

GENDER AND PROPERTY IN MEXICO'S *COLONIAS POPULARES*

Ann Varley and Maribel Blasco

Department of Geography

University College London

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... bound up with the concepts of property are concepts of the person ... these concepts of the person in turn can be characterised by their degree of individuation within social relations ... women's capacity to act as fully acting subjects in relation to objects (property) ... is always more circumscribed than that of men

Ann Whitehead (1984: 180)

Introduction

In this paper we ask who are better able to defend their claims to the ownership of a home in Mexico's *colonias proletarias*: women or men? We argue that women are at a disadvantage in this respect. Legally, women who are married enjoy the same property rights as their husbands. Pragmatically, however, they are more vulnerable to losing their home as a result of abusive behaviour by their spouse or children. They are vulnerable, not because they do not know their legal rights but because women and men construe their relationship to property differently. Women are more likely to see their title to the home as secondary to that of their husband or even children. Men's relationship to property is more direct. They do not necessarily set out to disadvantage their wives when they put their own name on property titles. Rather, they see ownership as part of the package of rights *and* responsibilities that go with being a husband and father. Nonetheless, if only the husband's name appears on the deeds, wider social assumptions about gender and property may make it difficult for his wife to defend her rights in the property.

The material we analyze in this paper comes from a three-year research project on gender and housing in urban Mexico.¹ We chose four low-income neighbourhoods of Guadalajara, Mexico's second largest city, that we considered representative of the housing options open to the low-income majority of the urban population. Two of these were *colonias populares*: 'self-help' settlements where families build their own houses on land that is acquired illegally, but subsequently regularized through government legalization programmes providing title for the occupants. One of these settlements was less than ten years old; the other, over forty. In each area we held a series of discussion groups with residents: one for women and the other for men. Over the course of six meetings, each group considered a series of different subjects, including property and security of tenure.² In addition to the discussion groups and individual follow-up interviews, we conducted questionnaire surveys in each area, to complement with this extensive methodology the intensive focus of the discussion groups.

The residents of the *colonias populares* reflect a mixture of urban and rural influences in their approach to property. Their property is new property, in the sense that the plots on which they have built their homes were created by the illegal subdivision of agricultural property. In both the self-help areas considered in our research, the land originally belonged to an *ejido*,³ although Guadalajara also has extensive low-income housing areas resulting from illegal subdivision of private land (Gilbert and Varley 1991). When land titles are issued for plots in these areas, the majority of title-holders are the first owners of the property thus defined (a minority will have acquired their plots from the original purchasers). Although the land was previously part of an *ejido*, titling takes place under civil law, many people's ideas about property matters clearly relate to the provisions of the civil code (concerning, for example, equitable inheritance). At the same time, there is evidence of the lingering influence of some

rural and in some cases indigenous traditions (such as the idea that the youngest son should inherit the parental home). This combination of urban and rural influences is hardly surprising. Compared with the population of other low-income housing areas (for example, in the inner city, where there is much rental housing), the population of the *colonias populares* is more likely to be of rural origin (Gilbert and Varley 1991).

Historically, the development of *colonias populares* in Mexico's cities gave many rural migrants their first opportunity to own their homes rather than depending on relatives or employers for housing (Varley 2000b, Stern 1998). Urban development has created millions of new property owners. The fact that property in the *colonias populares* is 'new' is particularly significant because people have to decide whose name is to appear on the title. Beneficiaries of legalization programmes are likely to think about whose name this *ought* to be in a way they might not otherwise do. The question is unlikely to arise, for example, for people buying a flat in a government housing project, where ownership is pre-determined by eligibility criteria emphasizing occupational status. The potential for family conflict to be unleashed by tenure legalization is, therefore, considerable (Varley 2000a).

Marriage and property rights in Mexico

In Mexico, the definition of marital property regimes is complicated, firstly, by the fact that the Federal District and each of the country's thirty one states has a separate Civil Code, and, secondly, by accepted practice being at odds with certain key stipulations of the Civil Code.

International comparisons such as the work of the convenors of this session are complicated by the terminology employed. Thus, although the default marital property regime in the Federal District is identified as a common property regime (*sociedad conyugal*), it is in one crucial respect more like the 'participation in profits' (*gananciales*) regime that is the default option in Bolivia, Chile, Colombia, Guatemala and Peru. If the marriage is dissolved, each spouse regains the property they brought to the marriage, whilst any common property acquired during the marriage is divided between the two (*Código Civil para el Distrito Federal, CCDF, Art. 204*). If a full common property regime applied, then *all* their property would be divided between them (regardless of when it was acquired).

The potential for confusion is increased by the existence, in the Federal District, of a 'mixed' property regime (*CCDF, Art. 208*). This can easily be confused with the participation-in-profits regime, since both are intermediate between a full common property regime and the complete separation-of-property regime (*separación de bienes*) that also exists in Mexico. The mixed property regime, however, refers to *any* combination of separate and common ownership, to be specified by the spouses in a formal declaration or contract (*capitulaciones matrimoniales*). In practice, however, no-one bothers with this requirement. Instead, couples simply fill in a form at the Civil Registry when applying to get married, saying which property regime they wish to adopt. It is assumed that those opting for *sociedad conyugal* will each own fifty per cent of all property acquired during the marriage (Pérez Duarte 1994: 259-65).⁴

In practice, therefore, property held before the marriage continues to be individual property (whereas, if *capitulaciones* really were used, it could become common property).

To increase the potential for confusion still further, there are significant variations between States. In a few States, the separation-of-property regime is the default (Pérez Duarte 1994). Property matters in Guadalajara are regulated by the Civil Code of the State of Jalisco. In Jalisco, the default property regime is not *sociedad conyugal* but *sociedad legal*. This differs

from *sociedad conyugal*, however, only in that it does not require *capitulaciones matrimoniales*; instead, the Civil Code specifies what goods become common property. Essentially, these are all those acquired during the marriage (*Código Civil para el Estado de Jalisco, CCEJ*, Art. 288).⁵ Profit or rent from all jointly- or separately-held property are held in common. Thus, *sociedad legal* is indeed a participation-in-profits regime (Pérez Duarte 1994). What is more, the Civil Code use of the word *gananciales* relates equally to *sociedad legal* and *sociedad conyugal* (*CCEJ*, Arts. 313-4). Mexico's common property regimes are clearly more akin to participation-in-profits than full common property.

In practice, most people are unlikely to have any property to bring to their marriage. They opt for the common property regime partly for that reason and partly because to do otherwise would be seen as demonstrating a lack of commitment to the marriage.

Some analysts used to argue that the poor did not get married anyway. This can no longer be sustained. National survey data show that in 1995 people living in consensual union constituted only 12.8 per cent of all couples.⁶ The tendency for people to marry rather than simply live together has been growing in recent decades (INEGI 1998, López Barajas and Izazola Conde 1994). The Federal District Civil Code recognizes consensual union as similar, but always inferior, to marriage, if the couple have lived together (exclusively) for at least five years or had children together, and if neither partner is already married (Baqueiro Rojas and Buenrostro Báez 1990). Its effects, however, are limited. In relation to property, they are limited to inheritance rights for the partners and their children (*CCDF*, Arts. 1602 and 1635). In Jalisco, these are the *only* rights shared by married and unmarried couples, whereas in the Federal District couples living together must support each other economically as if they were married (*CCDF*, Art. 302). Nowhere in the Civil Code is there any suggestion of a legal parallel between consensual union and marriage as regards the property relations between the two partners while both are still alive. This means, we believe, that the woman who survives her partner does not, like a wife, retain her half of the common property, because there was no common property.⁷ If the man had children and the woman has no other goods, his property is divided equally between each of his children and his partner (*CCDF*, Arts. 1624 and 1635). If either partner was still legally married - no matter how long they had been separated from their spouse - the other has no right to inherit.⁸

The conclusion we wish to draw from this discussion of marital property regimes is that a married woman enjoys the same property rights as her husband. Deere and León de Leal (1999) correctly observe that where men have greater income-generating capabilities than women, a common property regime in marriage is likely to be more favourable to women than the separation of property regime. It also seems that the woman who is *not* married to her partner is in a very vulnerable position. This could even be one reason (amongst many) why the proportion of Mexican couples who are formally married has risen, in spite of the recognition in other legislation (concerning social welfare provision, for example) of rights for women (only) living in consensual union.

The impact of illegality on the operation of family law

Before moving on to examine how the residents of *colonias populares* construe their relationship to property, it is important to point out that the illegality of the development process in these areas can disrupt the workings of family law. We have made this point in an earlier article, with respect to property disputes in a divorce case (Varley 2000a). It is confirmed by a case reported by Manuel Bejarano y Sánchez (1994).

A man bought a plot of land from the *ejido* authorities of San Lorenzo Tezonco, in the Federal District, in the 1960s. His wife died in 1983, before title-deeds were issued to her husband by the legalization agency CORETT, in late 1984. As the couple were married under the common property regime, the children listed their mother's fifty per cent share of the property in the inventory of goods they were to inherit from her. Their father objected, as he considered that the plot belonged entirely to him. He asked the courts to exclude the plot from his wife's estate. The Federal District courts found in his favour.

Had deeds been issued in the man's name before his wife died, their children would have inherited half of the property. A minority judgement on the case argued that as the woman had held the same *de facto* rights of possession as her husband, her children inherited them and could therefore legitimately claim half the property. The majority view was that there was insufficient evidence that either the man or the woman was in possession of the plot before her death, although they accepted that the document given to the man by the *ejido* authorities in 1964 established his possession (only) of the plot at that time.⁹

Bejarano y Sánchez (1994: 126) points to logical inconsistencies in the judgement (presumably concerning what constitutes possession) and notes the wider implication: that rights of possession do not form part of the good held in common in *sociedad conyugal*. If this position were to be generally upheld, then plots held illegally in *colonias populares* would only belong to the husband or wife whose name appears on the papers establishing possession. Only once they were legalized would they become part of a couple's common property. Whether or not this position is widely held, we do not know; but it is clear that illegality of tenure creates a 'grey area' disrupting the application of family law norms.

Property and persons

Box 1

Margarita: A house without title deeds, it would be like *you* were not registered.

María: Yes, it's a guarantee.

Margarita: For me, my title, it's like my birth certificate, that's what my title is to me, because I'm somebody, that's why I have my birth certificate. If I didn't have it, I'd be a nobody.

Los Encinos, women's group, session 3

The parallel Margarita draws between her status as subject and property owner echoes Ann Whitehead's argument (derived from Marx) that 'the concept of the subject is twinned with the concept of property' (Whitehead 1984: 179) (Box 1).¹⁰ Whitehead asserts, however, that women's agency in this respect is always more limited than men's. Although the universalism of this assertion may give us pause, Whitehead also argues that the relationship between gender and property must be understood in its 'historically specific forms' (191). We can more readily accept that the separation out from social relations of individual subjects with equivalent legal capacity to own property is characteristic of western, capitalist societies. The extent of that separation has been less for women than for men.

This can be illustrated, for Mexico, with reference to the late nineteenth century legal reforms fostering the development of a capitalist economy in a modern nation-state (Alonso 1995). As Jean Franco (1989: xviii) writes:

Nationalism demanded new kinds of subjects invested with authority to define the true and the real ... Woman (as opposed to women), however, played an ambiguous role in the construction of national identity.

Civil law reforms increased the individual freedom underpinning the operation of independent economic agents in the market place; but this freedom did not extend to the married woman (Arrom 1985a). As elsewhere in Latin America, she remained subordinate to her husband in the administration of property and was unable to represent herself in legal actions. It was not that women as a class were deemed incapable: restrictions on women's legal capacity did not extend to single women or widows, whose rights were extended by the late nineteenth century legal reforms. Rather, wives were required to be dependent on their husbands. To have two fully-capable subjects governing the marital property would be contrary to the 'community of interests that is created in marriage' (Solar 1978 cited in Deere and León de Leal 1999: 14). That 'community of interests' described the nation state as well as the family (Arrom 1985b). As a contemporary Mexican commentator argued, giving husbands and wives equal authority would mean the 'continual mutiny of the subjects against the established authority' (cited in Arrom 1985a: 310).

Box 2

Eloisa: I think that - the house, above all, it belongs to the two of you, and then, if there are children, then to the children. Like in my case: in that paper that they gave him, he presents himself as ... that is, they ask him 'single or married?' and he says 'married, with so-and-so' [*fulana de tal*]. Saying that, he's protecting *me*, he's leaving me the house, he presents himself as a married man.

Los Encinos, women's group, session 3

Legal reforms after the Revolution removed wives' subordination in property matters, in line with other measures reducing legal inequalities between women and men (Martínez 1991, 1995). Nonetheless, the idea that women should be subordinate to men in relation to property persists today, in some civil legislation and in everyday practice. As regards the legislation: although in most States couples are free to decide which spouse manages the common property, in Aguascalientes and Chihuahua it is still automatically the husband (Pérez Duarte 1994). As regards everyday practice: the contradictions that may result from this hybrid mixture of egalitarian and patriarchal influences can be seen in Eloisa's discussion of whose name should appear on property titles (Box 2). As a matter of principle, she argues that the house belongs to both spouses. When she elaborates, however, she places herself in a secondary position. The paper is automatically given to her husband, the questions are asked of him, and he *chooses* to acknowledge his relationship with her. She does not query any of this. What is more, in Eloisa's account, her husband's declaration of his marital status not only establishes her right to the house: it is also as though he brings Eloisa herself into being. Rather than being merely an anonymous woman (*fulana de tal*) she gains a specific identity as Eloisa through his acknowledgement of her: 'he protects *me*' (*me está protegiendo a mí*). Many women see themselves as gaining an adult identity through their relationship with their husband and their running the home (Varley 2000b; see also Stern 1995). In the words of popular

songs, a woman is 'made into a woman' through her sexual relationship with a man (Prieur 1996: 94).

Married women thus gain their status as both subject and property-owner from their relationship with their husband. Married men, on the other hand, gain their identity as such through the 'renunciation' of their exclusive title to property in recognition of their wives and families. They define themselves as autonomous beings in the very act of restricting, voluntarily, their freedom to own property or act on their own behalf. Although these points may appear speculative and far removed from the pragmatic consequences of whose name appears on the land title, the definition of subject status in relation to property can, as we hope to show, have serious implications for women's security of tenure.

Whose name should appear on title-deeds?: the women's view

In the discussion groups, we asked whose name should appear on title-deeds issued for plots in *colonias populares*. People gave a wide variety of responses reflecting different ways of approaching the question rather than a simple conflict of interest between women and men.

Box 3

Maribel: Who should have their names on the title-deeds of the house?

Dolores: Both of them.

Margarita: The husband.

(Discussion)

Maribel: Why both of them? Why the husband?

Mercedes: Well, because he bought it and he's the one who pays for it.

Eloisa: His name goes down as the main owner [*primer titular*] and then afterwards the wife's.

Maribel: Why? Because he bought it?

Mercedes: Well yes. Then, if he dies or

Maribel: And in your case, for example, did you help to build the house?

Mercedes: But I didn't give any money or anything. It belongs to both of us but I only helped him out.

Maribel: So, you think that the person who pays the money is the owner. OK. Does anyone disagree? Does anyone see things differently?

Los Encinos, women's group, session 3

Eloisa responds to Maribel's question with the argument we have quoted above. It reflects her own experience, because she was widowed before the property could be legalized. As a

neighbour explained to her, as her husband was the first ('original') owner, she name should go on any subsequent documents, as she is his widow - 'it's as though your husband is transferring the property to you'.¹¹ She would then become the *primera titular* and if she liked she could add one or all of her children's names to the document as her heir(s). When asked what was best, however, she was clear: 'you should be there [on the deeds, as the owner], and then, in second place, them, but you - as long as you're alive you should be there in your house'.

The discussion about whether the husband's or wife's name, or both, should be on the deeds carried on with an unusual contribution from Lola.

Box 4

Lola: It should be in both their names, because there are some men who say, 'no, it's that the house has to be in my name, and mine alone'. Like with my husband and me - we're now both of us the owners - '[it should be] me', he says. 'Everything that you do, when it's to do with the house - all the documents that get made out - all of it should be in my name.' But I say to him 'Why? If I'm the one who's paying for it'. 'Yes but I'm the one who gives you the money.' 'No, you give me my housekeeping money [*mi semana*] each week and I pay for it out of my housekeeping'. That's how I can go and pay for the water and the electricity, because he doesn't like having to deal with that sort of thing. That's why he says 'it's a good job that it's in both our names, because I don't have a clue [about managing our money] [*yo soy más tonto*]'

Maribel: And have you already got your deeds?

Lola: No, not yet.

Maribel: But when you do, whose name will appear on them?

Lola: Both our names.

Maribel: And he agrees with you?

Lola: Yes, we're now both totally in agreement on this.

Los Encinos, women's groups, session 3

Lola was the only member of the discussion groups to turn the link between money and property round in this way. Although Dolores also said that both husband and wife should have their names on the papers, in her case the house was in her husband's name. He argued that legally she was protected anyway, because they were married. The situation to which Lola refers, however, is a common one: it is very often women who are responsible for running the household and meeting the family's everyday expenses. It is generally the woman who eggs her husband on to buy a plot of land. In order to do so, she may keep money aside, either from her own earnings or from the housekeeping, in order to save up enough money to put down a deposit on a plot of land. Women often do this without telling their husband until the time has come, so that they can overcome objections about the cost by showing that the money for the deposit is already there, waiting. Many women find paid work specifically to contribute to the

costs of buying land and building the house (Varley 1995; Massolo 1991, Coulomb and Sánchez Meiorada 1992, Gilbert and Varley 1991) .

Box 5

Maribel: Which member of the family is normally the one who encourages the others to buy a plot of land and build a house?

Cecilia: The wife. She encourages her husband, because if you don't put some effort into it, as their wife or *compañera*, they won't do anything.

Maribel: Why?

Cecilia: Well, because there are a lot of men who prefer to spend their money on something else, on drink -

Anita: - or something else! (general laughter)

Cecilia: - I don't know ... or they spend it on - whatever, they take their children out for the day or something like that, and, well, when you buy a plot you end up spending a bit more then, building the house ... but it is you who have to get the man to buy.

Maribel: And is it sometimes the man, too?

Teresa: Yes, because sometimes the wife likes to go around all dolled up (*andar muy catrina*) and - well, there just isn't enough money.

Maribel: What does *catrina* mean? (general laughter)

Lucia: All dressed up (*muy arreglada*). There are a lot of women who spend a lot of money on that, instead of buying a house, so sometimes it is the man, too.

Maribel: But in general?

Anita: In general it's the wife because we don't like living with our mothers-in-law! (general laughter)

San Mateo, women's group, session 2

The women in Los Encinos gave longer, more explicitly personal, answers to the same question, but in general they agreed that 'it is almost always the woman' (Lola). Nor was this simply a question of women 'talking themselves up'. The men gave more mixed responses, mentioning their parents, saying that both husband and wife were equally enthusiastic, or pointing to their wife's role (Box 6).

Box 6

Jesús: It's your parents who say 'I saw a little plot of land (*vi un terrenito*), why don't you go for it?'

Jaime: In my case it was my wife who insisted that we should buy a *terrenito* or a little house (*una casita*). She was the one who insisted more [...]

Raúl: The person who encouraged us most, in my family, it's my father, because he's the one who always encourages us, in situations like that ...

San Mateo, men's group, session 2

Fernando: ... sometimes you are in a position to be saving money, because it's the wife who's always getting on to you about it [*la mujer es la que está 'tas, tas....'*] [...]

Saúl: Go on!

Fernando: ... in my case, it was me, and my wife, we agreed on it, my family, 'come on, come on'.... Thank God! We're getting there, little by little, but we're getting there...

Rodolfo: We're all in the same position ...

Saúl: In my case, my parents drilled it into me that you've always got to try to improve your lot, saving a bit of money to buy a plot [...]

Martín: Anyone else?

Rodolfo: In my case, no, in my case it was both of us who took a chance and went for it. We looked at the position we were in, renting, and putting money into a plot, and - well, better the plot, it would only take a year....

Los Encinos, men's group, session 2

The tone of the men's discussions was more defensive. In both areas they responded partly in terms of how difficult it is to earn the money to pay for a plot - 'you feel a lot more positive when you get some good work [*buenas chambitas*], and then you say to yourself, this is when we should be looking [for a plot]' (Raúl, San Mateo). The group members saw it as their responsibility, as men, to be providing a home for their family, and therefore implied that they thought it *should* be them who encouraged other family members. Thus, Fernando says that it was 'me, and my wife', when he had just said that it was 'the wife' who always goes on about the issue.

The man, then, may be the main income earner, but he is not necessarily the only financial contributor (from income or savings) or the only one who encourages the family to buy. And yet many women, like Mercedes in Los Encinos, denigrate their own contribution as 'only helping' (Box 3). What is so unusual about Lola's statement, in this respect, is that she not only recognizes the value of women's contribution but depicts the housekeeping money as a

sort of wage for her work in running the house (Box 4). The money is 'paid' to her in exchange for her skills and effort in keeping the household 'in the black'. As both spouses work to earn the money that pays for the house, *both* should have their names on the title.

It is also worth observing, before moving on to consider the men's position, that Lola was the only member of her group who said that she was not married. Her partner had left her for three or four months when she took a job and started to pay the money for a plot of land (they had been living with her Lola's parents; her husband had been unconvinced about the value of buying a plot). When he came back he asked her if they could buy the plot together, and she said 'yes, but only on condition that both our names go on the papers, not just yours, because you've already taken me for a ride once [*ya me hiciste una jugada*], and I won't stand for it a second time'.

Box 7

Martín: In whose name should people put the deeds of the house? Which member of the family?

Mariano: In the man's name - the person who bought it.

Raúl: Both of them.

Jaime: Well, if your daughter bought the land it's got to be in her name, then. If your son bought it too, then what should you do? Should it go in my name just because I'm the head of the family? That's not right either.

Adolfo: It should be in the name of the person who bought it and if the family all agree then it can be in my name, because they all agree to it. If they don't agree, then let them put it in their own name -

Héctor: - in the mother's name -

Adolfo: - yes, that's why it should be in the name of the person who bought it.

Jaime: There's something else to bear in mind, though. If it's the head of the family who buys the land, it's got to be his name that goes on the deeds because he's the only one who can divide it up between his children, to see who's going to end up with what, to see what can be done when he's no longer there. Because if you leave it to one of the children...

Jesús: They'll kick the others out.

Jaime: If you put it in the name of one of the children, then they're the owner, and the family no longer counts for anything (*la familia ya no es nada*)

Héctor: Your son will sell it.

Jaime: Whereas if it's the father, they've got to decide who gets what.

Adolfo: That's why we're saying that it's got to go in the name of the purchaser. If you're my father but you're not the one who bought it, I'm not going to put it in your name, because I'm the one the who needs it. In other words, it belongs to the purchaser. When it's the family, it should be the head of the family [whose name goes on the deeds].

Mariano: If we all agree and we buy a plot for all the family, it should be in the father's name.

Jesús: Yes, the main head [*la cabeza principal*]

Mariano: But only if they've bought it.

Jesús: If I'm the one who's bought it there's no way I'm going to put it in someone else's name. It wouldn't be right like that.

Adolfo: If you give it away...

Jesús: Ah well, if it's an inheritance...

Martín: There, I guess, an inheritance, we're talking about something else ...

Mariano: If they give it away as a wedding present [yes].

San Mateo, men's group, session 3

Box 8

Martín: Whose name should go on the title deeds of the house? If someone is already getting on a bit, should they put it in the name of one of their children?

General 'no'

Rodolfo: No, because they'll chuck you out.

Saúl: No. It should always go in the name of the person who knows most about the type of life they're leading (*el régimen de vida que se está llevando*), because a child doesn't think, and what's more if one day they want to be able to sell a child won't be able to, because they're minors.

Francisco: It's like - look, for example, you could put it for example in the wife's name and then the kids as beneficiaries. In other words it doesn't have to be just the one owner: I put it in my name and that way I protect them all, as beneficiaries.

Roberto: Now, what *el compañero* is saying about this business - whether or not you put the children down [on the deeds] as heirs -

Francisco: - as beneficiaries -

Roberto: - as beneficiaries, then ... Automatically, when you die, as head of the family, if the papers, the deeds, are in your name, then when you die, they are automatically beneficiaries: your wife gets half and your children get half.

Francisco: No, if you don't leave a will, then things get screwed up (*queda intestado y se jode*)

Los Encinos, men's group, session 3

Whose name should appear on title-deeds?: the men's view

The men's discussions of this subject are noticeably different from the women's. In both areas, and unlike the women, the men get caught up with the idea of who is head of the family and the relationship between generations. In San Mateo, they also engage on a discussion of the relationship between the purchaser and the head of the family, which is open to different interpretations (Box 7). A cynical view would be that they are trying to find ways of hiding self-interest behind apparently 'objective' criteria, such as who bought the plot (with no allowance for the issues raised by Lola in this context). When, however, Jaime points out that someone else in the family might have bought the land, they engage in a somewhat convoluted attempt to narrow the field by saying it should be the (male) head of family, providing that they purchased the plot. Another way of interpreting the apparent ambiguity in their statements might be that they are thinking of their own fathers, as suggested by Adolfo's intervention. Could it be that they have parents who are still alive, who are or might one day be living with them? If so, are they trying to say that although they might consider their father head of the family, they themselves should be recorded as the owner since they bought the land and built

the house (unless, of course, the plot was a gift, an 'inheritance in life', or a wedding present...)?¹²

Father-child, rather than husband-wife, relationships do indeed seem to dominate the men's thinking about whose name should appear on the title-deeds.¹³ Perhaps a threat to their security of tenure coming from a spouse is simply too remote for men to consider, whereas women are much more aware of their vulnerability in this respect. The men talk about protecting their wives and children; the women talk about being protected. In general, the women's relationship with property is an indirect, passive one that contrasts with the agency assumed by men in this context.

The men's main concern about property is that they cannot trust their children to take care of them when they are older or to respect each others' rights after their parents' death. The fact that the men foreground these concerns does not mean, however, that the women were any less aware of the problem. Both the women and the men cited examples (from their own families) of children depriving or trying to deprive their parents or their siblings of their property. The words they use in this context are revealing: 'one of the sons was *ambiciosillo* [ironically, 'a little ambitious']; 'before long the ones who want to try it on [*los más vivarachos*] are going to turn up'.

In this respect, the men's thinking about property echoes the widespread rural custom of the father using his control over property in order to maintain his headship of the family (González 1992 cited in Deere and León de Leal 1999). He may reserve the house and possibly the largest parcel for the youngest son, in exchange for care in old age, for example, or give out small housing plots to the older sons on their marriage, but will not divide up the farmland until his death. That a similar logic underlies urban men's attitudes to property is illustrated by Adolfo from San Mateo (Box 9).

Box 9

Adolfo: I think that's why there are wills, or papers kept in the family. So that he can say 'this is yours', or they can talk to the family, while they're still alive, so as not to let go of the reins [*para no soltarse*], 'this is the way your father wants it'. If you do it while you're still around - 'listen, lads, this is for this, and this is for this, right?'. If one of them is *vividor* he'll screw the others [*ya se jode a los demás*], but I think that while he [the father] is alive he can keep the deeds in his name because the head of the family, he's head of the family until he dies.

San Mateo, men's group, session 3

In short, it is because of his *responsibility* to be a good father and good head of the family - which amount to the same thing - that a man feels he has to keep control of the family property. He protects his wife and children, and seeks to keep the family united, and to guide them down the right path in life. It is a man's duty, as a father, to show those who will live on after him how to live an upright life - which includes looking after your wife, since this moral lesson is addressed primarily to the male subject, in the person of his sons.

Family conflicts over property

We have examined in some detail how women and men construe their relationship to property differently. The reason for doing this is that we believe it leaves women more vulnerable than men to abuse by either their partner or other family members leading to loss of their property. In the case of the *colonias populares*, this mean their home.

First, all the evidence indicates that in a majority of cases only the man's name is registered on the title-deeds. CORETT officials in the State of Mexico (responsible for much of Mexico City) reported that 'In general it is the husband who puts himself down as the owner (*titular*)'.¹⁴ The Federal District agency responsible for legalizing *colonias populares* on private land notes that:

The process of issuing title-deeds tends to favour men. This reflects a set of mostly traditional cultural values originating in provincial areas. These include common-property marriages; the man as head of household and primary decision-maker; and the demolition or construction of parts of the house as a unilateral decision taken by the man (DGRT 1994: 17-18).

Social workers in this agency reported that although women undertake most of the preliminary business, their husbands take time off work on the day that the deeds are to be signed, to make sure they are recorded as the owner.¹⁵

Second: in theory, it does not matter whose name appears on the deeds if, as will virtually always be the case in low-income areas, people chose the common property regime when they married. The property belongs equally to husband and wife. Sale by either spouse without the permission of the other is legally invalid (*CCDF* Art. 172, Pérez Duarte 1994).

Third: in practice, it does matter. If only one person's name appears on a document establishing ownership, it is possible for them to sell that property as if it were exclusively theirs:

when notaries formalize legal acts [such as a property transfer], they require the parties to present their marriage certificates and, if necessary, require both spouses to attend to authorize the transfer of deed ... [T]his policy has not had the desired effects, as all you have to do is to tell the notary that you are single if you want to get round [*burlar* - literally, to mock] this restriction (Pérez Duarte 1994: 258, 261)¹⁶

Thus, as Deere and León de Leal (1999: 30) note, 'if the wife's name does not appear on the land title, the husband may sell or mortgage this land without her consent'.

The legalization agencies' policy of inviting title-holders to name the people who are to inherit the plot in the event of their death (the 'beneficiaries') should make it more difficult for people to cheat their spouses in this way. If only a son or daughter are named, however, the owner could claim that the person whose name appears is their nephew or niece, or illegitimate, and that they themselves are single.¹⁷

The point we sought to establish in our discussion of the connection between one's status as subject and as property owner, and how this differs for women and men, is simply this: a man

will more readily be able to convince others that he is single, and therefore autonomous in property matters, than a woman. This is partly a matter of practicalities: a married woman adds her husband's name to hers, and proofs of identity presented to a notary will therefore reveal her marital status. The same does not apply to men. The difference goes deeper than practicalities, however: it is ultimately about concepts of the person. We have suggested that a woman gains her social identity as an adult in part through her relationship with her husband. Her status as a subject - her agency - is less secure than a man's. She gains her relationship to property, as Eloisa's statement shows, by a man's recognition of her as his wife and thus as someone entitled to be provided with a roof over her head by him. Women's contributions to land purchase, from money they have either earned or saved from the weekly budget, are generally not recognized fully (if at all) by either sex.¹⁸ If, in addition, we remember that men are traditionally more likely to hold title to land, and better able to afford it, we can predict that a woman claiming to be a landowner in her own right will be a far less credible figure than a man doing the same. It is not surprising that the men in the discussion groups seem not even to have considered the possibility of a threat to their property arising from the actions of their spouse. The evidence we gathered about disputed ownership of plots in *colonias populares* suggests that their confidence was not misplaced.¹⁹ We find it noteworthy that in the only case of a woman allegedly threatening her husband's property we came across, she was also accused of having murdered him!²⁰

There were more instances of men depriving or trying to deprive women of their property rights as a result of their relationship ending. We have discussed elsewhere the case of a man who threw his wife out and subsequently tried to sell their house in a *colonia popular* on the outskirts of Puebla (Varley 2000a). This is not the only case of a husband seeking to cheat his wife by ignoring or actively denying her claim to the property. In the east of Mexico City, for example, a man who had abandoned his wife claimed that the plot on which she was still living had been lent to them by his brother, the owner of two adjacent plots. The husband concealed the paper he had received from the *ejidatarios*, on which his own name appeared as the purchaser, and presented the courts with a letter from his brother concerning the supposed 'loan' of the property. He thus succeeded in having the property left out of the couple's divorce settlement. The woman could not therefore prove that it had formed part of their common property. Although she asked CORETT to legalize the property in her name, the man's brother also tried to have it legalized in his favour. The brothers were clearly working together to cheat the woman. In this instance, their ploy did not work. As the brother could not prove that he had ever been in possession of the property, CORETT eventually decided in favour of the woman, leaving it to the man's brother to challenge the decision in court if he so wished.²¹

In another Mexico City case, a woman brought a divorce case against her husband for adultery. He then divided the property in two, and 'ceded' half to his lover. He carried on living on the same half as his wife, in a new room he had built at the back, with the hope of having (at most) only that half of the property divided between them when the divorce settlement wound up the *sociedad conyugal*. He also tried to evict his wife. At the time of interview, CORETT were waiting for a judge's decision on whether or not the 'gift' to the lover was valid.²²

In both these cases, the man seemed unlikely to succeed in their attempt to manipulate the situation. Years of experience have taught the legalization agencies what kinds of problems to expect, and they have put in place procedures to help protect people's property rights against

this sort of manipulation. The agencies are particularly aware of the difficulties facing a woman who has been abandoned by her husband (Varley 2000a). A case from the south of the Federal District shows how in theory their procedures might benefit a woman in this position. A man had signed a contract with CORETT to start the legalization of the property he occupied with his wife of seven years and their two sons. A year later, before deeds had been issued, he left his family and went to live with his mistress and their children. After ten years had passed, during which the husband had shown no interest in the property, the wife sought to have it legalized in her name. As she had a Certificate of Abandonment (issued by the police), and neighbours willing to support her case, CORETT were able to make the change of name. The husband would have to challenge the transfer in court if he wished to claim half the property, and in the circumstances was unlikely to succeed.²³

We conclude that the law on *sociedad conyugal* protects the rights of both spouses, and legalization agency practices such as including ‘beneficiaries’ names on property documents should hinder attempts to circumvent the law. They are not always effective, however. A man seeking to sell common property as though it were his own is more likely to be believed than a woman. In addition, illegality of tenure clouds the issue, making it more difficult for a woman to establish her rights in a plot of land. If legalization agencies or the courts reach a decision that goes against her legal rights, her only recourse will be to challenge that decision in (a higher) court - *if* she can afford to do so.

There is in short no single problem that can be identified as the source of what we believe to be women’s greater vulnerability to loss of their property in Mexico’s *colonias populares*. The problem arises from a combination of cultural norms denying women full agency in relation to property but requiring men to exercise ownership in order to be good husbands and fathers; illegality of tenure clouding property matters and disrupting the application of family law; and inadequate or inappropriate action by the courts. In theory, the courts have the power to order their own investigation of the facts behind family law cases. In practice, however, they often make decisions on appearances rather than investigating further.²⁴ Thus, the spouse who leaves home is vulnerable to accusations of abandonment, and may end up losing their share of the property, if they cannot prove that they have had to leave for a valid reason.²⁵ CORETT officials in the State of Mexico told us of a case in which a wife left and the husband then moved another woman in to live with him; the property was subsequently legalized in his name.²⁶ How often must something similar happen, whatever the rights and wrongs of the case? Indeed, this may help to explain why agency officials report dealing with more problems between parents and children than between spouses. Perhaps it is simply too difficult for most married women to defend their property rights, so they do not even try to do so; and if it is difficult for wives to defend their rights in the home, it is surely more difficult still for those who are not married but living in consensual union.

Conclusion: is equality possible for married women?

We have shown that in Mexico’s *colonias populares* women are indeed less likely than men to be recognized, either by themselves or others, as ‘fully-acting subjects’ in relation to property. This undermines the supposed equality of married men and women established in Mexican civil law after the Revolution. The most obvious expression of married women’s problematic relationship to property is that it is their husband’s name that is likely to appear on all documents concerning land transactions or ownership. Illegality of tenure further clouds the issue, leaving wives vulnerable to attempts to deprive them of their legal share of the land and

house belonging to a married couple. We believe that women who are not formally married are in an even worse situation, in spite of their enjoying *some* of the same rights as married women. It can surely not be a coincidence that Lola, the only woman in our discussion groups to insist on both partners' names appearing on title deeds, was not married.

Although we have concentrated on threats to women's security of tenure arising from their husbands' behaviour, we believe that a woman's not having her name on property deeds must also render her more susceptible to losing her property to other relatives prepared to act unscrupulously.

The immediate practical conclusion must be that, as Deere and León de Leal (1999: 34) argue, 'joint titling of land and other real estate is of crucial importance to the economic security of women'. Women should insist either on both names being entered on property documents, or even theirs alone.

There is, however, a problem with this recommendation, in that, if people wish to raise loans on their property, they may find themselves unable to do so if the plot is registered as belonging to a wife who is not in formal employment. Credit agencies will often loan money only to people with a regular income who can secure the loan against property registered in their own name. In practice, most families in the *colonias populares* would rather raise money informally from relatives if they need to do so (Varley 1987). Owners of legalized properties are in any case less likely to need loans for home improvements than those in newly-settled areas, because most expenditure is needed in the early years, while the *colonia* is still illegal. The issue arises more acutely in housing projects supported by government departments or non-government organizations, in which land must be obtained legally before construction can be organized (Coulomb and Sánchez Mejorada 1992). A member of the Mexican branch of Habitat International Coalition's Women and Shelter Network roundly denounced to us the notion that title deeds should be issued in the woman's name, because, she argued, it would hinder the family's ability to obtain credit.²⁷

Thus, married women need to insist that their right to joint ownership is recognized, but if they do so they may exclude their family from the credit market. If women in housing projects are to gain access to credit, they must tolerate the insecurity that, despite the formal protection of *sociedad conyugal*, arises from not having their name on property documents. This looks like another instance of the conflict between legal equality and economic inequality that has been widely reported in other contexts. It may be one reason why organizations seeking to do something about women's housing problems often focus on *single* women (Varley 1996). The only specific 'gender' project of the Women and Shelter Network members concerned single mothers, for example. It seems that the challenge that feminist practice in development has greatest difficulty in facing is that presented by married women. The legacy of married women's historical subordination is still with us.

Notes

¹ *Gendered housing: identity and independence in urban Mexico*, Economic and Social Research Council, UK, Research Grant R 000 23 6808.

² The discussions in the women's groups were facilitated by one of the authors (Blasco); those in the men's groups were facilitated by Martín Ortíz González.

3 *Ejido* land was intended for agricultural use by the beneficiaries of Mexico's agrarian reform. Until the
1991-92 constitutional reforms, *ejido* land could not legally be sold and any sale that did take place was
legally invalid.

4 Although Alicia Pérez Duarte (1994: 259) goes so far as to say 'to date, not a single marriage in the
Federal District is known to have been based on *capitulaciones matrimoniales*', Manuel Bejarano y
Sánchez (1994: 116) refers to a 1993 Federal District legal case in which the details of the
capitulaciones matrimoniales in one marriage are discussed. Pérez Duarte's assertion nonetheless seems
to be generally valid. The failure to formalize *capitulaciones matrimoniales* has been observed elsewhere
in Latin America (Deere and León de Leal 1999: 30).

5 Goods may be withheld from the common property if they are inherited by or given to one of the
spouses.

6 Figure based on female population of 12 years or over. Data from 1995 Encuesta Nacional de Empleo
(reported in INEGI 1998: 34). It is worth comparing these figures with those for the 1980s reported for a
range of countries by Deere and León de Leal (1999: Table 7.3). The only figure lower than the
Mexican one cited was 4.8% for Chile; the highest figure cited was 54.0% for Honduras, and a figure of
63% has been reported for El Salvador. The authors are however right to point out that census takers are
unlikely to challenge an assertion that someone is married when they are in fact living in consensual
union, so census figures probably underestimate the proportion of consensual unions.

7 I.e. none resulting from the relationship itself. They could always, of course, have bought property
expressly as co-owners - for example, as two brothers or sisters might do.

8 Our references to the 'right' to inherit concern what happens when the deceased has left no will:
Mexicans can leave their property to whomsoever they choose. Discussion with government officials,
lawyers and the residents of *colonias populares* suggests that most residents die intestate.

9 The Court apparently wanted to see evidence that the couple were living on the plot at the time of the
wife's death. Although evidence to this effect may have been available from CORETT, the Court
considered only the document recording the land transfer in 1964 (as far as can be ascertained from the
extract from the judgement reproduced by the author). The Federal District Civil Code defines
possession in terms of having a '*de facto*' power over something, and therefore 'enjoying' it (CCDF, Art.
790). It does not as far as we can tell require the possessor of real property to be living on it.

10 All group members' and *colonia* names have been changed.

11 The word Eloisa uses in citing her friend's advice is *cediendo* - 'ceding'. In *ejido* areas, land which
cannot legally be sold is transferred to the new occupiers under the pretext of a *cesión de derechos*: the
ejidatario 'cedes' their rights to the land to someone else. Eloisa's friend seems to draw on this process
as an analogy to show how Eloisa can legitimately claim ownership although her husband's name was
on the original documentation.

12 An 'inheritance in life' (*herencia en vida*) is a share of someone's property that you receive while that
person - usually your parent - is still alive. Although it might sound like a gift, the beneficiary can
expect to receive nothing more after their parents' death. There is clearly potential for this system, which
depends on family consensus, to go awry if the parent dies intestate (in which case all children inherit
equally from their deceased's share of their parents' estate). Although the many problems with *herencia
en vida*, and with people dying intestate, were noted by the group participants, this particular connection
between the two was not discussed.

13 Although it is worth noting that the facilitator's question, in Los Encinos, may have led the group
members to emphasize this theme.

14 Interview with social worker, CORETT, State of Mexico Delegation, 18 September 1998.

15 Interviews with head of Social Section, General Director of Land Tenure Legalization (Dirección General de
Regularización Territorial, DGRT), Department of the Federal District, 27 April 1994, and with social
workers in the same agency, 28 April 1994.

16 All translations from Spanish by the authors.

17 We are unclear, moreover, about the exact legal significance of the naming of 'beneficiaries' on
legalization agency documents.

18 The difficulty of identifying married women's occupations via social surveys are well known, given that
they tend to say they do not 'work', acknowledging, only if pushed, that they help out in some small
way. To be unable to keep a wife is regarded as undermining a man's masculinity, so women's reticence
is understandable (see also Melhuus 1996).

19 We refer to the cases of family conflict described in the discussion groups, and to cases recounted to us
by legalization agency officials. We had hoped to conduct a more systematic survey of family conflict in
CORETT's offices in Guadalajara, but were unable to gain access to these records. Archival work in the
courts proved unhelpful because of the variety of cases all filed together.

- 20 Interview with officials of the CORETT Delegation in the Federal District, 19 September 1998. The accusation came from the husband's mother, who had been evicted by her daughter-in-law after the man's death, and must clearly be regarded with considerable scepticism, especially as no prosecution was brought. The circumstances of the death (of a man in his twenties) were certainly unusual.
- 21 Interview with officials of the CORETT Delegation in the State of Mexico, 18 September 1998.
- 22 Source as note 20.
- 23 Source as note 20. The spouse who abandons the other, without just cause, for over six months loses their right to benefit from the *sociedad conyugal*, and can only regain it with the express consent of the other spouse (CCDF, Art. 196). The spouse who is found 'guilty' of causing the breakdown of a marriage has to pay the other maintenance and make good any losses caused to the 'innocent' party; their property can be used to ensure payment of maintenance for their former spouse or their children (CCDF, Arts. 288, 317).
- 24 Interview with lawyer specializing in family and civil law matters, Bufete Jurídico (free legal advice service), Universidad Autónoma de Puebla, 7 August 1995.
- 25 See note 23. 'Valid' reasons include being obliged to leave, and any cause sufficient to lead to the other spouse being found 'guilty' of the breakdown of the marriage. In such cases, the spouse who leaves must sue the other for divorce within a year if they are not to become 'guilty' of abandonment (CCDF, Art. 267).
- 26 Source as note 21.
- 27 Workshop on women and housing held with representatives of HIC Women and Shelter Network, Mexico City, April 1998. HIC is an international umbrella organization of housing-related NGOs.

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