

# Tracing Female Ancestors in America

## *Class 2: Legal Rights of Women in America*

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Women have been long been constrained by the laws created by men. They became a form of property of their husbands, held to their whims, for example: if the husband was unable to manage his finances, his widow and children were often in a untenable position.

### **Colonial America**

One of the most important things to keep in mind when looking at how the laws dealt with women in the colonial era is to understand that as extensions of the British empire, the earliest colonial inhabitants were bound by English laws. It was some of these laws that limited what women could own.

In her book *Law, Gender, and Injustice: A Legal History of U.S. Women*, Joan Hoff discusses how the foundation of the American Revolution to become economically independent of England did nothing for women. The words *liberty* and *independence* meant nothing to married women who still found themselves economically dependent on their husband. Women, regardless of marital status, were barred from voting and political involvement.

With that said, there were some women who managed to find ways to work within the confines of the system while also getting some of what they wanted. The biography of Abigail (Smith) Adams, wife of John Adams, by Woody Holton relies heavily on her correspondence and reveals a savvy woman who ran a mercantile and the farm while her husband was involved with the Continental Congress and the beginnings of the fledgling country. In addition, Abigail Adams was a bond speculator. Though she was of the elite class, her communications with family members touched on many of the disparate issues woman faced at that time.

### **Legal Terms**

Some important legal terms pertaining to women:

- Feme Covert: “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything....” (William Blackstone, *Commentaries on the Laws of England*)
- Coverture: The legal status of a married woman, considered under her husband’s protection and authority.

- Feme Sole: A single woman functioned on a legal par with men in property rights. It could mean separate estate by inheritance, dower, or marriage contract.
- Dower: The provision which the law makes for a widow out of the lands or tenements of her husband for her support and the nurture of her children (*Black's Law Dictionary*)

## The Husband

Once married the husband owned and controlled anything the wife may have owned prior to marriage. Of course, he was also responsible for her and any debts she had incurred. This also meant that he could sell her land or other property to cover his own debts.

## Probate Records

Women often inherited from their fathers, and sometimes their fathers made stipulations on their inheritance to protect them from squandering husbands. When inheriting from a husband, it was usually only during her lifetime, reverting to a son or all the living children at the time of her death.

When it came to the guardianship of her children, it was not an automatic guarantee that she would be granted their guardianship upon the husband's death [guardianship refers to the maintenance of a minor's inheritance and legal responsibility of their moral upbringing until they reached majority age].

Many times, when writing their wills, husbands would include clauses indicating that a wife could have the property (real or personal) until her death. To protect his estate for his children, the clause was often not just until her death, but also required that she remain his widow.

In certain states and at certain times, a widow could claim her dower—her share of the husband's estate—instead of what he left in the will. This was usually given to the widow before the creditors could get their share. It was also usually her share when her husband died intestate.

## Land Records

When a married man purchased land only his name is recorded, however, when he went to *sell* land, his wife will often be mentioned. She will have signed—or left her mark—and additionally there will be a paragraph indicating that she is relinquishing her “dower right” freely. [Of course, one does have to question if she truly felt free to not relinquish her rights.] The dower right was generally one-third of the land being sold. Wording may be:

And the said \_\_\_\_\_ wife of the said \_\_\_\_\_ having been by me examined separate and apart and out of the hearing of her husband and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her and she also by me being fully informed of her rights under \_\_\_\_\_, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all

her rights and advantages under and by virtue of all laws of this State..., without compulsion of her said husband, and that she does not wish to retract the same.

Because of the limitations of a woman's ownership of property, deeds often show her land being sold by her children after her death. These deeds may include information within the legal description of how she inherited the lands either from her husband or father.

The land records are also where you may find "marriage contracts" of sorts. Sometimes used to protect property intended for the children of the first marriage, such contracts or agreements did allow a widow to—in essence—maintain a "separate estate" as though she were a single female.

It would not be until the middle of the 19th century that states would begin to pass laws in relation to married women and property. The Married Women's Property Act of 1848 passed by the state of New York was the first legislation to establish a "separate estate" for any real or personal property a woman owned at the time she entered into marriage. It also allowed her to receive by gift, grant, devise, or bequest from someone other than her husband after she was married. By 1900 all the states of the Union would have similar laws.

## **Naturalization in the 19th Century**

The earliest naturalization legislation appears shortly after the ratification of the Constitution (1790, 1795) and the Act of 1802 used the wording "free white persons" to describe who was eligible for naturalization. Of course, women were basically an afterthought in this period because they couldn't hold property or vote. In essence they were not "persons" as the term was used.

The first naturalization act to address women and children was that of March 26, 1804, under the Eighth Congress in which Sec. 2 stated "*And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die, before he actually naturalized, the widow and the children of such alien shall be considered citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law."

Basically, this meant that as long as the husband had completed the declaration of intention before he died, then his wife and children need only take the oath of allegiance and renunciation. As a result, a researcher might find records of a woman taking the oath and have no additional records.

Perhaps the most influential naturalization act for women in the 19th century was that of the act of February 10, 1855, which allowed for any immigrant woman who married a U.S. citizen (either by birth or having already become naturalized), be automatically granted citizenship. As such there will be no paper trail for such an immigrant female regarding citizenship. There were some women who did not qualify under this act if their husbands were those who were racially ineligible.

*Note: If she married a U.S. Citizen abroad, or if her husband came to the U.S. and naturalized before sending for her, then she would have arrived as a “U.S. Citizen” on passenger lists until 1922.*

A modification of the 1855 Act in 1860 resulted in some confusion as to the citizenship status of native-born and naturalized women. The modification referred to a woman who left the U.S. to reside with her unnaturalized husband in a foreign residence (which could be as close as Canada or as far as Russia). Her residence in the foreign country negated her U.S. citizenship. The problem with this modification was that some courts assumed it applied to any woman married to an alien husband, even if they remained in the United States. In some instances, a woman who didn't need to may have felt the need to naturalize, especially if she was a widow.

## **Marital Status and Citizenship**

It was the connection of a woman to her husband via the 1855 Act regarding her naturalization status in the United States that began to influence the courts across the country, especially before the Immigration and Naturalization Service was established and rules were standardized.

Many courts assumed that if the husband had not naturalized, that an alien wife could not apply on her own behalf. By the same token an alien wife immediately became a citizen the moment her husband's naturalization record was approved by a judge. However, until 1906, you are unlikely to find the wife mentioned in any of the papers generated for the husband. In fact, there may be no way of even determining if the man who is naturalizing is married.

While there was confusion between 1866 and 1907 about the citizenship status of a woman who had married an alien, that confusion was put to rest with the passage of the act of March 2, 1907, also known as the *Expatriation Act*. This act established that “any American woman who marries a foreigner shall take the nationality of her husband.” This meant that the woman could have been the descendant of many generations of Americans and a member of, say, the Daughters of the American Revolution, only to discover that as she said “I do,” that she was no longer a U.S. citizen. Of course, if her husband naturalized, then she would again become an American citizen. She could also submit all the required papers and go through the naturalization process on her own—just as any other immigrant did. However, if her husband did not qualify for naturalization for some reason, then she too would be denied citizenship.

## **Repeal of the Expatriation Act**

The Cable Act, named for Ohio Congressman John L. Cable, was passed on September 22, 1922. Also known as the Married Women's Citizenship Act or the Married Women's Independent Nationality Act, this act broke the marriage bond when it came to citizenship. Any woman marrying a U.S. citizen after this date did not automatically become a U.S. citizen. Likewise, if she and her husband were immigrants and her husband naturalized after this date, she did not become a citizen with him. She was required to submit the proper papers following the naturalization policies of the time.

Perhaps part of the impetus for this act was the fact that with the acceptance of the 19th Amendment which gave women the right to vote, some men were being denied their citizenship because judges believed that their wives could not meet the eligibility requirements—one of which was the requirement to speak English, and therefore should not be allowed to vote. Regardless of what pushed it through, it finally allowed a woman to marry almost whomever she chose without fear of losing her citizenship. And for researchers, it began a paper trail of places of birth and arrivals of immigrant women. She may have had less paper though. If her husband had already become a citizen when she began the process, then she only had to submit the petition of naturalization, getting to forgo the declaration of intent.

While the Cable Act was a big step forward, it still required of the women wishing to naturalize, that their husband be an alien eligible to naturalize. In the 1920s, Asian aliens were still considered racially ineligible for U.S. Citizenship. As such, if an American woman married an Asian alien after the passage of the Cable Act, she would still have lost her citizenship, and any woman married to an Asian alien would have been denied the opportunity to apply for citizenship.

Unfortunately, for those women who lost their citizenship from 1907 until the passage of the Cable Act, they were still considered non-citizens, as there was no provision in the Cable Act to address their situation. American women expatriated by marriage had to go through the same steps of naturalization as any immigrant who had arrived in the last few years. And if they were living abroad and wished to return to the United States to regain their citizenship, they could find themselves denied entry as a result of the Immigration Quota Law of 1924.

It was not until 1931 that congress removed the final two limitations of naturalization for women: the ineligibility of the spouse to naturalize and the foreign residence.

## **Repatriation**

Repatriation was not just limited to women. There were ways in which native-born men could lose their U.S. citizenship—usually as a result of fighting in the army of another country. This would affect many Americans in World War I who felt they needed to serve before the U.S. actually entered the war. Unlike a man who was an American citizen, who perhaps lost his citizenship by serving in the Canadian military during World War I and needed only to take an oath of allegiance to regain his U.S. citizenship, women who lost their citizenship under the 1907 Expatriation Act had to fulfill all naturalization requirements to regain their citizenship.

Commissioner of Naturalization, Raymond Crist, upon the passing of the Cable Act, broached the subject, in his annual report in 1923, on offering the women who were repatriating a similar option as that of men. However, it would not be until the act of June 25, 1936, that repatriation, as opposed to full naturalization, would be an option, and then only if the alien husband was deceased or the American-born wife had divorced him. The Act of July 2, 1940 would eliminate the stipulation of an ending of the marriage.

Repatriation records for women, while not including the records cited as document attachments, are useful for the fact that they supply you with the exact dates and places of birth, marriage, divorce, and death of spouse. During their repatriation process, they would bring in the documents and those are cited on the form as having been viewed by the naturalization clerk. At the very least they let you know where to focus efforts on searching for such documents.

Repatriation records are often found on Form N-415, Application to Take Oath of Allegiance to the United States and are generally filed in separate volumes within a court. You may find them listed under a variety of titles, but all of them will include the word *repatriation*. Within the records filed at the National Archives, and its branches, these repatriation records are catalogued under Record Group 21.

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Manifest Markings, A Guide to Interpreting Passenger List Annotations

<http://www.jewishgen.org/InfoFiles/Manifests/>

National Archives: Naturalization Records

<http://www.archives.gov/research/naturalization/naturalization.html>

Overview of INS History

<https://www.uscis.gov/sites/default/files/USCIS/History%20and%20Genealogy/Our%20History/INS%20History/INSHistory.pdf>