Hidden Histories of Gender and the State in Latin America

Elizabeth Dore & Maxine Molyneux, editors

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From E. D. and M. M.

for Alex, Matthew, Rachel

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Preface

This volume originated in a conference held at London University's Institute of Latin American Studies in June 1996. Our aim as organizers of the conference was to review some of the theoretical and substantive issues raised by the historical changes that have taken place in gender relations in Latin America, so we chose to focus on states and households, and on the diverse relationships between them. We hoped in this way to see how gender relations were affected both by the broader societal processes taking place at the macrolevel and by the ways they interacted with processes occurring at the microlevel within households in different historical periods. The 1996 conference subsequently grew into a book, and with it the scope of our inquiry broadened to include state-society relations and, in particular, the gendered aspects of state formation.

Although work of historians and social theorists on state formation in Latin America has provided a wealth of insights into the complex relationships that exist between states and societies, less attention has been devoted to the ways in which state formation is itself a gendered process. In considering this process, we felt that it was important to examine Latin American state forms both comparatively and historically not only to trace the continuities over time but also to identify some moments in the transition from one state form to another. It is evident that in the course of Latin American history, states of markedly different types and subtypes have emerged—colonial, republican, liberal, corporatist-populist, and socialist among them. Yet if these state forms can be seen as representing distinctive political projects whose realization depended upon a specific matrix of state-society relations and economic conditions, then what impact did they have on and how did they respond to the gender order within which they operated and which they sought to influence? This question of the gendered as well as the social character of states has just begun to be explored

in the Latin American context, and it is our hope that the work represented in this volume will enrich future debate and analysis.

It is necessary first to consider the two constitutive concepts in such an analysis. If sex is a biological category and gender a social one, the concept of gender signifies that the meanings and practices associated with femininity and masculinity are socially constructed. This theoretical distinction between sex and gender was a necessary precursor to the central questions posed in this volume: How did state formation condition gender, and how did gender affect state formation in Latin America?

In surveying the literature on these questions, we were struck by the fact that many books, even those with *state* in the title, tend to assume rather than analyze the state, and few ventured any definition. Certainly the state is a contested category, and its power difficult to define. Questions such as how it differs from *government* or *regime,* or how far it acts in the interests of dominant classes remain unresolved. Yet in the scholarly literature of the 1990s, the state, once the object of heated debates, came to be seen as being of limited interest and importance.

The declining significance accorded to the state emerged out of or against four influential analytical approaches. The first was a broadly Marxist debate on state theory that flourished in the 1960s and 1970s. This literature focused on the relationship of the state to the ruling classes. It assessed whether the modern state is relatively autonomous from the capitalist class or whether, in the oft-cited words of Marx and Engels, it is "but a committee for managing the common affairs of the whole bourgeoisie."[1] For a variety of reasons, including a perception that the theoretical analysis had reached its limits, that debate ceased to attract a following. In the political context of the end of the millennium, few scholars were prepared to revitalize that approach to state theory.[2] From within the left, the work of Gramsci, specifically his theorization of hegemony, was used to critique the limitations of earlier Marxist theories of the state and to shift the focus of left politics toward civil society and culture.[3]

The second approach, based on what can be described as a Foucauldian paradigm, achieved a significant influence over the social sciences in the final decades of the twentieth century. A central premise of this approach is that power is diffused throughout society; as a consequence, the state is decentered as a site of power. By the same logic, those who appear to be powerless can exercise power through "every-day forms of resistance."[4]

Variants of this approach differ in how they treat the state; sometimes it is viewed as a power broker between competing interests, sometimes its discursive interventions are the object of analysis, and sometimes it is ignored altogether. Consequently, explicit definitions of the state are rarely found in this approach. Culture, discourses, and civil society replace the state as the meaningful sites of the social analysis of power relations.

Neoliberalism, the economic creed of the 1980s and 1990s, was the third analytic influence to marginalize the state. A central proposition of this approach is that the state represents a potential threat to economic and other freedoms. Its activities should be curtailed because markets allocate resources most efficiently when freed from state intervention.[5] Notwithstanding neoliberalisms' doctrinaire antistatism, it is worth noting that in practice this creed is often associated with strong states of a particular kind: states that regularly intervened to enforce neoliberal policies, to maintain law and order, and to guarantee the "freedom" of the market.

The fourth body of work to marginalize the state was concerned with the analysis of globalization. At the end of the millennium, many academics and policymakers held that capitalism had reached a new globalized stage in which the power of states had declined irreversibly vis-à-vis transnational corporations. They argued that as a consequence of deregulation, nation-states were withering away, their powers appropriated by multilateral agencies that presided over an increasingly globalized civil society.[6] Although critics of this literature pointed to the ways in which states were still influenced by economic and social policy,[7] the locus of scholarly interest was in the main on transnational processes, in which states were largely ignored.

Although these four approaches in one way or another have turned attention away from the state, Latin American history and gender studies have been in some ways out of step with this trend. On the one hand, historians have analyzed processes of state formation, in particular how forms of rule were normalized through everyday customs, practices, and rituals. On the other hand, feminists, often reflecting the experience of Latin American women's movements, have engaged in theoretical and political debates over the state and over whether women should work in, with, or against it. In this perspective, the state remained a central term of reference.

The essays in this volume emerge from these two areas of shared con-

cern. They represent a work of collaboration between social scientists from various disciplines and examine the changing modalities of state / gender relations across a period of some two hundred years in Latin America. In doing so, they offer a number of different approaches to and treatments of particular states. Some emphasize ways in which states have intervened in the gender order; others examine the ways in which states have deployed gender discourses; and still others are concerned with the relationship between states and social actors, especially women's movements.

The chapters on the colonial state emphasize two themes: (1) the close link between family and public patriarchy, and (2) the formation of a social hierarchy formally demarcated by criteria of race and gender. Both aspects of state-society relations endured long after Spanish and Portuguese rule ended in the Americas. After independence, states set about reconstituting more absolutist models of patriarchy that had relaxed as a consequence of social upheaval and war. In the latter part of the nineteenth century, liberal states intervened to modernize patriarchy, often through reform of the legal system. Many of these apparently modern measures undermined women's historic rights to property and formal sexual parity within marriage.

The chapters on the later variants of Latin American state forms suggest that among the significant changes during the twentieth century, three were particularly salient: the rise of the women's movement, which placed new demands on the state; the emergence of states that actively and explicitly sought to intervene in the gender order through legislation; and the slowly increasing presence of women within the apparatuses of the state as members of the government and in official women's organizations. The mobilization of women was part of the broader incorporation of citizens and new social classes into politics. Women thus became both social actors and objects of state policy, with contrasting results in different political contexts.

The focus of this study, the gendered character of states, is an ongoing one, the terms of which are repeatedly redefined by domestic, continental, and global processes. In this sense, the chapters in this volume offer not only a historical context for understanding contemporary processes but also contain implications for the formulation of current and future policies. It is our hope that this book will contribute to the dialogue that began in the 1980s among those in Latin America and beyond who are concerned with promoting gender justice there. That this dialogue will continue in the new

millennium is beyond doubt. It is as much as a contribution to unfinished business as in its reformulation of the past that this volume will be tested.

Notes

1 Karl Marx and Friedrich Engels, *Manifesto of the Communist Party,* in *The Marx Engels Reader,* 2d ed., ed. Robert C. Tucker (New York: W. W. Norton, 1978), 475.

2 The regulation approach is one school that continued to develop theories on political economy and to focus on the state. See, for example, the collection edited by R. Burrows and B. Loader, *Towards a Post-Fordist Welfare State* (London: Routledge, 1994).

3 See Sonia Alvarez, Evelina Dagnino, and Arturo Escobar, eds. *Cultures of Politics / Politics of Cultures* (Boulder, Colo.: Westview, 1998), and Dagnino's essay on Gramsci's appeal to the Latin American left, 33–63.

4 Michel Foucault, *The History of Sexuality,* vol. 1, *An Introduction* (London: Allen Lane, 1979). Feminist theory shares in the view that power is dispersed, and it has developed critiques of normative theories of political power as residing only in the public domain. For a feminist engagement with the work of Foucault, see Caroline Ramazanoglu, ed., *Up against Foucault: Explorations of Some Tensions between Foucault and Feminism* (London and New York: Routledge, 1993). For a Foucauldian interpretation of peasant resistance, see James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

5 For a periodization of the Latin American state and critique of neoliberalism, see Peter Smith, "The Rise and Fall of the Developmental State in Latin America," in *The Changing Role of the State in Latin America,* ed. Menno Vellinga (Boulder, Colo.: Westview, 1998), 51–73.

6 Frances Fox Piven and Richard A. Cloward, "Eras of Power." For a critique of this view, see Ellen Meiskins Wood, "Class Compacts, the Welfare State and Epochal Shifts." Both appear in *Monthly Review* 49, no. 8 (January 1998): 11–43.

7 For a critical analysis of the role of the states in the context of globalization, see Paul Hirst and G. Thompson, *Globalisation in Question* (Cambridge: Polity, 1996).

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I

State and Gender in Latin America

Elizabeth Dore

One Step Forward, Two Steps Back

Gender and the State in the Long Nineteenth Century

This book is a response to Joan Scott's call to examine how politics constructs gender and gender constructs politics.[1] Its purpose is to analyze how politics of a particular type—state politics—affected gender relations and how gender conditioned state formation in Latin America from the late colony to the twenty-first century. Each chapter is a study of ways in which the state influenced gender relations and vice versa in a particular country at a specific historical conjuncture. Like all anthologies, this one aspires to be more than the sum of its parts. Its aim is to contribute to the elaboration of a systematic account of the interaction between state politics and gender politics in Latin America.

Periodizations of the state in Latin America are fairly common, typologies even more so.[2] They highlight agreement regarding the importance of historicizing state forms and disagreement regarding how to differentiate states. Notwithstanding their diversity, the existing periodizations do not take gender into account: neither the gendered nature of states nor how states regulated gender.[3] In light of this absence, the two introductory chapters in part 1 of this volume analyze major changes in gendered state making across Latin America.

Until recently this endeavour would have foundered on a paucity of empirical research and an underdevelopment of theory. The former obstacle has been partially overcome by a number of excellent monographs on what could broadly be called state-gender relations in Latin America; the latter has been redressed by the growth of an analytical literature concerning gender and the state.[4] These contributions made our project not only possi-

ble, but necessary. Drawing on the twelve case studies presented in this volume and on recent scholarship in the field, the introductory chapters analyze the ways states constructed gender and how gender conditioned state making over a period of 250 years. In light of the heterogeneity of states and gender cultures in Latin America and of the time span under review, the objective of these two essays is to identify major turning points and historical continuities in the interface between state politics and gender politics.

Years ago, historians of Europe and the United States assessed the fit between "traditional" history and "gender" history.[5] They questioned, in particular, whether conventional periodizations corresponded to major turning points in women's lives. Joan Kelly, for instance, asked, "Did women have a Renaissance?"[6] More recently, feminist scholars in the United States have debated whether state-sponsored research and development in the field of contraception, which culminated in the Pill, were more important in the transformation of gender relations in the late twentieth century than, say, the Cold War. Maxine Molyneux and I embarked on this cross-disciplinary project after realizing that scholars of Latin America rarely have addressed issues of long-term regional trends and turning points in the ways states influenced gender.[7] Our conclusions, which form part 1 of this book, were written in the spirit of discovery and recovery. We hope they make a contribution to the fruitful dialogue between feminists working to transform the state and those of us studying the formation of gender relations in Latin America.

How Latin American states sought to govern gender relations during the long nineteenth century, from the late colony to the twentieth century, is the subject of this essay.[8] It focuses on the legal regulation of gender, especially changes in family and property law. Although states enact laws to promote certain social practices and to discourage others, it goes without saying that governments are not always successful in reforming societies in accordance with their laws. Consequently, this account of long-term transformations in the legal foundations of gender relations should be read as a history of state policy, not as a history of gendered practices.

Latin American historians have tended to view the long nineteenth century as an era in which the state gradually dismantled major structural inequalities in gender relations. Studies of legal reform, education, employment, and social policy have emphasized the incremental elimination of

restrictions on women's participation in the public domain. In particular, historians have stressed the emancipatory effects of secularization, arguing that the declining prerogatives of the church and the rising powers of the state generally resulted in an expansion of women's rights. Overall, these analyses have supported the orthodox interpretation of liberalism in Latin America, which claims that liberal states ushered in "Order and Progress."

Yet evidence from a number of countries casts doubt on this account. Transposing Kelly's question regarding women in Renaissance Europe to the Latin American context, I ask, "Did liberal states usher in 'Order and Progress' in gender relations?" I assess the implications of legal reforms and secularization for women, keeping in mind that their effects varied along lines of nation, class, and race. I conclude that, on balance, state policy had more negative than positive consequences for gender equality, which suggests the need to reassess the view that the long nineteenth century was a period of progress for women. Some legal reforms and some aspects of secularization did reduce gender inequalities for some, maybe most, women. Nevertheless, I propose that the general direction of change was regressive rather than progressive. My interpretation of the relationship between state politics and gender politics in the long nineteenth century can be summarized in the phrase "one step forward, two steps back."

States act in myriad ways on gender relations. It is necessary, therefore, to clarify what this chapter is not about. During the long nineteenth century, Latin American states moved on a number of fronts to normalize elite, predominantly male, ideals of femininity and masculinity, especially in areas of health, education, employment, and charity-social work. This normalization provided the opportunity for national, regional, and local officials to exert pressure on men and women to conform to what the elite regarded as "proper" behavior. As a number of chapters in this volume demonstrate, "proper" was a highly fluid notion that varied by sex, class, race, marital status, age, and so on.[9] Furthermore, state policy regarding gender has never been limited to the exercise of government. Art, literature, and cultural ceremonies in every country and in every epoch have played a central role in the construction of the official politics of gender.[10] Despite their importance, these nonlegal and nonlegislative forms of regulation are not treated in this chapter, except in passing.

My argument—that changes in state policy increased more than decreased gender inequalities—is developed in six parts. I begin with a brief

discussion about how to study the state and with a characterization of Latin American states as they emerged over the course of the long nineteenth century. The second part examines and rejects the myth of the supersubordinated female in the colonial era; the third part analyzes the early republics; and the fourth part treats the reform of property and family law enacted by liberal states. What this essay stresses and what has not been adequately explored before is that the liberal assault on the historic privileges of the church and Indian Communities was accompanied by a similar assault on the privileges of women. At a time when landed property and other resources gradually became commodities, women lost much of the legal protection to family property that they had enjoyed "from time immemorial." The fifth part assesses secularization and its implications for marital rights, and finds that, contrary to the prevailing view, secularization of married life tended to expand inequalities between women and men. The conclusion contrasts this interpretation to the view that history is a story of progress.

Part One: Understanding the State

To understand the state, we must begin by posing three interrelated questions: What is the state? Why does it exist? How does it rule? Answering these questions involves a theoretical analysis of the role of the state in a particular society and an empirical examination of the historical development of specific social conditions. In my approach, "What is the state?" centers largely on the classic debate about the relationship between the state and class interests. "Why does it exist?" refers to the objectives inherent in the exercise of power. "How does it rule?" treats the means by which the state achieves its political domination. It is noteworthy that late-twentieth-century literature on the state tends to eschew the first two questions, moving directly to the third, "How do states rule?" In general, scholars examine fundamental issues—such as how states organize consent, suppress opposition, and protect sovereignty—without addressing the prior issues, namely, the class nature of the state and its objectives of rule. I propose that this approach leaves many substantive issues about the state unresolved.

This essay analyzes changing state policy in a variety of countries over a

long period of time; it treats states of different kinds, with different objectives, and different methods of rule. In response to the question "What is the state?" I propose that despite their heterogeneity and under ordinary conditions, these Latin American states ruled *in* the interests of a portion of the society's upper classes *through* the general interest of the populace—insofar as that was possible. By this I mean that except under extraordinary circumstances, states ruled in the class interests of an elite, but with an ideology that rule was in the wider interests of a broader portion of society.

In this interpretation, class rule does not imply that the exercise of power at all times directly promoted the well-being of the dominant classes nor that those states should be understood simply as a tool wielded by economic elites to achieve their aims or to impose their will. Rather, insofar as those states presented themselves as governing in the common good, politics involved the construction of consent alongside the imposition of authority. It is a truism that subaltern classes always endeavor to exert pressure on the state, but only in unusual historical conjunctures, and even then only briefly, have exploited classes exercised state power. I suggest, therefore, that it is useful to think of the state as operating within a gravitational field in which the pull of the exploiting classes is considerable and the pull of the exploited classes considerably less. Or, as one historian has written, the state's many activities take place within the *field of force* of the dominant classes.[11]

Turning to question two—"Why does the state exist?"—in all but extraordinary circumstances, the primary objective of rule is to enable the exploiting classes to appropriate labor and resources from the subordinate classes. How this appropriation is achieved depends upon the mode of production or the way economics, politics, and social life are organized. Finally, "how rule is accomplished" is the story of how exploiting classes, under unique historical and social conditions, establish and perpetuate their rule. In contrast to most capitalist states, premodern states in the Latin America of the long nineteenth century did relatively little to camouflage their class character.[12] To the extent that politicians masqueraded as ruling in the common interest, they portrayed themselves as benevolent *patrones* who governed for the good of their subordinates. In the last twenty years, scholars have come to recognize that the exercise of state power involves the politics not only of class, but also of race and gender. Therefore, the answers to these three questions about the state—What is it? Why

does it exist? and How does it accomplish rule?—rest on an analysis of changing class, race, and gender relations in society.

Recently, historians writing about state formation in Latin America have been influenced by a neo-Marxian tradition, particularly by Philip Corrigan and Derek Sayer.[13] Their book, *The Great Arch: English State Formation as Cultural Revolution,* argues that states endeavor to create a political culture that naturalizes one form of social domination. Utilizing coercion and constructing consent, states gradually make it appear that one historically specific way of organizing society is the only "natural" way. In this approach, the state—the organized power of the ruling classes—normalizes particular social relations and identities, and destroys others. As Corrigan and Sayer emphasize, states play a critical role in transforming the way ruling classes appropriate labor (or the products of labor) from exploited classes. Also, states frequently take the lead in transforming social relations, consciousness, and culture more generally. This understanding of state making is particularly relevant to gender. With its array of governmental, juridical, cultural, and overtly coercive institutions, state politics normalizes a variety of gender relations. Acceptable and unacceptable ways of being female and male may vary, depending on class and race. However, states establish a quasi-official gender regime by regulating as many aspects of life as they can reach, including sexual practices, prostitution, vagrancy, contraception, abortion, marriage, and the family. Because states are part of and act within particular societies, theories of the state in the abstract are of limited analytic value. Therefore, before examining the ways that states altered constructions of gender in the long nineteenth century, I turn to a very brief characterization of those states and societies.

This chapter treats an era that largely predated the rise of capitalism in Latin America. By capitalist, I mean a society permeated by the market and organized around relations of free wage labor. In the nineteenth century, politics and economics in most of Latin America were based largely on patronage and often involved the relatively undisguised use of force. Toward the end of the era, capitalist relations began to assume a certain importance in some of the countries, notably Argentina. But capitalism had yet to revolutionize most Latin American societies in the sense that economic and political life, as well as consciousness, still tended to be dominated by personal as opposed to market relations.

Politics in colonial Spanish and Portuguese America was based on the ideology that the legitimacy of the state derived from God. Nevertheless, state power ultimately derived from the state's capacity to impose its rule with violence. The colonial state perpetuated a hierarchical social order differentiated primarily by gender, race, and official status. Within the limits of the autocratic state, consent of the governed was fostered by a patriarchal system in which senior males exercised authority in the home, the community, and the polity.

Liberal states came to power in most Latin American countries in the middle of the nineteenth century and ran the gamut from a more radical liberalism in Mexico to a constrained version under the empire in Brazil. To a greater or lesser extent, liberals advocated free trade, private property, and anticlericalism. In line with most of their counterparts in Europe and the United States, Latin American liberals promoted freedom of property, not freedom of persons. Consequently, liberals in power in Latin America sought to reduce corporate control over land by the church and Indian Communities in order to foster private property in land. At the same time, liberal states advocated and often directly organized unfree labor systems—debt peonage, state labor drafts, and slavery. Their promotion of forced labor rested on two pillars: first, the ideology that Indians, mulattos, blacks, and peasants in general were primitives who had to be forced out of their natural laziness into the world of work; second, the material reality that, in the absence of a market in labor power, the landed elites had to use overt violence to recruit and discipline a labor force if they were going to enrich themselves from export agriculture.

Rejecting the old ideology of divine right and hereditary privilege, liberals asserted that the right to rule derived from the social superiority of elite males. They believed it was the natural right of men with wealth or professional status to exercise political authority.[14] This belief marked a change from, but not a radical break with, the patriarchal principles of the late colony, which remained embedded in liberal thought. Consequently, the ideology and practices of patriarchalism continued to underpin the social hierarchy. Senior men governed females and younger males in their household, a system that sustained the paternalist ideologies of the men who governed the nation and community. In line with these practices, liberal states established a polity based on restricted representation. In most

countries, full political participation was the purview of males with money or a profession. Other members of society had limited political rights; in particular, they did not have the right to vote. For the majority of the population, exclusion from the political sphere mirrored their lack of freedom in the economic sphere. Liberals represented this exclusion as government for the people, so consent of the governed was fostered by a paternalist ideology underpinned by the state's capacity to impose its rule with force.

Throughout the region, except in Brazil and Cuba, there was an interregnum of early republics between the late colonial and liberal states. These states were unstable regimes, struggling to rule not-yet-existing nations. More than anything else, they were bridges between the fall of empire and the rise of liberal states across the region.

Part Two: Late Colony: the Myth of Women without Rights

Mature colonial society was a corporate patriarchy, divided along the lines of estate, race, and gender.[15] In Spanish America, the social order was officially segmented into three strata: republic of the Indians, republic of the Spaniards, and *castas*. The category *casta* usually included all people of mixed race: called *mestizo* if they were of Spanish-Indian heritage, and *negro* or *mulatto* if of African ancestry. Each strata was further subdivided by sex. Portuguese America had many more racial categories, all subdivided by sex. The Spanish and Portuguese Crowns codified the privileges and obligations of subjects in each group. These elaborate systems of race-gender segregation were spelled out in decrees that detailed which peoples could occupy positions in the church, the guilds, and the professions, which paid tribute and had labor obligations, and even which could wear jewelry and imported cloth.

As María Eugenia Chaves describes in her chapter in this volume, in practice, women's privileges and obligations, notwithstanding the text of decrees, were conditional upon their honor. Chaves develops her argument through an examination of a trial in late-eighteenth-century Guayaquil, in which a female slave challenged her slave status by arguing that she was publicly recognized to be a woman of honorable morals. Drawing on the text of a lengthy court case, Chaves demonstrates how the Spanish colonial state naturalized racially differentiated norms of femininity. Her essay ex-

plores the parallels between the upper-class ideology that slaves were sexually licentious by nature and the quasi-official classification of all slaves as people without honor.

It is worth noting that in the U.S. South before the Civil War, honor also resided in the public sphere. As Patricia J. Williams argues, "character was a central ingredient in proving racial identity during the nineteenth century [in the South]."[16] In exploring the "litigation of whiteness," she shows that along with skin color, reputation and "white conduct and character" were all essential to the "performing" of whiteness.

Returning to Ibero-America, the patriarchal character of colonial society was codified in a succession of royal proclamations that dated from the time of Conquest.[17] These decrees granted fathers and husbands legal authority in their households and established a regulatory framework that restricted and protected women and children. Evidence of the naturalization of patriarchal authority in those societies is the absence of religious or philosophical disputation regarding women's subordination. In contrast to the celebrated Las Casas–Sepúlveda debates over the relative merits of Indian versus African slavery, there was no public justification of female subordination. In Ibero-America, men's gender privileges and obligations were regarded as natural law. It was taken to be self-evident that women were not equal to men. Therefore, senior males' authority derived from their "natural-born" superiority to women.

State theory in the colonial era rested on the principle that a well-ordered society was composed of well-ruled families. Such families were governed by patriarchs who exercised power, demanded obedience, provided maintenance, and guaranteed protection.[18] Colonial officials drew on legal and cultural norms of patriarchal authority to lend legitimacy to the authority of the state. Their political discourse was impregnated with analogies between the king and the family father. In this model of government, the Crown was like the benevolent father who ruled over and protected his family. Like all good fathers, he rewarded his children when they behaved well and punished them when they behaved badly.

Male prerogatives in colonial society were pervasive. Nevertheless, the extent of women's legal subordination has been greatly exaggerated. Frequently, it has been argued that the colonial state accorded women few rights and denied them juridical personhood.[19] This is a myth: the Ibero-American colonial state did not deny women a legal existence. Relative to

most contemporary states, and in particular contrast to the Anglo-Saxon legal tradition, where until the late nineteenth century women *were* virtually denied juridical personhood, the Spanish and Portuguese Crowns granted women extensive privileges. Women could sign contracts, ratify official documents, make wills, and appear in court. In the Anglo-Saxon world, with its tradition of primogeniture and entail, it was rare for women to own and control landed property. By contrast, in the Ibero-American world, women of the propertied classes were guaranteed an equal share of their parents' wealth, including land, by mandatory partible inheritance laws. Therefore, one of the salient ways in which the late colonial state in Latin America constructed gender was to guarantee to women property rights and an equal share of their family's fortune. It is noteworthy that female property ownership may well explain, in part, the high proportion of female household heads in Ibero-America, relative to the number in Europe and the United States in the eighteenth and nineteenth centuries. My chapter in the second part of this volume explores this issue and its ramifications in the case of Nicaragua.

Of course, like all myths, the myth of the colonial woman without rights contains certain truths. Although less sexist than most contemporary systems of jurisprudence, the Ibero-American legal tradition profoundly circumscribed women's rights. First, only widows and unmarried adult females (if legally emancipated by fathers) exercised rights of contract and property. Married women and minors were subject to direct patriarchal control and forfeited their juridical persona, including administration of property, to their father or husband.[20] Second, women were not permitted to govern another person. Unlike men, who exercised patriarchal authority (*patria potestad*) over their wives and children, women had absolutely no legal authority over their children.[21] This contrast between female status vis-à-vis property and children had far-reaching implications, notably because few people (male or female) were property owners in this era, but many women headed households.[22]

In the late eighteenth century, when internal rebellion and external aggression were undermining the stability of the Spanish colonial state, the politics of gender acquired a new significance. As Chaves argues, toward the end of the colonial era, the official racial hierarchy was falling apart. First, miscegenation made it increasingly difficult to maintain separate racial groupings. Second, rich mestizos and mulattos often purchased racial

mobility, or "whitening." These changes tended to blur race- and gender-based social distinctions. In their efforts to shore up the old social order, the Portuguese and Spanish colonial governments enacted laws in the 1770s that strengthened parents' rights to veto their children's choice of marriage partner.[23] Although at first glance these laws might seem of marginal significance, they were important signals of the states' attempts to reinforce more absolutist understandings of patriarchal authority in the home and in the body politic, as a number of historians have argued.[24]

In contrast to canon law, which before the 1770s had regulated marriage choice and which protected men's and women's freedom to select their spouse, the new secular laws expanded parents' rights to intervene if their child's proposed consort was of inferior social or racial status. It is significant that at a moment when the Crown sought to legitimate its rule, the state appropriated authority from the church. By circumscribing church powers in an area so economically important and so sacred as the regulation of marriage partners, the state moved to reinforce its political domination.[25]

In addition to treating the symbolic effects of this matrimonial law reform, historians have tracked its practical consequences.[26] Before the state claimed for itself the power to regulate choice of marriage partner, disputes between parents and children were argued in church courts. There, ecclesiastical judges were guided by the sacramental nature of marriage, which upheld the principle of free will regarding choice of marriage partner.[27] In other words, religious doctrine and practice had tended to restrict the authority of the family patriarch. However, following the reform, these disputes came under the jurisdiction of state courts, which sustained the father's authority to overrule—and to rule over—his children. This shift brings to the fore an important conceptual issue: secularization and its gendered effects. Reform of marital law was an early indicator of a trend that became increasingly apparent over the course of the nineteenth century: the transition from ecclesiastical to secular governance tended to strengthen patriarchal authority.

In Spanish America, the state's attempts to resurrect social practices associated with so-called traditional values collided with modernizing policies called forth by pressures for change. As a number of historians have noted, the late colonial state asserted a more absolutist model of patriarchal privilege at the same time as it dismantled certain exclusionary practices that sustained the patriarchal order.[28] Near its end, the colonial powers ex-

panded educational and economic opportunities for females. In both areas, the entry of women into the male domain came about in response to a combination of enlightenment ideas and state efforts to promote economic growth. The Bourbon state in Spanish America encouraged basic education for women so they could more effectively moralize and educate their children. As William E. French argues, "Motherhood became a civic responsibility that only enlightened women could fulfil."[29] At the same time, the state overturned laws that barred women from joining artisan guilds.[30] Though the immediate impact of these reforms was limited, as few females enrolled in schools or joined guilds, they had a wider significance. The erosion of barriers to female education and employment laid the basis for women's autonomy from direct patriarchal authority.

Part Three: Exclusionary Republics

Following independence, the state virtually disappeared in Spanish America. The exceptions were few, notably Chile and Costa Rica.[31] In the rest of the region, elites fought among themselves not so much to control the state, which existed in name only, but to accumulate sufficient power to construct one. It is frequently noted that in periods of upheaval, politicians link appeals for order with calls for a return to patriarchal values. Paradoxically, during Spanish America's independence wars, both royalists and republicans claimed for themselves the patriarchal tradition. Rebecca Earle's chapter on the independence era in Colombia illustrates the ways in which royalists stressed the absolute authority of the king, and republicans emphasized the contingent nature of the Crown's patriarchal authority. Steve J. Stern's paradigm of contested patriarchal models, absolutist versus contingent, is appropriate here.[32] In a classic formulation of the contingent nature of patriarchal privilege, Simón Bolívar declared that because the king had violated his familial duties and obligations, the population had the right to rebel. In a more absolutist vein, royalists demanded obedience to the king and called on the population to "honor thy father."

After independence was won or, as in some places, granted by default, republicans accommodated their patriarchal discourse to the new situation. Leaders of the early republics, switching to an absolutist model of

patriarchal rights, assumed the mantle of the benevolent father who demanded obedience and respect from his children. Earle describes how the political elite in Colombia demobilized the female population, which had been drawn into active participation on both sides in the wars.[33] Following independence, considerable gender disorder remained as women's presence continued to be felt in spheres regarded as exclusively male.[34] Politicians moved swiftly to make it clear that they would not tolerate female activities of this nature. They urged women to return home where they belonged and sought to marginalize them from the public sphere, symbolically as well as literally. In some regions, demographic change imposed a particular urgency on elite intentions to fortify patriarchal authority and remove women from the public domain. As a legacy of war, the population was overwhelmingly female in some of the new republics. For instance, in Argentina, females outnumbered males in the decades after independence by a ratio of approximately three to two, and the balance between the sexes was not restored until the middle of the century.[35]

The process by which political authority was reestablished in the half century following independence was deeply gendered. The new countries of Latin America remained highly unstable, debilitated by coups, intra-elite wars, popular rebellions, and banditry. As the corporate social order of the colonial era was gradually dismantled, the family became the bulwark of the new society.[36] Recognizing that the state was too weak to rule effectively, some politicians took comfort in the idea that elite family networks would serve as the glue to hold society together.[37] They advocated a political model wherein male elders represented both the family to the state and the state inside the family. With this in mind, politicians sought to enhance the powers of the family patriarch and to link their own claims to political authority with the traditional prerogatives of the family father.[38] The 1853 inaugural address of Nicaragua's supreme director, Fruto Chamorro, is emblematic of this political philosophy: "I consider myself as a loving but rigid father of the family [who] always seeks the welfare of his children. . . . I will maintain the peace, but like a good father of the family I will punish the wayward son who disturbs it."[39]

In the United States and Western Europe, politicians influenced by the Enlightenment advocated a fraternal contract that extended political rights exclusively to propertied males. They called this the "Liberal Contract,"

but Carole Pateman calls it the "sexual contract" because political rights were synonymous with patriarchal rights over women.[40] This sexual contract was spelled out in some of Latin America's first constitutions. In Mexico and Central America, for example, men became citizens at a younger age if they were married (provided, of course, they fulfilled the property requirement) than if they were single.[41] In a similar vein, citizenship could be suspended if a man showed ingratitude toward his father.[42] Such conditions underlined the importance Latin America's founding fathers accorded patriarchal authority in the home. As well as institutionalizing family patriarchy, the constitutions codified the public authority of elite patriarchs *cum* fathers. In this way, early republics were polities of propertied males who governed their subordinates, male and female, in and beyond the confines of their families.

Benedict Anderson argues that the transition from premodern sacred communities and dynastic realms to the imagined community of modern nation-states required new symbols to represent the nation and new ideologies to legitimate and support new forms of state power.[43] Such new symbols and ideologies were not the predominant characteristic of early Latin American nationalism, however. The imagined communities of the young republics largely reworked old symbols and traditional ideologies. In their search for stability, Latin America's republican leaders attempted to naturalize the patriarchalism they inherited. As a consequence, family patriarchy possibly acquired a greater political significance in the new society than it had had in the old.

Reforms in education and employment countered somewhat the trend toward state support of patriarchal absolutism with a protodevelopmentalist mentality; Mexican politicians made education obligatory for girls and boys between the ages of seven and fifteen. By the 1840s, the number of females and males enrolled in schools in Mexico City was roughly equal. Though females were denied access to secondary schooling, primary education opened up certain vocational opportunities for them, which in turn loosened the strictures of patriarchal control.[44] Such measures were a continuation of policies initiated by the colonial state and demonstrated a commitment by the region's new leaders to the principle of basic education for females.

Part Four: Gendered Liberalism

Latin America's liberal states ushered in two great social transformations: the large-scale privatization of land and the secularization of society. These reforms—or in the case of women, we might say "counterreforms"—radically altered the regulatory frameworks that governed gender relations. Laws promoting the rise of private property in land had largely negative implications for women because they were accompanied by provisions that abrogated much of the legal protection women had enjoyed "from time immemorial" to their share of family property. Secularization tended to reinforce wives' subordination to patriarchal authority. As states reworked the juridical frameworks that restricted and protected women, reforms tended to weaken women's historic rights to property and the church's official protection of sexual equality within marriage. At the same time, however, governments passed laws that strengthened women's personal rights, especially to control male violence. State regulation of gender followed similar trends across the continent; nevertheless, there were some significant differences in national experiences.

After independence in most of Spanish America, landowners, mineowners, and merchants were more preoccupied with fighting each other than with figuring out ways to appropriate the labor of the poor.[45] Once order was restored, around midcentury, elites sought to forge a state that above all would enable them to acquire land and labor to produce coffee, nitrates, metals, beef, and other products for export. Although ideological differences between liberals and conservatives have been exaggerated, liberals did tend to be more aggressive than their political rivals in dismantling corporate privileges inherited from the colonial era, privileges that they believed inhibited economic growth. Consequently, liberals viewed the church and the Indian Communities, where they existed, as prime targets for reform.[46] To this end, under the auspices of liberal politicians, the state introduced laws that subverted corporate land rights and vastly expanded private property in land.[47]

The rise of private property in land revolutionized the social order in every Latin American country in the nineteenth century. However, contrary to conventional wisdom, I maintain that rather than unleashing capitalism, the rise of private property in land retarded it in many countries.

With privatization, many small and medium peasants across the continent (with Brazil and the Argentine state the great exceptions) acquired some security of tenure and title to land.[48] This new form of *landedness* impeded the expansion of exports, liberals' primary goal. Exporters found it hard to appropriate labor from landed peasants, and peasant property inhibited the spread of a market in land. To resolve these difficulties, liberals in government in almost every country institutionalized forced labor regimes. Consequently, even more so than their counterparts in Western Europe and the United States, Latin America's liberals were obsessed with protecting the rights of property, while turning a blind eye to the rights of "man"—and woman.

The new property regime in Latin America had important implications for gender relations. Yet, little attention was paid to family law in the decades following independence for two reasons: first, politicians believed that patriarchal prerogatives imparted stability to a social order under threat; second, the state was too weak to enact new codes of law. Consequently, elaboration of civil and criminal codes, a central aspect of state regulation of gender, was postponed throughout Latin America until nation-states were stronger in the second half of the nineteenth century.

When jurists finally turned their attention to drafting new laws and legal codes for postcolonial society, several issues high on their agenda had major implications for gender—including property rights, inheritance rights, and parental authority. After independence, the first wave of family law reform reduced patriarchal authority over children.[49] In Mexico, Argentina, Brazil, and most other countries, changes to the civil codes released unmarried adults from parental authority and lowered the age of majority. These measures reduced the jurisdiction of male elders within the family and expanded the freedom of adult children, female and male, in personal and financial matters. However, jurists in almost all Latin American countries (e.g., Mexico, Chile, Argentina, Brazil, and Central America) rejected proposals to reduce patriarchal authority over married women. Consequently, wives were excluded from the general expansion in personal rights. As Silvia Arrom suggests, this exclusion in effect increased married women's relative subordination to their husbands.[50]

Justifying his opposition to the emancipation of wives, a Mexican jurist declared that wives should "recognize the authority of their consorts as heads of family, in order to maintain the order and tranquillity of families,

on which the State in large part depends." And as another Mexican politician explained, if wives were emancipated from their husbands' authority, it would "risk the continued mutiny of the population against the established authority, and undermine the stability of the Mexican state."[51] Apparently these absolutist interpretations of patriarchal right enjoyed widespread popular support, at least among men. Drawing on a number of legal cases, Arrom found that most men believed their wives should remain subordinated to their authority.[52]

With the rise of private property in land, parents' legal obligation upon their death to divide property equally among their legitimate children, or mandatory partible inheritance, was abolished in Mexico, Central America, and other countries of the region. This reform had negative implications for women. From the proverbial "time immemorial," inheritance laws in the Spanish and Portuguese empires had required parents to distribute property and wealth equally to sons and daughters. These laws were in marked contrast to the Anglo-Saxon property regime in which primogeniture favored eldest sons. But the commission drafting the Mexican Civil Code of 1884, which ended obligatory partible inheritance, apparently was inspired by English law. In a speech justifying the reform of inheritance law, one jurist extolled England, "that great nation . . . that is today the most free and perhaps the most civilized in the world."[53] One may infer that he was voicing admiration for the Anglo-Saxon common law tradition in which the eldest son generally inherited landed property. This example suggests that some Mexican lawmakers believed subdivision of property contributed to economic backwardness. Perhaps they were right; nevertheless, the abolition of mandatory partible inheritance was detrimental to women. With new laws promoting privatization of land, which transformed property relations in all social strata, including the peasantry, the elimination of the guarantee that women receive an equal portion of their parents' estate, no matter how grand or humble it might be, worked to undermine women's economic security. In this context, it is particularly significant that mandatory partible inheritance remained in effect in Brazil, Argentina, and Uruguay until the middle of the twentieth century.[54] These contrasting paths suggest the need for cross-country comparisons on the effects of inheritance reform on female-male property ownership and on gender relations more widely.

In the second half of the nineteenth century, states made additional

changes to family and property law that undermined women's rights to the family fortune, such as it might be. First, there was the end of the obligatory dowry; second, the abolition of the requirement that the property of married couples be jointly owned. The second reform allowed both men and women to exclude their spouse from sharing ownership. Although the first reform was characteristic of all Latin America,[55] the second pertained only to Mexico and Central America.[56] Muriel Nazzari has studied the effects of the "disappearance of the dowry" among families of the São Paulo elite. However, more research is needed before we will be able to discern regional trends in the practical consequences of these reforms or counterreforms.

Overall, the patriarchal inheritance system, which promoted gender parity in property ownership, was part of an ancien régime that liberal politicians sought to sweep away in their quest for "Order and Progress." Just as they regarded church and community property as impediments to the free market, so it seems they regarded the legal protection women enjoyed to land and wealth. In the eyes of more radical liberals, such as those in Mexico, these particular impediments had to be swept aside to make way for the revolutionary transformations that the market would bring.

The legal reform of property rights points to a widening of gender inequalities, particularly in Mexico. However, more research is needed to specify the long-term gendered consequences of liberal family and property laws in different regional and national contexts. In this regard, it is important to remember that the category *women*—insofar as it does not differentiate women according to status, class, ethnicity, and race—is of limited analytical value in tracking gender changes within the social order. For one, the effect of legal changes was different and often contradictory for single, widowed, and married women. Second, class, ethnicity, and race conditioned how women were affected by the law. Finally, the disjuncture between state policy and social practices also comes into play. For instance, where compulsory partible inheritance and community property were abolished in law, there is evidence that in practice they remained the norm.[57]

Research on the effects of liberal reforms on women's access to land points to the diversity of local, regional, and national experiences across Latin America. It shows that it is essential, for instance, to distinguish between indigenous women who lived in communities where communal

property was dismembered and women who had for centuries been part of the private property sector. It is noteworthy that among indigenous regions there is evidence of a heterogeneity of experiences. Florencia Mallon's analysis of the sexual differentiation of land privatization in Puebla, Mexico, suggests that law reform had negative consequences for women. None of the new land titles distributed in the 1860s went to women; they obtained access to land only by virtue of their ties to men, or as wives and mothers.[58] Although Mallon's conclusion is supported by another study from Mexico,[59] those experiences contrast with other cases where land privatization dismantled barriers to Indian women's acquisition of land.[60] We might conclude, tentatively, that although land privatization reduced men's common property rights, its effect on women was more contradictory. Where it extended the rule of Hispanic laws and practices, such as in the former Indian communities, liberal agrarian reforms may have expanded poor women's opportunities to own and control land.

Liberal reforms to property and family law were not all of a piece. However, it would seem that change moved in the direction of expanding gender inequalities.[61] Reform to inheritance law had negative implications for gender parity insofar as it reduced protective measures for women. In contrast, what I call the "ladinoization of gender" in Nicaragua may have benefited indigenous women in that it opened the way for them to acquire rights to property, a way previously blocked by customary practices in Indian communities.

Part Five: Secularization of Marriage

The second great transformation effected by liberal states was the secularization of society. In Latin America, the majority of incipient nation-states sought to legitimate their authority by wresting power from the church. In part this battle was played out in the realm of gender. Governments appropriated for themselves powers previously wielded by the Catholic Church—the regulation of marriage, annulment, sexuality, and legitimacy of birth. Insofar as the state claimed for itself the authority to regulate so central and traditionally sacred areas of life, it was a bold move.

Lewis Namier warned against imagining the past in terms of our own experience.[62] This caveat is particularly relevant for studying the historical

construction of gender. For instance, it is often argued that the Catholic Church has always undermined gender equality. The conclusion scholars draw from this interpretation is that secularization has always modernized the gender order.[63] Neither the former nor the latter propositions are entirely true in the case of Latin America. Secularization in Latin America had contradictory gendered effects over the course of the long nineteenth century.[64] To the extent that Catholicism naturalized the notion that motherhood was the sole purpose of women's lives, it played a reactionary role. However, Catholic doctrine held that marriage was a sacred union of equals; to the extent that the church put into practice this article of faith, secularization thus tended to expand inequalities between men and women, particularly within marriage.

There is increasing evidence that state regulation of marriage and sexuality reinforced patriarchal authority over wives in the nineteenth century. Analyzing changes in the policing of married life in Costa Rica, Eugenia Rodríguez argues that after independence in 1821, when the state assumed authority over marriage, secular courts attempted to modernize, not to reduce, patriarchal power. Drawing on legal cases, she highlights how courts played a role in civilizing husbands' behavior toward wives. A similar point is made by Donna J. Guy, who analyzes court cases in Argentina later in the century.

The particular "liberal" combination of privatization and secularization had negative repercussions for many women. In the 1770s, royal decrees strengthened patriarchal control over family fortunes; one hundred years later, in the 1870s, the state again intervened to protect patriarchal control over children and money. With the rise of private property, the question of heirs became relevant to broader sectors of society. Consequently, although colonial laws had regulated the identification of legitimate heirs, civil codes drafted by liberal states reinforced a husband's control over his wife's body for inheritance purposes. For instance, the codes spelled out that husbands could appoint their own "representatives" to witness their wives giving birth, and in cases of marital separation husbands were empowered to place estranged wives under the protection of an honorable family for ten months. The objective of both measures was undoubtedly to assist men in identifying their offspring.[65]

Perhaps the clearest contrast between religious and secular regulation of marriage concerned adultery. In Catholic doctrine, adultery by husbands

and wives is equally sinful, and there is evidence that ecclesiastical courts in Latin America tended to judge male and female adulterers similarly.[66] That changed after the regulation of marriage and adultery passed from the church to the state. In the nineteenth century, Latin America's civil codes virtually legalized adultery for males and made it a capital offence for females. In Mexico, Argentina, and Nicaragua, for instance, a husband's infidelity was neither criminalized nor considered grounds for divorce unless it took place in the marriage bed or created a public scandal.[67] This legal tolerance did not extend to wives; if a husband could prove that his wife had sex with another man, he enjoyed impunity within the law to kill her. In practice, this impunity was often extended to husbands whose wives were considered to be promiscuous in the "public's opinion." In other words, regarding sexual mores, secularization tended to override the church-based single standard with a double standard, although perhaps only to codify existing customs and attitudes.[68] It is significant that male adultery remained legal and female adultery remained criminal in most countries of the region well into the twentieth century.[69]

Secularization did not create a blanket system of heightened gendered oppression. Late-nineteenth-century legal reforms benefited women in several ways. Over the course of the long nineteenth century, women's legal authority over their children increased slowly, if unevenly. In the late colony, widows and single mothers were legally responsible to provide for and protect their children, but had no legal authority over them. By the close of the nineteenth century, in most countries all *except* married women had the right to govern their children.[70] Despite its narrow reach, this reform was a watershed in Latin America. It marked the first time women were legally permitted to exercise authority over another person. It is significant, however, that wives were not granted parental authority over their children until after the turn of the twentieth century when women's organizations fought for reform of patria potestad.

Liberal states advanced the cause of women in a number of other ways, including increased intervention in the domestic sphere to control male violence. Three chapters in this volume examine the implementation of laws designed to protect women and children from abuse. Rodríguez describes how courts in Costa Rica tended to punish husbands who physically abused their wives. She goes on to argue that the courts attempted to impose on all sectors of society an upper-class marriage ideal that normalized