Polycentrism, Self-Governance, and the Case of Married Women’s Rights Reform

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1. Introducing the Relationship Between Polycentrism, Self-Governance, and Married Women’s Rights

A self-governing political system is one in which individuals create and enforce the rules that govern their own communities. Questions about the creation, functioning, and maintenance of these systems are foundational to the study of constitutional political economy (Buchanan and Tullock 1962, Hayek 1973). One of the most enduring of these programs is the research of Elinor Ostrom, Vincent Ostrom, and their colleagues in the Workshop in Political Theory and Policy Analysis at Indiana University Bloomington.

The collective oeuvre of Elinor and Vincent Ostrom considers self-governance in two lights. First is the question of the practical realization of self-governance. This is exemplified particularly by the work for which Elinor Ostrom has become most famous, the study of how individuals have designed arrangements for the management of common pool resources on their own authority without the need for a central coordinator (E. Ostrom 1990). The second sense in which

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self-governance is discussed, and the focus of this paper, is the study of self-governance as an ideal political structure to be sought after and worked towards because of the benefits that will result from government serving as an instrument of the people rather than vice versa. In The Meanings and Vulnerabilities of Democracies, Vincent Ostrom articulates the paradox that

human beings are required to have potential recourse to instruments of evil to advance their joint or common good… The threat of chaos and the creation of order from chaos, in turn, pose a threat of tyranny (V. Ostrom 1997: 121).

Taking as given that some sort of governing institutions are desirable for activities such as the production of public goods but that the strength of these same institutions poses great danger, the critical question becomes whether or not the governing power can be sufficiently harnessed.

The polycentric order is proposed as a social structure equivalent to the task of sufficiently harnessing governing power. A polycentric system is a network of multiple autonomous governing units that interact within a system of shared rules. The self-governing properties of a polycentric order are many. The most active and important political units in a polycentric order are communities and the voices of their individual members. The growth of governance structures from the bottom up guarantees that large political entities only emerge with the sanction of the lower levels, all the way down to individual residents. Finally, and perhaps most importantly of all, the existence of multiple autonomous units that are directly connected to individual persons opens the opportunity for jurisdictional competition. Political bodies in competition with each other are motivated to satisfy citizen preferences and disciplined when they do not, resulting in a government more responsive to the will of the people it was designed to serve (Aligica and Boettke 2009; V. Ostrom 1972; Ostrom, Tiebout, and Warren 1961).

The history of the many at least partially sovereign states nested within the United States provides rich fodder for evaluating the relationship between a polycentric order and the effective functioning of a self-governing society. The particular example I will explore here is that of gains in married women’s rights during the nineteenth century. The evolution in this particular legal institution was dramatic. The American republic came into being with married women formally established as a lesser class who sacrificed both their legal and economic independence upon marriage. Married women could not own property, retain their own
wages, sign contracts without permission, or in general participate in any other activity requiring legal recognition. However, this state of affairs did not persist for long. By the end of the nineteenth century, nearly every state had passed legislation establishing married women’s property rights as fully equivalent to those their husbands had always enjoyed. Does women’s success in getting what they wanted from their political leaders have anything to do with the Ostroms’ insights about the ability of polycentric orders to sustain self governance?

I argue that there is indeed a strong and causal relationship between the presence of a polycentric legal order in nineteenth century America and the advances in women’s rights that occurred during that time. In the second section of this paper, I will discuss the nature of polycentric orders in greater detail. Particular emphasis will be placed on the question of why polycentric orders should be expected to support self-governing behavior. In the third section I will introduce evidence from the passage of the married women’s property acts that supports the theoretical proposition that polycentrism allows the residents of a jurisdiction to retain true governing power instead of leaving it to the discretion of legislators and other political leaders. The essay concludes with some final thoughts on what United States history can teach us about polycentricity and self-governance as general propositions.

2 Jurisdictional Competition in a Polycentric Order as Self-Governance

2.1 Self-governance and jurisdictional competition: Communities of individuals may find it advantageous to cooperate with each other for the production of public goods and services, such as law, that no one individual would find it profitable or possible to produce alone. The ability to reap these gains is, however, limited by the temptation for individuals to free ride and enjoy the benefits of public goods without contributing to their production. Social contract theory posits that in order to get around this unfortunate inevitability, individuals will choose to select a third party to enforce the terms of the contract (Buchanan and Tullock 1962; Hobbes [1651] 2008). For example, if the members of a community agree to compensate a judge to serve as a full time arbiter of disputes, they can solve the free rider problem by turning the power to tax or evict any who should choose to renge over to a neutral third party.

An entity granted the power to enforce all social contracts for cooperative provision is generally known as a government. So long as this entity sticks to the
enforcement duties it is authorized to perform, the society can be considered a self-governing society in which authority and ultimate control over political activity remains in the control of individuals rather than government officials. Unfortunately, the ability of individuals to govern themselves can be difficult to retain after ceding even a portion of enforcement power to a political apparatus. The agreement with the third party enforcer is after all a contract as well, similarly subject to potential default.

So, _quis custodiet ipsos custodes?_ Or in a more modern tongue, who will watch the watchman? The problem becomes one of finding a solution that is mechanistic in nature, or self-enforcing (Leeson 2011). The hypothetical ideal is to find a structure that rations the exercise of coercive behavior in the same way that the price system rations the consumption of market resources (Hayek 1945). This is the only way to avoid the never ending pursuit of finding a watchman to guard the watchman who’s guarding the watchman and so on ad nauseam.

Competition between governing bodies can provide this type of self-enforcement by serving as a market-like mechanism through which individuals can discipline political leaders (see Leeson 2011; Tiebout 1956; and Weingast 1995 for variants on this assertion). Governance structures that require states to provide their citizens with some consumer satisfaction can help individuals retain some degree of control over what they have created. In other words, jurisdictional competition “may produce substantial benefits by inducing self-regulating tendencies with pressure for the more efficient solution in the operation of the whole system” (Ostrom, Tiebout, and Warren 1961: 838).

The simplest and most common variant of jurisdictional competition is federalism. Federalism broadly understood is little more than the division of governing power across multiple states, often with the attached implication that competition is supposed to lead to good results— the much storied laboratory of the states. Yet despite federalism’s long history, there is still no scholarly consensus over why competing jurisdictions work or even exactly what they do.

Most of the ink and effort to date has taken the form of proposing different sets of conditions under which multiple competing governance units should be expected to be more or less efficient than the centralized provision of public goods and services. Tiebout (1956) added a set of standard neoclassical assumptions

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to the relationship between citizens and politicians to demonstrate that under a set of idealized conditions,\(^3\) governing units could be disciplined through the process of citizen mobility to efficiently provide public goods. If the politicians in one state behave sub-optimally, a system of multiple states in competition allows citizens to simply choose another state to be recipient of their tax dollars. The ultimate result is the efficient provision of goods and services.

Tiebout’s assertion that competition between political units could be efficient has been expanded upon by many scholars since. Albert O. Hirschman hypothesized that individual mobility between jurisdictions was a way for citizens to exercise a type of market choice over government agents (Hirschman 1970). Geoffrey Brennan and James Buchanan proposed the empirical existence of an inverse relationship between the number of government jurisdictions and the extent to which taxpayers are fiscally exploited (Brennan and Buchanan 1980). Frey (2005) offers up the theory of “functional, overlapping, competing jurisdictions” as a normative proposal for how to best organize government in order to take advantage of efficiency when possible while still ensuring that a core set of government services are provided to all residents of the overall geographic regions. More recently, Leeson (2011) builds on Buchanan (1965) to propose a system of clubs that would serve as a true market in governance.

As such the most distinctive contribution of the Ostroms and their colleagues is not necessarily their role in early studies on jurisdictional competition. They were not the first or the only to advance the idea. Rather the importance of the Ostroms’ work in this field comes from the particular set of conditions they suggest as most conducive to effective governance, those of the polycentric order (Ostrom, Tiebout, and Warren 1961).

2.2. Polycentrism as the fertile ground:

All variants of jurisdictional competition theory recognize two distinct and equally necessary prerequisites to the functioning of jurisdictional competition. First, individuals must have the motive and means to be able to choose to patronize a variety of different jurisdictions. If jurisdiction A does not satisfy, the members of a society must have the option to move on to jurisdiction B. Albert

\(^3\) Conditions for efficiency include a citizenry with complete knowledge of the choice set, a sufficiently large number of jurisdictions to choose between, costless mobility between those jurisdictions, no externalities from public goods provision, and that there is an optimum population within each jurisdiction.
Hirschman popularly labeled this phenomena as “exit”, one of the two mechanisms by which politicians can be disciplined by the citizenry, the other being “voice” (Hirschman 1970). Complete knowledge is not required as long as there is some systematic accuracy in individuals’ assessments as to whether they prefer to live in jurisdiction A or B. In the context of law as a public good, this can be thought of as market demand for better laws (O’hara and Ribstein 2009).

The second prerequisite for jurisdictional competition stems from the fact that polycentric orders are built by and comprised of individuals rather than conglomerates. As such it is not obvious that a jurisdiction necessarily prefers more residents to fewer in the way that a firm in the marketplace prefers more customers. The structure of the governing institutions must be such that the individuals with political decision making power will be personally affected by people either entering or exiting the jurisdiction. O’Hara and Ribstein (2009) label these individuals the suppliers of law who are seeking to better serve the market demand of current and potential residents of the jurisdiction.

Where theories of jurisdictional competition differ is in the details of the structure and functioning of these markets- or quasi-markets- in governance. Every theory of jurisdictional competition has its own perspective and context. For the Ostroms and their colleagues, polycentrism is the institutional context that is proposed as the most likely to guarantee the effective functioning of jurisdictional competition. The concept of polycentrism is first introduced in a collaboration between Vincent Ostrom, Tiebout, and Warren (1961). This initial article focuses on illuminating the ordered reality under the anarchic appearance of many different and occasionally conflicting governing units working to provide public goods in the same metropolitan region. The aim was to contradict the common belief that multiple governing units are necessarily inefficient because of the inevitable duplication of efforts and overlap of jurisdiction. Instead the trio argued that multiple autonomous jurisdictions can successfully resolve conflict between groups working to provide the same public goods or services while increasing the satisfaction of resident consumers.

Polycentric orders have now been a recurring theme in the work of Vincent and Elinor Ostrom for over fifty years (see for example E. Ostrom 1972, 1990; E. Ostrom and McGinnis 2012; V. Ostrom 1972, 1991, 1997). Polycentrism liter-

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4 See Boettke, Coyne, and Leeson 2011 for a critique of conflating the functioning of political and market systems.
ally means ‘more than one center’. However, the Ostroms have imbued the term with additional layers of meaning that make it both more specified and less concrete. In the vernacular of the Ostroms and their colleagues, a polycentric order is one where many elements are capable of making mutual adjustments for ordering their relationships with one another within a general system of rules where each element acts with independence of other elements (V. Ostrom 1972: 6).

Translated into language more directly related to political economy, a polycentric order can be defined as a governance system that involves multiple autonomous decision makers spontaneously interacting within a shared system of rules.\(^5\)

There is a good deal to unpack in this definition. It is a good start to note that polycentric orders are individually unique, complex phenomena that cannot be identified by counting up the units of government and classifying the number as either equal to or greater than one. It is true that if an order is going to be considered polycentric, political authority must be dispersed across many organizations rather than held en masse in one central location. However the presence of multiple jurisdictions is not a sufficient condition. A polycentric order requires more. Returning to Vincent Ostrom’s definition, the relevant decision makers in each jurisdiction must be “capable of mutual adjustments” and “ordering their relationships,” and all “within a general system of rules” (V. Ostrom 1972: 6).

In order for a governing jurisdiction to be able to take action to adjust its role in the legal-social-political order, there must be both means to act and incentive to take action. The means to act requires that each jurisdiction vested with the authority to govern must retain some degree of autonomy. If the decisions of the political leaders in a particular jurisdiction are overly constrained or subject to overturn by other jurisdictions, then the ability of those political leaders to take any action at all is severely impaired. The incentive for jurisdictions to act comes through the process of interjurisdictional competition, to be discussed in greater detail shortly. A polycentric order also requires that all the participants operate within a shared general system of rules, which serve the function of defining the terms of engagement for interaction between jurisdictions.

Perhaps above all, a polycentric order is characterized by the recognition that decisions are made by the individuals participating in the system. Jurisdictions\(^5\)

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\(^5\) For the sake of simplicity, all future uses of the term “polycentrism” in this paper will refer to the latter definition, as adopted by the Ostroms and their intellectual kin.
themselves do not make decisions, nor do they come in to being through a mandate dictated from on high. As such the proposition that individuals imbue governing entities with authority rather than the other way around becomes a state of reality rather than a normative proposal, at least in the context of a peaceful society. The only alternative to voluntary individual decision making is a coerced dictatorial society. From this perspective, polycentrism in many societies is not one of many alternative systems, it is simply a fact.

Polycentric orders that are comprised of many autonomous and overlapping jurisdictions will be distinct from monopolistic – or monocentric – governance systems in many important ways. A crucial difference that I would like to focus on here is the question of self-governance, or the extent to which these two different systems hold political actors accountable to those who granted them the authority to govern in the first place.

3. Polycentricity and Advancements in Married Women’s Property Rights

In the United States, laws regarding marriage have traditionally been the exclusive purview of state level courts and legislatures. With some minor variation by state, the precedents of these courts and the statutes of the legislatures formed a set of legal rules that allocated a majority of a nineteenth century woman’s legal rights to her husband upon marriage. Married women had no right to own property, retain wages, sign contracts, or stand in court (Salmon 1986, Warbasse 1987, Zaher 2002). In Blackstone’s Commentaries on the Laws of England, the definitive source on pre-revolutionary Anglo-American law, the married woman is described as: “…incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything…” (Blackstone 1765: 430).

Around 1840 states began the slow, piecemeal process of changing these rights. No state’s history is the same. Many states failed to abolish restrictions on married women’s property rights in one fell swoop, but rather amended them one piece at a time through multiple legislative acts. Others acted fully and decisively. In some states, the process took decades while others include rights for married women in their initial constitutions. Despite this great diversity, laws regarding ownership of property were contingent upon neither marital status nor sex by the early twentieth century. Restrictions on married women’s legal rights were no longer a relevant part of American life.
In this section, I present evidence that this evolution in family law not only occurred within a polycentric order, but that the polycentric nature of the institutional environment contributed directly to the advancements in married women's rights.

3.1 The relevance of the case:

In order for the case of reforms in married women's property rights to be able to say anything about jurisdictional competition in polycentrism, it must be true that married women's property laws were a public good produced within a polycentric order. So can the nineteenth century American landscape be in any way described as polycentric in the sense defined by the Ostroms, the sense that is relevant to a conversation about self-governance?

We know that the United States has always been federalist, but federalism and polycentrism are not synonymous. The term federalism often refers to a hierarchical process of decentralization that is determined optimal and put into place by a central body (Wagner 2005). A federalist system as such can have multiple loci of power and can even imbue these loci with sovereignty to an extent, though it is important to remember that what can be given can also be taken away. However, it is possible for a system to be considered federalist while still missing a key component of a self-governing order—namely, establishment by the people through a process of bottom up development.

In a truly polycentric order, the appropriate scale of government provision is not centrally coordinated but emerges through individual action as people choose either to operate independently or contract for joint production (V. Ostrom 1972). Though it might be questionable how well this statement applies to the modern United States, the nineteenth century was a wide open landscape where a significant portion of today's units of government had not yet been formed or even imagined. Boundaries of states and even the number of states that would be admitted to the union were still undecided. Many political leaders, particularly along the frontier, did not know if they would maintain control or wind up annexed or gerrymandered out of relevance.

However, despite the flexibility of the landscape, the formal entry of new jurisdictions was by act of Congress only and as such not completely unrestricted. Fortunately the existence of a monocentric federal government does not prohibit specific public goods or services from being provided within a polycentric order. Polycentrism and monocentrism are not dichotomous concepts, and they are capable of co-existing simultaneously over the same geographic space. It is
perfectly possible for some aspects of law to be provided by a system that is largely monocentric while others are provided within a polycentric order. Further, even if power is only partially dispersed among competing autonomous jurisdictions, self governance can still be partially successful. Political leaders may still be somewhat constrained even if a legal order is only somewhat polycentric.

The case for the relevance of married women’s property reform is further bolstered by the fact that particular facets of American law are still today and have always been polycentric in the sense of autonomous, competitive, and constrained by local interests (O’Hara and Ribstein 2009). Incorporation law is a classic example of this often cited in the literature. Most states in the eighteenth and early nineteenth centuries granted businesses the right to incorporate only through special charters granted individually by the legislature. Butler (1985) argues that competition over the fees and taxes associated with incorporation led state legislatures to switch to general charter systems that made the incorporation process simple and more attractive to businesses. These changes would not have taken place if each state was not completely autonomous in their choice of incorporation practice (Butler 1985, Easterbrook and Fischel 1991: 212-227, O’Hara and Ribstein 2009).

Although less thoroughly discussed, laws relating to marriage and family would seem to fit these criteria as well and for the same reasons. Until very recently in history there has been no discussion of infringing upon state sovereignty regarding marriage law. Consequently tales of moving across state boundaries in search of preferable laws abound- individuals have moved in search of a lower marriage age, laxer definitions of consanguinity, less costly divorce, and the list goes on (Hartog 2002; Jones 1987).

My argument is that in the nineteenth century, laws regarding married women’s property were subject to the same type of search behavior on the part of residents. Further, this search behavior combined with the Ostroms’ insight that orders with more polycentric characteristics will be closer to truly self-governing societies explains why some states enacted married women’s rights reform earlier or with greater strength than other states.

When circumstances emerge such that political leaders benefit from individuals entering their jurisdiction, and conversely incur costs when individuals exit or

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6 O’Hara and Ribstein (2009) argue this as well in the context of the contemporary debate about same sex marriage.
fail to enter, those political leaders become motivated to capture population. This
in turn leads them to engage in the type of behavior that current and potential
citizens will find desirable. This type of jurisdictional competition cannot func-
tion in the absence of polycentrism, because without some degree of polycentrism
there are not multiple autonomous actors capable of engaging in competition.

The Tiebout model, which lays out a theoretical argument for a similar breed
of jurisdictional competition, is in many ways too restrictive to be a reflection
of reality (Easterbrook 1983, Epple and Zelenitz 1981). Individuals do not have
perfect information about the behavior of political agents. They are not able to
move costlessly between jurisdictions. Even if they did, the full political profits
of this movement do not accrue neatly to a single politician (or even to a small
homogenous group), creating further room for distortion in the feedback loop
between individual choice behavior and political action.

However, the effects of Tiebout competition are, under the right conditions,
observable in the real world. Even in the absence of the ideal conditions required
for efficiency in the provision of public goods, there can still exist pressures that
will encourage more efficient behavior at the margin. In this regard one can view
the historical advancements in married women’s property rights as a set of condi-
tions encouraging—if not requiring—political leaders to act according to the will
of the people.

3.2. The market for law along the moving frontier:

Within the historical movement of advancements in married women’s prop-
erty rights, there is one particular area of reform that I would like to focus on in
this case study—the Western frontier. The West is the area of the country that
saw the greatest fluctuations in jurisdictional boundaries during the post-1840 era
of married women’s rights reform. States were not only unformed, but territo-
rial boundaries were still evolving. Creation and re-creation of state and territio-
rial constitutions was a frequent occurrence. Consequently the West developed
within a robust system of legal competition over potential residents, resulting in
many beneficial outcomes for married women. This section will explore the two
components necessary for jurisdictional competition in a polycentric order: resi-
dents moving between jurisdictions in search of a better life, and politicians who
stand to personally gain by satisfying the demands of those residents.

Most frontier migrants pre-1860 made the journey as part of a wagon train,
largely because there were no alternatives. Wagon trains traveled many possible
routes, each of which traversed a different section of the largely unsettled Western territory. Before making the journey from locales further east, these migrants had an important decision to make: which trail would they choose to follow? Were they on their way to California or Idaho, Missouri or Colorado? Popularly available trail guidebooks such as “The Emigrants Guide to Oregon and California” and “Journal of Travels Over the Rocky Mountains” helped people select their trail of choice (Schlissel 1982 [2004]: 119).

There is evidence that the people making these decisions had knowledge of how the governing regimes behaved, and that they based their choice of future residency at least in part on this knowledge. Further, women were active participants in this process. Though married women did make the journey with their families, more women than might be expected were young and single when they chose to brave the wagon train. Newspapers carried advertisements such as “WANTED--Situations by two respectable women to go West. Best references given.” As such a number of the women traveling west were particularly likely to care about laws that defined the allocation of property within marriage, because the decision as to whether or not to marry was still ahead of them.

Though cognizance of why one is exiting a legal jurisdiction and entering a preferred set of rules is by no means requisite for the mechanism to function, there is evidence that settlers consciously compared different legal orders. For example, in 1879 a reader writes in to the Weekly Inter Ocean of Chicago to ask whether it’s true that women in the Dakota’s can own property that is not subject to their husband’s control. Newspapers across the country frequently carried stories regarding the development of married women’s property legislation in major jurisdictions like Missouri, New York, and the U.K. Liberality of divorce law is even explicitly advertised to lawyers along the east coast as a reason for them to move their practice and take advantage of the business available to them in the more permissive Western states (Jones 1987).

Choice behavior on the behalf of residents would however mean little in the absence of political suppliers of law individually benefiting from competition for

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7 *Boston Investigator*, (Boston, MA) Wednesday, June 18, 1873; pg. 6; Issue 8; col D.
8 *The Weekly Inter Ocean*, (Chicago, IL) June 05, 1879
residents. Both sides of the competitive process — politicians to compete and residents to judge — are necessary for jurisdictional competition to have been a factor in these legal reforms. The political competition to provide better law along the Western frontier came from territorial legislators and political leaders who stood to gain a significant degree of power and influence by attracting sufficient population to turn their territory into a state.

The benefits to legislators of attracting population are well documented historically. The procedures for transforming a territory into a state were first laid out in the Northwest Ordinance. These same terms were then more or less duplicated for every region that made the transition from settlement to territory to state during the nineteenth century\(^{10}\) (Willoughby 1905). One of the key pre-requisites to the application for statehood was a particular level of population that had to be met. Initially this level was set at 60,000, but beginning in 1850 the territories were required to meet the higher mark of having a population sufficient to merit a seat in the House of Representatives (Owens 1987).\(^{11}\)

Further, and key to the claim that political leaders in the territories cared about population, there were strong gains to be enjoyed by territorial politicians who succeeded in transforming the geographic region of their employ into a state. First it should be noted that territorial political leaders were a small group with close connections to Washington. Upon initial formation, a territorial government consisted entirely of a governor, secretary, and three judges, all of whom would be appointed by the federal government. A legislature of one representative per 500 residents would be added when the population of the territory reached 5,000, to be supplanted by a legislature of that initial legislature’s design once the population reached 12,500 (Willoughby 1905).

Many political scientists have made a strong case for why local political leaders would have preferred to transition out of the territorial appointment system and into a more autonomous state-based structure. First off, territorial leadership

\(^{10}\) The exception to this rule is California, which skipped the territorial stage entirely.

\(^{11}\) This increase in the population requirement continued to grow with the population of the country as a whole, as follows: in 1850, a population of 99,000 inhabitants was required; in 1880, a population of 150,000 inhabitants was required; in 1890, a population of 170,000 inhabitants was required (Owens 1987). Owens also writes about Congress invoking a clause in the Northwest Ordinance about admitting regions in the general interest of the union in order to either admit territories early or delay admission. This complicates the link between population and gain to territorial politicians, but does not destroy the connection — Congress was only willing to flex the requirement so far.
was appointed by the United States government, leaving office holders with very little stability in their position. It was to be expected that a new President would appoint new territorial governors. Second, being granted statehood gave territorial leaders the right to participate in the state constitutional process. Third, at least three of these local politicians would also have the opportunity to move up to Washington as a delegation to Congress (Owens 1987, Downes 1931).

The upshot is that there was a clear vested interest which would benefit from attracting an increased population. This in turn increased the sensitivity of territorial law-makers to the demands of potential immigrants. Territorial governments wanted new settlers to pick their region as their future home and were willing to alter constitutions and legal practices in order to make this so.

The great scarcity of women along the western frontier gave legislators particular reason to focus on attracting women in order to grow their populations. The first to travel to a new territory were always predominantly male migrants working in solitary manual occupations like mining and trapping. Only after the initial homesteading would farmers, ranchers, and their families follow, introducing a female population to the territory. This is illustrated particularly starkly in the Mountain and Pacific territories. In 1850, the residents of these regions were 73.7% men. This number grew but slowly, reaching 68.2% in 1860 and 62.5% in 1870 (Kleinberg 1999: 51).

These strikingly low proportions of females on the frontier provided additional incentive for law-makers to focus on reforming those areas of law that would be of particular interest to women. And the question of population growth goes beyond satisfying a congressional requirement. Charles Ingersoll, a representative from Pennsylvania during the 1840’s conflict with Canada over ownership of the Oregon territory, is reported to have said, “We wanted no Alexander to put us in possession of our modern Asia. All we wanted was women and children.” Population growth was key to the protection of America’s interest in expanding geographically, and there is no population growth where there are no women to be found.

Newspaper archives provide rich historical evidence on the competition between territorial political leaders for female residents. One of these political agents

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12 Braun and Kvasnicka (2010) similarly find that the collective action problem inherent in women’s suffrage is overcome when states need to attract women to the Western frontier in order to correct the gender imbalance. The ratio of females to males in a state is a robust predictor of voting rights, with states with a proportionally smaller female population granting suffrage earlier.

13 *Fayetteville Observer*, (Fayetteville, NC) Tuesday, January 13, 1846; Issue 1493; col E
was William Gilpin, whose life and livelihood depended upon progress and settlement in the American west. He spent his life traveling the frontiers as part of different United States government missions. All before 1848 he had lived or served in Missouri, Florida, Oregon, and other areas of the region that would be acquired by the U.S. at the conclusion of the Mexican-American War. Gilpin’s life was dedicated to encouraging westward expansions through writings such as the dramatically descriptive *Mission of the North American People*, a treatise on the virtues and supremacy of the North American continent (Gilpin 1873).

Gilpin also happened to be the first governor of the Territory of Colorado. During his tenure, Colorado became the first Western territory to enact full married women’s property rights. Gilpin’s intentions of attracting population to the territory, and women in particular, can be clearly seen in an editorial he wrote in 1861 upon arriving to the territory:

> 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.¹⁴

Gilpin’s editorial was circulated around the country in newspapers as far east as Massachusetts, so this message certainly made it to those “poor girls” Gilpin was hoping to entice to Colorado.

J.M. Ashley, governor of the Territory of Montana, goes even further in his salesmanship in an address to the Montana Immigrant Association, an organization dedicated to encouraging migrants to choose the territory of Montana as their homestead:

> In many of the Eastern States and especially in all the great cities there are thousands of honest, industrious men and women without homes and without employment, struggling for a precarious subsistence. Here in Montana there is remunerative labor for all, with free homes, and health and a bright future. **Montana is especially desirable for women who are dependent upon their own labor for support**… thousands can find good homes and immediate employment… (Ashley 1870: 4; emphasis added).

¹⁴ *The Barre Gazette* (Barre, Massachusetts) December 13, 1861; Volume: 28; Issue: 21; Page: 1
Ashley’s singling out of working women is of particular interest. Working women during this time would have been disproportionately single. To work outside the home while married was still rare (Kleinberg 1999). This group of women would have been the group with the most to gain from the married women’s property reforms, as they not only owned separate property but also had not yet ceded any of their earnings to a husband. If there was a way for a politician to appeal to the single working girl of the nineteenth century, reforming laws regarding property rights after marriage would certainly have been a good choice.

The messages of these governors are echoed by dozens upon dozens of unattributed calls in newspapers for all—particularly women—to head West in search of a better life, often with one particular region highlighted as the promised land. A South Carolina paper in 1843 reprinted a story published in an Iowa newspaper where the editor “…begrts and prays five thousand good-looking industrious and sweet-tempered young women to emigrate…” A Milwaukee paper wondered in 1846 why more women hadn’t ventured to the mineral region of the state, where a working woman “can easily earn one hundred dollars there per annum, besides her board.” An unnamed resident of Utah pleaded to a New York paper in 1856, “For humanity’s sake… do, Mr. Editor, earnestly recommend the emigration from Down East of a few thousands of virtuous and industrious young ladies…” And taking advantage of some of the most common parlance of all, the Cleveland Herald in 1883 proclaimed, “GO WEST, young girl! In Texas they are paying servant girls $20 a month.”

In these and like actions we can see the self-governing capacity of polycentric orders that the Ostroms have so successfully drawn our attention towards. Autonomous political actors reacted to the potential gains from statehood by appealing to the women and men of regions further east—particularly the women—to come and join them along the Western frontier. This type of jurisdictional competition, possible only within a polycentric governance framework, opened the door for a type of social change that may not have otherwise occurred.

15 A partial survey of nineteenth century newspaper articles on women uncovered over 100.
16 The Southern Patriot; Date: 03-10-1843; Volume: XLIX; Issue: 736; Page: [2]; Location: Charleston, South Carolina.
17 Daily Sentinel and Gazette, (Milwaukee, WI) Saturday, March, 14, 1846; Issue 24; col A.
18 The Weekly Herald, (New York, NY) Saturday, March 29, 1856; pg. 99; Issue 13; col B.
19 The Cleveland Herald, (Cleveland, OH) Friday, November 02, 1883; pg. 4; Issue 300; col C.
4. Concluding Remarks

The history of the nineteenth century United States offers great opportunity for the study of polycentric orders. Real world instances of relatively stable and economically developed systems that both allow autonomous sub-units and permit jurisdictional entry and exit of these units are rare. This much cannot even be said of state level activity in the United States today, though certainly polycentrism is alive and well at the municipal level. Rarer still is the observance of autonomous and competing jurisdictions in the context of a shared set of general rules and norms, provided in part in the case of the United States by the legal ancestry of the common law that has shaped so much of state legislation and judicial action.

The stakes of this expedition into economic history are high. Polycentrism and its mechanisms of function, such as jurisdictional competition, may be one of very few ways to actualize a self-governing society. In the words of Vincent Ostrom,

If the whole system of human affairs is capable of being organized on principles of polycentricity rather than monocentricity, we could have human societies that no longer depend upon a unity of power to achieve coherence (V. Ostrom 1991:224).

This does not mean the subversion of cooperative effort. It does not mean no government, or even no coercion. What is offered forth in this statement is the idea that there may be a system capable of permitting the formation of governing bodies that could not ever fully embody the description of a government as a monopolist in violence even if they tried.

The consequence is that a truly self-governing system becomes possible. If the Ostroms are correct, polycentric systems enable the actions of individuals to effectively prevent power from becoming concentrated among political actors, instead keeping that power dispersed. The potential of this research agenda to answer one of the great unsettled questions in constitutional political economy justifies investment in scholarship that uses historical evidence to press the theory of polycentric orders to a finer level of understanding.
References


polycentrism, self-governance, and the case of married women's rights reform


