4-1977

The Married Women's Property Act, 1882: A Study of Victorian Reform

Charles Norbert
Western Kentucky University

Follow this and additional works at: https://digitalcommons.wku.edu/theses
Part of the European History Commons, Social History Commons, and the Women's History Commons

Recommended Citation
https://digitalcommons.wku.edu/theses/2701

This Thesis is brought to you for free and open access by TopSCHOLAR®. It has been accepted for inclusion in Masters Theses & Specialist Projects by an authorized administrator of TopSCHOLAR®. For more information, please contact topscholar@wku.edu.
Norbert,

Charles G.

1977
THE MARRIED WOMEN'S PROPERTY ACT, 1882:
A STUDY OF VICTORIAN REFORM

A Thesis
Presented to
the Faculty of the Department of History
Western Kentucky University
Bowling Green, Kentucky

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
Charles G. Norbert
April 1977
THE MARRIED WOMEN'S PROPERTY ACT, 1882:
A STUDY OF VICTORIAN REFORM

Recommended June 23, 1977

Jack W. Sharkey
Director of Thesis

Lowell H. Harrison

Approved July 5, 1977

Dean of the Graduate College
This thesis proposes to deal with the development of the Married Women's Property Act of 1882. This Act exemplified the effort to improve the rights of women in the nineteenth century. Similar to the series of Reform Acts, the series of Married Women's Property Acts (1870, 1874, 1882, and 1893) represented the gradual extension of the tenets of Victorian liberalism to a broader portion of the English population. The unique feature of these Acts was that they marked the transcendence of liberalism over sexual barriers.

In order to understand the significance of these Acts it is necessary to note the accepted image of a woman and a wife. The Victorian ideal of womanhood guaranteed her subjection to the family and her husband. This accepted social subordination was further substantiated by the law. Basically, upon marriage, a woman became a legal non-person. All of her possessions passed into her husband's hands. It was precisely this problem that the provisions of the Married Women's Property Act sought to remedy.

At this point I want to recognize the valuable assistance and encouragement of several persons. I want to express my gratitude to my committee, Dr. Jack W. Thacker, Dr. Lowell H. Harrison, and Dr. Carol Crowe Carraco, for their constructive criticisms and suggestions. I want to acknowledge my typists, Jean Morris and, especially, Linda Bragdon for her invaluable service in the preparation
of the final copy. Finally, I want to thank Jessica, my wife, for her patience, encouragement, and devotion. Without her the whole project would be meaningless.
TABLE OF CONTENTS

I. The Social Position of Wives ........................................ 1
II. The Legal Position of Wives ......................................... 31
III. The Married Women's Property Act of 1882 ..................... 60
IV. The Significance of the Act ......................................... 80
Bibliography ................................................................. 90
The major purpose of this thesis was to analyze and evaluate the development of the Married Women's Property Act of 1882. This Act exemplified the effort to improve the rights of women in nineteenth century Britain. Similar to the series of Reform Acts, the series of Married Women's Property Acts (1870, 1874, 1882 and 1893) represented the gradual extension of the tenets of Victorian liberalism to a broader portion of the English population. The unique feature of these Acts was that they marked the transcendence of liberalism over sexual barriers.

In order to understand the significance of these Acts it was necessary to note the accepted image of a woman and a wife. The traditional Victorian ideal of womanhood guaranteed her subordination to the family and her husband. However, William Thompson and Mary Wollstonecraft were early advocates of the need for a reappraisal of a woman's social and economic role in society. A comparison between John Ruskin's "Of Queens' Gardens" and John Stuart Mill's *The Subjection of Women* revealed the two approaches to the problem of a woman's true position in Victorian society.

The accepted social subordination of a woman and a wife was further substantiated by the law. Basically, upon marriage, a woman became a legal non-person. All of her possessions passed into her husband's hands. The degree of a husband's control varied with the specific type of
property involved. In certain instances, owing to the provisions of restraint on anticipation developed through the laws of equity, a wife's property could be secured against possible encroachment by her husband. However, this provision did not establish a wife's financial independence. The main advantage of restraint on anticipation was to protect a family estate from an extravagant husband.

The problem of a wife's economic status was precisely what the provisions of the Married Women's Property Act sought to remedy. The issue was first debated in Parliament in 1857, however, fears of disturbing domestic harmony thwarted any successful passage until 1870. The 1870 Act merely guaranteed a wife separate use of her earnings and wages. It was not until 1882, that Parliament passed a sweeping reform guaranteeing a wife the full sanctity of private property, thereby releasing her from the economic bondage to her husband.

Although the debate over the merits of these Acts subsided within a very short time, their importance should not be minimized. They provided as important foundation for the blossoming debate for the eventual enfranchisement of women. More importantly, the Married Women's Property Acts signaled the beginning of the end of the Victorian view of the submissive wife.
Chapter I
THE SOCIAL POSITION OF WIVES

"But our house has been nothing but a play-room. Here I have been your doll-wife, just as at home I used to be papa's doll-child."

Henrik Ibsen, A Doll's House.

In the area of human relations the basic and in many ways the most obvious characteristic of English society in the Victorian era was the inequality of the sexes. Historians have frequently focused upon the issues of political disenfranchisement, economic exploitation, social wealth, education or other conditions, while glossing over the inescapable and unchangeable fact that sex doomed more than half of the population to an unequal chance in practically all aspects of life.1 Moreover, this sexual repression accentuated other characteristics of the age. Such valid epithets as energetic, self-satisfied, and exuberant, attributed to the Victorians, were tainted by the dominant qualities of snobbery, hypocrisy and prudery. 2


2 The basic characteristics of the Victorian age are depicted in such works as: Asa Briggs, The Age of Improvement (New York, 1959), 446-489; Asa Briggs, Victorian Cities (New York, 1963), 51-82; G. Kitson Clark, The Making of Victorian England (New York, 1972), 28-64; Herbert
It is often forgotten that the Victorian era was only a short step removed from the harshness of the previous century. At the beginning of Victoria's reign, England was still predominantly agrarian, and life, especially in the country, was harsh, rugged and unrefined. However, with the advent of the railroads and the growth of industrialization English society began to shed the rugged and uncouth traits of their ancestors. With their social and economic gains, the Victorians began to adopt characteristics that would set themselves apart and above the "muck" of the past.

George Kitson Clark suggested the reasons for the outstanding characteristics of the Victorians:

The concentrated industry of the Victorians was the natural habit of men confronted by new and exciting opportunities. The uneasy Victorian snobbery was probably the result of the impact of new classes who wanted to secure their position in the traditional hierarchy. Victorian hypocrisy the result of the attempt to lay claim to new standards of conduct which proved to be too hard to maintain consistently, Victorian prudery the result of a struggle for order and decency on the part of people just emerging from the animalism and brutality of primitive society. These are probably signs of process of growth and change.

He maintained that these characteristics were forms of defense mechanisms employed to prevent any possible regression into the uncivilized past. As a further preventive measure, a defensive

---

Tingsten, Victoria and the Victorians (n.p., 1965; English translation, 1972), 18-68; and George M. Young, Portrait of an Age (London, 1960).

3 Clark, The Making of Victorian England, 63-64.
perimeter was established around the family unit, with the drawing-room as the citadel against the ever-present evils of the world. With women safely within its confines, either as wives or as dependents, men were free to venture out into the work-a-day world. Women were to be protected from all possible encroachments from the world of reality, and they were to strive to make their home a place of moral virtue, peace, and "... a shelter for those moral and spiritual values which the commercial spirit and the critical spirit were threatening to destroy ..." The net result of this attempt to isolate the home from reality was that it heightened hypocritical attitudes. John Ruskin defined the true nature of the home as:

... the place of Peace; the shelter, not only from all injury, but from all terror, doubt, and division. In so far as it is not this, it is not home; so far as the anxieties of the outer life penetrate into it, and the inconsistently-minded, unknown, unloved, or hostile society of the outer world is allowed by either husband or wife to cross the threshold, it ceases to be home; it is then only a part of that outer world which you have roofed over, and lighted fire in. But so far as it is a sacred place, a vestal temple, a temple of the hearth watched over by Household Gods, before whose faces none may come but those whom they can receive with love, --so far as it is this, and roof and fire are types only of a nobler shade and light, --shade as of the rock in a weary land, and light as of the Pharos in the stormy sea;--so far it vindicates the name, and fulfils the praise, of Home.

---


5 Houghton, Victorian Frame of Mind, 343.

The Victorians' attitudes toward the treatment of sex exemplified their hypocrisy and prudery. Part of their grand strategy for civilizing society was taming the savagery of sex. To achieve this goal, they banned sex, as much as possible, from everyday life through a strict interpretation of the sixth commandment. In fact, this interpretation was so strict that violation brought not only social condemnation but damnation for any lewd thought.  

Banning sex from conversation was easy enough; stern reprimands and punishments were used to keep the young in line. Excluding it from immediate sight was accomplished by a change in fashion which made women bell-shaped with skirts that concealed everything except the toe. The covering of limbs even included inanimate objects such as chair and piano legs, which were hidden behind heavy cloths. The sex act, itself, offered a more difficult problem.

Sexual intercourse was regarded as something unclean and shameful, though necessary for the continuation of the species. The sacred element of "love" had the power to render sex almost respectable, perhaps even pure, but this element served also as a protection against sensuality. To love a pure woman, indeed, even to associate with her, was supposed to make chastity endurable for men.  

The "double standard" was in its heyday when it came to the Victorian concept about sex. A man was regarded as being disposed to

---

8Tingsten, Victoria and the Victorians, 56.
sexual gratification, whereas a "good" woman was considered averse to this beastly desire. Even a married woman was supposed to be so pure that she was incapable of deriving enjoyment from sexual intercourse and merely yielded to the male lust of her husband. In order to maintain an air of respectability, the act was to take place in a "darkened bedroom into which the husband would creep to create his offspring in silence while the wife endured the connection in a sort of coma, thereby precluding any stigma of depravity which would have been incurred by showing signs of life." 9

Silence was the most important factor, for a lady to derive pleasure from the act was unthinkable; 10 the medical books of the period told her emphatically that to do so showed a disturbing abnormality. 11 A lady's duty was to shut her eyes, grit her teeth, and, as Queen Victoria was reputed to have told one of her daughters

---

9 Crow, Victorian Woman, 25.

10 Mrs. Anna Sewell, author of Black Beauty, published a book entitled Woman and the Times We Live In. Dedicated to her husband, it stated what many Victorians felt: "'It is a man's place to rule and the woman's to yield. He must be held up as the head of the house, and it is her duty to bend so un mur murl rung ly to his wishes that the due respect for his sex demands.'" As cited in Kenneth Hudson, Aspects of Social and Economic History: The Place of Women in Society (London, n.d.), 56.

11 Tingsten, Victoria and the Victorians, 62-64, devoted several pages to the various views put forth in contemporary medical books and journals on this subject. Dr. Elizabeth Blackwell in The Moral Education of the Young in Relation to Sex (London, 1879), and in The Human Element in Sex (London, 1884), went so far as to praise the merits of celibacy. Sir James Paget expressed in his article "Clinical Lectures and Essays" published in The Lancet: "'Many of your patients will ask you about sexual intercourse, and expect you to prescribe fornication. I would as soon prescribe theft and lying, anything else that God has forbidden.'" Tingsten, Victoria and the Victorians, 62. All these viewpoints...
who married abroad; "'Think of England', or, on a more practical level, prepare for yet another pregnancy." 12

Once sex was confined securely between the bed sheets of the darkened chamber, then the "purity" of the society was preserved. However, it was hypocritical to deny the existence of sexual intercourse. Women had been raised from childhood on the idea that marriage and child-bearing were to be the ultimate goal of their existence, but were warned against yielding to any intimate pre-nuptial relationship. However, for the man there was a distinctly different standard. Unchastity, in the sense of sexual relations before or outside of marriage, was, like everything else, available for the man. If it were an offense, it was at least a mild and pardonable one; but for the woman it was utterly inexcusable. 13

...maintained sex as a necessary evil to be regarded with distaste and ideally with abstinence.

12 Crow, Victorian Woman, 52.

13 It would be extremely Whiggish to view these attitudes toward sex as being concrete and universally accepted in the Victorian period. A scan of the pornographic literature of the period, such as the eleven volume anonymous autobiography, My Secret Life, offers an extremely contradictory viewpoint. On the one hand, the "official" view presents an extremely sterile society, whereas the pornography depicts solecisms at every lamp post. The problem of obtaining an accurate picture of the sexual activities of the Victorians rests solely upon a lack of evidence. Proper society simply did not dwell upon this aspect and there are inherent problems with pornography as an historical source. Brian Harrison, "Underneath the Victorians," Victorian Studies, X (March 1967), 247-248, pointed out the historical limitations of pornographic literature. By its very nature, this type of literature deals with anonymous actors and timeless physiological details:

Pornography is a highly abstract literary form not because it generalises, but because it is concerned with organs rather than with individuals, and because it infinitely repeats detailed impersonal descriptions of physiological movements in various
The Victorian snobbery was perhaps best depicted in the new middle class. In the first forty years of the nineteenth century the population of Britain almost doubled, rising from 10.5 million in 1801, to 18.1 million in 1841. As the nation grew and became more economically sophisticated there was a disproportionate increase in the rising middle class connected with trade and manufacturing. At first, theirs was a shaky position, teetering between the lower ranks of society and grasping for the status of the upper crust.

When a man had entered this middle class by his financial or professional status, it became the responsibility of the woman to personify what he had achieved and also to maintain the family's newly acquired social position. In order to demonstrate this new position, they adopted certain rules, rituals and symbols to distinguish themselves from the lower classes. Quite naturally their rules and rituals were designed to emulate the upper class, being ever conscious to smooth off the rough edges and to discard any trait which might, even in the slightest way, be construed as lacking in combination. It is structurally shapeless, readily loses contact with reality, and is written almost invariably from the masculine viewpoint. However, the presence of this literary form indicates perhaps at least some inconformity within the Victorian social structure.

Crow, Victorian Woman, 45.

It is extremely difficult, and perhaps futile to attempt to pin-point the precise moment of birth of the new middle class in England. Harold Perkins, The Origin of Modern English Society, 1780-1880 (Toronto, 1969), 216, dealt with the rise of class and class-consciousness in nineteenth-century England. He stated that the birth of both the middle and working classes occurred between the Peterloo Massacre and the Royal Divorce Bill. He stated: "The union of the middle and working classes against the aristocracy was hastened and anticipated by two events which together marked the end of the period of birth."
refinement. It was this change in social condition and mental outlook that demonstrated the characteristics of the age; the optimism, the faith in progress, the zeal for social reform, the moral enthusiasm, and the growing air of selfconfidence.

From out of this new rising middle class, the feminist movement was born -- a birth not from the factory, or the mine, but from the drawing-room of the middle class. As Viola Klein pointed out: "The women who attempted to improve their lot and to reform their position were not as exploited class in the sense of suffering material hardship . . . . If they were 'dispossessed', they were dispossessed of their sense of purpose and social usefulness." 16

The industrialization of the period, besides providing the impetus for the growth of the middle class, had a profound effect upon the women of England. It transferred an increasing number of productive activities from the home to the factory, and thereby relieving women of many household burdens. In the case of the more affluent, the chores that remained could be passed on to the servants and maids. 17 It created for the middle-class wife as abundant

---


17 The burdens of the household work were dealt out to the various servants and maids employed by the household. Caroline E. Stephens published an article, "Mistress and Servants," The Nineteenth Century, VI (Dec., 1879), 1051-1063, in which she set out the various guidelines to be followed when dealing with the hired help. She attempted to state the proper approach that should be cultivated when dealing with the servants. The mistress was to remain aloof but nonetheless maintain a cordial relationship with the servant while, at the same time, maintaining the wholesome moral atmosphere of the house. She stated: "Well-bred women have an inborn power, which, with practice,
amount of leisure. George J. Romanes wrote an article on "Recreation" in 1879, in which he expressed his displeasure with the lack of emphasis upon physical exercise in England. At one point, he described what might have been a typical day for an upper- or middle-class wife in London. She probably rose at nine or ten o'clock, "without much appetite for breakfast." She remained inside reading a novel or magazine, writing letters or attending to her household duties until lunch time. After lunch she took a carriage ride, paid a few afternoon calls, and returned home for afternoon tea. Until it was time to dress for dinner there was another period devoid of physical recreation. Dinner afforded her a certain amount of mental exercise with pleasant company. After dinner, during "the season", she probably held an evening party, went to the opera, or attended some other kind of amusement until the small hours of the morning.  

George J. Romanes, "Recreation," The Nineteenth Century, VI (Sept., 1879), 415. Romanes' article centered around the lack of muscular exercise on the part of the leisure class in England. A lady's daily activities offered her no real exercise and her evening activities confined her to "hot rooms with vitiated air." Aside from the contemporary emphasis of his article, Romanes provided a concise description of a typical day for a Victorian lady.
Finally she retired to rest, "complaining that her delicacy of constitution makes her a martyr to headaches, languid circulation, lassitude and feeling of sickness."\textsuperscript{19} It was no wonder, concluded Romanes, that she arose the next morning without much of an appetite.

The lady in the country had more opportunity for physical exercise. Such outdoor amusements as rowing, riding, skating, lawn tennis and croquet occupied her time. All of these endeavors were "happily recognised by the stern law of etiquette as suitable for ladies, and which in performance are singularly graceful as well as highly conducive to good spirits."\textsuperscript{20}

Of course, a lady in the country was not without her indoor activities. Like her city counterpart, she was generally well educated, often read several languages and displayed a literary knowledge of drawing or painting, music and fancy needlework. As well as being interesting to do and to chat about, these hobbies provided proper subjects for the copious letters that were an "admired trait of the day when the ability to write elegant and entertaining letters was a mark of excellent breeding for a young lady."\textsuperscript{21}

This new middle class had put a premium on the idleness of their women. They attached a definite prestige value to it. Apart from bearing children, the social function of the bourgeoisie wife was to

\textsuperscript{19}Ibid.

\textsuperscript{20}Ibid.

be a "living testimony to her husband's social status."\textsuperscript{22} Francis Power Cobbe, a noted social and education reformer, wrote: "Nobody dreamed that any of us could, in later life, be more or less than an ornament to society."\textsuperscript{23} Mary Wollstonecraft, who felt the way women wasted their time was degrading and one of the main causes for their deplorable plight, termed a woman's leisure as being consumed by "... a round of little cares, or vain pursuits" which frittered "away all the strength of mind and organs, they become naturally only objects of sense."\textsuperscript{24} The bourgeoisie wife, by her actions, very aptly fitted Ibsen's epithet as a doll in a doll house world, completely removed from the cares and concerns of the world of reality.

She was placed upon a pedestal to be admired as a living testimonial of her husband's economic and social success. The woman was secured safely within the sanctuary of the home, as a wife, if possible, or a dependent. The proper destiny of a woman was to be sheltered in a home provided and maintained by a man.\textsuperscript{25} However, in the nineteenth century certain elements of discontent began to permeate the middle class family unit.

\begin{itemize}
\item \textsuperscript{22} Klein, "Emancipation of Women," \textit{Third Programme}, 264.
\item \textsuperscript{23} Ibid.
\item \textsuperscript{24} Mary Wollstonecraft, \textit{A Vindication of the Rights of Woman: With Strictures on Political and Moral Subjects}, edited by Charles W. Hagelman, Jr. (New York, 1967; first published 1792), 124.
\item \textsuperscript{25} "Women and Work," \textit{The Woman Question: Papers Reprinted From "The Examiner"} (London, 1872), 35.
\end{itemize}
Along with the rise of the middle-class and its imitation of the upper crust of society, psychological elements were beginning to weave their way into the fabric of this new middle class. Elements which sprang from the American and the French revolutions were now being applied to other areas of social concern. Specifically, ideas from the revolutions were being applied to the emancipation of women. At a time when monarchy and aristocracy seemed to be on the verge of destruction, men and women began to inquire whether the elements of despotism operated in other areas besides the political arena.

The French people had killed a king, massacred an aristocracy and plundered a church, all in the name of liberty. The French Revolution had rendered the Bourbon Divine Right of kingship null and void, but was there not a similar situation still existing? Was there not a divine right of men over women? William Thompson and Mary Wollstonecraft began to see such parallels.

The political economist, William Thompson, in the early nineteenth century, cried out for the women of England to awaken to the situation of degradation that existed. For him the situation

---

26 William Thompson (1785?-1833), a wealthy Irish landlord from County Cork, was regarded by many as the founder of scientific socialism. He came under the influence of Jeremy Bentham and resolved to work out that philosopher's utilitarian principles. Their correspondence eventually led to a close friendship, and Thompson lived with Bentham in London for several years. Thompson was also an enthusiastic supporter of Robert Owen, and he was a great admirer of Owen's co-operative system. He was perhaps the first writer in England to raise this question of the distribution of wealth on industry rather than commerce. He was a strict vegetarian and teetotaler for the last twenty years of his life. He died of inflammation of the chest on March 28, 1833. Sir Leslie Stephens and Sir Sidney Lee, The Dictionary of National Biography: From the Earliest Times to 1900 (22 vols., London, 1917-1922), XXII, 1251-54. John Stuart
had become intolerable; women had been reduced to "trifling objects," having no control over their property or even the children "which you are the passive machines of producing." Women were degraded to the level of mere "automatons," they were the passive tool of a man's pleasures and passions, with their actions strictly regulated by "the arbitrary will of masters, to whom, by the necessities of existence uniting yourselves, you are compelled to vow uninquiring obedience." No longer should women tolerate the despotic nature of the husband over her person, her property or even her children.

In his frantic plea for action, Thompson asserted that in England, a country purported to be the most enlightened in civilization, the "glorious" principle of utility had sealed the fate of women. As long as individual competition existed, where men dreaded the competition of other men in every line of industry, one could imagine how much they would dread the additional competition from women. Man, the selfish, despotic creature that he was, according to Thompson, would never avail himself to this challenge from women. Within this "latest and most enlightened system of philosophy, the glorious principle of Utility itself, hardly born, is prostituted to seal your

---


28 Ibid., 193-194.

29 Ibid., 195-197.
eternal degradation, classing you with the immature, imperfectly
developed portion of the human race, with infants and children,
to be governed at the arbitrary command of your masters." 30

Since, according to Thompson, the accumulation of individual
wealth under the present system was the only important goal, all
other qualities which did not contribute to this end would naturally
be disregarded. Thus, owing to the natural physical strength of
men, which this system perpetuated, women would be eternally condemned
to an inferior position. The only way to alleviate this dilemma was
to become totally detached from it.

Only through a system of Associations or of Labor by Mutual
Co-operation could true equality between the sexes be obtained. This
Thompsonian socialist system would provide the proper atmosphere where
all would labor for the common good or common happiness rather than
promoting individual competition. Because men would have no more
wealth than women, and no more influence over the general property,
and their superior strength would be reduced to a level of utility,
they would no longer be in a position of dominance. In fact, men
could "procure no sexual gratification but from the voluntary
affection of woman . . .." 31

In these associations, women would at last be freed from the
arbitrary, despotic grasp of the male. A woman would also be
freed from the dependence upon an individual man for daily support,
since the institution of marriage would be revamped. Children would

30 Ibid., 195.
31 Ibid., 201.
be educated out of the common wealth and women would be freed to
develop their talents for the benefit of society. Thompson's
social system would eliminate the existing family unit and all
children would be raised by the community as a whole; therefore,
woman would no longer be restricted to the home, chained to her
traditional role of caring for and raising a family.

A social system such as this does not spring up over night and
Thompson was very much aware of this fact. As he stated: "No
wretches ever passed from a state of slavery to a state of freedom
without more or less of mental excitement, without more or less of
alarm to the timid amongst their masters." Affirming the English
timidity toward violent revolution and upheaval, Thompson set
forth a guideline of reforms to strive for until the Associations
were eventually established. Thompson stated:

In the mean time, however, until the association of men
and women in large numbers for mutual benefit shall supersede
the present isolated mode of exertion by individual competition,
assert every where your right as human beings to equal
individual liberty, to equal laws, political, civil, and criminal,
to equal morals to equal education,—and, as the result of
the whole, to equal chances, according to the extent and improvement
of your faculties and exertions, of acquiring the means of
happiness, with men.

He did not advocate violence to bring his socialist system into
being; rather, until it did occur, he encouraged working within the
existing system to bring about the necessary reforms. However, as

32 Ibid.
33 Ibid., 208.
34 Ibid., 207-208.
he saw it, women could achieve their rightful status of equality only by a complete revision of the social and economic system.

Unlike Thompson, Mary Wollstonecraft, writing in the late eighteenth century, did not conclude her work with a plea for the eventual creation of a socialist system to replace the existing order. She reflected upon the French Revolution and its relationship to the question of women's rights, for to her the French Revolution offered a sign of new hope.\textsuperscript{35} She did not advocate upheaval, but believed

\textsuperscript{35} Wollstonecraft, \textit{A Vindication of the Rights of Woman}, 78.

She stated: "The divine rights of husbands, like the divine rights of kings, may, it is to be hoped, in this enlightened age, be contested without danger, and though conviction may not silence many boisterous disputants, yet, when any prevailing prejudice is attacked, the wife will consider, and leave the narrow-minded to rail with thoughtless vehemence at innovation."

Mary Wollstonecraft wrote \textit{A Vindication of The Rights of Woman} prior to her visit to France in December, 1792; however, she had promised her readers a sequel to it devoted to the further problems of women. Books dealing with controversial subjects, especially those dealing with the French Revolution, were in great demand. On the surface, it appeared that she was journeying to France to observe, learn, and write about the revolution. While in Paris, she became involved in drawing up a plan for coeducation, which she discussed in the \textit{Vindication}. Unfortunately, it is not known whether she completed her plan or even presented it to the Committee on Public Instruction. Elenor Flexnor, \textit{Mary Wollstonecraft: A Biography} (New York, 1972), 167-181.

Flexnor does, however, hint at an underlying factor for her trip to Paris. She had fallen in love with an artist, Henry Fuseli, who, unfortunately for Mary, was already married. Her relationship with Fuseli was so strong that she even called upon Sophia Fuseli, his wife, and begged to be permitted to join their family and live under the same roof with Sophia and her husband, claiming she could no longer exist without "the satisfaction of seeing him and conversing with him daily." This was a proposal which Sophia rejected out of hand, and she ordered Mary never to darken their door again. With a deep sense of rejection, she went to France hoping "to lose in public happiness the sense of private sorrow." William Godwin, \textit{Godwin and Mary: Letters of William Godwin and Mary Wollstonecraft}, edited by Ralph M. Wardle (Lawrence, Kansas, 1966), 3.
that by working through the existing system women could obtain their proper status.

The key word in her *A Vindication of the Rights of Woman*, published in early 1792, was education. Education, to her, was the necessary tool to be employed in achieving a satisfactory position for women in society. She felt that a woman was first and foremost an individual, having her own powers and capacities that needed development, if not to the same level as a man, at least to a much higher level than she had been allowed to attain. Wollstonecraft stated:

I, therefore, will venture to assert, that till women are more rationally educated, the progress of human virtue and improvement in knowledge must receive continual checks. And if it be granted that woman was not created merely to gratify the appetite of man, or to be the upper servant, who provides his meals and takes care of his linen, it must follow, that the first care of those mothers or fathers, who really attend to the education of females, should be, if not to strengthen the body, at least, not to destroy the constitution by mistaken notions of beauty and female excellence; nor should girls ever be allowed to imbibe the pernicious notion that a defect can by any chemical process of reasoning, become an excellence. 36

She urged, in her rather long-winded manner, that all traditional views of women be set aside and that women be given the fullest opportunity for development.

By no means was Wollstonecraft a believer in the superiority of women over men. She agreed that they were, on the average, both physically and mentally inferior to men. "Let it not be concluded," she declared, "that I wish to invert the order of things; I have already granted, that from the constitution of their bodies, men seem to be designed by Providence to attain a greater degree of

36 Ibid., 77.
But, she asserted, male superiority should not be used as an argument to impede the development of women's rights. The way to accomplish this development was through a strengthening of the mind. She concluded:

Strengthen the female mind by enlarging it, and there will be an end to blind obedience; but, as blind obedience is ever sought for by power, tyrants and sensualists are in the right when they endeavor to keep women in the dark, because the former only wants slaves, and the latter a plaything. The sensualist, indeed, had been the most dangerous of tyrants, and women have been duped by their lovers, as princes by their ministers, whilst dreaming that they reigned over them.  

Believing that women had been drawn into a sense of false security, she threw down the gauntlet, and challenged women to throw off the bondage of the petty tyrants.

All endeavors pursued by women required a good mind; even to be a good mother, which was portrayed as the traditional destiny of women, required responsibility and intelligence. Wollstonecraft stated:

To be a good mother--a woman must have sense, and that independence of mind which few women possess who are taught to depend entirely on their husbands. Meek wives are, in general, foolish mothers; . . . that unless the understanding of woman be enlarged, and her character rendered more firm, by being allowed to govern her own conduct, she will never have sufficient sense or command of temper to manage her children properly.

She felt that what people had termed a "woman's place" required

---

37 Ibid., 59.
38 Ibid., 56.
39 Ibid., 227.
better training and education than was generally provided.

Wollstonecraft's ideas about education were quite radical for her day. She was opposed to boarding schools for students of any age. They removed the child from the natural environment of the home and tended to promote laxity and vice, while living at home inspired "a love of home and domestic pleasures."\(^4^0\) She advocated the idea of coeducation and the mixing of all classes, at least in the elementary schools. She believed this form of education would be a more natural situation:

If marriage be the cement of society, mankind should all be educated after the same model, or the intercourse of the sexes will never deserve the name of fellowship, . . . . Nay, marriage will never be held sacred till women, by being brought up with men, are prepared to be their companions rather than their mistresses . . . .\(^4^1\)

One aspect which set Mary Wollstonecraft's ideas apart from other reformers was her insistence that reason, which set humans apart from other animals, was a gift from God. This gift, to her, required no proof, but it did serve as evidence that humans had an immortal destiny. To deny a woman the power of reason, therefore, was to deny her what Christian faith had promised. Thus, reason could not be held solely by one sex alone. If a woman, no less than a man, was endowed by God with His own nature, if she was to obtain the destiny proclaimed by the Christian faith, then she could not

\(^{40}\) Ibid., 243.

\(^{41}\) Ibid., 247.
be confined to the role presently bestowed on her by society.  

She stated:

Gracious Creator of the whole human race! Has Thou created such a being as woman, who can trace Thy wisdom in Thy works, and feel that Thou alone art by Thy nature exalted above her,--for no better purpose? Can she believe that she was only made to submit to man, her equal, a being, who, like her, was sent into the world to acquire virtue? 

In the end, she rested her argument not on an appeal for justice or on reason but, rather, upon the principles of Christian faith.

Wollstonecraft's own lack of a well-rounded education appeared throughout the book. It was doubtful whether she had ever read some of the authors she referred to, such as Swedenborg, Monboddo, Adam Smith, Bacon, and Leibnitz. Her work suffered from a lack of organization, many irrelevant digressions, and loose generalizations.

The book was greeted with mixed reactions. Many women shrank from its exaggerations, while others refused to see one shred of truth in its pages. There were satirical replies to the Vindication such as A Sketch of the Rights of Boys and Girls, by an author bearing the pseudonym of "Launcelot Light", and A Vindication of the Rights of Brutes, which was attributed to the philosopher, Thomas Taylor. However, the book sold widely with a second edition appearing by the end of the year, and the work was translated into

---

42 Flexnor, Wollstonecraft, 158-160.

43 Wollstonecraft, A Vindication of the Rights of Woman, 114.

44 Flexnor, Wollstonecraft, 164.
While the success or failure of the woman's movement certainly did not hinge upon one particular book, Wollstonecraft's treatise did provide guidelines for women in the nineteenth century. Her work spurred on such reformers as Barbara Leigh Smith and her struggle for the repeal of the Contagious Disease Act and Mrs. A. Sutherland Orr and the fight for women's suffrage.

Perhaps the best way to assess the attitudes toward the woman's movement in the Victorian period is to contrast the two central documents of the sexual spectrum. John Stuart Mill's *The Subjection of Women* and John Ruskin's "Of Queens' Gardens" revealed the two approaches to the problem of women's true position in society. Mill portrayed the progressive and the realist approach; Ruskin typified the traditional attitudes of the age. Mill's essay was hailed as the book in which the entire cause of women was first adequately stated. Ruskin's lecture was called one of the most complete insights into "that compulsive masculine fantasy one might call the official Victorian attitude."  


47 Kate Millett, "The Debate Over Women: Ruskin vs. Mill," *Suffer and Be Still: Victorian Women in the Victorian Age*, edited by Martha Vicinus (Bloomington, Indiana, 1972), 122. Houghton, The Victorian Frame of Mind, 343, supports this statement: "This lecture of Ruskin's is the most important single document I know for the characteristic idealization of love, women, and the home in Victorian thought."
Ruskin presented "Of Queens' Gardens" at the Manchester Town Hall in 1864 before a mixed audience of middle-class men and women. It appeared in print with the publication of *Sesame and Lilies* the following year, and a second edition was printed in 1871, with an additional preface which mentioned his infatuation with one Rose La Touche. The last two lectures, "Of King's Treasuries" and "Of Queens' Gardens", in *Sesame and Lilies* were ostensibly written for young people but in reality, as he confessed in his later preface, they were intended "to please one girl."48

He greatly flattered the women in the audience by referring to them as "Queens." Feeling the growing pressure of the woman's movement, he stated: "And there never was a time when wilder words were spoken, or more vain imagination permitted, respecting this question."49

On the question of the rights of women, Ruskin steered a middle-of-the-road approach. On the one hand, he attacked the radical elements of the feminists: "We hear of the mission and of the rights of Woman, as if these could ever be separate from the mission and the rights of Man;-- as if she and her lord were creatures of independent kind and of irreconcilable claim. This, at least,


49 John Ruskin, "Of Queens' Gardens," 49.
is wrong."50 This separation, to Ruskin, was pointless, since the very continuance of the species rested upon a dependency of both sexes. The idea that women could even dream of acting as "creatures of independent kind" was preposterous.

On the other hand, however, he told his audience that he was not entirely in favor of the supreme dominance of the men. He directed his listeners on his middle-of-the-road concept when he stated:

And not less wrong--perhaps even more foolishly wrong (for I will anticipate thus far what I hope to prove)--is the idea that woman is only the shadow and attendant image of her lord, owing him a thoughtless and servile obedience, and supported altogether in her weakness by the pre-eminence of his fortitude.51

He continued by disputing popular statements that women were loved and honored, that they had nothing to complain about, and that they were even treated as royalty, as long as they stayed at home.

It was foolish to believe that women could be independent from men, and it was also folly to expect women to become completely subordinate to their husbands and to act as their shadows. Ruskin's strategy was an attempt to replace this new feminist agitation with a doctrine he termed "separate sphere". Kate Millett categorized this doctrine as "the period's most ingenious mechanism for restraining insurgent women."52

Ruskin's thesis or strategy was really very simple. It was designed to soothe rather than to ruffle his listeners. He began with the basic assumption that the educated middle class exercised

50Ibid., 50.
51Ibid.
52Kate Millett, "The Debate Over Women," 123.
a "kingship" over the "illguided and illiterate." His task was simply to divide a little section of this realm off for the "Queens", or as he put it: "... what special portion or kind of this royal authority, arising out of noble education, may rightly be possessed by women ..." He referred to these territories, over which women would rule, as "Queens' Gardens."

Ruskin termed the sexes as complementary opposites, and he charted their "separate spheres," reserving the complete scope of human endeavor for the one, and the home for the other. He stated:

Now their separate characters are briefly these. The man's power is active, progressive, defensive. He is eminently the doer, the creator, the discoverer, the defender. His intellect is for speculation and invention; his energy for adventure, for war, and for conquest, wherever was is just, wherever conquest necessary. But the woman's power is for rule, not for battle,--and her intellect is not for invention or creation, but for sweet ordering, arrangement and decision. She sees the qualities of things, their claims, and their places. Her great function is Praise: she enters into no contest, but infallibly adjudges the crown of contest. By her office, and place, she is protected from all danger and temptation. The man, in his rough work in the open world, must encounter all peril and trial:--to him, therefore, the failure, the offense, the inevitable error: often he must be wounded, or subdued, often misled, and always hardened. But he guards the woman from all this; within his house, as ruled by her, unless she herself has sought it, need enter no danger, no temptation, no cause of error or offence.

53 Ruskin, "Of Queens' Gardens," 49. Ruskin's and Mill's description of a woman's education are almost exactly the same; however, Ruskin finds it a good thing and Mill despises it. John Stuart Mill, The Subjection of Women, introduction by Wendall Robert Carr (Cambridge, Mass., 1970; first published 1869), 88. Mill stated: "An education of the sentiments rather than of the understanding--calculated to render women fit for submission, vicarious experiences, and a service ethic of largely ineffective philanthropy."

54 Ruskin, "Of Queens' Gardens," 59.
Ruskin felt that the home was the proper place for the woman in society. She was to be the guiding force behind her man in his endeavors. No matter how hard he tried to disguise his intent, Ruskin still insinuated a subordinate role for women. Her sphere was relegated to be within the confines of the home, pursuing her wifely and motherly duties.

John Stuart Mill did not use such lofty terms as "Queens" or "Separate Spheres". The Subjection of Women was written in 1861, three years before "Of Queens' Gardens." It was not published, however, until 1869, two years before Ruskin reprinted his statement. Mill wrote his essay with the assistance of his stepdaughter, Helen Taylor, and indicated that his part was largely inspired by his wife, Harriet Taylor.55

When the book appeared in 1869, it produced perhaps the greatest public reaction of all his works. A reviewer rebuked Mill for his interest in "'the strangest'" and the "'most ignoble and mischievous

55 Mill, Autobiography, 173. He stated in a footnote that his opinion on this subject was

. . . little more than an abstract principle. . . . But that preception of the vast practical bearing of woman's disabili-
ties which found expression in the book on the "Subjection of Woman" was acquired mainly through her [Harriet Taylor] teach-
ing . . . I am painfully conscious how much of her best thoughts on the subject I have failed to reproduce, and how greatly that little treatise [The Subjection of Women] falls short of what would have been if she had put on paper her entire mind on this question, or had lived to revise and improve, . . . . , my imperfect statement of the case.

Most of Mill's biographers tend to agree that Harriet's intellectual influence on the treatise was slight. She did help to revise it and provided constant inspiration, but she was in no sense the origin-
of all the popular feelings of the age." His book, however, became the shield and bible of womenkind and it won for him an army of devoted feminists.

Mill was foremost a political realist, and he was quite aware of the revolutionary overtones of his thesis. Unlike Ruskin, Mill did not intend to placate his audience. In the opening paragraph of his work, Mill stated:

That the principle which regulates the existing social relations between the two sexes--the legal subordination of one sex to the other--is wrong in itself, and now one of the chief hindrances to human improvement; and that it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other. 57

This drastic remark was very much removed from the placid, tranquil "separate spheres" idea of Ruskin. Very much aware of the possible resistance, Mill stated: "In every respect the burden is hard on those who attack an almost universal opinion. They must be very fortunate as well as unusually capable if they obtain a hearing at all." 58

Perhaps the contrast between Ruskin and Mill can be best seen in their discussions of the home and the goodness of women. Ruskin's handling of the domestic scene was a primary example of the Victorian ideal. He termed it as a "woman's true place." The home was the

57 Mill, The Subjection of Women, 3.
58 Ibid., 4.
sphere Ruskin had designated the "Queen's Garden," set aside as a place of peace, free from anxieties and pressure of the outside world--the citadel. Moreover, it was deemed to be a sacred place, "a vestal temple where the members of the family can be received with love. And wherever a true wife is, there too is the home."\(^{59}\) Ruskin's analogy conjures up an image of a roaring fire with a grateful wife quietly attending to her tasks, never complaining, always placid and contented with her station in life.

Mill saw the scene from a very different perspective. The home was the center of a system he termed "domestic slavery." The Victorian wife was living under the longest rule of force in the history of tyranny. As Mill maintained: "If ever any system of privilege and enforced subjection has its yoke tightly riveted on the necks of those who are kept down by it, this has."\(^{60}\) Mill declared that it was time for a wife to be freed from the concept of being a bondservant within marriage. This concept was an enigmatic blot on modern society "a single relic of an old world of thought and practice exploded in everything else, but retained in the one thing of the most universal interest."\(^{61}\)

Mill cited some impressive legal and historical evidence to support his point. Although a husband could divorce his wife, a wife could not divorce her husband. English law defined the murder

\(^{59}\) Ruskin, "Of Queens' Gardens," 59-60.


of a husband as petit treason because a husband was considered the sovereign over a subject.\textsuperscript{62} Mill concluded that a wife was nothing more than a bond-servant of her husband. As Mill stated: "She vows a lifelong obedience to him at the altar, and is held to it all through her life by law."\textsuperscript{63} According to Mill, English law served to perpetrate and strengthen the husband's position over his wife.

Mill argued that even slaves had more rights than wives. At least a slave, like a soldier, was entitled to some leisure time away from the task of his master, but this was not the case for the wife. He stated:

Above all, a female slave has (in Christian countries) an admitted right, and is considered under a moral obligation to refuse to her master the least familiarity. Not so the

\textsuperscript{62}Petit treason, according to the statute (1351) could happen three ways: 'By a servant killing his master, a wife her husband, or an ecclesiastical person his superior, to whom he owes faith and obedience. A servant who kills his master whom he left, upon a grudge conceived against him during his service, is guilty of petit treason, for the traitorous intention was hatched while the relation subsisted between them; and this is only an execution of that intention. So if a wife be divorced (from bed and board), still the bond of matrimony subsists; and if she kills such divorced husband, she is a traitress . . .."

The punishment of petit treason, in a man, is to be drawn and hanged, and, in a woman, to be drawn and burned: the idea of which latter punishment seems to have been handed down to us by the laws of the ancient Druids, which condemned a woman to be burned for murdering her husband; and it is now the usual punishment for all sorts of treason committed by those of the female sex. Sir William Blackstone, Ehrlich's Blackstone: Part Two, Private Wrongs, Public Wrongs, edited by J. W. Ehrlich (2 vols., New York, 1959), II, 400-401; Blackstone, Commentary, II, 226-227. Thus English law reinforced the subordinate position of the wife to the husband.

\textsuperscript{63}Mill, Subjection of Women, 31.
wife; . . . he can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of an animal function contrary to her inclinations.  

A reviewer noted that perhaps marriage was not entirely blissful for the husband either. In his criticism of Mill's book, he stated:

The hardships are not all on her side. He (the husband) must go on whether he likes it or no, while she may pause and rest; there can be no break in his labours, for everything depends upon him; not only the moral but a legal obligation binds his hand and foot . . . ; he has to earn bread not lightly for one, but painfully for two, or three, or any indefinite ever-increasing number.

Mill was the first to admit that he had described only the legal position of wives, not necessarily their actual treatment. If married life was all that it might be expected to be when viewed purely from a legal standpoint, "society would be a hell upon earth." Men, in general, did not inflict nor did women, in general, suffer in such absolute terms as Mill described. The villain, to Mill, was not the individual husband but, rather, the absolute power that had been granted to him through the English law. This power had to be checked. As Mill stated: "Men are not required, as a preliminary to the marriage ceremony, to prove by testimonials that they are fit to be trusted with the exercise of absolute power."

---

64 Ibid., 32.
65 "The Subjection of Women, By John Stuart Mill. London: 1869," The Edinburgh Review, CXXX (Oct. 1869), 587. The reviewer felt that perhaps Mill's assessments were too one-sided in favor of women, and that he had bent the situation to dramatize his desire for reform.
66 Mill, Subjection of Women, 33.
67 Ibid., 35.
Laws and institutions were adopted, not for good men but, for bad. Mill maintained that there must be some way to alter the legal position of women, a way to protect them from the possibility, even the remotest chance, of abuse.

Mill asserted that it would be completely absurd to accept the status quo, as accentuated by Ruskin, in this situation. Merely to relegate a wife to her garden of "contentness" would be folly. The situation had to be altered, a drastic revision had to occur in order to protect the wives from the "absolute power" granted to the husband by the Laws of England.

An age that had freed the slaves, that had begun the process of enfranchising the middle and working classes, and that had abolished the disabilities of religion, could not remain totally deaf to the rising current of discontent among one half of its married population.
Chapter II

THE LEGAL POSITION OF WIVES

Myself, and what is mine, to you and yours
Is now converted: but now I was the lord
Of this fair mansion, master of my servants.
Queen o'er myself: and even now, but now,
This house, these servants, and this myself
Are yours, my lord.

W. Shakespeare, The Merchant of Venice.

The social attitudes, which had relegated wives to a subordinate position under their husbands, were echoed in the written law of England. During the Middle Ages, while France and other parts of Europe were developing a system of "community of goods", English law steered toward the legal dominance of the husband over the wife. As the legalists, Frederick Pollock and Frederick Maitland, pointed out, in France the system of community first developed in the lower strata of society: "There was a community of goods between the roturier and his wife while as yet there was none among the gentry." 68

However, in the centralized form of justice in England, "the habits of the great folks are more important than the habits of the small." 69

---


69 Ibid.
Thus the English law reflected the social practices of the rich, stressing the dominant influence of the husband as the family's lord and protector.

During the latter third of the nineteenth century, legislation simplified the law of property as it pertained to the relationship of husband and wife. This branch of the law showed the development of the status of the wife from a subservient member of the family to a co-equal head more clearly than any other, with the possible exception of the parents' rights with respect to their children. Until 1870, the property rights of a married woman were mainly determined by the rulings of the two bodies of judge-made law: the Common Law and the Law of Equity.

The unique position in law occupied by women arose from the Common Law doctrine regarding coverture, or marriage, which maintained that: "The very being or legal existence of women is by the

---

70 Maude I. Crofts, Women Under English Law (London, 1925), 48-53; R. H. Graveson, "The Background of the Century," A Century of Family Law: 1857-1957, edited by R. H. Graveson and F. R. Crane (London, 1957), 17-17. It was generally considered unthinkable, in mid-Victorian England, to infringe upon the common law right of the father as the sole and exclusive guardian of his children. Even on the father's death, the legal custody of the children did not pass to the mother as such, but to the guardian appointed by the father's will. Not only had the widow no rights of guardianship over her own children, she was not permitted to appoint a guardian for them by will. The first step to reverse this practice came in 1886 with the Guardianship of Infants Act. This provided that on the father's death the mother would be her children's guardian. Later legislation, in the twentieth century, turned increasingly in the direction of the children, not the mother. A section of the Guardianship of Infants Act of 1925 provided that the welfare of the children should be the first and uppermost consideration in determining legal guardianship.
Common Law suspended during her marriage." 71 In accordance with this view, married women occupied a position in law that was analogous to that occupied by infants and lunatics. 72

Marriage converted a woman into a legal nonperson. Bracton and Glanville attributed this principle to the biblical reference in Genesis 2:24, that the husband and wife became "one flesh". 73 Another theoretical justification for the legal subordination of wives, maintained by the Judge Henry Bracton and restated by Pollock and Maitland, portrayed the husband as the guardian of his wife. They stated: "The husband is the wife's guardian: -- that we believe to be the fundamental principle; . . . . The wife's subjection to her

71 Albert Venn Dicey, Lectures on the Relation Between Law and Public Opinion in England During the Nineteenth Century (London, 1930; first published 1905), 371; William Blackstone, edited by J.W. Ehrlich, Ehrlich's Blackstone: Part One: Rights of Persons, Rights of Things (2 vols., New York, 1959), I, 83: "... or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover she performs everything; and is therefore called in our law - a feme covert, . . . ."


73 Pollock and Maitland, History of English Law, II, 405; The Book of Common Prayer and Administration of the Sacraments, and Other Rites and Ceremonies of the Church According to the Use of the Church of England together with the Psalms of David Printed as they are to be Sung or Said in Churches; and the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests and Deacons
husband is often insisted on, she is 'wholly within his power,' she is bound to obey him in all that is not contrary to the law of God; . . . .74

Building upon these theoretical principles of English law and social heritage, husbands in the nineteenth century were still almost universally regarded as the dominant partner. A wife in 1800 had few rights; she could not make contracts or acquire any personal property, and all her earnings belonged to her husband. Perhaps John Stuart Mill was accurate in his assessment of marriage as being "the only actual bondage known to our law," and adding that "there remained no legal slaves except the mistress of every house."75 Of the two systems of judge-made law, the Common Law best reflected the appraisal of Mill.

The effect of marriage under Common Law was to give the husband extensive rights over his wife's property, whether it belonged to her

(Oxford, n.d.), 348-349. The marriage ceremony of the Church of England affirmed through its biblical citations the legal principles maintained to be the proper status of wives:

. . . , ye wives, hear and learn your duties toward your husbands, even as it is plainly set forth in holy Scripture.

Saint Paul, in the ... Epistle to the Ephesians, teacheth you thus; Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the Church: and he is the Savior of the body. Therefore as the Church is subject unto Christ, so let the wives be to their own husbands in everything.

75 Mill, The Subjection of Women, 147.
at the date of the marriage or came to her while they were married.76 Indeed the husband's rights over her property came into operation even before the marriage was solemnized. As Montague Lush pointed out: "So jealous was the law of any interference with the marital right of the husband that once the 'favourite of the law' had agreed to marry him she could not deprive him of any of her property without his consent."77 The law maintained that it would be an intolerable hardship on the intended husband if the woman he was about to marry were allowed to give away or to settle her property in favor of herself without consulting him. There was, however, no corresponding right for the intended wife; her fiancee could strip himself of all his possessions without ever consulting her.78

Following the solemnization of matrimony, the effect of marriage under the Common Law on a woman's property varied with the nature of the property. The interest which a husband acquired in

76 Thomas Barrett-Lennard, The Position in Law of Women: A Concise and Comprehensive Treatise on the Position of Women at Common Law as Modified by the Doctrine of Equity and by Recent Legislation. Together with the Married Women's Property Act, 1870, 1874, 1882: The Rules of the Supreme Court, 1883, Relating to Taking Acknowledgements and the Postal Regulations, 1883, Affecting Married Women (London, 1883), 69-70. Hereinafter cited as Position in Law of Women. The position of wives under the Common Law was clearly explained in the following terms: "From the time of the intermarriage the law looks upon the husband and the wife but as one person; and therefore allows but one will between them, which is placed in the husband, as the fittest and ablest to provide for and govern the family; and, for this reason, the law gives the husband an absolute power of disposing of her personal property, no acts of hers being of any force to effect or transfer that which by the intermarriage she has resigned to him; . . . ."


78 Ibid., 359.
his wife's freehold estate differed from his interest in her leasehold.

Following the marriage, the husband's rights over his wife's freehold estate were limited. Dicey stated: "Any freehold estate of which W [wife] was seised vested in W and H [husband] during coverture, but was during coverture under his sole management and control." The husband did not become the absolute proprietor of the estate, but as governor of the family he was master over it. He could receive the profits from it during his lifetime; however, he did not have the power to make an absolute sale of it without her consent.

If a wife died before her husband, her freehold estate went immediately to her heirs, subject to the husband having an estate for his life by the curtesy in estates of inheritance. If the husband died before his wife, her estate remained her own, unaffected by any will of his. The wife, however, had no interest in her husband's freeholds at all; but if she survived him, she was entitled to an estate for life. This estate, by inheritance, consisted of one-third of all her husband's freeholds, which he acquired at any

time during coverture, provided she could have borne a child capable of inheriting, whether or not such a child was ever born. 82

A wife's leasehold estate was in a different category from her freeholds. The leasehold belonged absolutely to the husband during the marriage, and he could dispose of them or mortgage them by his deed alone, without her consent. As Dicey pointed out, the husband "was entitled during coverture to the whole of W's income from whatever source it came, e.g. if it were rent from her leasehold or freehold property, or if it were her own income." 83 However, if the husband's death preceded his wife's, her leaseholds automatically reverted to her and the husband had no power to dispose of them by will. 84

Personal property which was in the wife's possession at the time of her marriage, or came into her possession during the marriage, belonged absolutely and for all purposes to her husband, who, therefore, had the power to dispose of it inter vivos or by will. Even if he died intestate during the wife's life, her personal property did not revert to her. 85 The only exception to this rule dealing with personal property applied to the wife's paraphernalia.

The term "paraphernalia" was a comprehensive one encompassing ornaments, such as clothing and jewelry, used by the wife during

---

82 Bromley, Family Law, 421.
84 Bromley, Family Law, 422.
85 Ibid.
coverture, which were suitable to her rank. Thus the composition of this category depended to a great extent upon her and her husband's position in society. Articles expressly given by the husband to his wife for the purpose of being worn for her personal adornment fell into this category. As Barrett-Lennard stated, however, the list was expanded to include other articles:

It has been said the paraphernalia was confined to the personal ornaments of the wife, but a writer of considerable authority says she is entitled to 'her bed, her copher, her chains, borders, and jewels.' And it has been decided "Middleton vs. Middleton_7 that she was entitled to her chamber plate and the furniture of her chamber, besides her jewels.'

Although these articles were for her personal use, she could not dispose of them during her husband's lifetime. The husband could, on the other hand, dispose of them. Upon his death they belonged to the wife, but were subject to his debts.

The final type of a woman's property was her pin money. Although similar to paraphernalia, the term was difficult to define. Lord Chancellor Henry Brougham, in the case of Howard v. Digby, stated:

"You can not get a definition of pin money from the books, upon which you can rely. You can not trace the line which divides it from the separate property of the wife with any distinctness, or in a way on which you can depend . . .."

Pin money was not an outright gift from the husband to his wife, nor was it to be considered money set apart for her sole and separate

---

87 Ibid., 81.
use during the marriage. However, it was a sum designated for a specific purpose. "'Pin money,'" Lord Brougham continued, "'means that which goes to deck or attire the person of the wife, and, . . . , to pay her ordinary personal expenses.'" If paraphernalia could be interpreted as the articles of adornment, then pin money could be construed as the funds available to acquire those items.

Pin money was never meant to sustain a wife, rather, it was a means for her to dress and attire herself "suitable to the degree of her husband." Since it did not belong to her as absolute personal property, it could not be recovered by her lawyers should it fall in arrears, because it was not meant to aid her in the accumulation of funds.

Even a wife's earnings and savings were vested in her husband. The income from her bodily or mental labor, which one might suppose to be her inalienable right to hold, was denied her. Although she was able to earn a substantial fortune, the moment it was earned it belonged to her husband under the Common Law. Charles Shaw-Lefevre, in debating the Married Women's Property Bill, related to the Commons a case in which a wife who earned money by her own work had, unknown to her husband, put a little in a savings bank for a rainy day. Her husband, "a dissipated, improvident man," suspecting this, tested her by suddenly saying: "'Do you know the savings bank has

---

88 Ibid.

89 Ibid.

90 Ibid.
failed?" The poor woman fainted from shock, and her husband immediately set out to withdraw her money. 91

Although the Common Law Doctrine appeared to be very stringent with regard to a woman's property, it should be noted that it contained certain advantages in favor of the wife. Even though the husband enjoyed the rents and profits from her land, he could not dispose of the land without her consent. On his death, the land reverted absolutely to her. In return for the husband's rights in the real estate of the wife, she was entitled, at his death, through her dower, to one-third of the rents of all lands which at any time during marriage he might have possessed. Her dower was enlarged by the Dower Act of 1833; however, this enlargement was merely compensation for a larger power granted to the husband, which enabled him to deprive his wife of her dower altogether. 92

Albert Dicey, in a lecture on the property of married women, provided an example which best summed up a wife's position under the Common Law. A lady possessing a large fortune consisting of household furniture, pictures, a large sum of bank notes and money, as well

91 Hansard, Commons (3rd Series), CXCI, April 20, 1868, 1020. Notices were attached to depositors' bank books stating that, although money would be received from married women, it would be paid over to their husbands on application.

92 Lush, "Changes in the Law," Twelve Lectures, 363; Barrett-Lennard, Position in Law of Women, III. The broad feature of the Dower Act of 1833 was that it permitted all husbands married after January 1, 1834, to bar their wives' right to dower by a declaration to that effect in any deed or will, it removed that peculiarity of dower in attaching to property conveyed to third person by the husband, and it rendered property in which a husband had merely an equitable, and not a legal interest, subject to dower.
as £10,000 deposited in a bank, leasehold estates in London, and freehold estates in the country, was induced into marrying an adventurer without having made any settlement. He immediately became the actual owner of all the goods and money she possessed. He could, through the proper legal channels, with or without her consent, obtain for his own use the money at her banker, and exact payment to himself from all debts owed her. He could sell her leaseholds and pocket the proceeds. He could not sell her freehold estate, but he could charge it to the extent of his own interest in the freehold estate after the death of his wife, he could charge the estate throughout his natural life. He could spend the whole of his wife's income as he pleased.93

This husband, in Dicey's example, turned out to be a gambler. In a few years he had managed to get rid of the whole of his wife's property except her freehold estate. Although it had not been sold, he had charged it with the payment of all his debts. If he outlived his wife, she would never receive a penny of rent from her estate. The couple was actually penniless. However, she did earn £1,000 a year as a musician and actress; since he was master of the money she earned, this income was fortunate for the husband. If he allowed her enough, say £200 a year, to induce her to continue working, he could live in moderate comfort on the remaining £800.94

This was substantially the state of the Common Law prior to 1870.

---


94Ibid.
The husband had, under the Common Law, absolute domination over all which, except for marriage, would have been the property of the woman. There the hardships inflicted by the Common Law upon married women, restricting their rights over their own property, were somewhat lessened by the doctrines of equity in the Court of Chancery. As Russell Gurney, in his argument favoring the passage of the Married Women's Property Bill in 1870, stated: "This was the law of England—a law so unequal and so unjust that it could never have lasted to the present day had it not been for the means of evading it, sanctioned and encouraged by our Courts of Equity."  

The Court of Chancery was originally instituted in England to advise the King on special petitions in cases where there was no redress in the Common Law. Gradually it became a recognized court

95 Lush, "Changes in the Law," Twelve Lectures, 350-351. There were three exceptions to the Common Law regarding women's property. The Queen Consort, being a public person, was not like other married women. The Queen was able to purchase lands and to convey them, to make leases, and to do other acts of ownership without the consent of her husband. She was also entitled to separate property in goods as well as lands, and she had the right to dispose of them by will. Sir Edward Coke reasoned:

"Because the wisdom of the common law would not have the King (whose continual care and study is for the public et circa ardua regui) to be troubled and disquieted on account of his wife's domestic affairs, and therefore it vests in the Queen the power of transacting her own concerns without the intervention of the King, as if she was an unmarried woman."

The second exception rested on an ancient custom of the City of London, which allowed a married woman within the city limits to carry on trade and contract and incur debts and acquire property as if she was unmarried. It was only in the City of London that this custom prevailed. Finally, if a man was convicted of a crime and was civilly dead, his wife could acquire and hold property and contract as if she was unmarried. However, once the husband regained his freedom, the wife lost hers.

96 Hansard, Commons (3rd Series), CXCV, April 14, 1869, 761.
administering justice in accordance to the doctrine of equity. By this process it was possible to supplement the more rigid Common Law of the ordinary Courts of Law. While the Courts of Law ignored trusts and recognized only the trustees as the legal owners of a property in his hands, the Court of Chancery, through equity, enforced trusts and compelled trustees to designate the property to the purpose for which it had been entrusted to him. 97

Equity permitted the married woman, through a trustee, to hold "separate property" or "separate estate" for her own use. The trustee was obliged to hold the property solely for the woman. This "separate property" had to be administered according to the instructions of the married woman and her husband had no right to interfere in the administration or the enjoyment of that property. 98

The position held by equity may appear as a stride toward the liberation of wives from their husband’s control, but Edward Johnson in his work on Family Law insisted that the intervention of equity was not due to any theory of equality of the sexes. According to Johnson: "The purpose of the 'separate estate' was to prevent family property from being sacrificed to the husband's business speculations and extravagant tastes." 99

The development of the concept of the "separate estate" was perhaps the most important contribution of equity to the law relating to a

97 Crofts, Women Under English Law, 34.

98 Ibid.

married woman's property. By the end of the sixteenth century, it was established that if property was conveyed to a trustee for the separate use of a married woman, she retained, in equity, the same right of holding and disposing of it as if she were a feme sole. This principle applied to real as well as personal property. She could dispose of it inter vivos or by will and she could call upon her trustee to transfer the title or convey the estate. 100

The Court of Chancery thus gave her the power to give away or sell her estate, and to leave it to whomever she wished by will. It also enabled her to charge it with her contracts. In short, equity, at last, gave a wife nearly all the rights of a single woman. The right of "separate estate" was generally acquired through a marriage settlement. This settlement was usually sought by the girl's father prior to the solemnization of matrimony; however, it could be obtained during the marriage.

Although this advance had been made through equity, it became apparent toward the beginning of the nineteenth century that adequate protection was not provided for the settled property of a married woman. It still was possible for a husband to get his wife's property in his control whether as a trustee of her property or through his persuasion or coercion over her decisions. In the case of Pybus v.

Smith in 1791, Lord Edward Thurlow, Lord Chancellor, introduced into the marriage settlements and wills a provision known as the "restraint on anticipation". This provision was intended to strengthen a wife's position against any possible encroachment by her husband. 101

In order to insure that the wife would be protected from her own weakness and to prevent her from being "kissed or kicked out of her money" 102 by her husband, the restraint on anticipation prevented her during her marriage from disposing either of the capital from her separate estate or anticipating the income before it actually fell due. Her property, under restraint, could not be made liable for her debts. 103 In other words, a married woman could not establish her financial independence from her husband on the basis of her separate estate which was bound by this clause.

The main advantage of restraint on anticipation was the protection it granted to family property which by will or gift fell to a hapless daughter and her extravagant husband. As Henry C. Raikes, Conservative Member of Parliament for Chester, told the House of Commons:

"... those settlements were drawn up, not for the purpose of securing

102 Johnson, Family Law, 75.
103 Edmund Henry T. Snell, Snell's Principles of Equity, edited by R. E. Megarry and P. V. Baker (London, 1973; first published 1868), 567. If property was given to a single woman and was subject to restraint on anticipation, the restraint did not come into effect until she married. The restraint was effective until she died or became single again by the death of her husband or divorce, and upon remarriage, the restraint was reinstituted.
the property of the wife against the husband, but to secure the property of the children against the extravagance and recklessness of both the husband and wife."104  The obvious drawback of the clause was that its wording restricted its applicability to the very wealthy who could afford to tie up their property under restraint and who did not necessarily need the income for subsistence.105

Indeed, the entire system of equity relating to married women's property was restricted to the upper classes. As Russell Gurney, Conservative Member from Southampton, commented to his associates in the House of Commons: "... it [a marriage settlement] was a remedy altogether out of the reach of any but the comparatively rich."106 A marriage settlement in the case of property of £200 or £300 was relatively unknown, and, due to the expense incurred in acquiring such a settlement, would not be justified with such a small amount. "It was," Gurney concluded, "a mere mockery to send such persons to the Court of Chancery for protection."107

These two judge-made laws, seemingly functioning counter to each other, are excellent examples of the inequality that existed in the system prior to 1870. Russell Gurney asserted that: "The fact was

104 Hansard, Commons (3rd Series), CXC VIII, July 21, 1869, 402.
105 Johnson, Family Law, 75. The power to impose a restraint on anticipation was abolished by the Law Reform (Married Women and Tortfeasors) Act of 1935, and all existing restraints were abolished by the Married Women (Restraint upon Anticipation) Act of 1949.
106 Hansard, Commons (3rd Series), CXC V, April 14, 1896, 763.
107 Ibid.
that as every marriage settlement was a silent protest against the law so did every decree of the Courts of Equity on this subject proclaim their sense of its impolicy and injustice.\textsuperscript{108} It appeared that the rich, through marriage settlements, had a way of skirting the Common Law, while the humbler classes faced the full force of the law's harshness.

It was not until 1870 that Parliament began to make a deliberate and systematic attempt to place the law relating to the property of married women on an equal footing with husbands. Dicey believed that perhaps the blame for this slow progress rested with the rules of equity:

The barbarism of the common law did not, as a rule, press heavily upon the rich who derived political power from their wealth and position, or upon the labouring poor who had at last obtained much of the political power due to numbers. The daughters of the wealthy were, when married, protected under the rules of equity in the enjoyment of their separate property. The daughters of the working men possessed little property of their own. The one class was protected, the other would, it seemed, have gained little from protection.\textsuperscript{109}

Russell Gurney contended that the members of the House were reluctant to favor a Married Women's Property Act because of the provisions of the Court of Equity: "...there is probably not a Member of this House who, upon the marriage of a daughter, does not pronounce his condemnation of the principles of our common law by securing to her, by means of a settlement, the enjoyment of her property."\textsuperscript{110} He felt

\textsuperscript{108}Ibid.


\textsuperscript{110}Hansard, \textit{Commons} (3rd Series), CCI, May 18, 1870, 880.
that perhaps the benefits of equity had removed the Members from a proper awareness of the conditions under which the poorer classes must function.

In the 1830's the plight of Caroline Sheridan, granddaughter of the dramatist, had a decisive effect on the position of married women and caused an open scandal which threatened to unseat the Prime Minister, Lord Melbourne. When she was nineteen, she married George Norton, the younger brother of Lord Grantley. The marriage was a disaster from the beginning with politics being the major topic of disagreement. George Norton was a Tory, the Sheridans were staunch Whigs; and even when Norton entered Parliament she never concealed her political views.\textsuperscript{111}

Caroline Norton established herself as a poet, novelist and the editor of a magazine, and she constantly entertained some of the notable people of London. Her most constant visitor was Lord Melbourne, a member of the Whig Government, whom she first met when she wrote asking him to use his influence to find her husband a job.

Although Caroline and Lord Melbourne were only close friends, George Norton became irritated. In 1836, while Caroline was visiting her sister, George Norton sent their three children to the home of a relative with instructions that their mother should not be allowed to see them. He then brought suit for divorce. According to Josephine Kamm: "He brought a suit for the alienation of his wife's affections

against the man he could injure most—Lord Melbourne, who by this time was Prime Minister. In so doing he believed that he could strike a blow against the Whigs, gain heavy damages, and utterly discredit his wife."112

The trial convened in June, 1836, but lacking any proof that she had committed adultery with Lord Melbourne or with any other men, the case was dismissed without even retiring the jury. Caroline was not represented at the trial because she was not legally a party to the suit and, as a married woman, she could neither sue nor be sued. It was only after the trial that she began to realize her desperate situation. Although she lived with members of her family, in law all her property and all the money she earned belonged to her husband. Infinitely worse was the fact that her children belonged unconditionally to him, and without his permission she might never see them again until they came of age.113

Caroline Norton never concerned herself with sexual equality. She wrote in a letter to The Examiner: "'I for one (with millions more) believe in the natural superiority of man, as I do in the existence of God ... I never pretended to the wild and ridiculous doctrine of equality."114 This bitter experience led her in an effort to change

112 Ibid., 24.

113 Ibid., 25. George Norton, realizing that she would never return to him, struck back by having the children sent to his sister in Scotland. By his actions, he made an enemy of John Bayley, his counsel at the Melbourne trial. Caroline Norton, John Bayley and Thomas Noon Talfourd, the junior counsel for Lord Melbourne and later a Member of Parliament from Reading, led the fight for the eventual enactment of the Infants' Custody Act in 1839.

114 Caroline Norton Letter to The Examiner, as cited in Ibid., 27.
the law of property and divorce. Two of her pamphlets, *English Laws for Women in the Nineteenth Century* (1854) and *A Letter to the Queen* (1855) influenced the passage of a Divorce Law in 1857.

The women's movement really accelerated in 1855 when Barbara Bodichon, in her rage over the plight of Caroline Norton drew up and printed *A Brief Summary in Plain Language of the Most Important Laws Concerning Women*. Her pamphlet was placed by a family friend, Matthew Davenport Hill, Recorder of Birmingham, before the Law Amendment Society. After considering the laws, the Law Amendment Society framed a Married Women's Property Bill to be introduced into the House of Commons. Public meetings were held, resolutions were passed, and petitions were drawn up. Twenty-six thousand signatures were collected in the course of a year.

The Married Women's Property Bill was introduced in the House of Commons in May, 1857, by Sir Thomas Erskine Perry, Liberal Member from Davenport. The Bill passed its Second Reading by a majority of 120 to 65, but despite this favorable start, the Bill met with a growing opposition. The rather conservative *Saturday Review*, though feeling that some redress in the law should be made, felt that Parliament had gone too far afield in this matter:

> There is a perfect rage for Acts of Parliament to redress all little social and domestic miseries of human life. . . . There is a Bill for controlling the sale of dirty books, a Bill for dealing with adultery . . . and the Bill introduced by Lord

---

115 Kamm, *Rapiers and Battleaxes*, 90.

116 *Hansard, Commons* (3rd Series), CXLVI, July 15, 1857. 1523.
Raynham to prevent cruelty to animals, which will put a stop to live bait fishing and galloping a horse to a railway station. And finally there is Sir Erskine Perry's Bill for redressing all the hitches which occur about money matters between married people. 117

Many of the objections which echoed through Parliament in 1857 over Perry's Bill were reiterated when the question over married women's property was again before the House in 1868 and 1869. Henry Charles Lopes, Conservative Member from Launceston, believed that the Bill was "distasteful" to the majority of the legal profession and to the part of the general public that understood its scope. He objected because if it became law it "would go far to impair the confidence that ought to exist between husband and wife, and which was the mainspring of domestic happiness." 118 Further, Lopes maintained that the present law was:

... in accordance with public feeling which recognized the fact that the wife was a weak vessel, that there ought to be only one head of the house, and that the husband was the proper head, being physically, at all events, better fitted to bear the brunt of the outer world than his wife. 119

This same point was raised by Sir Roundell Palmer, President of the

---

117 Ernest Sackville Turner, Roads to Ruin: The Shocking History of Social Reform (Middlesex, England, 1966; first published 1950), 145. Also under consideration in the House at this time was a Divorce Bill sponsored by Lord Lyndhurst. This bill sought to make divorce possible without resorting to an act of Parliament. Opponents of the Married Women's Property Bill saw an opportunity to incorporate in the Divorce Bill a few safeguards for married women's property from Perry's Bill. For example, one clause in the Divorce Bill provided for the protection of a wife's earnings if she were deserted for one year or more.

118 Hansard, Commons (3rd Series), CXCV, April 14, 1869, 774.

119 Ibid., 775. It is difficult to determine the amount of favorable sentiment attached to his remarks since his statements were not parenthesized by any cries of "Hear! hear!", "Rubbish!" or "Sit down!"
Juridical Society, at one of their meetings. He questioned whether or not the law would be conducive to domestic peace and harmony in families. On the basis of his experience and observations, he had grave doubts. 120

The question of domestic tranquility was one of major concern to the Select Committee of Parliament established to gather evidence on the proposed legislation. Often, in cases of proposed changes in the law, such committees were forced to rely upon theoretical arguments to buttress their case; however, the Select Committee on Married Women's Property relied heavily upon the factual precedents on this matter from the United States and Upper Canada. 121

Charles Shaw-Lefevre, chairman of the Select Committee and one of the co-sponsors of the Bill, was extremely interested in gleaning the reaction to the new law from the United States. He addressed letters in the name of the committee to several prominent men in the states where a new law was functioning. His major inquiry concerned the effect of the legislation on the working class, the tendency of the legislation to sow dissension in families, and the success of wives

120 The Times, Jan. 27, 1870.

121 "Special Report from the Select Committee on Married Women's Property Bill; Together with Proceedings of the Committee, Minutes of Evidence, Appendix, and Index," British Parliamentary Papers: Reports from Select Committee on Married Women's Property Bills and on Nonconformist Marriages with Proceedings, Minutes of Evidence, and Indices, 1867-1894: Marriage and Divorce (3 vols., Shannon, Ireland, 1970), II, July 17, 1868, 14. Vermont was the first state to deal with the separate property of married women, in 1840. In 1848 New York gave married women absolute control over their own earnings, and Massachusetts adopted it in 1857. Upper Canada made the change in 1859.
in handling their property. All responses to the chairman's inquiry were favorable. The three most useful responses came from Dudley Fields of the New York Bar; Emory Washburn, Professor of Law at Harvard University, former Governor of Massachusetts, and member of the Supreme Court of Massachusetts; and Edward Atkinson, a cotton manufacturer from Lowell, Massachusetts.

Dudley Fields could detect no break-up or dissension within New York families as a result of the legislation. Indeed, he disclosed, "I doubt whether half a dozen instances of such a tendency could be ascertained by the inquiries of all my friends." He was not aware of any discord between husbands and wives over property which would not have been just as likely to have arisen under the old law.

Emory Washburn admitted that he was opposed to the legislation when it was first proposed in Massachusetts, but he had become a solid convert. From his observations he saw "no mischievous consequences growing out of this change." He added that: "it often saves a family from the consequences of the recklessness or misfortune of the husband or father by saving, from the reach of his creditors, the estate which belongs to the wife." Finally, Edward Atkinson added: "The objection of the opponents of a

---

122 Ibid., Appendix I, 107.
123 Ibid.
124 Ibid., 109.
125 Ibid.
separate estate for women on the grounds that it will promote a
division in families, simply suggests a smile here; no such result has
followed from our legislation." 126

Dudley Fields felt that the Married Women's Acts were quite
beneficial for the large class of foreign-born laborers in the cities
of New York. He believed that the absence of such legislation in
some of the southern states had given rise to discontent among the
colored women. 127 Fields, who signed his letter, "Believe me,"
felt that generally a wife put all her property at the disposal of
her husband as long as he treated her with "conjugal affection."
The only apparent contradiction, he noted, could be seen in the large
numbers of deposits by married women in savings banks. However,
he reassured the chairman that it was really not an inconsistency.
The banks required the signature and presence of the depositor,
and since the bank hours were inconvenient for working men, they
preferred that their wives deposit their own money in their own name,
and "in many cases allow their wives to deposit the husband's
money in like manner for the sake of convenience." 128

The oral evidence taken from members of the Vermont and

126 Ibid., 111.
127 Ibid., 107. While they were slaves, they were not legally
married, and therefore, held what little their masters allowed them
independently from their husbands. After gaining their freedom, and
becoming lawfully married, they found themselves with nothing of their
own. Fields felt that the male negroes had a high notion of the dignity
of their sex and were apt to enforce all their rights against their wives.
128 Ibid., 107-108.
Massachusetts bars, from Cyrus Field a New York merchant, and from Finance Minister John Rose of Canada, reinforced the written testimony from Fields, Washburn, and Atkinson. They all felt that the change was beneficial, that it had not caused dissension in the families, and that it had not weakened the authority of the husband. Because this matter was undertaken late in the parliamentary year, the panel concluded, in spite of the favorable testimony, that another Select Committee should be established during the next session in order to insure an adequate investigation. The Bill was withdrawn on July 24, 1868, in order to facilitate additional debate.129

The time element was again an important factor the following year. The Bill was presented in Commons for the first time on February 25, 1869, then submitted to a committee on April 14 after its second reading. The Committee Report, which was adopted only by the deciding vote of the chairman, emerged on June 17. During the debate of the Bill's third reading, Alexander James Beresford Hope, Conservative Member from Maidstone, complained that the Bill was being rushed through without adequate debate. He noted that it was past five o'clock on a Wednesday late in July and that:

The House was like an exhausted receiver; they were now not holding a debate but a mere conversation on the question. The front Bench on the Opposition side was absolutely empty, and not a Cabinet Minister was to be seen on the Treasury Bench.130

129 Hansard, Commons (3rd Series), CXCIII, July 24, 1868, 1710.
130 Ibid. (3rd Series), CXCVIII, July 21, 1869, 405.
The Bill, which would produce a profound effect upon married life in every class of society, deserved more attention, Hope declared. He hoped the House would not pass on its third reading but would allow it to be held over until the next session in order "to give it a calm and full consideration." 131

Despite Hope's protest, as the last order of the day the Bill was read and passed. 132 The House adjourned at a quarter to six. It was only due to the reluctance of the House of Lords that the Bill was not passed until the 1870 session.

The Married Women's Property Bill of 1870 reflected the parliamentary paternalism of this age of reform. Debate on the floor of both Houses showed a genuine concern for the welfare of the poorer working classes, rather than for the upper levels of society. Since the richer elements could find refuge in the provisions of marriage settlements as a means of protecting a wife's property, Parliament focused its attention on a remedy for the working class. The primary concern in dealing with the working class was not, as with the rich, real property, but instead a protection of the wages earned by the wife. Anthony Earl of Shaftsbury stated:

There were in this country 800,000 poor women whose earnings must be protected, because those earnings were the very existence of themselves and their children. . . . The women of the working classes discharged many more duties than were discharged by ladies. The wife of a

131 Ibid.

132 Great Britain, The Journals of the House of Commons, CXIV. July 21, 1869, 347. The vote was 131 to 33.
working man was the moving principle of the whole family. 
... she had no nurses or other servants to assist her.
It was therefore of the utmost importance that everything
should be done to protect her earnings for herself and
her children. 133

He felt that the current protections were insufficient because they
were granted only after desertion and often after everything the
woman had was already gone.

Shaw-Lefevre related to the House of Commons an instance of a
married woman who "was clever and industrious and could easily
earn money" and whose husband was an engineer on board a man-of-war.
The husband would periodically return from a cruise and in a few
weeks clean his wife out by living off her savings and earnings.
"As he was not cruel to her within the meaning of the law," Shaw-
Lefevre related, "and as his cruises could not be deemed desertion,
... she had no resource but to submit to his periodical visitations." 134

It was generally agreed that it was essential to protect the
earnings of a married woman. It was felt that such a proposal
would not challenge the "revered" position of the husband as the
head of the family unit, a point which had delayed the Bill for so
long, but it would provide protection for the lower class working
wife. However, some opposition still lingered. Sir Roundell Palmer
was opposed to such legislation, which would allow wives control of
their own income, on the grounds that the legislation was conceived
"in a spirit which would tend to make women unfeminine." 135

133 Hansard, Lords (3rd Series), CClII, June 21, 1870, 612-613.
134 Ibid., Commons (3rd Series), CXCI, April 20, 1868, 1020-1021.
135 The Times, Jan. 27, 1870.
The revised Bill, as finally handed down from the House of Lords, was simply a guarantee that a wife's earnings were her own. Under the new law, which was given the Royal Assent on August 9, 1870, the following types of property were deemed to be held to the separate use of the wife, free from the control of the husband and his debts:

1. Wages, and earnings of the woman acquired in any employment, occupation, or trade carried on separately from the husband.

2. Money or property acquired by her through the exercise of any literary, artistic, or scientific skill.

3. All investments of such wages, earnings, money or property.

4. Deposits in savings-banks in the name of the woman.

5. Public stocks and funds standing in the books of the Bank of England in the name of the woman.

6. Paid-up shares in a joint-stock company registered in the name of the woman.

7. Shares in any friendly society registered in the name of the woman.

8. Personal property devolving on her as next-of-kin to an intestate.

9. Rents and profits of real property descending to her as heiress upon an intestacy.

10. Policy of Insurance effected by her in her own name or by her husband in her name for her own use.\(^{136}\)

Essentially the 1870 legislation was a lower class act, that insured the various types of income for a wife's separate use. As Russell Gurney pointed out: "I do not indeed think that the relief

was afforded in the best form, . . . I do not, however, hesitate to advise the house to accept the Bill." 137 He felt that legislation on this subject could not end with this Act, for "there would yet remain much to be remedied, . . ., unless it were to be contended that bad husbands were to be found only amongst the poor, . . ." 138

While the final act, as Russell Gurney contended, was a much watered-down version of the sweeping reforms originally proposed, it was seen as a gradual positive step toward the eventual emancipation of all property possessed by married women. Indeed, the passage of this particular Property Act was quite in character with the gradual progression toward reform throughout nineteenth century England.

137 Hansard, Commons (3rd Series), CCIII, Aug. 3, 1870, 1488.
138 Ibid.
Chapter III

THE MARRIED WOMEN’S PROPERTY ACT OF 1882

Thy husband is thy lord, thy life, thy keeper,
Thy head, thy sovereign; one that cares for thee,
And for thy maintenance commits his body
To painful labour both by sea and land . . . .

W. Shakespeare, The Taming of the Shrew.

The Married Women's Property Act of 1870, although certainly not a thorough reform, was an advance. It did not, as some had hoped, put women on a free and equal footing by granting them possession of their own wealth. The Act only permitted them to keep possession of what they earned for themselves. All other forms of property, whether acquired before or after marriage, belonged, as before, to their husbands.

The passage of the law did not indicate as endorsement of any theory of equality. There was no indication during the parliamentary debates that there was any distress over the idea that a man should be the legal owner of his wife's property. The law, however, was the produce of a direct response to the argument that a man, who had deserted or mistreated his wife, should not be allowed to step in and take away the money that she had earned and sell her household goods.139

Even as the Married Women's Property Bill of 1870 descended, in its amended form, from the House of Lords to the Commons, protests were being expressed about its effect and usefulness. Lydia E. Becker, a member of the Married Women's Property Committee, a citizen group formed to push for this legislation, writing to the editor of *The Times*, maintained that the Lords had "annihilated it." The original Bill, as sent to the Lords, would have secured to a married woman possession of all property that was her own, whether gained by her own labor or acquired under the laws which governed the acquisition of property for men. Thus, by a simple and comprehensive Bill, women would hold all real and personal property as if they were unmarried. This, Becker stated, would avoid "the insidious suggestion of divided family interest involved in the notion that any property owned by a wife must be settled for her 'separate use.'" The application of this phrase, which had arisen from the custom of securing property of rich wives against the operation of the Common Law, would be, Becker believed, a "grave misfortune." She continued: "Married men are allowed to own their property without this ugly condition. We ask the same freedom for married women." As a spokeswoman for the Married

140 *Ibid.*, 274n. Strachey pointed out a rather curious and enlightening example of the complexities of the law. A legacy of £500 was left to the Suffrage Society in London in 1879. One of the members, Mrs. Whittle, was appointed as trustee. "It then appeared that since she was a married woman she could not act in that capacity, and another lady, Mrs. Lucas (who happened to be a widow) had to be appointed."

141 *The Times*, August 4, 1870.

Women's Property Committee, Becker listed their objections to the amended Bill:

Because it perpetuates an unjust law, and extends a mischievous rule originally framed to evade that law. Because the protection it offers is inadequate to meet the necessities of the case. Because it frees the husband from liability for his wife's debts contracted before marriage, while handing over to him her property and earnings before marriage. Because it applies the complicated rules and decisions of the Equity Courts respecting the separate property of a wife to sums of the most trifling amount, and enables husbands and wives to put each other in the County Court to determine whether any particular portion of a wife's estate is subject to the control of the husband. . . . Because its provisions are unintelligible without the aid of a lawyer.\textsuperscript{143}

During the 1870 Session of Parliament, an appeal was made for the enfranchisement of women. The appeal was rejected, as Becker stated, because "one of the grounds . . . was the allegation that the interests of women were better cared for while they were deprived of political rights than they would be if they had votes."\textsuperscript{144} She, therefore, viewed the passage of the revised Bill as a betrayal of that confidence and a stimulus for women to obtain a voice in the political realm.

In another letter to The Times, following the passage of the 1870 Bill, Elizabeth Wolstenholme and Lydia Becker, while agreeing that the Act was a real and a great gain, added: "We cannot but regret that our legislators should have abandoned the vital principles of the original measure, and have retained the general rule of confiscation of a wife's property by the simple act of marriage."\textsuperscript{145} Further, they vowed to keep their organization working toward the liberation of the property of wives:

\textsuperscript{143} Ibid.
\textsuperscript{144} Ibid.
\textsuperscript{145} Ibid., August 25, 1870.
... we decline to accept it as even a temporary settlement of the question. We have decided, therefore, to keep our organization intact and in working order, and to continue to press the subject upon public attention, in the hope that at a very early period a complete measure may be brought forward with a fair hope of success. 146

A similar view was reflected in The Examiner in 1872, which stated that "equality in marriage is not possible unless it goes further than sentiment; there must be equality also in material interests. ... Where the purse is, there power finds its centre of gravity." 147 So long as the husband has control of the family funds, the article continued:

... the husband has the power, if he chooses to use it, of governing his wife's actions, and subordinating her wishes to his own. If the husband consults his wife's views, it is from generosity, or 'nagging.' In order that a woman may secure her comfort by right, and not by sufferance, she must not be depend-ent on marriage for subsistence. 148

Even The Times expressed its belated dissatisfaction with the 1870 Act. In an article of explanation of the Married Women's Property Act of 1882, that appeared on January 1, 1883, it referred to the 1870 Act as being "in every respect a compromise and makeshift Act, with the signs of a short life stamped upon its face." 149

The first Parliamentary discussion on the provisions of the 1870

146 Ibid. They concluded their letter with a plea for contributions to meet existing expenses and adding that "few political agitations of equal importance have been conducted so economically."

147 The Woman Question, 44.

148 Ibid., 44-45.

149 The Times, January 1, 1883.
Act came in 1874, with the introduction of a Married Women's Property Act (1870) Amendment Bill. Similar to Lydia Becker and the Married Women's Property Committee, the sponsors of this Amendment Bill desired to alter the Act of 1870. However, the Bill's sponsors did not intend to provide for the total liberation of a wife's property. Samuel Morley, of Bristol, told the Commons that as the 1870 Bill went to the House of Lords, it contained two important clauses. First of all, the third clause of that Bill provided that every woman who married after the passage of the Act would, during her marriage, retain all her personal property, whether possessed by her before marriage or acquired after marriage, free from the debts or control of her husband. The second important clause, numbered sixth in the Bill, affirmed that the husband would not be liable for debts contracted by his wife before marriage, but that the wife might be sued, and any property that she had to her separate use might be taken to satisfy that debt. 150

When the proposal was returned from the House of Lords, in its revised form, in 1870, this first clause had been struck out, but the second one remained. This had created a rather curious situation, Morley stated. The wife had lost control of her personal property, except for wages and earnings, and the husband had been relieved from the liability of the debts incurred by his wife before the marriage. Morley believed he correctly cited the present state of the law when he said: "There were thousands of unmarried women now carrying on

150Hansard, Commons (3rd Series), CCXVIII, April 15, 1874, 607.
trade who might purchase on credit goods in which they were dealing, and
the following week might marry and snap their fingers at their creditors,
who would have no remedy against the husband or the wife.” 151

Morley and his co-sponsors, Sir John Luddock and Sir Charles Mills,
presented their Amendment Bill to the 1874 Session, not to establish
equality of property rights between husband and wife but, rather, to
alleviate the hardships inflicted on creditors by the present state
of the law. Morley presented to the Commons both a petition, signed by
a large number of bankers and traders seeking a remedy of the situation,
and several examples to illustrate his point. He told of a lady who
purchased a piano from a manufacturer, agreeing to pay for it in
eight quarterly installments. She had made three or four of those
payments, then married, thus the piano passed into her husband's
possession. The husband refused to pay the installments due by his
wife. 152 Under the law, by their marriage, she was free from the debt,
and the husband was not liable either. In this instance, based upon
the provisions of the 1870 Act, the piano was his.

As a result of such occurrences, Morley proposed in his Amendment
Bill to enact that the husband should not be released from his wife's
ante-nuptial obligations. According to Morley, if a husband acquired
property by their marriage, he should be liable to the extent of the
property which he gained. 153 In other words, if a couple married,

151 Ibid.

152 Ibid., 607-608.

153 Ibid., 608-609.
without the benefit of a marriage settlement, the husband, as the legal owner of the property, should be held responsible for the debts incurred by his wife prior to their vows, but only to the extent of the property he acquired.

Staveley Hill, Liberal Member from Staffordshire, told the Commons that he had received many similar complaints relating to this flaw in the 1870 Act, which "caused great injustice to creditors." He believed that this Bill would provide an immediate remedy to this situation. The key word to this entire debate is the word "immediate". it was generally agreed that a remedy had to be quickly enacted, despite the expression of some reservation.

Henry Charles Lopes, Frome, viewed the Bill as piecemeal legislation and felt that some complete and fully comprehensive measure should be enacted. Sir Francis Goldsmid, Liberal Member from Reading, told the Commons that if he saw "any chance of comprehensive legislation on this subject during the present session" he would willingly wait. Charles Henry Meldon, from Kildare, Ireland, held that "piecemeal legislation never worked satisfactorily," and that he was opposed to it on that ground. Meldon continued by stating: "It was necessary to amend the law by declaring that a married woman, trading separately, should be competent to contract, and be made liable,

154 Ibid., 612.
155 Ibid., 611.
156 Ibid., 613.
in certain cases, to be made bankrupt."\textsuperscript{157} There was, however, no serious attempt in Commons to broaden the scope of the Bill. The general consensus was to postpone consideration on the expansion of a wife's property rights to a later date. George Burrow Gregory, Conservative Member from Sussex, summed up the general attitude of Commons when he stated that: "In principle the Bill was perfectly right."\textsuperscript{158}

The Amendment Bill of 1874 was sent to a Select Committee on April 15, 1874, in order to clarify the meaning of some of the clauses. It passed its Third Reading in Commons on June 2, and was sent to the upper house where it passed all three readings without debate. It received the Royal Assent on July 30, 1874.

The Married Women's Property (1870) Amendment Act of 1874 is often glossed over by the legalist writers on the subject. Albert Dicey termed the 1874 Act as simply an attempt to correct an "absurd blunder by which Parliament had entirely freed a husband from liability for his wife's ante-nuptial debts, whilst allowing him still to obtain the greater part of his wife's property."\textsuperscript{159} Another writer stated simply that: "The Married Women's Property Act of 1874 . . . may be passed over."\textsuperscript{160} Although this Bill is rather limited in its scope, it is important as an intermediate step in the progression toward the

\textsuperscript{157} Ibid.

\textsuperscript{158} Ibid., 614.

\textsuperscript{159} Dicey, Lectures on the Law and Public Opinion in England, 390.

\textsuperscript{160} Lush, "Changes in the Law Affecting the Rights, Status, and Liabilities of Married Women," Twelve Lectures, 353.
more sweeping provisions of the 1882 Act.

Dissatisfaction with the limited protection granted by the 1870 and the 1874 Acts did not surface in Parliament until 1881. Indeed, on the opening day of the 1881 Session a parliamentary delegation, headed by John Hinde Palmer, Lincoln, along with Sir Jacob Bright, Birmingham, Arthur Arnold, Salford, and Sir Arthur Hobhouse, met privately with the Lord Chancellor in his private room off the House of Lords. During the interview, Hinde Palmer presented the provisions of the proposed measure to the Lord Chancellor. The Lord Chancellor expressed his desire to consider the Bill further and promised that he would consult with the Bill's sponsors and would promote the Bill in the Lords.161

The proposal itself was written by Dr. Richard Marsden Pankhurst, husband of Emmeline G. Pankhurst, the famous suffragette.162 The Pankhurst proposal, sanctioned by the Married Women's Property Committee, granted a wife absolute right to her property and to sue and be sued in the Courts of Law, as if she were a feme sole.

It appeared that generally the members of Parliament were either extremely willing to confer sweeping property concessions upon married women or extremely tired of debating the issue altogether. This question

161 The Times, January 8, 1881.

had been before the Commons, in one form or another, off and on since 1857. The Select Committee on Married Women's Property, which met during the 1881 Session, did not hold hearings on the proposal, as in 1868, instead, they merely deliberated among themselves over the wording of certain clauses. The Committee Report contained no lengthy explanation of the scope or effect of the proposal, as had been done by the committee in 1868. The 1881 Committee probably believed that the evidence gathered by their predecessors was adequate enough to satisfy any serious objection as to the worth of such legislation. 163

Sir George Osborne Morgan, Liberal Member from Denbighshire, Wales, sponsor of the Bill in Commons, 164 presented it for its Second Reading on June 8, at 1:35 A.M., stating that he felt the motion "would not meet with any opposition . . . that the principle of the Bill had been over and over again discussed in that House." 165 Sir George Campbell, Liberal Member from Kirkcaldy, Scotland, arose to protest. He felt that a measure of such enormous importance which "might be said to alter the state of every one of Her Majesty's subjects," 166 needed more discussion. He said that the Bill had only been circulated to the members the previous morning and that he and several other

163 British Parliamentary Papers: Marriage and Divorce, II, 149-150.


165 Hansard, Commons (3rd Series), CCLXX, June 8, 1882, 615. Technically the proposal was presented on June 9th, merely because the evening session ran over into the early hours of the next day.

166 Ibid., 616.
members had not had time to read it. Then he added that he felt bound to say "that it would be almost indecent to pass the Bill through the important stage of second reading at that hour of the morning L1:40," and, in order to give further time for its consideration, he begged to adjourn the debate. Despite his protests, the Bill was read a second time.

On another occasion, Sir George Campbell arose, with cries of "'Oh, oh!'" ringing throughout the Commons, to protest the Bill. The "doughty member" felt that the Bill was of enormous importance; "as important as all other Bills that had passed the House since Parliament began." However, he maintained that it was being rushed through the House without one man or woman in a million having any idea what was being done. His opinion was greeted by an outburst of "'No, No!'" He, nonetheless, continued:

The Bill came down from the House of Lords, was put on the Paper the same day, and passed its first stage at 2 o'clock one morning without the challenge or discussion, and now the second stage came on at a time when Members were impatient of everything and when the Bill could not receive the discussion it required.

C. N. Warton, Representative for Bridport, echoing Campbell's views, stated that it could not receive full consideration "at so late a period of the Session."

167 Ibid.
168 Turner, Roads to Ruin, 155.
169 Hansard, Commons (3rd Series), CCLXXIII, August 11, 1882, 1604.
170 Ibid.
171 Ibid., 1605.
Both Campbell and Warton tried to buttress their delaying tactics by making substantive objections against the proposal. It was Campbell's opinion that the Christian form of marriage, in which there was complete community between the couple, was the best form. He sensed, however, that the current was running in the opposite direction; that the "women righters" had been exceedingly energetic, "whilst the friends of the poor married man were indolent, so that the case of the poor married man was hopeless." 172 He was convinced that the supporters of the Bill desired to give a woman all the privileges and control over her own property but without any of a man's liabilities. 173 Warton objected to the proposal because he believed that it would alter the position of the sexes "and make the woman, instead of a kind and loving wife, a domestic tyrant." Then he added: "Scripture was opposed to the Bill." 174

Osborne Morgan pointed out that it was rather ironic that these two Members of Parliament should be questioning the Bill. According to Morgan, Warton had a reputation in Commons as one who "blocked every

172 Ibid., 1604.

173 Ibid. He prepared an amendment that would impose on a married woman, who possessed all the privileges of a man, and who retained all her property, the same liabilities as her husband. He proposed to make the estates of a husband and a wife jointly and severally liable for maintaining the spouse and family. He had previously attempted to attach a similar Amendment to the Scottish Bill. In both cases the amendment was thrown out in the House of Lords.

174 Ibid., 1606. Thorold Rogers responded that he had never "in the whole of his Parliamentary experience, heard a more distinctly obstructive speech than that of the honorable and learned Member from Bridport."
Bill, good, bad, or indifferent." Campbell represented a constituency which had no interest whatever in this Bill, and which, Morgan continued, "already enjoyed the benefits proposed to be conferred by the Bill on English women." Despite the vocal protests of Campbell and Warton, the Bill met with little opposition as it passed through the legislative process. Warton did, however, make one final effort to postpone the Bill. Once the Bill was enacted, it was to become effective on the first of January, 1883. Warton proposed an amendment to substitute the year 1885 for 1883, reasoning that it would provide ample time for the people contemplating matrimony to "change their minds when they found the law altered." His effort failed and the effective date remained New Year's Day, 1883.

The Bill received its Third Reading in the Commons on August 15, 1882, and was sent up to the Lords on the same day. Three days later, August 18, 1882, the Bill was given the Royal Assent and labeled .45 & 46 Victoria 75.

On November 18, 1882, the Married Women's Property Committee met for the final time, primarily for members to congratulate each other on such a fine job. The Committee offered a special vote of gratitude

175 Ibid.
176 Ibid. Morgan was referring to the passage the previous year of a Married Women's Property Act for Scotland.
177 Ibid., 1610.
178 Journals of the House of Commons, CXXXVII, Aug. 15, 1882, 481.
to Osborne Morgan for his sponsorship of the measure in the Commons. Morgan humbly stated that the gratitude was really due to "the devoted band of earnest-minded women, who, with very slender resources at their back and in the face of determined opposition, were resolved to secure for poor women of this country that control over their own property which their richer sisters enjoyed." 179 As its last act, the Committee unanimously adopted the following resolution:

"That this meeting, regarding the Married Women's Property Act, 1882, as a great measure of justice, advantageous to all classes of the community, and calculated to raise the dignity and stability of the marriage relation in this country, hereby tenders its hearty thanks to the Lord Chancellor and Parliament, whose labours have contributed to the passing of the Act." 180

The fruits of the Committee's and Parliament's efforts were realized when the new Act officially went into effect on January 1, 1883. Many British couples arose on that New Year's Day and read a rather lengthy explanation of the new law in their morning The Times. It hailed the Act as one which

... introduces wholly new principles and, in fact, revolutionizes the law upon a vital subject. It concerns every husband and wife—in a marked manner those who marry to-day or afterwards—but more or less every married pair, even those who may be celebrating their golden weddings. 181

Basically the Act was designed to consolidate the two previous acts and to add some needed new provisions and innovations. There were three new principles introduced in this Act. The first innovative pro-

179 The Times, November 21, 1882.
180 Ibid.
181 Ibid., January 1, 1883.
vision provided that a married woman would be capable of acquiring, holding and disposing of any real or personal property as her separate property, without the intervention of any trustee. In respect to this separate property, she would be capable of entering into and rendering herself liable on any contract, and of suing and being sued, either in contract or in tort, as if she were a *feme sole*, without her husband being joined with her as plaintiff or defendant, or being made a party to any action or other legal proceeding. This provision expanded the 1870 Act, which gave to a wife her wages as her separate property, to include all forms of real and personal property, free from the control of trustees. Coupled with this innovation were certain liabilities. A wife was now solely responsible for her own debts and contracts, and she was made subject to the laws of bankruptcy as if she were unmarried.

The second innovative principle of this Act was also an expansion of the 1870 Act. The Act of 1870 provided that a woman married after the commencement of that Act would be entitled, for her separate use, to personal property without any limitation of amount succeeded to her in the case of intestacy. However, the 1870 Act did set a rather arbitrary limitation of £200 in the case of property succeeded to a wife under a will. The new Act entitled her to hold, as her separate property, all real and personal property which belonged to her at the time of the marriage, or acquired or succeeded to her after

marriage. The third innovative principle declared, simply, that property acquired after the Bill became law by a woman married before the Act should be held by her as a *feme sole*.\(^{183}\)

Other clauses in the new Law dealt with stocks, bonds, and deposits held by a wife. As the Select Committee had stated in its report, these were to be regarded as the separate property of a wife.

All deposits, annuities, and sums forming part of the public stocks or funds, which at the commencement of the Act are standing in the name of a married woman, and to which she is entitled, and all shares, stocks, debentures, debenture stocks, or other interests in any company or society which at the commencement of this Act are standing in her name, and to which she is entitled, shall be deemed to be the separate property of such married woman. And the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every company, society, and savings bank shall, on the application of such married woman, and on sufficient evidence of her title being produced, take notice thereof and act accordingly.\(^{184}\)

These innovations insured for the married woman her legal possession of all classes of property and to deal with or dispose of them as if she were unmarried.

As Edward L. Johnson stated in his chapter on property rights of husband and wife, the first two clauses of the Act created "a regime of strict separation of property . . ., and marriage no longer had any effect on the property rights of the spouses *inter se*."\(^{185}\) The

\(^{183}\)Ibid.

\(^{184}\)"Report from the Select Committee on Married Women's Property Bill; with Proceedings of the Committee," British Parliamentary Papers: Marriage and Divorce, II, 1881, 150. The last sentence of the proposal was struck out in the final draft of the Act.

\(^{185}\)Johnson, *Family Law*, 77.
new law made it impossible for a married man to acquire any further interest in his wife's property by marriage. To further insure a wife's property rights, section 19 of the Act left the marriage settlement intact; it did not diminish the protection derived from the restraint on anticipation.186

Besides guaranteeing property rights to a wife, the Act also provided for the protection of her separate property against both her husband and outsiders. She was granted the right to sue in her own name for protection against outsiders. Clause one, section two dispensed with the need to join her husband in actions by or against her.187 She could now sue or be sued in her own name without her husband. The Act also recognized that her property might need protection even against her husband. It recognized this by permitting an exception to the rule that husband and wife could not sue each other in tort.188

Section 12 gave a wife civil and criminal rights of action against her husband for the protection and security of her property. However, no criminal proceedings could be taken by a wife against her husband while they remained together. Even if the couple were living apart, a wife could take criminal proceedings against her husband, concerning property claimed by her, only for wrongs committed by him when leaving or

187 Ibid., 366.
deserting her, or about to leave or desert her. 189

The Law not only defined the property rights of a wife and provided her with the means to protect her interest but also recognized her responsibility to her husband and children. Section 20 stated that when a husband fell into the charge of a parish or union, his wife, if she held separate property, could be forced by the court to maintain him. Similarly, section 21 provided that a wife with separate property was subject to the maintenance of her children and grandchildren, the same as her husband. However, this provision was not viewed as an excuse for a husband to abandon his fatherly responsibilities for the clause provided that "nothing in this Act should relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren." 190

The Married Women's Property Act of 1882 was a milestone. It gave to women married after 1882 sole power of disposition of their real and personal property. Similar power over property acquired after 1882 was bestowed on those already married. In view of the traditional English reverence for property, it seems rather curious that the extension of property rights to married women was the first solid success in the feminist campaign in the late nineteenth century. Perhaps the explanation for that is the fact that in this campaign the feminists were fortunate in having the support of business and

189 "Married Women's Property Act, 1882" The Public Acts, 1882, 368. Section 17 provided the legal procedure for questions concerning possession of property between a husband and wife.

190 Ibid., 370.
legal interests, which found the existing property laws inconvenient.

Although support for the passage of this Act had increased, skepticism about its successful operation did not subside. The best example of this view appeared in the January 13, 1882 issue of Punch:

THE MARRIED WOMAN'S PROPERTY ACT

(From Two Points of View.)

FIRST POINT OF VIEW.—HOW IT IS EXPECTED TO WORK.

Scene—Angelina's Boudoir. Edwin and his Wife discovered.

Edwin. And so love, you quite understand the new measure?
Angelina. Entirely, darling. But you may as well run over the chief provisions.
Edwin. You have a perfect right to deal with all your real and personal property.
Angelina. As if I were a feme sole—which, in effect, I am?
Edwin. Quite so. You take the rents and profits of all real property, and dispose of personalty absolutely.
Angelina. And I think, dear, that it is unnecessary to get your consent to any of my investment? That I can keep a separate banking-account, and so forth?
Edwin. Exactly. In the eyes of the law we are two persons.
Angelina. So I imagined. And I rather fancy, darling, that any money you receive from me you must account for? Am I not right, sweetest?
Edwin. Unquestionably.
Angelina. Correct me if I am wrong—but, my own, I always have my remedy at Civil Law?
Edwin. Certainly.
Angelina. Even when we are sharing the same dear home I can conduct a suit against you?
Edwin. Yes, darling—but you would not?
Angelina. Well, love, business is business. And a propos, what did you do with the five pounds I gave you (and which came to me as next of kin to my uncle) to convey to my dressmaker?
Edwin (confused). Well dear, as my tailor was rather pressing, I thought you would not mind my paying him before—
Angelina (severely). What! You have misappropriated my money?
Edwin (nervously). I do not like this tone, ANGELINA! And, to mark my displeasure, I shall go to Brighton by myself for a fortnight.
Angelina. A step I was about to suggest, EDWIN, as you know I cannot take criminal proceedings against you while we are living together!

"Exit Edwin, tremblingly, to consult his Solicitor."
SECOND POINT OF VIEW. -- HOW IT IS SURE TO WORK.

Scene - Edwin's Study. ANGELINA and her Husband discovered.

Angelina. And so, love, you quite understand the new measure? Edwin. Yes, darling. It's all right. Now we can do anything we like.

Angelina. Oh, how delightful! And no more stupid restrictions. I shan't be obliged to go before a musty old judge when you want to get rid of any of our money?

Edwin. Oh, dear, no, angel. That sort of thing is quite out of date. The law regards us, in later days, as two distinct persons. You can do just what you like with your money.

Angelina. That is just what you like, darling, for my money is yours. Oh, I am so pleased! And you will promise never to bother me any more about business? You will do just what you want with all the rent and profits and things?

Edwin (laughing). Well, it's a rather heavy responsibility. You know the law gives you a remedy. Wives can proceed against their husbands.

Angelina (ironically). Oh, can they?

Edwin. Yes; not only in civil suits, but even in criminal actions.

Angelina (indignantly). The Law allow a wife to send her husband to prison! The Law should be ashamed of itself!

Edwin. But, then, husbands in like manner can incarcerate their wives!

Angelina (agitated). But you wouldn't dear! You wouldn't be so cruel!

Edwin. Well, business is business! There -- don't cry. I was only joking. And that reminds me that the remaining thousand, which you took as next-of-kin to your Aunt, had better be invested. I think I shall put it into Turkish Sixties.

Angelina (nervously). But haven't you lost rather a lot, dear, before, by putting things into Turkish Sixties?

Edwin (angrily). I do not like this tone, ANGELINA! What! you interfere with my disposition of your money!

Angelina (piteously). Oh, no darling!

Edwin (severely). Well, I shall mark my displeasure by going to Paris by myself for a month!

Angelina (crying). Oh, EDWIN! (Wiping her eyes.) Well, perhaps it will do you good, darling -- it will do you good! And I would suffer anything for your sake! But, to show you are not angry with me, do, do -- (sob) -- put the money into Turk -- (sob) -- Turkish -- (sob) -- Six-ix-ties. (sob.)

"Exit Edwin triumphantly, to direct his Stockbroker." 191

---

Chapter IV

THE SIGNIFICANCE OF THE ACT

"It is a commonplace that legislators rarely foresee the effect of their own legislation . . . ."

"The New Legal Position of Married Women,"
Blackwood's Edinburgh Magazine, Feb., 1883.

The central principle behind the Married Women's Property Acts was the establishment of a distinction between the husband's and the wife's estate. This principle had been an adoption of the equity principle which had established marriage settlements and had made a wife a feme sole over her separate property. The Property Acts, as passed by Parliament, merely recognized and consolidated this judge-made principle into statutory form.

Although the Married Women's Property Act of 1882 was based upon this principle, the wording of various provisions had created some anomalies which, as Dicey pointed out, "may have been quite unforeseen by members of Parliament."\(^{192}\) One individual, identifying himself only as "Q.C.", wrote a letter to the editor of The Times concerning the phraseology of section 12 of the 1882 Act. This section provided that no husband or wife shall be entitled to sue the other for a tort. The problem was, according to the writer, that certain actions in the

High Court of Justice to obtain a divorce was considered in consequence a tort. Therefore, he questioned whether this Act in fact abolished the right to obtain a divorce.

It seems to me that until this Act is amended this must be so, as it is impossible, I think, legally to say that an action in the High Court of Justice grounded on a matrimonial wrong is not an action where 'the husband or wife sues the other for a tort.'

"Q.C.'s" main attack was, however, not directed at the Married Women's Property Act, but rather, it seems, at divorce in general. In the next to the last paragraph of his letter, he stated:

My own opinion is that socially the Divorce Act has operated very injuriously, and that whenever a marriage to a divorced person has taken place in a family it has sent a chill through the family generally; and my opinion of the new Act is that when fully understood and acted upon by the masses in our great towns it will tend very much to lower the happiness of the marriage state, and reduce matrimony to a condition very little, if any, better than a state of concubinage with the chill or stigma of that state removed.

The question over the ambiguous phrasing of the Act raised by "Q.C." was never pursued in Parliament and there is no indication that the interpretation of the act ever posed as a deterrent to divorce in the courts. His letter did, however, indicate a potential problem of interpretation.

The most pessimistic view of the Married Women's Property Act was expressed in an article that appeared in Blackwood's Edinburgh Magazine. Citing a woman's inability to handle her own finances, the writer saw only disastrous consequences as a result of the passage of the act. "Few women like having to do with money," he insisted.

193 The Times, January 5, 1882.
194 Ibid.
"Many are afraid to have anything to do with it except spend it. Indeed, from the conduct of some women, one might judge that this is the only idea about it that they have." Since the liberation of her property from her husband's control, he feared that the woman would now fall victim to bubble companies, speculators, and other kinds of impostors. For the author, the fear of an inexperienced wife being financially duped was less troublesome than the fear of the spirit of independence that might be instilled in them as a result of the new property law.

The circumstances that the new Act puts some married women into a position independent of their husbands, if they have strength of mind to assert it, will tend to make all women dwell more upon their rights, and resent their husband's interference with their management of their property. The effect of the Act will be to increase the independence of women, . . . . If the husband is no longer the head of the wife (and, as far as property goes, he is so no longer), there seems no reason why wives should not have independent views, an independent profession, independent society and independent interests, just as much as independent property.

The author admitted that while the consequences of the Act could not be easily foreseen it was an immense improvement on the old law. He regretted that the Act did not proceed on other lines and "avoid creating separate interests in conjugal property." However, he concluded, "... we do not doubt that its operation will be salutary in protecting many unfortunate women who, if it had not been passed, would have had to make the best of a bad system of law, as well as of a bad husband."

196 Ibid., 217-218, 219-220.
197 Ibid., 220.
198 Ibid.
One of the unforeseen consequences of the Act stemmed from the ambiguous phrasing and subsequent reinterpretation of certain phrases by the law courts. A major conflict centered on the contractual powers granted to married women by the act. Section one, subsection four, of the 1882 Act, stated:

Every contract entered into by a married woman with respect to and to bind to her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire. 199

Based on the wording of this section, it did not appear that a married woman was personally liable for a debt, but, rather, bound her separate property.

The ambiguity of this passage surfaced soon after the passage of the 1882 Act. In one case a married woman had attempted to bind in contract separate property which, at the time of the contract, was not in her possession. The Court had to determine whether her action was legal or whether her power to contract and dispose of property was still confined to separate property which belonged to her at the time of the contract. This, in fact, was the case prior to the passage of the 1882 Act. The Court held that if a married woman had no separate property at the time of the contract, she therefore had no contracting power at all. 200

Section one, subsection three of the 1882 Act had made future


acquired property liable to contract. The question arose whether the possession of any separate property, no matter how small, enabled a wife to enter a contract so as to bind separate property acquired in the future. The Court again opted for a narrow interpretation of the Act's provision. The Court held that only if a married woman held property sufficient enough to suppose that she intended to pay the debt out of it could the contract be considered valid. According to the Court's interpretation of this first section the third subsection was completely negated. A wife could exercise her contractual powers only in respect to separate property in her possession at the time of the agreement.

Not only did these Court rulings severely limit a married woman's newly acquired liberties, but this narrow interpretation also placed creditors in a rather peculiar situation. It appeared that by the actions of the Court creditors were placed in a situation very similar to that which existed prior to the passage of the Married Women's Property Act of 1874. By entering into contract with a married woman a creditor risked having the contract invalidated if, at the time of the agreement, a married woman lacked sufficient property to cover the obligation.

This problem became so acute that it was necessary for Parliament to pass the Married Women's Property Act (1882) Amendment Act of 1893, to deal with the question of contracts. The only function of the Act

---

201 Ibid.
was to clarify the ambiguous wording of the 1882 Act. As Lord Macnaghten stated in the debate on this issue: "It dealt with some points in the law relating to married women, not of very great importance, but upon which amendment was necessary."202 The Amendment Act of 1893 affirmed the full contractual powers granted to a wife by the 1882 Act.203

Admittedly the changes and revisions enumerated by the Act of 1893 concerned relatively minor points and, therefore, they should not detract from the fact that the Married Women's Property Act of 1882 was perhaps "the greatest social revolution of the century."204 A married woman was, after 1882, capable of acquiring, holding, and disposing of any property belonging to her without the interference of a trustee. Every woman married after the passage of the Act was entitled to hold as her separate estate all property belonging to her at marriage or acquired by her after marriage.

The twenty-three year span from the passage of the first property act in 1870 to the passage of the Amendment Act of 1893 certainly typified the pattern of reform which was a major characteristic of

202Hansard, Lords (4th Series), XV, July 31, 1893, 870.

203The legalists in their writings concerning a married woman's property and the development of the various property acts devote very little space to this particular act. P. M. Bromely, Family Law (London, 1966), 427, devoted only one sentence to this act and merely declared that it was passed "to clear up a number of difficulties and ambiguities in the Act of 1882 and to fill one or two gaps which this Act had left." Albert V. Dicey, Lectures on the Law and Public Opinion in England, 371-398, simply referred only to its title with no in-depth explanation of its ramifications.

the Victorian era. It may seem to be a contradiction of terms to state that the gradual emancipation of married women's property had a revolutionary effect. As Dicey noted: "For within twelve years (1870-1882), or at most twenty-three years (1870-1893), Parliament reformed the law as to married women's property, and thus revolutionised an important part of the family law of England; and neither twelve not twenty-three years can be considered as more than a moment in the history of a nation."205 This is not to say that the changes introduced by this series of acts were a sudden revolution. It would be more accurate to accept Dicey's interpretation that they were merely a "tardy recognition of the justice of arrangements which, as regards the gentry of England, had existed for generations."206 The acts were, therefore, simply a statutory statement of the rulings and arrangements which had been previously established through Equity by the Court of Chancery.207

The study of the property rights of married women, in nineteenth-century Britain, should not be confined solely to legal history and a discussion of the judicial and legislative procedures. Such a study

206 Ibid., 395.
207 Ibid., 371-398. The main emphasis behind Dicey's chapter on the property rights of wives, and, indeed, the only reason for his discussion of it at all, was to establish a comparison between the slow process of judicial litigation and the more rapid operation of statutory law, as the chapter heading ("Judicial Legislation: The Effect of Judge-made Law on Parliamentary Legislation") indicates. The evolution of the rules of equity, as Dicey pointed out, spanned a period of over two centuries and when compared to twenty-three years of parliamentary action, the legislative process seems to be markedly more rapid.
has to be included within the teleological progression toward total feminine equality and political enfranchisement. The effort for passage of the several property acts was not an end unto itself. Rather than viewing the 1882 Act as the culmination of the struggle for repeal of property restrictions on wives, it should be viewed as a stepping-stone toward the complete enfranchisement of women. The major effect of the Married Women's Property Acts, in this respect, was that wives were no longer precluded from possessing the necessary property qualifications in order to vote.

Mrs. Millicent Garrett Fawcett,208 one of the leaders of the suffragette movement, in her article "Women and Representative Government" that appeared in The Nineteenth Century in 1883, maintained that it was essential to the property acts as a progressive step toward active political participation. She was convinced that the property acts would never have been introduced or even heard of had it not been for the work done by the Married Women's Property Committee and the Women's Suffrage Societies. She maintained:

... by (their) constant and untiring efforts actively carried on for sixteen years, have done something to awaken that keener sense of justice to women ... However, let it be supposed that this view ... is entirely erroneous, and let it be supposed that the Legislature have, of their own free will, quite unmoved by any representation made to them by women, been graciously pleased to say that married women may have what is their own. What right has any set of human beings to say to another, "I concede to you that piece of justice, and I withhold this, not because you

ask for either, or can make me give you either, but because I choose to act so?"209

The views she put forth in this article echoed the fears that had been expressed by the anonymous author in his article "The New Legal Position of Married Women": "As for politics, property has always been the English qualification for a vote; and if a woman has separate property, it may occur to her that she ought to have a separate vote also."210

The demand for the political enfranchisement of women was, according to George M. Trevelyan, "the outcome of a very considerable degree of social enfranchisement already accomplished."211 Similar to the series of Reform Acts passed in the nineteenth century, this series of property acts represented the gradual extension of the tenets of nineteenth century liberalism to a broader portion of the English population. The interesting point concerning the property acts was that their passage marked the transcendence of liberalism over sexual barriers. However reluctantly and grudgingly these concessions were granted, the sanctity of private property was guaranteed to wives, thereby releasing them from the economic bondage to their husbands.

Although these property acts are relegated to a subsurface position in the mainstream of British history, and although the debate over

209 Millicent Garrett Fawcett, "Women and Representative Government," The Nineteenth Century, XIV (August 1883), 314.
211 George Macaulay Trevelyan, English Social History: A Survey of Six Centuries Chaucer to Queen Victoria (London, 1942), 552.
the merits of their provisions subsided within a very short time, their importance should not be minimized. They provided an important foundation for the blooming debate for the eventual enfranchisement of women. More importantly, the Married Women's Property Acts signaled the beginning of the end of the Victorian view of the ideal wife. The image of the submissive wife whose whole excuse for being, according to Houghton, "was to love, honor, obey -- and amuse -- her lord and master, and to manage his household and bring up his children"\(^{212}\) was rapidly becoming a relic of the past.

\(^{212}\) Houghton, *Victorian Frame of Mind*, 348.
BIBLIOGRAPHY

PUBLIC DOCUMENTS


- Hansard's Parliamentary Debates (3rd Series). CXLVI (1857); CXCI (1868); CXCIII (1868); CXCIX (1869); CXCVII (1869); CCI (1870); CCII (1870); CXXIII (1870); CXXVII (1874); CCLXX (1882); CCLXXIII (1882).


- The Journal of the House of Commons. CXXIV (1869); CXXXVII (1882).


LETTERS AND DIARIES


Ruskin, John. The Winnington Letters: John Ruskin's Correspondence with Margaret Alexis Bell and the Children at Winnington Hall. Edited by Van Akin Burd. Cambridge, Massachusetts, 1969.

NEWSPAPERS


ARTICLES


The New Legal Position of Married Women." Blackwood's Edinburgh Magazine, CXXXIII (February 1883), 207-220.


Women's Rights and Duties." Blackwood's Edinburgh Magazine, LIV (September 1843), 373-397.


Commager, Henry Steele. "English Traits: One Hundred Years Later." The Nineteenth Century, CXLIV (July 1948), 1-10.


Galloway, M. A. A. "Women in Politics." The Nineteenth Century, XIX (June 1886), 896-901.


"The Married Women's Property Act from Two Points of View." Punch, LXXXIV (January 13, 1883), 21.


Romanes, George J. "Recreation." The Nineteenth Century, VI (September 1879), 401-424.


Stephens, Caroline E. "Mistress and Servants." The Nineteenth Century, VI (December 1879), 1051-1063.


Tod, Miss. "Married Women's Property." Leisure Hour (January 1, 1869), 12-15.


SECONDARY BOOKS


________. *The Moral Education of the Young in Relation to Sex.* London, 1878.


The *Book of Common Prayer and Administration of the Sacraments, and Other Rites and Ceremonies of the Church According to the Use of the Church of England Together with the Psalter or Psalms of David Printed as They Are to Be Sung or Said in Churches; and the Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons.* Oxford, /n.d.7.


Cruse, Amy. The Victorians and Their Reading. Boston, 1936.


Thompson, William. *Appeal of One Half of the Human Race, Women, Against the Pretensions of the Other Half, Men, to Retain Them in Political, and Thence, in Civil and Domestic Slavery; In Reply to a paragraph of Mr. Mill's Celebrated "Article on Government."* London, 1970; first published 1825.


---------. *English Social History: A Survey of Six Centuries Chaucer to Queen Victoria.* London, 1942.


UNPUBLISHED DISSERTATIONS
