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Analyzing the Disappearance of Women's Surnames and the Retrenchment of their Political-Legal Status in Early Modern England

*Deborah Anthony**

I. INTRODUCTION

American actress Zoe Saldana conducted an interview for *In Style Magazine* in July 2015. The story made headlines, but for an unexpected reason: She revealed in the interview that her husband had taken her last name when they married, rather than the other way around. Multiple media outlets picked up that piece of the story and reported on the “untraditional” move,¹ and the public response was telling. While some commenters hailed the step as refreshing and progressive, many of the (tamer) critical comments lamented the deterioration of an important tradition, reproachfully discussed who “wore the pants in that family,” referenced his emasculating himself and “giving up his man card,” accused him of being insecure, browbeaten, “whipped,” and “neutered,” and questioned what has become of real men in this world.² The response was strong enough to elicit further comment from Saldana, who questioned why it should be so shocking for a man to do what women are expected to do regularly.³

The sheer surprise of some and the intensely negative response of others to the personal family decision of Saldana and her husband reveal how attached many people still are to the implications of a gendered tradition that signifies the transfer of ownership, and how thoroughly entrenched the sex distinctions remain in this area. It is difficult to imagine another activity that would elicit such vehemence when undertaken by one sex, but not even a

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1. See, e.g., Hoai-Tran Bui, *Zoe Saldana's Husband Takes Her Last Name*, USA TODAY (June 9, 2015), <http://www.usatoday.com/story/news/nation-now/2015/06/09/zoe-saldana-husband-last-name/28727311/>.

2. See, e.g., Carolina Moreno, *Zoe Saldana's Husband Takes Her Last Name, Doesn't Care What You Think*, THE HUFFINGTON POST (June 8, 2015), http://www.huffingtonpost.com/2015/06/08/zoe-saldana-husband-last-name-_n_7536974.html.

3. “Why is it so surprising, shocking—eventful that a man would take his wife’s surname? Women have never been asked if its [sic] ok for them to give up their names—why doesn’t that make the news?” Emma Gray, *Zoe Saldana Doesn't Get Why Everyone's Shocked Her Husband Took Her Name*, THE HUFFINGTON POST (June 9, 2015), http://www.huffingtonpost.com/2015/06/09/zoe-saldana-husband-name-change-response_n_7546412.html?1433880025&ncid=fbklnkushpimg00000063.

second thought when undertaken by the other. Indeed, what on its face would appear to be a mild disruption of the status quo—in a realm that is entirely individual and personal, with no effect on anyone outside of the family—apparently cannot take place without widespread public criticism and shaming. Clearly there is more to the issue of women relinquishing their names at marriage than simple precedence or convenience, or it would not be so remarkable when men did what women have been expected to do for generations. What was not discussed in the reporting of the story and the debate surrounding it, however, was the fact that Ms. Saldana and her husband were not eschewing a long-standing and fundamental traditional practice, but rather a more modern development. English women historically were not bound by the same name restrictions that even today's women are.⁴

The historical development of surname usage reveals a great deal about English and American history, culture, politics, and law.⁵ Names function as representations of one's individuality, lineage, family beliefs, religion, and community, and they are central to the ways in which the law interacts with and mediates politics and culture. They are exclusively a social and legal construct rather than something intrinsic to human nature; as such, names are subject to manipulation and appropriation, making them a useful vantage point from which to analyze elements of the existing status quo of gender politics and the position of women in culture.

A thorough investigation of the historical record reveals that the history of gender equality is not as straightforward as is commonly assumed. What we consider to be the "norm" or "traditional" when it comes to naming practices was not nearly so consistent or unyielding historically. In fact, principles of coverture and female legal impotence appear to have in some ways become increasingly rigid and restrictive, rather than less, over time, and women's surnames are but one indication of that. The commonly accepted notion that history generally moves in a positive direction in terms of human rights and thought is a misguided one.

While feminist scholars tend to focus on modern history in their work,⁶

4. A variety of surname practices have existed worldwide, some of which are quite different in general approach as well as in particular prescriptions for women. However, for purposes of this paper, I focus on English and American historical practices.

5. American surnames are a representation of history, language, and culture from all over the world. Although laws specific to surnames were historically rare in America and England (see Carlton F.W. Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 GEO. WASH. L. REV. 159, 178 (2011); Deborah Anthony, *A Spouse by Any Other Name*, 17 WM. & MARY J. WOMEN & L. 187, 191–192 (2010)), the American legal view of surname usage developed under the common law system adopted from England. See *Henne v. Wright*, 904 F. 2d 1208, 1217–18 (8th Cir. 1990). As such, the implications in the United States of the historical development of surname convention and usage in England are significant.

6. See Paddy Quick, *Feudalism and Household Production*, 74 SCI. & SOC'Y (ISSUE 2) 157, 158 (2010).

scholars of economic and political history have tended to ignore women, so there is a dearth of scholarship investigating women in premodern economic and political history. This is unfortunate, as there is much to be unveiled in such an analysis. This work argues that the modern state of affairs does not reflect a steady linear progression of ever-increasing rights for women in English history. Rather, evidence demonstrates some significant shifts backwards over a period of centuries. It is essential to note that the legal subordination of women implicit in surname custom is a relatively recent phenomenon, and its development coincides with an operation of coverture that reflected and reinforced an increasingly rigid gender hierarchy in English history.

What, then, may have driven this retrenchment that resulted in increasingly limiting rules for women, with surname practices and expectations following suit? Multiple economic and political developments appear to have jointly contributed to the constriction, including feudalism, the English common law, capitalism, colonialism and imperialism, and the development of the nation-state and its attendant concept of citizenship. Viewing these developments in terms of their effects on women through the vantage point of surname usage reveals the ways in which they wrought a new formal exclusiveness and subordination of women. This analysis unveils new considerations about women's status, identity, and progress over the past millennium of English history.

II. ORIGINATION AND DEVELOPMENT OF SURNAMES

The names by which people have been known illustrate a great deal about social norms and legal practices of various periods and places. While the use of first names has been a universal practice throughout recorded history, what are now known as "surnames" are a more recent phenomenon. They first came to England via the Norman conquest in 1066.⁷ The Saxon traditions previously in place were largely replaced by Norman ones,⁸ and since that time, the conventions, laws, and customs surrounding surname use have changed considerably over the years. Despite historical variations in usage and subtle distinctions in meaning, in this paper I will use the term "surname"⁹ to mean a second name, which is not limited exclusively to an

7. FRANCES GIES & JOSEPH GIES, *WOMEN IN THE MIDDLE AGES* 27 (1978); P. H. REANEY, *A DICTIONARY OF ENGLISH SURNAMES* xii (R. M. Wilson ed., 3d ed. 1997).

8. WILLIAM DODGSON BOWMAN, *THE STORY OF SURNAMES* 30–31 (1932).

9. The word "surname" originates from the Old French *sur* meaning "upon" or "over," and *nom* meaning "name" (Jess Stein & Laurence Urdang, *THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE* (2nd ed. 1987)). Though we now think of these as "family names," they originally operated more as second or additional names, and were not necessarily hereditary (*MIDDLE ENGLISH DICTIONARY*. 2014. <https://quod.lib.umich.edu/cgi/m/mec/med-idx?size=First+100&type=headword&q1=surname&rgxp=constrained> (last visited Oct. 31, 2017)). They were often referred to as "bynames." (Talan Gwynek & Arval Benicoeur, *A Brief Introduction to Medieval Bynames* (1999), <http://www.s-gabriel.org/names/arval/bynames/> (last visited Oct. 31, 2017)).

inherited family name, as it is typically defined today.

From the initial introduction of surnames to England, and spurred by growing population, limited first name availability, and increasing need for government regulation of individuals, their usage gradually spread from the aristocracy to the lower social classes, until eventually they were used regularly by nearly everyone.¹⁰ For the lower classes, names were chosen either by the bearer himself, or by her or his acquaintances as a matter of common use. Through the fourteenth century, individual surnames changed easily, and were less likely to refer to the bearer's paternity than to other attributes of the person.¹¹ Surnames generally fell into one of five types: topographical (John Attford, from John at the ford); parental (John Richardson, from John son of Richard); designating places (John Durham, for John of Durham); occupational (John Potter, for John the potter); and representing individual characteristics (John Goodman, from John the good man). Because of this fluidity, members of the same family might have different surnames, and the name of an individual could itself change throughout one's life.¹² A baker named Jack might be called Jack Baker, and could have a daughter known as Alice Draper (a seller or maker of cloth)¹³ and a son called Henry Jackson (son of Jack), who is also called Henry Short (due to his stature), or Henry Green (because he lived on the green).

Hereditary acquisition of surnames had become the norm by the fourteenth to the fifteenth centuries, although the shift took place incrementally and was inconsistently applied from one region to the next.¹⁴ A perusal of any of the multiple parish records from the period, which record births, marriages, and deaths of local citizens, demonstrates this fluidity in surnames: the recording of births often lists the babies with an "alias" surname, and occasionally two of them, for reasons that are not clear.¹⁵ This practice seems to have declined significantly by the early 1600s.

Surnames as they relate to (and have been held by) women have been not only soundly ignored, but also presumed to be pointless and irrelevant, under the assumption that only men bear and pass on real, permanent names.¹⁶ Yet ample evidence suggests that the relationship of English women to their surnames was historically quite dynamic and individualized.

10. Stein & Urdang, *supra* note 9, at 8–9.

11. Cynthia Blevins Doll, *Harmonizing Filial and Parental Rights in Names: Progress, Pitfalls, and Constitutional Problems*, 35 *HOW. L.J.* 227, 228 (1992).

12. BOWMAN, *supra* note 8, at 15.

13. *Draper*, *MIDDLE ENGLISH DICTIONARY*, <http://quod.lib.umich.edu/cgi/m/mec/med-idx?size=First+100&type=headword&q1=draper&rgxp=constrained> (last visited Jan. 5, 2016).

14. REANEY (1997), *supra* note 7, at xlv–xlvi, xlix, li.

15. Roger Smyth, als. Goldyng (1573), and Ales Fletcher, als. Leadebeater, als. Crowther (1585) are two of many examples. See, e.g., Deborah Anthony, *In the Name of the Father: Compulsion, Tradition, and Law in the Lost History of Women's Surnames*, 25 *J. JURIS.* 59, 64 (2015).

16. See Anthony (2010), *supra* note 5, at 195–96.

Surnames specific to women existed in numerous forms. Some female-specific names were patronymic (from the father), such as Emma Rogerdaughter (1381),¹⁷ Magota Stevendoghter (1379),¹⁸ and Joan Tomdoutter (1379).¹⁹ There are even examples of men who held surnames ending in “daughter”—Robert ffelisdoghter (Felix daughter) (1379),²⁰ John Jakdoghter (1381)²¹ and Richard Wryghtdoghter (1379) are a few.²² This suggests that these men inherited their surnames from a *female* ancestor, perhaps a mother or grandmother whose name reflected her own parentage, in the same way that many women today inherit “son” surnames from a male ancestor.²³ With the wide variety of surname usage possibilities available at the time, the fact that these “daughter” surnames exist, and were even held by men, provides a clue to the social standing of 14th century women.

It is also clear that matronymic names—those which identify the mother rather than the father—were common, and such names were passed down to both males and females: Rose Anotdoghter (1379)²⁴ (daughter of Annot, diminutive of Ann)²⁵ and Ameria Ibbotdoghter (1324)²⁶ (daughter of Ibb-ot, diminutive of Isabel)²⁷ represent women with matronymic names, while Richard Margretson (1381),²⁸ William Marysone (1298),²⁹ and Richard Elynoreson (1375)³⁰ (son of Eleanor) are a few examples of “son” names referencing the mother. Often the mother’s given name would become the surname without the addition of “son” or “daughter”: Peter Rose (1302),³¹ John Marie (1279),³² and John Mariun (1279)³³ are a few examples. Furthermore, female-specific names identifying a characteristic, occupation, or relationship can also be found, including among others, Nota Godwyf (good wife) (1311),³⁴ Isabella Vikerwoman (1379) (vicar woman, or female servant of the vicar),³⁵ and Alice Prestsyster (1379) (priest’s sister).³⁶ Nicholas Snypewife (1309)³⁷ is an interesting example; the name means

17. REANEY (1997), *supra* note 7, at xviii.

18. *Id.* at li.

19. *Id.* at 127.

20. *Id.* at 127.

21. P. H. REANEY, THE ORIGIN OF ENGLISH SURNAMES 83 (1967).

22. REANEY (1997), *supra* note 7, at 127.

23. For further discussion, see Anthony (2010), *supra* note 5.

24. REANEY (1997), *supra* note 7, at 127.

25. *Id.* at 12.

26. *Id.* at xviii.

27. *Id.* at 247.

28. *Id.* at 298.

29. *Id.* at xx.

30. *Id.* at 153.

31. *Id.* at 383.

32. REANEY (1997), *supra* note 7, at 298.

33. *Id.*

34. REANEY (1967), *supra* note 21, at 109.

35. REANEY (1997), *supra* note 7, at li.

36. *Id.*

37. REANEY (1997), *supra* note 7, at 416.

“wife of a man from Snipe,” but the name was held by a man, who could not have himself been a wife. This is another indication of a man inheriting a female-specific surname from a female ancestor, and may have been just as unremarkable as a woman who inherited a “Johnson” or “Albertson” surname despite not being sons themselves. While many of these matronymic names have disappeared as a result of later marriage naming conventions, some are still in use today, such as Madison (son of Maddy) and Marriott (diminutive of Mary).³⁸ In addition, further research into the record reveals a number of examples of names that were passed from a woman to her descendants but that are not obviously identifiable as female from the name itself, suggesting that the occurrence was even more common than is immediately apparent.³⁹

There is considerable documentary evidence demonstrating that women sometimes retained their birth names at marriage.⁴⁰ The practice appears to have been relatively common; it was no foregone conclusion that a married woman must share a surname with her husband. Beyond this, however, men even adopted the surname of the wife, often in an effort to associate themselves with the estate that she expected to inherit.⁴¹ Husbands in these cases were considered merely custodians of the property that was held by the woman through her bloodline,⁴² but association with her family name was necessary even for that.⁴³ The presentation of these facts within contemporary documents as wholly unremarkable suggests that they were neither troubling in terms of gender dynamics nor particularly unusual.

The frequency at which these practices occurred varied depending on the period, the location, the social class of the individuals, and other circumstances of those involved. All of the surname types relating

38. See Anthony (2010), *supra* note 5, for a detailed discussion of matronymic names that are still in use.

39. For example, John Dyson de Langeside (1369) was named after his mother Dionysia de Langside. In 1408 Richard Ryvelle was the son of Joan Ryvell and Geoffrey Reynald. Thomas Cromwell's daughter married a man named Williams, but their son was named Richard Cromwell. Matilda Ridel married Richard Basset, and both of their sons were surnamed Ridel. See, e.g., Deborah Anthony, *To Have, to Hold, and to Vanquish: Property and Inheritance in the History of Marriage and Surnames*, 5 BR. J. AM. LEG. STUDIES 217, 233–234 (2016). For further discussion, see Anthony (2010), *supra* note 5.

40. For instance, in the mid 13th century Isabella de Ford retained her family name and was referred to as such despite her marriage. A 1543 royal charter lists Janet Ogilvie as the wife of John Gordon of Pitlurg. Mary Carne is referenced in a lawsuit jointly with her husband, whose name is John Prise (1702). See Anthony (2016), *supra* note 39, at 234.

41. The 14th century Book of Chertsey Abbey in Surrey alone gives several examples of this phenomenon. Hugh atte Clauwe of Thorpe appears as Hugh le Keach after his marriage to Alice le Keach. John atte Hethe of Cobham married Lucy atte Grene, and was thereafter called “atte Grene.” In another entry, a woman originally took her husband's name, but after her father's death when she inherited his property, she reverted to her birth name and her husband adopted the new name as well. See, e.g., Anthony (2016), *supra* note 39, at 236–37.

42. *Table of Pedigree of the Family of Gordon of Pitlurg* (available in print at the British Library in London); Anthony (2016), *supra* note 39, at 149–150.

43. For further discussion of the relationship between property, marriage, and surnames, see Anthony (2016), *supra* note 39.

specifically and individually to women are in evidence in England beginning as early as the 11th century, and they continue in the records for hundreds of years. Such occurrences became much less common by the 17th century, but examples can nevertheless be found even into the nineteenth century.⁴⁴

Although they did not initially function this way, surnames eventually became intertwined with property to such an extent that the family member with legal ownership of the property was vested with naming rights for the family. Despite the fact that this was often the man, the many examples of men taking the wife's name at marriage demonstrate that even after property became central to surname function, it was not uncommon for the woman to bestow the family name. However, where women had been owning and inheriting property through early medieval times,⁴⁵ inheritance for daughters later became limited to situations where there were no surviving sons.⁴⁶ Later still, this type of female inheritance also diminished until sometimes even distant male relatives were preferred for succession over immediate female family members,⁴⁷ and women were more clearly chattel themselves to be owned and named by their husbands. The elimination of women's inheritance thus contributed to the disappearance of these variable surname practices as well as a great many of the individualized names that were once held by women.

It is clear that women's surname usage demonstrated a remarkable variety for a significant period, reflecting their own individual attributes rather than simply the names of their fathers or husbands, and supporting a legacy where those names were passed on to children and grandchildren in a striking number of cases. This suggests that women enjoyed a social visibility and status, as well as an independent and autonomous legal identity, in stark contrast with modern developments. The new status quo, whereby a woman takes a man's name at marriage and any children born of the union categorically take the father's name, was not the rule during the Medieval period.

There exists a strong presumption that the road of progress through history generally moves in an upward trajectory, if not linearly or steadily so. I have previously referred to this concept as "chronological ethnocentrism,"⁴⁸ whereby we exhibit a strong tendency to believe that the

44. See Anthony (2016), *supra* note 39, at 236.

45. See *id.*

46. Ann J. Kettle, *My Wife Shall Have It: Marriage and Property in the Wills and Testaments of Later Mediaeval England*, in MARRIAGE AND PROPERTY 90 (Elizabeth M. Craik ed., 1984).

47. Pearl Hogrefe, *Legal Rights of Tudor Women and the Circumvention by Men and Women*, 3 THE SIXTEENTH CENTURY J. 97, 98 (1972).

48. I first encountered this term in a *Salon* article by Jim Loewen: chronological ethnocentrism allows the writers of history to "sequester bad things, from racism to the robber barons, in the distant past," allowing us to always 'know' that everything turned out for the best." Jim Loewen, *Our Real First Gay President*, SALON (May 14, 2012), http://www.salon.com/2012/05/14/our_real_first_gay_president/.

present day necessarily represents more enlightenment and progress than the past. Yet, aside from being inaccurate, it also creates a cloudy lens through which we view the past and the present. We fail to seek out ways in which the presumption might fail, and are more likely to ignore as anomalous those instances we do find. Extensive evidence points to a significant and prolonged retrenchment of rights for women. Important questions are raised as to the reasons for and the implications of such changes.

III. THEORETICAL UNDERPINNINGS AND CAUSES

It is important to take note of the fact that names are not exclusively rooted in institutional functions, but are also ideational in nature. They can serve as a representation of individuality, family relations, community, beliefs, and social structure; in short, they serve as a symbol of one's personal and group identity. As such, they exhibit psychological effects on the self as well as others. They have been manipulated and coerced throughout history to provide prestige and advantage, as well as to control, oppress, and dehumanize.⁴⁹ The analysis of institutional developments must therefore be considered with a view towards the fuller diverse functions and effects of names and naming.

While this paper centers its analysis on gender and the impacts of various economic and political changes on women, it should be noted that gender often is not clearly distinct from other identities subject to categorization, including race, class, and religion, nor can the whole fairly be considered the sum of the parts. The operations of each identity in concert with the others are reciprocal, relational, and at times contradictory.⁵⁰ Nevertheless, women have been largely ignored by historians, social scientists, and legal scholars dealing with the developments discussed herein, and gender will be the focus of the theoretical analysis employed here, despite the fact that such an approach will necessarily be incomplete.

A number of interconnected factors likely account for the extended period of decline for women. Among them are the existence (and disappearance) of feudalism, the gradual implementation of the common law and the system of coverture in England, and multiple economic and political developments of the Early Modern period, including the emergence of

49. For example, the names of immigrants were often changed at Ellis Island in order to enhance assimilation into American culture or to minimize association with less desirable ethnic groups. Nazis in the 1930s required Jews to add Sarah or Israel to their names to mark them as "other." Slave owners in the American south often denied the right of slaves to have surnames at all, and when they did, the surnames would change to match that of the owner as the slave was bought and sold. For further discussion, see Anthony (2010), *supra* note 5, at 193-197 (2010).

50. This concept, typically referred to as intersectionality, was pioneered by Kimberle Crenshaw's work, and has been the subject of much scholarship since. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 140 U. CHI. LEG. F. 139 (1989).

capitalism, colonialism and imperialism, concepts of citizenship and rights, and the building of the modern nation-state. None of these developments can be adequately considered in isolation from the rest, and indeed their dependence upon each other for their very existence is often asserted but is complex and intertwined enough that it cannot be conclusively explicated in a paper of this scope. What is clear, however, is that these new political and legal concepts necessarily brought with them discourses of dominance and superiority, self and other, in ways that solidified into formal exclusion of women.⁵¹ The implications of these historical developments and their impact on women are wide ranging and significant.

A. MEDIEVAL PERIOD – FEUDALISM, COMMON LAW, COVERTURE

Feudalism as a concept is difficult to pin down as a cohesive, coherent categorical unit of analysis. In fact, Susan Reynolds argues that “feudalism” is actually a historical construct, distorted into an interpretive framework which was created centuries after the fact in the 17th to 18th centuries. This new construct then served to alter the vantage point by which we consider the period, and that framework has essentially been locked in as the dominant paradigm ever since.⁵²

However, despite the oversimplification attendant to such an analysis, the period with which feudalism is associated nevertheless exhibited significant and lasting impacts on women's rights and status. The practice began in France around the ninth century, and made its way to England with the Norman Conquest.⁵³ Generally speaking, feudalism consisted of a lord granting fiefs (lands) to a vassal (landholder) in return for military service. What resulted was a group of elite male vassals who ruled those who worked the land. While technically the land belonged to the vassal only for his lifetime and ownership remained with the lord,⁵⁴ a strong sense of inheritance rights nevertheless developed.⁵⁵ The emphasis on military service necessarily gave preference to men while excluding women. The principle of primogeniture was similarly developing during this time (between the 12th to the mid 14th centuries), whereby the eldest male child inherited the land, and if there was no male child, the land would be divided among the females jointly.⁵⁶ Where they had previously been inheriting

51. Women were certainly not the only group excluded in this process; these movements worked against certain religions, races, ethnicities, and social classes as well. See generally ANN LAURA STOLER, *RACE AND THE EDUCATION OF DESIRE: FOUCAULT'S HISTORY OF SEXUALITY AND THE COLONIAL ORDER OF THINGS* (1995); *CULTURES OF EMPIRE: A READER* (Catherine Hall ed., 2000).

52. SUSAN REYNOLDS, *FIEFS AND VASSALS: THE MEDIEVAL EVIDENCE REINTERPRETED* 1–3 (2001).

53. GIES & GIES, *supra* note 7.

54. *Id.* at 29.

55. *Id.* at 148–149.

56. Susan Mosher Stuard, *Widow and Ward: The Feudal Law of Child Custody in Medieval England*, in *WOMEN IN MEDIEVAL SOCIETY* 160 (Susan Mosher Stuard ed., 1976). Counter-

regularly, women's inheritance became limited to instances in which no male heirs, even distant ones, existed.⁵⁷

During the feudal period, women were moving more clearly into the guardianship of male relatives: the father, the father's lord if the father died, and then the husband.⁵⁸ The lord received the income generated by the estate, and the woman was required to marry whomever was chosen by the lord or risk losing any inheritance.⁵⁹ However, for middle and lower class women, the relative equality experienced in Saxon times continued in many respects during feudalism, and they experienced a practical, if not legal, equality for some time longer than did upper class women. Unlike their counterparts in the upper classes, the lives of lower class women were characterized by physical labor on the land, where sex-based divisions of such labor were not pronounced.⁶⁰ The courts of the manors, which enforced custom rather than more formal "law," tended to treat women and men equally. Examples can be found of women claiming the lands of the husband after his death, even holding and working those lands independently for many years. The rights of women remained fairly consistent in the manorial courts over the years.⁶¹ Canon law also continued to treat women equally with men in some respects, and even resisted some common law changes that moved to oppress them.⁶² The feudal period was relatively brief, experiencing decline in the early 14th century and essentially dead by about 1440,⁶³ having lasted just a few centuries.

Taking place simultaneously as the institution of feudalism, such that it existed, was the English common law, and with it the new concept of coverture. Coverture originated under Norman influence around the 11th century.⁶⁴ Prior to that, Anglo-Saxon women enjoyed considerable independence with most of their property and demonstrated autonomy in

examples exist however; in one case in 1189, both the wife and the husband owned land, and the oldest son inherited the father's lands while the youngest son inherited the mother's. PEDIGREE OF SIR JAMES RIDDELL, OF ARDNAMURCHAN, AND SUNART, BART. LL. D., CONTAINING AN ABSTRACT OF THE DESCENTS, WITH THE AUTHORITIES ANNEXED vii (Edinburgh, 1794).

57. REYNOLDS, *supra* note 52, at 49–50.

58. GIES & GIES, *supra* note 7, at 27.

59. *Id.*

60. Eileen Power, *The Position of Women*, in THE LEGACY OF THE MIDDLE AGES 407–408 (C. G. Crump & E. F. Jacob eds., 1926); *see also* Kathleen Casey, *Women in Norman and Plantagenet England*, in THE WOMEN OF ENGLAND 87–88 (Barbara Kanner ed., 1979).

61. Ruth Kittel, *Women Under the Law in Medieval England*, in THE WOMEN OF ENGLAND 127–128 (Barbara Kanner ed., 1979).

62. *See, e.g.*, Ann J. Kettle, *My Wife Shall Have It: Marriage and Property in the Wills and Testaments of Later Mediaeval England*, in MARRIAGE AND PROPERTY 94 (Elizabeth M. Craik ed., 1984) (discussing the opposition of the English bishops to the prohibition of women's ability to make a will, holding that married women had the same right as men to do so).

63. Casey, *supra* note 60, at 87.

64. ARIANNE CHERNOCK, MEN AND THE MAKING OF MODERN BRITISH FEMINISM 91 (2010); COURTNEY STANHOPE KENNY, THE HISTORY OF THE LAW OF ENGLAND AS TO THE EFFECTS OF MARRIAGE ON PROPERTY AND ON THE WIFE'S LEGAL CAPACITY 11 (1879).

other areas as well.⁶⁵ The legal concept of coverture developed slowly, gaining a stronghold in the late Middle Ages. Under coverture, the husband and wife became one legal entity at marriage, and that entity amounted to the husband alone. A woman's rights, obligations, and legal existence were entirely subsumed by the husband, who became entitled to her services, labor, company, and sexual activity at his whims. Her property legally became his to use, extract profits from, and dispose of as he wished, even to the point of selling it without her consent, and even when she inherited the property independently during the marriage.⁶⁶

The practice of the wife assuming the husband's surname reinforced these concepts, but interestingly, it did not become the norm until centuries after coverture became a fixture in English law. Other elements of the legal restrictions likewise saw much delay in full implementation, including those surrounding property ownership, failing to become fully realized until the early modern period in some cases.⁶⁷ As coverture became more rigid in application, women experienced ever increasing restrictions on their legal rights. Where women once acted as attorneys in court, the practice became exclusively male by the end of the thirteenth century.⁶⁸ Where women once regularly inherited property, primogeniture overtook previous practices and sons inherited alone.⁶⁹ The practice of women creating their own wills also effectively ended.⁷⁰ Women were more consistently expected to relinquish their names at marriage, with children receiving the name of the father as well. Yet once the application of coverture was at its most rigid, the earlier variation in practice and legal effect was distorted and concealed. Courts treated the issue as though it had been clearly established through time immemorial, holding in an 1881 New York case, for example, that "by the common law among all English speaking people, a woman, upon her marriage, takes her husband's surname. That becomes her legal name, and she ceases to be known by her maiden name. By that name she must sue and be sued . . . and execute all legal documents. Her maiden surname is absolutely lost, and she ceases to be known thereby."⁷¹

Even under these increasing restrictions brought about by feudalism and

65. See Anthony (2016), *supra* note 39, at 220–225.

66. Glanville's 12th century legal treatise reasoned that "since legally a woman is completely in the power of her husband, it is not surprising that . . . all her property is clearly deemed to be at his disposal." Kittel, *supra* note 61, citing Ranulf de Glanville, TRACTATUS DE LEGIBUS ET CONSUEUDINIBUS REGNI ANGLIE QUI GLANVILLA VOCATUR: THE TREATIES ON THE LAWS AND CUSTOMS OF THE REALM OF ENGLAND COMMONLY CALLED GLANVILL vi, 3 (G. D. G. Hall trans. & ed., 1965) (1187–89).

67. See Anthony (2016), *supra* note 39.

68. Kittel, *supra* note 61, at 131.

69. *Id.*

70. For instance, a 1311 case in the court of Common Pleas indicated that "no person can make a testament save he who can claim property in the chattels, but a wife cannot claim property and consequently cannot make a testament." Kettle, *supra* note 62, at 94, quoting YEAR BOOKS 5 EDWARD II, 1311, 240–41 (G. J. Turner ed., 1947).

71. Chapman v. Phoenix Nat'l. Bank, 85 N.Y. 437, 449 (1881).

the common law, however, women's rights were nevertheless more extensive during this period than they would later become. Additionally, the harsh developments of the common law did not always reflect the true realities for women of the time. Common practice and alternate types of law both acted in contrast at times with the dictates of the common law. Women's participation in the public sphere and economic activity was common, and customs existed to accommodate married women engaged in independent trade activity⁷² in spite of, and in direct contrast to, the restrictions of the common law and coverture. Women in practice circumvented the prohibitive laws in multiple ways. They continued to own, sell, and bequeath property independently of the husband, and engaged with the legal system in other ways that included bringing and defending lawsuits, creating wills, and entering contracts, in an apparent continuation of long-established custom and direct contravention of legal principles.⁷³

Women's independent surnames similarly continued to be used quite commonly in this period. A considerable variety of female surname practices persisted which reflected women's individual attributes, occupations, or relationships rather than exclusively the names of their fathers or husbands. Female names were often passed on to children and grandchildren during this period as well. Women through their names therefore maintained independent social and legal identities quite distinct from what would be seen in more modern times.

The normative system provided in the written documents thus does not fully or accurately reflect the lived reality of Medieval women.⁷⁴ Custom appears to have been quite resistant to the technical changes wrought by the common law, indicating that coverture during this period was not as rigid or as encompassing as might be suggested by exclusive reliance on legal treatises. Nevertheless, many new restrictions on women developed during this period and increased in the rigidity of their application.

B. ECONOMIC AND POLITICAL DEVELOPMENTS OF THE EARLY MODERN PERIOD

1. Capitalism

England is often considered to be the "home of capitalism,"⁷⁵ its "classic ground,"⁷⁶ which makes it an apt location of analysis when considering its effects on English women's rights. Capitalism as it developed in English

72. Susan Mosher Stuard, *Introduction to WOMEN IN MEDIEVAL SOCIETY* 4 (Susan Mosher Stuard ed., 1976); Power, *supra* note 60, at 407.

73. GIES & GIES, *supra* note 7, at 29.

74. See, e.g., Casey, *supra* note 60, at 89; Power, *supra* note 60, at 401; Marc Meyer, *Land Charters and the Legal Position of Anglo-Saxon Women*, in *THE WOMEN OF ENGLAND FROM ANGLO-SAXON TIMES TO THE PRESENT* 70 (Barbara Kanner ed., 1979).

75. MAX WEBER, *GENERAL ECONOMIC HISTORY* 341 (Frank H. Knight trans., Collier ed. 1966) (1927).

76. KARL MARX, *CAPITAL: A CRITICAL ANALYSIS OF CAPITALIST PRODUCTION* xvii (1889).

society is closely connected to the institution of feudalism and the property concepts that developed therein. Feudalism is, in fact, widely considered to be the necessary precursor to capitalism; Karl Marx referenced the “transformation of the feudal mode of production into the capitalist mode,”⁷⁷ and many other theorists have taken the same view.⁷⁸ The peasant agriculture and commodity relations system, so the theory goes, necessarily develops into capitalism.⁷⁹ This suggests that the developments of feudalism bear a close relationship to those of capitalism when considering the implications for women and their legal, economic, and political status.⁸⁰

The advent of capitalism saw immense shifts in views of “work” in the Early Modern period, with new norms for gender-specific types of work. The strong division of labor between public and private inherent in capitalism had significant effects on women. Previously, the peasant household was hierarchical, where a head served as representative of the household. That head was typically male, but not always; widows often took on those obligations and maintained the necessary relationship with the lord as representative. The modes of production differed considerably in a working-class household under capitalism. Wage laborers (typically men) entered into a contract with capital as individuals rather than as household representatives.⁸¹ They were entitled to their wages as a result of the labor performed, and unlike with the peasant household, the ruling class had no responsibility for the rest of the family.⁸² Where the domestic labor of women was still necessary for the functioning of the household, women now could not carry out that function without being provided some of the husband’s wages or the fruits thereof.⁸³ The functioning of the household came to depend upon the use of wages to purchase commodities, and women shifted from being household members to being actually dependent on their husbands for the wage labor performed.⁸⁴ Additionally, capitalist enterprise excluded women from most wage work, which heightened the separation of production and the domestic and further exacerbated women’s inequality.⁸⁵

A central tenet of a capitalist system is the recognition of private property and the enforcement of property rights as sacrosanct. Such

77. MARX, *supra* note 76, at 776.

78. *See, e.g.*, Quick, *supra* note 6, at 158.

79. Irfan Habib, *Capitalism in History*, 23 SOC. SCI. 15, 16 (1995).

80. Some, including Habib, however, have cast doubt upon this view. He argues that, for one, there is a significant gap between the decline of feudalism (around 1400) and the beginnings of capitalism (mid 16th Century, but not dominant until the mid 18th century). In addition, he claims that the central feature of capitalism’s genesis goes beyond the internal, and is rather focused on the use of force against worldwide external economies. *Id.* This debate is not central to the analysis employed here, however, as certain foundational elements of capitalism can be analyzed regardless of the theory of its genesis.

81. Quick, *supra* note 6, at 170–71.

82. *Id.*

83. Quick, *supra* note 6, at 170–71.

84. *Id.*

85. Amy Louise Erickson, *Coverture and Capitalism*, 59 HIST. WORKSHOP J. 1, 5 (2005).

recognition is necessary for the existence of institutions that accommodate and direct the distribution of wealth and surplus value. In order for such systems to function efficiently, uniform norms detailing which individuals are entitled to acquire property, how it is to be transferred and used, and how its income is to be distributed, are necessary. England adopted these in the form of contract and property law around the 13th century.⁸⁶

The effects on women of the changes wrought by an economic system shifting towards capitalism were profound. These effects may not be implicit within capitalism as such; some of the practical effects may be connected to the particular ways in which capitalism developed in England specifically. Yet capitalism itself likely creates many of these pressures, while geopolitical realities and individuals may have exhibited influence in distinctive directions as well. Private ownership of property, when formalized in a capitalist system, resulted in women becoming excluded from the ownership of property itself under the strictures of the common law and coverture, in ways they had not been previously. Property transfers at marriage and death became central, which reinforced (and were reinforced by) marriage laws that were becoming more rigidly gendered.⁸⁷ Where women had consistently owned, inherited, and devised property in England through early medieval times, female inheritance became a rare occurrence limited to instances where there were no surviving sons, and sometimes even no surviving male relatives of any kind. With the intertwining of surnames and property, the property owner who supplied the family name was less and less often the woman as their property rights were eradicated. The law accompanying capitalist mechanisms imbued the husband with a superior legal status and provided him with legal dominion over his wife and children, as well as control of all marital labor and property, with both labor and property gaining critical importance within capitalist markets as they shifted exclusively to male hands. Where the labor of men was moving to the public sphere, women were left with a double burden at home: producing for the family and the home, and reproducing labor by bearing children. Yet these responsibilities did nothing to increase their status or rights, and gained them nothing in terms of capitalist advancement; the entire family estate was owned exclusively by the husband, with the wife entitled only to subsistence, and only for the duration of the marriage. In the process, surnames as a social and legal convention became more closely aligned with the rules of coverture and the formal legal restrictions of the common law. The effect on women's surnames as a result are clear: a woman's name largely ceased to be an independent marker of her individuality or a recognition of her own lineage that she could pass on to her descendants. Instead, the new connection between ownership and naming meant that women's surnames transformed

86. Derek Sayer, *A Notable Administration: English State Formation and the Rise of Capitalism*, 97 AM. J. SOC. 1382, 1399 (1992).

87. See Erickson, *supra* note 85, at 1-3.

as they moved from the legal ownership of their father to their husband (and subsequent husbands), and male rights over the family were reinforced. Through this gradual process, the surname became a symbol of the full and proper operation of ownership of the male head of household over the family.

2. Colonialism and Imperialism

English colonialism and imperialism had a significant structural impact on the regression of the status of women. Although the two terms refer to political and economic practices with some distinctions, and they took place over different (but overlapping) time periods, the finer points of these definitions and the margins where the two are distinct are not central to the purposes of this paper. Colonialism refers to a relationship between an indigenous population and foreign invaders or colonizers, whereby economies are subjugated, assets and resources exploited, and governing decisions are made and implemented by the colonizers in the interests of the home nation. Imperialism is a broader concept, focusing on the extension of power of the home country (the creation of an empire) by acquiring new lands as state policy for political, ideological, and economic reasons. Both practices are constituted by notions of dominance, and both are justified by the promulgation of the superiority of the conquerors and the paternalistic promise of greater order and civilization for the inferior conquered. English colonialism is considered to have begun in the seventeenth century, with a number of colonies established by 1670. The Age of Imperialism began in the mid 18th century. Both had significant effects on conceptions of self and other and the perceived worthiness of women (and other groups) to participate in public, civic activity, which manifested in concrete social and legal changes.

The political and social effects of colonialism and imperialism were momentous. By 1820, Britain ruled 26% of the world's total population,⁸⁸ and in the latter part of that century, about one-third of the world's land.⁸⁹ Much work on imperialism has investigated the implications of colonial activities for the colonized lands and peoples; more recently, scholars have considered the repercussions it wrought on the sociopolitical dynamics of the home country and those who remained there.

Yet as the theory was developed and debated, the implications of capitalism and imperialism for women were largely unrecognized or ignored.⁹⁰ Issues of class distinction and difference were thoroughly discussed, but in that process the default, paradigmatic social participants were presumed male. The concerns and status of women were considered to be naturally outside the scope of the imperial regime, at best a "special

88. Catherine Hall, *Introduction* to *CULTURES OF EMPIRE: A READER* 7 (Catherine Hall ed., 2000).

89. *Id.* at 9.

90. *See, e.g.*, MARY POOVEY, *UNEVEN DEVELOPMENTS: THE IDEOLOGICAL WORK OF GENDER IN MID-VICTORIAN ENGLAND* 5–6 (1988).

interest area” not central to the real work.⁹¹ Later, issues of race, class, and religion were added to the analysis. Only in recent decades have women been considered as distinct agents upon whom the effects of the political institutions may have functioned separately, and for whom the concept of difference operated to create a unique sexual construct whose roots went deep and, without being adequately recognized, have been difficult to deconstruct.

In the British imperialist system, the colonizers were convinced of the superiority of their moral and political foundations and thus perceived themselves as having a mandate to rule. Much work has focused on the relationship between the colonized and the colonizing peoples and the hierarchies attendant to colonialism, including race, class, and religion. Indeed, the colonization enterprise was not simply aimed at ruling peoples, but also colonizing minds.⁹² The “rule of colonial difference” is central here—it is the notion that, as part of the justification for and legalization of their domination, the colonized cultures, races, and religions are constructed as different, other, and inferior.⁹³ This process is often credited with the invention of race and its existence as a central aspect of modernity in the Western world.⁹⁴

Any discussion of imperialism is incomplete without a theory of gender. Yet scholarship of imperial history and of gender history have developed quite apart from each other, rarely attempting to address the significance of either on the other.⁹⁵ Scholars such as Anne McClintock, Antoinette Burton, and Kathleen Brown have sought to highlight the ways in which discourses on race and gender intersect in the context of colonial history.⁹⁶ They note that the colonization process created a heightened consciousness of race and class in the representation of gender.⁹⁷ These new categorical distinctions served to justify men’s political authority over colonized subjects; this was then linked to men’s authority over women more generally.⁹⁸ Joanna de Groot argues that sex as a category was constructed similarly to race in the nineteenth century, both of them through concepts of

91. See Clare Midgley, *Introduction to GENDER AND IMPERIALISM 2* (Clare Midgley, ed., 1998).

92. See, e.g., STOLER, *supra* note 51, at 4.

93. *Id.* at 7 (citing PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POST-COLONIAL HISTORIES* 10 (1993)).

94. POOVEY, *supra* note 90, at 5.

95. See Midgley, *supra* note 91, at 1, 7.

96. ANNE P. MCCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEST* (1995) (investigating nineteenth century British imperialism); ANTOINETTE BURTON, *BURDENS OF HISTORY: BRITISH FEMINISTS, INDIAN WOMEN, AND IMPERIAL CULTURE, 1865-1915* (1994); KATHLEEN M. BROWN, *GOOD WIVES, NASTY WENCHES, & ANXIOUS PATRIARCHS* (1996) (focusing on colonial Virginia).

97. See Durba Ghosh, *Gender and Colonialism: Expansion or Marginalization?*, 47 *HIST. J.* 737, 744 (2004).

98. See *id.* at 745.

domination and subordination.⁹⁹ The connections were more than simply parallel, however; sex constructs were in some ways dependent on those of race, where specific traits of women were linked to the “lower races” in ostensible scientific discourse, thus lending legitimacy to the concepts of inferiority in both race and sex.¹⁰⁰ These gendered and racial differences were enforced in multiple circumstances, both public and private, altering not only the discourse, but also participation in civic institutions.¹⁰¹

Yet there are no neat divisions between colonized and colonizer, colony and metropole, when it comes to such discourses. Colonialism's restructuring of gender dynamics and its notions of belonging were not discretely confined to the far-away lands; they spread to the core, and gender at home was significantly altered as well.¹⁰² This internal colonization process—a kind of “social colonization”—reinforced uneven power and legitimacy within the state congruent to that which was taking place abroad.¹⁰³ While colonizers heavily traded in ideas of class, race, and gender distinctions between themselves and dominated societies, equally important were class and gender distinctions amongst themselves.¹⁰⁴ The strict regulation of racial and sexual politics inherent in empire reproduced normative boundaries at home that situated women as more formally and legitimately belonging to the “other” due to their presumed inherent difference and inferiority. The paternalistic mechanisms supporting colonialism and empire abroad transferred as a model to the paternalistic family at home, serving to both create and reinforce it. This privileging of the dominant group over others not only constituted white male authority over both family and community, but was also central to the formation of state more generally.¹⁰⁵ Indeed, the family “was the state writ small, in Europe and abroad.”¹⁰⁶ As Thornton acknowledges, “throughout history, the essence of empire is control,”¹⁰⁷ and the control exhibited within the family was immense. Poovey argues that the development of new ideas of women's difference “performed critical ideological work” in the development of English social institutions in the mid 18th century, including those centrally

99. Joanna De Groot, ‘Sex’ and ‘Race:’ *The Construction of Language and Image in the Nineteenth Century*, in *CULTURES OF EMPIRE: A READER* (Catherin Hall ed., 2000); Kettle, *supra* note 46.

100. Hall, *supra* note 88, at 19 (citing Nancy Stepan, *Race and Gender: The Role of Analogy in Science*, in *ANATOMY OF RACISM* 43 (David Theo Goldberg ed., 1990)).

101. Ghosh, *supra* note 97, at 745 (referring to French colonies in the Arab societies).

102. See Antoinette Burton, *Rules of Thumb: British History and ‘Imperial Culture’ in Nineteenth- and Twentieth-Century Britain*, 3 *WOMEN'S HIST. REV.* 483 (1994) (for discussion of the fallacious distinction between “home” and “away” in British imperial historiography).

103. See A. P. Thornton, *Colonialism*, 17 *INTL. J.* 335, 337 (1962); Ghosh, *supra* note 97, at 737.

104. See McCLINTOCK, *supra* note 96; STOLER, *supra* note 51.

105. See Ghosh, *supra* note 97, at 745.

106. *Id.* at 745–748.

107. Thornton, *supra* note 103, at 338.

related to economic, legal, and imperial interests.¹⁰⁸ The net cast by new formalized hierarchies of race and class which were both implicit and explicit in imperial governance caught women up in its networks of superiority and dominance.¹⁰⁹ The resultant boundaries of belonging—decisions regarding who is in and who is out—left women decidedly out.

These changing familial, household, and political norms had sweeping effects on the formal position of women vis-à-vis the state. As women's labor was relegated to the private sphere, economic decisions and property ownership were removed from their control, and their difference was ascribed and assigned fundamental importance justifying their exclusion from privileged status. The formal and informal results of this are empirically evident. The developing custom of women assuming the husband's surname at marriage became increasingly rigid and universal; his status as head of household was symbolically reinforced in this way. Female inheritance and property ownership became prohibited and increasingly rare, and the practice of the husband assuming the wife's name at marriage was less and less commonplace. Where instances of children taking or being assigned the birth surname of a female ancestor are easy to find in earlier centuries, even during periods where written records are sparse, such cases became quite exceptional and nearly unheard of by the 19th century. Even women's occupational options and participation in commerce and other aspects of public life diminished substantially, as the nature of their female identities and the management of their existence became more rigidly enforced within the internal frontiers of the imperial state.

3. Nation-State and Citizenship

The creation of the nation-state consists of the consolidation of political and military power in the early modern period, during which time Europe moved from numerous independent states to larger, more centralized government.¹¹⁰ Empires and nation-states are often thought to be opposed or contradictory in form,¹¹¹ but there are in fact many similarities and overlapping elements between them.¹¹² While race, class, and sex were all central to supporting imperialist regimes, imperialism is often considered central in creation of nation-state and national identity. Some scholars, including Marshall, attribute the catalyst for eighteenth century notions of citizenship to capitalism, by its fostering of a shared language and common culture.¹¹³ Karl Marx contends that citizenship formed of the legal

108. POOVEY, *supra* note 90, at 2.

109. See Ghosh, *supra* note 97, at 741–42.

110. See Richard Bean, *War and the Birth of the Nation State*, 33 J. ECON. HIST. 203, 203 (1973).

111. See, e.g., HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 126–131 (1968).

112. See Krishnan Kumar, *Nation-states as Empires, Empires as Nation-States: Two Principles, One Practice?*, 39 THEORY & SOC'Y 119 (2010).

113. See T. H. Marshall, *Class, Citizenship, and Social Development*, 26 J. POL. 942 (1964)

developments of earlier centuries in England where new narratives of legal and constitutional rights that created spheres of public participation and culture and a kind of public civil society that expanded throughout the empire.¹¹⁴ Others argue that multiple forces drove the rise of citizenship, including “a shifting configuration of political, legal, community and economic institutions...”¹¹⁵ that included a growing sense of nationalism, religion, new methods of transportation, larger cities, population growth, war, taxation, colonialism, as well as the economic changes brought about by the emergence of capitalism.¹¹⁶

Anthony Marx contends that the creation of the modern nation-state developed as the result of the need for the raising of revenue to support both colonialism and war, and rose from an artificially and often intentionally manufactured sense of collective cohesion of identity, ethnicity, and language by states and elites for their own benefit.¹¹⁷ The concept “implies some convergence of an institutionalized polity and collective allegiance to it...,” where the legitimacy of the state derives from that unified sentiment.¹¹⁸

Although varying conceptions of citizenship exist,¹¹⁹ broadly speaking, it is a formal status encompassing the relationship of the individual with the state. Nation-state and citizenship are necessarily coupled; neither can exist in isolation. The fostering of the requisite unity in the creation of the nation-state discussed by Anthony Marx necessitated the bestowal of citizenship and its attendant rights and obligations.¹²⁰ However, while often conceived of as naturally occurring, citizenship is in actuality a construct dependent upon membership in certain political and social paradigms.¹²¹

Yet, despite the heightened impulses towards liberty, equality, and inclusion borne of the Enlightenment period and its focus on citizenship rights, as well as the need for national unity to serve the purposes of the

(Marshall argues that capitalism is the very premise of citizenship, because it demands free individuals for the labor market as well as property rights for the bourgeoisie.).

114. Margaret R. Somers, *Rights, Relationality, and Membership: Rethinking the Making and Meaning of Citizenship*, 19 L. & SOC. INQUIRY 63, 73 (1994).

115. *Id.* at 69.

116. *See, e.g.*, Sayer, *supra* note 86, at 1401.

117. Anthony W. Marx, *The Nation-State and its Exclusions*, 117 POLIT. SCI. Q. 03, 105 (2002).

118. *Id.* at 104.

119. Marshall does not limit citizenship to an individual's relationship with the state, so various types of community citizenship are possible as well. His conception included economic, political, and social rights. Marshall, *supra* note 113, at 67. Others have argued that the term lacks a single set fixed meaning and is used in various historical contexts. *See* Angus Stewart, *Two Conceptions of Citizenship*, BR. J. OF SOCIOLOGY 63, 64 (citing H. Van Gusteren, *Notes on a Theory of Citizenship*, in DEMOCRACY, CONSENSUS AND SOCIAL CONTRACT (J. Lively and G. Parry eds., 1978); Jean Leca, *Immigration, Nationality and Citizenship in Western Europe*, paper presented to conference on Social Justice, Democratic Citizenship and Public Policy in the New Europe (1991); D. HEATER, *CITIZENSHIP: THE CIVIC IDEAL IN WORLD HISTORY, POLITICS AND EDUCATION* (1990)).

120. *See* Stewart, *supra* note 119, at 63, 67.

121. *See* Somers, *supra* note 114, at 65.

elites, not all members of society were incorporated equally. Citizenship privileges were selectively granted, with some groups purposefully and categorically excluded.¹²² As social identity was being reshaped by national identity and one's place within it, various differences, including race, gender, class, and religion, were formally institutionalized by states.

The new discourses and gendered performances attendant to colonialism influenced the ways in which British national identity was developed.¹²³ Indeed, some have argued that the colonies themselves were a space in which the notions of citizen and participation, and the implicit inclusions and exclusions attendant thereto, were born.¹²⁴ Imperialism is closely connected to the creation of the British nation-state, and as such, it exhibits similar results in terms of its effects on the categorization of difference. The popular sense of imperial ambition, the growing sense of self and other, and citizen and non-citizen, all contributed to a preoccupation with otherness and a differentiation of groups as if the differences were natural and inevitable, rather than socially constructed and ascribed. Social power relations were based upon these ascriptions which were necessary for the domination inherent in empire. That articulation of difference was continually crafted and reified, with categorical differences in body justifying and legitimating differences in citizenship and rights.

This resulted in what Peled refers to as a two-tiered system of full membership for some, and "residual, truncated" membership for others.¹²⁵ Anthony Marx suggests that rather than being incidental, these exclusions were purposefully manufactured to solidify unity, cohesion, and loyalty among the core privileged groups. This was accomplished not only through providing special rights and privileges to those who fit within these groups, but also by demonizing those who did not, providing a reference point by which to distinguish and favor the core groups and further entrench their loyalty and support. The resulting exclusions were both informal and legally codified, with social effects expanding well beyond their legal reach.¹²⁶

It is not difficult to imagine the effects of these categorizations of difference upon women. When clear, deliberate categories began to be drawn of the citizen and the other, the privileged and the deprived, women were placed squarely within the excluded groups. Rather than being an incidental or aberrant development, it was a deliberate and deeply embedded one that was "part and parcel of the construction of the entitlement of

122. See Marx, *supra* note 117, at 1–7.

123. Ghosh, *supra* note 97, at 746.

124. See Frederick Cooper & Ann Laura Stoler, *Between Metropole and Colony: Rethinking a Research Agenda*, in *TENSIONS OF EMPIRE: COLONIAL CULTURES IN A BOURGEOIS WORLD 3* (Frederick Cooper & Ann Stoler, eds., 1997).

125. Yoav Peled, *Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State*, 86 AM. POL. SCI. REV. 432, 434 (1992).

126. See Marx, *supra* note 117, at 109–114.

men...,"¹²⁷ while national identity superseded concepts of gender identity in public discourse.¹²⁸ That British women did not gain the right to independently transfer their citizenship to their children until 1981¹²⁹ is evidence of the depth at which such concepts took root.

Ann Stoler's analysis of sexuality, race and power implicit in the national reaction to miscegenation during this period reinforces this theory. She argues that exclusion and discrimination not only coexist with liberalism, but are perhaps structurally inherent within it.¹³⁰ In her analysis of the highly charged issue of interracial coupling, she suggests that its intense controversy was due to the fact that it called into question "the very criteria by which . . . citizenship could be accorded, and nationality assigned."¹³¹ She refers to the notion of "interior frontiers" (quoting German philosopher Johann Gottlieb Fichte), where infiltration of the "other" is a threat to the notion of the self in the nation-state, such that distinctions and categorizations within the state serve to reinforce the "national essence."¹³² Stoler elsewhere discussed the history of empire as being central to the history of sexuality for these same reasons.¹³³

It is no wonder, then, that part of this process involved a new rigidity in the functioning of women's surnames: no longer could they adopt their own, retain them at marriage, or pass them on to husbands, children, and grandchildren. For their names were a reflection of their status, and that status was now decidedly and formally subordinate.

IV. CONCLUSION

Rather than being dictated by nature and instinct, common notions of sex roles and difference can be tied to historical context and events, including those of the common law, capitalism, imperialism, and the creation of the nation-state. Marginal and excluded members were identified in the drawing of the biopolitical and moral boundaries of the new imperial nation. The effects were wide ranging and potent, translating in direct and tangible ways into social and legal institutions. These processes brought with them discourses of dominance and superiority, notions of self and other. In the process of formally identifying the "self"—the privileged, core, dominant and paradigmatic group—women were formally excluded in ways in which

127. Nira Yuval-Davis, *Women, Citizenship and Difference*, 57 FEMINIST REV. 4, 12 (1997).

128. See POOVEY, *supra* note 90, at 18.

129. Yuval-Davis, *supra* note 127, at 12.

130. Ann Laura Stoler, *Sexual Affronts and Racial Frontiers: European Identities and the Cultural Politics of Exclusion in Colonial Southeast Asia*, in TENSIONS OF EMPIRE: COLONIAL CULTURES IN A BOURGEOIS WORLD 198 (1997) (focusing on French Indochina and the Netherlands Indies, pointing out that, while there were differences between the practices and policies of the French and English, there were many similarities in discourse).

131. *Id.* at 199.

132. *Id.*

133. STOLER, *supra* note 51, at 8.

they had not previously been. This created for the first time a system in which both the justifications for and the effects of the exclusion were enshrined into social structures, policy, and law. At the same time, the historical regression was ignored until it disappeared entirely from the public consciousness, with the narrative skewed to envision an entire false history of western civilization that reinforced the desired modern status quo while simultaneously pretending that it was the result of ever-increasing enlightenment and progress. Once complete, the status quo was then viewed as natural, traditional, even divinely ordained, and therefore inviolable. But it was not, in fact, reflective of the historical tradition; neither was it the result of a human progress. Instead, it was a modern phenomenon manipulated to appear to be implicit within human society while it reflected and reinforced relatively recent political developments, along with their desired outcomes resulting in the privileged status and paramount rights of men. Those concepts have been thoroughly embedded into the social and legal fabric for centuries and have proven exceptionally difficult to eradicate. Recognition of their origins is a necessary step in that process.