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Life in the Borderlands

As newly incorporated U.S. citizens, Mexican Americans faced a myriad of new laws, social changes, and political practices. While the Treaty of Guadalupe Hidalgo guaranteed them full citizenship rights, few exercised those rights in practice. Elites gained easier acceptance as citizens than the poor. Yet, as a group, Mexican Americans lost land, political power, and social standing throughout the second half of the nineteenth century. The extent and pace of their loss, however, varied by region and by individuals' socioeconomic class and gender.

Mexican Americans' ability to hold onto political power depended partly on demographics. They were likely to remain in office in regions where they constituted a majority. Mexican American politicians retained office by forging alliances with Euro Americans, dispensing political patronage, and encouraging bloc voting. The obstacles facing Spanish-speaking communities included U.S. laws, limited English-language fluency, and the denial of the right to vote. Vigilantes physically intimidated Mexican American voters throughout the U.S. Southwest, newspapers discouraged them from exercising the franchise, and Euro American politicians manipulated voters to maintain themselves in office.

As they lost political power, Mexican Americans became more vulnerable to discriminatory laws. Throughout the Southwest, local governments passed legislation that prohibited or limited Mexican cultural practices such as dances, gambling, and bathing in rivers. Influenced by manifest destiny and notions of superiority, Euro American legislators restricted cultural practices considered uncivilized, immoral, and barbaric. Newspapers portrayed Mexican Americans as criminals, and courts incarcerated them in larger numbers. In California, competition over mining claims during the Gold Rush led Euro American vigilantes to attack those who looked “foreign,” including Mexican, Chilean, and Chinese miners. Encouraged by nativist sentiments, California's legislature passed the Foreign Miners Act in 1850, which required foreigners to pay a prohibitive tax in order to mine for gold. Throughout the region, Mexican Americans lost their land through legal challenges and vigilante actions.

Responding to their criminalization and rising ethnic tensions, some Mexican Americans launched rebellions. During the 1850s, Californios (Mexican Californians) engaged in

banditry after experiencing violent attacks, killings, and evictions from the gold mines. Property disputes in New Mexico led some to organize into secretive groups that carried out raids, cut fences, and destroyed property. In southern Texas, land disputes and Tejanos' increasing incarceration ignited a six-month insurrection led by Juan N. Cortina, a land-grant heir. To offset the decline in their economic and social standing, some Spanish-speaking elites established alliances with Euro Americans. Inter-marriage between elite Mexican American women and Euro American men created mutually beneficial social ties. While the newcomers profited from Mexican Americans' extensive familial and friendship networks, the latter sometimes protected their property and maintained political and economic power with the help of Euro American in-laws. This chapter examines how the U.S. government and Euro American settlers exercised their control over newly acquired lands and how Mexican Americans adapted to the U.S. political and legal system.



DOCUMENTS

Although unfamiliar with U.S. laws when they became U.S. citizens, Mexican Americans soon adapted to the legal system. While they had appealed to religious officials to marry and separate in Mexico, they learned that U.S. civil authorities now held jurisdiction over marital concerns. In Document 1, Sarah Garcia Clay, a Mexican Texan woman married to a Euro American man, sues for divorce in a civil court. Marriage and property laws varied throughout the U.S. Southwest, and these differences had significant effects on women's property rights. Unlike the states of California and Texas, the territory of New Mexico incorporated U.S. coverture laws, which subsumed a married woman's rights under her husband, as described in Document 2. Tejanos struggled to obtain justice within the legal system because of widespread bias among judicial officials and jury members. In Document 3, a visiting French priest describes the legal consequences of anti-Mexican views. Western states passed liberal divorce laws that motivated residents of neighboring states to move west and engage in the so-called interstate divorce trade. Along the U.S.-Mexico border, this divorce trade assumed international dimensions as couples who married in Mexico crossed into Texas to divorce, as shown in Document 4. Among the rebellions resulting from the rising ethnic tensions in the postwar period was one that broke out in southern Texas in 1859. Juan N. Cortina issued a proclamation, Document 5, listing the rebels' grievances, including the inability of local governments to uphold the citizenship rights of Tejanos. Inter-marriages between elite Mexican American women and Euro American men increased in the postwar period, and were the subject of two elite Californios' frank discussion in Document 6. Among the harshest anti-Mexican views were those directed against poor residents. In Document 7, a Euro American journalist characterizes poor Tejanos as criminals.

1. Sarah Garcia Clay Seeks a Divorce from an Interethnic Marriage in Texas, 1856

Now on this day came the parties by their attorneys, and also came a jury as follows, ... good and lawful men who being duly sworn and empanelled proceeded to hear the evidence in the cause and the allegations in the Petition set forth, being proved to wit, that the said James H. Clay had in the month of September AD 1848 married the said Sarah formerly Sarah Garcia[,] and that soon thereafter in the year AD 1849[,] the said James H. Clay had departed from the State of Texas and had since that time wholly neglected to furnish support to the said Sarah his wife[,] and that he had wholly abandoned his said wife and the said witnesses being men well known to the jurors herein, the cause was submitted under the charge of the court to the Jury who rendered the following verdict, to wit, we the Jury find for the plaintiff and that all the facts stated in the petition are true. Robert B. Kingsbury, foreman.

Whereupon it was ordered adjudged and decreed by the court that the said Sarah Clay and James H. Clay be and they are hereby finally and forever divorced from the bonds of matrimony heretofore existing between them and that the defendant pay all costs of court in this cause incurred.

2. New Mexico's Ruling Places Women under Coverture, 1857

This bill was a bill in chancery in the district court of the second judicial district, for the county of Taos, by Mariana Manuela Martinez against her husband, Tomas Lucero. The complainant alleges that on or about the thirtieth day of September, 1828, she intermarried with Tomas Lucero, and that at the time of said marriage and afterwards, a large amount of money, property, chattels, and real estate, the absolute property and inheritance of the said complainant, was delivered to the said Tomas Lucero as her husband, in trust for her use and benefit, and for the use and benefit of both, while they should live together as man and wife. The bill further alleges that they lived together as man and wife for the space of eight years, and that then, from various causes, a separation between them took place; that a few years afterwards, in the year 1847, they were reunited and lived together in the matrimonial relation for the space of eleven months; that at the expiration of that eleven months, they again separated, without issue, and have never since lived together. The complainant further alleges that her said husband has for years past been living in open adultery with another woman, by whom he has two children, and that he has been wasting and dissipating the property and effects of said complainant for the benefit of his said

Cameron County District Court Minutes, #1016155, Case #485, *Sarah Garcia Clay v. James H. Clay*, 25 July 1856.

Mariana Manuela Martinez v. Tomas Lucero. Report of Cases Argued and Determined in the Supreme Court of the Territory of New Mexico, Vol. 1 (January 1857), pp. 208-218.

paramour and her two children, and she has good reason to believe that he will continue to waste, dissipate, and so convert the same until the whole amount thereof shall have been consumed. The petitioner therefore prays that the said Tomas Lucero be enjoined from further waste and dissipation of her estate; that he be compelled to answer the allegations of her bill; that he be compelled to account with her for the full amount of her property and estate, as well as the rents and profits thereof, since their last separation, and that such further relief may be granted as the nature of the case may require.

The respondent, Tomas Lucero, in his answer, admits that he intermarried with the complainant as alleged in her bill, and that they lived together for some seven or eight years. He avers that about seven or eight years after their marriage, he discovered that his said wife had proved faithless to him by the commission of adultery with one Mariano Martinez, and that she then, of her own accord, left her house and lived with the said Mariano Martinez in different houses; that in the year 1839, he went to California to escape the infamy and injuries his wife was heaping upon him; that at the time of his departure, she was living with the said Mariano Martinez; that upon his return to New Mexico, in 1842, he found her living in adultery with Mariano Lucero, a priest of the holy Catholic church, and first cousin to him, the respondent; and that she continued to live in adultery with said Mariano Lucero until the year 1846, when, through the solicitations of the respondent and the intercession of one Jose Antonio Martinez, she returned to her house and promised to live a reformed life and continue to live with the respondent. About nine or ten months after, she presented herself before Jose Maria Valdez, an alcalde of the county of Taos, and before him they separated by mutual consent, and the complainant at the time of separation released the respondent from any claim whatever that she might have had against him. And he further avers that immediately after their last separation his said wife returned to the house of the said priest, Mariano Lucero, and continued to live in open adultery with him up to the period of the filing of his answer to the complainant's bill. He also avers that in order to comply with his conjugal duties and his religious obligations, he made many sacrifices to induce her to return to him, and discontinued his effort only when all hope of reformation had gone.

The respondent admits that he had at the time of his answer a woman living in his house to aid and assist him in his household duties, and that the said woman has two children, but avers that he does not know whether he is the father of said children or not. He denies the allegation that he is wasting and dissipating the property of the complainant upon the said woman, and avers that he never took the said woman or any other into his house until he had made several efforts to induce his wife to live with him; and that as late as the year 1854 he requested said complainant to return to her home and perform the duties of a wife towards him, and that she refused so to do. The respondent further avers that he has paid to his said wife the full amount of property which he received as her separate estate....

According to the principles of the civil law, a separation from bed and board, or a dissolution of the conjugal association, must be decreed by a competent tribunal

and not by the consent of the parties. It does not appear from the record that any separation had been decreed by a competent tribunal; but the separation which took place between the parties appears to have been voluntary, against the policy of matrimonial law, without legal sanction, and therefore powerless for the purpose of dissolving the conjugal tie. The complainant, in her bill, did not even allege, as a cause of separation from her husband, any one of the causes which would have availed her in a prayer for separation before a competent tribunal....

We are, then, to view the complainant in the character of the lawful wife of the respondent, and it is a principle of the civil law ... that a wife can not, during the conjugal association, recover from her husband her separate dotal property, or resume the administration thereof, without showing waste or dissipation of the same on the part of her husband; for the administration of the dotal property, whether appraised or not, belongs exclusively to the husband during the existence of the marriage....

... The complainant, according to her own allegations, separated from the respondent as his wife without the assignment of any cause which would have justified her in so doing.... She still stood in the eye of the law related to the respondent as his lawful wife, and as such the court could not grant to her the administration of the property, which she claimed without proof of waste and dissipation of the same on the part of the respondent. The bill of the complainant alleges waste and dissipation; but the respondent in his answer denies the charge, and no testimony is introduced to establish the truth of the allegation.

3. A French Catholic Priest Describes Anti-Mexican Views in the Legal System, 1858

The Americans of the Texian frontiers are, for the most part, the very scum of society—bankrupts, escaped criminals, old volunteers, who after the treaty of Guad[a]lupe Hidalgo, came into a country protected by nothing that could be called a judicial authority, to seek adventure and illicit gains....

The magistracy is far from giving adequate guarantees for the security of the public; and in criminal matters it is barefaced as it is revolting. Let the criminal be an American, and though he were the worst ruffian in the town he is let off scot-free, with a mere promise to pay a sum of money, which of course he never pays. Should the crime be of too glaring a nature to escape punishment, the perpetrator, be he robber or murderer, gets off with imprisonment, a mockery in its duration.... This shameless partiality of the American judges is the best justification of Lynch-law. And hence this Draconian code is in full force in all the new States of the Union. As to Germans, Irish, and Mexicans, the civil law is enforced in their cases with all its rigour. Even frequently, where the crime remained to be proved, they would in the first instance be thrown into prison

Emmanuel H. D. Domenech, *Missionary Adventures in Texas and Mexico: A Personal Narrative of Six Years' Sojourn in Those Regions* (London: Longman, Brown, Green, Longmans, and Roberts, 1858), pp. 228–229, 237–240.

in irons, there to await their sentence, or rather their condemnation, in which the sentence most generally is terminated.

Towards the Irish and Mexicans excessive rigour used to be employed, savouring glaringly of bigotry and religious hate.... I saw at Brownsville Mexicans whom the sheriff was flogging to death with his ox-hide lash. They were bound, half-naked, their arms extended across the prison door, and then scourged on the sides and loins with the most brutal violence. To save the expense of their support, pending sentence, they were not sent to prison, but were sent back untried, having their frames lacerated with stripes. Some died from the effects of these barbarities.

I could never comprehend the Mexican's submission, supporting, as he did, at once the cruelty and the contempt of a nation which he sovereignly detested, had I not been so often the witness of his incredible *nonchalance* and imperturbable meekness. In these badly-organised regions, the Mexican might have an easy vengeance on his persecutors, who are quite the minority on the Texian frontiers; but vengeance is not in his heart; he would rather forget an injury than take the trouble of avenging it.

Still there is no lack of courts of justice. Some are stationary and periodical in their sessions; others are itinerant, and courts of appeal. Every village ... has its magistrates for civil and criminal cases. Over them is a more important tribunal, which despatches annually a Judge of Appeal to the principal places of the country of Texas. The man that came to Brownsville was a large handsome Yankee, neither over unpolite nor unreasonable. He even decided equitably enough in the rare moments of his sobriety....

From judges of this stamp, people can hardly expect "*Just Justice*," and hence they dispense it for themselves. When drunkenness is the only defect of a judge, you may hope ... that out of many sentences, some few may be fair, and yours among the number. But when to drunkenness is added ignorance of the law, of the nature of a contract, of the general rules on which property and society itself rest secure; and when to drunkenness and this ignorance too, is further added venality, fear of the strong hand, and party feeling, then it is only a Mexican, a simpleton, or a coward, that would appeal to law for justice. The Americans, and the Europeans who know how things stand in these still savage regions, dispense with magistrates; and the dispensers of justice never interfere in the disputes of such people, knowing well the consequence of their intermeddling.

4. Antonia Diaz Marries in Mexico but Divorces in Texas, 1859

The State of Texas to the Sheriff of Zapata County,

Greetings,

You are hereby commanded, that you summon by publication Felipe Cuellar, [whose] residence is in Mexico, to be and appear before the District Court, to be holden in and for the county of Zapata, at the court-house thereof,

The Ranchero (Brownsville), May 12, 1860.

in the town of Carrizo, on the 11th day of June, 1860, then and there to answer the petition of Antonia Diaz Cuellar filed in said court against the said Felipe Cuellar, and alleging in substance as follows, to wit: That she, the said Antonia Diaz Cuellar, a resident of the said county of Zapata, on the 13th day of August, 1852, was in the town of Guerrero, in the State of Tamaulipas, in the Republic of Mexico, lawfully united in the bonds of matrimony with Felipe Cuellar; that for some years before and continuously up to the time of the celebration of the rites of said matrimony, her husband, Felipe Cuellar, and herself, were residents of the town of Carrizo, in said county of Zapata, in said State of Texas, and ever since said marriage up to about the beginning of February, 1859, her said husband, Felipe Cuellar, and herself, continued to reside at the said town of Carrizo, when her said husband left the said county and State, and up to the present time has temporarily resided out the said State of Texas, to wit: in the said town of Guerrero, in Mexico; while she, the said Antonia Diaz Cuellar has continued up to the present time to reside in said town of Carrizo. The plaintiff further says, that during the residence of herself and her said husband, the said Felipe Cuellar was guilty of excesses, cruel treatment, and outrages toward her of such a character as to render their living together insupportable; and particularly the plaintiff says, that in the month of January, 1856, in the said town of Carrizo, her said husband struck and beat her severely and cruelly; that he has during the whole term of their said marriage, at various times, applied to her opprobrious and disgraceful epithets and language, putting her in bodily fear, and has thus rendered her unhappy and their further living together insupportable.

Came to hand the 22nd day of April, A.D. 1860, and executed by publishing in *The Ranchero*, a newspaper published in the county of Nueces, being the nearest county where a newspaper is published, (there being no newspaper published in the county of Zapata), for four weeks previous to return day.

Dated this 22nd day of April, A.D. 1860. Pedro Dias, Sheriff, Z.C.S.T.

5. Juan N. Cortina Defends Tejanos' Sacred Right of Self-Preservation, 1859

An event of grave importance, in which it has fallen to my lot to figure as the principal actor since the morning of the 28th instant, doubtless keeps you in suspense with regard to the progress of its consequences. There is no need of fear. Orderly people and honest citizens are inviolable to us in their persons and interests. Our object, as you have seen, has been to chastise the villainy of our enemies, which heretofore has gone unpunished. These have connived with each other, and form, so to speak, a perfidious inquisitorial lodge to persecute and rob us, without any cause, and for no other crime on our part than that of

Juan Nepomuceno Cortinas to the inhabitants of the State of Texas, 30 September 1859, "Difficulties on the Southwestern Frontier," 36th Congress, 1st Session, Vol. VII, No. 52, 1859-1860, Serial No. 1050 (Washington Thomas H. Ford, Printer, 1860), pp. 70-72.

being of Mexican origin, considering us, doubtless, destitute of those gifts which they themselves do not possess.

To defend ourselves, and making use of the sacred right of self-preservation, we have assembled in a popular meeting with a view of discussing a means by which to put an end to our misfortunes.

Our identity of origin, our relationship, and the community of our sufferings, has been, as it appears, the cause of our embracing, directly, the proposed object which led us to enter your beautiful city, clothed with the imposing aspect of our exasperation.

The assembly organized, and headed by your humble servant,... we have careered over the streets of the city in search of our adversaries, inasmuch as justice, being administered by their own hands, the supremacy of the law has failed to accomplish its object....

... Three of them have died—all criminal, wicked men, notorious among the people for their misdeeds. The others, still more unworthy and wretched, dragged themselves through the mire to escape our anger, and now, perhaps, with their usual bravado, pretend to be the cause of an infinity of evils, which might have been avoided but for their cowardice.

They concealed themselves, and we were loth to attack them within the dwellings of others, fearing that their cause might be confounded with that of respectable persons, as at last, to our sorrow, did happen. On the other hand, it behoves us to maintain that it was unjust to give the affair such a terrible aspect, and to represent it as of a character foreboding evil; some having carried their blindness so far as to implore the aid of Mexico, alleging as a reason that their persons and property were exposed to vandalism. Were any outrages committed by us during the time we had possession of the city, when we had it in our power to become the arbiters of its fate? Will our enemies be so blind, base, or unthinking, as to deny the evidence of facts? Will there be *one* to say that he was molested, or that his house was robbed or burned down[?]

The unfortunate Viviano Garcia fell a victim to his generous behavior; and with such a lamentable occurrence before us on our very outset, we abstained from our purpose, horrified at the thought of having to shed innocent blood without even the assurance that the vile men whom we sought would put aside their cowardice to accept our defiance.

These, as we have said, form, with a multitude of lawyers, a secret conclave, with all its ramifications, for the sole purpose of despoiling the Mexicans of their lands and usurp them afterwards. This is clearly proven by the conduct of one Adolph Glavecke, who, invested with the character of deputy sheriff, and in collusion with the said lawyers, has spread terror among the unwary, making them believe that he will hang the Mexicans and burn their ranches, &c., that by this means he might compel them to abandon the country, and thus accomplish their object. This is not a supposition—it is a reality....

[Glavecke] is the assassin of the ill-starred Colonel Cross, Captain Woolsey, and Antonia Mireles, murdered by him at the rancho de las Prietas, the theatre of all his assassinations. It is he who instigated some, and aiding others, has been the

author of a thousand misdeeds; and to put down the finger of scorn that ever points at him, and do away with the witnesses of his crimes, he has been foremost in persecuting us to death. The others are more or less stamped with ignominy, and we will tolerate them no longer in our midst, because they are obnoxious to tranquillity and to our own welfare.

All truce between them and us in at an end, from the fact alone of our holding upon this soil our interests and property. And how can it be otherwise, when the ills that weigh upon the unfortunate republic of Mexico have obliged us for many heart touching causes to abandon it and our possessions in it, or else become the victims of our principles or of the indigence to which its intestine disturbances had reduced us since the treaty of Guadalupe? [W]hen, ever diligent and industrious, and desirous of enjoying the longed-for boon of liberty within the classic country of its origin, we were induced to naturalize ourselves in it ... and contributed with our conduct to give evidence to the whole world that all the aspirations of the Mexicans are confined to one only, *that of being freemen*; and that having secured this ourselves, those of the old country, notwithstanding their misfortunes, might have nothing to regret save the loss of a section of territory, but with the sweet satisfaction that their old fellow citizens lived therein, enjoying tranquillity, as if Providence had so ordained to set them an example, of the advantages to be derived from public peace and quietude; when, in fine, all has been but the baseless fabric of a dream, and our hopes having been defrauded in the most cruel manner in which disappointment can strike, there can be found no other solution to our problem than to make one effort, and at one blow destroy the obstacles to our prosperity.

... Our oppressors number but six or eight. Hospitality and other noble sentiments shield them at present from our wrath, and such, as you have seen, are inviolable to us.

Innocent persons shall not suffer—no. But, if necessary, we will lead a wandering life, awaiting our opportunity to purge society of men so base that they degrade it with their opprobrium. Our families have returned as strangers to their old country to beg for an asylum. Our lands, if they are to be sacrificed to the avaricious covetousness of our enemies, will be rather so on account of our own vicissitudes.... [O]ur personal enemies shall not possess our lands until they have fattened it with their own gore.

We cherish the hope, however, that the government, for the sake of its own dignity, and in obsequiousness to justice, will accede to our demand, by prosecuting those men and bringing them to trial, or leave them to become subject to the consequences of our immutable resolve.

It remains for me to say that, separated as we are, by accident alone, from the other citizens of the city, and not having renounced our rights as North American citizens, we disapprove and energetically protest against the act of having caused a force of the national guards from Mexico to cross unto this side to ingraft themselves in a question so foreign to their country that there is no excusing such weakness on the part of those who implored their aid.

6. María Amparo Ruíz de Burton and Mariano Guadalupe Vallejo Discuss Intermarriage between Mexicans and European Americans, 1867

M. G. Vallejo to M. A. Ruíz de Burton

"... Do you believe that our race is inferior to the Yankee? ... I believe that our blood is better and that they (the Yankees) surpass us ... in mercantile spirit, industrialists, crazy without any God but money. We [have] taste, pleasures, romanticism, etc. Thus, having these two opposite elements in the mass of the blood of both races, the mixture of them cannot but produce a third, more beautiful, more energetic, stronger, sweeter in character, more temperate, and I believe stronger."

M. A. Ruíz de Burton to M. G. Vallejo

"Yes, it is true that the Yankee and the Mexican race is pretty, and 'prettier still is that of a Belgian and a Mexican,' but more attractive is that between a Protestant and a Catholic.' ... Yes, it is true. The mixed races are sometimes very beautiful and good.... Onward, let this process continue, and our nationality will die walked upon by the foot of the Saxon."

7. Texas Newspaper Characterizes Poor Mexicans as Thieves, 1867

To speak within bounds, three-fourths of the inhabitants of this border town are thieves, and live more or less by stealing. In fact, the name of the thieves in this community is legion. Three-fourths of our population consists of Mexican *pelados*, born, bred, and matured thieves. They live in sinks, sewers, and shanties. They infest the alleys day and night. The habits and customs of every family in the place is intimately known to them. They will work by the day or week for almost nothing, in order to find midnight access to some depository of valuables. Not a clothes line can be stretched, not a washing of clothes can occur, that the eyes of a practiced thief does not behold the moments made.

Nine out of ten Mexican *jacal[es]* are but receptacles for stolen goods, and nine out of ten families live by stealing. These are facts known to our whole community. What work these miscreants do is mainly for the purpose of stealing. We are suffocated and hemmed in by the most adroit thieves the world or Mexico ever produced; so adroit, indeed, that detection appears to be out of the question....

What is the remedy for these ills of which we complain? The first is to close up the alleys and all back door ingress and egress. This is the first most important

Rosaura Sánchez and Beatrice Pita, eds. *Conflicts of Interest: The Letters of María Amparo Ruíz de Burton* (Houston Arte Público Press, 2001), pp. 158–159, 270–271.

Daily Ranchero (Brownsville, Texas), May 29, 1867.

step to be taken. The entire and complete exclusion from our back doors of thieving greaser eyes....

We say abolish the alleys. They are only traversed by thieving *pelados* and are reservoirs for disease, death, and hell ... for no man nor woman, only *pelados*, dare walk the alleys after dark.



ESSAYS

The legal changes from Mexican to U.S. law at midcentury introduced widespread transformations. However, the legal effects varied because the region's states and territories implemented distinct laws. In territorial New Mexico, the national government enacted property legislation while in neighboring Texas, the state legislature had more influence over its property laws. In the first essay, María Montoya, professor of history at New York University, focuses on the owners of the vast Maxwell land grant in New Mexico as a window into the transformation of property law in the territory. The implementation of U.S. law had devastating effects on the property rights that peons and married women had enjoyed under Mexico. Peons lost the informal rights and reciprocal obligations under a *patrón* (landowner) in Mexico because U.S. lawmakers refused to recognize such rights. Married women lost specific property rights under Mexican law that protected their independent holdings. In New Mexico, married women became subject to coverture, which tied their property rights to their husbands.

The U.S. annexation of Mexico's Far North transferred control over marital issues from Mexican religious officials to U.S. civil authorities. This jurisdictional change meant the loss of Mexico's courts of conciliation, where legal officers and the local community exerted pressure over wayward spouses. While couples lost this avenue for reconciliation, they gained several legal opportunities under U.S. law. In the second essay, Omar Valerio-Jiménez, professor of history at the University of Iowa, explains that women facing domestic abuse had more direct ways of stopping the violence by charging their husbands with a crime, and U.S. courts were more likely to punish abusive husbands than were Mexican tribunals. Moreover, U.S. marriage laws gave women more independence because they removed religious marriage restrictions and made absolute divorce possible and relatively easy.

Mexican Married Women, Coverture, and Peonage

MARÍA E. MONTOYA

When Col. Stephen Watts Kearny led the U.S. Army of the West into Santa Fe in 1846 he was not merely conquering a Mexican province for the U.S.

Translating Property: The Maxwell Land Grant and the Conflict Over Land in the America West, 1840–1900, by María E. Montoya, © 2003 by the Regents of the University of California. Published by the University of California Press.

government. Kearny was also leading a moral crusade against what some U.S. political leaders, such as John C. Calhoun, regarded as a despotic and feudalistic system of government and property....

[P]roponents of the U.S.-Mexican War were correct in noticing the enormous differences between the systems of land tenure dominant in Mexico and the United States, at least north of the Mason-Dixon line. The Spanish and, after 1821, Mexican governments had distributed huge land parcels through royal or executive grants to particular individuals or communities favored by the crown, president, or provincial governors.... By contrast, U.S. law distributed lands owned by the federal government through auction to the general public for standardized prices and, later, through uniform systems of possession and patent under the Homestead Act.... Such a collision of property regimes led to enormous uncertainty among people who held their property under the Spanish/Mexican system of royal or executive grant. Former Mexican citizens who were now incorporated into the United States feared that the U.S. government would confiscate their land, throw it into the public domain, and open it to U.S. settlers.

The Treaty of Guadalupe Hidalgo, which ended the U.S.-Mexican War in 1848, provided Mexican landowners with only limited legal protection. The original treaty contained Article 10, which clearly recognized the property rights that former Mexican citizens had enjoyed under Mexican law, guaranteeing that U.S. courts would be obliged to enforce their rights. But the U.S. Congress refused to ratify Article 10 because many congressmen had justified the war as a way to free Mexican *peones* from the domination of the hacienda system and the *patrón*.... Some congressmen argued that by ratifying Article 10 they would be undermining the republican ideals of equality and individualism that had justified the war in the first place. Ironically, while Congress's failure to ratify Article 10 did dispossess large Mexican landowners, particularly the Californios, the failure of Article 10 also hurt small landholders who held land through community grants.

Thus Kearny's occupation of New Mexico threw land titles into confusion, causing leading landowners such as Guadalupe Miranda to sell to people such as Lucien B. Maxwell who were willing to speculate on the validity of these Mexican land grants under U.S. law. The concern over the validity of land titles was the direct result of irreconcilable differences between the two property regimes. It was also the result of U.S. ideological hostility to what Americans saw as Mexican feudalism and the hierarchy of landowners over landless *peones*. Yet there was a deep irony in this American reluctance to recognize Mexican systems of land tenure. In refusing to enforce rights defined by Mexican law, U.S. courts ultimately relegated other members of Mexican society, married women, to the state of "feudalistic dependence" from which U.S. law was supposedly liberating Mexican *peones*. While U.S. lawmakers were quick to point out the inequalities inherent in the hacienda system, they turned a blind eye to analogous sources of hierarchy and subordination in the United States: enslavement of African Americans and unequal treatment of women. More specifically, Anglo-American law, and especially the law of coverture—which allowed husbands to control their wives' property, barring its sale, lease, or bequest without the husband's signature—was just beginning to be reformed in the United States.

Mexican law denied husbands such extensive power over their wives, because the civil law on which Mexican law was based lacked any substantial rule of coverture. Under Mexican law, a married woman could own, sell, lease, and bequeath her property without her husband's signature. By refusing to recognize Mexican practices, U.S. courts stripped Mexican married women of these rights, re-creating them as common-law dependents of the husband, master of the household.

... [T]he uncertainty surrounding land title after the U.S. conquest of New Mexico aided Lucien B. Maxwell in acquiring his vast estate.... He acquired the grant by marrying María de la Luz Beaubien, who was the daughter of the wealthy and prominent Carlos Beaubien, one of the original owners of the Beaubien/Miranda Land Grant. Maxwell obtained the core of his vast estate as the result of a dynastic alliance in the Mexican feudal tradition. He was not unambiguously the "sole owner" of the Maxwell Land Grant because his wife was co-owner of the parcel with the right to control its disposition. In fact, the doctrine of coverture may have aided Maxwell's property acquisition, for it gave Maxwell's sisters-in-law an enormous incentive to sell their holdings to him and thus avoid the legal consequences of the new U.S. property regime.

... The New Mexican system of peonage and *patrón* domination persisted after 1848 in New Mexico despite the efforts of U.S. courts to eradicate it. Lucien Maxwell continued as the *patrón* of his hacienda until he and Luz sold the grant in 1869. As feudal overlord, he owned slaves, dispensed justice among his tenants, and ruled his estate through quasi-familial relationships rather than through contractual formalities, which he disdained. In short U.S. law did not eradicate the feudalism of the *patrón/peón* system during the two decades of Maxwell's tenure. But U.S. law did install the Anglo-American feudal regime of coverture. The conquest of 1848 did not represent a radical break with the hierarchy of the hacienda system, but rather a perfection of it; the law preserved the informal quasi-familial control of *patrón* over *peón* and extended this control to the *patrón's* wife and other female relatives.

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After the U.S. victory over Mexico in 1848 and the U.S. occupation of New Mexico, Carlos Beaubien and Guadalupe Miranda became concerned about the status of their property holdings, particularly the extensive grant they had received from Governor Manuel Armijo in 1841. The two grantees, however, dealt with the changes quite differently. Miranda sold his claims and share to Lucien and Luz Maxwell soon after the Americans arrived. Miranda, a Mexican loyalist, saw no future for himself in the new territory of the United States. After Santa Fe's fall to Kearny's troops, Miranda fled over the border with Governor Armijo to Mexico, where he remained. The Beaubien family, however, took over Miranda's shares, remained on the grant, and attempted to perfect their title to the full extent of the grant's boundaries. Carlos Beaubien died before the U.S. government gave the final patent to the land grant, but his family—particularly his son-in-law, Lucien B. Maxwell—carried on the enterprise.

In 1848, while Mexicans hurried to establish their property rights, the enterprising Lucien Bonaparte Maxwell profited from this confusion by speculating that

Mexican property rights and land grants would be recognized by the United States under the Treaty of Guadalupe Hidalgo. Through his marital connections, Maxwell eventually gained control of the entire grant. As a result of his property acquisition, Maxwell was probably the richest man in all of New Mexico Territory during his lifetime, and he ran very profitable mining, ranching, and farming enterprises. These typical western American businesses, however, were not based on his own individual effort or even on that of his family. Instead, they depended on his use of feudalistic practices reminiscent of Mexican haciendas, such as peonage labor and sharecropping-type relationships between himself and his tenants. His persona as a benevolent yet often violent *patrón*, a huge hacienda owner, a wild gambler, and a generous friend has taken on legendary proportions....

The romantic mystique that surrounds Maxwell's life stems in part from his early career as a trapper and trader.... While settling himself into the [Taos] community, he courted and then, in 1844, married the thirteen-year-old María de la Luz Beaubien, one of Carlos Beaubien's six children. Beaubien, himself a French-Canadian turned Mexican trader, was by this time one of the most prominent citizens in colonial New Mexico.... Maxwell had managed to make an excellent marriage, which brought with it social mobility and financial opportunity through his wife's family.

Intermarriage between *ricas*, unmarried women from wealthy families, and outsiders such as Maxwell occurred frequently on the Mexican-American frontier and played a significant role in acculturating foreigners into New Mexican society.... Whether to establish trading alliances or to acquire property, through intermarriage Anglos allied themselves with prominent families, thus uniting the outside Anglo world with the local Hispano culture....

Maxwell[s] ... wealth and power had been derived from the more traditional alliances provided by marriage and family.... [T]he Maxwells acquired the remaining shares of the grant when Carlos Beaubien died in February 1864, leaving his estate to his six children.... As was common practice when a Mexican father passed property to his heirs, Beaubien bequeathed his interest to all of his children, male and female, in equal shares....

Over the next five years, after Beaubien's death and the acquisition of Luz Beaubien Maxwell's inherited share, the Maxwells purchased the other five undivided shares from her siblings....

... Maxwell has come to epitomize the diligent frontiersman who conquered the American West by making a large expanse of land economically profitable. Yet he did not acquire the land through the mythical attributes that have come to be associated with these so-called "pioneers": diligence, industry, and individual effort. Rather, Maxwell acquired his wealth through such Old World tactics as marriage, inheritance, and peonage. He also benefited from the change in government, capitalizing on the uncertainty that his sisters-in-law faced with regard to their own property holdings....

* * *

Historians of the Maxwell Land Grant and biographers of Lucien B. Maxwell have generally dismissed the presence of María de la Luz Beaubien Maxwell.... Luz ...

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had a large family and household, which would have kept her occupied and apart from the affairs of the outside world. Furthermore, Luz spoke no English during her years on the land grant and probably did not read or write....

Nevertheless, historians cannot so easily dismiss the role of Luz Beaubien Maxwell. Historical evidence indicates that Luz was a successful businesswoman both during and after her husband's lifetime. After Lucien and Luz sold the bulk of their propertied estate in 1869, they continued to sell other parcels of property jointly. In some cases, however, only Maxwell's signature appears on deeds. These variations in their transactions suggest that Luz had influence over some aspects of their financial affairs, while Maxwell kept other dealings separate. One might even surmise that the transactions for which Lucien cosigned were for Luz's property, and that he cosigned only because U.S. law required his consent in his wife's business transactions. Furthermore, twenty years after Lucien's death, court documents show that Luz owned her own cattle business.... Luz was not a quiet and passive *doña* of the Maxwell hacienda, but an active and integral part of New Mexico's cattle industry.

Likewise, upon the sale of the whole estate to an English syndicate in 1869, Luz's signature again appears on the documents, indicating that she was the co-owner and coseller of the property....

Luz Maxwell's signing of her name was no trivial act: it signified a vast difference between the restrictive Anglo-American system and the relative autonomy women enjoyed under the Spanish-Mexican legal regime.... Prior to the U.S. conquest of New Mexico, women frequently willed property to their heirs independently, made contracts with persons outside of their family, often without the signature of their husbands, and in general disposed of their property as they chose....

Luz Maxwell's signature, under Mexican civil law, was a crucial detail in legal transactions disposing of the Maxwell estate. Since she had inherited a share of the grant from her father, and since she and her husband had acquired other shares, she shared control over such transactions, at least to the extent that Mexican law governed them. Thus she played an important legal and social role in acquiring property from her family both through inheritance from her father and by purchase from her siblings. By stark contrast, Lucien Maxwell came to New Mexico with very little capital and no real social standing. Had he not married Luz, he would have found it difficult to generate business dealings with the wealthy and influential Beaubien and Miranda families. Absent his marriage to a *rica*, he was an outsider, and a cash-poor one at that....

During the 1840s, two contradictory impulses ran through American society: liberalization of married women's status and anti-Mexican sentiment. Although since 1839 various states had been passing Married Women's Property Acts, which in theory gave more property rights to married women, the law of coverture remained quite powerful.... Though the irony provoked no comment at the time, the Married Women's Property Acts were promoting the kind of legal equality that Mexican law already took for granted. So while the status of American women, at least in theory, appeared to be improving throughout the nineteenth century, the status of Mexican women who now found themselves living under U.S. rule declined.

A female American citizen in the middle of the nineteenth century could expect to have very little control over the property she brought into marriage as dower, through inheritance, or through contract. She, unlike Mexican married women, could not make a will on her own property unless her husband gave his consent in writing to the court.... American women in the nineteenth century retained almost no control over their property and had to rely on their husbands to take proper care of their assets....

While the rest of the United States was liberalizing through Married Women's Property Acts, legislation and court cases from New Mexico's early territorial period were instituting coverture as the prescribed law for the newly conquered population. For example, territorial legislation in 1852 explicitly stated that women could engage in property transactions only if their husbands cosigned the contract. Furthermore, one of the earliest territorial cases involving the rights of married women made it quite explicit that coverture was the law. In 1857, Mariana Martínez brought before the Territorial Supreme Court a complaint against her husband, Tomás Lucero. Martínez and Lucero had been legally married for seven years but had separated amicably.... Lucero and Martínez had moved in with other partners.... Martínez sued Lucero because he was using and "wasting" the dowry she had brought to the marriage on maintaining his new family. [See Document 2.]

The territorial court disagreed, however, with Mariana's assessment of her marital situation. According to the law, [they] were still legally husband and wife....

The territorial court punished Mariana Martínez but not her husband, Tomas Lucero, for the act of adultery.... Using phrases such as "derelict in her conjugal obligations" and "sullied by the unrefuted charge of guilt," the Territorial Supreme Court of New Mexico made her responsible for the failed marriage. Furthermore, the court punished her by protecting her estranged husband's right to use her property to maintain his new family. She, on the other hand, was left with none of the money or property that she had brought into the marriage. As a married woman under U.S. common law, Martínez possessed no legal ability to control her property....

... From a legal point of view, then, affluent Mexican women had every reason to be skeptical about their ability to control property as the U.S. legal regime was gradually, but securely, being locked into place after 1848....

These changing legal conditions may have played a significant role in the decision that the Beaubien women made in disposing of their property interest; however, their social and economic position, as well as the location of the grant, may also explain their actions. The Maxwell Land Grant ... was far away from Santa Fe and Taos. These geographic barriers made the property difficult to work and also economically risky....

[P]eople also questioned the extent of the grant's boundaries.... The various heirs and claimants to the land grant sold at below-market prices because of pending litigation and questions surrounding the grant's validity and limits....

... During the Maxwells' tenure on the grant, however, the boundaries made little difference as they went about their business of building a home, a

family, and a ranching business in the heart of what would later be patented by the U.S. Congress as a 1.7-million-acre estate....

... Another sort of uncertainty, and perhaps the most decisive reason, concerned which legal regime governed the land grant. If U.S. law applied, the Beaubien sisters would not have retained control over the estate at all: their husbands would have had legal control over the land. Their right to use the land in any manner they thought proper would have been worthless if conflict ever arose between the sisters and their respective spouses.... The sisters may have sold as a rational reaction to the likelihood that U.S. law had already stripped them of the rights they were waiving with quitclaim deeds to the Maxwells. While the women could hold cash as their own personal property, they could not hold land. Luz Maxwell, on the other hand, benefited from her sisters' strategic decisions only because she maintained a solid marriage to Lucien. Maxwell, however, suffered the unfortunate circumstance of dying relatively early in life in 1875, leaving Luz a wealthy widow. After Maxwell's death, Luz was free to act as a *femme sole*, or single woman, and run her own cattle business.

... The failure to recognize the wide variety of property rights under Mexican law was due in part to U.S. lawmakers' deep disdain for what they understood to be the hierarchical, aristocratic, and feudalistic hacienda system of land tenure in Mexico. Ironically, these were the same congressional leaders who had fewer problems justifying the continued existence of slavery, as well as women's lower political and economic status. Members of Congress had ratified the Treaty of Guadalupe Hidalgo, which legally protected the rights of Mexican citizens, but at the request of President James K. Polk, they had also refused to ratify Article 10, which specifically guaranteed the property rights of Mexican citizens. Polk and Congress ... instead assured the Mexican negotiators that land grants would be protected under U.S. law. Moreover, many congressmen did not want to give unequivocal recognition to the property rights of feudal landlords who held vast estates in Texas, New Mexico, and California. They considered such extensive land parcels inimical to the Jeffersonian ideals of equality and individualism that they imagined to be the foundation of U.S. property law....

The irony, however, was that congressional refusal to recognize Mexican property law relegated Mexican women to precisely the state of feudalistic dependence from which they intended to rescue Mexican *peones* on hacienda estates. This is to say that as a matter of plain legal description, the position of women under U.S. law and *peones* under the rule of the *patrón* were similar. Neither held clear title to property. Neither married women in the United States nor *peones* in New Mexico could use or dispose of the land they inhabited as they chose. This similar legal status, however, does not mean that Mexican married women and *peones* were ever conscious of their common subordination, let alone that they united to resist it....

To better understand the parallel relationships between married women and the *patrón*, and *peones* and the *patrón*, we must look more closely at the *patrón* and *peón* relationship on the New Mexican frontier. The modified hacienda system

was part and parcel of the Mexican grant system.... The *patrón* took on the obligation of settling families on the grant, which was usually in a frontier location, as a condition of receiving enhanced acreage. In effect, the Mexican government intended *patrones* ... to be the leaders, overlords, and *alcaldes* of their communities in addition to fulfilling their responsibilities as private property owners.... While the *patrón's* tenants had no formal legal rights recorded in any deed, they did possess a set of circumstances and informal customs that limited the discretion of the legal owner, and which informally protected their interests. The *patrón* was, in effect, head of an extended family—an informal, closely knit association. While the rhetoric of familial association may seem exaggerated, Maxwell at least respected the duties of the *patrón* insofar as he did not evict his tenants without cause....

When the United States took control of New Mexico, the debt-peonage system that provided the workforce for large ranches and farms like the Maxwell grant concerned the federal government: Congressmen were troubled by a land tenure system that placed so much land in the hands of a few owners and left a whole class of workers to fend for themselves against hacienda owners. The problems associated with *peones* and *patrones* were of particular concern in New Mexico, because the institution persisted long after U.S. occupation. In 1857, the Territorial Supreme Court first took up the issue of peonage in the case of *Mariana Jaramillo v. José de la Cruz Romero*. Mariana, a young girl of thirteen or so, ran away from her *patrón*, José de la Cruz, for reasons not outlined in the case. Romero sued Mariana and her father, claiming that she still owed him \$51.75 in cash or services on her debt. The justices ruled that since Mariana was a minor ..., Romero could not force her to repay the debt and hold her in servitude. Although this was a clear-cut case, the Territorial Supreme Court took the opportunity to examine the history of debt peonage in the region and tried to make sense of where this labor relationship might fit into the U.S. legal system....

... The court found few laws that regulated the practice of people selling their labor and personhood to a *patrón*. The court concluded that in the absence of any clear, historically specific legal description, the *peón/patrón* relationship would be best viewed by the U.S. government and territorial officials as a contract in which both parties willingly engaged in the exchange of labor for credit or cash—free labor. For the court, the most important element of the contract was “the consent of the parties [which] was invariably the foundation upon which a servant became bound to service.” The court also noted that the relationship went beyond economics since it was based on the “personal interests” of parties who chose to live in close proximity to one another and shared cultural and social ties as well. For example, the *patrón* often acted as a *padrino*, or godfather, to children being baptized or young couples getting married. Moreover, *peones*, servants, and even Indian slaves often lived within the familial household.

Nevertheless, although the court viewed the relationship as socially beneficial and economically lucrative, ... the court felt the relationship was basically uneven and despotic.... [A]nti-Mexican sentiment reverberates throughout the opinion.... The court detested the Mexican legal regime, with its odd labor, social, and property practices. Yet ironically, they did not seem interested in eradicating peonage.

The court's main concern was how to label, codify, and then regulate the practice of debt peonage within the U.S. legal system. This type of servant/

master relationship, while possessing many similarities to southern slavery, still held as one of its basic tenets the right to freely choose one's *patrón*.... One change the New Mexico territorial legislature made in 1852, however, was to take away from the *patrón* the legal right to punish *peones*.... [T]he court eradicated the use of corporal punishment, which had been the *patrón's* prerogative, and instead mandated imprisonment as the only method of punishment, which was to be determined by the courts, not by the *patrón*. By agreeing to view the *patrón/peón* relationship as a contractual relationship between two “equal” and willing partners, the court deftly avoided the thorny issues that would have arisen if comparisons to slavery were made too closely....

Significantly, these debt-peonage cases more often than not involved the abuse of a woman or girl. On one side of New Mexican society, women like the Beaubien sisters could own property and control economic assets, but many, many more women lived and worked under the control of the upper classes....

While court officials rightly stopped the abuses that came before them, ... the ... cases involving ... young female children reveal the kind of abuses that took place within the debt-peonage system.... Moreover, these ... cases came to the court's attention only because the *patrón* or mistress believed that he or she had unfairly lost service due to him or her and sought legal relief. We have no evidence of *peones* using the courts to punish unfair or abusive *patrones*, which illustrates the skewed power relations between classes in territorial New Mexico, where not everyone stood as equals under the law. The court, even with such evidence of abuse, did not seek to eradicate the entire labor system but instead contented itself with simply punishing its abuses and regulating its practices.

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Maxwell inhabited the legal arena in which the U.S. government sanctioned the *patrón/peón* relationship. Indeed, he created a world of intimate and complex labor relations with his settlers who came freely, *peones* who worked the land, and Indian slaves he owned. Through his enterprises ... he attracted and settled hundreds of settlers and *peones* who worked on his land and paid him rent through in-kind payments such as crops and livestock. Maxwell also had Native American servants who were probably slaves captured during the myriad Indian wars that raged on this frontier during the late nineteenth century. Indeed, one of his closest associates, Kit Carson, was known for his role in leading campaigns against Indians and taking captured Indian children into his home. These captured Indians were often used as slaves in New Mexican households and thus were incorporated into this frontier world. In 1860 the Maxwells had three Indian servants living in their household. By 1870 the Maxwell household had fifteen servants, including seven Indians under the age of fifteen....

Maxwell comfortably played the complex role of *patrón*. While these labor relationships seem complicated and multifaceted to historians, for Maxwell his role was relatively similar whether he was dealing with his sisters-in-law, wife, slaves, *peones*, workers, lessees, or business associates. He was the leader of an insular community that depended on him to negotiate with the outside world, which was rapidly moving toward the Maxwell estate: he was the conduit through which most of the cash flowed on the grant....

The relationship between Lucien B. Maxwell and the Hispanos, almost five hundred by some estimates, ... was really a modernized Mexican hacienda system suited to New Mexico's frontier conditions. The *patrón/peón* bond between Maxwell and individual Hispanos and Jicarillas was a personal and informal relationship between dominant and subordinate persons involving nontransferable rights and duties for both. Regardless of the kind of intimacy suggested by friendship or *compadrazgo*, the tie between Maxwell and his *peones* remained mainly a financial one that was an especially lucrative one for Maxwell....

... The workers on Maxwell's hacienda produced surplus commodities for the nascent market economy created by the presence of the U.S. Army, the Indian agency, and the arrival of the Santa Fe Trail trade.

Despite the intrusion of the market into the workings of the estate, Maxwell maintained the informal economic obligations on his estate by personal ties rather than by legal contracts or state enforcement. The grant was much too extensive for Maxwell to manage single-handedly, so he allowed Mexican settlers to hold plots of land on which they built homes and farms. In turn, these settlers paid "rent" to Maxwell in grain, cattle, wool, or sheep, which he then traded to outside markets. Although not as strong as U.S. homesteaders' rights, squatters did have rights to their small parcels. In fact, Maxwell carried out the original intention of the Beaubien and Miranda grant by acting as a Mexican *empresario* who took a large grant of land and agreed to settle it for the Mexican government. He developed the land, brought settlers onto the estate, and created a stable economy for the migrants. Social and economic relations on the Maxwell grant were inherently unequal in terms of power, but the system was mutually beneficial because the settlers improved the land, and Maxwell protected their homes and farms from Comanche and Kiowa raids on their livestock, as well as from the Anglo settlers moving into New Mexico....

The problems that *peones* and married women faced during this early history of the Maxwell Land Grant grew out of the U.S. legal system's inability to accommodate different labor and property regimes. Consequently, Mexican land tenure, which encouraged intimate relations between *patrón* and *peón*, and married women's property rights were not preserved in their original form or with the original set of reciprocal obligations. U.S. lawmakers failed to see the economic and social functions that Mexican land grants and property systems had served and were deeply offended by the notion of haciendas and feudalism existing on U.S. soil. By replacing Mexican with U.S. land law, however, Congress encouraged the creation of a *patrón* system not for Hispano *peones*, but for Mexican married women. Women's legal position in the United States was analogous to the position of the *peón* in the *patrón* system: a theoretically benevolent and familial dependence that meant to protect those deemed incapable of participating in the property regime.

Ironically, the United States law that regulated married women's property was more feudal and paternal than the Mexican law it replaced. While they remained under Mexican law, and later after the Americans moved in—under

New Mexican custom—the Beaubien sisters were quite autonomous and free to deal with the *patrón* as they chose, at least in terms of property relations.... Under U.S. law, and particularly as a result of coverture laws, however, the Beaubien sisters could not necessarily expect to enjoy the same rights that they had exercised earlier in their lives.

In the end, the power of market capitalism—which demanded of its participants a knowledge of markets, bonds, stocks, and interest—as well as the uncertainty of their legal status as married women under the U.S. regime, proved overwhelming for the Beaubien sisters. For them it was easier to sell their land ... to the Maxwells and move on to other enterprises. All continued to be prominent citizens of New Mexico and to engage in ranching and farming enterprises within the confines of early territorial society....

... The story for Mexican American women is a declensionist tale, a loss of autonomy as individuals capable of contracting and holding property became wards of their husbands, on whom they were legally dependent.

This transformation in property and legal regimes brought drastic changes to both the *peones* and women owners on the grant. Both suffered, but for opposite reasons. The *peones* lost because their informal property rights as squatters or tenants, recognized and enforced by the *patrón*, had no equivalent in U.S. law and consequently could not be recognized: they lost their land and livelihood. The Beaubien/Maxwell women also suffered under the U.S. system, but they lost because the very formal property rights that had been recognized under Mexican civil law were called into question. Now women had to rely on the informal communal property system established for them by U.S. law: coverture. They now had to rely on the good will of their husbands (their *patrones*) to protect their interests. In the end, both *peones* and Mexican women suffered loss of property and livelihood because their old Mexican property rights would not be incorporated into and recognized by the new system of law.

Getting Un-Hitched along the Rio Grande: Mexicans, Anglos, and Divorce

OMAR VALERIO-JIMÉNEZ

In 1834, María Nepomucena Benavides appeared in a Laredo court to accuse José María Cisneros, her husband, of striking and insulting her. Cisneros countered that he had asked Benavides about her lack of attention to their children; unsatisfied and angry at her response, he struck her. Benavides, in turn, accused him of ignoring the family upon his return from outings and dances. She also faulted his negative attitude towards their children and his refusal to help with the housework.... Benavides explained feeling overwhelmed since she was solely responsible for the housework and childcare. The court admonished the feuding

Omar Valerio-Jiménez, "New Avenues for Domestic Dispute and Divorce Lawsuits along the U.S.-Mexico Border, 1834-1893," *Journal of Women's History* 21, no. 1 (Spring 2009), pp. 10-34.

couple about their marital obligations and convinced them to reunite. The agreement, however, was obtained only after the court threatened Cisneros with punishments should marital problems persist. According to the judgment, Cisneros would incur a five-peso fine and eight days in jail if he continued to abuse his wife. The court also warned Benavides to avoid angering her husband with her responses.

This was a typical outcome for nineteenth-century domestic dispute cases in the *villas del norte* (northern towns) near the Rio Grande's mouth at the Gulf of Mexico. Spanish-Mexican residents had been living along the river since the middle of the eighteenth century when they established these seven towns. The churches, government offices, and businesses in the *villas del norte* served a population living not only in the towns but also in a geographically large rural area consisting primarily of livestock ranches. Couples who aired marital grievances before the municipal courts often felt pressured to reunite under threats of punishment. Some women resisted this pressure, but others rejoined unhappy marriages. The resolution of such marital disputes in Mexico depended on the courts, the community, and the Catholic Church. This arrangement changed abruptly in 1848 when the United States annexed Mexico's Far North. Residents of the newly annexed territory could no longer seek the municipal court's assistance in reconciling troubled marriages. But Mexican Americans, who had acquired American citizenship, did gain an easier way to end those marriages....

... Divorce in colonial Latin America was not permitted. Ecclesiastical divorce (i.e., a legal separation that prohibited remarriage) was possible but rare because numerous obstacles dissuaded couples from legally separating, including the Catholic Church's disapproval. For the American West, the opposite was true, because western states passed liberal divorce laws to attract westward-moving migrants....

This [essay] explores changes in domestic dispute and separation lawsuits created by shifting legal jurisdictions in the nineteenth century. It compares the lawsuits of residents of the Lower Rio Grande border region living under Mexican jurisdiction in the first half of the nineteenth century to those living in the same region under American jurisdiction in the second half of the nineteenth century. The jurisdictional change transferred control of marital relations from Mexican religious authorities to American civil officials.... [T]his region underwent dynamic change as different cultures, religions, and civil communities intermixed to create a new society. The transformation of domestic disputes and marriage separations illustrates an increase in women's legal freedom to resolve domestic disagreements, new legal expectations regarding spousal responsibilities, and a decrease in the legal influence of the Catholic Church over marital relations.... American annexation did not lead exclusively to negative changes; it also opened new opportunities for women.... [R]ather than being an era of decline, it was a more complex period with both positive and negative results.

If marital woes interrupted domestic life in Mexico, an aggrieved spouse could appeal to acquaintances or relatives.... [W]ives asked such male allies as relatives, priests, or employers to intervene on their behalf. Antonio Castillo of

Laredo interceded in such a manner by charging his son-in-law, Andrés García, with striking Castillo's daughter in 1834. The court sided with Castillo, reprimanding García for easily resorting to violence, and suggesting that García "correct his wife's faults by scolding or advice rather than [by] blows." When persuasion did not alter their husbands' behavior, some wives left their home to live independently or with relatives. Most who did so suffered from physical abuse or a lack of financial support. However, women were still legally bound to return to their spouses.... Men initiated far fewer domestic dispute lawsuits than did women, and usually after their wives abandoned them. Once women left to escape physical mistreatment, they were unlikely to return. Often they had decided to separate permanently from their husbands—either through an unofficial arrangement or an official legal separation.

When extralegal means failed, wives filed charges in *juicios de conciliación* (trials of conciliation), accusing their husbands of a range of mistreatment, including financial neglect, physical attacks, and adultery. Trials of conciliation were held in each of the *villas del norte*, where a judge (a councilman) presided over the court with the assistance of two arbitrators (elite men). Residents of various class, gender, and racial backgrounds had access to the courts of conciliation. Seeking to preserve marriages, officials attempted to reconcile couples by reaching compromises. A successful conciliation often involved a judge's threat of future punishment should problems persist, a husband's promise to reform, and a reminder for the couple to adhere to their marital obligations. Among twenty-nine domestic dispute cases from 1832 to 1846, the courts secured eighteen reconciliations. The courts of conciliation relied on social pressure from the arbitrators, judge, and community to enforce the compromise agreement. Magistrates could also legally pressure feuding couples. In seventeen of eighteen cases where reconciliation was reached, the judge threatened or fined the couples in order to obtain their agreement.

In seeking marriage reconciliations, the civil courts followed the Catholic doctrine on marriage, which stipulated that "those whom God united under the bond of matrimony cannot and should not be parted." The civil courts' rulings predictably reminded spouses of marital obligations and Catholic responsibilities.... Thus civilian judicial officials cooperated with ecclesiastical authorities in enforcing the Catholic Church's view of marriage as a sacrament that could not be dissolved.

If marital difficulties could not be overcome, a spouse could seek an ecclesiastical divorce, but success was nearly impossible. Mexican law required that couples attend two *juicios de conciliación* before seeking a legal separation. In these civil trials, officials actively sought to preserve marriages, especially when both spouses were culpable for marital discord.... The aggressive attempts of civil authorities to reunite bickering couples ensured that few obtained permission to file for an ecclesiastical divorce....

During the first half of the nineteenth century, the Catholic Church was the only institution authorized to grant marital separations in Mexico. Since the church sought to preserve marriages, ecclesiastical divorces and annulments were very rare. An ecclesiastical divorce permitted the couple to separate legally

but neither individual could remarry while their spouse still lived.... Permanent separations were granted only if a spouse (but not both) committed adultery and witnesses corroborated the transgression. Divorce was not permitted in Mexico under civil law until 1917.

The spouse who lost the separation proceedings incurred severe economic and personal penalties. An ecclesiastical divorce was granted in favor of a litigant and against her/his *guilty* spouse. A guilty man not only lost child custody, his wife's dowry, and their community property, but also was required to provide financial support for his family after the legal separation. A guilty woman lost custody of her children older than three years of age and forfeited the right to her husband's financial support. If convicted of adultery, a wife also lost ownership of her dowry and community property. The court required the guilty party to pay for court costs. These punitive consequences made the *threat* of an ecclesiastical divorce an effective tool to pressure husbands to reform.... Due to the severity of ecclesiastical divorce proceedings, a legal separation was typically the last resort for women....

Women benefited more than men did from legal separations because they gained independence and regained legal rights previously held by their husbands.... Once legally separated, women gained the right to litigate independently and to live apart from their husbands, who were required to provide them with financial support. However, enforcing this financial support after a legal separation was difficult.... The legal right to live independently was especially important for women who suffered from domestic abuse. Wives also recovered control of their dowries, their share of community property, and custody of their children. Upper- and middle-class women were more likely to seek legal separations to regain control over their property than poor women, who often chose informal separations. Economic independence proved critical for women whose husbands' lack of support had brought misery upon their family and forced them to work for wages outside the home.

During the lengthy separation proceedings, women lived in a safe-house called a *depósito*. The *depósito* protected the wife from her husband's influence and possible physical assaults while she pursued litigation. It also protected the family's honor as the residents of the *depósito* were entrusted with ensuring the wife's faithfulness; the courts did not make similar arrangements to confirm the husband's fidelity, reflecting [a] double standard of honor and sexual purity....

Husbands maintained a considerable financial advantage during legal separation proceedings because they controlled the couple's property. This economic control allowed elite men to live comfortably, hire attorneys, and to punish their wives by refusing to pay for their *depósito* expenses. The bitter disagreements during separation proceedings were further aggravated by child custody disputes....

The acrimony of legal separation proceedings increased the possibility of violence and the need for the *depósito*. Some wives feared their husbands based on past patterns of violent behavior.... In 1833, a priest testified about the danger faced by María Concepción Flores. While walking past her residence, the priest and a parishioner had come to her aid as Flores ran away from her knife-wielding husband. Subsequently, the priest placed Flores in *depósito* at his own

residence while she sought an ecclesiastical divorce to escape a fifteen-year marriage plagued by physical abuse and a lack of financial support; her husband provided no support during her *depósito*. Though they urged most feuding couples to reconcile, local Catholic clergy were supportive of legal separation for marriages involving domestic violence....

Women suffering from domestic violence were the most likely to persevere through the numerous legal obstacles and press for an ecclesiastical divorce. Escaping domestic violence was women's most common reason to seek separations.... After unofficially separating from her abusive husband, one woman sought a legal separation in response to her husband's legal attempts to force her to return home. For the eleven women from the *villas del norte* who refused to reconcile with their husbands, the danger posed by their violent husbands outweighed any social stigma attached to an ecclesiastical divorce. It is unclear from extant documents if these eleven litigants were successful.

Documents from trials of conciliation and divorce petitions provide a window into legal marital expectations.... [W]omen who filed for a legal separation often contrasted their husband's violent behavior and other failings with their own fulfillment of domestic responsibilities. Their arguments, shaped by the law, strategically employed their society's prescribed gender roles, including an acknowledgement of a wife's subordination to her husband. In one petition, a woman described herself as an ideal wife who offered the "caress of a woman who is tender, friendly, and docile." Women argued that they fulfilled their domestic duties by assisting their husbands, raising their children, and preparing the family's food. In return, women expected their husbands to provide for and protect their families. One petitioner accused her husband of abusing the power entrusted to him in marriage. She observed that the canonical teachings that assigned "men as head of the home" did not have the desired legal effect when men "forgot their obligations and abused that superiority." ... Women who filed for separations were not claiming equality with men. Rather, they pursued such lawsuits because women disagreed about the extent of their subordination or believed husbands had abused their "superior position." ...

Rio Grande society underwent a great transformation in the mid-nineteenth century due to jurisdictional changes. The Republic of Texas, independent from 1836 to 1845, claimed but did not control the disputed region between the Nueces and Rio Grande rivers. Instead, Mexico held jurisdiction over the *villas del norte* until the conclusion of the [U.S.-Mexican] War in 1848. Thereafter, residents saw their communities split by the new international border.... [O]nly Laredo and Dolores ... became part of the United States.... Mexicans continued living across a vast rural area encompassing livestock ranches, but now an international boundary divided those with newly acquired American citizenship from their families and friends with Mexican citizenship.

American annexation altered the lives of Mexicans in the ceded territories. As former Mexican citizens became Mexican Americans, they gradually lost economic, political, and social power to newcomers. Anglo-American squatters, lawyers, and speculators obtained property from the old Mexican American landed elite through legal and extralegal means. Mexican Americans also

struggled to adjust to an American society that criminalized their cultural activities, racialized them as nonwhite, and limited their civil rights. As Mexican Americans' occupational opportunities shifted from skilled to unskilled labor, women entered the work force in greater numbers while witnessing few gains in literacy and enduring suspicions for moral laxness. Nevertheless, Mexican Americans adapted to the new legal system by filing several types of litigation, including domestic abuse and divorce suits....

The legal avenues to combat domestic abuse in the newly annexed territory decreased after American annexation. Unlike their counterparts across the river, women in southern Texas could not appeal to courts of conciliation to resolve marital problems. This loss worked against women who sought legal means to reform their marriages. Women's first legal option was the mayor's court, where the officials were typically Anglo-American and non-Spanish-speaking. Unlike Mexican courts of conciliation, the mayor's court in Texas was not required to reconcile feuding couples, but rather to punish any violations of the law.... Women could only appeal to the mayor if they wished to charge their husbands with a crime. Some did, while others chose such extralegal means as relying on community pressure to reform their marriages....

Although courts of conciliation were not available after 1848, women in Texas gained the ability to punish their husbands for domestic violence more readily. However, women who pursued criminal charges against their husbands had to accept the possibility that their husbands' punishment might hurt their families' financial standing. In 1866, for example, Mrs. Echarete protested her husband's arrest despite suffering his vicious assault, which provoked a miscarriage and threatened to end her life; she eventually dropped domestic violence charges against him because the family needed his financial support. A mayor could impose a fine, jail time, or hard labor on public works projects for men guilty of domestic abuse.... If officials determined that a domestic abuse case involved felonious assault, they transferred the case to the district court, where men could receive up to ten years in the penitentiary.

While women in Texas lost a legal option to reconcile marriages, they gained the recourse to legally and unequivocally end marriages. Divorce was not an uncomplicated benefit for all women. Some might have preferred the option to legally reconcile their marriages rather than ending them to assume sole responsibility for supporting and raising their children. However, women who believed their marriages were unsalvageable no longer had to endure two trials of conciliation before requesting a divorce. Like marriage, divorce became a civil matter. Border residents witnessed the Catholic Church's loss of power over matrimonial matters in the United States, but its continued control over marriage in Mexico. Since American civil courts were not bound by any church's policies, Texas residents witnessed more religious freedom in matrimonial matters than their counterparts in Mexico. Texas gave the district courts jurisdiction over divorce in 1837, and four years later established precise grounds for granting a divorce. The grounds included adultery, abandonment, and cruel treatment "which made living together insupportable." Violence was not an immediate cause for divorce unless "it was a 'serious' danger and might happen again."

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The availability of divorce after 1848 had a tremendous impact; the number of divorce petitions along the border in Texas increased dramatically [from just 12 lawsuits between 1849 and 1863 to 115 between 1879 and 1893].

Marital separation proceedings in Texas were similar to those in Mexico. Men continued to hold the upper hand during divorce proceedings in Texas because husbands controlled the couple's property until the divorce was finalized. The judicial audience (judges, jurors, lawyers, and interpreters) in Texas, as in Mexico, remained elite and male. However, its ethnic composition changed because Anglo-Americans were more prominently represented. Like their counterparts in Mexico, Texas women seeking a divorce typically did so because their husbands had committed adultery, inflicted physical abuse, or failed to provide financial support. Husbands usually filed for divorce after their wives abandoned them. As in Mexico, a spouse lost custody of his/her children if the court determined that he/she was guilty of adultery.

... Unlike in Mexico, where the Catholic Church might grant temporary legal separations, Texas laws granted only permanent divorces. The process was speedier in Texas.... Moreover, the Catholic Church lost all legal influence in civil court proceedings in Texas.... While few couples legally separated in Mexico, most who sought divorce in Texas succeeded. Among 169 divorce petitions in Cameron and Webb counties between 1849 and 1893, 133 (78.7 percent) were successful, three were denied, seventeen were dropped, and six were dismissed. The outcome of the remaining ten lawsuits is unknown.... The percentage of Mexican Americans suing for divorce was significant, but less than their proportion of the population....

Among the acceptable grounds for divorce, adultery was the hardest to prove in court.... The court required a plaintiff who accused her/his spouse of adultery to provide a third party as witness.... Since adultery was hard to prove, spouses of unfaithful parties frequently sued for divorce on other grounds. Adulterous spouses often deserted their marriages, so plaintiffs could charge abandonment, cruel treatment or multiple failings.... Texas laws enforced a double standard in divorce cases charging adultery. A man could obtain a divorce if his wife "shall have been taken in adultery" once. In contrast, in order to obtain a divorce based on adultery, a woman had to prove her husband "lived in adultery with another woman."

Texas law gave judges latitude to interpret "cruel treatment" to include both physical and mental abuse reasons for divorce. A woman could charge mental cruelty if her husband wrongly accused her of infidelity in public but failed to prove his accusation. Spouses could also be held liable for mental anguish if they repeatedly insulted, outraged, or provoked their partners.... The option to use "cruel treatment" as grounds for divorce gave women in Texas more choices to leave bad marriages than their counterparts in Mexico....

Abandonment was the easiest charge to prove. Texas law defined abandonment as physical separation with an intention to leave the marriage. An individual had to wait three years after their spouse's desertion before suing for divorce.... [A] wife who left her husband to escape his cruelty could sue for divorce based on abandonment.... Texas officials, unlike Mexican authorities,

could not pressure a married woman to live with her husband. However, women in Texas could not obtain financial support while they remained separated from their husbands during the three years required to claim abandonment.... Among nineteen abandonment lawsuits in Cameron and Webb counties, seventeen were successful, one was denied, and the outcome of one is unknown....

Abandonment lawsuits depict marriages plagued by several problems. Wives described partners who were physically abusive and neglected to provide financial support. Husbands complained about wives who refused to accompany them to their present residence.... Several women ... returned to their former homes because they were unhappy with the rustic environment in southern Texas.... Spouses in Mexico also deserted their marriages without official sanction, but abandoned spouses had limited legal recourses. An abandoned wife in Mexico was required to prove that reconciliation was impossible in order to obtain a temporary legal separation. Only then could she reclaim her financial and physical independence. But the couple remained legally married. In contrast, an abandoned spouse in Texas could divorce and sever all links to the wayward partner. Divorce permitted an abandoned wife to reclaim her birth name, exercise full custody of her children, and remarry....

Lax legal and residency requirements made Texas a convenient place to divorce. Like other western states, Texas implemented liberal residency requirements to make it easier for newcomers to vote. But they also made divorce easier. By the mid-1880s, Texas consistently ranked among the top ten divorce-granting states.... The national divorce rate increased five times faster than the nation's population growth rate throughout the latter half of the nineteenth century. The number of Texas divorces was affected by the so-called "interstate divorce trade" as residents of neighboring states moved to Texas specifically to divorce....

Texas women had more freedom while divorce lawsuits were pending than did their counterparts in Mexico, who were placed in *depósito* by the courts. Authorities in Texas allowed women to arrange their own lodging. By the time they filed for divorce, most plaintiffs were living apart from their spouses. Texas law, like Mexican legislation, allowed the husband to retain control of the couple's community property while awaiting the trial's outcome. It also gave women the right to file for alimony while the divorce lawsuit was pending. Among the 169 divorce petitions ..., however, only six plaintiffs secured alimony payments. The majority of men had fled the area, and the courts struggled to enforce alimony—a trend common throughout the United States.... Women's success in securing divorces despite enduring economic hardships in the absence of alimony underscores their determination to abandon abusive marriages.

The high number of Texas divorces can partially be attributed to the relatively mild consequences of divorce under U.S. law. A legal separation was more detrimental to a spouse who lost a lawsuit in Mexico than in Texas. A guilty spouse in Mexico lost control over property and child custody. Texas courts charged the losing party with litigation expenses, but avoided exacting harsh

punishments unless a party was guilty of cruel treatment or adultery. Spouses guilty of adultery forfeited their right to any community property and usually lost child custody as well....

The legal advantages of marital separations in Texas, as in Mexico, were greater for women than for men. A married woman retained ownership (but not control) of her separate property and shared ownership in the couple's community property. Her husband controlled her separate property and any community property. Furthermore, a married woman could not establish any business contracts without her husband's permission. However, divorcées regained legal control over their separate property and their share of community property in the majority of cases. They could also litigate and establish contracts freely.... For upper- and middle-class women, regaining control of their property was critical because it prevented their spouses from mismanaging or selling it. While poor women did not have property on which to rely, their legal and economic independence after divorce became critical as they became single heads of households. For example, Rosalía Galves, a fifty-seven-year-old divorcée, lived alone while working as a servant. Divorce also appealed to men because it allowed them to leave unhappy marriages, abandon aging wives, and/or absolve themselves of family responsibilities. However, women filed the majority of lawsuits until 1879, when men began filing for divorce in larger numbers. The increase is partly explained by a change in Texas divorce law that altered child custody determinations, requiring judges to consider the children's interests. As a result, magistrates usually gave custody of younger children to mothers and custody of older boys to fathers....

One of the most important consequences of divorce in Texas was the option to remarry. This option was particularly useful for individuals who had limited financial resources to provide for their children.... [L]egally separated individuals in Mexico could only appeal to friends and family for support or they could establish informal unions, but they could not legally remarry until their spouse died. Both women and men in Texas benefited from the ability to remarry because life on the border during the nineteenth century was harsh and could be considerably easier for a couple than for a single person....

Divorce petitions demonstrate that the legal expectations concerning marital relations in southern Texas had changed from those held in prewar Mexico. Texas court cases continued to describe gendered marital expectations where wives were responsible for childcare and housework while men were responsible for financial support.... In addition to caring for their children, many women worked to supplement their husbands' income. Yet husbands continued to enjoy greater legal rights than wives and marriages were not examples of domestic parity.... Nevertheless, a change did occur in the manner that spouses described their roles within marriage. Absent from divorce petitions is any mention of wives' subordination to their husbands—an essential element in marital dispute cases in Mexico. In legal records, at least, women no longer had to profess subservience in marriage in order to fulfill social expectations. Moreover, women sought divorce for reasons other than cruel treatment, in contrast to the majority of wives in Mexico. The large number of abandonment cases

suggests that deserted wives could gain legal redress under Texas law by divorcing, and thus regain financial and legal independence from absent husbands. As in other parts of the American West, women in southern Texas filed for divorce more often than men (eighty-nine women versus eighty men) from 1848 to 1893.... While a legal marital separation was exclusively a female option in the *villas del norte*, it became more complicated after 1848 as men increasingly filed for divorce.

The availability of divorce in the United States provided new avenues for women and men to end troubled marriages, but the application of American laws did not create marital separations nor increase their number. Spouses in Mexico had been separating long before American annexation in 1848. Many had chosen to resolve their marital problems through unsanctioned separations, and a few attempted to obtain an ecclesiastical divorce. After 1848, American laws made divorce available for the first time in southern Texas. Subsequently, the number of legal marital separations in the region increased. Women and men left unsatisfactory marriages, obtained legal custody of their children, and remarried through civil channels. The increasing number of Mexican Americans who filed for divorce demonstrates their adaptation to a new legal system and suggests their departure from the Catholic Church's teachings on marriage. Yet spouses who divorced did not completely abandon their religious beliefs as they negotiated the contradictions between civil society and their Catholic faith. Several divorced individuals continued attending church services, baptisms, and their children's religious wedding ceremonies. Mexican American women's use of American civil courts to obtain divorces also demonstrated a willingness to exercise new rights, which gave them more power within marriage.... Nevertheless, divorce did not solve all problems.... [L]aws continued to favor men and many divorcées struggled economically after escaping bad marriages.

American annexation in 1848 began a period of economic dislocation, land dispossession, and political marginalization for Mexican Americans, but it also created new opportunities. The transfer of jurisdiction from Mexico to the United States opened new avenues for women and men to begin, negotiate, and end their marriages. Although the international border separated two distinct legal systems, it did not sever social relations. Border residents occasionally chose spouses who lived on the other side of the Rio Grande, and sometimes individuals crossed the border to escape unhappy marriages (with or without previously securing a divorce). The porous nature of the border offered some individuals a choice of legal options with radically different possibilities. After 1848, women living in the southern Texas region lost the recourse to appeal to a Mexican court of conciliation to resolve marital disputes. But these women gained the ability to more easily punish their husbands for domestic abuse crimes. They also gained the right to divorce. Domestic dispute and divorce lawsuits suggest that women in Texas enjoyed more independence than their counterparts in Mexico. The right to divorce was the most important change since it restored women's independent juridical rights and provided each spouse with the option to remarry.



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