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To Have, to Hold, and to Vanquish: Property and Inheritance in the History of Marriage and Surnames

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ABSTRACT

Surnames, introduced to England with the Norman Conquest of 1066, became commonly hereditary from parent to child around the fifteenth century. Yet during that time and beyond, women sometimes retained their birth names at marriage, men sometimes adopted the surnames of their wives, and children and grandchildren adopted the surnames of their mothers or grandmothers. Surnames became closely tied to the concept of property, such that the person with the property was the holder and creator of the family name. That person was more often the man, but not always. As women's property ownership became more severely restricted over time, these diverse surname practices eventually disappeared. The connections between the operation of the surname as a socio-legal function and property law and practice will be analyzed in this paper. Important in this analysis is the legal recognition of personhood implicit in the concept of property ownership; "legal personhood" for women was minimal during the period in which surnames became most restrictive for women. Yet prior to that, both the property rights and the surname options for women were more expansive, suggesting that the legal identities of women were more developed in earlier centuries and experienced a significant retrenchment in more modern times. The causes and implications of these historical developments will be analyzed.

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I. Introduction

Surnames have existed in English culture for over a thousand years. But until about 1600 A.D., surname adoption was a highly variable and fluid cultural practice rather than a rigid, legally dictated one, and hereditary assumption of names was the exception rather than the rule during the early centuries. Women often held individualized surnames reflecting specific traits, occupations, status, or parentage (e.g., Cecilia Fairwife, Alice Silkwoman, Agnes Widow, Mary Robertdaughter, respectively). Matronymics—the hereditary passing of a female's name to her descendants—was common. Surnames such as Margretson (son of Margret) and Madison (son of Maddy, nickname for Maud) are just a few of a great many examples of this type of naming. Women's given names also frequently became surnames, without the "son" or "daughter" appellation. Marriott is a Middle English nickname for Mary; Agnes, Elizabeth, Margaret, and Helen are just a few additional examples of female given names that were converted to surnames of various forms. The strongly gendered status quo of contemporary times collectively believed to be "traditional," whereby wives assume the names of their husbands and children the names of their fathers, is a relatively recent phenomenon rather than an ancient English tradition.

Hereditary acquisition of surnames had become the norm around the fourteenth to the fifteenth centuries, though the practice was inconsistently applied from one region to the next.[1] Yet well after this time, when women had become firmly established as legally impotent, they nevertheless sometimes retained their birth names at marriage; men sometimes adopted the surnames of their wives; and children and grandchildren sometimes took the surnames of their mothers or grandmothers. Women had been permitted to own and inherit property through early medieval times, with Saxon landowners willing their lands to their daughters as well as their sons. Later, inheritance for daughters became limited to situations where there were no surviving sons. Surnames as a social and legal convention became closely connected to property, such that the person with the property was the holder and creator of the family name. That person was more often the man, but not always. However, this type of female inheritance too diminished until sometimes even distant male relatives were preferred for succession over immediate family members who were female. As women's property ownership became more severely restricted over time, these variable surname practices also disappeared. The operation and function of property, especially as applied to women, is connected to the operation of surnames as a socio-legal function.

[1] P.H. Reaney & R.M. Wilson, A Dictionary Of English Surnames Xlv-Xlvi, Xlix, Li (3d Ed. 1997).

When it comes to women, the modern state is not the result of a steady linear progression of ever-increasing rights. Rather, evidence demonstrates some significant shifts backwards. Principles of coverture and female legal impotence appear to have become more unyielding and restrictive, rather than less, through many periods in English history, thus reflecting and reinforcing a gender hierarchy that was beginning to take on a more rigidly limiting form.

The legal recognition of personhood implicit in the concept of property ownership becomes critical to the analysis when women are considered specifically. Legal personhood for women was virtually nonexistent during the period in which surnames became most restrictive for them. Yet prior to that, both their property rights and their surname options were more expansive, supporting the view that their legal identities were at one time more developed. The significant simultaneous retrenchment in both areas was not a coincidence. Although it is difficult to determine causality in these events—indeed, other forces were also operating at the time that probably also had simultaneous effects on both women's surnames and their property rights—what is apparent is that women's rights and status were being increasingly restricted in both areas. However, once the new limitations on the inheritance and property rights of women were in place, they conclusively and definitively ended the enduring variation in surname convention and usage under which they had been operating. Thus, surname retrenchment was likely exacerbated by property restrictions. Surnames and property eventually became linked socially and legally, and the implications of this for women are numerous and complex. The modern uses of both conventions have supported the large-scale erasure of women from history: with both their names and their property gone, so went their historical existence.

II. Property Ownership

A. Theories of Property

Theorists for centuries have debated concepts surrounding property as a legal and social construct, such as whether individuals can ever truly own property, whether such ownership is natural or inevitable, how it is accomplished, and the role of the state in creating and enforcing the legal concept. Yet Western theories of property are almost universally based on the assumption that the owner of the property is a legal person and entail the right to pass on one's property to heirs or designees. This is significant given that women's right to own and inherit property was once relatively expansive, and then became increasingly restricted until it was removed entirely, in the case of married women. This suggests that the legal personhood of women similarly disappeared where it had once existed.

B. Women's Historical Inheritance and Property Ownership

1. Pre-Conquest

The situation for women under diverse historical kingdoms and empires was quite variable, and in some cases they enjoyed considerable status and rights. Celtic Britain pre-dates the Anglo-Saxon period, with the first known Celtic settlements dating to the first century A.D. Although Celtic traditions may have influenced Anglo-Saxon England, very little is known about them, and the status of women cannot be determined.[2] Under the Roman Empire, women in Western Europe enjoyed some economic independence and had substantial property rights that expanded over time.[3] They could inherit equally with their brothers,[4] owned and administered property,[5] maintained separately any property they owned before marriage, and had it returned to them in the event of divorce along with the dowry.[6] During that same period, the Salian Franks (early Franks first appearing in records in the third century A.D.) originally prohibited women from owning property, but the law was amended by the Edict of Chilperic in the sixth century to allow daughters to inherit if no surviving sons existed.[7] The Germanic codes vary when it comes to women. Some were quite restrictive, placing women under the guardianship of their husbands and holding that women could not inherit, own, or administer property.[8] Yet that tradition broke down over time and women's rights grew. They became allowed to inherit property if male heirs did not exist.[9] The Visigoths (early nomadic Germans appearing about the same time as the Salian Franks) held that the husband and wife could administer jointly any land possessed before marriage by either of them,[10] and land acquired during the marriage was jointly owned by both.[11] If the husband died, the wife retained control of all of the property, including the inheritance of the minor children.[12]

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2 Sheila Dietrich, *An Introduction to Women in Anglo-Saxon Society* (c. 600-1066), in The Women of England from Anglo-Saxon Times to the Present 32-33 (Barbara Kanner ed., 1979).

3 Frances Gies & Joseph Gies, Women in the Middle Ages 13 (1978).

4 *Id.* at 14.

5 David Herlihy, *Land, Family, and Women in Continental Europe, 701-1200*, in Women in Medieval Society 14 (Susan Mosher Stuard ed., 1976).

6 *Id.*

7 Gies, *supra* note 3, at 18.

8 Herlihy, *supra* note 5, at 14.

9 *Id.*

10 *Id.* at 14-15; Gies, *supra* note 3, at 18.

11 Gies, *supra* note 3, at 18.

12 *Id.*; Herlihy, *supra* note 5, at 14-15.

The Anglo-Saxon period began in the early fifth century A.D. in England. The status of women during this period was considerable.[13] Women were not only allowed, but encouraged to own property individually.[14] The Domesday Book (1086), commissioned by William the Conqueror to survey the landholders and estates of England and Wales, contains a striking number of examples of place names that are themselves derived from the names of female ancestors.[15] The list would have been longer still had the place names recorded in the book been more complete.[16] This speaks to the role women played in the ownership, cultivation, and occupation of lands, as well as their general social status at the time. At a time when surnames did not yet exist, there are nevertheless examples of naming equity between husband and wife: Wulfgifu and her husband Æoelstan named their son Wulfstan, intentionally combining the first part of her name with the second part of his.[17] While the sparsity of the extant records make it more difficult to determine the practical aspects of women's position and involvement in social life, evidence indicates that their social roles were varied, and there were many notable examples of significant women religious figures, administrators, rulers, and warriors.[18] Social views of acceptable behavior for women appear to have been more expansive than they became in later centuries, and women were allowed "the widest liberty of intervention in public affairs."[19]

The position of women under Anglo-Saxon law was likewise relatively expansive. King Æthelbert of Kent recorded a legal code in order to codify existing law and practice[20] in about 602-603 A.D. Several provisions of that code suggest a relatively high status of women by virtue of their property ownership and other rights. If a male ruler died without male heirs, the wife would rule if she was able, and the fact of her authority in public affairs was rather unremarkable and taken for granted by contemporary chroniclers[21] (as were other examples of strong, accomplished, industrious women).[22] Æthelflæd, for example, ruled alone after her husband, a royal

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13 Dietrich, *supra* note 2, at 33.

14 Arianne Chernock, Men and the Making of Modern British Feminism 91 (2010).

15 Lovacott comes from Lufu, and Fladbury comes from "Flæde's burh" (burg/settlement), for example, where Lufu and Flæde were female given names.

16 F.M. Stenton, *Presidential Address: Historical Bearing of Place-Name Studies: The Place of Women in Anglo-Saxon Society, 25 Transactions of the Royal Historical Society* 1, 4-6 (1943).

17 Reaney & Wilson, *supra* note 1, at xxxvii.

18 Barbara Kanner, *Introduction*, in The Women of England from Anglo-Saxon Times to the Present 11 (Barbara Kanner ed., 1979).

19 *Id.* at 1.

20 Bertha Phillpotts, Kindred and Clan in the Middle Ages and After: A Study in the Sociology of the Teutonic Races 205 (1913).

21 Betty Bandel, *The English Chroniclers' Attitude toward Women*, 16 J. Hist. of Ideas 113, 116 (1955).

22 Kanner, *supra* note 18, at 11.

official of Mercia, died in 911. She exerted skillful political and military leadership, successfully retaking areas of land that had been conquered and laying the groundwork for the unification of England. At her death in 918, she left her daughter Ælfwyn to succeed her.[23] Queen Seaxburh likewise reigned after her husband died.[24] "Anglo-Saxon society allowed women the mobility to step directly and without fuss into roles which involved ruling a kingdom or even, on occasion, leading an army."[25] The apparent casual acceptance of such events speaks to common attitudes concerning the place of women in public life.

Other provisions of Æthelbert's Code relating to women lead to similar conclusions. The fine for killing a woman was the same as for a man.[26] Anglo-Saxon practice protected women by adopting the concept of community property within marriage.[27] If a husband died, the wife obtained half of the property if there was a surviving child. If the wife chose to leave the husband, she was entitled to half of the property if she took the children with her, and the same share as a child if she left the children behind.[28] A wife maintained authority over her sphere of the household, and widows were guaranteed maintenance.[29] The morning gift, which was a gift of property from the husband to the wife at marriage intended to protect her in the event of his death, was the wife's to control alone.[30]

Beyond any general provisions dictated by legal codes, much can be inferred from the particularized legal documents of individuals of the period. Women received grants of land just as men did.[31] Land charters, also known as royal charters, created "bookright" or the right to hold property in perpetuity. They were issued by the king or received in inheritance.[32] Women obtained bookright along with men, giving them the right to devise the land as they wished, which provided them with significant legal powers, independence, and enhanced social and political status.[33]

Wills are some of the most common Anglo-Saxon documents to be found, and they suggest much about the status of women. The Anglo-Saxon wife enjoyed autonomy with most of her property,[34] and both spouses were

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23 Dietrich, *supra* note 2, at 34.

24 *Id.*

25 *Id.* at 36.

26 *Laws of Ethelbert,* English Historical Documents 359, (Dorothy Whitelock ed., 1968).

27 Marc Meyer, *Land Charters and the Legal Position of Anglo-Saxon Women*, in The Women of England from Anglo-Saxon Times to the Present 57, 63 (Barbara Kanner ed., 1979).

28 *Id.*

29 Dietrich, *supra* note 2, at 39.

30 Stenton, *supra* note 16, at 3.

31 Dietrich, *supra* note 2, at 40.

32 Meyer, *supra* note 27, at 59.

33 *Id.* at 58-60.

34 Courtney Stanhope Kenny, The History of the Law of England as to the Effects of Marriage on Property and on the Wife's Legal Capacity (Being an Essay which

considered able to manage estates after the death of the other.[35] Many men willed land to women even when male relatives were available. King Alfred (873-888) bequeathed part of his lands to his daughters and wife, stating that he wanted to divide his lands "on the female as well as the male side, whichever I choose."[36] Ælfgar willed lands to his daughters, his daughter's children, and his wife, while other property went to a man.[37] The Will of Ketel indicated that two of his sisters would succeed to different estates if they outlived him; he had a similar agreement with his stepdaughter.[38] Bishop Ælfsige willed lands to his kinswoman and his sister, as well as his kinsman.[39] Ealdorman Ælfheah granted lands to the king's wife independently, as well as to the king, in addition to his own wife and son.[40] Ælfhelm granted some lands to his son, but also left some to his daughter and his wife.

Not only were Anglo-Saxon women able to inherit, but they also possessed the power to bequeath land in wills themselves. A good portion of the wills to be found not only leave property to women, but are actually written by women who chose how to dispose of their property. This power to bequeath land was not limited to their heirs or even their kin, but to all manner of individuals.[41] A woman named Wynflæd in 950 A.D. left property to her daughter as well as her son.[42] Wulfgyth similarly granted land to her daughters as well as her sons.[43] Wulfwaru left her property to her daughters and sons, with one property left jointly to her daughter and son with the stipulation that "they are to share the principal residence between them as evenly as they can, so that each of them shall have a just portion of it."[44] Ælfgifu[45] and Ælfflæd[46] were both women who granted property and estates to various parties, while Leofgifu included both her daughter and her female relative in her list of devisees.[47] It was even possible for a woman to disinherit her son and instead leave all of her property to a female relative. One woman in the eleventh century did just that; when it was challenged in court by her son, the woman stated, "Here sits Leoffled, my kinswoman, to whom after my death I grant … all that I have…. [G]ive my message to the good men in the court, and tell them to whom I have given

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Obtained the Yorke Prize of the University of Cambridge) 10 (1879).

35 Dietrich, *supra* note 2, at 40.

36 *The Will of King Alfred*, English Historical Documents 495 (Dorothy Whitelock ed., 1968).

37 *The Will of Ælfgar*, Anglo-Saxon Wills 7-9 (Dorothy Whitelock ed., 1930).

38 *The Will of Ketel*, *id.* at 91.

39 *The Will of Bishop Ælfsige*, *id.* at 17.

40 *The Will of Ealdorman Ælfheah*, *id.* at 23-25.

41 Stenton, *supra* note 16, at 3.

42 *The Will of Wynflæd*, Anglo-Saxon Wills 11-15 (Dorothy Whitelock ed., 1930).

43 *The Will of Wulfgyth*, *id.* at 85-87.

44 *The Will of Wulfwaru*, *id.* at 63.

45 *The Will of Ælfgifu*, *id.* at 21-22.

46 *The Will of Ælflæd*, *id.* at 39-43.

47 *The Will of Leofgifu*, *id.* at 77.

my land and my property – and to my son, nothing." The son lost the suit, and the woman's desires were recorded in the will as she wished.[48] The right of the woman to devise her lands and property according to her own desires trumped the right of the son to inherit as legal heir.

There are several examples of husbands and wives holding property jointly, sometimes with their daughters inheriting. Bishop Wærferth of Worcester said in a land lease, "And Æthelred and Æthelflæd [husband and wife] shall hold it for all time, … uncontested by anyone as long as they live. And if Ælfwyn [their daughter] survives them, it shall similarly remain uncontested as long she lives…"[49] In another case, King Offa of Mercia (757-796) gave an estate to Osbert and his wife to be held jointly by both; it could not be alienated without the other's consent.[50] One will was created jointly by a husband and wife, where he granted some estates, and she granted others, including an estate she willed to her kinswoman.[51]

Anglo-Saxon women also bought, sold, and exchanged property, and were often litigants in land disputes.[52] Deeds of sale often listed women as seller or purchaser. Æfswith, wife of Ælfphege, for example, purchased an estate in Wiltshire from King Edgar; another woman named Cuthswith purchased land in Warwickshire, Queen Æthelswith sold part of her land to her minister Cuthwulf; and Queen Edith bought an estate in Lincolnshire.[53]

It is clear that many Anglo-Saxon women held land that they had acquired by all of the ordinary means, including gift, purchase, or inheritance, and they were permitted t42o dispose of their land as they chose.[54] As one commentator concludes, given the amount of land and goods given by some widows in wills, these women must have been quite powerful.[55]

It must be acknowledged that the legal codes considered as a whole are not entirely consistent, and there is evidence to suggest legal and social inferiority of women in the period. Furthermore, women's status compared to men may have been quite variable by social class;[56] most of the available documents refer exclusively to higher-class women, making the status of middle and lower class women more difficult to determine. Nevertheless, the conclusion cannot be avoided that Anglo-Saxon women were remarkably independent and influential, with demonstrated importance in legal and political activity. Numerous scholars have attributed to the period a "rough equality" and independence of women and men.[57] "As maidens they were valued and

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48 English Historical Documents 556 (Dorothy Whitelock ed., 1968).

49 *Id.* at 63-64, quoting Anglo-Saxon Charters: An Annotated List and Bibliography 1280 (P. H. Sawyer ed., 1968).

50 Meyer, *supra* note 27, at 64.

51 *Will of Ulf & Madselin*, Anglo-Saxon Wills 95-97 (Dorothy Whitelock ed., 1930).

52 Meyer, *supra* note 27, at 66; Dietrich, *supra* note 2, at 40.

53 Meyer, *supra* note 27, at 67.

54 Stenton, *supra* note 16, at 3.

55 Dietrich, *supra* note 2, at 40.

56 Meyer, *supra* note 27, at 61.

57 Stenton, *supra* note 16, at 13; Dietrich, *supra* note 2, at 41; Meyer, *supra* note 27, at 70.

protected; as wives they appear to have been considered partners, not abject subjects, to their husbands; as widows the laws enabled them to manage their lives with virtually no interference …"[58] Indeed, with respect to women the period appears "almost enlightened," and "a study of Anglo-Saxon history might produce examples of women's influence and freedom of action that would make aspects of even the twentieth century appear 'dark.'"[59]

Everything changed with the Norman invasion. As a whole the Norman influence brought to the region in the eleventh century was extremely damaging to women's rights—especially their right to hold property. In fact, the principle of coverture itself originates in the Norman influence and the subsequent rise of feudalism; thus began a protracted period of decline for women.

2. Post-Conquest and Feudalism

The Norman Conquest of 1066 set in motion a very long and slow process of retraction of women's rights. Where the Anglo-Saxon wife enjoyed autonomy with most of her property,[60] ideas and theories about the place and proper role of women began to shift and harden. The principle of coverture originated in England around the eleventh century, but it developed slowly, beginning to gain a strong hold in the late Middle Ages (1300-1500). In a system of coverture, the husband and wife became one person upon their marriage, but that person was the husband alone, making it less a merger than an annihilation. The wife lost her right to own or use property, and any property she owned prior to the marriage became legally his. Beyond property ownership, the entirety of a woman's rights, obligations, and entire legal existence were subsumed by those of her husband. He became entitled to her company, her labor, and her services, including sexual ones, for the marriage constituted her irrevocable and permanent consent to sexual intercourse at the husband's whim. He was permitted the use of physical force against her for reasons he saw fit. In many respects, the woman herself, not just her property, came to be owned by the husband. The practice of the wife assuming the husband's surname reinforced this legal and social absorption. "Custom said … that man owned what he paid for, and could put his name on everything for which he provided money … [H]is land, his house, his wife and children, his slaves when he had them, and on everything that was his."[61] Given the legal property ownership rights of women before the Conquest, it is evident that the principle of coverture itself originates in the Norman influence brought to the region after the invasion in 1066 and the subsequent

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[58] Dietrich, *supra* note 2, at 39.

[59] *Id.* at 32, 44.

[60] Kenny, *supra* note 34, at 10.

[61] Priscilla Ruth MacDougall, *The Right of Women to Name Their Children*, 3 Law & Ineq. 91, 138 (1985) (quoting Ruth Hale, *But What About the Postman?*, 54 The Bookman 560, 561 (1922)).

rise of feudalism, rather than a traditional "English" practice.[62] The equality with respect to men experienced by Anglo-Saxon women continued in many respects for peasant women during feudalism, but women of upper classes were increasingly restricted to the rule of their husbands[63] and lost the liberty to dispose of their property as they wished.[64]

William Blackstone, the 18th century jurist, legal commentator, and professor of law at Oxford, published his four-volume treatise on the common law, *Commentaries on the Law of England*, in 1765-1769. The work was unprecedented in its design as a complete overview of English law, and it influenced the development of American and other English speaking legal systems. Blackstone explained coverture as follows:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law – French a feme-covert;…and her condition during her marriage is called her coverture.[65]

The implication that coverture was traditional and therefore incontrovertible English practice was misguided, however. Evidence suggests that a number of elements of coverture – including those related to property ownership – did not become fully implemented or entirely rigid until well into the Middle Ages and even into the early modern period. Blackstone appears to have relied on a mistranslation of a key document by an Anglo-Saxon history scholar to draw some of his conclusions about women's property rights in ancient England that he utilized in his justification of contemporary coverture. He asserted that Saxon women had been entitled to only one third of the husband's personal property on his death, but no share of the land, and that later laws which gave her rights to land were only for her lifetime. However, evidence suggests that the wife actually had rights to a share of both personal and real property, and the right was absolute rather than for her life only; this indicates that her property rights within marriage were considerably more expansive than Blackstone presumed. Blackstone had borrowed much of this work from Sir Martin Wright, who had borrowed it from Nathaniel Bacon, who had himself relied on a mistranslation; he then used this mistranslation as support for his own assertions about the supposed time-honored system of coverture and the justice and foundation of the contemporary treatment of women. [66]

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62 Chernock, *supra* note 14, at 91; Kenny, *supra* note 34, at 11.

63 Dietrich, *supra* note 2, at 41.

64 Stenton, *supra* note 16, at 3.

65 William Blackstone, Commentaries on the Law of England 442 (1768).

66 Although the original mistranslation was later corrected by its author, this appears to have gone unnoticed by Blackstone, who continued to make the same assertions about the history of English law regarding women even while referring readers to the cor-

Courtney Kenny, writing in 1879 about marital property rights in English history, discussed the deterioration of rights for women through the centuries, and similarly attributed it to the Norman influence. That influence resulted in the wife sinking to the state of being a "puppet of her husband's will;" Kenny called this a "revolution in the law of marriage." [67]

Even by the time of the Middle Ages, however, women's lives still exhibited considerable variability; "tradition had yet to solidify into the unyielding patterns which characterize later centuries."[68] When there were no surviving males in a family, women would still inherit the family's estate.[69] Sometimes the beneficiary would be the eldest daughter, while sometimes it would be a younger daughter who was not married. Robert Benyt's widow, for example, died in 1343 with three surviving daughters. The estate went to Emma, who was not the oldest but was the only one left unmarried and residing at the manor.[70] There was an important relationship between land and family bloodline, which took precedence over the preference for male heirs.[71]

The practice of feudalism likely had a significant influence on the restrictions to women's property rights. The practice began in ninth century France, subsequently spread through Europe, and came to England via the Norman Conquest.[72] In a feudal system, the lord grants land to the vassal in return for military service. As a result, a small elite group of soldiers ruled those who worked the land. As a technical matter, the land belonged to the lord and was given to the vassal for his lifetime only,[73] but there was nevertheless a very strong sense of hereditary rights, and rules of inheritance were applied seriously.[74] Such a system, by its dependence upon military service for property ownership, gave a heavy preference to men and excluded women,[75] whose inheritance became more strictly limited to those situations in which there were no male heirs. Between the twelfth and the mid-fourteenth centuries, the principle of primogeniture developed, whereby the eldest male child inherited the land; if there were none, then

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rected translation of the work in question. *See* Kenny, *supra* note 34, at 35-36. It may also be the case that Blackstone's work served as an attempt not simply to describe the principle, but also to reinforce it. This may have obscured later scholarship on the legal status of women, whereby any complexities, exceptions, and even common practices were ignored to the extent that they conflicted with Blackstone's account. *See* Margot Finn, *Women, Consumption and Coverture in England, c. 1760-1860*, Hist. J. 703, 705 (1996).

67 Kenny, *supra* note 34, at 11.

68 Susan Mosher Stuard, *Introduction*, in Women in Medieval Society 4 (Susan Mosher Stuard ed., 1976).

69 Gies, *supra* note 3, at 147.

70 *Id.*

71 *Id.* at 148.

72 Gies, *supra* note 3, at 27.

73 *Id.* at 29.

74 *Id.* at 148-49.

75 *Id.* at 27.

females would inherit jointly.[76] (Counter-examples exist however; in one case in 1189, both the wife and the husband owned separate lands, and the oldest son inherited the father's lands while the youngest son inherited those of the mother.[77]) Even in the absence of a male heir, women began to have difficulty inheriting an estate. In 1319, Alicia Ridel was the sole heir to Galfridus when he died. She attempted to secure his lands as her inheritance, but "her pretentions to the barony of Blaye were doubtful, as it seems to have been confined, like many others, to heirs male only." She nevertheless managed to gain possession of it and sell it to the King, under some uncertainty of outcome.[78] The restriction was connected to specific lands; other property connected to the same family was not similarly restricted, as women inherited freely during the same period when there were no surviving males.[79] Women were moving more clearly into the guardianship of males: first the father (then the father's lord if the father died), and then the husband.[80] After the father's death, the lord received the estate's income until the woman married, and she was required to marry whomever the lord chose or risk losing her inheritance.[81]

Yet even under the much more restrictive rules of feudalism, women's rights were still not restricted to the extent they would later become. Not yet relegated exclusively to the private sphere, women engaged in public life quite extensively, with significant effects on the economy.[82] The expansion of city life and the growth of commerce contributed to the involvement of women in working life.[83] Customs and policies developed in many towns for dealing with married women engaged in trade on their own, in stark contrast to the common law restrictions upon women;[84] many pre-feudal customs persisted, in fact, despite these restrictions. The strong relationship between marriage and property existed before, during and after feudalism.[85] Under feudalism, the husband of an heiress could not sell his wife's property without her consent,[86] nor could he deny her the use of her land.[87]

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[76] Sue Sheridan Walker, *Widow and Ward: The Feudal Law of Child Custody in Medieval England*, in Women in Medieval Society 160 (Susan Mosher Stuard ed., 1976).

[77] Pedigree of Sir James Riddell, of Ardnamurchan, and Sunart, Bart. LL. D., containing an Abstract of the Descents, With the Authorities Annexed vii (1794).

[78] *Id.* at 9.

[79] "[H]e died without issue male, whereupon his property came to be divided between two daughters…" *Id.* at xi.

[80] Gies, *supra* note 3, at 27.

[81] *Id.*

[82] Stuard, *supra* note 69, at 4.

[83] Gies, *supra* note 3, at 29.

[84] Eileen Power, *The Position of Women*, in The Legacy of the Middle Ages 407 (C. G. Crump & E. F. Jacob eds., 1926).

[85] Gies, *supra* note 3, at 31.

[86] *Id.* at 29.

[87] *Id.*

The wife could defend her title to land in court if the husband defaulted.[88] Both married and single women could still own, sell, or give land, and could engage in other legal behaviors such as suing and being sued, making wills, and entering into contracts.[89] This period also saw the creation of equity courts, which were separate from the common law courts and were founded on the idea of equity, or fairness, and these courts grew in the fourteenth and fifteenth centuries.[90] The Lord Chancellor had the power to decide equity cases as he saw fit, and such courts often enforced and supported the property rights of women.[91] The feudal system started crumbling around 1320 and was essentially dead about 1440,[92] although it did not end officially until the Tenures Abolition Act of 1660. But the vestiges of the adversities wrought upon women under the feudal system did not lessen when that system disintegrated; instead, they intensified.

In the mid to late middle Ages, women experienced ever-increasing restrictions on their legal rights and status, including those related to property.[93] While early legal records show women acting as attorneys in court, by the end of the thirteenth century attorneys were almost exclusively male.[94] Daughters did not inherit as they once had; the oldest son inherited alone.[95] A wife could still inherit lands during her marriage if there were no surviving sons, but the husband controlled them. If a child was born alive and the husband survived the wife, he received a lifetime interest in all of her lands; she did not receive the same upon his death. The wife was not allowed to sell or give her lands without the husband's permission, but he could give or sell not only his own lands, but also hers, unilaterally.[96] Any profits generated from her lands were his to keep.[97] The community property practices seen in Anglo-Saxon times were replaced by a common law that did not allow for it, and women also lost the ability to make their own wills. Glanvill's twelfth century legal treatise reasoned that "since legally a woman is completely in the power of her husband, it is not surprising that … all her property is clearly deemed to be at his disposal."[98] A 1311 case in the court

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88 *Id.*

89 *Id.*

90 Ruth Kittel, *Women Under the Law in Medieval England*, in The Women of England 131 (Barbara Kanner ed.,1979).

91 Gies, *supra* note 3, at 30-31.

92 Kathleen Casey, *Women in Norman and Plantagenet England*, in The Women of England 87 (Barbara Kanner ed.,1979).

93 Ann J. Kettle, *My Wife Shall Have It: Marriage and Property in the Wills and Testaments of Later Mediaeval England*, in Marriage and Property 90 (Elizabeth M. Craik ed., 1984).

94 Kittel, *supra* note 91, at 131.

95 *Id.*

96 Kettle, *supra* note 94, at 90.

97 Kittel, *supra* note 91, at 129.

98 *Id.*, quoting Ranulf De. Glanville, Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla Vocatur: The Treaties on the Laws and Customs of the Realm of England Commonly Called Glanvill vi, 3 (G. D. G. Hall trans. & ed., 1965).

of Common Pleas dealing with wills indicated that "no person can make a testament save he who can claim property in the chattels, but a wife cannot claim property and consequently cannot make a testament."[99] Bracton, a thirteenth century legal scholar, entreated women to "attend to nothing except the care of her house and the rearing and education of her children."[100]

It is worthy of note that the development of the common law, harsh as it was for women, did not necessarily reflect the full realities for women of the Middle Ages. For one thing, other types of law operating concurrently with the common law functioned differently for women. During this period canon law treated women equally with men, in some cases resisting the developments of the common law which was moving to oppress them. [101] Each manor had its own court tasked with enforcing custom, which therefore varied from place to place.[102] These manorial courts generally treated women equally with men; there was more concern with the obligations to the lord being fulfilled than with the sex of the landholder.[103] In some manors, a widow was able to claim the entirety of her deceased husband's land rather than it passing to the eldest son, and sometimes she held it and worked it for long periods, in one case thirty-two years.[104] In the manorial courts women's rights remained consistent over the centuries.[105]

For another thing, theoretical statements of law do not tell the whole story. It would be a mistake to conclude that the legal treatises of the time fully and accurately reflect women's lived experience. There appears to have been much resistance—intentional or otherwise—to the changes wrought by the common law, and many of the older traditions held fast for centuries. Multiple scholars have remarked upon the dissonance between the prominence of medieval women and their common law subordinate status.[106] Medievalist Eileen Power notes that it is actually a blend of theory, law, and practice that constructs the true position of women,[107] while Marc Meyer observes that when it comes to women "legal theory and practice are often diametrically opposed."[108] Legal codes provide the existing normative structure, while other documents provide a fuller understanding of the reality of their lives. For example, married women in this period did in fact

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[99] Kettle, *supra* note 94, at 94, quoting Year Books 5 Edward II, 1311 p. 240-241 (G. J. Turner ed., 1947).

[100] Kittel, *supra* note 91, at 124, quoting Henry de Bracton, De Legibus et Consuetudinibus Angliae f.98 (George E. Woodbine ed., 1915-44).

[101] *See*, e.g., Kettle, *supra* note 94, at 94 (discussing the opposition of the English bishops to the prohibition of women's ability to make a will, holding that married women had the same right as men to do so).

[102] Kittel, *supra* note 91, at 127.

[103] *Id.* at 128.

[104] *Id.* at 127-28.

[105] *Id.* at 128.

[106] *See*, e.g., Casey, *supra* note 93, at 89.

[107] Power, *supra* note 85, at 401.

[108] Meyer, *supra* note 27, at 70.

make wills and distribute property at death, technical prohibitions or no. There are not many examples to glean from, and the beneficiary was often the husband, but examples from 1460 and 1462 demonstrate their existence.[109] Customs often dictated events more than common law; in Gloucester and Lincoln, for instance, the husband's consent was not required at all for the wife to will property, whereas in other counties, wives was not permitted to will property even *with* his consent.[110] Certainly the position of women vis-à-vis men varied by social class, as discussed above. Middle and lower class women experienced a practical equality much longer than did upper class women, since they were engaged in physical labor on the land and there was not a strong sex division of such labor. [111] Upper class women nevertheless still enjoyed more equality in the Middle Ages than they would see by the eighteenth century.[112] Yet, despite the fact that everyday life was different than the dictates of the common law would suggest, available evidence strongly suggests that in both law and practice, the rights and status of women were much more limited during this period than they had been earlier.

The Early Modern period, running from about 1500-1800 A.D., brought about a firming up of the developments begun in the mid to late Middle Ages rather than any substantial changes to them. Married women's property rights were essentially nonexistent,[113] and husbands were thoroughly dominant over their wives. A commentator in 1816 noted that "[m]arried women are, by the law of England, subject, in matters of contract, to a greater disability even than infants …"[114] While women had been able to inherit in the absence of male heirs, even that began to be retracted; a number of examples arose in the sixteenth century of uncles attempting—sometimes successfully—to wrest an estate from a woman who had inherited it from her father.[115] The extreme limits on women's rights were thoroughly entrenched in law and theory. In 1642 the author of *The Law's Resolutions of Women's Rights* claimed it was well-understood that all women could be classified by their status in marriage (which was either married or to-be married), and that even their desires were not their own but were instead "subject to their husband."[116] Nevertheless, even in this period, there are examples which contravene the common law. Women still managed at times to leave property in wills and to handle their own affairs and estates.[117]

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[109] Kettle, *supra* note 94, at 94-95.

[110] *Id.* at 95.

[111] Power, *supra* note 85, at 408; see also Casey, *supra* note 93, at 87-88.

[112] *Id.* at 410.

[113] Pearl Hogrefe, *Legal Rights of Tudor Women and the Circumvention by Men and Women*, 3 The Sixteenth Century J. 97, 100 (1972).

[114] Peregrine Bingham the Younger, Law of Infancy and Coverture 161 (1816).

[115] Hogrefe, *supra* note 114, at 98.

[116] *Id.* at 97-98, quoting T. E., The Lawes Resolutions of Women's Rights 6 (1632).

[117] Rosemary Masek, *Women in an Age of Transition: 1485-1714*, in The Women of England 143 (Barbara Kanner ed., 1979).

They were executors for estates and ran their own businesses.[118] Yet it was this period during which their rights were most severely restricted.

III. Surnames and Property

Despite the concomitant emergence of English surnames with feudalism and the common law after the Conquest in 1066, women's surname usage continued to demonstrate their remarkable visibility and respect for a significant period. Their surnames often reflected individual characteristics rather than the names of their fathers or husbands. When surnames did begin to become more consistently hereditary nearing the end of the thirteenth century,[119] the names passed down were not just those of men; women were represented as well in a striking number of cases. Some of those matronymic names are still in use today.[120] The modern status quo, whereby a woman takes a man's name at marriage and any children born of the union categorically take the father's name, was not the rule during the medieval period.

The fact that medieval women were so commonly represented and acknowledged in the surnames of not only themselves, but also their descendants, means that their status was probably much more complex than is often presumed. They were not systematically and thoroughly denied any legacy or condemned to the total eradication of their identities, as would become the case later; they had names specific to them as women; they were able to retain those names after marriage; they independently inherited and owned property; and they passed both their property and their names down to their daughters, sons, and other descendants. The frequency at which these practices occurred varied depending on the period, the location, the social class, and other circumstances of the individuals involved. But it was the subsequent strict reining in of those rights and that status, and the eventual elimination of any matronymic naming and female property ownership, which created the "traditions" under which modern culture currently operates and makes the earlier system so hard to imagine. Surnames work in tandem with property rights to provide a vantage point from which to evaluate the status of women, and that status saw a very long period of decline beginning around the eleventh century and not reversing again until the women's property acts of the 19th century in both the United States and the United Kingdom.[121] The legal recognition of personhood is implicit in

[118] Hogrefe, *supra* note 114, at 99-100.

[119] Reaney & Wilson, *supra* note 1, at xlviii.

[120] Such as Madison (son of Maddy) and Marriott (diminutive of Mary).

[121] The Married Women's Property Act of 1870 was the first to allow married women in the United Kingdom to inherit and retain property and money (at a capped amount), as

the concept of property ownership. The fact that law and practice regarding female property ownership transformed over time raises considerable implications for not only the legal, but also the social and philosophical position of women as a class through the ages.

When the wife as a legal individual no longer exists independently from the husband, it might seem natural, even necessary, for her to adopt the husband's surname, and for children of the marriage to take his name. Yet that development happened some time after the institution of coverture entered into English law; there exist numerous examples of women retaining their birth names at marriage, passing their names to their children, and even to their husbands, as late as the eighteenth century. Although not the case early on, surnames in particular, and gender more broadly, became closely tied to the concepts of property and inheritance. The surname was both a symbol of and a necessity for the full and proper operation of ownership, but that operation did not always exclude women.

Matronymic naming was common through the Middle Ages, and it took several forms. The mother's birth surname could be passed to her descendants as their surname, or the mother's given name could be incorporated into a surname for her children, either with or without a "son" or "daughter" attached (e.g. Ibbotdaughter or Isabel). Many other surnames existed which were either specific to or related to women but were not necessarily matronymic, such as Rogerdaughter, Fairewif (fair wife), Silkwoman (female silk dealer), Prestsyster (priest's sister), or Mariman (male servant of Mary), but these are beyond the scope of this article.

A few specific examples from the records provide a sense of the larger picture. William Maryson (1298),[122] Richard Elynoreson (1375) [123] (son of Eleanor), and Richard Margretson (1381) [124] are just a few of a great many examples of "son" names referencing the mother. In the twelfth century a man named Robert was alternatively known as Robert de Thweyt (his father was Griffin de Thweyt) and Robert de Curcun (his mother was Cecilia de Curcun), and sometimes even Robert de Curcun de Thweyt.[125] John Organ of Treworian in 1327 is named after his mother Organa.[126] Walter Damealis (son of Lady Alice) and Robert Dame Isabel (son of Lady Isabel), both in 1327, are likewise named for their mothers.[127] Roger Heron de Ford was the son of Mary de Ford and William Heyrun (1327), demonstrating a combination of the surnames of both parents with his mother's appearing last.[128]

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well as to retain her own wage earnings. In the United States, similar laws were passed by individual states, the first being Mississippi in 1839.

[122] *Id.*

[123] *Id.* at 153.

[124] *Id.*

[125] *Id.*

[126] *Id.* at l.

[127] *Id.*

[128] Richard Heron, A genealogical table of the family of the Herons of Newark 5 (c. 1798).

John Dyson de Langeside (1369) adopted his surname from his mother Dionysia de Langside,[129] where the surname reflects the mother's entire name rather than her surname alone, as Dyson means "son of Dy" (a diminutive of Dionysia). In 1408 Geoffrey Reynald and Joan Ryvell had a son known as Richard Ryvelle after his mother.[130][131] Thomas Cromwell, considered to be the first traceable ancestor of Oliver Cromwell, had a daughter who married Morgan Williams. They had a son Richard Williams, but Richard later took his mother's surname Cromwell.[132] In another case from the twelfth century, Matilda Ridel married Richard Basset. Their son Galfridus took the surname Ridel for his mother; their younger son Jordan also assumed the name Ridel.[133] The same practice can be seen as late as the modern period; Susanna Newton married William Eyre in the late seventeenth or early eighteenth century, and one of their four children took the surname Newton after his mother.[134] John Gordon of Pitlurg, born in 1734, added Cuming to his name, which was his mother's birth name. His son also took the dual surname of Gordon Cuming.[135]

Furthermore, it was not uncommon for a couple to give their son a *first* name after the mother's birth surname. For example, in the early seventeenth century Sir Richard Sondes married Susan Montague, and they named their son Mantague Cholmeley.[136] This type of naming is more difficult to locate and trace since the practice is not immediately apparent unless familial relationships are recorded at the same time as the individual's name, and because given names are typically not passed down through generations. In fact, there may be a great many unidentified cases of matronymics where the surname does not specifically identify a woman (such as Robert de Curcun above), given that historical documents typically reference individuals in isolation without familial relationship information to determine the origin of one's name.[137]

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[129] Reaney & Wilson, *supra* note 1, at lii.

[130] He was also called Richard son of Geoffrey Reynald of Edmascote, and Richard son of Joan, daughter of William Ryvell.

[131] *Id.* at xlix.

[132] A Short Genealogical View of the Family of Oliver Cromwell. To Which is Prefixed, a Copious Pedigree 1 (1785).

[133] Pedigree of Sir James Riddell, *supra* note 78, at v.

[134] Isaac Newton, Memoirs of Sir I. Newton sent by Mr. Conduitt to Monsieur Fontenelle. Pedigree of Newton … with His Affidavit Accompanying It.-A Conversation Between Sir I. Newton and Mr. Conduitt 85 (1806), British Library General Reference Collection 455.f.15.

[135] *Table of Pedigree of the Family of Gordon of Pitlurg, Continued from the Eleventh Descent of the Pedigree of the Family of Gordon in Scotland, as stated in table I. now represented by Alexander, Fourth Duke of Gordon*, in Table of pedigree of the family of Gordon in Scotland, from Adam de Gordun, first of the name in Scotland, anno 1057, to Alexander IVth Duke of Gordon, who now (1784) represents the family 12 (1784).

[136] Isaac Newton, *Pedigree of Cholmeley of Easton, descended from the Cholmeleys of Cheshire, and bearing the same arms*, in Newton, *supra* note 135.

[137] Reaney & Wilson, *supra* note 1, at xlviii.

Children would sometimes be given the surnames of their grandmother, rather than either their mother or father, usually to associate themselves with an estate and eventually inherit it themselves, either voluntarily or as a condition of inheritance as indicated in the will,[138] and this is a phenomenon that occurred all the way into the modern era. In the early eighteenth century, for example, Judith Lytton married Nicolas Strode, and their grandson was named Lytton Lytton (alias Strode), taking his grandmother's surname as both his given and last name.[139] Mary Tyssen's grandson took the surname Daniel-Tyssen. When he married Amelia Amhurst, their son was named William Amhurst Tyssen (1835-1909), which was a combination of female surnames on both sides—his mother's and his paternal grandmother's, but not his father's. Gregory Harlaxton married Susanna Williams around 1800. Their grandson was named William Gregory Williams, after his grandmother. Both of his children had the surname Williams as well.[140]

Similarly, there are examples of women who did not assume their husband's name after marriage, even in the late Middle Ages and into the Early Modern period. A widow named Cecilia de Sanford was the daughter of Henry de Sandford, indicating that she went by her father's name rather than her late husband's. Emma Godzer (1290) was the daughter of Walter Godzer and the wife of Robert Pacy. One woman had a seal that read S. Emme. de Litlecote, but her husband was Reginald de Lavynton.[141] In the mid thirteenth century Isabella de Ford retained her family name and was referred to as such despite her marriage.[142] A divorce document from 1499 lists the parties as Peter Mewys and Elizabeth Chapman.[143] Mary Carne is referenced in a lawsuit jointly with her husband, whose name is John Prise (1702).[144] A man from the Gordon family called Alexander Earl of Huntly had a wife referred to as Janet Stewart in 1508.[145] A 1543 royal charter lists

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[138] W. P. W. Phillimore & Edward Alexander Fry, Index to Changes of Name; Under Authority of Act of Parliament or Royal Licence, and Including Irregular Changes from I George III to 64 Victoria, 1760 to 1901 p. ix (1969).

[139] Dame Anne Russell, Widow of Sir Francis Russell Bar. Deceas'd. Appellant. Lytton Lytton alias Strode Esq; and the Rt. Honourable Rebecah Viscountess Dowager Falkland (1708), British Library General Reference Collection 816.m.5.(123).

[140] Isaac Newton, *Pedigree of Gregory of Harlaxton from Thoroton's Nottinghamshire*, in Newton, *supra* note 135, at 455.f.15.

[141] P.H. Reaney, The Origin of English Surnames 84 (1967).

[142] Heron, *supra* note 129, at 5.

[143] Certificate of Divorce of Peter Mewys and Elizabeth Chapman (1499), London National Archives Reference E 135/7/22.

[144] The appellant's case, John Prise, Esq. Eldest Son of Thomas Prise, Esq; by Mary Carne his Wife, Appel. Thomas Button, Esq; Administrator of Diana his late Wife, Respond. Against a Decree in Chancery, made by Default the Twelfth of June, 1702. (1702).

[145] Table of pedigree of the family of Gordon in Scotland, *supra* note 136, at 13.

Janet Ogilvie as the wife of John Gordon of Pitlurg.[146] The practice appears to have been relatively common and unremarkable; it was no foregone conclusion that a married woman must share a surname with her husband.

At times men who married heiresses even assumed the surnames of their wives at marriage—even well into the modern period—in order to attach themselves to the estate and keep the family name connected to the land. [147] Husbands in these cases were considered merely custodians of the property that was held by the woman through her bloodline.[148] In the absence of surviving children, the land would revert to the wife's family rather than the husband's.[149] If there was an heir and the wife died first, the husband would keep the land for his lifetime only, after which the land would go to the wife's heir rather than the husband's in order to keep the land in the wife's family bloodline.[150] The fourteenth century Book of Chertsey Abbey in Surrey alone gives several examples. Hugh atte Clauwe of Thorpe appears as Hugh le Keach after his marriage to Alice le Keach.[151] John atte Hethe of Cobham married Lucy atte Grene, and the record indicated "He is now called atte Grene."[152] In another entry, a woman originally took her husband's name, but after her father's death when she inherited his property, she reverted to her birth name and her husband adopted the name as well.[153] Later cases include that of Henry Gough, who took the name Henry Calthorpe in 1796 when he married Barbara Calthorpe. Their children were surnamed Gogh-Calthorpe.[154] Fysh Coppinger assumed his wife's name of de Burgh in the early nineteenth century, and their children and grandchildren took the surname as well.[155] At times the surname adoptions could become rather comical, as with Richard Temple Nugent Grenville, who in 1822 upon marrying Lady Anna Brydges, adopted the surname Temple-Nugent-Brydges-Chandos-Grenville.[156] There is even a case where a husband, William Eyre, adopted the birth surname of his mother-in-law (his wife had the surname of her father), becoming William Archer. When his wife died and he remarried and subsequently had a son, even that son

146 *Table of Pedigree of the Family of Gordon of Pitlurg*, *supra* note 136, at 6-7.

147 *Id.* at 149.

148 *Id.* at 149-50.

149 *Id.* at 149.

150 *Id.*

151 Reaney, *supra* note 142, at 85, citing Elsie Toms, Court Book of Chertsey Abbey xxxviii.

152 *Id.*

153 *Id.*

154 *Administrative History*, Calthorpe Estate, (1799-1899), London Metropolitan Archives Reference Code E/CAL.

155 *Administrative History*, Burgh, De Family (1637-1937) London Metropolitan Archives Reference Code: ACC/0742.

156 *Administrative History*, Buckingham (1785-1839) London Metropolitan Archives Reference Code ACC/0749.

was given the new surname Archer, despite his having no relationship to the former mother-in-law either by blood or marriage.[157]

Thus, even after women's property ownership had become quite restricted, their surnames had not yet been entirely eliminated. Such flexibility left women with some independent identity, until those options were eventually foreclosed to them as well via imposed legal impotence. This suggests that coverture did not take the full measure of its chokehold as early as we think. It is also likely that the common law and the theory supporting it were inconsistent with actual practice, and that the realities of medieval life were resistant to change. The evidence derived from women's property ownership supports the conclusion that a more gradual implementation and development of coverture and its attendant principles, including a more prolonged reining in of women's rights, took place. Change in general during the period was protracted, and older traditions died hard; in medieval life, "…ideas and information spread only slowly, and against great resistance, from one district to another; custom determined everything, and the type altered little from age to age."[158] While the common law of England was exacting its restrictions on the rights of women, women's representation in surnames eventually followed suit, although this shift began later and took more time.

Where formal law created new restrictions and disabilities for women in medieval England, those restrictions influenced the ways in which surnames were culturally adopted and used, even though no law directly addressed surname use. The common law had nothing directly to say about women's names, as those had always been a cultural rather than a legal practice. But surnames as a social and legal convention became closely connected to property, and the increasingly restrictive rules of coverture which limited property ownership eventually ensured the elimination of any independent women's names. As women's property rights went, so went their names.

The law imbued the husband with a superior legal status as head of household and gave him legal dominion over his wife and children and all marital labor and property. That eventually included the convention of the wife and children adopting the surname of the husband, and it carried with it the right of control and ownership. The functions of property and surnames thus simultaneously operated upon one another in a symbiotic dance of reduced status and increased subordination of women. To be sure, the flexibility of women's surname use and the independence they once enjoyed in their surnames was already diminishing concomitantly with the restriction of other rights they once held. But the eventual connection between naming and ownership changed the relationship of women to their names. Men were given the right to name women, and women's names

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[157] *Pedigree of Archer of Coopersale, & Great Paunton*, in Newton, *supra* note 135.

[158] Charles Homer Haskins, *The Spread of Ideas in the Middle Ages*, 1 Speculum 19, 20 (1926).

changed as they moved from the legal ownership of their father to that of their husband.[159] In this way, the changes in surname usage both enforced and reinforced male rights over the family. The operation and function of property, especially as applied to women, is thus connected to the operation of surnames as a socio-legal function.

Surnames and property are not intrinsic to human nature; both are social and legal constructs. As such, both have been appropriated and manipulated in ways that support patriarchy and confine women. This fact is not surprising; what is more interesting is that it was not always the case. The law's systematic and complete antagonism to women is a relatively recent development. The common law inscribed a new ideology on the collective social consciousness, thereby altering the relationship of the culture with its women. Once complete, the status quo was then viewed as natural, traditional, common sense, and divinely ordained, with preconceived historical fact warped and altered, and then presented as truth. It is not difficult for a culture to look around at the system in which it finds itself and then conclude by its existence that it is the only reasonable course.

IV. Conclusion

Although the concept of a surname as signifying ownership (of wife, children, and property) is no longer overt in English and American culture, it is still undoubtedly present in more subtle ways within our social schema and naming framework. The common conception is that only men have "real" names, and their permanency is one of the rights of being male; women's names are more fleeting and relationship-dependent and they must therefore be less connected to them. That notion managed to insert itself into the American legal system, where the courts have upheld men's naming "rights" with respect to their wives and children; one court held that "a natural father has a protectable right to have his child bear his name,"[160] because women's names are contingent and impermanent, and as one commentator noted, women "merely inhabit names which actually belong to their husbands."[161] Names are important for their own sake, yet they also speak volumes about broader issues

[159] This concept is reinforced by considering the fact that slaves in America were often given no last names at all because, as property themselves, they could not have an independent surname. When they did have last names, they were given the master's surname, and renamed each time they exchanged owners. Lisa Kelly, *Divining the Deep and Inscrutable: Toward a Gender-Neutral, Child-Centered Approach to Child Name Change Proceedings*, 99 W. Va. L. Rev. 1, 12-14 (1996).

[160] Burke v. Hammonds, 586 S.W.2d 307, 309 (Ky. Ct. App. 1979).

[161] Cynthia Blevins Doll, *Harmonizing Filial and Parental Rights in Names: Progress, Pitfalls, and Constitutional Problems*, 35 How. L.J. 227, 235 (1992).

within the dominant culture, including the status of women vis-à-vis their husbands, their children, and their society.

The rigidity in naming we know today is one of the last vestiges of the old system of coverture, yet the issue still receives very little collective analysis or criticism. It is a product not of abiding and ancient tradition, but rather of new strictures instituted most firmly during the modern period, ironically during the "Age of Enlightenment" of the seventeenth and eighteenth centuries. When names stopped signifying individual attributes, they came to signify ownership instead, and women were the ones falling under its regime.

Future research on this topic would expand upon the history in several ways. First, an in-depth analysis of the relationship between culture, tradition, and law, as seen through the lens of surname usage, will shed light on the underlying ways in which patriarchy became more firmly enshrined into cultural and legal systems. Surname usage and adoption was strictly a traditional practice, yet it became so entrenched that it eventually garnered legal backing when it encountered resistance. This was accomplished by virtue of a deceptively appropriated "tradition" that was not, in fact, traditional at all. The mechanisms by which this took place warrant further analysis. Second, a theoretical investigation into the reasons for the constriction discussed herein will be important; if coverture in fact became more restrictive over time, what reasons underlie such a shift? In addition to the emergence (and disappearance) of feudalism and the gradual implementation of common law, these manifestations may be tied to economic and political developments in the Early Modern period. Such factors include capitalism; the development of theoretical concepts of citizenship, rights, and exclusivity; the rise of imperialism and conquest; and the building of the modern nation-state. There is much to be developed on that front.

The status of women in England was at one time strikingly expansive given the era and the natural assumption of society's perpetual forward progress with the passage of time. That assumption, as it turns out, is patently false. Women's legal identities were never static in their limitations, but experienced significant transformation in the form of lengthy retrenchment and then, eventually, expansion. Anglo-Saxon women enjoyed a remarkable status and legal rights that placed them on par with their male counterparts in many ways that would not be seen again for nearly a millennium. Yet the early Middle Ages too exhibited much flexibility for women, as evidenced by their surname autonomy and property ownership and inheritance. Later restrictions in these areas had profoundly negative effects on women, and once in place were then circularly referenced to justify the essentialism of women's gross inferiority. Although today's women for the most part enjoy formal legal equality with men, contemporary surname practices have not only failed to shed the vestiges of the systems under which they were most oppressed, they have failed to even recognize those systems as such. These practices are a product of recent developments in a system of growing patriarchy, ownership, and power. Yet the status quo is justified—to the extent that it is even considered—simply by reference to a "tradition" that is not in fact traditional at all.