Women In Utah History

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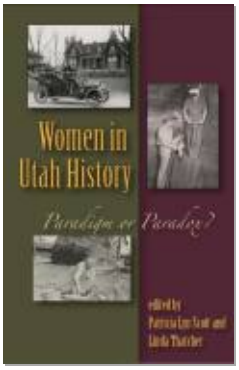

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Innovation and Accommodation

The Legal Status of Women in Territorial Utah, 1850–1896

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The story of the legal status of women in territorial Utah (1850–96) weaves together three historical strands: the expansion of women's legal rights nationally, the liberalizing tendencies of frontier development, and most important, the necessity of protecting Mormon control and practices, including plural marriage, and ultimately defending them against the counter measures of the federal government. While influenced to varying degrees by the first two developments in American history, the third most clearly defined the focus of early Utah territorial law with respect to women.

Creating territorial law to support Mormon ideology and practice, particularly by providing a legal identity for plural wives and their children within the framework of American jurisprudence, required innovative and imaginative measures by Utah lawmakers. Polygamy (the popular name) or polygny (the technically correct term for marriage between a man and multiple wives) was a basic tenet of Mormonism. By any name, it was a system of female enslavement, according to its critics and was designated an illegal practice after 1862 by federal decree. According to its defenders, it was a God-given commandment that should have been protected as a free exercise of religion by the U.S. Constitution. Paradoxically, this system forced a consciousness of women's legal rights by Utah's territorial legislature and put Utah in the vanguard of efforts to improve the legal status of women.

Some of these innovative measures, however, were casualties of the escalating assertion of federal power, aimed at destroying polygamy and Mormon political hegemony in the territory. The process of accommodation that followed federal anti-polygamy legislation eventually led to the discontinuation of the practice by the Mormon Church and opened the way to statehood. It also removed any recognition of legal rights of plural wives; but in some other areas of the law, the legal advances experienced by Utah women survived the transition to statehood.

The National Struggle for Woman's Rights

In the first half of the nineteenth century, women's legal status was still defined in large measure by common law, a form of British jurisprudence transported to the American colonies. While some of its provisions were dropped in transit, the principle of "coverture" remained intact.[1] Under the doctrine of coverture, upon marriage a woman's "very being or legal existence [was] suspended during the marriage or at least incorporated or consolidated into that of the husband," according to William Blackstone, the seventeenth-century compiler of the common law.[2]

Because under the law a husband and wife were considered one person (and that person was the husband), they could not testify for or against each other in court. Furthermore, married women were denied such civil rights as the right to sue or be sued in their own name or keep any judgment recovered on their behalf, to manage or control their real property, to own personal property, to keep their wages, or to make a contract or will. Nor could they act as independent legal guardians of their children.[3]

In exchange for the surrender of her legal identity and her property to her husband, the common law granted a married woman two rights: the right of support (to be fed, clothed, and sheltered) and the right of dower (a right to the income and use of one-third of the real estate that her husband owned during the marriage if she survived him). She received no protected interest in her husband's personal property, including that which originally belonged to her. In practice, some of the harsh consequences of the common law were ameliorated by (1) prenuptial contracts which reserved property rights to the wife, often in lieu of her dower interest; (2) trust arrangements which gave a third-party trustee legal title to property to hold for the wife; (3) court settlements of the wife's property on the husband only after some provision was made for the wife; and (4) the doctrine of *feme sole* where women widowed or abandoned by their husbands were given power to act as if they were single or where women who ran mercantile establishments were given power to act independently with respect to their businesses.[4] Nevertheless, the consequences of coverture were far-reaching for the majority of women.

The common law thus reflected cultural assumptions about male and female relationships in society as well as in marriage. Women were under the control and protection of men, and the law recognized the husband as the sole legal representative of a family, particularly in the public realm. Blackstone acknowledged the disabilities which the wife lived under but claimed that they "were for the most part intended for her protection and benefit; so great a favourite is the female sex of the law."[5]

Instrumental in eroding the harsh effects of the common law on women was the rising importance of state and territorial legislatures. The common law was a collection of legal precedents, distilled and compiled in Blackstone's

Commentaries. Legislatures, however, created and formulated laws, sometimes paralleling and sometimes differing with common-law precedents. Women's emergence from the common-law "legal fiction," or legal construct, of marital unity began primarily with state legislation, notably the passage of Married Women Property Acts, beginning in 1835, which granted women the right to their own property.[6] Initially, the rationale for the Married Women's Property Acts was not economic equity or relief of women's economic dependence. Rather, they reflected the "male response to such major economic dislocations as panics and depressions," according to historian Joan Hoff. Land transfers and business transactions were also facilitated by these acts, which could help support the family economy by protecting married women's assets from the husband's creditors during periods of personal or general economic depression.[7]

But after these first acts were passed, women began to actively campaign for such reform in their own behalf. One consequence of these acts, according to some legal historians, lay in demonstrating the effectiveness of statutory revision on the state or territorial level as a major instrument of legal change for women. By 1865 twenty-nine states had property acts that modified, in varying degrees, the common-law doctrine of coverture.[8] Throughout the rest of the nineteenth century, these acts would be amended and enlarged in varying degrees to include essential aspects of women's economic independence. This relatively quiet feminist success in altering the law, which accompanied the economic rationale for change, provided impetus to the movement for greater political rights that followed the close of the Civil War.[9]

The Liberalizing Effect of the West

A further national trend that affected the development of Utah law for women was the protracted struggle for woman suffrage—most successful in the western United States. Political reform followed immediately on the heels of domestic legal reform, and the two soon became intertwined. Among the grievances listed in the "Declaration of Sentiments," drawn up by Elizabeth Cady Stanton and presented to the first women's rights convention held in Seneca Falls, New York, July 1848, was not only the lack of women's legal identity but also denial of the vote.[10] Political reform proved to be far more challenging, divisive, and controversial, however, than legal change, since it impinged even more directly on the dicta of coverture.

Following the Civil War, the drive toward equal political rights began in earnest. The national campaign kept the issue before the national conscience and found its initial success in the West, where the expansiveness of its lands and resources matched the breadth of its attitudes and vision. While Congress debated the question of granting suffrage to the territories "as an experiment," both Wyoming and Utah territories passed statutes enfranchising their women, Wyoming in 1869 and Utah in 1870. Both acts reenforced the ability of legislative means to effect legal change for women. Well before the 1920 passage

of the Nineteenth Amendment granting all U.S. women the vote, thirteen western states had enfranchised their women. In addition to Wyoming, they were Colorado (1893), and Utah and Idaho (1896) at statehood. (See also chap. 11.)

This adventurous and entrepreneurial spirit of western settlers, along with the endless promises the West offered, conspired to soften the social and legal restrictions on women dominant in Eastern society. The initial absence of a formal judiciary allowed local justice to rule in many areas. Legal practices based on the common law were suspended or transformed as the natural and social characteristics of the various western territories dictated a unique application and development of the law. The scarcity of women, the interdependence so essential during the frontier period, the physical labor required to establish homes and communities that of necessity ignored traditional gendered divisions of labor, and the homesteading laws that allowed women to own and develop property in their own names, all contributed. Western women came to enjoy more legal rights, greater political power, and more employment opportunities much earlier than their Eastern counterparts. All of these factors were also appealing motivations for female migration.[11]

The Development of Utah Law

Though influenced by these national developments, Utah responded to an even stronger social force shaping the legal and political status of women in the territory. Settled by Mormon pioneers and populated largely by Mormons during the nineteenth century, Utah was an anomaly among the states and territories. Driven out of their former settlements in the East and Midwest, Mormons hoped to establish a spiritual kingdom of their own making in the pristine West. Their mission was to establish "the kingdom of God" on earth in preparation of the Second Coming of Jesus Christ under the direction of their prophet, at that time (1847), Brigham Young. He was their spiritual head but also their economic and political leader. His spiritual and secular leadership blurred the line between the temporal and the eternal. "We are trying to establish the Kingdom of God on the earth," he declared, "to which really and properly everything that pertains to men [and women]—their feelings, their faith, their affections, their desires, and every act of their lives—belong, that they may be ruled by it spiritually and temporally."[12] With this overriding mission, the spiritual equality of men and women, a concept that underlay their theology, translated in many respects to various forms of social equality.[13] While the prevailing notion of "separate spheres" for men and women constituted a type of ideal division of labor in Mormon Utah, the exigencies of their mission rendered the boundaries between the two extremely permeable. Even the parameters of what constituted the "public sphere" underwent considerable transformation in Mormon practice, as women assumed numerous economic, professional, and community responsibilities individually or as members of their local Relief

Society. Establishing the territory of Utah did not fit the settlement pattern that prevailed elsewhere in the West, being founded on a religious rather than an entrepreneurial base.

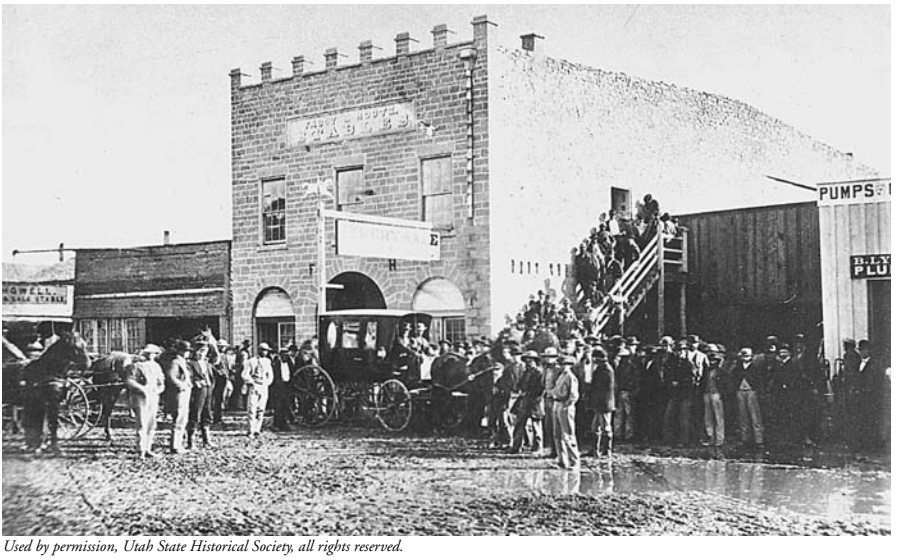
Added to this distinguishing feature were the communal fervor of Mormons, the solidarity of their interests, their united commitment to the faith, and their shared distrust of the federal government that resulted from its failure to intervene when Mormons were forced repeatedly from their homes and communities before settling in Utah. From the beginning, all of these peculiarities made other Americans suspect Mormon loyalty to the government.

But nothing could match the opprobrium that followed the public announcement of the LDS Church's practice of plural marriage in 1852. This religious practice formed the basis for an innovative departure from the common law to protect its adherents and, in many respects, aligned it with the national movement for women's rights. The basis for law in Utah was established the day Brigham Young entered Salt Lake Valley in 1847. As that first exploratory pioneer company met together, Mormon Apostle Wilford Woodruff recorded that, among other principles Young announced, "the ten commandments and the Christian ethics were practically proclaimed to be in force."[14] The statutory form of these principles closely paralleled those of the Mormon ecclesiastical court system which the pioneers had used during their sojourn in Winter Quarters, Nebraska, on the trek to Utah. It was no great change to establish them in Utah.[15]

The first Legislative Assembly in Utah met in 1849 and sent a memorial to Congress to recognize the provisional "State of Deseret." Congress rejected that first appeal and Utah became subject to a Congressional organic act giving it territorial status and providing its governing law two years later. Within the general framework of that law, the new territorial legislature adopted the enactments passed previously by the "State of Deseret."[16]

When the first federally appointed officials arrived in Utah, the conflict with the federal government began. "Their [Mormon] judicial economy," Utah writer Edward Tullidge wrote, "was after the pattern of the New Testament rather than Blackstone. It was this that made the Mormon rule so obnoxious to the federal judges and Gentile [non-Mormon] lawyers."[17] Throughout the territorial period, that contest influenced the development of law in a variety of ways. Congress had the power to review and approve or disapprove laws as well as enact legislation for the territory,[18] and federally appointed territorial judges interpreted and applied laws passed by the territorial legislature.[19] Consequently, Utah jurisprudence often represented a compilation of unique legal expedients and innovations designed to sustain Mormon practices and doctrines carefully constructed to fit within federal guidelines.

A primary point of conflict centered on the jurisdiction of the federal and local courts. The Mormon legislature granted unusual legal powers to



Faust & Houtz Livery Stable, Salt Lake City, 1871. In Judge James B. McKean's Third District Court on the second floor, many violations of the Morrill Anti-Bigamy Act of 1862 were prosecuted, including Brigham Young's.

county probate courts presided over by local officers. Besides conducting matters relating to estates, guardianship of minors, and divorces, the territorial legislature also granted probate courts jurisdiction over all civil and criminal cases and the drawing of jury lists. It created the locally filled offices of territorial marshal and territorial attorney with powers paralleling those of their federal counterparts. Later, the legislature extended their power by giving the probate courts the same original jurisdiction as the federally governed district courts.[20] Many litigants, particularly Mormons, took their cases to the probate courts rather than before the federally appointed judge of the district court. The effect was to displace the federally appointed courts with a judiciary under local control. The probate courts thus provided an alternative legal system and allowed Mormons to appear in locally administered and thus more sympathetic courts.[21] Moreover, the Mormon ecclesiastical court system entertained a wide variety of civil suits, thus offering a second locally governed legal avenue to church members. Concerned that the probate courts gave extensive judicial power to the LDS Church and, in effect, thwarted the prosecution of polygamists, Congress reacted by placing the judiciary firmly under federal control. The Poland Act of 1874 stripped the probate courts of all civil, criminal, and chancery (equity) jurisdiction and transferred to federal officials the duties of the territorial attorney general and marshal. It also gave federal judges wide latitude in the selection of jurors.[22] Probate courts were restricted to matters of estates, guardianship, and divorce.

A second point of discord was Utah Territory's effort to reject the common law. In 1852 Brigham Young declared: "We have not adopted the

common law of England, nor any other general law of old countries, any further than the extending over us the constitutional laws of the United States by Congress, has produced that effect."[23] This disclaimer took statutory form in 1853: "All questions of law, the meaning of writings other than laws, and the admissibility of testimony shall be decided by the Court: and no laws nor parts of laws shall be read, argued, cited or adopted in any court, during any trial, except those enacted by the Governor and Legislative Assembly of this Territory, and those passed by the Congress of the United States when applicable; and no report, decision or doings of any Court shall be read, argued, cited or adopted as precedent in any trial."[24]

In 1874 the chief justice of the Utah Supreme Court, James McKean, expressed his incredulity at the legislative attempt to exclude from Utah the authority of Coke, Blackstone, Mansfield, Kent, Story and Marshall (authors of widely used treatises which compiled cases involving the common law in certain areas of the law). "What can be said?" he queried. "Language fails properly to characterize such legislation."[25] Despite the 1842 statute, the applicability of the common law was recognized in a variety of local court cases beginning in 1855. In 1889 the U.S. Supreme Court ruled that the common law operated in Utah by virtue of the Organic Act, which declared in section 9 that the courts of the Territory possessed "chancery as well as common law jurisdiction." It was also operative as a result of the territorial legislature's enactment of a statute in 1852, which provided that all courts should have "law and equity jurisdiction."[26]

The third and most persistent Mormon-federal conflict focused on polygamy.[27] The need to provide legal protection for plural wives generated several legal advances for women. Congress responded with legislation to abolish the practice, however, beginning with the Morrill Act in 1862, followed by the Poland Act in 1874, the Edmunds Law in 1882, and the Edmunds-Tucker Law in 1887.[28] The severity of the last, with even more crushing measures promised, led to an accommodation by LDS Church President Wilford Woodruff, who issued a manifesto in 1890 withdrawing public support for new plural marriages and advising members to abide by the laws of the land. The civil and criminal sanctions and disabilities imposed by these federal laws substantially altered the legal status of Utah's women, especially plural wives and their children.[29]

These three social forces were instrumental in shaping Utah law in the nineteenth century and had long-range influence on how the law related to women. The national trend toward women's rights along with the more innovative attitude of western lawmakers is clearly discernible in the development of domestic law in Utah during this period. But the impact of the struggle to assert a Constitutional right against escalating federal intervention had a far more perceptible and pervasive effect than the first two. Utah's bumpy ride to statehood left its innovative measures far behind as it accommodated itself to the expectations of becoming the forty-third state in the Union.

Elias Smith (1804–84) was a cousin of the Prophet Joseph Smith. He was an early pioneer of Utah as well as editor and publisher of the *Deseret News*. He also held the position of probate judge in Salt Lake County from 1852 to 1882.

Marriage and Divorce Laws

The lack of legislation regulating marriage and Utah's lenient divorce law (1852), provoked major political and legal controversy and clearly demonstrated the influence of Mormon beliefs on the formulation of Utah law. The first territorial legislature in 1852 authorized officers of the Church of Jesus Christ of Latter-day Saints "to solemnize marriage" and required that "a registry of marriages" be kept in every branch or stake [ecclesiastical units] of the church.[30] For Mormons, marriage was a religious covenant properly solemnized only by ecclesiastical authority and enduring beyond the deaths of the partners. Therefore, the legislature made no provision for the civil recording of marriages nor did it pass any other regulatory measures. As a result, the only documentation of the numerous marriages civilly or ecclesiastically during most of Utah's territorial period appears in the personal records of judges and justices of the peace, church records, diaries and journals, and temple sealing [marriage] records.[31] Federally appointed governors exhorted the legislatures in 1872, 1874, 1876, and 1878 to pass statutory provisions regulating marriage, but none was adopted until 1887.[32]

The Mormon-dominated territorial legislature did not enact a civil marriage law, not only because of the Mormon concept that only LDS marital rites were binding, but also because of the need to avoid public records of plural marriages, especially after passage of the Morrill Act (1862), criminalizing bigamy. The force of this act stemmed from Congress's power to regulate marriage in the territories as legislatures did in the states.[33] It had no provisions for enforcement, however. Not until passage of the far more stringent anti-polygamy Edmunds-Tucker Act in 1887, which provided for the certification of marriages, did the territorial legislature enact a parallel marriage statute outlawing polygamy and requiring the registration of all marriages, including the names of the parties, and the officiator, to be filed with the probate court.[34]

In contrast to its failure to enact a marriage law, the first legislative assembly in 1852 established a liberal divorce law, which, paradoxically, appeared to permit the easy dissolution of marriage by a religious community committed to the sanctity and eternity of marriage.[35] The Utah law allowed anyone who was or "wished to become" a resident of Utah to invoke the jurisdiction of the court. This act was influenced both by Utah's location in the West and by a basic premise of Mormon theology. During this period, the Western population was rapidly increasing with migrants, especially in Utah. Moreover, the amount of mobility between the western territories begged the question of what constituted residency. With the constant influx of new settlers and frequent change of domicile, a long period of residency was impractical for many reasons and often worked hardship for new westerners seeking legal separation from spouses unwilling to join them.[36]

The traditional grounds for divorce were impotency, adultery, desertion, habitual drunkenness, felony conviction, and abusive treatment. Significantly, the Utah statute added a seventh cause: "when it shall be made to appear to the satisfaction and conviction of the court, that the parties cannot live in peace and union together and that their welfare requires a separation."[37] Only six other states and territories had a similar law.[38] The circumstances giving rise to these lenient statutes, however, differed in each jurisdiction and particularly in Utah.

Utah's divorce statute gave legal force to a social and religious principle that governed divorce in LDS Church courts. Mormons valued social unity and harmony, qualities that family life was meant to exemplify and foster. Divorce provided a way to remove a source of social contention and permitted the innocent party to remarry and ideally create a more harmonious and peaceful family relationship.[39] Thus, divorce for Mormons did not "destroy" home and family but was in reality a safety valve, a means of preserving the institution of the family by dissolving those alliances that abused its peace and harmony.

Moreover, since civil marriage ceremonies were neither eternally binding nor valid in the eyes of the church, divorce was merely a rhetorical exercise in compliance with the demands of a temporal legal system. Marriage was a religious covenant, its eternal duration entirely dependent on the faith

and commitment of the marital partners. Spiritually, it would have no force if either partner disregarded the covenants he or she had made. As early as 1842, according to diarist John D. Lee, Mormon prophet Joseph Smith declared that couples "were married to each other only by their own covenants, and if their marriage relations had not been productive of blessings and peace, and they felt it oppressive to remain together, they were at liberty to make their own choice, much as if they had not been married . . . . It was a sin for people to live together and raise and beget children in alienation from each other."[40]

In 1861 Brigham Young acknowledged the desire of couples to have tangible evidence of their separation. In a ruling that clearly favored women, he announced: "When a woman becomes alienated in her feelings and affections from her husband, it is then his duty to give her a bill [of divorcement] and set her free." In other words, to live together without natural affection from whatever cause was a violation of the marriage covenant. Moreover, if a man proved to be an "unworthy" husband and father, according to Young, he automatically forfeited his marriage covenants, and his wife or wives were "free from him without a bill of divorcement."[41] Young issued divorce certificates only reluctantly, complaining, "You might as well ask me for a piece of blank paper." He charged husbands whose wives requested a divorce ten dollars, not for his services, he said, but for their "foolishness."[42] In Mormon terms, marriage ideally endured only on the basis of mutual affection and righteous behavior and was automatically dissolved when either partner failed to meet his or her religious commitments. This position had, needless to say, numerous practical problems—hence the development of written certificates of divorce.

More than two thousand extant bills of divorce, granted by Brigham Young and his successor, John Taylor, provide evidence that women, particularly those in plural marriages, were not bound in relationships that proved undesirable, contrary to the assertions of anti-polygamists. Though the records do not indicate, it can be assumed that most of the applicants were plural wives dissolving their marriages through ecclesiastical courts.[43] This easy access to divorce, either through probate or ecclesiastical courts, coupled with the liberal attitude toward the dissolution of unharmonious marriages, stood in marked contrast to the conservative views of marriage and divorce that dominated American society in the nineteenth century.[44] In fact, for some Mormon critics, it was as undesirable as polygamy. While divorce has never been treated as a desirable social institution in American life, it was the only remedy for women legally bound to dissolute, abusive, and irresponsible husbands. And for disillusioned plural wives, it offered ready escape. A *Deseret News* article explained: "Polygamy would be considered a system of bondage, if women desiring to sever their relations with a husband having other wives, were refused the liberty they might demand."[45]

Despite this apparent permissiveness toward divorce, Brigham Young and other church leaders consistently advised against it, admonishing couples

to overlook personality flaws and other personal irritations. Nevertheless, while urging husbands to be more patient and long-suffering, Young seldom refused a woman who expressed dissatisfaction with her husband. A letter to Frederick Kesler explains Young's position. "Your wife Abigail called upon me, stated her feelings and requested a bill [of divorce], which under the circumstances we thought proper to grant her, as is usual when a woman insists upon one." He also made other statements expressing this preferential status of wives in divorce actions: "When women tease for a divorce, and are determined to have one what can be done better than to give them one?" Or "I should feel a little ashamed to require a wife to ask me twice for a bill of divorce, or to refuse signing and paying for it at once." Or "If the brethren were but a small part as anxious, diligent and prompt in this particular [acceding to divorce] as they are in having women sealed to them, it would prevent much needless annoyance and perplexity to the sisters." Grievances ranged from "an abusive tongue" to desertion.[46]

Church divorces for first wives were not accepted by the civil courts as legal, nor could plural wives appeal to the civil courts for the termination of their marriages. Since Mormon bishops presided over many of the county probate courts, the jurisdiction of the bishops' ecclesiastical courts and the civil probate courts was sometimes invoked incorrectly. First wives occasionally obtained divorces in church courts, and some plural wives received divorces in probate courts, causing them later legal difficulties.[47] A noted jurisdictional dispute involved John R. Park, first president of the University of Utah and first state superintendent of public instruction. Park married Annie F. Armitage in 1872 on her supposed deathbed in a church marriage, which was considered legal at that time; but when she unexpectedly recovered, the couple, evidently changing their minds, decided to obtain a church divorce, which was not legally recognized. While Park never remarried, Armitage, on the basis of her church divorce, married William Hilton in 1875 and gave birth to ten children. At Park's demise in 1900, Armitage successfully sued for a dower interest in Park's property, claiming her right as his widow, since she had been his only wife and since their church divorce was not recognized by the court.[48] Legal readjustment of such marital relationships continued well into the twentieth century.

An unforeseen result of Utah's lenient divorce statute occurred after the completion of the transcontinental railroad in 1869. Eastern lawyers used the liberal residency and grounds provisions to obtain quick and easy divorces for their clients. In the eight years between 1869 and 1877, Utah's civil divorces increased from 75 in one year to as many as 914 in 1877, while the general population had slightly less than doubled. Nearly all of these divorces were initiated by nonresidents.[49]

The federally appointed governor, George W. Emery, strongly urged the legislature to amend the divorce laws in 1876; but the legislature did not act until after a grand jury investigation in 1877 and another appeal by Emery

in 1878.[50] Divorces dropped to 122 that year. Although Mormon ecclesiastical courts continued to grant divorce for incompatibility, civil law could no longer embrace a religious concept too liberal for prevailing social norms and policies. Once again Mormon theology and practice met and were forced to yield to federal authority. Mormon legal theory, however, continued to focus on the *quality* of the marital relationship rather than the institution of marriage itself, putting Utah on the liberal side of this nationally debated social issue.[51] Though even more controversial than woman suffrage, liberalizing divorce laws was on the agenda of many social activists of this time.[52]

Custody and Guardianship

The common-law approach to guardianship vested custody and guardianship rights exclusively in fathers. Children were considered dependents entitled to support but were also essentially the property of their fathers, who were entitled to their children's services and wages.[53] Early Utah territorial law likewise affirmed that the father was the guardian of his minor children during their lifetimes and had the power to appoint another guardian upon his death. Thus, mothers became guardians only if their husbands became incapacitated, appointed them guardians, or died without appointing another guardian.[54] In the case of divorce, common law also awarded custody to the father.[55]

The first law in Utah, however, recognized that women could be awarded custody of children when the legislature granted probate courts authority to make provision for maintaining the wife and children who were placed in her custody. The law further allowed for the divorcing parties to mutually agree on the disposition of the children; children age ten or older could designate their choice of custodial parent.[56]

If a minor child owned property that did not derive from either parent, the courts were empowered to appoint a guardian to manage the property. No express preference was statutorily conferred upon fathers. Rather, the law provided that either the mother or father (or other adult) could be appointed and that children over fourteen could select the guardian.[57]

Utah law was consistent with early attempts in other jurisdictions nationally to accord greater custody rights to women. These changes were influenced in part by the reform efforts of women's rights advocates. The 1848 Seneca Falls "Declaration of Sentiments" described the male-authored laws of custody and guardianship as being in total disregard of the "happiness of women" and kept these issues at the forefront of the women's rights campaign. Nineteenth-century ideology assigned the proper sphere of women to the home and defined their primary role as motherhood, a view that contributed in some instances to the judicial acceptance of expanded legal rights for women within the home. Finally, the emergence of the role of the courts as arbiters and protectors of the "best interests of the child" led to an erosion of the paternal custody rights and an increase in maternal ones. The power shifted away from husbands

and fathers, not directly to women, however, but to the state. While the law did begin to recognize women's legal capacity for custody and guardianship, the ability to enjoy those rights still depended on a discretionary determination by a male-dominated judicial system.[58]

Utah's unique family situation—where one man fathered many children with multiple wives—however, clearly necessitated some circumvention of the common-law decree on guardianship. When Isaiah Cox of St. George moved to Mexico to escape federal prosecution, his plural wife, Martha Cragun Cox, became, in effect, the primary guardian of her children. She taught school to provide for them, while her young sons assisted by carrying the mail. Their wages became Martha's to control.[59] Without paternal influence, sometimes for years at a time, plural wives were thrust into decision-making roles regarding their children. In some cases, plural wives' situations were tantamount to divorce since they lived apart from their husbands throughout their married lives, often in separate cities, and frequently received little or no maintenance from them. They were in fact, if not in law, the primary guardians of their children. Moreover, a plural wife would sometimes give one of her children to a childless sister-wife to rear, a decision between the women rather than by the father. The reality of life in Mormon society obviated the rule of common law and its assumptions about parent-child relationships.

Property Rights: Control of Real Estate and Wills

When the Mormon pioneers first arrived in the Salt Lake Valley, they surveyed the area and divided it into lots, which were distributed at a drawing. Forty-one women were allocated lots in that initial distribution. Some were single, some were widowed, some were plural wives, and some were married but were considered "heads of households" because their husbands were away with the Mormon Battalion, then on its way to California, or serving church missions.[60]

Federal land laws successfully sought to encourage female migration to the West by allowing women land ownership rights beginning with the Oregon Donation Act of 1850.[61] Passage of the federal Homestead Act of 1862 entitled the "head of a family" to obtain title to 160 acres by living on the land for five years and improving it. If the original settler died, his widow or his or her heirs could continue in possession and make the claim.[62] The Townsite Act of 1867 gave city dwellers the means to obtain title to property within the boundaries of cities and towns by filing and establishing their right to it.[63] Not until 1868 were federal land laws extended to Utah, with a federal land office following the next year.

The combined property laws had a unique effect in practice in Utah. While married women generally were not able to make claims under the Homestead or Townsite Acts, because most of them were not "heads of families" or the primary "occupant," married women who were de facto heads of families or the main adult occupant apparently made such claims successfully, giving

them legal control of the property. For example, Orson Pratt and his first wife, Sarah Marinda Bates Pratt, occupied a lot in Salt Lake City for some time prior to 1861 and made improvements on it. They moved to St. George and Brigham Young took possession. Sarah returned in the winter of 1867–68, and Young relinquished possession. She resided on the property with her children, with little or no aid from her husband and with no agreement, express or implied, to pay rent to Young. When the time came to file claims under the Townsite Act, both she and Young sought title. The court held that, though she was married, as head of the household and actual occupant of the land, Sarah Pratt was entitled to the deed.[64]

The property claims of plural wives did not go unchallenged, however. In 1879, the acting secretary of the Interior Department denied a plural wife's homestead claim. His decision asserted that plural wives were, to all intents and purposes, subject to the control and governance of their husbands. If all plural wives made claims under the homestead laws, he asserted, a husband could gain control of multiple tracts. His ruling apparently gave no weight to the 1872 passage in Utah of the Married Person's Property Act giving women control of their own property, nor did it recognize that many plural wives were independent heads of households. That the practice was extensive enough to elicit notoriety is suggested by a critical article by Schuyler Colfax published in the *Chicago Advance,* December 22, 1881: "Nor should these surplus wives be allowed to claim land as the 'head of a family' to help enrich their husbands,—a right denied to legal wives anywhere. . . . Such a practice holds out a premium in power and in possession to polygamy as against law abiding citizens."[65] Though Utah's property laws mirrored those elsewhere, in Utah they carried implications beyond their original intent.

Once "legal" ownership of land was possible, the same social imperative which led to the passage of married women's property acts in other jurisdictions motivated passage of "An Act Concerning the Property Rights of Married Persons" by the Utah legislature in 1872.[66] The law provided "that all property owned by either spouse before marriage, and that acquired afterwards by gift, bequest, devise or descent with the rents, issues and profits thereof, is that separate property of that spouse by whom the same is owned or acquired and separate property owned and acquired as specified above may be held, managed, controlled, transferred and in any manner disposed of by the spouse so owning or acquiring it, without any limitation or restriction by reason of marriage."[67]

This statute, similar to married women's property acts in other states, represented a departure from the common law by allowing married women to keep their personal property and to control their real property. It took another quarter century before all states recognized married women's right to their property.

But there was still resistance. Conservative legislators in several states interpreted married women's property acts as undermining the institution of

marriage and the concept of marital unity. Some of the earliest acts entitled women to *hold* their own property but not to *use* it by conveying it in any way. Such provisions, they assumed, would assist husbands acting on behalf of or together with their wives.[68] During the 1895 convention to draft the constitution for the state of Utah, the debate on this issue demonstrated ambiguity in defining the act's intent as well as its extent. Delegate Charles S. Varian, representing one point of view, proclaimed himself "in favor . . . of incorporating in this Constitution a recognition of the community system . . . which enables the wife to participate equally with the husband in all the earnings and accretions derived by either of them during the marriage."[69] Under the community property system, developed in states and territories of Spanish heritage, each spouse retained ownership of his or her property owned before marriage. All money and property acquired during the marriage was jointly owned, although the husband enjoyed the right of sole management and control. Upon the husband's death or divorce, the wife received one-half interest. It thus went beyond the provisions of the Utah Married Person's Property Act by giving women joint ownership of property acquired by either marital partner. This measure was too liberal for the delegates, who rejected it.

On the other end of the spectrum was Representative William Howard, described by a colleague as "a man too much married [who] wished to take away some of the liberties of women." He proposed that the constitution provide that a woman could sell, devise or mortgage her separate property but that "such sale, or alienation . . . shall not be valid, without the signature of her husband to the same." That amendment met only laughter and failed for lack of a second. The delegates were clearly no longer bound to the principle of coverture. The final draft of Utah's constitution gave women rights over their separate property but stopped short of including control over marital property or earnings.

The Married Person's Property Act of 1872, which allowed women to "transfer" or "dispose of" their own property "in any manner," seemed to include the power to dispose of property by will.[70] In an atypical response to the "liberating" features of the Married Person's Property Act, the legislature passed an act in 1876 providing that a married woman could *not* dispose of her property by will without her husband's consent.[71] Its intent may have been to protect a husband's interest in the property of his wife, especially if he were a polygamist. Governor George W. Emery did not sign the bill because he found it inconsistent with both the Married Person's Property Act and with national progress in this area. The legislature reconsidered and within months passed a law that allowed a married woman to dispose of her separate estate by will.[72] While Utah was already progressive in passing a Married Person's Property Act, this extension of its provisions reflected national goals in women's legal rights.

Women's right to control their property by will not only effectively challenged the underlying premise of coverture but contributed to the growing

legal independence of women as well as to their individual wealth. As more states adopted Married Women's Property Laws, women's financial holdings grew proportionately throughout the century.[73] Women's wills thus provide some measurement of the extent of their individual wealth and the control they exercised over it. In Utah, for example, plural wife Elizabeth Hoagland Cannon used this newly clarified legal right by willing all her property to her husband but requested that he use it to rear and educate *her* children and that upon his death he assign her property or the equivalent to *her* children and heirs so that, in her words, "said children and heirs may stand upon the same footing as my said beloved husband's other children and heirs and not suffer any loss because I have bequeathed to him . . . all the property, real and personal, which I possess."[74] This property included an inheritance from her father and gifts from her husband, including stock in ZCMI (a church-owned cooperative retail store in Salt Lake City), the Deseret National Bank, the Provo Woolen Factory, Salt Lake City Railroad Company, and some real estate.

Like Elizabeth Cannon, Eudora Shaugnessey, in 1889, bequeathed her property to her husband in trust for the support, maintenance, and education of her children, and provided that each child was to receive his or her share of the estate when reaching the age of majority.[75] In 1894, Jane McKay Smith executed a will which appointed two of her children as trustees and directed them to sell one parcel of her property and to use the proceeds to build a house on another lot for the use of her husband and unmarried children, the husband to have the use and benefit of the house (including the right to lease it) for his lifetime. The property then passed to her daughter.[76] These women had extensive land and stock holdings whereas many other women had only small sums of money and a few personal effects to bequeath.

Rather than to their children, some women chose to leave their small inheritances to friends, their church, or to charities. Sophie Ramzell's will in 1876 bequeathed to "her sisters in the faith," Margaret Blyth, $100; Olivia Rosengreen, $100 and her "steam box"; Maria Lagergran, $100 and her "black worsted dress"; Julie Sophie Weinerholm, $100; Sarah P. Heywood, her "black silk dress," all as "tokens of remembrance." In addition, she bequeathed $200 to the Trustee-in-Trust of the Church for the temple in St. George, $200 for the temple in Salt Lake City, and all the rest, including land, buildings, notes, mortgages or furniture, to George Q. Cannon, a member of the LDS First Presidency.[77] In 1881, Sarah Cunningham willed to her niece all her wearing apparel and keepsakes, to the Female Relief Society her house and lot, "to assist the poor," and the rest to her bishop to "dispose of as proper."[78] Lydia Blinde's will of 1890 left what appeared to be all her household property to Emma Elizabeth Wilson: one "feather bed weight," three quilts, three comforters, four pillows, a cookstove, furniture, one side board, one eight-day clock, one carpet, one leaf table, a sewing machine, pictures, household furniture and dishes, books, clothes, and garden tools.[79]

However small the bequest, women clearly enjoyed designating the beneficiaries of their own property, a legal development that also provided historical insight into women's individual wealth, their personal and household possessions, and their relationship to family, friends, and community. Women's right to control their own property became a necessary corollary to the growing economic independence of women nationally throughout the nineteenth century and reflected not only changing economic realities but social attitudes as well.

Right to Sue or Be Sued

The Utah Married Person's Property Act also allowed married women to sue or be sued in their own names.[81] However, the 1884 Code of Civil Procedure required that a married woman's husband be joined in suit except "when the action concerns her separate property or her right or claim to the homestead property, . . . when the action is between herself and her husband, . . . or when she is living separate and apart from her husband by reason of his desertion of her, or by agreement in writing entered into between them."[81]

Husbands and wives did in fact bring suit together in cases which concerned only the wife. In *Oliphant v. Fox,* Mrs. Oliphant, who had recently married Mr. Oliphant, sued her former husband, Mr. Fox, to modify the divorce action which gave Fox custody of some of the children. In fact, all the children had chosen to live with Mr. and Mrs. Oliphant, and the Oliphants sued for more support.[82] This was but one of a number of cases in which husband and wives sued together to recover for injuries sustained by the wife.[83]

A few territorial statutes gave women specific rights in certain classes of cases. For example, one territorial statute granted a married woman the right to "institute and maintain, in her own name, a suit [on a bond posted by persons licensed to manufacture, dispense, or sell liquor] for all damages sustained by herself and children, or either, on account of the [liquor] traffic, and the money when collected, [was to] be paid over for the use of herself and children, or either."[84] Wrongful death actions for the loss of a child could be brought only by the father, however, unless he had died or deserted the family.[85] In either of those cases, the mother could sue for the seduction of a minor daughter, and an unmarried woman could sue her seducer in her own behalf.[86]

In the right to sue or be sued, Utah law cases resembled those in other states with Married Women's Property Acts. Through a series of amendments to the basic property acts, married women gradually acquired a legal identity independent of their husbands and important to their concurrent claims to independent political representation.

Inheritance Laws

Throughout the territorial period, the inheritance rights of wives, especially plural wives, had a stormy history under inheritance laws. A review of local

court proceedings shows that many estates went to the widow and minor heirs by virtue of statutes which reserved homestead and personal property for their benefit. An 1852 law provided that the homestead (the home occupied by the family) was to be set apart for their benefit despite will provisions to the contrary or creditors' claims (both during life and upon death). The homestead exemption laws (not to be confused with the federal homestead legislation which regulated grants of public land to those who lived on and improved it for a specified period of time) were a unique American legislative innovation of the early nineteenth century. Like the bankruptcy laws of the same period and the later Married Women's Property Acts, these laws were aimed at preserving family financial stability by insulating the basic properties that a family needed to survive from imprudent financial actions by the head of the family.[87]

Initially, no specific dollar amount of the real estate was designated, but the law did outline specific items of personal property to be reserved for the use of the head of the household, or upon his death for the widow and children such as clothing, furniture, tools of trade, livestock, household effects, farm implements, and sewing machines.[88] Later enactments allowed the court to award the family additional funds from the estate, but provided that, if the widow had a sufficient, independent maintenance, the homestead would go to the minor children.[89] Under the 1852 law, the widow had only a life interest in the use of the property, her share passing to the children on her death.[90] In 1888 the law was amended to give the widow absolute ownership of all the homestead property if there were no children or one half the property if there were.[91]

In the early territorial period, these provisions were applied to both the legal and plural wives; and the whole estate was often set aside for their use as a result. The welfare of plural wives and their children had prompted the passage of these provisions. For example, when William Nixon died intestate, the court ordered that a house then under construction be completed and set aside as the homestead for two of the wives to occupy and that a third wife be given a homestead interest in the house she occupied. In addition, the court awarded amounts for the support and maintenance of all the wives and their children.[92] At J. M. Woolley's death, his estate was divided, giving one wife, Maria, and her six children the homestead on which she resided, worth $3,000, and additional property including cows, stoves, buffalo robe, dishes, beds, linens, all worth an additional $1,000, and $500 in additional personal property. Another wife, Anna Woolley, who apparently had no children, did not have a home or the necessary furnishings for housekeeping. The administrators were ordered to purchase a cooking stove and other essential furniture for her and to provide for her support and maintenance.[93]

In later enactments, the homestead was limited to a specific value ($1,000 which was later raised to $1,500) plus additional support for the wife and each child.[94] Where property remained in the estate after the homestead allowance was awarded and there was no will, the laws of intestacy determined

the distribution of the balance of the estate. Possibly in recognition of the legal challenge posed by multiple wives, in 1852 the territorial legislature enacted a somewhat ambiguous law providing for the estate of a husband who died intestate:

> If there be other property remaining after the liabilities of the estate are liquidated, then it shall, in the absence of other arrangements by will, descend in equal shares to his children or their heirs; one share to such heirs through the mother of such children, if she shall survive him, during the natural life, or during her widowhood; or if he has had more than one wife who either died or survived in lawful wedlock, it shall be equally divided between the living and the heirs of those who are dead, such heirs taking by right of representation.[95]

Under this law a monogamous wife shared equally with her children. In *Cain Heirs v. Young,* the court held that the widow took "a child's part during her life or widowhood" which then descended to the children. In that case there were two children who each took a one-third interest immediately and one-half reversionary interest in the widow's one-third interest.[96] It is not clear whether the statute meant to cover cases where the decedent had more than one wife simultaneously, as in polygamy, or simply consecutively. Nor does the term "survived in lawful wedlock" necessarily specify the first wife, rather than the plural wife, since the Morrill Act outlawing such marriages had not yet been enacted. Nevertheless, no territorial court cases appear to have granted plural wives property under this statute.

Both church courts and individual informal arrangements, however, attempted to equalize the claims of all surviving wives and children, as in the case of Mary Ann Maughan of Cache Valley, the first of Peter Maughan's plural wives. When her husband died intestate, she selected local leaders to handle the settlement. She was not entirely happy with the decision, however: "January 1872. I chose G. L. Farrell and Francis Gunnell to assist in settling the estate. The Brethren thought it best for all to share alike, so [plural wife] Lissy's little boy 2 ½ years was awarded just as much as I was."[97]

A separate provision of the 1852 law, however, allowed "illegitimate children and their mothers" to inherit from the father, whether acknowledged by him or not, if it could be demonstrated that he was the father.[98] Cases later in the territorial period suggest that the probate courts elected to include plural families under this provision, so worded as to pass Congressional scrutiny while covering the justifiable if illegal claims of plural families.

In 1872, ten years after passage of the Morrill Act, a plural wife's right to inherit under the second provision of the 1852 statute was challenged. In the case of *Chapman v. Handley,* the probate court had denied any distribution from the estate of George Handley to his second wife, Sarah Chapman, and her children, ruling that the Utah statute was nullified by the Morrill Act,

which made bigamy a crime and invalidated all laws which "establish, support, maintain, shield or countenance polygamy."[99] The Utah Supreme Court agreed, and plural wives and their children were left unprovided for by intestacy laws. They became dependent on the largesse of the first or legal wife or the willingness of all parties to allow ecclesiastical leaders to distribute the property. Like other cases where first wives were unwilling to share their inheritance, the plural wives of Francis Gunnell experienced economic hardship when the husband died intestate. Gunnell's plural wife Emma "wept uncontrollably for now she would have to stay in a little one-room cabin with her five children," according to a granddaughter. "She and Jane [another plural wife] were left nothing, not being recognized by law as a wife. Everything was left to the first living wife, Esther, except some property which was divided among the children."[100] To avoid this situation, Anne Leischman, aware of the precarious financial position that her father's second wife would face at his death, urged him to make a will. "My mother would come in all right if he dies for a home and things," she explained, "but Aunt Betsy would only be treated as a child. . . . She can't write a check, she can't sign a deed, she can't do anything."[101]

In 1876 Governor Emery urged the legislature to *require* that the father acknowledge illegitimate heirs before they inherit to avoid the possibility of fraudulent claims.[102] The legislature added the suggested provision to the statute while reluctantly removing any inheritance rights of mothers of illegitimate children. One year after the *Chapman v. Handley* decision, the issue of the inheritance rights of children of polygamous unions was again raised in *Cope v. Cope,* a case that went all the way to the U.S. Supreme Court. Four years after the Edmunds-Tucker Act reinforced anti-polygamy measures and one year after LDS Church President Wilford Woodruff issued his manifesto suspending the authorized performance of new plural marriages, the Supreme Court ruled that the legislature was free to provide for illegitimate children to inherit from their mother, father or both since it was "unjust to visit the sins of the parents on the heads of the children."[103] The Court disagreed with the determination of the Utah Supreme Court that the Morrill Act, which invalidated laws that supported polygamy, applied to this statute which provided inheritance rights for offspring of polygamous unions. The Court noted that subsequent federal anti-polygamy legislation had been particularly solicitous of the rights of children of polygamy, specifically legitimating any such offspring born before 1883[104] and expressly disallowing inheritance rights only of illegitimate children born twelve months after passage of the Edmunds-Tucker Act in 1887. This act provided that

> the laws enacted by the legislative assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit, or to be entitled to any distributive share in the estate of the father of any such illegitimate child, are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father, or to receive

The Salt Lake City and County Building was dedicated in 1894 and has been in continuous use for government offices since its construction ca. 1900.

> any distribute share in the estate of his or her father: Provided, That this section shall not apply to any illegitimate child born within twelve months after the passage of this act, nor to any child made legitimate by the seventh section of the [Edmunds] act.[105]

Despite the legislature's initial attempt to provide legal protection for plural wives, these later legislative and judicial decisions annulled their efforts. Intestate husbands thus left their plural wives in straitened economic circumstances. The only legal safeguard for plural wives was a will.

Occasionally some husbands designated their wives as guardians of their property but often only until their children reached maturity. For example, in 1874 John Proctor left his wives their respective homes and lands only until their youngest child reached the age of sixteen, when the property was to be sold and the proceeds divided as he specified.[107] Some men, however, entrusted full control of their estates to their surviving wives. John McDonald gave his wife a lifetime interest in his property for her own use and that of her daughters and the right to designate the distribution of the property to the daughters after her death with the provision that she eliminate from her will any daughter who married a non-Mormon.[107] Albert Merrill, with little to leave behind, willed his lot and house to his first wife but reserved the two back rooms for his second wife.[108]

At common law, if a husband either disinherited his wife or disposed of all his property in some other way, the common law right of dower, or one-third interest in his real property, protected her. In Utah, however, prohibiting dower was necessary to avoid the impracticability or even impossibility of granting multiple one-third dower interests to plural wives. While granting married women the right to control their own property, the Utah Married Person's Property Act of 1872 formally disallowed dower in property settlements. Monogamous marriages were thus seriously affected. Absence of dower effectively diminished a legal wife's claim by withdrawing her contingent, prospective interest in one third of her husband's property during his lifetime, which he could not transfer away without her consent, and granting her only an equal share with all of her husband's direct heirs at his death. While non-Mormons complained, Mormon wives declared that dower was a form of "vassalage" and a "relic of the old common law" and claimed that the property rights granted women were far more progressive and reflective of social and economic change.[109] After signing the legislation, however, Governor George L. Woods reconsidered and urged the legislature to repeal it at the next session.[110] The legislature did not. One polygamy critic, U.S. Vice-President Schuyler Colfax, after visiting Utah, argued: "The right of dower which has been abolished by the Utah legislature (so as to render a polygamous wife slavishly dependent on the husband's favor for any share of his property after his death for herself or her children) should be reenacted by national legislation and carefully guarded for the legal wife, who, in polygamy is not the favorite as a general rule. This would greatly discourage women from marrying a polygamist."[111]

In 1887 the federal government entered the controversy over the dower. Despite a growing national trend to rescind dower, passage of the anti-polygamy Edmunds-Tucker Law that year reinstated in Utah a dower interest for married women in all of their deceased husband's land held any time during the marriage.[112] Five years later Utah legislation provided rules for claiming dower, and for releasing dower interests, and created a cause of action for the wrongful withholding of dower property.[113] Court cases addressed various aspects of the right of dower, including the inability of plural wives to claim dower even when the first wife had died.[114] The court ruled essentially that "once a plural wife, always an unlawful plural wife."[115] The dower right became part of Utah law in 1896 when the first Utah state legislature enacted a dower provision which mirrored the language of the Edmunds-Tucker Act.[116]

By the end of the territorial period, because Utah was in the forefront of the homestead exemption movement and construed the right rather generously along with the federal ruling to reinstate dower rights, monogamous wives in Utah enjoyed greater protections than most women in the country. The restrictions on inheritance of polygamous children that were imposed by the final, most drastic piece of anti-polygamy legislation, the Edmunds-Tucker Act,

were removed upon statehood. Plural wives, however, were left without any legal protection if not provided for by will.

Women in Non-Domestic Work

Despite the prevailing cultural value of domesticity, Brigham Young enunciated a progressive view of women in the trades and professions. For example, in 1869 he issued a call to women to expand their social usefulness:

> We have sisters here who, if they had the privilege of studying, would make just as good mathematicians or accountants as any man; and we think they ought to have the privilege to study these branches of knowledge that they may develop the powers with which they are endowed. We believe that women are useful, not only to sweep houses, wash dishes, make beds, and raise babies, but that they should stand behind the counter, study law or physic, or become good bookkeepers and be able to do the business in any counting house, and all this to enlarge their sphere of usefulness for the benefit of society at large.[117]

Out of necessity or by choice, women acted on this invitation and found employment in a variety of professions. As noted by Elizabeth Kane, wife of Brigham Young's friend, Thomas L. Kane, during a visit to Utah in 1872: "They close no career on a woman in Utah by which she can earn a living."[118] Because of polygamy, widowhood, and their husbands' missionary service, many women acted as heads of their households, including the role of breadwinner for themselves and their children—and, not infrequently, for their husbands as well. Some did so in traditional ways: domestic service, sewing, millinery, and managing boarding houses. Less traditional occupations in which Utah women were employed included typesetting and printing, bookkeeping, clerking, and accounting. Some women became telegraph operators, nurses, and midwives, and doctors. In the area of vocational choice, Utah was in advance of many other states and territories, including actively finding ways to train women in their chosen field.[119] Even the field of law was open to women, although such progressivism is ironic, considering Mormon distrust of lawyers during the early territorial period.[120] It was this very disdain for professional lawyers that opened the door for women to enter the legal profession.

To avoid the necessity of requiring licensed lawyers to protect one's legal interest when challenged, the 1852 legislature provided another route for litigating cases, a statute that appeared to allow women as well as men to act as their own legal counsel or to choose any person, male or female, of good moral character to represent them.[121] While a few courageous women were struggling to assert their admission to various state bars elsewhere, largely unsuccessfully, Utah's provision, which allowed men *and women* to act not only in their own behalf but also as counsel for others, was markedly advanced. Although the provision was seldom invoked by women, in 1874 a Provo woman, Martha

Jane Coray, may have assisted a sick friend in a legal capacity during several days of court hearings in a custody suit.[122] She was at least an active participant in the case. To further protect individuals from exorbitant legal fees, the same act prohibited attorneys from compelling payment through the courts.

Despite these provisions for non-professional legal service and an early denigration of the profession, there were attorneys in Utah territory, including women. Rather than legal expertise or academic credentials, admission to the Utah bar was based on good moral character, a favorable report of an examining committee, or admission to practice in the highest courts of other states or territories:

> Applicants for admission to practice as attorneys and counselors of this court, shall be admitted on proof, presented at the time of applications, of good moral character, and on the favorable report of an examining Committee appointed for that purpose; or on the production of a certificate or proof of previous admission to practice in the highest Court of any State or other Territory of the United States. A person admitted to practice in this Court shall be entitled to practice in all Courts of this Territory.[123]

In 1872, Utah formally admitted two women to the bar: Phoebe Couzins, a graduate of the Washington University Law School in Missouri, who had previously been admitted to practice in Missouri state and federal courts and in the Arkansas state court but had been denied admission by several other state bars; and Georgiana Snow, daughter of Zerubbabel Snow, a former attorney general of Utah Territory, who had clerked in her father's law office for three years. In welcoming Couzins and Snow "as sisters at the bar," the court expressed an unusually favorable view of the prospect of having women members of the bar: "It has been said by a learned writer that law is the refinement of reasoning. Perhaps it is natural to infer that those who have the most refinement ought to be very clear, perhaps intuitive reasoners. Certainly no gentleman of this bar would deny that, in social life, woman's influence is refining and elevating. May we not hope that the honorable profession of the law be made even more honorable by the admission of women to the bar?"

And in welcoming Miss Snow the court stated: "It may be pertinent for the court to remark that Miss Snow will find in Utah an ample field for the exercise of her professional talent . . . . The fact that she has long resided here, and that she is the daughter of a lawyer, will be of great service to her, giving her much advantage over strangers who come here, and especially in listening to the complaints of her own sex."[124]

Far from being impediments to this traditionally male profession, Judge James B. McKean, chief justice of Utah, asserted, their womanly characteristics would prove advantageous. Myra Bradwell of Illinois, however, found those same characteristics grounds for denying her entry into law. In 1869, after studying law in her husband's office, she applied for admission to the Illinois

Bar. Denied admission, Bradwell carried her case to the U.S. Supreme Court. When the Court finally heard her case in 1873, it ruled against her, declaring, among other reasons, that "the natural and proper timidity and delicacy which belong to the female sex evidently unfits it for many of the occupations of civil life." Viewing the legal profession as outside the domain of women's "natural sphere," it declared that "the constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and function of womanhood."[125] This attitude prevailed in the majority of states and territories, although this strong bastion of male dominance was beginning to fall through the agitation and determination of women activists. Mormon women concurred with this social norm, but they also created a uniquely female public domain that intersected philosophically with the private and expanded their opportunities for non-domestic activities. Moreover, though Utah's rationale behind its approach to the legal profession did not result from female agitation, it put Utah in the vanguard of states to remove this impediment to women's vocational rights.

However, the admission of Couzins and Snow did not herald a surge of female lawyers in Utah Territory. Both women eventually left Utah and proved to be ineffective role models for other women in that profession although both became politically active. But in 1892, Utah territory admitted Josephine Kellogg of Provo to the bar, and records show that several other Utah women studied law before the turn of the century, although no evidence is available that they were admitted to the bar.[126]

Jury Duty

In Wyoming, a woman suffrage statute was passed a month before Utah's, which also allowed women to sit on juries, As soon as Wyoming women began acting in that capacity, however, men organized to take away that right, and it was not restored until the 1940s.[127] Unlike the Wyoming law, Utah's first woman suffrage law, passed in 1870, did not expressly cover the public duty of jury service or the right to hold public office. Before that time women did not sit on juries in the territory, although the law was less than clear in excluding them. Utah's first general code of civil procedure provided that if either party requested a jury, the court should issue an order to the proper officer requiring him to summon for that purpose, not less than three nor more than twelve "judicious persons," which suggests the possibility of including women.[128] However, the code of criminal procedure enacted in the same session required grand juries of "judicious *men.*"[129] Despite the gender-neutral wording of the civil statute, there is no evidence that women ever served on juries in civil cases nor sought to do so. All enactments concerning petit, grand, and special juries expressly required men, although some women occasionally served on coroners' juries.[130] After the Civil War, Utah's jury statutes were amended to omit the "free" and "white" requirements, but the "male" requirement remained.[131]

A case in which the defendant claimed that the exclusion of members of his religion from the jury was a denial of equal protection illustrates the prevailing interpretation of "a jury of one's peers" of particular importance to women. In pointing out the illogic of the defendant's argument, the court stated: "The correctness of this theory is contradicted by every day's experience. Women are not allowed to sit on juries; are they thereby denied the equal protection of the laws?"[132] Many women, like Susan B. Anthony, would have answered, "Yes!" In 1872, following a suggestion by the National Woman Suffrage Association, women were urged "to apply for registration" and if that failed to bring suit in order "to secure general and judicial recognition" of their cause. Their plan was to test the Fourteenth Amendment in relation to women's right to vote, who were U.S. citizens. Anthony and fifteen of her friends in Rochester, New York, succeeded in voting but were thereafter arrested for violating the Enforcement Act. Anthony promptly sued. Before the verdict was delivered the judge gave Anthony opportunity to speak. She responded with a lengthy diatribe against the discriminatory legal system which denied her a jury of her peers, since no women were in the jury box. Though she lost her case, the judge imposed neither a fine nor imprisonment.[133]

In many states, jury service was tied to voter status, and women hoped that the opportunity to serve on juries would follow the grant of suffrage. In the decade prior to passage of national suffrage for women by the Nineteenth Amendment in 1920, Washington, Kansas, California, New York, and Michigan gave women the right to serve on juries along with voting rights. Most other states, however, did not.[134]

While many men and women slowly accommodated themselves to the notion of women in the political realm, jury service still appeared to be more appropriately and exclusively a male duty.

Even in those states where jury service was allowed, exemption provisions led to curtailment of women's presence in the jury box. As late as 1961, the U.S. Supreme Court upheld a state's power to automatically exempt women from jury service.[135]

A defendant's right to have a jury drawn from a pool that included women was not recognized until 1975, and the practice of using peremptory challenges to exclude female jurors on the basis of gender was not ruled unconstitutional until 1994. Indeed for most women in the United States, the right to be considered for jury service was not fully vouchsafed until the last decade of the twentieth century.[136]

The right to serve on juries became an issue for Utah women after statehood in 1896. Although the state constitution allowed women all civil and political rights and privileges, this provision was at first not construed to include jury service.[137] The point was debated and passed in the first state legislative session in January 1896. Utah thus became the first state to have a permanent statute that allowed women to serve as jurors. However, Utah

women could also claim exemption from doing so. Utah's first governor, Heber M. Wells, so indicated in his 1902 report on the effectiveness of woman suffrage in Utah, published in Susan B. Anthony's *History of Woman Suffrage:* "One of the bugaboos of the opposition [to woman suffrage] was that women would be compelled to sit on juries. Not a single instance of the kind has happened in the State, for the reason that women are never summoned; the law simply exempts them, but does not exclude them."[138]

Political Rights

The national suffrage movement, Utah's location in the more liberal West, Mormon interests, and federal authority all converged when the Utah's territorial legislature granted Utah women the right to vote in 1870. During the 1860s, Congress introduced several bills extending the franchise to women of the various territories, partly as an experiment in female suffrage, as an inducement to female migration to the West, and as a mean of eradicating polygamy in Utah. Since plural wives were particularly oppressed, it was reasoned, suffrage in Utah territory would help elevate them by giving them the political power to remove the source of their oppression.[139]

When Congressional attempts at woman suffrage legislation failed, Utah's delegate, William H. Hooper, embraced the idea of suffrage for Utah women as a means of countering the image of subjugated Mormon women while also enhancing Mormon political unity. There was little fear that women would use the vote as a tool to outlaw polygamy since they were as committed to the principle as LDS men. In fact, in a show of unity, a number of LDS women, responding to a particularly punitive anti-polygamy congressional proposal, planned a general woman's rally for January 1870. Declaring that it was time to "rise up . . . and speak for ourselves," they also drafted a resolution to "demand" from Acting Governor S. A. Mann "the right of franchise" and planned to send two women to Washington, D.C., to plead their case before lawmakers.[140] As matters turned out, it became unnecessary for them to act on either resolution. The territorial legislature granted them the right to vote just weeks later, and various business associations throughout the country decried the harsh economic restraints and political ramifications of the proposed bill.[141] The pressure of Hooper's recommendation, the favorable attitude toward woman suffrage of church leaders, positive articles in the *Deseret News,* and adoption of woman suffrage in nearby Wyoming a few weeks earlier all contributed to a favorable outcome in Utah. To cap these persuasive developments, Mormon women's bold initiative in mounting a rally in defense of plural marriage influenced the legislature to return a unanimous vote to enfranchise women. In the prolonged absence of the newly appointed governor, Mann reluctantly signed the act on February 12, 1870.[142] National suffragists were delighted, Congress surprised, and federal officials in Utah alarmed.

Although enfranchisement did not expressly confer the right to hold office, Mary Cook ran for Salt Lake County Superintendent of Common

Schools in 1874 and her sister Ida was elected Superintendent of Schools in Cache County in 1877. Both women, however, were ruled ineligible.[143] In 1878, women attended caucuses of the Mormon People's Party for the first time, and three women were elected delegates to the county convention. At that convention, Emmeline B. Wells, editor of the *Woman's Exponent,* was nominated for county treasurer. When it was again determined that the statute did not allow a woman to hold office, women began a two-year campaign to amend the law. The first attempt in 1878 failed. A second effort in 1880 passed the legislature but the federally appointed governor refused to sign the bill.[144] In commiserating with Utah women, Susan B. Anthony lamented the "utter hopelessness of making any changes. . . . Men have so long had absolute control," she continued, "that every activity of woman to shape matters in the primary meetings and nominating conventions is still deemed an intrusion on her part."[145] Emmeline B. Wells, a strong proponent of the bill, quickly retorted. In Utah, she said, "every office open to woman, she has been allowed to occupy," including membership on nominating committees. As delegates to county and territorial conventions, women have always "been most politely treated, invited to speak, and express opinion." Failure to amend the law to include the right to hold office, she wrote, cannot be laid at the feet of the Mormon legislature, but solely at the door of the federally appointed governor, who had "refused to extend the courtesy of his signature."[146] Women made no further attempts to achieve the right to hold elective office until statehood.

In 1878, almost simultaneously with the drive to extend women's political rights, a group of disaffected and non-Mormon women organized the Anti-Polygamy Society. One of the society's first acts was to draw up a memorial to President Rutherford B. Hayes denouncing polygamy and urging the repeal of woman suffrage in Utah. Mormon women countered with a second mass rally and their own memorial affirming their constitutional right to the free exercise of their religion.[147] The Anti-Polygamy Society, however, caught the interest of many national moral reform associations dedicated to stamping out immoral practices, among which they included polygamy, and proved to be a formidable national force in publicizing the practice and creating public opinion against it.

Local efforts to disfranchise Mormon women climaxed in 1880, when members of the non-Mormon Liberal party challenged the validity of the 1870 law giving women the vote. They filed suit for a writ of mandamus to compel the voting registrar in Salt Lake County to strike the names of all women from the registration list. Their challenge was based on the claim that the act was discriminatory because the 1859 act enfranchising male voters required them to be taxpayers while the 1870 act contained no such requirement for women. In addition, men were required to be citizens but women who were only wives or daughters of citizens (and not citizens themselves) were eligible to vote. The large number of immigrant converts to Mormonism made the provision

particularly relevant. The defense argued that the court had no jurisdiction and that the complaint did not state a cause of action. The court affirmed its jurisdiction but denied the mandamus, ruling that this writ was capable only of compelling a person to do what the law as enacted required him to do, not to prevent a person from following the law or compel him to act contrary to the law.[148] Letters and telegrams of congratulations to the women of Utah poured in from suffragists throughout the country.

In *Lyman v. Martin,* decided the next year, the validity of the act granting women voting rights was again challenged on the same basis. In that case, a candidate sued to have election results publicly announced by officials who had refused to do so because they claimed the election law was void. Rather than voiding the statute giving women the vote, however, the court ruled that the taxpayer requirement for men should be stricken. It also held that the act *perhaps* permitted a female noncitizen to register and that other territorial statutes requiring voters to be citizens applied to women as well.[149] Several other unsuccessful local attempts to disfranchise Utah women followed, but suffrage was left intact.[150]

Where local court action was unable to rescind women's right to vote, federal legislation succeeded. The Edmunds Act of 1882 denied suffrage to all participants in plural marriage and empowered a federally appointed Utah Commission with control of elections. In *Murphy v. Ramsey,* the plaintiffs contested the constitutionality of a "test oath" requiring voters to declare whether they were then practicing or ever had practiced plural marriage. In 1885 the case reached the U.S. Supreme Court, which held that the retroactive sweep of the oath was beyond the commission's power but upheld the disfranchisement of those currently practicing polygamy. Two of the plaintiffs, both women and both married to polygamists, were thus allowed to vote, since the husband of one had died before passage of the Edmunds Act, and the other had separated from her husband since its passage. The court required that the prospective voter be evaluated on the basis of his or her status at the time of registration.[151] Thus non-Mormon and Mormon women who did not practice polygamy or no longer practiced it (widowed, divorced, separated, deserted) were still entitled to vote—but only temporarily. The Edmunds-Tucker Act, which Congress passed in 1887, the most sweeping of all anti-polygamy bills, disfranchised all Utah women. Thus, the 1870 gratuitous offering of suffrage to Utah women, which had met a pressing religious need, had now, like other laws associated with polygamy, also bowed to federal intervention. Many non-Mormon women living in Utah willingly relinquished the franchise, their aversion to polygamy being stronger than their appreciation of the vote.

The final chapter in the story of woman suffrage in Utah concerns the effort of Mormon women and a few other Utah suffragists to regain the vote. After Mormon Church president Wilford Woodruff issued his manifesto in 1890, counseling church members to obey the law of the land and withdrawing

support for new plural marriages, the forty-year wait for statehood gradually drew to a close. Presidential pardons and a general amnesty in 1891 by outgoing President Benjamin Harrison restored some of the rights of citizenship cancelled by the Edmunds-Tucker Law. A second amnesty in 1893 by Grover Cleveland restored the franchise to polygamist males but not to women. Utah women had already organized to regain suffrage, however, in anticipation of statehood. They were therefore ready to mount an extensive grassroots effort to secure a commitment of support from both political parties when the Constitutional Convention met in March 1895.[152] Once the delegates were elected, however, and the Convention convened, the status of woman suffrage became uncertain.

An unexpected debate on the issue lasted twelve days, a fifth of the time allotted for the entire Convention. One prominent delegate, B. H. Roberts, a Democrat from Davis County and a member of the third-tier General Authorities (First Council of Seventy, just below the First Presidency and Quorum of the Twelve), persuasively argued first, that woman suffrage might elicit a negative reaction in Congress and jeopardize passage of the constitution, and second, that as voters or office holders, women lost their womanliness. Other delegates tended to agree with one or the other of these arguments. A compromise, to which many delegates agreed, was to submit the woman suffrage clause to the voters separately from the constitution. However, despite the numerous petitions favoring separate submission and the eloquent oratory of Roberts, pro-suffrage delegates Orson F. Whitney and Franklin S. Richards were more persuasive. The delegates finally passed the woman suffrage proposal, as did the voters at the ratification election, and Utah's women once again enjoyed the vote. Riding on its coattails was a broad affirmation of equality of rights for women: "The rights of the citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges."[153]

A further twist in the history of woman suffrage in Utah occurred after the close of the Constitutional Convention. Ambiguity in the language of the Enabling Act, which permitted Utah to apply for statehood, raised the possibility that women might be eligible to vote at the ratification election in November 1895. Franklin S. Richards, a convention delegate, proposed that they do so but it was never brought before the assembly. Thus, the intent of the Enabling Act had to be judicially decided. Sarah E. Anderson of Ogden, Utah, agreed to be party to a test case. In July, two months after adjournment of the Constitutional Convention, Anderson attempted to register and was denied. She sued and was issued a writ of mandate against the registrar of voters, Charles Tyree, who appealed to the Utah Supreme Court.

While awaiting the court's decision, both Democrats and Republicans wooed women to their parties. The Republicans went so far as to put the names of three women on their ballot, holding to the assumption that they would

Sarah E. Anderson, Ogden, Utah, agreed to be a test case for the Enabling Act. In 1895 she attempted to register to vote and was denied.

be legally entitled to hold office by the time they were installed in January of the following year. Though the District Court had ruled in favor of Sarah E. Anderson, the Utah Supreme Court ruled against her appeal. The qualifications designed by the Enabling Act (male, citizen, twenty-one or over), it ruled, were in force for the November election and the provision in the Utah Constitution making women qualified voters could have no effect until the constitution was ratified and Utah was a state.[154] Public pressure forced the women to withdraw at that point; but the next year, legally empowered to vote and hold office, Utah women helped to elect Martha Hughes Cannon as the first woman state senator in the United States, and two other women, Sarah E. Anderson of Ogden and Eurithe K. LaBarthe, as state representatives, along with several other women as county recorders.[155] And so, after a tumultuous half-century, the longest territorial period of any state in the United States, came to a close, and Utah entered the Union as the forty-third state and the third state to grant its women the right to vote.

With Wilford Woodruff's 1890 Manifesto against polygamy and the 1896 grant of statehood, the Mormon experiment in legislating support of what came to be an illegal practice became irrelevant. The umbrella of the Constitutional guarantee of freedom of religion, which Mormons had always claimed, failed to protect them from the storms of public outrage and federal prosecution. For nearly half a century the Mormon Church had held tenaciously to a religious practice at odds with the country's social norms, using the law to

protect that practice. The resulting zigzag course of law-making in nineteenth-century Utah also reflected the looser gender boundaries resulting from the expanding women's rights movement and the freer Western social environment of which it was a part. In the process, it advanced a consciousness of women's need for a separate legal and political identity, moving Utah women into the forefront of the movement for equal rights. By the time of statehood, however, other Utah laws and its judicial system were generally harmonious with more traditional American jurisprudence. There were clear jurisdictional boundaries between the district and probate courts, and Mormon ecclesiastical courts heard fewer domestic and civil disputes, confining themselves to traditional ecclesiastical matters.

For nearly fifty years, territorial Utah served as a study of the interplay of law and the community of interests it serves. To achieve statehood, Utah had to acknowledge the broader community of which it was a reluctant part by eliminating the offending practice of plural marriage as well as those laws designed to protect it. Utah began the territorial period with a statutory disassociation from the common law and public disdain for the legal profession. Yet its dominant institution, the Mormon Church, found itself drawn ineluctably into a protracted legal battle with the federal government, ironically dependent on the legal profession to defend its interests. In that legal struggle, the women of Utah, both Mormon and non-Mormon, found their legal status constantly in flux. Plural wives were ultimately the losers. Following statehood, a time of enormous legal readjustment, they continued to face legal discrimination as they attempted to press mainly unsuccessful claims for legal protection. But Utah entered statehood bringing with it a number of legal and political entitlements to women, including the right to vote, hold elective office, practice law, serve on juries, and other advances still unavailable to women in the majority of states. The half-century struggle had its rewards. Perhaps the major legal insight culled from Utah's territorial experience is how the law can serve as an instrument of social innovation, even as it serves as a tool of social conformity.

Notes

1. Joan Hoff [Wilson], *Law, Gender, and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991), 89–90, 119–22.
2. William Blackstone, *Commentaries on the Law of England,* 4 vols. (1765–69; reprinted New York: W. E. Dean, 1853), 1:355. Many editions of this work were printed in the United States during the nineteenth century.
3. For more details on coverture and women's rights under common law, see Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986); Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, N.Y.: Cornell University Press, 1982) and Basch, "Invisible Women: The Legal Fiction of Marital Unity in Nineteenth Century America," *Feminist Studies* 5 (Summer 1979): 346-66; Linda K.

Kerber, "From Declaration of Independence to the Declaration of Sentiments: The Legal Status of Women in the Early Republic 1776-1848," *Human Rights* 6 (1976-77), 115-24; John D. Johnston, "Sex and Property: The Common Law Tradition, The Law School Curriculum, and Developments Toward Equality," *New York University Law Review* 47 (1972): 1033-83. Several treatises published in America in the late nineteenth and early twentieth centuries summarized the common law and its effect on women, also outlining statutory and judicial modifications of it. See, for example, Joel Prentiss Bishop, *Law of Married Women* (Boston: Little, Brown, and Co., 1875); John C. Wells, *A Treatise on the Separate Property of Married Women* (Cincinnati, Ohio: Robert Clark and Co., 1879); C. H. Scribner, *A Treatise on the Law of Dower* (Philadelphia: T. and J. W. Johnson, 1883); George E. Harris, *A Treatise on the Law of Contracts by Married Women* (Albany, N.Y.: Banks and Bros., 1887); Charles Austin Enslow, *Law Concerning Women* (Seattle, Wash.: I. N. Davidson, 1928); Charles Garfield Vernier, *American Family Laws* (London: Oxford University Press, 1935).

4. Basch, Kerber, and Johnston all address this legal concept. Early nineteenth-century feminists used Blackstone and the strictures of the common law in their unmodified form as a symbol of the inequalities that women experienced. The 1848 "Declaration of Sentiments" drafted at the first woman's rights convention in Seneca Falls, New York, included the inability of married women to hold property and control their wages as one of the grievances enumerated. See Susan B. Anthony, Elizabeth Cady Stanton, and Matilda Joslyn Gage, eds., *History of Woman Suffrage,* 3 vols. (New York: Towles and Wells, 1881), 1:70–71.
5. Blackstone, *Commentaries on the Law of England,* 1:355. Johnston, "Sex and Property: The Common Law Tradition, the Law School Curriculum, and Developments Toward Equality," 1033–83, discusses four rationales for the common-law status of married women, none of which fully accounts for it: (1) the biblical ideal that husband and wife become one flesh may justify the merger of identities but does not justify women's subordinate status; (2) the theory of a husband's guardianship of his wife is invalid because the law is inconsistent in its treatment of women as the weaker sex, and single women do not fall under this rationale; (3) marriage as a contract does not hold, given the uniformity of results in each marriage arrangement and the lack of free bargaining power; (4) the practical need for final authority to resolve disputes does not necessarily require that the husband have all power. In business partnerships, management and decision-making powers are shared.
6. Hoff, *Law, Gender and Injustice,* 120–128, 87–90. Initially, removal of legal disabilities dominated the arguments of the early feminists; and while twenty-nine states had passed some form of married women's property legislation by 1865, it was in many cases limited and narrowly interpreted. Legal historians have traced the continuity of traditional judicial attitudes in New York and elsewhere, especially in appellate decisions, despite the passage of married women's property acts.
7. Hoff, *Law, Gender and Injustice,* 119–22; see also Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, Mass.: Harvard University Press, 2000), 52–55.

8. Joan Hoff [Wilson], "The Legal Status of Women in the Late Nineteenth and Early Twentieth Centuries, *Human Rights* 6 (1976–77): 126–27. This success in altering the law provided impetus for the political struggle for greater rights for women that followed.
9. The disappointing wording and legal construction of the Fourteenth (1866) and Fifteenth (1869) Amendments dashed the expectations of women suffragists who then began their long struggle for another amendment guaranteeing sex equality.
10. "Declaration of Sentiments and Resolutions," in Miriam Schneir, *Feminism: The Essential Historical Writings* (New York: Vintage Books, 1972), 76–82; also Anthony and Stanton, *History of Woman Suffrage,* 1:70–71.
11. Mari J. Matsuda, "The West and the Legal Status of Women: Explanations of Frontier Feminism," *Journal of the West* 24, no. 1 (January 1985): 47–56.
12. Brigham Young, June 22–29, 1865, *Journal of Discourses,* 26 vols. (London and Liverpool: LDS Booksellers Depot, 1855–86), 10:329. Young's discourse urged the blending the temporal and the spiritual.
13. A popular Mormon hymn, "O My Father," written by Eliza R. Snow, expresses the notion of a Heavenly Mother, a doctrine accepted and understood but seldom taught in Mormon theology. Linda P. Wilcox, "The Mormon Concept of a Mother in Heaven," in *Sisters in Spirit: Mormon Women in Historical and Cultural Perspective,* edited by Maureen Ursenbach Beecher and Lavina Fielding Anderson (Urbana: University of Illinois Press, 1987), 64–77; Cheryl B. Preston, "Feminism and Faith: Reflections on the Heavenly Mother," *Texas Journal of Women and Law* 2 (1993): 337.
14. Wilford Woodruff's Journal, July 25, 1847, quoted in B. H. Roberts, *A Comprehensive History of the Church of Jesus Christ of Latter-day Saints,* 6 vols. (1930; Provo, Utah: BYU Press, 1965), 3:269.
15. R. Collin Magrum, "Furthering the Cause of Zion: An Overview of the Mormon Ecclesiastical Court System in Early Utah," *Journal of Mormon History* 10 (1983): 79–90; Mangrum and Edwin B. Firmage, *Zion in the Courts: A Legal History of the Church of Jesus Christ of Latter-day Saints, 1830–1900* (Urbana: University of Illinois Press, 1988); Raymond Swenson, "Resolution of Civil Disputes by Mormon Ecclesiastical Courts," *Utah Law Review* 12 (1978): 573–95; and Stephen J. Sorensen, "Civil and Criminal Jurisdiction of LDS Bishops and High Council Courts, 1847–1852," *Task Papers in LDS History, No. 17* (Salt Lake City: LDS Church Archives, April 1977).
16. "An Act to Establish a Territorial Government for Utah," September 9, 1850, 9, *United States Statutes at Large,* 453. A study of that first bid for statehood is Dale L. Morgan, "The State of Deseret," *Utah Historical Quarterly* 8 (January 1940): 65–251. For the Deseret statutes re-passed by the Utah Territorial Legislature, see *1851 Utah Laws* 205. Though Mormons numerically dominated Utah during the territorial period, the laws enacted by its legislature were interpreted by a federally appointed Utah Supreme Court, which to a large extent represented the minority population of Utah. Paul A. Wright estimated the non-Mormon population at 7 percent in 1867, 17 percent in 1874, and 25 percent in 1887. Quoted in Elizabeth D. Gee,

"Justice for All or for the 'Elect'? Utah County Probate Court, 1855–1872," *Utah Historical Quarterly* 48 (Spring 1980): 129. The territorial legislature was even more imbalanced. Of the 381 men who served in the legislature between 1851 and 1894, 330 (86.6 percent) are known to be Mormon, 26 non-Mormon, and 25 of unknown religious affiliation. Through 1884 no known non-Mormons served, although ten men of unknown religion were members. Federal anti-polygamy legislation in 1882 disqualified polygamists as voters or office-holders. Non-Mormons serving in the legislature rose from one in 1886 to ten by 1894 with five of unknown religion also serving the latter year. Of the 330 known Mormons, 46 were General Authorities of the church, 132 had served or would serve in stake presidencies and high councils, and 125 were in bishoprics (ecclesiastical offices). Marital statistics of the 340 for whom information is available indicate that 55 percent were monogamous, 43 percent were polygamous, and 3 percent were single at election. Despite Brigham Young's antagonism toward lawyers, there were 37 in the legislature (most serving in the latter part of the territorial period), 24 or nearly two-thirds of whom were Mormon (Statistics were compiled from unpublished data collected by Davis Bitton and Gordon Irving. Used by their permission).

17. As quoted in Gustive O. Larson, *Outline History of Territorial Utah* (1958; reprinted, Provo, Utah: Brigham Young University Press, 1972), 85–86.
18. Federal law provided: "All laws passed by the Legislative Assembly and Governor of any Territory except in the Territories of Colorado, Dakota, Idaho, Montana and Wyoming, shall be submitted to Congress, and, if disapproved, shall be null and of no effect." Title 23, "The Territories," Section 1850, *1875 Revised Statutes of the United States,* 328.
19. Gordon M. Bakken, "Judicial Review in the Rocky Mountain Territorial Courts," *American Journal of Legal History* 15 (January 1971): 56–75; Everett L. Cooley, "Carpetbag Rule: Territorial Government in Utah," *Utah Historical Quarterly* 26 (April 1958): 107–29.
20. "An Act Providing for a Probate Court," Section 29, *1851–52 Laws of Utah,* 85, granted authority to Utah probate courts over a wide range of cases that traditionally could be tried only in courts of general jurisdiction—which, in Utah territory, were federal courts, administered by federally appointed judges.
21. James B. Allen, "The Unusual Jurisdiction of County Probate Courts in the Territory of Utah," *Utah Historical Quarterly* 36 (Spring 1968): 132–42. See also Jay E. Powell, "Fairness in the Salt Lake County Probate Court," *Utah Historical Quarterly* 38 (Summer 1970): 256–62; and Gee, "Justice for All or for the 'Elect'?"
22. Utah State Archives webpage, "Utah Court System, Territorial Period, 1850–1896," retrieved on February 13, 2004, from http://archives.utah.gov/Referenc/utcourts.htm.
23. Brigham Young, "Correspondence between His Excellency Governor Brigham Young and David Adams, M.D.," *Millennial Star* 14 (May 29, 1852): 215.
24. "An Act Concerning Provisions Applicable to the Laws of the Territory of Utah," Section 1, January 14, 1854, *1853-54 Laws of Utah,* 16. See also Shane Swindle, "The Struggle over the Adoption of Common Law in Utah," *Thetean,* May 1984, 76–97.
25. Quoted in Bakken in "Judicial Review," 61.

26. *Mormon Church v. U.S.,* 136 United States Reports 1 (1889). The Utah Statute disclaiming common law was challenged in *People v. Green,* 1 Utah Reports 11 (1855): operative pursuant to section 17 of the Organic Act; *Thomas v. Union Pacific Railway Co.,* 1 Utah Reports 232 (1875); *First National Bank v. Kinner,* 1 Utah Reports 100 (1876): The people "tacitly agreed" to the maxims of the common law, but these maxims awaited court recognition to become the territory's common law; *Hilton v. Thatcher,* 31 Utah Reports 360 (1906); *Hilton v. Stewart,* 31 Utah Reports 255 (1907); *Norton v. Tufts,* 19 Utah Reports 470 (1899).
27. For two recent accounts of the anti-polygamy crusade, see Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002); and Joan Smyth Iversen, *The Anti-Polygamy Controversy in U.S. Women's Movements, 1880–1925* (New York: Garland Publishing, 1997).
28. "Anti-Polygamy Act," An Act to Punish and Prevent the Practice of Polygamy in the Territories of the United States and other Places, and Disapproving and Annulling Certain Acts of the Legislative Assembly of the Territory of Utah, July 1, 1862, 12 *United States Statutes at Large,* 501 (1862); "The Poland Bill," An Act in Relation to Courts and Judicial Officers in the Territory of Utah, June 3, 1874, 18 *United States Statutes at Large,* 253 (1874); "The Edmunds Law," March 22, 1882, 22 *United States Statutes at Large,* 30 (1882); and "The Edmunds-Tucker Law," March 3, 1887, 24 United States Statutes at Large 635 (1887).
29. Carol Cornwall Madsen, "'At Their Peril': Utah Law and the Case of Plural Wives, 1850–1900," *Western Historical Quarterly* 20 (November 1990): 425–44.
30. "An Ordinance, incorporating the Church of Jesus Christ of Latter-day Saints," February 6, 1851, *Laws and Ordinances of the State of Deseret,* 66. The ordinance did not prohibit any other ecclesiastical or legal agency from performing marriages. "Legal Marriage," *Deseret Evening News,* May 3, 1876, 218, explains the accepted practice without specifying a law. "The Judges of the District or Probate Courts, Mayors and Aldermen of Incorporated Cities, Justices of the Peace and ministers of any religious denomination can officiate in the marriage ceremony, and in the eyes of the law the act is equally lawful performed by either as by the others. A priest or elder of the Church of Jesus Christ of Latter-day Saints has just as much lawful authority to solemnize a marriage as any minister of any other Church. And it makes no difference where that ceremony is performed." The article concludes, "The marriage of more than one woman to the same man, is, under certain conditions sanctioned by the law of God in the Church of Jesus Christ of Latter-day Saints and the marriage of the plural wife is just as binding, sacred and divine as that of the first wife. But it is not recognized by the law of the land."
31. Lyman D. Platt, "The History of Marriage in Utah, 1847–1905," *Genealogical Journal* 12 (Spring 1983): 32–33. A record of marriages compiled from various sources is the *Utah Territorial Vital Records Index, 1847–1905,* Family History Library, Family and Church History Department, Church of Jesus Christ of Latter-day Saints, Salt Lake City. This index also includes records of divorce, naturalization, and probate as well as other vital statistics.

32. Governors' Messages: December 10, 1862, Stephen S. Harding; January 9, 1872, George L. Woods; January 11, 1876, George W. Emery; January 13, 1874, George L. Woods; *1878 Journals of the Legislative Assembly of Utah.*
33. Cott, *Public Vows,* 74.
34. Edmunds-Tucker Law, Section 9, 24, *United States Statutes at Large* 635 (1887): "An Act Regulating Marriage," March 8, 1888, *1888 Laws of Utah,* 88.
35. In early America, divorces were rare, granted only by state or territorial legislatures. By the mid-nineteenth century, however, general divorce laws were passed in the vast majority of jurisdictions giving the judicial branch the power to dissolve marriages. Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 251.
36. Hendrik Hartog, *Man and Wife in America: A History* (Cambridge, Mass.: Harvard University Press, 2000), 264–67.
37. "An Act in Relation to Bills of Divorce," Sections 2 and 3, March 6, 1852, *1851-52 Laws of Utah,* 83. See Richard I. Aaron, "Mormon Divorce and the Statute of 1851: Questions for Divorce in 1980s," *Journal of Contemporary Law* 8 (1982): 5–46.
38. Indiana was the first (1824), followed by North Carolina (1827), Illinois (1832), Connecticut, Iowa, and Maine. Following Utah in adopting lenient divorce laws were Arizona, Louisiana, the Dakotas, and Washington. See also Cott, *Public Vows,* 50.
39. According to D. Kelly Weisberg, "'Under Great Temptations Heer': Women and Divorce in Puritan Massachusetts," *Feminist Studies* 2 (Summer 1975): 183–94, disharmony was a valid basis for the comparatively rare divorces of Puritan times.
40. Quoted in John D. Lee, *Mormonism Unveiled or the Life and Confessions of the Late Mormon Bishop, John D. Lee,* edited by W. W. Bishop (St. Louis, Mo.: Brand and Co., 1977), 146–47; see also Lawrence Foster, "A Little Known Defense of Polygamy," *Dialogue: A Journal of Mormon Thought* 9 (Winter 1974): 21–34.
41. Quoted in James Beck, "I Notebook, 1859–65," October 8, 1861, December 11, 1869, Special Collections, Marriott Library, University of Utah, Salt Lake City. See also "Few Words of Doctrine Given by President Brigham Young in the Tabernacle in Great Salt Lake City," reported by George Watt, October 8, 1861, LDS Church Archives. The case of Emma Mallory is illustrative. Emma desired a certificate of divorce, which Brigham Young granted on August 1, 1862 "because her husband [Alisha (sic) Mallory] . . . has been cut off from the Church of Jesus Christ of Latter-day Saints for apostasy and therefore forfeited his privileges and blessings." Office Files, Files Relating to Divorce and Family Difficulties, Brigham Young Papers, Box 65, fd. 21 (Reel 76), LDS Church Archives.
42. Brigham Young, June 28, 1874, *Journal of Discourses,* 17:118–19.
43. Eugene E. Campbell and Bruce L. Campbell, "Divorce among Mormon Polygamists: Extent and Explanations," *Utah Historical Quarterly* 4 (Winter 1978): 4–23. Brigham Young asserted that he never denied a woman who desired a divorce but seldom granted one to a man.
44. Contrasting approaches to divorce found public expression in a well-publicized 1860 national debate on divorce between Horace Greeley, who took the conservative

side, and Robert Dale Owen, who argued that easy divorce preserved the "purity of marriage." Greeley, *Recollections of a Busy Life* (New York: J. B. Ford, 1868). See William L. O'Neill, "Divorce as a Moral Issue: A Hundred Years of Controversy," in *Remember the Ladies: New Perspectives on Women in American History,* edited by Carol V. R. George (Syracuse, N.Y.: Syracuse University Press, 1975), 127–43.

45. "Divorce," *Deseret News,* October 3, 1877, 532.
46. Brigham Young, Letter to Frederick Kesler, April 12, 1873, Kesler Papers, Special Collections, Marriott Library, University of Utah; Young, Letter to Benjamin F. Johnson, March 20, 1865, Brigham Young Letterbooks 7:517, LDS Church Archives; Young, Letter to Bishop Philo T. Farnsworth, November 22, 1859, Ibid., 5:132. Linda P. Wilcox, "Brigham Young as a Domestic Counselor," n.d., unpublished paper in our possession courtesy of Wilcox.
47. Carroll Wright, *Marriage and Divorce in the United States, 1867–1886* (1889; reprinted, New York: Arno Press, 1976), 203.
48. *Hilton v. Roylance,* 25 Utah Reports, 129 (1902).
49. Wright, *Marriage and Divorce in the United States,* 203–6, 414–17.
50. "An Act Amending Sections 1151 and 1154 of the Compiled Laws of Utah," Section 1, February 29, 1878, *1878 Laws of Utah,* 1. See also *Journals of the Legislative Assembly of Utah,* January 11, 1876 and January 1878, and "Divorce," *Deseret News,* October 3, 1877, 532.
51. The causal relationship between liberal divorce laws and increased divorce is disproved by the statistics of the latter half of the nineteenth century. Divorce laws became more stringent even as divorce began its precipitous rise. This phenomenon is explained by a change in attitude toward divorce, which was no longer considered morally or socially unacceptable except among conservative, usually religiously based groups. Mormons were an exception among most ecclesiastical groups in their views on divorce. Sarah Barringer Gordon, *The Mormon Question,* 175–77, explains that many anti-polygamists, rather than recognizing divorce as a safety valve for plural wives, felt that liberal divorce was an undesirable side effect of polygamy and just as antithetical to traditional family life. See also O'Neill, "Divorce as a Moral Issue"; and Nelson Manfred Blake, *The Road to Reno: A History of Divorce in the United States* (New York: Macmillan, 1962).
52. Elizabeth Cady Stanton was an even stronger proponent of accessible divorce for women than for woman suffrage. See Ellen Carol DuBois, ed., *Elizabeth Cady Stanton and Susan B. Anthony: Correspondence, Writings, Speeches* (New York: Schocken Books, 1981), index s.v. "divorce."
53. Michael Grossberg, "Who Gets The Child? Custody, Guardianship, and the Rise of a Judicial Patriarchy in Nineteenth-Century America," in *Reproduction, Sexuality, and the Family,* edited by Karen J. Maschke (New York: Garland Publishing, 1997), 1, 4; also Grossberg, *Governing the Hearth,* 235.
54. "An Act in Relation to Guardians," Section 1, February 3, 1852, *1851–52 Laws of Utah,* 79.
55. Norma Basch, *Framing American Divorce: From the Revolutionary Generation to the Victorians* (Berkeley: University of California Press, 1999), 115.

56. "An Act in Relation to Bills of Divorce," Section 6, March 6, 1852, *1851–52 Laws of Utah,* 83–4.
57. "An Act in Relation to Guardians," Sections 4, 5, February 3, 1852, *1851–52 Laws of Utah,* 79.
58. Grossberg, "Who Gets the Child?," and his *Governing the Hearth.* A few states passed "tender years" statutes, a victory for women, granting mothers presumptive custody of infants, children with health ailments, children below the age of puberty, or, in some cases, all female children. Not until 1900 did ten jurisdictions lead the way by passing statutes giving mothers an equal right to guardianship.
59. Martha Cragun Cox, Biographical Record, 1928, typescript copy in our possession; holograph in LDS Church Archives.
60. Martha Sonntag Bradley, "Woman and Land Ownership, 1847," 1977, unpublished paper in our possession, used by permission. Bradley identifies the following plural wives who received title to property: Jane Baker, Nancy Baldwin, Margaret Henderson, Nancy Perkins, Patty Sessions, Jemima Young, and Susan Young. She also identifies several other female recipients of property who may have been plural wives: Laura Bess, Abigail Bradford, Ann Burland, Martha Burwell, Sarah Harris Gadbury, Cathrine Clawson, Lucy Gregory, Terissa Judd, Mary Moseley, Elizabeth Moss, Sally Murdock, Sarah Ogden, and Abigail W. Smith. The practice of land distribution to polygamists does not appear to have been consistent. Leonard J. Arrington, *Great Basin Kingdom: An Economic History of the Mormons* (Cambridge, Mass.: Harvard University Press, 1966), 52, states that polygamists were entitled to receive one lot for each family. In most cases, title appears to have been entered in the husband's name. This is one reason that many polygamists, e.g., Brigham Young, gained extensive real estate; yet some wives received title in their own name, including a few of Brigham Young's wives. It may be that, in the absence of federal land law in the territory, some formalities regarding land titles were ignored. Moreover, the right of married women to control property does not necessarily follow from the vesting of title to the property in them.
61. Katherine Harris, "Homesteading in Northeastern Colorado, 1873–1920: Sex Roles and Women's Experience," in *The Women's West,* edited by Susan Armitage and Elizabeth Jameson (Norman: University of Oklahoma Press, 1987), 165–78.
62. The Homestead Act was extended to Utah pursuant to "An Act to Create the Office of Surveyor-General in the Territory of Utah, and Establish a Land Office in Said Territory, and Extend the Homestead and Pre-emption Laws over the Same," July 16, 1868, 15 *United States Statutes at Large,* 91. See Arrington, *Great Basin Kingdom,* 249; and Lawrence Linford, "Establishing and Maintaining Land Ownership in Utah Prior to 1869," *Utah Historical Quarterly* 42 (Spring 1974): 126–43.
63. "An Act for the Relief of the Inhabitants of Cities and Towns upon Public Lands," March 2, 1867, 14 *United States Statutes at Large,* 541; "An Act Prescribing Rules and Regulations for the Execution of the Trust Arising under an Act of Congress Entitled "An Act for the Relief of the Inhabitants of Cities and Towns upon the Public Lands,'" February 17, 1869, *1876 Compiled Laws of Utah,* 379; amended February 20, 1880, *1880 Laws of Utah,* 47; amended March 4, 1888, *1888 Laws of Utah,* 37.

64. *Pratt v. Young,* 1 Utah Reports, 347 (1876). Additional details of the case are in Breck England, *The Life and Thought of Orson Pratt* (Salt Lake City: University of Utah Press, 1985), 254.
65. Colfax, "The Mormon Defiance to the Nation: Suggestions as to How It Should be Met," *Deseret Evening News,* October 1, 1879, quoted in Jennie Anderson Froiseth, *The Women of Mormonism or the Story of Polygamy* (Detroit: C. G. G. Paine, 1882), 360–61.
66. While feminists petitioned for legal change as an expression of their individual rights as citizens, state legislatures were influenced more by economic pragmatism than a sense of equality in the law. Salmon, *Women and the Law of Property in Early America* and Basch, *In the Eyes of the Law.*
67. "An Act Concerning the Property Rights of Married Persons," Section 1, February 16, 1872, *1876 Compiled Laws of Utah,* 342.
68. Cott, *Public Vows,* 53.
69. *Utah Constitutional Convention, 1895, Official Report of the Proceedings and Debates,* 2 vols. (Salt Lake City: Star Printing, 1898), 2:1782–85.
70. "An Act Concerning the Property Rights of Married Persons," Section 1, February 16, 1872, *1876 Compiled Laws of Utah,* 342.
71. "An Act Relating to the Estates of Decedents," Section 3, February 18, 1876, *Journals of the Legislative Assembly of the Territory of Utah,* 76, 239–40.
72. "An Act Relating to the Estates of Decedents," Sections 5, 43, 18 February 1876, *1876 Compiled Laws of Utah,* 271, 277.
73. Cott, *Public Vows,* 55.
74. Third District Court, Salt Lake County, Wills, No. 911, November 15, 1881, Utah State Archives; emphasis ours. Utah State Archives, series #3578.
75. Ibid., Wills of Salt Lake County, No. 1353, February 9, 1889, Utah State Archives.
76. Ibid., Wills, No. 2175, December 31, 1860.
77. Ibid., Wills, No. 481, January 7, 1876.
78. Ibid., Wills, No. 755, August 15, 1881.
79. Ibid., Wills, No. 1526, April 28, 1890.
80. "An Act Concerning the Property Rights of Married Persons," Section 2, February 16, 1872, *1876 Compiled Laws of Utah,* 342.
81. "An Act Revising the Code of Civil Procedure of Utah Territory," Sections 227, 228, March 13, 1884, *1884 Laws of Utah,* 192.
82. *Oliphant v. Fox,* November 6, 1867, Salt Lake County Probate Records, Box 23, No. 1472, Utah State Archives.
83. *Thomas v. Union Pacific Railroad Co.,* 1 Utah Reports, 235 (1875): husband and wife filed suit for injuries caused to the wife and her child by the defendant (railroad company); *Eccles v. Union Pacific Railway Co.,* 7 Utah Reports, 335 (1891): husband and wife sued for injuries to wife including premature delivery of her child resulting from a train accident; *Thomas v. Springville City,* 9 Utah Reports, 426 (1894): suit for injuries to wife, including miscarriage due to accident on a bridge; *Tucker v. Salt Lake City,* 10 Utah Reports, 173 (1894): suit for injuries to wife from falling on a defective sidewalk.

84. "An Act Licensing and Regulating the Manufacturing and Sale of Intoxicating Liquors," Section 7, March 9, 1882, *1882 Laws of Utah,* 32.
85. "An Act to Regulate Proceedings in Civil Cases in the Courts of Justice of This Territory, and to Repeal Certain Acts and Parts of Acts," Section 11, February 17, 1870, *1876 Compiled Laws of Utah,* 402; *1888 Compiled Laws of Utah,* Vol. 2, Section 3178.
86. "An Act Revising the Code of Civil Procedure of Utah Territory," Section 232, March 13, 1884, *1884 Laws of Utah,* 193.
87. "State Homestead Exemption Laws," *Yale Law Journal* 46 (1937): 1023–41.
88. "An Act in Relation to Estates of Decedents," Section 1, 14, 2021, March 3, 1852, *1851–52 Laws of Utah,* 67, 69–70; "An Act in Relation to Estates of Decedents," Section 1, March 8, 1852, *1851–52 Laws of Utah,* 265.
89. "An Act in Relation to the Estates of Decedent," Section 1, 14, 2021, March 3, 1852, *1851–52 Laws of Utah,* 67, 69–70.
90. Ibid. *Dooly v. Stringham,* 4 Utah 107 (1885); *Rand v. Brain,* 5 Utah 197 (1887): holding that a widow had only a life interest. In 1884 the legislature made a confusing and short-lived attempt to make the homestead provisions reciprocal, available to either husband or wife, and engraft thereon a distinction between homesteads of common property and separate property origin, giving a fee simple interest to the survivor if from a common property origin, but not if from separate property of the decedent, which ultimately passed to the heirs of the decedent. See "An Act Relating to Procedure of Probate Courts in the Settlement of Estates and in Guardianship," Sections 1–8, March 12, 1884, *1884 Laws of Utah,* 406–9. These provisions were repealed in 1888.
91. *1888 Compiled Laws of Utah,* Vol. 2, Sections 5113-19.
92. Salt Lake County Probate Court Records, Salt Lake County Estates, Book A, 1859–65, August 20, 1862, 173, Family History Library, Salt Lake City.
93. Ibid., 205. See also Estate of H. Jessee Turpin, ibid., 43. The homestead allowance was only a lifetime interest and available to the widow and minor children only as long as they continued to occupy the property. Estate of Almon W. Babbitt, 124. Early Salt Lake County probate court records indicate that widows were often well provided for by the homestead allowance. In 1856, when Babbitt died, he left no will and an estate worth $15,2251.79. His widow, Julia Babbitt, was granted the homestead she and her family occupied, valued at $5,000, and property exempt from execution in the amount of $6,235. Salt Lake County Probate Court Records, Salt Lake County Estates, Book A, 1859–69, 107, LDS Family History Library, Salt Lake City. Similarly, in 1856 Thomas Tennant's widow was granted use of the house and lot which she occupied and $40 a month support. Ibid., 112. See also Estate of John M. McKay, October 1865, ibid., 220; and Estate of Simon Baker, March 1864, ibid., 196.
94. *Knudsen v. Hannberg,* 8 Utah Reports, 203 (1892).
95. "An Act in Relation to the Estates of Decedents," Section 24, March 3, 1852, *1876 Compiled Laws of Utah,* 268. It could be argued that the widow holds the child's

interest for her life or widowhood and/or if there is more than one wife, the estate is divided according to the number of children alive or deceased leaving heirs, each wife to hold her children's share for her life or widowhood. This does not appear to have been the construction given the statute, however. Although this provision is written in terms of the "wife," Section 28 states that the husband shall inherit the estate of a deceased wife in the same manner that a wife inherits the estate of a deceased husband. Adding to the ambiguity of the 1852 act is another provision which states that "in all cases where the deceased leaves a wife, the *inheritance* shall not pass therefrom, so long as the name of the dead shall be perpetuated thereon." "An Act in Relation to the Estates of Decedents," Section 26, March 3, 1852, *1876 Compiled Laws of Utah,* 269, emphasis ours. See *Dooly v. Stringham,* 4 Utah Reports, 107 (1885) which construes "inheritance" to mean "homestead."

96. *Cain Heirs v. Young,* 1 Utah Reports, 361 (1876). The court apparently did not apply the homestead provision, possibly because the widow's one-third interest exceeded that amount.
97. Mary Ann Weston Maughan, "Journal," in *Our Pioneer Heritage,* edited by Kate B. Carter, 20 vols. (Salt Lake City: Daughters of Utah Pioneers, 1959), 2:396.
98. *1851-2 Laws of Utah,* 71-72.
99. *Chapman v. Handley,* 7 Utah Reports, 49 (1890).
100. Ruth Victor, "Emma Jeffs Gunnell," and Louis Jeffs Gunnell, "Lewellyn (Louis) Jeffs Gunnell," typescript, 5-6, in our possession. Both wives became financial dependents of their children.
101. Anne W. G. Leischman, Oral History, interviewed by John Steward, 1973, typescript, 6, 37–38, Utah State University Voice Library Interview, microfilm copy in LDS Church Archives.
102. Governors' Messages, George W. Emery, January 11, 1876, *Journals of the Legislative Assembly,* 1876, 31.
103. *Cope v. Cope,* 137 United States Reports, 682 (1891), applying 1852 intestacy law, reversing *In re Estate of Cope,* 7 Utah Reports, 63 (1890). See also *In re Pratt's Estate:* same result applying intestacy law as amended in 1876, 7 Utah Reports, 278 (1891).
104. "The Edmunds Law," Section 7, 22 *United States Statutes at Large,* 30 (1882).
105. "The Edmunds-Tucker Law," Section 11, 24 *United States Statutes at Large,* 635 (1887).
106. Wills of Salt Lake County, No. 379, February 16, 1874, Utah State Archives.
107. Wills of Salt Lake County, No. 440, February 21, 1875, Utah State Archives.
108. Wills of Salt Lake County, No. 376, November 19, 1873, Utah State Archives.
109. "Woman's Right of Dower," editorial, *Woman's Exponent* 11 (December 1, 1882): 100.
110. George L. Woods, January 15, 1874, *Journals of the Legislative Assembly, 1874.* See also "An Act Concerning the Property Rights of Married Persons," Section 3, February 16, 1872, *1876 Compiled Laws of Utah,* 342. Authorities do not agree about whether Utah recognized the common law right of dower before 1872 when it was declared

statutorily invalid. No specific territorial statute recognized the right of dower. Thus, if it were in force, it would have been so because the common law generally was in force in Utah. As discussed earlier, this was disputed by Brigham Young and territorial legislative enactments, but it was asserted by the federal judiciary.

111. Schuyler Colfax, "The Mormon Defiance to the Nation: Suggestions As to How It Should be Met," *Chicago Advance,* December 22, 1881, reprinted in Froiseth, *The Women of Mormonism,* 360–61.
112. Edmunds-Tucker Law, 24 *United States Statutes at Large,* 635 (1887).
113. "An Act Prescribing the Procedure in the Matter of Dower," March 10, 1892, *1892 Laws of Utah,* 53; "An Act to Amend Section 4119 of the Compiled Laws of Utah, of 1888, and Enacting New Sections 4120, 4121, 4122, 4123, Relating to the Assignment of Dower," March 10, 1892, *1892 Laws of Utah,* 55.
114. *Kelsey v. Crowther,* 7 Utah Reports, 519 (1891) affirmed 162 U.S. 404 (1896) held that a wife could not be compelled to convey her dower interest. *Knudsen v. Hannberg,* 8 Utah Reports, 211 (1892) held that a widow's dower interest and intestacy interest were cumulative. *Norton v. Tufts,* 19 Utah Reports, 470 (1899) held that a wife did not forfeit her dower right if, while separated from her husband, she committed adultery.
115. *Beck v. Utah-Idaho Sugar Company,* 59 Utah Reports, 314, 322–23, 1921.
116. "An Act Defining and Providing for the Right of Dower," April 5, *1896, Laws of Utah, 1896,* 356.
117. Brigham Young, July 18, 1869, *Journal of Discourses,* 13:61.
118. Elizabeth Wood Kane, *Twelve Mormon Homes Visited in Succession on a Journey through Utah to Arizona* (Salt Lake City: Tanner Trust Fund/University of Utah Library, 1974), 5.
119. The women's Relief Society supported a number of women in their medical training as doctors, nurses, and midwives. Training women to become telegraphers and to learn the business of printing and typesetting was also a priority in early Utah.
120. "Lady Lawyers," *Woman's Exponent* 1 (October 1, 1872): 68. By encouraging women to study these trades and professions, especially the law, Brigham Young showed a marked reversal of his earlier attitude to lawyers. In 1852 he did not mince words in describing his feelings: "To observe such conduct as many lawyers are guilty of, stirring up strife among peaceable men, is an outrage upon the feelings of every honest, law abiding man. To sit among them is like sitting in the depths of hell, and their hearts are as black as the ace of spades. . . . They love sin, and roll it under their tongues as a sweet morsel, and will creep around like wolves in sheep's clothing, and fill their pockets with the fair earnings of their neighbors, and devise every artifice in their power to reach the property of the honest and that is what has caused these courts." Quoted in Andrew Love Neff, *History of Utah: 1847–1869* (Salt Lake City: Deseret News Press, 1940), 196.
121. "An Act for the Regulation of Attorneys," Sections 1, 2, February 18, 1852, *1851–52 Laws of Utah,* 55.

122. Martha Jane Knowlton Coray, Diary, April 17, 18, 20, 22 1874, L. Tom Perry Special Collections, Harold B. Lee Library, Brigham Young University, Provo, Utah.
123. Rule 21, Rules of the Supreme Court by the Territory of Utah, 1 Utah Reports, 6. Although the qualifications for admittance to the bar were not published until 1876, they had been in effect earlier.
124. "Ladies Admitted to the Utah Bar," *Deseret News,* September 25, 1872, 512.
125. *Bradwell v. Illinois,* 83 United States Reports [16 Wall], 1130 (1873). See also Albie Sachs and Joan Hoff Wilson, *Sexism and the Law: Male Beliefs and Legal Bias* (New York: Free Press, 1978), 97–100.
126. "Editorial Notes," *Woman's Exponent* 20 (June 1, 1892): 172. See also Carol Cornwall Madsen, "'Sisters at the Bar': Utah Women in Law," *Utah Historical Quarterly* 61 (Summer 1993): 208–32.
127. Linda K. Kerber, *No Constitutional Right to Be Ladies* (New York: Hill and Wang, 1998), 137.
128. "An Act Regulating the Mode of Procedure in Civil Cases in the Courts of the Territory of Utah," Section 11, December 30, 1852, *1852-53 Laws of Utah,* 8.
129. "An Act Regulating the Mode of Procedure in Criminal Cases," Section 9, January 21, 1853, *1852–53 Laws of Utah,* 8; emphasis ours.
130. "Home Affairs," *Woman's Exponent* 3 (September 15, 1874): 61.
131. "An Act Amending an Act Prescribing Certain Qualifications Necessary to Enable a Person to Be Eligible to Hold Office, Vote, or Serve as a Juror," Section 1, February 5, 1868, *1868 Laws of Utah,* 4.
132. *People vs. Hampton,* 4 Utah Reports, 262 (1886).
133. Alma Lutz, *Susan B. Anthony* (Boston: Beacon Press, 1959), 211–13. See also Ellen Carol DuBois, "Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820–1878," *Journal of American History* 74 (December 1987): 853.
134. Linda K. Kerber and Gretchen Ritter, "Jury Service and Women's Citizenship before and after the Nineteenth Amendment," *Law and History Review* 20 (Fall 2002): 479–515.
135. *Hoyt v. Florida,* 368 United States Reports 57 (1961).
136. Kerber, "No Constitutional Right to Be Ladies," 136.
137. Section 1299, *1898 Revised Statutes of Utah,* 349. This provision is similar to Wyoming law, in effect since territorial days. Suffragist Emmeline Wells makes mention of this aspect of the voting law in her diary, January 21, 1896, Perry Special Collections.
138. Susan B. Anthony and Ida Husted Harper, eds., *The History of Woman Suffrage,* 6 vols. (Rochester, N.Y.: Susan B. Anthony, 1902), 4:1089. Reprinted in Carol Cornwall Madsen, ed., *Battle for the Ballot: Essays on Woman Suffrage in Utah, 1870–1896* (Logan: Utah State University Press, 1997), 310.
139. T. A. Larson, "Woman Suffrage in Western America," *Utah Historical Quarterly* 38 (Winter 1970): 7–19; Thomas G. Alexander, "An Experiment in Progressive Legislation: The Granting of Woman Suffrage in Utah in 1870," ibid., 20–30;

"Woman Suffrage in Pioneer Days," lesson pamphlet for February 1977 (Salt Lake City: Daughters of Utah Pioneers); Beverly Beeton, *Women Vote in the West: The Woman Suffrage Movement, 1869–1896* (New York: Garland Publishing, 1986); Madsen, *Battle for the Ballot;* Lola Van Wagenen, *Sister-Wives and Suffragists: Polygamy and the Politics of Woman Suffrage, 1870–1896* (Ph.D. diss., New York University, 1994; printed Provo, Utah: Joseph Fielding Smith Institute for Latter-day Saint History and BYU Studies, Dissertations in LDS History Series, 2003).

140. Fifteenth Ward Relief Society, Minutes, 1868–73, January 6, 1870, LDS Church Archives.
141. The far-reaching effects of the economic provisions of the bill, named for its sponsor, Illinois Representative Shelby M. Cullom, elicited opposition from sources other than Utah. Members of Congress, newspaper editors, and other economic and political factions throughout the country registered objections to its economic restraints. Others thought it might provoke another civil war because it provided enforcement by federal troops. Larson, *Outline History of Territorial Utah,* 226–27. See also Orson F. Whitney, *History of Utah,* 4 vols. (Salt Lake City: George Q. Cannon and Sons, 1893), 2:405–39.
142. "An Act Conferring Upon Women the Franchise," February 12, 1870, *1876 Compiled Laws of Utah,* 88. Utah thus became the second territory to enact woman suffrage. Several other territories besides Wyoming, which passed a woman suffrage bill in December 1869, also debated woman suffrage but passed no legislation. Utah women were the first to vote because it held an election earlier than Wyoming after both territories passed suffrage bills. Seraph Young is credited as being the first woman in Utah to cast her ballot.
143. Jill Mulvay Derr, "Zion's Schoolmarms," in *Mormon Sisters: Women in Early Utah,* edited by Claudia L. Bushman (1976; reprinted with a new introduction by Anne Firor Scott, Logan: Utah State University Press, 1997), 67–88.
144. The "woman's bill" generated a great deal of debate among women, much of which was printed in the *Woman's Exponent.* See, for example, "Agitation Is Educational," 8 (February 1, 1880): 132; "Our Opinion," "A Woman on the Woman's Bill," and "Correspondence," 8 (February 15, 1880): 138; 139, 141; "Legislative Proceedings," "Another Woman's Opinion," and "Work and Wait," 8 (March 1, 1880): 145, 146, 148.
145. Untitled and undated 1881 newspaper clipping in Papers of Elizabeth Cady Stanton and Susan B. Anthony, Library of Congress, microfilm at Utah State Archives, reel 5, LC control #78011049.
146. "Woman Suffrage in Utah," undated clipping from unidentified newspaper, ibid.
147. Whitney, *History of Utah,* 3:60–63. For the conflict, see Robert Joseph Dwyer, *The Gentile Comes to Utah* (Salt Lake City: Western Epics, 1971).
148. "Woman Suffrage in Pioneer Days," 283–84; *Woman's Exponent:* "Woman's Right to Vote in Utah Contested," 9 (October 1, 1880): 68; and "The Decision of the Supreme Court in the Mandamus Case," 9 (October 15, 1880): 77–79. This case does not appear in Utah Reports.

149. Utah Reports, 136 (1881), 144–47, 153–57.
150. Whitney, *History of Utah,* 3:235.
151. *Murphy v. Ramsey,* 114 United States Reports, 15 (1885). An overview of the federal disfranchisement effort is Joseph H. Groberg, "The Mormon Disfranchisements, 1882–1892," *BYU Studies* 16 (Spring 1976): 399–408. See also Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002), 168–71.
152. Jean Bickmore White, "Woman's Place Is in the Constitution: The Struggle for Equal Rights in Utah in 1895," *Utah Historical Quarterly* 42 (Fall 1974): 344–69 and Madsen, *Battle for the Ballot,* 221–243. See also White, "Gentle Persuaders: Utah's First Women Legislators," *Utah Historical Quarterly* 38 (Winter 1970): 31–49; Madsen, *Battle for the Ballot,* 291–307. The Republican platform stated: "We favor the granting of equal suffrage to women." The Democratic platform was more generous: "Democrats of Utah are unequivocally in favor of women's suffrage, and the political rights and privileges of women equal with those of men, including eligibility to office, and we demand that such guarantees shall be provided in the Constitution of the State of Utah and will secure to the women of Utah these inestimable rights." Quoted in White, "Woman's Place Is in the Constitution," 347.
153. Utah Constitution, Article 14, Section 1 (1896).
154. *Anderson v. Tyree,* 12 Utah Reports, 129 (1895).
155. Madsen, "Schism in the Sisterhood: Mormon Women and Partisan Politics," in *Battle for the Ballot,* 245–72.