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**Strategic Sacrifices and Acceptable Conditions: Feminists Playing Offense and Defense in  
the Quest for Legal Abortion**

Verónica Pérez Bentancur

Universidad de la República

[veronica.perez@cienciassociales.edu.uy](mailto:veronica.perez@cienciassociales.edu.uy)

Jennifer M. Piscopo

Royal Holloway University of London

[Jennifer.Piscopo@rhul.ac.uk](mailto:Jennifer.Piscopo@rhul.ac.uk)

Cecilia Rocha-Carpiuc

Universidad de la República

[cecilia.rocha@cienciassociales.edu.uy](mailto:cecilia.rocha@cienciassociales.edu.uy)

Paper prepared for the 27th IPSA World Congress of Political Science

15-19 July 2023, Buenos Aires, Argentina.

## **Abstract**

This paper offers a novel theoretical framework to understand feminists' mobilization to secure but also defend legal abortion in Latin America. Laws liberalizing women's access to abortion rarely pass without significant negotiation, as proponents and opponents must agree on how permissive or restrictive the new regime should be. Conservative actors will not just seek concessions in the legislative phase. In the aftermath, they will seek the most restrictive interpretation of the law possible or try to revert it. While scholars have studied the congressional negotiations and their aftermath separately, this paper links both stages. We argue that the types of concessions feminists make in the negotiation phase directly affect their strategies in the aftermath. We differentiate two types of concessions: on the one hand, strategic sacrifices in the adoption phase allow feminists to play offense to ensure access in the aftermath. On the other hand, acceptable conditions that in the aftermath force feminists onto the defensive, as they are caught unaware of far-reaching implications. We develop this theory through the in-depth case analysis of abortion legalization in Chile and Uruguay, offering new empirical insights into the introduction and evolution of obstacles to abortion rights.

Key words: legal abortion, strategic sacrifices, acceptable conditions, Latin America

## **Introduction**

Laws that legalize abortion are often a contentious policy arena. Due to their doctrinal nature, these laws have been difficult to pass (Htun & Weldon, 2018). They trigger opposition and reactions from conservative actors, including center-right parties, religious or pro-life organizations, and doctors. When conservative actors hold congressional majorities, they manage to block reformist attempts, almost always promoted by progressive actors alliances (center-left parties and feminist movements) (Blofield, 2006, 2008; Blofield & Ewig, 2017; Fernandez Anderson, 2017, 2020; Htun, 2003; Htun & Weldon, 2018). Only under specific circumstances have progressive coalitions succeeded in legislative assemblies and pass legal abortion laws. Yet, under these scenarios, proponents of the laws usually make multiple concessions that imply that conservative actors are not utterly defeated. To get the votes for passing the laws, bill's proponents often must negotiate with some conservative parties or leaders, resulting in "small victories" for the latter, who manage to move laws away from the original feminist version. Furthermore, proponents of the laws frequently include certain elements in order to cultivate broad-based support –i.e., conscientious objection clauses– which opponents then leverage to restrict access in the aftermath, hindering the law's implementation (Dickens, 2014). In this sense, while legal abortion laws often face multiple conservative reactions (Pérez Bentancur & Rocha-Carpiuc, 2020; Wilson, 2016), sometimes these reactions originated from concessions made by progressive actors during the adoption phase. We are interested in these types of reactions specifically.

The literature explaining legal abortion has mostly considered how decriminalizing or legalizing laws came about as well as examined the obstacles imposed by conservative actors in

the aftermath (Blofield, 2006, 2008; Blofield et al., 2017; Fernandez Anderson, 2017, 2020; Htun, 2003; Htun & Weldon, 2018; Pérez Bentancur & Rocha-Carpiuc, 2020; Zarembeg & Almeida, 2022). Both literatures offer key insights, but they tend to treat the adoption phase separately from the aftermath, analyzing either feminists' victory in obtaining (some form of) legal abortion or conservatives' reactions to this victory. Additionally, the latter scholarship has paid far less attention to whether and how feminists can defend the laws and ensure access to rights in the aftermath. In this vein, studies focusing on the adoption of the laws and those centered on law's aftermath are still scarcely interconnected.

This paper bridges both stages, arguing that what conservative actors can do in the aftermath emerges from what proponents of legal abortion laws (here, "feminists") did during the adoption stage. We argue that both stages should be analyzed together as a process in which feminists' decisions and conservative actors' strategies interplay. We center our analysis on the behavior of feminists —politicians, with close ties with feminist movements, that propose the laws and explicitly defend them in the aftermath. We examine how the concessions that feminists make in the adoption stage shape opponents' ability to restrict access to rights in the aftermath —and thus how feminists then mobilize to defend the law. Essentially, the types of concessions feminists make in the adoption phase directly impact their strategies in the aftermath. We differentiate among two types of concessions: (1) "strategic sacrifices," in which feminists agree to restrictions that they know will hinder access but are necessary for winning moderate legislators' support; and (2) "acceptable conditions," in which feminists agree to, or even support, a restriction that appears less consequential or harmless, failing to anticipate how this measure will later pose a significant obstacle to abortion access.

These differences are relevant to understand feminists' behavior in the aftermath and consequently, the possibilities they have to prevent conservative actors' attempts to limit access to rights. Strategic sacrifices allow feminists to play offense: since they understand the consequences of the agreed-upon restrictions, they can proactively deploy actions to ensure access to abortion in the aftermath. Acceptable conditions, however, force feminists onto the defensive: since they did not foresee the consequences, they are caught off-guard by the conditions' far-reaching implications. Thus, the type of concessions made by feminists in the adoption stage constrain the opportunities they have in the aftermath to defend the law and ensure its implementation.

We build this argument upon the in-depth study of abortion legalization in Chile and Uruguay, drawing on interviews with legislators, ministers, and high-ranking ministry officials, as well as on a systematic analysis of legislative and governmental documents and media reports. Although both cases differ in the scope of legalization (the Chilean law is more restrictive than the Uruguayan one), the political process of passing these legal abortion laws was similar. They involved tough negotiations between feminists and conservative actors during the adoption phase. Furthermore, feminists had to make strategic sacrifices and introduce acceptable conditions that had negative implications for access to rights in the aftermath.

By tying the adoption and aftermath strategies together and bringing feminists back into the analysis of the latter, the paper offers a new theoretical framework to understand feminists' mobilization around legal abortion. Additionally, it provides new empirical insights into the dynamics of conservative reactions and feminist resistance in the aftermath. Showing the link between concessions in the adoption phase, on the one hand, and feminists' strategies in the aftermath, on the other, indicates clear patterns in how implementing legal abortion will lay out.

Rather than being idiosyncratic products of legislative negotiations, concessions introduced during the adoption phase have structured and therefore predictable consequences in the aftermath.

This article is organized as follows. First, we summarize the literature on the conditions for the adoption of legal abortion laws and on the reactions legalized abortion has encountered. Second, we present our argument about types of feminist concessions and their implications for feminist behavior in the aftermath. Third, we show how this theory works through the case analysis of Chile and Uruguay. Finally, we conclude and discuss the implications of our results.

## **Literature review**

Reproductive rights policies, such as legal abortion, are special issues among the so-called women's rights agenda. These policies involve doctrinal topics as they challenge widespread religious principles and confront organized groups with opposite views: on the one side, pro-choice movements, and on the other, groups or leading individuals that support conservative assessments, such as the rights of the unborn. Due to the contentious nature of reproductive rights policies, it is not easy for politicians to defend them (Htun & Weldon, 2018; Tribe, 1992). Usually, the political debates surrounding these laws tend to be not only passionate but also intricate. Moreover, comparative experience shows that when these laws are adopted, they are "never safe", as they often face backlash and setbacks.

The right to abortion has been particularly difficult to achieve in Latin America. Most Latin American countries maintain restrictive legislation that force women facing unwanted

pregnancies to resort to illegal practices, which is particularly risky for poor and indigenous women (Casas & Vivaldi, 2014; Sedgh et al., 2016). In some cases, liberalization of abortion laws has occurred as a result of Supreme Court decisions following strategic feminist litigation (Ruibal, 2021). However, the adoption of legal abortion laws by elected authorities has been extremely difficult, as political parties have often failed to agree on this issue (Blofield, 2008; Blofield & Ewig, 2017; Haas, 2010; Htun, 2003; Pérez Bentancur, 2019). Yet, under certain circumstances, these laws have been enacted at the national level in a few of cases, —i.e., Uruguay in 2012, Chile in 2017 and Argentina in 2020.

A first wave of studies has focused on the origins of legal abortion laws, focusing on the conditions that enable or hinder them. In doing so, they have stressed that the singular nature of legal abortion policies implies specific combinations of variables or more restrictive circumstances in comparison to other women's rights policies (Htun, 2003; Htun & Weldon, 2010, 2018). Existing research has pointed to a variety of determinants in the adoption of abortion laws (Blofield, 2006, 2008; Blofield et al., 2017; Cherif, 2015; Fernandez Anderson, 2020; Friedman, 2019; Grzymała-Busse, 2015; Htun, 2003; Htun & Weldon, 2018). However, it is usually agreed that the combination of feminist mobilization and left-wing parties represents a critical factor. Women's mobilization is widely acknowledged as one of the key conditions for the adoption of gender equality policies (Daby & Moseley, 2022; Fernandez Anderson, 2017). Yet, when it comes to explaining the adoption of legal abortion laws, the political opportunities structures of women's movements have been shown to improve when leftists parties hold the majority in congresses (Blofield & Ewig, 2017; Fernandez Anderson, 2020; Friedman, 2019; Htun & Weldon, 2010).

Access to rights depends not only on whether laws are adopted, but also on what happens after congresses pass them. A second line of research has focused on the aftermath, especially on conservative actors' reactions and their attempts to inhibit access to new rights or to roll back the laws entirely (Corrales, 2015; Haider-Markel & Taylor, 2016; Lamas, 2017; Undurraga Valdés, 2019). These studies have mainly focused on the features of such groups and the dynamics of their reactions, showing the different ways in which they re-calibrate their strategies after the bills passed and how they use institutional and non-institutional avenues to prevent or restrict access to the enshrined rights (Biroli & Caminotti, 2020; Corrales, 2017; Lamas, 2017; Mayka & Smith, 2021; O'Brien & Walsh, 2020; Pérez Bentancur & Rocha-Carpiuc, 2020; Piscopo & Walsh, 2019; Undurraga Valdés, 2019; Wilson, 2016).

In the aftermath of the laws, conservative actors may gain a new role as protagonists, organizing to repeal the laws via popular referenda or appeals to high courts (Johnson et al., 2019; Lamas, 2017; Pérez Bentancur & Rocha-Carpiuc, 2020; Undurraga Valdés, 2019). They may also resort to "street politics," such as mobilizing outside hospitals in order to obstruct abortion procedures or impede women's access to reproductive care, and exerting pressure on doctors to exercise conscientious objection (Dickens, 2014; Lamas, 2017; Tribe, 1992; Wilson, 2016). They articulate a retrograde rhetoric seeking to sway the dominant public discourse and regress the status quo to a prior social condition. In some cases, they successfully achieve fundamental changes or social reversions; however, on other occasions, they fail (Alter & Zürn, 2020).

Both sets of literature, while complementary, have seldom dialoged. Most have considered the adoption phase and the aftermath as separate political processes, often analyzing conservative backlash but scarcely feminists' attempts to protect abortion access (Corrales, 2022;



Zaremborg & Almeida, 2022). Similarly, they have considered how both conservatives' and feminists' decisions in the aftermath emerge from decisions made in the adoption stage. Therefore, when it comes to analyzing access to enshrined rights in reproductive policies, it may be helpful to ponder the political dynamics of the adoption and the aftermath phases as part of a continuum. The next section provides a theory to account for both phases as unified process.

### **Linking Legalization and Aftermath**

Our framework offers a way to systematically tie the different concessions abortion proponents make in the adoption stage (time 1) to the kinds of resistances they face and strategies they develop in the aftermath (time 2). The adoption stage refers to the decisions taken by national congresses to legalize or decriminalize abortion, namely shifting a restrictive status quo towards a less restrictive position. Specifically, legalization moves abortion from a complete or almost complete prohibition to become fully or fairly legal, significantly expanding access for women.

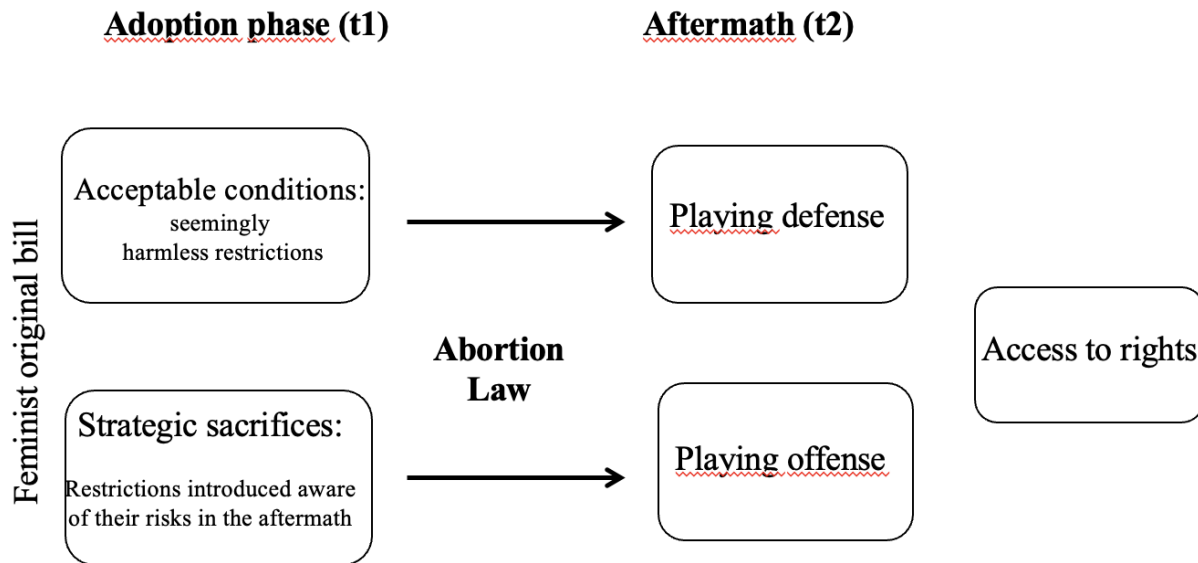
In this article, we call “feminists” the individuals that propose and defend legal abortion laws during the congressional debates and in the aftermath (e.g., during implementation). Legislators introducing the bills are usually women –and sometimes men– from left parties, working with allies in the executive branch and with feminist organizations in civil society (Blofield & Ewig, 2017; Fernandez Anderson, 2020; Htun, 2003; Johnson et al., 2015; Pérez Bentancur, 2019). Feminists are “critical actors” in abortion laws’ negotiations (Childs & Krook, 2009). Conversely, conservative actors are groups or individuals who explicitly oppose the reforms during the adoption stage and react to them in the law’s aftermath. Generally,

conservative actors are center or right-wing parties or politicians, religious and pro-life organizations, and even medical associations (Grzymała-Busse, 2015; Pérez Bentancur & Rocha-Carpiuc, 2020; Tribe, 1992; Wilson, 2016).

We theorize a process in which feminist and conservative actors engage in a two-stage political game that affects women’s access to abortion rights. During the adoption phase, feminists frequently must make concessions to these actors to pass the laws. Our framework suggests that feminists make two types of concessions, which have different implications in the aftermath, as shown in Figure 1.

**Figure 1.**

**Feminists Concessions in the Adoption Stage and Feminists Reactions in the Aftermath**



In the legislative process of adopting abortion laws, feminist legislators are key actors. As lawmakers, their task is to pass laws while attempting to fulfill their party’s political commitments (Cox & McCubbins, 1993). Additionally, in the case of abortion, they seek to

channel the demands of their allies, usually feminist organizations (Beckwith, 2000; Htun & Weldon, 2018; Johnson et al., 2015). Thus, to get the law passed is the primary concern of feminist lawmakers.

The process begins when feminists put forward their ideal version of the bill. In the negotiation preceding sending the bill to Congress, or while the bill is passing through congressional committees, feminists may agree to temper portions of the bill in ways that would restrict abortion access, in order to coopt key individuals from the center-left, center, or center-right. Feminists are compelled to concede these moderations as they are politically weak: the pro-abortion coalition in Congress lacks the votes to pass the bill on their own, needing to build a majority with legislators with less progressive views (Fernandez Anderson, 2020). Feminists agree to these restrictions strategically, fully aware of how they will affect access to rights, but considering a more restrictive bill is still preferable than not bill at all.

A strategic sacrifice is a deliberate decision taken during the adoption stage (time 1) to accept restrictions that moves the bill farther away from the feminists' ideal point, but in ways they can anticipate the outcomes of the sacrifices, being able to play offense in the aftermath (time 2). Feminists can anticipate how an agreed-upon restriction or loophole—like requiring a waiting period—waters down the law and might affect access to abortion, planning their next steps proactively. For instance, they can strategize how to implement the law to mitigate the impacts of the sacrifices made or contemplate how civil society organizations can accompany abortion-seekers, helping them navigate the bureaucracy. Playing offense means having the advantage of understanding the outcome, however undesirable, and anticipating and planning the following steps. Often, the offensive play consists of feminists in executive positions trying to promote law's regulations that fill the gaps created in the congressional negotiations. In doing so,

they seek to recoup the losses they suffered during the adoption phase, bring implementation closer to their initial preferences (Moe & Howell, 1999).

During the adoption stage, another type of concession feminists make is including restrictions in their bill that appear inconsequential or harmless, called “acceptable conditions”. We understand these concessions as limitations introduced at the outset or later, but which feminists accept for they believe it will not overtly hinder implementation or affect access to rights; they do not see this acceptance as a sacrifice. Therefore, feminists might agree that women seeking abortion should consult health workers who might be objectors (conscience objection) (Dickens, 2014). Including these limitations in the proposal or during the congressional negotiations might be seen by feminists as a representation of the diverse views comprising the feminist coalition. In sum, an acceptable condition is a deliberate decision to include a seemingly innocuous clause, however failing to foresee its potential negative effects. Since the consequences of acceptable conditions are not fully anticipated, feminists are forced to play defense in the aftermath when conservative actors exploit the limitations. For instance, they may use judicial activism against the law or conscience objection clauses in an abusive way. By introducing acceptable conditions and failing to anticipate the blow to implementation and access to rights, feminists do not have the advantage of planning a response in advance, forced to be reactive rather than proactive in the aftermath. Playing defense means being caught off guard by the outcome and the need to play from behind to attempt to protect rights.

## **The Reality of Abortion in Chile and Uruguay**

Uruguay and Chile were the first two countries that, during the third wave of democratization legalized abortion (by law) in Latin America. However, in the case of Chile the liberalization was restricted to only the grounds. Although, both laws have substantial differences, they present similar patterns regarding the interplay between feminists and conservative actors during the law's adoption phase and its consequences in accessing rights during aftermath.

In Uruguay, abortion was legalized in 2012. The Law No. 18,987 allowed abortion based on women's will within the first 12 weeks of gestation. According to the law, women are required to consult with a multidisciplinary team. The team's aim is to provide information about the characteristics of the procedure and its different alternatives. Upon completion of the interview, the woman must take five days for reflection. If she decides to continue with the interruption, she can do so at no cost only within the national healthcare system. Before the law, abortion was legal on the following grounds: to save the honor of the wife or a close relative, in case of rape, risk to the woman's life, and for reasons of "economic necessity" (Law No. 9,763). All the grounds, except rape, required judicial authorization. In practice, it was complicated to obtain an abortion under these exceptions (Carril Berro & López Gómez, 2008).

In Uruguay, the abortion law has proved to be one of the most challenging laws after the democratic transition (1985). The abortion legalization was promoted by an alliance of social actors headed by feminist organizations and the Frente Amplio (Broad Front, FA), a center-left party (Pérez Bentancur 2019). In particular, some Broad Front's feminist legislators with strong linkages to women's organizations were critical actors during the negotiation of the bill (Correa & Pecheny, 2016; Fernandez Anderson, 2017, 2020; Johnson et al., 2015, 2019). Yet, the approval of the abortion law was neither straightforward nor automatic. The abortion law was

passed in 2012, during the second term of the FA government (under the presidency of José Mujica), following two unsuccessful attempts, including a veto by President Tabaré Vázquez during the first FA government. The law was adopted by a narrow margin. Its passing involved intense parliamentary negotiations and significant concessions which resulted in the moderation of the original bill (Correa & Pecheny, 2016; Fernandez Anderson, 2017, 2020; Johnson et al., 2015, 2019).

Abortion law has been relatively successful in Uruguay. According to official estimations, the rate of abortions per 1000 women in reproductive age resembles that of advanced countries where abortion is legal (OPP, 2017). This fact indicates that most of the demand for voluntary abortions seems to be met by the legal system. Yet, some groups of women encounter difficulties in accessing abortion. The overly bureaucratic process and conscientious objection represent relevant barriers to access abortion in some regions, particularly due to the widespread abusive use of individual conscientious objection (MYSU, 2017). Between 30 and 40 percent of doctors have declared themselves as objectors. However, they are not evenly distributed throughout the territory. In the early stages of the law's implementation, all doctors in some areas declared themselves objectors. Years later, this situation persists in some hospitals in zones far away from the capital city (Montevideo), where health services are scarce. In addition, many doctors have been "pseudo-objectors", meaning they refused to perform abortions because of the stigma they could face in conservative areas or due to pressures from their medical superiors who were pro-life doctors (Cárdenas et al., 2018; MYSU, 2017). As a result, many women had to travel to other cities to have a legal abortion. This specially affects poor women who have less support and resources.

Chile liberalized abortion in 2017 when its Congress passed the Law No. 21,030 on Voluntary Termination of Pregnancy. The law enables abortion under specific grounds: danger to the woman's life, fetal malformation incompatible with extrauterine life, and rape. Although the new Chilean law was limited to only three grounds, it represents a major liberalization in comparison to a previous very restrictive status quo. Prior to this law, Chile was one of the few countries in the world where abortion was completely prohibited (Casas & Vivaldi, 2014; Haas, 2010; Ríos Tobar & Godoy, 2003).

After the return of democracy in 1990, attempts to decriminalize abortion encountered multiple obstacles. Opportunities for liberalization only emerged during the second term of Socialist President Michelle Bachelet (2014-2018). In 2015, she introduced the bill in Congress after an intense lobbying of women of her center-left coalition, the Nueva Mayoría (New Majority, NM). These women had succeeded in introducing legal abortion on three grounds as one of the proposals of the 2013 NM's electoral platform. As a result, once in government, Bachelet, a president committed to the women's rights agenda, tasked her cabinet to draft a bill under the terms specified in the electoral platform (Fernandez Anderson, 2020; Maira Vargas & Carrera Ferrer, 2019; Pérez Bentancur, 2022).

Similarly to Uruguay, during the first years of the law's implementation, there were numerous hurdles to accessing abortion, which ranged from excessively bureaucratic procedures to widespread conscientious objection (Fondo Alquimia & Mesa Acción por el Aborto en Chile, 2019; Humanas, 2022; Maira et al., 2019; Sarmiento et al., s. f.). According to data from the Ministry of Health, 3,826 legal abortions were performed between 2018 and 2022,<sup>1</sup> while

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<sup>1</sup> Report "Information on cases constituted within the Law 21.030 that regulates the voluntary interruption of pregnancy on three grounds", available at:

previous estimations had expected an annual average of 3,000.<sup>2</sup> Yet, these numbers are not representative of the overall abortion landscape in Chile. Due to the restrictive nature of the law, most abortions are not covered by the legal grounds. Consequently, they are performed under clandestine conditions.

Even in cases covered by the law, women often resort to underground methods (or proceed with unwanted pregnancies) due to them encountering multiple obstacles within the legal system (both in private and public hospitals). For example, the requirement of a legal report in cases of rape frequently inhibits women from seeking a legal abortion on this ground, as they are often afraid to report the rape or “have to continue living with their aggressor.”<sup>3</sup> Regarding the ground of fetal malformation, organizations supporting women seeking abortions have pointed out that in some areas, accessing an abortion on this ground is often challenging due to the requirement of multiple tests and consultations with specialists, unavailable in many regions. When this occurs, women are forced to travel to Santiago de Chile (the capital city) and “end up spending money from their own pockets.”<sup>4</sup> Finally, conscientious objection is widespread in Chile. Several private clinics have been declared institutional objectors. It also affects public

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[https://informesdeis.minsal.cl/SASVisualAnalytics/?reportUri=%2Freports%2Freports%2F382105c8-521f-4356-b1b8-6bad21ba8b08&sectionIndex=0&sso\\_guest=true&reportViewOnly=true&reportContextBar=false&sas-welcome=false](https://informesdeis.minsal.cl/SASVisualAnalytics/?reportUri=%2Freports%2Freports%2F382105c8-521f-4356-b1b8-6bad21ba8b08&sectionIndex=0&sso_guest=true&reportViewOnly=true&reportContextBar=false&sas-welcome=false) (last consulted: June 30, 2023)

<sup>2</sup> Interview with Gonzalo Rubio high-ranking government official, July 5, 2022, Santiago de Chile.

<sup>3</sup> Interview with Javiera Canales Aguilera, MILES Chile, July 12, 2022, Santiago de Chile.

<sup>4</sup> Interview with Javiera Canales Aguilera, MILES Chile, July 12, 2022, Santiago de Chile.



hospitals where, in 2022, an average of 42% of the doctors had declared themselves objectors in cases of rape. As in Uruguay, in some areas of Chile, all doctors are objectors (Humanas, 2022). Additionally, there are many pseudo-objectors.<sup>5</sup>

In both cases laws were promoted by feminist legislators during left-wing governments which were more open to debate and legislate on this issue. The Uruguayan FA and the Chilean NM were majoritarian center-left coalitions at the time abortion laws were passed. Nonetheless, the bills faced multiple opponents, even from within leftist coalitions. Therefore, feminists in the executive and legislative branches promoting the bills had to negotiate intensively to pass the laws. Consequently, the original bills that feminist crafted were diminished in their scope due to the need to negotiate to achieve support from soft conservative legislators.

All laws can face implementation gaps after approval. However, this study demonstrates that some of the issues with implementing and accessing abortion services in Chile and Uruguay stem from political dynamics that emerged during the adoption and post-approval phases, between feminist and conservative actors. These issues directly resulted from the strategic sacrifices made during the adoption phase and continue to impede progress in abortion access.

## **Method and Data**

We build our framework based on the in-depth case analysis of the first two countries that legalized abortion (by law) in Latin America: Uruguay and Chile. We use both cases for the

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<sup>5</sup> Interview with Débora Solís, APROFA July 4, 2022, Santiago de Chile and Javiera Canales Aguilera, MILES Chile, July 12, 2022, Santiago de Chile.

purpose of theory building, using an iterative process which moves back-and-forth between theory and empirical analysis (Beach & Pedersen, 2016; Yom, 2015). More specifically, we use process tracing, a useful research design to capture and analyze processes (Beach & Pedersen, 2016; George & Bennett, 2005, 2005; Goertz, 2017). We trace the connections between the adoption and the aftermath phases, considering them as a process in which feminists and conservative actors interplay (Weller & Barnes, 2014). Our data allows us to map the “fingerprints” (Collier, 2011) of the strategic sacrifices and acceptable conditions introduced in the adoption phase. Simultaneously, the case studies enable us to appreciate the type of strategies (offensive and defensive) deployed by feminists in the aftermath, conditioned by the types of concessions feminists made in the adoption phase. Overall, we offer a theory explaining the decisions and reactions of pro-abortion coalitions (feminists): while conservative actors pursue multiple avenues to obstruct abortion laws, we analyze those intentionally or unintentionally opened by feminists and how these opening condition feminists’ responses.

The descriptive inferences about the processes are mainly drawn from the in-depth case studies. Even though we analyze two cases, the aim of this research is not comparative. We use comparison in a subsidiary way and for analytical purposes only (George & Bennett, 2005). Although both countries display substantial differences in the enacted laws and socio-political aspects (i.e., the more significant influence of conservatives in Chile), we argue they show similar patterns. In both cases, we observe how feminists had to make strategic sacrifices to pass the law and, simultaneously, they introduced acceptable conditions they considered harmless. Moreover, we consider that strategic sacrifices and acceptable conditions affect feminist behavior in the aftermath in patterned ways. In this vein, the similarities lend confidence to our descriptive inferences because the effects are replicated across two cases.

We draw our evidence from in-depth interviews with feminist activists, legislators, and ministry officials and a systematic review of media reports and parliamentary records on the topic. We use process tracing language to assess the probative value of our evidence (Beach & Pedersen, 2016; Collier, 2011; Evera, 1997). Regarding the reform phase, we look for traces of strategic sacrifices and acceptable conditions introduced to abortion bills during the negotiation processes. We assume we are in the presence of a strategic sacrifice when a decision-maker makes statements such as: “this clause was something we had to accept”, “if we hadn’t accepted that clause, the bill would have failed” or “we had to compromise on this issue.” An acceptable condition refers to statements in which decision-makers make statements such as: “this clause seemed fine to us, not realizing it would be misused,” or “we agreed with that term, then realized we were naïve.” In the aftermath, we consider feminists played offense by expressing they could plan actions to mitigate the potential damage caused by a strategic sacrifice. Conversely, we considered feminists played defense when unanticipated problems arising from acceptable conditions in the law emerged during implementation, forcing them to seek contingent solutions.

To assess the quality of our data, we asked ourselves how surprising our evidence was (Beach & Pedersen, 2016; Collier, 2011). We do so in light of two features of the sources: its proximity to the outcome and its potential bias. For instance, if an interviewee was directly involved in the decision-making processes (e.g., as the main drafter of the bill), we considered this an indicator of high proximity, which implied a direct knowledge about the decision-making process, therefore providing us with first-hand information. In addition, if the interviewee recounted the facts in detail or provided information, we would not expect to hear from her – e.g., she accepted there were mistakes in the negotiation or that were weak at negotiating– then we could rely on that evidence, deeming it strong enough to support our argument. Moreover, to

enhance the validity of our data, we utilized triangulation by cross-referencing multiple sources. This ensured a higher level of inferential confidence when two or more sources provided similar evidence (Bennett & Checkel, 2015). We present our evidence in detail in two appendixes, following recent recommendations about transparency in qualitative research (Kapiszewski & Karcher, 2020, 2021).

## **Case Studies**

### **Uruguay**

When the law was passed, the Uruguayan Congress was composed of three major parties. The leftist FA hold majorities in both chambers and most of its legislators supported the law. The party had strong ties with feminist organizations, for whom abortion was a historical grievance. The other two major parties, the Partido Nacional (National Party, PN) and the Partido Colorado (Red Party, PC), were on the center-right and had close connections with religious and pro-life organizations. Their representatives mainly advocated for the protection of life since conception (Correa & Pecheny, 2016; Johnson et al., 2015). Furthermore, two out of the three legislators of the Partido Independiente (Independent Party, PI), a centrist party, were opponents. Only the third –Deputy Ivan Posada– was open to negotiations.

The law was introduced by FA’s legislators and passed in the Senate only with the support of the Left. Yet, in the Chamber of Deputies the bill faced major hurdles. The FA had 50 out of 90 deputies, but two of them refused to vote in favor of the original bill, holding strong

positions against it: one of them considered the bill “too permissive” and the other due to religious beliefs.<sup>6</sup> Under this scenario, Senator Mónica Xavier (FA), who drafted the proposal, stated: “In the current situation, it is impossible for the Chamber of Deputies to approve the bill”.<sup>7</sup>

To get the law passed, feminists had to negotiate with Deputy Iván Posada (PI), which implied two significant strategic sacrifices. First, Posada agreed to support the legalization if the law stipulated that women had to consult with a multidisciplinary team –comprised by a doctor, a social worker, and a psychologist– prior to the interruption. Posada’s proposal also stated one of the members of the multidisciplinary team had to be a conscientious objector, aiming to discouraging abortions. After the consultation, a five-day reflection period had to elapse. Feminist legislators managed to convince Posada to remove the requirement of having a conscientious objector as a member of the multidisciplinary team. They also negotiated that the team would only provide information about the characteristics of the abortion as well as its alternatives. However, they had to accept the team and the reflection period. As several feminists stated, this clause was a “necessary concession”,<sup>8</sup> and “an opportunity to advance in

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<sup>6</sup> La Diaria, April 24, 2012, “Banca sagrada”, available in:

<https://ladiaria.com.uy/articulo/2012/4/banca-sagrada/> (last consulted, July 15, 2016).

<sup>7</sup> El País, April 22, 2012, "Xavier: no hay voto para aborto", available in:

<http://historico.elpais.com.uy/120422/pnacio-637530/politica/xavier-no-hay-voto-para-aborto-/> (last consulted September 9, 2016.)

<sup>8</sup> Interview with Senator Mónica Xavier, Broad Front, November 16, 2022, Montevideo.

decriminalization”<sup>9</sup> since the original bill “had no viability in the Chamber.”<sup>10</sup> (Appendix I Observations UY1SS to UY3SS).

Furthermore, whereas the original bill only allowed individual conscientious objection, feminists had to accept the introduction of institutional objection for two specific religious hospitals (the Evangelical and the Catholic Circle hospitals), which claimed they could not perform abortions because their statutes required them to protect life. Members of these organizations intensively lobbied in the Chamber of Deputies committee that discussed the bill. As a result, Posada introduced the following clause:

Health care institutions, which prior to the enactment of this law, had religious objections to voluntary termination of pregnancy, may agree with the Ministry of Health on the way their patients will have access [to abortion].<sup>11</sup>

Feminists claimed that recognizing institutional conscientious objection “was the only possible thing” they could do.<sup>12</sup> They also affirmed that although they “would have preferred not to include” this element in the law, they supported it “following the agreement [...] reached in the process of drafting [the] bill.”<sup>13</sup> (Appendix I, observations UY4SS to UY6SS).

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<sup>9</sup> Interview with Deputy Juan Carlos Souza, Broad Front, cited in Johnson, Rocha y Schenk 2015: 97.

<sup>10</sup> Interview with Deputy Berta Sanseverino, Broad Front, August 5, 2016, Montevideo.

<sup>11</sup> Cluse 10, Posadas’s proposal September 10, 2012.

<sup>12</sup> Interview with Senator Mónica Xavier, Broad Front, November 16, 2022, Montevideo.

<sup>13</sup> See Verbatim record N° 1247 de 2012, Special Committee with the Aim of Debating Bills Regarding Interruptions of Unwanted pregnancies; Folder N° 1354, September 10, 2012).

While institutional conscientious objection was a strategic sacrifice, according to our theory, individual one was an acceptable condition. The main FA drafters of the law agreed with individual conscientious objection, including it in the bill' first version. As one of them stated, it was not a matter of concern:

The discussion surrounding conscientious objection was not about incorporating it into the bill, but rather about collective conscientious objection. [...]. So, all the efforts were made to prevent collective conscientious objection, having individual conscientious objection instead. I was so concerned about getting the bill passed, so concerned [...] that the only thing we were concerned about regarding conscientious objection was collective conscientious objection, not individual [...]. I would never have given it legal status, considering what happened then, right?<sup>14</sup> (Appendix II, observation UY6SS).

After the law was passed, its opposers (members of the PN, PC and PI in alliance with pro-life groups and the Catholic Church) unsuccessfully attempted to call a repealing referendum (Correa & Pecheny, 2016; Johnson et al., 2019). Meanwhile, feminists in the Ministry of Health played offense, initiating the implementation process under the supervision of the Vice-minister (Leonel Briozzo), a prestigious gynecologist committed with reproductive rights. He had close linkages with feminist organizations, collaborating with leftist feminist legislators who had drafted the bill, particularly with Senator Xavier.

During the implementation phase, one critical issue was the formation of multidisciplinary teams in each hospital. In some areas of the country, this was virtually

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<sup>14</sup> Interview with Senator Constanza Moreira, Broad Front, April 10, 2022, Montevideo.

impossible in the short term because many hospitals had few social workers and psychologists in their staff. Anticipating this problem, Briozzo included a clause in the implementation decree, stating that women's consultation with the teams could take place with one member at a time and not necessarily with the entire team simultaneously (Appendix I, observations UY1PO and UY2PO).

Briozzo believed this clause could be challenged by conservatives in court. Nonetheless, he also thought it would allow to stall for time to establish teams in each hospital.<sup>15</sup> In fact, the multidisciplinary team consultation requirement made the process overly bureaucratic for women. Still, thanks to Briozzo's offensive play in the aftermath, the lack of teams was not a problem for access to abortion (MYSU, 2017).

The widespread use of individual conscientious objection posed a challenge to the feminists in charge of the implementation. Feminist legislators did not fully foresee this problem when they included the clause in the original bill. Only retrospectively did they understand that conscientious objection should have limitations. In the aftermath, they acted defensively regarding this issue. First, they tried to regulate it by law, but failed because the political context was not very propitious. Second, feminists in the Health Ministry attempted to mitigate the costs of individual conscientious objection, for example by reorganizing abortion staffs or helping women to travel when needed (Appendix II, observations UY1PD to UY1PD).

## **Chile**

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<sup>15</sup> Interview with Leonel Briozzo, Vice Minister of Health, March 3, 2017.



In Chile, the bill's drafting was led by the Ministry of Women's Affairs. Legalization under three grounds was the best possible reform that could be achieved in Chile under that political juncture. The two major center-right parties, Renovación Nacional (RN, National Renovation) and Unión Demócrata Independiente (UDI, Independent Democratic Union), held strong positions against the bill because they considered it violated the "legal status" of life (Pérez Bentancur, 2022). As the Minister of Women's Affairs stated: "they were closed to any type of negotiation."<sup>16</sup> Therefore, Bachelet's government needed the support of the NM's legislators, which was hard to obtain as the bill also faced opposition from within the NM, particularly from the Partido Demócrata Cristiano (PDC, Christian Democratic Party), the first minority in Bachelet's coalition. Thus, feminists in the executive and legislative branches had to make concessions to pass the bill.

The first significant concessions took place in the Chamber of Deputies, where feminists had to make four strategic sacrifices. Although the three grounds proposal was part of the NM's electoral platform, several PDC legislators considered the government's bill too permissive. They demanded to better specify the ground on fetal malformation, pretended to restrict interruptions in cases of rape and sought to establish a procedure of accompaniment from the health system for the women who would have an abortion. To bring positions closer within the NM and get the bill passed, feminists proposed three amendments to their original proposal. The first, established the ground on fetal malformation should be considered as "malformation of a lethal nature." The second, stated hospitals had to report the rapes –which was unnecessary in the original bill. Finally, they proposed that health services should offer "accompaniment" programs

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<sup>16</sup> Interview with Claudia Pascual, Ministry of Women Affairs (Santiago de Chile, August 2, 2022).

to help women in their “discernment process, [and] after the decision was made” –whilst the original proposal only stated that written information should be provided.<sup>17</sup> (see Appendix I, observations Ch1SS to Ch3SS).

The most critical concession, however, took place in the Health Committee, where PDC’s deputies proposed to reduce the time limit for abortion in cases of rape in women under 14 from 18 to 14 weeks.<sup>18</sup> According to feminists, this significantly reduced the scope of the law since adolescent rape often occurs in the context of violent family relationships, which means that these pregnancies are generally detected at an advanced stage. Thus, they claimed, shortening the term introduces a significant obstacle to abortion access.<sup>19</sup> However, feminists also stated that it was an issue they “had to compromise on”<sup>20</sup> because they had requested deputies to vote for the original draft unsuccessfully (see Appendix I, observations Ch4SS to Ch6SS).<sup>21</sup>

The last strategic sacrifice occurred in the Senate’s Constitutional Committee. PDC’s legislators conditioned their support to the bill to the extension of conscientious objection to the whole health team and not only to doctors, as established originally. Simultaneously, right-wing

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<sup>17</sup> See History of the Law N° 21.030: 27-28.

<sup>18</sup> See History of the Law N° 21.030 N° 21.030: 58.

<sup>19</sup> Interviews with feminist activists and Bachelet’s government officials.

<sup>20</sup> Interview with Elisa Walker, high-ranking government official, Ministry of Women’s Affairs, June 29, 2022, Santiago de Chile.

<sup>21</sup> Interview with Claudia Pascual, Minister of Women’s Affairs, August 2, 2022, Santiago de Chile.

parties sought to allow institutional conscientious objection –i.e., that health providers could declare themselves objectors notwithstanding the will of the physicians working in them.<sup>22</sup>

Feminists included this clause in the original draft. While some Bachelet’s advisors believed that conscientious objection should not be mentioned in the law, they were a minority. For those promoting the bill, it was fundamental to protect individuals with deep beliefs conflicting with the law; in their words, it was “a way to be equanimous” and of not “forcing anyone.”<sup>23</sup> Still, they thought it should be limited to doctors performing abortions only.<sup>24</sup> From this perspective, individual conscientious objection may be interpreted, in terms of our theory, as an acceptable condition (see Appendix II, observations Ch1AC to Ch3AC).

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<sup>22</sup> Both motions, particularly the one on institutional conscientious objection, reflected the Catholic University’s position against the legalization of abortion. Catholic University has several clinics and hospitals throughout the territory. During the legislative discussion of the bill, several their high-ranking members its rector, Ignacio Sanchez, defended the extension of conscientious objection to the entire healthcare team and institutional conscientious objection. Sanchez was an active actor against the law, claiming the Catholic University’s health services would not perform abortions, nor would they hire doctors willing to perform them (See for instance Sánchez’s speech before Chamber of Deputies Committee in History of the Law Historia N° 21.030. 475).

<sup>23</sup> Interview with Paz Robledo, high-ranking government official in charge of the implementation’s guidelines, Ministry of Health, July 6, 2022, Santiago de Chile.

<sup>24</sup> Interview with Elisa Walker, high-ranking government official, Ministry of Women’s Affairs, June 29, 2022, Santiago de Chile.

The discussion about conscientious objection in the Senate's Constitutional Committee was tricky and the supporters of Bachelet's clause, minoritarian. NM had five of the nine senators in the Committee. Yet only two defended the original article on individual conscientious objection. The other three were from the PDC and supported the extension to the entire health team, as right-wing senators did (as a second preference). Hence, the feminist position did not thrive. This may be considered a strategic sacrifice; to pass the bill and not to lose entirely, they had to agree on including conscientious objection to the entire health team. Otherwise, the amendment on institutional conscientious objection could have been approved as some PDC's senators might have supported it (see Appendix I, observations Ch7SS to Ch8SS).

To prevent conscientious objection from fettering the implementation of the law, two NM's senators (Felipe Arboe and Alfonso de Urresti) sought to make an insertion in the bill to clarify that "conscientious objection has an individual nature and in no case can it be invoked by an institution."<sup>25</sup> This was negotiated with the PDC senators, and the bill was passed in the plenary session in July 2017.

In August 2017, legislators from both center-right parties presented two requests of unconstitutionality before the Constitutional Court, an independent body in charge of controlling law's constitutionality. They argued the law violated the right to life. They pointed out it legitimized abortion "as a subjective right enforceable before health services"<sup>26</sup> and that it violated health institutions' prerogatives based on values opposed to abortion. They affirmed the law should not force these institutions since the State itself guaranteed "the statutory right to

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<sup>25</sup> Indications 86 and 88 in History of the Law N° 21.030: 1221.

<sup>26</sup> History of the Law N° 21.030: 1836.

ascribe to a certain ideology, religious or not.”<sup>27</sup> While the Constitutional Court did not declare the law unconstitutional, its sentence further broadened the scope of conscientious objection.

The Court’s ruling stated that the Constitution assured conscientious objection as a “manifestation of freedom of conscience” and indicated there was no reason to restrict it only to individuals. Thus, only a phrase in the law was declared unconstitutional (the expression “in no case,” between “has an individual nature” and “can it be invoked by an institution”), contradicting the Congress’s will.<sup>28</sup> This decision opened the door for institutional conscientious objection to be broadly recognized (Undurraga Valdés, 2019).

In the aftermath Bachelet’s government acted defensively regarding the Court’s ruling. In October 2018, Bachelet issued an executive rule establishing that institutional conscientious objection could not apply to private hospitals receiving state funds.<sup>29</sup> During the adoption phase, feminists did not anticipate the clauses regarding conscientious objection could be used to assure its institutional version. Therefore, in terms of our theory, it was an unforeseen consequence of a condition that was seen as acceptable previously. Through the executive rule, feminists sought to move the implementation closer to their preferences, trying to safeguard the law’s original version as much as possible. However, the decree limited but could not eliminate institutional conscientious objection (see Appendix II, observations CH1PD to CH2PD).

As in Uruguay, in Chile evidence suggests that feminists played offense in the aftermath. Feminists in government sought to safeguard the law’s contents to prevent distortions during implementation. Since it was likely that the right coalition would win the next elections, as it

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<sup>27</sup> History of the Law N° 21.030: 1923-1924.

<sup>28</sup> History of the Law N° 21.030: 1923-1924.

<sup>29</sup> See CVE 1482452, clause 13.

finally happened in December 2017, Bachelet's government intended to avoid leaving the law's implementation to the future administration. However, time was short. Before leaving office, and aware of the strategic sacrifices made during the adoption phase, feminists in the Health Ministry aspired to leave clear guidelines for an appropriate implementation. Among the elements considered were training plans for healthcare teams, action protocols for support teams and doctors, provision of abortive medications to hospitals and clinics, and informative campaigns (see Appendix I, observations CH1PD to CH2PD).

In December 2017, Sebastián Piñera, a center-right candidate won the Presidency supported by a coalition of RN and UDI. The new government did not repeal the law, but also did not make efforts to ensure access to abortion rights. At the beginning of his government, and in response to a complaint from the Catholic University, Piñera issued a new executive rule allowing institutional conscientious objection for any private hospital, regardless of whether it received state funds. In this way, the feminist's defensive strategy after the conservative onslaught suffered a new setback.

Feminists who agreed with including individual conscientious objection during the adoption phase only realized the hurdles it would generate during the implementation phase, as illustrated by the following quote:

I think we were so consumed by the urgency to approve this bill that it happened to me too, or it's happening to me now, as if I look back and say, "but what happened that we never had a reflection?" [...] So, the truth is that we never anticipated how brutally obstructive conscientious objection would be to the implementation of the law.<sup>30</sup>

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<sup>30</sup> Interview with Débora Solís, APROFA July 4, 2022, Santiago de Chile.

## **Conclusions**

This paper has offered a new theoretical framework to understand feminist mobilization seeking to secure legal abortion in Latin America. Laws that liberalize women's access to abortion are rarely passed without intense negotiation, as proponents and opponents have to agree on the restrictiveness of the new regime. Conservative actors (rightists political parties, religious and pro-life organizations and sometimes, groups of doctors) will not only be on the lookout for concessions in the legislative phase. In the aftermath, they will seek to interpret the law in the most restrictive way possible or try to roll it back. While scholars have studied congressional negotiations and their aftermath separately, this paper links both phases, bringing feminists back into the analysis. The literature on reproductive rights that has more recently focused on analyzing setbacks and the counter-wave in women's rights pays more attention to how conservatives are and what they do, leaving the role that feminists play in this phase under-theorized.

Based on evidence from the cases of Uruguay and Chile we have shown that the types of concessions feminists make in the negotiation phase directly affect their strategies in the aftermath. We have distinguished two different types of concessions: on the one hand, strategic sacrifices in the adoption phase enable feminists to go on the offensive to secure access in the aftermath. On the other hand, acceptable conditions put feminists on the defensive in the aftermath, due to their unawareness of far-reaching implications.

New questions for further research arise from the differences in the strength of the evidence we found between the Chilean and Uruguayan cases. While in both cases, we found strong evidence that feminists had to make strategic sacrifices during the adoption phase and acted defensively in the aftermath, only in the Uruguayan case did we find strong evidence that they acted offensively. In the case of Chile, the evidence only suggests that they played offense. Two factors may account for these results. First, Chilean feminists had little time to act because the law was passed late in the Bachelet administration, which was not the case in Uruguay. Secondly, it is also possible that feminists do not react offensively to all the strategic sacrifices made during the adoption phase simply because their main objective is to get laws passed, and less attention is paid to what happens during implementation. Additionally, the possibilities for acting in specific political and institutional contexts are more constrained after making strategic sacrifices.

Future research should examine the extent to which our proposed theory, developed inductively from the cases of Uruguay and Chile, travels (i.e., whether it is useful and accurate) for understanding other cases. We argue that our theory should travel to understand adoption-phase and aftermath linkages in contentious reform settings. In contrast, it may not be as useful for studying softer reforms characterized by less bargaining (e.g., maternity leave policies or domestic violence laws). Women's rights agendas are never fully secured. However, some policies, such as sexual and reproductive rights, remain particularly contentious even after successful legislation.

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## Appendix I: Feminists Strategic Sacrifices (Adoption Stage, t1) and Feminists Playing Offense (Aftermath, t2)

### 1) The Case of Chile

Evidence of feminist strategic sacrifices	Observations and sources	Inference
<p>Amendments to the law introduced by the Executive (History of the Law N° 21.030: 27-28):</p> <p>(Chamber of Deputies 1)- Added that fetal defect not compatible with life had to be of a “lethal nature”. (Feminist original version: Only “fetal defect not compatible with life”).</p> <p>(Chamber of Deputies 2)- Women seeking abortion in case of rape are required to have a police report that identifies the rapist. (Feminist original version: Unnecessary to have a police report).</p> <p>(Chamber of Deputies 3)- Added that a team of health professionals accompany the woman after the decision to abort. (Feminist</p>	<p>Observation Ch1SS: Several Christian Democracy’s (CD) legislators considered the government’s bill too permissive. The party’s leader in the Chamber of Deputies (Matías Walker) announced modifications that would be presented to “improve” the law. He claimed that in the case of rape “it is a fetus that does not present problems” and in the case of fetal non-viability, he stated that “in other countries it has been used to allow abortions in a broader manner” (El Mercurio, March 2, 2015).<sup>i</sup> In addition, an internal report of the party proposed an accompaniment procedure from the health system for the woman who would have an abortion (El Mostrador, July 27, 2015).<sup>ii</sup> Some days later, Bachelet’s government proposed amendments 1 to 3 to the Health Committee of the Chamber of Deputies (History of the Law N° 21.030: 27-28).</p> <p>Observation Ch2SS: About the amendment of fetal malformation, Bachelet’s Minister of Women’s Affairs claimed: “It is an amendment made by the Executive, but an amendment as a result of the resistance generated by the redaction [of the article on] fetal malformation.” (Interview with Claudia Pascual, Minister of Women’s Affairs, August 2, 2022, Santiago de Chile.)</p>	<p>Observation Ch1SS indicates that after CD’s legislators proposed modifications that restricted the scope of the bill, Bachelet’s government sent modifications to Congress that included the requirements the of the CD party. This piece of evidence is necessary to assert that the three modifications were strategic sacrifices, but it is not sufficient (Hoop test).</p> <p>Observation Ch2SS is sufficient to affirm the modification regarding fetal malformation was a strategic sacrifice because, based on the statement of the Minister of Women’s Affairs, it can be inferred that this modification would not have been made if it were not for the conditioning of the CD (Smoking Gun Test).</p> <p>Observation Ch3SS represents a general statement that indicates that the four modifications made to the bill were strategic sacrifices derived from their political weakness. Although it is a general statement, it is necessary to</p>

<p>original version: No accompaniment program).</p>	<p>Observation Ch3SS: About the changes introduced to the bill in Congress, Bachelet’s Minister of Women’s Affairs claimed: “We had to achieve the majority to pass the bill with the votes of the people who supported President Bachelet’s government or with independents, and we barely had the possibility of recovering three or four votes in the Chamber of Deputies [among independents] [...] You do not negotiate with the Right, because they were closed to any agreement.” (Interview with Claudia Pascual, August 2, 2023, Santiago de Chile.)</p>	<p>affirm they were strategic sacrifices (Hoop Test).</p> <p>Jointly, these three pieces of evidence suggest that the three amendments were strategic sacrifices. However, they are not sufficient, except for the amendment on fetal malformation.</p>
<p>Amendment introduced by CD’s deputies in the Health Committee:</p> <p>(Chamber of Deputies 4)- Reduction of 18 to 14 weeks in cases of rape for women under 14 years old (Feminist original version: Abortion allowed in the first 18 weeks of pregnancy for women under 14).</p>	<p>Observation Ch4SS: In Chamber of Deputies’ Health Committee the CD’s legislators proposed to reduce the time limit time to admit legal abortion in cases of rape in women under 14, from 18 to 14 weeks (History of the Law N° 21.030 N° 21.030, pp. 58).</p> <p>Observation Ch5SS: A government official who participated in the negotiations on behalf of the Ministry of Women’s Affairs claimed about the amendment that: “In the end, it was one of the issues we had to compromise on.” (Interview with Elisa Walker government official, Ministry of Women’s Affairs, June 29, 2022, Santiago de Chile).</p> <p>Observation Ch6SS: Minister of Women’s Affairs claimed that: “The original bill established 18 weeks for children under 14 [to have an abortion]. We did not change the 14 weeks. That was an initiative of members of the Health Committee [...] We requested deputies to vote for our draft, but we lost. And then, their proposal was voted”. (Interview with Claudia</p>	<p>Observation Ch4SS is neither necessary nor sufficient to affirm that reducing 18 to 14 weeks for rapes for women under 14 was a strategic sacrifice. It only indicates this clause was a CD’s requirement (Straw in the Wind Test).</p> <p>Observations Ch5SS and Ch6SS are (separately) necessary and sufficient to show that the reduction of 18 to 14 weeks in cases of rape for women under 14 was a strategic sacrifice. Two high government officials accepted this was the price they had to pay for passing the law (two Doubly Decisive Tests).</p> <p>Jointly, observation 3 to 6 are sufficient (Smoking Gun Test) to show feminists' strategic sacrifices during the</p>

	<p>Pascual, Minister of Women’s Affairs, August 2, 2022, Santiago de Chile.)</p>	<p>negotiations. Particularly, observation 5 and 6 clearly show that the amendment introduced by CD’s deputies in the Health Committee was a concessions feminists had to make; otherwise, the law would not have been passed.</p>
<p>Amendment introduced by CD’s senators in the Health Committee:</p> <p>(Sen 1): extended conscientious objection to the entire health team, not just doctors (Feminist original version: Conscientious objection was restricted to doctors performing the procedure).</p>	<p>Observation Ch7SS: Senator Matías Walker from the DC affirmed: "We have agreed that the 'conscientious objection' must be enshrined, not only for doctors but also for the entire health workers [...], except obviously when there is a danger to the life of the mother." (La Tercera, June 6, 2017).<sup>iii</sup> Also, Senator Carolina Goic (CD) proposed in the Senate’s Health Committee to extend conscientious objection to the entire health team (History of the Law de la Ley N° 21.030, pp. 1221, statement 83.)</p> <p>Observation Ch8SS: The Minister of Women’s Affairs claimed: “We lost our original formulation [on conscientious objection restricted to doctors]. The one who proposed the extension to the entire health team was Carolina Goic. In order not to lose entirely, because the rightist parties intended to extend conscientious objection even to the hospital guard, we suggested, because we obviously did not have the right to vote, the [left-wing] senators of the Health Committee that it was better to support the less lousy indication. Therefore, [we told them] we preferred they vote for [the amendment proposed by] Senator Goic, on the understanding that our original formulation had already been lost.” (Interview with</p>	<p>Observation Ch7SS suggests the CD conditioned its support to the bill to the extension of conscientious objection to the entire healthcare team. This observation is necessary to assert that this amendment was a strategic sacrifice, but it is not sufficient (Hoop Test).</p> <p>Observation Ch7SS is sufficient to affirm that the amendment regarding the extension of conscientious objection to the entire healthcare team was a feminist strategic sacrifice. The interview with the Minister of Women's Affairs clearly shows that without this amendment. Feminist were minoritarian to impose their point of view regarding this issue. (Smoking Gun Test)</p> <p>Jointly, both pieces of evidence are sufficient to affirm that this amendment was a strategic sacrifice to pass the law. (Smoking Gun Test)</p>

	Claudia Pascual, Minister of Women’s Affairs, August 2, 2022, Santiago de Chile.)	
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Evidence of feminist playing offense	Observations and sources	Inference
<p>The law was passed in July 2017, at the end of Bachelet’s government (March 2018). Bachelet 's government had only a few months to implement the law. Aware of the sacrifices made during the adoption, feminists in government strive to promptly design clear guidelines for optimal implementation. In doing so, they aimed to avoid leaving the law’s implementation in the hands of the future government, as a right-wing coalition had won the presidential election in December 2017. Feminists in government sought to safeguard the law’s contents to prevent distortions during implementation.</p>	<p>Observation Ch1PO: Health Ministry designed clear guidelines for the incoming government to secure an optimal implementation of the law (“Informe Implementación en Sistema Público de Salud de la Ley N° 21.030 que Regula la Despenalización de la Interrupción Voluntaria del Embarazo en Tres Causales”).<sup>iv</sup></p> <p>Observation Ch2PO: “What we had to do was to be able to set up a program that would take charge and provide the tools so health teams that already existed would be strengthened [...]. The most important thing was that it should be very technical, based on evidence, and highly approved. So that they would not say, “they are doing ideological things that should had been discussed in the law.” [...] In technical standards, the guidelines specified what the teams had to develop, and it was assumed that each team had to make a local protocol afterward. This failed in the implementation. We were able to do the training. I provided clear guidelines for everything that had to be done [...] In other words, everything was designed, written, and regulated so that things would flow [...] We designed everything that had to be printed and publicized [to inform women]</p>	<p>Observations Ch1PO and Ch2PO suggest (individually and jointly) that feminists played offensively. Yet both pieces of evidence are neither necessary nor sufficient because it is not clear that the design of concrete guidelines for implementation derives from the strategic sacrifices made by feminists during the adoption stage (Straw in the Wind Test).</p>

	(Interview with Paz Robledo, high government official in charge of the implementation’s guidelines, Ministry of Health, July 6 2022, Santiago de Chile).	
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## 2) The Case of Uruguay

Evidence of feminists strategic sacrifices	Observations and sources	Inference
<p>Amendment 1 proposed by Deputy Ivan Posada (Independent Party):</p> <p>(Dep 1): incorporated that women must consult with a multi-disciplinary team (a doctor, a social worker, and a psychologist) to be provided information before deciding to interrupt the pregnancy. After that, women must take 5 days to reflect.</p> <p>(Feminist original version: No conceptualization of a</p>	<p>Observation UY1SS. “Ivan’s [Posada] amendment gave a chance to a bill approved in the Senate that had no viability in the Chamber. As simple as that. We could not achieve the majority with our party, because we also have freedom of conscience on these topics” (Interview with Deputy Berta Sanseverino, Broad Front, August 5, 2016, Montevideo).</p> <p>Observation UY2SS. “It was another necessary concession. Of course, we were not satisfied with it. It was the price we had to pay for the law to come out. Otherwise, the law would not have been passed (Interview with Senator Mónica Xavier, Broad Front, November 16, 2022, Montevideo).</p> <p>Observation UY3SS. “There is an opportunity to advance in decriminalization. We do not have the votes to approve a text with that degree of maturity and depth [in reference to the original bill]. [But] I cannot remain raising the flag of rights while criminalization and women putting their lives at risk continue. I can either raise that flag and die with it in</p>	<p>Observations UY1SS to UY3SS are individually sufficient to show that the clause regarding the multi-disciplinary team and the 5-day reflection period was a strategic sacrifice (Smoking Gun Test). The three legislators recognized that they had to negotiate this clause in a way that distanced the law from their original draft, or the law would fail. Although from the bill’s proponents’ perspective, the agreement with Posada introduced conservative elements, they deemed it the only way to legalize abortion.</p> <p>These legislators were highly relevant in the negotiation of the bill (Mónica Xavier was the drafter of the law). Thus, these joint pieces of evidence are decisive to sustain that</p>

<p>team nor a waiting period).</p>	<p>my hands, or I can be more flexible and get a big obstacle out of the way.” (Interview with Deputy Juan Carlos Souza, Broad Front, cited in Johnson, Rocha y Schenk 2015: 97).</p>	<p>the amendment was a strategic sacrifice (Doubly Decisive Test).</p>
<p>(Dep 2): Introduction of institutional conscientious objection for two specific religious hospitals. (Feminist original version: Only individual conscientious objection).</p>	<p>Observation UY4SS: During the discussion of the new draft proposed by Ivan Posada in the Chamber of Deputies, Deputy María Elena Laurnaga (Broad Front) claimed she would have preferred not to include the article on institutional conscientious objection: “We are going to vote in favor of this article following the agreement we reached in the process of drafting this bill. We would have wished this article would not exist” (Verbatim record N° 1247 de 2012, Special Committee with the Aim of Debating Bills Regarding Interruptions of Unwanted pregnancies; Folder N° 1354, September 10, 2012).<sup>y</sup></p> <p>Observation UY5SS: Senator Xavier claimed: “The discussion was that the law affects and commits us all, and [it was a like a] clash. They [representatives of the Evangelical Hospital and the Catholic Circle Hospital] said ‘we have organic statutes that define that we have to protect life’; therefore, no possibility of interruption could be considered. And something was done that, in my opinion, was not the right thing, but it was the only possible thing to do: to recognize conscientious objection in institutions [...] The two fundamental elements were: the recognition of those institutions and to find a formulation for them, that was the only possibility.” (Interview with Senator Mónica Xavier, Broad Front, November 16, 2022, Montevideo).</p>	<p>Observations UY4SS to UY6SS allow to affirm that there was a strategic sacrifice regarding this issue. Three leftist legislators directly involved in the negotiations of the bill clearly affirmed that institutional conscientious objection was something they were forced to include.</p> <p>Jointly, these pieces of evidence are sufficient to affirm that the clause about institutional conscientious objection was a strategic sacrifice (Smoking Gun Test).</p>

	<p>Observation UY6SS: “I believe that one of the things that may have been a mistake was [that] conscientious objection went beyond what we originally proposed because it was a result of the transaction to pass the law” (Senator Mónica Xavier, in Conference “The Politics of Legal Abortion. Progress, Challenges and Setbacks”, December 5, 2022, Montevideo).</p>	
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Evidence of feminist playing offense	Observations and sources	Inference
<p>Given the law’s shortcomings, the Ministry of Health designed a progressive decree to secure its optimal implementation.</p>	<p>Observation UY1PO: “It was a very complex law. It had to be regulated extensively to leave nothing to chance. [...] It may seem stupid, but at that time, it was crucial that the consultation with the multidisciplinary team could be done successively, with the doctor, the social worker, and the psychologist. [...] It was impossible at that time to have all three together. [...] That interpretation was a political interpretation that I made of the law. [...] It was not a maneuver that I did either. It was a political interpretation of what to do because I had interpreted that it was impossible to do it simultaneously [...] and that we had to do it successively (Interview with Leonel Briozzo, Vice Minister of Health, March 3, 2017).</p> <p>Observation UY2PO: “[...] concerning whether the [multidisciplinary] teams had to proceed simultaneously or successively [...] the decision we took was that it could not be done simultaneously,</p>	<p>Observation UY1PO provides sufficient evidence to demonstrate the feminist proactive approach following the passage of the law. The Vice Minister of Health (a politician committed with women's rights, responsible for drafting the decree that regulate the law) openly expressed in an interview his deliberate decision to adopt a broad and progressive interpretation of the law in the regulatory process. He justified this decision in their concerned that without such an interpretation, the law's effectiveness could have been compromised, given the strategic sacrifices made during the legislative process.</p>

	<p>simply because that would cause the law to fail. Because there was no institution, public or private, that could bring together a gynecologist, a social worker, and a psychologist in one clinic. Therefore, if I regulated the law as it came, the law would fail." (Vice Minister of Health Leonel Briozzo in Conference "The Politics of Legal Abortion. Progress, Challenges and Setbacks", December 5, 2022, Montevideo).</p>	<p>Observation UY2PO provides a similar piece of sufficient evidence from another actor and dated five years later than the interview cited in Observation UY1PO. Jointly, observation UY1PO and UY2PO provide sufficient evidence to affirm that feminists played offensively regarding the implementation of the clause that established the meeting with the multidisciplinary team as a requirement. (Smoking Gun Test). There is no evidence to support the claim that feminists acted offensively to the clause that enshrined institutional conscientious objection.</p>
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<sup>i</sup> "DC debate proyecto sobre aborto en marzo y adelanta objeciones a dos causales", available in: ; last consulted, April 20, 2023).

<sup>ii</sup> , "Consejo Nacional de la DC confirma 'libertad de conciencia' para sus parlamentarios ante votación de proyecto de despenalización del aborto", available in: en:<http://www.elmostrador.cl/noticias/pais/2015/07/27/consejo-nacional-de-la-dc-confirma-libertad-de-conciencia-para-sus-parlamentarios-ante-votacion-del-proyecto-de-despenalizacion-del-aborto/>; last consulted, April 20, 2023).

<sup>iii</sup> "DC condiciona ley de aborto a incluir objeción de conciencia", available in: <http://www2.latercera.com/noticia/senadores-dc-condicionan-apoyo-proyecto-aborto/>; last consulted 9/6/2018).

<sup>iv</sup> Available in: <https://biblioteca.digital.gob.cl/bitstream/handle/123456789/3632/Informe%20Implementación%20IVE%203%20causales.pdf?squence=1&isAllowed=y>, last consulted: 27 Abril, 2023; also consult Paz Robledo's conference in the Chilean Medical



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Association, available in: [https://archivocolmed.colegiomedico.cl/wp-content/uploads/2018/06/Implementacion-Ley-IVE-junio-2018-y-sus-desafios-final\\_-Paz-Robledo.pdf](https://archivocolmed.colegiomedico.cl/wp-content/uploads/2018/06/Implementacion-Ley-IVE-junio-2018-y-sus-desafios-final_-Paz-Robledo.pdf), last consulted: 27 Abril, 2023).

<sup>v</sup> Available in: <https://parlamento.gub.uy/camarasycomisiones/representantes/documentos/documentos-comision/47/1247/0/CON> last consulted: 20 Abril, 2022).

## Appendix II: Acceptable Conditions (Adoption Stage, t1) and Feminists Playing Defense (Aftermath, t2)

### 1) The Case of Chile

Evidence of acceptable conditions	Observations and sources	Inference
<p>Inclusion of individual conscientious objection in the law (History of the Law N° 21.030: 15-16). To clarify this clause, leftist senators from the New Majority (NM), Felipe Arboe and Alfonso de Urresti, added to the bill the following sentence: “conscientious objection has an individual nature and in no case can be invoked by an institution” (Indications 86 and 88 in History of the Law N° 21.030: 1221).</p>	<p>Observation Ch1AC. The statement of purpose of the bill written by Bachelet’s Cabinet indicated: “As mentioned, this bill deals with difficult situations where the deep convictions of each person are at stake. That is why the surgeon is granted the possibility to express, in writing and in advance, their conscientious objection. [...] Of course, this is a right inherent to the intervening physician, as an individual” (History of the Law N° 21.030: 15-16).</p> <p>Observation Ch2AC. “An issue that was part of the bill from day one. [...] We know it is critical. We know there are people who effectively intervene in a termination of pregnancy, which can be something that honestly conflicts with their deepest values. So, we shared the idea of the objection, but with the safeguards that it should be limited, [...] exceptional, and [...] ensure health care provision to women” (Interview with Elisa Walker, high-ranking government official,</p>	<p>Observation Ch1AC is necessary but not sufficient to affirm that the inclusion of individual conscientious objection in the law was something feminists accepted for pluralist reasons (Hoop Test).</p> <p>Observations Ch2AC and Ch3AC are sufficient to show that individual conscientious objection was an acceptable clause to feminists. Two high-ranking government officials directly involved in drafting the bill, stated in interviews that conscientious objection was an aspect of the law that sought to consider and respect the position of those who would not perform abortions due to conflicting values. (Smoking Gun Test)</p> <p>Observations Ch1AC to Ch3AC are coherent with the statement and point to the same interpretation of what happened. Also, the sources are individuals with high proximity to the drafting and negotiation processes, who exposed their arguments both through personal interviews and public statements.</p>

	<p>Ministry of Women’s Affairs, June 29, 2022, Santiago de Chile).</p> <p>Observation Ch3AC. “This was a political committee’s political decision. [They said] ‘We are not going to force anyone here, neither this way nor that way.’ Just as a way to be equanimous” (Interview with Paz Robledo, high-ranking government official in charge of the implementation’s guidelines, Ministry of Health, July 6, 2022, Santiago de Chile).</p>	
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Evidence of conservative reaction and feminist playing defense	Observations and sources	Inference
<p>Center-right parties, in alliance with the Catholic University, approached the Constitutional Court to object to the constitutionality of the law. They contended the law infringed upon the prerogatives of health institutions, as it conflicted with their values. The Constitutional Court’s sentence removed the words "in no case" from the law, thereby permitting institutional conscientious objection (see History of the Law N° 21.030, pp. 1923-1924).</p>	<p>Observation CH1PD.</p> <p><i>“Interviewer: Institutional conscientious objection was already enshrined by the Constitutional Court. Still, you inserted a clause in the decree regulating the law stating that private hospitals that received public funding cannot declare themselves institutional objectors. Is that so?”</i></p> <p>Claudia Pascual: Yes. This has a very logical argumentation. The private institutions replacing the State must guarantee the health services in each</p>	<p>Observation CH1PD is necessary to affirm that in the aftermath of the law the Executive established the impossibility of relying on institutional conscientious objection by hospitals receiving public funds as a defensive reaction to the achievement of conservatives in the Constitutional Court. Feminists did not anticipate that the clarification they inserted in the law regarding individual conscientious objection could be used to change the meaning of what it stipulated, reducing the content of the law. It was an</p>

<p>In October of 2018, at the end of her government, Bachelet issued an executive rule establishing that institutional conscientious objection could not apply to private hospitals that received state funds (CVE 1482452, clause 13).</p>	<p>territory and therefore receive public funding; they could not be institutional conscientious objectors as they are replacing the State [...]” (Interview with Claudia Pascual, Minister of Women’s Affairs, August 2, 2022, Santiago de Chile).</p> <p>Observation CH2PD.  “‘So, what was proposed was, 'Okay, you are free to become an institutional conscientious objector.' But the state cannot buy services from a hospital that discriminates against women.’” (Interview with Gonzalo Rubio high-ranking government official, July 5, 2022, Santiago de Chile).</p>	<p>unforeseen consequence. Through the decree, feminists sought to cushion that loss in implementation, trying to safeguard the original version of the law as much as possible, in a defensive way (Hoop Test).</p> <p>Observation CH2PD alone is insufficient to support the claim. However, in conjunction with the first observation, it strengthens the inference because it is a second voice that reaffirms the argument used by the Ministry of Women Affairs.</p> <p>Jointly, both observations provide necessary evidence to affirm that the clause establishing that institutional conscientious objection could not apply to private hospitals that received state funds was a defensive reaction (Hoop Test).</p>
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## 2) The Case of Uruguay

Evidence of acceptable condition	Observations and sources	Inference
<p>Inclusion of individual conscientious objection in the law.</p>	<p>Observation UY1AC. "I advocate for the existence of conscientious objection for individuals (...) but with limits. It is not possible for someone to oversee a service and object to the very service they provide. It is not possible to pursue a career in certain fields when you are diametrically opposed to an existing law. So, I believe we were naive, we didn't foresee that step." (Senator Mónica Xavier, Broad Front, in Conference The Politics of Legal Abortion. Progress, Challenges and Setbacks, December 5, 2022, Montevideo).</p> <p>Observation UY2AC. "When Mónica re-drafted the bill to present in 2011, the conscientious objection was there, and [senator] Gallo, another very important actor to pass the law, agreed that conscientious objection (.) had to be included, it had to be included, it had to be included. And as we were dealing with other things, like the number of weeks and people with disabilities, I don't know, those issues (...). The discussion surrounding conscientious objection was not about incorporating it into the bill, but rather about collective conscientious objection. That's the discussion we had. So, all the efforts were made to prevent collective conscientious objection, having individual conscientious objection instead. I was so concerned about getting the bill passed, so concerned (...) that the only thing we were concerned about regarding conscientious objection was collective conscientious objection, not individual [...]. I would never have given it legal status, considering what happened then,</p>	<p>Observation UY1AC is sufficient to affirm that the conscientious objection clause was an acceptable condition for feminists from the beginning. The main drafter of the law publicly acknowledges that she believed conscientious objection had to be included in the law (Smoking Gun Test).</p> <p>In observation UY2AC, a senator directly involved in negotiating the bill acknowledged that individual conscientious objection was not a problem for those trying to pass the law. The senator stated that those who drafted the law had said that it should include conscientious objection. This observation is another sufficient piece of evidence to affirm that conscientious objection was an acceptable clause.</p>

	right?" (Interview with Senator Constanza Moreira, Broad Front, April 10, 2022, Montevideo).	
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Evidence of conservative reaction and feminist playing defense	Observations and sources	Inference
<p>Extensive abusive conscientious objection by medical staff. Hospital's medical directors declared themselves as conscientious objectors and sometimes abused their power to insist that doctors on their medical staff must do the same. According to data from the Ministry of Public Health and from women organizations, on average, between 30% and 40% of doctors were conscientious objectors; however, in some areas of the country, all doctors had declared themselves as conscientious objectors. Furthermore, the Vice-Minister of Health, Leonel Briozzo, claimed in the aftermath that several doctors were "pseudo-objectors".</p> <p>As a result, the strategies of feminists were defensive.</p> <p>They discussed the regulation of conscientious objection through a law.</p>	<p>Observation UY1PD. "But there we didn't have a safety clause in the law. And when we realized it, we needed to make a law on conscientious objection, but there was no longer a favorable balance of power to do so" (Interview with Mónica Xavier 2022).</p> <p>Observation UY2PD. "When I was Vice Minister [...] I remember with Mónica, [and] we were also with Senator Constanza Moreira, and feminist colleagues from different areas, [we were] working on the issue of conscientious objection, and it was difficult for us to make progress due to the political context in which we were discussing. [...] It was October of 2017." (Vice Minister of Health, Cristina Lustemberg, Broad Front, in Conference The Politics of Legal Abortion, December 5, 2022, Montevideo).</p> <p>Observation UY3PD. To mitigate the costs of individual conscientious objection: reorganize legal abortion services' staff in public and private hospitals; organized and paid for the transportation of women lived in areas with 100% conscientious</p>	<p>Observations UY1PD and UY2PD are sufficient evidence to show that feminists play defense in the aftermath. Two prominent feminists recognized they attempted to regulate conscientious objection in a new law; however, they did not present a bill because the political context was unfavorable to pass it.</p> <p>Observation UY3PD is sufficient to demonstrate that feminists in the Ministry of Health played defensively regarding the issue of conscientious objection during the implementation phase (Smoking Gun Test). Multiple pieces of evidence, including press articles and reports from civil society organizations, show how high-ranking</p>

<p>Feminists in the Ministry of Health tried to mitigate the costs of individual conscientious objection to ensure women's right to access abortion by different action.</p>	<p>objectors to places where they could access abortion services; informed physicians of the specific conditions under which it was possible to declare themselves objectors; employed non-objector doctors in public hospitals of towns where all of the local doctors were objectors (see for instance El País, January 1, 2013<sup>i</sup>; Montevideo Portal January 7, 2013<sup>ii</sup>; El Observador, February 16, 2013<sup>iii</sup>; May 17, 2013;<sup>iv</sup> La Diaria, September 24, 2015; MYSU 2017).<sup>v</sup></p>	<p>officials, including Vice-Ministers Briozzo and later Lustenberg, "monitored" the implementation of the law, attempting to mitigate the effects of individual conscientious objection women's right to access abortion.</p>
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<sup>i</sup> <https://www.elpais.com.uy/informacion/msp-quiere-requerir-por-escrito-motivos-de-objecion-de-conciencia>

<sup>ii</sup> <https://www.montevideo.com.uy/ZZZ-No-se-usa/Aborto-objecion-de-conciencia-en-Salto-uc189149>

<sup>iii</sup> <https://www.elobservador.com.uy/nota/la-mujer-que-viajo-2-400-kilometros-para-hacerse-un-aborto-legal-201321619190>

<sup>iv</sup> <https://www.elobservador.com.uy/nota/defienden-control-en-objecion-de-conciencia-201352718240>

<sup>v</sup> “Conflicto de intereses”, publicado en La Diaria 24/9/15, available at: <https://ladiaria.com.uy/articulo/2015/9/conflicto-de-intereses/>