

Jurisdictional Competition and Married Women's Property Rights

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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 jurisdictional competition between states and territories in the 19th century was instrumental in motivating these reforms. Two conditions are necessary for jurisdictional competition to function: 1) law-makers must hold a vested interest in attracting population, or law consumers, to their jurisdictions, and 2) consumers of law 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 jurisdictional competition.

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I. Introduction

Married women in 19th century America 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 legally classified as 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 separate contracts (Salmon 1986, Warbasse 1987, Zaher 2002).

Beginning in the 1840’s, state legislatures began to enact legislation 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. In some jurisdictions it took decades before married women enjoyed access to the same suite of property rights protections as their husbands. Despite these barriers, by 1920, 43 states had passed acts granting married women both control over separate property and rights to their earnings, effectively reversing their long standing legal disabilities (Hoff 1991, Geddes and Tennyson 2012). In this paper, I argue that jurisdictional competition between states and territories in the 19th century was instrumental in motivating these reforms.

Past research has focused on the efficiency implications of a transition to a legal regime where married women could hold full property rights, setting aside the mechanics of how these efficiency enhancing reforms came to be enacted. Geddes and Lueck (2002) argue that the productivity gains from fully incorporating such a large segment of the population into the formal economy became too significant to forgo, finding that the strength of women’s rights in a given state and time can be predicted by the degree of urbanization, per capita wealth, and the educational attainment of the female population. A similar account of rising marginal productivity of women’s labor explains 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 (Fleck and Hanssen 2010). A related vein of research evaluates whether or not

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women altered their investment or consumption behavior following rights acquisition (Combs 2005, Khan 1996, Roberts 2006, Solivan 2008).

An alternative yet complementary set of explanations considers the internal conflict inherent in men's dual roles as husbands and fathers. As husbands, they are expected to prefer a legal regime where they control all property within the marriage, where as fathers they are expected to desire regimes that will protect their investments in their daughters by enabling women to control their own property. The implication is that at some critical threshold of human capital development, the gains to enriching their daughters will outweigh the gains from impoverishing their wives. Doepke and Tertilt (2009) provide empirical support for this theory by demonstrating that returns to education are an important predictor of women's rights. Fernandez (2010) contributes through the use of fertility data to show that reform is predicted by the scarcity of daughters—as the relative population of daughters to wives decreases, the greater becomes the value of legally protecting daughters.

These explanations are incomplete. They tell us why the individuals living within a legal regime might want legislators to extend strong property rights protections to married women, but say nothing about why a legislator would be willing to satisfy these demands. Even if we assume the universal desirability of property rights reform, an unlikely and historically inaccurate proposition, property rights extensions are still 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 ensure supply when it comes to political markets. There must be a mechanism capable of transmitting the preferences of individuals to legislatures and punishing those legislators who don't respond to the demand. Explanations for married women's rights reform that do not address how preferences influence political behaviors have failed to fully establish a causal mechanism of change.

Consequently the puzzle remains: why did legislators respond to demand for reform so universally? This paper seeks to provide a mechanism of change by arguing that the 19th century reforms

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were driven by a particular subset of state and territorial legislators who, through the influence of jurisdiction competition, could directly 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. Furthermore, the nature of these groups was such that legislators could only internalize benefits by making their particular jurisdiction more attractive to potential residents—especially women. There was an alignment of public and private interest that resulted in legislators responding to demand for extensions in married women's property rights.

There are two necessary conditions that must hold in order for jurisdictional competition to motivate legislators to take the preferences of general members of the community into account: 1) political elites, or law-makers, must have a vested interest in attracting or maintaining population within the jurisdiction, and 2) non-elites 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 are consumers who demand better laws and regional political elites are suppliers of those better laws.¹ The consequence is that individuals formally outside the political sphere are able to discipline lawmakers who fail to adequately meet their demands.

Those lawmakers who experience the force of jurisdictional competition more strongly are expected to be the first to change the law regarding married women's legal and property rights.² This paper examines that proposition by considering three factors that strengthened jurisdictional competition over female residents in the 19th century, either by reducing the cost of mobility across jurisdictional boundaries or increasing the potential gains to legislators. In section two, I present the historical context of married women's property reforms. Section three is a discussion of the theory of jurisdictional competition as applicable to the history of these reforms. In section four, I examine three predictions in order to test the relationship between jurisdictional competition and married women's rights reform. First,

¹ O'Hara and Ribstein (2009) explore this analogy and potential 21st century applications in detail.

² 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.

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I show that increasing opportunities for women to work outside the home and the resultant greater ease of geographic mobility strengthened the force of jurisdictional competition and led to earlier reform. Second, I show that innovations in transportation, in particular the development of interstate railroads, similarly lowered the cost of crossing jurisdictional boundaries and facilitated the functioning of jurisdictional competition as a mechanism for reform. Third, I examine the particular circumstance of territorial governors attempting to raise the population in their states to a level that would render them eligible for entry to the union. These territorial governors were particularly subject to the pressures of jurisdictional competition and as such particularly likely to enact reform. Finally, in section five I conclude that the historical record supports the claim that jurisdictional competition influenced legislators to expand married women's property rights. With the conditions for jurisdictional competition in place, the simple action of individuals moving between jurisdictions in order to improve their lives led to widespread legal reform and an impressive expansion in women's rights.

II. Evolution in married women's rights

Communities and states throughout U.S. history have developed and enforced laws designed to govern relations within marriage. These laws commonly dictate who can marry, what requirements must be met in order to constitute a formal marriage, and under what conditions the marriage can be dissolved once entered. At the beginning of the 19th century, marital law also contained provisions detailing the rights a wife would be required to turn over to her husband and the duties her husband would be legally required to perform in exchange.

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. Furthermore coverture erected legal barriers to the exchange of rights between husband and wife by denying the wife's independent agency (Blackstone 1765: 430-33). This legal non-existence left married women in both Britain and the United States with no right to own property and no

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right to enter into contracts without her 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 in court alone. Any property or wealth acquired either before or during coverture automatically became her husband's to dispose with as he wished (Salmon 1986). Furthermore the husband had the right to enforce his ownership rights through physical force and restraint (Hartog 2002: 137).

The husband did also owe duties to his wife, and she held the right to command their performance. "The husband is bound to provide his wife with necessaries by law, as much as himself; and if she contracts debts for them, he is obliged to pay them" (Blackstone 1765: 430). The financial duties of the husband extended to ensuring that his wife would be cared for in case of his death. This was enforced through the wife's claim to 1/3 of all real estate. These dower rights required the husband to obtain his wife's permission before selling any part of her future source of support (Hartog 2000: 145-7). One substantial difference between the rights of husband and the rights of wife within marriage was enforcement. Though the husband was granted license to use some forms of coercion in enforcement, his wife was required to appeal to the state should her husband prove errant.

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 their real estate,³ 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 the father-of-the-bride. This enabled the family to retain control full control over their

³ '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 entirely decimating their wife's dower, 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).

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property rather than risk it being appropriated by the future son-in-law (Rabkin 1980, Salmon 1986, and Warbasse 1987). There is evidence 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 only utilized by a minority of women (Salmon 1982, Chused 1982).

These equity actions implied that property rights were available to married women, but still 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 statutory acts that applied to all women in the state. State legislatures began to pass MWPAs in the latter half of the 19th century. These acts varied in their particular content and tone, but usually granted married women some combination of the following rights: the right to write a will without your husband's consent, the right to engage in business activities as if a *femme sole*, the right to refuse to pay your husband's debts, the right to access your husband's personal estate after his death, the right to keep wages independently earned, or, finally, 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.⁴ Separate estate acts enabled women to enter marriage with personal holdings and keep those resources separate from the household. Earnings acts, which tended to come later, protected married women's rights to keep any wages earned after marriage. Table 1 lists for each state the year that the first one of these acts was incorporated and the year that married women are considered to have property rights equal in security to those held by married men.

[Insert Table 1]

⁴ The separate estate and property acts were often individual legislative acts, but some states and territories included them directly in the constitution.

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Separate Estate Acts codified the equity practice of marriage settlements by allowing all married women to maintain separate property. The New York Married Women's Property Statute of 1848 served as the template for many other states:

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.⁵

Acts explicitly granting women control over their earnings emerged later. This example statute from Maryland is an exception in that it was enacted in 1842, before the state even had a separate estate act, but it is representative in tone and form:

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 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...⁶

Earnings acts were significant in that although previous acts had granted the right to keep property acquired before the marriage, the earnings acts gave married women greater control over the use of any income they were able to generate within the marriage. This decreased the transactions costs associated with productive behavior, increasing married women's level of ownership over their property and human capital.

There are two major geographic trends 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]

⁵ 1848 *New York Laws* 307, ch. 200.

⁶ 1842 *Laws of Maryland*, ch. 293, S8.

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

III. Jurisdictional 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 law-makers are subject to competition from other legal jurisdictions.

Jurisdictional 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 within the community as individuals exercise choice over legal regime from the inside, through processes such as voting and ideological activism. Besley and Case's (1995) model of yardstick competition proposes a type of voice as the mechanism by which competition influences the behavior of legislators. 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 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.

Individuals can also exercise choice between legal regimes by actively opting in or out of particular sets of laws, or exercising their "exit option" (Hirschman 1970: 21). This choice is often referred to as "voting with your feet" to evoke the idea of physical movement between jurisdictions.⁷ This geographic mobility is the most relevant form of jurisdictional competition for purposes of this paper.

⁷ Although most legal jurisdictions are defined geographically and exit is therefore a physical activity, there are some areas of law where individuals are able 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).

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Although the voice mechanisms of change, including voting, yardstick competition, and their variants, were theoretically operational through women's positions in the welfare functions of men, their force was greatly diminished as a potential tool due to the fact that women could not vote. A significant portion of the population affected by these legal restrictions was therefore prevented from participating in the potential mechanism of competition. Further, the law of marriage did not (and still does not today⁸) permit contractual choice of law, thus eliminating the feasibility of exit options not grounded in physical mobility. In order to switch between different property rights regimes, married women were required to physically move to a different state.

Charles Tiebout is credited as the first to propose jurisdictional competition operating through geographic mobility as a mechanism capable of generating efficiency in the provision of law and other public goods (Ostrom, Tiebout, and Warren 1961; Tiebout 1956). The strict Tiebout hypothesis shows that for a particular and rather restrictive set of assumptions, local governments in competition with each other will provide efficient allocations of public goods.⁹ This hypothesis has generated a slew of extensions and empirical tests designed to test the competitiveness of local governments and the desirability of such competition.¹⁰ Both evidence that local governments are competitive and evidence that competition in this context is desirable have been mixed.¹¹ On the whole, the mixed 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.

⁸ See O'Hara and Ribstein 2009 for an analysis of the modern day market- or lack thereof- in marriage law.

⁹ 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 exceed the bounds of the jurisdiction, some fixed factor 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: 419-20).

¹⁰ On whether or not local governments compete with each other, see for example Brennan and Buchanan 1980, 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.

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Jurisdictional competition is best conceived as an imperfect analog of market competition rather than 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: 230). Boettke, Coyne and Leeson (2011) also provide a critique of the idea that competition in the public sector would necessarily have beneficial consequences.

When jurisdictional competition is recognized as a general tendency rather than a determinate outcome, all that is required for competition between jurisdictions to occur is the fulfillment of two conditions. First, there must be a group of individuals willing and able to exert demonstrated preference for a particular set of laws. In the case of 19th century women’s rights reform, there must be single women or families including women willing to venture to new jurisdictions in search of better ways of living. These women and their families fill the role of consumers in a market for legal change. The second condition is that there must be individuals willing and able to act as suppliers. In other words, there must be a group capable of capturing rents from the process of producing legal change. If both of these conditions are met, a market for law can develop.

Geographic entry and exit forms the demand side of a market in which jurisdictions compete to provide preferred sets of laws. In order for competition to fully function there must also be exchange, which requires individuals operating on the supply side of the market. These suppliers must have both the ability to influence law and the incentive to do so. In order for an incentive to be in effect, the suppliers must accrue rents when consumers decide to opt in to their particular legal product. In yardstick competition, the profit to the supplier is continued tenure in a political office. In exit-based models of

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competition, no specific form of profit is requisite, but the supplier still must be in a position to profit when one set of laws is chosen more often than another.

In the case of a competitive market for legal reform based upon consumer choice through geographic entry and exit, the suppliers can be any organized group that stands to directly benefit from either attracting entrants or preventing exit from a particular legal jurisdiction. These groups, termed “exit-affected interest groups” by O’hara and Ribstein (2009: 28), may be official political actors but need not be. All that is required is that the interest group be in a position to influence law. This can occur through either direct participation in the political process as when the exit-affected interest group is comprised of legislators themselves, or through indirect participation such as coordinated lobbying efforts by organized industry or cause-based interest groups.

This tendency towards improvements in the law will vary based on how well the circumstances match those of a competitive market. As such reform in married women’s property rights is expected to be increasing in the mobility of people and resources across jurisdictional boundaries, the range of available jurisdictions to choose from, the degree of latitude that jurisdictions have in the creation of law, and the extent to which the consequences of law are felt within the jurisdiction.¹² As will be discussed through section 4, two regions of the 19th century United States meet these conditions with particular strength: the Western frontier and the industrial Northeast.

IV. The role of jurisdictional competition in married women’s rights acquisition

The question of whether or not jurisdictional competition exerted influence over legislator’s behavior is, like many issues in economics, fundamentally a question of motive. In this sense the answer must remain a mystery. However, economic theory can predict how legislators should be expected to respond if they are in fact sensitive to jurisdictional competition. This theoretical prediction can then be compared against the historical record. The extent to which jurisdictional competition generated a

¹² Boyne 1996, Easterbrook 1983, O’Hara and Ribstein 2009, and Tiebout 1956 advance similar sets of conditions.

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tendency towards reform in married women's property rights varied based on how well local circumstances matched those of a competitive market. If reforms in married women's property law were responsive to the functioning of a competitive market in law, then we can conclude that jurisdictional competition did indeed constitute an important causal connection between the changing preferences of citizens and legislative action. In that spirit, I explore in the following subsections the relationship between married women's rights reform and three observable variations in jurisdictional competitiveness.

A. Mobility and women's employment opportunities

The development of the factory system in the northeastern United States in the 1830's and 1840's 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. This relative price shift increased the net benefits to women of moving to a state with a more desirable legal regime, thus exerting greater pressure on legislators to respond to women's demands in order to maintain population. Consequently, if jurisdictional competition was a relevant influence on legislator's behavior, married women's rights reform should follow in the wake of the new factory system.

The mobility of people and resources across jurisdictional boundaries is an essential characteristic for the functioning of any competitive market for political reform. Any group that stands to gain or lose based on the outcome of jurisdictional competition will be disciplined by their consumers most strictly in those regions where entry and exit are less costly. From the perspective of the individual resident, a lower cost of transitioning between legal jurisdictions translates to 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. This essentially raises the cost of persuading them to stay, or conversely lowers the cost of attracting new entrants. Either way the affected law-makers will be making a greater sacrifice if they fail to provide a superior set of laws.

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Since married women's property laws were not subject to choice of contract provisions that would have allowed choice between laws without physical mobility, the disciplining of government through resident migration required women to be able to physically move between states and territories.¹³ In the nineteenth century, interjurisdictional movement by women took place in the form of both migration of current residents and immigration into the country. Both of these types of mobility were heavily driven by opportunities for wage employment. Throughout the century, dramatic changes in labor allocations were taking place for both women and men. In the Northeastern states, particularly those states north of Virginia and east of Ohio, productive effort was shifting away from agriculture and toward manufacturing. Simultaneously the population was spreading westward in search of new opportunities, many of these in mining and transportation. The result was an exodus from rural agricultural communities in the Northeast and the settled portion of the Midwest as people migrated to the Western frontier and to the growing industrial towns and cities of the Northeast.

In order for jurisdictional competition to have influenced the reform of married women's rights in the Northeast, the level of migratory activity must be sufficiently high for there to be value in its capture. The high levels of population growth and internal population churning in the Northeast suggest that the region did satisfy the condition of robust movement between jurisdictions. The population of the average Northeastern state in the 19th century grew at a rate of 14.2% per decade, and studies of local populations suggest that this figure is eclipsed by the rate at which people moved between cities and states. The migratory flow through Boston in the 1880's was rapid enough for the population to have completely turned over roughly four times during a single decade, and a survey of studies of population stability in 19th century agrarian frontier communities found that one-third or less of farmers remained in the same spot 10 years later (Thernstrom and Knights 1971). The female textile workers that are the subject of this section were no exception to the trend. They generally migrated to a state for employment opportunities

¹³ See O'hara and Ribstein (2009) for a discussion of how choice of contract provisions can substitute for physical mobility.

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and tended not to stay in the same position for too long. Miles (1846) surveys eight mills in Lowell, MA, finding that 25% of workers were employed for less than a year and 49% for less than three years.

The extent to which immigration played a role in population flows varied across time and by region. In every recorded year more men than women immigrated to the United States. In most years the ratio of men to women was at least 1.5:1. In the 1860's, the frontier regions of the country were populated almost exclusively with emigrants from the Northeast and, to a lesser extent, the Midwest, with only 10-15% of settlers coming from outside the United States (Eblen 1965). The growth of urban industrial areas was also largely driven by internal migration, particularly in the first half of the century. The survey conducted by Miles (1846) found that only 11-12% of female mill operatives were born outside the United States, with the remaining 88-89% having moved to Lowell from rural areas in New England. Similarly a survey of the 1836 records of the Hamilton Manufacturing Company in Lowell found that 96% of the mill operatives were native-born. However, by 1860, 47% of the workers at the same mill had emigrated from Ireland, and another 13% had been born in other countries outside the United States.

A number of studies find, not surprisingly, that property owners are less likely to migrate than their less wealthy counterparts (Thernstrom and Knights 1970, Dublin 1986). Although this might seem to imply that those women engaged in moving between legal jurisdictions were those with the least cause to be concerned over their rights of property ownership, keep in mind that women leaving home in search of wage labor were usually young and leaving home in search of a better life. One study of the farm communities of Rockingham, New Hampshire and York, Maine in the 1860s found that a majority of the young adults living in these communities venture West or settle down in an industrially focused town or city rather than continuing the family tradition of farming. Of the 364 of these young adult emigrants who went on to work in the boot and shoe manufactories of Lynn, Massachusetts, Dublin (1986) finds that 79% are young people still living at home when they choose to leave the farm. A little over half of these migrant workers were young women, average age 19, and most did not return home, instead establishing new families in Lynn or other industrial cities. So even though they may not have owned property or been

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married when they left, they almost certainly aimed to own property by time they arrived at their final destination.

Further strengthening the role that women played in jurisdictional mobility was the extent to which Northeastern states provided opportunities for women to work outside the home in a capacity other than as a domestic helper. From 1820 until at least 1860, women in the Northeast were two to three times more likely to be employed outside the home than women in any other region.¹⁴

[Insert Figure 1]

Many of these women worked at textile mills, an industry unusual for its predominantly female composition. The female-centric nature of manufacturing and the consequent ability of women to exert influence through jurisdictional mobility is 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, the states that enacted married women's property reform were significantly more invested in manufacturing than their unreformed counterparts.

[Insert Table 3]

Like many industrial innovations, women's entry to formal markets was born from the emergence of a previously unanticipated need. At the dawn of the 19th century, any textiles that weren't produced at home or in small, family-operated mills were imported from Britain or India. This changed with the Embargo of 1807, which set off a series of trade restrictions that rendered the business of importation illegal at worst and prohibitively costly at best. Although all of New England was adversely impacted by the embargo, the prohibition hit Massachusetts particularly hard. One third of all shipping went through the merchants and ports of Massachusetts. During this economic lull, Boston merchant trader Francis Cabot Lowell became inspired to circumvent the need for textile importation by attempting to imitate Britain's success at large scale domestic manufacture. Since Lowell couldn't import the products of the Industrial Revolution, he decided to bring the revolution to the United States (Rosenberg 2011).

¹⁴ From U.S. Census data and Thomas Weiss, 2006, "Free female gainful workers, by state: 1800–1900 [Age 16 and older] ." Table Ba128-176 in Carter et al. (2006).

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The importation of the new manufacturing techniques from Britain was, however, not an easy task. Parliament had banned the export of both textile machinery and plans for the design of textile machinery. The determined Lowell consequently spent years traveling back and forth, touring Britain and Scotland, questioning mill owners, attempting to learn how to duplicate their successes. Along the way he met many talented engineers and came up with his own ideas on how to improve upon the current first-in-class British system. Lowell took this knowledge and, in partnership with his brother-in-law Patrick Tracy Jackson and other wealthy Boston merchants, founded the Boston Manufacturing Company of Waltham, Massachusetts, the first large scale textile manufactory to be fully integrated from cotton to cloth. The Boston Manufacturing Company model would prove highly successful and would come to be imitated in factories across the Northeast (Rosenberg 2011).

The departure of Lowell's system from previous textile production was not only in vertical integration or in the unprecedented efficiency of his newly developed technology. Lowell also made dramatic innovations in the utilization of labor by staffing his factories almost exclusively with farmers' daughters from throughout rural New England who lived on the factory grounds under the supervision of older female chaperones. The women were primarily between ages 16 and 22, and most would work in the factory for only a few years each before returning home or moving on to marriage. The benefits to the women were varied. 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 1976 [1898]: 38).

Further, young women had a chance for real financial gain by just a few years work in the mills. The female operatives at Lowell are known to have purchased houses, land, expensive luxury goods like pianos, investments in banks, and even stock in the company. By many accounts the bank accounts of the

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mill girls were in the hundreds and thousands. 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 (Ginger 1954). Harriet H. Robinson, the same mill operative quoted above, spoke eloquently on the subject: “The law took no cognizance of woman as a money-spender. She was a ward, an appendage, a relict... [at Lowell] at last they had found a place in the universe; they were no longer obliged to finish out their faded lives mere burdens to male relatives” (Robinson 1976 [1898]: 42).

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 4 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. One such letter came from a man named David Daig, who wrote

In regard to Girls wanting out, I have applications almost every day from decent Girls anxious to get away . . . I have to mention that there is a man of the name of George Brown who has seven of a family and two Girls and two boys of his are fit to work he is very anxious to get out, and I would like to have [him do so] as soon as possible if you could take them... (Ginger 1954: 80).¹⁵

Two different but not necessarily mutually exclusive motivations have been proposed as to why Lowell may have chosen to approach staffing his mills in this way. First, as much as Lowell admired British manufacturing methods, the relationship between factory owners and employees left something to be desired. Lowell’s travel abroad had alerted him to the potential dangers of allowing a factory to become surrounded by slums and a perpetually dissatisfied workforce. New mechanistic modes of production had never been particularly popular among the working class, and the violent protests of the Luddites in Britain were too recent a memory to be forgotten (Rosenberg 2011). Second, Lowell needed a way to convince young women, and their fathers, that leaving home and going to the big city would not result in the devastation of their morals and marriage prospects. In the words of Lowell’s eventual successor, John Amory Lowell,

¹⁵ Quoted in Ginger (1954) from a letter to Stephen Holman, 10 April 1856, Box LW-1, Lyman Mills Papers.

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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: 8).

Towards this end Lowell housed the women in same-sex dorms supervised by older women and required observation of the Sabbath on penalty of termination (Rosenberg 2011).

One of the practices first implemented by Lowell and later copied by other industrialists was the active recruitment of these young women. Lowell would pay recruiters to go out into the rural areas of Massachusetts, New Hampshire, and Vermont in order to find employees. 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: 80). In 1846 “57 girls from Maine arrived at the Lawrence [Massachusetts] counting room” (quoted in Sumner 1910: 80). Factory owners would even go so far as to hire agents to recruit young women from other cities and states. Head hunters 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: 80).

Aspiring industrialists across the Northeast—and beyond—adopted Lowell’s business model. Some of these early imitators started their business with machines purchased from the machine shops at Lowell. Lowell’s customers included 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). Other textile factories capitalized on Lowell’s innovations by following in the path of building manufacturing equipment in house. Textile manufacturers in Lawrence, MA; Manchester, NH; and Saco, ME all had their own machine shops. The shops at Saco even hired a former Lowell employee to design their equipment manufactory (Hekman 1980). Mills in Nashua, NH; Chicopee, MA; Holyoke, MA; Whitestown, NY; and Pittsburgh, PA also followed the Lowell model of

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vertically integrating textile production from cotton to cloth and housing female laborers from across the country who came to the factory town or city solely for the purpose of employment (Foner 1977: xviii).

The parallels between Lowell and these early imitators were often not only striking, but deliberate. The Harrisburg Cotton Company was formed immediately following the passage of Pennsylvania's general incorporation law, which was heralded in the newspapers as sure to bring the success of Lowell to Pennsylvania. Like the mills at Lowell and Waltham, the mill at Harrisburg was a fully vertically integrated factory that transformed raw cotton to usable cloth. The owners were wealthy and politically well connected individuals. Although the mill would in later years hire predominantly local women, its initial recruitment strategy involved sending representatives to recruit young women from New England (Eggert 1993). Another early industrialist, Hamilton Smith, was a lawyer from the town of Lowell who greatly admired the textile factories and was determined to share in their success by pushing the industrial revolution westward to Cannelton, Indiana. In 1848, Smith began writing newspaper editorials advertising the opportunities available in Cannelton. These editorials were explicitly "not so much for the sake of interesting our townsmen as to give persons at a distance information."¹⁶ The mill was ultimately unsuccessful, going under after only three years, but illustrates the extent to which the Lowell model was admired across the country (Torrey 1977).

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, it is widely known that these industrialists had close political allies and were willing to utilize those political connections to their economic advantage. Francis Cabot Lowell's grandfather, John Lowell, graduate from Harvard with a small group of New England elites including the second president of the United States, John Adams, who would stay friends with the family and greatly admire the mills at Lowell and Waltham. His son and Francis Cabot Lowell's father, also named John Lowell, participated in drafting the constitution of Massachusetts and served as Massachusetts delegate to the 1787 Constitutional Convention in

¹⁶ Quoted in Torrey (1977) from *The Cannelton Economist*, February 2, 1850, p. 318.

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Philadelphia. Francis Cabot Lowell himself became one of the first industrial lobbyists with his advocacy for the Tariff of 1816, which penalized the importation of cloth (Rosenberg 2011).

These politically influential industrialists had both the means and the motive to make their states more desirable for women, and in turn these prospective employees made it clear that they were socially aware and valued political advancements in women's 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; and, while we have mind, talent, acquisition, ability, and a pen, we will defend them" (quoted in Foner 1977: 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: 298). Harriet H. Robinson, former mill operative, reports in her memoirs that there were often women working in the mills who were afraid that their estranged husband 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 1976 [1898]: 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 jurisdictional competition shifted westward.

B. Mobility across jurisdictional boundaries

In states where it is easier for people to enter and exit, legislators will feel the pressure of jurisdictional competition more strongly. Therefore, if jurisdictional competition was indeed a causal

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mechanism behind advancements in married women's legal ownership rights, then access to new or more cost effective means of travel between jurisdictions should be associated with legal reform. One such significant reform was the development of the interstate railroad system through the latter half of the 19th century.

The spread of railroads significantly reduced the costs associated with interjurisdictional mobility. Homesteading along the 19th century frontier was never easy, but prior to the development of the railroads even getting far enough west to settle was complicated, expensive, and dangerous. In the 1850's there were three routes to San Francisco: around Cape Horn, which took 6 months; through the Panama Isthmus, which took 1 month; or overland by wagon, which took 6 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 8 to 15 miles per day, a developed stagecoach route permitted travel of 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 1835 construction 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 1976 [1898]: 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

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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 Federal 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: 23). The value of these 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 "[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."¹⁷

This belief in the conductive power of the railroad would prove true. Demand to migrate west in order to take advantage of mining and homesteading opportunities remained strong through the 19th century. In 1870, the Chicago Tribune boasted that there were 700 emigrants passing through Chicago every day in order to catch a westbound train.¹⁸ The value to territorial politicians of attracting railroad construction was further strengthened by the powerful political influence of the railroad companies. The governor or senator savvy enough to ally himself with a railroad corporation made a powerful friend who could directly influence his political future. The collaboration was so tight that when the Union Pacific

¹⁷ "Gov. Haight's Biennial Message." San Francisco Bulletin, December 9, 1869.

¹⁸ "Emigration: Horace Greeley as a "Predictionist."" Chicago Tribune, April 2, 1870.

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commissioned Robert E. Strahorn to write guidebooks for the western states in order to drum up rail traffic, the territorial legislators of Wyoming, Idaho, and Montana bought them at a discounted price and distributed them as official information (Knight 1968). The politicians wanted the rail traffic as much as the owners of the railroads.

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. In the 1830's the debate was fought along the east coast between cities like Boston, New York, and Savannah. Each time the peculiar public/private entanglement that was the railroad industry sought to expand west, so did the battle lines. The contest for which cities would be lucky enough to lie along the nation's first transcontinental railroad was no exception. There were several horses in the race: the Northern Trail, which ran through St. Paul and upper Missouri between the 47th and 49th parallels; the Mormon Trail, which ran through Salt Lake along the 38th parallel; the Buffalo Trail, a pet route of Stephen Douglas's that ran through South Pass in Wyoming; the 35th Parallel Route, through Albuquerque and northern Arizona; the Southern Trail, between the 32nd and 35th parallels; and Jefferson Davis and William Emory's preferred route along the 32nd parallel (Borneman 2010: 9, 11; Wheat 1925: 228).

Nine years and roughly \$150,000 (\$4.5 million in 2011 dollars) were invested into the exploration and discussion of these possible routes, and still there was no consensus, nor even a political compromise. Several of the routes were found to be impossible to navigate due to the challenges presented by the Rocky Mountains. However, even a complete lack of practicality did not stop state and territorial politicians from fighting for a route that ran through their region. Isaac I. Stevens, the governor of Washington Territory in 1853, was a member of the exploratory party assigned to evaluate the feasibility of the northernmost proposed route. The proposed terminus of this route was in Seattle, then a small mining village. Stevens so desperately wanted the route through Washington Territory to be selected that despite turning back his expedition at least twice in fear of the snowy and steep route, his report back to the federal committee was the most glowing of them all (Borneman 2010). George Suckley, the chief

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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 1979 [1959]: 283).

With the prospect of a far north route eliminated for technological reasons, it became apparent that if there was going to be a transcontinental railroad it would have to either be centrally located or run through the south. Unfortunately for the south, the question of which route west the federal government would support was still undecided when the Civil War broke out. The secession of southern states to the Confederacy eliminated remaining political opposition to a north-central route. Consequently, railroad engineer Theodore Judah was warmly received when he arrived in Washington D. C. in 1861 with the political support of California's representatives in Congress and a thorough set of plans for the construction of a transcontinental railroad. After Judah was appointed Secretary of the Senate Pacific Railroad Committee and clerk of the House Pacific Railroad Committee, he had little trouble securing a charter for an eastward extension of the railroad owned by Judah and his business partners.¹⁹ The Pacific Railroad Act of 1862 designated twenty million acres in land grants and sixty million dollars in funds (\$1.4 billion in 2011 dollars) for three companies to begin construction. Judah's Central Pacific Railroad would build east, the newly formed Union Pacific Railroad would build west from the Missouri River, and the Leavenworth, Pawnee, and Western²⁰ would receive support to build a secondary route designed to connect to the Union Pacific in central Nebraska (Borneman 2010). The path of the first transcontinental railroad is superimposed over a map showing the timing of married women's rights reforms by state in Figure 4.

[Insert Figure 4]

¹⁹ Somewhat surprising in lieu of the fact that only six years before, Judah wrote in *Report of the Chief Engineer upon the Preliminary Survey, Revenue and Cost. of Construction of the San Francisco and Sacramento Railroad*, Feb. 1856: "Can the United States Government do it? Have they done it? Have they tried? No, and they will not; and what is more. the people do not much care to have them, for they have little confidence in their ability to carry it out economically, or to protect themselves and the treasury from the rapacious clutches of the hungry speculators who would swarm around them like vultures round a dead carcass."

²⁰ Renamed Union Pacific Railway, Eastern Division in 1862 and then Kansas Pacific Railway in 1869.

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The first transcontinental railroad was completed in 1869 when the Central Pacific and Union Pacific joined in Promontory Summit, Utah. Once constructed, the railroads generated new opportunities for women to traverse jurisdictional boundaries in search of a better life. Women had certainly migrated westward before the advent of the railroad, by wagon trains, stagecoaches, and even the occasional ship. However, their numbers were dwarfed by the floods of male settlers. The first official census of California in 1850 recorded that the population was 91.8% male. There are reported to have only been 15 women living in San Francisco in 1849, and when Denver was founded in 1859 there were potentially as few as five women in the 1,000 person settlement (Brown 1958). The development of the railroad system was a tool that helped to enable the rectification of these extreme early gender imbalances. By the early 1860's 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 rapidly expanded 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 painfully jostled, train service quickly became a quick, 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 farmer's 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 actively recruit, 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 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: 42) and established a recruitment office in Chicago in order to review the thousands of applicants. 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 employment 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

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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: 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 co-educational 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 to legally 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 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.²¹

The opening of the rails both promoted the creation of opportunities for unmarried women and decreased the cost to women of migrating across jurisdictional boundaries. Variation in timing and location of interstate railroads supports the proposition that a lower cost of mobility is associated with legislative reform. Table 4 divides states into quintiles based on year of full reform in married women’s property rights and then reports the average year of interstate railroad access to that state for each quintile. The average year that interstate rail travel is made available to the top quintile of states is 1847. Each successive quintile has later access to interstate rail, with the bottom quintile of states not having access to interstate rail travel until 1864 on average.

²¹ 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).

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[Insert Table 4]

The greater likelihood that states with robust rail networks are more likely to enact reformatory legislation bears out within regions as well.

For example, six states at the far western edge of the North American continent were admitted to the union in 1889 and 1890: Idaho, Montana, North Dakota, South Dakota, Washington, and Wyoming. Of these, Wyoming was the first to reform married women's property laws, enacting legislation permitting married women to both maintain separate estates and keep earnings in 1869 when it was still a young territory. The other five states did not enact reform until at least 1877, with Idaho not finalizing reforms until 1903. What was different about Wyoming? Wyoming was the only one of these states to have interstate rail service prior to 1870. The territory was more connected to the rest of the country, making it a lower cost selection for new entrants. Consequently, local politicians anticipated greater gains from attempts to attract new residents than politicians in less connected jurisdictions. Conversely, the low cost of exit made it more likely that a dissatisfied resident would move to another state or territory, forcing politicians to work harder to maintain population.

C. High stakes for territorial governments

Territorial governments had a particularly strong incentive to attract population because of the requirements associated with entry to the union of the United States of America. Since jurisdictional competition will have a greater influence on political behavior when the rents associated with attracting population 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 U.S. political institutions. The legal status of U.S. territorial acquisitions was shaped predominantly by the Northwest Ordinance, written

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by Thomas Jefferson in 1787 to govern the land ceded to the U.S. government by the former colonies²². The Northwest Ordinance outlined procedures for the initiation of territorial government, standards for when legislative bodies should be formed, and the conditions under which a territory could appeal to Congress for membership in the United States. The precedents established by the Northwest Ordinance were subsequently 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 Northwest Ordinance was Texas, which transitioned to statehood so quickly after its acquisition from Mexico that no territorial legislation was ever 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. Under the statutory guidelines for establishing territorial governments, governors and judges were chosen by federal appointment. These 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 introduced a great deal of uncertainty into the power of local elites. Once granted statehood, this particular form of uncertainty would no longer be a threat and the stability of local political capital would rise.

²² The Northwest Territory (now IN, OH, MI, IL, WI) and Southwest Territory (now TN, KY) were created from the lands immediately west of the original colonies. This land had originally been under colonial control but was ceded to the federal government upon entry to the union.

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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 U.S. 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's (1931) detailing of the political dynamics behind Ohio's statehood movement. He finds that while there were multiple interest groups in favor of statehood arrangements that would make their respective locales into state capitals, there was not a single interest group 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 jurisdictional competition. In order for aspiring politicians along the frontier to gain 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 was dependent upon 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 in sub-section B. Frontiers had been flooded with surplus men throughout the history of the United States. The Western frontier was certainly 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. Consequently the Mountain and Pacific regions of the United States were only 26.3% female in 1850. The second wave westward movement drew out farmers, ranchers, and teachers, which were more gender balanced populations and had an ameliorating effect on this early

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dramatic gender disparity. Still, the population was only 31.8% female in 1860 and 37.5% female in 1870 (Kleinberg 1999: 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 twelve 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 dramatically decelerated. 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 is 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 where 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..."²³ 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** (emphasis added).²⁴

The desire to attract population often motivated territorial governments to advertise the merits of their jurisdiction to Eastern populations. The Montana Immigrant Association was a group formed for the express purpose of attracting population to the territory of Montana. Career politician J.M. Ashley was

²³ "Oration Delivered by Governor T.W. Bennett, at Boise City, I.T. July 4th, 1873." Idaho Tri-Weekly Statesman, July 5, 1873, page 3.

²⁴ Ibid.

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both President of this association and Governor of the Territory of Montana when he wrote for their 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: 4).

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

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.²⁵

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 from 1870-1877, both territories along the Western frontier. Both of these political jurisdictions were still territories in search of population and statehood at the time of these decisions. Right to divorce was also a legally contentious issue in the 19th century, and those states with the most permissive divorce legislation were generally along the frontier (Jones 1987).

V. Conclusion

When the married women's property acts are considered in their full historical context, there is strong evidence that jurisdictional competition was an important determinant of reform. Those regions where jurisdictional competition was particularly strong—when relocation was easy, transportation was low cost, and political incentives were aligned—consistently enacted reform more thoroughly and more

²⁵ The Barre Gazette (Barre, Massachusetts) December 13, 861; Volume: 28; Issue: 21; Page: 1

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quickly than less competitive regions. In the absence of jurisdictional competition in the form of 19th century United States federalism, it is likely that women's rights to property ownership would have been significantly delayed, along with 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. Jurisdictional competition is an important constitutional tool that can be used to keep a law-making body responsive to the demands of the individuals living within the community. Individuals interested in evaluating the efficacy of a constitution as a device for restraining the scope of political action should consider the presence or lack of jurisdictional competition as one important factor. Further, individuals interested in maintaining a society where government is accountable to the people rather than discretionary should be particularly wary of institutional reforms that dilute the influence of jurisdictional competition.

This is particularly disconcerting in light of the fact that the protective mechanism of jurisdictional competition has proven itself to be susceptible to erosion by the political body. Just as a firm has no desire to operate in a competitive field when monopoly is an option, so political actors prefer not to have the restraints 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, etc.— 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 jurisdictional competition being a source of discretionary political power, forcing state or regional governments to compete with each other for citizens can actually protect citizens from tyranny by punishing political actors for failing to respond to the will of residents. However, jurisdictional competition can only function in the context of a mobile citizenry, autonomous local governments, and appropriate political incentives.

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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
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

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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 due to post-1900 statehood.

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

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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).

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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).

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Table 4: Average year of interstate rail construction, by quintile of time of passage of full MWPA

Year of full MWPA (earliest to latest)	Average year of interstate rail service
Quintile 1	1847
Quintile 2	1853
Quintile 3	1857
Quintile 4	1858
Quintile 5	1864

Sources: First interstate rail service gathered by decade from Stover (1999).

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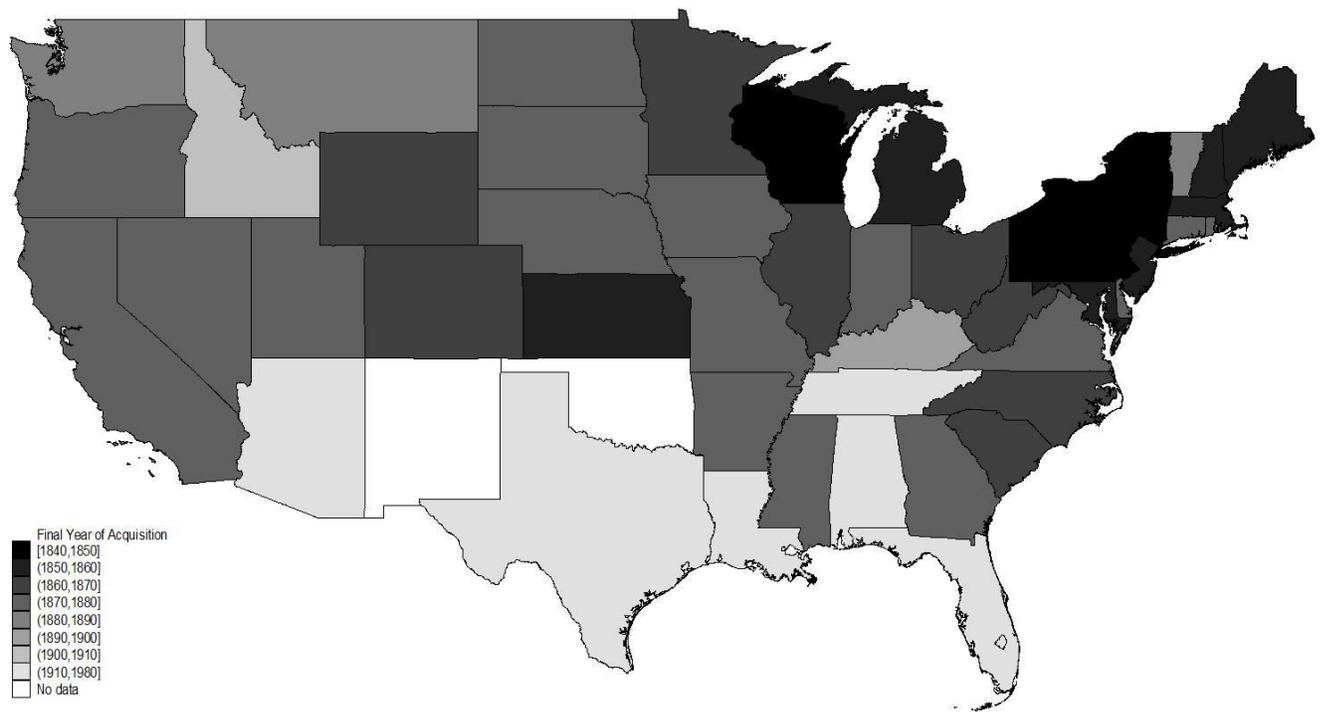
Table 5: Married women's rights reform in western jurisdictions

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).

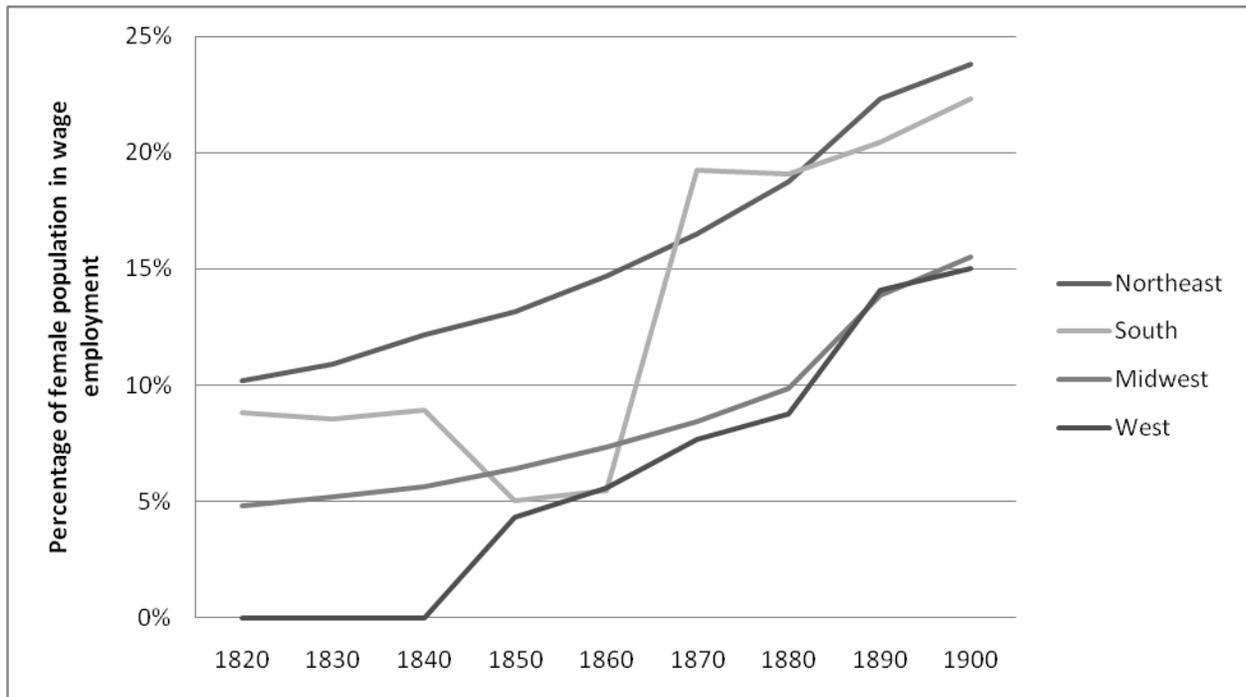
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Figure 1: Full married women's rights acquisition, by state



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

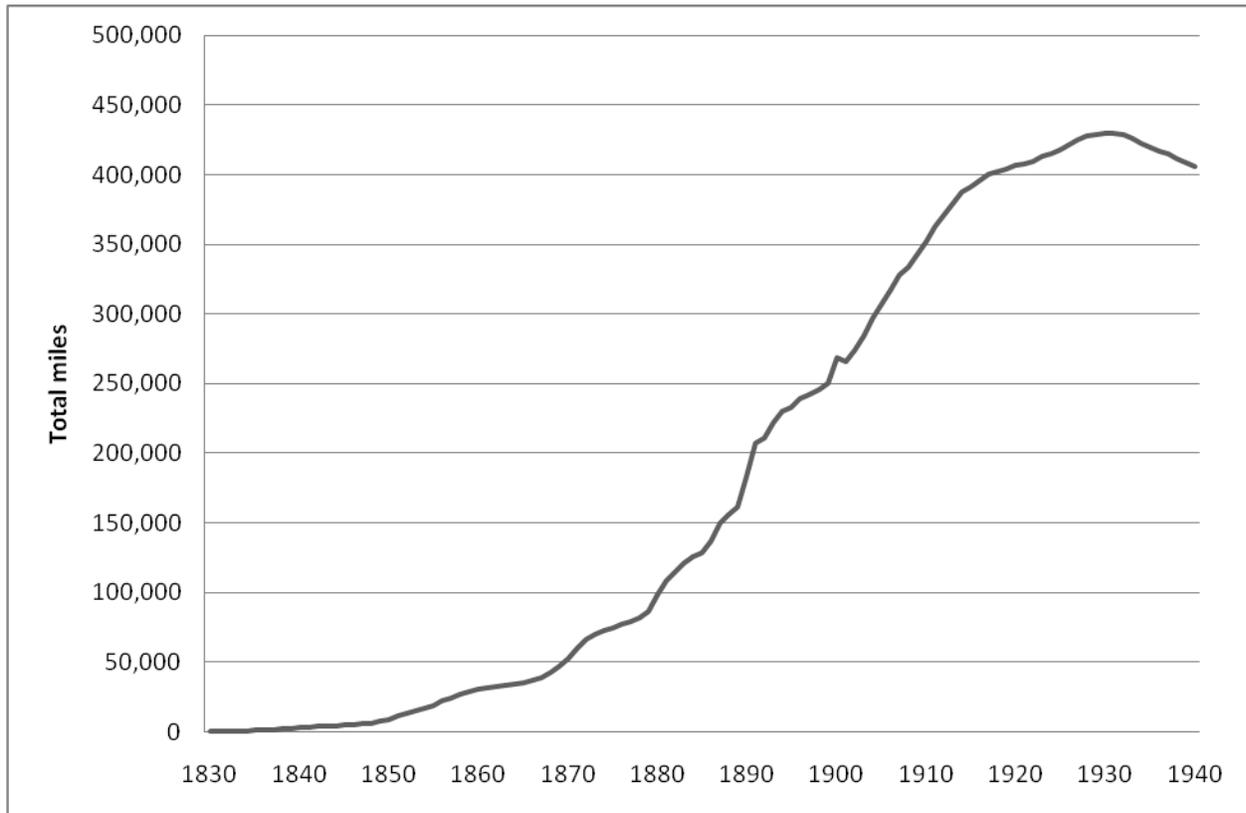
Figure 2: Percentage of female population in wage employment, by region



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.

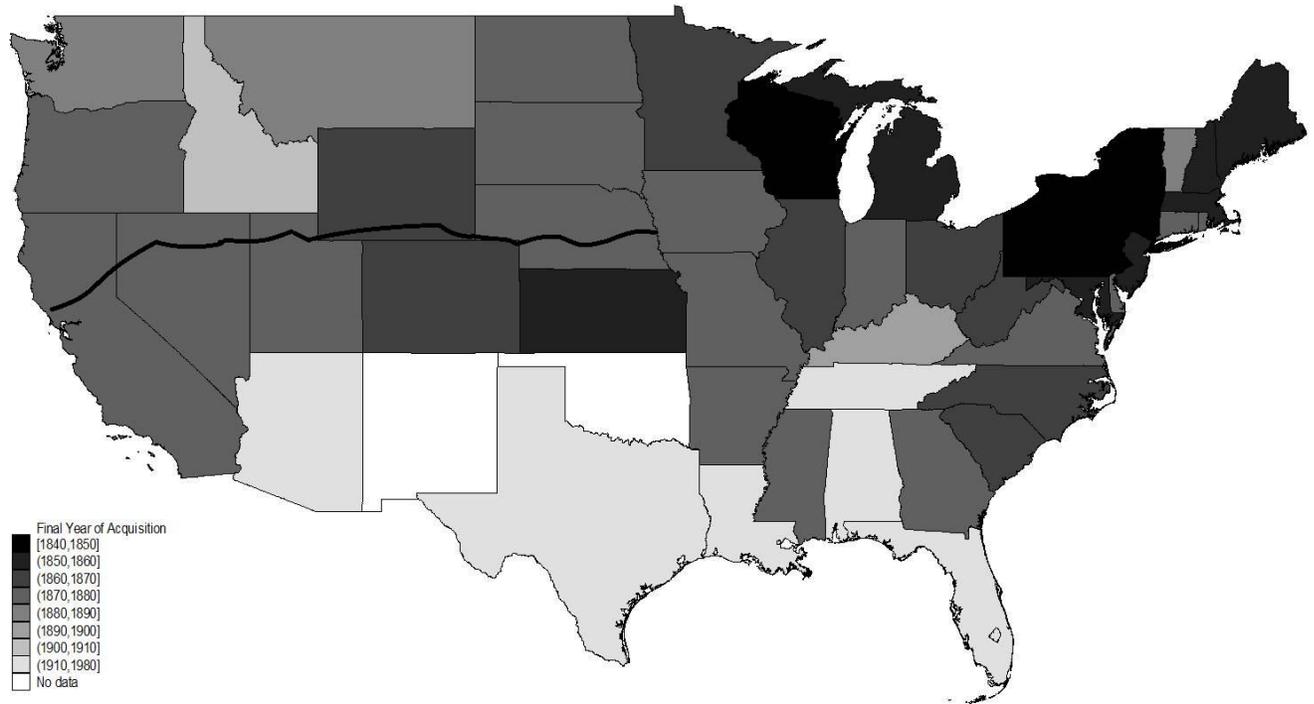
Figure 3: Total miles of rail operated in the United States, by year



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.

Figure 4: First transcontinental railroad, mapped over year of full married women's rights



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