Liberalism and Married Women's Property Rights in Nineteenth-Century Latin America

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By the beginning of the twentieth century, married women's property rights in Latin America had evolved along two distinct paths. All South American countries still maintained their colonial marital regime, with either partial (Hispanic America) or full (Brazil) community property. In contrast, Mexico and the five Central American republics had established the separation of property marital regime—with each spouse owning and controlling his or her own property and its fruits—as either a formal option or as the default regime. Moreover, whereas South American countries maintained the colonial inheritance regime of restricted testamentary freedom with only a few important modifications, Mexico and Central America had adopted full testamentary freedom. The question thus arises: why did such divergent systems of family law emerge in Latin America?

We investigate the impact of liberalism—the dominant intellectual current during this period—on married women's property rights in nineteenth-century Latin America. Following independence, new constitutions throughout the region incorporated notions of individual freedom, guarantees to private property, and representative democracy.[1] By the middle of the century, most countries boasted liberal and conservative parties. While the latter were generally associated with traditionalism or continuity with the colonial past, liberal parties tended to champion an agenda that included free trade, free land and labor markets, and a reduction in the economic and political power of the Catholic

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1. As is well known, all women and various classes of men were excluded from citizenship. See Roberto Gargarella, "Towards a Typology of Latin American Constitutionalism, 1810–60," *Latin American Research Review* 39, no. 3 (1994): 141–53, for a typology of the early Latin American constitutions.

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Church. To what extent did liberal notions of individual freedom and private property affect the family—and specifically, the property rights of married women? Furthermore, why did Mexico and Central America go much further than South America in reforming the inherited marital and inheritance regimes? Finally, did these liberal reforms contribute to gender-progressive change?

Following Bina Agarwal, we define as gender progressive those laws, practices, and policies that reduce or eliminate the inequities (economic, social, or political) faced by women in relation to men.[2] Silvia Arrom, in her pioneering feminist analysis of Mexican civil codes, argues that liberal reforms, by strengthening individual freedom, reduced patriarchal dominance within the family.[3] While gender equality was not the goal, this expansion of individual freedom reduced the legal inequities between men and women. Elizabeth Dore, in contrast, takes issue with what she considers the generally positive, orthodox interpretation of the impact of liberalism on gender relations. Such evaluations, she argues, have largely been based on liberal policies that supported women's formal education and entry into the labor force—what might be considered participation in the public domain. Looking instead at women's property rights in Mexico and Central America, Dore contends that state policy in this period had more negative than positive consequences for gender equality and that the overall direction of change was regressive rather than progressive.[4]

We investigate the impact of liberal reform on married women's property rights in 14 Latin American countries.[5] There has been little systematic analysis of the nineteenth-century civil codes or the laws concerning civil marriage and

2. Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge Univ. Press, 1994), 9.

3. Silvia M. Arrom, "Cambios en la condición juridical de la mujer mexicana en el siglo XIX," in *Memoria del II Congreso de Historia del Derecho Mexicano*, ed. José Luis Soberanis Fernández (Mexico City: Univ. Nacional Autónoma de México, 1980), 493–518; Silvia Arrom, *The Women of Mexico City, 1790–1857* (Stanford: Stanford Univ. Press, 1985); Silvia Arrom, "Changes in Mexican Family Law in the Nineteenth Century: The Civil Codes of 1870 and 1884," *Journal of Family History* 10, no. 3 (1985): 305–17.

4. Elizabeth Dore, "One Step Forward, Two Steps Back: Gender and the State in the Long Nineteenth Century," in *Hidden Histories of Gender and the State in Latin America*, ed. Elizabeth Dore and Maxine Molyneux (Durham: Duke Univ. Press, 2000), 3–32.

5. See table 1 for the list of countries. We focus on married women, since in colonial and nineteenth-century Latin America, emancipated single women had the same property rights as single men. Arrom, *The Women of Mexico City*, chap. 2. There is a growing body of evidence, however, that consensual unions were much more common than formerly assumed in the literature, meaning that a large proportion of adult women were technically single. Many single women were also household heads. Elizabeth Kuznesof, "The History of the Family in Latin America: A Critique of Recent Work," *Latin American Research*

divorce, particularly in a comparative context.[6] Comparative analysis has been constrained, in part, by the lack of a chronology of the promulgated codes and laws in the different countries. It is also difficult to access much of this legislation. Moreover, too often scholars assume that republican civil codes largely followed the Napoleonic code of 1804 with respect to the subordinated position of married women. Various authors argue that the strong influence of the French code caused the new republics to retain the concepts of *potestad marital* (the rights of the husband over the person and property of his wife) and *patria potestad* (paternal rights over the children) in their civil codes.[7]

This emphasis, we believe, is misplaced. The Napoleonic code did have a tremendous influence on property law (and economic and commercial law

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Review 24, no. 2 (1989): 168–86; Elizabeth Dore, "The Holy Family: Imagined Households in Latin American History," in *Gender Politics in Latin America: Debates in Theory and Practice*, ed. Elizabeth Dore (New York: Monthly Review Press, 1997), 101–17.

6. Arrom's work on Mexico is the most systematic: "Cambios en la condición de la mujer"; *The Women of Mexico City*; and "Changes in Mexican Family Law." Also see Christine Hünefeldt, "Las dotes en manos Limeñas," in *Familia y vida privada en la historia de Iberoamérica*, ed. Pilar Gonzalbo and Cecilia Rabell (Mexico City: Colegio de México, 1996), 255–87; and Arlene J. Díaz, *Female Citizens, Patriarchs, and the Law in Venezuela, 1786–1904* (Lincoln: Univ. of Nebraska Press, 2004). These authors consider only selective aspects of married women's property rights in their analysis of the nineteenth-century civil codes of Peru and Venezuela, respectively. Asunción Lavrin's excellent comparative study of Argentina, Chile, and Uruguay focuses primarily on the early twentieth-century reform movement: *Women, Feminism, and Social Change in Argentina, Chile, and Uruguay, 1890–1940* (Lincoln: Univ. of Nebraska Press, 1995). Civil marriage and divorce has received more attention and been treated in more depth. In addition to Lavrin's *Women, Feminism, and Social Change*, see Eugenia S. Rodríguez, "La aprobación del divorcio civil en Costa Rica en 1888," in *Fin de siglo XIX e identidad nacional en México y Centroamérica*, comp. Francisco Enríquez Solano and Iván Molina Jiménez (Alajuela, Costa Rica: Museo Histórico Cultural Juan Santamaría, 2000), 143–76; and Eugenia S. Rodríguez, "Reformando y secularizando el matrimonio: Divorcio, violencia doméstica y relaciones de género en Costa Rica (1800–1950)," in *Familias iberoamericanas: Historia, identidad y conflictos*, coord. Pilar Gonzalbo Aizpuru (Mexico City: El Colegio de México, 2001), 231–75, on Costa Rica; and Eileen J. Findlay, "Love in the Tropics: Marriage, Divorce, and the Construction of Benevolent Colonialism in Puerto Rico, 1898–1910," in *Close Encounters of Empire: Writing the Cultural History of U.S.–Latin American Relations*, ed. Gil Joseph, Catherine Legrand, and Ricardo Salvatore (Durham: Duke Univ. Press, 1998), 139–72, on Puerto Rico.

7. Maria Gabriela Leret de Matheus, *La mujer: Una incapaz como el demente y el niño (según las leyes latinoamericanas)* (Mexico City: Costa-Amic Ed., 1975); FAO (Food and Agriculture Organization of the United Nations), *Situación jurídica de la mujer rural en diecinueve paises de América Latina* (Rome: FAO, 1992).

in general). However, legislation concerning married women's property rights largely reflects continuity with colonial Luso-Hispanic legal tradition rather than French influence. The Napoleonic code did set a precedent for Latin American codifiers in three important areas: instituting civil marriage and divorce, lowering the age of majority, and abolishing entails. Husbands' legal control over their wives and wives' property, however, largely continued in the colonial legal tradition.

A close examination of the initial republican civil codes shows that their modest innovations in married women's property rights had little to do with either the Napoleonic code or the evolution of family law in nineteenth-century Spain. Through their codification of family law, Latin American countries began to reveal their own unique legal personalities. This is surely due to the heterogeneous implementation of colonial family law in the far-flung reaches of the Spanish and Portuguese empires. It also undoubtedly reflects the differing debates over individualism and equality, the family, and the position of married women that developed in specific historical circumstances. Our examination of the early civil codes reveals concerted attempts to improve the position of married women, as well as an emerging tendency to favor the conjugal, rather than the patrilineal, family in inheritance.

The most radical reforms in marital and inheritance law took place in Mexico and Central America after 1870. The precedents for these reforms are found not in Spain or France, but in England and the United States. While these reforms went furthest in stripping husbands of their control over their wives' property, they were also the most ambiguous in terms of their potential outcome for married women. These very liberal codes also maintained crucial aspects of potestad marital, such as male household headship.

Two caveats are in order. In a comparative analysis of this scope—covering 14 countries over the course of the nineteenth century in the context of legal change in France, Spain, England, and the United States—we cannot do justice to the national contexts of the Latin American reforms, nor can we adequately consider the aims and debates surrounding the enactment of these laws. Our analytical framework privileges the *potential* of these reforms to enhance the bargaining power and economic autonomy of married women, and it is in these terms that we evaluate gender-progressive legal change.[8] The question of the impact of the liberal reforms on the position of married women in practice will

8. For a full development of the bargaining power framework, see Agarwal, *A Field of One's Own*; and Carmen Diana Deere and Magdalena León, *Empowering Women: Land and Property Rights in Latin America* (Pittsburgh: Univ. of Pittsburgh Press, 2001), chap. 1.

have to await further research. We hope this essay will challenge historians to provide the missing historical documentation and interpretation.

The Republican Civil Codes

Most Latin American countries did not adopt their first republican civil codes until the second half of the nineteenth century—not from lack of effort but rather due to the political instability that marked the first 50 years after independence. Drafting commissions were appointed and disbanded with frequency.[9] The first country to adopt its own civil code was Bolivia, in 1830.[10] As table 1 shows, over the next two decades Bolivia was followed by Costa Rica, Peru, and Chile. The primary author of Chile's 1855 code was legal scholar Andrés Bello, a Venezuelan who had been Simón Bolivar's tutor and who was to have a profound influence on most nineteenth-century codes in Latin America. Bello resided in England between 1820 and 1829, pleading the cause of Latin American independence and serving in the legations of Colombia and Chile. He then took up residence in Chile, where he became a naturalized citizen and served in the senate, and also founded the University of Chile. He was well versed in the new European codes and British common law, as well as being an expert on Roman and medieval and colonial Spanish law.[11]

Scholars generally agree that the Napoleonic code was only one of several that Bello took into account in drafting the Chilean code.[12] According to M. C. Mirow, he tended to follow French law and its interpretations on economic and commercial matters, while on familial and social matters he was more conser-

9. For example, Peru appointed civil code drafting commissions in 1825, 1831, 1834, and 1845—most to see their work aborted by changes of government; Helen L. Clagett, *A Guide to the Law and Legal Literature of Peru* (Washington, DC: Library of Congress, 1947), 27. See M. C. Mirow, *Latin American Law: A History of Private Law and Institutions in Spanish America* (Austin: Univ. of Texas Press, 2004), 134–35, on the difficulties most countries faced after independence in codifying their private law.

10. Drafted under president Andrés Santa Cruz, this civil code was briefly adopted by the states of Upper and Lower Peru during the short-lived (1836–39) confederation between Bolivia and Peru. Clagett, *A Guide to the Law*. Outside of Haiti, which adopted the French code in 1825, the Bolivian is considered the code to have been most inspired by that of France. Mirow, *A History of Private Law*.

11. M. C. Mirow, "Borrowing Private Law in Latin America: Andrés Bello's Use of the Code Napoleón in Drafting the Chilean Civil Code," *Louisiana Law Review* 61 (2001): 291–329.

12. Ibid.; Arturo Valencia Zea and Alvaro Ortiz Monslave, *Derecho civil: Parte general y person*, vol. 1, 18th ed. (Bogotá: Temis, 1997).

Table 1: Latin American Republican Civil Codes, by Date and Period.

Country	*First Republican Code*	*Other 19th-Century Codes*	*Next Code*
Bolivia	1830		1972
Costa Rica	1841	1887 (1888)	1973
Peru	1852		1936
Chile	1855 (1856)[a]		
El Salvador	1859 (1860)[a]		1902 (1904)
Ecuador	1860 (1861)[a]		1949
Venezuela	1862 (1863)[a]	1867, 1873, 1880 (1881), 1896	1904
Mexico	1866	1870 (1871), 1884	1928 (1932)
Nicaragua	1867 (1872)[a]		1903 (1904)
Argentina	1869 (1871)		1926
Colombia	1873[a]		1932
Guatemala	1877		1926
Honduras	1880	1898	1906
Brazil	1916 (1917)		1988

Note: The first year represents the year the code was passed; the year in parentheses represents the year it went into effect, if different. In the text, we refer to the codes by the year of their approval.

[a] Bello code.

Sources:

Argentina. 1869: Antonio Zamora, *República Argentina*, *Código Civil con las notas de Vélez Sarsfield y las reformas dispuestas por las leyes 17711 y 17940 . . . textos ordenados y actualizados por Antonio Zamora* (Buenos Aires: Claridad, 1969).

Bolivia. 1830: Ramón Salinas Mariaca, *Códigos Bolivianos*, *compilación especial por el Dr. Ramon Salinas Mariaca*, 3rd ed. (La Paz: Gisbert & Cia., 1955).

Brazil. 1916: Joseph Wheless, trans., *The Civil Code of Brazil: Being Law No. 3.071 of January 1, 1916* (St. Louis: The Thomas Law Book Co., 1920).

Chile. 1855: República de Chile, *Código Civil de la República de Chile*, *aprobada diciembre 14, 1855* (Santiago: Imprenta Nacional, 1856).

Colombia. 1873: República de Colombia, *Código Civil Colombiano expedido por el Congreso de 1873*, *Adoptado por la Ley 57 de 1887* (Bogotá: Imprenta Nacional, 1895).

Costa Rica. 1841: Rafael Ramírez, *Código General de la República de Costa-Rica*, *emitido en 30 de julio de 1841* (New York: Wynkoop, Hallenbeck and Thomas, 1858);
1887: República de Costa Rica, *Código Civil de la República de Costa Rica* (San José: Imprenta Nacional, 1887).

Ecuador. 1860: República de Ecuador, *Código Civil de la República del Ecuador* (Quito: Imprenta de los Huerfanos de Valencia, 1860).

El Salvador. 1859 and 1902: Belarmino Suárez, *El Código Civil del año 1860 con sus modificaciones hasta el año 1911 por el Dr. Belarmino Suárez* (San Salvador: Tip. La Unión, 1911); Rafael U. Palacios, *Código Civil de la República de El Salvador*, 4th ed. (San Salvador: Imprenta La República, 1904).

Guatemala. 1877: República de Guatemala, *Código Civil de la República de Guatemala*, *1877* (Guatemala City: Imprenta El Progreso, 1877).

Table 1: (*continued*)

Honduras. 1877: República de Honduras, *Código Civil de la República de Honduras 1880* (Tegucigalpa: Tip. Nacional, 1880); 1898: República de Honduras, *Código Civil de 1898* (Tegucigalpa: Tip. Nacional, 1898); 1906: República de Honduras, *Código Civil, 1906* (Tegucigalpa: Scancolor, 1997).
Mexico. 1866: República de Mexico, *Código Civil del Imperio Mexicano 1866* (Mexico City: Imprenta de Andrade y Escalante, 1866); 1870: República de Mexico, *Código Civil del Distrito Federal y Territorio de la Baja California* (Mexico City: Tip. De J. M. Aguilar Ortiz, 1870); 1884: Manuel Mateos Alarcón, *Código Civil del Distrito Federal, concordado y anotado por M. Mateo Alarcón* (Mexico City: Libreria de la vda. de Ch. Bouret, 1904).
Nicaragua. 1867: República de Nicaragua, *Código Civil de la República de Nicaragua aprobado 25 enero 1867* (Managua: Imprenta de El Centro Americano, 1871); 1903: J. Santos Zelaya and Fernando Abaunza, *Código Civil de la República de Nicaragua* (Managua: Tip. Nacional, 1903).
Peru. 1852: Gustavo A. Cornejo, *Comentarios al Código Civil de 1852* (Chiclayo: Dionisio Mendoza, Libería y Casa, 1921).
Venezuela. 1862: Gonzalo Parra-Aranguren, *La Codificación de Paez (Código Civil de 1862)*, vol. 1 (Caracas: Biblioteca de la Academia Nacional de Historia, 1974); 1873: *Código Civil Sancionado por el General Guzman Blanco . . . , Ed. Oficial, 1873*, reprinted in Congreso de la República, *Conmemorativa del Centenario del Código Civil Decretado en Febrero de 1873* (Caracas: Congreso de la República, 1973); 1896: República de Venezuela, *Código Civil sancionado por el Congreso de los Estados Unidos de Venezuela en sus sesiones ordinarias de 1896* (Caracas: Tip. Del Comercio, 1896); Anibal Dominici, *Comentarios al Código Civil Venezolano (reformado en 1896)*, vol. 1 (Caracas: Imprenta Bolivar, 1897); 1916: República de Venezuela, *Código Civil de los Estados Unidos de Venezuela, 1916* (Caracas: Tip. Del Comercio, 1916); and Instituto de Derecho Privado, Facultad de Ciencias Jurídicas y Políticas, *Código Civil de Venezuela: Antecedentes, comisiones codificadoras, debates parlamentarios, jurisprudencia, doctrina, concordancias* (Caracas: Universidad Central de Venezuela, 1993), multiple volumes, by groupings of articles.

vatively inspired by the thirteenth-century *Siete Partidas* and Spanish colonial law.[13] Mirow attributes the profound influence of Bello's code to his masterful adaptation of these influences to the particular socioeconomic needs of Chile, balancing "liberal economic concerns and traditional social expectations."[14] Bello's code was copied in large measure throughout the Andes (Ecuador, Venezuela, Colombia) and Central America (El Salvador and Nicaragua); we refer to these six national codes as the Bello codes.[15]

13. Mirow, "Borrowing Private Law," 312.
14. Ibid., 324.
15. Mirow also considers the 1880 civil code of Honduras to have been a copy of Bello's and those of Uruguay, Mexico, Guatemala, Costa Rica, and Paraguay to have been greatly influenced by it. Ibid., 291. As we will subsequently show, the Honduran code

The Argentine civil code of 1869, drafted by Dalmacio Vélez Sársfield, was also influential. Like Bello, Sársfield consulted numerous Latin American and European models, including Chile, France, Teixeira de Freitas's draft code for Brazil, and García Goyena's 1851 draft of the Spanish civil code.[16] Similarly, Justo Sierra—appointed by president Benito Juárez in 1857 to draft Mexico's civil code—consulted a broad array of modern and traditional codes, including Bello's and the draft Spanish civil code. Sierra's draft, completed in 1861, was subsequently revised by a special commission that continued to work during the French Intervention. Emperor Maximilian decreed this draft of the first two volumes as Mexico's first civil code in 1866. This short-lived code, however, was abrogated when Maximilian was executed and another drafting commission appointed. The code for the Federal District and territories (which became the model for most states) promulgated in 1870 is considered to conform, in most important respects, to Sierra's initial draft.[17]

By the time Honduras and Guatemala enacted, during the period of their respective liberal revolutions, their own civil codes in the final quarter of the century, other Central American countries and Mexico were redrafting their earlier codes in more liberal directions that we will discuss in the last section of this article. Brazil is the only country governed for the better part of the nineteenth century by colonial civil legislation. This owes partly to its monarchical government from independence in 1822 to 1889. After four unsuccessful attempts to draw up a new civil code between 1859 and 1899, the final version was completed in 1900 but not approved until 1916.[18] Thus, the limited com-

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breaks radically with the others on inheritance matters and thus does not copy the Bello code in this regard. See table 1 for full citations to all the nineteenth-century civil codes analyzed in this essay.

16. Mirow, *History of Private Law*, 138–40. The 1851 draft project of the Spanish civil code had its origins in the constitutional Cortes of Cádiz that in 1811 ordered a new codification of Spanish law. But a commission did not begin to carry out this task systematically until 1843, completing its work in 1851. It took another four decades to resolve the difficulties surrounding the status of provincial legislation and local customs. The nineteenth-century Spanish civil code was not promulgated until 1889. Clifford Stevens Walton, *The Civil Law in Spain and Spanish-America* (Washington, DC: W. H. Lowdermilk & Co., 1900), 107–10.

17. Walton, *Civil Law*, 107–10; Luis Méndez, "La verdad histórica sobre la formación del Código Civil," in *Revisión del proyecto de Código Civil Mexicano del Dr. Justo Sierra por la Comisión formada . . . durante los años 1861–1866*, ed. Agustín Verdugo (Mexico City: Talleres de la Librería Religiosa, 1897); Arrom, "Cambios," 495.

18. Joseph Wheless, *The Civil Code of Brazil: Being Law No. 3.071 of January 1, 1916* (St. Louis: The Thomas Law Book Co., 1920), xiii.

parisons to Brazil in this essay refer primarily to Portuguese colonial law. In the years between independence and the promulgation of new codes, most countries decreed the colonial codes (civil, commercial, and penal) to be in force.[19] Personal or family law was sometimes modified by specific legislation, such as the laws effecting civil matrimony and divorce or changing the age of majority.

Contract or Sacrament? The Struggle over Civil Matrimony and Divorce

The great drama that played out in just about every Latin American country during the nineteenth century was the struggle between the Catholic Church and the emerging liberal state. At issue was the economic and political power of the church in the new republics. One of the main points of contention was the issue of civil matrimony and divorce.[20] While the church viewed marriage as a holy sacrament, liberals viewed it as a contract to be regulated by the state.

In colonial Latin America, the Catholic Church, as the official state church, determined most of the rules governing marriage and divorce. It regulated the conditions (such as the age of consent and other impediments to marriage), the ceremony, and the registration of marriage. It also determined the conditions for annulment or a temporary or permanent separation (known as *a mensa et thoro*, from bed and board without the possibility of remarriage—what we will term ecclesiastic divorce) and mediated conflicts over these matters. Since marriage was a sacrament, a couple was joined together for life. The church insisted that marriage be based on voluntary choice—the exercise of free will.

The civil implications of matrimony, however, were the province of the colonial state. Once marriage had been consecrated by the church or a separation decreed, the state determined the property arrangements of the *sociedad conjugal* (the marital society) and regulated its dissolution. The state also defined the rights and responsibilities of parents (and in their absence, of guardians) over children. In addition, it determined the age of majority (25 years of age),

19. Mirow, *History of Private Law*, 126.

20. Another key issue with respect to the family was control over education, and hence the socialization, of children. The points of contention were ample, including the concentration of property in the hands of the church, its sources of financing, the appointment of church officials, control over cemeteries, the registration of births, marriages and deaths, down to the number of religious holidays and times a day church bells might be rung. Gerardo Molina, *Las ideas Liberales en Colombia: 1849–1914* (Bogotá: Univ. Nacional de Colombia, Dirección de Divulgación Cultural, 1970); Jeffrey Klaiber, SJ, *The Catholic Church in Peru, 1821–1955: A Social History* (Washington, DC: Catholic Univ. of America Press, 1992).

the age at which individuals attained civil capacity, and the process through which children could be emancipated. Children of both sexes were subject to paternal authority (*patria potestad*) until their father's death, their marriage, or until they were officially emancipated by their father or court order.[21]

France, in its 1791 constitution and 1804 civil code, was the first Catholic nation to make civil marriage obligatory and to allow for civil divorce (*a vinculo matrimonii*—from the bonds of matrimony) with the possibility of remarriage. Although civil divorce was subsequently abrogated with the restoration of the monarchy in 1816, the French experiment with civil divorce—which included not only the dissolution of marriage due to marital fault but also by mutual consent—set the agenda for liberal reformers in both Europe and the Americas.[22] The Napoleonic code also set the standard for the age of majority, which, in a nod to individual freedom, was lowered to 21 for all acts of civil life save marriage. The age of consent for marriage without parental approval was lowered to 21 for women but remained 25 for men—perhaps because of the importance of the patrilineal line in the transmission of property. Moreover, against explicit Catholic Church canon, the minimum age for marriage was raised from 12 to 15 for women and 18 for men.[23]

All of the initial republican civil codes in Latin America recognized the Catholic Church as the official church and, except for matters concerning property, largely left marriage and separation in its hands.[24] The contentious

21. Arrom, *The Women of Mexico City*, 58; Muriel Nazzari, *Disappearance of the Dowry* (Stanford: Stanford Univ. Press, 1991), 61. On the Bourbon reforms of marriage regulations, see Patricia Seed, *To Love, Honor, and Obey in Colonial Mexico: Conflicts over Marriage Choice, 1574–1821* (Stanford: Stanford Univ. Press, 1988); Ramón A. Gutiérrez, *When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500–1846* (Stanford: Stanford Univ. Press, 1991); Nazzari, *Disappearance of the Dowry*; and Steinar Saether, "Bourbon Absolutism and Marriage Reform in Late Colonial Spanish America," *The Americas* 59, no. 4 (2003): 475–509.

22. Civil divorce did not become legal again in France until 1884. Dorothy McBride Stetson, *Women's Rights in France* (Westport, CT: Greenwood, 1987), 84–85. It was approved in England in 1857 and in most U.S. states by the 1870s, generally on the grounds of culpability of one spouse. Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: Univ. Press of Toronto, 1983), 98; and Findlay, "Love in the Tropics," 166n22.

23. *Code Napoleon or The French Civil Code*, trans. A Barrister of the Inner Temple (1904; Washington, DC: Beard Books, 1999), arts. 144, 148, 165, 173, 227, 233, and 488.

24. The republican civil codes usually go into great detail on the impediments to marriage and the conditions for annulment or legal separation, but here they generally replicate the canons of the Catholic Church and leave it to the church to enforce these provisions and solve disputes.

nature of civil marriage and divorce in the nineteenth century is suggested by the chronology in table 2. Civil marriage and divorce were adopted piecemeal across the region and well into the twentieth century; this issue, more than any other, came to signify the separation of church and state.[25] The first two Hispanic countries to sanction civil matrimony and divorce—Guatemala and Colombia—subsequently rescinded the legislation.[26] Guatemala passed legislation on these issues in 1837, during the period that it was a state under the Central American Federation. Crafted under the leadership of liberal Mariano Gálvez and popularly known as the "Ley del Perro," it was supposedly among the reasons he was deposed in 1838.[27] Four decades passed before civil marriage was again reconsidered. During the height of its liberal revolution, civil matrimony was adopted one step at a time—first for those of different creeds, then as an option for all, before finally being made obligatory in 1879.[28]

Colombia passed laws allowing for civil marriage and divorce during the liberal hegemony of the mid-1850s. The church and the Conservative Party opposed civil divorce so strongly that this portion of the decree was rescinded three years later. In the ensuing period of decentralized governance, some of Colombia's more liberal states maintained the option of civil divorce. Subsequently, during the period known as the Regeneración (1880s–1894), the church and its allies prevailed in restricting civil matrimony to non-Catholics. The power of the Catholic Church blocked the issue of optional civil matrimony and divorce for a century in this country.[29]

Two groupings emerge in table 2: those countries that adopted civil matrimony in a piecemeal fashion (Guatemala, Colombia, Venezuela, Argentina, Cuba, Honduras, and Peru); and those where it was made obligatory for all and remained so (Mexico, El Salvador, Chile, Uruguay, Costa Rica, Brazil, Nicaragua, and finally Ecuador and Bolivia in the twentieth century). Mexico was the first country whose original law on civil matrimony—passed during the height

25. Molina, *Las ideas liberales.*

26. Haiti, in 1825, was the first Latin American country to establish civil marriage and divorce when it adopted the French civil code, but we have not studied this case; Díaz, *Female Citizens*, 235.

27. José Mata Gavidia, *Anotaciones de historia patria centroamericana* (Guatemala City: Ed. Universitaria, 1969), 324–25.

28. By *obligatory* we mean that all marriages must be registered with civil authorities. A further distinction could be made in table 2 between those countries that *only* recognized civil marriages and those that recognized church marriages that were duly registered.

29. Carlos Gallón Giraldo, *Divorcio, familia y matrimonio* (Bogotá: Gráficas Venus, 1974), 43–70; Gustavo Contreras Restrepo, Alvaro Tafur González, and Arturo Castro Guerrero, *Código Civil Comentado*, 6th ed. (Bogotá: Leyer, 1996).

Table 2. Civil Matrimony and Divorce in Latin America.

	Civil Marriage		*Civil Divorce*	
Country	*Year*	*Type*	*Year*	*Grounds*
Guatemala	[1837–40][a]	obligatory[b]	[1837–40]	mutual consent[c]
	1877	non-Catholics	1894	mutual consent
	1878	option for all		
	1879	obligatory		
Colombia	[1853–87]	obligatory	[1853–56]	mutual consent
	1888	non-Catholics	1976	for those married civilly
	1974	obligatory	1992	mutual consent
Mexico	1859	obligatory	1917	mutual consent
Brazil	1861	non-Catholics	1977	mutual consent
	1890	obligatory		
Venezuela	1862	non-Catholics	1904	fault
	1873	obligatory		
Argentina	1869	non-Catholics	[1954–56]	fault
	1888	obligatory	1987	mutual consent
El Salvador	1880	obligatory	[1880–81] /1894	fault
Honduras	1880	option	1898	fault
	1881	obligatory	1906	mutual consent
Chile	1884	obligatory	2004	mutual consent
Uruguay	1885	obligatory	1907	mutual consent
Costa Rica	1887	obligatory	1887	fault
Cuba	1889	option	1918	mutual consent
	1899	obligatory		
Puerto Rico	1889	option	1902	fault
	1899/1902	obligatory		
Nicaragua	1894	obligatory	1894	fault
			1906	mutual consent
Peru	1897	non-Catholics	1930	mutual consent
	1930	obligatory		
Ecuador	1902	obligatory	1902	fault
			1910	mutual consent
Bolivia	1911	obligatory	1932	mutual consent

Notes:
Countries are ordered by year of first civil matrimony legislation.
[a]Brackets indicate legislation that was later rescinded.
[b]*Obligatory* means that church marriages must be registered with civil authorities to be considered valid.
[c]Where divorce by mutual consent is noted, the legislation also provides for divorce due to fault.

Table 2. (*continued*)

Sources:
Argentina. "Ley de Matrimonio Civil," Law 2393 of 11 Feb. 1888 and Law 2681 of 11 July 1889, sec. 2, tit. 1, arts. 64 and 81, 1869 code in Zamora, *Código Civil*; Luis Alberto Estivill, *Código Civil de la República Argentina con las notas de Vélez Sarsfield y leyes y decretos complementraios; Edición al cuidado de Luis Alberto Estivill* (Buenos Aires: Victor P. De Zavalia, ed., 1970), 53–54, 964; Recalde, *Matrimonio civil*, 8; arts. 213 and 215 in República de Argentina, *Ley No. 23.515*, *Reforma al Régimen de la Familia*, *Introducción del Divorcio Vincular* (Buenos Aires: Bregna, 1987).
Bolivia. "Ley del Matrimonio Civil de 11 de octubre de 1911," and arts. 1 and 2, "Ley del Divorcio Absoluto de 15 de abril de 1932," in Salinas Mariaca, *Códigos bolivianos*, 449, 455.
Brazil. Decree 1114 of 11 Sept. 1861, cited in Dain Edward Borges, "The Family in Bahia, Brazil, 1870–1945" (Ph.D. diss., Stanford Univ., 1987), 103; "Decréto n. 181 de 24 de Janeiro de 1890," in Manoel Godofredo de Alencastro Autran, *Do Casamento Civil segundo o Decreto no. 181 de 24 de Janeiro de 1890* (Rio de Janeiro: Laemmert & C., 1896); art. 180, 1916 code in Wheless, *Civil Code of Brazil*; art. 2, law 6515 of 26 Dec. 1977 in Ed. Auriverde, *Separação & Divorcio* (Rio de Janeiro: Auriverde, 1977).
Chile. "Ley de Matrimonio Civil de 10 de enero de 1884," in República de Chile, *Códigos de la República de Chile; Código Civil* (Valparaiso: Ed. Jurídica de Chile, 1958), 563–70; and arts. 53–55, Chile, "Ley de Matrimonio Civil," *Diario Oficial*, 17 May 2004, law 19.947.
Colombia. Josefina Amezquita de Almeida, *Lecciones de derecho de familia* (Bogotá: Temis, 1980), 294–99; Contreras, Tafur, and Castro, *Código Civil Comentado*, 72–74; Gallon Giraldo, *Divorcio, familia y matrimonio*, 43–70; Roberto Suárez Franco, *Derecho de familia*, vol. 1, *Derecho matrimonial*, 6th ed. (Bogotá: Temis, 1994), 64–74, 198–99.
Costa Rica. Arts. 59 and 86 in 1887 Costa Rican code.
Cuba. Arts. 42 and 105 of Spanish civil code of 1889 in P. Barbé and Huguet, *Códigos de Cuba: Vigentes en Cuba con las modificaciones introducidas desde el cese de la soberanía española, brevente anotadas por P. Barbé y Huguet* (Havana: Librería Benavent, 1925); 1899 United States decree in Stevens, *The Civil Law in Spain*, 483; and Lynn K. Stoner, *From the House to the Streets: The Cuban Woman's Movement for Legal Reform, 1898–1940* (Durham: Duke Univ. Press, 1991), 46–47.
Ecuador. Juan Lovato, *El divorcio perfecto* (Quito: Universitaria, 1957), 60–61.
El Salvador. Suárez, *El Código Civil del año de 1860*, 52–55, 78–81.
Guatemala. Pineda de Mont, *Recopilación de las Leyes*, 263, 300–10; art. 130 in 1877 Guatemalan code; Fernando Cruz, *Instituciones de Derecho Civil Patrio, escritas por Fernando Cruz*, vol. 1 (Guatemala City: Tip. El Progreso, 1882), 176–79; República de Guatemala, *Leyes que reglamentan la celebración del matrimonio civil* (Guatemala City: Tip. Nacional, 1923).
Honduras. Art. 129 in 1880 Honduran code; arts. 58 and 75 in 1898 Honduran code; Gautama Fonseca, *Curso de derecho de familia*, vol. 1 (Tegucigalpa: Imprenta Lopez y Cia., 1968), 39–40.
Mexico. "Ley de 23 de junio de 1859," in *Legislación mexicana: Coleción completa de las disposiciones legislativas expedidas desde la independencia de la República*, vol. 8, ed. Manuel Dublan and José María Lozano (Mexico City: Imprenta del Comercio, 1877); also in María de la Luz Parcero, *Condiciones de la mujer en México durante el siglo 19* (Mexico City: Instituto Nacional de Antropología e Historia, 1992); art. 101 in 1866 Mexican code; Manuel Mateos Alarcón, *Código Civil del Distrito Federal*, 27, 81; art. 267, 1928 code in Michael Wallace Gordon, *The Mexican Civil Code* (London: Oceana, 1980).

Table 2. Civil Matrimony and Divorce in Latin America.

Sources (continued):
Nicaragua. T. G. Bonilla, *El Matrimonio en el Código de la Familia y sus Efectos Civiles* (Managua: Tip. Nacional, 1894); arts. 95, 160, and 174 in Santos Zelaya and Abaunza, *Código Civil*; divorce by mutual consent was established in the *Código de Procedimiento Civil* of 1906, in note to art. 174 in República de Nicaragua, *Código Civil de la República de Nicaragua*, 3rd ed. (Managua: Carlos Heuberger y Co., 1931).
Peru. Cornejo, *Comentarios al Código Civil*, 203–5; arts. 101 and 124 in República de Peru, *Código Civil*, *1936* (Lima: Americana, 1939); Comisión de la Mujer, *La mujer peruana en la legislación del siglo XX* (Lima: Congreso de la República, 1997), 24–25.
Puerto Rico. Arts. 42 and 105 of Spanish civil code of 1889 in Barbé and Huguet, *Códigos de Cuba*; on 1899 United States decree, see Stevens, *The Civil Law in Spain*, 483; on 1902 civil code, see Findlay, "Love in the Tropics."
Uruguay. Lavrin, *Women*, *Feminism*, *and Social Change*, 227, 231.
Venezuela. Art. 2, 1862 Venezuelan code; arts. 48 and 81 in 1867 code; for 1873 in Dominici, *Comentarios al Código Civil*, xvi; arts. 63 and 74, 1896 Venezuelan code; and Instituto de Derecho Privado, *Código Civil de Venezuela*, *artículos 41 al 65*, 83–86.

of the liberal reform period—prevailed, perhaps because it did not seriously consider the issue of civil divorce at that time. The provisions for separation of unions in the 1859 Law on Civil Matrimony followed the colonial rules as established by the Catholic Church.[30]

All told, there were at least three unsuccessful attempts (by Guatemala, Colombia, and El Salvador) to introduce civil marriage and divorce simultaneously. Costa Rica was the first country, in 1887, to succeed—indicative of continuing church power in most countries and its vehement opposition to such measures. Costa Rica promulgated both measures in a period when the church was in disarray, partly as a result of persecution by liberals.[31] It is worth emphasizing that, as a result of their liberal revolutions, *all* of the Central American states adopted civil divorce by the end of the nineteenth century. In contrast, civil divorce was not instituted in South America until the first decade of the twentieth century, and then only by Ecuador, Venezuela, and Uruguay.

Feminist scholars have argued that in this century-long struggle over civil matrimony and divorce, its liberal protagonists and conservative opponents shared similar ideals of family dynamics, matrimony, and gender roles.[32] They

30. According to Arrom, "Cambios," 510–11, and Arrom, "Changes in Mexican Family Law," 311, civil divorce was under discussion by the late 1860s and adamantly opposed by leading jurists.

31. Rodriguez, "La aprobación del divorcio."

32. Arrom, "Cambios"; Arrom, *The Women of Mexico City*; Arrom, "Changes in Mexican Family Law"; Suzy Q. Bermúdez, *Hijas*, *esposas y amantes: Género*, *clase*, *etnia y*

agreed that marriage must be based on mutual consent and that its objective was fidelity, procreation, and mutual assistance. Both considered the monogamous, nuclear family based on harmonious relations a necessary institution for social stability, peace, and progress. In the nineteenth century, neither liberals nor conservatives broke with the colonial view of society as a set of hierarchical relations based on patriarchy. In Arrom's words, the family was "the basic social unit on which the entire structure rested, with men governing wives and children just as they were in turn governed by the state."[33] Neither side questioned traditional gender roles. Moreover, by the last quarter of the nineteenth century, both liberals and the Catholic Church generally agreed that the ideal marriage was based on love and companionship. Both exalted women's roles as wives and mothers.[34]

The point of contention concerned who retained the authority to regulate this unitary family: the church, with its sacramental view of marriage, or the state, following the liberal tenet that matrimony should be solely a civil contract?[35] While for centuries the church had recognized some of the contractual aspects of marriage (such as property rights), it nevertheless opposed civil matrimony so vehemently in Latin America in this period because it feared that its recognition would inevitably lead to civil divorce. It thus equated civil matrimony with concubinage and predicted that it would lead to the breakup of the family, the diminution of paternal power, and the abandonment of children.[36] Liberal reformers, on the other hand, in countries such as Venezuela, argued that civil marriage and divorce were necessary to combat the high degree of concubinage and that such measures would make marriage more attractive.[37]

Liberals and the church had very different views of the expected outcome of divorce. Liberals contended that it would improve family harmony by allowing

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edad en la historia de América Latina (Bototá: Ediciones Uniandes, 1992); Rodríguez, "La aprobación del divorcio"; Rodríguez, "Reformando"; Guiomar Dueñas Vargas, "'La Ley del Padre' y la vida familiar en Colombia, siglo XIX" (paper presented at the Latin American Studies Association Congress, Washington DC, Sept. 2001).

33. Arrom, "Changes in Mexican Family Law," 310.

34. Rodríguez, "La aprobación del divorcio"; Rodríguez, "Reformando."

35. But not all liberals were anti-Catholic; rather, they wanted religion confined to the private, rather than the public, domain. Another important aspect in the debate was freedom of religion; Molina, *Las ideas liberales*, 115. In countries such as Argentina and Venezuela, it was argued that religious freedom and civil marriage were necessary to encourage immigration from Western Europe; Hector Recalde, *Matrimonio civil y divorcio* (Buenos Aires: Centro Editor de A.L., 1986), 110–12; Díaz, *Female Citizens*, 198.

36. Rodríguez, "La aprobación del divorcio," 154.

37. Díaz, *Female Citizens*, 255–57.

the dissolution of marriages marred by irretrievable conflict; remarriage would give these individuals a new opportunity to find marital bliss.[38] Moreover, the possibility of civil divorce would not only make marriage more attractive but also contribute to social stability. One of the strongest arguments offered by the Catholic Church against civil divorce was that it would harm and degrade women by taking away the protection and security of indissolvable marriage.[39]

Missing in the great debates over civil marriage and divorce was any acknowledgement of what civil divorce might mean for women's bargaining power within the family. From a feminist perspective, divorce increases women's bargaining power by giving them the option to leave an oppressive marriage. Of course, whether "exit" is a real option depends on a woman's fallback position—her ability to survive economically outside the marriage.[40] Women's property ownership, employment prospects, and familial and community support networks all affect the viability of this option. As we show in the next section, the default marital regime in colonial Latin America provided women with a fairly strong fallback position. Perhaps as Christine Hünefeldt argues for urban Peru, "there was nothing husbands feared more than divorce . . . divorce not only meant losing authority over the family, but it also meant losing assets and income."[41]

One of the ironies about "the great debate" is that although the issue of divorce had a lot to do with the position of women within the family and their presumed needs and aspirations, women's role in this debate has largely been invisible.[42] What few references we have found to women's views on the matter

38. Bermúdez, *Hijas, esposas y amantes*, 152.

39. Rodríguez, "La aprobación del divorcio"; Dueñas Vargas, "'La Ley del Padre,'" 9–12.

40. Deere and León, *Empowering Women*, chap. 1.

41. Christine Hünefeldt, *Liberalism in the Bedroom: Quarreling Spouses in Nineteenth-Century Lima* (University Park: Pennsylvania State Univ. Press, 2000).

42. Rodríguez, who thoroughly researched press reports between 1880 and 1930 for her piece on the adoption of civil marriage and divorce in Costa Rica, reports no feminine voice in the debates between liberals and conservatives. Rodríguez, "La aprobación del divorcio," 147. Brazil, which passed legislation on civil matrimony in 1890, may be a partial exception. Hahner cites a feminist publisher who actively championed divorce in this period, but it appears that it was in subsequent decades that a number of prominent women began to speak out in support of divorce; June Hahner, *Emancipating the Female Sex: The Struggle for Women's Rights in Brazil, 1850–1940* (Durham: Duke Univ. Press, 1990), 18–19. Leading Brazilian jurists strongly opposed it, and Brazil did not incorporate civil divorce in its 1916 civil code. Angela Mendes de Almeida, *Fámilia e modernidade: O pensamento jurídico brasileiro no século XIX* (São Paulo: Porto Calendário, 1999), 55–68. See Lavrin, *Women, Feminism, and Social Change*, chap. 7, on the debates over civil divorce in the Southern

suggest that they generally opposed civil matrimony and divorce, perhaps due to their greater personal involvement with the Catholic faith and hence support for the church position. Nevertheless, their public role in the debate appears to have been limited. For example, as civil matrimony was under intense debate in Peru during the liberal period of the late 1840s and 1850s, the Catholic bishops organized a major campaign against the constitutional convention of 1855, and "during the sessions, several upper-class women went to the congress building and interrupted speeches by the Liberals." [43] It is likely that women's participation in the debate over civil marriage and divorce in most countries took place through their moral influence and pressures in the domestic realm.[44]

In evaluating the role of women in this debate, we must recall that in countries such as Mexico, Guatemala, Costa Rica, Colombia, and Peru, it was overwhelmingly women who filed for ecclesiastic divorce during the late colonial period and first half of the nineteenth century.[45] Ecclesiastical divorce was a difficult, costly, and even shameful process, and the number of cases was quite small in each country.[46] Thus, while the frequency of such proceedings is probably not a good indicator of the demand for civil matrimony and divorce among

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Cone and how in the early twentieth century there was not unanimity among feminists concerning the importance of its attainment. Civil divorce in Uruguay was largely imposed from above in 1907, due to the strong secularizing bent of the dominant Colorado party; ibid., 11.

43. Klaiber, *The Catholic Church in Peru*, 63. Peru's first civil code drafting commission proposed civil matrimony in 1847, but they were not in unanimity over this provision. During the congressional debate conservatives prevailed, and it was not included in the 1852 civil code. The discussion, nonetheless, continued throughout this decade; Clagett, *A Guide to the Law*, 28; Hünefeldt, *Liberalism in the Bedroom*, 84–85.

44. Bermúdez, *Hijas, esposas y amantes*, 165–66. This point is well illustrated in the novel *Soledad*, which depicts the wife of former Colombian liberal leader Rafael Núñez, who led him to reconcile with the Catholic Church during the Regeneración; Silvia Galvis, *Soledad: Conspiraciones y suspiros* (Bogotá: Arango, 2002).

45. Arrom, *The Women of Mexico City*, 210; Beatriz Palomo de Lewin, "Vida conyugal de las mujeres en Guatemala (1741–1871)," in *Mujeres, género e historia en Centro America durante los siglos XVIII, XIX y XX*, ed. Eugenia Rodríguez Sáenz (San José, Costa Rica: UNIFEM / Plumsock Mesoamerican Studies, 2002), 25–34; Pablo Rodríguez, "Las mujeres y el matrimonio en la Nueva Granada," in *Las mujeres en la historia de Colombia*, vol. 2, ed. Magdala Velásquez Toro (Bogotá: Consejería Presidencial para la Política Social / Grupo Ed. Norma, 1995), 239; Hünefeldt, *Liberalism in the Bedroom*, 84–85.

46. Estimates for Lima indicate that somewhere between 4 and 6 percent of married couples were involved in ecclesiastical divorce suits during the nineteenth century; see Hünefeldt's excellent analysis of the difficulties of the process in *Liberalism in the Bedroom*, chap. 5.

women, it does suggest that women, more than men, needed a means to end intolerable marriages, as well as a means to recover control over their property.[47]

Where civil divorce was successfully adopted in the nineteenth century, it was usually allowed on the grounds of spousal fault—generally the same faults that permitted ecclesiastic divorce (adultery, bigamy, extreme cruelty, and abandonment). Divorce by mutual consent was usually the last step in a process (see table 2). But the trend of the last half of the century was to expand the reasons for separation of unions, thereby augmenting personal freedom. For example, the Mexican civil code of 1870 introduced mutual consent as a valid reason for separation after two years of marriage, as did Costa Rica's 1887 code.[48] Arrom considers the change from misbehavior to incompatibility a major break with tradition, and one that reflects the growing support for companionate marriage and expanded personal freedom.[49]

The main change that took place in a number of countries' initial civil codes concerned the age of majority or the age at which individuals could marry without parental permission. Distancing themselves from the Bourbon reforms that had strengthened parental prerogatives, and firmly following liberal tenets, many countries lowered this threshold from 25 to 21 (see table 3). In contrast to the Napoleonic code, many countries (Brazil, Peru, Ecuador, Mexico, Guatemala, and Honduras) placed the age of majority on par with the age at which marriage could take place without parental permission. None copied the French code exactly, although the Bolivian code of 1830 was most similar.[50] Few fol-

47. The case of Puerto Rico suggests another indicator of the latent demand for divorce in the late nineteenth century. When civil divorce was legalized there in 1902, "married women flocked to the courts" and constituted two-thirds of the plaintiffs; Findlay, "Love in the Tropics," 141, 154. In Venezuela, Díaz argues that the institution of civil divorce in 1904 was at least in partial response to women's growing participation in the courts over the course of the nineteenth century; Díaz, *Female Citizens*, 235, 225.

48. While the civil divorce provisions in Costa Rica's 1887 civil code did not include divorce by mutual consent, its inclusion as a reason for formal separation opened the way for divorce by mutual consent, since a spouse could request a divorce after two years of separation; Rodríguez, "La aprobación del divorcio," 159.

49. Arrom, "Changes in Mexican Family Law," 311.

50. The first legislation to lower the age of marriage without parental consent was a 1826 Bolivarian decree during the period of Gran Colombia. It was similar to the Napoleonic code in that while it lowered the age of consent for marriage, individuals between that age and the previous age of consent were still required to seek their parents' permission and only allowed to marry after a specified waiting period if said permission were denied; Barrister, *Code Napoleon*, arts. 151 and 152; Dueñas, "'La Ley del Padre,'" 5; Díaz, *Female Citizens*, 134.

lowed the French in challenging the church's prerogative to determine the minimum age required for marriage.[51]

Overall, the age of majority was lowered before the issue of civil matrimony and divorce was fully resolved. In most countries, this meant that at 21 individuals could now inherit and manage property, as well as their own incomes, and marry without parental consent. Single women at this age had most of the same civil rights as men, with the notable exception of political rights, since all countries prevented women from voting or standing for elected office.[52] The main gender difference was linked to a woman's marital status: married women were treated legally as relatively incompetent, as we will see in the next section. The lower age of majority potentially increased the bargaining power of children over parents with respect to marital choice and made it easier to marry following the dictates of romantic love. This was coupled with control over inheritances (such as from grandparents or other relatives) at an earlier age and the ability (particularly of young men) to retain their own earnings. But parents still had substantial control over the marriage possibilities of young women through their control over dowries and the changes that would take place in inheritance over the course of the century. Overall, however, we concur with Arrom that lowering the age of majority—the most consistent nineteenth-century liberal reform with respect to family law—augmented individual freedom and weakened patriarchal authority.[53]

Continuity and Change in Married Women's Property Rights

In the colonial period, married women's property rights were constrained by three components: male legal household headship, the marital regime, and the

51. Mexico was the first country to do so; article 103 of its short-lived 1866 code raised the minimum age for marriage to 15 for women and 18 for men. In its 1870 and 1884 codes, it was subsequently lowered to conform with Catholic canon: 12 for women and 14 for men; Manuel Mateos Alarcón, *Lecciones de derecho civil: Estudios sobre el Código Civil del DF, promulgado en 1870, con anotaciones a las reformas introducidas por el Código de 1884* (Mexico City: Libreria de J. Valdes y Cueva, 1904), 81.

52. Mexico is an anomaly here; although its 1870 code established the age of majority as 21 for both men and women, it required single women until the age of 30 to request permission to move out of the parental home; Mateos Alarcón, *Lecciones*, 34; 1870 Mexican code, 34; Arrom, "Changes in Mexican Family Law," 308. Venezuela's short-lived 1862 civil code had a similar provision; Díaz, *Female Citizens*, 294n12. The 1851 draft of the Spanish code, which established 23 as the age of majority for both men and women but did not allow daughters under the age of 25 to leave the parental home without permission, might have inspired these provisions; Walton, *Civil Law*, art. 185.

53. Arrom, *The Women of Mexico City.*

Table 3: The Age of Majority and for Marriage without Parental Consent in Nineteenth-Century Latin America (by year of first legislation).

		Age of Majority		*Age for Marriage without Parental Consent*	
Country	*Year*	*Women*	*Men*	*Women*	*Men*
Bolivia	1830	21	21	23	25
Brazil	1831	21	21	21	21
Costa Rica	1841	25	25	23	25
	1887	21	21	21	21
Peru	1852	21	21	21	21
Ecuador	1852	21	21	—	—
	1860	21	21	21	21
Colombia	1853	—	—	18	21
	1873	21	21	18	21
Chile	1855	25	25	25	25
Mexico	1859	—	—	20	21
	1866	21	21	21	21
	1870	21	21	21	21
El Salvador	1859	25	25	—	—
	1880	21	21	—	—
Venezuela	1862	25	25	21	25
	1867	21	21	20	23
	1873	21	21	18	21
Nicaragua	1867	25	25	25	25
	1903	21	21	18	21
Argentina	1869	22	22	22	22
Guatemala	1871	21	21	21	21
Honduras	1880	21	21	21	21

Note: — indicates that this point was not treated in the civil code or relevant legislation of that year.

Sources:

Argentina. Arts. 126 and 169, 1869 code.

Bolivia. Arts. 93 and 195, 1830 code.

Brazil. Nazzari, *Disappearance of the Dowry*, 98.

Chile. República de Chile, *Código Civil* (Santiago: Jurídica, 1999), 17; and Instituto de Derecho Privado, *Código Civil de Venezuela*, 387; no change was made by the 1884 Law of Civil Matrimony.

Colombia. Dueñas, "'La Ley del Padre'"; arts. 34 and 116 in 1873 code.

Costa Rica. Arts. 93 and 192 in 1841 code; arts. 22 and 57 in 1887 code.

Ecuador. Elizabeth García, "La situación de la mujer en el sistema jurídico ecuatoriano," doc. LC/R.11324 (Santiago: Comisión Económica de América Latina, 1992), 1; arts. 260 and 93 in 1860 code.

El Salvador. Suárez, *El Código Civil del año de 1860*, 9, 155.

Table 3: (*continued*)

Guatemala. Decree 42 of December 1871 in República de Guatemala, *Recopilación de las leyes emitidas por el gobierno democrático de la República de Guatemala desde el 3 de junio de 1871 hasta 30 junio 1881*, vol. 1 (Guatemala: Tip. El Progreso, 1881).
Honduras. Art. 113 and p. 8 in 1880 code.
Mexico. Art. 6, 1859 Law of Civil Matrimony, in Dublan and Lozano, *Legislación Mexicana*; arts. 106 and 268, 1866 code; art. 165 and p. 34, 1870 code; arts. 161 and 362, 1884 code; and Parcero, *Condiciones de la mujer*, 123.
Nicaragua. Arts. 107 and 269 in 1867 code; Bonilla, *El matrimonio*, 49–52; arts. 100 and 278, 1903 code.
Peru. Arts. 12 and 146, 1852 code.
Venezuela. Tit. 3, art. 5 and tit. 7, art. 2, 1862 code; arts. 54, 55, 57, and 146 in 1867 code; and Instituto de Derecho Privado, *Código Civil de Venezuela*, 383–87.

rules of inheritance. We will first describe the colonial norm and then analyze continuities and changes in the initial republican codes up through the 1870s.[54]

Household Headship and Potestad Marital

In contrast to the Portuguese civil code, which designated the husband as the legal head (*cabeça do casal*), no explicit reference is made in Hispanic colonial family legislation to the husband as household head.[55] Three interrelated aspects, however, defined the husband as the head of household and the sole legal representative of the family: he administered both the couple's community property and his wife's property; he had paternal authority over the children; and his wife enjoyed limited juridical capacity. In this section we focus on the relative legal incapacity of married women.

54. The main codifications governing Hispanic America were the mid-thirteenth-century *Siete Partidas de Alfonso X, el Sabio*; the *Ordenamiento de Alacalá* (1348); the *Leyes de Toro* (1505); the *Nueva Recopilación de las Leyes de Castilla* (1567); and the *Novíssima Recopilación de las Leyes de España* (1805). For Brazil, it is the *Codigo Phillipino* (1630). We draw on the following editions: for the *Siete Partidas*, Gregorio López, *Las Siete Partidas del Rey Don Alfonso El Sabio cotejadas con varios codices antiguos por la Real Academia de la Historia y Glosadas por el Lic. Gregorio López* (1555; Paris: Librería de Rosa Bouret y Cia., 1851); and for translations cited in the text, Robert I. Burns, ed., *Las Siete Partidas*, trans. Samuel Parsons Scott (Philadelphia: Univ. of Pennsylvania Press, 2001). For the *Novísima Recopilación*, we use Galván, *Novísima Recopilación de las Leyes de España*, vol. 3 (Mexico City: Galván, Librero, 1831), which includes the relevant *Leyes de Toro*; For the *Codigo Phillipino*, we use Candido Mendes de Almeida, *Codigo Philippino o Ordenaçoes e Leis do Reino de Portugal: Recopilado por Mandado d'el Rey D. Philippe I. Decima-Quarta Edição, segundo a primeira de 1602 e a nora de Coimbra de 1822* (Rio de Janeiro: Typog. do Instituto Philomathico, 1870).

55. Nazzari, *Disappearance of the Dowry*, 25.

The sixteenth-century *Leyes de Toro* spelled out what wives could and could not do during marriage. The most significant limitation was that they could not enter into contracts or initiate lawsuits without their husband's permission. But a husband could give his wife general or specific permission to enter into contracts, as could a judge in his absence, and either could ratify contracts she had made after the fact.[56] This is why married women were only *relatively* incapable. Moreover, married women could carry out certain acts without their husbands' permission. For example, a wife could initiate a lawsuit against her husband for poor or fraudulent administration of her dowry or to initiate an ecclesiastical divorce. And while a wife could not accept or refuse an inheritance without her husband's permission, she could do so if the precise content and value of the inheritance was specified in the inventory. Finally, a wife could write her own will without her husband's permission.[57]

The Hispanic colonial principles regarding wives' limited legal capacity were reiterated in all of the initial republican civil codes.[58] Married women were subject to potestad marital, defined by Andrés Bello in the 1855 Chilean code as "the sum of rights that the law gives to the husband over the person and property of his wife," wording reproduced verbatim in the codes of El Salvador, Ecuador, Nicaragua, and Colombia.[59] As noted earlier, the Napoleonic code, and even Napoleon himself, are often blamed for the continuance of potestad marital in the Latin American civil codes.[60] But all of the key elements were already part of the Luso-Hispanic colonial legal tradition, which, of course, shared common roots with the French tradition in Roman law.

The Napoleonic code merely added a few new turns of phrase that captured the essence of the unequal relationship between man and wife. According to Article 213 of the French code, "The husband owes protection to his wife, the wife obedience to her husband." This article was copied word for word in most of the Latin American codes, including the initial civil codes of Bolivia, Costa

56. Bk. 8, tit. I, laws 11–15, *Novísima Recopilación*.

57. José Maria Ots y Capdequi, "Bosquejo histórico de los derechos de la mujer en la legislación de Indias," *Revista General de Legislación y Jurisprudencia* 132 (1918): 161–82.

58. See arts. 132–34, 1830 Bolivian code; arts. 133–35, 1841 Costa Rican code; arts. 179 and 182, 1852 Peruvian code; arts. 136–38, 1855 Chilean code; arts. 138–39, 1859 Salvadoran code; arts. 129–30, 1860 Ecuadorean code; arts. 27–28, 1862 Venezuelan code; arts. 135–42, 1866 Mexican code; arts. 138–40, 1867 Nicaraguan code; and arts. 181–82, 1867 Colombian code. See the source note to table 1 for the edition of the code.

59. Art. 132, 1855 Chilean code; art. 134, 1859 Salvadoran code; art. 125, 1860 Ecuadorean code; art. 133, 1867 Nicaraguan code; and art. 177, 1873 Colombian code.

60. Leret, *La mujer*, 59; FAO, "Situación juridical," 15, 22.

Rica, and Peru.[61] Legal scholars subsequently considered this article as the basis of potestad marital, for it recognized the husband as the "natural head of the family" and established what was "indispensable to maintain the juridical and economic unity of the family."[62]

The Napoleonic code also specified two things that had remained only implicit in Spanish colonial family legislation: the husband's right to determine the couple's residency and his obligation to provide for the sustenance of the family.[63] Article 131 of the 1830 Bolivian code followed article 214 of the French code almost word for word: "The wife is obliged to live with her husband and to follow him to wherever he considers it convenient to reside. The husband is obliged to receive her in his home and to furnish everything necessary for the wants of life, according to his means and station."[64]

The Bello codes followed similar language but made the sustenance of the family a reciprocal obligation of husband and wife under certain conditions: "The husband should provide his wife with the necessities according to his means, and the wife will have a similar obligation to her husband if he lacks assets." The Salvadoran and Venezuelan codes added an important qualifier at the end—"and she has them"—since women were less likely to own assets.[65]

61. Art. 130, 1830 Bolivian code; art. 131, 1841 Costa Rican code; and art. 175, 1852 Peruvian code. The Bello codes combined into one article the mutual obligations of husband and wife (arts. 212 and 213 of the French code). See art. 131 in the 1855 Chilean code; art. 133, 1859 Salvadoran code; art. 124, 1860 Ecuadorean code; art. 23, 1862 Venezuelan code; art. 132, 1867 Nicaraguan code; and art. 176 in 1873 Colombian code.

62. Gustavo A. Cornejo, *Comentarios al Código Civil de 1852* (Chiclayo, Peru: Dionisio Imprenta Nacional, 1887), 236.

63. In the *Siete Partidas*, residency is only mentioned in the definition of marriage in the following terms: "the union of husband and wife, made with the intention of always living together . . ." (partida 4, tit. 2, law 1, in Burns, *Las Siete Partidas*, 886). We have found no explicit reference making the husband responsible for the family's sustenance, although that is implied by the power given him to administer the wife's dowry and arras: "The husband should be the master and have control of all the property aforesaid, and be entitled to collect the income of the whole, including what the wife gives, as well as that given him, for the purpose of supporting himself, his wife and his family . . ."; partida 4, tit. 9, law 7, in Burns, *Las Siete Partidas*, 933.

64. See art. 132, 1841 Costa Rican code and arts. 176–77, 1852 Peruvian code, for similar language.

65. The Bello codes also dealt with residency and sustenance in two different articles. See arts. 133–34, 1855 Chilean code; arts. 135–36, 1859 Salvadoran code; arts. 126–27, 1860 Ecuadorean code; arts. 24–25, 1862 Venezuelan code; arts. 134–36, 1867 Nicaraguan code; and arts. 178–79, 1873 Colombian code. The 1866 Mexican code lumped together the various reciprocal obligations of the couple in article 132; these were subsequently elaborated upon and delineated separately (arts. 198–204) in the 1870 Mexican code.

The Bello codes also differed from the Napoleonic by establishing a husband's presumptive approval of certain economic activities carried out by his wife. The husband's authorization, for example, was assumed if a wife purchased moveable goods with cash or items on credit destined for the family's ordinary consumption.[66] Moreover, "If a married woman publicly exercises a profession or some industry (such as being the director of a school, a teacher, actress, midwife, landlady, wet nurse) the general authorization of the husband is assumed for all acts and contracts relevant to her profession and industry, unless he claims otherwise or protests."[67] The precedent for this general license for married women to work is found in the Bourbon reforms.[68] The Napoleonic code only gave married women who were public traders the right to enter into contracts, as did the Latin American commercial codes.[69] It is worth stressing that the Bello codes provided much more latitude for wives' economic activities than did the French code and hence improved the relative economic autonomy of married women.

The Marital Regime

The default marital regime in colonial Hispanic America is known today as *gananciales* ("participation in profits") or partial community property. Three types of property were recognized in marriage: his property, her property, and the couple's joint property. Individual property consisted of what each owned prior to marriage and any inheritances or donations acquired during the marriage. Earnings from individual property (such as rent and interest), as well as assets purchased with ordinary income from "work or industry" during the

66. Art. 147, 1855 Chilean code; art. 150, 1859 Salvadoran code; art. 140, 1860 Ecuadorean code; art. 38, 1862 Venezuelan code; art. 150, 1867 Nicaraguan code; and art. 192, 1873 Colombian code.

67. Art. 150, 1855 Chilean code; art. 153, 1859 Salvadoran code; art. 144, 1860 Ecuadorean code; art. 43, 1862 Venezuelan code; art. 153, 1867 Nicaraguan code; and art. 195, 1873 Colombian code. Similar intent but slightly different language is found in art. 138, 1866 Mexican code, and art. 56, 1869 Argentine code. No such reference to women's economic activities is found in the 1830 Bolivian, 1841 Costa Rican, or 1852 Peruvian codes.

68. A 1784 decree established the "General permission for women to work in all arts compatible with their sex"; bk. 8, tit. 23, law 15, *Novíssima Recopilación*. See arts. 140–43 of the 1855 Chilean code for the language used in all of the Bello codes.

69. Art. 220 in Barrister, *Code Napoleon*. Most of the Latin American civil codes reference their respective commercial codes with respect to the special rights of married women engaging in trade; see, for example, art. 151 in the 1855 Chilean code.

marriage, constituted the couple's community property. If the marriage was dissolved, for whatever reason, each spouse retained their individual property, as well as half of the community property.[70]

This colonial marital regime was flexible. Under what was known as *capitulaciones*, a couple could make a prenuptial agreement to pool all of their property, to separate it fully, or any combination thereof. Prenuptial agreements could specify the management of assets, as well as ownership rights over subsequent earnings. Although under the default regime husbands managed both the common property and their wives' individual property, women could, via a prenuptial agreement, retain management over some or all of their property or its fruits.[71]

Special provisions governed dowry and *arras* (a husband's wedding gift to the bride). Dowry was the property that parents of means were required to provide their daughters at marriage to contribute toward the new couple's expenses.[72] In colonial Hispanic America, dowry was the property of the wife, although it was administered by her husband. If the union was dissolved, it reverted to her and her legal heirs and took priority over outstanding debts of the husband or of the joint estate. A dowry was considered an advance on a daughter's eventual inheritance from her parents, and at their death its value was deducted from her share. A dowry gave women a certain degree of bargaining power in marriage. If her husband mismanaged it, she could file suit to have its management revert to her or a third party. And in case of widowhood or ecclesiastical divorce, it provided the potential basis for a woman's economic autonomy.

Arras represented a gift from the groom to the bride, often given in recognition of her virginity. Legally, it could not exceed one-tenth of the groom's patrimony. The groom's gift was considered as was dowry, the wife's property although managed by the husband, and upon dissolution of the marriage the wife or her heirs retained it. Finally, *bienes parafernales* (paraphernalia) were those items not included in the dowry (such as clothing, jewelry, and household

70. Bk. 10, tit. 4, laws 1–5, *Novísima Recopilación*; Ots y Capdequí, "Bosquejo histórico, 54–56. Couturier, "Women and the Family," and Korth and Flusche, "Dowry and Inheritance," for Mexico and Chile, respectively, concur that legal practice in the colonies generally conformed with Spanish legal norms. See Andy Daitsman, "Unpacking the First Person Singular: Marriage, Power, and Negotiation in Nineteenth-Century Chile," *Radical History Review* (Winter 1998): 29–47 on how colonial legal practices carried over into the early republican period in Chile.

71. Bk. 10, tit. 4, law 5, *Novísima Recopilación*.

72. On the obligation of fathers (and in their absence, mothers) to provide a dowry for their daughters, see partida 4, tit. 11, laws 8 and 9, *Siete Partidas*.

goods) that constituted the personal property of the wife and could be administered by her.

The default marital regime in the Portuguese colonies was different, being based on full community property (*comunhão universal*). All individual property acquired before marriage and whatever assets acquired during it were pooled, constituting the joint property of husband and wife. The husband was the sole administrator, but he needed his wife's consent to alienate or mortgage real estate. In case of dissolution of the marriage for any reason, all of the couple's property was divided into equal halves.[73] As in Hispanic America, in colonial Brazil couples could sign prenuptial agreements establishing their own arrangements with respect to ownership and administration of property, including complete separation of property. Dowry required special legal treatment to avoid being pooled into the couple's joint property. With a *contrato de dote* [dowry] *e arras*, the dowry and any prenuptial gifts from the husband remained the separate property of the wife.[74] Although this property was managed by the husband, in case of dissolution it had to be returned intact to the wife or her estate. Depending on the specifics of the contract, a widow might receive her dowry and groom's gift, plus half of the profits generated by her husband's management of their community property, or only the dowry and groom's gift.[75]

Through the 1870s, all of Latin America's initial republican civil codes maintained the same default marital regime as during the colonial period: that of gananciales or partial community property. Moreover, all named the husband as the administrator of both the community property and his wife's separate property. The language of the 1855 Chilean code is replicated in the other Bello codes: "By the act of matrimony the spouses enter into a society of assets [*sociedad de bienes*], and the husband assumes the administration of those belonging to the wife."[76] Further, "the husband is the head of the marital society [*sociedad conyugal*] and as such freely manages the society's assets and those of his wife."[77]

The initial republican codes differed from the Napoleonic in that the French default regime of partial community property differentiated between moveable and immovable property. In contrast to Hispanic America, all moveable property was pooled upon marriage. Immovable property, however, remained

73. Hahner, *Emancipating the Female Sex*, 6–7; Nazzari, *Disappearance of the Dowry*, 25.

74. Under Portuguese law, the arras was limited to one-third of the value of the dowry rather than the Spanish norm of one-tenth of the groom's capital. Nazzari, *Disappearance of the Dowry*, 143.

75. Ibid.

76. Art. 135, 1855 Chilean code.

77. Art. 1714, ibid.

individual, although its fruits became community property. The Napoleonic code gave the husband explicit free license to do whatever he wanted with community property: "The husband alone administers the property of the community. He may sell, alienate, and pledge it without the concurrence of his wife." Nonetheless, he needed his wife's permission to alienate her individually owned immovables.[78]

All of Latin America's republican codes institutionalized the practice of prenuptial property agreements that afforded the colonial regime such flexibility. The main change in the initial codes had to do with the rules and privileges governing dowry. Dowry became an option rather than a legal requirement in Bolivia, Costa Rica, Argentina, and in the 1870 Mexican civil code.[79] In the 1855 Chilean code and others fashioned after it, dowry, grooms' gifts to their brides, and wedding gifts by parents to sons were given equivalent status and called indiscriminately "donations due to marriage." Not only were these optional, but they now received similar legal treatment to any other donation, meaning that dowries lost the special protection from creditors that they had enjoyed in the colonial period.[80] This change in the treatment of dowry did not follow the Napoleonic code, which retained the option of dowry as a special class of property.[81]

The republican civil codes' renunciation of special treatment for dowry may simply reflect a general decline in its practice. There is growing evidence that dowry was either already in decline in the late colonial period or declined

78. Arts. 1401, 1404, 1421, and 1428, Barrister, *Code Napoleon.* Only the Bolivian code of 1830 (art. 974) copied the French code word for word in terms of the husband's sole right to administer common property without the concurrence of the wife. The Costa Rican code of 1841 (art. 973) partially followed the language of the French code in this respect.

79. Peru was the exception. Note the language: in the 1852 Peruvian code the father or other paternal ascendant has the obligation to give a dowry ("*tienen obligación de dotar*") to a daughter or granddaughter. This obligation was dropped, however, if an underage daughter married without paternal consent (arts. 980 and 981). The other early republican codes only define what a dowry is and its privileges.

80. Arts. 1786, 1788, and 1789 of 1855 Chilean code. For identical language, see arts. 1608, 1610, and 1611 of the 1859 Salvadoran code or arts. 1842, 1844, and 1845 of the 1873 Colombian code. Donations between spouses were limited to one-quarter of their individual patrimony.

81. Arts. 204 and 1540–73, Barrister, *Code Napoleon.* Nonetheless, since the Napoleonic code made the giving of dowry optional, some legal scholars in Argentina consider it the precedent for the similar measure in this country's 1869 code. María Isabel Seoane, *Historia de la dote en el derecho Argentino* (Buenos Aires: Instituto de Investigación de Historia del Derecho, 1982), 39.

steadily over the nineteenth century in Mexico, Peru, and Brazil.[82] Muriel Nazzari, who has given the greatest attention to this matter, argues that the decline of dowry in Brazil was related to the changes in the family-based economy and the separation of family and business, as well as the needs of capital accumulation.[83]

Andrés Bello and the other members of Chile's drafting commission argued, "If the privileges of dowry have been eliminated . . . in compensation we have organized and broadened the benefits of separation of property in favor of women; we have reduced the despised inequality among spouses with respect to the civil effects of divorce; we have regularized the society of gananciales; we have given guarantees so as to preserve the real estate of wives that is in the hands of their husbands."[84] In clarifying the rules for the simple separation of property following ecclesiastical divorce or in the case of insolvency or fraudulent administration by the husband, Bello partly followed the Napoleonic code. It differed, however, in that the French code authorized a wife to manage her own movable property and dispose of it freely but did not allow her to alienate immovables without permission of her husband or a judge.[85] The Bello codes, in contrast to both the French code and Hispanic colonial tradition, allowed the wife to recover full management of all of her own property, including her half of the gananciales. Thus, the protection granted dowry from a husband's mismanagement was now extended to any of her property, as well as the gananciales. She still needed his permission or that of a judge, however, to enter into a suit.[86] Notwithstanding, the Bello codes were thus more favorable to married women.

The Bello codes kept the punitive aspects of ecclesiastical divorce when granted due to the wife's adultery: she lost all claim on earnings generated during the marriage, and her husband retained management of her individual prop-

82. Asunción Lavrin and Edith Courturier, "Dowries and Wills: A View of Women's Socioeconomic Role in Colonial Guadalajara and Puebla, 1640–1790," *Hispanic American Historical Review* 59 (1979): 280–304; Edith Couturier, "Women and the Family in Eighteenth-Century Mexico: Law and Practice," *Journal of Family History* 10, no. 3 (1985): 294–304; Arrom, *The Women of Mexico City*; Hünefeldt, "Las dotes en manos Limeñas"; Hünefeldt, *Liberalism in the Bedroom*; Nazzari, *Disappearance of the Dowry*.

83. Nazzari, *Disappearance of the Dowry*.

84. "Mensaje del Ejecutivo al Congreso proponiendo la aprobación del Código Civil," Manuel Montt, 22 Nov. 1855, reprinted in República de Chile, *Código Civil* (Santiago: Ed. Jurídica de Chile, 1999), 15.

85. Art. 1449, Barrister, *Code Napoleon*.

86. Arts. 152–59, 1855 Chilean code.

erty. Nevertheless, as the drafters note above, the husband was required to continue supporting his wife in accordance with the value of the wife's assets still under his administration, as determined by the judge. Moreover, if the husband was at fault in the divorce, the wife regained management of her own property and half the gananciales, while the husband was still required to provide her with alimony. Whatever the cause of the ecclesiastic divorce, the wife was allowed to freely manage any property she acquired by her own means after the separation.[87]

Finally, by "regularizing the sociedad de gananciales" the drafters of the Chilean code refer to the limits placed on a husband's ability to alienate the immovable or real property of the wife: "The real estate of a woman that a husband is obliged to restitute in kind cannot be sold or mortgaged except with the permission of the wife and prior agreement by a judge" (art. 1739). Thus, dowry disappeared, but married women were given additional protection in terms of the real property they brought into marriage.

The 1870 Mexican code went further than the Bello codes, specifying that the community property of the couple belonged to both husband and wife and that neither could sell or mortgage the immovable property without the other's consent. Nonetheless, the wife could administer the community property only with her husband's authorization or in his absence.[88] Moreover, echoing the French code, the husband was allowed to do whatever he pleased with their movable community property. Silvia Arrom concludes that this reform reduced the degree of inequality between husband and wife but was still far from establishing equality between them.[89]

Inheritance

The *Leyes de Toro* consolidated Hispanic rules of inheritance. In intestate succession, the forced heirs of the deceased (the decedent) included, first, the children (or in their absence, their descendants), followed by the parents (or in their absence, any other living ascendants), and finally siblings and other collateral kin until the tenth degree.[90] Luso-Hispanic legal traditions specified that all

87. Arts. 171, 174–75, in 1855 Chilean code.

88. Arts. 2157, 2158, 2164, and 2165, 1870 Mexican code.

89. Arrom, "Cambios," 504.

90. The outside limit on intestate inheritance of the tenth degree of kinship before an estate passed to the state was established in the *Siete Partidas*, partida 6, tit. 13, law 6. This was reduced to the fourth degree of kinship in the *Novísima Recopilación*, tit. 20, law 3 (citing laws passed in 1501 and 1785). According to Ots y Capdequí, "Bosquejo histórico," 69, in practice, judges allowed a broad range of kin to inherit in the case of intestate.

legitimate sons and daughters inherited equally.[91] Spouses, on the other hand, were apparently excluded from the necessary heirs.[92] While gananciales were divided into two equal shares upon the death of a spouse, this did not represent the transfer of the decedent's property to the surviving spouse, but rather reflected the surviving spouse's property rights in the community assets.

In the case of testaments, only one-fifth of an estate could be willed freely to heirs of one's choice. Fourth-fifths of the estate, known as the *legítima*, was reserved for the legitimate children (or their descendants). If there were no living children, the legítima was reduced to two-thirds of the estate and passed to the parents (or in their absence, other ascendants). If there were no living children or parents, testators were free to will the entire estate to whomever they chose. They also could preferentially grant up to one-third of the legítima to one child or descendant: the *mejora*, or betterment. Thus, sibling inequality in the division of estates was limited to the famous *quinta y tertia* (the fifth that could be freely willed, plus one-third of the legítima).[93]

The main difference between Portuguese and Spanish inheritance law concerned the share that could be willed freely, which was one-third of the estate under Portuguese norms. The legítima was thus only two-thirds of an estate, regardless of whether it fell to the children or, in their absence, the parents of the deceased. Portuguese custom also lacked the practice of the mejora—perhaps because the share that an individual could will freely was larger. Finally, in contrast to Hispanic law, spouses were clearly included among the forced heirs in the line of intestate succession, although they inherited only in the absence

91. In the *Siete Partidas*, partida 6, tit. 13, law 3, on intestate inheritance, it states that sons or grandsons inherit from the father or grandfather, "quier sean varones o mujeres." Korth and Flusche trace this gender equality to the *Fuero Juzgo*, the seventh-century Visigothic code: "Dowry and Inheritance in Colonial Spanish America: Peninsular Law and Chilean Practice," *The Americas* 43, no. 4 (1987): 398. Illegitimate children received different treatment from legitimate children of marriage, and we do not have space to deal with the issue. For a detailed treatment of illegitimacy in the Brazilian case, see Linda Lewin, *Surprise Heirs II: Illegitimacy, Inheritance Rights, and Public Power in the Formation of Imperial Brazil, 1822–1889* (Stanford: Stanford Univ. Press, 2003).

92. In the case there were no living, collateral kin, the *Siete Partidas*, partida 6, tit. 13, law 6, provided for spouses to inherit before an estate passed to the state.

93. We find the interpretation of Mateos Alarcón and Korth and Flusche as regards the mejora most convincing and follow that here. Mateos Alarcón, *Lecciones de Derecho Civil*, 139; Korth and Flusche, "Dowry and Inheritance," 398. Given the vague language regarding the quinta y tercia in the *Novísima Recopilación*, this has led to various interpretations in the literature. Ots y Capdequí, "Bosquejo histórico," 177; Arrom, *The Women of Mexico City*, 303; Lavrin and Couturier, "Dowries and Wills," 286.

of living children, parents, or collateral kin to the tenth degree.[94] The surviving spouse (*as meeira/o*) automatically received half the community property. Since the default marital regime was full community property, this share could potentially be larger for a widow in colonial Brazil (since the husband's individual property was pooled into the community property) than in Hispanic America, where it was not.

The republican codes introduced a number of innovations and clarifications into the inheritance regime. The Bello codes explicitly affirmed that in inheritance, "neither sex nor primogeniture will be taken into account."[95] This confirmed the colonial norm of gender equality in inheritance rights and the republican prohibitions against entailed estates.[96] *All* of the initial republican civil codes maintained the Hispanic tradition of forced heirs and the legítima. According to M. C. Mirow, Bello wanted to introduce testamentary freedom in the Chilean civil code but was stymied by the proclivities of the Chilean elite, who wanted to maintain the traditional forced heirs.[97] The Bello codes thus gave only a nod to testamentary freedom by increasing the share that could be willed freely, from one-fifth to one-quarter of the estate (if the deceased had living descendants).[98] In addition, the size of the mejora was reduced from one-third to one-quarter.[99] Costa Rica and Peru reduced the mejora further still,

94. The key rules of succession are found in the *Quarto Livro das Ordenaçoes*, tit. 82, laws 82, 88, and 90–96, in Mendes de Almeida, *Codigo Philippino*. Also see Maria Beatriz Nizza de Silva, *Sistema de casamento no Brasil Colonial* (São Paulo: Editora da Universidade de São Paulo, 1984); and Nazzari, *Disappearance of the Dowry*.

95. Art. 982, 1855 Chilean code; art. 956, 1859 Salvadoran code; art. 967, 1860 Ecuadorean code; bk. 3, tit. 5, law 1, art. 3, 1862 Venezuelan code; art. 982, 1867 Nicaraguan code; and art. 1039, 1873 Colombian civil code. No explicit mention of gender equality is made in the first republican codes of Bolivia, Costa Rica, Peru, or Argentina.

96. Entailed estates (*mayorazgo* in Hispanic America and *morgado* in Brazil) were established at the behest of the crown and generally limited to the nobility. These privileges were abolished soon after independence in most countries. Mirow, "Borrowing Private Law," 315–22; Mirow, *History of Private Law*, 151; John Tutino, "Power, Class, and Family: Men and Women in the Mexican Elite, 1750–1810," *The Americas* 3, no. 1 (1983): 365–66 and Maria Beatriz Nizza da Silva, *História da família no Brasil colonial* (Rio de Janeiro: Ed. Nova Fronteira, 1998), 59–60.

97. Mirow, "Borrowing Private Law," 302, 323.

98. In the case there were no living children but parents or ascendants of the deceased, in the Bello codes the share that the testator was free to will increased to one-half. art. 1184, 1855 Chilean code.

99. Art. 1184, 1855 Chilean code; art. 1155, 1859 Salvadoran code; art. 1169, 1860 Ecuadorean code; bk. 3, tit. 5, law 2, art. 9, 1862 Venezuelan code; art. 1184, 1867 Nicaraguan code; and art. 1242, 1873 Colombian civil code. The end result of increasing

while Argentina and Mexico eliminated the practice.[100] Mexican jurists argued that the mejora, by introducing inequality among siblings, was "unjust."[101] The 1804 Napoleonic code makes no provision for a mejora, treating all descendants equally, irrespective of sex or birth order; in this respect, these Latin American codes may have been influenced by the French.

The most important change in married women's property rights, however, was in no way inspired by the Napoleonic code. Three Latin American countries included the surviving spouse among the necessary heirs in the first order of succession, with equivalent rights to a child. Bolivia, in 1830, was the first to do so, followed by Argentina in 1869. In both countries, this spousal inheritance was limited to the individual property of the deceased, excluding the gananciales (presumably, because the surviving spouse was already entitled to half of them).[102] Venezuela's short-lived 1862 code specified that a surviving spouse share equally with the children in both the decedent's individual property and his/her half of the gananciales.[103]

This improvement in spousal inheritance has not received sufficient attention in the literature. Placing spouses in the first order of inheritance significantly strengthened wives' property rights. If we assume a male bias in inheritance and in income-earning opportunities, then—not withstanding the dowry, but particularly after its decline—husbands' individual patrimonies were probably greater than those of their wives. The possibility for a widow to inherit from her husband's individual patrimony represented a potential shift in wealth accumulation favoring married women.[104]

In Argentina, it appears that this improvement in the position of widows/

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the share that an individual was free to will and reducing the mejora was to leave the degree of sibling inequality that could be introduced via testaments approximately the same as during the colonial period: a maximum of one-half versus 7/15 of an estate could go to a favored child.

100. Arts. 575–76, 1841 Costa Rican civil code and art. 735, 1852 Peruvian code. In both the 1869 Argentine (art. 3605) and 1870 Mexican (art. 3515) codes it is stated explicitly that the position of one heir can only be bettered with the one-fifth the testator was free to will to anyone.

101. Mateos Alarcón, *Lecciones*, 139.

102. Art. 517, 1830 Bolivian code, and arts. 3565, 3570–72, 3576, 3592, and 3595, 1869 Argentine code.

103. Bk. 3, tit. 5, law 1, arts. 4 and 9, 1862 Venezuelan code.

104. Deere and León, *Empowering Women*; Carmen Diana Deere and Magdalena León, "Derechos de propiedad, herencia de las esposas e igualdad de género: Aspectos comparatives entre Brasil e Hispanoamérica," *Estudios Feministas* (Florianopolis, Brazil) 9, no. 2 (2001): 433–59.

ers resulted from the debate over whether to eliminate the dowry: spouses were elevated to the first order of inheritance in order to compensate for the fact that fathers were no longer required to endow their daughters.[105] Perhaps a similar motivation inspired Bolivia's 1830 code, which was the first to make dowry optional. Contemporary legal scholars in Venezuela were aware that they were innovating by giving inheritance rights to the surviving spouse. But the 1862 code was abrogated only months after went into effect; the following civil code of 1867 eliminated surviving spouses from the first order of inheritance. This right was then restored in the 1873 civil code and subsequently maintained in the 1896 and twentieth-century codes. Commenting on the addition of spouses to the first order of inheritance, legal scholar Anibal Dominici noted that "it was a peculiarity of the Venezuelan civil code, perfectly adjusted to the demands of reason, equity, and natural sentiments."[106] His comments are indicative of the shift in familial loyalties—from the patrilineal to the conjugal family—that took place throughout Latin America over the course of the nineteenth century.

Without more research into the legislative debates surrounding the adoption of these civil codes, it is impossible to know the full motivations behind the reform of spousal inheritance rights and whether improving the position of the widow or widower was controversial. It is certain that these countries were not copying the Napoleonic code, since the French code did no such thing; neither did the nineteenth-century Spanish code.[107] Moreover, no other countries followed these innovators in placing spouses among the first-order inheritors for at least a century.[108]

Most of the other initial republican codes did, however, place spouses (along with the parents) in the second order of inheritance, or with siblings and other collaterals in the third order, for intestate succession. Thus, the initial Spanish American republican codes came to resemble the Portuguese code in that in the absence of children, parents, siblings, or collaterals to the stipulated degree, the

105. Seoane, *Historia de la dote*, 46–47.

106. Anibal Dominici, *Comentarios al Código Civil Venezolano (reformado en 1896)*, vol. 2 (Caracas: Imprenta Bolivar, 1897), 42–43.

107. In the French code, spouses were not included among the forced heirs in the case of testaments; arts. 916, 755 and 767, in Barrister, *Code Napoleon*. While spouses were included as forced heirs in the Spanish code of 1889, they were only entitled to a *usufruct* share equal to the share of one child, or if there were no living children or parents, to the usufruct of one-half of their deceased spouse's estate; Stevens Walton, *The Civil Law in Spain*, arts. 834–37, 952–53. In both countries, in the case of intestate succession the position of widows was quite unfavorable.

108. Deere and León, *Empowering Women*, table 2.5.

surviving spouse inherited the full estate. They went much beyond the colonial or European codes in shifting the transfer of wealth from the patrilineal to the conjugal family—paralleling the rise of the importance of companionate marriage—by elevating the spouse to either the first or second order of inheritance.

Further reflecting this trend, those countries that did not elevate the spouse to the first order of inheritance (including all of the Bello codes) formalized the colonial practice of looking out for the interests of a spouse left destitute due to widowhood. This practice dates from at least the *Siete Partidas*, which specifies "what share of the property of a rich husband a poor wife can inherit, if she should marry without a dowry, and not have anything to live upon."[109] It states that if the husband did not leave his wife the means to live honestly and she did not own any assets, then she could inherit up to one-fourth of his estate, even if he had children, as long as this sum did not exceed one hundred pounds of gold. According to Ots y Capdequí, this *cuota viudal* applied whether the husband had made out a will or died intestate, and the sum was deducted from the estate before other deductions.[110]

The 1841 Costa Rican code provides the best evidence that such a widow's share was probably a colonial practice.[111] In the order of intestate succession, spouses followed collaterals to the fourth degree and were to receive only one-third of the deceased's estate (with the remainder to go to the state). But "if this was a woman and she did not have assets of her own, and her husband did not leave her the means to live well and honestly, then she will inherit one-fourth of the estate, even when the deceased left legitimate heirs, in whatever line."[112] The 1852 Peruvian code also extended this "marital fourth" to widowers under

109. Partida 6, tit. 13, law 7, *Las Siete Partidas*.

110. Ots y Capdequí, "Bosquejo histórico," 68. What is curious is that in the *Novísima Recopilación*, bk. 10, tit. 19, law 11, such a cuota viudal appears only in the section on "Comisarios testamentarios," referring specifically to the case of intestate. Poor wives were to receive what "according to the laws might correspond to them," without further clarification. This paragraph is what is cited by Ots y Capdequí, "Bosquejo histórico," 175, as the source for the practice of what he calls in this text the "cuarta marital." We have yet to run across any reference in the colonial family literature to whether it was actually practiced.

111. Moreover, the 1830 Bolivian code, art. 513, mentions it explicitly when it eliminates it after including the surviving spouse in the first order of succession: "as a consequence the *cuarta material* has no effect."

112. Art. 634, 1841 Costa Rican code.

certain conditions, such as husbands who lacked sufficient means to live and were also incapacitated, infirm, or over 60 years of age.[113]

In the Bello codes, this *porción conyugal*, defined as "that portion of a deceased individual's patrimony that the law assigns to the surviving spouse who lacks the necessary means for their appropriate support," applied equally to widows and to widowers.[114] In the 1855 Chilean code, it was equal to one-fourth of the estate in all orders of succession except if the decedent had living children, in which case the surviving spouse would receive a share equal to each child. In sum, while there was a great deal of continuity between the colonial and republican periods concerning inheritance, the initial civil codes of most countries introduced important innovations that strengthened the inheritance rights of married women.

The Liberal Reforms of the Late Nineteenth Century

The liberal reforms that were potentially the most consequential for married women's property rights were the late-nineteenth-century Mexican and Central American reforms to both the marital and inheritance regimes. Mexico, in 1870, was the first to formalize the regime of separation of marital property as an option, although the gananciales regime remained the default. The liberal revolutions in Costa Rica, Nicaragua, El Salvador, and Honduras went a step further and made separation of property the default regime; in the process, they bestowed married women with legal capacity.[115] In the same period, these states introduced testamentary freedom. Honduras, in 1880, was the first to abolish the Hispanic regime of forced inheritances built around the concept of the legítima. It was followed by Costa Rica, Guatemala, Mexico, El Salvador, and Nicaragua (see table 4).

113. Art. 918, 1852 Peruvian code. Other caveats were added, such as that if there were surviving children the cuarta marital could not exceed eight thousand pesos or the legítima of each heir. But if there were no surviving children, then the widow was not subject to the poverty requirement and was automatically entitled to one-quarter of her husband's estate. Arts. 920, 924, 926 and 927, ibid.

114. Arts. 1172–78 of the 1855 Chilean code; arts. 1142, 1146, and 1148, 1859 Salvadoran code; arts. 1156, 1161, and 1163, 1860 Ecuadorean code; arts. 1172, 1176, and 1178, 1867 Nicaraguan code; and arts. 1230 and 1234–35, 1873 Colombian code.

115. Mexico adopted separation of property as the default regime in 1917 with the Law of Family Relations. Venustiano C. Carranza, *Ley sobre Relaciones Familiares*, oficial ed. (Veracruz: Oficina Tipográfica del Gobierno, 1917). It was short lived, with the country returning to the gananciales regime as the default in 1928.

Table 4: The Liberal Reforms to Married Women's Property Rights in Mexico and Central America.

Country	*Maximum Force*[a]	*Civil Marriage*[b]	*Civil Divorce*[b]	*Separation of Property*[c]	*Testamentary Freedom*[d]	*Manage Property*[e]
Mexico	1855–61	1859	1917	1870 1917–28 (default)	1884	1917
Costa Rica	1838–42 1870–82	1887	1887	1887 (default)	1881	1887
Guatemala	1873–85	1879	1894	1877	1882	1926
El Salvador	1876–83	1880	[1880–81] 1894	1902 (default)	1902	1902
Honduras	1876–83	1898	1898	1906 (default)	1880	1906
Nicaragua	1893–09	1894	1894	1903 (default)	1903	1903

Notes and Sources:

[a]Mexico. Mark Wasserman, *Everyday Life and Politics in Nineteenth-Century Mexico: Men, Women, and War* (Albuquerque: Univ. of New Mexico Press, 2000), 98.
Central America. Jame Mahoney, *The Legacies of Liberalism, Path Dependence, and Political Regimes in Central America* (Baltimore: Johns Hopkins Univ. Press), table 1.1.

[b]See table 2; refers to when civil marriage became obligatory and divorce with remarriage an option.

[c] Arts. 2009 and 2102, 1870 Mexican code; Carranzas, *Ley sobre Relaciones Familiares*, art. 270; art. 76, 1887 Costa Rican code; art. 1164, 1877 Guatemalan code; arts. 187–88, 1902 Salvadorian code; art. 169, 1906 Honduran code; art. 153, 1903 Nicaraguan code.

[d] Art. 3323, 1884 Mexican code; "Ley de Sucesiones de 1881," cited in Eugenia Rodríguez Sáenz, "Las esposas y sus derechos de adeso a la propiedad en Costa Rica durante el siglo XIX," in *¿Ruptura de la inequidad? Propiedad y género en la América Latina del siglo XIX*, ed. Magdalena León y Eugenia Rodríguez (Bogotá: Siglo del Hombre Editores, 2005), 200; arts. 158-159, Decree 272 of February 1882 in República de Guatemala, *Recopilación de las leyes emitidas por el gobierno democrático de la República de Guatemala desde el 1 de julio de 1881 hasta 30 junio 1883*, vol. 3 (Guatemala: Tip. El Progreso, 1883); art. 1001, 1902 Salvadorian code; art. 1036, 1880 Honduran code; art. 157, 1903 Nicaraguan code.

[e] Refers to when wife could enter into contracts and suits without husband's permission; for Mexico, art. 45, Carranzas, *Ley sobre Relaciones Familiares*; art. 78, 1887 Costa Rican code; art. 166, República de Guatemala, *Código Civil de la República de Guatemala, 1926* (Guatemala City: Tip. Nacional, 1926); art. 191, 1902 Salvadorian code; art. 173, 1906 Honduran code; art. 157, 1903 Nicaraguan code.

Separation of Property

The marital regime of separation of property represents the extreme of economic individualism, for it applies the concept of "to each his own" to the family. In this regime, the property that each spouse acquires prior to or after marriage—including the earnings generated from this property, as well as any other individual earnings—remains his/her individual property. Both liberal writers

and the scholars who examine them have been strangely silent about the separation of property regime. To our knowledge, it is nowhere mentioned as the logical extension of economic individualism as applied to the family. Indeed, Jeremy Bentham, one of the foremost liberal thinkers of the early nineteenth century, assumed a full or partial community property regime in his treatise on the ideal civil code based on principles of utility.[116]

The origins of the separation of property regime are linked to the nineteenth-century feminist movement in England and the United States. Separate property for married women emerged as a demand in these countries precisely because of married women's weak property rights, since common law viewed married women as extensions of their husbands. This legal fiction meant that wives lost the right to manage any real property (land and buildings) they brought into marriage and lost both ownership and control over their personal property, including wages or salaries. While a husband could not dispose of his wife's real property without her consent, he could do anything with her personal property. Moreover, married women could not inherit property in their own names; a wife's inheritance became her husband's property. Married women also could not draft wills.[117]

Upon her death, a wife's real property passed to her children or parents. If a couple had children, a husband enjoyed a life interest in his wife's real property, known as the curtesy [*sic*]. In addition, he kept her personal property, since it was considered his property. Upon her husband's death, however, a widow regained control of her real property. She also enjoyed dower rights in her husband's real property, consisting of usufruct rights to one-third of it.[118] In case of separation

116. In his *Principles of the Civil Law*, published in French in 1830, Bentham does not go into detail on marital regimes, but a full or partial community property regime is implicit in his discussion of the law of succession and of community of goods. Consider the following: "The question is not here of the community of goods between husband and wife. Called to live together, to cultivate their interest together, and to feel a mutual concern for the interest of their children, they ought to enjoy in common a fortune often acquired, and always kept by the common cares. Besides if their wills conflict, the dispute will not be lasting; the law confers upon the husband the right to decide." C. K. Ogden, ed., *The Theory of Legislation by Jeremy Bentham, edited with an introduction and notes by C. K. Ogden* (1931; Littleton, CO: Fred B. Rothman & Co., 1987), 195.

117. Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: Univ. of Toronto Press, 1983).

118. During the eighteenth century, dower went into decline and was replaced by jointure, a prenuptial agreement whereby the wife would forego dower in return for a guaranteed annual income derived from her husband's real estate. Susan Staves, *Married Women's Separate Property in England, 1660–1883* (Cambridge: Harvard Univ. Press, 1990), 29.

or abandonment by either party, the husband continued to control his wife's property, including any income from her real property and her wages or salary.

During the seventeenth and eighteenth centuries, a parallel legal system developed based on equity courts, which began to recognize women's separate property through prenuptial agreements.[119] While equity provided clear advantages for married women compared with common law, it did not treat wives equal to unmarried women. Rather, it accorded a special status to wives to protect them from the worst abuses of common law. Moreover, participation in equity courts was expensive and generally available only to the elite. Thus, two separate traditions came to govern the property rights of English wives: common law for the poor and equity for the rich. Lee Holcombe considers this anomaly an important factor in the growing support for the reform of married women's property rights in England after 1850, a movement that paralleled calls for general legal reform.[120] The emergence of the nineteenth-century feminist movement in England also paralleled the steady increase of married women in the labor force. The abuses to which working wives were subject, particularly in cases of separation and abandonment (since they could not control their own wages and salaries), became the rallying cry for the first organized feminist effort to reform the property rights of married women.

The progress of these reforms in England was slow and piecemeal. It was not until 1870 that Parliament approved the minimalist Married Women's Property Act allowing married women to dispose of their own wages and independent earnings.[121] It took another 12 years before they gained most of the same rights over property as single women. The 1882 Married Women's Property Act essentially created a separate estate for all married women and furthered their economic autonomy by allowing them to enter into contracts, join suits, and leave wills disposing of this separate property.[122]

The process of reform in the United States was equally drawn out, particularly since its federal system of government meant that reform acts had to be adopted on a state-by-state basis. The 1830s witnessed the earliest reforms to married women's property rights, primarily in southern states. These reforms were designed to protect family property (particularly slaves) from creditors,

119. On the equity courts, see Holcombe, *Wives and Property*. Holcombe notes that a separate estate could be created which was put in trust "for her sole and separate use" and that was not subject to control by her husband or attachable by his creditors; it was usually managed by a trustee.

120. Ibid.

121. Ibid., 108, 177–79

122. Ibid., 201–4.

rather than to expand the rights of married women. The desire of parents to protect their daughters' inheritances from their husbands' bad management, combined with the growth of both the codification and the feminist movements after 1848, resulted in several states enacting legislation that established separate estates for married women in the 1840s and 1850s. A third wave of reforms after the Civil War gave married women control over their own earnings.[123] As a result of the married women's property acts, by the early twentieth century married women in most states could inherit, own, and dispose of their property, leave wills, retain and spend their own wages, manage their own businesses, and generally enter into all contracts and suits.[124]

Feminist demands for reform of married women's property rights in England and the United States largely focused on equalizing property rights between married and single women. They were not designed to create equality between men and women within the family nor to recognize the contribution of wives, through their domestic labor, to the value of their husband's property. As Carole Shammas et al. note, married women's property acts "protected the property of married women acquired from their own kin, but were silent about rights to assets derived partially or entirely from the labor they performed as wives, whether in the home or family business."[125] With the exception of the western United States, debates over married women's property rights in England and the United States paid little attention to the potential benefits of alternative marital regimes, such as full or partial community property, or to equality of rights and obligations between men and women.[126] John Stuart Mill, one of the earliest advocates for women's property rights, reportedly argued that commu-

123. Linda E. Speth, "The Married Women's Property Acts, 1839–1865: Reform, Reaction, or Revolution?" in *Women and the Law: A Social Historical Perspective*, vol. 2, ed. D. Kelly Weisberg (Cambridge: Schenkman, 1982), 69–91; Richard H. Chused, "Married Women's Property Law: 1800–1850," *Georgetown Law Journal* 7, no. 5 (1983): 1359–1425; Joan R. Gundersen, "Women and Inheritance," in *Inheritance and Weath in America*, ed. Robert K. Miller and Stephen J. McNamee (New York: Plenum, 1998), chap. 5.

124. Susan C. Nicholas, Alice M. Price, and Rachel Rubin, *Rights and Wrongs: Womens' Struggle for Legal Equality*, 2nd ed. (New York: The Feminist Press, 1986), 32.

125. Carole Shammas, Marylynn Salmon, and Michel Dahlin, *Inheritance in America: From Colonial Times to the Present* (New Brunswick: Rutgers Univ. Press, 1987), 163.

126. Partly because of the influence of French and Spanish legal traditions, when they became states in the late nineteenth century, the southern and western U.S. territories adopted a partial community property regime. Similar to the gananciales regime, whatever property was acquired by either spouse during the marriage constituted community property that was managed by the husband. Each spouse retained as independent property that they acquired prior to marriage or that they inherited or received as a donation; the

nity property would be the strongest recognition of the unity between man and wife in marriage. Such arguments, however, fell on the deaf ears of those who opposed married women's property rights on the grounds that it would disrupt the harmony of marriage based on patriarchal control.[127]

The separation of property regime first appeared as a formal option in Latin America in the 1870 Mexican civil code, the year that England adopted its first Married Women's Property Act and several decades after similar acts had been adopted by many U.S. states. Given the different legal traditions, Mexico's separation of property regime followed different conventions. It required a prenuptial agreement with an inventory specifying each spouse's assets. In principle, each retained ownership and management of his or her earnings and assets and enjoyed the fruits thereof, but the couple was free to determine the precise breakdown of ownership and management. In another innovation, these prenuptial agreements could be changed at any time during the marriage. Finally, each spouse was obligated to contribute to the maintenance of the household.[128]

The separation of property regime was subsequently adopted throughout Central America, where, with the exception of Guatemala, it became the default regime. The following norms established in the 1887 Costa Rican civil code became the model for El Salvador, Nicaragua, and Honduras.[129] Prior to marriage, a couple could arrange everything having to do with their own assets, and these prenuptial agreements could be changed afterward by mutual accord. The following provision established separation of property as the default arrangement: "In the absence of a prenuptial agreement, each spouse remains the owner and freely disposes of the assets which he or she had at the time of marriage and those which he or she might acquire through whatever means and their fruits."[130]

In contrast to England and the United States, in Mexico and Central

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earnings from this individual property were generally also pooled. Leo Kanowitz, *Women and the Law: The Unfinished Revolution* (Albuquerque: Univ. of New Mexico Press, 1969), 62.

127. Holcombe, *Wives and Property*, 154.

128. Arts. 2009, 2102, 2110–13, 2120, 2121, 2205, and 2208–9, 1870 Mexican civil code. The 1884 code maintained these provisions.

129. In its 1877 civil code, Guatemala followed the Chilean rules for the simple separation of property but innovated in that such could be arranged by mutual accord, thus making the separation of property regime a formal option; art. 1164, 1877 Guatemalan code.

130. Arts. 75–76, 1887 Costa Rican civil code; arts. 187–88, 1902 Salvadoran code; arts. 153–54, 1903 Nicaraguan code; and art. 169, 1906 Honduran code.

America the demand for a separation of property regime does not appear to have originated with women. The drafting commission for the 1870 Mexican code nonetheless considered this new choice "a radical innovation to improve the position of women."[131] We have been unable to locate any commentary at all by contemporaries, however, addressing the reasons the four Central American countries adopted this regime as the default.

In principle, the separation of property regime represented an advance for married women's property rights, for wives could now manage their own property independently, without permission of their husbands. For a woman of means or one who owned more property than her husband, this regime could be quite beneficial, particularly if she was a better financial manager than her husband. It could also potentially benefit working women, who could now control their own wages and salaries. If men and women use their income in different ways, women could now follow their own spending preferences. But for poor women without assets to control or access to steady employment, the separation of property regime was potentially prejudicial. With better opportunities to earn income and outright discrimination in the labor market, husbands were likely to earn higher incomes than their wives were. In addition, husbands were more likely to own assets, given these unequal income opportunities and the gender bias in inheritance. In case the marriage was dissolved, under the separation of property regime a woman would no longer share in her husband's earnings, including in the fruits of any investments she may have made in his properties during the marriage. Thus, a housewife would lose the implicit recognition of domestic labor embodied in the gananciales regime.

Some legal scholars recognized this last point. As legal scholar Mateos Alarcón noted in discussing why the gananciales regime was preferred and remained the default in Mexico, "this has as its basis the consideration that while a man by his aptitude and labor acquires a patrimony, a wife assists him by economizing and watching over its formation and conservation."[132] Moreover, under the gananciales regime, a woman could always separate her own property under a prenuptial agreement without losing the right to gananciales if widowed or separated.[133] Arrom argues that the separation of property regime was probably adopted as an option in Mexico at this time because it expanded the range of personal choice in marriage and "fit the more flexible, diversified economy, and society of the nineteenth century."[134]

131. 1870 Mexican code, 74.
132. Mateos Alarcón, *Lecciones*, 329.
133. Arrom, "Cambios," 514.
134. Arrom, "Changes in Mexican Family Law," 313.

But it was one thing to provide for separation of property as an option; it was quite another, as happened in most of Central America, to make it the default. We concur with Elizabeth Dore that, overall, the adoption of the separation of property regime was probably prejudicial to married women.[135] It did not become the default regime, however, in all countries where it was held forth as an option, and it was not even a formal option in most of South America until well into the twentieth century.[136]

Potestad Marital

Commenting on the 1884 Mexican code, Alarcón argued that it was imperative that the husband remain the household head and that a woman obey him, "because disorder and immorality would be introduced into the family, making its existence, as well as the preservation of its assets, impossible."[137] Moreover, he considered women incapable of carrying out the acts of civil life by themselves and without permission of their husbands, both because they were weaker and inexperienced and also because wifely obedience was "in the interest of the marriage." Thus, the separation of property option in Mexico maintained restrictions on married women's capacity to manage their own property. A wife could not sell her own real property without her husband's permission; no such restriction applied to the husband, presumably because he remained the household head. [138]

In contrast, in El Salvador (where separation of property became the default), wives attained the legal capacity to manage all of their own property without their husband's permission. The commission that drafted that country's 1902 code thought that, by introducing the separation of property regime as the default, they were in fact ending potestad marital. But while men and women now enjoyed reciprocal rights and obligations within the family, "and neither one was to be under the potestad or dependency of the other," this code maintained the infamous Napoleonic article that "the husband owed the wife protection, and the wife obedience to her husband," as did Costa Rica's.[139]

135. Dore, "One Step Forward," 3–32.

136. Deere and León, *Empowering Women*, table 2.3.

137. Mateos Alarcón, *Lecciones*, 100–2.

138. Art. 2210, 1870 Mexican code, and art. 2077, 1884 Mexican code. Arrom, "Changes in Mexican Family Law," 313.

139. Mauricio Gusmán, *Código Civil de El Salvador 1959 con estudio preliminar de Dr. Mauricio Gusmán* (Madrid: Instituto de Cultura Hispánica, 1959), 17–18; art. 184, 1902 Salvadoran code; and art. 73, 1887 Costa Rican code.

Moreover, Nicaragua and Honduras explicitly maintained the husband as the head of household.[140] And in all four countries, the wife was still required to live where the husband determined and to follow him if he changed residence.[141] In addition, in all four cases husbands maintained patria potestad over the children in case of separation or divorce. Nonetheless, these four Central American countries, where separation of property was the default, did go further than any other Latin American country had gone to weaken husbands' spousal authority by giving married women control over their own property, if not totally over their person.

Mexico would not go as far with respect to married women's legal capacity until 1917, when it, too, adopted separation of property as the default regime (table 4). Mexico's 1917 Law of Family Relations further legislated that husband and wife were to have "equal authority and consideration" in marriage, establishing the goal of the "dual-headed" household, where both husband and wife represented the household and jointly managed its affairs.[142] This appears to be the first successful civil code reform in Latin America based on the active participation of feminists.[143] Ironically, in those Central American countries that first extended the concept of individual freedom to married women—by making them legally capable rather than relatively incapable—women's voices were largely absent.[144]

140. Art. 151, 1903 Nicaraguan code and art. 167, 1906 Honduran code.

141. Art. 73, 1887 Costa Rican code; art. 185, 1902 Salvadoran code; art 152, 1903 Nicaraguan code; and art. 168, 1906 Honduran code.

142. Art. 43 in Carranza, *Ley sobre Relaciones Familiares*; Carmen Diana Deere, "Married Women's Property Rights in Mexico: A Comparative, Latin American Perspective and Research Agenda," revised version of paper presented at the Workshop on Law and Gender in Contemporary Mexico (Institute of Latin American Studies, Univ. of London, 19–20 Feb. 2004).

143. Ana Macías, *Against All Odds: The Feminist Movement in Mexico to 1940* (Westport, CT: Greenwood, 1982), 13–70. See Lavrin, *Women, Feminism, and Social Change*, on the development of the feminist movement in the Southern Cone and on how male household headship began to be contested in efforts at civil code reform in the first half of the twentieth century. See Deere, "Married Women's Property Rights in Mexico," and Deere and León, *Empowering Women*, on how long it took to attain the legal figure of the dual-headed household in most countries.

144. The available evidence suggests that the first feminist newspaper in Central America appeared in Guatemala in 1887. Hugo R. Cruz, "Mujeres que entran y salen de la historia: El caso del semanario feminista *El Ideal*, Guatemala (1887–1888)," in Rodríguez S., *Mujeres, género e historia*, 85–94. While concerned with issues of gender equity, the various writers do not appear to address civil code reform.

Testamentary Freedom

Advocates of testamentary freedom in Central America considered it a natural and logical consequence of private property. As the commission that drafted Honduras' 1880 code also argued, "in testamentary succession the principle of the free individual dominates; the fecund economic principle that man is the only omnipresent legislator regarding the fruits of his labor, over everything he has produced or acquired."[145] The commission realized that it was breaking with Hispanic tradition and introducing "truly radical reforms." Part of their justification was that the United States and England, "the freest peoples on earth," did not follow the practice of the legítima and that in these countries "the son has nothing to expect from the father except what he merits."[146] Reflecting on testamentary freedom in the North, versus forced inheritances in Latin America, the Honduran commission argued that forced inheritance discouraged individual initiative. Moreover, "the system of reserved [forced] inheritances leads more to hate and ingratitude toward parents than to respect."[147]

In Mexico, where testamentary freedom had been discussed since the 1870s, its adoption in 1884 remained quite controversial among jurists. While advocates considered it necessary to stimulate the work ethic, dissenters feared it would undermine family harmony. Arrom argues that, in contrast to the abolition of dowry, which followed the trend in social practice, testamentary freedom was introduced to bring about social change, specifically economic development.[148] As noted by the 1884 drafting commission, "The right to property requires this liberty as a complement to individual guarantees and as a necessity for the enhancement of public wealth."[149]

The commission that drafted El Salvador's 1902 civil code defended testamentary freedom in similar terms, arguing that "father knows best" in terms of the prospects of his children, who should be given incentives to work hard and become independent. But the commission also assumed that "testamentary freedom should in no way affect compliance with duties to the family. . . . [I]t is probable that the liberty of the testator will normally favor such persons following the most natural sentiments of the human heart."[150]

145. "Informe del Código Civil presentado por la Comisión Codificadora al Sr. Presidente de la República," 1880 Honduran code, 29.

146. Ibid., 33. Testamentary freedom had been adopted throughout the United Kingdom and its colonies in the early eighteenth century, and after U.S. independence, all of the states had ratified it. Shammas et. al, *Inheritance in America*, 27.

147. "Informe del Código Civil," 1880 Honduran code, 38.

148. Arrom, "Changes in Mexican Family Law," 313–15.

149. Ibid.

150. Belarmino Suárez, *El Código Civil del año 1860 con sus modificaciones hasta el año 1911 por el Dr. Belarmino Suárez* (San Salvador: Tip. La Unión, 1911), 158–59.

It is worth noting, nonetheless, that all of the countries adopting testamentary freedom at this time made provisions to assure that children and surviving spouses not be left totally dispossessed through a will. El Salvador generously reserved up to one-third of an individual's patrimony as a pension (*alimentos*) for children, parents, and spouse if they were disinherited, in order that that they might "maintain the position that they have held during the life of the testator."[151] This was considered necessary in order to "reconcile property rights, which have forced the Commission to endorse testamentary freedom, with compliance with duties to family."[152]

It is somewhat difficult to predict the outcome of testamentary freedom on the position of women, given the caveats to which this right was subject. In principle, testamentary freedom could favor a widow, for now her husband could freely will her all of his property. Thus, upon his death she could take complete control of the family farm or business. But this outcome depended totally on his goodwill. On the other hand, with the exception of the two countries that provided for the porción conyugal, a wife could also be totally disinherited. Combined with the marital regime of separation of property, the likelihood that a widow might end up dispossessed of any assets at all surely increased. Scant research has been done on these questions, as well as on how common it became for widows and children to actually receive alimentos.

Arrom argues that testamentary freedom carried a very high price for daughters; combined with the disappearance of the practice of dowry, it dramatically reduced the protection to which they had previously been entitled.[153] She does not consider the end of dowry by itself to have been such a calamity, for what essentially changed was the timing of inheritance—the right of daughters to inherit from their parents before their brothers. While Arrom recognizes that dowries constituted "a power base" for women in marriage, she argues that their vulnerability did not necessarily increase, as long as they eventually inherited some wealth. The ending of dowry meant they just had to wait longer to secure this inheritance. The end of the legítima, however, meant that neither sons nor daughters were guaranteed any inheritance at all. Given the unequal opportunities for women to accumulate property by other means, this made daughters more vulnerable than previously and certainly more vulnerable than their brothers. In our framework, it potentially reduced women's bargaining power both in the marriage market and within marriage itself, since it weakened their fallback position. In addition, testamentary freedom could have reinforced

151. Ibid., 160.
152. Ibid., 217. Also see art. 1139, 1902 Salvadoran code.
153. Arrom, "Changes in Mexican Family Law," 313–15.

male privilege in inheritance, particularly of land. But again, firm conclusions await further empirical research.

Arrom also considers the introduction of testamentary freedom a "logical accompaniment to the decline in the authority of parents over children," including authority over marriage choice.[154] The end of dowry reduced the dispersal of parents' capital during their lifetimes; in addition, since they had less control over their children's choice of occupation or spouse, they were also released from having to treat all children the same. Thus, testamentary freedom considerably enhanced the bargaining power of parents to assure that children conform to their wishes.

Several of the liberal civil codes in Central America considerably bettered the position of wives in cases of intestate succession. El Salvador's 1902 code included spouses, along with parents, in the first order of inheritance.[155] Also, if the deceased had no living children or parents, the spouse now inherited the deceased's entire estate. Honduras vacillated in its numerous codes of this period, limiting spouses to the porción conyugal in its 1880 code, elevating spouses and parents to the first order in 1898, then limiting spouses once again to the marital portion in 1906. This latter code increased the maximum share of the porción conyugal from one-fifth to one-quarter of the deceased's patrimony.[156] Costa Rica also elevated the spouse, along with the parents, to the first order, but with a caveat: if the spouse was entitled to receive gananciales, then he or she only received the difference in value between the amount of gananciales and the inheritance share of one child.[157] Thus, while improving the inheritance rights of spouses with respect to the 1841 code (since the widow no longer had to plead poverty to inherit), it was a limited gain. Spouses were also better off now in Nicaragua and Honduras in the case where the deceased left no living children; they were added to the second order of inheritance and divided the deceased's estate in equal shares with the parents.[158]

154. Ibid.

155. Art. 988, 1902 Salvadoran code.

156. Arts. 1087–92, 1898 Honduran code; arts. 965, 1150–54, 1906 Honduran code.

157. Art. 572, 1887 Costa Rican code.

158. Art. 1010, 1903 Nicaraguan code; art. 1026, 1880 Honduran code; art. 1089, 1898 Honduran code; art. 966, 1906 Honduran code. This was also the case in El Salvador and Costa Rica if there were no surviving children; moreover, if there were no surviving children or parents, the spouse would inherit the whole estate. In Guatemala, intestate estates were subject to the cuarta conyugal when there were surviving children or parents; in their absence, the spouse would inherit all; arts. 953 and 983, 1877 Guatemalan code. Spouses remained in a much worse position in Mexico, where in the first or second order

Hence, for cases of intestate inheritance, the Central American liberal revolutions generally furthered the trend that had begun with independence in many South American countries in strengthening the position of spouses at the expense of siblings. As El Salvador's 1902 drafting commission explained, "No matter how great the affection of parents for their children, it can not be greater than that between husband and wife, and it does not exclude the obligations that love and gratitude impose upon children with respect to their parents."[159]

Conclusion

The liberal revolutions of the late nineteenth century followed two paths in Latin America in reforming marital and inheritance regimes: most Central American countries adopted separation of property as the default regime, while most of South America maintained gananciales as the default. The exception is Brazil, where the colonial regime of full community property remained the default until 1977, when it too adopted partial community property as the default regime. Moreover, in 1916 Brazil became the first South American country to offer a formal option of the separation of property regime, joining Mexico and Guatemala in this practice.[160] It is worth stressing that during the late nineteenth and early twentieth century, only four countries took the tenets of individual freedom to their logical conclusion within the family, imposing economic autonomy on two unequal actors, husband and wife.

Inheritance regimes also followed two distinct paths: the innovation of testamentary freedom in Mexico and Central America, and the maintenance of the tradition of forced heirs in South America. The only nod toward testamentary freedom in South America was the increase in the share that testators were free to will, which was increased in the Bello codes from the colonial one-fifth to

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of inheritance they could only claim the porción conyugal; arts. 3574, 3615, 3627–32, 1884 Mexican code.

159. Suárez, *El Código Civil*, 149.

160. Arts. 276–277, 1916 Brazilian code. The 1916 code also makes available two other options, the gananciales regime (or regime of partial or limited community) and the dotal regime. Ibid., arts. 269–277 and 278–309. The advantages and disadvantages of alternative marital regimes were discussed in Brazil and other South American countries. Almeida, *Fámilia e modernidade*, 60–61. For example, in the first attempt to reform married women's property rights in Argentina, a bill was submitted to the legislature in 1902 that would have introduced the separation of property regime. While it is unclear whether the proposal was to introduce this regime as an option or as the default, the bill was unsuccessful. Lavrin, *Women, Feminism, and Social Change*, 201.

one-quarter of the estate, and which was increased in Brazil (in 1907) from the traditional one-third to one-half of an individual's patrimony.[161]

Central America's liberal revolutions are distinct from those of South America in coming at a later point in history; when they occured, liberal parties (or caudillos) had sufficient domination of the political scene to ram through a whole gamut of reforms—including the freeing of land and labor, free trade, and secularization—as they sought to consolidate their agroexport economies. Moreover, as table 4 shows, the reform of the marital and inheritance regimes was either simultaneous with the advent of civil matrimony and divorce (in Costa Rica) or followed closely on its heels. Nonetheless, the change in marital property and inheritance regimes did not always take place during the height of the liberal revolutions and were sometimes carried out by subsequent liberal governments.[162]

Both timing and geography are important factors in explaining why Central America was more radical in its reforms. By the time of their liberal revolutions, liberalism was well consolidated in Mexico. Given the proximity to Mexico, one might assume that the Central American elite were well versed in its debates over civil matrimony and divorce, testamentary freedom, and separation of property. Similarly, it is probable that jurists were familiar with the reform of married women's property rights in the United States and England. Conditions were, of course, quite different, since women's formal education and workforce participation—factors that contributed to the adoption of the married women's property acts in United States—were less advanced in Central America (even compared with Mexico or the Southern Cone).

The importance of political geography is highlighted when we consider why the only liberal revolution in South America of this period—that of Ecuador from 1895 to 1911—was less radical with respect to family law than those in Central America. Ecuador, too, sought to consolidate the basis for its agroexport economy, and there civil matrimony and divorce were introduced along with the separation of church and state. Nevertheless, it made no apparent attempt to reform other provisions of its civil code dealing with family law.[163] What clearly

161. Muriel Nazzari, "Widows as Obstacles to Business: British Objections to Brazilian Marriage and Inheritance Laws," *Comparative Study of Society and History* 37, no. 4 (1995): 801.

162. James Mahoney, *The Legacies of Liberalism: Path Dependence and Political Regimes in Central America* (Baltimore: Johns Hopkins Univ. Press, 2001).

163. Enrique Ayala Mora, "De la revolución Alfarista al régimen oligárquico liberal (1895–1925)," in *Nueva historia del Ecuador*, vol. 9, *Epoca repúblicana III*, ed. E. Ayala Mora (Quito: Corporación Editora Nacional, 1988), 121–66.

differentiates these countries in this period is the much greater influence of the United States in Central America, presumably with the much greater penetration of American ideas regarding all aspects of social life.[164] Thus, ironically, the separation of property regime and testamentary freedom that had been demands of the feminist movement in the North ended up being imposed by modernizing elites on women in much of Central America.

It is difficult to weigh the contributions that liberal reforms to married women's property rights made to gender-progressive change, since women are not a homogenous category. The potential impact of these reforms—particularly with regard to access and control over assets—generally depended upon a woman's class and familial position. Nonetheless, by focusing on the potential of legal reform to increase women's economic autonomy, as well as their bargaining power within the family, we can advance some tentative conclusions. A more comprehensive evaluation of the impact of liberal reform to married women's property rights must take into account actual practice and thus will require substantially more research. We have only undertaken the first steps in this agenda: clarifying the nature of the liberal reforms to family law and offering a comparative framework to guide future research.

Almost all Latin American countries lowered the age of majority and for marriage in the nineteenth century, a change that was potentially favorable for daughters of all social classes. Their economic autonomy was surely enhanced, since now at 21 they could elect to take a job or a husband of their choosing. The latter was reinforced by the fact that single women could now retain their own earnings and manage their own inheritances at an earlier age. Overall, this reform enhanced the bargaining power of children over parents and contributed to the individual freedom of both men and women.

The end of the dowry changed conditions in the marriage market and probably reduced the bargaining power of young women in their choice of a partner. This change undoubtedly reinforced the trend already underway favoring companionate marriage. To the extent that it saved young women of means from the "dowry hunters" portrayed in period literature, this was potentially beneficial.[165] But by reducing or eliminating the economic contribution that women brought to marriage, it potentially reduced their bargaining power therein. As Nazzari argues, the end of the dowry made married women more dependent on their

164. See Walter LaFeber, *Inevitable Revolutions: The United States in Central America* (New York: Norton, 1983), chap. 1.

165. See the novel by Brazilian José de Alencar, *Señora: Profile of a Woman*, trans. Catarina Feldmann Edinger (1875; Austin: Univ. of Texas Press, 1994).

husbands and reinforced women's role in the domestic sphere, since a family's economic position was now largely determined by the husband's earnings.[166]

Moreover, the demise of the dowry weakened a married woman's fallback position and thus reduced the possibility that she would be able to file for separation or divorce in the case of an insufferable marriage, since she would no longer be able to depend on it as a means of economic support. Alternatively, she would have to delay such a separation until she came into her share of a forced inheritance. Thus, we conclude with Nazzari that the end of dowry tipped the marriage bargain in favor of husbands.[167] Whether the demise of the dowry affected women of all class positions similarly requires further research. As Arrom suggests, it probably had substantially more negative consequences in those countries that also adopted testamentary freedom, since a daughter's equitable inheritance share was no longer guaranteed.[168]

The introduction of civil matrimony was important for women in paving the way for civil divorce, which in turn increased their ability to leave insufferable marriages. One of the greatest accomplishments of nineteenth-century liberalism was the recognition of marriage as a civil contract. By the end of that century, 13 of the 17 countries included in table 2 had made civil matrimony obligatory. Only the 5 Central American countries had approved civil divorce, and only one of these allowed divorce by mutual consent. These numbers expanded considerably during the first two decades of the twentieth century, when another two countries adopted civil matrimony, six enacted civil divorce and, in step-wise fashion, more countries allowed divorce by mutual consent. The overall tendency of the nineteenth century was to expand the conditions under which legal separation could take place and to move authority in such matters from the church to the state. In addition, the liberal reforms strengthened the economic autonomy of separated and divorced women by generally giving them complete control over their marital assets, as well as any income or property earned after the separation.

The formal introduction of the separation of property regime as an option was, in principle, an important extension of individual freedom into the realm of the family, since it gave married women, for the first time, the option to control their own property and earnings. But having this regime as an option or as the legal default are quite different matters. In those countries were it became the default, it was potentially most harmful to married women who did not work

166. Nazzari, *Disappearance of the Dowry.*
167. Ibid.
168. Arrom, *The Women of Mexico City.*

outside the home, for the end of the right to gananciales meant that there was no longer any implicit recognition of wives' contribution of domestic labor to the formation of their husbands' patrimony. Moreover, while the ability to control one's own earnings was certainly an advance for many working wives that gave them a measure of economic autonomy and perhaps greater bargaining power within the household, unequal opportunities for income and asset accumulation reduced the regime's potential benefits. In the broader picture, however, the adoption of this regime in Central America did provide the important precedent of making married women legally capable and may have paved the way for the undermining of potestad marital in the rest of the region in the twentieth century.[169]

Testamentary freedom, adopted in Mexico and Central America, may have had potentially diametrically opposed effects on daughters and widows. The end of the legítima meant that daughters were no longer assured an equal share of their parents' estate. Combined with the demise of dowry, this reform made daughters potentially more economically vulnerable and, particularly, more so than their brothers, given the unequal opportunities in education and the labor market. At the same time, testamentary freedom may have favored widows, since their husbands could now will them a greater portion, or even all, of their estate. But this outcome totally depended on the goodwill of husbands. Such a move would certainly have increased the economic autonomy of widows and enhanced their bargaining power over children. The gains of widows, however, may have come at the expense of children, particularly daughters. These propositions, of course, beg for further empirical research.

The most important liberal reform to inheritance regimes in South America was the addition of spouses to the first order of inheritance in three countries, by including them in the legítima. This constituted an important break with colonial norms and considerably enhanced the potential economic autonomy of widows. The formalization of the porción conyugal was also a gain for widows, albeit a restricted one (since it required the widow to plead poverty), but it did extend some protection from destitution and enhanced their economic autonomy. Moreover, by the end of the nineteenth century, most Latin American countries had bettered the position of spouses in cases of intestate succession—now favoring the spouse over the deceased's siblings, if not the parents. In general, these changes signaled a shifting of allegiances from the patrilineal to the conjugal family, related to the rise of companionate marriage.

169. Deere and León, *Empowering Women*; Lavrin, *Women, Feminism, and Social Change*.

The improved position of widows in both the legítima and intestate succession was one reform that potentially enhanced the economic autonomy of married women of all social classes and gave them a considerable advantage over women in consensual unions—perhaps increasing the attractiveness of marriage. While improving the position of widows in intestate succession had precedents in the United States, their inclusion in the legítima was a uniquely Latin American liberal reform, without legal precedent either in the Napoleonic code or in Spain.[170] Though the liberal reforms of married women's property rights in the nineteenth century had both positive and negative aspects, on balance we conclude that these reforms favored gender-progressive change.

170. Chused, "Married Women's Property Law."