

**BAD CREDIT, OR BAD HUSBANDS?
PROPERTY RIGHTS, MORTGAGE AND MARRIAGE IN MÉRIDA 1850-1900**

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Introduction

Until the Banco Yucateco opened in Mérida in 1889, mortgage contracts constituted the single systematic record of formal credit in Mérida, Yucatan's capital. These contracts, recorded by notaries and maintained in their ledgers, are also a singularly revealing source on the participation and the rules of participation of women in the economy. This paper uses the agricultural export boom and the mortgage market that developed to support it in Yucatan in the nineteenth century as the context in which to analyze the participation of women in the economy during the nineteenth century.

Scholarship on gender and women has not focused specifically on the economic participation of women, or on the effect gender may have had on the development of markets. For Yucatan in the nineteenth century, glimpses of female participation can be gleaned from works on colonial Maya women or the scholarship on the feminist movement and rural women in the era of and preceding the Mexican revolution¹. The literature on women and gender in Latin America similarly has focused more on how women have dealt with conflict and hardship in a myriad of contexts, yielding a rich literature on women at the poorest and most militant end of the spectrum. While numerous indigenous Maya names appear in the notarial records, there are only three among the credit contracts analyzed in this sample, and this paper consequently focuses more on elite women, and the wives, daughters and widows of artisans and traders or liberal professionals. While these women have been the focus of biographical works, either because of their public roles or because they left behind revealing journals and letters, this group of women has traditionally not garnered much attention from the recent scholarship.

¹ Anna Macías, *Against All Odds: the Feminist Movement in México to 1940*, (Westport, CT; Greenwood Press, 1982); Emma Marie Perez, "Through her Love and Sweetness" *Women, revolution and Reform in Yucatan, 1910-1918*, Ph.D. University of California, Los Angeles (1988); Peniche Rivero, *Gender*, 1994, opcit; Wells and Joseph, *Summer of Discontent*, 1996, opcit.; Matthew Restall, *The Maya World: Yucatec Culture and Society, 1550-1850*, (Stanford; Stanford University Press, 1997); Stephanie J. Smith, *Engendering the Revolution: Women and State Formation in Yucatan, Mexico, 1872-1930*, Ph.D. Diss. SUNY Stony Brook (2002).

Their social position by definition prevented them from appearing in the sources that have become so favored among scholars, such as inquisition documents, criminal court records, and public hospital or poor-house ledgers². Their existence however is not limited to their journals, as the notarial records of Mérida attest³. The ladies of Mérida, elite or simply urban middle class, represent a significant proportion of lenders and borrowers in the Mérida mortgage market, and analyzing their participation in this market provides an perspective over the intersection of gender with the public sphere as defined by the market. The market, in this specific case, the mortgage market, is an ideal place to analyze the relationship between gender and economic development.

The late development of banks in this economically active region of Mexico fostered the growth of the mortgage market as it expanded to accommodate the demands of henequen planters and other entrepreneurs in Yucatan's burgeoning economy. The production of henequen, a regionally specific rough cordage fiber, and its export to primarily American purchasers, transformed this backwater state of the new Mexican Republic into a large and very well organized henequen plantation. This transition happened without the support of banks, and it was not until 1884, well into the henequen boom, that a commercial code outlined specific bank charter regulations and banks became an important part of the local financial system.

The development of Mérida's mortgage market did not hinge only on the demands of the henequen planters. Ecclesiastical usury bans for example, maintained interest rates in credit contracts at or below 6 percent, and it is not until the mid-nineteenth century that liberal reforms weakened the Church, and with it the anti-usury institutions. Under the usury restrictions, which were reinforced in the civil codes, records of mortgages often omitted the interest charge – suggesting that charges and fees were being discounted up front, and off the books⁴

Property rights similarly affected the mortgage market, especially with respect to women. Property rights are not just the right to own an asset, but the mechanisms that determine how and within what parameters and by whom the asset can be

² Donna Guy, Martha Few, Stephanie Smith, Mary Kay Vaughn

³ K Burns

⁴ There is evidence of contracts that discount interest rates up front, without explicitly charging it, as in cases of a \$112 peso one year contract at zero percent interest rate, which was most likely a \$100 peso loan at a twelve percent interest rate. Cite box number and details

used. The right to use property, earn an income from property, and the right to sell it are all crucial in the realm of credit markets, which function largely on the basis of collateral. Effective ownership of property is then central to the lending process, especially in the case of mortgages, which are by definition secured by land. In this context, the structure of the credit market was determined by the structure of ownership as defined by the property rights, and access to land should, at least putatively, have conferred access to credit⁵.

However, the evidence from the Mérida mortgage markets suggests that property ownership alone did not guarantee access, let alone equal access, to the credit market. Public records of sales of land, land deeds and probate inventories attest to the fact that women owned property in Yucatan, but distortions existed in their participation in the mortgage market. Women of Spanish descent lent and borrowed repeatedly, but they paid much higher interest rates than men. Barring quantitative differences in the value of the land this group of female borrowers presented as collateral, the explanation to these unequal terms lies in a qualitative assessments of the security of the ownership of collateral. Clearly gender was not a barrier to ownership, but it did affect participation in the credit market.

By taking a closer look at the participation of women in this market I propose a property rights-based interpretation of the particularities of their participation. The explanation of the high interest rates paid by women does not lie in an innate risk factor associated with gender, but in the mechanisms set in motion by the particularities of the legal system and the consequent structure of property rights and mortgage markets in Mexico.

The first part of the paper analyzes the levels of participation of women in the mortgage market and the distribution of their credit activity. Part two contextualizes

⁵ Douglass North, *Institutions, Institutional Change and Economic Performance*, (Cambridge, New York; Cambridge University Press, 1990), pp. 3-4. North pioneered work in New Institutional Economics and elaborated most of the terminology associated with it. For a review of seminal works in institutional economics and analyses in economic history that use some of the key concept of new institutional economics see: North, *Institutions*, 1990, opcit.; Davis & Cull, *International Capital Markets*, 1994, opcit.; Jean-Laurent Rosenthal, "Credit Markets and Economic Change in Southeastern France, 1630-1788." *Explorations in Economic History* (1993); Naomi Lamoreaux and Kenneth Sokoloff, "Inventors, Firms and the Market for Technology in the late Nineteenth and early Twentieth Centuries." In Naomi Lamoreaux, Daniel Raff and Peter Temin, *Learning by Doing in Firms, Markets and Nations*, (Chicago; Chicago University Press, 1998), pp. 19-57; Stanley Engermann and Kenneth Sokoloff, "History Lessons: Institutions, Factor Endowments and Paths of development in the New World." *Journal of Economic Perspectives* 14:3 (Summer 2000), pp. 217-232.

this participation within its legal context and part three establishes the effect of the Mexican property rights regime on this participation. Part four concludes.

Part 1: Women in the Mérida credit market

The delay in the establishment of banks in Yucatan did not impede the development of a credit market. On the contrary, the henequen boom fostered the growth of the mortgage market, which was managed through the offices of notaries. Notaries recorded all manner of public documents, and mortgages going back to the sixteenth century can be found in the notarial ledgers of Yucatan. With the growth of Yucatan's export market and in the absence of banks, notaries became vital participants in Mérida's financial development. Since all transactions involving the sale and transfer of property, including transactions containing real estate collateral, such as mortgages, had to be recorded by notaries, these documents provide proof of the growth of Mérida's mortgage market during the henequen boom⁶. Notaries recorded the loans, and they also provided, through informal means, information on borrowers and lenders that eased this particular human interaction of credit allocation and increased trust between parties. But information alone did not confer all the guarantees, and in order for the credit markets to exist, let alone prosper, lenders need material claims to their debtors' property.

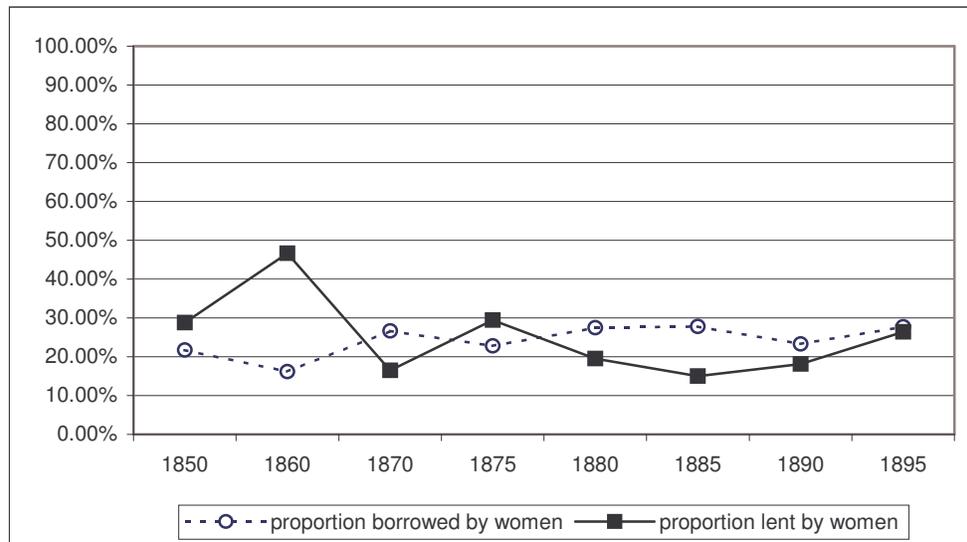
These claims and the land to which they were tied were sufficiently strong in Yucatan during the nineteenth century to garner the participation of a significant number of women, who participated in this mortgage market both as lenders (30 percent of lenders in Mérida between 1850 and 1895 were female) and borrowers (20 percent of borrowers were

⁶ Before the establishment of the Property Registry (*Registro Público de la Propiedad*) in the late nineteenth century, real estate transactions were officially recorded in notarial ledgers. This requirements harks back to the sixteenth century when Charles I dictated in 1528 a *Pragmatica* that all contracts establishing liens on property and transferring property by sale or inheritance had to be 'manifested and declared' (*manifestar y declarar*). The Pragmatica was later reinforced in the pillar of colonial legislation, the *Novísima Recopilación de Leyes* in 1539 and subsequent legislation that conferred on the scribe the duties of maintaining a mortgage and property record, c.f. Bernardo Perez Fernandez del Castillo, *Historia de la Escribanía en la Nueva España y del Notariado en México*; (Mexico; Colegio de Notarios del Distrito Federal, Ed. Porrua, 1988). The obligation to register mortgage loans was codified in the Civil Code which stated that mortgages had to be recorded in a public document (art. 1979, *Código Civil del Estado de Yucatán*, 1870 - *La hipoteca solo puede ser constituida en escritura pública*) and that mortgages were never tacit (art. 1980, *Código Civil del Estado de Yucatán*, 1870 - *La hipoteca nunca es tácita*).

female). This level of participation in the mortgage markets is not surprising, since women owned assets, including land, since colonial times, yet women have rarely represented as important members of Mexico's financial community. The exception may be among wealthy widows, who inherited half the wealth left behind by their husband, and have long been acknowledged as having a routinely invested or lent this wealth in their local market⁷. Since all debt contracts in the notarial ledgers of Mérida included some type of real estate, such as plot of land (a *solar*), house and/or garden, or hacienda and fields as security, it follows that women who borrowed through these contracts owned property, and that women who lent had excess wealth of their own.

While men dominated the market in numbers, women were no strangers to financial activity, and in Mérida, women comprised a significant percentage of the credit market, as illustrated in graph 1⁸. The full line in the graph represents the proportion of the amounts lent by women compared to male lenders, and the dotted line represent the proportion of amounts borrowed by women compared to male borrowers.

Graph 1: Proportion of amounts borrowed and lent by women



Source: *Protocolos notariales AGEY and ANEY*.

⁷ Greenow, Twinam, Gauderman, Arrom.

⁸ Colonial scholarship sheds further light on the economic participation of women; see for example Arrom, Mexican Family Law, 1985, *opcit.*, Muriel Nazzari, *The Disappearance of the Dowry: Women, Families, and Social Change in Sao Paulo, Brazil, 1600-1900*, (Stanford; Stanford University Press, 1991); Susan Socolow, *The Women of Colonial Latin America*, (Cambridge, NY; Cambridge University Press, 2000) have all specifically addressed the participation of women in the colonial economy.

The conventional story of the participation of women in the economy in Latin America continues to be that they were a small and peripheral group. Graph 1 however shows a different picture, and defies these conventional expectations⁹. Save for 1860, the participation of women, as borrowers and lenders, was fairly stable, with a comparable proportion funds accessed by women in the mortgage market as funds being lent by women through mortgage contracts. Approximately 30 percent of the mortgages in the Mérida notarial ledgers originated in contracts in which women were either the borrower or the lender.

However, this graph masks an important distinction: women participated in the mortgage market under significantly different terms than men. Borrowing costs in particular were much higher for women than for men, and table 1 makes this difference in interest rates over the second half of the nineteenth century clear.

Table 1: Average interest rates by gender of borrower¹⁰

	Women	Men	Difference
1880	11.43%	9.80%	1.63
1885	14.69%	11.85%	2.84
1890	13.61%	12.08%	1.52
1895	11.54%	11.19%	0.35

Source: AGEY and ANEY, Protocolos notariales

The average interest rates varied greatly between men and women, especially in 1885, when women paid on average 2.84 percentage points above men¹¹. Interest rates reflect the risk embodied in each borrower, and there are a myriad of

⁹ Elite women are rarely accorded a role in markets at all. Colonial scholarship, most recently Kim Gauderman writing on the women of colonial Quito, emphasizes especially that large scale activity in lending activity was most important to the “lower sectors” and especially the indigenous activity. Silvia Marina Arrom’s evidence tells a similar story of economic activity determined by urgency, rather than opportunity. CF, Silvia Marina Arrom, XXXX, and Kim Gauderman, *Women’s Lives in Colonial Quito: Gender, Law and Economy in Spanish America*, University of Texas Press: Austin, 2003.

¹⁰ A regression of interest rates to the gender of borrowers yields t-stats of 2.91, and a coefficient of 1.53. Gender was statistically significant in the establishment of interest rates for borrowers.

¹¹ The ecclesiastical ban on usury, supported in civil law, created an artificial cap on interest rates until the early 1870’s, which led to widespread under reporting of interest rates in the mortgage contracts of this period. This silence on interest rates complicates an assessment of interest rate levels until later in the century. The lifting of the usury ban and progressive liberal reforms in commercial legal proscriptions freed interest rates from this tether, and beginning in the mid 1870’s, notaries increasingly recording interest rates.

unobservable reasons why one borrower could be riskier than another and thus pay a higher interest rate. Interest rate differentials are generally due to one of two reasons: either the borrower presents a more significant risk (e.g., has a track record as a bad payer, is a known gambler, or has an ailing business); or the lender has insufficient information about the borrower, such that the interest rate is a hedge against a lack of knowledge. In such cases, the interest rate reflects the *perceived*, rather than the real, risk of the borrower. The risk inherent in any loan transaction is a product of this combination of real and perceived risks.

The centrality of property rights in the assessment of credit risks also determined the risk that women presented in the mortgage market. The definition of women’s right in the Mexican codes was determined by their marital status, and consequently, the variations in interest rate differentials in Mérida follow a similar pattern. The legal framework of nineteenth century Mexico accorded adult women different legal capacities according to their marital status, which were defined as either “married”, “widowed”, or “unmarried”. Breaking down women along these marital lines allows for a very different picture to emerge, seen in table 2. Table 2 compares average interest rates charged to women according to their marital status. Under these categories, all women, whether they were married, widowed or single, generally paid higher average interest rates than men, but as column four highlights, married women paid the highest interest rates of all.

Table 2: Comparison of average interest rates by marital status and gender

	<i>average interest rates to unmarried women</i>	<i>average interest rates to widowed women</i>	<i>average interest rates to married women</i>	<i>average interest rates to male borrowers</i>	<i>average interest rates to all borrowers</i>
1880	12.60	9.30	12.40	9.80	10.60
1885	15.80	17.60	19.20	11.85	15.90
1890	13.80	15.00	14.30	12.08	12.50
1895	12.10	11.60	13.20	11.19	11.40

Source: AGEY and ANEY, Protocolos notariales

Rates were highest if women were married, their average interest rates were also higher than the average rate charged to all borrower (as the last column calculates), and

married women paid well above average interest rates compared to unmarried and widowed women. These high rates were compounded by the fact that most female borrowers were married, and very few married women lent. Of the 28 female borrowers in 1880, seventeen (61 percent) were married. In 1885, more than half (55 percent) of the 29 female borrowers were married. In 1890, eighteen of the thirty-two female borrowers were married, and in 1895, fifteen of the thirty-one women who borrowed through the notarial ledgers were married. In each of these years, there were few unmarried and widowed borrowers. All women paid higher interest rates than men, but very few unmarried and widowed women borrowed at all, leaving the high interest rate burden disproportionately among married women.

Middle-class and elite women were largely left outside of the commercial circle of Yucatan's masculine world of henequen trade. Their interaction in commercial circles was as wives of the *hacendados*, daughters of the traders, and as their mothers; but the day-to-day business was not theirs. Women however inherited wealth and their participation in the mortgage market suggests that they were not entirely removed from the commercial world. Women's credit history however was constrained by the domestic nature of the circles they moved in, and commercially oriented male lenders usually interacted with other male borrowers, traders and ventures linked to the lucrative henequen business. The persistent interest rate difference between married women and other borrowers further suggests that interest rates, with their built-in assessment of risk, hinged not just on the gendered exposure to commercial markets and its social distinctions, but also on characteristics of women relative to their property rights status.

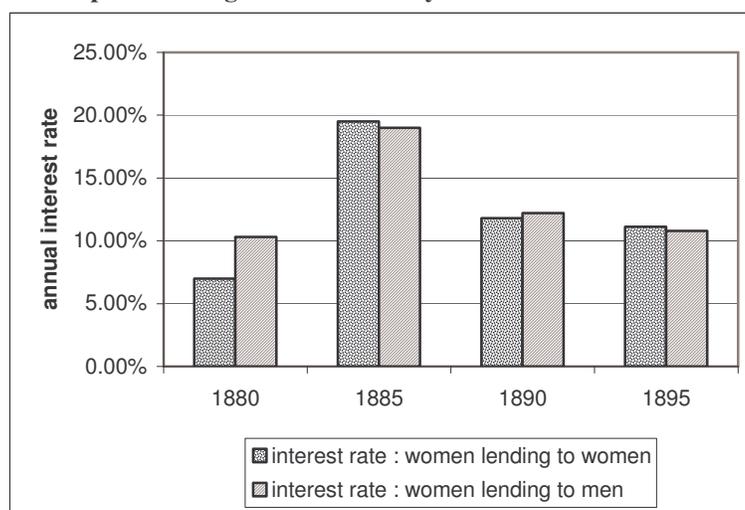
Did married women present more of a risk than widows or spinsters? Was the risk real, or simply perceived by virtue of their absence from the traditionally male centers of commercial and financial activity? The statistical evidence suggests that the correlation between marital status and interest rates is not just a random coincidence¹². Statistics however cannot account for the causality that drives this relationship, and an explanation to the logic of this relationship between marriage and the cost of borrowing for women lies in the legal texts. This analysis follows in Part II.

¹² See appendix for regression supporting statistical significance of marriage on interest rates for women. The results support the statistical significance of marriage on interest rates.

A note on female lenders:

The previous results in table 2 illustrate the discrepancy in borrowing costs among women. However, these discrepancies are restricted to women who borrowed. Female lenders (which were largely widows – married women rarely lent), behaved much like men in this market. Their gender did not spur them to lend at lower or higher interest rates than men, nor did these women lend to a significantly different group of borrowers, and there were no specific differences in proportional amounts lent or interest rates charged. Women lenders lent to a similar groups of borrowers as male lenders, and nothing suggests a preference for same–sex contracting. On the contrary, the cases of women lending to other women are relatively scarce. However, on the rare occasions when both the lender and the borrower were women, none of the disparities that otherwise characterize interest rates for women are repeated. When women lent to women, the interest rate disparity disappears. Graph two illustrates the secular stability and equality in the interest rates the female lenders charged to their borrowers, female and male.

Graph 2: Average interest rates by women lenders



Source: *Protocolos notariales AGEY and ANEY.*

The differences between the average interest rates women charged when lending to other women or to men are rather slight. Only in one observation period does the difference exceed half a percentage point. In 1880, women who borrowed from other women paid an average interest rate of 7 percent per year, and men who borrowed from

women paid on average 10.20 percent per year. But the cases of women lending to women are so rare that they mitigate any conclusions we may want to draw from this result. In 1880, only three mortgage contracts were the result of women lending to women; in 1885, 10 of the 150 mortgage contracts were between women; in 1890, five mortgages out of 141, and in 1895, nine out of 112 mortgages were between women. Since women rarely lent to other women. Ultimately, the results suggest that as lenders, women behaved similarly to men, and that whatever risk a borrower represented (especially a female borrower who was married), women were just as likely as men to contract around the risk.

Part II: Women and the law

The legal regime in which women lived in Mexico secured their rights historically, and Mexican women did not have to await the reforms that followed the Mexican Revolution in the early twentieth century to secure their rights. Roman Law, from which the Latin American legal codes spring, provides an underlying recognition of women's rights, and the Napoleonic Code, which inspired the independent Mexican legislators, continued the long tradition of securing rights of all individuals, especially those the State considered weak. More relevant to this paper's concern, the legal framework of Roman Law regimes accorded women rights depending on their marital status. Consequently, Mexico's nineteenth century legal codes similarly distributed property rights along not just gender lines, but also marital lines. Unmarried women, be they spinsters or widows, could act with relative independence. This independence was relative, since widows were not allowed to act as financial guardians to their children's inheritance until the reform of the Civil Code in 1884. Similarly, under-aged widows also returned to their under-aged civil status upon the death of their husbands. Married women of any age on the other hand, had few civil liberties, except in their ability to share in the liability of their spouse. These different civil responsibilities for unmarried, widowed and married women coincided with different legal definitions of the property rights that each marital status conferred to women; these differences in turn affected the conditions and terms under which women participated in the credit market.

Mexico's 1824 Constitution granted citizenship to all Mexicans, irrespective of property ownership or literacy, but the formal rights of women were limited (as was the case in many other countries at the time). Women did not have the right to vote, married women were subject to the will of their husbands in legal and economic matters, and widows were not allowed to be guardians of their children's inheritance. As Silvia Marina Arrom writes, the exclusion of women "was considered so natural that it did not have to be specified in the Constitution¹³," and this exclusion was not entirely out of line with the legal regimes in other parts of the world¹⁴.

Nevertheless in 1865, the Civil Code enacted under emperor Maximilian, the Austrian prince sent to Mexico in response to the liberal government's unwillingness to repay its European creditor, and the amendments under the restored republic (following said emperor's demise in front of the firing squad) in 1870, upheld women's right to enter into contracts, and upheld the conditions under which this right could be curtailed¹⁵.

Gender was the most obvious of determinants in the difference in the civil rights of women and men, but among women, age limits and marital status were the main barriers to legal equality¹⁶. Even at the age of majority however, the freedom to transact was conditional. Wives at any age required the express permission of their husbands, and unmarried daughters still need the approval of their father or guardian, even after they had turned twenty-five. They gained the right to transact individually only upon turning thirty. This conditional age of majority remained in place until 1884, when a new Civil Code enacted under Porfirio Diaz widened the scope of civil action for women, including that of widows. The 1884 Code finally granted widows the right to manage the inheritances of their minor children, unless of course, the widow herself was still a minor. The new code however did not affect the legal cast in which married women lived, and instead it reaffirmed that a wife's ability to transact was subject to the will of her husband. Wives continued to retain sole ownership of the assets they brought into the marriage, and husbands continued to have exclusive power over the management of this property, and

13 Silvia Marina Arrom, *The Women of México Cit*, 1985, *opcit.*, p.84.

14 Such as the American or British legal codes which reserved even less rights for women up until the nineteenth century.

15 Silvia Marina Arrom, *The Women of México Cit*, 1985, *opcit.*

16 The age barrier in the nineteenth century was 25-years, the age of majority for unmarried women.

final say in any contract entered into by her. The formal institutions of marriage more than anything continued to place Mexican women in legal straightjackets.

Mexican laws, and most legal codes of the period, were designed with respect to women to maintain their obedience within the family structure, which was both an economic unit as well as a pillar of social cohesion. The laws reflected this concern with both maintaining the social and economic harmony through the family structure. In this light, restricting the mobility or liberty of women, especially wives, was not only the reflection of a patriarchal fear of independent female wiles, but a conservative concern with the safeguard of the family's estate. Even if women continued to be the sole owners of their property (in stark contrast to their European and American counterparts), the law did not entrust them with the responsibility to use this wealth¹⁷. None of the nineteenth century reforms changed the fact that marriage returned a woman to a state of dependence akin to that of an underage daughter, a status which endured until the death of her husband. The death of a husband however, freed women from almost all the legal shackles marriage had imposed on her. The laws afforded widows the widest legal berth, and they were in legal terms, most akin to men. Widows were free to act alone in commercial endeavors, provided they were of age. A widow who had not attained majority returned to the guardianship of her father and until the Civil Code of 1884, widows of any age were not allowed to act on behalf of their children. The wealth her children inherited had to remain under the authority of a man (either a family member or an appointed guardian). After the 1884 reforms to the Civil Code, unmarried women (widows and unmarried mothers) were for the first time permitted control over their children's inheritance.¹⁸

In Mérida however, this change in the law did not seem to have made much of a difference. Widows who lent through the mortgage market usually did so with their own money (not their minor children's) and they did it without the legal representation of a man. For example, in 1860, Fidelia Quijano de Lara lent \$2000 to María Encarnación Guzman de Quijano. Both women were widows, and both signed on their own behalf, without the help of a male legal representative. In 1890, Concepción Troncoso, a seventy-

¹⁷ These controls continued in the nineteenth century to be based both on Roman Law and Spanish Law, which itself was defined by the thirteenth century *Siete Partidas* laws and the sixteenth century *Leyes de Toro*

¹⁸ Arrom, Mexican family Law, 1994, opcit.

five year old widow, signed a mortgage contract in which she lent her son Joaquin Duarte Troncoso \$30,000 pesos¹⁹. She also did this without a relying on a male representative.

As widows, Concepción Troncoso and Fidelia Quijano represented a majority of the female lenders in Mérida. Of the total sum lent by women in 1875, more than 70 percent was lent by widows. In 1880, widows were responsible for almost 85 percent of all loans lent by women. In 1885, fifty-three percent of female lenders were widows. 1890 is the only year in which unmarried women lent more than widows. The high proportion of unmarried women lending in this year brought the proportion of loans by widows to one-third, but in 1895, widows were again responsible for more than one-half of the total loans made by women. Most women who lent in Mérida were widows, and widows generally lent more often than they borrowed. This is most likely because after becoming widows, women not only inherited their husband's wealth, they acquired exclusive control over their own estate, and the right to manage and invest it in their own best interest.

Contrary to widows and wives, women who were never married had an intermediate legal status in relation to their property rights. Although less unmarried women participated in the Mérida credit market, they could still transact in the market under certain conditions. As minors, unmarried women were not allowed to transact in their own name without a guardian, although as soon as they became of age, they acquired the right to terminate any contracts entered in their name by a guardian. For example, in 1885 Miguel Espinoza Loza lent \$1,820 pesos of his grand-daughter's inheritance. Sixteen-year old Mercedes Espinoza's father died leaving her a small estate, and her grandfather became her guardian. He in turn lent part of this inheritance to his other son, Mercedes' uncle. The loan did not determine a term date, but it clearly stipulated that Mercedes could call back the loan as soon as she became of age or any time thereafter. As her guardian, her grandfather signed his name at the bottom of the loan, and initiated the procedures of the loan, as the text of the mortgage contract records. Gertrudis Vado's history on the Mérida mortgage market provides another example. Gertrudis never married, but the notarial ledgers show that she lent independently at least twice in her adult life. At the age of twenty-five, in 1875, Gertrudis Vado lent \$1,800 pesos to Juan José

¹⁹ This is roughly equivalent to \$15,625 US dollars in 1895.

Martinez, a hacienda owner, and in 1885 she lent \$3500 to Joaquin Mangas, also a property owner in Mérida. She charged both men 18 percent and 15 percent respectively per year. None of her transactions were with other women, nor were they co-signed by a guardian or a representative. In similar fashion to the widows of Mérida, Gertrudis invested her inheritance in the mortgage market.

Married women on the other hand, were big borrowers. Furthermore, as table 2 showed, they paid higher interest rates than other women, and as was also mentioned earlier, borrowed more and more often than other women²⁰. The property rights of married women in Latin America were largely defined by the concept of *potestad marital*, which gave husbands tutelage and control over wives wealth, time and space²¹. *Potestad marital* (literally translated as “marital power”) was based on the notion that vesting authority in the husband alone would prevent antagonism between the spouses, and maintain unity in the family and coherence in society. The legal capacity of women was diminished in order to protect her economic and moral interests as the vulnerable sex, – but also to protect husband and family.

Potestad marital originated in colonial legal codes and survived into the nineteenth century. As the legislators of independent Mexico waded through the mass of colonial laws governing civil affairs, they often returned to and relied on the Spanish colonial legal tradition for personal and family law. Nineteenth century Mexican civil codes reflected the concerns of the Spanish codes, which enforced matrimonial peace by giving the husband the power to decide and maintain family unity, wealth, and social peace. *Potestad marital* afforded married women limited legal capacity: only when the husband was unable to perform his legal role (due to illness or old age for example), could the wife step in. Husbands had power over the administration of the joint property of the couple, the wife’s dowry and her ancestral inheritance²². The husband’s power further extended to the

²⁰ The mortgages never detail what the loan was going to be used for.

²¹ Such as the following articles in the 1870 Civil Code of Yucatán: Art. 205: The husband is the legitimate administrator of the marital assets; Art. 206: The husband is the legitimate representative of his wife. Código Civil del Estado de Yucatán, 1870, con todas las adiciones y reformas, 3a edición, Mérida, 1885.

²² Silvia Arrom suggests that by the middle of the nineteenth century, dowries were no longer a main component of a bride’s wealth, and this is confirmed in the official record of Yucatan, where not one single dowry contract appears in the notarial ledgers. This does not mean that women no longer owned assets before they got married, but it suggests that family property and the traditional mechanisms of transmission of wealth within the family structure were changing. It is beyond the scope of this paper to speculate about or analyze this phenomenon.

use of her time outside the home, specifically with respect to employment. The Civil Code also gave fathers the authority over the children produced in marriage, as well as their inherited property. Until 1884, if any minors survived the father, a male guardian was appointed to administered the minor's inheritance until the minor's marriage or his/her adulthood.

Family law reflected a preoccupation among legislators of maintaining the integrity of family property. The system of equal inheritance, under which all children inherited equally, was a pillar of the Mexican property regime, and it guaranteed women an inalienable right to their family's wealth. All children, irrespective of gender, inherited equal parts of the estate, and this wealth could not be transferred or diluted through marriage. Parents did not have the right to disinherit their legal offspring, or to favor one at the expense of others²³. To guarantee that the inheritors of a father's wealth were his biological children, there needed to be minimal doubt about the legitimacy of the offspring. The tutelage and laws controlling a wife's freedom in the marriage guaranteed to a degree²⁴, that children of the marriage were the biological result of the union²⁵. If the genetic legitimacy of the child was not certain, as long as a wife remained obedient in the eyes of society, then at least there was a guarantee of social legitimacy.

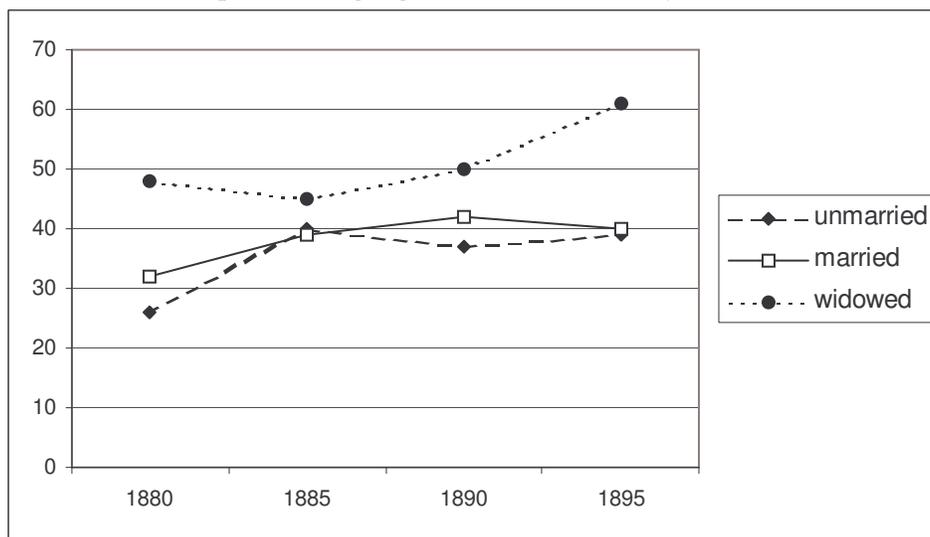
In all these mortgages, women exercised their, arguably restricted, civil rights to contract. The variation in these restrictions is rooted in the preoccupations of the law with the integrity of the family estates, and in light of this the restrictions on the exercise of these rights was codified in terms of marital status, but reflected the biological determinants related to women, especially those of childbearing age. This concern for family wealth and its potential dilution explains the relative reduction of restrictions on widows and long-term spinsters, who would, by virtue of biology, be less likely to sire offspring of dubious origin. The following graph lends support to this hypothesis.

²³ Margaret Chowning, *Wealth and Power*, 1999, opcit., shows that this egalitarian principle was so strong that before 1884, testators rarely availed themselves of the opportunity under the law to reserve one-fifth of the estate for someone other than wife or children, or to bequeath to a favorite child. This one-fifth was called a '*quinto*', or unrestricted fifth of the estate. Even after 1884, testators continued to divide their estate equally among their children.

²⁴ There are enough cases of husbands (and wives) accusing their spouse of adultery in the Civil court files of the AGEY to suggest that these constraints were not enough to curb certain passions. Nevertheless, it was extremely rare for a wealthy member of society to accuse his or her spouse of infidelity.

²⁵ By maintaining a wife under tutelage and control, a husband's legitimate fatherhood would not be easily doubted by either the father or the social circle. See most recently Twinam (1999).

Graph 3: Average age at time of contract, by marital status



Source: AGEY and ANEY, *Protocolos notariales*.

Graph 3 sketches the age at which individual women, sorted by their marital status, lent or borrowed through a mortgage contract. As the graph illustrates, widows who lent (and sometimes borrowed) in Mérida were on average much older than the married or as yet unmarried women. The tutelage laws then reflected the paternalistic prerogatives of the law and the biological determinant of the women it addressed. Since inheritance laws made women receptors of an important share of the family's wealth, the law could not grant them the freedom to use that wealth until very late in their life. It is generally not until they became widows and had ceased to bear children, that women were granted the full rights to their property.

Marriage and childbearing age did not dispossess women of their property, but it did extend the obstacles to their use of this property (and thereby weakened their property rights). Husbands were intricately involved in their wife's contracting activity, because the legal codes expressly gave husbands a final say in their wife's decision to contract²⁶. Legally, husbands were allowed to administer their wives' wealth, but they could not use her property as collateral in a loan. A wife needed her husband's consent to sell or donate her separate property, and no such restriction existed on a husband's

²⁶ Art. 207: the wife cannot, without prior license (approval) of her husband, acquire, sell or borrow save under the conditions specified in the law.

management of his separate property²⁷. The following excerpt from the *Novísimo Escribano Instruido*, the handbook of instruction to Mexican notaries which was published in 1859 and reprinted in 1892 illustrates in detail the restrictions to women's legal mobility they were obliged to uphold. As legitimators of civil contracts, notaries were required to implement the limitations under which married women operated, and this excerpt subtly reminds the notary that in dealing with married women, it was the conjugal society that needed to be protected above all.

Excerpt from the Novísimo Escribano Instruido:

Art. 7: On the contracts by married women

In the interest of the conjugal society and the deference owed by the wife to her husband, it is obligatory that the wife never enter into any important agreements without her husband's permit or authorization. Therefore a wife may not enter into a contract, or renege on a contract she has entered into, or be involved in a lawsuit, as the prosecution or the defense, or repudiate or accept an inheritance without her husband's consent. The husband can confer his consent for all the above-mentioned acts, or for a specific one, and he can also ratify those acts that his wife entered into without his express permission.²⁸

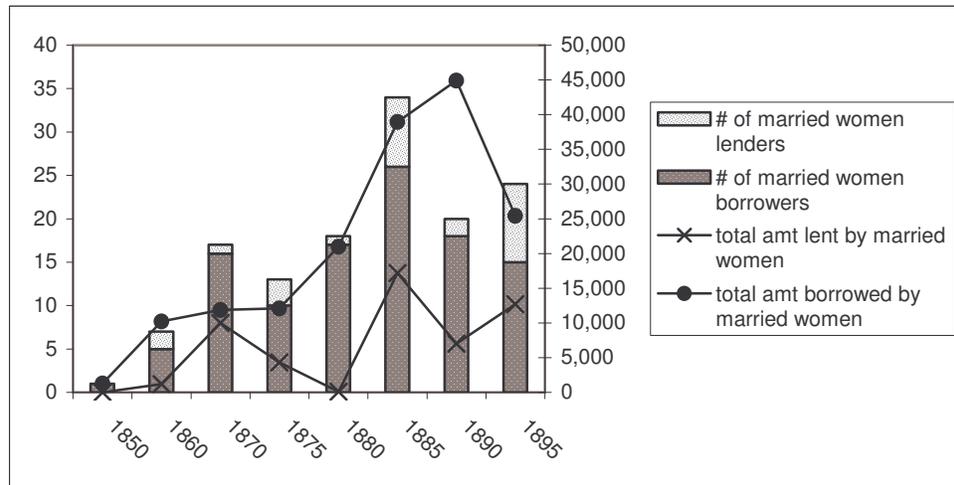
The requirement that a wife defer to her husband's will is reiterated in the restrictions on wives entering into contracts, especially those affecting her wealth (and by extension the wealth of her children and her husband, were she to die first) or potentially involving a trial (either as a defender or accuser) that could lead to public disgrace. The notarial handbook made no similar comment concerning non-married women (although since unmarried girls were still under the tutelage of their parents they were strictly barred from contracting anyway). The reputation of women, especially wives, needed to be

²⁷ Arrom, Mexican Family Law, 1985, opcit.

²⁸ El novísimo escribano instruido, Primera edición 1859, Edición presente 1892, Mexico 1892; Sección 2a; Título I : De las escrituras de contrato; Capítulo I; Art. 7: sobre los contratos de las mujeres casadas: El interés de la sociedad conyugal y la deferencia que la mujer debe a su marido la obligan a no hacer jamás cosa importante sin su licencia ni autorización. No puede por lo tanto la mujer sin licencia del marido hacer contrato, ni separarse del que tuviese hecho, ni estar en juicio demandado ni defendiendo por si o por procurador, ni repudiar herencia por testamento o abintestato, ni aceptarla, sino solo a beneficio de inventario. Esta licencia se la puede conceder el marido para todos los referidos actos, o solo especialmente para alguno de ellos y asimismo puede ratificar lo que hubiere la mujer ejecutado sin su permiso. Si el marido injusta y arbitrariamente se negase a conceder esta licencia a su mujer, puede el juez con conocimiento de causa legitima o necesaria, compelerle que se la otorgue, y si no se la diere, el juez se la puede conceder, pudiéndose ejecutar lo mismo en la propia forma, cuando el marido se halla ausente y no se espera su próxima venida o corre peligro en la tardanza.

safeguarded at all costs, and this was best achieved if husbands were granted such wide discretion over their wife’s transactions. Within the confines of these rules however, the evidence suggests that Yucatecan men were inclined to allow their wives to borrow, but rarely consented to them lending. The following graph illustrates this tendency among the married women of Mérida.

Graph 4: Married women in the Mérida mortgage market



Source: *Protocolos notariales, AGEY, ANEY*

As graph 4 illustrates, in any year, borrowing wives far outnumbered lending wives. Both in terms of number of contracts and amounts, wives generally tended to use the mortgage market to borrow funds rather than to lend them. Even in 1885, when married women lent more than in any other year analyzed, the amounts they lent (\$17,000) were less than half of what they borrowed (in excess of \$38,000). Similarly, the number of married women who borrowed outnumbered those that lent significantly in every year. Borrowing wives outnumbered the lenders by at least 100 percent in the best of cases, but as was the case in 1870 and 1880, only one married woman lent money when more than 15 wives borrowed.

In light of the legal context discussed above, how do these figures contribute to our understanding of the interest rate differential highlighted in table 2? What does this intense borrowing activity among married women have to do with their borrowing costs? The next part of this paper addresses these questions.

Part 3: The predicament of marriage

Married women were predominantly borrowers in the mortgage market, and the notarial contracts reveal certain trends in this participation. Women were either primary borrowers in a mortgage contract, and they also appeared as co-signers on a contract in which their husband was the primary borrower. When women were the primary borrowers, the signature of their husband also accompanied at the end of the contract. The signatures of spouses signified their approval of the contract, but not necessarily their shared liability in the debt. If marital property was used as collateral, then both spouses shared in the loss in the case the collateral was claimed as repayment. However when wives appeared as co-signatories to a mortgage contract in which their husband borrowed, her property could never be claimed in repayment of the loan.

We should not take the signature of a spouse, especially the signature of a wife on her husband's loan as proof that women were co-borrower *per se*. A wife's signature on the contract did not imply active participation in the credit market, but reflected instead the legal requirements that a wife had to give formal consent to transactions involving the use of joint property. Seventy-five percent of the loans by married male borrowers bore their wife's signature, and this suggest that joint property was the main source of collateral, and that the wife's signature was indeed the legal convention whereby she stated her knowledge of the transaction. The inverse is not true however. The signature of a husband at the end of a mortgage in which a woman was the primary borrower does not reveal that she was using joint property as collateral. Women were not allowed to transact, let alone transact with property that was not entirely their own. They couldn't even manage their own property. All contracts in which women borrowed bore the husbands signature as a form of consent to the transaction itself.

Husbands signed at the end of mortgage contracts to signify their consent. While husbands did not sign explicitly as legal representatives or as guarantors (as was the case for fathers and tutors signing on behalf of under-aged daughters and wards), spouses nevertheless remained under each other's watch with respect to contracting²⁹. Furthermore, this watchfulness was expanded under the Civil Code Article 1779, which existed in the

²⁹ As was also suggested above by the prevalence of spousal co-signatures on loans by married men.

1870 Civil Code and remained intact under the 1884 Code. This article gave the husband the right to annul any contract his wife signed without his express consent³⁰. As per the Code, husbands had this right both during the marriage, and retroactively for four years following the eventual dissolution of the marriage (either by divorce or death)³¹. This article again was rooted in the Roman Law tradition of reducing antagonism and maintaining the integrity of marriage, both in social and economic terms. The laws protected right to ownership for women, but article 1779 essentially destroyed the value of her property were she to use it as collateral in a contract without her husband's consent.

The situation was only slightly different among married lenders. When married women served as lenders, their husbands almost always countersigned the contracts. In these cases, the spousal signature indicated the husband's approval of his wife's transaction.. While husbands controlled their own property, and the joint marital property, they only had administrative control, not any claims to ownership, over their wife's property. Married women could only transact using their own property, but the law gave the husband final say over his wife's decisions over the use of her assets. However, one notable legal exception allowed women to enter into contracts independently if they were acting in a commercial context. If women were engaged in a professional endeavor, the law presumed the agreement of the husband as long as the transaction was directly related to her stated profession³². Unfortunately, the mortgage contracts do not reveal much about the use of the loans, and the occupation stated in the contracts of most female lenders is always the rather limited definition of "*labores domesticas*" (domestic labor) or "*de estado honesto*" (of honest standing). In the remaining cases, the occupation is either not stated at all or it is replaced by the general term of "*propietaria*" (property owner).

³⁰ Articles similar to Article 1779 exist in the 1889 Civil Code of Spain, albeit without the retroactive provision included in the Mexican Civil Code. C.f. art. 62 & 65 of the 1889 Civil Law of Spain.

³¹ Divorce in this context referred only to a legal separation of residence. Divorced women and men were not free to remarry, and divorce cases were extremely rare before the twentieth century. C.f. Stephanie J. Smith, *Engendering the Revolution: Women and State Formation in Yucatan, 1872-1930*, Mexico, Ph.D. Diss, CUNY Stony Brook, 2002.

³² The civil code presumed the '*licencia*' (agreement) of the husband when the contract happened in a professional context. The 1866 Código Civil del Imperio Mexicano stated in Art.135 of Libro I: "La licencia para contratar puede ser general, o especial. Se presume concedida cuando la mujer tiene un establecimiento publico o propio, profesional o mercantil, y en ese caso quedan obligados por los contratos relativos al establecimiento, celebrados por la mujer, los bienes del establecimiento mismo; si no bastan, los gananciales del matrimonio y en defecto, los propios de la mujer."

The cases of married women who lent are very rare (as illustrated in graph 2), and the cases of women who lent without their husband's signature are even rarer and these cases are sufficiently odd to suggest that the husband's signature was absent for other reasons than the professional endeavors of the wife. For example, one of the more prolific female lenders was Candelaria Castillo de Villajuana, the wife of a wealthy Mérida trader Cosme Angel Villajuana. She repeatedly lent money to people in Mérida without his signature, although the contracts never bear her signature either. Candelaria was the only lender, but the contracts stated that she was too ill to visit the notarial office, and therefore her son Antonio signed the contract in her absence. Nevertheless, these cases suggest that while the laws allowed husbands to control their wives, husbands were not always expressly using that right, and that even under laws granting husbands significant control over their wives' wealth, women retained some autonomy and could use their wealth outside the marital domain³³. Since notaries were bound to record only legal documents (under threat of severe penalties), it is highly unlikely that notaries recorded and oversaw contracts that went against the wishes of recalcitrant husbands³⁴.

Marriage then significantly reduced women's liberty, especially with regards to the use of their property. The bonds of marriage limited the use a woman could make of her property, and it tied this usage quite closely to the wishes of her husband. The interest rate differential that so clearly plagued married women above all other borrowers is therefore not only a function of her marital status, but of the husband himself. Answering this interest rate quandary requires an understanding of the motivation of married women's borrowing as well, since their activity was so disproportionately geared towards borrowing. However, mortgage contracts typically remained mute as to the purpose of the loan. However, if women were actively using their borrowed funds to start up businesses, refinish the roof on their house or plant new henequen seedlings, there is no reason for why married women would do this more than unmarried or widowed women. If women were

³³ Incidentally, these women were not lending small amounts to friends. Three of the loans were to other women, but all were well structured with competitive interest rates and collateral, and contained the countersignature of the borrowers' spouse.

³⁴ If a notary failed to use the proper caution in this respect, he would be liable for the costs of this illegal transaction, as well as for the damages caused. If he could not cover the costs and damages, he could be suspended for up to two years. Código Civil del Estado de Yucatán, Cap. IV: *Los notarios que omitan este requisito incurrirán en la pena de pagar los daños y perjuicios que causaran, y en caso de insolvencia en la suspensión del oficio por dos años.*

engaging actively in business or home-improvement projects, we would expect *all* women, irrespective of marital status, to borrow as much as the married women did. Furthermore, considering the restrictions the law imposed on married women in terms of their activities outside the house and their financial responsibilities within the household, we would expect widows and spinsters to borrow more than married women. Instead, it is the women with the least amounts of leeway with respect to their own property who borrow most. This reinforces the co-relation between marriage and the borrowing activity of wives, and further suggests that there was also a causal mechanism that led married women to borrow more than other women.

That causal mechanism can be narrowly defined as the husband. Husbands are the heart of the explanation of both the interest rate differential and the borrowing activity of married women. Women who owned enough collateral to be viable debtors were most likely not involved in the economy in a direct way and would have no need to borrow for independent projects, while married women were further restricted from participating in the economy through legal constraints. But their husbands were not subject to any of these constraints. Men could do as they pleased, or more specifically, their marital status did not limit their range of action in the same explicit ways. The laws did not limit or restrict men's freedom to use their own wealth, but it did create obstacles to their power over their wives wealth.

If a wife could not legally borrow without the express consent of her husband, he in turn could not use her wealth without her collaboration. Neither the wife nor the husband could legally act alone to effectively manage her wealth. While the husband had the right to administer her wealth, he did not have the right to sell, lend, or do anything else with it. If a husband needed to borrow for his own enterprises, he could only use his wife's property as collateral if she was also central to the transaction. Therefore, if a husband needed to use his wife's property as security against a loan, his wife had to serve as the primary borrower. And in order for his wife to borrow, the husband had to grant her legal license to contract and then he sign the contract as proof of his consent. This implies that when a husband gave his wife the right to transact, he was actually giving her the right to use her wealth as collateral for a loan he would eventually use. In Mérida, when married women borrowed they did so with the express consent of their husbands, for his implicit

use of the loan. Wives therefore did not borrow for any specific projects they were involved in, but for projects their husbands needed funds for, and could not raise funds for on their own.

This suggests that married women who borrowed did so most probably for no other reason than to remit the funds to their husbands. Loans to married women were in fact repackaged loans to their husbands, and the reason for this is that the laws forbade husbands to use their wife's property as collateral. Therefore, if a husband wanted to use his wife's wealth, she had to be the primary borrower in the contract, and he had to give her express consent to do so.

Most men, married or not, used their own assets to secure funds through the mortgage market, and men, regardless of marital status, constituted the large share of borrowers and lenders in the credit market. Contrary to the majority of the participants in the market, husbands who granted their wife the "liberty" to transact signaled an anomaly in their asset base. None of the husbands of the borrowing women were themselves wealthy or known, and their name at the end of the contract constitutes the first evidence of their existence in the mortgage market. However, it does not constitute their last appearance in the record, as was the case for Blas Díaz. Blas Díaz was married to Antonia Pereira, and in 1885, Antonia borrowed \$1500 pesos from Remigio Nicoli, a wealthy property owner in Mérida. Antonia was the 45-year old housewife of Blas Diaz, one of the cities sorbet makers. Antonia put up as collateral her share of a house she owned with her sister, having inherited that home recently from their parents, and she paid 15% annual interest on the one year loan. Five years later, Blas Diaz borrowed \$3000 from another Mérida lender, putting up a house he now owned in Mérida as collateral. The couple no longer lived at the same address, and one can but assume the sorbet business had improved in Mérida's sweltering climate, since Blas could now put up his own property as collateral, borrow in his own name, and pay only 12% interest per year.

Most of the outcomes of the loans made by women in Mérida don't end on such a note, but this example does suggest an answer to the puzzle presented at the beginning of this paper: women who borrowed in this market were married to men poorer than they. When a lender entered into a contract with a married woman, the lender knew he or she was not just lending to her, he was lending to her husband. In light of this, the

interest rate charged to a married woman was in fact an interest rate on her husband. While a poor man might be lucky to have a rich wife, relying on his wife's personal wealth was a public signal of his economic duress. Just as a bad harvest signaled low profits for agricultural planters in Yucatan, relying on a wife's assets to borrow signaled to creditors, past and present, that the husband who allowed his wife to use her property as collateral on a loan most likely did not have any property of his own. The interest rate premium charged to married women then was a response to the *implication* of their borrowing, namely that husband and household were less credit-worthy; and loans to married women were therefore much more closely associated to the risk presented by their husbands than to any real risk embodied in the women themselves.

Conclusion

The relationship between marriage and property rights constitute an explanation as to why married women paid higher interest rates than widows or spinsters. The latter two represented only themselves when entering into contracts. Spinsters and widows accounted alone for the responsibility of repayment, and lenders needed only to worry about their credit history, and in turn, these women were alone were responsible for making good on the loan.

Married women on the other hand, were not allowed to act on behalf of themselves and were hardly independent in their decision to borrow. Women participated in this market within a paternalistic legal context that sought not only to protect them, but mostly their family, and ultimately the paternalistic ideal itself. Women could transact within these confines, although in margins that were directly tied to their marital status and their husbands. While female lenders in the Mérida mortgage market did not act significantly differently than their male counterparts, female borrowers faced a very different playing field. The continuing concern of the law with safeguarding family harmony by giving the husband control over his wife's property, while simultaneously restricting his ability to use it, affected both a married woman's ability to enter into commercial transactions and restricted a husband's ability to profit from her wealth. Consequently, the definition of property rights in Mexican law is an institutional source of

the gender bias observed in the Mérida credit market in the nineteenth century, and constitutes a likely element of the gender bias observed in society at large.

Appendix

The regression results in table 5-2 show the effect of marriage on interest rates to female borrowers. The closing of the gap seen in the third column of table 5-1 is consequently tempered by the marital status of women, who were more likely to pay higher interest rates.

Relationship of interest rate to female borrowers to contract variables³⁵

Interest rate Constant	9.52
marital status (married/unmarried – includes widows)	coef: -2.23 SE: 1.06 t-stat: 2.10
length of loan (short term/long term)	coef: -.47 SE: 1.21 t-stat: -.40
location of collateral (urban /rural)	coef: 2.26 SE: 1.28 t-stat: 1.72
size of loan (small/large)	coef: -2.26 SE: 1.12 t-stat: -2.01

Source: AGEY and ANEY, Protocolos notariales.

The length of the loan and the location of the collateral were not significant determinants of interest rates charged to women. But loan size and marital status were statistically significant in determining interest rates for female borrowers. Unmarried women paid lower interest rates, and marriage had statistically significant effect on interest rates, and it exacted a penalty of more than two percent on female borrowers. In gauging the effect of loan size on interest rate, we have to consider that the size of a loan is also correlated to the type and quality of the collateral, which is determined by the quality of the borrower and in turn affects the interest rate. Furthermore, loan size would have affected all borrowers equally, irrespective of gender.

³⁵The regression was estimated over the entire period. I used dummy variables for marital status (0 if married, 1 if not married – which includes widows); length of loan (0 if less than one year, 1 if one year or above); location of collateral (0 if urban, 1 if rural); and size of loan (0 if less than 1000 pesos, 1 if 1000 pesos or larger). The t-stat measures statistical significance, and the results are significant (i.e. not due to a random numerical error) when the t-stat is above 2, SE stands for standard error. The constant is the constant term of interest rate in the regression equation. The coefficient calculates the effect on the interest rate for a change in value of the variables. In the regression, marital status was identified as 0 if the female borrower was married, and 1 if widowed or unmarried. The negative sign on the coefficient signifies that for a value of 1 in the variable, the interest rate will be 2.23 times higher than if the variable were 0. Similarly, if the loan was large, the interest rate would be 2.26 times smaller. The t-stat measures the statistical significance,