

**Federalism and Legal Inequality: The Distribution of Domestic Violence Laws
across Argentinean Provinces**

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Abstract

The article argues that in federal contexts, the distribution of legal promises across a territory depends on the specific way in which legislative and judicial competences are allocated between levels of government. This distribution enables, in turn, heterogeneity and inequalities in the allocation of rights. It follows that inequality under the law is not only related to the actors' social endowments but also to the institutional mechanisms enabling geographically differentiated right allocations. In particular, the article argues that when federal legislative or judicial exclusive competences are low or when shared or residual provincial competences are high, variations in the content of rights and in their enforcement mechanisms are more likely. To analyze the impact of federal territorial arrangements on the distribution of legal promises, the article compares and measures the protective scope of 35 provincial laws on domestic violence and 2 Federal ones sanctioned in Argentina, between 1992 and 2009. It provides a methodology to compare differences in legal promises across provinces and it measures their protective scope. Analysis confirms that heterogeneity in legal promises is related to the legislative and judicial capacities of local authorities to define what will be protected, who will be protected, and what instruments will be available to address claims. Preliminary evidence from other federal Latin American countries suggests that these findings are likely to apply beyond the Argentinean case.

1. Introduction

Equality under the law is a powerful and inspiring promise of democracies. Empirical studies have shown, however, that differences in social endowments affect and hinder its fulfillment. At present most of the literature considers this finding uncontroversial. It implies that the protection of rights tends to be unequal among social groups but homogeneous among members of the same group. However, preliminary data from two federal Latin American countries shows that the protective scope of legal promises can vary significantly across subnational jurisdictions. For example, initial comparisons of the Mexican¹ and Argentinean domestic violence laws indicate that legal promises as well as their protective span vary significantly across states. These findings suggest that when territorial institutional arrangements are considered, privileged or unprivileged groups are not homogeneously better or worse protected across the border. The article argues that inequality in right protection is due not only to differences in the actors' social endowments but also to the way federal² institutions and subnational politics shape the distribution of legal norms and resources within and across provinces and states. And that this distribution determines, in turn, differences in access and in right enforcement. This argument has some conceptual implications. It suggests that access to justice theories need to consider not only the actors' social endowments but also the impact of territorial arrangements. And it points out that analysis about the workings of federalism need evaluate not only the distribution of fiscal power but also how they specifically allocate legislative and judicial competences across levels of government.

To analyze the impact federal territorial arrangements have on the distribution of legal promises, the article examines and measures the protective scope of 35 provincial laws on domestic violence and 2 Federal ones sanctioned in

¹ Frias 2008.

² Beramendi 2007; Gibson 2004; Diaz Cayeros 2006; Wibbels 2005; Watts 1999; Rodden, 2004.

Argentina, between 1992 and 2009.³ It measures variations in legal promises across provinces and it shows that differences in the protective scope of the laws are related to the legislative and judicial capacities state authorities have to define what will be protected, who will be protected, and what instruments are available to address the problem.

2. Federalism and Legal Inequality.

How and why federal arrangements are related to variations in right distribution and policy outcomes at the local level? Federal institutional arrangements differ in the way they enable local powers to legislate, to adjudicate and to implement policies, and those variations determine, in turn, unequal policy outcomes. Differences in the local powers abilities to legislate and to adjudicate explain, then, why in some federal countries the definition and the implementation of rights might vary across districts.

Before discussing the relationship between federalism and legal inequality, two comments regarding the concept of rights are in order. For the purpose of this study I consider, that a social aspiration qualifies as a right “when an effective legal system treats it as such by using collective resources to defend it”⁴. Thus, to become rights, social aspirations need to achieve a legal status. Rights are *institutionalized promises*, they indicate claims a political community recognizes and is willing to back with resources and with the use of the coercive powers of the state. To understand differences in right protection across the territory it is necessary to determine 1) how each jurisdiction specifically defines a legal promise (i.e. what is recognized in need of state protection, to whom and how), 2) the financial resources each local state allocates to ensure their enforcement and 3) the ways local bureaucratic agencies perform their duties (i.e. how judiciaries decide and how executive agencies enforce and deliver services). In this article,

³ Since December 1994, when the Federal government approved Law 24.417 regarding the Protection against Domestic Violence, all 24 provinces have approved their own laws (in some cases more than one).

⁴ Holmes and Sunstein 1999, 17.

however I will only focus on the first of these dimensions, that is, in the variations of legal promises.⁵

The second caveat relates to the legal promises that will be compared. Not always, in federal contexts, there is a unique and valid law throughout all jurisdictions. Although reference to a right involves a common way of naming or framing a particular social question, its specific legal manifestation may differ across jurisdictions. For example, as it will be observed, in the Argentinean case there is not a unique definition of the right to be protected. Thus, to compare rights and laws we need to consider the different ways in which jurisdictions define the contents of a grievance they name similarly. Comparison of these variations allows establishing the different promises local polities make in regard to a relatively common issue. Inequality in right protection will be, then, a relational measure not an absolute one. It establishes differences in the ways districts define a right rather than distance from a fixed common parameter. Hence, to evaluate differences in legal promises, this study establishes what each district defines as the good to be protected, what resources should be allocated to ensure its implementation, and what judicial and executive agencies are responsible for its enforcement.

In recent years the literature and definitions of federalism have bloomed. Gibson, for example, states that federalism is “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”⁶. Dahl, reminds us 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”⁷. Recent analyses also noted that a defining condition of these regimes is the inherent fiscal

⁵ This article is part of an ongoing study that analyzes determinants of inequality in right protection in federal contexts. That other study also analyzes allocation of resources for implementation and performance of bureaucratic agencies.

⁶ Gibson 2004, 5. See also Watts 1999; Linz 1999, and Stepan 1999.

⁷ Dahl 1986, 114.

authority of local states⁸. Indeed, much of the recent literature about the workings of federal regimes has centered on the impact that the use of fiscal resources have on the political autonomy of local states, on the structure of the local party systems and elections⁹, on the implementation of economic reforms¹⁰, and on the democratization of subnational regimes¹¹. This literature shows that the distribution of fiscal powers condition the ability of local governments to resist political and economic interventions by federal authorities and to shape their own policies. Although this summary overlooks most of the conceptual subtleties of this literature, it shows that its main concern is focused on the relationship between the federal government and the provinces. It is a perspective that illuminates how fiscal power shapes the relationship between federal government and the local units but it tends to overlook the district level factors that explain policy variations within and among provinces. It concentrates on the economic and political consequences of the distribution of material goods between the federal government and the provinces but pays little attention to the mechanisms that enable uneven territorial allocation of symbolic and political goods in each jurisdiction.¹²

This study argues that to explain inequalities in right protection among provinces we need to observe not only the mechanisms that distribute fiscal power, but also the distribution of the legislative and enforcement capacities between the federal and local units. Federalist arrangements differ not only by the way in which they distribute fiscal powers but also by the way they distribute political competences between levels of government. Indeed, federations distribute exclusive, shared, and residual powers to legislate among central and local authorities as well as their enforcing responsibilities in varied ways.¹³ While in some federations, central authorities have broad exclusive legislative competences; in others they have narrow ones. The way these legislative and

⁸ Diaz Cayeros 2006.

⁹ Remmer and Gélinau 2003; Calvo and Murillo 2004; Marcor 2003.

¹⁰ Gibson and Calvo 2000; Remmer and Wibbels 2000.

¹¹ Gervasoni 2010; Giraudy 2009.

¹² The literature on the workings of federalist systems notes that their operation is additionally determined by the number and character of the constituent units and by the nature of the common federative institutions. Watts, 1998; Wibbels 2005.

¹³ Watts 1999.

enforcing responsibilities are specifically distributed is important because they determine whether local politics can redefine what and how rights are protected at the local level. It follows, then, that when residual or shared legislative competences are high, the legislative and political capacities of the central authority at the local level diminish. In other words, the way political and legislative capacities are distributed between federal and local units matters because it indicates whether local units are enabled to define their own legislation and their enforcement mechanisms.¹⁴ The magnitude of the political and legislative autonomy of the local units vis-à-vis the central authority, does not explain, however, the specific content provincial laws achieve or how rights are actually protected, they just inform if conditions enabling variations among local units are in place. Thus, we expect to find that, when federal legislative exclusive competences are low and shared or residual provincial legislative competences are high (i.e. Argentina), variations in the content of rights and in enforcement mechanisms will be more likely. Higher shared or residual legislative competences are associated with higher variation in policies and outcomes at the provincial level because they increase the relevance local endowments and local political competition have in the definition of legal rights and in the allocation of resources for enforcement¹⁵. It should be noted that I am not arguing that policies implemented at the provincial level are of a “lower quality” than those sanctioned or enforced at the federal level. My claim is, instead, that the magnitude of the legislative competences of provincial units is associated with heterogeneity in the contents of laws and in the enforcement capacities across districts. When the autonomy of provincial districts to legislate and to enforce laws is high, outcomes can be more or less protective,

¹⁴ The scope of these capacities varies widely across Latin American federal countries. For example, the actual legislative autonomy of states in Brazil is low; while in the Argentinean case, they are high. More on this below. I greatly appreciate Marcus Melo’s comments and information on the Brazilian case. See also Souza 2004.

¹⁵ Variations in right protection also take place in unitary states in so far the distribution of state capacities, actors’ social resources, and support structures can also be unevenly distributed in these regimes. It is expected, however, that in federal regimes where legislative autonomy of local units is greater, variation will be greater. It should be remembered that unitary regimes do not preclude regional inequalities in right protection. However, those variations will not be associated with differences in legal promises but with the conditions for enforcement.

effective, or innovative than the ones sanctioned and enforced at the federal level¹⁶ and in other districts.

The preceding comments also alert that Gibson and Dahl's emphasis on the exclusive character of the political attributions of federal or local authorities tends to overlooks the wide gray areas where federal and local authorities have concurrent and residual attributions. Their implicit acceptance of fixed and exclusive attributions of authority hides one important source of conflicts between federal and local authorities. The contested character of many federalist arrangements is related to this vaguely fixed distribution of responsibilities and can also become a tool for limiting the federal authorities' abilities to implement homogenous policies across the territory.

The next section describes the characteristics of the Argentinean Federalism and the following one, analyzes measures, and compares the protective scope of the domestic violence laws sanctioned at the Federal and Provincial level in Argentina.

3. Varieties of Federalism: The Argentinean Setting

Argentina is a federal country; it has twenty-three provinces, one autonomous government in the city of Buenos Aires, and one thousand nine hundred twenty-two municipalities¹⁷. These 24 local units enjoy the same institutional status, draw their own constitutions, choose their provincial executives and legislatures, and organize their own judiciary.¹⁸

¹⁶ Furthermore, some authors have argued that in some cases, due to this autonomy, provincial states are able to protect rights more widely or promote innovations that cannot be consider at the federal level. Dulitzky 2007. Dulitzky 2009 Thus, federalism results in heterogeneity rather than in systematic worse or better local or federal outcomes .In spite of that, it should be mentioned that a growing literature about enforcement of International Human Treaties indicates that in many federal states, local authorities are using the "federal card" to justify non compliance of rights across their territories.

¹⁷ The autonomous government of the City of Buenos Aires is considered the 24th province.

¹⁸ Argentinean federalism is also characterized by important differences in the size, development levels, and distribution of economic resources among its provinces. In 2000, a UNDP report established that five Argentinean provinces. (Buenos Aires, Ciudad de

Recent studies about Argentinean federalism recognize its working is related to both constitutional and political variables. However, most of them concentrate on the impact of the latter. These studies consistently show that provincial rules defining electoral calendars,¹⁹ candidate selection procedures and electoral thresholds increase the governors political power in their districts vis a vis the national government and protect them from interferences of federal authorities.²⁰ Studies also note that the fiscal revenue transfers system (usually named as “Coparticipación”) is an additional and important source of provincial power. According to this system, the central government collects taxes that reallocates through a complex mix of automatic and discretionary mechanisms to the provinces while provincial authorities set their budgets, spend their moneys and transfer revenues to their municipalities according to their own priorities. Subnational governments spend around 50 per cent of the consolidated public spending and collect only 20% of the consolidated revenue.²¹ In some scarcely populated provinces, federal transfers from “Coparticipation” amount to 80% of the provincial revenue.²² As Ardanaz, Leiras and Tommasi, among others, note “provincial politicians enjoy a large share of the political benefits of spending, yet pay only a small fraction of the political cost of taxation”.²³ Given the decentralized structure of the federal government and the provincial autonomy to provide public services and to implement policy; the intergovernmental transfers system not only has a built in expansionary bias but it also conspires against interprovincial and vertical intergovernmental cooperation.²⁴ Due to this arrangement, provinces can

Buenos Aires, Córdoba, Santa Fe y Mendoza) concentrate 85 % of the Geographical Gross Product. Differences in the provincial infant mortality rates reflect the social dimension of these inequalities. In a country where the national average of infant mortality rate is 11.4, the infant mortality rate in Corrientes is 19,7 per thousand while in Ciudad de Buenos Aires is 6,2. Thus, any study of Argentinean federalism should keep in mind that variations in institutional instruments take place in a context also characterized by huge regional inequalities in the distribution of economic endowments and in the performance of social indicators.

¹⁹ Oliveros and Scherlis, 2004, 179-211; Ardanaz, Leiras, and Tommasi, 2010.

²⁰ Ardanaz, Leiras, and Tommasi, 2010; Fenwick 2010; Braun and Aradanaz 2008, 29-31.

²¹ Braun and Aradanaz, 2008.

²² Ardanaz, Leiras, and Tommasi, 2010.

²³ Ardanaz, Leiras, and Tommasi, 2010.

²⁴ Jones, Saiegh, Spiller and Tommasi. 2002; Fenwick, 2010.

extract cash for votes in the Federal Legislative bodies but the central government is unable to ensure that provincial authorities will use the obtained resources according to central government guidelines.

This literature thoroughly described and analyzed how political and fiscal variables transform governors into powerful political players. The following paragraphs analyze another aspect of the power and autonomy of provincial authorities: its constitutional foundation. This base not only enables the workings of the mentioned political and fiscal variables. It also provides constitutional arguments to reduce central government interferences and to reinforce their autonomy vis a vis the central government.

The Argentinean National Constitution establishes the primacy²⁵ of the federal authority over the provincial autonomies but it also preserves the powers of the provincial states when there is no explicit delegation of power to the federal authority. While some articles establish the supremacy of the federal over the provincial authorities, others redefine the scope of this subordination in ways that result in the establishment of arenas of provincial autonomies. There are three types of relations among federal and provincial authorities a) of subordination, when provinces delegate powers to the federal state), b) of autonomy, when delegation has not been explicitly established and c) of cooperation when the Constitution establishes concurrent powers between federal and provincial authorities.

²⁵ For example, articles 5 and 123 condition the exercise of the constitutional power of the provincial states; article. 75 inc. 12 establishes the unity of the codified legislation, article 116 establishes the hierarchical supremacy of the National Supreme Court for constitutional review, article. 127 establishes that conflicts among provinces will be solved at the National Supreme Court; article 128 establishes that provincial governors are the natural agents of the federal government for the enforcement of the Constitution and the national laws, article 6 and 75 inc. 31 establish the competence of the National Congress to decide interventions of the territory of the provinces, article 23 allows the Federal government to establish the state of siege and article 75 inc. 2 establishes a unified system for tax recollection in the central government and soft requirements for their distribution among provinces Castorina de Tarquini, 1997, 61-62.

For example, article 5²⁶ entitles provinces to establish their own Constitutions, 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. Each province is entitled to organize its own Judicial Power, to exercise constitutional control of their own provincial constitution, to decide the rules regarding the relations between the provincial and municipal government as well as how basic education will be provided in the provincial territory.

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.” The general principle recognized in *Article 121* is specified in articles 75, 99, 116 and 117, that establish which competences provinces delegate in the Legislative, Executive and Judicial powers and in others that explicitly establish the competences reserved to the provinces (i.e. articles 5, 75, inc 12 and 122). Article 75 inc. 12²⁷ establishes the power of the Federal Congress to enact Civil, Commercial, Criminal, Mining, Labor and Social Security Codes. However it also establishes *“that enforcement corresponds to federal or provincial courts depending on the jurisdictions for persons or things”* (my italics). Thus, provinces are entitled to enforce the law by their local courts, and to establish the local

²⁶ Article 5, establishes that provinces “shall enact its own constitution under the republican, representative system, in accordance with the principles, declarations, and guarantees of the National Constitution, ensuring its administration of justice, municipal regime, and elementary education” The article also establishes that “under these conditions, the Federal Government shall guarantee each province the full exercise of its institutions.”

²⁷ - “Congress is empowered: To enact the Civil, Commercial, Criminal, Mining, Labor and Social Security Codes, in unified or separate bodies, *provided that such codes do not alter local jurisdictions, and their enforcement shall correspond to the federal or provincial courts depending on the respective jurisdictions for persons or things;* and particularly to enact general laws of naturalization and nationality for the whole nation, based on the principle of nationality by birth or by option for the benefit of Argentina; as well as laws on bankruptcy, counterfeiting of currency and public documents of the State, and those laws that may be required to establish trial by jury.” (my italics)

procedural codes to implement them at the provincial level.²⁸ Since an important source of policy differentiation rests on the implementation and enforcement stages of the policy process, these entitlements give provincial authorities ample autonomy to define what policies actually become at the local level. Provincial capacities to define the specific content policies achieved at the local level are reinforced by article 116²⁹. This article precludes the National Supreme Court from reviewing the interpretation Superior provincial tribunals' make of the unified Codes mentioned in Art. 75.12.³⁰ The policy implication of these two articles (75,12 and 116) is that the National Supreme Court jurisdiction is limited to federal laws, that is, norms included in Art 75 with the exception of those explicitly mentioned in Art 75.12; and that its jurisdiction does not include the so called "derecho común"³¹ laws, that is, the interpretation of the unified Codes mentioned in 75.12. *In other words, the definition of the procedural aspects of the unified codes and the judicial review of procedural decisions of local tribunals rests on the provinces. This means that local powers enjoy a significant authority to define the actual meaning rights achieve at the time and place in which they are implemented and that local power have significant authority to define the procedures that regulate their enforcement.* Consequently, by constitution, provincial authorities control two of the strategic points characterized by the public policy literature as critical for the definition of the actual content policies achieve.

Provincial governments appeal to the general principle established in Articles 121 and in 75, 12 to protect their autonomy and their ability to legislate and to regulate rights in ways that may differ from the federal regulations. Although in

²⁸ Gelli 2005, 675.

²⁹ Article 116 establishes that "The Supreme Court and the lower courts of the Nation are empowered to hear and decide all cases arising under the Constitution and the laws of the Nation, *with the exception made in Section 75, subsection 12*, and under the treaties made with foreign nations; all cases concerning ambassadors, public ministers and foreign consuls; cases related to admiralty and maritime jurisdiction; matters in which the Nation shall be a party; actions arising between two or more provinces, between one province and the inhabitants of another province, between the inhabitants of different provinces, and between one province or the inhabitants thereof against a foreign state or citizen." (*my italics*)

³⁰ Gullco 2008, 1229.

³¹ I kept the Spanish expression "derecho común" to avoid the language confusion that may arise with the English expression "common law".

principle these differences cannot confront or eliminate rights established in the National Constitution, provinces are entitled to redefine the actual and specific scope these rights achieve at the local level.³² The vague character of the delegation established in Article 121, together with the interpretation capacities endowed by article 116 to the provincial High Courts, explain why variations in the protective scope of rights can take place. Together these three articles endow provincial authorities with broad policy making capacities, they also open a window of opportunity for persistent political struggles regarding the distribution of competences between federal and provincial authorities and they give place to continuous contestation of their interpretation.

The previous paragraphs inform about the complexities and numerous gray zones involved in the constitutional allocation of responsibilities between provincial and federal authorities. They show that although the Argentinean constitutional design establishes areas in which the federal government prevails over provincial units, the constitution fragments power and attributions among federal and provincial units and it establishes both specific and vague zones where provincial legislative and judicial competences can be pursued. In addition, the description shows that in spite of the existence of some contested areas, provincial authorities enjoy wide attributions to redefine the specific contents of rights, to decide how resources for policy implementation will be allocated and to regulate how enforcement will take place at the provincial level. These attributions indicate not only the critical role provincial authorities have at the time and place in which policies and rights are decided and enforced but also make evident why the study of policy making and of right protection needs to focus at the provincial level.

³² As the comparison of provincial domestic violence laws shows, the specific ways in which provincial legislative powers define how rights will be protected, result in many cases in protection levels below the floor established by the national legislation. Indeed, several U.N. reports evaluating the implementation of International Right Treaties in Argentina include observations mentioning that due to the “federal system, many of the rights included in the Pact are not uniformly protected throughout the national territory (Article 2 of Pact)” (my translation) See, *UN. Comité de Derechos Humanos*, 2010,.2. For more on this regard see Dulitzky 2007 and Dulitzky 2009.

The following section analyzes the impact provincial legislative and judicial autonomy has in the content of the provincial laws regulating domestic violence in Argentina. The analysis presents a map of those differences and an assessment of the resulting levels of protection.

4. Mapping and Comparing Differences in Domestic Violence Laws.

In the last thirty years, regulation of gender relations in Argentina has witnessed important changes. In 1980 Argentina signed the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The Convention achieved congressional status in 1985 (Law N° 23.179/85), but its protocol was only ratified in 2006 (Ley N° 26.171/06). The Congressional status of the treaty gave place to several other policy and legislative changes. In 1985, the National legislature approved a law regarding the rights of out wedlock children, and another (Ley N° 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 forbidden divorce and in 1987 Congress approved a new civil marriage law (Ley N° 23.515/87) that contemplated divorce and new marriages.³³ A few years later, and in order to increase women's participation in politics, Law N° 24.012/ 91 set up a quota system that establishes that 30% of all candidates standing for elections have to be women. And in 2002 a law establishing a quota requirement for elections in trade unions was also sanctioned.

In this context characterized by the increasing presence of gender issues in the public and legislative agenda, Congress sanctioned in 1994 Law N° 24.417/94 on Domestic Violence (Ley de Protección contra la Violencia Familiar). The 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 group³⁴ at a Family judge.

³³ Since the late 1960's women achieved greater rights in marriage in Argentina Brazil and Chile, and divorce was legalized in Argentina and Brazil. In none of the three countries abortion has been liberalized. Htun 2003.

³⁴ Family groups includes married and consensual unions.

The National law established that in addition to victims, public and private agents such a public hospital, schools the police and social services were entitled and in some cases obliged to denounce physical or psychological abuses. It enabled victims to request a series of precautionary measures such as provisional custody of the minors, order 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 hearing of the parties within 48 hours and to deliver the precautionary measures already mentioned, even before the complete legal process has been substantiated.³⁵ Judges also entitled to call for mediation hearings. Finally, in its last article, the 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 Eradicate Violence against Women ("Convención de Belem do Pará") (Nº 24.632). In 2009, it approved a law protecting women against different types of violence and in all areas where they develop interpersonal relations (Law 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. Although, as Franceschet has noted, since its creation the Council has been losing cloud in the development and implementation of policies.³⁶

In 2008, the National Supreme Court opened an Office of Domestic Violence that receives denounces and provides legal counseling for victims living in the City of Buenos Aires. Between September 2008 and January 2009, this Office received 11.501 denounces, 68% involved physical violence, 13% sexual violence and 30 % economic violence. In spite of these relevant institutional changes, Argentina does not have official and comprehensive statistics regarding the prevalence of the problem. Indeed the "Informe sobre Genero y Derechos Humanos 2005-2008"

³⁵ Larrain, 1997.

³⁶ Franceschet 2010.

elaborated by ELA, an NGO specialized in gender issues, not only acknowledges and denounces this problem but it reports official disaggregated data regarding denounces of domestic violence only for the City of Buenos Aires.³⁷ In another study, information comes from a survey to women living in three big cities and not from official records.³⁸ Although statistics about domestic violence are not exhaustive and are mainly collected by NGOs, all sources agree that the number of victims of domestic violence is high and increasing. According to Amnesty International in the last 12 years claims for domestic violence grew 400% in Civil Tribunals (1.109 claims in 1995, 3779 in 2006)³⁹ and other organizations have informed that in 2009 there were 231 femicides, 23 more than in 2008.⁴⁰ The 2009 ELA Report indicates that from 2002 to 2008, denounces received by the Appeal Civil Court of the City of Buenos Aires grew from 2.720 to 5.152⁴¹ and it indicates that 61% of the interviewed women consider violence by male partners against women very frequent.⁴² Since 1994, the 24 provinces have approved laws against domestic violence. The sanctioning process shows a domino pace that is likely related to the incorporation of international treaties, such as CEDAW, in the 1994 Constitution.⁴³ Although this article does not analyze the determinants of this sanctioning process, it is safe to speculate that in many cases, international commitments rather than internal impulses engine their approval.

³⁷ Equipo Latinoamericano de Justicia y Género 2009.

³⁸ Equipo Latinoamericano de Justicia y Género. 2009 (2) 16.

³⁹ A study developed by AMJA in 2003 shows that judicial statistics underegister the relevance and presence of domestic violence cases in the lower court tribunals of Capital Federal. For example, while the “Justicia Correccional” statistics recognized that 5.5% of its cases involve domestic violence, the in depth study of sentences revealed that 24.4% of the cases involved this type of conflicts. The same trend was found in the statistics of the family courts where registers showed that 10% of the case involved domestic violence and the study found that 25% of the cases addressed by this courts included cases of domestic violence. AMJA, 2003.

⁴⁰ <http://www.lacasadelencontro.com.ar/femicidios.html>).

⁴¹ Equipo Latinoamericano de Justicia y Género 2009, 311.

⁴² Equipo Latinoamericano de Justicia y Género 2009 (2),16.

⁴³ Some provincial laws explicitly acknowledge that they result from incorporation in article 75,22 of the 1994 Constitution of International Conventions. They explicitly refer to CEDAW and to laws ratifying the Interamerican Convention regarding the Rights of Children and the prevention of violence against women (Convención de Belem do Pará).

To analyze differences among provincial laws I elaborated an index of legal protection.⁴⁴ It measures the protective scope of the provincial laws across eight dimensions. Although laws are just one dimension of the problem of inequality of rights, they are a relevant one. Laws indicate which are the official institutional promises states and communities are willing to make and back with the use of the coercive power of the state regarding specific conflict or behaviors. Thus, differences in the contents of laws informs about the intensity and scope of those institutionalized commitments. If the specific content of laws were irrelevant, laws among provinces wouldn't differ or all provinces should have extremely protective laws. We will see that that is not the case in the Argentinean context.

The index contemplates how domestic violence provincial laws define a) the victims or groups to be protected, b) the injuries (harms) to be protected c) where, d) who can place a claim, e) the measures judges can decide, f) whether mediation is mandatory g) whether laws indicate bureaucratic offices responsible for enforcement and h) where does funding for implementation come from. Each of these dimensions was, in turn, disaggregated into the specific topics contemplated in the different provincial laws. It assigns a value of 1 to each topics and the index results from the sum of the topics included in each provincial law. Topics were not weighted due to difficulties for determining the intrinsic relevance of each of them.⁴⁵ As it will be observed some provincial laws protect physical and psychological damages while others also include property harms. In some provinces, only individuals related by marriage or by "de facto unions" can advance claims, while in others separated, divorced, or engaged individuals can also do it. Provincial laws also differ in the type of requirements they demand to file claims. Some provinces allow social workers or public officials (teachers, policemen) to file claims on behalf

⁴⁴ Annex includes the data base I collected in order to elaborate the index of legal protection.

⁴⁵ The following example illustrates the difficulties faced to weight each topic in the different laws. For example, how to evaluate the relevance that the inclusion of "separated" victims has in identification of the victims to be protected? It can be argued that the item is less important than the inclusion of victims related by marriage or de facto unions. However, statistics about occurrences of domestic violence indicate that episodes of violence tend to be more frequent among separated than between other types of relationships.

of all type of victims while others allow third party intervention only when victims are infants or incapacitated adults. Other aspects where laws differ are the number and type of precautionary measures available for judges, on the mandatory character of mediation and of the psychological treatment for the family group. Laws also vary in the way they provide funds and allocate bureaucratic responsibilities for enforcement. The following table outlines the universe of laws analyzed and summarizes the degree of protection of the different legal texts. The comparison includes 37 laws and decrees sanctioned between 1988 and 2009, 35 have been approved by provincial authorities and 2 by National (federal) ones.

Table 1: Legal Protection by Dimensions of the Domestic Violence Laws (by jurisdiction)

Jurisdiction Provinces	Law and Approval Date		Protected Group (a)	Protected Harm (b)	Places to advance Claims (c)	Who can advance a claim (d)	Precautionary Measures Available (e)	Mandatory mediation (f)	Implementation and Budget (h) and (i)	Total Protection (i) (30,5/11,5)	Total Protection Standardized (100/27)
	Law	Approval Date									
Nation (Federal Law)	26.485 "Integral Protección Law..."	2009- 14 th April	5	4	6	4,5	9	1	1	30,5	100
San Juan	7.943	2009- 14 th January	5	4	7	3,5	7	1	2	29,5	97
Misiones	4.405	2007- 29 th November	5	4	5	5	8	1	1	29	95
CABA (Modified)	Aggregate Modified (ii)	2005- 28 th April	5	3	6	4	8	1	1,5	28,5	93
Córdoba	9.283	2006- 13 th March	5	4	4	3	8	1	1	26	85
La Pampa	Aggregate	2000- 28 th December	5	4	2	4,5	7	0	2	24,5	80
Buenos Aires	12.569	2001- 2 nd January	5	3	4	4	7	1	0	24	79
Santa Fe	11.529	1997- 27 th November	5	4	6	4	4	0	1	24	79
CABA	Aggregate (iii)	2005- 28 th April	5	3	1	4	8	1	1,5	23,5	77
Jujuy	5.107	1998- 22 nd December	4	3	3	4	6	0	2	22	72
Neuquén	Aggregate	1997- 20 th June	3	4	3	2,5	6	1	1	20,5	67
Entre Ríos	9.198	1999- 10 th February	3	2	4	3	5	1	2	20	66
Salta	7.403	2006- 1 st August	5	4	3	2	5	0	1	20	66
Formosa	Aggregate	1996- 27 th June	3	3	4,5	3	5	0	1	19,5	64
Chubut	Aggregate	1998- 21 st September	3	2	5,5	2,5	5	0	1	19	62
Río Negro	3.040	1996- 16 th October	3	3	2	2,5	5	1	1	17,5	57
La Rioja	6.580	1998- 22 nd October	2	4	3	2	5	0	1	17	56

Legal Protection by Dimensions of the Domestic Violence Laws (by jurisdiction)											
Provinces	Law and 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 (i) (30,5/11,5)	Total Protection Standardized (100/27)
	Law	Approval Date									
Tucumán	Aggregate	2003- 16 th January	5	2	1	2	5	1	1	17	56
Chaco	Aggregate	1996- 12 th December	3	2	3	2	3	0	3	16	52
Corrientes	Aggregate	2004- 16 th June	3	2	1,5	1,5	4	1	2	15	49
San Luis	I-0009-2004 (5477 "R")	2004- 23 rd April	3	2	2,5	2	5	0	0	14,5	48
Nation (Federal Law)	24.417 "Protection Against Familiar Violence"	1994- 28 th December	3	2	2	2	4	0	1	14	46
Mendoza	6.672	1999- 20 th April	3	3	2	2	3	1		14	46
Tierra del Fuego	39	1992- 14 th October	3	2	1	2	5	0	1	14	46
Santiago del Estero	6.308	1996- 16 th July	3	2	2	1,5	4	0	0	12,5	41
Santa Cruz	2.466	1997- 29 th July	3	2	1	1	4	0	1	12	39
Catamarca	4.943	1998- 15 th April	0,5	2	2	2	5	0	0	11,5	38

(i) **Total Protection Level of achieved protection** sums the different topics included in the laws and decrees sanctioned in each jurisdiction. The date refers to the last modification approved.

(ii) **CABA Modified** assumes that the denounce places contemplated in the National Integral Law were available for the citizens of Ciudad de Buenos Aires.

(iii) **CABA Accumulated** considers that the judicial and police authorities created by the reformed 1994 Constitution are not in place yet. Thus victims in CABA must direct claims to Federal Courts.

Figure 1: Protection Level by Jurisdiction Valid in 2009 Ordered by Approval Date

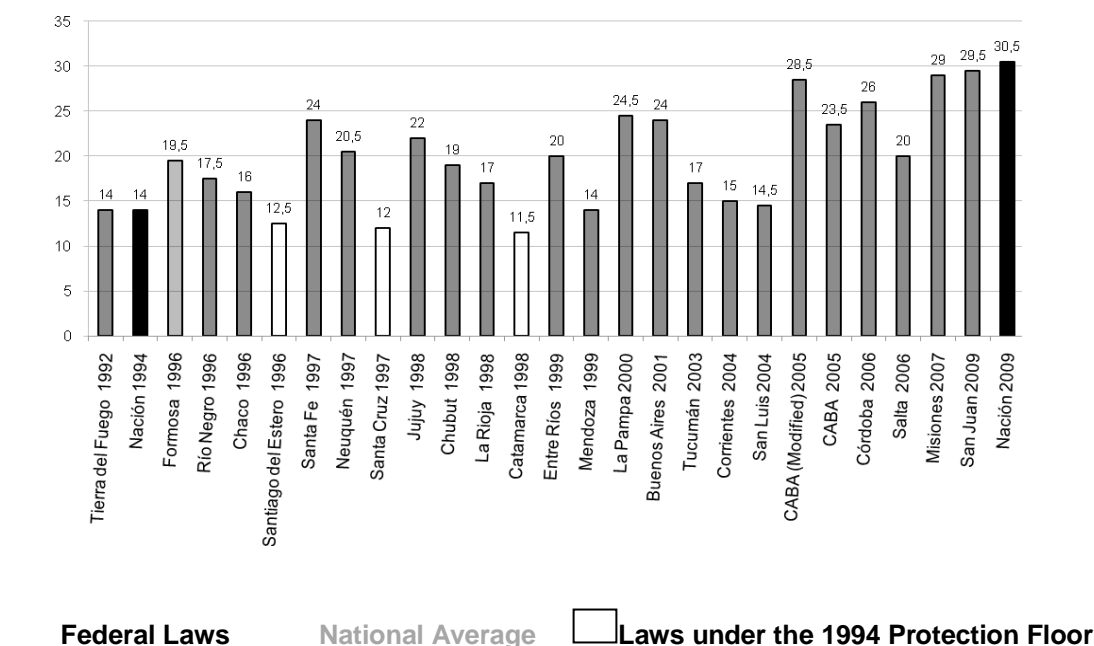


Table 2: Legal Protection by Region

Region	Average total Protection	Standard deviation	Average total Protection	Standard deviation
Northeast	16.67	4.095	16.67	4.095
Northwest	19.9	5.527	19.9	5.527
Cuyo	19.33	8.808	19.33	8.808
Pampean Region	25.4 (*)	1.917	24.4 (**)	0.962
Patagonia	16.6	3.525	16.6	3.525

(*) It includes CABA 2009.

(**) It includes CABA 2005.

The preceding tables confirm that in Argentina the protection level of the domestic violence laws vary significantly among provinces and regions. The index shows that in 2009 the protection of provincial laws ranged from 29,5 (San Juan) to 11,5 (Catamarca). The standard deviation of protection is 5.73 and 12 provincial laws protect less than the current national protection average (Chubut, Rio Negro, La Rioja, Tucumán, Chaco, Corrientes, San Luis, Mendoza, Tierra del Fuego, Santiago del Estero, Santa Cruz, and Catamarca). The results also show that even if we were not to consider the last national law, due to its relatively recent approval (2009), there are still three provinces that protect less than the floor established in 1994 by the first national law (Santiago del Estero, Santa Cruz and Catamarca). Eight jurisdictions approved more than one law and in all cases modifications widen the protective scope of the previous law and surpassed the floor established by the 1994 Federal law.

Table 2 shows that protection among regions varies and that in some regions laws are more similar than in others. In fact, the Pampean Region has the more protective laws and the promised protection of its provinces is relatively similar. That is not the case in the other regions, where protection levels are lower, and regions show high variation in their protection levels. Indeed, the high standard deviation found in these other regions indicate that variations are likely associated with internal provincial factors rather than with regional ones. Data then, shows that Argentinean federalism not only enables differentiation in the protective scope of legal promises but that it is also producing it. Beyond the specific reasons that may explain these differences among provinces, a first important finding is that provincial legal autonomy is not irrelevant: it

enables inequality among provincial laws and it produces inequality in the contents of laws.

Which legal promises included in the provincial domestic violence laws converge across provinces? And which ones diverge? As Table 3 shows protection of provincial laws varies the most in regard to the number and variety of places where victims can address denounces (Standard Deviation. 1.77). The number and variety of places to make claims is a relevant aspect of the protective ability of a law in so far as it indicates the difficulties victims confront to advance their claims and to have their rights addressed. If the number and varieties of agencies to advance denounces is low, the victims' ability to realize their rights is significantly reduced. Thus, even if the law contemplates an ample number of damages or a variety of groups, if the places to advance claims are low, those other protective aspects of the law end up cancelled. La Pampa illustrates this situation (see Table 1 and Annex 1.) Its law protects a wide group and a relatively ample number of damages but provides few places where victims can address those demands. Other provincial laws provide the same number or even fewer places to advance denounces, however, it is worth mentioning the La Pampa case since it shows how dimensions in a legal text interact and can cancel each other. Information also shows that most laws establish that family judges are to take claims (20) and that only 8 contemplate that claims can be made in any type of Court.

Table 3: Legal Protection by Dimensions of Domestic Violence 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
Max Protection	5.00	4.00	7.00	5.00	9.00	1.00	3.00	30.50
Minimum Protection	0.50	2.00	1.00	1.00	3.00	0.00	0.00	11.50
Difference between Max and Min	4.50	2.00	6.00	4.00	6.00	1.00	3.00	19.00
# of Provincial Laws under Average	15	11	19	19	17	12	19	12

Note: Total Number of Laws considered 37 (35 provincial laws and 2 Federal laws) Laws and Decree were approved between 1988 and 2009.

The other aspect where provincial laws vary the most is the number and menu of precautionary measures judges can advance (Table 3). The main innovation of Domestic violence laws is that they enable judges to issue preventive measures they can use in the emergency of a violent situation to stop the continuation of possible irreversible harms. Thus, which measures are available is particularly relevant for the analysis of the protective scope of a law. The distribution of precautionary measures among provinces shows that almost all provincial laws provide judges with instruments to decide restriction home orders, restriction of access to workplaces and schools, orders to reintegrate victims to their homes and to decide food quotas and parental responsibility of 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 have the custody of the victims. And only two laws provide judges with the ability to place victims in shelters.

Table 4: Places for Denounces

	Family Judge	Public Ministry	Lay Judge (Juez de Paz)	Any Court	Police Station	Lower Court Judge	Minor Judge	Public Defender	Prosecutor
Number of Laws	20	11	11	8	7	7	5	4	4

Source: See data in Annex

Table 5: 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
Number of Laws	28	28	27	25	13	13	3	2	7

Source: See data in Annex

In regard to the Groups (Victims) and Harms protected, data shows that most provinces protect basically two types of harms (physical and psychological) (Table 6)

and two types of victims (married couples and civic unions) (Table 7). The other harms and victims that can be protected show a significant lower presence.

Table 6: Protected Harm

	Physical	Psychological	Sexual	Patrimonial
Number of Laws	31	30	16	9

Source: See data inn Annex

Table 7: Protected Group or Victim

	Member of a Married Couple	Civil Unions	De Facto Couples	Fiancées	Separated	Other victims decided by the judge
Number of Laws	29	29	18	12	11	10

Source: See data inn Annex

Table 8 indicates whether provincial laws include enforcement and budget provisions. The inclusion of these dimensions in the laws is considered a sign of the commitment provincial authorities have with its enforcement. It is assumed that if the intention of the legislators was just to pay lip service to a “good cause”, laws will not include enforcement and budgeting provisions that might tide the hands of public authorities in the future. Analysis shows that while 88% of the laws mention some bureaucratic agency involved in enforcement only 34% laws indicate where public moneys for its enforcement should come from.

Table 8: Mediation, Enforcement, and Budget Provisions in Laws

	Presence of Mediation Provisions			Presence of Enforcement Provisions		Presence of Budget Provisions	
	Yes	No	Banned	Yes	No	Yes	No
Number of Laws specifying provision	15	12	1	28	4	10	19
% of Laws specifying provision	54	43	4	88	12	34	66
Number of Laws considered	28			32		29	

Source: See data inn Annex

Finally, Figure 2 indicates that the protection level is significantly correlated with the approval date of the law. Of course diffusion theories can help to explain the wave of approval and the increasing protective character of the succeeding laws⁴⁶. Subnational authorities had been invited in the National Law (24.417) approved in 1994 to sanction their own laws. And some provinces, particularly those highly dependent from fiscal transfers, may have had incentives to swiftly meet the national government request that, in turn, was interested in showing at international forums that it was complying with the CEDAW agreements it had signed. However, Figure 2 also shows that, even after the 1994 national law had been approved three provinces (Santa Cruz, Santiago del Estero and Catamarca) sanctioned local laws that protected less than the national one, and that, even after some provinces started to approve more protective laws than the national one, others such as Tucumán, Corrientes, San Luis and Salta approved late laws that were significantly less protective. Why not all the provincial laws approved after the 1994 national one, promised to protect the same or more than that landmark? If legal promises were immaterial, even in federalisms with high legislative and judicial autonomy, the contents of legal promises should have converged or all jurisdictions ought to have had highly protective laws. Evidence shows that that was not the case. Differences in the protection level indicate on the one hand, that the content of legal promises matters. If it wouldn't, all provincial authorities would have approved more protective ones or laws would have, at least, mimic the national one. On the other, differences in the protection level indicate that emulation; learning or external pressures are not the only drivers of legal diffusion. To explain the pace and unequal protective scope of subnational laws, internal provincial dimensions, such as local political competition and strength of local social actors, should enter the picture. Furthermore, differences in the protective scope of laws suggest that local authorities might be using the definition of their contents as tools for allocating universal or particularistic benefits and building, in the process, local political coalitions.

⁴⁶ See Weyland Kurt; "Theories of Policy Diffusion: Lessons from Latin American Pension Reform" in *World Politics*, (57, 2) 2005.

5. Concluding Remarks

This article shows that equality under the law is related not only to the actors' social endowments but also to the specific institutional mechanisms defining the distribution of legal promises in a territory. It argues that the specific way in which in federal contexts, legislative and judicial competences are distributed between levels of government impacts the geographical allocation and the contents of legal promises. And that this in turn, results in inequality in the distribution of rights. As mentioned the argument has conceptual implications regarding the access to justice theories and the debates on the workings of federalism. It suggests that actors' social endowments are not sufficient to explain inequality in access and that territorial arrangement need to be considered. And those analyses of federalisms need to incorporate the effects that the specific allocation of legislative and judicial competences across levels of government has in their performance. Although the article, analyzes the distribution of legal promises regarding domestic violence laws in Argentina, preliminary evidence from other Latin American federal countries suggests that their findings are likely to apply beyond this case. In particular, the article shows that in federal contexts where legislative and judicial autonomy of local authorities is high, the diffusion of legal promises is heterogeneous among jurisdictions and that this gives place to unequal protection entitlements across districts. Access to justice ends up being unequal not only because actors enjoy different social endowments but also because the protection they are entitled differs across the territory. In addition, the article provides an specific methodology to evaluate and measure differences in legal promises in federal countries.

Analysis of the contents of Domestic Violence laws approved in Argentina confirms that inequity in protection starts with differences in the legal promises provincial states make. The study measures the protective scope of 37 different laws sanctioned since 1992. It shows that provinces promise to protect different harms, different type of victims and with different instruments. Provincial legislation also differs in the precautionary measures judges can decide and in the budgetary commitments provincial states make. In a nutshell, the article provides evidence indicating that when legislative and judicial autonomy is high, legal promises vary significantly across

jurisdictions. The protection index shows that in 2009, legal protection promises ranged from 29.5 in San Juan to 11.5 in Catamarca and that thirteen provinces were promising to protect less than the 2009 national average. Evidence indicates also that when the specific features of the provincial laws are considered, the Federal legislation not always holds as a protective floor. Indeed, three provinces still promise to protect less than the base established by the 1994 Federal law (Santiago del Estero, Santa Cruz and Catamarca). And although the protective scope of provincial laws tends to increase with time, three late laws (San Luis, Corrientes, and Tucuman) still show relatively low levels of protection. Research also showed that provincial UBN (unsatisfied basic needs) was not related to the protection levels achieved by each province. And although provinces in the Pampean region have more protective laws and less variation than in others; the high standard deviation found in the protection level of the other regions suggests that variation is likely due to internal provincial factors rather than to regional ones.

A few additional comments regarding the implicit conceptual “conversations”. As noted, the article discuss with the literature on federalism, that its study should also consider the specific way in which legislative and judicial competences are distributed between central and subnational authorities. This distribution of competences is not the same throughout all federalist countries. For example, while in Mexico⁴⁷ and Argentina⁴⁸ subnational legislative and judicial powers are high, in Brazil they are relatively low. Brazilian states have fewer legislative competences than Federal authorities, and after the 1988 Constitution they even have fewer competences than municipalities. The Brazilian Constitution, as is the case in Argentina 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 of the 1988 Brazilian Constitution greatly restricts them by explicitly enumerating the ones that exclusively belong to the federal authority.⁴⁹

⁴⁷ Carbonell 2003.

⁴⁸ For illustration purposes I just mention Latin American cases, but the U.S. is another example where local legislative and judicial autonomy is broad.

⁴⁹ Clause I of Article 22 specifies that *federal authorities* have exclusive competence to legislate on “direito civil, comercial, penal, processual, eleitoral, agrário, marítimo, aeronáutico, espacial e do trabalho. The other clauses of Article 22 of the 1988 Constitution state that the Federal authority also has exclusive competences to legislate on “II - desapropriação; III - requisições

The detailed enumeration of the matters under exclusive competence of the federal authority voids Brazilian states from their apparent legislative autonomy. Preliminary data from Mexico and Brazil seem to confirm the findings of the Argentinean case, that is, that the specific way legislatives and judicial competences are distributed between governmental levels impacts the allocation of rights across jurisdictions. In contrast to the Argentinean case, in Brazil where state legislative autonomy is low, the Domestic Violence Law (known as the Maria da Penha Law) is valid and holds for all states because Clause I in Article 22 of the Constitution establishes that Criminal laws are a competence of Federal authorities. Although analysis of its implementation may show inequalities at the state level, those differences are related to the way in which rights are implemented rather than to variations in legal entitlements. In Mexico, instead states have wide capacities to legislate and there is no hierarchical relationship between state and federal legislation. Research⁵⁰, in this case, shows that by May 2005 four states had not sanctioned laws protecting victims of family violence, that only 26 of the 32 states

civis e militares, em caso de iminente perigo e em tempo de guerra; IV - águas, energia, informática, telecomunicações e radiodifusão; V - serviço postal; VI - sistema monetário e de medidas, títulos e garantias dos metais; VII - política de crédito, câmbio, seguros e transferência de valores; VIII - comércio exterior e interestadual; IX - diretrizes da política nacional de transportes; X - regime dos portos, navegação lacustre, fluvial, marítima, aérea e aeroespacial; XI - trânsito e transporte; XII - jazidas, minas, outros recursos minerais e metalurgia; XIII - nacionalidade, cidadania e naturalização; XIV - populações indígenas; XV - emigração e imigração, entrada, extradição e expulsão de estrangeiros; XVI - organização do sistema nacional de emprego e condições para o exercício de profissões; XVII - organização judiciária, do Ministério Público e da Defensoria Pública do Distrito Federal e dos Territórios, bem como organização administrativa destes; XVIII - sistema estatístico, sistema cartográfico e de geologia nacionais; XIX - sistemas de poupança, captação e garantia da poupança popular; XX - sistemas de consórcios e sorteios; XXI - normas gerais de organização, efetivos, material bélico, garantias, convocação e mobilização das polícias militares e corpos de bombeiros militares; XXII - competência da polícia federal e das polícias rodoviária e ferroviária federais; XXIII - seguridade social; XXIV - diretrizes e bases da educação nacional; XXV - registros públicos; XXVI - atividades nucleares de qualquer natureza; XXVII - normas gerais de licitação e contratação, em todas as modalidades, para a administração pública, direta e indireta, incluídas as fundações instituídas e mantidas pelo Poder Público, nas diversas esferas de governo, e empresas sob seu controle; XXVIII - normas gerais de licitação e contratação, em todas as modalidades, para as administrações públicas diretas, autárquicas e fundacionais da União, Estados, Distrito Federal e Municípios, obedecido o disposto no art. 37, XXI, e para as empresas públicas e sociedades de economia mista, nos termos do art. 173, § 1º, III; (Redação dada pela Emenda Constitucional nº 19, de 1998) XXIX - defesa territorial, defesa aeroespacial, defesa marítima, defesa civil e mobilização nacional; XXX - propaganda comercial.

⁵⁰ Frias 2008, 235.

prosecute it as such and that six states did not consider it a felony. Although further international comparative research is needed, these examples illustrate that the distribution of legislative and judicial autonomy of state authorities vary across federations and that its specific distribution impacts the way legal promises are allocated across jurisdictions. These preliminary findings suggest not only that the distribution of competences between federal and subnational authorities are likely to impact the working of federalisms, but they also warn that future research should concentrate on the effects different varieties of federalism rather than federalism itself may have on their policy performance.

Identification of the legislative and judicial abilities provincial authorities have, has another consequence. It informs whether local authorities are enabled to manage the distribution of symbolic goods in their territories. The ability to manage these goods, such as legal promises, is important in so far as they can become an important instrument for building support and obedience at the subnational level. Moreover, in contexts where fiscal powers of local governments are restrained, the ability to manage and to distribute rights can become instruments to compensate those limitations. It is an ability that allows local authorities not only to control and define the specific content of policies in their territory but also to build local political coalitions through, universal or particularistic, mechanisms of distribution of rights.

The second unspoken conversation takes place with the access to justice and inequality literature. The article suggests that both literatures need to consider the consequences that territorial allocation of rights have on access and on inequality. The article provides evidence indicating that territorial distribution of competences determine inequalities in rights within a same social group across a given country. It shows that neither powerful nor unprivileged groups enjoy the same rights across the territory. This finding qualifies the argument that holds that access to justice mainly depends on the actors social endowments and it implies that assessments of access abilities need to consider the specific location in which actors operate. As the article shows rich citizens in San Juan are not entitled to the same rights as rich citizens in Catamarca.

The third conversation is related to the selection of political strategies for the advancement of particular policy agendas. It follows from the article's findings that

selection of a political strategy cannot disregard the specific characteristics of the federal arrangements in which they will be developed. In unitary contexts or in federal ones with low legislative and judicial autonomy, political strategies can concentrate their efforts at the national level and expect to succeed. However, when legislative and judicial autonomy of subnational authorities is high, centralized, or non territorially differentiated strategies are likely to fail. In these latter contexts, success in policy reforms depends on the actors' abilities to develop locally grounded strategies. Not only laws need to be approved locally but also the coalitions needed to approve them differ across jurisdictions. Although, success may also be achieved through the creation of agencies with mandatory national capacities, the experience of federal councils in a country like Argentina, where provincial competences are high, shows that their performance faces some of the same difficulties confronted by Federal authorities when attempting to promote mandatory homogeneous policies across jurisdictions.⁵¹ Regarding the advancement of a gender agenda, these findings indicate that the selection of future strategies cannot disregard the specific federal arrangements in which they will take place.

Finally, a comment about the content of legal promises. Heterogeneity in their content indicates that legal promises are locally negotiated and defined but also that their specific contents matters. If contents of legal promises were immaterial, even in federalisms with high legislative autonomy, the protective scope of laws should converge or all jurisdictions ought to have highly protective ones. The evidence shows that that is not the case. It is precisely because the content of legal promises matter, that provincial authorities use them to make policy, to enlarge coalitions or to appease oppositions.

⁵¹ Serafinoff, 2007.

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APPENDIXES

Appendix 1: Level of Total Protection by jurisdiction

Provinces	Law and Approval Year			Level of Total Protection 30,5 – 11,5
	Law	Approval Year	Sanctioned	
Nación	24.417	1994	1996	14
Nación	26.485	2009	2010	30,5
Buenos Aires	12.569	2001		24
Catamarca	4.943	1998		11,5
Chaco	4.175	1995		12
Chaco	4.377	1996	DECREE 620/97	9
Chubut	4.118	1995		18
Chubut	4.405	1998		7
CABA	1.265	2004		22,5
CABA	1.688	2005		10
Córdoba	9.283	2006		26
Corrientes	5.019	1995	1998	13
Corrientes	5.020	1995	1999	2,5
Corrientes	5.464	2004		3,5
Entre Ríos	9.198	1999		20
Formosa	1.160	1995		12
Formosa	1.191	1996		18
Jujuy	5.107	1998	2001	22
La Pampa	1.081	1988		2
La Pampa	1.327	1991		2
La Pampa	1.333	1991		2
La Pampa	1.919	2000		22,5
La Rioja	6.580	1998	1999	17
Mendoza	6.672	1999		14
Misiones	4.405	2007	2008	29
Neuquén	2.152	1995	1998	7
Neuquén	2.212	1997	1999	18
Río Negro	3.040	1996	2003	17,5
Salta	7.403	2006		20
San Juan	7.943	2009		29,5
San Luis	I-0009-2004 (5477 "R")	2004		14,5
Santa Cruz	2.466	1997		12
Santa Fe	11.529	1997	2001	24
Santiago del Estero	6.308	1996		12,5
Tierra del Fuego	39	1992		14
Tucumán	7.028	2000		5
Tucumán	7.264	2003		17

Appendix 2: Protected Group/ Grupo Protegido

Provinces	Law and Approval Year		Protected Group/ Grupo Protegido						Level of Total Protection 5 – 0,5
	Law	Approval Year	Marriage	Civil Union	“De facto unions”	Fiancées	Separated	Other victims decided by the judge	
Nación	24.417	1994	x	x				x	3
Nación	26.485	2009	x	x	x	x	x		5
Buenos Aires	12.569	2001	x	x	x	x	x		5
Catamarca	4.943	1998						x	0,5
Chaco	4.175	1995	x	x				x	3
Chaco	4.377	1996							
Chubut	4.118	1995	x	x				x	3
Chubut	4.405	1998							
CABA	1.265	2004	x	x	x	x	x		5
CABA	1.688	2005	x	x	x	x	x		5
Córdoba	9.283	2006	x	x	x	x	x		5
Corrientes	5.019	1995	x	x				x	3
Corrientes	5.020	1995							
Corrientes	5.464	2004							
Entre Ríos	9.198	1999	x	x	x				3
Formosa	1.160	1995	x	x				x	3
Formosa	1.191	1996	x	x				x	3
Jujuy	5.107	1998	x	x	x	x			4
La Pampa	1.081	1988							0
La Pampa	1.327	1991							0
La Pampa	1.333	1991							0
La Pampa	1.919	2000	x	x	x	x	x		5
La Rioja	6.580	1998	x	x					2
Mendoza	6.672	1999	x	x	x				3
Misiones	4.405	2007	x	x	x	x	x		5
Neuquén	2.152	1995	x	x	x				3
Neuquén	2.212	1997	x	x	x	?	?		3
Río Negro	3.040	1996	x	x	x				3
Salta	7.403	2006	x	x	x	x	x		5
San Juan	7.943	2009	x	x	x	x	x		5
San Luis	5477	2004	x	x				x	3
Santa Cruz	2.466	1997	x	x				x	3
Santa Fe	11.529	1997	x	x	x	x	x		5
Santiago del Estero	6.308	1996	x	x				x	3
Tierra del Fuego	39	1992	x	x	x				3
Tucumán	7.028	2000	x	x					2
Tucumán	7.264	2003	x	x	x	x	x		5

Appendix 3: Protected Damage /Daño Protegido

Provinces	Protected Damage /Daño Protegido						Level Protection 4 - 2
	Law	Approval Year	Physical	Psychological	Sexual	Patrimonial	
Nación	24.417	1994	x	x			2
Nación	26.485	2009	x	x	x	x	4
Buenos Aires	12.569	2001	x	x	x		3
Catamarca	4.943	1998	x	x			2
Chaco	4.175	1995	x	x			2
Chaco	4.377	1996	x	x			2
Chubut	4.118	1995	x	x			2
Chubut	4.405	1998					
CABA	1.265	2004	x	x	x		3
CABA	1.688	2005	x	x	x		3
Córdoba	9.283	2006	x	x	x	x	4
Corrientes	5.019	1995	x	x			2
Corrientes	5.020	1995					
Corrientes	5.464	2004					
Entre Ríos	9.198	1999	x	x			2
Formosa	1.160	1995	x	x			2
Formosa	1.191	1996	x	x	x		3
Jujuy	5.107	1998	x	x	x		3
La Pampa	1.081	1988					
La Pampa	1.327	1991					
La Pampa	1.333	1991					
La Pampa	1.919	2000	x	x	x	x	4
La Rioja	6.580	1998	x	x	x	x	4
Mendoza	6.672	1999	x	x	x		3
Misiones	4.405	2007	x	x	x	x	4
Neuquén	2.152	1995	x	x		x	3
Neuquén	2.212	1997	x		x		2
Río Negro	3.040	1996	x	x	Only abuse		3
Salta	7.403	2006	x	x	x	x	4
San Juan	7.943	2009	x	x	x	x	4
San Luis	I-0009-2004 (5477 "R")	2004	x	x			2
Santa Cruz	2.466	1997	x	x			2
Santa Fe	11.529	1997	x	x	x	x	4
Santiago del Estero	6.308	1996	x	x			2
Tierra del Fuego	39	1992	x	x			2
Tucumán	7.028	2000	x	x			2
Tucumán	7.264	2003	x	x			2

Provinces	Law and Approval Year		Where to place Claims/Lugares de Denuncia									Level Protection (2) 7 - 1
	Law	Approval Year	Family Judge	Public Ministry	Police Station	Prosecutor	Lower Court Judge	Any Court (1)	Minor Judge	Public Defender	Lay Judge	
Santa Fe	11.529	1997		X				x				6
Santiago del Estero	6.308	1996	x				x					2
Tierra del Fuego	39	1992						Civil Judge				1
Tucumán	7.028	2000										
Tucumán	7.264	2003	x									1

1) Any Court: when a province accepts that denounces can placed in any court, it is worth 5 because it implies all other agencies.

2) MIDA means minor, disabled and absentee, it is worth 2,5 because it implies that when victims are MIDA their ability to access is restricted.

3) Values for CABA consider that the local judicial institutions established by the 1994 Constitution have not yet been created.

Appendix 5: Who advance Claims/ Quién Denuncia

Provinces	Law and Approval Year		Who advance Claims/ Quién Denuncia					Level Protection 4,5 - 1
	Law	Approval Year	Differentiates between minor and adult victims (i)	Adults	Social Service / Servicio Asistencial	Police	Any Citizen	
Nación	24.417	1994	A	x	x (children and disabled people)			2
Nación	26.485	2009	B	x	x (only women)	x	MIDA	4,5
Buenos Aires	12.569	2001	B	x	x		x	4
Catamarca	4.943	1998	A	x	x			2
Chaco	4.175	1995	A	x	MIDA			1,5
Chaco	4.377	1996	A	x	x			2
Chubut	4.118	1995	B	x	MIDA			2,5
Chubut	4.405	1998	B					
CABA	1.265	2004	B	x	x		x	4
CABA	1.688	2005	B					1
Córdoba	9.283	2006	B	x	MIDA		x	3
Corrientes	5.019	1995	A		MIDA			1,5
Corrientes	5.020	1995	A					1,5
Corrientes	5.464	2004	A					1,5
Entre Ríos	9.198	1999	A	x	x	x		3
Formosa	1.160	1995	A	x	MIDA		MIDA	2
Formosa	1.191	1996	A	x	MIDA			2
Jujuy	5.107	1998	B	x	x	x		4
La Pampa	1.081	1988						
La Pampa	1.327	1991						
La Pampa	1.333	1991						
La Pampa	1.919	2000	B	x	x	x	MIDA	4,5
La Rioja	6.580	1998	A	x	x			2
Mendoza	6.672	1999	B	x				2
Misiones	4.405	2007	B	x	X	x	x	5
Neuquén	2.152	1995						
Neuquén	2.212	1997					x (if victim is unable to denounce)	2
Río Negro	3.040	1996	B	x	MIDA			2,5
Salta	7.403	2006	B	x		x		2
San Juan	7.943	2009	A	x	x		MIDA	3,5

Provinces	Law and Approval Year		Who advance Claims/ Quién Denuncia					Level Protection 4,5 - 1
	Law	Approval Year	Differentiates between minor and adult victims (i)	Adults	Social Service / Servicio Asistencial	Police	Any Citizen	
San Luis	I-0009-2004	2004	B	x		x		2
Santa Cruz	2.466	1997	A	x				1
Santa Fe	11.529	1997	A	x	X		x	4
Santiago del Estero	6.308	1996	B	x	MIDA			1,5
Tierra del Fuego	39	1992	A	x	MIDA		MIDA	2
Tucumán	7.028	2000	A					
Tucumán	7.264	2003	A	x			family or related	2

i) A counts as 0 because in these cases denounces must be placed by an adult, or by a public agent. These laws do not consider the minors ability to place denounces. B counts as 1 because in these cases minors and disabled are entitled to place denounces by themselves