

Mary Williams  
Common Law Marriage

Common Law Marriage in the United States

The social norms of citizens were often influenced by the region, Native American law, and whether the state had formally been a French or Spanish colony, or part of Mexico. Overall, common law marriage was widely practiced in the western United States. Many scholars attribute this to the conditions of life on the frontier: mainly the lack of religious officials available to perform ceremonies, and the difficulty of traveling. Until the end of the 19th century, common law marriage was recognized largely to protect women's property or to legitimize children. Courts generally determined common law marriage with evidence of a stable relationship, cohabitation, and children. But by the end of the 19th century, in part due to a shifting economy, many states began to emphasize the importance of marriage as an institution, pointing out that common law marriages did not monitor the unions involving individuals too immature or mentally disabled for marriage. Some opponents of common-law marriage wanted regulation to prevent interracial marriages. The culture of the frontier changed and many states no longer saw common law marriage as a necessity. States also feared fraudulent claims under common marriage law. Today only 9 states and the District of Columbia recognize common law marriage. Arizona banned common law marriages in 1913.

In "Why She Didn't Marry Him": Love, Power, and Marital Choices on the Far Western Frontier," Cynthia Prescott examines marriage on the American Western frontier during the 1800's. During the 19th Century, expectations for marriage on the frontier changed. Wives, whose initial value to their husbands was labor, changed as women began to demand more influence in the household and in decision-making. The economic prosperity and advances in technology decreased the patriarchal culture on the frontier. By the late 19th century, Americans living on the frontier viewed romantic love as a pillar of a happy marriage. Though the frontier conditions had encouraged settlers to marry relatively young, within one generation the average age at first marriage began increasing. By 1880, women in the West were seen as having more autonomy and agency within society and marriages than before. Courts became more likely to support women in their decisions regarding marriage and divorce. In 1880, when Josephine and Wyatt met, 1,236,119 men of Wyatt's age were married, with a spouse present, according to the U.S. Census of Population (Table Aa614-683). Wyatt's brothers, James, Virgil and Morgan, also had common-law wives. The Census classified those in a common-law marriage the same as those who had had a ceremonial marriage.

The Lotta Crabtree Will case sheds a good deal of light on common-law marriage in Tombstone. Wyatt Earp even testified in the case *Cockburn vs. Crabree*, a trial that revolved in part around the issues of common-law marriage and the lawless reputation of Tombstone. When the apparently heirless actress Lotta Crabtree died in 1924, her fortune, worth four million dollars, was left to several charities. Carlotta Cockburn was not the only person to come out of the woodwork, claiming a relation to Lotta, but her claim was the most substantial. Cockburn claimed to be Lotta's niece. Her mother, Annie Leopold, Carlotta claimed, was married to Lotta's

brother Jack in 1880. Although there was no evidence that the two had been officially married, a year later Carlotta was born. Not long after her birth, Jack deserted the family. Carlotta's mother soon abandoned Tombstone and her daughter as well. Carlotta was adopted by Ed Bullock, Jack's partner in a livery stable.

The deciding point of the case rested on determining Carlotta's paternity and legitimacy. Carlotta's defense would argue that Jack and Annie had had a legitimate common-law marriage and were Carlotta's parents. Whether or not they had had a ceremonial marriage would not determine the case alone; "even if Arizona in 1881 did not legalize common-law marriages, living together as husband and wife was some evidence that a legal marriage existed" (274). If her lawyers could prove that Jack and Annie had a legitimate relationship, it would indicate that Jack was indeed Carlotta's father. The validity of the relationship did not rest on the validity of common-law marriage, but rather the validity of common-law marriage within Tombstone, which had a reputation for being lawless and wild. In arguing against Carlotta's case, the state's lawyer remarked that "A reputation that is acquired as husband and wife in Dedham, Massachusetts, is one thing" but in Tombstone it was quite another (297). Tombstone was on trial. The defense argued against the validity of the marriage because "no man, not even Crabtree, would take his bride there on a 'nuptial flight' from California" (297). The state attorney reiterated throughout his case that, "if there wasn't a ceremonial marriage, a common-law reputation didn't mean anything in Tombstone" (277). The worst Tombstone could be portrayed, the better for his case.

The state's lawyer used to his advantage the fact that "the law judged these matters by applying community standards" (277). He reasoned that if a population lived in sin, no standards could be applied to the intentions of men and women who lived together. And yet by "community standards" Carlotta's claim was certainly valid. The old-timers of Tombstone sided with Carlotta. Many witnesses would testify that they had known Jack and Annie as 'husband and wife' and that Carlotta was their child. As one "local justice of the peace" said, "If a man and woman said, 'We are Mister and Missus', they were, that is all there was to it, and no man dared run into a bullet as a consequence of suggestion that such might not be the case" (277).

Carlotta's lawyer argued that Annie was Jack's wife, common-law or otherwise and that the wickedness of Tombstone could not change that, adding that Wyatt Earp himself had testified that "Tombstone was not half as bad as Los Angeles" (299). Earp was solicited as a witness because he "had known almost everyone in Tombstone, and might be of considerable value to the case" (36). Earp was seventy-seven when he testified. Despite his age, the former sheriff is described as being "an erect, vigorous six-footer with a crushing handclasp and cold blue eyes" (279). And, more importantly for the case, his memory of Annie Leopold Crabtree was "altogether intact" and overall he supported Colatta Cockburn's position, although he conceded that Annie Leopold "had a loose reputation" and Carlotta "could well have been fathered by someone other than Jack Crabtree." (280). Those fighting against Cockburn would try to prove that Jack was not in Tombstone 7-9 months before her birth. But Earp testified that, "Bullock and Crabtree came [to Tombstone] in the spring of 1880 and built a corral on Allen Street, between Fourth and Fifth Streets, next to where the Grand Hotel was built. They built a small office and

fixed up a three-seated carriage for a sleeping place, and I believe the baby was born in that carriage. It was a common rumor at the time that a child was born there. I knew both Crabtree and his wife and knew that a baby was born to them but don't know whether it was a boy or a girl...I saw Mrs. Crabtree several times at the San Jose rooming house kept by Mrs. Taylor. She knows all about Mrs. Crabtree."

The Judge ruled that Colatta was not, definitively, "the last of the Crabtrees" on the basis that within "Tombstone, being the Sodom and Gomorrah of the West, Jack and Annie's conduct did not prove a common-law relationship" (300), and that Jack was probably in New York in the time period when Colotta could have been conceived (though this seems to have been unlikely, according to the book's authors).

### Sources

- "The Triumphs and Trials of Lotta Crabtree" David Dempsey with Raymond P. Baldwin
- "Why She Didn't Marry Him": Love, Power, and Marital Choices on the Far Western Frontier, Cynthia Prescott, *Western Historical Quarterly*, Vol. XXXVIII, No. 1. (Spring 2007)
- Table Aa614-683 - Population, by marital status, sex, and race: 1880–1990 [Michael R. Haines](#) and [Richard Sutch](#) (Historical Statistics of the United States Millennial Edition Online)
- [http://en.wikipedia.org/wiki/Common-law\\_marriage](http://en.wikipedia.org/wiki/Common-law_marriage)