DOI: 10.15691/0719-9112Vol10n2a3

Marital Home. Law, Divorce and Intimate Violence in Nineteenth Century Chile

El hogar conyugal. Derecho, divorcio y violencia marital en el siglo XIX en Chile

FRANCISCA RENGIFO*

Abstract

This article analyzes the divorce cases processed in Chile in the 19th century during the period in which the foundations of the republican legal order were laid. Its objective is to identify the specific meanings of home as a private space and family environment in relation to the fundamental rights of men and women united in marriage. In this line, this paper investigates the tensions between these rights and the prerogatives of the husband – family man – in the liberal context and the secularization of marriage. Methodologically, divorce lawsuits allow us to immerse ourselves in marital homes given that they comprise several issues that include women's rights, the defense of marital power, the voices of jurists and judges regarding marriage, as well as the understanding of power in the family, its abuse, and the intervention power of the State in said circumstances. This analysis reveals that divorce was a female protection resource against the mistreatment suffered at the hands of their husbands; this paper sustains that while the male prerogative to correct women was discredited, the notion of home as an inviolable space was a powerful defense for exercising marital power. Paradoxically, this discourse, although it could have overshadowed female rights, also acquired a positive meaning as a space from which to invoke rights and demand public action.

Keywords: *divorce; intimate violence; Chilean history; family and law.*

Resumen

Este artículo analiza los casos de divorcio procesados en Chile en el siglo XIX durante el período en el cual se sentaron las bases del orden jurídico republicano. Su objetivo es identificar los significados concretos del hogar como espacio privado y ámbito de la familia en

* Universidad Adolfo Ibáñez, Santiago, Chile (francisca.rengifo@uai.c). ORCID: https://orcid.org/0000-0003-3836-8428. Article received on May 13th, 2022 and accepted for publication on August 30, 2022. Translated by Fluent Traducciones.

How to cite this article:
RENGIFO, Francisca (2022). "Wives at Home. Law, Divorce and Intimate Violence in Nineteenth Century Chile", *Latin American Legal Studies*, Vol. 10 Nº 2, pp. 61-137.

relación a los derechos fundamentales de hombres y mujeres unidos en matrimonio. Para ello indaga en las tensiones entre estos derechos y las prerrogativas del marido -padre de familia- en el contexto liberal y de secularización del matrimonio. Metodológicamente, los pleitos de divorcio constituyen una puerta de entrada al hogar, porque en éstos se manifiestan de un modo prístino las reivindicaciones de derecho de las mujeres, la defensa de la potestad marital, las voces de juristas y jueces respecto del matrimonio, así como el entendimiento del poder en la familia, su abuso y el poder del Estado para intervenir en dicho espacio. El análisis devela que el divorcio fue un recurso de protección femenina en contra del maltrato sufrido en manos de sus maridos; y argumenta que, si bien la prerrogativa masculina de corregir a la mujer fue desprestigiada, la noción de hogar como un espacio inviolable fue una defensa poderosa del ejercicio de la potestad marital. Paradójicamente, este discurso, aunque pudo haber ensombrecido la demanda femenina, también adquirió un sentido positivo como espacio desde el cual invocar derechos y reclamar la acción pública.

Palabras clave: *divorcio; violencia doméstica; historia chilena; derecho y familia*.

INTRODUCTION

The concept of home evokes contrasting images of unfathomable human experiences. It regards a concept that has represented both spaces of freedom and intimacy, as well as that of submission and isolation. Since the enlightened origins of modern democracy, home has been the seat of the fundamental freedoms of the individual and, consequently, conceived as an inviolable space, closed to public interference and state intervention.

For more than two centuries, this notion of home (as an individual fortress) has operated as a legal premise to help identify and differentiate those actions that would threaten the free development of individuals.[1] Among the threats represented by the interference of the State and by third parties, other menaces have emerged within this space (home) and among those who share it.

Although home and family are not equivalent concepts or realities, they were intimately intertwined throughout the 19th century. Ideologically and politically, home was assimilated to the family sphere as an entity that was separate and

[1] ARENDT (2005); DWORKIN (1989); OKIN (1989) y (2004); NUSSBAUM (2000); BOURDIEU (2000); GARGARELLA (2008); ALEXY (2008).

distinguishable from the State.[2] Thus, these characteristics strengthened its sense of privacy during that period.[3]

The formation processes of the national State, the construction of political power and the constitution of civil society were supported by a new family model consistent with the modern public space. Accordingly, all these spheres assigned family a central role in the formation of future citizens. Family and home became the space where ties – determined by consanguinity or affinity- ultimately affected the scope of individual rights.

Unlike the relationships involving male individuals characterized by free and equal relations in the public-political space, the family relationships of woman and children were hierarchical. These latter relationships were characterized by dependence and obedience towards husbands and fathers, who owed them protection.

If for some citizens these rights represented their independence from all authority and operated as interpersonal limits based on the notion of private property,[4] this was not the case for those who the family subdued to a subordinate civil status. According to said vision, there was only room for the government of one figure, that of the family man, unlike that of the republic in which everyone participated.

Nonetheless, it should be noted that the only distinctions that the law permitted between the members of the family were the biological ones determined by the age and gender of individuals. Regarding age, distinctions were temporary, but for woman it was permanent.[5] Age conditioned women's development until they reached emancipation; in the meantime, their development occurred at home.

Family meant for the wife a form of dependency that occurred at home under male rule. Unlike the Old Regime society, the nature of domestic ties was different, framed in the notion of a contract between people free to commit to each other. To resolve this dilemma of individual freedom presented by the contractual ties (introduced by civil code regulations governing family relations), marriage assumed that the woman consented to acquire that subordinate status.[6] Therepublican codes did not improve the status of women in the family[7] and

[2] HUNT (1992) and (2007).

[3] ARIES (1962); SHORTER (1975); ARIES & DUBY (2001).

[4] NEDELSKY (1990), p. 167.

[5] ROSANVALLON (1992).

[6] MILANICH (2009) and STANLEY (1999).

[7] PUTMAN *et al.* (2005), p. 7.

reinforced the assumption of home as the place where women should develop by nature.

The historiography of women, gender studies and, more recently, socio-legal studies have shown how home became a key legal concept for understanding modern family and marriage. In other words, it was configured as a material and abstract limit whose scope would go beyond the autonomy of the will of women.[8] It is worth asking, therefore, how this domestic and private space could represent a form of confinement for wives.[9] And, in the words of Claude Gauvard,[10] what would have been her real space of freedom.

The purpose of this article is to contribute to the understanding of these tensions between individual rights, family, and home during the period in which the foundations of the Chilean legal order were laid. The question that guides this analysis inquires on what have been the specific meanings that men and women - united in marriage in order to constitute a home - attributed to this bond (understood as a limit of their fundamental freedoms).

To respond, the present analysis pays special attention to marital conflicts and marital abuse. This, given that under borderline situations women's right are manifested more clearly; the same can be said with the defense of masculine prerogatives, the voices of husbands, as well as that of lawyers, jurists, and judges regarding marriage. In other words, marital conflicts, and marital abuse allow understanding power in the family sphere and its abuse. Therefore, methodologically, this work analyses marital breakdowns by studying the divorce trials processed in Chile during the second half of the 19th century.

The analysis of these lawsuits constitutes a starting point for getting insight on the characteristics of home, which is the place in which men and women develop their lives on a daily basis and where they provide meaning to their rights.

According to Reva Siegel,[11] the meaning of fundamental rights is constantly shaped (historically speaking), both in consensual relations as well as in interpersonal conflicts. These aspects are present in the legal grounds that support divorce claims, in the allegations submitted by parties in court, in the defenses made

[8] BACKHOUSE (1988); HALL (1989); PATEMAN (2000); SUK (2005); GINSBORG (2008); SIEGEL (1996) and (2015).

[9] HAREVEN (1991), p. 271.

[10] GAUVARD (2013), pp. 215-224.

[11] SIEGEL (2015).

by their lawyers, in the interpretation shown in judgements, as well as in the public discussion.

This empirical perspective allows us to recognize the complex meanings that individual rights have acquired and how they have configured distinctive ideas through which people interpret themselves and society, thus, providing meaning to their relationships with others. Through this approach, we can infer that this phenomenon represents a complex set of concrete relationships, where practices and discourses at different levels are not separate from each other. According to those premises, the law acknowledges contingent and specific contents that relate to said reality.[12] Likewise, what is also noted is that the significance of rights also occurs in a space that does not take place in legislative debates, political struggles, or constituent processes.

The scarcity of empirical studies on the relationship between home and fundamental rights responds to the traditionally understood separation of the private-domestic and public-political spheres. Today, these different spheres have been grouped into an analytical framework that juxtaposes them dichotomously.[13]

However, more recent studies have revealed the similarities between them and the inadequacy of such an approach. The gender perspective has had a radical importance in this turn,[14] revealing how this dichotomous approach has helped build the assumption of home as a self-evident reality.[15] In this regard, legal liberalism has provided a protective status to the concept of family, thereby describing women as subordinate to the husband figure within home (we believe that said approach is oppressive in principle). However, the recurring themes of study in this field, such as the property rights of married women, divorce, inheritance rights, child custody, *inter alia*, have demonstrated the complex ways through which the law has organized the private sphere around the figure of marital power.

In particular, the studies focused on marital life, on its conflicts and on the breakdown of marriage show that this notion of home could place wives in a space lacking protection.[16]

---

[12] EDWARDS (2012), p. 194; HARTOG (2012), pp. 152-3; SHANLEY (2002); DAVIS (1987).

[13] STABILI (2017).

[14] SCOTT (1986), (1997) and (2008); MEYEROWITZ (2008).

[15] SUK (2009); SIEGEL (1996).

[16] BAILEY & GIESE (2013); MAINARDI (2003); DAVIDOFF & HALL (2002); PRICE (2002); STONE (1993); PHILLIPS (1988) and (1991).

On the one hand, research reveals a dynamic process in which the legal reforms introduced in the direction of generating greater equality of rights between husbands and wives involved an increasing limitation of male prerogatives rather than an expansion of women's rights.[17]

On the other hand, these historical perspectives show how the phenomenon of marital violence has taken on concrete forms that cannot be explained solely in terms of the legal subordination of wives.[18] The power of the husband over the wife must also have responded to the new liberal grounds that rejected despotic power. In this way, the socio-legal approach to family law, paraphrasing Isabel Jaramillo,[19] allows us to observe how academic opinions on the abuse of rights permeated the interpretation of domestic relations and thus framed domestic violence in a more comprehensive analysis of social ties.[20]

Within this framework, based on historical information provided by divorce processes for nineteenth-century Chilean society, this article argues that divorce was a legal remedy that challenged the legitimacy of marital power in more restrictive terms and, therefore, limited the prerogatives of the husband over the wife figure.

However, at the same time, home became an entity that hid mistreatment and abuse. The remedy of divorce was used almost exclusively by women as a measure of personal protection against mistreatment suffered at the hands of their husbands. Although the male prerogative to control his wife – even to correct her – was generally discarded by the judges, who in most cases decreed divorce in her favor, the notion of home as an inviolable space emerged as a powerful defense for exercising marital power.

For the husband, the privacy that the home represented acquired a negative meaning (of safeguard) in connection with the role exercised by public authority. Paradoxically, this discourse (that could have overshadowed female claims) also acquired a positive meaning for wives. Home was the space from which to claim their rights and demand their protection by the State.

---

[17] LASLETT (1977); BACKHOUSE (1991); HAMMERSTONE (1995); MURAVYEVA (2013).

[18] CLARK (1992); GORDON (2002); ADLER (2003); PLECK (2004); DOLAN (1994) y (2008); MURAVYEVA (2017).

[19] JARAMILLO (2010).

[20] ARAYA (2018); DOSSEY (2008); DAS (2008); COTT (2000); COUNTS *et al*. (1992); MARCUS (1994). Following Jaramillo, both the deductive analysis of the documents that establish rights and the inductive analysis of the judgements allow understanding the uses of the law in its entirety. JARAMILLO (2010), p. 844.

This argument is presented in four sections. First, a methodological approach presents a set of divorce trials in the context of civil codification and secularization of social institutions.

The second section analyzes the constitution of home as the space of lawful families and the subordinate position that the wife occupied in it. This approach investigates the daily meaning of cohabitation regarding the power of the family man and the personal security claimed by the wives.

The third section examines the argumentative strategies of the parties through which a discussion about marital abuse emerges, where male power is circumscribed and limited.

Finally, the last section examines the scope of criminal justice in marital relations and the persistence of the private meaning of home (tensioned by the public relevance of family).

I. Divorce trials

Divorce was an exceptional remedy in nineteenth-century Chilean society; but not for the reasons of ending a marriage. Marital conflicts were frequently resolved by *de facto* separations, distance, or abandonment. Similarly, divorce appeared as a strategy to demand marital obligations from each other, namely, assistance and aid. Thus, this was the way in which the rights of men and women could be fulfilled.[21] However, this was not necessarily the means to obtain them since there were specific civil actions to demand certain marital obligations such as food.

Nonetheless, divorce was the only legal action for proceeding with the legal separation of marriage (*quod thorum etmutam cohabitationem*), although without dissolution of the bond. Among its civil effects, the suspension of cohabitation and the separation of property stand out.

This work examines a total of 575 divorce lawsuits filed before the Ecclesiastical Court of the diocese of Santiago between 1850 and 1890. This set of divorce trials integrates a larger set of 821 cases registered since the year 1711. This work addresses them because they integrate in a very special way the set of legal grounds, legal structures and procedures that intertwine the marriage figure with the concept of home.

In these trials, the spouses had to develop strategies in order to remain together or separate from each other. Thanks to their litigious nature, these lawsuits

[21] Hartog (2002).

allow having an approach to possible divorce situations, thus, providing greater complexity to the understanding of the tensions and mutual influences between domestic life and the State.[22]

During this period and for more than a century of republican life, marriage and, therefore, divorce, corresponded to the ecclesiastical jurisdiction (as in the Hispanic period). The Civil Code (enacted in 1855) did not imply an innovation, but rather recognized Catholic marriage, where it had to be performed according to the conditions and validity requirements established by canon law. The Civil Code recognized it as the legitimate institution of life in common and only regulated its civil effects.

Consequently, marriage became a matter of civil justice upon the enactment of the *Ley de Matrimonio Civil* in 1884; divorce was a legal matter that intertwined both justice systems.

The preservation of Catholic marriage as civilly lawful did not mean a mere continuity. The figures related to the phenomenon of divorce insinuate that, although the Civil Code did not introduce an explicit reform, it did have a significant impact on the use of this remedy.

70% of divorce cases relate to those filed since the mid-nineteenth century and were concentrated in the 1870s. The average number of lawsuits filed tripled from 4.7 (prior to the entry into force of the Civil Code in 1857) to 17 per year. It is plausible to attribute this increase in lawsuits to the effects of codification, which organized matters related to marriage with a new clear legal language, facilitating knowledge and access to the law. On the other hand, this could also be due to bureaucratic factors, the administrative organization of the curia and record keeping.

This increasing trend in the number of divorce cases outlines a Chilean society that was undergoing profound transformations. It regarded a society that was becoming mostly urban, more complex and plural. Thus, divorce trials would translate a social and legal change regarding the understanding of marital relations. As pointed out by other investigations on divorce, this was an institution more typical of modern Latin American societies.[23]

The sociodemographic profile of Chilean spouses who faced each other in a divorce corresponded to wealthy families belonging to a political, economic and

[22] CHAMBERS (1999); HUNEFELDT (2000); MOLYNEUX (2000); DORE (1997) and (2000).

[23] RENGIFO (2011); GARCÍA (2006); CALDERONI (2005); DÁVILA (2005); KLUGER (2003); HUNEFELDT (2000); LAVALLE (1999); NIZZA DA SILVA (1992); ARROM (1988).

cultural elite, whose homes were mostly domiciled in the city of Santiago, some in the port of Valparaíso and to a lesser extent in the urban areas of the agricultural provinces of the country.

Divorce was a female court action. Wives filed 91% of the lawsuits, based on the grounds of mistreatment -cruelty- and/or adultery. The other grounds established by law, but which only appeared in relation to these first two, consisted in the following: having been one of the two spouses perpetrators, accomplices or instigators of a crime against the property, honor or life of the other; if the husband prostituted his wife; if either of the spouses were vicious or dissipated, and if one of the spouses suffered from a serious, incurable and contagious disease that endangered the life of the other.

These legal grounds led to perpetual divorce, because the seriousness of the facts that supported it did not allow having a life in common. What was at stake, therefore, were the fundamental rights to life, personal security and tranquility of each person. In this light, women used divorce as a protection remedy against the mistreatment suffered by their husbands.

To proceed with this remedy, they were required to concurr personally or through a legal representative to the court of the archbishop's seat in Santiago.[24] Some lawsuits were filed in the parish where they were parishioners. In said situations, the parish priest had to refer them to court for processing.

The trial followed an ordinary procedure initiated by the lawsuit, followed by the answer, the evidentiary stage, the allegations of the parties, and the opinion of the ecclesiastical promoter. This could conclude after a hearing in which the judge heard the parties and, if there was sufficient grounds for a divorce (according to the background information that was submmited), the ecleassiasitycal authority had to decree the separation.

However, this type of divorce could only be temporary, which would explain that the processes that had this fate corresponded to marriages that, due to the number of years they had been married, the advanced age of the spouses or the husband, and certain particular circumstances, would never return to life in common. Most of the lawsuits followed the course of the process until the judgement. In no case, did these proceedings take more than two years.

[24] The Chilean territory was divided into three dioceses with their respective ecclesiastical court: La Serena in the north, Santiago, and Concepción in the south, where each of them functioned as a court of appeal.

Trials were costly, which could have led to divorce being a remedy used by women of well-off socioeconomic status. Their husbands had to provide them with the resources to appear before court, which were deducted from the marital property and, in the event that the divorce was decreed on grounds attributable to the husband, the latter had to pay the costs of the trial.

If either of the spouses did not have the necessary financial means, either of them could request to proceed *in forma pauperis*. This benefit was awarded by the court considering the poverty information that the requesting party had submmited to demonstrate it lacked resources (where three witnesses had to appear proving the requesting party's situation). Wives requested it in greater numbers than husbands (14% and 8.9%, respectively), however, these percentages generally coincided; this privilege was always awarded to wives.

Although divorce was an urban phenomenon that was focused in the middle and upper socioeconomic sectors of the population, there were more than seven thousand complaints submitted by wives. These were channeled verbally, directly before the judge, who proceeded summarily.

By not having a registry of the divorce files, it is only possible to know the submittal number, the name and reason of the person who filed it, and what was resolved by the court[25]. This procedure was free, which leads one to suppose that it was an action mostly used by lower income individuals. Since the complaints did not follow a formal process, in these cases the judge could only order a temporary separation between the spouses. Said separation measure could have been a sufficient strategy to lead to a permanent separation.

The limited information available, however, provides a quantitative floor to analyze the divorce files, given that both situations share a feminine nature in the sense that this remedy was used as a protection mechanism against mistreatment by husbands. This common denominator show how socially transversal the phenomenon of marital violence has been and also allows us to glimpse at the meaning that fundamental rights have acquired for Chilean women as a whole.

Strategically, the claims founded on mistreament (*sevicia*) were effective in obtaining a perpetual divorce. In all those cases where a judgment was issued, the court ruled in favor of the divorce and for the benefit of the woman. Accordingly, divorce was decreed because of the husband's unlawful acts, which had civil consequences in connection with divorce.

[25] 7,220 verbal lawsuits were registered by the Ecclesiastical Court between 1846 and 1878.

This evidence does not reveal that marital violence was a particularly frequent phenomenon in Chilean society in the nineteenth-century. Instead, and as analyzed in the third section, it evidences the discredit of marital punishment and how it was linked to the expansion of the meanings of violence.

These lawsuits reflect the breakdown of marital relations and clearly reveal the characteristics of marriage. Accordingly, the descripcion in those lawsuits of what the spouses expected and aspired in contrast to their marital experiences reveals a lot about the meanings of the bond and, consequently, about the phenomenon of marital violence (Rambo, 2009; Hartog, 1997; Phillips 1991, 1988; Stone, 1990).[26]

For this reason, divorce trials have a special methodological relevance, since -as Noemí Goldman (1989) points out- the language occupied therein intertwines metaphors, symbols and collective values, as well as the legal figures that configure domestic conflict.The information they contain describes and combines the experiences and expectations of couples along with legal opinions, legislative debates and other discourses on marital conflict.

II. The Constitution of the Home: Marriage

Divorce trials show how marriage has been a central area for providing meaning to individual rights. In other words, marriage has defined the *familiae status* that every person has.

In connection with individual rights, the Political Constitution of the Republic, enacted in 1833, guaranteed all inhabitants equality before the law, freedom of movement and the press, the inviolability of property, the right to present petitions to the State authorities and the right to security. In this same sense, the Civil Code specified these fundamental rights by defining the legal capacity of people based on the criterion of autonomy.

However, women were excluded from political citizenship because they belonged to the family sphere. Single woman of legal age could act independently and were free to undertake obligations, but her married status limited her fundamental rights in civil matters by being considered a relatively incapable person. Even if she were widowed, despite being able to freely manage her estate, she could not be the guardian of her children.

Andrés Bello, ideologue of the Civil Code (that was adopted in an integral way in Chile and in other cases adapted by several Latin American countries)

[26] Rambo (2009); Hartog (1997); Phillips (1991), (1988); Stone (1990).

understood that the limitation of the rights of the wife was exceptional in the liberal legal framework.

The reason was based on the very special nature of marriage that required its legal unity in the husband figure.[27] Due to this particular nature, the new liberal model of marriage was based on the premise that women voluntarily ceded her independence through consent to form, together with her husband, a moral entity represented and directed exclusively by the latter.[28]

Using this contractual language, few women in the intellectual elite raised the question on whether they were free. Her arguments pointed to civil codification as the determining structure of an order in connection with the concept of family. Similarly, given that family was prioritized as the basis of society, certain public interests prevailed over those of women as individuals.[29]

The law created new bonds of female subordination. Marital authority was redefined in rejection of the specific form of power that absolutism represented; now, the authority of the husband was not naturally given, but legally originated and circumscribed.[30] Regarding Indian legislation, the patriarchal theory that supported royal sovereignty shared certain elements with the authority of the husband. Based on citizenship rights, this set of prerogatives of men over women had the purpose of preserving the family unit and not the perpetuation of the lineage, which implied profound changes in terms of filiation and inheritance.[31] For

[27] BELLO (1881); AMUNÁTEGUI (1885a) and (1885b); LETELIER (1917). Consequently, certain interpretations of nineteenth-century liberal law that assume a gender bias without due historical criticism should be considered with caution. JAKSIC & POSADA-CARBÓ (2011); DEERE & LEÓN (2005).

[28] GONZÁLEZ (1862); COOD (1897); CLARO S. (1902); ALESSANDRI (1941); CAFFARENA (1947); RIOSECO (1956); ROSSEL (1958); SOMARRIVA (1963). The legal opinion on marital union shares essential elements with the figure of coverture present in common law. Said latter figure was defined by the jurist William Blackstone in 1760 and implied that the legal existence of the woman, in terms of the consequences of her acts, were incorporated into that of her husband (Gender & History, 2015: 502 -504). On Chilean civil law, see BARRIENTOS (2019).

[29] BARROS (1872-73); BRANDAU (1898). Their demands for equal rights have shaped the struggle of women and its authors have been the protagonists of the feminist and women's movements that led the campaigns for full equal rights in Chile.

[30] ECHEVERRÍA (1892-1893).

[31] MILANICH (2009); DOUGNAC (2013).

the same reason, married women lost one of their main protection mechanisms against possible abuse by their husband: the dowry.[32]

In this new legal context, divorce meant a specific limitation to the exercise of such power and provided legal grounds to separate the spouses. Accordingly, wives had the authorization from the judge to leave the marital home. In several cases, the *de facto* separation between the spouses had already occurred and this court certificate only formalized it. Only once the trial was over, the woman was freed from marital obligations -but not from that of fidelity- and she could definitely change her residence.

In order to learn on the meaning that home had in the Chilean socio-legal culture, it is necessary to examine the marriage model that legitimately constituted it. The Civil Code and its subsequent reform in 1884 meant an irreversible effort to organize the family around personal will and the ideal of well-being or individual happiness. During that period, marriage was defined as a contract of a very special nature and whose validity conditions, execution and registration remained in the hands of the Church.

However, the influence of ecclesiastical regulations in civil law cannot be interpreted as a colonial remnant. To a large extent, the culmination of the ideological conflicts, which had divided the liberal and conservative political sectors around the secularization of the State reflected this change (social understanding and court practices regarding domestic relations).[33]

The legislative discussion on the *Ley de Matrimonio Civil* submitted to discussion in 1875, discussed in 1883 and enacted in 1884, was a theoretical claim that urged for more freedom of conscience to marry. However, at the same time, it discarded the freedom to dissolve the bond[34]. It was ultimately a debate about the State versus individuals and not about the freedom of men and women in marriage.[35]

---

[32] ARROM (1988); DEERE & LEÓN (2005). The Hispanic laws understood marital power in a more restricted way than the republican laws, thus, protecting the wife's properties such as dowry, whose ownership was kept by the woman and which the husband administered it with restrictions.

[33] SERRANO (2008).

[34] The jurisdictional change materialized years later with the Code of Civil Procedure of 1903. The conjugal bond remained indissoluble until 1994. Divorce by mutual agreement was included in the law in 2004, thus culminating this process of individualization of the family. BARCIA (2011).

[35] This debate resumed the previous discussion regarding the marriage law for non-Catholics enacted in 1844 on freedom of conscience when forming a family, because it was an area in which there was no room for State interference.

Said reform was a political and institutional milestone within the process of liberal modernization, since it excluded the Catholic Church from its regulation and, thus, from the constitution of the family; however, neither the Civil Code, nor said law greatly altered the conditions and requirements to get married, nor to get a divorce.

Nonetheless, the transition of marriage to a purely civil contract meant that the indissolubility of the bond had to be based on new legal grounds.[36] As noted, these transformations make it difficult to have a linear interpretation of the secularization of marriage.[37] Despite the fact that the free consent expressed by the spouses had been the primary legal requirement, both to get married and to not render the contract invalid, divorce only authorized marital separation.[38]

The legislative debate on the civil marriage bill demonstrated the political consensus in this regard: the preservation of the social order required the durability of the family and "both public and private morality demanded the indissolubility of the marital bond".[39]

Most members of parliament stated that, given the central role of family, issues of a personal nature should not be allowed to come to light. The debate expressed an ideologically shared concept of divorce as an exceptional remedy and the understanding of family as an intimate space that should be protected (given that a court proceeding required performing an investigation of what happened in the family).

On the other hand, the ecclesiastical perspective was different, because for the Church the bond was indissoluble since it was a sacrament in which the salvation of the soul of each spouse was at stake and, precisely, for the sake of this supreme good, the Catholic Church had to interfere in the privacy of home.

This discussion reveals the mutual private and public significance of marriage. We can conclude that divorce did not have a liberal significance in terms

[36] LATORRE (1887).

[37] HASDAY (2004).

[38] In Catholic doctrine, the freedom to commit should respond to the express personal will, a defining element of the individual that had already been introduced in post-Tridentine canon law. VAN DÜLMEN (2016), pp. 128-129.

[39] 26th ordinary session, Chamber of Deputies, July 31st, 1883.

of individual freedom, but one of social necessity; for the same reason, in the new civil divorce process the public prosecutor office's role was key.[40]

The jurisdictional change led by the law of 1884 was not a reform to the regulation of marital relations. Marriage created a unique identity that radically and affected differently the rights of husbands and wives. The subordinate position of the wife placed her within a home understood as the material and symbolic space of the family, which was ultimately governed by the husband. Thus, the place where women live was determined by the husband's domicile. Accordingly, in order to advance with a divorce proceeding she had to inform the court where she would reside while the process lasted, and the husband had the right to challenge that petition.[41]

The husband argued that if his wife did not comply with the subordinate position that corresponded to her, the social order would be upset. "Mrs.… has tenaciously annoyed her husband with her continuous activities outside home, abandoning the care of the house and, therefore, that of her husband and son, and her tenacious character is revealed in not having obeyed the court order that forbade her living with her mother…".[42]

In this case, the court was receptive to the male allegations to the extent that it considered that the wife intended to participate in a space outside the family orbit. Given that the wife was required providing explanations, she invoked the domestic space as a personal place, a home that intended to become the exclusive center of the family and, consequently, of herself. "I lack a home, I lack tranquility in all moments of life […] the defendant believes that the atrocious cruelty, immorality and cruel treatment of the family, however serious it may be, is strictly of the domestic order and that I should not ask for the protection of justice, but only suffer in silence whatever is done to me […]".[43]

The legal arguments provided therein used the concepts of home and family, which derived from the regulation of the rights of use and habitation, and maintenance in the Civil Code. By doing so, they became significantly intertwined.

---

[40] In the Western legal tradition, the conjugal bond has long been considered indissoluble, despite the will of the spouses to the contrary, due to the durability of the family it creates. On Chile, see LEPIN (2014) y SCHMIDT H. (2005).

[41] Legally, the domicile was the residence in which there was a real or presumed intention to remain there; however, this determination depends on the condition or marital status of the person. ALFONSO (1900), pp. 827-858.

[42] *Avaria v. Zurmarán* (1870).

[43] *Garcés v. Blanco* (1880).

Home corresponded to the place where she lived, and it was also the space for personal development. At the same time, the family was legally understood as the group of people who had the right to use and live in said home, and where they ate.[44] The wife had the right to be received in her home and her husband the right to demand from her the right to live there and to follow him if he changed his residence. For both, these rights corresponded to the duty to live together.

This duty of cohabitation was marital, involved sexual union, and could only be exempted in case of vital risk or acts against nature. Its meaning was daily and, at the same time, quite absolute. This was expressed in the formula used by the wives before the courts to demand good treatment, because it responded, "to the intimate and rigorous nature of matrimonial obligations".[45]

On one occasion, the judge sanctioned a husband on the grounds that this obligation was mutual, based on the marital unity; thus, the judge provided that these obligations could not be understood as ownership rights.[46] For its part, unlike the ecclesiastical doctrine, the civil marriage law did not elaborate on said obligation and allowed the judge to resolve these issues based on good faith or consciously. Thus, neither the State nor anyone interfered in the intimacy of the home.

In the first place, compliance with the duty of cohabitation was difficult to enforce in practice. In fact, the husbands resorted to the police and the civil judge to force their wives to comply with this obligation. Otherwise, they argued, "there would be no way to stop a married woman from abandoning her husband when she wishes to, even more so if she sees that the court could help her" (Honorato v. Sanz, 1875).[47]

Unlike the Indian legislation that had authorized the use of force by the husband, the republican Civil Code included civil actions following the French law, which was a legal body inspired by one of its best-known writers, Joseph Pothier.[48] These actions represented a remedy for the exercise of marital power as well as a limit since the husband had to request them on founded grounds.

Towards the end of the 19th century, the criterion whereby the judge enforced these marital obligations was considered unlawful. As summarized by the

[44] LASTARRIA (1914), p. 141.

[45] Regarding article 133 of the Civil Code, Bello followed Delvincourt in connection with the French Civil Code.

[46] The rules of conjugal debit were an element of the Catholic doctrine of marriage and explained in the canonical dictionary of the Chilean Bishop Justo Donoso. DONOSO (1857), p. 422.

[47] *Honorato v. Sanz* (1875).

[48] POTHIER (1846), p. 175.

well-known civil law jurist Alfonso,[49] there was no legal provision that would allow the judge to enforce (upon the husband's request) the marital obligation of the wife to live at home.

Therefore, this would be a violation of personal guarantees and would turn home into "a domestic prison." In other words, and for reasons of public law, the constitutional guarantees would be put into question.

Secondly, female dependency demanded in turn the protection from her husband. If he failed to comply with this duty, the woman had the right to self-defense and, even without court authorization, she could leave the home in the extreme case that her life was at risk. For this reason, divorce was a strategy used by many whose lawsuits show well-founded fears of not being able to continue the proceedings (provided they did not have a guarantee of physical safety). A lawyer, often a representative of the wives, introduced in his writings a recurring formula: "…Your Honor knows very well that divorce petitions are filed by women without news of the husband or waiting for the occasion in which they can proceed without their knowledge; these petitions are performed many times when both spouses are united…".[50]

What was also at stake was the guarantee of access to justice and that the woman could continue the trial. Therefore, husband and wife could represent themselves in their own behalf, even if they were minors. Likewise, despite the wife's relative incapacity, she did not require the husband's authorization to initiate a divorce action or to answer a lawsuit of this type (or litigation that would force the husband to comply with his marital obligations).

The sense of home as a personal space prevailed among the contentious arguments in a double sense. On the one hand, the government of the home was a masculine prerogative that the husband defended as his private domain.

From this position, the inviolability of the home and marital power was articulated in opposition to the State. The wife had illegally crossed that border when filing the lawsuit, because the marital affairs should not be discussed before any public authority. This argument contained two intertwined dimensions to be distinguished: a socio-legal one about the privacy of the home and an ideological one about political power. Home was an exclusive personal domain and, therefore, the place of marital authority, understood not in the sense of an original power but for exercising the rights of the husband.

[49] ALFONSO (1901), p. 104.

[50] *Saavedra v. Mujica* (1863).

The male allegations were not, and could not have been, founded on the household being deprived of the rule of law. To the contrary, home had a public significance as a constitutional guarantee. The person's house was an "inviolable asylum" for the Constitution of 1833. In the words of Robustiano Vera, who was the jurist and then prosecutor in criminal matters of Santiago, this was still far from being accomplished. "Home is the center, it represents the family reunion and for this reason it is all worthier of protection; it must be protected to enhance republican practices in a free and cultured country".[51] In his opinion, the Chilean authorities infringed it at every moment, because they still did not understand that the home was the fortress of the person as enshrined in English law. From this perspective, the divorce trials show how this border between the family and the State was constructed. At the same time, they show how the premise of the home was constructed (as the space closed to the outside gaze in which the wife could live).

III. Legitimate Punishment or Spousal Abuse

From the entry into force of the Civil Code, the divorces processed reveal that, although the legal reasoning shown by litigating parties invoked the new values of autonomy and privacy to justify control (over the wife) as a male prerogative, they were also used to repudiate it. Certain forms of resolving marital issues - punishment, in particular - were discredited and had fallen into disuse by the mid-nineteenth century. Husbands, judges, lawyers, experts, and witnesses were not very receptive to the legal figure of punishment as an instrument of physical and moral coercion. This rejection indicates both the extent that certain practices had reached in the past, and the time when they were considered abusive.[52] Although the idea of a woman's due obedience to her husband persisted, a conceptual limit to his power emerged that condemned abuse as domestic violence. According to Christine Hunefeldt, in Lima, as in other Latin American cities, husbands were not supposed to beat their wives and domestic violence was not easy to hide.[53]

In Santiago de Chile, in a context in which divorce was understood as exceptional, lawsuits increased during the second half of the century and the fact that they were on accounts of mistreatment reveals the change in the conceptualization of violence. The legal terms according to which *sevicia* was defined responded to the influence of canon and Hispanic law. The new corrected edition of the dictionary of legislation and caselaw prepared by the Spanish jurist

[51] Vera (1883), pp. 326-27.

[52] Ferguson (2010); Hammerstone (1995), p. 39.

[53] Hunefeldt (2000), p. 69.

Joaquín Escriche defined *sevicia* (cruelty) as the threats and insults that deprived the wives' security. This also included the encroachment by the husband to take her life, the dissolute life that he carried and if he had transmitted any venereal disease, the accusation of adultery or other serious crime without proving it, a capital hatred against her, and if he pertinaciously led her to evil.[54] The quote coincides with *Las Partidas*, which were an important source of family law for the Civil Code. Through the clarity in the language and the organization that Bello provided to the regulation of marriage in the Civil Code, the concept of cruelty acquired a broader meaning that was appreciated in divorce trials as forms of abuse (even if they did not imply an imminent danger for the woman's life).

What is even more suggestive regarding the understanding of cruelty is that during the court allegations, a variety of behaviors were presented under this concept that were no longer tolerable or echoed. Both the allegations presented by the litigating parties and the judgments interpreted conducts and expressions that implied a humiliation of the person as ill-treatment, and not just the blows, the beatings, the deprivation of food, the whipping, and the confinement.

In the trials, the prosecutor and the judge argued that, although the mistreatment had not caused serious bodily harm, "even if they were only serious and frequent insults", they led to perpetual divorce.[55] The plaintiffs' accounts also narrate a history of offenses, threats, and insults that the court understood as serious practices if they did not occur accidentally; the premeditation was evident from their repetition or frequency. What constituted abuse also depended on the social status of the wife, since her level of well-being directly implied a degree of education and moderation of customs.

These defining elements (of the seriousness of the acts) were heard by the judge. In doing so, the court entwined the tendency to dismiss the husband's right of correction - without seeking to subvert his power in the family - with marriage as a model of civilized order and self-government. Both the husband and the wife were warned that they should live according to customs and morality, even if said elements had led to divorce; and given that "the marital union of these spouses cannot serve as a place where both parties put themselves in danger and scandalize society, the divorce is declared".[56]

The elements that represented mistreatments had already been addressed by enlightened canonists and writers. These first modern reformers were part of

[54] ESCRICHE (1869), p. 569.

[55] *Larrosa v. Melo* (1853).

[56] *León v. Castro* (1852).

the larger process of civilization of customs that rejected violence and considered it as a phenomenon different than disciplinary actions. Within this current of thought, spousal abuse acquired, precisely, a sense of contradiction to the legitimate exercise of power. The Chilean Bishop Justo Donoso,[57] author of the most popular canon law works in the Latin American republics, called husbands to treat their wives well, because they were not servants, much less animals. Citing Jesuit theologian Tomás Sánchez – whose late 16th-century work on marriage continued to be considered a fundamental authority among Chilean lawyers and jurists into the 19th century – argued that Christianity had elevated women to the position of companion, establishing bonds based on morality and justice. In relation to such arguments, a natural law notion of law emerged, which appealed to the civilization of domestic relations. Such approach was also understood as liberal in regulating marriage as a contract. However, the meaning of the metaphor where the savage age (where wives were servants) was compared against modern society was used in the direction of limiting male power and not altering female subordination.

This change in perception helps to understand the scope of the male responsibility in order to support and protect the wife, since many husbands were likely to be accused of abusing their authority.[58] By way of example, one wife accused her husband of beating her "[…], beating me to the point of teasing me in the patio of my house and continuing to beat me with a cane, poking me in the eyes and in the face…";[59] the opinions of the prosecutor who intervened in these cases and the judgements understood that "[...] cruelty provides grounds for divorce even if the spouse allows himself to be carried away by just indignation".[60]

In trials, frequent citations to Spanish jurist Azcárate (who commented the Chilean Civil Code) revealed both European and Spanish American criticism to marital power given that it had become stale. In the opinion of Azcáratel,[61] a society that submits married women in this way preserves "the last vestiges of marital power" and notes that "in fact it no longer exists, since it is a dead letter in the codes". He also emphasized that according to the functions that were natural to the husband and wife, both shared authority in the home: "The woman is an older person united to her husband, and not a minor subject to him, as are her children." His argument was not radical for the time. The *Diccionario razonado de legislación y jurisprudencia* of Escriche had several editions since the first one published in 1851

[57] DONOSO (1861-62), p. 100.

[58] DOLAN (2003), p. 265.

[59] *Godoy v. Campino* (1854).

[60] *Heredia v. García* (1852).

[61] AZCÁRATE (1881), pp. 13-14.

and was a mandatory reference for Chilean lawyers and judges. In this work, *sevicia* was defined as cruelty, insults, and bad treatment of a person against another over whom he has some power or authority. Accordingly, the notion of domestic violence emerged by virtue of the power of the husband over the wife, and not, or in contrast to, "[…] those differences and altercations that usually occur in some families and that can be considered as accidents inseparable from the human condition".[62] This concept of mistreatment was included in the *Ley de Matrimonio Civil* that established divorce as an inalienable action.

The marriage reform implemented by this statute did not alter the meaning of divorce as a female protection remedy. From then on, divorce followed the civil procedure, and the action was subject to a statute of limitations of one year from the date the involved party became aware of the grounds that supported it. This term contemplated two exceptions that included the notion of mistreatment as a transgression of the limits of marital power. One of those exceptions assumed that the requesting party waived its legal action if it continued to lead a marriageable life (while being aware of the grounds that founded the legal action). The second exception had to be accredited, because even if there were grounds for filing an action founded in mistreatment, the court could not assume that the requesting party waived its right by the fact that it remained living in the same household. According to these terms, the law tried to emphasize the notion of marital power in order to reinforce marriage as a contract.

This model of marriage and family was acknowledged by Bello thanks to the influence of the jurist and editor of the French Civil Code Jean Portalis. This code, which was proposed several times by Chilean authorities and jurists in the first decades of the 19th century to be adopted in the country, was a legal reference in divorce proceedings. Portalis was also cited when arguing that the mistreatment suffered by victims was a violation that pushed the wife "outside the natural order of marriage".[63] However, by placing the marital dispute and the court discussion under these terms (i.e., limiting the prerogatives of the husband), does not allow us to deduce that the rights of the woman should be equated with respect to the husband. The interpretation that the private law experts made of the aforementioned legislation of 1884 expresses the ways in which the new meanings of mistreatment were interpreted. The severity criterion was not limited to the fact that the woman's life or health was in danger; it also included other actions if they were repeated at least twice, either by conducts or verbally, respectively, or

[62] ESCRICHE (1869), p. 1542.

[63] *De la Cuadra v. Correa* (1865).

alternatively. In this regard, professor of Civil Law Paulino Alfonso added the following, "although only serious and repeated bad treatment authorizes divorce, the husband does not have the right to infer any bad treatment to his wife, nor even by way of correction and punishment".[64]

The claims of wives and their performance within the divorce proceedings reveal a female agency that complicates explaining the victimization process. According to Catherine MacKinnon,[65] the construction of the victim figure that certain specialized literature has made *a posteriori* has had the objective of denouncing gender violence. Paradoxically, emphasizing the weakness of female agency. However, in divorce lawsuits, a sense of individuality emerges with respect to women; in other words, they are the protagonist of their lives, of their possibilities, either through agency, or strategies. Certainly, among the strategies shown by wives, they accounted of the duties complied by them against an abusive and dissolute husband. In this sense, it seems that women could only constitute an individuality in opposition to the husband. However, according to Hendrik Hartog,[66] the litigious nature of divorce, of confrontation, required an individual strategy that would make it easier to recognize the wife as an identity separate from the husband.

The court proceedings were a concrete space in which women told her own story, alluding to certain common events, but built on particular facts that made it believable. Accordingly, the needs of the wives, their sufferings and their interests were manifested. As Frances Dolan concludes,[67] they experienced and manifested a sense of self beyond mere resistance. The wife expressed feeling "disappointed", the desire "to enjoy some rest";[68] the frustration of not being able to "tolerate any longer the company of a man who has lost his affection for me";[69] she also manifested disappointment: "Our marriage was happy and in a short time these ties were secured by the family we had, living happily together";[70] the feeling of

[64] ALFONSO (1900), pp. 93-94.

[65] MACKINNON (1982).

[66] HARTOG (2002), pp. 40-44.

[67] DOLAN (2003), pp. 258-259.

[68] *Godoy v. Campino* (1854).

[69] *Marchant v. Echeverría* (1859).

[70] *Larrosa v. Melo* (1853).

contempt, of being "reduced to appearing in the saddest and most humiliating role";[71] and, literally, "due to my husband's whim, I would become his victim".[72]

Given that the burden of proof fell on the plaintiff, women had a decisive role in the trial beyond their court representation by a lawyer. In almost all cases, they underwent medical examinations that certified the various types of injuries experience by them. They were questioned and summoned again to contrast their accounts of what happened with the other testimonies. They narrate the history of their marriage from experiences that they elaborated within the existing statutory framework. In doing so, marital violence took on concrete significance.

There was also a procedural change that reinforces the above and that brought the divorce remedy closer to women by eliminating, in practice, an entry barrier. The pretrial requirement that demanded attaching documentation (accrediting the accused facts) fell into disuse. This step was no longer demanded from 1870 onwards. From then on, divorce claims were submitted with a certificate that allowed the wife to leave the home while the trial lasted.

The protection of women was a priority for the court. Almost all the judgements awarded divorce, which meant a marital separation that would benefit the wife. The ecclesiastical sanction implied civil effects that regulated the situation in which the spouses lived from then on. Divorce suspended life together, ceased the right of the husband to force his wife to live with him; she could not demand sexual relations from him, nor assist him personally. However, the mutual obligation of fidelity did not cease, nor that of financial aid. If the divorce was perpetual, it introduced exceptions to the general rules on the obligations and rights of the spouses in relation to their assets, because it ended the marital partnership regime. If the wife was of legal age, she then acquired full civil capacity.

IV. Domestic Violence

The debate that emerged from the divorce trials did not contain an explanation *per se* on the hierarchical relationship of marriage. Instead, it provided insights on the rights of the person associated with the inviolability of the home in the case of men. In turn, in the case of women, it addressed the protection of her within that space.

In this context, the triple meaning of home (as a space, its legal features, and the power that revolved around it) for nineteenth-century liberalism made the

[71] *Niño v. Cruzat* (1858).

[72] *Grez v. Molina* (1878).

mistreatment that occurred there distinguishable from other violence that occurred in the public space.

In the mid-nineteenth century, spousal abuse was not yet a problem of domestic violence distinguishable and regulated in a different way from other social behaviors considered violent. The discussion of the *Ley de Matrimonio Civil* exposed this phenomenon as a problem of social disorder caused by the absence of the bond; they argued that this was because working class households were not constituted through marriage.

In consideration of the diagnosis made, characterized by the low marriage rate and the consequent very high number of births of illegitimate children, the legislative debate catalyzed the social anxiety caused by the distance between the family model and the reality of homes.[73]

For the political and intellectual elites, it was impossible to consider as home those unhealthy ranches that welcomed illicit and relaxed relationships in a space open to the view of the people.[74] The fights, the blows, the promiscuity in which they lived required the intervention of the State to constitute the family.[75] And if these occurred in marriage, this was a conflict between the spouses, who could resort to justice to settle the breach of mutual obligations.

The exercise of marital power was understood as a distinguishable form of power limited by public power (as the only source of legitimate violence). According to Michele Perrot,[76] the father was the key figure in nineteenth-century bourgeois society due to the power he held in the family. But this position of command was contained by a State, i.e., by law and justice, which claimed for itself the exclusive use of violence. Within this state paradigm, which Weber explained by describing the father's right to discipline his children (understood as the remanence of the former independence that the head of the household once had),[77] the exercise of violence by individuals was admissible only as self-defense.[78] In this sense, the greater legal protection provided by the State caused an isolation of the wife that

[73] The gross marriage rate did not exceed 8.6 marriages per thousand inhabitants during the 19th century. For the capital, Santiago, it is possible to adjust this proportion to the population over 15 years of age, amounting to 15.5. Figures calculated from the *Anuarios Estadísticos la República de Chile 1850-1885* and the *Libro de Informaciones Matrimoniales 1850-1890* of the Archbishopric Archive of Santiago.

[74] ORREGO (1884), p. 45.

[75] Legislative sessions, Chamber of Deputies, August 1883.

[76] PERROT (1998).

[77] WEBER (1944), pp. 54-56.

[78] MACHAFFIE (2018), pp. 8-12; LIDMAN (2013).

made her more vulnerable.[79] Unlike the husband, who claimed the privacy of the home against the interference of the court, the wife was, in practice, in an exceptional situation that required the intervention of justice.

From the perspective of the husband's power, the court intervention in divorce proceedings on marital punishment consisted of identifying mistreatment as a form of violence that transgressed the limits of that power. In that regard, home was not a space of male immunity. Although marriage was still hierarchical, it was also an affective, contractual, and egalitarian relationship. The existence of the legal figure of mistreatment was justified given the reciprocal obligations that marriage created between the spouses. Thus, it was not understood as a figure that went against marital power and from public order. In other words, the liberal meaning of the husband's authority was conceived as a mandate. Thus, the in-court strategy of the wives consisted in expressing their rights as limits to such power. "[…] assuming that the woman commits a fault for which she is entitled to a severe punishment, the husband has no power to impose it, but must resort to the authority […]".[80] Otherwise, there would be a discretionary space of power that would destabilize the State. On the other hand, marital power came from male autonomy and if the husband could not control his violence, he became a danger to society, because he threatened the family model on which the civil organization was based.

Regarding the concept of home, both the Civil Code and the Criminal Code (in force as of 1876) shortened its scope. The rights of the individual as fundamental freedoms permeated both legal bodies, thus, providing new meaning to social relations and the understanding of power. According to one of the authors of the Criminal Code (CP), Robustiano Vera, historically the field for the exercise of public authority was different and not that of the family (which related to the sphere of individual action). This ideological frontier had to be built and the codification process made efforts in that direction by critically revising the criminal legislation that then existed. This law represented a historical antagonism. In the words of Vera, who served as prosecutor in criminal matters in Santiago, indicated that privately prosecuting to find a crime would mean going back to the times of the Inquisition for two reasons: First, because crime was confused with sin; secondly, because it was no longer plausible to believe that society was everything and the

[79] DOLAN (2008); SUK (2009).

[80] *Godoy v. Campino* (1854).

individual nothing. He exemplified this idea by describing the rationale of torture as a means to find the criminal.[81]

This private weighting of home as a safeguard of fundamental rights had an impact on the understanding of the violence that occurred there. For criminal justice to intervene in marital conflicts, the events that justified its interventions involved scandalous action, i.e., domestic dissensions that interrupted the public order (article 495 CP). These domestic dissensions regarded fights between spouses that occurred in the street or in the square, and the authority punished the "scandalous" spouse. In no case did the law refer to the content of these aggressions.[82] There is evidence in the divorce trials that the police intervened in these domestic fights, responding to the call made by witnesses, the husband or the wife, and that said authority carried out an investigation of what happened. However, the few references to these measures suggest that it was either an option rejected by the involved parties, or that there was a certain tolerance by the authorities towards domestic violence.

Similarly, the prevailing criterion among police officers and judges was that "if there were voluntary acts carried out by people, it was convenient to privilege personal safety and not interfere under the pretext of taking care of private acts".[83] In line with this reasoning, domestic violence was not classified as an act prohibited by law,[84] but rather was included within the crime of aggravated injuries if it was committed against the spouse (article 390, CP). In Vera's opinion (in his comments to the Criminal Code), the legal logic followed the same reasoning (regarding homicide) in the case of parricide, thus, domestic violence could aggravate this crime with sanctions that could range from a fine to imprisonment for eight years.[85] Like other crimes, the injuries suffered by a battered wife were classified according to the damage caused and, if more pain had been deliberately caused, the penalty increased (articles 391 and 400 CP). Wounds, blows, a miscarriage were serious injuries if the person was left "insane, useless for work, impotent, disabled in some important limb or noticeably deformed", or deemed less serious if they became ill or unable to work for some time. (Article 397 CP). In contrast, contusions that were easy to heal were considered minor. These crimes, whether they were crimes or misdemeanors that one spouse committed against the other, could be invoked as

[81] VERA (1884), pp. 316 y 564.

[82] VERA (1884), p. 781.

[83] VERA (1883), p. 567.

[84] Paragraph 1, article 1 of the CP (1874): "crime is any voluntary action or omission punishable by law" that was committed freely and voluntarily and with malice.

[85] VERA (1883), p. 614.

grounds for divorce if there was a judgement that confirmed it. But not so the offenses that corresponded to less serious injuries and that did not serve as grounds for obtaining a prison sentence.

The occurrence of these assaults in marriage was not perceived as a problem, nor was it a matter of specific legal interest. Among the great work produced by the Mayor of Santiago, Benjamín Vicuña Mackenna, there are a couple of works on police and criminal statistics. According to said records, he pointed out that the "bad treatment of women" - he did not specify whether it was caused by the husband, partner, or other - corresponded to 2.8% (187) of the total crimes punished with prison (6,777) in 1873 and a similar average for the following year (Vicuña, 1875: 36-37 and 44).[86] However, he did not comment on it. Neither did Vera in his prolific work on the criminal regime and the caselaw in this matter (in which he did not collect any case of marital abuse).

The scarce attention paid to this issue reinforces the need to inquire into divorce proceedings regarding the legal protection that was slowly emerging regarding these issues. Those ideas and first approximations had little publicity, because they were expressed in an ecclesiastical court. In the hands of the Church, in a context of political conflict over the reforms towards the secularization of the State, divorce trials generated a contentious discussion and caselaw of limited influence.

However, it should be noted that violence against women was included in the Criminal Code by incorporating certain legal figures associated to gender. An aggravating circumstance of criminal liability was to abuse the superiority of one gender over the other if the woman could not defend herself with any probability of repelling the offense.

Another aggravating circumstance included the respect that the offended woman deserved due to her gender if she had not provoked the event. The assumption of the vulnerability of women and the weakness of her gender was transversal to the legal system. This natural condition of women made them subjects of moral and legal protection. Mistreating her, therefore, was cowardly, an abuse of masculine strength and could not be understood as the legitimate exercise of her husband's duty to direct her.[87] The scope of the fundamental rights of women was, therefore, a consequence of this premise.

[86] VICUÑA (1875), pp. 36-37 and 44.

[87] VERA (1883), pp. 119-123.

The good treatment and protection that the husband owed his wife emerged from her vulnerable nature; In turn, the principles of inviolability of the person and his/her property, the right to privacy, the introduction of the criminal criterion of proportionality between the infringement and the penalty, discredited the figure of marital punishment. The rejection and criticism of this power, today understood as excessive, were a predominant discourse throughout the 19th century. Although spousal mistreatment was not explicitly sanctioned by law as a crime, it was an aggravating circumstance in criminal matters and represented a legal ground for divorce in civil matters. Apparently, it was not considered necessary to penalize it either, because there was no debate on this matter during the two years of legislative discussion of the Criminal Code. This does not mean that the repudiation was hypocritical. On the one hand, divorce trials demonstrate the social and statutory delegitimization of punishment; on the other, the prevailing theory of marital unity redefined male prerogatives and created new ways of exercising marital power in order to preserve the integrity of the family.

Conclusions

The analysis of the divorces processed in Chile during the 19th century, in the light of the new liberal legal order, allows us to recognize the transcendental significance that home had for women when it was invoked as the seat of the family and space for individual autonomy. In the construction of this space, which was understood as private to the family and exclusive to the individual, the Church and the State converged through canon law and the law. The liberalization of marriage – through its regulation by the Civil Code of 1855 and its subsequent reform in 1884 – was a process that reconfigured said bond and that built a wall surrounding the home, containing those who belonged to it, as well as a border with respect to public space. On one hand, the home was the space of the family as a community distinguishable from civil society and the State. On the other, the private status that it acquired represented a legal argument that sought to dismiss the interference of the public authority regarding what occurred in that sphere.

Divorce trials, whose main legal ground was mistreatment, show not only the phenomenon of domestic violence, but also show how the fundamental rights of women – and men– were materialized in alliance with the State. The contractual language that penetrated marriage also affected the understanding of home, where complex tensions were manifested between individual rights both at the statutory level and in the application of justice. The divorces examined herein reveal these ambivalences. They reveal us the efforts that were put by the different actors to

guarantee fundamental rights not only with respect to the limits to state intervention, but also between them.

The claims of rights that the wives made in their divorce petitions expressed a broader social process of male restriction prerogatives that, eventually, promoted greater equality between men and women. They also suggest that the notion of female dependency underwent a change towards the idea that women could be guarantors of themselves. However, we cannot assume that this approach later leads to a progressive and unidirectional trajectory towards secular marriage between equals.

Consequently, marital power was redefined in a double sense. On the one hand, the right to correct one's wife was a delegitimized male prerogative. However, a direct relationship cannot be established between its obsolescence and a more egalitarian bond between spouses. On the other, said power came from male autonomy and if the husband could not control his violence, he became a danger to society, because it threatened the family model as the "little republic" on which society was founded. Following the reasoning of the judgements that sanctioned divorce, the mistreatment towards wives were attacks against this concept of home.

Likewise, the analysis of divorce trials identifies a turning point in which the phenomenon of domestic violence acquires a public meaning as a problem of rights, intertwined with the processes of secularization and liberalization that marriage experienced during the second half of the twentieth century.

Home as a space of personal security became a key concept to understand privacy as an argument in order to limit the action of justice; and, in turn, to demand the protection of women's rights not to be mistreated. This ambivalent meaning reveals that individual consent as an essential element of private action was a premise for the increase in coercive powers by the State. Paradoxically, the process known as home privatization promoted another process that can be understood as criminalization (which sought to legitimize state intervention).

In order to allow State intervention at home, certain behaviors would have to be penalized and thus legitimize court interventions. These changes seem contradictory, however, precisely due to the growing private significance of home as an individual's private space. This shift meant that marital abuse began to be understood as domestic violence, gradually assimilating it to a crime. In short, home drew artificial borders – which in no way means that they did not exist – that hid and at the same time allowed domestic violence to be identified.

BIBLIOGRAPHY CITED

ADLER, Jeffrey S. (2003). "We've Got a Right to Fight; We're Married": Domestic Homicide in Chicago, 1875-1920". *The Journal of Interdisciplinary History* 34 (1): 27-48.

ALESSANDRI R., Arturo (1941). *Derecho de Familia*. Santiago: Editorial Zamorano Caperán.

ALEXY, Robert (2008). *Teoría de los derechos fundamentales*. Madrid: Centro de Estudios Políticos y Constitucionales.

ALFONSO, Paulino (1901). "Estudio sobre la lei de matrimonio civil". *Anales de la Universidad de Chile*: 83-166.

ALFONSO, Paulino (1900). "Estudio sobre la Lei de Matrimonio Civil. Continuación". *Anales de la Universidad de Chile*: 827-858.

AMUNÁTEGUI, Miguel L. (1885a). "Matrimonio Civil. Discurso pronunciado en la Cámara de Diputados en sesión de 21 de agosto de 1883". *Discursos Parlamentarios*: 589-614.

AMUNÁTEGUI, Miguel L. (1885b). *Don Andrés Bello y el Código Civil*. Santiago: Imprenta Cervantes.

ARAYA, Alejandra (2018). "Femicidio en Chile: breve historia de una ley, larga historia de la violencia contra las mujeres". *Anales de la Universidad de Chile* 14: 355-394.

ARENDT, Hannah (2005). *La condición humana*. Barcelona: Ediciones Paidós Ibérica.

ARIÉS, Philippe & DUBY, George (2001). *Historia de la vida privada. De la Revolución Francesa a la Primera Guerra Mundial*. Madrid: Taurus.

ARIES, Philippe (1962). *Centuries of Childhood: A Social History of Family Life*. New York: Vintage Books.

ARROM, Sylvia M. (1988). *Las mujeres de la Ciudad de México*. México: Siglo Veintiuno Editores.

AZCÁRATE, Gumercindo. 1881. *Código Civil de la República de Chile precedido de un juicio crítico por D. Gumersindo de Azcárate*. En *Colección de códigos europeos y americanos (comentado, concordado y comparado con las legislaciones vigentes en Europa y América)*, Alberto Aguilera y Velasco (ed.). Madrid: Imp. García y Caravera.

BACKHOUSE, Constance (1991). *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada*, Women's Press/Osgood Society.

BACKHOUSE, Constance (1988). "Married Women's Property Law in Nineteenth-Century Canada". *Law and History Review* 6 (2): 211-257.

BAILEY, Joanne & GIESE, Loreen (2013). "Marital cruelty: reconsidering lay attitudes in England, c. 1580 to 1850". *The History of the Family* 18 (3): 289-305.

BARCIA, Rodrigo (2011). *Fundamentos del derecho de Familia y de la Infancia*. Santiago: Editorial Thomson Reuters.

BARRIENTOS, Javier (2019). "Blackstone y su uso por Bello en la formación del código civil de Chile. Un ejemplo en sede de nulidad del matrimonio". *Revista de Estudios Histórico Jurídicos* 41: 305- 315.

BARROS, Martina (1872-73). "La esclavitud de la mujer por Stuart Mill (estudio crítico)". *Revista Chilena* II: 112-124.

BELLO, Andrés (1881). *Obras Completas*, Santiago: Impreso por Pedro G. Ramirez.

BOURDIEU, Pierre (2000). *La Dominación Masculina*. Barcelona: Anagrama.

BRANDAU, Matilde (1898). *Los derechos civiles de la mujer*. Santiago: Imprenta Cervantes.

CAFFARENA, Elena (1947). *¿Debe el marido alimentos a la mujer que vive fuera del hogar conyugal?* Santiago: Ediciones de la Universidad de Chile.

CHAMBERS, Sarah C. (1999). *Public Lives, Private Secrets: Gender, Honor, Sexuality, and Illegitimacy in Colonial Spanish America*. Stanford: Stanford University Press.

CLARO S., Luis. (1902). *Explicaciones de derecho civil y comparado*. Santiago: Roma.

CALDERONI, Sonia (2005). "Haciendo públicos actos de nuestra vida privada. El divorcio en Nueva León, 1890-1910". En *Historia de la vida cotidiana en México*, Pilar Gonzalbo (ed.), 463-498. México D.F: Fondo de Cultura Económica.

CLARK, Anna (1992). "Humanity or Justice? Wifebeating and the Law in the Eighteenth and Nineteenth Centuries". En *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*, Carol Smart (ed.), 187-206, London: Routledge.

COLLIER, Simon (2012). *Ideas y política de la independencia chilena. 1808-1833*. Santiago: Fondo de Cultura Económica.

COOD, Enrique (1897). *Explicaciones de Código Civil: tomadas en las clases de los profesores del ramo en la Universidad de Chile*. Valparaíso: Libr. del Porvenir.

COTT, Nancy (2000). *Public Vows: A History of Marriage and the Nation*. Cambridge: Harvard University Press.

COUNTS, Dorothy A., BROWN, Judith K. & CAMPBELL, Jacquelyn C. (eds.) (1992). *Sanctions and Sanctuary: Cultural Perspectives on the Beating of Wives*. New York: Routledge.

DAS, Veena (2008). "Violence, Gender, and Subjectivity". *Annual Review of Anthropology* 37: 283-299.

DAVIDOFF, Leonore & HALL, Catherine (2002). *Family Fortunes: Men and Women of the English Middle Class 1780-1850* (Edición revisada). London: Routledge.

DÁVILA, Dora (2005). *Hasta que la muerte nos separe. El divorcio eclesiástico en el arzobispado de México*. México D.F.: El Colegio de México, Universidad Iberoamericana, Universidad Católica Andrés Bello.

DAVIS, Natalie Z. (1987). *Fiction in the Archives. Pardon Tales and Their Tellers in Sixteenth-Century France*. Stanford: Stanford University Press.

DEERE, Carmen D. & LEÓN, Magdalena (2005). "Liberalism and Married Women's Property Rights in Nineteenth Century Latin America". *Hispanic American Historical Review* 85 (4): 627-678.

DOLAN, Frances E. (2008). *Marriage and Violence: The Early Modern Legacy*. Philadelphia: University of Pennsylvania Press.

DOLAN, Frances E. (2003). "Battered Women, Petty Traitors, and the Legacy of Coverture". *Feminist Studies* 29 (2): 249-277.

DOLAN, Frances E. (1994). *Dangerous Familiars: Representations of Domestic Crime in England 1550-1700*. Ithaca: Cornell University Press.

DONOSO, Justo (1857). *Diccionario Teológico, Canónico, Jurídico, etc*. Valparaíso: Imprenta y Librería El Mercurio.

DONOSO, Justo (1858). *Instituciones de derecho canónico americano escritas por el rev.sr.d. Justo Donoso para el uso de los colegios de las repúblicas americanas*. Rosa y Bouret.

DORE, Elizabeth (2000). "One Step Forward, Two Steps back: Gender and the State in the Long Nineteenth Century". En *Hidden Histories of Gender and the State in Latin America*, Elizabeth Dore y Maxine Molyneux (eds.), 3-32. Durham: Duke University Press.

DORE, Elizabeth (1997). *Gender Politics in Latin America*. Nueva York: Monthly Review.

DOSSEY, Leslie (2008). "Wife Beating and Manliness in Late Antiquity". *Past & Present* 199: 3-40.

DOUGNAC, Antonio (2003). *Esquema del Derecho de Familia Indiano*. Santiago: Ediciones del Instituto de Historia del Derecho Juan de Solórzano y Pereyra.

DWORKIN, Ronald (1989). "Rights as trumps". En *Theories of rights*, Jeremy Waldron (ed.), 153-167. Hong Kong: Oxford University Press.

ECHEVERRÍA, Guillermo (1892-1893). "Derechos civiles de la mujer. Memoria presentada para optar al grado de Licenciado en la Facultad de Leyes y Ciencias Políticas". *Anales de la Universidad de Chile* 82 (1): 1127-1137.

EDWARDS, Laura F. (2012). "The History in 'Critical Legal Histories': Robert W. Gordon. 1984. Critical Legal Histories". *Stanford Law Review* 36: 57-125.

ESCRICHE, Joaquín (1869). *Diccionario razonado de legislación y jurisprudencia. Nueva edición en que van corregidos numerosos yerros de las anteriores; aumentada con multitud de artículos nuevos sobre el derecho vigente en España y América*. Paris: Librería de Garnier Hermano.

FERGUSON, Eliza E. (2010). *Gender and Justice: Violence, Intimacy and Community in Fin-de Siecle Paris*. Baltimore: John Hopkins University Press.

GARCÍA, Ana L. (2006). El fracaso del amor. Género e individualismo en el siglo XIX mexicano. México D.F.: El Colegio de México.

GARGARELLA, Roberto (2008). *Los fundamentos legales de la desigualdad: el constitucionalismo en América, 1776- 1860*. Buenos Aires: Siglo XXI.

GAUVARD, Claude (2013). "Conclusions". En *Couples en justice, IVe – XIXe siècle*, Claude Gauvard y Alessandro Stella (eds.), 215-224. Paris: Publications de la Sorbonne.

GINSBORG, Paul A. (2008). "Only Connect": Family, Gender, and Civil Society in Twentieth-Century Europe and North America". En *Civil Society and Gender Justice. Historical and Comparative Perspectives*, Karen Hagemann, Sonya Mitchel, y Gunilla Budde (eds.), 153-170. New York, Oxford: Berghahn Books.

GOLDMAN, Noemí (1989). *El discurso como objeto de la historia*. Buenos Aires: Hachette.

GONZÁLEZ, Florentino (1862). *Diccionario de Derecho Civil*. Valparaíso: Imprenta del Comercio.

GORDON, Linda (2002). *Heroes of their own Lives. The Politics and History of Family Violence, Boston 1880-1960*. Chicago: University of Illinois Press.

HALL, Catherine (1989). "Sweet Home". En *Historia de la vida privada. De la Revolución Francesa a la Primera Guerra Mundial*, Peter Brown et al. (eds.), 53-94, Madrid: Taurus.

HAMMERTONE, James A. (1995). *Cruelty and Companionship. Conflict in Nineteenth-Century Married Life*. New York: Routledge.

HAREVEN, Tamara K. (1991). "The Home and the Family in Historical Perspective". *Social Research* 58 (1): 253-285.

HARTOG, Hendrik. (2012). "Introduction to Symposium on 'Critical Legal Histories': Robert W. Gordon. 1984 Critical Legal Histories". *Stanford Law Review* 36: 57-125.

HARTOG, Hendrik (2002). *Man and Wife in America: A History*. Cambridge: Harvard University Press.

HARTOG, Hendrik (1997). "Lawyering, Husbands' Rights, and 'the Unwritten Law' in Nineteenth-Century America". *The Journal of American History* 84 (1): 67-96.

HASDAY, Jill E. (2004). "The Canon of Family Law". *Stanford Law Review* 57 (3): 825-900.

HUNEFELDT, Christine (2000). *Liberalism in the Bedroom. Quarreling Spouses in Nineteenth-Century Lima*. Pennsylvania: The Pennsylvania State University Press.

HUNT, Lynn (2007). *La invención de los derechos humanos*. Barcelona: Tusquets.

HUNT, Lynn (1992). *The Family Romance of the French Revolution*. Berkeley: University of California Press.

HUNT, Margaret R. (1992). "Wife Beating, Domesticity and Women´s Independence in Eighteenth-Century London". *Gender & History* 4 (1): 10-33.

JAKSIC, Iván & POSADA-CARBÓ, Eduardo (eds.) (2011). *Liberalismo y poder. Latinoamérica en el siglo XIX*. Santiago: Fondo de Cultura Económica.

JARAMILLO, Isabel C. (2018). "El papel del derecho en la producción de desigualdad: El caso de los alimentos". *Comparative Law Review* 9 (1): 120-142.

JARAMILLO, Isabel C. (2010). "The Social Aproach to Family Law: Conclusions from the Canonical Family Law Tratises of Latin America". *The American Journal of Comparative Law* 58 (4): 843-872.

KLUGER, Viviana (2003). *Escenas de la vida conyugal. Los conflictos matrimoniales en la sociedad rioplatense*. Buenos Aires: Editorial Quórum, UMSA.

LASTARRIA, José Victorino (1914). *Instituta del derecho civil chileno*. Santiago: Imprenta, Litografía i Encuadernación Barcelona.

LATORRE, Enrique C. (1887). *Estudio sobre la lei de matrimonio civil (de 10 de enero de 1884)*, Santiago: Imprenta La Unión.

LASLETT, Peter (ed.) (1977). *Family Life and Illicit Love in Former Generations*. Cambridge: Cambridge University Press.

LAVALLÉ, Bernard (1999). *Amor y opresión en los Andres coloniales*. Lima: IEP/EFEA/URP.

LEPIN, Cristián (2014). "Los nuevos principios del derecho de familia". *Revista Chilena de Derecho Privado* 23: 9-55.

LETELIER, Valentín (1917). *Génesis del estado y de sus instituciones fundamentales*. Buenos Aires: Cabaut y Cía.

LIDMAN, Statu (2013). "Violence or justice? Gender-specific structures and strategies in early modern Europe". *The History of the Family* 18 (3): 238-260.

MACKINNON, Catharine A. (1982). "Toward Feminist Jurisprudence". *Stanford Law Rewiev* 34 (3): 703-37.

MARCUS, Isabel (2014). "Reframing domestic violence as torture or terrorism". *Zbornik radova Pravnog fakulteta Nis* 67: 13-24.

MAINARDI, Patricia (2003). *Husbands, Wives, and Lovers. Marriage and its Discontents in Nineteenth-Century France*. New Haven y Londres: Yale University Press.

MEYEROWITZ, J. (2008). "A History of 'Gender'". *The American Historical Review* 113 (5): 1346-1356.

MCHAFFIE, Matthew (2018). "Law and Violence in Eleventh-Century France". *Past & Present* 238 (1): 3-41.

MILANICH, Nara (2009). *Children of Fate: Childhood, State and Class in the 19th Century Chile*. Duke University Press.

MOLYNEUX, Maxine (2000). "Twentieth-Century State Formations in Latin America". En *Hidden Histories of Gender and the State in Latin America*, Elizabeth Dore y Maxine Molyneux (eds.), 33-81. Durham: Duke University Press.

MURAVYEVA, Marianna (2017). *Domestic Disturbances, Patriarchal Values: Violence, Family and Sexuality in Early Modern Europe, 1600-1900*. Routledge.

MURAVYEVA, Marianna (2013). "'A king in his own household': domestic discipline and family violence in early modern Europe reconsidered". *The History of the Family* 18 (3): 227-237.

NEDELSKY, Jennifer (1990). "Law, Boundaries, and the Bounded Self". *Representations* 30: 162-189.

NIZZA DA SILVA, Beatriz (1992). "Divorce in Colonial Brazil: The Case of Sao Paulo". En *Sexuality and Marriage in Colonial Latin America*, Asunción Lavrin (ed.), 313-340. Nebraska: The University of Nebraska Press.

NUSSBAUM, Martha C. (2000). "The future of Feminist Liberalism". *Proceedings and Addresses of the American Philosophical Association* 74: 47-79.

OKIN, Susan M. (1989). *Justice, Gender, and the Family*. Nueva York: Basic Books.

__2004. "Gender, Justice and Gender: An Unfinished Debate". *Fordham Law Review* 72: 1536-1568.

PATEMAN, Carol (1990). *The Disorder of Women: Democracy, Feminism and Political Theory*. Stanford: Stanford University Press.

PERROT, Michèle (1998). *Les Femmes ou les silences de l'histoire*. Paris: Flammarion.

PERROT, Michèle (2001). "Figuras y funciones" y "La vida de familia". En *Historia de la vida privada. De la Revolución Francesa a la Primera Guerra Mundial*, Philipe Aries y George Duby (eds.), 125-183 and 185-191. Madrid: Taurus.

PHILLIPS, Roger (1991). *Untying the Knot: A short History of Divorce*. Cambridge: Cambridge University Press.

PHILLIPS, Roger (1988). *Putting asunder. A History of Divorce in Western Society*. Nueva York: Cambridge University Press.

PLECK, Elizabeth (2004). *Domestic Tyranny: The Making of American Social Policy against Family Violence from Colonial Times to the Present*. Illinois: University of Illinois Press.

PONCE DE LEÓN, Macarena; RENGIFO, Francisca; & SERRANO, Sol (2006). "La 'pequeña república'. La familia en la formación del Estado nacional, 1850-1929". En *El eslabón perdido. Familia, modernización y bienestar en Chile*, J. Samuel Valenzuela, Eugenio Tironi and Timothy R. Scully (eds.), 43-96. Santiago: Taurus.

POTHIER, R. Joseph (1846). *Tratado del contrato de matrimonio por Pothier; traducido al español con notas de derecho patrio*, Mariano Noguera y Francisco Carles (eds.). Barcelona, Imprenta y Litografía de J. Roger.

PRICE, Joshua M. (2002). "The Apotheosis of Home and the Maintenance of Spaces of Violence". *Hypatia* 17 (4): 39-70.

PUTMAN, Lara; CHAMBERS, Sarah C. & CAULFIELD, Sueann. 2005. "Introduction: Transformations in Honor, Status, and Law over the Long Nineteenth Century". En *Honor, Status, and Law in Modern Latin America*, Sueann Caulfield et al., 1-24. Durham&London: Duke University Press.

RAMBO, Kirsten S. (2009). *'Trivial Complaints': The Role of Privacy in Domestic Violence Law and Activism in the US*. Columbia University Press.

RENGIFO, Francisca (2011). *Vida conyugal, maltrato y abandono: el divorcio eclesiástico en Chile, 1850-1890*. Santiago: Centro de Investigaciones Diego Barros Arana (DIBAM), Editorial Universitaria.

RIOSECO, Emilio. (1956). "El Código Civil y la evolución del Derecho de Familia". *Revista de Derecho Universidad de Concepción* 98 (XXIV).

ROSANVALLON, Pierre (1992). *Le sacre du citoyen. Histoire du suffrage universal en France*. París: Gallimard.

ROSSEL, Enrique (1958). *Manual de Derecho de Familia*. Santiago: Editorial Jurídica de Chile.

SCHMIDT, Claudia (2005). "La constitucionalización del derecho de familia". En *Sesquicentenario del Código Civil de Andrés Bello. Pasado, presente y futuro*, María Dora Martinic et al. (eds.), 1235-1244. Santiago: LexisNexis.

SCOTT, Joan W. (2008). "Unanswered Questions". *The American Historical Review* 113 (5): 1422-1429.

SCOTT, Joan W. (1998). *Gender and the Politics of History* (Revised Edition). Nueva York: Columbia University Press.

SCOTT, Joan W. (1997). *Only Paradoxes to Offer: French Feminists and the Rights of Man*. Harvard University Press.

SCOTT, Joan W. (1986). "Gender: A Useful Category of Historical Analysis". *The American Historical Review* 91 (5): 1053- 1075.

SERRANO, Sol (2008). *¿Qué hacer con Dios en la República? Política y secularización en Chile (1845-1885)*. Santiago: Fondo de Cultura Económica.

SHANLEY, Mary L. (2002). "Review: Public Values and Private Lives: Cott, Davis, and Hartog on the History of Marriage Law in the United States". *Law & Social Inquiry* 27 (4): 923-940.

SHORTER, Edward (1975). *The Making of the Modern Family*. New York: Basic Books.

SIEGEL, Reva B. (1996). "The Rule of Love: Wife Beating as Prerogative and Privacy". *The Yale Law Journal* 105 (8): 2117-2207.

SIEGEL, Reva B. (2015). "How Conflict Entrenched the Right to Privacy". *124 Yale L.J. F.* 316 http://www.yalelawjournal.org/forum/how-conflict-entrenched-the-right-to-privacy.

SOMARRIVA, Manuel (1963). *Derecho de Familia*. Santiago: Editorial Nascimento.

STABILI, M. Rosaria (2017). "La res-pública de las mujeres". En *Historia política de Chile. Tomo I: Prácticas Políticas*, Iván Jaksic y Juan Luis Ossa (eds.), 243-270. Santiago: Fondo de Cultura Económica.

STANLEY, Amy Dru (1999). *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation*. Cambridge University Press.

STONE, Lawrence. 1993. *Broken Lives. Separation and Divorce in England, 1660-1857*. Nueva York: Oxford University Press.

__1990. *Road to Divorce: England 1530-1987*. Oxford: Oxford University Press.

SUK, Jeannie (2009). *At home in the Law. How domestic violence revolution is transforming privacy*. New Haven y Londres: Yale University Press.

VAN DÜLMEN, Richard (2016). *El descubrimiento del individuo*. Madrid: Siglo XXI.

VERA, Robustiano (1883). *Código Penal de la República de Chile, comentado por Robustiano Vera, Abogado y Promotor Fiscal en lo criminal de Santiago*. Santiago.

VERA, Robustiano (1884). "Editorial". La Epoca, Agosto 16, 1884.

VICUÑA M., Benjamín (1875). *La policía de seguridad en las grandes ciudades modernas. La Estadística criminal de Santiago durante los años de 1873 y 1874*. Santiago: Imprenta de La República.

WEBER, Max (1944). *Economía y sociedad esbozo de sociología comprensiva*. México D.F.: Fondo de Cultura Económica.

Cases Cited, Archivo del Arzobispado de Santiago de Chile, Tribunal Eclesiástico:

Avaria v. Zurmarán, exp. 77, año 1870.
De la Cuadra v. Correa, exp. 283, año 1865
Garcés v. Blanco, exp. 568, año 1880.
Godoy v. Campino, exp. 526, año 1854.
Grez v. Molina, exp. 565, año 1878.
Heredia v. García, exp.598, año 1852.
Honorato v. Saénz, exp. 612, año 1875.
Larrosa v. Melo, exp.1032, año 1853.
León v. Castro, exp. 688, año 1852.
Marchant v. Echeverría, exp. 792, año 1859.
Niño v. Cruzat, exp. 876, año 1858.
Saavedra v. Mujica, exp. 1173, año 1863.