feel free to engage in hermeneutical techniques that diverge from those applied by higher courts. Textualist judges tend to follow higher courts' practice; conversely, interpretive judges tend not to feel bound by their decisions and engage in creative hermeneutical techniques. In the following paragraphs, I discuss key concepts and ideas of the disciplines I draw upon.

Judicial politics scholars have looked at the factors that shape institutional change and stasis in Latin American judiciaries (Kapiszewski and Taylor 2008), and several examine the role of legal culture in Chile (Couso and Hilbink 2011; Couso, Huneeus, and Sieder 2010; Hilbink 2007; Huneeus 2010). Lisa Hilbink (2007) characterized legal culture in Chile as traditionally textualist, in that judges understand their role in a constrained manner and defer to the executive and the legislature. Furthermore, Hilbink (2007) described the judiciary as centralized, hierarchical, and unitary, where departing from traditional or textualist interpretations was deemed unprofessional and ultimately risky to a judge's career. Subsequently, Couso and Hilbink (2011) documented an incipient change toward a neoconstitutionalist legal culture—a legal paradigm that favors judges' use of principles and human rights treaties—in which some lower court judges feel empowered to assertively defend constitutional rights. Building upon the work of these scholars and focusing on strong conventionality control, I argue that in Chile, disparate legal cultures significantly shape how judges understand and apply a gendered perspective.

While judicial politics scholars examine the phenomena that undergird the functioning of the courts, legal anthropologists are committed to examining, at the granular level, how state and legal actors engage in everyday processes and practices on a domestic, transnational, and global scale (Goodale 2017; Speed 2008). Some of the processes that ethnographers look at involve the circulation and translation of transnational gendered ideas and how these are vernacularized in particular local contexts (Merry 2006). The process of vernacularization entails "the extraction of ideas and practices from the universal sphere of international organizations, and their translation into ideas and practices that resonate with the values and ways of doing things in local contexts" (Merry and Levitt 2017, 213). Organizations and institutions that work as translators of international ideas face a "resonance dilemma." As Merry and Levitt (2017) explain, "The more extensively a human rights issue is transformed to be concordant with existing cultural frameworks, the more readily it will be adopted but the less likely it is to challenge existing modes of thinking" (219). Thus, agents engaged in vernacularization have strategic considerations in how they promote ideas in local contexts. I argue that legal culture is an important factor in how the Secretariat translates the concept for a Chilean audience.

Whereas legal anthropologists center people's intersubjective experiences and how these shape their sociolegal worlds, feminist institutionalists examine the implementation

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

of gendered policies and norms from an organizational viewpoint. Feminist legal scholars argue that the law is a patriarchal system that reinforces women's societal subordination through multiple structures and practices (Facio 1999; MacKinnon 1989). Feminist institutionalists draw upon such insights to assess institutional gendered change; they concentrate on gradual institutional change driven by internal institutional logics in a context of opportunities and constraints (Mackay et al. 2010). Such scholars examine the processes, obstacles, and factors involved in making institutions gender-sensitive, including institutional culture (Chappel 2016). I draw from this scholarship to show that institutional change has occurred to some extent in Chilean Appeals Courts in a five-year span and analyze the implication of this change vis-à-vis the legal culture of these courts.

Data and methods

My findings are based on nineteen months of fieldwork between 2019 and 2024. I conducted interviews throughout the country, while my ethnographic fieldwork was predominantly based on a location I will refer to as "Río Santo." I draw from over a hundred interviews with judges, prosecutors, public defenders, and other legal and nonlegal actors; shadowing of the work of intrafamily violence prosecutors and public defenders specialized in women defendants; analysis of court rulings and official documents; attendance at online and in-person legal conferences; and informal conversations with legal academics. The bulk of the data that I draw from for this article are transcribed interviews and court rulings. I draw from a total of fifty-five semistructured interviews with judges: nineteen Appeals Court judges, twenty-one Criminal Court judges, six Family Court judges, two Civil Court judges, one Mixed Competence judge, three Supreme Court judges, and one justice from the Constitutional Court. I recruited the judges from snowball sampling, cold emailing, and direct recruitment. Interviews were conducted both in person and through Zoom and lasted between forty minutes and two and a half hours. I relied on the grounded theory approach (Corbin and Strauss 2008) as a method of data analysis, as it allows categories to emerge without forcing preconceptions on the data. My positionality as a middle-class Chilean woman studying anthropology abroad shaped relationships to some degree. As a Chilean, I would seamlessly blend into the cultural milieu, while as an anthropologist, I was sometimes perceived as a curiosity within the legal realm. Yet perhaps the aspect of my identity that made a tangible difference in certain interactions is my identification as a woman, which would sometimes influence the willingness of some victims and victim-activists to talk to me.

A gendered perspective in the Chilean Judiciary: Top-down efforts for institutional change

The term *gendered perspective* has become ubiquitous in Chile in a number of public spaces: social media posts, protests, the official discourse of state institutions, and activist and nongovernmental organization discourses. It is well documented why a gendered perspective in the Chilean courts is urgent, particularly in cases of VAW and sexual offenses (Araya 2020; Cabal, Lemaitre, and Roa 2001; Casas and Mera 2004; Rivas 2022; Secretaría 2020a). Yet advocates seek to mainstream a gendered perspective in all aspects of legal practice and judicial expertise and not just in the most evidently gendered areas of the law, such as sexual crimes and gender and domestic violence (Secretaría 2018).

The concept of a gendered perspective entered strongly into the Chilean judiciary's vocabulary with the Seventeenth Ibero-American Judicial Summit in 2014, which was

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

hosted in Chile and in which the summit's first Gender Commission was created. Earlier that same year, a lawyer with an academic profile—with a trajectory outside of the judicial branch—was appointed as the Justice in charge of gender affairs of the court and would eventually serve as president of the newly created summit's Gender Commission.[2] The choice of this lawyer as a justice who would promote gender-sensitive approaches was crucial, as she had significant experience working closely with governmental institutions to advance progressive gendered legislation (e.g., divorce law, paternity recognition law). When I interviewed her in 2019, she told me that the summit was a crucial opportunity to engage with other judiciaries because it allowed her and her collaborators to understand the international relevance of gender issues. Therefore, international cooperation, the exchange of ideas (Lousada 2020), and the appointment of a justice with a career outside of the courts have been vital to the promotion of a gendered perspective, particularly for an institution that has historically looked inward for guidance and has been averse to innovation (Hilbink 2007).

The Supreme Court's Secretariat of Gender and Nondiscrimination works closely with allies (e.g., an organization of female judges called Magistradas Chilenas, or MACHI) to promote materials to incorporate a gendered perspective within judges' adjudicative praxis. For instance, the *Good Practices Handbook*—which I closely examine elsewhere (Parodi 2023)—offers examples of national and IACHR jurisprudence regarding stereotypes, intersectionality, and VAW. Additionally, the Secretariat organizes a yearly contest in which it invites submissions of rulings that incorporate a gendered perspective. This contest has been, to some extent, subject of criticism by some of my interlocutors and others (Henríquez 2023; Wilenmann 2023), predominantly for the personal notoriety it gives judges. Most of the participation at the competition is significantly feminized, as is the labor associated with promoting a gendered perspective in the courts. The Secretariat also created "Gender Committees" in all of Chile's seventeen Appeals Courts; the committees conduct seminars and discussion within their jurisdiction to promote a gendered perspective.

The Chilean judiciary is worthwhile to look at because of its comparatively high levels of external judicial independence, which suggests, in principle, that judges are free to respond to the Supreme Court's efforts to make their institution gender-sensitive. Yet the internal independence of courts remains a challenge due to the institutional design of the Chilean judiciary, as judicial governance is rooted in the Supreme Court: "As has been observed for many years now, the institutional structure of the Chilean judiciary nurtures a corporative and closed mentality, in which judges are oriented principally to their hierarchical superiors, who supervise and evaluate their performance and maintain control over their promotion" (Hilbink 2019, 177). Thus, in a context in which the promotion of a gendered perspective comes from the top—as has been the trend in Latin America—it is relevant to look at the ways actors are responding to the Supreme Court's efforts in the context of a culture in which judges are used to look at higher courts' decisions for guidance. Additionally, the judicial branch in Chile has very low levels of confidence and approval from the citizenry.[3] Thus, confidence and approval may be somewhat affected by the Court's recent gender-sensitive efforts, as some recent cases of sexual assault and femicide have caused a national uproar, such as the Antonia Barra case.

[2] A feature of the Chilean judiciary allows incorporation of a few practicing lawyers and legal academics as Supreme Court justices.

[3] I drew on data sets from Latinobarómetro for the year 2020, available at https://www.latinobarometro.org/lat.jsp.

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

Judging with a gendered perspective: Chilean judges' perspectives and practices

In this section, I offer an analysis of how my interviewees understand and apply the concept of a gendered perspective, three of which they subscribe to—a method to remove stereotypes and biases from the judicial process, a tool to analyze the context in which facts are embedded, and an instrument to reach a fair adjudicatory result—and a fourth that they reject: the loosening of evidentiary standards and changes in the rules of evidence.

A method to remove stereotypes and biases from the judicial process

The most mainstream understanding of a gendered perspective for the judges I interviewed is that of a method to identify gendered stereotypes, inequalities, and biases within the legal process, legal arguments, and the law. This conceptualization was also expressed in legal conferences, workshops, informal conversations with legal academics, and the Secretariat's educational materials. While the Secretariat endorses other understandings of the concept to some degree, this is the most palatable to a textualist legal audience and thus the dominant meaning it promotes. Materials offered through the Secretariat's website, such as a journal, a podcast series, and explanatory videos, suggest the same understanding, usually referring to the metaphor of putting on "gendered glasses" (*lentes de género*) to see inequalities that had been invisible. The Supreme Court Justice who leads the Secretariat has offered the same definition in different seminars emphasizing the role of stereotypes: "A gendered perspective seeks to dissolve cognitive biases, stereotypes and prejudice associated with gender" (Muñoz 2019, 20). Two flagship IACHR cases that are usually brought up at trainings and seminars—the *Algodonero* case and the *Atala* case—deal with stereotypes against young women and lesbians. Several academics define a gendered perspective in this way while emphasizing that it is a legal mandate derived from international treaties and rooted in the international human rights principle of equality and nondiscrimination (Araya 2020; Facio 1999).

The majority of the judges I interviewed defined a gendered perspective as a principle of equality that allowed them to identify stereotypes and biases in the legal process. A Criminal Court judge stated that this understanding was compatible a fundamental judicial duty: "A gender perspective has precisely everything to do not with weakening impartiality but with strengthening it." Yet this was the crux of the disagreement with detractors, who believed a gendered perspective violated the principle of equality and favored women over men. A female Appeals Court judge who offered a similar conceptualization to many of her colleagues stated the following: "I understand it as a focus on equality ... I think a 'gendered perspective' makes us look at plaintiffs with equality, but being able to discern certain biases, stereotypes that we have historically incorporated." Thus, in her view, impartiality can encompass taking into consideration the disadvantages that certain groups experience. Practically all the examples interviewees discussed with me were about cases involving cisgender, heterosexual women whose legal cases were impacted by stereotypes and expectations about gendered behavior or identity. Stereotypes such as the "bad mother," the "lying woman," and "the vengeful woman" often appear and shape decisions in courts (Araya 2020). The famous *Atala* case, for instance, involved a woman who, because she was in a same-sex relationship, was perceived as an unfit parent by Chilean higher courts and thus stripped of her custody rights.

However, one middle-aged male Appeals Court judge told me of a case in which stereotypes were used against a man who was in a heterosexual relationship in which he performed a stereotypically feminine role. This man stayed home, did the housework, and

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

took care of the couple's pets. When his partner was hospitalized for a sudden ailment, her family denounced in Family Court that he was accessing her funds. Without hearing him first, the court decreed a precautionary measure that he was prohibited from seeing his partner. The Appeals Court judge offered that the fact that the Family Court was unable to see a man as economically dependent on a woman shaped the distrust that led to its decision. Thus, although predominantly understood as a method to scrutinize situations in which minority groups are at a disadvantage, a gendered perspective allows for examining power differentials and stereotypes however they shape relationships.

Several recent court rulings embrace this understanding of a gendered perspective a method to remove stereotypes and biases from the process of legal interpretation. In a very well-known case of homicide, abortion, and rape—among other crimes—judges explained that they had incorporated a gendered perspective in their ruling by taking into consideration as an aggravating circumstance the fact that the perpetrator acted upon a pregnant victim (*actuar sobre seguro*). The judges argued that the victim's pregnancy made her more vulnerable to defend herself. Judges stated in the ruling that the main role of a gendered perspective is to "remove biases or stereotypes which must be discarded and which should not interfere in the ways in which criminal justice actors make decisions." As this is the dominant understanding of the gendered perspective my interviewees offer, the Supreme Court's Secretariat has arguably been successful in its process of vernacularization of the concept. This is the meaning that is most easily defended and accepted, as it can be seamlessly incorporated into already fundamental legal principles and judicial duties without engaging in unorthodox practice or ascribing more power to judges. Yet as many of my interviewees stated, there is significant misunderstanding and resistance against the application of a gendered perspective as a method to detect stereotypes, as many of my interviewees claimed that their colleagues were uninterested in the topic and thought it was about favoring women and minorities.

A tool to analyze the context in which facts are embedded

My interviewees also described a gendered perspective as a tool to examine the immediate and broader context in which events take place. Two female Criminal Court judges whom I interviewed jointly spoke of the national and cultural context as a relevant factor in understanding and assessing the dynamics of facts in cases in which gender plays a relevant role. One of them stated, "I cannot overlook the fact that we belong to a patriarchal society in which women do not have the same rights as men." She spoke of how the fact that Chile is a sexist country should work as a *máxima de la experiencia* (experience-based knowledge that judges can use to decide a case) just as much as the fact that Chile is a seismic country. The *Good Practices Handbook* offers a very broad understanding of context, including the national context: "To offer context, is to read and interpret facts in the corresponding social environment, in the sum of conditionings and national, regional, local and community, institutional, political, economic, social, religious, cultural context" (92). These judges articulated a gendered perspective as an insight based in the cultural reservoir of people who shared certain characteristics: middle-aged women who were aware of the inequalities that underrepresented groups face. These traits would help harness an examination of context with a particular insight to detect gendered inequalities, thus suggesting that the identities and experiences of judges affect the way they make decisions.

Several other judges spoke of the analysis of context as well, focusing on the much more immediate context of people's particular situations. One Labor Court judge—whose decision had been celebrated at the Secretariat's contest of rulings with a gender perspective in 2023—included contextual considerations in a case of sexual harassment in which three women were accosted by their direct male boss for years while their

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

workplace offered no relief. The judge determined that the fact that these women had dependents and no other significant income was an important consideration in understanding why they had not quit their jobs, which she gleaned by examining the plaintiff's psychological evaluations. Similarly, in cases of sexual offenses, an acute analysis of the context of the relationship between victim and defendant can help understand how power dynamics shape sexually abusive interactions.

In interviews, judges also described how they assessed the context of defendants' lives, particularly the complex economic and familial context of women defendants who commit low-level offenses to financially support their families. Citing several international instruments, public defenders would often bring up in precautionary measures hearings that women who are in charge of the care of children or seniors should not be sent to preventive custody—or to jail at all if convicted. Yet the Criminal Court and Appeals Court judges I interviewed had mixed perceptions about these claims. While many of them defended this differential approach and thought that women who were pregnant or in charge of young children did not belong in preventive custody, some had a rigid understanding of the principle of equality and argued that if women repeatedly engaged, for instance, in *microtráfico* (low-level drug trafficking), they should be sent to preventive custody just like men would be. These judges understood a gendered perspective as a strictly formal egalitarian principle. Context is also fundamental in cases of women victim-survivors of VAW who kill their partners in self-defense. In such cases, the immediate context of the aggression, and sometimes the context of the entire relationship, sheds light on the abuse such women endured, sometimes for years, which can lead to their absolution in court through different legal categories.

This contextual understanding of a gendered perspective is compatible with and overlaps to some extent with defining a gendered perspective as a method to remove stereotypes. An analysis of stereotypes and biases benefits from an in-depth examination of the identity of the plaintiffs, the nature of their relationships, and their previous history. The Supreme Court justice in charge of the Secretariat has discussed in seminars that deploying "contextual hermeneutics" is at the core of a "gendered perspective." Yet while all my interviewees agree that judicial reasoning had to be cleansed from stereotypes and biases, not all agreed that a context of vulnerability, structural inequality, or dependence required a differential approach that results in an advantageous decision for the person in such a situation, particularly defendants. Thus, some judges explain that although public defenders usually bring to light the many structural inequalities women defendants who engage in *microtráfico* face, such as poverty, lack of access to education, and lack of child caregiving, these women should still face the legal consequences for their transgressions. Alternatively, a few other judges were strong advocates of keeping women out of jail. Thus, acknowledging structural inequality and acting upon it are two different things that interact uncomfortably in criminal law. Conversely, the judges I discuss in the next section are adamant about the relevance of acting upon structural inequality.

An instrument to reach a fair adjudicatory result

One of the ideas associated with a gendered perspective is overcoming the paradigm of formal equality anchored in the nineteenth-century liberal tradition to embrace the concept of substantive equality. Substantive equality underscores result-oriented justice, which takes into account people's structural situations and material conditions to reach a fair legal outcome rather than procedural fairness alone (Fredman 2016; MacKinnon 2016). Yet in a judiciary that has traditionally espoused a predominantly textualist legal culture, the topic of substantive justice poses difficulties, as textualism foregrounds the letter of the law rather than principles of fairness, human rights law, and extralegal factors such as structural disadvantages. In this section, I discuss how judges struggle between textualist

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

approaches and their dedication to enforcing fair decisions, which are sometimes at odds with the letter of the law. In this context, interview participants often spoke of their admiration of other judges whose decisions "dare" to go beyond the dominant textualist paradigm.

Accomplishing what judges perceive to be a fair result in light of unfair laws or legal arguments can be done in different ways. My interviewees discussed two forms of doing so: (1) applying rules for resolving antinomies between laws and implicitly applying principles of fairness and (2) drawing on international human rights treaties. When judges rely on international human rights treaties to accomplish fair outcomes, whether explicitly or not, the doctrine of conventionality control (*control de convencionalidad*) operates. This doctrine states that judges must analyze domestic law in light of the Inter-American Convention of Human Rights and other instruments of the Inter-American system. If judges draw upon such instruments in coordination with or in the absence of national law, they engage in "weak" conventionality control; if they do so against domestic law, they engage in "strong" conventionality control.

Through informal conversations with more than ten legal academics and my interviews with judges, I gleaned that the mainstream Chilean legal culture and legal community are antagonistic to conventionality control (Huneeus 2016). However, there is a generational component in judges' acceptance and willingness to apply it in its strong version, as judges who attended the judicial academy (created in 1994) and have been socialized into the neoconstitutionalist paradigm (Couso and Hilbink 2011) are more equipped to follow the doctrine of conventionality control: "Neoconstitutionalism promotes a greater predisposition to acknowledge the open nature of legal texts and expects judges to subject legislative acts to strong constitutionality and conventionality tests" (González-Ocantos 2016, 40). Thus, judges who adhere to this paradigm, who tend to be younger, are more willing to scrutinize domestic law in light of international human rights norms.

Judges who understand a gendered perspective as an instrument to reach a fair result were predominantly Civil Court and Family Court judges. One female Civil Court judge I interviewed in 2019 discussed two cases that had her particularly anxious. The cases involved two married women in conjugal partnerships who had asked the court for authorization to sell inherited property when their husbands (the administrator of the conjugal partnership according to Chilean law) were absent. As the judge explained to me: "The only hypothesis in the code to ask the court for authorization to sell inherited property is when the wife is absent and the husband has to ask for her authorization, to substitute her authorization, but not the other way around."[4] The reason for the judge's anxiety was finding a basis for a decision on an issue that the civil code regulates explicitly, yet in a manner inconsistent with international human rights treaties. However, she indicated that she would find a way to authorize it, even though she pointed out that "it has been very difficult because the rules clearly speak of the husband." Her discomfort revealed the inherent problem of producing a nondiscriminatory result when the laws in principle establish an unequal situation. Even so, this judge had previously relied on international law to authorize name changes for transgender people before domestic law explicitly authorized it. When I interviewed her again in 2024, she told me that she had found a way to let the women sell their property.

Some of the Criminal and Appeals Court judges I interviewed had previously worked as Family Court and Civil Court judges, and they argued that in such jurisdictions they had more leeway than in criminal law to produce a fair result. As Family Court judges, they often saw the inherently unequal situations of men and women in the context of getting a divorce, splitting assets, and receiving compensation for time away from work. Men would usually resort to sophisticated fraudulent means so as not to give women half of the assets

[4] See Sonia *Arce v. Chile* for previous attempts to fight this law.

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

the Family Court judge had assigned to them, and they would contest such rulings in Civil Court. Several former Civil Court judges stated that they felt they could not intervene in these situations and felt powerless. Yet there are judges—as many interviewees expressed—who "dare" (*se atreven*) to engage in "bold rulings" (*sentencias jugadas*).[5]

One former Civil Court judge told me of a case in which a Family Court judge had split a house among spouses as compensation for the wife's time away from work during the marriage. The husband fought the ruling in Civil Court through a third-party objection (*tercería*), as he had been trying to incorporate the house into his company before the woman could inscribe her ownership in the property registry as co-owner. The Civil Court judge saw the situation as fundamentally unfair and ruled that the woman's title to the house depended not on the property registry but on the Family Court judge's ruling, which, the Civil Court judge argued, worked itself as a property title. She said she "had to go back to Roman law to make it work," and now feels she cannot cite her own ruling, because of its unorthodox nature. As this example shows, judges do not necessarily need to rely on international law to accomplish what they perceive to be a fair result. My interlocutors often used "daring" as an evaluative term to refer to unorthodox or "brave" practices in the context of a textualist legal culture in which judges tend to follow the status quo and higher courts' criteria, which thereby hinders creativity. Another Civil Court judge told me that while she would like to stop banks from foreclosing the homes of wives and children when the former husband stopped paying the mortgage, she does not yet "dare" to do so.

Within the Chilean legal community attuned to gender-sensitive judging, there are certain highly renowned "bold" court rulings. One of them is the decision made by a middle-aged female Family Court judge in 2020 who decided, drawing upon human rights treaties, that the child of a same-sex couple ought to be registered as the offspring of both mothers. One male Appeals Court judge I interviewed told me the Family Court judge had gone "too far" since Chile did not have a regulation on same-sex adoption, although he supported the Secretariat's project of removing stereotypes from judicial reasoning. Another appellate court judge celebrated the ruling and referred to the Family Court judge as someone who "dares," which shows that judges can commit to different manners of applying a gendered perspective. This ruling was celebrated and received a prize in the Secretariat's yearly contest. Thus, while the Secretariat does not explicitly advocate for strong conventionality control, it has honored rulings that do so and thus had indirectly supported going beyond its weak application.

Another ruling that won the same contest in 2023 established that a young person who identifies as nonbinary had a right to have their identity registered in the civil registry as such, although current Chilean gender identity legislation maintains a binary understanding of gender identity. A conservative lawyer reacted to this ruling by writing an opinion column in which he disapproved of the judges' reasoning (Henríquez 2023). In his column, he argued that the Supreme Court favors judicial activism and judges who disregard domestic law when applying a gendered perspective: "Against what is usually affirmed, this tool [gendered perspective] is not neutral." While this lawyer's analysis may lack nuance, in my view, he had a point: a gendered perspective—in the way some judges understand it—is not limited to detecting stereotypes in the judicial process and could potentially entail sidelining domestic law. Thus, this rift shows the extent to which legal culture is at the core of which form of gendered perspective is acceptable, as some legal analysts normatively abhor the possibility of judges using human rights treaties and sidelining domestic law in the process.

Judges who engage in strong conventionality control have also been chastised in other ways. For instance, conservative lawyers have filed lawsuits for prevarication (incorrect application of the law) against them, which is evidence of the clash of different legal

[5] *Jugadas* is Chilean slang for "courageous."

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

approaches—although these have usually been unsuccessful. Yet ideas about the applicability of strong conventionality control as a means to reach a fair result are becoming more prevalent in certain sociolegal worlds. For instance, during 2023, I attended a seminar to celebrate the anniversary of a women judges' organization. One panelist, discussing preventive custody, said that judges in the audience have the tools not to send women to preventive custody, that they must "dare" to engage in conventionality control. Similarly, in a training for the public defenders I shadowed, the trainer, a public defender with years of experience, argued that they should ask judges to engage in conventionality control, with the possibility of "unapplying [domestic] norms", although this should be done only in important cases. Conversely, the Appeals Court judges I interviewed (who are older and tend to belong to a textualist legal culture) were predominantly against the practice. Thus, although an interpretive legal culture remains in the minority (Couso and Hilbink 2011), there is growing support for it and there are institutional actors who endorse it.

Following Ansolabehere, Botero, and González (2022), and focusing on strong conventionality control, I argue that Chilean judges belong to different legal cultures and that while some lower court judges adhere to interpretivism, most Appeals Court judges are textualists. Judges have disparate hermeneutical visions when it comes to the role of international law, particularly with regard to strong conventionality control. This view has implications for how interpretive judges understand their relationship to the executive and legislature—that is, their role in the political system—as they do not feel bound by the laws approved by them. Additionally, judges who engage in strong conventionality control are not deferential to higher courts, or the judicial hierarchy, as Appeals Court judges reject such a practice. So far, I have addressed the three ways my participants understand a gendered perspective. In the next section, I address an understanding which my interviewees reject.

Loosening of evidentiary standards and changes in the rules of evidence

In several forums I attended, it was usually important for judges and legal academics to state at some point what a gendered perspective is not: favoring women and minorities per se, believing all women, or loosening evidentiary standards. The anxiety about what a gendered perspective is not, and the need to discuss it—particularly within criminal law—is rooted in the liberal foundations of criminal law and, to some extent, in recent developments in international law. With the rise of liberalism in the nineteenth century, the idea of a fair and rational criminal justice system took hold in which criminal law principles and evidentiary demands would protect citizens from the unrestrained power of the state. Yet within the past thirty years, international criminal courts such as the ICTR and ICTY, driven by the ideal of "gender justice" (Grey and Chappell 2019), have developed theories to loosen the principle of personal culpability and, to some extent, lower evidentiary requirements for the prosecution (Minkova 2022). Legal activists have celebrated these practices, yet observers concerned with criminal law principles in the international sphere have denounced this turn as benefiting victim-survivors at the expense of defendants' rights.

My interviewees strongly agreed that a gendered perspective could not entail a loosening of evidentiary standards or any understanding that challenged established rules of evidence or principles within criminal adjudication, particularly the principle of presumption of innocence. I asked judges about IACHR jurisprudence that states that testimonies of victims of sexual violence should be given a strengthened value (which entails assessing such testimonies with the understanding that trauma affects memory and thus inconsistencies are not rare in such testimonies). All my interviewees who were Criminal Court judges and Appeals Court judges said it was not possible to have such

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

considerations, as they understood the concept to mean assigning a higher evidentiary value to victims' testimonies vis-à-vis those of defendants. Several judges stated that it would be extremely difficult, for instance, to convict a defendant with a victim's statement alone. Yet they agreed that inconsistencies in the testimonies of victims of sexual assault should not discard their veracity. Although my interviewees reject any changes in the standard of proof, they embrace the role of indirect evidence in adjudication—a type of evidence that requires inferences to prove a fact—and have acquired a more expert understanding of the impact of trauma in testimony, particularly in cases of sexual offenses.

Ideas about what a gendered perspective is not are embedded in trials and court rulings, which reveals that legal actors are concerned about perceptions of whether they are sidelining criminal law orthodoxy. In two 2023 trials with a high public impact, the issue of evidentiary standards was discussed explicitly. In one case of femicide which relied heavily on indirect evidence as there were no direct witnesses, a prosecutor I was shadowing argued at her closing statement: "A gendered perspective is not about loosening evidentiary standards, but adjusting evidence to the principle of equality before the law." In another case of rape, abortion, and homicide, in which the prosecutors heavily requested that a gendered perspective be incorporated into assessment of evidence, the judge wrote in the ruling: "A gendered perspective does not entail a loosening of evidentiary standards or of the presumption of innocence which protects all citizens." Conversely, in seminars and televised forums, feminist lawyers suggested that in cases of sexual assault the burden of proof should be reversed, or evidentiary standards loosened as they were perceived to be insurmountable, yet these statements were soon chastised by others—even by other feminist lawyers—or simply ignored. This issue has generated intense discussion about whether corroboration—or what kind of corroboration—should be necessary in cases of sexual assault (Gama 2020).

During my fieldwork, I documented an increasing awareness of the relevance of indirect evidence (Araya 2020) in cases of domestic and sexual violence. Lawyers who work as *querellantes* (private prosecutors) and sexual crimes prosecutors stated in interviews and in public forums I attended that judges are increasingly willing to convict in contexts where indirect evidence is the only one available.[6] Furthermore, judges are currently willing to convict defendants of domestic violence and femicide without victim-survivors declaring at trials, as they understand the complex challenges that they face in doing so. Conversely, in the past, judges would absolve defendants if victims did not declare at trials, or if their testimonies showed inconsistencies. This change has been so noticeable that one of the prosecutors I shadowed stated that going to trial without victims was "the business they were in" (*el giro del negocio*), and they now "dare" to indict in cases where there is scarce evidence or predominantly indirect evidence. A recent law introducing new rights for victims of sexual assault and gendered offenses—commonly known as Ley Antonia—further supports some of these practices as it offers tools for prosecutors to present at trials the written statements of victims when these are unable or unwilling to testify.

A longitudinal perspective on the challenges to implementation

In my interviews, judges identified several obstacles to embracing a gendered perspective in their everyday work. There were barriers they discussed such as discriminatory laws, the lack of gender-sensitive arguments from the prosecution and the defense, the constraining nature of their textualist legal education, and the lack of interest and

[6] According to Verónica Michel (2018, 6), "The right to private prosecution is a right of the victim or their relatives to have a lawyer that represents their interests and to participate in the criminal proceedings."

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

knowledge among their colleagues. Judges also emphasized the inadequate investment from the state to fund psychological treatment for people who commit VAW, and lack of comprehensive assistance to victims beyond judicialization.

However, there was a key barrier that lower court judges agreed on: the possibility of their rulings being annulled by Appeals Courts due to their conservative criteria on gendered issues and the textualist legal culture they adhere to. I conducted interviews with these lower court judges during 2019, and, in 2023 and 2024, I conducted follow-up interviews with the same judges, which allowed me to compare a change in their views regarding Appeal Courts, thus providing me with an important longitudinal component to my analysis. My findings reveal that within a five-year period, there was some change in Appeal Courts regarding their receptivity to a gendered perspective.

During 2019–2021, a number of male and female judges described the Courts of Appeals of their jurisdictions as a hindrance to having gender-sensitive considerations within adjudication. In an interview with two Criminal Court judges, this issue was the main focus of our conversation. These judges explained that whenever they tried to include contextual considerations in their rulings regarding the state of gender relations in the country, the Appeals Court would annul their rulings, sending the message that contextual information was unnecessary and undesirable. Another Criminal Court judge argued that in cases of sexual crimes against sex workers, he felt compelled to limit the scope of protection to prevent his judgment from being annulled. Thus, due to Appeals Courts' conservative criteria on gendered issues and their textualist legal culture, my interviewees felt they needed to adapt their decisions to align with their expectations.

Judges also described Appeals Courts as conservative milieus adverse to innovation. Appeals Courts are constituted by older judges and until recently were overwhelmingly male-dominated. Describing the rise of neoconstitutionalism in some pockets of lower courts in the post-transition period, Couso and Hilbink (2011, 122) offer: "In the appellate courts and the supreme court, by contrast, traditional commissarial institutional values and routines remain well embedded, and judges display little knowledge of or interest in neoconstitutionalism." A fundamental component of neoconstitutionalist thought is the relevance of legal principles and international human rights treaties, yet as part of a predominantly textualist legal culture, several Appeals Courts display a preference for domestic law to the detriment of international instruments. One Civil Court judge stated that every ruling in which she cited international instruments would be annulled by the Appeals Court. Even Appeals Court judges themselves acknowledged in interviews that their courts were conservative and static, and that within them they were socialized to enforce conservative criteria.

During 2023 and 2024, I again interviewed several of the judges who had told me during 2019 that their most challenging obstacle to incorporating a gendered perspective in their judicial praxis was their respective Court of Appeals. I saw a couple of these judges at an event organized by the Secretariat to celebrate the winners of the contest of rulings; in their speech as recipients of a prize, they thanked the Secretariat because they had come to feel that they had their support and told me that their gender-sensitive rulings were no longer annulled. My other interviewees' perspectives on Appeals Courts had also changed, as they did not feel to the same extent that they had to tailor their decisions so that they would be palatable for Appeals Courts. As feminist institutionalists offer, institutional endogenous change takes place gradually and the signals from key people at the top are crucial (Mackay, Kenny, and Chappell 2010). Still, these findings regarding change within Appeals Courts must be examined with caution, as several Appeals Court judges from different regions stated in 2022–2023 that most of their colleagues are uninterested and dismissive of the topic of gender-sensitive judging.

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

Final reflections

In this article, I have offered an examination of the ways in which the concept of gendered perspective is understood within the Chilean judiciary. I demonstrated that judges understand a gendered perspective predominantly in four different ways. The Secretariat, as translator of a concept that circulates in the international sphere, has been successful in vernacularizing predominantly the first meaning and strategic in supporting other more polemic forms. The Secretariat directly promotes and vernacularizes a gendered perspective as a method to remove stereotypes and biases, the most palatable concept for a textualist audience. Concomitantly, it also promotes the analysis of context, with judges holding different understandings of how to react to structural inequality in criminal law cases: while some notice inequality and acknowledge it, not all agree that it should lead to a differential result. This is an interesting development to examine in the future, as it shows contestation in the strictest area of the law.

Through its contest of rulings with a gendered perspective, the Secretariat supports other more controversial understandings that relate to reaching a fair adjudicatory result. Additionally, some understandings seem more prone to be developed by particular jurisdictions. For instance, it is predominantly former and current Civil and Family Court judges who discussed a gendered perspective as an instrument to reach a fair result, as they feel they have more "leeway" in such spheres: they do not have to adhere to the stringent principles of criminal law and some of their rulings cannot be appealed (e.g., noncontentious matters such as name and gender change). These judges who "dare" to be bold or engage in strong conventionality are in the minority. However, in 2023, there were institutional and individual actors who expressed support and even admiration for them—although they do have critics. Additionally, Chilean criminal judges strictly embrace criminal law principles. Nonetheless, this is compatible with an increased significance of indirect evidence and a more expert understanding of the effects of trauma on testimony.

Courts of Appeals were described by several judges as conservative milieus that are resistant to apply a gendered perspective and international human rights law. Yet gradual institutional change is possible, as my interviewees attested to change in Appeals Courts in a five-year span. Disparate legal visions between these Appellate judges and judges who "dare" to go beyond the textualist legal culture reveal that different legal cultures coexist in the Chilean courts (Ansolabehere, Botero, and González 2022). As I have argued in this article, legal culture is an important factor which shapes how judges understand and apply a "gendered perspective." Different visions within the judiciary are positive signs of a pluralist judiciary in which disparate hermeneutical practices and views about the law exist, and show significant change of the Chilean judiciary's legal culture (Hilbink 2007). Contestation, debate, and antagonism regarding how to understand and apply a gendered perspective is fundamentally shaped by legal culture, as there are different beliefs in the legal community about how judges should interpret the law and how they should perceive their role vis-à-vis other political actors and in relation to higher courts' practices. Thus, future research on gender-sensitive judging in Latin America and elsewhere should take legal culture seriously when looking at the factors that shape how and why judges apply a gendered perspective.

Additionally, a series of considerations regarding a gender perspective in a global and Latin American scope are due. First, the Secretariat has promoted the concept, and judges understand it, mostly as a substantive consideration within adjudication. International tribunals have included considerations which seem unacceptable to Chilean judges, such as loosening the personal culpability principle, yet Chilean judges have incorporated gender-sensitive considerations in other ways consistent with criminal law orthodoxy. Some courts, such as the ICC and Colombia in its transitional justice system, have incorporated

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

victim-centered approaches; however, such changes have not yet been incorporated in the Chilean criminal system, which still puts the defendant at the center (Secretaría 2020a). Yet there are also legal and constitutional features that have stymied change when it comes to certain forms of gender perspective, making it different from other legal systems such as Colombia, Argentina, and Mexico, in which conventionality control and international human rights treaties are enshrined in the constitution.

Finally, almost a decade after its launch in 2014, the top-down endeavor of promoting a gendered perspective in Chile has significant milestones, adherents, and detractors. The process is still incipient and there is interesting undertaking ahead for the Secretariat, such as the project to offer mandatory gender-sensitive training to all Chilean judges beginning in 2024. However, another ten years are needed to see the effects in probably one of the most important efforts: gendering legal education. Taking this seriously would entail a major change in law schools' curricula and an explicit commitment to the arguments of feminist legal theorists that the law is not neutral and that it reinforces power differences and inequality.

Acknowledgments. I dedicate this work to my beloved grandmothers, Juana and Yemile—two especial ladies who have always believed in me and supported my endeavors. I am deeply grateful to Lisa Hilbink, whose thoughtful feedback sharpened my argument, to Karina Ansolabehere for her help refining the concept of "legal culture," and to Jodi Finkel for clarifying the presentation of ideas. My gratitude extends to my advisor, Laurie Hart, who has profoundly shaped my approach to this research. I also wish to express my thanks to Dr. Cecilia Menjívar for her insightful feedback and for generously providing funding for a copy editor. My sincere thanks go out to Jessica Lopez-Espino, Diana Quintero, Diego Rochow, and Samantha Martin for their helpful suggestions and insightful comments, and to the Centro de Investigación en Derecho y Sociedad UAI for organizing a workshop which provided meaningful feedback. Finally, I wish to express my gratitude to all the judges who took time from their busy schedules to speak with me. This research was made possible by funding provided by the Social Science Research Council.

References

Ansolabehere, Karina, Sandra Botero, and Exequiel González. 2022. "Conceptualizar y medir la cultura legal: Evidencia a partir de una encuesta a los jueces federales mexicanos." *Política y Gobierno* 29 (2): 1–30.

Araya, Marcela Paz. 2020. "Género y verdad: Valoración racional de la prueba en los delitos de violencia patriarcal." *Revista de Estudios de la Justicia* 32: 35–69. https://doi.org/10.5354/0718-4735.2020.56915.

Bergallo, Paola, and Aluminé Moreno, eds. 2017. *Hacia políticas judiciales de género*. Buenos Aires: Jusbaires.

Buchely, Lina. 2014. "Género y constitucionalismo: Una mirada feminista al derecho constitucional colombiano." *Ciencia Política* 18: 83–107. https://doi.org/10.15446/cp.

Cabal, Luisa, Julieta Lemaitre, and Monica Roa, eds. 2001. *Cuerpo y derecho: Legislación y jurisprudencia en América Latina*. Bogotá: Temis.

Casas, Lidia, and Alejandra Mera. 2004. *Violencia de género y reforma procesal penal chilena. Delitos sexuales y lesiones*. Santiago: Cuadernos de Análisis Jurídico Series, Universidad Diego Portales.

CEJA (Centro de Estudios de Justicia de las Américas). 2021. *Oficinas judiciales de género en América Latina: Avances y desafíos pendientes*. Santiago: https://biblioteca.cejamericas.org/handle/2015/5694.

Chappell, Louise. 2016. *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy*. New York: Oxford University Press.

Corbin, Juliet M., and Anselm L. Strauss. 2008. *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory*. Los Angeles, CA: Sage Publications.

Couso, Javier, and Lisa Hilbink. 2011. "From Quietism to Incipient Activism: The Institutional and Ideological Roots of Rights Adjudication in Chile." In *Courts in Latin America*, edited by Gretchen Helmke and Julio Ríos-Figueroa, 99–127. New York: Cambridge University Press. https://doi.org/10.1017/CBO9780511976520.005.

Couso, Javier, Alexandra Huneeus, and Rachel Sieder. 2010. *Cultures of Legality: Judicialization and Political Activism in Latin America*. Cambridge: Cambridge University Press.

Di Corleto, Julieta. 2018. "La Valoración de la Prueba en Casos de Violencia de Género." In *Garantías constitucionales en el enjuiciamiento penal*, edited by Florencia Plazas and Luciano Hazan, 598–606. Buenos Aires: Editores del Sur.

EQUIS Justicia para las Mujeres. 2017. *Unidades de género en el Poder Judicial: Informe sobre su estructura y funcionamiento a nivel nacional.* Mexico City: EQUIS Justicia para las Mujeres.

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

Facio, Alda. 1999. "Hacia otra teoría crítica del derecho." In *Género y derecho*, edited by Alda Facio and Lorena Fríes, 113–136. Santiago: LOM Ediciones.
Fredman, Sandra. 2016. "Substantive Equality Revisited." *International Journal of Constitutional Law* 14 (3): 712–738. https://doi.org/10.1093/icon/mow043.
Gama, Raymundo. 2020. "Prueba y perspectiva de género: Un comentario crítico." *Quaestio Facti* 1: 285–298. http://doi.org/10.33115/udg_bib/qf.i0.22373.
González-Ocantos, Ezequiel. 2016. *Shifting Legal Visions: Judicial Change and Human Rights Trials in Latin America*. New York: Cambridge University Press. https://doi.org/10.1017/CBO9781316535509.
Goodale, Mark. 2017. *Anthropology and Law: A Critical Introduction*. New York: NYU Press.
Grey, Rosemary, and Louise Chappell. 2019. "'Gender-Just Judging' in International Criminal Courts: New Directions for Research." In *Research Handbook on Feminist Engagement with International Law*, edited by Susan Harris Rimmer and Kate Ogg, 213–239. Cheltanham, UK: Edward Elgar Publishing. https://doi.org/10.4337/9781785363924.00021.
Henríquez, Tomás. 2023. "Prevaricación con perspectiva de género." *Columna de Opinión en Diario Constitucional.* https://www.diarioconstitucional.cl/articulos/prevaricacion-con-perspectiva-de-genero/.
Hilbink, Lisa. 2007. *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. New York: Cambridge University Press.
Hilbink, Lisa. 2019. "Annual Lecture: Judges, Citizens, and a Democratic Rule of Law: Building Institutional Trustworthiness to Recover Public Trust." *Latin American Legal Studies* 5: 165–198. https://doi.org/10.15691/0719-9112VOL5A1.
Huneeus, Alexandra. 2010. "Judging from a Guilty Conscience: The Chilean Judiciary's Human Rights Turn." *Law & Social Inquiry* 35 (1): 99–135. https://doi.org/10.1111/j.1747-4469.2009.01179.x.
Huneeus, Alexandra. 2016. "Constitutional Lawyers and the Inter-American Court's Varied Authority." *Law and Contemporary Problems* 79 (1): 179–207.
Kapiszewski, Diana, and Matthew M. Taylor. 2008. "Doing Courts Justice? Studying Judicial Politics in Latin America." *Perspectives on Politics* 6 (4): 741–767. https://doi.org/10.1017/S1537592708081899.
Lousada Arochena, José Fernando. 2020. "El enjuiciamiento de género en la Cumbre Judicial Iberoamericana." *Llapanchikpaq: Justicia* 1 (1): 187–225. https://doi.org/10.51197/lj.v1i1.8.
Mackay, Fiona, Meryl Kenny, and Louise Chappell. 2010. "New Institutionalism through a Gender Lens: Towards a Feminist Institutionalism?" *International Political Science Review* 31 (5): 573–588. https://doi.org/10.1177/0192512110388788.
MacKinnon, Catherine. 1989. *Towards a Feminist Theory of the State*. Cambridge, MA: Harvard University Press.
MacKinnon, Catherine. 2016. "Substantive Equality Revisited: A Reply to Sandra Fredman." *International Journal of Constitutional Law* 14 (3): 739–746. https://doi.org/10.1093/icon/mow047.
Merry, Sally Engle. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: University of Chicago Press.
Merry, Sally, and Peggy Levitt. 2017. "The Vernacularization of Women's Human Rights." In *Human Rights Futures*, edited by Stephen Hopgood, Jack Snyder, and Leslie Vinjamuri, 213–236. New York: Cambridge University Press. https://doi.org/10.1017/9781108147767.009.
Michel, Verónica. 2018. *Prosecutorial Accountability and Victims' Rights in Latin America*. New York: Cambridge University Press.
Minkova, Liana Georgieva. 2022. "(In)Compatible Visions of Justice? Personal Culpability and Gender Justice at the ICC." *Politics & Gender* 18 (1): 62–94. https://doi.org/10.1017/S1743923X20000215.
Muñoz, Andrea. 2019. "Clase magistral: Enfoque de género en el acceso a la justicia." *Revista Perspectiva de Género* 1: 9–29.
Pabón-Mantilla, Patricia, and Paul Cáceres-Rojas. 2021."Incorporación del enfoque de género en las sentencias de restitución de tierras proferidas en Santander—Colombia." *Entramado* 17 (2): 60–73. https://doi.org/10.18041/1900-3803/entramado.2.7586.
Parodi, Karime. 2023. "Tackling Bias against Women Victims of Sexual Assault in the Chilean Judiciary: A Case Study." *Revista Derecho Pontificia Universidad Católica del Perú* 90: 139–184. https://doi.org/10.18800/derechopucp.202301.005.
Rivas, Carola. 2022. *La perspectiva de género como método de argumentación jurídica en las decisiones judiciales*. Santiago: RIL Editores.
Secretaría Técnica de Igualdad de Género y No Discriminación. 2018. *Política de igualdad de género y no discriminación*. Poder Judicial. ~úhttps://secretariadegenero.pjud.cl/index.php/politica-genero-pjud#:~:text=Implica%20orientar%20los%20esfuerzos%20del,público%20como%20en%20el%20privado.
Secretaría Técnica de Igualdad de Género y No Discriminación. 2020a. *Acceso a la justicia de las mujeres víctimas de violencia usuarias del Poder Judicial, 2020*. Poder Judicial. https://secretariadegenero.pjud.cl/index.php/estudio-acceso-a-la-justicia-vcm.

https://doi.org/10.1017/lar.2024.72 Published online by Cambridge University Press

Secretaría Técnica de Igualdad de Género y No Discriminación. 2020b. *Cuaderno de buenas prácticas para incorporar la perspectiva de género en las sentencias.* Poder Judicial. https://secretariadegenero.pjud.cl/index.php/cuaderno-buenas-practicas-para-incorporar-perspectiva-genero-en-la-administracion-de-justicia.

Speed, Shannon. 2008. *Rights in Rebellion: Indigenous Struggle and Human Rights in Chiapas.* Stanford, CA: Stanford University Press.

Wilenmann, Javier. 2023. "Se puede fallar con perspectiva de género?" *Archipiélago* 1. https://revistaarchipielago.cl/idea/se-puede-fallar-con-perspectiva-de-genero/

Zelada, Carlos, and Mauricio Ocampo. 2012. "Develando lo invisible: La feminización de los estándares de prueba sobre violencia sexual en la jurisprudencia de la Corte Interamericana de Derechos Humanos." *Derecho en Libertad* 4 (9): 138–190. https://www.corteidh.or.cr/tablas/r38451.pdf.

Karime Parodi is a PhD candidate in the UCLA Anthropology Department. Her research interests focus on Latin American sociolegal studies, with a particular interest in gender and the law.

Cite this article: Parodi, Karime. Gendering Justice in the Chilean Courts: Institutional Developments and Legal Actors' Perspectives. *Latin American Research Review.* https://doi.org/10.1017/lar.2024.72