

## Coverture and Economic Gender Inequality in Early America

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By: Thomas Walsh

From the founding of British colonies in North America to the United States of the mid-20<sup>th</sup> century, women were denied property rights equal to those which men enjoyed. Though women still are often placed at a disadvantage in modern society compared to their male counterparts, these situations are often due to social norms and gender bias rather than inequality codified in law.<sup>[1]</sup> While it may be such that women are not given just control over property due to economic inequality, modern law recognizes no disparity between men and women in their respective abilities to own and control property. This has not always been the case. With roots in archaic British customs, restrictions on the ability of women to manage property were major features of American law for much of the nation's history. Known as "coverture," these chauvinistic legal traditions restrained the socioeconomic freedom and autonomy of women for centuries prior to, during, and after the founding of the United States.

Many early American legal norms were established by existing English law. In English common law, the doctrine of coverture erased the separate legal existence of a woman upon marriage. Prior to marriage, a woman was considered a *feme sole* and had the right to independently own property and make contracts under her name. When she became married, the woman became a *feme covert*; her legal rights were absorbed into those of her husband.<sup>[2]</sup> Coverture created a union between husband and wife to such a degree that they were to be treated as one entity. This individual entity, however, was not to be controlled in equal amount by both parties joined into it; the role played by the husband in marriage was likened by 18<sup>th</sup> century author William Blackstone to that of a baron or a lord.<sup>[3]</sup> Additionally, for spouses to enter into any form of covenant or compact between one another would violate the concept of marriage as a force of unifying two individuals into one; it is illogical that one could enter into a legal agreement with oneself.

Coverture was not universal throughout Britain, however, and was still somewhat flexible.<sup>[4]</sup> Women could still face prosecution for crimes and, in certain circumstances, sue others on their own behalf throughout medieval England. In medieval England and Wales, coverture was applied less rigidly and more situationally than commonly thought, according to some historians; additionally, coverture was not applied to Scottish law.<sup>[5]</sup> Although the proliferation of *feme sole* status in some regions appears to be a positive presence of equality, societal roadblocks for independent women prevented total gender equality and economic disadvantages for women led to a smaller disparity in well-being between the two groups of women than would be expected.<sup>[6]</sup> Whether applied universally or not, the existence of coverture outlined a system of marital inequality which would persist for centuries and spread by way of common law throughout England's expansive colonial empire.

The spread of coverture through English law led to the stricter and more universal application of coverture in early America than in Britain. Under colonial rule, American women were sometimes subject to a complete lack of property rights; in Connecticut, women had no rights to own property and no claim to their husband's property.<sup>[7]</sup> In other colonies, coverture existed in a more restricted state, such as Virginia's law giving widows the right to own and control use of land while other colonies gave wives the right to private examination, thus meaning a husband had to receive the signature of his wife before a wife's property could be transferred into joint ownership in a marriage. A New York law, dating back to 1691, states that a woman must be able to examine actions taken with regards to her property without "threats or

compulsion from her Husband.”[8] The Supreme Court in the young United States would render more than 100 decisions regarding women and property rights from the founding of the nation to the end of the 19<sup>th</sup> century. One of the earliest, *Barnes’ Lessee v. Irwin*, occurred in 1793 and determined that a wife had the right to grant ownership of her belongings by use of a will.[9]

In the early United States, many states allowed slavery and racial equality was not ensured anywhere in the fledgling nation. Though this was the case, on paper, the rights of free black women were not noticeably less than those which were afforded to white women. This extends to slaveholding states, though racial prejudice limited social mobility in the greatest capacity within Southern states. In much of the nation, the language of the law did not ensure just and equal treatment for all. The situations faced by many free black individuals of the time reflected a state that was not led by law, but instead by racial prejudice. In fact, racism and slavery in Mississippi would be the impetus by which coverture would end.[10] Additionally, enslaved women, as with all other enslaved persons, were not granted any of the rights or liberties afforded to free individuals. They had neither custody of their children nor any sort of agency over their own lives.

Coverture elicited criticism and expressions of dissatisfaction from progressive thinkers of the time. Abigail Adams, the wife and closest advisor to American founder John Adams, wrote to him regarding coverture soon before the drafting of the Declaration of Independence, asking him to “remember the Ladies, and be more generous and favorable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands.”[11] Additionally, historian Arianne Chernock asserts that late Enlightenment philosophers believed coverture and similar principles “did not reflect the ‘advancements’ of a modern, civilized society.”[12] John Neal, the earliest American women’s rights lecturer, likened coverture to slavery in its restrictions regarding property ownership and management in the 1840s. Criticism of the status quo in America built steadily. In the mid-19<sup>th</sup> century, a series of changes to state laws would begin a slow and arduous process to eliminate coverture.

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[1] Cecilia L. Ridgeway, *Interaction and the conservation of gender inequality: Considering employment*, 62 AM. SOCIOLOGICAL REV. 218 (1997). <https://www.proquest.com/docview/218838363>

[2] David H. Bromfield & Marylynn Salmon, *Women and the law of property in early America*, 85 MICHIGAN L. REV. 1109 (1987).

[3] WILLIAM BLACKSTONE ET AL., COMMENTARIES ON THE LAWS OF ENGLAND (Wilfrid R. Prest et al. eds., 2016).

[4] TIM STRETTON & KRISTA. J. KESSELRING, MARRIED WOMEN AND THE LAW: COVERTURE IN ENGLAND AND THE COMMON LAW WORLD (2013).

[5] MARRIED WOMEN AND THE LAW IN PREMODERN NORTHWEST EUROPE (Cordelia Beattie & Matthew Frank Stevens eds., 2013).

[6] Marjorie K. McIntosh, *The benefits and drawbacks of femme sole status in England, 1300–1630*, 44 J. BRIT. STUD. 410 (2005).

[7] *State Law Resources – American Women: Resources from the Law Library*, LIBR. OF CONG. RSCH. GUIDES, <https://guides.loc.gov/american-women-law/state-laws#s-lg-box-wrapper-22569020>.

[8] *Charter of Liberties and Privileges, 1683*, HISTORICAL SOCIETY OF THE NEW YORK COURTS, [https://history.nycourts.gov/wp-content/uploads/2019/01/Publications\\_Charter-Liberties-1683-Transcript-compressed.pdf](https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_Charter-Liberties-1683-Transcript-compressed.pdf).

[9] *Barnes’s Lessee v. Irwin*, 2 U.S. 199 (1793).

[10] Diane Klein, *Their Slavery Was Her Freedom: Racism and the Beginning of the End of Coverture*, 59 DUQ. L. REV. 106 (2021), <https://dsc.duq.edu/cgi/viewcontent.cgi?article=3906&context=dlr>.

[11] *Adams Papers Digital Edition – Adams Family Correspondence, volume 1 – Abigail Adams to John Adams*, MASSACHUSETTS HIST. SOC’Y (1776), <https://www.masshist.org/publications/adams-papers/view?id=AFCo1d244>.

[12] ARIANNE CHERNOCK, MEN AND THE MAKING OF MODERN BRITISH FEMINISM (2010).

[13] LeAnne Howe, *Betsy Love and the Mississippi Married Women’s Property Act of 1839*, MISSISSIPPI HISTORY NOW (Jun. 2005), <https://mshistorynow.mdah.ms.gov/issue/betsy-love-and-the-mississippi-married-womens-property-act-of-1839>.

[14] Megan Benson, *Fisher v. Allen: The Southern Origins of the Married Women’s Property Acts*, 6 J. S. LEGAL HIST. 97 (1998).

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