Liberalism and Married Women ≠ Property Rights:

Continuity and Change in Nineteenth Century Latin America

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I. Introduction

At the beginning of the twentieth century married women’s property rights in Latin America were characterized by two paths. All South American countries maintained their colonial marital regime, which was that of either partial (Hispanic America) or full (Brazil) community property. In contrast, Mexico and the five Central American countries had established the separation of property regime—where each spouse owned and controlled his/her own property during marriage—as either a formal option or as the default regime (what governed if not declared otherwise at the time of matrimony). Moreover, whereas most South American countries maintained the colonial inheritance regime of restricted testamentary freedom with some modifications, Mexico and Central America had established full testamentary freedom. This raises the question of why Latin America is characterized by such divergent paths with respect to family law. Moreover, what difference did the more profound liberal reforms in Mexico and Central America make in terms of women’s access to and control over assets?

Liberalism as a doctrine of individual rights emerges from the Enlightenment and was the leading intellectual current of the nineteenth century in Latin America as in Western Europe and the United States. The Latin American independence struggles were greatly inspired by the banner of the French revolution, equality, liberty and fraternity. Everywhere in the region notions of individual freedom, guarantees to private property and representative democracy were incorporated into the new constitutions and civil codes. As is well known, all women and various classes of men were excluded from citizenship. But to what extent did liberal notions of individual freedom and private property come to bear upon the property rights of married women?

By the mid- to late nineteenth century most Latin American countries were characterized by the formation of 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, measures to foment a market in land and labor, and secularization or at least a reduction in the economic and political power of the Catholic church. The liberal revolutions are generally understood as those moments when liberal parties gained power and successfully implemented several or all of these measures. To what extent did these liberal revolutions enact or modify legislation to extend the concepts of individual freedom and economic autonomy to the domain of the family and, specifically, the position of married women?

Silvia Arrom (1980; 1985a; 1985b), who pioneered the feminist analysis of nineteenth century civil codes in her study of Mexico, argues that the liberal reforms, by strengthening individual freedom reduced the patriarchal dominance of the family. While gender equality was not the goal, the expansion of individual freedom reduced some of the distinctions between men and women before the law (Ibid.: 1985b: 305, 315). Elizabeth Dore (2000) takes issue with what she considers to be the generally positive, orthodox interpretation of the impact of liberalism on gender relations. This evaluation has largely been based on liberal policies which supported women’s education and labor
force participation and hence, their entry into the public domain. Focusing on women’s property rights in Mexico and Central America, she argues 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.

This paper investigates the impact of liberalism on married women’s property rights in fourteen Latin American countries (see Table 1). Our primary objective is to set the record straight in terms of what the liberal revolutions, and liberalism more broadly, did or did not do in terms of married women’s property rights. Our research focuses on the comparative analysis of the nineteenth century civil codes and marriage laws. The question of the impact or consequences of legal change on the position of married women in practice will have to await future research. Our analytical framework privileges the potential of these legal changes for enhancing the bargaining power and economic autonomy of married women as a means of contributing to their empowerment. It is in these terms that we evaluate gender-progressive legal change.1

In the next section we introduce the nineteenth century civil codes that we study. Our entry point into married women’s property rights are the regulations regarding marriage and divorce since it is the act of matrimony that changed a woman’s status.2 Thus in the third section we briefly review the

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1 Following Agarwal (1994: 9), we define gender-progressive as those laws, practices, policies, etc. which reduce or eliminate the inequities (economic, social or political) that women face in relation to men. See Agarwal (Ibid.) and Deere and León (2001a: chpt. 1) for a full development of the bargaining power framework.

2 In colonial and nineteenth century Latin America emancipated single women had the same property rights as single men (Arrom 1985a: chpt. 2). Moreover, there is a growing body of evidence that consensual unions were much more common than formerly assumed, meaning that a large proportion of adult women were technically single; many single women were also household heads (Kuznesof, 1989; Dore, 1997). In some countries, however, such as Costa Rica formal marriage was on the rise during the nineteenth century (Rodriguez 2000b: 19-21).
century-long conflict between church and state over civil matrimony and divorce since this provides the context in which civil code reform took place. The fourth section focuses on the three main components of married women’s property rights: their limited juridical capacity due to male household headship; the marital regime; and the rules of succession. Our intent in this section is to assess the degree of continuity and change with respect to Spanish and Portuguese colonial law with independence up through the 1870s. The fifth section considers the liberal revolutions in Mexico and Central America and how, why and the extent to which the concepts of individual freedom and economic autonomy permeated family law in their civil codes of the late nineteenth and early twentieth century. The sixth section offers some tentative conclusions.

II. The Republican Civil Codes

It was not until the second half of the nineteenth century that most Latin American countries adopted their first Republican civil codes. This was not because of lack of effort. Rather, political instability besieged many of the new republics in the first fifty years after independence. Drafting commissions were appointed and disbanded with frequency. The first country to adopt its own civil code was Bolivia in 1830. As Table 1 shows, over the next two decades Bolivia was followed by Costa Rica, Peru and Chile in promulgating a civil code. The primary author of Chile’s 1855 code was legal scholar Andrés Bello, a Venezuelan who had been secretary to Simón Bolívar and pleaded the cause of Latin American independence in England in the 1820s. This code was copied in large measure throughout the Andes (Ecuador, Venezuela, Colombia) and Central America (El Salvador, Nicaragua) and greatly influenced other codes. We refer to this set of six as the Bello codes.

Mexico followed a different trajectory. In 1857 President Benito Juárez appointed Justo Sierra to draft the country’s first civil code, a task he finished in 1861. It was subsequently reviewed and revised by a special commission that continued to work during the French Intervention. Emperor Maximilian decreed their draft of the first two tomes as Mexico’s first civil code in 1866 (Mendez 1897). It was short-lived, since it was abrogated when Maximilian was executed and another drafting commission appointed. The code for the Federal District and territories (that became the model for most states) was promulgated in 1870 (Arrom 1985b: 306).

By the time Honduras and Guatemala enacted their own civil codes in the last quarter of the century,
during the period of their respective liberal revolutions, other Central American countries were re-drafting their initial ones in more liberal directions. Brazil is the only country to have been governed for most of the nineteenth century by colonial legislation with regard to civil matters, partly due to the fact that it remained a monarchy from independence in 1822 to 1889, and that there were four unsuccessful attempts between 1859 and 1899 to draw up a new civil code before the final version (completed in 1900) was approved in 1916 (Wheless 1920: xiii). In the intervening years between independence and the promulgation of new codes most countries decreed the colonial codes (civil, commercial and penal) to be in force. These were sometimes partly modified by specific legislation, such as the laws on civil matrimony and divorce.

It is sometimes argued that the continuity of potestad marital (the sum of rights that the law gives to the husband over the person and property of his wife) was largely due to the influence of the Napoleonic code in Latin America (Leret 1975: 59; FAO 1992: 15, 22). We argue that this is a gross exaggeration. As regards married women’s property rights, the continuity with Luso-Hispanic legal tradition was much greater than French influence. While the Latin American codes were inspired by the individualism and egalitarianism of the French Revolution, the early Republican codes differ in significant ways from the Napoleonic code of 1804 with respect to family law. A detailed examination reveals not only the continuity with the colonial legal tradition, but that Latin American countries began to reveal their own unique personalities through the civil code legislation. This is surely because of the heterogeneity in how colonial family law was actually implemented in the various parts of the far-flung Spanish and Portuguese Empires. But undoubtedly, it also must reflect the differing content of the particular debates over individualism, equality and gender roles that developed in specific historical circumstances.

III  Contract or Sacrament? The Struggle over Civil Matrimony and Divorce

The great drama of the nineteenth century, one that was played out in just about every Latin American country, 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 as regards the family was the possibility for civil matrimony and divorce. Whereas the church viewed marriage as a holy sacrament, for liberals it represented a contract, one that should be totally regulated by the state.

5 Art. 132, Chile (1856).

6 Another key issue as regards 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 the number of times a day church bells could be rung.
In colonial Latin America the Catholic church, as the one and only official church, determined most of the rules governing marriage and divorce. It regulated the conditions (such as the impediments to marriage and their dispensation), the ceremony, and the registration of marriage. It also determined the circumstances under which couples could attain an annulment, or a temporary or permanent separation (known as ecclesiastic divorce, without the possibility of remarriage) and mediated such conflicts. Since marriage was a sacrament, a couple was joined together for life. A corollary was that marriage must be based on voluntary choice-- the exercise of free will-- a position reinforced at the Council of Trent.

According to Patricia Seed (1988: 32-35), the resolutions of the Council of Trent (1545-63) were the Catholic church's response to the protestant challenge of the period. Whereas protestants where advocating the secularization of marriage and a stronger role for parental consent, the Catholic church resolved to strengthen marriage as a sacrament, the church's exclusive jurisdiction over it, and the role of individual consent. The Catholic monarchs of Spain and Portugal supported the Council of Trent by subsequently over-riding, for example, provisions of the Siete Partidas that had required parental permission for the marriage of daughters and sanctioned their ability to disinherit them if they married against their wishes. The Church regulated the minimum age for marriage twelve for girls and fourteen for boys, the age at which individuals were considered capable both of procreation and exercising their own will. Marriages by individuals under this age or that were entered into under the duress (such as by parental coercion) provided grounds for annulment.

The civil implications of marriage and divorce were the province of the State. Thus once marriage had been consecrated by the Church or a separation decreed, the State determined the property arrangements of the sociedad conyugal and of its dissolution. The State also defined the rights and responsibilities of parents over children, and in the absence of parents, of guardians. In addition, it determined the age of majority (twenty-five), the age at which individuals attained civil capacity, and the process through which they obtained emancipación. Children of both sexes were subject to paternal authority (patria potestad) until their father's death, their marriage, or until they were official emancipated by their father or court order (Arrom 1985a: 58; Nazarri 1991: 61).

The first major encroachment on the church's prerogative over marriage came during the period of the Bourbon reforms. Royal pragmáticas of the 1770s in both Portugal and Spain strengthened parents' right to veto their children's choice of marriage partner if there were great inequality among them, aimed primarily at stemming inter-racial marriages. In requiring paternal permission for marriage

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7 Royal Pragmática of 23 March 1776, Libro X, Titulo II, Ley IX of Novísima Recopilación (in Galván 1831). The Marriage Pragmatic was extended to the Spanish colonies in 1778. In Portugal similar laws aimed at unequal marriages had been passed in 1772 and 1775, allowing non-emancipated sons and daughters of whatever age to be disinherited if they married without parental consent. Nazarri (1991: 131) also points out that the Portuguese family legislation of this period was inconsistent. Another 1775 law empowered judges to approve the marriages of couples who had not obtained parental consent if it was considered convenient and a 1784 law allowed those 25 years of age and
by daughters under the age of 23 and sons under 25, the state sought to tip the balance between individual choice and parental consent in favor of the latter, principally by providing that children who married without parental approval could be disinherited. At the same time it required parents to have a just and rational reason for doing so, such as gravely offending the honor of the family or being prejudicial to the state. Moreover, these decrees moved jurisdiction for solving these familial disputes from the church to the state. While generally interpreted as reflecting the Bourbon state’s interest in furthering secularization while strengthening social stability, this move was in discord with the liberal tenet supporting individual freedom and the right of individuals to enter into contracts.

The French Constitution of 1791 and Civil Code of 1804 combined both secularization with support for individual freedom. France was the first Catholic country to make civil marriage obligatory and to allow for civil divorce with the possibility of remarriage. Moreover, marriage could be dissolved not only due to the transgressions of one of the partners, but also by mutual consent. Further, the age of majority was lowered to 21 for all acts of civil life, save marriage. The age of consent for marriage without parental approval was maintained at 25 for men, but lowered to 21 for women, perhaps because of the importance of the patrilineal line in the transmission of property. In another innovation, the consent of both the father and mother was required although if there was disagreement between them, the wishes of the father were to prevail. Moreover, against explicit Catholic church canon, the minimum age for marriage was raised to 15 for women and 18 for men.

In contrast, all of the initial Republican civil codes in Latin America recognized the Catholic church as the official church and left marriage and divorce largely in its hands, replicating the colonial rules.

over who were not legally emancipated to marry without parental consent.

8 In the absence of the father, maternal permission was required, but by a subsequent Royal Pragmática of 1803, the age of consent was lowered, to 22 for women and 24 for men. If the parents were deceased, this prerogative passed first to the paternal and then to the maternal grandparents and finally, to the judge or guardian, with the age of consent lowered further to 21 and 23 and 20 and 22, respectively (Libro X, Titulo II, Ley XVIII, Novíssima Recopilación, in Galván 1831).

9 See Seed (1988: 195) and Gutiérrez (1991:315-317) on how under Charles III the Spanish crown undertook to curtail the independence of the Catholic church in a multitude of ways. They also interpret these Royal Pragmáticas as an effort to strengthen patriarchal control of the family, which could perhaps be seen as an alternative to the social stability provided by church control. Nazarri (1991: 131) suggests that the Portuguese decrees were in reaction to the rising importance of romantic love among young people which was perhaps leading to more unequal marriages, particularly by sons.


11 The Republican civil codes usually go into great detail on the impediments to marriage and the conditions under which marriages could be annulled or for legal separation, but here they generally
The contentious nature of the issue of civil marriage and divorce in nineteenth century Latin America is illustrated in Table 2. It shows that its adoption was a piecemeal process in the region, one that dragged on well into the twentieth century, for this issue more than any other came to signify the separation of church and state (Molina 1970). Thus in the first two countries to sanction civil matrimony and divorce--Guatemala and Colombia--the legislation was subsequently rescinded.

replicate the canons of the Catholic church and leave it to the church to enforce these provisions and solve disputes.
The civil marriage and divorce legislation of 1837 in Guatemala was passed in the period that it was a state under the Central American Federation. Crafted under the leadership of liberal Mariano Gálvez, it became popularly known as the Ley del Perro and was among the reasons he was deposed in 1838 (Mata Gavidia 1969: 324-325).\footnote{A number of laws regarding civil matrimony and divorce were passed in Guatemala between 1829 and 1837, with Law 1201 of 28 August 1837 being the most comprehensive. It is difficult to pinpoint when it was abrogated for in the compilation by Pineda de Mont (1872) there are a number of laws dating from 1838 to 1840 that rescind previous laws that reduced matrimony to a simple civil contract (such as Law 1170 of 19 October 1840) but Law 1201 is not specifically mentioned. This case merits further research.} Four decades passed before civil marriage was again reconsidered. During 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.\footnote{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 were church marriages were recognized if duly registered.}

In Colombia, the decree on civil marriage and divorce was approved during the height of its Liberal revolution of the mid-1850s. Opposition to civil divorce by the church and Conservative party was so strong 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 predominated in restricting civil matrimony to non-Catholics. Due to the power of the Catholic church in this country, it took almost a century for the issue of optional civil matrimony and divorce to reappear on the agenda (Gallón 1974:43-70; Contreras et al. 1996).
In Table 2, we can distinguish two patterns, the countries where civil matrimony was adopted in a piecemeal fashion (Guatemala, Colombia, Venezuela, Argentina, Cuba, Honduras and Peru), and those where from the start it was obligatory and remained so (Mexico, El Salvador, Chile, Uruguay, Costa Rica, Brazil and Nicaragua, and finally Ecuador and Bolivia in the twentieth century). Mexico was the first country where the original law on civil matrimony, passed during the height of the Liberal Reforma period, was to prevail henceforth, perhaps because the issue of civil divorce was not seriously considered 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.\footnote{According to Arrom (1980: 510-11; 1985b: 311) civil divorce was under discussion by the late 1860s and adamantly opposed by leading jurists. It was thus not incorporated into any of Mexico’s nineteenth century civil codes although the grounds for separation were gradually expanded.}

With the exception of El Salvador, after the aborted attempts of Guatemala and Colombia, no countries attempted to introduce both civil marriage and divorce simultaneously until Costa Rica successfully did so in 1887, indicative of the continuing power of the Catholic church and its vehement resolve to oppose such in most countries. Costa Rica achieved both measures in a period when liberal power was hegemonic and the Catholic church in disarray as a result of persecution (Rodríguez 2000a).

One of the salient points raised by feminist scholars about this century-long struggle over civil matrimony and divorce is that its liberal protagonists and the Catholic church and its allies (generally, the conservative parties) shared a similar view of the ideal model of the family, matrimony and gender roles (Arrom 1980, 1985a, 1985b; Bermudez 1992; Rodríguez 2000a, 2001; Dueñas 2001). They 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, to be necessary for social stability, peace, and progress. Neither liberals nor conservatives in the nineteenth century had broken with the colonial view of society as a set of hierarchical relations based on patriarchy. In Silvia Arrom’s (1985b: 310) 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. Neither side questioned traditional gender roles that reserved the public sphere to men and relegated women to the private, domestic realm. Moreover, by the last quarter of the nineteenth century both Liberals and the Catholic church were generally in agreement that the ideal marriage was based on love and companionship. Both were exalting women’s role as wife, mother and housewife, and generally accepting that appropriate education for women supported these roles (Rodríguez 2000a; 2001).
The point of contention was who was 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. While for centuries the Church had recognized some of the contractual aspects of marriage (such as property rights), the reason that it opposed civil matrimony so vehemently in Latin America in this period was the fear that recognition of civil marriage would inevitably lead to civil divorce. Thus it equated civil matrimony with concubinage and predicted that, being against the moral and social order, this would lead to the break-up of the family, a diminution of paternal power and the abandonment of children, promoting instability (Rodriguez 2000: 154).

Liberals and the Church had very different views of the expected outcome of divorce. Liberals contended that it would produce greater harmony within the family and more social stability, since by allowing those cases of irretrievable conflict to be dissolved, remarriage would give these individuals a new opportunity to find marital bliss. Consider the following statement by one of Colombia’s most ardent Liberals at mid-century, Salvador Camacho Roldán, which also emphasizes the growing emphasis of romantic love in marriage:

El lazo conyugal consiste en el afecto recíproco de los esposos, el cual jamás puede ser creado por el precepto de una ley. Las garantías de duración del matrimonio no pueden ser distintas de las de duración de los afectos y éstas no pueden mantenerse sino por la ternura cuidadosa de la mujer, la nobleza de los sentimientos del marido, su gratitud por la que llena su vida de encantos y por sus hijos que, prendas de un amor común son el lazo más fuerte que une al corazón de los esposos. La indisolubilidad del enlace es frecuentemente la causa de la frialdad y aun tal vez de la desavenencias de los matrimonios (in Bermúdez 1992: 152).

One of the strongest arguments offered by the Catholic church against civil divorce was that it would be bad for women, leading to their degradation, for they would lose the protection and security that indissoluble marriage gave them (Rodríguez 2000a.; Dueñas 2001: 9-12).

Missing in the great debates over civil marriage and divorce was any acknowledgement of what civil divorce might mean in terms of women’s bargaining power within the family and for their economic

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15 But not all liberals were anti-Catholic; rather, they wanted religion confined to the private rather than public domain. Another aspect in the debate was freedom of religion (Molina 1970: 115). Among the arguments put forth in a number of countries in support of religious freedom was that it would encourage immigration from Western Europe.
autonomy. From a feminist perspective, civil divorce increases women’s bargaining power because if the conditions of marriage become too oppressive they have the option of leaving it. Of course, whether exit is a real option depends on a woman’s fall-back position, her ability to survive economically outside the marriage (Deere and León 2001a: chpt. 1). Among the factors determining this fall-back position is women’s ownership of property, their employment prospects, and the extent of familial and community support networks. As we will argue below, the default marital regime in Latin America was relatively favorable, providing women with a fairly strong fall-back position. Perhaps as Christine Hunefeldt (2000: 299-300) argues in the case of urban Peru, ‘where 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’.

One of the ironies about the great debate was that although the issue of divorce had a lot to do with the role of women within the family and their presumed needs and aspirations, the role of women in this debate has largely been invisible. What few references we have found to women suggest that they were generally in opposition to civil matrimony and divorce, perhaps due to their greater active practice of the Catholic faith and hence support for the positions of the Church hierarchy. But their public role appears to have been very limited. For example, in Peru where civil matrimony was under intense debate during the period of liberal dominance in 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 (Klaiber 1992: 63). 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 (Bermúdez 1992: 165-166). This point is well illustrated in the novel Soledad: conspiraciones y suspiros (Galvis 2002), a novel about the woman who led former Colombian liberal leader Rafael Núñez to reconcile with the Catholic church during the Regeneración.

In evaluating the role of women in the debate over civil matrimony and divorce it is also important to

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16 Rodríguez (2000a:147), 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. An exemption may be Brazil, where the law on civil matrimony was approved in 1890 immediately after the overthrow of the monarchy. Hahner (1990:18-19) cites a feminist publisher who actively championed divorce in this period, but it appears that it was in subsequent decades that women began speaking out in support of divorce. Leading Brazilian jurists at this time soundly rejected absolute divorce and provisions for it were not included in Brazil’s 1916 civil code (Almeida 1999: 55-68).

17 Civil matrimony had been proposed in 1847 by the commission that drafted Peru’s first civil code, but they were not in unanimity over this provision. During the congressional debate the conservatives prevailed and it was not included in the 1852 civil code although the discussion continued throughout this decade (Clagett 1947: 28 and Hunefeldt 2000: 84-85).
take into account that in countries such as Mexico, Costa Rica, and Peru it was overwhelmingly women who were filing for ecclesiastic divorce during the late colonial period and first half of the nineteenth century (Arrom 1985a: 210; Rodríguez 2000a: 161; Hunefeldt 2000: 288). The number of ecclesiastical divorce cases in each country was quite small given that it was a difficult, costly and even shameful process. Thus while such proceedings are not a good indicator of the demand for civil marriage and divorce among women, it does suggest that women more than men needed a means to end marriages which had become insufferable.

Where civil divorce was successfully adopted in the nineteenth entury, it was usually only on the grounds of culpability of one of the spouses, most usually for the same reasons that the Catholic church permitted ecclesiastic divorce (adultery, bigamy, extreme cruelty and abandonment). Divorce by mutual consent was usually the last step in a process. But the trend in the civil codes of the last half of the century was to expand the reasons for separation of unions, 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 the 1877 Costa Rican code. Arrom (1985b:311) 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.

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18 Estimates for Lima indicate that somewhere between four and six percent of married couples where engaged in ecclesiastical divorce suits during the nineteenth century (Hunefeldt 2000: 148). See Hunefeldt (Ibid: chpt. 5) excellent analysis of the difficulties of the process.

19 While the civil divorce provisions in Costa Rica’s 1877 civil code did not include divorce by mutual consent, its inclusion as a reason for separation opened the way for divorce by mutual consent since after two years of separation one of the spouses could request a divorce (Rodríguez 2000a: 159).
Returning to the initial Republican civil codes, the main change that took place in a number of countries with respect to the rules of matrimony had to do with the age of majority and/or the age at which individuals could marry without parental permission. Distancing themselves from the Bourbon reforms, and firmly following Liberal tenets, many countries lowered this threshold from 25 to 21 or 22 (see Table 3, rank ordered by year of initial civil code or marriage law). In contrast to the Napoleonic code, many established the same age of majority and at which marriage could take place without parental permission, with the age of majority now equivalent to full emancipation (Brazil, Peru, Ecuador, Mexico, Guatemala, and Honduras). None copied the French code to perfection, with the Bolivian code of 1830 being the most similar. Few followed the French example of challenging the Church's prerogative to determine the minimum age required for marriage.

Overall in Latin America the age of majority was lowered before the issue of civil matrimony and

20 The Colombian legislation of 1826, the first in Latin America to lower the age at which individuals could marry without parental consent, was inspired by the Napoleonic code in a different respect. The original legislation was subsequently amended so that women between the ages of 18 and 21 and men between 21 and 25 were still required to ask paternal permission, but if this permission was denied a second time, the marriage was allowed to proceed after a six month delay (Dueñas 2001: 5). The Napoleonic Code had similar provisions, but for women between the ages of 21 and 25 and men between the ages of 25 and 30 (Arts. 151 and 152, in Barrister 1804/1999).

21 Mexico was the first country to do so in its short-lived 1866 code, with the minimum age for marriage raised to 15 for women and 18 for men (Art. 103, Mexico 1866). It was subsequently lowered in the 1870 and 1884 codes to follow Catholic church canon, 12 for women and 14 for men, making it consistent with the 1859 legislation on civil marriage (Mateos Alarcón 1904: 81).
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,\textsuperscript{22} the notable exception being political rights, with women in all countries denied the vote or the ability to stand for elected office. The main gender difference was linked to a woman’s marital status, with married women continuing to be relatively incapable, as we will see in the next section.

\textsuperscript{22} Mexico is an anomaly here for 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 (Mexico 1870: 34; Arrom 1985b: 308).
The most important consequence of the lowering of the age of majority was that it potentially increased the bargaining power of children over parents with respect to marital choice. It thus created the legal basis for individuals to marry more easily following the dictates of romantic love. This was supported by the ability of children to legally manage their own inheritances (such as from grandparents or other relatives) at an earlier age, and their 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 rules over the course of the century. Overall, however, we concur with Arrom (1985a) that the lowering of the age of majority augmented individual freedom while weakening patriarchal authority.

III. Continuity and Change in Married Women’s Property Rights

In this section we examine each of the three components that make up married women’s property rights: household headship; the marital regime; and the rules of inheritance. We first describe the colonial norm  and then analyze the degree of continuity and change in the initial Republican codes up

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23 As Arrom (1985b:307) concludes, the lowering of the age of majority combined with its redefinition as equivalent to emancipación probably affected unmarried children the most. For in the colonial period they alone had been subject to patria potestad after the age of majority. By allowing young women at 21, for example, to take a job without parental permission it potentially increased their economic autonomy as well as the option of not marrying at all.

24 The main codifications governing Hispanic America were the Siete Partidas de Alfonso X, el Sabio (of the mid-13th century); the Ordenamiento de Alcalá (1348); the Leyes de Toro (1505); the Nueva Recopilación de las Leyes de Castilla (1567); and the Novíssima Recopilación de las Leyes
through the decade of the 1870s.

*Household Headship*

Three interrelated aspects of colonial law defined the husband as the head of household and the sole legal representative of the family: he administered the common property of the couple as well as his wife’s property; he had *patria potestad* over the children; and the limited juridical capacity of married women. Thus while marriage produced the emancipation of a daughter from her father’s tutelage, she passed directly to that of her husband.

The *Leyes de Toro* spelt out what a wife could and could not do during marriage: she could not enter into a contract of any type or initiate a lawsuit without her husband’s permission. But a husband could give his wife a general or specific permission to enter into contracts, as could a judge in his absence, or ratify contracts made by her after the fact. A wife could also without her husband’s permission initiate a lawsuit against him to recuperate her dowry (for poor administration) or to initiate an ecclesiastical divorce. A wife could not accept or turn down an inheritance without her husband’s permission; but she could accept an inheritance on her own volition if it came with an inventory. Most important in terms of the transmission of property, a wife could also write her own will without her husband’s permission (Ots y Capdequí 1918 (172-73).

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25 We have not found any *explicit* reference in Spanish family legislation to the husband as household head. In contrast, the Portuguese code does refer to the husband as the *cabeça do casal*, or as the legal head (Nazarri 1991: 25).
A common feature of the nineteenth century civil codes was the limited legal capacity of the wife.\textsuperscript{26} 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,\textsuperscript{27} wording reproduced verbatim in the codes of El Salvador, Ecuador, Nicaragua and Colombia. As noted earlier, the Napoleonic Code, and even Napoleon himself, are often blamed for the maintenance of *potestad marital* in the Latin American civil codes (FAO 1992: 15, 22; Laret 1975:59 ). But as we have stressed, all of the key elements were already part of the Luso-Hispanic colonial legal tradition which shared common roots with the French in Roman law. What the Napoleonic Code did was to provide a few new twists of phrase which captured the essence of the unequal relationship between man and wife. According to Article 213: \textit{The husband owes protection to his wife, the wife obedience to her husband.} This article was copied word for word in a number of the Latin American codes, as in the 1830 Bolivian code: \textit{El marido debe protección a la mujer y ésta obediencia al marido.} \textsuperscript{28}

\textsuperscript{26} The Spanish colonial principles are reiterated in Arts. 132-134 of the 1830 Bolivian code; Arts. 133-135, 1841 Costa Rican code; Arts. 179 and 182, 1852 Peruvian code; Arts. 136-138, 1855 Chilean code; Arts. 138-139, 1859 Salvadorean code; Arts. 129-130, 1860 Ecuadorean code; Arts. 27-28, 1862 Venezuelan code; Arts. 138-140, 1867 Nicaraguan code; and Arts. 181-182, 1873 Colombian code. See Table 1 for the edition we are using.

\textsuperscript{27} Art. 132 of the 1855 Chilean code; Art. 134, 1859 Salvadorean code; Art. 125, 1860 Ecuadorean code; Art. 133, 1867 Nicaraguan code and Art. 177, 1873 Colombian code.

\textsuperscript{28} Art. 130. For identical wording see Art.131, 1841 code of Costa Rica and Art. 175 of the 1852 Peruvian code. The Bello codes combined into one article the mutual obligations of husband and wife (Art. 212 of the French Code) with Art. 213 of the French code, in the following fashion: \textit{Los
For a Peruvian legal scholar of the early twentieth century, this article—which the Peruvian 1852 civil code also copied—was the basis of *potestad marital* (or what he termed *poder 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 (Cornejo 1921: 236).

cónyugues están obligados a guardarse fe, a socorrerse y ayudarse mutuamente en todas las circunstancias de la vida. El marido debe protección a la mujer, y la mujer obediencia al marido. Art. 131 in 1855 Chilean code; Art. 133, 1859 El Salvadorean code; Art. 124, 1860 Ecuadorean code; Art. 23, 1862 Venezuelan code; Art. 132, 1867 Nicaraguan code; and Art. 176 in 1873 Colombian code.
The Napoleonic code also made explicit two things which had only been implicit in Spanish colonial family legislation: the right of the husband to determine the residency of the couple and his obligation to provide for the sustenance of the family. The 1830 Bolivian code followed Article 214 of the French word for word: A la mujer esta obligada a habitar con el marido y a seguirle donde el juzgue conveniente residir. El marido esta obligado a recibirla en su casa y a darle todo lo necesario para la vida, según sus facultades y su estado. 

The Bello codes innovated here, making the sustenance of the family a reciprocal obligation of husband and wife under certain conditions. El marido debe suministrar a la mujer lo necesario según sus facultades, y la mujer tendrá igual obligación respecto del marido, si éste careciere de bienes. The Salvadorean and Venezuelan codes added an important qualifier to this at the end, since women were less likely to own assets: Ay ella los tiene.

29 Art. 131. For similar language, but sometimes developed in two different articles, one dealing with the residency, the other with sustenance, see Art. 132 of the 1841 Costa Rican code; Arts. 176-177, 1852 Peruvian code; Arts. 133-134, 1855 Chilean code; Art 135-136, 1859 Salvadorean code; Arts. 126-127, 1860 Ecuadorean code; Art. 24-25, 1862 Venezuelan code; Arts. 134-136, 1867 Nicaraguan code; and Arts. 178-179, 1873 Colombian code.

30 Art. 134 of the 1855 Chilean code; Art. 136, 1859 Salvadorean and Art. 25, 1862 Venezuelan code. In Article 132, the 1866 Mexican code lumped together the various reciprocal obligations of the couple; these were subsequently elaborated upon and delineated separately (Arts. 198-204) in the 1870 code.
The Bello codes also differentiated themselves from the Napoleonic code by establishing the principle of presumption with respect to the husband’s approval of certain economic activities carried out by married women. It assumed the authorization of the husband, for example, if they purchased moveables with cash or items on credit which were destined for the ordinary consumption of the family. Moreover, in the case of a married woman who exercises a profession, it was assumed that she had the general permission of her husband for all acts and contracts:

A Si la mujer casada ejerce públicamente una profesión o industria cualquiera (como la de directora de colegio, maestra de escuela, actriz, obstetra, posadera, nodriza) se presume la autorización general del marido para todos los actos i contratos concernientes a su profesión e industria, mientras no intervenga reclamación o protesta de su marido....

The precedent for this general license for married women to work comes from the Bourbon reforms which in 1784 decreed a facultad general de las mujeres para trabajar en todas las artes compatibles con el decoro de su sexo. And this is consistent with the colonial principle, reiterated in the Republican codes, that a husband could provide either a general or a specific authorization for a wife to engage or carry out whatever acts she needed to, a principle consistent with male household headship.

31 Art. 147 of the 1855 Chilean code; Art. 150, 1859 Salvadorean code; Art. 140, 1860 Ecuadorean code; Art. 38, 1862 Venezuelan code; Art. 150, 1867 Nicaraguan code; Art. 192, 1873 Colombian code.

32 The French code only refers to the case in which the woman is a public trader, in which case she may, without the authority of her husband, bind herself for that which concerns her trade (Art. 220 in Barrister 1804/1999). Most Latin American countries in their commercial codes specifically grant married women special rights for trading activities, referencing this code in the civil code; see Art. 151 in the 1855 Chilean code. The point is that most of the Latin American codes provided much more latitude than the French for women’s economic activities.

33 Art. 150, 1855 Chilean code; Art. 153, 1859 Salvadorean 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 of the 1866 Mexican and Art. 56 of the 1869 Argentine codes. No such reference to women’s economic activities is found in the 1830 Bolivian, 1842 Costa Rican or 1852 Peruvian codes.

34 Novísima Recopilación, Libro 8, Título 23, Ley 15.

35 Similarly, a judge, rather than the husband, could also authorize a married woman to carry out all such acts. Novísima Recopilación, Libro 8, Título I, Leyes 11-15. See Arts. 140-143 of the 1855 Chilean code for the language used in all of the Bello codes.
The default marital regime in colonial Hispanic America was what is known today as *gananciales* (participation in profits or partial community property). Three types of property were recognized in marriage: what was his, what was hers, and the joint property of the couple. Individual property consisted of what each owned prior to marriage and any inheritances or donations acquired by each after the marriage. The earnings from this individual property (such as rent and interest) as well as any assets purchased from ordinary income from work or industry during the marriage constituted the common property of the couple. If the marriage was dissolved for whatever reason each spouse retained their individual property as well as half of the common property (Ots y Capdequí 1969: 54).

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36 On the origins of Castilian family law and detailed references to the *Siete Partidas* or later *Leyes de Toro*, see Korth and Flusche (1987). They and Couturier (1985), for Chile and Mexico, respectively, concur that legal practice in the colonies generally conformed with Spanish legal norms.
One of the characteristics of the colonial marital regime was its flexibility. 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 in between. *Capitulaciones* could be written both in terms of ownership rights over the fruits of property (rents, interest), as well as with respect to the management of assets. Whereas under the default regime, a husband managed both the common property and that of his wife, through *capitulaciones* a wife could retain management over some or all of her property and/or its fruits.

Special provisions governed dowry and *arras*, a husband's wedding gift to the bride. Dowry was the property which parents of means where required to endow daughters at marriage to contribute towards the expenses of the new couple. In colonial Hispanic America dowry was the property of the wife although it was administered by the husband. If the union was dissolved, it reverted to her and her legal heirs and took precedent over outstanding debts of the husband or the joint estate. A dowry was considered an advance on a daughter's eventual inheritance from her parents. At their death, its value was deducted from her legitimate share of the inheritance (see below). Daughters and their husbands in this case had the advantage of choosing whether the dowry was to be valued at the time of its receipt or at its current value. A dowry gave women a certain degree of bargaining power in marriage. If her husband mismanaged it, a wife 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 husband to the wife, often given in recognition of her virginity. Legally it could not exceed one-tenth of a husband's patrimony at the time of marriage. *Arras* received similar legal treatment to dowry in that it was considered the wife's property although managed by the husband; upon dissolution of the union it was retained by the wife or her heirs. Finally, *bienes parafernales* or paraphernalia were those items not included in the dowry (such as clothing, jewelry and household goods) which constituted the personal property of the wife and could be administered by her.

Turning to colonial Brazil, the default marital regime in Portugal was different, being the full

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37 The clearest statement that the husband administers the common property of the couple is the following: *Ay* otro, que los bienes que fueren ganados, mejorados y multiplicados durante el matrimonio entre el marido y la muger,....que los pueda engenar el marido durante el matrimonio, si quisiere, sin licencia ni otorgamiento de su muger, y que el contrato de engenamiento vale salvo si fuere probado que se hizo cautelosamente por defraudar ó damnificar a la muger.*Novísima Recopilación, Libro X, Titulo IV, Ley V. That the husband administers his wife's individual property is principally deduced from the treatment of dowry.

38 On the obligation of fathers (and in their absence, mothers) to provide a dowry for their daughters see Partida 4, Titulo 11, Leyes 8 y 9 in López (1851).
community property regime, or *comunhão universal*. All individual property acquired before marriage and whatever assets were acquired during it were pooled, constituting the joint property of husband and wife. The husband was the sole administrator, but the wife's consent was necessary to alienate or mortgage property, particularly real estate. In case of dissolution of the marriage, all of the property of the couple was divided into equal halves (Hahner 1990: 6-7; Nazarri 1991: 25).

Dowry required special legal treatment since, otherwise, it would be pooled into the couple's joint property. As in Hispanic America, in colonial Brazil couples could sign prenuptial contracts establishing their own arrangements with respect to ownership and administration of property, including complete separation of property or a dotal regime. With a *contrato de dote e arras* the dowry and any prenuptial gifts from the husband remained the separate property of the wife. Although this property was managed by the husband, in case of dissolution of the union the dowry 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 *arras* plus half of the profits generated by her husband's management of his and her property, or only the dowry and *arras*. Only with a *contrato de dote e arras* did a dowry receive special treatment with respect to creditors, taking precedence above all other debts of the husband (Nazarri 1991: 143).

All of the initial Republican civil codes in Hispanic America up through the decade of the 1870s maintained the same default marital regime as during the colonial period, the *gananciales* regime. And all maintained the husband as the administrator of both the common property and that of the wife. The language of the 1855 Chilean code (Art. 135) is replicated in those codes which copied it: *Por el hecho del matrimonio se contrae sociedad de bienes entre los cónyuges, y toma el marido la administración de los de la mujer*, según las reglas que se expondrán en el título De la sociedad conyugal. In that section (Art. 1714) it established that *El marido es el jefe de la sociedad conyugal y como tal administra libremente los bienes sociales y los de su mujer*. The Napoleonic code gave the husband free license to do whatever he wanted in even more explicit terms: *El marido administrará libremente la comunidad y se reservará para sí la gana de su propia parte.*

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39 Under Portuguese law the *arras* was limited to one-third of the size of the dowry rather than the Spanish norm of one-tenth of the husband's capital at time of marriage (Nazarri 1991: 143).

40 The Costa Rican code of 1841 (Art. 973) partially followed the language of the French code.
(and colonial law) in allowing the husband to alienate common property without the wife’s permission, but made clear that he could not sell the property of his wife, even if she agreed, unless he replaced this property with assets of equal value and quality.
All of the Republican codes also institutionalized the practice of capitulaciones, the prenuptial arrangements that could be made regarding property, maintaining the flexibility that the colonial code had provided. The main change in the initial codes had to do with the rules and privileges governing dowry. With the exception of Peru, dowry became an option rather than a legal requirement (Bolivia, Costa Rica, Argentina and 1870 Mexican code). In the 1855 Chilean code and others fashioned after it, dowry, arras and wedding gifts by parents to sons were given equivalent status and called indiscriminately ADonations due to Marriage. Not only were these optional, but they now received similar legal treatment to other donations, meaning that dowries lost the special protection from creditors that they had enjoyed in the colonial period.

This change in the treatment of dowry did not follow the Napoleonic code, which retained the Alotal regime as well as Acommunity property, the latter (the default) being similar to the gananciales regime in Hispanic America. There is a growing amount of evidence that the practice of dowry was either already in decline in the late colonial period and/or declined steadily over this century in at least Mexico, Peru and Brazil (Lavrin and Couturier 1979; Couturier 1985; Arrom 1985a; Hunefeldt 1996 and 2000; Nazarri 1991). The end of the special legal treatment afforded dowries may simply have

41 Note the language: in the 1852 Peruvian code it is noted that the paternal ascendent A tienen obligacion de dotar the legitimate descendent who has the right to inherit from him. However, if the daughter marries without his permission before the age of 21 he is under no such obligation (Arts. 980 and 981, in Cornejo 1921). The other early codes only define what a dowry is and its privileges, for example, in the 1841 code of Costa Rica: Aa suma de bienes la muger u otro por ella, da al marido para soportar las cargas matrimoniales (Art 975, in Ramírez 1858).

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

43 The main way that the default regime differed was that the Napoleonic Code differentiated between moveable and immovable property as well as the active and passive part of community property. All moveable property of the husband and wife was pooled upon marriage, whereas only the fruits of their immovable property formed part of the common or community property. In addition, not only did the husband alone administer the community property, but he could alienate it or mortgage it without her permission. He only needed her permission to alienate the immovables which belonged to her individually (Arts. 1401, 1404, 1421, 1428, in Barrister 1804/1999).

44 Couturier (1985: 301-02) provides evidence of a decline in the share of legally certified dowries in notarial records of marriages in Guadalajara, Puebla and Mexico City between the mid-16th century (when roughly three-quarters of marriages had these records) and the late eighteenth century (when this figure had declined to approximately half). In her study of notarial records for Mexico City only 10 percent of these contained dowry records in 1829 while almost none were found for 1847. For Lima, the number of wills in 1850 mentioning dowry dropped to less than half the number at the
reflected a general decline in its practice in the Americas. Nazarri (1991) who has given the greatest attention to this matter, argues that in Brazil it was related to the needs of capital accumulation, giving parents greater freedom of action with respect to its investment.

Andrés Bello and the other members of the commission that drafted the Chilean code considered that they had compensated for the end of dotal privileges by other innovations:

beginning of the century; the total value of dowries also decreased steadily (Hunefeldt 2000: Tables 7.1 and 7.2).
Si se suprimen los privilegios de la dote y cesa de todo punto la antigua clasificación de bienes dotales y parafernales llevando adelante la tendencia de la jurisprudencia española, y si la hipoteca legal de la mujer casada corre la suerte de las otras hipotecas de su clase, pues que según el presente proyecto deja de existir...en recompensa se ha organizado y ampliado en pro de la mujer el beneficio de la separación de bienes; se ha minorado la odiosa desigualdad de los efectos civiles del divorcio entre los dos consortes; se ha regularizado la sociedad de gananciales; se han dado garantías a la conservación de los bienes raíces de la mujer en manos del marido.45

A particular contribution of Bello was to codify the rules for the simple separation of property following the granting of an ecclesiastical divorce or in the case of insolvency or fraudulent administration by the husband of his wife or property or the common property of the couple. Thus, in essence, what had changed was that the protection granted dowry from a husband’s mismanagement was now extended to any of her property as well as the gananciales. In such a case a wife recovered her own property and as well as half the gananciales and gained the right to manage this property. In a change with colonial practice, a separated woman could sell this property without her husband’s permission; she still needed his permission or that of a judge to enter into a suit (Arts. 152-159, in Chile 1856).46

45 Mensaje del Ejecutivo al Congreso proponiendo la aprobación del Código Civil, @ Manuel Montt, 22 November 1855, in Chile (1999: 15).

46 The Napoleonic Code had earlier clarified the rules for simple separation of property under similar grounds. However, while the wife regained administration of her property and could dispose freely of moveables, she could not alienate immovables without permission of her husband or a judge (Art. 1449, Barrister 1904/1999).
The Bello codes retained the putative aspects of ecclesiastical divorce when this was due to the adultery of the wife. In this case the wife lost all claim on the gananciales generated during the marriage. Moreover, the husband maintained the usufruct and management of any of her property that had not been subject previously to separation of property.\footnote{This probably refers to property separated via capitulaciones before marriage, since the Bello codes did not formally create a full separation of property regime. The Napoleonic Code had taken a step in this direction by specifying that among the special arrangements that could be made prior to the marriage was the full separation of property whereby the wife retained the right to manage both her movable and immovable property. However, she could not alienate her separate property without her husband’s permission (Arts. 1536 and 1538, in Barrister 1804/1999).} The positive change noted above by the drafters of this code had to do with the fact that the husband still had to support his wife, with the judge determining the amount based on the value of the wife’s assets still under the administration of the husband. Moreover, if a divorce was the fault of the husband, the wife regained 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 manage freely any property she acquired by her own means after the separation.\footnote{Arts. 171, 174-175, in Chile (1856). The other early Republican codes did not go into such detail. In all, following colonial norms, the wife lost her share of gananciales in case the divorce was due to her adultery. Costa Rica’s first code, where a woman lost her share of the gananciales as well as her dowry if the divorce were due to her adultery, nonetheless, provided a bit more gender balance. If the divorce was due to the husband’s failure to provide the family with subsistence, he lost the right to his share of the gananciales (Art. 156 in Ramírez 1858).}

Finally, by regularizing the sociedad de gananciales what the drafters of the Chilean code are referring to is that this code (and those modeled on it) placed limits on a husband’s ability to alienate the immovable or real property of the wife: \textit{No se podra enajenar ni hipotecar los bienes raices de la mujer, que el marido este o pueda estar obligado a restituir en especie, sino con voluntad de la mujer y previo decreto del juez}\footnote{Arts. 2157, 2158, 2164 and 2165, 1870 Mexican code.} (Art. 1739). Thus dowry disappeared but married women were given additional protection in terms of the real property which they brought into marriage.

The Mexican code of 1870 went further by making clear that the common property of the couple belonged to both husband and wife and that the husband could not sell or mortgage the immovable property without the consent of his wife. He was allowed to do whatever he wanted to with the movable property. The wife could not pledge any of the common property without her husband’s permission and could administer it only with his authorization or due to his absence.\footnote{As Silvia Arrom (1980: 504) concludes, while this move reduced the degree of inequality between husband and wife, it was still a far cry from establishing the basis for equality between husband and wife.} As Silvia Arrom (1980: 504) concludes, while this move reduced the degree of inequality between husband and wife, it was still a far cry from establishing the basis for equality between husband and wife.
Inheritance

The Hispanic rules of inheritance were consolidated in the *Leyes de Toro*. If a person died intestate his/her necessary or forced heirs included first, the children (or in their absence, their descendents); then, the parents (or in their absence, any other living ascendants); and finally, siblings and other collateral kin until the tenth degree. One of the salient Luso-Hispanic legal traditions was that all legitimate sons and daughters inherited equally from their parent's estate. Another, was that spouses were excluded among the forced heirs. While upon the death of one spouse the *gananciales* were divided into two equal shares, this did not constitute an inheritance, but rather, represented the surviving spouse's property rights in the community assets.

With respect to wills, only one-fifth of an estate could be willed freely, to whomever one chose. Fourth-fifths of the estate, known as the *legítima*, was reserved for the legal heirs. Children (and descendents, by stock) where again in the first order of inheritance. If there were no living children, the *legítima* was reduced to two-thirds of the estate (with the share that could be willed freely increasing to one-third) and passed to the parents (or other ascendants in their absence). If there were no living children or parents, then a testator was free to will his/her entire estate to whomever he/she chose.

A testator could benefit one child or decendent more than the others. This practice, known as the *mejora*, was limited to one-third of the *legítima*. Thus the degree of sibling inequality which could be introduced through wills was limited to the famous *quinta y tercia* (the fifth that could be freely willed plus one-third of the share reserved as the *legítima*).

50 According to Ots y Capdequí (1969: 69) the outside limit on intestate inheritance before an estate passed to the State of the tenth degree of kinship was established in the *Siete Partidas*. This was subsequently reduced to the fourth degree of kinship in the *Novísima Recopilación*, but he suggests that this was not followed in practice.

51 Korth and Flusche (1987: 398) trace this gender equality to the *Fuero Juzgo* (Book IV, title II, laws 1, 9), the seventh century Visigothic Code. The *Sexta Partida* (Título XIII, Ley III), on intestate inheritance, states that sons or grandsons inherit from the father or grandfather *A quién sean varones o mujeres*. Illegitimate children received different treatment from those that were legitimate and for lack of space will not be dealt with in this paper. See Lewin (1992) for a meticulous study of inheritance rules with regard to illegitimates in the case of colonial Brazil.

52 We find the interpretation of Mateos Alarcón (1885: 139) and Korth and Flusche (1987: 398) as regards the *mejora* most convincing and follow that here. Given the vague language of the *quinta y tercia* in the *Novísima Recopilación*, this has led to various interpretations in the literature (Ots y Capdequí 1918: 177; Arrom 1985: 303; Lavrin and Couturier 1979: 286). As the latter conclude, the law is both vague and intricate and practice seems to be the more important guide. We will argue below that this vagueness probably led to different practices in different parts of the Spanish
colonial empire, leading to very different treatment of the *mejora* in the Republican codes.
The major difference between Brazil and Hispanic America in terms of inheritance practices was with respect to the share of an estate that could be willed freely, being larger in Portuguese law, one-third of an estate. The *legítima* was thus smaller, two-thirds of an estate, and remained the same share whether pertaining to the children, or in their absence, the parents. Another important difference was the absence of the practice of the *mejora*, perhaps because the share that an individual was free to will was larger. And finally, in contrast to Hispanic law, spouses were included among the forced heirs in the line of intestate succession but only in the case there were no children, parents or collateral kind to the tenth degree. The surviving spouse (as *meeira/o*) automatically received half the common property when widowed. Since the default marital regime was full common property, for a widow this share could potentially be larger in colonial Brazil than Hispanic America since the husband’s individual property was pooled into the common property and in the latter case it was not.

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53 The key rules of succession are found in the *Quarto Livro das Ordenações*, Titulo LXXXII, Leyes LXXXII, LXXXVIII, XC-XCVI, in Mendes de Almeida (1870). Also see Silva (1984) and Nazarri (1991).
A number of clarifications as well as innovations in the inheritance regime were introduced by the Republican codes. The Bello codes explicitly affirmed that in inheritance, se atiende al sexo ni a la primogenitura, confirming the colonial practice of gender equality in inheritance rights and the Republican prohibitions against entailed estates. With respect to wills, all of the initial Republican civil codes maintained the Hispanic tradition of necessary or forced heirs and legítimas. But the Bello codes gave a nod to testamentary freedom by increasing the share that could be willed freely from one-fifth to one-quarter of an estate. In addition, in these codes the size of the mejora with which one child (or grandchild) could be favored over others was reduced from one-third to one-quarter of the legítima. Costa Rica (1841) and Peru (1852) reduced the size of the mejora still further, while the practice was eliminated in Argentina (1869) and Mexico (1870). Jurists in that latter country recognized that by introducing inequality among siblings the mejora was unjust.

54 Art. 982 of 1855 Chilean code; Art. 956, 1859 Salvadorean code; Art. 967, 1860 Ecuadorean code; Libro Tercero, Título V, Ley 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 codes of Bolivia, Costa Rica, Peru or Argentina.

55 Entailed estates (mayorazgo in Hispanic America and morgado in Brazil) were established at the behest of the crown and limited to the nobility. In Hispanic America they could only be established with the quinta y tercia of an individual estate in favor of the eldest son and his issue, following primogeniture. Daughters could inherit a mayorazgo if there were no sons and were preferred over more distant male kin. These privileges were abolished soon after independence in most countries. On Brazil see Silva (1998: 59-60).

56 Art. 1184, 1855 Chilean code; Art. 1155, 1859 Salvadorean code; Art. 1169, 1860 Ecuadorean code; Libro Tercero, Título V, Ley 2, Art. 9, 1862 Venezuelan code; Art. 1184, 1867 Nicaraguan code; and Art. 1242, 1873 Colombian civil code. The end result of increasing the share that an individual was free to will and reducing the mejora was to leave the degree of sibling inequality which 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.

57 Costa Rica reduced the share the individual was free to will to two-thirds of a fifth of his/her assets, and what appears to be one-third of that fifth as a mejora, with the legítima implicitly remaining the colonial four-fifth share of the estate (Arts. 575-576, 1841 code). In the 1852 Peruvian code, parents could designate 1/3 of their assets to better the position of a child, but in this case the mejora substituted for the 1/5 which they were free to will to whomever they pleased (Art. 735). The 1869 Argentine code stated that the 1/5 free share could be given to anyone or to better the position of one heir, but that no other portion of the inheritance could be used to better the position of an heir (Art. 3605).

58 Mateos Alarcón (1885: 139). The 1870 Mexican code (the first Mexican code to deal with inheritance rights) explicitly stated that the mejora could only be made with the one-fifth the testator
The most important change with respect to married women’s property rights was that three countries added surviving spouses to the necessary heirs in the first order of succession, with equivalent rights to a child. Venezuela’s 1862 code provided for surviving spouses to share equally with the children in the inheritance of the deceased’s individual patrimony as well as his/her share of the *gananciales*.\(^{59}\) Bolivia (1830) and Argentina (1869) placed a limitation on this right, excluding spouses from inheriting from the deceased spouse’s share of *gananciales*.\(^{60}\) Contemporary legal scholars in Venezuela were aware that its 1862 code innovated by giving inheritance rights to the surviving spouse (Dominici 1897: xiv).\(^{61}\) But was free to will to anyone (Art. 3515).

\(^{59}\) Libro Tercero, Título V, Ley 1, Arts. 4 and 9 in Parra-Aranguren (1974).

\(^{60}\) Article 513 of the 1830 Bolivian code states: *Si han quedado viudo o viuda e hijos legítimos, aquél o aquélla tendrá en la sucesión la misma parte que cada uno de éstos, quedando en consecuencia sin efecto la cuarta material.*\(^{59}\) We will discuss the *cuarta marital* subsequently. Article 517 goes on to limit this inheritance right to the individual patrimony of the deceased: *Los derechos que se conceden en la sucesión del cónyuge, sólo tienen lugar respecto de los bienes del difunto que no sean gananciales, en los cuales tiene siempre el sobreviviente la mitad, debiendo la otra mitad dividirse únicamente entre los otros herederos, si los hay de las clases que quedan señaladas; pero no habiéndolos él heredará también esta mitad*\(^{59}\) (in Salinas Mariaca 1955). On the Argentine code, see Arts. 3565 and 3576, in Zamora (1969).

\(^{61}\) This code was short-lived, having been suspended in 1863 only months after it had gone into effect. The next civil code, that of 1867, got rid of the surviving spouse’s right to be included in the first
This betterment in the position of the surviving spouse has not otherwise been commented upon in the literature which we have reviewed.

This neglect is surprising since the addition of wives to the first order of inheritance was a crucially important move in strengthening the property rights of wives. If we assume that there was a male bias in inheritance, and that men had greater income earning opportunities than women, then, not withstanding the dowry (but particularly after its elimination), the individual patrimonies of husbands were probably greater than those of their wives. Thus the possibility for a widow to inherit along with the children from her husband’s individual patrimony represented a potential shift in wealth accumulation favoring married women. It also potentially strengthened the bargaining power of widows over children in such matters as control of the family farm or business since her inheritance share was added to her half of the gananciales (Deere and León 2001a; 2001b).
Without primary research into the legislative debates surrounding the adoption of these civil codes it is difficult to know whether legislators were consciously attempting to improve the position of widows. What is certain is that these countries were not copying the Napoleonic code, since this code did no such thing. Moreover, no other countries followed these innovators in bettering the position of widows and widowers in such a fashion for at least a century (Deere and León 2001a: Table 2.5). Most of the other initial Republican codes, however, did better the position of spouses by including them along with parents in the second order of inheritance, and with siblings and other collaterals in the third order. Moreover, all reduced the degree of kinship recognized for intestate inheritance to either the fourth or sixth degree. Thus the initial Spanish American Republican codes came to resemble the Portuguese code in that if there were no children, parents, siblings or collaterals to the stipulated degree of kinship, then the surviving spouse inherited the full estate. Overall, these changes signaled the beginning of a move in familial loyalties from the patrilineal to the conjugal family, one that paralleled the rising importance of romantic love in marriage choice.

Finally, a number of the Republican codes, including all of the Bello codes, formalized the colonial possibility of bettering the situation of a spouse left destitute due to widowhood. The origin of this practice dates from at least the Siete Partidas where it refers to *En quanta parte de los bienes del marido rico puede heredar la muger pobre si caso sin dote, et non ha de que vevir.* It states that *Si el marido non dexase a tal muger en que podiese vevir bien et honestaminete, nin ella lo hoviese de lo suyo, que pueda heredar fasta la quarta parte de los bienes del, maguer haya fijos; pero esta quarta parte non debe montar mas de cient libras doro* (Sexta Partida, Título XIII, Ley 7). According to Ots y Capdequí (1969: 68) this *cuota viudal* applied whether the husband had made out a will or died intestate, and the sum was deducted from the mass of the estate, before other deductions.

62 In the French rules governing intestate, spouses did not inherit from each other unless there were no children nor any other relations capable of inheriting up to the twelfth degree of kinship (Arts. 767 and 755, in Barrister 1804/1999).

63 What is curious is that in the Novísima Recopilación (Libro X, Título XIX, Ley 11) such a *cuota viudal* appears only in the section on *Comisarios testamentarios* (when someone else makes out one’s will?), referring specifically to the case of intestate that *alexandole a la muger...lo que segun las leyes le puede pertenecer...* with no further clarification. This paragraph is what is cited by Ots y
Capdequí (1918: 175) as the source for the practice of what he calls there the *cuarta marital.* We have yet to run across any reference to it in the colonial family literature.
The Costa Rican 1841 code provides the best evidence that such a widow’s share was a colonial practice. In establishing the ordering for 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, Aí este fuese la muger y no tuviese de lo suyo, ni le dejase el marido con que poder vivir bien y honestamente, sucederá siempre en la cuarta parte de la herencia, aun cuando el intestado deje herederos legítimos, de cualquiera línea que sean (Art. 634, in Ramirez 1858). The 1852 Peruvian code innovates by extending the *cuarta marital* to widowers under certain conditions: ALa viuda que carece de lo necesario para subsistir, heredará la cuarta parte de los bienes del marido que ha muerto con testamento o sin el...El viudo tiene el mismo derecho...cuando a mas de carecer de lo necesario para vivir, queda invalido o habitualmente enfermo, o en una edad mayor de 60 años (Art. 918, in Cornejo 1921).

Moreover, the 1830 Bolivian code mentions it explicitly when it does away with it after including the surviving spouse in the first order of succession, AQuedando en consecuencia sin efecto la cuarta material (Art. 513, in Salinas Mariaca 1955).

Other caveats were added, such as that if there were surviving children the *cuarta marital* could not exceed 8000 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).
In the Bello codes what is called the *porción conyugal* applied equally to widows and widowers and was 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 congruent maintenance.*\(^6\) In the 1855 Chilean code, this marital share was equal to one-fourth of the estate in all orders of succession except the first (when there were children); in this case the surviving spouse would receive a share equal to each child. The problem in terms of bettering the position of the surviving spouse was that, in addition to pleading relative poverty (by having less assets than the stipulated marital share), any assets (including the *ganancias*) that he/she had were deducted from the marital share, with the widow or widower only receiving the residual.\(^6\) Thus it was not at all as favorable as the right to be included in the first order of succession, the only possibility that potentially left widows either in an equal or much better position to a child. In sum, while there was a great deal of continuity between the colonial and Republican periods, important innovations were introduced in the initial civil codes of most countries particularly with respect to the property rights of married women.

V. The Liberal Revolutions of the Late Nineteenth Century

The Liberal revolutions that were to be potentially of the most consequence in terms of married women’s property rights were those of the last two decades of the nineteenth century in Mexico and Central America. They reformed two crucial aspects of married women’s property rights, the marital and inheritance regimes. Mexico in 1870 was the first to formally introduce the separation of property marital regime as an option that couples could chose among along with *ganancias*, which remained

\(^6\) Arts. 1172-1178 of the 1855 Chilean code.

\(^6\) The provisions regarding the *porción conyugal* are identical in the 1859 Salvadorean code (Arts. 1142, 1146, and 1148), the 1860 Ecuadorean code (Arts. 1157, 1161, and 1163), the 1867 Nicaraguan code (Arts. 1172, 1176, and 1178) and the 1873 Colombian code (Arts. 1230, 1234, and 1235). The 1862 Venezuelan code which otherwise resembles the Chilean on family law, does not have these provisions since, as noted earlier, the spouse was elevated to the first order of succession with no conditions attached. Venezuela’s next code, that of 1867, did away with this favored treatment and provided for something similar to the Bello *porción conyugal* but the spouse did not have to prove economic need in order to receive this share, a considerable advantage (Arts. 705, 711 and 712, in Venezuela 1867). The 1870 Mexican civil code is another special case. While the spouse was included in the first order of intestate succession along with the children and parents, he/she had the right to a share equal to a child only *si carece de bienes o si sus bienes son menor que la cuota de un hijo.*\(^\) In other words, the widow/er had to prove absolute poverty or if not he/she was entitled only to the residual (the difference between a child’s share and the value of their assets). This code also introduced another provision for widows/ers, what was called the *porción viudal*, in the case that he/she did not receive the above inheritance. If the widow/er did not have means of subsistence he/she was entitled to a pension (*alimentos*) from their spouse’s estate as long as they needed it and did not remarry (Articles 3844, 3885, 3909 and 3910, in Mexico 1870).
the default regime. The Liberal revolutions in Costa Rica, Nicaragua, El Salvador and Honduras went a step further, making separation of property the default regime. The major change in the inheritance regime was the introduction of testamentary freedom. Honduras in 1880 was the first to abolish the Hispanic system of forced inheritance, built around the concept of the *legítima*. It was followed by Guatemala, Mexico (where it had been under discussion since the 1870s), Costa Rica, El Salvador and Nicaragua (see Table 4).

**Separation of Property**

The marital regime of separation of property could be considered the extreme of economic individualism, for it applies the concept of *a* to each his own*to the family. In this regime the property that each spouse acquires prior to or after marriage remains his/her individual property, including the rents, interest, etc., generated from this property, as well as any other individual earnings (wages, salaries, etc.). The history of thought on liberalism is 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. Jeremy Bentham, one of the foremost liberal thinkers of the early nineteenth century, assumed a full or partial common property regime in his treatise on the ideal civil code based on principles of utility. Perhaps the advantages of patriarchy, as represented by a marital regime under the direction of the husband, were just too great.

For its origins as a marital regime we have to look to the nineteenth century feminist movement in England and the United States. It emerged as a demand in these countries precisely because of married women's lack of property rights. The position of married women was much worse in England and the US than in Latin America, for with marriage effectively all of their property became that of their husbands. Under British common law married women were viewed as an extension of their husbands, as summed up in the adage *An law husband and wife are one person and the husband is that person* (Holcombe 1983: 18). The result of this legal fiction, according to Lee Holcombe, was that wives were deprived of their property rights.

With marriage, wives lost the right to manage any real property (land and buildings) they had brought into marriage and lost both ownership and control over any personal property (also called chattel

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68 In his *Principles of the Civil Law*, published in French in 1830, Bentham actually 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 (Chapter 3) and of community of goods (Chapter 6). 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* (in Ogden 1931/1987: 195).
property or moveables) that they owned, including any wages or salaries they might earn. 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. They could also not make out a will. Upon a wife's death, her real property passed to her children or parents. If a couple had children, however, a husband enjoyed a life interest in his wife's real property, known as the _courtesy_. In addition, he kept her personal property, since that was considered his property. Upon her husband's death, however, a widow's real property reverted to her control. She also enjoyed dower rights in her husband's real property, consisting of usufruct rights to one-third of the property. In case of separation or desertion by either party, the husband continued to control a woman's property, including any income from her real property and her personal property derived from wages and salaries (Holcombe 1983: 20-25).

During the seventeenth and eighteenth century a parallel legal system developed in England based on equity courts which began to recognize women's separate property through prenuptial marriage settlements. 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, but which was usually managed by a trustee (Staves 1990: 133). Such agreements, responding to parents' worries that their daughters' inheritances would be dissipated by their husbands or that if there were no children of the marriage that the property revert to them, could give wives a range of property rights. If unrestricted, she could enter into contracts and will her property (Holcombe 1983: 38-43). While equity provided clear advantages for married women compared with Common Law, it did not provide wives with equal legal treatment to that of unmarried women, but rather, was a special status accorded 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 married women, common law for the poor and equity for the rich (Ibid.: 44-47).

Holcombe considers this anomaly to have been an important factor in the growth of support for the reform of married women's property rights in England after 1850, a movement that paralleled growing support for legal reform in general. The emergence of the nineteenth century feminist movement in England also paralleled the steady growth in the number 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 effort by feminists and their allies to reform the property rights of married women.

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69 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 (Staves 1990: 29)
The American colonies followed a similar trajectory under British law. By the time of independence, equity law was in common use, particularly as a way for fathers to guarantee that their daughters retain control of their inheritances. Joan Gunderson (1998:12) argues that the development of the reform movement for Married Women’s Property Acts was largely motivated by parents wanting to protect their daughter’s inheritance from potentially bad management by their husbands; it was less motivated by questions of assuring women economic autonomy in marriage. In the US, as in England, the reform of married women’s property rights was spearheaded by the nascent feminist movement which began to coalesce after the 1848 Seneca Falls Women’s Convention. 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 (Nicholas et al. 1986: 32).

In England the process for reform of married women’s property rights was also a slow and piecemeal effort. The Divorce Act of 1857, which transferred jurisdiction over marital concerns to civil courts and allowed for divorce with remarriage, recognized some of the particular grievances of women abandoned by their husbands. Partly as a result, it was not until 1870 that a minimalist Married Women’s Property Act was approved by Parliament. This law, aimed primarily at protecting the earnings of poor women, allowed married women to dispose of their own wages and independent earnings (Holcombe 1983: 108, 177-179). It was another twelve years before married women 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 as regards this separate property (Ibid.: 201-204).

What is interesting in this trajectory is that the move for reform of married women’s property rights by feminists was largely focused on giving married women the same rights to property as single women. It was not couched in terms of achieving equality between men and women within the family nor in recognizing the contribution of wives, through their domestic labor, to enhancing the property of their husbands. As Carole Shammas, et al. (1987: 163) note, the 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.\footnote{Partly because of the influence of French and Spanish legal traditions, the southern and western US territories adopted a partial community property system when they became states in the late nineteenth century. Similar to the gananciales regime, whatever property was acquired by either spouse during the marriage constituted community property and was divided equally among them in case of dissolution of the union. The community property was also managed by the husband (Nicholas et al. 1986: 40).}

With the exception of the special case of the western American states,\footnote{With the exception of the special case of the western American states, little attention was given to the issue of property rights for married women. The western US territories adopted a partial community property system when they became states in the late nineteenth century. Similar to the gananciales regime, whatever property was acquired by either spouse during the marriage constituted community property and was divided equally among them in case of dissolution of the union. The community property was also managed by the husband (Nicholas et al. 1986: 40).} little attention was given
during the many years of debate in England and the US to alternative marital regimes, such as the potential benefits of a *gananciales* regime or a full community property regime, one with equality of rights and obligations for men and women. John Stuart Mill, one of the earliest advocates for women’s property rights, reportedly argued that a community of goods would be the strongest recognition of the unity between man and wife in marriage, but such arguments fell on deaf ears to those who opposed married women’s property rights on the grounds that it would disrupt the harmony of marriage based on patriarchal control (Holcombe 1983: 154).

The separation of property marital regime first appeared as a formal option in Latin America in the 1870 Mexican civil code, the same year that the first Married Women’s Property Act was passed in England. In Mexico it required a prenuptial agreement with an inventory specifying the assets of each spouse and whether the separation was to cover all or only some of the property. In principle, each spouse retained ownership and management of his/her assets and enjoyed the fruits thereof, but the couple was free to determine any combination they desired of ownership and management of their property. Moreover, in another innovation, these *capitulaciones* could be changed any time during the marriage. In addition, each spouse had the obligation to contribute to the maintenance of the household.

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71 Arts. 2009, 2102, 2110-2113, 2120, 2121, 2205, 2208 and 2209 in Mexico (1870). These same provisions were maintained in the 1884 Mexican civil code.
The separation of property regime was subsequently adopted throughout Central America, and with the exception of Guatemala, became the default marital regime. The norms in El Salvador, Nicaragua, and Honduras were identical to those defined in the 1887 Costa Rican civil code. Prior to marriage a couple could arrange everything having to do with their own assets, and these capitulaciones could be changed afterwards by mutual accord. What made it the default regime was the following provision: Si no hubiera capitulaciones matrimoniales cada conyuge queda dueño y dispone libremente de los bienes que tenía al contraer matrimonio, de los que adquiera durante el por cualquier título y de los frutos... 

In contrast to England and the United States, no evidence has been uncovered that the separation of property regime was a demand of women in Mexico or Central America. But the commission which drafted the 1870 Mexican code considered the fact that a couple could now choose the marital regime a radical innovation to improve the position of women (Mexico 1870: 74). We have been unable to locate any commentary at all by contemporaries, however, on why this regime was adopted as the default regime in four of the Central American countries.

Turning to its potential impact, in principle, it represents an advance for married women’s property rights for wives could now manage their own property independently, without permission of their husbands. The option in Mexico, nonetheless, was still restricted for a wife still could not sell her inmovibles or real property without her husband’s permission (Art. 2210, in Mexico 1870 and Art. 2077 in Mateos Alarcón 1904); no such restriction applied to the husband, presumably because he remained the household head (Arrom 1985b: 313). For a woman of means, or who owned more property than her husband, this regime could be quite beneficial, particularly if she was by inclination or talent a better financial manager than her husband. It could also be potentially beneficial to working women who could now control their own wages and salaries. If men and women use their income in different ways, with the separation of property regime, women could now follow their own spending preferences. But for poor women, those without assets to control or access to steady employment, the adoption of the separation of property regime as the default was potentially prejudicial. Due to unequal income generating opportunities and outright discrimination in the labor market, husbands were likely to earn higher incomes than their wives. In addition, husbands were probably more likely to own assets, given the gender bias in inheritance as well as the unequal income earning opportunities. Moreover, in the case of dissolution of the marriage, under this default regime a woman would no longer share in the gananciales from her husband’s earnings, including any investments in his properties that she might have contributed to during the marriage. Thus a housewife would lose the implicit recognition of domestic

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72 Guatemala in its 1877 civil code followed the Chilean rules for the simple separation of property (resulting from ecclesiastical divorce or judicial decree due to the husband’s mal administration within the gananciales regime) but innovated in that such could be arranged por convenio or mutual accord (Art. 1164 in Guatemala 1877).

73 Arts. 75-76 in Costa Rica (1887); Arts. 187-188 of 1902 Salvadorean civil code; Arts. 153-154 in 1903 Nicaraguan civil code; and Art. 169 of Honduras (1906).
labor that was embodied in the *gananciales* regime.

The latter was recognized by legal scholars. As noted by Mateos Alarcón (1885: 329) as to why the *gananciales* regime was preferred and remained the default in Mexico, *tiene por fundamento la consideración de que si el hombre por su aptitud y su trabajo adquiere un patrimonio, la mujer le ayuda por su economía y por su celo a formarlo y conservarlo.* 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 (Arrom 1980: 514). Silvia Arrom (1985b: 313) argues that the reason the separation of property regime was probably adopted as an option in Mexico at this time was that it expanded the range of personal choice in marriage and *fit* the more flexible, diversified economy and society of the nineteenth century.

But it was one thing to provide for separation of property as an option and quite another, as in Central America, to make it the default regime, what would prevail unless specified otherwise. We thus concur with Dore (2000) that, overall, the adoption of the regime of separation of profit was probably prejudicial to married women in the countries where this became the default regime. It did not become the default regime, however, in all countries where it was formally introduced, nor even a formal option in most South American countries until well into the twentieth century.74

**Testamentary Freedom**

The advocates of testamentary freedom considered it *a natural and logical consequence of private property.* *As the commission which drafted Honduras' 1880 code also argued, En la sucesión testamentaria domina el principio de la personalidad libre; domina el fecundo principio económico del hombre único legislador omnipotente sobre el fruto de su trabajo, sobre todo lo que ha producido o adquirido* (Honduras 1880: 29). The commission was cognizant of the fact that it was breaking with Hispanic tradition and introducing *verdaderas reformas radicales.* *Part of their justification for doing so was precisely that the United States and England, los pueblos mas libres de la tierra,* did not follow the practice of the *legítima* (Ibid.: 33-38). Testamentary freedom had been adopted throughout the United Kingdom and its colonies in the early eighteenth century, and once the United States became independent in 1776, all of the states had ratified it (Shammas, et. al 1987: 27). Reflecting on the practice of testamentary freedom in the North and of reserved inheritances in Latin America, the commission argued that a reserved inheritance discouraged individual initiative. Moreover, *El sistema de reserva inclina mas bien al odio i a la ingratitud con sus padres que al respeto i al reconocimiento...* Testamentary freedom was thus looked upon favorably since *el hijo nada tiene que esperar del padre,

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74 Brazil was the first South American country to formalize the separation of property regime as an option in its 1916 civil code; it also made this regime obligatory for men who married over the age of sixty and women over fifty, presumably to protect the children from a previous marriage (Arts. 258 and 276, in Wheless 1920). See Deere and León (2001a: Table 2.3).
In Mexico, where testamentary freedom had been under discussion since the 1870s, its adoption in 1884 was quite controversial, at least among jurists. Whereas its advocates thought it necessary to stimulate the work ethic, dissenters feared that it would undermine the harmony of the family. Silvia Arrom (1985b: 313-315) argues that in contrast to the abolition of dowry which followed the trend in social practice, the introduction of testamentary freedom was designed to bring about social change, specifically economic development. 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.

Two decades later, the commission which 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 to become independent. But the commission also assumed that a libertad de testar en nada puede afectar el cumplimiento de los deberes con la familia...es probable que la libertad del testador se manifiesta ordinariamente en favor de tales personas, obedeciendo a los sentimientos mas naturales del corazón humano (Suárez 1911: 158-159).

It is worth noting, nonetheless, that all of the countries adopting testamentary freedom at this time made some provisions to assure that the children and surviving spouse not be dispossessed totally. El Salvador was the most generous, reserving up to one-third of an individual’s patrimony as alimentos for the children, parents and spouse if they were disinherited in order so that they can sostener la posición en que se han mantenido durante la vida del testador (Ibid.: 160) This was considered necessary in order to conciliar los derechos de la propiedad, que han obligado a la Comisión a consignar la libertad de testar, con el cumplimiento de los deberes con la familia.

Mexico limited the alimentos to those in need of support which could include children under 25; sons older than this age if incapacitated; single daughters over 25; parents; and widows as long as they did not remarry and lived honestly (Arts. 3323, 3324, and 3326, in Mateos Alarcón 1885). In legislating testamentary freedom, besides subjecting this right to the provision of alimentos to those in need, Honduras and Nicaragua also maintained the porción conyugal. Such followed the Chilean rules regarding the spouse need to prove impoverishment, with the share limited to a maximum of one-fourth of the deceased patrimony in Nicaragua and one-fifth in Honduras.

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75 Suárez (1911: 217). Also see Art. 1139 of 1902 Salvadorean civil code.

76 Arts. 976, 1201, 1205 and1207 of the 1903 Nicaraguan code and Arts. 1036 and 1214 in 1880 Honduran code. In its1898 civil code Honduras got rid of the porción conyugal, but then expanded the share of a deceased person s patrimony to a maximum of one-fifth which could be paid in alimentos to a needy widow/er and children (Art. 994).
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. With the exception of the two countries which 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 was surely increased. Little research has been done on these questions, as well as on how common it became in Mexico and Central America for widows and children to actually be provided *alimentos* if in need.

With respect to daughters, Arrom (1985b: 313-315) argues that testamentary freedom came about at a very high price, for combined with the disappearance of the practice of dowry it dramatically reduced the protection to which they previously had been entitled. She does not consider the end of dowry by itself to have been such a calamity, for what essentially changed was only 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. With the end of dowry they just had to wait longer to obtain property. The end of the *legítima*, however, meant that neither sons nor daughters were guaranteed any inheritance at all. Given the unequal opportunities by gender for accumulating 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 their fall-back position was greatly weakened. In addition, testamentary freedom could have reinforced male privilege in inheritance, particularly of land. But again, firm conclusions awaits further empirical research.

Arrom (Ibid.) also considers the introduction of testamentary freedom a logical accompaniment to the decline in the authority of parents over children, such as over marriage choice. The end of dowry prevented the dispersal of their capital during their lifetimes; in addition, since they had less control over their children’s choice of occupation or spouse, they were also released at death 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 by different means.

Turning to intestate inheritance, several of the Liberal civil codes in Central America considerably bettered the position of wives. El Salvador’s 1902 code now included spouses, along with parents, in the first order of inheritance (Art. 988). Also, if the deceased had no living children or parents, the spouse now inherited the deceased’s entire estate. Honduras kept vacillating 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 *porción conyugal* in 1906. In this latter code it increased the maximum share of the *porción conjugal* from one-fifth to one-quarter of the
deceased’s patrimony. Costa Rica also elevated the spouse (along with the parents) to the first order, but with a caveat. If the spouse received gananciales, then he/she was only entitled to the difference in value between the gananciales and the inheritance share of one child. If the gananciales exceeded this amount then the widow(er) was not entitled to inherit from his/her spouse (Art 572, Costa Rica 1887). Thus while an improvement over its 1841 code with respect to the inheritance rights of spouses (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 that the deceased left no living children; wives were added to the second order of inheritance and now divided their husband’s patrimony in equal shares with his parents.78

Hence, in the case of intestate, the Central American liberal revolutions generally furthered the trend that had begun with independence in many South American countries: the position of spouses was strengthened at the expense of siblings. As the commission which drafted the 1902 Salvadorean code explained: APor grande que sea el afecto de los padres hacia los hijos, no es mayor que el que se profesan el marido y la mujer, ni excluye tampoco las obligaciones que el amor y el agradecimiento imponen a los hijos respecto de los padres.@Suárez 1911: 149).

**Potestad Marital**

Commenting on the 1884 Mexican code, legal scholar Mateos Alarcón (1885: 100-102) argued that it was imperative that the husband remain the household head and that a woman obey him A pues se introduciría el desorden y la inmoralidad en la familia, haciendo imposible su existencia y la conservación de sus bienes.@Moreover, he considered that women were incapable of carrying out the acts of civil life by themselves and without permission of their husbands because they were weaker and inexperienced but also because the obedience of the wife was An the interest of the marriage.@

The commission drafting El Salvador’s Liberal code of 1902 thought that they were ending potestad marital, for wives attained the legal capacity to manage all of their own property without their

77 Arts. 1087-1092, in Honduras (1998); Arts. 965, 1150-1154, in Honduras (1906).

78 Art. 1010, Nicaragua (1903); Art. 1026, Honduras (1880); Art. 1089, Honduras (1898); Art. 966, Honduras (1906). 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 was subject to the cuarta conyugal in the case there were surviving children or parents; in their absence the spouse would inherit all, irrespective of whether he/she demonstrated economic need (Arts. 953 and 983, Guatemala 1877). Spouses remained in a much worse position in Mexico, where in the first or second order of inheritance they could only claim the porción conyugal. Moreover, in the case there were no surviving children or parents, the wife had to divide the estate with the deceased’s siblings and if there were two or more brothers the widow(er) received only one-third of the estate (Arts. 3574, 3615, 3627-3632, in Mateos Alarcón 1904).
husband's permission: With the pretext of protecting the married woman and taking care of her interests, civil law [in the past] deprives her of the administration and enjoyment of her property, inhibiting her from disposing of what is hers, and submits her to the potestad or tutelage of her husband, without whose intervention she cannot contract or join a suit...That such a regime is inconsistent with the principles of natural rights is a point of which the Commission has no doubt (El Salvador 1959: 17-18). But while men and women were now to have 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 phrase that el marido debe protección a la mujer, la mujer obediencia al marido, as did Costa Rica.\footnote{79 Art. 184, 1902 Salvadorean code and Art. 73, 1887 Costa Rican code.}
Moreover, Nicaragua and Honduras maintained the husband as the explicit head of household.\textsuperscript{80} And in all four countries the wife was still required to live where the husband determined and to follow him if he changed residence.\textsuperscript{81} In addition, in all four husband maintained \emph{patria potestad} over the children in case of separation or divorce. Nonetheless, the four Central American countries that established the separation of property regime as the default did go further than any other Latin American country had gone to weaken \emph{potestad marital} 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 and Guatemala until 1926 (Table 4). By the second decade of the twentieth century civil code reform, specifically, the ending of \emph{potestad marital}, was a demand of the nascent feminist movement throughout Latin America.\textsuperscript{82} Ironically, in those Central American countries

\textsuperscript{80} Art. 151, 1903 Nicaraguan code and Art. 167, 1906 Honduran code.

\textsuperscript{81} Art. 73, 1887 Costa Rican code, Art. 185, 1902 Salvadorean code, Art 152, 1903 Nicaraguan code, and Art. 168, 1906 Honduran code.

\textsuperscript{82} The first writings by women demanding the reform of married women’s property rights appear in the first decade of the twentieth century and civil code reform is taken up at the First International Feminine Congress in Buenos Aires in 1910 (Lavrin 1995: 204-205). Carranza’s 1917 Law of Family Relations in Mexico was the first successful civil code reform to have counted with the active participation of feminists (Macías 1982: 13-70). In Brazil, where feminist voices calling for the emancipation of women appear even earlier than Hispanic America, the focus of their attention in the 1890s (coinciding with the enactment of Brazil’s first republican constitution) was centered on suffrage. Less attention appears to have been given by them to married women’s property rights or at least in June Hahner’s (1993) account they do not seem to be very involved in the discussions regarding Brazil’s first civil code of 1916.
to first extend the concept of individual freedom to married women by making them legally capable rather than relatively incapable--women’s voices were largely absent.

VI. Conclusions

The Liberal revolutions of the late nineteenth and early twentieth century led to two paths in Latin America as regards marital and inheritance regimes. The adoption of separation of property as the default regime in much of Central America (and its availability as an option in Guatemala and Mexico), and the maintenance of gananciales as the default regime in most of South America. The exception to the latter is Brazil where the colonial regime of full community property remained the default until 1977. Moreover, in 1916 it was the first South American country to formalize the option of the separation of property regime. What we want to stress is that only four countries took the tenets of economic liberalism to their logical conclusion within the family, imposing economic autonomy on two unequal actors, husband and wife.

Inheritance regimes also followed two parallel paths, one following testamentary freedom in Mexico and Central America, and the other maintaining the reserved portion of children in South America. The only nod towards testamentary freedom was the increase in the share testators were free to will in the Bello codes from the colonial one-fifth to one-quarter of an estate and much later, in Brazil in 1907, from the colonial one-third to one-half of the estate (Nazarri 1995: 801).

What distinguishes the Central American liberal revolutions from those of South America was that these came later and when they did, liberal parties (or caudillos) had sufficient strength over conservatives to ramrod the whole gamut of reforms, from the freeing of land and labor, to free trade and secularization in the context of the consolidation of their agro-export models. Moreover, as Table 4 shows, the reform of the marital and inheritance regimes was either simultaneous with the institution of civil matrimony and divorce (Costa Rica) or followed closely on its heels. Nonetheless, the change in marital and inheritance regimes did not always take place during the precise period that, according to Mahoney (2001), the liberal revolutions were at their maximum force, sometimes being carried out by subsequent liberal governments.

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83 Arts. 276–277 in Wheless (1920). The 1916 code also makes available two other options, the gananciales regime (or regime of partial or limited community) and the dotal regime (Arts. 269-277, and 278-309). The advantages and disadvantages of alternative marital regimes were discussed in Brazil (Almeida 1999: 60-61) and other South American countries. For example, in the first attempt to reform married women’s property rights in Argentina, a bill was submitted to the legislature in 1902 which 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 got nowhere (Lavrin 1995: 201).
Timing and geography are important in terms of why these radical reforms were adopted in Central America. By the time of their liberal revolutions, liberalism was well consolidated in Mexico. Moreover, the precedent of the Married Women’s Property Acts in the United States and Great Britain was already well known. However, in Central America women’s formal education and entry into the labor force were still just incipient (compared with Mexico and the Southern Cone), factors that contributed to the adoption of the Married Women’s Property Acts in the North. The importance of geography is highlighted by considering why the only liberal revolution in South America of this period, that of Ecuador (1895-1911), was not as radical with respect to family law as those in Central America. While it too was consolidating the basis for its agro-export economy, and civil marriage and divorce were introduced along with the separation of church and state, no apparent attempt was made to reform the family law provisions of its civil code (Ayala 1988). Perhaps this is because the position of the church as well as its opposition to reform in Ecuador were stronger than in Central America. But what clearly differentiates them 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. 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 the women in much of Central America.

In drawing up a balance sheet of whether the liberal reforms in married women’s property rights contributed to gender-progressive change, we focus on their potential for increasing women’s bargaining power as well as economic autonomy, taking into account that the potential impact of the reforms often depended upon a woman’s class and familial position.

1. The lowering of the age of majority and of consent for marriage was the one liberal reform that was undertaken by almost all Latin American countries in the nineteenth century and that was potentially favorable for daughters of all social classes. Their economic autonomy was surely increased as now at twenty-one they had at least the weight of the law behind them in choosing to take a job or deciding when and whether to get married. 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.

2. The end of the dowry changed conditions in the marriage market, probably reducing the bargaining power of young women in their choice of a partner. Its demise undoubtedly reinforced the trend already underway favoring marriage based on romantic love. To the extent that it saved young women of means from lowry hunters as portrayed in the literature of the period, this was potentially beneficial. But by reducing or eliminating the economic contribution that women brought to marriage, it potentially reduced their bargaining power. As Nazarri (1991) argues, the end of dowries made married women more dependent on their husbands and reinforced women’s role in the domestic sphere, since a family’s economic position was largely determined now by the husband’s earnings.

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84 See the wonderful novel in this regard written in 1875 by Brazilian writer José de Alencar, *Senhora. Profile of a Woman*. 
Moreover, the end of dowry weakened a married woman's fall-back position, making her more vulnerable. In case of an insufferable marriage it reduced the possibility that she would be able to file for a separation since she would no longer be able to count on her dowry as a source of economic support (or she would have to delay such a separation until she came into her share of a forced inheritance). Thus we conclude with Nazarri (1991) that the end of dowry tipped the marriage contract in favor of husbands. Whether the demise of the dowry effected women of all class positions in a similar fashion requires much more research. It probably had more substantive negative effects in those countries that also adopted testamentary freedom, as suggested by Arrom (1985a).

3. The introduction of civil matrimony was important for women to the extent that it paved the way for civil divorce, increasing their bargaining power to leave insufferable marriages and hence, their individual freedom. One of the greatest accomplishments of nineteenth century liberalism was the recognition of marriage as a civil contract, one that could be terminated as any other contract. By the end of that century twelve of the sixteen countries included in Table 2 had made civil matrimony obligatory while only five had approved civil divorce and only one of these, divorce by mutual consent. These numbers were expanded considerably during the first two decades of the twentieth century when another six countries enacted civil divorce and, in step-wise fashion, more countries made available divorce by mutual consent. The overall tendency of the nineteenth century was for the conditions under which legal separation of unions could take place to be expanded and for authority in such matters to move from the church to the state. In addition, civil code reforms strengthened the economic autonomy of separated women by generally giving them complete control over the assets to which they were entitled (their own individual property and half of the gananciales) as well as any income or property earned after the separation.

4. We have argued that, in principle, the formal introduction of the marital regime of separation of property as an option that couples could choose among was an important extension of the principle of individual freedom to the realm of the family, for it gave women the option to control their own property and earnings for the first time. 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 women who did not work, for the end of the right to gananciales meant that there was no longer any implicit recognition of women's contribution of domestic labor to the formation of the husband's patrimony. Moreover, while the ability to control one's own earnings was certainly an advance for many working wives, giving them a measure of economic autonomy, unequal opportunities in the labor market and to accumulate assets reduced the potential benefits of this regime. In the broad picture of things, however, the adoption of this regime by Central American countries in this period did provide the important precedent of married women being legally capable, which may have paved the way for a deepening of reforms in the rest of the region in the twentieth century.

5. The adoption of testamentary freedom in Mexico and Central America had potentially diametrically opposed effects on daughters and widows. The end of the legítima meant that daughters were no
longer assured of an equal share of their parents’ estate. Combined with the end of the practice of dowry one would expect this to make daughters more vulnerable than ever before and particularly more so than their brothers, given the unequal opportunities for the attainment of education and gender-differentiated prospects in the labor market. At the same time, testamentary freedom may have favored widows, since their husbands could now will them a larger portion of or their entire estate, leaving them in control of the family farm or business. But this outcome totally depended on the good will 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, require empirical research.

In contrast, in South America, the liberal reforms in the rules of inheritance tended to favor sibling equality, such as the reduction or the end of the practice of the mejora. But in the Bello codes this was usually accompanied by an increase in the share that an individual was free to will, possibly negating this effect.

6. The most important liberal reform of the rules of succession in South America was the addition in three countries of spouses to the first order of inheritance, including them in the legítima. This constituted an important break with colonial practice and considerably increased the potential economic autonomy of widows. The formalization of the porción conyugal was also a gain for widows, albeit a limited one (since it required the widow to plead poverty), but it did extend some protection to them from being left destitute. Moreover, by the end of the nineteenth century most countries had bettered the position of spouses with respect to intestate, 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. The betterment of the position of widows in both the legítima and intestate was one reform that enhanced the potential economic autonomy of married women of all social classes and gave them a considerable advantage over women in consensual unions. Moreover, it was a uniquely Latin American liberal reform, not having any legal precedent in the Napoleonic code or the United States. Thus, on balance, the liberal reforms of married women’s property rights in the nineteenth century had both positive and negative aspects, but the trend favored gender-progressive change.
Table 1: Latin American Nineteenth Century Civil Codes, by Date and Period.

<table>
<thead>
<tr>
<th>First Republican Code</th>
<th>Other 19th C Codes</th>
<th>Next Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>1830 Bolivia</td>
<td></td>
<td>1972</td>
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<tr>
<td>1841 Costa Rica</td>
<td>1887</td>
<td>1973</td>
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<tr>
<td>1852 Peru</td>
<td></td>
<td>1936</td>
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<tr>
<td>1855 Chile (Bello)</td>
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<td></td>
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<tr>
<td>1859 El Salvador (Bello)</td>
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<td>1902</td>
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<tr>
<td>1860 Ecuador (Bello)</td>
<td></td>
<td>1949</td>
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<tr>
<td>1862 Venezuela (Bello)</td>
<td>1867, 1873, 1881, 1896</td>
<td>1904</td>
</tr>
<tr>
<td>1866 Mexico</td>
<td>1870, 1884</td>
<td>1928</td>
</tr>
</tbody>
</table>
Notes: The year of the civil code often varies in the literature depending on whether the author is referring to the year in which the legislation was approved versus the year that the code went into effect. For consistency, we have followed the convention of always referring to the earlier date. Also, above we do not include the dates of all of the partial reforms made to these codes.

Sources for nineteenth and early twentieth century codes: Argentina, Zamora (1969); Bolivia, Salinas Mariaca (1955); Brazil, Wheless (1920); Chile, Chile (1856) and Chile (1958); Colombia, Colombia (1895); Costa Rica, Ramírez (1858) and Costa Rica (1887); Ecuador, Ecuador (1860); El Salvador, Suárez (1911); Guatemala, Guatemala (1877) and Guatemala (1926); Honduras, Honduras (1880), Honduras (1898), Honduras (1997); Mexico, Mexico (1866), Mexico (1870), Mateos Alarcón (1904); Nicaragua, Nicaragua (1871), Santos Zelaya and Abaunza (1903); Peru, Cornejo (1921); Venezuela, Dominici (1897) and Parra-Aranguren (1974).

Table 2: Civil Matrimony and Divorce in Latin America

<table>
<thead>
<tr>
<th>Country</th>
<th>Matrimony</th>
<th>Divorce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guatemala</td>
<td>[1837-40] obligatory</td>
<td>[1837-40] by mutual consent</td>
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<tr>
<td></td>
<td>1877 if of diff. creeds</td>
<td>1894 by mutual consent</td>
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<tr>
<td></td>
<td>1878 option for all</td>
<td></td>
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<tr>
<td></td>
<td>1879 obligatory</td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>[1853-87] obligatory</td>
<td>[1853-56] by mutual consent</td>
</tr>
<tr>
<td></td>
<td>1888-1974 non Catholics</td>
<td>1976 for those married civilly</td>
</tr>
<tr>
<td></td>
<td>1974 obligatory</td>
<td>1992 by mutual consent</td>
</tr>
<tr>
<td>Mexico</td>
<td>1859 obligatory</td>
<td>1917 by mutual consent</td>
</tr>
<tr>
<td>Venezuela</td>
<td>1862 non Catholics</td>
<td>1904</td>
</tr>
<tr>
<td></td>
<td>1873 obligatory</td>
<td></td>
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<tr>
<td>Country</td>
<td>Law Change años</td>
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<tr>
<td>Argentina</td>
<td>1869 non Catholics [1954-56]</td>
<td></td>
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<tr>
<td></td>
<td>1888 obligatory 1987 by mutual consent</td>
<td></td>
</tr>
<tr>
<td>Cuba</td>
<td>1889 option 1918 by mutual consent</td>
<td></td>
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<tr>
<td></td>
<td>1899 obligatory</td>
<td></td>
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<tr>
<td>El Salvador</td>
<td>1880 obligatory [1880-81]/1894</td>
<td></td>
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<tr>
<td>Honduras</td>
<td>1880 option for all 1898</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1881 obligatory 1906 by mutual consent</td>
<td></td>
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<tr>
<td>Chile</td>
<td>1884 obligatory No</td>
<td></td>
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<tr>
<td>Uruguay</td>
<td>1885 obligatory 1907 by mutual consent</td>
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<tr>
<td>Costa Rica</td>
<td>1887 obligatory 1887</td>
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<tr>
<td>Brazil</td>
<td>1890 obligatory 1977 by mutual consent</td>
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</tr>
<tr>
<td>Nicaragua</td>
<td>1894 obligatory 1894</td>
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<tr>
<td></td>
<td>1906 by mutual consent</td>
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<tr>
<td>Peru</td>
<td>1897 non Catholics 1930 by mutual consent</td>
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<tr>
<td></td>
<td>1930 obligatory</td>
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<tr>
<td>Ecuador</td>
<td>1902 obligatory 1902</td>
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<td></td>
<td>1910 by mutual consent</td>
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<tr>
<td>Bolivia</td>
<td>1911 obligatory 1932 by mutual consent</td>
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</tbody>
</table>

Notes:
- [ ] Passed, then rescinded. Obligatory includes where may marry by Catholic church, but must register the marriage civilly. In all cases where divorce by mutual consent is noted divorce due to the culpability of one spouse is also available.

Sources:
- Argentina: Artls. 64 and 81, 1869 code in Zamora (1969); Estivill (1970: 53-54; 964); Recalde (1986: 8); Arts. 213 and 215 in Argentina [1987].
- Brazil: Decreto n. 181 de 24 de Janeiro de 1890, in Alencastro Autran (1896); Soares (1905: xv); Art. 180, 1916 code in Wheless (1920); Art. 2, Lei No. 6515 de 26 de dezembro de 1977 in Auriverde (1977).
Chile: A ley de Matrimonio Civil, 1884, in Chile (1958: 563-570); and Chile (1998: 159-166).
Colombia: Amezquita de Almeida (1980: 294-299); Contreras, Tafur and Castro (1996: 72-74);
Costa Rica: Arts 59 and 86 in Costa Rica (1887).
Cuba: Arts 42 and 105 of Spanish civil code of 1889 in Barbé and Huguet (1925); on 1899
El Salvador: Suárez (1911: 52-55, 78-81).
Guatemala: Pineda de Mont (1872: 263, 300-310); Art 130 in Guatemala (1877); Cruz
(1882: 176-179); Guatemala (1923).
Honduras: Art. 129 in Honduras (1880); Arts. 58 and 75 in Honduras (1898); Fonseca (1968:
39-40).
Mexico: Parcero (1992); Art. 101 in Mexico (1866); Mateos Alarcón (1904: 27, 81); Art. 267,
1928 code in Wallace Gordon (1980);
Nicaragua: Bonilla (1894); Arts. 95, 160, and 174 in Santos Zelaya and Abaunza (1903);
divorce by mutual consent was established in the Código de Procedimiento Civil of 1906, in
note to Art. 174, Nicaragua (1931).
Peru: Cornejo (1921: 203-205); Arts. 101 and 124 in Peru (1939); Comisión de la Mujer (1997:
24-25).
Venezuela: Art. 2, 1862 code in Parra-Aranguren (1974); Arts. 48 and 81 in Venezuela (1867);
for 1873 in Dominici (1897: xvi); Arts. 63 and 74 in Venezuela (1896); and Instituto de

Table 3: The Age of Majority and for Marriage without Parental Consent, Nineteenth Century Latin
America

<table>
<thead>
<tr>
<th>Date</th>
<th>Country</th>
<th>Age of Majority</th>
<th>Age for Marriage</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Women  Men</td>
<td>Women  Men</td>
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<tr>
<td>1826</td>
<td>Colombia</td>
<td>-    -</td>
<td>18/21  21/25</td>
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<tr>
<td>1853</td>
<td></td>
<td>-    -</td>
<td>18    21</td>
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58
<table>
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<tr>
<th>Year</th>
<th>Country</th>
<th>1873</th>
<th>1830</th>
<th>1831</th>
<th>1841</th>
<th>1887</th>
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Note: - Refers to fact that this point not treated in the civil code or relevant legislation of that year.

Sources:
Chile: Chile (1999: 17); and Instituto de Derecho Privado (1993: 387); no change was made by the 1885 Ley de Matrimonio Civil.
Colombia: Dueñas (2001); Arts. 34 and 116 in 1873 code in Colombia (1895).
Costa Rica: Arts. 93 and 192, 1841 code in Ramírez (1857); Arts. 22 and 57 in Costa Rica (1887).
Ecuador: Arts. 260 and 93 in Ecuador (1860).
El Salvador: Suárez (1911: 9, 155).
Guatemala: Decree 42 of December 1871 in Guatemala (1881).
Honduras: Art. 113 and p. 8 in Honduras (1880).
Mexico: Art. 6, 1859 Ley de Matrimonio Civil in Dublan and Lozano (1877); Arts. 106 and 268 in Mexico (1866); Art. 165 and p. 34 in Mexico (1870); Arts. 161 and 362, 1884 code in Mateos Alarcón (1904); and Parcero (1992: 123).
Nicaragua: Art. 107 and 269 in Nicaragua (1871); Bonilla (1894: 49-52); Arts. 100 and 278, 1903 code in Santos Zelaya and Abaunza (1903).
Peru: Arts. 12 and 146, 1852 code in Cornejo (1921).
Venezuela: Title III, Art. 5, Title VII, Art. 2, 1862 code in Parra Arranguren (1974); Arts. 54, 55, 57 and 146 in Venezuela (1867); and Instituto de Derecho Privado (1993: 383-387).

Table 4: The Liberal Revolutions in Mexico and Central America and Married Women's Property Rights
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<tr>
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<th>Maximum&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Civil&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Civil&lt;sup&gt;b&lt;/sup&gt;</th>
<th>Separation&lt;sup&gt;c&lt;/sup&gt;</th>
<th>Testamentary&lt;sup&gt;d&lt;/sup&gt;</th>
<th>Adm. Own&lt;sup&gt;e&lt;/sup&gt;</th>
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<tbody>
<tr>
<td><strong>Mexico</strong></td>
<td>1855-61</td>
<td>1859</td>
<td>1917</td>
<td>1870</td>
<td>1884</td>
<td>1917</td>
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<td><strong>Costa Rica</strong></td>
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<td>1870-82</td>
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<td><strong>Guatemala</strong></td>
<td>1873-85</td>
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<td><strong>El Salvador</strong></td>
<td>1876-83</td>
<td>1880</td>
<td>[1880-81]/94</td>
<td>1902 (default)</td>
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<td>1876-83</td>
<td>1898</td>
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<td>1894</td>
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<td>1903 (default)</td>
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</table>

**Sources:**

<sup>a</sup> for Mexico, Wasserman (2000: 98), for Central America, Mahoney (2001: Table 1.1).

<sup>b</sup> See Table 2; refers to when civil marriage became obligatory and divorce with remarriage an option.

<sup>c</sup> Arts. 2009 and 2102, Mexico (1870); Art. 76, Costa Rica (1887); Art. 1164, Guatemala (1877); Arts. 187-188 of 1902 Salvadoran civil code in Palacios (1904); Art. 169 of 1906 civil code in Honduras (1997); Art. 153 of 1903 Nicaraguan civil code in Santos Zelaya and Abaunza (1903).

<sup>d</sup> Art. 3323 of 1884 civil code in Mateo Alarcón (1906); Art. 595, Costa Rica (1887); Arts. 158-159, Decree 272 of February 1882 in Guatemala (1883); Art. 1001 of 1902 Salvadoran civil code in Suárez (1911: 159); Art. 173 in Honduras (1997); Art. 157 in Santos Zelaya and Abaunza (1903).

<sup>e</sup> Refers to when wife could enter into contracts and enter into suits without husband’s permission; for Mexico, Ley sobre Relaciones Familiares in Carreras Maldonado and Montero Dubalt (1975: 72-74); Art. 78, Costa Rica (1887); Art. 166, Guatemala (1926); Art. 191 in Suárez (1911: 107); Art. 173, Honduras (1997); Art. 157 in Santos Zelaya and Abaunza (1903).
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