The New Role of Women in the Law

Luis Martinez-Calcerrada
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INTRODUCTION: THE HISTORICAL EVOLUTION
OF THE STATUS OF WOMEN

For this legal interchange between the state of Louisiana and Spain it is important to note that two years ago in our country the privileges or preferences which husbands still enjoyed with respect to their wives were abolished. This statement, however, must be qualified as a half-truth, for although it is clear that under our former laws those privileges were certain, it is also clear that for quite a long time a series of reforms incorporated into our Civil Code has progressively equalized both spouses to the point where equality is today the norm. To clarify this "half-truth" would require a detailed examination of all the areas in which the law distinguished between husband and wife, as well as a study of their Hispanic origin and a realization that much of Spanish law was assimilated from French civil law.

This work, however, will attempt to take into account only the legal obligations of women, using as a point of departure a series of situations in which women find themselves or have found themselves assuming functions or responsibilities different from those of men. Some of these fall more naturally to women than to men, while others, perhaps, have been imposed or accepted without analysis. The logical goal is to learn in what manner the law has influenced "how women are or have been." This work will examine the different spheres in which women appear unequal to men and will indicate the different roles of women and the changes in those roles. The final view to emerge will be that of women under current law.

Without exhausting the historic sources of the problem—since history is not the focus of this study—one may glean from the important work of Don José Castán on the social and legal condition of women, written in 1955, the following conclusion: that, as is known, the original view of women, now condemned, was that they were held to be so lacking in certain physical and mental qualities as to be called "the weaker sex." From this it developed that the mere fact of their natural femininity gave women certain characteristics that caused them to be considered from a legal standpoint as an object or person having an inferior legal status.

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Under the primitive social systems regulated by patriarchal regimes, women were in a servile position, subject to male power, or were placed under masculine guardianship. Vestiges of these systems are found both in ancient Roman and ancient Germanic law. It was Christianity, with its belief in the sanctity of matrimony, in equality and liberty for human beings, which contributed decisively to the importance of women within the family and society. In the final period of the Roman law, on which Christianity had already exerted an influence, and under the *jus commune*, there were certainly fewer limitations upon women than those imposed by private law, in spite of the fact that the principle of women's legal incapacity was maintained under the public law.

As in many other areas of the law, and as affirmed by Professor Castán, the sixteenth-century principle of the incapacity of married women passed into the French Civil Code of 1804, quite significantly, despite the Revolution in France which was based upon such progressive ideas as the dogma of individualism. Also consecrated in that code were the results flowing from the principle of marital power, as great in the personal sphere as in the patrimonial. From the second half of the nineteenth century up to our time, however, the new currents of equality between the sexes have been ingrained in the major civil laws and have become the basis for its codification. In sum, the status of married women became stronger and stronger through the years, and if some inequities did persist, the most recent legislative reforms have abolished them. Finally, in the area of public law, this doctrine of equality has gained ground so that women are able to assume the same duties or public offices as men.

Such an historical review indicates an up-hill battle for women who, by reason of their being the "weaker sex," were subjected in legal matters to the authority of their fathers or husbands. Through this evolution an end was put to the legal inferiority of women, which had resulted in greater opportunities being granted to men. Assuming that legislators had reasons which, in their day, were valid for according unfavorable treatment to women, one cannot possibly determine the origin of the discrimination historically accorded women without undertaking a study of the differences existing between men and women, not just from a biological point of view, but also by considering the role or status which men and women have had in society and within the family. This threefold view is important because, although the principle of legal equality of the sexes is an uncontestable reality, major differences between them still persist in political, social, and family life.
Physiological Differences Between the Sexes and Their Legal Implications

In regard to the personal qualities of men and women, one must first consider all of their indisputable biological differences and likenesses, joining to them the closely related matter of procreation, since the concepts of maternity and paternity have accounted for certain rules of inequality within the law. Considering the psyche, intelligence, intuition, will, and psychological attitude of the sexes, it is clear that men are not necessarily superior to women. And, even though there are physical differences between them, particularly in regard to physical strength, one must admit that such is not necessarily a basis for asserting the legal inferiority of women. But, even though such superiority is non-existent, the dictates of legislative politics throughout the ages and among the various nations have taken advantage of the existence of certain differences between the sexes, and the scale has always been tipped in favor of men on the basis that such differences gave rise to the so-called inferiority of women.

Sociological Implications and Influences

Perhaps more interesting in a legal study, if not more important, is a consideration of how men and women fit into society and how they are affected by the various social institutions as a result of the differences in their sexes and in their roles. Regardless of what period is examined, the point of reference is always a social structure created by men for men. The "rules of the game" are unilaterally imposed and are therefore established for those who instituted them. In this sense, the rules are addressed to women who are, nevertheless, always viewed as "inferior," as "objects" relied upon for the comfort and use of those in control of the game. As a result of this self-oriented structure, men tend to make the choices, while women have accepted the duties imposed upon them, perhaps because of their natural adaptability for such duties, which have primarily related to maternal and domestic functions. It is important, also, to point out that even in contemporary society, there persist numerous examples of these structures centered around the interests of men.

Customs, traditions, and social trends. Customs, traditions, and social trends constitute assimilated social rules which distinguish one group of people from another. Although all three are spontaneously and subconsciously integrated and practiced by the members of a societal group, it is clear that there is a difference where men and women are concerned. Perhaps the most important aspect of this difference is in the roles of the sexes, with men assuming an exterior role, that is, with their being the principal actors in the theater of
society, while women are placed in an interior role, inside the home, with no possibility of approaching the social “exterior.”

If one examines the causes for this dicotomy, bearing in mind the substantial biological similarity between the two sexes, and therefore their similar initial aptitude, it is difficult to understand why this situation has arisen. Considering all possible reasons, including the greater physical strength of men and the placement of women with regard to the family or their domestic tasks clearly this dicotomy must be related to women’s feelings of subordination resulting from their secondary roles as imposed by such customs, traditions, and trends of society. Even today, a glance at life in certain sections of southern Spain reveals marriages in which only the husband works and amuses himself outside of the home, while his wife remains a recluse, performing the often thankless tasks of rearing children and serving her spouse.

_Morals._ The term “morals” must be taken to mean the set of ethical values that shapes the general conduct of the members of the social group, as well as a reality that is deeply felt and ingrained in the conscience of man, and by which such conduct is qualified as moral or immoral. It is clear that morality as a concept, which goes beyond the individual and comprises a diversity of religious sentiments, good customs, and other personal virtues rooted in society, has varied with the times and among different societies. Obviously, moral values are not the same in a rustic, underpopulated region as in a large metropolitan center, nor are they the same in the twentieth century as they were in the Middle Ages. Nevertheless, if there is one thing which clearly characterizes the value judgments that result from the concept of morals, it is the severity with which women are judged as compared to men. It is as if more is demanded of women in adhering to the rules, whereas there is a greater permissiveness, or tolerance, in regard to the actions of men. For instance, certain feudal or partriarchal privileges, such as having a concubine or several spouses, have been considered moral with respect to men, but not women. Although the evolution toward equal expectations of the sexes in terms of moral conduct has reduced the disparity in defining immoral conduct for men and women, there still remains a tendency toward granting greater justification or explanation for male transgressors than for female ones.

_Employment and social development._ It is clear, and is generally accepted, that until very recent times women have not been part of the employment world, understanding that term to mean the rendering of services to another for adequate compensation. It is well known that women in the past were separated from the area of rendering
services and from the exercise of any profession, art, or task of any influence in the community. Since women were relegated to domestic tasks for which they were financially uncompensated, there was never any specific recognition of their usefulness to society. Thus, in the employment world, as in other areas, women have been given the secondary role of supporter in regard to men, the main workers.

With their liberation, at least in theory, women have gained fulfillment in the employment world, although in practice there still exist areas or professions which are not open to them. Nevertheless, there is evidence of a backlash because it is felt that part of the problem of unemployment is attributable to the fact that many positions are now held by women rather than by men who have families to support. In spite of all this, there is one major certainty: the true liberation of women must begin with their actual incorporation into the work force. From there, women can obtain not only social and economic independence, but also recognition of their valuable contribution to the progress of their communities.

Overcoming social discrimination. The picture arrived at on the basis of the preceding social analysis is certainly a negative one. In society and elsewhere, women find themselves discriminated against in relation to men, because of the role that they occupy or are assigned is always an inferior one. It would appear that it is very difficult for men to give up their primary position, and thus that the factual role of women is somewhat different from that accorded them under the law. The evolutionary process in this regard is symptomatic—the more a society progresses or develops, the higher the standard of living for its members becomes. Thus, as the standard of living improves, women begin to play role similar to those of men. This becomes evident if one compares the greater liberation of women characteristic of industrialized countries with the inferior situation of their counterparts in underdeveloped countries. Such a correlation may be due, perhaps, to the fact that in such liberalized societies, the male establishment is already so saturated with power or well-being that it tends to make more concessions. This may also be due to the fact that the very encouragement of cultural, scientific, and spiritual developments in the more advanced countries produces a less submissive women who succeeds in achieving greater participation in society by means of protest and rebellion. Whatever the reason for the discrimination between the sexes, it is clear that the movement toward liberation and equality should not stop at the point of legal equality. If the views and value judgments regarding women remain the same, legislation can do very little, but it is important to begin with legal change, for only then will the slow process of breaking down rigid beliefs being.
The Family

The single women. The question of whether or not the single woman is dependent on some sort of family authority can only be considered with respect to modern times. In ancient times, this question of independence was irrelevant, for in all cases women were limited in their capacity because of their sex. If a woman remained single, this incapacity caused her to be under a life-long guardianship. That notion, however, was abolished under the law of Justinian. Subsequent legal developments, which accompanied social progress, do permit one to examine the status of single women within the family for an indication of changes in their level of autonomy. To accomplish this, one must look to the single woman's different roles and inter-relationship with man.

The dependent single woman is one who lives within the family circle under the authority of the family head. Such a woman may or may not be a minor, and she may or may not be the daughter of the family head. The question to be examined in this respect is whether or not the dependent single woman had equal status with the dependent man living in an analogous situation. As a general rule, the orientation of the family differed according to the sex of the child. The girls were expected to stay home and engage in domestic or household tasks and were given only an elementary or artistic or musical education. The boys, on the other hand, were expected to dedicate themselves to studies outside the home and to mixing with others, for this would enable them to function as family head and to support their families later on. In terms of restrictions and punishment with respect to behavior, the stamp of sexual discrimination reappears. The single dependent woman was more controlled and protected, with the single dependent male being given greater freedom with regard to his activities and choice of friends. When a woman's actions caused the personal or family honor to be at stake, that conduct was viewed with greater distain and was punished more severely than if a male family member had engaged in the same conduct. The women's liberation movement has definitely reduced these inequities in the way society judges the actions of men and women, and educational opportunities for women are more closely approximating those of men.

The independent single woman is one who is autonomous, that is, a woman who by herself constitutes a family unit, has her own financial resources, and is emancipated. In modern societies this situation is becoming more and more common, whether the woman's resources derive from her own inheritance or from her employment. Since such a woman is free of family domination, her conduct will be judged by values different from those for the single dependent
woman. It should be noted also that a single independent woman can live with a man without losing her single status, thus creating, whether or not there are children of that union, a "de facto" family. In any case, the single independent woman becomes a part of society and will be exposed to the discriminatory pressures discussed in the preceding section.

The married woman. If, as has been pointed out, the single woman (whether or not she is free of family authority), suffers apparent prejudices because of her unequal status with men, when such a woman marries, her new conjugal status does not offer her any additional freedom or any greater recognition of her rights, but instead plunges her into new depths of inequality and discrimination. It is clear, in legal terms, and especially from an historical point of view, that just as the single woman endures a generic incapacity because of her sex, the married woman is weighed down with an additional incapacity specifically because of her marital status. A reasonable person might well ask how the single woman who, by marrying, frees herself of paternal power and thus emancipates herself according to law, rather than acquiring greater freedom, finds herself in a new state of dependence or family slavery. The answer lies in the fact that such a woman simply changes from being dependent on her father, the titular holder of authority, to being dependent on a new family head, in the person of her husband. Things have changed, of course, although not to such an extent that one should believe that this pathology has been absolutely eradicated. This view of women can be examined in light of the following discussion of its different aspects.

The historical precedents of this problem appear in great profusion in the writings of jurists studying the influence of marriage on capacity. This is naturally so, since marriage forms the nucleus of the family and the basic unit of society. Under ancient Roman law, which declined in the fourth century A.D., the woman in a traditional marriage formed part of the husband's family and was subject to his domestic control. If the husband was a son still living with his own family, then his wife was subject to the authority of the pater familias. In either case, the wife did not have the capacity to contract or to incur obligations. Although under Germanic law marriage was regarded as a unit over which the husband had control and for which the husband acted as representative, the woman, because of her domestic talents, was granted some rights of representation.

With the passage of time, this situation of total dependence for women gradually weakened, and an awareness and recognition of their conjugal position evolved, even in ancient times. The full range of powers held by the husband were limited by custom. The recognition of the respect and consideration owed to the wife's family acted as
a rein on possible abuses of the marital power, apart from the implicit dignity of the woman as wife and *mater familias*. Briefly, this post-ancient evolution can be described as follows.

Under the laws of the Roman Republic, the decline of the husband's marital powers over his wife began. A wife was not formally endowed with a general incapacity, yet there were very specific prohibitions on her ability to obligate herself. For example, she was prohibited from acting as a surety for her husband. Christianity brought about a certain backsliding in the recognition of the married woman's autonomy. By carefully consecrating the values of the institution of matrimony and preservation of the harmony of its members, the Church attributed the function of superintendent or manager to the husband, with the result that the secondary role went to the wife. Nevertheless, the wife was accorded the dignity and respect due all individuals.

Medieval law attempted to retain the influence of the Christian values in regard to recognizing the married woman as a person and perpetuating her lack of capacity in legal matters, since she remained under her husband's control. Thus, there evolved under medieval law the principle that a married woman had no economic capacity. Even if the married woman did have legal capacity within the personal sphere, she was denied this capacity in regard to her patrimony. The codification movement did not substantially change this inferior position for the married woman, and even the French Civil Code, dating from the early part of the last century, reinforced and intensified the principle of the incapacity of the married woman, despite the fact that it incorporated other liberal ideas stemming from the Revolution. This situation continued up until the most recent legislative reforms of the present century.

*Social significance of marriage.* This transmission of power to which a married woman was subject, first to the power of her family and then to that of her husband, and even in some cases her husband's father, must be explained with reference to the social value attributed to marriage. Marriage has always been an institution whose origins are lost in history. It has been of transcendental importance for society itself, which has imposed upon it certain rites and liturgical forms, generally of a religious character. It can be shown that of all the institutions regulated by law, the oldest for which a solemn form was prescribed was marriage. Thus, in a majority of nations, marriage has been endowed with a certain sacred character and special rites have been established for its celebration.

Speaking in social terms, it is unquestionable that during much of history marriage was conceived of as a business between the families involved, and its economic consequences were the most im-
portant consideration. Even in recent times, the economic motivation, this need to protect the family fortune, so to speak, has been of primary importance, for it is clear that, in general, families prefer that the spouse chosen by an offspring have a substantial economic status.

In ancient Rome, such a monetary motivation created the situation in which a wife was bought by a husband, with this practice ending only when slaves became the principal workers and women were no longer a factor in producing food, goods, or services, but were instead supported by their husbands. In fact, a woman in effect bought her husband, for she had to provide him with a dowry. It is clear that in both instances the husband's interests were of primary importance. Since the husband had to support his wife, he incorporated her into his legal and economic sphere. With this obligation, the management of any income which the wife acquired naturally became the husband's responsibility. Thus, it is easy to understand the evolution of the husband as being preeminent and the wife as secondary. Since it was the husband who worked and supported the wife, naturally he had the right within the family to impose his own rules upon her. Experience demonstrates that, in those modern marriages where both spouses work and support the family, the right to impose such rules does not belong exclusively to the husband, but is distributed between the spouses.

*Domestic position of the married woman.* The discussions of the concept of work within this paper are not intended to imply that the traditional domestic duties of wives do not constitute work, for they do; however, such duties, with their diverse connotations, always seem to operate to the detriment of women. Their domestic work is not remunerated, so a wife does not contribute in a tangible way to the family resources and therefore cannot present "credentials" which would entitle them to an economic power comparable to that of their husbands' within the family. Nor does their work have an influence on society, and it is therefore improper to say that such work assists or aid society's progress and development. Finally, such domestic work does not distinguish the wife in the eyes of the community, since it occurs only in her home surroundings, and even there her services often go unappreciated.

Modern law and recent reforms refer prompously to "domestic power" or to the "power of the keys" which the married woman has. The purpose of such terminology is to grant to married women a certain autonomy or independence with respect to the dominant authority that their husbands have within the family. But what is the "domestic power" which women have? The inappropriateness of the term is the same as if one were to maintain that in order to protect a debtor
one should declare him to be in charge of his own debt! The married woman's duties included rearing and caring for the needs of the children, tending to the physical and everyday needs of her husband, treating him with an attitude of reverence and respect, undertaking rather unattractive manual tasks, such as cleaning, washing, and ironing, and performing such chores outside the home as transporting the children to school, grocery shopping, and purchasing other necessities. It is only in this latter instance that the previously mentioned autonomy of the married woman comes into play.

One thing is clear amid this complex series of tasks—there is a certain ingratitude associated with them, for they are indeed a nuisance. Additionally, these chores are given negligible economic and social recognition, to the extent that being a paid domestic servant is one of the lowliest forms of employment in society. Not only are those who engage in this type of work the least endowed economically and culturally, but they are also given an inferior status legally. For instance, domestic work is excluded from standard labor law in Spain.

In spite of all this, however, the married woman does make indisputable, valuable contributions, and these should be recognized and taken into account in the reevaluation of the married woman's activities. In addition to the vital assistance which she provides to her husband and children, a noble mission, she also participates in the family savings and contributes to the family economy. A married woman accomplishes this through her administration of the expenses of daily life and by providing domestic services for the family, which implies a financial gain, since domestic workers would otherwise have to be hired to perform those duties. As will be discussed in more detail below, legislators are now beginning to take note of this phenomenon and have begun to assign an economic value to the domestic work performed by the wife, so that its social relevance can be appreciated and the wife's contributions can no longer be minimized by the husband.

The so-called conjugal fidelity. Early in this century, article 105 of the Spanish Civil Code stated that a legitimate cause for divorce, among others, was "adultery on the part of a wife in all cases, and on the part of her husband when the result was a public scandal or disdain for the wife." With the reforms made in 1958, that article was changed so that adultery on the part of either one of the spouses was a sufficient cause for separation. Today, under Law of July 7, 1981, article 82 of the Civil Code, regarding separation, states that "marital infidelity" is a cause for separation. It is thus clear that conjugal fidelity is of primary importance among the reciprocal duties of the spouses, since the Civil Code itself establishes such fidelity as a reflection of the personal content of marriage. But, as in so many
other areas of marriage and family law, the legislator does (and should do) nothing but record reality as it exists within the family and society.

**LEGAL PERSPECTIVES**

The final stage in which differences between the sexes will be compared is in the legal realm. It must be emphasized that, unfortunately, the disparity between reality as it is affected by morals, society, and the family, and the norm as it appears in the law has not been totally harmonized. In most countries the social reality of women's liberation and equality of the sexes has antedated legislative evolution and reform, where change is usually very slow.

**Comparative Law**

As indicated above, sociological precedents have influenced the legal status of women in all legislations of the civilized world. Certainly the trend toward equating the status of men and women began to acquire significance in the first decade of this century, when people in most civilized countries began to perceive the necessity of changing the basis for much traditional legislation concerning women's rights. The feminist movement, which began shortly before World War I and reappeared with more intensity in World War II, suggested to constitutionalists the need to look, not only at the rights of the individual, but also at those relating to the family, to marriage, and to the equalization of the sexes. To gain an overview of the comparative law in this area one can consider international law and the legislation from a number of countries.

The international community of nations. In the founding charter of the United Nations (1945), the principle of equality of rights for both sexes was clearly included, along with a condemnation of any distinction by reason of sex. The Declaration of Human Rights of 1948, in articles 2 and 5, reaffirms this legal equality. The United Nations Subcommission on the Legal and Social Condition of Women has aspired to improving the position of women until it is equal to that of men in all human endeavors. In this effort the subcommission sent a series of recommendations to the Economic and Social Council of the United Nations and the latter, in turn, has approved the following resolutions.

Resolution of July 23, 1953 recommended that governments adopt all measures possible in order to guarantee the equality of rights and duties of husbands and wives in matters relating to the family and all measures possible in order to guarantee married women full legal capacity, the right to work outside the home, and the right, in a manner equal to their husbands, to acquire, administer, realize income from, and dispose of property. Based on the belief that the matrimonial
regimes of many countries were contrary to the principle of equality between the spouses, both during and at the termination of the marriage. Resolution of December 12, 1954 contained the recommendation that all member states take every action necessary in order to assure that all discrimination measures in their legislation be eliminated. In Resolution of August 3, 1955, it was recommended that governments adopt all means necessary to guarantee a wife the right to have an independent domicile. The Resolutions of August 3, 1955 and March 20, 1965 called for cessation of the requirement that marriage automatically affected or changed the wife's domicile and recommended that the member states adopt all measures necessary to insure that parents would have equal rights and obligations with respect to their children. With respect to these resolutions adopted by the Economic and Social Council of the United Nations as a basis for the more specific proposals elaborated by the Subcommission on the Legal and Social Condition of Women, it is important to emphasize the following pertinent conclusions on which those resolutions and proposals were founded.

The problem of social and legal discrimination against women became so acute in all countries of the international community following the Second World War that the United Nations itself felt the need for a subcommission to deal with this issue and to exhort member nations to eradicate such discrimination. Just as with the problem of children born of illicit sexual relations, it became necessary in the case of discrimination against women to direct a series of questions to member states. As a result, the following legal criteria which denied women equality were revealed:

1. That women did not share with men certain rights and obligations in relation to their families and their spouses;
2. That the women actually lacked legal capacity;
3. That they were not duly guaranteed their right to work outside the home;
4. That they could not, under equal conditions with their husbands, acquire, administer, have the usufruct of, or dispose of family property;
5. That in many countries a wife had no rights in regard to community property, and even with respect to her separate property;
6. That a wife often could not have a domicile independent from that of her husband nor could she maintain her own nationality if different from that of her husband;
7. That authority over the children was exercised exclusively by the husband.

Since these discriminatory practices grossly contradicted the Charter
of the United Nations, and specifically the Universal Declaration of Human Rights, the previously mentioned recommendations corresponding to future legislative reforms were suggested.

Obviously the level of discriminatory treatment for women was not, nor is it now, uniform. Naturally, the more progressive and advanced societies have enjoyed and do enjoy a more equitable legal situation, while more traditional societies remain anchored to obsolete regulations clearly prejudicial to women. Nonetheless, because of the promulgation of the UN recommendations, and no doubt because of the growing pressure of feminist movements, the political trend has clearly been toward legal equalization of the sexes, which now widely appears in statutes and codes. Of course, as has been pointed out, putting these changes into effect is a slower process, one which depends upon deep-rooted social and family habits.

*Foreign legislation.* The legislative details of every country are, of course, beyond the scope of this paper, although it should be noted the differences in the various legal criteria do exist. Thus, in addition to the preceding international panorama, a series of the most positive national laws has been selected to complete the picture of women and their relationship to men on a comparative law basis.

At the beginning of this century, Roguin classified the legislations of various countries with respect to the civil capacity of married women into the following groups: (1) guardianship of married women was in force in the Scandinavian countries; (2) the need for the husband's authorization in order to act, and independent of the matrimonial regime between the spouses, was required by a number of countries such as France, Belgium, Holland, Portugal, and Chile; (3) the need for the husband's authorization, which was dependent upon the matrimonial regime between the spouses, was in force in the Germanic laws of Austria, Germany, and Switzerland; (4) absolute independence of women was recognized from the beginning of the century in Russia, England, and in most North American states. Based on subsequent reforms, the following examination of a selection of the most important national laws which relate to those of Spain can be offered.

In France, the Napoleonic antifeminism incorporated into the *Code civil* has now been eliminated in our neighboring country. The change in legal attitude began with Law of February 28, 1938 and, most importantly, in those of September 22, 1942 and July 13, 1956, this being in addition to the constitutional texts of 1946 and 1958. The following legislative milestones can also be pointed out. Under the Law of July 13, 1907, the French wife no longer needed her husband's authorization to sell or donate any income or property she might acquire with her earnings. As a result of the Law of August 10, 1927, a wife could no longer lose her nationality by reason of marriage, and by the Law
of February 18, 1938, a wife was granted in full civil capacity to contract and appear in court without her husband’s authorization. This profoundly revised marital power and, since it recognized the unity of the family community and the cooperation of the spouses, it clearly limited the ability of the family head to act purely in his own interest. It permitted a wife recourse to a judge if her husband unilaterally decided on the family domicile and eliminated the former obligation of the wife to obey her husband. Since French legislation at that time still retained anachronisms, according to some scholars, an avant-projet was drawn up by the commission to reform the Code civil. The main goal was to reorganize the family so as to achieve modern equality of men and women, social equality—education, sports, art—and economic equality—professions and salaries instead of income by dowry—avoiding thereby a titular family head and the designation of the domicile by the husband. The judge was to resolve any conflicts, as had been prescribed by the law enacted in 1942. Although this avant-projet was never promulgated, the Law of July 13, 1965 included the majority of its postulates, especially in regard to the wife’s equality regardless of the matrimonial regime in effect during the marriage.

In Italy, the Law of July 17, 1919 had already abolished the need for the husband’s authorization in order for the wife to act. Then, in the Italian constitution of December 27, 1947 the principle of legal equality of the spouses was proclaimed, although it was quite some time before legislation to this effect appeared in the Italian Civil Code. The reform of the latter in matters of family law was approved by the Chamber of Deputies on December 1, 1971. After many parliamentary discussions, Law 151 of May 19, 1975 was passed, which sanctions the egalitarian principle found in the 1947 constitution, establishes conjoint authority over children, and requires that in cases of conflict a court decision must be sought.

In spite of the recent approval of the Portuguese Civil Code by the Law of November 25, 1966, the obsolete dogma of the husband’s authority is maintained. Its importance, however, is being revised in order to permit wives some freedom to act. Examples of this are her coparticipation in the domestic decisions within the home and the possibility of her having an independent profession. Other examples result from Decree No. 261/75 of May 27, 1975, which maintains an air of progressiveness with regard to women’s liberation.

The Constitution of the German Federal Republic of 1949 includes the principle of legal equality of husband and wife, and therefore the so-called Bonner Grundgesetz, the Law of May 23, 1949, abolishes the husband’s right to decide upon the domicile and the wife’s obligation to accept his choice. The Law of June 18, 1957 established legal equali-
ty for the sexes and served as a model for other countries. It granted conjoint authority over children and the wife's right to have recourse to the Judge of Tutorships in order to resolve any conflicts.

In the matter of legal equalization of the sexes, not only the U.S.S.R., but its satellites as well, were model examples, for it should not be forgotten that women in those countries constitute a work force equal to that of men and that they participate with equal force in technological and social development. Their maternal and domestic chores have been reduced by a system of family planning. The iron-curtain countries, since their revolutionary beginnings, have attempted through legislation to demolish the classical family unit. An effort has been made to do away with marriage and even with paternal authority within the family. Nonetheless, those criteria are tempered in the legal texts, and the Russian Civil Code of 1918 establishes that family authority, rights, and duties shall be exercised jointly by both parents and, specifically in the constitution of 1936, it is solemnly declared that "women have the same rights as men in all aspects of life." As has been noted, this spirit and development permeates the other codes within the realm of Russia's political influence.

It can be observed, then, that the duality evident in comparative law generally also exists in the countries just discussed: the recognition of the principles of legal equality of the sexes and its practical applications vary from country to country and among the particular institutions in which it operates.

Spanish Civil Law

Law prior to the revision of the Civil Code. Concerning Spanish legal history, it has been said, in effect, that the status of women in our ancient law followed an evolution parallel to that of the other European, Latin, and Germanic countries. The slow but constant effect of Christian ideas, the strengthening of public authority which made it possible for the state to protect the weak, and the institution of Justinian law with its favorable attitude toward the economic independence of women contributed to reducing the harshness of the social and legal condition of women. But no uniformity existed in the treatment of women by the various regional fueros, for, as Professor De Castro points out, alongside dispositions which presupposed full capacity for married women there existed others which denied such capacity to her, especially in order to free the husband of responsibility for the actions of his wife. In the law prior to the enactment of the Código civil women were still denied the exercise of their political rights and, as a general rule, their aptitude for carrying out public offices, and even for carrying out acts of a private, civil nature, were subject to important limitations such as the following:
1. They were unable to be guardians, except in the case of a grandmother with respect to her grandchildren;
2. They were unable to exercise authority over their children, except in the absence of the father;
3. They were unable to serve as witnesses for wills, except in times of disaster, or to adopt children, except in the case of a woman who lost her son while he was defending his country;
4. They were unable to serve as sureties for their husbands or anyone else, except in exceptional cases;
5. Married women were unable to effect any juridical act in ter vivos without their husband's consent or, absent that, without the consent of a judge.

In order to determine what effect the Spanish Civil Code in force in 1889 had on this problem and to glean whether or not it advanced the status of women in our legal system, one must in principle look to the historical antecedents—basically the Leyes de Toro and various scattered territorial laws, or fueros—and the decisive influence of the French codification movement (which proved very unpromising). For instance, Cortezo has noted, quite accurately, that the Spanish code continued the incapacities and limitations of the Leyes de Toro and the entire antifeminist spirit of the Napoleonic Code, and, according to Professor Castán, there still subsisted in our first civil code a limitation upon the capacity of the married woman to take any kind of financial action. The differentiating criteria for men and women within the 1889 Civil Code can be seen in the following groups of norms in which a discriminatory stamp is evident, but which can be established without prejudice to the original reasons that the legislators might have had for their establishment.

Limitations by reason of sex. Professor De Castro classified the Civil Code precepts, prior to the successive reforms of recent years, that revealed the legal inequality of the sexes. He called his criteria “dispositions based on the different physical constitutions of men and women.” He pointed out: (1) those provisions relative to the age at which one could contract a civil marriage, being twelve years for women and fourteen for men (art. 83-1); (2) the disposition which imposed upon a widow the limitations that prohibited her from remarrying for 301 days following the death of her husband or prior to giving birth, if she was pregnant at the time of his death, and the disposition which imposed the same restriction upon a woman whose marriage had been annulled, beginning from the moment of her legal separation (art. 45-2); (3) the precepts which regulated the causes for divorce (art. 105-3, 105-4) that, according to De Castro, clearly established an unjustified difference in relation to adultery.
It will be recalled from the previous discussion concerning the physiological differences between the sexes that real differences in their very nature do exist, while other differences exist in popular belief only. On the other hand, in the discussions of family and sociological matters it was clear that, merely because women could bear children, there evolved a series of unjustified demands upon women. Those expectations condemned any sexual transgressions on a woman's part with much more severity than if a man had been the perpetrator.

The differing age at which men and women could marry (art. 83-1) without a doubt evolved from the well-known fact that females reach sexual maturity much earlier than males. This legal distinction cannot be condemned, since the biological difference is indisputable. The regulations found in article 45-2, concerning the restrictions upon remarriage by a widow or a woman whose marriage had been annulled, result from biological differences as well, since absent the restriction, circumstances could prevent any certainty as to which man was the true father of a subsequently born child. For example, if a widow marries before 301 days have passed since her first husband died, or if a woman marries before that many days have passed since the annulment of her marriage, it is quite probable that those women would have had sexual relations with both their first and second husbands during the period of gestation. Thus the 301-day prohibition on remarriage was an attempt to prevent confusion as to the true father. The degrading nature of the discriminatory treatment regarding adultery as a ground for divorce under article 105-1, which provided that "adultery on the part of a wife in any case and on the part of the husband if a public scandal or disdain for the wife should result," has already been noted. This provision was eliminated by the Law of April 24, 1958, but until then it was a viable example of legal discrimination. Under article 45-3 another ground for divorce was based on the "violence of the husband toward his wife to force her to change religion." Apart from the unusual goal of such force, this regulation is of interest as an indication of the superior strength of men—which has not been questioned—and which allows them to act in a violent manner with women as their victims.

In regard to the social or moral sphere, the restrictions on women based upon a hesitancy to grant them capacity in the first few years of their majority have been discussed. Article 321, after its revision by Law 20 passed in December of 1952, stated that:

[A] daughter who has reached majority but is under 25 cannot leave home without her father or mother's permission. She shall live in her parents' company until reaching the age of 25 except if she leaves to marry or to enter an institute approved by the
church, or if her father or mother should later remarry or there should be some other reason to justify the separation.

Prior to this change in 1952, the content of this law was even stricter, for it stated: "In spite of what is stated in the previous article regarding majority, daughters who have reached their majority but who are younger than 25 cannot leave their parents' house without permission of the father or mother in whose company they live unless it is to marry, to enter the church, or if the father or mother has remarried." De Castro has described this as "legal hesitancy" to concede complete autonomy to women. The reason for this is precisely because of the weight of those social and family conditions that not only judged her conduct with special severity but also subjected her to more family authority, and therefore granted her less liberty, than a male child under the same circumstances. It is curious that an ancient example of paternalism, which remained in force until 1952, should annull the clearest sign of majority: the granting of independence to a person who has reached majority, even if the person possesses the ability to work and to provide for himself. But, even in view of this fact, what was even more important or discriminatory was the fear that the single woman would face great danger to her moral uprightness if she were allowed to live alone outside the home before the age of twenty-five. It should not be forgotten that she was allowed to live outside the family domicile only to marry, to become a nun, or if her father or mother remarried. Under the latter circumstances, it was thought that the family atmosphere might not be adequate for forced living under the same roof. Finally, in the reform of 1952, more flexible and progressive criteria fell under the category of "any other reason that would justify" the daughter's leaving the home, such as financial independence because of employment.

In terms of the family, De Castro speaks about two different groups. The first is referred to as "regulations having the character of a privilege for women," relative to the establishment of an obligatory dowry for daughters, except in cases where the daughters marry without first obtaining the required consent under article 1340. The second is referred to as "limitations related to a woman who marries for the second time." The sanctions resulting from a second marriage can be either the loss of authority over the children from the first marriage, except when that occurrence has been foreseen by the father according to article 168, or the ability of a widow who remarries to name a testamentary tutor for her children without the approval of the family council, according to article 206.

Considering the attitude of the nineteenth-century Spanish legislator, these regulations must have had only one explanation: the dowry, because daughters who married according the dictates or
advice of the family benefited from it. Also, the restrictions upon a widow who remarried can be explained by the idea that her action denoted a lack of respect for her dead spouse, who could so quickly be replaced in her affections, or by the view that she was not deemed to have the necessary qualities or adequate competence to be a guardian of the children. In reality, the discriminatory element was clear. In the case of a dowry, apart from its being an unrealistic institution that remained in our Civil Code until the recent revision of the Law of May 13, 1981, even though it was an apparent plus for a woman, and one certainly not available to her brothers, in truth it favored the future husband, for his wife thus brought to the marriage an economic tool of appreciable benefit.

Among the historical factors contributing to male primacy, one finds included the ancient prohibitions based on the archaic principle that men are the only ones who can carry out public functions. In this respect, reference is made to the remanents of the public character that testaments and the exercise of tutorship had under ancient Roman law, as a consequence of which two particular prohibitions persisted in the Spanish Civil Code. In the first place, a woman could not be a witness to a will, under article 681, except during a time of epidemic, in which event she was permitted to be a witness if she was at least sixteen years old, in accordance with article 601. Secondly, a woman could not be a tutor, undertutor, or member of the family council, as provided in articles 237-7 and 298, with the exception that a woman could be called in the case of a legal tutorship if she was a grandmother, spouse, mother, or sister of the ward under articles 220, 221, 227, and 230. In addition, vestiges of ancient distinctions originating in the area of public law existed among the laws governing the inheritance of noble titles. Generally, a woman was limited in this area because preference was given to male children.

Apart from the consideration of nobility, which actually is not a part of the present study, since the topic falls under the realm of administrative law, the limitations described can have no explanation other than the weight of historical legacy. Although those limitations have now disappeared, one can note that the conscious influence of Roman law existed until recent times in our country, as the regulation regarding the witnessing of wills by women remained in force until 1975.

Limitations by reasons of marriage. In the previous discussion of the family, it was pointed out that, in addition to the traditional limitations placed upon women because of their sex, there is another incapacity which is imposed by reason of marriage. When she marries, a woman simply goes from the domination of the family to that of the husband. The regulations in force in the Spanish Civil Code until the
Law of April 24, 1958 were eloquent in terms of the degrading effects of matrimony on the capacity of the married woman. These effects can be summarized according to three groups: the personal, financial, and filial spheres.

Until its revision, article 57 established that "the husband must protect his wife, and the latter must obey her husband." Such protection and obedience naturally tend to create a family head and a subordinate companion. Article 58 stated that the "wife is obliged to follow her husband wherever he should choose to reside. Nevertheless, courts shall, with just cause, be empowered with the right to exempt her from this obligation if her husband should move abroad." This clearly gave the power of choosing a domicile to the husband. Article 56 stated that: "The wife shall enjoy the honors to which her husband is entitled except those which are exclusively personal, and she shall retain them as long as she does not remarry." This was a unilateral privilege accorded to the wife, which includes an implication that if she should forget her deceased husband she could no longer participate in those honors.

The subordination of the wife to the husband within the financial sphere was total until the revisions instituted in the Law of April 24, 1958. The manifestation of this situation can be seen principally in former articles 60, 61, 62, 65, and 59. Article 60 provided: "The husband is the representative of his wife. Without his permission she cannot appear in court on her own behalf or through an attorney." This incapacity was of a personal nature, since the husband represented his wife even if she was destitute or totally under his domination. Article 61 stated: "Neither can a wife purchase property even for profit, sell her property, or incur debts, without the husband's permission except in cases permitted by law and with established limitations." Her financial submission to her husband was absolute, and any infractions were punished under article 62, which provided:

Those acts executed against the disposition in the previous regulations are null and void except if it is a question of purchases for the ordinary use of the family, in which case purchases made by a wife are valid. Any purchase of jewelry, furniture or precious objects made without the husband's permission are valid only if he has consented to the use and enjoyment of such objects.

The primacy of the husband and the lesser importance of the wife, as well as the exception which has been previously referred as "the domestic power of the married woman," are evident in article 65, which provided: "Only her husband and her heirs can proclaim null and void any acts carried out or permitted by a wife without the necessary permission and authorization." Here, the wife's domestic power was very limited, since any possible flexibility depended on the good-will
of her husband. Article 59 provided: "The husband is the administrator of the community property except as stipulated to the contrary in Article 3182." The regulation is clearly prejudicial to married women. Furthermore, article 1413 elevated this regulation to the level of complete male supremacy, for a husband could do anything he wished with the community property, including selling or mortgaging it. The interest of the wife or her heirs were only contemplated when the husband had committed fraud or had broken the law. And, article 1263-3 prevented the married woman from making contracts, so that her capacity to act was quite minimal.

The authority of the husband was also clearly supreme in the filial area under the old regime. Article 154 provided in part that the "father, and in his absence the mother, have power over their children." Clearly there is in this article preferential treatment for the father. Prior to the revision of 1958, article 206 required the approval of the family council before a testamentary tutor could be designated by a mother who had married for a second time. The delegation of legal tutorship in articles 211, 220-2, 227-1, and 230, the prohibitions on being a tutor under article 237-7, and the requirements for the composition of the family council in article 294 are examples that reveal a clear preference for the husband over his wife.

Many of these requirements were not revised by the law passed in 1958, nor by that passed in 1975. Because such revision was not accomplished until the recent Law of May 13, 1981, it is clear that in the legislative mind these preferences resulted from a history of male preeminence. None of these deficient legal norms reflected even the slightest degree of legal equality between men and women, whether the woman was married or not.

**Civil Code Revisions Concerning Legal Discrimination**

The actual discrimination suffered by women can be easily understood in light of the foregoing analysis. It should also be clear what the response of our government must have been with regard to the previously mentioned United Nations Subcommission recommendations. But, let us now turn to the three revisions which dismanteled the archaic discriminatory patterns within the law.

**Law of April 24, 1958.** The principal goal of this law was not to alter the legal position of women. Indeed, in its *Exposé de motifs* the following is found: "The present modification of the Civil Code, the most extensive of those introduced up to now, affects primarily the matrimonial regime, in order to accomodate the Concordat of August 27, 1953 between the Holy See and the Spanish State ... and it deals with the problem of the legal capacity of women, a problem which
has existed for some time." Thus, one finds that the primary motivation for these changes was to conform Spanish positive law to the Concordat. The egalitarian manifestations of this law are evident in other statements from its Exposé de motifs as well, some of which are discussed below.

Concerning the legal differences between men and women by reason of sex, the following quotation is instructive. "In terms of the legal capacity of women in general the present law derives its inspiration from the principle that both in the natural and social order of things, sex in and of itself cannot determine a difference in treatment within the civil law, which cannot be translated in any way into a limitation upon women in the area of legal relations." Under this law, however, that egalitarian statement does not find complete normative reflection, since its expression is found only in regard to the law's recognition of women as having the capacity to witness wills and to serve as tutors. Also, despite the proclamation of the goal of dignifying women, the following pronouncements clearly carry discriminatory weight. Although it is maintained that the family is the most intimate and essential social institution, the law states that the family "cannot be the cause of inequities, but there are certain institutional differences derived from the duties which its members are obligated to perform in order to achieve better the moral and social goals which, according to natural law, it is designed to fulfill." In other words, even if marital and family status do not cause inequities, they are nonetheless the cause of organizational differences, that is, differences derived from the structure of the family as a result of the distinctive duties of husband and wife, for example, there is a difference in the secular weight accorded to the roles which each must perform, one being social and external, and the other being domestic and internal. The law further states that: "The peculiar position of the married woman in the conjugal relationship in which, because of the exigencies of matrimonial unity, there exists a power of direction which nature, religion and history attribute to the husband." Criticism of this statement cannot be, nor should it be, based on ethical or discretionary grounds, because its very context prevents that; and, the drafters themselves, several years later of course, became quite disturbed about the statement.

The Exposé de motifs further states: "One contemplates . . . the peculiar position of the married woman within a regime in which the feeling of the Catholic tradition has always inspired and ought to inspire in the future the relations between the spouses." There cannot be a more inopportune affirmation, nor a greater hodgepodge of institutions, than this. One must also be prudent in his criticism, because a jurist must not take advantage of hindsight, keeping in mind that
the law was enacted in 1958, a time when political authority was invading the parimeters of the law in Spain and when Catholicism was unfortunately allied with ideological positions which were actually incompatible with it. Concerning marital authority, the law states: "Because the principle of marital authority demands that it be so," the husband's permission is necessary in order for the wife to act. Thus, the idea of the husband as head of the household is sanctioned, and its most characteristic and odious features are maintained—the need for a wife's actions to be authorized in order to be valid.

Law of May 2, 1975. Until the promulgation of this new and so eagerly awaited law, there had actually been no profound alterations in the existing laws in this area. Although as a result of the 1975 law equality finally penetrated our legislative framework, as in all human endeavors, there were a few remaining examples of the old attitudes. Those have apparently been eliminated by the 1981 changes, as a result of criticism by feminists and certain jurists.

The Exposé de motifs of the 1975 law reveals its goal of complete equality in the following statement:

One of the most strongly felt currents of thought in our time in the area of private law, a reflection of authentic needs of a pressing nature, is that which deals with the legal status of married women. They endure limitations upon their capacity to act which, if in earlier times might have had an explanation, have not lost it. Since this is the case, new legislation has resulted.

From the Exposé de motifs the following manifestations of the egalitarian principle can be derived.

In the first place, marriage no longer in and of itself automatically affects the acquisition, loss, or recovery of Spanish nationality, although such changes can be effected voluntarily at the wife's discretion. The discriminatory formula in article 57, which attributed protection to the husband and required obedience of the wife, has been eliminated. Now absolute reciprocity is expected. Husband and wife must be mutually protective and must always act in the interest of the family. The change in article 58 grants equal participation to the wife in determining the place of residence.

Marriage no longer implies a restriction with respect to the capacity of the spouses to work. Therefore, neither spouse can boast of having the power of legal representation over the other, except when the latter so chooses. In addition, each spouse can carry out certain juridical acts and exercise the private or exclusive rights to which he or she is entitled. In article 65 it is explained that in a case where the consent of both spouses is required for a particular transaction, if the consent of one of the spouses is lacking and if that spouse has not ratified the transaction, it can be annulled.
Under article 66 the domestic authority within the family is explained in such a manner that for those acts and contracts which relate to ordinary necessities of the family both spouses are fully permitted and required to act. In article 68-4 it is established that during the course of an annulment or separation proceedings the administration of the community property may be carried out by either the husband or the wife. Article 237, which prevented a woman from being a tutor or undertutor, has been modified, and as a logical consequence, the exception imposed upon women in all cases has been eliminated according to article 244. The following instances in which a wife needed her husband's permission or authorization to act have been eliminated: article 893 has been amended so that a wife can be an executrix; article 995 has been amended so that she can accept or refuse an inheritance; and, article 1053 has been amended so that she can request a partition of such inheritance. The discrimination contained in former article 1263-3, by which a married woman could not give valid consent in certain cases established by law (a true incapacity to contract), an archaic section which included women among those who physically or mentally lack the normal requirements for capacity, has been eliminated.

Concerning matters relating to finances within the marriage, the following manifestations of the goal of equality between husband and wife can be observed. In reference to the paraphenalia, or her separate property, the wife can now dispose of this property of her own accord, she can appear in court in order to litigate with respect to it, and her husband can act in regard to the property only as her agent. Articles 1389 and 1391 have been modified to the extent that, if a wife assigns the administration of her separate property over to her husband, such an assignment must be in writing and included in the marriage contract, and in default of this, the rules governing mandate will be applied and will likewise govern the restitution of her separate property administered by the husband. Concerning the dissolution of the community at the time of a legal separation between the spouses, the contradiction found in former articles 73 and 1433 has been resolved by the provision that, when a final judgment of separation has been obtained, either of the spouses, whether that spouse was or was not at fault in causing the separation, is entitled by law to demand a separation of property. Once such a separation has been completed, each spouse acquires full ownership of whatever property was adjudicated to him or her as a consequence of the dissolution of the marriage. If the separation is based upon the interdiction or absence of one of the spouses, the administration and dispoition of the property adjudicated to the interdicted or absent spouse shall go to his or her curator or legal representative in accordance with the specific provisions governing this matter.
With regard to a woman's administration of the property, a distinction is made between the automatic grant of such power, as when a wife is her husband's curator, when a petition has been made for a declaration of his absence, or when he has been declared a fugitive or rebel under article 1441, and the judicial grant of such power, as when the husband has abandoned the family or is prevented from administering the property. By virtue of article 1442 the same powers that fall to the husband when it is he who exercises such administration are also conferred upon the wife. In regard to the wife's disposing of property that belongs to the couple, when she is the administrator in the instances mentioned above, and since the property referred to must be understood as community property, and, further, in keeping with the goal of equalizing the rights of husbands and wives, it has been provided that the wife is granted the same power to dispose of property as that granted the husband under article 1413 and, conversely, it has been provided that the wife is subject to the same requirement of procuring judicial authorization for the disposition of immovables and business establishments just as her husband would be.

With respect to actions by married women in the commercial world, there are three examples of instances where they have been put on equal footing with their husbands. When doubts or conflicts arise in the management of a business by a married woman or by her spouse, those doubts or conflicts must be resolved by referring to the express agreement contained within their marriage contract. If no such agreement was entered into, articles 4 to 11 of the Commercial Code governing the management of a business by either spouse must control. In all cases, the archaic requirement of the husband's permission in order for the wife to engage in business has been eliminated.

Jurists were quick to comment upon this Law of May 2, 1975, and it has been the subject of innumerable works. The reactions were generally quite favorable. The analogy made by Professor Antonio Hernandez-Gil in speaking before the Institute for Legal Studies is illustrative: "I have complete confidence that just as the date of May 2 signifies independence in our country, this law, which bears the same date, will represent independence for women." Without giving consideration to the marginal technical aspects of the revision, a subject that should be dealt with in a more scientific study, it is this writer's opinion that the law has been positive and favorable with respect to the general phenomenon of sex discrimination within the law. With this revision, Spain truly joined the women's liberation movement which had existed in the civilized world for some time. There were, however, valid accusations that two instances of discrimination still remained after the promulgation of the 1975 law—the supremacy of
the husband in matters of authority over the children and the administration of community property. Although such discrimination was finally eliminated with the recent revisions in 1981, it would appear that it was not dealt with under the 1975 law because of the difficulties that can arise in exercising such authority and administration.

Laws of May 13, 1981 and July 7, 1981. The projection of the reformist impetus, at times excessively progressive, which the new political situation in Spain has produced cannot be ignored as it relates to the law and, in particular, to legislation concerning the family in its most obvious aspects: filiation, authority over children, and administration of the economic regime of the marriage, as well as the cause for annulment, separation, and divorce. The first three areas were the object of the Law of May 13, 1981, and the three remaining, that of the most recent Law of July 7, 1981, the so-called “divorce law.” But, just as the latter, which convulsed the secular system of the indissolubility of marriage, was born in an atmosphere of intense controversy, the former, in spite of its decisive importance and far-reaching repercussions in the area of family law, did not cause the same belligerance in parliamentary discussion, nor did it, once promulgated, at least up to the present, provoke such wide publicity or treatment by jurists.

Restricting the examination of the Law of May 13, 1981 to the well-known area of the interrelationships of the married couple, it can be expected that with this law the last vestiges of discriminatory treatment for women will disappear. This was the goal which inspired the law, as is clear from its Exposé de motifs, which the government sent to the Congress of Deputies, but which was not published when the law was promulgated, a fact which has no precedent in our legislation. With this law, and that of July 7, 1981, equalization of the rights and duties of the sexes is a definite reality in Spain. In fact, if one recalls that, basically, the discriminatory residue which existed in our laws was limited to the areas of the ages which had to be attained before marriage, the maintenance of an obligatory dowry for daughters, the preference for males over females in the exercise of certain responsibilities, the grant of the administration of the community property to the husband, and preference for the husband in the grant of authority over the children, the new regime removes these discriminatory regulations in the following ways.

Significant improvements in alleviating discrimination by reason of sex were accomplished by the Laws of May 13, 1981 and July 7, 1981. The latter was most important in regard to legal discrimination based upon the physiological differences between the sexes. The Law of May 2, 1975, maintained only the provision that the age for marriage was different for men and women, according to article 83-1. The Law of May 13, 1981 made no change in this regard, but under the
Law of July 7, 1981, current article 46 states that non-emancipated minors may not marry and current article 48 states that "in decisions regarding the age of the minor ... his/her parents or guardians" must be heard and that treatment should not vary according to sex. As a radical change with respect to family factors giving rise to the legal discrimination, the Law of May 13 eliminated the dowry. The reasons for this are clearly expressed in the *Exposé de motifs*: “The Code prescribed so many and such extensive precepts for the dowry, not because it was customary at the time the Code was drafted, but because such precepts constituted the general status of all private property of any married woman under any regime. However, these goals were no longer of use when the Code was promulgated.” One may add, also, the recognition of the fact that, among others, the dowry was a fossilized institution. The preferences for males over females in regard to carrying out certain responsibilities were also eliminated. In article 4 of the Law of May 13, 1981, it is prescribed that certain articles of the Civil Code are to be changed as follows: (1) article 184 now reads in part, “representation of one who has been declared absent is entrusted to the oldest son; and if there are several, those who were living with the absent party and the oldest shall have preference;” article 211 now reads in part, “Legal tutorship . . . is entrusted to: First—to the youngest grandparent;” article 220 reads in part: “Tutorship of the demented or deaf mutes is entrusted: . . . Second to the father and mother . . . third to the children;” and article 227 reads in part: “Tutorship of prodigal children is entrusted: . . . First to the father and mother . . . Second to the youngest grandparent . . . Third to the oldest of the other siblings.” Finally, for some incomprehensible reason, except perhaps as a result of a simple oversight, current article 295 has not been revised. That article, as amended by the Law of April 24, 1958, maintains that: “For the Family Council the closest relative will have preference over the most distant, and if there is a choice of two equally close or distant relatives, a man will have preference over a woman. . . .” (Emphasis added.)

In regard to legal discrimination by reason of marriage, two vestiges remained in the law: the exclusive grant to the husband of the administration of the community property and the authority over non-emancipated children. Both of these were eliminated under the Laws of May 13, 1981 and July 7, 1981. The revisions effected by the Law of May 2, 1975 had already eliminated several instances of legal discrimination, particularly in regard to articles 57, 58, and 64, as discussed earlier. In consonance with the goal of total equality of the spouses, the Law of July 7, 1981 made the following significant amendments. New article 66 provides: "The husband and wife are equal in rights and duties." This is a fundamental rule which replaces prior article 62, which stated: “Marriage does not restrict the capacity
to act of either spouse." Thus, new article 66 is more categorical and
precise. New article 67 states: "The husband and wife must respect
each other and act in the interest of the family." This replaces former
article 57 which, in its 1975 version, eliminated the wife's duty to
obey. Now neither spouse receives protection, and, instead, they must
aid and respect each other, nothing more. New article 70 provides:
"The spouses will agree on their domicile, and in case of disagree-
ment, a judge will resolve the situation, keeping in mind the best
interests of the family." With this new text, the contradiction in former
article 58 is corrected, for there it was stated that the father, as the
parent having authority over the children, had the sole power to decide
on the place of domicile. Article 64 concerning shared honors has been
repealed, since it was deemed to have minimal practical meaning.

Marital infidelity as a cause for separation, which had been equal-
ized in terms of legal treatment of the sexes in the revision of April
24, 1958, reappears in 1981, but no longer as related to adultery. In
articles 85 et seq. infidelity appears as a ground for divorce. Thus,
article 82 provides: "Causes for separation are: the unjustified aban-
donment of the home, conjugal infidelity injurious conduct, or any
other serious or repeated violation of conjugal duties." In addition
to this explicit use of "conjugal infidelity," an adjustment in article
82 and prior article 105 demonstrates that the causes for separation
in former article 105-4 ("an attempt on the part of the husband to
prostitute his wife") and former article 105-5 ("an attempt on the part
of the husband or wife to corrupt their children or prostitute their
daughters") have been eliminated. Although these provisions were not
previously discussed, those causes contained a difference in the treat-
ment of men and women in a sexual context which today would have
no valid justification.

As a consequence of the provision in new article 66 that the hus-
band and wife have equal rights and duties, new article 71 reflects
the same tenor of prior article 63, which provided: "Neither spouse
can take it upon himself/herself to represent the other unless this
right has been conferred." There are, however, two pervasive revisions
with respect to the economic sphere of marriage. The consecration
of the principle of conjoint management, concerning the administration
and disposition of community property, is prescribed by new article
1375 in the following terms: "In the absence of a martial contract,
the management and disposition of community property is the joint
responsibility of the spouses, in conformity with the following articles."
Thus, an ancient stigma which had been maintained under previous
revisions and which was repeatedly denounced by feminist groups has
finally been eliminated. The complete financial autonomy of the
spouses, and their capacity to carry out any kind of contract, is
definitely recognized in new article 1323: “The husband and wife may exchange between themselves, with any kind of title, any property and/or rights and may make between themselves any kind of contract.” The Law of May 13 also made important changes with respect to the spouses’ financial contributions to the family and the economic value of the wife’s domestic tasks. As amended by that law, article 1438 regulating the regime of separation of property now provides:

The spouses shall contribute to the fulfillment of the responsibilities of the marriage. If there is no written agreement, the contribution of each shall be proportional to his or her financial resources. Housework shall be considered a contribution to the duties of the marriage and shall entitle the performer of the work to compensation which shall be indicated by the Judge. In case an agreement cannot be reached the regime of separation shall be eliminated.

This rule is equally applicable to the so-called regime of participation, according to article 1413, but not to the community property regime.

With the elimination of preferences for the husband over the wife and for the man over the woman in carrying out certain duties, the revision also eliminates the archaic Roman system of authority over children and proclaims the principles of joint authority and joint exercise of its function as revealed in the following two articles. Article 154 provides: “Non-emancipated children are under the power of the father and the mother.” In addition, article 1546 states: “Authority over the children shall be exercised by both parents or by only one with the express or tacit consent of the other.” Aside from the fact that difficulties and problems may arise in regard to the practical application of the new laws, in terms of equalization of the rights and duties of the sexes, there is no doubt that full legal equality of the sexes and of the spouses has been achieved. In this way, Spain definitely joins the long list of civilized countries where women have been liberated from all servitude to men.

Miscellaneous enactments concerning employment and the political and public activities of women. In order to complete the portrait of women’s social opportunities in Spain, it is appropriate to examine the status of women in the areas of employment, politics, and public administration in light of the regulations currently in force. As discussed earlier, the Law of May 2, 1975 treats the activities of women within the commercial sphere, applying three egalitarian principles: (1) in order to resolve doubts or conflicts in the exercise of a business by a married woman, or by either spouse, one must have recourse to the agreement contained in the marital contract; (2) if there is no
such agreement, articles 4 to 11 of the Commercial Code will govern in that which relates to the exercise of a business by either of the spouses; (3) in all cases, the husband's permission in order for his wife to engage in business is eliminated. In addition to that law, in matters of employment, politics, and public life, the applicable laws began with those of June 22, 1961 and December 28, 1966 and culminated with the Spanish Constitution of 1978 and the Labor Statute of March 10, 1980.

The Law of June 22, 1961, as a result of the partial equalization in the Law of April 24, 1958 and in the provisions of articles 11 and 24 of the Fuero de los Españoles, affirmed in article 1 that "the law recognizes for women the same rights that men have in carrying out any kind of political, professional or work activities, without any limitations except those established in the present law." Excluded from this principle was participation in administrative bodies and the armed forces. Subsequently, however, the Law of December 28, 1966 eliminated the first exception, so that women can now be judges, magistrates, or district attorneys.

The principle of equality is categorically stated in article 14 of the Spanish constitution of 1978: "Spaniards are equal before the law. There can be no discrimination because of birth, race, sex, religion, opinion or any other personal or social condition or circumstance." In this regard, there are two significant provisions in the Labor Statute of March 10, 1980. Article 17 of that law provides: "Regulatory precepts, clauses contained in collective agreements, individual pacts and unilateral decisions by a manager that contain discrimination because of age, favorable or unfavorable discrimination employment, compensation, working hours or any other working condition, discrimination because of sex, origin, civil status, race, social condition . . . shall be null and without effect." Likewise, article 28 provides: "The employer is obligated to pay an equal salary for equal work, with respect to salaries, as well as raises, without discrimination on the basis of sex."

CONCLUSIONS AND THE Egalitarian Objective

No longer is there discrimination against women in the written laws of Spain. Just as men, women can now engage in political activity, carry out any public responsibilities, except within the armed forces, carry out any business or commercial activities, engage in work for someone else, and exercise equal rights and responsibilities, whether she is married or single. In the latter instance this is true, if she is single, because her legal position is the same as that of a man, and if she is married, because within the personal sphere she occupies an identical position of respect and reciprocal assistance with her hus-
band and because, in the financial sphere, she enjoys the same powers of administration and disposition of property, whether it be separate or community, and because, in the filial sphere, she is the co-holder of authority over the children. As a final example of the equality of men and women before the law, even though it may seem of secondary importance, article 109 of the Civil Code now provides that upon reaching majority a child may petition the court to alter the order of his/her surnames, thus permitting the elimination of the traditional preference of the paternal surname over the maternal one.

The problem between the reality of the principle of legal equality for women and its practical observance by the "male powers" was suggested sometime ago by Simone de Beauvoir. She queried whether it is sufficient merely for the laws to change so that women can in reality achieve equality with men. In addition to the practical implications of that query, one may also include an examination of how the family, as a spontaneous self-regulator, and the law, as a resolver of conflicts in both special and non-exceptional situations, bear upon the effectiveness of the elimination of legal discrimination by reason of sex or marriage.

The legal equality of the sexes and the resulting lack of discrimination by reason of sex or marriage is a goal now achieved by women. It must not nearly prevail in the law as a formal truth, but it must also be felt as a material truth and become operative in the real world, society, and the family. In the face of this objective, any attempts to oppose the practical application of the new regulations will be resisted, whether those attempts stem from the carry-over of an historical or cultural legacy or from the intervention of masculine power, the way a family functions, or perhaps from the co-management of marital affairs. One must be wary of such obstacles in order to prevent them from having an effect. Although each family possesses an immense source of spontaneous self-regulation, whereby adequate solutions are arrived at for the daily conflicts which arise, there should exist some coordination so that the family's own internal methods do not conflict with legal precepts that now impose legal equality of the sexes. Such coordination must be based upon two factors: the identification of the need involved and its appreciation.

The need is for the legal framework to influence the family's methods of self-regulation so that those methods come as close as possible to the egalitarian principle proclaimed by the law. Thus, the different roles of husband and wife within the family must be adjusted in order to balance power and omit functional subordination of the wife. In this way, the husband will more closely approximate the "legal husband," even though his powers are diminished, and the wife will more nearly approximate the "legal wife," as a result of the
strengthening of her position and the recognition of her rights. The appreciation, or understanding, of this need may be explained in the following way. Any demand for judicial protection by a spouse, because he/she is dissatisfied with his/her rights or position within the family, is not an exceptional pathology that will demolish the family as it is presently constituted. Rather, it is a special situation resulting from the impossibility of resolving a conflict on the basis of the family’s methods of self-regulation. Thus, the subsequent judicial intervention need not lead to irreconcilable differences, nor be the cause of a scandal or shameful humiliation in the face of public opinion. It is simply an indispensable therapeautic recourse by which to treat a family illness, so that the family can proceed to live together in health and harmony.

Unfortunately, this work must conclude by stating that, just as the need for coordination can have a promising future, the necessity for “appreciation” implies difficulties that are at the moment insoluble. To improve matters it will be necessary to modernize the scale of values which restrict social units and the family by removing the obsolete standards by which family conflicts are resolved. In any case, this warning about the risks to be faced in applying the principle of legal equality between the sexes should not prevent its proper application nor cast a shadow over the fact that today the new role of women under the law is absolutely comparable to that of men.