Legal Inequality and Federalism: Domestic Violence Laws in the Argentine Provinces

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ABSTRACT

This article shows that the institutional design of Argentine federalism allows for differences in the protective scope of the provincial domestic violence laws. It holds that the broad legislative capacities of subnational districts enable the working of political and social local factors, which, in turn, determine heterogeneity in these laws' protective scope. It analyzes, compares, and measures 37 laws on domestic violence sanctioned between 1992 and 2009. It advances a methodology to measure their differences and it evaluates the impact local factors have on legal variations across jurisdictions. The article shows that the protective scope of these laws is determined by the intensity of the local electoral competition and by the strength of women's organizational capacity. Results also show that time matters insofar as it allows for the diffusion of more protective laws.

In a classic article published in 1984, Aaron Wildavsky stated, "federalism means inequality." This outcome is usually attributed to the territorial distribution of social and political resources, such as the strength of the actors' organization and the degree of political competitiveness. Although these variables cannot be dismissed, empirical findings from different federal settings indicate that even when actors' strength, organization, preferences, and political competition vary across subnational districts, legal promises do not always vary across jurisdictions.[1]

Results regarding the protective scope of domestic violence laws from Brazil, Mexico, and Argentina illustrate this point. Whereas in Brazil legal promises included in the domestic violence law (known as the Maria da Penha Law) are valid and hold the same for all states, in Mexico (Frias 2008, 2010) and in Argentina, variations across subnational units are high. These three situations give rise to the following question: even though the territorial distribution of social and political actors in these countries varies, why are differences in legal promises irrelevant in the Brazilian case but significant in Argentina and Mexico?

This article uses the Argentine case to build a theory about the impact of institutional design of federalisms on the distribution of legal rights across jurisdictions and, in turn, on rights inequality. It argues that even though macro social and political variables cannot be ignored, legal rights' heterogeneity across the territory also

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depends on the institutional distribution of legal competences and power across levels of government (Linz 1999; Stepan 1999; Watts 1999; Gibson 2004, 2013; Rodden 2004; Wibbels 2005). The article suggests, first, a framework to explain why and how the distribution of legal competences, authority, and matters between government levels in federal countries produces legal heterogeneity. It then compares and measures the protective scope of 37 laws on domestic violence sanctioned in Argentina between 1992 and 2009 (2 federal and 35 provincial) and shows that when local authorities enjoy broad legislative competences and authority, legal promises and right protection levels vary significantly across jurisdictions (Haussman and Vickers 2010; Chappell and Curtin 2012).

The article empirically tests the impact of three local variables (subnational electoral competitiveness, women's access to provincial elected bodies, and women's involvement in local organizations) on these variations in federal contexts characterized by high local legislative competences. The article analyzes domestic violence laws, although it is not a study of gender politics. Its purpose is to illuminate an overlooked variable in the explanation of rights inequality and protection: the institutional design that enables or precludes the working of local social and political actors. It holds that when the institutional design provides local authorities with broad legislative competences, legal heterogeneity across jurisdictions increases because local actors are enabled to pursue their goals. On the other hand, when the institutional design precludes local authorities from legislating on certain matters or when their authority is narrow, legal heterogeneity can be irrelevant, since the strength of social and political actors can be neutralized.

This argument complements Wildavsky's dictum. It confirms that "federalism means inequality." However, it adds that the inequality federalisms produce differs across countries insofar as those differences depend on the way their institutional design enables the working of local sociopolitical factors that end up defining the intensity of those inequalities.

Legal Inequalities and Federalism

Preferences, competition, and actors' strength may vary across subnational districts in federal contexts. However, policy outcomes and legal promises do not always vary. In Brazil, for example, legal promises (Smulovitz forthcoming) included in the domestic violence law are valid and hold the same for all states.[2] In Mexico, on the other hand, by May 2005, 4 states had not sanctioned specific laws protecting victims of family violence, only 26 of the 32 states were prosecuting it as such, and 6 still did not consider it a felony (Frias 2008). In Argentina by 2009, all jurisdictions had sanctioned their own domestic violence laws, and the promised legal protection, as this article will show, varies significantly across districts. Why do legal promises vary significantly in some countries but are irrelevant in others? A key factor is how institutional designs could increase or neutralize policy inequalities in federalist contexts.

According to Gibson (2004), federalism refers to "a national polity with dual (or multiple) levels of government, each exercising exclusive authority over constitutionally determined policy areas, but in which only one level of government—the central government—is internationally sovereign." Dahl (1986) adds that in federal systems, "some matters are exclusively within the competence of certain local units—cantons, states, provinces—and are constitutionally beyond the scope of the authority of the national government, and that certain other matters are constitutionally outside the scope and authority of the smaller units." Thus, although in federal systems only the central authority is internationally sovereign, federalisms differ in the way they allocate legislative, judicial, and implementation competences between local and central levels of government; the array of matters each government level is authorized to decide; and the scope of the authority each of these levels can exercise.

While in some cases subnational units enjoy ample legislative, judicial, and implementation competences and can decide on a broad array of matters, in others they exercise only some of these competences and decide over only some specific and narrow policy matters. On the other hand, in some cases, subnational units have exclusive authority to decide on those authorized competences and matters, while in others, their authority is shared with central-level authorities. Thus, although federalism implies the coexistence of multiple levels of government, the competences and matters beyond the reach of the central sovereign and the scope of authority of each government level differs.

Outcomes from the Brazilian, Mexican, and Argentine cases suggest that the institutional dimension of the problem merits consideration.[3] In Argentina and Mexico (Carbonell 2003), where subnational legislative powers are high, legal heterogeneity is also high.[4] In Brazil (Souza 2004), on the other hand, where legislative subnational capacities to legislate on matters such as domestic violence are low, legal heterogeneity is low.[5] These cases suggest that the geographical distribution of social and political endowments matters only when the institutional design allows them to operate. Therefore, whether local authorities are entitled to decide and on what matters becomes critical. If they are, legal heterogeneity will probably increase; if they are not, or if the matters are limited, legal heterogeneity is likely to be irrelevant. Thus the distribution of competences and authority between government levels informs whether local actors (parties and NGOs) can participate in defining a particular policy. Institutional scenarios do not explain which local factors determine the resulting legal outcome, but they indicate if conditions enabling heterogeneity are in place or if local factors could be neutralized.

Table 1 draws an analytical map of 27 institutional scenarios resulting from the combination of competences and authority between government levels.[6] It identifies institutional scenarios where outcome heterogeneity or homogeneity is more likely. The exercise assumes that when central-level authority has more competences and exclusive authority, variation across districts will be lower, and that when local units have more competences and more delegated authority, variation will be greater. The exercise also assumes that when more competences are shared, political negotiations and conflicts are also likely.

Table 1. Distribution of Competences and Authority Among Government Levels

Combinations	Competences			Outcome
	Legislative	Judicial	Implementation	
1	Central Exclusive	Central Exclusive	Central Exclusive	3
2	Central Exclusive	Central Exclusive	Delegated Local	5
3	Central Exclusive	Central Exclusive	Shared	4
4	Delegated Local	Central Exclusive	Central Exclusive	5
5	Shared	Central Exclusive	Central Exclusive	4
6	Central Exclusive	Delegated Local	Central Exclusive	5
7	Central Exclusive	Shared	Central Exclusive	4
8	Central Exclusive	Shared	Shared	5
9	Central Exclusive	Delegated Local	Delegated Local	7
10	Central Exclusive	Shared	Delegated Local	6
11	Central Exclusive	Delegated Local	Shared	6
12	Delegated Local	Central Exclusive	Delegated Local	7
13	Shared	Central Exclusive	Shared	5
14	Delegated Local	Central Exclusive	Shared	6
15	Shared	Central Exclusive	Delegated Local	6
16	Delegated Local	Delegated Local	Central Exclusive	7
17	Shared	Shared	Central Exclusive	5
18	Delegated Local	Shared	Central Exclusive	6
19	Shared	Delegated Local	Central Exclusive	6
20	Shared	Shared	Shared	6
21	Shared	Shared	Delegated Local	7
22	Delegated Local	Shared	Shared	7
23	Shared	Delegated Local	Shared	7
24	Delegated Local	Delegated Local	Delegated Local	8
25	Shared	Delegated Local	Delegated Local	8
26	Delegated Local	Shared	Shared	8
27	Delegated Local	Delegated Local	Delegated Local	9

Values: Central Exclusive Authority = 1, Shared Authority = 2, Delegated to Local Authority = 3

Scenarios in table 1 where local level governments have more competences and authority have higher scores, and it is expected that they will result in higher heterogeneity. Scores result from the allocation of the following values: Central Exclusive Authority = 1, Shared Authority = 2, Delegated to Local Authority = 3. It is expected that heterogeneity will be more likely when the score is higher because local variables (i.e., local political competition and social actors) have more opportunities to impinge on the content of local decisions. Although the distribution of competences does not explain the specific content of the legal promises, it identifies whether conditions enabling subnational heterogeneity are in place (Dulitzky 2007).[7]

This argument does not refute Wildavsky's dictum; it just complements it. It suggests that not all federalisms produce the same type of heterogeneity and that the

intensity of the resulting heterogeneity depends on the institutional distribution of competences, authority, and matters between government levels, since such distribution enables or precludes the working of local actors and politics.

How does the Argentine case relate to this typology? Argentina is a federal country with 23 provinces, an autonomous government in the city of Buenos Aires, and 1,922 municipalities.[8] These 24 provincial units draw their own constitutions, choose their provincial executives and legislatures, and organize their own judiciary.[9] Although the 1994 Argentine Constitution establishes the dominance of the federal authority over the provincial autonomies, it also preserves the powers of the provincial states when there is no explicit delegation of power to the federal authority. Article 5 entitles provinces to establish their own constitutions, to create the institutional rules that govern competition, and to legislate and regulate their legal activity. Thus, competition rules, legislation, and the organization of legal activity vary across provinces.

Article 121 establishes the general principle that delineates the legislative autonomy of the provinces. It holds that "provinces reserve to themselves all the powers not delegated to the federal government by this constitution, as well as those powers expressly reserved to themselves by special pacts at the time of their incorporation." Thus, while some articles establish the supremacy of the federal authorities over the provincial ones, others redefine the scope of this subordination in ways that result in the establishment of arenas of provincial autonomy (Gelli 2005).[10] Article 75, section 12 establishes that the federal congress has the power to enact the civil, commercial, and other codes but that enforcement corresponds to federal or provincial courts, depending on the jurisdictions for persons or things. That is, provinces decide on the organization of their judiciaries and on the local procedural codes that regulate how laws will be implemented. These entitlements give provincial authorities ample autonomy to define the specific content of rights, how resources for policy implementation are allocated, and how policies are enforced. Since the case fits the characteristics of scenario number 27 in table 1, it is expected that in Argentina, legal promises among subnational units will be heterogeneous.

Mapping Legal Inequality: Domestic Violence Laws Across Argentine Provinces

This section measures and compares the legal protection promised by 37 domestic violence laws and analyzes if they differ significantly, as the advanced argument suggests.

The content of a law is just one dimension of the protection of rights, but a relevant one.[11] Laws indicate the official institutional promises states and communities make and back with the use of their coercive power to enable or enforce a particular behavior. The contents of laws, the specific way they define what and who is protected, inform about the characteristics of those institutionalized commitments. If their contents were irrelevant, laws would not differ among provinces, or all provinces should have extremely protective laws. As we will see, that is not the case.

How to compare legal promises across subnational jurisdictions in a federal setting? Not always does a unique law regulate a particular behavior throughout all subnational jurisdictions, and not always do laws use the same wording to name or frame a specific legal right. In Argentina, for example, even when all jurisdictions have laws regulating the protection of victims of domestic violence, their titles differ across jurisdictions. Therefore, the following comparison analyzes the contents of laws that protect a similar grievance but that provincial jurisdictions may have named differently. This procedure allows us to compare the legal promises provinces make regarding a relatively common issue. It is a relational measure; it does not establish the distance from a fixed or common parameter but differences in the way districts define their promises. In particular, this study analyzes what districts define as the "good" to be protected, the resources that should be allocated to ensure its implementation, and the agencies responsible for its enforcement.

A brief introduction to the recent regulation of gender relations in Argentina is in order. Argentina signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1980, and Congress ratified it in 2006 (Law No. 26.171/06). During that period, several policy and legislative changes took place. In 1985, the national legislature approved a law regarding the rights of out-of-wedlock children and another (Law No. 23.264/85) regarding the shared rights and responsibilities of fathers and mothers. In 1986, the Supreme Court declared the unconstitutionality of the law that forbade divorce, and in 1987 Congress approved a new civil marriage law (Law No. 23.515/87) that included divorce and new marriages (Htun 2003). A few years later, Law No. 24.012/91 set up a quota system establishing that 30 percent of all candidates standing for election to the national legislature have to be women. And in 2002 a law establishing a quota requirement for elections in trade unions was also sanctioned (Caminotti 2009; Alles 2008; Franceschet and Piscopo 2008; Jones 2008).

In this context characterized by the increasing presence of gender issues in the public and legislative agenda, the National Congress sanctioned in 1994 Law No. 24.417/94 on domestic violence (*Ley de Protección contra la Violencia Familiar*). This law recognized that domestic violence is not a private question but a public one. It contemplated both physical and psychological violence, and it established that any person may report abuses from a member of the family group to a family judge.[12] This law also established that in addition to victims, public and private agents, such as public hospitals, schools, the police, and social services, were entitled, and in some cases obliged, to report physical or psychological abuses. It enabled victims to request a series of precautionary measures, such as provisional custody of minors, orders of mandatory departure from the conjugal home, intervention in the custody of minors, prohibition of entry into the place where the petitioner or the minors are located, orders to pay support, orders to stop disposition of common property, etc. Since domestic violence requires the urgent and swift protection of harms, the law enabled judicial officials to issue summary procedures and hear the parties within 48 hours and to deliver the precautionary measures mentioned even before the complete legal process had been substantiated (Larraín 1997). Further-

more, in its last article, this national law explicitly invited provinces to sanction laws dealing with the problem.

Since then, several other institutional changes have taken place. In 1996, Congress approved the Interamerican Convention to Prevent, Sanction, and Erradicate Violence Against Women (*Convención de Belem do Pará*) (No. 24.632), and in 2009, it sanctioned a new and more comprehensive law protecting women against different types of violence in all areas of their interpersonal relations (Law No. 26.485). The first democratic government also created the National Council of Women in order to design and articulate the legislation regarding gender issues among provinces. However, as Franceschet (2010) notes, since its creation, the council has been losing its clout in the development and implementation of policies. And in 2008, the national Supreme Court opened an Office of Domestic Violence that receives accusations (*denuncias*) and provides legal counseling for victims living in the City of Buenos Aires.[13] Since 1994, when the first federal law was sanctioned, the 24 provinces have approved their own laws against domestic violence. The sanctioning process shows a domino pace that is probably related to the incorporation of international treaties, such as CEDAW, in the 1994 Constitution.[14]

In spite of these relevant institutional changes, however, Argentina does not have official and comprehensive statistics regarding the magnitude of the domestic violence problem (Alméras and Calderón Magaña 2012). Available information is not exhaustive and is mainly collected by NGOs. However, all sources agree that the number of victims is high and increasing. According to Amnesty International, between 1995 and 2007, claims due to domestic violence grew 400 percent in civil tribunals (Ramírez 2003), and other organizations have reported that in 2009 there were 231 femicides, and 295 in 2013 (Casa del Encuentro 2015).[15] The 2009 report of the Equipo Latinoamericano de Justicia y Género (ELA) indicates than from 2002 to 2008, accusations at the Court of Appeals of the City of Buenos Aires grew 89 percent and that 61 percent of the interviewed women considered violence by male partners against women very frequent.

To analyze differences among current provincial laws, I elaborated an additive Index of Legal Protection (ILP). It measures the protective scope of the legal promises made by 37 provincial laws and what the provincial laws establish in regard to 7 dimensions and 36 subdimensions.[16] The 7 dimensions are

1. The victims or groups to be protected
2. The injuries (harms) to be protected
3. Places for claims and accusations
4. Authorized claimants
5. Precautionary measures judges can decide
6. Whether mediation is mandatory
7. Whether laws indicate bureaucratic offices responsible for enforcement and funding

Values for each subdimension were assigned according to the following criteria: 1 when the subdimension is present in the law, 0 when it is absent, and 0.5 when its presence depends on the interpretation of a public servant.[17] The index results from

adding the values of the subdimensions present in a law.[18] No provincial law shows the maximum protection score that could be achieved (36).

Table 2 outlines the universe of laws analyzed and summarizes the promised protection of the 37 legal texts. It includes laws and decrees sanctioned between 1992 and 2009 (35 provincial laws and 2 federal ones), and it shows that the promised protection varies significantly among districts.

Table 2 and figure 1 confirm that legal promises regarding the protection for victims of domestic violence vary significantly among provinces. In 2009 the promised protection ranged from 29.5 (San Juan) to 11.5 (Catamarca), the national protection average was 19.83, the standard deviation 5.73, and 12 provincial laws protected less than the national protection average (Chubut, Rio Negro, La Rioja, Tucumán, Chaco, Corrientes, San Luis, Mendoza, Tierra del Fuego, Santiago del Estero, Santa Cruz, and Catamarca).[19] The ILP also shows that by 2009, after the new federal law had been sanctioned, three provinces still protected less than the floor established by the 1994 federal law (Santiago del Estero, Santa Cruz, and Catamarca).

Beyond the specific reasons that may explain these differences, the table suggests that provincial legislative autonomy is not irrelevant and that it leads to heterogeneity in the treatment that victims of domestic violence can seek in their jurisdiction.

On what dimensions do provincial laws converge or diverge? Table 3 shows that laws vary the most with regard to the number and variety of places where victims can address accusations (standard deviation 1.77), a feature that indicates the victims' difficulty initiating claims. If the number and variety of agencies authorized to advance accusations is low, victims' rights must be significantly reduced. A law that contemplates an ample number of damages or groups to be protected but includes few places to advance claims ends up ineffective. La Pampa's case illustrates this situation. Its law protects a wide group and a relatively ample number of damages but provides few places where victims can address those demands (table 2). Although other provincial laws provide as few or fewer places to advance accusations, La Pampa's case shows how dimensions interact and can cancel each other out. Table 4 further shows that family judges are the most common site entitled to receive claims (20 laws) and that only 8 laws allow for claims to be made at any type of court.

Provincial laws also vary significantly with regard to the number and menu of precautionary measures available to judges. Domestic violence laws introduced one important innovation: in the emergency of a violent situation, judges can issue precautionary measures to prevent the violence from continuing and to avoid irreversible harms. Therefore their protective scope is highly dependent on the number and type of precautionary measures available. Almost all provincial laws provide judges with instruments to order restrictions of victimizers from homes, workplaces, and schools; to reintegrate victims to their homes; and to decide food quotas and parental responsibility for children. However, only half of them provide judges with instruments to restrict access to other places where victims may go or to decide who will get custody of the victims, and only two laws entitle judges to place victims in shelters.

Figure 1. Protection Level by Jurisdiction Valid in 2009
(ordered by approval date)

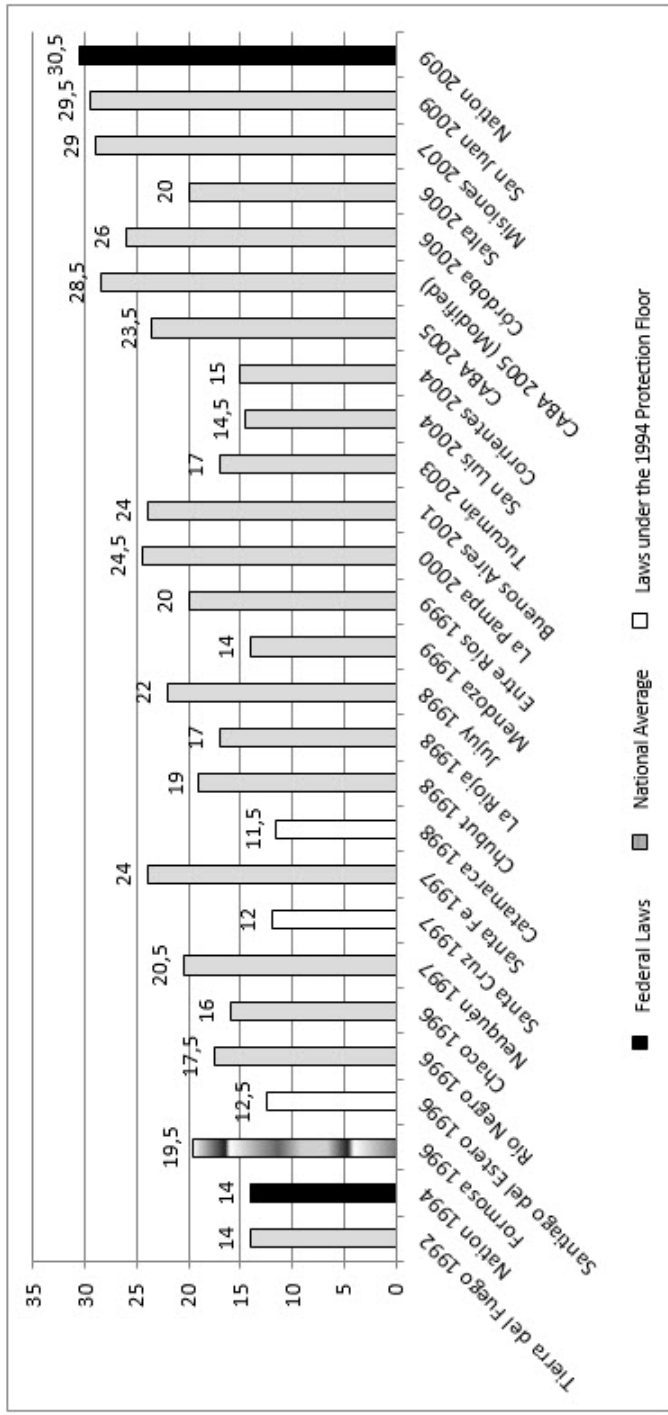


Table 2. Legal Protection by Dimensions of Domestic Violence Laws (ordered by protection level)

Jurisdiction Provinces	Law	Approval Date	Protected Group	Protected Harm	Places to Advance Claims	Who can Advance a Claim	Precautionary Measures Available	Mandatory Mediation	Implementation and Budget	Total Protection (30.5/11.5)
Nation (federal law)	26.485 "Integral Protectión Law…"	2009-Apr	5	4	6	4.5	9	1	1	30.5
San Juan	7.943	2009-Jan	5	4	7	3.5	7	1	2	29.5
Misiones	4.405	2007-Nov	5	4	5	5	8	1	1	29
CABA (Modified)	Aggregate Modified[a]	2005-Apr	5	3	6	4	8	1	1.5	28.5
Córdoba	9.283	2006-Mar	5	4	4	3	8	1	1	26
La Pampa	Aggregate	2000-Dec	5	4	2	4.5	7	0	2	24.5
Buenos Aires	12.569	2001-Jan	5	3	4	4	7	1	0	24
Santa Fe	11.529	1997-Nov	5	4	6	4	4	0	1	24
CABA	Aggregate[b]	2005-Apr	5	3	1	4	8	1	1.5	23.5
Jujuy	5.107	1998-Dec	4	3	3	4	6	0	2	22
Neuquén	Aggregate	1997-Jun	3	4	3	2.5	6	1	1	20.5
Entre Ríos	9.198	1999-Feb	3	2	4	3	5	1	2	20
Salta	7.403	2006-Aug	5	4	3	2	5	0	1	20
Formosa	Aggregate	1996–Jun	3	3	4.5	3	5	0	1	19.5
Chubut	Aggregate	1998-Sept	3	2	5.5	2.5	5	0	1	19
Río Negro	3.040	1996-Oct	3	3	2	2.5	5	1	1	17.5
La Rioja	6.580	1998- Oct	2	4	3	2	5	0	1	17
Tucumán	Aggregate	2003-Jan	5	2	1	2	5	1	1	17
Chaco	Aggregate	1996-Dec	3	2	3	2	3	0	3	16
Corrientes	Aggregate	2004-Jun	3	2	1.5	1.5	4	1	2	15

Table 2. (*continued*)

Jurisdiction Provinces	Law	Approval Date	Protected Group	Protected Harm	Places to Advance Claims	Who can Advance a Claim	Precautionary Measures Available	Mandatory Mediation	Implementation and Budget	Total Protection (30.5/11.5)
San Luis	I-0009-2004 (5477 "R")									
Nation (federal law)	24.417	2004-Apr	3	2	2.5	2	5	0	0	14.5
	"Protection Against Familiar Violence"	1994-Dec	3	2	2	2	4	0	1	14
Mendoza	6.672	1999- Apr	3	3	2	2	3	1		14
Tierra del Fuego	39	1992-Oct	3	2	1	2	5	0	1	14
Santiago del Estero	6.308	1996-Jul	3	2	2	1.5	4	0	0	12.5
Santa Cruz	2.466	1997-Jul	3	2	1	1	4	0	1	12
Catamarca	4.943	1998-Apr	0.5	2	2	2	5	0	0	11.5

Source: Provincial legislation.
Note: Laws identified as aggregate add the provisions included in the first provincial law and those established in the subsequent regulatory laws and decrees.
[a]CABA Modified assumes that places for accusations contemplated in the National Integral Law are available for CABA citizens.
[b]CABA Accumulated considers judicial and police authorities created by the 1994 Constitution as not in place yet. Thus victims in CABA must direct accusations to federal courts.

Table 3. Legal Protection by Dimensions of Domestic Violence Laws (includes federal laws)

	Protected Group	Protected Harm	Places to Advance Claims	Who Can Advance a Claim	Precautionary Measures Available	Mandatory Mediation	Implementation and Budget	Level of Total Protection
Average	3.72	2.93	3.22	2.81	5.56	0.48	1.15	19.83
Standard deviation	1.21	0.87	1.77	1.09	1.65	0.51	0.72	5.73
Maximum possible protection	6	4	9	5	9	1	2	36
Maximum protection achieved	5.00	4.00	7.00	5.00	9.00	1.00	3.00	30.50
Minimum protection achieved	0.50	2.00	1.00	1.00	3.00	0.00	0.00	11.50
Difference maximum–minimum	4.50	2.00	6.00	4.00	6.00	1.00	3.00	19.00
Number of provinces	15	11	19	19	17	12	19	12

Note: 37 laws are considered (35 provincial and 2 federal)

Table 4. Presence of Places for Accusations, Precautionary Measures, Harms, and Victims in Provincial Laws

Places for Accusations									
	Family judge	Public ministry	Lay judge	Any court	Police station	Lower court judge	Minor judge	Public defender	Prosecutor
No. provinces	20	11	11	8	7	7	5	4	4
Precautionary Measures Available									
	Home restriction order	Workplace and school restriction	Victim access to home	Alimony, parental responsibility	Restriction order from other places	Assignment of protective care	Restriction from buying arms	Placement in shelters	Other decided by the judge
No. provinces	28	28	27	25	13	13	3	2	7
Protected Harm									
	Physical		Psychological			Sexual		Patrimonial	
No. provinces	31		30			16		9	
Protected Group or Victim									
	Member of a married couple	Civil unions	De facto couples	Fiancées		Separated		Other victims decided by the judge	
No. provinces	29	29	18	12		11		10	

Source: Provincial legislation

Table 5. Mediation, Enforcement, and Budget Provisions in Provincial Laws

	Mediation Provisions			Enforcement Provisions		Budget Provisions	
	Yes	No	Banned	Yes	No	Yes	No
Number of provinces	15	12	1	28	4	10	19
Percent of laws with provision	54	43	4	88	12	34	66
Number of laws considered			28		32		29

Source: Provincial legislation

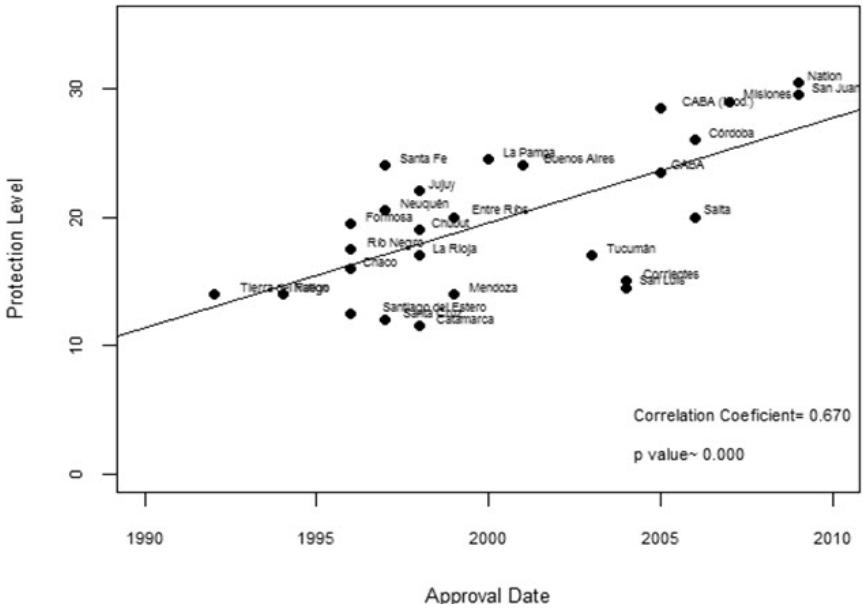
Data regarding who (victims) and which harms are protected show that most provinces protect two types of harms (physical and psychological) and two types of victims (married couples and civil unions) (table 4). The other harms and victims that can be protected show a significantly lower presence across provincial laws.

Table 5 indicates the number of provincial laws that include enforcement and budget provisions. These provisions can be understood as a sign of the district's commitment to enforcement. It is unlikely that laws would include enforcement and budgeting provisions that could tie the authorities' hands in the future if the legislators' intention were just to pay lip service to a "good cause." The table shows that 88 percent of the laws mention the involvement of a bureaucratic agency in enforcement but that only 34 percent indicate where public moneys for enforcement should come from.

Figure 2 indicates that protection levels are significantly correlated with the law's approval date. Of course, diffusion theories can help explain this result and the increasing protective character of the succeeding laws (Weyland 2005). However, figure 2 also shows that even after 1994, when Law No. 24.417 was approved, three provinces (Santa Cruz, Santiago del Estero, and Catamarca) sanctioned laws protecting less than the federal one, and that "latecomers," such as Tucumán, Corrientes, San Luis, and Salta, approved laws that did not follow the expected protective trend.[20]

The fact that not all provincial laws approved after 1994 promised to protect the same or more than that landmark confirms that legal promises are not immaterial. If they were, even in federalisms with high legislative autonomy, the contents of legal promises should have converged, or all jurisdictions ought to have had highly protective laws. Evidence shows that this is not the case. These outliers demonstrate that the content of legal promises matters but also that emulation, learning, or external pressures are not the only drivers of legal diffusion. Indeed, they suggest that once the institutional design enables the working of local dimensions, the approval date and specific protective scope of subnational laws appear to be related to provincial dimensions, such as political competition or the strength of local actors.

Figure 2. Protection Level by Approval Date of Laws



Local Actors, Political Competition, and the Protective Scope of Laws

It could be argued that local political competitiveness, and also the strength of women's organizations, can determine the protective scope of provincial laws. It is likely that higher electoral competitiveness will result in more generous laws insofar as credible electoral threats force candidates to target electoral offers toward groups with specific policy agendas, such as women. Therefore I expect that when provincial political competitiveness is higher, laws will be more protective. However, high political competition does not always impact the content of laws. For this impact to take place, political competition has to be high, but provincial women's organizations and mobilization also have to be significant. Otherwise, provincial candidates could choose to concentrate their electoral appeals on other groups, better organized or noisier. To empirically test this hypothesis I analyzed whether subnational electoral competitiveness, women's access to provincial elected bodies, and female involvement in local civic organizations influence the protective scope of the provincial legislation.

To conduct this test I used the additive ILP described in table 2 as the dependent variable. The analysis comprises the 23 provinces and the City of Buenos Aires and covers the provincial laws sanctioned between 1992 (Tierra del Fuego) and 2009 (San Juan). Due to theoretical and empirical limitations, the phenomenon cannot be studied on a time-series basis, so I focused on the electoral, institutional,

and organizational conjunctures that characterized each province when its domestic violence law was implemented.[21]

With regard to the independent variables, I selected the following indicators. To measure electoral competition I used the margin of victory between the winning political party, or coalition of parties, and the runner-up in the immediate legislative election before the adoption of the law. The data were taken from the *Atlas electoral de Andy Tow* (Andy Tow 2014) and the Ministry of the Interior, and it equals the percent share of votes obtained by the winner minus the share of votes obtained by the second-most–voted party. To make the interpretation of the empirical results simpler, the indicator for electoral competition was measured in negative terms by multiplying the margin of victory values by –1. I expect that in more competitive scenarios, legal protection will be higher because elected officials will have more incentives to be responsive to their constituents' needs. This variable ranges from the uncompetitive Neuquén (–.46) in the 1995 election to the highly competitive Mendoza (–.01) in the election of 1997.

Representation of women in elected bodies and the number of local NGOs focusing on gender, family, or domestic violence were used to measure the strength of women's organizations and women's ability to make noise and have impact on the local agenda. To measure the representation of women, I considered the changes in the gender composition of provincial legislatures in the legislative period in which the bill on domestic violence was passed. Data come from Granara's 2012 dataset on gender quota laws and women's representation in the Argentine provincial legislatures. This variable considers the percent change in the number of legislative seats that were effectively apportioned to (or withdrawn from) women candidates in the provincial legislature's lower chamber (if it was a bicameral legislature). I expect local politicians to be more sensitive to women's specific grievances and more inclined to endorse protective legislation when the allocation of seats to female representatives is higher. Women's political representation ranges from a declining rate in Formosa (–.06) for the 1995–97 legislative period to a sharp rise in the incorporation of women legislators in Corrientes (.19) for the 2003–5 legislative period.

The last variable, women's civic involvement, is measured by the share of social organizations, such as local NGOs or voluntary associations, that focus on gender, family, or domestic violence issues or that provide services (health, education, legal advocacy, etc.) to women, families, and victims of domestic violence. I use the Centro Nacional de Organizaciones de la Comunidad (National Center of Community Organizations, CENOC) database on social and voluntary organizations (1995–2009) to construct the indicator.[22] It measures the share of the specialized organizations in the total number of organizations that were enrolled in CENOC one year before the enactment of the domestic violence law in a given province. My hypothesis is that in provinces where female population is well organized—that is, where women participate in NGOs—elected officials will be likely to improve the protective scope of legal promises to appease or co-opt social actors with abilities to voice their interests or to exert pressure on the local political system. This variable ranges from the highly organized Federal Capital in 2004 (0.17) to districts like

Catamarca, Formosa, or Santa Cruz, where no organization representing women was enrolled in CENOC one year before the approval of the law.

I also incorporated two control variables. First, to gauge the temporal dimension of legal inequality in Argentina, I included the year in which the provincial law was sanctioned. I expect newer laws to be more protective than older ones, since I expect that legislators learn from experiences in other districts and modify legislation accordingly. Second, to control for socioeconomic grievances, I use maternal mortality rates. This indicator is a good proxy for gender inequality and for socioeconomic distress of the female population (WHO 2014).[23] Data was taken from the INDEC (National Institute of Statistics and Censuses). I expect higher mortality rates to be positively correlated with the scope of the legal promises because I assume that in those provinces, legislators will be more responsive to the needs of female population.[24]

Statistical Results

The models were estimated using ordinary least squares (OLS) with robust standard errors. Because no data are available on NGOs or civic associations for Tierra del Fuego at the time the law was introduced, I decided to construct a second model by dropping this variable. Both results are presented in table 6. Given the small number of observations, results should be interpreted with caution.

The coefficient for the electoral competition variable is positive and statistically significant at 10 percent for both models, indicating, as predicted, that the more intense the provincial party competition, the wider the scope of the legal promises. Other things being equal, a standard deviation increase in the margin of victory in the provincial legislative election before the sanction of the law leads to a 1.98- (model 1) and a 2-point (model 2) increase in the additive ILP. According to the theoretical expectations, this coefficient shows that Argentine provinces enacted more protective laws when the party in control of the provincial legislature faced serious electoral challenges. The province of Misiones, for instance, passed a highly protective legal scheme—the second-most protective law after the one implemented in San Juan in 2009—in the wake of the highly competitive legislative election that took place in October 2007.

Furthermore, the coefficient for the women's representation variable also shows the expected sign, although it is not statistically significant at the conventional levels in either of the two models. This might suggest that women's access to elected bodies is not a prerequisite for increasing the protective scope of legal promise, or alternatively, that the allocation of seats to female candidates is not by itself a sufficient condition for making more generous commitments in the content of these laws.[25] This result confirms, as Franceschet and Piscopo (2008) found, that in Argentina, quotas have not enhanced women's ability to transform policy outcomes.

The coefficient for the variable corresponding to the involvement of women in local civic society is positive and statistically significant at the 5 percent level, demonstrating that the more organized women are in social associations, the more

Table 6. Determinants of Legal Promises in Argentine Provinces

	Model 1	Model 2
Year of approval	.742**	.749***
	(.254)	(.245)
Maternal mortality	.273	.149
	(.243)	(.240)
Electoral competition	.148*	.150*
(% margin of victory * –1)	(.076)	(.079)
Women representation	9.71	9.01
(% rate change in seats)	(13.9)	(13.0)
Women NGOs	21.5**	
(% of total registered organizations)	(8.05)	
Constant	–1466**	–1477***
	(510)	(492)
R^2	.51	.44
N	23	24
Estimation	OLS	OLS

*p<0.1, **p<0.05, ***p<0.01.
Robust standard errors in parentheses.

protective the laws. Controlling for other factors, a 5 percent increase in the share of voluntary associations specializing in gender, family, or domestic violence from the total of registered voluntary associations in the year prior to the sanction of the law is associated with a one-point increase in the additive ILP. As hypothesized, this coefficient seems to point out that provinces introduced more protective legislation when the share of NGOs increased. For example, the City of Buenos Aires decided to pass a bill on domestic violence after 39 new NGOs promoting women's rights registered at CENOC in 2004, representing a 17 percent increase in comparison to the previous year.

With regard to the control variables, the year in which the law was implemented has a positive and statistically significant effect at the 1 percent level in both models. As expected, the newer the law, the more protective its content. *Ceteris paribus*, a one-year increase is associated with a .74- (model 1) and a .75-point (model 2) increase in the additive ILP of legal promises.

It is important to remember that, as shown in figure 2, some particular provinces (e.g., Santa Fe, San Luis, or Corrientes) did not seem to follow the expected protective trend over time. The regression coefficients for the political variables might indicate that although in most jurisdictions, local politicians emulate or learn from other subnational experiences, in the end the content of the legal promises is likely to be shaped by the provincial patterns of electoral competition and social forces. Thus, while diffusion clearly matters in the long run, the immediate

incentives and constraints imposed by elections and by the organization of civil society influence legal promises in ways that do not necessarily fit the protective tendency. As figure 2 illustrates, although protection levels are correlated with the laws' approval dates, by 2009 there were still some significant provincial outliers.

It should also be mentioned that although the coefficient for the maternal mortality variable yields the expected sign, it is not statistically significant at the conventional levels. In other words, the objective conditions of the local female population do not appear to be among legislators' concerns when they are deciding the protective scope of these laws. The fact that maternal mortality does not trigger more responsive politics seems to reveal legislators' disregard for women's needs. Moreover, if maternal mortality is considered as a proxy of poverty, results indicate that poverty is unrelated to the protective scope of provincial laws.[26]

In a nutshell, these empirical tests show that when the constitutional design of a federal country enables legislative differentiation among districts, some specific provincial factors explain the differences in the protective scope among these laws. The tests show that the intensity of the electoral threat candidates face and local women's organizational capacity matter, but that women's presence in local legislatures and their objective social conditions are irrelevant in the definition of the laws' protective reach. Results also show that time matters insofar as it allows for diffusion of more protective laws.

Concluding Remarks

This article analyzes, compares, and measures the protective scope of 37 laws on domestic violence sanctioned in Argentina between 1992 and 2009. It shows that legal protection levels vary significantly across jurisdictions; it advances a methodology to measure these differences; and it evaluates some of the local factors that explain these variations.

Based on findings from other Latin American cases indicating that the degree of legal heterogeneity is not the same across federal countries, this article argues that the resulting heterogeneity is related to the specific institutional design of each federal setting rather than to the impact of federalism tout court; that is, not all federalisms produce the same type of heterogeneity among districts. The likelihood and intensity of their legal heterogeneity depends on the combination of legislative competences and authority between levels of government. These institutional scenarios determine, in turn, whether local social and political actors are able to operate and to influence outcomes at the subnational level.

The article shows that the institutional design of the Argentine federalism—which allocates ample legislative capacities to subnational districts—enables the working of provincial factors, such as the level of competitive threats and the strength of local women's organizations, which determine the protective scope of domestic violence laws achieved in the provinces. What is protected, who is protected, and what measures are available are some of the dimensions in which provincial laws differ. The ILP shows that provinces promise to protect different harms

and different types of victims with different instruments and that the measures judges have at hand vary and the budgetary commitments subnational states make also differ.

Three final comments are in order. First, a remark about the political consequences of the distribution of competences and authority among government levels. Recent studies of federalism have shown the relevance of the allocation of fiscal powers between central and local governments (Díaz-Cayeros 2006; Wibbels 2005; Watts 2004). They show that districts' fiscal powers condition how local governments resist federal political and economic interventions and shape their own policies. This perspective illuminates how fiscal power shapes the relationship between federal government and local units but tends to overlook the district-level factors explaining policy variations within and among provinces. This article shows, instead, that the specific way those competences and authority are distributed matters, because that defines the instruments local authorities have to manage and distribute symbolic goods, such as legal promises. It could be speculated that when local fiscal powers are low, subnational broad legislative or judicial competences can be used to compensate for those limitations. Such competences provide local governments with instruments to redefine the content policies achieve in their territory, to build local coalitions, and to appease local oppositions through the distribution of symbolic goods, such as legal promises.

The second comment relates to the relevance these findings have for the analysis of inequality and access to justice. The article holds that federalism is a usually overlooked dimension in the analysis of access to justice and that access-to-justice studies need to consider the effects of territorial differences, in addition to the possible impact of actors'endowments, on access. Analysis of the Argentine case shows that inequality in access takes place not only among social groups but also within groups. Powerful or, for that matter, unprivileged groups in Catamarca cannot aspire to the same protection that powerful (or unprivileged) groups get in Jujuy. The institutional design of federalism gives place to this other form of inequality of rights, which affects both the powerful and the unprivileged individuals living in a given district.

The study also draws some lessons with regard to the selection of political strategies and agendas. It suggests that political strategies cannot neglect the specific characteristics of the federal context in which they are applied. It shows that political strategies focused at the national level may succeed in unitary contexts or when legislative and judicial subnational autonomy is low. When subnational competences are high, centralized or territorially undifferentiated strategies can be less efficient. In these latter contexts, success depends on the ability to develop locally grounded strategies. Although success may also be achieved through national coordinating agencies, the federal councils in Argentina, where provincial competences are high, face the same difficulties confronted by other federal agencies attempting to promote homogeneous policies across jurisdictions (Serafinoff 2007). In other words, policy strategies cannot disregard the characteristics of the federal institutional setting in which they will have to develop.

Next, a comment about the content of legal promises. Heterogeneity in the content of legal promises indicates that they are locally negotiated, but also that the specific content of laws matters. If the content were immaterial, the protective scope of laws would tend to converge, even in federalisms with high legislative autonomy. Evidence shows that this is not the case. It is precisely because the content of legal promises matters that subnational authorities can use them as tools to enlarge coalitions or appease oppositions.

Finally, a note about some normative questions. We know that heterogeneity is an expected result of federalism and that some advocates have justified these diverse outcomes in the name of the autonomy of component units, or because they indicate policy experimentation and innovation. However, from the point of view of the citizens of a common political unit, these variations imply that a common "demos" (the Argentine citizens) enjoy unequal rights and that the protection to which they can aspire is unequal. Since the characteristics of the rights citizens enjoy depends on the district in which they live, it can be argued that at the same time that federalism enables autonomy and innovation, it might conspire against equality under the law. If that is the case, what does equality under the law mean in a democratic federal system? Does it mean that inequality under the law can become an acceptable outcome? Furthermore, if legal inequality becomes an acceptable outcome, are there limits to the magnitude of legal inequalities that can coexist within a common democratic political unit? This article did not address these questions, but its empirical results suggest that their normative implications cannot be ignored. Indeed, acknowledgment that federalisms may produce heterogeneous legal outcomes does not answer how those expected inequalities can coexist with the promise of equality under the law that inspires and defines liberal democracies.

NOTES

I thank Jorge Mangonnet, Emilia Siminson, and Valentín Figueroa for their work as research assistants. Of course, mistakes are my responsibility.

1. Laws can be understood as "legal promises" insofar as they are commitments that states pledge to back with the use of their coercive power with regard to a specific conflict or behavior.

2. For a study of heterogeneity in the implementation of legal promises, see Smulovitz 2015.

3. The Brazilian and Mexican cases are mentioned just to illustrate differences in the types of heterogeneity federalisms may produce. They are not the focus of this article.

4. In Mexico, instead, states have wide capacities to legislate and there is no hierarchical relationship between state and federal legislation (Carbonell 2003).

5. Brazilian states have fewer legislative competences than do federal authorities, and since the 1988 Constitution they have even fewer competences than municipalities. The 1988 Brazilian Constitution, like those of Argentine and Mexico, establishes that states have residual competency over areas not enumerated as federal capabilities (a clause that could have led to ample state-level legislative and judicial competences). However, Article 22 greatly restricts them by explicitly enumerating the ones that belong exclusively to the federal author-

ity. The detailed enumeration of those matters (found in Article 22, Clause 1) voids Brazilian states from their apparent legislative autonomy. I greatly appreciate Marcus Melo's comments and information on the Brazilian case. See also Souza 2004.

6. For clarity, this map considers competence (legislative, judicial, and implementation) and authority (central, delegated, and shared) of government levels but does not include the array of matters these levels are authorized to decide.

7. This argument does not imply that local decisions are of a "lower quality" than federal ones. Indeed, some authors argue that provincial autonomy enables local authorities to promote innovations and to protect some rights not considered at the federal level. Nevertheless, a growing literature about enforcement of international human rights treaties indicates that in some federal states, local authorities are using local competences to justify noncompliance in their territories.

8. The autonomous government of the City of Buenos Aires (CABA) is considered the 24th province.

9. Argentine federalism is also characterized by important differences in the size, development levels, and distribution of economic resources among its provinces. A UNDP report (2000) established that five Argentine provinces (Buenos Aires, Ciudad de Buenos Aires, Córdoba, Santa Fe, and Mendoza) concentrate 85 percent of the geographical gross product.

10. The general principle established in Article 121 is specified in Articles 75, 99, 116, and 117, which establish the competences provinces delegate in the legislative, executive, and judicial powers; and in Articles 5; 75, section 12; and 122, which explicitly establish the competences reserved to the provinces.

11. Assessment of rights protection also involves evaluating other dimensions, such as how bureaucratic agencies perform their duties and the economic resources states allocate to ensure their enforcement (Holmes and Sunstein 1999; Smulovitz 2015). This article focuses on the varieties of legal promises; the other dimensions are analyzed in Smulovitz forthcoming.

12. In this law, "family group" includes married and consensual unions.

13. Recently the federal Supreme Court has created Offices of Domestic Violence in Santa Cruz, Santiago del Estero, Salta, and Tucumán.

14. Some provincial laws explicitly acknowledge that they result from incorporation of international conventions into Article 75, 22 of the 1994 Constitution. They explicitly refer to CEDAW and to the Interamerican Convention Regarding the Rights of Children and the Prevention of Violence Against Women.

15. A study developed by the Asociación de Mujeres Jueces de la Argentina (AMJA) in 2003 shows that judicial statistics underegister the relevance and presence of domestic violence cases in the lower court tribunals of Capital Federal. While the "Justicia Correccional" statistics recognized that 5.5 percent of its cases involve domestic violence, the mentioned study revealed that 24.4 percent of the cases involved this type of conflicts. The same trend was found in family courts, registers showed that 10 percent of the case involved domestic violence while the study found that 25 percent of the cases included cases of domestic violence (Ramírez 2003).

16. Subdimensions result from a qualitative analysis of the different provincial laws. The following subdimensions were identified for each variable: 1) victims to be protected (marriage, civil union, de facto unions, fiancées, separated, others defined by the judge), 2) injuries (harms) to be protected (physical, psychological, sexual, patrimonial), 3) places for claims (family judge, public ministry, police station, prosecutor, lower court judge, any court, minor judge, public defender, lay judge), 4) authorized claimants (only victims, adults, social service, police, anyone), 5) precautionary measures judges can decide (house restriction order,

school or workplace restrictions, devolution of home to victims, alimony, restriction from other areas, restriction to buy arms, placing victims in shelter, judge discretion, judicial protection), 6) whether mediation is mandatory (yes/no), and 7) whether laws indicate bureaucratic offices responsible for enforcement and funding (yes/no).

17. In some provinces, only adults related to the victims by family ties are entitled to initiate a claim; others do not require this type of relationship. I assigned 0.5 to this type of case.

18. I assigned a value of 1 to each additional protection that appears in the law, given the difficulties of weighing the intrinsic relevance of each subdimension.

19. When the two federal laws (2004 and 2009) are not included, the average protection and the standard deviation are 19.64 and 5.42, respectively.

20. This article does not study what determines the timing of these laws. The topic is relevant and requires further study. However, because no reliable information exists about some of the independent variables for every year before 2003 (i.e., women's NGOs, and number of protests by women), I am unable to build a panel dataset. This is problematic since only 10 of the 37 laws were enacted after 2003. A future study could use a survival model or a rare events fixed effects model to estimate this issue.

21. Legal frameworks tend to create "sticky," path-dependent institutional arrangements that persist over time and are difficult to change (Pierson 2001). This phenomenon could cause problems for a cross-section time-series analysis since the values of the dependent variable will not vary yearly. For example, as shown in table 2, only the City of Buenos Aires modified a section of the law (April 2005) leading to an enlargement of the sites where claims could be advanced.

22. Data on third-sector organizations are scarce in Argentina, particularly at the subnational level. National statistical institutes have no systematic information on this topic. CENOC was the only national institution collecting data on these organizations. However, two qualifications should be noted. First, CENOC registers only those associations that voluntarily sign up. Thus the list is not a census. Information might be incomplete, since many organizations could have failed or refused to register. Second, CENOC's lists register the formal enrollment of these organizations; they do not report whether they are active or whether they have ceased operations. Researchers from the IDES-UNSAM project "Citizenship and Human Rights" have upgraded and filtered this dataset in order to solve some of these problems. Nevertheless, it is likely that in spite of their efforts, some registered organizations are no longer active. I thank Laura Taube and Elizabeth Jelin, who authorized the use of this reclassified dataset.

23. The World Health Organization has systematically established the link between maternal mortality and poverty (WHO 2014).

24. It should be noted that the reverse relationship can also be hypothesized. High maternal mortality rates can be associated with less protective laws if we assume that those rates indicate legislators' disregard for women's concerns.

25. I also tested the effect of this variable by using the net percentage of women occupying seats at the local legislature. The statistical results remained unchanged.

26. Thanks to a reviewer's suggestion, I also used the individual components of the ILP as separate dependent variables. Results reconfirmed those obtained in models 1 and 2. This finding indicates that variations in the ILP are not driven by changes in a single component. Results not reported but available on request for replication.

Data Sources

Dependent variable (additive index of legal protection against domestic violence): provincial laws on domestic violence.

Independent variable 1 (legislative electoral competition). *Atlas electoral de Andy Tow* (www.towsa.com/andy) and Ministerio del Interior (www.miniterior.gov.ar).

Independent variable 2 (women's representation at the local legislature): Granara 2012.

Independent variable 3 (social organizations): IDES-UNSAM project based on CENOC database (www.cenoc.gov.ar).

Independent variable 4 (motherhood mortality): Instituto Nacional de Estadística y Censos (www.indec.gov.ar).

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