Marriage and Law Reform: Lessons from the Nineteenth Century Michigan Married Women’s Property Acts

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Today, news about family law reform most often concerns marital rights for same-sex couples. While the legal part of that campaign is mainly waged in state and local courts and legislatures, the most important battleground may be public opinion. Indeed, personal assertions of legal rights that do not yet exist, and personal experience with same-sex relationships seems to be leading to gradual public acceptance. Consider an excerpt from a recent radio interview by reporter Tovia Smith with Marty Rouse, a Human Rights Campaign strategist, and Michael Gronstal, the Iowa Senate Majority Leader.

Mr. Rouse: The writing is on the wall that the states and neighboring states are seeing what's happening, seeing that the sky is not falling down, the milk still comes out white from the cow, and this is happening very, very quickly.

Smith: Indeed, polls show a significant jump in support for gay marriage. Opponents still outnumber supporters by about 55 to 45, but younger voters are overwhelmingly supportive. That generation gap was cited by Iowa Senate Majority Leader Michael Gronstal last week, when the Democrat who has opposed gay marriage in the past, announced he would not help efforts to ban gay marriage now.

State Senator Michael Gronstal . . .: My daughter, Kate, said that you guys don't understand. You've already lost. My generation doesn't care. I think I learned something from my daughter that day.

But change is uneven. Human and legal relationships do not obey the laws of physics.

Indeed, this is not the first nor, likely, the last, battle for legal change in individual and social rights. The right to marry a person of a different race was part of the larger struggle for civil rights in the twentieth century. In the early nineteenth century, the struggle for women's equality was a state-by-state campaign that included reshaping fundamental relations and rights of married couples. That battle provides useful perspective and information on what is regarded as legitimate rights and on how complex legal, social, and personal issues play out.

This article uses data from nineteenth conveyancing records to test various theories as to (1) why Michigan gave married women rights to property beginning in 1844 and (2) how those rights were exercised.

Introduction

The rich story of nineteenth century women's rights reform has been lost and the story narrowed to only the right to vote. Perhaps, the degree of change can best be captured by the rules on women's clothing. Women were required to be "modest" and to cover their heads and
wear dresses that swept the floor and were confining, hot, and unhygienic. Reformers, such as Amelia Bloomer,\(^4\) were shunned and ridiculed for promoting loose clothing for loose women, clothing that literally did not weigh women down.

Women's education was neglected, and college education and most jobs were not open to them. When they married, women in the common law states entered a legal status called "coverture", referred to as civil death. Marriage made women one person with their husbands and that one person was the husband. As a result, women lost control and, effectively, ownership of their personal and real property to a husband or guardian, if one was appointed for a woman before her marriage.\(^5\)

One consequence of this concept of marital unity was a significant limitation on the right of a wife to own or manage the property that she brought to the marriage by gift, inheritance, or her own labor. Tangible personal property, such as furniture and money, belonged to her husband absolutely and could be reached by his creditors. *Choses in action* when reduced to the husband's possession also became his property. The disposition of real property was more complicated. Title to land remained in the wife, but the husband was entitled to manage or rent her land during the marriage and could retain any profits. This interest lasted only during the wife's life unless there was issue of the marriage born alive, in which event the husband's interest extended during his life under the doctrine of courtesy. The husband could alienate and his creditors reach his wife's land to the extent of his interest. Moreover, married women could not make independent contracts and had severely limited testamentary capacity. . . . The net effect of the common law . . . “reduced the wife to complete economic dependent and legal invisibility.”\(^6\)

Coverture was justified as fulfilling the punishment of Adam and Eve – that husbands should rule over their wives.\(^7\) By depriving even women who had competently managed their property of that capacity by the simple act of marriage, coverture deprived women of the status, livelihood, self-protection, and self-respect linked to property holding. Thus, it is not surprising that both feminists\(^8\) and scholarly works such as Kents Commentaries\(^9\) regarded the Married Women's Property Acts as bold innovations in women's legal status.\(^10\)

What then seemed the natural order of things is no more. Women's suffrage – the right to vote – mattered, but it was but one of many women's rights battles. Ironically, not only have we lost that larger history, but, although women won the right to vote, those who opposed them won the naming rights. The supporters of women's suffrage called themselves "suffragists" – those who work for the right of suffrage, while their enemies belittled them and their cause by using the diminutive "suffragettes". Indeed, the most visible symbol and goal in that early period was not votes but, rather, the enactment of Married Women's Property Acts (MWPA), legislation that gave married women the rights of ownership and control over their real and personal property. In the nineteenth century MWPAs were fought for, opposed, and regarded as creating fundamental change in the status of women,\(^11\) rights we now take for granted.
Michigan passed its first MWPA in 1844, just seven years after becoming a state on January 26, 1837. It is somewhat surprising that the first states that enacted Married Women's Property Acts were Mississippi, Michigan, and Maine, rather than larger, more populous states actively engaged in law reform, such as New York or Massachusetts. It would be decades more before Michigan's more urban neighbor to the south, Ohio, enacted its own Married Women's Property Act. Michigan revised and enlarged the rights it conferred in statutes passed in 1846 and 1855 and made it part of the state constitution in 1850. According to Richard Chused:

In fact, the acts were passed in at least three waves, beginning in 1835, and each wave arose for somewhat different reasons. The first group of statutes, passed almost entirely in the 1840's, dealt primarily with freeing married women's estates from the debts of their husbands. By and large these statutes left untouched the traditional marital estate and coverture rules. The second wave of legislation, the most frequently discussed, established separate estates for married women. These statutes appeared over a long period of time beginning in the 1840's and ending after the Civil War. The third set of statutes took the important step of protecting women's earnings from the institution of coverture. These laws generally did not appear until after the Civil War, although Massachusetts enacted an early statute in 1855.

This legislation took place amidst a century of struggle for women's rights that first became visible in 1848.

In July of 1848 the Seneca Falls Conference adopted a Declaration of Sentiments and Resolutions protesting the inequalities of American women. Among other grievances, the delegates singled out the legal disability of married women to own and manage their own property: "He has made her, if married, in the eye of the law, civilly dead. He has taken from her all right in property, even to the wages she earns." For all their appeal as political propaganda, these resolutions did not accurately summarize the prevailing law regarding married women. Such strident rhetoric ignored the rights which had been secured for women by courts of equity and the then recent reform statutes. The obvious purpose of the resolutions was to spur the movement for reform legislation which had already appeared across the United States.

Early – and largely overlooked – legislative successes in a few common law states preceded the Seneca Falls Conference by several years. Mississippi enacted a Married Women's Property Act in 1839, followed in 1844 by Michigan and Maine. Although the three statutes were enacted within just a few years of one another, the language of the Michigan statute differs significantly from that of Maine and Mississippi.

Section 1 of Mississippi's 1839 act provided that married women become "seized and possessed of any property, real or personal, . . . in her own name, and as of her own property." Maine's 1844 statute mirrors the Mississippi language. Michigan's 1844 statute
provides that after marriage, property shall be the "estate of such female after marriage to the same extent as before marriage." 27

Mississippi may have been influenced by its neighbor, Louisiana, a civil law jurisdiction 28 "that adhered to the civil law concept of community property under which a wife's separate property was free from any claim by her husband." 29 Michigan's MWPA may also have been influenced by the French who had settled the state and whose history and culture continued to be important well into the nineteenth century. 30

However, there is a strong claim that demand for the change was based in an 1837 lawsuit concerning a debt, in which, because the wife was a member of the Chickasaw Tribe and the family resided on Chickasaw land, it was argued

that, contrary to American and Mississippi law, usage and customs of the Chickasaw Indians were such that a husband and wife held property separate and that each contracted debts on their own. Among many American Indian tribes in the southeast, including the Chickasaws and Choctaws of Mississippi, a woman retained ownership of all property that she brought into a marriage, whether it was land, slaves, or personal items, and each spouse entered into business contracts and debts on their own. 31

The MWPA's of Mississippi, Maine, and Michigan were apparently overlooked by those who gathered at Seneca Falls and seem to have been largely overlooked by historians in the decades that followed. 32 As Professor Richard Chused puts it:

1848 is commonly thought of as the year the women's rights movement began. That year witnessed both the Seneca Falls Convention and the adoption of the well-known New York married women's act. The dearth of literature on women's law in the 1800-1850 period has made it all too easy for the legal community and the modern feminist movement to label 1848 as the pivotal year. 33

Seneca Falls was important for focusing attention and enlisting support for women's equality, including the vote and giving married women the same property rights as men, campaigns that would take many more decades of struggle. 34

Given the difficulty of that struggle, why did a frontier state like Michigan enact its MWPA, what effect did it have on women's rights, and what does it tell us about the process of law reform of marital relations?

**The Study**

Even though fought for as restoring to married women the property rights they had as single women, the early Married Women's Property Acts more accurately created "a new era of quasi coverture", 35 that made incremental changes in married women's status and rights. But if they did not give married women the rights of all free men and free single women, then why
were they enacted? The two most common theories into the late 1970's was that they were enacted as (1) women's rights or protective legislation\(^{36}\) or (2) debtor relief, allowing an indebted husband to place his property beyond the reach of his creditors by conveying it to his wife.\(^{37}\) Later twentieth century empirical research tested these theories by examining legal documents, such as wills and trust deeds\(^{38}\) and proceedings, such as bankruptcy filings by married women,\(^{39}\) and found a reality more complex than those theories.

This is the first empirical study to examine Michigan's Married Women's Property Acts. It attempts to shed light on the nature and effects of the Michigan MWPA by examining Washtenaw County, Michigan deeds from 1840 through 1865, a period that begins four years before the first Michigan MWPA was enacted and extended through the Civil War. The original purpose of the study was to test whether the law was feminist legislation or debtor protection. If the Act was feminist legislation, then conveyances to and from married women should be found after the MWPA was passed - but not before. If the MWPA was debtor relief, then not only should the number of married women grantees rise, but there should also be conveyances from husbands to wives in order to place property out of the reach of creditors, including, potentially, deeds with nominal consideration.

Those predictions were far from the mark. (1) Married women appeared as grantors throughout the study, including in the years before they had a legal right to own or convey property; (2) there were virtually no women grantees until the very last years of the study; and (3) there were no conveyances from husbands to wives; and (4) there were but minor changes in conveyancing patterns as to married women over the decades studied.

Knowing what a law does not do, however, does not explain why it was enacted. We can say with certainty that a law that changes fundamental relationships and rights is not passed without support and effort. It may be that the Michigan MWPA was intended to be debtor legislation but was not used for that purpose because people did not feel comfortable giving wives property. Unfortunately, it is now more than a century too late to do survey research on mid-nineteenth century opinions on using the MWPA. It may be that the best explanation is that any law that affects fundamental rights is the product of many motives. We should also not discount the effect judicial interpretation can have on laws, even, at times, wholly transforming the law in the process of adjudication.\(^{40}\)

This does not mean the answer is "all of the above". This article examines the traditional explanations for the enactment of the Michigan Married Women's Property Act and its operation (1) Debtor relief and (2) Women's rights legislation, as well as other viable theories, including that the Michigan MWPA was (3) Progressive legislation enacted in a politically progressive state, (4) the fruit of already existing gender equality, and (5) affected by other contemporaneous law. Each theory ought to predict a specific pattern to be found in the deeds.

1. **Debtor relief**: Before the MWPA was enacted there should be no married women grantors or grantees. Married woman should appear only to release their dower rights. After its enactment, their numbers as grantees should rise. They may also appear in "sales" from husband to wife, though use of a "straw" man may disguise a fraudulent
transaction and make it more difficult to identify fraud. Increasingly larger numbers of women grantees should be found in periods of economic difficulty, and there may be evidence of economic difficulty at the time of its enactment.

2. **Women's rights legislation**: Before the MWPA was enacted there should be no married women grantors or grantees. After its enactment, married women should be present as grantors and grantees, and the number of married women in both capacities should increase over time as the law takes hold. There should be evidence of contemporaneous activism in support of women's rights.

3. **Progressive legislation enacted by a politically progressive state**: There should be evidence of progressive political action in addition to women's rights. The deeds might show patterns similar to those related to debtor relief and women's rights in the sense that more women – single and married – would be found in the deeds over time.

4. **Law embodied existing gender equality**: This motive would reflect the family dynamics of Laura Ingalls Wilder's “Little House” books, in which Ma and Pa worked as a team, battling nature and other challenges in order to ensure the survival and well being of their family. Michigan was a frontier state, and its citizen experiences might have led to an acceptance of women and men as equals.

5. **The effects of other contemporaneous law**: This theory depends on finding some law or laws that permit and promote the patterns of property conveyance seen in the deeds. There should be a congruence between the law and the patterns seen in the forms and wording of the deeds.

In order to test these theories, samples of conveyancing records from Washtenaw County, Michigan were studied.

From 1840 until 1865, all recorded deeds were copied by hand into bound deed books. Late in 1865, miscellaneous deeds from preceding years were recorded in an additional book in which most portions of the instrument were preprinted. Thus, after 1865, the form of deeds became fairly standard, except for the description of the land being conveyed and the names of the parties. Thus, the 1865 sample did not include deeds in this additional book. Even before 1865, the deeds, including those from out of state, fell into a few standard forms. Indeed, the handwriting of the various clerks over the years shows far more variation than that in the wording of the deeds. As part of this study, an attempt was made to trace the wording of the deeds to a contemporary form book. An initial search failed to find any source for the wording of the deeds, although it seems likely forms existed, if only in attorneys' offices. However, as will be discussed below, a more recent search found one form book that was published during the middle of the period examined that included key features of the Michigan deeds.

For the first study twenty-five deeds, evenly distributed throughout the years 1840, 1845, 1850, 1855, 1860, and 1865, were selected. Information collected in this first study included the genders and names of the grantors and grantees; their relationship, if any was stated; the general features of each deed; and the value of the property. A second, larger set of deeds was studied for
only the bookend years of 1840 and 1865. One-third of deeds recorded in each of these years was examined. In this group, only the existence of women on the deeds and their status was noted. The study's reliance on deeds from only one county means that the range of practices may not be applicable to the state as a whole.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Price Ranges of Property Conveyed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840</td>
<td>810</td>
<td>$200 - 11,562</td>
</tr>
<tr>
<td>1845</td>
<td>710</td>
<td>$50 - 1500</td>
</tr>
<tr>
<td>1850</td>
<td>1330</td>
<td>$12 - 1800</td>
</tr>
<tr>
<td>1855</td>
<td>1250</td>
<td>$1 - 3300</td>
</tr>
<tr>
<td>1860</td>
<td>1150</td>
<td>n.a.</td>
</tr>
<tr>
<td>1865</td>
<td>700</td>
<td>n.a.</td>
</tr>
</tbody>
</table>

The total number of deeds recorded in each of years 1840, 1845, 1850, 1860, and 1865 varied from a low of 700 to a high of 1330, so the number in this study is a small percentage of the total number of each year's deeds. The price of the property sold is not directly relevant to the issues being examined but is, nevertheless, included. The lower range of the prices declined over time. These declines may reflect the effect of economic conditions or land speculation around the time Michigan became a state. The prices may also reflect the size of tracts being conveyed as a frontier state becomes urbanized and large tracts are subdivided.

**Data From the First Study**

The first surprise was the presence of so many wives as grantors, including in 1840, four years before the enactment of the first Michigan MWPA. Their presence as grantors raises the question: If married women could be grantors without the MWPA, why was it enacted? As the table of Grantors shows, though, while in each sample year, husband and wives were the largest number of grantors, sole women or wives alone were not. Over time, the numbers of husband-wife grantors trended upward, as the number of grantor men appearing alone (at least some of whom were known to be married) declined slightly. The deeds also show that not all wives joined in their husband's deeds as grantors, suggesting that it was not mandatory that married couples do so. At this time, as discussed below, because wives had to release their dower rights in their husband's property, it was possible to know that a grantor man was married even when his wife was not included as a grantor.
<table>
<thead>
<tr>
<th>Year</th>
<th>Men</th>
<th>Women</th>
<th>H/W</th>
<th>Misc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840</td>
<td>10 (3 married)</td>
<td>0</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>1845</td>
<td>8 (3 married)</td>
<td>1</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>1850</td>
<td>10 (2 married)</td>
<td>0</td>
<td>12</td>
<td>3</td>
</tr>
<tr>
<td>1855</td>
<td>8</td>
<td>1</td>
<td>12</td>
<td>4</td>
</tr>
<tr>
<td>1860</td>
<td>8</td>
<td>1</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>1865</td>
<td>4</td>
<td>3</td>
<td>16</td>
<td>2</td>
</tr>
</tbody>
</table>

Grantors
(sample of 25 deeds in each year)

One might think that the pattern for grantees would be similar to that of grantors; however, in each sample year, about four-fifths of the grantees were men, and an average of only three conveyances a year were to women. The pattern for grantees is relatively consistent over time, except for 1850 when the number of men dips from 22 to 16 and the number of women rises to 7 but declines to the very low numbers in prior years. Deaths and injuries from the Mexican War, 1846-1848 may partially explain the 1850 data. Although overshadowed by the Civil War, the Mexican War saw 13,283 American soldiers killed (of which 1,733 were in battle and 11,550 from other causes, including disease). In addition, 4152 were wounded. The number of Michigan men on active duty in the Mexican War exceeded its commitment in previous wars. With approximately 350,000 citizens, Michigan sent over 1,500 to war – more than many other states, including New York, which had nine times more people than Michigan. The war also left more Michiganders dead than in all previous wars combined.

The dead and injured may explain the dip in men grantees and the increase of woman grantees (at least one of whom was married), some of whom may have been widowed or caring for an injured veteran and receiving pensions.

The table of sales also shows that by 1850 Michigan was emerging from the effects of the Panic of 1837. One might have expected that, six years after the first MWPA was enacted and in the year it was amended and included in the Michigan constitution there would have been some increase in the number of wives and husbands buying property jointly. However, there is only one such purchase, perhaps the result of the husband's injuries in the Mexican war. The only years in which the number of husband-wife grantees is not zero are 1850 and 1860, both perhaps connected to war.
If the law had such a small effect on landowning patterns, how was there support for its enactment? It is important to keep in mind how difficult it is to get basic information about the parties to these deeds, let alone details about how their relationships functioned. For example, we cannot know how many of the men grantees were married. Although some deeds stated that the male grantee was a married man, there was no requirement that he list his marital status. It is almost certain that many of the men were married. We know more about the grantors, because, when land was sold, a purchaser would demand that a wife give up her dower right. As a result, even if the wife did not join as a grantor, information about a male grantor's marital status was easier to find. If a woman was a grantor, her husband would have corresponding rights of courtesy, curtsy, or curtsey to release in order to pass a clear title. None of these doctrines would impel including a grantee's marital status in the deed.

One especially striking feature of the deeds is the large disparity in the genders of sellers and buyers in all periods. One would expect at least a rough equivalence between the genders of those buying and selling land. The data suggest that, as a matter of course, a man bought land by himself but then joined with his wife, most often naming her as co-grantor, when he sold it. When the chain of title was traced, it was found that this was often the case. The record books include men who conveyed — with their wives as a grantor — land he had bought in his own name alone that very day. The frequency with which this common conveyancing practice occurred makes it clear that a marriage was unlikely to have taken place in the interim.

Whether or not the man was married before he became seized of the land is irrelevant. In neither case could the wife be an owner. Even rights, such as dower, did not entitle her to be a grantor of her husband's land. In addition, joining in the husband's deed as grantor was not regarded as the proper legal means of releasing dower. Dower was to be released expressly in a separate dower release clause and there was to be a process of a separate examination to ensure that the wife's dower rights were protected. Here is an example of a dower release clause of the

<table>
<thead>
<tr>
<th>Year</th>
<th>Men</th>
<th>Women</th>
<th>H/W</th>
<th>Misc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840</td>
<td>22  (1 married)</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1845</td>
<td>22  (1 married)</td>
<td>1</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>1850</td>
<td>16</td>
<td>7</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>1855</td>
<td>21</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>1860</td>
<td>19</td>
<td>4</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>1865</td>
<td>22</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>
sort also found in the study.

**No. 66.—Release of Dower.** To all to whom these presents shall come, Susan Doe, of the city of Pittsburgh, in the county of Allegany, and state of Pennsylvania, widow and relict of John Doe, late of the same place, deceased, sends greeting: Know Ye, that the said Susan Doe, the party of the first part to these presents, for and in consideration of the sum of five hundred dollars, lawful money of the United States, to her in hand paid at or before the ensealing and delivery of these presents, by Richard Doe, of the city of Wheeling, in the county of Ohio, and state of Virginia, of the second part, the receipt whereof is hereby acknowledged, hath granted, remised, released, and for ever quit-claimed, and by these presents doth grant, remise, release and for ever quit-claim, unto the said party of the second part, his heirs and assigns for ever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim, and demand whatsoever, in law and equity, of her, the said party of the first part, of, in, and to all that certain piece or parcel of land, &c. [here describe the premises]; so that she, the said party of the first part, her heirs, executors, administrators, or assigns, nor any other person or persons, for her, them, or any of them, shall not have, claim, challenge, or demand, or pretend to have, claim, challenge, or demand, any dower or thirds, or any other right, title, claim, or demand whatsoever, of, in, and to the same, or any part or parcel thereof, in whosoever hands, seisin, or possession, the same may or can be, and thereof and therefrom shall be utterly barred and excluded for ever by these presents.

In witness whereof, the said party of the first part to these presents hath hereunto set her hand and seal, the first day of November, in the year of our Lord one thousand eight hundred and fifty.

Nevertheless, throughout this period, the most common practice in the study was male grantees and married couple grantors, with the grantor wife included in the covenant clause.

<table>
<thead>
<tr>
<th>Date</th>
<th>Wife Named</th>
<th>Wife Not Named</th>
<th>No</th>
<th>No Covenant Clause in Deed</th>
<th>Total Deeds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840</td>
<td>8</td>
<td>2</td>
<td>4</td>
<td>0</td>
<td>14</td>
</tr>
<tr>
<td>1845</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>1850</td>
<td>3</td>
<td>1</td>
<td>6</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>1855</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>1860</td>
<td>3</td>
<td>7</td>
<td>4</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>1865</td>
<td>3</td>
<td>8</td>
<td>2</td>
<td>3</td>
<td>16</td>
</tr>
</tbody>
</table>

The pattern seen in the Table above is hard to square with the law of the time. Property could not be warranted by a nonowner, yet we know that most of the wives could not have been
frequently appeared on deeds as warrantors of the land. Indeed, the deeds often include wives by name, making it unlikely their inclusion was an error in copying a form. Indeed, even after the passage of the Married Women's Property Acts prior to 1855, Michigan law provided that a wife could not be bound by her covenants even for her own land, let alone that of others. The Michigan Married Women's Property Act of 1855 altered this situation, by allowing the wife to contract with regard to her own property. This lack of equality was justified by contemporaries who held that the Act gave only those new powers necessary for the protection of the wife's estate.

Wives as warrantors present a second example of women included in deeds in capacities with no obvious legal justification. This is equally true of their inclusion as grantors, although not as obvious. The law did not bar their presence, but their inclusion seemed to have no purpose. However, the situation was worse from the buyer's point of view, because the state of the law as to a grantor's warrants was muddled, and uncertainty in the law breeds litigation and worse. As late as 1873, treatise writer Joel Prentiss Bishop insisted:

[A] covenant of warranty is not an essential part of a deed conveying lands. The title will pass just as effectually without it. Therefore, though the wife execute a deed with covenants, she is not bound by them. The estate simply flows form her – no more."

Some courts created work-arounds for this situation. Although the wife many not have been liable for her covenants, she may have been estopped by them, even before the Married Women's Property Act. In Colcord v. Swan, an 1811 Massachusetts case, the court held that the wife's "executing the deed operates the conveyance of the land; but although she is estopped by her covenants, she is not answerable in damages for any breach of them. The husband alone is liable."

While this form of law might fit well with the status of wives, it is unlikely that a purchaser of land would be happy buying land whose warranty provisions could only be enforced through a complex chain of responsibility. Considering how most families' finances operate, this may have been a distinction with little practical difference, but legal complexity in enforcing one's rights creates opportunities for fraud. By the 1880's at least one treatise writer concluded that a married woman could be liable for a promise concerning her separate estate.

**Dower Rights**

The data show that methods for releasing dower rights underwent an interesting change in the method used to expressly release dower. In 1840, all wives who expressly released dower, whether named as a grantor or not, did so in a separate clause that recited the receipt of specific consideration for the release. By 1845, a shift had begun toward wives (1) releasing dower as grantors and (2) releasing dower in the premises, rather than in a separate clause. After 1855, no wives released dower who are not also named as grantors, and only 25% of wives released dower expressly. Whatever the cause was, dower seems to have became merely one of miscellaneous rights and interests jointly conveyed with no specific link to the wife.
The disparity between grantor and grantee sexes may mean that wives were included as grantors solely to bar her dower rights. This may appear to place the spouses on an equal footing, but it may actually have harmed the wife. Dower could ensure that a widow was not penniless by giving her a life's interest in a percentage of her husband's property when he died. If a wife did not transfer her dower rights when her husband conveyed his property, the property would be encumbered for the lifetime of the wife. Few grantees would want to buy encumbered property, so the seller had to choose between lowering the price of property encumbered in this way or enticing the wife to bar her dower. Put another way, "The most significant bargaining tool after marriage consisted in a wife's refusal to give up dower in realty that her husband wanted to sell." The shift to including dower rights in a very long paragraph full of legal terminology made it possible to bury its significance to the wife.

Wives in the study who were not named as grantors invariably released dower in a separate clause that recited consideration for the release. Wives named as grantors either released dower in a separate clause, as did wives not named as grantors, or joined as grantors in deeds, some of which did not specifically mention dower or any other interest peculiar to the wife. Thus, the inclusion of a wife as a grantor was apparently not necessarily considered to be the equivalent of a separate release, since some found it necessary to do both. However, some apparently thought that including the wife as a grantor was sufficient to release all rights, including dower. It is also possible that the failure to include dower rights was a legal error and oversight.

**Data from the Second Study**

To answer questions left unanswered by the first Michigan deeds study, a second study examined a third of the deeds in the two bookend years – 1840 and 1865. In 1840, 65% of the deeds involved husband-wife grantors, and, of these, 66% of husband-wife grantors were husbands and wives named as grantors and 34% were wives who signed the deed but were not named in the deed. In 1865, 59% of grantors were husbands and wives, and all but 2 wives were named as grantors, signaling at least a shift in the formalities of conveying property. The second study affirmed the earlier results that in all years, even before the first Michigan MWPA, a significant number of wives were named as grantors or present in a grantor-related role.

In both 1840 and 1865, more than two-thirds of grantors included wives, and women named as sole grantors, most of whom had no designation as to their marital roles, increased
nearly nine-fold from 6 in 1840 to 56 in 1865. At least part of the increase in sole woman grantors in this second sample may be explained by the death and prolonged absence of men for extended period of times during two major wars, the Mexican War (1846-1848) and the Civil War (1860-1865). Although not included in these tables because not the focus of this study, many more of the 1865 conveyances than the 1840 conveyances involved heirs, particularly minor heirs under guardianship.

<table>
<thead>
<tr>
<th>Deeds with Women as Grantors</th>
<th>1840</th>
<th>1865</th>
</tr>
</thead>
<tbody>
<tr>
<td>Husband/Wife grantor</td>
<td>143</td>
<td>210</td>
</tr>
<tr>
<td>Wife signs as grantor, but wife not named in body of deed</td>
<td>74</td>
<td>2</td>
</tr>
<tr>
<td>Wife selling own land</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Miscellaneous women</td>
<td>6</td>
<td>53</td>
</tr>
<tr>
<td>Total Women Grantors on deeds</td>
<td>226 = 68%</td>
<td>268 = 75%</td>
</tr>
</tbody>
</table>

The most significant change is the increase in the number of sole women grantees from 4% in 1840 to 17% of grantees in 1865.

<table>
<thead>
<tr>
<th>Deeds with Women as Grantees</th>
<th>1840</th>
<th>1865</th>
</tr>
</thead>
<tbody>
<tr>
<td>Woman</td>
<td>6</td>
<td>52</td>
</tr>
<tr>
<td>Married woman</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Husband/Wife</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>Total Women Grantees on deeds</td>
<td>13 = 3.9%</td>
<td>62 = 17.4%</td>
</tr>
</tbody>
</table>

In this second study, as with the first, the large disparity in numbers of women as grantors compared with women grantees continues. We also see the large number of husband/wife grantors even before the Act's passage and the overwhelming number of deeds involving husband and wife grantors. In 1840, 68% of the deeds included grantors who were women. By 1865, that figure was 75%. These results show an increase in “joint management by husbands and wives” coupled with increased egalitarianism and greater control by women, a feature found in other studies.

By 1865, when the percentage of women grantors had risen to 75% and women grantees constituted 17.4% of all grantees, it is difficult to sort out what effects should be attributed to war, the Michigan Married Women's Property Act, changed views as to women, or other forces. Whatever changes occurred, the most important forces acting on the presence of women in deeds appear to have occurred years before the Act's passage. For feminists, it would be attractive to conclude that deeds show that women were more nearly equal than the black letter law would suggest. However, even if that were true for those buying and selling land, it is important to bear in mind that the results say nothing about the poorer members of the population.

**Do the Results Fit with Theories as to Why the Michigan MWPA Was Enacted?**

How well do the patterns we see in these deeds fit with predictions as to the effects of the
theories articulate to explain the enactment of the Michigan Women's Property Act? Bear in mind that, even if there is no fit as to effects predicted does not mean that these theories are wrong as to the motivations for enacting the MWPAs. Many laws fail to achieve their proponents' goals. Even if the law's failed, the Michigan legislature expanded the rights several times, suggesting that they approved of the law, and perhaps tweaked the law to make it more effective.

1. Debtor relief: Before the MWPA was enacted there should be no married women grantors or grantees. Married woman should appear only to release their dower rights. After its enactment, their numbers as grantees should rise. They may also appear in "sales" from husband to wife, though use of a "straw" man may disguise a fraudulent transaction and make it more difficult to identify fraud. Increasingly larger numbers of women grantees should be found in periods of economic difficulty, and there may be evidence of economic difficulty at the time of its enactment.

The best support for the debtor relief theory is that the MWPA put property conveyed to a wife out of reach of the husband's creditors.57 One Mississippi state senator predicted that all marital property in Mississippi would be in the hands of wives within six months of passing the Mississippi MWPA.58 Support for the debtor relief theory also has some support in the language of the 1855 Michigan statute:

That the real and personal estate of every female acquired before marriage and all property, real and personal, to which she may afterwards become entitled by gift, grant, inheritance, devise, or in any other manner, shall be and remain the estate and property of such female, and shall not be liable for the debts, obligations, and engagements of her husband, and may be contracted, sold, transferred, mortgaged, conveyed, devised, bequeathed by her in the same manner and with like effect as if she were unmarried.59

The language of the provision in the 1850 Michigan Constitution also suggests that debtor relief might have been intended.

The real and personal estate of every female, acquired before marriage, and all property to which she may afterwards become entitled by gift, grant, inheritance, or devise, shall be and remain her estate and property of such female, and shall not be liable for the debts of her husband, and may be devised or bequeathed by her as if she were unmarried.60

However, it may be that this sort of language protecting the wife's property from her husband's creditors would be necessary in order to make the MWPA meaningful, even if debtor relief – or defrauding the husband's creditors – was not the motive.

Of course, what may creditors see as fraud may be a noble effort to protect a family during hard times. “Samuel R. Thurston, the Oregon Territory's non-voting delegate to Congress from 1849 to 1851 wrote his constituents . . . on the exemption of married women's assets from husbands' debts”, saying: ““This land of the wife will serve as homestead exemption to the family
Concern for protecting debtors in Michigan existed in this period, and there is a close temporal and philosophical relationship of the Michigan MWPAs and the obvious debtor relief provided by the early Michigan Homestead Acts. Homestead Acts allowed a debtor to keep some possessions from creditors – usually tools, land, or a limited amount of money and made homestead property up to a certain acre limit inalienable without the wife's written assent.

Debtor relief must have been a concern given the desperate economic conditions in Michigan – and the rest of the country – at this time. In 1844, when Michigan's first Married Women's Property Act was passed, the state's early prosperity had vanished in the general financial ruin following the Panic of 1837. In Michigan, depressed conditions "lasted from 1837 until the early 1840s", and Michigan “was so crushed by debt in the early 1840s that it repudiated part of the principle of its debt.”

The best improved property in the best towns shrank to less than half, and sometimes less than a fourth of its previously estimated value, while unimproved property not paid for bankrupted its luckless mortgagor and if paid for was often too burdensome to support its quota of taxes.

However, if the MWPAs were intended to allow this sort of legal fraud, the low percentage and absolute number of married women grantees show that Michigan debtors missed an important tool for protecting their families from ruin or defrauding their creditors. The percentage of married woman grantees remained tiny even as late as 1865, and there was no up-tick in married women grantees after the 1844 law was enacted. In comparison, the percentage of sole women grantees increased from 4% of the sample in 1840 to 17% in 1865. That increase may have been due more to the aftermath of war. Finally, although not conclusive, the money recorded as paid by women grantees was in line with that paid by men grantees. Sale prices ranged from a low of $70 to a high of $4010, with most transactions over $500.

However, even though the deeds studies do not show a pattern associated with debtor relief in practice, evidence from the MWPA's language itself and contemporaneous economic conditions suggest that, even if there is no evidence the MWPAs were used for debtor relief, it still have been a motive for the law's enactment. New York, for example, responded to the Panic of 1837 by enacting a law that gave married women interest on lands sold under judgment, as did other states. In short, debtor relief as a force behind the enactment of the Michigan MWPA is not ruled out, but the deeds show no support for it in practice.

2. Women's rights legislation: Before the MWPA was enacted there should be no married women grantors or grantees. After its enactment, married women should be present as grantors and grantees, and the number of married women in both capacities should increase over time as the law takes hold. There should be evidence of contemporaneous activism in support of women's rights.

Professor, Richard Chused, one of the foremost researchers of Married Women's Property Acts, observed:
While the connection between the first wave of married women's acts and the Panic of 1837 is impossible to dismiss, other factors also must have been at work. The country had seen bad economic times before 1840, while married women's acts were a new legislative response. The fact that many of the acts had general statements adopting the notion of a separate estate for married women's property also suggests a broader purpose. The acts must therefore have been part of a larger evolution in the treatment of women by the law.71

The very name – Married Women's Property Acts – suggests they were women's rights legislation, and equality in property ownership is an essential element of equality. Michigan's repeated re-enactment and expansion of these laws suggests they must have been important. Before their enactment, marriage deprived a woman, but not the man she married, of the legal ability to own and manage property, including property she brought into the marriage. A married couple was theoretically and legally one person – the husband – under the doctrine of “marital unity” and the husband had the sole legal right to act in all matters affecting the couple.

While the theory of marital unity may have been attractive, in practice it created problems that required elaborate work-arounds. “Exceptions to coverture enabled a system in which married women could fulfill their necessary economic roles, something that would not have been achievable had they been literally unable to exercise any legal personality. Without its exceptions, coverture would have collapsed much sooner than it did.”72 “Michigan had a separate court of chancery from 1836 to 1846. A review of its decisions reveals the complexity of equity rules for separate estates and the virtually complete dependence of married women upon judges and husbands.”73 While there were cracks and exceptions in this doctrine, it had not yet collapsed when the first MWPAs were enacted, and the MWPAs were more work-arounds than laws that set women on an equal footing with men.

In fact, the nineteenth century women's rights movement regarded coverture's loss of legal personhood as a far more immediate problem than woman suffrage. Feminists regularly commented on laws that enabled a husband to “control the wife's property, collect and use her wages, [and] select the food and clothing for herself and children.”74

Evidence that Michigan's MWPAs were enacted as women's rights laws exists in contemporaneous agitation for women's rights, in particular for reform of coverture both in the state and throughout the nation. Indeed, there was sufficient support for women's rights by 1848 to hold a convention at Seneca Falls, New York, an event generally regarded as the beginning of the movement for American women's rights.75 Coverture was an issue at that conference. The key document that emerged from the Seneca Falls Conference, the “Declaration of Sentiments", included, among the wrongs committed against women, taking “from her all right in property, even to the wages she earns.”76

Agitation within Michigan in this period included an 1846 address by Ernestine L. Rose, an early reformer, to the Michigan Legislature concerning women's rights, and a resolution for women suffrage was introduced in 1849.77 An example of the importance of property rights to these early feminists is a speech by women's rights activist Ernestine Rose in 1851:
Let married women have the same right to property that their husbands have; for whatever the difference in their respective occupations, the duties of the wife are as indispensable and far more arduous than her husband's. Why then, should the wife, at the death of her husband, not be his heir to the same extent that he is heir to her? In this inequality there is involved another wrong. When the wife dies, the husband is left in the undisturbed possession of [what] there is, and the children are left with him; no change is made, no stranger intrudes on his home and his affliction. But when the husband dies, the widow at best receives a mere pittance, while strangers assume authority denied to the wife. The sanctuary of affliction must be desecrated by executors; everything must be ransacked and assessed, lest she should steal something out of her own house: and to cap the climax, the children must be placed under guardians. When the husband dies poor, to be sure no guardian is required, and the children are left for the mother to care and toil for, as best she may. But when anything is left for their maintenance, then it must be placed in the hands of strangers for safekeeping! The bringing up and safety of the children are left with the mother, and safe they are in her hands. But a few hundred or thousand dollars can not be intrusted with her?78

This and other speeches show there was agitation for women's property rights at and near the time of the enactment of the Michigan MWPA. Law reform may result from rational79 or irrational80 impulses for change. The enactment – and re-enactment – of Michigan MWPAs during a time of agitation for women's rights seems to be simply too great a change from the traditional understanding of formal legal rights for its passage to have been mere happenstance.

But do the deeds fit with evidence of national and local pressures for gender equality as a basis for enacting the Michigan MWPAs? As discussed earlier, the number of women as parties to the deeds does increase over time. However, the change is slow and can often be attributed to other causes, such as the effects of war. The patterns in the deeds from the start show that married women are often included as grantors, suggesting, perhaps, some sense of folk equality even before Michigan's first MWPA was enacted. Indeed, studies of other states' laws using legal archival records (such as wills), case law, legislative sources, historical literature, and law as understood broadly suggest that there was more equality in practice than the law allowed.81

In other words, the MWPAs and legal developments in other states suggest that law may be less a force changing family and property relationships than “a derivative phenomenon reflecting widespread social and economic changes."82 But if that optimistic scenario is correct, if equality had been achieved, why re-enact the Michigan MWPA several times? The continual amendments suggest that problems persisted. In addition, we know that all or most of the married women grantors in the study (wives) did not own the land being conveyed. Thus, the evidence from the deeds shows, at best, only weak support for the women's rights theory.

3. Progressive legislation enacted by a politically progressive state: There should be evidence of progressive political action in addition to women's rights. It is hard to predict how this motive would affect the inclusion of parties on the deeds. The deeds might show patterns similar to those related to debtor relief and women's rights in the sense that more women – single and married – would be found in the deeds over time.
A third explanation is that MWPA rights may have grown out of general interest in reform. According to William Graham Sumner, "Legislation . . . has to seek standing ground on the existing mores, and . . . legislation, to be strong, must be consistent with the mores." This general observation about the relationship between a society and its laws requires looking for evidence about the society in which the MWPA's operated. Richard Chused observed that changes made by the various states' Married Women's Property Acts were enmeshed in the "general package of reform movements in the first half of the nineteenth century." Even before it became a state, Michigan law was established on a different foundation than that of the original thirteen states: "The Northwest Ordinance provided for transfer of property by deed, free of the technical constraints of English common law." Michigan's first constitution, written in 1835, two years before it became a state, was a "minimalist constitution that speaks only to fundamentals, such as the rights of the people and the structure of government." This is not to say the minimalist constitution was without faults. It was criticized for failing to "include provisions for coping with private corporations."

The devastation left by the Panic of 1837 had a positive aspect as a spur to legal innovation in Michigan.

An amendment to the constitution was proposed in 1843 – and approved by the people in 1844 – that required a public referendum on every law authorizing government borrowing or the issuance of state stock. . . . This limited provision for direct democracy predates the Progressive Era reforms of the initiative and referendum by over sixty years. Complete renovation of Michigan's financial house came in the Constitution of 1850. That constitution included a revised Married Women's Property Act.

The reform process was apparently a mixed bag. In 1844, the year the first Michigan MWPA was enacted, Sanford M. Green, was appointed to consolidate and revise the body of Michigan laws. However, James V. Campbell, then a justice of the Supreme Court of Michigan and Marshall Professor of Law at the University of Michigan, wrote that, while Green had "incorporated all the important amendatory legislation, and introduced some valuable new features tending towards liberality", when his work was reported to the legislature in 1846, it was "somewhat mangled by the zeal of certain so-called reformers, whose impartial ignorance enabled them to proceed with a degree of confidence not usually shown by competent legislators." The Married Women's Property Act was not included by James Campbell as a reform he regarded as tinkering.

Michigan enacted other important and progressive legislation in this period. For example, in 1846, it became the first English speaking government to abolish capital punishment. Slavery had been outlawed in Michigan in 1787 under the Northwest Ordinance, and Michigan prohibited slavery in its 1835 constitution. The anti-slavery movement was active in the state, and Michigan's proximity to Canada made it an important route on the Underground Railway. Among abolitionist actions taking place in this period, in 1832 "Elizabeth Margaret Chandler, a Quaker, organized the first anti-slavery society in the Michigan"; and anti-slavery
societies were organized in Detroit in 1834, in Ann Arbor in 1836,\textsuperscript{97} and in 1842 in Marshall.\textsuperscript{98}

The Mexican War generated more opposition in Michigan than any other previous war. This opposition continued to grow after the war ended and – coupled with the concern over the extension of slavery into newly acquired territory – precipitated the sectional conflict that in 1854 led to the formation of the Republican party in Jackson, Michigan.\textsuperscript{99}

On the other hand, people in Michigan also kept slaves, returned runaway slaves – something required by federal law at that time, and otherwise supported slaveholders\textsuperscript{100}.

Progressive actions and movements for personal freedom certainly existed in Michigan and created a climate that would support laws that protected both debtors and women. "But as we now know, the story of women's property acts is much more complex than a simple tale about progressive ideals winning out over blind forces of reaction."\textsuperscript{101} Furthermore, while it is difficult to predict how a progressive climate might affect the form of deeds, it might explain the presence of so many married women as grantors. Perhaps, they were included as a personal statement of equality in form if not in law. If true, though, why were married women so absent as grantees, a status that would have given them far greater security, and why were married women not present as co-owner grantors in their right? In short, there is no evidence that would positively rule this theory out.

4. The law embodied existing gender equality: This theory is built on the family dynamics most of us would be familiar with through Laura Ingalls Wilder's "Little House" books. The first book is set in Wisconsin in the early 1870s, past the period discussed here,\textsuperscript{102} but they are well known and capture a popular view of that period. In them, Ma and Pa move westward by stages, always at a new frontier. The books show the entire family working as a team, led by a loving couple, in battling nature and other challenges in order to ensure the survival and well being of their family. This theory proposes that frontier experiences such as these would affect views as to women's and men's equality and rights. We would find support for this theory if we see evidence of equality between men and women in the deeds.

This theory predicts evidence of gender equality in addition to the enactment and reenactment of the Michigan MWPAs, with their expanding rights for married women. It theorizes that there would be evidence of attitudes which had already changed\textsuperscript{103} beyond changes in women's owning property.

Indeed, within and without Michigan there were extant egalitarian models of marital relationships in the system of equity and decisions of its courts of chancery\textsuperscript{104} and in other states' property laws, such as the civil law system's community property doctrine.\textsuperscript{105} Research shows evidence of joint husband-wife property management, for example, in South Carolina from 1730-1830: "Authority . . . moved . . . toward joint management by husbands and wives.", and that research roughly fits with research in other geographic areas.\textsuperscript{106} In addition, pressure from changing demographics, urbanization, and a highly mobile population left many women without male support.
During the first third of the nineteenth century, abandoned and widowed women were more likely to be isolated from extended families or friends than in the previous century. The growth of industrial cities and the opening of the Western territories provided ample occasion for husbands to leave their families or for widows to find themselves without means of support.\(^{107}\)

Thus, settlement patterns and reactions to them created the conditions for and may have actually changed norms about power and decision-making structure and process within families. This theory is a good fit with and brings together as influences on the Michigan MWPA feminist sentiments, contemporaneous progressive views, and gender equality based on the experience of husbands and wives working together as equals on the frontier.

It is also possible that the inclusion of women as grantors of their husbands' property – regardless of the initial motivation – may have promoted a folk sense of equality. Indeed, in the early period of the deeds study, some of the property with husband and wife grantors may have been property the wife brought into the marriage but which effectively became the husband's property under the law of coverture. Even if the wife was included solely to release dower or some other right in her husband's property, her name next to her husband's in jointly conveying rights and interests may have promoted a sense of greater equality than did the law.

Unfortunately, while attractive, it is difficult to test this theory against the general deed patterns as to grantors and grantees. Moreover, the deeds' dearth of woman grantees and single woman grantors throughout most of this period undermines any claims of increasing gender equality. Furthermore, the most progressive laws among the states still left men in control of women's property and motives difficult to tease out. The 1840 Texas marital-property statute recognized a married woman's right to own property, but her husband had exclusive control over it.\(^{108}\) Richard Chused observes: “[R]eforms in trust law, which made the establishment of married women's estates more difficult may say more about the early nineteenth-century movement to merge law and equity and reform pleading practices”\(^{109}\) than about women's equality.

On the other hand, the deeds and, in particular, the fact that conveyancing practice needed to change little to fit with the series of Michigan MWPAs that were enacted and reenacted. Michigan was not the only state in which the MWPAs were uncontroversial and in which the legislation was taken by most. As Kay Thurman observed in 1966:

The history of the Married Women's Property Acts, however shows no feature more striking than the lack of sustained, sharp controversy. This picture is in sharp contrast with the struggle over women's suffrage; there is no evidence of an organized women's lobby supporting the property measures. The significance of the absence of high controversy seems to be that, at most, these more clearly defined and ratified, rather than created the values they embodied. Indeed, regarded as a whole, the statutes seem to have been of little innovative force, rather they seem to have given more definite form to practices and institutions already well established in the culture.\(^{110}\)
In fact, there were a number of ways that law allowed women to act on behalf of the couple. Laws that allowed a wife to manage the family's property while her husband traveled to scout out new land or take care of other business allowed husbands and wives to act as partners and to trust that they would jointly prosper through equality and autonomy. Again, while plausible, there is nothing in the deeds that lends strong support to this theory.

5. The effects of other contemporaneous law: This theory depends on finding some law or laws that permit and promote the patterns seen in the deeds. In addition, there should be a congruence between these other laws and patterns seen in the deeds.

The failure to find a tight fit between the theories proposed and patterns seen in the deeds so far may suggest that the best theory is that the MWPAs were passed inadvertently by the Michigan legislature. However, laws are not enacted for no reason, and that is certainly true in the case of laws that involve a fundamental structure in society, such as marriage and property ownership.

This theory suggests that the MWPA cannot be understood as stand-alone legislation without attention to the larger ecosystem of other laws and practices. Although the MWPAs had supporters, the judiciary was unenthusiastic, and treatise writers tended to interpret the new rights as narrowly as possible, even long after the MWPA was law in Michigan and elsewhere. For example, in 1873, Joel Prentiss Bishop took the position that the MWPAs were limited to the rights and powers necessary to protect a married woman's private estate, and in 1887, George E. Harris contended that the power and dominion of the MWPAs was actually limited and restricted by the terms of its enabling statute. Actions by those two influential groups may have limited the effects of the MWPAs.

In fact, the MWPAs ecosystem included other laws and practices related to conveying property, including debtor legislation. It and other laws governing property owned by couples could be used to protect debtors from creditors and even be used to defraud creditors. The Michigan courts prided themselves on their willingness to see through such fraudulent transactions and defeat and discourage them; however, there would be no record of those they failed to detect. In addition, if the MWPAs could be used to defraud a creditor, so too could the disabilities of married women. Various methods – other than directly conveying property from a husband to a wife to put the property out of creditors' reach – were used to achieve the same result. An 1851 form book and legal treatise advised:

If a husband wishes to convey property to a wife, he can do so by conveying to some friend in trust for her benefit. Such a conveyance would be set aside on the application of creditors whose rights were prejudiced by it, but they will secure the property to the wife against everybody else.

Beach v. White, a Michigan Chancery case, was an attempt to defraud a creditor by using a married woman's disabilities under coverture, an attempt that was not successful. In Beach, the court held that while “[a]ll postnuptial contracts are not necessarily void as to creditors,” in this case the hallmarks of fraud were too obvious to permit the court to uphold the transaction.
The decision's dependence on hallmarks of fraud to set a transaction aside suggests that it was possible to defraud creditors by using structures created to deal with married women's legal disabilities.

Indeed, it may have been creditors' concerns that explain the presence of so many married women on the deeds as grantors both before and after the enactment of Michigan's first Married Women's Property Act. This concern may go a long way to explain the presence of so many husband-wife grantors even though the wives did not own the property. For a practice to be so common suggests it had legal significance. Wives' inclusion as grantors solely to release dower rights seems unnecessary, especially in the cases where married women were included as grantors on deeds even though they had expressly released their dower rights in a special clause in the deed. This practice suggests there were rights other than dower that grantees were concerned about. For the price of writing out a longer legal document, a purchaser – including creditors – could have greater assurances that they had clear title and that there would be no remaining grantor property rights and, thus, no legal disputes.

There were a number of property rights based on status, in addition to dower and curtesy, that could interfere with receiving all rights in property. For example, tenancy by the entirety, a form of ownership limited to property owned by a married couple, created rights that continued even after sale unless special efforts were made to extinguish them. Michigan courts held that the MWPA did not in any way affect the tenancy by the entirety.

The issue of greatest concern seems to have been the exposure of entireties property to claims of creditors of either spouse individually. Some states held that each spouse was entitled to possession of one-half of the property and one-half of the income; their individual creditors were permitted to attach these interests. Other states held that neither party had the exclusive right to possession or income, and therefore did not permit creditors of either spouse alone to levy on entireties property so long as both were alive.

Thus, the concern may have been not just dower rights but “that contracts for the sale of entireties property signed only by the husband are not binding on the wife. This holding is consistent with the common law, of course, since the husband cannot convey the wife's survivorship rights.”

Consent to the termination of an estate by the entirety, along with "payment of consideration, delivery and recording of the deed constitute such joint action and mutual assent as are required by our cases to destroy the entirety." The wife's failure to join in the conveyance would allow the wife's survivorship rights continue to exist. To be safe, both spouses needed to be included, regardless of which actually owned the property. Economic reality as to property ownership meant that most often it would be the wife joining her husband's conveyance of his property, but it might apply to a husband's interests in his wife's property if she had any to convey.

Michigan courts interpreted their law so as to require that both the wife and husband joined in a transfer of property. A "levy by the husband's creditors upon 'his interest in' an estate
by the entireties will reach nothing . . .”128 Perhaps the reason that release of dower and tenancy by the entirety do not offer a completely satisfactory explanation for the presence of wives as grantors of their husbands’ property is that other laws of the time also made the wife’s inclusion expedient. Michigan’s Homestead Act129 reinforced the impression that the wife was a co-grantor by requiring that she give consent to a sale of marital property. In addition, the Homestead Act incorporated into the state constitution of 1850,130 created and supported conditions of equality for husbands and wives, as well as protecting the rights of creditors and grantees in general through its exemptions of real property from alienation and encumbrance unless both husband and wife joined in the transaction.131

Of course, Michigan courts varied in the liberality with which they interpreted the law. Some held that a married man could not consent to a sale or waiver without the wife’s assent.132 Others allowed creditors more rights under the law by interpreting the wife’s rights more narrowly. For example, the court in People v. Plumstead,133 held that the husband could designate homestead property from among his lands and sell that which he had decided was not in the homestead. However, other courts narrowed protections to debtors by holding that there must be occupation of the land before any part of it would be exempt from the homestead acts.134 In any case, the natural effect of such legislation would have been to encourage grantees and creditors to require grantors’ wives to signify their acquiescence in any sale of land. A simple way to demonstrate such intent would be by joining fully in the husband’s deed.

There are other connections between the Homestead Act and the Married Women’s Property Act that may have affected the deeds. Both are in close physical proximity in article sixteen of the Constitution of 1850; both deal with rights in land of two generally less favored classes – women and debtors; and both potentially give wives greater property rights. In 1855, further revisions of the Married Women’s Property Act created a greater entanglement between the two by providing that a “wife may bring an action in her own name, with the like effect as in cases of actions in relation to her sole property” in order to protect homestead property.135 That act also allowed wives to sell their own property without their husband’s joining in the deed;136 however, as a practical matter, it may not have been possible to convey clear title without a husband’s also conveying his interests, such as curtsey, in some instrument. Joining in his wife’s deed would have been a simple way to do this.

Thus, the general practice as to married women as revealed in these deeds was not one that made property inaccessible to purchasers and, potentially, creditors. Rather, it assured purchasers that they were entering into a bona fide transaction.

Where law bettered the condition of women, the record was not always clear as to the force impelling change; there is some reason to believe that the married women’s property acts were prompted as much by concern to help creditors attain the security of the wife’s signature on her husband’s note as to advance the woman’s capacity to be a free trader for herself.137

Protection of creditors’ rights would seem to explain the pattern seen in the deeds, but does it? A convenient way to convey any property – and to ensure that a clean title was passed – was to join
as a grantor to convey any interest in the property a spouse had or might have along with the property's owner, the practice that we see in many of the Michigan deeds examined. This is such a tidy way of explaining the data – even though it does little to explain the effects and purpose of the Michigan MWPA – that, it would seem, no more need be said. But though convenient, it does not answer the question: Was it legal under Michigan law to convey property in this way?

The convenience of including a wife as a grantor in order to convey all her interests in a property seems interesting but not irregular until the contemporary law is explored. Elizabeth Gaspar Brown's study of the sources of law relied on by lawyers in Wayne County, Michigan (the county just east of Washtenaw County) in the period just preceding this study found that even at that early time, they relied on the same sources of law as those in the large cities in the East.

The cumulative impact of these books demonstrates that the practicing lawyer in Wayne County did not find his sources of law in theoretical abstractions of justice or local conceptions of right and wrong. Rather, he possessed and used the same sources of law as his contemporaries in Philadelphia or New York. Excluding the purely American materials, he drew his water from the same well used by his British counterpart. 138

What these practitioners would have found was that deeds that included wives only as grantors – as some of these deeds did – were technically insufficient to pass an unclouded title. Great pains were taken – at least on the books – to protect women by making it difficult to lose dower rights. As a result, dower rights could only be released expressly and through a separate dower release clause. 139 A wife who merely joined in a deed that conveyed her husband’s land was not bound thereby in any way. 140 It, nevertheless, appears – and certainly is the case with the Michigan deeds – that married women commonly joined in the whole deed to bar their dower rights, rather than by the fine of common law 141 or by a separate clause. A study of married property law from 1800-1850 found the same dynamic:

The use of a fine and recovery to convey a married woman's interest in her husband's land gave way to joint conveyance accomplished by signature. Even though many Colonies, states, and territories retained the English practice of approving a land sale only after a married woman was separately examined before a judge or magistrate, the general liberalizing of conveyancing practices had substantial impact. While in hindsight the ease with which a wife's dower or other interest in real property could be transferred may be viewed as a double-edged sword, there is little doubt of its importance in early American women's law. 142

The practice seen in the Michigan deeds, was, however, considered a highly irregular practice by treatise writers. 143 Although the law apparently did not require an exact formula of words, 144 it did require an express intention to release dower and other rights. 145 Dower rights could only be released as part of the transfer of the property as to which the dower rights existed: “A release of dower can operate only as a release, it must accompany the conveyance of another, and ceases to operate with that; it cannot operate as the transfer of an independent estate.” 146 But even though these rights were to be conveyed in the same document, treatise writers and
form books said the husband alone was to be named as the grantor of his land and the wife was to bar her dower in a separate clause within that same document. 147

In short, we seem to have had a treatise writer's view of the law that differed from the law as commonly practiced – and not only in Michigan. A New Hampshire case provides an example of a practice we see in some of the deeds in the study where the wife is not named in the deed but signs her husband’s deed to bar her dower.

In New Hampshire it was much later before the courts were composed of educated lawyers, or were materially aided by an educated bar, and it is probably owing to this circumstance that the custom became established here that the wife may release her dower by her signature and seal at the foot of her husband's deed, without her name being in any other way mentioned or alluded to in the instrument. 148

It is easy to see the attraction of the form of deed that named both husband and wife and included a release of all conceivable rights either or both might have for grantors, grantees, lawyers in practice, and the legal secretaries who hand wrote the documents. It was certainly simpler – and thus easier to avoid errors – to have one form used for most transactions. That goal could be achieved by naming both husband and wife as grantors – as they were, but as to different rights – and to list all rights they each or both could be conveying, even if only one was conveying some of these rights.

In the United States, the middle-class family was part and participant in the working legal system. English land-law practices were too cumbersome, technical, and expensive for this class to bear. Moreover (and this was critical), the tangle of rules and practices was potentially an impediment to the speed and efficiency of the land market. 149

Thus, the general practice was not English land-law practices, but the form books and treatises discussed here were American documents that embodied law descended from England.

By the mid-nineteenth century, however, a split developed among the states as to how dower could be barred,150 either expressly in a separate clause or by joining in the whole deed. Unfortunately, for finding a simple answer but fortunately for this article, the state of Michigan's law on this issue was uncertain. By statute, conveyances of land in Michigan had to comply with formal requirements that they be by deed, signed and sealed “by the person from whom the estate is intended to pass” or his agent or attorney.151 However, the legislation did not state expressly whether the release of dower was to be express or not. Another statute seems to permit joining in the deed to bar dower rights:

A married woman residing within this state may bar her right of dower in any estate conveyed by her husband or by his guardian if he be under guardianship, by joining in the deed of conveyance, and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged.152
Although this statute appears to provide the entire answer for the behavior of the Washtenaw County grantor couples, the history of the Act suggests otherwise. This provision was borrowed in 1837\textsuperscript{153} almost verbatim from a Massachusetts law of 1836,\textsuperscript{154} along with much of the rest of the Massachusetts code of 1836. The Massachusetts statute book from which this provision was almost certainly taken cites \textit{Fowler v. Shearer},\textsuperscript{155} a well known case of the time, as do later versions of the Michigan statute.\textsuperscript{156} That case held that, to be effective, a release of dower must be express.\textsuperscript{157} In other words, Michigan may also have required an express release, despite the wording of the statute.

Some cases and treatises suggest that, even when dower was not released expressly, other required parts of the deed could be manipulated in order to achieve the ends of justice and bar dower. For example, language stating that there had been a separate examination of the wife, a provision in every deed in the study that included a married woman, was originally intended as an important protection for the woman when conveying her own property.\textsuperscript{158} There is only one deed with a married woman without such a clause. Since most of the deeds which do not expressly release dower state generally that they are conveying all of the parties' legal and equitable interests, it is not unreasonable to conclude that this includes dower, despite the requirement that such a release be express. The legal requirement of a separate examination and other measures may have provided some protections to the wife by potentially giving her leverage over a husband who wanted or needed to convey property. However, equally important in estopping a wife from later asserting her dower or other rights were the interests of the purchaser in receiving a clear title.

It seems likely that most of the grantor wives genuinely intended the transaction to end their interest in the land. Certainly, the deed's premises appear to be the appropriate place to include dower, as one more thing the co-grantors are conveying. The separate examination would then operate as a sworn statement that the intent to convey on the part of the wife was real. There may have been some wives who revealed during a separate examination that her will had been overborne, but one wonders what would have happened then, especially when cases and treatises make it clear that the husband exercises all rights within the relationship. In any case, we live now more than a century after anyone who could explain what actual practices and motives were. The best we say is that no Michigan court then construed Michigan law in any way other than to require that wives must release dower expressly.

\textbf{Michigan Law and Gender Equality?}

Although the Married Women's Property Act, which was the initial impetus for this study, did not affect deeds as anticipated, it may have shaped them in an entirely unexpected manner. The act provided, prior to 1855\textsuperscript{159} and including the constitutional provision of 1850,\textsuperscript{160} that the husband was required to join in the wife's deed.\textsuperscript{161} This can be viewed in two very different ways: as evidence of the married woman's inferior status, as a sort of quid pro quo for the laws that required the wife to join in her husband's deed, or in recognition of the need to bar rights the husband had in his wife's property, such as curtsey. That requirement that spouses be party to sales of the other's property may have greater than legal significance. It is plausible that laypeople, who may have been aware that in order to sell property either a husband or a wife had
to get the other's written consent, may have equated that with a certain degree of gender equality.

It would be a mistake to regard these effects of dower, curtesy, tenancy by the entirety, the Homestead Act, and the Married Women's Property Act as merely tenuous signals of equality based on mere speculation and wishful thinking. When those acts are further considered within the context of other laws of nineteenth century Michigan, it is obvious that this was not a society dedicated to women's absolute inferiority. Other laws allowed women more than the right to own their land and convey it, protected by the separate examination and the requirement that the husband join in the wife's deed. They gave a wife, for example, the ability to deal with her property and business affairs as the equal of men by conferring powers of attorney on her. Michigan law at this time had a number of statutes concerning married women and powers,\textsuperscript{162} some of which merely allowed a wife to deal with her own property without seeking her husband's consent.\textsuperscript{163} A woman could also be given a more general power.

A married woman may execute a power during her marriage, by grant or devise, as may be authorized by the power, without the concurrence of her husband, unless by the terms of the power its execution by her during the marriage is expressly or impliedly prohibited . . . .\textsuperscript{164} Apparently other states also found it useful that married women have such powers. The Massachusetts court said:

\begin{quote}
[A]s his attorney she may execute a deed in his name, and may put his seal to it, and may before a magistrate acknowledge it to be her husband's deed. And he shall be bound by it as effectually as by a deed executed personally by himself.\textsuperscript{165} In other words, the law saw both the necessity for and the ability of women to play an unhindered role in the world and provided the means for them to do so. For example, Michigan law provided that a woman who had preceded her husband to the state could carry on family legal affairs by herself.

[S]he may transact business, make contracts, and commence, prosecute, and defend suits in her own name, and dispose of her property which may be found in this state, or which she may acquire in like manner, in all respects as if she were not married.\textsuperscript{166}
\end{quote}

These immigrant woman laws reflect a practical response to necessity. If a family migrated piecemeal, someone must be empowered to take legal action other than the husband. In addition, such a situation meant there could be no problem of causing dissension in the household over acts taken to protect the family's holdings, since there was no one there to disagree with. These temporary breakups of families and this method of providing for their legal affairs may have led to the idea that it was possible to let the law reflect the reality of the two individuals which made up the basic unit. This may explain the passage of the acts with so little stir in Michigan. Lawrence Friedman observed:

\begin{quote}
The married women's property acts, therefore, did not signal a revolution in the status of women; rather, they \textit{ratified} and adjusted a silent revolution. A curious fact provides
striking though indirect confirmation of this point; passage of these laws seemed to effect an enormous, radical change, in that most basic of institutions, the family; yet the laws were hardly debated or discussed at the time. 167

To the extent that Friedman's conclusion is correct, it did not apply to all states. In Oregon, for example, debates on giving married women homestead rights were rancorous and went to the core of contemporary understandings of family roles. The debates on the Oregon Donation Act were based on the premise “that the family was the core of American culture, that families needed a central male figure to survive, and that wives would vie for family leadership if they gained some economic independence from their husbands . . . [fearing] that a husband would become 'simply a boarder at his wife's establishment . . ..”168 Others argued that honest creditors would be cheated by the enactment of these property protections.169

Conclusion

In the Middle Ages, the English landholding system "exhibited a great drive toward unifying control in one person"170 who was typically the husband and father. The various Married Women's Property Acts are evidence of an opposite trend begun in the mid-nineteenth century toward eventually lodging control in the individual, without regard to that person's status. That trend also tracked a rise in the legal autonomy and status of women. That said, efforts to trace reasons for enacting the Michigan Married Women's Property Act and its effects on practice show no simple explanation, no simple cause and effect for its enactment and operation. This study was begun with the assumption evidence of conveyancing practices would provide a means for testing theories and extant legal doctrines against those practices.

While the results cannot afford the satisfaction of simplicity, the more complex explanations for its passage and operation are actually more satisfactory. They fit with what we know about the messiness of our own era. Laws which affect women are among those that require especially careful analysis, since these laws have historically embodied more than is strictly necessary to accommodate innate and relevant differences between men and women.

But before leaving this exploration, it is worthwhile considering briefly some of the explanations explored. Take, for example, the failure of the wording of the deeds to conform to the law as set out by learned treatise writers and judges. Of far greater importance may have been the desires of grantees and creditors to get clear title and the usefulness of a book like the lowly legal form book. It may be that Michigan conveyancing practice owes its practices most of all to a Canadian, recently graduated from Yale – Delos W. Beadle, the author of The American Lawyer, and Business-Man's Form-Book; Containing Forms and Instructions.171 Beadle was born in Ontario, Canada and returned to Canada after graduating from Yale in 1844, the year in which the first Michigan Married Women's Property Act was enacted.

After graduation he studied law in the office of Strachan & Cameron in Toronto and in the University of Toronto, from which he also received the degree of Bachelor of Arts in 1846. He completed his law studies in Harvard Law School and received the degree of Bachelor of Laws in 1847. In the autumn of 1848 he entered the law office of William C Noyes, Esq, in New York City, and after a short period of general practice,
confined himself to real estate law. In 1852 he compiled "The American Lawyer and Business Man's Form Book," which was published in English and German. There was probably little original in that book, but, for this turbulent period in American history, it was likely to be particularly useful. As with other books of its kind, Beadle's form book made useful legal information accessible for a populace moving into areas where there would be few lawyers. His book appeared during a “down with lawyers” period in American history, and included a promise that people could order their affairs without recourse to lawyers, as long as they had his form book. Beadle appears to have had a talent for self-promotion. The front pages of the book tout the book as valuable to all.

TO THE PURCHASER.

This book which we now offer you is emphatically a manual for the guidance of any and every man in business transactions, in a manner prescribed by law and the usages of trade. But in addition to this, it embodies an array of practical information which makes it a most valuable reference-book to the business man; and we assume that the world is not in possession of its equal in point of Fullness and Correctness. It has been prepared by a lawyer of high character and standing in the city of New York, whose professional reputation is a sufficient guaranty for its accuracy, assisted by a business-man well acquainted with the wants of the community, which this work is intended to supply.

... It Will Pay Every Man.

Look at the array of subjects already mentioned, besides Forms for holding Property in Trust, Promissory Notes, Compounding with Creditors, Landlord and Tenant's, Agreements, Rights of Married Women, Dower, Rights to Military Bounty Land, Interest Tables, &c., together with another item giving great interest to this work, being a well-delineated.

Map Of Each State In The Union, And A Map Of The U. S.

which Maps alone are worth three times what is asked for the whole work.

The special State Laws have been compiled at great labor and expense, from the latest statutes of the various States, so far as they could be reached, and will be found more complete and reliable than anything now before the public.

If we have now made it plain that it will be a valuable book to you, we ask you to buy it, not simply to promote our interest, but because we give you in return that information which every man ought to have at his command.

Thus, a young man just a few years out of law school with scant experience with American legal practice may, nonetheless, have promoted the widespread – and extra-legal – use of deeds that suggested greater women's equality than actually existed.
Agitation for women's rights has already been explored above. However, there are other interesting elements to that story in terms of the process of doing historical work on legislative change. The most important of these is the influence of the multi-volume history of the women's rights movement originally produced by Elizabeth Cady Stanton and Susan B. Anthony—History of Woman Suffrage. Volume I covered the period 1848-1861, beginning several years after the first MWPAs were enacted. The books are useful because they are not histories in the usual sense. They documents included are letters, speeches, petitions, and news stories that are otherwise difficult to access. That quality has given them a large influence on how the history of the women's rights movement is understood. However, accepting that history and viewpoint is not without problems.

Their history was begun after the Civil War and after the women's rights movement had split over the question of universal suffrage in Kansas. Stanton and Anthony played an important role in causing and perpetuating that rift for many decades. As a result, their viewpoint must be borne in mind when reading their history. This matters in small ways as well as large. The most important of these issues where caution is necessary concerns the split that grew out of the 1867 ballot issues for woman suffrage and for Negro suffrage. Stanton and Anthony left behind the women's rights movement's traditional alliance with abolitionists in order to oppose Negro suffrage as a way to promote women's suffrage. Other long time proponents of women's rights, including the Rev. Olympia Brown, Lucy Stone, and Henry Blackwell went to Kansas to campaign for universal suffrage. As a result of the campaign and split, Stanton and Anthony took for themselves the label of radical suffragists and labeled their opponents as conservatives, labels that are puzzling, given the facts of the situation, but which have, nonetheless, been widely accepted. That split continued for many decades. In short, the history of this history shows the quirky process by which we understand our past.

A particular challenge for understanding the process of historical law reform is that most past events will not leave any evidence, particularly those that involve interactions within non-elite families. The may be true even though we can see change has occurred. We know that before the Civil War, "women held a negligible amount of property" In the latter nineteenth century, "directly after the passage of the married women's property acts or the adoption of a community property system, the situation changed markedly. Propertyed and wage-earning women did not take their places along with men in running American business, but they were at least in a position to make some decisions about their and their family's own consumption, investments, and wealth transmission. Wealthy women and wives whose husbands failed to support them and their children benefitted the most.

Richard Chused observed:

One of the more interesting phenomena in the history of women's private law status is the slow process by which regulation of women moved from special treatment towards equality. While there is still much debate about the extent to which this has occurred, there are a number of examples which suggest the validity of the notion. Protective labor legislation is a nice example, as is voting, ability to sue, access to damages for loss of
consortium and a number of others. Some areas were equalized, at least in legal theory, before others. Women's property law happens to be one of the earliest to change, leaving women with access to the same sorts of property as men long before other aspects of society were prepared to let them fully use their economic rights. Perhaps this occurred because the debtor protection aspects of married women's property law created legislative coalitions that otherwise may not have existed.\textsuperscript{182}

In other words, change in this area of the law was not linear, and the sources of change were many and even, at times unexpected. Consider, for example, the very different pictures of the law, its causes, and its effects from the deeds versus court opinions and most treatise writers.

These messy interactions of law, practicalities, personal needs, and social mores and how they play out may shed light on the great family innovation of our time – social acceptance of same-sex families and legal recognition of same-sex marriage. As with the Married Women's Property Acts, they are undergoing a state-by-state uneven development. And just as we do not fully know how property and decisions about property were handled within nineteenth families, and, with the passage of time, have lost any capacity of finding out directly, so too, we are largely ignorant about current actions and values that will affect the outcome of this struggle.

If Michigan deeds and laws suggest that nineteenth century women were not as unequal as has been thought and, in fact, may have had significant involvement with property, how does that evidence fit with the nature of the campaigns fought for their enactment? If, on the other hand, married women had only the veneer of equality but not its substance, how was greater equality achieved? Was the law on the books or social acceptance of gender equality most important? Or do we do a disservice to understanding by insisting that there is a dichotomy? Public acceptance of women's property rights should make law reform easier. And laws that mandate equality are easier to enforce when supported by public mores.

The attempt to explain the enactment and effect of the Michigan Married Women's Property Act involves more than just legal support for women's rights. Laws that incrementally gave wives and women equality and legal rights could not effect a complete break with the past. The MWPAs were simply impotent to transform women in poverty, as a result of past discrimination, into women property owners. In addition, the struggle's outcomes reflect assumptions about women. To be comprehensive and accurate, we must, then, interrogate laws closely identified with families because they may conflate assumptions about the family as a component of society with the realities of individual family members. For example, laws which, on their face, appear to demean women may in fact be directed to some other objective of that era's ideal. The effect on women may be indistinguishable, but the distinction must be made in order to identify and comprehend the processes at work.

Married Women's Property Acts were enacted within a society struggling with the nature of democracy, economic disasters, the struggle to free slaves, the founding of the Equal Rights Association, which evolved into the abolitionist and women's rights movements (both with substantial involvement of women in leadership roles),\textsuperscript{183} the Civil War which left many families bereft of their men, and the transformation from an agrarian into an industrialized society. These and other changes affected what families did and who within the family played specific roles. In that period, the ideal family changed from a unit that must be obedient to a
single head or risk anarchy and dissolution. Social upheaval and political and economic challenges still affect the process and possibility of law reform today.

While it would be lovely if law reform had the neat cause and effect trajectory of a bullet from a smoking gun, we know that life and law are far messier – and more interesting. A search for the impetus for enacting the 1844 Michigan Married Women's Property Act and its later versions makes that situation plain. Understanding the processes of law reform is not a case of saying "all of the above and more". Rather, that conclusion is both too simple and less interesting than the reality of law reform involving a fundamental social institution, such as

1 Fannie Weiss Distinguished Faculty Scholar and Professor of Law, Penn State Dickinson School of Law. I would like to thank Charles Donahue, Jr., Constance Gadell-Newton, and participants in the 17th Annual CLE Conference Update for Feminist Law Professors, Temple University, Philadelphia, PA (Nov. 21, 2009).


4 For a drawing of the sort of dress reform promoted, see the cover of this sheet music. http://www.library.upenn.edu/collections/rbm/keffer/scenes-lee.html


7 Genesis 3:16.

8 See, e.g., Carrie Chapman Catt & Nettie Rogers Shuler, Woman Suffrage and Politics: The Inner Story of the Suffrage Movement 21 (1923); Caroline Dall, The College, The Market, and The Court 348-49 (1914).

9 4 James Kent, Commentaries on American Law 114-17 n.1 (10th ed. 1860). Even the acts' enemies regarded them as legislation which could and would cause significant changes. See Comment, Husband and Wife – Memorandum of the Mississippi Woman's Law of 1839, 42 Mich L. Rev. 1110, 1114 (1944).


16 New York's law was passed in 1848. For a detailed history of that law, see Norma Basch, In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York (1982).


41 LeRoy Barnett & Roger Rosentreter, Michigan's Early Military Forces: A Roster and History of Troops Activated 341 (2003). Rosters show the number of Michigan soldiers by roster. Rosters from southern and southeastern Michigan made up a large number of those mustered. *Id* at 344-346.
42 For an overview of dower and curtesy rights, see Angela M. Vallario, *Spousal Election: Suggested

45 See infra text accompanying note 157.

46 Delos W. Beadle, The American Lawyer, and Business-man's Form-book; Containing Forms and Instructions 84 (Rev. & Enlarged Ed. 1851).

47 Allen v. Williams (1824) in 2 Transactions of the Supreme Court of the Territory of Michigan, 1814-1824, at 31 (W. Blume, ed. 1938). In that case, the court held: "[I]t appears by the very inception of the contratt [sic] that she the Said Clairette Allen is a married Woman, and therefore is not liable to pay any debt during the life of her husband." Id. See also Baron and Feme: A Treatise of Law and Equity, Concerning Husbands and Wives. 219, 332 (3d ed. 1738) (only the husband bound on joint covenant. But see Baron and Feme: A Treatise of Law and Equity, Concerning Husbands and Wives 174-75 (3d ed. 1738) (action lies against the wife for her warranty in the fine).

By the early nineteenth century, although at common law a wife could execute a conveyance with her husband, she was unable to join in the covenants. See Aldridge v. Burlinson, 3 Ind. (Blackf.) 201 (1833).


50 2 Joel Prentiss Bishop, Commentaries on the Law of Married Women § 232 (1873).

51 1 Joel Prentiss Bishop, Commentaries on the Law of Married Women § 424 (1873).


53 George E. Harris, A Treatise on the Law of Contracts by Married Women: Their Capacity to Contract in Relation to Their Separate Statutory Legal Estates, under American Statutes § 57 (1887).

54 See May v. Rumney, 1 Mich. 1 (1847).


58 Comment, Husband and Wife – Memorandum of the Mississippi Woman's Law of 1839, 42 Mich L. Rev. 1110, 1113-15 (1944). See also James V. Campbell, Outlines of the Political History of Michigan 485-86 (1876). It may be found in full text on-line at http://www.archive.org/details/outlinesofpoliti00camp


63 Act of March 25, 1848, §§ 1-2.

64 See James V. Campbell, Outlines of the Political History of Michigan 485-86, 493 (1876).

65 Id. at 493.


68 James V. Campbell, Outlines of the Political History of Michigan 485-86, 493 (1876)

69 Richard Chused, for example, sees the poor economic conditions as playing an important role in the legislation's enactment and for its impetus to have been debtor relief. Richard Chused, Married Women's Property Law, 1800-1850, 71 Georgetown L. J. 1359, 1361 (1983).

70 Norma Basch, In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York


72 Karen Pearlston, * Married Women Bankrupts in the Age of Coverture*, 34 Law & Soc. Inquiry 265, 266 (2009). Pearlstein’s observes that coverture should have precluded married women from becoming bankrupt. Bankruptcy was restricted to persons who made their living by buying and selling and who could be held legally liable for the debts they incurred. A married woman could not incur liability for a debt. In consequence, she could not be a bankrupt. Yet a few married women traded on their own account and some of them tried to take advantage of the bankruptcy regime. *Id.*

Pearlstein’s study is of British law in the nineteenth century, but her observation holds true for law in the United States as well.


77 See Willis Frederick Dunbar, *I Michigan Through the Centuries* 272 (1955).


82 Norma Basch, *Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America*, 5 Feminist Studies 346, 347 (1979). Indeed, if we consider the women in Shakespeare’s plays, we would conclude that women in the 16th and 17th centuries were largely autonomous beings and powerful beings.


89 James V. Campbell, Outlines of the Political History of Michigan 510 (1876). Green had moved to Michigan in 1837, was elected to the State Senate in 1842, and as a member of the Senate Judiciary Committee “was instrumental in revising the Statutes of the State that were adopted in 1847.” Michigan Supreme Court Historical Society http://www.micourthistory.org/bios.php?id=19; Political Biography of Sanford M. Green (1807-1901) Bay Journal Pioneer History http://www.bjmi.us/bay/lhe/writings/mibio-green-sanford-m.html


91 James V. Campbell, Outlines of the Political History of Michigan 510 (1876).

92 James V. Campbell, Outlines of the Political History of Michigan 520 (1876).

93 For an overview of Michigan's legal progress from its formation as a territory as it moved toward statehood, see Elizabeth Gaspar Brown, Frontier Justice: Wayne County 1796-1836, 16 Am. J. Leg. Hist. 126 (1972).

94 James V. Campbell, Outlines of the Political History of Michigan 524-25 (1876). According to Citizens United for Alternatives to the Death Penalty, "March 1, International Death Penalty Abolition Day, marks the anniversary of the date in 1847 in which the State of Michigan officially became the first English-speaking territory in the world to abolish capital punishment." The CUPD history notes that "the first official act of the [Michigan] legislature was to constitutionally abolish the death penalty. The constitutional language was approved in the Spring of 1846, and became official on March 1st, 1847." http://www.cuadp.org/michhist.pdf


96 Michigan Department of Natural Resources and Environment, Slavery, Resistance and the Underground Railroad in Michigan http://www.michigan.gov/dnr/0,1607,7-153-54463_18670_44390-158647--,00.html

97 http://www.michiganopera.org/mg_ed/educational/Timeline.html

98 Michigan Department of Natural Resources and Environment, Time Line of Slavery, Resistance and Freedom (1837 -1893) http://www.michigan.gov/dnr/0,1607,7-153-54463_18670_44390-158720--,00.html

99 LeRoy Barnett & Roger Rosentreter, Michigan's Early Military Forces: A Roster and History of Troops Activated 341 (2003). Rosters show the number of Michigan soldiers by roster. Rosters from southern and southeastern Michigan made up a large number of those mustered. Id at 344-346.