

## MARRIED WOMEN'S PROPERTY RIGHTS AS HUMAN RIGHTS: THE LATIN AMERICAN CONTRIBUTION

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### I. INTRODUCTION<sup>1</sup>

There are two key components to securing married women's property rights as human rights: attaining the same property rights for married women as for single women and establishing equal rights between husband and wife in marriage. While these are interrelated, their attainment has followed different trajectories in Latin America and in countries of the common law tradition. What Latin America, the United Kingdom and the United States shared until the late nineteenth century was that the act of marriage changed a woman's property rights. Single women had almost the same property rights as single men, whereas married women did not.

Where the two traditions differ is that up until the early nineteenth century, married women's property rights were stronger in Latin America than among their counterparts in the common law countries. This partly

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1. This Article draws freely on CARMEN DIANA DEERE & MAGDALENA LEÓN, *EMPOWERING WOMEN: LAND AND PROPERTY RIGHTS IN LATIN AMERICA* (2001); Carmen Diana Deere & Magdalena León, *Liberalism and Married Women's Property Rights in Nineteenth Century Latin America*, 85 *HISP. AM. HIST. REV.* (forthcoming 2005); Carmen Diana Deere, *Married Women's Property Rights in Mexico: A Comparative, Latin American Perspective and Research Agenda*, paper presented at the Workshop on Law and Gender in Contemporary Mexico, Institute of Latin American Studies, University of London, Feb. 19-20, 2004.

explains why the demand for securing for married women the same property rights as single women emerged much earlier in the United Kingdom and in the United States than in Latin America, and why these reforms were largely attained in common law countries during the second half of the nineteenth century.

Little attention has been given to the fact that reforms aiming to establish equal rights between husband and wife in marriage began earlier in many Latin American countries than in either the United States or the United Kingdom. The first moves toward what has been termed the “dual-headed” household — where husbands and wives have equal rights and responsibilities for household representation and management, including the couple’s joint assets — were taken by several Latin American countries in the first half of the twentieth century. Other countries in the region moved to establish equal rights in marriage even before the 1979 U.N. Convention on the Elimination of All Forms of Discrimination against Women was ratified in 1981, a convention which the United States has yet to ratify. The aim of this Article is to highlight the Latin American contribution to the process of attaining married women’s property rights as human rights.

In the next section, a brief comparison is presented of married women’s property rights in the early nineteenth century under common law and the Hispanic codified tradition. Then, the late nineteenth century reforms of married women’s property rights in the two regions are analyzed. The third section considers the paths toward gender equality in marriage in Latin America. The final section highlights the challenges that remain to secure real as opposed to formal gender equality with respect to property rights in Latin America.

## II. MARRIED WOMEN’S PROPERTY RIGHTS IN THE EARLY NINETEENTH CENTURY

Under British common law, married women were viewed as an extension of their husbands. The result of this legal fiction was that wives lost the right to manage any real property they had brought into marriage and lost both ownership and control over any personal property that they owned, including any wages or salaries that 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, for her inheritance became her husband’s property. Women also could not make out a will. Upon her death, a wife’s 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 "curtesy." In addition, the husband kept her personal property, since that was considered his property.<sup>2</sup>

Upon her husband's death, the 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) or by the eighteenth century, jointure (a guaranteed annual income from her deceased husband's real property). In the case of separation or abandonment by either party, the husband continued to control his wife's property, including any income from her real property and her wages or salary.<sup>3</sup>

During the seventeenth and eighteenth centuries, a parallel legal system developed in England based on equity courts that began to recognize women's separate property through prenuptial marriage settlements.<sup>4</sup> 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 wealthy. Thus, two separate traditions came to govern the property rights of married women in England: common law for the poor and equity for the rich.<sup>5</sup>

The default marital regime in colonial Hispanic America was partial community property, which is known in the region as *gananciales* (participation in profits). Three types of property were recognized in marriage: what was his, what was hers, and the joint or community 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

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2. LEE HOLCOMBE, *WIVES AND PROPERTY: REFORM OF THE MARRIED WOMEN'S PROPERTY LAW IN NINETEENTH-CENTURY ENGLAND* (1983).

3. *Id.*; SUSAN STAVES, *MARRIED WOMEN'S SEPARATE PROPERTY IN ENGLAND 1660-1833* (1990).

4. A separate estate could be created, which was put in trust "for her sole and separate use," and that was not subject to control by her husband or attachable by his creditors; it was usually managed by a trustee. *See* STAVES, *supra* note 3, at 1660-1833. 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. *See* HOLCOMBE, *supra* note 2.

5. HOLCOMBE, *supra* note 2.

“work or industry” during the marriage, constituted the community property of the couple. If the marriage was dissolved for any reason, each spouse retained their own individual property as well as half of the community property.<sup>6</sup>

One of the characteristics of the colonial marital regime in Latin America 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 some combination thereof. Prenuptial agreements could be written in terms of the management of assets as well as ownership rights over subsequent earnings. Under the default regime, a husband managed both the community property and that of his wife, via a prenuptial agreement, for example, 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 his bride). Dowry was the property that parents of means were required to endow daughters at the time of marriage to contribute towards the expenses of the new couple.<sup>7</sup> In colonial Hispanic America, the dowry remained the property of the wife, although it was administered by her husband. If the union was dissolved, it reverted to her or her legal heirs and took precedent over outstanding debts of the husband or of the joint estate. A dowry was considered an advance on a daughter’s eventual inheritance from her parents. At the parents’ death, its value was deducted from her legitimate share of the inheritance. Daughters and their husbands 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. In the case of widowhood or ecclesiastical divorce, it provided the potential basis for a woman’s economic autonomy.

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6. NOVÍSIMA RECOPIACIÓN, BOOK X, TITLE IV, LAWS I-V, IN GALVÁN, NOVÍSIMA RECOPIACIÓN DE LAS LEYES DE ESPAÑA 3 (1831); see also JOSÉ MARÍA OTS Y CAPDEQUÍ, HISTORIA DEL DERECHO ESPAÑOL EN AMÉRICA Y DEL DERECHO INDIANO (Aguila ed., 1969). Legal practice in the Spanish colonies generally conformed with Hispanic legal norms and these colonial legal practices generally carried over into the early Republican period. See Edith Couturier, *Women and the Family in Eighteenth-Century Mexico: Law and Practice*, 10 J. FAM. HIST. 294-304 (1985); Eugene Korth & Della Flusche, *Dowry and Inheritance in Colonial Spanish America: Peninsular Law and Chilean Practice*, 43 THE AMERICAS 395-410 (1987); M.C. MIROW, LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA (2004).

7. On the obligation of fathers (and in their absence, mothers) to provide a dowry for their daughters, see *Siete Partidas, Partida 4, Title 11, Laws 8 and 9*, in LAS SIETE PARTIDAS 5 (Samuel Parsons Scott trans., Robert I. Burns ed., 2001).

The main way that married women's property rights differed in the two legal traditions was that married women in Hispanic America did not lose their ownership rights, but only their ability to manage property during the marriage. In the United Kingdom, married women lost both ownership and control of their personal property; only the treatment of real property was thus similar, with women losing managerial rights in both cases. An equally important difference is that married women in Hispanic America did retain a civil personality. With their husband's permission, wives could exercise the right to contract, file suits, and be sued as regards their own individual property. Moreover, Hispanic American women could inherit in their own name and retain property rights over such assets and will this property to whomever they pleased (subject to the same norms of restricted testamentary freedom as men). Further, if separated or granted an ecclesiastic divorce, women regained control over all of their property, both personal and real. Their stronger fall back position undoubtedly contributed to their greater bargaining power in marriage.

### III. THE REFORM OF MARRIED WOMEN'S PROPERTY RIGHTS

Given the stronger property rights of married women in Hispanic America and the much greater flexibility provided by the marital regime, it is not surprising that the moves for reform of married women's property rights began earlier in the United States and the United Kingdom than in Latin America. Moreover, given the anomaly between married women's property rights under common law and equity courts, it is also not surprising that the main demand of the early feminists was for the creation of separate estates for all married women, as could be attained under equity. The reform movement, which grew in parallel with the broader codification movement for legal reform, largely focused on attaining the same rights for married women as for single women.<sup>8</sup>

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 in England to reform the property rights of married women.

The process of reform of married women's property rights in England was a slow and piecemeal effort. It was not until 1870 that a minimalist

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8. HOLCOMBE, *supra* note 2.

Married Women's Property Act, one that allowed married women to dispose of their own wages and independent earnings, was approved by Parliament. It took 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 with regard to this separate property.<sup>9</sup>

The process of reform in the United States was especially drawn out, because, given its federal system of government, reform acts had to be adopted on a state-by-state basis. The earliest reforms of married women's property rights, adopted primarily in southern states in the decade of the 1830s, were designed to protect family property (particularly, slaves) from creditors, rather than to expand the rights of married women. The desire of parents to protect their daughter's inheritance from bad management by their husbands, combined with the growth of both the codification and the feminist movements after 1848, resulted in a growing number of states adopting Married Women's Property Acts in the 1840s and 1850s that established separate estates for married women. A third wave of reform acts after the Civil War gave married women control over their own earnings.<sup>10</sup> 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.<sup>11</sup>

As noted, the demand for reform of married women's property rights by feminists in England and the United States was largely focused on giving married women the same property rights 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 value of their husband's property. The Married Women's Property Acts "protected the property of married women acquired from their own kin, but were silent about rights to assets

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9. *Id.*

10. Linda E. Speth, *The Married Women's Property Acts, 1839-1865: Reform, Reaction or Revolution?*, in 2 *WOMEN AND THE LAW. A SOCIAL HISTORICAL PERSPECTIVE* 69-91 (D. Kelly Weisberg ed., 1982); Richard H. Chused, *Married Women's Property Law: 1800-1850*, 7 *GEO. L.J.* 1359-1425 (1983); Joan R. Gundersen, *Women and Inheritance*, in *INHERITANCE AND WEALTH IN AMERICA* ch. 5 (Robert K. Miller, Jr. & Stephen J. McNamee eds., 1998).

11. SUSAN NICHOLAS ET AL., *RIGHTS AND WRONGS: WOMEN'S STRUGGLE FOR LEGAL EQUALITY* (2d ed. 1986).

derived partially or entirely from the labor they performed as wives, whether in the home or family business."<sup>12</sup> With the exception of the special case of the western American states,<sup>13</sup> little attention was given during the many years of debate over married women's property rights in England and the United States to the potential benefits of alternative marital regimes, such as the full or partial community property regimes, or to equality of rights and obligations for men and women.<sup>14</sup>

In Hispanic America all of the initial Republican civil codes up through the decade of the 1870s maintained the same default marital regime as during the Spanish colonial period, that of *gananciales*. Moreover, all maintained the husband as the administrator of both the community property and that of his wife.<sup>15</sup> The struggle for reform of married women's property rights in Hispanic America was to focus on ending what was known as *potestad marital*, defined in the 1855 Chilean civil code as "the sum of rights that the law gives to the husband over the person and property of his wife."<sup>16</sup>

Strengthening married women's property rights required: 1) establishing the equal civil capacity of married men and women, so that wives no longer required the permission of their husbands to administer their own property, contract, file suits, or exercise a profession or work outside the home; and 2) establishing equal rights and responsibilities for household representation and management — the dual-headed household. The latter included: securing the joint administration of community property; mutual restrictions on the sale of individual and joint assets; each spouse contributing to the maintenance of the household according to their

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12. CAROLE SHAMMAS ET AL., *INHERITANCE IN AMERICA: FROM COLONIAL TIMES TO THE PRESENT* (1987).

13. Partly because of the influence of French and Spanish legal traditions, when they became states in the late nineteenth century, the southern and western U.S. territories adopted a partial community property system. Similar to the *gananciales* regime, whatever property was acquired by either spouse during the marriage constituted community property, which was managed by the husband. Each spouse retained independently the property acquired prior to marriage or that they inherited or received as a donation; the earnings from this individual property were generally pooled. See LEO KANOWITZ, *WOMEN AND THE LAW; THE UNFINISHED REVOLUTION* (1st ed. 1969).

14. John Stuart Mill, one of the earliest advocates for women's property rights, reportedly argued that community property 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. See HOLCOMBE, *supra* note 2.

15. Deere & León, *Liberalism and Married Women's Property Rights*, *supra* note 1.

16. CÓDIGO CIVIL DE LA REPÚBLICA DE CHILE art. 132 (1856) (approved Dec. 14, 1855) (Chile).

possibilities; mutual determination of a couple's residence; and shared *patria potestad* over the children.

The first reforms of married women's property rights in Latin America focused, nonetheless, on a change in the default marital regime, a change that was not necessarily an improvement in terms of women's access to and control over property. Largely inspired by the Married Women's Property Acts in the United Kingdom and United States, the separation of property marital regime first appeared as a formal option in Latin America in the 1870 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 (that which governs if nothing else is declared at the time of marriage). The norms established in the 1887 Costa Rican civil code became the model for El Salvador (in 1902), Nicaragua (1903), and Honduras (1906) and were as follows. Prior to marriage a couple could arrange everything having to do with their own assets, and the premarital agreement (*capitulaciones*) could be changed afterwards by mutual accord. What made it the default regime was the following provision: "In the absence of *capitulaciones matrimoniales*, each spouse remains the owner and freely disposes of the assets which he/she had at the time of marriage and those which he/she might acquire through whatever means and their fruits. . . ."<sup>17</sup>

In contrast to England and the United States, the separation of property regime does not appear to have been a demand of women in Mexico or Central America, its adoption taking place considerably before the development of Latin America's feminist movement. The commission that drafted the 1870 Mexican code, nonetheless, considered the fact that a couple could now choose their marital regime "a radical innovation to improve the position of women."<sup>18</sup>

The extent to which the adoption of separation of property benefited married women in those Central American countries where it was adopted as the default regime, however, is questionable. The outcome largely depended on the particular circumstances of individual women, specifically, if they owned or stood to inherit any property and/or on

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17. CIVIL CODE COSTA RICA arts. 75 & 76 (1887) (Costa Rica).

18. CÓDIGO CIVIL DEL DISTRITO FEDERAL Y TERRITORIO DE LA BAJA CALIFORNIA 74 (1870) (Mex.). 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. In Deere and León's *Liberalism and Married Women's Property Rights*, we argue that it was probably because of the extraordinary influence that the United States had in Central America by the late nineteenth century due to geographical proximity and U.S. investments in the region. Deere & León, *Liberalism and Married Women's Property Rights*, *supra* note 1.

whether they earned any independent income. The most dramatic change for married women was that they gave up the benefits of the *gananciales* regime, including the automatic right to half of the community property generated during the marriage, which constituted the legal recognition of the contribution of wives through their domestic labor to generating it.

The adoption of the separation of property regime, however, did set an important precedent in terms of married women attaining equal civil capacity with their husbands. For under this regime, married women could enter into contracts, suits, join the labor force, etc., without their husband's permission. Women's attainment of full civil capacity regarding their own property, nonetheless, did not end *potestad marital*, especially a husband's rights over the person of his wife. The Costa Rican reform of 1887 still required a wife to obey her husband, live with him, and follow him if he changed the family's residence. Husbands, in turn, owed their wife protection, and continued to be responsible for the family's maintenance.<sup>19</sup> El Salvador maintained the infamous phrase copied from the Napoleonic code that "the husband owes protection, the woman obedience" in its liberal code of 1902 as well as *patria potestad*, the unequal position of parents with respect to rights over their children.<sup>20</sup> The reformed codes of Honduras and Nicaragua also explicitly designated husbands as the household head.

#### IV. PATHS TOWARDS THE DUAL-HEADED HOUSEHOLD

Mexico's 1917 Law of Family Relations was the first successful reform effort to have included the active participation of feminists.<sup>21</sup> It was historic in that it was the first legal reform in the Americas to establish that the husband and wife were to have "equal authority and consideration" in marriage, formally establishing the goal of the dual-headed household, where both husband and wife represent the household and jointly manage its affairs.<sup>22</sup> Specifically, the 1917 Law provided that any community property could be jointly administered by both spouses or by one of them with the consent of the other.<sup>23</sup> The 1917 law also established the separation of property regime as the default, granting wives the right to

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19. CIVIL CODE COSTA RICA arts. 73, 74 (1887) (Costa Rica).

20. BELARMINO SUÁREZ, EL CÓDIGO CIVIL DEL AÑO 1860 CON SUS MODIFICACIONES HASTA EL AÑO 1911 POR EL DR. BELARMINO SUÁREZ art. 182 (1911).

21. ANA MACÍAS, AGAINST ALL ODDS: THE FEMINIST MOVEMENT IN MEXICO TO 1940 (1982).

22. C. VENUSTIANO CARRANZA, LEY SOBRE RELACIONES FAMILIARES, OFFICIAL EDITION art. 43 (1917).

23. *Id.* art. 279.

administer their own property and to enter into contracts and suits, with the benefits and potential pitfalls mentioned earlier of this regime.

While Mexico's 1917 code was a significant departure from the "protection and obedience" framework that had governed most nineteenth century Latin American civil codes, it did not eradicate all elements of *potestad marital*.<sup>24</sup> For example, married women's right to contract was still limited, since they could only work outside the home with the permission of their husbands. In addition, while this code established that both spouses were to contribute economically to the marriage, it assumed that men were the breadwinners and specifically charged women with responsibility for domestic labor. Also, wives were still required to live where their husbands determined.<sup>25</sup>

The 1928 Mexican civil code for the Federal District and Territories (which was subsequently replicated by many states) went a step further by making it explicit that men and women had equal civil or juridical equality, providing a firmer basis for the dual-headed household.<sup>26</sup> The equal authority and consideration in marriage clause was strengthened since wives were no longer required to obtain their husband's permission to work outside the home, to accept or repudiate an inheritance, or to be the executor of a will.<sup>27</sup> The 1928 code gave couples considerable flexibility in designing their own marital regime. They could choose between the separation of property and the *gananciales* regime (termed the *sociedad conyugal*) and were expected to make *capitulaciones* at the time of marriage (which could subsequently be changed) stipulating who in the family is to manage the property, along with which specific property is to constitute individual or common property.<sup>28</sup>

Outside of Mexico and Central America, reforms granting married women a full legal personality and the right to manage their own property as well as community assets were slow and piecemeal. In some cases, such

24. María Carreras Maldonado & Sara Montero Duhalt, *La Condición de la Mujer en el Derecho Civil Mexicano*, in CONDICIÓN JURÍDICA DE LA MUJER EN MÉXICO (1975).

25. CARRANZA, *supra* note 22, arts. 40-42 & 44.

26. NUEVO CÓDIGO CIVIL PARA EL DISTRITO Y TERRITORIOS FEDERALES art. 2 (Manuel Andrade ed., 1929).

27. *Id.* arts. 169, 1655 & 1679.

28. *Id.* arts. 178 & 189. The 1928 code does not specify who the default manager will be if no *capitulaciones* are made. Given the language of article 164 ("The rights and obligations that are created by marriage will always be equal for the spouses and independent of their economic contributions to maintain the home") and article 168 ("The husband and the wife shall have equal authority and consideration in the home. . . ."), one would assume management rests with the couple. For a translation of the revised 1928 Mexican civil code, see MICHAEL WALLACE GORDON, *THE MEXICAN CIVIL CODE* (1980).

as in Uruguay, female suffrage preceded these important legal changes. In other countries, however, married women's property and civil rights were achieved, as in Mexico, long before they obtained political rights.<sup>29</sup> Given the growing number of women in the labor force, the first wave of feminism in a number of South American countries focused on gaining married women's right to control their own wages and incomes. Thus, in a pattern similar to the United States and United Kingdom's Married Women's Property Acts, between 1916 and 1949, a number of South American countries gave married women the right to manage their own earned income and/or their assets independently of their husbands. The main difference was that this reform took place within the framework of the *gananciales* regime.<sup>30</sup> These special rights of married women were usually abrogated once further civil code reform gave both husbands and wives the right to manage their own individual property and the shared right to manage the community property of the marriage.

One of the main accomplishments of the second wave of feminism has been the series of reforms that ended the primacy of husbands as legal household heads and instituted the dual-headed household — where both husband and wife represent the household and are jointly responsible for the management of the community property. Only two countries, Mexico and Uruguay, attained this legal reform before the 1970s. As previously noted, the case of Mexico achieving the dual-headed household was a piecemeal process that began in 1917, deepening in 1928, but was not completely achieved until 1974. The reforms of that year got rid of the sexism remaining in the 1928 civil code with respect to the gender division of labor in the home. Both spouses were made equally responsible for sustaining the household according to the possibilities of each. It was also made explicit that the rights and obligations of marriage were always equal independently of the economic contribution of each spouse.<sup>31</sup>

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29. DEERE & LEÓN, EMPOWERING WOMEN, *supra* note 1.

30. These countries include Venezuela in 1916; Cuba, 1917; Chile, 1925; Guatemala, 1926; Argentina, 1926; Colombia, 1932; Peru, 1936; Uruguay, 1946; Ecuador, 1949; and Brazil, 1962; *see id.* In some countries this provision was known as the reserved property (*bienes reservados*) of married women. It had the benefit (compared to the separation of property marital regime) that if the marriage was dissolved for whatever reason, the *gananciales* of both husband and wife were pooled and divided equally between them. There is considerable variation in these laws depending on whether all of married women's individual assets were considered their separate property or only those assets purchased with their own wage income; these laws also differ on the extent to which they addressed other elements of equality within marriage.

31. A 1953 Mexican reform ended the right of husbands to determine the residency of the couple. *See* Maldonado & Duhalt, *supra* note 24.

In Uruguay, the 1946 Law on the Civil Rights of Women established the equal civil capacity of men and women and gave women the right to manage their own assets and income within the *gananciales* marital regime. The law was silent about the administration of joint assets; however, consent of both spouses was required to alienate any joint or individually-owned real property. Moreover, the notion of shared rights and obligations in marriage is evident in the provisions regarding the establishment of the couple's residency, the sharing of expenses, and the joint *patria potesta* over children.<sup>32</sup>

Other countries that were among the early reformers in establishing important aspects of gender equality within marriage were Bolivia (1972), Costa Rica (1974), and Colombia (1974). While their reforms abrogated most of the elements of *potestad marital*, they did not completely establish gender equality within the household. For example, while Costa Rica's 1974 Family Code established that the "spouses will share the responsibility and governance of the family," the code maintained the husband's responsibility for the family's sustenance.<sup>33</sup> This aspect was not reformed to reflect equality of obligations until the 1990 Law to Promote the Social Equality of Women.<sup>34</sup>

A major impetus behind the reform of married women's property rights in the last quarter of the twentieth century was the 1979 U.N. Convention on the Elimination of All Forms of Discrimination against Women, a convention that explicitly guarantees men and women equal rights before the law. By 1990, this convention had been ratified by all nineteen Latin American countries, and between 1982 and 1998 Venezuela, Peru, Honduras, Brazil, Ecuador, El Salvador, and Guatemala had also established the legal figure of the dual-headed household. The main laggards in Latin America are Argentina, Chile, and Nicaragua, which have yet to grant husbands and wives equal rights in marriage.<sup>35</sup> The Equal Rights Amendment to the U.S. Constitution which would require the United States to ratify this U.N. Convention and establish the dual-headed household as the law of the land has never been approved.

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32. CÓDIGO CIVIL DE LA REPÚBLICA ORIENTAL DEL URUGUAY: CON LAS LEYES Y DECRETOS QUE REFORMAN Y COMPLEMENTAN SU TEXTO PRIMITIVO (1977) (Uru.).

33. Arts. 33 & 34, *Código de Familia*, in CÓDIGO DE LA MUJER (Ana Elena Badilla & Lara Blanco eds., 1996).

34. Art. 1, *Ley de Promoción de la Igualdad Social de la Mujer*, in CÓDIGO DE LA MUJER, *supra* note 33.

35. DEERE & LEÓN, EMPOWERING WOMEN, *supra* note 1, tbl. 4.1.

## V. CONCLUSION

This Article has sought to demonstrate the particular Latin American contribution to the reform of married women's property rights as human rights and the region's pioneering role in attaining equal rights and responsibilities between husbands and wives for household representation and management, including the management of the community assets of the couple. This reform was partly facilitated by the dominant marital regime, partial community property, although important precedents were set by those Central American countries that broke with Hispanic tradition at the turn of the century and established the separation of property marital regime. The dominant trend in the twentieth century in South America was to create married women's separate property within the *gananciales* regime, granting women full civil status with regards to their own property while guaranteeing their right to half of the community property. This trend represented a potentially more favorable situation for married women than the separation of property marital regime. It took most Latin American countries decades to follow Mexico's example in establishing the dual-headed household, though overall the region was in the vanguard in conforming to the principles of the 1979 U.N. Convention.

Much still remains to be done, however, to achieve married women's full property rights, although in only three countries does this agenda consist of legal reform. At the beginning of the twenty-first century, the main challenge in most Latin American countries is implementing the legal notion of the dual-headed household. Cultural norms change slowly, and throughout the region men are still considered the household heads. This means that unless marital assets are titled in the name of both spouses, husbands will continue to dispose of these as they see fit. As a result, one of the main demands of the feminist movement in the 1990s has been the pursuit of joint titling with respect to land, real estate, and consumer durables, seen as the precondition for effective joint ownership and management of community property.

