

Land and Women's Legal Issues in 19th Century California

Mexican Period:

1824-28 Mission Lands were secularized.

- Nearly all California mission property and livestock became about 455 large ranchos granted by the Californio authorities. This land was mostly within about 30 miles (48 km) of the coast.
- Mexican-era land grants by law were provisional for five years in order for the terms of the law could reasonably be fulfilled.
- The boundaries of these ranchos were not established.

1837 Mexican laws are adopted recognizing the existing government of the Tribunal Superior, the Court of First Instance *Alcades*, Prefects, Justices of the Peace, and *Ayuntamientos* (town councils).

Many foreign residents became rancho grantees.

- Some were "Californios by marriage"
- Others married Californios but never became Mexican citizens, possible for these men because, **under Spanish/Mexican law, married women could independently hold title to property.**

American Period:

1848-California became a territory of the U.S. due to the Treaty of Gaudalupe Hilgado that ended the Mexican-American War.

1850, California became a state.

Property:

The **1849 California constitution** ruled the state without fundamental change for 30 years.

- Securing the freedom of other races, the legislators also provided for emancipation of married women.
- Abolished the common law penalties of loss of identity and loss of property inflicted on the women of property who married.
- To insure its perpetuity . incorporated into the constitution instead of being left to the Legislature.
- Motivated by sense of inherent justice to women; the immunity of the woman's property against spoliation or loss in the reckless whirl of mining adventures of the time, and because small percentage of the citizenry represented by a small membership in the convention (Californios) had grown up under the system of Spain and Mexico

and become accustomed to the better legal treatment of women.

- Protected women's rights not only to property acquired prior to marriage but to property acquired independently after marriage.
- Inherited from the Mexicans, this law set the standard by which all future community property law in other community property states would be evaluated. (See *McDonnell v. Senn*, New Mexico)

In **1870**, the legislature repealed the registration requirement and gave women the protection they needed to pursue their independence as capitalists. The legislature further amended the law to permit a husband and wife to determine for themselves the status of their property as joint tenants, tenants in common or community property. Although the husband continued to have the sole right to manage community property, recognition of separate property status for women opened the world of business and real estate to California women.

Between 1872 and 1917, only small changes were made in the wording of community property law. In the 20th century, as the social status, political importance and economic position of women developed, community property law evolved to give the wife ownership rights commensurate with her contributions to the marriage, family income, and industrial society. Separate property ownership gave women legal economic equality with men in California, socially and politically they continued to lag far behind.

1872 rents, issues, and profits of separate property of either spouse shall be their separate property.

1876 a married woman may not devise her half of community property; upon the death of the wife, the husband inherits all community property; a widow inherits only one-half of the community property.

Between 1880-1940, middle- and upper-class women increasingly fought against the social and political barriers to property ownership and management for all women. Individually and through their women's clubs, they asserted their rights by demanding that cities respond to their claims and protect and enhance one of the few economic assets they had.

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Sole Trader Status:

April 13, 1852, California Legislature approved a statute that proclaimed, in section 1, "Married women shall have the right to carry on and transact business under their own name, and on their own account, by complying with the regulations prescribed in this act."

- She had to publish her intention for four weeks in the newspaper, appear in court and prove that she wasn't doing it to defraud her husband's creditors, get court approval, had to swear she was going into business with her own money to support herself and her children, and her husband wouldn't be responsible for any of her debts
- She did not need to prove she had been left destitute by her husband as in other sole trader laws in other states.

Marriage and Divorce:

1850 marriages may be performed by judges, justices of the peace, and all clergy; records must be sent to the county recorder. Pre-marital agreements are allowed, but may not "alter the legal orders of descent" (deleted in 1872). "Marriages of white persons with Negroes and mulattoes" are null and void.

1852 Mental suffering is allowed as grounds for divorce.

1872 common-law marriage is recognized as legal.

1873 community property is divided "in such proportions as the court ...may deem just," for divorce on grounds of extreme cruelty; a divorced woman may claim one-half of the community property.

Civil Liberties Gained:

1870 - US, California: Married women granted control over their earnings

1874-Kate Kennedy won the right for equal pay for female school teachers.

1878, Clara Shortridge Foltz began her quest to become California's first woman lawyer.

1911-California women are granted complete suffrage

Where to find evidence of land ownership or sole trader status:

- U.S. Census forms for California from 1860 forward, in property owned columns by women's names.
- Digital newspaper archives
- Court records - similar to other courthouse research

Where to find land records:

- Surveyor-General's Office, State of California, titled "Spanish Archives." Original Spanish version and English translation. Has been microfilmed and available from the Family History Library and California State Archives
- Bureau of Land Management for Homestead Act grants (Won't be many in California due to Spanish land grants.)
- Most Mexican Land Grants under "Private Land Claims" papers, microfilmed and available from the Family History Library and California State Archives

Sources:

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