

The Regulation of Abortion in Chile: The Failure of the Separation of Church and State

MACARENA SAEZ*

Abstract

This paper provides an explanation for the treatment of women within the Catholic Church based on two different concepts of dignity. One linked to equality and autonomy that applies to men, and another linked to sacrifice and martyrdom that applies to women. By exploring the history and current developments on abortion laws in Chile, the paper shows how this gendered idea of dignity translated into the secular regulation of abortion. It also shows a shift in the last few years in which a secular concept of dignity linked to equality and autonomy is gaining track and abortion is finally discussed with women's lives at the center.

Keywords

Dignity; Women's Rights; Abortion; Religion; Gender Violence; Latin America; Chile.

Author Affiliation

Professor Macarena Saez teaches U.S. Family Law, Comparative Family Law and Strategic Litigation in International Human Rights at the American University Washington College of Law, where she is also the Faculty Director of the Center of Human Rights & Humanitarian Law. Professor Saez holds a law degree from the University of Chile School of Law and an L.L.M. from Yale Law School.

*Correspondence: American University Washington College of Law, Washington D.C., USA. E-mail: msaez@wclamerican.edu

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The hour is coming, in fact has come, when the vocation of women is being acknowledged in its fullness, the hour in which women acquire in the world an influence, an effect and a power never hitherto achieved (Pope Paul VI 1965a).

Introduction

The Catholic Church (CCh) is the most influential religion in Latin America. Even with the rise of new religious denominations, in 2014 69% of Latin Americans identified as Catholics (Pew Research Center 2014: 4). In Latin America Catholicism is not just a religion but also a political actor with great influence among the elites. It is common for CCh leaders to call on Catholic Congress members to vote on bills according to their Christian values (Gonzalez Ruiz 2004; Sanchez 2013). The CCh is also a social actor with the ability to reach out to a large part of the most marginal sectors of the population, many times defending them against human rights violations (Betances 2004). In a region marked by socio economic divides, very few groups have been able to unite under the same brand the poor and the rich. This ability has allowed the CCh to act as a 'neutral' third party in social and political conflicts both at domestic and international levels. For example, the Chilean CCh was the most important actor in the protection of human rights during the dictatorship of Augusto Pinochet; in recent years, the Vatican has attempted to mediate between the government of Nicolas Maduro and the Venezuelan opposition, and in Colombia both the government and the FARC leaders reached out to Pope Francis for his support to the peace process.¹ The CCh has also played an active role in the protection of the environment (Cuenca 2009: 15).

Although the CCh's stance in favor of peace and protecting the most vulnerable is commendable, it does not cover all violent situations or all vulnerable groups. The CCh has a specific idea of womanhood that negates the profound harm that women and girls suffer around the world from violent and risky pregnancies. According to the CCh, women must accept the risks to life and health that come with pregnancy, and must accept pregnancy, even in the case of rape. This dichotomy between a strong opposition to violence and its dismissal of forced pregnancy as a form of violence to women derives from a particular cosmo-vision where men and women may be equal in some dimension, but very different in another. Whereas men's dignity materializes in their ability to make autonomous decisions, women's dignity requires of them a willingness to make sacrifices, to be martyrs.

In countries with a Catholic majority, the secular discussions about abortion have resembled the position of the CCh. Until the last decades of the 20th century, the regulation of and debates about abortion placed women at the periphery or did not consider women's lives at all. In the last decades, however, the rise of women's rights finally gained enough power to influence abortion debates. In 2017 Chile passed a statute that gives women access to legal abortion on three specific cases: rape, risk to life of the pregnant woman, and lethal fetal malformations. The bill, submitted to Congress during the second term of

¹ On the Colombia peace process Aciprensa 2004; Noticias RCN 2016 (on Venezuela, Peñalosa 2017; Herrero and Malkin 2016).

President Michelle Bachelet, Chile's first female President, placed women at the center. The debates in Congress, public opinion, and the decision by the Chilean Constitutional Court that declared the bill constitutional, had for the first time to confront the reality that pregnancy impacts women's lives in ways that a system of citizenship based on autonomy and equality cannot deny.

This paper shows that the CCh refers to human dignity in two different ways. When it comes to violence or the protection of individuals in general, it uses dignity as linked to autonomy, but when it comes to women, dignity seems to derive from women's acceptance of motherhood and sacrifice. Through an analysis of the regulation of abortion in Chile the paper also shows how until recently the Catholic understanding of dignity translated into secular legal frameworks by assuming that women must accept motherhood in all circumstances.

Human Dignity and Women's Dignity

Secular v. Catholic Human Dignity

Dignity is used today to justify protections and expand rights. Courts around the world often use human dignity to support their decisions (Daly 2012). The meaning of dignity, however is not straightforward and its use as a feature of all human beings started only after the 1940s when the meaning shifted from a concept linked to rank and hierarchy, to a feature of all human beings (Moyn 2015: 33). The vagueness of the meaning of *human dignity* was clear to the drafters of the Universal Declaration of Human Rights, who decided to include references to it without explaining what they meant by it (Luban 2007: 67).

Despite its vagueness, secular countries around the world have used dignity with some recurrent meanings. For example, courts have referred to dignity as bodily integrity or to justify the regulation of abortion and the decision of women not to be pregnant (Nixon and Nussbaum 2012: 65; Siegel 2008: 1737; Siegel 2013). Human dignity is often cited as the reason to allow individuals to make decisions that profoundly affect their personal lives such as who they would love. They have also been used to reject governmental bodily intrusions.

According to Samuel Moyn, the CCh started using human dignity in the late 1930s to oppose communism, which, 'robs human personality of all its dignity' (Pius XI 1937). Human dignity in the Catholic interpretation, seems to be tied to humanity's 'essential equality' derived of their creation 'in the image and likeness of God' (Pope John Paul II 1988: Title V.16 Par. 3). This feature of equality in the origins of their creation is the source of the dignity of the human person (Catechism of the Catholic Church n.d.: Par. 1700). Both secular and Catholic narratives of dignity place autonomy as an important feature or representation of dignity. The idea that individuals should be capable of making decisions that profoundly affect their lives is both present in the basic writings on dignity by Kant (Kant 2002: 51), as well as in some writings of the CCh (Catechism of the Catholic Church n.d.: Par 1700; Pope Paul VI 1965b: Par 16).

In most areas, such as in the fight to abolish the death penalty, to protect labor rights, to prohibit the use of torture, to save individuals from gang violence, or to protect indigenous peoples, Catholic and secular discourses of dignity converge. For the CCh, however, dignity gains a different meaning when it comes to sexual and reproductive autonomy.

Catholic Human Dignity and Feminine Dignity

If every individual enjoys human dignity, could there be a situation in which the same act could simultaneously violate someone's human dignity and not violate another's? It is very difficult, if not impossible, to think that only some of the detainees shown in the pictures released in 2004 of US soldiers humiliating Iraqi prisoners in Abu Ghraib had their dignity violated while others, also shown in the pictures, had not. An attack to dignity seems to harm every individual involved. It has been argued that an action or omission that undermines human dignity affects everyone involved, regardless of how the recipient of the action feels about it.² Dignity as an essential aspect of humanity is an equal trait of every human being. This is where Catholic human dignity and secular understandings of human dignity part ways. Secular understandings of human dignity encompass all individuals regardless of their race, gender, sexual orientation, ethnicity, social origin, and other social or natural conditions. Catholic human dignity, however, is gendered.

Even though all individuals are equal in their creation, for the CCh men and women have different purposes and vocations in life. There is not one concept of dignity but two: one universal human dignity, as it applies to men, and one gendered concept of dignity that applies to women, sometimes referred to as *feminine dignity* (Pope John Paul II 1995: Par. 1). This distinction is critical for understanding why legal systems have left some acts of violence against women without a legal reaction. According to the CCh 'Each of the two sexes is an image of the power and tenderness of God, with equal dignity though in a different way'. (Catechism of the Catholic Church n.d.: 2335).

The personal resources of femininity are certainly no less than the resources of masculinity: they are merely different. Hence a woman, as well as a man, must understand her fulfilment' as a person, her dignity and vocation, on the basis of these resources, according to the richness of the femininity which she received on the day of creation and which she inherits as an expression of the 'image and likeness of God' that is specifically hers (John Paul II 1988: Par. 10).

Only by understanding the construction of a *feminine dignity* as different to human dignity it is possible to reconcile the acceptance and support of profound acts of violence against women as legitimate acts of sacrifice, as 'gifts of the self' which, for the CCh, are part of the vocation and dignity of women: 'Within Christianity, more than in any other religion, and since its very beginning, women have had a special dignity, of which the New Testament shows us many important aspects' (Pope Paul IV 1976).

The writings on the early 20th century are clear in the different understanding of the human nature of men and women. No other writing makes it clearer than the 1930 Encyclical of Pope Pius XI *Casti Connubii on Christian Marriage*. The document explains the role of women in the 'domestic society' as 'an order

² An attack on dignity may still be the same if the person who receives the attack did not feel attacked. See for example the decision of the UN Human Rights Committee upholding a prohibition by French Courts of 'dwarf-tossing', even when the plaintiff was a person suffering from dwarfism, as was necessary 'to protect public order, which brings into play considerations of human dignity that are compatible with the objectives of the Covenant' (Human Rights Committee 1999).

of love'. In the domestic society the subjugation of woman is unquestionable. This includes 'both the primacy of the husband with regard to the wife and children, the ready subjection of the wife and her willing obedience' (Pope Pius XI: Par. 26-27).

The Catholic perspective of women's different nature, and, therefore, different dignity, has not fundamentally changed since the times of Pius XI. As women's rights have gained ground, however, the CCh has changed the tone of its discourses on women, recognizing, for example, the role of women in the public sphere (Pope John Paul II 1995).

The nature of women's dignity is well explained in Pope John Paul II's *Mulieris Dignitatem*. The Letter refers to dignity of women as 'the gift of self', which includes openness to procreation and service. Early in the Letter John Paul II refers to the 'extraordinary dignity of the 'woman' that derives from her procreative capabilities.³ The 'fullness of grace' granted to Virgin Mary during the Annunciation is 'what is feminine'. The Letter adds, 'Here we find ourselves, in a sense, at the culminating point, the archetype, of the personal dignity of women' (John Paul II 1988: Par. 5). The document does not reject the subjection of wife to husband but it tries to balance the biblical mandate of husbands ruling over wives. It explains that a wife's 'gift of self' is reciprocated with a gift from the husband, which translates into respect for the wife, who cannot be treated as an object of domination (John Paul II 1988: Par. 10). The text warns women at the same time that the 'rightful opposition of women to what is expressed in the biblical words 'He shall rule over you' (*Gen3:16*) must not under any condition lead to the 'masculinization' of women. In the name of liberation from male 'domination', women must not appropriate to themselves male characteristics contrary to their own feminine 'originality'. (John Paul II 1988: Par. 10).

The special dignity of women is sometimes referred to as the 'vocation' of women, the 'female personality' or the 'feminine genius'. (John Paul II 1988: Par. 31). The letter explains virginity and motherhood as 'two particular dimensions of the fulfillment of the female personality' (John Paul II 1988: Par. 17).

Abortion and Feminine Dignity

According to the CCh, motherhood is part of women's unique dignity. Regardless of the age of a woman, her vocation *is* motherhood. Therefore, there can be no violation of dignity in forcing a woman to bear an unwanted child. Any plans must be subdued to the 'special openness to the new person: and this is precisely the woman's "part"' (John Paul II 1988: Par. 18). For the CCh a woman

³ Par 4 of *Mulieris Dignitatem* states 'On the one hand, this dignity consists in the supernatural elevation to union with God in Jesus Christ, which determines the ultimate finality of the existence of every person both on earth and in eternity. From this point of view, the 'woman' is the representative and the archetype of the whole human race: she represents the humanity which belongs to all human beings, both men and women. On the other hand, however, the event at Nazareth highlights a form of union with the living God which can only belong to the 'woman', Mary: the union between mother and son' (Pope John Paul II 1988).

who is pregnant, regardless of age, circumstances, and quality of future life, is fulfilling her feminine dignity by accepting and embracing pregnancy.

Motherhood involves a special communion with the mystery of life, as it develops in the woman's womb. The mother is filled with wonder at this mystery of life, and 'understands' with unique intuition what is happening inside her. In the light of the 'beginning', the mother accepts and loves as a person the child she is carrying in her womb (John Paul II 1988: Par. 18).

The 'gift of self' that materializes in the openness to motherhood, also manifests in the readiness to embrace suffering and, often, resisting it better than men (John Paul II 1988: Par. 19). The Letter also explains the vocation of virginity and spiritual motherhood for women who do not marry. The 'mystery of 'woman' is tridimensional: 'virgin-mother-spouse' (John Paul II 1988: Par. 22).

For the CCh personhood begins at conception, making women mothers even before we know we may be pregnant and regardless of the circumstances in which such pregnancy may occur (Catechism of the Catholic Church n.d.: 2270). Thus, an 11 year old pregnant girl must not seek an abortion even when her life is in danger. Furthermore, even forced impregnation has to be accepted by women and girls alike.⁴ This is not to say that the CCh would oppose sanctioning perpetrators of those harms but for the CCh pregnancy is never *the* harm to be stopped. It is the destiny of women, which, in ideal circumstances, would occur within marriage and as an act of love. In the worst circumstances, however, it is still a situation that girls and women must accept as part of their feminine dignity.

The CCh suffers from a constant contradiction. On one hand, it has a discourse of equality between men and women but, on the other, it imposes women a particular role in procreation that derives from natural law and makes women suffer a higher burden than men.

The Inexistence of Women's Harm in the Secular Regulation of Abortion

Historically, women have terminated unbearable pregnancies using any available means. The risk of dying, suffering horrible health problems for life, and enduring atrocious pain has not deter millions of women from seeking to terminate pregnancies (Knight 1977: 57). Despite being a practice that involves and affects women, the history of abortion regulation in Chile, as in many other countries, has little to no intervention of women. Secular regulations have treated women with the same standards used by the CCh.

⁴ Forced impregnation is one of the horrible strategies of genocide. It was used by all sides of the Yugoslav conflict, in which rape camps were established with the aim not only at humiliating ethnic groups but at impregnating women who would then have children from the opposing ethnic group (Askin 1997: 273). Pope John Paul II, speaking about the Bosnian women affected by this horrible act of torture, stated that 'These likenesses of God, these new beings have to be respected and loved...The entire community has to rally around these women so painfully violated, to help them transform an act of violence into an act of love and welcome' (Los Angeles Times 1993).

Abortion was regulated in the first Chilean Criminal Code of 1875. According to Antonio Bascuñán, the drafters of the 1875 Criminal Code understood that abortion, when performed by a doctor, had to be exempted from criminal sanctions in some circumstances (Bascuñán 2004: 145). Thus, induced abortions as means to save the life of the pregnant woman were considered by the medical community as legal. This was not a decision by the pregnant woman but one that could be made by a doctor.

Criminal abortion covered almost all situations outside those that put the life of the pregnant woman in immediate danger. The first discussions about abortion in Chile took place in the second decade of the 20th century, when doctors started to pay attention to the problem of maternal mortality due to unsafe abortions (Del Campo Peirano 2008: 2079). Women came to hospitals suffering eminent risks to life and health after unsafe abortions. The discussion, however, was not about women's lives or health, but about the problem that reproduction control created for a young nation. This discussion was just another perspective of a larger issue that preoccupied Chilean elites: the need for a healthy and prosperous 'Chilean race' (Subercaseaux 2007: 29–63, 55).

In 1917, a medical doctor founded the Chilean League of Social Hygiene with the objective of propagating eugenic ideas (Subercaseaux 2007: 56). Darwinian ideas, spread around many countries at the time, covered the control of behavior considered vicious such as alcoholism and prostitution, and the eradication of venereal diseases.⁵ These ideas also included the criminalization of abortion or the toughening of criminal sanctions in cases of abortion. The League pushed for the eradication of abortion and contraception for going 'against the interests of the homeland' (Del Campo Peirano 2008: 2105). This eugenic argument was also combined with a narrative that could be interpreted as religious in its origin. According to Del Campo Peirano, the Chilean League bylaws promised to 'protect ... the cute beings that sleep the dream of innocence in the maternal cloister' (Del Campo Peirano 2008: 2105). Most concerns with abortion at the time, however, related to a need to maintain high levels of population growth. Feminist organizations were the only ones that centered their critiques for lack of safe abortion on the consequences for women, specifically, working class women (For example, *Movimiento Pro Emancipación de las Mujeres de Chile* 1935: 5).

It is difficult to know if the doctors who started raising the issue of abortion did so moved by their religious beliefs. One of the doctors who first supported the idea of legalizing abortion admitted that, despite 'being a fervent Catholic', he was in no position to praise keeping a baby or having an abortion and that, at the end, it was a decision that only the doctor, thinking 'as a man and a surgeon' should make (Urzua 1936: 5). Del Campo cites Doctor Monkeberg stating that some married couples would lightly decide on abortion because of 'ignorance of embryonic life', which was 'as sacred and respectable as the life of the mother who carries it in her womb' (Del Campo Peirano 2008: 2258).

Even though the majority of doctors were against abortion procedures, in the case of pregnant single women doctors tended to put the blame on society. In

⁵ The *Social Hygiene Bulletin* published monthly by the American Social Hygiene Association had the following heading in a 1920 volume: 'Eugenic Organizations Strong in Latin America'. The note named several organizations created throughout the region. See *Social Hygiene Bulletin*, Vol VII, N. 9, 1920: 10.

order to decrease abortions, doctors advocated for more protections directed at single pregnant women. They blamed poverty and dishonor as two main causes for women to seek abortions. The medical community, as the legal community, included mostly men. Women's autonomy was never part of the conversation on abortion. In the case of poor women, the cause for abortion had to be economic need or social shame. In the case of rich women, it had to be selfishness of married couples, or social shame.

One doctor broke lines openly speaking about the need to regulate abortion because of the harm unsafe abortions caused to women. Doctor Victor Gacitua wrote that there was no public discussion outside feminist circles about why women had abortions despite the high risk to life and health. Not even Gacitua, however, thought that abortion could be legal outside saving the life of the pregnant woman. In his opinion, abortion was a social need that required an open discussion with the 'primary end of avoiding the woman, who is our mother, our spouse, our daughter, and our sister, the dangers, many times serious, she is exposed under these circumstances' (Gacitua 1935: 7).

The medical discussions of the first decades of the 20th century did not include women's voices even in cases of doctors advocating for regulating abortion. The Catholic Church intervened publicly in these discussions advocating for the total prohibition of abortion. According to the CCh, the role of women was 'to preach the Sacred Scripture and always be right next to the crib of her child' (Gaviola Artigas 1986: 25). In this context, as a complement to the Criminal Code, the Sanitary Code of 1931 codified legal abortions allowing the interruption of pregnancies only when the life of the pregnant woman was at risk.

By the end of the 1960s complications for unsafe abortions were an increasing public health problem with around 35% of surgeries in obstetric services derived from complications of unsafe abortions, and 26.7% of all blood transfusions in emergency rooms used on women with complications after unsafe abortions (Mooney 2008: 3165).

Chile started in the sixties a policy of family planning that encouraged the use of contraceptives. This move took place despite the fact that in the Encyclical *Humanae Vitae* Pope Paul VI rejected all uses of unnatural contraceptives. Although the Chilean president was a Christian Democrat, he understood that contraception would reduce unsafe abortions. (Mooney 2008: 3508).

Chile maintained the legality of abortion when the life of the pregnant woman was at risk until 1990. That year, and thanks to a direct request of the CCh to the military junta, article 119 of the Sanitary Code was abrogated and Chile became one of the few countries in the world with a total ban on abortion.

Catholic Church and Abortion in Chile

The End of Therapeutic Abortion under the Military Regime

In the last days of the Pinochet dictatorship (1989–1990), the Military Junta was busy issuing statutes and regulations that would ensure their power even in a formal democracy. One of the 'laws' that the regime wanted to abrogate was the exception to the criminalization of abortion when the life of the pregnant woman was in danger (therapeutic abortion). The military dictatorship, trying

to resemble a democracy, would submit bills to the four members of the military junta, and they would act as a legislative body. On July 6, 1988, the Head of the Navy proposed an amendment to the Sanitary Code that would eliminate therapeutic abortion. The Bill's Preamble explained that since the Chilean constitution stated that 'the law protects the life of the one who is about to be born', the Sanitary Code was incompatible with this constitutional mandate, adding that 'The openness and imprecision of article 119 do not protect life in its intra-uterus stage'. The Bill also stated that the Criminal Code had two different concepts of life, one for the being who was already born and another for the one who is in the maternal womb. Finally, the Preamble stated that 'The Bill represented an inescapable starting point for authorities, professionals and citizens of this country to...reinforce the protection actions for the life of the one who is about to be born' (Biblioteca del Congreso Nacional de Chile 1988: 4).

The Bill included several amendments to the Criminal Code to increase sanctions for the criminal offense of abortion and an amendment to the Sanitary Code restricting the scope of action for health care professionals. The original amendment, however, still included an exception for actions required to treat a serious illness of the pregnant woman that would indirectly cause the death of the fetus. In those cases, the Bill required the opinion of three medical doctors; one specialized in obstetrics, another in pediatrics and a third one who, ideally, would be the head of the hospital where the pregnant woman is being treated. The legislative history of the Bill includes several briefs from professional organizations, universities and religious denominations. The expert brief provided by the School of Economics and Administration of the University Federico Santa Maria reflects the widespread belief that women must accept the sacrifices that come with maternity: 'Between the survival of the mother and the survival of the fetus, the real solution can only come from science and medical capabilities, as well as the moral virtues that maternity itself naturally requires from the woman' (Biblioteca del Congreso Nacional de Chile 1988: 47).

Most legal briefs came from groups suggesting that the protection of the unborn life required tighter sanctions to criminal abortion and therapeutic abortion was rarely needed. The Joint Legislative Commission concluded, however, that it was not necessary to modify the legislation in the area and closed the discussion (Biblioteca del Congreso Nacional de Chile 1988: 106–120). A month later, however, the ministers of Justice and Health reactivated the legislative process. The first legislative process included only men. The joint legislative commission was formed by men and the briefs submitted to the joint commission were provided by doctors, attorneys and priests, all of them men. None of the briefs had even a slight consideration of how the decision to have an abortion affected the pregnant woman as an autonomous individual. The discussions about therapeutic abortion dealt with the pregnant women's body as if it were an object to intervene. One of the members of the legislative commission stated that

The moral dilemma is not which of the two lives 'to choose' that of the mother or that of the son, but what act to perform: to take the life of the fetus (an homicide), or do nothing even when doing nothing could bring the decline of the health of the mother or her eventual death. If the difference between killing and letting die is not well established the debate on euthanasia is senseless (Biblioteca del Congreso Nacional de Chile 1988: 55).

There was only one opinion by a Professor of the University of Chile Medical School that stated that it was easy to talk about abortion when they were not the women in that situation. He then, however, went on to speak about the need for preventing unwanted pregnancies rather than elaborating on the regulation of abortion (Biblioteca del Congreso Nacional de Chile 1988: 90).

After the resubmission of the Bill, there was a second set of briefs. Surprisingly, it was the opinion by a religious group, the Evangelical Lutheran church that touched on the reality of women seeking abortions. It argued that societies had to avoid situations of poverty and provide the most support for women to avoid choosing an abortion. The opinion was based on abortion as a tragic choice that only the pregnant woman and her family can make (Biblioteca del Congreso Nacional de Chile 1988: 139).

Most opinions considered abortion unjustifiable even in the case of risk for the pregnant woman's life. Medical doctors from the Catholic University Medical School mentioned that therapeutic abortions were very rare or non-existent. The opinion of medical doctors from the University of Chile Medical School was more nuanced. The brief stated that there were several situations where the life of the pregnant woman could be at risk if abortion was not available. The brief also raised the issue of unviable fetuses that women have to carry to term for lack of legal exceptions to criminal abortion (Biblioteca del Congreso Nacional de Chile 1988: 161).

Jorge Medina, then Chilean Bishop who would later become Cardinal of the Catholic Church and a prominent figure within the Vatican, wrote a letter to the four members of the military junta requesting them to abrogate therapeutic abortion. Medina argued that thanks to scientific advances there is 'never a conflict between the life of the mother and the life of the fetus' and, if there was one, 'Christian morality has never allowed...to save the life of the mother destroying directly the life of a child to be born' (Biblioteca del Congreso Nacional de Chile 1988: 165). Medina stated in the letter that the road to massive abortions was open in Chile, just as 'during the times of the Popular Unity [referring to the Socialist government coalition overthrown by the military cue] this was the venue to perform abortions under legal protection'. Medina explains that 'it is possible that no other opportunity as this one may present in order to mend course of legislation that contradicts Christian morality and whose consequences may be disastrous for the great Christian values that form the national soul'. Medina is referring to the fact that the military regime was about to be over. This was, in other words, the best option to do this behind closed doors with no opposition.

Medina ends the letter asking 'God to bless you for all the good you have done to our Nation' (Biblioteca del Congreso Nacional de Chile 1988: 166). It is at least bizarre that Medina would praise the dictatorship for the good done to the country at a time when human rights violations by the regime, including torture and disappearances, were well known, especially thanks to the CCH which, under the leadership of Cardinal Raul Silva Henríquez, had been at the forefront protecting human rights.

The discussion of the Bill disregarded opinions from doctors who explained that therapeutic abortions, although infrequent, did occur.

There is a dialogue in the legislative history of the bill between General Matthei and the Minister of Health that shows the irrationality of the bill. The Minister of Health explains that the last 'therapeutic abortion' recorded in a

public hospital had taken place eight years before. At the same time, in 1987 there had been around 22,000 clandestine abortions that had brought women with post-abortion complications to public hospitals. General Matthei asked if this bill would eliminate 22,000 abortions and the Minister of Health replied 'That is absolutely impossible'. Matthei asks the Minister if he would take 22,000 women to jail. The minister's answer was no. The exchange ended with Matthei stating 'I signed the report because, in fact, it has no effect'. The Minister of Health accepted that this was a 'problem of principles' (Biblioteca del Congreso Nacional de Chile 1988: 177).

In the last legislative session where the new statute was approved there were 32 men and three women. Article 119 of the Sanitary Code was amended to read 'It is not allowed to perform any action with the aim of provoking an abortion'. During the two years the Military Junta was discussing this project it received seven briefs during the first discussion. All of them were written by men and four of them were experts who openly identified with a religious denomination or had their medical training at a Catholic institution. During the second bill the Military Junta received six opinions. All of them were written by men, with five of them from individuals with medical training at or professional affiliation with the Catholic University of Chile, or openly affiliated with religious denominations.

Abortion in Democracy

After Chile's return to democracy in 1990, there were several failed attempts by members of the government coalition to reinstate therapeutic abortion. In 2015 a Bill submitted by President Michele Bachelet gained enough traction to get a full vote in both the Senate and the Chamber of Deputies. The Bill went beyond therapeutic abortion to include legal abortion in the case of rape and lethal fetal malformation. For the first time, the experiences of pregnant women were at the center of the abortion debate. In her Message to introduce the Bill, President Bachelet speaks about 'the dignity of women as an inviolable attribute' (Message of the President 2015). The Bill linked women's dignity to autonomy, emphasizing that Chile is a secular country.

A few days after, the Chilean Episcopal Conference published an open letter with the title 'The human right to life, to a dignified life for every person' (Bishops of the Episcopal Conference 2015). The letter accepts that pregnancy can be a painful experience. It depicts abortion, however, as a 'fast solution', especially in cases of rape or extreme poverty. The letter does not accept that pregnancy can be harmful for a woman. It states that 'a truly Christian attitude will always look in these cases for life, dignity and the wellbeing of the mother and her child and never [will look at] the exclusion and suppression of one of them'. The abortion Bill became the space for a battle on the concept of dignity with the CCh and the government claiming it to their side.

Even though the Christian Democratic Party was part of the coalition that proposed the Bill, it issued a report against it. Similar to the CCh, the report viewed the pregnant woman and her interests as essentially intertwined to the life of the fetus. It criticized President Bachelet's Message introducing the Bill as 'individualistic' by considering the woman 'apart from her social and family context' (Report Party Commission 2015). Additionally, the Archbishop of Santiago

stated to a news outlet that Christian members of Congress should vote obeying their conscience and their Christian beliefs (La Tercera 2015). Despite the Party position and pressure from the CCh, the Bill was passed with the vote of several Christian Democrats.

In August 2017, Congress members of the government opposition filed a writ of unconstitutionality of the Bill before the Chilean Constitutional Court. Their main argument (among others related to freedom of religion, discrimination, and freedom of association) was that the Bill violated the Chilean Constitution, which states, 'the law protects the life of the one about to be born' (Constitucion Politica de Chile 1980: Art. 19 N. 1 second Par.). In her brief to the Constitutional Court, President Bachelet focused again on the role of women as citizens, stating that 'to privilege the protection of the fetus over the rights of the woman using criminal law tools is to disavow her quality as a subject gifted with dignity, which goes against the constitution'. It added that the Constitution cannot force individuals to perform heroic acts such as maintaining a pregnancy to the detriment of her own life or in the case of rape (Constitutional Court of Chile 2017: 29).

Only a few weeks after the oral arguments, the Chilean Constitutional Court issued its decision placing dignity in the side of women. The decision explains that the Constitution treats persons and fetuses differently, protecting the right to life and integrity to persons, and leaving to the legislator flexibility on how the law will protect the life of the fetus (Constitutional Court of Chile 2017: 7475). The Court also analyzed the rights of women, and based its decision on the recognition of such rights. The shift from an analysis of abortion without women, and one with women at the center is clear when the Court states that 'the mother cannot be considered a 'utilitarian tool for the protection of the unborn' (Constitutional Court of Chile 2017: 85).

The Triumph of Secular Dignity over Feminine Dignity

There is no secular idea of dignity attached to pregnancy *per se*. In other words, pregnancy does not make a person more or less worthy of dignity (whatever that concept may entail). At the same time, secular understandings of personhood also vary. Until recently most countries did not have a definition of when life started, and less so of when personhood started. Christian religious groups, however, have successfully lobbied in a few countries or parts of a country to constitutionalize that life begins at conception or that personhood begins at conception. In the most common understanding of personhood, however, women are individuals with human dignity who must be treated with equality, whose most profound life options must be respected, who cannot be humiliated by the state by treating them as means to ends, forcing them to take to term a pregnancy.

Even if a secular country decides, for secular reasons, that a fetus is a person, who competes in dignity with a pregnant woman, the result cannot be an *a priori* prevailing by law of one person's dignity over another's. Secular countries have systems of balancing women's rights with the interest of states in protecting prenatal life. No secular country where abortion is regulated, treats the interruption of pregnancy in the first stages of fetal development as equal to terminating a pregnancy in the last days, prior to birth. Even Germany, where

the Constitutional Court since 1975 has interpreted the Constitution as protecting the life of a fetus, has a system where women can make the decision to terminate a pregnancy under a specific timeframe and conditions (German Constitutional Court 1993: 88).

If, as the CCh affirms, women's call is to be mothers and to sacrifice the self, there is no opposition between a total ban or a very restrictive system on abortions and the recognition of human dignity. Secular ideas of dignity, however, cannot accept that while some people live within a space of recognition of rights, others live in a space of martyrdom. The main drafter of the Chilean Constitution of 1989 stated this disregard for women as citizens very clearly:

There are people for which the limit between heroism and martyrdom on one hand, and moral wrong, on the other, is so narrow that it becomes impossible. The majority of human beings live most of their lives in a broad intermediate zone between those two [martyrdom and moral wrong], but many times Providence allows, orders or imposes to a human being to reduce the space between them and the person may be forced to face a dilemma in which there is no alternative but the moral wrong, on one hand, or heroism on the other and in that case she has to choose heroism, martyrdom or whatever ... In the case of mother and child, it is not two rights that are in conflict, because it is not the case that one can choose between killing the mother or the baby, because there is only the possible killing of the baby; the mother would die of natural elements. It is not a decision between two possible homicides, there are not two rights in conflict. It is about a right that is being affected by trying to preserve not a right, but an emotionally understandable desire [the desire of the mother to live] (Constituent Commission, Session 87, 1974)

The approval of the abortion Bill and the decision of the Constitutional Court of Chile are official rejections to the role of women as martyrs.

Conclusion

There is plenty of literature about abortion and plenty more discussing the bleak scenario of women in Latin America when it comes to abortion. Through media we have seen the suffering of Beatriz, (BBC 2013) Belen (El Mundo 2013),⁶ a 10 year-old girl in Paraguay (El Mundo 2015), Paulina in Mexico (Proceso 2016), L.C. in Peru (Lamula 2013),⁷ and girls all over Latin America, usually victims of sexual violence in their own homes. These cases are dramatic examples of the violence of a forced pregnancy. If women's destiny *is* pregnancy, as hard as these girls' lives may be, there can be no harm in forced pregnancy. In all these cases, however, women are treated not as ends in themselves.

⁶ Belen is a 10 year old Chilean girl who suffered multiple rapes by her stepfather and got pregnant in 2013. Sebastian Pinera, President of Chile at the time, praised Belen (and revealed her identity to the press) for her maturity to decide to have the baby, as if it was an option to terminate her pregnancy.

⁷ L.C. is a Peruvian girl who was raped during two years by her stepfather and pregnant at 13. She tried to commit suicide when she found out she was pregnant. She ended up paraplegic and an abortion was denied.

A secular concept of dignity requires a regulation of abortion that recognizes the harm that comes with forced pregnancy and treats motherhood as a chosen process. The 2017 regulation of abortion in Chile, although still limited, is a good example of a shift from a system of motherhood as destiny and dignity as martyrdom, to a system of motherhood as a chosen process and dignity as autonomy. This is a slow and late start, but it is something.

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