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ABSTRACT

An examination of coverture law in North Carolina between the years 1790 and 1854 demonstrates that married women were deeply concerned with their status under marriage law. Marriage law in North Carolina gave power to legislators and the state to intervene in private marriages. The state upheld coverture law, adapted from English common law, as its primary legal precedent in deciding cases of divorce or cases in which property was transferred. Married women were thus subject to the control of their husbands, who were empowered by the state laws of marriage. Women had no control over their own body and married women expressed their dissatisfaction with this lack of control through formal petitions to the state. These petitions show a common experience among the married women of North Carolina between 1790 and 1854. This study is important for understanding how married women navigated their legal constrictions under the law. Their petitions underscore a desire to air their grievances under the marriage contract. The right the state exerted over women’s bodies and their property was challenged by female petitioners who claimed certain rights under the law.
ACKNOWLEDGMENTS

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More gratitude should be extended to my fellow graduate students, who shared my misery and elation, sometimes in the same day. The commitment of my peers to this profession pushes me to be a better historian and a better friend.

Lastly, I would like to thank all three of my grandmothers for passing on the teaching gene to me. I am extremely proud to be a product of such noble and inspiring women. My dedication to this profession is a product of each one of you.
DEDICATION

I would like to dedicate this thesis to my niece, Marie Turner Earp, whose joy and love inspires me daily. May you grow up to be a strong and kind woman, who appreciates all the women who came before you.
CHAPTER ONE

Introduction

The American Revolution touched the lives of everyone in the country. Lawmakers and civilians tried to assess what changes they would like to see in their new government. The disenfranchised included women, slaves, and free blacks as well as whites with no property holdings. These groups wondered how their needs could possibly be represented since they had no representation in the government. Alexander Keyssar explained that “women enjoyed (or at least possessed) different, more intimate relationships with the men who could enfranchise them than did other excluded groups.”¹ These relationships were more intimate because of marriage. White, married women found themselves responsible for more and more of their livelihoods as their husbands were either away at war or away creating the framework for the new country’s government. One of the more notable pro-Revolution women who found herself responsible for the family farm was John Adams’s wife Abigail. The historical record has preserved their prolific correspondence during the war years which highlighted Abigail’s increased duties on the farm.

Abigail wrote to John often while he was away in Philadelphia at the Continental Congressional meetings to discuss everyday duties she was now tasked to care for in the wake of his absence. The Adams family came from a long tradition of self-reliance and hard work that John Adams hoped his wife would be able to continue while he was away. Their letters included her observations on the business of the farm and his advice on how

best to deal with particular workers. Though Abigail had little to no experience with handling a farm or acquiring land, she was able to do both while John was away at the Congress. Through her efforts, she was able to sustain their estate and even add some property to it through acquisitions approved by her husband.

During the course of the war Abigail found herself with more responsibility and more power over her own faculties than ever before. The sense of accomplishment she acquired through this experience was incalculable, but some of Abigail’s correspondence to her husband belies her concern for accurate representation for the many women in the country who found themselves in her position. While many historians may view Abigail’s stance early feminism, others like Edith Gelles have shown that she was still very much operating within the confines of colonial marriage. She noted that in Abigail’s middle years in life she referred to herself as Portia in her letters. This showed that the “image which Abigail chose to reflect was that of Brutus’s patient, long-suffering wife. Her model was the wife of a great politician, above all, a domestic figure – a Roman wife.”

Abigail Adams was notable as an historical figure because of the vast primary resources from her own hand that are well preserved in her papers. Her correspondence was also notable because she was the wife of the first vice president and the second president of the newly-minted United States. Though Abigail was by her husband’s account and historical accounts, a remarkable woman with regard to mental acuity and resourcefulness, she was very much like most other women in her class during the

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3 Ibid, 517.
American Revolution. That is, Abigail was first and foremost a wife and mother and these duties were what defined her position as a resident of the United States.

It seems that Abigail was well-versed as to the confines of her marriage. She did not abhor nor stand against those boundaries. By all accounts, Abigail and John Adams shared a happy marriage that saw many trials but they always supported each other in these times. Perhaps one of the most lasting and oft quoted letters between the husband and wife was Abigail’s instruction for John to “remember the ladies” while he helped to draft the Declaration of Independence in Philadelphia. However, one of the later letters to John was less subtle and more condemning of the practice of holding a kind of tyranny over women within the confines of marriage. In May of 1776 Abigail wrote to John how she felt about his treatment of women:

I cannot say, that I think you are very generous to the ladies; for, whilst you are proclaiming peace and good-will to men, emancipating all nations, you insist upon retaining an absolute power over wives. But you must remember, that arbitrary power is like most other things which are very hard, very liable to be broken; and, not withstanding all your wise laws and maxims, we have it in our power, not only to free ourselves, but to subdue our masters, and, without violence, throw both your natural and legal authority at our feet. This letter from Abigail illuminates her feelings that marriage gave men “absolute power over wives” while it also gives insight into how this power related to the political situation of the country. The proclamations of “peace and good-will to men” being made by her husband in Philadelphia were not, according to Abigail, representative of women’s rights within the marital household. Her last declarations in the letter are interesting for their allusions to the master and slave relationship. Historian Kathleen M. Brown has

4 See Linda Kerber’s, Women of the Republic: Intellect and Ideology in Revolutionary America or Mary Beth Norton’s The Revolutionary Experience of American Women, 1750-1800.
noted how race and gender in the antebellum South were ultimately linked by the mutual oppression of their rights. Indeed, she argues that “Without a more organic view of the relationships between gender, race, and power, we cannot begin to grapple with the legacy of colonial Virginia for the new nation, the antebellum South, and our own time.”

Abigail’s disdain for married men’s “arbitrary power” and their “wise laws and maxims” reinforces Brown’s assertions that gender and power played a pivotal role in the development of the United States. By examining the institution of marriage in North Carolina between the years of 1790 and 1854, one can see how the relationship between gender and power not only confined and restricted white women, but it also solidified a place for white men in the new political system. To begin to see how the relationship between man and wife influenced an entire political system, one can look to the evolution of marriage law. To understand marriage law in North Carolina, there is a need to understand how the Revolution affected the envisioned political leadership in the colonies. This leadership would be responsible for the revision and implementation of marriage laws and their motivations in government would belie their political value systems with regard to women.

In North Carolina, the years immediately after the American Revolution brought many changes to the government. Republicanism, as envisioned by the nation’s founders, was meant to place power in the hands of the polity. The success of their new system of governance was entirely dependent upon taking the ruling power out of the hands of a monarchial being and disseminating it among a society of people deemed

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virtuous. It seems that the differences between the governance models of monarchy and republic were not as radical as the founders may have suggested. As Gordon Wood points out, “By republicanism the Americans meant only to change the origin of social and political preeminence, not to do away with such preeminence altogether.”

This meant that the social order in the new American colonies allowed for ascension in the political system, but that ascension was based primarily on adherence to a type of virtue that the new government’s crafters would outline. The people in power would be able to assert a type of dominance over the populace, but their actions were subject to a vigorous set of moral codes. Nowhere was this truer than in the South during the time of the Revolution. Again, Wood notes that the leadership “ideal especially in the southern colonies, was the creation and maintenance of a truly natural aristocracy, based on virtue, temperance, independence, and devotion to the commonwealth.”

This aristocracy was maintained by white, propertied men who, in adherence to a society based on virtue, justified their power to govern within “natural law.” White, propertied men were also the only enfranchised group in the new country. It is no coincidence, therefore, that Abigail Adams described the power that husbands held over their wives as both “natural and legal.” The concepts of these two types of power are derived from a legal tradition of English common law, which was transported to the colonies by way of the legal codes adopted long before the American Revolution began. However, it should be noted that once the Revolution was over and new legal codes were set in place, the laws put on the books in the new states differed greatly. The historian

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8 Ibid.
9 Butterfield, The Book of Abigail and John, 127.
Marylynn Salmon notes that “colonial lawmakers deviated from English standards, adapting both local customs and the common law to their own circumstances.” After the Revolution, this trend continued, with each new state adapting its own legal codes to reflect the changes in their government and also the spirit of the newly freed colonists.

Portions of English common law continued to leave a lasting impression on the laws adapted by the colonies in the United States. Though the different adaptations of marital law were quite often a response to public petitions for divorce and marital separation, the courts in post-Revolutionary North Carolina still operated under a system of patriarchy. Often patriarchy and the establishment of a new leadership in the states were closely intertwined. So even though common law tenets were adapted by the American courts to reflect new challenges in the “New World”, they still retained those principles of a patriarchal society. Marriage law in America adapted common law to its own specifications but it also shared a system of patriarchy with England that affected just how liberal the laws could be interpreted. The common law was challenged by colonists, both male and female, the colonial and later state governments amended their implementations of common law. However, these amendments did little to challenge a system of patriarchy that was already so ingrained into the national consciousness.

Though the law differed vastly from colony to colony, many of the basic rules of marital common law remained in the new legal codes, particularly in North Carolina. The law in North Carolina prioritized marriage, as evidenced by the subsequent revisions to its codes in the period directly following the Revolution. The codes of marriage were

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continuously updated, not to reflect changes in the system of patriarchy, but to reflect
dissonance within individual marital households. North Carolina’s legal codes and
marital court cases are significant to the history of marriage because they show a strict
adherence to the protection of marriages from divorce. The courts in North Carolina and
the leaders that maintained those courts give insight into how effective the institution of
marriage was in subjugating women and denying them financial, legal, and physical
rights.

In post-revolutionary North Carolina, the state legislature primarily handled
petitions for divorce. North Carolina did not pass a law for divorce procedure until 1814.
In the years leading up to this legislation, the petitions for divorce were isolated from one
another in the eyes of the law. This meant that the government did not treat divorce law
broadly, but on a case by case basis. The legislature applied the tenets of common law
that had shaped North Carolina marriage law in the years prior to the Revolution. The
petitions for divorce were not the only petitions that the legislature considered or heard
with regard to marriage. Many women and men petitioned the government for separate
estates in this period, since they were less dismissive of the sanctity of the marriage
contract. Like England, North Carolina was hesitant to grant a full divorce to couples
experiencing marital problems. They would rather protect marriage and the rights of men
than give married women a version of autonomy that separation or divorce might
provide. The differences between the success and failure between these two types of
petitions belies just how much the North Carolina legislature valued and perpetrated the
sentiments expressed by English common law.
Much of what historians know of English common law is found in Sir William Blackstone’s *Commentaries on the Laws of England*, published in 1765. The tenets of marriage law that were adopted and revised in the colonies and later the states that comprised the United States, can be linked to the premises of common law that Blackstone gleaned in the first volume of his *Commentaries*. The laws of coverture in marriage are essential to his discussion of what could and could not be shared in marriage. Coverture as a concept in law would be extremely influential in the laws of the British colonies. The legal liminal space that married women were forced to occupy under coverture is important to understanding how they may or may not have found avenues under the auspices of the law to challenge their position.

Understanding how coverture law operated in Blackstone’s *Commentaries* provides a type of control to show how North Carolina marriage law evolved in the years following the American Revolution. Coverture, as Blackstone described it was a condition where

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything; and is therefore called in our law-french a *feme-covert, foemina viro co-operta*; is said to be a *covert-baron*, or under the protection and influence of her husband, her *baron*, or lord; and her condition during her marriage is called her *coverture*.11

Coverture was a system by which the law could not separate man and wife legally because they were in fact one entity. The unity principle of coverture law has been and continues to be contentious in the historical community. Some scholars found that Blackstone had not accurately reflected changes in the laws that happened during the

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time he was writing the *Commentaries*. Women had for some time been acting separately from their husbands, whether sometimes in legal matters of property and in matters concerning the execution of wills after death. Norma Basch describes one of Blackstone’s most fervent American critics, a Mr. Tapping Reeve. When Reeve challenged Blackstone’s model of one being under marital law, he found that “with practical considerations requiring a wife to act separately, and buttressed by a long tradition of equity precedents, Reeve flatly denied the entire doctrine of the unity of spouses.”

Basch’s work highlighting how Blackstone’s critics viewed his definition of coverture is valuable to the understanding of how common law precedence affected the implementation of marriage laws in the United States. Her analysis explains how those critics expanded the limits and intricacies of coverture law. Reeve, for instance, believed that women were inherently unequal under coverture law because marriage “was not a contract between equals, but a relationship between the stronger sex and the weaker sex, which the common law in its wisdom recognized.” However, in Reeve’s efforts to reverse the model of coverture, he inadvertently arrived at a legal paradox in which the husband continued to retain unconditional power over his wife. The result was that Reeve had “arrived at equally patriarchal results by reversing the fiction of marital unity, a process Blackstone undoubtedly facilitated with the circularity of his own logic.” No matter which way one examined coverture law, it continued to represent a legal precedent for denying women the status of an individual legal being.

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13 Ibid.
14 Ibid.
The static definition of coverture as outlined by Blackstone survived in the legal system after the American Revolution. It was a model of law that affected the way the law would apply to women for many years. It can be viewed as a remarkable piece of legislative precedence because it went unchallenged by new legal cases, and because it continued to direct the discourse surrounding marriage law for many years. This continuity does not suggest that coverture was never challenged, however, as individuals and legal scholars were occupied with different applications of coverture law in both the eighteenth and nineteenth centuries.

In the late eighteenth century, coverture law affected the type of divorces granted to women in the colonies, and later in the state of North Carolina. Blackstone had outlined two types of divorce in his *Commentaries*. He described the types as “one total, the other partial; the one *a vinculo matrimonii*, the other merely *a mensa et thoro*.”¹⁵ The total divorce was a divorce that legally absolved the matrimonial partnership, which was significant because it would allow subsequent marriage for either of the partners. The *a mensa et thoro* divorce, or divorce from bed and board, was a legal separation that prevented remarriage and often stipulated the husband’s fiscal responsibility for his wife and any children the couple may have produced. These two types of divorce further complicated marriage law in North Carolina immediately following the American Revolution, as they complicated many of the points of contention between man and wife outlined by the petitions they filed to the state legislature.

In nineteenth century America, the two types of divorce became problematic because of issues of property, both inherited and transferred. The law of coverture and its

¹⁵ *Commentaries*, page 440.
two types of dissolution of marriage were a point of contention for women who sought property rights in the nineteenth century in the years before the Civil War. The study carried out in this examination of coverture begins with the years following the end of the American Revolution and the ratification of the United States Constitution, and concludes with the years in which women began to fight for their property rights. This thesis examines marriage laws and divorce petitions in North Carolina between 1790 and 1854. The study ends with 1854 because it was the first year that women were granted property rights. Control of property was an avenue for autonomy for married women. That control addressed many of the concerns of married women, who petitioned for divorce and for property rights. These laws and petitions explain the evolution of common law principles regarding marital unity and coverture. The changing nature of coverture illustrates how women’s marital status and citizenry shaped their everyday lives. This study also strives to explicate the public and private lives of women in North Carolina using their own accounts of the difficulties they encountered in their marriages.

The study of married women in North Carolina who either petitioned for divorce or property shows that most women confined under coverture prioritized their own fiscal and physical health. In these petitions, women’s bodies and their livelihoods were threatened by their husbands and their government. Married women and the North Carolina legislature responded to societal and political norms to establish the boundaries of their power. Over time, married women who petitioned for rights over property or for divorce responded to the courts’ previous rulings. The court then shaped their policies and laws on the types of grievances heard from married women. The relationship between married women and their government was symbiotic, as the court sought to
retain power over propertied women while bolstering the institution of marriage. Married women maintained their right to publicly petition their government to ensure that the power over them was in part a response to their own experiences. If the government and their husbands held control over their bodies, marriage contracts, and properties then women’s only outlet for their grievances became the marriage and property petitions. North Carolina’s married women and their grievances are important because they are prolific and show how the relationship between women and their government was a constant struggle for power.
CHAPTER TWO

Historiography

As a field, gender history has strived to investigate every aspect of women’s lives, examining their day to day routines, concerns and challenges in order to reveal their experiences within the larger framework of social and political change. The evolution of women’s history has arrived at an inclusive turning point. More can be learned from women’s experiences by crossing traditional and newer histories. The history of coverture for instance, can be supplemented by a history of women’s political rights and an examination of the political history expands our understanding of how power shaped relations between married couples in ways that historians are still discovering today.

The opening of new avenues for research in the history of power politics has broadened the avenues by which historians understand the most intimate experiences of women. It has also been insightful into how women’s bodies were affected by those forces. This prompts the historian to contemplate how women’s responses to public legislation could be a consequence of how their private lives and bodies were affected by such legislation. The examination of power politics in the history of coverture is useful because it unearths new ground on which women’s experiences can be understood.

The historiography of coverture as a legal and social constraint on women began as an intense study of the law. Many previous accounts of coverture history in the United States began with references to the work of Richard B. Morris and his *Studies in the History of American Law: With Special Reference to the Seventeenth and Eighteenth Centuries*. While his work was influential for historians studying women’s legal states, the pitfalls of using his work as a “gospel” have led to some outdated interpretations of
colonial law and women’s rights. More often than not, the law was the only surviving record of the restraints on married women that existed in the American colonial era. The state of marriage and sexuality in seventeenth and eighteenth century America was in flux, as colonial Americans sought to define boundaries for proper human sexual behavior inside and outside marriage. One of the first historians to treat coverture as a restriction upon women’s liberty was Mary Ritter Beard. She published Women as Force in History: A Study in Traditions and Realities in 1946. An early historian of the female experience, Beard was instrumental in outlining the origins of female subjugation in America. She placed particular emphasis on the writings of Sir William Blackstone, as his work was the standard treatise on coverture law in England. She cited his Commentaries on the Laws of England as the basis for the historic interpretation of the inequality of wives to their husbands in both England and the United States.

Mary Beard’s analysis of coverture law was not based entirely on the law itself. She heavily criticized the perpetrators of the law, particularly Blackstone. Her account described Blackstone as a man who published his Commentaries in a period of great personal turmoil and distress over professional prospects. His dismissal from the candidacy to become a Roman civil law professor at Oxford, she argued, led to his career in common law and equity jurisprudence. Beard also noted that his disdain for equity jurisprudence coupled with the desire to inject common law with Roman women’s

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16 For a more detailed account of how Morris’ work has seemingly stagnated some historical inquiries, see Marylynn Salmon’s “The Legal Status of Women in Early America: A Reappraisal,” Law and History Review 1 (Spring 1983):129-151.
property rights influenced his work and led to his endorsement of the strict coverture laws that would come to dominate the English and American legal codes.  

Beard also argued that the uniform application of common law from England to the American colonies was a difficult process because “the general domain of civil law was left to the determination of the several states after the Revolution.” Though this law was not applied uniformly, Beard noted that many of the colonial governments and the later state governments attempted to “make the common law govern generally in the United States.” This transference and acceptance of the tradition of coverture law explained how much the English common law principles perpetrated by Sir William Blackstone were integrated into the American legal record. Beard further argued that Mary Wollstonecraft, the British writer, inadvertently perpetuated the right of husbands over their wives when she wrote her *Vindication of the Rights of Woman* in 1792. Wollstonecraft had denounced the coverture laws in her examination of women’s rights while simultaneously promoting the ideological freedoms that Jean Jacques Rousseau had touted in his work. Although Wollstonecraft was working within an equal-rights ideology, Beard noted that she “helped to vitalize the doctrine that married women were civilly dead.” In her analysis of the evolution of Blackstone’s Commentaries, Beard effectively traced the practice of the subjugation of women to the institution of marriage under the law. Though Beard recognized that coverture law and its American adaptations were pivotal in the restriction of the citizenship of women, she did not directly link coverture to a more deliberate type of political and social control. Her analysis created an

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18 Ibid, 17.
19 Ibid, 35.
20 Ibid, 36.
21 Ibid.
invitation for future historians to examine how coverture shaped the legal status of women, as well as their physical and mental status.

Beard’s work in the 1940s synthesized the notion that American law was a primary obstacle in the fight for gender equality. The subsequent scholarship about the legal subjugation of women was scarce, probably due to social and political changes in the American landscape such as suburbanization and the Cold War. The 1950s and 1960s were riddled with a kind of sexism that suppressed the study of women’s issues, though there was never really an all-out abandonment of women’s concerns. The rise of the protest movements and second-wave feminism in the 1960s brought them a renewed interest in women’s issues in the historical literature. One of the earlier examinations of the legal status of women came from historian Norma Basch a decade after second-wave feminism made inroads into academic life and study. Published in 1979, her article about the nature of coverture law examined how the married women’s property acts of the mid-nineteenth century affected the subsequent status of women as citizens. As a response to women activists claiming property rights, many state legislatures had passed similar acts in the mid-nineteenth century which extended the right to own property to women. Many states, such as North Carolina, did not dole out these rights liberally, but their willingness to hear and accept many legislative acts based on property rights showed a shift in women’s legal status.

Under coverture law, any property women had acquired through inheritance was absorbed wholly by her husband. Critics of the coverture laws in the nineteenth century rested their hopes on the passage of new property acts as a means of ameliorating the disparity between men’s and women’s status as citizens under the law. Basch argued that
the right of women to control their own property was not, in fact, an equalizing force in the law and that these property statutes were generally failures. Basch explained that “one reason for the failure of the statutes was the power, comprehensiveness, and resilience of the common law doctrine of marital unity.”22 She also argued that the legislators who passed the new property laws in the nineteenth century tended to amend the common law instead of creating new laws, which only served to perpetuate the right of state governments to deny equality in marriage. By amending the coverture law with exceptions, legislators in American effectively extended the *femme covert* status of wives into every new law they passed. In this account, women were guaranteed a right to property, but not the right to their bodies. Basch countered the notion that property rights bolstered women’s status with the argument that lawmakers “by maintaining the meticulous definition of gender roles and by mandating the complete dependence of wives on husbands, the old common law fiction of marital unity meshed neatly with the cult of domesticity.”23

Significant sections of Basch’s argument are fueled by her economic propensity to examine the past. She recognized that many of the reasons behind statutory reform in the nineteenth century were economic because women’s physical property was protected in order to consolidate wealth in the burgeoning United States. Basch’s work expands our understanding of Mary Beard and her analysis of the coverture law as a means to keep women invisible within the institution of marriage. Basch’s insights into statutory reform were influential because they forced later legal historians to look at the laws as a way to understand larger issues of social and political control. Basch had given women’s

23 Ibid, 349.
legal historians a new way to explain how other attempts at female control were ramifications of the failure of statutory law to protect women’s interests. Her work was also integral to explaining why colonial and state governments continued to riddle common laws with exceptions rather than formulate new laws.

The 1980s saw a marked rise in the examination of coverture law in the historical scholarship. Works published at the beginning of the decade continued in Basch’s tradition of examining the economic and legal ramifications of coverture law. In this period, Peggy Rabkin also addressed the property acts of the nineteenth century in her 1980 monograph. Rabkin tackled the 1848 property law in New York, which granted women separate equitable estates. Rabkin’s analysis supported Basch’s earlier argument that these statutes were embedded within a common law precedent in order to keep restrictions on female legal mobility. Her argument expanded upon Basch’s analysis by giving a more detailed explanation as to why the number of these statutes rose during the mid-nineteenth century. Her primary argument contends that the property statutes were a direct result of a need to make America less feudal in nature, which was accomplished through the abolishment of formal trusts. By mid-century, the United States was on the verge of an expanding industrial age and state governments, particularly those in New York, wished to create a space for wealth to accumulate outside the legal realm of the trust.24

Rabkin also assessed property laws which addressed the right of women to labor under their own account and accumulate wealth. The 1848 law gave husbands greater freedom to hold property separately. She recognized that this section of the law was

detrimental to the women who worked as wage-earners in the nineteenth century.

Rabkin’s arguments about property law were confined by the more traditional economic understanding of how the law affected minorities and the disenfranchised. Her discussion of wage-earning women however, was a step toward treating coverture laws and its revisions with a more social significant consciousness. Rabkin also included a brief argument that the New York property law and its reception by the American female population was an impetus for the emerging women’s rights and suffrage movement. Unfortunately, this assertion was more of an afterthought of her research, and was not fully expanded in this monograph.

Linda Kerber’s 1980 monograph, *Women of the Republic*, followed Rabkin and focused on the Revolutionary-era experience of American women. In this work, she teases out spaces in which women operated autonomously from their husbands. Prior to Kerber’s examination of women in the Revolutionary age, historians gave little thought to the topic of the legal status of women in their discussions of how the larger political climate had affected the common citizenry. An intellectual history of women’s experiences, Kerber addressed how property rights were transferred to some women during the Revolution. Most notably, her analysis sought to show that women’s property rights were not uniform across the country.25

Kerber found evidence that some Revolutionary-era women were able to gain property rights through their perceived loyalty to their country. Women who engaged in the war effort by staying in the country once their loyalist husbands defected were able to gain control of the possessions that their husbands left behind. In this small space of time

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and opportunity, women gained considerable rights over property. Though this marked progress was in direct opposition to the common law tenets found in coverture, women’s loyalty to the Patriots had afforded them narrow maneuverability within their marriages. Kerber’s argument advanced the notion of small-scale victories for some women who operated against the constrictive force of the law in America, and her argument would influence new research into women’s legal history. Kerber paved the way for historians to seek out new avenues of scholarship to explain women’s resistance to coverture law.

The topics of coverture law and women’s invisibility in marriage became a serious historical study by the mid-1980s. In 1985, Michael Grossberg wrote on the law in nineteenth century America and focused on the family unit. In his analysis, Grossberg took a different view from Basch and Rabkin by arguing that the social construction of the family was the central premise on which nineteenth-century law was based and not the other way around. His argument tracked of the evolution of the republican ideal of the family and its effect on the law. Domesticity, he contended, was the impetus by which the government (and its courts) intervened in family life. This interjection of the state into the home was essentially a reach made by the public institution of government into the private institution of marriage and the family. Grossberg explained common law as well, but he contended that the laws of coverture and property were subject to the social context in which they were forged. Their evolution was tied to the evolution of the nature of the American family.26

Grossberg’s assertions were controversial at the time because he also argued that family law was by nature anti-patriarchal. He supported this theory with an analysis of

the contractual nature of American marriage. If man and woman become husband and wife, they enter into a social contract. Under this premise, families under these contracts were not natural entities, but instead a fabricated collection of individuals. His argument is important to the study of coverture because it presupposes that married women had some semblance of individuality, though legally they were under the power of their husbands. Those semblances included contracting and carrying out wills and transferring property. While Grossberg managed to flesh out the relationship between state and family, he did not account for the power that coverture law imparted on the behalf of the husband. Because of this omission, Grossberg’s assumption is problematic because he did not address the women’s property laws. By not addressing the property question, Grossberg’s arguments graze over the inherently important power relationships, within the family and between the family and the state which defined how individual property was controlled by state laws.

Grossberg’s oversight of property rights was unfortunate, but his analysis of how the family unit affected private laws was significant. Following Grossberg, the study of women’s property rights became extremely important. Marylynn Salmon dove deeply into this focus on property rights in her examination of women in early America. Salmon’s monograph, published in 1986, argued that legal restraints set upon women had directly affected many women’s well-being. Notably, Salmon’s argument distinguished between different types of laws. Property law took center stage in her analysis, but she also included divorce law and divisions of alimony and childcare. While Salmon expanded the study of the law from property laws to other areas, she also expanded her research geographically to include a history of many different colonies instead of just
one. This led her to conclude that the experiences of married women varied greatly across different colonies.\textsuperscript{27}

Salmon located the differences in the legal codes in the colonies to differing social and political structures. These structures shared the common thread of subordinating women to their husband’s authority, but they were also molded to address the local pragmatic concerns of the colonial legislatures. Demography and the economy accounted for the differences in marital law between the colonies of the North and South. Salmon does not argue for a uniform divide in the law between the two areas; in South Carolina and New York, for example, the colonial legislators accepted coverture law into their legal doctrines because both wanted a more simplified marital law in their respective colonies. To achieve such simplification of the law, both colonies continued to support common law solutions to separate estate property claims to keep those claims from weighing down the due process in the courts of the colonies. Salmon’s motive-based research on the part of the government showed that the law was often shaped by social and political forces. This assertion would give future historians a larger framework in which to place women’s legal plight.

The 1990s brought more shifts to the historical discussion of women and property law, as property law became central to a number of historians’ studies of women’s daily lives. Joan Hoff took up the legal rights of women in America in the nineteenth century by arguing that much of the resistance by women to property law created a cohesive woman’s rights sentiment. Hoff recognized that nineteenth-century women were genuinely concerned with the state of American marriage and that this concern

manifested in the rise of a woman’s rights movement. In 1848, women convened at Seneca Falls Convention to discuss gender inequality and to craft a Declaration of Sentiments which contained references to marriage and marriage law as a source of discontent among women. Though Hoff recognized coverture and property laws as a source of disdain, she did not think that the progress women made with legal reform was indicative of any larger social change. The cohesion of the woman’s movement to fight those changes was disparaged by a greater control of men over the legal system.²⁸

Hoff’s view of the changes in marriage law, particularly the property laws in New York, was pessimistic at best. She presumed that legal equality was unattainable in the mid-nineteenth century and that as long as men controlled the legal system, the goal of equality would remain out of reach. Hoff’s periodization of the legal discrimination was a new direction in the study of female legal history. In each era, she addressed the failures of the legal system and the American government to protect the rights of women, which were given to their male counterparts. Through the control of the legal system, men created boundaries for change that would keep women indebted to them as citizens and wives. Embedded in her pessimism, Hoff articulated a new and less presentist history of the legal reform efforts of nineteenth-century women. Her analysis moved away from description of women’s progress to a more in-depth analysis of the larger forces that controlled and limited women’s legal rights.

The early 1990s saw the incorporation of a more diverse legal history into the landscape of women’s history. Scholarship in the 1980s had broadened the strict categories of legal, political, and social histories. In addition to the loosening of these

divisions, there was a concerted effort among historians to define the spaces in which women worked and lived as public and private. Glenna Matthews’ 1992 analysis of women’s power and legal status began by defining how women in the public sphere differed from women in the private. This separate sphere analysis of legal doctrine was important to understanding how different groups of women operated within the legal climate and how some women had more legal mobility. Though Matthews’ primary focus was on the appearance of women in the public and its consequences, she includes an interesting argument about women’s legal status by examining the differences between Puritan and Quaker women.

Matthews claimed that religion served as a force which challenged the legal doctrine of coverture and the idea that women were invisible entities within the institution of marriage. Her analysis, though based on scant evidence, shows that in certain cases the ideology of equality between the sexes was a tenet in the Quaker religion. The marriages of men and women within these communities were predicated upon an equal intellectual and propertied partnership. Matthews’ study was significant for its extension of the historian’s consciousness into the separation of the public and the private. Though her insights would open up new avenues to future historians of coverture, it did not accurately account for the sheer strength of the law and its restrictive capability to negate egalitarian unions described under Quakerism.

As historians probed deeper into the complexities of coverture law and its effect on women, there was a consistent movement to understand American coverture law through the study of earlier English coverture practices. The historical community had

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previously addressed how the two nations shared a similar legal code, but the rise of comparative history in the 1990s led to a reevaluation of that shared relationship to the law. The merits of studying the practice of common law in England were numerous, particularly for the more broad resource material available from women in that country. Previously the scholarship about the legal aspects of women’s lives barely included a mention of the women whom the law affected and dealt more with a breakdown of the actual laws. This disparity was most likely a consequence of the paucity of resources of women’s experience and the relative proliferation and preservation of historic legal records. Historian Amy Erickson sought to remedy this impersonal study of common law while tracing its origins and practice in England. In 1993, Erickson was able to unearth enough legal and personal literature to illuminate the differences between the physical law and its common practice in England.30

Erickson argued that there was a visible difference in the legislation pertaining to women and the everyday experience of women in England. Her argument gave an enormous amount of agency to women, who worked within their marriage and the law to transmit property and possessions. She noted that coverture did not fully explain the movements of women and men to maneuver their individual economic assets. Erickson found that men and women who entered into the formal contract of marriage often used informal contracts within their private lives to negotiate an understanding about individual property and assets. Her analysis highlighted the difference between public law and the private lives of women. The inclusion of women’s individual experiences into the narrative surrounding coverture is an important precedent if historians are to understand the common experience of women in both England and America.

One of the most influential books on the practice of coverture and its effects on women came in 1995 from Peter Bardaglio. The historical literature at this point had recognized that the state was often eager to intervene in the practice of marriage when necessary to define the parameters of social citizenship. Bardaglio provided his reader with a new perspective on the state and its reluctance to intervene in marriage when it came to sexuality. His argument that the state often deferred to the coverture law of male authority in cases of rape and incest was vital to the understanding of how coverture protected the rights of the husband to control his wife’s body.31

Bardaglio examined cases where extra-marital rape also deferred to the status of man as the protector of his wife’s chastity and reputation. Coverture law, therefore, created an environment of intense scrutiny from the public when a white woman’s virtue was in jeopardy. In such a state it became the husband’s responsibility to protect his wife from scrutiny. This argument was a part of a greater historical conversation about how sexuality in and outside of marriage was a product of both public and private interests. Though historians of sexuality had made some connections between gender, sexuality, and the laws of marriage, Bardaglio was one of the first historians to treat this theme extensively. He also incorporated race in his analysis and noted that the rape of white women by black men, was, at this time, seen as the ultimate assault against a married woman’s character. The husband was advised in this matter to brutally defend her character under the circumstances of attack. By synthesizing the history of race, gender, sexuality and law into one cohesive narrative, Bardaglio paved the way for future

historians to realize the inherent interconnectedness of their work. Bardaglio’s work about the control of women’s bodies would prove vital to future scholarship.

Up until this point in the historiography of coverture and women’s legal status, scholars had glanced over the role that slavery as a legal institution had in shaping other institutions in the United States. In the late 1990s, historians such as Amy Dru Stanley sought to correct this oversight. At the heart of her 1998 analysis, was the presumption that the contractual nature of marriage was of utmost importance if one was to understand how legal parameters shaped the female consciousness. Stanley situated the rising importance of the contract in a concrete historical context. She argued that in post-emancipation America, the existence of legal contracts was one way to define the differences between bondage and freedom. The country was deeply embedded in arguments of citizenship and race after the Civil War which created a climate where the legal contract came under intense scrutiny.32

This scrutiny belied certain ambiguities in contracts of marriage that went unexamined in the antebellum years. The examination of contract law led to disparities between slave marriages and free marriages. This disparity sparked debates about the role of marriage and the household in defining individual liberty and natural rights. These debates permeated the national political landscape and led to a more in-depth definition of marriage under the law. Stanley also contends that antebellum capitalism obscured the true nature of the contract of marriage. The labor of wives in the antebellum nation had automatically deferred to their husbands, as marriage had limited the control that women exercised over their wages. The convergence of antebellum

capitalism with the belief in individual earnings belied the problems within marriage law which stripped free women of their wages. Ultimately, married women’s work as a commodity to American business and capitalist ventures was less important than the power of the marriage contract. In effect, the opportunities which women could have afforded to exert control over their own finances were overshadowed once again by the patriarchal power that defined them under the coverture law. Stanley’s analysis of the rise of the contract and the reinvigoration of the codes of coverture was important to the historical literature because it created a common ground between the marriage contract and other influential political and social institutions in the United States.

Linda Kerber’s analysis of women’s roles as American citizens was published in 1998 and revisited the coverture laws to demonstrate how women and men differed in their experiences with legal status. This study was influential because it linked the rights of women as citizens to their rights as wives. She contended that the laws of coverture not only affected women’s economic status and their rights to property, but that they also more broadly defined their duties as a part of the American citizenry. She attached importance to the dichotomy between a woman’s responsibility to the state and responsibility to her husband. In her previous scholarship on the American Revolution and its effects on women’s rights she argued that some women were able to negotiate the boundaries of coverture law and their right to property because of loyalty to the state during the war. This was instrumental in the integration of women into the citizenry through their duties as patriots.33

Kerber reevaluated her previous position on the rights of women during the Revolution and extended her discussion of women’s property rights to the era following the Revolution. At the center of Kerber’s analysis was a court case which ruled that a woman’s obligation to the state came second to her legal obligation to her husband. Under coverture law, this woman’s political status as an American citizen was in no way as important as her status as a wife. Her status as a *femme covert* defined her status in relation to the state. Women were not obligated to the state because she was absorbed into her husband’s citizenship status. In a political sense, women were aliens because they were removed from the body politic. This discussion of women’s responsibilities in colonial America was pivotal to the discussion of the evolution of women’s citizenship in later scholarship. By linking citizenship with marriage, Kerber noted another causal relationship between marriage and political rights and duties that would define women’s experiences with politics for many years.

In the late 1990s, Candice Bredbenner entered the debate about marriage and citizenship with her own fresh take on the coverture laws. The late-nineteenth century and the early-twentieth century was a watershed period for American marriage and citizenship rights. The dramatic rise in immigration had American lawmakers scrambling to redefine citizenship. Bredbenner focused on a law from this era to highlight how much marital unity coverture was protected. Immigrant wives were automatically granted American citizenship under their husband’s status as citizens. This new implementation of the practice of coverture was important because it reiterated America’s preference for marital unity.34

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Bredbenner underscores the importance of marital unity, as evidenced by the law which revoked a woman’s citizenship status if she married a foreign national, which was passed in 1907. This law demonstrates that married women’s citizenship was dependent on their legal status as a *femme covert*. She argued that the principles of coverture law were extended to apply to the legal and political status of women as citizens. The implications of these laws are important because they tie together findings from previous scholarship about the role of the wife in the public and the private. Through these citizenship laws, the United States demonstrated a preference for women’s duty as wives over their rights as citizens. In this instance, the law once again restricted the mobility of women within marriage to a very narrow legal and political space.

Peggy Cooper Davis furthered the historical discussion of citizenship and its effects on women’s public and private lives with her 1997 monograph. Davis elaborated on Amy Dru Stanley’s argument that race and slavery affected the status of women in America. Davis rejected the notion that the Constitution did not address family dynamics and marriage practices. Her analysis drew upon the scholarship of the public and private spheres, but instead of defining women’s experiences in those terms, she show how women operated within their communities while they simultaneously sought autonomy in their private lives. She argues that after the Civil War, family autonomy became crucial because of white women’s and men’s need to separate themselves from government and state control during the period of Reconstruction.  

During Reconstruction, amendments to the United States Constitution regarding the status of newly-freed slaves addressed the practices of civil and legal institutions such

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as marriage. Under the law, the definition of the American family was significantly expanded. The freedoms afforded to the American family in this period paralleled greater freedoms in the institution of marriage. The government was less concerned with marriage law than the outcome of the Civil War. Reconstruction had changed the role of the government regarding marriage, and Davis’ monograph was instrumental in showing how changes in the scope of the government affected marriage practices.

The next notable entry in the historiography of coverture came from Katherine Franke. Franke returned to the notion that marriage in the nineteenth century was largely defined by the construction of citizenship. This construction was meant to separate white and black marriages under the law. She argued that the state’s intervention in marriage was beneficial for the state for numerous reasons. Specifically, marriage created a monogamous and predictable way to monitor the movements of American men. This was important for the government and the country because soon after Reconstruction, the nation was plunged into the Industrial Revolution. The labor force was diversifying and marriage allowed the state to assess American men through their participation as husbands.36

The institution of slavery made marriages between slaves illegal, but after Emancipation the government could no longer forbid this practice. Often, freed men and women who had married before Emancipation had their marriages legalized retroactively by the government. Franke argues that in some states, this gave the government control over the freed-black populations. She also argued that marriage became the means by which the state coerced freed black men into the labor force. This argument was

significant for its contribution to the scholarship regarding slave marriages. The implications of state control over marriage were broad, and historians were finding new ways that the state found ways to intervene in the private institution.

The historiography of coverture in the 1990s had evolved into a vigorous study of how larger forces outside of marriage came to define the institution. Scholarship sought to include further marginalized groups such as slaves, freed blacks, and poor women in an effort to gain a better understanding of the diversity of women’s experiences. Hendrik Hartog’s conclusion sought to synthesize some of the overlapping arguments about marriage in his 2000 monograph. His treatment of coverture law denied the notion that marriage had existed in American society without some form of political or social intervention. Hartog’s analysis of the institution of marriage and its implications for women’s legal status was innovative because of his methods of discerning what divorce entailed in the nineteenth century. By examining court cases in which married men and women sought to separate or divorce, Hartog got to the heart of some of the legal interpretations of marriage. His study supports the previous scholarship which demonstrated how women’s status under coverture was indicative of a patriarchal need to control women within the confines of marriage.37

Hartog brought two new arguments to the debate over coverture law. First, he argued that even though marriage was often seen as a permanent contract, men and women in the nineteenth century frequently petitioned for divorce and separation. His argument was based on solid research and added a nuanced perspective to the historical landscape. His second argument was more controversial. He contended that coverture was not necessarily a negative influence in women’s lives. Hartog explained that the

absorption of the wife into her husband’s status often shielded the wife from responsibility under the law. If a woman’s actions were legally her husband’s responsibility, then a woman was granted a certain amount of protection and support from her husband regarding her actions. He leaves his reader with the impression that coverture law was a way of infusing greater meaning to the roles of wife and husband in the nineteenth century.

Nancy Cott’s 2000 monograph was a response to some of Hartog’s claims. Cott consolidated the ideology that slavery and other political and social institutions were instrumental in shaping the evolution of marriage in America. Here, her aim parallels the aims of Hartog. Cott argued that ever since the colonial period, marriage was used a way to serve the public and its institutions. The colonial legislatures were therefore reworking marriage laws to create the ideal citizen who would carry out the perceived aims of the republic. She noted that the adaptation of coverture law from England to America was adopted differently in each colony, but legally the common law remained relatively unchanged. 38

Cott explained that coverture in America was primarily maintained in new legal cases to ensure that men would take their roles as husbands seriously and that their citizenship status would derive in part from the husband’s role. The authority of husbands, therefore, was not to mirror the authority that the King had exercised over the colonists. Cott sets out to erase some of the strictures that English common law and coverture had on the American system with this argument. She recognized that the state had a vested interest in keeping marriage law amenable to its public goals. Her work

supports the idea that marriage and citizenship were directly linked and that marriage was a mechanism for controlling the social norms that the state wished to impress upon its citizens. Cott also treated the race question in her discussion of social norms and expanded upon the idea that racial marriage was defined on terms that allowed the state to limit civil rights. Cott also included the Native American population in her discussion of racial marriage.

Perhaps the most significant aspect of this work, was when Cott linked the institution of marriage to expressions of sexuality in America. Sexual partnership in marriage was encouraged by the state and that encouragement revealed certain truths about what the state felt was appropriate for sexual expression. Monogamy became the preferred standard for sexual behavior against the polygamist model. This argument renders Cott’s analysis invaluable to the scholarship because it bolsters the notion that marriage was an institution which became useful in regulating the sexual behavior of women.

In 2001, Barbara Welke studied coverture and citizenship and included influential aspects of American society. Welke argues that women in nineteenth-century America were aware that marriage law was not particularly suited for the industrial era. The laws regarding marriage and citizenship rights were contested and numerous new court cases were documented where women fought for their rights. Welke explained this rise in activism through the industrial ideology of personal autonomy. She argued that the rise of industry in America led to technologies that prized autonomy over subjugation. In marriage, women continued to be subjected to their husband’s control, but in the national landscape the new innovations in industry showed that the nation valued individual
liberty very highly. The shift was ultimately one which valued wage labor over the individual’s status as economically independent.

Welke contended that women who brought their cases to court claiming injury did so as a direct response to the railroad revolution in the nineteenth century. Under coverture and common law, women’s invisibility was a condition of marriage. In cases of personal injury, the law treated a woman as a separate entity from her husband in the awarding of damages. Often these damages were not punitive, but instead came in the form of a formal apology. Welke did not discern much difference in the outcomes of these cases because she contended that any action on the part of the court to treat women as autonomous beings was rather revolutionary. Welke highlighted the tendency of women to shape the law and challenge the legal system in personal and individual ways.

The historiography of coverture continued to expand in the first decade of the twenty-first century. Frances Dolan’s 2003 article based its assertions on more current popular culture. She traced the current status of marriage back to the colonial era and its practice of coverture law. Women’s representation in legal and popular culture, particularly those cases which display spousal conflict, became evidence that the notion of marital unity still exists in American culture.

Dolan examines the medium of film to discern how women in popular media were portrayed. She argued that conflict between spouses in these films underscored the legacy of coverture in American values. She claimed that the portrayal of widows in popular culture shows how marital unity affected the nation. In the law, if a wife became

a widow, her status as *femme covert* changed to the status of *femme sole*. Dolan also focuses on this transition and uses it to highlight how spousal murder was treated under coverture law. Her arguments about popular culture are overshadowed by her treatment of female sexuality in the context of the coverture model. She posited that “the husband’s supposed ownership of his wife was also manifested in his sexual access to her.”41 This argument had been largely absent from the historical literature of coverture. The study of sexuality and coverture, once combined, can help illuminate how law created a public understanding of legal control over the very private entity of a woman’s body. This connection, and Dolan’s treatment of it, has provided an invaluable insight into the legacy of coverture in the law and in marriage.

In 2009, legal historian Rebecca Probert addressed the notion of coverture in her sweeping monograph. Probert upended the previous scholarship on marriage law in the colonial era by arguing that the Marriage Act of 1753 was largely misinterpreted by previous historians. This act essentially mandated the practice of common law marriage. Its English origins and its adaptation in America aided the new nation in establishing the types of marriages that would be recognized by the state. Other analyses of this law have concluded that in the eighteenth century, many marriages existed outside of the formal doctrine of the church. The presence of those marriages was evidence that the common law of marriage and the practice of coverture were often flexible in their interpretations. Probert, however, denies this flexibility and argues that marriages which did not follow formal doctrine were never socially acceptable in the colonial era.42

41 Ibid, 256.
Probert’s analysis seems to be a direct consequence of her background as a legal historian. Her strict and close reading of marriage laws harkens back to Mary Beard’s analysis of the coverture laws. Between Beard and Probert, the historical scholarship of marriage and coverture law has been extensive. Probert’s strict interpretation is motivated by her methodology and her unwillingness to use the earlier scholarship on colonial law as conclusive. The scholarship between Beard and Probert had been instrumental in placing marriage law firmly into the social and political era in which it was examined. Instead of using this social construction method, Probert reverts to an examination where the law is its own social context. Neither methodology is necessarily correct, but social historians looking to find nuances in women’s experiences have found the task more manageable by utilizing trends in the social and political landscape to uncover women’s and men’s true values in marriage.

This historiography of coverture has spanned many different topics over the last seventy years. In its capacity, it has maintained the example of other fields in history and become more inclusive of social and political movements as well as minority groups. As this history has broadened its scope to include race, societal norms, politics and sexuality it has become more egalitarian. The future of this history continues to trend toward a cross-disciplinary examination that focuses outside the boundaries of nations and elevates the discussion to a global level. One of the most interesting intersections of these fields is the history of sexuality and the history of coverture. The coupling of these two areas of study can help illuminate the physical experiences of women from the colonial era to the modern day. The relation between marital law and the sexuality of women can explain how social and legal norms were created and perpetuated within American society. In
this regard, the intersection of sexuality and coverture will illuminate an aspect of women’s lives that cannot always be gleaned from more broad interpretations of their experiences.

Thesis Statement

The history of coverture in North Carolina in the antebellum years has scarcely been addressed in the scholarship. There is no dearth of primary material, as North Carolina’s colonial records and General Assembly records have survived mostly intact. What remains for interpretation is an abundance of both legal records and formal petitions for divorce and property from women. These types of documentation contain an ideal mix of the public ideologies of the government and the private feelings of women and men with respect to marriage. As detailed earlier, the intersection between public and private life in the law has helped historians to see how marriage could both be shaped by as well as shape the social and political climates.

This study explains the rules and laws written by the North Carolina General Assembly in order to discern how lawmakers either confirmed or denied the common law idea of coverture. Though treated separately in the first portion of this study, the laws themselves do not stand alone. It is imperative to place them in the context with the private details from the many petitions from women and men in order to maintain a complete picture of women’s lives in North Carolina between the years of 1790 and 1854.

The sampling of the years 1790 to 1854 is not an arbitrary choice. The primary sources from this period are abundant and the evolution of the law takes into account
both the aftermath of the American Revolution to the antebellum years. This span allows for a proper evaluation of the evolution of the coverture law and the evolution of the rights and concerns of American women. The laws and petitions from the late eighteenth century represent a transitional period in North Carolina law. The Revolution barely over, North Carolina found itself interpreting a rising number of petitions for divorce. This increase, though far from astronomical, gives the impression that the Revolution as a fiercely political movement had some bearing on the North Carolina citizenry and their decisions in marriage. After the first official divorce law was added to the legal record in 1814, the number of petitions skyrocketed. A political rhetoric of freedom had sparked the initial petitions for divorce in the state, and the law of 1814 perpetuated this participatory desire in the citizens of North Carolina.

A discussion of North Carolina’s version of coverture law will be enhanced by an examination of the rise in property law legislation in the nineteenth century. The rise in divorce petitions coincided with a rise in requests by women for control over property. Often, the petitioners who sought divorce also sought property rights for lands that were a part of their dowries. Some cases involve women’s requests for rights to property that their husbands had acquired during marriage. The rise in these requests for control of land is situated within a sectional context of women’s rights activism. North Carolina passed its first property rights legislation for women in 1854, which is where this study will conclude.

Coverture and marriage legislation, petitions for divorce, and petitions for personal property are the three main foci for this study. None were mutually exclusive and their interconnectedness will be enhanced by a qualitative and quantitative analysis.
of the petitioners, their spouses, their class, and their race. The purpose of this study is to begin to define how the public and private spheres converged and how both spheres influenced each other’s ideologies. Politically, the public courts and legislators had a vested interest in the regulation of private married lives because their rulings often affected enfranchised married men.

One place where both the public law and private women’s experiences intersected was at the point of an individual’s sexual life. Extramarital affairs, adultery claims before marriage, and illegal cohabitation are all found within the petitions and legislative court cases. Thus, the essential argument of this interpretation of the laws revolves resolutely around the ideology of human sexuality studies. Women’s access to and control over their own bodies, in sexual relations and in marriage, is the common thread of their collective experiences. The historical record will be augmented by comparing and contrasting how the law treated cases of adultery, bastardy and miscegenation.

The following examination presupposes a variation of autonomy for women petitioners, who were able to air their grievances in public through legal action. The argument of this piece stems from the source material as well as a close reading of Hendrik Hartog, who asserted that the “courts were precisely the arena where the wife’s separate identity was most easily and commonly recognized. Legal doctrine created coverture. Legal processes provided public recognition of the separate legal identities of wives”43

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To date, the conversation among historians about the nature and practice of coverture has focused primarily on the question of whether or not a certain piece of legislation benefitted women. The question of progress, while important, is not the focus of this study. The intent is to focus on how women’s sexuality and their bodies were influenced by legal doctrine and how women in North Carolina challenged that influence. Women’s control over their sexuality and their bodies, coupled with their desires to own property were the result of their relationship with the North Carolina legislators. The adaptation of coverture law by North Carolina’s legislators forced women to consider how their petitions for divorce and their claims for property were linked to the lack of control they exerted over their own sexuality and their bodies.
CHAPTER THREE

Divorce Law in North Carolina

State divorce law in North Carolina was not static until the legislature passed the divorce law in 1814. Cases for divorce brought before the General Assembly before 1814 were subject to a wide array of interpretations, and the earnest wish to define marriage under the law began in the year 1785. The colonies were still reeling over the end of the American Revolution, which had solidified a sense of community among soldiers and citizens. The roles expected to be filled by that community, however, was less clear. The surprise of becoming the winning side in the Revolution had genuinely shocked the colonies into a state of redefinition, both politically and socially.

The social and political hierarchy that developed between men and women, men and slaves and men with land and landless men was as much about power as it was politics. Gordon Wood noticed that in the new republic “it was axiomatic that no society could hold together without the obedience of its members to the legally constituted authority.” In the new republic, this “legally constituted authority” was as much a local issue as it was a national issue. Women were a large part of the future of the republic since their ability to produce children would ensure the continuance of the new nation. The recognition of women’s integral part in the perpetuation of the republic was based on a prevalent ideology about how a representational democracy would work. However, women were subject to laws that would reduce their rights as citizens both during and after the Revolution. The heads of state “continued to assert patriarchal privilege as

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heads of households and as civic actors. They explicitly denied married women entry into the new political regime.**45

This exclusion continued as an ideological concept that directly opposed the rhetoric of the Revolution. The rights of “man” as established by the new Constitution of the United States allowed for the interpretation of those rights on a state level. Governance by the patriarchal leadership in the country was integral to the rights that women were allowed to exercise. The legitimacy of that patriarchy’s power would be decided in individual laws and statutes. In North Carolina, the systematic denial of women’s rights in marriage began in the new state legislature in the years immediately following the end of the American Revolution.

In 1785, the North Carolina legislature passed an act that outlined how the state should handle the rise in marriages that were not legally documented. The state had come to the realization that a portion of the population was marrying without the benefit of a formal marriage contract. Some married couples did not feel it necessary to enter into a contract for marriage. Not being able to monitor the transfer of property was a major concern for the government. The legislature claimed that the purpose of the marriage contract was to bind the estates of the husbands in marriage. If a marriage was performed in secret, without a legal contract, the property could be used for debts that the husband could not pay.

Underlying this law was a deep sense of the value of property in the state, as well as a sense of the massive debt the entire country had accrued. The act claimed that without a binding marriage contract, the “possessors upon the credit of their apparent property have been enabled to contract great debts, to the manifest deception and injury

45 Kerber, No Constitutional Right to be Ladies, 9.
of their creditors.”⁴⁶ A man who had not entered into a formal marriage contract was not the true possessor of property gained through his union, and thus the concern over money owed to creditors was a dilemma that the state needed marriage law to ameliorate. This concern underscored the importance of ownership within marriage. It emphasized that the consolidation and proper handling of property was dependent upon the registration of the marriage with the state.

The state had a vested interest in monitoring the exchange of property within its borders. Land changed hands often during the Revolution in North Carolina because of displacement, and the state needed to follow those developments in property if they were to create a stable post-war economy. Their avenue for following those developments was through marriage. The link between marriage and property ownership was apparent and the link between property ownership and debt was also apparent. By using marriage law to track the transfers of property, North Carolina could legitimately monitor the amount of debt and credit in the state.

The government recognized the relationship between marriage law and the control of women’s property. The first mention of property in the act says that registered marriage contracts have the effect of “binding the estates of the husbands.”⁴⁷ The second mention extends the definition to “all marriage contracts, whereby any money or other estate shall be secured to the wife or husband.”⁴⁸ The state recognized that women’s property, most often their dowry, constituted a large part of the state’s tangible wealth. A woman’s dowry or the property and assets she brought into the marriage would transfer title and control to her husband in a binding marriage contract. The practice of coverture

⁴⁷ Ibid.
⁴⁸ Ibid.
law would make sure that all property of the wife be absorbed into and owned by her husband. Outside the bonds of a legal and registered marriage, a woman might maintain rights to her property. The state did not want a woman’s physical assets to remain under her control, and this law was a way to insure this would not happen.

This act also stipulated that the formal marriage contract could not “be good against creditors, where a greater value is secured to the intended wife and the children of the marriage, or either of them, than the portion actually received with the wife in marriage, and such estate as the husband at the time of his marriage shall be possessed of, after deducting the just debts by him then due and owing.” This section of the act primarily affected wives. The statute made sure that a woman who was not married did not control or have possession of more wealth than was originally constituted within her dowry. If she was worth more than her dowry in property and assets, the marriage contract would not legally cover the couple’s debts. The only way a joint venture of property could cover any debts was if the husband controlled and owned the majority of the property.

Women’s property rights under this act were strictly controlled by their husbands, and informal promises of inheritance, outside of formal trusts, were not to be under the execution of the wife. Any legacy the wife holds at the time of marriage would be “held, deemed and taken as part of the portion received with the wife, and shall be seemed to those claiming under such marriage contract, any thing herein contained to the contrary notwithstanding.” In other words, if a debtor received any compensation from the land

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49 Ibid.
50 Ibid.
acquired by a husband from a woman’s dowry, the debt would be covered by any possessions the wife may have controlled outside of a formal trust.

This act set up a precedent for the marriage contract that constricted women’s property rights for many years. Its provisions ensured that women’s property could only be used for credit and to pay debts if she herself did not control those assets. This reinforced the law of unity set up under the tenets outlined in coverture. Without a formal marriage contract, the state could not make sure that women did not make transactions with debtors and creditors. This lack of trust implies an inherent dissatisfaction with any marriage that existed outside of the registered contract and its requisite coverture practice. The passage of this act made sure that wealth within the state was consolidated and recorded with the government and secret marriages where women might retain their property rights were made illegal. The enforcement of coverture and the requirement of marriages to be registered with the state gave the legislature control over the state of debt and property within their borders.

The importance of enforcing legal marriage contracts was high on the list of priorities for the North Carolina authorities during the Revolution. It should be noted that this act was passed immediately before an act that required the relief of disabled veterans of the Revolutionary War. This implies that the legislature placed marriage, and its transference of property, high on their list of priorities. State intervention in marriage had taken hold during the Revolution and it would become more intense during the years following the end of the war. The state’s insistence that coverture be enforced in marriage was intensified during the period of American history most associated with the natural rights rhetoric. Women’s property rights reflected the patriarchal hierarchy of
their husbands and their government and the latter would be sure to enforce this hierarchy through the law. The control that the state exerted over married women’s property rights could be linked to the control that they exercised over women’s mobility and industry. The new nation valued property ownership immensely, and anyone without property was relegated to a second-class status. The consolidation of the marriage contract took away a married woman’s control of her physical property.

The next law concerning marriage rights was passed in the year 1790. The country had finished fighting in the Revolution, and in the year prior to this law it ratified the Constitution. The movement of troops between colonies had displaced many soldiers. While many soldiers returned home, some never returned due to death or desertion. The movement of men coincided with a change in thought which was “rapid, irreversible, and irresistible. It swept past boundaries few had set out to cross, into regions few had wished to enter.”

The changing landscape of the country was both physical and ideological and the implications of this movement on the marriage contract became visible.

In 1790 the North Carolina legislature passed an act that restricted persons from ever marrying again while their spouses were still living. The act condemns the “many evil-disposed persons, going from one part of our country to another, and into places where they are not known, do marry, having another husband still living, to the utter destruction of the peace and happiness of families.” The punishment for marrying again was deemed a felony, which was punishable by death. Legislators hoped to eradicate any instances of bigamy by passing this law. The only exception to this

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punishment were those who married after their spouse had been absent for more than seven years, as those spouses were not able to confirm whether their partner was dead or alive. This clause to the law was likely added for those wives whose husbands had left for war and never returned. As women did not serve in the Continental armies, they would be the only ones affected by this addendum.

The act further stated that the felony would not be charged against anyone who had been “divorced according to the mode established, or which hereafter established by law, nor to any person or persons whose former marriage is declared by law to be void and of no effect.” This act outlined the limits of marriage under a formal contract and gave the power to dissolve marriages only to the government. If married couples informally disbanded their union and were found trying to marry another without going through the court, the punishment was severe. Control of the avenues for a proper divorce was important for the state to further solidify its moral authority and its authority over married couples. Thus, divorce could not be arbitrarily granted and marriage contracts would not be dissolved without the consent of the state. This decision would prove detrimental to both women and men who sought divorce in the state in the following years because only the state had the power to end an unhappy marriage. This law was also rather vague, as it mentioned a divorce “mode” that had not yet been established by the law codes and would not be agreed upon until the year 1814.

The state’s intervention in the marriage contract was on a steady incline, and women were the primary subjects under the state’s control. Women whose husbands abandoned them had no legal recourse for compensation or control over property inside the seven year stipulation outlined in the North Carolina law. The practice of coverture

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53 Ibid.
coupled with the laws on abandonment left married women without a means of financial support. Bigamy was abhorrent to the state, and the protection against it would cost women their livelihoods.

Fifteen years would pass between the bigamy law and the next law concerning marriage in the North Carolina legal codes. In 1805, the first act concerning adultery was passed in the state. The act referenced vice and immorality as offences against the state. The legislature noticed that “doubts have arisen as to the power of punishing by indictment those who commit the crimes of fornication or adultery.” This prompted the articulation of the punishment for those who transgressed the sexual boundaries of the marriage contract. It should be noted that adultery in the modern era is usually predicated upon the act of sexual intercourse outside of marriage. This modern definition did not apply to the law of 1805 in North Carolina. In that law, legislators were much broader with their application of the term adultery. Adultery was defined as sex between a man and married woman, and fornication was sex between a single woman and man or a married man and single woman.

The act added crimes of fornication to its list of adulterous behavior, and the classification of these crimes created many sexual boundaries for couples. The law stated that any woman or man living together who had “one or more children without parting or an entire separation” would be indicted by the courts. Fornication and adultery, therefore, consisted of any sexual acts performed outside of the marriage contract. This included having children or living together without being married. These laws sought simultaneously to protect the state from illegitimate sexual unions while enforcing the

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54 Ibid, Chapter 684.
marriage contract as a necessity for anyone engaging in sexual intercourse and cohabitation.

A formal legal contract of marriage, in which a wife was under her husband’s right of coverture, was the only safe haven for couples who wished to avoid persecution to the full extent of the law. The government had set the boundaries for sexual relations within the state and limited legitimate sexual practices only to the marriage bed. Any act of fornication outside of marriage, and therefore outside of the control of the state, was considered criminal activity. The level of control that the government exerted over sexual activity increased with each passing year. The government was not happy about the lack of deference to the common law of coverture, and each couple who practiced sex outside of marriage directly defied the state. They made sure that the citizens of North Carolina knew that the consequences of such practices were entirely within their power to decide.

The state also wished to uphold a kind of moral virtue in early years of the nineteenth century, and its laws reflected this wish. The adultery and fornication act made marriage a place where the virtue of men and women would be protected against vice and criminal activity. In this, the state expressed a sincere interest in the virtue of women. In 1808, the state passed an act enabling women to bring charges of slander against those who sought to “destroy the reputation of innocent and unprotected women, whose very existence in society may depend on the unsullied purity of their character.”55

The existence in society that the state refers to is most likely the woman’s social eligibility for marriage. Chastity and virtue before marriage were imperative for women who sought prospects for marriage, as the state continued to underscore the importance of

55 Ibid, Chapter 748.
the legal marriage contract. Marriage was the only way for free women to legally cohabitate or fornicate with a man without fear of punishment by the state.

This law was a response to a system of sexual control that the state had an active hand in perpetuating. The state staked a claim on women’s bodies and set the boundaries for the appropriate use of those bodies. Therefore, the state felt that women should have an outlet to defend their character against those who sought to tarnish their good names. Words became powerful in this climate, and the suggestion of promiscuity meant both criminal charges and a limitation of marriage prospects for a woman. If she was accused of indecency, she could take action against her accuser in court. While this law may seem to give a limited amount of legal protection to women, its implications were far from noble. The state argued that “the laws which secure to individuals the enjoyment of private character should be plainly defined and clearly understood.” However, by decreeing a right to accuse slander, the state was intervening on the very private character which it wished to protect.

This law emphasized the state’s interest in woman’s virtue. It also reinforced the strictures placed on white women’s sexuality that the fornication laws had set up. A paradox had been established whereby women could not operate sexually outside of the marriage contract without fear of punishment while within marriage they could not claim control over their own bodies. This environment had equated virtue with the success of the republic and women who were not virtuous were a danger to society. Women without virtue were not apt to uphold the new republic’s strict moral authority which posed a problem for the government. The state felt that giving women the opportunity to

56 Ibid.
defend this virtue in court would ameliorate the strictures they had placed on their sexuality while keeping the state free from undesired sexual maneuverability.

The year 1814 was a watershed year for the legal avenues of free women and men. In this year, the legislature passed its first piece of divorce law. To begin, the state needed to define the boundaries of charges brought in divorce cases. The number of petitions for divorce in North Carolina had increased after the first decade of the nineteenth century from around six per year to nearly double that per year. The General Assembly decreed in 1814 that the only proper reasons for divorce were impotence, prolonged separation and adultery. In these cases, cause for divorce would necessitate a trial before the Assembly which would either grant a divorce either “from bed and board or from the bonds of matrimony, at the discretion of the courts.” These two types of divorce were adapted directly from the common law tenets of England. Neither form of divorce was guaranteed even if the aforementioned transgressions had taken place. All of the power for dissolving marriage was up to the court which heard each individual case.

The law designated that the superior courts of the state would hear all petitions for divorce and that each petitioner must submit their case in the county in which they resided. The divorce law of 1814 was more a guideline for these individual courts than an actual legal precedent. However, it was extremely important for its implications. The adherence to common law demonstrated the court’s perpetuation of coverture in marriage. There was no middle ground between absolute divorce and divorce from bed and board, as one absolved the marriage completely and the other amounted only to a legal type of separation. Even though the court had implied that adultery, impotence and absence were grounds for divorce, it did not guarantee that proof of any of these acts

57 Ibid, Chapter 869.
would give couples a right to separate. It merely guaranteed that they would be granted a due process in the courts where they were tried.

At this juncture, it is useful to examine grounds for divorce to ascertain how claims affected a couple’s chances of obtaining legal separation. Two of the three grounds dealt specifically with sexual matters. Cases that involved either adultery or impotence would automatically be heard by the superior court. The state made sure that any cases involving these two aspects of sexuality would be heard. Again, neither of these claims would be sufficient for a divorce without sufficient testimony from the injured party. Some examples of these cases can be seen in Chapter Three of this study. Sex outside marriage and sexless marriage claims required proof beyond doubt for a divorce to be granted. The law required that these claims had to be “true to the best of his or her knowledge and belief, and that the said complaint is not made out of levity or by collusion between the said husband and wife, and for the mere purpose of being freed and separated from each other.”58 The state protected the institution of marriage from claims of adultery, but did not protect women from a lack of fair legal recourse. In this law, one can ascertain how a married woman in North Carolina would have been suspect of the court’s willingness to hear their petitions.

There were no guarantees that a divorce would be granted by the courts, and the law presupposed that the claimants in each case might have motive to collude in order to abandon the bonds of matrimony. Overall, the legislators meant to protect the bonds of matrimony against disingenuous individuals who might petition for divorce in order to shirk the responsibilities and strictures of marriage. At this stage, if the court agreed to hear the case for divorce the petition would necessarily be “submitted to a jury, upon

58 Ibid.
whose verdict, and not otherwise, the court shall decree – any rule or practice to the contrary notwithstanding.\textsuperscript{59} For women, this meant that claims brought against their husbands would be submitted to a jury of men. This is an inference of the law, since women were not able to serve on juries as they were bonded to their husbands under coverture law. Therefore, a woman would be at the mercy of a male jury when she brought a claim to court against her husband.

The law of 1814 complicated the legal environment for couples seeking divorces. The odds of merely getting one’s petition heard in court seemed nearly insurmountable if the law was followed, and once in court there was no reassurance that one’s case would be successful in acquiring a divorce. Other stipulations on petitions involved instances where the plaintiff in the case was guilty of the same offence of adultery. The law made known that any case where the injured party was found guilty of the same charge of adultery would be immediately thrown out of the court. Interestingly it also would throw out cases where the plaintiff “has admitted the defendant into conjugal society or embraces after he or she knew of the criminal fact, or that the said plaintiff (if the husband) allowed of his wife’s prostitution or exposed her to lewd company whereby she became ensnared to the crime aforesaid.”\textsuperscript{60}

These stipulations illuminate how sexuality in and outside marriage could become convoluted within the court system. Legislating divorce meant examining each and aspect of a married couple’s sexual lives and passing judgment on what did or did not constitute a legitimate reason for separation. No divorce would be granted if both parties were guilty of adultery or sex outside of marriage. The claimant in these cases would be

\textsuperscript{59} Ibid.
\textsuperscript{60} Ibid.
subject to a public scrutiny of their transgressions, and forced to stay married to the defendant. Any post-adulterous coitus between the man and wife after adultery was suspected would also get a case thrown out of court. In some ways, this law protected the courts against having to try cases of adultery instead of protecting the petitioner’s rights.

If, after battling the court to hear her case, a female petitioner was able to acquire a divorce from the bonds of matrimony, she would then be allowed compensation in the form of alimony from her husband. The sentence of alimony, however, would only be considered valid if the General Assembly approved this legal action. If the Assembly felt the previous legal decision legitimate, then alimony would be paid and the “complainant or innocent person shall be at liberty to marry again as if he or she had never been married: provided always, that nothing herein contained shall be construed to extend to affect or render illegitimate any child or children born of the body of the wife during coverture.”61

Securing legitimate divorce was challenging, and if a wife was to receive alimony, the children born to her must be legitimate as well. The divorce law in North Carolina at this point was pessimistic about the motives and the claims made by both parties, but women had to further prove that their virtue was maintained throughout the marriage.

The divorce law of 1814 made sure that cases in which a wife claimed grounds for alimony were not easily admissible for trial within the courts. Women’s bodies had to be in mortal danger for alimony to be granted outside of cases where adultery could be proved. The law charged husbands with responsibility for alimony if the wife could prove her husband would “abandon his family or maliciously turn his wife out of doors,

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61 Ibid.
or by cruel or barbarous treatment endanger her life.”\textsuperscript{62} In these cases, a complete divorce would not be granted. Rather, a divorce from bed and board with the stipulation of alimony would be the appropriate legal decision. Interestingly, alimony could not exceed one-third of the husband’s annual estate at any time and the courts would hold sole responsibility for determining the appropriate compensation for the wife in these cases. A married woman’s body and her value were decided by the court.

Additionally, in order for the courts to protect themselves from cases brought to them in the heat of disagreement between husband and wife, no petitioner was allowed to file for divorce within six months of the offense. Also, the courts were legally barred from making decisions on these cases until the petition had been filed for a full twelve months. Therefore, the amount of time required to pass between the original transgression and the conclusion of the case was a full eighteen months. This time span allows for a host of transgressions to conspire while the couple awaited the completion of judgment in their case. If the case involved allegations of adultery, as mentioned previously, then the sexual status of both parties was celibacy. If the couple engaged in intercourse during the eighteen month period, their case would be dismissed by the court and their allegations would never be heard.

Overall, the divorce law of 1814 created a myriad of obstacles for women and men seeking separation. At every turn, couples alleging misconduct in marriage had to continue to navigate the maze of litigation stipulations that the law had constructed. As if these stipulations were not enough of a deterrent from filing for a divorce proceeding, the state required that a tax would be levied against petitioners amounting to the sum of ten pounds. This tax further restricted the amount of petitioners who had grounds for

\textsuperscript{62} Ibid.
divorce, this time monetarily. Since married women under coverture law did not legally have access to their earnings or property, this law was gender-biased. Those couples who could not spare any income for divorce proceedings were left without a legal avenue for justice.

The passage of the divorce law of 1814 meant less and less maneuverability for married couples. The law was invested in protecting the system of coverture and protecting legal marriage from the option of dissolution. Only two years after the law was passed, it was amended by the legislature. In 1816 the Assembly ruled that any separations granted to a woman from bed and board due to her husband’s desertion would add the stipulation that the wife could secure “any property which she may subsequently obtain either by her own labour, gift, devise or operation of law.”

The courts realized in these cases that the call for alimony from a husband who had deserted his wife was not likely to be collected. Therefore, the courts allowed women in these cases to control the money that they had earned. Since a separation from bed and board still upheld the right of coverture for husbands over their wives, a man guilty of desertion could “return and squander away the estate of the wife, subsequently obtained.”

This amendment to the divorce law is useful in understanding exactly how damning the law of coverture could be for a woman’s livelihood. The protection of wages acquired by women after formal separation from husbands who deserted them was the only exception in the law that allowed women access to the fruits of their own labor. In the absence of literally any other avenue for support, self-sufficient wives were in legitimate danger of having their husbands return and legally collect their earnings under

63 Ibid, Chapter 928.
64 Ibid.
coverture law. That is, until the passage of this act in 1816. The state, which obviously had no qualms about intervening in marriage proceedings, would only intervene in the favor of women in extremely rare and dire circumstances. The assumption underlying this action is that women were helpless.

Some of the more poignant obstacles the state issued in the divorce law of 1814 came under fire after the law was passed as new petitions addressed the obstacles for obtaining divorce. In 1818, the state amended the law in order to dismiss the requirement of the General Assembly’s approval of final divorce proceedings. The new law declared the superior courts’ judgments “final in dissolving the bonds of matrimony, be and the same is hereby repealed.”

This amendment was likely a response due to the rising number of petitions within the state. The General Assembly would have been flooded with county cases requesting final judgment on divorce cases under the law of 1814. This amendment bequeathed the power of this judgment to the county legislatures where the divorce proceedings originally took place.

In 1820, the General Assembly enacted a law that required that “if any person shall marry a female infant under the age of fifteen years, the person so offending shall be deemed guilty of an indictable offence, and on conviction, shall be fined at the discretion of the court: provided, that this act shall not extend to cases in which the father of the female shall be living, and shall previous to the marriage have consented have consented thereto in writing.”

This act defined the legitimate age at which women, without the consent of their fathers, could marry.

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65 Ibid, Chapter 968.
66 Ibid, Chapter 1041.
The implications of this act are broad, and they demonstrate the transfer of control over women’s bodies by men. In this environment, North Carolina women were legally subject to a kind of legal dependency before marriage if they were under the age of fifteen. This dependency supposed that a woman’s father was the guardian of her status until this age, at which it became legal for a man to marry her and assume control of that status. The disturbing implication of this transfer of another party’s rights is that a father could give up his daughters’ rights as a *femme sole* to another man by simply signing his consent to the man who wished to marry his daughter before she was of the age of fifteen. The consent of the affected woman was of no concern under the law, as girls were subject to the machinations of their would-be suitors as well as their own fathers.

If a man was convicted of the offense of marrying a woman under the age of fifteen, all of the property that he may have acquired from her dower at the time of marriage would “belong to the trustee or trustees so appointed by the court, and he, she or they, shall have full power and authority to take all such estate into his, her or their possession, and if necessary to sue for and recover the whole or any part of said property in his, her or their own name as trustee or trustees aforesaid.” The law was adamant that a woman under the age of fifteen had no legal option for gaining control over her own property or assets both before and after marriage. Control was ceded to a third party outside of the marriage for her, and only after the marriage was officially dissolved would the property be returned to her control. The law was more concerned that the property fell into the hands of the trustee instead of the husband, than it was in ensuring that the original owner of the land should get to control it.

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67 Ibid.
In 1820, the state passed one of its first anti-miscegenation laws in an effort to underscore its definition of proper sexual activity. The preferred mode of controlling such sexuality was through the punishment of the ministers or justices which controlled the making of the legal marriage contract. The law punished those clergymen who would marry “a white man or woman with an Indian, negro, mustee or mulatto woman or man, or any person of mixed blood.”68 The punishment for each offence of marrying a couple consisting of one white person and one mixed blood person were pecuniary. The minister or priest would be forced to pay the state one hundred dollars for every ceremony of interracial marriage that they performed. This law put the burden of responsibility of preventing such marriages on the ministers as a way to control the legitimate marriages between mixed race couples. The legislature knew that by preventing legal marriages would be illegal. If mixed couples were denied the right to a legal contract marriage, then the state precedent laws regarding marriage would have the effect of nullifying any sexual union between mixed races, as any union outside of marriage would automatically be illegal.

In 1824, the divorce law of 1814 was amended again by the state legislature, as the response by petitioners had not abated. This time, the court ruled that its previous financial requirement of a tax on petitions be repealed. This eliminated a small barrier for those couples who could not afford the fee in order to have their case tried in court. However, not all couples were excluded from this fee. The court ordered that in order the fee to be transferred, the petitioner “shall make oath at time of filing the same, that he or she is not worth the sum two hundred dollars, both for the payment of the costs of such

suit shall not be required from such party.” Thus, this amendment rectified the substantive denial of due process based on monetary restriction, thereby somewhat democratizing the right of couples to have their day in court.

Laws regarding divorce after the first quarter of the nineteenth century seemed to be increasingly concerned with the fiscal responsibility of the husband. The concern stemmed from a number of petitions from women which addressed the lack of control over finances. In 1828, the courts ruled that any husband who had “become a habitual drunkard or spendthrift, wasting his substance to the impoverishment of his family, in every such case it shall be lawful for his wife to claim and for the court to decree an alimony aforesaid.” This act did nothing to ameliorate the wife’s condition of fiscal vulnerability under the laws of coverture. However, the law did require husbands to avoid the wasteful spending of money, lest they be subject to the intervention of the court. In cases like this one, state intervention was likened to a threat meant to keep husbands in line. Since the status and property of a wife was controlled by her husband, he was meant to be responsible with his allocation and maintenance of that property. This law reiterated the ideology that property and assets were the most tangible indicators of a successful society. If the measure of the success of the state was the accumulation and disbursement of land, then those in charge of those lands needed to act responsible with the power entrusted to them by their right to control that form or currency.

By 1828, the control of property was very clearly on the mind of the government. In this year, the courts decreed that any woman who requested alimony in her divorce petition could be granted *femme sole* status. The request for divorce did not mean she

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69 Potter, Chapter 1248.
70 Iredell and Battle, Chapter 39, page 239.
was automatically a femme sole, because if granted, the petition was not likely to entirely absolve her of the marriage. This legislation was extremely important, as women under *femme sole* status were able to sue and be sued, maintain rights over their wages, and stipulate who would be granted control over the women’s estate upon their death. This kind of decision was a turning point in the discussion of the state’s control over marriage. Even if a woman requested alimony, then her finances might not secure enough for her to be self-sufficient. This admission concerned the state, prompting it to allow financial maneuverability and control “without joining the name of her husband.”

Therefore, a married woman’s avenue for the control of her own property and assets was to enter her name into the record for divorce and request alimony. This reiterated the preferred mode of the coverture marriage contract, as only when seeking reprieve from this contract could a woman gain access to her personal property.

In the late 1830s, the state passed new laws regarding the procedure for divorce instead of continuing to amend the law of 1814. They had seen a flood of petitions which contained complaints over the custody of children. The law of 1814 had not made provisions for any children who were a product of a marriage, and so the new laws would ameliorate this oversight. These laws were only concerned with the custody of children if a divorce from bed and board or from the bonds of matrimony had already been declared. In these cases, any “child or children under the age of twenty-one years” was committed to the custody of either the father or mother. Furthermore, the determinant

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72 Iredell and Battle, Chapter 16, page 167.
for which parent was granted custody was dependent upon what the court “think the interest of the child or children shall require.”

If the child had any estate to his or her name, then the court would appoint a trustee for the management of that estate which would hold all the power of a guardian over the child. This seemingly arbitrary transfer of custody and estates rights was purposefully vague. The courts placed the rights of the estates of children away from both parents and into the hands of an appointed guardian seemingly in order to protect against those estates falling into the hands of the parents. The state recognized that the control over children’s dowries and assets was a likely a motivation for the requests of custody and so they took that power out of the hands of the mother and father. They then gave that power to the state and the guardian in order to ensure that financial control was not a factor in deciding custody cases. A subsequent law allowed the courts to grant a kind of shared custody between parents in some circumstances, which would always be subject to the limitations provided by the court.

The year 1842 brought resounding changes to the process of divorce for women and men, as the state saw more petitions which requested county decision appeals. In one of the most succinct laws regarding marriage found in the legal record, the state made the provision that cases of marriage “may be removed into the Supreme Court, before a hearing, in like manner as suits in Equity may now be removed into that court.” The option of having marriage cases held in the Supreme Court of the state gave married couples a larger audience for their claims for divorce. The county legislatures held final jurisdiction up until this point in the law. The Supreme Court was not likely to overturn

73 Ibid.
74 Ibid, Chapter 43, page 168.
any of these county-decided divorce proceedings in its courts as the county courts had more control of how the divorce law was made. However, the option available for couples to appeal the decisions from their local courts was a significant change in the law. The public institutions of the state and the private matters of married couples were now dependent on one another in due process. The impetus for this change can be linked to the rising number of divorce petitions in the 1830s and 1840s within the county courts, and the subsequent rise in divorce appeals to the Supreme Court.

In the years between the passage of the custody and appeals laws the state passed another miscegenation law that further restricted the rights of mixed couples in the state. On January 8, 1839 the government declared that “all marriages in future, between a white person and a free negro, or free person of color, to the third generation, shall be void.” The previous law regarding miscegenation and marriage had prohibited mixed marriages, but made no real mention of their status as slaves or free persons of color. The law of 1839 made sure that any case where a marriage involved the mixing of a white person and another race would be voided. The North Carolina General Assembly was, after all, interested in protecting the rights of white men over any other social group. Since North Carolina was a slaveholding state and the labor force was controlled by white men, the legislature had a serious interest in protecting those men from any threats to their power. The politics of marriage in the state favored those citizens whose economic viability depended upon chattel slavery. Marriage law was one way which the legislature could claim control over the intermixing of race which threatened the legality of slavery and of treating free blacks and other persons of color as non-citizens.

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75 Ibid, Chapter 68, page 391.
The divorce codes of North Carolina were intended to elevate the institution of marriage to an extremely high level of importance. The relative difficult process of obtaining a divorce was a hindrance for couples who wished to dissolve their marriages. Arbitrary dissolution of a marriage was a near impossibility. The entry of the public institution of government into the private details of marriage life was common, and those wishing to have their cases heard before the court were prepared to divulge every aspect of their private lives to the legislators. Issues of extra-marital sexual practices as well as boundaries placed on sexual practices within marriage were frequently cited in the laws.

The ultimate question posited by the examination of these laws is one of motive. If couples were to obtain a divorce, they had to have irrefutable proof of indiscretion as well as the means and patience to continue with divorce proceedings that could last for months at a time. Even if their case was decided by the granting of a divorce, many couples were not guaranteed that they would be able to remarry or fully break the ties with the spouse from whom they sought separation. A lack of confidence in the government’s handling of divorce law had to have permeated the minds of those married couples who sought a separation. What motive then, did the petitioners for divorce have for bringing their cases to the attention to the courts? Many of the laws that defined appropriate marriage practices carried stipulations of somewhat severe consequences if either partner defied the state’s boundaries. The punishment for transgressors in those cases ranged from fines to the death penalty. However, amendments to those restrictions were made by the government in the years following those laws, which hints at a public condemnation of such restrictions. Divorce law was restrictive to women’s rights and couples’ sexuality, yet petitions for divorce only increased after the passage of the
divorce act of 1814 because the petitioners, who were mostly women, found the petitions to be their only outlet for airing their grievances. If the state insisted on protecting marriage bonds, then women would insist on the state hearing the intimate details of those marriages. It seems that the strict legal codes for divorce in North Carolina did not deter the amount of petitions heard by the courts. Furthermore, the issues of sexuality and property brought up in those petitions influenced the General Assembly’s amendments to those laws after their passage.
CHAPTER FOUR

Divorce Petitions

The divorce petitions heard by the state of North Carolina between the years 1790 and 1854 are indicative of a rise in the participatory democracy within the populace. They are also indicative of the heightened public willingness to challenge the greater restrictions on marriage and divorce. In the years prior to the Revolution, divorce petitions were rare. It seemed that the war affected the populace with the “contagion of liberty” and the implications of this infusion of the spirit of liberty on the laws were limitless.\(^\text{76}\) Between 1780 and 1800, the courts in North Carolina heard fourteen petitions for divorce.\(^\text{77}\)

The importance of studying divorce petitions in order to glean how coverture law affected women’s everyday life cannot be understated. These records have both the “advantages of census and church records, because they deal with an ‘ordinary’ population, and some of the advantages of prescriptive and personal documents, because they reveal values, attitudes, and individual practices, but they have not been as commonly used.”\(^\text{78}\) The divorce records of North Carolina couples point to a rise in the interest of women to have their concerns about marriage heard by the public legislature. The willingness of these women to display their private lives in the public eye indicates that they valued their right to divorce over their right to privacy.

The first petition for divorce to the General Assembly of North Carolina was made in the year 1766 by Solomon Ewell. Mr. Ewell petitioned the state for divorce

\(^{76}\) Bailyn, Ideological Origins, 230.
\(^{78}\) Nancy Cott, “‘Eighteenth-Century Family and Social Life Revealed in Massachusetts Divorce Records,” Journal of Social History 10 (Autumn, 1976), 20.
complaining of the elopement of his Wife Lydia and her living in adultery with one Samuel Colten of Northampton County, and praying an Act may pass to dissolve the Marriage of the said Solomon and Lydia; and moved that a Committee be appointed to examine into the truth of the several allegations in the said petition contained, which was objected to; on which the motion was made and question put, if the said Committee be appointed or not and carried in the affirmative, and Mr Fanning, Mr Charlton, Mr Dawson, Mr Bradford, and Mr Harris are appointed a Committee agreeable to the said motion; and that they have power to send for persons and papers, and report their proceedings thereon to the next Session of Assembly.  

Ewell’s petition was filed before the legislature had decreed desertion and adultery illegal, and his request for divorce was denied. The next petition for divorce was taken to the General Assembly by Alexander Dickson in 1779. The minutes of October 22, 1779 included the line “Read the Petition of Alexander Dickson, of Duplin County, praying a Divorce from Elisabeth his wife.” The Assembly did not mention this petition any more in the records for that day, and the implication of this is that the case was dismissed.  

Until 1814, North Carolina petitions for divorce were rare, and those who did petition during the period 1790 to 1814, found that the lack of legal precedent led to the dismissal of their cases. After 1814, the number of petitions for divorce steadily rose in North Carolina and the legal precedent made the appearance of more detailed arguments and notes more common in the legal record. It seems that once the state passed the extremely tortuous divorce law, that the petitioners were more likely to bring their cases to court. The overall successes of these petitions are not heartening, as many of them that survived the rigors of the divorce proceedings were eventually not granted a divorce.

The consideration of these petitions, however, does highlight the individual experiences of women in North Carolina after the divorce laws were passed in the state. The petitions also demonstrate how the state perpetuated a system of rigorous patriarchal values. The

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80 Ibid, Volume 13, page 932.
elaborations of the male judges on the decisions of each case show how women navigated the bonds of marriage while trying to maintain their dignity in a fiercely patriarchal society and political system.

The first petition to be examined came to the legislature in the year 1817, and it involved a case of fornication and adultery. In *State vs. Cox*, the defendant was indicted under the act of 1805, which had decreed that any sexual act outside marriage was adulterous, and that cohabitation of a husband or wife with another besides their spouse was also considered adultery. In this case, the husband who was indicted for cohabiting with a woman named Hawkins and a motion was filed “to quash the indictment, because the woman was not joined with the defendant in the charge.” The judge in the case was C.J. Taylor, and he noted that “it is time that the law should be understood by this community; for I believe that no judgment has been passed in any case, where the objection was taken.”

The 1805 act of adultery had made clear that cohabitation constituted adultery. Taylor ruled that the call for a reversal of the indictment of Cox was not warranted, because nowhere in the law of 1805 did it say that both accused parties were required to be in court. The husband, Hawkins Cox, had tried to argue that the absence of the woman with whom he was accused of fornication made his indictment null and void. The court in this case took the role of protector of the woman Hawkins, when they decreed that she would not be required to appear before the court in order to indict the offending Cox for adultery. The judge’s elaboration on his opinion was interesting because it held that

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82 Ibid.
The possibility of, that some evil disposed man might procure himself to be indicted for fornication, with some good and virtuous woman, I think, is too remote to govern this case. The penalty which would fall on the defendant, by virtue of this act, the grand-jury, the State’s officer, the court, and her friends, would, in my opinion, be sufficient guards to protect her from such an outrage.  

This decision in this case implied that the societal pressures placed on women regarding the maintenance of their virtue were enough to stop those women from fornication. The judges did not uphold the motion to quash Cox’s indictment. The public courts in this case ruled that the threat posed to women for engaging in sexual intercourse outside of marriage were enough to deter women from ever committing such a crime. This view of women was dangerous for female sexuality, because it supposed that no woman would dare transgress the boundaries of marriage in order to participate in sexual activities. This implies that any woman who may be found guilty in the future of such a transgression was operating on a malicious intent to defy the strictures of her courts and her society. In this instance, it would be likely that the full extent of the law would be brought down upon her as she was acting against a high standard of female sexual fidelity.

The next case brought to the courts specifically asked for a divorce from bed and board or from the bonds of matrimony, left to the discretion of the courts. The case was heard in 1819 and was between Louisa and Joel Dickenson. In Dickenson v. Dickenson, the couple had their case tried previously in the county courts and the husband was found guilty of adultery and cohabitating with a woman for at least six months between 1812 and 1813. The only reason this case was then heard by the Supreme Court of North Carolina was because there was some question as to whether the wife could file for either

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83 Ibid, p. 599.
two types of divorce under the law of 1814 since the transgressions of her husband had happened before the law was passed.

In this case, Louisa had gone through all the proper legal channels in order to obtain divorce from her husband. She had abided by the legal waiting periods and testified that she was not colluding or making the complaint out of levity. The court noted that “it was contended, that the act of 1814, ch. 5, required the affidavit to set forth, that the facts which formed the ground of the complaint had existed and had been known to the petitioner at least six months prior the filing of the petition.” Louisa had also charged her husband “with cruel treatment to the petitioner, and with having offered to her person intolerable indignities.” The county courts had denied prosecution of Joel for these offences, and so the Supreme Court would not hear those allegations. It seemed that this decision was only of concern to the state court because of its questions of legal retroactivity.

The judge agreed with the indictment for adultery that the county court had leveled against Joel, but could not grant Louisa any reprieve from her marriage because the act of adultery had occurred before the law of 1814 was passed. The court ruled that no “ex post facto law ought to be made” regarding the divorce law of 1814, and therefore, Joel would be charged with the indictment of guilt under the previous law of adultery, passed in 1805. Though the guilt of the husband had been agreed upon by both the county and state courts, he would only serve to pay a fine under the law of 1805, and his wife was not allowed to separate from him under that law. The petition was then dismissed from the court for its requests of a divorce under a retroactive premise.

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84 Ibid, p. 328.
85 Ibid, p. 327-328.
The petitions for divorce brought to the government before the law of 1814, would ensure that no marriage could be dissolved even if the husband or wife was found guilty of adultery. It should be noted that Louise Dickenson had waited for nearly six years in order for her case to be heard by the state legislature. In this time, her husband was found guilty of adulterous cohabitation and she had gone through all the proper channels of legal action in order to obtain a separation from her husband, who she felt was dangerous to her well-being. The North Carolina courts, however, were working within a very narrow legislative framework on this case and because of the timing of her petition, she was not able to get a divorce. In this case, the restricted legal avenues for women in marriage were made very clear. Women who filed for divorce or separation before the divorce law of 1814 were afforded little reprieve from the boundaries of coverture set upon them by the legal codes.

Perhaps one of the most interesting petitions for divorce was filed in 1822. The case of *Long v. Long* is interesting because the charges filed in the petition are almost exclusively indicative of the state’s intervention into extremely private aspects of a marriage and sexuality. The petition requested a divorce from the bonds of matrimony with the added stipulation of alimony for the wife. The husband in this case was by no means a saint. The wife leveled a litany of charges against him including abandonment, adultery, cohabitation with another woman, and life endangerment. The endangerment of her life was not physical or mental abuse, but the communication of a sexually-transmitted disease.

In this case, the defendant or husband,

admitted the marriage, admitted his having been guilty of a single act of adultery, admitted he had reason to believe he had communicated a loathsome disease to the
petitioner, but averred at that time, he was ignorant that he was affected with it, and
denied living in adultery with any intention of abandoning her; but averred that any
separation which had taken place during the marriage was either by consent or owing to
the voluntary departure of the petitioner. 87

There were numerous factors that affected the outcome of this case, and all of them were
covered under the divorce law of 1814. The state ruled that a retrial of this case was
refused, on the grounds that the only offense for which Myles, the husband, may be
responsible for was that of endangerment of his wife’s life. The court rationalized the
rest of the charges against him, for which Myles claimed guilt for the majority of those
claims, and ended up dismissing the case and granting no divorce.

First, the courts ruled that abandonment was not an applicable charge because
Charlotte had left the home voluntarily, and had come back to live with her husband for a
period of time after that separation. The second time they separated, she left to go live
with her father, at which time she was very sick. There were physicians brought in to
examine her after the charges of the disease were leveled. They found that Charlotte
“was for some time diseased after she returned to the house of her father, and it was also
proved that from the period of that return she had not received her husband to conjugal
embraces.” 88 As for the charge of indignities against her, the court found that “the
petitioner declared her willingness to live with her husband, that he had treated with
affection, that she was attached to him, and did not wish a divorce, but that her parents
did, and that her separation from Long was not a voluntary act, but was owing to
others.” 89

88 Ibid.
As for the charge of the communication of the disease, the court found that the husband’s ignorance of having acquired the disease meant that the endangerment charge was not founded. The court debated whether or not this communication was grounds for a retrial, but ultimately found that “the defendant was not impelled by any settled purpose or mischief, or moved by that brutal disposition which shows itself in repeated acts destructive of the happiness of the married state; that he was unconscious of his situation at the time; and when he afterwards discovered its calamitous effect on the petitioner he expressed his sorrow in the tones of unfeigned remorse.”90 The court’s ruling demonstrated a complete disregard for the sexual health of married women. The court would rather defend a marriage in shambles than admit a husband would knowingly endanger his wife’s sexual health. The double standard in this case is remarkable, as the court would not likely think twice to condemn a woman for communicating such a disease to her husband. The price of a difficult marriage for women was withstanding physical and sexual harm, which was not a justification for a divorce in the law.

In the closing remarks of the case, the court ruled that ultimately the couple had fallen victim to the “busy whispers of officious friends” and that the “interposition of judicious friends will enable these parties to find their way back to domestic harmony, and the evidence in the case warrants the belief that their dislike towards each other will be found the least formidable obstacle to a reunion.”91 In effect, the court’s decision cast a feeling of disdain for intervention by friends and family into the relationship between man and wife. The hypocrisy of this charge is astounding. The state had not only intervened in the case to deny detriment to the wife, but it had also cast judgment on the

91 Ibid.
couple’s private lives and all but required them to reunite. It seems that the state would rather deny some of the facts of this case, such as the near-death of Charlotte, in order to uphold that the bonds of matrimony were to be protected under the law at all costs. Women were not able to claim bodily harm when their husbands were not aware that they were endangering their wives, though the fault of this endangerment rested solely with the husband.

In 1832 a case was brought to the Supreme Court of North Carolina on appeal from the courts of Buncombe County. The case was between Marville and Lucretia Scroggins, and it involved implications of adultery and miscegenation. The Supreme Court took over this case on appeal because Scroggins v. Scroggins involved causes other than “those specified in the act of 1814.” The petitioner was the husband, Marville, and he sought divorce because after five months of harmonious marriage, his wife Lucretia gave birth to a mulatto child. The Supreme Court took over the jurisdiction of the case on appeal and immediately launched into a discussion of both common law and religious law.

The court expressed the sentiment that “the imagination can scarcely conceive a case which is calculated to awaken a larger share of sympathy in the human bosom.” They then make an historical reference to the Bible, by saying that “levitical law, as expressly recognized by our Saviour, a fraud, of the character disclosed in the petition, without the degrading distinction of caste and color, was not only sufficient cause for divorce, but was punished by death.” The charge of fraudulent practices of marrying while pregnant with another man’s baby, as the court explained, had a very long legal

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92 Ibid. p. 459.
93 Ibid.
94 Ibid.
precedent dating all the way back to biblical times. The court then explained that common law always sought to restrict the causes that would warrant a divorce. However, after a brief discussion of legal precedent of such fraud in the common law, the North Carolina court noted that “the common law in England would have afforded a remedy, if the facts had existed, and it is abhorrent from all the better feelings of our nature to suppose that it will not do so here.” The Supreme Court was essentially arguing for the creation of a new law that would handle cases of fraud and pregnancy in the state legislature so that they could remedy the ambiguities of this case and create legal precedent. The fact that they referenced both biblical and English common law underscores their desire to create a similarly effective means of treating cases like this one. Their ambition was to create a law in the state of North Carolina that would stand the test of time by becoming a precedent for future cases.

It should be noted, that this argument for precedent came at a time of transition for the North Carolina legislature. The Chief Justice of the court was Judge Thomas Ruffin, who would serve in this post for many years. The elevated language and references to common and biblical law were unique to his style of governance. Ruffin was always concerned with due process and legal jurisdiction and he immediately referenced the law of 1827 in claiming jurisdiction over this case. The law of 1827 had given power to the superior courts to grant both types of divorce. Ruffin expressed displeasure with the task of ruling in divorce cases, but he justified this displeasure with the task of upholding the law at all costs. Ruffin held that verdicts of divorce, particularly ones where adultery was charged, were difficult to hand down because they suppose that the marriage contract is able to be dissolved. The judge also held that

95 Ibid.
contract in very high regard, noting that matrimony makes “a perfect union between the parties, so that they become one; and, to carry it out, they [the courts] ought to believe and feel that they are ever to remain so – that absolute union is also indissoluble.”96

After a rather verbose description of precedent, the judge wrote that ruling against the wife in this case based on the charge of fraud would put the courts on shaky legal ground. He declares that to avoid this ground, “there is in general no safe rule but this: that persons who marry agree to take each other as they are.”97 He goes on to admit that unchaste women have been the bane of undeserving men since the time of Solomon. Their presence being so known throughout the years meant that men who willingly married such women who never gave auspices as to their chastity were deserving of the situations and consequences of marrying those women. Ruffin declared that “he who marries a wanton, knowing her true character, submits himself to the lowest degradation, and imposes on himself. No fraud can be said to be practiced on him by mere silence and concealment of other aberrations.”98

This case was extremely important for understanding how sexual politics were navigated by both the courts and married couples. The husband in this case had willingly married a woman whose chastity was not confirmed, and after she had birthed a mulatto child he sought a divorce for her transgressions prior to that marriage. The judge did not comment on whether the husband assumed her chastity at marriage, but the case does not allude to any prior misgivings the husband might have had before they were married. His wish to be released from the bonds of matrimony had come after his wife had become infamous for her lewd behavior. The court ruled that this was not grounds for a divorce

96 Ibid, p. 462.
and the husband was blamed for his unhappy situation. This case is indicative of both a society’s and a legal institution’s stance on women’s sexuality. The ultimate sin of transgression for a woman was sexual encounter with a man before marriage. In the eyes of the law and the society which it governed, women who did not protect their virginity before marriage were considered perpetuators of sin and avarice. They were to be avoided by both prospective suitors and respectable members of society. If a man willingly entered into a marriage contract with a tainted woman, then the blame for the consequences of that union was unavoidable and indefensible under the law. This case illuminates how women’s sexual promiscuity outside of marriage created an undesirable necessity for the courts to have to legislate on such doings. The ruling in Scroggins v. Scroggins would set a precedent in North Carolina law that subsequent rulings of fraud would harken back to again and again.

One such case that used the Scroggins ruling was the case of Barden v. Barden. Again, this case was brought to the Supreme Court on appeal under the act of 1827 which gave the court jurisdiction. This case, tried before the court in 1830, was similar to that of the Scroggins case, in that a man had petitioned for divorce after his wife had given birth to a mulatto child. The Wayne county courts had originally dismissed the petition because the marriage had taken place before the act of 1827. Justice Ruffin was inclined to rule this case on the merits of those presented in the Scroggins case, but he was challenged by his judiciary colleagues to try it separately since the wife had tried to convince her husband that the child was his own. In the Scroggins case, the wife never attested to her chastity, and never claimed that the child was the petitioner’s own. The
differences in these two cases prompted Ruffin to declare a reversal of the dismissal of the case by the Wayne county court.

Ruffin called for a retrial to determine whether or not the wife in this case had made clear to the husband that the child “was the offspring of the petitioner himself, and that upon inspection at that time, the real color was not so obvious as to be detected by the petitioner, or a person of ordinary diligence and intelligence.”

If the defendant had deceived her husband and made him believe that the child was his, then the grounds for divorce from the bonds of matrimony were justified according to the ruling of the Supreme Court. Ruffin’s last statement in this case noted that this dissolution of marriage would partially be justified because of the “deep-rooted and virtuous prejudices of the community upon this subject.”

The courts recognized that miscegenation between a white woman and black man was not only abhorrent to the community because of the act of premarital sex, but also because it disregarded the extreme prejudice against the black community. The wife in the Barden case has not only ignored societal restrictions on her chastity and sexual activities, but she had also ignored the extreme displeasure of that society regarding interracial sex.

Ruffin’s written judgment displayed societal reservations about pre-marital sex and miscegenation. His final decision was “that the judgment of the Superior Court must be reversed, and the cause remanded to be proceeded in to ascertain the facts according to the statutes.” If the facts of the case proved that the child produced was the result of a mixed union, then the husband was granted a divorce from the bonds of matrimony.

100 Ibid, 470.
101 Ibid, p. 469.
Miscegenation claims in marriage were not heard often, but when offered proof of such fornication, the court was willing to grant divorce.

The case of *Whittington v. Whittington* in 1836 concerned a husband’s plea for divorce from his wife who had abandoned him and committed adultery. The wife, Lucy, was twelve years older than her husband Andrew, who was eighteen at the time of their marriage. Lucy had been away from her husband and their farm for more than two years after a period of cohabitation with him of only thirty days. Andrew learned that his wife had given birth to a child during her absence and he believed that the child was his own offspring. Longing for contact with his child, Andrew persuaded Lucy to return home and she did. After her return, Andrew noticed that his wife was neglectful of her household duties and he feared “that she had no affection for him.” Lucy often left home for days at a time and Andrew believed that she was engaging in extra-marital sexual intercourse during her absence. Andrew eventually left the house they shared together and abandoned Lucy, who birthed three children after the abandonment, which were all considered to be Andrew’s since they had occasionally shared a bed together when he called at her house. The original petition for divorce stated that Andrew brought charges against Lucy for adultery and miscegenation during her absences preceding the time that Andrew left the house.

The county court dismissed Andrew’s petition and it was then taken up by the Supreme Court. Justice Ruffin oversaw the case, and he declared that Andrew’s lack of control over his wife caused his current situation. Ruffin stated that his delay in bringing charges against Lucy “implies a license to the wife, so far as his rights and honor are involved, to act as she pleases; and amounts, by fair intendment, and constructively, to

102 Ibid, p. 65.
condonation. Total inactivity and profound silence under such circumstances, are a pardon.\textsuperscript{103} Ruffin and the court did not sympathize with Andrew nor heed his allegations of adultery and miscegenation because he had not exhibited an interest in keeping in wife in line. The age difference between the couple was likely a determinant in the lack of forcefulness on the part of Andrew, but the courts did not address this issue. The court’s condemnation of Andrew for his lack of power over his wife plays into the ideology of power politics that women were subject to in this era.

The court was not comfortable with the ruling it had to deliver, however, because its admonishment of Andrew for his lack of conviction was difficult to make given that the court thought Lucy was in fact committing adultery. The court reprimanded Andrew for alleging his wife’s infidelity in vague language. They noted that had the charge been brought against his wife with respective evidence, including specific dates and names, then perhaps Andrew would have had a case for divorce. Instead, the court affirmed that he was not entitled to a separation, and they further chided him for not putting the charges “in legal language” which was meant to “be particular and certain as to acts, persons, times, and places.”\textsuperscript{104} In effect, Andrew was not granted a divorce because, by all accounts, he was not forceful enough both with his wife and with his pleas to the court. This ruling, and particularly its admonishment of Andrew’s behavior, displays an adherence to a patriarchal and powerful model of manhood and the notion that masculinity meant a certain amount of control over female behavior. If a husband was unable to control his wife, even by force if necessary, then his complaints about her behavior were easily dismissed.

\textsuperscript{103} Ibid, p. 72-73.
\textsuperscript{104} Ibid, p. 77.
The three cases in the 1830s which claimed miscegenation in their claims for divorce prompted the legislature to enforce the anti-miscegenation laws on the books in the state. In 1841, the case *State v. Fore* was tried which reiterated the state’s stance on interracial marriages and miscegenation. In this case, Joel Fore was a free black man who had married a white woman named Susan Chesnut. The assembly had passed an act against interracial marriage in 1838-9 which required them to declare the marriage of Fore and Chesnut void under the law. The defendants were found to have received their license for marriage before the law against interracial marriage was passed. The county court declared their marriage illegal and the couple appealed it to the Supreme Court.

The state court passed down the decision that because the couple had produced offspring that they were in violation of the rule of cohabitation and fornication outside of marriage. This indiscretion was deemed inappropriate in the eyes of the law, and it had the effect of nullifying any claim that they had to marriage rights under the law. The courts noted that “no latitude of intention can be allowed to include anything more than is expressed.”105 The increase in cases of miscegenation and interracial marriages in the courts was legally problematic, because before 1838, the courts did not have legal redress to deem these unions illegal. They could not void interracial marriages based on the provisions set up in the divorce law of 1814, because no provisions for that dismissal of a marriage existed. The control over sexual intercourse and interracial marriage, therefore, had to come from a law that specifically denied those couples any legal means to cohabitate, marry, or produce children.

The case of *Moss v. Moss* in 1841 included allegations of adultery brought about by a husband’s insistence that a child bore by his wife was not his own. The husband had

caused a separation between himself and his wife when he charged her with being a prostitute. The wife, Nicey, left the home she shared with her husband after he made these claims against her. The husband then filed for divorce from his wife for her supposed transgressions during the time that she was gone from his house. The court ruled that a husband who caused a separation between him and his wife could not then divorce that wife for adultery during the separation.

Instead of taking the proper avenues to ensure a divorce, the husband’s impetuousness had caused him to act irrationally, and she was charged “by the husband with prostitution, and imposing on him a spurious issue, and is told by him that he will never receive her as a wife.”\(^{106}\) The state court sided somewhat with the wife, noting that after he charged her with these claims, “what else is she to understand, but that they cannot have the same home, and that she must leave her husband’s house and seek a home elsewhere?”\(^{107}\) The state’s dissatisfaction with the behavior that the husband exhibited toward his wife is clear in the last part of the report. However, the court seemed not upset with the harshness of his words toward his wife, but rather disapproved of his methods in trying to divorce her. If the husband had “informed us of the circumstances, which established beyond a doubt in his mind, that he was not the father of the child, and had shown their existence by proof, there might be some plausible ground to palliate, to some extent, the act of expelling his wife from his dwelling.”\(^{108}\) It seems that courts were more likely to be considerate of claims for divorce if the petitioner followed the due process of the law outlined by the divorce act of 1814.

\(^{106}\) Ibid, p. 48.
\(^{107}\) Ibid.
\(^{108}\) Ibid.
In 1842, a case was brought to the courts that concerned a bigamy charge. The case of the *State v. Patterson* was one where Thomas Patterson was indicted for bigamy. Thomas had taken a second wife after a separation from his first wife, who was still living. This case is notable because the courts decreed that consummation, or sexual intercourse, of a marriage was not necessary to its validity. Thomas’ assertion that his second marriage was legitimate because of consummation was invalid. Also, the case included the testimony of his second wife, which the court deemed admissible. The details of their marriage were confirmed with her testimony, but the court still ruled that the marriage was void because Thomas’ previous wife was still living. The court acknowledged that second marriages did not always constitute bigamy charges because of the provisions of the original law. That law stated that bigamy “shall not extend to any person, whose husband or wife shall continually remain beyond sea for the space of seven years together, nor to any person whose husband or wife shall absent him or herself in any other manner for the space of seven years together, such person not knowing his or her husband or wife to be living within the time.”

Since Thomas’ first wife had not been separated from him for more than seven years, and he had knowledge that she was still living, his second marriage was a violation of the bigamy laws. The court reiterated its definition of marriage under the law, saying that marriage was official in the eyes of the state when “parties, able to contract and willing to contract, actually have contracted to be man and wife in the forms and with the solemnities required by law. It is marriage – it is this contract, which gives to each right or power over the body of the other, and renders a consequent cohabitation lawful.”

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110 Ibid.
Thus, sex between marriage partners did not constitute a lawful marriage. Instead the transfer of power rendered a marriage contract legal. In all the petitions examined in this study, this case makes the power politics of the marriage contract the most transparent. The petition also shows how women’s bodies were a battleground on which marriage law was fought. The fight for control over women’s sexuality was what defined the court’s decisions over time.

An examination of these court cases reveals a rise in cases involving bodily harm or threats of violence in the middle years of the nineteenth century. Women who were concerned for their own physical well-being began to bring charges against their husband for cruelty and abuse in order to acquire a divorce. In 1847, Nancy Harrison filed these charges against her husband, Nathaniel in hopes of gaining a divorce and alimony. In *Harrison v. Harrison*, Nancy requested a divorce from bed and board with alimony from her husband. Nancy and Nathaniel were married in 1839, and Nancy tried to the best of her abilities to perform her wifely duties and care for her husband. Her testimony states that over time her “husband’s conduct to her became daily more and more intolerable, by threats of violence to her person and charging incontinency, so as to render her life miserable.”

Nancy’s testimony also claimed that during the night, her husband “would awake and find her distressed by reflecting on her forlorn condition” and then he would charge “her with having illicit intercourse with on Henry Grady before her marriage and attributed her wakefulness to the lashing of a guilty conscience for her past whoredoms.” By her account, Nancy was in constant fear for her life and her

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112 Ibid.
husband’s accusations were unfounded. Unfortunately for Nancy, the Supreme Court upheld the lower courts’ decision to deny separation and alimony. Justice Ruffin rationalized all of Nancy’s fears into mere conjecture. He stated that “there is no evidence to the fact of any altercation between the parties, or improper language used by the one to the other.” The court then declared that “it does not appear, that the defendant ever admitted, that, either in her presence or elsewhere he applied to the wife the very gross epithet of ‘whore.’”

The courts’ defense of Nathaniel Harrison and its denial of a separation were based solely on a lack of evidence in the case. Nancy’s fears for her life and her extreme unhappiness were of no concern to the court without admissible evidence from a third party that could validate Nancy’s claims of abuse and threats. The state did not press Nathaniel for proof of innocence in the case, they simply denied any claims that Nancy had made based on lack of evidence. The state continued to play a calculated game of intervention with each individual court case and petition for divorce. The threat to Nancy’s body posed by her husband was not really of consequence to the court. The only way they would be able to justify intervention into the Harrisons’ marriage would be if Nancy could prove beyond doubt that her husband had defiled her good name or communicated real threats to her life. This he said, she said type of justice favored the husband in this case.

In 1852, another case was brought to the attention of the Supreme Court which dealt with spousal abuse and threats. In the case of the State v. Hussey, the legislator’s impotence and apathy with regard to the physical safety of women was fully illuminated.

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113 Ibid, p. 376.
114 Ibid.
Beulah Hussey, the wife of William Hussey had testified that her husband had physically
abused her “by kicking her on the leg and striking her on the head and side with his fist,
whereby she suffered considerable pain, but no lasting or permanent injury.”\textsuperscript{115}
William’s counsel argued that a husband had a right to physically correct his wife, and
that the wife was not considered a reliable witness as to whether her husband’s physical
correction was not provoked on her part.

The jury in the original case had found William guilty of several acts of violence
without cause against his wife. William then appealed the case to the Supreme Court of
North Carolina. The state court cited numerous precedents regarding spousal correction
as evidence for this case. One of the precedents cited was that of Sir William Blackstone,
whose interpretation of the law cited that “the husband has the right to ‘restrain the wife
by domestic chastisement, in the same moderation that a man is allowed to correct his
apprentice or children.’”\textsuperscript{116} The Supreme Court of North Carolina deemed this definition
of correction acceptable as long as it could not be proved that he intended to cause lasting
injury to his wife. Similarly, the court upheld the decision to disallow a wife’s testimony
against these corrections unless her husband had intended to cause her lasting harm. This
case demonstrates that the courts deferred to the husband’s rights under coverture to
correct his wife’s behavior.

Perhaps this law is so disturbing because it does not accurately define what acts of
violence would be considered lasting injury. This legal gray area was dangerous for
wives, who could not bring charges against their husbands for excessive violence without
having first been subject to that violence. It is interesting to consider the practical

\textsuperscript{115} Ibid, p. 127.
\textsuperscript{116} Ibid, p. 128.
applications of this case, because they are rather contradictory. If a wife could not be a witness against her husband except in the cases where she suffered lasting injury, then what were the chances that this lasting injury would prevent her from being able to testify in the first place? If the legally acceptable correction of wives was kicking and hitting in the head, then wouldn’t excessive or lasting-damage correction possibly render a wife incapacitated? If so, then she would not be able to testify against her husband in court because of severe bodily harm. These ambiguities within the law affected the everyday lives of women and caused them little option for restitution for harms done by their husbands. Once again, the legal tenet of coverture had excluded a wife’s voice from being heard in the public arena and this silence was directly related to the state’s control over her body. Though it was unlikely that married women would find protection from abusive husbands, they continued to petition their government to show that the lack of control over their own well-being was not acceptable.
CHAPTER FIVE

Laws and Petitions for Property

In North Carolina, women petitioned their government for property rights rather regularly during the years involved in this study. Oftentimes, the same women who petitioned for property rights would also petition for divorce. These cases are more prominent in the years following the 1814 divorce law and do not account for all cases regarding property rights. In some cases, wives merely sought a separation of physical assets between themselves and their husbands and not a separation from bed and board or from the bonds of matrimony. Between 1816 and 1824, there were thirteen petitions for separate property by married women filed to the state. None of these petitions requested divorce. Between 1824 and 1838, there were thirty-five petitions for divorce filed by married men and women. By examining those petitions which asked for one or both of these types of separation, one might learn if and how women prioritized certain aspects of their relationships and how those relationships were affected by perceived rights to property.

It is not unusual for a study of American marriage practices and divorce proceedings to often include a discussion of real property and women’s rights. Many notable historians of coverture law have often found themselves entangled in a discussion of property rights as a result of their research into women’s lives in the eighteenth and nineteenth centuries. The subject of property and married women’s rights should be treated in the same study because often marriage laws contained significant references to property control. The married women of North Carolina are no exception to this

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118 The most complete discussion of this topic has been covered in Marylynn Salmon’s Women and the Law of Property in Early America.
discussion of property rights, as many of their petitions will show. The transfer and maintenance of property for those North Carolina women were paramount in their petitions to the state legislature. Coverture law and its manifestations in the North Carolina legal record had a significant impact on the requests for the control of property by women in the state.

As noted in Chapter Three, property laws made it into the books in North Carolina soon after the conclusion of the Revolution. The law of 1785, which outlined the proper channels for obtaining a legal marriage, included a discussion of property. Under this act, a marriage settlement or contract was not deemed acceptable “where a greater value is secured to the intended wife and the children of the marriage, or either of them, than the portion actually received with the wife in marriage.” A woman’s property holdings in marriage, therefore, could not exceed the amount that she possessed in her dower or else the marriage contract was deemed void by the state. This act insured that no woman who wished to be legally married, and therefore outside of due punishment by the state, could gain control of the property of her husband upon their marriage. The legitimate marriage contract would contain restrictions to women’s rights to property while giving the state the means to control that property if any woman transgressed against those very restrictions.

The historical record of North Carolina shows that women were very often concerned with such a restriction of their property rights and often their petitions to the government highlight this concern. One of the first petitions which referenced property rights was that of Teresa Butler, who petitioned for divorce in 1791 in the town of Wilmington. Teresa was married to husband Henry in 1786, and after five months of

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119 Potter, Laws, Chapter 238.
marriage Henry left their household and never returned. Henry did not write his wife after his departure, and she claimed that he “has again been married in the West-Indies.”120 Adding insult to abandonment, Henry had left Teresa with a daughter and no means for her to care for their child. Teresa claimed that she did not know if he had any “visible property from which she may claim a support for herself and daughter.”121 The conclusion of the petition had Teresa asking for a *divorce a vinculo matrimonii*, or absolute divorce, from her husband which the court did not grant.

Teresa’s petition for divorce is an interesting case for historians because of the many tenets of basic divorce law in North Carolina referenced in her petition. Foremost, the issue of abandonment would be vital to women’s petitions for property control. Without their husbands present, women could not transfer or control the sale of property under the North Carolina law. Even then, women were not allowed to remarry for seven years after the initial abandonment according to the act of 1790. In absence of another husband and his rights to control property for the span of seven years, women were subject to a degree of poverty. Their livelihoods under coverture law were entirely dependent upon the transactions of their husbands.

Teresa turned to her father for assistance during her trying time. Her petition for divorce included a written document of support from her father that supported the dissolution of her marriage. In her husband’s absence, Teresa was left with the “Paternal care of her father.”122 This parental care and support for divorce from her father demonstrates a married woman’s helplessness in the absence of her husband. Rights to property, child support, remarriage and livelihood were outside the realm of a woman’s

121 Ibid, 217.
122 Ibid.
control in the case of spousal abandonment. The control of property was dependent upon an absolute divorce, and the state was not willing to grant divorces easily, as evidenced by the verdict in Teresa’s case. The court did not grant Teresa a divorce from her husband. Control of property was tantamount to securing a living wage for women who were not likely to be granted a divorce by the North Carolina legislature.

A petition for separate estates became the preferred method for North Carolina women to control property under the strict system of coverture. Women who petitioned for divorce in order to control property found these requests fell on the deaf ears of legislators who wished to uphold the marriage contract at nearly all costs. The legislature’s preference for upholding those contracts was never more apparent than in the written decision of Teresa Butler. The denial of her petition included the observation that “should the Legislature enter into the business of granting divorces, it would be productive of evil and dangerous consequences.”123 Women who were unable to fight this entrenched system of preference for the marriage contract instead sought a remedy for their troubles by petitioning for separate estates.

Separate estate petitions would allow a woman who remained married to be granted *feme sole* status in order to control property and maintain her livelihood. The tradition of granting *feme sole* status to a wife stemmed from English law. In his *Commentaries*, Blackstone wrote that a wife “shall sue and be sued as a *feme sole*, viz. where the husband has abjured the realm, or is banished, for then he is dead in law; and, the husband being thus disabled to sue for or defend the wife, it would be most unreasonable if she had no remedy, or could make no defence at all.”124 In cases of

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123 Ibid, 216.
abandonment or banishment, the English common law made sure that a woman would be able to gain control over her rights to be sued. In North Carolina, married women who found it unlikely that their requests for divorce would be granted used this English law precedence to gain control over property.

The first petitions for separate estates in North Carolina were filed in 1798, and unfortunately these petitions did not survive in their entirety in the historical record. The only indication that they existed comes from the committee reports on the petitions of Ruth Bell, Elizabeth Carter, and Elinor Perry. These women were abandoned by their husbands, and their petitions set the legal precedence in North Carolina for petitions for separate estates. In the years between 1798 and 1800, twenty-four petitions for separate estates were filed. In 1800, North Carolina passed a statute that granted these women’s requests for separate estates. By granting separate estates, the state avoided granting an absolute divorce.

The North Carolina legislature was extremely reluctant to grant absolute divorces, but they were much less reticent to grant women separate estates. Their reticence to deny the sanctity of the marriage bond would have placed them in a vulnerable position as lawmakers. To insure that married women would not have full control over their bodies or their physical property, they adhered to coverture law and upheld the institution of marriage. After the law of 1800 was passed, women had a legal avenue to control their own property and many of them took advantage of the opportunity. Often women who petitioned for separate property appealed to the courts’ sense of proper society in an effort to gain the trust of the court so they might receive a favorable judgment. Their

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pleas showed a similar vein of accusation when asking solely for separate estates. These common accusations highlight a shared experience among married women in North Carolina who wished to control their own property.

In 1816, Sarah Chiles petitioned the General Assembly in order to own separate property. She had married General Thomas Chiles in Anson County thirty years prior to the petition and at the time of their marriage he was “in affluent circumstances.” The marriage gave Thomas control over Sarah’s property under the laws of coverture. Sarah’s property holdings at the time of marriage were deemed a considerable personal estate, and Thomas’ marriage to her guaranteed him an increase in wealth and power. Apparently, he did not act responsibly with his newfound power and wealth and over the years he fell into a state of “intemperance.” Sarah accused her husband of abandonment as well, as he had “removed himself and resided with a neighbor.”

Thomas was a Revolutionary War veteran who received a pension from the United States. Sarah’s main qualm with her husband, who seemed to have many sources of income and property holdings, was that he did not support her in her old age. Sarah described herself as “old and infirm” and without the financial support from her husband, she would not be able to support herself from her own industry. The issue of self-industry in these petitions for property control was an oft-quoted factor in the petitioner’s filing for separate estates. Had Sarah been well and able enough to secure her own wages, she felt she would be able to subsist on her own earnings. Her appeal to the values of hard work and industry suggests that the courts’ allegiances favored those who supported themselves through their own work.

127 Selected General Assembly Petitions 1816-1838, microfilm reel Z.1.67.4, frames 8-11. North Carolina State Archives
128 Ibid.
Sarah’s remedy for the situation would be to have the General Assembly pass a law that secured her right to her own property. The Assembly ultimately denied Sarah’s request to control her property and refused to pass such a law. Though she was not able to gain control of her property, her petition was important for understanding how married women who sought relief from the strictures of coverture appealed to the moral and social sensibilities of the courts. These appeals simultaneously upheld the symbol of the virtuous woman while it perpetuated the stereotype of the irresponsible man. Perhaps Sarah felt that her husband’s character should be the reason she might gain back some of the control over her property. She certainly did try to convince the court that his behavior did not warrant the amount of power bestowed on him by inheritance, dowry, and military pension.

In 1816, the General Assembly reviewed six cases in which the petitioner requested rights to property. Of those six cases, only one requested both a separation of property and a divorce from matrimony. The next petitioner who sought to acquire a separate estate was Nancy Jean of Guilford County. Nancy petitioned the government to acquire property separate from her husband Samuel. Nancy’s prime complaint against her husband was that he had been “gambling and drinking to very great excess, by which conduct he has brought your petitioner and her little children to a state of indigence and disgrace.”129 The North Carolina marriage law of 1814 did not account for husbands who were negligent with their money or their wife’s property. Only in cases of abandonment beyond seven years’ time were wives able to get a divorce from the bonds of matrimony and therefore control their own property. In Nancy Jean’s case, she did not argue for divorce from her husband, just the ability to acquire property separate from him in order

that she may be able to provide for herself and her children in the event that his habits bankrupt her family.

Nancy Jean’s appeal to the court is notable for its reference to a type of sanctity of the American family. Not only had her husband Samuel’s drinking and gambling affected their financial status, it had also brought “indigence and disgrace” to her and her small children. There was no legal precedence for Nancy to declare divorce or separate property for drinking and gambling, but she made sure that the General Assembly understood how his actions might affect her social status and the status of her children as well. If her husband so clearly did not respect their family by gambling and drinking, then what did that say about her ability to shelter her children from harm? Nancy’s appeals to protect her and her children from disgrace were a part of the rising trend in petitioners who appealed to the court’s sense of familial sanctity and protection. If Nancy could not depend on her husband to provide for their family and keep them in good social graces, then, by her reasoning, she ought to be able to acquire property herself in order to protect herself and her children from outside harm.

The case in 1816 which requested both a divorce and a plea to own property involved a woman named Harriet Laspeyre, who resided in New Hanover County. Harriet levied a host of charges against her husband Bernard. These charges included wife abuse, miscegenation and adultery. The language used in this petition is alone worth studying for its grave implications about Bernard’s indiscretions. Harriet describes his “diabolical schemes” and claims that he is in “violation of every law, human or divine.”\(^{130}\) Harriet’s language while asking for the divorce was damning, while her language when asking for the rights to control property was much milder. She asked the

\(^{130}\) Ibid, frames 30-33.
court to please give her control over the little property they owned and the property she would acquire in the future “by her own industry.”\textsuperscript{131} The difference in the language between the requests for divorce and the requests to control property is vast. Harriet’s accusations against her husband for adultery and miscegenation were more vibrant and angry, and those two indiscretions were covered under the divorce law of 1814. However, her request for property had no legal precedent, so she treaded lightly with her request to control her own land. In the end, the court did not grant Harriet a divorce, but did allow her to control property outside of coverture as a means to protect herself from any other indiscretion from her husband.

The next petition to the Assembly which requested a right to control property came from Nancy Balance of Currituck County. Nancy petitioned the General Assembly for a law to secure her inherited property. Nancy had married her husband Charles in 1802 and “in seven months after their marriage he unfortunately became deranged and remained so nine months.”\textsuperscript{132} Nancy’s petition is the first example of a married woman in North Carolina petitioning for property under the pretense that her husband is insane. Insanity defenses in cases of divorce and separate property were not generally heard by the General Assembly, so this case is somewhat rare.

It appears that Nancy and Charles’ marriage was tortuous for many years. She describes to the Assembly periods of relative normality between herself and Charles, followed by a period of derangement on the part of Charles. In one instance, Nancy claims that Charles “set fire to his house and repeatedly endeavored to kill your

\textsuperscript{131} Ibid.
\textsuperscript{132} Ibid, frames 53-57.
petitioner.” After the many attempts on her life, Nancy sought refuge at her father’s house where she lived for four years, until her father died and left her with some property. During this period apart, Nancy testified that Charles remained insane and that she worried he would set fire to the new property if he gained control of it. Her petition was therefore a plea to control her father’s lands in order to ensure that they would not be unrightfully destroyed by her deranged husband.

Nancy’s petition was one of the few which claimed insanity as a legal defense against a spouse and a legal precedent for controlling land. Her petition showed the importance of controlling property for a woman’s well-being and safety. The assured destruction of her father’s property by her husband was cause enough for her to ask for a law to grant her control of the land. However, her husband’s apparent repeated attempts on her life did not spur her to request divorce. Nancy’s priorities for protection in this case place her land above her own body and health. This indicates a strong assessment of the limitations of the General Assembly’s laws regarding divorce as well as a strong understanding of the importance of property to the self-worth and well-being of an individual.

The next petition which appeared on the docket for the General Assembly was similar to Nancy Ballance’s, in its insanity claim as a condition for obtaining rights to property. This petition filed by Mary Murden of Camden County claimed that her husband had been “deranged for nearly thirteen years.” Mary was forthright in describing her circumstances, stating that she and her husband Robert had been separated for almost five years. During that separation Mary assumed sole responsibility for their

133 Ibid.
134 Ibid, frames 60-61.
three small children, whom she meant to “support by her own industry.” Mary’s primary grievance against her husband was not that he was insane, but that he had squandered all his estate away and Mary was frightened that he would do the same to the small amount of property she acquired through her own hard work.

Real property for women, who were either abandoned or separated from their husbands, was constantly under threat if the husband decided they wanted to control the property. Therefore, women who filed these petitions were asking for protection over the property their own industry had helped them acquire. A wanton husband who was deranged and/or a spendthrift posed a real threat to a woman’s livelihood under the law of coverture. With no direct guarantee her work and acquisitions would be kept safe, women were compelled to petition the General Assembly for personal control over land.

At this juncture, the rise in petitions for separate estates and property seemed to parallel the rise in women’s organizations in the state of North Carolina. In 1817, the General Assembly read a petition from a women’s organization in Wilmington which requested that the Female Benevolent Society of that town be incorporated. The Female Benevolent Society was concerned with the care of “poor children” and orphans, and a foundation of “moral and religious as well as common education.” The directors who signed this petition were Eliza Lord and Mary Orme, and their request for incorporation included a plea that they might be able to adopt children and allot property and funds in a “corporate capacity.”

This petition and the society that backed it were indicative of a push for a virtuous society. In this type of society, the care of children who had been orphaned and the need

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135 Ibid.
137 Ibid.
for education were at the forefront of their concerns. This petition is the first indication that North Carolina’s women sought to support the outcasts of society and gain some powers over their care that may have been previously individually denied to these women. The petitions to incorporate a kind of virtue and care system publicly acknowledged a societal need to undertake the education of the disenfranchised and abandoned. The importance of the establishment of these societies, and their nature as women’s organizations, shows that women were concerned with the outcasts of the legal and marital systems, which were primarily children. This society’s aims to uphold a kind of moral standard for women were echoed in the petitions for separate estates in the years prior to and after this society sought incorporation. The links between female control of property and the feminine ideal of a virtuous society were becoming more and more apparent.

Ann Mason became the next petitioner to ask the General Assembly for the right to secure property when her husband William abandoned her and her children, taking all of their money with him. For the debts her husband had acquired the creditors “seized upon his property which fell very far short of paying his debts.”138 Ann’s concern that her future property might be seized to make up for those debts caused her to plead to the legislature for the right to secure her own property. Mary Barker from Lumberton petitioned the government for a divorce and the right to own property around the same time as Ann Mason. Mary accused her husband of desertion and non-support, as well as adultery. Ann Mason and Mary Barker appealed to the government to gain control over property, but for entirely different reasons. Their only commonality was that they somehow instinctively hoped that a right to the protection of their own property or the

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138 Ibid, frames 105-107.
property they might acquire in the future would help remedy both their pecuniary and mental anguish.

Late in 1817 the courts received the first petition to repeal a past action of property allotment. Bernard Laspeyre petitioned the General Assembly to repeal the decision made the previous year regarding his wife Harriet while calling her petition a “virulent and infamous libel.” Harriet had accused Bernard of adultery, miscegenation, and wife abuse in an attempt to gain a divorce and control property. Bernard was appalled that his wife would have the gall to smear his name before the superior court. His only explanation as to why she might have pressed on with her petition was that “previous to the signing of it, some soporiferous potion had been given to her by the female with whom she now stays and who is constantly intoxicated herself.” Bernard accused his wife of initiating the abandonment from their marriage because of her constant absences, and then he accused her of altogether disrespecting his role as the head of the family.

Bernard’s main argument against the validity of his wife’s claims against him was that her actions were too brazen. In this petition one finds the most insight into how the legal status of *femme covert* came to define how a woman’s behavior and her actions were controlled by a legal doctrine without that doctrine explicitly defining the physical restrictions on her activity. Bernard claimed that his wife Harriet, by leveling charges against him in her original petition, acted as if “she has the same rights and privileges as if she was not feme cover [sic], and had never been married.” Bernard felt that his wife’s actions warranted chastisement because she claimed the right to protection from

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139 Ibid, frames 115-118.
140 Ibid.
141 Ibid.
her husband from the General Assembly. Her act of petitioning the Assembly went against what Bernard believed to be the proper avenues for justice of a married woman. As a married woman, Harriet’s accusations against her husband should not be publicly accepted by the courts as her rights for petitioning were not covered under the law. Bernard was both a scorned and publicly humiliated husband who could not fathom how coverture law did not prevent his wife from charging him with his indiscretions in a public court.

The petition of Mary Hassell of Bertie County in 1817 shed new light on how different properties should be managed by a husband and wife. Mary requested a divorce from her husband Benjamin as well as a right to own property. Her primary grievance was that Benjamin had turned to “gradual intemperance” which led him to acquire “to himself as a wife and companion, a negro woman, the slave and lawful property of your petitioner.”

This petition was the first the General Assembly had received that took up miscegenation within the plantation household in full view and knowledge of the wife. At the time of her wedding, Mary’s father had given over a considerable estate to her new marriage and since the instance of the miscegenation she felt that this property should be transferred over into her control.

Mary’s insistence on controlling her father’s property and her dowry was directly related to the deep injustice she felt over the sexual relationship between her husband and their slave. She felt that the appropriate action the Assembly could take for this extra-marital affair was to levy control over her father’s assets. In this way, Mary’s petition demonstrated the relationship between sex and property. Extra-marital sexual relations, particularly those which involved cases of miscegenation, were grounds for control of

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142 Ibid, frames 130-134.
property in her view. Her husband’s admonishment for his lack of sexual control gave her the will and power to plead to the courts for control of property.

In 1818, Elizabeth Stubbs of Fayetteville, North Carolina petitioned the Assembly for the right to own property due to many counts of criminal acts on the part of her husband. Elizabeth married her husband John in 1814 after he had relocated to North Carolina from England. In the course of the first couple of years of her marriage, Elizabeth found out that John had “formed a connection with Benjamin Gray, the notorious ‘Pick Pocket’ and Band Braker [sic] who was lately hung in Fayetteville, and the said Stubbs acknowledged himself an accomplice, turned states’ evidence and thereby obtained his acquittal!” Elizabeth was shocked to learn that her husband would have been involved in such criminal actions and she was further astonished to find out that he had another wife in England. Elizabeth stumbled upon a letter from a Mary Stubbs in 1817 that was sent to her husband from Manchester, England that confirmed he “had in that place a wife and live children previous to his leaving that country.” Elizabeth included in her petition the letter from Mary Stubbs from England which clearly identified John as her husband.

Ultimately, the shock and surprise Elizabeth felt upon finding out about her husband’s transgressions did not prompt her to file for a full divorce from her husband. Her main concern was that she be allotted control over the property of her parents’ estate, as she was an only child. She hoped that “they could extend their aid, with safety from seizure and waste of the said John B. Stubbs or of his conveying the same away to his

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143 Ibid, frames 157-163.
144 Ibid.
other family in England.” Single children households which were blessed with a girl had no means of protecting the property those children’s husbands were granted legal access to under coverture law. Elizabeth’s concern with the future of her parents’ estate came from a very real threat to the extension of a lineage of property in her family. The actions of her husband led her to file a petition to control property in order to preserve her family’s legacy.

The years 1819 and 1820 found one petition each for control of property from women. In 1820, Phoebe McKaughan of Rowan County petitioned for a law that would preemptively protect her inheritance. Phoebe’s husband was not doing well financially, and she was concerned about the “considerable sum yet due to his creditors.” Phoebe’s concern that her husband’s debts might consume her inheritance led her to plead for the control of the estate on behalf of her and her children. Her real fears of a lack of power over her inheritance led her to believe that her husband’s bad financial savvy would result in her lands being “liable to be taken by execution and sold to satisfy her said husbands debts.” Phoebe’s concerns about the possible future squandering of her inheritance prompted her to preemptively address her husband’s financial shortcomings in court. Her petition asked that she be able to control her own property, as well as other women who found their inheritance in danger. The concerns in her petition about her husband’s irresponsibility with property and money were a common thread in many of the petitions.

The General Assembly heard six more petitions for the protection of inheritance between the years 1821 and 1833. These women were primarily concerned that their

145 Ibid.
146 Ibid, frames 198-201.
147 Ibid.
husbands not retain the rights to control their family’s legacies, and often their pleas included accusations of extreme fiscal irresponsibility on the part of the husband. Since inheritance law had not been addressed by the North Carolina legislature, these women found themselves dealing with the intricacies of navigating their cases on a singular basis. As the years progressed toward the 1830s, the number of petitions for inheritance asking for a specific law rose exponentially. Women who sought protection from the harm of their family’s inheritance by their husbands also sought a law that would make other women in their position less likely to have to defend their right to protect their inheritance from mismanagement.

In the 1833-1834 session of the General Assembly, a shift occurred in the specificity of the type of control over property that women sought. One example of this specific wish for control came from Sally Ann Kieth of Washington County, who desired to be able to sell land without her husband’s signature. Sally Ann’s husband William had become “insolvent, and all the property which he and your petitioner had, was sold to pay his debts; amongst which was William Kieth’s life estate.”148 Her main grievance against her husband was that he sold properties at such an alarming rate that she was unable to track how much of their estate had been depleted. Sally Ann wished to join her husband in the making of property transactions so that she might be more privy to understanding how their worth was accumulating or disappearing. Sally Ann’s petition tapped into a legal vein that the General Assembly had not truly addressed prior to the early to mid-1830s. A wife’s holdings of property under coverture were automatically transferred to her husband’s control. The petitions for separate property up until this point had mainly focused on wives who sought protection from the government for their property. These

148 Ibid, frames 557-554.
wives asked for shared property rights or sole property rights as more of a precautionary measure to stop their husbands from squandering their lands. The women behind these petitions were not asking for the right to buy and sell land necessarily, but for the right to hold that property in safe-keeping. Sally Ann’s petition took that need for control over property to the next level, as she wished to control actual transactions of her own accord. This shift in desire from safe-guarding property to actively selling and purchasing it was a watershed moment in the North Carolina women’s property rights movement.

The culmination of the type of specific control over property that Sally Ann Kieth’s petition outlined came in a law passed nearly twenty years later which finally gave North Carolina women an avenue for the control over the sale and conveyance of real property. The increase in petitions for property during the 1830s and 1840s had made the government rethink their policy on property holding. The 1854 section of the North Carolina Sessions Laws provided married women under coverture with the opportunity to sell and convey lands. In Chapter 37 of the Deeds and Conveyances Law, the General Assembly, who had been responsible for hearing most of the petitions for property in the previous years, passed the first North Carolina law allowing married women to convey property.

This law, however, was not without its restrictions. Before the legislature would grant a married woman the right to convey property while in marriage, she had to undergo a review process by the local government. This addendum to the law was often referred to as a remedy to the status of "femme covert" in marriage. The legislature, even in giving married women the right to convey property, still held to the standard of common
law and coverture. Their discussion of conveyance and deeds continually referred to the status of the wife as a *femme covert*. Section 11 of the law stated

All conveyances, which may be made by any person, under a power of attorney from any *feme covert* by her freely executed jointly with her husband, shall be valid to all intents and purposes, to pass the estate, right and title which such *feme covert* may have in such lands, tenements, and hereditaments within this State, as are mentioned or included in such power of attorney.¹⁴⁹

The law provided that a woman could convey property, but only jointly with her husband.

It further restricted those women to a kind of judgment before these powers of conveyance were granted. Section 8 of the law stated that

All conveyances in writing and sealed by husband and wife for any lands, and duly proved, or by them personally acknowledged before one of the judges of the supreme or superior courts, or in the court of the county where the land lieth, the wife being first privily examined before said judge, or some member of the county court, appointed by the court for that purpose, whether she doth voluntarily assent thereto, and duly registered, shall be valid in law to convey all the estate, right and title which such wife may have in the said lands, tenements, and hereditaments.¹⁵⁰

A married woman, therefore, could only convey land under two conditions which somewhat ameliorated her condition under coverture. The courts did not freely give away the powers of attorney or deeds and conveyances to these women without somehow protecting their status under coverture. The wife would have to file these conveyances jointly with her husband, and would be able to do so only if she had submitted herself to a process of review before the courts. This review process was never applied to men, though the women who had petitioned for separate estates or protection of property might have wished that a similar system could be applied to their husbands. It seemed that the state continued to protect the status of women under coverture, even in giving them the rights of property those women sought for almost fifty years. This system of addendums

and hoop-jumping showed just how committed the state of North Carolina was to common law control over married women’s rights and physical property.
CONCLUSION

The experience of married women in North Carolina and in the other parts of the country were by no means uniform. The histories of each state or colony will prove this to comparatively be true and this study does not presuppose to prove these histories incorrect. However, within a single state, like North Carolina, whose own sets of laws were uniformly applied to its constituents over a period of time, one can gain certain insights into how constituents might have felt about their condition under the law. The study of these people is bolstered by an understanding of the basic human right of objection and dissonance. Since the primary documents in this study are petitions to the government, the sentiments expressed by the female petitioners capture the true feelings of married women who sought agency.

In order to bring a petition for divorce or property to the General Assembly in North Carolina, a married woman was required to air her private grievances with her husband in full view of the public. Not only were the courts comprised mainly of high-profile men of the community, they also carefully preserved their legislative records. After the 1790s in North Carolina, the number of extant petitions referenced either by the courts themselves or their dockets declined to almost zero. Before and during the American Revolution, this attention to detail and preservation of petitions heard by the government was not as resolute as in the years following the war. At first, it seemed that North Carolina’s Revolutionary War experiences might hinder dissonance and dissatisfaction in an effort to maintain or bolster a concerted war effort. Instead, this study finds that the years surrounding the Revolutionary War became the genesis of the era of the petition in North Carolina.
This era in North Carolina’s history, again, cannot be reduced down to a single thread of understanding. The courts saw many cases and heard many petitions ranging from stealing animals to adultery. When one focuses on a single common factor within these petitions however, a picture emerges of a shared common experience. This study has striven to focus on married women in North Carolina in an effort identify and explain their common experiences. The predominant sources from that revealed the positions of these women came from petitions to the government, and in using these petitions as the baseline for this study, it sets the parameters of its scope to women who were dissatisfied or unhappy with their status in marriage.

Often this dissatisfaction manifested itself in complaints of a husband’s futility. What these women may not have realized, however, was that in describing their husband’s weaknesses they shared a common experience. This is not to say that these women’s husbands were identical in their perceived transgressions or their behavior. Instead, this study suggests that the married women who testified about their husband’s transgressions were prescribing to an established social and political order that they themselves had no part in creating. The state, its legislature, and its laws defined the parameters of what would and would not be heard in its courts. Their particular and extended adherence to the law of coverture meant that married women who sent petitions to them had to work within a certain ideological framework if they thought their requests might be granted.

This assertion certainly presupposes that the state’s intervention in the practice of marriage was widespread in North Carolina. This idea is supported by the evolution of marriage law in the state, as well as with Michael Grossberg’s assertion that “legal
changes occurred in large part because post-revolutionary America witnessed the final demise of an earlier colonial conviction that society was best protected by compelling brides and grooms to submit to community and family matrimonial supervision." The marriage petitions under review in this study did not exist outside of the social and political control of the government and their claims often played into this control in order to gain a favorable outcome. Married women petitioned on behalf of their children, described the lack of support of their husbands, and appealed to the courts sensibilities about responsible living. These women understood that the courts perpetuated an agenda in their lawmaking and that if they wished their petitions to be taken seriously and favorably heard, they would have to adhere somewhat to this agenda in the description of their grievances.

It seems surprising that the first half of the historiography of coverture and marriage often ignored the agency and understanding that these married women employed by petitioning their government. So much focus was placed on the control and power of the state, that many historians missed just how intuitive and intelligent married women had to be in order to have their petitions heard by the legislature. The missing factor in these studies not only supposes that women were entirely subject to their government, but that this subjection was entirely political or social. Ultimately, a woman was operating under the common law of coverture that first and foremost restricted her right to her own physical body. The ideal of marital unity conformed to the notion that a woman’s body was the property of her husband. Though it has been argued that marital unity did not exist because of the presence of petitions to the government by married

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women, this study suggests that the physicality of the practice of coverture was applied resolutely by the North Carolina government.

The married women discussed in this study share a lack of power over their own bodies that manifested itself in the social and political arenas, and was perpetuated by the state’s unwillingness to upend coverture law. Petitions outlined in these pages reveal women’s common grievances and situations, and their brave efforts to achieve control over their lives and bodies.
Bibliography- Primary Sources


Bibliography – Secondary Sources


