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Interjurisdictional competition and the Married Women's Property Acts

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Abstract Married women in the early nineteenth century United States were not permitted to own property, enter into contracts without their husband's permission, or stand in court as independent persons. This severely limited married women's ability to engage in formal business ventures, collect rents, administer estates, and manage bequests through wills. By the dawn of the twentieth 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 nineteenth 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 to their jurisdictions, and (2) residents must be able to actively choose between the products of different jurisdictions. Using evidence from the passage of the Married Women's Property Acts, I find that legal reforms were adopted first and in the greatest strength in those regions in which there was active interjurisdictional competition.

Keywords Interjurisdictional competition · Decentralization · Competitive governance · Married Women's Property Acts · Property rights · Women's rights

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1 Introduction

Married women in the eighteenth and early nineteenth century United States were subject to a severe set of legal disabilities under the doctrine of coverture.[1] 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, p. 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). Historian Norma Basch described these restrictions on married women's property rights as the "single smoldering issue that symbolized the subordinate status of women in the wake of the Revolution" (Basch 1986, p. 99).

Beginning in the 1840s, state legislatures began to enact laws designed to reverse these legal disabilities. The Married Women's Property Acts (MWPAs) varied in their content and tone, but usually addressed some combination of married women's rights to create enforceable wills, to engage in independent business activities, to refuse to pay their husbands' debts, to access their husband's estate after his death, or, as in the acts that are the focus of this paper, to keep wages independently earned and/or maintain separate property (Hoff 1991). I follow the convention established by Geddes and Lueck (2002) of considering women to have equality in property rights within marriage once past wealth *and* future earnings are legally protected through the passage of both a separate estate act and an earnings act. By this measure, 43 states reformed married women's property rights between 1855 and 1920 (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 MWPAs 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 fourth 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 rights or from protecting their investments in their daughters by expanding 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 *legislators* would be willing to take action. Even if we assume the universal desirability of property rights reform, an unlikely 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 benefits sufficient to motivate optimal provision of legal reform (Samuelson 1954). In other words, demand will not ensure market-clearing supply when it comes to political markets. Whether or not legislators will be motivated to discover and act

[1] Unmarried women, including widows, were not subject to the same limitations on property ownership. They could own property, enter into contracts, and sue or be sued. The extent of the disadvantage of coverture is such that businesswomen or women who had been abandoned by their husbands were sometimes granted the right to be treated as if they were single by chancery courts or private legislative acts (Hoff 2007, pp. 41–42; Chused 1982, pp. 1369–1371).

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 nineteenth century United States respond to demand for reform so universally? This paper seeks to explain legislators' interest in reform by articulating the ways in which nineteenth century state and territorial legislators stood to gain by reforming married women's property rights. In the historical cases explored here, legislators could only internalize the benefits of reform by making their particular jurisdiction more attractive to potential residents—women in particular. Consequently, 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.[2]

Two necessary conditions must hold in order for interjurisdictional competition to motivate legislators to take the preferences of the community into account: 1) lawmakers must have a vested interest in attracting or maintaining population, 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.[3] 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 passage of MWPAs is a function of the degree of competition in the market for legal reform.[4] To the extent interjurisdictional competition was a relevant factor, reform was more likely where and when 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 a causal impact on the passage of the MWPAs:

1. If it becomes less costly for unmarried women to support themselves in jurisdictions where they do not currently reside, then legislators in jurisdictions within unmarried women's geographic choice set will be more likely to reform married women's property laws.
2. If it becomes less costly for unmarried women to move between jurisdictions, then legislators in jurisdictions within unmarried women's geographic choice set will be more likely to reform married women's property laws.

[2] In additional to this type of geographic competition, shifting attitudes towards women's economic rights are likely to have altered the types of legislation that an all-male electorate would have favored, thereby shifting the ideal rights regime from the perspective of a vote-seeking politician. For purposes of analytic tractability with respect to the question of nineteenth century interjurisdictional competition, the preferences of the electorate and other forms of ideological influence on political behavior are presumed to be roughly constant across jurisdictions. However, there were many and varied causes that influenced legislative treatment of married women's property rights over the course of the nineteenth century, and these other factors are worthy of further research.

[3] O'Hara and Ribstein (2009) explore this analogy and potential twenty-first century applications in detail.

[4] Conditions of jurisdictional competition in the nineteenth century United States led to expansions in other rights as well. Braun and Kvasnicka (2013) and Horpedahl (2011) discuss the role of interjurisdictional competition with respect to suffrage.

3. If 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 Sect. 2, I present the historical context of married women's property reforms. In Sect. 3, I discuss the theory of interjurisdictional competition as applicable to the history of these reforms. In Sect. 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 Evolution of married women's rights

The terms of the nineteenth 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. 430–433). Further, coverture erected legal barriers to the exchange of rights between husband and wife by denying the wife's independent agency. A married women could neither sue nor be sued in her own name. This legal non-existence left married women in both Britain and the United States with no legal right to own property or enter into contracts without their husband's approval and assistance. This in turn severely limited married women's ability to engage in formal business ventures, collect rents, administer estates, and manage bequests through wills. 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).[5] Widows and single women did not face the same legal disabilities. It was not uncommon for young unmarried women to work for wages or for widows to maintain control of family property and businesses after their husbands' death (Goldin 1990, pp. 46–54). However, nearly all women would live under the umbrella of coverture at some point in their lives.

The extent to which coverture was an effective limitation on women's choices is a matter of debate among scholars of women's history (Basch 1986, pp. 100–106). Equity courts in the early nineteenth century had become increasingly permissive of couples working around the precedents and laws that limited married women's economic activity by drawing up alternative contractual arrangements. Equity actions relating to married women's property rights included enabling wives to sue for the wrongful sale of real estate,[6] 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 usually involved placing the woman's property under the management of a third party, often her father or another male trustee (Rabkin 1980; Salmon 1986, 1992; Warbasse 1987). For those couples able to take advantage of them, equity courts offered respite from the strictures of coverture.

However, despite the increasing availability of equity solutions, coverture remained a significant legal disability for several reasons. First, there were legal limits on the extent to

[5] The legal relationship was not completely one-sided. A husband owed 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 2002, pp. 145–147).

[6] These actions were intended to protect a wife's interest in the one-third share of the family property she could expect to receive upon her husband's death. In the event that real estate was sold without consent, widows could sue the purchaser in order to recover their dower right (see Salmon 1986 and Warbasse 1987).

which coverture could be contracted around. Some of the legal disabilities associated with coverture were written into state codes or constitutions (Basch 1986, pp. 100–101), and the bulk of judicial precedent affirmed coverture. Second, those work-arounds that were permitted, either through equity or occasionally through private legislative acts, were specific to individuals. This system of working around the common law through equity courts "created two legal views of marriage—one for the wealthy and legally sophisticated, and one for everybody else" (Basch 1979, pp. 348–349). The few studies that have been done of equity trusts find that they were costly enough that they were used by relatively few women, often those with significant property interests prior to marriage (Salmon 1986, 1992; Chused 1982). Third, private agreements made outside the formal court system were unusually weak due to wives' inability to enforce their side of the bargain. A husband who went back on his word would often have the courts on his side. His wife would not even have recourse to terminating their partnership. Divorce was all but impossible at this time in American history, with jurisdictions only beginning to allow divorce for causes other than proven adultery or abandonment, if they allowed divorce at all (Jones 1987). These barriers made bargaining costly and served as a wedge between optimal and realized marital property arrangements.

In contrast to equity court actions that were individual-specific and often protected a married women's economic rights by transferring their control to a male trustee, the MWPAs were legislative actions that applied to all women in the state. State legislatures began to pass MWPAs in the late 1830s and 1840s. 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.[7] Separate estate acts codified and universalized the equity practice of marriage settlements by allowing all married women to own and manage property separately from their husbands.[8] Earnings acts, which usually came later, protected married women's rights to keep any wages earned after marriage.[9] Table 1 lists for each state the year that the first of these acts is known to have been incorporated and the year that married women become legally able to control both separate estates and earnings.

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

[8] The New York Married Women's Property Statute of 1848 served as the template for many other states. From 1848 New York Laws 307, Chap. 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.".

[9] 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 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, Chap. 293, S8).

Table 1 Timing of married women's separate estate and earnings acts by state

State	Year of statehood	Year of first legislation	Separate estate and earnings acts in effect	Years from first legislation to full MWPA
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

Table 1 continued

State	Year of statehood	Year of first legislation	Separate estate and earnings acts in effect	Years from first legislation to full MWPA
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 post-1900 statehood

Source Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Year of first legislation is the earliest separate estate or earnings act identified by Geddes and Tennyson (2012). A state is considered to have a full MWPA if both separate estate and earnings acts are in effect

Two 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, and the Midwestern frontier to a lesser extent, were the earliest relative to year of statehood and quickest to complete once initiated. This information is summarized in Table 2 and illustrated visually in Fig. 1.

In the remainder of this paper, I explore the extent to which this variation can be understood as a result 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 lawmakers are subject to pressure from the people living within their jurisdiction. Hirschman (1970) distinguished between two fundamental ways individuals can motivate political change: exit and voice. Voice encompasses those activities that take place as individuals influence law from inside the jurisdiction, through processes such as voting and ideological activism.[10] Although American women could and did exercise their voice by participating 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. These women's voices, however, did affect the preferences and beliefs of both politicians and the male electorate. For analytic tractability, men's preferences are presumed to be roughly constant across jurisdictions for the purposes of this paper.

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

[10] 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, voters learn that their elected officials are not doing as well as they could and choose not to re-elect.

Table 2 Timing of married women's separate estate and earnings acts by region

Region	Average year of statehood	Average year of first legislation	Average year of full MWPA	Average years from first legislation to full MWPA
Northeast	1791	1848	1862	13.7
South	1814	1864	1893	29.2
Midwest	1834	1855	1865	9.6
West	1881	1871	1877	6.0

Source Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Year of first legislation is the earliest separate estate or earnings act identified by Geddes and Tennyson (2012). A state is considered to have a full MWPA if both separate estate and earnings acts are in effect

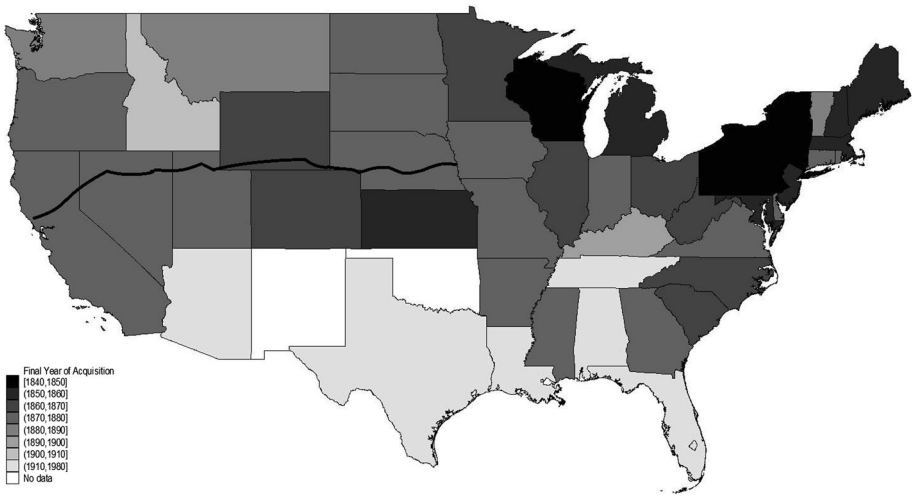

Fig. 1 Full married women's rights acquisition by state, including overlay of first transcontinental railroad. *Source* Data on year of passage of separate estate and earnings acts is from Geddes and Tennyson (2012). Map generated by author

physical movement between jurisdictions.[11] Charles Tiebout is credited as the first to propose interjurisdictional competition operating through geographic mobility as a mechanism capable of generating efficiency in the provision of public goods (Ostrom et al. 1961; Tiebout 1956). 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 studies that are most similar to the case of the MWPAs are those that investigate the extent to which state-level legislative bodies were influenced to switch from specific to general incorporation laws by competitive pressure from other

[11] 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).

jurisdictions (Butler 1985; Shughart and Tollison 1985; Easterbrook and Fischel 1991; Bebchuk 1992; Kahan and Kamar 2002; O'Hara and Ribstein 2009). This body of research demonstrates the significance of interjurisdictional competition. However, overall, evidence that local governments are competitive and that competition in this context is desirable has been mixed.[12] The ambiguous nature of these results suggests that the context within which competition takes place is of utmost importance to its ability to function and the outcomes that will result.

Interjurisdictional competition is best considered 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 McCahery (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 McCahery 1997, p. 230). In other words, the potentially beneficial properties of interjurisdictional competition—like those of market competition—are a function of the institutional context within which competition takes 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 the MWPAs, 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 reform. These groups, termed "exit-affected interest groups" by O'Hara and Ribstein (2009), 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 in the market for legal reform. If interjurisdictional competition was a relevant factor in explaining passage of the MWPAs, 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.

[12] On whether or not local governments compete with each other, see, for example, Brennan and Buchanan (1980), Crowley and Sobel (2011), 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 et al. (2011); and Oates and Schwab (1988).

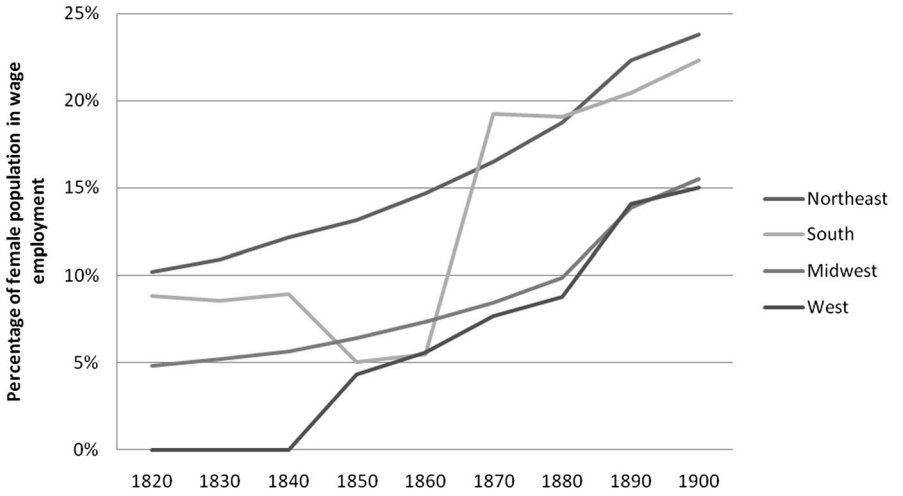

Fig. 2 Percentage of female population in wage employment, by region.
Note Records of female wage employees count women age 16 and over; records of female population count women age 15 and over. State census counts of the female population from 1820 through 1840 are of white women only.
Source Data on population and gainfully employed female workers from Weiss (2006) and Haines (2006)

Proposition #1 *If it becomes less costly for unmarried women to support themselves in jurisdictions where they do not currently reside, then legislators in jurisdictions within unmarried women's geographic choice set will be more likely 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 wage 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, 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 industrial Northeast was a particularly attractive destination for young women seeking to work outside the home. As illustrated in Fig. 2, women in the Northeast were more likely to be employed for wages, rather than working at home in support of a family or family business, than women in almost any other region and decade from 1820 through at least 1900.[13] In 1820, 4.9 % of women age 15 and older in the Northeast were engaged in wage-earning employment as compared to 1.8 % in the Midwest and 2.4 % in the South. By 1900, 16.4 % of Northeastern women age 15 and older were engaged in wage-earning

[13] From U.S Census data and Weiss (2006). The sole exception is the high rate of women in wage employment in the South during the 10 years following emancipation.

employment as compared to 13 % in the South and approximately 10 % in the West and Midwest.[14]

The rate of women's participation in the wage labor force is even higher when consideration is limited to young single women, who were more likely to work outside the home. Goldin (1990, pp. 50–51) found that in Massachusetts in 1850, 33 % of all women aged 10–29 worked in industry.

A broad view of the relationship between women's entry to industrial work and their consequent legislative treatment is illustrated in Table 3, which compares per capita investment in manufacturing in states that had granted women full control over their property and earnings with per capita investment in manufacturing in states that had enacted either an incomplete MWPA or no married women's property legislation at all. From 1860 to 1910, all decades for which comparison is possible, per capita investment in manufacturing was higher in states that had reformed married women's property rights. In proportional terms the most significant observed difference was during 1890, when capital investment in manufacturing averaged $33.47 per capita in states that had not enacted a MWPA and $111.23 per capita in states that had enacted a MWPA. This comparison does not enable derivation of any causal claims, but it does provide additional support for the idea of there being a connection between passage of the MWPAs and the increase in women's employment opportunities.

The burgeoning textile industry is a particularly interesting case of how women's increased options for employment and therefore geographic mobility affected their treatment by political and industrial interests. The value of women's labor to the textile industry 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 US, 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. These women primarily were between the ages of 16 and 22 and almost always unmarried. Most would work in the factory for only a few years before returning home or moving on to marriage (Rosenberg 2011).

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 or thousands of dollars (Ginger 1954). Savings of $1000 in 1823, 5 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

[14] These figures are underestimates of actual female labor force participation and are presented for regional comparison only. First, and most significantly, all nineteenth century measures of women's work are considered underestimates due to the inaccuracy of nineteenth century census practices and the fact that data explicitly omit much of women's actual work (Goldin 1990, pp. 43–46). Second, the available population data used here counts women age 15 and older, while available employment data only includes gainfully employed women age 16 and older. Third, the labor force base is overstated by including all women, not just those capable of and seeking work.

Table 3 Capital investment in manufacturing per capita in reformed vs. non-reformed states

Decade	Observations	Average capital investment per capita for all states	Capital investment per capita in states without Full MWPA in effect	Capital investment per capita in states with Full MWPA in effect
1860	36	$33.47	$31.46	$46.29
1870	43	$56.87	$52.53	$69.48
1880	43	$52.88	$27.34	$68.01
1890	45	$88.76	$33.47	$111.23
1900	45	$116.24	$45.99	$136.31
1910	45	$175.84	$90.92	$200.10

Note Data are reported for all years in which there is both data on capital investment and variation in MWPA status by state. A state is considered to have a full MWPA in effect if a law granting women full control over both their property and earnings was enacted before or during the census year

Source Per capita investment in manufacturing calculated from population data (Historical Census Brower 2004) and total capital investment as reported by the United States Bureau of the Census (1841, p. 364; 1902, pp. 982–988, and 1913, p. 546). Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012)

and sent money back home within 4 months of their arrival. For years afterward the mill received letters inquiring about employment opportunities for young Scottish women (Ginger 1954, p. 80).

In addition to the opportunity for financial gain, the Waltham-Lowell style mills provided young women with 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 moving 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.[15]

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; and, while we have mind, talent, acquisition, ability, and a pen, we will defend them" (quoted in Foner 1977, p. 308). 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. 41–42). 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 completed full reform earlier than other parts of the country. However, by the latter half of the nineteenth 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 in jurisdictions within unmarried women's geographic choice set will be more likely 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, access to new or more cost effective means of travel between jurisdictions should be associated with reform. Arguably the most significant of such transportation innovations in the nineteenth century was the development of the interstate railroad system.

The spread of railroads significantly reduced the costs associated with interjurisdictional mobility. In the 1850s, there were three routes 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 traveler's luck (Schlissel [1982] 2004). The first innovation in transportation was the development of stagecoach routes. Whereas early wagons could

[15] 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). Many factories even 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).

travel only eight to 15 miles per day, a developed stagecoach route permitted covering 70–100 miles per day. The development of the stagecoach routes, which largely took place through government mail carriage contracts, shortened the approximately 3000-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 in the Northeast for industrial purposes. Even these relatively minor rails proved popular 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. In 1830, there were 23 miles of functioning rail in the United States. By 1840, there were over 2800 miles of track, and by 1850 growth had taken off in earnest. Between 1850 and 1860, the number of miles of rail operated more than tripled from 9021 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).

The paths 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 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 could be used to promote led to intense political competition. Western politicians believed that railroad routes would draw migrants their way, and that with migrants would come population growth, 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 20 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."[16]

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 nineteenth 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 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).[17] The ultimate determination was that the Central Pacific

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

[17] 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 Goetzmann [1959] 1979, p. 283).

Railroad would build east from Sacramento, the Union Pacific Railroad would build west from the Missouri River, and the Leavenworth, Pawnee, and Western[18] 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 migrated westward before the advent of the railroad by wagon trains, stagecoaches, and even the occasional ship. However, their numbers were dwarfed by migration of male settlers. The Mountain and Pacific regions of the United States were 26.3 % female in 1850, 31.8 % female in 1860, and 37.5 % female in 1870 (Kleinberg 1999, p. 51). Some gender imbalances were even more extreme. The first official census of California in 1850 recorded that the population was 8.2 % female, and when Denver was founded in 1859 possibly as few as five women resided in the 1000-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 traffic grew as the railroads expanded in potential destinations and in the provision of amenities for the journey. Whereas the first trains were essentially cattle cars that left their passengers covered in dust and painfully jostled, train service quickly became a fast, smooth ride that included comfortable seats, smoother tracks, and options for dining and sleeping en route. *Harvey & Co.'s Popular California Excursions*, a promotional guidebook published in 1888, promised that women traveling alone would be "as well cared for as though accompanied by personal friends" (quoted in Richter 2005, p. 93).

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. The most common route was for passengers to travel first to Omaha, often via Chicago, where they would board a train to their destination of choice (Brown 1977, pp. 136–138). In 1882, passage from Omaha to San Francisco was $100 first class, $75 s class, or $45 emigrant class. Women could also choose to travel on emigrant fares to Denver or Cheyenne for $20; to Evanston, Wyoming, Eagle Rock, Idaho, or Ogden, Utah for $40; or to Portland or Seattle, via steamer from San Francisco, for $55 (Central Pacific and Union Pacific Railroad 1882, p. 5). The fare seems to have been a reasonable investment for a single woman in search of a job. The Aldrich Report found that the median weekly wage for a female mill operative in Massachusetts in 1882 was $4.93 (Abbott 1969 [1910], p. 290). At this median wage, a single working woman could reasonably expect to spend one to three months' worth of wages on passage West, depending on origin and destination.

Further, Western employers looking to hire recruited aggressively. 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 18–30 years of age, of good character, attractive and intelligent" (Poling-Kempes 1989, p. 42) and established a 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

[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).

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 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 5 years would receive 160 acres of land at no financial cost. Within the first year of the Oklahoma Territory being opened for official settlement, nearly 1000 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 (see footnote 18).

The opening of the rails promoted the creation of opportunities for unmarried women and lowered the cost to them of crossing jurisdictional boundaries. Variation in the timing and location of interstate railroads supports the proposition that a lower cost of mobility is associated with 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 causal on its own, but lends credence to the idea that there is likely some type of connection between political competition and reform.

Proposition #3 *If 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 population because of the requirements associated with entry to the Union of the United States of America. Since interjurisdictional competition has 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 legislative acts that extended federal

[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.

protections to the territories of Louisiana, Orleans, Florida, Oregon, California, and the Southwest Territory. The only nineteenth century entrant to the Union that did not experience the influence of the Northwest Ordinance was Texas, which was admitted 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 US House of Representatives. In 1850, this was 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 territory prior to their appointment, resulting in the frequent appointment of individuals 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 gave politically influential residents strong incentive to promote population growth. Particularly telling of the attractiveness of the rents to be gained through statehood is Downes' (1931) detailing of the political 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 one interest group opposed 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 realize the potential gains of 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, as discussed in Sect. 4, Proposition #2.

Among the Western states, the only region for which a territorial versus state comparison is relevant during this time period, evidence supports the proposition that territorial governments were more active in enacting MWPAs than already established states. Nine out of 12 western states were territories at the time of passage of their first known MWPA. Further, once these territories gained statehood, the pace of married women's rights reform

[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.

Table 4 Married women's rights reform in western jurisdictions

State	Year of statehood	Year of first legislation	Territory at time of first legislation?	Year of Full MWPA	Territory at time of full reform?	Average years from first legislation to full MWPA
California	1850	1869	No	1872	No	3
Colorado	1876	1861	Yes	1861	Yes	0
Idaho	1890	1867	Yes	1903	No	36
Montana	1889	1872	Yes	1887	Yes	15
Nebraska	1867	1871	No	1871	No	0
Nevada	1864	1861	Yes	1873	No	12
North Dakota	1889	1877	Yes	1877	Yes	0
Oregon	1859	1872	No	1878	No	6
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

Source Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012). Year of first legislation is the earliest separate estate or earnings act identified by Geddes and Tennyson (2012). A state is considered to have a full MWPA if both separate estate and earnings acts are in effect

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 4.

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 their merits to Eastern populations. The Montana Immigrant Association was a group formed for the express purpose of attracting people to the territory of Montana. Career

[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.

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

> 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 in 1870, both 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 nineteenth century, and those states with the most permissive divorce legislation generally were located along the frontier (Jones 1987).

5 Conclusion

When the MWPAs are considered in their historical context, strong evidence exists that interjurisdictional competition was an important determinant of reform. Those regions where interjurisdictional competition was particularly strong—where relocation was easy, transportation was low cost, and political incentives were aligned—enacted reform more thoroughly and more quickly than less competitive regions. In the absence of interjurisdictional competition in the form of nineteenth 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 a system of autonomous suppliers and demanders of legal reform. 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 should be

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

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 seek to restrict movement across borders and enact legislation on the less 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 that individuals living in those jurisdictions will suffer as a consequence. The history of married women's rights reform suggests a different story. Rather than interjurisdictional competition being a source of discretionary political power, forcing state or regional governments to compete with each other can protect citizens 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 compatible political incentives.

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