

2022

## **Married Women and the Law in Britain, North America, and the Common Law World**

University of Florida Levin College of Law

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## **Married Women and the Law in Britain, North America, and the Common Law World**



**This intimate conference examines issues of marriage and married women's legal disabilities through multiple lenses, including by time period, legal system, as a colonial export, as a religious imperative, its economic and social impact, and as literary representation.**

**May 6, 2022 from 8:30 – 5:30**

**May 7, 2022 from 8:30 – 4:00**

**Ustler Hall, University of Florida**

**Married Women and the Law in Britain, North America,  
and the Common Law World  
Program**

**Friday, May 6, 2022**

8:30-11:00 – **Continental Breakfast** – Ustler Hall

9:00 – Welcome and Introductions

9:15-10:35 - Panel 1 – The Social and Legal Constructions of Coverture

**Cordelia Beattie** – ‘I was much surprised to hear this sad news’: Alice Thornton and Coverture in Seventeenth-century England

**Gwen Seabourne** - Coverture and the (Medieval) Common Law: Embracing, Complexity, and Bedspreads

**Holly Brewer** - Transformations of Domestic Law (Redux): the Expansion of Coverture

10:45-12:25 – Panel 2 – Women in the Courts

**Sara Butler** – Marriage and Malicious Prosecution in Late Medieval England

**Rebecca Mason** - Family conflict, legal strategies, and married women’s litigation in early modern Scotland

**Stephanie Brown** – Feme Uncovered: Coverture and Crime in Late Medieval England

**Krista Kesselring** - From the Law-full to the Lawless: Women in the Late Elizabethan and Early Stuart Court of Star Chamber

12:25-1:20 – **Lunch** – Ustler Hall Courtyard

1:20-2:40 – Panel 3 – Marital Breakdown

**Amy Froide** – Coverture and its Relationship to Marital Separations in Early Modern London

**Emily Rhodes** – ‘As man and wife ought to doe’:  
Unauthorized Marital Separation in Late  
Seventeenth-Century England  
**Tim Stretton** – Combatting Marital Violence in  
England, 1500-1750

2:50-3:50 – Panel 4 – Married Women and Religion

**Susan Cogan** – “Catholic Wives, Coverture, and  
Citizenship in Early Modern England”

**Maebh Harding** – Article 41, Catholic Teachings  
and the Ossification of Victorian Family Power  
Structures in Irish Law

4:00-5:00 – Panel 5 – Married Women and Culture

**Susan Amussen** - Gender and Racial Order on the  
late 17<sup>th</sup> century English stage

**Allison Tait** – The Curiously Female Household:  
Forming Families in the Shadow of Coverture

**Saturday, May 7, 2022**

8:30-11:00 – **Continental Breakfast** – Ustler Hall

9:00-10:40 – Panel 6 – Wives and Wealth

**Cathryn Spence** - ‘Given up by herself’: Wives and  
wills in early modern Scotland

**Carla Spivack** - Coverture After Death: How  
Inheritance Law Robs Women of Financial Self  
Determination

**Amy Erickson** - Coverture the labour market, and  
entrepreneurship in England, 1690-1851

**Jennifer Aston** - Removing ‘the Enjoyment of Her  
Property’: Coverture, Trusts, and the Matrimonial  
Causes Act 1857

10:50-12:10 – Panel 7 – Wives and The Economic Sphere

**Emily Ireland** – Who suffered under the South Sea  
Sufferers Bill 1721? *Feme Coverts* and parliamentary  
petitions in the wake of the South Sea bubble

**Danaya Wright** – The Liminal Status of Married Femes Sole  
**Mary Beth Combs** - The 1870 Married Women’s Property Act and the Marriage Patterns of Nineteenth Century British Shopkeepers

12:10-1:00 – **Lunch** – Ustler Hall Courtyard

1:00-2:20 – Panel 8 – Women and Empire

**Phillip Emanuel** – My Lady begins now to sollicit hard’: Wives and the making of the imperial state

**Brian Connolly** – Sovereignty, Marriage, and the Intimate Sphere

**Elizabeth Bowyer** - Coverture and Married Women’s Contracting in Settler Colonial Societies: New Zealand 1840-1920

2:30-3:50 – Panel 9– Marital Unity, Children, and Law Reform

**Taylor Starr** – External Advocacy for Legal Reform: Genesis of Ontario Family Law, 1918-1964

**Josh Blecher-Cohen** - Habeas Corpus for Child Custody in Nineteenth-Century American Legal Thought

**Laura Rosenbury** – The New Parental Rights

## Abstracts and Bios

### **Susan Amussen - Gender and Racial Order on the late 17<sup>th</sup> century English stage**

The paper will explore the ways two late 17<sup>th</sup> century plays, Aphra Behn's *The Widow Ranter* (focused on Bacon's rebellion in Virginia) and Thomas Southerne's dramatic adaptation of Behn's novel *Oroonoko*, talk about marriage, from the perspective of widows (major characters in both plays), unmarried women, and to a lesser extent, married women. Both plays are deeply concerned with both gender and racial order, and thus help us think about racialized nature of gender.

Susan Amussen is a social and cultural historian of Britain in the early modern period at University of California, Merced

### **Jennifer Aston - Removing 'the Enjoyment of Her Property': Coverture, Trusts, and the Matrimonial Causes Act 1857.**

The study of trusts and settlements has received attention from historians of women and class (Perkin 1989; Erickson 1993; Shanley 1993; Spring 1993; Morris 2005; Phillips 2006; Aston 2016) and legal scholars (Stebbins 2002) but none have examined what happened if these complicated arrangements had to be reversed in the event of a divorce. This paper will use a close reading of the divorce case of *Beauchamp v Beauchamp* [1900] to explore what happened when trusts and marriage settlements, which were designed to be permanent and difficult to break, had to be unravelled. In doing so, it will outline the wider implications for women's legal, economic, and social status and suggest possible avenues for future research.

Jennifer Aston is Senior Lecturer in History and  
Director of the Institute of Humanities at  
Northumbria University

**Cordelia Beattie – ‘I was much surprised to hear this sad news’: Alice Thornton and Coverture in Seventeenth-century England**

Alice Thornton (1626-1707) was the daughter of Christopher Wandesford, Lord Deputy of Ireland in 1640. When he died later that year, Alice’s father bequeathed her fifteen hundred pounds at age twenty-one (or on marriage, whichever came first), and a further thousand pounds a year after marriage, although his will was lost for many years and Alice’s inheritance was challenged. In 1651, at age twenty-five, Alice married a member of the minor Yorkshire gentry, William Thornton, and he agreed to give her his lordship of East Newton as jointure, and his estate was to be settled on any children he had with her, male or female. However, he had control of these lands during their marriage and, by the time he died intestate in 1668, many were sold or heavily mortgaged. Our main sources for Alice’s situation are the four accounts of her life written by Alice herself. Only one has been fully edited so far: *My first booke of my life*, ed. R.A. Anselment (2014). However, it is the books that follow, which deal with the events after her husband died intestate, that have most to say about Alice’s experiences with the law. This paper will draw on these manuscripts to reflect on the effect of coverture on women’s ability to own and transmit property in seventeenth-century England, using Alice Thornton as a case study.

Cordelia Beattie is a Senior Lecturer in Medieval History and the founding director of its Centre for Medieval and Renaissance Studies at the University of Edinburgh

**Josh Blecher-Cohen - Habeas Corpus for Child Custody in Nineteenth-Century American Legal Thought**

Child-custody litigation reveals the fiction of coverture, casting mother and father as legal adversaries. Across the long nineteenth century, married parents in the United States turned to habeas corpus to contest interspousal child-custody disputes as formally separate parties. In response, state courts and treatise-writers wrestled with an array of English precedent, new state statutes, and evolving social norms about the family to fashion a distinctly American body of law on habeas corpus for child custody.

The resulting doctrine looked different than its English inspiration at King's Bench, authorizing greater protections for mothers who were separated but not legally divorced and providing an increasingly robust defense of the tender-years doctrine. Even within the marital household, American courts began to acknowledge that mothers and fathers were "jointly entitled" to custody of minor children in a shared household. Drawing on state and federal cases from nearly two dozen states, as well as family-law treatises like Tyler's 1882 *Commentaries on the Law of Infancy and Coverture*, this paper traces the development of habeas corpus for child custody in American legal thought—and its role in facilitating custodial claims asserted by mothers and recognized by courts.

Josh Blecher-Cohen is a Liman Fellow at Yale University

## **Holly Brewer - Transformations of Domestic Law (Redux): the Expansion of Coverture**

For several years after my 2005 *By Birth or Consent: Children, Law, & the Anglo-American Revolution in Authority* I became obsessed both with changes in the Common Law in England itself between 1600 and 1800 and especially on the impact of William Blackstone, whose *Commentaries* (1765-1769) helped to rationalize a much messier legal system into something more coherent. In *By Birth or Consent*, and in my subsequent work, I have also been fascinated by how the common law—and struggles over the shape of that law—impacted England’s colonies in the Americas and the new United States. In 2008 I published [a deeply researched think piece, a chapter on "The Transformation of Domestic Law"](#) in the *Cambridge History of Law in America* that argued that Blackstone, while arguably progressive in some ways in his response to natural rights theories, was regressive in the way he considered and reframed domestic law, especially in his dramatic expansion of the law of coverture. What was most disturbing was that he made the status of wives and children more like that of servants; such comparisons made the law more coherent, and yet represented a step backwards for both women and children’s legal status in an era when servants had few rights. I received shortly afterwards a book contract from CUP to turn my multi-fold consideration of the history of domestic law as Blackstone framed them (master/servant, husband/wife, parent/child) into a short book that considered his impact on domestic law in practice in both England and in the new U.S., that I then moved away from as I focused on a different book (now in final edits). In my paper here, I propose to revisit that book manuscript (that comprehensively considers transformations in domestic law) in order to revise the chapter on coverture to incorporate references to all the wonderful work of the last decade, and

consider where we stand on the question of coverture at this point. To what extent did Blackstone reformulate the relationship between husband and wife by expanding the legal range of coverture, and to what extent did he not? How did his treatise influence/reshape practice in both England and in a range of American states in the decades following its publication and the American Revolution? Can we argue that his reframing actually gave power and impetus to the early women's rights movement, by making abuses of power (and women's legal incapacity, especially within marriage) more extreme? To what extent did early modern theories of human rights privilege only (particular) men (as opposed to men of other races or religions, women, children/the insane/the elderly).

Holly Brewer is the Burke Professor of American Cultural and Intellectual History at the University of Maryland

### **Stephanie Brown - Feme uncovered: coverture and crime in late medieval England**

Coverture has been framed as the erasure of a woman's legal identity because after marriage she was 'covered' by her husband. This paper uses criminal inquests and trials to argue that women have always played a vital role in prosecuting crime and that women's words mattered. Upon the words of a woman, a person, usually a man, could be arrested and held in the county gaol, which could be for months if not years, and then face a capital trial. Moreover, women of any marital status were personally liable for their violent actions. They were expected to defend themselves, without their husband or a male relative. Unlike in civil cases where a woman was 'covered' by her husband, in felony trials, which had the highest stakes, life or death, they stood alone. This speaks to the legal capabilities and knowledge of premodern women. Finally, this paper shows that when a husband

and wife were indicted together, the chattels were recorded as *theirs* not *his*. This finding reveals that while the law may have stated that a husband took ownership of his wife's possessions, in practice, society considered such goods to be the property of the couple.

Stephanie Brown is the Economic History Society's Eileen Power Fellow at the Institute of Historical Research and is a member of the Cambridge Group for the History of Population and Social Structure.

**Elizabeth Bowyer - Coverture and Married Women's Contracting in Settler Colonial Societies: New Zealand 1840-1920.**

This paper will discuss the dynamic and convoluted relationship between married women and contracts in settler colonial New Zealand. Women were part of the distinct and diverse ways contracts operated in colonial settings. Contracts not only acted as an instrument of creating and maintaining order within the colonial marketplace, but as a way in which unconnected individuals were able to form and build relationships and networks between each other when they came from disparate and unfamiliar backgrounds. In New Zealand, married women, both Māori and Pākehā, populate the archive of cases relating to contracts, as well as the archives where the law of contract was tried and developed under the common law. The common law however, interacted in complex ways with women's capacity to contract, especially in the application and evolution of coverture in the nineteenth century. This paper will discuss whether colonial settings allowed married women greater or lesser autonomy to act as economic and social agents. It will situate New Zealand within the broader context of European settler colonialism and the common law world in which New Zealand's marketplace and its people, through trade, commerce, law, and travel, were inextricably linked. It will

discuss how women's contracting practices were influenced, enable or disabled by the workings of coverture and how New Zealand's Married Women's Property Act 1884 changed the frequency and nature of women's contracting practices.

Libby Bowyer is a PhD candidate in the History Programme of Te Herenga Waka – Victoria University of Wellington with a research focus on women's legal history in Aotearoa New Zealand

### **Sara Butler – Marriage and Malicious Prosecution in Late Medieval England**

The purpose of this paper is to highlight how evidence of the experience of marriage, popular attitudes towards marriage, and disputes evolving from marriages can be drawn from a multitude of sources outside the records of the church courts. In this paper, I am going to be examining the class of documents referred to as C 144 in The National Archives, that includes inquests into malicious accusations of homicide. This may seem like an odd exercise: in medieval England, a married woman was forbidden from initiating criminal accusations, except when it comes to personal injury (generally defined as rape) or the homicide of her husband. This "limiting rule," as historians refer to it, appears in *Magna Carta*, *Bracton*, *Britton*, *Fleta*, *the Mirror of Justices*, and *Placita Coronae*. And because most adult women were married, this rule should have had a broad-ranging impact. Nonetheless, as historians have demonstrated time and again, in flagrant disrespect for the limiting rule, women generally shouldered the burden of private prosecution. Also, women regularly ignored the acceptable categories of private prosecution: they did not merely sue for the deaths of their husbands; they also sued for the deaths of their sons and their brothers. Accordingly, when it comes to complaints about false accusations of

homicide, what we are really talking about is men complaining that they are victims of women's abuse of the legal system. When I first delved into this class of records, I expected to discover lots of deep-rooted misogyny– I didn't expect to find so much about marriage. This paper will examine marriage through the lens of malicious accusations, highlighting relationships with in-laws; marriage by extortion; the conjugal debt; and the law as a form of revenge in marital spats.

Sara Butler is the King George III Professor in British History at the Ohio State University

### **Mary Beth Combs – The 1870 Married Women's Property Act and the Marriage Patterns of Nineteenth Century British Shopkeepers**

This paper aims to determine if marriage patterns and marriage matches among shopkeepers changed in the years surrounding the 1870 Married Women's Property Act. The Act of 1870 granted British women the right to own and control personal property. Economic theory suggests that, after the Act was passed, single male shopkeepers had a greater incentive to delay marriage until they were able to save an amount of money equivalent to what they would have gained from the estate of the wife had they married before 1870. Moreover, after the Act, parents may have been less restrictive about the married choices of their daughters (e.g. allowing them to marry outside their occupational network). Since most of the property of women married after the Act was protected by law, it seems possible that the freedom of daughters to marry outside the social and occupational network of their parents would increase. One important implication of the Act, therefore, may be an increase among marriage matches based on compatibility and

companionship and a decrease in marriages based on business connections.

Mary Beth Combs is an associate professor of Economics at Fordham University

### **Susan Cogan – “Catholic Wives, Coverture, and Citizenship in Early Modern England”**

This paper examines how Catholic wives in post-Reformation, Protestant England claimed citizenship rights for themselves despite a double legal disability. As women subject to the laws of coverture and practicing Catholics in violation of anti-Catholic statutes, Catholic wives should have experienced severe legal incapacities. Yet Catholic couples seem to have resisted the state's vision of coverture on a range of issues, from holding husbands responsible for a wife's refusal to attend church to holding a wife responsible for her husband's religious views. This study unites the literature on coverture by scholars such as Frances Dolan, Krista Kesselring, and Colleen Seguin, with the literature on female citizenship in premodern England by Phillipa Maddern and Patricia Crawford and with literature on gender and marital status by Amy Froide and Susan Amussen. It argues that Catholic couples of gentry status exploited areas where the law collided with spiritual free will to turn coverture to their advantage. One benefit of this strategy was to allow married Catholic women to make a claim on individual citizenship through the performance of specific duties that placed them in direct relationship to the early modern English state, despite their legal status as *feme covert*.

Susan Cogan is an assistant professor of history at Utah State University

## **Brian Connolly – Sovereignty, Marriage, and the Intimate Sphere**

This paper explores the relationship between national sovereignty and marriage by looking at the legal discourse around conflict of laws and “foreign” marriages. Beginning with an 1845 case of incestuous marriage contracted in England and then recognized as legal in Boston, I am particularly interested in the way that the legal discourse on marriage and the so-called “family of nations” of international law required the recognition of marriage even if it violated state laws in order to secure the harmony and order of the community. This thus relies on the ideology of separate spheres to secure international comity. Thus, I return to the oft-criticized literature on separate spheres to think through the way that the family of nations and sovereignty relied on the legal elision of married women, thus rooting the law of marriage in what the French feminist Luce Irigaray called “the eternal irony of the community.”

Brian Connolly is associate professor and chair of the department of History at the University of South Florida

## **Phillip Emanuel – ‘My Lady begins now to sollicit hard’: Wives and the making of the imperial state**

My paper will argue that while it was men who held administrative positions within the late seventeenth- and early-eighteenth century English Empire, they conducted them within closely connected domestic and administrative households, often as lineage or marital property. Wives therefore worked alongside their husbands in these positions, whether as London agents for husbands abroad, hostesses in domestic spaces used for public business, or bearers of official

documents and information, and as widows often retained a surprising amount of control over government property. Married women were thus essential to the establishment of the imperial state in the period before the transformation of the combined domestic-administrative household into the homosocial office of later centuries.

Phillip Emanuel is a newly minted PhD in History at the College of William and Mary

### **Amy Erickson - Coverture, the labour market, and entrepreneurship in England 1690-1851**

As the most draconian marital property system in Europe, coverture might be assumed to affect the economic as well as the legal and social realm. For example, a man's ownership of his wife's movable assets could be seen as a disincentive to employment for that half of the adult female population who were married. In the 1851 census, the great majority of unmarried women but only 10% of married women were recorded as in regular employment – a disparity that is unlikely to be due entirely to domestic duties. The wage-earners were probably the least affected since they were unlikely to amass capital that could be claimed by a husband in financial need. The entrepreneurs (i.e., self-employed), who had capital to start with and were able to accumulate, were more vulnerable. But there is no evidence that English women were less entrepreneurial than other European women living under more individualistic legal systems. In London and some other cities, businesswomen may have operated under the protection of the *feme sole* trader custom. However, this custom was used to prevent a husband's creditors seizing a woman's property; no evidence has yet been discovered that feme sole trader status protected a woman's assets from her own husband. This paper discusses the evidence for the relationship between

employment, entrepreneurship and marriage for women.

Amy Erickson is fulltime on the History faculty at Cambridge University and in the Group for the History of Population and Social Structure

### **Amy M. Froide – Coverture and its relationship to marital separations in early modern London**

What was it like to be a separated wife in early modern England? What kind of social, economic, and legal status did these women inhabit? Were they social pariahs? Or was separation an unfortunate but common scenario due to the inability to obtain a divorce? This paper begins to delve into these questions by examining separated wives in late seventeenth- and early eighteenth-century London. The sources for this exploration are marital cases from London's Consistory Court. While we have excellent historical scholarship on the legal process of legal separation, and a number of women's historians have examined these marital separation cases for what they can tell us about spousal abuse, we have much less understanding of the experience of being a separated wife in early modern England. While adultery or violence may have been the reason given for a separation request, an examination of the court transcripts show that what the two spouses ended up talking about was money. There were disputes over dowries, household trades and businesses, the upkeep of children, and maintaining a wife in the lifestyle to which she was accustomed. Focusing on the experiences of separation also draws out significant differences between a remarried widow separating and a first- time wife separating. Marital status mattered. Widows were much more likely to have brought property to their (re)marriages which led to disputes with their second husbands, and a refusal on the part of such women to bend to the

customs of coverture. Examinations of separating spouses indicate that the inability (or refusal) of remarried wives to conform to the expectations of coverture may have resulted in many marital separations in second marriages.

Amy Froide is professor and chair of the department of History at the University of Maryland, Baltimore County where she teaches British history and European Women's history

**Maebh Harding** - Article 41, Catholic Teachings and the ossification of Victorian family power structures in Irish Law

The structures of Victorian British family law formed the basis of an archetypal Irish family which was elevated to an ideal by Irish nationalists in the 19th century. The sense of a morally superior, Catholic Ireland, which prioritised harmonious family life and did not need a Divorce Court became a welcome marker of a different Irish identity during 19th century Westminster debates over Home Rule. The 1937 Irish constitution cements this aspirational family as a keystone in Irish law, effectively 'constitutionalising' certain aspects of the doctrine of coverture. Under Article 41.1.2 the state pledges to protect the marital family in its 'constitution and authority' while Article 41.2 imposes the traditional expectations of motherhood and a domestic role on married women. The power dynamics of Victorian Family life became imbedded in how the Irish state thought about regulating family life because they were bolstered by Catholic teachings and permeated understandings of Irish national identity.

This paper provides a feminist critique of the effects of these vestiges of coverture in legal understandings of the family in Ireland throughout the 20th century. It argues that these unexamined Victorian power structures still shape Irish legal ideas of marital autonomy and drive an unconscious bias towards

wealth retention by the economically stronger spouse in cases of divorce.

Maebh Harding is Lecturer/Assistant Professor in the School of Law at University College Dublin

**Emily Ireland – Who suffered under the South Sea Sufferers Bill 1721? *Feme Coverts* and parliamentary petitions in the wake of the South Sea bubble**

The collapse of the South Sea Company in late 1720 famously ravaged the finances of people from all ranks of English society. The South Sea Sufferers Bill of 1721 sought to hold the directors of the company to account. The Bill confiscated the estates of the directors, apart from a small allowance, to pay off the losses the South Sea Company had sustained. The wives of the directors then reacted to the confiscation of family property through petitions to Parliament and waging law in courts such as Chancery. They sought to secure property they brought into their marriages, which were sometimes held as separate property or jointures, from being confiscated. This group of married women thus demonstrated independent legal agency by submitting claims or petitions for property that either was, or they perceived to be, theirs. Much like the treatment of the old directors under the bill itself, the outcomes for the directors' wives were not uniform, and demonstrated substantial use of parliamentary discretion.

Emily Ireland is a Lecturer in the School of Law at the University of Liverpool

**Krista Kesselring – From the Law-full to the Lawless: Women in the Late Elizabethan and Early Stuart Court of Star Chamber**

Social historians have found in the rich archive of the Court of Star Chamber telling accounts of women's

individual agency and collective action. With the court's own records of judgement now missing, however, discussion often ends there, with little sense of how the privy councilors and high court justices who staffed the tribunal responded, in a venue where they enjoyed some freedom in crafting their responses to suit offences and offenders as they thought best. Contemporary reports on cases and notes taken from the court's order and degree books can help fill the gap. Using these reports and notes, this paper addresses what role the court itself played in shaping legal doctrines about women's action and agency; it turns to Star Chamber not just as a provider of sources for the social historian but as a venue for developing norms as well. It also explores what cases involving women suggest about Star Chamber, and how they might help us characterize the court in comparison to others in the realm. Other studies have shown that equity courts provided far more benefits to early modern women than did their common law counterparts, with Chancery, Requests, and others allowing exceptions to the doctrine of coverture; early study suggests that by the late sixteenth century, Star Chamber was more akin to common law than equity, in this respect at least.

Krista Kesselring is University Research Professor and Chair of the Department of History at Dalhousie University

### **Rebecca Mason – Family conflict, legal strategies, and married women's litigation in early modern Scotland**

This talk explores the motivations and strategies of married women who engaged in legal action against close family members and kin relations, focusing closely on disputes before the burgh (town) and commissary (reformed church) courts of early modern Scotland. It argues that an in-depth study of married women's legal activity as litigants, arbiters,

and users sheds new light on their position in the wider kin network, their public role in the judicial system, and in the development of property law.

Rebecca Mason is a historian of gender and law in early modern Scotland at the University of Glasgow's Centre for Gender History

### **Emily Rhodes - 'As man and wyfe ought to doe': Unauthorised Marital Separation in Late Seventeenth-Century England**

In late seventeenth-century England, married, plebeian women who were trapped in unhappy and/or abusive marriages had very little legal recourse to escape their marriages. Women could seek separation from 'bed and board' if their husband was cruel and/or adulterous through the ecclesiastical courts, but would not be allowed to remarry, leaving them still legally unprotected. Divorce with the ability to remarry only started to become available in the 1690s if a couple could get a bill passed in Parliament, but was an option only for the elite. However, in the course of my PhD research on petitions submitted by women in late seventeenth-century England, I have uncovered evidence of wives who separated from their husbands with no legal sanction, and who often lived on their own for years, without interference from the authorities in their local communities. This paper will study these women through petitions they wrote to the Lancashire Quarter Sessions courts. When informally separated women faced *in extremis* situations, they could turn to the local Justices of the Peace (JPs) to formalise their marital situation, such as by asking for relief or habitation. As such, these petitions show that communities and authorities could subsequently sanction couples living apart illegally if it meant that peace was maintained in the community. Thus, this paper will study how separated wives lived when their legal position was

precarious, and show how sources from outside legal archives can help explore the repercussions of coverture in early modern England.

Emily Rhodes is a PhD candidate in early modern British History at Cambridge University

### **Laura Rosenbury – The New Parental Rights**

Legal historians have extensively explored and critiqued the evolution of coverture and its effects, but the vast majority of that scholarship examines coverture's effects on wives, as opposed to children born within marriage. Indeed, legal historians generally have not grappled with how coverture affected children within legally recognized families. Historians have identified and critiqued the common law's failure to impose obligations on fathers who bore children outside of marriage, which was certainly a collateral effect of the doctrine of coverture. Without marriage, unwed mothers and their children experienced neither the benefits nor burdens of coverture. Scholars have not, however, delineated how the doctrine of coverture consolidated family power in the husband upon marriage, removing all other family members from the public sphere and limiting their influence in the private sphere. To emphasize and critique coverture's broader effects, this Article examines the relationship between marital coverture and child coverture, coining these more specific terms in order to analyze coverture's far-reaching nature and its persistence to this day in the form of expansive parental rights.

Laura Rosenbury is the Levin, Mabile & Levin Professor of Law and Dean at the University of Florida Levin College of Law

### **Gwen Seabourne – Coverture and the (medieval) common law: embracing, complexity, and bedspreads**

This paper will consider the place of ideas of coverture in the medieval common law, both in terms of their contemporary importance and also in terms of the role they have played in shaping legal historical writing on women. Picking up some threads from the scholarship of others, from F.W. Maitland and C.S. Kenny to Krista Kesselring, Tim Stretton and Sara Butler, and tying in some further considerations of the way in which the coverture concept was understood by medieval common lawyers, based on my own research on medieval law reports and plea rolls, it will emphasise the uneven texture of 'coverture' in this period, completely effacing married women in some contexts, whilst exposing them in others. It will also consider the advantages and difficulties which coverture ideas brought to the common law as an intellectual and practical system, and the efforts of medieval common lawyers to fit married women within a set of rules essentially focused upon male paradigms.

Gwen Seabourne is professor of legal history at the University of Bristol Law School and head of the Crime, Medical and Family Law Primary Unit

### **Cathryn Spence - Married Women and the Law in Britain, North America, and the Common Law World**

'Given up by herself': Wives and wills in early modern Scotland - This paper will explore the practice of will-writing by wives in early modern Scotland, including both legal barriers and benefits, the percentage of wives who wrote wills, how these wives exerted legal agency when writing these wills, what these wills reveal about married women's lives, and the agency these women exerted in naming and bequeathing goods and property. In addition, the information from these wills will be paired with information from burgh and kirk session records to

explore women's economic and social presence in early modern Scottish towns.

Cathryn Spence is assistant professor of economic and social history of women and gender at the University of Guelph

### **Carla Spivack – Coverture After Death: How Inheritance Law Robs Women of Financial Self Determination**

Inheritance law has made progress over recent decades in materializing the concept of marriage as partnership: elective share law in now recognizes a surviving spouse's right to a share of the marital estate despite a decedent's wishes to the contrary. But these laws still can deny that survivor, who is likely female, a fully vested property interest. Wendy Gerzog's critique of the QTip Trust is well known. Less understood, however, are the ways elective share law deprives women of vested rights after death, But this deprivation is the essence of coverture: when it comes to property rights, it is still true that "in marriage two become one, and that one is the man."

Carla Spivack is the Oxford Research Professor and Director of the Certificate Program in Estate Planning at Oklahoma City University

### **Taylor Starr - External Advocacy for Legal Reform: Genesis of Ontario Family Law Beyond Suffrage, 1918-1964**

This paper is a prequel, written to fill the gaps concerning questions about some unanswered inquiries beyond the scope of the original project. In "Internal and External Advocacy for Legal Reform," it was important to identify women's advocacy efforts in the period of 1964 to 1986 where the women *inside* the legal profession in just three decades began

to have a different effect on both social and legal change. As time progressed through the twentieth century, feminist scholars and activists realized the inadequacies of their efforts, as issues arising out of unfair compensation at marriage breakdown or "unsuccessful" common law relationships runs rampant today. There has been much written on coverture and married women's property law on nineteenth-century Ontario, just as there are substantial amounts of literature on women's efforts to secure equal rights for women under the law at marriage breakdown in the late twentieth century. However, there has been an absence in the historical record of family and property law reform from both a social/cultural and legal perspective through the period of 1918 to 1964. Thus, this paper aims to illuminate such gaps, and to locate how the activism that existed externally – which coincided with larger sweeping trends such as the demands of the suffrage movement – worked to construct truncated rights for women and eventually produced a fertile ground for more substantial changes in the latter half of the twentieth century.

Taylor Starr is a PhD student in History at York University

### **Tim Stretton - Combatting Marital Violence in England, 1500-1750**

English criminal law offered few protections to victims of domestic violence. Although the common law did not give husbands an express 'right' to beat their wives, it permitted them to use physical force (and other means) to 'correct' their wives with relative impunity. This made it virtually impossible for victims to initiate assault proceedings, except in the most extreme cases. For the majority of women, the only available remedies were: (1) to approach a magistrate to have a husband bound over

to keep the peace, which did nothing to address the harm already inflicted and sought only to deter future violence through money penalties; or (2) to approach ecclesiastical authorities to seek a separation on the grounds of cruelty. This could be expensive, created its own problems in a society where marriage was crucial to so many aspects of life, and regularly met with initial demands from church officials that couples attempt to reconcile.

Against the backdrop of these depressing realities, this paper explores the rise of clauses intended to limit or prevent domestic violence in separation deeds and marriage treaties or settlements. Historians have assumed that private separation agreements date from the 1650s and the chaos of Civil War, but evidence from unpublished litigation records confirm that they date from at least the early 1500s. These agreements attempted to guarantee women's safety by securing separate income to allow them to live apart from husbands. However, some went further and made explicit provisions to prevent violence or 'ill usage'. A number of the clauses in these agreements were virtually unenforceable, under the rules and logic of coverture. However, this paper argues that the willingness of parties to draft and attempt to enforce them is revealing of family strategies and the limits of official protections for abused wives.

Tim Stretton is Professor of History at St. Mary's University in Canada

### **Allison Tait - The Curiously Female Household: Forming Families in the Shadow of Coverture**

While most critics claim the marriage market – and by extension the marital relationship, defined by coverture – are at the heart of the novels of prolific Victorian author, Anthony Trollope, his novels also contain a set of curiously female households. These households vary in form, but include widows and

never-married women living on their own, unmarried sisters collectively constituting a household, and female companions coordinating their daily lives. These women are neither embedded in the marriage market nor called upon to navigate the disabilities of coverture. Instead, they find satisfaction in masculine-coded activities and responsibilities, such as running an estate or a business, managing finances, and enjoying travel and leisure. When they do show competence in feminine-coded activities, they are not subject to a husband's or father's domestic "mastery." In organizing and leading their lives outside of the marital-household norm, these women exist outside the ambit of coverture – sometimes unintentionally and sometimes strategically so. In so doing, they both function within and drive alternative markets that shape family formation outside of marriage and coverture, through exchanges and opportunities disconnected from the typical marital exchange. The freedoms these women possess contrast sharply with that of other female characters in Trollope's novels who participate in the marriage market because of the perceived lack of a meaningful "career" for women, because of financial precarity and the threat of female poverty, and because of gendered social expectations. Trollope's novels are an apt source for considering these dynamics of law, coverture on the margins, and household governance. And while Trollope's contemporaries attributed his enormous popularity to his "true to life" and "perfect" portrayals of English households and family life, modern Trollope scholarship has complicated this view, highlighting the ways in which Trollope not only recognized the vitality of households outside of the marital norm but also simultaneously affirmed and subverted gender norms.

Allison Tait is Professor of Law and Associate Dean for Faculty Development at the University of Richmond School of Law

**Danaya Wright – The Liminal Status of Married Females under § 21 of the 1857 Divorce Act**

This paper examines over 100 petitions for protective orders for property under the 1857 divorce act. Under that act, a wife who had been deserted was entitled to an order that would return her to feme sole status for purposes of controlling her future earnings or inheritances, and she could enter into contracts and sue or be sued even though she remained legally married. These petitions reveal a rich history of women's economic participation and expectations about what property was theirs and what belonged to their husbands. They also reveal complex pressures on both men and women as they negotiated an economic world in which marital property became a source of marital strife. Within 12 years, however, the first Married Women's Property Act would grant all wives control over their wages. I argue that this twelve-year experiment of the married feme sole was an important wedge in the breakdown of coverture.

Danaya Wright is the Sessums/Sohn Professor of Constitutional Law and Co-Director of the Center for Governmental Responsibility at the University of Florida, Levin College of Law

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