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Reforming the married state: women and property after the Married Women's Property Acts, 1870-1935

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Dissertation

**REFORMING THE MARRIED STATE:
WOMEN AND PROPERTY AFTER THE MARRIED
WOMEN'S PROPERTY ACTS, 1870–1935**

by

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B.A., The Catholic University of America, 2011

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This dissertation is dedicated to my parents.

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ABSTRACT

The 1870 and 1882 Married Women's Property Acts' passage constituted a significant change in married women's legal status in Britain. The Property Acts granted married women independent property rights, thereby overturning much of the English common law of coverture—the doctrine that a married woman had no legal identity independent of her husband. Married women's property rights, consequently, introduced a fundamental tension into Britain's patriarchal social order, long predicated on a married woman's legal non-existence and economic dependence.

This dissertation argues that the social and legal contradictions the Property Acts engendered compelled Britons to re-imagine their society: from one organized around an independent, property-owning male head of household to one comprised of men and women, married or single, with claims to individual rights. It follows social commentators, judges, feminists, MPs, and government officials who tried to define the Act's scope via debates in the press, the courts, the halls of Parliament, and offices of Inland Revenue. Recovering these debates reveals two understandings of the Property Acts: for some, a paternalistic law that protected poor women's property from idle

husbands; for feminists, a symbol of a married woman's independence. Overall, this study marks a transitional moment for British society, as these competing arguments undermined the dominant Victorian-era separate spheres ideology and required Britons re-negotiate husbands and wives' respective obligations to each other, to society, and to the state.

“Reforming the Married State” deploys a trove of sources—newspapers, periodicals, suffragists' papers, Parliamentary debates, and government papers—that reframe the Property Acts within histories of gender, liberalism and capitalism. While scholars acknowledge the Property Acts' passage constituted a significant political victory for the women's movement, they commonly regard women's Parliamentary enfranchisement in 1918 as the impetus for subsequent economic and social reforms. As a result, the Property Acts are overlooked in social and economic histories of nineteenth and twentieth-century Britain. Re-centering the Property Acts illustrates the breadth of debate the Property Acts inspired, as legal changes to women's rights in marriage reverberated through British social and economic life.

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Introduction

In 1869, as the Married Women's Property Bill made its way to the House of Lords, the *Times* reminded its readers that, although the proposal “may not attract so much public attention as great political schemes . . . few matters are of equal consequence to the social well-being of the community.” The editors feared that dramatic changes to legal and economic rights within marriage would carry social ramifications: “[T]he married state is the foundation of the social state,” they declared, “and it would be a matter of grave and universal concern if a revolution in the law tended to disorganize such a relation.”¹

For Victorian Britons, the “married state” meant that the relationship between a husband and wife and that between a family and society at large were premised on a patriarchal household ideal reinforced by laws regulating women's property rights in marriage. Under the common law of coverture, upon marriage a husband became the legal owner of his wife's moveable property—items such as money, stocks, or furniture. A wife retained her realty but had no legal claim to any income deriving from it. She could not enter into contracts on her own terms and could only purchase goods as her husband's agent, buying on credit under his name.

In the twelve years after the *Times* published its editorial, Parliament passed a series of Acts that overturned much of the law of coverture—the legal justification for women's subordinate position in marriage and British society. The 1870 and 1882

¹ "When the Married Women's Property Bill passed." *The Times*. July 31, 1869: 9.

Married Women's Property Acts (MWWPA) granted every married woman control over her realty and moveable property, the ability to make contracts independent of her husband, responsibility for debts incurred before marriage or as a result of her business, and the responsibility to maintain her husband before he could apply for poor relief. Together, the Property Acts constituted a landmark legal reform that dramatically altered women's rights in marriage.

But these individual rights existed in fundamental tension with Britain's social and political order—predicated on married women's legal non-existence and economic dependence. Focusing on the period between 1870 and 1935, when the Married Women and Tortfeasors Act ended the legal distinction between a *feme sole* (an unmarried woman) and a *feme covert* (a married woman), this dissertation argues that through the social and legal conflicts created by the Property Acts, Britons came to re-imagine their society: from one organized a property-owning male head of household, to one comprised of men and women, married or single, with claims to individual rights. It follows social commentators, judges, activists, feminists, MPs, and government officials as they tried to define the Acts' scope via debates in the press, the courts, the halls of Parliament, and offices of Inland Revenue. Recovering these debates reveals two understandings of the Property Acts.

For some, the Property Acts remained a paternalistic law that protected a woman's property in marriage. One contingent—judges, some MPs who voted for the law, or individuals who campaigned for reform—understood that the 1870 Property Act protected industrious women's earnings from idle husbands. The 1882 Act simply

extended these protections. Justice Walter Phillimore, First Baron Phillimore, of the High Court of Justice, expressed this sentiment when he observed that the Married Women's Property Act "was an Act as to married women's property." It was not, he emphasized, "a code as to married women's rights."²

For others, however, the 1882 Married Women's Property Act represented "the great charter of married women." It was as "as much a great charter as Magna Charta was the great charter of British liberties in the past."³ In feminists' view, the Property Acts—by granting married women control over their property—overturned the common law of coverture and introduced a new principle into law: married women's individuality.

These competing arguments undermined the dominant Victorian-era separate spheres ideology. Late-Victorian and Edwardian women's rights activists lay claim to the Property Acts as a feminist symbol of married women's equality in order to advance more expansive claims for women's rights. Their claims jostled against ideals regarding a husband's familial authority and paternalistic obligation to provide for his dependents. Attention to the Property Acts therefore highlights the ways married women's claims to individual rights required Britons to re-think and, at times, defend, its gender order. Overall, this study marks a transitional moment for British society, as these competing arguments undermined the dominant Victorian-era separate spheres ideology and

² "High Court of Justice. King's Bench Division," *The Times*, July 3, 1905, 14.

³ "Assessment of Income Tax on Joint Incomes of Husband and Wife. Minutes of Deputation to the Rt. Hon. Mr. Austen Chamberlain, M.P. (Chancellor of the Exchequer). Thursday, 10th April, 1919," April 10, 1919, IR 75/193 Vol. XII Royal Commission on Income Tax. Various IR Memos, pp. 327. National Archives, Kew.

required Britons to re-negotiate husbands and wives' respective obligations to each other, to society, and to the state.

Most historians date the emergence of an organized campaign for property reform to the 1850s. The socialite Caroline Norton's dissolving marriage and attempt to secure a Parliamentary divorce, sensationalized in the press, made divorce law reform a topic of public debate. Independently wealthy and educated, the reformer Barbara Leigh Smith (eventually Bodichon) formed a committee that set about to reform the laws as they related to married women's property.⁴ Sir Thomas Erskine Perry introduced the first bill to reform the property law in 1856. The effort collapsed after the 1857 Divorce Act circumvented reformers' calls by introducing minor property protections for women separated from their husbands.

In 1867, a resurgent effort to reform the property laws emerged alongside a nascent suffrage movement as debate over the 1867 Reform Act, which enfranchised working-class men, brought renewed attention to questions of property and political rights.⁵ In 1868, MPs George Shaw Lefevre, John Stuart Mill, and Russell Gurney introduced a bill, drafted by Richard Pankhurst on behalf of the Social Science Association, to grant married women the same property rights as *feme soles*.⁶ Russell

⁴ Lee Holcombe, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983), 58. On the origins of the property reform campaign see Holcombe and Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England, 1850-1895* (Princeton, N.J.: Princeton University Press, 1989). Both define the campaign as a feminist campaign.

⁵ Catherine Hall, Keith McClelland, and Jane Rendall, *Defining the Victorian Nation: Class, Race, Gender and the British Reform Act of 1867* (Cambridge: Cambridge University Press, 2000).

⁶ Holcombe, 166.

Gurney eventually took charge of the bill, alongside Jacob Bright and Thomas Headlam (Mill lost his seat in the 1868 election and Shaw Levefre became secretary to the Board of Trade). The bill passed the Commons in 1870 and went to the Lords, who dramatically altered it.⁷ Members of the Property Reform Committee begrudgingly accepted the revisions upon the advice of Russell Gurney and in 1870 Parliament passed an Act To Amend the Law Relating to the Property of Married Women—the Married Women’s Property Act of 1870.⁸ Ben Griffin has convincingly argued that the 1870 Act’s passage relied less on MPs’ “feminist” political stances and more on their perception that working-class fathers were drinking away the family wage in the pub, leaving their wives and children without adequate funds for food or shelter.⁹ Giving married women the right to their own earnings, MPs reasoned, would protect working wives from their husbands, enable mothers to provide for their children, and shame the fathers who had abrogated their duties towards the family.¹⁰

⁷ Holcombe, 177.

⁸ Committee members feared that the outbreak of the Franco-Prussian War would reduce their ability to secure more extensive reforms in the near future. Holcombe, 178.

⁹ Ben Griffin, “Class, liberalism and the erosion of Victorian Domestic Ideology” in *The Politics of Gender in Victorian Britain: Masculinity, Political Culture and the Struggle for Women’s Rights* (Cambridge: Cambridge University Press, 2012), 65-110; “Class, Gender, and Liberalism in Parliament, 1868-1882: The Case of the Married Women’s Property Act,” *The Historical Journal*, 46, no. 1 (2003): 59-87. The passage of the Married Women’s Property Acts fits the model of government reform articulated by Oliver MacDonagh in “The Nineteenth-Century Revolution in Government: A Reappraisal,” *The Historical Journal* 1, no. 1 (1958): 52-67. This model is useful for conceptualizing legal reform as an ongoing process, not an end point.

¹⁰ The London poor was a particular social concern by the late-nineteenth century. Economic change and a housing crisis in London entrenched a casual labor cycle that prevented working class men from holding consistent jobs. Although historians recognize the underlying structural issues that contributed to the growing numbers of poor in London, middle- and upper-class observers understood the situation differently. Contemporaries viewed pauperism as evidence of sin—a deficient character; elite reform attempts often sought to inculcate the poor with the correct values, but did not deal with the underlying structures contributing to the phenomenon. Two simultaneous concerns shaped the relationship between the poor and middle-class: first, that “residuum” would expand to contaminate other classes. Second, that geographic separation between the two classes—the rich in the West End and the poor occupying London’s

The 1870 Married Women's Property Act's provisions reflected these assumptions. Building on the idea of a separate trust in equity used by the Courts of Chancery, the 1870 Act established specific categories of property that constituted a woman's separate property: it granted a married woman control over earnings and investments she acquired by carrying on a trade or occupation separate from her husband; money under £200 that she became entitled to; rents and profits from real estate; and property she owned before her marriage that a husband reserved for her separate use. It allowed husbands and wives to enact life insurance policies for the wife's separate use. A married woman became liable for her debts, her children, and maintenance for her husband to the extent of her separate estate. Finally, the 1870 Act declared a husband was no longer liable for his wife's ante-nuptial debts. This provision, however, was altered in 1874, when Parliament passed the Amendment Act, which made a husband liable for his wife's ante-nuptial debts to the extent of the property he acquired upon the marriage.¹¹

Disappointed by the 1870 Act's limitations and contradictions, the Married Women's Property Committee—whose leadership included Ursula Bright as treasurer (she replaced Lydia Becker), Elizabeth Wolstenholme Elmy as secretary, Jacob Bright, Josephine Butler, and Richard Pankhurst—carried on a campaign to secure married

East End, was causing the wealthy to forgo their duties to the poor. Gareth Stedman Jones, *Outcast London: A Study in the Relationship Between Classes in Victorian Society*, (New York; Oxford University Press, 1971).

¹¹ John Richard Griffith, *The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874. Its relations to the Doctrine of Separate Use*, (London: Stevens & Haynes, 1875).

women more extensive property rights.¹² The 1882 Married Women's Property Act realized these efforts and the Committee disbanded shortly thereafter.

The 1882 MWPA dramatically extended the rights granted under the 1870 Act. Most significantly, while the 1870 Act only protected specific forms of property, the 1882 MWPA made any married woman capable of holding and disposing of any real or personal property as her separate estate, as if she were a *feme sole* and without the intervention of a trustee. A married woman was capable of entering into any contract, suing, and being sued, to the extent of her separate property.

Although scholars acknowledge that the Married Women's Property Acts cumulatively constituted a landmark legal reform, little attention has been given to the meanings Britons attached to the Acts after their passage. Most scholarly attention to the Property Acts has focused on the political campaign outlined above. Within this narrative, the MWPA's are commonly regarded as a milestone on a path of progressive political reforms that originated in the nascent women's movement of the 1850s and culminated with the 1918 Representation of the People Act, which enfranchised propertied women over thirty years of age. For instance, Lee Holcombe's study, *Wives and Property: Reform of the Married Women's Property Law in Nineteenth-Century England*, identifies the many key advocates and politicians who sustained the property reform effort but deploys a teleological framework that folds the reformer's actions into a history of women's rights that hinges on political citizenship.¹³ It begins with the future

¹² Holcombe, 185.

¹³ Barbara Caine, *English Feminism, 1780-1980* (New York; Oxford University Press, 1997); Nicoletta F. Gullace, *"The Blood of Our Sons;" Men, Women, and the Renegotiation of British Citizenship During the First World War*, (New York; Palgrave, 2002); Susan Kingsley Kent, "The Politics of Sexual Difference:

leader of the suffrage movement, Millicent Garrett Fawcett, recounting her surprised reaction upon hearing in court that her purse, which had been nabbed by a pickpocket, was listed as the stolen property of her husband, Mr. Henry Garrett Fawcett.¹⁴

Holcombe's vignette implies the event made Fawcett aware of the need for property reform, commencing a long career working for women's political rights. In her conclusion, Holcombe argues that the push for property reform "had a liberating effect on women."¹⁵ The effort, she asserts, brought men and women together in common cause for women; the experience and political alliances forged laid the groundwork for a sustained women's movement.¹⁶

More recent scholarship has complicated Holcombe's progressive narrative of feminist political action by examining how class-oriented ideas regarding the proper family unit and the lives of the poor influenced social reform. Ben Griffin has challenged the existence of a cohesive "feminist" political stance by examining how MPs' assumptions regarding masculine authority and class position influenced their willingness to support liberal reforms in Parliament.¹⁷

World War I and the Demise of British Feminism," *Journal of British Studies* 27, No. 3, The Dilemmas of Democratic Politics (1988): 232-253. Works challenging a longstanding narrative that "British feminism" faded after the First World War continue to use women's enfranchisement in 1918 as a hinge point to discuss citizenship. See: Julie Gotlieb and Richard Toye, *The Aftermath of Suffrage: Women, Gender, and Politics in Britain, 1918-1945*, (New York; Palgrave Macmillan, 2013), Cowman, Krista 'From the Housewife's Point of View': Female Citizenship and the Gendered Domestic Interior in Post-First World War Britain, 1918–1928." *English Historical Review* Vol. CXXX No. 543 (2015). doi:10.1093/ehr/cev019. Caitriona Beaumont begins her periodization slightly later, in 1928, when women gained universal enfranchisement. See: *Housewives and Citizens: Domesticity and the women's movement in England, 1928-1964*, (Manchester, Manchester University Press, 2013).

¹⁴ Holcombe, 3.

¹⁵ Holcombe, 218. On an "enlightenment" moment as a trope in suffragists' writings see Jill Richards, "The Long Middle: Reading Women's Riots," *ELH* 85, no. 2 (2018): 540-545, <https://doi.org/10.1353/elh.2018.0020>.

¹⁶ Holcombe, 218.

¹⁷ Ben Griffin, *The Politics of Gender in Victorian Britain*, 3-35, especially 18-20.

Overall, these studies have made a valuable contribution to historians' understanding of reformers' political alliances, shaped at various points by concerns for the poor and women's rights, that secured the Property Acts' passage. Yet given both contemporaries' and historians' recognition that the Property Acts constituted a significant reform, surprisingly little is known about how these legal changes reverberated through British society.

The Property Acts' absence from economic and social histories of the late-nineteenth century is particularly surprising when contrasted with early-modern and feminist scholars' attention to the law of coverture.¹⁸ Because married women's subordinate status under coverture serves as a symbol of women's broader social and political subordination, scholars have been deeply engaged in tracing the ways married women resisted or worked around its strictures.¹⁹ Through this work, early modern and

¹⁸ Major works include: Susan Staves, *Married Women's Separate Property In England, 1660-1883*, (Cambridge, MA; Harvard University Press, 1990), Amy Louise Erickson, *Women and Property in Early Modern England*, (London; Routledge, 1993); Dorothy M. Stetson, *A Women's Issue: The Politics of Family Law Reform in England*, (Westport, CT; Greenwood Press, 1982); Holcombe, 9-17. For a recent discussion of early-modern women's legal experiences see Alexandra Shepard and Tim Stretton, "Women Negotiating the Boundaries of Justice in Britain, 1300–1700: An Introduction," *Journal of British Studies* 58, no. 4 (October 2019): 677–83, <https://doi.org/10.1017/jbr.2019.84>.

¹⁹ Margot C. Finn, "Women, Consumption and Coverture in England, c. 1760–1860," *The Historical Journal* 39, no. 3 (September 1996): 703–22, <https://doi.org/10.1017/S0018246X0002450X>. Finn characterizes coverture as existing in "suspended animation" in women's lives during the century before property reform laws were passed. By this she means that in practice, wives, husbands, and shopkeepers often ignored the law's precise details during their consumer transactions, but the norms of coverture continued to shape women's economic experience. Husbands and wives could use coverture to claim or evade their economic obligations, but the law shaped their actions. This finding is echoed in Alexandra Shepherd's *Accounting for Oneself: Worth, Status, and the Social Order in Early Modern England*, (New York; Oxford University Press, 2016); Tim Stretton and K. J. (Krista J.) Kesselring, eds., *Married Women and the Law: Coverture in England and the Common Law World* (McGill-Queen's University Press, 2013), 4. Karen Pearlston, "Married Women Bankrupts in the Age of Coverture," *Law and Social Inquiry* 34 (2009): 265–299; Catherine Bishop, "When Your Money Is Not Your Own: Coverture and Married Women In Business in Colonial New South Wales," *Law and History Review* 33, no. 1 (February 2015): 181–200, <https://doi.org/10.1017/S0738248014000510>.

feminist historians have established women's central role in the early-modern economy.²⁰

Women's participation as investors and lenders, as well as their dowries, provided a critical source of capital for the expanding economy.²¹

“Reforming the Married State” contributes to scholars’ understanding of the history of coverture by highlighting how liberal reformers shaped a particular narrative of coverture—that emphasized women’s subordination under outdated laws—as they advocated for married women’s property rights. Both Tim Stretton and Karen Pearlston have suggested that Victorians’ definition of coverture—marital unity—reflected late-eighteenth and early-nineteenth century social and cultural changes.²² As Stretton has noted, sixteenth- and seventeenth-century commentaries on spouses’ property rights

²⁰ On the early-modern “credit economy” see: Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England*, (New York; St. Martin’s Press, 1998); “Interpreting the market: The ethics of credit and community relations in early modern England,” *Social History*, 18 no. 2 (1998): 163-183. doi.org/10.1080/03071029308567871; “‘A Mutual Assent of Her Mind’? Women, Debt, Litigation and Contract in Early Modern England,” *History Workshop Journal*, no. 55 (2003): 47–71. Muldrew builds on the concept of “neighborliness” articulated by Keith Wrightson in *Earthly Necessities: Economic Lives in Early Modern Britain*, (New Haven; Yale University Press, 2002). On credit and debt in the nineteenth century see: Paul Johnson “Small Debts and Economic Distress in England and Wales, 1857-1913” *The Economic History Review*, New Series, 46 no. 1 (1993): 65-87; Margot Finn, *The Character of Credit: Personal Debt in English Culture, 1740-1914*, (Cambridge; Cambridge University Press, 2003), especially 265-273. Finn discusses the impact of the MWPA as well as other legislative changes to marriage law on legal treatments of debt. She emphasizes the uneven and discordant nature of judges’ rulings in county-court cases that arose from the law. Her focus on court cases and judge’s rulings illustrates only the legal discrepancies that persisted after the MWPA, not how the law was understood and used by the wider populace. Additionally, Finn’s focus on debt relations means that she is less concerned with changing ideas regarding property and property rights after 1870. Amy Erickson provocatively suggests that Britain developed a capital economy early because Britons’ experience creating trusts and settlements to circumvent coverture provided them with greater comfort in dealing with complex financial arrangements in “Coverture and Capitalism,” *History Workshop Journal*, no. 59 (2005): 1–16.

²¹ Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (Berkeley: University of California-Berkeley, 1996). On how changing notions about “work” informed constructions of gender and class during the Industrial Revolution see Deborah M. Valenze, *The First Industrial Woman*, (New York: Oxford University Press, 1995).

²² Stretton, Tim, “Coverture and ‘Unity of Person’ in Blackstone’s Commentaries,” in *Blackstone and His Commentaries: Biography, Law, History*, ed. Wilfred Prest (Portland, Oregon: Hart Publishing, 2009), 111–28; Karen Pearlston, “Male Violence, Marital Unity, and the History of the Interspousal Tort Immunity,” *The Journal of Legal History* 36, no. 3 (September 2, 2015): 260–98, <https://doi.org/10.1080/01440365.2015.1089972>.

focused mostly on land tenure. They contain few references to the principle that a “unity of person” justified a woman’s legal non-existence. Although references to the “unity of person” increased during the first part of the eighteenth century, William Blackstone was the first to suggest that “unity of person” formed the underlying principle of the law of coverture in his *Commentaries on the Laws of England*.²³ His dictum—“the husband and wife are one person in law; that is, the very being or legal existence of women is suspended during marriage”—subsequently played an outsized role in defining the principle of coverture: marital unity. Victorians and legal scholars well into the twentieth century frequently referenced Blackstone’s dictum as the definition of coverture.

Yet, in contrast to Stretton’s research showing the ways the “unity of person” principle emerged in tandem with Victorian cultural prescriptions—referred to in shorthand as Victorian separate spheres ideology—Victorian reformers located the “unity of person” principle in a pre-historical age. They viewed coverture as a vestige of a primitive time, when a wife shared the same status as a slave and the family was bound together by the power of the husband. Recognizing reformers’ role in writing the history of coverture, therefore, situates a particular understanding of coverture within a broader tradition of late-Victorian liberal reform and prompts further reflection about the extent to which “coverture” changed over time.

Historians of coverture frequently date its end to the Property Act’s passage.²⁴ But beyond these assertions there has been little focus on *how* the Acts’ dismantled coverture.

²³ Tim Stretton, “Coverture and ‘Unity of Person’ in Blackstone’s Commentaries,” 124.

²⁴ For examples see: Erickson, “Coverture and Capitalism,” 5; Finn, “Women, Consumption and Coverture,” 705; in their Introduction to *Married Women and the Law: Coverture in England and the Common Law World* Stretton and Kesselring similarly assert that the MWPA, alongside other legal reforms

Instead, historians have remained divided over the Act's material and symbolic impact. For instance, Pat Jalland asserts that the Property Acts' significance was mostly symbolic because Britain's upper classes continued to avail themselves of marriage settlements to protect their daughters' finances.²⁵ The persistence of marriage settlements, however, does not necessarily illustrate the Acts' limited impact. Given their anxieties that a woman's property rights could upend a husband's authority in the home, Victorians continued use of marriage settlements to define property ownership and financial responsibilities in marriage deserves further scrutiny.

Indeed, following the 1870 Act's passage, the journal *The Musical World* published an article by "Felovese" warning "musicians about to marry" that the Act would allow a woman with £10,000 a year to refuse to contribute to the household expenses and spend the fortune on herself. The only remedy to "save the husband from an extravagant, thoughtless or wicked wife" was a marriage settlement. "It will now be absolutely necessary for a man to insist upon an ante-nuptial settlement, so as to compel the wife to give a fair portion of her income to the support of the family," Felovese advised.²⁶ The barrister Andrew Holdsworth provided a similar recommendation to the readers of his treatise, *The Married Women's Property Act*. "The only certain defense against" a scenario in which a husband became the tenant of his property-owning wife (meaning he did not possess legal rights to the premises) was an "antenuptial settlement"

such as the 1857 Divorce Act, in late-Victorian England created "enough of a disjunction" to justify separate study (4).

²⁵ Patricia Jalland, *Women, Marriage, and Politics, 1860-1914* (New York: Clarendon Press, 1986): 58-61.

²⁶ Felovese, "To Musicians About to Marry," *The Musical World* 48, no. 40 (October 1, 1870): 663.

that outlined spouses' respective rights in marriage.²⁷ Expecting the Acts to increase married women's access to property, therefore, overlooks the ways Britons' anxieties about the law could shape their response to it.

Historians' uncertainty with regard to the MWPA's impact has likely been shaped by suffragists' testimonials. Women's rights activists strongly disliked the 1870 Act and their coverage of the law reflected their desire for further reform. For example, the *Women's Suffrage Journal*—founded by Jessie Boucherett and MWPC member Lydia Becker—criticized the 1870s Act's weakness when it drew attention to a story about a wealthy young “girl of fifteen” who “[threw] her whole wealth into the hands of an adventurer” and eloped with an older man.²⁸ As a consequence of the Act's limited protections, the *Journal* expected the man would successfully pressure his wife to transfer her fortune to him via a trust. Reflecting activists' bitter disappointment over the 1870 bill's fortune, the article thanked “the Peers who rejected Mr. Russell Gurney's Married Women's Property Bill” for the “continuance of this risk to young girls, and for the misery that may hereafter result from it.”²⁹

Suffragists' critiques of the 1870 MWPA were not unique. Indeed, complaints about the Act's contradictions commenced with its passage. It is important, however, to recognize that suffragists possessed an incentive to frame Property Acts in ways that aligned with their main political goal: women's enfranchisement. For instance, an 1872

²⁷ W[illiam] A[ndrew] Holdsworth. *The Married Women's Property Act 1882 (45 & 46 Vict., cap. 75), with an introduction, notes, and index by W. A. H. of Grey's Inn, Barrister-at-Law.* (London: George Routedledge and Sons. Broadway, Ludgate Hill. New York; 9 Lafayette Place. [1882]), 38.

²⁸ Becker left the MWPC in 1873. Holcombe, 184.

²⁹ “Stolen Marriages and the Married Women's Property Act,” *Women's Suffrage Journal* 1, no. 9 (November 1, 1870): 91.

article in the radical *The Examiner*, reported on a case in which creditors claimed the £500 a woman lent to her husband shortly before his death, meaning the widow lost her life's savings. For the paper, the outcome illustrated the "irrational caprice as well as the injustice of the law." It also reinforced to "the workers for women's suffrage" the "necessity" of their "most strenuous efforts to obtain justice for women, married as well as unmarried."³⁰ Similarly, after a failed attempt to amend the 1870 MWP, the *Women's Suffrage Journal* argued the failure provided a clear example of Jacob Bright's saying: "to try to bring a woman's question before the House of Commons while women are excluded from the franchise is like trying to drag along a heavy waggon [sic] without horses. The motive power is wanting."³¹ In this vein, suffragists emphasized, the twelve years between the 1870 Act and the passage of the 1882 Act illustrated that meaningful change to women's lives could not occur until they were enfranchised.

Recognizing suffragists' framing of the Property Acts in service to a parallel political cause is important because suffragist publications provide a rich source for historians of the women's movement. This does not deny the suffrage movement's enormous significance. Indeed, Chapter 4 will examine how suffragists invoked the Property Acts during the suffrage campaign. It does recognize, however, that suffragists possessed a vested interest in demonstrating that women's lives would not be improved until they could vote for their Parliamentary representatives. It behooved suffragists to

³⁰ "A Woman's Grievance," *The Examiner*, no. 3339 (January 27, 1872): 92.

³¹ "Legislation for Women," *Women's Suffrage Journal* 4, no. 28 (April 1, 1873): 40.

emphasize the limits of the law. For reforming feminists, the Property Acts served a far more powerful function as a symbol of women's equality than they did as a social reform.

While no sustained analysis of the Property Acts exists, references to the Acts abound in studies on the late-nineteenth century and suggest their impact on Victorians' lives. For instance, John Tosh suggests that the new cultural mood fostered by the Property Acts—a more egalitarian climate—strained the mid-Victorian ideals of a domestic patriarchy by the end of the nineteenth century.³² Erika Rappaport has also highlighted how the Property Acts emerged as a critical area of debate with regard to women's consumer debts. Their research makes a valuable contribution to our emerging understanding of the MWPA and its impact on ideas regarding masculinity or consumer culture.

Furthermore, recent scholarship has begun to explore the Property Acts' impact by tracking changes to women's investment practices after 1870. Economic historian Mary Beth Combs has used census and tax records from shop-keeping households in Leeds and Liverpool to illustrate dramatic shifts in women's investment practices before and after the 1870 Act, suggesting that women and their families took advantage of the new law.³³ Combs' findings are reinforced by Janette Rutterford, David Green, Josephine

³² John Tosh, *A Man's Place: Masculinity and the Middle-Class Home in Victorian England* (Yale University Press, 2008) 157, 161. For Tosh's reappraisal of his "flight from domesticity" thesis see "Home and Away: The Flight from Domesticity in Late-Nineteenth-Century England Re-Visited," *Gender & History* 27, no. 3 (November 1, 2015): 561–75, <https://doi.org/10.1111/1468-0424.12150>.

³³ Combs shows that three generations of women married before 1870 each kept about 55% of their total entrusted property in realty and 44% in various forms of moveable property. In striking contrast, the generation of women married shortly after 1870 held only 25% of their property in realty and 75% of their total wealth in movable property. She argues that these shifts demonstrate that women and their families responded to the law by altering their wealth-management practices substantially in the decades after its passage. "A Measure of Legal Independence": The 1870 Married Women's Property Act and the Portfolio Allocations of British Wives." *The Journal of Economic History*, 65 no.4, (2005), 1041. Combs' findings

Maltby and Alastair Owens who similarly attribute increases in women's investments to the Property Acts.³⁴

“Reforming the Married State” builds on the insights of these scholars as it follows the Property Acts' contested afterlives. It deploys a trove of sources—newspapers, periodicals, suffragists' papers, Parliamentary debates, and government papers—that illustrate the breadth of debate the Property Acts inspired among Britons. Attention to these debates suggests that despite feminists' proclamations about coverture's demise, marriage continued to delineate social rights and obligations well into the twentieth century. Recognizing this, this study aims to advance historians' understanding of modern British society and the emerging welfare state by demonstrating how legal changes to women's rights reverberated through British social and economic life.

“Reforming the Married State” begins in 1870, examining how Victorians conceptualized the two Acts' passages. Chapter 1 traces how activists contrasted the histories of legal reform in Ancient Rome, India, and the United States to advocate for property reform in Britain. Their arguments successfully cast the law of coverture as a legal relic from a barbaric age and, by contrast, the 1882 MWPA as a rational reform that

align with similar studies that focus on changes to women's wealth after property reforms were implemented in the United States. On the United States see Carole Shammas, “Re-Assessing the Married Women's Property Acts,” *Journal of Women's History* 6, no. 1 (1994): 9-30.

³⁴ Janette Rutterford et al., “Who Comprised the Nation of Shareholders? Gender and Investment in Great Britain, c. 1870–1935,” *Economic History Review* 64, no. 1 (n.d.): 157–187.

reinforced Britons' view of their society as distinctly modern: an enlightened commercial society.

Once the MWPA came into effect, Victorians needed to consider under what circumstances property constituted a married woman's separate property and received protection under the law. Chapter 2 turns to the courts, where judges grappled with this question. It argues that judges' assumptions about a husband's authority over his wife shaped their rulings defining a wife's separate property. Yet, by emphasizing the ways a husband permitted his wife to run her business without his assistance, their rulings simultaneously illustrated married women's capabilities as independent persons. Over time, these legal justifications became abstracted. The Acts developed a symbolic status that provided Britons with a causal means to explain married women's independent actions.

Chapters 3 through 5 use debates about Britain's income tax to consider the prosaic and principled contradictions that arose between married women's claims to individual rights and broader class-based obligations. Chapter 3 traces the debate's origins to the passage of the 1882 MWPA. The 1842 Income Tax Act, reflecting the law of coverture, stated that a husband was liable for paying the household tax, assessed on the aggregate income of both spouses. Critics argued firstly, that a household income tax violated a married woman's property rights because it required a wife to reveal her income to her husband for him to pay tax and secondly, that it unjustly obligated husbands to pay tax on their wives' now-separate incomes. Prosaic motives shaped Inland Revenue's response to these principled arguments: officials expected that small-

businessmen would exploit the Act's separate property provisions to reduce their tax liabilities and opposed any reform on the basis that the state could not afford the anticipated revenue losses.

Married women's tax status persisted as a slow-burning debate in Parliament until 1909, when a suffrage society, the Women's Tax Resistance League (WTRL), advised all married women to claim their rights under the 1882 MWPA and refuse to divulge their incomes to their husbands. The WTRL's campaign, the focus of Chapter 4, culminated with Inland Revenue arresting a resister's husband who could not afford to pay tax on his wife's income. The arrest confirmed Britons' underlying anxieties about a husband's precarious legal position in his family and the ensuing public outcry compelled officials to introduce minor tax concessions to suffragists in the 1914 Finance Act.

While the First World War's outbreak abruptly concluded the WTRL's campaign, the controversies the League generated ensured married women's tax obligations received the attention of the 1919 Royal Commission on Income Tax. Chapter 5 examines how the Property Acts provided feminists with legal grounds to call on the state to recognize married women as individuals. Revenue officials were ultimately able to elide these claims by reframing the problem, not as a question of women's individual rights, but a matter of class-based obligations: they argued that taxing women independently would allow Britain's wealthy to escape their social obligation to pay a higher tax rate under progressive taxation. Instead, officials embraced "marriage allowances" as a policy that showed the government recognized the economic burdens faced by lower-middle class men with families to support.

The study concludes in 1935, when the Married Women and Tortfeasor's Act ended the legal category of a *feme covert* and granted all married women the same rights as unmarried women or men. Commentary on the Tortfeasor's Act illustrated how Britons' understanding of the MWPA had changed. In this framework, the MWPA emerged as a feminist legal victory that had helped secure women's individuality. At the same time, commentators concerns about the way's men suffered under the law belied any clear feminist victory.

A Note on Terms

Throughout most of "Reforming the Married State," I refer to the individuals who supported the Property Acts' passage or subsequent legal changes as "activists" or "reformers." Political support for property reform coalesced among an alliance of individuals with multiple motives: to protect women and reform the behavior of men, to create uniformity between Britain's laws, and for some, to secure women's equality. Consequently, I intentionally deploy a more neutral "activists" or "reformer" to emphasize that not all who supported women's property rights were committed to women's equality. Furthermore, an implicit contention of this dissertation is that while women's rights activists regarded the Property Acts as a critical stepping stone in advancing women's equality, the Property Acts became more clearly construed as a "feminist" law over time. I use "feminist" in Chapter 5 to refer to the women who

testified before the Royal Commission on Income Tax because their arguments espoused a clear commitment to women's equality.

I use "Britons" and "Britain" throughout the text for simplicity. The 1870 and 1882 Property Acts applied to England, Wales, and Ireland. Property Acts applying to Scotland were passed in 1877 and 1881.³⁵ Debate and press coverage about the controversies surrounding the Property Acts, however, occurred throughout Great Britain.

Chapter 1: A Social Revolution: The Married Women's Property Acts' Passages, 1868-1883

Introduction

Reflecting on the recent passage of the 1882 Married Women's Property Act at the annual provincial meeting of the Incorporated Law Society, Sir Thomas Paine, the Society President, observed that the Act's provisions would "probably ... make their legal ancestors of two or three generations past turn in their graves."¹ The 1882 Act marked the "complete reversal ... of the old common-law doctrine of the identity of husband and wife" and Britain's arrival in a new "epoch."² These remarks captured a sentiment commonly expressed by Britons in the aftermath of the 1882 Property Act's

³⁵ Griffin, *The Politics of Gender*, 11.

¹ "The Incorporated Law Society," *The Times*, October 18, 1882: 10.

² *Ibid.*

passage: the law introduced a new principle—a married woman’s independence—into British marriages, thereby ushering in a new historical era.

From this perspective, the 1882 Married Women’s Property Act’s passage marked the triumphant culmination of a twenty-five-year effort to reform married women’s status under coverture. During the mid-1850s, calls for legal reforms granting married women control over their property began to emerge; the 1857 Divorce Act introduced minor property protections for women formally separated from their husbands.³ In the late 1860s, a resurgent reform effort, developed alongside a nascent suffrage movement, watched the House of Lords dismantle their preferred bill and pass the far narrower 1870 Married Women’s Property Act, which granted married women limited property rights. Disappointed by the Act’s shortcomings, activists on the Married Women’s Property Committee commenced a sustained campaign to secure married women property rights on the same terms as those enjoyed by a *feme sole* or widow.⁴ Twelve years later, the 1882 MWPA realized these efforts.

Yet activists’ jubilant celebrations—that the law overturned coverture and established women’s equality with regard to property—existed in tension with Victorians’ understanding that the “married state” provided the foundation for the “social state.” Recognizing this prompts a question: how did Victorian Britons, with their attendant patriarchal assumptions and affinity for precedent, make sense of a legal reform that

³ Shanley, 44-47.

⁴ Holcombe, 184-205.

overturned the common law doctrine historically governing women's position in marriage?

This chapter surveys the four frameworks Britons drew on as they tried to make the Property Acts legible. Support for the 1870 MWPA coalesced around the expectation that the law would assist poor women suffering from their husbands' drunken behavior. To counter arguments that the patriarchal family represented the 'natural' state of society, during the 1870s activists sought to place married women's property rights within a progressive narrative of historical change by contrasting the histories of reform in Ancient Rome, India, and the United States. Their arguments successfully cast the law of coverture as a legal relic from a barbaric age and placed the Property Acts within a narrative of Victorian-era progress that framed married women's property rights as an enlightened reform. When Parliament passed the 1882 MWPA, supporters celebrated the Act for overturning the principle of coverture. Others regarded these legal changes with apprehension. But whether victorious or anxious about the 1882 Act, Britons viewed it as a change that introduced a "social revolution."

The twelve-year gap between the two Acts is important because it meant that from the late-1860s a sustained debate on married women's property rights proliferated across Britain. Most scholarly work on the Property Acts has focused on the reform campaign and the Acts' passages in Parliament. But outside the halls of Parliament, discussion of the Property Acts continued across the public sphere. Newspapers reprinted MPs' speeches and published articles expressing support or opposition to reform; intellectuals gave public lectures on the history of married women's property rights that

were subsequently published by the Property Reform Committee for the reading public; witnesses from the United States testified to the social benefits that followed from property reforms in America; and barristers and legal experts published books explaining married women's new rights to Britons. It is to their arguments that the chapter turns.

The Centrality of Marriage

References to the "married state" reflected Victorian Britons' assumption that marriage formed the basis of a free and moral society. During the nineteenth century these ideas came into their full expression with the concept of "separate spheres." As many historians have discussed, Victorian separate spheres ideology viewed the home as a moral place of refuge from the corrupting forces of public life.⁵ The home, however, could only serve as a place of refuge if marital harmony existed between husbands and wives. Separate spheres ideology worked to ensure this harmony by emphasizing the essential unity of a husband and wife, in which a wife's legal and social identity was subordinated to her husband's authority. As *The Derby Mercury* reminded its readers: "the idea of the marriage state is one of subordination. The husband's supremacy is its essential condition, and he is the responsible *governor* of his household."⁶ This

⁵ The seminal work on separate spheres ideology is Leonore Davidoff and Catherine Hall's *Family Fortunes: Men and Women of the English Middle Class, 1780-1850*, (Chicago: University of Chicago Press, 1987). For a critique see Amanda Vickery, "Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History," *The Historical Journal* 36, no. 2 (1993): 383-414. Lucy Delap, Ben Griffin, and Abigail William's provide a good overview of the historiographical debate in their introduction to *The Politics of Domestic Authority in Britain since 1800* (London: Palgrave Macmillan UK, 2009), 1-16. On masculinity and the middle-class home, see Tosh, *A Man's Place* and Griffin, *The Politics of Gender* pp. 37-64.

⁶ Emphasis mine. "Husband and Wife," *The Derby Mercury*, April 21, 1869.

overlapping language between marriage and politics—the husband as governor—also reaffirmed that marriage served as the model for Britain’s social and political institutions.⁷

Calls to grant a married woman control over her property therefore existed in tension with dominant ideas regarding a husband’s authority over his wife. Property rights formed the basis for men’s social and political participation in the public sphere and justified a husband’s authority. The *Derby Mercury*, for instance, viewed women’s property rights as a change that presumed to “repudiate” marriage itself and “substitute the idea of equal partnership. It is, in point of fact, to abolish families in the old sense, and to break up society again into men and women” the paper proclaimed.⁸ Although wealthy women and their families had long secured a married woman’s property in trusts through the Courts of Chancery, the potential for *all* married women to acquire property rights, with their connotations of independence, posed a direct challenge to Victorian separate spheres ideology that assumed a woman’s inherent dependence.

Property Rights for Poor Women

While women’s property rights posed a challenge to separate spheres ideology, they did not foreclose the possibility for legal reform because support for reform did not align along a clear woman’s rights agenda. Many members of the Married Women’s Property Committee participated in other reform campaigns that scholars, in retrospect, would regard as “feminist” and did so out of a commitment to women’s equality.

⁷ Griffin, “Class, Gender, and Liberalism in Parliament,” 63.

⁸ “Husband and Wife,” *The Derby Mercury*, April 21, 1869.

(MWPC treasurer Ursula Bright and her husband Jacob helped found the Manchester Society for Women's Suffrage; Emmeline Pankhurst, married to committee member Richard Pankhurst founded the militant suffragette society the Women's Social and Political Union which MWPC members Elizabeth Elmy and Harriet Mellquham joined.) But support for property reform did not guarantee support for suffrage, or vice versa. George Shaw Lefevre, Liberal MP for Reading, who introduced the 1868 bill and chaired the final MWPC meeting, opposed women's suffrage.⁹ By contrast, Alexander Staveley Hill, Conservative MP for Coventry, supported women's suffrage and opposed the 1869 property bill on the grounds that it altered marriage relations and did not address the real problem: idle husbands.

If marriage, as Victorians understood it, provided the foundation for social morality, it also followed that the discovery of immoral behavior in marriage could enable reform. As Ben Griffin has shown, reformers presented a simple narrative to Parliament: poor or working-class husbands were abusing their authority by taking their wives' earnings, intended to support the family, and drinking these wages away in the pub. These women lacked the financial resources necessary to take advantage of the law of equity, as the wealthy did, and were left to suffer under the harsh common law. In effect, one law existed for the wealthy and one for the poor. Granting women property rights, activists argued, would resolve poor women's suffering and create one law that applied to all classes.¹⁰

⁹ Griffin, "Class, Gender, and Liberalism in Parliament," 60.

¹⁰ *Ibid.*, 59–87.

This narrative helped secure MPs' support for the 1870 Property Act. In 1868, for example, when Shaw Lefevre introduced his bill granting married women property rights he argued that the common law functioned as a "fruitful source of wretchedness" that shaped both men and women's behavior. In a speech that reflected the value Victorians placed on individual labor, morality, and responsibility, he explained that a husband's control over his wife's earnings "often acts as an inducement to the husband to become idle or drunken" and "prevents the wife having that moral control over him."¹¹ Furthermore, because a wife knew that she had no control over her earnings, the law "sometimes takes from the wife the motive for exertion." Both the husband and wife's resulting idleness "urged the family downward in its career of misery."¹² Those who opposed Shaw Lefevre's bill did so on the grounds that the rights granted to women were too extensive, but agreed that the issue of drunken husbands needed to be addressed. For instance, Henry Lopes, the Conservative MP for Launceston and later a justice on the Supreme Court of Judicature, agreed that the "spoliation of the savings of the women of the humbler classes by dissolute and idle husbands was an admitted evil which required an adequate remedy." He opposed the bill in its current form because he felt it would "impair the confidence that ought to exist between husband and wife, and which was the mainspring of domestic happiness."¹³ In other words, he viewed the bill as destroying the essential unity of husband and wife assumed by separate spheres ideology. Ultimately, as

¹¹ Ibid, 69.

¹² George Shaw Lefevre, *Speech of Mr. G. Shaw Lefevre, MP. on Bringing in 'The Bill to Amend the Law with Respect to the Property of Married Women' in the House of Commons, April 21, 1868.* (Manchester: A. Ireland & Co., Printers, Pall Mall, 1868), 7.

¹³ "Bill 20 Second Reading" (Hansard, April 14, 1869).

Ben Griffin has shown, the 1870 Act's provisions reflected the fact that political support for reform coalesced around MPs' expectation that the Act would help poor women but would not disrupt marriage relations in their own upper-class homes.¹⁴

Outside of Parliament, similar stories reinforced reformers' arguments that the common law enabled drunk, spendthrift, or profligate men to avoid work by taking advantage of their industrious wives. An article in the *Leisure Hour*, for example, provided three vignettes contrasting a woman's industriousness with the deceitful behavior of her idle husband. In one story, a young lady orphan named Sarah married a man pretending to be an officer in the Navy. Once they were married (and he controlled her property), he revealed he had borrowed the officer's suit from a friend and was, in fact, an officer's valet. Upon this revelation, Sarah ran away, leaving her fortune with her husband. Over the next five years he squandered her wealth while his industrious wife started a business running a "fashionable watering hole."¹⁵ Eventually, her husband learned about the business and insisted she provide him with money. Aware that she had no recourse under common law, the narrator emphasized, Sarah was forced to support a man who did nothing to support himself. Such exploitation led to tragic ends: Sarah died young and in poverty, exhausted after a life in which her earnings were spent keeping her husband at bay.

Women's own testimonies reinforced the moral lessons of these fictional stories. The *Women's Suffrage Journal* reprinted a letter from "An Actress," initially written to

¹⁴ Griffin, "Class, Gender, and Liberalism in Parliament," 79-80.

¹⁵ "Married Women's Plagues." *The Leisure Hour: A Family Journal of Instruction and Recreation*, no. 937 (December 1, 1869): 798.

the editor of the *Daily News*, detailing the abuse she suffered from her husband, a solicitor. Her letter followed a familiar narrative. She married her husband with the shared understanding that upon marriage she would leave her profession. After two weeks of marriage the husband began arriving home drunk two or three times a week. He demanded her savings with the promise of investing them, but squandered the £200 on himself and refused to support his wife. The “Actress” eventually resumed her career in London while her husband remained in the country. When he did come to London, it was to demand money from her. At the time of her writing, he was threatening to obtain an injunction against her continuing to work in order to earn money. “[T]he few clients which my husband had have deserted him and he is penniless. Must I return to him to starve and to be beaten?” she pleaded to the editor.¹⁶ Her plight conveyed a clear message: trapped under the terms of the common law, a woman was left with no means to provide for herself and her child even as the same law incentivized her husband’s immoral actions.

Narratives about the injustice married women experienced under the common law functioned as an effective critique of the poor, but they also drew on new ideas regarding male criminality. In reformers’ stories, drunk husbands shared many common characteristics with an emerging figure of social suspicion: the vagrant.¹⁷ One article, for

¹⁶ “The Law for Married Women,” *Women’s Suffrage Journal* 2, no. 17 (July 1, 1871), 75.

¹⁷ Historian Beate Althammer has outlined the ways in which vagrancy and begging became strongly gendered as a form of male criminality in nineteenth-century Europe: “up to the middle of the century, it would be a gross overstatement to speak of vagrancy offenses as a masculine domain. . . . In England in 1860, women and girls constituted 25 percent of those convicted of begging and 23 percent of those convicted of sleeping out. . . . By the late nineteenth century, however, the picture had changed quite radically. While convictions of men for vagrancy offenses generally increased, with peaks, depending on the country, between 1880 and 1910, female participation dropped away. In France in 1910, the female

instance, sympathized with wives “struggling against the hardships of life with a drunken, thriftless, idle, *vagabond of a man*, claiming all the rights of a husband and fulfilling none of the duties of that relation.”¹⁸ Charles Dicken’s magazine *All the Year Round* similarly argued that a poor woman required individual property rights because her husband was often a “worthless vagabond who does no work himself” or “an idle, drunken rascal” who lacked the decency to desert his wife.¹⁹ In these instances, a husband lived a life of legal criminality, allowed to steal his wife’s earnings.

Perceptions about who the 1870 Act was supposed to help—namely poor women—were important for shaping Britons’ competing understandings of both Property Acts in two regards. In this framework, the 1870 Act enabled an important legal exception to the law of coverture but never challenged the broader ideology of separate spheres.²⁰ For example, after a second reading of John Hinde Palmer’s 1873 bill, the *Saturday Review* published an article opposing the bill on the grounds that it was introducing changes that would extend beyond the specific problems faced by working class women. “Everyone is agreed,” the author wrote, that protection of property should be made for “women who have the misfortune to be married to dissipated or rapacious men.” But “this is the case only of a section, and we should say a very small section, of the community.” The author emphasized that most marriages in Britain did not require

share among those accused of begging and vagabondage was reduced to 11.3 and 6.6 percent, respectively (as compared to 28 and 25 percent in 1855). In England in the same year, women made up only 5 and 6.4 percent of those convicted of the corresponding offenses (as compared to 25 and 23 percent in 1860).” “Roaming Men, Sedentary Women? The Gendering of Vagrancy Offenses in Nineteenth Century Europe,” *Journal of Social History* 51, no. 4 (2018): 742-743.

¹⁸ Historicus, “Our Women, Past and Present,” *The Chelmsford Chronicle*, January 29, 1869.

¹⁹ “Married Women’s Property,” *All the Year Round* 4, no. 82–93 (June 25, 1870): 90.

²⁰ Pearlston, 265–299.

legal interference and drew attention to “the great body of people” who did not suffer from unhappy marriages and had “some right to be considered in the matter.”²¹ In this view, the 1870 Act created a legal exception to address working men’s bad behavior but did not challenge coverture.

These perceptions continued to inform one view of the 1882 Property Act. As Griffin has noted, John Hinde Palmer, Liberal MP for Lincoln in 1868-1874 and 1880-1884, took charge of the 1882 bill in Parliament after he became convinced that the 1870 Act was too limited to fully protect poor women from their husbands.²² The press also continued to echo lines of argument used in 1870. *Chambers Journal*, for instance, predicted that the 1882 Act would affect the “lower and middle classes more than it will affect the Upper Ten Thousand.” The article reiterated a common refrain: property rights would assist the “hard-working wife” in “thousands of English homes” who “earns the living, sometimes bringing up a large family of children, while the husband spends his time in idleness, and not unfrequently demands money from his wife to waste on strong drink.”²³ Drawing a distinction between the lower and middle classes, and the Upper Ten Thousand, the author maintained the class-based logic—bad marriages existed among the poor and working classes—that helped convince MPs the MWPA would not impact their households.²⁴

²¹ “Man and Wife (Limited),” *Saturday Review of Politics, Literature, Science and Art* 35, no. 904 (February 22, 1873): 241.

²² Griffin, “Class, Gender, and Liberalism in Parliament,” 80.

²³ “The Married Women’s Property Act (1882),” *Chambers Journal of Popular Literature, Science and Arts* 19, no. 991 (December 23, 1882): 320.

²⁴ Griffin, *Ibid.*, 82.

As a second point, it is also worth emphasizing that this rhetoric shaped Britons' expectations about how women would use their earnings if they were granted property rights. Reformers argued married women would be able to use their separate earnings to provide food for their children. The *Glasgow Herald* reprinted an article (first published in the *Englishwoman's Review*) that exemplified this assumption. Protecting women's earnings constituted a "great victory," because it meant that "the wife and mother's earnings may now be spent, without deduction, for the benefit of the family."²⁵ In sum: reformers expected mothers would spend their wages on others, not themselves. By contrast, "drunken husbands and fathers will still be able to spend the whole of their wages on their own gratification." Consequently, while reformers' arguments for the MWPA functioned as a critique of men's behavior, they also reinforced particular expectations about women's behavior. The moral contours of this argument assumed that a married woman's money was not for herself, or her husband, but for her to provide for others. (Although more radical reformers agreed that a woman did have the right to spend money on herself if she chose.) In many ways, this reflected the daily circumstances many poor women faced—low wages did not leave room for purchases for "gratification." But these arguments also reinforced an expectation that women's property rights would benefit others in ways that left little room for a married woman to pursue her individual economic self-interest.

Importantly, this strand of argument made no concessions regarding married women's equality. In this class-based framework, the Property Acts reflected the actions

²⁵ "Married Women's Property," *Glasgow Herald*, October 18, 1870.

of Britain's elite men who had a social duty to legislate and care for the poor.²⁶ As later chapters will show, this narrow, class-based understanding of the Property Acts existed alongside a more universal aim of radical reformers: that women's property rights were a stepping stone to women's equality and the 1882 Property Act had altered the principle of the law.

Ancient Roman Legal Reform and Barbarian Influences

Victorians' attempts to understand the history of property rights was an important means through which they articulated arguments about the need for reform in their own society. Conservatives who opposed reform did not need to argue that the Common Law's principle was flawed. They were willing to address the exceptional case of poor women's earnings, but maintained that the patriarchal family unit reflected both the natural order and had divine sanction. Reformers therefore sought to counter these arguments by associating coverture with a primitive age and barbaric, eastern influences. By contrast, they positioned women's property rights within a historical trajectory shaped by ideals of progress and enlightened civilization.

Histories of married women's property rights shared common assumptions about the progressive development of civilization. Here the line between advocacy and objective history blurred. The liberal education reformer Charles Pearson, a lecturer in modern history at Trinity College, Cambridge, argued in an article published in Josephine Butler's *Women's Work and Women's Culture* (Butler was a member of the MWPC but

²⁶ Griffin makes this point as well in "Class, Gender, and Liberalism in Parliament" (67-69), which I echo.

is more well-known for her role in the repeal of the Contagious Diseases Acts) that the law of coverture remained a “relic of primitive times” when “society [was] required to be held together by stronger bonds than at present” and the family constituted an “artificial compound.”²⁷ In this era, the family included the wife, slaves, and children, all bound together by the husband’s power. A wife had no property rights, and under the law, had a status equal to that of a slave within the family.²⁸ Eventually, the multiplication of the family unit formed societies, marking the beginning of civilization.²⁹ Civilized society emerged from this primitive, patriarchal, custom-bound family unit and was comprised of individuals with property rights and the power to contract.³⁰

In these histories, Ancient Rome exemplified “civilization” and served as a model for contemporary political debates about English society.³¹ For instance, in his 1873 lecture, “The Early History of the Law of the Property of Married Women, as Collected from Roman and Hindoo Law,” the jurist and legal scholar Henry Maine asserted that by the late-Roman Empire, women’s position in marriage had changed so that “the relation of husband and wife became a voluntary conjugal society,” a description that echoed

²⁷ Charles H. Pearson, “On Some Historical Aspects of Family Life,” in *Women’s Work and Women’s Culture: A Series of Essays*, ed. Josephine Butler (London: MacMillan & Co, 1869), 154.

²⁸ Henry Sumner Maine, *The Early History of the Law of the Property of Married Women, as Collected from Roman and Hindoo Law* “A Lecture Delivered at Birmingham, March 25, 1873. (Manchester: A. Ireland & Co., Printers, Pall Mall, 1873), 6.

²⁹ For Maine “[a]ll the larger groups which make up the primitive societies in which the Patriarchal family occurs, are seen to be mere multiplications of it, and to be, in fact, themselves palpably formed on its model” (6).

³⁰ Karuna Mantena, *Alibis of Empire: Henry Maine and the Ends of Liberal Imperialism*, 2e ed. (Princeton; Princeton University Press, 2010), 80.

³¹ Simon Goldhill argues that Victorians possessed “a deep-seated expectation” that engagement with ancient history reflected an “an active engagement with contemporary politics.” Victorians saw themselves as the inheritors of the Roman Empire and deployed histories of the Roman Empire to think through their own constitutional questions or modes of imperial rule. *Victorian Culture and Classical Antiquity: Art, Opera, Fiction, and the Proclamation of Modernity*, (Princeton: Princeton University Press, 2011), 174, 187.

Britons' views of their own society.³² Marriage laws during the period of the Roman Empire provided a benchmark for British women's progress. A *Times* editorial, for example, lamented that "modern English women are worse off than their Roman ancestors, who enjoyed a power of dominion over certain of their inherited or self-acquired property."³³

Consequently, reformers' histories of women's property rights in ancient Rome reflected their contemporary interest in property reform in Britain. Pearson, for example, spoke to Victorians' concerns about the potential impact of the Married Women's Property Acts when he explained to his readers that ancient Roman statesmen— analogous to opponents in Parliament—felt that "with the growth of civilization the authority of fathers and husbands was mitigated" and feared these changes "would strike at the root of the whole family system." Despite these anxieties, ancient statesmen "conceded in deference to public opinion." Once the Romans embraced the legal change granting ancient women property rights, Pearson reassured his readers, "precisely the converse to what English conservatives fear actually happened." The reforms did not inspire familial dissension or increase divorce. Instead, women remained members of their family with control over their property.³⁴

Maine similarly addressed contemporary concerns about how husbands and wives would contribute to household expenses if a wife had control over her own income. In his

³² Maine, 6. On Maine's views of Roman law see Carl Landauer, "Henry Sumner Maine's Grand Tour: Roman Law in Ancient Law," in *Law and History: Current Legal Issues 2003 Volume 6*, ed. Andrew Lewis and Michael Loban (Oxford: Oxford University Press, 2004, 2012), [doi: 10.1093/acprof:oso/9780199264148.003.0008](https://doi.org/10.1093/acprof:oso/9780199264148.003.0008).

³³ Warder, "The Property-Rights of Married Women," *The Sunday Times*, April 18, 1869.

³⁴ Pearson, 161.

1873 lecture, he explained that, although Roman legal reforms allowed the wife to retain control over her own property, the law included one caveat: part of the wife's property was converted into a fund for "contributing to the expenses of the conjugal household."³⁵ The detail spoke to contemporary criticisms that women would refuse to contribute their separate income to the household expenses if granted property rights. Drawing a contrast between the expensive and complex marriage settlements drawn up by English lawyers to delineate spouses' financial obligations, Maine emphasized the simplicity of Roman marriage contracts. The Roman "mechanism was infinitely simpler. A few words on paper would suffice to bring any part of the wife's property under the well-ascertained rules supplied by the written law for dotal settlements [for household expenses], and nothing more than these words would be needed," he explained.

By turning to ancient Rome as a model of how to embrace legal change, these speakers constructed the era of Imperial Rome as a relative golden age for married women's proprietary rights. For example, Arthur Hobhouse—liberal reformer, barrister, law member for the India Law Council, and member of the Social Science Association—argued that "the Romans, who had singular power of moulding their laws to fit the growth of society, found the domestic tyranny intolerable, and they got rid of it by one process after another; and the position of a wife under the later Roman law was one of great freedom."³⁶ Through these lectures, reformers drew on the Roman legacy to frame

³⁵ Maine, 11.

³⁶ Arthur Hobhouse, "On the Laws Relating to the Property of Married Women." *A Paper Read at the Social Science Congress, Birmingham, October, 1868*. (Manchester: Alexander Ireland & Co., 1870). 14-15; "Hobhouse, Arthur, Baron Hobhouse (1819–1904), Judge. Oxford Dictionary of National Biography," <https://doi.org/10.1093/ref:odnb/33902>. On the SSA see: Lawrence Goldman, *Science, Reform, and Politics*

the extension of property rights in Britain as a continuation of Roman progress and development.³⁷

While ancient Roman history provided Britons with a model for thinking about legal reform, Rome's history—and implicitly British legal reform—was also written in opposition to the East. For Maine (Hobhouse's predecessor on the India Law Council from 1862-1869), the history of property reform in India provided a lesson in contrasts. Although Roman and Indian legal systems shared a common assumption that the family formed the basis of all social organization, he asserted, continued Brahmin priestly influence had steadily degraded Indian society since antiquity.³⁸ Connecting women's property rights to the practice of suttee, or widow-burning in Bengal Proper, he explained that disputes over familial property caused a resurgence of the practice, despite the fact the British outlawed it in 1829.³⁹ “[A]s a rule,” childless widows of the upper classes most commonly burned themselves upon the funeral pyre, he claimed. Their families, under the guise of religious custom, pressured the women to sacrifice themselves in order to gain access to the estate's wealth.⁴⁰ These arguments positioned married women's

in Victorian Britain : The Social Science Association 1857–1886 (New York: Cambridge University Press, 2002)

³⁷ Maine, 21. On the ways Maine's theories of the “traditional” family influenced imperial rule see Mantena, *Alibis of Empire*. Mantena asserts that Maine viewed ancient society in opposition to modern society: ancient society was organized around the patriarchal family unit while modern society was comprised of individuals. She focusses on how this constructed opposition helped justify imperial rule but does not discuss whether British married women's status under coverture challenged presumed distinctions between a “traditional” East and a “modern” West (73-82). On Maine's theories of property see Chapter 4, 129-147.

³⁸ Maine, 5, 13.

³⁹ On the British privileging Brahminic scripture and ideas regarding past Hindu golden age in the abolition of sati see Lata Mani, “Contentious Traditions: The Debate on Sati in Colonial India,” *Cultural Critique*, no. 7 (1987): 119–56, <https://doi.org/10.2307/1354153>.

⁴⁰ Maine, 18-21.

property rights within a broader Victorian tradition of liberal reform that contrasted Britain's progress against a constructed history of India's decline.⁴¹

For Maine, India's decline reaffirmed that Britons needed to embrace legal reform. While he acknowledged that many factors had contributed to the West's ascension and India's decline, he concluded his lecture by stating that if forced to name one factor that determined their differing outcomes, it was that "one [western society] steadily carried forward, while the other [India] recoiled from, the series of changes which put an end to the seclusion and degradation of an entire sex."⁴² Bengal's commitment to an outdated religious custom that rejected women's rightful claims to property, Maine argued, impeded India's development.

By contrast, the lesson to be learned from Roman history was that openness to change had long strengthened Western society and enabled its progress. The history of Roman legal reform, and therefore, Western civilization, was that progress and development occurred by embracing change. This argument framed change as inevitable—for rejecting change led to decline—and placed women's property rights as central to a progressing society.

If Maine and his contemporaries looked to the Romans as a model "golden age" of married women's property rights, they also needed to explain how women's property rights became restricted under common law. To do so, reformers argued that coverture

⁴¹ Thomas R. Metcalf, *Ideologies of the Raj*, New Cambridge History of India ; III, 4 (Cambridge ; New York: Cambridge University Press, 1994). On the ways India fit into British feminist's imagination as they made claims for their own rights see Antoinette M. Burton, *Burdens of History: British Feminists, Indian Women, and Imperial Culture, 1865-1915* (Chapel Hill: University of North Carolina Press, 1994).

⁴² Maine, 21.

was not an original aspect of common law, but a reflection of the “barbaric” influences that had permeated the early Church after Rome’s fall.

This required a careful delineation. Arthur Hobhouse, for example, explained “the influx of the ruder Aryan nations brought back many older and ruder customs, and, coupled with the influence of Christianity, or at least of the Christian priesthoods, placed women in a position far inferior to what they occupied under the civilized imperial system.”⁴³ Espousing assurance in elite and enlightened governance, Charles Pearson explained that because Christianity “was not the religion of the best-educated or most intelligent men” and “recruited its teachers from the lower classes” it could not rise to the level of the highest Roman Jurisprudence.” As a result, it “became more and more leavened with the feelings of Gothic and Vandalic invaders” and “relapsed more and more into the patriarchal conception of the husband as supreme in his family.”⁴⁴ By attributing Christianity’s patriarchal teachings to the influence of invaders from the East during the collapse of the Western Roman Empire, reformers challenged conservative arguments that the patriarchal family was inherit to Christian teaching.

In doing so, they reaffirmed the feudal era—after the barbarian invasions—as a dark age for married women’s proprietary rights. For example, Maine stated that “the disruption of the Roman Empire was very unfavourable to the personal and proprietary liberty of women. ... The place of women under the new [feudal] system when fully organized was worse than it was under Roman law, and would have been very greatly

⁴³ Hobhouse, 14-15.

⁴⁴ Pearson, 163.

worse but for the efforts of the Church.”⁴⁵ He credited the early church with preserving Roman law codes and “keeping alive” Roman legislation that “respected settled property.” In other words, preserving as much as possible, women’s property from the barbaric influences coming from the east.

By establishing the feudal era as the age when women’s property rights were curtailed, these histories successfully cast the law of coverture as a barbaric law. Arthur Hobhouse countered the claim that a husband’s authority over his wife reflected an “enlightened” view of his duties when he asserted that the practice of coverture was “but a fragment of a barbarous system rejected by all nations in proportion as they have civilized and improved their laws.”⁴⁶ Similarly, the *Liverpool Mercury*, understood a married woman’s position under common law as a “relic of slavery” from the old Roman law that allowed a father to sell his daughter and complained that no other “civilized country” still possessed a law like England’s.⁴⁷

The debate framing the passage of the Married Women’s Property Act contained an underlying ambiguity. Reformers looked to the distant past to make the case for granting married women property rights. But they also viewed the 1882 MWPA as a law for a modern, enlightened age and the Act’s passage marked the end of a lingering feudal influence. An article in the *Westminster Review* proclaimed that “we have now arrived at the last stage of historical development. The Married Women’s Property Act 1882, from January 1, 1883, entirely abrogates the old Common Law doctrine of unity between

⁴⁵ Maine, 19-20.

⁴⁶ Hobhouse, 15.

⁴⁷ “The Property of Married Women,” *Liverpool Mercury*, October 23, 1875.

husband and wife, so far as property *inter* is concerned. Henceforth, they are to have separate and antagonistic interests; and the woman whom Mill portrayed as a degraded slave is emancipated by statute, with all the attributes and privileges of a freeman.”⁴⁸

Property Reform in America

While the history of Ancient Rome maintained a significant hold on Britons’ imaginations, it could also be a limiting model. If Britons drew inspiration from imperial Rome, the end of the Roman Empire raised questions about imperial Britain’s eventual demise. This ambivalence was captured in an 1884 essay, “A History of the Laws Affecting the Property of Married Women in England,” by the barrister Basil Edwin Lawrence. Commenting on the recently passed 1882 Property Act, which had come into effect a year before, Lawrence expressed uncertainty about the Act’s consequences. He interpreted the 1882 Act as introducing a new principle, severing “the unit of person” that underpinned the assumptions of common law. Changes to a wife’s property rights, he noted, were ““tried at Rome” and were “a failure.”⁴⁹

Rome’s failure, however, did not necessarily predict Britain’s demise. In the United States, Vermont, Massachusetts, and New York had granted married women control over their property.⁵⁰ For Lawrence, English and American society possessed

⁴⁸ R[obert] M[etcalf] Minton-Senhouse, “Married Women: A Historical Sketch,” *Westminster Review* 131, no. 1 (January 1889), 364.

⁴⁹ Basil Edwin Lawrence, *History of the Laws Affecting the Property of Married Women in England. (Being an Essay Which Obtained the Yorke Prize of the University of Cambridge)* (London: Reeves & Turner, 100 Chancery Lane and Carey Street, 1884), 15.

⁵⁰ *Special Report from the Select Committee on Married Women’s Property Bill; Together with the Proceedings of the Committee, Minutes of Evidence, Appendix, and Index* (House of Commons, 1868), xi.

more similarities than England and Ancient Rome; evidence that property reform had “apparently been successful” in America led him to cautiously express that “the success of the principle in America makes the success of the principle in England more than probable.”⁵¹

Lawrence’s attention to legal reforms in the United States exemplified a third framework used by activists to argue in favor of reforming the common law. In doing so they participated in a broader trend in late-Victorian imperial thought. As Duncan Bell has shown, during the late-Victorian period imperial thinkers began to view the United States as a potential model for securing the future of “Greater Britain.”⁵² Debates regarding property reform aligned with this tendency to see the United States as a model for Britain’s future.⁵³

The United States, with its origins as a British colony, provided an important model for English reformers because common law formed the foundation of the states’ legal systems. Furthermore, the United States’ political structure—that states had autonomy within the federal system—had the advantage of providing examples of legal reforms being successfully introduced in multiple societies. For example, in the same essay in which he discussed married women’s property rights in ancient Rome, Charles

⁵¹ Lawrence, 15.

⁵² Duncan Bell, “From Ancient to Modern in Victorian Imperial Thought,” *The Historical Journal* 49, no. 3 (September 2006): 735–59.

⁵³ These views, overall, participated in ongoing transatlantic conversations about liberal reforms in both nations in the post-American Civil War era. On transatlantic exchanges regarding women’s suffrage between Victorian intellectuals in the United States and Britain see: Leslie A. Butler, “A ‘Badge of Advanced Liberalism’: Woman Suffrage at the High Tide of Anglo-American Reform.” In *Outside In: The Transnational Circuitry of US History*, edited by Andrew Preston, and Doug Rossinow. New York: Oxford University Press, 2017. Oxford Scholarship Online, 2016. doi: 10.1093/acprof:oso/9780190459840.003.0004.

Pearson asserted that the United States provided the best evidence that property reforms could be successful because “the experiments, though guided more or less by a common principle, have been almost as numerous as the States of the Union.”⁵⁴

Reformers imagined Massachusetts, in particular, as a society that most closely reflected their own. The *Englishwoman's Review*, reviewing an essay by the American lawyer, abolitionist, and suffragist Samuel E. Sewell on women's legal position in Massachusetts, observed that no other state in America retained “so close a family resemblance in its social life to England.” Massachusetts, therefore, could “safely be held up as an example.”⁵⁵

Just as histories of reform in Ancient Rome closely paralleled histories of Britain, reformers found commonality in Massachusetts' and England's traditions of incremental legal change. Massachusetts, explained the *Review*, “started with English laws, and has proceeded in our British fashion, not violently changing, but mending, patching, and remodeling the old laws, till ... the fabric of the laws has been almost entirely changed through repeated amendments.”⁵⁶ (Of course, emphasizing Massachusetts's tendency for slow reform required a generous interpretation of the ways Massachusetts's colonists had violently overthrown British rule during the American Revolution.) More usefully, Massachusetts's incremental reform—alterations to the law were passed in 1855, 1862, and 1874—reflected a trajectory of legal reform that advocates were trying to achieve in

⁵⁴ Pearson, 176.

⁵⁵ “Art I. Legal Condition of Women in Massachusetts,” *The Englishwoman's Review*, (March 15, 1876), 97.

⁵⁶ *Ibid.*

England.⁵⁷ The 1870 MWPA had introduced limited property rights, with revisions introduced in an 1874 amendment. English reformers continued to campaign for a third bill that would grant women full property rights, just as Massachusetts had successfully done in 1874.

Similarly, Americans' testimonies closely echoed reformers' arguments that legal reforms would assist wives at the lower end of the social hierarchy. The *Times*, for example, reprinted a letter from the New York jurist Dudley Field upon Shaw Lefevre's request. (Shaw Lefevre explained that the letter was too long to be read during Parliamentary debates but that it "answered objections to the Married Women's Property Bill.") In his letter, Field acknowledged that the "division" between "American working men" and the rest of society was not as great as in England. He instead emphasized the law's benefit for different racial populations, writing that "among the large class of foreign-born labourers who throng our large cities, and who are much below American mechanics in intelligence and comfort, I think that the beneficial effects of our Married Women's Acts are quite as perceptible as anywhere else."⁵⁸ While British reformers rarely, if ever, suggested that property reform would benefit immigrants in Britain, historians have illustrated the ways Victorians tended to regard the urban poor as a "race apart."⁵⁹ Field's attention to "othered" populations in his letter then, echoed Victorians own imagining of their urban environments, particularly following on the heels of

⁵⁷ Ibid.

⁵⁸ George Shaw Lefevre and Dudley Field, "The Married Women's Property Bill," *The Times*, June 15, 1868: 6.

⁵⁹ Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London*, *Women in Culture and Society* (Chicago: University of Chicago Press, 1992), 19.

testimony offered by the Reverend Septimus Hansard, a rector in Bethnal Green, in London's East End.⁶⁰

Unreformed property laws in the post-antebellum southern states served as an important contrast that reinforced the social benefits of women's property rights. Field acknowledged there was "great dissatisfaction" among ex-slave women. He explained that when they were slaves, the women were not legally married and therefore "held what little their masters allowed them to hold at all independently of their husbands."⁶¹ Ironically, emancipation had robbed slave-women of their limited property. Now that they could legally marry, "male negroes"—who Field characterized as having "high notions of the dignity of their sex"—were "enforcing all their rights against their wives" and taking their earnings.⁶² The assertion illustrated the ambiguous ways critiques of slavery existed alongside racial assumptions about America's recently emancipated slave population. It also constituted a deep critique of common law, suggesting that under chattel slavery a woman enjoyed more property protections than she did as a free woman.

Fields also took care to emphasize that married women's property rights had no impact on men's familial roles, reinforcing English reformers' promise that property reform would not undermine the patriarchal family. He attested that he personally had not witnessed any familial dissention caused by the law. More importantly, the reforms had not impacted men's masculinity: men in America continued to be the main breadwinners for their families even though the law required woman property-owners to contribute to

⁶⁰ Hansard would also serve as a member of the MWCC. Holcombe, 167. On the East End see Walkowitz, 26.

⁶¹ George Shaw Lefevre and Dudley Field, 6.

⁶² *Ibid.*

the family expenses. He maintained that Americans found the idea that a wife would contribute to the family to be “utterly repugnant” and “offensive to the pride which all men among us have in assuming the responsibilities of their families.”⁶³ The law, promised Fields (and implicitly English reformers), had no impact on a husband who fulfilled his masculine duties; it simply provided protections to lower-class women that enabled them to care for their children when their husbands failed in their familial duties.

Papers that supported the property reform efforts reiterated Americans’ testimonies as evidence that British reform would be successful. *The Economist* concluded that “the Northern states of America have almost all adopted the principle of giving married women the same power over their own property which single women possess, and we do not find that ‘the family’ has suffered in consequence.”⁶⁴ Similarly, in 1875, *The Liverpool Mercury* argued that “more than 20 years ago, the law, originally the same as our own... was repealed in several of the New England states; and there are the strongest testimonies to the beneficial results.”⁶⁵

Glowing testimonies about the benefits of property reform in America did not convince all Britons, however. The *Pall Mall Gazette*, which opposed reform beyond any measure that would protect the earnings of poor women, suspected that Americans’ testimonies were not fully honest. “Can anyone who knows anything of Americans, of all people in the world, believe that an American would be likely to come forward before an English Parliamentary Committee and say: one of the most characteristic of our

⁶³ Ibid.

⁶⁴ “The Property of Married Women,” *The Economist*, June 13, 1868.

⁶⁵ “The Property of Married Women,” *Liverpool Mercury Etc*, October 23, 1875.

alterations in the law of England has not been justified?" one article asked. In this case, Britain and America's long history was a reason to question Americans' experiences. The paper doubted that any American would ever concede that "American women are not such good wives as Englishwomen, nor are American homes so happy as English homes."⁶⁶

Just as opponents expected that Americans would never honestly admit their reforms had failed to the country it rebelled from, proclamations about Americans' success also prompted anxieties about the proper boundaries between Britain and its old colony. The *Grantham Journal* opposed property reform in 1868 and 1869 on the grounds that "Americanizing the institutions of our land" did not constitute "legislative wisdom."⁶⁷ An article in the *Bradford Observer*, on the other hand, questioned American evidence by arguing that reforms in New York, passed only eight years prior, was not "a long time to pitchfork usages and nature out of doors" and that Americans had not yet seen the true effects of property reform. Adopting a tone that implied the long-term benefits of British imperial rule, the paper contended that "the majority of American women are still under the sentiments generated by the common law of England."⁶⁸

More broadly, for opponents, American reforms reflected the fact that America and Britain were different societies that existed under different conditions. The *Times* (which initially opposed the property reform bills but eventually shifted its position) captured this sense most acutely when it reflected on the fact that "we have always

⁶⁶ "The Property of Married Women," *The Pall Mall Gazette*, July 29, 1868.

⁶⁷ "Married Women's Property Bill," *Grantham Journal*, July 3, 1869.

⁶⁸ "The Married Women's Property Bill," *The Bradford Observer*, March 21, 1870.

demurred to the United States ... to answer these apprehensions” about women’s property rights.” But the paper questioned whether the United States was even a useful model. Emphasizing the United States’ geographic expanse, the paper observed that the “proportions of society” in America were very different. In America, the country’s size and “the wide scope for individual action render a greater degree of personal independence, if not necessary, at least innocuous.” By contrast, Britain was “a crowded and complex civilization” that “stands in a very different position.”⁶⁹ Characterizing Britain in such a way, of course, overlooked the ways its expanding empire provided an outlet for the growing population. But it also captured Britons’ sense of the precarious and interdependent nature of their society, and the ways in which they expected changes to married women’s rights to carry social consequences.

Despite the many statements testifying to the Americans’ success, when the 1882 Property Act finally passed, Britons turned to the diversity in their own empire for reassurance that society would continue to flourish. Commenting on the many legal implications of the Property Acts, the *Times* wrote that the “first feeling of many ... will be one of apprehension that some of the fine features of English domestic life may be impaired.” But, the article continued, the second thoughts were likely “to be re-assuring.” If one looked to the “state of our colonies, where very diverse laws as to this subject have prevailed—the English common law, the old *coutume* of Paris, the Roman-Dutch law, for

⁶⁹ “When the Married Women’s Property Bill Passed,” *The Times*, July 31, 1869, 9.

instance”—they would be “convinced that tranquility and happiness may exist and most domestic virtues flower and flourish under the most unlike conditions.”⁷⁰

A Social Revolution

Britons looked to Ancient Rome and the United States as models for legal reform because they understood granting married women’s property rights to be a “revolutionary” measure. An 1869 *Times* editorial, for instance, reminded its readers that because ‘the married state’ was the “foundation of the social state it would be a matter of grave and universal concern if a *revolution* in the law tended to disorganize such a relation.”⁷¹ Comparing the 1869 property bill to other controversial political legislation, the *Bradford Observer* asserted that the proposal contained “the germs of a change more general and sweeping” than the political changes “accomplished by the [1867] Reform Bill” which had enfranchised working-class men, or the changes outlined in Mr. Gladstone’s Irish Church Bill,” (the Irish Church Act of 1869) that disestablished the Church of Ireland.⁷² In 1870, however, promises of enormous social change went unrealized. Because the 1870 Act that passed Parliament was more limited in its scope than the proposed bill, many Victorians viewed the 1870 Act as a significant reform that addressed the problems faced by poor women, but they did not consider it “revolutionary.”

⁷⁰ “The Operation of the Married Women’s Property Act,” *The Times*, June 20, 1883, 11.

⁷¹ Emphasis mine. “When the Married Women’s Property Bill passed.” *The Times*, 31 July 1869: 9.

⁷² “Married Women’s Property,” *The Bradford Observer*, April 16, 1869, 2.

Instead, the 1882 Property Act represented a “revolutionary” reform. Undoubtedly a major reform, the Act greatly expanded married women’s property rights and overturned much of the law of coverture, so that a married woman possessed almost the same rights as a *feme sole*. For activists, the 1882 Act fulfilled the MWPC’s aims, evidenced by the fact that the Committee dissolved itself after its passage, which further reinforced the sense of conclusive achievement.

Ironically, for an Act that commentators proclaimed inaugurated a “social revolution,” and in contrast to the long debates that preceded the limited 1870 Act, Parliament passed the 1882 Married Women’s Property Act after relatively little discussion. Throughout the 1870s, the Married Women’s Property Committee spearheaded a campaign—deploying petitioning, efforts to sway public opinion, and Parliamentary networks—to secure a reform bill that would extend married women the same property rights held by a *feme sole* or widow.⁷³ In 1880 and 1881, versions of their bill received second readings in the Commons. Progress was stalled by Sir George Campbell, Scottish liberal and MP for Kirkaldy Burghs and Mr. Warton, MP for Bridport; both used a parliamentary procedure known as the twelve-o’clock rule to block further debate. By 1882, then, the bill had lingered in Parliament for two years, a possible reason for its lack of attention.⁷⁴ In the Commons, the bill received one debate.⁷⁵ In the Lords, the liberal Roundell Palmer, Lord Chancellor and First Earl of Selborne, moved

⁷³ Holcombe, 184-205.

⁷⁴ “London, Saturday, May 20, 1882,” *The Times*, May 20, 1882.

⁷⁵ “The New Legal Position of Married Women,” *Blackwood’s Edinburgh Magazine* 133, no. 808 (February 1883): 207.

for a second reading of the bill on March 8.⁷⁶ On May 20 it passed the third reading. Back in the Commons, the bill was ordered into Committee in and received a third reading four days later. On the day Parliament recessed, the Act received royal assent.⁷⁷

As the bill made its way through Parliament, press coverage was also muted. *The Times*, for instance, reported the bill's passage through the Lords, but did not reprint any debates that occurred before the reading, a contrast to the 1870 Act, when Parliamentary debates were reprinted in papers across Britain.

The lack of public debate makes it difficult to determine why MPs supported the bill, although Ben Griffin has suggested four factors secured the Act's passage. Firstly, as previously mentioned, the outcomes of various court cases reported in the press convinced MPs, particularly John Hinde Palmer, who took charge of the bill, that the 1870 Act was too limited to fully protect poor women from their husbands. Secondly, creditors were lobbying Parliament for changes that would enable them to recover debts from married women. Thirdly, the 1873 Judicature Act stated that whenever the rules of equity and common law conflicted, equity prevailed, meaning that women's position under common law would be altered as the Judicature Act took effect. Finally, Liberals' large majority after the 1880 election meant the MWPC had many sympathizers in Parliament willing to support reforms.⁷⁸

Notably, Britons offered different conclusions about the reasons for the Act's passage. In other words, the terms of the bill, as understood by MPs, was not necessarily

⁷⁶ "London, Wednesday, March 8, 1882." *Times*, March 8, 1882, 11. Palmer's daughter was the suffragist Lady Laura Elizabeth Riding.

⁷⁷ Holcombe, 201.

⁷⁸ Griffin, "Class, Gender, and Liberalism in Parliament," 80-81.

the same as the ways Britons understood the Act. This is an important point because these competing interpretations of the law continued to shape debates about the law's scope and meaning, as the following chapters will show.

For MPs and some commentators outside Parliament, class perceptions continued to inflect discussion of the 1882 Act. As noted, *Chambers Journal* reiterated a common refrain: the 1882 Act would provide a benefit to the “hard-working wife” in “thousands of English homes” who “earns the living... while the husband spends his time in idleness, and not unfrequently demands money from his wife to waste on strong drink.”⁷⁹

More commonly, however, Britons interpreted the 1882 Act's passage as either evidence of a shift in popular opinion with regard to women's property rights, or evidence of Parliament's ineffective governance. For example, the barrister William Andrews Holdsworth regarded the 1882 Act's passage as reflecting changes in public opinion. He explained that the 1870 Act which was passed “in spite of strenuous opposition” had been more limited because “public opinion was not ripe for a broad and sweeping recognition” of a married woman's right to control her property.⁸⁰ By implication, the 1882 Act's smooth passage through Parliament illustrated the public's acceptance of its principles. An article by George John Cox on the “Changed Position of Married Women” published in *The Dublin Review* expressed a similar point. Cox observed that “it may be safely said that forty years ago such an Act would have been wholly impossible, and yet, public opinion, slowly ripening had so gathered force that the

⁷⁹ “The Married Women's Property Act (1882),” *Chambers Journal of Popular Literature, Science and Arts* 19, no. 991 (December 23, 1882): 320

⁸⁰ Holdsworth, *The Married Women's Property Act 1882 (45 & 46 Vict., Cap. 75), with an Introduction, Notes, and Index* (New York, NY: George Routledge and Sons, 1882), 5.

Bill became law without scarcely any opposition, and without vigorous debate at all.”⁸¹ Cox did not consider whether the limited debate reflected the Liberals’ 137-person majority, instead viewing the Act’s easy passage as evidence of the public’s wide support.⁸²

By contrast, those who regarded the 1882 Act with deep apprehension, if not full opposition, regarded the lack of controversy as evidence of the public’s ignorance of the Act’s provisions. In 1882, George Campbell (the MP who successfully blocked the 1880 bill) argued that “not one woman in a million” or “the country at large” had the “slightest idea of what the Bill proposed.”⁸³ Campbell’s invocation of women’s disinterest was not unusual. MPs commonly opposed women’s rights bills—in particular suffrage—on the grounds that they found no evidence the majority of women in Britain desired a change. His complaint that the nation as a whole was unaware of the bill’s provisions, however, was reiterated after the Act’s passage, when the public’s ignorance could not be an excuse to stall the bill. For example, in 1883 the *Derbyshire Times* lamented that “neither the people of England, nor their so-called legislatures, seem to have known anything about it, yet the Bill passed both Houses of Parliament.”⁸⁴ *Chambers Journal* suggested that the Act had only passed because it was “passed very quietly” during a session of Parliament in which the “attention of the public was taken up” with other controversies—

⁸¹ John George Cox, “Art. VIII-The Changed Position of Married Women,” *The Dublin Review* 9, no. 2 (April 1883): 418.

⁸² The Liberal majority was 137, but 200 if Irish nationalists were included. Holcombe, 196

⁸³ “House of Commons, Friday, Aug. 11,” *The Times*, August 12, 1882.

⁸⁴ “a Man and His Wife Are One—Are They?” *The Derbyshire Times and Chesterfield Herald*, January 13, 1883, 5.

Irish land reform and Britain's occupation of Egypt.⁸⁵ Implicit in these complaints was opponents' assumption that they shared the public's true opinion, which would have been expressed if the public had been made aware of the bill.

Opponents tended to dwell on the public's ignorance because it indicated a larger problem with Parliament: that "bills slip through Parliament without anything like sufficient criticism, and even without any very exact comprehension of their meaning."⁸⁶ One article in the *Times* compared MPs to "an ignorant labourer at work with a pick and shovel among a labyrinth of wires and pipes" who "strikes, as he thinks, a harmless blow" that was felt in "far distant places and in unexpected ways."⁸⁷ Another complained that Parliament "did not deign to accord" the MWPA a "tithe of the attention which it ungrudgingly and as a matter of course bestows upon a third-rate Irish measure" despite the fact that the 1882 MWPA represented "a sort of wedge driven into our social system."⁸⁸ For critics, the MWPA was not a legislative victory, but evidence that MPs were abrogating their governing duties.

Regardless of how they interpreted the 1882 Act's passage, most Britons shared a common expectation with regard to its consequences: the Act constituted a "social revolution." George Cox, for instance, described the 1882 MWPA as "one of those

⁸⁵ "The Married Women's Property Act (1882)," *Chambers Journal of Popular Literature, Science and Arts* 19, no. 991 (December 23, 1882): 819.

⁸⁶ "The Lodger Franchise," *Saturday Review of Politics, Literature, Science and Art* 54, no. 104 (September 23, 1882): 397. On Britons' frustration with Parliament's ability to pass bills and govern see Ryan A. Vieira, *Time and Politics: Parliament and the Culture of Modernity in Nineteenth-Century Britain and the British World* (New York: Oxford University Press, 2015), especially Chapter 3 pp 84-122.

⁸⁷ "The Operation of the Married Women's Property," *The Times*, June 20, 1883, 11

⁸⁸ *Ibid.*

revolutions of the silent sort, which, almost unnoticed, change the face of society.”⁸⁹ In reality, both the 1870 and 1882 Act drew on existing legal precedent established by the Courts of Chancery. Both laws built on the idea of a “separate trust” established in equity when they granted married women a right to her separate property. The major change introduced by the statutes was the fact that *all* women had access to the rules of equity (although neither Act was retroactive). Victorians seemed to simply accept the premise that married women’s property ownership would change their positions in their marriages and families. The extent of disagreement centered on whether commentators expected this change to destroy or improve society.

Therefore, despite its legal continuities, most commentators framed the 1882 Act as inaugurating a new era for women’s rights. The *Derbyshire Times* (which opposed the 1882 Act but supported women’s suffrage) assured its readers that “social revolution,” was “not too large a term” to describe the legal changes introduced by the law.⁹⁰ The paper offered the broadest possible interpretation of the MWPA: it explained that a married woman could own, inherit, and dispose of her property; sue and be sued; be made bankrupt; trade on her own; and act as if she “were an unmarried woman.”⁹¹ The explanation is noteworthy because it illustrates how Victorians’ expectations about the Acts’ revolutionary potential relied more on a broad acceptance of the general summaries of the MWPA, rather than the specific legal details which built on existing practices in equity.

⁸⁹ Cox, 417–42.

⁹⁰ “a Man and His Wife Are One—Are They?,” *The Derbyshire Times and Chesterfield Herald*, January 13, 1883, 5.

⁹¹ *Ibid.*

While the 1882 MWPA greatly extended a married woman's property rights, it did not place a married woman in the exact same position as an unmarried woman. Judges continued to hold, for example, that a married woman could only be held liable for debts to the extent of her separate estate. A married woman had to conduct her trade entirely independent from her husband for her property to be protected under the Act. If she received his assistance, coverture remained in effect (the subject of the next chapter). But for many, the legal principles the Act introduced symbolized the clear end to the "community of property" that had once bonded a husband and wife in marriage.⁹²

Supporters of the Property Act, on the other hand, celebrated its revolutionary promise for the same reason other Britons regarded the law with apprehension. Elizabeth Elmy, longtime member of the Married Women's Property Committee, authored a jubilant article in the *Englishwoman's Review* in which she characterized the 1882 law as "the Magna Charta for Women" and a "veritable Women's Emancipation Act." For Elmy, the fact that the law "wholly destroys the common law incapacity of a wife with regard to property" proved just as exciting as it was alarming for opponents. Like the *Derbyshire Times*, Elmy agreed that the 1882 Act marked a "social revolution," but she expected that this revolution would further improve women's position in society, and therefore advance social progress.

Victorians' proclamations regarding the revolutionary potential of the Married Women's Property Acts served two significant purposes. First, the 1882 Act introduced a break in the history of married women's rights, establishing a period before and after the

⁹² Ibid.

1882 Property Act. In this narrative, drawn from histories of Ancient Rome, married women's rights (or lack thereof) under common law cast coverture as a legal relic from a more barbarous age. By contrast, the "revolutionary" 1882 Act represented a break from the lingering "feudal" or "primitive" laws that previously dictated married women's subordination. Married women's rights under the 1882 Act reflected the rights of individuals in a society that had broken from the influences of its barbaric past.

Second, and subsequently, the 1882 Property Act seemed to confirm the highest ideals of the Victorians' century, reinforcing their notions of their society as progressive, rational, and modern. As early as 1870, after the Lords had dramatically altered Russell Gurney's Bill, an article in the *Saturday Review* connected a future property reform bill to an age of greater enlightenment when it observed that "the cancelled clauses of the Bill embodied a great principle" but "must await an age of more complete enlightenment for its reception into the system of English law."⁹³ The 1882 Act's passage appeared to confirm this prediction. For Elizabeth Elmy, the Act was a "most just and salutary" one that confirmed a triumph of "reason over prejudice, of justice over selfishness."⁹⁴ She made a point to celebrate men's willingness to surrender an "unjust prerogative"—their marital claims to their wives' property. This sacrifice, asserted Elmy, provided "striking proof of the growing strength of that spirit of justice which we hold to be the crowning glory of this nineteenth century."⁹⁵

⁹³ "The Married Women's Property Bill," *Saturday Review of Politics, Literature, Science and Art* 30, no. 771 (August 6, 1870): 170.

⁹⁴ Elmy, "Art. I. The Married Women's Property Act," *The Englishwoman's Review of Social and Industrial Questions* Vol XIII (September 15, 1882), 388.

⁹⁵ *Ibid.*

Summary

These many competing arguments in favor of reform—efforts to help the poor, conceptions of Britain as the heir to ancient Rome’s legacy, ideas about Britain’s commonalities with the United States, and the law’s revolutionary nature—formed the primary strands of debate as Britons considered the Property Acts’ potential consequences. In doing so, they reflected the various ways, sometimes in tension with each other, that Victorians conceptualized their society. But they also anticipated the many ways the Property Acts would be understood after 1882. In other words, because there was never one singular argument that secured the Acts’ passage, Britons possessed multiple understandings about the Acts.

The 1882 Act, in particular, constituted a landmark legal reform that enabled supporters of women’s rights to make further claims for married women’s individuality and equality. But not all who supported the Property Acts agreed that the law had conceded the main principle of coverture—marital unity—or had any implications for women’s rights. Some recognized that the Acts had the potential to impact family life, but generally expected that it provided benefits for working class wives. Others regarded the new law as evidence of Parliament’s foolhardy willingness to pass laws without reflecting on their long-term consequences.

These unresolved, competing understandings were important because they continued to shape debates over the Property Acts in the decades after their passage. Did the Property Acts contain universal principles symbolizing women’s equality or were

they a law to protect poor women's property? This contest—between a universal or narrow, class-inflected understanding of the Act—provided much of the tension informing arguments about how they should be applied in the years to come.

Chapter 2. Her Separate property: A Husband's Authority and a Wife's Separate Business, 1870-1930

Introduction

In his treatise, *The Married Women's Property Act, 1882*, Joseph Samuel Rubinstein, a solicitor of the Supreme Court, tried to dispel the idea that the 1882 MWPA overturned the common law of coverture. As Rubenstein reminded his readers, the 1882 MWPA was “neither so sweeping nor so logical as has been represented. Married women are still far from having acquired the independent status of *feme sole*.”⁹⁶ Instead, he explained, the Act “extend[ed] the notion of separate estate.”⁹⁷ So long as a woman possessed separate property, the property was protected under the MWPA; she could be held liable for debts only to the extent of her separate estate. If a woman lacked separate property, the law of coverture remained in force and she was prevented from entering into contracts (except as her husband's agent) or being sued.⁹⁸ Despite these continuities, Rubinstein predicted that the “equivocal character” of the language of the Act, alongside the combination of common law and equity law that determined married women's

⁹⁶ Joseph Samuel Rubinstein, *The Married Women's Property Act, 1882 (45 & 46 Vic. Cap. 75) with Introduction, Summary, Notes, Cases, and Precedents, and an Appendix Containing the Statutes Relating to Married Women with Careful Cross-References and Copious Index*. (London: Waterlow Bros & Layton, 1882), 26.

⁹⁷ *Ibid*, 24.

⁹⁸ *Ibid*, 25.

property rights, meant that the “Act will give rise to a great amount of litigation to determine its meaning.”⁹⁹

This chapter turns to the courts, where judges, barristers, plaintiffs, and defendants articulated their respective interpretations of the MWPA’s meaning. It focusses on one question: how did judges define a woman’s separate property? Both the 1870 and 1882 MWPA stated that any earnings or profits a married woman earned by carrying on a business or trade independent of her husband constituted her separate property.¹⁰⁰ But, as many commentators acknowledged, no clear standard existed for determining when a wife had acted sufficiently “independently” from her husband for a business to be her separate property.¹⁰¹ They generally accepted that the circumstances of a case would show whether a woman had acted independently. Consequently, cases involving a married woman’s separate business required a judge to interpret both the married woman’s and her husband’s behavior in order to determine whether the wife had acted independently.

This chapter argues that judges’ assumptions about a husband’s authority over his wife shaped their decisions defining a wife’s separate property. Judges took great care to find evidence that a husband had granted his authority for his wife to run her business by

⁹⁹ Ibid, 26.

¹⁰⁰ The 1870 Act granted married women control over specific forms of property: earnings or acquired in a trade or occupation carried on separately from her husband; investments from these earnings; deposits in a Savings Bank; intestate property under £200; rents and profits from real estate; and insurance policies effected for her separate use. The 1882 Act expanded these rights to cover any property, real or personal, acquired by a married woman after 1 January 1883, (the year the Act went into effect). Archibald Brown and John Richard Griffith. *The Married Women’s Property Acts 1870, 1874, 1882 and 1884 : With Copious and Explanatory Notes and an Appendix of Acts Relating to Married Women*. 6th ed. London: Stevens and Haynes, 1891. 1-4. Section 11 of the 1870 MWPA and Section 12 of the 1882 MWPA granted a married woman the right to maintain an action at law with regard to her separate property (16).

¹⁰¹ Holdsworth, 37.

herself before they determined that a wife's business constituted her separate property. At the same time, this high bar also effectively demonstrated married women's capabilities as independent successful traders. Their success, while reliant on a husband's authority, also existed in contradiction to late-Victorian assumptions regarding a woman's economic ignorance and necessary dependence on a husband or male family member.¹⁰² Over time, the chapter contends, these conflicts undermined Victorians' ideals of marital unity and compelled Britons to contest with husbands and wives' independent identities. Emergent acceptance of married women's individual property rights generated a growing sense among some Britons that men suffered unjust obligations under the law. In either view, the MWPA became a means to explain husbands and wives' changed relationships.

This chapter focuses on cases that came before the courts between 1870 and 1935. The emphasis here is not on the development of case law, but on the ways men and women's behaviors were interpreted. During this period, women in Britain experienced many changes in their employment prospects, educational access, and achieved political citizenship. My interest here is on the ways the MWPA served as an easy shorthand that encapsulated these many changes.¹⁰³ Ultimately, this trajectory was deeply ambiguous and prevents any easy conclusions about whether the Act had a positive or negative

¹⁰² For an example of this sort of advice literature see [M.S. Welshman], *A Guide to the Unprotected in Every-Day Matters Relating to Property and Income, by a Banker's Daughter* (London: R. Clay, Son, and Taylor Printers, 1863).

¹⁰³ On economic changes, particularly the burgeoning consumer economy, see Erika Diane Rappaport, *Shopping for Pleasure: Women in the Making of London's West End* (Princeton, NJ: Princeton University Press, 2001). For discussions of women's employment experiences see Lee Holcombe, *Victorian Ladies at Work: Middle-Class Working Women in England and Wales, 1850-1914*. (Hamden, CT: Archon Books, 1973) and Helen Glew, *Gender, Rhetoric and Regulation: Women's Work in the Civil Service and the London County Council, 1900-1955* (Manchester: Manchester University Press, 2016), <http://www.jstor.org.ezproxy.bu.edu/stable/j.ctt1b349vc>.

impact. Early cases from the 1870s show that judges tended to construe the MWPA as narrowly as possible. Over time, judges showed greater acceptance of women's abilities to act independently in marriage. Yet, concerns about the ways the law impacted men continued to inform their decisions.

This chapter primarily draws on records of cases as they were reported by the *Times Law Reports*. Most of these cases occurred in the high courts and are exceptional in the sense that those pursuing the suit (or appealing the decision) had the funds to pay the high legal costs. This is noteworthy in two respects. MPs passed the 1870 MWPA asserting that the law would have little impact on the respectable middle and upper classes.¹⁰⁴ They were content to let county courts—which were perceived to have different legal standards—take care of cases involving poor women. High court cases show the ways in which the law's impact was felt at all social levels. This also means that elite judges' own gender and class assumptions should be remembered as they interpreted the law.

On a more pragmatic level, the *Times* provides sufficient details of both the cases and the judges' decisions. Court documents were archived as clerks filed them and they remain uncatalogued and scatted across boxes at the National Archives. Consequently, the *Times* is a far more reliable source to track the outcome of a case. *Times Law Reports* detail the major arguments and judgements as they developed in court. These reports are also useful because they show how the public learned about the cases.

¹⁰⁴ Griffin, "Ben Griffin, "Class, Gender, and Liberalism in Parliament."

The 1870 Property Act and a Husband's Authority

Digges v. Godderer, was initially heard in the Court of Common Pleas before Justice Willes and a jury in 1872. The case sparked a wider debate about the means through which a woman acquired her property and subsequent rights to it. The plaintiff, Mrs. Hannah Digges was an actress and married woman living separately from her husband. The couple separated in 1868 (at the time of the separation Hannah Digges did not secure a protection order). After their separation Hannah Digges supported herself by sewing, giving piano lessons, and working as a ballet dancer at Haymarket Theatre. In the spring of 1872, the Sheriff of Middlesex seized property from Mrs. Digges' home to satisfy gambling debts her husband owed to a Mr. Godderer. The seized property included furniture, jewelry (including one or two diamond rings), and £70.¹⁰⁵ Hannah Digges then sued the defendant, Mr. Godderer, for the return of her property, arguing that the items were her separate property under the 1870 MWPA and could not be seized for her husband's debts.

As one of the first cases to raise the question of what constituted separate property under the MWPA, Digges v. Godderer illustrates two important points: firstly, the tenuous position women occupied within Victorian moral and legal frameworks; secondly, how high court judges constrained the potential of women's property rights through their reading of the MWPA.

¹⁰⁵ "Mrs. Digge's Earnings," *The Examiner*, no. 3357 (June 1, 1872): 547; "Westminster Police Court," *Jackson's Oxford Journal*, June 15, 1872.

The main question for the court was whether “gifts” constituted separate property. Mrs. Digges explained that she acquired the furniture and other seized property through her own earnings, and “partly with gifts to her by gentlemen who ‘admired her dancing.’”¹⁰⁶ While the 1870 MWPA clearly stated a woman’s earnings were her separate property, it did not mention “gifts.” Determining whether “gifts” were protected property generated a wider moral question: were married women’s property rights absolute or contingent on the circumstances in which the property was acquired?

Lawyers for Mr. Godderer (who had seized the property for gambling debts) predictably argued that the property was not protected under the MWPA. Their argument relied heavily on the implication that Mrs. Digges purchased her property with money she earned through prostitution and therefore, the property was not protected under the MWPA. Press coverage obliquely explained that “it was contended that the property was not acquired by earnings in the ordinary sense of the term,” adding that there was “reason to suppose that certain inferences — freely urged in court — are not without foundation.”¹⁰⁷ The *Times* reported that “the furniture . . . had been bought partly by the proceeds of her [Mrs. Digges’] industry, and partly with gifts to her by gentlemen who ‘admired her dancing.’” The paper did not directly accuse Mrs. Digges of infidelity, but implicitly questioned that she would have received money from gentlemen admirers solely out of admiration, when it added that “she declined to state whether there was any other ground for these gifts, which from one gentleman amounted to 60*l.*, from another

¹⁰⁶ “Court Of Queen’s Bench, Westminster, Jan. 11. Digges v. Godderer,” *The Times*, January 13, 1873, 11

¹⁰⁷ “Legal and Police News.” *The Graphic*, June 1, 1872.

10*l.*, and from another 5*l.*”¹⁰⁸ Overall, the defense’s argument emphasized that married women’s right to separate property was conditional on whether the property had been acquired through moral means.

An alternative perspective was that the law protected a married woman’s property regardless of how she acquired it. This line of argument called for a universal application of the law, in opposition to skeptics of the Married Women’s Property Acts who hoped to see the Act enforced as narrowly as possible. The radical *The Examiner*, for instance, argued that the right to own property should not be contingent on society approving its acquisition. The paper tended to downplay the potential that Mrs. Digges’ money was acquired through immoral means but still supported her absolute right to it. One article argued that even “if we assume the very worst ... “it is clear that Mrs. Digge’s earnings were her own...” Therefore, regardless of its acquisition, “the money is as clearly her own as if she had made it by betting, or by gambling, or by lending it at eighty per cent.”¹⁰⁹ Social approval did not determine a woman’s proprietary rights because “the fact that that it was made in a way of which society does not approve remove it from the scope of the Act.” Because there was nothing in the “the Act to show that its operation is confined to those earnings alone for which a good ‘consideration’ has been given” a woman’s right to her property under the law was absolute.¹¹⁰

Establishing a woman’s absolute right to her property, supporters emphasized, would ensure that the law could not be used to penalize moral women. *The Graphic*, for

¹⁰⁸ “Court Of Queen’s Bench, Westminster, Jan. 11. Digges v. Godderer,” *The Times*, January 13, 1873, 11.

¹⁰⁹ “Mrs. Digge’s Earnings,” *The Examiner*, no. 3357 (June 1, 1872): 547.

¹¹⁰ *Ibid.*

instance, expressed hope that the Court would decide in favor of the plaintiff, “not for the sake of persons such as Mrs. Digges may possibly be, but for the sake of industrious and respectable persons whom the suggested interpretation of the law might expose a cruel annoyance.”¹¹¹ The article noted that it would be “hard upon a woman” who was “maintaining herself honestly apart from her husband” to have “the nature of her earnings and the possible fruits of pure benevolence subjected to a scrutiny of the kind.”¹¹² In their view, excluding “gifts” from the Act’s protection prevented a married woman from receiving assistance from friends during a time of need. The paper did not believe that the Act could “intend that a woman so circumstanced should not receive assistance from friends.” Given the fact that most Britons accepted the law would most help poor women, preventing “gifts” from inclusion in the Act’s protections appeared to contradict the very aims of the MWPA.¹¹³

The judge, Justice Willes expressed a universal view of the MWPA when he issued his judgement in favor of the plaintiff. Hannah Digges’ means of acquiring her property, he wrote, did not give her husband a claim to said property, ““even under the circumstances that one may infer took place here; for the man deserted his wife, and what she acquired is not his in honesty or fairness, however she came by it.””¹¹⁴

While Willes ruled in favor of Hannah Digges, he also thought the matter required a full Court’s attention because the case raised a new question that would affect many

¹¹¹ “Legal and Police News,” *The Graphic*, June 1, 1872.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ “Mrs. Digge’s Earnings,” *The Examiner*, June 1, 1872.

people. Consequently, in January 1873, the case was heard by Lord Chief Justice Bovill and Justices Byles, Keating, and Brett at the Court of Queen's Bench, Westminster.

At this point, *Digges v. Godderer* concluded rather quickly. Again, the defense argued that the Property Acts were never intended to protect immorally earned income. The barristers contended that "earnings meant lawful earnings and that those in question had been obtained by unlawful means."¹¹⁵ The Justices agreed, ruling that "gifts" given to a married woman were not protected by the Property Acts. In his decision the Chief Justice casually suggested that the two parties—Mrs. Digges and the Mr. Godderer—divide the proceeds of the sale of the property in order to avoid further litigation and ended the case.¹¹⁶

Press coverage of the decision gave no indication why the justices' ruled the way they did. The defense's and justices' attention to the implication that Hannah Digges acquired her money through "unlawful means" raises the possibility that a different decision might have followed if the case involved a less morally-suspect and more "industrious" plaintiff. Contrasting the outcome of *Digges v. Godderer* with subsequent cases also suggests a second interpretation: that a husband's approval was important for determining whether a lady's earnings comprised her separate property. Three cases from the 1880s—*Ashworth v. Outram*, *Davis v. Artingstall*, and *In Re Dearmer-James v. Dearmer*—show that judges proved willing to respect a married woman's separate property when they could confirm a husband also viewed it as such.

¹¹⁵ "Court Of Queen's Bench, Westminster, Jan. 11. *Digges v. Godderer*," *The Times*, January 13, 1873.

¹¹⁶ *Ibid.*

In all three cases, the justices ultimately decided that the business in question was the separate property of a married woman. To arrive at their respective decisions, justices relied heavily on evidence demonstrating that the husband conceded to his wife's business and allowed her to run her business independently. In doing so, they recognized and privileged assumptions about a husband's natural authority over his wife.

Ashworth v. Outram, heard by Vice-Chancellor Sir Richard Malins in the High Court of Justice in 1877, emerged from disputes over the administration of the estate of a Mr. Thomas Outram, a farmer and manufacturing chemist.¹¹⁷ Thomas Outram died intestate in 1877. He was survived by his widow, Sarah Outram (nee Fairbanks). Fairbanks had been employed by Outram as his housekeeper; the couple became engaged in 1855, but did not marry until 1874, a few months before his death. Throughout this time, Sarah Fairbanks had carried on a preserve-making business. The business had become very successful, earning about £6,000 over the years.¹¹⁸ Following Thomas Outram's death, his next-of-kin claimed he was entitled to the preserving business as part of Thomas Outram's estate. The question before the judges was whether the preserving business formed part of the deceased Outram's estate or whether it was the absolute separate property of his widow.

¹¹⁷ Malins began his political career in 1852 when he was elected the Conservative MP for Wallingford. He strongly opposed the 1857 Divorce Bill but secured the passage of the 1855 Infants' Marriage Settlements Act and the 1857 Married Women's Reversionary Property Act which gave married women the ability to deed certain property with their husbands' approval. J. A. Hamilton and M. C. Curthoys, *Malins, Sir Richard (1805–1882), Judge* (Oxford University Press, 2004), <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-17884>.

¹¹⁸ "High Court Of Justice, March 13." *The Times*. March 14, 1877.

When Malins delivered his judgement, Thomas Outram's actions provided significant evidence that he had viewed his wife's preserve-making business as her separate business. Sarah continued to run her business using her maiden name—Fairbanks. Furthermore, her account books indicated that she had lent her husband, who was repeatedly in arrears, money from her accounts—at one-point lending him £700. These transactions, the judge concluded, showed he was aware she kept separate bank accounts. Witnesses also testified that Thomas Outram had “again and again declared it [the business] was Sarah's.” These public declarations provided evidence that he consented to his wife's business.

Malins' decision, while in favor of Sarah Outram, simultaneously attempted to circumscribe the MWPA, revealing the extent to which he regarded the Act on very narrow terms. Sarah Outram had argued that her business was her separate business under the 1870 MWPA. Malins, however, dismissed this argument. The 1870 Act was not “intended to make settlements for spinsters.” It was a law, he emphasized, “relating to the property of *married* women.” Therefore, he explained, “that if Mrs. Outram had set up this business after the marriage, her earnings in it would have been protected.” In other words, the law existed to protect married women's earnings. It did not automatically protect property a woman brought to a marriage, unless a husband agreed otherwise. If the husband did not consent to a settlement, the property became his upon the marriage.

Malins' explanation of this logic affirmed Thomas Outram's authority. Outram's public consent to his wife's business prevented the property from automatically becoming his upon marriage. As Malins reasoned, Outram “might the moment they were

married have stopped her continuing it [the preserve business], or have taken everything connected with it. But, if he had that right ... and the husband did not interfere with his wife's carrying on the business, the conclusion must be that he acquiesced in her so doing." In other words, by not claiming his right to the property upon their marriage, Outram demonstrated his consent. Consequently, Malins concluded that "Mrs. Outram did carry on the business, and did so successfully, with her husband's knowledge, from the time of her marriage till his death. ... [E]ven independently of the Act of 1870, there was enough to make this business the separate property of Mrs. Outram."¹¹⁹

Re Dearmer-James v. Dearmer, heard in 1885 by Justice Kay, who succeeded Malins as Vice-Chancellor, revealed Kay's more flexible view of the MWPA, while again relying on a husband's actions to establish that a wife, Mrs. Dearmer, ran a ladies' school she founded before her marriage independently from her husband. Upon her marriage, a settlement was drawn up between her and her husband, but it did not mention the school. Throughout their marriage she ran the school and contributed to the household expenses with earnings from it. When her husband died in 1877, his will made no mention of the school. Mrs. Dearmer continued to run the school and then "sold it for a considerable sum."¹²⁰ The question before the court was whether it constituted her separate estate, or whether the children had interests in the business and were entitled to the property and effects from the sale.

¹¹⁹ "High Court Of Justice, March 13." *The Times*. March 14, 1877.

¹²⁰ "Law Report. Dec 5. High Court Of Justice. Chancery Division. In Re Dearmer-James v. Dearmer." *The Times*, December 7, 1885.

The fact that the husband “did not take any part in the business” led Kay to conclude that the business “was, in fact, carried on by the wife separately from her husband.” Evidence supporting this included the fact that “the prospectuses of the school were in the lady’s name, and he [the husband] did not assist in any manner with the tuition.” While the husband invested some of the earnings from the school in his own name, he invested another portion in the lease for the school’s premises. The Law Report also added that the “husband lived until after the passing of the Married Women’s Property Act, 1870.” While it did not elaborate, the aside suggests that the reporter assumed Mr. Dearmer would have been aware of women’s rights under the MWPA and therefore, the fact that he chose not to include any directions regarding the school in his will demonstrated that he viewed the school as his wife’s property. Unlike Malins, who proved reluctant to agree that the MWPA protected a woman’s pre-marital business, Kay confidently agreed that “it was to all intents and purposes the lady’s own business” and therefore protected under s.1 of the 1870 MWPA.

If a woman could establish that her business was her separate property, the law did provide protection, as *Davis v. Artingstall* showed. In 1880, a married woman, Mrs. Davis brought an action against Messrs. Artingstall, auctioneers from Manchester, under the 1870 MWPA. Mrs. Davis had married her husband, Frank Davis, in 1872. During the 1870s they lived in Manchester at a beerhouse Frank Davis ran. Mrs. Davis carried on her own business as a “general dealer in boots and shoes, drapery, haberdashery, furniture, and similar goods.” Initially, she ran the business out of the top floor of the beerhouse but eventually opened a shop next door. In May 1879, Frank Davis arranged for most of the

furniture and goods in the shop premises to be removed and stored in a warehouse until they could be sold at auction. (The *Times* did not explain his motives.) After the auctioneers advertised the sale, Mrs. Davis notified them that the furniture and items listed in the ad constituted her separate property. Despite her warning, the sale continued and the furniture sold for £130. The unsold items were returned to Frank Davis. In response, Mrs. Davis sued the auctioneers under the 1870 MWPA for the value of the furniture, stock in trade, and other effects that had been sold.¹²¹

The outcome of the suit depended on how the courts interpreted Mrs. Davis' business. If it constituted a separate business, her earnings and property accrued through the business were protected under the 1870 Act because she married after it went into effect. If she had acted as her husband's agent, running the haberdashery shop on his behalf, the furniture and trade goods remained the legal property of Frank Davis.

In his decision, Justice Edward Fry emphasized three details that allowed him to conclude the business was Mrs. Davis'.¹²² Firstly, although Frank Davis had printed the bills and trade cards for the business, they had Mrs. Davis' name on them, which implied that he consented to the business being run as her own. Secondly, Fry noted, other people recognized Mrs. Davis as the main dealer: "persons had trusted the wife who would not trust the husband."¹²³ Finally, Frank Davis appeared to have "nothing to do with the business" with the exception of "one occasion" in which he sold "a few yards of

¹²¹ "Davis v. Artingstall." *The Times*, May 3, 1880, 5.

¹²² Fry was one of the first Justices to join the High Court after the Judicature Act. He was J. E. G. de Montmorency and Sinéad Agnew, *Fry, Sir Edward (1827–1918), Judge and Zoologist* (Oxford University Press, 2004), <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-33283>.

¹²³ "Davis v. Artingstall." *The Times*, May 3, 1880: 5.

trimming to oblige a customer.”¹²⁴ In light of this evidence—that Frank Davis allowed the business to be advertised under his wife’s name, his reputation as a less-trustworthy trader, and his absence in the store—Fry “held the business belonged to the wife.”¹²⁵ Consequently, he ruled, Mrs. Davis was entitled to the “fair value” of the goods (instead of what they sold for at auction) as well as all legal costs from the trial.¹²⁶

The cumulative effect of these decisions exposed an ambiguity between a husband’s authority and a wife’s independence. Judges assumed that a husband occupied an authoritative position in his marriage and therefore looked to men’s actions to establish a woman’s independence. Unlike Mrs. Digges, who acquired money through morally suspect “gifts,” Mrs. Outram, Dreamer, and Artingstall were portrayed as industrious and honest women and received the law’s protection. Ironically, they also illustrated married women’s capabilities to run a business without their husband’s assistance.

By contrast, *Thornley v. Thornley*, heard in 1893, illustrated the ways the law deferred to the husband if a married woman could not establish that she worked independently from him. The Thornleys married in 1860. The husband was a soldier who joined the Royal Artillery. Together, the couple worked as peddlers and furniture dealers, eventually “putting together several thousand pounds” that they invested in freehold property. They separated in 1889 and the husband eventually obtained a decree to dissolve the marriage. In the case before the court, heard by Justice Robert Romer, the

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

plaintiff, the wife, sued her ex-husband, arguing that the business and other property was her separate property.¹²⁷

In this instance, the fact that the Thornleys worked together throughout their marriage meant that Mrs. Thornley could only be regarded as her husband's agent and therefore not protected under the MWPA. As Justice Romer explained: "The facts showed that it [the business] was not hers. The husband and wife worked together at it, and the business was carried on for the benefit of the household." He acknowledged that Mr. Thornley had been "assisted" by his wife, and "no doubt her assistance was of great value as she was a very clever woman" but assistance did not make the business hers.¹²⁸ In this reading, the wife was not an equal trader alongside her husband. Her benefit derived from a man fulfilling his familial duties: the business was not carried on for her benefit, "apart from the benefit which any wife got from her husband being prosperous in his business and earning the support of his family."¹²⁹ The husband's perceived character was important for reinforcing Romer's interpretation of the evidence that explained these facts. He expressed his belief that the husband was "an honest man" and therefore "gave full credit to his evidence."¹³⁰

Romer ruled that under the terms of the Married Women's Property Act, the wife was entitled to her share of the interest from property her and her husband had purchased

¹²⁷ F. D. Mackimmon and Patrick Polden, *Romer, Sir Robert (1840–1918), Judge* (Oxford University Press, 2015), <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-35819>.

¹²⁸ "High Court Of Justice," *The Times*, February 7, 1893.13.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

after the 1882 Act came into effect. The business, however, remained the husband's property.

Consequently, the decision exposed the limits of the ways women's economic activity could be legally conceived. Justices' upheld a woman's right to control her separate property under the MWPA as long as a woman could demonstrate she acted independently of her husband and with his consent. This created a space for women to work independently, as respected and successful traders. At the same time, a legal commitment to demonstrating women's complete independence left little room for husband and wives who cooperated with each other. While this might never become a problem for spouses who remained happily married, when disputes over property arose a married woman had little recourse before the law. As the Thornley suit showed, there was little room in the law to recognize (and extract) a wife's contributions from her and her husband's business. So long as they continued to work together—fulfilling the vision of a cooperative marriage painted by many MPs—her husband was considered the rightful owner of the property.

The 1882 Property Act and a Woman's Independence

Husbands' authority over their wives continued to shape interpretations of the law following the passage of the 1882 Married Women's Property Act. But the 1882 Property Act, with its "revolutionary" potential also seemed to broaden the scope of married women's actions. Because the 1882 MWPA allowed married women to enter into contracts to the extent of their separate estate, it also subsequently compelled Britons to

reconsider the contracts and agreements they made with other individuals in society as well.

This shift is best illustrated by *Smith v. Hancock*, which was heard by the Supreme Court of Judicature in 1894. The defendant, Mr. T. P. Hancock, had owned a grocery business in Kidsgrove, Staffordshire, which he ran with his wife and nephew's assistance. In March 1886, Hancock sold the shop, fixtures, utensils, and goodwill of the business to the plaintiff, Mr. Smith, for £2000.¹³¹ As part of the sale Mr. Hancock agreed not to "not to carry on, or be in anywise interested in, the business of a wholesale or retail grocer and provision dealer and baker" within five miles of Smith's store, for a period of ten years.¹³² Seven year later, in 1893, Hancock's wife used money from her housekeeping savings to open a grocery business 200 yards from Smith's shop. In response, Smith sued Mr. Hancock for violating their contract.

Justice Arthur Kekewich heard the case in the Chancery division of the High Court in 1893. He ruled that because the 1882 MWPA Act granted a married woman the right to carry on her own separate business, as if she was a *feme sole*, the existing contract between Mr. Hancock and Mr. Smith had no impact on Mrs. Agnes Hancock's grocery business. The defendant appealed the decision and the case reached the Supreme Court of Judicature in 1894. Lords Justices Lindley, Kay, and A. L. Smith subsequently dismissed the appeal, meaning Kekewich's decision stood.

¹³¹ "Smith v. Hancock," in *Law Times Reports: Containing All the Cases Argued and Determined in the House of Lords*, 70, vol. LXX (London: Horace Cox, Windsor House, 1894), 163.

¹³² *Ibid.*

As in previous decisions, Kekewich and the Justices on the Supreme Court continued to defer to men's actions to define a woman's separate business. For example, Agnes Hancock had started the business with money she saved from the housekeeping allowance her husband gave her. While housekeeping money remained a husband's property under law, the Justices emphasized that Mr. Hancock had "assent[ed] to these savings becoming her separate property."¹³³ They also emphasized that Agnes Hancock opened a separate bank account under her own name and all money was paid out of that account—further evidence the business was her separate property.

Most notably, Agnes' explanation for starting the store provided important evidence that the store was not a front for her husband's business. Reports from the case, as well as Justices Kekewich, Lindley, and Smith reiterated that Mrs. Hancock had opened her grocery store because she was "anxious to start her nephew in business."¹³⁴ Her nephew had worked in her husband's store; Agnes Hancock employed him as manager of her store, Mrs. T. P. Hancock. She paid his salary and a share of the store's profits out of her bank account.¹³⁵ Kekewich explained that "after having heard the whole of the evidence, that I cannot doubt that the intention and object of Mrs. Hancock, with the ultimate concurrence of her husband, was to make some provision for the nephew by giving him a start in trade..."¹³⁶ Similarly, Justice Lindley acknowledged that "it cannot be denied that this proceedings is calculated to injure the plaintiff," but still found "it

¹³³ "Supreme Court Of Judicature," *The Times*, April 24, 1894: 3.

¹³⁴ "Smith v. Hancock," *Law Times Reports*, 163.

¹³⁵ "Supreme Court Of Judicature," *The Times*, April 24, 1894: 3.

¹³⁶ "Smith v. Hancock," in *Law Times Reports*, 163–65.

impossible to avoid the conclusion that the business is being carried on by the wife primarily for Kerr, and perhaps, to some extent for herself.”¹³⁷

By emphasizing that the business was intended to provide for the nephew’s future, the justices provided reassurance that the wife’s actions, while morally questionable, were providing for the economic future of another man. She was not primarily acting for her own economic gain. None of the justices ever noted whether they would have arrived at the same conclusion if a wife had opened up a grocery business for her own economic future, not for a nephew. Even Lindley, who conceded that the wife might gain some small part from the grocery store, immediately added that it was unlikely, because “there being at present little or no profit, she has not yet got any money out of the business for herself.”¹³⁸ Given the financial state of the store he was “unable to hold that the defendant has done ... what he agreed not to do.”¹³⁹ This line of reasoning aligned with one of the general assumptions that surrounded the MWPA, as noted in Chapter 1—that if granted separate property rights a woman would use her earnings for the benefit of her family, not her own self interests. At the same time, the decision established that a wife was not bound by her husband’s agreements and could independently enter into contracts.

Justice Kay, on the other hand, rejected the argument that Mr. Hancock had not assisted his wife with the store and did not stand to gain from its success. In his decision he pointed out the many ways Mr. Hancock had assisted his wife and nephew. In addition

¹³⁷ “Supreme Court Of Judicature,” *The Times*, April 24, 1894: 3.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

to providing his wife with money to start the business (money accepted by the other justices as her separate property), Hancock helped advertise the store by printing and distributing a flyer informing old customers that Agnes Hancock's "well-known mixture of tea" which he had once sold would be available in the new shop. He took his nephew to Liverpool and Manchester where he introduced him to his old wholesale dealer and asked the dealers to supply his wife's business. He also helped negotiate the lease for the shop premises and connected his wife with the lawyers who wrote up the lease. Through these actions, Kay determined that Hancock "rendered active assistance in carrying on the new business."¹⁴⁰

His opinion exposed the inherent ambiguity in distinguishing what constituted a husband and wife's independent actions. When Kay pointed out that because the Hancock's "are living together, and any profits she may receive he will have the benefit of while that continues" he captured the deep tension the Married Women's Property Acts had produced.¹⁴¹ The Acts decreed a married woman had a right to her separate property, but extricating these individual rights from the communal aspects of marriage—in this case, that a husband could benefit from his wife's success—had broader implications for how individuals in society would interact with each other.

More broadly, then, *Smith V. Hancock* illustrated the extent to which the Property Acts had opened up possibilities for women to pursue business ventures on their own terms. Justice A. L. Smith acknowledged this change in his decision when he stated that

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

“before the passing of the Married Women’s Property Acts of 1870 and 1882 I do not doubt that a wife, setting up business in the way Mrs. Hancock has, would have done so as agent for her husband, for as long as coverture existed she could do so in no other capacity, and her acts would then constitute a breach of covenant by her husband.”¹⁴² In other words, prior to the passage of the MWPA, a similar scenario would not have raised any legal questions, because under coverture a wife would have been bound by her husband’s contract. If she had opened a parallel business after her husband agreed to restrain from trade, the court would have found her in violation of the agreement because she could only act as an agent of her husband. “But,” Justice Smith continued, “this is not so now. The wife, although coverture exists, can nevertheless trade with her own separate property, apart from her husband and free from his control, as if she were a *feme sole*, as and when she pleases, and, if she does so, she is no more the agent for her husband than his father, uncle, or brother would be under like circumstances, nor can the husband restrain his wife from so acting.”¹⁴³

Ultimately, Justices Lindley and Smith agreed that that Agnes Hancock’s business was her separate business under the Married Women’s Property Act. Lindley summarized the problem, when he wrote that “an agreement by a husband not to do a thing does not oblige him to prevent his wife from doing that same thing if she has a right to do it independently of him.” In the future, he advised, conveyancers would be required to consider women’s property rights when writing contracts.¹⁴⁴ Similarly, Justice Smith

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

condemned the Hancock's "reprehensible" conduct, but conceded that the Agnes Hancock was not bound by her husband's agreement. If "it is desired to restrain such an act of a wife, the covenant of the husband must hereafter be so framed as to meet the case" he wrote. It was not the duty of the Court to put a "forced construction" upon a contract "in order to put a stop to that of which it disapproves."¹⁴⁵

Since the Married Women's Property Act

While defining a business as a married woman's separate venture remained conditional on her husband's authority, this chapter contends that the high bar of evidence necessary to establish a woman's independence slowly created the possibility for a married woman to act independently of her husband in their marriage. Over time, the MWPA became abstracted and a means to explain married women's independent behavior, as the high-profile divorce case of Sir Charles Hardtop and Lady Millicent Hardtop illustrates.

Sir Charles Edward Cradock Hardtop married Millicent Florence Eleanor Hardtop (nee Wilson) in 1895. Millicent was the daughter of Baron Nonbroiler, Charles Henry Wilson, Liberal MP for West Hull and a wealthy ship-builder.¹⁴⁶ From the beginning, the marriage had been unhappy and became increasingly so, as Sir Charles' significant debts were disclosed. According to Millicent Hartopp's barristers, at the time of his proposal, Charles gave the impression that he had gambling debts ranging from £4,000 to £5,000. It

¹⁴⁵ Ibid.

¹⁴⁶ Sidney, L. P., and Arthur G. Credland. "Wilson, Charles Henry, First Baron Nunburnholme (1833–1907), Shipowner." In *Oxford Dictionary of National Biography*, 2004. <https://doi.org/10.1093/ref:odnb/36947>.

was later revealed they were closer to £8,000 to £9,000. Six months into the marriage, Hartopp asked his wife to obtain £1,000 from her father so he could pay and silence a mistress. In 1897, Millicent's mother (Florence Jane Helen—the eldest daughter of Colonel William Henry Charles Wellesley, nephew of the first duke of Wellington) rented a flat for her daughter because Charles Hartopp could not afford the expense.¹⁴⁷ Even this effort provided little security from Charles' debts. Bailiffs soon entered the house seeking payment. In total, between 1895 and 1900, Charles Wilson secured about £16,000 to cover the costs of his son-in-law's debts.¹⁴⁸

Millicent Hartopp left her husband in 1900. While separated, she developed a friendship with Earl Cowley, Henry Arthur Mornington Wellesley. In 1902, Charles Hartopp sued for dissolution of the marriage on the grounds that Lady Hartopp committed adultery with Cowley. Millicent denied the charge and accused Sir Charles of cruelty and adultery with a Mrs. Sands.

To defend Lady Hartopp's behavior, her barrister, Sir Edward Clarke, oscillated between emphasizing her naivety and arguing that her independence was illustrative of women's changed social position since the 1882 MWPA's passage.¹⁴⁹ Establishing a contrast between Sir Charles, a thirty-seven-year "experienced man of the world" and Lady Hartopp, a "girl of 22," Clarke faulted Sir Charles for the marriage's dissolution, arguing that he failed to fulfill his paternal duties and "mould" his wife.¹⁵⁰ The revelations about her husband—his gambling debts and mistresses—he explained,

¹⁴⁷ "Probate, Divorce, And Admiralty Division," *The Times*, November 29, 1902: 5.

¹⁴⁸ *Ibid.*

¹⁴⁹ "Sir Edward Clarke, K. C." *The Times*, April 27, 193: 17.

¹⁵⁰ "Probate, Divorce, And Admiralty Division," *The Times*, November 29, 1902: 5.

shocked the young bride. “What did the jury suppose was likely to be the effect of such a disclosure upon a light-hearted girl’s mind?” he asked the jury. “The bailiffs being put into the flat” provided another blow. “It would,” he asserted, “have been a shock in any rank of society.”¹⁵¹

Through his behavior, Clarke argued, Sir Charles had abrogated his duty as a husband to influence his wife, explaining that if Sir Charles “had exercised any ordinary care he could have moulded her [Lady Hartopp’s] character as other men mould women.”¹⁵² One episode provided particular evidence of this. The barrister explained that Sir Charles had refused to accompany his wife on a trip to Paris. At the last minute he decided to go salmon fishing in Ireland, despite the fact that Paris was a place “where a young woman needed the protection of her husband.”¹⁵³

After laying out the ways that Sir Charles had shirked his duty to protect his wife’s innocence, Clarke’s argument switched to defend Lady Hartopp’s independence. The reasoning paralleled previous arguments regarding a woman’s separate business—that a husband consented to his wife’s business by remaining uninvolved in it. In this vein, Clarke explained that Lady Hartopp gained the impression she could act independently because “the absolute way in which he [Sir Charles] had neglected her allowed her to think she could do exactly what she liked.”¹⁵⁴ In other words, her husband’s frequent absences and general disinterest in his wife’s life served as evidence of his consent for her to act independently.

¹⁵¹ “Probate, Divorce, And Admiralty Division,” *The Times*, December 13, 1902: 5.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

Through the barrister's argument, the Married Women's Property Acts provided a cause for Lady Hartopp's independent actions. Sir Charles's attempts to control his wife, exposed the transformation regarding expectations in marriage that occurred since the Acts' passage. "[I]f it had been 50 or 60 years ago" Clarke reasoned, "he [Sir Charles] would have been perfectly right" in his efforts to control his wife and expect her compliance.¹⁵⁵ But, he continued, expectations regarding marriage had changed: "since the Married Women's Property Act women had become more emancipated and had a greater freedom and were placed upon terms of equality with their husbands."¹⁵⁶ This, in his opinion, "was a very good thing." The new expectations regarding marriage, as well as the many documented instances of the ways Lady Hartopp and Sir Charles generally lived separate lives, he argued, only led to the conclusion that "Lady Hartopp had always lived a perfectly innocent and moral life."¹⁵⁷

The barrister's reasonings exemplified the ambiguous, and at times awkward transitions Britons used as they thought through the implications of wives' independence. On one hand, the defense was at pains to demonstrate Lady Hartopp's innocence, particularly since she was accused of adultery. In doing so, they emphasized her youth and the shocks that occurred from her husband's behavior. They espoused paternalistic ideals about what Sir Charles, as a good husband would have done—if he had lived a moral life, he could have influenced his young wife's life as well. And yet, a husband's authority was no longer unquestioned. By frequently leaving his wife, gambling, and

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

racking up debts, he no longer had a right to expect her obedience. The cause of this, they attributed to the MWPA, whose passage had generated increased equality between couples. In this new social climate, Lady Hartopp's actions were perfectly acceptable. Without reciprocity between her and her husband, she had the right to live her life independently of him.

If the Hartopp divorce case exposed tensions between Victorian ideals of a husband's authority over his wife, and emerging claims regarding a wife's independence, *Gotcliffe v. Edelston* best illustrates the extent to which ideas regarding a husband and wife's independence had become accepted. Both the case, heard in 1930, and the judgement issued by Justice Sir Henry Alfred McCardie reveal the ambiguity between the changes and continuities that continued to inflect discussions of the MWPA. McCardie's judgement showed how much Britons had come to accept ideas regarding a woman's independence with marriage. But it also showed how a husband's position in marriage continued to shape these decisions. Ideas about a husband's authority had transformed into concerns about the ways the law burdened a husband and privileged a wife. This transformation cautions against reading the changes inspired by the MWPA as a story of linear progress.

The main question before Justice McCardie was whether a married woman could sue her husband for an ante-nuptial tort.¹⁵⁸ The plaintiff, Esther Gotcliffe, sued the defendant, Dr. Harry Edelston, a medical officer at the West Riding Mental Hospital in Wakefield, Leeds, for personal injuries she sustained when the car Edelston was driving

¹⁵⁸ "High Court of Justice," *The Times*, June 20, 1930: 5.

collided with a horse and cart on the road. (Gotcliffe was a passenger.) She eventually lost an eye as a result of her injuries. At the time of the accident (October 1928) and when the writ for the suit was initiated (January 1929) Gotcliffe and Edelston were unmarried. The couple married in April 1929.

Barristers for the defendant, Dr. Edelston, argued two points. First, that section 12 of the 1882 MWPA prohibited a married woman from suing her husband for torts. Second, a married woman could not sue her husband under common law. Consequently, they argued, the plaintiff's action could not be sustained.¹⁵⁹ Esther Gotcliffe's barristers, on the other hand, countered that the law no longer viewed husband and wife as "one in law" and that the case was essentially a matter of a single woman suing a single man.¹⁶⁰

Justice McCardie dismissed the case by taking "the position at common law" that husband and wife were one under the law and a wife could not sue her husband.

McCardie was well-known for his long, exhaustively-researched judgements and "veneration" of common law.¹⁶¹ He was also a controversial figure, known for

¹⁵⁹ Section 12 of the 1882 MWPA prohibited interspousal torts except in the case of suits by the wife for "the protection and security of her own property." On interspousal tort immunity as a consequence of reforms to coverture see Karen Pearlston, "Male Violence, Marital Unity, and the History of the Interspousal Tort Immunity," *The Journal of Legal History* 36, no. 3 (September 2, 2015): 260-298. Pearlston's reasoning for s.12's construction supports Ben Griffin's argument that MPs were willing to intervene in the family and grant women property rights insofar as they expected these reforms would improve working men's behavior. Pearlston notes (p.291, fn. 155): "Griffin does not specifically discuss tort law issues but his account of the parliamentary debates over married women's property law reform make it clear that parliamentarians were anxious that any reforms would leave male authority in the family intact. ... Because tort actions would take place in the expensive common law courts, prohibiting them between husbands and wives would have the greatest effect on middle- and upper-class families. In contrast... working-class women were able to prosecute their violent husbands in magistrate's court." The 1962 Law Reform (Husband and Wife) Act abolished interspousal tort immunity (296)

¹⁶⁰ "King's Bench Division. A Problem in the Law of Husband and Wife.," *The Times*, May 24, 1930: 4.

¹⁶¹ A. Lentin, "McCardie, Sir Henry Alfred (1869–1933), Judge.," *Oxford Dictionary of National Biography*, accessed October 23, 2019, <https://doi.org/10.1093/ref:odnb/34677>.

advocating for reform to Britain's divorce laws, supporting women's access to birth control, lowering the age of consent, and the legalization of abortion. He entered into political controversy in 1919, after presiding over a libel case centering on the Amritsar massacre. Both the trial, which prompted discussions of the history of the MWPA, and McCardie's researched judgement, illustrated how much opinion with regard to the law had changed since the MWPA's passage.

For instance, during the trial McCardie asked how the law came to "regard the husband and wife as one."¹⁶² Mr. Diamond, barrister for Esther Gotfliffe, responded that he "did not know" but thought "that in the old days the position of women was held to be so low that on marriage they were considered to have no rights at all."¹⁶³ McCardie followed up, asking whether the "the doctrine [of unity] depended on complete subordination?"¹⁶⁴ To this, Diamond responded: "That is the only reason I can suggest."¹⁶⁵ While Victorian Britons had comfortably espoused the view that a wife's natural position was one of subordination, this expressed uncertainty revealed a historical distance between the Victorian-era property reform campaign and interwar Britons' view of marriage.

McCardie's judgment further reflected this sense of change and illustrated a transformation in the idea of "unity" that defined the marriage ideal. The judgment echoed the history of common law, as written by reformers in the nineteenth century: that a wife's legal subordination emerged during the feudal era, after the fall of Rome.

¹⁶² "King's Bench Division. A Problem in the Law of Husband and Wife."

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

McCardie wrote that the explanation for a husband and wife being treated as one under common law, was that the common law “during the thirteenth century onwards was very largely influenced by the theology of the Middle Ages, and that this particular branch of the law relating to husband and wife was a marked by many features of ecclesiastical influence.”¹⁶⁶ Suggesting that rationality had overcome religious thought—again echoing nineteenth-century reformers—he noted that “very gradually there has been a dissipation of that ecclesiastical influence and the overthrow of the old theological mysticism, and both by the growth of the common law and the Act of Parliament, man and wife now possess individual existences.”¹⁶⁷

In a passage that deserves to be quoted in full, McCardie listed the many ways that husbands and wives lived as independent persons:

I find it difficult to see how the old and conventional doctrine of unity can be said to operate at the present day. There is, of course, no physical unity, save in the most limited and occasional sense. There is no mental unity in any just meaning of the word. Husband and wife have their individual outlooks. They may belong to different political parties, to different schools of thought. A wife may be in counsel in the Courts against her husband. A husband may be counsel against his wife. Each has a separate intellectual life and activities. Moreover, as Lord Bryce says: ‘ The modern notion is that it is one’s duty to assert one’s own individuality. . . . we are probably completing the transition from one family to the personal epoch of woman.’”

In contrast to the Victorians’ concern that differences between husband and wives would lead to social conflict, McCardie’s statement seemingly accepted husbands and wives’ individuality, in its social, political, and intellectual manifestations.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

Yet, he continued, marriage required some acceptance of unity: “in spite of all this, the fact remains that marriage creates a most important status and one which should create also a substantial identity of social and other interests between husband and wife.”¹⁶⁸ What these social interests were specifically remained undefined. McCardie’s “unity” was not that same “unity” that the Victorians had celebrated. He accepted that husbands and wives should have some common, albeit undefined interests, but he also accepted that they could differ within marriage.

While pointing to the ways a wife and husband could be independent of each other, McCardie’s judgment articulated an emerging sense, increasingly expressed by Britons during the 1930s, that men unfairly suffered under the legal regime created by the 1882 MWPA.¹⁶⁹ As scholars have shown, and Chapter 1 discussed, class-based perceptions about husbands’ abuse of their wives helped secure the MWPA’s passage. By 1930, however, this class-based justification for a woman’s property rights had fallen away. McCardie’s opinion espoused a strengthening narrative that legal reforms to women’s rights in marriage had been gained at the expense of men: “many other aspects of injustice spring from the fact that the various changes in favour of married women have not been accompanied by the adjustments that were needed to secure a proper and adequate code for the regulation of relations between the spouses.”¹⁷⁰

The MWPA came under particular scrutiny because it “conferred no privileges on the husband” even though it “conferred many privileges on the wife.” As a result, legal

¹⁶⁸ “Law Report, June 19. Summary,” *The Times*, June 20, 1930: 5.

¹⁶⁹ Pearlston, 293.

¹⁷⁰ “High Court of Justice,” *The Times*, June 20, 1930: 5.

reforms to women's rights in marriage meant that "wives, however wealthy of purse or independent of character, possess powers and privileges which are wholly denied to husbands."¹⁷¹ For McCardie, these burdens included the fact that a husband was liable to pay income-tax on a wife's income even if a wife refused to contribute to the household expenses; that a husband remained liable for his wife's torts while she was not liable for his; and a husband was required to provide his wife with "necessaries," even if she possessed a greater income than him.¹⁷²

This sense of injustice inflected McCardie's conclusion that Esther Gotcliffe could not sue her husband for torts. He agreed that by driving negligently Edelston had "infringed on her [Gotcliffe's] right of personal safety and security." But, this right of security was not "her 'property' in the normal meaning of the word." In his view, although section 12 of the MWPA allowed a wife to sue her husband in respect of her separate property, allowing a married woman to sue for damages (such as a missing eye) would require such a broad interpretation of the clause that it would enable a wife to sue her husband for any tort. The potential "consequences would be striking." Specifically, for McCardie, the possibility that a wife could sue her husband for torts represented a wife's unequal power over her husband: "It would mean that, although no husband can sue his wife for any tort whatsoever committed by her against him . . . the wife can sue the husband for every act of tortious doing against her before marriage, whether it be for negligence, libel, slander, or assault."¹⁷³ He concluded that "it is plain . . . that the framers

¹⁷¹ "High Court of Justice," *The Times*, June 20, 1930: 5.

¹⁷² *Ibid.*

¹⁷³ "Law Report, June 19. Summary," *The Times*, June 20, 1930: 5.

of the Act did not wish to encourage litigation between the spouses. Such litigation is admittedly unseemly, distressing and embittering.”¹⁷⁴ Consequently, while a supporter of controversial causes for women, McCardie’s final decision again illustrated that concerns over men’s positions in marriage shaped continued to shape interpretations of women’s rights.

Summary

Attention to the legal questions raised by the Married Women’s Property Acts highlights Britons’ changing attitudes towards women’s property rights between 1870 and 1930. In the years surrounding the 1870 MWPA’s passage, judges showed a preference for defining women’s rights under the law as narrowly as possible. For instance, only money earned through “lawful” means was protected under the Acts, as the actress Mrs. Digges learned. Judges also deferred to evidence that a husband had granted his authority for his wife’s business when deciding whether the business was her separate property. By the end of the nineteenth century, however, the Property Acts had become a way to explain married women’s independent actions. Britons’ acceptance of married women’s independence, however, existed alongside emerging concerns about a man’s status within these social transformations. Even as expectations about a husband’s marital authority waned, complaints about how men suffered under the law highlighted the ways women’s rights seemed to challenge men’s social authority.

¹⁷⁴ “Law Report, June 19. Summary,” *The Times*, June 20, 1930: 5.

Chapter 3. A Husband's Burden: Property Rights and Income Tax Obligations, 1882-1909

Introduction

In 1930, when Justice McCardie wrote his decision in *Gotcliffe v. Edelston*, the case regarding whether a married woman could sue her husband for ante-nuptial torts, he expressed his opinion that as a consequence of the Married Women's Property Act, "husbands are placed under burdens from which wives are free."¹ Among the burdens he listed, McCardie found it particularly unfair that a husband "living with his wife is liable to pay income-tax on her income even though she may refuse to contribute anything to the household expenses. If he does not pay the tax he may be sent to prison till he is able (if ever) to find the necessary money."² Under Britain's income tax laws, a husband remained liable for paying the income tax due on his and his wife's aggregated incomes. Failure to pay tax meant a husband was liable to be imprisoned until he could pay the debt, but he possessed little legal power to compel his wife to contribute to the owed tax if she refused to volunteer payment.

When he raised his complaints about husbands' income tax obligations, Justice McCardie participated in an ongoing debate—over husbands and wives' income tax obligations—that originated with the passage of the 1882 Married Women's Property Act. The next three chapters follow the trajectory of this debate, from 1882 to 1921, as a way to consider the principled and prosaic contradictions the Property Acts engendered.

¹ "High Court of Justice." *The Times*, June 20, 1930: 5.

² *Ibid.*

This chapter will focus primarily on the debate as it emerged in the press and Parliament from 1882 through 1909, when David Lloyd George's "People's Budget" magnified activists' claims that Britain's tax regime violated married women's property rights and unjustly burdened men. Chapter 4 will focus on the actions of the Women's Tax Resistance League, as they exploited anxieties about men's tax liabilities to protest women's disenfranchisement. Finally, Chapter 5 will focus on the debate in the immediate post-WWI war period, when it received the attention of the 1919/1920 Royal Commission on Income Tax.

The question of how to categorize married women's incomes under the Property Acts posed a broader question about the extent to which individual rights functioned in tension with family and social obligations. Neither Britons nor state officials ever completely resolved this question. Instead, both sides settled into a debate that persisted long into the twentieth century, drawing on gendered and class-inflected arguments to advance their case. Supporters of reform called for the government to tax husbands and wives separately. They consistently argued that the current law was unjust, unfair, and violated individuals' rights, although they could disagree over who suffered more under the law—men or women. They argued that the law penalized marriage and encouraged immoral relations. Government officials, particularly Inland Revenue and Treasury officials, continued to support a household income tax. They feared that any substantial reform that taxed husbands and wives individually would result in diminished revenue for the state and subsequently drew on class-based arguments to defend their stance, arguing that a household tax distributed the tax burden more fairly across classes.

The 1842 Income Tax Act and a Household Income

In 1842, Robert Peel secured the passage of the Income Tax Act to cover budget deficits. Parliament intended the tax to be a temporary measure and authorized it for three years.³ In 1845, however, Parliament re-authorized the income tax, and continued to do so in subsequent years. Over the course of the century, the income tax became a significant feature in British national identity. Officials believed that its relative ease of assessment and general acceptance by British taxpayers signified the stable relationship between the state and its subjects, in contrast to other European tax regimes.⁴ Together, Robert Peel and William Gladstone successfully “established the principle that the state should not appear to favour any particular economic interest” in matters of taxation.⁵ This helped ensure the British state’s stability because it could frame the state as “neutral and above the selfish tussle of interests.”⁶

The mid-Victorian state’s claim to neutrality relied on the concept of proportionality,” which held that each taxpayer should pay the same proportion of income tax.⁷ Throughout most of the nineteenth-century, taxes were assessed at a flat rate (7d on the £) on the assumption that a “fair” tax meant every taxpayer paid the same percentage of their overall income.⁸ The aim of this system, as Martin Daunton explains,

³ Martin Daunton, *Trusting Leviathan: The Politics of Taxation in Britain, 1799-1914* (New York: Cambridge University Press, 2001), 79.

⁴ *Ibid.*, 183.

⁵ Daunton has argued that the income tax was essential to securing the stability of the British state during the nineteenth-century, helping Britain avoid the revolutions toppling governments in Europe, *Trusting Leviathan*, 178.

⁶ *Ibid.*, 161.

⁷ *Ibid.*, 138.

⁸ *Ibid.*, 160, Table 6.2.

was to “ensure that the tax system as a whole fell proportionately on all levels and forms of income so that it was neutral and left the social structure as it was found.”⁹

By end of the Victorian era, this framework had come under strain. John Stuart Mill, for instance, argued that taxation should be based on “equality of sacrifice” and that an individual income should provide the basic necessities for life. In other words, a 10% tax had a greater impact on a person with an income of £100, than it did on a wealthy industrialist with an income of £1000.¹⁰ Therefore, Mill argued, each person should be allowed a minimum amount of income—£150 in his view—to purchase “necessaries.” All money over £150 should be subject to tax.¹¹ By 1876, incomes under £150 were exempt from tax. Incomes under £400 received a £120 abatement (an allowance). All taxable income was taxed at a rate of 7d on the £.¹²

The passage of the 1882 Married Women’s Property Act, however, created a legal ambiguity that undercut state's claims to be a neutral arbiter of taxpayers’ interests so long as officials continued to assume that a married man represented the household’s interests. Since 1842, income tax had been assessed as a household income tax, in which the combined incomes of a husband and wife constituted the household income. Reflecting the logic of coverture—that a wife had no legal identity and could not own personal property—the Income Tax Act included married women in the legal category of

⁹ Ibid, 139.

¹⁰ Mill did not argue in favor of a graduated income tax. Daunton summarizes Mill’s position: taxing large incomes at a higher rate was a “tax on industry and economy; to impose a penalty on people for having worked harder and saved more than their neighbors.’ A graduated taxation of *income* would therefore harm growth and enterprise; taxation of *inherited wealth* was a different matter.” Ibid, 141—2.

¹¹ Ibid, 141.

¹² Ibid, 160, Table 6.2.

“incapacitated persons” alongside infants and lunatics, who could not be held personally responsible for paying the tax. Clause 45 stated that “the profits of any married woman living with her husband shall be deemed the profits of the husband, and the same shall be charged in the name of the husband, and not in her name, or of her trustee” meaning that husbands, as head of the household, were liable for paying the tax on any income earned by their wife.¹³ The MWPA disrupted this relationship when it granted married women control over their separate property.

Although the 1882 Act did not specify any changes to a married woman’s tax status, Britons quickly seized on the property protections granted to married women to argue that a husband should no longer be responsible for paying tax on an income he could not access or enjoy. This view understood the Married Women’s Property Act to have introduced a new principle—a married woman’s individual identity—that superseded laws premised on coverture. An article in the *Law Times* aptly expressed this perspective in 1885 when it observed that a “[h]usband and wife living together are still viewed by the Income Tax Commissioners as one person.” The Tax Commissioners’ view appeared in contradiction to the fact that a married woman was “now practically a feme sole as regards her separate income” whereas in 1842 she was scarcely deemed to have a separate existence from that of her husband.”¹⁴ For those who accepted the

¹³ John Paget, *The Income Tax Act 5 & 6 Vict. Ch. 35, with a Practical and Explanatory Introduction and Index* (London: Thomas Blenkarn, Law Bookseller, 1842), 27. The same section did allow that if a married woman was carrying on a trade as a sole trader, per the custom of the city she traded in (such as London) her profits would be considered her own and taxed as if she were a feme sole. This part of the section was never raised by the WTRL or critics after 1882.

¹⁴ “Solicitors Having the Management of Small Property...” *Law Times*, December 5, 1885, 74.

premise that the MWPA had established married women's individuality, laws premised on the assumptions of coverture needed to be brought into alignment with the MWPA.

Victorian reformers built on the assumption that the 1882 MWPA had altered the principle of the law to articulate three main critiques of Britain's unreformed income tax laws. First, men and women were treated differently under the law. Secondly, the law penalized couples who married. And third, by refusing to reform the income-tax code, the state inconsistently observed the MWPA's principles. As with arguments in support of granting married women property rights, these critiques did not align with a clear "feminist" agenda. Critics agreed that the tax system perpetuated injustice but they disagreed over who suffered more under the law—a husband or a wife. These three critiques, and Inland Revenue's response (discussed further below), shaped the major lines of debate over Britain's tax system into the twentieth century (Chapters 4 and 5).

For supporters of men's rights, the fact that husbands continued to have financial obligations without a corresponding right to their wives' property was indicative of the law's injustice. The *Derbyshire Times*, which condemned the 1882 MWPA because it enacted a "social revolution," complained out that the law "very illogically" left a husband liable for his wife's income tax.¹⁵ Individual Victorians also expressed their discontent. "X.Y.Z" wrote to the *Manchester Courier* expressing the view that "it was clearly unjust" that a husband should be required to continue paying tax on his wife's income while an R. Bruce Dickinson asked in the *Times* whether would it be "too much

¹⁵ "a Man and His Wife Are One—Are They?," *The Derbyshire Times and Chesterfield Herald*. January 13, 1883: 5.

to demand that a husband shall no longer be required to pay Income-tax on the property of his wife?"¹⁶ From this perspective, the 1882 MWPA illustrated the ways women's rights seemed to be achieved at men's expense.

An inverse narrative, emphasized by supporters of women's rights, argued that women should be taxed individually as part of a broader commitment to establishing equality between men and women. Only when the law treated women on the same terms as men—with corresponding rights and obligations—would equality between the sexes exist.¹⁷ For example, the women's rights supporter and suffragist Helen Taylor (John Stuart Mill's stepdaughter) called attention to the "'injustice and anomaly' of the present method of collecting income tax from married teachers" at a meeting of the London School Board. She moved for the School Board solicitor to issue an opinion regarding the legality of assessing income tax jointly on married teachers "since the passing of the Married Women's Property Act."¹⁸ Reformers argued that as long as women were treated differently under the law, men would continue to face unequal obligations. This idea was expressed at a suffragist meeting in 1911, when the Irish novelist Mrs. Katharine Tynan Tynan Hinkson, commenting on Britain's tax system, dryly observed that "there was a curious anomaly in the change which was brought about by the Married Women's

¹⁶ R. Bruce Dickson, "Income-Tax On Married Women's Property," *The Times*, June 26, 1883, 4.

¹⁷ Leaders of the women's movement also took care to point out the many ways women still suffered under the. Major areas of concern included women's rights related to their children and the unequal divorce laws.

¹⁸ "Income Tax on Married Women's Property," *The Englishwoman's Review of Social and Industrial Questions*, August 15, 1883. Taylor joined the school board in 1876 and remained a member until her resignation in 1884. Philippa Levine, *Taylor, Helen (1831–1907), Promoter of Women's Rights* (Oxford University Press, 2009),

<http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-36431>.

Property Act. The anomaly fell at least as hardly upon men as upon women. Women wanted to give a helping hand, to take some of the burden off men's shoulders."¹⁹ Married women's equal treatment under the law, the argument went, would ensure men's equal treatment.

In addition to arguing that the law perpetuated injustice between men and women, critics further argued that the income tax law penalized marriage because a married couple living together could pay more in tax than unmarried individuals. (Husbands and wives who were formally separated were taxed in accordance with their individual incomes.)²⁰

To make this point, critics frequently compared the tax obligations of married individuals to siblings living in the same household. The familial analogy drew on a common assumption—that siblings or married couples who comprised a household pooled financial resources to cover their expenses—while allowing critics to point out that siblings had access to double the income before becoming liable for income tax. An 1885 letter from a “Married Woman” published in the *Times* provided one of the earliest examples of this view.²¹ In 1885, all income over £150 was subject to income tax at £7d on the £ (although incomes between £150-400 received a £120 abatement).²² As a “Married Woman” pointed out, a husband and wife with joint incomes became liable for tax at £150 (after their allowance, they would pay £2. 18s. 4d of tax on the remaining

¹⁹ “Women’s Revolt Against Tax-Paying,” *Courier*, February 3, 1911, Scrapbook of Press Cuttings relating to Tax Resistance (10/21), Women’s Library.

²⁰ “Solicitors Having the Management of Small Property...” *Law Times*, December 5, 1885, 74.

²¹ A Married Woman, “A Tax On Matrimony,” *The Times*, May 8, 1885: 3.

²² Daunton, *Trusting Leviathan*, 160, Table 6.2.

£30). This meant, for example, a husband and wife with incomes of £100 and £50 respectively would have to pay tax on income that they would not be liable for if they remained unmarried. By contrast, if two sisters lived together, each sister would need to possess an individual income of £150 before she became liable to income tax. The two sisters would have a combined income of £300 a year before paying tax. The married couple, on the other hand, paid tax on a yearly income of half that amount. Furthermore, a married man or woman could pay tax on money otherwise not eligible for income tax. For critics, this amounted to a “tax on marriage.” To resolve this problem, the author advocated changing the tax law so that married couples would be taxed on the same level as bachelors and spinsters, meaning that married couples should not be taxed until their joint income reached £300.²³ When Victorians argued that the income tax penalized marriage, they articulated a larger point: that marriage should not affect an individual’s tax status under a fair and neutral tax regime.

Through these lines of argument—that the law inscribed injustice and penalized marriage—critics called on the state to consistently uphold the principle of the Married Women’s Property Acts. Britons and government officials alike anticipated that if husbands and wives’ incomes were assessed individually, fewer incomes would become liable for tax because the disaggregated incomes would fall below the £150 threshold. For instance, the married couple with theoretical incomes of £100 and £50 would no longer pay tax. This left the state open to criticism that it was unwilling to observe the MWPA when it stood to benefit from the status quo. For example, in his

²³ A Married Woman, “A Tax On Matrimony,” *The Times*, May 8, 1885, 3.

letter to the *Times*, R. Dickinson warned that “[u]nless in future the properties of husband and wife are assessed as two separate properties... there will be good ground for concluding that the Government is unwilling to apply the principle of this Act in cases where it may be a loser.”²⁴ In his view, the government maintained a double standard towards the MWPA. It had demonstrated it was willing to uphold the Acts when the circumstances involved a husband and wife. (Dickinson did not provide a specific example, but a case from Chapter 2 such as *Smith v. Hancock*—in which the courts ruled a wife’s business was her own separate property irrespective of her husband’s contracts—likely supported his contention.) In cases where the state stood to benefit if husbands and wives were treated as one unit, however, the state proved far more unwilling to recognize the MWPA—in this instance, when it expected tax reforms to reduce revenue. Activists therefore called on the government to uphold the principles of individual rights, regardless of the financial costs to the state.

Together, these critiques illustrated how the perceived changes introduced by the Married Women’s Property Act—that it had overturned coverture—produced a conceptual shift in how Victorians understood husbands and wives’ relations to each other. Prior to the passage of the MWPA, there could be little debate over how income tax was assessed because a married woman had no legal identity. Therefore, with the exception of property tied up in separate trusts, a married woman’s earnings were legally her husband’s, justifying his obligation to pay tax on them. The Property Acts disrupted

²⁴ Dickson, “Income-Tax On Married Women’s Property.”

this relationship and for many Britons, meant that husbands and wives should be treated as individuals in matters of taxation.

In contrast to Victorians' expressed interpretation of the law, Inland Revenue and Treasury officials consistently maintained that the MWPA had no impact on Britain's tax laws. In October 1882, a George Hicks sent a letter to Inland Revenue explaining that he had seen an article in *Justice of the Peace* claiming that a married woman's income earned under the 1870 MWPA was not included as part of a husband's earnings for income tax; he paid tax on his wife's income and wrote to clarify whether he had grounds to appeal his past assessments.²⁵ The letter prompted Inland Revenue officials to send an "urgent" memo clarifying that neither the 1870 MWPA, nor the 1882 Act, set to go into effect in January 1883, had any impact on how income tax was assessed on husbands and wives living together.²⁶

Inland Revenue's stance relied on a legal interpretation offered by an Inland Revenue solicitor that determined the MWPA did not impact the tax laws because the Property Acts never mentioned the Crown in the statutes. Because the power to tax subjects derived from the Crown, Inland Revenue was not implicated in any statute unless the Crown was explicitly mentioned.²⁷

Despite a *Law Times*' prediction that the question of married women's incomes would likely be "judicially solved," the income tax laws never faced legal challenge in the nineteenth century. This is likely because activists potentially interested in

²⁵ George Hicks to Inland Revenue, October 16, 1882. IR 75/183. National Archives, Kew.

²⁶ *Ibid.*

²⁷ *Ibid.*

challenging the point lacked the funds necessary to pursue a case through the high courts and Inland Revenue had no incentive to investigate the question.²⁸ Without a clear judicial ruling, however, both Inland Revenue and critics were free to assert the correctness of their interpretation of the law.

Inland Revenue's own legal interpretation certainly reflected some degree of motivated reasoning because officials generally assumed that a shift away from a household tax would be detrimental to the nation's finances. Most directly, if the income of husband and wife who once qualified for income tax was disaggregated and fell below £150 the state lost the revenue. Officials also feared that allowing married women to be taxed individually would encourage fraud.

Inland Revenue's concerns about tax evasion derived from the methods it used to assess income tax. In 1842, Robert Peel (building on the collection system introduced by William Pitt during the Napoleonic Wars) organized income tax assessment into "schedules" to assuage Britons' fears that an income tax would allow the state to pry into families' personal finances and encourage compliance with the system. The five schedules were organized according to type of income. Tax from income falling under Schedules A (rents from real estate and houses), C (profits from stocks and dividends), and E (salaries and pensions from public office) was "collected at the source," meaning it was deducted before the individual received payment. Income from Schedules D (profits from trade, commerce, and the professions) and B (profits from land) was self-reported.

²⁸ The Women's Tax Resistance League, the focus of Chapter 4 would begin pursuing a legal test case during the suffrage campaign.

The schedule system, therefore, shaped Inland Revenue's opposition to married women's independent taxation in two respects. First, the schedules prevented Inland Revenue from ever knowing a household's total income. Second, Inland Revenue delegated tax assessment to local assessors, often tradesman, in order to minimize "frictions" between the state and taxpayer. Traders and small shopkeepers, were also one of the few classes of people who the state relied on to report their profits under Schedule D. Officials therefore recognized that assessors and traders had an incentive to downplay profits in order to reduce taxes. At the same time, it was almost impossible to prove small-traders reporting income under Schedule D were lying about their profits when they reported them for income-tax purposes.²⁹ In one internal memo, for instance, Arthur Milner, chairman of the board of Inland Revenue between 1894 and 1897, estimated that "the man who really makes 600*l* a year probably puts it down at 400*l* if not 300*l*" and no class was as "under-assessed" as shopkeepers.³⁰ Generally, officials resigned themselves to their perception that some degree of tax evasion likely existed among traders and accepted it as the price for Britons' more general compliance.³¹ Whether traders did actually evade their taxes is unclear.³²

Officials opposed married women's individual taxation because they assumed it would exacerbate traders' perceived evasion. They expected married traders would take

²⁹ Daunton, *Trusting Leviathan*, 198.

³⁰ A. Milner, "Income Tax on Married Women's Property; Claim to Exemption or Abatement," May 21, 1895, Board of Inland Revenue: Budget and Finance Bill Papers, IR 63/5, National Archives, Kew.

³¹ Daunton, *Trusting Leviathan*, 184-185.

³² Daunton uncritically accepts that small-traders evaded taxation but he relies primarily on Inland Revenue documents discussing traders' evasion as evidence. As discussed here, however, Revenue officials relied mostly on their own perception as evidence that traders were evading taxes. See *Trusting Leviathan*, 197-198.

advantage of the separate property provisions in the MWPA and attribute a portion of their income to their wives, lowering the amount of tax they owed. This was not an unfounded fear. In 1868, 47.9% of taxpayers falling under schedule D assessments had incomes between £100 and £200.³³ Any division of income between spouses could quickly mean that the largest percentage of Schedule D taxpayers avoided liability for income tax. As Milner warned, “the husband has only to attribute such a portion of his profits as it may suit his convenience in making his assessment, to the exertions of his wife in order to double the exemption or abatement to which he is otherwise entitled.”³⁴ This needed to be avoided because the “difficulty of disproving the assertion, that such portion of the profits of the business is due to the exertions of the wife, appears insuperable.”³⁵ His argument downplayed the possibility that married women could own and run businesses of their own accord and therefore had a right to be taxed independently. Women’s earnings, in this view, were not legitimately subject to protection under the Property Acts, but a front for men to hide income.

Consequently, while Arthur Milner conceded that “it is true that the law on the subject is by no means clear,” he stood firm that “Inland Revenue had never admitted” to activists’ interpretation of the law.³⁶ He conceded that advocates’ argument for separate

³³ Numerically this meant 191,342 incomes out of the total 399,597 incomes assessed under schedule D. Daunton, *Trusting Leviathan*, 160, Table 6.1.

³⁴ Milner, “Income Tax on Married Women’s Property,” 4.

³⁵ *Ibid.*

³⁶ Milner, 1. Milner became Chairman of the Board of Inland Revenue in 1894 under Chancellor Sir William Harcourt. Immediately prior, he had been director-general of accounts in Egypt in the Khedive Tawfiq government. In 1897 he left Inland Revenue to become governor of Cape Colony and high commissioner of South Africa. On Milner’s career see Colin Newbury, “Milner, Alfred, Viscount Milner (1854–1925), public servant and politician.” *Oxford Dictionary of National Biography*. 20 Oct. 2018. <http://www.oxforddnb.com.ezproxy.bu.edu/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-35037>.

taxation was “logical,” but maintained that the “practical objections to giving way to it are enormous.” He therefore strenuously warned the Government against granting any concession on the matter because it would be “quite impossible for the Inland Revenue to guarantee their income tax estimate for the present year if such a course were adopted.”³⁷ Such a stance prioritized efficacy and stability so that Inland Revenue could fulfill its duties to the nation. Dismissing claims regarding the rights of a married woman as “mere pious opinion,” Milner maintained that Inland Revenue would continue to administer its interpretation of the law unless it was challenged in court.³⁸

Challenging a Fair Tax

Critiques of Britain’s income tax laws that had filtered through the press after the MWPA’s passage gained limited attention in Parliament during the 1880s.³⁹ By the final decade of the nineteenth century, however, the fiscal consensus secured by Gladstone during the mid-Victorian era was coming under strain as military expenditures, imperial unrest, and pressure for social welfare programs—for instance, education services, old age pensions, and agricultural relief—increased the state’s financial obligations.⁴⁰ For Daunton, the years between 1894-1906 mark a period in which Britain’s “fiscal

³⁷ Milner, “Income Tax on Married Women’s Property,” 3-4.

³⁸ *Ibid.*

³⁹ In 1885, James Rankin, a Conservative MP for Leominster and Captain Charles Selwyn Conservative MP for Wisbech betook up the call for spouses’ incomes to be taxed individually. During parliamentary questions each MP would ask the Chancellor of the Exchequer to clarify how husbands and wives’ incomes were taxed and whether joint assessment was allowed under the Married Women’s Property Acts. In all instances, the Chancellor responded that the MPWA had no effect on the tax laws. Beyond these questions, however, there was no concerted effort among MPs to reform the tax laws. “House Of Commons, Monday, July 13,” *The Times*, July 14, 1885, 6; “House Of Commons, Tuesday, Sept. 7,” *The Times*, September 8, 1886, 6; “Parliamentary Intelligence,” *The Times*, September 11, 1886, 6.

⁴⁰ Daunton, *Trusting Leviathan*, 303-304.

constitution” was re-written, as politicians searched for means to widen the tax-base in order to meet revenue demands.⁴¹ In this context, married women’s property rights and their implications for husbands and wives tax obligations gained renewed attention.

During the 1890s, MPs in Parliament continued to draw on existing arguments to argue that married women should be taxed separately from their husbands. In 1894, Conservative MPs Walter Goldsworthy (Hammersmith) and Charles Darling (Deptford, eventually Baron Darling and a High Court Judge) articulated a version of the “tax on marriage” argument when they drew attention to the “great hardship” felt by married men and women teachers whose incomes were jointly assessed for income tax even though their individual salaries would not have qualified for taxation.⁴² (Their support highlights again how MPs support for women’s rights did not necessarily divide along clear lines. Two years prior, Goldsworthy had voted in favor of the 1892 Women’s Franchise Bill, which Darling opposed.⁴³)

The Exchequer supported a reform that would address the issue of married teacher’s salaries but persistent concerns about evasion and its impact on revenue informed the extent of its support. In Parliament, Chancellor of the Exchequer William Harcourt explained that he supported a reform that would allow married teachers to be taxed individually because “the case of a schoolmistress, for instance, was that of pure

⁴¹ Ibid, 304-305.

⁴² The suffragist Helen Taylor had complained about the “injustice and anomaly” of married teacher’s income tax to the London School Board over a decade before, but the issue did not make headway in Parliament until 1894. House of Commons, “The Income Tax” (Hansard, March 30, 1894), HC Deb 30 March 1894 vol 22 cc1043-59, Hansard (online).

⁴³ *The Debate, 1892, In the House of Commons on Women’s Suffrage* (20, Parliament Square: The Central National Society for Women’s Suffrage, London, 1892), 60, 65.

earnings, the result of the mere exertion and occupation of the wife herself.”⁴⁴ By contrast, he opposed allowing a married woman trader to be taxed independently because he could not guarantee she earned income entirely through her own exertions. He explained: “... trade must involve some degree of capital. The woman might be a lodging-house keeper, and yet the purchase of the house might be made by the man.”⁴⁵ The fact that married teachers were not likely to evade income tax because the tax was deducted from their salary also likely enabled Harcourt to support the measure, even if he justified it on the grounds that a married-woman teacher’s income was easily separated from her husband’s.

The terms of the 1894 Finance Act further illustrate how officials’ concerns about evasion shaped the government’s willingness to recognize married women’s claims. The Act contained a clause that allowed a married woman’s income to be taxed separately if particular conditions were met: the combined household income of husband and wife could not exceed £500 and the wife’s income had to be “derived from any profession, employment, or vocation chargeable under” Schedules D or E.⁴⁶ This meant that a married woman who earned an income entirely separately from her husband and through her own exertions in a profession or other employment could be assessed independently. Notably, married women who earned incomes through investments or trade were

⁴⁴ “Income Tax” Hansard Online. HC Deb 23 May 1895 vol 34 cc153-70.

⁴⁵ House of Commons, “Application of Income Tax Act” (Hansard, July 8, 1896), HC Deb 08 July 1896 vol 42 cc1040-5, Hansard (online).

⁴⁶ The limit was set at £500 to parallel other adjustments in the tax code made in the same Act. Income under £160 was exempt from tax. Incomes between £160-£400 were entitled to a £160 abatement and incomes between £400- £500 were granted a £100 abatement. William Lawson, “The Liability of Women to Income Tax,” *Journal of the Statistical and Social Inquiry Society of Ireland, 1894-1900* X (1899), 434. “Married Women and the Income Tax,” *Daily News*, October 17, 1894.

excluded from the provision, reinforcing the extent to which Inland Revenue feared married-men traders' potential evasion.

The provisions introduced in the 1894 Finance Act did not end calls for reform. Mr. George Bartley, Conservative for Islington North continued to call for all women to be taxed individually, regardless of how they earned their incomes.⁴⁷ Over Inland Revenue's opposition, Parliament passed reforms allowing married women traders to be taxed independently in 1897. The 1897 Finance Act stated that if a wife derived income from a business carried on by her own personal labour and her husband earned income from a business through his personal labour, they could be taxed independently. If a husband earned income from investments, the wife could not be taxed independently. Implicit in this caveat was the assumption that a husband would actually run the business but attribute it to his wife so as to reduce his total income from investments and trade.⁴⁸

In addition to concerns about fraud and the revenue impact, MPs also began to express a third anxiety regarding the potential consequence of tax reform: the creation of anomalies. Concerns about anomalies between individuals tax obligations illustrated a growing tension between MPs' acceptance of women's property rights under the MPWA and a commitment to a neutral tax regime that treated all taxpayers objectively and fairly. From the perspective of the Exchequer and Inland Revenue, married women's independent tax status posed a threat to the system's "neutrality" because it raised the

⁴⁷ "The Finance Act And Married Women," Hansard, February 14, 1895.

⁴⁸ Lawson, 434.

possibility that families would have different tax obligations despite having similar incomes, therefore undermining any claims to fairness.

For instance, William Harcourt explained his reluctance to expand the principles of the 1894 Finance Act because it would “create very much greater anomalies than those which at present existed.” He presented an example in which a husband and wife who were both engaged in trade would take advantage of the exemption and have their incomes assessed separately. The exception, he explained, would give a “great advantage” to childless married persons because both spouses could employ themselves in trade. This would be unfair to those married with children because the “children would necessarily require the care of the wife, so that she would not be able to devote her services towards assisting the husband in the shop.” Furthermore, if his wife died the shopkeeper would be left a widower. At the moment he would need to employ a person to look after his children, his income tax “would be raised.” Consequently, Harcourt asserted, the clause actually increased a widower’s tax burdens because after having advantage of the exemption in “his wife’s lifetime” it would not “would not be extended to him in his new position.”⁴⁹ While Harcourt’s logic rested on a very specific theoretical example, it does illustrate officials’ public commitment to upholding a neutral tax system. Exemptions that recognized married women’s independent incomes inherently undermined this public commitment because they raised the possibility that men taxpayers could have disparate tax obligations. In addition to these social anomalies,

⁴⁹ House of Commons, “Application of Income Tax Act” (Hansard, July 8, 1896), HC Deb 08 July 1896 vol 42 cc1040-5, Hansard (online).

Harcourt added, “his advisers at the Inland Revenue assured him that the effect of the Amendment would be to create a very large deficit.”⁵⁰

By the conclusion of the nineteenth century, the basic outline of the debate over how the Married Women’s Property Acts affected husbands and wives’ tax obligations under the 1842 Income Tax Act was well established. Britons were aware of the uneven financial burdens the income tax placed on husbands and wives. Reformers argued that the law was unjust because it violated women’s property rights, unduly burdened husbands, and penalized the married. Inland Revenue was also cognizant of the legal ambiguities between the two Acts, but its concerns about losing revenue or creating anomalies by disrupting the status quo meant it remained committed to the existing household income tax model. These concerns existed as a slow-burning debate in the press, in Parliament, and Inland Revenue until the Edwardian-era, when David Lloyd George’s “People’s Budget” introduced a new round of political controversy.

The 1909 Budget and the Super-Tax

The introduction of a graduated income tax in David Lloyd George’s 1909 “People’s Budget” returned the MWPA to the forefront of political debate.⁵¹ The Budget provided suffragists with an opportunity to politicize the income tax in order to draw attention to women’s continued disenfranchisement and the state’s violation of married women’s property rights. Debates over the new Super-Tax also shaped debates over

⁵⁰ Ibid.

⁵¹ A graduated tax was first introduced on death duties, in 1894. On how graduated death duty taxes “paved the way” for Lloyd George’s reforms, see Daunton, *Trusting Leviathan*, 224-255.

spouses' tax obligations that suffragists capitalized on during the height of the militant movement. Chapter 4 will examine suffragists' use of the MWPA. The remainder of this chapter will consider how Parliamentary and public debates over the Super-Tax exposed multiple fault-lines between class and gendered economic interests in British society, revealed underlying anxieties about husbands' position under the law, and spurred the emergence of a new feminist critique of "wealth."

Historians have long recognized the significance of the 1909 Budget, which ultimately prompted a constitutional crisis that resulted in the House of Lords' loss of veto and Irish Home Rule.⁵² To raise revenue for his ambitious plan of social spending without alienating married middle and working-class liberal voters, David Lloyd George introduced a "Super-Tax" into the Finance Bill.⁵³ Any household with an aggregate income over £5,000 was liable to pay "Super-Tax"—an additional tax levied at a rate of 6d on the pound for all income over £3,000.

Less recognized is how the mechanisms of assessing the new tax intersected with the long-standing question of husbands' and wives' tax obligations. While critics had argued that the joint assessment of incomes under the 1842 Income Tax Act violated married women's property rights, the fact that the 1842 Act was passed long before the MWPA allowed Revenue officials to claim that the 1882 MWPA did not impact the income tax laws. Because Super-Tax continued to assess tax on husbands and wives'

⁵² The classic account is George Dangerfield's *The Strange Death of Liberal England* (New York: Capricorn Books, 1961). For a contrasting view, that argues Lloyd George's budget was designed to avoid conflict with the Lords see Bruce K. Murray, "The Politics of the 'People's Budget,'" *The Historical Journal* 16, no. 3 (1973): 555–70, <http://www.jstor.org/stable/2638204>.

⁵³ The budget also introduced a system of child allowances—granting a £10 allowance per child under sixteen for families with incomes under £500 a year. Daunton, *Trusting Leviathan*, 364, 367.

aggregated incomes, despite being introduced after the MWPA, it constituted a “new and unexpected attack upon the rights and property of married women” wrote the suffragist and liberal Laura McLaren in the *Times*.⁵⁴

William Joynson-Hicks, the Conservative MP for Manchester, echoed McLaren’s point when he called on the government “not to perpetuate the injustice of the Act of 1842” during Parliamentary debates. He urged the government to recognize that “when you are putting on a new tax, you should realize the new conditions of modern society, and you should treat these incomes separately instead of jointly.”⁵⁵ In fulfillment of this view, he introduced an amendment that would extend the idea introduced in the 1894 Finance Act (that husbands and wives earning less than £500 a year could be taxed separately) and called for Britain’s tax laws to apply equally to the wealthiest and poorest in society—so that all married incomes would be assessed individually.

In Parliament, opposition to the aggregation of incomes for the purposes of assessing Super-Tax emerged from a coalition of Conservative MPs, women’s rights supporters, and MPs concerned about men’s position under the law. For instance,

⁵⁴ Laura McLaren, “Women And The Finance Bill,” *The Times*, August 28, 1909: 10. McLaren was a prominent suffragist married to the Liberal MP Charles McLaren. Both were well connected in radical liberal social networks. She was also independently wealthy, having inherited most of her father’s estate upon his death in 1895. The estate was probated at: £16,173 3s. 1d. See Trevor Boyns, “Pochin, Henry Davis (1824–1895), manufacturing chemist and industrialist.” *Oxford Dictionary of National Biography*. 4 Dec. 2018.

<http://www.oxforddnb.com.ezproxy.bu.edu/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-47964>. Elizabeth Crawford, “McLaren [Née Pochin], Laura Elizabeth, Lady Aberconway (1854–1933), Campaigner for Women’s Rights and Horticulturist,” *Oxford Dictionary of National Biography* (Oxford University Press, 2004), <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-58228>.

⁵⁵ Hansard, “House of Commons. Debate Clause 47.—(Super-Tax on Incomes over £5,000.)” (Hansard, September 20, 1909), HC Deb 20 September 1909 vol 11 cc59-181, Hansard (online).

William Joynson-Hicks, Frederick George Banbury (Conservative, City of London), and Philip Snowden (Labour, Blackburn) upheld a common understanding that the MWPA protected a woman's right to privacy. All three pointed out that since the Married Women's Property Act's passage, a wife had enjoyed both control over her own property and the ability to keep the amount of her property from her husband. During one debate Banbury beseeched Parliament to "remember the Married Women's Property Act." His speech reflected a full commitment to women's individual privacy with regard to her property when he stated:

For under the Married Women's Property Act [a wife's] property is her own, just as much as the husband's is his own, and if she likes to say, 'It is my property, and I will not allow you to interfere with it,' what legal power has the husband to say, 'I intend to investigate your property, because the Inland Revenue have assessed me at such and such a sum.'⁵⁶

In support, Snowden stated that he rarely agreed with Banbury on any matter—Snowden was an active champion of women's suffrage while Banbury was regarded as "one of the bitterest enemies of votes for women"—but he fully supported Banbury's view that the MWPA protected a married woman's property and prevented her husband from gaining knowledge about her property.⁵⁷

These debates revealed how the principle of the MWPA had conceptually expanded since the Act's passage. Snowden, for example, espoused the perspective that the MPWA had overturned the law of coverture when he argued that reform would show

⁵⁶ Ibid

⁵⁷ John D. Fair, "The Political Aspects of Women's Suffrage during the First World War," *Albion: A Quarterly Journal Concerned with British Studies* 8, no. 3 (1976): 287, <https://doi.org/10.2307/4048477>.

the state's recognition of married women's individuality: "that women may belong to themselves, that they may own their property, and they may not be in the eyes of the law economic ciphers."⁵⁸ By 1909, however, supporters also possessed a tangential assumption that a married woman's right to own property guaranteed her a right to privacy with regard to her property. They assumed that husbands and wives enjoyed access to their separate incomes and rarely, if ever, shared knowledge about their personal incomes with their spouse.

These assumptions—that a married woman enjoyed a right to privacy with regard to her personal property—consequently informed anxieties about a husband's precarious legal position for Super-Tax assessments. The Budget required all husbands to report the aggregated income of both spouses and held husband's liable for non-payment of tax. Glaringly, the bill offered no way for a husband to learn his wife's income if she refused to share the information with him.

During the debate, most MPs generally seemed to accept the claim that under the MWPA a woman had a right to privacy with regard to her property and could not be compelled to share the information with her husband. For instance, the Liberal Unionist for St George's, Hanover Square Alfred Lyttleton asked the government to answer how it intended to "enforce the obligation upon the husband to return his wife's income" when the wife had every right to refuse to share the amount of her income with her husband.⁵⁹ Given this assumed privacy, the Super-Tax laws law opened up the possibility that a wife

⁵⁸ "House of Commons. Debate Clause 47.—(Super-Tax on Incomes over £5,000)."

⁵⁹ *Ibid.*

could refuse to share information about her income while leaving her husband legally liable for the owed tax. Consequently, questions about a husband's liability for Super-Tax renewed anxieties about men's unequal legal and financial burdens.

The debate took a more humorous tone in June 1910, when the *Times* published Shaw's correspondence with Warren Fisher, the clerk to the Special Commissioner of Income Tax, after Shaw had written to him inquiring into how he should report his income for purposes of Super-Tax.⁶⁰ Shaw explained that his wife had refused to share the amount of her income with him. She maintained an entirely separate bank account and retained a different solicitor. So long as she continued to refuse to share her income, he lacked a means to compel her to disclose the information. As he explained:

Clearly ... it is in the power of the Commissioners to compel my wife to make a full disclosure of her income for the purposes of taxation; but equally clearly they must not communicate that disclosure to me or to any other person. It seems to me under these circumstances that all I can do for you is to tell you who my wife is and leave it to you to ascertain her income and make me pay the tax on it. Even this you cannot do without a violation of secrecy, as it will be possible for me by a simple calculation to ascertain my wife's income from your demand."⁶¹

In other words, the protections granted to his wife's property under the Property Acts meant the state could not reveal the information to Shaw without violating her rights. Perhaps most disconcerting for Britons, then, the contradiction created by the 1882 MWPA and a household income tax exposed a husband's legal vulnerabilities. When faced with questions about how Inland Revenue would respond if a wife refused to share her income, officials provided little reassurance that they possessed a fair response.

⁶⁰ Geoffrey K. Fry, "Fisher, Sir (Norman Fenwick) Warren (1879–1948), Civil Servant.," *Oxford Dictionary of National Biography*, 2008, <https://doi.org/10.1093/ref:odnb/33144>.

⁶¹ G. Bernard Shaw, "The Husband, The Supertax, And The Suffragists," *The Times*, June 10, 1910: 7.

For example, Sydney Buxton, the Postmaster-General, acknowledged critics' point but downplayed their argument by promising that "these difficulties had not arisen in the past, though the husband's and wife's incomes were aggregated; and the Inland Revenue authorities did not anticipate they would arise in the future."⁶² In many ways, Buxton's faith in the system's efficacy relied on a vague assumption that wives would comply with their husbands' authority and men and women would ultimately comply when the state asserted executed its power.

When asked by MP Earnest Pretzman how Inland Revenue would assess a husband whose wife refused to share her income, Buxton explained that Inland Revenue would estimate the household income. The husband retained the onus of proof if he wanted to contest Inland Revenue's estimate.⁶³ As supporters of separate assessment recognized, the approach did not address the underlying problem: if a husband had no access to his wife's income, he could not dispute Inland Revenue's assessment, because he could not prove what the actual household income was. This loophole left households open to government abuse, because Inland Revenue could arbitrarily assess a household for a certain amount of tax as long as a wife refused to divulge her income. If she did share her income to avoid an arbitrary tax, her own rights were violated.

Throughout the debates, MPs' own conceptions of proper masculinity and social obligations continued to shape their understanding of women's property rights. MPs who opposed Super-Tax emphasized a husband's respect for his wife's separate property

⁶² "House of Commons. Debate Clause 47. (Super-Tax on Incomes over £5,000)."

⁶³ *Ibid.*

rights to argue that it was unjust for a husband to pay tax on an income he had no rights to. For example, the Conservative MP for Cambridge John Rawlinson explained that his experience as a solicitor revealed the extent to which husbands and wives kept their incomes separate, saying: “I have been perfectly surprised at the cases laid before me during the past year showing the general ignorance of the husband as to the income of the wife.” Adding, “I can give cases where the husband has literally gone so far as to refrain from asking his wife the amount of her income sooner than give the information in order to apply for the exemption” his speech suggested that a constructive masculinity was tied to respecting a wife’s right to her separate property.⁶⁴ Husbands suffered under the law because they were silently shouldering a greater economic burden and paying the household tax rather than violate their wives’ property rights.

Supporters of a household Super-Tax, on the other hand, emphasized an alternative view of masculinity, tied to a husband’s ability to provide for his family. Mr. Curran, the Labour member for Durham, questioned the masculinity of members who supported the amendment, when he said that “the members of the Labour party listened to the discussion with amusement.” Labour, and implicitly working-class men, “knew their wives’ incomes, because themselves supplied them. (Laughter.) It did not enhance their respect for rich people to hear that it was not uncommon for a wife to conceal her income from her husband.”⁶⁵ By suggesting that working-class men provided their wives’ income, Curran articulated a view of the husband as a provider for his family who

⁶⁴ Ibid.

⁶⁵ “House Of Commons,” *The Times*, September 21, 1909: 4.

possessed authority over his wife; a household tax was not a problem because the husband provided his wife with her income. Implicitly, this challenged the authority and masculinity of wealthy husbands, or husbands whose wives provided the majority of the household income, and were left legally exposed by their wives' actions.

Overall, the legal contradiction made MPs acutely aware that the MWPA undercut a husband's authority over his wife by protecting her property while continuing to hold him responsible for the taxes. It left a husband exposed to legal consequences if his wife chose not to go along with the behavior the law expected from her.

As MPs expressed concerns about the ways the Super-Tax could burden husbands, the introduction of the Super-Tax spurred the emergence of a new feminist critique of how "wealth" was understood. Supporters of women's rights, of course, had been concerned with matters relating to women's poverty throughout the Victorian era and had criticized Britain's income tax laws since the 1882 MWPA came into effect. The introduction of a graduated tax added a new class dimension to this critique because it carried implications for the rate of tax applied to a married woman's income. During the nineteenth-century, debates over joint assessment of married couple's incomes centered on incomes in the £100-£200 range because the £160 exemption limit meant the aggregation of incomes could determine whether a couple was liable for income tax. Once an income exceeded the exception limit, it was taxed at the same rate as all other income. The introduction of a graduated tax—intended to ensure the wealthy paid a fair share of taxes—spread this tension through the tax system by establishing different tax rates for different income levels.

Therefore, for feminists, taxing married women's incomes as part of an effort to tax the wealthy ignored married women's relative poverty. The suffragist Laura McLaren articulated this argument when she charged that the Super-Tax "made a new and unexpected attack upon the rights and property of married women" in the *Times*.⁶⁶ Her argument relied on the principle introduced by the MWPA—a woman's right to individual property—as the basis for her broader argument regarding economic inequality between sexes. She pointed out that even in wealthy families, women could be very poor: a wife's only income could be her £150 dress allowance, while her husband lived off £4,900 a year. Yet under the current proposal, the wife's allowance would be taxed under Super-Tax rates, even though an individual with an income of £150 a year was exempt from paying any income tax at all.⁶⁷ Suffragist Ruth Cavendish Bentinck expressed a similar point when she wrote that "the mistake we make is to speak of rich men's wives as 'rich women'" in the Labour-supporting *Daily Herald*.⁶⁸ Because a woman did not own the clothes her husband bought (unless they were clearly defined as her separate property), it was incorrect to assume a well-dressed woman was wealthy. In reality, the wife of a rich man reflected her husband's wealth: "She is expected to appear in an ornamental garb suitable to her husband's position; it does not follow that she can obtain more money to spend on her own pleasures if these happen to be of the unostentatious sort that furnish no advertisement to the man who pays for them."⁶⁹ Because Britain's

⁶⁶ McLaren, "Women And The Finance Bill," 10.

⁶⁷ Ibid.

⁶⁸ Ruth Cavendish Bentinck, "Rich Women; As Good as Their Sisters," *Daily Herald*, 1912, Papers of Ruth Cavendish Bentinck, Women's Library.

⁶⁹ Ibid.

maintenance laws only required a husband to provide his wife with necessities, spouses in marriage did not necessarily share equal access to wealth.

For activists, then, the Married Women's Property Acts provided important protections that enabled them to develop this feminist critique—a recognition of economic inequality within marriage—that exposed how a graduated income tax assessed on a household income ignored a dimension of the gendered nature of individual poverty. This early critique would gain further strength in the post-war years, as Chapter 5 will discuss.

Summary

The years between 1882-1909 saw the development of multiple, competing strands of argument with regard to husbands' and wives' respective income tax obligations. For Britons who understood that the MWPA had introduced a new principle—a married woman's independence—into law, Britain's tax code, predicated on the law of coverture, demanded reform. They argued that the law inscribed injustice between men and women: husbands faced unfair legal and financial burdens because they were expected to pay tax on income they did not control; married women's property rights and privacy rights were violated if she shared information about her income with her husband for him to pay tax. The law could also penalize married couples because an aggregated income could qualify for a higher rate of tax than spouses would individually. These critiques challenged the British state's claims to neutrality because they exposed

how the income tax was predicted on the legal assumptions of coverture—that a husband and wife formed one unit.

Despite calls for reform, Inland Revenue and Treasury officials, and some MPs effectively avoided any major changes to the tax code by maintaining that the MWPA had no impact on the tax laws. Their opposition to these principle arguments was shaped by more prosaic concerns: fears about the impact on revenue, the creation of further anomalies between taxpayers, and the potential for fraud.

Chapter 4. The Possession of Money Means the Possession of Power: The Property Acts and the Women's Tax Resistance League, 1909-1914

Introduction

On September 18, 1912, Inland Revenue officials arrested and imprisoned Mark Wilks, a London county schoolteacher. His warrant charged him with failure to pay £37 in income tax and committed him to prison “during the King’s pleasure,” until the debt was paid.¹ The £37 was the amount of tax owed on the income his wife, Elizabeth Wilks, earned through her medical practice in London’s East End. Elizabeth Wilks, a suffragist, had refused to pay any taxes for the previous four years as a protest against her disenfranchisement. Revenue officials initially tried to secure payment for the unpaid tax by distraining furniture from the couple’s home. This effort failed, however, after Elizabeth claimed the furniture was her separate property; as separate property, it was protected under the 1882 Married Women’s Property Act (MWPA) and could not be seized for a debt for which her husband was liable under Britain’s income tax law. In response, officials executed a warrant for her husband’s arrest and imprisoned Mark Wilks in Brixton Gaol.

The arrest confirmed many Britons’ anxieties that husbands faced unjust financial and legal liabilities under Britain’s tax laws. Under the governing income tax law—the 1842 Income Tax Act—men, widows, and single women who failed to pay their taxes were liable to have property distrained by Inland Revenue and sold at auction as payment

¹ Mark Wilks, “Unjust Imprisonment of Mark Wilks,” c. September 1912, Scrapbook 10/03, Women’s Library.

for the unpaid tax. As discussed in the previous chapter, women and men's rights advocates had argued since the 1882 MWPA's passage that the clause in the 1842 Income Tax Act which held husbands liable for the entire household income tax both violated married women's property rights and unjustly burdened men left responsible for paying their wives' taxes without access to their income. This debate persisted as a slow-burning issue in Parliament—with minor reforms introduced in 1894 and 1897—until the late-Edwardian period, when David Lloyd George's "Super-Tax" and the actions of the suffrage society, the Women's Tax Resistance League (WTRL), brought renewed attention to the legal contradiction.

Wilks' imprisonment marked the culmination of a campaign spearheaded by the Women's Tax Resistance League to protest the contradictory laws governing husbands' and wives' tax obligations in Edwardian Britain and claim women's rights under the Married Women's Property Acts. The WTRL, which formed in 1909, directed the tax resistance campaign until its suspension at the outbreak of World War I. During this time, the League effectively exploited the legal contradiction between the 1842 Income Tax Act and the 1882 MWPA to advance their primary cause—women's enfranchisement—by demonstrating the consequences husbands could face when the conflicting laws were enforced.

This chapter resuscitates the WTRL's role in the Edwardian suffrage movement. Thus far, the WTRL has been obscured by historians' attention to the larger and better-known suffrage organizations: Millicent Garrett Fawcett's constitutionalist National Union of Women's Suffrage Societies (NUWSS); Emmeline Pankhurst's militant

Women's Social and Political Union (WSPU); and the Women's Freedom League (WFL), headed by Charlotte Despard after a contingent of suffragettes broke away from the more autocratic WSPU.² For instance, Jill Liddington asserts that the WTRL never achieved the inspirational clout of the WSPU or WFL due to its relatively small size, and that its significance was therefore mostly symbolic.³ Indeed, in 1912 the WTRL had 550 members and associates.⁴ Out of these women, the official League history recorded 212 women tax resisters who participated in the protest between 1910 and 1914.⁵ By contrast, the NUWSS boasted 50,000 members in 1914.⁶ Dismissing the WTRL's influence on account of its size, however, ignores the League's role in advancing a debate about husbands' and wives' tax obligations under the Married Women's Property Acts that compelled the government to make concessions to suffragists in the 1914 Finance Act. As Chapter 5 will discuss, the WTRL's critique was taken up in the post-war years by other women's societies, including the National Union for Societies of Equal Citizenship (the NUWSS's successor), the National Council of Women, and the Women's Freedom League.

² For existing scholarship on the WTRL see Hillary Frances, "'Pay the Piper, Call the Tune!': The Women's Tax Resistance League," in *The Women's Suffrage Movement: New Feminist Perspectives*, ed. Maroula Joannou and June Purvis (Manchester: Manchester University Press, 1998), 65-76; Crawford, *The Women's Suffrage Movement*, 672-673; and Laura E. Nym Mayhall, *The Militant Suffrage Movement: Citizenship and Resistance in Britain, 1860-1930* (New York: Oxford University Press, 2003), 59-60.

³ Jill Liddington, *Vanishing for the Vote: Suffrage, Citizenship and the Battle for the Census* (New York, NY: Manchester University Press, 2014), 69-70.

⁴ "Men's International Congress. Societies Taking Part Today," *Daily Herald*, October 25, 1912, Scrapbook of Press Cuttings relating to Tax Resistance (10/21).

⁵ Margaret Kineton Parkes, *The Tax Resistance Movement in Great Britain; A Brief History of the Women's Tax Resistance League and the Work It Did in Helping to Gain the Parliamentary Vote. Introduction by Laurence Housman* (Women's Freedom League, c. 1920). Hilary Frances asserts that more than 220 women participated in tax resistance but does not cite a source for her statistics (69).

⁶ Julia Bush, *Women against the Vote Female Anti-Suffragism in Britain* (Oxford: University Press, 2007), 4.

Although historians have long recognized suffragists' participation in the late-Victorian campaign to reform the property laws, they have given far less attention to the meaning suffragists attached to married women's property rights after the Acts' passages. This is surprising given the Property Acts' prominent position in leading suffragists' early political careers. For instance, many suffragists, including Emmeline Pankhurst and her husband, Richard, served as members of the Committee to Reform the Property Laws Relating to Married Women after the 1870 Act's passage. Furthermore, historians frequently reference an anecdote from Millicent Garrett Fawcett's memoir that recounts her surprised reaction upon hearing in court that her purse, which had been nabbed by a pickpocket, was listed as the stolen property of her husband, Mr. Henry Garrett Fawcett.⁷ Scholars have used this story to suggest that Fawcett's experience awakened her to her legal invisibility and inspired her to join the suffrage movement. Yet, despite suffragists' stated awareness of the property laws as they related to married women and their involvement in the campaign to reform the law, scant attention has been paid to how suffragists asserted their new rights following the Acts' passage.

Not only were suffragists aware of the MWPA, as this chapter shows, the 1882 Married Women's Property Act formed a cornerstone of the League's tax resistance strategy. The WTRL continued to lay claim to the principle of the 1882 MWPA—a married woman's independence and right to privacy with regard to her property—when it advised women to refuse to share information about their incomes with their husbands or Revenue officials to protest both women's disenfranchisement and Britain's tax laws.

⁷ Finn, "Women, Consumption and Coverture in England," 705; Holcombe, 3.

Ultimately, the WTRL unleashed a debate that exposed a continuing tension between Victorian ideals regarding a husband's authority over his wife and married women's established claims to property rights under the MWP. As Chapter 1 discussed, many MPs supported the Property Acts' passage, confident that the statutes would reform the behavior of the violent and frequently-drunk husbands amongst England's poor without jeopardizing the domestic harmony that characterized the idealized middle-class and upper-class home.⁸ The WTRL's campaign showed, however, that a husband and wife could have conflicting interests and that a husband could face legal consequences if his wife chose to assert her rights. The ensuing public outcry illustrated a deep ambiguity between Britons' acceptance of women's property rights and their misgivings that these rights imperiled husbands' positions within their households. Outrage over husbands' liabilities for their wives' taxes never contested a wife's right to privacy with regard to her property. Instead, it called attention to the "absurdity" that husbands continued to be responsible for their wives' taxes. While historians have asserted that separate spheres ideology began to wane by the end of the nineteenth century, the tax resistance campaign revealed how these ideals did not naturally fade, but were instead subject to sharp contestation into the twentieth century.⁹ By exposing the extent to which middle- and upper-class women could exploit their husbands' precarious legal positions to protest their own disenfranchisement, the WTRL effectively challenged prevailing ideals

⁸ Griffin, "Class, Gender, and Liberalism in Parliament: 59-87.

⁹ On challenges to Victorian domestic ideology see Griffin, *The Politics of Gender*, 65-109; Tosh, *A Man's Place*, 145-194. For a recent recognition of the ways the political system was organized around sex see Susan Pedersen's "Ben Pimlott Memorial Lecture 2018. The Women's Suffrage Movement in the Balfour Family," in *Twentieth Century British History* 30, no. 3 (September 1, 2019): 299-320, especially 300-301, <https://doi.org/10.1093/tcbh/hwz010>.

regarding a husband's authority over his wife and, by extension, the state's authority over its subjects.

Women's Tax Resistance League Forms

The Women's Tax Resistance League emerged from a meeting held at the home of Louisa Garrett Anderson on 22 October 1909. Anderson was the daughter of Elizabeth Garrett Anderson, Britain's first female doctor, and the niece of Millicent Garrett Fawcett.¹⁰ By the turn of the century, suffragettes began to explore tax resistance as one tactic within a wider militant campaign.¹¹ Dora Montefiore refused to pay taxes in 1904 and 1905. The WSPU called for members to resist paying taxes in November 1907, and the WFL echoed the call shortly after.¹² The meeting at Garrett-Anderson's house was a response to this growing interest. After a brief discussion, attendees pledged financial support to establish the League as an independent suffrage society committed to tax resistance.¹³

The decision to remain an independent, non-party society enabled the WTRL to attract supporters from both the constitutional and militant wings of the suffrage movement. Mrs. Margaret Kineton Parkes left her position with the WFL to become

¹⁰ Jennian Geddes, *Anderson, Louisa Garrett (1873–1943), Surgeon and Suffragette* (Oxford University Press, 2015), <https://www.oxforddnb.com/view/10.1093/ref.odnb/9780198614128.001.0001/odnb-9780198614128-e-62050>.

¹¹ On the Boer War (1899-1901) as a critical turning point for the emergence of militancy in the Edwardian era see Mayhall, 32-36.

¹² Mayhall, 60; Parkes, 3.

¹³ Meeting notes for 22 October 1909 detailed the following subscriptions: Mrs. Sargent Florence, £50.00; Dr. Elizabeth Wilks, £25.00; Dr. Kate Haslam, £20.00; Miss Serwya [sic], £5.00. Minute Book, Women's Tax Resistance League, Vol. 1, 1909-1913, Records of the Women's Tax Resistance League, 2WTR/1, Box FL509, Women's Library.

WTRL secretary.¹⁴ She remained League secretary throughout its existence and travelled all over Britain to speak to other suffrage societies about the tax resistance effort.¹⁵ Siblings Clemence and Laurence Housman were affiliated with the WTRL, the WSPU, and the Suffrage Atelier.¹⁶ Suffragists affiliated with the NUWSS also joined the WTRL and framed their actions as a constitutionalist protest.¹⁷ For example, Mrs. Fyffe, a committee member of the WTRL and NUWSS, explained that she “adopted tax resistance as a method of making a dignified and constitutional protest.”¹⁸ Although the WTRL remained closely associated with the non-violent WFL, tax resisters also retained memberships in The New Constitutional Society for Women’s Suffrage, the Conservative and Unionist Women’s Franchise League, The Free Church League, the Catholic Women’s Suffrage Society, The Church League for Women’s Suffrage, the Actresses’ Franchise League, the Artists’ Franchise League, and the Women Writers’ Franchise League.¹⁹ Overall, their participation in these overlapping networks defies a neat distinction between militancy and constitutionalism. The WTRL did not consider its

¹⁴ Margaret Wynne Nevinson, “Five Years’ Struggle for Freedom: A History of the Suffrage Movement from 1908 to 1912” (Women’s Freedom League, c. 1912), Women’s Freedom League Pamphlets, Vol 1., Huntington Library.

¹⁵ Crawford, “Parkes, Margaret Anne, Mrs. (c.1865-1920),” in *The Women’s Suffrage Movement: A Reference Guide 1866-1928*, 528–29.

¹⁶ On Clemence Housman see Crawford, “Housman, Clemence Annie (1861-1955)” 293–94. Laurence was also a founding member of the Men’s League for Women’s Suffrage. Crawford, “Housman, Laurence (1865-1959),” 295–295.

¹⁷ The NUWSS considered adopting tax resistance as a means of protest, but ultimately decided against it. 2LSE/E/15/09, Women’s Library.

¹⁸ “Another Government Seizure,” *Daily Herald*, October 23, 1912, National Union of Women’s Suffrage Societies Archive, GB 133 NUWS/7/1, John Rylands Library.

¹⁹ Frances, 67.

campaign to be a form of militancy. Instead, the League framed tax resistance as “actively passive,” which meant they employed “passivity to produce a deadlock.”²⁰

While drawing support across suffragist networks, the WTRL’s membership was in many ways exceptional. The existing tax laws established a minimum income threshold for participation. Resisters also required the financial means or property to afford the costs associated with resistance. Although some lower-income women did participate by refusing to pay license fees, League members tended to be financially independent.²¹ Furthermore, women who could refuse to pay income tax constituted a very small proportion of the population. In 1913, about 1,130,000 Britons out of a population of 42,582,300 were liable for income tax.²² Women, particularly married women, who had incomes greater than the exemption limit, £160, therefore represented a very small group.

Consequently, the League’s leadership—dominated by professional, middle-, and upper-class women—reflected the narrow pool of women for whom questions of taxation were relevant. In addition to Dr. Garrett-Anderson and Dr. Elizabeth Wilks, who served as honorary treasurer, other women medical doctors who served as WTRL committee members included: Mrs. Kate Haslam, MD, Dr. Winifred Patch, and Dr. Jessie Murray. The painter Mrs. Mary Sargant Florence was one of the League’s founders and designed

²⁰ Although some WTRL members participated in militancy, I refer to WTRL members as “suffragists” because that is the term they used themselves and because they framed and understood their actions as “constitutional.” [Untitled], *Bristol News*, January 26, 1911, Scrapbook of Press Cuttings relating to Tax Resistance (10/21). For recognition that militancy occurred along a “spectrum” see Mayhall, 7-8.

²¹ Crawford, “Women’s Tax Resistance League,” in *The Women’s Suffrage Movement*, 672.

²² “Mid-1851 to Mid-2014 Population Estimates for United Kingdom: Total Persons, Quinary Age Groups and Single Year of Age;” (Office for National Statistics, 2015), <https://www.ons.gov.uk>.

the WTRL badge and banner.²³ Ethel Ayres Purdie, who joined the London Association of Accountants in 1909 as Britain's first chartered female accountant, provided the League with critical legal expertise. She ran her own accounting business, the "Woman Taxpayer's Agency," and since 1907 had audited the WFL and other suffrage organizations, including the International Women's Suffrage Association.²⁴ The participation of well-known, upper-class women such as the Duchess of Bedford and the Lady Princess Sophia Dunleep Singh also helped grant legitimacy and respectability to the cause.²⁵ Given the WTRL leadership's economically exclusive and socially elite character, the controversy its campaign generated illustrated how effectively it tapped into broader social anxieties about Britain's gender order.

The Women's Tax Resistance League had two aims. First and foremost, it argued that taxation guaranteed individuals the right to political representation under the British constitution.²⁶ Margaret Kinton Parkes, for instance, explained that the "law clearly said that whoever paid taxes must be represented." Tax resistance illustrated women's realization that "the possession of money meant the possession of power" and "the power

²³ Florence also designed the WFL banner, "Dare to be Free." Crawford, "Florence, Mary Sargant Mrs. (1858-1954), 223-224.

²⁴ For Purdie's exchange with the I.W.S.A. see I.W.S.A. Headquarters Correspondence Files, File: P and Q. GB 133 IWSA/2/25, John Rylands Library.

²⁵ "Duchess of Bedford's Cup Sold," *The Times*, May 2, 1913, 8. "Princess Sophia Dunleep Singh's Jewels," *The Times*, January 27, 1914, 4.

²⁶ Of course, this view had enormous precedent. For example, in 1852 Charles Babbage, a professor at Cambridge and founder of the Statistical Society, calculated that 850,000 out of one million voters had incomes below the income tax threshold. This induced Gladstone, in 1853, to lower the exemption rate from £150 to £100, allowing incomes between £100 and £150 to pay lower rates. The £100 marked the division between the "educated and labouring" and the voter and non-voter. Because the franchise was based on a £10 household qualification he estimated that this required £96 a year to qualify for the vote. Daunton, *Trusting Leviathan*, 150, 152.

to refuse to pay taxes” until they were granted Parliamentary representation.²⁷ League members also consciously placed their resistance efforts within a historical narrative that celebrated tax resistance as a moral and constitutional response to government tyranny by celebrating their “spiritual kinship” with the “great constitutional reformer” John Hampden.²⁸ Hampden had refused to pay taxes for ship money to protest Charles I’s levying of taxes without Parliamentary consent—the contest between the king and Parliament over who possessed the right to levy tax eventually sparked the English Civil War. Women’s tax resistance, therefore, upheld the foundational principles of the constitution and English liberty. The League’s “black list” of imperial taxes (taxes levied by Parliament) that women could refuse to pay in order to resist government tyranny included: income tax, property tax, inhabited house duty, taxes on male servants and armorial bearings, and dog-, carriage-, motor-car, and gun licenses.²⁹

Because a woman’s marital status determined how the government assessed her tax obligations, the ways in which a suffragist could practice tax resistance depended on both the forms of property she owned and her marital status.³⁰ For example, Inland Revenue collected tax from “unearned income”—income derived from investments and stocks—“at the source,” meaning tax was deducted before an individual received

²⁷ “No Vote, No Taxes,” *Bristol Daily Press*, November 10, 1910, Scrapbook of Press Cuttings relating to Tax Resistance (10/21).

²⁸ Mrs. [E. I.] Darrent Harrison, *John Hampden*, (Women’s Tax Resistance League, 1912), Rare Books. The Women’s Tax Resistance League Pamphlets, Huntington Library; Margaret Kinton Parkes, “Tax Resistance,” *Englishwoman*, March 1911, Scrapbook of Press Cuttings relating to Tax Resistance (10/21), Women’s Library.

²⁹ For example, WTRL member Alice Waters was imprisoned for seven days, three times, for refusing to pay her dog license. “An Unlicensed Dog,” *The Vote* VIII, no. 197 (August 1, 1913): 227.

³⁰ One pamphlet explaining the methods of tax resistance divided women into groups, including: “single women and widows”, and “married women.” “Methods” (Women’s Tax Resistance League, no date.), 2LSW/E/15/09, Box FL154, Women’s Library.

payment. Taxation at the source made it impossible for a woman to resist tax on unearned income. Therefore, League literature advised all women with income classified as “unearned income” to transfer their stocks to foreign securities to prevent Inland Revenue from collecting the tax. An unnamed foreign suffrage society, in collaboration with the WTRL, agreed to act as agent and promised to collect and remit interest payments back to the suffragists as they came due.³¹

Unmarried or widowed women possessed the same economic rights and liabilities as men. These suffragists could directly register their resistance by refusing to pay taxes. Those who refused to pay property tax, income tax, or inhabited-house duty could have property distrained and sold as payment. If they lacked property, they were liable to go to jail.

Married women, on the other hand, did not directly pay taxes. Their husbands were responsible for submitting the tax forms and paying the aggregate tax. As a second aim, therefore, the WTRL intended for its campaign to highlight how Britain’s income tax laws violated married woman’s rights under the 1882 MWPA in order to secure reforms recognizing married women’s individual tax status.

To this end, the League advised all married women to protest the contradictory laws and assert their rights under the MWPA by refusing to divulge the amount of their separate incomes to their husbands and Revenue officials. One pamphlet explained that “[Women] should resolve to keep the amount of their separate income an inviolable

³¹ Parkes, “No Vote, No Tax” (Women’s Tax Resistance League, c. 1910), 2LSW/E/15/09, Box FL154, Women’s Library.

secret from the Revenue authorities, and also from their husbands, which, under the Married Women's Property Act of 1882, they are now able and entitled to do, just as a man need not disclose his income to his wife (and we know that many of them never do.)"³² In other words, a married woman's right to her separate property under the 1882 Act ensured a wife's income remained private. As George Bernard Shaw had pointed out in his correspondence with the clerk to the Special Commissioner of Income Tax, Warren Fischer, contemporaneously published in the *Times* (Chapter 3), the protections afforded to married women's separate property under the 1882 Property Act meant that if a wife refused to reveal her income, her husband lacked any legal means to ascertain the amount. By implication, it also meant the state lacked any means to learn a wife's income so long as it insisted on obtaining the information from the husband. The state, however, still considered the husband liable for the total tax owed.

Here, married women's property rights functioned as a linchpin in the League's broader strategy. The WTRL maintained that "no married woman is liable for any" direct taxes, including "Super Tax, Income Tax, Property Tax and Inhabited House Duty," and it was "illegal to demand payment from her, to enforce or attempt to enforce payment, or even to ask her to furnish particulars of her property or income."³³ By asserting married women's property rights, the WTRL drew attention to the very legal contradiction it wanted resolved: that there was "a marked conflict between the spirit of the Act of 1842"—passed at a time when a wife could have no income and no property—"and the

³² WTRL, "Methods," 2.

³³ Ethel Ayres Purdie, "Married Women and Tax Resistance" (Women's Tax Resistance League, c 1911), 1, 2LSW/E/15/09, Box FL154, Women's Library.

spirit of the Married Women's Property Act of 1882 (which gives her both)."³⁴ If married women refused to divulge their incomes to their husbands, who remained liable for the tax, the League "fully anticipated that ... it will involve the Revenue authorities in remarkable complications, and will most probably lead to the status of married women being raised above that of infants, lunatics, &c."³⁵

Of course, suffragists had undertaken individual tax resistance efforts to protest their disenfranchisement since the 1870s. Historians frequently cite the efforts of Anne and Mary Priestman, who first refused to pay taxes in 1870 and 1871 only to have their taxes paid anonymously. (They subsequently abandoned the effort.) Charlotte Babb and Rose Anne Hall called for tax resistance campaigns in 1871 and 1872. Miss Henrietta Müller (sister of suffragist Eva McLaren) refused to pay taxes in 1884.³⁶ These women, however, were all single and could more directly refuse to pay tax.

A more analogous precedent for the WTRL's campaign to reform married women's tax obligations lay in a dispute over a married woman's eligibility under the 1870 MWPA to participate as a member on the boards of Guardians. At the time, the editors of the *Englishwoman's Review* saw the situation as a "test case" for determining

³⁴ WTRL, "Methods," 2-3.

³⁵ Ibid.

³⁶ "No Votes-No Taxes," *Women's Suffrage Journal* 3, no. 30 (August 1, 1872): 115; A Householder, "Taxation and Non-Representation," *Women's Suffrage Journal* 3, no. 31 (September 2, 1872): 121; R.A.H., "Taxation and Non-Representation," *Women's Suffrage Journal* 4, no. 36 (February 1, 1873): 27; C.E.B., "Correspondence," *Women's Suffrage Journal* 4, no. 40 (June 2, 1873): 103; Charlotte E. Babb and Rose A. Hall, "Taxation Without Representation," *Women's Suffrage Journal* 4, no. 44 (December 1, 1873): 175. Parkes, *The Tax Resistance Movement in Great Britain; A Brief History of the Women's Tax Resistance League and the Work It Did in Helping to Gain the Parliamentary Vote. Introduction by Laurence Housman* (Women's Freedom League, c.1920), 1-2, The Women's Tax Resistance League Pamphlet, Huntington Library, On the Priestman sisters' role in the late-Victorian suffrage movement see Sandra Stanley Holton, *Suffrage Days: Stories from the Women's Suffrage Movement*, (New York; Routledge, 1996), 24; Frances, 66.

who was the legal occupant of a premises, but it also provided the first instance illustrating the potential consequences of a married woman's refusal to cooperate with tax collection.³⁷

Before her marriage, a Mrs. Shearer, née Downing, leased premises at 126 Hemingford Road. As a single-woman ratepayer, she sat as an elected Guardian for St. Mary's Parish in Islington, London. When she married Mr. J. R. Shearer, the premises (where the couple continued to live) along with other furniture were settled upon Mrs. Shearer as "her own absolute property, under the Married Women's Property Act 1870."³⁸ After the marriage, the local vestry clerk removed "Miss Downing" from the list of rate-payers, replacing her name with her husbands', Mr. J. R. Shearer. Consequently, at the next Guardians election Mrs. Shearer was disqualified because she no longer appeared on the list of rate-payers. She took her case before the Local Government Board, who elevated the question for the consideration of the Law Officers of the Crown.³⁹

The case anticipated questions regarding spouses' tax liabilities because, as her case was pending before the Local Government Board, Mrs. Shearer made a further effort to establish herself as the rate-payer at the couple's home. She offered to pay the owed taxes on the condition that she "receive a receipt in her own name."⁴⁰ (She never explained her strategy, but her insistence on a receipt likely arose from her desire to

³⁷ Although the case occurred in 1882, the 1882 MWPA had not been passed. The questions raised therefore developed within the legal context of the 1870 Act.

³⁸ "Important Question of the Qualification of Married Women Board as Guardians," *The Englishwoman's Review of Social and Industrial Questions*, April 15, 1882, 176–78.

³⁹ "The Qualifications of Lady Guardians," *The Standard*, July 28, 1882.

⁴⁰ "Important Question of the Qualification of Married Women Board of Guardians," 177.

establish that she was a ratepayer and therefore eligible to remain a Guardian.) Officials, however, refused her offer. Instead, her husband received a summons to appear before one of the Justices for the county of Middlesex, for “non-payment of rates, levied on 126 Hemingford Road the previous January.” The *Englishwoman’s Review* explained that if Mrs. Shearer was deemed the rate-payer, the summons against her husband would be withdrawn. If Mr. Shearer was held liable for the outstanding rates, then the case would go before a local magistrate. Significantly, the paper explained, “a magistrate will be asked to commit him to prison, and should the magistrate feel bound by the rather stringent terms of the local Act, Mr. Shearer must be so committed.”⁴¹ While the outcome of the case is not clear, Mrs. Shearer’s actions showed the potential consequences a husband could face if she refused to abide by authorities’ demands. The Women’s Tax Resistance League exploited these same contradictions as it commenced its own campaign in 1910.

The campaign took shape at a moment when both tax resistance and taxation were already subject to sharp political debate. The 1902 Education Act, the payment of MPs, and the 1910 Budget Debate ensured the dual issues of tax resistance and women’s property rights were at the forefront of the public’s attention when the League announced its own campaign in the wake of the failed 1910 Conciliation Bill.

The 1902 Education Act had established a national system of secondary education, replaced the local school boards established in 1870 with Local Education Authorities, and, most controversially, allowed denominational schools to be supported

⁴¹ “Important Question of the Qualification” of Married Women Board of Guardians,” 178.

through rates.⁴² Nonconformists opposed the use of rates to support Catholic and Anglican schools and organized a passive resistance effort in which they refused to pay education rates until the law was repealed.⁴³ Resistance persisted until 1914.⁴⁴ Indeed, on at least one occasion, education-rate and suffragist tax resisters' goods were put up for auction alongside each other.⁴⁵ At these moments, the WTRL was quick to draw attention to the disparate treatment that education- and suffragist tax resisters received. For instance, after Clemence Housman's arrest for non-payment of inhabited house duty, the Men's League for Women's Suffrage (MLWS) made sure to point out that many people who condemned resistance in the matter of women's suffrage had adopted their own methods of passive resistance to protest the Education Rates.⁴⁶

The announcement that MPs would be paid salaries exacerbated suffragists' resentment that their taxes were paying politicians who refused to allow women a voice in determining how the money would be used. For those sympathetic to the WTRL's cause, the announcement seemed to strengthen suffragists' moral claims. At a drawing

⁴² Wendy Robinson, "Historiographical Reflections on the 1902 Education Act," *Oxford Review of Education* 28, no. 2/3 (2002): 159–72, <http://www.jstor.org/stable/1050905>.

⁴³ By November 1905, *British Weekly* recorded a total of 65,481 prosecutions for rate resistance. 176 resisters faced imprisonment. Although he does not cite the MWPA, D. R. Pugh's article, "'English Nonconformity, Education and Passive Resistance 1903–6,'" suggests that radical nonconformists also took advantage of the protections offered by the Married Women's Property Act: while most nonconformists allowed their property to be distrained and sold at auction, a radical minority tried to ensure they would be imprisoned for their protest. These resisters signed their property over to their wives or other relatives, suggesting that they were taking advantage of the MWPA's protections against seizure of property for debt, so that they could claim they had no property available for distraint before the magistrate, ensuring their imprisonment. See D. R. Pugh, "English Nonconformity, Education and Passive Resistance 1903–6," *History of Education* 19, no. 4 (1990): 355–73, <https://doi.org/10.1080/0046760900190405>.

⁴⁴ Pugh, 373.

⁴⁵ "Sale of Resisters' Goods," *Hampstead and Highgate Express*, June 7, 1912, Scrapbook of Press Cuttings relating to Tax Resistance (10/21).

⁴⁶ "Arrest of Miss Housmann," *Men's League for Women's Suffrage. Monthly Paper*, no. 25 (October 1911): 99; "Woman Suffrage," *The Times*, October 9, 1911: 5.

room meeting in Knightsbridge, for instance, the speaker “Mrs. Cecil Chapman reminded her audience that Mr. Sydney Buxton and others in the House of Commons, who were deserting the women in their hour of need, were really paid for their services there by the women taxpayers, and for that reason alone women ought to now refuse to pay their share of their salaries.”⁴⁷ *The Englishwoman*, which regarded the case for women’s suffrage as “already strong,” predicted that for “many naturally quiet and law-abiding women,” the payment of MPs “will be the last straw—the one insult too much—to bear.”⁴⁸

These complaints developed as Parliamentary debates over the budget continued. As discussed in the previous chapter, the 1909 “People’s Budget” had raised the question of how married women’s incomes were assessed under the new “Super-Tax.” The same questions carried into 1910, partly because the resulting constitutional crisis had prevented the state from collecting revenue the previous year.

The 1910 Budget debates provided suffragists with yet another opportunity to argue that the combined taxation of husbands and wives violated married women’s property rights under the 1882 MWPA. Both Ethel Purdie and Charlotte Despard published open letters to David Lloyd George calling attention to the matter. In Parliament, Leonard Hobhouse had agreed that married women’s tax position was “anomalous” and would have to be dealt with eventually, but he opposed any change at the moment because it would “mean a loss of £1,500,000 to the Exchequer.”⁴⁹ In

⁴⁷ “Tax Resistance,” *The Standard*, March 22, 1912, National Union Women Suffrage Society Archive, GB 133 NUWS/3/1, John Rylands Library.

⁴⁸ “The Case for Women’s Suffrage,” *Dundee Courier*, June 26, 1911.

⁴⁹ “House Of Commons,” *The Times*, November 24, 1910: 8. Ethel Purdie referenced the debate in her pamphlet, “Married Women and Tax Resistance” p. 4. The pamphlet was printed in late 1910 or January 1911; League Committee members gave Purdie permission to correct the proofs and order prints on

response, Purdie wrote to David Lloyd George (the letter was published in the *Common Cause*) asking him to “[address] this matter by immediately refunding to married women all the tax which has been illegally charged upon them and deducted from their incomes for some 28 years past.” In contrast to the cost to reform the tax laws, she estimated that refunding married women their money would “probably amount to about £100,000,000 on a very modest and conservative estimate.”⁵⁰ Despard’s letter echoed a similar rhetoric. She wrote asking David Lloyd George to meet with a WFL delegation who found themselves “seriously aggrieved by the present administration of the Inland Revenue Department.” The members’ general grievance was that they continued to be taxed without receiving political representation, but they also had two specific “injustices” they wanted addressed: the new land taxes assessed on women landowners and the income tax levied on married women. “[I]t is our contention that at present a married woman is subjected to grave injustice by the inclusion of her earnings or income as that of her husband, with the consequent payment of tax upon a larger sum and at a higher rate, and, further, that this procedure on the part of the Inland Revenue officials can be proved to be absolutely illegal,” she wrote. They asked for a meeting where they could lay their case before Lloyd George and present “documents which prove definite breaches of the Married Women’s Property Act and of the Income Tax Act.”⁵¹

December 19, 1910 (See League Minutes for 19 December 1910.) Articles about the pamphlet began appearing in the press by January 1911.

⁵⁰ Ethel Ayres Purdie, “Open Letter to Chancellor of Exchequer,” *Common Cause*, August 4, 1910, Scrapbook of Press Cuttings relating to Tax Resistance (10/21).

⁵¹ “Women and Inland Revenue,” *The Times*, September 20, 1910.

About three weeks after the *Times* published Despard's letter, the 1910 Conciliation Bill provided the impetus for the WTRL to launch its campaign: if the bill failed, WTRL supporters would commit to non-payment of imperial taxes the following year.

Mark Wilks' Arrest and a Husband's Authority

The press's initial response to the WTRL's campaign was characterized by a sense of curious anticipation about the League and its methods. The *Financial News* described League members as "a number of clever and determined women" whose confrontation with the government was "proving a source of considerable embarrassment."⁵² One correspondent expressed his "irrepressible admiration for the [members'] boundless and unflinching pluck," adding that "as a rule, a British Government's answer to a strong argument is the application of brute force to compel silence. But these ladies are not to be 'squashed' even by the official bludgeon."⁵³

Soon, however, the press seized on the potential consequences a husband could face if his wife joined the tax resistance effort. Journalists recognized that the WTRL's argument extended beyond the divisive issue of suffrage because it challenged a husband's idealized role as breadwinner and source of domestic authority in his family. In articles responding to the WTRL, the husband who earned less income than his wife emerged as the object of concern. As the *Dundee Courier* noted, there were many

⁵² "The Ladies and the Taxes," *Financial News*, January 26, 1911, Scrapbook of Press Cuttings relating to Tax Resistance (10/21).

⁵³ "A Ladies League," *The Financial News*, February 13, 1911, Scrapbook of Press Cuttings relating to Tax Resistance (10/21).

examples of married couples in which the wife was “a woman of means and the husband is, financially speaking, a man of straw.” In these families, a husband relied on the presence of a “docile wife” who sat with him while he filled in the income tax form “with her assistance, pays, and there’s an end [to it].”⁵⁴ A husband’s presumed authority remained intact so long as his wife remained compliant. “[I]f the wife is strong-minded and has views” the paper continued, “she may refuse to tell him” anything about her income, leaving her husband no choice but to return the “form with a polite intimation that he has no income, and that his wife is standing upon her legal rights and refusing to divulge hers.”⁵⁵ Vignettes like these exposed a tension between a husband’s idealized place in the home—as a patriarchal authority figure whose labor provided for his family—and families’ disparate financial realities. Most troubling, a husband’s presumed authority within the household had little legal backing.

The fact that the state could penalize a husband for non-payment of taxes on income to which he had no claim sparked a wider debate about the state’s abuse of its power that cut across established pro- and anti-suffrage divisions. The *Leicester Mail* noted that “many who have no real sympathy with woman’s suffrage will share the feeling that it is a gross injustice to punish a man for not complying with an abstract demand or paying taxes on property which is no more his own than is the property of his next-door neighbor.”⁵⁶ Papers that did not support women’s suffrage or remained skeptical about militancy acknowledged the power of the WTRL’s argument and

⁵⁴ “Married Women and Taxes,” *The Dundee Advertiser*, February 13, 1911, Scrapbook 10/21.

⁵⁵ *Ibid.*

⁵⁶ “Liability for Wife’s Debts,” *The Leicester Mail*, September 19, 1912, Scrapbook 10/03.

expressed concern about its implications. *The Queen: The Lady's Newspaper* “set aside” the League’s “ulterior motives”—women’s suffrage—but agreed that “if the present agitation leads to nothing else but the regularization of the law governing income tax... it will have resulted in considerable good.”⁵⁷ An article in the *Looking Glass*, while assuring its reader of its disapproval “of the suffragette, her claims and her methods,” expressed “admiration” for the WTRL’s “astuteness” after receiving a copy of Ethel Purdie’s pamphlet, “Married Women and Tax Resistance.” If Purdie’s claims were correct, the author predicted, “Mr. Lloyd George is in for a bad time.”⁵⁸

As the WTRL built its case in the press, it also pursued legal cases whose outcomes reinforced the League’s claims that married women could not be held liable for taxes. In November 1912, Ethel Purdie successfully argued a case on behalf of Alice Burns, a Medical Inspector for Durham County, before the Durham Commissioners of Taxes. Burns, originally from New Zealand, had moved to England around 1902 to study medicine and then remained in the country, working as a medical doctor. The case rested on the commissioners’ interpretation of what constituted “living together” for the purposes of taxation. Clause 45 of the Income Tax Act stated that if a husband and wife were living together, the husband was responsible for paying the tax; if they were separated, each was responsible for paying income tax. The Crown representative argued that the Burnses were separated and Alice should therefore pay taxes. Purdie argued that Alice should be exempt from paying taxes because she and her husband should still be

⁵⁷ “Married Women and Taxes,” *The Queen, the Lady's Newspaper*, c 1911, Scrapbook 10/21.

⁵⁸ “A New Suffragist Dodge,” *The Looking Glass*, February 11, 1911, Scrapbook 10/21.

considered to be “living together.” Purdie contended that the “separation” contingency referred to married couples who obtained a legal separation order, not married couples who were physically separated. The Burnses, while living in different countries, were not legally separated, and therefore, Alice was not responsible for paying the tax. The commissioners ruled in Purdie’s favor. At the same time, Inland Revenue could not collect the tax from her husband, who lived in New Zealand and remained outside its jurisdiction. The ruling, therefore, seemed to confirm that liability for income tax remained with a husband, and the state had few means to collect income tax from married women if they refused to cooperate.⁵⁹

Britons’ anxieties about husbands’ legal liabilities were subsequently realized when Inland Revenue arrested Mark Wilks. Wilks’s arrest marked the culmination of a four-year long tax resistance effort by his wife, Elizabeth Wilks. Elizabeth Wilks was honorary treasurer of the Women’s Tax Resistance League and a medical doctor with a practice in Hackney. Inland Revenue’s initial response to Elizabeth’s protest showed a typical ambivalence with regard to the government’s observance of women’s claims under the law. Initially, the government sent a tax assessment to Elizabeth Wilks. She refused to pay taxes in 1908 and 1909, writing “taxation without representation is

⁵⁹ “A Lady’s Income-Tax Victory,” *Financial News*, November 28, 1912; “A Novel Point as to Income Tax,” *Yorkshire Post*, November 28, 1912; “An Appeal Against Income Tax,” *Manchester Guardian*, November 28, 1912; “Novel Income-Tax Point,” *The Liverpool Daily Courier*, November 29, 1912; “Married Women and Income Tax,” *The Standard*, November 30, 1912; “Married Women and Income Tax,” *The Standard*, December 2, 1912; “Married Women and the Income Tax,” *The Standard*, December 4, 1912; “Married Women and Income Tax,” *The Standard*, December 9, 1912; “Married Women and Income Tax,” *Accountant*, December 14, 1912. Scrapbook 10/21.

tyranny” across the form.⁶⁰ In response, Revenue officials seized her dining room furniture, a sideboard, and a piano.

By 1910, the WTRL had developed its strategy with regard to married women’s tax resistance and began to develop the Wilks’s effort as an exemplary case supporting its argument. Importantly, the Wilks’s financial situation aligned with Britons’ expressed concerns about men with wives who earned more income and chose to assert their rights under the MWPA. As a schoolteacher, Mark earned an income around £150 a year. By contrast, Inland Revenue estimated Elizabeth earned £700 a year through her medical practice.⁶¹ The same year, Revenue officials gave up their effort to collect tax from Elizabeth and informed Mark he would be held liable for both his and his wife’s taxes.⁶² Mark paid the amount due on his income but claimed it was impossible for him to pay his wife’s taxes of £37: firstly, because she refused to tell him her income; secondly, because, as a teacher with an income considerably lower than his wife’s, he could not afford to pay the amount assessed.

When officials returned to the Wilks’s residence to distraint another dining room set as payment for the outstanding tax, Elizabeth Wilks claimed the furniture as part of her separate property under the 1882 MWPA. She owned the house and furniture, meaning that under the Act the property could not be seized to pay a debt for which her husband was liable, even if those debts were taxes owed on her income. Inland Revenue relented. Importantly, however, in recognizing Elizabeth Wilks’ rights under the MWPA,

⁶⁰ “The Lady Doctor’s Income Tax,” *The Evening News*, September 11, 1912, Scrapbook 10/03.

⁶¹ “Clause 2—(Income Tax for 1913–14.)” (Hansard, August 11, 1913), HC Deb 11 August 1913 vol 56 cc2109-45, Hansard (online).

⁶² “The Lady Doctor’s Income Tax,” *The Evening News*, September 11, 1912, Scrapbook 10/03.

Inland Revenue officials also appeared to concede to her interpretation of the tax law—a point that reinforced the public’s perception that officials overreached by arresting Mark Wilks.

By 1912 the situation had reached an impasse. In a May interview with *The Standard*, Elizabeth Wilks explained that the outstanding tax “could only be recovered (by reason of an anomaly in the Married Women’s Property Act) by the imprisonment of her husband. But as yet the authorities had not resorted to this step.”⁶³ In September, unable to secure payment for another year’s incomplete taxes, Inland Revenue obtained a warrant for Mark Wilks’s arrest. They first tried to arrest him on September 3, but refrained because he had a bad cold. Officials formally arrested him on September 18.

For the Women’s Tax Resistance League, Wilks’s arrest ensured welcome controversy and supported the League’s contention that married women possessed no liability under Britain’s income tax laws. The fact that Mark earned less income than his wife but could be imprisoned for her refusal to pay income tax realized the scenario painted by the press—that a “woman of means: could stand “upon her legal rights” and leave her husband to face the consequences for her unpaid tax.⁶⁴ On the day of his arrest, the WTRL’s Urgency Committee, which had been organized in anticipation of Wilks’s coming arrest, finalized plans for a publicity campaign intended to bring attention to “the Wilks’ case.” They mailed 600 letters to WTRL members and other suffrage societies

⁶³ Wilks did accept liability for other taxes. In May 1912 she had a gold watch distrained and sold at auction in Mile End, the fifth time her property was seized. In her interview she explained that that her watch had been distrained for non-payment of inhabited house duty. “A May Day Procession,” *The Standard*, May 2, 1912; “Refusal to Pay Taxes,” *Birmingham Post*, May 2, 1912; “Suffragette Tax Resisters,” *The Morning Advertiser*, May 2, 1912, Scrapbook 10/21.

⁶⁴ “Married Women and Taxes,” *The Dundee Advertiser*, February 13, 1911, Scrapbook 10/21.

notifying them of the League's plans and organized multiple events to raise awareness of the unjust laws that led to Wilks's arrest.⁶⁵ The WTRL, in conjunction with the Men's League for Women's Suffrage (Mark Wilks was a member), the WFL, and the WSPU, organized large public demonstrations to protest the arrest and lobbied MPs to help secure Mark's release. The Men's League hosted nightly meetings outside the jail.⁶⁶ Public meetings were held in Trafalgar Square and Hyde Park. Other events included a Saturday meeting co-hosted with the Women's Freedom League and a planned public procession to Brixton Prison followed by a demonstration on September 23. Three days later, the playwright George Bernard Shaw gave the keynote speech at a public meeting held at Caxton Hall.

As Mark Wilks sat in Brixton Gaol, his supporters lost no time reinforcing the universal implications of his arrest: under the current tax law, any man with a wealthy wife could suffer the same fate if his wife refused to pay taxes. Elizabeth Wilks's sister, Mrs. Charles Stansfield, pointed out that "every man who is married to a woman with an income of her own is in [Wilks's] position, and if he cannot pay his wife's taxes he is liable to imprisonment. It seems to place an enormous weapon in the hand of rich wives."⁶⁷ Israel Zangwill, a fellow member of the MLWS and supporter of the WFL, reinforced the point when he warned that the Wilks case showed "marrying an heiress may be the ruin of a man."⁶⁸

⁶⁵ 3 and 18 September 1912, "Minute Book, Woman's Tax Resistance League, Vol. 1."

⁶⁶ 18 September 1912, "Minute Book, Woman's Tax Resistance League, Vol. 1," Follow-up Urgency Meetings were also held on September 24, and 30.

⁶⁷ "Mr. Wilks and His Wife's Income. Taxed for Property He Cannot Control," *Leicester Mail*, September 20, 1912, Scrapbook 10/03.

⁶⁸ "Suffragists' Income-Tax," *The Times*, September 27, 1912: 6.

In his speech at Caxton Hall, George Bernard Shaw connected Wilks's experience to his own previous exchange with Inland Revenue regarding his difficulties paying Super-Tax. For Shaw, both experiences exemplified the ways husbands had become victims under the law. As things stood, "from the unfortunate Prime Minister downwards no man was safe."⁶⁹ He agreed that the MWPA marked an important reform because it protected poor women whose husbands would otherwise sell the household furniture and get drunk on the proceeds. But, he complained, the law left men with more responsibilities than rights: "the husband retained the responsibility of the property and the woman had the property to herself. Mr. Wilks was not the first victim. He (Mr. Shaw) was the first victim."⁷⁰ To delay reform any longer was "mere senseless stupidity."⁷¹

By using the legal contradiction between the 1882 MWPA and income tax laws to undermine a husband's presumed familial authority, the WTRL challenged men's broader social and political authority. This was made most apparent in the public response to Adeline Chapman's tax resistance effort. A member of the WTRL and President of the New Constitutional Society for Women's Suffrage, Chapman was married to Cecil Chapman, a metropolitan magistrate and male suffragist.⁷² Officials distrained and sold a gold watch and chain after she failed to pay inhabited house duty on a summer cottage she owned.⁷³ For critics, her tax resistance reflected Cecil Chapman's

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Crawford, "Chapman, Adeline Mary, Mrs. (1847 1931)," in *The Women's Suffrage Movement*, 145.

⁷³ For example articles see "The Magistrate's Wife," *Daily Mail*, December 4, 1912; "Magistrate's Wife as Tax Resister," *Daily [Sic]*, December 6, 1912; "Mrs. Chapman as Tax Resister," *The Standard*, December 6, 1912; "The Latest Resister," *The Liverpool Echo*, December 6, 1912; "[Untitled]," *Yorkshire Post*, December 6, 1912; "Magistrate's Wife as Passive Resister," *Oldham Evening Chronicle*, December 7,

weak authority over his wife and therefore raised questions about his ability to uphold the social order as a magistrate. In a letter addressed directly to Cecil Chapman and published in *John Bull*, the author expressed his “sorrow not unmixed with surprise” that Chapman’s wife had chosen to defy “the laws of the realm” by refusing to pay tax. He found himself “astounded that a gentleman occupying your judicial position should permit rebellion against the law to find a footing in your own household, and that you have failed to prevail upon the lady who promised to move, honor, and obey you, to conform to the laws of the land.”⁷⁴

Mark Wilks faced similar criticisms for not insisting on his authority over his wife. *Modern Man* announced that it refused to regard Wilks as a “martyr” for the suffrage movement, instead recommending “he ought to have a spanking for not insisting on his wife dubbing up her tax.” The paper had “to put it mildly” a “very poor opinion of Dr. Elizabeth Wilks for allowing her husband to be sent to prison to satisfy her paltry grievance.”⁷⁵

More broadly, these husbands’ inability to assert their influence over their wives illustrated how the WTRL effectively used the MPWA to challenge the British state’s authority. Mark Wilks had been released from Brixton Gaol despite the fact that the owed tax remained unpaid. Furthermore, in Parliament, David Lloyd George faced questions from Felix Cassel, Conservative for St. Pancras West; the Liberal MP for Islington West

1912; “Magistrate’s Wife as Tax Resister,” *Birmingham Evening Dispatch*, December 7, 1912; “Suffragist Protest by Magistrate’s Wife,” *Daily Sketch*, December 7, 1912, Scrapbook 10/21.

⁷⁴ John Bull, “To Mr. Cecil M. Chapman, Esq., Southwark Police Court,” *John Bull*, December 14, 1912, Scrapbook 10/21.

⁷⁵ “Willful Mrs. Wilks,” *Westminster Gazette*, October 5, 1912. The *Gazette* reprinted the opinion from *Modern Man*. Scrapbook 10/03.

Thomas Lough; and George Lansbury, Labour MP for Tower Hamlets Bow and Bromley and active WSPU supporter. All inquired how Lloyd George planned to address the injustice husbands faced under the law. In response, Lloyd George stated that he was open to amending the law, but would not stop administering it as it stood. He stated that it was not the policy of the government to arrest husbands for their wives' debts, but did not explain how a husband could report or pay for the household taxes if his wife refused to tell him her income.⁷⁶

The government's demonstrated willingness to arrest husbands while proving unable to explain how taxes could be collected from married women without violating their rights under the Property Acts exposed the state's weak authority over its subjects.⁷⁷ *The Aberdeen Free Press* declared "the victory was... wholly on the side of the defiant husband and wife, and the authorities have been made to look very foolish."⁷⁸

Perceptions about the state's inept governance were reinforced by a story that gained renewed attention during Wilks' imprisonment. In the spring of 1912, Marie Stopes was employed by the British Museum to help create the catalogue of cretaceous flora for its geological department. (Although best known for her work as a birth control advocate, sex educator, and eugenicist during the interwar years, in the Edwardian era, Stopes had a reputation as a respected scientist of paleobotany, the study of fossil

⁷⁶ "Income Tax (Imprisonment of Mr. Mark Wilks)" (Hansard, October 9, 1912), HC Deb 09 October 1912 vol 42 cc340-1, Hansard (online).

⁷⁷By the interwar years, Inland Revenue still lacked a clear solution for collecting income tax from married women. "Arrears: Recovery of Income Tax from Married Women," n.d., IR 40/4827, Kew.

⁷⁸ "[Untitled]," *Aberdeen Free Press*, October 7, 1912, Scrapbook 10/03.

plants.⁷⁹) Upon receiving payment from the British Museum, she engaged in a lengthy back-and-forth with Revenue officials in order to have her income tax refunded to her and not her husband. While the income was legally Stopes' under the MPWA, Inland Revenue only paid refunds from tax collected at the source to husbands, at which point the refund became his legal property. For supporters of women's rights, this constituted a clear contravention of the 1882 MOWA. Stopes eventually persisted in compelling Revenue officials to pay the refund directly to her and then published her account in *The Standard*, upon the advice of Margaret Kineton Parkes.⁸⁰

The story gained renewed attention in the fall of 1912, probably because *The Vote*, the Women Freedom League's publication, reprinted the story during Mark Wilks' imprisonment. In her article, Stopes framed Inland Revenue officials as incompetent and unaware of the laws pertaining to women's property rights, explaining that a resolution occurred only when she "wrote direct to Mr. Lloyd George, calling his attention to the need of his personal supervision of this department."⁸¹ Press coverage echoed this perspective in headlines such as "An Income-Tax Comedy," and articles connected Stopes' effort to Mark Wilks' imprisonment, writing: "coinciding with the imprisonment

⁷⁹ Lesley A. Hall, "Stopes [Married Name Roe], Marie Charlotte Carmichael (1880–1958), Sexologist and Advocate of Birth Control," in *Oxford Dictionary of National Biography* (Oxford University Press, 2015), <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-36323>.

⁸⁰ Marie C. Stopes, March 26, 1912, May 9, 1912, May 23, 1912, June 26, 1912, Stopes Papers. Vol. CXIII, Papers relating to income tax and marriage; 1912-1952. British Library, Western Manuscripts; Stopes, "The Story of a Refund," *The Standard*, July 18, 1912, Scrapbook 10/21.

⁸¹ Stopes, "The Story of a Refund," *The Standard*, July 18, 1912, Scrapbook 10/21 and "A married woman's Property and Income Tax," *The Vote*, September 27, 1912, Scrapbook 10/03.

of Mr. Mark Wilks ... comes the story of how a woman scientist outwitted Somerset House and the British Museum on exactly the same point.”⁸²

Through these stories, the law’s unjust treatment of husbands, men’s victimhood, and the state’s weak authority intertwined. For instance, *Modern Man* viewed the entire “Wilks income tax muddle” as the best demonstration that Britain’s laws were “entirely framed for the benefit of the fair — is it unfair? — sex.”⁸³ It called for the government to enact reforms that “make the present state of affairs impossible.”⁸⁴ The “latest governmental ‘screaming absurdity’” had resulted in an unpaid tax that left Wilks “free to pose as a glorious martyr before all the militant suffragists in the country” while the Government “made itself look like a fool.”⁸⁵ In this view, the fact that the law treated men unjustly enabled women to undermine the government’s authority. In this vein, *Christian Commonwealth* complained that “judicial procedure is being reduced to a farce, the law is being brought into contempt, and we are becoming the laughing-stock of the world,”⁸⁶ while the *Times* offered the ironic observation that “somehow ... in a Parliament elected by men, laws placing them in a position of inferiority and disadvantage are passed.”⁸⁷

While Mark Wilks’s arrest seemed to prove to many in the press that both men and the state lacked clear authority, the response simultaneously illustrated the extent to

⁸² “Income-Tax Comedy,” *Manchester Courier*, September 27, 1912; “Suffragist’s Income-Tax Comedy,” *Manchester Evening Chronicle*, September 27, 1912; “The Woman Wins,” *Sheffield Daily Telegraph*, September 27, 1912. Scrapbook 10/21

⁸³ “Rot! The Wilks Income Tax Foolery,” *Modern Man*, October 12, 1912, Scrapbook 10/03.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ “Towards Anarchy,” *Christian Commonwealth*, October 9, 1912, Scrapbook 10/21.

⁸⁷ “The Release of Mr. Wilks,” *The Times*, October 4, 1912: 7.

which Britons had come to accept the principle of the Married Women's Property Act. Some publications, such as *Modern Man* or *John Bull*, lamented that a husband couldn't force his wife to share information about her income. But neither the press nor any politicians in Parliament ever contested the WTRL's main claim—that under the MWPA a wife had a right to privacy with regard to her property. Instead, public opinion coalesced on the assumption that the government would bring Britain's tax laws into compliance with the Married Women's Property Acts.

This line of argumentation, while respecting married women's property rights, emphasized the law's unjust treatment of men and argued that any reform should ensure men's equal treatment under the law. Characterizing Wilks's arrest "as a puerile and peevish act," *The Aberdeen Free Press* called on the government to implement reform: "the obvious requirement of the situation—if the law is to conform to common sense and justice—is to bring the Income-Tax Acts into conformity with the Married Women's Property Acts, instead of perpetuating an irritating official fiction and congruity."⁸⁸ Similarly, the *Times* expressed little sympathy with Elizabeth Wilks's reason for refusing to pay her taxes but agreed that it was unjust for her husband to go to jail for a law that "sins against good sense." The paper described the 1842 Income Tax Act's treatment of a husband's and wife's income as an "official fiction, more and more in discord with facts. The justification for such a presumption, if any ever existed, is gone. . . . the Married Women's Property Acts [had] entirely altered the position of things."⁸⁹

⁸⁸ "[Untitled]," *Aberdeen Free Press*, October 7, 1912, Scrapbook 10/03.

⁸⁹ "The Release of Mr. Wilks," *The Times*, October 4, 1912: 7.

The State's Response: the 1914 Finance Act

Despite popular expectations that Parliament would quickly address the problem, officials' concerns about revenue losses continued to impede any major reform in 1913. Reformers did, however, successfully compel the government to introduce minor concessions in the 1914 Finance Act.

In Parliament, Felix Cassel emerged as the MP who repeatedly brought the issue before the Commons.⁹⁰ The Wilks case served as a turning point for Cassel, who explained: "I confess, quite frankly, that from the moment the case occurred I made up my mind to not let the question rest until we had forced the Government to alter such an absurd position."⁹¹ Cassel sought to hold Lloyd George responsible for two public statements he made in response to Wilks' arrest—that he was open to amending the law and that the law constituted a "legal humiliation" to married women—to commit Lloyd George to introducing a government amendment addressing the situation for either the 1914 Revenue or Finance Bill.⁹²

During the 1914 debate, MPs who had long supported separate taxation built on arguments they previously articulated: the law violated women's rights, was unjust

⁹⁰ G. R. Rubin, "Cassel, Sir Felix Maximilian Schoenbrunn, First Baronet (1869–1953), Lawyer," *Oxford Dictionary of National Biography* (Oxford University Press, May 24, 2008), <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-75606>.

⁹¹ "Clause 2—(Income Tax for 1913–14.)" (Hansard, August 11, 1913), HC Deb 11 August 1913 vol 56 cc2109-45, Hansard (online).

⁹² Cassel tried introducing his own amendment but ultimately withdrew it because of a process technicality. "Income Tax" (Hansard, May 7, 1913), HC Deb 07 May 1913 vol 52 cc2107-46; "Clause 2—(Income Tax for 1913–14.)" (Hansard, August 11, 1913), HC Deb 11 August 1913 vol 56 cc2109-45; "Income Tax" (Hansard, May 4, 1914), HC Deb 04 May 1914 vol 62 cc94-108, Hansard (online).

towards men, and penalized marriage. Cassel gave multiple examples illustrating how the law was unjust to both the husband and wife and placed a “penal tax on marriage.”⁹³ The first case illustrated how, through marriage, a couple could be forced to pay income tax, while unmarried individuals with the same income avoided the tax. In this example, a clerk earned £160 a year. A woman inherited money from her father and possessed £100 a year. Before their marriage neither paid income tax. After they married, despite the fact that their income remained the same, their tax amounted to £5. At the same time, a joint household comprised of a father and son or brother and sister paid no tax.

For Cassel, separate taxation supported the institution of marriage. The question of justice revolved around individuals who married and individuals who remained unmarried. He considered it “indefensible” that a bachelor or spinster should pay at the same rate or lower rate than a married couple, who had at least double the expenses and, most likely, children to provide for: “it is impolitic and unjust for the State to select marriage as the one relationship for special and penal taxation when it is the married people to whom the State has to look to bring up its future-citizens.”⁹⁴

David Lloyd George, the most frequent voice articulating the government’s and Treasury’s position, allowed some concessions, but continued to emphasize the revenue losses and new financial burdens other classes would have to take on, if reform of Super-Tax and Income tax as envisioned by Cassel and the WTRL became law.⁹⁵ Lloyd George

⁹³ “New Clause— (Provisions with Respect to Income Tax of Married Persons.)” (Hansard, July 15, 1914), HC Deb 15 July 1914 vol 64 cc2013-61, Hansard (online).

⁹⁴ Ibid.

⁹⁵ The WTRL supported Cassel’s effort. “Married Woman’s Income Tax,” *The Vote X*, no. 248 (July 24, 1914): 232.

tended to emphasize the way separate assessments would burden single-earner households, whose husbands provided the entire income:

Take an income of £5,600 a year. If it all belonged to the husband, and was unearned, that household would contribute £27 10s. to the Income Tax. If it were divided between husband and wife, the household would contribute only £12, although the income and the expenses were the same as in the other case. ... the first household would have to bear a considerably heavier burden, in order to make up the deficiency caused by giving relief to the second household.⁹⁶

His argument illustrated a shift away from Victorian officials' understanding that a "fair" tax required all taxpayers to pay an equal proportion of their income. Instead, he emphasized that revenue losses from reform would have to be made up by other classes, implicitly poorer classes, if wealthier families lucky enough to possess multiple forms of income were assessed separately. This view would gain further expression in the post-war years, as Chapter 5 will discuss.

Ultimately, however, the WTRL secured some concessions from the government in the 1914 Finance Act. The Act contained a clause that allowed husbands and wives to apply for separate assessment, although the rate of tax continued to be assessed on their aggregated incomes. Inland Revenue viewed the measure as the best limited concession they could make to satisfy supporters of separate taxation. The clause was designed, explained one Revenue memo, to address the problems raised by the Wilks case which had "been found in practice to be a point of special friction" but avoided "interfering with the principle [of a household tax] as a whole."⁹⁷

⁹⁶ "New Clause— (Provisions with Respect to Income Tax of Married Persons.)".

⁹⁷ "Note on 1914 Amendment," c. 1914. IR 75/183. National Archives, Kew.

The WTRL and other women's rights advocates opposed the change on the grounds that it did not fully recognize married women's independent property rights. They resented that the individual assessment required a voluntary application and that each spouse's property was liable to be seized if the other did not pay.⁹⁸

The outbreak of the First World War shortly after the passage of the 1914 Finance Act shifted the public's attention away from debating methods of tax assessment. The war also put an abrupt end to the WTRL's activities. A general meeting was held on August 26, 1914 to discuss a response to the national crisis. The League voted to suspend official activities for the war's duration but left members to decide individually whether they would continue tax resistance during the war.⁹⁹

Over the long term, the controversies the WTRL raised about husbands' and wives' respective financial obligations towards each other and the state persisted long after women's limited enfranchisement in 1918. The rights granted to married women under the Married Women's Property Acts formed a cornerstone of the Women's Tax Resistance League's legal strategy in its pursuit of women's enfranchisement. But the League's strategy generated further questions about husbands' authority over their wives, the state's authority over its citizens, and exposed the ways in which women's independent property rights under the MWPA could effectively challenge long-standing legal conventions. In 1919, a royal commission convened to consider the current income tax structure. The pre-war controversies outlined in this chapter ensured that the Royal

⁹⁸ "Married Woman's Income Tax," *The Vote* X, no. 248 (July 24, 1914): 232.

⁹⁹ "Minute Book, Tax Resistance League, Volume 2," 2WTR, Box FL509, Women's Library.

Commission examine the question of husbands and wives' tax obligations. Again, government officials proved reluctant to introduce any major change to Britain's tax code. But they were forced to respond to arguments laid out by the WTRL as they worked to re-affirm the value of a taxation model premised on a patriarchal household.

Chapter 5. A Joint Grievance: The Property Acts and the Royal Commission on Income Tax, 1919-1920

Introduction

In March 1919, Chancellor of the Exchequer Austen Chamberlain announced that the Royal Commission on Income Tax promised by the coalition government had received royal assent. The *Financial Times* reported that the announcement was “received with a hope of relief by the many taxpayers labouring under the grievance of a heavy and frequently unjustly apportioned tax upon their incomes.”¹ The article expressed a common sentiment: Britain’s income tax no longer functioned fairly and a broad re-assessment of the system was necessary to secure the nation’s financial future. In this spirit, the Commission was tasked with undertaking a general review of the income-tax system and issuing recommendations for its reform.

Of the many issues brought before the Commission, the question of how the Married Women’s Property Acts affected husbands and wives’ tax obligations, established in the 1842 Income Tax Act and reaffirmed in the 1918 Income Tax Act, was intrinsic to the broader debate over what constituted a fair and equitable tax. As the previous chapter has shown, the Women’s’ Tax Resistance League exploited the legal contradictions between the two Acts to challenge both husbands and the state’s authority during the Edwardian-era suffrage campaign. The League ended its protest upon the

¹ “The Burden of Income Tax,” March 28, 1919, IR 75/183 pp. 793, National Archives, Kew.

outbreak of the First World War in 1914. The passage of the Representation of the People Act in 1918, which enfranchised women over thirty who met the property qualifications, quelled much of the suffrage unrest. (The Women's Freedom League continued to argue for women's enfranchisement on the same basis as men; a goal that was realized in 1928.²) Women's limited enfranchisement, however, did not resolve the long-standing debate regarding husbands and wives' tax obligations under the Married Women's Property Acts. The war's end brought renewed attention to the question once Britons, government officials, and commissioners began to consider what a post-war equitable tax regime would look like.

During the Commission, the WTRL's argument was advanced by representatives from the National Union of Societies for Equal Citizenship (NUSEC), successor to the National Union of Suffrage Societies, the Women's Freedom League, the National Council of Women of Great Britain and Ireland (NCW), and the Industrial Women's Organizations (IWO) who invoked the principles of the Married Women's Property Act of 1882 to present their support for separate assessment— the shorthand term used to refer to a tax regime in which husbands and wives would be assessed individually and in accordance with their independent incomes.³

² On the Great War as a critical factor in securing women's suffrage see Nicoletta R. Gullace, *"The Blood of Our Sons": Men, Women, and the Renegotiation of British Citizenship during the Great War* (New York, NY: Palgrave Macmillan, 2002). For a critique of this argument see Dawn Langan Teele, *Forging the Franchise: The Political Origins of the Women's Vote* (Princeton, NJ: Princeton University Press, 2018), especially 9-13 and Chapter 3, 49-82.

³ The Industrial Women's Organizations represented the Women's Trade Union League, the Labour Party, The Women's Co-operative Guild, The National Federation of Women Workers, The Railway Women's Guild. "Standing Joint Committee of Industrial Women's Organizations. Statement of Evidence Prepared for the Royal Commission on Income Tax," June 1919, IR 85/3 #62, National Archives, Kew.

In doing so, they continued to articulate two critiques of Britain's tax regime that had originated with the 1882 MWPA's passage. First and foremost: Britain's income tax law violated married women's rights under the 1882 MWPA. Second, the aggregation of incomes penalized marriage because couples paid a higher rate of tax than they would individually. They called on the government to redress what one *Times* editorial described as "a most serious moral wrong" and bring Britain's tax laws into compliance with the Property Acts by taxing husbands and wives individually.

In addition to these long-standing critiques, the 1882 Married Women's Property Act provided activists with language to articulate a feminist social vision in which sex equality was the primary organizing principle between the state and its citizens.⁴ For feminists, married women's independent taxation furthered the ideals the Married Women's Property Acts represented because it marked the state's recognition of women as individuals. Their argument challenged the state's claim that it was a fair arbiter of taxpayer's interests because it exposed the deeply gendered assumptions that structured Britain's "neutral" tax regime: that "the taxpayer" was a man, and likely a married man.

By contrast, Inland Revenue officials, Trade Union representatives, and tax experts called as witnesses urged the Commission to continue jointly assessing incomes for the purposes of taxation. Supporters of joint assessment articulated a class-oriented argument, in which a household's "ability to pay" constituted the primary consideration

⁴ I use the term "feminist" in this chapter because the women articulating this argument espoused a commitment to women's individual sex equality over socio-economic equality, in keeping with the views of vanguard feminism as Lucy Delap has discussed *The Feminist Avant-Garde: Transatlantic Encounters of the Early Twentieth Century*, (New York: Cambridge University Press, 2007) especially chapter 3, 122-138.

of a fair tax system. Separate assessment, they predicted, would result in lost revenue because disaggregated incomes would be assessed at a lowered tax rate and therefore require the state to raise rates, adding further financial burdens onto the already-struggling taxpayer. Through this argument, officials successfully re-framed a question about women's individual rights to one that focused on social and economic fairness across classes.

In their 1920 Final Report, the Commissioners concluded that women's arguments represented a "grievance more vocal than real" and recommended that the aggregation of a husband and wife's income continue.⁵ Most notably, the Commissioners recommended increasing the marriage and child allowances, an adjustment they expected "the taxpayer" would regard as a "welcome recognition of his family responsibilities."⁶ As a result, a bachelor would not pay income tax until his income exceeded £150; a married couple would not pay income tax until their income exceeded £250; and a married man with a wife and three children would not pay tax until the household income exceeded £350.

The recommendations aligned with a broader shift in early-twentieth century British government policy that privileged a married man with children as the normative taxpayer and beneficiary of government benefits.⁷ Historians have argued that these

⁵ Royal Commission on the Income Tax, *First Installment of the Minutes of Evidence*, Parliament. Papers by Command ;Cmd. 288: 1-7, 7 v. in 2 (London: Pub. by H.M. Stationery off., 1919), [//catalog.hathitrust.org/Record/009011070](https://catalog.hathitrust.org/Record/009011070). 59. Hereafter, Royal Commission on the Income Tax is RCIT and *Minutes of Evidence* is *MOE*.

⁶ RCIT, *First Installment of the MOE*, 29.

⁷ Many historians have recognized that during the post-war years British culture and social policy took a conservative turn. For example, Susan Pederson has both shown how the male breadwinner—a married man with a wife and children to support—formed the locus of government domestic policies and social

policies helped re-gain middle class consent for the tax regime during a period of high taxation by using a system of allowances to alleviate married men's financial burdens, shifting the tax incidence onto bachelors and households with high incomes.⁸

But treating this as the end of the story overlooks how the state positioned itself as a “fair” and “neutral” arbiter of a tax system ingrained along deeply gendered lines. Attention to these debates reveals how the Married Women's Property Acts provided activists with an important mode of making claims about married women's individual economic rights, one that compelled the state to respond in defense of the status quo. Consequently, debates over the meaning of the Property Acts shaped post-war social policies, even if these policies did not accord with feminists' hoped-for reforms.

“The Taxpayer”

Recognizing who constituted “the taxpayer” is important for understanding both feminists' and Revenue officials' arguments before the Commissioners. In the immediate aftermath of the First World War, any discussion of income tax reform revolved around three competing interests: securing revenue to pay Britain's war debts, concerns about the rate of taxation on married men, and married women's claims to independent taxation under the Property Acts.

welfare benefits in *Family, Dependence, and the Origins of the Welfare State: Britain and France, 1914-1945* (New York: Cambridge University Press, 1993). On taxation, see Martin Daunton, *Just Taxes: The Politics of Taxation in Britain, 1914-1979* (Cambridge; New York: Cambridge University Press, 2002), especially Chapter 4.

⁸ As Daunton argues “the consent of middle-class taxpayers [in the post-war years] was retained in Britain by reducing the burden on a crucial constituency of family men and allowing the Conservative party to secure their allegiance.” *Just Taxes*, 119-122.

The British government had incurred enormous debts fighting the First World War and the state's ability to maintain revenue streams was essential for it to make payments on the debt. By 1920/21, interest on the war debt amounted to 22.4% (£308,700,000) of the government's gross income.⁹ Income tax and Super-Tax payments provided a critical revenue stream; in 1919 they constituted about 35.9% of the net receipts paid to the Exchequer.¹⁰

Consequently, debates about taxation—in other words, who would bear the costs of the war—cut to the center of debates about Britain's post-war social order.¹¹ At a moment when Britons' tax payments were critical to the state's long-term financial stability, there was a growing sense that Britons were increasingly unwilling to continue paying high wartime taxes during peacetime. In March 1919, the *Financial Times* reminded its readers of the “resentment” felt by the “higher paid workmen” and warned that “as an instrument for raising revenue, the income tax has been carried much too far, and if persisted in during peace times is likely to have unfortunate consequences.”¹² Taxpayer resentments, widespread social suspicion of *rentiers* who had made immense fortunes from war profits, and Labour calling for a one-time capital levy to pay off the debt, meant the re-establishment of a financial system that the taxpayer perceived as fair and equitable was essential for Britain's post-war future.¹³

⁹ Martin Daunton, “How to Pay for the War: State, Society and Taxation in Britain, 1917-24,” *The English Historical Review* 111, no. 443 (1996): 883.

¹⁰ Daunton, *Just Taxes*, Table 2.4, p. 46.

¹¹ Daunton, “How to Pay for the War,” 882–919.

¹² “The Burden of Income Tax,” March 28, 1919, IR 75/183 pp. 793, National Archives, Kew.

¹³ Daunton, “How to Pay for the War,” 883.

By the time the Commission, chaired by Lord Colwyn, convened in 1919, tax policies introduced over the previous two decades had ingrained gendered assumptions about “the taxpayer” and *his* responsibilities that defined tax obligations along family lines. Throughout the nineteenth century, income tax was assessed at a flat rate. No exemptions or allowances existed for children or wives, meaning a bachelor paid the same rate of tax as a married man.¹⁴ Indeed, as noted in Chapter 3, Chancellor of the Exchequer William Harcourt had explained his reluctance to allow husbands and wives with incomes under £500 to be taxed separately because it would give a “great advantage” to a married couple without children who could both earn income from trade. For nineteenth-century officials, different financial obligations between taxpayers undermined the state’s claim to oversee a “fair” tax across classes.

In the early-twentieth century, however, attitudes about what constituted a fair tax began to shift. Politicians argued that the tax rate should reflect a household’s “ability to pay.” A fairer tax, they argued, would consider an individual’s financial obligations and recognize that wealthier individuals had a greater ability to pay than individuals with lower incomes.¹⁵ In 1907, the Liberal government introduced “differentiation,” meaning that types of income were taxed at different rates.¹⁶ Supporters of differentiation argued

¹⁴ Daunton, *Trusting Leviathan*, 63.

¹⁵ *Ibid.*

¹⁶ Earned income—income from wages—was taxed at a slightly lower rate. Unearned income—income derived from investments, interest, or dividends—was taxed at a slightly higher rate. For an overview of the way differentiation was accepted by Inland Revenue, see Daunton, “Payment and Participation: Welfare and State-Formation in Britain 1900-1951,” *Past & Present*, no. 150 (1996): 175-6. There is little scholarship that examines the taxation of married women’s incomes. An interesting line of inquiry could examine whether differentiation particularly impacted married women’s incomes. Historians have long recognized that women played an important role as investors in the emerging capital markets. They have also demonstrated women continued to be active investors in the late-Victorian period, suggesting that an increase in women’s investment correlated with the passage of the Married Women’s Property Act. The

that wage-earning men needed to set aside income to support their family when they no longer earned a wage, either during retirement or after their death, and therefore should be taxed at a lower rate.¹⁷ Individuals with unearned income (income from investments and stocks) could afford to pay a higher tax because they lived off a more secure source of income. (In this view, the income was “more secure” because it was not reliant on the wage-earner’s health.) In 1909, David Lloyd George introduced a graduated income tax, “Super-Tax” in his controversial “People’s Budget,” in order to pay for his ambitious plan of social spending.

While these reforms aimed to secure revenue flows without alienating middle-class men, they also exacerbated feminists’ contention that the government was running roughshod over married women’s property rights, as discussed in Chapter 4. Graduation meant that married women’s incomes, when aggregated with their husbands, could be taxed at a higher rate than they would be if assessed separately.¹⁸ As John Butcher, Conservative MP for York, explained to Austen Chamberlain in 1919, “the grievance which undoubtedly existed was far less acutely felt than it is at the present day. ... The effect of this graduated income tax is to impose liabilities on the husband and wife when their incomes are graduated from which they would be entirely free if ... they had not

introduction of differentiation meant that women’s investments were taxed at a higher rate than individuals with earned income. Since many upper-class women’s incomes were derived from investments, any who actively followed their economic fortunes would be acutely aware of their increased tax burden. On women’s investments see: Janette Rutterford et al., “Who Comprised the Nation of Shareholders? Gender and Investment in Great Britain, c. 1870–1935,” *The Economic History Review* 64, no. 1 (2011): 157–87.

¹⁷ Daunton, *Trusting Leviathan*, 218.

¹⁸ The Budget levied a new “Super-Tax” on incomes over £5,000. Any household with an aggregate income over £5,000 was liable to pay Super-Tax, an additional tax levied at a rate of 6d on the pound for all income over £3,000.

gone to the altar.”¹⁹ These policies, critics argued, introduced new violations of married women’s property rights and continued to penalize men and women for their decision to marry.

Wartime tax policies reinforced the relationship between a taxpayer’s marital status and tax obligations. In 1915, Lloyd George doubled the standard tax rate and lowered the exemption rate from £160 to £130, increasing the proportion of the British population potentially liable for income tax.²⁰ Most significantly, the lowered limits meant miners became eligible for income tax. In 1917, three years into the war, miners in the South Wales Miner’s Association began protesting the income tax rates by limiting how much they would work in order to avoid becoming liable for tax. To quell unrest, Lloyd George promised to include a “wife allowance” in the 1918 budget that would recognize married miners’ familial obligations.

Increasingly, family status determined a man’s tax liabilities.²¹ Initially set at £25, the wife allowance was increased to £50 a year later. Consequently, an unmarried man became eligible for income tax at £130; a married man without children became liable for tax when his income exceeded £155; and a married man with three children would not become eligible for income tax until his income exceeded £220.²²

¹⁹ “Assessment of Income Tax on Joint Incomes of Husband and Wife,” 13.

²⁰ He also lowered liability for Super-Tax from £5,000 to £3,000 and eventually, £2000.

²¹ This wartime system of allowances meant that while the number of potential taxpayers increased, the percentage of individuals who actually paid tax decreased. In 1913, 94% of eligible taxpayers paid some amount of tax. By 1917/1918 only 66% of potential taxpayers paid tax, and by 1919/1920, 50% of potential taxpayers paid tax. See Daunton, *Just Taxes*, Table 2.2. p. 42.

²² “Tax Concession To Married Men,” *The Times*, October 8, 1917: 9.

The cumulative impact of these policies shaped both Britons and Inland Revenue's assumptions about the normative "taxpayer" and the aims of income tax reform in the post-war years. Inland Revenue officials, Commissioners, the press, and witnesses before the Commission commonly assumed "the taxpayer" was a man with dependents to support. For example, the Commissioners referred to "the taxpayer, himself, his wife, children, and dependent relatives."²³ In their recommendations, they acknowledged the "legal obligation resting upon the taxpayer" to support his wife and children.²⁴ These conceptions of the "taxpayer"—bachelor or married man—ignored widows or single women (who remained liable for income tax) and assumed married women would be financially dependent on their husbands.²⁵

For Inland Revenue officials and witnesses who testified before the Commission, the central question for the Commissioners was what proportion of tax relief would be given to men with dependents in comparison with bachelors "who have to bear none of the financial burdens of dependents."²⁶ "No question can be graver," the *Times* asserted, "for it is very certain that the load of direct taxation upon the breadwinner is a potent influence on the size of families."²⁷

Married Women's Property Rights and Sex Equality in Taxation

²³ RCIT, *Report of the Royal Commission on the Income Tax*, (London: H.M. Stationery Office, 1920), 31.

²⁴ RCIT, *Report of the Royal Commission on the Income Tax*, 63.

²⁵ This oversight is highlighted by Lillian Knowles' reservation, opposing the Commission's recommendation to continue jointly assessing husbands and wives. Knowles referred to "single persons," "and spouses" acknowledging that men and women could pay taxes. See "Reservation to Part III" in *Report of the Royal Commission*, 151.

²⁶ "Income Tax Incidence," *The Times*, March 28, 1919: 13.

²⁷ *Ibid.*

By contrast, the women's societies that submitted evidence to the Commission contested the narrative that tax relief for the male breadwinner was the "gravest concern" of *all* Britons. Eva Hubback, NUSEC's parliamentary secretary, stated that the taxation point her members felt most strongly about was "the taxation of the incomes of married people as one income."²⁸ Emphasizing the extent of women's grievance, she added that the Union, with its 300-400 branches in Britain, spoke for "a large number of organized women."²⁹ Mrs. Oglivie Gordon, President of the National Council of Women of Great Britain and Ireland, claimed that after the Mother's Union, the NCW had the highest number of married women members out of any organization in Britain. (Educated, middle class women comprised much of the NCW membership.)³⁰ When Gordon explained that she was "commissioned to put forward the absolute unanimity of our women with regard to [the recommendation for separate assessment]" she therefore claimed to present the views of middle-class women throughout the nation.³¹ By reinforcing the breadth of their membership, women's societies countered the gendered assumption that the high tax rates born by the male breadwinner constituted Britons' universal concern, arguing that in fact, married women felt the violation of their rights far more acutely.

Through their testimonies, feminists called for a universal application of the Married Women's Property Acts in which the state recognized married women's

²⁸ RCIT, *Second Installment of the MOE*, 140.

²⁹ *Ibid.*

³⁰ Caitríona Beaumont, *Domesticity and the Women's Movement in England, 1928–1964* (Manchester, England: Manchester University Press, 2013), 22 <http://www.jstor.org/stable/j.ctt1mf71x2.1>.

³¹ RCIT, *First Installment of the MOE*, 69.

individuality. As Eva Hubback explained to the Commissioners, under Britain's tax laws "a woman loses her individuality," which was "degrading in itself and unjust in its working out."³² In other words, the income tax laws continued to retain the spirit of coverture, which had denied a married woman's legal existence. Consequently, the NUSEC held that the taxation of aggregated incomes was a "direct contravention of the spirit of the Married Women's Property Act."³³ The National Council of Women similarly urged the "immediate reform of this system of taxation, both on the grounds of morality and equity" and as a "method, moreover, wholly inconsistent with the intentions of the Married Women's Property Act."³⁴

More forcefully, Ethel Ayres Purdie, speaking on behalf of the Women's Freedom League, urged that separate assessment would mark "the Crown's recognition and acceptance of the Married Women's Property Acts, which have been in force for forty years, and acceptance of which is imposed on all others." She added that separate assessment would resolve the "impasse" over married women's tax obligations in a "rational and dignified manner," a suggestive aside, given her role in organizing the

³² RCIT, *Second Installment of the MOE*, 140.

³³ RCIT, *First Installment of the MOE*, 138. Eva Hubback was actually filling in for Harriet MacMillan, who was detained abroad. MacMillan had met with Austen Chamberlain as a member of a deputation to discuss separate assessment. NUSEC formed in March 1919, after a vote to amend the NUWSS' constitution. See Crawford, "National Union Societies for Equal Citizenship," in *A Suffrage Reference Guide*, 435. On Hubback see: "Hubback [née Spielman], Eva Marian (1886–1949), social reformer and feminist." *Oxford Dictionary of National Biography*.

³⁴ RCIT, *First Installment of the MOE*, 65. Gordon was a geologist and first woman geologist granted a PhD. She also served as Vice President of the International Council of Women and was active in Liberal party politics. Mary R. S. Creese, *Gordon [Née Ogilvie], Dame Maria Matilda (1864–1939), Geologist and Women's Activist* (Oxford University Press, 2004), <http://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-46415>.

WTRL's tax resistance campaign that had directed so much political attention to the question of married women's tax liabilities.³⁵

Purdie's testimony provided the staunchest example of a woman's commitment to her individual rights under the Property Acts. She became the first British woman to join an accountancy organization, the London Association of Accountants, in 1909, and she ran her own accounting business, the Woman Taxpayer's Agency.³⁶ Despite the fact that Purdie ran her own business under her name, Inland Revenue solicited tax payments from her husband. Tax forms were sent to "F. S. Purdie," her husband, at her business address, Hampden House. Such bureaucratic procedure exemplified Revenue officials' presumptions, both regarding who the normative taxpayer was, and women's assumed compliance. Consequently, Purdie's testimony caused much consternation when she announced that she had not submitted a return or paid any tax on her income during the twelve years she had been in business as a professional accountant.³⁷ "Of course," she explained to the commissioners, "there is no F. S. Purdie at Hampden House" and the forms simply remained at the office.³⁸

When justifying her actions, Purdie insisted the state recognize her as an individual, separate from her husband. She explained: "I am not recognized as an individual, and the country makes me pay as part of my husband. Well, I am an

³⁵ RCIT, *Third Installment of the MOE*, 330.

³⁶ On Purdie's life see Stephen P. Walker, "Ethel Ayres Purdie: Critical Practitioner and Suffragist," *Critical Perspectives on Accounting* 22, no. 1 (January 1, 2011): 79–101, <https://doi.org/10.1016/j.cpa.2010.09.001>.

³⁷ RCIT, *Third Installment of the MOE*, 334. Purdie made the same announcement as a member of the deputation to Austen Chamberlain the previous March. "Assessment of Income Tax on Joint Incomes of Husband and Wife..

³⁸ RCIT, *Third Installment of the MOE*, 332.

independent person. I am not a chattel of my husband. I must be regarded just the same as anybody else—as a man or my husband is. ... I claim to be treated as an individual and to be treated as any other individual is.”³⁹ When asked by a commissioner whether she felt any obligation to pay tax as other women did, Purdie reiterated that she certainly felt the obligation but would not pay tax until she was recognized as an individual.⁴⁰ Her testimony reinforced similar statements provided by other representatives: that married women’s separate tax identity marked the state’s recognition of a married woman’s individuality and her rights as a citizen.

Following in the wake of the 1918 Representation of the People Act, feminists also tried to align married women’s individual tax status with their new responsibilities as voters. “We want separate assessment, as recognition of separate citizenship,” Ogilvie Gordon explained. This argument aligned with the NCW’s broader mission to show how new women voters could best contribute to local and national life.⁴¹ It was important, Gordon explained, for women “especially now they were voters” to “realize ... their individual responsibility in the upkeep of the state.” Taxing women individually, in this view, “would give a tremendous impulse to the whole enlightenment of women.” She predicted that once women became cognizant of the way their personal money was implicated in the state’s upkeep, they would begin to take a greater interest in politics—becoming involved in discussions of the Finance bills, tracking MPs’ actions, or reading

³⁹ RCIT, *Third Installment of the MOE*, 334.

⁴⁰ Purdie died in 1923. At the end of her life, Inland Revenue estimated that her husband owed £850 on outstanding taxes. Inland Revenue, “Arrears: recovery of income tax from married women” IR 40/4827, Kew.

⁴¹ Beaumont, 22.

statements of accounts. In other words, women's individual taxation would inspire them to apply their assumed skills in domestic economy to the nation's economy.

Arguments that separate assessment would encourage women to contribute to the nation in their capacity as citizens did not necessarily convince the Commissioners. The Chairman Lord Colwyn replied to Gordon's explanation by saying 'that is a very clever answer.'⁴² The blunt response and the lack of follow up suggests that the commissioners remained skeptical of women's new status as citizens and viewed feminist as using the 1918 Act to make a convenient point in service to another cause.

Consequently, while feminists expected that separate assessment would encourage women's engagement as citizens, more often, they expressed a commitment to the principle of equality between the sexes as their primary motive for reform. Purdie, for example, explained that her object in presenting her case was to: "obtain equal treatment for women so that married women shall be treated the same as single women, or the same as married men if it comes to that—that there shall be equality as between the sexes."⁴³

For feminists, recognition of married women's individuality required the state to re-structure Britain's tax regime in order to reflect the principle of men and women's equality. Scottish suffragist and barrister Chrystal Macmillan, representing the NUSEC at a meeting with Austen Chamberlain, rejected any effort to introduce minor reforms to the tax code.⁴⁴ NUSEC wanted "something very much larger," she explained, "we want the whole principle altered."⁴⁵ A commitment to equality, feminists insisted, meant that all

⁴² RICT, *First Installment of the MOE*, 71.

⁴³ RCIT, *Third Installment of the MOE*, 333

⁴⁴ "Assessment of Income Tax on Joint Incomes of Husband and Wife." 24.

⁴⁵ "Assessment of Income Tax on Joint Incomes of Husband and Wife," 24-25.

individuals should be taxed upon their own income. Maria Gordon testified that “the money made or held by either wife or husband could presumably be made or held by them whether married or unmarried, and should not be taxed differently, whatever the state of the individual is, single or married.”⁴⁶ In sum: marital status should not affect an individual’s tax obligation.

This commitment to sex equality posited an alternative, individualistic understanding of both wealth and inequality in British society. Feminists’ framework recognized that a wife could be “poor,” living off a small settlement while her husband was wealthy, earning income from his business or profession.⁴⁷ Alternatively, a wife could be “wealthy” and a husband could be “poor,” and each would pay tax according to their individual, not combined ability. Treating married women as taxable individuals was fairer than a household assessment because it allowed women with small incomes to be taxed at a fair rate relative to their individual property. In other words, feminists argued that inequality could exist within marriage, and therefore, individual income should determine an individual’s tax obligations.

A system of taxation based on the principle of sex-equality remained at odds with the dominant understanding of income as a household asset. According to this view, held by Commissioners and Inland Revenue officials alike, the household formed the taxable unit because the fairness of the tax was measured in relation to other households. They

⁴⁶ RCIT, *First Installment of the MOE*, 65.

⁴⁷ This point had been articulated many years before, by suffragist Laura McLaren when she wrote an editorial in the *Times* arguing that Super-Tax would exacerbate women’s poverty. She pointed out that even in wealthy families, women could be very poor: a wife’s only income could be her £150 dress allowance, while her husband lived off £4,900 a year. McLaren, “Women and The Finance Bill,” *The Times*, August 28, 1909.

understood that a bachelor, a married man, and a married man with three children who all had incomes of £400 had different “abilities to pay.” A bachelor had the greatest ability, because he only had to support himself. A married man with a wife and or children had a smaller ability to pay because he had additional financial obligations.

Feminists calls for a system of taxation based on the principle of sex-equality jarred against Commissioners and Inland Revenue officials’ assumption that any “fair” tax reform would consider the tax-payers’ ability to pay. Commissioner Sir Thomas Whittaker pressed Gordon on this point, asking how she squared individual tax assessments with what he viewed as the “sound basis of taxation:” ability to pay. He offered two examples. In the first, a husband and wife each had an income of £500 a year, making their aggregate income £1,000. In the second, the husband had a yearly income of £1,000 while his wife had no income. Didn’t these two households, he asked, have the same “ability to pay” and should be taxed at the same rate?⁴⁸ Gordon responded by contesting Whittaker’s assumption that “ability to pay” should be the first principle of taxation: “I think that the first great principle of equality of men and women ... should be superior in the eyes of the State, to what you are suggesting as the first basis, namely; ability to pay.”⁴⁹

Eva Hubback expressed a similar view when she presented evidence on behalf of the NUSEC a few weeks later. Ernest Pretyman, Conservative MP for Chelmsford and Civil Lord of the Admiralty, asked whether Hubback supported a household with a high

⁴⁸ RCIT, *First Installment of the MOE*, 66.

⁴⁹ *Ibid.*

aggregate income of £10,000 being allowed to pay tax on two incomes of £5,000. Her response reiterated women's commitment to economic independence, stating that if both husband and wife possessed streams of income, the Society desired that they be taxed separately: "We desire that married people should count as separate individuals the same as a brother and sister living together each with an income of £5,000; it would be taxed in that way, and not as one income of £10,000."⁵⁰

The exchange illustrated the gap between feminists' vision of equality in taxation and the dominant understanding of wealth as a household asset. Gordon did not deny that "ability to pay" was a consideration, but, she emphasized, it should constitute the secondary principle of taxation. Neither the Commissioners nor feminists accepted the premise of the other's argument. For women's societies, separate assessment was the only way to recognize the burdens of all taxpayers, exposing the deeply gendered assumptions about "the taxpayer" that informed arguments in favor of "ability to pay."

Inland Revenue and a Household Assessment

In response to feminists' claims, Inland Revenue and the Treasury continued to deny that the Property Acts possessed any implications for the tax law, relying on the legal interpretation provided by an Inland Revenue solicitor shortly after Parliament passed the 1882 Act. The solicitor had determined the MWPA did not impact the tax laws because the Acts never mentioned the Crown. In other words, because the power to tax

⁵⁰ RCIT, *Second Installment of the MOE*, 141.

subjects derived from the Crown, and the Crown was never mentioned in the Property Acts, Inland Revenue was not implicated.⁵¹

The primary reason for officials' opposition stemmed from the assumption that a shift away from a household tax would be detrimental to the nation's finances and have political consequences. In 1919, for instance, R. V. N. Hopkins, Joint Secretary at Inland Revenue, warned Austen Chamberlain that separate assessment would result in about £20,000,000 of lost revenue, possibly reaching as high as £50,000,000.⁵² Hopkins assumed that if husbands and wives were allowed to be taxed independently, they would divide their wealth between them in order to lower their tax burdens. By implication, the revenue losses would have to be made up through other taxes, a strategy both Inland Revenue and the Government wanted to avoid at a moment when the press continued to report that Britons were increasingly resentful of their unprecedentedly high taxes.⁵³

The government's response to feminists' arguments revealed how far interpretations of the Married Women's Property Acts had diverged since their passage. By 1919 the Property Acts' symbolic meaning for feminists was just as powerful, if not more so, than the specific rights it had granted. The Acts had provided a powerful symbol for the WTRL's protest. And in 1919, when the Conservative MP for Wood Green, Godfrey Locker-Lampson reminded Chamberlain that the Acts were "the Magna Charta of women's rights" he relied on the ideals attached to property rights in Britain—

⁵¹ "George Hicks to Inland Revenue," October 16, 1882.

⁵² For critics, the £20,000,000 represented the enormity of the injustice.

⁵³ "Hopkins to Chamberlain," March 31, 1919, IR 75/183 pp. 791-792, National Archives, Kew.

independence, individuality, and privacy—to make a more universal claim about the ways the Property Acts should structure British society.

By contrast, Austen Chamberlain, commissioners, and Inland Revenue officials espoused a far narrower interpretation of the Property Acts. They continued to express the view that the Acts were laws to protect women's property, not a code for women's rights. When meeting with a deputation of women's organizations in April 1919, as the RCIT was assembling, Austen Chamberlain expressed his "entire acceptance" that a married woman have "absolute and complete control" over her property. He begged the deputation "to believe that in spite of my action on the suffrage question I am not trying to whittle away the rights which the Married Women's Property Acts gave."⁵⁴ His earnestness highlighted how, in some respects, the Acts were no longer controversial—Chamberlain accepted the specific rights granted to women under the Acts. But for him and other officials, because the Property Acts made no mention of taxation they were irrelevant to questions about income tax.

The attitude was similarly encapsulated in an exchange between the Commissioner Duncan Kerly, chairman of the Board of Referees, and C. G. Spry, Assistant Secretary to the Board of Inland Revenue. Spry appeared to provide Inland Revenue's position on the question of how the MWPA affected separate assessment. During the examination, Kerly asked Spry whether he agreed with the view that "the Married Women's Property Act was directed to dealing with the control of a married woman's income and had nothing to do with the rate at which the woman and her

⁵⁴ Assessment of Income Tax on the Joint Income of Husband and Wife," 28.

husband should pay tax.” To which Spry agreed: “precisely.”⁵⁵ For these men, a woman’s control over her property had no impact on the rate of tax she or her husband might have to pay on the property.

To counter arguments in favor of separate assessment, Inland Revenue officials struck a careful position in which they either denied the relevance of the MWPA for tax purposes or claimed to have already addressed women’s grievances. Revenue officials and private witnesses repeatedly denied that Britain’s income tax laws violated married women’s individual rights.⁵⁶ For example, Mr. G. O. Parsons, an accountant and Secretary to the Income Tax Reform League reported that the aggregation of income was “not unduly oppressive and the public agitation ... is mainly misconceived.”⁵⁷ Through their testimonies, witnesses and government officials successfully reframed the question of separate assessment as an economic and social problem that would place additional financial strains on men with dependents.

Officials did need to demonstrate, however, that they were attuned to public sentiment in order to maintain consent for taxation. To do so, they pointed to small reforms like the 1894 and 1897 Finance Acts, which they argued showed their willingness to adjust the income tax to address the needs of lower-income taxpayers. As Chapter 3 discussed, the 1894 and 1897 Finance Acts had allowed married women who earned income through their own labor, independently of their husbands, to be assessed

⁵⁵ RCIT, *Second Installment of the MOE*, 136.

⁵⁶ Their arguments were reinforced by witness testimony from other civil associations including: The Trades Union Congress, the Chamber of Commerce, The British Association for the Advancement of Science, the Institute of Chartered Accountants, the Income Tax Reform League, and various individual witnesses.

⁵⁷ RCIT, *First Installment of the MOE*, 78.

and taxed as though they were a *feme sole* if the aggregate family income was under £500.⁵⁸ The £500 standard remained in effect, although two opposing interpretations of the law existed by 1919.⁵⁹ Women's groups viewed the £500 limit as evidence that the government was not upholding the universal principles of the Property Acts, a sentiment captured during Gordon's testimony when she expressed that equality existed between a woman and man "when they are taxed upon their own earnings up to a joint income of £500."⁶⁰ Inland Revenue, on the other hand, regarded the limit as "a concession to the material circumstances of the husband and wife, and not to an alleged right possessed by married women."⁶¹

Officials also pointed to the more recent 1914 Finance Act as evidence that "no such suppression of the individuality of married women now continues."⁶² Passed in the wake of Mark Wilks' imprisonment, the 1914 Act contained a clause that allowed a husband or wife to apply for separate assessment. The rate of tax continued to be based on the spouses' aggregated income and both spouses were liable for any unpaid tax.⁶³

Privately, officials acknowledged that "it will be argued with a certain degree of truth that

⁵⁸ As a result of changes to the cost of living since the 1890s, the £500 limit no longer necessarily captured the groups it was initially intended to help. In the 1890s, the reform was intended to allow married couples who worked as teachers to be separately assessed. Yet, by 1919, a headmaster and headmistress combined salary could easily exceed £500. Mr. Charles W. Crook, speaking on behalf of National Union of Teachers estimated a married headmaster and headmistress in a London school could earn around £900 a year, jointly. The joint salary for assistant headmasters and headmistresses in London would reach £540 by the next year. The stasis of the law meant it no longer allowed married couples who would have qualified for separate assessment decades before to be taxed individually.

⁵⁹ "Married Women's Property and Income Tax. Notes on the Proposals for Separate Assessments of the Income of Husband and Wife.," 1911, IR 74/39, National Archives, Kew.

⁶⁰ RCIT, *First Instalment of the MOE*, 67.

⁶¹ "Married Women's Property and Income Tax."

⁶² Evidence of C. G. Spry, an Assistant Secretary to the Board of Inland Revenue, in regard to the Assessment of Income Tax and the Rate of Charge upon the Incomes of Married Persons. RCIT, *Second Installment of the MOE*, 125.

⁶³ "Married Woman's Income Tax," *The Vote X*, no. 248 (July 24, 1914): 232.

the only way of really dealing with the question is to abolish the present system of aggregating the husband's and wife's income."⁶⁴ Publicly, however, they used the 1914 Finance Act to dismiss arguments that a household tax violated married women's property rights.

For example, the Commissioner Mr. Armitage-Smith explained to Eva Hubback that he understood her "alleged grievance" to be comprised of two elements: "the method of assessment and, secondly, the amount that has to be paid." When Hubback agreed that the method of assessment was a grievance, he pointed out that the 1914 Finance Act allowed a woman to be separately assessed if she felt the usual method was a problem and denied her claim by concluding "that part of the grievance is nonexistent."⁶⁵

Officials argued that because the 1914 Act allowed spouses to voluntarily apply for individual assessment, women incorrectly viewed taxation as a "sex issue" between men and women when it was actually a question about the fairness of tax between the married and unmarried. A typical exchange occurred during Armitage-Smith's examination of Eva Hubback. He asked whether Hubback considered the high tax rates endured by married couples to be "more a woman's grievance than a man's grievance?" Hubback conceded that the rate of taxation was a "joint grievance," one felt by both spouses. Armitage-Smith had already denied Hubback's contention that an aggregated income tax violated married women's rights because any woman could apply to be separately assessed under the 1914 Finance Act. Consequently, her concession returned

⁶⁴ "Note on 1914 Amendment," c. 1914, IR 75/183, National Archives, Kew.

⁶⁵ RCIT, *Second Installment of the MOE*, 140.

the question of the rate of tax back to one based on “ability to pay” and re-affirmed the household income tax as the basis of assessment.

Similarly, when Ethel Purdie announced that she did not pay income taxes because she insisted on being recognized as an individual, the Commissioner Ernest Pretzman expressed his disappointment that Purdie had squandered her opportunity by presenting a “personal view.” He explained it was important to him she understood “that the object is not in any way to make a sex difference.” “When you come here in this way we want you to help us try and look at it from the national point of view, not only from the sex point of view or the personal point of view, but to help us about a real difficulty,” he continued.⁶⁶ Pretzman acknowledged that the Commission hoped to satisfy the “very proper and reasonable aspirations of women to be treated on exactly the same basis as men” but reminded Purdie that the Commission had to do so without making an “enormous hole in the Revenue” or allowing “very rich people” to take advantage of any reform that would treat a husband and wife as “entirely separate persons.”⁶⁷

Individual witnesses reiterated the government’s argument that the household tax was not an effort to suppress married women, but the fairest way to assess tax. One paper submitted by Messrs. Diggines, Harris, Healslip, and Mylam denied that an aggregate household income tax reflected a wife’s subordination to her husband and asserted that it recognized the reality that a wife with an income contributed to the family’s expenses. “The reason for the aggregation of the income of the husband and wife is not the

⁶⁶ RCIT, *Third Installment of the MOE*, 335.

⁶⁷ *Ibid.*

conception of their union as a ‘social unit’ nor is it the medieval idea of their unity in the eyes of the law; but it is their practical identity as a taxable unit,” the authors explained.⁶⁸

Of course, this stance—that the aggregation of incomes was a pragmatic question of finances and economic fairness—ignored the historic reasons why a wife’s income was aggregated with her husband’s— that the income tax laws had been passed at a time when a wife’s income was legally her husband’s.⁶⁹ But by dismissing women’s arguments as a divisive “sex issue,” supporters of a household tax were able re-frame the problem as a question about the fairness of the tax between married and unmarried individuals, one that affected both married men and women.

While Inland Revenue successfully shifted the question away from married women’s individual rights to an income-oriented one, the debate also illustrated the ways the Property Acts provided feminists with a way to demand the state to justify the status quo. Consequently, debates over the rights granted under the Property Acts informed what tax reforms Revenue officials were willing to concede in order to mitigate activists’ claims.

The limits of separate assessment and the appeal of marriage allowances

Questions about ability to pay exposed the limits of feminists’ arguments for a commitment to sex equality and the universal application of the Married Women’s Property Acts. When asked how the government should recoup the anticipated lost

⁶⁸ D.C.I Clark, “Income Tax Committee. Husband and Wife,” c 1919, IR 75/183, National Archives, Kew.

⁶⁹ Ibid.

revenue, supporters tended to suggest that tax rates could be raised across all incomes. The suggestion aligned with women's views of their rights under the MWPA but it also left politicians' concerns about men's tax resentments unaddressed.

The lack of a potential policy was most apparent during Maria Gordon's testimony. After a tense and frustrated examination, one commissioner, Mr. Synnott tried to push Gordon to present the NCW's plan to pay for the revenue losses if their recommendations were implemented. Gordon responded: "...while I really do not wish to be aggressive, if the men do not ask the women to form a committee or join them in thinking out those points, you cannot blame us if in the midst of our hurried lives we do not do it."⁷⁰ She added that she would like her "formal reply to be that she should like women to think it out and to be given time and a commission to do it."⁷¹ While her statement captured activists' frustration that only one woman had been named as a commission member, indicative of a general disregard for women's opinions on economic matters, it also proved unable to provide a concrete solution to the revenue problem.

Claims for a universal application of the Property Acts also fractured along class-based lines, as Marion Phillip's testimony showed. She spoke on behalf of the Industrial Women's Organization, whose membership was comprised primarily of poor and working-class women earning up to £4 a week.⁷² At an income of about £200 a year, their

⁷⁰ RCIT, *First Installment of MOE*, 69.

⁷¹ Ibid.

⁷² Phillips described the member's income as capturing a broad range: "they cover cases of independent women working by themselves, whose wages, even to-day, goes low as £1 a week, in some cases, and also the married working woman whose income is a family income, and may come up to the artisan level of £3 or £4 a week or more." RCIT, *Second Installment of MOE*, 158.

members likely paid the lowest rate of tax, “2s. 3d. in the £,” if they qualified for income tax at all.⁷³ In a testimony that departed from the universal-rights claims of the NUSEC, NCW, and WFL, Phillips acknowledged that while the IWO supported separate assessment for regular income tax, it did not object if the Treasury continued to aggregate spouses’ incomes for the purposes of assessing Super-Tax.

When asked by Commissioner Kerly why a rich woman and a poor woman should receive separate treatment, Phillips explained that the IWO felt that in cases where the income was “at a level very high above a living amount” there was sufficient “special reason” for aggregating the incomes.⁷⁴ The scheme paralleled the existing tax regime, in which a woman’s ability to be taxed independently was not a right derived from the MWPA, but contingent on her income levels. While this position aligned with the IWO’s goals to advocate for the interests of the poor and working classes, it also undermined arguments that women’s property rights should be absolutely upheld.

Because feminists’ principle-based argument could not address the more prosaic concerns of Inland Revenue, officials were able to successfully frame marriage allowances as addressing the main concerns of British taxpayers. Internally, in preparation for the Commission, Revenue officials decided that adjustments to the “wife allowance” would address the question of separate assessment without conceding any claims regarding married women’s property rights. As noted, the “wife allowance”—a tax abatement for married men with incomes under £700—had been introduced in 1918

⁷³ RCIT, *Second Installment of MOE*, 158.

⁷⁴ *Ibid.*, 159-160.

as a way to recognize the financial burdens born by wage-earning married men and quell discontent among South Wales miners.⁷⁵ Revenue officials seized on wife allowances as a means to mitigate the criticism that the income tax penalized married couples by taxing their combined incomes at a higher rate than they otherwise would be. One internal memo recommended that if the allowance limits were adjusted and based on the assumption that “it costs one and a half times as much for two people to live together, as for one to live separately,” complaints that the income tax penalized marriage would be resolved. In short, the memo concluded, “there would be no point left in the argument for the separate treatment of a married woman.”⁷⁶

Revenue officials carefully pursued this strategy by separating any discussion of married women’s rights from wife allowances during commission hearings. This was most apparent during C. G. Spry’s testimony. Spry was the Revenue official who officially presented evidence pertaining to the question of separate assessment and married women’s property rights. He assured commissioners while the question of separate assessment was “sometimes represented as one which affects the political or social status of women in relation to that of men,” that was “not actually the case.” In fact, it was a question “affecting married people (either men or women), as compared with bachelors, spinsters, widowers and widows.” During his examination he agreed that increasing the wife allowance would likely address the feeling that the income tax penalized marriage. Yet, despite repeated questioning from Commissioners, he

⁷⁵ A child allowance already existed, having been introduced in 1909. “The Wife Allowance,” *The Times*, October 9, 1917.

⁷⁶ “Notes on Husband and Wife,” January 15, 1919, 10. IR 75/183, National Archives, Kew.

steadfastly refused to offer any statement regarding what a more appropriate allowance amount should be. The question of allowances, he maintained, was a matter relating to “ability to pay” and “graduation,” subjects that another Revenue official, R. V. N. Hopkins, would present on later in the Commission.⁷⁷

Throughout the Commission then, Inland officials emphasized that if the allowance system were replaced by separate assessment, 2,800,000 “unfortunate” men who supported wives without separate incomes would be in a “far greater degree affected than the women.”⁷⁸ They reiterated that increasing allowances would have the double benefit of alleviating economic pressures felt by the “family man” and address the feeling that the income tax currently penalized marriage without offering tax relief to “people of considerable means.”⁷⁹

Their argument was reinforced throughout the hearings, as Commissioners heard repeated testimony that the income tax pressed too hard on wage-earning breadwinners. Indeed, Maria Gordon took care to emphasize that “most cases of real hardship crop up within the limits of £300 and £1,000.”⁸⁰ Sidney Webb, speaking on his own behalf, told the Commission that miners in northern England were skipping work to avoid earning wages that would make them eligible for income tax.⁸¹ The assertion went unchallenged by the commissioners, possibly because miners in the South Wales Miners Association had already refused to pay their taxes in 1918 to protest the high rates. Webb emphasized

⁷⁷ RCIT, *Second Installment of the MOE*, 136.

⁷⁸ *Ibid.*, 135.

⁷⁹ *Ibid.*

⁸⁰ RCIT, *First Installment of the MOE*, 64.

⁸¹ RICT, *Third Installment of the MOE*, 338.

that it was “imperatively and urgently necessary to remedy the present disproportionate burden . . . imposed on heads of households and especially upon the fathers of several children,” warning that the current high tax rates were “already having results that are disastrous to the nation.”⁸²

The burdens born by working class men were drawn in sharp contrast to Britain’s wealthy taxpayers, who experts repeatedly testified, would take advantage of any separate assessment to evade their tax obligations. William Cash, speaking on behalf of the Institute of Chartered Accountants, testified that “evasion by legal means”—the use of trusts and other legal devices that reduced an individual’s tax burden—was “continually going on and increasing.”⁸³ When asked about his views on separate assessment, he expressed his confidence that enabling separate assessment for spouses with high incomes would exacerbate the problem. He did not have strong feelings on whether the limit could be raised slightly, from £500 to £1000, but warned he did not “think the law should be altered so as to enable joint incomes to be split up for the purpose of evading tax.”⁸⁴ He anticipated that “especially on large incomes” a husband would divide up his income, establishing a “post-nuptial settlement or a trust to the wife for life” that would then be bequeathed to their children in order to lower his tax burden.⁸⁵

⁸² Ibid, 338.

⁸³ Ibid, 409.

⁸⁴ Ibid, 411.

⁸⁵ Cash’s argument as well as the opinions put forward by Inland Revenue witnesses relied on the assumption that the transfer of property to a wife was not absolute, where a husband would lose control over the income once it became his wife’s property, but a fiction created to avoid tax. Cash and other witness’ testimony seemed to imply that they assumed a husband would create a trust on the assumption that he would still be able to enjoy the wealth he had set aside. This view was only challenged on one

Testimonies such as these illustrated how Britons' attitudes about "the taxpayer" shifted in relation to discussions of women's rights under the MWPA. During the late-Victorian era, officials had opposed reform on the grounds that a small tradesman, with an income between £100-£200 would evade his tax obligations by attributing his income to his wife. In the midst of the WTRL's campaign, "the man of straw"—a husband with a wife who possessed a greater income—represented men's victimhood under the law. Only a few years later, however, these "men of straw" had been replaced by wealthy men who would again transfer money to their wives to avoid fulfilling their social and financial obligations.

Consequently, these examinations exposed Commissioners' and witnesses' gendered assumption that financial relationships in marriage were distinct from other economic relationships. Ethel Purdie testified that she knew of a solicitor who lived with his mother and his four sisters. Each person possessed an income and paid tax based on their personal income. She asked why a married couple's income should be combined and assessed at a higher rate if this household's income was not aggregated. Ernest Pretyman responded that the four individuals did not pay more because their income was "really their own income."⁸⁶ He expanded his point, clarifying that he did not consider a husband and wife's income one income, but assumed they "could interchange" their

occasion, when Mrs. Knowles expressed her skepticism that a husband would transfer property to his wife. She asked Cash whether he really believed "husbands do hand over money to their wives like that?"⁸⁵ Saying, "I do not believe it. I think they like to keep their money in their own hands; but of course, that is only a personal opinion?"⁸⁵ In response, Cash reiterated that a husband might create a trust or post-marriage settlement, although he conceded rather morbidly that the effort might not be successful because "on any division of capital ... there [was] always the risk that the wrong person may die first," leaving the trust subject to death duties. RCIT, *Third Installment of the MOE*, 419.

⁸⁶ *Ibid*, 336.

incomes to reduce their tax burdens. Therefore, the only way to ensure a married couple paid their fair share was to aggregate their incomes. As Purdie responded, any persons in a household could shift incomes to lower a tax burden. But Pretzman's response provided a telling example that illustrated how overlapping concerns about tax evasion and gendered conceptions of women's income informed the conversation about married couple's assessment.

For example, Mr. Roger N. Carter, the author of the book *Murray and Carter's Guide to Income Tax*, argued that business partners should be allowed to file separate tax assessments, but did not extend the same logic to women. He complained that present system of having business partners jointly file tax assessments was unduly complicated and violated a man's privacy. "Even in these days there is supposed to be something private about a man's total income, but the present system gives every partner exact knowledge of the finances of his co-partners, a highly objectional thing," he argued.⁸⁷ By contrast, marriage formed a different kind of partnership. Carter expressed his opinion that "there did not seem to be any unfairness" in the current method of aggregating a husband and wife's income since they "essentially form one fund."⁸⁸ This assumed that marriages functioned as co-operative economic relationships, in which couples pooled their incomes to support the family.

Carter considered the aggregate income tax as the fairest way to guard against husbands avoiding income tax by dividing their income with their wives. "The system of

⁸⁷ RCIT, *Second Installment of the MOE*, 148.

⁸⁸ *Ibid.*

taking the wife's unearned income as being the husband's, is inconsistent, but probably necessary to guard against a division between husband and wife of the unearned income of the husband" he explained.⁸⁹ In this view, women's ability to own unearned income functioned more as a means for men to re-allocate wealth in order to reduce their tax burdens, than as a legitimate form of property married women owned in their own right.

As witnesses repeatedly emphasized that any policy of separate assessment would "create anomalies of a startling character" and allow the wealthy to escape their share of taxation, a consensus view emerged between commissioners and Revenue officials that a "marriage allowance" would resolve many grievances without burdening married men.⁹⁰ Inland Revenue emphasized that if the allowance system were replaced by separate assessment, 2,800,000 "unfortunate" men who supported wives without separate incomes would be in a "far greater degree affected than the women."⁹¹ Witnesses reiterated that increasing the allowances would have the double benefit of alleviating economic pressures felt by the "family man" and address the demand for separate assessment without offering tax relief to "people of considerable means." In doing so, the allowance system shifted a greater tax burden onto bachelors and spinsters, strengthening the "distinction" "between those [married] persons having commitments for the benefit of the State and those with no such responsibilities."⁹²

Conclusion

⁸⁹ Ibid.

⁹⁰ Ibid, 125.

⁹¹ Ibid, 135

⁹² RCIT, *First Installment of the MOE*, 78.

The Commissioners' final recommendations reflected many of the arguments articulated by Inland Revenue over the course of the hearings. Dismissing women's claims as a "grievance more vocal than real," the Commissioners wrote that the question of separate assessment "should not be regarded as a political question, but purely as one of finance and revenue," and one that must be decided "not on any theoretical grounds of equality of citizenship, but in accordance with the outstanding principle of 'ability to pay,' which we recognize as governing all questions of taxation."⁹³

Many of the Commission's recommendations, intended to reduce the tax burdens of family men, were implemented in the 1920 Finance Act. This included new exemption limits based on marital status.⁹⁴ For the unmarried, the limit was raised from £130 to £150. Married couples on the other hand, would not be liable for tax until their annual income reached £250. If they had children they received an additional child allowance, a £30 abatement on taxable income for each child. This meant that the "normal citizen"—a man with a wife and three children, would not pay tax until his income exceeded "£350 per annum."⁹⁵

These reforms aligned with an ongoing shift in early-twentieth century social policies that privileged married men with dependents as the beneficiaries of government benefits. But as this chapter has argued, questions over the meaning of married women's property rights formed a locus of these debates. The Property Acts provided activists with

⁹³ *Report of the Royal Commission on the Income Tax*, 58.

⁹⁴ Dauntton, *Just Taxes*, 117.

⁹⁵ J.E. Allen, "Income Tax Problems." *Fortnightly Review* 107, no. 641 (May 1920): 740.

a significant means to call on the state to recognize married women as economic individuals.

Revenue officials were ultimately able to elide these claims by denying the Property Acts' relevance to matters of taxation. Nonetheless, they were compelled to provide a response. Revenue officials and politicians reframed the problem—not as one of women's rights, but a matter in which women's independent incomes would exacerbate economic inequality and allow the wealthy to escape their financial obligations.

Marriage allowances offered a desirable policy because they enabled the government to show that it recognized the economic burdens faced by a family man, while neutralizing arguments that the tax penalized the married. Ultimately, this policy was shaped, in part, by the contest over married women's property rights, even if it was enacted without conceding the broader principle that women's rights groups wanted recognized: a married woman's individuality.

Epilogue. The Law Reform (Married Women and Tortfeasors) Act, 1935

Parliament's passage of the 1935 Law Reform (Married Women and Tortfeasors) Act appeared to fulfill the changes to married women's legal status the Property Acts first introduced. The 1935 Tortfeasors Act ended the legal category of a *feme covert* and struck out "separate" from references to married women's property. It abolished the practice of restraint on anticipation for any wills or trusts coming into effect after 1935. All married women became personally liable for their torts, debts and contracts, and were subject to all bankruptcy laws (they had only been liable to the extent of their separate property). Correspondingly, it ended a husband's liability for his wife's torts, debts, or contracts made before or after marriage. In sum: the Tortfeasors Act established that married women possessed the same individual rights as unmarried women or men.¹

Vestiges of the principle of marital unity that defined coverture during the nineteenth century remained, however. The Act specifically retained interspousal tort immunity—that a husband and wife could not sue each other; Parliament abolished the principle in the 1962 Law Reform (Husband and Wife) Act.² Husbands also continued to be liable for taxes due on their wives' income. In its final report, the Law Reform Committee, which provided the recommendations for the Tortfeasors Act's reforms, suggested that the law with regard to a household tax be changed, to address the "hardship" a husband faced in paying tax. It refrained, however, from issuing a formal

¹ From a Correspondent, "Married Women's Status," *The Times*, December 23, 1935: 9.

² Pearlston, 294.

recommendation because questions relating to taxation remained outside its original remit. Although adjustments to the tax code were introduced in subsequent years, British men and women would not be independently assessed for income tax until 1990.³

The Tortfeasors Act's passage also prompted a reconsideration of the Married Women's Property Acts that illustrated how Britons' understanding of the MWPA had changed since the nineteenth century. For instance, "A Correspondent" for the *Times* offered a history of married women's property rights. The correspondent explained that in the "sixties of that century women, or a few of the more determined of them, began to rebel, with the result that in 1882 (after some feeble and tinkering efforts in the seventies) a revolutionary statute was passed called 'The Married Women's Property Act.'⁴

In this narrative, the MWPA was transformed into a feminist law—one of the early political successes of the Victorian women's movement. The Victorians' motivations for reform that existed alongside women activists' claims—as a way to reform the lives of the poor—were absent in retrospect. The 1870 Act was a "feeble and tinkering effort" and the 1882 MWPA, the result of "determined women" who had begun "to rebel." Even the 1882 Act, in the words of the correspondent, "did not satisfy the feminist lust for complete equality" and feminists continued to argue that marriage should not impact a woman's status, property rights, contracts or torts.⁵ Undoubtedly, the persistent efforts of the MWPC throughout the 1870s, helped secure the 1882 MWPA's

³ Anthony Seely, "Tax and Marriage. Research Paper 95/87," July 13, 1995, researchbriefings.files.parliament.uk/documents/RP95-87/RP95-87.pdf; Inland Revenue, "Income Tax and Married Couples" (Inland Revenue, 1997), Inland Revenue, "Pamphlet No. 40. Income Tax and Married Couples" (Inland Revenue, 1997), IR 122/52/4, Kew.

⁴ From a Correspondent, "Married Women's Status," *The Times*, December 23, 1935: 9.

⁵ *Ibid.*

passage. The retrospect illustrated, however, the success of feminists' interpretation of the MWPA.

The *Times* correspondent's assessment of the Married Women's Property Acts reflected one understanding of the MWPA that this dissertation has traced: that it provided activists, and eventually feminists, with a significant means to claim married women's rights to be recognized as individuals.

But as this dissertation has also shown, feminists' understanding of the Property Acts existed alongside other conceptions of the Acts: as a law to protect women's property, but never a law that conceded women's equality. The passage of the MWPA, particularly in 1870, was shaped far more by the paternalistic motives of MPs who did not think that women's property rights would undermine their own authority in the household.

Indeed, the passage of the Tortfeasors Act continued to reflect how MPs' concerns about men's rights shaped the terms on which they were willing to grant women rights. While interwar feminists advocated for legal changes that erased a distinction between a *feme sole* and a *feme covert*, the Tortfeasors Act also emerged out of a social context in which Britons perceived that married men were unfairly suffering under the MWPA. As other scholars have noted, in many ways, the 1935 Tortfeasors Act reduced men's obligations for their wives more than it recognized married women's equality.⁶

Through its attention to these competing concerns, "Reforming the Married State" has argued that the ensuing social, legal, and cultural conflicts the Acts inspired engaged

⁶ Pearlston, 294.

Britons in a broader debate that required them to re-define (or at the very least, defend) men and women's rights and obligations to each other, to society, and to the state.

Married women's property rights compelled Britons to consider what constituted equity in their society. The question at the core of this problem was whether women constituted individuals with individual rights, or members of a household, defined along class-based lines. Importantly, Britons never fully resolved this question. Their efforts to negotiate these tensions, however, reveals how the "married state" continued to serve as the foundation for the "social state" long after coverture's demise.

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