



Women's Rights in Early America

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[00:00:00] Jeffrey Rosen: March is Women's History Month and to celebrate, we are hosting a conversation exploring the story of women's rights in the 19th and 20th Century. Hello, friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center and welcome to *We the People*. A weekly show of constitutional debate. The National Constitution Center is a non-partisan, non-profit chartered by Congress to increase awareness and understanding of the constitution among the American people.

[00:00:30] Jeffrey Rosen: In this episode, we're joined by two authors who have enlightening new books exploring different aspects of the fight for women's rights in the 19th and 20th Century. Sarah Chatfield is assistant professor of political science at the University of Denver. She's here to discuss her new book, *In Her Own Name: The Politics of Women's Rights Before Suffrage*. Welcome Sarah to *We the People*.

[00:00:52] Sarah Chatfield: Thank you so much, Jeff. I'm so happy to be here.

[00:00:55] Jeffrey Rosen: And Nicole Evelina is here to discuss her new book, *America's Forgotten Suffragists: Virginia and Francis Minor*. Nicole, it's wonderful to welcome you to the show.

[00:01:05] Nicole Evelina: Hi, thank you for having me.

[00:01:07] Jeffrey Rosen: Nicole, in your wonderful new book, you tell the story of the Minors who brought a case to the Supreme Court where the court rejected the idea that the right to vote was one of the privileges or immunities of citizenship in 1875, and they also fought to reform, and economic rights for women. Tell us who Virginia and Francis Minor were and why *We the People* listeners should learn about something.

[00:01:32] Nicole Evelina: Virginia and Francis Minor were a husband and wife who lived in St. Louis Missouri in the 1800s and Virginia actually founded the country's first and possibly the world's first organization solely dedicated to women's suffrage, which was called the Women's Suffrage Association of Missouri. And from there, she went on with Francis to come up with a theory called the new departure that basically said that the 14th Amendment already gave women the right to vote, because it used gender-neutral language of citizens rather than men. And that was the basis of her attempting to register to vote and hundreds of other women across the country.

[00:02:12] Nicole Evelina: When she was denied the right to vote, she was, she and her husband sued the registrar, Reese Happersett, in the St Louis courts. That case made it all the, all the way to the Supreme Court and, um, that became the only time that women suffrage was ever argued before the Supreme Court in the United States. And during their time, Francis and Virginia were actually very well-known. They were in papers across the country, friends with Elizabeth Cady Stanton and Susan B. Anthony, but they've been forgotten somehow in the last hundred years. So, I felt it was important to restore them to the historical record and they're really fascinating people.

[00:02:51] Jeffrey Rosen: They really are and your book does such a wonderful job in bringing them to life. Sarah Chatfield, in your wonderful new book, you discuss how it was that women's property rights, uh, governed by laws called curvatures were reformed in the 19th Century a period, uh, when women didn't have the right to vote. Tell us why that was and how this remarkable story evolved.

[00:03:19] Sarah Chatfield: So this was definitely the puzzle that I kind of started out with, with this project. We have this pretty massive transformations in women's economic rights starting in 1935 and continuing all the way through the ratification of the 19th Amendment and beyond where at the start of this period, um, after women got married, they really had no independent economic or civic identity, um, according to, um, the common law, which was in operation in most states at that time.

[00:03:52] Sarah Chatfield: Women after marriage became one person with their husband [laughs] and that one identity was governed by the man. They didn't have the ability to own property or appear in court under their own name, a whole host of, um, legal and economic rights that they didn't have and over this period, uh, both state legislatures and state constitutional conventions granted women this right. So that's really my question of how in the world [laughs] did this happen when women couldn't pressure them at the ballot box?

[00:04:21] Sarah Chatfield: And, part of the answer is that this solution of granting married women's property rights, um, became seen as sort of this, uh, way to deal with many, many social problems [laughs] that men were dealing with at the time. So for example, in the pre-Civil War South, um, it was a way to provide economic stability to slave holding families. Um, in the West, it was a way to attract women to come out and be part of the settler project. Um, it was a way to provide a social safety net to struggling families, um, and I can get into any of those explanations if you like but it starts out as sort of, okay, this could be a way to solve XYZ problem that we have, and then courts start interpreting the laws and things kind of cycle through state level institutions.

[00:05:10] Sarah Chatfield: And the national government was not involved in this at all during this time period both marriage law and property law were seen as pretty much exclusively [laughs] things that states should deal with. So although they've got there in different ways, every single state adopted some version of these reforms in the 1800s and early 1900s.

[00:05:32] Jeffrey Rosen: It's such a fascinating reminder of the fact that all sorts of people benefited from the reform of these laws including men.

[00:05:40] Sarah Chatfield: Yes.

[00:05:40] Jeffrey Rosen: Nicole, you vividly paint the story of, of the Minors marriage, which was very supportive and you begin by saying that Francis created a trust for Virginia that allowed her to be financially independent. How, how does the, the Minors early financial arrangements relate to the story of property rights of married women more broadly?

[00:06:03] Nicole Evelina: It, I think it relates very strongly. They had what was called at the time a companion at marriage, which we would call kind of a love match nowadays. They were, they were very much interested in each other's intellect and each other's interests and, and as you said, very supportive of each other. And Francis was a lawyer, so he obviously had access and knowledge that the average person didn't and he used that to, as you said set up a series of trusts that basically he took on the role of a woman as far as property rights goes and gave the trust and through the trust Virginia, the role, um, that a man would typically take. And through that, she was able to buy, sell, lease property at will.

[00:06:47] Nicole Evelina: She was able to say in her will if she wanted to that the property would go to someone other than him or their heirs, which was almost unheard of at that time. And in, at least, S. Louis, if not in the state, she sold property to another woman and bought property from another woman, which again was almost unheard of. And he was doing that so that she had the most rights possible within their marriage because he hated the system of coverture for just as much as Virginia did. Both of them fought against it throughout their entire lives. And that was really a first step for them to model within their marriage the types of rights that they were fighting for, for all women across the country.

[00:07:28] Nicole Evelina: And being supportive and giving Virginia those rights gave her not only personal courage but, you know, a legal ability to do the things that she went on to do later in the suffrage movement.

[00:07:41] Jeffrey Rosen: Sarah, you identify five categories that you see most important to economic rights reform. I'll just put them on the table and ask you to explain them and then you'll help our listeners understand what, what coverture laws were and how strong the disabilities, uh, uh, for women were, but they include a married woman's ability to hold property separate, uh, and free from her husband's debts, to control and manage the property, to hold wages or earnings a separate property, to write a will, to engage in business. Tell us more about that and how coverture, uh, thwarted all of those efforts.

[00:08:13] Sarah Chatfield: Yeah. Prior to this period, generally married women didn't have any of those rights and as Nicole mentions there could be this very individual arrangements, um, most commonly that happened because of woman's father wanted to leave her property, although actually [laughs] wonderful to hear an example of a husband who was wanting to empower his wife. But ultimately, uh, because of the legal situation it had to be on an individual level and initiated by a, a man. Typically, a male relative of some sort.

[00:08:44] Sarah Chatfield: So, to kind of go through these different categories of how things change, typically the earliest laws to be passed were what I call debt free estate laws and

basically what these did was allow a married woman to hold property, to own property that she brought into the marriage, typically through a gift or a bequest. And that property, she couldn't actually do anything with it legally, [laughs] but she could own it and it wouldn't be liable for her husband's debts. And so, these laws in a lot of ways functioned as debtor protection for families.

[00:09:19] Sarah Chatfield: Really what they were doing was saying even if a husband fell into horrible financial, um, straights, there would be a portion of family property that his creditors couldn't seize that portion, uh, brought to the marriage by the wife. And then, over time you start to see laws passed that give women more ability to do things with that property. So control and management laws, as you'd expect [laughs] those allow women to actually sell, mortgage, do all the things we would typically expect that people can in fact do. Then, earnings laws allow them to hold their earnings separately.

[00:09:57] Sarah Chatfield: And the reason that comes in a different law there's a few reasons. One is that wages, um, at this time were really seen as a different type of property than let's say land. It was seen as sort of having a different character. Over time that starting to change and that's as you start to get these new laws, but it has to be enumerated separately in legislation. And the other piece of that, um, is that at this time, part of coverture law is this idea of marital service, which is that, um, wives as part of the marriage relationship, oh, all of their labor, unpaid, to their husband for household duties.

[00:10:39] Sarah Chatfield: So things like doing the housework, raising the children, making meals, um, not just their properties and their own but their actions, their behavior, their labor is not their own and so earnings acts are what start to change that and say actually women could work outside the home and could opt to do so on a separate account and then own those wages as their own property. So that's a piece of it. And then, connected to that is the right to run a business, to sign contracts, to do all of those legal things, um, that one would need to do to engage in independent business. Things like, uh, being able to appear in court under your own name without your husband being part of that lawsuit.

[00:11:22] Sarah Chatfield: And then, finally the fifth category that I look, um, at is testamentary rights, which is the right to will property to another person, which as Nicole mentioned, um, that was a separate economic right not just to own property but to decide what would happen to it after you passed away.

[00:11:40] Jeffrey Rosen: Nicole, Sarah talks about the relationship between married woman's property reform and slavery in the South, and how did the Minors become abolitionists and, and what did they see as the relationship between slavery and women's suffrage?

[00:11:54] Nicole Evelina: We don't know exactly how the Minors became abolitionists or why. Um, we know that they were raised in slave holding families. Their family bibles exist that have the list of the names of slaves in the back of them. So, we know that they were raised in that type of culture. Um, they did after they left Virginia lived for three years in Mississippi with Francis's brother, Dabney, uh, his older brother. So, there could possibly have been something, you know, that they witnessed there that changed their minds or perhaps they already had that mindset.

[00:12:26] Nicole Evelina: The record doesn't tell us unfortunately, but we do know that there are no records of them ever, um, holding slaves as property of purchasing or anything like that. There are mentions of a maid that Virginia had in her employee who she left a very generous, um, request to in her will. So, you know, we, we know that they did have other servants. As far as abolition, they were very outspoken. They were part of, uh, several abolition groups and they just didn't care who knew. We were pretty sure that they followed the *Dred Scott* case, which happened in St Louis. Oddly enough in the exact same room that their court case would take place in the first level of it.

[00:13:10] Nicole Evelina: And they felt like everyone should have the right to vote. Francis got in a heck of a lot of trouble for, um, advocating for universal women's suffrage, which meant not only the white women but black women as well. And so, they believed that everyone should have the right to vote. And during their court case they also compared the state of women under coverture to the state of, um, slaves. Because they were basically put under the same legal status. Um, a lot of people said that that was a bit of a stretch. You know, that Virginia by no means was under the same type of distress that a slave would be, but I mean legally speaking, they, they weren't wrong.

[00:13:52] Jeffrey Rosen: Sarah, you describe how in, in some cases reform of married women's property acts was in the interests of enslaving men. Tell us about the relationship between women's rights reform and slavery.

[00:14:06] Sarah Chatfield: Yeah. So before the Civil War, five slave states explicitly identified enslaved people in married women's property laws enumerating them as a type of property that a wife might be able to own. And they often treated them differently than other sorts of property, in particular, really specifying that oversight of enslaved people would be done by the husband and that if, uh, they were to work off the plantation, any of their wages would go to the husband, not the wife.

[00:14:39] Sarah Chatfield: So, a lot of what this is doing is providing an ongoing revenue stream for families that own enslaved people and may be in, um, economic distress. Um, so these laws are typically those type of debt relief laws that I was talking about earlier. And so, what they're doing is saying, uh, enslaved people that a white married woman brings into a marriage cannot be seized for her husband's debts, yet any problem profits from those people's labor is going to the husband. So, it's providing ongoing, um, money to prop up, um, families that own enslaved people.

[00:15:17] Sarah Chatfield: And, um, one of the interesting things is that, uh, white women during this period were especially likely to own enslaved people, to receive them as gifts, uh, parents, slave owning parents were especially likely to think this was an appropriate gift for celebrations like birth, a birthday, um, marriage. From a lot of different state scholars have gathered evidence to show, um, that they really commonly did own, um, enslaved people and that these laws then were, uh, kind of propping up the slave economy, um, in a lot of ways.

[00:15:53] Jeffrey Rosen: Nicole, uh, tell us about the birth of the women's suffrage movement after the Civil War the 13th, 14th, and 15th Amendments are ratified and, uh, Virginia Minor

hears a speech by a Missouri Senator, uh, Senator Brown in 1866 where he says that universal suffrage is a matter of fundamental principle and intrinsically a natural right. Tell us about how that speech inspired her and how that launched her crusade for women's suffrage.

[00:16:23] Nicole Evelina: Yeah. When she read that speech in the newspaper and was very, very inspired because she felt like they had an ally and not only an ally that was a man but a very powerful man. So she actually wrote to him and thanked him for having holding those views and being willing to speak them publicly. And we don't know, you know, what kind of response she got back, uh, from him but that inspired her to write the first petition in the state of Missouri, um, asking for women to get the right to vote and, and several of her friends and family members in St. Louis signed it and it was sent on to him. Of course, nothing came of it and a lot of the, the subsequent ones. But that was kind of a rallying point for those women who after the Civil War they were used to doing so much work, they were suddenly thrust back into this life of quiet domesticity and didn't really know what to do with themselves.

[00:17:19] Nicole Evelina: Um, Virginia was doubly unfortunate because she was grieving the loss of her 14-year-old son, that was her only child. So she lost that part of her identity as well. And so, in 1867 she and a group of other women formed the, the Missouri Woman Suffrage Association in St. Louis and came together and said, "What can we do? You know, we really like this first petition that we sent. It didn't work. How can we gather more signatures?" And the, as, as they did their work, the organization grew, eventually, Susan B. Anthony and Elizabeth Cady Stanton found out about it and they became part of the National Women's Suffrage Association, which was formed two years later.

[00:18:02] Nicole Evelina: Interesting that we remember that one and not Virginia's, which was the first one, um, and later on they split from that organization for a variety of reasons, but having that national organization behind them gave them even more, uh, power, more ability to do things, more visibility, uh, than they had just on the state level. So that union was, was very fruitful for the women's suffrage movement in the Midwest. Uh, the other big state in the Midwest was Kansas. We tend to think of the suffrage movement as a territorial and eastern thing, but it, it took place all over the country.

[00:18:40] Jeffrey Rosen: Sarah, tell us about the movement for reform of women economic rights in the Midwest around this time, which was different as you mentioned from that in the South and give us a sense of the complex relationship between reform in the state legislatures, uh, in constitutional conventions and in the courts, uh, around this time.

[00:19:03] Sarah Chatfield: Yeah. So outside of the pre-Civil War South, obviously, the issue of slavery is not the one driving what's going on here. [laughs] And you do, um, definitely get more explicit activism from feminist organizations around this issue. One of the things that a lot of those groups are actually fighting for is an idea of joint property rights where because women's labor in the home is uncompensated, but still contributing to the good of the family, they should have an equal share [laughs] of all property in the marriage, not just property that they themselves personally brought into it. Um, and you'll be unsurprised to learn that no

legislature or court in the country ever bought into that theory. But that's a lot of what, um, many women's organizations were actually fighting for.

[00:19:49] Sarah Chatfield: So we see different motivations, um, outside of the pre-Civil War South. We still see a lot of this sort of debt relief motivation, but one of the big things on the frontier is also trying to encourage women to move West and become part of settlement of the West, because, um, you have these huge gender imbalances among white men and white women in Southern states. Um, in some cases, it was as extreme as only 8% white women, um, in terms of gender balance in the territories. So this was very extreme and, uh, because this is a settler project as opposed to just trying to extract resources. It's really seen as women are crucial to that happening.

[00:20:37] Sarah Chatfield: You can't set up a society that's 8% [laughs]. You need women to be there, um, to sort of make this work long term as well as women are seen as this kind of civilizing force, right? Um, that they're going to bring things like temperance [laughs] and feminine values, um, and this different, um, very gendered perspective of what they're going to kind of bring to the frontier. Um, and so as part of that, you see these arguments. For example, um, a great one I love from, uh, the California Constitutional Convention. Uh, one of the delegates basically saying, "There's nothing we could do to get ourselves wives that would be better than, um, enacting a married women's property protection as part of our state constitution."

[00:21:23] Sarah Chatfield: So really seeing this as a way to encourage wealthy single women to [laughs] move West and become part of the settler project, uh, definitely different things going on depending what time period and what part of the country you're looking at.

[00:21:39] Jeffrey Rosen: Nicole, tell us about the new departure and the fight for suffrage. This is a period where, uh, Virginia and Francis Minor decide that the right to vote is one of the privileges or immunities of citizenship protected by the newly passed 14th Amendment and Virginia gives a series of important speeches including one to the state convention of publishers and editors in St. Louis in 1869 asking them to use their influence to support the right of suffrage. Tell us about this period.

[00:22:09] Nicole Evelina: Yeah. 1869 is when Virginia and Francis first made their theory of the new departure public. Uh, they did it at the National Women's Suffrage Association Convention here in St. Louis and because Virginia was considered a host, uh, because it was in her hometown, she was given a platform that, you know, on a state level a lot of times really wasn't normal and was able to say to everyone from across the country that, "Hey, we already have the right to vote."

[00:22:39] Nicole Evelina: And, you know, they explained why with the language. And in addition to that, they urged women to go out and exercise this right. So over the next four years or so, especially in the presidential election of 1872, which just as a historical note, we had our first woman run for president that year, Victoria Woodhull. Uh, she, she obviously didn't win, [laughs] but, uh, women had the chance to vote for another, or attempt to vote for another woman on top of, you know, exercising a right that not everyone believed they actually had. So it was historic in many, many ways.

[00:23:13] Nicole Evelina: The new departure was very empowering because it brought women together and it gave them something that they could do that wouldn't necessarily get them in legal trouble. Now Susan B. Anthony did get in legal trouble on voting day, November 1872 for attempting to vote, because there was an action there versus, uh, which made it criminal versus Virginia. She was just turned away from the, the registrar's office when she went to try to register, which made theirs a civil case.

[00:23:42] Nicole Evelina: The whole idea of the 14th Amendment as the case passed through the courts really brought up an issue of states' rights versus, um, national law. And in that time, Sarah alluded to this earlier, the, the states' rights were much, much more powerful. You know, we nowadays tend to think of voting as something that is a right given to us on our 18th birthday, um, from the national government, but back then that's, that's not how it was viewed. Um, a lot of states were afraid that the national government would basically do something really monstrous.

[00:24:16] Nicole Evelina: You know, basically start another civil war, that type of thing. So they were afraid of giving the national government too much power and what Virginia and Francis were doing was saying that the national government was giving women this right, instead of the state government. They argued that the constitution superseded the, uh, state constitution of Missouri, which upset a lot of people. And they, they did everything that they could to convince the Supreme Court justices in the end that that their theory was correct, even though they were basically saying things that nobody else had ever said.

[00:24:55] Nicole Evelina: They were going against what a lot of people believed was the founders original intent. They believed that the constitution was a living document that needed to be reinterpreted over time rather than set in stone, which is an argument we're still having today, which is, is very interesting and very relevant. And, you know, in the end, the court found against them, um, and basically said that, you know, they nothing that they said had a legal basis, but even though that happened, it brought a lot of publicity to the suffrage movement and got people thinking about the law in a completely different way and, and led to a lot of changes that we've seen obviously since that case passed and it's still affecting, um, our legal system today.

[00:25:38] Jeffrey Rosen: Uh, very much so. Uh, Sarah, we're talking about state constitutional reform-

[00:25:45] Sarah Chatfield: Mm-hmm.

[00:25:46] Jeffrey Rosen: ... uh, tell us about the state-by-state reforms of women economics rights, and in particular, the role of state conventions and state constitutions.

[00:25:56] Sarah Chatfield: Yeah. Um, so one of the interesting things here is that although every state passes a statute and typically many statutes [laughs] on the topic of married women's economic rights, um, only some states choose to elevate this to a constitutional guarantee in their state constitutions and largely the place that that's happening is in the South, um, in their reconstruction and post-reconstruction constitutions, um, or in the West, in statehood constitutions, um, and that's because they obviously have to, they're forced to have conventions

and as they're having these discussions about fundamentally how do we want to organize our societies, um, but not all states choose to include some type of guarantee for married women's economic rights in those fundamental documents.

[00:26:49] Sarah Chatfield: And one of the things I think is interesting here is that we really see different types of rights included in state constitutions as compared to the US Constitution. So people will often talk about the US Constitution as being one that is primarily about negative rights. It's about telling us things that the government can't do to us [laughs] and a scholar Emily Zackin has a really interesting book looking at how state constitutions, in general, are much more full of positive rights. Telling us things that the state needs to do for us, um, that it must proactively do.

[00:27:27] Sarah Chatfield: Um, and in this book, I really take a look at the type of rights that married women are guaranteed in state constitutions and I'd say they almost fall in between, um, but they have more of a positive rights aspect to them. So rather than saying just the government can't seize your property without due process of law, um, they're saying government needs to do things to help married women have, um, these rights. Um, so you'll see, um, directives in some state constitutions that say, uh, state governments must pass legislation protecting married women's property rights. Um, in some states you'll also see requirements that states set up, uh, registration lists where married women can, um, in a public, um, office list out, um, a registry of all of their property that then is going to be protected, um, from seizure by state courts.

[00:28:26] Sarah Chatfield: Um, so you really have a more proactive role, um, that these Constitutions are envisioning, um, for states to play, not just a prohibition on states coming into, um, the marriage relationship. And that was quite controversial because there was a concern that this should be maybe a private relationship right that the state shouldn't be intervening into marriages, um, across a whole host of issues. [laughs] Um, and you're starting to really see that break down across this period and of course continuing into the 20th Century that, yes, the state can get involved concerning things like property relationships within marriage but also violence within marriage, um, and other issues, um, within marriages so that's not just a bubble that the state can't enter.

[00:29:11] Jeffrey Rosen: Uh, Nicole, let's now talk about the Minor and the Happersett case from 1874. You mentioned that the court held that the idea that the right to vote was one of the privileges or immunities of citizenship could not be justified as a matter of original understanding, because, uh, the right to vote was a political right and the 14th Amendment was originally understood to protect only civil rights.

[00:29:36] Jeffrey Rosen: And in fact, the author of the 14th Amendment as, you know, John Bingham said as much when he rejected the claim that, uh, women's suffrage should be covered by the 14th Amendment and he and others noted that, uh, Section 2 of the 14th Amendment itself anticipates that Southern states might deny the right to vote, uh, but that they would suffer a penalty in having a apportionment in Congress proportionately reduced. Is it, is it fair to say that the court was accurate as a matter of original understanding and that, and that Virginia Minor

was making an argument as you said involving a living Constitution? And tell us more about the relevance of, of that debate.

[00:30:17] Nicole Evelina: You know, it's hard to say for sure if the court was accurate or if the Minors were, were right, because we don't know the true intent of the founding fathers. Um, those who believe in that the constitution should be interpreted as generally believed that it was meant to be by the founding fathers back, way back when and not change pretty much thought that, you know, if they, if they intended women to vote, they would have flat out said women in the, in the document somewhere and, and nowhere does that word actually appear.

[00:30:53] Nicole Evelina: Um, they do talk about citizens and citizenship in the Constitution, but that's not actually defined in the Constitution. That was part of the, all of the theories surrounding this case is, you know, we're women citizens of the United States and there, there's a lot of, of political background to that, that we don't have time to go into today, but one of the positive things that came out of the Minor versus Happersett set case is that the judge very clearly or judges, very clearly said, "That, yes, women are citizens of the United States. It's just that suffrage is not one of the rights that are given to them as citizens."

[00:31:30] Nicole Evelina: The idea of living constitutionalism that the constitution should be reinterpreted was considered very radical at the time, um, and is still now. That as times change, the interpretation of the Constitution should change as well, uh, because, you know, culture changes, uh, people's beliefs and understandings of certain things change and the Minors were basically saying that the world is, was so different here after the Civil War, you know, the amendments have since come through that have given former slaves, male slaves, the right to vote. So why can't other amendments come through to give women the right to vote?

[00:32:16] Nicole Evelina: And they used the founding father's own words, some of them, um, to justify this, you know, even though those words didn't end up in the Constitution and it becomes a question of intent versus what is actually in the final documents. And that's an argument that I don't know we're ever, that we're ever going to be able to settle regardless of the issue that we're talking about, because we don't... The founding fathers didn't, you know, lay out anywhere. This is exactly what we mean by this and why. And I think they did that intentionally because, you know, things do change, the needs of the country changes. But yet, there's the question of they said what they said for a reason. So you've got two sides of that argument and it comes down to personal opinion really as to which is the correct way of looking at it.

[00:33:07] Jeffrey Rosen: Sarah, um, tell us about the role of the courts in the reform of-

[00:33:11] Sarah Chatfield: Mm-hmm.

[00:33:12] Jeffrey Rosen: ... women's, uh, property rights and whether there was any connection between the court cases involving suffrage and those involving economic rights.

[00:33:19] Sarah Chatfield: Yeah. Kind of as, as Nicole is saying you're interpreting a shorter document, right? And that's true of interpreting the Constitution at a very high level, [laughs] but of course, it's also true when courts are interpreting statutes. These statutes at most might be a

page and a half, two pages, sometimes they're really only a paragraph, um, but they obviously don't cover every single possible thing that could arise, right?

[00:33:43] Sarah Chatfield: And so, courts are now in the position of taking these laws that are trying to do a whole bunch of different things, accomplish a whole bunch of different goals and apply them to specific situations. And the majority of, um, the state court cases that we see here don't deal with husbands and wives fighting against each other. They deal with husband and wife as sort of a unit fighting against a creditor or someone else that they're trying to have, um, maybe an employer, someone who's injured the wife, but some third party. Um, there are some, of course, divorce cases or separation cases but the majority, um, our husband and wife versus a third party.

[00:34:22] Sarah Chatfield: And as courts start to interpret these laws, what they find is that the way that state legislators have tried, kind of tried to balance all of these different goals of giving women some more rights, um, but also still trying to protect them and maybe not trying to give them too many rights, [laughs] um, this creates this really confusing legal atmosphere. One of the cases that I, um, find incredibly interesting is from Mississippi [inaudible 00:34:51] Scruggs from 1874. This dealt with a woman taking out a loan under a married woman property right in Mississippi that at the time allowed women to mortgage their property for some reasons that the state legislature thought were appropriate.

[00:35:08] Sarah Chatfield: So, for things like educating her children, but did not allow them to take out loans and mortgage property for, um, purposes like land speculation, things that the state legislature thought were too risky, women would be taken advantage of, we don't want them getting too much into this sort of inappropriate activities. [laughs] And so, in this case, basically, the court was, is unsympathetic to a creditor [laughs] who literally what they've done is they've drawn up a loan document with this married woman that expressly laid out the way she would use the funds.

[00:35:43] Sarah Chatfield: She said it would be for purchasing family supplies and necessities and clothing for herself and her children, and that's not enough for the court. [laughs] They say, "The creditor has to actually prove she did spend the money on those things." It's not enough that she signed a document saying she would, [laughs] they have to prove that's actually what the money went to in order to recover. So over time, um, in many states, um, you see similar patterns and this leads to increasingly, um, expansive laws because state legislatures and state constitutional conventions are seeing this is just a legal nightmare. [laughs] The level of documentation required of creditors and debtors, it, it's just too much. It's, um, creating these legal issues that legislatures really didn't necessarily foresee, but that develop as courts try to interpret this sort of piecemeal complex laws.

[00:36:39] Sarah Chatfield: In South Carolina, at their post-reconstruction convention, this becomes a major issue. You see, um, convention delegates saying things like, "This is the worst legal problem in our, our state. This has led just to a nightmare and we need to use the convention to reform this." Um, so that's one of the things that's happening in courts, um, is trying to interpret these laws really ending up with a very confused reality in practice. And then,

legislatures and conventions responding and saying, "Well, maybe we could go all the way back to coverture."

[00:37:12] Sarah Chatfield: Doesn't seem like that's the way the country's going, [laughs] that's not the direction we're going so we're going to have to liberalize things further so that our economy can actually function.

[00:37:22] Jeffrey Rosen: Nicole, after their defeat in the Supreme Court case, the Minors continued to fight and Virginia, in particular, organized tax boycotts on the grounds the taxation without representation was tyranny and also set out with Susan B. Anthony to Nebraska to stump for women suffrage. Tell us about what she did after the Supreme Court case.

[00:37:43] Nicole Evelina: Yeah. a lot of people if they have heard of the Minors, don't hear of anything of their lives after that court case. It's, it's like things just came to a halt. And that couldn't be further from the truth. Uh, Virginia, going all the way back before the, the court case firmly believed that she shouldn't have to pay, and not only her, all, all women, shouldn't have to pay their property taxes because they were not allowed to vote for their representatives so it was taxation without representation.

[00:38:11] Nicole Evelina: And she sent some scathing letters, um, in the paper to, uh, the different auditors and, uh, financial controllers in the state of Missouri basically saying, "Hey, we have X number of women in St. Louis alone that hold property and that equates to millions of dollars that we can withhold from you, you know, in order to make a statement, you know, about the, the right to vote and that, that women in order to be treated equally to men, uh, need, they need to have that right."

[00:38:46] Nicole Evelina: And so, she and many, many other people across the country, especially women, they, they joined in and chose to not pay their taxes, which for a lot of people had very serious, uh, consequences. Women had properties seized. They had farm animals seized, household implements, some ended up in jail, some ended up sentenced to hard labor just depending on their location and, you know, the, the personalities of the, the authorities that they were involved with.

[00:39:18] Nicole Evelina: Um, we don't have any record of anything like that ever happening to Virginia, but there are a lot of documents that are still being processed, uh, by our officials here in St. Louis. So it's possible that something could have that we just don't know about. She was definitely not the first person to do a form of tax civil disobedience. It went back before her, but she was one who was able to bring it into the suffrage movement, because of her position within the, the higher ranks of the National Women's Suffrage Association, and of course in the state of Missouri, she and Susan B. Anthony did travel to the state of Nebraska to stump for suffrage.

[00:40:00] Nicole Evelina: It, it, it's one of those things that's in history that's so crazy, you, you would really think it was made up. They survived a tornado while they were there. They spoke at what was called at the time a Woman's Lunatic Asylum and the inmates said, "Yeah. We, you know, we believe that women should have the right to vote." You know, and, and she showed,

she was able to witness that not all of those institutions were horrible like, you know, the ones that Nellie Bly went to and, you know, kind of provide a counterpoint.

[00:40:31] Nicole Evelina: She also spoke at school houses where there was barely enough light to see the, the audience that she spoke to. And in general, she really felt like they were getting their point across because they had this really neat custom at the end of every speaking engagement, they would hold a mock vote amongst the people who were there of, if women should be given the right to vote. And it almost, it was almost unanimous, uh, at most of the locations that women were like, "Yeah. We totally should be."

[00:41:00] Nicole Evelina: So that was their way of publicly demonstrating against the women who were in the anti-suffrage movement and, you know, just said, "You know, women don't need it, we don't want it." That was a very, very common argument that, that women just they had no need for the right to vote. They had other things to do. And they were basically, you know, using a real life case to say, "No. You're wrong."

[00:41:21] Jeffrey Rosen: Sarah, between the Happersett case in 1874, and then 1920. A, a, a range of reforms of economic rights spread across the states. You describe the influence of reforms in one state on another, and by 1920, when the 19th Amendment was passed you say much of the economic reform had substantially taken place, although it wasn't complete. Were the voting reforms and the economic reforms taking place around the same time? And describe this final push toward the reform of economic rights leading up to 1920.

[00:42:00] Sarah Chatfield: Yeah. So, uh, of course, some states did, um, give women the right to vote prior to 1920 and a national right to vote. Um, and sometimes women have the right to vote before legislatures were passing these laws at the state level, but it was unusual. By and large economic rights were coming first, and then voting rights were coming second in most states. Of course, we have a lot of states. [laughs] There's variation there. But by and large that's what, what you're seeing here.

[00:42:29] Sarah Chatfield: And I would say, um, in terms of thinking about 1920 as an inflection point, um, you do still see states passing this sort of basic economic rights, property rights, laws after 1920, although the context looks different. Florida is a case I'm really interested in. In that regard, they don't pass the more expansive version of married women's property laws until the 1940s, but it's then a really different context than what we saw in earlier years. A woman wrote the law, [laughs] a woman introduced it into the state legislature. Um, when it was challenged in court, a woman was the one who successfully defended it before the Florida Supreme Court, um, 53 state level women's organizations advocated for the passage of the law.

[00:43:15] Sarah Chatfield: Um, so while women had been involved prior to 1920, I think it's clear they have a more active role and voice after 1920 when reforms are happening then. And I would really say the story continues in a lot of ways up through the '70s when we see the fight against gender discrimination and the granting of credit, especially as relating to married women there are what I think now [laughs] looking back on are these pretty shocking cases of loan officers, for example, demanding that, um, a married woman sign a document saying if she got

pregnant during the term of the loan, she would get an abortion, um, so that her income wouldn't be affected [laughs] by having a baby.

[00:43:59] Sarah Chatfield: If you're interested in this, I really recommend, um, Chloe Thurston has a great book *At the Boundaries of Home Ownership*, and there's a chapter in there that goes into all the details on the amazing sources she found on this, but that push, um, again, involves women and women's organizations in every venue, um, really working to get this passed. I think it's just a very different political context than in this period where women are more limited, um, in their ability to really access and exert power over political institutions.

[00:44:34] Jeffrey Rosen: We really helpfully illuminate this counter-intuitive dynamic between political reform and economic reform, and one of your many surprising and important conclusions is in most cases the economic reform came first, which is, which is not intuitive at all. Um, well, it's time for closing thoughts in this great discussion. Uh, thank you both for teaching us so much about the expansion of women's economic and voting rights in the, in the 19th Century. And, uh, Nicole, uh, you end your book by saying that, uh, Virginia Minor received finally national recognition around the time of the 100th anniversary of the 19th Amendment, around, around 2019 and '20. Uh, tell us what has she recognized, uh, for, and, and why should *We the People* listeners celebrate the remarkable achievements of Virginia Minor.

[00:45:26] Nicole Evelina: Yeah. It was, it was an absolutely wonderful event. Uh, the National Women's History Alliance recognized Virginia is a, they have a kind of Hall of Fame. They don't actually call it that, but, um, they kind of inducted her, uh, into there as one of their honorees and she was recognized for her contributions to the state of Missouri with the National, uh, Women's Suffrage Association, but also for her national accomplishments as well through all of the things we've been talking about.

[00:45:55] Nicole Evelina: And to, to actually see her name, you know, put in the same context as the other greats is to me a dream come true. Obviously, as her biographer, I, I feel like a lot of people don't realize that the suffrage movement was way bigger than the way we portray it when you learn it in school. You know, we've, we've heard about a handful of greats and, you know, they were very, very important people. There is no denying that. You know, they, they deserve all of the attention that they get, but there were hundreds of thousands of women across the country without whom, you know, the movement wouldn't be successful or wouldn't have gone the way it did for some reason or another.

[00:46:35] Nicole Evelina: And, uh, Virginia and Francis are, are just a small portion of those people and I feel like the more we learn the true story, the well-rounded story, the more we can be grateful to those who came before us and, um, allowed, you know, me as a woman, Sarah as a woman to be able to exercise the right to vote, which is something we so often take for granted, um, in societies today. So I feel like recognizing Virginia is, is a way to, to say thank you and to express our, um, you know, our debt of gratitude to all of the women who came before us.

[00:47:20] Nicole Evelina: You know, someday hopefully our history will be completely rounded out, our being women, um, rounded out to where we have equal, you know, uh, placement in textbooks and, you know, we know who we have to, to look to as examples in the

past as we try to fight for our own rights moving forward, and hopefully eventually we, you know, won't have to be fighting any more that we will have the, the rights that, that we deserve as people. So it's a, it's a very important story I believe in, in kind of putting together that puzzle that is women's history.

[00:47:54] Jeffrey Rosen: It is an important story and it's an inspiring one and you tell it so vividly and so well. Uh, Sarah, last word in this great discussion are to you. It's, it, uh, it's hard to sum up the, the complicated and important story that you tell, uh, it is a counter-intuitive story, uh, but you remind us that, uh, political and legal change comes not only from great, uh, figures like Virginia Minor, but from a complicated interrelationship of courts, legislators, constitutional reform and, and also from the Joint efforts of men as well as women. Uh, what can we learn from the checkered history of economic reform for women's property rights in the 19th Century?

[00:48:35] Sarah Chatfield: Yeah. I'm so happy for the opportunity to kind of share this story because I think often it's one we don't learn about or talk about in school and women's history tends to start with the fight for suffrage and not necessarily touch on some of these economic rights that really were crucial in providing women with the resources and the voice.

[00:48:56] Sarah Chatfield: Um, Nicole spoke about how Virginia getting, um, these economic rights, although in her case not through statute, through her husband, but that was part of what empowered her to do this work, right? Um, and I think more broadly there are a lot of connections there in economic rights being necessary, um, for women to be able to do things like going on independent tours and having the ability to engage in this work. So I guess one thing would just be, um, I'm really happy to be able to spread knowledge about this and I also think it's important to think about rights expansions, not only as, "Oh great, uh, rights were expanded. That's wonderful." Which of course, you know, there's an aspect of it that is, but also of thinking about the aspects of rights expansions that don't include everybody and that leave people behind, um, where we see in, um, many of the ways that these laws operated.

[00:49:54] Sarah Chatfield: It's increased property rights, increased economic rights, for, for example, white women in the pre-Civil War South. That doesn't mean increased property [laughs] rights for enslaved women. They're the people being acted upon by these laws. Um, we see simultaneously, "Oh, we want to attract wealthy white women out West. We'll give them these rights." Great. Um, but what's missing from that picture is that native women and men are being stripped of their property so that, um, [laughs] the white women who were trying to attract can move West and, um, settle.

[00:50:29] Sarah Chatfield: And I, I think a lot of the ways that states use these laws was to kind of define, who is our ideal citizen who we want? Who are we going to grant rights to? Although, a lot of the laws don't necessarily have race specific language, um, or class specific language, um, it's also clear from these discussions who, uh, state legislatures are aiming to grant rights to [laughs] and who these laws are maybe treating as property or stripping rights from. Um, and so I think that's an important piece of the story too, to, um, think about rights expansions, but also think about who those apply to, um, and who's benefiting and who's losing out as kind of the march of rights moves forward.

[00:51:15] Jeffrey Rosen: Thank you so much, Nicole Evelina and Sarah Chatfield for an illuminating and superb discussion in commemoration of Women's History Month about the complicated and important fight for women's rights in the 19th Century. Nicole and Sarah, thank you so much for joining.

[00:51:34] Nicole Evelina: Thank you.

[00:51:35] Sarah Chatfield: Thank you.

[00:51:36] Jeffrey Rosen: Today's episode was produced by Lana Ulrich, Phil Pollock, and Sam Desai, who was engineered by Dave Stotts. Research was provided by Sophia Gardell, Emily Campbell, and Lana Ulrich. Please recommend the show to friends, colleagues, or anyone anywhere who's eager for a weekly dose of constitutional illumination and debate. And always remember the National Constitution Center's a private nonprofit who rely on the generosity, the passion, the engagement, the devotion to lifelong learning about history about the constitution of people like you who are inspired by our non-partisan mission of constitutional education and debate.

[00:52:08] Jeffrey Rosen: Support the mission by becoming a member at constitutioncenter.org/membership or give a donation of any amount, \$5, \$10 or more to support our work, including this podcast at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen, and happy Women's History Month.