Coverture: For the Benefit of All Man[kind]

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Coverture was a central facet of 18th and 19th-century jurisprudence and legal thinking. Coverture stipulated that upon entering into a marriage contract, the legal identity of a wife would be entirely subsumed by that of her husband. At a time when the courts, both state and federal, often functioned as agents of marginalization, coverture was presented as a system intended to protect and provide for the very women it legally incapacitated. This paper examines the motivations behind coverture, how it perpetuated a patriarchal society devoid of female socio-political mobility, and its practical consequences in legal precedent and doctrine.

I. Introduction

William Blackstone writes in his 1769 *Commentaries on the Laws of England*:

> By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing; and {...} is said to be {...} under the protection and influence of her husband {...}; and her condition during her marriage is called her coverture.[140]

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[140] Sir William Blackstone, renowned 18th Century English legal scholar and philosopher, upon whose writings the U.S. Constitution was heavily based; William Blackstone, Commentaries on the Laws of England, Volume 1: A Facsimile of the First Edition of 1765-1769 15 (1979), https://press.uchicago.edu/ucp/books/book/chicago/C/bo3636418.html (last visited Nov 30, 2023).

This "coverture" was a facet of the common law until the mid-late 19th century. At its core, coverture was the absorption of the complete legal identity of a wife into that of her husband. By modern legal standards, this may appear drastic; however, coverture prevailed throughout American law for decades, with roots in English common law.[141] Legislators, judges, and lawyers who were instrumental in perpetuating this practice often justified it based upon the assumed ineptitude of women.[142] Such assumptions regarding female ineptitude were enough to warrant that their care be placed solely in the hands of one better equipped to guide and manage them throughout their life.[143] However, the question regarding whether coverture was enacted and maintained with the best interests of women in mind, namely their reproductive and homemaking capacities, remains unclear.

As distressing as it may be, one must consider if coverture was merely wielded as a tool by which a disingenuous patriarchy could keep women in a state of permanent subjugation and legal incapacitation. While outright discrimination against women on the basis of sex alone would be blatantly unconstitutional by today's standards, the law could very well have provided an alternative avenue to perpetuate such subjugation. Under the guise of due process, and with foundations in both 18th century English legal doctrine and American jurisprudence, subjugation was lent a measure of constitutionality, allowing proponents to surmount objections of arbitrariness and discrimination.[144]

This paper begins by exploring 19th century legal documents and court opinions detailing how coverture was treated by the judges and legal professionals that put it into

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[141] Blackstone, *supra* note 140.
[142] BARNES' LESSEE v. IRWIN, 2 U.S. 199 (1793), Justia Law, https://supreme.justia.com/cases/federal/us/2/199/ (last visited Dec 6, 2023).
[143] *Id.*
[144] Blackstone, *supra* note 140.

practice, followed by an examination of writings from some of the philosophical and feminist minds who argued against it. Court opinions and legal documents lay the groundwork for establishing the true intentions behind coverture and its supporters by providing a sample of the rationale shared in its defense. The writings to follow, those authored by the very women subject to coverture's limitations, will hold a mirror to the preceding justifications and reveal whether or not they conveyed the purported benefits. In seeking answers to these questions of intent and legality, special attention is paid to court cases, judicial opinions, and articles by legal scholars and professionals, as these are the few perspectives properly informed on the law with an adequate grasp of its history and nuances.

Upon the conclusion of these examinations, it ought to be apparent that the true impacts of coverture were *not* in the interest of women, nor were they ever intended to be. Rather, coverture was a re-packaging of patriarchal values and white, upper-middle class, male socio-political dominance, designed to pass as constitutional legislation under the guise of American legal doctrine.[145]

II. The Fragility of the Feminine

Coverture was first formally conceptualized by Blackstone, in *Book the First: Chapter the Fifteenth: Of Husband and Wife* of his *Commentaries on the Laws of England*, yet he offers little decisive explanation as to why such a system not only exists but is needed in the first place. Fortunately, surviving texts serve to illustrate the thoughts of philosophical and legal scholars on the subject of coverture and

[145] Review of The Law of Infancy and Coverture; Traités du Contrat de Mariage, de la Puissance du Mari, du Contrat de la Communauté, et du Douaire, Pothier, 26 North Am. Rev. 316 (1828), https://www.jstor.org/stable/25102704 (last visited Dec 6, 2023).

the female sex at various points throughout the 18th and 19th centuries. John Stuart Mill, widely considered to be the greatest English-language philosopher of the 19th century,[146] wrote on this very subject.[147] He, like many during the 18th and 19th centuries, wholeheartedly believed that women belonged in a place of total subjugation and dependence upon men.[148] This is especially evident in his 1870 pamphlet entitled *The Subjection of Women*, where he writes:

> It had been decided, on the testimony of experience, that the mode in which women are wholly under the rule of men, having no share at all in public concerns, and each in private being under the legal obligation of obedience to the man with whom she has associated her destiny, was the arrangement most conducive to the happiness and well being of both.[149]

Mill asserts that the state most conducive to the satisfaction of men and women alike is the latter's complete dependence upon, and allegiance to, the former. While coverture is not mentioned outright in this passage, this allusion to a "legal obligation of obedience" is clear. Specific words such as "mode" and "arrangement" are effective stand-ins for coverture. By using these allusions in place of the term itself, Mill's word choice serves to soften the impact of an otherwise clinical and harsh term, which conjures to mind all manner of oppression. His further inclusion of the phrase "on the testimony of experience" lends this excerpt a sense of authority

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[146] Christopher Macleod, *John Stuart Mill*, *in* The Stanford Encyclopedia of Philosophy (Edward N. Zalta ed., Summer 2020 ed. 2020), https://plato.stanford.edu/archives/sum2020/entries/mill/ (last visited Dec 6, 2023).
[147] *Id.*
[148] John Stuart Mill, *The Subjection of Women* (1870), https://jstor.org/stable/60244766 (last visited Nov 30, 2023).
[149] *Id.* at 3.

beyond the academic, by citing real-world experience rather than philosophy or legal doctrine. For all these reasons, Mill's writing champions coverture as an institution in service of the people, and one desired by them as conducive to their general quality of life.

This pamphlet is certainly later in time than the height of coverture-related legal discourse, as by the mid to late 19th century, coverture was slowly being phased out of the courtroom.[150] That being said, it serves as an excellent example of the pervasive mindset that the subjugation of women, specifically in a legal sense, would facilitate the happiness and well-being of men and women alike.[151]

Mill's explanation is one affirming that by subjugating women, and giving men complete dominion over them, society would be preserved in its most natural, pleasant state. Mill was a philosopher, not an attorney, judge, or legal scholar. His perspective on coverture is helpful when establishing a more general explanation of the issue, but it falls short of reliable legal doctrine or precedent. To that end, court cases dealing with coverture offer unique insight into the legal rationale behind decisions regarding the rights of women.

In the 1793 Pennsylvania Supreme Court case *Barnes's Lessee v. Irwin, et al.*, Chief Justice M'Kean wrote a majority opinion regarding the right of women to give away property acquired prior to entering their coverture.[152] In keeping with the trend thus far, Justice M'Kean stipulated "by the maxims and rules of the law she is disabled, as having no will of her own."[153] Here, M'Kean identifies the "maxims and rules of the law" as the source of women's disability, demonstrating the

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[150] Married Women and the Law: Coverture in England and the Common Law World, (2013), https://www.jstor.org/stable/j.ctt32b7jq (last visited Dec 6, 2023).
[151] Mill, *supra* note 148.
[152] Barnes' Lessee v. Irwin, 2 U.S. 199 (1793), *supra* note 142.
[153] *Id.*

manner in which the legal system was blatantly used as a tool to deprive women of portions of the basic rights and autonomy enjoyed by the opposite sex. M'Kean goes on to offer an explanation for this facet of common law, stating, "[t]he reason or ground of a wife's being disabled {...}, is, from her being under the power of the husband, not from want of judgment, as in the case of an infant, or idiot."[154]

M'Kean here makes a crucial, and telling admission; it is not some mental or physical handicap that demands the legal subjugation of women, rather it is a product of the dominance allotted to a husband upon entering into the contract of marriage.[155] The implication of this is that coverture was not, in fact, a condition rendered for the protection of women from themselves, as would be warranted in the case of an inherently vulnerable individual like a child or disabled person. Rather, this condition is an artificial one, arising solely from the legally recognized dominance of men. "Artificial" in this context is descriptive of coverture as a fabrication. Coverture was fabricated for women in the sense that it would never have arisen naturally by virtue of any general defect in the constitution of women, it had to be forcibly created and assigned a purpose by a legal system desiring a measure of control over them.[156]

The 1864 case of *Drury v. Foster* further illustrates the true nature of coverture. The U.S. Supreme Court was tasked with determining if a deed signed by Mrs. Foster was enforceable without the added signature of her husband.[157] In the opinion delivered by Justice Nelson, he opened with the acute observation that coverture "exist[s] by statute and the common law for her protection, in consideration of her

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[154] *Id.* at 202.
[155] *Id.*
[156] Barnes' Lessee v. Irwin, 2 U.S. 199 (1793), *supra* note 142.
[157] Drury v. Foster, 69 U.S. 24 (1864), Justia Law, https://supreme.justia.com/cases/federal/us/69/24/ (last visited Dec 6, 2023).

dependent condition, and to guard her against undue influence and restraint."[158] The inclusion of words relating to protection and guarding indicate that coverture was, at the very least, presented as existing for the sake of women. However, Nelson's opinion identifies the marriage contract, "her dependent condition," as the primary justification for a woman's condition under coverture. This is made evident by his inclusion of the phrase "in consideration of," which can be taken to mean as a result of, or because of.[159] To rephrase Nelson's writing in simpler terms, he acknowledges that coverture exists because of the condition of women as dependent upon men.

Nelson's sentiment was similar to that expressed by M'Kean. Both opinions establish that coverture was not solely intended to protect women and their interests, nor was it an institution necessarily arising from the nature of women themselves.[160] Rather, it was an effective tool employed to keep men in power and to keep women as the helpless subjects of their totalitarian control.[161] The arbitrary deprivation of the rights of women would have been deemed brazenly unconstitutional, so those wishing to maintain this authority needed a pretext in which to ground it, and a legitimate avenue through which they could exercise it. As the previous cases have demonstrated, this pretext was found in the ineptitude of women themselves, demanding a level of protection contingent upon their domination by men. The law provided the ideal avenue through which to carry out this "necessary" oppression, as it lent the legitimacy of any other hallowed legal doctrine of American jurisprudence.

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[158] *Id.* at 33.
[159] *Id.*
[160] Barnes' Lessee v. Irwin, 2 U.S. 199 (1793), *supra* note 142 at 202; Drury v. Foster, 69 U.S. 24 (1864), *supra* note 157 at 33.
[161] Barnes' Lessee v. Irwin, 2 U.S. 199 (1793), *supra* note 142 at 202; Drury v. Foster, 69 U.S. 24 (1864), *supra* note 157 at 33.

III. Challenges to Coverture Arise

The preceding cases certainly indicate that the condition of coverture was more a product of male dominance than a necessary means of protecting women. Such verdicts, however, are by their very nature, tailored to the individual case at hand. To answer questions regarding coverture as it pervaded both the legal sphere and society as a whole, sources containing broader reasoning are essential. To supplement the opinions of *Barnes's Lessee v. Irwin, et al.* and *Drury v. Foster*, one must draw from 18th and 19th century sources that discuss the issues posed by coverture in light of more general public discourse, beyond the scope of the courtroom.

An excellent touchstone that offers context within which one can better place and interpret Justice M'Keen and Nelson's opinions is the April 1828 issue of *The North American Review.* In a piece entitled "The Law of Infancy and Coverture," author *Peregrine Bingham* explores societal standards and perceptions for and of so-called civilized women. Within the first few paragraphs, Bingham notes coldly that "a spirit [men], {...} has too often presided over the formation of the laws, which fix the rights and obligations of woman in the social scheme."[162] Bingham's inclusion of the phrasing relating to the frequency of instances of oppression indicates his distaste for the role men have long played in regulating the place of women, both in society and under the law.

Bingham goes on to describe the place of women in various cultures, and upon reaching what he considers the most civilized world, Europe, he points to the equality European women have as something for Americans to strive towards. It is evident that Bingham himself believes women to be

[162] Review of The Law of Infancy and Coverture; Traités du Contrat de Mariage, de la Puissance du Mari, du Contrat de la Communauté, et du Douaire, Pothier, *supra* note 145 at 316.

inherently deserving and capable of enjoying the same rights and freedoms as men when he writes that "just equality with the other sex, which the sober and rational pursuit of their common felicity requires she should possess."[163] By including language such as "sober," "rational," and "common," Bingham acutely emphasizes how straightforward and indisputable this stance ought to be.[164] He thereby insists that the rights of women are nothing short of undeniable and should be treated as such by any individual with the capacity for rational thought and reasoning.

Bingham concedes that if the rights of women were to be left solely to a competition of physical strength, women would surely lose.[165] This is an interesting point, that because men have the power to bestow and deny the rights of women, largely as they see fit, it becomes something that reflects well on the men that do, and appreciated by the women that benefit.[166] Put simply, if women are at the mercy of men from a purely physical standpoint, every action taken by men to benefit women is one taken not out of necessity, but out of generosity.[167] A generous act is commonly understood to be a commendable one on the part of the giver, and something worthy of gratitude on the part of the recipient. By framing the capacity to bestow rights upon women as a gift, Bingham portrays the act of granting women such privilege as socially desirable and in good taste.[168] These sentiments, taken together, demonstrate Bingham's belief that women are perfectly capable of, and deserving of, exercising rights.

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[163] *Id.* at 317.
[164] *Id.*
[165] *Id.*
[166] Review of The Law of Infancy and Coverture; Traités du Contrat de Mariage, de la Puissance du Mari, du Contrat de la Communauté, et du Douaire, Pothier, *supra* note 145.
[167] *Id.* at 316, 317.
[168] *Id.*

Despite his evident belief in the capacity of women to occupy a position in society on par with that of men, Bingham asserts that the promises of men to improve the status of women are oftentimes performative and done in the interest of securing said "gift and its acceptance," which "are alike honorable to humanity."[169] Seeing as these promises are applauded as honorable, there is little incentive to fulfill them, as the desired effect of garnering praise has already been achieved. Given this stance, it is unsurprising that Bingham pointedly states, "the disabilities incident to a married woman are not designed for her benefit and protection; but for the security of her husband."[170] This directly answers the question posed at the outset of this paper—was coverture a system for preserving the best interests of women, or was it merely a tool employed to keep women in a state of permanent subjugation, and legal incapacitation, thus furthering the interests of men?

Bingham is convinced of the latter, as is evidenced by his stance that coverture was never enacted for the benefit or protection of women, but rather for that of her husband.[171] Unlike the opinions of Justice M'Keen and Nelson, Bingham's conclusion that coverture was for the benefit of men alone was reached not in the narrow legal context of a specific court case, but through careful consideration of what the author had experienced in everyday life. His reflections on the civilized world, as well as his recognition of the performative inclinations of men, are illustrative of a perspective shaped by the broader influences of society and dynamic socio-political affairs.[172] It is this broad perspective that fleshes out the narrow ones offered in *Barnes's Lessee v. Irwin, et al.* and *Drury v. Foster*, providing a framework in which to better contextualize them. Bingham's "The Law of Infancy and Coverture" serves

[169] *Id.*
[170] *Id.* at 332.
[171] *Id.*
[172] *Id.* at 318, 319.

as but one example of the growing defiance of coverture and the limitations it posed upon women.

While Bingham's writings are certainly invaluable for the purpose of framing and expanding upon relevant court opinions in light of broader social contexts, they are limited by the perspective of their author, a man, to whom the regulations of coverture did not apply. The voices of women, the true victims of this legal means of systematic oppression, are integral to understanding its real-life consequences. To that end, the following writings come from female authors, sharing their thoughts on an institution they themselves were subject to, with or without their consent.

Judith Sargent Murray was a preeminent female essayist and early proponent of women's equality during the late 18th century.[173] In 1790, Murray penned an article entitled "On the Equality of the Sexes," for an edition of *The Massachusetts Magazine*.[174] In this article, Murray challenges long-held assumptions regarding her sex, quipping, "suffer me to ask, in what the minds of females are so notoriously deficient, or unequal."[175] She continues,

> May not the intellectual powers be ranged under these four heads – imagination, reason, memory and judgment. The province of imagination hath long since been surrendered to us, and we have been crowned and undoubted sovereigns of the regions of fancy. Invention is perhaps the most arduous effort of the mind; this

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[173] Kerri Alexander, *Biography: Sarah Moore Grimké*, National Women's History Museum, https://www.womenshistory.org/education-resources/biographies/sarah-moore-grimke (last visited Dec 6, 2023).
[174] Judith Murray, *On the Equality of the Sexes.*, Digital.library.upenn, https://digital.library.upenn.edu/women/murray/equality/equality.html (last visited Dec 6, 2023).
[175] *Id.* at 132.

> branch of imagination hath been particularly ceded to us, and we have been time out of mind invested with that creative faculty.[176]

Here, Murray is describing how the female mind is uniquely capable. By referencing categories of intellect often attributed to women, such as being "fanciful" and overly imaginative, Murray reclaims them as pillars of one form of "intellectual power"—imagination. This, in turn, is a reclamation of the very traits identified by cases such as *Barnes's Lessee v. Irwin, et al.* and *Drury v. Foster* as justifications for the existence of coverture. By doing so, Murray reframes these alleged deficiencies of women as strengths.[177] This resultantly negates the need for coverture arising from her position under the dominance of the husband as described by Justice M'Kean and her condition of dependence upon him as described by Justice Nelson.[178]

In place of these justifications, Murray's writings indicate that the obligation to provide protection and benevolent influence described by Blackstone was not so much born of necessity, as for the security of the position of the husband as concluded by Bingham.[179] In short, Murray's writings identify the aforementioned characteristics of women as strengths of the mind and character. Given the numerous justifications of coverture as contingent upon these characteristics as *weaknesses*, Murray's reframing of them necessitates a different justification.[180] It is here that the recurrent idea of coverture being used as a tool benefitting the dominance of men seems the only viable explanation in their stead.

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[176] *Id.* at 132, 133.
[177] *Id.*
[178] BARNES' LESSEE v. IRWIN, 2 U.S. 199 (1793), *supra* note 142.
[179] Blackstone, *supra* note 140.
[180] Murray, *supra* note 174 at 132, 133.

Murray does concede certain shortcomings common to her sex, but here too she identifies men as the party at fault, rather than the women themselves.[181] When it comes to knowledge and education, for example, she points to the fact that women cannot reasonably be expected to possess any significant measure of the former without proper access to the latter.[182] In Murray's own words, "Are we deficient in reason? We can only reason from what we know, and if an opportunity of acquiring knowledge hath been denied us, the inferiority of our sex cannot fairly be deduced from thence."[183] Women have long been condemned as irrational, prone to fit and fancy, and as such, unfit for aspects of life demanding critical thought and reasoning.

Murray offers a logical explanation: women cannot exercise sound reason if they are denied the opportunity to learn when and how to do so.[184] That is, if men are able to keep women from educating themselves on reason and its proper uses, then women cannot be expected to be reasonable. It is not the fault of women that they have been denied the chance to learn and expand their knowledge, it is merely a consequence of the patriarchal and misogynistic society that prevailed during the 18th and 19th centuries.[185] Women were relegated from a young age to realms of domesticity, which excluded any manner of higher education.[186] Since women were handicapped in such a manner, their full intellectual potential could never truly be reached. The rest of society would have to pass judgment upon women who had been unfairly stunted by reduced opportunities for self-improvement and learning.[187]

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[181] *Id.* at 133.
[182] *Id.*
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.* at 132, 133.
[187] *Id.* at 133.

Continuing on the topic of education, Murray illustrates her point with a poignant observation:

> May we not trace [judgement's] source in the difference of education, and continued advantages? {...} how is the one exalted, and the other depressed, by the contrary modes of education which are adopted! The one is taught to aspire, and the other is early confined and limited. As their years increase, the sister must be wholly domesticated, while the brother is led by the hand through all the flowery paths of science. Grant that their minds are by nature equal.[188]

The above quote is evidence that, like Bingham, Murray contends that women have the capacity for rational thought and intelligence equal to that of men. However, from a young age that capacity is cultivated in males, and stunted in females, leaving women at an increasingly large disadvantage as both sexes age.[189] Murray's perspective on the issue is unique. She herself is a woman, and is thus better equipped to speak on the topic than most philosophical and legal writers of the time (as, needless to say, the vast majority were men). Murray went through life knowing firsthand what it was to be viewed and treated as a second-class citizen, deprived of opportunities equal to those of men. This firsthand experience is key, as her writing comes from experience, rather than speculation. This is evident from her repeated use of the words "we," us," and "our," whereby she includes herself in the women whose fate has been so constricted by men.[190]

The perspective of women on coverture and their own alleged disabilities is invaluable. To that end, the writings of Sarah M. Grimké, renowned 18th century abolitionist and

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[188] *Id.*
[189] *Id.*
[190] Murray, *supra* note 174.

women's rights advocate, offer themselves up as an ideal companion to those of Judith Sargent Murray.[191] In an 1837 letter addressed to her sister entitled "Legal Disabilities of Women," Grimké laments and systematically proposes solutions to the numerous laws that existed solely to restrict the rights and legal identities of women.[192] The opening lines of this letter echo the sentiments expressed hitherto,

> There are few things which present greater obstacles to the improvement and elevation of woman to her appropriate sphere of usefulness and duty, than the laws which have been enacted to destroy her independence, and crush her individuality; laws which, although they are framed for her government, she has had no voice in establishing, and which rob her of some of her essential rights.[193]

Like Murray, Grimké asserts that the distinct lack of equality between women and men is a direct result of laws that have limited the independence and identity of the former.[194] That is to say women, given the proper chance through education, are perfectly capable of the self-improvement proposed by Grimké.[195] Murray and Grimké wholeheartedly believe women to possess capabilities equal to those of men, though both agree that their sex has been unjustly hindered in this pursuit by the laws and restrictions imposed by the latter.

Moreover, the "laws" to which Grimké attributes the oppression of women, she also condemns as merely contrived

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[191] Alexander, *supra* note 173.
[192] Sarah M. Grimké, *30_Letter_XII_legal_disabilities_grimke.Pdf*, Civics Online, http://www.civics-online.org/library/formatted/texts/grimke.html (last visited Jan 21, 2024).
[193] *Id.* at 1.
[194] *Id.*
[195] Grimké, *supra* note 192.

for their benefit.[196] Grimké's comment that these laws "are framed for her government" speaks to the central question of coverture. These laws, of which coverture was essentially an performative amalgamation used the prevailing belief in the dependencies and vices of the "fairer sex" as an excuse to secure male power.[197] The inclusion of the word "framed" suggests the laws were presented as being in the best interest of women, but were, in reality, a way by which the law and courts could deny women many of their most fundamental rights.[198] Suffice to say, the courts did not have the best interests of women in mind and chose, on numerous occasions, to uphold their legal yoke by men.

Recalling one sentiment shared by Murray, it is men who have prevented women from expanding their knowledge. Thus, any judgments passed on the intelligence of the female sex are flawed, as they are based on the functioning of stunted minds rather than educated ones.[199] Grimké appears to share in her observation that women had been systematically made ignorant by men such that the former lacked the proper knowledge and confidence to challenge the decrees of the latter.[200] In combination with this, and in keeping with the prevailing mindset of the time, women were thought of as being "placed completely in the hands of a being subject like herself to the outbursts of passion, and therefore unworthy to be trusted with power."[201] In this manner, women were both denied knowledge and autonomy directly, and taught they lacked the basic capacity to make use of either. However, like Murray, Bingham, and M'Kean, Grimké, too, rejects this assumption, finding no fault with the intellectual powers of

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[196] *Id.*
[197] *Id.* at 1.
[198] *Id.*
[199] Murray, *supra* note 174 at 132, 133.
[200] Grimké, *supra* note 192 at 1.
[201] *Id.* at 3.

women themselves.[202] Instead, she echoes the sentiments expressed hitherto, rejecting the notion that the laws and doctrines consolidated under coverture were, in truth, intended for the betterment and protection of womankind.[203] Grimké decidedly concludes that, "the laws which have generally been adopted in the United States, for the government of women, have been framed almost entirely for the exclusive benefit of men, and with a design to oppress women, by depriving them of all control over their property, is too manifest to be denied."[204] There can be no doubt that women of the time, those best equipped to speak on the true nature and implications of the coverture that afflicted them, did not view it as a state intended for their protection, nor one warranted by the nature of their sex. Rather, coverture was established and perpetuated as an instrument of their own oppression, rendered unto them, heedless of their objections, by the very men sworn to guard and shepherd them.

IV. Conclusion

After close examination of case law, legal commentaries, scholarly publications, and the writings of prominent female thinkers, an indisputable set of historical facts has emerged which recounts the repressive nature of coverture. The works of Blackstone and Mill serve to illustrate the mindset and rationalizations of those in support of the coverture of women, chiefly that it is a condition deemed necessary for the protection of women and one under which society will be the most stable. This is a sentiment echoed by Nelson in *Drury v. Foster* as well. The cases of *Drury v. Foster* and *Barne's Lessee v. Irwin,* however, demonstrate that in practice, at least in the realm of the courts, coverture was more

[202] *Id.* at 3, 4.
[203] *Id.*
[204] *Id.* at 4.

contingent on the husband and the state of marriage itself, rather than any disabilities or deficiencies found inherent within women.

To expand upon this idea, Bingham, Murray, and Grimké concur that coverture was a condition arising from the relationship of women to men, rather than the state of women themselves. Furthermore, they identify it as one knowingly tailored for the benefit of men and the protection of their assumed superiority, at the expense of women and their intellectual and legal opportunities. Hence, it may be concluded that coverture was never a product of the needs of women as inferior beings. Any such inferiority referenced at the time was demonstrably either entirely absent or merely manufactured by a system of imposed ignorance created by men.

In all, this article has described how coverture was a scheme intended to subjugate women and deprive them of their legal identity. In doing so, coverture's true purpose was to elevate men to a status far above women, thus protecting mens rights and ensuring their dominance. By perpetuating such a system, American jurisprudence not only allowed for the patriarchy to extend itself into the legal sphere, but also actively endorsed it.