

Federalism and Subnational Legal Mobilization: Feminist Litigation Strategies in Salta, Argentina

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This article draws from a qualitative study of feminist legal strategies in the province of Salta, Argentina, to put forth an argument about the impact of federalism on subnational legal mobilization in a nonindustrialized federal democracy. It argues that the federal architecture of the state can strengthen the ability of local legal activists to pursue litigation strategies, and that it can do so in two main ways: by fostering the institutional autonomy of government agencies and insider activists working for the defense of rights at the local level, and by facilitating the provision of external legal resources and support for local legal activists in civil society. The theoretical perspective connects two research agendas that have not yet been combined to explain feminist legal strategies in federal systems: legal mobilization studies and gender and federalism scholarship, and proposes nuances to both strands of research.

Feminist legal advocates in the province of Salta have developed two of the most important processes of strategic litigation related to women's rights in contemporary Argentina, addressing issues of gender discrimination in the workplace and religious education in public schools. Their legal claims spurred innovative judicial decisions at the local level, as well as the first case of strategic litigation for women's rights to reach and be upheld by the national Supreme Court. In response to these demands, in 2014 the Court established that private companies providing Salta City's public transportation system should comply with a gender quota, and in 2017 it declared that Salta's provisions allowing for religious education within the public education system were unconstitutional. Most notably, women's rights activists in Salta have been able to make judicial gains without counting on a strong organizational infrastructure to sustain litigation, and they have done so in a highly traditionalist enclave, with a local judiciary widely influenced by Catholicism and the presence of a majority of conservative justices in the highest provincial court. That is, we cannot make sense of the development of women's legal mobilization in this case by a straightforward reference to a typically favorable support structure for legal mobilization or a clearly open legal opportunity for feminist legal claims at the local level.

This study poses the question of how can social movements pursue effective legal strategies in a mostly conservative political and legal subnational environment, and without counting on strong material resources for legal mobilization. In this regard, it follows the lead of recent works that have analyzed legal mobilization processes under constrained or challenging conditions for the use of law by social actors (Lemaitre and Sandvik 2015; Vanhala 2012).¹ This study argues that to account for a case like Salta, we should consider the impact of federalism on subnational legal strategies, and in particular how federalism interacts with two of the most important variables from legal mobilization studies: support structures and legal opportunities. Its main thesis is that federalism's institutional arrangements can strengthen the capacities of local feminist legal activists to pursue litigation strategies, and that they can do so in two main ways: by fostering the institutional autonomy of government agencies and insider activists working for the defense of rights at the local level, and by creating incentives that facilitate the provision of external legal resources and support for local legal activists in civil society. Among the main conditions for the former mechanisms to work is the existence of favorable institutional and political conditions for the appointment of sympathetic officials at the local branches of federal institutions. With regard to the latter mechanism, among its main scope conditions are a certain degree of inequality in resource availability between legal activists located in different jurisdictions; their common interest in a legal cause; and the legal expertise, gender training, and social capital of local legal activists.

To develop this argument, this article connects two research agendas that have not yet been combined to explain subnational feminist legal mobilization in federal systems: legal mobilization studies and gender and federalism scholarship. It argues that the literature on gender and federalism complements legal mobilization studies in explaining subnational feminist legal strategies under federalism. In fact, the literature on gender and federalism constitutes the most wide-ranging and consolidated body of work on the implications of federal arrangements for a social movement. Its arguments, and their application to the analysis of legal mobilization, can be taken as reference points for the comparative assessment of federalism's impact on mobilization by other social

¹ These works have analyzed the dynamics of legal mobilization in the context of unfavorable legal opportunities (Vanhala 2012) and political violence (Lemaitre and Sandvik 2015). The focus of the present study is not on the conditions that prompted a movement to use legal strategies (as in Vanhala 2012) but on how it succeeded in doing so; that is, the emphasis is on the factors that have fostered activists' capacities to advance their legal claims through courts and to influence legal change.

groups as well. The analysis of the Salta case study allows us to propose nuances with regard to key propositions of both fields of research, and to expand their area of application.²

The influence of federalism on feminist legal mobilization is understudied in general, and in Latin America in particular. On the one hand, gender and federalism studies have produced a notable body of theoretical and empirical work regarding the impact of state architecture on how women organize, as well as about the variation in the implementation of gender policies across subnational units (see, e.g., Chappell 2000; Piscopo 2014; Sawyer and Vickers 2010; Smulovitz 2015). However, this scholarship has generally focused on political and administrative institutions, and has not paid enough attention to judicial institutions (an exception is Smulovitz 2012) and women's legal strategies. On the other hand, the burgeoning field of studies on law and courts in Latin America has not paid sufficient attention to legal mobilization processes and the interaction between social movements and legal institutions at the subnational level. This is so, first, because given the importance of the recent creation or empowerment of constitutional courts across the region, most of the literature on law and social change in Latin America has generally focused on the national level (see the volumes edited by Couso et al. 2010; Gargarella et al. 2006; Gauri and Brinks 2008). And, second, studies on subnational judicial politics, which are still scarce in the region, are generally court-centered, focusing on judicial independence and the empowerment of local courts (Beer 2006; Bill-Chávez 2003; Ingram 2013). But the development of legal mobilization processes at the subnational level, including the field of women's rights, have received scant attention in the academic literature on law and courts in Latin America, with few notable exceptions (Kohen 2009; Smulovitz 2005). This study aims to contribute to the study of the use of law by subnational social actors, especially under federal regimes, and to analyze the pathways through which federalism influences these processes.

The case study was developed following process tracing, which is considered to be the most important qualitative tool for causal inference in within-case studies aimed at gaining insight into causal mechanisms (Bennett and Checkel 2015; Collier 2011; George and Bennett 2005; Mahoney 2010). Research on causal mechanisms through process tracing entails identifying the causal

² In particular, as pointed out by Lemaitre and Sandvik, the bulk of the literature on law and social movements has been developed to account for legal processes and institutions in industrialized democracies, and tends to exclude contexts of scarce resources (2015: 68), which can generally be found in the Global South.

pathways—the sequences and intervening factors—that connect the hypothesized explanatory variables with the outcomes of interest, with the purpose not only of revealing the specifics of a single historical event, but also of drawing generalizing conclusions beyond the case under investigation (George and Bennett 2005: 17, 206). This mode of explanation is generally presented in a narrative style that involves articulating a careful description and in-depth engagement with case knowledge, with an analytic explanation based on theoretical variables (Mahoney 2010: 125–31; Collier 2011: 824; George and Bennett 2005: 5, 17). This type of narrative must explicitly include microfoundations. In the present study, this entails tracing the influence of federalism's institutional architecture in the generation of a series of conditions and incentives for local and national actors in different instances along the legal mobilization processes in the Salta case, which come together to produce effective litigation strategies by subnational legal actors.

The empirical research consisted primarily of semistructured in-person interviews conducted by the author in the city of Salta in 2013, with the purpose of reconstructing the series of events involved in the legal mobilization processes under study. The selection of interviewees was aimed, in the first place, at exhaustively covering the field of feminist litigation activism in Salta, which is formed by a small group of young female lawyers. Other members of the feminist movement in Salta were also interviewed, to understand the development of legal strategies within the wider movement; these interviewees were selected according to two main criteria: (1) inclusion of members of the two main networks that form the local feminist movement, and (2) generational representation, including young activists as well as the movement's founding members. These criteria were based, respectively, on two main assumptions: (1) usually, different movement sectors hold different positions with regard to the development of legal strategies; and (2) in Argentina, as in the rest of Latin America, legal mobilization is a recent phenomenon, so cross-generational representation was necessary to obtain a more thorough panorama of the development of this process in the Salta case. Finally, external actors, particularly historians, journalists, and members of NGOs, were interviewed with the purpose of obtaining additional information about the local political and cultural setting in which legal strategies were developed. In total, 15 one- to two-hour interviews were conducted in Salta. For contextual and comparative purposes, those were supplemented with interviews by the author with feminist legal activists in other Argentinean provinces (Buenos Aires 2010, Córdoba 2010, Chubut 2014), as well as in other Latin American countries between

2010 and 2014.³ News articles from local and national newspapers were surveyed, in particular the major Salta newspaper *El Tribuno*, and *Página 12*, the only national newspaper to periodically include a column on women's rights, which has followed legal developments in this field in Salta. The study also included the analysis of the relevant case law. The two legal cases selected for investigation—addressing, respectively, the issues of gender equality at the workplace and religious education at public schools—are two of the most salient strategic litigation processes carried out so far by feminist legal activists in Argentina, in that they were the first ones to reach and be decided by the Supreme Court, and both entailed notable legal victories with *erga-omnes* effects. Most importantly for this study, the sociolegal processes developed around these cases activated a series of actors and mechanisms that help to thoroughly analyze the impact of federalism on subnational legal mobilization dynamics.

The article's first section lays out the analytical approach, with a focus on how conceptualizations from gender and federalism scholarship supplement the analysis of legal opportunities and support structures, for the study of legal mobilization processes at the subnational level in a federal system. The second section analyses the hypothesized impact of federalism on legal mobilization in the Salta case study, tracing the sociolegal process of two salient feminist strategic litigation cases in the province. The conclusion discusses the study's main findings and their implications for the analysis of feminist legal mobilization at the subnational level in other nonindustrialized federal democracies, particularly in Latin America.

Federalism's Impact on Subnational Feminist Legal Mobilization

The main argument of this study is that the infrastructure of federalism can have an influence on institutional and social dynamics that can contribute to support legal mobilization in subnational units. To analyze the impact of the federal organization of the State on legal mobilization processes, we examine how federalism interacts with components of the two main variables from legal mobilization studies: legal opportunities and support structures. In this analysis, we combine the legal mobilization scholarship with gender and federalism studies. Within this framework, our main hypothesis is that, under certain conditions, the

³ The latter interviews were part of the author's research on legal mobilization in the field of abortion rights in Latin America (Ruibal 2015).

institutional architecture of federal systems can strengthen the capacities of local feminist legal activists to pursue litigation strategies, and that it can do so through its influence both at the state level and at the level of civil society. First, federal antidiscrimination and rights-protection agencies located at the subnational level can enjoy, under certain circumstances, institutional autonomy from local political powers. This confers a degree of independence to movement allies and institutional activists within those institutions to support legal mobilization processes at the subnational level. Second, the federal organization of the judiciary can generate incentives for national level rights advocacy organizations to support subnational legal strategies, which can strengthen the legal resources of local legal activists to carry out strategic litigation.

Legal mobilization studies generally argue that significant litigation strategies take place either when there is a favorable legal opportunity—including, among other elements, accessible legal standing rules, or a low cost judicial process (Hilson 2002; Vanhala 2012; Wilson and Cordero 2006)—or when movements count on a strong support structure for legal mobilization, comprising the presence of public interest lawyers, rights advocacy organizations, and the availability of financing sources to sustain litigation (Epp 1998: 18). The legal opportunity approach is in consonance with institutionalist scholarship on courts, which argues that institutional norms are key to understanding judicial behavior as well as the types of claims and actors that reach the courts (Gillman and Clayton 1999). Hilson (2002) adds to the concept of legal opportunities the receptivity of courts to social movement legal claims. Judicial receptivity or responsiveness is indicated by the composition of courts as well as by their previous decisions (Meyer and Boutcher 2007).⁴ Court precedents constitute a signal for social actors about the possible receptivity to certain types of claims. Rules governing forum selection are important in this regard, in that they sometimes allow plaintiffs to choose among different judges or courts, and in this way they can expand the legal opportunities even in a generally unfavorable legal context. With regard to the support structures approach, both in legal mobilization studies and social movement scholarship the development of successful legal strategies is usually associated with the professionalization and institutionalization of the movement (Epp 1998; Meyer and Staggenborg 1996), with professionalization being characterized by the presence of organizations with paid activists, professional leadership, and

⁴ Meyer and Boutcher explain how court decisions about movements' claims may signal judicial openness for other movements and issues as well (2007: 81).

institutionalized organizational practices (Meyer and Staggenborg 1996: 1649; Staggenborg 1988: 598–99).

For its part, the gender and federalism literature offers key insights for the analysis of women's rights and mobilization in federal regimes. By placing attention on the gendered effects of the state architecture, this scholarship contributes to understanding the impact of federalism on gender politics and policies. However, existing studies in this field have generally not analyzed litigation strategies and the interaction between women and the judicial system, even though, as Chappell points out, litigation has been an avenue successfully pursued by feminist groups to sidestep blockages in the parliamentary and bureaucratic realms in federal systems (Chappell 2002: 38–39). Instead, works in this field have emphasized the analysis of political and administrative institutions, focusing in particular on explaining the uneven enforcement of women's rights and gender policies across subnational jurisdictions. In this regard, they have argued that some districts fare better in women's rights protection than others due to political factors related to the federal character of the state (Chappell 2000; Piscopo 2014; Sawyer and Vickers 2010; Smulovitz 2015). Most relevantly for the present study, this literature has also shown how federalism impacts women's mobilization, for example, by providing more institutional sites for venue and forum shopping in the pursuit of gender equality reforms (Chappell and Costello 2011; Chappell and Curtin 2012; Sawyer and Vickers 2010; Vickers et al. 2010). Although it has not focused on legal mobilization processes, the theoretical and empirical contributions of this scholarship, when combined with legal mobilization studies, provide fundamental analytical elements to understand the mechanisms through which federalism can affect feminist litigation strategies at the subnational level.

This study does not claim that federalism provides a uniform advantage for feminist legal mobilization in general, or that the advantages hypothesized here are unconditioned. In the first place, the claim about federalism's beneficial impact is restricted to the legal strategies of subnational legal actors in a given jurisdiction—it does not extend to legal mobilization by the whole feminist movement of a country. As the literature on gender and federalism has pointed out, while multiple access points offered by federalism increase the possibilities for venue shopping, they can also impose an extra burden on women's mobilization, as they force activists to pursue multiple campaigns, which can fragment their efforts (Vickers 2010: 17). Both consequences can take place simultaneously: although federalism can help local legal activists to pursue their claims in a subnational jurisdiction, it can be at the same time costly for the country's feminist cause in general having

to pursue different campaigns, struggle for implementation of gender norms, and resist backlash at different jurisdictions throughout the national territory, instead of concentrating, for example, on litigating cases regarding only national norms and institutions. In the second place, each of the mechanisms or pathways for the influence of federalism advanced in this study is subject to a series of scope conditions. The factors that influence the relative autonomy of local branches of federal institutions, as well as those that favor the presence of national partner organizations with resources in subnational legal mobilization processes, are described in the analysis that follows.

Federalism and the Autonomy of Institutional Activists at the Local Level

The literature on state feminism and the scholarship on social movements have called attention to the fundamental role played by institutional activists (McGuire and Santoro 1997: 504) or insider activists (Banaszak 2010: 30) within the state's structure, in effecting and implementing gender equality reforms. This type of actors, who are located in an intersection between movements and the state, are different from movement elite allies, in that they are more consistently favorable to movement goals (Banaszak 2010: 6–7). In the same vein, and working in the field of legal mobilization, Epp (2009) has shown how, in the United States, in the 1970s and 1980s, social reform-minded government officials worked with movements in civil society to pressure reluctant bureaucracies to adopt changes in the pursuit of progressive social reform through law. These perspectives blur the boundaries implicit in traditional political opportunity approaches within social movement research, which assume that movement activists and elite actors are different entities, that movements and the state are separate or antithetical spheres, and that movement action is extra-institutional. In terms of legal mobilization processes, we can understand the position of these types of actors as located in the interface between legal opportunities and support structures for legal mobilization.

Institutional activists favorable to gender equality can have a strong impact particularly on conservative subnational enclaves, where opportunities are generally inhospitable to movement demands. To be effective, particularly in those settings, these actors must enjoy a degree of autonomy vis-à-vis local political authorities. Institutional autonomy allows institutional activists to pursue advocacy actions without fear of retaliation by local authorities. The question is: how can these actors come to occupy those positions in the first place and, in turn, develop

their work in an autonomous way, precisely in the context of conservative local politics and legal opportunities? Local institutional structures, even in conservative enclaves, can include provisions for the autonomous work of some key actors, such as Public Defenders, who can be crucial in subnational legal mobilization. The institutional architecture of federalism, with the presence of federal agencies for rights protection with delegations at the subnational level, is another important way in which this can take place. Federalism's infrastructure can allow for movement allies and institutional activists to occupy positions within the state at the local level and to defend the rights of oppressed groups, even if in doing so they oppose local power holders.

For the latter mechanism to work, national authorities must appoint actors who are favorable to the advancement of rights and gender equality at the local branches of national institutions. We can expect this to happen when the national administration has a progressive orientation, or when the appointment rules and functioning of those federal institutions is relatively autonomous from the policy preferences of the governing national coalition. On the contrary, if the national administration is occupied by actors who are hostile or at least unsympathetic to movement demands, and appoints unreceptive actors to fill federal institutions and their local branches, we can expect the subnational delegations of federal institutions not to counter local political powers. In these cases, the hypothesized mechanism would not be effective, or it could even reinforce the position of local governments against the claims of subnational legal activists.

Federalism and the Resources of Local Legal Activists

The literature on gender and federalism (Chappell and Costello 2011; Chappell and Curtin 2012; Sawer and Vickers 2010) as well as studies on law and social movements (Nejaime 2012: 900; Siegel 2006: 1350) point out that federalism, with its constitutional division of power among different levels of government, offers activists more institutional sites for contestation, through so-called venue and forum shopping. According to both fields of research, activists use this advantage in search of friendlier government forums. In particular, the gender and federalism literature has explained that federations permit feminist activists to employ a two-tiered strategy, or "two-level games," in search of a supportive government venue when progress is blocked at another (Chappell 2002: 151–53; Chappell and Curtin 2012: 28). The conceptualization of multiple points of access, forum

shopping, and two-tiered strategies is key to understanding the impact of federalism on legal mobilization dynamics in federal systems. However, at least in some subnational cases in nonindustrialized federations, the mechanisms of this influence can be different from what is expected from the theory.

In the first place, the idea that activists in general will search for more amicable institutional settings assumes a certain degree of equality in terms of resource availability for organizations to choose among different jurisdictions. This assumption should be qualified to explain venue shopping dynamics in contexts marked by high regional inequalities within a federation, and disparate resource availability for social organizations according to their geographical location. In these contexts, the advantage of forum shopping is available for big NGOs that are active at the national level and have the resources to choose where to invest their efforts across different jurisdictions. However, local organizations or activists who—at least in nonindustrialized federations—oftentimes work in unfavorable conditions in terms of financial and organizational support, do not enjoy the same advantages. Therefore, the conventional explanation of the effect of federalism on activists' strategies does not offer a complete account of processes of legal mobilization carried out by local activists at the subnational level.

Still, in those contexts the possibility of forum shopping offered by federalism can foster local actors' capacities to pursue legal mobilization and influence legal change, through a related although different mechanism: it can promote the interaction of local legal activists with their peers working at the national level, and in this way, it can strengthen the resources of local activists to pursue their own legal strategies at the subnational level. This is so because resourceful national level organizations may find incentives to invest in subnational legal mobilization processes initiated by local legal actors. We can expect these incentives to be higher in federal systems in which most types of rights claims must be litigated first at local courts, to possibly reach the national Supreme Court, as in the cases of Argentina and the United States. In these settings, there are strong incentives for national level NGOs to collaborate with local actors who initiate strategic litigation processes at the subnational level, as the latter's intervention is necessary to carry out legal strategies in cases that may attain national relevance. In contrast, federal systems where the Supreme Court has original jurisdiction over most rights issues, and social actors can access it directly, incentives for collaboration and partnership will be lower. However, these incentives can still exist in these settings, as powerful NGOs may want to collaborate with local

level legal actors, due the latter's knowledge and expertise with regard to institutional arrangements and normative frameworks of their own jurisdictions that can be relevant to the development of a case.

In the second place, the idea that activists will employ a two-tiered strategy in search of more amicable venues is not always true. Legal activists with organizational capacity for forum shopping may in some circumstances opt to invest their resources in unfriendly jurisdictions. Judicial federalism, particularly when its appellate system mandates that legal claims be initiated in lower courts, may lead national level activists to support claims promoted by local actors in hostile settings, to nationalize issues and reach the Supreme Court. In these cases, no matter how closed political and legal opportunities are at the local level, local activists may be able to gather support from large national level players, which can profit from choosing among different jurisdictions and may decide to invest their resources not necessarily in the most amicable ones. In this way, forum shopping by large NGOs in federal systems can empower local actors in the pursuit of their legal strategies, in contexts where political and legal opportunities are apparently more adverse for the advancement of rights.

National level NGOs may decide to support subnational legal strategies especially when two conditions are present at the subnational level: when local activists develop significant litigation strategies that may potentially reach the country's highest court, and when local activists count on social capital and contact with relevant actors in other jurisdictions, which allows for their legal strategies to be acknowledged and supported. The legal expertise and gender training of local activists can allow them to initiate important litigation strategies for women's rights at the subnational level, and can be considered as signs of the professionalization of the movement, even though they are not usually included in extant definitions of this dimension. In turn, their social capital—the formal and informal linkages and networks of the movement's organizations with other relevant individuals and groups (Diani 1997) can facilitate their interaction with prominent legal actors and organizations from other jurisdictions. Gender and legal training as well as social capital are, in fact, an intangible but nonetheless influential resource for feminist legal mobilization and could be considered as part of the support structure, although they are not generally included in this concept. These factors can be fundamental in subnational contexts signed by the absence of external financing and a consequent weak infra-structural capacity of the movement.

Further conditions for this mechanism to hold and be significant are interest on the issue by resourceful organizations and a significant degree of resource inequality between actors working at the national and subnational levels. With regard to the first condition, in order for large national level organizations to have an incentive to seek out and invest in relationships with local organizations, there must exist a prominent national issue in which national and local organizations share an interest. That is, the organizations must be like-minded, and there must be a major issue that both of them prioritize. In contrast, if local cases do not have national resonance, or if there are not like-minded organizations at the national level with an interest in those cases, it would be difficult for local actors to find national counterparts for processes of strategic litigation at the subnational level. Finally, regarding the second condition, the interaction between national and local legal actors can be higher and more determinant in contexts signed by a high disparity of resources between legal actors located in the capital or main cities and those located in other subnational units. This is, indeed, the prevailing situation throughout Latin America, the region with the highest inequality in income distribution in the World and high regional inequalities within countries, where there exists a huge concentration of resources in the capital cities, or in a few main cities, with the consequent presence of stronger NGOs in those locations, and low resource availability for social actors in peripheral locations, with considerable weaker support structures for strategic litigation. In other types of federations, with equally affluent subnational units and more uniformly distributed resources for activists across different subnational jurisdictions, partnership and collaboration may still take place, but their role in empowering local actors may be less significant.

Tracing the Influence of Federalism on Legal Mobilization in the Salta Case

The Local Conditions for Feminist Legal Mobilization in Salta

Salta, located in one of the most marginalized and poorest regions of Argentina (the so-called NOA, or Argentine North-West), is one of the country's most traditional provinces, with a conservative social structure and very low social mobility.⁵ It is also a paradigmatic case of influence of conservative religious forces on the state at the subnational level, being one of the two

⁵ The index of poverty in Salta reached 43.6 percent in 2009 (Puga and Otero 2010).

jurisdictions, together with Catamarca, that grants the highest formal privileges to the Catholic Church, in the form of constitutional provisions (Esquivel 2014). In this province, also, informal rules and cultural traditions have historically fostered the capacity of the Catholic Church to influence public policies.⁶ In recent times, during the governorship of Juan Manuel Urtubey (elected in 2007, re-elected in 2011 and 2015), the ultraconservative Catholic group Opus Dei gained ascendance to provincial power structures, reinforcing the Church's historical influence on the political sphere (Cáceres, interview 2013; Gómez Augier, interview 2013). In fact, Urtubey appointed Opus Dei members in positions within the state that are highly relevant for the rights of women and vulnerable groups, such as the Minister of Education and the office of the Public Defender of Minors (Gómez Augier, interview 2013). During the past decade, Salta has been systematically singled out by the national press as an extreme case of religious influence on provincial governments, as well as of noncompliance with national norms on reproductive rights and sexual education.⁷

In Argentina, each of the 23 provinces as well as the Autonomous City of Buenos Aires has its own Constitution, which organizes the three branches of provincial governments, and each subnational entity has an independent judicial power, with a high court (called either supreme court or superior tribunal). Salta's *Superior Tribunal* is composed of seven judges, appointed by the Governor with Senate approval, for a 6-year term. According to Argentina's federal organization of the judiciary, most types of rights claims must first be filed at the local court level. Following the United States model, the Argentinean system of constitutional control is diffuse and concrete and there is no direct action of unconstitutionality. Every judge has competence to determine the constitutionality of a norm, and the national Supreme Court is the final interpreter of the Constitution and federal laws, and has original and exclusive competence in very limited types of cases (constitutional article 117).

⁶ Interviewees for this study characterize part of the elite sectors in Salta, who are proud of the Province's colonial past, as the "last bastions of Hispanic conservatism" in the country (Cáceres, interview 2013), and point out that in this province there exists a "superposition between culture and religion" and a widespread assumption that Catholicism is part of its cultural matrix (Gómez Augier, interview 2013).

⁷ The province has not implemented the National Program on Sexual Health and Responsible Procreation established by the National Congress in 2002 (Carbajal, Mariana. "El derecho a decidir tiene cláusula especial en Salta," *Página 12*, March 23, 2012). Moreover, Salta's government has refused to implement the 2006 National Law on Comprehensive Sex Education, and educational materials on this topic, delivered by the national Ministry of Education, have been systematically returned without being used (Gómez Augier, interview 2013).

The local legal opportunity in Salta has been marked by a pervasive influence of Catholicism on the judicial power, as well as by a constant majority of conservative judges at the *Superior Tribunal*. Interviewees for this study agree that there is a noticeable and direct influence of the Catholic Church on Salta's judiciary (Abbut Carol, interview 2013; Gómez Augier, interview 2013; Spaventa, interview 2013). This is evidenced, for example, by the presence and activities of the so-called *Pastoral Judicial*,⁸ the masses carried out each month for members of the judiciary, and the presence of religious symbols in court buildings (Gaspar, interview 2013). Despite this general conservative environment, some of the components of the local legal opportunity are favorable for social actors. In particular, the legal rules governing forum selection in Salta establish that plaintiffs can choose the judge of first instance to decide an *amparo* claim (art. 87, Salta's Constitution), which is the preeminent means for rights protection in Argentina. This institutional factor mitigates a generally unfavorable local opportunity structure, under the condition that there exists at least one expectably receptive first-instance judge, which was the case in Salta when the legal actions under study were developed. However, first-instance decisions can be directly challenged before the *Superior Tribunal*. So, we can argue that the legal opportunity in Salta has been at best uncertain for feminist legal claims.

The writ of *amparo*, oriented to protect constitutional rights in general, and the writ of *habeas corpus* (applied when physical liberty is involved) are the main instruments for rights protection in the Argentinean legal system. The 1994 constitutional reform widened the scope of these legal procedures, by conferring legal standing to social organizations and by including claims that have a collective dimension, such as the rights of groups affected by any kind of discrimination (art. 43, National Constitution). In this way, the reform broadened the means for public interest litigation in Argentina. However, the Argentinean legal system is not as amicable to social actors as, for example, those of Costa Rica and Colombia, whose flexible rules of legal standing allow for individuals and groups to submit their claims without legal representation and do not establish formal requirements for social

⁸ The *Pastoral Judicial* is an institutionalized action by Salta's Catholic Church, through a Commission formed by members of the Judicial Power, the Public Ministry and a priest (Bertha Lozano, "El Poder Judicial y la Iglesia," *El revés de la trama*, October 20 2011. Available at: <http://www.elrevesdelatrama.com/2011/10/el-poder-judicial-y-la-iglesia.html>). The *Pastoral* has been denounced as interfering with court sentencing and participating in the training of judicial employees ("El fallo me dio vergüenza ajena," *Informe Salta*, October 28 2011. Available at: <http://informatesalta.com.ar/noticia/55639/el-fallo-me-dio-verguenza-ajena>).

organizations to present class action lawsuits (Wilson and Cordero 2006). In Argentina, these claims must be filed by a social organization registered as a legal entity, and with a direct institutional interest in the case (art. 43, National Constitution). In this way, the normative framework regarding the main instrument for the development of strategic litigation in the country reinforces the need to count on an organizational structure for legal mobilization, because the lack thereof implies lack of legal standing in class lawsuits.

With regard to the local support structure for legal mobilization, despite the existence of an active and diverse feminist movement in Salta,⁹ local feminist organizations and legal activists for women's rights do not count on strong material resources to carry out strategic litigation. Indeed, the lack of material resources and external financing for feminist organizations hinders the development of an institutionalized feminist movement, as well as of a support structure for legal mobilization. Given the lack of material resources, other from the member's own contributions of time and money, feminist organizations do not count on paid staff, or even an office or other type of infrastructure for their functioning (Abbut Carol, interview 2013; Caliva, interview 2013). Furthermore, most feminist organizations do not count on legal personhood, which is needed for class actions.

On the other hand, feminist advocates in Salta do count on other types of resources, such as legal expertise and gender training, as well as social capital and connections, which were fundamental factors in local legal mobilization processes and allowed for the influence of federalism on these processes.

In this setting, legal advocates in Salta have carried out some of the most salient cases of feminist strategic litigation in Argentina: in March 2008, they filed a collective *amparo* claim demanding women's rights to work as bus drivers in the City of Salta, which was upheld by the Supreme Court in 2014, and in June 2010 they submitted a collective *amparo* requesting the end of religious education at public schools, which was favorably decided by the Supreme Court in 2017.

Furthermore, the process of feminist legal mobilization in Salta stands out in a country where, despite the existence of a prominent feminist movement since the transition to democracy (Feijoo and Gogna 1990), and an increasing use of courts by

⁹ The feminist movement in Salta is composed by two main networks: the Women's Multisectoral organization (*Multisectorial de Mujeres*), founded in 2003, and the Women's Forum for Equal Opportunities (*Foro de Mujeres por la Igualdad de Oportunidades*), created in 2004.

social actors (Smulovitz 2005), strategic litigation is still a sub-utilized tool in the pursuit of women's rights (Kohen 2009; Gherardi, author interview 2010). In fact, before the Salta cases reached the Supreme Court, no other legal claims originated in feminist strategic litigation had been submitted before the country's highest court. The feminist movement's lack of systematic recourse to national courts has taken place after the constitutional reform of 1994 broadened the scope of *amparo* briefs, and also conferred constitutional status to human rights treaties ratified by Argentina, including the Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) (art. 75), and even after the reform of the Supreme Court in 2003 expanded the legal opportunity for social movement claims (Ruibal 2009, 2012).

So, the question is what accounts for the effective processes of feminist legal mobilization in Salta? As noted, there were some favorable elements at the subnational level, both in civil society and the legal system, and also, as described below, a local Public Defender was a key actor in one of the processes of strategic litigation. But the fact that Salta has become the most outstanding site of feminist strategic litigation in the country is fully understood only when we factor in the mechanisms generated by the federal institutional architecture and its interaction with local factors. We examine, first, the influence of the federal structure in fostering the role of autonomous institutions at the local level and, second, federalism's impact on the support structure for local legal activists. Then, we analyze the two legal cases of feminist strategic litigation in Salta that resulted from those dynamics.

Federalism and Institutional Activists Within the State Structure in Salta

The case of Salta highlights the importance of the presence of institutional activists and movement allies within autonomous public institutions at the local level. In this case, three institutions were key for the development of feminist litigation strategies: the Office of the Public Defender, the local delegation of the National Institute against Discrimination, Xenophobia and Racism (INADI), and the Women's Commission (*Comisión de la Mujer*) within the National University of Salta (UNSA). The latter two are federal institutions working at the local level. Their presence in both the federal and local jurisdictions conferred them institutional independence from local authorities and a strong status for the defense of women's rights amidst adverse subnational political conditions. In the case of UNSA, this was possible given the well-

established regime of institutional autonomy and academic freedom at national universities in the country, and in the case of INADI, the role of this institution was strengthened during a period of progressive national politics under *Kirchnerist* governments (2003–2015).¹⁰

The local delegation of INADI, established in 2008, has been a key actor in the development of the most important litigation cases pursued by women's rights advocates in Salta. Since its creation and until 2013, the Delegate of INADI in Salta was Verónica Spaventa, a young feminist lawyer, who is part of the local feminist movement and has contacts with feminist lawyers and rights advocacy organizations in other provinces. It was under her direction that INADI intervened in the two strategic litigation processes under study. Spaventa can be considered a feminist institutional activist, who has worked inside the state in favor of feminist legal strategies. Given that INADI is a federal institution with provincial delegations, its local representatives enjoy institutional autonomy from local authorities. INADI's institutional network at the subnational level had been strengthened since its reform in 2005, when it was transferred to the National Ministry of Justice, Security and Human Rights, and adopted as one of its institutional purposes the federalization of its actions through the creation of local delegations in the 23 provinces and the Autonomous City of Buenos Aires. While María José Lubertino held the national presidency of INADI (2006–2009), the organization sharpened its gender focus, and local delegates with a background on the defense of women's rights were appointed in several provinces, including Chubut, Entre Ríos, and Salta (Tolosa, interview 2014). It should be noted, though, that INADI's federal structure and gender mainstreaming strategy had been in jeopardy since 2016, due to budget cuts and questionable appointment criteria at subnational delegations under a new national administration, which will most probably affect the role of this institution in legal mobilization processes.¹¹

¹⁰ *Frente para la Victoria*, the Center-Left party that governed Argentina from 2003 through 2015, headed by Néstor Kirchner and Cristina Fernández, is part of the so-called left-turn in Latin American politics that took place at the beginning of the XXI Century (Levitsky and Roberts 2011). It promoted a series of laws oriented to the protection of immigrants' rights (2003 reform of the immigration law, defining immigration as a human right and establishing a series of rights for foreign residents), sexual minorities (gay marriage was legalized in 2010, and the change of sexual identity in 2012), and domestic workers (2013 law establishing the formalization of domestic work), among others.

¹¹ Under the Center-Right government of *Alianza Cambiemos*, which came to power in Argentina in December 2015, INADI's new authorities ordered in March 2017 that subnational delegations be relocated to other public buildings, to reduce rent and other

Fort its part, the Women's Commission at UNSA, founded in 1987 by two university professors who are emblematic figures of Salta's feminist movement, has had a fundamental role in the development of legal mobilization for women's rights in this province.¹² The role of this institution in feminist legal mobilization has been twofold: on the one hand, its work has been determinant for the development of gender studies, and in particular for the education of a young generation of feminist activists and lawyers in Salta—as well as in other Northwestern provinces (Femenias 2005). Local feminist advocates recognize the key role of the Commission in terms of intellectual input and gender training (Caliva, interview 2013; Gaspar, interview 2013; Morales, interview 2013; Spaventa, interview 2013). On the other hand, the Commission has also played a direct and activist role in feminist litigation strategies, through its formal participation in judicial claims.

As an institution of the National University, the independence of the Commission with respect to local politics has been ensured, allowing it to introduce a gender perspective in the midst of a traditionalist cultural environment. One of the Commission's founders and current Director explains that one of its main strengths is its autonomy, and the fact that the University has never placed limits on the Commission's activities (Carrique, interview 2013). In Argentina, National Universities are financed by the federal state and are autonomous from governments, and the work of the Women's Commission should be understood as part of the development of academic feminism in the country, which has taken place since the democratic transition (Femenias 2005). In fact, the Women's Commission at UNSA has been pioneering in this process, considering that the greatest growth ("an explosion") in gender studies and gender groups and commissions at National Universities throughout the country took place around the years 2000–2005 (Quiroga, interview 2014).

Finally, the local Public Defender, who intervenes in cases involving low-income claimants, has been an important actor in the development of strategic litigation for women's rights in Salta. Natalia Buira, who has been a Public Defender in Salta since

expenses, under the threat of closing them, with the consequent loss of the local branches' institutional hierarchy and autonomy ("Recortes en el INADI. Cierre de sedes en el interior," *Página 12*, March 21, 2017). Furthermore, the new Delegate in Salta since March 2016, Alvaro Ulloa, reflects the lack of a gender perspective in the institution's appointment process. In 2016 and 2017, Ulloa made public statements against gender parity laws and maternity leave norms (see "Alvaro Ulloa: No va a dar resultado la Ley de Paridad," *El Inbra*, 5 de julio de 2017, and "Momentos para ser generosos," *Qué pasa Salta*, 22 de mayo de 2017).

¹² The Commission was created by Violeta Carrique, currently a key referent of the *Multisectorial*, and María Julia Palacios. For thorough accounts of the Commission's history, see Palacios and Carrique (2005) and Femenias (2005).

1994, has been an ally of the feminist movement within the state structure. As Smulovitz (2012) points out, given that the Argentinean legal system requires plaintiffs to count on legal representation in all cases, the role of Public Defenders is crucial for effective access to justice by low-income individuals and groups. The problem is how to safeguard the independent work of these institutions in subnational units. In Salta, the Public Ministry is governed by a collegiate body and does not depend on the highest local court. This institutional factor promotes the independence of the Public Defender with respect to local political and judicial powers, and has allowed Buira to hold her position even when, in the exercise of her official functions, she has often opposed the local government's policies.

Federalism and the Resources of Feminist Legal Activists in Salta

Judicial federalism in Argentina affects the dynamics of subnational legal mobilization. It does so in a country with huge regional economic inequalities (Gervasoni 2010: 332), which results in significant regional disparities in terms of the availability of resources for local legal activists. In the Salta case, it has promoted the interaction between local women's rights advocates with national level human rights organizations located in the capital city of Buenos Aires, where the bulk of strategic litigation takes place. In this way, it has strengthened the possibilities of feminist legal advocates in Salta to pursue their legal strategies.

The interaction between local and national players has been facilitated by incentives and capacities both at the subnational and national levels. In the first place, young feminist lawyers in Salta, who are part of the movement and received education by the Women's Commission at UNSA, count on legal expertise and gender training. They also count on social capital and connections at the level of state institutions, as well as with human rights organizations and legal activists from other provinces (Abbut Carol, interview 2013; Ramos, interview 2013; Spaventa, interview 2013). This has allowed them to identify relevant cases, put forward strong litigation strategies and, in turn, gain attention and support from external actors for their initiatives. In the second place, resources provided by well-established rights organizations can be particularly crucial in a legal system like the Argentinean one, whose rules of legal standing require that class action lawsuits be submitted by organizations that count on legal personhood status. In this context, local legal activists in Salta had incentives to search for support by national level organizations for their strategic litigation initiatives.

In Salta, there is low institutionalization and professionalization of the movement, in that there are no paid staff, no established offices for feminist associations, and only a few organizations count on legal personhood status. However, despite the lack of an organizational infrastructure and financial resources, the legal and gender training of a young generation of feminist advocates in Salta, as well as their connections with federal officials and national organizations, have allowed them to gather support from prominent national level rights advocacy organizations. In fact, the intangible but fundamental capacities of legal activists in Salta indicate some degree of institutionalization and professionalization of the movement, which is key to understanding why national level organizations have been involved in this interaction, although the literature's traditional definitions of institutionalization/professionalization and support structures overlook these types of factors.

In Argentina, there exist strong human rights organizations that emerged mostly since the last dictatorship (see Jelin 1994). They are located in Buenos Aires and have the organizational capacity to forum shop for litigation opportunities at the subnational level. The Association for Civil Rights (ADC) is one of the most prominent of these organizations and has collaborated extensively with local feminist advocates in Salta, providing them with institutional resources to comply with legal standing rules, as well as with an organizational structure to litigate in Buenos Aires before the Supreme Court. The type of appeals system established by Argentina's federal organization of the judiciary generates incentives for this interaction. Among the incentives for ADC to invest its resources in these legal processes was the potential of these cases to reach the national Supreme Court (Abbut Carol, interview 2013).

The collaboration between local feminist advocates and ADC should be understood within the context of an increasing interest in the defense of women's rights by well-established human rights organizations in Argentina, as well as in other Latin American countries. In fact, for many years, the Argentinean women's movement and large rights advocacy and human rights organizations had not worked together. The feminist movement had grown outside of the sphere of the big human rights NGOs such as ADC and the Center for Legal and Social Studies (CELS), which are some of the most resourceful and powerful rights advocacy organization in the country.¹³ However, during the past

¹³ For many years since the democratic transition, big human rights NGOs, which have a strong background in strategic litigation and count on significant material resources for legal mobilization, had a different agenda, as they were mostly oriented to the fight against impunity in crimes of state terrorism (Bascary 2010). Furthermore, in Argentina as well as in other countries in the region, human rights NGOs were originally linked to progressive sectors of the Catholic Church, whose struggles against political

decade, the relationship between feminist organizations and more traditional rights advocacy and human rights NGOs has intensified (Bascary, interview 2010; Puga, interview 2010). Particularly important in this process has been the development of a gender-sensitive perspective within the ADC (Puga 2010).

So, counting on their legal expertise and gender training, and supported by these institutional interactions, feminist legal advocates in Salta have been able to pursue the two processes of strategic litigation that follow.

Equality at the Workplace: The “Sisnero” Case

The first case of strategic litigation for women’s rights to reach Salta’s courts had its origin in the search for work as a bus driver in the city of Salta by Mirtha Sisnero, a young woman with no initial links to the women’s movement. Since 2004, and during 3 years, Sisnero applied for a job as a bus driver at the 7 private companies that provide public transportation services in that municipality and, even though she got the required training and license, she was not even considered as a potential candidate for that position. As it happens in most Argentinean cities, the public transportation system in Salta had never hired a woman.¹⁴

In 2007, Sisnero made her case public through a Letter to the Editor in the local press.¹⁵ As a consequence of that publication, the Public Defender Natalia Buirra, as well as the Delegate of INADI Verónica Spaventa contacted her; they discussed possible ways of action, and Buirra eventually offered to litigate the case through a procedure that could have *erga-omnes* effects for women in Salta (Sisnero, interview 2013). In March 2008, Sisnero and the Foundation *Entre Mujeres*, legally sponsored by the Public Defender and accompanied by UNSA’s Women’s Commission (under the legal figure of *Adherente*, or adherent to the case), filed

repression and social injustice did not include a concern for gender injustices. This has started to change in recent years, as an interaction between feminist actors and human rights organizations has set out to develop in countries such as Brazil, Mexico, and Argentina (see Ruibal 2015).

¹⁴ According to a report by the Center of Studies on Women and Work of CTA (Argentine Workers Central), the public transportation sector in Argentina is, after the construction sector, the second most segregated against women (86 percent of workers are men), and it is also the one that offers the highest wages (cited in Mariana Carbajal, “Un dictamen contra la discriminación,” *Página/12*, June 28, 2013). By 2010, only a few cities (Rosario, Buenos Aires, Caleta Olivia, Mendoza, and Córdoba) employed women as bus drivers, and women represented a small percentage of the total workers in that activity (e.g., in Buenos Aires, 1 percent) (Puga and Otero 2010).

¹⁵ Her Letter was published on June 8, 2007, in *El Tribuno*, the leading newspaper in Salta. Sisnero explains this decision: “after going to all the companies, without media coverage, without anybody else, one day I got tired and decided to write that letter (interview, 2013). The text of her letter reads: “I would be pleased if this kind of discrimination which arises from assuming that women cannot drive a bus, comes to an end.”

a collective *amparo* claim before the local Civil and Commercial Appellate Tribunal, on grounds of gender discrimination in the workplace. They demanded the incorporation of Sisnero as a bus driver, and the establishment of a quota to be occupied exclusively by women until there was equitable gender representation in the local public transportation system. The claim was grounded on the right to equality and nondiscrimination at work, granted by constitutional norms and human rights treaties with constitutional status.

The Public Defender litigated the case, and INADI submitted an *amicus curiae* brief in support of the claim. This was INADI's first intervention in a judicial proceeding in Salta, and it was also the first *amicus* brief admitted by Salta's judicial system (Spaventa, interview 2013). The support by UNSA and INADI was acknowledged by national judicial authorities during the legal process as a sign of the institutional relevance of the case.¹⁶ For its part, the Foundation *Entre Mujeres*, one of the few feminist organizations in Salta that counted on legal personhood, was convoked by the Public Defender to comply with legal standing requirements to file a collective claim. Since that moment, *Entre Mujeres* collaborated in the process, specially by giving publicity to the case (Caliva, interview 2013).

In November 2009, the claim was upheld by Judge Mario D'Jallad. The plaintiffs had chosen Judge D'Jallad because in previous cases he had shown an interest in gender equality matters (Sisnero, interview 2013). The judgment ordered the incorporation of Sisnero as a worker in the public transport system, and established an obligation by companies to hire female applicants until there is at least a 30 percent of women within this sector.¹⁷ It argued that discrimination was evidenced by the fact that no woman had ever been hired in the public transport system, which made it unnecessary to prove the existence of discriminatory conduct. It further characterized this state of affairs as a situation of violence against women. This decision was considered as the most progressive judicial sentence in the country regarding gender equality in the workplace (Puga and Otero 2010).¹⁸ Its remedial

¹⁶ National Public Prosecutor, Alejandra Gils Carbó (Expte. CJS 33.102/09 – Sisnero Dictamen Alejandra Gils Carbó: S.C. 8.932, L. XLVI, Sisnero, Mirtha Graciela y otros c. Tadelva SRL y otros s/amparo), p. 7.

¹⁷ *Sisnero, Mirtha G., Caliva, Lía V., Bustamante, Sandra, Fundación Entre Mujeres v. Tadelva S.R.L. y otros s/ amparo*, Appellate Civil and Commercial Chamber, Sala 5, November 18, 2009.

¹⁸ The decision was considered as an innovation with respect to its main precedent in the field of gender equality in the workplace, the so-called *Freddo* case, decided in the city of Buenos Aires in 2002 (*Fundación Mujeres en Igualdad y otro c/ Freddo S.A. s/amparo*, Federal Civil Appellate Chamber, Buenos Aires City, December 16, 2002). That case had

measures were eventually followed by the national Supreme Court.

The transport companies appealed the ruling to Salta's *Superior Tribunal*, which in June 2010 overturned it, arguing that there was no proof that during the recruitment process the companies had deliberately discriminated against women for the only fact of being women.¹⁹ In turn, the plaintiffs appealed this decision to the national Supreme Court, which on May 20, 2014, upheld the claim. For the first time in its institutional history, the Supreme Court had the opportunity to decide on a case of strategic litigation for women's rights. In its decision, it argued that the principle of equality and the prohibition of discrimination are structural components of the constitutional order and the international human rights regime, and that they apply to formal norms as well as to practices, and to state institutions as well as to private actors.²⁰ It also considered that the proof submitted by the plaintiffs—particularly regarding the fact that the companies had never hired a woman—was sufficient to prove the discriminatory situation in a complex discrimination case, in which discrimination can be presumed but is hard to demonstrate.

Secular Education in Public Schools: A Feminist Legal Claim

The second case of feminist strategic litigation initiated in Salta dealt with a claim for secular education in the province's public schools. These process of mobilization in this case was initiated by a group of 200 parents who disagreed with the fact that their children were subject to Catholic practices in Salta's primary schools. These practices included, on a daily basis, mandatory prayers before the start of classes, writing prayers and religious phrases in school materials, and saying grace before meals. Furthermore, families whose children attended public schools were required to fill out a form stating their religious affiliation; schools organized visits to the Virgin of the Miracle (Salta's Patron Virgin); there were Catholic signs in schools' buildings and Catholic rituals during school hours, and most fundamentally, there was a mandatory course on "values," which in practice consisted of

been the first one in which an Argentinean court required a private company (the chain of ice-cream shops *Freddo*, whose recruitment policies openly discriminated against women) to comply with measures that granted gender equality (Maurino and Nino y Martín Sigal 2005).

¹⁹ *Sisnero, Mirtha G., Caliva, Lía V., Bustamante, Sandra y Fundación Entre Mujeres v. Tadelva S.R.L., Ahynarca S.A., Alto Molino S.R.L. y otros s/ amparo - recurso de apelación*, pp. 628–29.

²⁰ *Recurso de hecho Sisnero, Mirtha Graciela y otros c/ Tadelva SRL y otros s/ amparo*, National Supreme Court, May 20, 2014.

Catholic teachings.²¹ Salta is an emblematic instance of a situation that has also been denounced, although to a lesser extent, in some other provinces.²² In Salta, confessional education is mentioned in the local constitution, which establishes the right of parents or tutors to have for their children a kind of religious education according to their own beliefs (art. 49), and the province's 2008 Education Law establishes that public schools should impart religious education during normal school hours.

The group of parents that objected to this practice sought the legal advice of INADI's local delegation. Verónica Spaventa, who was the President of INADI-Salta at that time, suggested that they submit a collective *amparo* claim on the grounds of discrimination. Spaventa also referred the parents to Graciela Abbut Carol and Gabriela Gaspar, two feminist litigating attorneys in Salta, who agreed to take up the case and provide legal representation to the parents.

The claim was linked to the feminist cause from the outset and throughout the development of the legal process it triggered in Salta. The promoters of the complaint, who mobilized a large number of parents around this issue, were a group of mothers, all of whom shared a manifest feminist perspective, and some of whom were directly related to feminist activism (Spaventa, interview 2017). For their part, the two feminist attorneys that carried out the legal demand considered this a crucial claim for the advancement of women's rights in Salta, given that one of the main conditions for progress in this regards is the separation between the state and the Church (Abbut Carol, interview 2013; Gaspar, interview 2013). They saw this case as an opportunity to contest the influence of Catholic forces and doctrines in the local public sphere (Abbut Carol, interview 2013). The wider feminist movement also considered the presence of religious education in public schools as a main sign of the interference of the Church on public policies in Salta, and directly connected this with the situation of women's rights in this province.²³

²¹ This course was called "education in values," but it consisted of Catholic teachings. This situation was promoted by the fact that the only institution certified to confer the necessary degree to teach this course depends on the Catholic Church and is oriented to instruct pastoral assistants and Catholic leaders (Gómez Augier 2013).

²² Attempts to implement Catholic education in public schools have been reported in other Northwestern provinces as well, including Tucumán, Catamarca, and Santiago del Estero (Abbut Carol, interview 2013; Gaspar, interview 2013; Esquivel 2014).

²³ In occasion of the 14th Women's National Encounter, which took place in Salta in October 2014 (initiated in 1986, the Encounters are the main instance of women's mobilization in Argentina), feminist activists published a manifesto, in which they stated: "We make this call from Salta, where fundamentalism is ruling, where the Catholic hierarchy has imposed, among other measures, religious education in public schools" (available at: http://www.ecoportall.net/Eco-noticias/Manifiesta_Feminista_en_el_XXIX_Encuentro_Nacional_de_Mujeres_Salta_Argentina).

In fact, the feminist movement was the only collective group in Salta to make this claim its own, not only because of the need to deepen the separation between state and Church, but more specifically because of the obstacle that religious education at public schools represented for the implementation of the National Law on Comprehensive Sex Education, which has been particularly resisted by local authorities in this province (Spaventa, interview 2017). As remarked by Spaventa (interview, 2017), other social forces that could have been relevant actors in this kind of claim did not play a significant role in this case. The Evangelic and Jewish Churches—which are the other two important religious groups in Salta, in terms of numeric presence and lobby capacity—did not want to intervene due to strategic reasons and economic relationships with local political powers (Spaventa interview, 2017). Furthermore, this claim was not embraced by the local teaching profession, which was in fact divided on this issue, because not all teacher unions' delegates thought that religious education at public schools was inappropriate (Spaventa, interview 2017).

The Salta case is, in this regard, part of a trend in Argentina and Latin America more generally, where the strength of religious conservatism and its influence in the political domain has been a critical question for feminist activists, whose campaigns in recent years have regularly included the claim for the secularism and lay public policies. In fact, since the democratization processes in the region, women's rights have been at the center of the discussion on religious politics, in the midst of contentious reform process in the fields of family law and sexual and reproductive rights throughout the region. In particular, the controversy around the legalization of abortion has become a focal point in the dispute over the secularization of the political sphere in the post-transitional Latin American context.

In the process of building support for this legal claim, Spaventa contacted the ADC, whose intervention in this case was essential to submit a collective *amparo* claim, for reasons of legal standing. This was due to the fact that, first, the local Public Defender could not pursue the case, given that the plaintiffs' income was above the income requirements for its intervention. Second, there was no social organization in Salta that could be granted legal standing in this case—for example, the feminist Foundation *Entre Mujeres* could not demonstrate a direct institutional interest on the issue, as required by legal standing rules. For its part, ADC became interested in this case because of the possibility of pursuing the claim before the national Supreme Court and addressing the problem of state neutrality on religious matters in the country (Abbut Carol, interview 2013).

Eventually, in June 2010, a collective *amparo* claim was filed against Salta's Ministry of Education in the local Civil and Commercial Appellate Court, by nine mothers and the ADC, represented by local attorneys Abbut Carol and Gaspar. They argued that the presence of religious practices at public schools creates unequal and discriminatory treatment for children who do not profess the Catholic religion. They requested the end of those practices and the declaration of the unconstitutionality of article 28 of the provincial Law of Education, which establishes that public schools should impart religious education during normal school hours. On February 23, 2012, the claim was partially upheld by first instance judge Marcelo Domínguez. Although his decision did not declare the provincial education law to be unconstitutional, it did conclude that there was "a discriminatory situation."²⁴

The local Ministry of Education appealed the decision before Salta's *Superior Tribunal*. On July 12, 2013, the Tribunal overturned the lower court's ruling. Among its arguments, which were based on a traditionalist rationale, it claimed that Argentina is "legally structured from its foundation as a Catholic Apostolic nation."²⁵ On July 16, 2013, the ADC appealed the decision to the national Supreme Court. In August 2017, invoking the institutional relevance of the case, the Court convoked four public hearings, with the participation of more than 50 experts on this matter.²⁶ On December 12, 2017, the Court upheld the claim and declared unconstitutional the provincial norms that allowed for religious education to be included in academic programs within the public education system.²⁷

Conclusion

Through the study of feminist litigation strategies in the Salta case, this article has argued that, under certain conditions, federalism can promote a synergy between national and local factors,

²⁴ The judge affirmed that it was not the content of the questioned norms, but their application which provoked a discriminatory effect over the non-Catholic minority in the province ("Castillo, Carina Viviana y otros c/ Gobierno de la Provincia de Salta y otro s/ Acción de amparo," Appellate Civil and Commercial Chamber, Sala H, Salta, February 23, 2012, p. 34).

²⁵ *Castillo et al. vs. Provincia de Salta – Amparo – Recurso de apelación*, Superior Tribunal, Salta, July 12, 2013, p. 13.

²⁶ "El debate del siglo XIX que retornó en pleno 2017," *Página 12*, August 16, 2017.

²⁷ "Castillo, Carina Viviana y otros c/ Provincia de Salta Ministerio de Educación de la Prov. de Salta s/ amparo," National Supreme Court, Expte: 1870/2014/CS1. December 12, 2017.

both in civil society and the state, which can favor subnational legal mobilization. Drawing on insights from legal mobilization studies and gender and federalism scholarship, modified to Salta's context, the study showed that federalism matters not only because it offers more possibilities for forum shopping—which can be used by big rights organizations that are national players—but also because it can increase the resources available to local legal activists for the pursuit of their own legal strategies. In this regards, it showed that national level NGOs with a capacity for forum shopping may support relevant litigation processes initiated at the subnational level, when local activists, even working in inhospitable settings, develop significant legal claims with a potential to reach the national Supreme Court. This is another form of two-tiered strategies and forum shopping in federal systems, different from what is predicted both by the gender and federalism literature and by studies on law and social movements. Among the main conditions for this mechanism to work, the study suggests that the interaction between local and national level feminist legal advocates is mediated by the legal expertise and gender training of local actors, as well as by their social capital. These local factors can be considered as components of the support structure, and they indicate a degree of professionalization and institutionalization, although the conceptualizations of movement institutionalization processes as well as of support structures for legal mobilization do not include them.

The dynamics described in this study can be expected to have an influence in other subnational settings, under similar conditions of resource concentration in capital cities, or in a few main cities, with the consequent presence of stronger NGOs in those places, and considerable weaker support structures for strategic litigation by local legal actors in other jurisdictions.

The feminist movement is particularly suitable for observing the influence of federalism on subnational legal mobilization. It is a movement that generally presents a territorially widespread structure, with a presence across subnational entities, as well as some type of national level network. Furthermore, the importance and strength of second-wave feminism during the past decades has led, at least in the Latin American context, to the creation of institutional structures within federal and local governments (the so-called women's machineries), and/or to the incorporation of gender-mainstreaming policies across government agencies, at the national and subnational levels. In this sense, feminist mobilization and its interaction with state institutions constitute a paradigmatic field where to observe the impact of federalism on a movement's legal strategies. However, the general argument developed here about the need to incorporate federalism as a

variable in the study of subnational legal mobilization can also be tested with regard to other social groups, and the specific mechanisms of federalism's influence pointed out in this study could be a reference point for comparison of the diverse ways in which federal architectures impact the legal strategies of different social movements.

Finally, the role of federalism in promoting the presence of rights activists within the state structure at the local level is likely to take place also in other federations. The creation of federal agencies for the protection of rights connected with parallel institutions at the subnational level has been a common development, for example, in other Latin American federal countries, as part of the process of institution building in the aftermath of democratic transitions. For its part, impacting specifically the defense of women's rights, academic feminism, and institutionalized groups of gender studies, which have been fundamental in the Salta case, have also been developed throughout the Latin American region, particularly since the democratization processes. In the region's federal countries, most of these institutional units for gender studies are part of national universities located in subnational entities. As the lack of relevant gender training at law schools has been singled out by feminist legal activists in different Latin American settings as one of the main obstacles for the development of strategic litigation on women's rights in their respective countries (Bascary, interview 2010; Beltrán y Díaz de León, interview 2012; Davis Mattar, interview 2012; Gerhardi, interview 2013), we can expect the increasing presence of gender studies initiatives in academic institutions at the local level to have a significant impact on subnational legal mobilization processes, through its contribution to the education of young feminist lawyers at the local level. Furthermore, as shown by the Salta case, these institutions can also play a direct role in subnational litigation strategies for women's rights.

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