Note: Wives' Lawsuits Addressing Husband Drunkenness: Tempered by Gender Standards, 1850-1910

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ABSTRACT: This Note explores wives’ lawsuits in response to male drunkenness between 1850 and 1910. These suits were notable in part because of the existing common law rule of coverture that denied a woman’s legal existence during marriage. The Note argues that prior to the major waves of temperance reform in the twentieth century, American courts devised creative legal solutions providing relief to wives that reflected the courts’ desire to achieve a socially accepted balance between protecting women and upholding male authority within the family. It finds that the courts shaped dram shop, divorce, and dower remedies both to address the incapacity of drunken husbands and to protect male privilege to a certain extent. While scholars have studied how men enjoyed immunities from prosecution for chastisement, they have not explored the historical civil remedies available to wives for male addiction to alcohol.

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INTRODUCTION

The early American temperance movement of the mid-to-late 1800s, which started addressing the excessive use of alcohol prior to major waves of social reform, reflected judicial recognition of wives who needed legal remedies to financially sustain their families. This Note will explore the nature of early wives' lawsuits in response to male drunkenness—the legal processes, causes of action, and types of judgment handed down by the courts under state and local statutes. These women's lawsuits constituted a relatively new phenomenon in the 1800s. This Note argues that the resulting creative legal solutions in the late nineteenth and early twentieth centuries reflected the courts' desire to strike a socially approved balance between protecting women and upholding male authority.

Into the early 1900s, courts strived to protect the privacy of the family. Previously, legal scholars and historians explored the state and local courts' responses to chastisement (domestic corporal punishment), generally agreeing that even after courts repudiated a husband's right to chastise his wife, men enjoyed immunities from prosecution for domestic abuse so that courts could protect the privacy of the family.1 This Note contextualizes this consensus

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concerning the importance of familial privacy within the phenomenon of women attempting to obtain financial relief for the incapacity of their drunken husbands between 1850 and 1910. Essentially, courts acknowledged that married women depended on their husbands for their familial livelihoods and had legal rights to bring suits when their husbands failed to provide on account of drunkenness. Yet, the courts construed the suits and remedies in ways that managed to protect male privilege to a certain degree. Legal literature on women’s rights has analyzed the way the common law privacy doctrine gave immunity to men in domestic relationship suits during this era. Scholars, however, have overlooked the fact that in the context of domestic temperance cases during a similar time period, courts did permit women to make inroads in the American legal system. Courts in this gendered society recognized wives’ lawsuits and provided them with modest forms of relief through dram shop liability, divorce, and dower rights.

Up until the mid-1800s, married women were severely limited by the law in contract, property, and court procedures in terms of what suits they could bring and what relief they could receive, if any at all. The common law of coverture, carried over from Great Britain to the North American colonies, had established that a wife and her husband were one person under the law. Prominent English jurist William Blackstone noted that the legal existence of women was essentially suspended during marriage, which resulted in married women having no title in property and in an absence of women in colonial American court records. In the 1800s, a number of states began passing legislation in the form of what were called “Married Women’s Property Acts.” The acts permitted married women to own property to increase familial economic security. Furthermore, as a result of the growth of cities, increased industrialization, more widespread education, and increased leisure time, women gained the resources necessary to begin effectively mobilizing for their own benefit by the 1870s. At this time, however, a significant number of American women were still ineligible to vote, excluded from the political party
system, and constrained by the “ideology of domesticity.” Yet American wives needed some way to address the intoxication of their husbands and sons that was seriously threatening their home lives. After the Civil War, in the midst of the energy of the grassroots women’s rights movement but prior to the burgeoning of the suffragist campaign in the early 1900s, wives resorted to the courts to gain financial relief for the excesses of their drunken husbands. In attempting to protect their family lives, they asserted their legal rights in the process. By focusing on the drunken and wasteful behavior of husbands, the early temperance court cases allowed women to earn a place in the courtroom in their own right. Wives’ lawsuits in the emerging temperance context focused on dram shop liability, separation from bed and board, complete divorce, and dower claims.

These types of relief varied in scope. Dram shop statutes held alcohol sellers liable for injuries or damages to a third person resulting from such sales. Wives burdened financially by their drunken spouses could therefore bring suit against bar and saloon owners for providing alcohol to their husbands. Although historians have a picture of how family law worked in the nineteenth century, dram shop liability led to a different category of cases that were more favorable to women. The dram shop cases expanded women’s legal rights by giving them a new cause of action and allowing them to receive significant damages. Separation from bed and board and complete divorce in the temperance context involved another group of cases in which judges were sympathetic to wives’ plight. Courts granted both types of divorce but preferred separation from bed and board because it preserved the marriage relationship. Dower rights, another type of relief, traditionally allowed a widow to retain a one-third share in her husband’s estate. The temperance cases involving dower are noteworthy because courts sometimes permitted wives to obtain dower in unconventional circumstances, such as if they lived separately from their husbands or prior to a husband’s death.

The next section of this Note, Part I, contextualizes the temperance movement by noting that alcohol played a large part in destabilizing American households between 1850 and 1910. Partly due to a lack of strong federal or state rehabilitation programs, this problem spiraled out of control.

Part II discusses how, given this increased level of husband drunkenness, women sought remedies within the legal system to address their financial distress, primarily through dram shop statute actions. Courts looked favorably upon dram shop suits, since enforcing the statutes did not require breaking the

8. Id. at 44-45.
sacred marriage relationship. In line with their preference for dram shop suits, the courts only imposed on plaintiff-wives the low burden of proof of witness testimony as to husband drunkenness.

Part III then looks at two other types of wives’ suits, divorce \textit{a mensa et thoro} (separation from bed and board) and divorce \textit{a vinculo matrimonii} (complete divorce). Courts preferred to grant divorce \textit{a mensa et thoro} to wives over divorce \textit{a vinculo matrimonii}, likely because separation from bed and board left open the possibility of future reconciliation between the husband and wife.\(^{10}\) Complete divorce was perceived of as a threat to the established female and male spheres within the marriage institution.\(^{11}\) In complete divorce cases, the courts imposed a higher and stricter burden of proof on the plaintiff-wives to show habitual intemperance that developed after marriage. This burden was sometimes even placed on plaintiff-husbands who filed for divorce.\(^{12}\)

Part IV describes how courts sometimes chose to shape dower rights to accommodate women with drunken husbands. In a few states, a wife could retain her share in her husband’s estate even if they lived separately, the husband assigned her dower rights away while he was drunk, or she remarried. Although dower was usually granted to wives when their husbands died, at least one situation involving a drunken husband induced a court to practice leniency towards the plaintiff-wife. For example, in a particular case, the Supreme Court of Nebraska went against legal tradition and held that a wife’s right to dower could accrue immediately at the time of divorce, not just at the time of her husband’s death.\(^{13}\)

The prevailing political and legal attitude that women and men occupied separate spheres within the sacred institution of marriage restricted wives’ suits and courts’ decisions. However, the mere fact that women were judicially permitted to stand as plaintiffs was a revolutionary outgrowth of the early American temperance movement. Many of the cases cited in this Note are from Midwestern America; the legislative trend in favor of temperance originated predominantly in that region of the United States in the 1800s.\(^{14}\) The Note ends with the acknowledgement that the temperance movement eventually

\(^{10}\) Divorce \textit{a mensa et thoro} separated the husband and wife but did not dissolve the marriage; neither party was permitted to remarry. \textsc{John Bouvier, A Law Dictionary, Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union} (6th ed. rev. 1856), http://www.constitution.org/bouv/bouvier a.htm.

\(^{11}\) Nineteenth-century author and attorney David Stewart noted that through marriage a man and woman discharge their particular duties towards society and each other and that “[marriage is the] [u]nion of one man and one woman so long as they shall both live . . . by an obligation which, during that life-time, the parties cannot of their own volition or act dissolve, but which can be dissolved only by the authority of the State.” \textsc{David Stewart, The Law of Marriage and Divorce} 3-4 (1887).

\(^{12}\) See infra notes 129-36 and accompanying text.

\(^{13}\) \textit{Tatro v. Tatro}, 25 N.W. 571, 573 (Neb. 1885).

transformed into a constitutional issue championed by women as a statement of their rights.

Courts approached these habitual drunkenness cases between 1850 and 1910 with the view that suffering wives were simultaneously financially needy and constrained domestic actors. In the nineteenth century, state and local courts fashioned remedies for women who desperately needed money and assets to support their families. Courts took on this initiative as men shirked their civil responsibilities through habitual drunkenness. However, the women who sought relief were also limited by the courts’ conception of male privilege. Regardless, the fact that women could bring suits themselves demonstrated a societal step towards greater gender equality.

I. ALCOHOLISM, DOMESTIC INSTABILITY, AND ABSENCE OF STATE INTERVENTION

A. Male Alcoholism: Financial and Social Insecurity in the Home

The prominence of alcohol in nineteenth century America cannot be overstated. Alcohol was considered a cheap and staple food, beverage, and drug, and the number of saloons increased dramatically following the Civil War. In fact, in the 1880s and 1890s, there was about one saloon for every fifty males over fifteen years of age in the working-class areas of American cities.

By the late 1800s, American society generally acknowledged the negative effects of drunkenness on family and community relations. The Detroit Free Press reported in 1883 that the “liquor men are now more defiant and more numerous . . . . They work their criminal mills openly in the face of all, and we see the streams of vice and crime pouring forth from these sources to lay waste the community . . . .” As a result, there were attempts to pass and enforce regulatory and early prohibition laws to rein in the effects of the rampant alcohol abuse. In attorney E.A. Whitman’s 1893 account of Massachusetts temperance reform, he describes the passage of a no-license law for alcohol in

15. See generally DAVID S. REYNOLDS, WAKING GIANT: AMERICA IN THE AGE OF JACKSON (2009) (describing, in part, the amount of American liquor consumption in the 1820s). In his article Alcohol in America, W. J. Rorabaugh discusses how drinking alcohol was considered an important part of American culture, with alcohol consumed at almost every meal. After the American Revolution, the British refused to supply rum and the American government began to tax it in the 1790s. Corn became plentiful in Kentucky and Ohio, resulting in the greater production of whiskey that sold for a cheap twenty-five cents a gallon by the 1820s. Whiskey was also considered safer than the often-contaminated drinking water. W. J. Rorabaugh, Alcohol in America, 5 OAH MAG. HIST. 17, 17 (1991).

16. BORDIN, supra note 6, at 5-6.

17. Id. at 6.

Cambridge. According to Whitman, a firm of coppersmiths in Cambridge remarked that after the closing of the saloons, men "save money and have an account in the savings-bank who never did so before."19 Society and, more specifically, wives grew increasingly concerned about male drunkenness and focused on the practical reality of needing men to provide for their families.

B. The Lack of Reform-Oriented State Programs: Courts as a Resource

Prior to the Prohibition era, government-sponsored programs or initiatives to combat alcoholism were either scarce or did not gain much popularity. Private organizations and calls to action had existed since the 1700s but only gained some traction in the mid-1800s.20 A limited number of alcohol recovery programs did exist, but they lacked longevity or widespread public approval.21 The New York State Inebriate Asylum, essentially a hospital for alcoholics and the first of its kind, opened in 1864 to treat alcoholism and other drugs, but by the last decade of the nineteenth century such homes and asylums were closing.22 The New York State Inebriate Asylum itself was converted to an Asylum for the Chronic Insane in 1879.23

In the interim, there was a growing concern with the dangers of alcohol and a number of private efforts were made to address this problem. The American Association for the Cure of Inebriety was founded in 1870 and brought to light the dangers of alcohol through its Journal of Inebriety, published from 1876 to 1914.24 That same decade, mutual aid societies, like the addiction recovery Ribbon Reform Clubs, came to life, and the religious urban mission movement began to grow.25 One mutual aid society, the Keeley League, conceived of drunkenness as a medical disease and created a sanitarium for drunkards, framing the issue of alcoholism as one requiring therapy rather than legal

20. For more information on influential American physician Benjamin Rush’s push for treatment of drunkenness in the late 1700s and his call in 1810 for the establishment of sober houses designed to treat alcoholics, see Mark S. Gold and Christine Adamec, Dr. Benjamin Rush and His Views on Alcoholism, Armenian Medical Network, http://www.health.am/psy/more/dr-benjamin-rush-and-his-views-on-alcoholism/ (last visited Apr. 19, 2014). For a discussion of private mutual aid societies, like the Washington Society (which predated Alcoholics Anonymous and focused on sobriety), see generally William L. White, Pre-A.A. Alcoholic Mutual Aid Societies, 19 Alcoholism Treatment Q. 1 (2001).
21. For a brief discussion of how very few public inebriate asylums were actually established in America between 1840 and 1870, see also Jim Baumohl, Inebriate Institutions in North America, 1840-1920, 85 Brit. J. Addiction 1187, 1189 (1990).
25. Id. at 3.
punishment. By the early 1900s, private “drying out” hospitals had become another phenomenon. One of the more disturbing movements was the sterilization of alcoholics and other undesirable groups. A number of physicians in the 1880s pointed to hereditary factors to explain alcoholism and other social and medical problems, resulting in the passage of a few state laws promoting a eugenics movement.

Other than these limited programs and the emerging state temperance statutes, though, neither the federal government nor the states vigorously stepped in to reform drunken men during this period. As a result, women took to the courts for relief in the midst of these weak initiatives. As the temperance issue rose to the forefront of the social and political agenda due to the activity of these private organizations and individual reformers, states began to pass stronger prohibition-oriented laws. By the second decade of the twentieth century, the movement had coalesced into a nationwide constitutional concern. This eventually resulted in the ratification of the federal Eighteenth Amendment that implemented the prohibition on the manufacture, sale, and transportation of alcohol. Between 1850 and 1910, however, the federal government was relatively silent on temperance, and state laws were in the early stages of development. It is highly likely that wives found smaller claims in state and local courts under civil damage, divorce, and dower laws promising, in that they could assert their legal rights and receive relief in a quick and reliable manner.

C. Gendered Duties and Civil Remedies for Husband Drunkenness

The societal conception of marriage as a relationship with strictly defined and gendered duties was the basis of the courts’ approach to providing legal remedies for women with drunken husbands. Marriage was legally understood

27. Significant Events, supra note 22, at 4.
29. Id.
30. See Baumohl, supra note 21, at 1187-89 (noting that many temperance organizations were urban, private, and charitable and that the few specialized public institutions that existed were either closed or converted to other uses by 1919).
31. See National Commission on Marihuana and Drug Use, History of Alcohol Prohibition, Schaffer Library of Drug Policy, http://www.druglibrary.org/schaffer/library/studies/nc/nc2a.htm (last visited Feb. 23, 2015) (identifying Maine, Delaware, Ohio, Illinois, Rhode Island, Minnesota, Massachusetts, Connecticut, Pennsylvania, and New York as states that managed to pass prohibition laws during or after the 1840s; but noting that a number of these laws were vetoed by governors, repealed by state legislatures, or invalidated by state supreme courts).
32. Rorabaugh, supra note 15, at 18 (1991) (discussing the growth of the Anti-Saloon League after 1900, the efforts of prohibitionists in 1917 to persuade Congress to pass a temporary wartime dry law, and the subsequent ratification of the Eighteenth Amendment in 1920).
33. U.S. Const. amend. XVIII.
at the time to be a "contract, made in due form of law, by which a man and woman reciprocally engage to live with each other . . . and to discharge toward each other the duties imposed by law on the relation of husband and wife." The legal definition, cited in an 1889 handbook on the legal implications of marriage, alludes to the prevailing attitude at the time that a husband was expected to work outside the home and provide financial support for his family. Relatedly, the wife’s responsibility was to occupy the domestic sphere and tend to the husband and children. Essentially, a husband and wife were “bound together in a peculiar manner, with special obligations and rights with regard to each other.”

A husband and wife were parties to their marriage contract and were societally expected to carry out their duties. Feminist legal scholar Catherine MacKinnon asserts that the family “serves . . . as a site for women to gain access to the material benefits of a man’s income.” The “husband has a duty to support his wife, [and] that she has a duty to render services in the home.” It was an established norm by 1885 that a husband was bound to support his wife and could not charge her estate with expenses for her support. A wife could indirectly or directly—by suit—enforce his obligation. In return, a wife’s obligations included surrendering her personalty, earnings, and labor to her husband.

During the political and legal lull between the abolitionist and mainstream suffragist movements, wives chose to exercise and test the available legal options that would directly allow them to recover for the drunken excesses of their husbands. As historian Ruth Bordin argues, “Since drink was seen to present a threat to the home, both men and women perceived temperance as a woman’s issue.” Women bore the brunt of male unproductivity within the home. Consequently, one can find proof in court dockets of women airing their grievances regarding male drunkenness.

Women began to champion the temperance movement on the grounds that they desired to reform their misbehaving husbands and recover the consequently lost financial support. In the diary of attorney A.B. Richmond,
published in 1883, he laments that there are “thousands of poor wives and mothers in our land who, with enfeebled health and weak hands, are made to do the labor of the slave to support their little families, while the husbands and fathers, drunken and debauched, are spending all they can earn in the licensed rum-shop.” Hence, women began using civil liability to recapture the household income they lost or would have gained had their husbands not fallen prey to alcoholism.

These remedies were shaped by the gendered social ideology of the time. Coverture had long established that men had legal dominance over their wives, and while responsibility lay with men, courts were reluctant to fully target the culpable husbands. Dram shop statutes bypassed direct husband liability and made sellers and the landlords of the sellers pay sizable damages to wives who had suffered financially as their husbands and sons succumbed to alcoholism. Wives also brought separation from bed and board suits on the ground of a husband’s habitual drunkenness during this time period. These types of cases, however, seem to have been brought less frequently—a type of intermediate suit between seeking third-party damages and achieving an absolute divorce. In complete divorce and dower suits, courts struggled the most with balancing the need to financially compensate suffering wives with protecting male privilege within the family unit. Between 1850 and 1910, courts retained greater discretion over such suits. Judges constructed legal hurdles that they seemingly hoped would dissuade women from bringing temperance-related lawsuits or would make it less likely that wives would be able to prevail. Yet, the reality that wives were even permitted to bring these suits in court—and received relief in many instances—was a legal and social revolution in itself.

II. THIRD-PARTY LIABILITY: DRAM SHOP STATUTES AND HUSBAND MISCONDUCT

Dram shop claims were the popular means by which women brought suits in their own name in the temperance context. By 1874, a number of states had

(1981) (noting that temperance crusaders claimed that household conflict and wife-beating were caused by alcohol abuse).

43. A. B. Richmond, Intemperance and Crime: Leaves from the Diary of an Old Lawyer 354 (1883).

44. Norton, supra note 2, at 26-27, 29 (describing coverture and noting that a wife had to rely on her husband to “file suits on her behalf or to defend her from legal attack” and that “wives’ submerged legal identity largely denied them access to the fruits of their own labor and enriched their husbands.”).

45. See infra Part II, notes 51-65, and accompanying text (discussing dram shop liability).

46. See infra Part III (discussing separation from bed and board suits).

47. See infra Part III.A, notes 91-97, and accompanying text (making references to the rarity of separation from bed and board suits in comparison to complete divorce suits).

48. See infra Parts III, IV, notes 100-128, 137-150, and accompanying text.

49. See infra Parts III, IV, notes 100-128, 137-150, and accompanying text.

50. See infra Parts III, IV, notes 100-128, 137-150, and accompanying text.
enacted dram shop laws that held alcohol sellers responsible for damages due to the effects of their alcohol traffic; the first one was supposedly enacted by Wisconsin in 1850. See D. LEIGH COLVIN, PROHIBITION IN THE UNITED STATES: A HISTORY OF THE PROHIBITION PARTY AND OF THE PROHIBITION MOVEMENT 25 (1926) (stating that the first civil damage act was enacted by Wisconsin in 1850 and that similar civil damage acts were passed in a number of states); J. E. STEBBINS & T. A. H. BROWN, FIFTY YEARS’ HISTORY OF THE TEMPERANCE CAUSE 296-297 (1876) (noting in 1874 that this civil damage system had its origins in Massachusetts, and that Delaware, Illinois, and West Virginia had adopted similar standards); see also Thomas R. Hoecker, Illinois Dram Shop Act: The Effect of the 1971 Amendment, 1974 U. ILL. L.F. 466, 466 (1974) (noting that dram shop statutes, in force in eighteen states in 1974, were the products of the temperance movement of the 1800s); James F. Mosher, Dram Shop Liability and the Prevention of Alcohol Related Problems, 40 J. STUD. ON ALCOHOL 773, 773 (1979) (stating that dram shop liability was introduced in America by temperance advocates in the mid-1800s).

State newspaper reports and court cases describe how wives brought suits under these statutes to recover damages from third-party alcohol sellers—not their husbands—for pecuniary harms resulting from their husbands’ alcohol abuse. The Chicago Tribune reported in February of 1871 that the “widow of a physician [recently] recovered $1,500 damages [sic] against the liquor seller who had plied her husband with whiskey until he sank into a drunkard’s grave, leaving her, in rags and beggary, to support herself and wretched orphans.” Such a recovery was made possible by the temperance law of Ohio that was being tested out at the time, which ordered in part that every

husband, wife, child, parent, guardian, employer, or other person, who shall be injured in person, property, or means of support, by any intoxicated person, or in consequence of such intoxication . . . shall have a right of action against both the person who sold the liquor and the landlord who owns the premises on which the sale was made.

The law further provided that wives could recover both actual and exemplary damages, with damages above $200 to be sought in the circuit courts. In Illinois in 1886, wives were also permitted to proceed jointly and severally against all defendants who provided intoxicating liquors to their husbands. The Appellate Court of Illinois, Third District found in Buckworth v. Crawford that the wife had “satisfactorily shown” that her husband “acquired settled habits of intoxication, squandered and wasted his estate, neglected his business and mistreated the plaintiff, so that she was compelled to leave home on several occasions.” In this case, the Illinois Dram Shop Act

51. See D. LEIGH COLVIN, PROHIBITION IN THE UNITED STATES: A HISTORY OF THE PROHIBITION PARTY AND OF THE PROHIBITION MOVEMENT 25 (1926) (stating that the first civil damage act was enacted by Wisconsin in 1850 and that similar civil damage acts were passed in a number of states); J. E. STEBBINS & T. A. H. BROWN, FIFTY YEARS’ HISTORY OF THE TEMPERANCE CAUSE 296-297 (1876) (noting in 1874 that this civil damage system had its origins in Massachusetts, and that Delaware, Illinois, and West Virginia had adopted similar standards); see also Thomas R. Hoecker, Illinois Dram Shop Act: The Effect of the 1971 Amendment, 1974 U. ILL. L.F. 466, 466 (1974) (noting that dram shop statutes, in force in eighteen states in 1974, were the products of the temperance movement of the 1800s); James F. Mosher, Dram Shop Liability and the Prevention of Alcohol Related Problems, 40 J. STUD. ON ALCOHOL 773, 773 (1979) (stating that dram shop liability was introduced in America by temperance advocates in the mid-1800s).
53. Id.
54. Id.
56. Id.
allowed the wife to hold the two defendants who plied her husband with liquor jointly and severally liable for the $350 verdict in her favor.  

The statutory history of Illinois paints a clear picture of the general utility of dram shop statutes to wives with drunken husbands. These statutes held alcohol sellers liable for injuries or damages to a third person resulting from the sale of alcohol in certain contexts. A glance at Illinois personal injury cases reveals that the majority of suits brought by wives under the Illinois Dram Shop Act—which targeted the seller of intoxicating liquors, not the drunk husbands—went in favor of the female plaintiffs. The courts even ordered exemplary damages and imposed joint and several liability. This occurred with particular frequency when the courts found that the plaintiffs had expressly instructed the sellers not to supply their husbands with alcohol.

A. Results: Plaintiff-Wife Standing and Significant Damages

The courts' objective behind these dram shop statutes was primarily to restore a wife's means of support without directly holding husbands responsible. Ellsworth v. Cummins, though a slightly different strain of case because the drunkard was a son, illustrates this point. Mary Cummins brought suit in her name against four defendants for selling liquor to her minor son and making him a habitual drunk against her advisement; her husband was in jail and provided no income for the family. The jury determined that since the sellers had willfully violated the law relating to damages for loss of support, the court would affirm Mrs. Cummins's award of $975, considering lost income and including exemplary damages.

It is important to note that through exemplary damages, the court recognized that punishment, not mere compensation, was necessary to deter alcohol sellers from supplying the beverage to husbands to the detriment of family life. As described in the New York Daily Times in 1856, "Every dram less sold saves so much money and so much misery. And the chance of thus diminishing...the quantity of liquor drank, the number of wives and children starved and bruised, the number of men maddened and brought to ruin, ought not to be abandoned...." In Ohio, it appears that such a deterrence-oriented approach worked. The Chicago Tribune reported in 1871 that landlords became

57. Id. at 603-04.
59. Id.
60. Id.
62. Id. at 398-400.
more astute observers of their renters.\textsuperscript{64} They began offering to cancel back rent payments if saloons would stop selling liquor to women's husbands and widow's sons so that the landlords themselves could avoid being sued by injured wives.\textsuperscript{65}

\textit{B. Courts' Preference for Dram Shop Statute Claims: A Lighter Burden of Proof}

For the most part, courts in various states construed the dram shop statutes in favor of wives. Women shouldered a lesser legal burden in these cases when compared to burdens on wives in divorce suits.

A number of cases illustrate the low burden of proof wives had to meet in order to receive relief under dram shop statutes. In Nebraska in 1894, plaintiff Mary Sawyer sued for damages from saloonkeepers whom she had personally instructed not to sell intoxicating drinks and liquors to her husband.\textsuperscript{66} Her husband's health became greatly impaired and his family were reduced to very destitute circumstances; that he was forced to mortgage, and finally sell most of his stock and other necessary equipments for carrying on his work and thereby leaving himself without proper means for the support of his family and for carrying on the farming business in which he was engaged\ldots.\textsuperscript{67}

In this case, even though there was a significant question as to whether the drowning of her husband was an actual consequence of his intoxication, the court rendered a verdict for the plaintiffs for $1,500.\textsuperscript{68} In fact, the relevant Nebraska statute provided that “[i]t shall be lawful for any married woman, or any other person at her request, to institute and maintain, in her own name, a suit on any such bond for all damages sustained by herself and children on account of such [alcohol] traffic.”\textsuperscript{69} The only evidence necessary, as indicated in Section 18 of the statute, was proof that “the defendant has given or sold

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\textit{64. The Temperance Law of Ohio, supra note 52. This convention also took hold in Elgin, Illinois. In April of 1882, plaintiff Mrs. Naughten brought suit against Elgin saloonkeepers and the saloon landlords for $5,000 in damages for the death of her intoxicated husband who fell off a moving train. The newspaper noted that it “is probable a verdict for the plaintiff will be found.” The verdict does not seem to have been recorded. The Dram-Shop Law, CHI. DAILY TRIB., Apr. 30, 1882, at 9.}
\textit{65. The Temperance Law of Ohio, supra note 52.}
\textit{66. Chmelir v. Sawyer, 60 N.W. 547, 548 (Neb. 1894).}
\textit{67. Id.}
\textit{68. Id. at 548, 550-51.}
\textit{69. Id. at 549.}
\end{flushright}
intoxicating drinks to such person during the period of such disqualification' from daily activities, due to intoxication.\textsuperscript{70}

Some state courts did not require the plaintiffs in these dram shop statute cases to meet a particularly high burden of proof.\textsuperscript{71} Accordingly, wives were likely to prevail in many instances. The Chicago Tribune reported in the 1880s that no "notification need be given to a saloonkeeper as to a person's habits."\textsuperscript{72}

The consumer could be sober or a stranger at the time of purchase, but the seller may still be liable if he sells alcohol to any person who is in the habit of becoming intoxicated.\textsuperscript{73} In addition, the same act provided that a plaintiff need only provide the testimony of witnesses detailing that they had frequently seen the consumer under the influence of alcohol in order to prove the habit of intoxication.\textsuperscript{74} Similarly, a jury in the Supreme Court of Pennsylvania found that plaintiff Mary Hemp, whose husband received intoxicating beverages from H.A. Mardorf's tavern after Mrs. Hemp had given the tavern owner written notice not to sell to her husband, had met the low burden of proof of witness testimony; the court suggested that the jury find the maximum of $500 in damages.\textsuperscript{75} The court's decision was based mainly on Mrs. Hemp's own testimony that Mr. Hemp had not been a habitual drinker prior to the establishment of Mardorf's tavern.\textsuperscript{76}

Judges were generally willing to absolve the plaintiffs of an extra burden of producing large amounts of evidence in court under the dram shop statutes. For instance, Chief Justice Horton of the Kansas Supreme Court asserted in Jockers v. Borgman that even though a plaintiff-wife had assisted the defendant in obtaining a liquor license, "she did not authorize him to barter, sell, or give intoxicants to her husband or any other person in violation of the statute, nor by so acting did she consent that he might injure her in person or property, or means of support, by intoxicating her husband."\textsuperscript{77} Furthermore, the court chose to sidestep the possibility that the plaintiff had consumed alcohol with her husband or encouraged him to drink in the years prior to the commencement of her action.\textsuperscript{78} It decided instead to focus on how the intoxicated husband left the

\textsuperscript{70} Id.
\textsuperscript{71} See infra notes 72-80 and accompanying text; see also Jockers v. Borgman, 29 Kan. 109, 118 (1883) (describing the case in such a way that it is implied that a plaintiff who had brought the suit in Kansas would not have to prove that she herself had not encouraged her husband's alcoholic habits); A. Reader & A. Paxton, The Dram-Shop Act: A Correspondent's Questions Answered, CHI. TRIB., Sept. 19, 1885, at 6 (implying that a wife in Illinois would not have to prove in court that she had notified the accused saloonkeeper that her husband had alcoholic tendencies and would just need to provide witness testimony).
\textsuperscript{72} Reader & Paxton, supra note 71.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Mardorf v. Hemp, 6 A. 754, 754-755 (Pa. 1886).
\textsuperscript{76} Id.
\textsuperscript{77} Jockers v. Borgman, 29 Kan. 109, 118 (1883).
\textsuperscript{78} Id. at 116, 118.
wife and family with little food, few clothes, and no male support. The court interpreted the dram shop statute at the center of the Jockers case to provide for both $1,000 in compensatory damages and $400 in punitive damages because the wife had notified the liquor seller not to sell to her husband and the seller proceeded to do so anyway.

Generally speaking, American society in the mid-to-late 1800s remained shaped by the lingering ideology of separate spheres for men and women as well as coverture. The Social Gospel movement of the twentieth century, which examined social justice issues through a Protestant Christian lens, viewed the marital system of the 1800s as based on wives' responsibility to marry, bear children, and serve the home for the benefit of their husbands. Under this perspective emphasizing the legal dominance of men and the domestic role of women, it appears that wives had better chances of victory when proceeding not against their own husbands but against outside saloons and taverns that acquired the profits from alcohol sales. It is possible that courts honored women's suits against liquor sellers because the third parties were disrupting family life and had the capability to pay damages.

C. The Limits of Dram Shop Liability

Despite the low burden that American courts established for winning dram shop liability suits, the courts could still be unpredictable when considering dram shop statute remedies. It appears that the state courts sometimes refrained from awarding very large damages. In Chmelir v. Sawyer, the plaintiff believed she was entitled to $10,000 in damages after calculating her husband's lost earnings and the needs of her family, but she was only awarded about one-tenth of the requested amount. In addition, in certain instances, courts ruled against the legal current and found reason to blame the women for their circumstances. A wife in Illinois was denied $1,000 in damages because the court determined that although her husband had gone to bed with a purchased jug of liquor, the wife was negligent in not taking away the jug.

Non-commercial alcohol providers generally escaped liability. For example, the Supreme Court of Illinois held that the Illinois dram shop act that ordered a fine and imprisonment of those who sell or give intoxicating liquor to a habitual drunkard does not apply to someone who provides alcohol to his

79. Id.
80. Id. at 111, 121.
82. 60 N.W. 547, 548 (Neb. 1894).
83. JOSLYN, supra note 58, at 136.
friend in his private home as an act of courtesy. The Appellate Court of Illinois, Fourth District accordingly ruled in 1887 that the legislature did not intend Section 9 of its dram shop act to include persons other than those who are engaged in the traffic of intoxicating liquors or who are licensed to sell or give it away for profit. As a result, a wife whose husband had become intoxicated and died after falling off a horse did not have a right of action against her deceased husband’s friend who supplied him with liquor. Courts’ acceptance of wives’ suits and their desire to assist women generally did not extend so far as to trump established male customs and marital relations.

Still, dram shop statute remedies remained available even after the turn of the twentieth century. The Supreme Court of South Dakota ruled in 1900 that even a divorced wife could bring an action under statute against a licensed saloonkeeper to recover damages resulting from the sale of liquor to her husband during coverture. The saloonkeeper “render[ed] the husband wholly incapable of performing his legal duty to support his wife and their minor children [during marriage].” As late as 1910, the Supreme Court of Nebraska compared the negligence of a saloonkeeper to the negligence of a railroad company. It held that $4,500 in damages would not be excessive if a train had negligently killed a man, and consequently the amount is not excessive to compensate a wife for the loss to intoxication of a strong and able-bodied man capable of earning wages.

### III. Divorce as an Alternative

#### A. Incomplete Divorce: Infrequency of Separation from Bed and Board Suits Related to Drunkenness

Wives were also able to bring temperance-related suits in court through the legal process of separation from bed and board, or divorce a mensa et thoro. Separation from bed and board allowed for the separation of the husband and wife, but it did not dissolve the marriage and did not authorize remarriage. In 1860, the Court of Appeals of Maryland held that a wife whose husband was a drunk and failed to support her was entitled to a divorce a mensa et thoro. The court refrained from granting the plaintiff a complete divorce because

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84. Albrecht v. People, 78 Ill. 510, 513 (1875).
86. Id.
88. Id.
90. Id.
91. BOUVIER, supra note 9.
"public policy and public morals, alike, require that a relation so intimate and tender should not be broken for slight or trivial causes." A few cases illustrate the success of plaintiffs. In *Williams v. Goss*, the Louisiana Supreme Court granted a separation from bed and board for a wife on the grounds that her husband was habitually intemperate, mistreated her, and became incapacitated. In *De Lesdernier v. De Lesdernier*, the same court granted a wife separation from bed and board because the "defendant was an actual and confirmed inebriate" and living together was "insupportable to the wife." Similarly, the Court of Appeals of Kentucky in 1868 preferred to grant a divorce *a mensa et thoro* (separation from bed and board) over a divorce *a vinculo matrimonii* (complete divorce). The court found that within the five years prior to the wife bringing the suit, the husband was only occasionally intemperate, did not contribute to waste, and did not mistreat or neglect his wife.

Wives who did succeed in separation from bed and board suits claimed some benefits. Plaintiff-wives could receive court orders that legally allowed them to physically separate from their husbands, relieving them of their spousal duties; wives could return to their family homes for support, as well as receive custody rulings in the wives' favor. The Supreme Court of Louisiana ruled in *De Lesdernier* that separation from bed and board even carried with it the "separation of goods and effects," and gave the wife $1,700 for paraphernal funds belonging to her that the husband converted to his use.

Despite these few victories for plaintiff-wives in separation from bed and board suits, a search for more separation from bed and board suits on the basis of husband drunkenness yields few results. This legal process does not appear to have enjoyed much widespread usage throughout the United States. Overall, divorce *a mensa et thoro* cases on the grounds of drunkenness were rare between 1850 and 1910.

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93. Id. at 217.
94. 9 So. 750, 751-52 (La. 1891).
95. 14 So. 191, 192 (La. 1893).
97. Id.
98. Levering v. Levering, 16 Md. 213, 213, 218-19 (1860) (noting that the wife had left her husband and went to her father's house prior to the lawsuit, and holding that the wife would have custody and guardianship of their young daughter); *Williams*, 9 So. at 752 (ruling that the husband's behavior was insupportable to the wife and noting that the court had appropriately adjusted the spousal obligations); *St. John*, 2 Ky. Op. at 599 (observing that the husband "urged ... a reconciliation and restitution of conjugal rights and relations" after his wife left him).
B. Judicial Limits on Divorce: Procedural Constraints on Wives’ Suits

At the end of the 1800s, courts permitted women to proceed directly against their husbands by requesting the court to grant divorce on the ground of habitual drunkenness. However, wives seeking complete divorce faced the additional obstacle of having to meet a higher burden of proof than in the dram shop statute cases. State courts were hesitant to depart from the public policy expectation that marriage should be protected whenever possible. Consequently, state statutes qualified wives’ right to bring divorce suits and generally dictated that drunkenness had to be shown as habitual and insupportable to the plaintiff. In 1890, it was found that nationally,

[the causes more generally prevailing as ground for divorce are adultery, cruelty, and desertion. Next in importance are drunkenness, imprisonment, and impotence . . . . In many States non-support by the husband is ground for divorce in favor of the wife; but, as she is usually obliged to prove that she actually suffers for lack of the necessaries of life as the result of her husband’s failure to provide them, that she does not receive them from any source, by her own labor of otherwise, and that he is amply able to support her and willfully refuses to do so, this remedy is practically of little value and is seldom relied on independently of other causes.]

Regardless, by at least the mid-nineteenth century, the concept had emerged that divorce would allow women to separate from their intemperate husbands. Divorce petitions reflected in part the efforts of reformers like Elizabeth Cady Stanton to promote the passage of liberalized divorce laws that permitted wives to break away from their habitually drunk husbands. The burdens of proof that the plaintiffs had to shoulder varied across states, but an analysis of case law reveals that courts imposed greater transaction costs on wives who attempted to bring successful divorce suits on the ground of drunkenness. Essentially, wives were expected to undertake additional legal steps in their cases if they chose to challenge the institution of marriage. The national trend by 1890 was that to establish a divorce suit based on habitual drunkenness, the habitual intemperance must have continued for a definite

100. See, e.g., Levering, 16 Md. at 217 (stating that “to dissolve the marriage bond, for light or trivial causes, is against public policy.”).
102. ROBINSON, supra note 34, at 64.
103. PEGRAM, supra note 7, at 57.
104. Id.
105. See, e.g., McBee v. McBee, 29 P. 887, 889 (Or. 1892) (requiring a showing of a husband’s habitual drunkenness); Divorce From an Ex-Conductor, WASH. POST, Sept. 9, 1896, at 10 (showing that presenting additional charges and evidence helped a plaintiff-wife’s divorce case).
Wives' Lawsuits Addressing Husband Drunkenness

number of years set by state. For the most part, wives also had to show that the habit was contracted after marriage in order to bring the suit in the first place.

In states with more lax divorce laws, the general limitation was that the plaintiff had to prove that the husband frequently drank excessively. In *Walton v. Walton*, the husband was shown to be drunk two or three weeks at a time and was consequently "incapacitated from attending to his business" and "very quarrelsome and irritable with the plaintiff." The Supreme Court of Kansas in 1885 accepted the plaintiff-wife's and witnesses' testimony and held that "where a person indulges in the practice of becoming intoxicated whenever the temptation is presented, and the opportunity is afforded him, it may safely be said that he is an habitual drunkard, within the meaning of the statute relating to divorce." The plaintiff thus achieved the requested divorce. The Appellate Court of Illinois, Second District granted Elizabeth Richards a divorce against her habitually drunk husband, asserting that habitual drunkenness is a ground for divorce "because it renders the person addicted thereto unfit for the duties of the marital relation, and disqualifies such person for properly rearing and caring for the children born of the marriage."

Despite the aforementioned plaintiff victories, state courts appear to have adhered strictly to the requirement of showing habitual drunkenness in divorce cases. In contrast, the courts accepted more general testimony when dealing with dram shop statute claims. The Supreme Court of Oregon reversed a judgment for divorce for the plaintiff-wife in 1892 on the grounds that the husband did not engage in "frequent repetition of excessive indulgence as to engender a fixed habit of drunkenness." The plaintiff herself had admitted that her husband carried on his business and was sober at home. Judge Graham of the San Francisco Superior Court highlighted the burden of proof, declaring that what was determinative of habitual intemperance was not the amount of liquor consumed but the effect of the liquor: "It must be shown that the defendant was wholly incapacitated by his habitual addiction to drink." The judge then used this rationale to deny a divorce to plaintiff Mrs. Coover.

When the petitioning wife did, however, establish by her own and witnesses' testimony that her husband was consistently drunk and did not provide for her, courts would generally rule for divorce in favor of the wife. This was the case in *Page v. Page*, in which a wife was granted a divorce based

106. ROBINSON, supra note 34, at 65-66.
107. Id.
109. Id. at 112.
111. McBee v. McBec, 29 P. 887, 889 (Or. 1892).
112. Id.
114. Id.
on the fact that the husband "squandered the greater part of his earnings for drink, and had failed and refused to make suitable provision for [his wife's] support... [and] he had loathsome and filthy habits when drunk, and had been guilty of personal indignities toward her while intoxicated."\textsuperscript{115} Similarly, the \textit{Hartford Courant} reported in 1909 that Cora Eddy was granted a divorce in a Connecticut superior court on the ground of her husband's habitual intemperance, as he was continuously drunk for three years and she had to work for twelve years to support herself.\textsuperscript{116} It is important to note, however, that the wives who were bringing legitimate suits also had to manage their households in the absence of a providing husband. Thus, bringing a divorce suit on the ground of drunkenness could be a rather extended, complex, and costly affair.

Plaintiff-wives often brought additional charges or presented more evidence with their divorce suits on the basis of her husband's habitual drunkenness, perhaps believing that more evidence of husband misbehavior would lead to success in court. This additional step was not particularly necessary or helpful in dram shop statute cases. It was common by 1890 for wives desiring divorce to allege cruelty and drunkenness together.\textsuperscript{117} This trend was pervasive, although each claim by itself was supposedly sufficient to achieve a divorce.\textsuperscript{118} Courts helped protect women by addressing domestic violence in divorce cases; to prove cruelty, women may have needed to prove "violent conduct" on the part of husbands that endangered "life, limb, or health" or created a "reasonable fear of such danger," or conduct "which result[ed] in such mental torture that its natural and direct effect is to injure or endanger the physical health."\textsuperscript{119}

The following cases are illustrative of wives' tendency to bring multiple charges of drunkenness and cruelty in divorce actions. When Emma Triepel charged her husband with drunkenness, she also charged him with cruelty.\textsuperscript{120} She then elaborated that her husband beat her and went to bed drunk, and that she had to pawn all of her valuables to pay his fine for carrying concealed weapons.\textsuperscript{121} Similarly, Louise More brought a suit in 1904 against her husband for "cruelty, intemperance, desertion, and failure to provide" because he had threatened to kill her, neglected to support her, and was drunk for an entire

\textsuperscript{115} 86 P. 582, 583 (1906).
\textsuperscript{116} \textit{Says Husband Remained Drunk for Three Years, HARTFORD COURANT, Mar. 13, 1909, at 2}.
\textsuperscript{117} ROBINSON, supra note 34, at 66. \textit{See infra} notes 120, 122, 123 and accompanying text.
\textsuperscript{118} ROBINSON, supra note 34, at 66.
\textsuperscript{119} \textit{Id.} The courts' consideration of domestic abuse in divorce cases is likely related to the American courts' formal repudiation of a husband's right of chastisement—his former right to corporally punish his wife—by the 1870s. Siegel, supra note 1, at 2129.
\textsuperscript{120} \textit{Divorce From an Ex-Conductor, supra note 105, at 10}.
\textsuperscript{121} \textit{Id.}
year. Judge Gager of the Connecticut Superior Court also granted plaintiff Jennie Decker a divorce on the ground of habitual intemperance, likely because the plaintiff had charged and brought evidence of both intolerable cruelty and habitual intemperance. The wife provided strong testimony that her husband sold furniture to obtain money for alcohol, ended up in an almshouse, and failed to provide for their family.

On the whole, analysis of the available case reports indicates that failure to provide and cruelty were the more common claims in divorce cases involving drunkenness. A court in Reno, California granted a divorce to a plaintiff-wife based on her testimony that her physician husband became addicted to alcohol soon after their marriage, was unable to earn a living, and physically abused her. The Supreme Court of Louisiana ruled earlier in the 1887 case Mack v. Handy that a wife could aduce proof of gambling under her divorce action in support of the charges that her husband was habitually intemperate and squandering money.

As implied by the value of additional claims and evidence in the divorce cases, state courts refused to treat divorce lightly. They were highly reluctant to deviate from the understanding of marriage as a binding and societally instrumental institution. Since habitual drunkenness on the part of a husband was clearly a violation of his duties to his wife, courts could not turn a blind eye. However, as explained above, the courts could complicate the process. The courts raised the burden of proof enough to make it more difficult for wives to go through with the divorce suits they were now allowed to bring.

C. Divorce Suits Against Wives: Uncommon, but Also Molded by the Language of Domesticity

Divorce suits brought by husbands against their wives on the ground of drunkenness were rare. Yet, the courts were determined to preserve the sanctity of marriage even in those infrequent cases. In Shutt v. Shutt, the husband sought a divorce and alleged that his wife was often drunk and that they would engage in occasional domestic fights. The Court of Appeals of Maryland ruled against the husband, holding that it

122. Drunk Every Day in the Year, S.F. CHRON., Oct. 28, 1904, at 3.
123. Liquor Causes 3 Divorce Suits, HARTFORD COURANT, Feb. 18, 1905, at 12.
124. Id.
127. See ROBINSON, supra note 34, at 7 (stating that the “institution of marriage is the foundation-stone of the social structure” and that monogamous marriage “has been cherished by the Government and protected by its laws as the chief object of its regard”).
128. See, e.g., McBee v. McBee, 22 Or. 329, 331-33 (1892); A Man May Drink, supra note 113.
129. 71 A. 1024, 1025 (Md. 1889).
[was] not aware that it has ever been held, or even suggested, that the habit of drunkenness . . . was sufficient ground per se for a divorce [in Maryland]. It may, no doubt, in connection with other grave offenses against the marital relation, be considered as an element in the habit and conduct of the party complained . . . 130

Since the habitual drunkenness cause of action did not exist in Maryland at the time, the Court of Appeals of Maryland refused to introduce a broad interpretation of the facts and the legal standard at the expense of marriage. Even in Michigan, where habitual drunkenness was an accepted sole cause of action in divorce proceedings, the Supreme Court of Michigan ruled that where a wife had been “equally industrious [as the husband]” and “frugal in the home-keeping,” the husband could not achieve a divorce merely because his wife engaged in “occasional intoxication.” 131 In another case, Rapp v. Rapp, the Supreme Court of Michigan held that a husband with an occasionally intoxicated wife who was a “competent and neat housekeeper” and “industrious and [who] at times did washing for many people” was not entitled to a divorce on the ground of habitual drunkenness. 132 Unsurprisingly, the court constrained the habitual drunkenness cause of action when it found that the wife had faithfully fulfilled her household duties. The courts were then left with no legitimate reason to tear the marriage relation apart.

Between 1850 and 1910, preserving marital relations was such an important objective of the courts that one court, and perhaps more, even looked beyond female domestic responsibilities to justify denying a divorce to husbands. The St. Louis Court of Appeals of Missouri rejected a husband’s divorce suit on the procedural issue that habitual drunkenness must last for one year to be a statutory ground for divorce. 133 The court selectively focused on the fact that the couple had only been married for two months, despite the fact that the wife in this case was often drunk and had actually neglected her children and home. 134 In Crowley v. Crowley, however, the Court of Appeals of Kentucky granted a husband a divorce where his wife had been habitually drunk for a number of years prior to him bringing the suit. 135 It ruled that the “habits and disposition of the wife are such that the husband cannot longer live with her. For the sake of the children, the mother should reform her habits.” 136 When the court could not evade the divorce issue because the husband had

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130. Id.
134. Id.
135. 40 S.W. 380, 380 (Ky. 1897).
136. Id.
shown the wife's habitual drunkenness and the wife had shirked her domestic duties, it had few other options but to allow a divorce in favor of the husband.

IV. SHAPING DOWER TO MAINTAIN FAMILIAL STABILITY

When wives began bringing dower claims relating to husband drunkenness, some courts were also willing to fashion interpretations of women's dower rights to financially aid struggling wives, while maintaining enough control in certain instances to protect male privilege. Dower, a wife's share in her husband's estate upon his death, was considered a "mere inchoate right [prior to a husband's death] . . . [I]t has been called an expectancy . . . [and] a mere contingent right." 137 As shown by case law of the time, a wife generally could retain dower in her alcoholic husband's estate even if she lived separately from him or he assigned away her rights in his drunken incapacity. The Supreme Court of Appeals of West Virginia held in 1901 that when a husband became a habitual drunkard after marriage, the wife "ha[d] a right to leave him [earlier], and live apart from him, until he furnis[ed] her indubitable evidence of reformation . . . [I]n doing so she in no sense forfeited her dower [after he died]." 138 In an earlier case, the Supreme Court of Missouri held that the "legislature has provided but one mode whereby a married woman may relinquish her dower in the real estate of her husband, and that is 'by their joint deed, acknowledged and certified.'" 139 The court held, therefore, that a plaintiff-wife with a drunken husband whose guardian sold his land had not relinquished her dower in her husband's sold estate. 140

At least one court held that the remarriage of the wife was no obstacle to the retention of her dower right. According to a holding of the Supreme Court of Ohio in 1887, Mrs. Olive McGill, who endured a period of living with her habitually drunk husband, divorced said husband in California, and then remarried, was still entitled to her initial dower in Ohio after her first husband's death. 141 Aligning with Ohio state precedent, Judge Dickman noted that dower is permitted not only to the widow "who was the wife of the person dying at the time of his death . . . [but also to] a woman who, under the act of 1824 concerning divorce, had obtained divorce a vinculo matrimonii from her husband for his misconduct [and remarried]." 142 Mrs. McGill, who herself was remarried, had alleged and shown with proof that her ex-husband had been habitually intemperate for more than three years. 143 She thus met part of the

137. STEWART, supra note 35, at 390.
140. Id. at 478, 483.
142. Id.
143. Id. at 655.
standard for grounds for divorce under the California statute. She eventually obtained a full divorce; the court found that her first husband's cruelty and habitual intemperance were sufficient aggression to entitle her, a divorced widow, to dower in his lands.

One court was willing to adopt an even broader view of dower as an enduring right by granting dower to the wife immediately upon divorce. It chose not to limit the vesting of the right to after the drunken husband's death, holding that the court retained discretion in the matter. In Tatro v. Tatro, the Supreme Court of Nebraska held that, according to state statute, the court could award the divorced wife dower in the lands of the misbehaving husband as a form of alimony. The court decided that the right to dower was not contingent upon the death of the husband but accrued immediately upon the rendition of the divorce decree.

Like in the divorce cases, however, some courts attempted to keep control over dower remedies. For example, once granted her dower, the wife in Tatro was no longer permitted to bring any claims for additional alimony or property from her divorced drunken husband. This judicial stance reflects the reality that the courts permitted a wife to bring a suit in her own name and were practical enough to afford a suffering wife the necessary finances, yet some courts still attempted to protect male privilege. The Supreme Court of Iowa ruled for the plaintiff-wife in Jolly v. Jolly under a similar rationale. The husband became intemperate within the seven years leading up to the case, and the couple was granted a divorce. The court affirmed that the wife should be awarded alimony as a specific portion of the land in fee and that her dower in the remaining portion of her estate was to be extinguished. Thus, courts realized that the principles behind dower had to be modified in some cases to keep in line with the gender norm. They took care to rein in their judgments so as to limit the potential of these judgments to excessively expand women's property rights.

CONCLUSION: SUMMARY AND FURTHER RESEARCH

This Note has explored wives' autonomy in filing temperance-related lawsuits and the types of remedies available to these women in a strictly gendered American society between 1850 and 1910. These lawsuits were particularly notable because the common law rule of coverture in effect at the

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144. Id.
145. Id.
146. 25 N.W. 571, 572 (Neb. 1885).
147. Id.
148. Id.
149. Jolly v. Jolly, 1 Clarke 9, 9-10 (Iowa 1855).
150. Id. at 11.
time held that a woman’s legal existence was suspended during marriage. Courts, in addition, were reluctant to intervene in family matters and to blame the husbands, who were legally and societally expected to assume legal and financial responsibility for their wives. While scholars have studied the courts’ responses to husband chastisement of wives and found that men enjoyed immunities from prosecution, they have not fully looked into the forms of relief afforded to women with drunken husbands at the state and local levels during this period. As discussed earlier, male addiction to alcohol became a pressing problem for families in the United States in the 1800s. Due to domestic responsibilities and social culture, women who depended on their husbands as the family breadwinners were the ones who bore the burden of this difficulty. American courts grew willing to provide legal remedies to help support these financially troubled wives and their children.

This Note investigates the extent to which wives, subject to gendered societal duties, were able to address in court their alcoholic husbands’ wastefulness and inability to earn wages. Without comprehensive federal or state reform programs in place, wives turned to state and local courts for relief in their times of financial distress. By bringing claims under dram shop statutes in their own names, wives were able to hold third-party alcohol sellers liable for the incapacity of their drunken husbands. Courts usually granted the wives actual and exemplary damages in these suits, with certain limits.

Wives also pursued other civil remedies. The judiciary imposed a higher burden of proof in divorce a vinculo matrimonii (complete divorce) cases brought on the ground of habitual drunkenness in order to reduce wives’ chances of winning. The courts perceived such complete divorce suits as posing a threat to the marriage institution and male privilege. Divorce suits were difficult to bring, but drunkenness claims could be successfully combined with cruelty and other causes of action for divorce. Though rare, even divorce a mensa et thoro suits were less questioned by the courts because separation from bed and board did not require the courts to fully end a marriage. The wife and husband could still choose to resume their relationship. Another method of relief employed by the courts was the shaping of dower rights. Even a woman with a drunken husband who then became divorced and remarried could retrieve promised property in the drunken husband’s estate. Courts fashioned these kinds of remedies for wives in response to the growing number of suits women brought in their own names. In doing so, the courts were attempting to balance providing financial assistance with preserving gendered duties in the home.

Further research is warranted into the ties between the Married Women’s Property Acts and wives’ decisions to bring lawsuits during the early

151. See supra notes 2-4 for more information on the common law of coverture.
152. See supra note 10 for a definition of divorce a mensa et thoro.
temperance movement. Numerous states in the mid-nineteenth century passed these Acts, which granted married women the right to own property when they were previously prohibited from doing so under coverture—a few of them as early as the 1840s. \[153\] There seems to be a logical connection between the passage of the Acts and women’s attempts in court to defend their rights to financial support and to test their available legal options. \[154\] The lack of legal uniformity among the states and the absence of a federal law implementing women’s property and contractual rights invite legal historians to take a closer look at the origins and effects of the Married Women’s Property Acts. The cases explored here do not directly mention the Acts, but it cannot be ignored that their passage and the early temperance movement were occurring during relatively the same time period in the United States.

While this Note has explored how wives could seek out civil remedies between 1850 and 1910, one wonders about the kinds of injunctive relief available to wives and enforceable during the period. While temporary restraining orders and other such equitable remedies may be commonplace today, courts in the temperance context mostly seemed to focus on monetary remedies when dealing with women with drunken husbands. As discussed, dram shop liability and dower rights afforded women the money or property necessary to support their families, while divorce did invoke more of an injunctive regime. It is possible that due to coverture and the gendered spheres of responsibility, courts generally frowned upon non-monetary relief that involved intruding upon male prerogative. Thus, wives may have determined it was in their best interests to proceed otherwise. Regardless, research into what limited forms of injunctive relief existed for wives in the nineteenth century could fortify knowledge of the origins of equitable relief for domestic issues.

The early temperance effort was motivated by wives principally attempting to stabilize their households, asking courts to maneuver between gender

\[153\]. See Khan, supra note 5, at 162-69 (discussing coverture; the status of married women, who could not control or enjoy their property, in the eighteenth century; and the Married Women’s Property Acts that gave property rights to married women); Norton, supra note 2, at 26 (describing how women were prohibited under coverture from managing their own property). Professor Zorina Khan notes, however, that there were Married Women’s Property Acts with “caveats such as the requirement that husbands were irresponsible, imprisoned or incapacitated, or appointed as trustees for their wives.” Khan, supra note 5, at 168. States with such Married Women’s Property Acts included Alabama, 1849; Arkansas, 1875; Connecticut, 1849, 1853, 1875; Delaware, 1865, 1873; Florida, 1881; Georgia, 1873; Idaho (no date); Illinois, 1874; Indiana, 1853, 1857, 1861; Kentucky, 1843, 1873; Louisiana, 1866; Maine, 1821; Massachusetts, 1835; Michigan, 1846; Minnesota, 1866; Mississippi, 1839; Missouri, 1865; Nebraska, 1881; New Hampshire, 1824, 1846; North Carolina, 1868, 1872, 1873; Ohio, 1868; Oregon, 1857; Pennsylvania, 1718, 1855, 1872; Rhode Island, 1880; Tennessee, 1835, 1858; Texas, 1865; Vermont, 1862, 1881; Virginia, 1876, 1877; West Virginia, 1868; and Wisconsin, 1850, 1878. Id. at 167-68 (listing some states that passed Married Women’s Property Acts, albeit with caveats, in the mid-1800s).

barriers to provide financial relief. As the temperance movement blossomed into a larger statement on women's rights after 1900, it focused on moving the issue up to the federal level—a trajectory heavily explored by scholars. The early temperance movement slowly transformed in the twentieth century into Prohibition, an undertaking initially spearheaded by women and that eventually gained political momentum. Prohibition was aimed at inducing a nationwide change in social behavior. The initial American cases addressing temperance include the unassuming yet notable civil lawsuits brought by wives for the immediate recovery of damages, divorce, and dower—remarkable suits because plaintiff-wives were the ones seeking remedies that were admittedly still shaped to accommodate male privilege.