Women and Inheritance in America

Virginia and New York as a Case Study, 1700–1860

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Probate records have proved to be an especially fruitful source for historians trying to reconstruct the socioeconomic world of early American women. The specific bequests and itemized inventories found in these records lend themselves to both quantitative and qualitative readings on questions as diverse as attitudes towards women (Gundersen and Gampel, 1982) and wealth stratification (Tompsett, 1974). Concerns about women’s property rights, especially for married women, are of particular interest for scholars studying the status of women. Coverture, that doctrine of English common law that merged the interests of husband and wife (especially in areas of property), has often been seen by feminists and scholars as a symbol of women’s status as nonbeings in the law (Flexner, 1959). Others, seeking to recover a role for women as actors in history, have pointed to equity law as a modifier of coverture (Beard, 1946). In all of these discussions, the right of
women to hold, control, inherit, and alienate property are seen as essential to determining women’s status.

A close study of the patterns of women’s inheritance in two states, New York and Virginia, can help to illuminate the ways community values, formal law, and socioeconomic conditions affected women’s property rights. No two states can be seen as “typical” of the larger whole; however, a compelling case can be made for focusing on these two particular colonies (states) from 1700 to 1860. Virginia was the most populous colony in 1750, and the oldest. It had a well-developed county court system modeled on the English common law county courts. Furthermore, the county justices also acted as judges in equity when necessary, and Virginia’s laws had been reviewed in the 1750s for compliance with English legal traditions. Despite its origins as a Dutch colony, New York, by 1750, also had fully accepted English legal traditions and implemented procedures for hearing cases in both equity and in common law. Like Virginia, it had a Anglican elite and a provincial culture consciously modeled on that of England. Among the middle and northern colonies, it was notable for its sizable slave population and a strong agricultural base. Thus, both colonies had much in common in the colonial period. With functioning traditions of equity and common law, New York and Virginia were among the best colonies for scholars to use to explore women’s property status.

What makes such a comparison even more interesting is that their experiences diverge in the nineteenth century. New York abandoned equity and became a leader in women’s rights with its passage in 1848 of a Married Woman’s Property Act. Virginia took a more conservative course. Neither New York nor Virginia are “typical” of their region, but both were influential. The legislation passed by these states was frequently copied by others. New York and Virginia both produced outstanding jurists, whose legal writings and opinions were often cited in other states. Thus, decisions about inheritance in these two states had an influence felt well beyond their borders. Furthermore, that influence was spread by the large numbers of citizens from those states who moved West and became settlers in the upper South and Midwest.

It should not be surprising, therefore, that Virginia and New York have been well studied by legal and social historians of the colonial, revolutionary and early national periods. There are numerous careful studies making use of local probate records for both states. Because probate records are local in nature and voluminous, most studies focus on one or two counties, and cover only a single time period. Few are comparative. This chapter makes extensive use of these detailed studies, supplementing them with additional work in Virginia records, in order to weave together a comparative, long-term interpretation of women’s experience with inheritance.

Although the legal divergence that Virginia and New York experienced after 1800 might lead one to assume that patterns of women’s inheritance