FOREWORD

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Scholarly work on law and gender in Latin America has begun to gather pace in recent years, after a period of relative neglect. This revival has proceeded in tandem with efforts by women's movements during the period of democratic transition to advance programs of reform aimed at securing gender equality in the spheres of law, politics, and social rights. Nourished in part by this interaction, a growing literature is to be found on the social, political, and historical aspects of law and gender relations, as well as a sizeable quantity of policy-related work on specific aspects of legal reform. This output is, however, dispersed across discipline and region; some of it is ephemeral; and there are still only a handful of book-length studies dedicated to this important area of scholarship. *Decoding Gender: Law and Practice in Contemporary Mexico* is therefore to be welcomed both for bringing together a quality collection of studies spanning more than one hundred years of Mexican history, and for its coverage of issues of contemporary scholarly debate.

Mexico is in many respects an ideal case study for exploring the intricate associations between law and gender in Latin America. A history of state formation marked by colonialism, revolution, and a "perfect dictatorship" of seventy-one years, together with uneven progress to join the dozen largest economies in the world, were and remain consequential on women's rights, in unexpected and sometimes conflicting ways. Today Mexico is a country with a population of over one hundred million people, more than half of whom are of indigenous or mestizo descent. Mexican society is riven by deep inequalities along class, gender, and ethnic lines, with these divisions refracted across social and cultural forms unevenly incorporated into the market economy. Three centuries of Spanish rule left its imprint on Mexico's justice systems, religion, language, demography, and economy, but this institutional apparatus always existed in a dual relationship, part coercion, part accommodation, with indigenous society. The colonial state was founded on the Greco-Roman tradition of law, its jurisprudence modified over the centuries, but more decisively transformed in the modern epoch by the influence of the Napoleonic Codes, by independence, and by the influence of liberalism and Enlightenment thought.

From the mid-nineteenth century, Mexican rulers embarked on a process of modern state formation, inspired by liberal principles of governance and justice, albeit adapted to and insecurely implanted in the formation over which they presided. If the modern history of law and gender in Mexico is that of state formation and re-formation, it is also a history of national and local discontinuities and of a complex articulation of state and customary modes of social regulation. Thus, despite the apparently unifying instance of law in the institutions and codes of the state, there is no singular account of law and gender, and even today in some regions of Mexico legal regulation is conducted through a plurality of parallel, overlapping, or syncretic systems. Common to much of the region, these features endured in some parts of Mexico despite the upheavals of the revolution of 1910 to 1920 and the creation of a modern corporatist state.

Such continuities existing within the broader currents of social change are central themes in analyses of law and gender in Latin America. Post-independence liberal governments sought to promote structural and institutional changes as part of their modernizing projects, and treated law as an accompaniment to, and instrument of, social change. Legal and constitutional reform and the creation of new regulatory instruments subjected the diverse forms of social life to a central authority, which defined itself according to prevailing liberal principles. Yet gender relations were only partially transformed in this process, and not always to women's advantage.

Luso-Hispanic colonial laws had accorded women rights and status different from men's, imposing on married women the obligation to serve and obey their husbands. This principle was reiterated in Article 213 of the Napoleonic Civil Code, and, although early liberalism proclaimed itself committed to freedom from servitude, its laws did little for what John Stuart Mill described as the slavery within marriage. At the heart of liberal legal reasoning about the gender order lay elements of earlier systems of patriarchal right. Although postcolonial state makers in Latin America sought to shift the principles of legal regulation from what has been called "colonial patriarchalism" to liberal contractarianism, and while there were some significant reforms in women's rights, masculine authority and privilege continued to prevail in the domestic and public sphere.

Mexican modernity, whether in its liberal, revolutionary, or corporatist moments, incorporated women selectively, on far from equal terms, and with a surprising degree of inconsistency. Mexico led the way in Latin America when it in 1870 established the principle of separation of marital property and in 1884 allowed testamentary freedom. But for much of the twentieth century, citizens' rights rested on deeply rooted notions of gender difference that accorded with an idealized view of the asymmetric social roles occupied by the sexes. In this ordering, men were naturally assumed to be the primary breadwinners, while women's duties lay in the home. The influence of the Catholic Church, although

diminished in the revolutionary years, remained a powerful moralizing force, particularly in matters pertaining to the family and to women's sexual and reproductive roles. Even today, some of the most restrictive and punitive abortion laws can be found in Mexico.

From their earliest manifestations, women's movements in Mexico had to confront a complex field of engagement in their struggle for citizenship. The revolutionary years, with their radical dynamic influenced by socialist currents, made some positive though limited impact on women's status. Revolutions tend to be state-strengthening and centralizing forces, but they are also paradoxically both conservative and modernizing, fixing certain social relations in the moment of their apparent transformation. The revolutionary government's project of accelerated development and nation building was premised on a bureaucratic one-party state, corporatist in form and selective in interest representation. The government's program of social modernization was also partial in that patriarchal authority and the sociolegal relations that underpinned it remained resilient and, to a significant degree, encoded in state law and practice.

The Constitution of 1917 and the Civil Code of 1928 accorded women legal equality and gave them some new rights, notably through removing *potestad marital*, yet denied them full civil and political rights. Women's right to contract remained limited, and married women, charged with legal responsibility for domestic matters, could only work outside the home with their husband's permission. Most surprisingly, perhaps, universal female franchise was not granted until 1953—later than in most Latin American states. Masculine privilege endured in these codes despite its transformation and resignification and the weakening of many of its institutional supports as a result of the profound changes in Mexican society.

This unevenness in women's acquisition of citizenship rights was particularly evident in judicial rulings that assumed male prerogatives and sexual rights over women's bodies. The old division between public and private matters of legal jurisdiction allowed the "private" sphere of the family to be left "outside justice," as in the case of marital rape and domestic violence, which were often treated as a private matter, with lenient sentencing of husbands even for serious cases of assault. Only gradually did the law place limits on men's authority over their wives, with women remaining subject to what has been called a "fraternal sexual contract," through which they acquired some rights in the public sphere but were denied others in the private sphere and by virtue of their "difference."

Violations of equality principles were not easily reformed, but those who opposed them appeared to have moral right on their side in an age when universalist principles prevailed in matters of justice. Other types of bias against women were more subtle and could be deeply divisive among women themselves. Although formal legal equality might be a desirable ideal, and an

advance on subjection, there was a risk that women's rights might simply be assimilated to what was, in effect, a masculine norm. This was a false equality in that, in erasing pertinent differences (such as childbearing), it assumed a level playing field for both sexes. In treating women as men, simple equality ignored inequalities of circumstance and opportunity, and could have the perverse effect of reproducing inequality through hidden forms of discrimination. Conservative maternalist lobbies, supported by Catholic traditionalists, had argued against equality on these as well as on moral grounds. They believed that women and men should be treated differently in accordance with their biological functions and temperamental dispositions, and that women should be accorded special dispensations on account of childbearing and child-rearing. Mexican laws, like those elsewhere in Latin America, had long recognized the special status of motherhood, framed in part as a concern for the well-being of children, with mothers and children seen as in need of "protection" rather than full citizenship. Equality feminists worried that lack of legal equality would only confirm women's second-class status, and would disadvantage them in employment, but at the same time they were aware that the failure to recognize the implications of the sexual division of labor and responsibility for childcare placed women at a disadvantage in relation to men in the competitive marketplace. Women, they argued, paid twice for the failure to equalize domestic responsibilities: in having fewer opportunities, and in bearing the cost in the form of lower pay, promotion prospects, and long-term financial security.

If the "difference question" remained as unresolved in law as among women's movements, more agreement could be reached over the treatment meted out to women in the courts. This form of discrimination, within the practice of the law, attracted the attention of scholars and activists alike and revealed the double standards to which women were all too often subject. Women's testimony often counted as less than men's, and courts were shown to be biased against women, especially in cases of domestic conflict and sex crimes. The most telling example of this last was the treatment of rape cases, where female victims were routinely subject to a range of pejorative assumptions situating them as colluding with the perpetrator or acting provocatively.

Campaigns for gender justice across the last century or more have therefore been directed at achieving reform in these three broad areas. Most evidently, they have sought to remove patriarchal and masculine privilege in the legal codes regulating the public and private spheres. This has involved tackling discrimination against women in public life, individuating women's rights from family or marriage status, and removing spurious forms of protection from employment, civil, and family laws. In recent times campaigns have challenged masculine right in matters of private conduct, demanding the reform of laws concerning domestic violence.

Equal-rights campaigners have also challenged the assimilation of women to the masculine norm where this is clearly at variance with justice. They have argued for laws that respect difference without surrendering the principle of equality, a demand that has characterized the historical struggle for women's citizenship rights across the world. In Latin America, feminist movements have supported entitlements for women that derive from their role as childbearers and mothers (such as paid maternity leave and job retention for pregnant women), as well as a range of restitutive measures designed to take account of the fact that equality of opportunity does not guarantee equality of outcome if conditions among competitors are unequal. Positive discrimination, targets, and quota systems are measures informed by this position, and their adoption in some areas of public life, notably in the political realm, have helped to shift the balance of representation in women's favor.

Reform efforts have also been directed at the judicial process itself, to make it more responsive to criticisms of its practice and more accountable to the principle of equal treatment. Concern over the prejudice routinely displayed in the courts against women has been challenged by campaigns to raise awareness of its nature and extent and to demand that women be treated as moral equals in the judicial process. Women's organizations have had some success in securing reforms in the law and the practice of justice in cases of domestic violence and in rape trials, and in drawing attention to the need for the training of the police and judiciary to create greater sensitivity to women's situation in these cases. Yet, as the tragic murders of young women in Ciudad Juárez and elsewhere show, the difficulties of securing justice for women remain formidable in contexts where weak institutionality, corruption, and violence routinely undermine the rule of law.

Taken together, there can be little doubt that the reforms of the last thirty or so years have brought striking advances in women's rights and legal treatment not only in Mexico but across Latin America. The wave of legal reforms that attended democratization was unusual in its scale, and derived some of its momentum from the strength of second wave feminism, both in its regional and international forms, and from international human rights legislation. In a politically favorable context, these elements combined to liberalize, modify, and transform gender relations as inscribed in law, with reforms governing the transmission of property, political representation, marriage, and sexuality serving as important levers of social change. Such changes represent significant steps towards gender justice, but law does not simply determine social relations, and, to the disappointment of some who participated in the reform movements, the hierarchical ordering of society along gender lines has seemed little altered.

It is through exploring the multiple interactions between law and gender that the chapters in this volume cast light on this question of the limits of law. In revealing the many dimensions of legality, these writings underline the point

that while the law is itself a social relation, and is to an important degree constitutive of social relations, it does not simply determine social life. The law exists in a relationship of reflexivity with society: it adapts to change; it is constantly contested and is subject to a degree of interpretation by those who exercise authority, with reference to presumed social norms.

The relationship between law and gender is therefore not simply one of unmitigated female victimhood. Even aspects of colonial, patriarchal, and indigenous laws gave women some rights that could serve, in sometimes surprising ways, to their advantage. Women from all social groups, from the poorest and most disadvantaged to those in more privileged circumstances, have been adept at challenging legal rulings, strategizing over which rights to appeal to in securing their diverse goals. As gender also cross-cuts other forms of social positioning that produce differences of interests and conceptions of justice, the idea that there is one account of “gender and law” is further unsettled.

The law thus does not exercise a direct and unambiguous mode of regulation over women. As the chapters in this book show, “the law” is not a unitary instance, and, in a context of interlegality, parallel and overlapping systems of regulation may prevail. Formal codes and the lived reality of social practice may also diverge significantly and have little bearing on how people negotiate their rights and entitlements and their social conduct within the social worlds which they inhabit. Transforming social relations to achieve equality and justice has provided feminism with a difficult and uncompleted task, one that depends not only on legal reform but on a multidimensional process of social change. Legal reform is a necessary condition for this change to occur, but is clearly not sufficient for the achievement of gender justice, as the discussions contained in this rich collection, *Decoding Gender: Law and Practice in Contemporary Mexico*, so convincingly illustrate.