THE POLITICAL ECONOMY OF GENDER DISPARITY IN LAW

by

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A Dissertation
Submitted to the
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of
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DEDICATION

To Billy, my role model, best friend, and equal partner.
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Throughout the history of England and the United States, judges and legislators have regularly found occasion to create and enforce laws that are conditional upon gender. In British and American history much of this disparate treatment under the law descends from the British common law doctrine of coverture, which effectively suspended a woman’s legal independence upon marriage. Both the wife and any property she owned or acquired were seen as completely subsumed by the husband. Consequently, women faced severe and gender-specific legal restrictions on their ability to exit marriage, own property, and stand as independent legal entities.

I use three historical examples to analyze the evolution and function of these legal institutions as they governed the lives of women living in the early American and British common law legal systems. First, I consider the effect of jurisdictional competition on the evolution of the rules governing married women’s ownership of property in the early United States, finding that state governments are more likely to grant wives equality
under the law when the success of legislators is tied to attracting female population.

Second, I analyze the liberalization of divorce law that took place in the 19th century United States, finding that interest groups comprised of entrepreneurial attorneys and local business owners were key drivers behind these early victories for women’s rights.

The third case study, jointly authored with Peter T. Leeson and Peter J. Boettke, explores the peculiar institution of wife sales in early modern Britain. We argue that these public auctions enabled wives to use the capital of bidders to buy their way out of unhappy marriages, and as such emerged as a consequence of married women’s inability to own property.
JURISDICTIONAL COMPETITION AND MARRIED WOMEN’S PROPERTY RIGHTS

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 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 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. 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. 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

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.
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, 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 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, 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 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

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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).
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. 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

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4 The separate estate and property acts were often individual legislative acts, but some states and territories included them directly in the constitution.
married women are considered to have property rights equal in security to those held by married men.

[Insert Table 1]

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.  

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…

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.

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6 1842 Laws of Maryland, ch. 293, 58.
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]

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. This geographic mobility is the most relevant form of jurisdictional competition for purposes of this paper. 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 today) permit contractual choice of law, thus eliminating the feasibility of exit options not grounded in physical mobility. In order to

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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).

8 See O’Hara and Ribstein 2009 for an analysis of the modern day market- or lack thereof- in marriage law.
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.\textsuperscript{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.\textsuperscript{10} Both evidence that local governments are competitive and evidence that competition in this context is desirable have been mixed.\textsuperscript{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.

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

\textsuperscript{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).

\textsuperscript{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.
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 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. As will be discussed through

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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 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.

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.\textsuperscript{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 19\textsuperscript{th} 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

\textsuperscript{13} See O’hara and Ribstein (2009) for a discussion of how choice of contract provisions can substitute for physical mobility.
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 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
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 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.\(^\text{14}\)

\[\text{[Insert Figure 1]}\]

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).

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 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 Holyoke, 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).

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,

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).

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

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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 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 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 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.\footnote{\textit{Emigration: Horace Greeley as a “Predictionist.”} Chicago Tribune, April 2, 1870.} 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 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 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.\textsuperscript{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 Western\textsuperscript{20} 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.

\[\text{[Insert Figure 4]}\]

\textsuperscript{19} Somewhat surprising in lieu of the fact that only six years before, Judah wrote in \textit{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.”

\textsuperscript{20} Renamed Union Pacific Railway, Eastern Division in 1862 and then Kansas Pacific Railway in 1869.
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 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.

[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

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).
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 by Thomas Jefferson in 1787 to govern the land ceded
to the U.S. government by the former colonies\textsuperscript{22}. 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 19\textsuperscript{th} 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

\textsuperscript{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.
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.

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 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…” 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).

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 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

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24 Ibid.
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 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.\(^{25}\)

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 19\(^{th}\) century, and those states with the most permissive divorce legislation were generally along the frontier (Jones 1987).

**V. Conclusion**

\(^{25}\) The *Barre Gazette* (Barre, Massachusetts) December 13, 861; Volume: 28; Issue: 21; Page: 1
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 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.
Table 1: Timing of Married Women's Property and Earnings Acts, by state

<table>
<thead>
<tr>
<th>State</th>
<th>Year of Statehood</th>
<th>Year of First Legislative Effort</th>
<th>Both Separate Estate and Earnings Acts in Effect</th>
<th>Years from first effort to rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northeast</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Connecticut</td>
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<td>1849</td>
<td>1877</td>
<td>28</td>
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<td>Delaware</td>
<td>1787</td>
<td>1865</td>
<td>1873</td>
<td>8</td>
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<tr>
<td>Maine</td>
<td>1820</td>
<td>1844</td>
<td>1855</td>
<td>11</td>
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<td>Maryland</td>
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<td>1860</td>
<td>18</td>
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<tr>
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<td>1788</td>
<td>1845</td>
<td>1855</td>
<td>10</td>
</tr>
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<td>New Hampshire</td>
<td>1788</td>
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<td>1788</td>
<td>1848</td>
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<td>Pennsylvania</td>
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<td>1848</td>
<td>0</td>
</tr>
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<td>Rhode Island</td>
<td>1790</td>
<td>1844</td>
<td>1872</td>
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<td>1855</td>
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<td>Admission Year</td>
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<td>1877</td>
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<td>1869</td>
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45
Table 2: Timing of Married Women’s Separate Estate and Earnings Acts by Region

<table>
<thead>
<tr>
<th>Region</th>
<th>Average Statehood</th>
<th>Average Year of First Legislative Effort</th>
<th>Average Year of Rights Acquisition</th>
<th>Average Years from First Legislation to Full Rights Acquisition</th>
</tr>
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<tbody>
<tr>
<td>Northeast</td>
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<td>1848</td>
<td>1862</td>
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<td>1877</td>
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<td>1832</td>
<td>1858</td>
<td>1882</td>
<td>24.20</td>
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Sources: Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012).
Table 3: Per capita investment in manufacturing in reformed v. non-reformed states

<table>
<thead>
<tr>
<th>Decade</th>
<th>MWPA</th>
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<th>Total</th>
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<tr>
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<td>Mean</td>
<td>Mean</td>
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<tr>
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<td>Obs.</td>
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<td>29</td>
</tr>
<tr>
<td>1850</td>
<td>54.513</td>
<td>19.756</td>
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<tr>
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<td>20.559</td>
</tr>
<tr>
<td></td>
<td>Obs.</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>1860</td>
<td>39.698</td>
<td>29.303</td>
<td>31.976</td>
</tr>
<tr>
<td></td>
<td>SD</td>
<td>31.741</td>
<td>32.465</td>
</tr>
<tr>
<td></td>
<td>Obs.</td>
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<tr>
<td>1870</td>
<td>73.920</td>
<td>20.291</td>
<td>55.573</td>
</tr>
<tr>
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<td>66.387</td>
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</tr>
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<tr>
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</tr>
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<td>SD</td>
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</tr>
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<td>Obs.</td>
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<tr>
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</tr>
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</tr>
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</tr>
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Sources: Per capita investment in manufacturing calculated from U.S. Census data. Data on year of passage of Separate Estate and Earnings Acts is from Geddes and Tennyson (2012).
Table 4: Average year of interstate rail construction, by quintile of time of passage of full MWPA

<table>
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<tr>
<th>Year of full MWPA (earliest to latest quintile)</th>
<th>Average year of interstate rail service</th>
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<tr>
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</tr>
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<td>Quintile 2</td>
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<tr>
<td>Quintile 3</td>
<td>1857</td>
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<td>Quintile 4</td>
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</tr>
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<td>Quintile 5</td>
<td>1864</td>
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Sources: First interstate rail service gathered by decade from Stover (1999).
Table 5: Married women’s rights reform in western jurisdictions

<table>
<thead>
<tr>
<th>State</th>
<th>Year of statehood</th>
<th>Year of first legislative effort</th>
<th>Territory at time of first effort?</th>
<th>Both property and earnings acts in effect</th>
<th>Territory at time of full reform?</th>
<th>Years from first effort to full reform</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
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<td>1869</td>
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<td>Idaho</td>
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<td>1867</td>
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<td>1903</td>
<td>No</td>
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<td>Nebraska</td>
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<td>1861</td>
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<td>1872</td>
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<td>1887</td>
<td>Yes</td>
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<tr>
<td>North Dakota</td>
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<td>Utah</td>
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<td>Washington</td>
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<td>Wyoming</td>
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</tbody>
</table>

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

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.
I. Introduction

It would be difficult to overstate the controversy surrounding divorce laws in the 19th century. Pleas on both sides of the issue were impassioned and immovable. When the Reverend Charles A. Dickey testified in front of the United States Congress on the issue, he characterized divorce as "worse than any pestilence that can be brought in ships, or any calamities that can come from the clouds. For, let the foundations of our homes be meddled with, and we will have no foundations for our country."\(^{26}\) In contrast, Elizabeth Cady Stanton described being trapped in an unhappy marriage as “…nothing more or less than legalized prostitution. Let us encourage, yea, urge those stricken and who are suffering in such degrading bondage, held there by crude notions of God’s laws and the tyranny of a false public sentiment, to sunder all such holy ties…”\(^{27}\)

Stanton’s words were addressed to the women of New York, who lived in one of the most restrictive divorce regimes in the country. New York’s first divorce statute was passed in 1787 and declared adultery the only suitable grounds for a full divorce. Despite numerous attempts over the next 150 years to liberalize this strict divorce law, no piece of legislation ever successfully passed both the Assembly and Senate. Consequently,

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adultery remained the only acceptable grounds for divorce in New York until 1966 (Basch 1990, Hartog 1991). However, the legislatures of many other states did choose to liberalize, either by expanding the acceptable grounds for divorce or reducing the amount of time an individual would have to be a resident before they could sue for divorce under that state's law. These liberalizations enabled dissatisfied spouses to procure divorces that would have been illegal in the state they were married in by simply moving to another jurisdiction and waiting the required amount of time—often as little as 3 months, or in the case of Nevada from the 1930s on, only 45 days.

There are two potential economic explanations for these liberalizations in divorce law. The first possibility is that the public interest had changed in such a way that altering the default marriage contract to be more easily dissoluble was a Pareto improvement. However, the possibility that legislatures systematically recognized the efficiency of more liberal divorce law and chose to provide these valuable public goods falls short given the theoretically indeterminate value of changing divorce law. To the extent that liberalizations in divorce law represent a transfer of marital rights from the satisfied to the dissatisfied spouse, the Coase theorem suggests that changes in divorce law will not alter the stock of efficient marriages. If a husband and wife are able to reach a marital bargain such that both benefit from remaining within the marriage, they will do so. Consequently, there is no assignment of rights over the decision to exit marriage that will alter the couple’s final decision to either separate or remain together and therefore no assignment of rights that would be preferable to another in terms of social efficiency (Becker 1981; Becker, Landes, and Michael 1977). Further, even the wealth effects of these transfers are
difficult to predict. Easy access to divorce does remove some of the risk from marriage, increasing the expected net present value of a union. However, since the offer of a lifetime of financial and familial support and the other benefits of marriage no longer comes with a guarantee of unconditional enforcement by the state, the admission of new legally permissible grounds for divorce also diminishes the expected net present value of the marriage contract. The net effect of a change in divorce law is consequently indeterminate from both a social and an individual perspective, making a simple public goods explanation unlikely.

The second potential explanation, and the one I argue for in this paper, is that liberalizations in divorce law were the result of legislative capture by private interests. Specifically, the history of migratory divorce havens illustrates that many of the liberalizations in divorce law that took place in the 19th century United States were driven by private interests of groups of lawyers that were small but well equipped to lobby. The primary modus operandi of divorce lawyers in these states was to attract clients from more restrictive states either through direct advertisement or by referral from a partner in a law firm back east. These clients, usually though not exclusively wealthy, would then move to the city for a period of three to six months depending on the local law. After this period of time, they were eligible for divorce on the grounds established by local statute. The local divorce lawyer received the fee, the local hotel owner received the rent money, the local businesses received 3-6 months of business from a wealthy patron, and the unhappy couple received the right to rearrange their marital obligations. However, despite the seemingly all-around benefits, vocal anti-divorce advocates across the country
took great offense to this particular money-making endeavor. In the words of a Chicago newspaper, “When will justice overtake the legal vampires who thus rob fools of their money, and disgrace an honorable profession?”

Most economic analysis of divorce has focused on attempting to understand changes in the divorce rate. The empirical veracity of the Becker-Coase proposition that changes in divorce law will not affect the divorce rate has been explored by the research program on the late 20th century transition to unilateral divorce laws in the United States. This literature has found mixed results, with the most up to date studies suggesting that changes in divorce law indeed have no significant long-term impact on the divorce rate (Allen 1992; Brinig and Buckley 1998; Ellman and Lohr 1998; Friedberg 1998; Peters 1986, 1992; Wolfers 2006; and Zelder 1993). Other papers argue that the constant or falling divorce rate in the no-fault era is not a result of the family conforming to the Becker-Coase prediction as claimed, but an effect of the decreased security in marriage lowering expected gains and ensuring that only better matched couples with a high expected utility will find it worthwhile to enter marriage (Rasul 2006, Mechoulan 2006). A related body of research looks at wealth effects, or the relative well-being of married people under different divorce law regimes. For example, Brinig and Crafton (1994) propose that no-fault divorce would create a dis-incentive for domestic abuse by reducing the cost of exit for a maltreated spouse, and Stevenson and Wolfers (2006) empirically investigate this claim.

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28 Inter Ocean, (Chicago, IL) Thursday, June 14, 1877.
29 Stevenson and Wolfers (2006) find reductions in female suicide, uxoricide, and domestic violence against both husbands and wives rate following the adoption of no-fault divorce.
The literature outlined above analyzes the economics of divorce by taking
changes in divorce law as exogenous and analyzing the effects of changes in laws on the
behavior of married people or people considering marriage. In this paper, I reverse the
standard relationship between individuals and divorce law by analyzing the actions of
individuals within the legal regime and the effects of those actions on changes in law. In
doing so, I raise the question of the legislative motivations behind the two hundred year
trend of liberalization in divorce law. Given that public interest explanations are
particularly unlikely to be relevant in the arena of divorce law for the reasons discussed
above, the incorporation of private interests in the economic analysis of divorce reveals
important causal relationships that would not be uncovered by alternative methods of
analysis.

In the next section of this paper, I present the economic theory of the effect of
interest groups on legislative activity in the context of divorce law, with a particular
emphasis on how the interests of lawyers translate into legislative influence. In section
three, I outline the role of divorce mills in the evolution of United States divorce law.
Then, in section four, I analyze the role of private interests in divorce liberalization by
evaluating the validity of three related predictions: 1.) If liberalization was driven by
private interests, liberal divorce laws should have been associated with demonstrable
profits to local lawyers and businessmen. 2.) Since the profits of the divorce business
were concentrated at the level of cities and other small localities, residents and
representatives of these jurisdictions are expected to be stronger advocates for liberal
divorce law than individuals operating at the state and national levels. 3.) Since liberal divorce law is beneficial at the local level only, state level legislatures are expected to be susceptible to the imposition of costs by anti-divorce pressure groups once the state’s status as a divorce mill becomes nationally known. Section five concludes.

II. Role of interests in legislative change

Some positive fraction of legislative activity comes about as the result of interest groups perceiving an opportunity for profit through some change in the law and legislators in turn responding to their rent seeking activities (Buchanan and Tullock 1962: 269-280). Landes and Posner (1975: 888-891) describe this as an exchange in which the legislature sells legal change to the highest bidding interest group.

Some of these exchanges will be easier to negotiate than others, due to a score of issues that can be broadly described as credible commitment problems. Given that legislators face no sanction for violating the terms of an exchange with an interest group, a legislature can never guarantee that its agreement will not be overturned in the next period. It is most difficult for a legislature to credibly commit to a legal reform that is likely to be misinterpreted or overturned by the judiciary, or that requires subsequent reinvestment in the form of funding or additional legislation. The influence of interest group politics also depends upon whether the judiciary decides to act as a pure contract enforcer or to engage in interpretive acts that neutralize legislative influence (see Buchanan 1975, Landes and Posner 1975, and Macey 1986).
This framework implies that reform in divorce law is an arena of legislation that is particularly susceptible to the influence of interest group politics. The right of states to choose their own set of laws governing marriage and divorce had long been established, and as such divorce laws were unlikely to be contested on grounds of constitutionality, at least at the national level. On the level of routine administration of the law, a legislative enactment changing the criteria for procuring a divorce was straightforward. Though sometimes the interpretation of grounds for divorce could be fuzzy—what does and does not qualify as mental cruelty?—the changes in residency requirements which were the most sought after by pro-divorce interest groups were generally not subject to interpretation and therefore judicial nullification. Further, since gains to lawyers and local businesses were immediate and did not require any direct financial investment, there was no immediate or future action that could nullify the benefits to the interest group of this particular form of legal exchange. The problem of credible commitment is minimal, at least in comparison to other forms of legislation.

Further, O’Hara and Ribstein (2009) argue that law firms and other associations of lawyers make for particularly powerful interest groups. Lawyers are highly motivated to involve themselves with legal reform because they can gain or lose clients when the law changes. Further, their familiarity with the law, membership in organized legal associations, and the fact that they have already incurred the licensing costs associated

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30 There had been occasional disputes in state level courts over the validity of migratory divorces, but the decisions were so varied and the precedent consequently so confused that both the majority and the dissenting opinions in the 1906 U.S. Supreme Court case believed that past state court decisions validated their perspective (Feigenson 1990: 119-121).
with being allowed to exercise legal expertise all lower the costs associated with lobbying (Ribstein 2004).

Lawyers working within the same area of law have frequently formed associations in order to more effectively promote legislation in service of their shared interests. As early as 1932, Chief Justice Harlan F. Stone observed:

The rise of big business has produced an inevitable specialization of the Bar. The successful lawyer of our day more often than not is the proprietor or general manager of a new type of factory, whose legal product is increasingly the result of mass production methods. More and more the amount of his income is the measure of professional success. More and more he must look for his rewards to the material satisfactions derived from profits as from a successfully conducted business, rather than to the intangible and indubitably more durable satisfactions which are to be found in a professional service more consciously directed toward the advancement of the public interest (quoted in Gordon 1988: 3-4).

Stone’s insights have proven prescient, as lawyers are now generally accepted as an important driving force behind legal reform. Tort lawyers have been particularly influential in altering product liability law (Rubin and Bailey 1994), the First Amendment Lawyer’s Association has been one of the driving forces pushing obscenity cases to the Supreme Court (McGuire and Caldeira 1993), and activity by entrepreneurial lawyers has been identified as a crucial component in the passage of various 20th century human rights legislations in the United States, Britain, and Canada (Epp 1998). These are just a few of many examples.

In sum, 19th century divorce legislation was particularly vulnerable to influence by a knowledgeable and well connected interest group that stood to benefit from easy divorce law. Consequently, it is not surprising that divorce law in the United States
experienced an evolution that resulted in most states significantly liberalizing their divorce laws over the course of the 19th century.

III. The history of United States divorce law

The legal environment within which early United States legislatures and judges were developing practices governing divorce had its foundations in British common law. Family law in 18th century Britain was 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. Coverture also 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 right to enter into contracts without her husband’s approval and assistance.

Further, if married life proved less desirable than anticipated, legal exit options were severely limited. Full divorce including restoration of the right to marry was completely forbidden until 1715, when it became possible to request an individually tailored act of Parliament. These private legislative acts were the only means of obtaining full divorce from 1715 until the marriage law reforms in 1857, and during the entire 150 years of their relevance only 327 such acts were passed (Gibson 1994: 11-14).

It was this severe legal environment in which the American colonies were developing their first divorce statutes. Prior to the relaxation of divorce law that will be discussed in this paper, exiting a legal marriage – i.e. a union contracted between a man
and a woman who were consenting, single, non-impotent, unrelated, and sane adults – was nearly impossible. The colonies in the New England region generally allowed divorce only in the case of desertion and adultery, but many other colonies did not begin to allow divorce at all until the late 18th and early 19th centuries. South Carolina forbid all divorce until 1869. Further, even in those jurisdictions where divorce was permitted, it was rare. Connecticut, recognized as the most permissive in matters of divorce as early as the 1650s, only granted 40 divorces between 1655 and 1699 (Strow and Strow 2006: 241-242).

Throughout the 19th and into the 20th century, there was a slow but pervasive liberalization in these stringent divorce laws (Basch 1999, Cowley 1879, Friedman 1973, Hartog 2002). New York and South Carolina are the only jurisdictions that do not have dramatically more liberal grounds for divorce at the end of the 19th century than at the beginning. At the other end of the spectrum, Rhode Island liberalized as early as 1798 when they added “gross misbehavior and wickedness, in either of the parties repugnant to, and in violation of, the marriage covenant” as acceptable grounds for divorce, becoming the first state to allow divorce for other than adultery and desertion (Jones 1987).

Throughout the 1800s, most states add some combination of violent cruelty, mental cruelty, habitual drunkenness, imprisonment or felony conviction, and failure to support to the traditional biblical grounds of adultery and desertion. Some states pass additional less common grounds such as joining a religious sect believing cohabitation
unlawful or engaging in prostitution or other licentious behavior before marriage. Other states add catch-all omnibus clauses, similar to no-fault divorce except in that the court must agree to your desire to separate. For example, the Territory of Washington passed a statute in 1855 allowing divorce for “any cause deemed by the court sufficient or where the court shall be satisfied that the parties can no longer live together.” By the end of the 19th century, the preponderance of states in the union had made it significantly easier for married women to remove themselves from the umbrella of coverture should it prove less desirable than anticipated.

Table 6 presents the year a state or territory first permits divorce on the liberal grounds of either mental cruelty, failure to support financially, or a quality of life ground of some sort. These provisions are considered liberalizations because they are the first to grant the judiciary discretionary latitude that extends beyond the traditional grounds of adultery, extended desertion, or violent cruelty. These quality of life grounds are generally expressed as “behavior that renders life intolerable,” “gross misbehavior and wickedness,” or “habitual exercise of bad temper.” Some states enact full omnibus clauses that grant the courts permission to allow divorce wherever they see fit, and these are considered liberal during the periods in which they are in effect. This accounting does not address the issue of divorce a mensa et thoro, a separation that carried legal weight but which did not permit remarriage (Bishop 1856). Also removed from

32 West Virginia Code 1870, p.441.
33 Terr. Stats 1855, p.405-7.
34 Connecticut (Public Acts 1849), Illinois (Revised Laws 1833, p.232-3), Indiana (Revised Laws 1824, ch. 32, S 1, p.156), Iowa (Laws 1845, ch. 24, p.23), Maine (Public Acts 1847, ch. 13, p.8), Minnesota (Laws 1855, p.62), Utah (Acts 1855, p.163), and Washington (Statutes of the Territory, 1855, p.405-7) all enact omnibus clauses for some period of time.
consideration at this time for the sake of restraining the scope of the query is the practice of private legislative actions for divorce, which were infrequently permitted until Delaware become the last state to prohibit legislative divorce in 1897 (Friedman 1973).

[Insert Table 6]

This overview of liberalizations in divorce law reveals two interesting patterns. First, states and territories in the Midwest and the West are more likely to have liberal divorce law than states along the eastern seaboard. The proportion of states in each region to have enacted liberal divorce law is presented in figure 5.

[Insert Figure 5]

Second, every omnibus clause—the most liberal of all possible divorce laws—was eventually repealed. The removal of the omnibus clause by all state legislatures represents a systematic pattern of partial repeal of liberal divorce laws. Other liberal grounds of divorce that were less publicly controversial would remain in effect. This suggests that whatever forces motivated the initial relaxation of divorce law were at least in part overwhelmed by countervailing pressures.

This pattern of liberalization in the Midwest and the West followed by partial repeal of the most extreme liberalizations is best explained in the context of the divorce mills. Migratory divorce—the practice of divorce seekers traveling to a jurisdiction with more liberal laws in order to procure a divorce—is a tradition that began in the 1700’s and persisted until the no-fault divorce revolution beginning in the 1960’s (Blake 1962; Friedman 1984; Jones 1987). Connecticut was the first state considered a haven for
divorce-seekers. This practice extended back to the New Haven Colony code of 1656, which established:

“That if any husband shall without consent, or just cause shewn, willfully desert his wife, or the wife her husband, actually and peremptorily refusing all Matrimonial society, and shall obstinately persist therein, after due means have been used to convince and reclaim, the husband or wife so deserted, may justly seek and expect help and relief, according to 1 Cor. 7. 15” (Hoadly 1858: 586).

Connecticut’s practice of permitting deserted wives to procure divorce solely because they were deserted garnered the colony and then the state a reputation for being liberal in matters of divorce that persisted through the 18th and into the 19th century (Cowley 1879). Compared to later decades this policy may not seem particularly lax, and indeed it would not be considered liberal by the criteria outlined above, but most other jurisdictions of the time would permit divorce only in the case of adultery.

In the 1840s and 1850s, it was the frontier of Ohio, Indiana, and Illinois that offered haven to those in search of a less strict divorce law. This practice was often disparaged in the newspapers: “The laws of Ohio allow a divorce for “gross neglect of duty,” which being liberally construed allows the parties to separate almost at pleasure. It is nearly the same in Illinois and Wisconsin.”35 There were 837 divorces granted in Ohio in 1865.36 Chicago was advertised as far away as England as a good place to spend a year while waiting for a divorce from an Illinois court.37 However, it was the laws of Indiana that were the most notorious. Indiana’s omnibus clause, enacted in 1824 and remaining in effect until 1871, allowed the courts to permit divorce “also for any other cause and in

36 “Statistics of Divorce in Ohio.” The Daily News and Herald, (Savannah, GA) Wednesday, June 06, 1866
37 Daily Evening Bulletin, (San Francisco, CA) Friday, December 10, 1869.
any other case where the court in their discretion shall consider it reasonable and proper that a divorce should be granted.”

In the words of one newspaper, “Indiana is determined to be ahead of any other state—even Connecticut—in the freedom of divorce.”

In 1871, the Territory of Dakota enacted an expansive divorce statute. Around the same time, lawyers from Chicago, Cincinnati, and New York established divorce mills in Utah Territory, where the more flexible courts and short residency requirements enabled them to offer quicker and easier divorces (Daynes 2011). As these changes were taking place in the west, anti-divorce advocates in Indiana and Illinois were slowing down the divorce mills in those states by successfully pushing through more restrictive legislation. Consequently Utah and the Dakotas became the premier divorce havens. Out of 300 divorce suits brought in Salt Lake City alone between September 1876 and September 1877, over 80% were initiated by non-residents.

Within the Dakota Territory, groups of lawyers in different cities were in competition with each other for superiority in the divorce business. The May 24, 1891 Bismarck Daily Tribune reports that “The St. Paul Globe is agrieved (sic) because Fargo used to be regarded as the divorce metropolis of Dakota territory, but of late, under the state regime, Sioux Falls is gathering in the business.” In addition to Fargo and Sioux Falls, Bismarck, Mandan, Jamestown, Grand Forks, and Yankton were all destination

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38 Rev Laws of Indiana 1824, ch. 32, S 1, p.156.
39 “Divorce in Indiana.” Vermont Chronicle, (Bellows Falls, VT) Saturday, June 05, 1869.
41 Inter Ocean, (Chicago, IL) Saturday, December 08, 1877.
42 Bismarck Daily Tribune, (Bismarck, ND) Sunday, May 24, 1891.
cities in the Dakotas for those in search of divorce. In addition to the 3 month residency requirement, courts in the Dakotas had the advantage of permitting divorce for desertion and willful neglect. From 1869-1886, there were 1,087 divorces granted in the Dakotas, 70% of which involved couples who migrated to the territory for the explicit purpose of obtaining a divorce (Jones 1987).

By the turn of the century the far western states of Oklahoma, Oregon, and Wyoming served as migratory havens. In 1893, South Dakota increased their residency requirement from 3 months to 6 months, and Oklahoma’s 3 month residency requirement began to steal the attention: “Oklahoma is rapidly supplanting the Dakotas in the divorce business. There are at least two good reasons for this. One is that the climate of Oklahoma is much more pleasant than that of Dakota, and the other is that the Oklahoma law requires only half as long a residence as that of Dakota.”

Practically, the old Dakota divorce law now prevails in Oklahoma, with the additional advantage that no notice is to be served upon the person from whom a divorce is sought unless by accident he or she should happen to see a printed notice of the application in some obscure Oklahoma paper. Several large hotels are to be erected in the principal towns of Oklahoma, and the divorce lawyers of South Dakota are preparing to move.

In 1895, there were 1000 people seeking residence in Oklahoma in order to be able to apply for divorce, with small divorce colonies of 25-200 divorce seekers popping up in different cities across the state. Between the formation of the Territory of Oklahoma in

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43 Bismarck Daily Tribune, (Bismarck, ND) Saturday, January 14, 1893.
44 “Oklahoma’s Divorce Colony: The Experiences of a Man Who Was Recently a Resident of It.” The Indiana State Journal, (Indianapolis, IN) Wednesday, February 19, 1896.
1890 and the media attention in 1895, the small territory had managed to grant 500 divorces.\textsuperscript{47} An attorney from Guthrie, Oklahoma wrote:

Guthrie is a pretty town. Persons of social standing desiring to temporarily reside here can always find congenial company and be entertained in royal style. Divorces can be easily obtained in Guthrie. The legal charges will be reasonable, and the persons concerned will be put to as little inconvenience as possible.\textsuperscript{48}

The wax and wane of different divorce havens continued well into the 20\textsuperscript{th} century. Nevada secured its well known status as a divorce mill in 1927 when it passed a law allowing divorce with only a 3 month waiting period. On February 26, 1931, Arkansas attempted to capture Nevada’s advantaged position by shortening their residency requirement to 90 days. Only a week later Idaho followed suit, enacting a 90 day residency requirement on March 3, 1931. Nevada reacted almost immediately, shortening their residency requirement to 6 weeks. A United Press dispatch of May 2, 1931 reported that “a 10-minute hearing system was installed in Reno’s divorce courts today in anticipation of the busiest week-end in the history of the nation's most famous divorce mill” and that “A new divorce suit every two minutes was the record set at the office of the county clerk here today” (quoted in Swearingen 1931: 254). Major cities in Nevada, particularly Reno, continued to capture these gains until the no fault divorce movement of the 1970’s eliminated the need for migratory divorce (Bergeson 1935, Swearingen 1931).

There is some disagreement over the extent of migratory divorce. Anti-divorce activist Samuel W. Dike considered migratory divorces irrelevant because only 19.9% of

\textsuperscript{47} “Divorce Decrees in Oklahoma.” \textit{The Galveston Daily News}, (Houston, TX) Sunday, August 11, 1895.
\textsuperscript{48} \textit{The Atchison Daily Globe}, (Atchison, KS) Tuesday, April 10, 1894.
divorces procured between 1867 and 1886 were granted outside the state where the couple was married (Potter et al. 1889: 513-517). However, a study cited in Jones (1987) finds that in the twenty year period from 1867-1886, 45-60% of divorces taking place in Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, South Dakota, North Dakota, Utah, Washington, and Wyoming were granted to out of state residents. So whether or not migration was the dominant method of divorce, it was certainly of substantial import in the states housing divorce businesses. Further, other records suggest that as many as 60 percent of divorces were not counted in the 1900 census, and potentially even more in earlier censuses (Strow and Strow 2006). Given the proclivity of divorce mills towards secrecy and protection of their clients, it seems reasonable to suspect that at least a proportional number of these uncounted divorces were migratory.

IV. The business of divorce liberalization

The primary hypothesis of this paper is that the business of divorce described above generated substantial profits for small groups of lawyers and local community businessmen who formed highly motivated interest groups. I analyze the role of these interest groups in the context of three predictions that should be expected to follow if my hypothesis is correct. First, liberal divorce law must by associated with demonstrable profits to local lawyers and businessmen. Subsection A demonstrates that there were substantial profits to be had, and therefore sufficient motivation for these individuals to engage in interest group activity. Second, since the profits of the divorce business were concentrated at the level of cities and other small localities, residents and representatives
of these jurisdictions are expected to be stronger advocates for liberal divorce law than individuals operating at the state and national levels. Indeed, politicians and associations founded at the state or national level are more likely to advocate the de-liberalization of divorce law. This is substantiated in subsection B. Third, since divorce liberalization was primarily supported by local rather than state actors, state level legislatures are expected to be susceptible to capture by competing pressure groups once they emerge. In subsection C, I present evidence that both state and national legislatures are swayed by anti-divorce interest groups, particularly once the public unpopularity of the divorce mills reaches a level sufficient to counter the benefits offered to legislatures by lawyers and local businessmen.

A. Benefits to private interests

In October 1898, Senator Bentley of Wichita proposed a bill changing Kansas’s residence requirement from one year to three months:

The securing of divorces has gotten to be a matter of business, not sentiment, and those who deserve to be separated will go where a divorce can be secured quickest. Oklahoma used to be a Mecca for all unhappily mated people, and South Dakota now is one. Kansas is a much nicer state in which to reside than either of these places and I believe if we can secure a three months divorce law for Kansas it will boom business immensely. I have talked with many members of the legislature, and everybody favors it. The bill will be introduced at the next session, and we expect to make Kansas the headquarters for all divorce wanters by next summer.49

49 Bismarck Daily Tribune, (Bismarck, ND) Saturday, October 22, 1898.
A comment on this speech adds, “As there is a two-thirds majority of attorneys in both houses, Senator Bentley feels confident his bill will pass unanimously.”

The support of attorneys in the community and in the legislature was a consistent force behind the passage of liberal divorce law. In developing states, the smaller population meant that there was a greater chance that the lawyers prosecuting local divorces were the same lawyers serving in the legislature. The overlap in those making the law and those benefiting from the law explains why one newspaper editorialized “It is probable that an attempt will be made [in the next meeting of the legislature] to amend the divorce laws, but any such attempt will find many lawyers in opposition.”

Similarly, in discussing a proposed increase in North Dakota’s residency requirement from 3 months to 1 year, a commentator speculates that “There will be a big fight on the bill by lawyers and hotel keepers, who have reaped a harvest from the present law.”

In order to take advantage of these profit opportunities, groups of lawyers across the country—and sometimes even beyond the borders—coordinated to find ways to profit from liberal divorce laws:

“The practice of coming to Indiana and getting divorced is by no means unfrequent among Eastern people, and a very large number come from New York city. The thing is very easily managed if the party has money and will avoid an honest lawyer, which is easily done. Many lawyers in New York have special partners throughout Indiana, who undertake the cases sent to them and then divide what profits accrue with the sender.”

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50 Bismarck Daily Tribune, (Bismarck, ND) Saturday, October 22, 1898.
51 “South Dakota’s Divorce Law.” The Milwaukee Sentinel, (Milwaukee, WI) Thursday, November 17, 1892.
52 “North Dakota Divorce Law.” The Galveston Daily News, (Houston, TX) Saturday, January 16, 1897.
53 “Gossip from Indianapolis—A Breach of Promise Case—Divorce Suits in Indiana.” Daily Evening Bulletin, (San Francisco, CA) Friday, April 19, 1867.
Lawyers advertised these opportunities to potential clients through newspaper advertisements. One New York lawyer advertised: “Divorces procured without publicity in all the States; desertion, ill treatment, etc., sufficient cause.” The respondent to this advertisement was able to procure a divorce from an Indiana court after staying in Fort Wayne for only a few days.\(^\text{54}\) An 1877 account describes “a Chicago shyster, who advertised to get Utah divorces in thirty days or six weeks, without regard to residence, and without publicity.”\(^\text{55}\)

Some Western lawyers were known to have conspired with attorneys from “almost every State”\(^\text{56}\) to procure divorces without residence or publicity. Some lawyers in the divorce mill states did not like having to share the cut with partners back east.

George A. Webster, an infamous divorce lawyer from Salt Lake City sent the following to the Central Law Journal in March 1877:

> You have doubtless noticed the number of soliciting advertisements for divorce practice, by parties in Chicago and other places. These solicitors all procure their divorces in this Territory, and I have represented and acted for many of them myself. But learning that most of the cases came from the profession through these brokers, I concluded to inform the profession as to the facts, and solicit direct, thus securing less division of fees and greater satisfaction (“Current Topics” 1877: 266).

This action, potentially risky on Webster’s part, illustrates how much local lawyers stood to gain from maximizing the profits associated with divorce suits. Thus it is perhaps not surprising that a commentator from Indiana argued “It is the lawyers, not the laws, that draw them to our State. It is generally known in interested circles that we have the most

\(^{54}\) “Twice Married: Testing the Value of an Indiana Divorce in New Jersey.” *St. Louis Globe-Democrat*, (St. Louis, MO) Tuesday, August 24, 1875.

\(^{55}\) *Inter Ocean*, (Chicago, IL) Thursday, June 14, 1877.

agreeable and accommodating lawyers for this branch of the professional business to be found in any State in the Union."

Next to the lawyers, the groups with the most to gain were the owners of the hotels, boarding houses, and other real estate where divorce seekers would stay during their 3-6 months in the area. One former resident of a divorce colony writes,

When I was in Perry [Oklahoma] the divorce colony there numbered between forty and fifty. Of these a majority were New Yorkers, and at least half were women. The divorce colony is large enough to have some social life of its own, and the three months which its members are forced to pass in the Territory pass very pleasantly... they keep several boarding houses well filled, and the bona fide residents like to have them there.

Mildred A. Hildreth, an infamous divorce lawyer from Fargo, North Dakota, talks very colorfully about how many of the people in the town are working together in order to satisfy the divorce seeking population:

The hotel people are my personal friends, and Charley Fisk, the judge of that district, is the nicest fellow in the world. He is a particular friend of mine... Everything in (sic) done in chambers unless there is a contest... Jamestown is another great town. The proprietor of the best hotel there is a personal friend of mine and is anxious to have a colony started there, and the newspaper people there are all my friends. The newspapers here and everywhere in the state for that matter can be bought up for a song. The divorce business in Fargo alone means at least $150,000 a year.

Many of the visitors to the divorce colonies were wealthy and accustomed to living in a relative degree of luxury. Madame Margaret De Steurs, wife of Belgian minister in Paris and member of the Astor family, purchased a $12,000 residence when she moved to

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57 Divorce Cases in Indiana—A Good Place for Lawyers.” Ibid.
58 “Oklahoma’s Divorce Colony: The Experiences of a Man Who Was Recently a Resident of It.” The Indiana State Journal, (Indianapolis, IN) Wednesday, February 19, 1896
Sioux Falls for the purpose of securing a divorce.\textsuperscript{60} Other service business also benefited from the increase in population, even in those cases when it was only temporary. The New York Herald estimated that the divorce colonies in North Dakota were pulling $500,000 in to the state annually.\textsuperscript{61} By the time Nevada took over the business in 1931, one source puts the annual revenue from divorce at $3 million, or $45.2 million in 2012 dollars\textsuperscript{62} (Swearingen 1931).

Though there were obvious and large benefits to the lawyers who would be compensated for prosecuting the influx of divorce suits and the service professional who would be meeting their other needs, there were in some cases benefits to the broader community. In their original incarnation, many of the divorce mills were established explicitly to attract needed people and services to ill-populated frontier towns.

The law has been on the statute books for fifteen years, and when acted on by the territorial legislature in its early days for the purpose of inducing immigration to the then sparsely-settled prairies of South Dakota, and the act of granting divorces on such a short time contemplated that the application would remain a resident of the territory and contribute to the building up of the then thinly-settled commonwealth.\textsuperscript{63}

Further, the legislature was not the only group to consider the prospect that those arriving in South Dakota for the purpose of securing divorce might be induced to stay. One account suggests that the single men of the West were supportive of divorce colonies because

\textsuperscript{60}“After a Divorce.” \textit{The Atchison Daily Globe}, (Atchison, KS) Friday, August 14, 1891. “A Baroness in Trouble.” \textit{The Atchison Champion}, (Atchison, KS) Sunday, September 13, 1891 suggests that she afterwards tried to get out of the sale.

\textsuperscript{61} Reprinted in \textit{Weekly Rocky Mountain News}, Thursday, April 27, 1899.

\textsuperscript{62} Based on percentage increase in CPI, from Officer and Williamson (2013).

\textsuperscript{63} “’T Won’t Work, Ladies: A Sudden Hitch in Certain Dakota Divorce Proceedings.” \textit{The Emporia Daily Gazette}, (Emporia, KS) Saturday, August 01, 1891.
“... marriageable women are scarce in South Dakota and adjoining regions; that ranch life on the boundless prairies is lonely to an almost intolerable degree, and that the “anybody, good Lord” of the traditional old maid’s prayer is heartily echoed by these well-to-do but desolate ranchers. It is thus that these men have come to look to the divorce courts of the flourishing towns of South Dakota as supply depots of wives, and to haunt them with matrimonial intent.”

A visitor to the colony validates the opinion that divorce colonies were good places to meet future partners: “As a rule the women are pretty, stylishly dressed, and well educated. The majority are young, and, being young, love life, excitement, pleasure... A new feature, and a strange one, too, is the number of men in Sioux Falls seeking a dissolution of the marriage tie.” So there were also non-pecuniary benefits to the establishment and maintenance of a divorce colony.

**B. Support of local versus state level actors**

Despite the fact that divorce law was made at the state level, the benefits of easy divorce legislation and short residency requirements accrued primarily to local actors (as described above). Consequently, most legislation on the issue was driven by locally based attorneys and legislators rather than politicians with a broader jurisdiction. Rarely did a push for easier divorce law come from state governors or organizations with a large base, such as state or nation-wide bar associations. Rather, these larger scale organizations often worked to shut down divorce mills. This is consistent with turn of the century legal scholar Rollo Bergeson’s description of competition between states for divorce mill

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64 *Morning Oregonian*, (Portland, OR) Friday, September 15, 1893.
status as a “a notorious "divorce racket" whose foster-fathers are short-sighted legislatures, avaricious chambers of commerce, resort promoters, and commercially-minded lawyers” (Bergeson 1935: 348).

The divorce business in Salt Lake City was so locally successful—and nationally unpopular—that a Grand Jury was appointed to review the records of the probate courts. The review was for the period September 1876 to September 1877. Out of 300 divorce suits brought during that year, there were detailed records available for 150 cases and lawyers listed for 67 cases. 99% of the cases were handled by three lawyers: George A. Webster, George C. Bates, and M. M. Bane. Essentially all of the city’s booming divorce business was handled by only three men, and the benefits were concentrated almost exclusively in their hands. There were few benefits to the state at large and certainly not the nation, making support at those levels exceedingly rare.

In fact, many efforts to reverse the legislation that permitted divorce mills to flourish were spearheaded by governors. When Connecticut Governor John Treadwell addressed the state legislature about the issue in 1810, he argued that permitting divorces was problematic because “it admits the principle that a legal and fair marriage may be dissolved for other causes than that of adultery, which, it is conceived, is the only legitimate cause, so the Legislature, especially of late years, have granted divorces for any cause, not specified in the statute, which they deemed subversive of the ends of marriage.” Although Treadwell may not have been persuasive enough to change the trajectory of the law, his efforts illustrate the difference in levels of support between

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66 “The Divorce Abomination in Utah.” Inter Ocean, (Chicago, IL) Friday, September 28, 1877.
himself and the legislature. While the governor was theoretically accountable to the whole state, the members of the legislature who were interested in preserving the laws were accountable to the smaller jurisdictions that were enjoying the benefits of the more liberal divorce statutes.

Indiana also enacted a revolutionarily liberal divorce statute that would eventually come to be reviled by its governor. Indiana’s omnibus clause, enacted in 1824, allowed that release from the bonds of matrimony could be granted “for any other cause and in any other case where the court in their discretion shall consider it reasonable and proper that a divorce should be granted.” In 1870, Governor Conrad Baker is quoted as very colorfully claiming “I shall not hesitate at the meeting of the legislature, if my life is spared, to commend this much needed reform to the attention of the general assembly.” It would seem that his life was spared, because the next year he is quoted in a speech to the state’s legislature suggesting that less migratory divorce and more restrictive laws would be preferable:

The laws of this state regulating the granting of divorces, and especially the lax manner in which they have been administered in some of our courts, have given Indiana a notoriety that is by no means enviable… With such amendments as these we might well hope that the Indiana divorces would soon cease to be advertised in any of the Atlantic cities as marketable commodities, and that refugees and fugitives from the justice of other states would no longer come to Indiana in quest of divorces, to be used on their return to their homes as licenses to violate the laws of our sister states.

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67 The difference in support between actors with smaller versus actors with larger jurisdictions may also explain why an earlier attempt to overturn the omnibus clause in 1869 succeeded in the Senate but failed in the House. See Vermont Chronicle, (Bellows Falls, VT) Saturday, June 05, 1869.
68 Rev Laws 1824, ch. 32, S 1, p.156.
69 Boston Daily Advertiser, (Boston, MA) Tuesday, January 04, 1870.
70 Quoted in The Milwaukee Sentinel, (Milwaukee, WI) Thursday, January 12, 1871.
Later that same year the omnibus clause that permitted the courts to grant divorce in any situation they saw fit was removed from the Indiana state code, eliminating Indiana’s status as a divorce mill.

The lack of support among organizations with a broader scale applied within the field of law as well. The National Conference of Commissioners on Uniform State Laws, established by the American Bar Association (ABA) in 1889, came out in favor of homogenous divorce law by drafting seven different model statutes between 1889 and 1906 and encouraging their universal adoption (O’Neill 1965: 205). The last of these model statutes allowed for full divorce only on grounds of adultery, bigamy, criminal conviction of a spouse, extreme cruelty, two years of willful desertion, or two years of habitual drunkenness. In addition to this conservative set of grounds, bringing suit for any cause other than adultery or bigamy required a two year bona fide residence in the state (Proceedings 1907: 124-128). By advocating a stricter divorce regime than that established in the divorce mill states, the ABA demonstrated its preference for restricting competition in divorce law. In addition to being consistent with the proposition that organizations serving larger jurisdictions received fewer benefits from the divorce business and would therefore be more likely to be apathetic or even antipathetic, this advocacy on the part of the ABA suggests that the organization—already in the practice of restricting the quantity of legal services through the practice of licensure (Ribstein 2004: 314-315)—may have enjoyed some form of monopoly rents from requiring that divorces be prosecuted in the home states of the applicants under a restrictive and more difficult to prosecute set of grounds.
C. The ascendancy of anti-divorce interests

Despite the local benefits to maintaining a thriving divorce business, easy divorce law remained highly controversial on a national scale. Over time, anti-divorce interests—largely driven by religious leaders from Catholic, Episcopal, and other Protestant denominations—became increasingly strong and well organized. The divorce mill states were a regular target of these anti-divorce advocates. James Gibbons, a Cardinal in the Roman Catholic Church, writes:

States are encouraging inventive genius in the art of finding new causes for divorce. Frequently the most trivial and even ridiculous pretexts are recognized as sufficient for the rupture of the marriage bond; and in some States divorce can be obtained "without publicity," and even without the knowledge of the defendant—in such cases generally an innocent wife… Every daily newspaper tells us of divorces applied for or granted, and the public sense of decency is constantly being shocked by the disgusting recital of divorce-court scandals (Potter et al. 1889: 520).

In addition to speaking out against the evils of divorce, these religious organizations were actively involved in campaigning against the divorce mills. These initiatives met with varying degrees of success, with failures generally due to “public apathy, sometimes coupled with undercover resistance from commercial and legal interests which profited from the divorce trade” (O’Neill 1965: 204). The Ohio Divorce Reform League, led by Bishop Gregory Thomas Bedell, Reverend William Henry Hoyt, and Reverend Samuel W. Dike, formed in Columbus, Ohio on December 6, 1883 at a conference of Protestant churches.71 At the organization’s second annual meeting, they

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71 “Divorce Reform in Ohio.” The Milwaukee Sentinel, (Milwaukee, WI) Friday, December 07, 1883.
resolved to ask the Ohio legislature to remove gross neglect as a ground for divorce and provide competent counsel for defendants, and participate in the Interstate Commission.\textsuperscript{72}

William Hobart Hare, an Episcopal bishop in South Dakota, led one of the more notable and successful campaigns against the divorce business. Hare is described as having

astonished his congregation and caused considerable commotion in the divorce colony by attacking the divorce law of the state, the people who come here and the various interests intimately connected with the business. “Any institution or practice carried on in a community which is sapping the moral life of that community,” said he, “should be exposed and suppressed.”\textsuperscript{73}

Hare recognized that he was up against business interests when he made his case to the legislature. A summary describes his petition as claiming that “… the measure now on the statute books is not only a disgrace to the State, but an actual damage to the business interests. He says he is prepared to prove the latter statement to the satisfaction of the committee.”\textsuperscript{74} Whether or not Hare succeeded in persuading anyone that stricter divorce laws would be good for business, the legislature did vote to increase South Dakota’s residency requirement from three months to six months (O’Neill 1965).

As a result of anti-divorce advocacy, every omnibus clause established during the 19\textsuperscript{th} century was eventually repealed. Most of these were repealed at the height of anti-divorce sentiment in the 1870s and 1880s, when politicians at the state and national level would have faced particularly high costs for their association with divorce mill states.

\textsuperscript{72} “Ohio Divorce Reform League.” \textit{St. Louis Globe-Democrat}, (St. Louis, MO) Wednesday, January 21, 1885.
\textsuperscript{73} “Dakota Bishop on Divorce.” \textit{The Galveston Daily News}, (Houston, TX) Wednesday, January 04, 1893.
\textsuperscript{74} “To Repeal Dakota’s Divorce Law.” \textit{The Daily Inter Ocean}, (Chicago, IL) Sunday, January 15, 1893.
In addition to their role as direct advocates for legislative change, religious organizations were also influential in generating anti-divorce sentiment at the national level that no doubt contributed to the increasing reluctance of state level politicians to support easy divorce laws. President Theodore Roosevelt was heavily influenced by Bishop William Croswell Doane of Albany, New York, who favored prohibiting divorce altogether and frequently recommended that the Episcopal Church reconsider its decision to allow the innocent party in divorces brought on grounds of adultery be allowed to remarry (O’Neill 1965). Doane and the members of the Inter-Church Council on Marriage and Divorce are often credited with having motivated President Theodore Roosevelt to order the first official collection of statistics on marriage and divorce (Pringle 1931: 472; Strow and Strow 2006: 243).

Towards the end of the 19th century, some migratory divorces that affected allocations of property after divorce were challenged in the United States Supreme Court with mixed verdicts—some upheld the rights of states to act as divorce havens while others issued a challenge to the practice (Feigenson 1990). In an address to Congress in 1906, Roosevelt even encouraged Congress to consider a national amendment to the Constitution granting the Federal government the right to regulate divorce on the grounds that “when home ties are loosened, when men and women cease to regard a worthy family life…as the life best worth living; then evil days for the commonwealth are at hand” (quoted in Pringle 1931: 473).
V. Conclusion

This evolution in divorce law is particularly intriguing in light of the fact that the desirability of such change was hotly contested, with both sides of the issue argued vociferously by large and diverse groups of supporters. However, despite the uncertainty surrounding the desirability of changing divorce laws, they almost universally became more liberal. Entrepreneurial lawyers and businessmen drove forward a set of reforms that a generation of feminists could not have achieved on their own, as illustrated by the fact that New York, the epicenter of progressive feminism, was one of the last states to reform its divorce statutes. If the nearly two century trend of liberalization in divorce law could be explained by a slow ideological shift towards the progressive, then the obstinence of New York’s legislators would be an anomaly indeed. In saying this I do not intend to downplay the role of feminism—it is quite possible that without the efforts of feminist advocates, the divorce sharks of the mill states would have been simply to repugnant to succeed.

The fact that small groups of lawyers and businessmen had such great influence over such controversial legislation also has implications for democracy in general. First, it should give pause to those who yet hold out for the sanctity of democracy and its ability to manifest the public will. If lawyers can exert such pressure towards the cause of getting people out of unhappy marriages, surely they can exert it along less desirable margins as well. However, there is also cause for optimism about democracy in the right

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75 In this sense, the contemporary debate over the permissible grounds for marriage, i.e. should marriage between two parties of the same gender be allowed, strongly mirrors this older debate over the permissible grounds for divorce.
context. The divorce mills can reasonably be interpreted as insulated forums for
institutional experimentation with relatively little risk. In areas of law in which local
jurisdictions can remain relatively independent of each other, it can be possible to prove
an experimental legal concept in the same way a consumer products firm might test a
new offering in a small market. In this sense, the divorce mills may have paved the road
for public acceptance of a more liberal family law in general.
<table>
<thead>
<tr>
<th>State</th>
<th>First formal legal code*</th>
<th>Year of Statehood</th>
<th>Liberal divorce law</th>
<th>Omnibus</th>
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Notes: Five states are omitted due to post-1900 statehood: Alaska, Arizona, Hawaii, New Mexico, and Oklahoma. The sample is curtailed at 1790, formal law may actually be older in those states marked 1790. (a) repealed in 1872; (b) temporarily repealed from 1907 – 1927; (c) repealed in 1874; (d) repealed in 1873; (e) repealed in 1855; (f) repealed in 1883; (g) repealed in 1864; (h) repealed in 1887; (i) repealed in 1921
Figure 5: Proportion of states and territories with liberal divorce laws, by region
WIFE SALES

With Peter T. Leeson and Peter J. Boettke

“Let be, yer rogue.  I wull be sold.  I wants a change.”

— Mattie, an unhappy wife, to her husband, c. 1830.  

I. Introduction

“Laerdies an’gentelmin, I ax lafe to oppose yer notice… Her’s a good creature… an’ goos pretty well in harness, wi’a little flogging… Her can carry a hundred and a ’alf o’ coals from the pit for three good miles; her can sell it well, and put it down her throat in less ner three minits… Now my lads, roll up, and bid spirited… I brought her through the turnpike and paid the mon the toll for her. I brought her wi’a halter and had her cried… Now gentelmin, who bids? Gooin, gooin, gooin! I cawn’t delay—as the octioneer sez, I cawn’t dwell on this lot!... Come, say six shillins!”

This auction was conducted in Wednesbury, England’s public market before of a crowd gathered in front of the White Lion tavern. What “crature” was the auctioneer selling?

A reasonable guess would be livestock. But a reasonable guess would be wrong.

The auctioneer wasn’t selling a cow. He was selling his wife.

The wife-selling husband was Moses Maggs. The lucky bidder bought Maggs’ wife for six shillings and three gallons of ale. “The bargain being thus concluded, the halter was placed in the” buyer’s “hand and the young woman received the congratulations of numerous dingy matrons. She wiped her eyes and smiled cheerfully; her new husband planted a sharp

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barking kiss on her rounded cheek by way of ratification, and as the new wedding party moved away the crowd broke up and slowly dispersed” (Thompson 1991: 465-466).

For over a century wife sales occurred throughout the world’s most economically civilized nation during an era of unprecedented growth and progress: Industrial Revolution-era England. This paper investigates Industrial Revolution-era England’s wife-sales institution. To do so it uses the theory of rational choice.

Wife sales were one among a variety of much more mundane methods of dissolving marriage de facto in a time and place where doing so de jure was impossible for all but a few. The existence of numerous “ordinary” methods of informal divorce in Industrial Revolution-era England, such as judicial separation and private separation agreement, poses a puzzle for explaining the existence of wife sales. Given the availability of such methods, what explains the particular and peculiar practice of selling wives?

Modern historians have suggested an answer to this puzzle: wife sales were public (see, for instance, Menefee 1981, Stone 1990, and Thompson 1991). Industrial Revolution-era English law imposed marital obligations on spouses, such as husbands’ responsibility for debts their wives incurred on their behalf. To relieve themselves of these obligations in their community’s eyes, informally divorcing spouses needed to inform community members, such as potential creditors, that their marital obligations to one another had ended. Unlike other methods of informal divorce, wife sales frequently took place at public marketplaces where community members gathered. Thus, when both
husbands and wives wanted to dissolve their marriages, they sometimes resorted to wife sales.

This “explanation” for wife sales is unsatisfying in a simple but crucial way. It doesn’t explain wife sales’ most important and intriguing feature: the sale of wives. Spouses’ need to inform their communities about the effective end of their marital obligations when they informally divorced was surely important. But the practice of wife selling doesn’t follow from it.

Just as numerous ordinary methods of informal divorce were available to spouses who wanted to dissolve their marriages in Industrial Revolution-era England, numerous ordinary methods of publicly informing communities about the end of their marital obligations were available to these spouses too. Moreover, these methods were cheaper than wife sales. Spouses could place ads in newspapers; announce their news at marketplaces or other public places; put up written public notices; hire criers to spread the word; or create records certifying mutual acknowledgment of their new marital status to provide others when one spouse’s marital status to the other was relevant to counterparties in a transaction.

Indeed, all of these methods were actually used by informally divorcing spouses to publicly communicate information about their marital status in Industrial Revolution-era England. But when they were, they were accompanied by the sale of a wife.77

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77 Another difficulty for the historical interpretation of wife sales is that some wife sales weren’t public. Thus, in addition to accounting for the sale of wives, a useful theory of wife sales should be able to account for private wife sales. Our theory does both.
For the same reason that the difficulty of divorcing de jure in Industrial Revolution-era England can’t explain wife sales, the privateness of ordinary methods of informal divorce in Industrial Revolution-era England can’t either. The former explains the practice of informal divorce. And the latter explains the practice of public communication. But neither explains the practice of selling wives.

This paper’s purpose is to explain the practice of selling wives. Our analysis explains both why spouses in Industrial Revolution-era England sometimes required an alternative to ordinary methods of de facto divorce and why that alternative took the specific and strange form of selling wives at auction.

We argue that wife sales were an institutional response to an unusual constellation of property rights in English law before the turn of the 20th century. That constellation simultaneously gave husbands the right to their wives’ marital status and denied wives the right to own property. In doing so it precluded direct Coasean divorce bargains between spouses that could dissolve inefficient marriages when wives’ valuation of life outside their marriages was higher than husbands’ valuation of life inside them.

Because the law effectively granted property rights in wives’ marital status to their husbands, to exit marriage from their husbands, wives required their husbands’ consent. To secure such consent from husbands who wanted to remain married, wives needed to buy it from them. But because the law denied wives the right to own any property, they had no property with which they might do so. Direct Coasean divorce bargains between spouses thus blocked, mutual gains from marital dissolution were left on the table.
To overcome this problem spouses used wife sales to engage in Coasean divorce bargains indirectly. Wife-sale auctions achieved this by identifying and leveraging “suitors”—men who valued unhappy wives more than their current husbands, who unhappy wives preferred to their current husbands, and who had the property rights required to buy unhappy wives’ right to exit marriage from their husbands. The resulting transactions enabled Coasean divorce bargains between inefficiently married couples where they were otherwise impossible.

An important implication of our analysis, evidenced in the historical records we draw on, and echoed by modern historians of wife sales, is that wife sales benefitted the wives who were sold (see, for instance, Menefee 1981, Stone 1990, and Thompson 1991).78 Wife sales permitted these wives to trade marriages they preferred less for marriages they preferred more. Although compared to the most common methods of de facto divorce used in Industrial Revolution-era England, wife sales were infrequent, wife sales’ importance to married women was significant. For reasons we discuss below, conventional methods of de facto divorce were overwhelmingly limited to unhappy husbands. In contrast, wife sales provided unhappy wives a means of marital exit. In terms of wives’ welfare, these sales were an important avenue of improvement in an era that ordered precious few such avenues to married women.

Our analysis draws on 222 unique cases of wife sales in Great Britain between 1735 and 1899. We collect these cases from historical records of wife sales reported in 18th- and 19th-century English newspapers. Our sample reflects what is probably only a

78 Though not all historians take this position. See, for instance, Samuel (1992); Thompson and Samuel (1993); and Clark (1997).
small fraction of the wife sales that occurred during this period. Still, the cases it
contains provide an up-close, in-depth look at the institution of wife sales that spouses
used to dissolve inefficient marriages and create new ones in Industrial Revolution-era
England.

Economists have said nothing about wife sales. But they have discussed
Coasean bargaining over divorce in less explicitly economic contexts. This paper is most
closely connected to that literature.

Becker, Landes, and Michael (1977) were the first to point out that when
transaction costs are low, laws that assign spousal property rights over marital status have
no effect on divorce rates (see also, Landes 1978; Becker 1981). A sufficiently unhappy
spouse will be willing to pay his or her marital partner enough to secure the right to exit
marriage when one or both spouses has veto rights over the decision to divorce.
Similarly, a spouse who values keeping his or her marriage intact will be willing to pay
his or her marital partner enough to induce them to remain married when the law permits
either spouse to terminate their marriage at will. Becker, Landes, and Michael’s
important insight applies the Coase theorem to divorce. Our analysis of wife sales
contributes to the literature on Coasean divorce bargains by examining legal impediments

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79 Historians are divided on the number of wife sales that took place. Stone (1990: 148) suggests they were rare and that the number of cases collected so far isn’t terribly far from the actual number of wife sales that took place. Thompson (1991: 412) challenges Stone’s assertion and suggests that the cases collected thus far may merely be the “tip of an iceberg.”

80 However, several scholars outside of economics have discussed them. See, Kenny (1929); Menefee (1981); Stone (1990); Thompson (1991); Hill (1994); Wright (2004); Vaessen (2006); and Suk (2011).

81 Following their work, numerous researchers have investigated changing divorce laws’ effect on divorce rates empirically (see, for instance, Peters 1986, 1992; Allen 1992; Friedberg 1998; Wolfers 2006; Stevenson and Wolters 2007).
to these bargains and the solutions that inefficiently married couples developed to overcome them.\footnote{Peters (1986) and Zelder (1993) consider other obstacles to conventional Coasean divorce-bargain logic.}

This paper is also closely connected to the literature that uses rational choice theory to understand unusual legal institutions. Friedman (1979) was among the first contributors to this literature. He considers the economics of legal institutions that stateless people in medieval Iceland used to create social order. Posner (1980) explores the economics of legal systems in primitive societies. Leeson (2007a, 2009a, 2009b) examines the economics of 18th-century pirates’ legal institutions. He also analyzes the economics of medieval judicial ordeals, monastic cursing, and trial by battle (Leeson 2012a, 2012b, 2011).\footnote{Leeson (2009c) also considers the legal arrangements that warring hostiles created along the 16th-century Anglo-Scottish border.} Our paper contributes to this literature by making economic sense of an unusual and neglected legal institution in Industrial Revolution-era England: wife sales.

II. \textit{Til Death Do Us Part}

A. Marriage in Industrial Revolution-Era England

Industrial Revolution-era English law called an unmarried woman’s legal status feme sole. Such a woman could own property, enter contracts, and enjoyed freedom of her person. Legally she was like a man.

Upon getting married English law converted a woman’s status to feme covert. All the property she owned before marriage and all that would have come into her possession
as an unmarried woman, such as inheritance, her wages from working, and the revenues generated by real estate she formerly owned, became her husband’s exclusive property.

A married woman also lost the right to enter contracts. Indeed, she lost her legal personality entirely. Those rights and attendant obligations, for example responsibility for debts a wife incurred on her husband’s behalf, accrued to her husband too.

In many ways a woman herself became her husband’s property when she got married. Her husband could beat her “within reason.” He could have sexual relations with her on demand. And he could “restrain a wife of her liberty”—i.e., imprison her in his home—“in case of any gross misbehaviour,” where he determined what constituted grossness (Hill 1994: 199).

Wives retained some important property rights in their persons. Their husbands couldn’t murder or mutilate them. Nor could they sell their wives into slavery or otherwise compel them to service others. These exceptions notwithstanding, husbands’ property rights in their wives was nearly complete.84

In return for surrendering her property rights to her husband, a woman who married received a legal claim to her and, if she had any children, her children’s, maintenance from her husband. The law required him to provide them sustenance and shelter consonant with his means. The sacrifice most women were willing to make to obtain such support—completely relinquishing their property rights and personal freedom—attest to the importance they attached to it.

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84 Geddes and Lueck (2002) explain the transformation of women’s rights in the United States from the Revolutionary era, when women were considered either their husbands’ or fathers’ property, to the end of the 19th century when women were permitted to legally own themselves.
Eighteenth- and 19th-century English life was hard for working-class men. Living standards were growing. But they remained low. Life was even harder for working-class women. Their employment prospects were much slimmer. And the wages even gainfully employed women earned were much lower. The average working-class woman couldn’t earn enough to support herself, especially if she had children. She required a man’s higher wages for her maintenance. So she got married.

Men also benefitted from marriage. They enjoyed the economies of scale that marriage conferred. And they added to their incomes through their wives’ labor and inheritances. Marriage also allowed men to enjoy on-demand sexual satisfaction, children, and companionship.

**B. Divorce in Industrial Revolution-Era England**

Like contemporary marriages, 18th- and 19th-century English marriages could break down. The reason for this is familiar: marriage is an experience good. A spouse may prove less materially productive, less sexually satisfying, less fertile, or for other reasons a less accept-able marriage partner than anticipated. If life outside the marriage—alone or with another spouse—appears more valuable to one or both spouses than life inside the marriage, one or both spouses will desire the marriage’s dissolution. He or she will want a divorce.

In theory Industrial Revolution-era English law granted husbands and wives the right to exit marriage— with or without their spouse’s consent—under only two circumstances: adultery and life-threatening cruelty. In practice husbands enjoyed

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85 See, for instance, Hayek (1963).
unilateral property rights over marriage. Husbands could exit marriage when they wanted. But many wives couldn’t do so without their husbands’ consent.

To understand this lopsided state of affairs, consider the divergent difficulty that an unhappy husband and an unhappy wife confronted in separating from their spouse under each of the means spouses had available to them for this purpose. First consider a private Act of Parliament. A private Act of Parliament was the only civil means of total divorce in Industrial Revolution-era England—i.e., divorce that permitted spouses to remarry. For an unhappy husband, obtaining a divorce this way was difficult and costly. But it was infinitely easier than for an unhappy wife, for whom a private Act of Parliament was all but impossible to obtain.

If a husband could prove his wife was an adulterer and could afford to undertake the necessary legal steps, he could purchase such an Act. The first step in doing so was to seek a divorce a mensa et thoro: a judicial separation from “bed and board.” Until 1857 only an ecclesiastic court could grant such a separation.

Judicial separation permitted spouses to live apart. The court awarded the wife alimony, her husband’s obligation to maintain her remaining intact since the marriage technically remained. However, if the wife committed adultery, she forfeited her husband’s support. Such would be the case if her husband was seeking divorce through a private Act of Parliament since adultery was the only grounds on which he could pursue such an Act.

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86 However, if an ecclesiastic court determined that a marriage supposed to have taken place had not actually taken place because of the parties’ ages, mental incompetence, sexual impotence, or fraud, the marriage-that-never-was was declared as much officially and the parties were free to remarry.
After obtaining a judicial separation, a husband seeking a private Act of Parliament needed to sue his wife’s lover for criminal conversation in a civil court. Victory here was important to proving to Parliament that his wife was an adulterer. Besides obtaining such proof, a victorious husband in this action received damages from the defendant for violating his exclusive property right in his wife.

With a judicial separation and successful criminal conversation verdict in hand, the husband could apply to Parliament for a private Act divorcing him from his wife. This freed him of all financial obligations to her and permitted both spouses to remarry.

The cost of this process was enormous. Completing the steps required to purchase a private Act of Parliament could run into the thousands of pounds. In 1871 a successful unskilled laborer earned a mere 75p a week (Gibson 1994: 67). Thus the only means of official divorce that English law permitted was unavailable to working-class persons.

An unhappy wife could also seek divorce through a private Act of Parliament. But the obstacles to success she faced were far greater. Since wives lacked legal personage, a wife needed to initiate legal action through an agent. She couldn’t do so simply because her husband was an adulterer, as he could for her. Her husband’s adultery was necessary but insufficient to pursue divorce. Besides proving her husband’s infidelity, a wife needed to prove her husband was guilty of aggravating acts. These acts included incest and bigamy. Though in 1857 Parliament added vicious cruelty to the list.

Demonstrating aggravation was difficult. Parliamentary members laughed one wife out of Parliament for claiming aggravation based on repeated beatings. Thus, of the 338 persons who attempted to divorce their spouses using a private Act of Parliament in
the 157 years from this instrument’s inception in 1700 to its termination in 1857, only 8 were wives. 318 husbands petitioned successfully. But only 4 wives did so (Stone 1990: 432).

While a private Act of Parliament was the only means of official divorce in Industrial Revolution-era England, several means of de facto divorce existed—legal and illegal spousal separations that could unofficially accomplish the same.

We mentioned the first means of de facto divorce above: judicial separation. Like a private Act of Parliament, a judicial separation was much easier for an unhappy husband to secure than an unhappy wife. An unhappy husband could obtain a judicial separation by proving his wife had committed adultery. In this case the court would award him an alimony free separation. If an unhappy husband couldn’t prove his wife had committed adultery, he might still obtain a judicial separation indirectly by manipulating the law’s operation. He did this by kicking his wife out of his house.

Under English law husbands were required to supply their wives housing. This was part of their maintenance obligation. If a husband exiled his wife, his wife could, through an agent, sue her husband for restitutions of conjugal rights— the right to cohabit— in an ecclesiastic court. The husband could then refuse to allow her back into his home, at which point the court would award a separation and alimony for the wife. If he was unsatisfied with paying his wife alimony, a husband could wait for his wife to slip and sue her in an ecclesiastic court for adultery. This freed him from future alimony payments.
For an unhappy wife, separating from her husband judicially was much harder. In principle the law allowed wives to sue for judicial separation on the grounds of adultery or life-threatening cruelty. In practice judges only vindicated wives seeking separation on the grounds of adultery when wives could prove their husbands guilty of adultery and, much more difficultly, aggravating acts, such as infecting them with venereal diseases. Further, unlike an unhappy husband, an unhappy wife had no legal back door—no “kick-out option”—to secure a separation if her husband wasn’t an adulterer or continually beat her to death’s edge.

An equally important constraint on an unhappy wife’s ability to use judicial separation to divorce her husband was the fact that judicial separation left her in a state of feme covert. As Lord Lyndhurst (Stone 1990: 53) complained to the House of Lords in 1856, this put a judicially separated wife almost in a state of outlawry. She may not enter into a contract, or, if she does, she has no means of enforcing it. The law, so far from protecting, oppresses her. She is homeless, helpless, hopeless, and almost destitute of civil rights. She is liable of all manner of injustice, whether by plot or by violence. She may be wronged in all possible ways, and her character may be mercilessly defamed; yet she has no redress. She is at the mercy of her enemies.

The second means of de facto divorce in Industrial Revolution-era England was desertion. Like a private Act of Parliament and judicial separation, the usefulness of this means was highly uneven for unhappy husbands and unhappy wives. An unhappy husband could “far more easily desert his wife and children than she could desert them”
(Thompson 1991: 444). Thus, while unhappy husbands commonly deserted their wives, unhappy wives rarely managed to desert their husbands.

To desert his wife an unhappy husband simply packed up his belongings and moved to another county or enlisted in the armed services overseas. When his wife returned home one day he was gone. Desertion was illegal. It violated the law requiring husbands to maintain their wives. Thus, if the law caught up with a deserting husband, an ecclesiastic court could order him to pay alimony.

Unfortunately for wives, it was difficult to bring deserting husbands to justice. Ecclesiastic courts had but one means of enforcing alimony payment directly: excommunication. By the 18th century this spiritual sanction carried little weight in the minds of most (Gibson 1994: 17).

If after trying excommunication an ecclesiastic court remained unable to compel payment, it could hand the matter over to secular authorities who could imprison the deserter. But secular authorities were often unwilling to do so. Imprisonment was costly. It generated no revenue. And scarce prison resources seemed better spent on violent criminals than deadbeat husbands. Because of weak enforcement, for unhappy husbands the risk associated with deserting was low. Thus they resorted to it frequently. Desertion was unhappy husbands’ most popular means of exiting marriage.

For a wife, desertion was much harder. Unlike an unhappy husband, an unhappy wife couldn’t just pack up and leave. She had no property, no property rights, and faced far higher risks fleeing to another county. It was much harder for a woman to find employment. Even if she could, what she could earn by herself was unlikely to be enough
to support her. This, after all, was one of the primary reasons she got married in the first place. “Although it was possible in some cases for the single wife to support herself, the additional burden of children often placed an unfair weight on her shoulders. The result… was usually impoverishment” (Menefee 1981: 61-62).

Perhaps most important, it was much more likely that a deserting wife would be caught. Religious officials called overseers of the poor administered poor relief in English counties. They kept a watchful eye on newcomers to their communities with the aim of discovering and booting persons who they believed they would have to support. Normally that meant keeping an eye out for newly entering single women. Single women’s slim employment opportunities and low wage-earning potential made them the greatest risks to overseers’ of the poor relief doles.

A deserting wife was therefore liable to find herself with nowhere to desert to. Even if she succeeded, she was likely to be identified, at which point her husband could take her back. Since wives were their husbands’ property, the law permitted husbands to forcibly return deserting wives to their homes where they could confine them to prevent future escape. Because of the high probability of detection, for unhappy wives the risk associated with deserting was high. Thus they were rarely able to use it to exit marriage.

The third means of de facto divorce in Industrial Revolution-era England was closely related to desertion: elopement. This method of marital exit, too, was easy for unhappy husbands to use but much harder for unhappy wives. An unhappy husband could abscond with a lover. If he eloped with an unmarried woman, elopement was as easy a way for an unhappy husband to de facto dissolve his marriage as desertion.
For an unhappy wife, things were different. Eloping allowed unhappy wives to overcome one of the problems desertion posed. In running away with another man, an eloping wife had a ready means of financial support. But elopement posed another problem for unhappy wives: it was hard to build relationships with lovers willing to run away with them in secret.

Husbands exercised close oversight over their wives. If their wives had lovers, they were likely to know their identities or, at the very least, whether their wives might be cultivating relationships with other men. If their suspicion was aroused, husbands who wanted to prevent their wives from eloping could legally confine their wives to their homes, terminating the relationship and preventing their wives from running away.

The final means of de facto divorce in Industrial Revolution-era England was private separation agreements. These agreements were contracts between spouses relieving them of some of marriage’s obligations. Typically in such agreements husbands agreed to pay their wives some amount of support and return to them some of their legal rights.

In exchange, wives, through contracting agents, agreed to live apart from their husbands and, per their new legal status, to absolve their husbands from obligations for future debts they incurred. Some private separation agreements also involved the parties’ agreement to not legally harass the other for potential violations of marital law. Implicitly such clauses were intended to secure husbands’ promise not to sue their wives’ current or future lovers for criminal conversation.
Like the marital exit options considered above, while private separation agreements might sometimes be useful for husbands desiring marital exit, they were considerably less useful for wives desiring exit. The reason for this is straightforward: the most significant terms of such agreements that husbands might make were legally unenforceable. Husbands could renege on them.

A husband who claimed in a private separation agreement to forfeit his right to forcibly seize and return his wife to him did no such thing legally. The law considered his right to forcibly seize and return his wife uncompromised. Thus husbands could reclaim property rights over their marital status after granting their wives’ exit in private separation agreements at will. Because of this, unhappy wives only remained separated from their husbands under private separation agreements as long as their husbands consented to the separation.

The foregoing features of marriage and divorce in Industrial Revolution-era England created a strikingly imbalanced state of affairs with respect to unhappy husbands’ and unhappy wives’ abilities to exit marriage without their spouse’s consent. Unhappy husbands’ ability to do so was great. Unhappy wives’ ability was not.

This isn’t to say that no unhappy wives managed to exit marriage through the channels described above. Unhappy wives whose husbands were guilty of both adultery and aggravating acts, and could prove as much, managed to obtain judicial separations. Some unhappy wives managed to desert or elope despite overseers’ of the poor and their husbands’ watchful eyes. Private separation agreements permitted some unhappy wives to live apart from their husbands for at least as long as their husbands were also happy.
with this arrangement. And a few independently wealthy, unhappy wives managed to purchase private Acts of Parliament divorcing them from their husbands.

Such wealth was an important determinant of wives’ ability to separate from their husbands without their husbands’ consent. Wives with significant premarital wealth could hire lawyers to make prenuptial agreements that created agent-controlled trusts. These trusts granted wives continued rights over property they owned before marriage and the revenues flowing from it. In this way premarital wealth greatly eased the obstacles that most unhappy wives, who weren’t so wealthy, confronted in appealing to any of the mechanisms of marital dissolution discussed above.

Still, most unhappy wives— in particularly the working-class sort— remained unable to use these channels to dissolve their marriages. Their husbands had many options for exiting marriage without their consent. But if these wives wanted to exit, they needed their husbands’ permission.

III. A Theory of Wife Sales

If an unhappy wives’ husband was also unhappy, and thus also wanted to dissolve their marriage, wives’ need for such permission was unproblematic. In this case couples could rely on the methods of de facto divorce discussed above or, easier still, simply agree to go their separate ways, and accomplish their mutual desire. The difficulties of

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87 While it should be obvious from what we have just said, it bears stating explicitly that the availability of multiple methods of de facto divorce to couples in which both members desired to dissolve their marriage means that the difficulty of divorcing de jure in Industrial Revolution-era England can’t be the raison d’être of wife sales. The members of such couples didn’t require wife sales to dissolve their marriages. Nor can the desire of unhappy husbands to exit their marriages when their wives did not be the reason for wife sales. Husbands didn’t require wife sales for this purpose either. That leaves unhappy wives who wanted divorce but whose husbands did not. As we discuss below, it’s in this situation that wife sales were
using the de facto divorce methods described above were difficulties for unhappy wives who wanted to exit their marriages but whose husbands did not. In this case the lopsided distribution of de facto marital property rights in Industrial Revolution-era England threatened to prevent unhappy wives from exiting marriages they wanted to escape.

According to the Coase theorem, this distribution of marital property rights shouldn’t have prevented divorce-desiring wives from exiting relationships with their marriage-desiring husbands as long as those relationships were inefficient. If transaction costs were low, when a wife valued life outside her marriage more than her husband valued life inside it, she would simply buy the right to exit the marriage from him. Distributionally English law would harm unhappy wives. But in terms of wives’ ability to separate from their husbands, it would not.

Unfortunately for unhappy wives, things weren’t so simple. Underlying this Coasean logic is a crucial assumption: wives must have something with which they can buy the right to exit marriage from their husbands. That requires them to have general property rights— the right to income and ownership. But Industrial Revolution-era English wives lacked such rights.

Under the law, wives’ wages, real property, and anything else they might have used to purchase the right to exit marriage from their husbands was their husbands’. The difficulty wasn’t that wives were liquidity constrained. It was that wives were legally prohibited from owning or borrowing any liquidity at all.

necessary and in the need to resolve this situation when marriage was inefficient that we find the reason for wife sales.
The problem for Coasean divorce bargains that the absence of wife property rights created was one of transferrable utility. Coasean bargains require transferable utility. And transferable utility requires property rights. To see this, consider an 18th-century English married couple, Hattie and Horace. Horace likes Hattie. She’s worth 5 utils to Horace as wife. But Hattie detests Horace. He’s worth -7 utils to Hattie as husband. Their marriage is inefficient.

Hattie wants to exit the marriage. To do so she requires Horace’s consent. Horace would be willing to grant Hattie his consent if she could transfer 5+ utils to him in return. And Hattie would be willing to transfer 5+ utils to Horace for his consent if she could. Unfortunately for both spouses, she can’t. Utils themselves aren’t transferable. Utility can be transferred through the transfer of goods or money. But since Hattie is married, she has no property rights and thus none of either. All property Hattie has that she might use to transfer utility to Horace is already his. Utility is non-transferable between Hattie and Horace. So an exchange between them is impossible.

The constellation of English property rights that both gave husbands property rights in their wives’ marital status and denied women the property rights required to purchase exit thus seems to short-circuit Coasean logic. It seems to make Coasean divorce bargains in which unhappy wives buy the right to exit inefficient marriage impossible.

But it doesn’t. Consider Harland, an English bachelor. Harland is Horace and Hattie’s neighbor. He likes Hattie more than Horace does. Hattie is worth 6 utils to him
as wife. Further, Hattie likes Harland more than Horace. Harland is worth 1 util to her as husband.

Horace knows this. He proposes the following to Hattie and Harland: if Harland will pay him a sum of money worth 5+ utils to him, he will sell Harland Hattie. Unlike Hattie, Harland has property that isn’t Horace’s. Because of this, utility is transferable between Horace and Harland. So an exchange between them is possible.

Hattie and Harland agree to Horace’s deal. The sale makes all three parties better off. Horace receives a money payment from Harland worth more to him than continuing his marriage to Hattie. Harland receives a wife worth more to him than the money he pays Horace in exchange for her. And Hattie secures the right to exit her existing marriage, trading a husband she prefers less for a husband she prefers more.

This exchange describes a wife sale. Hattie’s dearth of property rights precludes a direct Coasean bargain between her and Horace that would secure her the right to exit her inefficient marriage. But the gains available to Horace by granting Hattie that right incentivizes him to arrange an indirect Coasean bargain with Hattie through Horace. Horace leverages Harland’s higher valuation of Hattie-as-wife and Hattie’s preference for Harland-as-husband to facilitate a Coasean divorce bargain that grants Hattie the right to exit her relationship with him and dissolves their inefficient marriage.

In the example above, Horace is the “entrepreneur.” He initiates the wife sale. But Hattie and Harland could just as easily be entrepreneurial. Each party benefits from the sale. So each party has an incentive to suggest it to the others.
In this example it’s convenient that Harland, a higher-valuing user of Hattie-as-wife, lives next door to the troubled couple. What if he didn’t? In that case he might not know he could purchase Hattie. Further, Horace and Hattie might not know that Harland— their means of realizing a mutually beneficial marital dissolution— exists. Gains from trade would go unrealized. Most important, Hattie would remain stuck in her existing marriage.

How can Horace and Hattie identify an appropriate “suitor”— a higher-valuing user of Hattie-as-wife who Hattie prefers as husband to Horace— when he isn’t living right under their nose?

By selling Hattie at an auction. An auction identifies potential suitors who bid on Hattie-as-wife. Horace sets a reservation bid at his valuation of Hattie-as-wife and solicits bids. Hattie agrees to the auction provided that she may veto her sale to the highest bidder, who she may prefer Horace to as husband.

An auction accomplishes another important purpose from Horace’s perspective: it permits him to realize the maximum price for selling Hattie’s right to exit by identifying the highest-valuing user of Hattie-as-wife who Hattie is willing to take as her new husband and transferring property rights in her to him. An auction also ensures that Hattie becomes the wife of the suitor who values her highest who she prefers to Horace. The result is again beneficial for all three parties. Each of them gains from the wife sale relative to their situation without it.

IV. From Alter to Halter
The solution described above to the problem that couples in inefficient marriages face when wives want to exit but are unable to purchase the right to do so from their husbands directly may sound fanciful. But it’s not. It’s the very solution such couples in Industrial Revolution-era England used for this purpose. The result was a robust market in used wives and the Industrial Revolution-era English institution of wife sales.

Wife sales were used overwhelmingly by working-class couples. Wives who entered marriage with independent means didn’t require wife sales to exit unhappy marriages. As noted above, these wives had property rights with which they could buy that right from their husbands directly. Wives from comparatively impoverished backgrounds had no such luck. They required wife sales to buy the ability to exit marriage from their husbands indirectly.\(^{88}\)

The procedures wife sales followed in Industrial Revolution-era England are familiar. They’re the same ones livestock sales followed. A couple seeking to sell its better half would travel to a marketplace. The husband led his lady there with a halter rope tied around her, just as he would one of his cows. Given thicker markets’ helpful effect on wife sales’ success, couples seeking to sell their fairer halves were willing to travel considerable distances to reach a popular marketplace (Thompson 1991: 418). One couple travelled 20 miles for this purpose (*The Illustrated Police News*, November 19, 1870).

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\(^{88}\) Thus the wives put up for sale came from lower- and middle-class couples. However, used-wife buyers could be and, as we discuss below, sometimes were persons of more substantial means.
Alternatively, the couple might wait for a fair instead. Fairs were also markets. But they were “considered important events in the social calendar” (Menefee 1981: 37). Thus fairs attracted larger audiences from further distances.

To thicken the market further, wife-selling husbands sometimes hired criers—persons who strolled the streets and other public places on the day of the market, or shortly before, ringing a bell and crying news of the wife for sale, the sale’s location, and its time (see, for instance, *Hampshire Advertiser & Salisbury Guardian*, May 12, 1849). Moses Maggs’ bell-ringer used the following cry to announce news of his wife’s auction (Menefee 1981: 77; see also, *The Leeds Mercury*, June 7, 1879):

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A woman—
  and her little baby—
will be offered—
  for sale—
in the Market Place—
  This afternoon—
at four o’clock—
  by her husband—
Moses Maggs.
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Alternatively, husbands advertised impending wife sales in local newspapers. Consider the following ad from a late 18th-century country paper (Vaessen 2006: 26):

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To be sold for Five Shillings, my Wife, Jane Hebbard. She is stoutly built, stands firm on her posterns, and is sound wind and limb. She can sow and reap, hold a plough, and drive a team, and would answer any stout able men, that can hold a tight rein, for she is damned hard mouthed and headstrong; but if properly managed, would either lead or drive as tame as a rabbit. She now and then makes a false step. Her husband parts with her because she is too much for him. — Enquire of the Printer. N.B. All her body clothes will be given with her.  
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89 Wife-selling husbands also used criers and newspaper ads to publicly notify purveyors that their wives’ future debts were no longer their concern— but were rather they were the concern of their wives’ purchasers— after a successful sale. For example, “On Wednesday” a wife sold at Tongmoor Gate, Bolton “was delivered up to the purchaser, according to contract, and on Thursday morning the bellman
A cheaper option was to post notifications in public places, such as this one
(Thompson 1991: 419):

NOTICE

This here to be hinform the publick as how James Cole be disposed to sell his wife by Auction. Here be a dacent, clanely woman, and be of age twenty-five [y]ears. The sale be to take place in the New Inn, Thursday next at seven o’clock.

These tactics for thickening the market worked. Wife sales attracted hundreds and sometimes thousands of attendees (Menefee 1981: 57).

To participate in public markets, wife-selling husbands paid the market tolls collected from everyone seeking to sell their goods. They might also pay turnpike tolls for access to roads leading to market grounds.

Once he was admitted to the marketplace, a wife-selling husband sometimes walked her around the venue so potential buyers could get a closer look. Next his wife was auctioned off amidst cattle and horses.

A favorite auction platform was the market cross, a focal point of market attention that elevated the auctioneer, the husband, and his wife above the crowd to draw greater attention. Alternatively the parties might use a table, chair, or barrel for this purpose.

An auctioneer prefaced the bidding by extolling the virtues of the wife on the block. A wife-selling husband could purchase the services of a professional for this purpose or act as his own auctioneer instead. “Henry Broom, of the parish of Buckerell,”

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announced that her husband would not be answerable for any debts which she might in future contract” (The Times, June 15, 1831; see also, Grub Street Journal, March 27, 1735). Or, consider the following notification one husband made in a 1789 edition of the Ipswich Journal: “OCT. 29, SAMUEL BALLS sold his wife to ABRAHAM RADE in the parish of Blythburgh in this county for 1s. A halter was put round her, and she was resigned up to this Abraham Rade. No person or persons to intrust her with my name, Samuel Balls, for she is no longer my right” (Menefee 1981: 97-98; see also, The Morning Chronicle, January 2, 1819).
for example, “put his wife up at auction,” but only “after enumerating her various qualifications in the language and style of a jockey” (*The Morning Chronicle*, July 21, 1828).

Wife-selling husbands surely erred on the side of emphasizing their wives’ finer points in pre-auction priming. But some were shockingly honest in describing their lots to crowds of bidders. Consider how the wife-selling husband of a woman described by one observer as “a spruce, lively, buxom damsel” presented his wife to potential bidders (*The Times*, April 26, 1832):

Gentlemen,—I have to offer to your notice my wife . . . whom I mean to sell to the highest and fairest bidder. Gentlemen, it is her wish as well as mine to part for ever. She has been to me only a bosom serpent. I took her for my comfort, and the good of my house, but she became my tormentor, a domestic curse, a night invasion, and a daily devil… Now I have shown you the dark side of my wife, and told you her faults and her failings; I will now introduce the bright and sunny side of her, and explain her qualifications and goodness. She can read novels and milk cows; she can laugh and weep with the same ease that you could take a glass of ale when thirsty… She can make butter and scold the maid, she can sing Moore’s melodies, and plait her frills and caps; she cannot make rum, gin, or whisky; but she is a good judge of the quality from long experience tasting them. I therefore offer her with all her perfections and imperfections, for the sum of 50s.

In some cases husbands’ honesty more likely reflected the fact that their wives’ imperfections were readily observable. Thus the husband in York whose wife, according to one observer, “appeared to be on the wrong side of 50; has lost one leg, and has a wooden substitute,” was probably unable to avoid mentioning these features at her sale. The same reasoning probably motivated another wife-selling husband to describe his wife this way: she has two eyes, one of which “looks straight at you, the other wanders up to the North” (Menefee 1981: 52).
It behooved wives who were up for auction, as much as their husbands, to present themselves in a manner conducive to their sale. To accomplish this, some wives gussied themselves up to look their best. Thus a wife auctioned at Bath market appeared “dashing attired, and had a halter, covered with silk, round her neck” (The Times, August 27, 1833). Another appeared “dressed in rather a fashionable country style,” and so on (The Times, April 26, 1832; see also, The Times, October 9, 1839).

After describing the wife for sale, the auctioneer solicited bids from the crowd. The husband could set a reservation bid. The high bidder who met this reservation and the wife consented to be sold to won the used wife. In the eyes of participants and transaction observers, if not always in the eyes of the law, something we discuss below, all the selling husbands’ property rights in and obligations to the wife transferred to her buyer. The wife sale terminated one marriage and began another.

Most wife sales were final. Returns weren’t possible. But resale was, and a few used-wife buyers resold their purchases. Further, a few husbands sold their wives on a contingency basis. In one case a wife-selling husband allowed the buyer to try his wife out for three days, after which time, if the buyer was unhappy with her, he could return her for 50 percent of her purchase price (The Times, September 25, 1822; see also, The Examiner, September 29, 1822). Another wife-selling husband gave his wife’s buyer a month to decide if he was happy with his purchase (The Morning Post, September 16, 1803).

To formalize wife sales the parties involved sometimes procured the services of a lawyer who drew up a receipt recording the exchange, transfer of rights and obligations,
and one or more of the parties’ signatures. Consider the following 18th-century example (Menefee 1981: 96; see also, *The Sheffield & Rotherham Independent*, January 13, 1877; *The Derby Mercury*, January 5, 1881; *The Newcastle Courant etc.*, June 17, 1881):

Oct. 24, 1766

Memorandum.

It is this day agreed on between John Parsons, of the parish of Midsummer, Norton, in the county of Somerset, cloth-worker, and John Tooker, of the same place, gentleman, that the said John Parsons, for and in consideration of the sum of six pounds and six shillings in hand paid to the said John Parsons, doth sell, assign, and set over unto John Tooker; with all right, property, claim, services, and demands whatsoever, that he, the said John Parsons, shall have in or to the said Ann Parsons, for and during the term of natural life of her, the said Ann Parsons. In witness whereof I, the said John Parsons, have set my hand the day and year first above written.

In other cases wife-sale parties formalized their transactions with receipts from market toll collectors, such as this one (Thompson 1991: 425; see also, *The Sheffield & Rotherham Independent*, October 16, 1880):

Aug. 31, 1773. Samuel Whitehouse, of the parish of Willenhall, in the county of Stafford, this day sold his wife Mary Whitehouse, in open Market, to Thomas Griffiths of Birmingham value, one shilling. To take her with all faults.

Crucially, an auctioned “wife was able to exercise a veto” over her sale. For an exchange to occur, her “consent was essential” (Thompson 1991: 433; 432; see also, Kenny 1929). When a wife vetoed a transaction, the auction would end. Or, if she was willing, her husband could immediately auction her again to the remaining bidders (Menefee 1981: 93). For example, as a report from Manchester in 1824 described one case of wife veto, “after several biddings she was knocked down for 5s; but not liking the purchaser, she was put up again for 3s and a quart of ale” (Thompson 1991: 433).

As in any market, in the market for used wives, too, there were a handful of fraudulent sellers. In the case of wife sales those sellers were husbands who tried to sell their unconsenting wives to purchasers as consenting ones. But these sales typically failed.

The reason they failed was wife sales’ public nature. Publicity not only ensured a thicker market. It “was also essential because it displayed the wife’s consent—or enabled her to repudiate a contract entered into between husband and another without her consent” (Thompson 1991: 420).

In the 218 cases E.P. Thompson (1991: 430) collected covering the years from 1760 to 1880, he found only four instances in which a wife whose husband offered her for sale clearly didn’t consent to the transaction. Notably, in each of these cases of alleged wife compulsion the sale occurred via private agreement between wife-selling husbands and wife buyers rather than via public auction.

Only one of these sales transpired despite the wife’s protest. And even this case of alleged coercion is suspect. After her sale the supposedly unwilling wife wrote a letter of
complaint to the magistrate. But she didn’t complain that she was sold against her will. She complained that her former husband wasn’t honoring the terms of her sale agreement: he was pestering the man he sold her to for more money.

The necessity of wives’ consent to be sold to new husbands explains the happiness many of them displayed at their sales’ conclusion. A mid-19th century periodical puzzled, “The strangest thing about these sales is, that the women sold seem to have rejoiced in the change more than they lamented the degradation” (Chambers Journal of Popular Literature, Science and Arts 1861: 240). But this isn’t puzzling at all once one recognizes what wife sales were: a means by which unhappy wives in inefficient marriages secured the right to exit marriages they didn’t want to be in.

This explains why, after being sold at Smithfield market, one “woman declared it was the happiest moment of her life” (Hampshire Telegraph and Sussex Chronicle etc., June 15, 1812). Another sold wife “appeared overjoyed at the change” (World, November 12, 1790). Similarly, in Whitechapel, a wife was sold and, “the bargain being made, she went off, in high spirits, with her new master” (Public Advertiser, June 25, 1791). One wife’s satisfaction with her impending sale was apparent before her purchase was even final. As an observer reported, she “appeared to feel a pleasure at the exchange she was about to make” (The Times, April 26, 1832).

Sold wives’ unhappiness in their existing marriages also explains the remarks they made at their sales about their desire to exit marriage to their current husbands. Thus a wife sold at Tunbridge Market “declared her husband was such a good-for-nothing rascal she could not live with him” (Liverpool Mercury etc., April 20, 1821). Likewise, a
wife for sale in Loughborough “appeared very anxious to leave her husband” (*The Leicester Chronicle: or, Commercial and Agricultural Advertiser*, February 29, 1840).

Another wife was pleased to be sold by her current husband because she had “had enough of him” (*The Standard*, August 10, 1864). Still another remarked about her sale “that her first husband was such a brute that she was glad to get rid of him” (*The York Herald*, May 5, 1876).

The descriptions we have of wife-selling husbands suggest why their wives were eager to exit marriage from them. Wife-selling husbands were often men with undesirable features. “[F]ew of the husbands involved in these dealings are described as beauties.” But “common are the ‘drunkard, non-communicant, [and] contemner of the ministrie,’ the ‘ill-looking diminutive fellow, of apparently low and profligate habits,’ the laboring man ‘of idle and dissolute habits’ and the ‘wretched-looking fellow’ or ‘burly rascal’” *(Menefee 1981: 50).*

In contrast, used-wife buyers were considerably more desirable. They were men of greater means and social status. “[I]n almost all examples there was a tendency for the wife to be upwardly mobile.” Indeed, “in no case was the woman left with a partner who was demonstrably socially inferior to the man who sold her” *(Menefee 1981: 55).* This is consistent with the idea that wives “traded up” in wife sales. It suggests why wives who submitted themselves to auction viewed life outside their existing marriages as more valuable than life inside them.

Further evidence that wife sales reflected unhappy wives’ indirect purchase of the right to exit existing marriages to grazer greener pastures in new ones is found by
examining the identity of wife-sale purchasers, many of whom were sold wives’ lovers. Wives’ philandering suggests they valued marriage to other men more highly than marriage to their current husbands. Further, it depressed their current husbands’ valuations of marriage to them, making a mutually beneficial wife sale more likely.

Thus one couple decided that they should resort to a wife sale “hav[ing] lately lived together on unpleasant terms, in consequence of the wife having a strong ‘affinity’ for a man on the opposite side of the street” (The Illustrated Police News, November 19, 1870). Similarly, in another case, “The alleged ground of the separation was the incontinence of the wife, whose affections were stated to have been alienated by an old delver, who had occasionally got his dinners at their house” (The Times, February 9, 1837).

It’s unsurprising, then, that “[t]he offer to purchase seems to have been made by the lover on most occasions” (Menefee 1981: 78). For example, one husband “from West Hallam, named Hart, sold his wife in Nottingham Market-place, for 1s., to a fellow named Smith, with whom the woman had been living for several years. A rope was tied round the woman’s waist, and, on the bargain being completed, and the money paid, it was given to the purchaser, who carried off his prize. All parties seemed satisfied” (The Times, December 30, 1843).

Another husband “sold his wife… at Leeds, for a sovereign, to a person with whom she had been for some time cohabiting” (The Blackburn Standard, December 15, 1852; see also, The Times, September 23, 1834; The Standard, December 29, 1843). Explicit or implicit references in contemporary accounts to sold wives’ extramarital
relations are common (see, for instance, *True Briton*, August 11, 1797; *Oracle and Public Advertiser*, July 20, 1797; *The Leeds Mercury*, April 7, 1827; *The Manchester Times and Gazette*, June 20, 1848; *The Huddersfield Daily Chronicle*, January 3, 1873; *The Sheffield & Rotherham Independent*, May 2, 1882; *The Illustrated Police News etc.*, April 18, 1885; *The Blackburn Standard: Darwen Observer, and North-East Lancashire Advertiser*, May 7, 1887; *The Times*, February 3, 1837; *The Times*, July 15, 1837; *The Times*, September 23, 1834).

Of course husband philandering could lead to the conditions motivating couples to use wife sales too. When a husband’s affections were devoted elsewhere, his wife’s valuation of him as husband was likely to drop significantly, making the marriage more likely to be inefficient and the wife more likely to want to exit. Thus adultery appears to be the “most common . . . cause for sales . . . often, but not exclusively, by the wife” (Menefee 1981: 63).

The frequent existence of a ready and likely high bidder—a wife’s lover—explains why some wife sales were transacted without auctions and why, even in some cases when they were, “the affair was a pre-arranged one between the buyer, the seller, and the sold” (*The Illustrated Police News*, November 19, 1870). As a contemporary French observer put it, “The purchaser . . . is ordinarily a connoisseur of the merchandise sold, who knows her; one only presents her at market for the matter of form” (Menefee 1981: 2).

If a wife-selling husband was fairly certain that his wife’s lover was her highest-valuing user, an auction was unnecessary to identify the appropriate suitor. Though, in
this case, he may still desire to transact the sale at a public marketplace to certify his wife’s consent and to make the end of his obligations to her as husband publicly known. Alternatively, if a wife-selling husband thought his wife’s lover may be among the highest-valuing users of her, but that perhaps an unknown suitor might value her more highly still, he would want to put her up for auction and see. Thus, at a wife sale in London, though the couple had prearranged a buyer, “and he offered the price demanded, the husband still repeated his cries to try to draw some bidders, but none appearing, he pocketed the money” (Menefee 1981: 92).

Wife sales’ winning bidders weren’t always auctioned wives’ lovers. In some cases they weren’t even wives’ ultimate buyers— the men who sought them as new wives. Some bidders were agents operating on wife-seeking clients’ behalf. In other cases wives’ winning bidders weren’t men seeking new mates at all. They were wives’ family members, purchasing their sister’s or child’s right to exit her unhappy marriage (see, for instance, Liverpool Mercury etc., July 26, 1833; Liverpool Mercury etc., April 6, 1849; The Lancaster Gazette and General Advertiser, for Lancashire, Westmorland, &c., December 6, 1806).

Regardless of who purchased a sold wife, since wife sales required the husband’s, the wife’s, and the buyer’s consent, the husband, the wife, and the buyer benefitted. As an observer remarked following a wife sale in Southrepps, Norfolk, “All parties seemed perfectly contented and happy with the exchange” (The Essex Standard, and Colchester and County Advertiser, June 2, 1832).
Wife sales’ legal status was hazy. Though wife sales lacked legal sanction in English law, they “were popularly believed to be a legal and valid form of divorce” (Menefee 1981: 1). This belief was in no small part due to the ambivalent and sometimes confused attitude of public officials toward the institution.

Public officials were aware of wife sales. But most turned a blind eye to them. Indeed, one early 19th-century newspaper concluded that, “from the frequency of such occurrences,” England’s magistrates “must either be ignorant or negligent of their duty” (The Times, February, 25, 1832).

Some public officials did more than turn a blind eye. They participated in wife sales as toll collectors and marketplace constables where used wives were sold. Technically wife sales constituted bigamy. However, several jurists expressed confusion about whether wife selling itself was prohibited, as did the parties to wife sales, and the lawyers who sometimes codified them.

At least one judge suggested that wife sales were legitimate. “As to the action of the sale itself,” he noted, “I do not believe in the right to prevent it, even to put an obstacle in its way, because it was founded on a custom preserved by the people, a custom, perhaps, that it would even be dangerous to pass a law which abolished it” (Menefee 1981: 146). Indeed, “the legitimacy of ritual wife sale went unquestioned in the parishes of Effingham and Dorking” in 1814-1815 (Thompson 1991: 438).

Authorities prosecuted some wife-sale parties for their participation in these transactions. But prosecutions were rare. And convicted persons typically received light sentences (see, for instance, The Illustrated Police News, November 24, 1883).
Religious authorities’ attitudes toward wife sales were equally confused. Some of them condemned wife selling as illegitimate. But other religious authorities seemed to legitimize wife selling, if not in word, in practice. By attaching relief-dependent wives to new husbands, wife sales eased the burden on welfare doles that religious authorities were charged with financing. Thus, far from aiding the prosecution of wife sales, several religious authorities encouraged them (Stone 1990: 51; Thompson 1991: 437). For example, “prompted by a desire to keep women from becoming (or remaining) a charge on the parish,” an 18th-century parish officer at Barton-under-Needwood helped a husband arrange the sale of his wife. He wasn’t alone. A 19th-century parochial workhouse master at Epping did the same (Menefee 1981: 56).

Secular and religious officials’ laissez-faire attitude toward wife sales helps explain why, though the institution of selling used wives lacked official legal sanction and in some cases clearly flouted it, wife sales were often conducted in the open, in the most public of market-places, before throngs of spectators, and were commonly reported in newspapers for all to see.

V. Predictions and Evidence

Our theory of Industrial Revolution-era wife sales generates two predictions the historical record allows us to test. The evidence supports them.

1. *Wife-sale prices are positive.*
According to our theory, English wife sales reflected Coasean bargains whereby unhappy wives in inefficient marriages purchased the right to exit marriage from their husbands indirectly. If this is in fact what wife sales reflected, wife-sale prices should be positive. Positive wife-sale prices are consistent with unhappy wives’ purchasing, through wife-buying suitors, the right to exit marriage from their husbands. In contrast, negative prices are consistent with unhappy husbands purchasing, through wife-buying suitors, the right to exit marriage from their wives.

To see whether wife-sale prices were positive or negative, we collect data on wife sales from 18th- and 19th-century newspaper accounts preserved in the Gale database’s “17th-18th Century Burney Collection Newspapers” and “19th-Century British Library Newspapers.” To identify newspaper reports relating to wife sales we perform a search for the terms “wife sale,” “sale of wives,” and related variations on these keywords. We then examine the resulting articles to isolate those that pertain to the institution of wife sales in England and Wales.\(^90\)

Our data collection yields a sample of 222 unique cases of wife selling in the area of Great Britain governed by common law. These cases span the 165 years from 1735, when the first wife-sale case in our data appears, to 1899, when the last case in our data appears.

All but 13 of the 222 cases of wife selling our data contain provide some information about the price paid for the wife sold. In the reports we draw our data from

\(^{90}\) In our search we came across a handful of potentially similar cases in Australia, New Zealand, and the American colonies. A few newspaper reports also referred to wife sales in France, Russia, and China. We omit these cases from our study, not only because we’re interested in the English institution of wife sales, but also because of their extreme rarity and lack of substantiation for their authenticity.
these prices are expressed in terms of money, goods, or a combination of the two. Alcohol was a popular supplement to cash compensation. But one can also …nd payments via lottery ticket, dinner, and a donkey.

192 of our 222 cases have price data that are either wholly or partly monetary and thus data we can reliably convert into British pounds sterling. In 37 of these cases a used wife was sold for money and goods. For these cases the price data we report reflect only the monetary part of payments. For example, if a wife sold for a shilling and a beer, only the shilling is included in our price data. These data therefore tend to understate the prices for which used wives were sold, making our test for positive wife-sale prices a harder one for our theory to pass.

Since our price data span over a century, it’s important to adjust them for the changing value of British currency over time. Further, to express our price data in common units, we need to reduce reported wife-sale prices to pounds sterling. To do this we first convert the wife-sale prices reported in the newspaper articles from which we draw them into fractions of pounds sterling. Next we convert those figures in constant pounds sterling in 1800. To accomplish the latter we use the index of average earnings in Britain that covers the years our price data span compiled by Lawrence Officer (2009) as part of the “Measuring Worth Project.”

The second column in Table 7 presents mean wife-sale prices by decade for the cases in our sample. The mean used-wife price for the entire period is positive. Between 1735 and 1899 the mean used wife in our sample sold for £5.72. Further, in every decade
in our sample mean wife-sale prices are positive, ranging from a low mean price of £0.93 in the 1770s to a high mean price of £25.27 in the 1860s.

As we discuss below, the number of observations we have for each decade is low. This makes mean wife-sale prices subject to strong influence from outliers. One or two exceptionally low or high used-wife prices in a decade is sufficient to generate an exceptionally low or high mean used-wife price. Thus it’s useful to consider median used-wife prices. We report these prices in the third column of Table 7.

Median used-wife prices are less dispersed across decades. In the 1730s, where we have only two observations, the median used-wife price is £9.71. Excluding this decade, median used-wife prices in our sample range from a low median price of £0.10 in the 1890s to a high median price of £3.98 in the 1760s.

The last two columns in Table 7 report the minimum and maximum prices used wives sold for in each decade. The most expensive used wife in our sample sold at Bury, Lancashire for an impressive £229 in 1797. The least expensive used wife in our sample sold at Blackfriars for -£0.85 in 1788. We comment on this case, and the single other case with a negative used-wife price in our sample, below.

Our sample unavoidably includes what is probably only a small fraction of the total number of wife sales that took place in 18th- and 19th-century England. Even in the decade in which we find the largest number of wife-sale cases, 1830, when there were 30 wife sales for which price data are available, the number of observations is small. Because of this, it’s important to interpret our data with caution. We can’t be sure our sample is representative. Further, the small number of observations our sample includes
prevents us from drawing any reliable inferences from the relative height of used-wife prices over time.

The important point for our analysis is what we might learn about who was paying whom for an existing marriage to end and a new one to begin when a wife was sold. The signs on prices are enough to tell us this. And what they tell us is clear: unmarried suitors were paying husbands to permit their wives to exit their existing marriages and enter new ones with them. This is consistent with unhappy wives buying the right to exit marriage from their husbands indirectly through suitors who valued them more highly as marital partners than their husbands did.

Disaggregating our data on wife-sale prices to see whether any individual wife sales transacted at negative prices delivers nearly the same result. Of the 192 wife-sale cases we consider, only two have negative prices. One of these is the case indicated above. In 1788 a husband in Blackfriars paid a suitor £0.85 to take his wife. In the other case, in 1812, a husband sold his wife in Sheffield to a suitor for 6 pence. However, the halter rope he tied around her, which went with the wife to her purchaser, cost him 9 pence. This means the husband effectively paid the suitor he sold her to £0.01 to take her. These two cases reflect approximately one percent of our sample. In approximately 99 percent of our cases, wife-sale prices are positive.

Even the two cases of apparently negative wife-sale prices in our data may in fact be cases of positive prices. A wife-selling husband benefitted pecuniarily in two ways upon selling his wife. He received the price the buyer paid him for his wife and he obtained relief from the obligation to maintain her in the future, that obligation
transferring to his wife’s buyer. In this sense all the wife-sale prices in our data are biased downward. They consider only the “nominal” prices associated with wife sales— the direct, explicit payment made by a used-wife buyer received as direct, explicit income by the wife’s seller.

Adjusted for the maintenance relief that wife-selling husbands receive and the new maintenance obligation that wife-buying husbands “pay” when the former sell their wives to the latter, the two cases in our data with negative “nominal” wife-sale prices may in fact have positive “real” prices. Given the smallness of their negative nominal prices, this seems virtually certain. The discounted value of the selling husband’s expected future maintenance expenses for his wife would only need to be larger than £ 0.85 and £ 0.01, respectively, to make these negative nominal prices positive real ones.

2. **Wife sales disappear when English law grants wives property rights.**

According to our theory, wife sales emerged as an institutional response to the constellation of Industrial Revolution-era English property rights that gave husbands rights in their wives’ marital status and denied women generic property rights. These sales facilitated indirect Coasean divorce bargains through suitors where direct ones between husbands and wives weren’t possible. Thus our theory predicts that England’s wife-sales institution should have disappeared when English law gave wives the property rights required to purchase the right to exit marriage from their husbands directly, precluding the need purchase that right indirectly through wife sales.
The evolution of English wife selling and English property law supports this prediction. Wife sales went into decline in the second half of the 19th century and became nearly extinct by the turn of the 20th. This period corresponds to the period in which English law granted wives property rights.

The first step in English law granting wives property rights was the Matrimonial Causes Act of 1857. That Act declared that a wife “who obtained a decree of judicial separation… should henceforth be treated as a feme sole with respect to her property and contracts” (Shanley 1982: 370). The limited property granting provision the Matrimonial Causes Act introduced “challenged the notion that upon marriage a woman must become, for nearly all legal intents and purposes, ‘one’ with her husband” (Shanley 1982: 356). It granted wives the first semblance of property rights with which they might purchase the right to exit marriage from their husbands directly.

The next English legal change bearing on wives’ property rights was much more significant. That was the Married Women’s Property Act of 1870. This Act endowed wives with personal property rights in any income they earned working separately from their husbands while married, as well as income from investments they made based on those earnings. Further, the Act endowed wives with rights to property inheritances from their next of kin, granted them property rights to other inheritances up to £200, and gave them property rights to shares in friendly societies.

91 In addition, it made obtaining such a total divorce — one permitting remarriage — easier for an unhappy wife. She still had to prove her husband’s adultery and aggravating acts to obtain a divorce. But those acts were expanded to include cruelty, which might be physical or mental. Besides being a much more likely aggravating act than incest or bigamy, cruelty was presumably much easier to prove.

92 And the Matrimonial Causes Act’s cruelty provision expanded wives’ opportunity for de facto marital dissolution without their husbands’ consent.
According to the Married Women’s Property Act:

The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade (a) in which she is engaged or which she carries on separately from her husband (b), and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments (c) of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use (d), independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property . . . .

Any woman married after the passing of this Act shall during her marriage become entitled (w) to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money (x) not exceeding two hundred pounds under any deed or will.

In 1882 the Married Women’s Property Act was modified to include still more sweeping changes. These changes granted wives complete and unfettered property rights, consonant with those they were entitled to as unmarried women. Thus wives were endowed with personal property rights to any income they earned or property they acquired, regardless of when or from whom they earned or acquired it. Equally important, the Act returned to wives their full legal rights. It converted their legal status to feme sole.

As the 1882 Act put it:

A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee…

Every woman who marries after the commencement of this Act shall be en-titled to have and to hold as her separate property, and to dispose of in manner aforesaid all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment,
trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill…

Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, in protection including her husband, the same civil remedies, and also… the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole.

The 1882 Act eliminated any remaining property right impediments to unhappy wives’ ability to purchase the right to exit inefficient marriages from their husbands directly. Under it, wives were endowed with the property rights required to own property their husbands did not. Because of this change, spouses could engage in Coasean divorce bargains without relying on suitors as intermediaries to facilitate them.

This new legal environment rendered wife sales obsolete. Thus, as our theory predicts, wife sales disappeared. Indeed, more than three quarters of the 222 wife-sale cases in our data occurred before the first important English legal change that granted wives some personal property rights in 1857. More than 80 percent of these cases occurred before the next legal change giving wives property rights in 1870. And more than 90 percent of the wife-sale cases in our data occurred before the final important English legal change that granted wives total property rights in 1882.

According to our data, between 1870 and 1879 there were 17 wife sales. Between 1880 and 1889 there were 16. And between 1890 and 1899 there were 10 wife sales. After that our data end. However, Menefee (1981) reports 9 cases between 1900 and 1909. Rare reports of English wife sales pop up after that— one as late as 1972. But by the turn of the 20th century, English wife sales— as an institution— was surely dead.
It’s unsurprising that the wife-sales institution took some years to disappear following England’s 1870 and 1882 legislation. Neither of these Acts was retroactive. They applied only to women who married after their passage. Thus for some time there remained wives under the old legal rules who had no property rights and required indirect Coasean bargains via wife sales to purchase the right to exit marriage from their husbands.

There is one peculiarity in the historical data relating to the number of wife-sale cases over time that’s difficult to account for completely. Although wife sales didn’t end until the turn of the 20th century, their usage may have begun to go into decline some 17 years before the first English legal change granting wives some property rights discussed above. “Use of the institution appears to have gradually decreased from the 1840s on” (Menefee 1981: 47). Indeed, around 1840 wife sales appear to experience a sharp decline. In the 1830s our data find 35 cases of wife sales. In the 1840s they find only slightly more than half that number.

The sharp decline in wife-sale cases we observe around 1840 may simply be an artifact of data availability or newspaper reporting on wife sales. Alternatively it may be related to England’s Custody of Infants Act, which Parliament introduced in 1839. Under that Act, wives who were judicially separated from their husbands received the right to custody of their children under age 7 and access to their older children if the court deemed fit. Prior to this, wives’ children, like everything else they had, was their husbands’ exclusive property. Wives had no right to custody of their children, nor even the right to see them.
The fall in wife sales that appears in our data around 1840 is consistent with our theory if one thinks about the Custody of Infants Act as granting wives some new property rights in their children. Industrial Revolution-era English parents valued children not only for “parental reasons,” but also because children could be an important source of labor. In endowing wives with at least limited property rights in their children, the Custody of Infants Act of 1839 gave unhappy wives seeking to exit inefficient marriages a new, and indeed their first, bargaining chip for negotiating with their husbands—a form of property with which they might be able to purchase the right to exit marriage.

Since the property rights in their children that English law granted wives was contingent and thus limited, and the seeming decline in wife sales around 1840 is large—rather too large, it would seem, to be explained by reference to the Custody of Infants Act alone—we don’t wish to push this argument too far. Still, it provides a potential, contributing reason to the drop off in wife-sale usage around this time that’s consistent with our theory of wife sales as indirect Coasean bargains.

VI. Concluding Remarks

Our analysis of the law and economics of Industrial Revolution-era English wife sales leads to three conclusions. First, our analysis suggests that Coase’s (1960) seminal insight has even greater applicability than is usually thought. Coase pointed out that when transaction costs are low, regardless of the initial allocation of property rights, those rights tend to wind up in their efficient holders’ hands. The logic underlying his insight is simple: efficient users of inefficiently assigned property rights will buy those rights from
their inefficient holders. But this logic assumes that a property right’s efficient holder has some property rights to bargain with. If he doesn’t, Coase’s insight would seem to break down.

The institution of wife sales in Industrial Revolution-era England demonstrates that it needn’t. English law established a peculiar constellation of rights that both endowed husbands with property rights in their wives’ marital status and deprived wives of the property rights required to purchase the right to exit marriage from their husbands directly. This situ- precluded direct Coasean bargaining between husbands and wives that could terminate inefficient marriages rendered so by a wife’s higher valuation of life outside her existing marriage than her husband’s valuation of life inside it.

Spouses’ inability to engage in direct Coasean bargaining left gains from trade on the table when unhappy wives sought to exit inefficient marriages. To capture these gains, spouses devised a means of engaging in Coasean divorce bargains indirectly. They did so by auctioning their fairer halves to potential suitors who valued the wives for sale more than wives’ current husbands did, and who the auctioned wives preferred as husbands to their existing ones. Unlike the wives they purchased, these suitors had the property rights required to purchase unhappy wives’ right to exit from their husbands. The result was the institution of wife sales: an institution of indirect Coasean divorce bargaining that overcame the obstacle to direct Coasean divorce bargaining that Industrial Revolution-era English law created.

The institution of wife sales suggests we might profitably render the Coase theorem in more encompassing terms than it’s usually rendered in. That rendering is this:
where gains from trade exist, people will find innovative ways of overcoming hurdles that stand in the way of their ability to capture them. The presence of these gains alone may be enough to generate a tendency for individuals to capture them—i.e., a tendency toward efficiency.  

Second, our analysis of Industrial Revolution-era English wife sales suggests that these sales benefitted wives rather than harmed them. Without the wife-sales institution, unhappy wives who wanted to exit inefficient marriages would have remained trapped in marriages they didn’t want to be in when preferable alternative marriages were available. Wife sales required wives’ consent. Given the unhappy marital situations wives sometimes found themselves in, and given a legal environment that gave husbands rights to their wives’ marital status and denied wives general property rights, this alone is enough to guarantee that wife sales made the wives who chose to participate in them better off.

Of course wife sales weren’t a panacea to wives’ problems in Industrial Revolution-era England. This paper focused on one kind of problem that wives confronted as a result of English law: the problem of obtaining permission to exit their existing marriages when their valuation of life outside those marriages was higher than their husbands’ valuation of life inside them. Our analysis demonstrates how wife sales helped unhappy wives overcome this problem.

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93 Leeson and Nowrasteh (2011) make a related point. They argue that Coase’s insight also applies when property rights are ill-defined and interactions are coercive. They demonstrate this in the context of interactions between privateers and merchant ships in the Age of Sail.
But there was another kind of problem that Industrial Revolution-era English wives confronted because of English law: the problem of inducing unhappy husbands whose valuation of life outside their existing marriages was higher than their valuation of life inside them to stay in those marriages when wives’ valuation of life inside those marriages was higher still. Wife sales helped unhappy wives exit inefficient marriages. But they couldn’t help wives hold their efficient marriages together when their unhappy husbands wanted to exit instead.

Coasean logic suggests that wives in the latter situation would simply bribe their husbands to remain married to them. But the same legal difficulty that prevented wives from bribing their husbands to let them exit when their marriages were inefficient prevented wives from bribing their husbands to stay when their marriages were efficient. Until the second half of the 19th century, wives had no property rights. Since unhappy husbands were largely unconstrained in their ability to de facto divorce their wives, when pastures appeared greener to them outside their existing marriages, they often left them. Wife sales benefitted wives. But they did so only for one kind of marital problem wives confronted.

It’s sensible to lament the marital and generic property rights, or rather lack thereof, that Industrial Revolution-era English law conferred on wives. Similarly, it’s sensible to lament the fact that cruel, drunken, and irresponsible husbands may have often been a large part of the reason why unhappy wives were unhappy and desired marital exit. But these lamentations don’t alter the fact that these were the conditions Industrial Revolution-era English wives confronted. Thus they don’t alter the fact that, constrained
by these conditions, the wife-sales institution helped rather than hurt Industrial Revolution-era English wives.

A better reason for criticizing wife sales could be found if, when the law changed to give wives the property rights required to buy exit from their husbands directly, and thus the conditions that gave rise to wife sales disappeared, wife sales persisted. But they didn’t. When the legal circumstances in England that led to wife sales’ development and rendered those sales efficiency improving disappeared, so did England’s institution of wife sales.

Finally, and closely related, our analysis suggests that wife sales reflect neither pre-modern English irrationality nor pre-modern English barbarism. Wife sales were an institutional response to the system of Industrial Revolution-era English rights that prevented unhappy wives in inefficient marriages from purchasing the right to exit those marriages from their husbands directly. There’s nothing irrational about this. On the contrary, the wife-sales institution developed along precisely the lines it needed to circumvent the difficulties that unhappy wives confronted as a result of the legal system. Nor is there anything barbarous about wife sales—unless one considers an institution that benefitted wives barbaric.
## Table 7: Used-Wife Prices, 1735-1899

<table>
<thead>
<tr>
<th>Decade</th>
<th>Number of sales</th>
<th>Average price (constant 1800 £)</th>
<th>Median price (constant 1800 £)</th>
<th>Min price (constant 1800 £)</th>
<th>Max price (constant 1800 £)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1730</td>
<td>2</td>
<td>9.71</td>
<td>9.71</td>
<td>0.01</td>
<td>19.40</td>
</tr>
<tr>
<td>1760</td>
<td>5</td>
<td>11.22</td>
<td>3.98</td>
<td>0.46</td>
<td>37.20</td>
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<tr>
<td>1770</td>
<td>4</td>
<td>0.93</td>
<td>0.92</td>
<td>0.09</td>
<td>1.80</td>
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<tr>
<td>1780</td>
<td>8</td>
<td>2.02</td>
<td>0.67</td>
<td>-0.85</td>
<td>8.30</td>
</tr>
<tr>
<td>1790</td>
<td>15</td>
<td>18.59</td>
<td>1.37</td>
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<td>229.00</td>
</tr>
<tr>
<td>1800</td>
<td>24</td>
<td>5.95</td>
<td>0.59</td>
<td>0.02</td>
<td>92.70</td>
</tr>
<tr>
<td>1810</td>
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<td>0.18</td>
<td>-0.01</td>
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</tr>
<tr>
<td>1820</td>
<td>18</td>
<td>1.98</td>
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<td>0.01</td>
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</tr>
<tr>
<td>1830</td>
<td>30</td>
<td>0.95</td>
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</tr>
<tr>
<td>1840</td>
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<tr>
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<td>0.10</td>
<td>0.01</td>
<td>18.30</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td><strong>192</strong></td>
<td><strong>5.72</strong></td>
<td><strong>0.33</strong></td>
<td><strong>-0.85</strong></td>
<td><strong>229.00</strong></td>
</tr>
</tbody>
</table>


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CURRICULUM VITAE

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