Property Law and Family Regulation in Pacific British North America, 1862–1873

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Family regulation in British Columbia and Vancouver Island in the 1860s and 1870s developed in response to the perceived social ramifications of the developing market economy. The acquisitive individualism and concentration of wealth accompanying the market appeared to pose moral and economic dangers to society, threatening colonial demographic growth and independent producers. To rectify the situation, reform legislators turned to the family. Through family protection measures they attempted to mediate the competing demands of production and reproduction; through modifications to inheritance and property laws they tried to effect a broader distribution of wealth and property in society. In the process, the patriarchal form of the family was altered, although this effect was tempered by the continued priority placed on male rights and the liberal commitment to freedom of contract.

La réglementation familiale en vigueur en Colombie-Britannique et sur l'île de Vancouver durant les années 1860 et 1870 vit le jour en réaction à l'idée qu'on se faisait des ramifications sociales de la nouvelle économie de marché. L'individualisme acquisitif et la concentration de la richesse accompagnant le marché semblaient faire planer des menaces morales et économiques sur la société, mettant en péril la croissance démographique coloniale et les producteurs indépendants. Pour corriger le tir, les législateurs réformistes se tournèrent vers la famille. Par des mesures de protection de la famille, ils tentèrent de trouver un équilibre entre les demandes concurrentes de la production et de la reproduction. Par des modifications à la législation sur les successions et la propriété, ils tentèrent d'opérer une plus grande répartition de la richesse et de la propriété au sein de la société. Le modèle patriarcal de la famille s'en trouva modifié, quoique l'effet fut tempéré par la priorité constante que l'on accordait aux droits des hommes et à l'engagement libéral pour la liberté contractuelle.

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THE MID-VICTORIAN FAMILY was patriarchal; it was, in historian Wally Seccombe's words, characterized by various, historically specific ''systems of male headship in family households''. Patriarchal domination of the family was maintained by restricting the access of women and children to subsistence resources and was entrenched in the property rights accorded family members under the common law. At marriage women lost their independent existence before the law. They were deprived of the ability to contract or proceed in legal suits. Their personal property, including wages, was transferred to their husbands; while they retained legal ownership of real property, their husbands managed it during coverture and controlled any rents or profits it produced. Minor children were similarly exempted from the ability to control property or enter into contractual relations. Since patriarchs held most common-law property rights within the family and maintained sole testamentary power over the intergenerational disposition of family property, wives and children looked to their husbands and fathers for the material basis of both their present and future existence. The Court of Chancery, operating under the rules of equity, was charged in theory with preventing the worst excesses of this arrangement — by protecting minors from irresponsible parents and by allowing wives to retain control over some property — but equitable proceedings were in practice limited: courts were loath to interfere with the common-law rights of the father, and equitable trusts for married women did not apply to earnings. Moreover, the costs of proceeding in equity were prohibitively high; thus, most wives and children were bound rigidly to their patriarch by the common law.[1]

In the 1860s and 1870s, reform politicians in Britain's Pacific North American colonies began introducing statutes that reorganized property

1 Wally Seccombe, ''Patriarchy Stabilized: the Construction of the Male Breadwinner Wage Norm in Nineteenth-Century Britain'', *Social History*, vol. 11, no. 1 (January 1986), p. 59. The influence of the common law on the patriarchal family is described in Jane Ursel, ''The State and the Maintenance of Patriarchy: A Case Study of Family, Labour, and Welfare Legislation in Canada'' in James Dickinson and Bob Russell, eds., *Family, Economy and State: The Social Reproduction Process Under Capitalism* (London: Croom Helm, 1986), p. 153; Constance B. Backhouse, ''Married Women's Property Law in Nineteenth-Century Canada'', *Law and History Review*, vol. 6, no. 2 (Fall 1988), p. 213; Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), p. 25; Martha Minow, '' 'Forming Underneath Everything That Grows': Toward a History of Family Law'', *Wisconsin Law Review* (1985), p. 829. My description of the operation of equity and the Court of Chancery is based on Norma Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982), pp. 21, 39–40, 63, 65, 70–84 *passim*, 109–110, 131, 132; Backhouse, ''Married Women's Property Law'', pp. 214–215; Constance B. Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women's Press, 1991), p. 201; Paulette Yvonne Lynette Falcon, '' 'If the evil ever occurs' — The 1873 Married Women's Property Act: Law, Property and Gender Relations in 19th Century British Columbia'' (M.A. thesis, University of British Columbia, 1991), p. 18; Lee Holcombe, *Wives and Property: Reform of the Married Woman's Property Law in Nineteenth-Century England* (Toronto: University of Toronto Press, 1983), pp. 44–47.

relations within the family, simultaneously implementing measures to shield ''family property'' from debtor-creditor obligations. But few members of the ''core'' reform group are remembered for their commitment to familial or social reform. Rather, most are known as ''liberals'' and ''nation-builders'', an identification derived from their economic and political concerns: gaining responsible government, confederation, ''better terms'', the transcontinental railroad, and a favourable tariff. Their long-term commitment to protecting families from economic failure, modifying the property rights of married women, and reorganizing inheritance patterns is absent from the general histories of the period. These omissions do not mean traditional accounts of the era are wrong, though they are incomplete: the early leaders of British Columbia were preoccupied with nation-building and liberalism, and their concerns with the family developed within that context.

Feminist scholars have proposed two conflicting theories to account for changes in family regulation in liberal-capitalist states, and these offer an interesting dialectic for further research and analysis. The first of these interpretive outlines claims that governments under the sway of liberal discourse valued individualism above all else, and, by focusing on and expanding individual — including women's — rights, they weakened the patriarchal family.[2] The second claims, conversely, that patriarchy was not weakened, but transformed and appropriated by a state more interested in preserving the patriarchal family's reproductive function as a nation-building institution than in maintaining individual patriarchal power.[3] Both theories inform my examination of the evolution of family property law in the Pacific British North American colonies from 1862 to 1873. Legislative alteration of family property rights was a complex process, contradictory in its effects on the family, and stemmed from a conflict between the emerging

2 See Minow, '' 'Forming Underneath Everything That Grows' '', pp. 832–833; Mary Lyndon Shanley, ''Suffrage, Protective Labour Legislation, and Married Women's Property Laws in England'', *Signs: Journal of Women in Culture and Society*, vol. 12, no. 1 (1986), p. 63. Note, however, that portraying the legal changes of the era as a progression towards individual rights need not necessarily be ''whiggish''. It can be and has been portrayed as a struggle, the outcome of which was not inevitable. Often historians of this school nuance their interpretations with evidence that married women's statutes were also part of a broader drive to consolidate common law and equity, regularize credit relations, and provide debt relief for families in volatile economies. Furthermore, they point to the actions of the judiciary, which effectively stifled the (inferred) intentions of the legislation, forcing legislators to draft amendments or completely redraw the legislation. Some examples of this interpretive process are Backhouse, ''Married Women's Property Law''; Basch, *In the Eyes of the Law*; Falcon, '' 'If the evil ever occurs' ''.

3 Jane Ursel, building on Zillah Eisenstein's observation that capitalist productive requirements conflict with national reproductive priorities, proposes that the state's interest in protecting the patriarchal variant of the family stemmed from its distinctly ''pro-natalist dynamic'', which converged with the state's desire for a high birthrate. Ursel, ''The State and the Maintenance of Patriarchy'', pp. 150, 157–58, 188; and *Private Lives, Public Policy: 100 Years of State Intervention in the Family* (Toronto: Women's Press, 1992), pp. 18, 20–22, 38, 86–87, 122–124. See also Zillah Eisenstein, *Capitalist Patriarchy and the Case for Socialist Feminism* (New York: Monthly Review, 1979).

capitalist market economy and liberal nation-builders' overlapping ideological commitments to social reproduction and individual rights.

The Political Context

The leading reform politicians in the Pacific colonies during the 1860s and 1870s were committed to the liberal ideals of individualism, equality, and progressive social and economic expansion of the colony and province. John Robson and Amor De Cosmos promoted ''white'' immigration, the development of transportation infrastructure, free enterprise, and a tariff to protect local infant industries. They shared the liberal assumption that material progress — an ever-expanding production and consumption of material goods — was inextricably linked to demographic, social, moral, and finally political progress. Eric Hobsbawm writes that for nineteenth-century liberals the apogee of all forms of progress was the nation-state: ''the development of nations was unquestionably a phase in human evolution or progress from the small group to the larger, from family to tribe to region, to nation and, in the last instance, to the unified world of the future.''[4]

Robson and De Cosmos believed that national wealth, growth, and development would be best achieved in a free market economy. Both were opposed to the Hudson's Bay Company's monopolization of the economy and government offices. Influenced by classical *laissez-faire* liberal discourse, they believed that each person's actions were motivated by rational self-interest and directed toward the pursuit of personal gain. If individuals were allowed to realize their self-interest, the colony's total economic production and population would increase. Reform-oriented politicians, journalists, and individual colonists therefore pushed the colonial government and judiciary to create conditions favourable to individual economic enterprise. By making the rules of exchange in the Pacific colonies clear, predictable, rational, and impartial and by ensuring the security of property, these liberal legal reformers believed they could minimize risk to the individuals involved and promote independent economic activity.[5]

If economic expansion was what the colonists wanted when they demand-

4 The reform policies of Robson and De Cosmos are discussed at length in Patricia E. Roy, ''John Robson'', *Dictionary of Canadian Biography*, vol. 12 (Toronto: University of Toronto Press, 1990), pp. 916–917; Robert A. J. McDonald and H. Keith Ralston, ''Amor De Cosmos'', *Dictionary of Canadian Biography* vol. 12, pp. 238–239; Margaret Ross, ''Amor De Cosmos, a British Columbia Reformer'' (M.A. thesis, University of British Columbia, 1931), p. 52; Ivan Earl Matthew Antak, ''John Robson: British Columbian'' (M.A. thesis, University of Victoria, 1972), pp. iii, 86. Eric Hobsbawm is quoted from his *Nations and Nationalism Since 1780: Programme, Myth, Reality*, 2nd ed. (New York: Cambridge University Press, 1992), p. 38. For a detailed description of nationalism during this period, see pp. 14–45 *passim*, especially pp. 38–41.

5 Tina Loo, *Making Law, Order, and Authority in British Columbia, 1821–1871* (Toronto: University of Toronto Press, 1994), p. 3–4, 9–10, 57; See also E. L. Jones, *The European Miracle: Environments, Economies and Geopolitics in the History of Europe and Asia*, 2nd ed. (New York: Cambridge University Press, 1987), p. 85.

ed a liberal legal system, it was also what they got, but for reasons perhaps more geographical than legal. In the isolated Pacific colonies, distant from major manufacturing centres, highly capitalized domestic manufacturing developed rapidly alongside extractive resource industries — which were themselves becoming capital intensive — by the early 1860s. Wage labour was common in both sectors.[6] While the liberal drive for commercial development and economic opportunity appealed to most reformers, however, the social effects of capitalism did not. They, like republicans, clear grits, and British radical Liberals, idealized property-based democracy and economic equality for yeomen smallholders, artisans, tradesmen, merchants, and entrepreneurial businessmen. The prospect of industrial monopolies, widespread wage labour, and a large landless proletariat was abhorrent to them. Capitalist productive relations divided tasks, stripping workers of their individual competency, and capitalist ownership of the means of production divested workers of their economic independence and self-sufficiency. For liberals and republicans, only when the mass of people were economically, socially, and intellectually independent could a government supported by and responsible to the populace, regulating all equally rather than favouring the privileged few, be instituted.[7]

In the face of emerging capitalist productive relations, Pacific northwestern reformers moved to establish the preconditions necessary to develop an independent producer economy and electorate. Since they were convinced that the foundation of colonial prosperity and democracy lay with settlement of the land and a stable agrarian economic sector, they campaigned to discourage speculation and reserve arable land for the government to provide free homesteads to ''bona fide settlers''. They also supported an economy of small-scale industrial enterprise, De Cosmos advocating the develop-

6 John Sutton Lutz, ''Losing Steam: Structural Change in the Manufacturing Economy of British Columbia, 1860–1915'' (M.A. thesis, University of Victoria, 1988), *passim*. The capital-intensive nature of gold mining in the 1860s is discussed in Margaret A. Ormsby, *British Columbia: A History* (Toronto: Macmillan, 1958), pp. 183, 212.

7 These ''producerist'' ideals were likely self-reflective. In his landmark study, *Pollbooks: How Victorians Voted*, John Vincent suggested that Liberal voters in England were small producers and small property-holders: craftsmen, individual farmers, retailers, and the like. Robert Kelley perceptively notes that this was a similar profile to the Jacksonian Democrats in America. See Kelley, *The Transatlantic Persuasion: The Liberal-Democratic Mind in the Age of Gladstone* (New York: Alfred A. Knopf, 1969), p. 46. The radical Liberal/republican commitment to encouraging the development of an independent producer-based society is documented in Christopher Lasch, *The True and Only Heaven: Progress and its Critics* (New York: W. W. Norton, 1991), pp. 177, 195, 204; Paul Goodman, ''The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840–1880'', *Journal of American History*, vol. 80, no. 2 (September 1993), pp. 473–474; Kelley, *The Transatlantic Persuasion*, pp. 68, 128; John Vincent, *The Formation of the British Liberal Party, 1857–1868* (London: Constable, 1966), pp. 176–177; Eugenio F. Biagini, *Liberty, Retrenchment and Reform: Popular Liberalism in the Age of Gladstone, 1860–1880* (Cambridge: Cambridge University Press, 1992), pp. 86–88.

ment of artisans' cooperatives to compete with capitalists. Both reform leaders lobbied for responsible government and the development of broadly based democratic institutions. Given their preference for an independent commodity-producing electorate, neither seems to have advanced the cause of universal suffrage. A small property qualification would restrict the vote to industrious, socially stable individuals with a stake in the community's future. Nonetheless, all were to have a chance to improve themselves morally and economically and to rise in the social scale. Reformers envisioned a meritocratic colony and subscribed to Samuel Smiles's ''self-help'' doctrine, which posited that ''it was possible for all men to improve their condition, through their own effort and personal conduct.''[8]

Encouraging the family as a stable social institution was crucial to the reformers' nation-building agenda. Demographically, nation-builders required ''white'' families to establish a permanent and expanding Anglo-Saxon population base (they defined ''nation'' in racial terms). Throughout the nineteenth century the non-Aboriginal male to female ratio was 3:1, however, and in some areas of the interior it was 10:1. Thus, nation-builders encouraged those ''whites'' already in the colony to stay and marry, and they attempted to attract single women and entire families to immigrate, both to stimulate population growth and to promote retention of capital as men invested in the colonial economy to secure their children's future.[9]

The family was also associated with an orderly, stable society. Edward Gibbon Wakefield, designer of the conservative, paternalistic, hierarchical system of colonization implemented on Vancouver Island under Hudson's Bay Company rule, wrote that women were ''moral'' agents in a new society, citing ''[a]ll the evils which in colonization have so often sprung from a disproportion of the sexes''.[10] The stabilization of society assumed a new urgency in the age of liberal capitalism because acquisitive individualism seemed to pose novel dangers to the social structure. Many reformers believed that *laissez-faire* individualism threatened the existence of social and familial ties. If everyone was pursuing his (or her) own rational self-interest, what would prevent competition from escalating to the point where self-gratification and instinctive self-preservation overruled altruism, morality, and social cooperation? Reformers hoped that by encouraging family life they could tame otherwise unregulated desire. The ''obligation to support

8 Roy, ''John Robson'', pp. 914–915; McDonald and Ralston, ''Amor De Cosmos'', p. 238; Antak, ''John Robson: British Columbian'', p. 211. For De Cosmos's editorial on cooperatives, see *Daily Standard*, November 1, 1871. Samuel Smiles's influence on popular liberalism is discussed in T. A. Jenkins, *The Liberal Ascendancy, 1830–1866* (London: Macmillan, 1994), p. 119.

9 The sex-ratio is documented in Jean Barman, *The West Beyond the West: A History of British Columbia* (Toronto: University of Toronto Press, 1991), p. 100; Adele Perry, ''''Oh I'm Just Sick of the Faces of Men': Gender Imbalance, Race, Sexuality, and Sociability in Nineteenth-Century British Columbia'', *BC Studies*, nos. 105–106 (Spring/Summer 1995), pp. 36–37.

10 Perry, '' 'Oh I'm Just Sick of the Faces of Men' '', p. 32.

a wife and children'', writes historian Christopher Lasch, ''would discipline possessive individualism and transform the potential gambler, speculator, dandy, or confidence man into a conscientious provider.''[11]

Finally, reformers saw family protection and regulation as a means to reconcile the emerging economy with the envisioned property-based independent producer society. The family was to be economically and politically independent. To prevent capitalism's volatile and impersonal productive relations from undermining reproductive priorities and to inhibit proletarianization, legislators attempted to provide families with a stable property base. Thus, they introduced legislation exempting a portion of the independent producer's real and personal property from debt liability to protect him and his family from the ravages of debt and destitution. Reform legislators also hoped to encourage the growth of the independent producing class over the long term by eliminating the tendency of inheritance laws to produce class disparities. By abolishing primogeniture and by allowing illegitimate children to inherit, reformers hoped to put more of the population on an equal footing with regard to property and the exercise of democratic privileges.

Family Protection in the 1860s

The earliest family protection laws in the Pacific colonies developed to deal with the consequences of the volatile ''boom and bust'' mining economy, responsible for numerous economic failures and family breakdowns in the early 1860s. Those in debt often scrambled across the Puget Sound to avoid imprisonment — a practice known to locals as ''skedaddling''. In the wake of this economic instability, writes Constance Backhouse, Vancouver Island was left ''with a large number of abandoned wives and children''.[12] In 1862 the House of Assembly passed ''An Act to protect the Property of a Wife deserted by her Husband'' which provided a deserted woman, at the courts' discretion, with financial independence and contractual autonomy and protected her property and earnings from seizure by her husband or his creditors. But the act also permitted the husband to petition independently for removal of the protection order. The assemblymen intended no dilution of the husband's common-law marital powers, except to allow women thrust outside the boundaries of ''normal'' familial relations to assume provisional head of household status and to provide for their children. The act was *ad hoc*, intended to furnish a quick solution to the pressing and visible problems posed for the state by economic failure and its corollary, the ''broken'' family.[13]

11 Lasch, *The True and Only Heaven*, p. 59.

12 Backhouse, ''Married Women's Property Law'', pp. 218–219. Jean Barman overviews the goldrush period in *The West Beyond the West*, pp. 72–98 *passim*.

13 Paulette Falcon's analysis illustrates how the act's wording informed judicial consideration of protection orders. Married women were compelled to provide evidence that desertions were ''without reasonable cause''. The state was only interested in protecting virtuous women whose husbands had abandoned their patriarchal obligations. Concern over the morality of destitute women was also

The Deserted Wives Act addressed only the condition of already broken families; it was not intended to redress the difficulties faced by families that were still intact. As the recession deepened in the mid-1860s, it became clear to the emerging group of reform legislators that additional provisions were required to protect intact families, to prevent family breakdown and safeguard the state's interest in reproduction. The reformers ushered in a new era of family protection legislation, homestead exemption, focused on protecting families and retaining them within the colony. Homestead exemption legislation, as it had developed in American jurisdictions, exempted the family home and a small amount of property from seizure by creditors. It offered protection to wives by limiting the husband's ability to dispose of family property without spousal consent, and evolved to regulate the disposal of the property after the husband's death for the family's benefit.[14]

The chief proponents of this legislation were reformers Amor De Cosmos and John Robson. De Cosmos introduced homestead exemption legislation in the 1864–1865 and 1865–1866 sessions, referring to American competition for immigrants and noting the generous exemption laws in American jurisdictions. If Vancouver Island desired to attract and retain immigrant families, he asserted, it would have to ''offer similar advantages'' or ''people would leave it for these growing States, where they could safely invest their means for their wives and families, and provide for them against misfortune or want.'' Homestead exemption, De Cosmos declared, would protect a certain class ''of honest, industrious, and in many cases moral households from having their households ruthlessly taken from over their heads, and thus turned in perhaps a penniless condition into the streets''. Toward this end, he proposed a measure which would protect $5,000 in real property (including both rural landholdings and town lots) and a comprehensive array of personal property (including books, household furnishings, and the tools, implements, and instruments of various professionals, tradesmen, miners, farmers, and carters) from seizure by creditors. In addition, reflecting his emphasis on the central role of the wife and mother in the home, he included the American clause providing that the homestead could not be abandoned, conveyed, or mortgaged by a married man without consent of his wife.[15]

evident in a provision of the act stipulating that only property gained by a woman's ''own lawful industry'' would be safeguarded. See Falcon, '' 'If the evil ever occurs' '', pp. 25, 28–29. The act is printed in British Columbia, *The Laws of British Columbia, Consisting of the Acts, Ordinances, & Proclamations of the Formerly Separate Colonies of Vancouver Island and British Columbia, and of the United Colony of British Columbia. By Authority Compiled and Published by the Commissioners Appointed under ''The Revised Statutes Act, 1871''* (Victoria: Government Printer, 1871), pp. 54–55. The House of Assembly's debate is covered in the *British Colonist*, May 10, 1862.

14 Goodman, ''The Emergence of Homestead Exemption'', p. 471.

15 In the interest of brevity, I have collapsed two years' debates into a single discussion. De Cosmos's statements are taken from the *British Colonist* of April 25 and December 2, 1865. The full details

De Cosmos's legislation faced strong criticism. Opponents in the Assembly and Legislative Council alleged that the value of the exemption was too large and that exemption opened the door to fraud and social decay by freeing debtors of their obligations. In the Legislative Council, Chief Justice Joseph Needham announced that the bill would destroy the family: allowing the wife limited control over the disposition of family property would diminish familial interdependence, enabling ''the wife and children ... to feel independent of the husband and father''. Councilor Donald Fraser voiced the opinion of a sizable minority that the legislation should be restricted to ''heads of families'' (but he defined this category broadly, including women) to reward those contributing to colonial growth and productivity by raising families; no incentives should be extended to those shirking this important social obligation, the ''sportive'' bachelor and his spinster counterpart.[16]

In response to these objections, De Cosmos (himself a bachelor and unaffected by the alterations to familial power in the legislation) stressed the strong role of the family in building the nation and noted that an equivalent of the homestead exemption already existed under British equity practices. ''As it now is,'' he asserted, ''according to British Law, a man in business with $20,000 could buy a post-nuptial contract[,] give his wife $10,000 out of his capital, and the creditors could not touch it.'' Furthermore, he argued that the value of the exemption should not be reduced. Exemption was not intended solely, or even primarily, to protect impoverished wage-earners, but rather to promote economic activity by attracting the propertied and industrious immigrant. He informed the House:

> The bill was not so much for laborers as for men of capital, men who were carrying on the country. Suppose a young man made $10,000 in the Cariboo and wanted to get married here, he knew that if he left his wife and home behind him in this Colony, when he returned from being unfortunate in the Cariboo or elsewhere that he might lose all his property, while if he settled across the [Puget] Sound he would be protected. If they want the country to secure settlers and capital they would pass the bill.

The elected Assembly agreed, but the appointed Legislative Council allowed the bill to lapse in 1864–1865, fearing its effect on debtor-creditor relations.[17] By the following year, however, De Cosmos had gained the sup-

of the 1864–1865 bill are not available. Analysis is based on the *British Colonist*'s account of legislative proceedings on April 25, 1865, and a version of the 1865–1866 bill printed in the Victoria *Chronicle*, December 13, 1865.

16 *British Colonist*, April 25, 1865; January 19 and February 6, 1866; Victoria *Chronicle*, May 30, 1865; February 5, 1866.

17 De Cosmos, quoted in Victoria *Chronicle*, April 25, 1865; Legislative Council decision reported in Victoria *Chronicle*, May 30, 1865.

port of the business community and Attorney-General Thomas Lett Wood, who assured his fellow Legislative Council members that there was nothing fraudulent in ''a man ... limit[ing] his liability as joint stock companies did ... the public be[ing] told beforehand that [he] reserved £500 out of his property''.[18] The addition of these new allies seems to have tipped the balance, and De Cosmos's bill passed through the Legislative Council, with amendments limiting the value of real property exempted to $2,500 and personal property to $150. To protect the interests of creditors against fraud, no debts acquired prior to the exemption were protected. After an exemption was registered, legislators assumed creditors would not lend on the security of property that they could not seize. In addition, homestead protection was not automatic; the owner of the property, in most cases the husband, had to apply for it. Thus patriarchal prerogatives were not injured. A husband who wished to use his house and property for collateral in business could do so, if he did not register.[19]

In 1867 John Robson introduced homestead exemption to the newly created United Colony of British Columbia (the old Vancouver Island homestead laws did not automatically transfer to the new colony). Robson added a new clause allowing a widow to hold the homestead following the death of her husband, for the duration of her children's minority or for as long as she remained unmarried; this alteration made the measure the first example of ''homestead dower'' passed in Canada, albeit one that reflected patriarchal and state interests, since it appears to have restricted the wife's interest in the homestead to the period in which she was raising her children.[20] Robson's act also reflected his patriarchal bias in that it omitted a clause which had made the terms of the previous act gender-neutral, and thereby likely prevented independent women from registering homesteads. Since homestead exemption was explicitly offered as family protection, restricting registration to men encouraged retention of the patriarchal family as the norm. During earlier debates others had suggested restricting the measure to ''heads of households'', but included women within that category. For Robson, the only legitimate head of household was male.

Colonial expansionists of every political stripe understood the state's vested interest in the family as a reproductive institution, but capitalism

18 *British Colonist*, January 19, February 6, and May 19, 1866.

19 For the details of the bill as passed, see *Vancouver Island, Laws, Statutes, etc.*, 1866, 30 Vict., no. 6 (Toronto: Micromedia, 1977).

20 British Columbia, *The Laws of British Columbia*, pp. 226–231. Although the wording in the clause regulating homestead dower was somewhat confusing, Walter Scott in his 1917 treatise on homestead acts interpreted it as follows: ''the more lucid provisions of the B.C. Homestead Act, s. 7 (*infra*), which aims at making provision for both widow and children ... leaves the latter very much at the mercy of their mother, as it does not appear to constitute a trust in their favour, though measuring the interest of their mother by their minority.'' Walter S. Scott, *Homesteads and their Exemptions in Western Canada* (Edmonton: Books, Publishers of ''Law Booklets'', 1917), p. 49.

threatened the family's existence. According to American historian Paul Goodman, ''The market revolution placed women and families at high risk. In a boom and bust economy husbands often failed, sometimes through no fault of their own, and thereby plunged their families into destitution.''[21] Both the homestead and deserted wife protection acts were intended to insulate women and children from the volatility of the economy. The Deserted Wives Act provided wives in broken families with provisional property rights: an emergency status bestowed upon them to protect the state's interest in reproduction, enabling the broken family to continue to function and raise children. The homestead exemption act, by reserving a portion of the family's property beyond the reach of creditors, secured for the family a subsistence base to be utilized during recessions, depressions, and personal setbacks. Interestingly, both acts indicate an increasing identification of the family's interests with the wife. The Deserted Wives Act acknowledged that women in broken families were often maintaining themselves and their children by their own efforts; the homestead exemption act, reflecting the influence of the ideology of separate spheres, implied that wives could be entrusted with the responsibility of defending domestic interests. A ''good'' wife would ensure that the home was not unnecessarily risked as credit security against the family's needs. Moreover, if a husband predeceased his wife, she could retain the homestead under the terms of the act to look after the children. Rather than overestimating the scope of these new familial responsibilities for women, however, it would be wise to stress again their limitations. All familial authority was ultimately vested in the husband, since he had to invoke homestead protection; in the case of the protection order for deserted wives, the husband could apply to have his wife's independent financial status removed. The wife remained subject to the priorities of her husband and the state.

In addition to safeguarding national reproductive priorities, securing family property also provided a means for reformers to achieve their ideological vision of the nation. Homestead exemption bills were one piece of a ''legislative package'' designed to protect the independent producer and his family in the economy: legislators introduced bills that together provided homestead exemption, abolished imprisonment for debt, and established mechanics' lien laws.[22] By abolishing imprisonment for debt, reformers

21 Goodman, ''The Emergence of Homestead Exemption'', p. 487.

22 The mechanics' lien law entitled artisans to register a legal claim against property when not duly compensated for its construction or repair. After a preset period, the property could be auctioned to recover unpaid expenses and profit. In 1864–1865 De Cosmos introduced the homestead exemption bill and the mechanics' lien law. George Dennes introduced the bill to abolish imprisonment for debt. (Interestingly, Dennes may have been in financial difficulty himself. In 1866 he went bankrupt.) All three measures were defeated and were reintroduced in the following session by the same two members. This time imprisonment for debt was abolished and the homestead exemption established. In 1867, when John Robson introduced homestead exemption into the laws of the United Colony of

intended to lessen the risks taken by the industrious in attempting to achieve economic security. By the 1860s credit was essential to conducting business in British Columbia, and local politicians and businessmen believed that protecting indebted businessmen and independent producers from imprisonment would stimulate the economy and colonial growth. Furthermore, they realized that they would have to protect the small producer's family, if they wanted long-term settlement. Legislators thus not only protected independent producers from penalties for market activity, but through homestead exemption tried to secure their furniture, their homes, and the tools necessary to their occupations. Finally, reformers introduced mechanics' lien laws to secure the independent producing breadwinner's source of income. Although local politicians often declared that mechanics' lien laws were intended to protect the ''honest and poor man'', these laws did not actually aid the wage-earning ''workingman'' or labourer. No mechanism was provided to recover unpaid wages from employers. Liens, rather, were attached directly to the property under development or repair, allowing independent artisans and contractors to sell the property at auction after a preset period to recover their fees and expenses from the proceeds.[23]

The existence of the ''legislative package'' reveals a fundamental paradox in the reformers' nation-building programme. Reformers wanted to protect the family and the independent producing class from destitution, while maintaining the economy responsible for their difficulties. The free market economy was linked in the liberal psyche to economic opportunity and national growth, but it was also volatile, tending toward excesses and extremes. Through homestead exemption and related measures, reformers believed they could shield the patriarchal family from economic misfortune, stimulating natural population growth and immigration. Simultaneously, by providing a certain level of material security for the economic agent and his family, homestead exemption would minimize the risks of market activity and encourage the growth of independent enterprise. The individual could

British Columbia, he also brought forth a mechanics' lien bill, which was rejected. Ross, ''Amor DeCosmos'', pp. 62–63; James E. Hendrickson, ed., *Journals of the Colonial Legislatures of the Colonies of Vancouver Island and British Columbia, 1851–1871* (Victoria: Provincial Archives of British Columbia, 1980), vol. 3, pp. 592–595. Between 1860 and 1879, eight mechanics' lien bills were introduced to the legislatures of Vancouver Island and British Columbia. Prior to passage of the 1879 bill, the measures were rejected because legislators found the wording vague, confusing, or cumbersome, feared the legislation would lead to massive litigation, or opposed the lien being attached to land titles, which would hinder land transfers. *Daily Standard*, April 3, 1872; May 13, 1876; March 22, 1877; February 18, 1879.

23 On imprisonment for debt, see Loo, *Making Law, Order, and Authority*, p. 103; Assemblyman Leonard McClure's editorial in the *British Colonist*, December 7, 1865. Reformers' opinions on the Mechanics' Lien Law are drawn from McClure's editorial in the *British Colonist* of March 4, 1865, and the 1876 debates reported in the *Daily Standard* and *British Colonist* on May 10, 1876. The Mechanics' Lien Law passed in 1879 is found in British Columbia, *Statutes of the Province of British Columbia*, 1879, 42 Vict., ch. 24.

freely pursue economic goals without compromising his family's future. In addition to reconciling the imperatives of production and reproduction, providing bachelors and families with a stable property base was intended to encourage the growth of the broad, property-owning producer class that reformers believed so crucial to the proper functioning of democracy.

Family Protection in the 1870s

When Amor De Cosmos took over the premiership from John Foster McCreight in 1873, the declining economy provoked further changes to the homestead exemption act. During the session, Chief Commissioner of Lands and Works Robert Beaven tabled figures indicating that provincial settlement was occurring at a very slow rate. Arthur Bunster responded with a bill to provide compulsory homestead exemption to various small producers, but *laissez-faire* legislators opted instead to increase the personal property exemption under the existing optional homestead legislation to $500. In addition, the Land Act was amended to provide free land grants with automatic homestead exemption protection to settlers. Equal rights to pre-empt crown lands were extended to women.[24]

De Cosmos's ministry also moved to encourage family settlement in the province by passing a Married Women's Property Act (MWPA), which virtually duplicated the 1872 Ontario MWPA.[25] The act allowed a woman to hold separately any real estate she possessed at the time of marriage and to acquire additional real property in her own name. Her property, as well as the earnings derived from it and from any labour she might undertake, were to be free from her husband's control and debts, as were the assets she was newly empowered to invest in corporate stock and savings banks. She could also contract, sue, or be sued in matters regarding her separate proper-

24 In extending pre-emption rights to free lands to women, British Columbia was a definite front-runner (despite the Walkem administration's revocation of unmarried women's pre-emption rights in 1874), reflecting the De Cosmos government's concern with Woman's Rights. Women on the prairies began a campaign for equal homesteading rights in 1909. Federal authorities who maintained control over crown lands were not sympathetic. By the time the prairie provinces gained control of their public lands in 1930, most free grant lands had already been settled. Saskatchewan and Manitoba revoked homesteading privileges altogether. Alberta legislated to allow any ''person'' over the age of 18 to homestead, and a few women were able to pre-empt lands, for the most part in the Peace River District. See Catherine Cavanaugh, ''The Limitations of the Pioneering Partnership: The Alberta Campaign for Homestead Dower, 1909–25'', *Canadian Historical Review*, vol. 74, no. 2 (1993), pp. 199–200. Beaven's report is referred to in Robert E. Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871–1913* (Vancouver: University of British Columbia Press, 1974), p. 24. Bunster's bill is printed in the *Daily Standard*, February 8, 1873; for criticism see the *British Colonist* and *Daily Standard* issues of February 18, 1873. The Homestead Act amendment is reported in the *British Colonist* and *Daily Standard*, February 20, 1873. For the 1870 Land Act and its 1873 amendment, see ''An Ordinance to amend and consolidate the Laws affecting Crown Lands in British Columbia, 1870'' in *The Laws of British Columbia*, pp. 492–503; British Columbia, *Statutes*, 1873, 36 Vict., no. 1.

25 The exception being a single clause regulating the purchase of life insurance.

ty.[26] The sole but substantial restriction on her control over her ''separate estate'' was the inability to convey real estate.

De Cosmos had been interested in extending an equivalent of the married woman's separate estate into statute law as a form of family protection for some time. When supporting homestead legislation, De Cosmos and Thomas Lett Wood referred to equitable trusts and agreements, noting that, by bestowing upon his wife a certain amount of property, a man could protect it from his creditors. The Married Women's Property Act, based on the married women's equitable separate estate, provided these exact advantages. It omitted the restriction in the earlier 1859 Ontario legislation that prevented a woman's husband from giving her real estate to protect it from seizure, and it specifically freed a married woman's separate property from the claims of her husband's creditors. The 1873 act would thus allow De Cosmos's proverbial ''men who were carrying on the country'' to transfer large (in fact, unlimited) amounts of property to their wives before securing credit or undertaking business ventures, thereby protecting their homes and families from creditors and economic failure. Any real property protected in this manner, since the wife could not convey it, would be doubly secure.[27]

In the legislature, only Cariboo MPP Cornelius Booth supported the legislation's egalitarian potential and the ideal of companionate marriage it suggested. Booth asserted that he ''could not see on what ground a wife should be held in subjection and not placed on a level with her husband'', arguing that ''Man and wife should be in the same relation to property as other partners.'' Among those opposed, John Robson expressed the most perceptive apprehensions. He feared that the bill ''proposed to establish two authorities in the same household[,] ... savored of 'Woman's Rights''', and ''was calculated to revolutionize the marriage state''. Moreover, Robson argued, it would open the door for married women to enter the public sphere, ''encourag[ing] some wives to throw the children on the husband's hands, leave him, and go into business on their own 'hook'''. For Robson, the bill was the thin edge of a pernicious wedge which valued ''Woman's Rights'' to the detriment of family solidarity and stability.

Other opposing legislators revived earlier claims that altering family liabilities would disrupt credit relations. Despite a clause specifying that a man could not transfer ''moneys'' or ''investments'' into his wife's name to evade his creditors, they steadfastly maintained that the bill would encourage fraud; and they may have been correct, since no provisions account-

26 In Ontario an 1859 act extended the basic principles of the equitable separate estate into statute law. For details of the 1872 Ontario and 1873 British Columbia MWPAs, see Ontario, *Statutes of the Province of Ontario*, 1872, 35 Vict., c. 16; British Columbia, *Statutes*, 1873, 36 Vict., no. 29; Backhouse, ''Married Women's Property Law'', pp. 230–231.

27 Canada, *Statutes of the Province of Canada*, 1859, 22 Vict., ch. 34, s. 1; Ontario, *Statutes*, 1872, 35 Vict., ch. 16, s. 1; British Columbia, *Statutes*, 1873, 36 Vict., no. 29.

ed for the fraudulent transfer of real property. New Westminster MPP Henry Holbrook worried that, if the bill passed, extending credit to families would be impossible, with creditors ''knowing their property could be, and probably would be, placed exclusively in the name of the wife''.[28] The husband's ability to transfer assets to his wife to protect them from creditors offended advocates of the traditional family. In this way, family assets were shifted from one member to another, specifically to evade family liabilities. For opponents, this practice, as Philip Girard and Rebecca Veinott note in their study of married women's property law in Nova Scotia, ''reeked of fraud on creditors as it did not accord with the common perception of marriage as a community''.[29]

Heavy opposition from quarters hostile to both the bill's possibilities for generating fraud and its egalitarian implications forced supporters to appeal to paternalistic sensibilities. Lillooett's T. Basil Humphreys drew on the authoritative discourse of the English Woman's Rights movement, which associated married women's property acts with wife protection. He claimed that ''the English papers'' were rife with incidents of ''brutality on the part of husbands'' and cited ''a case wherein a man had drawn his wife's money from the bank, sold her property, and then decamped''. Humphreys asserted that, if legislators passed the MWPA, ''unjust and tyrannical men could not rob their wives of their property and hard earnings.'' Premier De Cosmos was also familiar with campaigns for married women's property legislation in other jurisdictions. In the legislature, he claimed that ''no liberal government could justly oppose this Bill.'' He believed the bill to be largely the same as the one recently passed in Ontario and cited John Stuart Mill's support for the measure in England. Despite obvious knowledge of the egalitarian leanings of the English movement, a personal liberalism which made him sensitive to women's demands for greater legal and political rights, and the bill's potential to achieve one of his long-term goals — protecting intact, functioning families from financial ruin — De Cosmos instead stressed its value in dysfunctional families. In both the legislature and his editorials, he tried to win over conservative legislators by appealing to their paternalism. The bill was ''intended as a safeguard'', he told the legislature: ''it brought the woman into a freer atmosphere, and prevented the worthless husband from concentrating his thoughts on the sole object of making money from the resources of his better half.'' Repeating this argument in the *Daily Standard*, De Cosmos declared, ''it is to remedy this evil, and to throw the aegis of the law's protection around married women who

28 The Committee debates are reported in the *British Colonist*, January 15 and 16, 1873; and *Daily Standard*, January 15, 1873.

29 Philip Girard and Rebecca Veinott, ''Married Women's Property Law in Nova Scotia, 1850–1910'' in Janet Guildford and Suzanne Morton, eds., *Separate Spheres: Women's Worlds in the 19th Century Maritimes* (Fredericton: Acadiensis Press, 1994), p. 74.

have been thus unfortunate in their matrimonial connections, that Mr. Beaven has introduced the bill under consideration.''[30]

While there is no evidence of an organized ''grassroots'' movement agitating for the married women's property law in British Columbia,[31] several letters in favour of the measure were printed in the *Daily Standard*. One letter, written under the pseudonym ''Proletarius'', addressed the question with Woman's Rights issues as its frame of reference: ''Proletarius'' objected to the idea that married women should be subordinate to their husbands, suggesting ''that marriage should be based upon perfect equality of rights'' and asserting that female inequality was antithetical to the ''enlightened freedom and liberalism'' of the late nineteenth century. But even this radical partisan was willing to include a caveat, perhaps to court favour with opponents: ''[W]omen'', he wrote, ''ought to possess the same personal and individual rights, *at least as regards property*, as men.'' Another writer, ''Sarah Jane'', addressed the question with family protection as her main focus. Opponents of the act, she wrote, feared that, if women were granted power or property, they would use it to the detriment of their husbands and families. But other jurisdictions had found differently: in Ontario and ''in more than three-fourths of the American states'', such laws were in already in place and were ''highly beneficial''. In fact, ''Sarah Jane'' suggested that a combination of maternal instinct and the married women's property law just might strengthen the economic base of the family:

> After considerable observation, I will venture that in every community where such a law has existed for any length of time, ten cases can be found where women have used every cent of their separate property for the support of their husbands and families — husbands often drunken and worthless — to one, where their separate property has been the cause of trouble or disruption in the family, or where they have selfishly refused to allow their property to be used for their families in case of need.

A third writer, ''Observer'', also supported the ideal of maternal instinct, claiming that ''A woman may be lost to all sense of decency, in so far as her own conduct is concerned ... but her natural affection for her offspring prevents her from allowing her children to want.''[32] Far from urging destruction of the family, as their opponents alleged, these writers were advocating a new view of the family, centred around the ideal of companionate marriage and informed by the ideology of separate spheres: the husband was

30 See coverage of the legislative debates in the *British Colonist* and *Daily Standard*, January 15, 1873, and De Cosmos's editorial in the *Daily Standard* on the same day.

31 In fact, the only organized public movement opposed the act. See below.

32 Letters to the editor, *Daily Standard*, ''Proletarius'' and ''Sarah Jane'', February 3, 1873; ''Observer'', January 25, 1873.

corrupted through his involvement in the competitive, uncaring marketplace, but the compassionate, family-oriented wife could be trusted to look after the needs of the family. With the nascent emergence of the ''cult of true womanhood'', stressing the importance of maternal instinct and women's role in the home, they believed that putting property in the hands of wives could only strengthen the family. The protection which MWPA advocates sought for married women was protection for the wife and children from the misdeeds or misfortune of their breadwinner.

Their opponents certainly did not see things in this way. The act engendered a public and political backlash of enormous proportions. In a *British Colonist* editorial, John Robson suggested that the bill disregarded ''existing systems and conditions'' and was ''too revolutionary''. It would, he wrote, ''unnecessarily disturb the matrimonial fabric'' and throw credit relations into disarray. Robson was not taken in by the passionate appeals of the bill's supporters. He advocated the Wives' and Children's Assurance bill and Arthur Bunster's Dower Bill (see below) as less sweeping measures which would produce the desired effect of protecting dependents. The editorial staff, he wrote, did not want to be

> understood as asserting that there are not instances in which the wife should have some protection as the bill proposes. Unhappily there are cases of the kind; but we are happy to think them exceptional, and we must question the wisdom, the necessity of producing a social and commercial revolution, especially when a much more simple remedy may be applied.[33]

In tampering with the family, Robson believed, legislators were jeopardizing the province's future. In the legislature he was joined in his opposition to the Married Women's Property bill by William Smithe, who argued — without success — that the measure should be amended to make a married woman with separate property ''liable for the support of her children and household, in an equal and proportionate degree with her husband''.[34] The absence of any attempt to address Smithe's concern is particularly interesting. Clauses 13 and 14 of the 1870 English MWPA specifically established the liability of a married woman with a separate estate for the support of her husband and children. Failure to include such a clause in the British Columbian MWPA may be further evidence that the purveyors of the bill were in tune with the emerging ideals of maternal feminism (companionate marriage, separate spheres, and female emancipation). In England, radicals had vigorously objected to the liability clause, arguing that a wife was entitled to support — her maintenance was an equivalent for the services she per-

33 *British Colonist*, January 24, 1873.

34 *Daily Standard*, January 25, 1873. See also British Columbia, *Journals of the Legislative Assembly of the Province of British Columbia*, 1st Parliament, 2d session, 1872–73, p. 39.

formed in managing the household — and that she should not legally be held responsible for the support of her children, as long as the law recognized her husband as their sole parent and guardian.[35]

The ideals of maternal feminists were not, however, as popular in the 1870s as they would be later in the century. Judging from a number of letters to the local newspapers, Smithe voiced the concerns of a sizable constituency. One critic argued that the bill bestowed upon ''the wife the same rights as the husband and an entire immunity from the responsibilities attached to him as nominal head of the household''. Many others opposed the bill in its entirety, fearing that the freedom from patriarchal authority that the MWPA provided women would result in serious consequences for the family and social breakdown. One wrote, ''by creating two separate and distinct purses, two powers are created where only one should exist''; this, he contended, would tend ''in every way to create coldness, bad feeling, jealousy and dissension in the family, where naught but love and trust should exist''. The result would be ''a quick and easy divorce law'' and ''total disregard of the institution of marriage''. Another believed the act would ''make the woman unwomanly'' and ''by its action promote bachelorhood and its concomitant evils'', eventually leading to ''social and commercial demoralization''.[36] Like proponents of the act, opponents believed that the shape of the family, the social structure, and hence the national destiny were closely linked. Their rhetorical flourishes should not be construed as gross exaggeration simply because they seem overly dramatic to modern ears. The concern was real. Shortly after the bill's passage, a petition circulated in Victoria and Nanaimo calling on Lieutenant-Governor Trutch to withhold his assent from the measure.[37] Despite its 450 signatures, the usually conservative Trutch decided not to act on the petition, perhaps because the British and Ontarian MWPA precedents would have made such an action difficult to justify.

The MWPA, like its predecessors in family property law reform, deserted wife protection and homestead exemption, was passed to protect the state's reproductive priorities from the volatility of the marketplace in the Pacific colonies. But this concern was tempered by intentions to maintain marketplace relations. Reformers did not intend to inhibit market activity. Rather, as Jane Ursel has indicated, the liberal state took on a role as mediator between the modes of material production and social reproduction.[38] Initially, by protecting deserted wives, legislators attempted to improvise a means of redressing the problems faced by already ''broken'' families. Later, they would move to forestall the pauperization of ''intact'' families: to reduce

35 Holcombe, *Wives and Property*, pp. 245–246.

36 *Daily Standard*, February 1, 1873; *British Colonist*, January 29, 1873.

37 Falcon, '' 'If the evil ever occurs' '', pp. 65–66; *Daily Standard*, February 10, 1873.

38 Ursel, *Private Lives, Public Policy*, p. 18.

their vulnerability in the new market economy, reformers tried to prevent proletarianization by securing for families a stable property base. In doing so, they looked to American and British precedents and found that either homestead exemption or the married woman's separate estate would suit their purposes. They were not alone in this observation. Several American states combined married women's property laws and homestead exemption laws into a single measure, or passed both measures together. According to Paul Goodman,

> The movement for homestead exemption converged with reform of married women's property law. Both recognized that the market revolution had weakened the traditional assumption that wives and children could rely on male household heads as breadwinners. The ups and downs of the economy, failure in business, or loss of jobs made families destitute. Even husbands who entered the marriage with property, sometimes brought by the wife, could suffer sudden reversals of fortune, as did thousands in the collapse of the late 1830s.[39]

Robert Beaven's MWPA, passed under De Cosmos's ministry, was intended to increase the family's protected property base (above that offered by homestead exemption). In doing so, however, it shifted familial power structures and neglected certain patriarchal priorities: it provided protection to wives who left their husbands, promoted companionate marriage, and extended married women's rights within the public sphere.

Because of its break with patriarchy, the MWPA occasioned a split amongst reform legislators. Up to this point, John Robson had agreed with the aims of the reform ''package'': establishing the security of the independent producing family, developing representative and responsible property-based democracy, and encouraging colonial and provincial economic growth. But he and De Cosmos divided at their conception of family structure. While Robson held a patriarchal conception of the family as a hierarchically organized community of interests with the husband and father at its head, De Cosmos, Beaven, and others were open to the idea of the companionate family. Robson, as has been shown, was willing to extend married women's rights within their role as wives and mothers confined to the domestic ''sphere''. Wives could prevent disposal of the homestead to protect their families, and in so doing were acting within the proper boundaries of their role: they were defending the requirements of the domestic sphere. Nonetheless, their ability to do so was constrained by the husband from his superior position as ''head of family'' and its representative in the public sphere. Only he could invoke homestead protection. Wives were not to be given legal abilities which would allow them to exceed their well-defined domestic

39 Goodman, ''The Emergence of Homestead Exemption'', pp. 488–489.

role. Robson thus opposed the MWPA, which would allow married women to enter the public sphere, to participate in the economy, and possibly to compete socially and economically with their husbands.

Proponents of the MWPA subscribed to completely different marital ideals. They believed in increasing power for wives and mothers in their roles within the family and, if necessary, in the public sphere. A mother could be counted on to look after the best interests of her children. But their reforms went beyond a simple admiration for women in the roles of wife and mother. Those who promoted the ideals of maternal feminism and companionate marriage, giving married women more power within the family, were also giving more power to women outside their traditional domain. Without a new conception of women's roles in society, allowing married women in functional marriages into the public sphere, the Married Women's Property Act could not have been passed.

In fact, several reform legislators supported Woman's Rights and agitated for recognition of women's independent political status. Shortly after the MWPA was passed, during a review of the government's Municipality Amendment Bill, Charles Semlin, member for Yale, ''moved to allow females to vote''. Over the raucous objections and ridicule of John Robson, George Walkem, and Robert Smith, Semlin noted that there was a precedent for his motion. In Ontario, he said, women could vote in some matters. Cornelius Booth supported this assertion, and De Cosmos said the same was true in England, Italy, and other continental European countries.[40]

De Cosmos had supported women's suffrage in his *Daily Standard* since June 1871. Others had rallied to the cause, perhaps influenced by American activist Susan B. Anthony, who lectured on Woman's Rights in Victoria in October 1871.[41] In 1872 an amendment to the Municipal Act to enfranchise women had been defeated under the conservative McCreight administration.[42] When Semlin's amendment came up for consideration in 1873, however, Premier De Cosmos lent it his support. He declared in a *Daily Standard* editorial that women, in certain cases, should have the franchise; he repeated Susan B. Anthony's argument that it was unfair to tax women and yet withhold the franchise from them. ''Among men,'' he asserted, ''taxation without representation is held to be an unbearable species of despotism — why should it be held to be any less despotic where females are concerned?'' Yet he felt it necessary to temper the effect of his editorial. He distanced himself from the most radical leaders of the Woman's Rights

40 *British Colonist*, February 13, 1873; *Daily Standard*, February 12, 1873.

41 The audience for Anthony's initial lecture was somewhat small (75 people according to the *Daily Standard*) and contained only ''two or three ladies'' but increased in size on subsequent nights. Anthony was, then, lecturing mainly to men, and, judging from newspaper accounts of their responses, many were sympathetic. *British Colonist*, October 24–27, 1871; *Daily Standard*, October 24–27, 1871.

42 *British Colonist*, April 10, 1872; *Daily Standard*, April 10, 1872.

movement — including Anthony and Lucy Stone — and repudiated any overt change in social roles, assuring readers ''that in many respects the rights of females might be extended considerably without doing violence to anyone, or in any degree impairing that native modesty in the female character, which the other sex profess so greatly to admire.''[43]

The legislature split into two opposing and evenly divided factions over Semlin's amendment. In the midst of the debate, McCreight proposed that the amendment be reformulated to allow unmarried women (''spinsters and widows'') over 21 years of age to vote in municipal elections. Semlin withdrew his amendment. The McCreight motion was based on the rationale, as the *Daily Standard* expressed it, that ''Where women are married the men should do the voting.'' According to McCreight, ''it might be difficult to settle disputes arising over ownership of property. So he would limit the right to unmarried women.'' Even such an accommodating amendment was rejected by the conservative faction. The House was divided, and Speaker Dr. James Trimble was forced to cast the deciding vote. The motion carried.[44] Notably, Robson, while critical of Semlin's amendment, supported McCreight's reformulation of the measure. As long as the bill was not bestowing rights in the public sphere to married women, Robson was willing to support it. Others, however, were more upset. Less than a week later, Robert Smith moved an amendment to revoke women's access to the municipal franchise, which was soundly defeated.[45]

The municipal act amendment shows that almost all of the legislators believed that the patriarch should represent the family's interests in the public sphere. A small majority believed that little harm could be done by allowing unmarried women the municipal vote. The barest of minorities argued that women should not be enfranchised whether married or single. There was also a small core group of ''feminists'' in the legislature, favouring the extension of women's legal and political rights regardless of their social role or position in the family. These members, among whom Robert Beaven, Cornelius Booth, and Amor De Cosmos were prominent, had given the MWPA their unqualified support and orchestrated its passage. They were joined by other members who saw in the MWPA an opportunity to protect families, to enable mothers to perform their tasks, or to help battered or deserted wives and their children.

Inheritance Law Reform

Reformers' commitment to equal opportunity for an independent producing class, or, alternatively, their hatred of privilege and aristocracy, manifested itself most overtly in inheritance law reform. Amor De Cosmos equated

43 *Daily Standard*, February 13, 1873.
44 *Daily Standard*, February 12 and 13, 1873.
45 *Daily Standard*, February 18, 1873.

property with prosperity and security, and he viewed property law as a crucial element in defending the interests of the family over both the short and the long term. Thus, while promoting immediate family protection through homestead exemption legislation between 1864 and 1866, he was also advocating reform of Vancouver Island's real property inheritance laws.[46] De Cosmos was attempting to effect a redistribution of wealth within the family and simultaneously attacking the foundations of hierarchical class structures. Other reformers would join him in that endeavour. Social conservatives, however, viewed inheritance law as central to the maintenance of entrenched social and familial structures, and they vigorously opposed reform. The battle over inheritance rights shows that, for De Cosmos, his allies, and his opponents, familial and social structures were consciously and closely linked.

When the colony of Vancouver Island was created, the descent of undevised real property[47] was determined by primogeniture: if a man died intestate, all of his real estate passed to his eldest son. De Cosmos proposed instead to divide the real property of intestates equally among their lineal descendants without preference to age or gender. If none existed, real property would succeed to the father; if he were deceased or the intestate's estate came from his mother, then to the mother or, if no mother, to the collateral relatives.[48] The Legislative Council rejected the 1864–1865 measure amidst allegations by Colonial Secretary Henry Wakeford that ''the cutting up of real property into small portions was decidedly ruinous to families.''[49] This prompted *British Colonist* editor Leonard McClure to retort that it was the present state of the law that injured the family, ''giving to probably the only [family] member that could do without it the property which should afford the sustenance for the young and helpless''. McClure wrote that, in matters of inheritance, ''justice would point out the youngest rather than the eldest, the girl rather than the boy, the weak rather than the strong as marks of special favor.''[50]

Although no further attempts to introduce inheritance legislation occurred for several years, De Cosmos had not abandoned the idea. In an 1871 editorial he wrote that he believed it a ''natural presumption that a parent has no more preference for one child more than another; and that he would divide his property equally between them [in a] case [where] he made his will''. He assured readers that abolishing primogeniture would not prevent

46 Since inheritance reform bills were introduced concurrently with homestead exemption, mechanics' lien, and imprisonment for debt bills, they might be viewed as part of the legislative ''package''.

47 Real property lacking provision for its transfer in a will.

48 I have found no record of the 1864–1865 bill, but have based my interpretation of it on the 1866 bill and the 1872 act, which contained these provisions. See *British Colonist*, January 9, 1866; British Columbia, *Statutes*, 1872, 35 Vict., no. 29.

49 *British Colonist*, June 8, 1865.

50 *British Colonist*, June 10, 1865.

testators from distributing their property as they wished, but it would ''relieve the state from being a party to the distribution of an intestate's estate in such a way as to violate every notion of common justice and humanity''.[51] Others agreed. In the following legislative session reformer Charles Semlin introduced a bill to abolish primogeniture. Semlin's measure passed without objection or amendment.[52] Quite evidently, the major obstacle to passing the bill had not been public opinion, but the class interest of a wealthy, landed, and conservative elite. Only the appointed members of the Legislative Council were opposed to ending primogeniture, a practice intended to concentrate extensive land holdings in a single family line, thus reinforcing the Tory values of class and aristocratic privilege. When Henry Wakeford alleged that abolishing primogeniture was ''decidedly ruinous to families'', he was referring to the concentrated wealth of certain families and the hierarchical vision of society it inspired; he was not referring to families in general. His social vision was not shared by local reformers. John Robson wrote that primogeniture was ''the key-stone, so to speak, of England's blue-blooded aristocracy'', responsible for ''that huge class monopoly of land, wealth, power, and position which has for centuries stood with its iron heel upon the pleb[e]ian neck''.[53]

The liberal desire to broaden the distribution of property throughout society demonstrated in Charles Semlin's Inheritance Act was not limited solely to the ''legitimate'', legal family. The 1872 legislature which had acted to improve the economic position of younger and female legitimate children also moved to extend the social and economic advantages of inheritance to illegitimate children, by legitimizing children born out of wedlock whose parents had either subsequently married or agreed to do so within a specified time. The bill's principle was enshrined in continental European law and had been adopted by several American states,[54] but it was invoked to address local concerns. Originator Robert Beaven observed:

> In early times it was impossible for white parents to get married to Indian women[;] consequently it was a great hardship to the children of such connections. According to Indian law they were legal marriages. In Ontario a law-suit [*Connolly v. Woolrich*] had arisen in a like case and it was decided in favor of the first child as by Indian law the parents were legally married.[55]

51 *Daily Standard*, June 3, 1871.

52 British Columbia, *Statutes*, 1872, 35 Vict., no. 29.

53 *British Colonist*, April 7, 1872.

54 British Columbia, *Statutes*, 1872, 35 Vict., no. 37. For precedents, see Jenny Teichman, *Illegitimacy: An Examination of Bastardy* (Ithaca, N.Y.: Cornell University Press, 1982), p. 35; Grossberg, *Governing the Hearth*, p. 204.

55 *British Colonist*, March 26, 1872. Backhouse discusses *Connolly v. Woolrich* at length in *Petticoats and Prejudice*, pp. 9–22. In 1873 Beaven made specific reference to an apparently local incident: ''In Heffly's case,'' he said, ''the children suffered through the death of their father because no such law

Beaven's act did not, however, uphold Aboriginal marriages as unconditionally valid. Rather, couples married under Aboriginal law could retroactively validate their marriages and legitimize their children by remarrying under Canadian law. The act gave the same opportunities to common-law families.

The measure ran into harsh opposition. Premier McCreight feared the bill would retroactively disinherit legitimate children. To address this problem, Robson inserted an amendment specifying that existing wills would not be affected. Several other members argued that the bill was *ultra vires*: that is, that the province had no constitutional jurisdiction over marriage and divorce. Although these constitutional objections appeared strong, the bill passed. Reformers were adamant in its support. Robson stressed the bill's links to individual rights and class formation, arguing that, although it did touch on the *ultra vires* matters of marriage and divorce, its real bearing was upon the ''property'' and ''civil rights'' of illegitimate descendants. On third reading, despite Premier McCreight's motion to hoist, the bill passed.[56] It was not, however, destined to become law. McCreight, in his capacity as Attorney-General, wrote to Lieutenant-Governor Trutch, who agreed to withhold assent from the bill so that the federal government could examine its constitutionality.[57]

In the following session, Beaven reintroduced the bill, which passed again, despite renewed opposition. In his *Daily Standard*, Amor De Cosmos noted the substantial grounds upon which the bill was opposed, but applauded the decision to pass it, characterizing the measure as one of ''justice and equity'' intended to remedy an unfortunate situation. Disqualifying the children of common law and ''country'' marriages from inheritance was manifestly unfair, De Cosmos wrote, since the ''parents are in a measure indebted to their [children's] labours and exertions for the wealth they have accumulated, and yet ... [the children] might be turned loose upon the world without a dollar.''[58] De Cosmos's commentary reveals two interesting opinions: he viewed inheritance as a fair share of labour expended in youth; and he was worried about individuals being left without that inheritance. The children of unmarried parents were at a social and economic disadvantage compared to those born legitimate, and his imagery (''turned loose upon the world'') suggests that non-inheriting individuals were less attached to the social system. Such people might form a dangerous underclass. The bill was intended to counteract this problem.

It was certainly not intended to be construed as an affront to morality.

as this was in force, notwithstanding he was anxious to have them righted shortly before his death.'' *British Colonist*, January 23, 1873.

56 *Daily Standard*, March 26 and 28, 1872; *British Colonist*, March 26 and 28, April 3, 1872.

57 British Columbia Archives and Records Services, Attorney-General, GR 1459, box 1, file 11, ''Draft Report on Legitimacy Act, 1872''; British Columbia, *Statutes*, 1872, 35 Vict., no. 37.

58 *Daily Standard*, January 24, 1873.

Both De Cosmos and Alexander Rocke Robertson argued that the bill would not encourage or sanction adultery, but induce those living together unlawfully to marry and legitimize their children. Robertson made no distinction between common-law and ''country'' marriages. He believed the act would be a benefit to the nation, holding out to unwed couples ''a very strong inducement to discontinue living in a state of things at once disgraceful to themselves, discreditable to the country, and pernicious in its general effect''.[59] Thus, the bill would not only ''legitimize'' the children of country marriages, but also the marriages themselves. Beaven saw the situation somewhat differently. His legislation and his comments in the legislature indicate that he believed (somewhat paradoxically) that ''country'' marriages were ''valid'', but in need of state sanction to gain full rights. He was unwilling to provide equivalent property rights to common-law wives and illegitimate children if they remained so, but he was attempting to create a means of legitimizing the common-law family and endowing its members with full legal rights. Beaven wanted to use the legitimization of their children to encourage common-law couples themselves to become ''legitimized'' by the state, brought within the compass of the law and tied to the established social system, but he was prevented from doing so. The measure was again reserved.[60] Some years later, in 1877, Andrew Charles Elliott's government passed legislation providing limited inheritance rights to the members of common-law families, but their Destitute Orphans Act was a stop-gap measure, motivated as much by concern over government expenditure and moral deterioration as the rights of the individual and the plight of ''irregular'' families.[61]

59 *Daily Standard*, March 26, 1872. De Cosmos repeated this argument in the issue of January 24, 1873.

60 British Columbia, *Statutes*, 1873, 36 Vict., no. 43.

61 Elliott explained that his intention was to relieve the public of the burden of supporting ''concubines'' and illegitimate orphans: ''unfortunately,'' he said, ''we know that men have died leaving their offspring without support and wholly dependent on the public. Those men have died rich and their riches have been claimed by relatives, the woman getting nothing for the children.'' In the bill's preamble, he disclosed a further apprehension that, under impoverished circumstances, ''children are exposed to physical and moral deterioration, to the further injury of the community.'' However, social concerns remained subordinated to ideological and economic prerogatives. When Cariboo MPP Captain John Evans moved to extend the bill to men who had left a will, Elliott, revealing a *laissez-faire* disdain for tampering with the patriarch's freedom of contract, replied that he ''did not think affairs bad enough to warrant it''. In its final form the bill relied heavily upon judicial discretion, providing the ''irregular'' family with few irrevocable rights. It accorded primacy to the legitimate family: if the intestate also left a widow or legitimate children, they or their representatives were to be notified and should ''have an opportunity of being heard'' before distribution of the estate was made. Furthermore, the act restricted eligibility to ''concubines'' protected or supported by the intestate and those children reputed to be his and maintained or protected by him within 12 months of his decease. If the patriarch chose not to support his dependents, neither would the state. But if the court did determine them eligible, the ''concubine'' and illegitimate children could each be awarded (in a manner consistent with their previous level of maintenance) up to a maximum of $500 or 10% of the estate, whichever sum was larger. British Columbia, *Statutes*, 1877, 40 Vict., no. 28; *British Colonist*, March 16, 1877; see also *Mainland Guardian*, March 10, 1877.

Spousal inheritance was not addressed by the legislature. For most men, a spousal inheritance clause was unnecessary, since they already held the rights to ''family'' property. But married women's interest in family property was less secure. Under the 1833 English Dower Act, a widow was entitled to one-third of the real property her husband possessed at his death, should he die intestate. However, if her husband made a will, her dower right was abrogated, and he could distribute his property as he wished. The new protection offered by homestead dower was no more certain. In British Columbia, homestead dower was not automatic; it was dependent upon homestead registration, which was the prerogative of the property-owner, usually the husband.

The absence of obligatory inheritance provisions for widows did not go entirely unnoticed. In both 1872 and 1873, MPP Arthur Bunster proposed bills to legislate mandatory dower.[62] Bunster's reasons, however, had more to do with family protection than the widow's right to inheritance. His mandatory dower was intended to be a compulsory replacement for homestead exemption and a less radical alternative to the Married Women's Property Act. Bunster announced that he wanted to protect wives from ''heartless, drunken husbands, who, as the law stands, have it in their power to sell them out of house and home'', and he informed the legislature that he intended to protect families from economic difficulties: ''A merchant became unfortunate in his business and the creditors swept away everything; but the wife's interest in the real estate must be untouched. The family rooftree was sacred. Thus good and valuable citizens would be kept in the country, because with this bill they would be able to redeem themselves.''[63]

Ultimately, Cabinet Minister George Walkem stymied Bunster's attempts to establish legislative dower, believing that mandatory dower rights as Bunster drafted them would encumber land titles and hinder the free disposition of property, a necessity in a settler society with a speculative economy.[64] The circumscription of widows' inheritance rights was not solely

62 His 1872 bill was a short document, containing only two clauses: the first provided a wife with a dower right in one-third of all the property her husband had held during her coverture; the second stipulated that the husband could not mortgage, dispose of, or otherwise alienate his real property without the consent of his wife and that every instrument of conveyance must specify whether the wife was releasing her dower claim. See the *Daily Standard*, April 9, 1872. In 1873 Bunster presented no bill. Rather, he asked Attorney-General George Anthony Walkem to frame a Dower Bill. Walkem refused, directing Bunster to the legislature's law clerk. See the *British Colonist*, January 22, 1873.

63 *Daily Standard*, April 10, 1872; *British Colonist*, January 22, 1873.

64 Homestead dower in British Columbia was similar, but not identical, to mandatory dower: the wife gained a limited dower right in the homestead and could prevent conveyance or mortgaging of the property; but if she consented to conveyance and the property changed hands, her dower ''right'' was unconditionally abrogated. There was no possibility of residual homestead dower claims encumbering land titles. Under Bunster's legislation, a widow could consent to property transfer while maintaining

motivated by concern over land transfers, however. The compulsory aspect of Bunster's dower bill also generated opposition. Its protection was automatic, imperilling patriarchal and *laissez-faire* liberal prerogatives. The homestead act, on the other hand, left implementation at the discretion of the husband.[65]

Through inheritance law reform, legislators intended to reorganize the structure of family and society. Within the family, Amor De Cosmos and William Smithe attempted to alter the descent of real property to provide equal opportunity for all of a man's descendants, regardless of gender or age. Robert Beaven tried without success to extend this inclusivity by providing a means for illegitimate children to inherit legally on an equal footing with other descendants. But there were substantial limitations in the

her dower right. Walkem, who was busy drafting legislation to facilitate land transfers, noted several precedents for abolishing dower. Other settler societies with speculative economies also attempted to remove the constraints dower posed on speculation. In 1868 Ontario passed an act preventing the recovery of dower from wild (unimproved) lands, in which speculators invested heavily. Manitoba and the Northwest Territories also abolished dower in 1885–1886, ostensibly in an attempt to encourage settlement by facilitating the transfer of land, but likely also to generate investment opportunities in land speculation. See Walkem's comments in the *Daily Standard*, April 9, 1872, and his legislation, ''An Act to facilitate the Conveyance of Real Property'' and ''An Act to facilitate the Granting of Certain Leases'' in British Columbia, *Journals of the Legislative Assembly*, 1st Parliament, 3d session, 1873–74, pp. 10, 55. For legislation restricting dower rights in other jurisdictions, see Toronto *Globe*, November 11 and 27, 1868; Ursel, *Private Lives, Public Policy*, p. 103; Cavanaugh, ''The Limitations of the Pioneering Partnership'', p. 211.

65 Charles McKeivers Smith noted in the *Daily Standard* (April 11, 1872): ''The principle objection urged against the law of dower is, that it would sometimes put men to inconvenience who might want to sell or mortgage their real estate, if their wives refused to give their consent — that it would have a tendency to cramp men in their business arrangements, if they had to depend on the consent of their wives before they could realize money on the security of their estates in case they felt disposed to go into business speculations.'' The contention that widows' inheritance rights were restricted because of a belief that the patriarch should possess ultimate authority within the family is supported by the debate surrounding the 1873 Wives' and Children's Assurance Bill. This bill — also a family protection measure — proposed to allow a man to purchase life insurance with his wife and children as beneficiaries; in addition, it specified that any such policy was to be paid directly to the family, exempt from the claims of creditors. The sole objection to the legislation concerned the distribution of the benefits. John Foster McCreight successfully insisted that the bill be amended to provide that, where no apportionment was specified in an insurance policy, its proceeds should be divided equally among the man's dependents. ''This bill'', McCreight argued, ''would place it all in [the widow's] hands, and who could say what she might do with it?'' Although McCreight claimed to be ''provid[ing] for the safety of the children in the matter'' the legislature's decision to amend the act also illustrates a lack of confidence in and mistrust of women. No similar constraints developed with regard to the husband's exercise of parental power. Socially conservative legislators feared the devolution of power within the family and justified their stance with the assertion that women were incapable of making rational and compassionate decisions regarding the welfare of their children. They spearheaded a movement to restrict widows' inheritance rights, a development which underlines the contention that conservative support for family property law reform often arose from a concern for family protection and nation-building, and not Woman's Rights. See British Columbia, *Statutes*, 1873, 36 Vict., no. 26; *Daily Standard*, January 15, 1873.

legislation, all of which respected *laissez-faire* priorities and the pre-eminence of patriarchal rights. The equal inheritance provisions of the Inheritance Act only affected intestate estates, and an individual could override them simply by making a will. So, too, could the Destitute Orphans and Wives' and Children's Assurance Acts (see notes 61 and 65). Openly forcing individuals to take specific economic actions was never part of the liberal programme. The measures were above all intended to be symbolic and normative. Prior to the Inheritance Act, for example, the norm — that is, the default position if one failed to make a will — left the entire estate to the eldest son. After the act, the norm included provision for all children. Legislators intended to influence testators by suggesting that an equitable distribution was approved, even desired, by society. Liberals believed strongly in the state's powers of moral suasion. Hence De Cosmos's anxiety, voiced in the *Daily Standard*, that by sanctioning primogeniture the state was ''a party to the distribution of an intestate's estate in such a way as to violate every notion of common justice and humanity''.[66] The reformers' aversion to restricting the rights of testators also affected married women's dower right. Certainly, compulsory dower was opposed because of the province's interest in unencumbered land titles and high rates of economic exchange. But widows' interests were also deemed less important than a married man's ability to determine freely the disposition of his estate. Even when provided for in the legislation — as in the Wives' and Children's Assurance and the Destitute Orphans acts — widows were relegated to subordinate, dependent roles in the family, on an equal plane with their children; the patriarch, his rights, and his freedoms were elevated above all other familial interests.

In restructuring inheritance, both amongst ''legitimate'' heirs and by including illegitimate descendants, liberal reformers were not only concerned with the family. They were also attempting to reorganize society on a more egalitarian basis. In the debates over inheritance law, reformers specifically compared the structure of family and society and indicated a causal relationship. The patterns of inheritance within the family, legislators asserted, had a definite impact on social class structures. Primogeniture led to the concentration of wealth in specific family lines and, ultimately, to the creation of an unequal and self-perpetuating class society. Those with wealth, monopoly, and privilege were able to retain power within their families, to the detriment of those outside the bounds of the privileged class. To reformers, who believed above all in meritocracy — that the ''natural leaders'' of society should rise from all classes — primogeniture symbolized everything that was wrong with the old order, most specifically the arbitrary assignment of power and wealth. Primogeniture and privilege prevented individuals from realizing their potential, retarding progress and national development.

66 *Daily Standard*, June 3, 1871.

The same concerns prompted Beaven's Legitimacy Act, designed to prevent the formation of a non-inheriting underclass. Full extension of the inheritance system to ''illegitimate'' descendants and ''irregular'' families was thwarted, however, and limited to the less comprehensive Destitute Orphans Act.

Conclusion

The feminist scholars cited previously offer two possible explanations for family property law reform in nineteenth-century liberal-capitalist states: an emerging liberalist concern for individual rights; and the priority placed by nation-builders on social reproduction over the patriarchal organization of the family. In the case of the Pacific colonies, they appear to be correct on both counts. Family property law reform in the 1860s and 1870s developed in reaction to capitalism, which thrived in liberalism's cherished free market economy. Since capitalism threatened both reformers' social ideals and the nation's material development, however, reformers moved to protect the family, which they believed crucial to nation-building. By insulating family property from the volatility of the capitalist marketplace, reform legislators intended to encourage family development, population growth, and social stability. In addition, reformers also valued individual rights and perceived that family property law was a means to influence the social structure in terms of class formation. Reformers desired broad, property-based democracy and an independent producing populace. In the face of expanding proletarianization, protecting family property and modifying inheritance rights appeared central to achieving these goals. Moreover, the liberal ideals of individualism and equality were not limited to the political arena, but extended to the family as well. Such ideals questioned all forms of hierarchical organization and worked toward equality amongst children and the emancipation of women.

Family property law reform was not accomplished solely by liberal reformers, however. It was the synergistic interaction of the nation-building and individual rights agendas that made reform possible. Reformers formed a minority in the colonial and provincial legislatures, and only in certain cases, when liberal ideals merged with the nation-building agenda — stressing the role of the family, and especially the wife, in social reproduction — and thus enjoyed widespread support amongst the socially conservative, did the legislature make meaningful changes to family property law.

Ironically, this synergy was also responsible for the limited nature of the individual rights achieved through reform. Many of the legislators who supported reform were concerned with national rather than individual welfare, and the reforms effected reflect this orientation. Married women's property rights were generally expanded only when such expansion was seen to tie in with their reproductive functions, and thus to be beneficial to nation-building. Modification of married women's property rights began with the emergency property rights granted to deserted wives in 1862; it

continued through the homestead exemption acts which gave wives — at the option of their husbands — power to veto the sale of family property and a dower right, both granted expressly for the purpose of protecting and raising their children. It culminated in the MWPA, under the terms of which property reserved for the family from creditors could be registered in the wife's name; in addition, abused wives now held property rights that allowed them to leave their husbands.[67]

The national agenda also placed limits on inheritance law reform. To begin with, inheritance reform was possible only after the dissolution of the Legislative Council, since reform undermined the councillors' vision of a primogeniture-based, landed aristocracy. Following the Council's dissolution, concern for the ''national morality'' prevented the extension of full inheritance rights to illegitimate children. Ultimately, even those inheritance reforms which became law were emasculated by concern for male freedom in the marketplace and liberals' *laissez-faire* principles. Liberals wanted a commercial economy with high rates of exchange. Thus they were loath to tamper with the individual's freedom of contract and failed to specify the obligations of testators. Nothing in the Inheritance or Destitute Orphans acts restricted the patriarch's freedom to dispose of property by will or during his lifetime. Likewise, concern for male freedom in the marketplace meant that a married woman's dower right operated only in cases of intestacy. Mandatory dower was rejected, and homestead dower subject to registration by the husband. Still, the power of moral suasion may have influenced testators, and this area requires further study.

The narrative and analysis presented here illustrate the interaction between political processes and the legal system, this nexus providing both a reflection and codification of social ideals. The legal statutes defining the family developed during conflict between rival interest groups pursuing political power and the right to social and legal definition. Therefore, the results of this process of legal (re)definition should not be understood as being derived from any fixed or immutable standard. Nor should ''family law'' necessarily be understood as the product of ideals intrinsic to the family. The evidence presented suggests that the different political factions in the Pacific colonies viewed the family as a means to an end, to be moulded according to their own transitory agendas. Identifying these political influences on the family illustrates that the family itself — at least as it is legally defined — does not reflect an order naturally inherent in human relations. It is a historically developed social construction, moulded by political will, and, as such, is contested terrain.

This study presents an incomplete picture of the family. It shows legislative intentions and limitations, but not effects, thus providing only a reference point for future investigations into the actual social relations of the

67 Under Lord Talfourd's Act (1839), they could also petition for custody of children under seven.

mid-Victorian family in the Pacific colonies. Numerous questions remain to be answered. How did families and individuals utilize the legal reforms examined here? Did they have alternative agendas and purposes antithetical to the intentions of legislators? How did the judiciary interpret and enforce the statutes? Historians will need to examine diverse sources to uncover the details,[68] but the results will be worth the effort, shedding new light on the inner workings of the ''private'' sphere.

68 Peter Baskerville's '' 'She Has Already Hinted at Board': Enterprising Urban Women in British Columbia, 1863–1896'', *Histoire sociale/ Social History*, vol. 26, no. 52 (November 1993), pp. 205–227, is a good example of this type of research.