Comparing whose laws? Interrogating biases in comparative law and scholarship through the lens of domestic violence workplace leave

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ABSTRACT

This article invites comparative scholars to reflect on the biases that bury legislative good practice. These biases and their consequences are demonstrated through the example of paid workplace leave for victims of domestic violence, comparing laws enacted between the Philippines' reforms in 2004 and more recent developments in New Zealand (2018) and Australia (2022). Three reasons for these legislative biases are offered, the foremost being an English language 'imperialism' where good practice legislation from Spain and Latin America has been overlooked. Second, a global 'gender equality bias' has framed global North nations – particularly traditionally-influential Nordic ones – as world leaders, with other even highly ranked global South countries ignored. Finally, feminist international scholarship has inadvertently fostered a perception of the global South as lacking women-centred law reform from which other jurisdictions can learn. To support these claims, in Part 3, three models for workplace leave for victims of violence are presented, a review that takes us from the Philippines and Spain to eight Spanish-speaking jurisdictions, valuable models enacted before these English-speaking nations that have been deemed legislative 'leaders' in this domain. This article urges scholars of comparative law to see the potential for meaningful findings to be drawn from cross-border, multi-linguistic comparisons, which require an active consciousness of the biases that must be overcome.
Key words: domestic violence; workplace leave; comparative law; multi-linguistic, linguistic bias

INTRODUCTION

In July 2018, New Zealand passed the *Domestic Violence – Victims Protection Act*[2] by a parliamentary vote of 63 in favour and 57 against. Several scholars described New Zealand's introduction of 10

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[2] *Domestic Violence—Victims' Protection Act 2018 No 21, Public Act Contents – New Zealand Legislation 2018* (Public Act 2018 No 21). New Zealand's reforms saw a change to the *Holidays Act* to provide 10 days paid leave per year for victims of violence and a change to the *Employment Relations Act* to offer flexible working arrangements for victims to

days' paid leave per year for victims of violence as 'a global landmark for holding workplaces accountable for safeguarding victims through a codification of employer responsibility'.[3] New Zealand's reforms were named a 'milestone'.[4] Yet as this article will demonstrate, New Zealand was far from the world's first to introduce workplace leave for victims of violence.

Shortly after New Zealand, Australia followed suit. In 2022, the Australian Federal Government introduced 10 days of paid leave – amending the previous 5 days of unpaid leave[5] – for employees of larger business (with 15 or more employees) from 1 February 2023 and for small business (with less than 15 employees) from 1 August 2023. Australia's union movement named the enshrinement of 10 days leave in law as a 'gamechanger,'[6] while acknowledging the decade of campaigning and law reform that preceded it. As early as 2010, Australia began to reform the field. The Australian Services Union was the first to negotiate paid family and domestic violence leave in a workplace agreement with the Surf Coast Shire Council, in this case, 20 days of paid leave.[7] This local council agreement – unfortunately incorrectly described by Public Services International, a federation of more than 700 trade unions in 154 countries, as 'the world's first entitlement'[8] to paid leave – was subsequently replicated in hundreds of other workplace bargaining agreements across Australia.

These largely uncontested claims that frame these global North nations as world leaders when it comes to domestic violence workplace leave, are reflective of a broader global bias concerning our knowledge about law reform. Through the example of paid workplace leave for victims of violence, we are able to see how even comparative scholars are biased by their own lens and their scope of comparison. This is not to be dismissive of the importance of these more recent reforms in New Zealand and Australia. The Surf Coast Shire Council agreement in Australia in 2010 was the start of an important trajectory that enabled the nation to arrive at its much-needed current legislative

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be able to negotiate a change to their work location, hours or duties for up to two months and to be protected from workplace dismissal. See Michael Fletcher, *Towards Wellbeing? Developments in Social Legislation and Policy in New Zealand* (No Social Law Reports No. 2/2019, Max Planck Institute for Social Law and Social Policy, 2018).

[3] Ruth Weatherall, Mihajla Gavin and Natalie Thorburn, 'Safeguarding Women at Work? Lessons from Aotearoa New Zealand on Effectively Implementing Domestic Violence Policies' (2021) 63(4) *Journal of Industrial Relations* 568, 568 ('Safeguarding Women at Work?').

[4] Ibid.

[5] *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (No. 47 of 2022).

[6] Mia McAuslan, 'Why Paid Family and Domestic Violence Leave Is a "Game Changer" for Women', *Australian Unions* (16 May 2022) <https://www.australianunions.org.au/2022/05/16/why-paid-family-and-domestic-violence-leave-is-a-game-changer-for-women/>.

[7] The Surf Coast Shire is a local council in the Southwestern region of the State of Victoria, with a population of under 40,000 people. See Surf Coast Shire Council Enterprise Agreement No.7 2010-2013 (AG2010/19899) – Clause 4.3 Family Violence, 6 December 2010 https://www.austlii.edu.au/cgi-bin/viewdoc/au/other/FWAAgmt/2010/9380.html.

[8] Hazel Ripoll, 'Australia to Introduce Paid Domestic Violence Leave', *Public Services International* (18 August 2022) <https://publicservices.international/resources/news/australia-to-introduce-paid-domestic-violence-leave?id=13212&lang=en>.

approach of offering paid leave for victims.[9] Nonetheless, as with the example of New Zealand, even leading scholars within the academy, have been described the 2010 workplace agreements as a natural 'case study' as 'one of the first domestic violence clauses providing paid leave in the world,'[10] begging us to ask how and why comparative and feminist legal scholars are getting it wrong.

This study requires us to return to March 2004, when the Philippines had much to celebrate. This was a nation that under its 2nd female President, Gloria Macapagal Arroyo, was changing the way it legislated when it came to women's experiences of the law – strengthening women's rights in the family, in relation to property, health, safety, violence, exploitation and at work. It was far from an ideal point in history for many Filipino women when Macapagal Arroyo led,[11] but in 2004, the President nonetheless signed into law the *Anti-Violence against Women and Their Children Act.*[12] A remarkable provision was embedded in that law. Section 43 provided access to ten days paid leave, in this case, exclusively for women victims of domestic violence and protection from adverse action and discrimination, such as dismissal from the workplace. A Bill put before the Senate in 2019 – yet to pass – seeks to extend that leave period up to 20 days.[13]

The Philippines has been, on occasion, acknowledged in comparative scholarship for its leadership on paid workplace leave,[14] including in my own work.[15] Yet even still, the net is hardly cast wider to reveal that the world firsts go beyond Australia and New Zealand.[16] One academic study even

[9] Jim Stanford, *Economic Aspects of Paid Domestic Violence Leave Provisions* (Centre for Future Work at the Australia Institute, December 2016) 13, fn. 12.

[10] Marian Baird, Ludo McFerran and Ingrid Wright, 'An Equality Bargaining Breakthrough: Paid Domestic Violence Leave' (2014) 56(2) *Journal of Industrial Relations* 190, 190 ('An Equality Bargaining Breakthrough').

[11] See for example Ramona Vijeyarasa, *The Woman President: Leadership, Law and Legacy for Women Based on Experiences from South and Southeast Asia* (Oxford University Press, 2022) 196–197.

[12] *An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes 2004* (Republic Act No. 9262) ('*Anti-Violence against Women and Their Children Act of 2004*').

[13] Manuel 'Lito' M Lapid, Granting Additional Leave for Victims of Domestic Violence Providing Parameters Thereof, and Amending for Such Purpose Republic Act No. 9262, Otherwise Known as the Anti-Violence against Women and Children Act 2019; 'Press Release - Pinuno Pushes for Additional Leaves for Victims of Domestic Violence' <https://legacy.senate.gov.ph/press_release/2022/0819_lapid1.asp>.

[14] Ruth Weatherall, Mihajla Gavin and Natalie Thorburn, 'Safeguarding Women at Work? Lessons from Aotearoa New Zealand on Effectively Implementing Domestic Violence Policies' (2021) 63(4) *Journal of Industrial Relations* 568, 570 ('Safeguarding Women at Work?'); Belinda Smith and Tashina Orchiston, 'Domestic Violence Victims at Work: A Role for Anti-Discrimination Law?' (SSRN Scholarly Paper No 2105150, 13 July 2012) 16 <https://papers.ssrn.com/abstract=2105150> ('Domestic Violence Victims at Work'); Ludo McFerran, Anna Lee Fos-Tuvera and Jane Acherhard-Hodges, 'An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence' (2018) 2018 *University of Oxford Human Rights Hub Journal* 167.

[15] Ramona Vijeyarasa, 'Does Law Matter?: Defending the Value of Gender-Responsive Legislation to Advance Gender Equality' (2022) 24(3) *NYU Journal of Legislation and Public Policy* 671, 721–722.

[16] Jennifer CD MacGregor et al, 'Intimate Partner Violence and Work: A Scoping Review of Published Research' (2021) 22(4) *Trauma, Violence, & Abuse* 717 ('Intimate Partner Violence and Work').

sought to share what the world has to *learn from* the Australian experiences.[17] In more recent reports that have made the case for workplace leave, the Philippines, New Zealand and Canada are mentioned;[18] yet the general rhetoric persists that 'paid family violence leave remains uncommon globally',[19] ignoring the practices of a vast number of nations that fall outside this narrow selection.

As will become evident, when one looks further afield, including to Spain and other Spanish-speaking jurisdictions, there is a wealth of good practice and early lessons from Latin America that fill a historical gap between the Philippines and New Zealand. As a scholar of gender and the law and gender-responsive law making, I have dedicated my recent body of research to finding good-practice legislation when it comes to feminist interventions in the legal arena. Indeed, there have been notable successes in recent years in constitutional and legislative reforms that seek to adopt a 'woman's standpoint' in the design and drafting of legislative reforms.[20] Simultaneously, there has been an evident call to expand the scope of topics to which we bring a gender lens – environmental law,[21] anti-slavery laws,[22] artificial intelligence[23] and anti-corruption legislation.[24] This pursuit of global good practices in the drafting of laws that better centre a diversity of women's interests has intrinsically raised a further question: how many of laws named as world firsts are truly the first and to what extent could domestic legislation have been improved if earlier reforms were uncovered and studied for the lessons they offer legislators.

[17] Jane Aeberhard-Hodges and Ludo McFerran, 'An International Labour Organization Instrument on Violence against Women and Men at Work: The Australian Influence' (2018) 60(2) *Journal of Industrial Relations* 246 ('An International Labour Organization Instrument on Violence against Women and Men at Work').

[18] See Ludo McFerran, Anna Lee Fos-Tuvera and Jane Acherhard-Hodges, 'An Employment Right-Standard Provisions for Working Women Experiencing Domestic Violence' (2018) 2018 *University of Oxford Human Rights Hub Journal* 167 which is a comparative study of Australia and the Philippines but also mentions Spain, Italy, New Zealand, Canada and the US and Jill Tomlinson, 'Domestic Violence Is a Major Public Health Issue' 31(14) *Australian Medicine* 14 which refers to the Australia, Canada and the Philippines.

[19] Emma McNicol, *Research Brief: Paid Family Violence Leave* (Monash Gender and Family Violence Prevention Centre, 2021) 1 < https://bridges.monash.edu/articles/report/Paid_Family_Violence_Leave/16915861>..

[20] Stéphanie Hennette Vauchez and Ruth Rubio-Marín, 'Introduction: From Law and Gender to Law as Gender – The Legal Subject and the Co-Production Hypothesis' in Ruth Rubio-Marín and Stéphanie Hennette Vauchez (eds), *The Cambridge Companion to Gender and the Law* (Cambridge University Press, 2023) 1 <https://www.cambridge.org/core/books/cambridge-companion-to-gender-and-the-law/introduction/2255D5B1A962D6D596474537DB9EF603> ('Introduction').

[21] Rowena Maguire, 'Gender, Race and Environmental Law: A Feminist Critique' in Ramona Vijeyarasa (ed), *International Women's Rights Law and Gender Equality: Making the Law Work for Women* (Routledge, Taylor and Francis, 2021) 107.

[22] Ramona Vijeyarasa, 'A Missed Opportunity: How Australia Failed to Make Its Modern Slavery Act a Good Practice Global Example' (2019) 40(3) *Adelaide Law Review* 857.

[23] José-Miguel Bello y Villarino and Ramona Vijeyarasa, 'International Human Rights, Artificial Intelligence and the Challenge for the Pondering State: Time to Regulate?' [2022] *Nordic Journal of Human Rights* 194.

[24] José-Miguel Bello y Villarino, 'Women in Anticorruption Laws – The Case for More Gender-Responsive International Treaties' in Ramona Vijeyarasa (ed), *International Women's Rights Law and Gender Equality: Making the Law Work for Women* (Routledge, Taylor and Francis, 2021).

This article is an invitation to comparative scholars to reflect on the biases that bury legislative good practice. I begin by offering key reasons for those legislative biases, using the issue of workplace leave for victims as a lens to interrogate why these barriers exist and what has been lost. As will be illustrated across Part I, three major factors have undermined the sharing of good practice legislation. The foremost is a lack of access to Spanish-language literature and legislation for non-Spanish speaking lawyers and researchers whose primary language is English. The result is an English language bias – what international scholar Odile Ammann describes in her research on linguistic biases in legal scholarship as a 'linguistic imperialism',[25] where the dominance of English is asserted. In some studies, these language biases in academic publishing create a 'linguistic (in)justice'.[26] While the 'justice' or 'injustice' that may be at play is less central to my discussion in this article, there is certainly present a linguistic legal privileging of one jurisdiction over another in these comparative discussions of law reform and the consequences are significant.

Second, I consider the divides between the global North and South where there is a worldwide gravitation to those countries considered world leaders on gender equality – most typically global North nations. In reality these are often the traditionally-influential Nordic ones. In turn, we pay insufficient attention even to the relatively highly-ranked nations – in gender equality terms – in the global South.

Third, feminist international scholars do not escape blame in this critique, myself a privileged global North scholar. We have tended to draw upon Southern women's sufferings in our collective fight for change, creating a very particular narrative about what (little) Southern nations have to offer the world. As Indian feminist activist and scholar Urvashi Butalia notes, when it comes to issues like violence against women, nations like India and South Africa are in the limelight, the 'rape capitals' of the world, giving the rest of the world 'the impression…that it's all-pervasive'.[27] Butalia speaks of a challenge that other comparative scholars have recognised, whereby a particular narrative from one place is 'reconstituted or rebranded as they are brought into a new space populated by global discursive practices of the present'.[28] In that case, LuMing Mao calls for

[25] Odile Ammann, 'Language Bias in International Legal Scholarship: Symptoms, Explanations, Implications and Remedies' (2022) 33(3) *European Journal of International Law* 821, 824.
[26] Stephen Politzer-Ahles et al, 'Is Linguistic Injustice a Myth? A Response to Hyland (2016)' (2016) 34 *Journal of second language writing* 3 ('Is Linguistic Injustice a Myth?').
[27] Urvashi Butalia and Nicky Falkof, 'Making Feminist Sense in the Global South: A Conversation with Urvashi Butalia' [2022] *Feminist Theory* 14647001211038887, 3 ('Making Feminist Sense in the Global South').
[28] LuMing Mao, 'Beyond Bias, Binary, and Border: Mapping out the Future of Comparative Rhetoric' (2013) 43(3) *Rhetoric Society Quarterly* 209, 21 ('Beyond Bias, Binary, and Border').

comparative scholars to adopt a more robust method to ensure a study of non-Euromerican practices do not end up being limited by our own, imposed perspectives.[29]

Paid leave for victims of violence is a subject that offers us a lens to interrogate these failings of comparative law scholarship and to ask how comparative law scholars can do things differently to enable law reformists to benefit from the good practices that may have emerged in some countries many years ago. Importantly, however, this article does not seek to merely be a gripe at the overlooking of Southern experiences – in this case, those of the Philippines and Spanish-speaking jurisdictions – by legislators in the Anglo world. Rather, it offers an example of cross-border barriers to the sharing of practice to the detriment of victims of violence. It therefore reveals the biases that might be holding back comparative scholarship and, in this case, with significant consequences for the advancement of gender-responsive law-making globally.

In Part I, I introduced readers to the problem of gender-based violence before turning to the drivers behind why such a significant body of legislation in this space is overlooked. Part II focuses on the example of paid leave for victims of violence. In this section, I provide the results of a study of the legislation from the Philippines, Spain and 19 jurisdictions, primarily Latin America nations, with laws from eight of those jurisdictions presented here. This broad study of legislative provisions for victims of violence has resulted in three main models that we can use to categorise workplace leave provisions. These three models, with substantive examples, are presented in Table 1. While no-doubt of interest to scholars of gender equality and law reformists in the field of gender-based violence, I use these models as an illustration of the richness that a less biased lens could bring. Certainly there are lessons here for the lagging nations – Australia, New Zealand and Canada – among many others.

Germany jurist Günter Frankenberg once described comparative law as being like travel: 'travelling offers opportunities for learning both about one's own country and culture and about other countries and cultures'.[30] Frankenberg cautioned that in travel, 'one must make a conscious effort to achieve distance from the assumptions and confidences that defend one from the uncertainties brought on by the un-usual'.[31] This article, I hope, reveals the assumptions and confidences from which we must achieve distance if we are to remove or at least reduce some of the linguistic and geo-political barriers that may otherwise hinder the sharing of global good practice when it comes

[29] Ibid 212.
[30] Günter Frankenberg, 'Critical Comparisons: Re-Thinking Comparative Law New Directions in International Law' (1985) 26(2) *Harvard International Law Journal* 411, 412 ('Critical Comparisons').
[31] Ibid.

to advancing gender equality. After all, the ultimate goal is a worthy one: 'to reform and improve the laws, to further justice and to better the lot of humankind'.[32]

UNDERSTANDING THE GEO-POLITICAL CONTEXT: LANGUAGE, LAW AND GLOBAL DIVIDES

In the U.S. – a country well-known to be a litigious society[33]– scholars of business and management in the 1990s began to urge employers to acknowledge the impact of domestic violence on the workplace. Around that time, the estate of one victim and her co-workers in the U.S. successfully sued a company for $USD5 million for negligence because of the company's failure to act after the woman told them that her ex-partner had threatened to kill her at work, the one place he knew he could find her.[34] This story is revealing in many ways. Clearly, governments were well-aware at the turn of the century that women were suffering violence in the home and that such violence seeped beyond the household doorway. Both employers and employees, including the victims –although evidently to differing degrees – were suffering the economic costs of such violence.

While employers may have recognised these blurred lines between home and work, such recognition begs us to ask why the lapse in time to design an appropriate legislative response. This question also forces us to ask not only why the legislative examples from the early adopters of workplace leave were not considered by legislators from other jurisdictions but also urges us to challenge the particularities of language and geography that may deny the sharing of good practice.

In the sections that follow, I begin to unpack some of the reasons for the lag in sharing of legislative reforms. This section focuses on three core arguments. First, I address English-language biases in how law reformers, activists and legislators understand good practice. Second, there exists what I describe as the magnetic effect of the world's 'best' performers on gender equality that results in some nations being overlooked. Finally, acknowledging my own standpoint as a global North, international feminist legal scholar, I consider the consequences of feminist scholarships' attempts to bring visibility on a global scale to certain national experiences of discrimination, harm and

[32] Ibid 413.

[33] Marc Galanter, 'Reading the Landscape of Disputes - What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society' 31(1) *UCLA Law Review* 4; Thomas F Burke, *Lawyers, Lawsuits, and Legal Rights: The Battle Over Litigation in American Society* (University of California Press, 2002) ('*Lawyers, Lawsuits, and Legal Rights*').

[34] Pamela R Johnson and Susan Gardner, 'Domestic Violence and the Workplace: Developing a Company Response' (1999) 18(7) *Journal of Management Development* 590, 594 ('Domestic Violence and the Workplace').

inequality. The outcome has been an inadvertent perception that Southern women have few law reform successes to share with other nations.

In July 2018, The Guardian reported on New Zealand's 'historic' introduction of paid leave for victims of violence; [35] at the time, other reports also named New Zealand as 'one of the first in the world to legislate paid DV leave in employment law at a national level'.[36] New Zealand's reforms were framed as a 'landmark, not only in this country but globally'.[37] The Guardian later corrected itself to include information on the Philippines' remarkable introduction of 10 days paid leave many years earlier and also acknowledged that provisions for such leave existed in some provinces of Canada. Yet in popular press reporting, the Philippines hardly rates a mention.

While the popular press is only one consideration to go by, even scholars working on leave provisions for victims of violence have by and large overlooked the vast number of countries – particularly in Latin America – that fill the void between the Philippines and New Zealand. Some explanation can be found in the 'English exceptionalism' that exists in Australian and New Zealand law and among the scholars that come from these nations. The overlooking of Latin American experiences, despite what the region has to offer, has been identified in other contexts, such as the 'relatively little engagement with Latin American Indigenous rights in Anglophone circles', resulting in the Anglophone world 'missing out on a plethora of experiences'.[38]

Language bias has been described by Odile Ammann as an 'underexplored topic in international legal scholarship',[39] despite a clear regression of multilingualism. Ammann defines language bias as not just being about the inclination or prejudice towards one language but also an association with that language as good, strong and trustworthy and therefore others as weak and of less value.[40] International lawyer, Anthea Roberts, too raised her concerns about the emergence of English in international law as the 'lingua franca'. In her book, *Is International Law International?* Roberts suggested that, 'People, materials, and ideas move more easily within linguistic communities than

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[35] Eleanor Ainge Roy and Eleanor de Jong, '"A Huge Win": New Zealand Brings in Paid Domestic Violence Leave', *The Guardian* (online, 26 July 2018) <https://www.theguardian.com/world/2018/jul/26/new-zealand-paid-domestic-violence-leave-jan-logie> ('"A Huge Win"').

[36] Alison Pennington, *Workplace Policy Reform in New Zealand: What Are the Lessons for Australia?* (The Centre for Future Work at the Australia Institute, March 2019) 39.

[37] Weatherall, Gavin and Thorburn (n 3) 568.

[38] Lucas Lixinski, 'Regional Indigenous Rights and the (Dis)Contents of Translation: A View from Latin America' [2022] *Research Handbook on the International Law of Indigenous Rights* 10, 13 ('Regional Indigenous Rights and the (Dis)Contents of Translation').

[39] Ammann (n 26) 811.

[40] Ibid 823.

between such communities'.[41] Yet, it may be that 'these communities are having the same debates, only in different languages'.[42] Here I extend this suggestion by directing attention to what is lost where the debates that may be vibrant and robust in one set of nations speaking the same language are not making their way across borders to others. In turn, this article will demonstrate the extent to which these rich experiences have gone unnoticed in the legislative debates in Anglophone nations many years later when it comes to paid leave provisions for victims of violence. Importantly, this English language imperialism can be felt both across countries but also nationally. For instance, the Philippines is a nation with 175 individual languages; while Tagalog-based Filipino is the national language according to the 1987 Constitution, it has made few inroads into the Filipino legal system.[43]

Professor Odile Ammann, in critiquing the language bias in international scholarship acknowledges that such biases are not easy to overcome; moreover, it is something, to a degree, all English-language scholars perpetuate and amplify.[44] Moreover, as others have pointed out, the hesitancy of comparative law scholars to venture too far beyond one's borders is, to some extent, understandable. Comparative legal scholars tend to contextualise, to seek local meaning to interpret law and law's relationship to a specific culture.[45] This type of comparative study requires fluency in language but also a deeper cultural knowledge than may be available to an outsider. Perhaps this task of undertaking comparative studies that are rigorous, nuanced and both global and localised has overwhelmed the comparative legal scholar who has therefore been unable to broaden the scope of laws included in their scan. This article seeks to take down one barrier – by offering the language of law from other jurisdictions – to the critics and makers of English-language law for the advancement of the interests of a particularly marginalised group, in this case, victims of violence. Workplace leave for victims offers a particularly illustrative sense of what is lost for victims when we fail to erase some of these boundaries.

Nonetheless, there are some Spanish-language laws from Latin America that have been widely regarded in English academic literature as pioneering 'firsts'. Argentina's legislation to establish transgender rights has been, rightly, noted as 'ground-breaking';[46] Ecuador's constitutional

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[41] Anthea Roberts, *Is International Law International?* (Oxford University Press, 2017) 3.
[42] Ibid.
[43] Isabel Pefianco Martin, 'Expanding the Role of Philippine Languages in the Legal System' (2012) 2(1) *Asian Perspectives in the Arts and Humanities* 1, 1.
[44] Ammann (n 26) 823.
[45] Darren Rosenblum, 'Internalizing Gender: Why International Law Theory Should Adopt Comparative Methods' (2006) 45(3) *Columbia Journal of Transnational Law* 759, 778 ('Internalizing Gender').
[46] Emmanuel Theumer, 'The Self-Perceived Gender Identity' (2020) 22(4) *Interventions* 498.

protections of the right to nature have been named 'pathbreaking'.[47] There may, therefore, be other factors at play that both amplify English-language biases while obscuring good practices in the overlooked jurisdictions.

Other explanations for this 'overlooking' of Latin American legislation can be found in the labelling of certain nations as the world's leaders on gender equality. Globally, we look to certain countries – often the Nordic ones – as offering the best practices on gender equality; all others are seen as lagging behind. The World Bank's *Women, Business and the Law* reports are arguably the greatest culprit in driving this mentality. In 2019, the index found that six countries had no inequalities across gendered lines in the eight areas measured by the Index:[48] Belgium, Denmark, France, Latvia, Luxembourg, and Sweden.[49] Some women in those countries might beg to differ. In 2023, the list increased to 14 countries.[50] Countries such as Sudan, Pakistan and Bangladesh are among the poorest scoring.[51]

Indeed, one may be forgiven for thinking that such global gender indices have set out to present the South – or as it has become known in some circles, the majority world[52] – in a particular light. In 2009, the Organisation for Economic Cooperation and Development's (OECD) Social Institutions and Gender Indicator (SIGI) contained only two measures for barriers to women's enjoyment of their civil liberties, one of which was an obligation to use a veil or burqa to cover parts of the body in public, an inherently biased measurement targeting countries with Islamic populations.[53] This data on the existence of dress codes were captured alongside freedom of movement outside the home. The Cingranelli and Richards (CIRI) Human Rights Data Project (spanning twenty-six years, fifteen human rights issues and 19 countries) contained only two indicators for violence against women: freedom from FGM and freedom from forced

[47] Stepan Wood, 'Rights of Nature: What Are They?' [2023] *Centre for Law and the Environment* <https://commons.allard.ubc.ca/cle/10> ('Rights of Nature').

[48] This includes women's mobility, access to employment and the nature of the pay available, equality in the family, business ownership and pensions.

[49] Marie Hyland, Simeon Djankov and Pinelopi Koujianou Goldberg, *Gendered Laws* (No Report No. 9080, World Bank, 2019) 481 <http://documents1.worldbank.org/curated/en/514981576015899984/pdf/Gendered-Laws.pdf>.

[50] 'Only 14 Countries Have Full Equal Rights for Women', *World Economic Forum* (10 March 2023) <https://www.weforum.org/agenda/2023/03/only-14-countries-have-full-equal-rights-for-women/>.

[51] Hyland, Djankov and Koujianou Goldberg (n 51) 481.

[52] Shahidul Alam, 'Majority World: Challenging the West's Rhetoric of Democracy' (2008) 34(1) *Amerasia Journal* 88 ('Majority World').

[53] Debra J Liebowitz and Susanne Zwingel, 'Gender Equality Oversimplified: Using CEDAW to Counter the Measurement Obsession' (2014) 16(3) *International Studies Review* 362, 375 ('Gender Equality Oversimplified').

sterilization,[54] both problems of particular magnitude in certain regions or countries of the world.[55] The decision to focus on certain jurisdictions and certain issues in the design of such gender indices fuels resentment over the image of the development sector's role in saving the 'third world woman'.[56] In turn, these 'Third World' nations are overlooked as offering little by way of lessons for gender-responsive law-making.

Feminist scholars have also contributed to the 'discounting' of the good that may be occurring in the global South. Urvashi Butalia has expressed well the frustration that feminists in the South feel with the disregard for their experiences – and successes – as advocates for women's rights. Part of this overlooking is driven by the heavy tendency of Southern experiences of abuse to become extremely visible in the Western media and Western feminist discourse. One obvious example is the murder and gang rape of Indian student Jyoti Singh, who with a friend, boarded a private bus home in South Delhi in 2012, was brutally gang raped and beaten and did not survive the attack. The national and global outrage that was sparked from the incident is one of many examples that form part a long and well-critiqued history of western feminist appropriation of non-western women's experiences.[57]

'Gender equality good practice' and the global South are subsequently treated as oxymorons in this landscape where local Southern suffering becomes a global one. The resulting narrative is one where little else is said about the 'Third world'. The 'Third world', in turn, is only relevant so far as it follows the western narrative in which all Southern experiences are homogenised and generally assumed to be bad.[58] In Butalia's words, 'There is a sense that feminist gains made in the west are what every other part of the world needs to aspire to. If you have not aspired to being somewhere along that ladder you're a poor cousin; you're left behind.'[59] Holning Lau, international and comparative law scholar of equality rights, has illustrated the notable drawbacks with the language of 'westernization' that emerged in the early 2000s to label a widespread number of global

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[54] Mary Caprioli et al, 'The WomanStats Project Database: Advancing an Empirical Research Agenda' (2009) 46(6) *Journal of Peace Research* 839, 841–842 ('The WomanStats Project Database').
[55] Ramona Vijeyarasa, 'Quantifying CEDAW: Concrete Tools for Enhancing Accountability for Women's Human Rights' (2021) 34(1) *Harvard Human Rights Journal* 37, 52.
[56] For more, see Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?: Reflections on the History of an Idea' in Rosalind C Morris (ed), *Can the Subaltern Speak?: Reflections on the History of an Idea* (Columbia University Press, 2010) 21 <http://www.jstor.org/stable/10.7312/morr14384>.
[57] Chandra Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses' (1988) 30(1) *Feminist Review* 61, 63 ('Under Western Eyes').
[58] Garima Bakshi, 'The "Nirbhaya" Movement: An Indian Feminist Revolution' (2017) 17(2) *gnovis (Georgetown University)* 43, 50.
[59] Butalia and Falkof (n 29) 4.

developments in other parts of the world – Africa, Asia and Latin America – as 'western'.[60] In turn the status of successes of these western nations in advancing gender equality is unduly elevated, without causal grounds, framing them as the 'reference point for understanding changes in other parts of the world.'[61]

Again these approaches can be explained and appreciated to some degree. It may be the feminist concern of appearing 'imperialist' that has led us to leave certain nations outside of our scrutiny. Nonetheless, the end result is a failure rather than a success of comparative law scholars in being unable or unwilling to go beyond the natural boundaries that confront us in our comparative work. This article seeks to flip the narrative on its head to demonstrate that it is the nations in the North that fail to see and value the law reforms of the South, who are indeed the 'poorer cousins' and the jurisdictions left behind.

A COMPARATIVE SURVEY OF THE GLOBAL GOOD PRACTICE: FROM THE PHILIPPINES TO CHILE

One may seek to justify New Zealand's and Australia's dominance of the most recent discussions about law reform in this field by simply accepting that these lagging nations were late to the table. However, it must be acknowledged that paid leave for victim workers has been considered since the very early 1990s in Australia. Subsequently, in April 1994, the Family Violence Unit of the New Zealand Department of Social Welfare commissioned Coopers and Lybrand to develop a model to estimate the economic cost of family violence. The end result, *The New Zealand Economic Cost of Family Violence* report by Suzanne Snively was proudly declared as one of the first attempts in the world to identify the cost of family violence, the report admitting that the starting point for its study was in fact an earlier one conducted in July 1991 in Australia.[62] In both cases, it is telling that the provisions for paid workplace leave for victims took more than 24 years to be introduced after these economic evaluations.[63]

In Australia and New Zealand, a claimed 'economic cost' of offering paid leave to workers experiencing violence was used to hinder reform. By notable contrast, women's rights sit at the centre of policy debates driving forward reforms in numerous other nations. Spain, Venezuela, Peru and El Salvador are particularly telling examples. All four were studied to identify the extent

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[60] Holning Lau, 'The Language of Westernization in Legal Commentary' (2013) 61(3) *The American Journal of Comparative Law* 507, 508.
[61] Ibid.
[62] Suzanne Snively, *The New Zealand Economic Cost of Family Violence* (Coopers and Lybrand, 1994).
[63] Ibid.

to which 'economic' arguments were used to justify such leave in policy documents and legislative debates, and whether opposition to the introduction of such leave voiced concerns that the leave was too costly to justify. It is readily apparent that by and large, law reform in these nations was motivated by a victim-centred focus on gender inequality, eradicating gender-based violence as a manifestation of discrimination as well as international commitments. Economic arguments rarely come to the fore.

For instance, the Spanish Law was motivated by a desire to end gender-based violence against women as a manifestation of discrimination, of inequality and of the power that men exercise over women (translation by author).[64] In Venezuela, the Chavez Government was motivated by the high rates of violence in the nation. Gender-based violence was perceived as a serious public health problem and a systematic violation of women's human rights, a clear consequence of discrimination and women's subordination in society.[65] Moreover, the Venezuelan law's preamble acknowledges the work of women's organisations and official and private institutions that have fought against gender-based violence to alter the previous perception of it being an exclusively private matter (author's translation).[66] The reforms were perceived as a 'constitutional mandate' that obliged the state of Venezuela to protect women from situations that 'constitute threats, vulnerability or risk to the integrity of women, their property, the enjoyment of their rights and the fulfilment of their duties, through the establishment of legal and administrative conditions, as well as the adoption of positive measures in favour of them so that equality before the law is real and effective' (author's translation).[67]

In El Salvador, the government too described its vision as motivated both by the enactment of government policies with a gender perspective, and 'compliance with the international commitments of the Salvadoran State in matters of women's human rights, non-discrimination based on gender and prevention, attention, sanction and eradication' (author's translation).[68] In Peru we can more explicitly see the economic arguments brought into the debate. There, the six-year plan to end violence against women that was introduced in 2009 acknowledged the loss caused to 'national GDP due to absences from work and the low productivity of its victims' (Author's

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[64] *Ley Orgánica 1/2004, de 28 de Diciembre, de Medidas de Protección Integral Contra La Violencia de Género 2004* (21760) 1.
[65] *Venezula; Organic Law on the Right of Women to a Life Free of Violence / Exposicion de Motivos de La Ley Organica Sobre El Derecho de Las Mujeres a Una Vida Libre de Violencia* 1.
[66] Ibid 2.
[67] Ibid 3.
[68] Govierno de El Salvador, 'Plan Quinquenal de Desarrollo: 2010-2014' 57 <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC140953/>.

translation).[69] Nonetheless, the plan also acknowledged the barriers gender-based violence causes to escape poverty for the victims themselves. From the outset of this analysis, we can see this stark contrast between the early reformers and the more recent examples from Australia and New Zealand.

This brief discussion of the drivers of law reform raises another point that is important to address before delving deeper into the individual laws. There is a growing global recognition of both male and non-binary victims of domestic violence.[70] Yet as can be seen in the preceding language, in the vast majority of jurisdictions, these legal reforms were intended to offer *women* victims of violence access to paid leave from work. In some cases, the law is also explicit in restricting who benefits from the law. Women are the sole beneficiaries of the law in the Philippines, the true world's first reformer in this field. In Argentina, an example explored below, the law only applies to women in the public sector.[71] Even in the instances where the legislation adopts more neutral language such as 'workers' who are victims of violence, as in Peru, the discussion above makes evident that the law reform was part of a larger plan to end violence against *women*.[72] As will be seen, in all of the examples discussed in this article, only in Chile does a judicial determination come close to offering leave entitlements in terms that could include victims beyond female-identifying. As will be noted below, of all of the examples offered in this article, therefore, it is actually only in the newer instances of Australia and New Zealand, where the paid leave provisions were introduced by amending 'neutral' laws to which people of all genders are entitled, that the paid leave provisions are clearly available to victims of violence of any gender.

I now delve deeper and offer readers three models for workplace leave for victims of violence. I use these examples as an illustration of the richness that a less bias lens could bring.

Method and approach

New Zealand's and Australia's relatively recent introduction of provisions for leave reignited some level of debate. However, little has been said about the form that such leave may take. Given the

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[69] Govierno de Peru, 'Plan Nacional Contra La Violencia Hacia La Mujer 2009-2015' 4 <https://www.trabajo.gob.pe/archivos/file/publicaciones/plan_nacional_contra_violencia_mujer_2009_2015.pdf>.

[70]See e.g. Meyerlyn Leticia Sanchez, 'The Resilience Experiences in Non-Binary Survivors of Intimate Partner Violence and Sexual Assault' (The Ohio State University, 2019) <https://etd.ohiolink.edu/acprod/odb_etd/etd/r/1501/10?clear=10&p10_accession_num=osu1556796935295631>.

[71] *Régimen de Licencia Especial Con Goce de Haberes Para Agentes Públicos Del Género Femenino, Que Se Desempeñan En El Ámbito Del Sector Público Provincial Que Sean Víctimas de Hechos de Violencia de Género. 2015* (Ley Provincial L Nº5086).

[72] Govierno de Peru (n 71) 4.

nature of domestic violence and its relationship to the workplace, the substance of the leave available can make a substantial difference in the lives of victims, depending on the accessibility of such provisions and their scope. For instance, by offering a victim employee flexibility concerning the time at which they start and end their days' work, a victim can be better protected from further incidences of violence at the hands of a former partner; by contrast, the same routine and location makes it easier for an aggressor to find them.[73] These nuances in what the law offers are therefore significant and is illustrative of the types of legal inclusions that may be lost if a broader scope of laws are not studied. Based on my analysis of laws enacted across Spanish-speaking jurisdictions, along with the Philippines' and Spain's early examples, here I present three models for paid leave for victims of violence.

Naturally, however, this discussion only touches the surface of these laws. Implementation is a distinct challenge across all nations. Moreover, a law may contain some strong provisions alongside weak ones. In a region traditionally dominated by Catholicism, where religious groups have frequently mobilized in opposition to law reforms that are perceived as a threat to Catholic values, too often the family is protected over individual women's rights.[74] While limited attention is given to these realities in this article, their significance is not underestimated.

Eighteen countries across Latin America were exhaustively studied for their laws. As the method of study was 'Spanish-language' jurisdictions, Puerto Rico also came to the fore, a Caribbean island that is an unincorporated territory of the U.S. While not a Latin American nation nor a sovereign state, it has been included in the discussion that follows as it is a pertinent example that sits alongside Spain and Argentina in the Model C category.

All laws that focus on the eradication of gender-based violence were identified and studied in Spanish, with the particular goal of establishing whether or not the law offered paid or unpaid leave for victims, under what circumstances, and for what duration.[75] Spanish is considered one of the 'supercentral' global languages,[76] in other words, despite the fact that it is overlooked by English-language legislators and scholars in this area of law reform, it is still a globally dominant

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[73] Paola D Álvarez and Paola G Truffello, *Legislación Comparada de Protección a Las Trabajadoras Víctimas de Violencia de Género: Argentina, Ecuador, España, Estados Unidos de América (Nueva York), Nueva Zelanda y Uruguay* (Biblioteca del Congreso Nacional de Chile, March 2022) 8 <https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/33042/1/BCN_Proteccion_laboral_violencia_contra_la_mujer_VF_pdf.pdf>.

[74] Susan Franceschet, 'Explaining Domestic Violence Policy Outcomes in Chile and Argentina' (2010) 52(03) *Latin American Politics and Society* 1, 5.

[75] Acknowledgement of Research Assistance in Spanish and English removed as can identify the author.

[76] Ammann (n 26) 823.

language. One can only begin to imagine what practice is lost by having inaccessible to the Anglo world a much greater diversity of languages beyond the twelve or so that are the world's most dominant.[77]

Given this article's focus is primarily on the Latin America nations that have been overlooked in this area of law reform, it is important to offer some consideration as to why these nations may have been among the world's firsts to introduce paid leave. Many women's rights advocates would point to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará). Enacted in June 1994 and entering into force on 3 February 1995, as of March 2020, 32 of the 35 Member States of the Organisations of American States had either signed and ratified or acceded to the Convention; the US., Canada and Cuba had not.

The Convention does not make any explicit mention of the benefits for victims to paid workplace leave. However, it does require state parties to take measures to modify existing laws,[78] including to ensure women subjected to violence can have a timely hearing and *effective access to such procedures*[79] and receive 'access to restitution, reparations or other just and effective remedies'.[80] The Convention has made a notable contribution to the development of international norms prohibiting violence[81] and perhaps explains why countries in the region have been able to take the relatively earlier step of introducing paid leave for victims of violence..

Three emerging models for workplace leave

Table 1: Three models for workplace leave and/or compensation for victims of violence

Models	Description	Examples of jurisdictions within category	
Model A: Comprehensive recognition of	Victims are offered a set number of days of paid leave from work. In some instances, the number of days of leave can be extended. The leave is seen as *both* a mechanism to enable victims to attend to matters (such	Philippines	2004
		Venezuela	2007
		El Salvador	2011
		Peru	2015

[77] A list of 'supercentral' languages includes Arabic, French, German, Hindi, Japanese, Malay, Mandarin, Portuguese, Russian, Spanish, Swahili and Turkish.
[78] *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém Do Pará) 1995* (1438 UNTS 63) Article 7(e) ('*OAS - Organization of American States*').
[79] Ibid Article 7(f).
[80] Ibid 7(g).
[81] Mary K Meyer, 'Negotiating International Norms: The Inter-American Commission of Women and the Convention on Violence Against Women' (1998) 24(2) *Aggressive Behavior* 135 ('Negotiating International Norms').

harm and impact	as judicial proceedings) related to the violence as well as general unmonitored compensation for the harm suffered. It is often a requirement to provide the employer documented evidence (such as a court order) to demonstrate institutional recognition that the victim has suffered GBV, or to have submitted a claim before the police or prosecutor concerning an incidence of violence. This leave is typically accompanied by other protections, such as a prohibition on dismissal for any cause related to the violence.	Ecuador	2018
		New Zealand	2018
		Chile	2021
Model B: Monitored compensation	Victims are offered a set number of days of paid leave from work. The leave is a mechanism to enable victims to attend to matters directly related to the violence (such as making arrangements for their safety, attending court proceedings, accessing police services, attending counselling or a medical appointment). Evidence is typically required and hence, this model of leave is considered monitored compensation.	Uruguay	2018
		Australia	2022
Model C: Public sector employee leave	Victims who are employees in the public sector are offered a set number of days of paid leave from work.	Spain	2004
		Puerto Rico	2005
		Argentina	2015

Model A: Comprehensive Paid Leave and Workplace Protections

Countries that fall within this category are considered the most comprehensive in their approach to gender-based workplace rights.

a) The Philippines

The Philippines was the first country in the world to introduce paid leave for victims of violence through its 2004 *Anti-Violence against Women and their Children Act* (No. 9262/2004).[82] Little is documented about the advocacy that led to the inclusion of this *specific* provision in the law and hence, as comparative scholars, we are left with a knowledge gap as to what drove the Philippines to introduce this provision when no other comparative examples were available, including from

[82] *Anti-Violence against Women and Their Children Act of 2004* (n 13).

nearby neighbouring countries. The law exclusively protects women and their children, with ten days of paid leave from work available for victims of abuse to afford them an opportunity to pursue legal proceedings, relocate their residence, care for their children or attend counselling sessions.[83] However, the law does not limit the use of the leave and it therefore acts as compensation too that can be used discretionarily at the victim's determination. The entitlement becomes available once the victim-employee has presented to her employer a certification from the village chairman (*barangay Punong*), village councillor (*barangay kagawad*) or prosecutor or the Clerk of Court, as the case may be, to demonstrate that an action related to the matter is pending.

While the world's first nation to introduce paid leave, implementation remains a notable obstacle in light of the absence of a national programme to educate the workforce about these rights.[84] Moreover, typically, women cannot afford to go to court, with no easy path to access a lawyer to seek a protection order in their village. Barriers remain for women to access other recourse such as moving to her relatives' community, or seeking the ongoing protection of village officials.[85] Again, knowledge of the law and its implementation are revealed to be an obstacle, with Art. 35 actually providing victims with the right to obtain legal assistance from the Department of Justice or any public legal assistance office, where they cannot otherwise afford it.[86]

b) Venezuela

Venezuela – a nation that ranks relatively poorly on the two most cited gender equality indices, the United Nations Development Program's (UNDP) Gender Inequality Index and the World Economic Forum's Global Gender Gap Index – introduced paid leave for victims of violence as early as 2007.[87] The provisions entitled a woman victim-employee to reduce or rearrange her work time or to change her workplace. Any attempt to suspend the women's work in response to such requests would require a judge's protection order, following a report and request from the Public Prosecutor's Office.[88] The law went on to confirm that such workplace leave is justified and therefore does not impact the worker's salary. Interestingly, no time limits are provided in the law

[83] Vijeyarasa, *The Woman President: Leadership, Law and Legacy for Women Based on Experiences from South and Southeast Asia* (n 12) 144.
[84] Aeberhard-Hodges and McFerran (n 17) 259.
[85] *A Parliamentary Response to Violence against Women Conference of Chairpersons and Members of Parliamentary Bodies Dealing with Gender Equality* (Inter-Parliamentary Union, 2 December 2008) 69 <http://archive.ipu.org/PDF/publications/vaw_en.pdf#page=71>.
[86] *Anti-Violence against Women and Their Children Act of 2004* (n 13) 35.
[87] UN Women, 'Venezuela (Bolivarian Republic Of)', *Global Database on Violence against Women* (2023) <https://evaw-global-database.unwomen.org/en/countries/americas/venezuela-bolivarian-republic-of?pageNumber=3>.
[88] *Ley Orgánica Sobre El Derecho De Las Mujeres A Una Vida Libre De Violencia 2007* (Nº 38.668) 4(8).

to cap the amount of paid leave available.[89] While the law has undergone amendments in recent years, no changes have been made to the provisions on workplace rights.

c) Peru

Relatively late when compared to other nations in the region, in 2015 Peru enacted a law to prevent and eradicate violence against women and other persons in the family. The legislation provided paid leave for 5 days in a period of 30 days or 15 days in a period of 180 days.[90] To be entitled to this leave, the female employee – as the entitlement is restricted to women – must have started an action before the police or prosecutor.[91] No distinction is made in the law as to whether the leave is a compensation for injury suffered or to attend to matters related to the violence so its use remains at the discretion of the victim. Employees are also entitled to have their workplace location or hours changed, so long as it does not undermine their pay and other rights,[92] and importantly, are protected from dismissal for reasons related to the violence.[93]

d) El Salvador, Ecuador and Chile

In El Salvador, a Labour Code regulates the relationship between employees and employers. Under this Code, there are a number of reasons to justify an employee not attending work: domestic violence is not one of them. [94] However, in 2011, El Salvador enacted the *Life Free of Violence against Women Act*[95] under which women victims of violence (only) can justify absences or lateness due to the physical or psychological consequences of violence. On this basis, victims can also temporarily or permanently have their place of work moved to another branch and request to have their schedules reorganised.[96] Here the decision to enact a standalone law on gender-based violence against women – and not merely an amendment to the labour code – may be telling of the government's intention to make a more vocal pronouncement of the unacceptability of such violence and society's collective responsibility to address it.

As in El Salvador, Ecuador has a general Labour Code (*Codigo del Trabajo)* that does not contain any provision regarding leave or paid leave for victims of domestic violence. However, in 2018,

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[89] Ibid 34.
[90] *Ley Para Prevenir, Sancionar Y Erradicar La Violencia Contra Las Mujeres Y Los Integrantes Del Grupo Familiar) 2015* (Law No. 30364) 11(c).
[91] Ibid.
[92] Ibid 11(b).
[93] Ibid 11(a).
[94] *Código de Trabajo de La República de El Salvador* (Act 520 of 2011) 203.
[95] *Vida Libre de Violencia Para Las Mujeres* (Act 520 of 2011).
[96] Ibid.

Ecuador similarly enacted a *Comprehensive Law to Prevent and Eradicate Violence against Women*.[97] Unusually again, no time limit is given for the paid leave which is available both for the woman to initiate and attend judicial proceedings but also as general compensation for the violence and harm suffered.[98]

A similar approach can be found under Chilean law where a Labour Code also governs employment relations, although arrived at by a different mechanism. Under an *Act for Work Accidents and Professional Illness,* the employee has a general right to be absent or reduce their workday or shift during an illness as certified by a medical practitioner.[99] During this time, the employee can enjoy a special subsidy, or is entitled to obtain regular remuneration or both in corresponding proportion in the form of paid leave.[100] The leave is paid regardless of whether the employee works in the private or public sector.

No provision in Chilean legislation outlines domestic violence as a reason for incapacity under the Code; nevertheless, the Court of Appeal of Santiago has recently expanded access to leave in a 2021 case.[101] The Court has recognised the right of a worker to be paid for the leave when the source of the incapacity is domestic violence, even if until this point of time, suffering the consequences of domestic violence was not considered a ground for obtaining paid medical leave from work ("licencias medicas"). The case brings Chile into the Model A category. It is worth emphasising here that the language of the case is gender neutral, allowing workers of all genders to identify experiences of domestic violence when seeking to access their leave entitlements. However, part of the justification offered in the judgement is the Interamerican Convention of Belem Do Para, that is, Inter-American Convention on the Prevention, Punishment and Eradication of *Violence against Women*,[102] suggesting that the court decision was driven by the risk of domestic and family violence facing women.

e) New Zealand

Like the abovementioned examples, New Zealand's 2018 law introduced family leave violence for employees up to 10 days as well as protections from workplace discrimination related to taking

[97] *Ley Organica Para La Prevencion y Erradicacion de La Violencia de Genero Contra Las Mujere 2018* (Oficio No. SAN-2018-0395).
[98] Ibid 28(g).
[99] *Protección Frente a Un Accidente o Enfermedad Profesional* (Code 16.744) 16.
[100] Ibid.
[101] *Denisse Patricia Muñoz Tempio contra Suseso, Compin y Consalud* [2021] (Court of Appeals of Santiago, 37322-2021, 1 September 2021).
[102] Ibid 11–12.

such leave. The law is explicit in its intention of offering victims paid days off from work to 'deal with the effects on the employee of being a person affected by domestic violence'.[103]

Model B: Monitored compensation – Paid leave only for matters salient to domestic violence or sexual harassment

This category of leave offers victims a set number of days of paid leave to attend to matters directly related to the violence suffered, such as attending a court proceeding, or a medical appointment or counselling or making arrangements to leave a situation of violence. This leave, however, is not seen as a more general form of compensation; rather, the leave is measured against specific and directly-related reasons.

a) Australia

Australia falls into Model B, guaranteeing paid leave entitlements to any victim of family or domestic violence. In Australia, however employees can be asked to provide evidence to show that they need to do something to deal with family and domestic violence that cannot be practicably done outside of their hours of work.[104]

b) Uruguay

Uruguay is one example of this restrictive model from Latin America (although other examples are offered in Part 4). Paid leave is provided for women victims under a 2018 law on gender-based violence, but in much more specific terms. For instance, a victim is able to receive full pay to attend hearings, obtain expert advice or engage in other errands (administrative or judicial) as foreseen in the Services for Women in Situations of Gender-Based Violence policy. Extraordinary leave with pay may be granted for 24 hours from the presentation of the complaint at the police or judicial headquarters, extendable for the same period if precautionary measures were decreed at the judicial headquarters. Victims are also entitled to make requests for flexibility and for a change to their schedule or place of work, along with other measures so long as they do not affect their right to work or career. Victims are also protected from dismissal for six months or an employer must pay compensation for dismissal in an amount equivalent to 6 months of salary, plus any corresponding legal compensation.[105]

[103] *Domestic Violence—Victims' Protection Act 2018 No 21, Public Act Contents – New Zealand Legislation* (n 2) Section 69ABB(1)(b).

[104] Fair Work Ombudsman, 'New Paid Family and Domestic Violence Leave' <https://www.fairwork.gov.au/newsroom/news/new-paid-family-and-domestic-violence-leave>.

[105] *Ley de Violencia Hacia Las Mujeres Basadas En Genero: Modification to Provisions of the Civil Code and Penal Code, Repeal of Arts. 24 TO 29 of Law 17,514 2018* (Law No. 19580) 40.

Model C: Paid leave for public sector employees only

Table 1 describes a third set of countries (Model C) that provide leave but exclusively only for workers in the public sector.

a) Spain

Like the Philippines, Spain introduced one of the world's first comprehensive laws on gender-based violence in the same year.[106] Article 21 offers a comprehensive set of protections for women victims of violence who are civil servants, including the right to reduce work or have working hours rearranged; or the right to request a change to the workplace and adaptations to their hours of work. This adaptation may be in the form of a suspension or termination of work which subsequently creates entitlements for the worker to access compensation under Spain's social security system.[107] The Spanish law also guarantees the right to receive a payment of social security even when an employer has replaced the female victim of gender-based violence with an interim worker,[108] along with a right to return to the previous work conditions once they return to the workplace.[109] Absences or lack of punctuality at work caused by the physical or psychological situation derived from gender violence will be considered justified and will be paid, although they must be communicated by the worker to the company as soon as possible.[110]

Today Spanish public servants are entitled to a leave of absence. Full salaries are paid for during the first month of domestic violence leave.[111] The law now also applies to victims of domestic violence who work outside of the public sector. Such workers can temporarily or permanently suspend their employment contract and still receive unemployment benefits for a period of up to 6 months, without making any contributions to the social security system during that six month period.[112] This time period can be extended up to a maximum of 18 months, subject to the ruling of a court. Interestingly, Spanish law also gives financial incentives to companies that employ victims of violence.[113]

[106] *Ley Orgánica 1/2004, de 28 de Diciembre, de Medidas de Protección Integral Contra La Violencia de Género* (n 66).
[107] Ibid 21(1) and 21(2).
[108] Ibid 21(3).
[109] Ibid.
[110] Ibid 21(4).
[111] Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género 2004 (21760) art 21(2) and 21(4).
[112] *Ley Orgánica 1/2004, de 28 de Diciembre, de Medidas de Protección Integral Contra La Violencia de Género 2004* (21760) 21(5).
[113] ibid 21(5); Real Decreto 1917/2008 2008 (BOE-A-2008-19918) art 9.

b) Puerto Rico

One year after Spain, in 2005, Puerto Rico first introduced paid leave for victims of domestic violence who are workers in the public sector. It is worth noting that despite the particular characteristics of Puerto Rico as a territory of the U.S., they have proceeded to make these entitlements available. The paid provisions mirror Model B above. Puerto Rico offers victims the right to non-cumulative paid leave for up to five days to seek help from a domestic violence lawyer or counsellor, to obtain a protection order or obtain medical or other services for themselves or their relatives.[114]

Further benefits were introduced to public sector employees in 2017 in relation to actual attendance in court. These provisions entitled victims to 5 days of leave for an appearance in an administrative and/or judicial proceeding before any department, agency or public body of the Government of Puerto Rico, such as in the cases of petitions for alimony, domestic violence, sexual harassment in employment or gender discrimination.[115] In 2019, additional protections were introduced into the law in 2019 for non-public sector employees, moving Puerto Rico into the Model B category. This included a 15-day *non-paid leave* entitlement, within one natural year, whether or not there is a police complaint, whether they or a family member are facing a situation of domestic or gender violence, child abuse, sexual harassment at work, sexual assault, lewd acts or stalking.[116]

c) Argentina

In 2015, Argentina introduced paid leave for women in the public sector in a law specifically enacted for this purpose: *Special Leave Regime with pay for female public agents, who work in the field of the provincial public sector who are victims of acts of gender violence*.[117] Paid leave can be received for up to 180 days and can be extended after examination by the Provincial Medical Board. This generous provision, however, raises budgetary questions, given the Argentinian National Women's Council has long-been considered an agency with a small budget and staff and very little political influence.[118] Doubt as to Argentina's capacity to deliver upon publicly-funded leave for up to 180

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[114] *Ley de Municipios Autónomos Del Estado Libre Asociado de Puerto Rico (Council Act)* (Act 107-2005) 11.016 (3).

[115] *Ley Para La Administración y Transformación de Los Recursos Humanos En El Gobierno de Puerto Rico* (Act 83 -2017) s9.1 (2)(3).

[116] *Ley de Licencia Especial Para Empleados Con Situaciones de Violencia Doméstica o de Género, Maltrato de Menores, Hostigamiento Sexual En El Empleo, Agresión Sexual, Actos Lascivos o de Acecho En Su Modalidad Grave of 2019 2019* (Act 83-2019) 3.

[117] *Régimen de Licencia Especial Con Goce de Haberes Para Agentes Públicos Del Género Femenino, Que Se Desempeñan En El Ámbito Del Sector Público Provincial Que Sean Víctimas de Hechos de Violencia de Género.* (n 73).

[118] Franceschet (n 76) 11.

days is further exacerbated by the differences in the capacities of subnational provinces to respond to requests for support, as evidenced by the uneven availability of services during the spike in gender-based violence witnessed during the mandatory stay-at-home order amid the COVID-19 pandemic of 2020.[119]

To conclude this section, it is important to note that the above presentation of these three models is not intended to overlook law reform elsewhere. For instance, Canada's Province of Manitoba introduced a law in 2016 (*Employment Standards Code Amendment Act (Leave for Victims of Domestic Violence, Leave for Serious Injury or Illness and Extension of Compassionate Care Leave*), the first and only Canadian province to provide such leave. It falls into Model B, providing leave for one or more of the following reasons to access paid leave: (a) to seek medical attention in respect of a physical or psychological injury or disability; (b) to obtain services from a victim services organization; (c) to obtain psychological or other professional counselling; (d) to relocate temporarily or permanently; and (e) to seek legal or law enforcement assistance, including preparing for or participating in any civil or criminal law proceeding related to or resulting from the interpersonal violence.[120] Nonetheless, like Australia and New Zealand – who are used in this article merely as a comparative example of the usurping of leadership in a legal domain – could easily have been replaced by Canada, another lagging nation for which linguistic and geo-political barriers may explain the notable lag. Indeed Canada's lateness to the table is particularly stark given the provisions exist in only one of Canada's ten provinces and three territories and no other province has followed.

By focusing on these handful of countries and particularly Latin America, it becomes evident that the legal landscape between the Philippines in 2004 and New Zealand in 2018 is much richer than is acknowledged by the media, in public policy or scholarly debates. These gaps in knowledge have, until now, undermined our ability to identify notable differences in the models offered, this article being the first to do so. There appears much value for victims in leave that is not tied to countable days to address some of their needs as victims; leave can be a way of acknowledging – in a small way – the harm suffered and emotional, physical and economic toll that results. These multi-jurisdictional examples also place value on workplace flexibility – it can offer both emotional support for a victim but importantly may help victims step outside of a routine that places them

[119] Luciana Polischuk and Daniel L Fay, 'Administrative Response to Consequences of COVID-19 Emergency Responses: Observations and Implications From Gender-Based Violence in Argentina' (2020) 50(6–7) *The American Review of Public Administration* 675 ('Administrative Response to Consequences of COVID-19 Emergency Responses').
[120] *The Employment Standards Code 2016* (C.C.S.M. c. E110) 59.11(3).

at risk of further violence. Domestic violence leave therefore offers a disappointing but exemplary case to demonstrate international comparative law's failings.

WHERE TO NEXT?

Comparative scholars seek meaningful comparisons,[121] with a clear sense that by doing so, we can find solutions in foreign legal systems to our own problems. Nonetheless, we have shifted to an era of doubt about cross-border, multi-linguistic comparisons. This has been a *long era*. German Professor of comparative law, Bernhard Grossfeld, wrote of a 'deep skepticism' about the 'non-transferability of law' in 1984 while scholar of gender and international law, Darren Rosenblum, re-raised these concerns about comparative law's unpopularity, with its 'near-empty dance card', as recently as 2007.[122]

Responding to this fairly engrained scepticism about comparative law's limits, when I set out to research the questions I grapple with in this article, I tried in earnest to understand whether Spain's and the Philippines' early laws, enacted in the same year – 2004 – were legal transplants of each other, that is, where a rule has moved from one country to another or from one people to another. Such 'legal transplants' – the notion of which has attracted a notable body of scholarship[123] – come with 'hazards and benefits'.[124] After all, laws of Spanish origin continue today to (in this case) taint Filipino laws on abortion.[125] These two countries – historically intertwined for reasons of colonialism – offered a way to demonstrate to the comparative world that good laws can be successfully transplanted from one nation to the another. Yet no clear indicators of such a relationship emerged in relation to this area of law reform. The task was left wanting.

In turn , this article sought to pursue an alternative task of demonstrating the indispensability of comparative work in this space. The intellectual benefits, I would hope, are self-evident for both comparative law scholars, but also gender equality advocates. Comparative scholars have

[121] Bernhard Grossfeld, 'Geography and Law' (1984) 82(5/6) *Michigan Law Review* 1510, 1510.
[122] Rosenblum (n 47) 777.
[123] See for example Pierre Legrand, 'The Impossibility of "Legal Transplants"' (1997) 4(2) *Maastricht Journal of European and Comparative Law* 111; Helen Xanthaki, 'LEGAL TRANSPLANTS IN LEGISLATION: DEFUSING THE TRAP' (2008) 57(3) *International & Comparative Law Quarterly* 659 ('LEGAL TRANSPLANTS IN LEGISLATION'); Toby S Goldbach, 'Why Legal Transplants?' (2019) 15(1) *Annual Review of Law and Social Science* 583.
[124] Goldbach (n 122).
[125] Center for Reproductive Rights, *Foresaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban* (Center for Reproductive Rights, 2010) 9 <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PHL/INT_CCPR_NGO_PHL_104_9910_E.pdf>.

interrogated the challenges and opportunities in undertaking comparison in different disciplines.[126] It is hoped that the pursuit of comparison in the discipline of gender-based violence itself creates methodological innovations in how we understand laws in this field. This article presents the only, to my knowledge, categorisation of the various models available for law reform to offer victims of violence workplace leave. While relatively obvious to scholars of gender-based violence, without this categorisation, the other options for legislators in terms of how to design new laws offering workplace leave might escape attention altogether. Yet, beyond the intellectual debates at hand, it is hoped that this analysis demonstrates comparative law's 'exciting potential'[127] to make legislation work better for marginalised women.

Nonetheless, this pursuit remains theory-driven, grounded in a sense of the Euro-centric nature of comparative legal scholarship to date. Critical thinking needs to take place beyond the experiences of the Anglo world in order to consider and value legal experimentation occurring in other parts of the world frequently deemed "less developed" and having less to offer legal drafters. Returning to the words of Rosenblum, penned over 15 years ago, for the success of 'international gender law' as they called it, 'international law must reach for ever broader and more comprehensive understandings of laws and cultures across the globe, rather than retreating into a dialect of the few'.[128] This article offers substantive evidence for why we must embrace the need for a deeper understanding of difference. Moreover, we can 'do' this comparative work better now than in the past. In the 1980s, Günter Frankenberg called for a critical approach to comparative scholarship whereby we recognise the problem of perspective as actually central to what we are doing.[129] In fact, perspective is 'determinative' in Frankenberg's view. Such perspective, in my opinion, allows us to achieve the following: acknowledge gender equality global good practice may be unfolding in parts of the world largely not considered global leaders on gender equality; to embrace rather than fear what 'linguistic travel' can offer when seeking to enact gender-responsive legislation; and to be conscious, as scholars – in this case, feminist legal scholars – of how our very own narratives may be creating the roadblocks to the type of law reform we all wish to see.

[126] For more see Maurice Adams and Jacco Bomhoff, 'Comparing Law: Practice and Theory' in *Practice and Theory in Comparative Law* (Cambridge University Press, 2012) 1, 5 ('Comparing Law').
[127] John C Reitz, 'How to Do Comparative Law Symposium: New Directions in Comparative Law' (1998) 46(4) *American Journal of Comparative Law* 617, 636 ('How to Do Comparative Law Symposium').
[128] Rosenblum (n 47) 828.
[129] Frankenberg (n 32) 411.