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Devaluing Women’s Lives through Law: Familyism Ideologies in Abortion and Violence against Women Laws in El Salvador

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Abstract

El Salvador’s violence against women (VAW) and antiabortion laws present optimal empirical ground to examine the intersection of familyism ideology, laws, and the state relevant beyond this case. Analyzing legal documents, content of laws, and newspapers, we juxtapose these two laws that have followed different applications within the same socio-legal context and historical time, legal reasoning, and juridical structure to identify a common thread: the control of women’s bodies and devaluation of women’s lives enshrined in the legal system. “Familyism” ideology embedded in the law prioritizes family over women’s rights where social class emerges as a central factor. The analysis centers the state, as it interacts with and responds to pressures from the international community and domestic political forces to create, align, and implement antiabortion and VAW laws while devaluing gender ideologies that seek to protect women. In sum, both laws prioritize family at the expense of women’s rights and lives, especially poor and socially disadvantaged women.

Introduction

Salvadoran women suffer some of the most extreme forms of violence, made possible or sustained through the country’s legal system. El Salvador implemented one of the most restrictive antiabortion laws in the world while at the same time its violence against women (VAW) laws are lax. Abortion is strictly criminalized,¹ stillbirths and miscarriages can lead to thirty-year sentences for “aggravated homicide,” while gender-based violence against women is unresolved due to impunity. Between 2000 and 2019, 181 adult women were accused and tried for abortion (46.5 percent) or aggravated homicides due to abortion (53.5 percent) (AC 2019, 23). At the same time, feminicides are the highest in the region (10.2 per 100,000 women), and domestic violence cases are in the thousands (41,710 cases between 2005 and 2020). Salvadoran law’s total ban on abortion in all circumstances permits the prosecution of abortion as homicide, which has led to the imprisonment of women who have had miscarriages or are *suspected* of abortion (AC 2019).² In contrast, VAW laws are implemented on the ground by encouraging reconciliation between partners in domestic

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1. “What El Salvador’s total abortion ban means for women and girls.” Accessed March 9, 2021. <https://www.amnestyusa.org/what-el-salvadors-total-abortion-ban-means-for-women-and-girls/>

2. See: “These women say they had miscarriages. Now they are in jail for abortion.” Accessed February 5, 2021. <https://www.cbsnews.com/news/miscarriages-abortion-jail-el-salvador/>

violence cases (Chant and Craske 2003) even when it is against Salvadoran law, seldom leading to prosecution. With high impunity, El Salvador is one of the most dangerous countries for women.³ Despite several VAW laws, violence against women in the family is seen as discord between a couple, which reconciliation will fix for the benefit of all. How are antiabortion and VAW laws connected?

We juxtapose these two laws, which have followed different applications within the same socio-legal context, legal reasoning, and judicial structure. We identify a common thread that activates such dissimilar state responses: the control of women's bodies and their devaluation in law and in the social context where laws are implemented. Indeed, it is when we contrast the origins, legal positioning, implementation, and outcomes of El Salvador's antiabortion law vis-à-vis VAW laws that we can discern the link between the two. Antiabortion law emerged as an effective punitive instrument against women because it is aligned with predominant family ideology. In contrast, VAW laws emerged as weak, symbolic legal actions with no implementation teeth because these laws challenge predominant gender ideologies about women and their bodies. Thus, a comparison of El Salvador's VAW and antiabortion laws reveals that these laws are grounded in convergent gender ideologies that undermine women's safety through controlling and devaluing their lives and by prioritizing the fetus and family unity. This comparison also highlights women's responses through their activism, as through organizing they contest and seek to repeal laws that harm them. Thus, the legal scenario we depict, and its effects, are not static or passively accepted.

We demonstrate how the state interacts and responds to pressures from the international community and domestic groups, both from those advocating for women's rights (in the case of VAW laws) and those advocating for the sanctity of life and the family's interests above all (the antiabortion law). Furthermore, a social class cleavage emerges when examining these two laws, adding complexity to our analysis of how different laws are amplified or altered as they intersect with social markers on the ground. Antiabortion law is overwhelmingly applied to poor women who lack access to quality medical services and education (Center for Reproductive Law and Policy 2001). In cases of VAW law, although the government seems disinclined to investigate, the cases it investigates are those of middle-class or upper-class women. And poor women are far less able to access legal mechanisms that can benefit them or avoid those that punish or penalize them. Thus, social class is critical here, but the results are different: in both laws, poor women bear the brunt of gender ideologies that devalue and control them along gender and social class lines.

Although we focus on El Salvador, this case should not be seen as exceptional, as similar confluences are present elsewhere. This empirical case allows us to examine the intersection of familyism and laws that undermine women's rights and lives, and the state's central place at this confluence, which is relevant beyond El Salvador, as the cases of Ecuador (Human Rights Watch 2021), China (Wang 2021), Dominican Republic (Alcántara and Estrada 2021), among others, demonstrate.

³“El Salvador 2020.” Accessed March 11, 2021. <https://www.amnesty.org/en/countries/americas/el-salvador/report-el-salvador/>

Previous Scholarship: Gap in Socio-legal Studies

The scholarship focusing on inefficient applications of VAW laws across national contexts emphasizes a lack of resources or, conversely, state agents' lack of will to implement laws. Ghosh and Choudhri (2011) argue that the high rates of domestic violence and feminicides in India—despite a comprehensive reform in 2005—are due in part to police officers' apathy about and disdain for processing cases of violence against women (Medie 2015). In Honduras, state agencies have diverted resources from efforts to protect women from violence to address more “serious crimes,” such as common crime, thus minimizing the importance that violence against women should have (Menjívar and Walsh 2017). However, when we examine VAW laws visà-vis antiabortion law in El Salvador, a picture of state capacity to enforce laws emerges. The state seems to have little capacity to implement VAW laws, but outsized capacity to enforce antiabortion law. Why are VAW and antiabortion laws producing such different outcomes?

Our analysis detects a bifurcation in state responsibility into acts of omission and acts of commission (Menjívar and Walsh 2017). On the one hand, the state seems unwilling and/or unable to prosecute cases of violence against women; on the other hand, it shows remarkable willingness and ability to prosecute abortion cases against women. In both cases, women's bodies have no priority, a stance reflected in the writing and implementation of both laws. Omission to protect women from violence and commission to implement one of the most extreme antiabortion laws in the world are two sides of the same state actions and social processes reinforcing gender-based violence that converge on the disregard for women's lives and bodies. Decoupling the mechanisms at work in the legal positioning and implementation of these laws shows the state's central role and responsibility in the perpetuation of gender-based violence.

The UN Special Rapporteur for accountability and due diligence outlines the states' responsibilities to eliminate violence against women. State responsibility is based on “acts or omissions committed either by state actors or by actors whose actions are attributable to the state” (United Nations Human Rights Council 2013), including the failure to exercise due diligence to prevent acts from other non-state actors. Under these guidelines, women's rights are a state matter, and due diligence is the mechanism that holds states accountable. The state is obligated to control, regulate, investigate, and prosecute non-state actions and to secure women's rights and undertake due diligence to assess what constitutes a failure to act on the part of the state. We examine how ostensibly different laws in the same national context work to subvert women's lives and rights by prioritizing the viability of the fetus and family unity.

The State, Familyism, and the Control of Women's Bodies

We understand the state as encompassing multiple institutions with different logics; thus, the same state can be progressive and regressive, extending some women's rights while restricting others (Htun and Weldon 2017). Furthermore, both logics are part of the state's infrastructural capacity with their own mechanisms to exercise power and control over women and their bodies. Thus, we examine how the state creates a differentiated approach

to control women based on gender inequities, with different mechanisms to reproduce these logics. Both indifference or inaction to implement VAW laws, and action to produce and enforce regressive antiabortion laws that constrain women's lives, reproduce extant gender power relations in society.

How does El Salvador govern over the bodies of women through these two laws? In addition to what state agents do, other political actors shape state actions, for example, women groups, religious leaders, national and international activists, and donor organizations (Gal and Kligman 2012). The state responds to demands from these other actors, and in so doing generates laws that sustain predominant gender ideologies and familyism. Thus, the Salvadoran state does not enact laws in isolation from external interests and domestic pressures (e.g., women's organizations, international donor organizations, and bodies such as the UN). Through dynamic interaction with these non-state actors, the Salvadoran state governs and molds laws that control women's bodies.

State power to enforce certain laws while neglecting others reinforces the symbolic domination that renders the "male order" as self-evident, taken for granted, and beyond the need for explicit justification (Bourdieu 1992, 171–73). Devaluing and controlling women's bodies in society becomes naturalized in the writing and positioning of laws within the legal hierarchy, their content, and implementation, reproducing the common sense of gender relations. This legal violence (Adamson, Menjívar, and Walsh 2020), crystallized in the idea that women can be equated to family, makes women vulnerable to physical and symbolic domination. Thus, in the eyes of the state, women do not exist as individuals and their needs are subsumed under family needs; this is what we refer to as familyism. The differential positioning of these laws therefore shows how the state contributes to reify societal ideas of family unity and gender inequalities through law.

Familyism is a set of standards that justifies and upholds the role of women as the primary caregivers in the household and as those who can put the needs of others before their own. A family unity rooted in authority, structured around unequal power relations with the male partner at the head and the submission of its members, lies at the root of family ideology (Facio 1992). As an ideology it goes unquestioned, and is seen as tradition. Contemporary family ideology is nuclear (legally married parents and their children), patriarchal, and based on middle-class expectations (Smith 1993). Regardless of its middle-class origins, the standards of family ideology present as universal and aspirational to all; they become natural and commonsensical (Bernardes 1985). Deference to and dependence on the male partner go hand in hand with motherhood expectations which ensures the successful and rightful upbringing of the children. Thus, men are the household heads, women are responsible for the family's well-being, including their care, and children are prioritized over other members. Any deviation from this standard ideology is considered a threat to the family and its values.

The conventional version of family ideology denies the diversity of family formations and the current challenges women face in society. In the context of familyism, working-class, low-wage-earning, head-of-household women challenge these norms (Coontz 2004). They defy the notion that family is constituted by "an adult male in paid employment, providing

economic sustainability, and an adult female whose primary responsibility is the care of the husband and the children” (Smith 1993, 52). Thus, women who deviate from this conventional definition, by choice or circumstances, are subject to devaluation and control through informal and formal legal means.

Thus, the legal doctrine does not escape the biases produced by familyism. The legal context adopts family ideology as normative and foundational. Following Alda Facio (1992), we argue that familyism is embodied in the laws we examine, shaping their content. The definition of women as main caregivers in the family undergirds legislation that precludes women from protection within the law. In this case, the law legislates women as mothers or as child bearers, but not as individuals or persons (Facio 1992, 94–95). Thus, laws that favor the “woman-mother” have been used in place of laws to protect the “woman-person.” As Facio affirms: “The identification of the woman-person with the woman-family is one of the manifestations of familyism. Although it appears natural that the woman is more linked to the family than the man, this does not imply that women do not have needs as a human person, which are not identical to the needs of the family. Family and woman are not synonymous” (Facio 1992, 96).

As a gender system, familyism prioritizes family unity over women’s rights (and, in many cases, women’s safety). Women are praised as mothers by their capacity to suffer and sacrifice for their families (Menjívar 2011). This ideology thus informs the content of laws, their legal positioning, and their implementation. As Velásquez Díaz, Vargas, and Pérez (2016) observe, familyism in law is

The idea that women and family are synonyms and therefore their needs and interests are the same. ... This form of sexism is frequently used among administrators of justice when, regardless of the circumstances, women are encouraged to return to their aggressors, to forgive them, to give them a second chance, to think about their family, to think about them, and to do it for their children.

(2016, 74)

Methods and Data

This study is based on a review of El Salvador’s antiabortion and VAW laws (1970–2020) and archival and newspapers research covering the period between 1992 and 2019. We present a novel explanation: that familyism is the mechanism explaining the state’s acts of omission (low-priority VAW laws and their lack of implementation), as well as the state’s acts of commission, as exemplified in excessive criminalization, and in the draconian and unjust enforcement of antiabortion laws. For our analysis we use the “extreme case” method (Gerring 2006, 101), which considers extreme outcomes, such as the punishment meted out by abortion laws and the impunity for gender-based violence laws—to unveil the conditions for the state’s (un)responsiveness to protect women. El Salvador is prototypical and paradigmatic in the field of violence against women because it is a double outlier, both in its tepid enforcement of VAW laws and its criminalization and extreme enforcement of antiabortion law. Employing the “extreme case” method thus reveals how familyism

permeates the state's acts of commission in the face of domestic pressure—approval and enforcement of the antiabortion law through a strong and powerful national conservative coalition—and omission—approval and lax application of VAW laws in the face of international pressure and opposition from coalitions of domestic women's groups.

The data used in the analysis are the laws on the books in El Salvador that address both violence against women, including intra-familial violence (El Salvador 1996), femicide (2011), and antiabortion articles in the penal code (1973 and 1997). We reference adjacent laws supporting or undermining the implementation of VAW laws, such as the penal and procedural codes. Secondary data sources include newspaper articles, reports from civil society organizations, and international and governmental reports to document femicide and abortion cases in our study. To complement these resources, we use statistical data on violence against women collected by the Organización de Mujeres Salvadoreñas por la Paz (ORMUSA) and Agrupación Ciudadana~ por la Despenalización del Aborto en El Salvador (AC). These various sources allow for data triangulation on which we build our argument.

We analyze the antiabortion and VAW laws through the discursive method. Methodologically, we studied the context of production and the historical evolution of the laws. Following Facio (1992) and Eichler (1988), we identified gender ideologies embedded in the text of the laws (e.g., androcentrism or sexual dichotomy). We focused on familyism ideology and examined how women are described in the laws (e.g., married, poor, pregnant) (Eichler 1988, 8). Furthermore, we identified possible effects of this paradigm on women of different social classes, races, ethnicities, beliefs, and sexual orientations. We identified the definition of women that serves as the building block for the VAW and antiabortion laws (i.e., women-mother, women-family, or women-person) (Facio 1992, 75–110). Finally, we examined the influence and effect of the structural and normative legal context in the approval and implementation of these two laws.

Familyism: Legal Contexts of Antiabortion versus VAW Laws Approval

The Salvadoran Constitution (1983) enshrines the principles of exclusion and control of women and their bodies, and thereby influences secondary laws, such as VAW and antiabortion laws. Article 1 recognizes life from the moment of conception and guarantees its protection and physical integrity (Article 2). However, despite the assertion that everyone is equal before the law (Article 3), women are subordinated to an inferior position when their rights are equated to those of the family. The Salvadoran Constitution declares the family as the basic unit of society. “It is the fundamental base of society and will have the protection of the state, which will dictate the necessary legislation and create the appropriate agencies and services for its integrity. [...] The law will regulate the personal and patrimonial relations of the spouses, between themselves and between them and their children. The state will also regulate family relations that result from the stable union of a man and a woman” (Articles 32–33). Unlike other constitutions in the region (e.g., Nicaragua 1987, Article 48), the Salvadoran Constitution does not recognize unequal gender relations for which women would need protection.

In a context of unequal gender relations, familyism disfavors women by providing mechanisms to protect the family above women's safety. The right to re-education and re-adaptation of offenders (Article 13), and the prohibition of access to a household without prior authorization of the owner—usually male partners—become mechanisms to reinforce men's superior and women's subordinated position (Article 20). The goal is that the family should be protected over and above individuals, as established in Article 194, which states that the Attorney General's first and most important responsibility is to protect the rights of the family as a unit. The Constitution only mentions women in three instances: when defining marriage (Article 33), when prohibiting women from performing high-risk jobs (Article 38), and when establishing that women have a right to paid leave before and after childbirth (Article 42). The lack of recognition of women's needs and rights outside the family reinforces the idea that women equate with family.

Antiabortion and VAW laws fit into this context of familyism arising from disparate legal positions. El Salvador's Constitution is the primary norm of the country (Article 83). All other laws and regulations are considered secondary and must abide by constitutional principles. In this legal framework, antiabortion and VAW are secondary laws; however, they are embedded in the normative hierarchy in dissimilar ways. Antiabortion law was inserted in and regulated by the penal code (Oberman 2013) and its application has had the full force of the penal and procedural codes. From its inception, therefore, the antiabortion law had detailed regulations and was aligned with other laws, hence the ease of its enforcement. Conversely, VAW laws were approved as stand-alone secondary laws, with little to no reference to the penal code. Thus, VAW laws have lacked the regulatory footing of the penal code to prosecute violence against women, creating the need for separate laws and additional steps to align VAW legislation with the penal and procedural codes. In principle, VAW laws should have had the same legal positioning as the antiabortion law because they are meant to protect the lives of women. But femicide and domestic violence are not treated legally with rigor, which translates into empty, symbolic laws in the books without teeth when it comes to implementation.

Antiabortion Law: Legal Positioning and Approval Process

El Salvador's draconian antiabortion law took a more extreme form in 1997. Since 1973, abortion in El Salvador has been considered a crime, with few exceptions, such as miscarriages and therapeutic abortions,⁴ or in cases of rape (1973, Article 169). Abortions outside exceptional circumstances carried sentences of between six months and eight years (Articles 161–68). However, in 1997 an even more stringent antiabortion decree (1030) revoked the 1973 law and reformed the penal code, making *all* forms of abortion punishable with stiffer prison sentences ranging from six months to thirty years. The total ban covers cases where a pregnancy is the result of rape, incest, or when a woman's life is at risk. Decree 1030 broadened the spectrum of who could be penalized under the law, including anyone involved in conducting, inducing, or encouraging an abortion (e.g., doctors, pharmacists, healthcare workers). It should be noted that there are no penalties for male partners; the law offers immunity from prosecution for the males whose role is central

⁴.Therapeutic abortions are performed to avoid a foreseeable deformity of the fetus or to protect the woman's life.

in pregnancies, and who may be responsible for rape and the statutory rape of minors that results in pregnancy. Thus, the misogynistic nature of the law exculpates the men who father a pregnancy that results in an abortion.

In 1999, an already restrictive position was amplified when the Legislative Assembly approved an amendment (Decree 541) to Article 1 of the Constitution to redefine life at conception instead of at birth.⁵ These two legislative changes (1997 and 1999) “created the legal basis for the state to prosecute abortion-related crimes as homicides” (Center for Reproductive Rights 2014), placing a woman’s health and life at risk. Intentional abortion is already a crime, but if the fetus is deemed viable, the crime is elevated to “aggravated homicide” and the penalty is the same as for first-degree murder: a prison sentence of thirty years (Patricio 2019).

The favorable legal position of the antiabortion law made for its swift implementation. Instead of creating a separate “special law,” the antiabortion law was embedded in the penal code as a chapter on “Crimes against the Life of Human Beings in the First Stages of Development” (El Salvador 1997). Since its approval, the law was aligned with the penal code, stipulating the different stages of abortion, from the woman to any accomplice, and a detailed typology of abortions. All scenarios were considered in a parsimonious set of five articles with penalties associated with each crime. The only obstacle to the full implementation of the antiabortion law was Article 1 of the Constitution, which defined life at *birth*. Thus, after passing the antiabortion law in 1997, supporters drafted and approved a constitutional reform in 1999 to make the protection of life from *conception* the state’s responsibility (Article 1). By the time it was signed, the law included the codification of penalties and the enforcement procedures, all supported on constitutional grounds.

The antiabortion law of 1997 came into effect after a national conservative coalition joined efforts to reform the penal code and Article 1 of the Constitution. Legislators, the media, the Catholic Church, and conservative Catholic groups mounted a national campaign against abortion, founded on principles of family first and life at conception. In 1994, at the International Conference on Population and Development, El Salvador’s First Lady declared her country’s intention to protect life at conception. Afterward, legislators from the right-wing National Republican Alliance Party (ARENA) introduced a bill to remove exceptional circumstances for abortion (e.g., rape, deformities of the fetus, and protection of the mother’s life) from the penal code and implement greater penalties for those who break the law. To support his political party’s initiative, then President Armando Calderón Sol⁶ and his Minister of Health,⁷ made public statements in support of more stringent penalization of abortion. The leading conservative media outlets followed suit; *El Diario de Hoy* and *La Prensa Gráfica* took a stance on the matter, publishing editorials favoring the absolute criminalization of abortion to eliminate the root causes: women and girl’s promiscuity and premature sex⁸ (Center for Reproductive Law and Policy 2001, 30–31).

⁵. This context extends penalization to sales of abortion medication or advertisement.

⁶. *El Diario de Hoy*. April 22, 1997. “Rechazo General al Aborto.”

⁷. *La Prensa Gráfica*. April 24, 1997. “Salud se pronuncia contra el Aborto.”

⁸. *La Prensa Gráfica*, April 6, 1997. Jose Coto. El Derecho a Vivir: “To terminate a pregnancy amounts to disrespect for the sexual act, debasing it to the level of hedonism, sex for pleasure, without taking responsibility for its consequences” (CRLP 2001, 31).

These newspapers became a voice for organizations who paid for advertisements demanding expansions of the penalization of abortion.

The government, legislators, and media efforts would not have come to fruition without the support of the Catholic Church and Conservative Catholic groups. The Catholic Church, through El Salvador's Episcopal Conference, released an open statement in opposition to abortion, quoting Pope John Paul II. The letter declared: "if the right to life is not respected, no other right is safe, and laws become meaningless." The Church had the greatest impact on public opinion due to ample media coverage. With financial support from the Church, conservative Catholic groups such as *Fundación Sí a la Vida* (Say Yes to Life Foundation)⁹ undertook a national campaign supporting the penal code's reform. They collected signatures in parishes, organized demonstrations in support of the bill, and mobilized students from San Salvador's Catholic schools to demonstrate against the right to abortion (Center for Reproductive Law and Policy 2001, 32). Their campaign argued that given medical progress, in obstetric emergencies it is possible to save the mother and the fetus. In this context, various conservative political parties¹⁰ joined efforts. On April 25, 1997, the Legislative Assembly approved the new articles of the penal code for abortion prohibition without a debate about women's safety and right to health.

As the antiabortion law came into effect, there was momentum for constitutional reform. The left-leaning Farabundo Martí National Liberation Front party (FMLN¹¹) opposed this reform and expressed the need to consider women's lives. But as Viterna argues, "Voting for legal abortion in any form seemed an unpopular move, and with upcoming legislative elections, FMLN deputies increasingly worried that the party line would equate to political suicide. The FMLN leadership relented, allowing their representatives to 'vote their conscience' in the final round" (2012, 251). In February 1999, the Legislative Assembly approved the constitutional amendment to recognize life at *conception* and reinforce punitive charges to all forms of abortion without regard to women's needs or lives, prioritizing the family (and the fetus¹²).

Ever since the antiabortion law was proposed, women's groups have opposed it. In the 1990s, the Instituto de Estudios de la Mujer (Institute for Women's Studies) (CEMUJER) voiced concern about the new antiabortion law and other groups argued for maintaining the exceptions clauses, but they did not have public support (Center for Reproductive Law and Policy 2001, 33; Guerrero 2002, 39). And even though women's rights groups continue to advocate for an end to the extreme criminalization of abortion in El Salvador (Januwalla 2016),¹³ mounting campaigns to free imprisoned women under this law, the antiabortion

Conspicuously absent is male promiscuity, which is not only acceptable but often expected. The burden of chastity and preserving the sanctity of life for the fetus is on women and not the men who impregnate them (often without their consent). In the absence of access to affordable and safe birth control, especially for poor women in a Catholic country that opposes its use, women and girls are vulnerable to pregnancy and sexually transmitted infections. We thank a reviewer for bringing this to our attention.

⁹The Foundation published sensationalist adverts in newspapers presenting disputable arguments.

¹⁰The Nationalist Republican Alliance (ARENA), the National Conciliation Party (PCN), and the Christian Social Union (USC).

¹¹The FMLN, a former guerrilla opposition group, became a political party in 1992 after the twelve-year civil war in El Salvador ended. During the war, the guerrillas implemented family planning programs and provided abortion services in the territories they controlled. For more on this, see Viterna (2012).

¹²Recently, as presidential candidate, Nayib Bukele declared his opposition to the criminalization of abortion; as President Bukele, he classified abortion as "genocide." Accessed October 10, 2021. https://www.lemonde.fr/international/article/2021/07/19/au-salvador-les-femmes-vivent-dans-une-vulnerabilite-totale_6088682_3210.html

law continues to be supported through a combination of political maneuvers and religious dogma. For instance, the political campaign for the mid-term elections held in February 2021 was infused with messages about family values and respect for life. A video created by a Catholic group in Spain circulated as part of these campaigns, reminding Catholics of their obligation to vote in elections for the values of family and respect for life and against corruption, laicity, and “gender ideologies.”¹⁴

VAW laws: Legal Positioning and Approval Process

El Salvador has approved two laws to eradicate domestic and gender-based violence. In 1996, Decree 902, *Ley Contra la Violencia Intrafamiliar* (Law against Domestic Violence) was approved. However, this law did not address violence against women; instead, it focused on the family and equal rights for “men, women, sons, and daughters” (Article 2). The generic approach to violence against *any* family member prioritized family first and ignored the reality that women and children are the primary targets of domestic violence. The law’s main goal was to prevent acts of domestic violence without prejudice to criminal liability. Instances of femicide were not included in this law. Decree 902 focused on the state’s broad responsibilities, creating the Instituto Salvadoreño para el Desarrollo de la Mujer (Salvadoran Institute for the Development of Women), and redefining the role of the national police to process domestic violence cases. Unlike the antiabortion law, the VAW law became symbolic. It made no reference to specific penalties and sanctions in cases of aggression,¹⁵ and made no substantive advancements in the protection of women. Significantly, familyism ideology was enshrined in VAW laws: our analysis reveals eighty-three references to the family in these laws; thus, from their inception, these laws were meant to protect the family and not women’s lives and rights. Even when the law is meant to protect women from murder, as in the femicide law, the law contains thirteen mentions to the family. Consequently, women should only be protected from violence when crimes put the family at risk.

In 2011, El Salvador approved Decree 520 on the *Ley Especial Integral para una Vida Libre de Violencia para las Mujeres* (Special Comprehensive Law for a Life Free of Violence for Women). This law recognized women’s right to a life free of stereotypical behaviors, social, and cultural practices based on concepts of inferiority and subordination (Articles 2). For the first time, a law declared that women had the right to physical and psychological safety and moral integrity, and to equal protection under the law. The principle of secularity was included, preventing appeals to customs, traditions, or religious considerations to justify violence against women.¹⁶ One of the main contributions of Decree 520 is the classification of femicidal violence as an extreme form of gender-based violence. Additionally, for the first time, the law included a chapter on “budget, finances, and special funds,” providing

¹³International organizations have condemned El Salvador’s antiabortion law, including the UN Human Rights Committee, CEDAW, and the Committee on Economic, Social, and Cultural Rights, as it law violates women’s rights to health and life enshrined in human rights conventions. <https://www.nytimes.com/2018/04/09/world/americas/el-salvador-abortion.html>

¹⁴See “Defendiendo Libertades: Cristianos ante las urnas.” Accessed July 17, 2021. https://vimeo.com/ondemand/defendiendolibertades?l&ref=fb-share&fbclid=IwAR12ZFkISiEAE_EXNDI1KR4QMITgS-mGW_LNfTYrW5JKsFCRG9ct-T6L_Dc

¹⁵The penalties were left at the ruling authority’s discretion or unspecified. For example, Article 23 of the Chapter on Measurements and Judicial Interventions was regulated twenty years later, in November of 2016 (Decree Law 546).

¹⁶“The types and modalities of violence contemplated in the law originate from the unequal relationship of power or trust, in which the woman is at a disadvantage with respect to men” (Article 7).

state funds to finance projects for women victims (Article 33–36). The principles of the law were commendable (e.g., right to education, reduction of risks, right to protection by the state, police, and governmental institutions), but unlike the antiabortion law, it fell short on outlining specific procedures to conduct investigations in cases of domestic violence or femicide. Thus, the law had serious loopholes that fostered impunity.

In the legal context, VAW laws passed as “special secondary laws” and were placed in a lower hierarchical position than, for instance, the antiabortion law. Their overarching scope encompassed multiple dimensions of domestic and gender-based violence,¹⁷ making them wide-ranging and vague. Unlike the antiabortion law, neither VAW Decrees—902 and 520—were harmonized with the penal code, making their implementation staggered and weak. In many cases, other laws in the normative structure supersede any rights and protections under VAW laws (Menjívar and Walsh 2016). Lacking appropriate prosecution procedures, the regulation of VAW laws was left for future legislation. For example, after its approval, Decree 902 had four reforms, an additional associated law—on specialized courts—and four postponements for its implementation. Decree 520 (Special Comprehensive Law for a Life Free of Violence for Women) had a similar trajectory, with four reforms between 2016 and 2019. Despite having 106 articles, their lack of regulation and concordance with the penal code, and the absence of specialized courts, have left VAW laws without legal grounds to protect women.

VAW laws came into effect in response to demands from a coalition between international organizations advocating for gender equality and the indefatigable mobilization of Salvadoran women’s groups. As part of a regional trend in the 1990s and 2000s, international pressure to protect women against violence led to the approval of VAW laws, and governments modified parts of their legal corpus to harmonize them with international legal norms. In the early 1990s, international organizations promoted the 19th Recommendation of the Convention on the Elimination of All Forms of Discrimination against Women (United Nations, Office of the High Commissioner for Human Rights, 1992). Signatory countries committed to developing effective measures to eradicate public and private gender-based violence, provide protection, investigate cases, and train public servants. Additionally, the Organization of American States signed the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, the “Convention of Belém do Pará” (1994). This convention was binding and required states to adapt their internal legislation and allocate resources to eradicate gender-based violence. During the implementation of VAW laws, “advocates in regional bodies worked with civil society to apply pressure on states to adopt regional-level norms through legislation.” Although domestic violence laws were adopted across the region, they did not reflect these norms; unfavorable contextual gender inequality regimes privileged family unity over women’s rights (Friedman 2009).

Thus, El Salvador approved its VAW laws in this context of regional dissemination of women’s protection laws. The Domestic Violence Bill (1996) was part of the first generation of VAW laws. During this period, the Red de Acción contra la Violencia de Género en El

¹⁷ These laws included multiple topics, such as power relations, state agencies’ responsibilities, among others.

Salvador (Network of Action against Gender-based Violence in El Salvador) emerged as a leading umbrella organization in the country. As members of regional networks, they created awareness and dissemination campaigns, joined efforts with the organization, Las Dignas, to launch the campaign “Nada Justifica la Violencia Sexual. ¡Mi cuerpo se respeta!” (Nothing Justifies Sexual Violence. My Body Deserves Respect!) (Guerrero 2002, 39), and deployed research and support groups for victims of gender-based violence. Other women’s groups, such as La Colectiva Feminista (Feminist Collective), have worked tirelessly for a life free of violence against women by also providing shelter and education to women victims (Ríos 2019).

In this general climate, El Salvador approved Decree-Law 902 (Law against Domestic Violence) to comply with international requirements, but in practice, gender-based proceedings were addressed through customary law where women’s rights are not recognized and are subordinated to male authority. The first wave of VAW laws legislation “underplayed the gendered aspects of the violence” by implying that family members are “equally likely to be perpetrators and victims” (Craske 2003, 37). As such, this approach reinscribed gender-based violence into VAW laws by prioritizing the family unit over women’s rights and naturalizing “domestic violence by implying that a couple can, or should, be reconciled even when one systematically abuses the other” (Macaulay 2006, 110; IACHR 2007, 90). In El Salvador, “reconciliation” or “mediation” is a first step in the legal proceedings, despite being illegal, and even when it is recognized that this strategy disfavors women and places them at greater risk (Walsh and Menjívar 2016, 593). Against Salvadoran law, domestic violence offenders are processed in reconciliation or mediation courts rather than in civil or penal courts. Although El Salvador seemed to be complying with international pressure to protect women, this strategy showed the privileging of the “well-being of the family unit” over the rights and safety of abused women.

Considering the failure of the Law against Domestic Violence (Decree 902), the Special Comprehensive Law for a Life Free of Violence for Women (Decree 520) was approved in the second generation of VAW laws. In 2011, after 4,000 women marched to the National Assembly on November 25 (International Day for the Elimination of Violence against Women¹⁸), the legislature passed the bill with the support of the Salvadoran Women’s Parliamentary Group.

Implementation Context

Antiabortion Law

After the antiabortion law passed, its implementation was swift. In its first year, from April 1998 to August 1999, sixty-nine prosecutions were recorded (Center for Reproductive Law and Policy 2001, 43–53). These cases included women (forty-six), providers (eleven),¹⁹ and fetuses found in public spaces (twelve). The women accused of abortion and placed in proceedings were twelve to forty years of age—twenty-nine between fifteen and twenty-

18. “El Salvador: Women in parliament unite on new law against violence.” Accessed February 19, 2021. <https://www.undp.org/content/undp/en/home/news-centre/announcements/2011/03/21/el-salvador-women-in-parliament-unite-on-new-law-against-violence/>

19. These cases involve midwives and gynecologists, aimed at finding the women who had an abortion, but were later dropped due to lack of evidence.

four, and three were girls twelve to thirteen years old. Although the penal code only applies to adults, seventeen minors were prosecuted under the penal law.²⁰ Thirty-one were single, and eighteen had children. According to the Center for Reproductive Rights, “women most affected by the total criminalization of abortion in El Salvador are young, single women, many of whom have at least one child” (2001, 47). Poor women are far more likely to be prosecuted under this law and are most likely to have suffered a miscarriage (which triggers suspicion of abortion) because of a life of malnourishment and lack of access to healthcare (Center for Reproductive Rights 2014). The prosecuted women were housekeepers (eighteen) and factory workers or messengers (seven), with only elementary school education. Thus, the antiabortion law targets the women most likely to be tried in criminal court.

El Salvador does not keep reliable abortion data²¹ due to its high criminalization; however, non-profit organizations (e.g., Agrupación Ciudadana, Citizens Association) have collected information on court proceedings against prosecuted women since 2000. According to these records, between 2000 and 2019, 181 adult women were processed for abortion accusations.²² And abortion cases have high levels of prosecution; between 2002 and 2019, 54 percent of the cases reported to the National Police—139 of 259—were tried in court as abortion crimes (46.5 percent) and as aggravated homicides (53.5 percent) (AC 2019, 23). Of the 181 cases, 66 percent (121) of women were between eighteen and twenty-five years of age. Only ninety-six reported education; 9 percent of women were illiterate, 61 percent had some elementary school, and 20 percent had some high school. Most of the women were single (126 or 70 percent). Their main economic activity was homemaker (38 percent), housekeeper (13 percent), factory worker (8 percent), or informal street vendor (3 percent); 76 percent of the women earned minimum wage or had no income at all (AC 2019, 40). Between 2000 and 2019, the government continued to target for prosecution lower-educated, poor, single women who were suspected of abortions, often because they had a miscarriage.

The total ban on abortion affects maternal mortality. In 2017, 32 percent of maternal deaths²³ were attributed to high-risk pregnancies that could have been prevented with therapeutic abortion (AC 2019, 27). At the age of thirty-three, Manuela suffered an obstetric emergency that led to a miscarriage. She was detained on *suspicion* of abortion. She lacked the financial resources for a private attorney and was assigned a public defender she met the day of her hearing. She was sentenced to thirty years in prison for aggravated homicide. Due to her public defendant’s negligence, she could not appeal. Manuela was only offered medical care after the trial. Her miscarriage was due to the lack of medical

²⁰In El Salvador, girls endure high levels of rape and pregnancy. In 2013, 1,540 cases of children pregnancies (girls fourteen years and under) were recorded (Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres 2016). Between January and March of 2020, the national police reported 372 rapes, and 144 pregnancies of girls ten to fourteen years. Accessed December 27, 2020. <https://www.elsalvador.com/noticias/nacional/144-%E2%80%A6Hubo/>

²¹The Asociación Demográfica Salvadoreña—a non-profit that delivers family planning services to poor, marginalized, and under-served groups—does not include questions on abortion because they might be forced by law to violate their confidentiality agreements. Similarly, the Ministry of Health only collected data in 2017, when 7,993 abortions were reported (Ministerio de Salud de El Salvador (MINSAL), <https://www.salud.gob.sv/> 2017). The Census Bureau (Ministerio de Economía, Dirección General de Estadística y Censos (DIGESTYC), <http://www.digestyc.gob.sv/>) does not collect abortion data.

²²Due to legal restrictions, information on abortion and aggravated homicide cases against minors (twelve to eighteen) is limited. Agrupación Ciudadana found twenty-four proceedings of minors between 2000 and 2011; four were processed as adults.

²³In 2011, suicide was the third cause of maternal mortality in El Salvador.

care for cancer—Hodgkin’s lymphoma— she was enduring. She died in hospital away from her family—her elderly parents and two children (Center for Reproductive Rights and Agrupación Ciudadana 2014, 11). Manuela was a rural, low-income, and semiliterate woman, as are most women prosecuted by the antiabortion law of El Salvador.²⁴ The extreme criminalization of abortion and lack of access to healthcare and legal counseling put women at higher risk of prosecution.

In Beatriz’s case, she filed a lawsuit against a hospital for violating her fundamental rights to life and health. She was diagnosed with lupus and the fetus with anencephaly, an anomaly incompatible with extrauterine life. Her physician recommended the interruption of the pregnancy; however, the hospital denied the procedure to avoid incurring criminal charges. The case was taken for constitutional examination to weigh the rights of the mother vis-à-vis those of the unborn. The Supreme Court denied the procedure and determined that “the hospital provided the treatment that guaranteed the patient’s rights to health and life,” maintaining that “the rights of the mother cannot be privileged over those of the unborn or vice versa; there is an absolute impediment to authorize the practice of an abortion for contravening the constitutional protection (Article 1) granted to a human being ‘from the moment of conception’.” The antiabortion law therefore remains an imminent threat to women’s lives.

The antiabortion law has been applied with full force from its creation because it had a comprehensive policy and different state agencies were committed to its implementation. Unlike VAW laws, the antiabortion law had the technical support of the public hospitals, the national police, the criminal courts, and even the expertise of the National Institute of Forensic Medicine for the prosecution of women from day one. Indeed, the antiabortion law served as a catalyst for conservative coalition pressures; it solidified a move toward the prioritization of the family over women’s safety, exacerbated through extreme criminalization in the decades to come.

VAW Laws

In a context suffused with familyism, the implementation of VAW laws has faltered since their inception. Decree 902 of 1996 (Law against Domestic Violence) has undergone four reforms aiming to correct family ideology biases, as this decree did not recognize that women were the primary targets of violence. First, it was reformed in 2002 (Decree 892, 2002) to acknowledge “power inequalities” within the family, define patrimonial violence as a form of domestic violence, assign prosecution responsibilities to specific entities of the state, declare the need for specialized gender units within the police, and promote research into the causes and consequences of domestic violence.²⁵ Two years later, a second reform (Decree 403, 2004) incorporated the use of forensic medical examinations to document assaults on the victim and assigned the responsibility of collecting evidence to the National Institute of Forensic Medicine. The 2004 reform had drawbacks. It incorporated an article recommending the treatment of an aggressor in self-help groups and programs “developed

²⁴.Pro-life organizations claim that Manuela was not a victim in this case. *BBC News*, 2021. Accessed July 30, 2021. <https://www.bbc.com/mundo/noticias-america-latina-56360875>

²⁵.These inclusions were the result of women’s organizations efforts.

by institutions of family protection” (Article, 2). Additionally, two more reforms passed in 2014 and 2016. The third reform defined the role and extent of police protection for victims (Decree 591, 2014), while the fourth reform included guidelines for the prosecution of criminal cases of domestic violence (Decree 546, 2016). The implementation of the Law against Domestic Violence (Decree 902, 1996) suffered setbacks. The lack of regulation and specific mechanisms for the evaluation, documentation, and prosecution of domestic violence cases were obstacles that had to be amended with over a decade of reforms (2002–2016).

Decree 520 of 2011 (Special Comprehensive Law for a Life Free of Violence for Women) made substantial progress to eradicate VAW; however, its implementation posed several challenges. This legislation was the first to define femicidal violence, along with other forms of individual and collective gender-based violence. It specified state agencies’ responsibility and declared the need for a national policy and the collection of data and statistics on gender-based violence. A major improvement was its chapter on “Crimes and Sanctions,” which defines femicide and aggravated femicide as crimes punishable with twenty to fifty years of prison. However, it lacked agreement with the penal and procedural codes. Only in 2015 was the 2011 Decree 520 aligned with penal and national laws (Decree 1001 of 2015). Chapter II on “Specific Procedural Provisions” required specialized jurisdiction with trained judges and multidisciplinary professionals. In March 2016, five years after the Special Comprehensive Law for a Life Free of Violence for Women (Decree 520 of 2011) was signed, these courts were created. Decree 286 approved the specialized courts, but their implementation had four consecutive extensions and their rollout was delayed. Finally, in July of 2017, the specialized courts came into operation. As judge Glenda Baires Escobar from the specialized court observed, “the creation of these new courts means that we are fulfilling commitments that the state has ratified in international conventions.” Three years after they were established, in 2019, the special courts struggled to serve women and were dismantled due to the high rates of domestic violence cases that the courts could not handle.

Thus, despite these various legislative actions, conditions for women in El Salvador have not improved. Mediation and reconciliation continue to be used in El Salvador despite its prohibition by the VAW laws (and international organizations), and rates of femicides and domestic violence continue to be some of the highest in the region (CEPAL 2019). Between 2005 and 2020, El Salvador had 41,780 domestic violence cases. Between 2005 and 2009, the National Police reported an average of 4,400 cases per year, with a drop to an average of 1800 cases per year between 2010 and 2020. Due to a lack of reliable data, these numbers reflect reports and not prosecutions, which are far lower. For example, during 2019 the police received 1,459 complaints, but the Attorney General’s office only reported 1,162 cases processed through the judicial system. Femicides follow a similar pattern. In 2017, El Salvador registered 10.2 femicides per 100,000 women, the highest in the region by far, followed by Honduras with 5.1 (per 100,000) (CEPAL 2019). Before 2011, when the Special Comprehensive Law for a Life Free of Violence for Women was approved, El Salvador reported 2,440 femicides (1999–2007) (ORMUSA 2021). After the law was approved, and with the legal redefinition of these crimes, El Salvador registered 4,355 femicide cases between 2010 and 2020. As the data show, despite changes in the legal system and phased

improvements for implementation, Salvadoran women continue to endure high levels of gender-based violence.

Gender ideologies that subvert women's right to protection interact with social class but not always in the expected direction. In contrast to the antiabortion law, which targets poor, socially vulnerable women, VAW laws do not follow social class lines. Many femicide cases remain pending in the courts; even the publicized ones of middle-class women go unresolved for many years. For example, Lidia Maria Huevo's case, the first killing of a woman classified as femicide in El Salvador after the Special Law for a Life Free of Violence against Women passed in 2011, is still pending at the time of this writing. Lidia's husband, Manuel D. Gutierrez, a wealthy businessman, was accused of killing her in 2012. According to preliminary witness reports and the suspect's own recollection, Gutierrez killed his wife with his gun. After the hearings, Gutierrez was released and acquitted of charges. The District Attorney's office appealed the verdict, and the penal court overturned the first sentence arguing that the prior judge went against the rules of sound reasoning and did not consider all the evidence. A new trial was ordered. The first trial was procedurally flawed on the part of the justice system, including the dismissal of experts' testimonies and previously documented episodes of intra-familial violence (Vaquerano 2016). Given the misalignment between VAW laws with the penal code and the absence of specialized courts in a context of familism, even with great effort and overwhelming evidence, cases like Lidia's go unsolved for years or even decades. In 2015, Gutierrez was charged again with Lidia's femicide and called to trial, but he never appeared in court and has remained a fugitive. Thus, the first killing of a woman classified as femicide in El Salvador, even with the killer's confession, is still unresolved nine years later. In stark contrast, cases of antiabortion law, riddled with technical errors and often based on suspicion alone, are fully prosecuted and the women convicted.

Unsolved femicides have accumulated in the last nine years and impunity remains high. Reina was married to Germán for thirty-eight years. In 2016, she filed a domestic violence case against him. Despite a restraining order, Germán went to her house. According to court documents, he claimed Reina had committed suicide. The coroner's autopsy, however, found signs of constriction not produced by the rope found at the scene. Additionally, the psychological autopsy on Reina confirmed that the victim had suffered from domestic violence throughout her marriage. In mid-2017, her husband was accused of femicide, but was acquitted by the Specialized Court for Women in 2019 (Guzmán and Cáceres 2020). Reina's femicide remains unpunished and the case remains concealed.

These crimes against women become normalized in a context in which family is prioritized over women's bodies, rights, and protection. In El Salvador, domestic violence and femicide laws serve as a "legitimacy-endeavor" (Friedman 2009; Guerrero 2002). What seems to be a commitment on the part of the state is a window-dressing strategy for external legitimacy-building. In practice, VAW laws have been addressed through customary law, or traditional practices, where women's rights are subordinated to men's authority through familism. The creation of VAW laws has responded to pressure from international and domestic women's organizations; however, these have been symbolic, meant to align the

country with international expectations and demands, and there remains a general lack of will for substantive legal processes to extend justice to women.

Discussion and Conclusion

Our comparative approach to examine these two laws in El Salvador, within the same national context and historical time, allows us to identify a common thread to reveal a lack of protection for women through state inactions (i.e., VAW and femicide laws) and actions (i.e., strict enforcement of antiabortion laws against women). The same context and judicial structure lead to different applications of the law. However, both laws are connected through a powerful ideology enshrined in the legal system: the devaluation of women's lives and the prioritization of the family unity and familyism ideology. Antiabortion and VAW laws are related through the control they exert over women's bodies and the formal treatment of women before the law. Both laws police women's bodies while prioritizing family-related concerns (e.g., family unity, reconciliation, fetuses) over women's health and life (Menjívar and Walsh 2017). The main question is: why are these two laws implemented so differently by the same government/state during the same historical time?

On the one hand, we see a large gap between law in the books and law in action regarding VAW laws and, on the other, the gap is much narrower with respect to antiabortion law. These laws are situated quite differently within the legal structure; they reflect the same disregard for women's lives and rights from their inception. Analyzing the legal connections (or disconnections) of antiabortion and VAW laws within the legal system shows why the former undermines women's rights and the latter often fails to protect women from gender-based violence. In practice, the positioning of VAW laws reflects a legal reasoning that is hierarchical, establishing levels of precedence among existing laws that undermine women's rights. On the other hand, antiabortion law is embedded within the penal code, protecting this law from any further interpretation or regulation. Hence, whereas with VAW laws the state seems to lack the capacity to enforce these laws, with antiabortion law the state demonstrates abundant capacity for enforcement, deploying all resources and human power to do so (especially on vulnerable women). Abortion cases are prosecuted even when there is only *suspicion* of an abortion; crimes against women, even their killings, can be dismissed on a technicality even in the face of overwhelming evidence. The fundamental difference here is in their relationship to unequal gender and familyism ideologies: laws will have enforceable teeth when they conform to predominant gender ideologies that prioritize family unity (VAW) or others in the family (antiabortion). Both laws stem from the same ideology that privileges family ideologies at the cost of women's rights and lives, especially those of poor women.

A crucial social class angle emerges in the implementation of antiabortion and VAW laws. Antiabortion law is forcefully applied to young, poor, single women who have lacked access to medical services, education, and resources for their defense (Center for Reproductive Law and Policy 2001) and are therefore in an unfavorable position to confront the justice system. At the same time, violence against women cases are neglected—or prosecuted with reconciliation in family courts—and the few cases investigated are of uppermiddle-class women (even these without much success). Regardless of the disparate implementation of

these laws, in both cases, it is poor women who bear the harms of gender and family ideologies that devalue their bodies and rights.

Family ideology entails a contradiction in society and the law because it does not view men's violence as a threat to the family. This contradiction is understood in the prevailing context of familyism, in which the burden and responsibility for family unity falls upon women. Thus, familyism explains the seeming contradiction that men's violence is acceptable within a family, but women's supposed violence to a fetus through abortion is not. The woman, girl partner, or victim (and not the male partner or rapist) is held legally responsible for the murder of a fetus—however weak the evidence. But the woman (or girl) is also held socially responsible for keeping the family united despite whatever violence she endures from her male partner, which may cost her her life and likely will result in impunity for the perpetrator of her murder—however strong the evidence.²⁶

We recognize that there may be other interpretations for the outcomes we examine here, including some that focus on individual motivation or technicalities of law implementation. We offer an alternative explanation that focuses on the central place of predominant gender and familyism ideologies, an account that connects society, institutions, and the state in a new light. By juxtaposing a law that is forcefully prosecuted and one that is not, by the same government, in the same context and historical moment, we demonstrate that the problem transcends questions of individual motivation, evidentiary proof, and procedural technicalities on the ground. We propose a research avenue that focuses on how familyism ideology molds legal systems and practices that are profoundly consequential (and harmful) for women's lives, with attention to how such ideology becomes embedded in law; these efforts can lead to real change. In this vein, although El Salvador may be an extreme case, it is not isolated, as other countries adopt similar family-first legal strategies. For example, in the United States, women have been charged for fetal assault, second-degree murder, neglect of a minor, or reckless homicide after having miscarriages or stillbirths.²⁷ Our examination therefore will have applicability beyond our empirical case.

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References

- Adamson Erin, Menjívar Cecilia, and Walsh Shannon Drysdale. 2020. The impact of adjacent laws on implementing violence against women laws: Legal violence in the lives of Costa Rican Women. *Law & Social Inquiry* 45 (2): 432–59.

²⁶ We thank one reviewer for bringing this to our attention.

²⁷ See: "The mothers society condemns." Accessed October 10, 2021. <https://www.nytimes.com/interactive/2018/12/28/opinion/abortion-law-poverty.html>

- Agrupación Ciudadana por la despenalización del aborto en El Salvador (AC). 2019. Del Hospital a la Cárcel. Consecuencias para las mujeres por la penalización sin excepciones de la interrupción del embarazo en El Salvador. 1998–2019. www.agrupacionciudadana.org
- Alcántara Amanda, and Estrada Victoria. 2021. The fight for abortion rights in the Dominican Republic. *Latino USA*. Accessed July 28, 2021, <https://www.latinousa.org/2021/06/29/abortionrightsdominicanrepublic/>
- Bernardes Jon. 1985. 'Family ideology': Identification and exploration. *The Sociological Review* 33 (2): 275–97.
- Bourdieu Pierre, and Wacquant Loïc JD 1992. *An invitation to reflexive sociology*. Chicago, IL: University of Chicago Press.
- Center for Reproductive Law and Policy. 2001. *Persecuted. Political process and abortion legislation in El Salvador: A human rights analysis*. New York: CRR.
- Center for Reproductive Rights. 2014. *The total criminalization of abortion in El Salvador*. <https://reproductiverights.org/document/the-total-criminalizationof-abortion-in-el-salvador>
- Center for Reproductive Rights and Agrupación Ciudadana. 2014. *Marginalized, persecuted, and imprisoned: The effects of El Salvador's total criminalization of abortion*. New York: Center for Reproductive Rights and Agrupación Ciudadana.
- Chant Sylvia, and Craske Nikki. 2003. *Gender in Latin America*. New Brunswick, New Jersey: Rutgers University Press.
- Craske Nikki. 2003. *Gender, politics and legislation*. In: *Gender in Latin America*, 19–45. New Brunswick, New Jersey: Rutgers University Press.
- Comisión Económica para América Latina (CEPAL). 2019. *Observatorio de Igualdad de Género de América Latina y el Caribe. Indicadores de Autonomía física: Número de femicidios o feminicidios*. <https://oig.cepal.org/es/indicadores>
- Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM). 2016. *Niñas Madre. Embarazo y maternidad infantil forzada en América Latina y el Caribe*. www.cladem.org
- Coontz Stephanie. 2004. The world historical transformation of marriage. *Journal of Marriage and the Family* 66 (4): 974–79.
- Eichler Margrit. 1988. *Nonsexist research methods: A practical guide*. New York: Routledge.
- Salvador El. Poder Legislativo. Decreto No. 270. Código Penal. *Diario Oficial*. 1973. No. 238.
- . Asamblea Constituyente. Decreto No. 38. Constitución Política. *Diario Oficial*. 2000. No. 128, tomo 348.
- . Poder Legislativo. Decreto No. 902. Ley Contra La Violencia Intrafamiliar. *Diario Oficial*. 1996. No. 241, tomo 333.
- . Poder Legislativo. Decreto No. 1030. Reforma al Código Penal. *Diario Oficial* 1997. No. 105, tomo 335.
- . Poder Legislativo. Decreto No. 541. Ratifícase el Artículo 1 del Acuerdo de Reformas Constitucionales, de fecha 30 de abril de 1997. *Diario Oficial*. 1999. No. 32, tomo 342.
- . Poder Legislativo. Decreto No. 892. Reformas a la Ley Contra la Violencia Intrafamiliar. *Diario Oficial*. 2002. No. 137, tomo 356.
- . Poder Legislativo. Decreto No. 403. Reforma a la Ley Contra la Violencia Intrafamiliar. *Diario Oficial*. 2004. No. 178, tomo 364.
- . Poder Legislativo. Decreto No. 520. Ley Especial Integral Para Una Vida Libre de Violencia Para Las Mujeres. *Diario Oficial*. 2011. No. 2, tomo 390.
- . Poder Legislativo. Decreto No. 591. Reformas a la Ley Contra la Violencia Intrafamiliar. *Diario Oficial*. 2014. No. 11, tomo 402.
- . Poder Legislativo. Decreto No. 1001. Reforma al Código Procesal Penal. *Diario Oficial*. 2015. No. 79, tomo 407.
- . Poder Legislativo. Decreto No. 546. Reformas a la Ley Contra la Violencia Intrafamiliar. *Diario Oficial*. 2016. No. 232, tomo 413.

- . Poder Legislativo. Decreto No. 286. Decreto para la Creación de los Tribunales Especializados para una Vida Libre de Violencia y Discriminación para las Mujeres. Diario Oficial. 2017. No. 60, tomo 411.
- Facio Alda. 1992. Cuando el género suena cambios trae (una metodología para el análisis de género del fenómeno legal). Costa Rica: ILANUD.
- Friedman Elisabeth Jay. 2009. Re(gion)alizing women's human rights in Latin America. *Politics & Gender* 5 (3):349–75.
- Gal Susan, and Kligman Gail. 2012. The politics of gender after socialism: A comparative-historical essay. Princeton, NJ: Princeton University Press.
- Gerring John. 2006. Case study research: Principles and practices. Cambridge: Cambridge University Press.
- Ghosh Biswajit, and Choudhuri Tanima. 2011. Legal protection against domestic violence in India: Scope and limitations. *Journal of Family Violence* 26 (4): 319–30.
- Guerrero Elizabeth. 2002. Violencia contra las mujeres en América Latina y el Caribe Español 1990–2000: balance de una década. New York: UNIFEM, Fondo de Desarrollo de las Naciones Unidas para la Mujer.
- Guzmán Valeria, and Cáceres Gabriela. 2020. Femicidios: Otra pandemia con subregistro. *El Faro*. Accessed July 15, 2020, https://elfaro.net/es/202007/el_salvador/24636/Femicidios-otra-pandemia-con-subregistro.htm
- Htun Mala, and Weldon S. Laurel. 2017. States and gender justice. In *The many hands of the state: Theorizing political authority and social control*, 158–77. Cambridge: Cambridge University Press.
- Human Rights Watch. 2021. Why do they want to make me suffer again? The impact of abortion prosecutions in Ecuador. Accessed July 14, 2021, <https://www.hrw.org/report/2021/07/14/why-do-they-want-make-me-suffer-again/impact-abortion-prosecutions-ecuador>
- Inter-American Commission on Human Rights (IACHR). 2007. Access to justice for women victims of violence in the Americas. 30 January 2007. OEA/Ser.L/V/II
- Januwalla Alia. 2016. Human rights law and abortion in El Salvador. *Health and Human rights Journal*. <https://www.hhrjournal.org/2016/08/human-rights-law-and-abortion-in-el-salvador/>
- Macaulay Fiona. 2006. Judicialising and (de) criminalising domestic violence in Latin America. *Social Policy and Society* 5 (1): 103–14.
- Medie Peace A. 2015. Women and postconflict security: A study of police response to domestic violence in Liberia. *Politics & Gender* 11 (3): 478–98.
- Menjívar Cecilia. 2011. *Enduring violence: Ladina women's lives in Guatemala*. Berkeley, CA: University of California Press.
- Menjívar Cecilia, and Walsh Shannon Drysdale. 2016. Subverting justice: Socio-legal determinants of impunity for violence against women in Guatemala. *Laws* 5 (3): 1–20.
- . 2017. The architecture of femicide: The state, inequalities, and everyday gender in Honduras. *Latin American Research Review* 52 (2): 221–40.
- Nicaragua. Asamblea Nacional Constituyente. Constitución Política de la República de Nicaragua. Actualizado a febrero de 2014. Diario Oficial. 1987. No 05.
- Oberman Michelle. 2013. Cristina's world: Lessons from El Salvador's ban on abortion. *Stanford Law & Policy Review* 24 (1): 271–308.
- Organización de Mujeres Salvadoreñas por la Paz (ORMUSA). 2021. Observatorio de violencia contra las mujeres. Archivo de femicidios, violencia sexual, y social. <https://observatoriodeviolenciaormusa.org/>
- Patricio Miguel. 2019. Retrial begins for the 'aggravated homicide' of a miscarriage. <https://www.courthousenews.com/retrial-begins-for-the-aggravated-homicide-of-a-miscarriage/>
- Ríos Lorena. 2019. For this group of feminists in El Salvador, change begins from the ground up. International Women's Media Foundation. <https://www.iwmf.org/reporting/for-this-group-of-feminists-in-el-salvador-change-begins-from-the-ground-up/>
- Smith Dorothy. 1993. The standard North American family: SNAF as an ideological code. *Journal of Family Issues* 14 (1): 50–65.

- United Nations, Office of the High Commissioner for Human Rights. 1992. La violencia contra la mujer: 29/01/92. CEDAW Recomendación General 19 (General Comments).
- United Nations Human Rights Council. 2013. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo. May 14, 2013. A/HRC/23/49
- Vaquerano Vilma. 2016. Violencia contra las mujeres en El Salvador. Análisis, Número 1, 2016. fesamericacentral.org
- Velásquez Enmanuel, Vargas Lidia, and Pérez Hamer. 2016. La mediación y su impacto en víctimas de violencia de género. Nicaragua: UNAN. <http://repositorio.cnu.edu.ni/Record/RepoUNANL5304>
- Viterna Jocelyn. 2012. The left and “life” in El Salvador. *Politics & Gender* 8 (2): 248–54.
- Walsh Shannon Drysdale, and Menjívar Cecilia. 2016. Impunity and multisided violence in the lives of Latin American women: El Salvador in comparative perspective. *Current Sociology* 64 (4): 586–602.
- Wang Vivian. 2021. China’s vow to reduce abortions sparks public worries. Accessed October 10, 2021. <https://www.nytimes.com/2021/09/27/world/asia/china-abortion-limits.html>