

Book Note: Married Women and the Law:  
Coverture in England and the Common Law  
World, by Timothy Stretton & Krista J Kesselring  
(eds)

Joshua Patlik

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>  
Book Note

**Citation Information**

Patlik, Joshua. "Book Note: Married Women and the Law: Coverture in England and the Common Law World, by Timothy Stretton & Krista J Kesselring (eds)." *Osgoode Hall Law Journal* 52.1 (2015) : 361-363.  
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol52/iss1/18>

This Book Note is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

## Book Note

**MARRIED WOMEN AND THE LAW: COVERTURE IN ENGLAND AND THE COMMON LAW WORLD, by Timothy Stretton & Krista J Kesselring (eds)<sup>1</sup>**

JOSHUA PATLIK

COVERTURE, GENERALLY REGARDED AS one of the common law's less-than-savoury aspects, was legislated out of the Anglo-American legal landscape throughout the late nineteenth and early twentieth centuries. Formally, coverture treated a wife and her husband as one person: the husband. This entailed myriad legal disabilities for wives, including incapacity to sue (or be sued), to make contracts, and to own personal property.

The days of coverture were undeniably the bad old days for many wives. Yet *Married Women and the Law: Coverture in England and the Common Law World*, a collection of essays, shows that coverture's impact on married women's agency varied across England and the American colonies (and the United States) between the late medieval period and 1870. Stretton and Kesselring's principal innovation is their presentation of coverture in its social, as well as legal, aspects. Stretton and Kesselring introduce the book by pointing out that the "yawning gulf" between the law of coverture and the reality of married life should not be taken as evidence that coverture had limited impact.<sup>2</sup> This gulf should instead invite comparative empirical inquiry into the relationship between law and reality.

In the first essay, Sara Butler demonstrates that late-medieval English judges were reluctant to acknowledge coverture directly.<sup>3</sup> They preferred to use intra-marital authority—not marital unity—to uphold wives' legal disabilities. Most married women of the time understood the legal implications of their

- 
1. (Montreal: McGill-Queen's University Press, 2013) 282 pages.
  2. *Ibid* at 9.
  3. "Discourses on the Nature of Coverture in the Late Medieval Courtroom" in *supra* note 1, 24.

coverture, and some knew how to exploit it. Natasha Korda explores the centrality of coverture in early modern English theatre.<sup>4</sup> Playwrights chafed against it, writing plays reflecting the normality of wives' control over household property and writing wills using trusts to shelter their wives' property from avaricious future husbands. Kim Kippen shows how eighteenth-century judicial interpretations of wives transferring property to their husbands reduced stepfathers' liability to support stepchildren under England's poor law.<sup>5</sup> This interpretation shifted the support burden to parish-level institutions.

Ideas of coverture sometimes shielded married women from accusations of criminal responsibility in English assize depositions from 1640 to 1760, as Marisha Caswell illustrates.<sup>6</sup> Deponents generally saw wives as criminally responsible except when the crime related to household duties or was a joint husband-wife enterprise. Lindsay Moore uses seventeenth-century English and colonial American debt and estate cases to suggest that American colonial women had less access to formal justice than their English counterparts.<sup>7</sup> This was because the American colonies lacked equity and ecclesiastical courts, which granted standing to married women.

State interests sometimes overrode coverture. The late seventeenth-century English Navy, as Margaret Hunt explains, encouraged sailors to sign pre-printed wills giving their wives extensive powers of attorney over their husbands' pay tickets.<sup>8</sup> Intended to facilitate recruitment and pre-empt dissatisfaction over infrequent payment, this measure gave sailors' wives virtually complete economic autonomy.

According to Barbara Todd, the judges in leading seventeenth-century English wills cases used coverture-like notions to allow children of English fathers and non-English mothers to inherit.<sup>9</sup> These judges circumvented the *partus sequitur ventrem*<sup>10</sup> rule by finding that marriage to an Englishman brought

- 
4. "Coverture and its Discontents: Legal Fictions on and off the Early Modern English Stage" in *supra* note 1, 45.
  5. "Poor Law, Coverture, and Maintaining Relations in King's Bench, 1601-1834" in *supra* note 1, 64.
  6. "Coverture and the Criminal Law in England, 1640-1760" in *supra* note 1, 88.
  7. "Women and Property Litigation in Seventeenth-Century England and North America" in *supra* note 1, 113.
  8. "The Sailor's Wife, War Finance, and Coverture in Late Seventeenth-Century London" in *supra* note 1, 139.
  9. "Written in Her Heart: Married Women's Separate Allegiance in English Law" in *supra* note 1, 163.
  10. *Partus sequitur ventrem*, originally a Roman legal principle used to determine a child's slave status, provides that a child inherits its *mother's* status, not its father's.

a woman ‘somewhat’ under the English monarch’s allegiance. These judicial innovations bolstered resistance to escheat and gave English merchants abroad greater economic freedom.

Angela Fernandez argues that some early New England law textbook writers refused to consider the marital-unity doctrine as good law because they were influenced by equality-oriented religious and women’s rights organisations in their home states.<sup>11</sup> Mary Beth Combs argues that the English Parliament passed married women’s property legislation in 1870 not out of concern for wives’ well-being, but out of a desire to appease creditors by making wives jointly responsible (with husbands) for family debts.<sup>12</sup> The legislation prevented husbands from committing bankruptcy fraud using their wives’ trusts for separate estate. Some wives, as Danaya Wright shows, asserted rights over property and children by publicly shaming malevolent husbands.<sup>13</sup>

Stretton and Kesselring conclude the volume by advising historians that a comparative approach is best suited for putting coverture in the context of the choices and limitations faced by those who lived coverture. This volume is an enlightening new look at an old institution. By revealing the disjuncture between law and life, this book invites us to examine whether and how coverture persists in present day legal orders.

---

11. “Tapping Reeve, Nathan Dane and James Kent: Three Fading Federalists on Marital Unity” in *supra* note 1, 192.

12. “‘Concealing Him from Creditors’: How Couples Contributed to the Passage of the 1870 Married Women’s Property Act” in *supra* note 1, 217.

13. “Coverture and Women’s Agency: Informal Modes of Resistance to Legal Patriarchy” in *supra* note 1, 240.

