

2016

Gendered Law in American History (2016)

Richard Chused
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Gendered Law in American History

Richard Chused

PROFESSOR
NEW YORK LAW SCHOOL

Wendy Williams

PROFESSOR EMERITA
GEORGETOWN UNIVERSITY LAW CENTER



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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I dedicate this book to my mother-in-law, Nikki Langer, an early feminist musician, educator, and role model to her daughter—my wife Elizabeth Langer—a second-generation feminist attorney, painter, mother, and muse-in-life.

Richard Chused

I dedicate this book to my mother, Jean Webster, who put this note under my pillow: “Girls can grow up to be anything they want to be.”

Wendy Williams

Library of Congress Cataloging-in-Publication Data

Names: Chused, Richard H., 1943- author. | Williams, Wendy (Writer on law), author.
Title: Gendered law in American history / Richard Chused and Wendy Williams.
Description: Durham, North Carolina : Carolina Academic Press, 2016. | Includes bibliographical references and index.
Identifiers: LCCN 2016012278 | ISBN 9781611636734 (alk. paper)
Subjects: LCSH: Women--Legal status, laws, etc.--United States--History. | Sex discrimination against women--Law and legislation--United States--History. | Women's rights--United States--History. | Sex and law--United States--History.
Classification: LCC KF478 .C495 2016 | DDC 342.7308/78--dc23
LC record available at <https://lcn.loc.gov/2016012278>

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

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Bradwell v. State of Illinois, 645, 857–885, 899, 936, 1186	Commonwealth v. Perry, 990
Brown v. Board of Education of Topeka, 631	
Bunting v. Oregon, 987, 992–1001, 1006, 1008, 1016, 1020, 1026–1028	

Chapter 1

Women and Citizenship at the Turn of the Nineteenth Century

A. Introduction

In its most common usage, the concept of “citizenship” is described as a way of separating those who may participate in the political life of a nation from those who must watch from the sidelines. Those who are citizens of the United States, for example, may vote, while resident aliens may not. A closer study of the idea, however, suggests that citizenship is a quite complex construction. Many citizen felons retain their national identity while losing their political rights. Some countries revoke the citizenship of any person who accepts membership in the polity of another state. In many nations, male citizens are obligated to complete some form of military service while their female peers are not. Citizenship, then, is not a simple proposition. Both access to citizenship and the shape of national privileges and duties are culturally and legally defined.

Three sets of related materials explore the concept of citizenship for women and men during the years surrounding the creation of the United States of America. The first explores a series of letters written by Abigail and John Adams while the Founding Fathers were deliberating the contents and release of the Declaration of Independence in Philadelphia. One of the letters contains the famous statement by Abigail warning John that the ladies may “foment a revolution.” But reading that missive as part of a series of letters makes its meaning much more ambiguous and constrained than one might initially imagine. The correspondence provides an entrée into the subtle notions of citizenship that surrounded American women during the years just before the Revolutionary War.

The Adams correspondence is followed by materials on the fascinating case of *Martin v. Commonwealth of Massachusetts*—a dispute over the propriety of Massachusetts seizing the property of a married woman after she went to England with her Tory husband during the Revolutionary War. The impact of gendered legal rules about property ownership, cultural attitudes about the appropriate roles of women and men, and Revolutionary era politics led to a surprising result—an order requiring Massachusetts to return assets to the son of a married woman.

The *Martin* case is followed by material on the only episode of women lawfully voting in early nineteenth century America—in New Jersey between 1790 and 1807.

The origins of this brief outbreak of women's suffrage are somewhat mysterious. It ended with something of a whimper. But enough is known about this unusual story to make it a quite helpful means of exploring citizenship and gender in early American history.

B. The Gendered Politics of Citizenship and Suffrage in Early America

1. Enlightenment and the American Revolution

Enlightenment thinkers heavily influenced those founding the American republic.¹ The works of Thomas Hobbes, Montesquieu, John Locke, Condorcet, Rousseau, and of a group of radical Whig thinkers in England including John Trenchard, John Toland, Thomas Gordon, Algernon Sidney, James Harrington, James Burgh and Catharine Macaulay, were familiar to the literate elite of colonial America. Their influence was dramatically visible in the opening lines of the Declaration of Independence.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

In the most often read version of Enlightenment thought,² John Locke argued that in a state of nature men were equal and independent. Though “Right Reason” would guide most men to the appropriate rules for living in a natural state, some would succumb to selfishness. Government, legitimated by consent of the governed, was necessary to control such impulses. This social contract would guarantee men both their liberty and their right to control the benefits produced by their labor. The central purpose of government, formed by consent of the governed, was to protect the natural rights of all men to life, liberty and the pursuit of happiness. Property ownership—generally male dominated—was a pivotal feature of this political philosophy. It guaranteed the independence of male citizens by precluding their social and economic dependence on others and, therefore, insured their capacity to intelligently participate in government.

Rejecting monarchy in favor of the social contract carried with it an assumption that men had to be free of undue influence by others when they agreed to form, allow

1. A summary of this topic may be found in LINDA K. KERBER, *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA* 15–32 (1980). A more thorough review is available in GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* (1991).

2. JOHN LOCKE, *TWO TREATISES OF CIVIL GOVERNMENT* (1689).

continuance of, and participate in a government. It was this idea that made the English radical Whigs particularly attractive to many in America's founding generation. “John Toland,” Gordon Wood wrote, “divided all society into those who were free and those who were dependent. * * * In such a simple division everyone who was not free was presumed to be a servant. Anyone tied to someone else, who was someone's client or dependent, was servile.”³ Non-servility was a product of property ownership. For only access to a source of wealth not in another's control created a foundation for independence and freedom.

In all of this theorizing, women were largely absent. Women, like children, servants, slaves, and the insane, were not thought of as autonomous souls.⁴ Women turned up as mothers, but not as actors with civic power or responsibility. Locke, for example, used gender and marriage in his *Two Treatises of Government* to launch an attack on Robert Filmer's defense of monarchy, *Patriarcha*, but not to endow wives with any political authority. Filmer created a justification of monarchy out of the biblical admonition to “honor thy father.” But, as Linda Kerber noted,

the commandment, after all, is to “honor thy father and thy mother.” Filmer's defense of absolutism in government conveniently forgot mothers. He described a power structure that was masculine, that was absolute, and that relied on primogeniture. To create and defend this structure as he did, Filmer had to ignore a large network of other relationships and impose a hierarchical order on all those he did acknowledge. Locke needed for his purposes only a reader who would concede that the biblical commandment was to “honor thy father and thy mother”; given this admission, Locke could proceed to race through Filmer, restoring mothers as he went, and by that device undercut Filmer's analogy between parental power and royal authority. If familial power is shared with women and limited by mutual responsibilities, the nature of royal authority must also be shared and limited. What Locke accomplished in the *First Treatise* was the integration of women into social theory.⁵

Once he completed his attack on Filmer, however, Locke articulated no place for women in governance. Nonetheless, the rhetoric about the natural rights of *persons* found in his work and that of his peers opened the door to new challenges on behalf of, and by, outsiders to public life. The widespread attack on patriarchy and monarchy during the Revolutionary Era made it easier to critique previously unchallenged status arrangements. By the end of the eighteenth century, indentured servitude and apprenticeship largely fell into disuse and anti-slavery societies emerged for the first

3. Wood, *supra* note 1, at 179.

4. Through much of our history the law of “domestic relations” included not only marriage and divorce, but also the status law surrounding children, servants, slaves, apprentices and other dependent souls.

5. KERBER, *supra* note 1, at 17. From *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA* by Linda Kerber. Published for the Omohundro Institute of Early American History and Culture. Copyright © 1980 by the University of North Carolina Press. Used by permission of the publisher. www.uncpress.unc.edu.

time.⁶ New Jersey's Quaker community barred its members from holding slaves.⁷ A few women also began to raise questions about their right to claim a role in consenting to governance as well as to marriage. Two English women, Catharine Macaulay and Mary Wollstonecraft, began publicly to attack traditional assumptions about women. Wollstonecraft, taking the "Right Reason" of Locke and the dependency notions of Toland seriously, argued their implications for women:

The being who discharges the duties of its station is independent; and, speaking of women at large, their first duty is to themselves as rational creatures, and the next in point of importance, as citizens, is that which includes so many, of a mother.

* * * *

But, to render her really virtuous and useful, she must not, if she discharge her civil duties, want, individually, the protection of civil laws; she must not be dependent on her husband's bounty for her subsistence during his life or support after his death—for how can a being be generous who has nothing of its own? or virtuous, who is not free?⁸

Wollstonecraft's strongest points were directed not at Locke, for he at least found a role for women in undermining Filmer's theories of monarchy, but at Rousseau. His misogynous view of women became, in Wollstonecraft's hands, an argument for recognition of women's civil and political rights. Linda Kerber observed:

"The empire of women," Rousseau had written, "is the empire of softness, of address, of complacency; her commands are caresses; her menaces are tears." Wollstonecraft perceived that to define women this way was to condemn them to "a state of perpetual childhood"; she deplored the "false system of education" that made women "only anxious to inspire love, when they ought to cherish a nobler ambition, and by their abilities and virtues exact respect." Women's duties were different from those of men, but they similarly demanded the exercise of virtue and reason. Women would be better wives and mothers if they were taught that they could not depend on frivolity and ignorance. Wollstonecraft ventured the suggestion that women might study medicine, politics, and business, but whatever they did, they should not be denied civil and political rights, they should not have to rely on marriage for assurance of economic support, and they should not "remain immured in their families groping in the dark."⁹

6. Id. at 184–186.

7. WILLIAM A. COOPER, *THE ATTITUDE OF THE SOCIETY OF FRIENDS TOWARDS SLAVERY* 7 (1929).

8. MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMAN* 218–219 (1792).

9. Kerber, *supra* note 1, at 224. From *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA* by Linda Kerber. Published for the Omohundro Institute of Early American History and Culture. Copyright © 1980 by the University of North Carolina Press. Used by permission of the publisher. www.uncpress.unc.edu.

Catharine Macaulay is less well known than Wollstonecraft in modern circles. She emerged in England during the 1760s as a prominent writer and thinker. Her eight-volume *HISTORY OF ENGLAND*, published between 1763 and 1783, is still recognized as a major work. That opus, together with *LETTERS ON EDUCATION*, published in 1790, were widely read by the American intelligentsia. In one of the letters, Macaulay wrote:

Among the most strenuous asserters of a sexual difference in character, Rousseau is the most conspicuous, both on account of that warmth of sentiment which distinguishes all his writings, and the eloquence of his compositions: but never did enthusiasm and the love of paradox, those enemies to philosophical disquisition, appear in more strong opposition to plain sense than in Rousseau's definition of this difference. He sets out with a supposition, that Nature intended the subjection of the one sex to the other; that consequently there must be an inferiority of intellect in the subjected party; but as man is a very imperfect being, and apt to play the capricious tyrant, Nature, to bring things nearer to an equality, bestowed on the woman such attractive graces, and such an insinuating address, as to turn the balance on the other scale. Thus Nature, in a giddy mood, recedes from her purposes, and subjects prerogative to an influence which must produce confusion and disorder in the system of human affairs. Rousseau saw this objection; and in order to obviate it, he has made up a moral person of the union of the two sexes, which, for contradiction and absurdity, outdoes every metaphysical riddle that was ever formed in the schools. In short, it is not reason, it is not wit; it is pride and sensuality that speak in Rousseau, and, in this instance, has lowered the man of genius to the licentious pedant.

But whatever might be the wise purpose intended by Providence in such a disposition of things, certain it is, that some degree of inferiority, in point of corporeal strength, seems always to have existed between the two sexes; and this advantage, in the barbarous ages of mankind, was abused to such a degree, as to destroy all the natural rights of the female species, and reduce them to a state of abject slavery. What accidents have contributed in Europe to better their condition, would not be to my purposes to relate; for I do not intend to give you a history of women; I mean only to trace the sources of their peculiar foibles and vices; and these I firmly believe to originate in situation and education only: for so little did a wise and just Providence intend to make the condition of slavery an unalterable law of female nature, that in the same proportion as the male sex have consulted the interest of their own happiness, they have relaxed in their tyranny over women; and such is their use in the system of mundane creation, and such their natural influence over the male mind, that were these advantages properly exerted, they might carry every point of importance to their honour and happiness.¹⁰

10. Excerpted from Letter XXII in Part I of CATHARINE MACAULAY, *LETTERS ON EDUCATION* 205–206 (1790).

The influence of Wollstonecraft and Macaulay on American culture is difficult to measure. Thought of by many as scandalous, both were subjected to widespread public ridicule.¹¹ Wollstonecraft's death due to complications from childbirth in 1797 removed her from the intellectual scene. Macaulay, however, mounted a successful United States tour in 1785, including a ten-day stay at Mount Vernon, the home of George Washington. At a minimum, it is likely that both women broached topics that many people were willing to thoughtfully discuss. The famous correspondence excerpted just below between Abigail and John Adams, in which Abigail asked John to "Remember the Ladies" as he helped draft a new code of laws, confirms that talk about gender was in the air even before the works of Wollstonecraft and Macaulay hit these shores.¹² Despite fears that intellectual achievement and housekeeping could not coexist in one person, the rhetoric of the Enlightenment left room for new forms of discourse about gender to emerge.

This discourse rarely occurred in public spaces with mixed audiences of men and women. There were few public fora in late eighteenth century America available for women to state openly their political and cultural preferences. Mary Wollstonecraft never ventured to a speaking dais, although she did participate in various "salon" meetings in England. The earliest known speech by a woman before a "promiscuous"¹³ audience was a salutary oration delivered by Priscilla Mason in 1794 as she graduated from Poor's Female Seminary of Philadelphia. Deborah Sampson Gannett, who managed to serve as a soldier in the Revolutionary War went on a speaking tour in 1802.¹⁴ Fanny Wright, a Scottish woman who challenged slavery as well as standard notions of female sexuality,¹⁵ was the first woman to speak to large "promiscuous" audiences of men and women in many parts of the United States. Her 1828 tour helped set the stage for public participation by women in the abolitionist movement. She was followed by the abolitionist Grimke sisters in the 1830s and a stream of women in the

11. Wollstonecraft lived with a man while unmarried and had a child before she married William Godwin. Publication of a memoir about her by Godwin in 1798 actually sealed her reputation as a character of dubious morality. The story is well told in Chandos Michael Brown, *Mary Wollstonecraft, or, The femail illuminati: The Campaign Against Women and "Modern Philosophy" in the Early Republic*, 15 J. EARLY REPUBLIC 389 (1995). A good biography of her is EMILY SUNSTEIN, *A DIFFERENT FACE: THE LIFE OF MARY WOLLSTONECRAFT* (1975). Catharine Macaulay married a man much her junior. See Jonathan Wordsworth's Introduction in the 1994 reprint to CATHARINE MACAULAY, *LETTERS ON EDUCATION* (1790).

12. So does the research of Rosemarie Zagarri, whose book details the ways women of the early republic participated in, debated and influenced politics. ROSEMARIE ZAGARRI, *REVOLUTIONARY BACKLASH: WOMEN AND POLITICS IN THE EARLY AMERICAN REPUBLIC* (2007).

13. This was the now quaint description used for audiences of men and women.

14. The stories of Mason and Gannett are told in Karlyn Kohrs Campbell, *Gender and Genre: Loci of Invention and Contradiction in the Earliest Speeches by U.S. Women*, 81 Q. J. OF SPEECH 479 (1995).

15. Wright, along with fellow utopian Robert Dale Owen, believed in "free love." That did not mean freedom to have multiple sexual partners, but the right to select sexual partners for monogamous relationships outside of marriage. She also believed that miscegenation was a solution to race problems.

following decade. During the same era, many female academies opened, and social organizations flourished.¹⁶

Though most women were unable to make use of public fora to state their views during our early history, some found other ways to make their opinions known in the late eighteenth century. Abigail Adams took advantage of one avenue of communication open to her—letter writing. Other women participated in boycotts of English goods, and organized spinning bees to make cloth. Some churches allowed women to undertake active roles in their organizations and rituals. A few women even took the extraordinary step of signing public pledges or petitions. And many, including wives and their families, accompanied troops during the Revolutionary War as cooks, nurses and supporters.¹⁷ These activities provide additional support for the proposition that talk about the role of women was "in the air." Perhaps James Cooper and his fellow Quakers in southern New Jersey were among those willing to think about gender in new ways when they supported the voting by women explored in the concluding segment of this chapter.

2. Suffrage, Dependency, and Gender: The Adams Correspondence

The view of Cooper, his Quaker peers and the members of the New Jersey legislature in the 1790s countenancing voting by women was a decidedly minority position. John Toland's notion that all of society was divided "into those who were free and those who were dependent"¹⁸ dominated the national debate about gender. The contours of this debate are made vividly clear in the famous correspondence between John and Abigail Adams in which Abigail asks her husband to "Remember the Ladies," and in other correspondence between each of the Adams and their peers on gender related questions.

This correspondence occurred while a vibrant debate over the proper form of a republican government transpired. The founding fathers generally agreed that power was derived from the consent of the governed and that liberty was every man's right. Since practicality precluded the participation of all free men in governance, some form of representation was required. In thinking about the nature of that representation, the early republicans did not distinguish between the capacity of a man to govern and the capacity of a man to select those who govern. Whether exercising power directly or by vote, men had to be free of the control of others in order to behave in a responsible fashion. Men without property and all women lacked the necessary freedom of action. Landless men were dependent upon others for their livelihood and women were dependent upon men.

Various founders had different visions about the basic nature of those men who actually held sufficient resources to responsibly exercise power. The early civic re-

16. See SARA M. EVANS, *BORN FOR LIBERTY* 67–92 (1989).

17. *Id.* at 43–66.

18. See *supra* p. 5.

publicans, including Jefferson and Adams, believed that such men would recognize the need to share in self-government, deliberate “with their fellow citizens about the common good,”¹⁹ and pursue policies designed to reduce disparities in economic power. Others, including the Federalists who dominated the drafting of the Constitution over a decade after Abigail and John Adams wrote the letters reproduced here, were less optimistic about human nature. They assumed that those in power would pursue their own self-interest and that the public welfare would be best served by structuring the government to bar dominance by any particular faction. In this view sharing would not necessarily arise out of a common national vision, but out of a common desire for structured decision making. The founders also shared some common ground. Both views of government relied upon deliberation by an educated electorate free of control by others. Whether the debates were over a common national vision or differences in factional views, independence, literacy and intelligence were a prerequisite.

The Adams correspondence is a particularly telling commentary on the gendered qualities of early republican citizenship theory. Abigail Smith was hardly the dependent female soul presumed by either republican or federalist theorists. She married John Adams on October 15, 1764, when she was nineteen and he was twenty-nine. By all accounts they had a long and happy marriage; Abigail and John were “dearest friends.”²⁰ The pain and loneliness of their many separations is quite palpable in their correspondence. During John’s frequent absences from home participating in the formation of a new nation and then serving as one of its leaders, Abigail ran their Massachusetts farm and educated their children. Of necessity, she was an independent, literate woman fully capable of managing all of the family’s affairs. Perhaps the many months without John present helped nurture her independent instincts. She was also a woman of uncommon curiosity. Raised in a large family of highly educated men, Abigail, from an early age

yearned to study with the “great Masters” who taught the male members of her family. Convinced that women played no less a role than men in the “Great Theater” of life, being responsible for the care and early instruction of their children, she mourned their lack of training for this “Trust.”²¹

Despite her lack of a formal education, Abigail was frequently exposed to discussions among educated men in her youth. She read avidly and was mentored by several men in her family.

Her marriage to John Adams, who never exercised the plenary authority men legally had over their wives, allowed some room for her talents to blossom. Though

19. MICHAEL J. SANDEL, *DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 5 (1996).

20. Three good biographies of Abigail Adams are WOODY HOLTON, *ABIGAIL ADAMS* (2009); PHYLLIS LEE LEVIN, *ABIGAIL ADAMS: A BIOGRAPHY* (1987) and LYNNE WITHEY, *DEAREST FRIEND: A LIFE OF ABIGAIL ADAMS* (1981).

21. Levin, *supra* note 20, at 4.

Abigail never became a public advocate, she had a lively and wide ranging correspondence with her husband and other literati of the time. The correspondence covered all manner of subjects, from family problems and educational policy to matters of state. Through the early months of 1776, Abigail and John wrote each other about politics. Thomas Paine’s pamphlet *Common Sense* had appeared in January, causing a major stir. While they both had doubts about the open democracy Paine advocated, Abigail was much more enthusiastic than John about the impetus Paine’s work gave to the movement for independence.²² Her spirits were further raised when new gun batteries convinced the British to leave Boston in mid-March. It was shortly after that event that their series of letters containing comments on the status of women were written. Abigail wrote the opening missive to John as he sat in Philadelphia with the Second Continental Congress and she, wondering about the fate of their Boston house following the departure of the British from the city, tended their farm in outstate Massachusetts.²³

a. Letter from Abigail Adams to John Adams (March–April, 1776)

Braintree March 31, 1776

I wish you would ever write me a Letter half as long as I write you; and tell me if you may where your Fleet are gone? What sort of Defence Virginia can make against our common Enemy? Whether it is so situated as to make an able Defence? Are not the Gentry Lords and the common people vassals, are they not like the uncivilized Natives Brittain represents us to be? I hope their Riffel Men who have shewen themselves very savage and even Blood thirsty; are not a specimen of the Generality of the people.

I am willing to allow the Colony great merit for having produced a Washington, but they have been shamefully duped by a Dunmore.²⁴

I have sometimes been ready to think that the passion for Liberty cannot be Equally Strong in the Breasts of those who have been accustomed to deprive their fellow Creatures of theirs. Of this I am certain that it is not founded upon that generous and christian principal of doing to others as we would that others should do unto us.

Do not you want to see Boston; I am fearfull of the small pox, or I should have been in before this time. I got Mr. Crane to go to our House and see

22. Holton, *supra* note 20, at 96–98.

23. You will notice many “misspelled” words when reading these letters. The quite formal spelling rules we abide by were not prevalent during our early history. Various authors often penned words differently. The shifts in syntax were hardly indications of literary ineptitude. The original spellings are used in all the letters reproduced here.

24. John Dunmore was the British Governor of the Virginia Colony. In 1775 he declared martial law in the colony in an effort to suppress rebelliousness. He led a series of political and military skirmishes with the elite of Virginia participating in the nascent Continental Congress and local efforts to control military facilities. For a summary of his life see http://en.wikipedia.org/wiki/John_Murray,_4th_Earl_of_Dunmore (visited Mar. 29, 2016).

what state it was in. I find it has been occupied by one of the Doctors of a Regiment, very dirty, but no other damage has been done to it. The few things which were left in it are all gone. Cranch²⁵ has the key which he never delivered up. I have wrote to him for it and am determined to get it cleaned as soon as possible and shut it up. I look upon it a new acquisition of property, a property which one month ago I did not value at a single Shilling, and could with pleasure have seen it in flames.

The Town in General is left in a better state than we expected, more owing to a percipitate flight than any Regard to the inhabitants, tho some individuals discovered a sense of honour and justice and have left the rent of the Houses in which they were, for the owners and the furniture unhurt, or if damaged sufficient to make it good.

Others have committed abominable Ravages. The Mansion House of your President is safe and the furniture unhurt whilst both the House and Furniture of the Solisiter General have fallen a prey to their own merciless party. Surely the very Fiends feel a Reverential awe for Virtue and patriotism, whilst they Detest the paricide and traitor.

I feel very differently at the approach of spring to what I did a month ago. We knew not then whether we could plant or sow with safety, whether when we had toiled we could reap the fruits of our own industry, whether we could rest in our own Cottages, or whether we should not be driven from the sea coasts to seek shelter in the wilderness, but now we feel as if we might sit under our own vine and eat the good of the land.

I feel a gaieti de Coar²⁶ to which before I was a stranger. I think the Sun looks brighter, the Birds sing more melodiously, and Nature puts on a more chearfull countenance. We feel a temporary peace, and the poor fugitives are returning to their deserted habitations.

Tho we felicitate ourselves, we sympathize with those who are trembling least the Lot of Boston should be theirs. But they cannot be in similar circumstances unless pusillanimity and cowardise should take possession of them. They have time and warning given them to see the Evil and shun it.— I long to hear that you have declared an independancy—and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hand of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Ladies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

25. Richard Cranch was Abigail's brother in law—the husband of her older sister Mary Smith.

26. The phrase means "happiness of the heart."

That your Sex are Naturally Tyrannical is a Truth so thoroughly established as to admit of no dispute,²⁷ but such of you as wish to be happy willingly give up the harsh title of Master for the more tender and endearing one of Friend. Why then, not put it out of the power of the vicious and the Lawless to use us with cruelty and indignity with impunity. Men of Sense in all Ages abhor those customs which treat us only as the vassals of your Sex. Regard us then as Beings placed by providence under your protection and in imitation of the Supream Being make use of that power only for our happiness.

April 5

Not having an opportunity of sending this I shall add a few lines more; tho not with a heart so gay. I have been attending the sick chamber of our Neighbor Trot whose affliction I most sensibly feel but cannot describe, striped of two lovely children in one week. Gorge the Eldest died on Wednesday and Billy the youngest on fryday, with the Canker fever, a terrible disorder so much like the throat distemper, that it differs but little from it. Betsy Cranch has been very bad, but upon the recovery. Becky Peck they do not expect will live out the day. Many grown persons are now sick with it, in this street 5. It rages much in other Towns. The Mumps too are very frequent. Isaac is now confined with it. Our own little flock are yet well. My Heart trembles with anxiety for them. God preserve them.

I want to hear much oftener from you than I do. March 8 was the last date of any that I have yet had.— You inquire of whether I am making Salt peter. I have not yet attempted it, but after Soap making believe I shall make the experiment. I find as much as I can do to manufacture cloathing for my family which would else be Naked. I know of but one person in this part of the Town who has made any, that is Mr. Tertias Bass as he is calld who has got very near an hundred weight which has been found to be very good. I have heard of some others in the other parishes. Mr. Reed of Weymouth has been applied to, to go to Andover to the mills which are now at work, and has gone. I have lately seen a small Manuscrip describing the proportions for the various sorts of powder, fit for cannon, small arms and pistols. If it would be any Service your way I will get it transcribed and send it to you.— Every one of your Friends send their Regards, and all the little ones. Your Brothers youngest child lies bad with convulsion fitts. Adieu. I need only say how much I am Your ever faithfull Friend.²⁸

b. Commentary and Questions

1. *Abigail's Code of Laws*: What did Abigail want John to include in the new "Code of Laws"? Was her statement that women would "not hold themselves bound by any

27. Note the similarity in language to that of Catharine Macaulay, excerpted supra at p. 7.

28. Abigail Adams to John Adams, March 31, 1776, I ADAMS FAMILY CORRESPONDENCE 369–371 (1963).

Laws in which we have no voice, or Representation,” a call for women’s suffrage? Or was her concern about male tyranny a signal that domestic violence or family and property law were her first priority? Do you think Abigail understood that the Declaration of Independence then being considered in Philadelphia by her husband and his colleagues was unlikely to deal with any of these issues? If she did understand that, why did she write the “rebellious” part of the letter?

2. *Fomenting Rebellions*: Excerpted versions of this letter have been reprinted in numerous anthologies, often as an example of early, vociferous feminism. Is that a correct reading of the letter? There is no doubt that Abigail Adams put some of the political and revolutionary rhetoric of her husband and his peers to good use. Hobbes would have been comfortable with her warning that men were “Naturally Tyrannical.” Her longing to hear an “Independency” declared surely resonated with John Adams. In short, there is much in the letter to suggest that Abigail Adams’ concern with the status of women was quite serious. But what are we to make of the first part of the letter’s April 5th continuation, saying that she was no longer writing “with a heart so gay”? Did she pen her famous rebellion phrase in jest? Was she tweaking the serious political mind of her husband and his peers? Or did she simply feel a need to “wrap her barb in velvet”?²⁹

3. *Women, Patriotism and Politics*: Putting aside the rebellion statement, note the opening segments of the letter. Adams wrote at length about the affairs of war, politics, important personages, and other public events. And, as you will soon see, John’s responding letter answered all her questions in a very straightforward manner. Any notion that women like Abigail Adams were politically naïve, immune to patriotism, and unconcerned about events of the day is surely wrong. That is also confirmed by Adams’ later letter, reproduced below, to Mercy Otis Warren, another important woman of the time. Though women were largely frozen out of direct participation in the political process during the late eighteenth and early twentieth centuries, they certainly were not barred from talking with, cajoling or assisting their men, or from petitioning their government for reforms. The Adams correspondence, of course, was not public. But that did not mean that women lacked a desire to influence their times or the men who ran the government. In short, we can’t translate social and legal limitations on the role of women in early America into invisibility, lack of concern, passivity and total powerlessness.³⁰

This is a critically important observation about the meaning of citizenship for women like Abigail Adams. Some political writers widely read in her time diminished the roles of women in at least two ways. For some, domestic concerns were separate from other cultural or political roles. There was no sense that the educational, social, and other formative aspects of family life were important for the future of the state. Second, though many commentators recognized that the rearing of civically minded

29. Holton, *supra* note 20, at 100.

30. That is made abundantly clear by the work of Linda Kerber, *supra* note 1, and Zagari, *supra* note 12, as well as by MARY BETH NORTON, *LIBERTY’S DAUGHTERS: THE REVOLUTIONARY EXPERIENCE OF AMERICAN WOMEN, 1750–1800* (1980).

offspring was a prerequisite to the creation of a modern republic, that role was treated as separate from politics, governance and patriotism. Adams had clearly read works of both sorts.³¹ Her letter should be read in part as a critique of both attitudes about women. It was filled with comments about the state of the home front, neighbors, children, disease, living quarters, and farming, in addition to admonitions and opinions about war, politics, generals, leaders and independence. The author was clearly a woman who deeply believed that domestic roles were critical to the formation of a republic, that the proper rearing of children was essential to the development of an intelligent body politic, that women’s roles on the home front were a critical part of the politics of the day, that patriotism was a duty of all citizens, and that, especially in time of conflict, patriotic devotion took precedence over her personal desires for husbandly companionship and personal needs. As Teresa Anne Murphy instructs us, Adams turned “her legal disabilities into a political virtue. Thus, while [some] * * * argued that patriotism in men derived from pride and a rather selfish pursuit of recognition, Adams argued that in women patriotism was a more disinterested virtue. Even though women lacked property and were denied a place in the government, they still supported it.”³²

4. *Reading the Letters to Follow*: Come back to this first letter again after you read the rest of this section. Does John’s chortling response in the next letter to his wife’s rebelliousness suggest that Abigail was also writing humorously? Or does it suggest that Abigail had to present her claims to John with humor in order to maintain her relationship with him? Was Abigail more serious in her letter to Mercy Otis Warren than she was in her letters to John? In short, think about the extent to which Abigail Adams felt limited in her ability to challenge the political stance of her husband, about the constraints culture may have imposed on her ability to vocalize all her concerns to various segments of her circle of social acquaintances, and about the ways her citizenship in the then emerging United States was limited by her gender.

c. Letter from John Adams to Abigail Adams (April 14, 1776)

John, perhaps prompted by Abigail’s desire for more frequent correspondence expressed at the beginning of her March 31 letter, responded quickly.

Ap. 14. 1776

You justly complain of my short Letters, but the critical State of Things and the Multiplicity of Avocations must plead my Excuse.—You ask where the Fleet is. The inclosed Papers will inform you. You ask what Sort of Defence Virginia can make. I believe they will make an able Defence. Their Militia and minute Men have been some time employed in training them selves, and they have Nine Battallions of regulars as they call them, maintained among them, under good Officers, at the Continental Expence. They have

31. TERESA ANNE MURPHY, *CITIZENSHIP AND THE ORIGINS OF WOMEN’S HISTORY IN THE UNITED STATES* 39–68 (2013).

32. *Id.* at 44.

set up a Number of Manufactories of Fire Arms, which are busily employed. They are tolerably supplied with Powder, and are successfull and assiduous, in making Salt Petre. Their neighbouring Sister or rather Daughter Colony of North Carolina, which is a warlike Colony, and has several Battallions at the Continental Expence, as well as a pretty good Militia, are ready to assist them, and they are in very good Spirits, and seem determined to make a brave Resistance.—The Gentry are very rich, and the common People very poor. This inequality of Property, gives an Aristocratical Turn to all their Proceedings, and occasions a strong Aversion in their Patricians, to Common Sense. But the Spirit of these Barons, is coming down, and it must submit.

It is very true, as you observe they have been duped by Dunmore. But this is a Common Case. All the Colonies are duped, more or less, at one Time or another. A more egregious Bubble was never blown up, than the Story of Commissioners coming to treat with the Congress. Yet it has gained Credit like a Charm, not only without but against the clearest Evidence. I never shall forget the Delusion, which seized our best and most sagacious Friends the dear Inhabitants of Boston, the winter before last. Credulity and the Want of Foresight, are Imperfections in the human Character, that no Politician can sufficiently guard against.

You have given me some Pleasure, by your Account of a certain House in Queen Street. I had burned it, long ago, in Imagination. It rises now to my View like a Phoenix.—What shall I say of the Solicitor General? I pity his pretty Children, I pity his Father, and his sisters. I wish I could be clear that it is no moral Evil to pity him and his Lady. Upon Repentance they will certainly have a large Share in the Compassions of many. But let Us take Warning and give it to our Children. Whenever Vanity, and Gaiety, a Love of Pomp and Dress, Furniture, Equipage, Buildings, great Company, expensive Diversions, and elegant Entertainments get the better of the Principles and Judgments of Men or Women there is no knowing where they will stop, nor into what Evils, natural, moral, or political, they will lead us.

Your description of your own Gaiety de Coeur, charms me. Thanks be to God you have Cause to rejoice—and may the bright Prospect be obscured by no Cloud.

As to Declarations of Independency, be patient. Read our Privateering Laws, and our Commercial Laws. What signifies a Word.

As to your extraordinary Code of Laws, I cannot but laugh. We have been told that our Struggle has loosened the bands of Government every where. That Children and Apprentices were disobedient—that schools and Colledges were grown turbulent—that Indians slighted their Guardians and Negroes grew insolent to their Masters. But your Letter was the first Intimation that another Tribe more numerous and powerfull than all the rest were grown

discontented—This is rather too coarse a Compliment but you are so saucy, I wont blot it out.

Depend upon it, We know better than to repeal our Masculine systems. Altho they are in full Force, you know they are little more than Theory. We dare not exert our Power in its full Latitude. We are obliged to go fair, and softly, and in Practice you know We are the subjects. We have only the Name of Masters, and rather than give up this, which would compleatly subject Us to the Despotism of the Peticoat, I hope General Washington, and all our brave Heroes would fight. I am sure every good Politician would plot, as long as he would against Despotism, Empire, Monarchy, Aristocracy, Oligarchy, or Ochlocracy.³³—A fine Story indeed. I begin to think the Ministry as deep as they are wicked. After stirring up Tories, Landjobbers, Trimmers, Bigots, Canadians, Indians, Negroes, Hanoverians, Hessians, Russians, Irish Roman Catholicks, Scotch Renegades, at last they have stimulated the _____ to demand new Priviledges and threaten to rebell.³⁴

d. Commentary and Questions

1. “As to your extraordinary Code of Laws, I cannot but laugh.”: Whether or not Abigail Adams wrote her husband with tongue in cheek, John certainly found her letter funny and perhaps annoying. But the jocular part of his response appeared after lengthy discussion of issues she had raised in her letter. John certainly took seriously the political and social questions and arguments of his wife, even while he chuckled at or perhaps mocked her rebellious pretensions. Was his chortling a sign that Abigail’s letter was also not totally serious? What do you think Abigail expected John to do when reading her letter—chuckle, laugh derisively or ponder its significance?

2. “Despotism of the Peticoat”: To whatever extent John took seriously Abigail’s threat to foment a rebellion, how did he respond? Do you think John believed that the “Tribe” of women were “more numerous and powerfull than all the rest,” that he was “obliged to go fair, and softly” in the presence of his wife, and that men “are the subjects”? Was at least part of John’s tongue in his cheek when he wrote these passages? Or was he simply reflecting the common notions of the day about the proper domestic roles of women?

3. *Republican Motherhood*: As suggested in the prior two notes, John Adams took seriously his wife’s comments on various issues and suggested he was in some sense the “subject” of his wife. At the very outset, he admitted that her complaints about his letters were justified. But then he immediately launched into a fairly detailed response to all her questions about politics, the war, and independence deliberations. While there are reasons to wonder about the degree of his candor, there is little doubt that he found the probing by Abigail totally appropriate. Their correspondence was representative of their culture recognizing and structuring a political role for women

33. This means mob rule.

34. John Adams to Abigail Adams, April 14, 1776, CORRESPONDENCE, supra note 28 at 381–383.

as the republic was in its formative stages. Linda Kerber, in her classic book on the history of women in the Revolutionary War era, *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA*, argued that “Republican Motherhood” infused woman’s traditional private role in the family with public significance and made her maternity a matter of civic duty:

The Republican Mother’s life was dedicated to the service of civic virtue: she educated her sons for it, she condemned and corrected her husband’s lapses from it. If, according to Montesquieu’s commonly accepted claim, the stability of the nation rested on the persistence of virtue among its citizens, then the creation of virtuous citizens was dependent on the presence of wives and mothers who were well informed, “properly methodical,” and free of “invidious and rancorous passions.” It was perhaps more than mere coincidence that *virtu* was derived was the Latin word for *man*, with its connotations of virility. Political action seemed somehow inherently masculine. Virtue in women seemed to require another theater for its display. To that end the theorists created a mother who had a political purpose and argued that her domestic behavior had a direct political function in the Republic.³⁵

Does the idea of “Republican Motherhood” help explain the contents of either or both of the Adams’ letters?

e. Letter from Abigail Adams to Mercy Otis Warren (April 27, 1776)

After Abigail received John’s reply, she wrote about their exchange of views to Mercy Otis Warren,³⁶ a poet, historian and famous writer of the period:

Braintree April 27, 1776

I set myself down to comply with my Friends request, who I think seem’s rather low spirited.

I did write last week, but not meeting with an early conveyance I thought the Letter of But little importance and tos’d it away. I acknowledg my Thanks due to my Friend for the entertainment she so kindly afforded me in the Characters drawn in her Last Letter, and if coveting my Neighbours Goods was not prohibited by the Sacred Law, I should be most certainly tempted

35. KERBER, *supra* note 1, at 229. From *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA* by Linda Kerber. Published for the Omohundro Institute of Early American History and Culture. Copyright © 1980 by the University of North Carolina Press. Used by permission of the publisher. www.uncpress.unc.edu.

36. Among other things, Warren published the three volume *HISTORY OF THE RISE, PROGRESS, AND TERMINATION OF THE AMERICAN REVOLUTION* (1805). Warren was also in contact with Catharine Macaulay in England, a woman much admired by both Adams and Warren. Kerber, *supra* note 1, at 82. For more on these two famous women, see KATE DAVIES, *CATHARINE MACAULAY AND MERCY OTIS WARREN: THE REVOLUTIONARY ATLANTIC AND THE POLITICS OF GENDER* (2005).

to envy her the happy talent she possesses above the rest of her Sex, by adorning with her pen even trivial occurrences, as well as dignifying the most important. Cannot you communicate some of those Graces to your Friend and suffer her to pass them upon the World for her own that she may feel a little more upon an Equality with you? — Tis true I often receive large packages from Philadelphia. They contain as I said before more News papers than Letters, tho they are not forgotten. It would be hard indeed if absence had not some alleviations.

I dare say he writes to no one unless to Portia oftner than to your Friend, because I know there is no one besides in whom he has an equal confidence. His Letters to me have been generally short, but he pleads in Excuse that critical state of affairs and the Multiplicity of avocations and says further that he has been very Busy, and writ near ten Sheets of paper, about some affairs which he does not chuse to Mention for fear of accident.

He is very saucy to me in return for a List of Female Grievances which I transmitted to him. I think I will get you to join me in a petition to Congress. I thought it was very probable our wise Statesmen would erect a New Government and form a new code of Laws. I ventured to speak a word in behalf of our Sex, who are rather hardly dealt with by the Laws of England, which gives such unlimited power to the Husband to use his wife ill.

I requested that our Legislators would consider our case and as all Men of Delicacy and Sentiment are averse to Exercising the power they possess, yet as there is a natural propensity in Humane Nature to domination, I thought the most generous plan was to put it out of the power of the Arbitrary and tyrannick to injure us with impunity by Establishing some Laws in our favour upon just and Liberal principals.

I believe I even threatned fomenting a Rebellion in case we were not considered, and assured him we would not hold ourselves bound by any Laws in which we had neither a voice nor representation.

In return he tells me he cannot but Laugh at My Extradonary Code of Laws. That he had heard their Struggle had loosned the bands of Government, that children and apprentices were disobedient, that Schools and Colledges were grown turbulent, that Indians slighted their Guardians, and Negroes grew insolent to their Masters. But my Letter was the first intimation that another Tribe more numerous and powerfull than all the rest were grown discontented. This is rather too coarse a complement, he adds, but that I am so sausy he wont blot it out.

So I have help’d the Sex abundantly, but I will tell him I have only been making trial of the Disintrestedness of his Virtue, and when weigh’d in the balance have found it wanting.

It would be bad policy to grant us greater power say they since under all the disadvantages we Labour we have the ascendancy over their Hearts

And charm by accepting, by submitting sway.

I wonder Apollo and the Muses could not have indulged me with a poetical Genius. I have always been a votary to her charms but never could ascend Parnassus myself.

I am very sorry to hear of the indisposition of Your Friend. I am afraid it will hasten his return, and I do not think he can be spared.

“Though certain pains attend the cares of State
A Good Man owes his Country to be great
Should act Abroad the high distinguished part
or shew at least the purpose of his heart.”

Good Night my Friend. You will be so good as to remember me to our worthy Friend Mrs. W_____e when you see her and write soon to your

Portia³⁷

f. Commentary and Questions

1. *Portia*: Portia was the wife of Brutus, the assassin of Julius Caesar in 44 BCE. She was deeply involved in the civil conflicts of her time—an image of obvious importance to Abigail Adams. Teresa Anne Murphy, after commenting on the frequent use of important historical figures from the past as namesakes, notes the importance of the reference.

In deciding on Portia, Adams chose someone who not only was married to a political leader revered for his opposition to tyranny, but also was a woman who demonstrated the ability to partake fully in the political activities of the rebellion. As the wife of Brutus, Portia had stabbed herself in the thigh to prove to him that he could trust her in discussing his political plans. Thus, Adams adopted a pseudonym that suggested not only her love of her husband and her willingness to support him in his political activities, but also her ability to act decisively and heroically with respect to the politics and the tyranny he opposed. Her love of her country and her love of her husband were distinct, but they did not demand different sensibilities. Here, history once again suggested a kind of patriotism that could be both personal and political.³⁸

2. *Abigail Adams' Self Concept as a Woman*: How did Abigail Adams view herself in comparison with Mercy Otis Warren? She claimed to have thrown out the first version of this letter, deeming it of “little importance.” Then, marveling at the talents Warren “possesses above the rest of her sex,” Adams asked if her friend could “pass [some of those graces] upon the World for her own that she may feel a little more upon an Equality” with Warren. Do these passages suggest that Adams felt less ac-

37. Abigail Adams to Mercy Otis Warren, April 26, 1776, CORRESPONDENCE, supra note 28 at 396–398.

38. MURPHY, supra note 31 at 46.

complished than Warren? Was she demonstrating her own intelligence by adroitly flattering Warren? Or was she simply being polite, as women of means might generally have behaved with each other in the late eighteenth century? Though very well educated for her time, Abigail never had any formal schooling. Raised in a largely male household, she often measured her own capacities against those of her well educated relatives. On the other hand, her thirst for knowledge equipped her well for her often independent married life. Do you think Adams was wistfully comparing herself to Warren or placing herself on the same intellectual plane?

3. *Another Look at Irony*: Were Abigail Adams's comments to Warren about her rebellion more serious than those she wrote to her husband? Adams' claim that she had submitted a “List of Female Grievances” to John was a bit overdrawn. No such list appeared in the opening letter in this run of correspondence. Does this mean she wanted Warren to take her seriously? Do you think Warren chuckled when she read about Abigail being “so saucy” that John declined to blot out his “coarse” compliment? Or might she have been a bit piqued?

4. *“And charm by accepting, by submitting sway”*: Near the end of the letter Abigail reported that the men thought it bad policy to “grant us greater power” since women had “the ascendancy over their Hearts and charm by accepting, by submitting sway.” This portion of the letter is written as reportage; there is no editorial commentary for us to parse. It is left for us to decide if she found the “power behind the throne” argument of John and his peers convincing. But compare this ambiguous use of the phrase in the letter to Warren with her use of the same “by submitting sway” language in her next letter to John. Did she grant John the validity of his claim even as she left the point open in her correspondence with Mercy Warren? If so, what might that say about gender and culture among the elites of early American history?

5. *Abigail Adams' “True” Opinions*: Do you think the letter to Warren reflects Abigail Adams' true views on the need for legal changes in coverture rules more than her letter to John? Was she more honest with Warren? If so, this letter also is a commentary on the limits—self imposed or not—constraining Abigail's behavior with her husband.

g. Letter from Abigail Adams to John Adams (May 7, 1776)

Abigail wrote the final letter in this series, a reply to John's letter of April 14.

Braintree May 7 1776

How many are the solitary hours I spend, ruminating upon the past, and anticipating the future, whilst you overwhelmed with the cares of State, have but few moments you can devote to any individual. All domestick pleasures and enjoyments are absorbed in the great and important duty you owe your Country “for our Country is as it were a secondary God, and the First and greatest parent. It is to be preferred to parents, Wives, Children, Friends and all things the Gods only excepted. For if our Country perishes it is as impossible to save an Individual, as to preserve one of the fingers of a Mortified

Hand.” Thus do I suppress every wish, and silence every Murmur, acquiescing in a painful Separation from the companion of my youth, and the Friend of my Heart.

I believe it is near ten days since I wrote you a line. I have not felt in a humour to entertain you. If I had taken up my pen perhaps some unbecoming invective might have fallen from it; the Eyes of our Rulers have been closed and a Lethargy has seized almost every Member. I fear a fatal Security has taken possession of them. Whilst the Building is on flame they tremble at the expence of water to quench it, in short two months has elapsed since the evacuation of Boston, and very little has been done in that time to secure it, or the Harbour from future invasion till the people are all in a flame; and no one among us that I have heard of even mentions expence, they think universally that there has been an amazing neglect some where. Many have turned out as volunteers to work upon Noddes Island, and many more would go upon Nantasket if it was once set foot on. “Tis a Maxim of state That power and Liberty are like Heat and moisture; where they are well mixt every thing prospers, where they are single, they are destructive.”

A Government of more Stability is much wanted in this colony, and they are ready to receive it from the Hands of the Congress, and since I have begun with Maxims of State I will add an other viz. that a people may let a king fall, yet still remain a people, but if a king let his people slip from him, he is no longer a king. And as this is most certainly our case, why not proclaim to the World in decisive terms your own importance?

Shall we not be despised by foreign powers for hesitating so long at a word?

I can not say that I think you very generous to the Ladies, for whilst you are proclaiming peace and good will to Men, Emancipating all Nations, you insist upon retaining an absolute power over Wives. But you must remember that Arbitrary power is like most other things which are very hard, very liable to be broken—and notwithstanding all your wise Laws and Maxims we have it in our power not only to free ourselves but to subdue our Masters, and without violence throw both your natural and legal authority at our feet—

“Charm by accepting, by submitting sway
Yet have our Humour most when we obey.”

I thank you for several Letters which I have received since I wrote Last. They alleviate a tedious absence, and I long earnestly for a Saturday Evening, and experience a similar pleasure to that which I used to find in the return of my Friend upon that day after a week's absence. The Idea of a year dissolves all my Philosophy.

Our little ones whom you so often recommend to my care and instruction shall not be deficient in virtue or probity if the precepts of a Mother have their desired Effect, but they would be doubly informed could they be indulged

with the example of a Father constantly before them; I often point them to their Sire

“engaged in a corrupted State
Wrestling with vice and faction.”

May 9

I designed to have finished the sheet, but an opportunity offering I close only just inform you that May 7 our privateers took two prizes in the Bay in fair sight of the Man of war, one a Brig from Ireland the other from Fayal [Fayal] loaded with wine Brandy and the other Beef &c. The wind was East and a flood tide, so that the tenders could not get out tho they tried several times, the Light house fired Signal guns, but all would not do, they took them in triumph and carried them into Lyn.

Johnny and Charls have the Mumps, a bad disorder, but they are not very bad. Pray be kind enough to remember me at all times and write as often as you possibly can to your

Portia³⁹

h. Commentary and Questions

1. *Revisit “By Submitting Sway”*: This letter arguably gives us more information than the others about the nature of Abigail's interest in her revolution. In contrast to the opening letter, she lectured her husband a bit. There is little obvious jesting in either her complaint that John was not “very generous to the Ladies” or her warning that “Arbitrary power is like most other things which are very hard, very liable to be broken * * * notwithstanding all your wise Laws and Maxims.” But this potentially severe tone was broken by two other parts of the letter. First, she opened with a paragraph of deep longing—a sad commentary about how deeply she misses “the Friend of my Heart.” While this might have been an effort to assuage any of John's hurt feelings, it surely had the effect of reassuring him of her deep love. And, second, later in the letter she agreed with John that his authority was subdued with “charm by accepting, by submitting sway.” Did she write with a sense of resignation as she enlarged the couplet beyond what she wrote in her letter to Warren by adding, “Yet have our Humour most when we obey”? Did Abigail, while believing deeply that family property laws and other rules of marriage were unfair, feel that explicit complaints about such things to her husband were too risky?

2. *Abigail Adams as Patriot*: This series of letters provides an interesting feel for Abigail as a patriot. Her pleas in the first letter for the men to quickly declare an “in-dependancy” must be taken quite seriously. How did she understand her own role in the emerging nation? Did she imagine herself as a political adviser? Was her vision limited to the domestic sphere? Was her willingness to discuss politics, war, important personages and affairs of the world a sign of things to come?

39. Abigail Adams to John Adams, May 7, 1776, *CORRESPONDENCE*, supra note 28 at 401–403.

3. *Adams to Sullivan*: The next and final letter produced here provides a fuller explication of John Adams' views on suffrage and gender. Does it suggest that Abigail could have taken more risks than she did in her correspondence with John?

i. Letter from John Adams to John Sullivan (May 26, 1776)

About two months after Abigail Adams penned the prior letter in which she advocated for "the Ladies," the "Independancy" she desired was declared in Philadelphia. But the members of the Continental Congress writing the Declaration of Independence⁴⁰ did not remember the ladies. The preamble's ringing proclamation that "all men are created equal" cannot be understood as encompassing women. Indeed, it did not even include "all" men. Universal male suffrage was not to be a routine feature of political life in the new republic.

John Adams, responding to a letter written by John Sullivan, a member of the provincial Congress of Massachusetts who advocated liberalization of property restrictions on male voting, described his reasons for favoring limited male suffrage and for denying women access to the ballot. It makes clear that his perhaps humorous response to Abigail's request to "remember the ladies" was grounded in his political philosophy.

Philadelphia, 26 May, 1776

Your favors of May 9th and 17th are now before me; and I consider them as the commencement of a correspondence which will not only give me pleasure, but may be of service to the public, as in my present station I stand in need of the best intelligence, and the advice of every gentleman of abilities and public principles in the colony which has seen fit to place me here.

Our worthy friend, Mr. Gerry, has put into my hands a letter from you, of the sixth of May, in which you consider the principles of representation and legislation, and give us hints of some alterations, which you seem to think necessary, in the qualification of voters.

I wish, Sir, I could possibly find time to accompany you, in your investigation of the principles upon which a representative assembly stands, and ought to stand, and in your examination whether the practice of our colony has been conformable to those principles. But, alas! Sir, my time is so incessantly engrossed by the business before me, that I cannot spare enough to go through so large a field; and as to books, it is not easy to obtain them here; nor could I find a moment to look into them, if I had them.

It is certain, in theory, that the only moral foundation of government is, the consent of the people. But to what an extent shall we carry this principle?

40. The opening section of the Declaration of Independence may be found *supra* at p. 4.

Shall we say that every individual of the community, old and young, male and female, as well as rich and poor, must consent, expressly, to every act of legislation? No, you will say, this is impossible. How, then, does the right arise in the majority to govern the minority, against their will? Whence arises the right of the men to govern the women, without their consent? Whence the right of the old to bind the young, without theirs?

But let us first suppose that the whole community, of every age, rank, sex, and condition, has a right to vote. This community is assembled. A motion is made, and carried by a majority of one voice. The minority will not agree to this. Whence arises the right of the majority to govern, and the obligation of the minority to obey?

From necessity, you will say, because there can be no other rule.

But why exclude women?

You will say, because their delicacy renders them unfit for practice and experience in the great businesses of life, and the hardy enterprises of war, as well as the arduous cares of state. Besides, their attention is so much engaged with the necessary nurture of their children, that nature has made them fittest for domestic cares. And children have not judgment or will of their own. True. But will not these reasons apply to others? Is it not equally true, that men in general, in every society, who are wholly destitute of property, are also too little acquainted with public affairs to form a right judgment, and too dependent upon other men to have a will of their own? If this is a fact, if you give to every man who has no property, a vote, will you not make a fine encouraging provision for corruption, by your fundamental law? Such is the frailty of the human heart, that very few men who have no property, have any judgment of their own. They talk and vote as they are directed by some man of property, who has attached their minds to his interest.

Upon my word, Sir, I have long thought an army a piece of clock-work, and to be governed only by principles and maxims, as fixed as any in mechanics; and, by all that I have read in the history of mankind, and in authors who have speculated upon society and government, I am much inclined to think a government must manage a society in the same manner; and that this is machinery too.

Harrington has shown that power always follows property. This I believe to be as infallible a maxim in politics, as that action and reaction are equal, as in mechanics. Nay, I believe we may advance one step farther, and affirm that the balance of power in a society, accompanies the balance of property in land. The only possible way, then of preserving the balance of power on the side of equal liberty and public virtue, is to make the acquisition of land easy to every member of society; to make a division of the land into small quantities, so that the multitude may be possessed of landed estates. If the multitude is possessed of the balance of real estate, the multitude will have

the balance of power, and in that case the multitude will take care of the liberty, virtue, and interest of the multitude, in all acts of government.

I believe these principles have been felt, if not understood, in the Massachusetts Bay, from the beginning; and therefore I should think that wisdom and policy would dictate in these times to be very cautious of making alterations. Our people have never been very rigid in scrutinizing into the qualifications of voters, and I presume they will not now begin to be so. But I would not advise them to make any alteration in the laws, at present, respecting the qualifications of voters.

Your idea that those laws which affect the lives and personal liberty of all, or which inflict corporal punishment, affect those who are not qualified to vote, as well as those who are, is just. But so they do women, as well as men; children, as well as adults. What reason should there be for excluding a man of twenty years eleven months and twenty-seven days old, from a vote, when you admit one who is twenty-one? The reason is, you must fix upon some period of life, when the understanding and will of men in general, is fit to be trusted by the public. Will not the same reason justify the state in fixing upon some certain quantity of property, as a qualification?

The same reasoning which will induce you to admit all men who have no property, to vote, with those who have, for those laws which affect the person, will prove that you ought to admit women and children; for, generally speaking, women and children have as good judgments, and as independent minds, as those men who are wholly destitute of property; these last being to all intents and purposes as much dependent on others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children upon their parents.

As to your idea of proportioning the votes of men, in money matters, to the property they hold, it is utterly impracticable. There is no possible way of ascertaining, at any one time, how much every man in a community is worth; and if there was, so fluctuating is trade and property, that this state of it would change in half an hour. The property of the whole community is shifting every hour, and no record can be kept of the changes.

Society can be governed only by general rules. Government cannot accommodate itself to every particular case as it happens, or to the circumstances of particular persons. It must establish general comprehensive regulations for cases and persons. The only question is, which general rule will accommodate most cases and most persons.

Depend upon it, Sir, it is dangerous to open so fruitful a source of controversy and altercation as would be opened by attempting to alter the qualifications of voters; there will be no end of it. New claims will arise; women will demand a vote; lads from twelve to twenty-one will think their rights not enough attended to; and every man who has not a farthing, will demand

an equal voice with any other, in all acts of state. It tends to confound and destroy all distinctions, and prostrate all ranks to one common level.⁴¹

j. Commentary and Questions

1. *Women's Legal History and Notions of Dependency*: The republican idea in Adams' letter that property ownership and political competence were intimately linked provides clues about the path the legal history of women would follow in the early nineteenth century. First, the linkage between wealth and political participation makes it easier to understand why reform of property and contract laws was high on the agenda of the women's movement that emerged in the 1830s and 1840s. Amelioration of the harshest of the legal rules was necessary not only to allow women to participate in the commercial world on their own terms, but also to provide them with the cultural attributes necessary for participation in governance. In the absence of property ownership, women would continue to be treated as dependent souls. Second, broadening suffrage to include all men by breaking down the links between property ownership and voting rights had to happen before suffrage for women would be seriously considered. Even if property ownership was no longer a prerequisite to voting, it still was deeply embedded in cultural notions of dependence. Women had to be able to make claims about both the right to own property and to manage the assets of others. Third, the critical links between notions of dependency and political competence make study of the family central to any inquiry into the legal status of women in the nineteenth century. Finally, before fundamental changes in legal norms about property, contracts, participation in governance or family could occur, cultural barriers to women publicly voicing their aims had to fall. Do you have any hypothesis about how women acquired a public voice? Remember that the subject matter of the Adams' correspondence was not part of widespread *public* discourse across gender lines during the Revolutionary War period.

2. *Dependence and Male Suffrage*: White male suffrage was significantly broadened during the first half of the nineteenth century. Most property restrictions disappeared, to be replaced by requirements that men be taxpayers, leaseholders or wage earners. A source of support other than ownership of the soil came to suffice as a foundation for independent thinking. This left only the paupers among white men without the franchise. In order for these changes to occur, Adams' focus on ownership of land as the *sine qua non* of political independence had to be modified. Robert Steinfeld described how that happened. Most early suffrage reformers, he wrote,

did not dispute that only property ownership conferred real independence on a man. And most also agreed that the dependent should not be permitted to participate in the self-governing people, even under broadened suffrage. As a result, when they argued for a broadened suffrage, reformers were faced with the task of reconciling underlying beliefs which appeared flatly contra-

41. John Adams to James Sullivan, IX THE WORKS OF JOHN ADAMS 375–378 (Charles Francis Adams, ed. 1856).

dictory. In order to do so, they had to offer a way of thinking about independence which did not turn on property ownership, but which recognized the indisputable fact that property ownership did bring power, and did confer a degree of personal independence.

* * * *

The suffrage reformers * * * justified the continued exclusion of so many from the franchise on the basis of natural or individual capacity. This preserved the idea that only the self-governing were entitled to participate in politics, but it added a new twist. Dependence was no longer associated with propertylessness, but dictated by nature and character and embodied in legal relationships of dependence, like husband and wife, parent and child, and pauper and town. The law of nature guaranteed the suffrage to all, reformers urged; “unless it be those on whom the same natural law has pronounced judgment of disability, or those who have forfeited it by crime and profligacy.”

* * * *

In other words, the real question in separating the self-governing from the dependent should be whether a man had the legal right to dispose of himself or whether that right of control lay in another.⁴²

The early nineteenth century suffrage reforms, of course, still left women defined as dependent and therefore ineligible for the franchise. This outcome makes New Jersey’s brief dalliance with women’s suffrage, taken up later in these materials, all the more remarkable and its demise easy to understand. The general assumption was that voting women, particularly married women, would vote the preferences of others. The coexistence of fraud and open suffrage in Essex County in 1807 only confirmed the truthfulness of John Adams’ warning that all but propertied men were “too dependent upon other men to have a will of their own.” It would be more than a century before women’s will was deemed independent enough to warrant granting them the ballot.

3. *The Life of Abigail Adams*: The Adams correspondence tells us much about the life of Abigail Adams. She was busy coping not only with the British invasion of Boston and the completion of tasks typically performed by husbands whenever John was absent, but also with the more common vexations of surviving in late eighteenth century America. Making or obtaining cloth, producing clothing, harvesting crops, maintaining a household, and educating children took enormous amounts of time and energy. The letters also contain many references to the perilous nature of life itself—disease, death, and infant mortality. It is difficult to imagine what daily life was like over two hundred years ago. But the impact of tragic events on the lives of women and men of Adams’ time must have been large.

42. Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 STAN. L. REV. 335, 353, 357, 360 (1989). Republished with permission of Stanford Law Review as conveyed through the Copyright Clearance Center.

Birth rates, infant mortality rates and maternal mortality rates were very high. Life expectancy was low. In 1800, there were 278 live births for every 1000 white women of childbearing age. In contrast, the 1990 rate for white women had fallen to 66.9 and for black women to 91.9.⁴³ Early in the twentieth century, crude measures placed fetal mortality rates at about 40 per 1000 live births.⁴⁴ Even if this rate was only slightly higher in 1800, it means that about one-third of all white women of child bearing age were pregnant each year during our early history.⁴⁵ Infant mortality in Massachusetts averaged 127 deaths per 1000 live births during the 1850s.⁴⁶ There is no reason to believe that number was any lower in 1800. Most families either experienced or knew of other families who experienced the death of an infant. Strolling through a New England cemetery with plots dating back to the seventeenth and early eighteenth centuries is a revelation. The number of graves of little children is stunning.⁴⁷ Early in the twentieth century, maternal mortality rates for white women were about 60 per 10,000 live births and 110 for non-white women. The comparable rates in 1990 were .54 and 1.9.⁴⁸ If a typical white woman had six pregnancies, then the likelihood of death from complications of pregnancy and birth was about 360 per 10,000, or about 4%. It is not unreasonable to suggest that a century before, at least one out of every twenty married women died in childbirth. In 1850, an average white man born in Massachusetts could expect to live only about 38 years, an average woman about 40.⁴⁹ The sadness in some of Abigail Adams’ letters reflected the pervasiveness of death in early America.

Despite the grim statistics on infant mortality, families were large. Average household size in 1790 was 5.79.⁵⁰ Over one-third of all households had 7 or more persons.⁵¹ These figures include household residents who were not members of the immediate family, such as boarders or apprentices. But whether a person was related or not, her or his presence meant there was work to be done. The large household size and lack of labor saving devices made routine tasks time consuming and arduous. Abigail Adams had a busier life than many of her peers, but running a household was an all-consuming occupation for all family women. Was the invention of labor saving devices for the home a prerequisite to women becoming full political citizens?⁵² Was reduction in the birth rate? Greater longevity?

43. UNITED STATES BUREAU OF THE CENSUS, *THE STATISTICAL HISTORY OF THE UNITED STATES FROM COLONIAL TIMES TO THE PRESENT* 49 (1976); UNITED STATES BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 1994, at 78 (1994). Child bearing ages are 15–44 years old.

44. *STATISTICAL HISTORY*, supra note 43, at 57. The rate for non-whites was approximately 75.

45. 278 live births plus 40 fetal deaths equals 318 pregnancies per 1000 women.

46. *STATISTICAL HISTORY*, supra note 43, at 57.

47. I have taken such strolls through cemeteries in Massachusetts. It is a sobering reminder of the ways our perceptions about being able to control our health are historically new.

48. *STATISTICAL HISTORY*, supra note 43, at 57; *STATISTICAL ABSTRACT*, supra note 43, at 91.

49. *STATISTICAL HISTORY*, supra note 43, at 56.

50. *Id.* at 41.

51. *Id.* at 42.

52. If you are interested in the relationships between technology, family and gender, read the wonderful book SUSAN STRASSER, *NEVER DONE: A HISTORY OF AMERICAN HOUSEWORK* (1982).

4. *Speaking of Rebellions!*: Would Abigail Adams have been upset by the result in *Martin v. Commonwealth of Massachusetts* that you will read next? If so, do you ascribe that to her patriotic opposition to returning property seized from a Tory or to her vision of women's roles in society?

5. *The Constitution of 1789*: Those drafting the Constitution did not remember the ladies any more than those writing the Declaration of Independence. If Mary Wollstonecraft, Catharine Macaulay and Abigail Adams had been allowed to sit in the Convention drafting the Constitution and the Bill of Rights, what terms might they have sought to add or delete from the document? What would have been the "code of laws" Abigail wrote about in her first letter to John?

In considering this question, note that most historians now agree that the civic republican vision of many of the founders did not control most of the central features of the Constitution of 1789. Rather than trusting in the ability of responsible citizens to directly elect a parliament to govern in the best interests of the republic, the drafters of the Constitution created a structure with many checks and balances. Fears that individual self interest, group power, class antagonism and thoughtless momentary hysteria would control decision-making led to a charter favoring the ruling elites and creating a number of hurdles to the speedy adoption and enforcement of laws.⁵³ Would women have operated on a different set of assumptions? Even if women of Adams' time were as self-interested as men, would men have assumed that to be so? Would women have crafted a different governing structure?

C. Property and Citizenship: The Status of Women During and After the Revolutionary War

As the Adams correspondence indicates, the structure of citizenship in our late colonial and early national history was heavily influenced by gender. Though women were citizens they were almost completely barred from participation in both the civil legal system and the political process.⁵⁴ Indeed, as the story of Anna Martin that unfolds below suggests, the national status of wives was sometimes dependent upon the actions of their husbands.

In 1801, James Martin sued to recover land that had been taken by the State of Massachusetts and sold at auction in 1781 after his parents, William and Anna Martin, sided with the British during the Revolutionary War. The Martins owned a substantial amount of land, including 844 acres outside of Boston, and a large house with out-

53. See, e.g., GERALD STOURZH, *ALEXANDER HAMILTON AND THE IDEA OF REPUBLICAN GOVERNMENT* (1970); Stanley N. Katz, *Thomas Jefferson and the Right to Property in Revolutionary America*, 19 J. L. & ECON. 467 (1976).

54. The only significant exception to the all male quality of suffrage in our early national history arose in New Jersey in the years surrounding the turn of the nineteenth century. That story is taken up in the next section of this chapter, beginning at p. 37.

buildings on Boston Harbor.⁵⁵ These assets were left to Anna Martin in 1770 when her father, James Gordon, died and left her a third of his estate. Though the land was titled in Anna's name, common law rules of coverture⁵⁶ gave her husband the right to manage and control the assets during his life. If she survived him, the land was returned to her. The impact of the husbandly management rights became the focus of James Martin's post-war attack on the seizure of his mother's estate by Massachusetts. The case became an important test of the nature of women's citizenship and civil legal status at the turn of the nineteenth century.

1. Opinions of the Massachusetts Supreme Court in *Martin v. Commonwealth of Massachusetts*

Martin v. Commonwealth of Massachusetts

1 Mass. 347 (1805)

Sedgwick, J. The plaintiff in error alleges that he is the son and heir of *Anna Martin* the wife of *William Martin* * * * which fact is, by the pleadings, admitted. This libel is founded on the act of the legislature passed on the 30th day of *April* 1779. The libel was made, by the *then* Attorney-General, (a) to the court of common pleas, * * * holden in this county on the second *Tuesday of July*, 1781 — from thence it was continued to the *October* term of the same court in the same year, when, upon proclamations being made, as required by the statute, and no person appearing to defend against the libel, a default was entered and judgment was rendered that the described premises escheat to the State.

* * *

The present United States, which had been previously, the acknowledged colonies of *Great-Britain*, on the 4th of *July* 1776, by their representatives, declared themselves independent of the mother-country; and justified themselves by certain acts of aggression and oppression which were deemed proper to be proclaimed and explained to the world. The constituents of those representatives adopted their sentiments and undertook to assert and support their new situation. In this new and untried assumption, the Attorney General, with sentiments which are equally just and liberal, admits the right of each individual to consult his own conscience in deciding on the past which it was his duty to adopt. While those generous spirits who united in defending, at every risk, the liberties and independence of their country were in the opinion of their fellow citizens entitled to deserved applause, those who from timidity, or doubt, or principles of duty and conscience adhered to their former allegiance were guilty of no crime, for which a punishment could be justly inflicted; and if from such opinions and impressions they withdrew from the country, all the evils to which

55. LINDA KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* 6 (1998). The first chapter of Kerber's wonderful book tells the story of the *Martin* litigation in some detail.

56. The nature of these coverture rules is the subject of the next chapter.

they could justly be subjected would be complete dissolution of their connexion with the country from which they voluntarily withdrew, and the natural consequences thereof. They could not be punished for treason, for they never had united with the new independent society. They had created no new allegiance, for it would be inconsistent with that to which they had a right to adhere. They had an election, and this was to be determined by their own opinions of interest and duty. If they chose to unite with the majority they became subject to the laws, and were bound to obedience. If they elected to withdraw; the support of the conflict, in which we were engaged, required that they should be permitted to do nothing which would weaken our means of defence. If they *did* withdraw they abandoned whatever might be made the means of the defence of the country—and especially such property as might aid in that defence. Roused as the public mind then was, and engaged in a contest, on the issue of which depended every thing dear and valuable in life, it is not strange that those who refused to assist in the conflict and voluntarily abandoned their country, at a time of its utmost need, should be deemed *offenders*. But the crimes of which they were guilty were not punishable further than resulted inevitably from the nature of the subject—the loss of the property which they abandoned, and which, as I think I may with some degree of propriety express it, they had staked on the issue of the contest. On these principles was the law, under consideration, made. By the withdrawing of the proprietor the property left behind was derelict—it might not be converted by the owner into means of offence—it might justly be seized by the community for its own defence and security. That this was the light in which the description of persons called *absentees* were viewed by the legislature, is clear to my mind from the consideration that the *acts*, for which death was to be inflicted, if performed by those from whom allegiance was due, had, in *their* cases, no punishment provided for them; and that on their departure from the country, for the purposes declared in the law, they were thereby debarred from becoming thereafter connected with this society.—Yet although it was admitted, by inevitable implication, that they had committed no crime for which it was intended that a punishment should, or supposed that it ought to be inflicted, it is most manifest, from the whole purview of the laws on this subject, that they were far from being considered as absolutely innocent—they were contemplated as “evilily disposed and regardless of their duty towards their country,” *then* invaded by an enemy endeavouring the destruction of its independence.

The *act of the 30th of April 1779*, after a preamble of some length, in which the legislature make an exposition of their opinions as far as to them seemed necessary to justify their proceedings towards those whose conduct they afterwards define, goes on to describe the several acts for which they say, in the conclusion of the *first sect*, that the persons who perform those acts, respectively,

Shall be held, taken, deemed and adjudged to have freely renounced all civil and political relation to each and every of the United States, and be considered as an alien.

The court below, to whom jurisdiction was given, have adjudged the ancestor, the mother of the plaintiff in error, to have performed all the acts, except one, which are specified by the statute, for which she was to be “deemed and considered as an alien,” and for which, by the *second sect.* her estate was to “enure and accrue to the sole use and benefit” of the State.

* * *

By the record before us it appears that *William Martin* and *Anna Martin*, the father and mother of the plaintiff in error, are *jointly* charged with the several acts which are alleged in the libel of the Attorney-General as incurring the forfeiture for which he sued—that, since the 19th day of *April 1775*, they had levied war and conspired to levy war against the provinces, or colonies, or United States: that they had adhered to the king of *Great Britain* his fleets and armies and had given to them aid and comfort; that since that time they had, without the permission of the legislative or executive authority of any of the United States, withdrawn themselves therefrom into parts and places under the acknowledged authority of the king of *Great Britain*—all these are charged as done jointly by the husband and wife—and we are called upon, by matter apparent on the record and by one of the errors expressly assigned, to say whether a *feme-covert* for *any* of these acts, *performed with her husband*, is within the intention of the statute: and I think that she is not. In construing statutes the great object is to discover from the words, the subject-matter, the mischiefs contemplated and the remedies proposed, what was the true meaning and design of the legislature. In the relation of husband and wife the law makes, in her behalf, such an allowance for the authority of the husband and her duty of obedience, that guilt is not imputed to *her* for actions performed jointly by them, unless of the most heinous and aggravated nature. For instance—the law says, whoever steals shall be punished, and yet if the wife participates in a theft with her husband she is not punishable. Innumerable other instances might be given. She is exempted from punishment, not because she is not within the letter of the law if she had sufficient will to be considered as acting voluntarily and as a moral agent but, because she is viewed in such a state of subjection and so under the control of her husband that she acts merely as his instrument, and that no guilt is imputable to her. Compare this with the case under consideration. In a case of great political interest, in which men of great powers and equal integrity, as is said by the Attorney-General, divided; and where a *feme-covert* is not expressly included, shall we suppose her to be so by general words? Can we believe that a wife for so respecting the understanding of her husband as to submit her own opinions to his, on a subject so all-important as this, should lose her own property and forfeit the inheritance of her children? Was she to be considered as criminal because she permitted her husband to elect his own and her place of residence? Because she did not, in violation of her marriage vows, rebel against the will of her husband? So hard and cruel a construction, against the general and known principles of law on this subject, could be justified by none but strong and unequivocal expressions. So far is this from being the case in this statute, that it seems to me there are no words by which it can fairly be understood that such was the intention of the legislature—but

the contrary. The preamble of the statute described the persons whom it intended to bring within it. It is that member who “withdraws himself from the jurisdiction of the government and thereby deprives it of the benefit of his personal services.” A wife who left the country in the company of her husband did not *withdraw* herself—but was, if I may so express it, withdrawn by him. She did not deprive the government of the benefit of her personal services—she had none to render—none were exacted of her. “The member who so withdraws, incurs,” says the preamble, “The forfeiture of all his property, rights and liberties holden under and derived from that constitution of government, to the support of which he has refused to afford his aid and assistance.” Can any one believe it was intention of the legislature to demand of *femes-covert* their aid and assistance in the support of their constitution of government? The preamble then goes on to particularize the violation of our rights of our former sovereign, and proceeds to declare that it thereupon

became the indispensable duty of all the *people* of said states forthwith to unite in defence of their common freedom, and *by arms* to oppose the fleets and armies of the said King; yet, nevertheless, divers of the *members* of this, and of the other United States of *America*, evilly disposed or regardless of their duty towards their country did withdraw themselves, &c.

Now it is unquestionably true that the *members* here spoken of as “evilily disposed” are included in the *people* above-mentioned. What then was the duty of these evilily disposed persons, for a violation of which they were to be cut off from the community to which they had belonged, and rendered aliens to it? It was “to unite in defence of their common freedom and *by arms* to oppose” an invading enemy. And can it be supposed to have been the intention of the legislature to exact the performance of this duty from *wives* in opposition to the will and command of their husbands? Can it be believed that an humane and just legislature ever intended that wives should be subjected to the horrid alternative of, either on the one hand, separating from their husbands and disobeying them, or, on the other, of sacrificing their property? It is impossible for me to suppose that such was ever their intention. The conclusion of the preamble speaks of those who withdrew as thereby “aiding or giving encouragement and countenance to the operations” of the enemy. Were *femes-covert*, accompanying their husbands, thus considered by the legislature? I believe not. So far from believing that *wives* are within the statute, for any acts by them done jointly with their husbands, that a fair construction of the whole *act* together does, to my judgment, clearly exclude them. And I do not discern that the 7th *sect.* which has been cited to prove that *femes-covert*, for withdrawing with their husbands, were within the act, has the least tendency to that purpose.—This *sect.* does not contemplate those who withdrew with their husbands, but those who staid behind. The provision which it makes for them is not from their own estates, but from those of their husbands. And I cannot perceive that any inference is to be drawn from the one case which tends to illustrate the other. On the whole I am clearly of opinion that for this error the judgment must be reversed.

[Following the English custom of each judge stating their view when deciding cases, Judges Strong and Dana also wrote opinions. They both agreed with the stance of Judge Sedgwick. Their opinions have not been reproduced.]

2. Commentary and Questions

1. *Citizenship*: The statute at issue in *Martin* provided that a person who abandoned the United States and went to England “renounced all civil and political relation to each and every of the United States, and [was to] be considered an alien.” It is hard to imagine a clearer statement about citizenship. William Martin’s decision to go to England during the Revolutionary War resulted in his becoming an alien—a foreigner. He chose England over the fledgling United States and citizenship rules abided his election. The choices confronting Anna Martin were said to be dramatically different. She, the court opined, was forced to chose between the United States and her husband. “Was she to be considered as criminal because * * * she did not, in violation of her marriage vows, rebel against the will of her husband?” Judge Sedgwick asked. “Can it be believed that an humane and just legislature ever intended that wives should be subjected to the horrid alternative of, either * * * separating from their husbands and disobeying them, or * * * of sacrificing their property?” What does the gendered structure of the questions posed in this case tell you about the concept of citizenship at the turn of the nineteenth century? Can you define the variations of citizenship held by single women, married women, single men, and married men? Would the legal status and citizenship of a single woman have changed during the era giving rise to the *Martin* case if she moved to England?

2. *Wives and “Settlements”*: The court in *Martin* claimed that a wife who left Revolutionary America with her husband “did not *withdraw* herself—but was * * * withdrawn by him.” It was a commonplace of late eighteenth century law that the residence of her husband determined the residence of a married woman. She was duty bound to follow him about. A married woman who refused to move west when her husband went to settle on the frontier, for example, lost her right to claim support from both her spouse and her government.⁵⁷ Her breach of the rules of marital governance made her a civil pariah. While most states imposed a (difficult to enforce) duty of support upon husbands who abandoned their wives, the reciprocal rule left wives without any means of support when they “abandoned” their husbands by refusing to accept the latters’ choices of residence. Even the welfare apparatus—then in the form of poor laws—was governed by the same principle. For a woman could only receive assistance from the local government where she had a settlement. The residence of her husband determined the location of that settlement. Do these rules mesh well with the provision in the Massachusetts statute providing for protecting the property of married women who refused to follow their husbands to England during the Rev-

57. See, e.g., the provisions of the Massachusetts Poor Law of 1793, in Kunal M. Parker, *State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts*, 19 *L. & Hist. Rev.* 583, 642 (2001).

olutionary War? The court described the 7th section of the statute, noted at p. 35, as one that protected the economic interests of wives “withdrawing” from their husbands. Is it fair to say that the court effectively declared wives to be citizens of the United States regardless of whether they followed their husbands to England or stayed here? Does that outcome mesh with the declarations about wifely duty enunciated by both the court and the poor laws? Was the citizenship status of wives manipulated to serve a variety of political and cultural interests?

3. *Women and Property*: Anna Martin was said to be a *feme covert*—a woman “covered” by marriage and “protected” by her husband. That status,⁵⁸ which will be studied in detail in the next chapter, carried a number of very important consequences. In *Martin*, the wifely duty of obedience led the court to note that married women were not responsible for all of their actions, including some criminal behavior undertaken in the presence of their husbands. Coverture also meant that wives were obligated to follow their husbands’ preferences in the management of property, including assets owned by wives. How can these sorts of rules be reconciled with the actual result in the case? When William Martin elected to go to England, that decision was made with knowledge of the risk that the family’s property would be lost. Why didn’t that “management” decision bind Anna Martin? Note that when a husband died, his widow regained the right to control any land she owned during her marriage. Did the *Martin* court, in essence, conclude that loss of citizenship is analogous to death, providing ample basis for returning management and control rights to a married woman? Or was the court declaring that Massachusetts could seize only the husband’s lifetime management rights, but not the remaining interests in the property? There was, of course, no small amount of irony in the conclusion that a woman who declined to follow her husband to England retained property management rights to the same degree as a woman married to a malefactor who fled the realm.

4. *Dependency*: Can a person who is wholly dependent on another person be an effective citizen of a democracy? Presuming that a married woman should act independently of her husband, Judge Sedgwick argued, was a “hard and cruel” construction, contrary to “general and known principles of law on this subject.” What was the structure of wifely dependence created by this decision? Were women thought of as political creatures incapable of exercising independent judgment? Create a list of the characteristics that a person must be thought to have before American culture at the turn of the nineteenth century would allow her or him to fully participate in the political and legal process. Think about how single women might fit into your structure of characteristics? How did Abigail Adams fit into the image of women described in the *Martin* opinion?

58. The word “status” carries much weight here. It describes a situation when the law attaches a set of automatic consequences to the existence of a state of affairs. These consequences are often not alterable by contract or waivable by the parties. There are a number of status relationships in addition to marriage. That of parent and child is most closely related to the rules governing spouses.

D. The Brief History of Woman Suffrage in New Jersey after the Revolutionary War

1. The Story

We know that women voted in New Jersey between the 1780s and 1807, that women appeared on at least one list of electors in 1787,⁵⁹ and that the state legislature explicitly sanctioned their voting in 1790.⁶⁰ The brief era of women’s suffrage ended after the 1807 election. Ten years earlier, John Condict, a Newark Republican, and William Crane, an Elizabethtown Federalist, were candidates for a seat in the state legislature from Essex County. In a last minute effort to sway the outcome of what was predicted to be a close election, Crane’s campaign mobilized a group of women to vote just before the polls closed.⁶¹ Condict won a narrow victory, but didn’t forget Crane’s tactics. In 1807 Condict shepherded the following act through the state legislature:

WHEREAS doubts have been raised, and great diversities in practice obtained throughout the state in regard to the admission of *aliens, females*, and *persons of color*, or *negroes* to vote in elections, as also in regard to the mode of ascertaining the qualifications of voters in respect to *estate*.—AND WHEREAS, it is highly necessary to the safety, quiet, good order and dignity of the state, to clear up the said doubts by an act of the representatives of

59. See NORTON, *supra* note 30 at 191–193. Two women, Iona Curtis and Silveria Lilvey, appeared on the voting lists in Burlington County as early as 1787, but no one knows if they voted. RICHARD P. MCCORMICK, *THE HISTORY OF VOTING IN NEW JERSEY: A STUDY OF THE DEVELOPMENT OF ELECTION MACHINERY 1664–1911*, at 78 (1953).

60. Sec. 11 of An Act to Regulate the Election of Members of the Legislative-Council and General Assembly, Sheriffs and Coroners, in the Counties of Bergen, Monmouth, Burlington, Gloucester, Salem, Hunterdon and Sussex, Acts of the Fifteenth General Assembly of the State of New Jersey, ch. CCCXXII, at 672–673 (Nov. 18, 1790), provided:

And be it further Enacted, That all free Inhabitants of this State of full Age, and who are worth Fifty Pounds Proclamation Money clear Estate in the same, and have resided within the County in which they claim a Vote, for twelve Months immediately preceding the Election, shall be entitled to vote for all public Officers which shall be elected by Virtue of this Act; and no Person shall be entitled to vote in any other Township or Precinct, than that in which *he or she* doth actually reside at the Time of the Election; and no Person who shall be convicted of Treason against this State or the United States, or any of them, shall be entitled to vote at any such Election. [Emphasis added.]

The terms of this statute were extended to Essex County in 1796 and to the entire state in 1797.

61. The story is told in several places. The best work by far is Judith Apter Klinghoffer & Lois Elkins, “The Petticoat Electors”: *Women’s Suffrage in New Jersey, 1776–1807*, 12 J. OF THE EARLY REPUBLIC 159 (1992). See also Zagarrì, *supra* note 12, at 30–37; J. R. Pole, *The Suffrage in New Jersey 1790–1807*, 71 PROCEEDINGS OF THE NEW JERSEY HISTORICAL SOCIETY 39, 53 (1953); Mary Philbrook, *Women’s Suffrage in New Jersey Prior to 1807*, 57 PROCEEDINGS OF THE NEW JERSEY HISTORICAL SOCIETY 87, 90 (1939); Edward R. Turner, *Women’s Suffrage in New Jersey 1790–1807*, 1 SMITH COLLEGE STUDIES IN HISTORY 165, 170 (1916); William Whitehead, *A Brief Statement of the Facts Connected with the Origin, Practice and Prohibition of Female Suffrage in New Jersey*, 8 PROCEEDINGS OF THE NEW JERSEY HISTORICAL SOCIETY 100, 103 (1859).

the people, declaratory of the true sense and meaning of the constitution, and to ensure its just execution in these particulars, according to the intent of the framers thereof;—THEREFORE,

SEC. 1. BE IT ENACTED, *by the council and general assembly of this state, and it is hereby enacted by the authority of the same*, That from and after the passing of this act, no person shall vote in any state or county election for officers in the government of the United States, or of this state, unless such person be a *free, white, male citizen* of this state, of the age of twenty-one years, worth fifty pounds proclamation money, clear estate,⁶² and have resided in the county where he claims a vote, for at least twelve months immediately preceding the election.

2. *And be it enacted*, That in order to establish an uniform practice throughout the state, and to avoid all questions in regard to the qualification of the voter as to estate, as aforesaid, every person in other respects entitled to a vote, who shall have paid a tax for the use of the county, or support of the state government, and whose name shall be enrolled on any duplicate list of the last state or county tax, shall be adjudged by the officers conducting the election to be worth fifty pounds clear estate, and entitled to vote for all officers of government chosen by the people at large.⁶³

* * * *⁶⁴

The roots of New Jersey's brief experience with women's suffrage are obscure. The 1709 colonial charter of New Jersey, which remained in effect until the end of the colonial period, confined the privilege of voting to "male freeholders having 100 acres of land in their own right, or £50 current money of the province in real and personal estate." But the state constitution drafted between May 26, 1776, and July 2, 1776, by the Provincial Congress of New Jersey, removed the requirement that a voter be a "freeholder"⁶⁵ and contained no language specifying the gender or race of voters. The state's first charter provided:

That all Inhabitants of this colony, of full age, who are worth fifty pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding

62. "Proclamation money" referred to a value placed upon various forms of coinage circulating in the colonies and, after 1776, the states of the new republic. The values were determined by proclamation of the Board of Trade before independence and various local authorities thereafter. WILLIAM S. POWELL, *NORTH CAROLINA THROUGH FOUR CENTURIES* 89 (1989); E. JAMES FERGUSON, *THE POWER OF THE PURSE: A HISTORY OF AMERICAN PUBLIC FINANCE, 1776–1790*, at 4 (1961). "Clear estate" probably means unencumbered by debt.

63. A Supplement to the act entitled "An act to regulate the election of members of the legislative council and general assembly, sheriffs and coroners in this state," passed at Trenton the twenty-second day of February, one thousand seven hundred and ninety seven, Acts of the Thirty-Second General Assembly of the State of New Jersey, ch. II, at 14 (Nov. 16, 1807).

64. The rest of the act deals with other matters, such as determining when a voter reaches the age of majority, enforcing the residency requirement, and preventing election fraud.

65. To be a "freeholder" a man must own land.

the election, shall be entitled to vote for Representatives in the Council and Assembly; and also for all other public officers, that shall be elected by the people of the country at large.⁶⁶

The intended meaning of "all Inhabitants" worth fifty pounds is unclear, though it is unlikely those drafting the language intended to rid state law of gendered limits on suffrage. The New Jersey Provincial Congress met "in secret, and very scanty records have been preserved."⁶⁷ There is evidence that the Provincial Congress was responding to pressure to extend male suffrage generally to non-landowners. The gathering received a number of petitions to liberalize voting rules and, in February of 1776, created a committee to draft an ordinance to extend suffrage to "every person" of full age residing in the state for one year and worth fifty pounds.⁶⁸ A few months later this concept found its way into the new state constitution. Once adopted, it had a significant impact on male voting patterns, not least because the fifty pounds limitation lost much of its exclusionary effect during the inflationary years following the Revolutionary War. Additional reforms in 1797 required the operation of polling locations in all townships, rather than just at county courthouses, and further loosened the property restrictions. By 1800, more than two-thirds of adult white males voted in elections.⁶⁹

Most commentators doubt that the gender neutrality of the voting provision in the New Jersey constitution was designed to grant women suffrage.⁷⁰ Nor is there any evidence that women actively lobbied for access to the ballot.⁷¹ But there is growing evidence that the equality rhetoric of the Enlightenment led to discussion if not easing of racial and property voting limitations in many jurisdictions during the Revolutionary War period, that political activity by women was encouraged in a variety of ways during and after the Revolutionary War in a number of areas including New Jersey, and that New Jersey's politicians sought the votes of women as well as men after hostilities ended.⁷² By 1790 there certainly were men pressing for women's suffrage—an undertaking made possible by the open ended quality of the state's constitutional suffrage language. A revised election law passed that year referred to voters as "he or she."⁷³ That usage continued as the election laws were further modified in 1797.⁷⁴ Quakers, who had opposed slavery and allowed women to participate freely

66. Sec. IV, New Jersey Constitution (1776). The story of voting through the colonial period in New Jersey is told in detail in MCCORMICK, *supra* note 59.

67. Turner, *supra* note 61, at 166.

68. *Id.* at 167.

69. Pole, *supra* note 61, at 39–45.

70. See, e.g., NORRON, *supra* note 30 at 191–193.

71. See, e.g., NORRON, *supra* note 30 at 191–193; Pole, *supra* note 61, at 52.

72. Klinghoffer & Elkins, *supra* note 61, at 173–180.

73. The act is reproduced *supra* note 60.

74. An Act to regulate the Election of Members of the Legislative-Council and General Assembly, Sheriffs and Coroners in this State, Acts of the Twenty First General Assembly of the State of New Jersey, ch. DCXXXIV, at 171 (Feb. 22, 1797).

in their religious meetings for some time, are thought to have supported adoption of the rules allowing women to vote. Joseph Cooper, a prominent member of the Society of Friends, proposed the suffrage language in the 1790 election law.⁷⁵ Cooper's motivations may have been political rather than religious. The areas of the state with Quaker settlements were more conservative and Federalist than the rest of New Jersey. The provisions allowing town voting in the 1790 act applied only in the six counties with large Quaker populations. Perhaps Cooper wanted women to vote to offset the rising population in the more urbanized areas in Essex County.⁷⁶ In any case, the 1790 election law apparently was uncontroversial. It passed both houses of the General Assembly by wide margins.⁷⁷

Though women were explicitly granted voting privileges in 1790, there is scant evidence of significant numbers of women voting until the Condict-Crane election of 1797.⁷⁸ That year also marked legislative extension of township voting to all counties in the state, making it easier for women to vote in all areas, not just those dominated by the Federalists.⁷⁹ Crane's attempt to mobilize women to vote for him was widely reported in the newspapers. Despite the lack of major controversy in the legislature when women's suffrage was expressly recognized in 1790, some of the newspaper commentary after the 1797 election suggests that women's suffrage was hardly looked on favorably by everyone.⁸⁰ The following tongue-in-cheek article appeared in the October 18, 1797, edition of the *Centinel of Freedom*, published in Newark.⁸¹

Too much credit cannot be given to the *Federal* ladies of Elizabeth, for the heroic virtue displayed on Wednesday last in gallantly advancing in a body to the poll to support their favorite candidates. It is a pity that this singular instance of female patriotism should be attended with any ill consequences, but it is said that the husbands and sweethearts of these heroines begin to suspect that some motive other than a love of the federal cause excited the enterprize. It is to be hoped, that this suspicion will not create a resentment that will reach the honorable candidates, who were highly flattered by this Amazonic exercise; and Fortune must be a malicious tide indeed, after all to render it unsuccessful. The *exclusive patriots* had for some days discovered symptoms of deep distress, but at 12 on Wednesday approaching Labour was

75. Whitehead, supra note 61, at 102, wrote that Cooper made the proposal. McCormick, supra note 59, at 93, urges caution, however, since Cooper, though a member of the assembly, was not on the committee that proposed the legislation.

76. NEALE MCGOLDRICK & MARGARET CROCCO, *RECLAIMING LOST GROUND: THE STRUGGLE FOR WOMAN SUFFRAGE IN NEW JERSEY 2* (1993).

77. Philbrook, supra note 61, at 89.

78. Some women were registered to vote. See supra note 59. It is therefore plausible that the 1790 legislation simply codified an extant practice. But we can't be sure.

79. Klinghoffer & Lois Elkins, supra note 61, at 175.

80. The examples of caustic humor used here were not unusual. For additional samples, see Zagarri, supra note 12, at 33–36.

81. Items also appeared in the *New Jersey Journal* (October 18, 1797) [Elizabethtown] and the *State Gazette* (October 24, 1797) [Trenton].

evident to the most careless observer. The alacrity with which the matrons, and even maids, assembled, afforded a transient prospect of immediate relief; but, horrible reverse! aristocratic imbecility gave way to republican vigour, and the hope of the aspiring family was strangled in embryo—the abortion took place on Saturday, at 3 o'clock, P.M. amidst the sighs and groans of the disconsolate friends of *good order* and *good government*.

This item was followed by another equally sarcastic note:

A Correspondent remarks, notwithstanding the imputation of aristocracy under which Essex county has for a long time laboured, it must now appear incontestably that they are the friends and persons of *Equality*, since no less than seventy-five women were *polled* at the late election in a neighboring borough. The *Rights of Man* have been warmly insisted on by Tom Paine and other democrats, but we outstrip them in the science of government, and not only preach the *Rights of Woman*,⁸² but boldly push it into practice—Madame Wollstonecraft has certainly the merit of broaching this subject, and as women are now to take a part in the jurisprudence of our state, we very shortly expect to see them *take the helm*—of government.

Other critiques of woman suffrage were even more explicit. William Griffith, a lawyer, wrote a series of papers entitled “Eumenides” (the name of a famous Greek general) between 1796 and 1800 calling attention to fraudulent events at many elections in New Jersey. He also had strong views on voting by women. “It is perfectly disgusting,” he wrote, “to witness the manner in which women are polled at our elections. Nothing can be a greater mockery of this invaluable and sacred right, than to suffer it to be exercised by persons, who do not even pretend to any judgment on the subject.”⁸³

In spite of the displeasure of Griffith and other men, women began to vote more often after 1797. As William Whitehead noted in 1859,

[At t]he Presidential election of 1800, between Mr. Adams and Mr. Jefferson, * * * females voted very generally throughout the State; and such continued to be the practice until the passage of the act positively excluding them from the polls. * * * At a contested election in Hunterdon County, in 1802, the votes of two or three such, actually elected a member of the Legislature. It is remarkable that these proceedings did not sooner bring about a repeal of the laws which were thought to sanction them; but that event did not occur until 1807, and it is noticeable that, as the practice originated in Essex County, so the flagrant abuses which resulted from it reached their maximum in that county and brought about its prohibition.⁸⁴

While there is no indication that women organized any of the nefarious activities during the Essex County election in 1807, fraud in that election was certainly a catalyst

82. This refers to MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMAN* (1792). For more on Wollstonecraft, see supra at p. 6.

83. As cited in Pole, supra note 61, at 53–54.

84. Whitehead, supra note 61, at 102.

for adoption of the statute repealing women's suffrage later that year. "In 1807," J. R. Pole wrote, "there took place, in Essex County, a holocaust of political morals in which every kind of abuse was exploited with festive extravagance."⁸⁵ The issue in the election was where to locate a new courthouse for Essex County. The two major towns in the county, Newark and Elizabethtown, were sharp rivals on any number of questions. Their inability to decide upon the location for the new facility led the state legislature to call for a county referendum. After the election, both towns correctly accused the other of fraud. The vote totals were extraordinarily high. Ballot boxes were stuffed before the scheduled opening time for the polls. Men voted more than once, sometimes by dressing up as women. Some said that women, even married women, were allowed to vote early and often, and that some of them did not possess the required amount of wealth.⁸⁶

Though allegations of fraud had surfaced in earlier elections in New Jersey,⁸⁷ the courthouse election of 1807 was widely ridiculed and eventually voided. The notoriety of the scandal probably made adoption of election reforms inevitable. Participation of women and men disguised as women in the illegal voting made the gender provisions of the 1790 election law an easy target.⁸⁸ John Condict, perhaps remembering the women who voted for his opponent ten years before, made the main speech in favor of the 1807 election law reforms.⁸⁹ The bill swept to passage with widespread support from both Republicans and Federalists, the latter changing their position on women suffrage on the perhaps erroneous assumption that widespread voting by women would benefit the Republicans.⁹⁰ Women's suffrage began under the terms of a constitution that ambiguously included them as electors and, lacking any strong supporting constituency, ended without much public clamor or legislative debate.

The demise of women's suffrage in New Jersey is typically viewed as evidence of the political powerlessness of women at the turn of the nineteenth century. Jean Matthews, for example, wrote that:

When New Jersey in 1807 rectified the oversight that had allowed a few women property owners to vote, no one seems to have objected, not even the disfranchised women. Women were seen as dependents of the male citizen, quite outside the fraternal bonds of the republic. They were also as-

85. Pole, *supra* note 61, at 55.

86. For summaries of this infamous election, see Pole, *supra* note 61, at 55–56; Whitehead, *supra* note 61, at 103–104; Turner, *supra* note 61, at 181–182.

87. Turner, *supra* note 61, at 179–181.

88. The notion that women were to blame for New Jersey's election scandals surfaced periodically in historical and anti-suffrage literature. See, e.g., KIRK H. PORTER, *A HISTORY OF SUFFRAGE IN THE UNITED STATES* 136 (1918), where it was said that women voting in New Jersey "ultimately led to such disorders that in 1807 the legislature took proper steps to put a stop to woman suffrage for good and all."

89. Condict, it is said, "delivered a most eloquent and impressive speech. No reply was attempted. The motion [to strike out the first section of the bill] was negatived by a large majority, and the bill ordered to be engrossed." *Centinel of Freedom* (Nov. 24, 1807).

90. Klinghoffer & Lois Elkins, *supra* note 61, at 178.

sociated with the fatal corrupting lures of luxury and self-indulgence. The most dire fate for the lapsed republican was to sink into "effeminacy."⁹¹

There is good evidence, however, that women's suffrage in New Jersey was not simply an "oversight." While the constitutional language extending voting rights to "all Inhabitants" adopted in 1776 may have inadvertently left the door open for women's suffrage, the use of language referring to voters as "he or she" in 1790 could hardly have appeared by accident. There are, therefore, some intriguing historical questions left open. What drove Joseph Cooper to sponsor the 1790 provisions giving women access to the ballot? Why did a male legislature pass the bill? On the other hand, what really led to the demise of women's suffrage seventeen years after it was first sanctioned by law? If New Jersey was ready to allow women to vote in the late eighteenth century, what led to the tightening of election rules early in the following century? Why did it seem so obvious to most early nineteenth century Americans that women's suffrage was inappropriate? Was it part of a conservative retrenchment after the heady days of the revolution? Perhaps the *Martin* case and the Adams correspondence help you answer some of these questions.

2. Commentary and Questions

1. *Voting by Women and Property Ownership*: During the 1797 election in Essex County, commentators expressed surprise when women showed up to vote. Consternation arose not merely because of cultural traditions linking married women to domestic duties. Their participation in many areas of public life was also severely constrained by legal norms. Women could not sit on juries, act as lawyers, serve as judges or assume other public positions. When *married* women voted in 1807, the level of incredulity must have increased another notch. While single women and widows were recognized as legal persons for purposes of contract and property law, marriage rendered women civilly dead for many purposes. After marriage, women could not make contracts or manage property. Their right to own personal property was virtually eliminated and their ability to own real property was severely constrained. Few married woman had fifty pounds under their control. As a result, most descriptions of women voting in the state between 1797 and 1807 spoke of single women and widows going to the polls. Their status as legally recognized persons made it possible for them to own sufficient assets to qualify as electors. The constraints on the legal status of nineteenth century married women are the subject of the next chapter. Can you think of any reasons why law at the turn of the nineteenth century made such sharp distinctions between the status of single and married women?

2. *Newspaper Commentary*: The commentary in the *Centinel of Freedom*⁹² on women voting in the 1797 election should be read with care. Modern pretensions of journalistic objectivity held little sway in early America. Papers usually had a political

91. JEAN V. MATTHEWS, *TOWARD A NEW SOCIETY: AMERICAN THOUGHT AND CULTURE 1800–1830*, at 77 (1991).

92. The articles begin *supra* at p. 40.

slant that greatly influenced their reportage. The *Centinel of Freedom*, for example, was a Republican paper. How then should we read the article giving “credit” to the “Federal ladies” for their “heroic virtue” in “gallantly advancing in a body to the poll”? What do you make of the language calling the events an “Amazonic exercise”? Why did the author use imagery of pregnancy, childbirth labor and abortion? Do you think this was related to Jean Matthews’ contention that it was a “dire fate” for politics to lapse into “effeminacy”? What was wrong with “effeminacy” in politics? Similarly, what effect was the assertion, in the second newspaper excerpt, that women suffrage would lead women to “take the helm — of government” meant to have on the *Centinel*’s readers?

3. *Humor and Irony*: Compare the response of John Adams to his wife’s threat to foment a rebellion to the commentary in the *Centinel of Freedom* on voting by New Jersey’s women in 1797. Did the authors of the *Centinel* commentary use humor and irony in the same ways as John Adams? What was there about women claiming a right to participate in governance that led men to write with levity, sarcasm or sexually oriented hostility?

4. *Public and Private*: The preamble to the act eliminating women’s suffrage provided that it was “highly necessary to the safety, quiet, good order and dignity of the state” to clear up doubts about who could vote. What did this language connote? Why should the presence of women at the polls threaten the good order and dignity of the state? If women in general, and especially married women, were thought of as dependent upon others for their economic well being and therefore lacking in the independent frame of mind necessary for intelligent exercise of the franchise, could their appearance at the polls be thought of as threatening? Was the concern that men threatened the dignity of women, or that women threatened the dignity of men?

Chapter 2

Property Reform and the First Women’s Movement

A. Setting the Stage: The Ohio Married Women’s Property Act of 1846

1. The Statute

On February 28, 1846, the state of Ohio enacted the following statute:¹

AN ACT

In relation to the interest of Husbands in
the estate of their Wives.

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio*, That the interest of any married man in the real estate of his wife, belonging to her at the time of their intermarriage, or which may have come to her by devise, gift, or inheritance during coverture, or which may have been purchased with her sole and separate money or other property, and, during her coverture, shall have been deeded to her, or to any trustee in trust for her, shall not be liable to be taken, by any process of law or chancery, for the payment of his debts during the life of the wife, or the life or lives of the heir or heirs of her body.

SEC. 2. All conveyances and incumbrances of the husband’s interest in the real estate of the wife, in the first section mentioned, shall be void and of no effect during the life of the wife, and during the life or lives of the heir or heirs of her body, unless an instrument of such conveyance or incumbrance shall have been executed, attested and acknowledged according to the laws of this state, for the conveyance or incumbrance of the estate of the wife in lands, tenements and hereditaments situate within this state.

SEC. 3. No interest of a husband in any chose in action, demand, legacy or bequest of his wife, shall be liable to be taken, by any process of law or chancery, for the payment of his debt, unless such husband shall have reduced the same to possession, so as, by the rules of law, to have become the owner

1. Some of the vocabulary in this statute may be strange to you. Translations of foreign language phrases and a glossary of legal terms may be found beginning at p. 49 *infra*.