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**Book Review. Married Women's Separate Property in England,
1660-1833 by Susan Staves**

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Recommended Citation

Grossberg, Michael, "Book Review. Married Women's Separate Property in England, 1660-1833 by Susan Staves" (1991). *Articles by Maurer Faculty*. 934.
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appeals until this century. The nineteenth-century criminal trial was a crude affair. In short, Bentham was right; there was no criminal law jurisprudence. Stephen wanted to rid English criminal law of its morass of case precedents (usually five line reports, found in the English Reports) and the baroque style of Victorian legislative drafting (it is not difficult to find sentences which run to 700 words). He did not believe that crisp, clear and concise statutory language would rob the law of flexible interpretation (a frequent complaint by judicial critics of codification). And yet Stephen remained enough of a common lawyer that he could not bring himself to draft a General Part. He wanted the judges to have control over general principles.

Stephen's attempts at codification were not successful in England, but his Code was adopted in Canada and, subsequently, in some Australian states and New Zealand. Its adoption in colonies and former colonies was due to two rather conflicting causes. Canada (and other parts of the Empire) could show something of an independent and innovative spirit by embracing a legislative scheme which was a pseudo-Code. On the other hand, they could still indulge in a modified form of The Cultural Cringe by adopting something which was still essentially English (rather than American or wildly reforming and Canadian).

Brown gives us an able political history of the 1892 Code but he is weaker on what I might call aspects of Legal Culture. What is codification as opposed to the common law? What are the anthropological factors which make it impossible for common lawyers to embrace the idea of a Code? What influences created the baroque style of Victorian drafting? How did nineteenth-century legal literature militate against an atmosphere in favour of codification? Why have Quebec judges (trained in a code system of civil law) never applied that expertise in interpreting the Code?

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Susan Staves, *Married Women's Separate Property in England, 1660-1833*. Cambridge, Mass.: Harvard University Press, 1990. ix, 290 pp. \$35.00.

The complexity of early modern English property law is beyond question. In the words of one King's Counsel testifying to the Real Property Commissioners, "there were not above six persons who understood the laws of real property" and only one "barrister of eminence practicing in any of the courts who has a perfect knowledge of their practical effects." [58]. Susan Staves, a Brandeis English professor, turns this complexity into a compelling study of legal ideology. By giving a history to one branch of eighteenth century real property law, the rules governing married women's separate property, she illuminates the subject in a strikingly new way.

Staves labels her subject the "legal regime of married women's property from 1660 to 1833." [4]. Her story begins with the abolition of military tenures and the rise of modern equity courts and closes with the Dower Act of 1833. In between, her intent is twofold: to demonstrate the significance of the intersection of gender and law; and to revive study of eighteenth century legal history. She examines married women's property in a topical analysis focused on four sets of rules: dower, jointure, pin money and wife's separate property,

and separate maintenance allowances. These are probed through a study of caselaw, primarily equity decisions, that concentrates on the eighteenth century. Staves makes her difficult subject comprehensible and even compelling by turning its complexity into a question of analysis and by skillfully using legal and literary examples, clarifying prose, attention to present controversies, and a glossary.

It is in the intricacies of property law that Staves locates the meaning of legal rules governing married women. At the heart of her analysis lay two methodological concerns: legal ideology; and elite rule creation. Carefully defining her terms, Staves labels as ideology "articulated forms of self-consciousness" used to justify power relations between people. [6]. Specifically, she is interested in the legal ideology of marriage. She explores it by drawing on Robert Gordon's admonitions against adaptive theories of law and injunction to study the conscious rule creation of legal elites. The result is a study of "mandarins and mandarin sources" that demonstrates that property law for married women was not an inevitable product of market and social change but a changing amalgam of legal rules devised by elite judges, lawyers, and law-writers that consistently legitimated the dominance of husbands and the subordination of wives. Staves posits a three-staged trajectory of legal change: an older common law conception of marriage as a status falls to a new contractual challenge; efforts to apply contract ideas to marriage lead to unintended, unwanted consequences; and finally, a retreat from contractualism results in the reimposition of deeper patriarchal structures. In carefully constructed examples of these changes, Staves is persuasive in her accounts of married women's property law and also succeeds in using gender to place such eighteenth century legal luminaries as Mansfield and Hardwicke in new contexts.

Dower illustrates the character of her argument. A traditional property law rule granting wives one-third of their husband's real property, dower ran afoul of the new contractual ideology. In its demise, Staves sees the creation of new techniques of subordination justified by calls for greater freedom in land alienation and the need to honor completed conveyances. She argues, though, that dower's decline was actually grounded in recurrent efforts to control wives that took different legal expressions in eighteenth century England as legal elites attempted to avoid the direct application of contractualism to married women. Staves questions whether dowers' replacements, like equitable jointures, were the boons for wives they are often claimed to be. On the contrary, by posing four alternatives rationales for the changes—liberal, neo-Marxist, sociological and feminist—she explores the range of possible explanations and suggests how a combination of the four, but particularly neo-Marxist and feminist approaches, seem the most plausible ways of understanding the range of options open to legal elites and why they created new means of "protecting" wives' property interests that primarily served to limit married women's legal autonomy and secure their husband's family power.

Inevitably in a closely argued volume, intriguing issues and themes are raised but not pursued fully. Thus, Staves suggests that her subject has implications for the social history of eighteenth century England, but she makes the links only in a cursory fashion and primarily in regards to historiographical debates about the character of English landed elites. And, perhaps surprising, she also seems little interested in drawing upon literary theory to elucidate case law. And in her analysis itself, a few issues remain underdeveloped. For example, in explaining the appeal of equitable jointures Staves asserts an

eighteenth century receptivity to arguments of gender equity, but does not develop the idea much or suggest the sources and implications of that congenial environment for the creation of new gendered domains of law. Similarly, assertions about the rise of individual choice in matrimony are not pursued. In another vein, though the gender tensions of the law are her prime subject, and are skillfully explored, her evidence also suggests a persistent fear of the future that haunted English property law and led to convoluted efforts to impose the will of the present on later generations. This too warrants further exposition.

Married Women's Separate Property is an informed, accessible study of an intricate subject. Staves has written a book that legal historians can profitably plumb for insights not only about its subject and era but also about the writing of legal history itself.

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