

WOMEN'S REPRESENTATION PROVISIONS IN ELECTORAL LAWS

AN ASSESSMENT OF CHILEAN RECENT ELECTORAL REFORM

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*“We have had the morality of submission, and the
morality of chivalry and generosity; the time is now come for
the morality of justice”*

John Stuart Mill, “The Subjection of Women” (1869)

Abstract

The article addresses the issue of women's representation in electoral legislation, focusing on the latest amendments of Chilean electoral laws. It first examines the conceptual relationship between representative democracy and equality, distinguishing between formal and substantive equality and representation, in order to fully understand the potential impact of electoral laws on women's representation. A comparative perspective is then offered, showing the current representation of women in Parliaments and reviewing the connection with different features of electoral systems. In this context, gender quotas are analysed as one of the main mechanisms that have been used to increase women representation. Finally, the recent amendments of Chilean electoral law on this issue are presented, in order to anticipate what we can expect for women's representation in the years to come.

Keywords: *Chile, electoral law, Parliament, women, gender, equality, representation, quotas.*

I. INTRODUCTION

The main objective of an electoral system should be to adequately represent the interest of its citizens. This adequacy can have several dimensions, including a territorial one, ideological, etc. Gender representation can be considered among one

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of these dimensions and during the last decades it has increasingly gain attention due to the serious under representation women have had in most Parliaments all over the world, even though they represent half of the population.¹ Our hypothesis is that electoral laws are key elements towards a gender balanced political representation and, in the case of Chile, the latest reforms in this arena can be interpreted as a promising sign for greater female presence in the future Congress.

To approach this issue, I will start by briefly framing the conceptualization of representative democracy and its connections with the concept equality. The next section will review women representation from a comparative perspective, showing the current situation of women in Parliaments, to then assess the impact of different electoral systems. Then, one of the most recurrent measures to improve women representation will be reviewed: gender quotas.

The previous theoretical analysis will be the basis to analyse the case of Chile and its most recent electoral reforms. I will present the current situation of women in Chilean parliament and how did the latest reform approached this issue, in order to make a conjecture of what can we expect for future elections. Finally, the conclusion reinforces the importance of a greater women representation -and therefore the potential impact of gender quotas-, but also underlines that isolated measures are not enough to guarantee this goal. For the Chilean case, we confirm our hypothesis regarding the likelihood of a positive impact for future female membership on the Congress. However, this expectation should be mitigated by acknowledging that some of the expected effects might take some time and will still face some resistance before fully transform the political scenery.

II. REPRESENTATIVE DEMOCRACY AND EQUALITY

Our common notion of representative democracy is based on the power of citizens to select their representatives so that they can make the decisions for their constituencies, resting on a free and fair system of elections to select those who are going to act as representatives. This simple model, however, hides several tensions between the concept of democracy and representation. We need to account for a much more complex mechanism of representation if we really want to satisfy a robust standard of political legitimacy.

One of these tensions must deal with the influence of structural inequalities as barriers to the concept of equality and the monitoring process that lies on the foundations of representation. In this sense, structural inequalities challenge the conventional view over representation in terms that “those whom they disadvantage often cannot, by virtue of their position in the hierarchies structural inequalities define, authorize representatives and/or hold them to account”.² Structural inequalities can therefore translate into either formal or informal exclusion from participation in

1 According to UN Population Division, women population worldwide reached a 49.55% in 2009.

2 HAYWARD (2009), p. 113.

elections or, most commonly, “into a lack of access to the organizational and financial resources needed to back candidates, mount successful electoral campaigns, and effectively hold representatives to account”.³

Regarding gender, this way of understanding representative democracy can help explain male-dominated legislatures, even in countries that are supposed to have gone over the patriarchal model of society. Women are equally considered under the law, but the long standing asymmetries in access to resources and political opportunities, many times built into the core structures of political parties, undermine their real possibilities of being part of legislatures.

One of the feminist strategies to account for these obstacles has been distinguishing between formal and substantive equality. Under the liberal notion of formal equality -likes should be treated alike-, also known as symmetrical equality;⁴ equal treatment is understood merely as exclusion of “less favourable treatment”, which has been linked to a procedural justice with no attachment to any particular outcome.⁵ Therefore, is not surprising that “policies based on these premises will tend to preserve the status quo, the power imbalances in society, since they tend to be unaffected by the social context within which they operate”.⁶ On the other hand, the model of substantive equality recognizes that there are differences that might be due to past discrimination and social attitudes and seek to prevent its perpetuation and disadvantages arising from them.⁷ There are different ways of conceptualizing substantive equality,⁸ but for the purposes of this article the important effect is that “if a substantive as opposed to a formal equality approach is adopted, policies which may lead to structural reform, including the use of affirmative action, can be justified”.⁹

In sum, while formal equality is satisfied if law treats persons alike, substantive equality accounts for whether the law itself is causing an increase or decrease in inequality in practical terms, taking into consideration social and cultural practices, as well as institutions and rules that may look neutral, but could produce a systematically discriminatory effect.¹⁰

Similarly, the simplistic notion that freely elected representatives should be enough to guarantee the representation of every interest, may be contested under

3 HAYWARD (2009), p. 113.

4 FENWICK (1998), p. 507.

5 BARNARD and HEPPLER (2000), pp. 562-563.

6 FENWICK (1998), p. 507.

7 FENWICK (1998), p. 508.

8 Substantive equality can be approached from the perspective of: (i) equality of results (dealing with apparently equal treatment or indirect discrimination), (ii) equality of opportunity; (iii) equality as auxiliary to substantive rights; and (iv) a broad value driven approach. BARNARD and HEPPLER (2000), pp. 564-567.

9 BARNARD and HEPPLER (2000), pp. 564-567.

10 WILLIAMS (2009), pp. 53-72.

alternative models of democracy. The aggregative notion of democracy rest solely on the add-up process of pre-existing preferences and interests of voters; by contrast, under a deliberative notion of democracy “the purpose of democratic politics is to bring people together to form a political community in which they can seek a way forward”.¹¹ Under an aggregative model, representatives just put forward the interests of their constituencies, while under the deliberative model representatives are participants of a process of deliberation, bringing their experience and expertise, but where their ideas and perception of interests can change.

This can also be approached by disentangling the concept of representation. Since Pitkin,¹² it is recognized that political representation comprehends multiple dimensions, including a formal aspect, a symbolic one, a descriptive and a substantive element. The formal dimension refers to the rules and procedures according to which representatives are chosen; the symbolic aspect points to the feelings of being fairly represented; the descriptive dimension or *representativeness* is defined as the similarity between representative and represented; while the substantive representation or *responsiveness* focus on the outcomes or the congruence of representative’s actions with the interests of its represented. A complete picture of women’s political representation must integrate all these different dimensions and consider the close interconnection between them.¹³

I will come back to some of these concepts in order to analyse the representation of women in today’s Parliaments, particularly to evaluate the impact of gender quotas as measures that intend to correct the under representation of women.¹⁴ However, it is important to emphasize that when analysing women’s provisions in electoral laws, the discussion must be framed beyond traditional models of merely descriptive representation or formal equality. If we really want to account for the complexities of political representation and develop the conditions towards legitimate gender equality, we must consider the effects of structural inequalities, and consequently examine the requirements to achieve an integrated notion of women’s representation.

III. WOMEN REPRESENTATION IN COMPARATIVE PERSPECTIVE

To have an overview of women representation in Parliaments it is useful to look at the comparative perspective around the world. This will not only allow us to make a diagnostic, but also to identify certain trends and extract which are the institutional factors that may produce a difference in terms of women representation. With this

11 WILLIAMS (2009), p. 60.

12 PITKIN (1967), pp. 209-288.

13 SCHWINDT-BAYER and MISCHLER (2005), p. 423.

14 Particularly, the distinction between descriptive and substantive representation will be useful to analyze what we mean by impact of gender quotas. See section III c).

objective, I will first show the current situation of women in Parliaments, in order to then analyse the influence of different electoral systems and the arguments for and against gender quotas.

a) Women in Parliaments

The following graph shows the current situation of women in Parliament, both in a world average and classified by regional averages:

WORLD AVERAGE			
BOTH HOUSES COMBINED			
Total MPs	46'149		
Gender breakdown known for	45'670		
Men	34'920		
Women	10'750		
Percentage of women	23.5%		
SINGLE HOUSE OR LOWER HOUSE		UPPER HOUSE OR SENATE	
Total MPs	39'292	Total MPs	6'857
Gender breakdown known for	38'731	Gender breakdown known for	6'760
Men	29'731	Men	5'189
Women	9'179	Women	1'571
Percentage of women	23.6%	Percentage of women	23.2%
REGIONAL AVERAGES			
	Single House or lower House	Upper House or Senate	Both Houses combined
Nordic countries	41.4%	---	---
Americas	28.6%	28.1%	28.5%
Europe - OSCE Members countries Including Nordic countries	27,3	26,2	27,1
Europe - OSCE members countries Excluding Nordic countries	25,9%	26,2%	26,0%
Asia	19.7%	16.0%	19.4%
Asia	19.7%	16.0%	19.4%
Arab States	18.3%	12.6%	17.5%
Pacific	15.5%	37.1%	17.9%

Regions are classified by descending order of the percentage of women in the lower or single House

Source: IPU (2017)

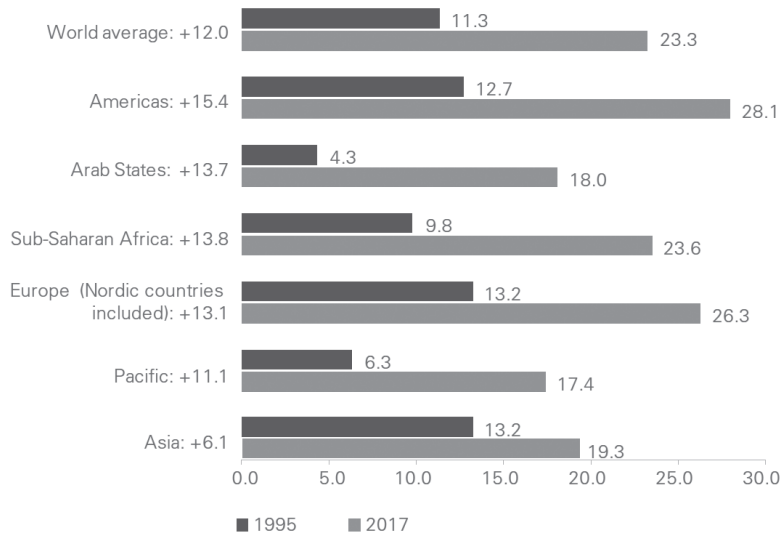
According to these data, the presence of women in world Parliaments reach only a 23.3%, even though they constitute half of the world population. In a world-wide scale, this percentage is almost the same in lower or single houses than in upper houses of the Parliament, having a slightly less presence in the latter. Regarding regional averages, it is surprising that not a single region exceeds a 30% threshold, being America the region with highest women presence, with a 28.1% of women in both houses combined (although the Nordic countries shows a very good level of 41.7% of women in their single houses, but they are considered part of the region

of Europe) . On the other hand, the Pacific region has the lower presence of women with only 17.4% on average on both houses, with the rare characteristic that women presence is significantly higher in upper houses.

These statistics are worrying. However, it is also necessary to look at the evolution of these numbers, in order to assess if there has been any improvement on women representation over the last years. The following figure shows the world and regional averages of women in both houses of parliament, at 1995 and 2017:

World and regional averages of women in parliaments, 1995 and 2017

Situation in July 1995 and January 2017, both houses combined. Regional ranking in the order of the percentage point change.



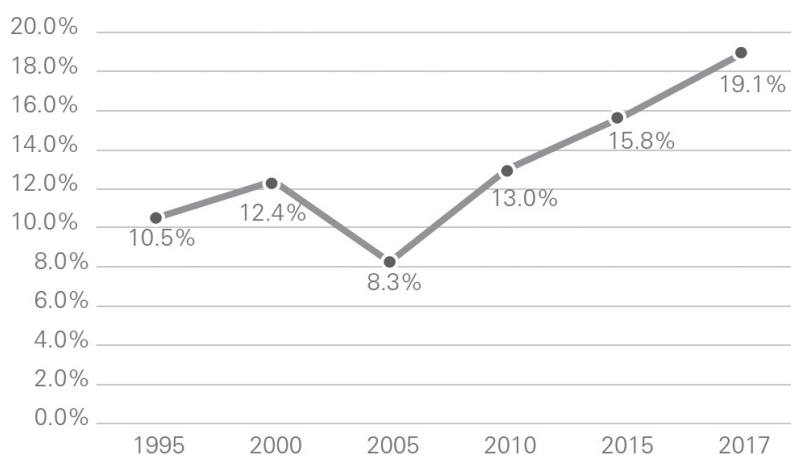
Source: IPU (2017)

As we can see, the evolution is positive in every region. This confirms there has been an improvement, but it is still not enough. A good example to examine would be the case of America, since they improved their percentage on 15.4 points, which implied becoming the region with the highest representation of women in 2017.¹⁵

Another way of looking at women presence in Parliaments is to examine the role they play inside legislative houses, since political leadership may be a useful tool in itself to further promote gender equality. A way of testing this is looking at how many women holds a position of power inside parliaments. The next figure shows the evolution of women holding the role of speakers:

¹⁵ According to the Inter-Parliamentary Union, America “has been at the forefront of the movement towards gender parity”, driven mainly by the efforts of Latin America, where several countries have passed legislative measures to go forward on women representation. INTER-PARLIAMENTARY UNION (2017), p. 7. A more detailed analysis of the Latin America situation can be found in HTUN (2002).

Progress of women speakers, 1995 - 2017



Source: IPU (2017)

Again, the percentage of women speakers is quite low, reaching only a 19.1%. Nevertheless, the improvement has been considerable, since in 1995 there were 10.5% of presiding officer posts held by women, which means that in little more than twenty years this percentage has almost doubled.

b) Differences across electoral systems

The factors influencing the presence of women in Parliaments are multiple. There are cultural and sociological elements influencing the attitudes of citizens towards gender equality; there are also structural factors, such as economic, labour, education and other imbalances that affect the access to political opportunities; and institutional factors, reflected on the rules and design of institutions that distributes power between men and women. In this section, I am going to focus on a particular institutional factor -electoral systems- in order to analyse how this choice may influence women representation in Parliaments.

It is not surprising that the specific type of electoral system we choose may influence women representation in legislatures, since the electoral system is precisely the set of rules determining the access to political power, its distribution and its limitations. There is a wide range of literature available on this topic, and the general consensus is that proportional representation systems favours the presence of more women at Parliaments compared to majoritarian or mixed electoral systems.¹⁶ The following table shows the percentage of women's representation in each of the electoral systems in a sample of 175 nations worldwide:

16 NORRIS (2005), NORRIS (2006), JOHNSON and MYERS (2017). For a detailed analysis of the impact of different type of electoral systems in different national contexts, see TREMBLAY (2008).

Table Women's representation by type of electoral system, 2005

	<i>% of women in the lower house of parliament, 2000</i>	<i>Number of nations</i>
<i>All majoritarian</i>	10.5	72
Alternative vote	8.5	4
Block vote	7.4	10
Second Ballot	12.0	20
First-past-the-post	11.4	35
Single non-transferable vote	3.1	3
<i>All combined</i>	13.6	36
Combined independent	12.6	27
Combined dependent	16.8	9
<i>All proportional</i>	19.6	67
Single transferable vote	11.3	2
Party list	19.9	64
Total	14.3	175

Note: The percentage of women in the lower house of national parliaments 2005, 175 nations worldwide. Note that six nations did not hold any elections. For the classification of electoral systems see Norris (2004).

Source: NORRIS (2006), p. 201.

According to this study, women would be almost twice as likely to be elected under a proportional electoral system (19.6%), compared to their opportunities under a majoritarian system (10.5%). The mixed systems represents a middle point (13.6%), being more likely to have more women elected as “more proportional” is the system. Norris acknowledge that simply verifying these numbers at a given point is not enough to draw a robust conclusion, which is why she also analysed the differences between mixed electoral systems (showing women are usually elected in higher percentages from proportional lists rather than from single-member districts) and the difference after a reform on the electoral system (women representation increased when switching to proportional systems).

One of the main reasons why a proportional electoral system may benefit women consists on the party incentives it generates. Under a proportional system, parties have the incentive to present a balanced list of candidates, including all major social cleavages, since in a multi-member district several candidates can be elected and each of them will appeal to a specific set of voters. On the other hand, under a majoritarian system, such as first-pass-the post for example, the party will likely have the strategy of presenting a candidate maximizing its chances of winning.¹⁷ That is why single-member districts under majoritarian rules, are often described as a zero-sum game, while proportional nominations can be considered as a positive-sum game.¹⁸

¹⁷ NORRIS (2006), p. 205.

¹⁸ JOHNSON and MYERS (2017), pp. 12-13.

It has also been found that proportional electoral systems tend to lower barriers to smaller parties, which benefit women and other minorities, as long as they are usually better positioned in smaller parties that in traditional male-dominated parties. Moreover, as smaller parties put forward women, large parties tend to follow, due to a macro-contagion effect.¹⁹ Additionally, there are some studies that show that proportional systems may slightly benefit challengers against incumbents, compared to majoritarian systems (although in both systems there is a high strength of incumbency).²⁰ Notwithstanding these benefits, there are important variations within each type of electoral system, as the following figure shows:

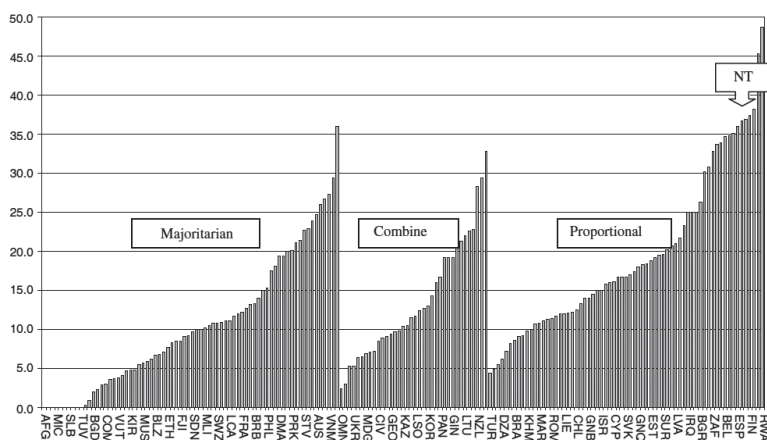


Figure Countries classified by electoral systems and ranked by the percentage of women in the lower house of parliament, 2005. *Source:* Inter-parliamentary Union (2005).

Source: NORRIS (2006), p. 204.

Another way of showing this variation is looking at a selected sample of countries under proportional electoral system and comparing its respective percentage of women legislators or its rank in world women’s representation:

Table – Selected Countries with List Proportional Representation Electoral Systems and the Representation of Women in the Lower House, June 2016

Country	Rank in the World for Women’s Representation	Proportion of Women Legislators (%)
Sweden	5 th	43.6
Finland	10 th	41.5
Norway	15 th	39.6
Denmark	21 st	37.4
Chile	118 th	15.8

Source: VIRGINT (2016), pp. 6. The highlight was added.

19 JOHNSON and MYERS (2017), pp. 12-13.

20 NORRIS (2006), p. 206.

As we can see, Chile is far from having the percentage of women legislators as other Nordic countries, even though it has a proportional electoral system.²¹ Therefore, the type of electoral system is not a sufficient condition for gender equality in parliaments, or more accurately, it is necessary to break down each electoral system and look at the impact that different elements of it may have.

Other features of the electoral design that are relevant include district magnitude, party magnitude, the formula used by the electoral system, the ballot structure (open or closed lists), term limits, dominant ideologies, electoral history and application of incentive measures. Regarding district magnitudes, the bigger the mean of candidates that is elected by district, it will be more likely that women turn out to be elected, since “if only one candidate is to be nominated it will often be the male incumbent”.²² Similarly, the bigger the party magnitude -number of candidates elected from a party in a given district- the better chances for women. Although party magnitude is a feature that can only be calculated post elections, it will be bigger if the districts are large and the number of parties winning seats is low.²³

The formula of the electoral system points to how the winner of a seat is determined. If parties have a bigger threat of losing seats to competing parties, it is likely they will react by offering a wide spectrum of candidates, including women. Hence, if the formula leads to multiple parties in the legislature, similar parties will be elected and therefore it will be easier for voters to switch among them, so parties will probably offer a more balanced option of candidates. Nevertheless, the more parties are elected, the smaller the party magnitude, which as we explained above, goes against women candidates. Also, if the electoral formula leads to less “wasted” votes, parties will have an incentive to appeal to a great spectrum of voters, offering diverse candidate profiles.²⁴

The ballot structure also play a role on women’s possibilities to be elected, in so far it defines how voters can express their choice. Open lists -candidate-centred systems- may give women a better chance of getting elected, in contexts where the attitude of the electorate is more favourable to women than in parties’ hierarchies. However, in rigid closed lists -party-centred systems-it might be easier to apply gender quotas.²⁵

21 More accurately, the “binominal” electoral system should be classified as a *sui generis* electoral system, since it does not exactly fit the description of neither a majoritarian (it does not only benefit the party or candidate that got more votes) nor a proportional electoral system (it can exclude a candidate that nevertheless got more votes than the one elected). However, conceptually is closer to proportional systems, with the peculiarity that it assigns only two seats per district. In this sense, it is an electoral system with the minimum conditions to be identified as “proportional”, notwithstanding the criticized effects it has on representation.

22 LARSERUD and TAPHORN (2007), pp. 10-11.

23 A research studying municipal elections in Peru, found that the most relevant factors towards female electoral success were party magnitude of the largest party and the application of quotas, while surprisingly district magnitude had no impact. SCHMIDT and SAUNDERS (2004), pp. 730-731.

24 LARSERUD and TAPHORN (2007), pp. 10-11.

25 LARSERUD and TAPHORN (2007), pp. 10-11.

Other features that are also mentioned are term limits, the left/right ideology and the history of women's access to the electoral system. Regarding term limits, limitations to renew mandates should open up seats to newcomers such as women.²⁶ The influence of ideology may also play a role, but although it was believed that left parties were more prone for gender equality, non-left parties are increasingly nominating female candidates.²⁷ Regarding the history of the electoral system, it has been found that the longer the women has been visible -as voters and candidates- the more likely is that they might be elected.²⁸ Finally, the implementation of affirmative action strategies such as gender quotas can have a crucial role on the representation of women.

c) The case for gender quotas

There is an extensive literature available on gender quotas, since it is probably the most common and extended measure to promote women participation in legislatures. Generally, we can distinguish three different types of quotas:

- (i) Reserved seats;
- (ii) Legislative quotas or ensured percentage of candidates; and
- (iii) Political parties' quotas or voluntary percentage of candidates.²⁹

The first type of measure separate a number of seats only for women and it has usually being applied in Asia, Africa and Middle East; the second one consist on electoral reforms that establish a compulsory number of women candidates and it has been applied in Latin America, Africa and Europe; and the third one is when that percentage is voluntarily adopted by political parties in their statutes and it has been applied in several countries across the world.³⁰ More than a hundred countries across the world has some sort of gender quota.³¹ The following table gives an overview of those quotas in 2016 parliamentary renewals. The table on the left show the number of chambers, among those that had renewals on 2016, that have voluntary, legislative, either types of quotas or none. The table on the right show the proportion of women elected in each case.

26 Although scholars warn that this expectation should also consider the partisanship variable. In the US, the evidence from States legislatures suggest that Democrat women benefit from term limits, while Republican women do not. O'REGAN and STAMBOUGH (2017).

27 TRIPP and KANG (2008), p. 344.

28 TRIPP and KANG (2008), p. 344.

29 Dahlerup and Freidenvall classify quotas according to two dimensions: the first dimension distinguishes between legal quotas and voluntary quotas; the second dimension is based on the level of the electoral process were the quota is applied and so it distinguishes aspirant quotas (potential candidates), candidate quotas and reserved seats quotas. Combining both dimensions, these authors distinguish six types of quotas. DAHLERUP and FREIDENVALL (2009), pp. 29-52.

30 Ríos (2008), p. 16.

31 A detailed description of the countries applying quotas all over the world and the different type of quota applied can be found at the data base of quota project (<http://www.quotaproject.org>), a jointly initiative by International IDEA and Stockholm University.

Types of quotas applied in the 2016 parliamentary renewals

A. Number of chambers renewed and types of quotas applied

Quota	Number of chambers per quota type		
	Lower/ Single House	Upper	Total
Legislated	14	0	14
Legislated+voluntary	4	1	5
Voluntary	11	5	16
None	20	11	31

B. Proportion of women's representation relative to quotas applied

Quota	Number of chambers per quota type		
	Lower/ Single House	Upper	Total
Legislated	25.5%	N/A	25.5%
Legislated+voluntary	29.2%	38.0%	31.5%
Voluntary	24.0%	20.0%	23.3%
None	15.5%	19.0%	16.3%

Source: IPU (2017)

Although gender quotas have been extensively applied across the world, there is still a debate on its legitimacy and efficacy.³² In brief, the main arguments against them are that they would be non-democratic measures (against free elections) and discriminatory against men (against equality), that they could bring legislators lacking the necessary legitimacy (when established without connection to a constituency), that they would be offensive against women or even against female convenience (in the sense they could turn into a ceiling for women representation), and that ultimately they don't solve the underlying conditions of gender inequality.³³

Regarding the first objection, it is worth remembering that Venice Commission have explicitly recognized that "legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis". According to Venice Commission, this principle may be implemented so as to admit: (i) obligations to ensure a composition of candidates' lists alternating men and women or to ensure a balanced percentage of women and men amongst candidates of the same party in single-member constituencies elections; and (ii) the refusal to register lists which don't respect such an alternating composition or dissuasive sanctions in case of non-respect of this obligation.³⁴

Additional reasons in favour of gender quotas could be classified into justice, pragmatic/utility and difference arguments.³⁵ Among the first type of arguments are those that justify this type of affirmative measures in order to compensate for historical gender discrimination. Pragmatic arguments instead, emphasize on the electoral

32 Krook frames the gender quota debate around four distinct narratives that could be used to support them: (i) women mobilizing for quotas to increase women's representation; (ii) political elites recognizing strategic advantages for pursuing quotas; (iii) quotas being consistent with existing or emerging notions of equality and representation; and (iv) quotas supported by international norms and spread through transnational sharing. According to her, each narrative have conflicting actors and motivations for supporting quotas, which is why they should be correctly identified in each specific case. KROOK (2007).

33 WILLIAMS (2009), pp. 54-56.

34 VENICE COMMISSION (2013), pp.43.

35 ALDEGUER (2016), pp. 23-28.

or strategic advantages that woman candidates could bring to political parties.³⁶ We could include among this type of arguments those who highlight the international support for gender quotas.³⁷ Lastly, difference arguments are based on women bringing “a different style and approach to politics which will change it for the better, an effect that is of benefit to all”.³⁸

Concerning the objection about quotas not solving the underlying conditions of gender inequality, it could be refuted if we consider that the Parliament is precisely the institutional place where those inequalities could be tackled through public policy. This brings up the issue of the impact of gender quotas. Latin America is a particularly interesting region for analysing gender quotas effects, since it is a region that has extensively enforced these quotas and they have been in place long enough to offer a good source of data. If we have a quick look over the current situation on the region, the general picture is the following:

Gender Quotas in Latin American Parliaments

Country	% Women Chamber/Senate	Year of election	Gender Quota (% and year enacted)	% Women before quota
Argentina	38.9% / 41.7%	2015	Y (30% - 1991)	6%
Bolivia	53.1% / 47.2%	2014	Y (50% - 1997)	11% / 4%
Brazil	10.7% / 14.8%	2014	Y(30% Chamber – 1997)	7%
Costa Rica	36.8%	2014	Y (40% - 1996)	14%
Colombia	18.7% / 21.6%	2014	Y (30% - 2011)	12.7% / 15.7%
Ecuador	38%	2017	Y (50% - 1997)	4%
Mexico	46.2% / 36.7%	2015	Y (40% - 1996)	17% / 15%
Paraguay	13.8% / 20%	2013	Y (20% - 1996)	3% / 11%
Peru	27.7%	2016	Y (30% - 1997)	11%
Uruguay	20.2% / 29%	2014	Y (33% - 2009)	11.1% / 9.7%
Venezuela	15%	2015	N (repealed in 2000)	-
Average	29% / 30,1%	-	-	9,68% / 11,1%

Source: Own elaboration with data from IPU, Quota Project and National Legislatures' websites.

It is difficult to extract decisive conclusions from these data, because as we explained before, the design of each quota can vary, as well as its interaction with the specific electoral design. The simplistic temptation of looking at the percentage of women before legislative quotas were established and compare it with the current percentage of women at legislatures may be misleading, since in most of the countries the quotas were established several years ago and multiple factors may have played a role during that period of time.³⁹

36 Regarding the criticism considering quotas against meritocracy, a recent study in Sweden have shown that the opposite could be the case: quotas can actually increase the competence of politicians, displacing mediocre men candidates or leaders. BESLEY et al (2017), pp. 2225-2240.

37 KROOK (2008), pp. 27-59.

38 LOVENDUSKI, quoted by ALDEGUER (2016), p. 27.

39 If the quota was established close enough to the next election, it could offer a chance to develop research using the methodology of “difference in difference”, which seek to compare two periods

However, there are some Latin-American cases that are worth studying in more detail, such as the successful experience of Bolivia which is a country that notwithstanding its low levels of GDP per capita (an often used proxy for development levels which is supposed to positively influence women representation) it has almost reached parity. On the other hand, the case of Brazil is disappointing, considering that even though it has a legislative quota of 30% for its lower chamber, its level of women representation remains the lowest of the region. Venezuela also offers an interesting case study: in 1993, before the legislative quota, the percentage of women representation was only 5.9%; in 1997 they established a 30% legislative quota which increased this percentage to 12.1% in 1998 elections; but short after, in 2000, they repealed this quota and women representation dropped to 9.7% the following elections.

The key lesson we should keep in mind when working with comparative data on gender quotas, is that its impact is highly context-dependant and its effects cannot always be anticipated. In this sense, the research shows the effect of quotas can vary depending on the characteristic of electoral system and the details of its implementation. Particularly important are features such as: proportional vs. majoritarian electoral systems, open vs. closed lists, the size of district magnitude, number of parties, duration of quotas, rules on rank order, sanctions for its infringement, among others.⁴⁰

Nevertheless, an important part of the literature agree that gender quotas can be regarded as a “fast-track” towards gender equality,⁴¹ in contrast with a model of incremental empowerment of women.⁴² However, there are other authors that have questioned the real efficacy of this mechanism, stating that “quotas may fast-track women’s representation, but they do not fast-track equality or democracy”.⁴³ In this context, a useful distinction to help us understand the impact of quotas is the difference we mentioned earlier between descriptive and substantive representation. Descriptive representation refers to the mere presence of women at legislatures, while substantial representation points out to the promotion of women’s interests in the legislative process.⁴⁴ While the “first generation” of studies on quotas focused

of time close enough so that they could only differ on the existence of the quota. Colombia and Uruguay may be good candidates for this type of research.

40 TRIPP and KANG (2008), pp. 343-344; HTUN and PISCOPO (2014), pp. 12-14.

41 DAHLERUP and FREIDENVALL (2005), pp. 26-48; TRIPP and KANG (2008), pp. 357-358.

42 According to these authors, this contrast can be also framed as “quotas from above” vs. “quotas from below”. The Scandinavian case represent the incremental model, where quotas were established after a history of gradual integration of women and so were imposed “from below”; while in countries where there was a bigger inequality, quotas were imposed “from above”, as in India, Pakistan and others. DAHLERUP and FREIDENVALL (2005), p. 20.

43 HASSIM (2009), p. 212. In a similar sense, SQUIRES (2003).

44 FRANCESCHET (2008), pp. 61-96.

mainly on how quotas influence the increase number of women in legislatures (representativeness), a “second generation” of research is now examining the impact of quotas on policy-making (responsiveness), public opinion and mass mobilization (symbolic representation).⁴⁵

This last concern, questions whether the fact of having more women in legislatures can be linked to a better representation of women, which requires analysing if “women’s issues” are better approached by having women legislators. There are a number of studies that research on the impact of quotas “beyond numbers”, looking if there is an impact, for example, over the legislation of women’s rights, child care, reproductive rights, laws on violence against women, etc.⁴⁶ Scholars have found mixed effects on this regard: even though increased women participation can improve substantive representation as process (more women’s issues getting into the agenda), not necessarily it is improved as outcome (there are no more approved laws on women’s issues).⁴⁷ They explain this by the double influence of a “label effect”, against which women would react by distancing themselves from women’s issues; and a “mandate effect”, which would impose a special obligation to represent these concerns.⁴⁸

Another line of research focus on the quality of women elected,⁴⁹ and on the effect of more women legislators on other areas, checking for example the impact on economic growth,⁵⁰ on corruption levels,⁵¹ and on government expenditure on health and social welfare.⁵² Regarding symbolic representation, the results are also be ambivalent;⁵³ some research have found that increased presence of women legislators lead to better opinion congruence with masses,⁵⁴ while others found no proof of attitudinal or behavioural effects on overall political engagement.⁵⁵

In sum, the available evidence supports that while gender quotas are likely to be a “fast-track” towards increasing women descriptive representation, they are

45 KROOK and ZETTERBERG (2014), p. 5.

46 There are also critics to this approach, who claim that this line of research ignores the differences among woman, overlooks the efforts of men on these policy issues and dismiss substantive representation on other realms outside policy approved by Parliaments. In this sense, CELIS et al (2007).

47 FRANCESCET and PISCOPO (2008) and HTUN and PISCOPO (2014), pp. 24-25.

48 FRANCESCET and PISCOPO (2008)

49 BALTRUNAITE et al (2012) and BESLEY et al (2017).

50 JAYASURIYA and BURKE (2012)

51 For a critical perspective on this approach, see TORO (2012).

52 CHEN (2010)

53 FRANCESCET, KROOK and PISCOPO (2012), pp. 155- 228.

54 For the Indian context see LINDGREN, INKINEN and WIDMALM (2009).

55 For the Latin American context see ZETTERBERG (2009).

not necessarily a sufficient condition to improve substantial and symbolic representation, which also depends on multiple other factors, including full enforcement of institutions of democracy and human rights.⁵⁶

IV. CHILEAN ELECTORAL REFORM

In this section I will analyse the specific impact of the recent Chilean electoral reform on women representation. In order to do so, I will first present the current panorama of women in Chilean Parliament, then I'll go through the provisions of the reform that may have a gender impact, and lastly, I'll suggest what can we expect for the future once these new provisions are in force.

a) Women in Chilean Parliament

The current situation of women representation in 2017 Chilean Congress is the following:

	Chamber of Deputies	Senate
Total seats	120*	38*
Total Nr. women	19	6
% Women	15.8%	15.8%
Legislative term	4 years	8 years
Constituencies	60 districts**	19 circumscriptions**
Electoral system	Proportional lists (binominal system)***	

* For the 2018 legislative period deputies seats will increase to 155 and senators to 50.

** In 2018 there is going to be 28 deputies' districts and 15 senatorial circumscriptions.

***The new electoral system will be used to renew the Chamber of Deputies and half of the Senate that will begin its functions in March 2018.

Source: Own elaboration

From this table we can conclude that Chile is still far from reaching the minimum levels of women representation.⁵⁷ However, it is not enough to look at the current situation of women that were elected to fully understand the Chilean case. It is also useful to examine the evolution of women candidates along the years. The following table shows this information for the Chamber of Deputies since democracy was restored in Chile:

⁵⁶ For an account of other gender equality policies see KROOK and NORRIS (2014); HTUN and PISCOPO (2014), pp. 14-17.

⁵⁷ The minimum thresholds set as goals for women participation are usually around a 40%. Only in some few cases a strictly parity representation is pursued (50%). However, in the first phases of legislative measures a 30% threshold is established in order to reach a "minimum critical mass", as defined by the UN. ALDEGUER (2016), pp. 190-192.

Number and percentage of women and men candidates to Chilean Chamber of Deputies from 1989 to 2013

Election	Women	%	Men	%	Total
1989	34	8.1	385	91.9	419
1993	51	13.3	333	86.7	384
1997	84	19	358	81	442
2001	54	14.2	327	85.8	381
2005	63	16.3	323	83.7	386
2009	72	16.8	357	83.2	429
2013	91	19.4	379	80.6	470
Average	64.1	15.4	351.7	84.6	415.9

Source: Translation of the table made by Morales et al (2014), pp.15, elaborated with data of www.servel.cl

This reminds us the crucial role of parties as “gatekeepers” for political participation, since they are the ones that determine who is presented as candidate. As we can see at the table above, the percentage of women candidates has been increasing over the years, but until last election it still represented only 19.4% of the candidates vs. 80.6% of men candidates. This huge difference is even more worrying, considering that three of the main political parties with parliamentary representation had voluntary gender quotas in their statutes.⁵⁸

b) Women representation provisions at electoral reforms

The electoral reform was structured mainly by three laws approved during 2015 and 2016, which fundamentally altered Chilean political and institutional landscape.⁵⁹ The scope of the reforms were varied, but along the replacement of the electoral system, a revised framework for political parties and new funding rules, there were also some gender provisions. In fact, the legislative bill introducing the project that replaced the electoral system highlighted that these provisions' purpose was precisely to increase the inclusion and representativeness of the electoral system.⁶⁰ The approved provisions on this realm are the following:

58 This was the case of the Christian Democratic Party, that established a 20% quota for women on its electoral lists; the Socialist Party, which statutes ruled that neither of the sexes shall be represented on electoral lists by more than 60% and neither sex shall occupy more than 70% of the seats in parliament; and the Party for Democracy which also established that neither men nor women should be represented on electoral lists by more than 60%. However these provisions were weakly enforced in practice. HELGESEN (2006), p. 8 and RÍOS (2008), pp. 18-24.

59 Ley N° 20.840, Ley N° 20.900 y Ley N° 20.915.

60 Bulletin N° 9326-07, 22nd April 2014, p. 10.

Gender electoral provisions	
Art.1° b) Law N° 20.840 May 2015	<p>“From the total candidates to senators or deputies declared by a political party, whether or not under political pacts, neither men candidates, nor female candidates shall exceed 60% of the total candidates. This percentage will be mandatory and it will be calculated independently from the procedure to name the candidates. The infraction will turn into the rejection of all the candidates of the party that did not comply”.</p> <p>* According to the transitory provisions, this special rule will only be applicable for the parliamentary elections of 2017, 2021, 2025 and 2029.</p>
Art.4° 3) Law N° 20.840 May 2015	<p>“The political party that decides to submit itself to the system of primary elections for the parliamentary periods of 2017, 2021, 2025 and 2029, they can only submit to this procedure up to 40% of the candidates for deputies or senators which will be presented for the definite election, whether they go in an electoral pact or not”.</p>
Art. 2° 2) Law N° 20.840 May 2015	<p>“Only for the parliamentary elections of 2017, 2021, 2025 and 2029, if female candidates for senators or deputies are elected, their political parties will be entitled to 500UF* for each of them. With these resources, the political parties may implement programmes and develop activities to promote inclusion and women participation in politics”.</p>
Art. 2° 3) Law N° 20.840 May 2015	<p>“For the parliamentary elections of 2017, 2021, 2025 and 2029, the female candidates to senators or deputies will have the right to ask the State for an additional reimbursement of its electoral expenses, of 0.0100 UF** for each obtained vote, following the procedure established in this law”.</p>
Art. 3° 2) Law N° 20.900 April 2016	<p>[about state funding to political parties]</p> <p>“(…) At least 10% of the state funding given to each political party shall be destined to promote the political participation of women”.</p>
Art. 1° 2) Law N° 20.915 April 2016	<p>[about political parties activities]</p> <p>“(g) Promote an inclusive and equitable political participation of women”.</p>

* Economic measure adjustable over time. At November 2017, 500 UF are equal to €19,000 app.

** Equivalent to approximately an additional€0.5 for each vote obtained.

Source: Own elaboration.

The first thing we should highlight is the establishment of a legislative gender quota, which will ensure at least a 40% of women candidates. There are three core characteristics of this quota: (i) its temporal nature, it will be enforced only until parliamentary elections of 2029; (ii) its gender neutral construction, since it is written so as to ensure that neither men or female candidates falls below the threshold; and (iii) its strong sanction in case of infraction, in which case the whole list of candidates will be rejected.

However, the establishment of this legislative gender quota did not follow an uncontested procedure. Even though, several NGOs celebrated this initiative during the hearings before the Committees,⁶¹ once the legislation was approved by both

61 Among them Corporación Mujeres Líderes para Chile, Corporación Humanas, Asociación de Organismos No Gubernamentales Acción AG, Comunidad Mujer, Central Unitaria de Trabajadores and Observatorio de Género y Equidad. The complete history of the Law N° 20.840 can be reviewed online on <http://www.bcn.cl/historiadelaley/nc/historia-de-la-ley/3997/>

Chambers of the Congress, a requirement was presented before the Constitutional Court, alleging that these norms were not only against equality before the law, but also against freedom of association and the autonomy of political parties due to the restrictions imposed on the system of primary elections. The Executive replied emphasizing that these new provisions were establishing an affirmative action, designed to compensate for structural barriers against women along electoral processes.

The Constitutional Court ruled that these new rules on gender quotas were not against the Constitution and supported the concept of affirmative action as a measure designed to ensure an effective equality before the law, for those groups historically under represented, such as women. Additionally, it highlighted that the chosen mechanism did not reserved seats for women and only established a quota for candidates; that the mechanisms of primary elections was not affected, since it remained voluntary and could still be used for the 40% of candidates; that the quotas are temporal measures; and that the limitation on primary elections was needed to ensure that the gender quota is afterwards respected.⁶² This ruling was later reaffirmed on the mandatory constitutional control of this legislation.⁶³

For further clarification, the Chilean electoral management body (SERVEL) enacted an instructive on April 2017, in order to specify how these provisions are going to be enforced in the next parliamentary elections of November 2017.⁶⁴ The instructive explained that the legislative gender quota is not applicable to primary elections, unless otherwise established in the parties' statutes, but that only 40% of the definitive candidates can be chosen through this mechanism of primary elections, precisely to ensure that parties can afterwards comply with the quota established for the definitive elections. It then specified how is this 40% going to be calculated for parties present in some regions, in all regions and going under electoral pacts. For definitive elections, it clarified that the maximum of 60% must be fulfilled by each political party, whether or not they go in electoral pacts, and notwithstanding the mechanism of nomination of its candidates. One polemic clarification set out by this instructive was that it made explicit that both percentages –40% limit for using primary elections and 60% gender quota for definitive ones– will be calculated separately for deputies and senators. Finally, the Instructive ratifies the sanction in case of non-compliance –the rejection of all the candidates presented by the party– but gives parties a short period to amend their candidates' lists, in case they are objected.

It is equally important to notice that the reform did not only establish this legislative gender quota. It also contained a provision explicitly including the promotion of women political participation as one the activities of political parties. Although it

62 *Requerimiento de inconstitucionalidad presentado por un grupo de Senadores en relación al proyecto de ley que sustituye el sistema electoral binominal por uno de carácter proporcional inclusivo y fortalece la representatividad del Congreso Nacional* (2015), paragraphs 26th to 34th.

63 *Control obligatorio de constitucionalidad del proyecto de ley que sustituye el sistema electoral binominal por uno de carácter proporcional inclusivo y fortalece la representatividad del Congreso Nacional, correspondiente al Boletín N° 9326-07* (2015), paragraphs 29th to 33rd.

64 The Instructive is available at <https://www.servel.cl/instructivo-de-aplicacion-de-porcentajes-de-sexos/>

might be said that these types of provisions do not really give any additional tool for women, it has a symbolic content that it is also important to acknowledge. Finally, there are some funding provisions with gender content, which can have an important instrumental role in order to promote women candidates and to help them build their campaigns. These funding provisions offer specific incentives for political parties and women candidates, with the added advantage that 10% of the State funding must be destined to promote women political participation.

c) What can we expect?

Chilean political parties already had to adjust to these new regulations for the primary elections and for generating their candidate's lists for the next parliamentary election that will take place next November 19, 2017. The first reaction to this new framework already revealed some difficulties. It was not easy for political parties to comply with the gender quota on their candidates' lists. In this context, the President of the Senate said: "we all made a mistake legislating too quickly. It will be necessary to deeply review this law once the election is over and its results are visible. Only then we will be able to know if political parties presented female candidates with real possibilities of being elected or only names to fulfil the quota".⁶⁵ Other politicians have done similar declarations, considering that the quota was a "shot on our own feet", an expression to highlight that it was too high for the reality of some political parties.⁶⁶

Given the high number of male incumbents across political parties, it is not surprising that the first-time application of the quota was more challenging, since it forced political parties to look for competitive female candidates in institutional spaces that were not used to be easily accessible for women politicians. That was precisely the purpose of these provisions. Notwithstanding these difficulties, on the 31st of August 2017, SERVEL certified that all political parties complied with the required gender percentage on their lists of senators⁶⁷ and deputies' candidates.⁶⁸ For the latter, two parties originally did not meet the percentage, but they managed to correct it on time. As a result, 412 female candidates will be running for November's election, more than four times the number of female candidates that were presented for the previous ones.

With this parliamentary election that will renew the Chamber of Deputies and partially renew the Senate, these reforms will be tested in practice. The functioning of the new electoral system will leave behind the so called "binominal system"⁶⁹

65 Andrés Zaldívar quoted in Spanish at <http://www.latercera.com/noticia/tacones-lejanos-la-verdad-la-cuota/>

66 Francisco Parraguez in the same press article.

67 SERVEL Resolution N° 3964, available on https://www.servel.cl/wp-content/uploads/2017/09/RO_3964_acepta_y_rechaza_declaraciones_Senadores_2017.pdf

68 SERVEL Resolution N° 3965, available on https://www.servel.cl/wp-content/uploads/2017/09/RO_3965_acepta_y_rechaza_declaraciones_Diputados_2017.pdf

69 According to this system electors vote for one candidate and the two representatives that are elected are those who obtained the most votes on each list, unless one of the lists is able to obtain the double of votes compared to those of the next most voted list, in which case the two candidates of the

and will implement the proportional system based on the D'Hont model. Strictly speaking, both systems are proportional⁷⁰ and use open lists, which would favour women representation.⁷¹ Yet, the new system significantly alters the magnitude of the constituencies. With the new system, the mean district magnitude is 5.5 for deputies' districts and 3.3 for senators' circumscriptions. With the previous system the district magnitude was always 2. This meant that among the list of a party or a coalition, in most of the cases only one candidate was elected (because the second one was elected from the opposition list). With the new constituencies instead, there is going to be several candidates elected from a party list, which creates the incentive for putting forward balanced lists of candidates with more presence of women and other minorities. Therefore, candidates will not necessarily compete inside their own lists, as it used to happen with the binomial system. Lastly, the reform also included measures regarding the constitution and functioning of parties⁷² that favoured the proliferation of new political parties, which opens an institutional space for groups with higher women presence.⁷³

The previous electoral features plus the gender provisions we already reviewed will most likely translate into a significant increase of elected women in the 2018 Congress. The combination of legislative gender quotas, the funding incentives for political parties, the most likely "contagion effect"⁷⁴ created by small parties with women candidates, and particularly, the bigger mean district magnitude and less competition among the candidates of the same list, should all favour an increase of women descriptive representation. This may be particularly strong for the Chamber of Deputies, since its constituencies are bigger and it will be fully renewed on 2018.

However, it is necessary to take into consideration that usually it takes time to reach electoral equilibriums and therefore the reforms introduced in electoral systems – such as gender quotas and other incentives toward women representation –

winning list are elected. In consequence, the elected candidates are not necessarily the ones that obtained more votes, since the votes in each list are accumulated.

70 For the reasons accounting for the qualification of the binomial system as proportional, see note 21.

71 Although, as we mentioned earlier, closed lists are a better fit to implement gender quotas.

72 Including less requirements to constitute a new political party, by reducing the percentage of the electorate required to be affiliated in order to create a new one; it allows for regional parties, since the previous percentage of affiliates can be obtained in three contiguous regions or in eight discontinuous regions; and it established a minimum of electoral support in order to keep the party functioning.

73 JOHNSON and MYERS (2017), p. 13.

74 MATLAND and STUDLAR (1996) referred to the "macro-contagion effect", when large parties feel compelled to follow small parties' trend of promoting women and minorities. However, other authors, such as VERGE and KENNY (2013), questioned these findings based on empirical and comparative research.

may not be instantaneous.⁷⁵ Moreover, as we examined previously, from the increase on women's descriptive representation it does not necessarily follow and improvement on their substantive or symbolic representation.

V. CONCLUSION

In times of increasing political crisis, it is crucially important to build robust and legitimate political institutions. Regarding Parliaments and the electoral laws behind them, this means we need to ensure they are really representative and respectful of equality. But these requirements are not satisfied with mere declarations of formal equality, free vote and ability to stand as candidate. An exhaustive notion of democracy demands us to work towards integral notions of equality and representation, able to compensate for structural inequalities affecting women and other minorities.

Under this enriched conceptual framework we can understand why in most Parliaments across the world, women are still heavily under-represented. The statistics shows us that this situation is improving over the years, but since we still lag behind it is necessary to analyse the influence of electoral systems and affirmative measures such as gender quotas—in its different types and designs—in order to select the tools that best fit a given political and legal context. Comparative research can offer useful insights in this field, although we need to be aware that research on quota effects can be highly context dependant.

In the case of Chile, a recent electoral reform has been approved, including new provisions designed to foster women's representation. The reasoning developed in this article, makes us conclude that these provisions, in combination with some features in the new Chilean electoral system, will most likely result in increasing women descriptive representation at the Congress. However, the enactment of legislative gender quotas is only a first step towards strengthening political participation of women. The newly functioning system can still face resistance in a variety of forms and strategies.⁷⁶ Therefore, the years to come will be particularly important to consolidate a positive trend for women's representation.

Of course, neither electoral laws nor gender quotas are enough to fully achieve gender equality. This goal must be tackled also taking into account cultural, sociological and structural factors of inequality, and consequently combining these electoral measures with broader public policies designed to promote integral gender equality.⁷⁷

75 THAMES (2017).

76 KROOK (2016).

77 At the time this article was written the parliamentary elections of 2017 were still pending. Those elections were held on November 2017 and as a result 35 women deputies were elected from the 155 seats of the lower Chamber, reaching a 22.6% of women representativeness. On the other hand, 6 women senators were elected from the 23 seats that were contested, which is equivalent to a 26.2% of female representation. This increase of female presence in both chambers was described as "historic" by the press and the electoral authorities (SERVEL), who praised the application of the recent gender quotas. <https://www.servel.cl/historico-23-de-mujeres-candidatas-were-elected-en-las-parlamentarias-2017/>

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Chile:

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Chile:

Ley N° 20.840, March 5, 2015, *reemplaza el Sistema electoral binominal por uno de carácter más inclusivo y proporcional y que fortalece la representación en el Congreso Nacional.*

Ley N° 20.900, April 14, 2016, *sobre el fortalecimiento y transparencia de la democracia.*

Ley N° 20.915, April 15, 2016, *fortalece las características públicas y democráticas de los partidos políticos y facilita su modernización.*

