

THE LEGAL STATUS OF WOMEN

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The Legal Status of Women by Jessie J. Cassidy

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JESSIE J. CASSIDY

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OF WOMEN**

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COMPILED BY
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PREFACE.

The following pages do not attempt to cover explicitly the entire condition of the legal status of women in all countries, nor all possible aspects of their status in the United States. It has been found expedient only to state the law on some of the most vital points.

It must be understood that the statute law alone has been examined, and that the actual practice in each state is sometimes more, and sometimes less liberal than the statutory enactments. It has been impossible to enter into the question of interpretation of the law. The latest code of each state has been examined with the amendments and additions thereto. It is suggested that an acquaintance with the code and different volumes of the session laws of each state is quite possible to any woman who will read carefully and who can gain access to the books themselves.

Though effort has been made to avoid inaccuracies, it is not claimed that none exist in the matter here presented. Some repealing acts may not have been traced, and some laws enacted have possibly been overlooked. All corrections and additions will be gratefully received by the Committee.

To the friends in each state and territory who have kindly rendered material assistance we wish to express our gratitude, and to the Association of the Bar of New York City, and the New York Law Institute acknowledgment is hereby given for the privilege of consulting their libraries.

CONTENTS.

CHAPTER I.—WOMAN'S POSITION IN THE PAST,	5
EARLY CONDITIONS,	5
BEGINNINGS OF MODERN CHANGES,	11
CHAPTER II.—PROPERTY RIGHTS OF MARRIED WOMEN IN THE UNITED STATES,	
INTRODUCTORY,	17
TABLE I.—CONTROL OF PROPERTY,	20
INTESTATE ESTATES,	25
RIGHT TO SUPPORT,	47
CHAPTER III.—DIVORCE,	
INTRODUCTORY,	55
DIVORCE LAWS IN THE UNITED STATES,	59
CHAPTER IV.—GUARDIANSHIP OF CHILDREN,	
INTRODUCTORY,	86
LAWS IN THE STATES WHERE PARENTS ARE EQUAL GUARDIANS,	87
LAWS IN THE STATES WHERE PARENTS ARE UNEQUAL GUARDIANS,	88
CHAPTER V.—THE AGE OF PROTECTION,	
INTRODUCTORY,	95
TABLE II.—AGE OF CONSENT IN 1896,	97
PENALTIES FOR RAPE,	98
TABLE III.—PROGRESSIVE LEGISLATION,	104
CHAPTER VI.—CRIMINALITY AMONG WOMEN,	107
CHAPTER VII.—WOMAN SUFFRAGE,	
INTRODUCTORY,	109
TABLE IV.—WOMAN SUFFRAGE IN THE UNITED STATES,	111
TABLE V.—WOMAN SUFFRAGE IN FOREIGN COUNTRIES,	113

First Chapter.

WOMAN'S POSITION IN THE PAST.

EARLY CONDITIONS.

SCOPE.—In the following summary of the legal and social status of women in times past, only the briefest outline is attempted. Detailed accounts and the various theories that have been advanced by different investigators can be found in works on early civilization and sociology, of which a partial list is given on page 116. A fuller study of the subject is earnestly recommended.

PRIMITIVE CONDITIONS.—It is indisputable that the ancestors of the most highly civilized races lived through a period when the animal appetites were the strongest actuating forces, and when physical power alone controlled. Since the beginning of human life, the position of woman has undergone vast changes. Scientists who have made a study of the earliest history of the race agree that at one period "everywhere women and children have constituted the most primitive of possessions; everywhere men have begun by exercising the power of life and death over these defenseless beings, and therefore, as the greater includes the less, the right of exchange and sale." (Letourneau, "Property," p. 33, also "Evolution of Marriage," p. 202.) This may not have been the case in the most primitive condition, but the present legal status of women among the most highly civilized nations is the outgrowth of a previous condition when by reason of his greater physical strength man exercised absolute control over women.

CONNECTION BETWEEN WOMEN AND PROPERTY.—The condition of women, as well as the form of government, has always been intimately associated with the development of ownership of property.

(Letourneau, "Property," pp. 2 and 22.) The first form of trading was bartering, and women were the first property used in exchange. (Letourneau, "Property," p. 259.) As slavery was established, slaves, women and children shared the same possibility, and were bought, sold, exchanged, mortgaged, rented, loaned, or willed at the pleasure of their owners. A girl was the absolute property of her father, or, if he was dead, of her brother or uncle, until she was married, when the husband exercised the same authority over her, often including the power of life and death. Sons were likewise the property of the father, and often the parental authority continued after the son's marriage. Regarding the possession of property, a wife quite generally was not considered an heir of her husband, but only of her father. When daughters inherited, they usually received less than the sons of such property as was divided, the greater part of a man's possessions, in early times, being either community property or else family property, which was kept intact as a family inheritance. Among the Hebrews, a son received twice as much as a daughter. But in many tribes women did not inherit either as wives or daughters; being themselves property, they passed as such by will or custom to the heir. As the race improved and the beginning of the altruistic sentiments were developed, man's authority over woman was gradually reduced, but up to the time of the Roman Empire the father possessed authority of life and death, the *jus vitæ necisque*, over wife, children and slaves. (Westermarck, "History of Human Marriage," p. 229.)

WOMEN IN THE MATRIARCHY.—Bachofen, the Swiss investigator, has given the name matriarchy to a form of society in which descent was traced through the mother, and in which women were treated with much respect and were possessed of considerable authority. It existed in different degrees among a large number of widely scattered tribes, and generally a larger degree of freedom

and property rights were held by women than was the case in patriarchal tribes, though sometimes the authority was confined to domestic affairs and exercised chiefly within the dwelling. (Letourneau, "Evolution of Marriage," pp. 278-80.) The matriarchate was more completely developed in ancient Egypt than anywhere else, and there for a long time, women controlled property and enjoyed a considerable degree of independence. It is claimed that the system was legally abolished by Philopator, and whatever traces of it might have persisted were effaced by the Roman and Saracen conquests.

DEVELOPMENT OF MARRIAGE CUSTOMS.—Woman's position has always been most intimately connected with marriage customs. Many tribes have lived through a period of contracting marriage by capture, more or less brutal, and all have at some time or other practiced marriage by purchase. Spiritual love and sympathy were not elements in marriage when brides were either stolen or purchased and when the man and woman, as a rule, were unacquainted before the ceremony. The domestic affections were only gradually developed, even the lower form of love between man and woman being later than the mother-love for the child, though much earlier than the father-love. (Drummond, "The Ascent of Man," p. 294.) The earlier forms of marriage by capture and purchase gave way, in Greece and Rome, to marriage by dowry. The Grecian and Roman are the only advanced civilizations of antiquity that have contributed directly to the formation of modern civilization, and through them can be traced some of the earliest steps in the improvement of women. In marriage by dowry, the dowry was given by the father nominally to his daughter, but it was in her husband's control. The transition, however, marks an advance in the general estimate of women. By the later Roman law, a woman at her marriage might be given property over and above her dowry, which was called "parapherna," and could be absolutely controlled by her.

The Legal Status of Women.

BEGINNING OF PROPERTY RIGHTS.—Beside the right to hold paraphernal property, the later Roman law, long after the period of the Twelve Tables, gave daughters the right to inherit equally with sons. Generally, however, no woman, whether married or single, directly controlled property so acquired, but it was in the care of either trustee or husband. After the fall of feudalism, women, particularly single women, gained a few liberties, especially in some localities.

WOMEN UNDER THE COMMON LAW.—The civil law, which is the basis of law on the continent of Europe, and in some of our own states that were settled by the French and Spanish, is the outgrowth of Roman law, and perpetuates much of its regulations. As Rome never maintained supremacy in Britain, the Roman law, as such, did not become established in England. But what is called the English common law is the accumulation of opinions and decisions rendered by English courts and codified by Blackstone, and it is the basis of the law in most of our states, where it is understood to be in force unless abrogated by statutory legislation. By this, no right equivalent to parapherna was given to the married woman. Upon marriage, all of a woman's property, real and personal, and all she acquired subsequently by gift, will or her own labor, was absolutely in her husband's control and subject to his debts. He could will it as he pleased, and if he died intestate, it passed with his own property to his heirs. English law gave a widow the right of dower, which was the use during her life of one-third of her husband's real estate, but this also was originally in the care of a trustee or guardian.

SOCIAL POSITION AND DIVORCE.—Among savage and semi-civilized tribes, and while woman was an actual chattel, her social position necessarily depended upon her owner's pleasure, and never rising very high, sunk at times to the lowest depths of degradation,