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Women's Property and the Downward Spiral into Fraud: Questioning the Persistent Narrative of Progress in Women's Legal Status

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Abstract

This article challenges the narratives that we tell ourselves about women's history in the nineteenth century, particularly narratives that celebrate progress in the legal status of women, based on the acquisition of rights. As it shows, legal changes in the nineteenth century lumped all women into an artificially reductive category "women," separated them from their families' property, and turned those claims into something so problematic that they were linked to fraud. By the end of the nineteenth century, it was difficult to imagine that family property to which women contributed all their lives might actually belong to them. The article focuses on white women of considerable means. But the point is that the problematic legal category "women" not only compromised all women's legal claims to property, but also obscured other, important social and legal differences—including those of race and class—among them.

Keywords: legal history; coverture; women's rights; property

In 1852, the eleven-year-old daughter of University of Virginia (UVA) law professor John B. Minor identified herself on the flyleaf of her diary in big, bold script. The volume belonged to "Mary L. Minor" of the "University of Virginia." It was prescient. The University of Virginia Law School was Mary's life and her life's work. She never married. She remained with her father, in Pavilion X, down from the Rotunda, and devoted her life to the support of his career, tending to the law students he taught. She took her duties seriously, to the point of using the law school's stationery for her correspondence.[1]

Mary never received a dime for her labor. UVA did not have to pay. It acquired access to her through her father, a practice formalized in the requirement that professors provide their own staff – wives, children, enslaved people, and, after emancipation, hired servants – to cover all the work that came with the job. The university paid the professor, who assumed responsibility for the support of his household. John Minor, the professor in question, was fully on board with this arrangement. He spent his career promoting a legal construction of patriarchal authority in accordance with the university's policies, one that concentrated power and resources in a single male household head. By that logic, Mary

Minor's relationship with the university ended with her father's death in 1895. UVA immediately evicted Mary and her stepmother to make way for the new law professor and his domestic entourage. Mary's experience mirrored that of one of her aunts, whose father, also a UVA law professor, was shot and killed in a student riot in the 1840s. As the aunt told the tale, the carriages that bore her father's body to the cemetery stopped on the way back to carry the family away from their home, Pavilion X, where Mary would spend most of her adult life. It had a don't-let-the-door-hit-you-on-the-way-out quality that was hard to miss.[2]

Back to Mary. After she and her stepmother left their home, they discovered that John B. Minor was much better at pontificating about the authority of fathers and husbands than he was at performing the associated duties. He left little, despite his professorship, a private practice, and several well-regarded publications. "I lament more than I can express the small provision which I have … for my dear family," he wrote in his will. But then he waved away his responsibility: "They will remember however the losses I have sustained." It never occurred to Minor that what was left in the estate was family property and not really his to give away – that it belonged as much to his daughters and wife, not to mention the unnamed domestic laborers, enslaved and free, as it did to him. So, Mary had to make do, piecing together a subsistence for herself and her stepmother, until her death some twenty years later.[3]

I am haunted by Mary Minor's story. It is a little odd because my work has never focused on privileged white women, and Mary is not a particularly sympathetic figure within that group. She is the kind of woman with a hat, gloves, and an outsized attitude, one who floats through the world obliviously, as if the benefits of her racial and class position were her due. But it did not turn out that way for Mary, which is why I cannot let her go and why I began this talk with her.

The life of Mary Minor and the women in her family complicate the narratives that we tell ourselves about women's history in the nineteenth century, particularly narratives that celebrate progress in the legal status of women, based on the acquisition of rights. Her own trajectory was hardly an upward arc because of legal changes, promoted by her own father, which lumped all women into an artificially reductive category "women," separated them from their families' property, and turned those claims into something so problematic that they were linked to fraud. By the end of Mary's life, in the late nineteenth century, neither Mary's father nor Mary herself could imagine that family property to which she had contributed all her life might belong to her. In this way, Mary is representative of all the women who found themselves within the legal category "women," a category that not only compromised their legal claims to property but also erased other, dramatic differences among the actual women placed in that category.[4]

The location for much of the action is Virginia because that is where John B. Minor, Mary's father, worked to shape the state's legal order. But there is another reason for Virginia. The focus is there because Virginia is not the state usually associated with scholarly discussions of married women's property or women's rights; in fact, it was the last state to enact such legislation. The traditional narrative, enshrined by Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Jocelyn Gage, in their monumental *A History of Woman Suffrage*, features New York. It all began there, in that state, where a handful of far-thinking women (most notably Stanton, Anthony, and Gage) realized the inequities of existing, outdated laws and demanded change. In 1848, they secured passage of the *first* married women's property act: first because it was the first statute of its kind and first because it was the first time married women could own property in North America, or so

they claimed. That act then led to the Seneca Falls Convention and the Declaration of Sentiments, which launched a nationwide movement. The rest is history.[5]

History. Elizabeth Cady Stanton and Susan B. Anthony's narrative of progress depended on a view of history that collapsed past, present, and future. In the first volume of *A History of Woman Suffrage*, published in 1881, they insisted that their movement's past made recognition of women's rights inevitable, almost as if they were already a reality. In fact, progress on those goals had been minimal when they were writing. Turning those incremental gains into major victories required the right backdrop, which took the form of an incredibly bleak past, dominated by, in Stanton's words, "a compound of barbarous usages." She was referring to coverture, which she described as "the preposterous fiction of law, that in the eye of the law the husband and wife are one person, that person being the husband."[6] That legal fiction, to use the words of another activist, "originated in the dark ages; in times of comparative intellectual ignorance, debasement and human vassalage, under an absolute and despotic feudal government and the auspices of mercenary men who were interested in … injustice." With history like that, it did not take much to improve.[7]

While opponents and supporters of coverture disagreed about its place in the present and future, they agreed on its history. They all saw contemporary statements of coverture as accurate renderings of past legal practice. That historical consensus speaks volumes about the importance of Sir William Blackstone and his treatise, *Commentaries on the Laws of England*, which laid out an incredibly influential version of coverture and wrapped it in the mantle of timelessness, disguising innovation as tradition. Coverture did have deep roots in English law. But it existed as a jumble of principles that could go in several different directions, depending on the context, which included other legal principles – more about those later. Blackstone, writing in the 1760s, fashioned a new synthesis that elevated the restrictions of coverture over other practices that allowed more legal space for married women. Then he closed off the exits, portraying his restrictive version of coverture as the way it had always been.[8]

This new, restrictive version of coverture moved from treatises into legal practice in the new republic, reshaping law while denying anything was happening.[9] John B. Minor was one of many legal professionals who made that happen. Minor, who attended UVA law school before he taught there, read books and sat through lectures that presented Blackstone's version of coverture as an already existing fact. In this, he was no different than other aspiring lawyers of his era. After completing their studies, all these lawyers went out and acted on what they had learned, embedding those principles at all levels of legal practice: in county courts, appellate decisions, and statutes.[10] When John B. Minor became the law professor at UVA, he built Blackstone's vision of coverture into his lectures, which formed the basis for his influential treatises. As he wrote in 1877, "A Married Woman is *one with her husband*, and in law, her existence is merged in his," which placed a married woman "*under the constraint of her Husband.*" That situation, Minor argued, reflected the natural order of things: "It is as true in fact, as it is in law." What more needed to be said? It was as it had always been, was now, and forever intended to be. The present reflected the past and foretold the future (Figure 1).

The commitment to a Blackstonian version of coverture ran deep because it was never just about married women. This version of coverture was particularly well adapted to commercial relations because it clarified the terms of property ownership. It turned over the property of wives and their families, including their children, to those women's husbands and, by extension, made that property available to those men and others to exploit. When buying, selling, and leveraging property, it was simpler when it belonged to

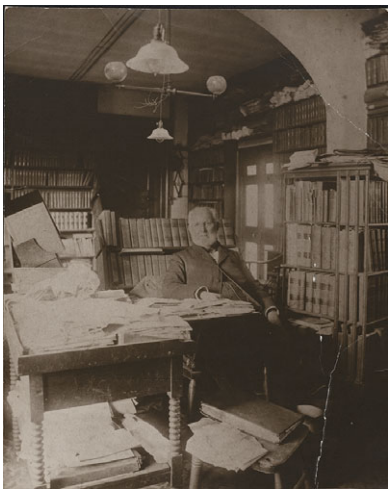

Figure 1. Photo of John B. Minor in his study. Papers of the Venable Minor, Wilson, and Related Families (MSS 3750-d), Albert and Shirley Small Special Collections Library, University of Virginia, Charlottesville, Virginia.

a single individual, namely the rights-bearing man at a family's head, who had few, if any restrictions on what he could do with it. Those individuals could leverage what they owned, as they wished. When they proved unable to meet their obligations, creditors could claim their due, without sorting through all the other pesky claims of family members. In this sense, coverture was compatible with an emerging body of legal rules that reduced all kinds of property to commodities, owned outright by individuals with the necessary rights. As John Minor's students learned in one of his first lectures, property was inseparable from marriage. Together, they "consolidated the fundamental ground work of all society." Nearly every aspect of his discussions of property law involved some reference to coverture because it was so central in defining ownership and its terms.[11]

Without coverture, property transfers became murky because of the power and presence of competing legal principles that operated alongside and in conversation with coverture throughout much of the early nineteenth century. These legal principles defined property in collective terms, kept it within natal families, and elevated familial claims over those of individual family members or their creditors. In this view, property was a resource to which all family members – through the generations – had claims. Ownership was more like stewardship, which placed limits on what owners could do. The present generation had use of the property, with the obligation to pass it on. Even then, ownership was not concentrated in a single individual because of other family members' claims. As such, the person designated in law as the owner did not have the legal power to cut off other family members who contributed to the value of familial property and depended on it for support. By extension, creditors' claims took a back seat to the claims of family members, including those of female family members.[12]

These principles empowered families, not women as individuals, which was why women's rights activists dismissed them as yet another means of denying married women's status as individuals, just like rigid versions of coverture. As activist Paulina Wright Davis put it, "The rights and liberties of one human being can not be made the property of another." Proponents of rigid versions of coverture focused on individuals as well, dismissing familial legal principles because they undercut a man's individual control

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of household property. Historians have tended to follow suit. They have assumed that *individual* conceptions of property ownership were already ascendant by the early nineteenth century. To be sure, individual conceptions of property ownership were definitely in play and definitely powerful.[13]

But familial conceptions of property also remained alive well into the late nineteenth century because they made sense. Extended families, not individuals, remained the primary unit for acquiring, managing, and transmitting wealth – as suggested by UVA's presumption that the position of professor included the labor of wives and children. As UVA's policies also suggest, women played central roles in these familial strategies. Despite the promises of rigid definitions of coverture, men needed help. A lot of it. Take St. George Tucker – a law professor at William and Mary, a treatise writer, a judge, and the father of Henry St. George Tucker who was a law professor at UVA before John B. Minor. Tucker's legal accomplishments did not extend to his finances. In those matters, he leaned heavily on his first and second wives, both of whom had control of property – land, enslaved people, and other resources – from their own families and their first husbands. Both women – Frances Bland Randolph, Tucker's first wife, and Lelia Skipwith Carter, his second wife – controlled property as representatives of *their* families: as daughters and mothers of their first husbands' children. This legal logic shifted the focus away from married women's position as wives and onto their extended families, where they were also mothers, grandmothers, aunts, daughters, sisters, and nieces. In *those* relationships, which were also legal relationships, women had legal claims on familial property. They also had recognized legal responsibilities for creating it, preserving it, and passing it along, just like other family members.[14]

People in Virginia and elsewhere relied on these principles. Consider entail, which may sound archaic, but was widely used in Virginia to bypass coverture and creditors – which were related because coverture's restrictions gave husbands control over the property of their wives' families, which made that property liable to the claims of those husbands' creditors. Entail provided a way out, by passing property through family members, even married women, giving them use for their lives, without rights of ownership. For instance, Virginian John Wayles willed his daughter, Martha, the use of large tracts of land during her life. The property then passed to her children and, through them, to Martha's grandchildren and so forth, through the generations. No single person owned the land outright, but everyone could use it. The arrangement kept the property out of the hands of Martha's husband, Thomas Jefferson, his creditors (of which there were many), and the creditors of John Wayles. Entail protected men from themselves.[15]

Virginia outlawed entail in 1776, thanks to Thomas Jefferson, who characterized it as a feudal holdover that protected the lazy children of the elite, keeping both economic resources and political power in their undeserving (and unmanly) hands. It was a mischaracterization because it was not just the wealthy who relied on entail. Lots of people did it because it made sense and was easy to do. There was no complicated form or legal rigmarole. It was a matter of writing common sense into a deed or will. John Donaghee, for instance, relied on the basics of entail to pass a small town lot in Norfolk to his grandson and, through him, to future heirs. His grandson acquired use rights, with the lot protected from his creditors because his heirs already had claims on it. It was hardly a case of elite overreach. On the contrary, it was an effort to distribute resources to a young family member who could use the help. It privileged the claims and needs of the family over those of creditors.[16]

Donaghee's use of entail did not involve women. But coverture played a key role in shaping the implications of entail's abolition. The 1776 statute that abolished it

transformed all entailed property into fee simple property, the form with which we are all familiar, the one that lodges ownership in individuals. That transformation had the effect of dispossessing married women who happened to possess their family's entailed property. Married women became owners in law, which meant that their husbands acquired control over that property through coverture. The point bears repeating. The statute took property belonging to a woman's family and turned control over to that woman's husband. That is exactly what happened to the property that John Wayles intended for his daughter, her children, and his grandchildren. It went to Thomas Jefferson and, ultimately, his creditors. Monticello, like so many estates in the new republic, was built on property that women brought to their marriages, but which we now see as belonging solely to their husbands.[17]

Passage of the statute prohibiting entail seems like the end of the story – and it is usually treated that way, as one of many nails in the coffin of family property. But John Donaghee, the man who tried to secure property for his grandson, wrote his will in 1821, long after the statutory abolition of entail. Virginians like Donaghee kept trying to entail property after the 1776 statute because that is what they were accustomed to doing. Many probably had no idea that entail had been outlawed. There was little publicity of the statute when it passed. Even if they knew, they did not necessarily know that what *they* were doing was *entail*. It was just what they did. So, they kept doing it. That explains an entire treatise on the rules of entail, published in 1837 by the UVA law professor who was killed in a student riot and who taught John B. Minor. Minor included a section on spotting and eliminating entail in his 1877 treatise. Cases involving entail continued to appear on court dockets in Virginia into the early twentieth century.[18]

Entail opens a window to a whole world of principles and practices in the new republic intended to keep property in the hands of family members. It was not just Virginians. People throughout the new United States regularly put those plans into various "written instruments": wills, deeds, indentures, settlements, and agreements, all of which could modify other laws, including the restrictions of coverture, that took property out of family members' hands.

Husbands, for instance, regularly willed the property of their wives and daughters back to them – usually linens, crockery, plate, china, and furniture as well as livestock, such as chickens and cows, all the kind of property that women generally brought into a marriage or accumulated with the proceeds of their own labor. Husbands sometimes put it in exactly those terms: I will the property that belongs to my wife back to her. Jacob Landis, in Philadelphia, wished his wife "to have and to take with her all the household goods as she brought at the time when we whear [*sic*] married with her Beddings and all the flax tow and Linnen and yarn with all her cloths to have and to hold for her one [*sic*] use and disposal forever."[19]

What sounds like patriarchal presumptuousness was actually a savvy legal end run around rules that privileged husbands and creditors. Everyone knew that some things in the household belonged to married women. But when her husband died, the restrictions of coverture kicked in. At that point, standard Anglo-American legal practice defined everything as his property and part of his estate, the proceeds of which went first to creditors and then to family members. There was nothing to be done at that point. When Mary Minor's uncle died, for instance, his widow and daughters were charged with completing the inventory. Room by room, page after page, they carefully described and valued the contents of their house, an act of listing that moved the property they considered theirs into their father's estate. Everything was then sold to pay his debts, of which there were many. It must have been excruciating. As Mary's father, John B. Minor,

noted, his brother left "a widow and 10 children … very slenderly provided for." He hoped that God would help them. It was what other men tried to avoid with bequests that separated their wives' and daughters' property from their estates.[20]

Other people used deeds to accomplish similar ends, conveying property to family members before their deaths, when it became subject to the claims of creditors. Of course, creditors' claims applied before an owner's death as well. But deeds were harder to challenge than wills for a variety of reasons. The kinds of property deeded away were similar to what husbands willed back: tables and chairs, chickens and cows, looms and spinning wheels. These utterly ordinary goods were painfully important, and people went out of their way to make sure that they stayed with the family members who were intended to have them.[21]

Many of these written instruments kept property in women's hands through "separate estates." The concept was based on a body of law called equity, which made it legally possible to keep a married woman's property separate from that of her husband. In theory, that separation required the creation of a trust, the logic being that the trust owned the property (not the married woman), and a trustee managed it (not the married woman). In practice, the terms of the trust determined the extent of a woman's control. The involvement of trustees varied widely, to the point where they did nothing at all, leaving married women to manage the property themselves. In some instances, women served as their own trustees, which was considered perfectly legal, because they were managing the property in their legal capacity as trustees and not as married women. In others, the whole fiction of a trust was dispensed with altogether, meaning that married women just managed the property.[22]

The wealthy made liberal use of separate estates. But so did other people. One father, who had two modest tracts of land, set up a separate estate in the traditional way, by making it clear that the property was to remain with his married daughter. As he stated, her husband was "not capable of conducting his own affairs" and was, therefore, "entirely excluded." The father did not come out and say that his daughter's husband was a complete dolt. But that was the implication, and that was how it went, until the doltish husband's death, when his relatives saw an opportunity to seize the property. As they argued, the property had always belonged to this man because coverture made it impossible to give it to a married woman in this way. The father's wording did cause the presiding judge consternation. It is just "awkward," he fretted. He had good reason. By the time of the court case, in 1842, legal professionals had created elaborate rules regarding the creation and management of separate estates as well as bequests to women, all of which tended to invalidate the simple, straightforward language of this father. In this instance, the judge felt confident in upholding the father's wishes, which left the property in the hands of his family, where he wanted it to be. But that was not always the case by the 1840s.[23]

The idea that women brought resources to their families, produced value during their lives, and had claims to familial property found expression in other legal principles as well. Significantly, married women could maintain legal control of the goods they produced or purchased with the proceeds of their own labor – which was also why it was so devastating when those items were taken from them in the settlement of estates. While women's economic contributions have been dismissed then and now as "domestic labor" that had no value, much of that work is better described as small-scale business activity that kept families afloat. The female members of Mary Minor's extended, utterly middle-class family all worked. They were teachers and nurses, boarding house keepers, seamstresses, and purveyors of butter, eggs, and produce. Such activities meant that some married

women were conducting business in their own names. In fact, married women in Virginia could acquire the status of independent traders by acting as independent traders. Practice made it legal. The presumption was that it must be legal because they were doing it; otherwise, they would not be doing it.[24]

All the legal strategies that kept property in the family's hands created a nightmare for business interests. It was unclear who owned what, and in what way. Figuring that out meant tracking down various written instruments and then parsing their meaning or, more frustrating, making inferences from practice. Did a man really own property? Or was it in the control of his wife? Or were his children really the ones with claims? Creditors were routinely caught out by familial strategies. To them, those strategies looked like efforts to defraud them, and they were not wrong. That was kind of the point.

Enter Virginia's lawmakers, many of whom were lawyers whose business involved commercial transactions and who had the power to define the state's law in ways that ordinary Virginians did not. Over the course of the nineteenth century, lawmakers whacked away at the thicket of principles and practices that made it possible to disperse property within families, without giving any individual full control over it. They made it more difficult to create and manage separate estates. They made it more cumbersome to deal legally or economically with married women. They dialed back legal claims to property that married women had enjoyed. They made it easier for married women to surrender their claims on family property to their husbands. They made it difficult to will property through generations. And they enforced existing fraud statutes to police familial legal strategies while minimizing the negative implications for creditors.[25]

All these measures had the effect of undermining women's legal connections to family property. Within the familial logic, women had claims to property themselves, although as members of families. The individual logic put the emphasis on married women's status as *wives* with claims only to maintenance, which husbands provided out of *their* property, not from property that belonged collectively to the family. Awareness of these legal changes registered in the defensive tone of wills and other written instruments. One man went with repetition. The property he willed to his wife, he wrote, "shall remain [her] property … and shall be totally at her disposal … [and she] can claim all as her property with a perfect right and she shall have solely the perfect right to act [on the] property according to her free will."[26] This man feared that his bequests to his wife and daughters were uncertain. He was right. In the emerging legal world, the claims of women to property, particularly the claims of married women, were rendered illegitimate. At best, those claims were charity; at worst, they were parasitical, with women making demands on property that was not really theirs. Men were the ones who owned property and distributed it within their families. They were the individuals who made their own way in the world. As such, they should not be dependent on their wives' property. Dependency was the position of *women* (Figure 2).

From there, it was a short hop to fraud. The joke in this cartoon is that this man's creditors are women. As the redness of his cheeks indicates, he is embarrassed, a term that referred generally to economic failure, but that invoked much more in this context. By recognizing the property claims of all these women, he had been ruined and emasculated. As John B. Minor taught his students, separate estates and other legal mechanisms that put resources in women's names were, primarily, a means for husbands to evade their debts. Lawyers kept a lookout, as did John B. Minor in his own private practice. His work diary from the 1850s is filled with notes on all the various means of defrauding creditors by conveying property to wives. The fact of a woman with property was the first sign of trouble: it signaled the possibility of some illegal scheme. Minor's concerns found

Figure 2. "A Meeting of Creditors," 1795, Isaac Cruikshank. Yale Center for British Art.

expression in case after case in Virginia court, where creditors accused those indebted to them of transferring property to their female relatives in order to defraud them. What was a legitimate means of shielding family property in one context became fraud in another. When women had property, it was legally suspicious. It always had the whiff of something off, perhaps something fraudulent.[27]

The discussion surrounding Virginia's 1877 married women's property act captures that changing legal context. The act automatically shielded some forms of property from seizure by placing it in the names of married women, without having to set up a separate estate. In one sense, the act was just another means of doing what Virginians had always been doing. Context explains its passage. State legislators had been debating similar measures since the 1840s but had not acted because there was no real need, given all the other means of keeping property within families, away from creditors. By 1877, there was need. Virginia had been devastated by the Civil War and was mired in a deep recession. By that time, the traditional mechanisms for preserving family property had been made cumbersome, unreliable, and outright illegal. In that context, the married women's property act was an attempt to preserve longstanding principles that kept property in families' hands.[28]

But this act was also different, because of the erasure of those other legal principles that had supported familial legal strategies. Proponents argued that it was akin to social welfare; that it secured support for women when their husbands fell down on the job. Opponents insisted that any diminution of husbands' authority would lead to the dissolution of families. But both sides focused on married women as wives, who were the economic responsibility of their husbands. (Given emancipation and the poverty of many white families, that stance was no coincidence, since it relieved local communities of the burden of poor relief.) Completely absent were longstanding legal practices and principles that positioned married women as members of families and gave them more varied, more robust claims to family property.[29]

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Judicial interpretations of that act and subsequent revisions reinforced married women's separation from family property, which remained firmly in the husbands' hands. By 1900, married women could claim wages earned outside the household and could contract on their own property in their own names. But they could not claim the value of anything they produced *within* their households or that they *added* to their households with their wages or even their separate property. If they paid off the mortgage, the house still belonged to their husbands and could be claimed by his creditors. If they bought goods for their families' use, those things belonged to their husbands and could be claimed by their creditors. If they used their property to buy food or medicine for their families on a regular basis, the courts interpreted that pattern as an ongoing transfer to the husband, and they lost claim to everything, even property that was still kept separate. But it was not just wealthy white women who suffered. This legal logic fell most heavily on women, white and Black, who lived on the economic margins and whose families relied on their labor. The property that they had secured, their homes and household goods, could be seized for their husbands' debts, sometimes debts about which they had no knowledge. Their race and class made them vulnerable, but their legal status as married women is what ultimately did them in.[30]

The limitations on married women implicated unmarried women as well because marriage was never an on-off switch. It was a state that women cycled into and out of throughout the course of their lives. And a person could not tell if a woman was married or not simply by looking at her. She might be. But maybe not. Or she might be getting married soon. It was hard to tell. When men presented themselves to creditors, it was presumed that they had the full array of rights necessary to own and control property, which meant that they could be held legally liable for its management. That was not the case with women, because their legal capacity depended on their marital status, which was frustratingly unknowable. Best to steer clear, which is what commercial concerns did, until the late twentieth century.[31]

Even as the restrictions of coverture simplified exchange in a commercial economy, they created deeply gendered, structural inequalities that made it difficult for all women to accumulate wealth, manage it, and pass it along to the next generation. For individual women, even white women from privileged families, the results ranged from uncertainty to downright impoverishment – which brings us back to Mary Minor. After her father's death, Mary purchased a small house, which she rented out to produce an income stream, reserving one bedroom on the ground floor for her own use. In the last years of her life, she took in her impoverished widowed stepsister, Susan Colston Minor Wilson, and Susan's three children, although it was as much about business as it was about charity. In an agreement carefully laid out in legal documents, Mary gave her stepsister the house rent-free and paid a nominal monthly sum for meals, cleaning, and other personal services. In other words, Mary Minor drew down the capital in her house to cover the care she needed in her old age, while also giving her sister a home.[32]

But there is more. Mary willed the remainder of her estate to her stepsister's eldest daughter, her niece, also named Susan, while also allowing her stepsister the use of the house until the niece came of age. The arrangement owed to the estate of her stepsister's husband, which was tied up with debt. Mary, who had learned her legal lessons well, wanted to keep family property out of the hands of creditors, who might seize it if it went to the stepsister. Anticipation of creditors' demands may also have been why Mary specified that her stepsister could live in the house until her daughter came of age. It

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Figure 3. Susan Colston Wilson as a WAVE in World War II. Papers of the Venable Minor, Wilson, and Related Families (MSS 3750-d), Albert and Shirley Small Special Collections Library, University of Virginia, Charlottesville, Virginia.

was entirely possible that the court might have mandated the sale of the house to cover Susan's needs, leaving her mother and the other children homeless. With this small legacy, the niece Susan made a life for herself (Figure 3).[33]

And so, we are left with Mary Minor as the keeper of a legal tradition of family property that stands in opposition to the one created by the father whose career she supported. Mary was as much a legal scholar as her father. She drew on a long history of legal arrangements that kept property in families and recognized the claims of women to family property. In using that past, she did what her male relatives failed to do. She took care of her family and kept property in the hands of her female relatives. It is a legacy that deserves our renewed attention today.

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Notes

1 Mary L. Minor Diary, 1865–1866, Papers of the Minor and Wilson Family, MSS 38-602, Albert and Shirley Small Special Collections Library, University of Virginia (hereafter cited as SSCL).

2 For the story of the riot and the family's eviction, see Lucy Minor Davis Reminiscences, 1840–1925, Papers of the Fishburne Family, MSS 6355-d, SSCL, 6. The families of nineteenth-century UVA Law professors were intertwined through the women in the families. Mary's mother, Martha Davis Minor, was the sister of John A. G. Davis, who served as UVA's Law professor from 1830 to 1840. Martha met her husband, John B. Minor, when she was living with her brother and his wife, Mary Jane Davis, in Pavilion X. While a law student from 1831 to 1834, Minor tutored the Davis children. The ties between the Minors and Davises deepened, as various family members moved in and out of each other's lives and formed close attachments. In addition to the Lucy Minor Davis Reminiscences, see Catherine Watson, "Reminiscences of the Davis Family," 1885, Papers of the Carr and Terrell Families, MSS 4757, SSCL; Henry D. Reck, "John Barbee Minor: The Early Years," *The Magazine of Albemarle County* 12 (1951–1952): 24–38; Anna Barringer, "Pleasant It Is to Remember These Things," *The Magazine of Albemarle County History* 24 (1965–1966): 18–21; "John Barbee Minor," *Virginia Law Register* 1 (Nov. 1895): 473.

3 John B. Minor, Last Will and Testament, Feb. 2, 1895, 249–250, Albemarle County Circuit Court, Clerk's Office (hereafter cited as ACCC).

4 For coverture and nineteenth-century UVA professors, see Laura F. Edwards, "Coverture and Virginia Law Professors: The Nineteenth Century," *Legal Education at the University of Virginia: A History of People, Place, and Pedagogy, 1819–2023*, ed. Meggan A. Cashwell, Randall N. Flaherty, and Loren S. Moulds (Charlottesville: University of Virginia Press, forthcoming 2025), 109–125. Also see notes 8 and 9 below.

5 Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, *A History of Woman Suffrage* (New York: Fowler and Wells, 1881), vol. 1.

6 Stanton, Anthony, and Gage, *History of Woman Suffrage*, 598 (first quotation) and 593 (second quotation). As Mary Ritter Beard argued decades ago in *Women as Force in History: A Study of Tradition and Realities* (New York: MacMillan, 1946), nineteenth-century activists focused on these restrictions to accentuate the extent of women's inequality. While politically astute, the historiographical effect was to flatten the complexities of women's legal status at the time. Also see Lisa Tetrault, *The Myth of Seneca Falls: Memory and the Women's Suffrage Movement, 1848–1898* (Chapel Hill: University of North Carolina Press, 2014).

7 *Remarks Comprising in Substance Judge Herttell's Argument in the House of Assembly of the State of New York in the Session of 1837, in Support of the Bill to Restore to Married Women "The Right of Property," as Guaranteed by the Constitution of This State* (New York: Henry Durrel, 1839), 7. Judge Thomas Herttell introduced a bill in the New York Legislature securing the property rights of married women in 1836. According to Stanton, Anthony, and Gage, *History of Woman Suffrage* (p. 67), Hertell's wife, Barbara Amelia Hertell, published her husband's speech posthumously in 1839 in pamphlet form. The pamphlet is eighty pages long, suggesting that either she (or he) added to the speech later, or that her husband had considerable stamina as an orator.

8 William Blackstone, *Commentaries on the Laws of England*, 4 vols. (London, 1765–1769; Chicago: University of Chicago Press, 1979), 1:430 (on coverture); 2:433–439 (on property); 2:129–139 (on dower). Scholars still cite Blackstone or simply assume his principles when describing married women's relationship to property in the early nineteenth century, even though historians have been arguing for some time that the situation in the colonial period and the early nineteenth century was more complicated. For Blackstone's version of coverture and its influence, see Holly Brewer, "The Transformation of Domestic Law," in *The Cambridge History of Law in America*, ed. Christopher L. Tomlins and Michael Grossberg, 3 vols. (Cambridge: Cambridge University Press, 2008), 1:288–323; Sara T. Damiano, *To Her Credit: Women, Finance, and the Law in Eighteenth-Century New England Cities* (Baltimore: Johns Hopkins University Press, 2021); Laura F. Edwards, "The Legal World of Elizabeth Bagby's Commonplace Book: Federalism, Women, and Governance," *Journal of the Civil War Era* 9 (Dec. 2019): 504–523; Joan R. Gundersen and Gwen Victor Gampel, in "Married Women's Legal Status in Eighteenth-Century New York and Virginia," *William and Mary Quarterly* 39 (Jan. 1982): 114–134. For work that suggests a Blackstonian version of coverture developed over time, see Ellen Hartigan-O'Connor, *The Ties That Buy: Women and Commerce in Revolutionary America* (Philadelphia: University of Pennsylvania Press, 2009); Marylynn Salmon, "Women and Property in South Carolina: The Evidence from Marriage Settlements, 1730–1830," *William and Mary Quarterly* 39 (Oct. 1982): 655–685; Reva B. Siegel, "'The Rule of Love': Wife Beating as Prerogative and

Privacy," *Yale Law Journal* 105 (June 1996): 2117–2206; Linda L. Sturtz, *Within Her Power: Propertied Women in Colonial Virginia* (London: Routledge, 2002).

9 American treatise writers adopted Blackstone early on, especially when it came to domestic relations. Although there are differences on the specifics, they are minor in comparison to the general areas of agreement. St. George Tucker, the father of Virginia Law professor Henry St. George Tucker, was an early adopter. His version of *Blackstone's Commentaries* (Philadelphia, 1803) reprinted that text and provided related elements of Virginia law in the footnotes. As John B. Minor later explained in the introduction to the first volume of his influential *Institutes of Common and Statute Law*, 2 vols. (Richmond, 1876), 1:vii, his "scheme … was to follow in general the outlines of … [Blackstone's] incomparable Commentaries." See also James Kent, *Commentaries on American Law* (New York: O. Halsted, 1827), vol. 2; Tapping Reeve, *Law of Baron and Femme; of Parent and Child; of Guardian and Ward; of Master and Servant; and of the Powers of Court of Chancery* (New Haven, CT: Oliver Steele, 1816). Those principles moved into magistrates' manuals slowly, although the influence was evident by the 1830s and, in some cases, before. See Laura F. Edwards, "The Material Conditions of Dependency: The Hidden History of Free Women's Control of Property in the Early Nineteenth Century South," in *Signposts: New Directions in Southern Legal History*, ed. Sally Hadden and Patricia Minter (Athens: University of Georgia Press, 2013), 171–192; Laura F. Edwards, *Only the Clothes on Her Back: Clothing and the Hidden History of Power in the Nineteenth-Century United States* (New York: Oxford University Press, 2022), chap. 1.

10 UVA law professors assigned treatises with a Blackstonian conception of coverture, elaborated on it in their lectures, and then drew on those lectures as the basis for their own treatises. Minor's *Institutes* were based on lectures delivered by John A. G. Davis that he had heard as a student and then elaborated on when he took over as a UVA law professor. The four volumes of his *Institutes of Common and Statute Law* (1875–1880) were based on the lectures he had heard as a student and had been refining as a professor for decades. See John B. Minor's 1866 Notes on Common and Statute Law, Student Notebooks, RG 401, LLSC. The notebooks of other students reflect the centrality of Blackstone to UVA law school's curriculum, with large sections of notes generally following the organization of his *Commentaries*. See, for example, Phillip B. Hiden Student Notebook, Student Notebooks, RG 400, Arthur J. Morris Law Library Special Collections, University of Virginia (LLSC) and Robert Thruston Hubard Student Notebook, University of Virginia Student Notebooks, MSS 5624, SSCL.

11 Quotation from Phillip B. Hiden Student Notebook, 2:49. The 1861 notebook of Robert Hubard revealed the nature of that relationship in his notes on the buying and selling of real estate. That right extended to everyone, except: "1) Those wanting understanding, eg idiots, lunatics & infants: (2) Those wanting freedom of will, married persons & those under duress, whether of threats or imprisonment, (3) Those who have no real title to the land." The claims of wives to family property were akin to those who had none at all. Robert Thruston Hubard Student Notebook, 21. While historians have traced the commercialization of all forms of property, the scholarship generally has not considered women's property claims as part of that process. Efforts to streamline law and make it more favorable to commercial interests had been ongoing. For classic statements, see James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956); Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, MA: Harvard University Press, 1977). For the interposition of lawyers and legal procedure in that transformation, see for instance Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639–1789* (Chapel Hill: University of North Carolina Press, 1995); Amalia D. Kessler, *Inventing American Exceptionalism: The Origins of American Adversarial Legal Culture, 1800–1877* (New Haven, CT: Yale University Press, 2017); Bruce H. Mann, *Neighbors and Strangers: Law and Community in Early Connecticut* (Chapel Hill: University of North Carolina Press, 1987); R. Kent Newmyer, "Harvard Law School, New England Legal Culture, and the Antebellum Origins of American Jurisprudence," *Journal of American History* 74 (Dec. 1987): 814–835.

12 For familial and communal conceptions of property, see Gregory S. Alexander, *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776–1970* (Chicago: University of Chicago Press, 1997); Allan Greer, *Property and Dispossession: Natives, Empires, and Land in Early Modern North America* (Cambridge: Cambridge University Press, 2017); Claire Priest, *Credit Nation: Property Laws and Institutions in Early America* (Princeton, NJ: Princeton University Press, 2021); Carol Rose, "Property as Wealth, Property as Propriety," *Nomos* 33 (1991): 223–247; E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act* (New York: Pantheon, 1975).

13 Stanton, Anthony, and Gage, *History of Woman Suffrage*, 233 (quotation). Recent work has recovered evidence of women's property ownership, revealing the various ways they controlled property and their participation in both the slave system and capitalist economic relations. But the work tends to accept the framework of nineteenth-century reformers, particularly reformers' rigid definition of coverture and their emphasis on individual ownership and legal agency. See, for instance, Jaqueline Beatty, *In Dependence: Women and the Patriarchal State in Revolutionary America* (New York: New York University Press, 2023); Ellen Hartigan-O'Connor, *The Ties That Buy: Women and Commerce in Revolutionary America* (Philadelphia: University of Pennsylvania Press, 2009); Stephanie E. Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven, CT: Yale University Press, 2019). By contrast, see Mandy L. Cooper, *A Republic of Credit: Building a National Family from Revolution to Reconstruction* (New York: Oxford University Press, forthcoming 2025).

14 It can be difficult to trace property through the female line because women controlled it without owning it and the terms of that control were often negotiated privately, without leaving a paper trail. Even then, some husbands tended to act as if the property was theirs, exaggerating their legal control. For example, Theodorick Bland, Frances Bland Randolph Tucker's father, deeded her several enslaved people before his death. That deed put in writing what had been assumed when he gave them to her at the time of her first marriage, years prior. She had kept possession of those enslaved people; they did not go into the estate of her first husband when he died, which is what would have happened in the absence of such an agreement. Deed, Theodorick Bland to Frances Randolph, June 1, 1784, box 11, folder 6, series 1: Correspondence, Tucker Coleman Papers, MSS 40T79, Special Collections Research Center, College of William and Mary, Williamsburg, Virginia. Frances Bland Randolph Tucker's father also left her more enslaved property in his will using language that constituted a separate estate at that time, going to "her and her heirs forever," although such language was later construed to mean that a husband acquired control during his lifetime. Will, Theodorick Bland, dated July 16, 1780, proved Oct. 29, 1784, Will books, vols., 2–3, 1771–1786, Amelia County Courthouse, Amelia, Virginia, accessed on FamilySearch.org. The will of Tucker's first husband, John Randolph, in *Chesterfield County, Virginia, Wills, 1749–1774*, ed. Benjamin B. Weisiger III (Richmond: Weisiger, 1979), 107, gives bequests of land to his sons, when they come of age, but places the family plantation in the care of Frances during her life, with the capacity to divide it among the children as she sees fit. That is where she lived with St. George Tucker after their marriage, although the plantation was to pass to her children by John Randolph, according to Randolph's will. Various references to St. George Tucker, however, treat Matoax, the Randolph plantation, as if it belonged to him. After the death of Frances, St. George married another heiress, Leila Skipwith Carter, who had property from her own family and her first husband, George Carter. St. George lived on plantation of her first husband. See "St. George Tucker (1752–1827)," *Encyclopedia Virginia*, Virginia Humanities, accessed Sept. 26, 2024, https://encyclopediavirginia.org/entries/tucker-st-george-1752-1827/.

15 For the dynamics of entail in the context of Virginia, see Holly Brewer, "Entailing Aristocracy in Colonial Virginia: 'Ancient Feudal Restraints' and Revolutionary Reforms," *William and Mary Quarterly* 54 (Apr. 1997): 307–346; Claire Priest, "The End of Entail: Information, Institutions, and Slavery in the American Revolutionary Period," *Law and History Review* 33 (May 2015): 277–319. For Martha Wayles Skelton Jefferson's property, see Steven Harold Hochman, "Thomas Jefferson: A Personal Financial Biography" (Ph.D. diss., University of Virginia, 1987), 62–82. While Hochman notes that Martha Jefferson's property did not come to her "entirely free and clear" (63) and also indicates the presence of separate estates and entail, he still assumes that the property would be and should be going to her husband, Thomas Jefferson, as soon as all that was cleared up. Jefferson's efforts to deal with his wife's entailed land required legislative acts. See John F. Hart, "'A Less Proportion of Idle Proprietors': Madison, Property Rights, and the Abolition of Fee Tail," *Washington and Lee Law Review* 58 (Winter 2001): 167–194. See also Will and Codicil of John Wayles (1760, 1772–1773), in *Encyclopedia Virginia*, Virginia Humanities, accessed July 7, 2024, https://encyclopediavirginia.org/entries/will-and-codicil-of-john-wayles-1760-1772-1773; Will of Bathurst Skelton, *Encyclopedia Virginia*, Virginia Humanities, accessed July 7, 2024, https://encyclopediavirginia.org/entries/will-of-bathurst-skelton.

16 *Camp v. Cleary*, Supreme Court of Appeals of Virginia, Jan. 19, 1882, 76 Va. 140. For the use of entail, see Priest, *Credit Nation*, 128-45; Priest, "End of Entail."

17 Priest, *Credit Nation*, 128-45; Priest, "End of Entail." See also Hart, "'Less Proportion of Idle Proprietors.'"

18 John A. G. Davis, *Exposition of the Principles which Distinguish Estates Tail from Other Limitations* (Charlottesville, VA: Tompkins & Noel, 1837); John B. Minor, *Institutes of Common and Statute Law* (Richmond, VA: Printed for the Author, 1877), 2:85–86. Questions about entail continued to find their way into court. See, for instance, *Bells v. Gillespie*, Supreme Court of Appeals of Virginia, June 1827, 5 Rand. 273;

Seekright v. Billups, Supreme Court of Appeals of Virginia, Jan. 1, 1833, 31 Va. 90; *Pryor v. Duncan*, Supreme Court of Appeals of Virginia, Apr. 1, 1849, 47 Va. 27. For continued debates, see Charles A. Graves, "Executory Interests," *Virginia Law Register* 4 (1899): 633–661; Raleigh C. Minor, "Dying without Issue in Virginia," *Virginia Law Register* 4 (1899): 804–811.

19 Will, Jacob Landis Sr., Apr. 8, 1777, no. 19, 28–29, vol. R, Philadelphia Wills. See also Will, Collen McSweeney, Mar. 27, 1777, no. 4, 6–8, vol. R, Philadelphia Wills; Will, George Wescot, no. 10, Sept. 6, 1781, 11–12, vol. S; all in Philadelphia Wills, Vol. R–S, 1778–1784, Pennsylvania Wills and Probate Records, 1683–1993, Ancestry.com. While husbands and fathers did not always use that language, the kinds of property they willed to their wives and daughters suggest a similar recognition. This language was also used in deeds, with husbands securing their wives' property to them before their deaths; Statement, James Burn, Mar. 28, 1792, 63, Vol. A, Deeds, Vol. A–C, 1791–1801, Kershaw County, South Carolina, Wills and Probate Records, Ancestry.com. The practice was explicit in Louisiana, where the state's civil code allowed women to reclaim property they brought into a marriage or acquired afterward. See Louisiana Civil Code, chap. 4, art. 2425 and 2426, pp. 1135–1136, https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=1006&context=la_civilcode_book_iii#page=45. For exemplary cases, see *Lizabet Barray vs. Pierre Roger [Meyer], her husband*, no. 23; *Magdelene Rion vs. Administrators of Rion*, no. 28; *Duplantier, Wife vs. Syndics of A. Duplantier*, no. 377; *Madam Durant vs. L. Durant her husband*, no. 684; *Madame Duvall vs. Duvall her husband and Larquette his syndic and executor*, no. 899; Suit Records, Parish Court, 1813–1835, New Orleans City Archives. For the point about married women retaining control of certain kinds of property, particularly textiles, see Laura F. Edwards, *Only the Clothes on Her Back.* For married women's claims to furniture and other household goods, see Alexandra Finley, "A Murder and Some Furniture," paper for the History of Value in Nineteenth-Century North America, conference held at Princeton University, Apr. 2023, paper in possession of author.

20 Louisiana is an exception; see note 19. For Charles Minor's estate, see Charles Minor, Will and Inventory, 1861, Will Book, 348–349 (will), 416–426 (inventory), ACCC; Charles Minor and John B. Minor, Daybook of Brookhill Farm, Albemarle County, Virginia, MSS 13912, SSCL; 110 (quotation). Mary L. Minor also inventoried a family estate later in the nineteenth century. From her notes, it was clear that many of purchasers were married women. See Mary L. Minor, Wastebook, Minor and Wilson Family Papers, box 55, MSS 3750-a, Albert and Shirley Small Special Collections Library, University of Virginia, Charlottesville, Virginia. For the centrality of women in settling their families' estates, see Damiano, *To Her Credit.* As Robert W. Gordon has argued, the legal rules associated with wills, as adopted in the post-Revolutionary United States, empowered the owner while disempowering everyone else and so "invariably restricts freedom while creating it." Robert W. Gordon, "Paradoxical Property," in *Early Modern Conceptions of Property*, ed. John Brewer and Susan Staves (London: Routledge, 1996), 95–110 (quotation on 102).

21 Deeds of household goods from Kershaw County, South Carolina, are illustrative of general trends. Deed, John Moore to Thomas Pace, Oct. 20, 1792, 58, vol. A; Deed, Clemment Stewart to Lydia Stewart, John Stewart, Elizabeth Stewart, and Jean Stewart, Dec. 10, 1793, 130–131, vol. A; Deed, John Kirkley to Willoughby Stone, Oct. 3, 1793, 152–153, vol. A; Deed, Hugh Brown to Mary Brown, Feb. 3, 1795, 137, vol. A; Deed, Isabella London and Ann London to Margaret McDonald, Dec. 29, 1796, 228, vol. A; all in Deeds, vol. A–C, 1791–1801, Kershaw County, South Carolina, Wills and Probate Records, Ancestry.com. Enslaved people were deeded separately or along with household goods and/or land; see Deed, Clemment Stewart to Lydia Stewart, John Stewart, Elizabeth Stewart, and Jean Stewart, Dec. 10, 1793, 130–131, vol. A; Deed, Elizabeth McNair to Margaret Cathcart Mathis, Apr. 12, 1800, 244, vol. C; both in Deeds, vol. A–C, 1791–1801, Kershaw County, South Carolina, Wills and Probate Records, Ancestry.com. For examples of people deeding property before they died, instead of passing it through a will, see Deed, Lueresy Drone to John Nicholas Hatch and George Efron Kebler, Aug. 25, 1792, 55, vol. A; Deed, David Hunter to George Ross, Nov. 15, 1792, 58–61, vol. A; both in Deeds, vol. A–C, 1791–1801, Kershaw County, South Carolina, Wills and Probate Records, Ancestry.com.

22 For separate estates, see Suzanne D. Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784–1860* (New York: W. W. Norton, 1984), 54–86; Beard, *Women as Force in History*, 77–105; Marylynn Salmon, "Women and Property in South Carolina: The Evidence from Marriage Settlements, 1730–1830," William and Mary Quarterly 39 (Oct. 1982): 655–685. For examples of separate estates that gave women control over the management of property, see Marriage Settlement of George W. Mordecai and Margaret B. Cameron, 1853, box 99, folder 2208, Cameron Family Papers; Indenture, Mary Cain Sutherland,

Willie N. White, and William M. Green, Dec. 28, 1839, folder 2, Mangum Family Papers, no. 483, folder 2; both in Southern Historical Collection, University of North Carolina, Chapel Hill (hereafter cited as SHC). Indenture, Bartholomew Henry Himeli, Rachel Villepontoux Moore Russ, and John Paul Grimké, Jan. 7, 1764, Charleston, Wills and Miscellaneous Records, vol. 90, 1765–1796, 255–261; Will of John Paul Grimké, Charleston, July 12, 1785, Wills, vol. 24, 1786–1793, 833–836, both in South Carolina, Wills and Probate Records, 1670–1980, in Ancestry.com. *Elizabeth P. Townsend by Daniel Doyley vs. Dr. J. Townsend and Edmund Bellinger*, 1797, no. 15, box 1, 1791–1799, Equity Bills, Court of Equity, Charleston County, South Carolina Department of Archives and History (SCDAH). *Barnes's Lessee v. Irwin et all*, Pennsylvania, 1 Yeates (1793), 222. In her will, Margaret Hinton created a trust for her husband from her own separate estate, suggesting the extent of her control; Will of Margaret G. Hinton, Aug. 2, 1855, box 1, folder 9, in the Moore and Gatling Law Firm Papers, 00521, SHC.

23 *Stinson v. Day*, Supreme Court of Appeals of Virginia, Dec. 1, 1842, 40 Virginia 435. For separate estates involving modest amounts of property, see separate estate by deed, Aug. 29, 1767, George Welch to his daughter Ann Murphey, 174–175; separate estate by deed, Dec. 9, 1767, Barbara Jones to her daughters Mary and Barbara Jones, 319; separate estate by a marriage settlement, Jan. 8, 1768, between Elizabeth Stevens and Joseph Henkison, 419–421; separate estate by marriage settlement, Nov. 22, 1786, Doctor John Weston, Mary Raven, and Robert Rawlins, 456–458. For the commonality of separate estates, see Lebsock, *Free Women of Petersburg*, 54–86; Salmon, "Women and Property in South Carolina." In the early nineteenth century, state appellate courts flipped the logic that applied to separate estates. The presumption had been that separate estates specified what could not be done with the property and that everything else was in bounds; instead, courts insisted that documents specify what could be done with the property and that everything else was out of bounds. While this transition usually went unremarked, it is discussed in *Lancaster v. Dolan*, Supreme Court of Pennsylvania, Jan. 1, 1829, 1 Rawle 231. The results went against settled expectations, gave rise to legal challenges, and made it more difficult to create and manage property through this legal mechanism. For the Virginia appellate court's insistence on specific wording, see *Pickett and Wife and others v. Chilton*, Supreme Court of Appeals of Virginia, Mar. 11, 1817, 19 Va. 467; *Williamson v. Beckham*, Supreme Court of Appeals of Virginia, Feb. 1, 1837, 35 Va. 20; *Woodson v. Perkins*, Jan. 1, 1849, 46 Va. 345; *Parker v. Wasley's Ex'r*, Supreme Court of Appeals of Virginia, Nov. 15, 1852, 50 Va. 477; *Rayfield v. Gaines*, Apr. 30, 1867, 58 Va. 1; *McChesney v. Brown's Heirs*, Nov. 12, 1874, 66 Va. 393; *Stroud v. Connelly*, Apr. 15, 1880, 74 Va. 217; *Frank v. Lillienfeld*, Supreme Court of Appeals of Virginia, Aug. 5, 1880, 74 Va. 377. At the same time, courts carved out more ways for creditors to claim property lodged in married women's names, particularly by loosening the restrictions on married women using separate estates to pay their husbands' debts and strengthening husbands' claims on property given to their wives. As the decision in *Buck v. Wroten*, Jan. 21, 1874, 65 Va. 250, states, "courts of equity will not deprive the husband of his rights at law unless the words relied upon to create a separate estate, of themselves leave no doubt of the intention to exclude him." Courts further complicated the legal status of separate estates by changing the base line for what married women could do without specific language. For the claims of creditors and changing legal grounds for what women could do, see, for example, *Nickell v. Handly*, Supreme Court of Appeals of Virginia, Sept. 8, 1853, 51 Va. 336; *Penn v. Whitehead*, Supreme Court of Appeals of Virginia, Feb. 5, 1855, 53 Va. 74; *Penn v. Whitehead*, Supreme Court of Appeals of Virginia, June 26, 1867, 58 Va. 503; *Brent v. Washington's Adm'r*, Supreme Court of Appeals of Virginia, May 15, 1868, 59 Va. 526; *Muller v. Bayly*, Nov. 17, 1871, 63 Va. 2; *Campbell v. Prestons*, July 6, 1872, 63 Va. 396; *Shackelford's Adm'r v. Shackelford*, Supreme Court of Appeals of Virginia, Dec. 4, 1880, 74 Va. 51; *Finch v. Marks*, Supreme Court of Appeals of Virginia, Feb. 9, 1882, 1882 WL 6012. Other decisions protecting the separate estates of married women indicate that there was still considerable support for conceptions of family property, even in the late nineteenth century. By the late nineteenth century, some legal commentators insisted that separate estates had not been widely used at all; see M. P. Burks, *Notes on the Property Rights of Married Women in Virginia* (Lynchburg, VA: J. P. Bell, 1894).

24 Edwards, *Only the Clothes on Her Back*, esp. chaps. 4, 6, and 11. For the economic activities of women in the extended Minor family, see Anna Barringer, "Pleasant It Is to Remember These Things," *The Magazine of Albemarle County History* 24 (1965–1966): 18–21; Lucy Minor Davis, Reminiscences; Catherine Watson, Reminiscences of the Davis Family, Terell-Carr Manuscripts, box 2, SSCL. In the late nineteenth century, the Virginia appellate court issued a ruling that neatly summarized the erasure of domestic labor's value, stating that such work when performed by female relatives, was not considered labor deserving of compensation; *Harshberger's Adm'r v. Alger*, Nov. 21, 1878, 72 Va. 52.

25 Edwards, *Only the Clothes on Her Back*, chaps. 11 and 12. The decisions in note 23 on separate estates were part of this effort, as was legislation abolishing entail, limiting the ability of individuals to pass property through the generations in other ways, and elevating coverture over other forms of law. The fraud statute dated from Elizabeth England and gave courts broad powers to oversee debtors' property to preserve the interests of creditors. There was a carve out for separate estates. But, with the passage of married women's property acts, courts began using their power in ways that undermined principles that protected married women's property from their husbands and their husbands' creditors. See note 30 below.

26 Will, George Schmidt, Sept. 1, 1826, no. 143, Wills, book 9, part 1, 1826–1829, Philadelphia, Pennsylvania, Wills and Probate Records, 1683–1993, Ancestry.com.

27 John B. Minor, diary, vol. 2, 278–289, 306–326, MSS 3114, SSCL. For examples of cases, see *Penn v. Whiteheads*, Feb. 5, 1855, 53 Va. 74; *William and Mary College v. Powell*, May 15, 1855, 53 Va. 372; *Campbell v. Bowles' Adm'r*, Sept. 19, 1878, 71 Va. 652; *Frank v. Lillienfeld*, Aug. 5, 1880, 74 Va. 377; *Triplett v. Romine's Adm'r*, Oct. 7, 1880, 74 Va. 651; *William v. Lord*, Mar. 1, 1881, 75 Va. 390; *Hayes v. Virginia Mutal Protection Association*, Feb. 16, 1882, 76 Va. 225.

28 The first act, passed in 1874, was a poorly designed debt relief act and had to be revised to secure property to married women. Married Women's Property Act, 1875, *Acts of Assembly* (Virginia, 1874–75), 442–443. There was very little discussion of the acts at the time of their passage; see Virginia Gianakos, "Virginia and the Married Women's Property Acts" (MA thesis, University of Virginia, 1982); Sarah Frances Ketchum, "Married Women's Property Law in Nineteenth-Century Virginia" (MA thesis, University of Virginia, 1985). For married women's property acts and their relationship to familial conceptions of property, see Suzanne D. Lebsock, "Radical Reconstruction and the Property Rights of Southern Women," *The Journal of Southern History* 43 (May 1977): 195–216; Peggy Rabkin, "The Origins of Law Reform: The Social Significance of the Nineteenth-Century Codification Movement and Its Contribution to the Passage of the Early Married Women's Property Acts," *Buffalo Law Review* 24 (Spring 1975): 683–760. See also Norma Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth Century New York* (Ithaca, NY: Cornell University Press, 1982); Richard H. Chused, "Married Women's Property Law: 1800–1850," *Georgetown Law Journal* 71 (June 1983): 1359–1424.

29 Gianakos, "Virginia and the Married Women's Property Acts"; Ketchum, "Married Women's Property Law in Nineteenth-Century Virginia." Debates surrounding homestead exemptions, which also put property in married women's hands were also framed in terms of welfare; see Alison D. Morantz, "There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteen-Century America," *Law and History Review* 24 (Summer 2006): 245–295.

30 For the limitations of married women's property acts, see Norma Basch, "Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America," *Feminist Studies* 5 (Summer 1979): 346–366; Richard D. Chused, "Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures," *American Journal of Legal History* 29 (1985): 3–35; Joan Hoff-Wilson, "The Unfinished Revolution: Changing Legal Status of U.S. Women," *Signs* 13 (Autumn 1987): 7–36; Reva B. Siegel, "Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850–1880," *Yale Law Journal* 103 (1994): 1073–1217. The principle that married women's property had to be kept separate from household property was still in place in the twentieth century; see *Norris v. Barbour*, Record no. 3413, Jan. 10, 1949, 188 Va. 723.

31 Edwards, *Only the Clothes on Her Back*, chaps. 11–12. A WestLaw search for key words "separate estate" and "wife" pulls up a variety of twentieth-century Virginia cases involving the kind of financial issues that plague families, such as medical bills, unpaid rent and lapsed mortgages, and child support. Women's separate estates figure into these matters as a measure of women's ability to support themselves and their children as well as a means of holding women responsible for familial debts.

32 Agreement between Mary L. Minor and Margaret R. Bryan, Sept. 20, 1898; Agreement between Mary L. Minor and Margaret R. Bryan, Oct. 15, 1898; Agreement between Mary L. Minor and Margaret R. Bryan, Apr. 15, 1901; Agreement between Mary L. Minor and Susan C. Wilson, Jan. 12, 1901; all in Mary L. Minor and Susan C. M. Wilson Financial and Legal Records, series G, reel 58, Southern Women and Their Families in the Nineteenth Century: Papers and Diaries (microfilm). The dates of these agreements overlap, suggesting that some may not have been in force. But the overall pattern is clear: Mary L. Minor had to rent out part of the house.

33 Mary L. Minor, Last Will and Testament, Apr. 24, 1902, 420, ACCC. Petition of Susan Colston Wilson, Affidavit, and Order, Circuit Court of the County of Albemarle, 1909, Mary L. Minor and Susan C. M. Wilson Financial and Legal Records, series G, reel 58, Southern Women and Their Families in the Nineteenth Century:

Papers and Diaries (microfilm). For Susan C. M. Wilson, see Susan Colston Wilson Papers, "A Guide to the Microfilm Edition of Southern Women and Their Families in the Nineteenth Century: Papers and Diaries, Series G, Holdings of the University of Virginia Library, Part 2: Central Piedmont Virginia," 71–72.

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