

Her Own Property: Lizzie's Diamonds and Rosalie's Fortune

SARAH SKWIRE
Senior Fellow, Liberty Fund

JAYME LEMKE
F. A. Hayek Program for Advanced Study
in Philosophy, Politics, and Economics,
Mercatus Center, George Mason University

1. INTRODUCTION

In British and American history, the division of property within marriage was governed by the system of coverture. You can still hear remnants of this at more traditional weddings today, where the bride is “given” to her husband by her father, promising to obey her new head of household. “For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior. Now as the church submits to Christ, so also wives should submit to their husbands in everything” (Ephesians 5:22-24).

This religious practice came to be reflected in British property law, which interpreted the idea of the husband as the sole head of household to mean that a man and women, once married, would act as one economically as well as spiritually. In turn, this view of marital property was imported to the United States by way of British colonial rule. In the decades after American independence, as states and territories began to formalize law through the creation of state codes, coverture was written into state law across the developing country. As a result, in both Britain and the United States, most marriages during and prior to the 19th century were governed by a set of property laws that declared the husband the formal owner of all property acquired either before or during marriage. These ownership rights included the right to sell at will and to determine who would gain control over the property upon his death. These laws put women in a situation where they were economically dependent and therefore vulnerable to both petty tyranny and genuine abuse.

Women's economic security was partially protected by a related set of laws intended to prevent the most egregious malpractice on the part of husbands, but enforcement of these laws was often available only to the wealthy and still required the assistance of a male family member who may or may not have her best interests at heart. For example, the husband's right to dispose of his family's property at will was bounded somewhat by a requirement that his wife or widow be sufficiently provided for, most often by a guarantee that she would remain in control of 1/3 of the estate after his death.¹ Similarly, women from wealthy families could sometimes work with male kin to create separate estate

¹ With some variation across jurisdictions and also some exceptions for particular circumstances. For example, a widow might be allowed to keep half an estate if there were no children to share it with, or she might have to give up her ‘dower rights’ if she began a relationship with another man (Shammas 1987).

trusts in order to keep family property from transferring to a future husband (Chused 1982). However, this was a legal device that had to be exercised *prior* to marriage, was only helpful to those few women wealthy enough to own property prior to marriage, and still left women beholden to the men of their family.

Fortunately, this situation did not last. Piece by piece, beginning in the 1830s and continuing well into the 20th century, women in Britain and the United States gained the ability to own independent property and to keep independent earnings (Chused 1982; Geddes and Lueck 2002; Lemke 2016; Shammas 1994). There is no clearly defined date at which married women gained full equality in economic rights, and it would be disingenuous to say that we are sure coverture has completely been excised from political and legal practice. Nine states continue to make it more difficult to convict spouses of sexual assault (Hasday 2000; Baker 2021), some doctors check in with husbands before agreeing to perform tubal ligations and other reproduction-related procedures (Fain 2020), and debate continues over whether the tax code is written and enforced in a way that holds husbands and wives equally accountable (Cain 2021; McMahon 2014).

However, there is no question that the century from 1830 to 1930 was a period of radical change in laws about women's property. Coverture, a legal practice that dated back to 10th century Roman law, had largely been dismantled (Zaher 2002), and the starting point for family relationships was now primarily one of equality rather than hierarchy. The relationship between husbands and wives was no longer primarily one of economic dependence.

As is the case for all revolutionary changes, the process of adjusting from coverture to equality was messy and at times painful. Further, our history books have not always done a particularly good job recognizing either the significance of these changes or the conflict surrounding them. The 19th century reforms in married women's property rights represented an obvious change in expectations about women's political rights and economic participation. Less obvious, at least from the historical distance of the 21st century, are the ways these legal reforms brought about changes in practices and expectations within people's most intimate relationships. As such, novels about women navigating the institutional uncertainty that accompanied changing property regimes served—then and now—as a useful way of seeing the unseen personal costs that go along with these institutional costs.

In this essay, we take a close look at two novels from the tumultuous period when women's property rights were in transition in the US and the UK. The novels in question are Anthony Trollope's *The Eustace Diamonds* (1991 [1871]) and Frances Hodgson Burnett's *The Shuttle* (2007 [1907]). *The Eustace Diamonds*, from Anthony Trollope's Palliser novels, is the story of the widowed Lizzie Eustace's struggle to gain/maintain ownership over a diamond necklace worth 10,000 pounds. *The Shuttle*, by Frances Hodgson Burnett, the popular children's author who wrote *Little Lord Fauntleroy* and *The Secret Garden*, is about the daughter of an American multi-millionaire who marries an impoverished English aristocrat and faces serious conflicts between her American understanding and his English understanding of women's property rights. (The British were a good forty years behind the most economically developed American states in terms of married women's property rights reform.)

In section two, we briefly elaborate on the value of using literature to illuminate 19th and 20th century reforms in married women's property rights. In section three, we discuss the conflict in *The Eustace Diamonds* and the difficulties that arise when rights depend on legal status that is uncertain or in conflict with cultural norms. In section four, we turn attention to *The Shuttle* and the way that relationships between British and U.S. citizens particularly illuminated the tensions between a coverture and a post-coverture system of property law. Section V concludes with a return to the question of how people navigated the radical changes in family law that took place during the 19th century, and what we can learn from studying the experience of Trollope's Lizzie, Burnett's Rosalie, and other fictional accounts of women navigating changing property regimes. Careful consideration of these novels brings great insight into how married women's property law—and by extension, other gender-discriminatory property institutions—affected women and families in complicated and intimate ways.

2. LITERATURE AND SOCIAL CHANGE

Literature is in general a useful tool for social scientists. In this chapter, our primary interest in the use of literature as a tool for social scientific analysis is for the unique view it offers into how individuals interpret their environment and their relationships during moments of radical social change.

Political economy prioritizes a subjectivist form of analysis in which individuals act according to their unique, personal perception of the value of alternative choices. When people interact, their views of themselves, each other, and the social and political rule systems they navigate come together to shape if, when, and how they will cooperate to talk, trade, create a business, form a non-profit, build a family, start a club, or engage in any of the other infinitely varied forms of human cooperation. The subjective values and choices of people interacting with each other within systems of rules become our social world. As a result of the inevitably internal roots of human action, “the articulation of human history has an “irreducibly narrative character,” and good history shares many of the attributes of good fiction” (Lavoie 2011, p. 112). Interpreting human social arrangements requires us to grapple with social problems as the people involved saw them, and social change as it was experienced by the people whose lives were affected. It is the meaning that individuals attach to those changes and those experiences that will be able to explain their choices and reactions in response. As such, Don Lavoie encouraged social scientists to turn their attention to questions of interpretation and shared meaning in their choice of methods (Lavoie 2011).

Carrying out this “interpretive turn” in practice requires the use of multiple methods, including the robust use of qualitative methods (Chamlee-Wright 2011). Looking at a situation from as many angles as possible is the best chance we have for understanding what is actually going on. As such, social scientists seeking to understand the systems of order that undergird social interaction will find it necessary to incorporate fieldwork, diverse historical records, and narratives of personal experience in order to attain the best understanding possible of what’s going on in an institutional environment (Boettke et al. 2013). For example, rule of law as it is written is an important piece of information, but in order to understand how people will respond to changing that law, it’s essential to be able to also identify the *de facto* rules in use (Ostrom 2009). The laws, policies, and practices that people *believe* to be relevant for their situation are the ones that they will factor in when making decisions (Lemke and Lingenfelter 2017).

However, fieldwork is not possible when looking to the past, and sometimes the historical record is not adequately robust. In the absence of clear and thorough historical records of the everywoman’s experience navigating changes in property rights regimes, narrative sources—including spoken lore, mythology, and literature—become some of our most valuable access points to understanding the issues people were struggling with and the perspectives that they were capable of bringing to the problem-solving process. Much as fieldwork can be used in studies that compare alternative political or economic systems to better understand the situation and constraints as perceived by people in the system—a productive alternative to an expert standing outside the situation and assuming they understand—literature helps to better understand the multifaceted impact of gendered property institutions on the lives of the men and women who experienced them.

Further, literature reflecting women’s experiences has a particularly relevant contribution to make to our understanding of economic institutions. There are many reasons for this, but we wish to highlight two. First, most histories have tended to be about political rather than economic life. As a result, women’s suffrage and other feminist causes have received significantly greater attention than the seemingly more mundane changes in property law, which were just as, if not more crucial to women’s advancement in the 19th and 20th centuries. Second, prior to the emergence of the field of women’s history in the 1970s (Lerner 1975), historical study focused on public rather than on private life. Since women were often excluded from participation in public domains, women’s experiences were categorized as belonging to the private domains of family, home production, and community and therefore not considered by the discipline of history. The creation of the field of women’s history was offered as a corrective to this imbalance, and often an effective one,

but the field came into being 100 years too late (give or take a generation) to be able to capture the turmoil surrounding changes in women's property rights in real time.

Novels often provide interesting and accurate commentary on the economic changes that characterize the times in which they are written as well as what the people experiencing those changes thought about them. But it is always a pleasant reconfirmation to observe that it **is** true that the worlds of art and economics are not as far apart as we sometimes feel they are. And here, with the question of women's property rights, the literary connections are particularly rich.

3. LIZZIE'S DIAMONDS

In *The Eustace Diamonds*, published before the Married Women's Property Act of 1882, the primary problem is the uncertainty that emerges when there are different property laws for different classes of property owners. In both British and American history, wealthy families had access to a legal device known as the "separate estate"—a type of trust in which a male trustee could serve as the *de jure* owner of a married woman's property in order to keep it separately from her husband's estate (Chused 1982). These were most often seen as devices that fathers could use to keep family property away from shady future sons-in-law.

One of the effects of the separate estate was to create a system in which women from wealthy families had ways to protect independent property that were not accessible to the bulk of the population. Over the course of the century, as both wealth and support for women's property rights grew, this dual system of 'rights for me but not for thee' contributed to confusion around what rights women could expect to be entitled to. When rights are contingent upon identity—in this case, whether you are a wealthy woman or a working class woman—complications can arise from the reality of needing to establish identity before it becomes possible to identify the relevant set of rights (Lemke 2023; Zelizer 2005).

Anthony Trollope's *The Eustace Diamonds* turns on these questions, as the widowed Lizzie Eustace,—grasping, dishonest, promiscuous, and utterly charming—struggles to stake her claim to a diamond necklace that may or may not have been left to her by her late husband. The estimable lawyer, Mr. Camperdown, explains the central problem of *The Eustace Diamonds* this way:

The diamonds in question had been bought, with other jewels, by Sir Florian's grandfather, on the occasion of his marriage with the daughter of a certain duke,—on which occasion old family jewels, which were said to have been heirlooms, were sold or given in exchange as part value for those then purchased. This grandfather, who had also been Sir Florian in his time, had expressly stated in his will that these jewels were to be regarded as an heirloom in the family, and had as such left them to his eldest son, and to that son's eldest son, should such a child be born. His eldest son had possessed them, but not that son's son. ...That last Sir Florian had therefore been the fourth in succession from the old Sir Florian by whom the will had been made, and who had directed that these jewels should be regarded as heirlooms in the family. ...The late Sir Florian had, by his will, left all the property in his house at Portray to his widow, but all property elsewhere to his heir...there was confusion.

... Mr. Camperdown believed that he had traced two stories to Lizzie,—one, repeated more than once, that the diamonds had been given to her in London, and a second, made to himself, that they had been given to her at Portray. He himself believed that they had never been in Scotland since the death of the former Lady Eustace (pp. 149-150)

The uncertainty here is a triple one, at least. The first of these uncertainties is that Lizzie Eustace is entirely devoid of any notion of truth, so her testimony about the diamonds is thoroughly untrustworthy and becomes increasingly so throughout the novel. The second of these uncertainties arises from the unreliability of Lizzie's testimony. All the property in the house at Portray at the time of her husband's death

has been willed to her, so much depends on whether the diamonds were in the house or not. Lizzie, as Mr. Camperdown explains, has told two stories which conflict with each other. One story, if true, will make the diamonds legally hers, following her to any future marriage. The other story will make them the property of her infant son, and of his future heirs. The final uncertainty is whether the diamonds are legally heirlooms or not. Heirloom status is a peculiarity of British property law applicable to pieces of property considered integral enough to an estate that removing that item would damage the value of the estate itself. The crown jewels are a canonical example. If an object is determined to be an heirloom, it cannot ever be willed away from the proper heir as defined by inheritance law (Blackstone 1915 [1765], pp. 1287-1291). Not even by the head of the family, not even to his wife. The Queen cannot give the crown jewels to anybody except her legal heir, and Sir Florian cannot give the diamonds to Lizzie—but only if they are determined worthy of heirloom status.

Lizzie's attempts to hang onto the diamonds are further complicated by her desires to marry again. Because the diamonds may or may not be part of the dowry she brings with her on her marriage, every potential husband, and the mother and sisters of every potential husband has opinions—freely shared—about the legal ownership of the diamonds. Some only want her if she owns the diamonds and can bring this valuable property with her upon remarriage. Others only want her if she will give them up, because they fear the social danger of being connected to a woman with a suspect reputation. Her cousin Frank (one of Lizzie's occasional fiancés) at one point writes a long letter to Lord Fawn (another of Lizzie's occasional fiancés) “with the object of proving that Lord Fawn could have no possible right to interfere in the matter.” While both men want her to give up her attempts to keep the diamonds, Frank finds himself constrained to argue from Lizzie's point of view because he is a relative:

And though he had from the first wished that Lizzie would give up the trinket, he made various points in her favour. Not only had they been given to his cousin by her late husband,—but even had they not been so given, they would have been hers by will. Sir Florian had left her everything that was within the walls of Portray Castle, and the diamonds had been at Portray at the time of Sir Florian's death. Such was Frank's statement,—untrue indeed, but believed by him to be true. This was one of Lizzie's lies, forged as soon as she understood that some subsidiary claim might be made upon them on the ground that they formed a portion of property left by will away from her;—some claim subsidiary to the grand claim, that the necklace was a family heirloom (pp. 183-4).

The lack of clarity about the ownership of the diamonds, and the instability of Lizzie's financial position regarding them—Can she sell them? Pawn them? Wear them in public?—take a toll on Lizzie that inspires some sympathy even in those readers who are immune to her amoral charms. Lizzie's unceasing uncertainty makes her veer wildly between wanting to keep the diamonds and threatening to throw them into the sea to be done with them. She becomes paranoid that the diamonds will be seized from her. She buys an iron box to keep them safe, but is then terrified to leave the box and so must carry it with her whenever she travels:

During the whole morning she had been wishing that she had never seen the diamonds; but now it was almost impossible that she should part with them. And yet they were like a load upon her chest, a load as heavy as though she were compelled to sit with the iron box on her lap day and night. In her sobbing she felt the thing under her feet, and knew that she could not get rid of it. She hated the box, and yet she must cling to it now. She was thoroughly ashamed of the box, and yet she must seem to take a pride in it. She was horribly afraid of the box, and yet she must keep it in her own very bed-room (pp. 187-88).

When property rights are not secure, when they are unclear, the social and personal effects are dire. History is never inevitable when it is taking place. The women living within this time of such dramatic in-

stitutional reform hoped to know that what they owned was theirs, but precedent and experience affirmed a different story. We may not like Lizzie, or trust her. But we don't want to see her like this. The effect this uncertainty has upon her is similar to that recounted by women who had been abandoned by their husbands during this period of time. Were they in reality still living under coverture, under the legal control of a man of unknown whereabouts and intentions? Or were they living under the legal status of a single woman, able to own their own property and make their own economic decisions? This not-knowing left them looking over their shoulders for the reappearance of a man who could transform their property status at a word (Robinson 1898).

The four page legal opinion on the matter of the diamonds written by another of Trollope's literary lawyers, Mr. Dove, provides a further example of unclear property rights in these decades of switching. The opinion delineates fine legal distinctions among types of property such as chattel, paraphernalia, and heirlooms. The opinion is too long to cite here, but what it does make clear is that Trollope's most experienced lawyers, who have practiced law for "upwards of forty years" have no idea to whom the diamonds belong.

When the diamonds are stolen twice over some of the debate about who should own them becomes irrelevant. But we gain a new sense of the lengths to which people will go to preserve their property when the rules are uncertain. The first time the diamonds are stolen, the thieves get only the iron box. Lizzie's paranoia had reached a stage where she now slept with the diamonds beneath her pillow. This protected them from the first theft. In order to then use the theft to protect her possession of the diamonds, Lizzie claims the thieves got them. This means that when another set of thieves actually do successfully steal the diamonds, she is without recourse. It also means that everyone is quite sure that somehow Lizzie is a thief—and as is usual with Lizzie, some people find this charming and others are horrified. Unsurprisingly, a certain number of women are on her side in the matter. As Lady Glencora puts it "It is so delightful to think that a woman has stolen her own property, and put all the police into a state of ferment" (vol II, p. 75). The ferment may be delightful for us as readers, and delightful for the unimaginably wealthy and socially prominent Lady Glencora, but for Lizzie, it's just more instability and insecurity, and more inspiration to lie and cheat in order to try to protect what is, or might be, hers. While some of Lizzie's response is certainly due to flaws in her character, at least some is clearly a response to the uncertainty of the rules of the game. As Trollope notes as the novel winds down and the diamonds are gone for good, "Her income was still her own. They could not touch that. So she thought, at least,—oppressed by some slight want of assurance in that respect" (vol II, p. 118).

4. ROSALIE'S FORTUNE

Complicated as property rights are in Trollope's novel, there are even more complications in Frances Hodgson Burnett's *The Shuttle* (2007 [1907]), where the primary problem is what happens after laws have been equalized, but there remain two different competing traditions of property rights. Though by the time *The Shuttle* was written, England had passed the Married Women's Property Act of 1882,² it had only been in effect for a generation. New York—the home of our heroines—became one of the earliest states to pass comprehensive reform when they enacted the 1848 Married Women's Property Act securing married women's right to own separate property and to keep earnings as their own (Geddes 2002; Custer 2013).³ As such,

2 Limited legislation was passed in 1870, but it was not until the 1882 Married Women's Property Act that women were granted equal rights to keep earnings and maintain separate property.

3 The 1848 New York Married Women's Property Act was not the first piece of legislation securing some form of property protection for married women, but earlier legislation was more piecemeal, addressing issues such as a creditor's ability to claim widow's property in payment of her husband's debts. The New York Act was the first to protect both separate property (including real estate) and earnings acquired after marriage (Geddes and Lueck 2002, Geddes and Tennyson 2013).

when Burnett wrote *The Shuttle*, three generations of American women had the experience of it being possible for married women to legally and securely own property separately from their husbands.

What is particularly intriguing about *The Shuttle*'s potboiler plot about wealthy young American women crossing the ocean to marry impoverished English aristocrats is the way it provides an international example of how the interplay between different political jurisdictions can impact reform. In the U.S. case, the 19th century was a time of great competition between states and territories. The rise of the railroads in America made it easier for people to move between jurisdictions, expressing their preferences for a particular kind of law or practice regarding property by voting with their feet (O'Hara and Ribstein 2009; Somin 2020). In this way, the decentralized federal structure of the United States helped to accelerate reform by creating opportunities for localities to experiment with new laws and for people to choose whether or not they were ready to participate in those changes. Political leaders sought population growth and industrial investment because their careers depended upon the successful flourishing of nascent and frequently-challenged American settlements across the continent (Lemke 2016). Further, the relative openness and distance from British political control had helped to foster a great spirit of civil society and local political entrepreneurship among the early American population. These factors contributed greatly to women being able to exert political influence without enfranchisement, and economic influence before the establishment of formal rights.

In short, political freedom and economic growth were mutually reinforcing influences in the early United States, which served to foster a trend towards greater equality and inclusivity throughout the century (Lemke 2020). Coverture and the strict hierarchies it fostered within the household did not mesh well with this new political landscape, but the social habits fostered by the system of coverture were not easily abandoned. It takes time and a great deal of learning for people to adjust to new ways of relating to each other.

The ability to learn new ideas from across international borders was not as well established in the 19th century as it is today. As travel across the Atlantic Ocean became more accessible, affordable, and comfortable throughout the century, Burnett and many of her contemporaries came to consider transatlantic transportation a great force in the shaping of early 20th century society. The title of *The Shuttle* is a reference to the steady increase in transatlantic steamship travel that paralleled the growth of the railroads:

Steamers crossed and recrossed the Atlantic, but they accomplished the journey at leisure and with heavy rollings and all such discomforts as small craft can afford. Their staterooms and decks were not crowded with people to whom the voyage was a mere incident—in many cases a yearly one. “A crossing” in those days was an event. It was planned seriously, long thought of, discussed and re-discussed, with and among the various members of the family to which the voyager belonged (p. 2).

And so when the first of our heroines—Rosalie Vanderpoel—leaves New York to live in England with her new husband, the distance between those counties seems enormous. But a mere twelve years later, when Rosalie's younger sister Betty is grown up and ready to travel alone:

The Shuttle had woven steadily and—its movements lubricated by time and custom—with increasing rapidity. Threads of commerce it caught up and shot to and fro, with threads of literature and art, threads of life drawn from one shore to the other and back again, until they were bound in the fabric of its weaving. Coldness there had been between both lands, broad divergence of taste and thought, argument across seas, sometimes resentment, but the web in Fate's hands broadened and strengthened and held fast (p. 68).

The increased ease of travel makes it possible for Betty to discover the truth about her sister's dreadful marriage. The people who crossed the Atlantic in the 19th century brought with them not just goods and

technologies, but also ideas, information and norms, including about the feasibility of alternative household property arrangements. Rosalie's father, in keeping with American practice, has given Rosalie her inheritance on her marriage. She controls her money. Her English husband, the vile Nigel Anstruthers, feels, on the other hand, that:

A man of birth and rank...does not career across the Atlantic to marry a New York millionaire's daughter unless he anticipates deriving some advantage from the alliance. Such a man—being of Anstruthers' type—would not have married a rich woman even in his own country without making sure that advantages were to accrue to himself as a result of the union. "In England," to use his own words, "there was no nonsense about it." Women's fortunes as well as themselves belonged to their husbands, and a man who was master in his own house could make his wife do as he chose. He had seen girls with money managed very satisfactorily by fellows who held a tight rein, and were not moved by tears, and did not allow talking to relations (p. 17).

And so from the moment she is married, Rosalie is confronted by emotional family scenes where she and her family are unjustly accused of being:

...vulgar sharers. They had trapped a gentleman into a low American marriage and had not the decency to pay for what they had got. If she had been an Englishwoman, well born, and of decent breeding, all her fortune would have been properly transferred to her husband and he would have had the dispensing of it. Her husband would have been in the position to control her expenditure and see that she did not make a fool of herself. As it was she was the derision of all decent people, of all people who had been properly brought up and knew what was in good taste and of good morality (p. 65).

While at the time of *The Shuttle*, the formal laws about women's property ownership are essentially the same on both sides of the Atlantic, the informal norms differ dramatically. While, in fact, the letter of the law of married women's property in England was formally stable, the new laws were wildly at odds with a deeply rooted set of cultural traditions held by the British aristocracy. This is why Sir Nigel feels threatened and unstable, noting "between puffs of the cigar he held in his fine, rather cruel-looking hands...A woman is not 'helping' her husband when she gives him control of her fortune. She is only doing her duty and accepting her proper position with regard to him. The law used to settle the thing definitely" (pp. 34-5). The law settles things definitely in 1907. It just doesn't settle them as Sir Nigel would prefer and as he was raised to believe it would. This sets up a cultural conflict wherein Rosalie's naïve attempt to adhere to American norms while her husband insists on English norms is nearly the (literal) death of her. His efforts to "manage" her satisfactorily through screaming at her, beating her, and dragging her reputation through the mud are, quite simply, desperate attempts at rent protection. (In the economic sense of investing effort in maintaining control of a revenue stream that has somehow been established as a guaranteed privilege, often by law—in this case, Sir Nigel finds it in his economic interest to preserve the rents that accrue to him via the legal privilege over Rosalie's fortune granted through the coverture system). And his final play of coercing her—beaten and ill—to give him legal control of her money is a way of forcing the new law to behave like the old.

Discovering the truth of her sister's fairy tale marriage to an English aristocrat leads Betty to travel to England, use her own personal fortune to rescue her sister and remind her of her privileges as an independent American woman. Betty, much more business-like than her fragile and slightly silly sister, argues that marriages like Rosalie's and Nigel's would be the better for a certain amount of public honesty about what is happening:

What I see is that these things are not business, and they ought to be. If a man comes to a rich American girl and says, 'I and my title are for sale. Will you buy us?' If the girl is—is that kind of a girl and wants that kind of man, she can look them both over and say, 'Yes, I will buy you,' and it can be arranged. He will not return the money if he is unsatisfactory, but she cannot complain that she has been deceived. ... Let it be understood that he is property for sale, let her make sure that he is the kind of property she wants to buy. Then, if, when they are married, he is brutal or impudent, or his people are brutal or impudent, she can say, 'I will forfeit the purchase money, but I will not forfeit myself. I will not stay with you.'" (p. 79)

Sugar-coating such financially-focused transactions with a coating of romance merely leads to Rosalie's horrified realization that "I never understood. I knew something made you hate me, but I didn't know you were angry about money...I would have given it to you—father would have given you some—if you had been good to me" p. (65).

When Betty enters on the scene to right the wrongs that have been done by bringing a lot of money and a set of very American bourgeois virtues (McCloskey 2010), we see how she is able to turn her business-like expectations for how the world should operate, combined with her considerable intelligence and knowledge of English property law, to confound the knavish tricks of Sir Nigel. As she observes to her sister:

"I am the spoiled daughter of a business man of genius. His business is an art and a science. I have had advantages. He has let me hear him talk. I even know some trifling things about stocks. Not enough to do me vital injury—but something. What I know best of all,"—her laugh ended and her eyes changed their look,—"is that it is a blunder to think that beauty is not capital—that happiness is not—and that both are not the greatest assets in the scheme. This," with a wave of her hand, taking in all they saw, "is beauty, and it ought to be happiness, and it must be taken care of. It is your home and Ughtred's—"

"It is Nigel's," put in Rosy.

"It is entailed, isn't it?" turning quickly. "He cannot sell it?"

"If he could we should not be sitting here," ruefully.

"Then he cannot object to its being rescued from ruin" (p. 179).

While she is unable to get back Rosalie's fortune—which Sir Nigel has lost at gambling tables and spent on other women—Betty is able to do with her own money what should have been done with Rosalie's. She is able to make her sister comfortable, happy, and prosperous, and secure the Anstruther family home for Rosalie and Sir Nigel's son.

Betty attributes much of her ability to accomplish these things to her strong relationship with her father. While she hasn't engaged with his businesses as a son would have—as an equal partner—Betty and her father are shown throughout the novel discussing business and money matters on fairly equal terms. In her preface to the Persephone Books edition of *The Shuttle*, Anne Sebba observes that American fathers had a reputation at the time for doting on their daughters and that "One of the biggest differences between American and English fathers was in their attitude to women and one of the strongest themes of *The Shuttle* is...the generous and intelligent way Reuben S Vanderpoel behaves towards his daughter, who may not have been a man but was virtually treated as such" (p. xi).

The importance of this father-daughter relationship for stable and effective women's property rights is not merely a novelist's construct, in other words. It is historically accurate and a relevant consideration to the political economy of women's rights reform. Our initial impulse might be to imagine that men living during this era would view married women's property reforms as a losing proposition. It used to be the expectation that a husband would be the sole manager of the family's property; now he had to share control, or perhaps even lose it entirely. However, the status of married women's rights affected men not only as husbands, but also as fathers. Even if we imagine these men to be concerned only with their narrow economic

interests—not likely in real experience, given the complexity of familial relationships—any upper hand they might gain through the system of coverture represents an upper hand their future son-in-law will hold over their daughters and any family property they inherit. As the economy grows, and with it women's access to wealth and opportunities to productively participate in markets, the gains from a daughter's future wealth will come to outweigh any personal losses men might experience from more equitably sharing property within marriage. As such, it's possible that the closer relationships fostered as marriages become more companionate, families become smaller (Fernández 2014), and lives become longer wind up positively reinforcing reforms in married women's property rights.

5. CONCLUSION

Discussions of coverture frequently quip that under British common law, "man and wife are one—but the one is the man" (Williams 1947, p. 17). Too often the experiences of only "the one" are preserved in the historical record and presumed sufficient to reflect a moment in history (Lerner 1975). Limiting our historical inputs in this way is a missed opportunity to understand the reality experienced by families and communities throughout history and across the world, where similar (and at times, more extreme) institutions persist still today. One way to access some part of that felt experience is to consider fictional representations of these institutions.

Anthony Trollope's *The Eustace Diamonds* forces us to confront the profound uncertainty that can occur when both law and culture are in flux. In addition to serving as a cautionary tale about the dangers of insecure property rights, Trollope's narrative deals with the thorny questions that arise when law is contingent upon identities such as man or woman, aristocrat or working class, deserving heir or undeserving gold-digger. Complex legal practices that establish different rights for different combinations of identity are both illiberal and confusing, forcing people to invest great effort into simply establishing who has the right to do what. Trollope's novel is a great help in illuminating how people respond to such situations and therefore in helping us to understand how particular institutional regimes can be expected to function.

Frances Hodgson Burnett's *The Shuttle* invites us to consider how the dynamics of globalization and learning across borders impact the most intimate of our personal relationships. Concepts that we take for granted today—such as women being as capable of hard work, leadership, and intellectual contributions as the men in their households—were once novel, if not controversial, concepts. Exposure to these ideas through the clashing of cultures can motivate people to use their voices in a diversity of ways to stimulate legal reform, from academic research to dinner table conversation to protesting in the streets. The story of Rosalie and her sister Betty gives us an intimate view of how the tensions that exist between clashing legal/political/social systems can affect individuals' lives in a way that shapes the evolution of social norms.

These are just two novels about one particular set of questions in women's history. There is a great deal more that could be done to understand better how the U.S. and the U.K. have been shaped by the doctrine of coverture and its impact on both laws and families. Court case records, diaries, letters, and wills can help us to recover some of these stories, but so too can fiction that was written specifically to explore such stories and the institutions that enable them. So, let's meet the wives, daughters, and sisters affected by gender-specific property law. Reading Trollope and Burnett—not to mention Jane Austen, Louisa May Alcott, Edith Wharton, and many others who captured women's hopes, fears, and experiences—is a great way to start.⁴

4 The authors wish to thank the participants of the symposium on Gender and Emergent Order sponsored by the Institute for Humane Studies for valuable feedback on a manuscript version of this article.

REFERENCES

Baker, Carrie N. 2021. California Law Eliminates Spousal Rape Exemption—But ‘Patriarchy Still Dies Hard.’ *Ms. Magazine* (blog). October 13, 2021.

Blackstone, William. 1915 [1765]. *Commentaries on the Laws of England*. San Francisco: Bancroft-Whitney.

Boettke, Peter, Liya Palagashvili, and Jayme Lemke. 2013. Riding in Cars with Boys: Elinor Ostrom’s Adventures with the Police. *Journal of Institutional Economics* 9(4): 407-25.

Burnett, Frances Hodgson. 2007 [1907]. *The Shuttle*. Bath, UK: Persephone Books.

Cain, Patricia A. 2021. The Unfairness of the Marriage Tax Penalty. Bloomberg Tax. March 31. <https://news.bloombergtax.com/daily-tax-report/the-unfairness-of-the-marriage-tax-penalty>

Chamlee-Wright, Emily. 2011. Operationalizing the Interpretive Turn: Deploying Qualitative Methods toward an Economics of Meaning. *Review of Austrian Economics* 24(2): 157-70.

Chused, Richard H. 1982. Married Women’s Property Law: 1800-1850. *Georgetown Law Journal* 71(5): 1359-1426.

Custer, Joseph A. 2013. The Three Waves of Married Women’s Property Acts in the Nineteenth Century with a Focus on Mississippi, New York, and Oregon. *Ohio Northern University Law Review* 40(2): 395-440.

Fain, M. K. 2020. In 2020, Women Still Need Their Husband’s Permission to Get Sterilized. 4W - Feminist News. February 25. <https://4w.pub/in-2020-women-still-need-their-husbands-permission-to-get-sterilized/>.

Fernández, Raquel. 2014. Women’s Rights and Development. *Journal of Economic Growth* 19(1): 37-80.

Geddes, Rick and Dean Lueck. 2002. The Gains From Self-Ownership and the Expansion of Women’s Rights. *American Economic Review* 92(4): 1079-92.

Geddes, R. Richard and Sharon Tennyson. 2013. Passage of the Married Women’s Property Acts and Earnings Acts in the United States: 1850 to 1920. In: *Research in Economic History* 29, Christopher Hanes and Susan Wolcott (eds.), pp. 145-89. Bingley: Emerald.

Hasday, Jill Elaine. 2000. Contest and Consent: A Legal History of Marital Rape. *California Law Review* 88(5): 1373-1505.

Lavoie, Don. 2011. The Interpretive Dimension of Economics: Science, Hermeneutics, and Praxeology. *Review of Austrian Economics* 24(2): 91-128.

Lemke, Jayme. 2016. Interjurisdictional Competition and the Married Women’s Property Acts. *Public Choice* 166(3-4): 291-313.

_____. 2020. Withdrawing Consent: Polycentric Defenses against Domination. *The Independent Review* 25(2): 265-78.

_____. 2023. Polycentric Institutions of Intimacy. In: *Living Better Together: Social Relations and Economic Governance in the Work of Ostrom and Zelizer*, Stefanie Haeffele and Virgil Henry Storr (eds.), pp. 135-62. Cham, Switzerland: Palgrave MacMillan.

Lemke, Jayme, and Jonathan Lingenfelter. 2017. A Practical Approach to Understanding: The Possibilities and Limitations of Applied Work in Political Economy. In: *The Austrian and Bloomington Schools of Political Economy*, Advances in Austrian Economics 22, pp. 81-102. Bingley: Emerald.

Lerner, Gerda. 1975. Placing Women in History: Definitions and Challenges. *Feminist Studies* 3 (1/2): 5-14.

McCloskey, Deirdre Nansen. 2010. *The Bourgeois Virtues: Ethics for an Age of Commerce*. Chicago: University of Chicago Press.

McMahon, Stephanie Hunter. 2014. What Innocent Spouse Relief Says about Wives and the Rest of Us. *Harvard Journal of Law and Gender* 37(1): [i]-242.

O’Hara, Erin A. and Larry E. Ribstein. 2009. *The Law Market*. Oxford: Oxford University Press.

Ostrom, Elinor. 2009. *Understanding Institutional Diversity*. Princeton: Princeton University Press.

Robinson, Harriet Jane Hanson. 1898. *Loom and Spindle: Or, Life Among the Early Mill Girls. With a Sketch of “The Lowell Offering” and Some of Its Contributors*. New York: T. Y. Crowell.

Shammas, Carole. 1987. English Inheritance Law and Its Transfer to the Colonies. *The American Journal of Legal History* 31(2): 145-63.

_____. 1994. Re-Assessing the Married Women’s Property Acts. *Journal of Women’s History* 6(1): 9-30.

Somin, Ilya. 2020. *Free to Move: Foot Voting, Migration, and Political Freedom*. Oxford: Oxford University Press.

Trollope, Anthony. 1991 [1871]. *The Eustace Diamonds*. W. J. McCormack (ed.). Oxford: Oxford University Press.

Williams, Glanville L. 1947. The Legal Unity of Husband and Wife. *The Modern Law Review* 10(1): 16-31.

Zaher, Claudia. 2002. When a Woman’s Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture. *Law Library Journal* 94(3): 459-86.

Zelizer, Viviana A. 2005. *The Purchase of Intimacy*. Princeton: Princeton University Press.