Reforming Legal Institutions for Gender Equitable Development: The Case of El Salvador

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Question:

Existing strategies for reforming gender biased state institutions have failed to make a noticeable difference for Salvadoran women's judicial rights.

Why?

What should we try next?

Institutions, Gender, and Development

1980s - 1990s

"Good" institutions, and particularly good state institutions, are key to development.

(Johnson 1982; Amsden 1989; Evans 1995; Acemoglu, Johnson, Robinson 2001)

2000's

"Feminist Institutionalism" -

"Good" institutions (in terms of formally espousing ideals of equality) often reproduce and even exacerbate gender inequalities. Why, and how can institutions be reformed?

(Chappell and Waylen 2013; Krook and Mackay 2011; Htun and Weldon 2010; Kenny 2007)

So what is an institution?

Political Scientists:

The "rules of the game," both formal and informal, within which political actors operate. Often rather structural.

Sociologists:

"Durable structures of shared knowledge." Thoroughly cultural.

(DiMaggio and Powell 1983, 1991; Patterson 2013, 2014).

Everyone agrees:

Institutions are SLOW TO CHANGE

Mechanisms by which state institutions shape gender

Gains and Lowndes 2014

- 1. Rules about gender
- 2. Rules that have gendered effects
- 3. Gendered actors working with rules
- 4. Gendered outcomes of action shaped by rules

Brush 2003

"Gender of Governance" and "Governance of Gender"

Interventions attempted to reform gender biased state institutions

- Creation of Women's Agency within the state
- Gender mainstreaming
- Legislative quotas
- Reforming sexist criminal and civil codes
- Passing modern laws against gender-based violence
- Training for state actors

Gender Bias in the Salvadoran Judicial Institution

TWO CASES:

1. Gender-based violence

2. Abortion-related "homicides"

History of Abortion Law in El Salvador

1992-

Civil war ends

New criminal code must be written

1994-

Powerful pro-life movement is launched

1997-

Criminal code = no abortions, no exceptions

1999-

Constitutional amendment = life begins at conception

Feminists agree to be silent on the issue



2001- pressure on legal system to prosecute

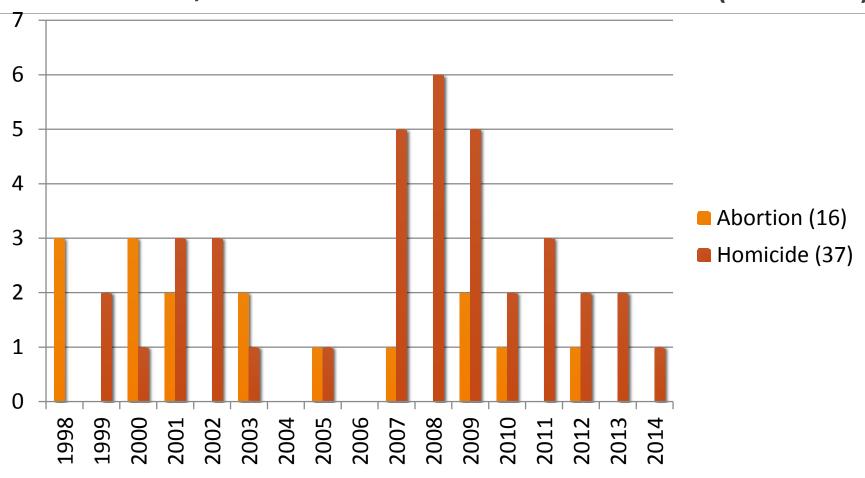
Abortion law results in a new kind of "homicide"



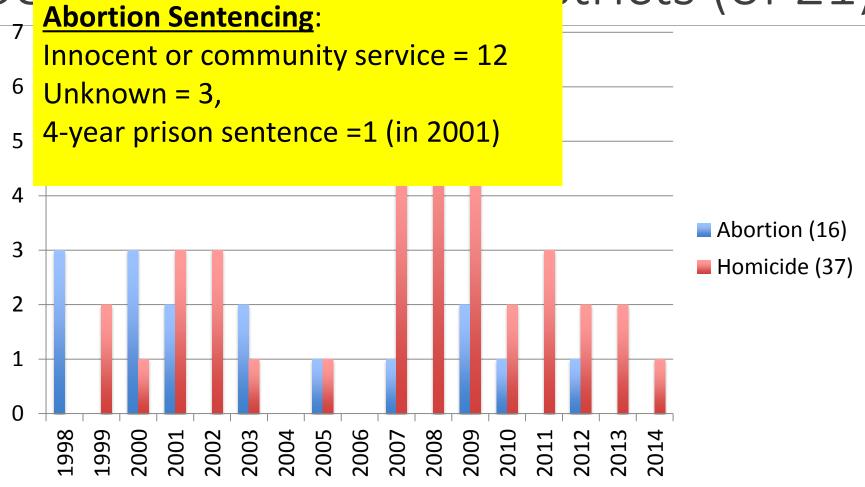
The Case of Maria Teresa

- Hardworking single mom in impoverished community
- Doesn't know she is pregnant
- Accidentally births into the latrine; all evidence indicates fetus died in utero
- Charged with abortion
- Charges upgraded to aggravated homicide
- •Sentenced to 40 years in prison.

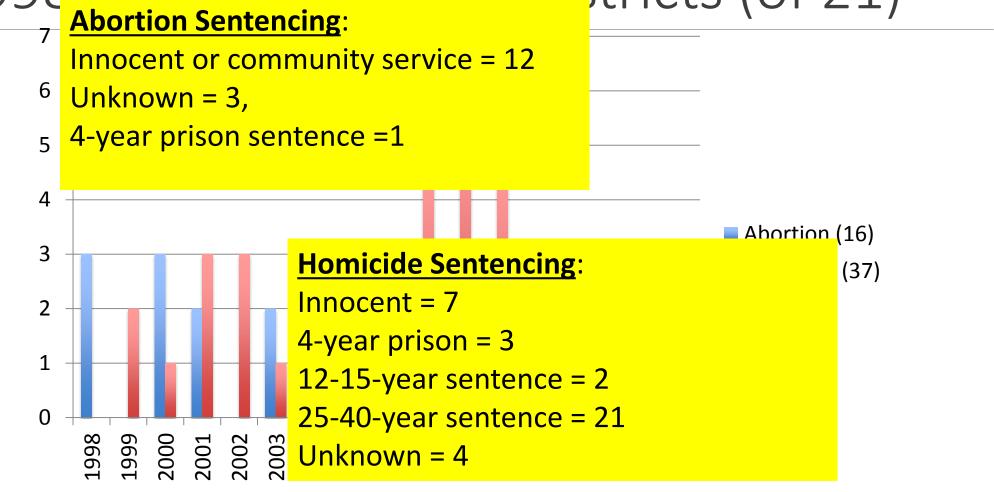
1998-2013, 12 Judicial Districts (of 21)



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In-depth review of 17 "Fetal Homicide" cases finds gender bias in...

Police

Hospitals

Medical Forensics

Attorney General office

Judge's sentencing

A parallel "Perverse Mother" narrative in the media...





Theoretical questions raised by this case:

- 1. What do scholars of Feminist Institutionalism miss when we only think in terms of a progress/no progress binary?
- 2. Institutions may be SLOW to progressive change, but are they FAST to regressive change?
- 3. How do we theorize the gendered difference between "laws on the book" and "laws in practice," when the laws on the book are horrifically biased?
- 4. Institutional reforms to date have focused on increasing the prosecution of those (men) who victimize women. What institutional reforms are necessary when it is the *prosecution* that victimizes women?

Why was regressive gender change so easy in El Salvador's Judicial Institution?

CULTURE

Obviously beliefs about 'perverse mothers' were remarkably easy to accept.

STRUCTURE

Fiscales have too many cases + quotas. Result = prosecution of most vulnerable.

If Salvadorans have a complaint about the fiscal, the only place they have to register that complaint is ...with the fiscal.

There are no checks on judges who have poorly enacted the law.

The Fiscal has far more power to shape the outcome of a trial than does the Defense.

In El Salvador, progressive reforms to date have included:

- -an influx of women as fiscales and judges
- -regular and thoughtful trainings on gender equity in the law
- -the passage of new, modern laws against gender violence
- -the creation of a women's agency within the state, and "women's cities" throughout the nation

...But data suggest few if any actual changes in court behavior re: effective and legal sanctioning of gender-based violence.

In El Salvador, regressive reforms include:

-a new law against abortion and fetal "homicides"

...and data provide clear evidence of a powerful transformation in the judicial system allowing the increased prosecution of women.

Suggestions for promoting more genderequitable institutions in El Salvador

-External mechanism of evaluation and control

- -Elaboration of protocols for gender-specific cases
- -Equalization of resources for state defense and state prosecution
- -More systematic—and realistic—method of determining which cases Fiscales will handle and in which order

-A separate court for gender-based violence cases