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Women's Legal Agency in Colonial and Post-Colonial Contexts: Implications for Gender-Responsive Governance in the United States

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ABSTRACT: In the United States (U.S.), women's legal and political positioning in contemporary governance is shaped by historical processes rooted in colonial and settler-colonial rule. These histories produced legal systems organized around racial hierarchy, patriarchal authority, and gendered exclusions that continue to influence access to power, rights, and political participation. Understanding women's legal agency therefore requires an approach that situates present conditions within their historical and institutional origins. This review found that many precolonial societies recognized women's authority through collective leadership, relational governance structures, and community-based decision-making. These systems were disrupted through the imposition of Eurocentric legal norms, Christian patriarchal ideology, and colonial political economies. Colonial law and early U.S. jurisprudence formalized women's exclusion from political life, restricted legal personhood, and entrenched structural barriers to governance participation. Contemporary mechanisms of control persist through gendered violence, reproductive governance, epistemic marginalization, and fragmented accountability structures, with particularly severe effects on Indigenous, Afro-descendant, and structurally marginalized women. Dominant gender governance frameworks continue to privilege technocratic and Western forms of knowledge, often sidelining Indigenous, experiential, and community-based epistemologies. Women's agency is expressed through collective organization, community governance, legal mobilization, and decolonial feminist leadership, which challenge dominant models of authority and generate alternative forms of political participation and leadership. The findings indicate that gender-responsive governance cannot be achieved through formal inclusion alone. It requires structural reform, institutional accountability, and the integration of decolonial feminist approaches into governance design in order to advance substantive equality and democratic legitimacy in the U.S.

KEYWORDS: Gender-Responsive Governance, Women's Legal Agency, Decolonial Feminism, Intersectionality

INTRODUCTION

Women's legal agency, understood as the ability to claim rights, pursue legal remedies, and participate meaningfully in public decision-making, continues to be unevenly realized in postcolonial societies, including the United States (U.S). Formal advances in constitutional and statutory law have not translated into equivalent gains in lived legal and political power. The gap between legal recognition and everyday practice reflects more than contemporary policy limitations; it is shaped by institutional arrangements that emerged from colonial and settler-colonial governance traditions [1, 2]. These systems were structured through gendered and racialized hierarchies that governed access to land, resources, political authority, and bodily autonomy, while displacing earlier governance orders in which Indigenous, Maya, and Afro-descendant women exercised social and political influence [3, 4]. Present patterns of women's legal and political participation in the U.S. therefore, reflect historical institutional continuities rather than isolated contemporary failures.

Recent shifts in U.S. law and policy have brought these structural constraints into sharper focus. The Supreme Court's decision in Dobbs v. Jackson Women's Health Organization (2022) illustrated the instability of formally recognized rights when they are not anchored in durable institutional protections [5]. Empirical evidence shows that the effects of this ruling have fallen unevenly, with low-income women, women of color, and rural populations bearing a disproportionate share of the consequences [5, 6]. Parallel to this, the ongoing crisis of Missing and Murdered Indigenous Women, Girls, and Two-Spirit people has exposed the human cost of fragmented jurisdictional authority and long-standing institutional neglect. American Indian and Alaska Native populations are reported missing at rates far exceeding their population share, exposing deep failures in governance, accountability, and recognition [7]. These patterns point to a broader condition in which gender-responsive governance remains constrained by legal frameworks that reproduce inherited hierarchies rather than dismantle them [8].

Research on gender and governance in the U.S. has expanded in scope and sophistication, yet the colonial foundations of women's legal marginalization remain only loosely connected to mainstream analytical frameworks. Studies of political participation often frame barriers as contemporary institutional shortcomings, rather than as historically produced systems of exclusion [9, 10]. Legal scholarship has focused on doctrinal change, constitutional interpretation, and statutory reform, with limited attention to the deeper historical structures that shape the scope and limits of these reforms [11]. Decolonial feminist work offers sustained theoretical engagement with these histories, but it remains marginal

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within dominant gender governance debates [3, 12]. The result is a body of literature that rarely brings these strands together, leaving contemporary patterns of women's legal exclusion analytically disconnected from their colonial and postcolonial institutional origins.

This review addresses that gap by synthesizing scholarship from legal history, decolonial feminist theory, intersectionality, and governance studies to examine how women's legal agency in the U.S. has been shaped over time. It moves from the historical production of gendered legal subordination to the institutional and intersectional constraints that continue to structure access to rights and protection. The paper further discusses the implications for governance reform. In this review, legal agency is treated not as an individual capacity, but as a condition formed through law, institutions, and history. On this basis, the paper develops a framework for implementing gender-responsive governance that is grounded in the structural, historical, and epistemic sources of persistent inequality.

METHODS

This narrative review employed an integrative synthesis approach to examine the historical, legal, and governance structures shaping women's legal agency in the U.S. A structured literature search was conducted across multidisciplinary academic databases (Scopus, Web of Science and Google Scholar) using predefined search terms related to gender governance, coloniality, settler-colonialism, legal agency, intersectionality, reproductive governance, Indigenous governance, and epistemic justice, supplemented by reference chaining. Sources were included if they addressed women's legal, political, or governance agency in U.S. or U.S.-territorial contexts and engaged with colonial, postcolonial, intersectional, or decolonial analytical frameworks; non-scholarly works, non-relevant geographic contexts, and purely descriptive studies were excluded. Data were extracted using a structured analytic matrix capturing governance domains, legal frameworks, institutional structures, epistemic positioning, and intersectional dimensions. Thematic synthesis was conducted through an inductive–deductive process guided by decolonial feminist theory, intersectionality, and structural justice models to generate cross-cutting analytical themes focused on institutional, legal, and epistemic mechanisms of gendered power rather than representational inclusion.

FINDINGS

Colonial and Settler Foundations of Gendered Governance

In the literature reviewed, colonial and settler-colonial systems played a central role in creating the current legal, social, and political positioning of women [1, 2, 13-19]. These structures enforced heteropatriarchal, racialized and masculinized structures that dictated women's access to power, involvement in governance, land and economic resources [1, 2, 13, 18]. In precolonial cultures, women and their power were frequently acknowledged in the form of leadership, ability to make decisions, and cultural impact [1, 2, 15, 20]. These structures were systematically broken down by colonization through Eurocentric gender norms, Christian patriarchy, racialized divisions of labor, and sexualization of women labor and bodies [2, 13-15].

Hierarchical control is a form of centralization of power in men, limited constitutional protection, voting rights, and political representation of women. These were codified in colonial legal systems, such as U.S. territories under Insular Cases (1901-1922), and disproportionately impacted women and communities of color [19]. Early jurisprudence, such as Bradwell v. Illinois, Minor v. Happersett, Muller v. Oregon, and Hoyt v. Florida, additionally codified domestic confinement as the anticipated social role of women, restricting occupational, professional, and civic involvement [21]. Although later cases, including Craig v. Boren and United States v. Virginia proposed intermediate or increased scrutiny, structural and legal limitations of women's participation in governance continued [21].

Gender expertise, in development and professional practice, is indicative of long-standing colonial epistemological practices, where Western technocracy, donor-determined measures, and liberal models are privileged over Indigenous, local or experimental knowledge. Women's agency was often redefined as economic participation or market inclusion, instead of legal or political empowerment [2, 14, 15].

Gendered Violence, Legal Disempowerment, and Structural Control

Violence against women and girls (VAWG) is one of the most widespread consequences of colonial and postcolonial rule serving as both an extension of historical oppression and a tool of structural control [1, 13, 18, 19]. In settings such as resource extraction zones, settler communities, and marginalized territories, women were left vulnerable in a combination of poor institutional control, poor legal jurisdictions, and dispossession of land and cultural authority [1, 13, 17].

Colonial rule made women legally non-existent and socially unworthy, with hypersexualization, forced sterilization campaigns, moral regulation of reproduction, and policies against unfit mothers seen as major means of control [1, 17, 19]. One instance to consider is the experimental sterilization and contraceptive programs implemented by U.S. authorities in Puerto Rico on women labeled as hypersexual and morally flawed, which exemplifies reproductive governance as a means of racialized, gendered, and population control [19]. In both physical and epistemic violence, the few reported cases of Missing and Murdered Indigenous Women, Girls, and Two-Spirit are indicative of the interaction between patriarchal and colonial power [13].

Disruption of Indigenous Governance and Accountability Mechanisms

Colonial and settler-colonial systems replaced communal, collective, and culturally embedded governance with fragmented legal and institutional structures, eroding women's access to justice and accountability [1, 13, 18, 19]. The precolonial mechanisms of social ostracism of perpetrators, loss of status, and community-imposed sanctions were replaced by nuclear-family formulations, privatized legal procedures that undermined the authority of women [1, 20]. Fragmented federal, state, and tribal jurisdictions resulted in non-local actors, such as temporary workers, avoiding responsibility, which exacerbates the structural vulnerability of women [13].

Professionalized gender governance frameworks reinforced epistemic hierarchies, privileging Global North technical authority while relegating Indigenous and local knowledge to subordinate observation roles [14, 22]. The political and legal presence of women was systematically swept away, strengthening structural invisibility and subalternity [2, 15].

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Precolonial Gender Systems and Women's Authority

Precolonial communities accorded women a great deal of authority in social, economic, religious, and political spheres. Women were rulers, warriors, healers, and priestesses, and political agency, ritual power, and economic influence were exercised by women in Maya societies [15, 20]. Essentially, the same trends were also found in the Indigenous and Afro-descendant community, where women in leadership positions helped govern communities, allocate resources, and resolve conflicts [1, 15]. These roles were systematically degraded by colonization via racialized hierarchies, Eurocentric gender ideals, and Christian patriarchal impositions [2, 15].

Structural and Intersectional Barriers to Political and Legal Participation

Structural, institutionalized, and intersectional barriers still limit the involvement of women in governance [2, 16, 18, 19]. Ethnicity, race, class, sexuality, disability, age, and socio-economic status were overlays of patriarchal norms, leading to further marginalization, particularly of Indigenous, Afro-descendant, and low-income women [2, 16, 23]. Other barriers consist of political violence, limited funds, cultures of machismo, limited care policy, and infrastructural shortages, which limit political voice and access to power [2, 16]. Marginalized women were also silenced by legal and epistemic exclusion, reinforcing the invisibility of intersectional oppression [2, 15, 22].

Women's Agency, Collective Action, and Resistance

Despite systemic oppression, women assert agency by organizing collectively, advocating and leading. Historic examples of this include precolonial Maya weaving collectives, Indigenous governance networks, and institutions rooted in communities that allowed them to participate in economic, social, and political engagement [15, 16, 20]. In modern societies, women participate in social movements, cross-party mobilization, networks of leadership, feminist advocacy, and strategies of legal reform that challenge patriarchal, colonial, and neoliberal structures [16, 19, 22, 23]. Croatian MPs of transitional justice and Aboriginal activists provide examples of how women utilized institutional, discursive, or policy-based approaches to reverse structural inequalities [23].

Knowledge Production and Epistemic Agency

The role of women in the production of knowledge is a crucial aspect of governance and power. They are co-producers of knowledge and transform lived experiences into alternative forms of epistemology that challenge the Western-dominated structures of governance [2, 15]. The approaches of decolonial feminism are centered around the experiences of Indigenous, Afro-descendant, and marginalized women, developing pluralistic knowledge systems, leadership networks and mentorships that enhance their participation in governance and policy-making [2, 16]. The use of epistemic agency empowers women to exercise their voices in legal, political, and social spheres to transform the decision-making processes [2, 15].

Decolonial and Transformative Feminist Leadership

Decolonial and transformative feminist leadership is used by Indigenous and marginalized women in promoting gender justice and collective well-being [2, 15, 16]. The models of leadership are based on empathy, interdependence, and community continuity, which criticize competitive Western paradigms of governance [16]. Transformational leadership changes political cultures, introduces the practices that are gender-equitable and fosters care-sensitive and context-oriented policies [2, 16]. Postcolonial feminist theories enable women to establish identities, describe agency, and initiate systemic transformations in governance systems [2, 15].

Reproductive Rights, Bodily Autonomy, and State Control

The bodies of women continue to be zones of governance and structural control. Autonomy was limited and hierarchical control was strengthened with colonial and postcolonial interventions, such as sterilization drive, contraceptive experiments, and moralized maternity [17-19]. Although international systems such as SDG Target 5.6, Cairo Programme of Action and Beijing Platform have provisions on the practical access to reproductive rights, economic, cultural, spouse-related, and governance constraints limit accessibility [24]. These policies are the illustration of the gap between official rights and actual practice, emphasizing the further subordination of women's bodily autonomy in legal and political practice [17-19, 24].

Economic Participation, Instrumentalized Agency, and Education

Economic empowerment approaches such as entrepreneurship, SMEs involvement, and leadership programs have promoted the financial independence of women. However, they often tend to implement agency for policy objectives without addressing structural inequities or unpaid domestic labor [24, 25]. Formal educational access has been enhanced in SDG and MDG frameworks though structural, cultural, and economic obstacles still restrict the complete empowerment of women and their participation in politics [24].

Governance Feminism, Community Leadership, and Policy Transformation

Governance feminism and other forms of community-based feminist traditions understand women, not as beneficiaries of policy, but as actors in reshaping social and institutional structures. These initiatives connect leadership to reproductive justice, collective decision-making and community responsibility, and ground political action in lived experience rather than only formal authority [17, 19, 22, 25]. Such locally grounded strategies that challenge dominant legal and political orders and promote alternative models of governance have persisted, as observed in both historical and contemporary examples, such as Indigenous leadership in resistance movements and the 1910 Buenos Aires Congress respectively [22].

Gender-responsive governance, however, requires more than increased representation within existing systems. It depends on deeper structural and epistemic shifts that integrate care, environmental responsibility, and intersectional experience into policy design and institutional practice. Decolonial feminist scholarship, in particular, emphasizes culturally grounded governance models that centre Indigenous knowledge systems and challenge Western epistemic dominance as a prerequisite for meaningful participation [2, 15, 16]. Although international instruments such as the UDHR and CEDAW articulate global norms for women's rights, their practical impact remains uneven. National sovereignty, delayed ratification, and weak enforcement mechanisms continue to limit their transformative reach, resulting in partial and uneven realization of gender justice across contexts [24].

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Violence, Structural Limitations, and Intersectional Exclusion

Violence against women and girls (VAWG) overlaps with historical legal subordination, coloniality, and structural limitations, and impact one out of three women in the world [13, 18, 19, 24]. Weak law enforcement, bias policy implementation, and entrenched patriarchal norms perpetuate vulnerabilities. This leads to disadvantaged women being disproportionately vulnerable to digital violence, restrictions in mental health, and discrimination [2, 16, 23].

Collective Action, Advocacy, and Legal Mobilization

The implementation of women legal and governance agency is done through action, advocacy, and strategic interventions with institutions [17, 19, 21-23, 25]. Historical and contemporary examples provide the engagements of legal and economic frameworks, as well as community-based mechanisms, in negotiations of structural constraints, establishment and enforcement of political power, and promotion of social change. Community, feminist and Indigenous networks offer the key enabling platforms of empowerment, knowledge development, and governance innovation [15, 16, 22, 25].

DISCUSSION

This review shows that efforts to strengthen women's legal agency in the U.S. cannot succeed without addressing the colonial and settler-colonial legal foundations that continue to organize gendered power. Early jurisprudence formalized women's confinement to the private sphere and limited constitutional protections for women in U.S. territories. Later doctrinal developments, including heightened scrutiny for sex-based classifications, altered the surface structure of equality but left intact deeper racialized and heteropatriarchal arrangements that shape access to law and power. For Indigenous, Afro-descendant, migrant, and low-income women in particular, these structures remain decisive in everyday legal experience [12]. Formal equality doctrines have therefore produced only partial transformation. Where law itself operates as an instrument that organizes hierarchy, non-discrimination alone cannot generate substantive justice.

This structural continuity exposes the limits of liberal equality frameworks as the foundation of gender-responsive governance. Meaningful reform requires a model of justice that treats inequality as institutionally produced rather than individually experienced. From this perspective, the U.S.' failure to ratify the Convention on the Elimination of All Forms of Discrimination Against Women reflects more than diplomatic reluctance. It signals the absence of binding accountability mechanisms, intersectional legal standards, and external oversight structures that support reform in comparable legal systems [11]. Ratification alone would not resolve these challenges. Without a coordinated statutory and regulatory review across territorial, tribal, immigration, and family law, colonial, racialized, and patriarchal governance systems would remain embedded in legal institutions [8].

The findings also show that intersectionality functions not only as an analytical tool but as a practical requirement for governance design. The crisis of Missing and Murdered Indigenous Women, Girls, and Two-Spirit people demonstrates how colonial governance structures produce institutional invisibility. American Indian and Alaska Native communities remain disproportionately represented in missing-persons data, while coordination failures persist across federal, state, and tribal systems despite legislative interventions such as the Not Invisible Act and Savanna's Act [7]. These failures reflect a jurisdictional system that disperses responsibility in ways that make accountability structurally difficult to achieve [21].

Reproductive governance shows similar continuity. Historical sterilization programs targeting Puerto Rican and Native American women were not isolated abuses but part of a longer racialized tradition of reproductive control [26, 27]. The decision in Dobbs v. Jackson Women's Health Organization (2022) has widened the gap between formal rights and lived agency, with early evidence linking restrictive policy environments to worsening maternal outcomes and deepening racial health disparities [5, 6]. These patterns support the need for binding federal intersectional impact assessment in legislative design, modelled on Canada's Gender-Based Analysis Plus framework [28], as well as the development of a national reproductive justice framework grounded in the structural approach [29].

Epistemic justice also emerges as central to governance reform. Colonial legal systems marginalized Indigenous and community knowledge through technocratic authority structures that privileged Eurocentric forms of expertise and decision-making [30, 31]. Contemporary policy models continue this hierarchy by reducing women's agency to economic participation while sidelining political, legal, and governance knowledge embedded in Indigenous and community traditions [3, 12]. Decolonial feminist scholarship demonstrates that governance grounded in care ethics, relationality, and collective responsibility produces more equitable outcomes. It also makes clear that recognizing Indigenous women's epistemic authority is a structural necessity, not a symbolic inclusion strategy [12, 32].

Recent legislative reforms illustrate both progress and limitation. The Violence Against Women Act Reauthorization of 2022 expanded tribal jurisdiction over non-Native offenders and extended protections to Native Hawaiian survivors, marking a meaningful shift in federal recognition of tribal authority [33]. Yet its restricted scope also reveals the persistence of fragmented governance and the absence of comprehensive jurisdictional reform. Without institutional mechanisms that support community participation in policy design and recognize Indigenous knowledge as a legitimate source of governance evidence, reform remains partial. Initiatives such as the Bureau of Indian Affairs Missing and Murdered Unit risk symbolic status when not supported by statutory authority and enforcement capacity [34].

Taken together, the findings point to the need for a deeper reorientation of gender-responsive governance in the U.S. Representation and participation, while necessary, are not sufficient. Sustainable transformation requires legal accountability, intersectional institutional design, and epistemic inclusion. International frameworks such as CEDAW, the Beijing Platform for Action, and the Cairo Programme of Action provide normative guidance, but their domestic influence remains limited by non-ratification, weak enforcement structures, and the persistence of inherited institutional logics [11, 35]. Subnational initiatives, including the Cities for CEDAW movement, reflect growing political commitment but cannot replace federal legal responsibility [36].

Future research should prioritize community-partnered methodologies, including participatory action research, oral history, and Indigenous research paradigms [37]. These approaches offer pathways for centering the governance experiences of women in U.S. territories, tribal nations,

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and structurally marginalized communities. Comparative analysis with postcolonial jurisdictions may also offer practical models for translating formal rights into substantive institutional change. Incremental reform within existing governance structures is unlikely to produce substantive gender justice where those structures were historically designed to produce exclusion.

CONCLUSION

Gender-responsive governance in the United States cannot be achieved through incremental legal reform alone. The institutional framework itself was shaped, in significant part, through colonial and settler-colonial logics that structured the subordination of women, particularly Indigenous, Afro-descendant, and territorially marginalized women. Substantive gender justice therefore requires more than policy adjustment. It demands a decolonial engagement with legal history, an intersectional reconstruction of governance institutions, and a genuine redistribution of epistemic and political authority to the women whose knowledge and leadership have been systematically suppressed.

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