Interjurisdictional Competition and the Married Women's Property Acts

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Abstract: Married women in the 18th and early 19th century United States were legal non-persons who were not permitted to engage in formal business ventures, accrue rents, manage their own estates, sign contracts on their own authority, or stand in court alone. By the dawn of the 20th century, legal reform in nearly every state had removed these restrictions by extending formal legal and economic rights to married women. Legal reform being by nature a public good with dispersed benefits, what forces impelled legislators to undertake the costs of action? In this paper, I argue that interjurisdictional competition between states and territories in the 19th century was instrumental in motivating these reforms. Two conditions are necessary for interjurisdictional competition to function: 1) law-makers must hold a vested interest in attracting population, or law consumers, to their jurisdictions, and 2) residents must be able to actively choose between the products of different jurisdictions. Using evidence from constitutional reforms and the passage of Married Women's Property Acts, I find that legal reforms were indeed adopted first and in the greatest strength in those regions facing interjurisdictional competition.

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1. Introduction

Married women in the 18th and early 19th century United States were subject to a severe set of legal disabilities under the doctrine of coverture. Coverture suspended "the very being or legal existence of the woman" so long as she was under the "wing, protection, and cover" of her husband (Blackstone 1765: 430). This legal non-existence meant that married women had no formal right to own property and no right to enter into contracts as independent persons (Salmon 1986, Warbasse 1987, Zaher 2002).

Beginning in the 1840s, state legislatures began to enact laws designed to reverse these legal barriers. The speed and extent of reform varied widely across states. Often the legislature would address only a subset of married women's legal and property rights, delaying consideration of the remainder for years or decades. By 1920, 43 states had passed acts granting married women both control over separate property and rights to their earnings, effectively reversing their longstanding legal disabilities (Hoff 1991, Geddes and Tennyson 2012).

Within economics, past research has focused on the question of why it might be welfare enhancing to strengthen women's legal rights to own and control property. This literature generally emphasizes changes in the marginal product of women's labor as particularly important determinants of property law. Geddes and Lueck (2002) argue that the married women's property reforms came about because the productivity gains from fully incorporating women into the formal economy became too significant to forgo. Fleck and Hanssen (2010) offer a similar account of rising marginal productivity of women's labor to explain the unusually strong state of women's rights in 4th century B.C. Sparta, where women were educated, politically influential, and owned approximately 40% of land. An alternative yet complementary set of explanations argues that property law is determined by whether men stand to gain more from protecting their interests in their wives' property by limiting married women's property rights or from protecting their investments in their daughters by expanding married women's property rights (Doepke and Tertilt 2009; Fernandez 2012).

These explanations are incomplete. They tell us why the women and families living within a legal regime might want to strengthen married women's property rights, but say nothing about why the *legislators* would be willing to take action. Even if we assume the universal desirability of property rights reform, an unlikely and historically inaccurate proposition, legal reform is a public good. Identifying and implementing optimal laws is costly, and the non-rivalrous and non-excludable nature of reform is such that it is theoretically impossible for a private group to internalize the benefits (Samuelson 1954). In other words, the existence of demand is not sufficient to motivate supply when it comes to political markets. Whether or not legislators will be motivated to discover and act upon the preferences of individuals depends upon the particular incentive structure of the political system they are operating within.

Consequently the puzzle remains: why did legislators across the 19th century US respond to demand for reform so universally? This paper seeks to explain legislators' interest in reform by articulating the ways in which 19th century state and territorial legislators stood to gain by reforming married women's property rights. These legislators not only had the ability to influence legislation over married women's rights, but were also in a position to internalize the benefits of legal reform. Further, it was often the case that legislators could only internalize the benefits of reform by making their particular jurisdiction more attractive to potential residents—women in particular. In short, state and territorial legislators were engaged in interjurisdictional competition over where women would choose to live and work, and legislators worked to improve the quality of the law in their jurisdiction to help them win this competition.

Two necessary conditions must hold in order for interjurisdictional competition to motivate legislators to take the preferences of general members of the community into account: 1) lawmakers must have a vested interest in attracting or maintaining population within the jurisdiction, and 2) individuals must have the knowledge and means to actively move from less preferred to more preferred jurisdictions. With both of these conditions in place, a market forms wherein residents and potential residents of a jurisdiction demand better laws and lawmakers within that jurisdiction supply better laws in order to

maintain population.[2] If the political system adequately rewards lawmakers for engaging in this type of competition, individuals formally outside the political sphere—including the women who are *de jure* excluded—have the ability to discipline lawmakers who fail to adequately meet their demands.

The extent to which interjurisdictional competition is expected to encourage reform in married women's property rights is a function of the degree of competition present in the market for legal reform.[3] If interjurisdictional competition was a relevant factor, then we should expect reform to be more likely in those times and places where competition in the legal market was more robust. In this paper, I evaluate this proposition by testing three corollary propositions against the historical record. These propositions focus on unmarried women as the group that is most affected by married women's property law, as they have not yet entered marriage contracts and so stand to benefit the most from improved terms. The following propositions are expected to hold if interjurisdictional competition had any causal impact in the case of the married women's property reforms:

1. *If it becomes less costly for unmarried women to support themselves in jurisdictions where they do not currently reside, legislators will be more likely ceteris paribus to reform married women's property laws.*
2. *If it becomes less costly for unmarried women to move between jurisdictions, then legislators will be more likely ceteris paribus to reform married women's property laws.*
3. *If local legislators stand to directly benefit from increasing the local population, then they will be more likely to enact reforms targeted towards unmarried women.*

This paper proceeds as follows. In section 2, I present the historical context of married women's property reforms. In section 3, I discuss the theory of interjurisdictional competition as applicable to the history of these reforms. In section 4, I examine the above propositions in order to test the relationship between interjurisdictional competition and married women's rights reform. Section 5 concludes.

[2] O'Hara and Ribstein (2009) explore this analogy and potential 21st century applications in detail.
[3] Conditions of jurisdictional competition in the 19th century United States led to expansions in other rights as well. See Braun and Kvasnicka (2010) and Horpedahl (2011) for a discussion of the role of jurisdictional competition in suffrage expansion.

2. Evolution of married women's rights

The terms of the 19th century marriage contract were largely defined by the legal doctrine of coverture, which set the initial allocation of the family's property and legal rights as all but completely in the husband's control (Blackstone 1765, pp. 430-33). Further, coverture erected legal barriers to the exchange of rights between husband and wife by denying the wife's independent agency. This legal non-existence left married women in both Britain and the United States with no right to own property and no right to enter into contracts without their husband's approval and assistance. This in turn rendered them unable to engage in formal business ventures, collect rents, administer estates, manage bequests through wills, or stand independently in court. Any property or wealth acquired either before or during coverture automatically became the husband's to dispose with as he wished (Salmon 1986). Furthermore, the husband had the right to enforce his ownership rights through limited physical force and restraint (Hartog 2002, p. 137).[4]

The first expansions in married women's property rights occurred not at the level of statute, but through equity courts in the early 19th century becoming increasingly permissive of limited contracting around coverture. Equity actions relating to married women's property rights included enabling wives to sue for the wrongful sale of real estate,[5] legal recognition of wills written by married women, and the formation of separate trusts that enabled delineation between the property of husband and wife. These separate estate trusts enabled a couple to place the woman's property under the management of a third party, usually her father. This enabled the family to retain control over their property rather than risk

[4] The legal relationship was not completely one-sided. A husband did owe duties to his wife, such as providing her with "necessaries" (Blackstone 1765, p. 430) and protecting the value of the one-third of his real property that was designated as her dower in the event she should survive him (Hartog 2000, p. 145-7). One substantial difference between the rights of husband and the rights of wife was that although the husband was granted license to use some forms of coercion in enforcement, the wife was required to appeal to the state should her husband prove errant.

[5] 'Wife inspection' was the spottily practiced legal tradition of interviewing a man's wife before he was permitted to sell real estate. This proviso was designed to prevent husbands from fully confiscating wifely dowers, the one-third share of the family property she could expect to receive upon his death or abandonment. In the event that real estate was sold without consent, widows could and often did sue the purchaser in order to recover their dower right (see Salmon 1986 and Warbasse 1987).

mismanagement or appropriation by the future son-in-law (Rabkin 1980; Salmon 1986; Warbasse 1987). Evidence exists of wealthy families taking advantage of these equity actions as early as the 17th and 18th centuries. However, most studies find that, even though equity solutions became increasingly available through the early 19th century, they were still utilized only by a minority of women (Salmon 1982; Chused 1982).

These equity actions made property rights available to married women, but required that those rights be requested from the courts by each married woman who wished to exercise them. In contrast, the Married Women's Property Acts (MWPAs) were statutes that applied to all women in the state. State legislatures began to pass MWPAs in the late 1830s. These acts varied in their content and tone, but usually granted married women some combination of the following rights: the right to write a will without her husband's consent, the right to engage in business activities as if a *feme sole* (single woman), the right to refuse to pay her husband's debts, the right to access her husband's personal estate after his death, the right to keep wages independently earned, and/or the right to maintain separate property without permission of the court. Each state adopted these acts in different combinations and at different times (Hoff 1991).

Following Geddes and Lueck (2002), married women are considered to have attained full equality before the law once past wealth *and* future earnings are legally protected through the passage of both a separate estate act and an earnings act.[6] Separate estate acts codified the equity practice of marriage settlements by allowing all married women to maintain separate property.[7] Earnings acts, which usually came later, protected married women's rights to keep any wages earned after marriage.[8] Table 1 lists for

[6] The separate estate and property acts were often individual legislative acts, but some states and territories included them directly in their constitutions.

[7] The New York Married Women's Property Statute of 1848 served as the template for many other states. From 1848 New York Laws 307, ch. 200: "The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents issues and profits thereof shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female."

[8] The Maryland earnings act is representative: "And be it enacted, That any married woman who by her skill, industry or personal labour, shall hereafter earn any money or other property, real personal or mixed to the value of

each state the year that the first of these acts was incorporated and the year that married women become legally able to control both separate estates and earnings.

[Insert Table 1]

Two major geographic trends can be seen in the passage of these laws. The first is that states in the industrial Northeast were first to begin to enact reforms. The second is that reforms along the Western frontier were the most dramatic and quickest to complete once initiated. This information is summarized in Table 2 and illustrated visually in Figure 1.

[Insert Table 2]

[Insert Figure 1]

Compared to these two regions, the rest of the country lagged behind in terms of married women's property rights reforms. The remainder of this paper suggests that this variation can only be fully understood in the context of interjurisdictional competition.

3. Interjurisdictional competition

Governance structures vary in their capacity to adapt to the conflict between existing rules and the desired arrangements of the individuals living within the law. One structural characteristic of particular importance is whether or not the lawmakers are subject to competition from other legal jurisdictions. Interjurisdictional competition can function in a number of ways. These can be separated into the two categories proposed by Albert Hirschman (1970): exit and voice. Voice encompasses those activities that take place as individuals influence law from the inside, through processes such as voting and ideological activism.[9] Although American women could and did exercise their voice by participating

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one thousand dollars or less, shall and may hold the same and the fruits, increase and profits thereof, to her sole and separate use with power as feme sole to invest and re-invest, and sell and dispose of the same…" (1842 Laws of Maryland, ch. 293, S8).

[9] Besley and Case's (1995) model of yardstick competition is an example of the exercise of voice. In yardstick competition, individual voters look at the behavior of legislators in neighboring districts and then compare their own representatives against those of their neighbors. If the neighboring jurisdiction performs better, say by offering

in local politics as activists and community leaders, the force of voice as a mechanism for change was diminished by the fact that women could not vote or hold political office. Consequently, if interjurisdictional competition was only operational through the mechanism of voice, we might not expect it to be relevant to 19th century women's rights reforms.

However, interjurisdictional competition can also function whenever individuals can actively opt in or out of particular sets of laws by exercising their "exit option" (Hirschman 1970, p. 21). This choice is often referred to as 'voting with your feet' to evoke the idea of physical movement between jurisdictions.[10] Charles Tiebout is credited as the first to propose interjurisdictional competition operating through geographic mobility as a mechanism capable of generating something like competition in the provision of law and other public goods (Ostrom, Tiebout and Warren 1961; Tiebout 1956). The strict Tiebout model shows that if a particular and rather restrictive set of assumptions hold, local governments in competition with each other will provide an efficient allocation of public goods.[11] This hypothesis has generated a slew of extensions and empirical analyses designed to test the competitiveness of local governments and the desirability of such competition. The application that is perhaps most applicable to the case currently under question is that of the extent to which state-level legislative bodies were influenced to switch from specific to general incorporation laws by competitive pressure from other jurisdictions (Butler 1985; Shughart and Tollison 1985; Easterbrook and Fischel 1991; Bebchuk 1992; Kahan and Kamar 2002; and O'Hara and Ribstein 2009). This body of research demonstrates the significance of interjurisdictional competition. However, overall, both evidence that local governments

similar services at a lower tax rate, the voters learn that their elected officials are not doing as well as they could and choose not to re-elect.

[10] Although most legal jurisdictions are defined geographically and exit is therefore a physical activity, some areas of law allow individuals to choose between legal venues without moving, such as in choice-of-law clauses in contractual arrangements. This insight has inspired a robust literature on jurisdictional competition in incorporation law, one of the few areas of law that explicitly allows individuals to contractually determine which state's laws will apply in the event of a dispute (see for example Butler 1985; Easterbrook and Fischel 1991; Bebchuk 1992; Kahan and Kamar 2002; O'Hara and Ribstein 2009).

[11] The assumptions of the Tiebout model are as follows: costless mobility of residents (including no restrictions on employment opportunities), complete knowledge of alternative jurisdictions, a significantly large number of jurisdictions, no externalities that spillover the bounds of the jurisdiction, some fixed factor of public good production that prevents endlessly increasing returns to scale, and an optimal number of residents in each jurisdiction that is determined by the cost structure of the services provided (Tiebout 1956, pp. 419-20).

are competitive and evidence that competition in this context is desirable have been mixed.[12] On the whole, the ambiguous nature of these results suggests that the context within which competition takes place is of utmost importance to both its ability to function and the outcomes that will result.

Interjurisdictional competition is best conceived as an imperfect analog of market competition rather than as an example of a perfectly competitive market at work. Wagner (2011) presents these alternatives as two unique frameworks with different epistemic properties. Easterbrook (1983) describes the useful conception of Tiebout as a tendency towards efficiency rather than a guarantee of optimality (see also Epple and Zelenitz 1981). Bratton and McCarehy (1997) go a step further by claiming that the Tiebout hypothesis is insufficiently strong to guarantee a tendency in any direction. Rather, "competition may make residents better off or worse off depending on a dynamic and complex mix of factors that competing governments cannot control" (Bratton and McCarehy 1997, p. 230). In other words, the potentially beneficial properties of interjurisdictional competition—like those of market competition—are a function of the broader institutional context within which competition is taking place. In the case of market competition, the emergence of prices and the efficiency properties of price competition both depend upon a system of strong, enforceable property rights.

Interjurisdictional competition also requires a particular institutional context in order for its operation to be effective. Two criteria must be met. First, a group of individuals must exist that is willing and able to exert demonstrated preference for a particular set of laws. In the case of 19th century women's rights reform, unmarried women, families including unmarried women, or single men hoping to form families must be willing to venture to new jurisdictions in search of better ways of living. These families and prospective families serve as the demand side of the market for legal reform. Second, there must be individuals who are willing and able to act as suppliers of legal reforms. These suppliers can be any organized group capable of both affecting legal reform and capturing rents from the process of legal

[12] On whether or not local governments compete with each other, see, for example, Brennan and Buchanan (1980), Crowley and Sobel (2011), Fischel (1981), Stansel (2006), Oates (1985), and Wagner and Weber (1975). On the subject of competition between governments being potentially undesirable, see Baysinger and Butler (1985); Boettke, Coyne and Leeson (2011); Cary (1974); McGuire (1991); and Oates and Schwab (1988).

reform. These groups, termed "exit-affected interest groups" by O'Hara and Ribstein (2009, p. 28), may be official political actors but need not be. An organized industry or cause-based interest group could also successfully capture rents from the process of bringing about change.

4. The role of interjurisdictional competition in married women's rights acquisition

The extent to which interjurisdictional competition is expected to encourage reform in married women's property rights is a function of the degree of competition present in the market for legal reform. If interjurisdictional competition was a relevant factor in explaining this set of 19th century reforms, then we should expect reform to be more likely in those times and places where competition in the legal market was more robust. In this section, I test this hypothesis by evaluating three corollary propositions against the historical record.

Proposition #1: If it becomes less costly for unmarried women to support themselves in jurisdictions where they do not currently reside, legislators will be more likely ceteris paribus to reform married women's property laws.

The development of the factory system in the northeastern United States, beginning with strength in the 1820s, created new opportunities for women to enter the formal labor force. These opportunities lowered the cost of moving across state boundaries by enabling single women to sustain themselves outside the family home. From the perspective of the individual resident, a lower cost of transitioning between legal jurisdictions translates into a higher net benefit to defecting from an undesirable jurisdiction. Thus, residents of regions where crossing state boundaries is less costly will, *ceteris paribus*, tend to be more likely to exit when they are displeased, which exerts greater pressure on legislators to respond to women's demands. Consequently, if interjurisdictional competition was indeed a relevant influence on legislator's behavior, reform of married women's rights should follow in the wake of the new factory system.

The Northeast was a particularly attractive destination for young working women because there were opportunities in Northeastern states for women to work outside the home in capacities other than as domestic helpers. From 1820 through at least 1900, women in the Northeast were more likely to be employed outside the home than women in any other region, except in the South during the 10 years following emancipation.[13]

[Insert Figure 1]

Many of these women worked at textile mills, an industry unusual for its predominantly female composition. The female-centric nature of the textile industry and the consequent ability of women to exert influence through jurisdictional mobility are illustrated by the relationship between higher levels of per capita investment in manufacturing and earlier reform of married women's property rights. Table 3 shows that in every decade from 1850 to 1900, per capita investment in manufacturing was higher in states that reformed married women's property rights than in states that did not reform. This statistic alone does not have a causal implication, but it does provide additional support for the idea of there being a connection between women's increased power in the economic sphere and views regarding women's economic and legal rights.

[Insert Table 3]

The value of women's labor was such that factory owners like Francis Cabot Lowell went to great lengths to attract female workers. In partnership with his brother-in-law Patrick Tracy Jackson and other wealthy Boston merchants, Lowell founded the Boston Manufacturing Company of Waltham, the first large scale textile manufactory to be fully vertically integrated from cotton to cloth. In addition to importing many technological innovations from Britain to the U.S., Lowell employed new and innovative labor practices. The women who worked in Lowell's mills were almost exclusively farmers' daughters from throughout rural New England who lived on the factory grounds under the supervision of older female chaperones. The women primarily were between the ages of 16 and 22, and most would work in

[13] From U.S. Census data and Weiss (2006).

the factory for only a few years before returning home or moving on to marriage (Rosenberg 2011). These women were almost always unmarried. To work for wages as a married woman was socially discouraged and often economically infeasible due to the extent of labor required to maintain a household during the early 19th century.

Young women had a chance for real financial gains in those few years' work. The female operatives at Lowell are known to have made investments and major purchases such as houses, land, and expensive luxury goods like pianos. By many accounts, the bank balances of the mill girls were in the hundreds and thousands of dollars (Ginger 1954). Savings of $1,000 in 1823, five years after the mill opened and approximately the time an operative of average tenure would be leaving, is equivalent to a savings of $22,200 in 2011 dollars. The financial attraction was similarly strong for immigrants from Europe. When a recruiter from Lyman Mills in Holyhoke, Maine went to Scotland in search of employees, the 67 young women who returned with him had all repaid the cost of their Atlantic voyage and sent money back home within four months of their arrival. The result was that for years the mill would receive letters from Scotland enquiring if they might not have more employment opportunities that the daughters of Scotland could use to their advantage (Ginger 1954, p. 80).

In addition to the opportunity for financial gain, the Waltham-Lowell style mills provided young women with otherwise inaccessible educational opportunities, a community of peers, and a relatively exciting measure of independence (Rosenberg 2011). Harriet Robinson, a girl who grew up working at the mills, writes in her memoirs that "stories were told all over the country of the new factory town, and the high wages that were offered to all classes of work-people, --stories that reached the ears of mechanics' and farmers' sons, and gave new life to lonely and dependent women in distant towns and farmhouses" (Robinson [1898] 1976, p. 38). Effectively, this was the first time in history that a young, single woman was able to make the choice to set off on her own, choosing for herself a jurisdiction and a set of laws under which to live.

One of the reasons Lowell approached staffing his mills in this way was that he needed a way to convince young women, and their fathers, that leaving home and going to the big city would not devastate their morals and marriage prospects. In the words of Lowell's eventual successor, John Amory Lowell,

> By the erection of boarding-houses at the expense and under the control of the factory; putting at the head of them matrons of tried character, and allowing no boarders to be received except the female operatives of the mill; by stringent regulations for the government of these houses; by all these precautions, they gained the confidence of the rural population, who were now no longer afraid to trust their daughters in a manufacturing town. (Lowell 1848, p. 8)

In order to gain this confidence, one of the practices first implemented by Lowell and later copied by other industrialists was the active recruitment of young women. Lowell would pay recruiters to go out into the rural areas of Massachusetts, New Hampshire, and Vermont to find female workers. In 1831 "a valuable cargo, consisting of 50 females, was recently imported into this State from 'Down East' by one of the Boston packets" (quoted in Sumner 1910, p. 80). In 1846, "57 girls from Maine arrived at the Lawrence [Massachusetts] counting room" (quoted in Sumner 1910, p. 80). Not every observer viewed this recruitment as innocent: "Headhunters made "regular trips to the north of the State, cruising around in Vermont and New Hampshire, with a 'commander' whose heart must be as black as his craft, who is paid a dollar a head for all he brings to market" (quoted in Sumner 1910, p. 80). The model developed by Lowell came to be copied by aspiring industrialists across the Northeast, and beyond.[14]

Lowell and his imitators had a clear motive for wanting to attract young women to their home jurisdictions and demonstrated that desire through costly action. Further, their prospective employees made it clear that they were socially aware and valued advancements in women's political rights. An anonymous operative wrote in 1846 that women "have an indefeasible and inalienable right to buy and sell, solicit and refuse, choose and reject, as have men…. [These] propositions, we are prepared to defend;

[14] Many factories bought equipment directly from Lowell, including the Poignand & Plant Cotton Company of Lancaster, MA; Crocker & Richmond of Taunton, MA; the Dover Cotton Company of Dover, NH; and Joshua and Thomas Gilpin of Pennsylvania (Rosenberg 2011). Textile manufacturers in Lawrence, MA; Manchester, NH; and Saco, ME capitalized on Lowell's innovations by following in the path of building manufacturing equipment in-house (Hekman 1980). Mills in Nashua, NH; Chicopee, MA; Holyoke, MA; Whitestown, NY; and Pittsburgh, PA, followed the Lowell model of vertically integrating textile production from cotton to cloth and housing female laborers from across the country (Foner 1977, p. xviii).

and, while we have mind, talent, acquisition, ability, and a pen, we will defend them" (quoted in Foner 1977, p. 308). An 1847 letter in the *Lynn Pioneer*, signed "An Indignant Factory Girl," asks "Can men be free and women slaves? nay verily…. Spendthrift husbands will not be suffered to waste the possessions of a woman, nor a woman be compelled to bend to the passions of a legal spoiler. Law will find no place in adjusting the marriage bond…" (quoted in Foner 1977, p. 298). Harriet H. Robinson, former mill operative, reports in her memoirs that women working in the mills often were afraid that their estranged husbands would locate them and seize either their persons or earnings. She reports that some women even worked under assumed names and hid their faces from visitors to the mill, fearful of being found (Robinson [1898] 1976, pp. 41-2). These women certainly would have been greatly relieved to see reform in the laws regarding married women's property.

Industrial interests and the mobility of women provided strong motivation for the early reforms in married women's property rights in the industrial Northeast. Consequently, it's not surprising that many of the earliest statutes were enacted in this region and that the Northeast also completed full reform earlier than other parts of the country. However, by the latter half of the 19th century, the boundaries of both married women's property rights reform and interjurisdictional competition had shifted westward.

Proposition #2: If it becomes less costly for unmarried women to move between jurisdictions, then legislators will be more likely ceteris paribus to reform married women's property laws.

In states where it is easier for people to enter and exit, legislators will feel the pressure of interjurisdictional competition more strongly. Therefore, if interjurisdictional competition was indeed a causal mechanism behind advancements in married women's property rights, then access to new or more cost effective means of travel between jurisdictions should be associated with legal reform. Arguably the most significant of such transportation innovations in the 19th century was the development of the interstate railroad system.

The spread of railroads significantly reduced the costs associated with interjurisdictional mobility. In the 1850s only three routes were open to San Francisco: around Cape Horn, which took six months; through the Panama Isthmus, which took one month; or overland by wagon, which took six months to a year depending on the quality of the route, the mode of travel chosen, and the extent of the traveler's luck (Schlissel [1982] 2004). The first innovation in transportation was the development of stagecoach routes. Whereas early wagons could travel only eight to 15 miles per day, a developed stagecoach route permitted covering 70 to 100 miles per day. The development of the stagecoach routes, which largely took place through government mail carriage contracts, shortened the approximately 3,000-mile journey from coast to coast from 6-12 months to 4-6 weeks. However, even these gains were rendered largely irrelevant by the development of interstate rail (Sells 2008).

The first steam locomotives in the United States were operated on short railroad lines built by businessmen in the Northeast for industrial purposes. Even these relatively minor rails proved popular and profitable as passenger lines. A female operative from the Lowell textile mill noted in her 1898 memoir that the defunct Middlesex Canal, long rendered obsolete by the construction in 1835 of the Boston and Lowell railroad, could still be identified in a few spots as "a reminder of those slow times when it took a long summer's day to travel the twenty-eight miles from Boston to Lowell" (Robinson [1898] 1976, p. 3). These early innovations in transportation spread rapidly across the country. Between 1850 and 1860, the number of miles of rail operated more than tripled from 9,021 to 30,626. Mileage then proceeded to double roughly once per decade for the next 30 years, until by 1890 there were approximately 180,000 miles of railroad being operated in the United States (Cain 2006).

[Insert Figure 3]

The path of these newly developed railroads shaped the flow of westward migration by determining which regions would be most accessible to entrepreneurs and settlers from the East. Though private entrepreneurs certainly played an important role in the development of railroads, the US government commissioned many lines and subsidized even more. By 1871, the federal government had

given over 158 billion acres of land to private companies or state governments in order to subsidize railroad construction (Richter 2005, p. 23). The value of those rents and the local settlement they would be used to promote led to intense political competition. Western politicians believed that railroad routes would draw the migrants their way, and that with migrants would come population, industry, money, and ultimately prestige. In Governor Henry Haight's 1869 address to the Senate and Assembly of California, he proclaimed that "[the transcontinental railroad's] completion has occasioned heartfelt rejoicing throughout California, whose citizens for the past twenty years have suffered in every way by their isolation from the Atlantic states and Europe," and went on to add that "The importance of facilitating immigration from the Eastern States and Europe is felt by all who are interested in our material development."[15]

As a consequence of these high stakes, the location of today's major railroad hubs was determined by a series of hotly contested political debates in the 19th century. Nine years and roughly $150,000 ($4.5 million in 2011 dollars) were invested into the exploration and discussion of the best possible route for a transcontinental railroad, and still neither consensus, nor even a political compromise emerged. Several of the routes were found to be impossible to navigate owing to the challenges presented by the Rocky Mountains. The process was complicated by the lengths to which politicians were willing to go to capture the rents of the location of the railroad. Isaac I. Stevens, the Governor of Washington Territory in 1853, so desperately wanted the route to terminate in Seattle that despite the treacherousness of the route, his report back to the federal committee was the most glowing of them all (Borneman 2010).[16] The ultimate determination was that the Central Pacific Railroad would build east from Sacramento, the newly formed Union Pacific Railroad would build west from the Missouri River, and the

[15] "Gov. Haight's Biennial Message," *San Francisco Bulletin*, December 9, 1869.

[16] George Suckley, the chief naturalist of the exploratory party, put it this way: "…the Governor is a very ambitious man and knows very well that his political fortunes are wrapped up in the success of the railroad making its Pacific terminus in his own territory" (quoted in Geotzmann [1959] 1979, p. 283).

Leavenworth, Pawnee, and Western[17] would receive support to build a secondary route designed to connect to the Union Pacific in central Nebraska (Borneman 2010). This transcontinental railroad was completed in 1869, when the Central Pacific and Union Pacific joined in Promontory Summit, Utah.

Once constructed, the railroad generated new opportunities for women to cross jurisdictional boundaries in search of better lives. Women had certainly migrated westward before the advent of the railroad, by wagon trains, stagecoaches, and even the occasional ship. However, the floods of male settlers dwarfed their numbers. The first official census of California in 1850 recorded that the population was 91.8% male. Only 15 women were reported to be living in San Francisco in 1849, and when Denver was founded in 1859 possibly as few as five women resided in the 1,000-person settlement (Brown 1958). The development of the railroad system was a tool that helped to rectify those extreme early gender imbalances. By the early 1860s, it was not uncommon for a woman to travel west by train alone, and the trend grew over the next 30 years as the railroads expanded rapidly both in potential destinations and in the provision of amenities for the journey. Whereas the first trains were essentially rudimentary cattle cars that left their passengers covered in dust and jostled painfully about, train service quickly became a fast, smooth ride that included comfortable seats, smoother tracks, and options for dining and sleeping en route.

Much like the rural young women of the Northeast had journeyed towards cities for the opportunities provided by textile mills, the farmers' daughters of the Midwest traveled west via train in order to take advantage of employment and other opportunities. Further, the employers looking to hire out West knew that they had to recruit aggressively, sending ads to newspapers further east in search of help. For example, the restaurateur Fred Harvey, who had an exclusive agreement with the Topeka, Atchison, & Santa Fe Railroad to serve at stops along their routes, advertised for "young women 18 to 30 years of age, of good character, attractive and intelligent" (Poling-Kempes 1989, p. 42) and established a

[18] See, for example, the case of Asa Shinn Mercer, whose recruitment of women from the Eastern seaboard to Washington Territory may have played a role in his election to the Senate of the Washington Territory (Brown 1958; Engle 1915).

recruitment office in Chicago in order to review the thousands of applications. Further mirroring the experiences of the young women who went to work in the textile mills in the first half of the century, these "Harvey girls" boarded at their job sites under a strict code of behavior that encouraged education and limited fraternization with men in order to assuage fears that there was something illicit in a young unmarried woman setting off from her family on her own (Poling-Kempes 1989). One young woman describes her decision to apply to Fred Harvey after meeting one of his female employees who was home for a visit:

> "…she was very beautiful and glamorous…I figured if I could live and look like her, I would be happy to work for him. I told her I'd go anywhere in god's world for a job away from that farm. She wrote away to Kansas City and within a few weeks I had a railroad pass…." (Poling-Kempes 1989, p. 66)

Waitressing for Fred Harvey was hardly the only opportunity available to women. Teachers along the frontier earned better pay than their colleagues in the East. The first coeducational universities were located along the frontier, making the West attractive in terms of higher education opportunities for women. Further, and perhaps most significantly, the Homestead Act of 1862 permitted unmarried women lawfully to homestead in their own names, encouraging movement towards the frontier. A single woman willing to stick it out in a territory for five years would receive 160 acres of land at no financial cost. Unmarried women did take advantage of this opportunity, both as individuals and in groups. Within the first year of the Oklahoma Territory being opened for official settlement, nearly 1,000 women submitted land claims (Hallgarth 1989). The frequency with which entrepreneurs engaged in for-profit ventures that arranged for women to travel westward is further evidence of the value that communities in the West attached to increasing the female population.[18]

The opening of the rails both promoted the creation of opportunities for unmarried women and lowered the cost to them of migrating across jurisdictional boundaries. Variation in the timing and location of interstate railroads supports the proposition that a lower cost of mobility is associated with

[18] See, for example, the case of Asa Shinn Mercer, whose recruitment of women from the Eastern seaboard to Washington Territory may have played a role in his election to the Senate of the Washington Territory (Brown 1958; Engle 1915).

legislative reform. Figure 1 shows the path of the first transcontinental railroad superimposed over a map showing the timing of married women's rights reforms by state. The observation that reform occurred first in those places accessible at lower cost is, again, not intended to be causal on its own, but to lend credence to the idea that there is likely some type of connection between political competition and reform.

Proposition #3: If local legislators stand to directly benefit from increasing the local population, then they will be more likely to enact reforms targeted towards unmarried women.

Territorial governments had a particularly strong incentive to attract populations because of the requirements associated with entry to the Union of the United States of America. Since interjurisdictional competition will have a greater influence on political behavior when the rents associated with attracting populations are unusually high, we should expect politicians subject to this population-based incentive structure to be more active in reforming married women's rights than their colleagues who did not face the same pressure.

Territorial governance played a unique role in the development of US political institutions. The Northwest Ordinance, written by Thomas Jefferson in 1787 to govern the land ceded to the US government by the former colonies,[19] shaped the legal status of US territorial acquisitions. It outlined procedures for the initiation of territorial governments, standards for when legislative bodies should be formed, and the conditions under which a territory could petition Congress for statehood. The precedents established by the Northwest Ordinance subsequently were copied by the legislative acts that extended federal protections to the territories of Louisiana, Orleans, Florida, Oregon, California, and the Southwest Territory. The only 19th century entrant to the Union that did not experience the influence of the

[19] The Northwest Territory (now IN, OH, MI, IL and WI) and Southwest Territory (now TN and KY) were created from the lands immediately west of the original colonies. That land originally had been under colonial control, but was ceded to the federal government upon admission to the Union.

Northwest Ordinance was Texas, which transitioned to statehood so quickly after its acquisition from Mexico that no territorial legislation ever was enacted (Willoughby 1905; Friedman 1973).

Originally, territories could petition Congress for statehood once they reached 60,000 inhabitants or if admission was not against the general interest of the Union. After 1850, the requirement was changed so that the territory's population had to meet the level required to obtain a seat in the U.S. House of Representatives. In 1850, this was equivalent to 99,000 inhabitants. By 1880, the number rose to 150,000 and by 1890 to 170,000 (Owens 1987). This emphasis on population created an incentive for local political leaders to encourage population growth within their territory of residence.

The gains from statehood to local political elites were significant.[20] Under the statutory guidelines for establishing territorial governments, the federal government appointed governors and judges. The appointees were not required to reside in the state prior to their appointment, resulting in the frequent appointment of individuals completely ignorant of local culture and customs (Owens 1987). Federal appointments effectively represented an exogenous introduction of new players into existing political games. Consequently, the practice created a great deal of uncertainty among local elites. Once granted statehood, this particular form of uncertainty would no longer be a threat and the value of local political capital would rise.

Admission to statehood also gave local political leaders the opportunity to advance their own interests by participating in the formation of the new state. Not only would many of them have the opportunity to participate in the constitutional convention, statehood meant that at least three local men – generally wealthy and well connected – would be headed to Washington, D.C. to represent their state in the US Congress (Owens 1987). Regardless of whether or not such an institutional transition would have been efficient or even desired by the average person, it did give influential members of territorial regions a strong incentive to promote population growth in order to achieve statehood. Particularly telling of the attractiveness of the rents to be gained through statehood is Downes' (1931) detailing of the political

[20] See Moussalli (2008, 2012) for additional detail on the change in political incentives that takes place when a territory becomes a state, particularly with regard to the state's authority to levy additional taxes.

dynamics behind Ohio's statehood movement. He finds that while multiple interest groups were in favor of statehood arrangements that would make their respective locales into state capitals, not a single interest group was opposed to statehood.

The ability to influence the trajectory of governing institutions, combined with the opportunity for direct personal gain, made territorial political leaders susceptible to the pressures of interjurisdictional competition. In order for aspiring politicians along the frontier to grasp the upward spike in potential power accompanying statehood, they had to encourage settlement within the boundaries of their particular territory. The satisfaction of the individual interests of political suppliers depended on their ability to attract settlers by providing a more desirable future home than other possible territories.

Further, this reform often took place along gender lines because of the scarcity of women, also discussed above. Frontiers had been flooded with surplus men throughout the history of the United States. The Western frontier certainly was no exception to this rule. The earliest migrants to the western frontier were soldiers, trappers, missionaries, and miners. Very few women were included among these early contingents of settlers. Consequently the Mountain and Pacific regions of the United States were only 26.3% female in 1850. The second wave of westward movement drew farmers, ranchers, and teachers, which were more gender-balanced populations and had an ameliorating effect on the early gender disparity. Still, the regional population was only 31.8% female in 1860, and 37.5% female in 1870 (Kleinberg 1999, p. 51).

Among the Western states, the only region for which a territorial versus state comparison can be conducted during the second half of the 19th century, evidence does support the proposition that territorial governments were more active in reforming married women's rights than already established states. Nine out of 12 western states were territories when they first enacted legislation designed to increase women's rights of property ownership. Further, once these territories gained statehood, the pace of married women's rights reform decelerated dramatically. Territorial governments took an average of 2.1 years to move from the first legislative effort to full reform, whereas territories that became states during that time

took an average of 11.4 years to make this same transition. Data on the territorial status of each western territory/state are presented in Table 5.

[Insert Table 5]

The motivations behind this reform are apparent in the statements of territorial governors. Governor T.W. Bennett of the Idaho Territory delivered a speech in 1873, in which he professed his belief that "To the development of any country two great requisites are absolutely necessary – labor and capital – those twin hand-maidens in the world's progress…"[21] He then went on to outline his plan for securing this type of growth to the territory of his employ:

> There are many things than can be done, and must be done to secure immigration to this Territory… First let me refer to some of the means of inviting immigration, that are of easy accomplishment. We could cultivate such a spirit of friendliness and social amity, as would woo and win the hearts of men and women, who are seeking homes in new lands. **To do this we should be pre eminently liberal in politics, in religion, and in social matters**.[22] (emphasis added)

The desire to attract population often motivated territorial governments to advertise the merits of their jurisdictions to Eastern populations. The Montana Immigrant Association was a group formed for the express purpose of attracting people to the territory of Montana. Career politician J.M. Ashley was both president of this association and Governor of the Territory of Montana when he wrote for its 1870 circular:

> In many of the Eastern States and especially in all the great cities there are thousands of honest, industrious men and women without homes and without employment, struggling for a precarious subsistence. Here in Montana there is remunerative labor for all, with free homes, and health and a bright future. Montana is especially desirable for women who are dependent upon their own labor for support. Good housekeepers readily command from $75 to $100 a month, while ordinary kitchen help commands from $50 to $75 a month, and thousands can find good homes and immediate employment at those figures. (Ashley 1870, p. 4)

Ashley was not the only political figure to become involved directly in persuading women to come to the frontier. The Massachusetts *Barre Gazzette* reported that in William Gilpin's first address as Governor of the Territory of Colorado, he expressed his belief that

[21] "Oration Delivered by Governor T.W. Bennett, at Boise City, Idaho Territory, July 4th, 1873," Idaho *Tri-Weekly Statesman*, July 5, 1873, p. 3.
[22] Ibid.

> It would be a great blessing to both Colorado and Nevada if an emigration of females to those Territories could be obtained. Many thousands of poor girls… destitute of employment in the Atlantic States, would be gladly welcomed in these remote regions, and might establish themselves for life in domestic happiness and comfort.[23]

The unique openness to expanding opportunities to women along the frontier can be glimpsed across the political and economic sphere. The first states to grant women the right to vote were Wyoming in 1869 and Utah, during 1870-1877, both territories along the Western frontier. Both of these political jurisdictions were still territories in search of populations and statehood at the time of these decisions. The right to divorce also was a legally contentious issue in the 19th century, and those states with the most permissive divorce legislation generally were located along the frontier (Jones 1987).

V. Conclusion

When the married women's property acts are considered in their full historical context, strong evidence exists that interjurisdictional competition was an important determinant of reform. Those regions where interjurisdictional competition was particularly strong—when relocation was easy, transportation was low cost, and political incentives were aligned—consistently enacted reform more thoroughly and more quickly than less competitive regions. In the absence of interjurisdictional competition in the form of 19th century US federalism, it is likely that women's rights to property ownership would have been delayed significantly; and so too the concurrent benefits of property rights—the ability to invest, incentives to become educated and be entrepreneurial, and the opportunity to lead an independent life.

The implications, however, extend much further than women's rights. The ability of an active, functional system of interjurisdictional competition to keep a lawmaking body responsive to the demands of the individuals living within the community may be severely underappreciated, perhaps due to the fact that most contemporary systems of decentralized government do not much resemble the system of

[23] *The Barre* (MA) *Gazette*, December 13, 861; Volume 28; Issue 21, p. 1.

autonomous suppliers and demanders of legal reform described above. Individuals interested in evaluating the efficacy of a constitution as a device for restraining the scope of political action should consider the presence or absence of interjurisdictional competition as one important factor. Further, individuals interested in maintaining a society wherein government is accountable to the people rather than discretionary should be particularly wary of institutional reforms that dilute the influence of interjurisdictional competition.

This issue is particularly disconcerting in light of the fact that the protective mechanism of interjurisdictional competition has proven itself to be susceptible to erosion by political bodies. Just as a firm has no desire to operate in a competitive field when monopoly is an option, so political actors prefer not to face the constraints of accountability that come with jurisdiction competition. Consequently, polities frequently seek to restrict movement across borders and enact legislation on the non–competitive federal level so as to prevent individuals from being able to choose between different jurisdictions.

Proponents of more centralized forms of legislation frequently argue that certain reforms—e.g., healthcare reform or equal marriage opportunity— will be ignored if left to the states and the individuals living in those jurisdictions will be without hope of improving their circumstances. The history of married women's rights reform suggests a very different story. Rather than interjurisdictional competition being a source of discretionary political power, forcing state or regional governments to compete with each other for citizens actually can protect citizens from tyranny by punishing political actors for failing to respond to the will of residents. However, interjurisdictional competition can function only in the context of a mobile citizenry, autonomous local governments, and appropriate political incentives.

References

Ashley, J.M. 1870. "Circular of the Montana immigrant association. Preamble - constitution- object. Helena, 1870. Library of Congress American Time Capsule Printed Ephemera Collection; Portfolio 86, Folder 27a.

Baysinger, Barry D. and Henry N. Butler. 1985. "The Role of Corporate Law in the Theory of the Firm." Journal of Law and Economics 28(1): 179-191.

Bratton, William W. and Joseph A. McCahery. 1997. "The New Economics of Jurisdictional Competition: Devolutionary Federalism in a Second-Best World." *Georgetown Law Journal* 86: 201-278.

Bebchuk, Lucian Arye. 1992. "Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law." *Harvard Law Review* 105(7): 1435-1510.

Besley, Timothy, and Anne C. Case. 1995. "Incumbent behavior: Vote seeking, tax setting and yardstick competition." *American Economic Review* 85: 25-45.

Blackstone, Sir William. 1765. *Commentaries on the Laws of England: Book the First*. Oxford, England: Clarendon Press.

Boettke, Peter J., Christopher J. Coyne, and Peter T. Leeson. 2011. "Quasimarket Failure." *Public Choice* 149(1-2): 209-224.

Borneman, Walter R. 2010. Rival Rails: "The Race to Build America's Greatest Transcontinental Railroad." New York: Random House.

Braun, Sebastian and Michael Kvasnicka. 2010. "Men, Women, and the Ballot: Gender Imbalances and Suffrage Extensions in US States." *Kiel Institute for the World Economy Working Paper*s No. 1625.

Brennan, Geoffrey, and James M. Buchanan. 1980. *The power to tax: Analytical Foundations of a Fiscal Constitution*. New York: Cambridge University Press.

Brown, Dee. 1958. *The Gentle Tamers: Women of the Old Wild West*. New York: Putnam.

Butler, Henry N. 1985. "Nineteenth-Century Jurisdictional Competition in the Granting of Corporate Privileges." *Journal of Legal Studies* 14(1): 129-166.

Cain, Louis P. 2006. Table Df874-881, "Railroad mileage and equipment: 1830–1890," and Table Df927-955, "Railroad mileage, equipment, and passenger traffic and revenue: 1890–1980," in *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition,* edited by Susan B. Carter et al. New York: Cambridge University Press.

Cary, William L. 1974. "Federalism and Corporate Law: Reflections upon Delaware." *The Yale Law Journal* 83(4): 663-705.

Chused, Richard H. 1982. "Married Women's Property Law: 1800-1850." *Georgetown Law Journal* 71: 1359-1425.

Crowley, George and R. and Russell S. Sobel. 2011. "Does fiscal decentralization constrain Leviathan? New evidence from local property tax competition." *Public Choice* 149(1-2): 5-30.

Doepke, Matthias, and Michèle Tertilt. 2009. "Women's Liberation: What's In It for Men?" *The Quarterly Journal of Economics* 124(4): 1541-1591.

Downes, Ralph C. 1931. "The Statehood Contest in Ohio." *The Mississippi Valley Historical Review* 18(2): 155-171.

Easterbrook, Frank H. 1983. "Antitrust and the Economics of Federalism." *Journal of Law and Economics* 26(1): 23-50.

Easterbrook, Frank H. and Daniel R. Fischel. 1991. *The Economic Structure of Corporate Law*. Cambridge, MA: Harvard University Press.

Epple, Dennis and Allan Zelenitz. 1981. "The Roles of Jurisdictional Competition and of Collective Choice Institutions in the Market for Local Public Goods." *The American Economic Review* 71(2): 87-92.

Engle, Flora P. 1915. "The Story of the Mercer Expeditions." *The Washington Historical Quarterly* 6(4): 225-237.

Fernandez, Raquel. 2012. "Women's Rights and Development." Working paper.

Fischel, William A. 1981. "Is local government structure in large urbanized areas monopolistic or competitive?" *National Tax Journal* 34: 1.

Fleck, Robert K. and F. Andrew Hanssen. 2010. ""Rulers Ruled By Women": An Economic Analysis of the Rise and Fall of Women's Rights in Ancient Sparta." *Economics of Governance* 3(10): 221-245.

Foner, Philip S., ed. 1977. *The Factory Girls: A collection of writings on life and struggles in the New England factories of the 1840s by the Factory Girls themselves, and the story, in their own words, of the first trade unions of women workers in the United States.* Urbana, IL: University of Illinois Press.

Friedman, Lawrence M. 1973. *A History of American Law*. New York: Simon and Schuster.

Geddes, R. Richard and Dean Lueck. 2002. "The Gains from Self-Ownership and the Expansion of Women's Rights." *The American Economic Review* 92(4): 1079-1092.

Geddes, R. Richard and Sharon Tennyson. 2012. "Passage of the Married Women's Property Acts and Earnings Acts in the United States: 1850 to 1920." *Research in Economic History* 29: 145-189.

Ginger, Ray. 1954. "Labor in a Massachusetts Cotton Mill, 1853-60." *The Business History Review* 28(1): 67-91.

Haines, Michael R., Tables Aa2244-2340 through Aa6500-6550, *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition*, edited by Susan B. Carter et. al, eds. New York: Cambridge University Press, 2006.

Hallgarth, Susan A. 1989. "Women Settlers on the Frontier: Unwed, Unreluctant, Unrepentant." *Women's Studies Quarterly* 17(3/4): 23-34.

Hartog, Hendrik. 2002. *Man and Wife in America*. Cambridge, MA: Harvard University Press.

Hekman, John S. 1980. "The Product Cycle and New England Textiles." *The Quarterly Journal of Economics* 94(4): 697-717.

Hirschman, Albert O. 1970. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, MA: Harvard University Press

Hoff, Joan. 1991. *Law, Gender, and Injustice: A Legal History of U.S. Women*. New York, NY: New York University Press.

Horpedahl, Jeremy. 2011. "Political exchange and the voting franchise: Universal democracy as an emergent process." *Constitutional Political Economy* 22(3): 203-220.

Jones, Mary Somerville. 1987. *An Historical Geography of Changing Divorce Law in the United States*. New York, New York: Garland Publishing, Inc.

Kahan, Marcel and Ehud Kamar. 2002. "The Myth of State Competition in Corporate Law." Stanford Law Review 55(3): 679-749.

Kleinberg, S.J. 1999. *Women in the United States, 1830-1945*. New Brunswick, NJ: Rutgers University Press.

Lowell, John Amory. 1848. *Memoir of Patrick Tracy Jackson.* New York: Merchants' Magazine and Commercial Review.

McGuire, Therese J. 1991. "Federal Aid to States and Localities and the Appropriate Competitive Framework." In Kenyon, Daphne A. and John Kincaid, eds. *Competition among States and Local Governments: Efficiency and Equity in American Federalism*. Washington, DC: The Urban Institute Press.

Moussalli, Stephanie D. 2012. *The Fiscal Case against Statehood: Accounting for Statehood in New Mexico and Arizona.* Lanham, MD: Lexington Books.

Moussalli, Stephanie D. 2008. "The fiscal effects of statehood: New Mexico and Arizona, 1903–1919." *Public Choice* 137(1-2): 119-126.

Oates, Wallace E. 1985. "Searching for Leviathan: An Empirical Study." *The American Economic Review* 75(4): 748-757.

Oates, Wallace E. and Robert M. Schwab. 1988. "Economic competition among jurisdictions: efficiency enhancing or distortion inducing?" *Journal of Public Economics* 35(3): 333-354.

O'Hara, Erin A. and Larry E. Ribstein. 2009. *The Law Market*. New York, NY: Oxford University Press.

Ostrom, Vincent, Charles M. Tiebout and Robert Warren. 1961. "The Organization of Government in Metropolitan Areas: A Theoretical Inquiry." *American Political Science Review* 55: 831-842.

Owens, Kenneth N. 1987. "The Prizes of Statehood." *Montana: The Magazine of Western History* 37(4): 2-9.

Poling-Kempes, Lesley. 1989. *The Harvey Girls: Women Who Opened the West*. New York: Paragon House.

Rabkin, Peggy A. 1980. *Fathers to Daughters: The Legal Foundations of Female Emancipation.* Westport, CT: Greenwood.

Richter, Amy. 2005. *Home on the Rails: Women, the Railroad, and the Rise of Public Domesticity.* Chapel Hill: University of North Carolina Press.

Robinson, Harriet H. [1898] 1976. *Loom and Spindle, or Life Among the Early Mill Girls*. Kailua, HI: Press Pacifica.

Rosenberg, Chaim M. 2011. *The Life and Times of Francis Cabot Lowell, 1775-1817*. Lanham, MD: Lexington Books.

Salmon, Marylynn. 1986. *Women and the Law of Property in Early America*. Chapel Hill, NC: Univ. of North Carolina Press.

Samuelson, Paul A. 1954. "The Pure Theory of Public Expenditure." *The Review of Economics and Statistics* 36(4): 387-389.

Schlissel, Lillian. [1982] 2004. *Women's Diaries of the Westward Journey*. New York, NY: Schocken Books.

Sells, John A. 2008. *Stagecoaches Across the American West 1850 to 1920*. Blaine, WA: Hancock House.

Shughart, William F. II and Robert D. Tollison. 1985. "Corporate Chartering: An Exploration in the Economics of Legal Change." *Economic Inquiry* 13: 585-599.

Stansel, Dean. 2006. "Interjurisdictional Competition and Local Government Spending in U.S. Metropolitan Areas." *Public Finance Review* 34(2): 173-194.

Sumner, Helen L. 1910. *Volume IX: History of Women in Industry in the United States*. Washington, D.C.: Government Printing Office.

Tiebout, Charles M. 1956. "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64: 416-424.

Warbasse, Elizabeth Bowles. 1987. *The Changing Legal Rights of Married Women 1800–1861*. New York: Garland Publishing, Inc.

Wagner, Richard. 2011. "Municipal Corporations, Economic Calculation, and Political Pricing: Exploring a Theoretical Antimony," *Public Choice* 149: 151-165.

Wagner, Richard E. and Warren E. Weber. 1975. "Competition, Monopoly, and the Organization of Government in Metropolitan Areas." *Journal of Law and Economics* 18(3): 661-684.

Weiss, Thomas. 2006. "Free female gainful workers, by state: 1800–1900 [Age 16 and older]." Table Ba128-176 in *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition*, edited by Susan B. Carter et al. New York: Cambridge University Press.

Willoughby, William Franklin. 1905. *Territories and Dependencies of the United States*. New York: Burr Publishing House.

Zaher, Claudia. 2002. When a Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture. *Law Library Journal* 94(3): 459-486.

Table 1: Timing of Married Women's Separate Estate and Earnings Acts by State

	State	Year of Statehood	Year of First Legislative Effort	Both Separate Estate and Earnings Acts in Effect	Years from first effort to rights
Northeast	Connecticut	1788	1849	1877	28
	Delaware	1787	1865	1873	8
	Maine	1820	1844	1855	11
	Maryland	1788	1842	1860	18
	Massachusetts	1788	1845	1855	10
	New Hampshire	1788	1846	1860	14
	New Jersey	1787	1852	1852	0
	New York	1788	1848	1848	0
	Pennsylvania	1787	1848	1848	0
	Rhode Island	1790	1844	1872	28
	Vermont	1791	1847	1881	34
South	Alabama	1819	1845	1920	75
	Arkansas	1836	1846	1873	27
	Florida	1845	1845	1943	98
	Georgia	1788	1861	1873	12
	Kentucky	1792	1873	1894	21
	Louisiana	1812	1916	1916	0
	Mississippi	1817	1871	1880	9
	North Carolina	1789	1850	1868	18
	South Carolina	1788	1868	1868	0
	Tennessee	1796	1870	1919	49
	Texas	1845	1845	1913	68
	Virginia	1788	1875	1877	2
	West Virginia	1863	1868	1868	0
Midwest	Illinois	1818	1861	1861	0
	Indiana	1816	1866	1879	13
	Iowa	1846	1861	1873	12
	Kansas	1861	1858	1858	0
	Michigan	1837	1844	1855	11
	Minnesota	1858	1860	1869	9
	Missouri	1821	1849	1875	26
	Ohio	1803	1846	1861	15
	Wisconsin	1848	1850	1850	0
West	California	1850	1869	1872	3
	Colorado	1876	1861	1861	0
	Idaho	1890	1867	1903	36

	Montana	1889	1872	1887	15
	Nebraska	1867	1871	1871	0
	Nevada	1864	1861	1873	12
	North Dakota	1889	1877	1877	0
	South Dakota	1889	1877	1877	0
	Utah	1896	1872	1872	0
	Washington	1889	1881	1881	0
	Wyoming	1890	1869	1869	0

Note: Alaska, Arizona, Hawaii, New Mexico, and Oklahoma omitted owing to their post-1900 statehood.
Sources: Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Year of first legislative effort is the earliest effort identified by Geddes and Tennyson (2012).

Table 2: Timing of Married Women's Separate Estate and Earnings Acts by Region

Region	Average Statehood	Average Year of First Legislative Effort	Average Year of Rights Acquisition	Average Years from First Legislation to Full Rights Acquisition
Northeast	1791	1848	1862	13.72
Southeast	1801	1866	1881	14.57
West	1879	1871	1877	6.00
All other	1832	1858	1882	24.20

Sources: Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Year of first legislative effort is the earliest effort identified by Geddes and Tennyson (2012).

Table 3: Per capita investment in manufacturing in reformed v. non-reformed states

Decade		MWPA	No MWPA	Total
1840	Mean	4.786	18.345	17.877
	SD	0	20.165	19.961
	Obs.			29
1850	Mean	54.513	19.756	21.929
	SD	41.443	20.559	22.888
	Obs.			32
1860	Mean	39.698	29.303	31.976
	SD	31.741	32.465	32.144
	Obs.			35
1870	Mean	73.920	20.291	55.573
	SD	66.387	19.438	60.383
	Obs.			38
1880	Mean	66.137	18.548	54.865
	SD	63.990	15.979	59.786
	Obs.			38
1890	Mean	0.105	0.032	0.0888
	SD	0.088	0.034	0.085
	Obs.			45
1900	Mean	0.133	0.046	0.114
	SD	0.100	0.032	0.096
	Obs.			45
Total	Mean	31.216	18.252	24.981
	SD	53.144	22.995	41.907

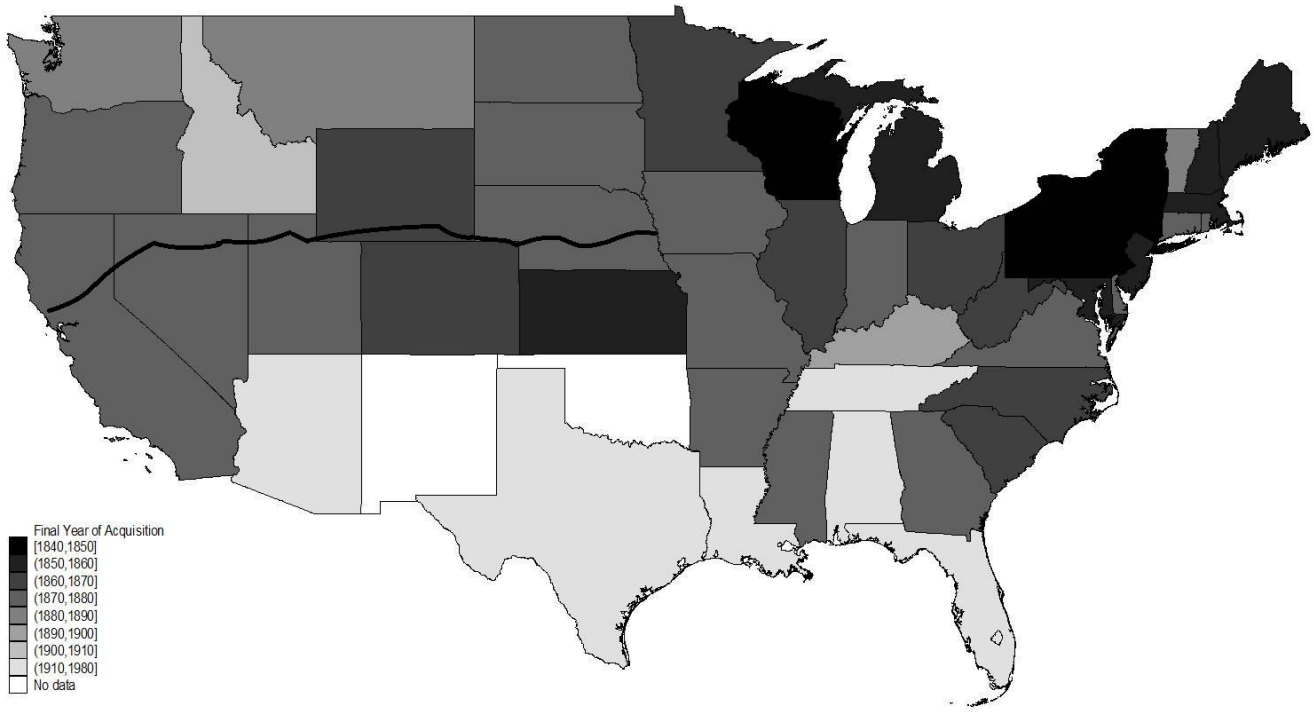
Sources: Per capita investment in manufacturing calculated from U.S. Census data. Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012).

Table 4: Married women's rights reform in western jurisdictions

State	Year of statehood	Year of first legislative effort	Territory at time of first effort?	Both property and earnings acts in effect	Territory at time of full reform?	Years from first effort to rights
California	1850	1869	No	1872	No	3
Idaho	1890	1867	Yes	1903	No	36
Nebraska	1867	1871	No	1871	No	0
Nevada	1864	1861	Yes	1873	No	12
Oregon	1859	1872	No	1878	No	6
Colorado	1876	1861	Yes	1861	Yes	0
Montana	1889	1872	Yes	1887	Yes	15
North Dakota	1889	1877	Yes	1877	Yes	0
South Dakota	1889	1877	Yes	1877	Yes	0
Utah	1896	1872	Yes	1872	Yes	0
Washington	1889	1881	Yes	1881	Yes	0
Wyoming	1890	1869	Yes	1869	Yes	0

Sources: Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Year of first legislative effort is the earliest effort identified by Geddes and Tennyson (2012).

Figure 1: Full married women's rights acquisition by state, including overlay of first transcontinental railroad



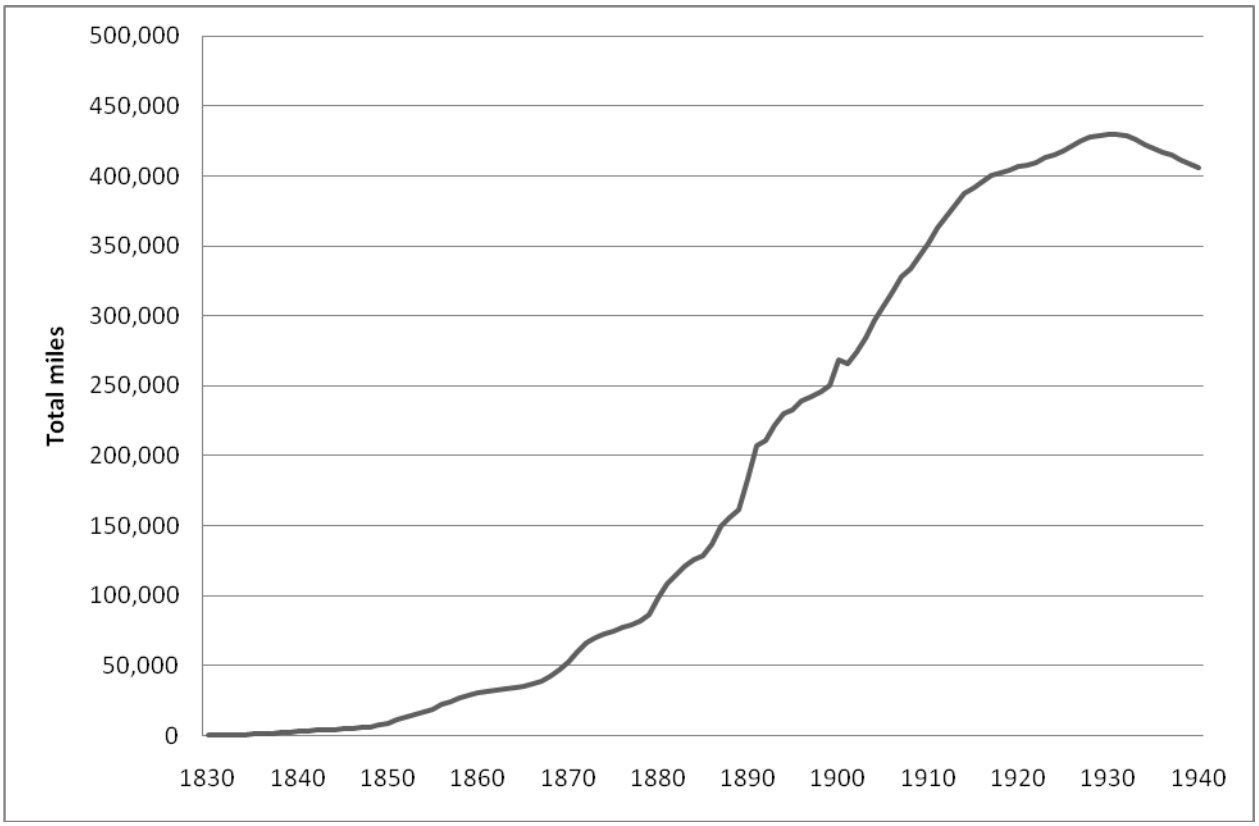
Sources: Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Map generated by author.

Figure 2: Percentage of female population in wage employment, by region

Notes: Records of female wage employees count women age 16 and over; records of female population count women age 15 and over. State census counts of the female population from 1820 through 1840 are of white women only.

Sources: Weiss, Thomas, " Free female gainful workers, by state: 1800–1900 [Age 16 and older]," Table Ba128-176, *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition*, edited by Susan B. Carter et. al, eds. New York: Cambridge University Press, 2006. Haines, Michael R., Tables Aa2244-2340 through Aa6500-6550, *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition*, edited by Susan B. Carter et. al, eds. New York: Cambridge University Press, 2006.

Figure 3: Total miles of rail operated in the United States, by year



Note: There were two observations reported for the years 1890 and 1916. In both cases the average of the two observations was used.

Source: Cain, Louis P. Table Df874-881, " Railroad mileage and equipment: 1830–1890," and Table Df927-955, "Railroad mileage, equipment, and passenger traffic and revenue: 1890–1980," in *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition,* edited by Susan B. Carter, Scott Sigmund Gartner, Michael R. Haines, Alan L. Olmstead, Richard Sutch, and Gavin Wright. New York: Cambridge University Press, 2006.