

Tracing Women in Your Family Tree

Class 2: Legal Rights of Women in America

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Women have 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. Some of these laws limited what women could own.

In her book *Law, Gender, and Injustice: A Legal History of U.S. Women*, Joan Hoff discusses how the American Revolution did very little 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 women 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.
- Divorce A Vinculo [Matrimonii] – Latin that states “divorce ‘from the chain of matrimony;’” that equates to a total divorce in which both parties are released from their matrimonial obligations; the parties are free to marry again
- Divorce A Mensa Et Thoro – Latin that states “divorce ‘from bed and board;’” considered a partial divorce that legally separates the couple, prohibiting them from cohabitating; does not dissolve the marriage and the parties may not remarry
- 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*)

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 her 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.

Do not be surprised if you find what looks like a "marriage contract" within land records. 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.

Not until the mid-19th century did states begin to pass laws relating 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 states had similar laws.

Divorce

Divorce remained heavily stigmatized well into the 20th century, and even relatives who knew about one may be reluctant to discuss it with despite your genealogical interest. Marriage applications, death records, censuses, and newspapers may reveal a divorce unexpectedly. City directories can also offer clues—for example, a woman may appear alone and later be listed as the "widow of" someone.

Tip: Look for statewide indexes.

Unlike present day where a couple can file for divorce in many states without supplying a reason—known as "no fault" divorce—this was not the case in earlier years. As a result, there will be a reason mentioned in the complaint in the Bill of Divorce. Abandonment is often seen as a reason for filing for divorce, but there can be other causes, including adultery and cruelty.

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.



Glossary

Affidavit – a document, written or printed, that is a statement of facts, made voluntarily, that is then confirmed by either an oath or affirmation

Bill – the formal written complaint in the form of a petition

Chancery – equity; the system of jurisprudence dispensed in a court of equity

Defendant – the person, in divorce cases, against whom the divorce is sought

Demurrer – the formal method of disputing the legality of the proceeding rather than the facts stated in the case

Deposition – testimony of a witness that is written and authenticated with the intention of using it in court

Docket – the court's calendar

Equity – the impartial justice between two persons whose rights are in conflict

Libellant – the individual who brings the complaint, in the case of a divorce, the individual making the petition for the bill of divorce (see Plaintiff)

Motion – an application to the court by the parties or their counsel needed to obtain some ruling that has become necessary in the progress of the case

Orator – the plaintiff in a cause in chancery

Oratrix – a female plaintiff in a cause in chancery

Order – a command or direction from the court (in divorce cases this could refer to a command from the court to supply them with a financial statement, for instance)

Plaintiff – the individual who brings the complaint or petition (in divorce cases they may be called plaintiff or libellant)

Præcipe – a writ demanding that the defendant do what he has been told to do or to show a valid reason why he either hasn't done so or can't

Summons – to notify the defendant that a legal action has been filed against him/her

Subpœna – the method of informing a witness, or the defendant in the case of a divorce, that their attendance in court is required at a specific date and time

Writ – a document generated by the court, in the form of a letter, sent to a sheriff, officer of the law, or an individual, of whom the court wishes to command an action; it bears the seal of the court

Bibliography

Books

Catt, Carrie Chapman, and Nettie R. Shuler. *Woman Suffrage and Politics: The Inner Story of the Suffrage Movement*. 1923. Reprint, Dover Publications, 2020.

Garner, Bryan A., ed. *Black's Law Dictionary*. 11th ed. Thomson Reuters, 2019.

Hartog, Hendrik. *Man and Wife in America: A History*. Harvard University Press, 2000.

Hoff, Joan. *Law, Gender, and Injustice: A Legal History of U.S. Women*. New York University Press, 1991.

Holton, Woody. *Abigail Adams: A Life*. Free Press, 2010.

McClure, Rhonda R., ed. *Genealogist's Handbook for New England Research*. 6th ed. New England Historic Genealogical Society, 2022.

Rose, Christine. *Courthouse Indexes Illustrated*. CR Publications, 2006.

Salmon, Marylynn. *Women and the Law of Property in Early America*. University of North Carolina Press, 1986.

Szucs, Loretto Dennis, and Sandra Hargreaves Luebking. *The Source: A Guidebook to American Genealogy*. 3rd ed. MyFamily.com, 2006.

Online Resources

Ancestry <https://ancestry.com/>

FamilySearch.org www.familysearch.org

FamilySearch Catalog www.familysearch.org/search/catalog

FamilySearch Research Wiki www.familysearch.org/en/wiki/Main_Page

Genealogical Publishing Company, Inc. Online Books Subscription Site
<https://genealogical.vitalsource.com/>

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