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PROPER WOMEN/PROPERTIED WOMEN: FEDERAL LAND LAWS AND GENDER  
ORDER(S) IN THE NINETEENTH-CENTURY IMPERIAL AMERICAN WEST

by

Tonia M. Compton

A DISSERTATION

Presented to the Faculty of  
The Graduate College at the University of Nebraska  
In Partial Fulfillment of Requirements  
For the Degree of Doctor of Philosophy

Major: History

Under the Supervision of Professor Margaret Jacobs

Lincoln, Nebraska

April, 2009

PROPER WOMEN/PROPERTIED WOMEN: FEDERAL LAND LAWS AND GENDER  
ORDER(S) IN THE NINETEENTH-CENTURY IMPERIAL AMERICAN WEST

Tonia M. Compton, Ph.D.

University of Nebraska, 2009

Advisor: Margaret Jacobs

This study explores the relationship between federal land policy and women's property rights in the nineteenth-century American West, analyzing women's responses to expanded property rights under the 1850 Oregon Donation Act, the Homestead Act of 1862, and the 1887 General Allotment Act, and the ways in which the demands of empire building shaped legislators' decisions to grant such rights to women. These laws addressed women's property rights only in relation to their marital status, and solely because women figured prominently in the national project of westward expansion. Women utilized these property rights to both engage in the process of empire building, and to challenge the imperial order, primarily as it related to the re-construction of the American gender order.

As women moved westward (or experienced the impact of such movement) in the nineteenth century they encountered and contested ideas about race, gender, and citizenship that were inextricably linked to federal land policies. White women in Oregon, African American and white women homesteaders on the Kansas prairies, and Nez Perce women forced onto a reservation in Idaho shared the experience of becoming property owners. For white women, this meant new rights, granted with the implied responsibility of modeling proper gender behaviors, from marriage to childrearing and domesticity. For indigenous women, this meant assimilation

to a new gender order through the restructuring of conceptions of property ownership and rights, and compliance with dominant ideas about marriage and gender roles. Because they were the most invisible female population in the imperial project, African American women slipped through the knotty discussions about women and property, their race prohibiting them from consideration as appropriate models of civilized behavior and proper gender relations.

Despite their differences, through their status as land owners, women shared the experience of being players in an imperial game that demanded them to negotiate a rocky terrain, littered with the racialized and gendered expectations which accompanied the efforts to establish a western American empire.

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## ACKNOWLEDGEMENTS

The writing of a dissertation is a solitary venture, but it cannot be accomplished alone. This project would not have been possible without the support of numerous individuals. My adviser, Margaret Jacobs, modeled exceptional teaching and scholarship, and provided insightful feedback for this project at every stage of its development. Douglas Seefeldt consistently proved a willing listener and sounding board for muddling through research questions and writing dilemmas. The other members of my committee—Kenneth Winkle, Jeannette Jones, and David Wishart—generously contributed their insights and expertise to this project. Also within the Department of History, contributions from John Wunder, Victoria Smith, and William Thomas have aided my thinking and the development of this study. My fellow graduate students provided an intellectually stimulating environment in which to work, and the occasional diversion from academic pursuits. I would especially like to thank Joann Ross, Leslie Working, Rob Voss and Aaron Wilson for their wit and wisdom. I was privileged to be able to work with graduate students from outside of the department of history, and to my fellow “shadows”—Amber Epp, Trina Rose, Karaline Poovey Mayer, Frank Moore, Max Post van der Burg, and Lee Dunham I owe incredible thanks for their friendship and support.

The research for this dissertation was made possible by the generous financial support of several organizations. The History Department at UNL provided ongoing support, including fellowship funding which allowed me to focus on the final stages of writing. The University of Nebraska Presidential Fellowship allowed me the luxury of a year to focus on completing research and writing for the dissertation. Research grants from the Huntington Library, Charles Redd Center, Center for Great Plains Study, and the Colonial Dames of America facilitated my many trips from Washington to Washington D.C. and points in between.

My family and friends have borne the burden of this project with me. My grandmother, Violet Adeline Compton nurtured my early love of history with countless trips to the library and road trips to historical sites. My parents, Ancel and Karen Compton have contributed far more than they could possibly know to the successful completion of this project. This project is as much theirs as it is mine. My brothers Johnathan (the “real” doctor in the family) and David have continuously provided me with encouragement, caffeine, and the occasional reality check or swift kick in the rear as necessary. Their lovely wives, the Angies, have kept them in line along the way and been more than willing to spend an afternoon in diversionary shopping tactics. My best friend for more years now than I like to admit, Amy M. Combs, never let me wallow in self-pity or stress and never failed to believe that I would complete this journey. As an undergraduate student at Columbia College I was lucky to find a mentor in Dr. Brad Lookingbill, who has remained an adviser and become a friend and colleague; his encouragement has been invaluable to my success. Finally, this project is for my three amazing nephews—Caleb, Evan and Joshua. I offer this dissertation as proof to them that you can graduate from the twenty-fourth grade.

## CHAPTER 1 THE LAY OF THE LAND

Polly Coon, Mary Hayden, Kate Warthen, and Cecille Tellior never met one another. In fact, they had very little in common. Coon was a white, middle-class, mother of one who left her home in Wisconsin to settle with her husband in Oregon's Willamette Valley. Hayden, a widowed mulatto woman from Kentucky, worked as a housekeeper for her neighbor in Graham County, Kansas. In Syracuse, Kansas, Kate Warthen, a white single woman (until the eve of her thirtieth birthday) exercised her right to participate in municipal elections in order to become the Hamilton County superintendent, while she also studied law, having previously been a school teacher and journalist. Cecille Tellior, mother to six children, was a member of the Nez Perce tribe of Idaho. This diverse group of women is united in the historical record by one simple fact—federal land laws in the nineteenth century made it possible for all of them to become land owners—and one complex relationship—that of women to the American empire built in the West.

In Oregon, Coon owned half of the family's claim granted them under the Oregon Donation Act, and, upon her husband's death, became owner of the full claim, on which she established a town (that she named) before selling the land. Hayden and Warthen both took up land in Kansas under the provisions of the 1862 Homestead Act. Tellior, by virtue of the General Allotment Act of 1887 (also known as the Dawes Act) owned outright her own 80 acres, and as the guardian for her minor children, controlled a family estate of 560 acres on the Nez Perce reservation.

This narrative explores the relationship between federal land policy and women's property rights in the nineteenth-century American West, analyzing women's responses to expanded property rights under these federal laws, and the ways in which the demands

of empire building shaped legislators' decisions to grant such rights to women. I argue that nineteenth-century federal land policies addressed women's property rights only in relation to their marital status, and solely because women figured prominently in the national project of westward expansion. Women utilized these property rights to both engage in the process of empire building, and to challenge the imperial order, primarily as it related to the re-construction of the American gender order.

This project focuses on the expansion of female property rights because the American West has been portrayed, both historically and by historians, as a site of freedom and opportunity that beckoned to both men and women. This series of federal legislation appears, on its surface, to support such an argument, in that it extended broad new rights to women. For the first (and only) time federal legislation recognized the right of married women to hold property; homesteading promised 160 acres of land to any who could successfully create a farm from the western soil, be they man or woman. The allotment of lands in severalty extended to native women, married or single, both property rights and United States' citizenship.

In this promising environment I expected to find women of all races seizing the moment, utilizing their status as property owners to demand greater rights. I hoped that white women would take advantage of this opportunity to insist that they be allowed to vote, to serve on school boards, to determine which crops the family would plant, to retain custody of their children in the case of divorce and to access institutions of higher education. I wanted African American and Native American women to use their property as a foundation for declaring their rights to participate in the nation on their own terms, regardless of race. In short, I wanted these nineteenth-century women to be modern day

feminists, or at least a recognizable prototype. What I found, of course, was that these women were not the beneficiaries of a hundred years of women's rights activism, but were instead, players in an imperial game that demanded that they negotiate a rocky terrain, littered with the racialized and gendered expectations which accompanied the American efforts to establish an empire in the West.

For white women, this meant new rights as property owners, granted with the implied responsibility of creating and modeling proper gender behaviors, from marriage to childrearing and domesticity. For indigenous women, this meant assimilation to a new gender order through the restructuring of both conceptions of property ownership and rights, and compliance with dominant ideas about marriage and gender roles. Because they were the most invisible female population in the imperial project, African American women slipped through the knotty discussions about women and property. Their race prohibited black women from being considered appropriate models of civilized behavior and proper gender relations, therefore, there was no consideration of their potential as property owners.

### **OF SETTLERS, EMPIRES AND COLONIES**

This study proceeds from the basic premise that the establishment of American dominance in the trans-Mississippi west was an exercise in imperialism. Patricia Nelson Limerick argues for such a conceptualization, noting that "the exact definition of the word 'imperialism' will never be a subject of general agreement. But, even allowing for a certain changeability of meaning, the practices of westward-moving white Americans



certainly seems to qualify for the category.”<sup>1</sup> She goes on to establish the criteria for such a definition as:

The intrusion of outsiders into the territory of indigenous people; the exercise of various kinds of power, including military force, to subordinate the indigenous people; the transfer of ownership of land and natural resources from the original residents to the invaders; the creation of political, social, and cultural structures (tribal governments, boarding schools, syncretized religions) to contain the new set of human relations brought into being by imperialism; the romanticizing and mythologizing of both the pioneers who drove this whole process and the safely defeated natives. . . .”<sup>2</sup>

The American empire in the West can best be understood as an enterprise of settler colonialism. Settler colonies were built through an imperial process, but, unlike extractive colonies where the focus was obtaining resources through the enforced labor of natives or imported enslaved workers, the invading forces arrived with the intent of staying put and reproducing the society from which they originated. This process was, as Patrick Wolfe argues, a “structure not an event,” where “elimination is an organizing principle.”<sup>3</sup> The United States is both the result of a settler colonial enterprise begun by the British in the seventeenth century, and is itself an imperial power which established its own settler colonies that were integrated into the nation. As Frederick Hoxie notes, “The American nation state developed its independent identity and imperial ambitions as a consequence of these simultaneous processes.”<sup>4</sup>

Land is a central theme for understanding the process of expansion and imperialism in the West. The availability of land for farming and ranching was central to

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<sup>1</sup> Patricia Nelson Limerick, “Empire and Amnesia,” *Historian* 66 (Fall 2004): 533.

<sup>2</sup> Limerick, “Empire and Amnesia,” 533..

<sup>3</sup> Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8 (December 2006): 388.

<sup>4</sup> Frederick E. Hoxie, “Retrieving the Red Continent: Settler Colonialism and the History of American Indians in the US,” *Ethnic and Racial Studies* 31 (September 2008): 1157.

the appeal of the West, and as the United States bought and fought its way to ownership of the continental interior stretching to the Pacific Ocean, the nation developed and refined its public land policy. This quest for land is a key component of settler societies. The need to acquire a land base by eliminating indigenous rights to the territory was the result of the settler colonial enterprise that, as Wolfe argues, had land as its “primary object and governing motive,” its aim in the contest over land the “replacement of native society.”<sup>5</sup>

Daiva Stasiulis and Nira Yuval-Davis define settler societies as “societies in which Europeans have settled, where their descendants have remained politically dominant over indigenous peoples, and where a heterogeneous society has developed in class, ethnic and racial terms,” noting that this form of empire-building relies on the presence of large populations of European men and women to create permanent settlements.<sup>6</sup> Central to the success of a settler colony was the need to reproduce, not just biologically by birthing a new generation of white children to populate the colony, but also to recreate the behaviors and institutions that clearly demarcated white “civilization” from indigenous traditions. At the core of such a process was the gender order—the social construction of what it means to be male or female, and the definition of how men and women should behave and interact with one another.

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<sup>5</sup> Patrick Wolfe, “Logics of Elimination: Colonial Policies on Indigenous Peoples in Australia and the United States,” *University of Nebraska Human Rights and Human Diversity Initiative Monograph Series 2* (2000): 2.

<sup>6</sup> Daiva Stasiulis and Nira Yuval-Davis, “Introduction: Beyond Dichotomies—Gender, Race, Ethnicity and Class in Settler Societies,” in Daiva Stasiulis and Nira Yuval-Davis, eds., *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class* (London: Sage Publications, 1995), 4.

## **LAND AND MARRIAGE: GENDER ORDER(S) AND EMPIRE BUILDING**

These two factors of settler colonialism—struggle over land and the processes of reproducing the dominant society—lay at the core of this study. Nineteenth century federal land policies were an integral part of the imperial process. These laws established a place for white women in the empire, categorizing them as wives and mothers (or recognizing their potential as such), who would aid in the civilizing process. Congress placed at the center of these laws legal, monogamous marriages, and nuclear family homesteads. Yet, the legislation also worked against the dominant gender order by offering women increased property rights, at times acknowledging the right of married women to own property, and at other moments placing single women on an equal footing with single men in the opportunity to become freeholders.

The process of establishing American gender practices in the West elevated the importance of women's vital, but submissive, roles as wives and mothers and the institution of marriage. Women would literally reproduce American society through their biological role as mothers and through the establishment of families, churches, schools, social organizations, and expectations for proper behavior. Lawmakers characterized women as both vulnerable to the "savage" setting and its native inhabitants, and as possessors of the stalwart strength necessary to thrive on the frontier and carry out the process of establishing "civilization."

Marriage as both a public and private institution, is the most inclusive of what Ann Laura Stoler calls the "intimate domains—sex, sentiment, domestic arrangement, and child rearing," of empire. In the institution of marriage, these various categories coalesce into a single "thing" that can be regulated. Thus marriage, like other intimacies

of empire, was central to “the making of racial categories and in the management of imperial rule.”<sup>7</sup> Marriage emerges as a central component of the laws in this study in three ways. First, access to the land, for both men and women, was tied to their marital status. In some cases, marriage benefited a potential settler, while in others it hindered their ability to become land owners. (See Figure 1.1) Second, marriage was central to the establishment of the American empire because it was the primary institution by which to establish and govern gender relations. As Nancy Cott notes, “Political and legal authorities endorsed and aimed to perpetuate a *particular* marriage model: lifelong, faithful monogamy, formed by the mutual consent of a man and a woman, bearing the impress of the Christian religion and the English common law in its expectations for the husband to be the family head and economic provider, his wife the dependent partner.”<sup>8</sup> This type of marriage was the foundation for the American gender order, and lawmakers wanted to ensure that these types of unions occurred in the western territories.<sup>9</sup>

Marriage also served to regulate race relations, making it even more important in the process of settler colonialism. As Sylvia Van Kirk has demonstrated, the widespread practice of white men marrying native women “according to the custom of the country,” was common in frontier societies.<sup>10</sup> The families that resulted from these unions created a significant *metis* population, blurring racial categories, and, in the Canadian territories, prompting efforts to better regulate and/or eliminate marriages between white men and

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<sup>7</sup> Ann Laura Stoler, “Tense and Tender Ties: The Politics of Comparison in North American History and (Post) Colonial Studies,” *Journal of American History* 88 (December 2001): 829.

<sup>8</sup> Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, Massachusetts: Harvard University Press, 2000), 3.

<sup>9</sup> For a discussion of these themes in Canadian western expansion see Sarah Carter, *The Importance of Being Monogamous: Marriage and Nation Building in Western Canada to 1915* (Edmonton: The University of Alberta Press, 2008).

<sup>10</sup> See Sylvia Van Kirk, *Many Tender Ties: Women in Fur Trade Society, 1670-1870* (Norman: University of Oklahoma Press, 1980).

native women.<sup>11</sup> The growing presence of significant numbers of white women in these areas resulted in a decline in these types of marriage, and a reinforcement of racial categories. In this way, and others, white women served as the “boundary markers of empire,” and their presence made instituting more formal marriage procedures possible and necessary.<sup>12</sup> The laws in consideration here tied eligibility for land to a recipients *legal* marriage status, thereby entrenching the dominant marriage model and its attendant gender expectations.

Finally, marriage carried with it important consequences for citizenship, another contested question of identity that is entangled in nineteenth-century federal land legislation. Citizenship and marriage are inextricably linked “where citizenship comes along with being born on the nation’s soil,” so that “marriage policy underlies national belonging and the cohesion of the whole.”<sup>13</sup> Women’s citizenship in the nineteenth-century United States was tied directly to marriage. Non-citizen women became national citizens by virtue of marriage to a man who was a citizen. Immigrant women who married American men thus became citizens, as did women married to foreign immigrants who became naturalized citizens. Women who married non-U.S. citizens, however, ceded their position as members of the state and were forced to become citizens of their husbands’ homelands.<sup>14</sup> The question of citizenship is crucial in each of these land policies. Both the Oregon Donation Act and the Homestead Act allowed aliens who had declared their intent to become citizens to claim land, and the Dawes Act awarded

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<sup>11</sup> See Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849-1871* (Toronto: University of Toronto Press, 2001) and Carter, *The Importance of Being Monogamous*.

<sup>12</sup> Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Conquest* (New York: Routledge, 1996), 24-25.

<sup>13</sup> Cott, *Public Vows*, 5.

<sup>14</sup> See Nancy Cott, “Marriage and Women’s Citizenship in the United States, 1830-1934,” *The American Historical Review*, 103 (December 1998): 1440-1474 and Linda Kerber, *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998), 33-46.

eventual U.S. citizenship to, or imposed it on, all Indians who took an allotment. For women then, their citizenship status, often dependent on their marriage, could determine their eligibility for land ownership under these statutes.

Another key theme that emerges time and again in this narrative is that of the domestic. Ideas about domesticity are intimately connected to the gender order, particularly women's roles in society and the home, as well as to national discussions about empire. As Amy Kaplan has pointed out, "the discourse of domesticity was intimately intertwined with the discourse of Manifest Destiny in antebellum U.S. culture."<sup>15</sup> The nineteenth-century American gender order revolved around the ideology of "separate spheres," the idea that women and men each occupied particular areas within society upon which they should exert their particular gendered influence.<sup>16</sup> For women, this meant a deification of the domestic; the home became a haven of comfort and order for men whose work took them into an increasingly complex and chaotic world of work outside the home. Kaplan argues that a concept of "manifest domesticity" meant that woman's "separate sphere" "was in fact a mobile and mobilizing outpost that transformed conquered foreign lands into the domestic sphere of the family and nation" while also

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<sup>15</sup> Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture* (Cambridge, Massachusetts: Harvard University Press, 2002), 24.

<sup>16</sup> There is a significant body of scholarship that explores the separate spheres ideology and its impact on nineteenth-century women. See Barbara Welter, "The Cult of True Womanhood," *American Quarterly* 18 (Spring 1966): 151-174; Aileen S. Kraditor, ed., *Up From the Pedestal: Selected Writings in the History of American Feminism* (Chicago, Illinois: Quadrangle Books, 1968); Gerda S. Lerner, "The Lady and the Mill Girl: Changes in the Status of Women in the Age of Jackson," in *The Majority Finds its Past: Placing Women in History* (New York: Oxford University Press, 1979), 15-30; Kathryn Kish Sklar, *Catharine Beecher: A Study in American Domesticity* (New Haven, Connecticut: Yale University Press, 1973); Nancy Cott, *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835* (New Haven, Connecticut: Yale University Press, 1977); Ann Douglas, *The Feminization of American Culture* (New York: Alfred A. Knopf, 1977); Mary Ryan, *Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865* (Cambridge: Cambridge University Press, 1981); Linda Kerber, "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History," *The Journal of American History* 75 (June 1988): 9-39; and Laura Wexler, *Tender Violence: Domestic Visions in an Age of U.S. Imperialism* (Chapel Hill: University of North Carolina Press, 2000).

“effac[ing] all traces of violent conflict.”<sup>17</sup> The ideology of the domestic incorporated issues of race as well. “Nonwhites,” Kaplan noted, “are excluded from domestic nationalism; moreover, the capacity for domesticity becomes an innate defining characteristic of the Anglo-Saxon race.”<sup>18</sup> This understanding of domesticity centralizes its importance in the development of American settler colonies in the West. It emerged in married women’s use of their donation land claims in Oregon, in female homesteaders’ establishment of homes and crops on the land which they owned, and in efforts to ensure that African American and Native American women were properly trained in the domestic arts.

### **MAPPING WOMEN’S PROPERTY: ORGANIZATION AND METHODOLOGY**

This study is divided into two sections. Part I, Proper Women: Gender Order(s) and Federal Land Law, analyzes each of these federal land policies that created new and/or expanded property rights for women in order to better see the continuities that shape these legislative initiatives and the ways in which each law contributed to the creation of the American empire. By property rights I mean specifically women’s ability to own land, particularly through free or discounted government programs. In order to understand the place that women as beneficiaries occupy in each law, I have scoured the Congressional debates, papers of Congressional committees, and writings by the men who drafted the bills. In the discussions by members of the House of Representatives and Senate are clues for understanding why women were specifically included (and why

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<sup>17</sup> Kaplan, *The Anarchy of Empire*, 25. See also Nancy Isenberg, *Sex and Citizenship in Antebellum America* (Chapel Hill: University of North Carolina Press, 1998), 133-147.

<sup>18</sup> Kaplan, *The Anarchy of Empire*, 39.

some categories of women were excluded) in the provision of these laws. Too, the ways in which women are included in the debates reveals the ways in which Congressmen of the era understood the role that women would play in building the Western empire.

None of these laws were conceived in a vacuum, thus each chapter also assesses what outside forces impacted the development of this series of free land policies.<sup>19</sup> The Oregon Donation Act must be understood in the context of a rampant belief in Manifest Destiny that swept the nation in the 1840s, particularly in the years immediately following the American expansionist war with Mexico (years that immediately preceded the passage of the Oregon law). The Homestead Act is indelibly etched with the scars of the national division over slavery, a schism that marked debate over the measure from its earliest inception in the 1830s. The Dawes Act carries with it the imprint of that veritable group, the “friends of the Indian,” white men and women who took up as a cause the plight of the nation’s supposedly disappearing indigenous population, and their attendant assumptions and philosophies about race and civilization.

Part II, *Propertied Women: The Operation of Federal Land Laws in the West*, shifts the focus of the study from the development of these land laws and their place in the imperial project to examine the laws in action, as related to women’s property rights. A central theme of this portion is the varying ways in which women engaged with the process of colonization, whether as supporters or detractors, subjects or enforcers, beneficiaries or victims. Women’s responses to and use of the property rights granted

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<sup>19</sup> I include the Dawes Act in this category of “free land” because while the reservations being allotted were not government property, not only would the passage of allotment open up hundreds of thousands of new acreage that would become a part of the public domain, but also because the attitude toward Indian lands generally seemed to view even reservation lands as properly belonging to the United States, despite the presence of native populations on them and federal treaties recognizing them as the property of the tribes who lived there.



them by virtue of these laws varied according to their temporal and geographical locations, their race and class, and any number of personal situations and idiosyncrasies. One goal of this section is to evaluate how (or if) the property rights that emerged out of federal legislation bettered women's positions within their families or communities.

It is important to note here that the women whose stories and properties are central to this analysis understood and experienced the imperial project in different ways. It would be far too simplistic to assume that a single identity—as female, or as African American, or as Native American—holds the keys to understanding women's places and actions within the imperial order. Also, as Adele Perry writes, “To suggest that white women held a special if contested place in the construction of the local colonial project is not to blame the brutal enterprise of imperialism on a handful of relatively powerless settler women.”<sup>20</sup> White women, who tended to most often benefit from the gains made by Americans moving west, were themselves facing multiple subjectivities. The gender order situated them as less powerful than men. The racial order, however, elevated white women to a place of power in relation to non-white women who were both colonizer and colonized. Native women (at least the Nez Perce women in this study), while subject to the demands of white men and women colonizers, benefitted from a gender order within their own societies that granted them greater power than white women typically enjoyed in gender relations. The varying demands and understandings about race and gender intersected time and again in different ways for the women in this study.

In order to evaluate the impact of federal legislation on women's property rights, I chose locations that lent themselves to such an exploration. The Oregon Donation Act generated a (relatively) compact geographical sample with which to work. My

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<sup>20</sup> Perry, *On the Edge of Empire*, 199.

exploration of the Homestead Act is centered on Kansas, a territory birthed out of and marked by the national debate over slavery, much as the land law that populated such an extensive portion of the state. Kansas was also the destination for a significant African American emigration beginning in the 1870s; thus, it is an ideal place to examine the differences that race made for women as property owners. To best understand the impact of allotment I analyze the female property holders on the Nez Perce reservation in Idaho. I selected the Nez Percés for several reasons. First, they were a fairly small tribe at the time of allotment, making it possible to look at the entire tribal population in the analysis. Likewise, the existence of important source materials, most notably the ability to access nearly all of the allotment patents for the tribe, helped to make this selection. Finally, Alice Fletcher conducted the allotment of the Nez Perce reservation, and as will be seen, Fletcher played a particularly important role in the adoption of the 1887 Dawes Act and its later revisions. Fletcher also had extensive experience as an allotting agent, having carried out similar work on the Omaha and Winnebago reservations before beginning her work among the Nez Percés.

For the Oregon Donation Act, I selected three of the northernmost counties in the Willamette Valley, which was the central area of settlement in the territory during the first years of American colonization and the years during which the act was in effect (1850-1855). The settlers of Marion, Linn, and Clackamas counties provide a sample of the total Oregon population and the land claims filed under the provisions of the ODA. Using the abstracts of the donation files prepared by the Oregon Genealogical Forum, I compiled a database of all claimants in each county, their marital status, date and place of marriage, and time of arrival in Oregon. This material allowed for a statistical analysis of

women as claimants, whether as widows who qualified for benefits, or as wives who held half of their husband's claim (up to 320 acres) in their own right. I also examined county marriage records in order to determine if the promise of additional acreage for married settlers prompted an increase in marriage rates in these counties. It did not. Finally, I examined the registers of married women's property in each county to determine if the women in my sample utilized the state law of 1859 to protect their donation claims (or other property). They did not.

In Oregon, the primary migrants were middle-class white women, who came from a somewhat privileged background in order to be able to afford the migration, and whose experiences prior to emigration did not spur them to challenge the gender order of the day. As this study will show, white women in Oregon did not challenge their place within the imperial project, fully adhering to Congressional expectations that they would replicate the American gender order in this far western territory. The Oregon migrations took place primarily in the 1840s, at a time when a national women's rights movement was just beginning; therefore, the women in Oregon were less likely to have been exposed to the fledgling movement, even the early attempts to establish married women's property laws. White women's complicity with empire building and their willingness to maintain the status quo for gender relations did not necessarily stem from a lack of interest in such issues, but from the timing of the migrations and land grants. This may also explain the very low numbers of women in Oregon who registered their property in the county registers.

More than twelve million acres of Kansas land were awarded to settlers under the Homestead Act, and historian Paul Gates estimates that nearly 100,000 new farms were

established in Kansas under the Homestead and Timber Culture Acts, making these free-land policies central to the state's history.<sup>21</sup> In examining the operation of the Homestead Act in Kansas I selected two counties. Graham County is situated in the north-central part of the state and is home to the town site of Nicodemus, a locus of settlement for African American migrants in the 1870s. Hamilton County, nestled in the far southwestern corner of Kansas, was home to the first female elected public officials in the state. While I had hoped to conduct an analysis of homesteading in the entire county, the reality of completing such a project made it necessary to limit the scope of this research to a single township in each county. I selected a township in each county that was located close to, but did not include, the county's primary population centers, Nicodemus and Syracuse, respectively. For each township I utilized the Kansas Tract Books, housed at the National Archives and Records Administration, to identify all homestead and timber culture claims filed there. I then examined the appropriate files for all of the women in the sample, using these records to determine age, marital status, family history, and property owned, that is, improvements, crops, tools, and livestock associated with the homestead entry.

Whereas the women who make up the sample for Oregon land claimants did not engage in any significant women's rights activities, or utilize property ownership as a base for challenging the existing gender order, the women homesteaders in Kansas, while still a minority of homesteaders, challenged the gender status quo by filing homesteads in the first place. Women in each county also worked against the expectations established for them by the Homestead Act as a tool for empire building. In Hamilton County

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<sup>21</sup> Paul W. Gates, *Fifty Million Acres: Conflicts over Kansas Land Policy, 1854-1890* (Ithaca, New York: Cornell University Press, 1954), 239.

women sought multiple claims, and engaged themselves in the county's politics. In Graham County, African American women made homestead claims, refusing to accede to the expectations that black women (and men) could participate in the imperial project only as laborers, not land owners.

The experiences for women homesteaders in Kansas differ drastically from Oregon women for several reasons. First, these women would have been much more aware of women's rights issues, particularly in the years immediately following the Civil War when questions of race, gender and citizenship become entangled in the national discourse. Second, the experience of the Civil War generated new opportunities for women to involve themselves in traditionally male roles, such as running farms and businesses, serving in the military, and nursing the wounded. Also, the sex ratio imbalance that characterized the post-Civil War generation meant that there were fewer options for single and widowed women in the East. Thus, the combination of a changing national discourse, the growth of the women's rights movement, the unintended opportunities for work brought on by war, and the lack of marriage options altered the appeal of western land ownership for women. While they were clearly a part of the imperial enterprise, they were unwilling to simply accept a transfer of eastern behaviors to western lands. Single women and widows who made homestead claims pushed for greater rights in a way that the women of Oregon did not.

For African American women, however, the experience was different still. In the wake of the Civil War they sought to claim a space in American society by virtue of their access to legalized marriage, wage labor, and property ownership. Some African American women sought to emulate the traditional domesticity of white women as an

effort to fully eradicate the markers of slavery. While asserting their rights as property owners under the homesteading law violated those gendered expectations, the fundamental importance of property rights that motivated African American post-Civil War migration to western territories overrode such concerns. In this case, property ownership superseded the need to fit with gender roles. Establishing themselves as property owners also directly confronted the expectations that whites in the West had for African Americans. Former slaves and their offspring were to be a laboring force, not a settling one; they were to be farm hands and domestic servants for white settlers, not to engage directly in the imperial project. Their race excluded them from the basic assumptions that drove the establishment of a settler society, which relied on the dominant race to establish its institutions, and made no provisions for racial minorities to be a part of the process of eliminating indigenous land ownership and use.

In order to assess the impact of the Dawes Act on native women's property rights, I examined the allotment process on the Nez Perce reservation in Idaho. Of the 1,995 allotments made to the Nez Percés, patent records exist for 1,416 of them. Using these records, I compiled a database that included the name (Nez Perce and English both, where available) gender, location and size of allotment, and signer for each patent. This data allows for an analysis of the type and quantity of land Nez Perce women gained under allotment, as well as an exploration of women's assertion of their rights to property through affixing their own signatures or marks to official documents.

Initially, it seemed as if the experiences of native women under the Dawes Act seemed an awkward fit with those of women who gained land under the auspices of the Oregon Donation and Homestead Acts. After all, the Nez Percés were given no choice in

the matter; they were not actively seeking private property rights or United States citizenship. Property ownership, then, did not signal opportunity to these women, as it had the potential to do for white and African American women. Yet, in analyzing Nez Perce women's land ownership immediately following allotment, what emerged was a complex picture of resistance and accommodation of imperial initiatives. Allotment established Nez Perce women as nearly half of the property owners for the tribe, and at times gave them control over significant family holdings, by virtue of their status as mothers to minor children. While the purpose behind the Allotment Act clearly included the detribalization of indigenous peoples and the forced adoption of "civilization," especially in terms of gender relationships, among the Nez Percés allotment allowed women to protect the right to own property that already marked their native society. In addition, women challenged the provisions of the Dawes Act by asserting their ownership of the allotment, when there was a marked preference for husbands to be viewed as familial heads and controllers of land holdings. In the end, Nez Perce women, like their counterparts in Oregon and Kansas, utilized what they could of their new property rights, as they negotiated the pressures of outside forces to assimilate to white ways of living.

This project is marked by the complexity and flexibility of the English language, thus I give here a brief explanation of some of the key terms that are used frequently throughout the study. In the discussions of settler colonialism I use several different terms to refer to the same overall concept; thus, the reader will encounter imperialism, colonialism, empire, colony, settler colony, and colonizer throughout the narrative. I recognize that there are important and nuanced definitions for each of these concepts; I use these terms to refer to the process of settler colonialism defined above, whereby

American settlers moved westward across the North American continent, establishing permanent communities, with the intent to eliminate the indigenous population and reproduce American society on the western landscape. The language of empire is also appropriate for this discussion of westward settlement, because it was the language employed by the men and women of the nineteenth century. Congressional debates reveal lawmakers time and again referencing the American empire in their discussions about free land policies in the West. The men and women who undertook the western journey also used this language; when combined with the scholarly theoretical approach of settler colonialism, empire and imperialism are particularly suitable terminologies.

This analysis also relies on the concept of a gender order or gender system, which I sometimes refer to specifically as patriarchal. These terms, borrowed from Sarah Carter and Nancy Cott respectively, refer to the specific set of expectations for how men and women interact with one another in society.<sup>22</sup> The gender order sets expectations for behavior both in and out of marriage. It operates on the assumption that the proper order for gender relations is a patriarchal system with legal, monogamous marriage at its core, a relationship “with the husband as family head and provider, and the wife as the dependent partner—obedient, unobtrusive, and submissive.”<sup>23</sup> Under this rubric, women are child bearers and rearers, though the ultimate authority for the home lies with the father.

In reference to the people groups who inhabited the North American continent in the years prior to European, and later American, colonization, I use the terms Indians, indigenous peoples, natives, and Native Americans interchangeably. Just as I refer to

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<sup>22</sup> See Carter, *The Importance of Being Monogamous*, 3 and Cott, *Public Vows*.

<sup>23</sup> Carter, *The Importance of Being Monogamous*, 3.



Americans in the plural, when referring to specific tribes, I use the plural form of each name—Nez Perces, Omahas, Winnebagos—as reference to their identity as members of a nation. When referring to the people who participated in the construction of the American empire, I generally use the terms white and American to signify the dominant population that carried out the colonization process, while recognizing that there were significant numbers of white non-Americans who participated, and that the definition of white is itself contested and fluid. In referring to people of African descent I use the terms African Americans or blacks, unless quoting from a source that employs different terminology.

As women moved westward (or experienced the impact of such movement) in the nineteenth century they encountered and contested ideas about race, gender, and citizenship that were inextricably linked to the federal policies that governed disposal of the public domain. White women in Oregon, African American and white women homesteaders on the Kansas prairies, and Nez Perce women forced onto a reservation in Idaho shared the experience of becoming property owners. As the stories of Coon, Hayden, Warthen, and Tellior reveal, women responded to their status as land owners and citizen in very different ways, but all negotiated the rugged and contested grounds of imperial discourse and practice, dominated by white men, that had the power to fundamentally alter their lives.

**FIGURE 1.1  
GENDER, RACE AND CITIZENSHIP ELIGIBILITY UNDER THE OREGON  
DONATION ACT, HOMESTEAD ACT, AND GENERAL ALLOTMENT ACT**

Law	Female			Male			Citizenship	
	Single	Married	Widowed	Single	Married	Widowed	Native-Born	Naturalized
Oregon Donation Act		X	X <sup>24</sup>	X	X	X	X	X
Homestead Act	X		X	X	X	X	X	X
General Allotment Act	X	X	X	X	X	X		X <sup>25</sup>

<sup>24</sup> Widowed women were eligible with some exceptions following amendment of the law in 1853. Women whose husbands died in Oregon prior to passage of the Donation Act or who died during the journey to Oregon were eligible to claim land.

<sup>25</sup> Native Americans who took allotments became citizens upon receipt of the patent to their lands.

PART I

PROPER WOMEN:  
GENDER ORDER(S) AND FEDERAL LAND LAW

## CHAPTER 2

### “THE OTHER HALF TO HIS WIFE”: MARRIED WOMEN’S PROPERTY AND THE OREGON DONATION ACT

On March 29, 1852, Polly Lavinia Coon “started from the town of Lima Rock Co. Wis. on [her] long contemplated journey to seek a home on the Pacific coast, in the territory of Oregon.”<sup>26</sup> It had been more than two years since her husband Thomas, with Polly’s brother Clark Crandall and three other men, embarked upon his own overland journey to California, then Oregon, and Polly reminded herself in the early days of the trip when bad weather plagued the caravan that “each mile lessens the distance between myself & my long absent husband.”<sup>27</sup> Polly and their four-year old daughter Cornelia would soon join Thomas in Marion County, Oregon, to settle on the family’s donation land claim near what would become the town of Silverton. Polly Coon was in many ways typical of the women who emigrated to Oregon in the 1840s and 1850s. She was married and had a child, and upon settling in Oregon became the owner of 160 acres of the family’s 320 acre land grant.

Yet, there are glimpses of the extraordinary in Polly’s life story. Polly and her siblings were educated at Alfred Center College in western New York at a time when co-educational institutions were few and far between. In 1840 as a young woman of 15, Polly and her family undertook a move to Wisconsin, where much of her extended family had already settled; unable to afford a direct move, Polly’s father Paul Crandall settled his family on a houseboat and traveled along the Ohio River working to earn money for the journey. At the height of the presidential campaign, the Crandall family anchored at

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<sup>26</sup> Polly Coon, “Journal of a Journey Over the Rocky Mountains,” in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1852: The Oregon Trail*, Kenneth L. Holmes & David C. Duniway, eds., Bison Books Edition (Lincoln: University of Nebraska Press, 1997), 173.

<sup>27</sup> Coon, “Journal of a Journey,” 179.

Marietta, Ohio, where Polly and her father engaged in the campaigning as singers of the popular song, “Tippecanoe and Tyler Too.” Her descendants noted in their family history that “to Polly the experience always remained a happy memory of her youthful days.”<sup>28</sup> At a time when women were just beginning to involve themselves in political campaigns, young Polly joined the ranks of female Whig supporters.

Polly would continue to push the boundaries of what was deemed acceptable behavior for women. She noted in her diary of the overland journey to Oregon that on April 11, the train reached the town of Dubuque, Iowa, and the women of the train made purchases there. During the course of their shopping they “excited not a little curiosity nor a few remarks from the good people of the city by our ‘Bloomer Dresses.’”<sup>29</sup> Polly was among those who chose the more practical Bloomer costume, a combination of a short skirt and trousers, for their overland journey. The costume, invented in 1850 by Elizabeth Smith Miller for women’s rights activist Amelia Bloomer, appeared in Oregon as early as 1851, and several women traveling overland in 1852 remarked on wearing the costume.<sup>30</sup> Even so, bloomers in 1852 were a bold choice for most women.

Polly was, unfortunately, like many other women who traveled to Oregon in that she was widowed only two years after her arrival. When Thomas died on January 10, 1854, Polly became sole owner of their claim, at which point she entered the male-dominated business and real-estate world. Polly had her 320-acre claim surveyed and sold off most of the land as town lots that became the center of the new town of Silverton

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<sup>28</sup> Coon, “Journal of a Journey,” 202..

<sup>29</sup> Coon, “Journal of a Journey,” 180.

<sup>30</sup> Kenneth L. Holmes, “Introduction to Volume IV,” *Covered Wagon Women: Diaries & Letters from the Western Trails, 1852: The California Trail*, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1997), 13-15.

(so named by Polly), which lay along the banks of Silver Creek.<sup>31</sup> In 1855 Polly married Stephen Wheelwright, a carpenter and millwright, who built the family a new frame home on land which Polly had brought into their marriage, land to which she retained all rights of ownership. Polly's status as land owner was a direct result of the 1850 Oregon Donation Act, the only federal legislation to grant married women property rights.

The 1850 "Act to create the Office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to Settlers of the Public Lands" (hereafter the Oregon Donation Act) seemed to have been a long time in the making. This legislation not only provided for the survey of public lands in Oregon Territory, it also made provision to grant up to a section of land to settlers in the territory. Section Four of the bill provided that lands be given to "every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen." Single men would be allotted 320 acres; married men, or those who married by December 1, 1852, received 640 acres, "one half to himself and the other half to his wife, to be held by her in her own right." Section Five made similar provisions to new settlers of Oregon, the only difference being the amount of land granted—160 acres to single men and 320 acres to a married man and his wife.<sup>32</sup> Passage of the act fulfilled the expectations that the country in general, and Oregonians in particular, had held for nearly thirty years.

For Congress and the nation as a whole, women's rights were not a primary, or even secondary, factor in consideration of the Oregon Donation Act or the decision to

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<sup>31</sup> Coon, "Journal of a Journey," 175-176.

<sup>32</sup> *United States Statutes at Large*, 9 Stat. 496 (1850).

emigrate to Oregon. Married women's property rights were included in the legislation because Congress recognized the necessity of ensuring that the right type of woman was a part of settling the Oregon Territory in the American quest to establish a settler colony in the region.<sup>33</sup> The right type of woman was white, married, and preferably a mother—she modeled the appropriate roles that women occupied in the gender order.

While the Congressional debates considered women in the context of their family roles, they reveal one of the basic paradoxes of settler colonialism and its dependence on a female presence for success. Women must be the ideal feminine, occupying the appropriate submissive and weak role that marriage created for them, yet, as frontier settlers, they must also possess a strength and courage that defied the traditional expectations of women. In an 1843 speech Illinois' Representative John Reynolds reminded his colleagues that "delicate females have already travelled from St. Louis to the Pacific, over the mountains," laying out for his peers evidence that the American presence could and should be established in Oregon.<sup>34</sup> The attitudes of lawmakers toward women alternated between praise for their ability to work alongside pioneer husbands as a civilizing force and concerns for their extreme vulnerability and fragility in such a setting.

The Oregon Territory captured the American imagination in the 1840s as part of the national discourse about manifest destiny. Almost from the beginning of public and

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<sup>33</sup> Legal historian Richard Chused argues that Congress demonstrated a desire to encourage female emigration to Oregon, as evidenced by provisions contained in the long series of Oregon bills presented in Congress beginning in the 1820s, and that this, in combination with Oregon territorial delegate Samuel Thurston's sympathetic stance on married women's property, prompted the granting of married women's property rights under the terms of the Oregon Donation Act. Chused's analysis fails to consider the role that settler colonialism played in making women's roles central to the project of westward settlement. See Richard Chused, "The Oregon Donation Act of 1850 and Nineteenth Century Federal Married Women's Property Law," *Law and History Review* 2 (Spring 1984): 44-78.

<sup>34</sup> "Speech of Mr. Reynolds," *Appendix to the Congressional Globe*, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 30, 1843), 112.

Congressional discussions about Oregon, women were seen as an integral part of the undertaking in their roles as wives and mothers. Women's domestic roles became a part of the broader discussion about empire in the 1840s, and "the discourse of domesticity was deployed to negotiate the borders of an expanding empire and divided nation." This "domestic discourse" both "expand[ed] female influence beyond the home and the nation, and simultaneously . . . contract[ed] women's sphere to that of policing domestic boundaries against threat of foreignness."<sup>35</sup> This was of particular importance given that the British presence in the contested territory was predominantly male. American families would establish the United States' rights to the region in a way that the British could not with their men engaged in fur trapping and relationships with native women.

In the process of drafting legislation to facilitate American settler colonialism in Oregon, Congress addressed the proper place of non-whites and non-Americans in the territory, just as they carved out appropriate roles for women. African Americans could not be colonizers; their race prevented it, and both the federal and territorial legislatures established this way of thinking in the laws they adopted. In the end, Congress would make provisions for non-citizens to be a part of the American empire by declaring their intent to become citizens, but the debates surrounding this issue, as with the discussions of gender and race, reveal that Congress had a clear image of what the American Oregon Territory should look like.

### **OREGON IN THE POPULAR IMAGINATION**

Long before Polly Coon arrived in the Oregon Country to claim her 160 acres of the public domain alongside her husband, Americans hotly debated U.S. claims to the

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<sup>35</sup> Kaplan, *The Anarchy of Empire*, 28.



region. It was not until 1846 that Oregon officially became a part of the American public domain. White Americans in the nineteenth century based U.S. claims to the Oregon Country first, on right of discovery, and second on right of occupation. U.S. explorations in the region began with the 1792 expedition of Captain Robert Gray which explored and named the Columbia River as the foundation of the United States' claim to the territory. The further explorations of the region by members of the Lewis & Clark expedition in 1804-1805 provided additional proof of the American claim. Despite these early explorations, the U.S. presence in Oregon remained negligible for the first two decades of the century. The nearly non-existent U.S. population in the territory did little to dissuade U.S. claims to the land, and in 1818 the United States and Great Britain negotiated a treaty of joint occupation, which allowed U.S. settlers and the men employed by the Hudson's Bay Company to co-exist in the Oregon Country.

While it would take Congress three decades to approve settling the Oregon Territory and to provide land grants to the men and women who undertook the effort, the American people moved at a much quicker pace to secure the region. American settlement in the region first began with the establishment of a fur-trading post by John Jacob Astor's Pacific Fur Company in 1811. Astoria, however, quickly fell victim to the British during the War of 1812, and most settlers in the region were British and French fur traders working for the Hudson's Bay Company. The first family farm was established in 1827, and in 1834 the missionaries moved in when Jason Lee established a Methodist mission in the region. Lee, as much a promoter of the territory as of the gospel, traveled east in 1838 to recruit additional settlers, and by the 1840s a steady stream of migration had begun.

The fascination with Oregon, the “Oregon Fever,” continued to infect the American public throughout the 1830s and 1840s. The *National Register* (Maryland) printed the following from an Iowan: “Just now Oregon is the pioneer’s land of promise. Hundreds are already prepared to start thither with the spring, while hundreds of others are anxiously awaiting the action of Congress, in reference to that country, as the signal of departure. . . . the Oregon Fever has broken out, and is now raging like any other contagion.”<sup>36</sup>

Oregon Fever was also fed by the formation in the late 1830s of the Oregon Provisional Emigration Society, an association of Methodist ministers and parishioners based in Massachusetts. This group sought to encourage the emigration of Christians to Oregon to convert the native population. For a short time the group published the *Oregonian, and Indian’s Advocate*, a paper with a subscription of roughly 500 that filled its pages with information about Oregon and its native population. The group planned a large-scale migration of settlers for 1840, a scheme that ultimately failed.<sup>37</sup>

While the Oregon Provisional Emigration Society was likely the most influential such group, it was not alone. In 1831 H. J. Kelley placed ads in newspapers across the country advertising himself as the general agent of the American Society for encouraging the settlement of the Oregon Territory. Kelley’s ad noted that “as the Government of the United States of America must derive vast and inestimable benefits from the settlement, Congress, it is believed, will sustain the expense of the enterprise.” Operating under this assumption, Kelley determined that “the Society will, therefore, await such measures, as

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<sup>36</sup> Quoted in Melvin C. Jacobs, *Winning Oregon: A Study of an Expansionist Movement*, (Caldwell, Idaho: The Caxton Printers, Ltd., 1938), 42.

<sup>37</sup> John D. Unruh, Jr., *The Plains Across: The Overland Emigrants and the Trans-Mississippi West, 1840-60* (Urbana: University of Illinois Press, 1979), 15.

the wisdom of Congress may see meet to adopt on their memorial.”<sup>38</sup> In communities across the country Oregon Emigration meetings were held to help interested families form emigration parties and provide information for how to undertake the journey. The *Bloomington Herald* reported in 1843 a series of meetings for those planning to migrate to Oregon. In Missouri the *Peoples Organ* reported a meeting to be held at Jefferson Barracks on September 1, 1843, and Maryland’s *National Register* detailed a meeting held in Savannah, Missouri in October 1843. The Savannah meeting resulted in a resolution to hold monthly meetings throughout the winter until the springtime emigration began.<sup>39</sup>

Public sentiment continually called for congressional action. In 1828 the *Daily National Journal* declared that “legislative sanction should be given to the scheme of settlement.”<sup>40</sup> The *Louisiana Advertiser* republished an excerpt from the *Boston Statesmen* that urged government action to undertake “a general colonization of the whole territory.”<sup>41</sup> In Mississippi the *Natchez Gazette* reprinted an article on Oregon that proclaimed the benefits of the country, the possibilities for agriculture and industry, and urged Congress to pass the Oregon bill then pending and thus take “the first grand step toward the settling and consequently the civilization of the country.”<sup>42</sup>

Many who chose to emigrate to Oregon in the 1840s saw their decision as one that benefitted not only themselves, but the country as well. One Missouri resident, Mr. Penn, declared “the colonization of Oregon . . . a noble enterprise.” “I think a good man

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<sup>38</sup> “Oregon Settlement, to be Commenced Next Spring on the Banks of the Columbia River,” *Daily National Journal*, November 2, 1831.

<sup>39</sup> Quoted in Jacobs, *Winning Oregon*, n.20, p. 49.

<sup>40</sup> *Daily National Journal*, December 23, 1828.

<sup>41</sup> *Louisiana Advertiser*, February 22, 1828.

<sup>42</sup> *Natchez Gazette*, February 4, 1826.

could not do a more acceptable service to himself, his country, and the cause of humanity, than to assist and aid in the settlement of that country,” he wrote.<sup>43</sup> Emigrants and their supporters viewed the settlement of Oregon as an exercise in empire building designed to support U.S. interests against foreign powers. The *Jefferson Inquirer* described the growing fascination with Oregon in 1845 as a “strong wave of emigration” that would carry people to Oregon where they would “plant on the shore of the Pacific the seed which is to ripen into a mighty empire.”<sup>44</sup> The *St. Louis Reporter* declared of the emigrants that:

They go to plant a new people in a new and active country—to create new states—to open a new field to the growing energies and wants of our expanding Republic—to carry civilization around the world . . . They go to confront and dislodge British invasion and to stop British conquest, which vanquished in front upon the Atlantic, has gone round our flanks and round the world to crush and destroy from behind. It is a wonderful impulse, this, combined of patriotism, curiosity, and a war-like spirit of adventure, which is pressing our people onward to the Western seas. They depart burning with high hopes of benefits to accrue both to themselves and the general country.<sup>45</sup>

Had it tried, Congress could not have escaped the public pressure to take action in relation to Oregon. Settlers themselves commented on the need for legislation. In 1845 Anna Maria King and her husband Stephen emigrated to Oregon, along with her brother-in-law Solomon. In a letter to her family the next spring Anna shared her experiences on the overland journey, and concluded with a plea for her mother and siblings to join her in Oregon, a land she thought they would be particularly suited to and one where her mother could be assured that her children were well off. “That is,” Anna cautioned, “if Congress ever does anything for Oregon.” While she praised the country and the free

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<sup>43</sup> *St. Louis Reporter*, March 23, 1843, in Jacobs, *Winning Oregon*, n. 5, p. 39.

<sup>44</sup> Quoted in Jacobs, *Winning Oregon*, 46.

<sup>45</sup> *St. Louis Reporter*, March 18, 1845, in Jacobs, *Winning Oregon*, n.4, p.37-38.

land, declaring it was “not like any other new country—a farm to pay for—it is already paid for when you get here,” Anna also understood the tenuous nature of such claims and the need for government action to secure title to the land.<sup>46</sup>

As early as 1823, individuals and state and territorial legislatures began submitting petitions to Congress, appealing to them to secure the Oregon Country to the U.S. and to make provisions for settlers in the region. In 1823 Congressman Little presented to the House of Representatives a memorial “from eighty enterprising farmers and mechanics” indicating their support for pending Oregon legislation and their desire to settle the Oregon Country.<sup>47</sup> The Ohio legislature submitted a petition to Congress in 1845 calling for them to “exert themselves, by all means in their power,” to settle the boundary negotiations with Great Britain over the Oregon Country and thereby secure the property of the Americans living there.<sup>48</sup> Missouri’s legislature submitted a similar memorial, calling on Congress to extend the laws of the United States to the Oregon Country, and provide protection for those already in the country and the thousands waiting to emigrate there in coming years. There were, the memorialists reminded Congress, among those needing protection “thousands . . . of women and children.”<sup>49</sup>

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<sup>46</sup> “The Letter of Anna Maria King,” April 1, 1846 in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1840-1849*, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1995), 45.

<sup>47</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (February 22, 1823), 1077.

<sup>48</sup> “Resolutions of the Legislature of Ohio,” House of Representatives Document No. 56, 28<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 22, 1845): 1.

<sup>49</sup> “Memorial of the General Assembly of Missouri,” Senate Document No. 95, 28<sup>th</sup> Congress, 2<sup>nd</sup> Session (February 11, 1845): 2. For similar petitions and memorials see “Resolutions of the State Legislature of Mississippi,” House of Representatives Document No. 106, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (February 9, 1846); “Resolutions of the Legislature of Tennessee,” Senate Document No. 150, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (February 18, 1846); “Resolution of the General Assembly of Illinois,” Senate Document No. 181, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (March 2, 1846); “Resolutions of the General Assembly of Indiana, in favor of the adoption of measures to effect the occupation and settlement of the Oregon Territory,” Senate Document No. 180, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (February 10, 1843) and others.

Many petitioners made it a point to remark on the number and vulnerability of women and children in Oregon.

Oregonians took it upon themselves to petition Congress for protection. An 1840 petition requested the extension of United States law over the territory so that those settled in Oregon might enjoy “the high privileges of American citizenship; the peaceful enjoyment of life; the right of acquiring, possessing, and using property; and the unrestrained pursuit of rational happiness.” The petitioners cited the encroachment of British interests and the lack of law in the territory as reasons for their request, noting that there were increasing incidents of “theft, murder, infanticide, &c.” in the territory.<sup>50</sup> It is interesting that infanticide was chosen as an enumerated crime; it is possible that this was a particular choice meant to remind Congress of the most vulnerable portions of society in need of their protection. There is nothing in the history of the territory during this time to indicate that infanticide was a common occurrence.

Despite the rhetoric of the 1830s urging emigration to Oregon, it was not until after 1840 that significant numbers of settlers began the overland journey to Oregon. (See Figure 2.1) The numbers increased steadily over the decade, growing from only a handful in 1840 and 1841 to 125 emigrants in 1842. The following year marked the first truly large emigration to Oregon, with 875 emigrants. By 1847 the numbers had climbed to 4,000 emigrants. The largest year for emigration occurred in 1852 when 10,000 settlers headed to Oregon, more than in the previous two years combined.<sup>51</sup> In that year the *Missouri Republican* reported that by May there had been 8,174 men, 1,286 women,

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<sup>50</sup> “Petition of a number of citizens of the Oregon Territory, praying the extension of the jurisdiction and laws of the United States over that territory,” Senate Document No. 514, 26<sup>th</sup> Congress, 1<sup>st</sup> Session (June 4, 1840): 2, 1.

<sup>51</sup> Unruh, *The Plains Across*, 84-85.

**FIGURE 2.1**  
**OVERLAND EMIGRATION TO OREGON, 1840-1860<sup>52</sup>**

<i>Year</i>	<i>Emigrants</i>
1840	13
1841	24
1842	125
1843	875
1844	1,475
1845	2,500
1846	1,200
1847	4,000
1848	1,300
<i>Pre-gold rush subtotal</i>	<i>11,512</i>
1849	450
1850	6,000
1851	3,600
1852	10,000
1853	7,500
1854	6,000
1855	500
<i>Post-ODA passage subtotal<sup>53</sup></i>	<i>27,600</i>
1856	1,000
1857	1,500
1858	1,500
1859	2,000
1860	1,500
<b>Grand Total, 1840-1860</b>	<b>53,062</b>

<sup>52</sup> Adapted from Unruh, *The Plains Across*, 84-85.

<sup>53</sup> This represents emigrants who began the journey following passage of the act (1851), and arrived prior to the ending date for eligibility for land grants in 1855.

and 1,776 children begin the journey to Oregon, noting that there was a noticeable rise in the numbers of women making the trip.<sup>54</sup>

### CONGRESS AND THE “OREGON QUESTION”

The expectation of land grants to settlers in Oregon stemmed from some of the first legislation in Congress to address what was referred to as the Oregon country. As early as 1821 Virginia’s representative John Floyd had proposed settling the Columbia River valley, a measure that included land grants to settlers who undertook the task.<sup>55</sup> From that point forward, most of the measures submitted to the House and Senate regarding settlement of the Oregon Country included a reference to land grants for settlers. The idea took hold of the popular imagination, so that every Congressional consideration of Oregon caused a collective holding of breath while the country waited to see if this would be the year when the promise would be fulfilled.

In 1846 Missouri’s Senator David Atchison chided Congress for its inaction on the Oregon question, noting that those who had already emigrated continually expected action on the part of the government. “And what was their inducement to go there?” he queried. “They anticipated that Congress would extend the laws of the United States over that country; they expected protection from their government, and that it was the object of the United States to take possession of it,” he answered.<sup>56</sup> Atchison’s speech captured the sentiment of many who had migrated to Oregon, not just hoping, but

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<sup>54</sup> Quoted in Glenda Riley, “Introduction to the Bison Books Edition,” *Covered Wagon Women: Diaries & Letters from the Western Trails, 1852: The California Trail*, Kenneth L. Holmes, ed., Bison Books Edition, (Lincoln: University of Nebraska Press, 1997), 1.

<sup>55</sup> *Annals of Congress*, 16<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 25, 1821), 958.

<sup>56</sup> *Congressional Globe*, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (March 12, 1846), 490.



expecting the government to secure the region and provide grants of land as they had been hinting at since 1821.

An 1850 congressional report related to the Oregon Donation Act admitted that “the advocacy of the policy [in Congress] though general, was no more so than was the conviction universal among the people of the states that these donations would be made by Congress.” The result was a series of meetings to publicize the idea of land grants and “that liberal donations would be made to all American citizens who would emigrate thither was declared as the fixed conviction, alike of the people in private circles, the press of the country, public meetings, public men, and . . . of Congress itself.”<sup>57</sup> The expectation of free land reached new heights in 1845 when President James K. Polk declared in his opening message to the Twenty-ninth Congress that “it will ultimately be wise and proper to make liberal grants of land to the patriotic pioneers who, amid privations and dangers, lead the way through savage tribes inhabiting the vast wilderness intervening between our frontier settlements and Oregon, and who cultivate and are ever ready to defend the soil.” Polk further suggested that “to doubt whether they will obtain such grants as soon as the convention between the United States and Great Britain shall have ceased to exist, would be to doubt the justice of Congress.”<sup>58</sup> Boundary disputes and the pressing domestic concern of slavery would delay action on Polk’s suggestion another five years.

Early on the unsettled nature of U.S claims to Oregon had gained the attention of at least one champion in Congress, Virginia’s Representative John Floyd. Floyd, a

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<sup>57</sup> “Surveyor General of the Public Lands in Oregon,” House Report No. 271, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (April 28, 1850), 2.

<sup>58</sup> “Message from the President of the United States,” House of Representatives Executive Document No. 2, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (December 2, 1845), 13.

Jacksonian Democrat who would later be governor of Virginia, was a physician who was first elected to the House of Representatives in 1817. Floyd championed the Oregon cause from his first bill in 1820 until the end of his tenure in 1829. Floyd's interest in Oregon stemmed from his own frontier experience in Kentucky and from his personal relationships with those who had experienced the country themselves. His cousin Charles Floyd had been a member of the Lewis and Clark expedition, and Floyd developed a close friendship with William Clark. Floyd also carried friendships with Thomas H. Benton, a fellow Congressman and champion of Oregon, and two of John Jacob Astor's employees, men who had trapped furs in the Oregon Country.<sup>59</sup>

Proposed legislation concerning Oregon in the 1820s and 1830s generally called for further exploration of the territory, the establishment of military forts, formalized trading relationships with the native population, and, usually, grants of land to American settlers. The debates generated by these various proposals concerned themselves with two key issues—first, the right of the U.S. to claim the territory, and second, the feasibility of extending the nation to the far western shores of the Pacific.

In the Congressional debates over Floyd's 1822 Oregon bill, Massachusetts' Francis Baylies argued that it was "the duty of civilized nations" to tame the land and to "reclaim its wandering aborigines, to draw them from their forests, to condense their population, and to convert them, if not to farmers, at least into shepherds and herdsmen . . ."<sup>60</sup> Congressman Albert Tracy (Whig) of New York objected to Baylies' suggestion, declaring that "no humane heart could be disposed to add to the long catalogue of injuries

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<sup>59</sup> Charles H. Ambler, "The Oregon Country, 1810-1830: A Chapter in Territorial Expansion," *Mississippi Valley Historical Review* 30 (June 1943): 22. See also Charles H. Ambler, *The Life and Diary of John Floyd, Governor of Virginia, An Apostle of Secession, and the Father of the Oregon Country*, (Richmond: Richmond Press, 1918).

<sup>60</sup> *History of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (December 1822), 418.

which this nation has inflicted upon the aborigines of the country, a wanton and exterminating war with this unoffending and remote people.”<sup>61</sup>

Tracy’s objections extended beyond a concern for the welfare of the Oregon Country’s native inhabitants, encompassing as well a belief that the natural boundary of the United States was the Rocky Mountains and that the establishment of settlements west of the Rockies would result in a “people of a new world, whose connexions, whose feelings, and whose interests, are not with us, but with our antipodes.”<sup>62</sup> Ultimately Tracy opposed the measure because he believed that an American settlement in the Oregon Country would constitute colony building. Tracy argued that the U.S. could not become an imperial power, given that it was the colonial that had been a root cause of the American Revolution, and was “abhorrent to the principles of our political institutions.”<sup>63</sup> Representative James D. Breckenridge of Kentucky also objected to the bill, declaring that the “spirit of your Constitution forbids a system of colonization,” which he believed the proposed settlement on the Columbia River to be.<sup>64</sup>

Baylies countered Tracy’s opposition to the bill noting first, that the Pacific Ocean marked the natural boundary of the United States, not the Rocky Mountains, and that “the swelling tide of our population must and will roll on until that might ocean interposes its waters, and limits our territorial empire.”<sup>65</sup> He also criticized Tracy’s denouncement of the bill on the grounds that it treated the natives unfairly, declaring it a “squeamish morality” that objected to the “expulsion of a few ignorant savages, prowling in a wilderness, drinking human blood, and gorging themselves on human flesh” in lieu

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<sup>61</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 13, 1823), 596.

<sup>62</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 13, 1823), 598.

<sup>63</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 13, 1823), 599.

<sup>64</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 25, 1823), 693.

<sup>65</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 24, 1823), 683.

of the “free, intelligent, and civilized men” who would take their place.<sup>66</sup> Baylies’ harsh depiction of indigenous peoples reflected not only common assumptions about natives, but also the overriding belief that white men (and women, by implication) carried with them a duty to civilize and Christianize native peoples. This belief imbued much of the Congressional debates over the public domain throughout the nineteenth century.

Throughout the remainder of the decade, Congress addressed the Oregon Question. The various bills introduced on the topic were similar to the earliest proposals, including provisions for land grants.<sup>67</sup> The most important gain made during this time was the clear articulation of American rights to the territory and the advantages that control of the region would garner the nation pronounced by Missouri’s Senator Thomas Hart Benton. Benton cited Gray’s 1790 discovery of the Columbia River, the Louisiana Purchase of 1803 and the subsequent explorations conducted by Meriwether Lewis and William Clark, the establishment of Astoria in 1811, and the 1819 treaty with Spain as the foundation of the United States’ territorial claims.<sup>68</sup> He also constructed a clear argument outlining the advantages of occupying Oregon, including increased U.S. access to the fur trade; control of the native population in the region; the establishment of a naval station; new lines of communication between the western frontier in the Mississippi River Valley and the Pacific Ocean; and, most importantly in Benton’s calculations, “the exclusion of foreign powers” from the region.<sup>69</sup>

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<sup>66</sup> *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session (January 24, 1823), 688.

<sup>67</sup> Floyd introduced measures related to Oregon twice in 1822, and again in 1824. In 1827 Floyd once again attempted to persuade Congress to act on the Oregon question, a measure that received more support than earlier bills because of the growing public interest in the territory. See *Annals of Congress*, 17<sup>th</sup> Congress, 2<sup>nd</sup> Session and 18<sup>th</sup> Congress, 1<sup>st</sup> Session, as well as the *Register of Debates in Congress*, 18<sup>th</sup> Congress, 2<sup>nd</sup> Session, and 20<sup>th</sup> Congress, 2<sup>nd</sup> Session.

<sup>68</sup> *Register of Debates in Congress*, 18<sup>th</sup> Congress, 2<sup>nd</sup> Session (March 1, 1825), 705.

<sup>69</sup> *Register of Debates in Congress*, 18<sup>th</sup> Congress, 2<sup>nd</sup> Session (March 1, 1825), 710-711.

Congressional interest in the Oregon Country was renewed in 1838 when Missouri Senator Lewis F. Linn introduced a bill similar to those proposed by Floyd a decade earlier, although his initial measures did not include land grants to settlers. Linn continued to push the measure, and each session of Congress from 1838 forward would in some way address the Oregon question until the passage of the 1850 Oregon Donation Act.<sup>70</sup>

### **“A STRONG INDUCEMENT TO MEN HAVING FAMILIES”: WOMEN IN THE CONGRESSIONAL DEBATES ON OREGON**

The settlement of the Oregon Territory occurred primarily as a family venture. From the earliest days of debate in Congress, it was clear that the family would play a central role in establishing U.S. dominance in Oregon. Debates over various bills relating to the territory addressed the familial nature of the settlement pattern, recognizing that as part of a family, women were indispensable to the imperial project.

Floyd’s 1820 bill called for a committee to investigate the feasibility of settlement at the mouth of the Columbia River, and Floyd himself chaired the committee. His report, delivered in January 1821, laid the groundwork for future debates over the Oregon Country, in particular the role that women and children would play in settling the territory. “Were an establishment made at the mouth of Columbia, which should be allowed to take with them their women and children,” Floyd argued, “there can be no doubt of success. . . .”<sup>71</sup> Floyd’s suggestion that successful settlement of Oregon required the presence of families would become a theme in ongoing Congressional debates about

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<sup>70</sup> Oregon’s new champion, Missouri Senator Lewis F. Linn, introduced measures again in 1839, 1840, 1841, and 1842. See *Congressional Globe*, 26<sup>th</sup> Congress, 1<sup>st</sup> Session, 26<sup>th</sup> Congress, 2<sup>nd</sup> Session, and 27<sup>th</sup> Congress, 2<sup>nd</sup> Session.

<sup>71</sup> *Annals of Congress*, 16<sup>th</sup> Congress, 2<sup>nd</sup> Session, (January 25, 1821), 956.

the settlement of not only Oregon, but Florida, New Mexico, and the vast public domain that lay in between.

These concerns emerged again in Congressional consideration of an 1843 Oregon bill which provided that any white man, aged eighteen and older, be given 640 acres; in addition married men were to receive an additional 160 acres for his wife, and 160 acres per child under the age of eighteen, including those born within the first five years of settlement.<sup>72</sup> When introducing the amendment to the bill that included the additional acreage for wives and children, Senator Fulton declared it an equalizing measure that would help to offset the greater cost of moving an entire family as opposed to a single man. It was, in Fulton's words, a "strong inducement to men having families."<sup>73</sup> The amendment's success suggests that many Senators saw the family unit as key to success in the region, though there was no particular consideration of women and the work they contributed to family emigrations.

In the Senate discussion of this bill there was no debate regarding the specific provisions relating to land grants, no objection to or support for the additional lands awarded for wives and children. The absence of any opposition to such sizeable land grants indicates that the Senate also saw settling the Oregon Country as a family undertaking. Senator McRoberts of Illinois alluded to the necessity of families when defending the land grant proposal, declaring that those provisions would "insure a vigorous and active population in the country, and nothing else will."<sup>74</sup> New Hampshire's Senator Woodbury contended that the land grants were a self-evident necessity for luring settlers to the country. "For many," he argued, "are not likely to

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<sup>72</sup> *Appendix to the Congressional Globe*, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 26, 1843), 155.

<sup>73</sup> *Congressional Globe*, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 3, 1843), 105-106.

<sup>74</sup> *Appendix to the Congressional Globe*, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (December 30, 1842), 90.

expose themselves and their families,” to the emigration without the promise of land as a reward.<sup>75</sup> At the very least, such generous provisions for families indicated a belief that women and children would and should be a part of the enterprise.

While Congress continued to drag its heels on successive measures related to Oregon, the United States continued its diplomatic efforts to gain control of the territory.<sup>76</sup> In 1844 Democratic presidential nominee (and eventual winner) James K. Polk made the Oregon question central to his campaign, with the slogan “54’40 or Fight,” declaring U.S. claims to the territory far to the north of where they would eventually be recognized. It was not until June 15, 1846, that the Senate ratified a treaty with the British that finally set the boundary of the Oregon Territory at the forty-ninth parallel, permanently settling the dispute. Congress, with the question about U.S. claims to the region finally settled, slowly moved forward with the establishment of a territorial government for Oregon Territory on August 12, 1848, but the measure did not include a provision for land grants to settlers.

The centrality of the family to the imperial venture in Oregon appeared in the 1848 debates over the bill to establish the territorial government as well. The final version of the bill did not include provisions for land grants, though they had been included in earlier proposals. In the House of Representatives, Missouri’s Willard A. Hall, a Democrat, asserted that free land grants were a necessary component of the legislation in order to reward the first settlers of the territory. The advance wave of settlers who had made their way to Oregon had, Hall argued, secured the country away from the British, and such service demanded recognition. Hall also asserted his belief

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<sup>75</sup> *Appendix to the Congressional Globe*, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (December 30, 1842), 90.

<sup>76</sup> In 1845 the House approved a territorial government for Oregon, but the measure did not receive Senate approval. See *Congressional Globe*, 28<sup>th</sup> Congress, 2<sup>nd</sup> Session.

that continued settlement was necessary to secure U.S. interests in Oregon, treaties notwithstanding. The placement of “fifty thousand American riflemen, with their families,” would protect the land from any foes. Family, according to Hall, was a key element in this situation, for the men of the territory would be motivated to protect their wives and children, and would thus be willing to “sally forth into war” to do so. Citing the 1842 Florida Armed Occupation Act as precedent, Hall declared that the “speedy settlement of Oregon is IMPERATIVELY DEMANDED” by a similar need to secure the country from possible enemies, whether they be foreign nations or the native population.<sup>77</sup> Hall’s arguments reflected the language of the settlers themselves, and their belief that their presence in the region secured the territory for the United States.

In 1850 Congress finally approved free land legislation for the Oregon Territory. Interestingly, the debates over the bill, unlike earlier provisions, did not focus on the role of families as the foundation of empire, though the provisions of the bill itself firmly entrenched that idea. Just as there was little consideration of families in the Congressional discourse relating to the 1850 bill, there was also only limited discussion about the particulars of the bill relating to women.

In 1850 the first territorial delegate from Oregon, Samuel Thurston, arrived in Washington, D.C. to represent the settlers of the territory in Congress. Thurston immediately set to work on behalf of Oregon’s settlers to secure the land grants that had been so commonly associated with the region, but had failed to be included in any legislation relating to the territory. Thurston made it his duty to see a land grant bill through the Thirty-first Congress in 1850.

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<sup>77</sup>*Appendix to the Congressional Globe*, 30<sup>th</sup> Congress, 1<sup>st</sup> Session (July 28, 1848), 803-805.



Thurston had settled in Oregon in 1847 with his wife Elizabeth and their son Henry. A lawyer by training, Thurston migrated from Iowa, where he had served as publisher of the *Iowa Territorial Gazette and Burlington Advertiser*, a Democratic newspaper that frequently included articles about the far western frontier. The Thurston family settled in Hillsboro, Washington County, a small settlement in the Willamette Valley. The following year Thurston entered Oregon's political arena, mounting a successful campaign for the territorial delegate to Congress.<sup>78</sup>

Upon his arrival in Washington, DC, Thurston set about immediately turning Congress' attention to the pressing needs of Oregon's residents, a task complicated by the fact that during his journey to the capitol he lost his luggage which contained the memorials from the territorial legislature to Congress. Thurston's first duty, then, was to rewrite these documents so that they could be presented in the House; the loss of the papers delayed his ability to present Oregon's case more than two months.<sup>79</sup> It was not until February 25, 1850, that Thurston successfully presented a resolution asking the Committee on Territories to explore the possibility of land grants to settlers in Oregon.<sup>80</sup> Much of the initial work on the bill was conducted by this committee, which presented it to the House on April 22 as House Resolution 250, where it was referred to the Committee on Public Lands.<sup>81</sup>

The contours of debate over HR 250 largely imitated that of earlier congresses. Slavery and foreign immigration emerged as the key topics, while women's roles were all

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<sup>78</sup> James R. Perry, Richard H. Chused, and Mary DeLano, eds., "The Spousal Letters of Samuel R. Thurston, Oregon's First Territorial Delegate to Congress, 1849-1851," *Oregon Historical Quarterly*, 96 (Spring 1995): 7-8.

<sup>79</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (January 24, 1850), 220.

<sup>80</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (February 25, 1850), 413.

<sup>81</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (April 22, 1850), 791. The Committee on Public Lands presented an amended version of the bill to the House in May, after which debate on the measure began.

but ignored. Only once was the role of women as settlers addressed in the House debates, and then only in relation to the marital status of the men who would receive grants of land. Representative Emery Potter of Ohio attempted to introduce an amendment that would equalize the land grants to single and married men. Potter saw no reason to distinguish between the two, arguing that “there are few men who go to Oregon now who do not carry families along with them.”<sup>82</sup> There remained an assumption in Congress that Oregon emigrations were largely family affairs. House Report No. 271, issued by the Committee on Territories to accompany the donation bill, assessed the costs of emigration for families, rather than for individuals.<sup>83</sup>

The inclusion of married women’s property rights in the bill generated almost no debate in the House. There was no questioning of the decision to grant additional acreage to married men, and no discussion of why married women would be allowed to hold their halves of the donations in their own names. At one point Representative William Sackett proposed the inclusion of a debtor’s exemption for land held in the wife’s name by adding the clause “And no interest in the part so held by the wife in her own right, shall be liable for, or subject to sale upon the debts of her husband,” to Section Five. Sackett believed such protection was necessary to combat common law provisions that made women’s property vulnerable on the death of a husband.<sup>84</sup> The amendment was quickly agreed to with no discussion.

The Senate debates over the Oregon bill were much like those conducted in the House of Representatives. Again, provisions relating to women received almost no

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<sup>82</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1080.

<sup>83</sup> “Surveyor General of the Public Lands in Oregon,” House Report No. 271, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (April 28, 1850), 3-4.

<sup>84</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1094.

attention, though surprisingly, the brief discussion about the married women's property provision of the bill was the first topic to receive notice during the Senate discussion of the bill. The first amendment to the bill was a proposal to strike out the provision adopted by the House exempting women's halves of the claims from debtors. Senator Alpheus Felch objected to the provision, not, he assured the Senate, because he objected to the principle, but because he felt it was a measure that should be legislated at the state or territorial level. Felch's objection reflected the growth of state laws that exempted family homesteads from being seized by creditors because of a husband's or father's debts.<sup>85</sup>

Senator Thomas Rusk disagreed with Felch's interpretation, arguing that if Congress had the power to make the land grants then it certainly had the power to "direct the manner in which it shall be enjoyed." Rusk argued that the principle of protecting a wife's property from her husband's creditors was not only right, but was already being "adopted every day in the most enlightened States of the Union."<sup>86</sup> In the course of the debate, Illinois' Stephen Douglas informed the Senate that Oregon's territorial laws already included such a provision, thus its inclusion in the land bill was immaterial. Based on Douglas' information, which was incorrect, the Senate approved the amendment, thereby revoking the specific protection of wives' portions of the land grant from their husbands' creditors.<sup>87</sup> Having settled the question, the Senate turned its attention to other particulars of the legislation.

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<sup>85</sup> This will be discussed in depth in the consideration of the Homestead Act in Chapter Three.

<sup>86</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 3, 1850), 1739.

<sup>87</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 3, 1850), 1739; see also Richard H. Chused, "The Oregon Donation Act of 1850 and Nineteenth Century Federal Married Women's Property Law," *Law and History Review* 2 (Spring 1984): 56.

Women were addressed in relation to the bill at only one other point. Florida's delegate David Yulee proposed striking out the entirety of Section Five, which made provisions for land grants to settlers who emigrated to Oregon between December 1, 1850, and December 1, 1853. The proposal generated significant debate, during which Senator Benton defended the land grants, arguing that the 320 acres was a small amount in relation to the efforts made by settlers. Thus, Benton asserted, "we give a quarter section to a single man and half a section to a family, *and I hope, widows, among the single men* [emphasis added]."<sup>88</sup> Benton's comment drew no response from the other Senators, and it would not be until the 1853 revisions of the bill that widows of men who died during the course of emigration or who had died in Oregon prior to passage of the bill were assured their rights to a donation claim.

Yulee argued that Section Five established a new principle by creating an inducement to settlers, rather than following the established precedent of land grants as a reward to early settlers.<sup>89</sup> Senator George Badger defended the provision, arguing that Oregon's distance from the rest of the country required as many new settlers there as would go in order to protect the country, and as free land was a sure way to get settlers there, the provision should remain. Badger concluded his remarks with the observation that "if we can get anybody to go there, on any terms, we ought not to complain." Yulee received support from Senator John Bell, who challenged Badger's claim that the country's remoteness required Congress to hold out inducements to settlers. Bell cited

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<sup>88</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 17, 1850), 1842.

<sup>89</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 17, 1850), 1839.

the growing population in the West due to the Gold Rush and the advantages of the country as sufficient to ensure continual population growth in Oregon.<sup>90</sup>

**“PROMOTE THE INCREASE OF THE CAUCASIAN RACE”:  
THE COLORS OF CITIZENSHIP IN THE CONGRESSIONAL DEBATES**

Considerations of race were initially almost entirely absent from debates over various Oregon bills, but because race was such a central factor in the overall colonial scheme, it inevitably drew the attention of lawmakers in relation to settling the Oregon Territory. Citizenship status also emerged as a key concern in the discussions about eligibility for land grants. Because the intent of the Oregon Donation Act was to facilitate the establishment of a settler colony in the territory, Congress had to define who could participate in the imperial enterprise. In the series of discussions over race and citizenship as related to eligibility for Oregon land grants, Congress sought to define who was “white” and to ensure that it was those settlers who had access to the land, as well as to erect barriers to non-white land ownership. In establishing clear racial boundaries for the process of settling Oregon, Congress elevated the importance of property ownership for married white women, using the land grants to wives as a means to ensure larger parcels of the country were awarded to white settlers, while simultaneously excluding non-white men from property rights (and by implication non-white women, though native wives would challenge this as will be seen in Chapter Five).

The process of defining proper settlers by virtue of their race began with the some of the earliest-proposed Oregon legislation. In an interesting tactic for defending the proposed land grants included in the 1842 legislation Senator Benton raised the issue of

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<sup>90</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 17, 1850), 1842.

Liberia, questioning the wisdom of an expenditure to “colonize” freed slaves. The cost of U.S. involvement in Liberia would, he declared “cost us more per head than the 640 acres apiece to each of our citizens choosing to settle in the Territory of Oregon.”<sup>91</sup> Benton’s argument did not spark any reaction from his fellow senators, at least none recorded in the pages of the *Congressional Globe*, but his approach indicates the future trajectory that much discussion over Oregon would take as the territory’s status became intertwined with the national debate over slavery in the late 1840s.

The Oregon bills occupied much of the attention of both the House and the Senate in the first session of the Thirtieth Congress. In both chambers measures to establish a territorial government for Oregon were introduced, though the Senate bill also included provisions for territorial governments in the newly acquired territories of New Mexico and California. The debate over the Oregon territorial government reflects the timing of the measure—the war with Mexico had just concluded, bringing new land acquisitions to the public domain, and it was a presidential election year fraught with increasing sectional agitation over slavery. In this context, what should have been a simple task of authorizing a territorial government for Oregon now that the boundary dispute had been settled became a never-ending debate about slavery.

The debate was fixed largely in terms of whether or not Congress had the power to legislate for the territories. Slavery became the key focus of the debate because of a law adopted by Oregon’s provisional government that excluded slavery in the territory. The initial bills provided for recognition of those existing laws, a move interpreted by supporters of the slave system as Congressional action on the issue. Congress could not, the bill’s detractors argued, establish a law preventing slavery in the territory. The

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<sup>91</sup> *Congressional Globe*, 27<sup>th</sup> Congress, 3<sup>rd</sup> Session (February 2, 1843), 235.

ensuing debate drew on precedent—the 1787 Northwest Ordinance, the Missouri Compromise of 1820, and the annexation of Texas as having established Congressional power to act on the slavery issue in territories, with both sides claiming the various measures to their own benefit.

Debate in the Senate grew so contentious that a special committee composed of equal numbers of Northern and Southern senators was commissioned to draft a compromise measure. The resulting bill attempted to appease both sides by adopting a measure that recognized the existing laws in Oregon for a period of three months, then specifically delineated several areas for which the new territorial legislature could not make laws, including “primary disposal of the soil, respecting an establishment of religion, or respecting the prohibition or establishment of African slavery.”<sup>92</sup>

While the debate over the bill was limited almost exclusively to a discussion of slavery, discussions about race and racial prejudice also appeared. In the Senate John Berrien, a Whig from Georgia, declared that New York’s Senator John Dix, an anti-slavery Democrat, sought only to “promote the increase of the Caucasian race,” at the expense of all other races.<sup>93</sup> The Senate also paid serious attention to the provision of the bill that established voting and office holding privileges as being limited to free white men over the age of twenty-one. Roger Baldwin, Whig Senator from Connecticut, objected to the exclusion of non-whites from such rights, arguing that because free blacks in other states had been extended voting rights, Congress could not then adopt legislation that prevented them from exercising those rights in the territories. “Is the principle of equality of rights only in force between the white inhabitants of the slaveholding and

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<sup>92</sup> *Congressional Globe*, 30<sup>th</sup> Congress, 1<sup>st</sup> Session (July 26, 1848), 1003-1004.

<sup>93</sup> *Appendix to the Congressional Globe*, 30<sup>th</sup> Congress, 1<sup>st</sup> Session, (June 28, 1848), 878.

non-slaveholding States,” he queried, “or does it apply equally to all citizens?”<sup>94</sup>

Baldwin’s attempt to remove the language of “free white” from the bill, while largely ceremonial, challenged slavery owners who asserted the right of property owners to carry with them into the territories all of their property, even that in human form.

Debate in the House of Representatives echoed that in the Senate, with the focus largely upon slavery, and engaging in discussions about the language of “free white” men as voters and office holders. John Palfrey, a Whig from Massachusetts, proposed an amendment to strike out the words “free white” from the language of the bill, arguing that there was no reason to restrict voting rights based on color, and declaring that “complexion” should not be a qualifying factor for voting. Palfrey’s amendment spurred the suggestion that the language be modified so that Indians were excepted from voting, which prompted Andrew Johnson to ask why Indians should not be allowed to vote. The debate continued when Samuel Vinton (Whig-Ohio) proposed that the clause should remove only the word “free” from the language so as not to imply that white men could ever be unfree. While Palfrey’s amendment was rejected, Vinton’s measure to remove “free” from the qualifying factors passed the house by a narrow margin (64-63).

In the debate over establishing a territorial government for Oregon, slavery again shaped the discussions, as revealed by Representative Willard Hall, who declared “It is time, sir, that we should lay aside our sickly fears on account of the black race, and sympathize a little for the white race. The white people of Oregon demand our help; and the question is not whether the blacks in that Territory shall be free, but whether the whites shall exercise the right of government.”<sup>95</sup> Hall clearly believed that proper

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<sup>94</sup> *Appendix to the Congressional Globe*, 30<sup>th</sup> Congress, 1<sup>st</sup> Session (July 26, 1848), 1194.

<sup>95</sup> *Appendix to the Congressional Globe*, 30<sup>th</sup> Congress, 1<sup>st</sup> Session (June 28, 1848), 803.



government in the territory would mirror that of the eastern United States by allowing only white men to participate.

Racial issues quickly emerged in the 1850 debates over the Oregon Donation Act. Thurston pointed to the non-white population of laborers utilized by the British in that region, arguing against extending grants to non-U.S. citizens because this would give land to all employees of the Hudson's Bay Company and the Puget Sound Agricultural Company, among whom were "some hundreds of Canakers, or Sandwich Islanders, who are a race of men as black as your negroes of the South, and a race too, that we do not desire to settle in Oregon."<sup>96</sup> Thurston reminded his peers that the people of Oregon had already adopted legislation that excluded free blacks from settling in the territory, and proceeded to paint a dire picture of what a liberal racial policy would mean to Oregon: "the Canakers and negroes, if allowed to come there, will comingle with our Indians, a mixed race will ensue, and the result will be wars and bloodshed in Oregon."<sup>97</sup>

Time and again, Thurston adopted this position in regard to non-white settlers in Oregon. When Representative Sackett questioned Representative James Bowlin's amendment to limit the land grants to free white settlers, Thurston again reminded the House that Oregon had excluded free blacks from settling there because they feared the negative influence such a population would exert over the native population in the territory. His argument was taken up by Representative Graham Fitch, who contended that the territorial legislature's decision to exclude free blacks settled the matter; Fitch

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<sup>96</sup>*Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1079. It appears that Thurston took these provisions regarding McLaughlin, the HBS and the PSAC as a personal matter. Upon passage of the bill Thurston wrote to his wife, "This Land bill, this great measure for Oregon is now the law of the land, and as the smoke clears up, and I look over the field, I see the scattered bones of D[r]. M[c] Laughlin, the HB Company, and their actors." See letter dated September 29, 1850, in Perry, et.al., eds., "The Spousal Letters of Samuel R. Thurston," 51.

<sup>97</sup>*Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1079-1080.

asserted that he supported the decision because of the dangers that the “amalgamation of the blacks with the Indians,” posed to the white population in Oregon.<sup>98</sup> Following the adoption of Bowlin’s amendment to insert the word “white” as a modifier of those settlers eligible for donations, Sackett attempted to make free blacks eligible by proposing an amendment to insert the words “or colored” after the word white. Sackett’s amendment was ruled out of order.<sup>99</sup>

Fitch’s argument came on the heels of Representative Joshua Giddings’ scathing attack on the racial exclusions included in the bill. Giddings charged that “the attempt to fix a distinction upon the complexion of men or the crisp of their hair, is of all propositions the most preposterous, the most destitute of reason.” Giddings went on to challenge his colleagues to consider what it would mean to exclude anyone with African American racial ancestry, including descendants of Martha Washington, Thomas Jefferson, and Virginia’s Governor Mason. “Do we owe nothing to the descendants of these distinguished names referred to?” he asked. Giddings noted that his question sparked smiles on the faces of some of his peers, and commented that it “was not usual to call names in connection with this subject.” He proceeded to condemn legislation that would grant land to the “white mobocrats of New York city, low, vulgar, vicious, and degraded, the miserable scum and filth of society,” but would prevent Frederick Douglass, “a man of high moral worth, of great intellectual power, of unrivalled eloquence, possessing in an eminent degree all the qualities which constitute moral excellence” from settling in the Territory.<sup>100</sup>

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<sup>98</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1091.

<sup>99</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1093.

<sup>100</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1090.

While Sackett and Giddings defended the rights of blacks to settle in Oregon, or anywhere else in the country, the overwhelming sentiment in the House was one of prejudice against the African American population. Representative Charles Conrad declared that “morally, physically, intellectually, and by the institutions of their country, the negro race now are, and are destined to be, a very inferior race.” Conrad, however, supported allowing blacks to settle in Oregon because he believed it necessary to disperse them, arguing that blacks were “a curse upon every community in which they are loosed; and for that reason I wish, so far as possible, to divide that curse.”<sup>101</sup> Representative David Carter, while sharing Conrad’s prejudice, believed that the bill should exclude free blacks, noting with approval the decision of the territorial legislature to prohibit free blacks from Oregon in order to prevent racial mixing. Conrad feared that allowing free blacks land grants would establish a precedent that would encourage them to settle freely among whites in the country. While declaring a deep sympathy for “the African race,” Conrad declared that he had no “sympathy for them in a common residence with the white race.”<sup>102</sup> The decision of Oregon’s territorial legislature to prohibit blacks from settling in the territory remained intact, and while the provisions of the 1850 bill allowed for mixed-race native men to obtain land, they did not create opportunity for blacks to apprise themselves of the land grants.

The issue of foreign immigrants and citizenship provoked less of a controversy than did the questions of slavery and race, but the discussions about this topic demonstrate the ongoing concern to define who could participate in the project of empire building, and the necessity to ensure that white families were the leading force in the

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<sup>101</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1091.

<sup>102</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1092.

enterprise. The discussions about immigration and citizenship that occurred in Congress took place in the context of a growing national discourse about whiteness and citizenship. The 1790 United States naturalization law provided that “any alien, being a free white person,” could become a United States citizen after two years’ residence in the country and taking an oath of allegiance.<sup>103</sup> The law did not, however, define who was white, and the changing nature of immigration to the United States in the 1840s sparked questions about the definition of whiteness.

Immigration to the United States burgeoned in the 1830s and 1840s. In 1847 alone more than 230,000 immigrants arrived in the country, and nearly half of them (105,536) were Irish. In the years between 1846 and 1855 nearly one million German immigrants also arrived in America. As Matthew Frye Jacobson notes, prior to this time the “salient feature of whiteness . . . had been its powerful political and cultural contrast to nonwhiteness.” Rapid industrialization and its demand for laborers, combined with increasing streams of Irish and German immigrants, prompted new discussions about whiteness in terms of “fitness for self government.”<sup>104</sup> These groups represented peoples who were “at once within the literal language, but well outside the deliberate intent of the ‘free white persons’ clause of 1790.”<sup>105</sup> In this context, then, Congress had to determine if immigrants who were not always considered white, would be allowed to participate in the American imperial project. If not all whites were fit to participate in the project of

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<sup>103</sup> *United States Statutes at Large*, 1 Stat. 103 (1789-1799).

<sup>104</sup> Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge, Massachusetts: Harvard University Press, 1998), 41. See also Ronald T. Takaki, *Iron Cages: Race and Culture in Nineteenth-Century America* (New York: Alfred A. Knopf, 1979); David Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (New York: Verso Press, 1991); and Noel Ignatiev, *How the Irish Became White* (New York: Routledge, 1995).

<sup>105</sup> Jacobson, *Whiteness of a Different Color*, 46.

self-government, then it stood to reason that there were also whites who could not participate in the colonial enterprise.

One of the primary objections to granting lands to foreign immigrants stemmed from Thurston and his antipathy toward the Hudson's Bay Company (HBC) in general and Dr. John McLaughlin in particular. Thurston worked diligently to prevent McLaughlin and other HBC employees from obtaining land grants, and successfully relieved McLaughlin of his Oregon City land claims in Section Eleven of the Donation Land Act. Much of the House favored provisions in the bill that allowed non-citizens to claim land, with the provision that they become naturalized citizens. In the debate over Section Five, Representative Cyrus Dunham articulated his concern that without requiring proof of naturalization before granting final title to the land it was possible that some foreign immigrants might claim land merely for purposes of speculation, not settlement.<sup>106</sup>

The granting of lands to foreign immigrants briefly occupied the Senate's attention. Senator James Mason objected to allowing non-citizens to make claims, and proposed removing that language from the bill. Senators Henry Dodge and Jesse Bright quickly objected to the proposal. Dodge urged the Senate not to "show any hostility at this late day to foreign emigration, when foreigners desire to become actual settlers in the new Territories." Bright defended the language of the bill as mirroring already existing preemption laws. Senator Willie Magnum responded to Bright's argument, pointing out the distinction between preemption, which required payment for the land, and the donation act which was a gift requiring no exchange of money. The difference, he noted, was an important one and Magnum challenged the Senate to show him where they

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<sup>106</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (May 28, 1850), 1094.

derived the power to give away the public lands to “all the refuse of the Old World that may choose to seek this country as an asylum.”<sup>107</sup> Senator William Dawson echoed Magnum’s concerns, and warned that the generosity of these land grants would “turn loose their [foreigners] whole population, and especially their pauper population.”<sup>108</sup>

Senators Dodge and William Seward defended the granting of lands to non-citizens, citing the high numbers of foreign immigrants who settled in Iowa and Wisconsin as evidence that such settlers did not constitute a problem. Seward estimated that as much as fifty percent of Wisconsin’s population was composed of foreign emigrants, and declared that “no community on earth shows more of industry and thrift, and gives higher evidence of social improvement, and of republican loyalty and patriotism.” Dodge praised the Irish who settled Wisconsin in the early 1830s, many of whom, he claimed, were unaware that they were required to file intent to become citizens. That aside, Dodge claimed these were men who “fattened the land with their blood, paid taxes, worked the roads, and did everything that any citizens of the United States could do.” Mason’s amendment did not pass the Senate, but the vote on the bill was extremely close, with twenty-three senators in favor and twenty-five in opposition.<sup>109</sup> That was not surprising given the context of the day, with growing anti-immigration sentiment in the country and the success of the nativist American Party.

The Oregon Donation Act was signed into law on September 27, 1850. After thirty years, Congress had finally acted on the question of land grants to settlers in Oregon. While the law finally fulfilled the decades-long hope of land grants to settlers, its passage did not attract overwhelming attention from the press. Several newspapers

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<sup>107</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 17, 1850), 1845.

<sup>108</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 17, 1850), 1845.

<sup>109</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (September 17, 1850), 1846.

merely noted the new legislation, with no comment on its various provisions. Others seemed aware of the importance of the law, but made no editorial comments about the specific provisions, like the *Cleveland Herald* which reported the news under the headline “A New Era for Women in Oregon.”<sup>110</sup>

The *Christian Advocate & Journal* noted passage of the bill in its Washington Correspondence category. The provisions of the bill that allowed for single men who married within a year would no doubt lead to “court[ing] at railroad speed” and would also benefit the clergy who would receive increased revenues from marriage fees, according to the paper.<sup>111</sup> The *Saturday Evening Post* made mention of the bill when announcing the publication of a letter by Samuel Thurston laying out the benefits of emigration to Oregon.<sup>112</sup> Criticism of the bill came from few quarters, but some papers pointed to the sectional tensions that characterized debate over the bill in Congress. *The Mississippian* reported the act and its benefits, noting that foreign born settlers had greater rights than native born southerners who could not emigrate from “the slave states with their peculiar property” to Oregon and take advantage of the land grants.<sup>113</sup>

**“EVERY WOMAN IS ENTITLED TO ONE HUSBAND”:  
WOMEN AND FAMILIES IN THE 1853 AND 1854 AMENDING ACTS**

The passage of the Oregon Donation Act created work to be done in the territory. The newly appointed surveyor general John Preston faced the task of not only surveying the territory, but also overseeing the land donation process. Between February 1851 and

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<sup>110</sup> “A New Era for Women in Oregon,” *Cleveland Herald*, January 21, 1851.

<sup>111</sup> “Washington Correspondence,” *Christian Advocate & Journal*, October 10, 1850.

<sup>112</sup> *Saturday Evening Post*, December 21, 1850.

<sup>113</sup> “Land in Oregon,” *The Mississippian*, October 11, 1850.

October 1852 nearly 600,000 acres of land were claimed by 1,079 settlers.<sup>114</sup> The reality of the work led to recommendations for amendments to the 1850 act.

If the family was the building block of Oregon Territory, then women and children who arrived there without the necessary male head of household presented a challenge to the intent and operation of the law. Preston noted in his report of October 1852 that during the course of the overland journey many people died, leaving widows and orphans destitute when they arrived in the territory. Preston recommended that the original donation act be amended so that widows and orphans “made such by the death of the husband or mother on the route to Oregon,” be granted 160 acres of land, the same granted to a single man under Section Five of the 1850 act.<sup>115</sup>

The surveyor general’s report, in conjunction with agitation from the Oregon Territory to divide the region into two separate territories separated by the Columbia River, spurred Congress to action. In 1853 Congress adopted several changes to the original Oregon Donation Act. Chief among these was a provision that followed the recommendations of the surveyor general and allowed widows the right to land grants. In order to be eligible, a woman had to have been widowed during the overland journey, prior to passage of the 1850 act for those already residing in the territory, or before her husband had a chance to make his claim. While the inclusion of widows as beneficiaries flew in the face of the family model established by the original law, the specificity of the circumstances under which a widow was eligible for land pointed to the continued veneration of the husband as primary property owner in the family. Widows must have

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<sup>114</sup> “Reports of Surveyors General of California and Oregon,” House of Representatives, Executive Document No. 14, 33<sup>rd</sup> Congress, 2<sup>nd</sup> Session (January 14, 1853), 14.

<sup>115</sup> “Reports of Surveyors General of California and Oregon,” 16.



been a part of the family unit during the process of emigration in order to qualify; they could not assert their rights to the land independent of their status as a wife.

These amendments generated almost no discussion in Congress, and generally followed all of the recommendations of the surveyor general, including provisions relating to town lots and extending the provisions of the act to December 1, 1855. The following year required additional amendments to the law. The creation of Washington Territory out of the Oregon Territory (north of the Columbia River) required Congress to specifically name Washington in the amending act since claims had already been made in the northern part of the territory under the terms of the original act. Under the provisions of the 1854 amendments orphans were finally granted the right to claim land under the same terms extended to widows the previous year.

The debates over the 1854 revisions reveal the continued assumption that women as wives remained important to the overall colonization scheme. Washington's territorial delegate, Lancaster, defended the proposal to allow those who had already met the terms necessary to receive patent to be allowed to sell all or a portion of their claims. He argued that young men in the territories should have this freedom in order to raise money so that they could "come to the States and obtain a wife," then return to their remaining land to raise a family. Lancaster declared that "there are more than five hundred young men in the Territory of Washington, who, if they had the power, would mortgage the land or sell a portion of it, and come here to the country where women are to be had, and take them to that country to settle on those lands."<sup>116</sup> The response to Lancaster's proposal was marked by humor and sarcasm, as the men of the House joked their way to revisions that would allow for settlers to sell all or a portion of their donation claims. Yet, behind

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<sup>116</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (May 4, 1854), 1078.

the humor, lies the truth that Congress could not envision the successful settlement of Oregon without proper white women.

In response to Lancaster's declaration, New York's Michael Walsh responded, with no little sarcasm, that he did indeed find it a "calamity" that young men were forced to "be washing their own shirts, and going without wives and the society of ladies." Walsh continued his humor with a veiled reference to Utah Territory where, he claimed, "there is an abundance of ladies, and where they are not compelled to come into the Atlantic States to obtain wives," an observation that generated laughter in the chamber. Walsh concluded that "there must be injustice done to the women, if there are a superabundance of them, as every woman, I believe, is entitled to one husband." John Letcher of Virginia continued the tongue-in-cheek discussion by declaring that he was surprised at the proposal before him. He had, he noted, expected that at some point during his tenure Congress would "not only give to settlers farms out of the public domain, but should supply them also with the means of working these farms and making them valuable." Lancaster's dilemma with the ladies pushed these expectations even further, Letcher declared, for "he now insists upon it, that it is the duty of Congress to so legislate as that *wives* can be furnished to them in addition to the grants of lands."<sup>117</sup>

Polly Coon's diary does not suggest that the particular provision granting married women's property rights in any way prompted her decision to relocate to Oregon. Indeed, her assertion that this was a move that had long been contemplated by their family suggests that the 1850 law did not propel them to Oregon. It is likely, however, that given the popularity of the land grant idea in the public mind that the Coons began their dreams of Oregon with an expectation of the possibility of free land. Polly's

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<sup>117</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (May 4, 1854), 1078.

acquisition of first her 160 acres of the Coon claim, and later the entire parcel after her husband's death, was typical of how the Oregon Donation Act operated. In Polly Coon's story we see the success of the Oregon Donation Act as a law to facilitate the establishment of an American settler colony in the region. Polly claimed her rights as a female land owner, yet she also participated in the imperial enterprise by upholding her proper place in the gender order. Following her husband's death she sold the majority of their claim, keeping enough land to establish a family settlement, then remarried, maintaining the priority of her roles as wife and mother, rather than asserting her rights as a property owner. In its attempt to eliminate the native presence in the territory by establishing white American families on the land, complete with wives and mothers who would recreate the gender order, the Oregon Donation Act succeeded as an imperial tool, and laid the groundwork for future free land policies.

**CHAPTER 3**  
**“PRAIRIE SIRENS”: FEMALE LANDOWNERS IN**  
**NINETEENTH-CENTURY HOMESTEAD LEGISLATION**

In 1870 on the southeastern Nebraska prairie, a young Bohemian woman, Ann Schleiss, set up housekeeping on her homestead claim near Beatrice. At twenty-two years of age, Schleiss staked her claim on 160 acres of the American public domain. She established her residence there in April, moving into a sod house that was already on the land, a “very poor dilapidated structure” that was still habitable. Her family lived only a half-mile away, and after planting her first crops, with the help of locally-hired men, she returned home. Schleiss at times hired out as domestic help in the area, and in July, she returned to her own claim where she worked to cultivate nineteen acres, five of which were sown in rye. She also began building a new house on her homestead, starting work on a block house to replace the decaying soddy. Ann Schleiss was one among hundreds of female homesteaders in the nineteenth century. She was, according to Assistant Attorney General Walter Smith, “just the person that the homestead law in its spirit grants a home.”<sup>118</sup>

Smith’s assertion that homesteading was intended for people like Schleiss— young, single women who were willing to work hard and settle the land, is a commonplace assumption in modern-day scholarship. There has been a significant body of scholarship exploring the experiences of the single woman homesteader.<sup>119</sup> Much of

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<sup>118</sup> “Waldo v. Schleiss,” *Public Land Laws, passed by Congress from March 4, 1869, to March 3, 1875*, Henry N. Copp, ed., (Washington, D.C.: The Compiler, 1875), 235.

<sup>119</sup> See Katherine Benton-Cohen, “Common Purposes, Worlds Apart: Mexican-American, Mormon, and Midwestern Women Homesteaders in Cochise County, Arizona,” *The Western Historical Quarterly* 36 (Winter 2005):429-452; Dee Garceau, “Single Women Homesteaders and the Meanings of Independence: Places on the Map, Places in the Mind,” *Frontiers: A Journal of Women Studies* 15 (1995): 1-26; Katherine Harris, “Homesteading in Northern Colorado, 1873-1920: Sex Roles and Women’s Experience,” in *The Women’s West*, ed. Susan Armitage and Betsy Jameson (Norman: University of Oklahoma Press, 1987),

the early recognition given to women homesteaders fell in the celebratory tradition that glorified the “Madonna of the Prairie,” the longsuffering wife and mother who grudgingly left behind Eastern civilization to begin a new life in the West with her husband and children. Yet, as early as 1937 Western historians noted the presence of the single, female homesteader in the West. Everett Dick extolled single women homesteaders who “tried without training or physical strength to wrest a living where strong men had difficulty in maintaining their hold. Many were sensitive, delicate, cultured women, unused to the harsh work involved in conquering the plains. They were plucky and staunch, taking things as they came, in an uncomplaining manner.” These near-perfect specimens of womanhood could not, however, in Dick’s analysis exist simply as women who chose to settle the land. Instead, they were the “prairies sirens” whose “wiles” attracted the large population of bachelors in the West; their attractions included not only the land they owned, but their housekeeping abilities as well.<sup>120</sup>

The scholarship on female homesteaders has, over the course of three decades, done much to reveal who these women were—their motivations, ethnic backgrounds, successes and failures, economic contributions—and to explore familial interactions. All of this scholarship has, however, preceded without questioning the inclusion of single and widowed women as beneficiaries of the Homestead Act. Mid-nineteenth century

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165-78; Harris, *Long Vistas: Women and Families on Colorado Homesteads* (Boulder: University Press of Colorado, 1993); Elaine Lindgren, “Ethnic Women Homesteading on the Plains of North Dakota,” *Great Plains Quarterly* 9 (Summer 1989): 157-73; Sheryll Patterson-Black, “Women Homesteaders on the Great Plains Frontier,” *Frontiers: A Journal of Women Studies* 1 (Spring 1976): 67-88; Sherry L. Smith, “Single Women Homesteaders: The Perplexing Case of Elinore Pruitt Stewart,” *Western Historical Quarterly* 22 (May 1991): 163-83; Anne Webb, “Minnesota Women Homesteaders: 1863-1889,” *Journal of Social History* 23 (Fall 1989): 115-36; Florence C. Gould and Patricia N. Pando, *Claiming Their Land: Women Homesteaders in Texas*, (El Paso: Texas Western Press, 1991); Jill Thorley Warwick, “Women Homesteaders in Utah, 1869-1934,” (M.A. Thesis, Brigham Young University, 1985).

<sup>120</sup> Everett Dick, *The Sod-House Frontier 1854-1890: A Social History of the Northern Plains from the Creation of Kansas & Nebraska to the Admission of the Dakotas* (Lincoln: University of Nebraska Press, 1937), 129.

America was not a place of expanded rights for women. The women's rights movement as an organized effort demanding that women have equal access to rights like property, divorce, child custody, education, and suffrage was just beginning. While the Seneca Falls Declaration of 1848 called specifically for these rights, when the Homestead Act was passed fourteen years later, women's rights were still very limited in most of the country.

As Chapter Two demonstrates, the Oregon Donation Act created new property rights for married women in its effort to establish a white American settler colony in the West. The Homestead Act built upon the assumptions about gender, race and citizenship in its role as a legislative tool for empire building, though it excluded married women from its benefits (with exceptions for widows and abandoned wives), and established single women as key players in the American imperial order. Women's place within the gender order became a key site for argument, with Congress often divided on the inclusion/exclusion of single women homesteaders; wives, however, did not garner lawmakers' attention. As this chapter contends, the shift in favoring single women over married women does not indicate a change in the belief that a successful empire required women as wives and mothers; rather, this suggests that the assumption remained that westward expansion was primarily a family enterprise conducted at the behest of the male head of household, and the inclusion of both single women and men as beneficiaries was a secondary consideration.

## FEMALE HOMESTEADERS IN HISTORICAL SCHOLARSHIP

Dick's minimal recognition of female homesteaders remained the primary description of these women as "gentle tamers" until the emergence of western women's history in the 1970s. As women's historians turned their attention to the West, they began to explore the roles that women played in westward expansion and the settlement of the land. Among the first studies of women homesteaders was Cheryl Patterson-Black's analysis of women on the Great Plains. Her sample, pulled from land offices in Colorado and Wyoming, revealed that women were as much as ten percent of the homesteading population, and that their rates of "proving up," that is, receiving final title to their land, matched and even exceeded men's rates. Patterson-Black not only showed the extent of female homesteading, but also pointed to the significant economic contributions that women homesteaders—both single and married—made.<sup>121</sup>

Other works on female homesteaders quickly followed, including Katherine Harris' study of Colorado, which echoed Patterson-Black's findings regarding rates of homesteading and proving up among women, and Jill Thorley Warnick's study of Utah women homesteaders.<sup>122</sup> One key study of women homesteaders focused on ethnicity and its impact on rates of land ownership. Elaine Lindgren, in examining women homesteaders in Minnesota, found that rates of female homesteading increased in the late nineteenth century, and that Anglo women were more likely to claim land than were women from other ethnic backgrounds. Lindgren also noted that groups with liberal

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<sup>121</sup> Patterson-Black, "Women Homesteaders on the Great Plains Frontier," 68, 79.

<sup>122</sup> Harris, "Homesteading in Northeastern Colorado," 165, Warwick, "Women Homesteaders in Utah." See also Harris, *Long Vistas*.

attitudes toward women's rights, specifically female suffrage, did not have higher rates of female land ownership.<sup>123</sup>

State by state analyses of women homesteaders continued to emerge in the 1980s. Annie Webb's study of women farmers in Minnesota reinforced Lindgren's assertion that greater numbers of women homesteaded late in the nineteenth century. Webb found that in Minnesota the rate rose from around five percent in the 1860s to nearly thirty percent by the 1880s. Webb's analysis went beyond rates of claiming land to consider how women used the land; her results indicated that women typically cultivated enough of their acreage to meet the base agricultural standards for proving up, but that women who began homesteading alone often had fewer improvements on their property than did women who began farming as a family venture and were subsequently widowed. In fact, widows were in the majority of Webb's sample.<sup>124</sup>

As studies of female homesteaders emerged and new sources were mined, Elinore Pruitt Stewart became a heroine of the genre, known largely because she wrote extensively for publication about her experiences as a woman homesteader. Sherry L. Smith's analysis of Stewart's writings provides important insights about the female experience as a homesteader. Stewart presented her published self as a typical woman homesteader, and used her experiences to encourage other women to claim their independence in the form of a 160-acre plot of the public domain in the vast Western landscape. Yet, as Smith shows, Stewart was a single woman homesteader for only a brief time, marrying shortly after arriving on her claim, and ultimately failing to prove up on the land she staked. Thus Stewart, despite her rhetoric, was not the independent

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<sup>123</sup> Lindgren, "Ethnic Women Homesteading on the Plains of North Dakota," 160-162, 171-172.

<sup>124</sup> Webb, "Minnesota Women Homesteaders: 1863-1889," 117-121.



woman she portrayed, but became instead a wife who resided on her husband's claim and relinquished her own property rights to her mother-in-law. Smith argues that Stewart's experiences suggest that homesteading was not a venture for the single male or female, despite the mythological belief in independence that tended to accompany frontier settlement.<sup>125</sup>

While Stewart's writings about the homestead experience are among some of the best known, Dee Garceau explored other women's contributions to what she termed the "woman's homesteading genre" of mass-circulated magazines in the early twentieth century to better understand the myth and reality that grew around the female homesteader. Garceau noted that single women homesteaders undertook their ventures for a variety of reasons, ranging from helping to secure family land holdings, to economic investments and the elevated status of a land owner. Motivations aside, Garceau argues that women homesteaders consistently presented their experiences as a celebration of female independence and a transformative experience for women's gendered identity. The transition from Victorian womanhood to the twentieth century's new woman shaped the ways in which these women described their experiences. Garceau concludes that "the published stories of single women homesteaders created a western version of New Womanhood, with images of independent women who succeeded in the heterosocial world. This theme spoke to women throughout the country, at a time when many sought to redefine their role in increasingly individualistic, egalitarian terms. The case of single women homesteaders thus adds gendered dimension to the symbolic West in the American mind."<sup>126</sup>

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<sup>125</sup> Smith, "Single Women Homesteaders," 179-80, 182.

<sup>126</sup> Garceau, "Single Women Homesteaders," 2, 18.

Garceau's study marked the end of widespread scholarship on women homesteaders. Western women's historians turned their attention in other directions. Recently, however, Katharine Benton-Cohen has revived interest in women homesteaders with her study of Cochise County, Arizona. Benton-Cohen's critical essay marks a departure from earlier scholarship on female homesteaders by emphasizing the diversity that marked women homesteaders. While there were commonalities, Benton-Cohen notes that the differences among the Anglo, Mexican-American, and Mormon women she studied were also important. For instance, Benton-Cohen found that Mexican-American and Mormon women homesteaded at rates equal to or greater than non-Mormon Anglo women, but that Mexican-American women were less likely to be heads of household. This analysis provides an important follow-up to Lindgren's study, which found Anglo women to be more likely to homestead in the Dakotas. Benton-Cohen's study brings to the forefront groups of women homesteaders whose contributions have historically been overlooked by the focus on white women homesteaders. Benton-Cohen concludes that "the two gendered streams of the homesteading movement—one celebrating a productive family anchored by a male head of household and the other offering women a chance at landed independence—converged when it came to race. The homesteading movement of the twentieth century celebrated white Protestant migrant families, rendering variations on the theme invisible."<sup>127</sup>

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<sup>127</sup> Benton-Cohen, "Common Purposes, Worlds Apart," 452.

**“FEMALES AS WELL AS MALES”:  
LABORING WOMEN AND MEN AND THE FREE LAND MOVEMENT**

The scholarship on female homesteaders has revealed both the widespread nature of women’s involvement in empire building as land owners, as well as the diversity of the women engaged in homesteading. The involvement of single women in homesteading, in marked contrast to women’s engagement with colonizing efforts under the provisions of the Oregon Donation Act, is due in part to the different sectors of society that pushed for the adoption of homesteading legislation. Where Oregon supporters tended to be middle-class white men already engaged in agricultural pursuits, homesteading became the rallying cry for working-class white men and women (and their supporters) engaged in wage labor.

In the midst of the growing labor movement of the 1830s, the public domain came to be seen as a “possible haven for the Eastern workingman” by both labor and other groups.<sup>128</sup> In 1845 the National Reform Association (NRA) emerged as the champion of a free land policy. The public domain, according to the NRA, provided a safety-valve to the country; the open lands in the West could relieve pressure on eastern cities by allowing laborers the opportunity to become farmers. As laborers departed eastern cities to settle on the public domain, the surplus labor pool in the east would shrink, resulting in higher wages that could combat the problems of urbanization. In addition, as the theory asserted, the removal of the surplus labor population would relieve overcrowding in urban centers and would populate the untamed western frontier with a hearty population of men and women who would secure the land for the United States.

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<sup>128</sup> Benton-Cohen, “Common Purposes, Worlds Apart,” 451-452.

The NRA's plan for land reform appealed to laborers across industries and genders. The NRA developed an active and successful women's auxiliary that actively campaigned for homesteads. The women also contributed to the cause by embroidering banners to be carried in NRA parades.<sup>129</sup> In the 1840s women were quickly becoming an important part of the wage labor system. The growth of industry created new opportunities for women's employment, and as young women flocked to the mills and factories, they engaged in debates and activism that directly affected labor—wages, hours, and working conditions. Women's contributions to labor and land reform often appeared in labor publications. In 1846 the *Voice of Industry* printed a poem by "Mary" that predicted labor's success in its campaigns, concluding "The bold oppressor sleeps in death!/The victory's won, the Soil is free;/ Ring on! Ring on! Ye liberty peals!/Send the glad sound o'er earth and sea."<sup>130</sup>

Women's issues became tied to the push for land reform among the NRA and labor associations. One New York land reform association adopted a series of resolutions on women's rights, a platform that declared men and women equal, and called for equal political rights, including suffrage. The resolutions also called for women legislators, and access to educational opportunities. These resolutions declared "That the emancipation of women is among the work to be achieved by the nineteenth century," and protested against "*female* education as something distinct from *male* education."<sup>131</sup> The NRA continually supported women's rights to the lands. Horace Greeley, editor of the *New York Tribune* and champion of labor and the free land movement, reported one NRA

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<sup>129</sup> Helene Sara Zahler, *Eastern Workingmen and National Land Policy, 1829-1862* (New York: Columbia University Press, 1941), 41.

<sup>130</sup> Zahler, *Eastern Workingmen and National Land Policy*, 72, n. 33.

<sup>131</sup> "Good Resolutions," *Spiritual Philosopher*, November 2, 1850.

proposal for land reform that would grant settlers forty acres, “to be extended to eighty acres to each married couple, or in case of marriage to any one not a claimant in like manner in her own right, so as to give to each family eighty acres without cost.”<sup>132</sup> The NRA ideal of land reform was a family-oriented one, evoking many of the same ideas about women’s place in the scheme of westward settlement and empire building that would appear in the Congressional debates over homesteading.

In Wisconsin, where the land reform movement was particularly strong, the demand for homestead exemption and provisions for married women’s property rights emerged in the debate over the proposed state constitution. While the measures were defeated by voters, their success at the constitutional convention indicates a willingness to consider new property rights and protections for women. Women advocated for both measures, and would continue to pursue legislation of this type across the United States in the mid-nineteenth century.

Women appear as signers of the many petitions submitted to Congress in support of a homestead policy. This is important to note, because women did not involve themselves in petitioning in relation to the Oregon question, though some of the documents were being submitted at roughly the same time. Oregon petitions tended to be submitted by small groups formed specifically for that purpose, where homestead petitions came from larger organizations that served multiple purposes, including labor groups and churches, which may explain women’s involvement in free land petitions.

Typical of the petitions which women signed was one published by labor leaders; “Freedom of the Public Lands” blazed across the top of the document, which spelled out objections to the current land system and requested the establishment of a new public

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<sup>132</sup> *New York Weekly Tribune* January 24, 1852.

land policy.<sup>133</sup> Petitioners submitted hundreds of these types of documents, as well as handwritten variations on the theme. For example, in 1854 George Wright and 113 of his fellow Wilmington, Illinois, residents sent to Congress their appeal for legislation “to stop the speculation in publick [sic] lands and make them free in limited quantities to settlers not posed [sic] of other lands.” Among the signers were seven women: Martha Wright, Clarissa A. Tilden, Barbara Watters, Rachel Milam, Elizabeth Huston, Esther Woodward and Lucy Brown.<sup>134</sup>

Some petitions called specifically for female property rights in their demands for changes to the public land system. One 1854 petition submitted by a group of Indiana citizens requested that Congress make available free 160-acre homesteads to “heads of Families, Females as well as Males.” Two women, Mary J. Darter and Mary E. Mullins affixed their signatures to this call for free land.<sup>135</sup> Though not an endorsement of the single woman homesteader, this language nonetheless indicates support in the general populace for at least some women to be permitted homesteads.

## **HOMESTEAD EXEMPTION AND MARRIED WOMEN’S PROPERTY LAWS**

Even as labor leaders advocated for land reform, and the general public appealed to Congress for a free land policy, other legal developments impacted women’s property rights in the nineteenth century. Under the common law notion of coverture, married women’s legal identity was subsumed under their husbands, creating what one historian

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<sup>133</sup> These petitions, dated in the 1840s and 1850s, are archived in the papers for the House of Representatives Committee on Public Lands, RG 233, National Archives and Records Administration (hereafter NARA), Washington, D.C.

<sup>134</sup> “Petition of George Wright & 113 others of Wilmington, Ill praying for donations of land to actual settlers,” January 2, 1854, Committee on Public Lands, RG 233, NARA.

<sup>135</sup> “The Petition of James Elliot and sunry [sic] other citizens of Indiana asking grants of land to actual settlers,” February 8, 1854, Committee on Public Lands, RG 233, NARA.

called “the legal fiction of marital unity.”<sup>136</sup> Coverture gave control of all women’s property, both personal and real, to the husband, and did not recognize married women’s rights to any wages they earned.

Beginning in 1835, several states adopted varying forms of married women’s property laws. These earliest laws, while protecting women’s property from their husband’s creditors, were not designed to expand women’s rights in general. Many of the earliest statutes, like those in Arkansas and Mississippi, emerged in southern states where slave property was a primary target for protection. Other states adopted laws protecting only a wife’s real or personal property, where others protected both types of property. (Figure 3.1) By 1862, when the Homestead Act was adopted, twenty-two states had approved some form of married women’s property laws, either protecting a wife’s estate from her husband’s creditors, or allowing for the creation of separate estates.<sup>137</sup> (Figure 3.2)

In a similar vein, by the passage of the Homestead Act twenty-seven states had adopted homestead exemption laws.<sup>138</sup> (Figure 3.3) While these laws were not specifically designed to address women’s property rights, they in effect granted married women new rights to control family property.<sup>139</sup> By protecting the family home from a husband’s creditors, these laws in effect granted to married women control over the family’s real property. Like married women’s property acts, homestead exemption laws stemmed largely from economic upheaval in the 1830s and 1840s. The laws varied by

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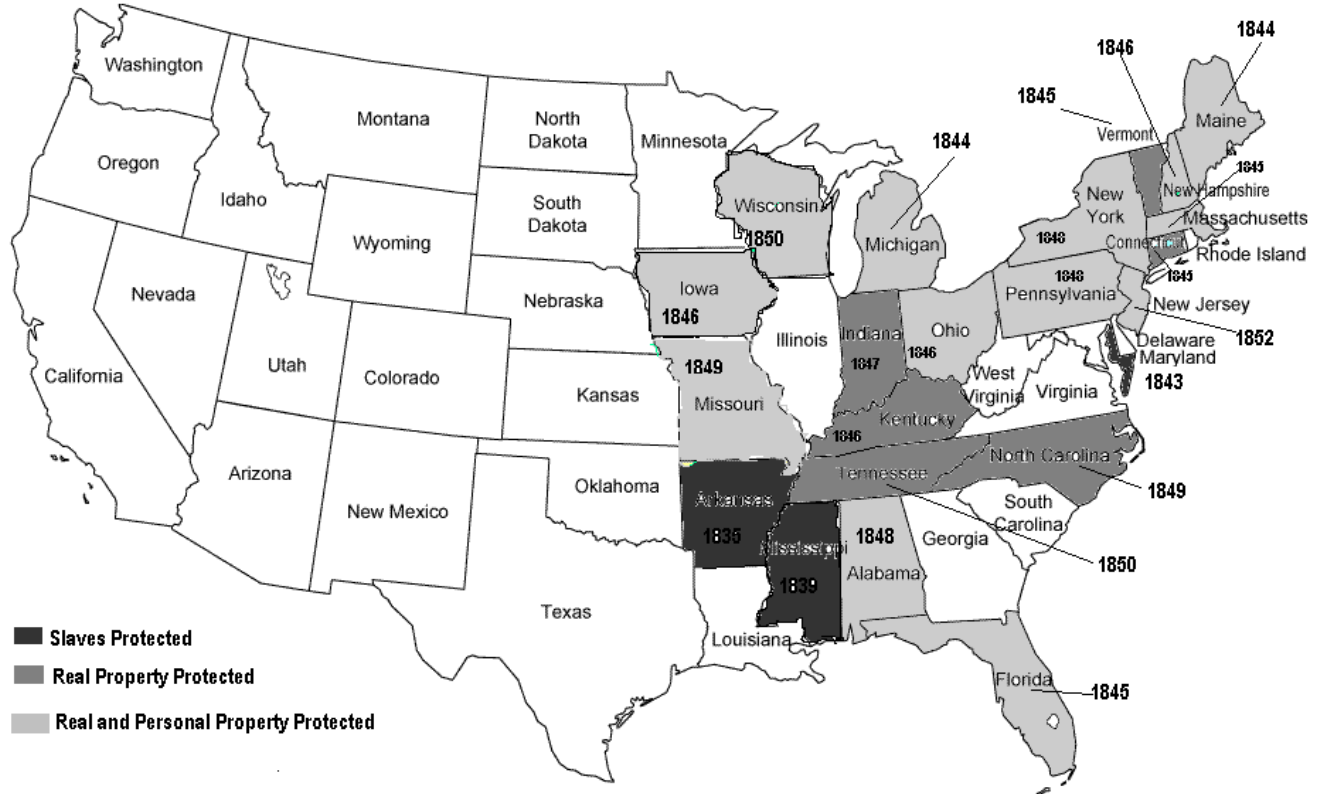
<sup>136</sup> Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth Century New York* (Ithaca, New York: Cornell University Press, 1982), 15.

<sup>137</sup> Joan Hoff, *Law, Gender, and Injustice: A Legal History of U.S. Women* (New York: New York University Press, 1991), 377-382.

<sup>138</sup> Goodman, “The Emergence of Homestead Exemption in the United States,” 472.

<sup>139</sup> Alison D. Morantz, “There’s No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America,” *Law and History Review* 23 (Summer 2006): 251.

**FIGURE 3.1**  
**TYPES OF PROPERTY PROTECTED UNDER EARLY MARRIED WOMEN'S**  
**PROPERTY ACTS<sup>140</sup>**



<sup>140</sup> Data from Richard H. Chused, "Married Women's Property Law: 1800-1850," *Georgetown Law Journal* 71 (June 1983): 1359-1425.





**FIGURE 3.3**  
**STATES WITH HOMESTEAD EXEMPTION LAWS IN 1862<sup>142</sup>**



<sup>142</sup> From Paul Goodman, "The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840-1880," *The Journal of American History* 80 (September 1993): 472.

state, but generally provided that land and homes could not be seized for payment of debt, unless there was a lien on those properties. Some states provided limited protection based upon dollar amounts, while others relied upon measurements of land to guide eligibility for exemption.<sup>143</sup>

The substance of homestead exemption laws, even the most conservative of them, granted women, both married and single, considerable new rights in relation to real property. Alison Morantz notes that exemption laws “significantly disrupted men’s traditionally extensive control over real property.”<sup>144</sup> The combination of married women’s property acts and homestead exemption laws created a legal structure that was, by the mid-nineteenth century, slowly granting women increased property rights.

### **“THEY HAVE AS MUCH RIGHT THERE AS BACHELORS”: THE CONGRESSIONAL DEBATE OVER WOMEN AS HOMESTEADERS**

It was in this context of labor activism, public petitioning, and the gradual expansion of women’s property rights through homestead exemption and married women’s property laws that the debates over homestead measures in the 1850s and 1860s occurred. There were, of course, other political and social movements that intersected with, and ultimately impacted the adoption of a homestead measure. The dominant concerns expressed by Congress in their debates over free land policies reflected the considerations that had emerged in the debates over the Oregon Donation Act. Congress designed homesteading law, like the ODA, to support the imperial enterprise in the West, thus gender roles, race, and citizenship all appear in the debates and the final legislation.

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<sup>143</sup> Goodman, “The Emergence of Homestead Exemption in the United States,” 471.

<sup>144</sup> Morantz, “There’s No Place Like Home,” 251.

Women were never intended as the primary beneficiaries in any free land measures introduced in Congress from the 1840s on, yet they were inevitably a part of the discussion. Where the debates over the Oregon Donation Act virtually ignored women, the multiplicity of homestead bills often considered them, parading white women as wives, mothers, potential wives, and former wives through the discussions about free land and western expansion. The dictates of settler colonialism deemed only white women as fit to fulfill the role of civilizer by virtue of their position within the gender order. Women of color could not be a part of the civilizing process—African American women because of their race and Native American women because they were the ones in need of civilization.

The discussions about white women reveal the same paradox about women's roles that confronted the men of Congress when they crafted the Oregon Donation Act. White women were a necessary component of empire building; they carried with them the physical and metaphorical building blocks of the American family, and thus, American civilization. As mothers, white women would produce the next generation of male leadership and the wives who would create for those men havens of peace from the fractious world of business and politics. This ideology of separate spheres of influence for men and women clearly shaped the ways in which Congress viewed women's role as civilizers in the process of western expansion.

At the same time, however, the mythology of the West depicted new opportunities and new roles for women, even as they were sent west to fulfill traditional gender roles. So, while Congress needed white women to be models of true womanhood, they also needed them to be strong and capable, unafraid to face the dangers of frontier living, the

uncertainty of an undeveloped land, and the challenges of building the structures of a civilized society. For example, one Congressman urged his colleagues to include “the weeping widow” as a beneficiary, and painted for them this picture of her as a homesteader: “Oh, I can see her now in my imagination, wending her way to the far West, with her little helpless sons and daughters, and settling down upon her home at the West; and I see her rearing up a log cabin to shelter them from the pitiless storm, and digging up a few hills of corn, from which she can derive sustenance for her orphan children.”<sup>145</sup> Here the widow is both frail (notice her weeping) yet strong enough to engage in the tasks of settling the land and providing for her family, taking on the role of both male head of household and mother.

In the need to place women on the western landscape to fulfill this double-edged duty of true woman and frontier helpmeet, Congress included women’s property rights as a part of the package. This is not to say that the men of Congress intentionally held out the promise of land ownership to women in an effort to induce them to move west, but rather, that, in the grand scheme to populate the west with the right kind of Americans, women’s property rights almost incidentally emerged as one means of placing women in the west.

Congressional discussions about women as homestead beneficiaries always considered their marital status as the proper means of determining their eligibility. Again, this points to the underlying assumptions of settler colonialism and the process of western expansion; women, while necessary to the enterprise, must carry out their imperial duties within the constraints of the gender order. Married women, then, almost never appear in these debates, because they presented no challenge to the gender status

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<sup>145</sup> *Appendix to the Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (April 29, 1852), 520.

quo. As part of a male-headed household, married women could be involved in the homesteading process by carrying out the duties required of them as wives and mothers. It was unmarried women—widows or single women—who presented the greatest challenge to lawmakers.

Widows, by virtue of having been wives, and likely mothers as well, were typically included as beneficiaries in the various versions of homesteading legislation that appeared in Congress. Andrew Johnson introduced some of the earliest homesteading proposals. Over the course of his legislative career, Johnson waffled in his attitude toward women homesteaders, at times introducing legislation that specifically excluded women, and in other instances extending the benefit of free land to widows with children. From 1850 to 1851 Johnson introduced three separate free land proposals, two of which allowed widows to claim land, one of which did not.

Johnson's fourth attempt to distribute the public domain, introduced in 1851, was the first to receive approval from the House of Representatives, and allowed widows who were heads of households to claim their portion of the public domain.<sup>146</sup> From this point forward, all homesteading proposals introduced to Congress included widows as beneficiaries, an inclusion that prompted no debate. In fact, there was no argument over widows being eligible under the pre-1851 bills either. The absence of debate stemmed from two factors. First, widows had already demonstrated their commitment to the gender order by having married at all, thus there was nothing about their behavior to suggest that widowed women posed a threat to proper female behavior. Second, widows, if they had children, (which was often the case) were considered heads of household, so,

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<sup>146</sup> *Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (December 10, 1851), 58. Johnson's first homestead proposal, introduced in 1846, did not include provisions for widows. *Congressional Globe*, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (March 9, 1846), 473.

while no longer subject to coverture, their position of responsibility for minor children in the absence of a father in some ways rendered them male. Of course, it is important to note that widows were also seen as having no choice in filling such a role, making them deserving in a way that other female heads of household were not; because of this, abandoned or divorced wives and unwed mothers would come under greater scrutiny for their behavior than did widowed women.

The category of female head of household, when under Congressional consideration, was generally understood to be inhabited by widowed women. One of the first homestead proposals, Felix McConnell's 1846 bill, proposed that women who had dependent children, whether single or widowed, be allowed to make homestead entries. McConnell's bill, H.R. 294, was titled "A bill to grant the head of a family, man, maid or widow, a homestead, not exceeding one hundred and sixty acres."<sup>147</sup> The language of the title is intriguing. McConnell clearly intended only heads of household to be eligible for homesteading, but he also recognized that women at times populated that category by virtue of being mothers. Yet, the bill specifically refers to "maids" a gendered term that in the nineteenth century had specific connotations of virginity and innocence. Maids could be the head of a family only if they were young women raising their younger siblings; unwed mothers would not be referred to as maids. It is impossible to know if McConnell meant to include unwed mothers in the provisions of the bill, or if by using the specific term "maid" he meant only female heads of household who had not violated the standards of proper sexual behavior for women.

In later Congressional discussions, single mothers again garnered lawmakers' attention when Senator William Dawson verbalized the common belief that only women

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<sup>147</sup> *Congressional Globe*, 29<sup>th</sup> Congress, 1<sup>st</sup> Session (March 27, 1846), 597.

who had children in wedlock were respectable, a belief that governed the inclusion of widows as beneficiaries of free land bills. Dawson, who objected to homesteading measures in general and often seized on gender-related issues in an attempt to stifle such proposals, included in his objections to the 1854 bill that “A maiden daughter over the age of twenty-one . . . will not be entitled to anything, unless she could by some accident be the head of a family.” Dawson’s remark generated laughter and a response from Indiana’s John Pettit, “That would be utterly impossible,” and further laughter. Dawson ended the exchange, to the accompaniment of continued laughter, with “It is an utter impossibility.” Such an exchange suggests that Congressmen very carefully chose their language regarding widows and heads of household. The requirement that a beneficiary be a widow with minor children would prevent women with illegitimate children from accessing these land grants.<sup>148</sup>

Later discussions about female heads of household forced Congress to confront female homesteading in the context of polygamous Mormon families. In debating the 1860 homestead bill, Stephen Foster, representative from Maine, emphasized the centrality of *proper* marriages to the Western empire. Foster described the practice of polygamy in Utah Territory as an “evil” that had been unheard of until the Mormons were “beyond the reach of civilization.” The distance between Utah Territory and the civilized East must be broached in order to end the practice of polygamy, and Foster believed that rapid settlement of the territory was the answer. The homestead measure, in combination with the construction of a transcontinental railroad, would, in Foster’s words

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<sup>148</sup> “Proceedings in the Senate,” *Appendix to the Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (July 20, 1854), 1106.



“people the wilderness, convert it into smiling fields and peaceful homes for millions of Christian families.”<sup>149</sup>

While Foster referred to the broad social antipathy toward polygamy, Congress was not unaware that polygamous marriages created a category of female heads of household that did not fit with gender order. Where marriages included plural wives, only the first would be considered a legal spouse by the United States government. Therefore, women who were, according to the laws of the Mormon Church (and for many years the territory of Utah) married, would legally be considered single under U.S. law. Plural wives were often mothers, making them heads of household, yet they were also often part of a larger family unit with their husband and other sister wives. In the years following the passage of the Homestead Act, the General Land Office would be forced to rule on plural wives’ eligibility for homestead claims. In the Congressional debates, this issue appeared only briefly in Foster’s speech, suggesting that lawmakers did not want to delve too closely into the matter, for it would have required additional legislative action on the question of polygamy.<sup>150</sup>

While the Oregon Donation Act was clearly family-oriented, its provisions allowed single men to receive land grants. In the course of Congressional debates over the law, there was never a suggestion that single men be excluded from its provisions.

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<sup>149</sup> “Speech of Hon. S.C. Foster,” *Appendix to the Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (April 24, 1860), 244-245.

<sup>150</sup> Congress would address the practice of polygamy, passing both anti-bigamy and anti-polygamy laws in an attempt to stop the practice by followers of the Mormon faith. For more on these laws see Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002) and Joan Smyth Iversen, *The Antipolygamy Controversy in U.S. Women's Movements, 1880-1925 : A Debate on the American Home* (New York: Garland Publishing, 1997). The polygamy question became tied to other controversial issues of the 1850s and 1860s, including slavery and western expansion. See Tonia M. Compton, “American Harems: Mormons as Racial Other in Nineteenth-Century Rhetoric,” *Alpha Chi Recorder* 50 (Fall 2007), 24-32.

Yet, in the homestead debates, men's marital status became a topic of disagreement. Debates about the inclusion of single men in free land legislation almost invariably prompted at least a nominal discussion about single female homesteaders.

The free land bill introduced by Johnson in 1851 provided only for heads of household (both male and female) to be recipients of land grants.<sup>151</sup> The exclusion of single men from the proposal prompted significant debate in the House. Alabama's William Smith opened the debate, arguing that single men should be included because they would populate the West, by eventually marrying; such unions would produce "young soldiers." Smith concluded with such a provision, "this bill will promote early marriages," making it favorable legislation.<sup>152</sup> Smith, like most of his peers, envisioned western settlement as a family enterprise, though he was willing to allow young men time to build their families after their arrival in the West.

Virginia's Fayette McMullin supported Smith's contention. He argued that the inclusion of single men would encourage them to fly "to the fertile regions of the West, with her who is dear to his heart."<sup>153</sup> McMullin's reference to fertility was probably quite intentional, as he enhanced this argument by citing the production of homes filled with children whose inheritance would be the land. Smith, and other legislators, believed that

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<sup>151</sup> Johnson's narrowly drawn legislation prompted John Allison (Pennsylvania) to propose an amendment that removed the requirement of being a head of household. Allison argued that men who did not have families were entitled to the land just as much as any father. He went on to express his hope that those members of the House who were not heads of household would further amend the bill so that land would also be "given to persons of the opposite sex." The Congressional reporter noted the laughter that followed Allison's declaration. The repeated laughter during these discussions suggests not only the prevailing beliefs about women's proper roles as wives and mothers, but also a certain level of discomfort at discussing so freely the inclusion of women as homestead beneficiaries. *Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (May 6, 1852), 1280.

<sup>152</sup> "Speech of Hon. W.R. Smith," *Appendix to the Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (April 27, 1852), 514.

<sup>153</sup> "Speech of Mr. McMullin," *Appendix to the Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (April 29, 1852), 520.

access to land ownership would make it possible for young people to marry by providing them with a place to live and a source of sustenance and income.

Joseph Cable, a representative from Ohio, speaking on behalf of the bill suggested that it would benefit “young men and maidens.” Orin Fowler interrupted Cable’s speech to ask if he intended to “propose a clause, providing for all the old maids in the country?” Cable responded that were he a bachelor he would certainly include such a provision, then went on to explain himself: “I had reference to maidens now, but who shall become wedded hereafter, for they could not conveniently till the soil.”<sup>154</sup> While Fowler’s remarks were likely prompted because he opposed the measure in general, Cable’s response is instructive. Most of those in Congress agreed with his assumptions that first, single women alone would be unable to work the land, and second, that despite this, allowing single women to claim homesteads would at least provide for a future population. This exchange illustrates the tension about women’s roles in western expansion that carried throughout the debates.

At another point in the same debate Representative Gaylord proposed an amendment that extended the benefits of the bill to all women over the age of twenty-one, regardless of marital status or children; Illinois’ Thompson Campbell responded: “They will never settle there,” to which Gaylord promptly replied, “They have as much right there as bachelors.” Gaylord later withdrew the amendment because Johnson argued that it jeopardized the entire bill, but its appearance in the debate is still significant.<sup>155</sup> These exchanges indicate that there were those in Congress who favored including single

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<sup>154</sup> “Speech of Hon. Joseph Cable,” *Appendix to the Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (March 10, 1852), 298.

<sup>155</sup> *Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (May 10, 1852), 1316.

women in the provisions of free land bills, either because it was due them as a right or because their reproductive capabilities promoted civilization.

These same discussions about the eligibility of single men and women, in particular single women, appeared in subsequent Congressional sessions where free land bills were debated. In debating the 1854 homesteading legislation, Alabama's W.R.W. Cobb, proposed an amendment that, among other things, allowed "any single free white male" to claim land, as well as those who were citizens and heads of households. Cobb's proposal met an objection from Dawson, who, while declaring his favorability toward allowing single men as beneficiaries, believed that such a move endangered the bill. Richard Yates (Illinois), however, supported Cobb's suggestion and added his own suggestion that the bill be amended by removing the requirement that beneficiaries be heads of household. George Jones (Tennessee) then recommended that a minimum age of twenty-one be added to the qualifications, at which point the clarification was asked for regarding sex—did this mean women as well as men—to which Jones replied in the affirmative.<sup>156</sup>

Ultimately, the amendment was accepted, but was immediately met with another proposed amendment, offered by McMullin who attempted to insert the qualifying word "male" before the age requirement. The proposal was met with objections, and the tongue-in-cheek response of W.A. Richardson (Illinois) who declared "Oh, I hope the gentleman will make it females instead of males. These bachelors ought not to be given land." Ohio's John Taylor followed the withdrawal of McMullin's amendment with his own proposal that kept the age requirement for single men, but lowered it from twenty-one to eighteen for single women. In support of Taylor's suggestion Richardson declared

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<sup>156</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (February 28, 1854), 502-503.

“I can very cheerfully vote for that portion of the amendment which proposes to give the land to the young lady of eighteen, and the young gentleman of twenty-one. If he is not married, it is his fault. If it is not his fault, he is not entitled to any land.”<sup>157</sup> Taylor’s amendment was rejected, only to be followed by William Barry’s (Mississippi) suggestion that eligibility be extended to any head of household, regardless of age, and any person over the age of twenty-one, regardless of sex.

Barry, in offering this amendment to make single women eligible for land, articulated the most decisive support for single female homesteaders, arguing that “If a female desires to possess a home, and is willing to conform to the requirements of the law, there is no reason why she should be an alien to the justice or the charity of her country. If she is unfettered by marriage ties she has the same natural right to be provided a home from the public domain that the unmarried man of the same age has.”<sup>158</sup>

Barry’s amendment succeeded, but received a challenge from William Dent (Georgia) who argued for lowering the age requirement to nineteen for single men and eighteen for single women. Dent cheekily ended his proposal declaring, “there are a great many young ladies eighteen years of age who are unmarried, though that is not their fault,” referring to Richardson’s earlier statements about marriage.<sup>159</sup>

In the 1860 debates over homesteading, these eligibility questions remained unresolved. At this time, Senator Wilkinson objected to the exclusion of single men from the initial bill, arguing that men could not take their families into unsettled lands, and that most women could not endure the hardships of early settlement.<sup>160</sup> While Wilkinson

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<sup>157</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (February 28, 1854), 503.

<sup>158</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (February 28, 1854), 503.

<sup>159</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (February 28, 1854), 505, 549.

<sup>160</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (April 3, 1860), 1510.

clearly did not advocate the granting of land to single women, he did believe that families were a necessary component for settling, if not taming, the frontier. Further in the debate Senator Grimes proposed amending the bill to extend its benefit to those over the age of twenty-one who were not heads of households.

Grimes' suggestion generated strenuous objections to single women being included, with Indiana's Graham Fitch protesting that such a provision created unfair advantages when marriages were contracted between land owners who had each claimed a quarter section while single. Senator Robert Johnson of Arkansas furthered Fitch's objection, declaring, "Young women over the age of twenty-one, are to be brought in the wilderness, make a settlement, build a house, and live in it by themselves, and unmarried. Why, sir, I hope the Senator does not wish to encourage that state of things, even if there are those who would accept it. But few would accept it." The greater danger to this measure, Johnson believed, was the likelihood that young women would be deceived by men who would use them to fraudulently obtain land.<sup>161</sup> Even while these men recognized that the full development of an American empire required the presence of women to build the structures of civilization, they remained resistant to creating circumstances that placed women at the center of the empire-building process, unless they were properly situated as dependents (wife or daughter) in a family with a male leader.

Single women presented the greatest challenge for lawmakers in drafting homesteading legislation that both encouraged the American empire through liberal land policies, while ensuring the maintenance of the gender order in the process. For the men of Congress, this meant that single women should marry and have children. Dawson at

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<sup>161</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (May 9, 1860): 1993.

one point proposed that land grants be given to anyone willing to settle in the West and, more importantly, that they “increase population by reproduction [by] giv[ing] to every girl over the age of eighteen or twenty-one, one hundred and sixty acres of land.” When asked how this would increase the population Dawson answered, “By inducing some to unite with her.”<sup>162</sup> Under Dawson’s plan the homestead grant would serve as a dowry for single women, thus helping to ensure the population of the West with American citizens by making it possible for women to marry and for their husbands to afford children.

In its final form the 1860 homestead measure granted any citizen who was the head of a family the right to a quarter section of the public domain, excluding both single women and men. President Buchanan’s veto of the bill ended free land measures until passage of the 1862 Homestead Act which, in its final version, proved to be much more liberal than any previous versions of the bill. Its benefits extended to anyone who was the head of a family or over the age of twenty-one, regardless of sex, and any citizen or person who had declared intent to become a citizen. The maturation of the bill stemmed from nearly two decades of debate over the character of the American empire in the West and the role that women were to have in its creation and maintenance.

### **“PERMANENT HOMES OF THE PURE CAUCASIAN RACE”: SLAVERY, IMMIGRATION AND CITIZENSHIP IN THE HOMESTEAD DEBATES**

Gender, race, and citizenship were intimately connected components in the creation of a successful settler colony. So, as with the debates over the Oregon Donation Act, Congress again struggled with the proper place for non-citizens and African

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<sup>162</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (July 10, 1854): 1669.

Americans in the western empire. Most of the discussion about homesteading occurred in the 1850s at a time when the national discourse was focused on the question of slavery and western expansion. Homesteading debates inevitably prompted discussions about whether or not the practice of slavery should be allowed in the western territories, and in the discussions about slavery, Congressional attitudes toward race emerge.

The 1854 discussions about slavery and race focused largely on the question of who could and could not become a citizen. The bill provided for homesteads to free white men its first section, but in a subsequent passage which laid out the citizenship requirements for eligibility, the language differed, specifying only that “individuals” declare their intent to become citizens. Some senators insisted on the need to clarify the section by replacing individual with “free white person.” Those who supported the amendment argued that the absence of this explicit delineation of race opened the door for non-whites to make homestead claims. Senator Archibald Dixon asserted that free lands could be given to “coolies, to Algerines, to Indians, and to all the other people of the earth, however uncivilized they may be, or of whatever color they may be.”<sup>163</sup> Dixon was not alone in this view, but there were among his peers some who argued that his fears were unfounded because U.S. citizenship laws prevented blacks from becoming citizens.<sup>164</sup> Representative George Jones of Tennessee declared that “[Blacks] are not citizens in the contemplation of the Constitution, and can never become citizens,” further warning his colleagues that an admission of blacks as citizens meant that the Senate itself

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<sup>163</sup> *Congressional Globe* 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (July 14, 1854), 1742.

<sup>164</sup> *Congressional Globe* 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (July 14, 1852), 1741.



would have to “admit that Fred. Douglass may take his place in the Congress of the United States, if he should be elected.”<sup>165</sup>

This debate about African Americans and citizenship, while not tied directly to the question of empire and western expansion, nonetheless reveals a critical assumption that many federal lawmakers held—that is that race and citizenship were inevitably linked to one another. One senator pointed clearly to this when he asked “what foreigner is there who can come to this country and become a citizen, who is not, in common parlance and understanding, deemed a white man?”<sup>166</sup> These discussions about race and slavery, when viewed in light of racial assumptions about empire, provide an important context for understanding the various attempts to ensure that homesteading rights be restricted to whites. The American West would become a white empire by increasing the native-born population through white women’s reproductive capabilities, and by allowing white immigrants to populate the landscape.

The explicit connection between race and empire, implied in debates over slavery, emerged in unquestionable terms during discussions of the 1860 homestead measure. Wisconsin Senator James Rood Doolittle declared that the homesteading bill generated “questions of opening, directing, and regulating the settlement of this continent,” and that these were “questions of empire.” James Murray Mason, his Democratic opponent from Virginia, concurred, agreeing with Doolittle that “this bill is a measure intended for empire, command, control, over the destinies of the continent,” that would “by the gratuitous distribution of the public lands . . . plant throughout the whole country . . . a free white population to preoccupy it.” Mason argued, then, that in light of the imperial

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<sup>165</sup> *Congressional Globe* 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (July 14, 1852), 1741.

<sup>166</sup> *Congressional Globe* 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (July 14, 1852), 1741.

nature of the question, and the objective of populating said empire with white families, the issue of slavery could not be separated from that of homesteading.<sup>167</sup>

As Doolittle and Mason both noted, there was, at the root of these disagreements about slavery and expansion, a common assumption that the American imperial project was an undertaking best reserved for whites. This explains in part the adamant opposition against allowing the practice of slavery in the territories. Doolittle argued that the free white men who ventured West to claim their quarter sections would “tend to prevent [the] Africanization” of the territories. He went on to proclaim that “I believe God in His providence intended, that the temperate regions under our control shall become the permanent homes of the pure Caucasian race.”<sup>168</sup> Another senator pointed to the fact that already in 1854 the West was home to populations of non-whites, referring specifically to the presence of Chinese immigrants in California.<sup>169</sup>

The 1862 bill, as noted above, made provisions for non-Americans who intended to become U.S. citizens to avail themselves of a homestead. As with the question of eligibility for single men and women, the extension of homesteading rights to non-citizens repeatedly appeared in the Congressional debates on free land policies. The increasing rates of immigration increased the import of these debates. Between 1850 and 1860 nearly two million foreign immigrants arrived in the United States. This included more than one and a half million Irish and nearly that many German immigrants.<sup>170</sup> As noted in Chapter Two, the significant growth of Irish and German immigration in the

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<sup>167</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (April 10, 1860), 1632, 1635.

<sup>168</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (April 10, 1860), 1632.

<sup>169</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (April 10, 1860), 1632.

<sup>170</sup> *Population of the United States in 1860; compiled from the Original Returns of the Eighth Census* (Washington, D.C.: Government Printing Office, 1864), xxix.

1840s and 1850s sparked new concerns about whiteness and the inclusion of immigrants in the body politic.

As early as 1849 the question arose when Senator William Seward prepared a resolution proposing that the Committee on Public Lands make a report on the feasibility of reserving a portion of the U.S. public domain as territory for Hungarian exiles being driven from their homeland because of the war with Austria, as well as other Europeans “fleeing from oppression.”<sup>171</sup> Seward’s proposal, and Senator Stephen Douglas’ homestead bill which extended land rights to immigrants, generated objections from Georgia’s William Dawson, who argued that both men had introduced legislation that favored foreign men over Americans. Dawson, ever the opponent of homesteading and quick to seize on gender issues as a means to defeat the proposals, wanted to know “Where are the widows and children . . .?” Dawson’s objection was certainly more about the granting of land to foreigners than the exclusion of women, but it served to bring the issue to light, and while neither measure was adopted by the Senate, this exchange marked the first of many concerning citizenship and homesteading.<sup>172</sup>

The ability of land ownership to transform a poor man into an American citizen ran throughout the debates of the various homestead measures, and became particularly important in the discussion of whether or not foreign immigrants fit with the vision for American empire. In the 1852 debates Thomas Hendricks, a representative from Indiana argued the merits of Americanizing foreign immigrants through homesteading. It was more dangerous, he believed, to leave these immigrants crowded upon one another in the cities, dependent upon wage labor. “. . . Hold out inducements for them to go out to the

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<sup>171</sup> *Congressional Globe*, 31<sup>st</sup> Congress 1<sup>st</sup> Session (January 30, 1850), 263.

<sup>172</sup> *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session (January 30, 1850), 265, 266.

new country, each man to settle down upon land that is his own,” he argued, “. . .and labor for himself and his children, associating with the native farmers around him, and how soon will they become Americanized?” Land ownership would generate in the immigrant a feeling that “they and their children have a stake and interest in the country and its institutions.” The result would be a country settled with peaceful and law-abiding citizens who would, in the case of war, come to the aid of their adopted homeland.<sup>173</sup> A similar belief in the ability of whites to propel Native Americans to civilization by virtue of the example they set as neighbors characterized arguments in support of the General Allotment Act more than 20 years later.

Senator James Shields of Illinois presented a similar argument, asserting that the provision of land secured the empire, and additionally had the advantage of Americanizing foreigners who were or would become citizens. “There is not a man who lives in the West,” he declared, “that does not know this singular fact: that the moment a man builds a log cabin, cultivates a piece of land, and finds himself in possession of a home, he becomes a better man, as well as a better citizen . . . .” Shields saw land ownership as a solution to the problem of foreigners clustered in eastern cities and as a chance to secure their loyalty to the United States. Ohio’s Salmon P. Chase concurred, arguing that granting land to those who were not yet, but would become citizens, would “Americanize them by generosity and justice” and that having become American, these settlers would be loyal and present no threat to the nation.<sup>174</sup> Senator Morton Wilkinson

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<sup>173</sup> Speech of Hon. T.A. Hendricks, *Appendix to the Congressional Globe*, 32<sup>nd</sup> Congress, 1<sup>st</sup> Session (April 27, 1852), 485.

<sup>174</sup> *Congressional Globe*, 33<sup>rd</sup> Congress, 1<sup>st</sup> Session (July 12, 1854), 1703.

also took up this argument, believing that the inclusion of immigrants as beneficiaries would “sanctif[y] his patriotism,” and cement his allegiance to the Constitution.<sup>175</sup>

Ultimately the Homestead Act extended land grants to naturalized citizens, despite the persistent concerns demonstrated by various Congresses about the suitability of immigrants, whose whiteness was questionable, to be included in the imperial project. Just as single men and women presented a challenge to the overall goals of the Homestead Act as a means of solidifying the American empire, so too did the possibility of non-white settlers. Yet, in the end, the Homestead Act built upon the groundwork laid by the Oregon Donation Act to ensure that white American settlers who would recreate the gender order had access to western lands. Despite the inclusion of single women in the legislation, the primary aim of the law was to populate the West with white families; as the debates revealed, single white women, like Ann Schleiss, would be granted a space within the imperial order for their potential to become wives and mothers who would recreate the gender order, not for their potential as agriculturalists.

In 1871 Ann Schleiss came under the scrutiny of the General Land Office when Ardin Waldo charged that she had abandoned her land. Initially the local land office ruled in favor of Waldo, but on appeal, her claim was returned. Waldo asserted that because Schleiss did not live on her land all of the time she had abandoned it; the periods of living with her family, situated close by, and working out as a domestic servant, were depicted as deliberate desertion of the claim. In the decision ruling in favor of Schleiss’s right to the land, Assistant Attorney General Walter Smith eloquently demonstrated the tension between feminine ideal and frontier reality for women homesteaders. He judged that the Homestead Act was intended for people like Schleiss, but at the same time, made

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<sup>175</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session (April 10, 1860), 1510.

exception for her status as a single woman, noting that “She is an unmarried woman, and can scarcely be expected to live continually upon the land, alone, removed from friends and isolated from all society . . . .” Schleiss did not seem to share Smith’s concerns, remarking when asked if she maintained a continuous residence, “I stay there the best I can,” with no apology for her occasional absences and a firm belief in her right to the land.<sup>176</sup> As will be seen in Chapter Six, the GLO wielded significant power in determining the implementation of the Homestead Act and their rules and decisions generally reflected the Congressional attitudes toward female homesteaders revealed here. While Ann Schleiss may have been just the sort of person intended to benefit from the Homestead Act, it is clear that Congress continued to view female land owners in the West as building blocks for empire.

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<sup>176</sup> “Waldo v. Schleiss,” *Public Land Laws, passed by Congress from March 4, 1869, to March 3, 1875*, Henry N. Copp, ed., (Washington, D.C.: The Compiler, 1875): 234-235.

**CHAPTER 4**  
**“SHE BECOMES A WHITE MAN”:**  
**NATIVE AMERICAN WOMEN AND LAND OWNERSHIP UNDER THE**  
**GENERAL ALLOTMENT ACT**

The justifications for the 1887 General Allotment Act (also known as the Dawes Act) were many, but none so poignant as Henry Dawes’ assertion that the act protected native women from white men who would enter the reservation, start a family, and then desert them when his opportunities for profit-making had disappeared. Under the allotment policy, Dawes declared, Indian women’s property rights were protected, so that “hereafter whosoever takes an Indian woman for his wife, takes her to his home and his heritage and the heirship of his household, and she becomes a white man rather than he an Indian woman.”<sup>177</sup>

The Dawes Act did not have as its primary aim the protection of native women’s property rights. The goals of allotment included the civilization of the native population by destroying tribal ties and instilling the virtues of the private property owner. Westerners seized on allotment as a means to open new vast acreages to white settlement with the promise of surplus lands being made available. These goals would be achieved, supporters of the measure asserted, by granting Indians title to plots of land, ranging in size from forty to 160 acres. As land owners, Indians would come to value private property, and support themselves as farmers or ranchers. Indian men would become providers for their families while Indian women maintained proper homes. To accompany these new values, the Dawes Act also established Indian allottees as citizens of the United States, a move intended to further their assimilation to American ways of

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<sup>177</sup> Henry Dawes, “Past and Present Indian Policy,” Address delivered at the Annual Meeting of the American Missionary Association, Hartford, Connecticut, 1892 in the Henry L. Dawes Papers, Manuscript Division, Library of Congress.

living. As a bonus to whites, the “surplus” Indian lands—that is, any land remaining after every member of the tribe had received an allotment—could then be opened for white settlers. Indians would benefit from this because white neighbors who would model an appropriate lifestyle would hasten the civilization process.

A succession of commissioners of Indian Affairs and members of the Board of Indian Commissioners supported the move for lands in severalty, and by the late 1870s Congress began grappling with the issue. Chief among the champions of allotment was the Women’s National Indian Association (WNIA), a reform group that targeted native women and the family home as the primary site for civilizing the Indian. Dawes, the WNIA, and other supporters of allotment saw private property—land complete with plowed fields and wooden homes—as the answer to the Indian question. This assumption did not, however, require that native women actually gain legal property rights under American law; rather, the belief was that Indian families would adopt the American patriarchal gender order which placed men at the head of the household. Such a vision did not necessitate establishing women as owners of the land on which their home sat, or even the furnishings within. However, the General Allotment Act, particularly after the 1891 amendments to the law, unintentionally granted married native women property rights on a more liberal basis than any other piece of federal land legislation.

While reformers saw allotment as a means to force native peoples to adopt a Christian American way of life, including its legal provisions for governing home and inheritance, the reality of the Dawes Act proved to be a law that established for native women greater federal protection of their property rights than those guaranteed to white



women. The irony, of course, is that native women had not asked for such protection, nor would they have been granted it had they petitioned Congress for such a law.

Many works address the issue of allotment and its aftermath.<sup>178</sup> What none of these works have considered in depth (or even briefly, for the most part) is the particular affect that allotment had on native women. For example, Leonard A. Carlson's *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming*, covers in great detail the ways in which allotment resulted in fewer acres farmed by Indians. What he fails to address is how the attempt to force white ideals about agricultural labor on native peoples impacted tribes where women bore primary responsibility for farming.<sup>179</sup> In *How the Indians Lost their Land* Stuart Banner traces native-white negotiations over land from the purchase of Manhattan Island to allotment. Banner does not consider the different ways in which land loss impacted native women, whether by forcing a shift in gender roles because of changes in agricultural production, as land ownership became a source of power among some tribes.<sup>180</sup> Even Emily Greenwald's fine study of allotment among the Nez Perces and the Jicarilla Apaches fails to include gender as a category of analysis. Greenwald considers the different ways in which these tribes responded to allotment, and how tribal histories impacted their responses, but does not address the

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<sup>178</sup> See D.S. Otis, *The Dawes Act and the Allotment of Indian Lands*, Francis Paul Prucha, ed. (Norman: University of Oklahoma Press, 1973); J. P. Kinney, *A Continent Lost—A Civilization Won: Indian Land Tenure in America* (New York: Octagon Books, 1975); Loring Benson Priest, *Uncle Sam's Stepchildren: The Reformation of United States Indian Policy, 1865-1887*, the Bison Books edition (Lincoln: University of Nebraska Press, 1975); Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984); Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman: University of Oklahoma Press, 1976); Wilcomb E. Washburn, *The Assault on Indian Tribalism: The General Allotment Law (Dawes Act) of 1887*, (Malabar, Florida: Robert E. Krieger Publishing Company, 1986); and Janet A. McDonnell, *The Dispossession of the American Indian, 1887-1934* (Bloomington: Indiana University Press, 1991).

<sup>179</sup> Leonard A. Carlson, *Indians, Bureaucrats, and Land: The Dawes Act and the Decline of Indian Farming* (Westport, Connecticut: Greenwood Press, 1981).

<sup>180</sup> Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2005).

specific ways in which gender roles might have played an important role. For instance, Greenwald looks at Nez Perces' allotment selections, noting the importance of traditional sites to many when choosing their land, but does not question how Nez Perce women's role as procurers of staple foods like the camas root might have also influenced their choices.<sup>181</sup> This chapter focuses on the ways in which lawmakers and reformers viewed native women as they advocated for the adoption of an allotment policy.

### **DON'T BLAME HENRY DAWES: LANDS IN SEVERALTY PRIOR TO THE 1887 GENERAL ALLOTMENT ACT**

Allotment was not a new idea in the 1880s. Some of the earliest treaties between the fledgling United States and native peoples included provisions for private ownership of Indian lands. Typically early allotments were made to individuals, chiefs, traders, or other influential people as a reward for their aid in the treaty-making process.<sup>182</sup> While native women were not a primary consideration in treaty making, at various times they did benefit as recipients of allotment. An 1805 treaty with the Choctaws included a grant of over 5,000 acres to the two daughters of Samuel Mitchell by his Choctaw wife Molly. The Chippewa treaty of 1826 reserved for white traders' wives and children nearly 50,000 acres of land in seventy-seven allotments. Among the Winnebago, treaties of 1829 and 1832 allotted 1,280 acres to Catherine Myott and 640 acres to her daughter, though both women conveyed their lands to male owners.<sup>183</sup>

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<sup>181</sup> Emily Greenwald, *Reconfiguring the Reservation: The Nez Perces, Jicarilla Apaches, and the Dawes Act* (Albuquerque: University of New Mexico Press, 2002).

<sup>182</sup> For a full discussion of pre-Dawes Act allotments see Paul W. Gates, "Indian Allotments Preceding the Dawes Act," in *The Frontier Challenge: Responses to the Trans-Mississippi West*, John G. Clark, ed. (Lawrence: University Press of Kansas, 1971): 141-170.

<sup>183</sup> Gates, "Indian Allotments," 142, 150-152.

In addition to providing allotments for specific women and children, many of the allotment provisions in early treaties included land grants for heads of household, which included widowed women, and for unmarried men and women. For example, the Chickasaw treaties of 1832 and 1834 created allotments of 640 acres for each unmarried adult over the age of twenty-one, and included 320-acre grants for orphans.<sup>184</sup> The provisions for allotment in these early treaties in many ways mirrored the rules that would be established in the Dawes Act, including a system for disposing of excess lands in reserve areas after individual allotments were made.

By the middle of the nineteenth century it had become clear that the process of making individual allotments did little to benefit the native men and women who received them. Much of the land set out as allotments ended up in the hands of white men who conducted business with the tribes, or local whites seeking additional property. Despite this, treaty making continued to include provisions for individual allotments, and by the 1860s the practice had been established to provide for the allotting of entire reservations.

A second tactic for promoting private property ownership among Native Americans emerged in 1875 when Congress, as part of the deficiency appropriation bill, extended the Homestead Act of 1862 to Indians.<sup>185</sup> The provisions of the bill generated little attention in Congress, and made no changes to the categories of people eligible for homesteading benefits. That is, single Indian women gained the right to homestead under this bill, but no provisions were made for married native women. A second Indian Homestead law was passed in 1884. This measure, again adopted without debate as part

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<sup>184</sup> Gates, "Indian Allotments," 145.

<sup>185</sup> *United States Statutes at Large*, 18 Stat. 420 (1875).

of an appropriations bill, clarified that the full homesteading privileges be extended to Indians.<sup>186</sup>

Among the first tribes to adopt, and then act upon, a treaty with provisions for allotment of their reservation was the Omaha of Nebraska. In 1854, as Congress opened the lands of the Nebraska Territory to white settlement with passage of the Kansas-Nebraska Act, the Omahas signed a treaty with the United States government, agreeing to settle on a reservation, the location of which was to be determined by the Omahas.

Among the other provisions of the treaty were those in Article Six, which stipulated that the President could, at his discretion, require the surveying and allotting of the Omaha reservation. The treaty specified that acreages would be granted according to family size, with single Omahas receiving eighty acres each; the treaty entitled families of more than ten to a full section of land (640 acres), plus an extra 160 acres for each additional five family members.<sup>187</sup> As white settlers poured into the newly opened lands of Kansas and Nebraska, the government made provisions for allotment when negotiating treaties with other tribes. In the decade following the Kansas-Nebraska Act at least forty treaties with native peoples included provisions for allotment of reservations, with land grants ranging from eighty to 320 acres per person.<sup>188</sup>

Allotment of the Omaha reservation did not begin until after a subsequent treaty in 1865 revised the terms of parceling out the land. Under the 1865 treaty Omaha women lost significant property rights. Families were to be allotted 160 acres and single men over the age of eighteen were to receive eighty acres; single women lost the land rights

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<sup>186</sup> *United States Statutes at Large* 23 Stat. 96 (1884).

<sup>187</sup> Judith A. Boughter, *Betraying the Omaha Nation, 1790-1916* (Norman: University of Oklahoma Press, 1998), 66-67.

<sup>188</sup> Gates, "Indian Allotments," 162-163.

granted to them under the terms of the 1854 treaty. In terms of absolute loss, few women stood to be affected by this change in property rights. The 1869 census prepared in advance of the allotment process counted only ten single women over the age of eighteen. As the Omaha population grew during the 1860s, women's labor was increasingly in demand, resulting in few single women among the tribe's populace. Despite this, there was at least a cursory attempt to consider the property rights of single Omaha women. In 1867 Omaha agent William Callon called a meeting of the chiefs to discuss the allotment of land to single women. Callon later reported that the men smiled amongst themselves at the discussion, as they doubted there were any single women among them.<sup>189</sup>

Allotment proceeded on the Omaha reservation in 1871, but failed to produce the progress and agrarianism that had been predicted. Agent Edward Painter carried out this first allotment, granting 160-acre plots to over 200 families and nearly 50 individuals. In 1877, following the tragedy of the Ponca removal, the Omahas began to question the security of their land ownership in Nebraska, and fearing that they too would be removed from their homeland, turned to reformer and anthropologist Alice Fletcher for help in securing the title to their land. The Omahas had been told by lawyers that their 1871 land certificates would not protect them from removal.

Fletcher urged the Omaha chiefs to pursue a re-allotment of the reservation that would secure their property rights. Fletcher drafted an appeal to Congress on behalf of the Omaha nation, the petition signed by fifty-three Omaha men, and followed their request for allotment to Washington, D.C. to lobby on their behalf. Fletcher succeeded in persuading Congress to approve the allotment of the Omaha reservation in 1882. The

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<sup>189</sup> Callon to Superintendent Denman, December 17, 1867, cited in David Wishart, *An Unspeakable Sadness: The Dispossession of the Nebraska Indians* (Lincoln: University of Nebraska Press, 1994), 154.

new law provided that those allotted in 1871 could retain their homesteads. Under the terms of the 1882 law single Omaha women regained their property rights, though the smaller acreages provided for in the 1865 treaty remained in place. These provisions meant that single women over the age of 18 gained the right to 80 acres, the same amount allowed adult single men, with parcels of 40 acres set aside for orphans and other minors.

The allotment of the Omaha reservation set an important precedent for national Indian policy in many respects. White reformers lauded the Omahas as an example of the civilizing potential of allotment, with much disregard for actual conditions on the reservation in favor of glowing reports of success. The move for a general allotment law that could be applied on all Indian reservations grew in strength in the 1880s.

### **THE WOMEN'S NATIONAL INDIAN ASSOCIATION AND THE DEMAND FOR LANDS IN SEVERALTY**

The Women's National Indian Association (WNIA), under the capable leadership of Amelia S. Quinton, emerged as a key proponent of lands in severalty in the 1880s. Though composed of women activists, the WNIA was not a women's rights group. In all of its agitation for allotment, the WNIA did not advocate the policy as a means of liberating native women. The WNIA vision for native women closely adhered to traditional nineteenth-century gender roles; their reform efforts centered on training Indian women to be model housewives while their husbands farmed the family homestead. Allotment aligned perfectly with WNIA goals, for it meant not only the establishment of white values in regards to property ownership, but also constructed the proper family framework necessary for molding native women into proper white women.

Quinton and other WNIA reformers believed that the solution to the “Indian problem” lay in the civilization of Indian women and the nurturing of their “womanly talents.”<sup>190</sup>

Initially the WNIA focused its attention on the legislative process as a means to improve conditions for all native peoples. Quinton declared shortly after the group’s founding that the women held as a goal “petitioning the Government to . . . guard the Indians in the enjoyment of all the rights guaranteed to them on the faith of the Nation.” She further explained that the WNIA’s aims aligned with the efforts of other national groups like the Boston Citizenship Committee, declaring it “most fitting, therefore, that our society, a national patriotic federation of Christian women, bound by no creed, party or section, should work among Indians, and directly for the upbuilding of the home and family . . . Indian women need us now, not alone for work in our National Capitol, but in their homes.”<sup>191</sup> Quinton clearly viewed the work of the WNIA as two-fold, serving a political purpose for lobbying and fulfilling the practical need of providing instruction about domestic concerns to native women. By 1885, however, the WNIA had shifted its effort from political involvement and petitioning to a more hands-on approach that included establishing missionaries on Indian reservations and a home loan fund meant to aid young Indian families in building American homes on their reservations. Quinton noted this shift at the 1885 Lake Mohonk meeting, declaring that they no longer “sen[t] to

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<sup>190</sup> Helen M. Wanken, “*Woman’s Sphere*” and *Indian Reform: The Women’s National Indian Association, 1879-1901* (Ph.D. dissertation: Marquette University, 1981): 5.

<sup>191</sup> Quoted in Sister Mary Antonio Johnston, *Federal Relations with the Great Sioux Indians of South Dakota, 1887-1933, with Particular Reference to Land Policy Under the Dawes Act* (Washington, D.C.: The Catholic University of America Press, 1948), 59.

Congress great popular petitions.” “We have learned more direct methods of work,” she declared.<sup>192</sup>

In the early 1880s, however, the WNIA proved to be one of the most effective lobbying voices on behalf of Indian reform efforts. Their first petition drive resulted in the submission of a petition with 13,000 signatures to President Rutherford B. Hayes and Congress in February 1880. The petition urged Congress to “prevent the encroachments of white settlers upon the Indian Territory, and to guard the Indian in the enjoyment of all the rights which have been guaranteed to them on the faith of the nation.”<sup>193</sup> The following year Quinton and the WNIA increased their efforts and acquired 50,000 signatures on a petition that again requested that Congress fulfill its treaty obligations to the Indians.<sup>194</sup>

The third petition marked a new approach for the women of the WNIA. Where the 1881 petition specified that “we do not suggest any political policy to be pursued,” the 1882 petition clearly advocated new policies for administering Indian affairs, and for the first time, called for the allotment of lands in severalty.<sup>195</sup> Quinton and five other women presented this petition, boasting over 100,000 signatures, to President Chester A. Arthur, the massive document decorated with red, white, and blue ribbons; this gesture earned the ladies contempt in Congress, where Colorado’s Senator Henry Teller denounced the petition “covered with its fine cloth and bound in its ribbons.” As the

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<sup>192</sup> Amelia S. Quinton, “Woman’s Work for the Indian,” *Proceedings of the Third Annual Lake Mohonk Conference of the Friends of the Indian, held October 7 to 9, 1885* (Philadelphia: Sherman & Co. Printers, 1886), 48.

<sup>193</sup> *Congressional Record*, 46<sup>th</sup> Congress, 2<sup>nd</sup> Session (February 20, 1880), 1044.

<sup>194</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 29, 1881), 1073.

<sup>195</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 29, 1881), 1073, and *Congressional Record*, 47<sup>th</sup> Congress, 1<sup>st</sup> Session (February 20, 1882), 1326-1327.



discussion over the petition concluded, its physical appearance prompted this exchange between Senator John Ingalls of Kansas and Dawes:

**Mr. INGALLS.** Did the Senator with the motion to refer include a motion to print all that mass of material?

**Mr. DAWES.** I did not intend that, I only meant that the petition should be printed without the names which I read.

**Mr. INGALLS.** I hope that the embroidered napkin in which the petitions are pinned, and the red, white, and blue ribbons by which they are tied, may be tenderly preserved in the archives of the Senate. [Laughter.]

**Mr. DAWES.** I hope the red, white, and blue will not be a red flag in the face of any Senator living on the border.<sup>196</sup>

While Dawes attempted to conclude the matter in favor of the WNIA, the ladies' patriotic gesture of dressing the large bundle of papers proudly bearing the signatures of citizens who supported their efforts failed to impress the Senate.

Petitioning was a tried and true method for women's involvement in political questions during the nineteenth century.<sup>197</sup> The WNIA's use of this tactic revealed their leaders' familiarity with the strategies used by women's organizations for decades. It is important to note, however, that on policy questions relating to land ownership, women engaged in widespread petitioning only as related to Native American property rights. As noted in the previous chapter, while Congress received numerous petitions from citizens advocating U.S. occupation of the Oregon Country and thousands of petitions in support of a free land measure in the 1850s, women very rarely signed these pleas. This was not the case for petitions requesting that Congress adopt the policy of lands in severalty for the country's indigenous population. Women not only signed these petitions, they

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<sup>196</sup> *Congressional Record*, 47<sup>th</sup> Congress, 1<sup>st</sup> Session (February 20, 1882), 1330.

<sup>197</sup> See Susan Zaeske, *Signatures of Citizenship: Petitioning, Antislavery and Women's Political Identity* (Chapel Hill: University of North Carolina Press, 2003); Lori D. Ginzberg, *Women and the Work of Benevolence: Morality, Politics and Class in the Nineteenth-Century United States* (New Haven, Connecticut: Yale University Press, 1990) and Ginzberg, *Untidy Origins: A Story of Woman's Rights in Antebellum New York* (Chapel Hill: University of North Carolina Press, 2005).

frequently authored them and oversaw the process of obtaining signatures. This marked difference in women's participation in land policy petitions suggests that women were not actively involving themselves in political agitation over the public lands. However, when land policy was wrapped up in an appropriately feminine reform effort such as the Indian question, women eagerly participated in petition drives and affixed their signatures to the documents in large numbers.

Despite the overtly political work of petitioning, a thread of domesticity and maternalism continually characterized both the work and rhetoric of the WNIA. At the 1885 Lake Mohonk conference Senator Dawes referred to the women of the WNIA as having “born and nursed” the policy of urging Congress to uphold its treaties with Indian nations.<sup>198</sup> Quinton envisioned the work of the WNIA as being particularly on behalf of native women, and undertaken as a duty to the “ever-endangered Indian women.” The cries of Indian women and children, Quinton declared, fell on the ears and hearts of “patriotic, Christian women,” who took up the cry and beseeched the men of Congress to provide for Indian women the “sacred shield of law.” Quinton appealed to Congress by reminding them that the signatures on the WNIA petition represented women's proper domestic roles, the “sisters, wives, and mothers of th[e] nation.”<sup>199</sup>

The WNIA would even more emphatically emphasize their domestic efforts after the 1885 decision to shift to a more direct method to achieve change than the previous use of political petitioning. This new approach emerged in the form of the home loan fund began in 1884 under the leadership of Sara Kinney. Kinney and the WNIA saw the

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<sup>198</sup> “Address by Hon. H. L. Dawes, United States Senator, at the Mohonk Conference, October 1885,” published by the Women's National Indian Association, Philadelphia, Pennsylvania in the Henry L. Dawes papers, Library of Congress.

<sup>199</sup> *Congressional Record*, 47<sup>th</sup> Congress, 1<sup>st</sup> Session (February 20, 1882), 1327.

establishment of single-family dwellings on the reservation as particularly important to civilizing the Indians. Much of Kinney's inspiration for this vision of establishing proper American domesticity on the reservation came from Alice Fletcher's address to the 1884 Lake Mohonk conference. In this speech Fletcher advised that reformers should aid young Indian couples who had been educated at eastern boarding schools in establishing proper Christian homes for nuclear families when they returned to their reservations. This aid would, according to Fletcher, prevent these young couples from abandoning the civilized way of living they had learned, and would also establish them as examples for other Indian families on their reservations.<sup>200</sup>

Kinney heeded Fletcher's advice and proposed to the Commissioner of Indian Affairs that the WNIA pilot its home loan fund on the Omaha reservation, which had already been allotted. The loans would be used to help young married couples who were graduates of Indian boarding schools to establish "modest little homes."<sup>201</sup> The first couple to benefit from this program was Philip and Minnie Stabler, graduates of the Hampton Institute who had returned to their home on the Omaha reservation.

The home loan fund perfectly illustrates the ways in which the WNIA emphasized proper American domesticity, and the belief that such a status relied upon the ownership of private property. Couples who applied for loans had to be approved by a committee of the WNIA, their good character serving as collateral for the loan. In addition, the WNIA required that loan recipients provide detailed plans for the home, as well as price quotes for lumber and furnishings. The WNIA oversaw from a distance every aspect of the

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<sup>200</sup> Wanken, *Woman's Sphere*, 153-154.

<sup>201</sup> Quoted in Wanken, "Woman's Sphere," 157. For more on the WNIA's home loan fund see Peggy Pascoe, *Relations of Rescue: The Search for Female Moral Authority in the American West, 1874-1939* (New York: Oxford University Press, 1990).

home building project, from its inception to, one imagines, the proper exercise of family values within its walls after completion.

Kinney shared a story with the 1887 Lake Mohonk conference attendees that illustrated the civilizing power of the home. In this case an Indian man had applied for a loan so that he could improve his home and his wife could learn to “make white woman’s bread.” His wife objected to the improvements, including the kitchen and its new stove, but, according to Kinney, she soon succumbed to the “right influence,” and “began to feel disturbed because of the grease spots on the new pine floor, and a scrubbing brush was brought into requisition.” This step forward caused the woman to then notice that where her floors were clean, her own appearance was not, and so, she submitted herself to the same scrubbing the floors had received. “By degrees,” Kinney related, “she has lost many of her slovenly ways, and last account she was learning to make ‘white woman’s bread.’”<sup>202</sup> This one woman encapsulated the goals of the WNIA and the ways in which the loan fund could accomplish those goals. Personal property—in this case the home—inspired the native woman to take pride in her surroundings, and in maintaining a proper sense of order and cleanliness in her home, which was then reflected in her person as well.

The WNIA was not alone in its assertion that private property and proper homes were key to the project of civilizing the native population in the United States. Other reform groups and missionary societies also supported the allotment of Indian lands in severalty as key to solving the Indian problem. In 1885 the New Bedford, Massachusetts chapter of the Indian Rights Association wrote to Senator Coke in support of then-pending allotment legislation, declaring that establishing the principle of private property

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<sup>202</sup> Quoted in Wanken, *Woman’s Sphere*,” 167-168.

among the Indians would “go far to promote the civilization of the Indian tribes” and settle the Indian question with “justice and humanity.”<sup>203</sup> William Hare, an Episcopal bishop and missionary to the Sioux Indians wrote to Coke in 1880, urging him to continue his push for allotment legislation. Hare cited his seven years’ experience working with the Sioux as basis for his claim that allotment of lands in severalty was “of the first importance to the amelioration of the condition of the Indians and the protection of their rights, and the reconciliation of their interests and the white man’s.”<sup>204</sup> Petitions in favor of allotment continued to pour into the Senate Committee on Indian Affairs until the passage of the General Allotment Act in February 1887.

### **INVISIBLE WOMEN: CONGRESS AND THE GENERAL ALLOTMENT ACT**

Congress began debating different variations on an allotment law in 1880. In all of these discussions, Congress virtually ignored native women, who seemed to be invisible to the body of male legislators who created laws that would significantly alter their lives. Native women appeared only briefly in the course of the debates, and only as wives; single native women are entirely absent from the Congressional discourse.

Married native women appear in the Congressional discussions first as vague impressions, gathered from the suggestions about family that peppered the debates. Senator George Pendleton’s defense of the bill included the justification that allotment “means to encourage the idea of the home; it means to encourage the idea of family; it

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<sup>203</sup> New Bedford, Massachusetts Indian Rights Association to Richard Coke, January 15, 1885, papers of the Senate Committee on Indian Affairs, RG 46, NARA.

<sup>204</sup> William Hare to Richard Coke, February 21, 1880, papers of the Senate Committee on Indian Affairs, RG 46, NARA.

tends to break up the tribe; it tends to build up the home; it tends to anchor the family, and it tends to encourage the love of home and family. . . .”<sup>205</sup> While specific references to women as wives or mothers is absent from Pendleton’s declaration, the specter of a native female presence lurks around the peripheries of his speech, hinting that within the home and family there must be a female presence.

At other times native women appear only by their pointed absence. Alabama’s Senator John Morgan referred to the ability of “a boy” to get forty acres of land, or more if over the age of eighteen, and the rights of an Indian man to 160 acres of land if he is the head of a household, but did not recognize the right of single native women to claim their fair share of allotment acreage.<sup>206</sup> Yet Morgan went on to note the absence of women in Section Nine of the proposed bill, which required the approval of two-thirds of the adult male population of the tribe before allotment could proceed. Senator Morgan connected this oversight to the issue of property ownership, a topic that he would return to. Morgan queried the bill’s author, Senator Richard Coke of Texas, as to why the requirement included only men over the age of twenty-one. “The women are not represented at all,” he declared, “and yet they are the owners of a large part of the Indian property.”<sup>207</sup> Morgan’s recognition of women as property owners stemmed not from his desire to protect the rights of native women, but from his concern that men were not properly included in native inheritance practices.

When married native women did draw the attention of lawmakers, it was not as married women, per se, but as potential inheritors. It was again Alabama’s Senator Morgan who raised the issue, asking who would define the “head of a family” for

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<sup>205</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 25, 1881), 906.

<sup>206</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 20, 1881), 785.

<sup>207</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 28, 1881), 1000.

purposes of allotting lands. Morgan demanded to know if the law referenced “the head of a civilized family or a savage family,” and reminded his peers that native family structures often did not mirror those of American households. He went on to explain:

Sometimes with one of the tribes the mother is the head of the family; sometimes the husband is the head of the family; and when a man dies leaving a brother, that brother adopts the whole of the family and becomes the head of it. When we speak of ‘the head of a family,’ of course, under this act, I understand we mean the head of a civilized family; but the Indians do not recognize that.<sup>208</sup>

Morgan then listed the various concerns that stemmed from the vaguely defined term, noting that laws of descent and inheritance were most vulnerable to misinterpretation and misapplication when applied to native families. Morgan followed his concerns with the introduction of an amendment to the bill that specifically addressed the practice of polygamy among Indian populations, making provisions for inheritances that would be complicated by the existence of multiple wives.

Morgan proposed that in cases of polygamy, the wives should be registered according to the order in which they were married, and that “all such wives of the polygamic family shall inherit property as daughters.” Morgan’s amendment further provided that all polygamous marriages contracted after receiving an allotment would be void. Morgan justified his amendment with his an analysis of native inheritance practices, noting that among many tribes inheritance of personal property occurred through the female line and that Indian laws “cut off the male members of the family entirely from inheritance.”<sup>209</sup> Morgan’s attitude reveals that his problem was not with the practice of polygamy, but rather with an inheritance system that did not mirror American

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<sup>208</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 25, 1881), 912.

<sup>209</sup> *Congressional Record*, 46<sup>th</sup> Congress, 3<sup>rd</sup> Session (January 28, 1881), 997-998.

law and did not ensure the passage of property—real or personal—to the male line. Morgan’s amendment received the approval of his fellow Senators. This 1881 version of the allotment act did not, however, become law, and Morgan’s discussion of women and polygamy marked the end of Congressional consideration of native women in relation to allotment until revisions to the 1887 act were approved in 1891.

### **A NATIVE AMERICAN MARRIED WOMEN’S PROPERTY ACT?: THE 1891 REVISIONS OF THE DAWES ACT**

The General Allotment Act of 1887 emerged out of three previous attempts at such a measure, and with the exception of the debates in 1881, Congress did not address the impact of allotment on native women in any of their discussions. They were not alone. The WNIA, the IRA, the Commissioner of Indian Affairs, the Board of Indian Commissioners all advocated the allotment of Indian lands in severalty, yet none specifically argued for or against the right of women, married or single, to be beneficiaries of allotment. It was not until after the law had been adopted and put into practice on several reservations that these friends of the Indian began to consider how native women were impacted.

Certainly the Commissioner was not unaware that tribes themselves expressed concern about native women and allotment. In his annual report of 1886 Commissioner J. D. C. Atkins noted that “For the last five years attention has been called to the condition of affairs relative to the estates of deceased and female allottees under the provisions of the Kickapoo treaty of June 28, 1862 . . . .”<sup>210</sup> The Kickapoos, an

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<sup>210</sup> *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior*, (Washington, D.C.: Government Printing Office, 1886), XLV.



Algonquian tribe, had continually been pushed westward, out of their traditional homelands in the Great Lakes region and into Illinois and then Missouri. In 1832 the Kickapoos in Missouri agreed to a treaty that established a reservation for them in Kansas, and a portion of the tribe, under the religious leadership of Kenekuk, relocated to the northeastern corner of the Kansas Territory, where they claimed nearly 20,000 acres of land. The influx of settlers into Kansas, particularly after passage of the Kansas-Nebraska Act in 1854, threatened Kickapoo sovereignty over their land, and the combined interests of settlers and the railroad prompted a new treaty in 1862 that provided for allotment of the reservation. The Kickapoos actively resisted allotment, and even those who eventually accepted lands in severalty challenged some of the provisions.<sup>211</sup>

One of the primary objections that the Kickapoos made to the operation of the allotment process established by the 1862 treaty stemmed from its failure to allow for women to receive land. The Kickapoos are a patrilineal society, so it is unlikely that their insistence on female property rights reflected traditional practices among the tribe. It is likely instead that the faction of the Kickapoos that accepted allotment, many of them converts to Christianity, recognized the need to protect their land by ensuring that women could receive allotments. Kickapoo women apparently received allotments, but could not gain legal title to them, because they did not meet the requirements of the treaty. Price explained in a letter to President Arthur that women could not appear in district court and take the oath of citizenship, nor could they receive the patent that established their legal

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<sup>211</sup> Phillip M. White, *The Kickapoo Indians, Their History and Culture: An Annotated Bibliography* (Westport, Connecticut: Greenwood Press, 1999), xxii-xxiii. For an account of the controversy over the 1862 allotment treaty see A.M. Gibson, *The Kickapoos: Lords of the Middle Border* (Norman: University of Oklahoma Press, 1963), 124-140.

right to the land, because the treaty only allowed for men, whether single or heads of household, to receive the patents. Price objected to this practice, declaring that “as many of [the women] are sufficiently intelligent and prudent to control their own affairs,” they should be allowed to obtain patents to their allotments.<sup>212</sup>

The Kickapoos first lodged their complaints with the Office of Indian Affairs in 1881, when Commissioner of Indian Affairs Hiram Price noted in his annual report that no provision had been made “by which female allottees can become citizens and obtain patents for their land.”<sup>213</sup> For the next five years this issue remained in the annual report. In 1882 Price prepared a bill to amend the allotment eligibility requirements. The Senate considered and passed the bill, but no action occurred in the House. The bill was reintroduced every year until it received the approval of both chambers in 1886. Under the revised law, the terms of the treaty establishing allotment were “extended to all adult allottees under said treaty, without regard to their being ‘males and heads of families,’ and without distinction as to sex.”<sup>214</sup> There was no debate over the measure, and no indication that Congress objected to extending property rights to native women.

Just as the Kickapoos challenged the terms of allotment, other tribes also registered their protests of not only allotment itself, but the particulars for enacting the law. Almost immediately following passage of the 1887 act there came a demand from native peoples to equalize allotments. In his annual report for 1889 Commissioner Thomas J. Morgan noted that some Indians were demanding that “each individual

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<sup>212</sup> “Message from the President of the United States, transmitting a communication from the Secretary of the Interior, with draft of a bill, in reference to the settlement of the estates of deceased Kickapoo Indians in the State of Kansas,” Senate Executive Document 55, 47th Congress, 1st Session (January 18, 1882), 2.

<sup>213</sup> *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior* (Washington, D.C.: Government Printing Office, 1881) LVI.

<sup>214</sup> *United States Statutes at Large* 24 Stat. 219 (1886).

without regard to age, including married women, should secure the same quantity of land.” Morgan agreed with this assessment, citing the “looseness of the marriage relation among many of the tribes” as a complicating factor that left married women particularly vulnerable, as they were not guaranteed their own property and could, at any time, find themselves unmarried and without land. Morgan also argued that because reservations were the common property of all members of the tribe, that everyone should receive an equal allotment as their fair portion of that common heritage.<sup>215</sup>

That same year the Board of Indian Commissioners (BIC) echoed Morgan’s recommendations. The BIC cited the Sisseton Indians of South Dakota as resisting allotment in large part because they opposed the unequal acreages. The BIC reported that the Sissetons argued that “This reservation is our common property; we, our wives and our children have a right to an equal share in it.” The BIC also turned to that well-known Indian and allotment expert, Alice Fletcher, for advice on the matter. Fletcher argued that the allotments should be equalized for two reasons. First, the smaller portions provided for young children and orphans left them without enough property to establish themselves as farmers, while the old men could not manage the full 160 acres they had been allotted. Second, Fletcher argued, “by the present allotment the women are losers.” The ease of divorce within many tribes placed married women at risk of being left without access to any land, and furthermore, women were “as truly heirs to the tribal heritage as men,” but through allotment were prevented from owning any piece of that heritage if they were married.<sup>216</sup>

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<sup>215</sup> *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior* (Washington, D.C.: Government Printing Office, 1889), 17.

<sup>216</sup> *Annual Report of the Board of Indian Commissioners*, in the *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior* (Washington, D.C.: Government Printing Office, 1889), 802.

Fletcher had first encountered native complaints about the lack of allotments for married women during her work with the Omahas in Nebraska. In her report to the Commissioner of Indian Affairs after completion of allotment on the Omaha reservation, Fletcher noted that her attempts to explain inheritance and property laws to the Omahas as she parceled out their lands met with objections to the exclusion of married women. The Indians did not understand the reason for “the absorbing of the wife’s rights to land in that of her husbands, it seeming unjust to the Indian that the wife should not possess land distinctive from her husband, she being as responsible as he regarding the family.”<sup>217</sup> Fletcher’s support for allotments to married women no doubt stemmed in part from this early experience with the process, as well as her own sympathies for the women’s rights movement.

Congress responded quickly to these recommendations. In March 1890 Senator Dawes introduced a bill to amend the 1887 General Allotment Act. The amendments generated almost no debate in the House or Senate, and were adopted as law on February 28, 1891. The language of the amendments does not, in fact, specifically include married women, though it is clear that they were intended to benefit from the change. The new legislation amended the original act so that all Indians were entitled to eighty acres of land, maintaining in essence the total land amounts by granting married women eighty acres to accompany the eighty granted to their husbands.

Congress demonstrated here, as they had demonstrated in their adoption of the amendments to the Kickapoo treaty, their inability to see native women, even when dealing with legislation that directly impacted them. This was not always the case. In a

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<sup>217</sup> Alice Fletcher to the Commissioner of Indian Affairs, June 1884 in the Alice C. Fletcher Papers, Smithsonian Anthropological Archives. (Hereafter Fletcher Papers, NAA)

surprising turn of events, Congress had, in 1888 adopted a law that directly impacted marriage and citizenship for native women. While the measure easily passed both chambers of the legislature, it did force Senators and Representatives to directly address these issues as they related to native women. The adoption of this bill also paved the way for the 1891 revisions to the Dawes Act.

Henry Dawes introduced “An act in relation to marriage between white men and Indian women,” to the Senate in December 1887, just 10 months after the passage of the General Allotment Act. This bill established that white men who married Indian women did not acquire rights to tribal properties simply by marrying a woman of the tribe, as well as specifying that native women who married white men became U.S. citizens by virtue of that union. The citizenship provision very specifically protected native women’s rights to their tribal property, however, declaring that citizenship did not “impair or in any way affect the right or title of such married woman to any tribal property or any interest therein.”<sup>218</sup> This bill suggests that Dawes, despite his belief that allotment had the power to turn native women into white men, believed that there should be specific protections for Indian women’s property. The timing of the bill suggests that Dawes feared white men would use the new allotment law as a method of obtaining land by entering into marriages with Indian women, and he hoped to prevent such an abuse. Arkansas’s Representative John Henry Rogers’ explanation of the bill’s origins support this contention. Rogers explained that the proposed law “proceeds upon the theory that the worst element to be found among the Indian tribes is that class of white men who are

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<sup>218</sup> *United States Statutes at Large* 25 Stat. 392 (1888).

willing to sacrifice everything like civilization for the purpose of getting beyond the law and gaining head-rights among the Indian tribes beyond the jurisdiction of the courts.”<sup>219</sup>

The bill generated very little debate, particularly in the Senate where it was passed with no discussion. In the House of Representatives, a brief explanation of the bill and the rationale behind it revealed that beliefs and assumptions about whiteness, civilization, and marriage persisted. In questioning the benefit of making U.S. citizens of Indian wives, one representative suggested that the union between a white man and an Indian woman should not be seen as a tool to civilize the Indian, because it was generally the worst sort of white man who entered into such arrangements. These men entered Indian lands and “come out of there in a year with feathers in their hats, revolvers buckled around them, and a pair of Texas spurs, whooping and yelling whenever they can get drink.” It took more than marriage to produce civilization, according to Representative Rogers. White-Indian marriages had to be conducted in the States, not among the Indians, in order to produce a civilized couple.<sup>220</sup>

While most of the House agreed that these marriages should not be seen as a primary way of civilizing native populations, they were, according to one representative, preferable to marriages between full-blooded Indians, unions that would produce full-blooded Indian children. George Adams (Illinois) asserted that “the white man who goes into the Indian nation and marries an Indian woman, however degraded he may be, is likely to be more an instrument of civilization than a full-blooded Indian.” Adams also registered his belief that the United States should have nothing to do with the question if the goal of the law was to discourage white-Indian marriages for “the moral welfare of

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<sup>219</sup> *Congressional Record*, 50<sup>th</sup> Congress, 1<sup>st</sup> Session (July 26, 1888) 6885.

<sup>220</sup> *Congressional Record*, 50<sup>th</sup> Congress, 1<sup>st</sup> Session (July 26, 1888), 6886.

the Indian woman.”<sup>221</sup> Adams, though in the minority, articulated the ongoing assumption that was common in settler colonialism, that is, the ability to civilize indigenous populations through intermarriage with whites. Katherine Ellinghaus notes that “Interracial relationships could . . . be perceived to be a way of getting rid of a distinct group of people by ‘absorbing’ their indigenous identity. Assimilation could occur at two levels—cultural assimilation that focused on living conditions as a means of making natives white, and “biological absorption,” whereby interracial relationships could eradicate the physical characteristics of the indigenous population. While most American reformers did not emphasize the later method of assimilation, they did not discount it either.”<sup>222</sup>

This 1888 legislation on marriages between native women and white men reveals that Congress did not actively seek to protect Native American women’s property rights. Only when the topic was tied to the rights of white men, did Congress directly address these property rights. In light of this, it is not surprising that the 1891 revisions to the Dawes Act extended married women’s property rights to indigenous women as an incidental perk rather than an intentional protection.

Historians have typically examined these revisions as they impacted the rights of Indian allottees to lease their land. This same legislation, however, extended allotment

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<sup>221</sup> *Congressional Record*, 50<sup>th</sup> Congress, 1<sup>st</sup> Session (July 26, 1888), 6887.

<sup>222</sup> Katherine Ellinghaus, *Taking Assimilation to Heart: Marriages of White Women and Indigenous Men in the United States and Australia, 1887-1937* (Lincoln: University of Nebraska Press, 2006) xvii, xxiv-xxv. See also Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford: Oxford University Press, 2009); Margaret Jacobs, “The Eastmans and the Luhans: Interracial Marriage between White Women and Native American Men, 1875–1935,” *Frontiers* 23 (2002): 29-54; Albert Hurtado, *Intimate Frontiers: Sex, Gender, and Culture in Old California* (Albuquerque: University of New Mexico Press, 1999); Patrick Wolfe, “Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era,” *Social Analysis* 36 (October 1994): 93-152; and Patricia Grimshaw, “Interracial Marriages and Colonial Regimes in Victoria and Aetearoa/New Zealand,” *Frontiers* 23 (2002): 12-28.

rights to married native women, thereby establishing a second federal law that implicitly (though not explicitly as they had in the 1850 Oregon Donation Act) recognized married women's property rights. In this case Native American women gained rights that exceeded those granted to white women under the Oregon Donation Act. The provisions of the newly revised allotment law did not require the husband and wife to maintain a single residence, or choose adjoining allotments. Where the Oregon Donation Act specified which portion of the total land grant belonged to the wife, under the revised Dawes Act, native married women could claim their land wherever they wished, independent of their husband's acreage. In this sense, the Dawes Act proved to be a much more liberal policy for married women than the Oregon Donation Act had been for white women, though that was certainly not the intent of lawmakers. The extensive freedom in selecting and maintaining property that native women gained under the Dawes Act would not always translate to actual liberties when allotment was carried out on individual reservations (as will be seen in Chapter 7). The Office of Indian Affairs and the allotting agents appointed by the Commissioner of Indian Affairs retained the ability to institute rules that restricted, and at times contradicted, these broad provisions of the Dawes Act.

The key similarity between the Oregon Donation Act and the General Allotment Act lay in the assumption that civilization dwelled within the walls of proper American homes. Where the Oregon bill sought to establish white American families on the land in the West, the 1891 revisions to the Dawes Act sought to further efforts to civilize Indians, in part by establishing private ownership of land on which to build and maintain a home



that mirrored American ideals of domesticity. In both processes, women bore the burden of responsibility for creating these reflections of civilized living.

In this way, Henry Dawes was not so far off the mark when he declared in 1895 that allotment provided a way for native women to become white men. Their access to property in their own right protected them from native and white men. White men lost any incentive to marry native women simply for access to reservation land, and native women were prompted to become full American citizens by virtue of their land ownership. While native women had certainly not become white men in the sense that Dawes suggested—they still lacked basic rights, such as suffrage, that white men enjoyed—they were certainly one step closer to becoming white women, at least in the eyes of the women and men who argued so vehemently that the allotment of lands in severalty was necessary to civilize the Indian.

PART II

PROPERTIED WOMEN:  
THE OPERATION OF FEDERAL LAND LAWS IN THE WEST

**CHAPTER 5**  
**“POOR AND DEPENDENT ON A MAN”:**  
**FEMALE PROPERTY OWNERSHIP UNDER THE OREGON DONATION ACT**

In 1852 Martha Read, Mary Colby and Lydia Rudd all settled with their husbands in the Oregon Territory on acreage they claimed under the provisions of the Oregon Donation Act. Read, Colby, and Rudd all became the legal owners of one-half of the land, but property ownership meant very different things to each of them.

Martha Read made the journey to Oregon reluctantly. In a letter to her sister dated just before the family departed its Illinois home, she wrote that “Clifton [her husband] was bound to go and I thought I would go rather than stay here alone with the children I spoke about going there to stay with you but Clifton thought it want [sic] best he thought we had better all hang out together and then we should not be a worrying about each other.” Martha continued her lament about the move, declaring her hopes to “live to see the day to come back and live among you.”<sup>223</sup>

Martha wrote much about their land claim, but not in terms of personal ownership. She described her husband’s realization that “he had a right to a home as well as the rest of the folks” and his decision to make “his claim of 320 acres of land.” Martha’s letters indicate that while she was clearly a partner in the work of settling the claim, she did not consider herself a land owner. The claim was her husband’s, as was the initial decision to settle in Oregon. Their home, however, Martha viewed in terms of “we” when she told her sister “we are building a small frame house” and “we have got a

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<sup>223</sup> Martha S. Read to Lorinda Sheldon, April 16, 1852, printed in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1852*, Volume 5, Kenneth L. Holmes, ed., Bison Books edition (Lincoln: University of Nebraska Press, 1986), 210.

good well of water.”<sup>224</sup> For Martha, any sense of ownership tied to the Oregon landscape came attached to the domestic and the family domicile, not the farming of the land.

Mary Colby’s relationship to the land differed markedly from Martha Read’s. While it is possible that Mary too was a reluctant emigrant, she soon grew attached to the land. Mary and her husband Elias made the overland journey to Oregon in 1850. Mary seemed excited about the journey, remarking in a letter to her brother and sister that she planned to “enjoy the trip first rate.”<sup>225</sup> After settling on their claim in Marion County, Mary again wrote to her siblings, and shared with them that she had initially not liked Oregon. Her disposition changed “after we had taken our claim,” she declared, and having settled on the land she remarked that she liked it more and more the longer she lived there.<sup>226</sup>

Property ownership seems to have meant more to Mary than it did to Martha, though Mary never directly references her legal ownership of half the claim. She does, however, speak of the land in terms of “we” and “our” and brags to her siblings that “we shall ere long be as well off[f] for property as some of the rest of the family think they are and if I do not get what honestly belongs to me.” It appears that Mary’s family had argued over an inheritance, given her cryptic comment here and a later remark. Mary’s description of their claim included her statement that “we have about 140 acres of our land under fence,” followed by a description of their log cabin and plans to one day build a frame house. The cabin did not bother her, she insisted, for it was come by honestly and she “had rather live in a log cabin and have enough to eat and drink and wear than

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<sup>224</sup> Read to Sheldon, *Covered Wagon Women*, 250.

<sup>225</sup> Mary M. Colby to Brother and Sister, May 6, 1850, printed in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1850*, Volume 2, Kenneth L. Holmes, ed., Bison Books edition (Lincoln: University of Nebraska Press, 1983), 49.

<sup>226</sup> Colby to Brother and Sister, *Covered Wagon Women*, 49.

have a large house and fine furniture and know that it is bought with money that I had cheated out of my poor brother and sisters.”<sup>227</sup> Whatever the family drama, it is clear from Mary’s letters that she valued property ownership. Further, Mary’s letters also reveal that she viewed the land upon which she and Elias settled on in Oregon as being their property, unlike Martha Read’s view of the claim as her husband’s land.

Lydia Rudd’s understanding of land and property rights marked the opposite extreme of Martha Read’s. Lydia and Harry Rudd left their Michigan home in 1852 to travel to Oregon for the express purpose of making a land claim through the Donation Act. Lydia eagerly embraced the move, noting that as she viewed the last reminder of civilization at St. Joseph, Missouri, she turned and “with good courage and not one sigh of regret” began the journey on her pony, Samy.<sup>228</sup> Later in the journey Lydia described meeting a group of five men who were waiting to cross a stream just at the point where they had buried a member of their party. These were, in Lydia’s words, “the persevering kind” who wanted to go to California “more than I do.”<sup>229</sup> Though the journey for the Rudds was marked by illness for both of them and much of their wagon train, Lydia’s diary of the journey remained remarkably upbeat. It was not until the journey’s end that a sense of despair seemed to grip her. This arose when she noted that Henry had become a partner in the mercantile business at Burlington.

Henry’s taking up of an occupation signaled to Lydia that “we shall not make a claim after all our trouble in getting here on purpose for one.” What was most devastating about this in Lydia’s mind was that not owning her own land in Oregon

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<sup>227</sup> Colby to Brother and Sister, *Covered Wagon Women*, 52.

<sup>228</sup> Lydia Allen Rudd, “Notes by the Wayside en route to Oregon, 1852,” printed in *Women’s Diaries of the Westward Journey*, Lillian Schlissel, editor, (New York: Schocken Books, 1982), 188.

<sup>229</sup> Rudd, “Notes by the Wayside,” 190.

meant that she would “have to be poor and dependent on a man my life time.”<sup>230</sup> Lydia, unlike Martha and Mary, clearly relished the prospect of being a land owner. While we do not have any record of her time following the conclusion of her diary in October 1852, the historical record assures us that Lydia’s trip was not made in vain. She and Henry settled on a claim in Linn County on November 17, 1858. The couple received their patent on the 321.35 acres in December 1862, at which point Lydia became owner of the northern half of their claim.<sup>231</sup>

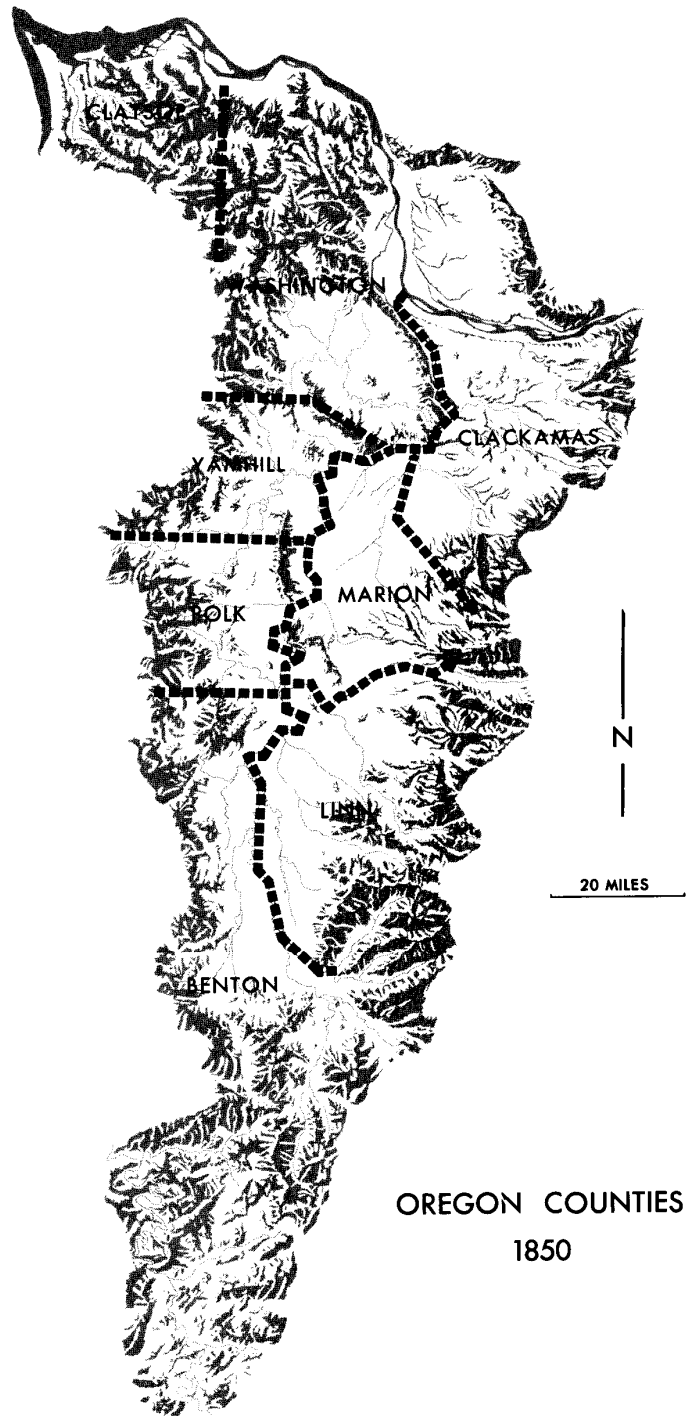
The differing attitudes toward land ownership demonstrated by these women reflect the range of responses that married women had to their newly-created property rights in Oregon Territory. This chapter examines women on Donation Land claims in Marion, Linn, and Clackamas counties. (See Figure 5.1) These three Willamette Valley counties compose nearly a third of all donation land claims in Oregon. The analysis of these claims suggests that women did not necessarily view the right to hold half of the land claim in their own name as a particularly important part of becoming an Oregon settler. These women did not use their property rights as a basis to argue for other rights, nor did they generally assert the right to declare their own property under Oregon’s married women’s property law. Married women who came to own land in their own name under the provisions of the Oregon Donation Act did not utilize their rights as property owners to challenge traditional gender roles.

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<sup>230</sup> Rudd, “Notes by the Wayside,” 197.

<sup>231</sup> Oregon and Washington Donation Land Files, Number 1441, RG 49, Microfilm Publication M815, NARA, (hereafter DLF).

**FIGURE 5.1**  
**WILLAMETTE VALLEY<sup>232</sup>**



<sup>232</sup> William A. Bowen, *The Willamette Valley: Migration and Settlement on the Oregon Frontier* (Seattle: University of Washington Press, 1978), 15.

As Congress had hoped, women in Oregon created their homes to replace those they had left behind; while frontier living conditions at times required women to engage in work and behaviors that challenged traditional notions of femininity, this did not signal a move to overturn gender roles. Thus women in Oregon were a part of the larger process of creating a settler society on the far western frontier, establishing as part of the imperial process the dominant gender order. Yet within this, it is clear that widowed women did assert their right to land claims, though their motivations stemmed from a need for economic security rather than any notion of new rights for women in the West.

As noted earlier, the country's fascination with Oregon, referred to as the Oregon Fever, drew the attention of men and women across the United States. Women were keenly aware of this Oregon Fever, many of them succumbing to it themselves. In 1847 Keturah Belknap noted in her diary while living in Van Buren County, Iowa that "the past winter there has been a strange fever raging here (it is the Oregon fever) it seems to be contagious and it is raging terribly, nothing seems to stop it but to tear up and take a six months trip across the plains with ox teams to the Pacific Ocean." Her next entry reported the departure of some of their friends for Oregon.<sup>233</sup> The following year the Belknap family would also make the overland journey to Oregon.

The Oregon migrations tended to be family affairs—husbands, wives, children, aunts, uncles, cousins, grandparents and family friend often traveled together in the same wagon train. Julie Roy Jeffrey argues in *Frontier Women: The Trans-Mississippi West, 1840-1880* that the lack of sources by and about women prior to undertaking emigration makes it difficult to determine whether women migrated reluctantly or enthusiastically.

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<sup>233</sup> "The Commentaries of Keturah Belknap," in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1840-1849*, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1995), 209-210.



She notes, however, that the sources do reveal that women directly impacted the decision to migrate or not, in part because their own material circumstances were at stake in the economic question of migration. Others, Jeffrey notes, sought the adventure of the journey or “the dream of easy circumstances,” just like their male counterparts.<sup>234</sup>

Later scholarship suggests that Jeffrey’s ability to see women’s influence on the decision to migrate is overly optimistic. John Mack Faragher, Sandra Myres, and Lillian Schlissel all argue that the overland journey was a profoundly gendered one that forced women to attempt to maintain traditional gender roles under the most trying of circumstances and did not provide them with an opportunity for freedom.<sup>235</sup> These differing interpretations reveal, as do the plethora of diaries and letters written by women who undertook the overland journey, that there is not a simple answer to the questions about decision making and life on the trail, but that women’s attitudes and experiences varied widely.

#### **A FAMILY AFFAIR: MARRIAGE PATTERNS AMONG DONATION LAND CLAIMANTS**

The motivations for women’s migration to Oregon, and the experiences of the overland journey differed from family to family, but as most migrations were family affairs, women typically enjoyed the company of husbands, children, and extended families both on the journey and after settling a claim. Certainly the women who traveled to Linn, Marion, and Clackamas Counties in Oregon did so with extended kinship

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<sup>234</sup> Julie Roy Jeffrey, *Frontier Women: The Trans-Mississippi West, 1840-1880* (New York: Hill and Wang, 1979), 32-33.

<sup>235</sup> See John Mack Faragher, *Women and Men on the Overland Trail* (New Haven, Connecticut: Yale University Press, 1979); Sandra Myres, *Westering Women and the Frontier Experience 1800-1915* (Albuquerque: University of New Mexico Press, 1982); and Lillian Schlissel, ed., *Women’s Diaries of the Westward Journey* (New York: Schocken Books, 1982).

networks that persisted as they became land owners. Marion and Clackamas Counties were among the earliest in the Oregon country, both established in 1843. Marion, originally named Champoege County, was renamed in honor of American Revolutionary war hero General Francis Marion in 1849. Clackamas derived its name from one group of indigenous peoples in the region. Linn County, formed in 1847, was named for Oregon's long-time legislative champion, Missouri Senator Lewis F. Linn.<sup>236</sup> These counties form the northernmost part of the Willamette Valley, and were among the most populous of the territory in the 1850s.

In these three counties settlers filed 2,648 donation claims. This represents over one-third of the total 7,437 claims filed under the Oregon Donation Act.<sup>237</sup> It is important to note, however, that claimants represented only a small portion of Oregon's population.<sup>238</sup> Based on migration numbers and figures from the 1850 territorial census, it is possible to estimate the territory's population at 36,000-37,000. Even excluding children and married women from the numbers of those eligible to make claims on their own, this still leaves a significant number of settlers who did not make claims under the Donation Act.

Married couples made up over 80 percent of the donation claims in these counties. (See Figure 5.2) Single men comprised the next largest category, making up just under 16 percent of total claimants. The smallest fractions of claims were filed by widows

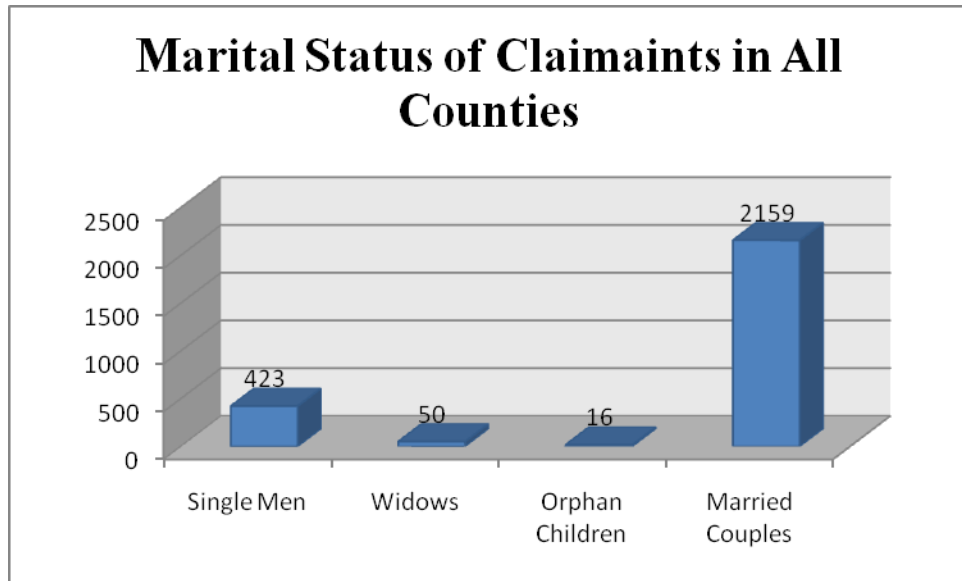
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<sup>236</sup> Charles Henry Carey, *History of Oregon* (Chicago: The Pioneer Historical Publishing Company, 1922), 910.

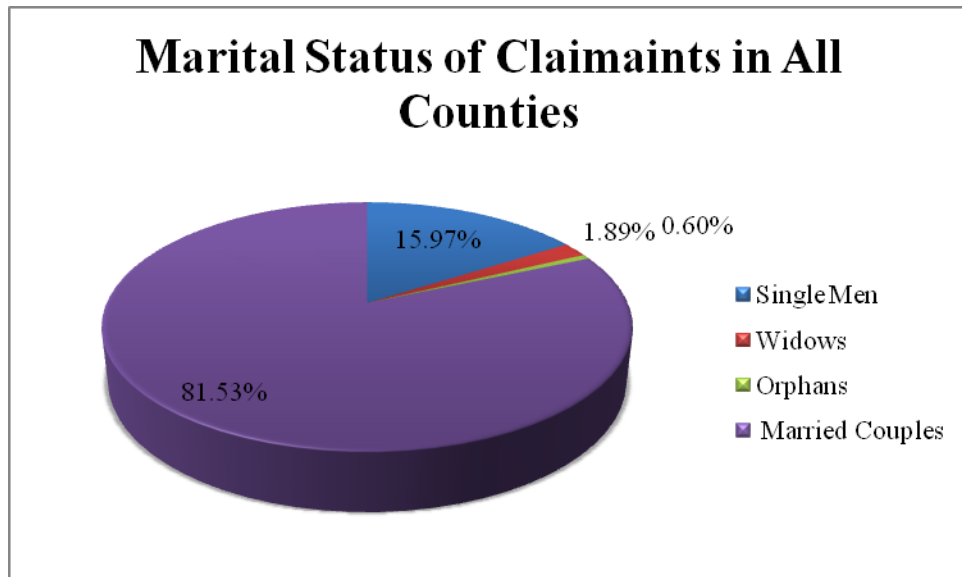
<sup>237</sup> Dorothy O. Johansen, "The Roll of Land Laws in the Settlement of Oregon," in *Genealogical Material in Oregon Donation Land Claims*, Volume 1 (Portland: Genealogical Forum of Portland, Oregon, 1992).

<sup>238</sup> See Dorothy O. Johansen and Charles M. Gates, *Empire of the Columbia: A History of the Pacific Northwest* (New York: Harper & Row Publishers, 1957), 234.

**FIGURE 5.2**  
**NUMBERS OF CLAIMANTS IN ALL COUNTIES BY MARITAL STATUS**



**FIGURE 5.3**  
**PERCENTAGES OF MARRIED CLAIMANTS IN ALL COUNTIES**

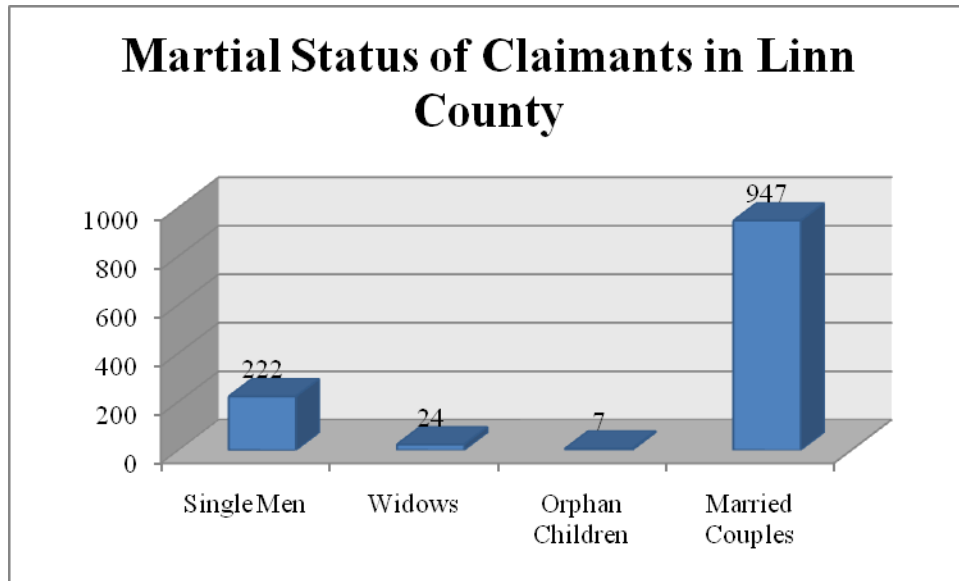


(1.89%) and on behalf of orphaned children (.60%). (Figure 5.3) These numbers support the understanding of the Oregon migrations as primarily a family affair. These overall numbers reflect similar trends in each county. (See Figures 5.4-5.9) Linn County boasted the largest proportion of single male donation claims, reaching nearly 19 percent of those filed in the county. The numbers in Marion and Clackamas Counties more closely match those of the overall sample.

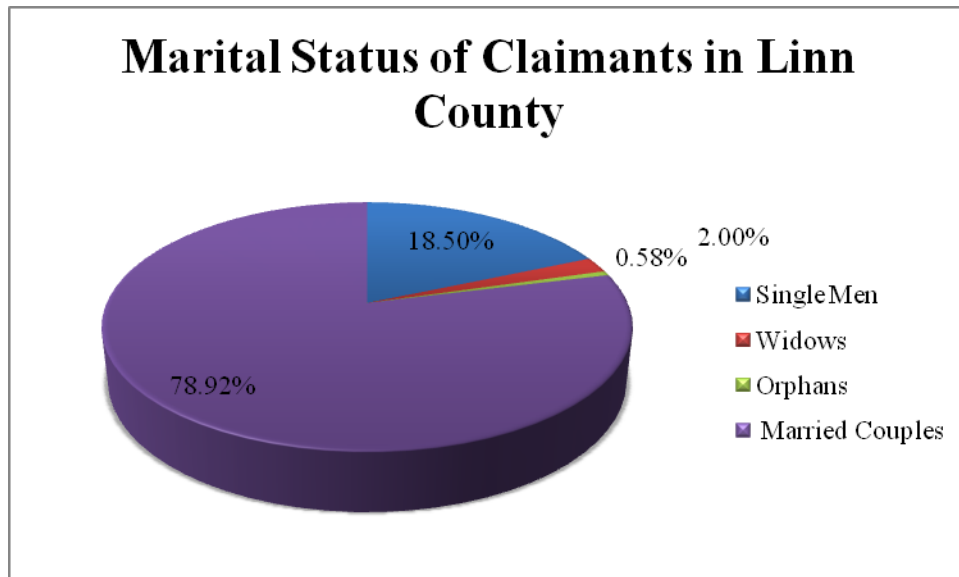
The data tells us that large numbers of women participated in the Oregon migrations and that many of them went on to become landowners under the provisions of the Donation Act, but they do not tell us in any real sense what that property ownership meant to women. The files themselves record which portion of the claim was held in the wife's name, but do not indicate if that portion of the claim included the family domicile and outbuildings or was agricultural land. The files do not record how decisions were made to use the land, what crops to plant, or about decisions to sell or lease part of the land.

One way to discern what control women exercised over their portions of the donation claims is through an examination of separate property filed by married women. While the Donation Land Act served essentially as a federal married women's property law for Oregon, it was not until 1859 that the state adopted its own statute allowing women to claim their own real and personal property. For a brief time prior to this there existed a statute that declared the wife's half of the claim to be reserved for her "sole and separate use and control." This 1852 territorial law was repealed the following year, but

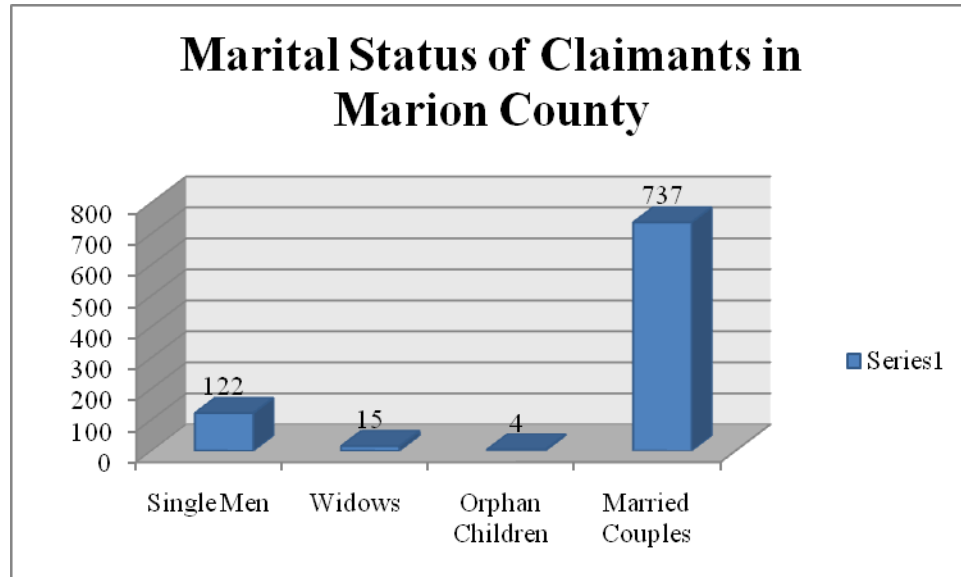
**FIGURE 5.4**  
**NUMBER OF CLAIMANTS IN LINN COUNTY BY MARITAL STATUS**



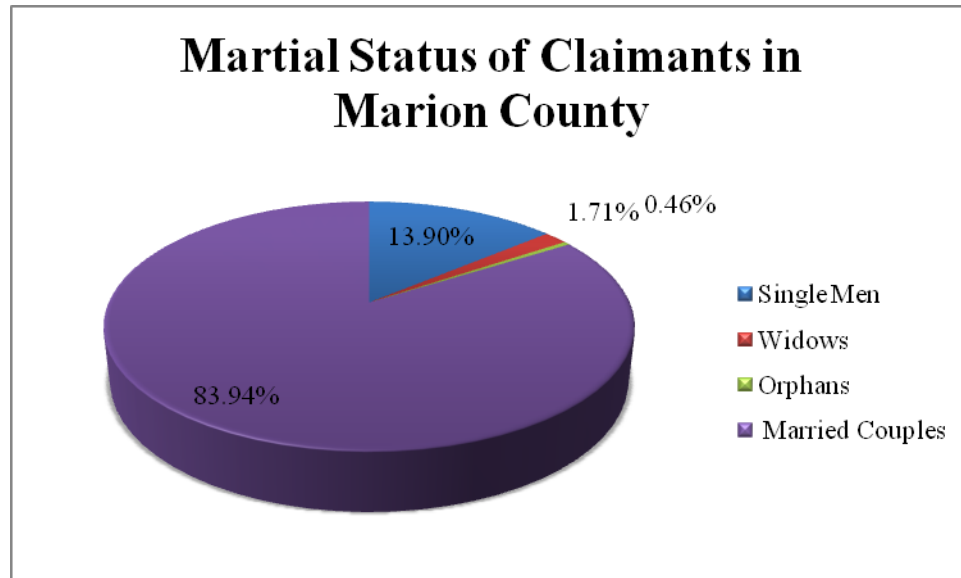
**FIGURE 5.5**  
**PERCENTAGES OF MARRIED CLAIMANTS IN LINN COUNTY**



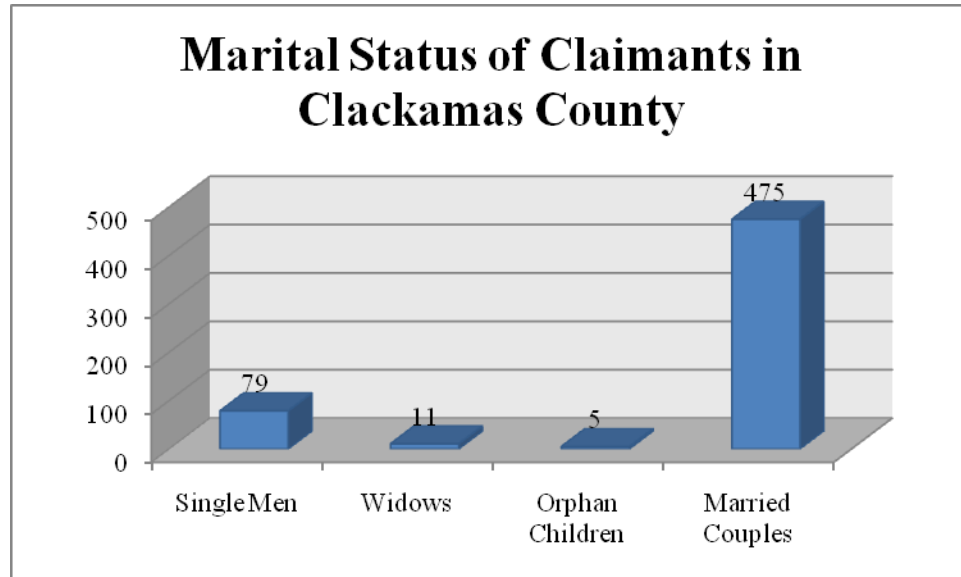
**FIGURE 5.6**  
**NUMBER OF CLAIMANTS IN MARION COUNTY BY MARITAL STATUS**



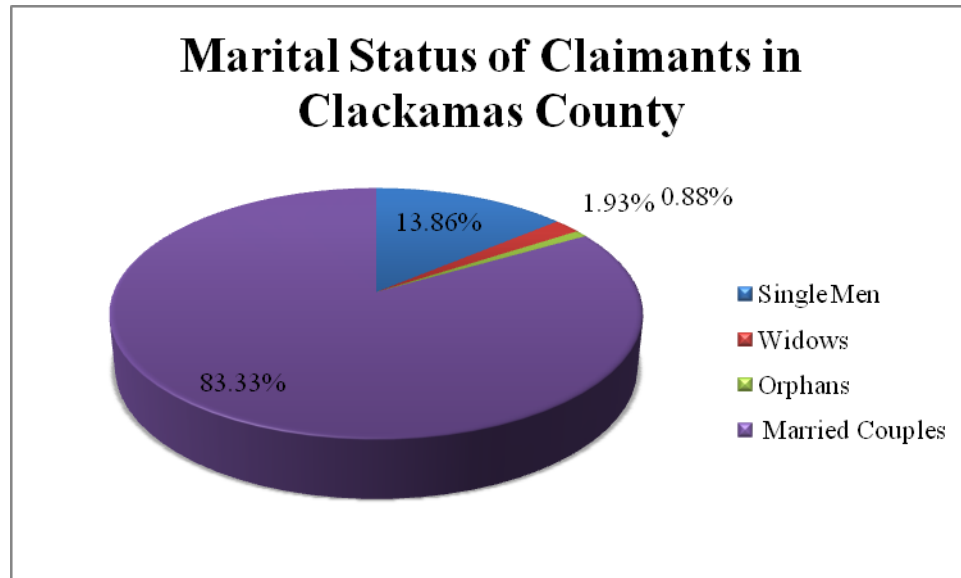
**FIGURE 5.7**  
**PERCENTAGES OF MARRIED CLAIMANTS IN MARION COUNTY**



**FIGURE 5.8  
NUMBER OF CLAIMANTS IN CLACKAMAS COUNTY BY MARITAL STATUS**



**FIGURE 5.9  
PERCENTAGES OF MARRIED CLAIMANTS IN CLACKAMAS COUNTY**



rulings by the General Land Office declared that claims filed during the time in which this law existed as territorial rule must be governed under that legislation.<sup>239</sup>

An examination of the married women's property registers for these counties reveals that the overwhelming majority of women who became land owners through the Donation Act did not subsequently claim their portions of the land as separate property under the state provisions. Even Lydia Rudd, to whom property ownership meant so much, did not register her half of the donation claim as her personal property. For all three counties there were 2,159 married couples who made donation claims; out of this potential pool of registrants, only 17 registered separate property in their respective counties (See Figures 5.10 and 5.11). This represents less than one percent of the sample. Among these few women who sought to protect personal property they had either inherited or purchased as married women, most did not include their halves of the donation claims among the property they registered.

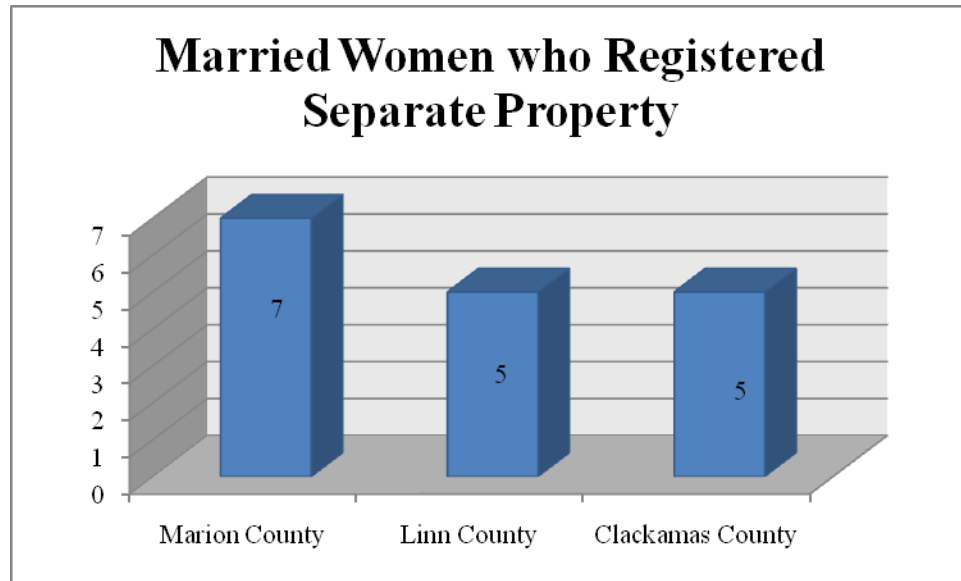
In Marion County two women from the sample included their donation lands in their declaration of separate property. Adaline Foster registered "200 acres of land being part of John T. Fosters Land Claim" in 1860. Amanda Rees claimed "in her own right, benefit & use, the products grown on, etc. – the West half of the Donation land claim of her husband." Only one other woman in the sample registered real property, but not land from the donation claims. Instead, Charity C. Taylor registered land that she purchased in Gervais with money gifted to her by her son, Winfield. Other women filed protection on their personal properties, most of which included livestock and household goods. Julia A. Johns presents an interesting study in that she registered personal property,

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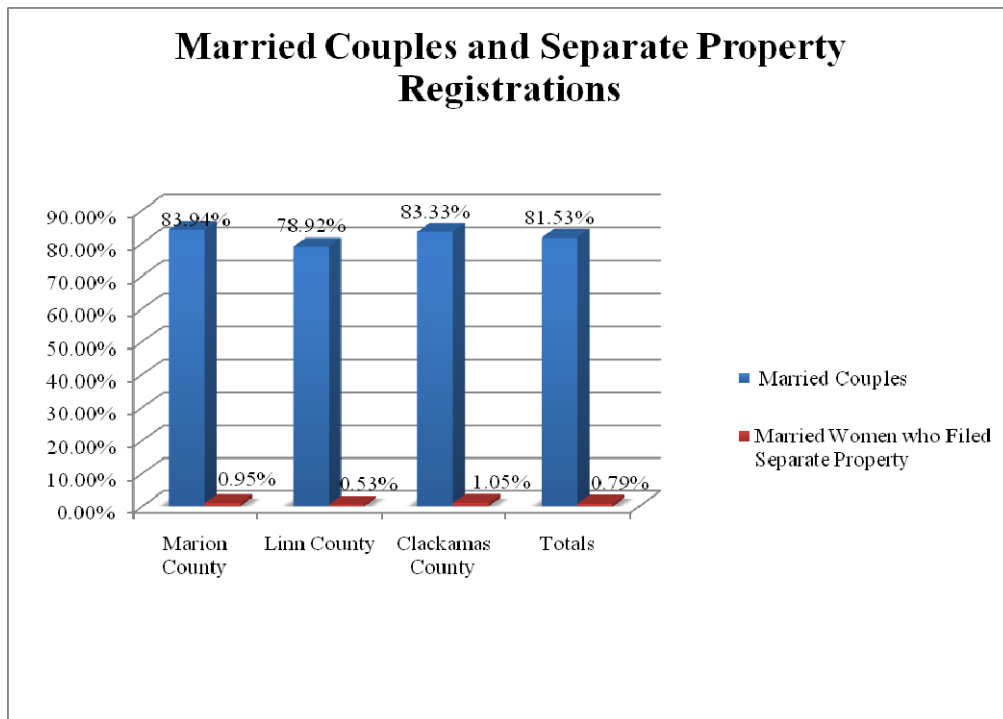
<sup>239</sup> See Harlow Head, "The Oregon Donation Acts: Background, Development and Application" (M.A. Thesis, University of Oregon, 1969), 119-120.



**FIGURE 5.10  
CLAIMANT WIVES WHO REGISTERED SEPARATE PROPERTY**



**FIGURE 5.11  
PERCENTAGES OF MARRIED COUPLES AND SEPARATE PROPERTY REGISTRATIONS**



including household goods, clothing, crops, and livestock that she owned by virtue of “rents, issues & profits of her real estate situated in Marion County.” She did not, however, register the land that allowed her to purchase the personal goods she chose to protect.<sup>240</sup>

The Clackamas County married women’s property register reveals similar patterns in the types of goods claimed by married women. Among the five women from the sample who appear in the register, three claimed their halves of the donation land claims. These women, Chloe D. Curry, Margaret Wallenstein, and Susan L. Chase listed no other real or personal property in the registers. This too mirrors the claims by women in Marion County. The other women in the Clackamas County sample, Catharine Vinson and Caroline Norton, listed personal property in the form of livestock; both women noted that the animals were purchased with money left to them by their brother and father, respectively.<sup>241</sup>

It is difficult to determine why more married women did not register their property under the Oregon state law, especially since the Donation Land Act automatically made every wife settled on a claim a land owner. It is also puzzling that among those women who did have donation claims and filed separate property, they did not all choose to include their donation lands in the enumeration of property. This limited use of the Oregon married women’s property law is likely derived from four sources. First, these women were far removed from the center of the fledgling women’s rights movement, which had just begun agitating for expanded rights, including laws to

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<sup>240</sup> *Register of Married Women’s Property Rights, 1859-1897*, Marion County, Oregon, Oregon State Archives.

<sup>241</sup> *Register of Married Women’s Separate Property Rights 1859-1909*, Clackamas County, Oregon, Oregon State Archives.

protect married women's real and personal property, making it unlikely that they would be aware of such activities. Second, the women in this sample were largely already married when they became property owners, and thus would never have expected to exercise legal protection of the land. Third, Oregon did not adopt a married women's property act until 1859, well after most of these women had already received their claims. Had the law been instituted at the height of the era when land claims were available it is possible that there would have been greater numbers of women registering those claims as separate property.

Finally, most of the women came from states that did not yet have married women's property acts, so they had not had the opportunity to register their belongings prior to emigrating to Oregon, making it less likely that they would do so after their arrival in the territory. Most of the territory's population came from Midwestern states, most of which did not yet have married women's property acts. (See Figures 5.12-5.14) Among the more than 13,000 inhabitants of Oregon in 1850, only 32 percent of them came from states that had already adopted married women's property legislation that granted women separate estates. The earliest of these laws was the 1846 Ohio statute; only seven percent of Oregon's population had come from Ohio. The other states with pre-1850 separate estate laws—Missouri, New York, Pennsylvania—did not adopt these measures until 1848 and 1849, meaning that the bulk of the emigrants left these states prior to their establishment.<sup>242</sup> It is also important to note that the married women's property laws enacted prior to 1850 still severely limited women's rights. Joan Hoff notes that "This legislation tended to adhere to traditional ideas of patriarchal common

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<sup>242</sup> The dates for the establishment of married women's property laws that granted women separate estates are taken from Hoff, *Law, Gender, and Injustice*, 379-382.

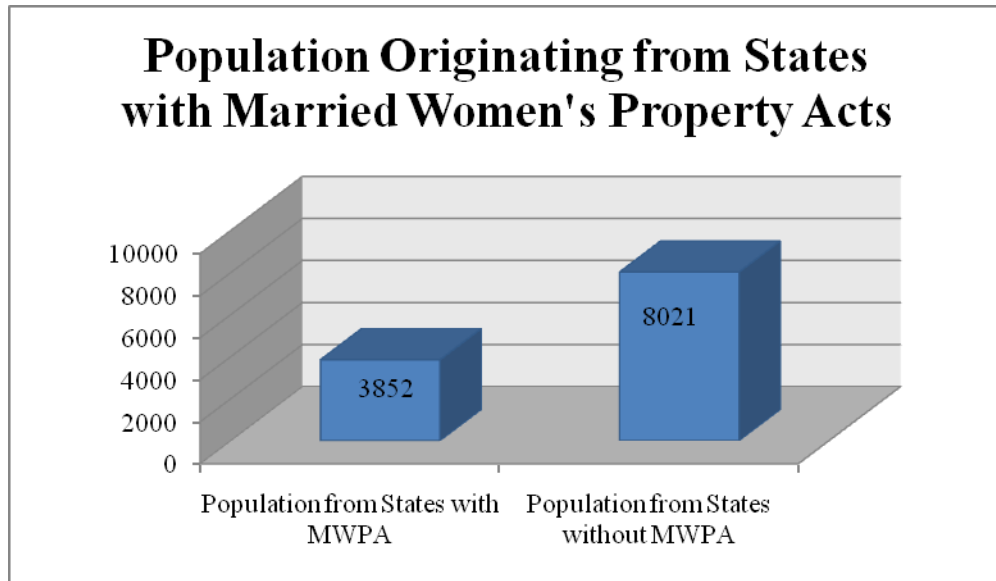
**FIGURE 5.12**  
**ORIGINS OF OREGON RESIDENTS IN 1850<sup>243</sup>**

State of Origin	Persons in 1850 Oregon Population	% of 1850 Oregon Population
Missouri	2196	18.50%
Illinois	993	8.36%
Ohio	836	7.04%
Kentucky	709	5.97%
Indiana	697	5.87%
New York	532	4.48%
Virginia	457	3.85%
Iowa	425	3.58%
Tennessee	382	3.22%
Pennsylvania	288	2.43%
Massachusetts	176	1.48%
North Carolina	164	1.38%
Maine	105	0.88%
Vermont	92	0.78%
Maryland	71	0.60%
Connecticut	66	0.56%
New Jersey	65	0.55%
Arkansas	64	0.54%
Michigan	45	0.38%
New Hampshire	41	0.35%
South Carolina	33	0.28%
Rhode Island	33	0.11%
Georgia	25	0.22%
California	25	0.21%
Texas	20	0.12%
Delaware	18	0.15%
Alabama	18	0.15%
Wisconsin	16	0.14%
District of Columbia	9	0.08%
Mississippi	7	0.06%
Louisiana	5	0.04%
Florida	3	0.03%

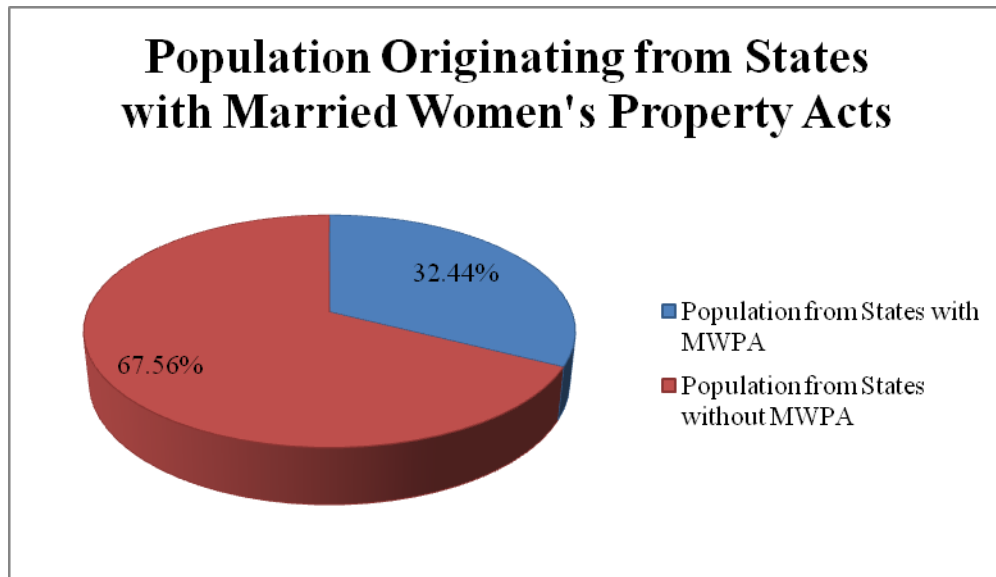
States in grey had laws protecting married women's separate estates prior to 1850.

<sup>243</sup> Data adapted from Bowen, *The Willamette Valley*, 24-27.

**FIGURE 5.13**  
**NUMBER OF OREGON RESIDENTS IN 1850 FROM STATES WITH MARRIED**  
**WOMEN'S PROPERTY ACTS**



**FIGURE 5.14**  
**PERCENTAGE OF OREGON RESIDENTS IN 1850 FROM STATES WITH**  
**MARRIED WOMEN'S PROPERTY ACTS**



law by denying women the right to sell, sue, or contract without their husbands' or other male relatives' approval, . . . [leaving] most noneconomic privileges of husbands completely intact, and . . . minimiz[ing] progress toward other improvements in women's rights."<sup>244</sup>

It is difficult to judge if women's use of separate property rights in Oregon reveals a marked distinction from women in other states. Each state instituted its own procedures for protecting married women's property; they did not all necessarily maintain county by county registers of such property. Studies of married women's property acts generally focus on the development, rather than the implementation, of these laws, and there are limited analyses of the impact that these laws made on women as property owners.<sup>245</sup>

#### **“AFTER THE DEATH OF HER HUSBAND”: WIDOWS’ ASSERTION OF PROPERTY RIGHTS UNDER THE OREGON DONATION ACT**

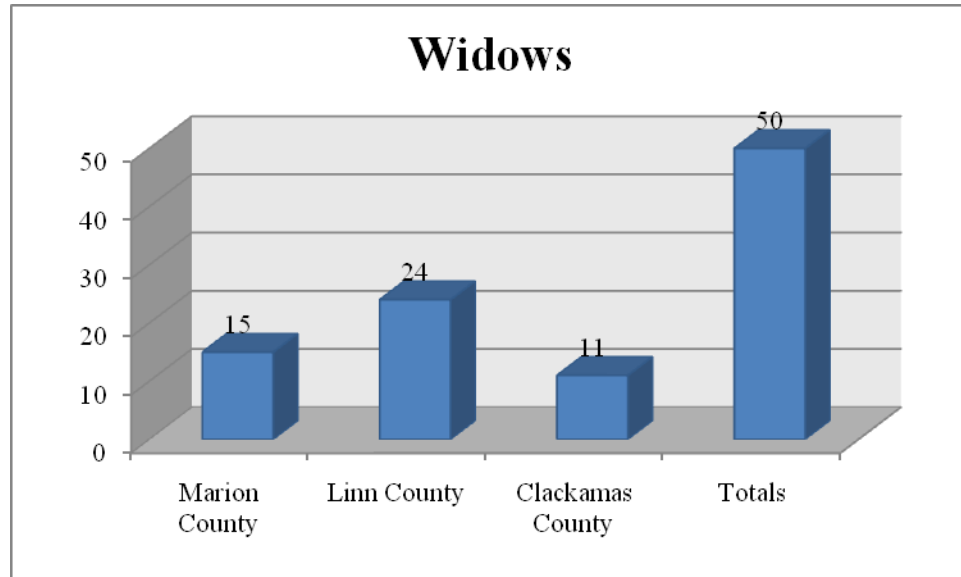
While this study finds that for married women the right to own land in their own name did not figure prominently into their decision to migrate or their settlement in the Territory, for widows there was a clear assertion of their rights to land. Widows compose only a small sample of the claims in each county (See Figures 5.15 and 5.16), and it is

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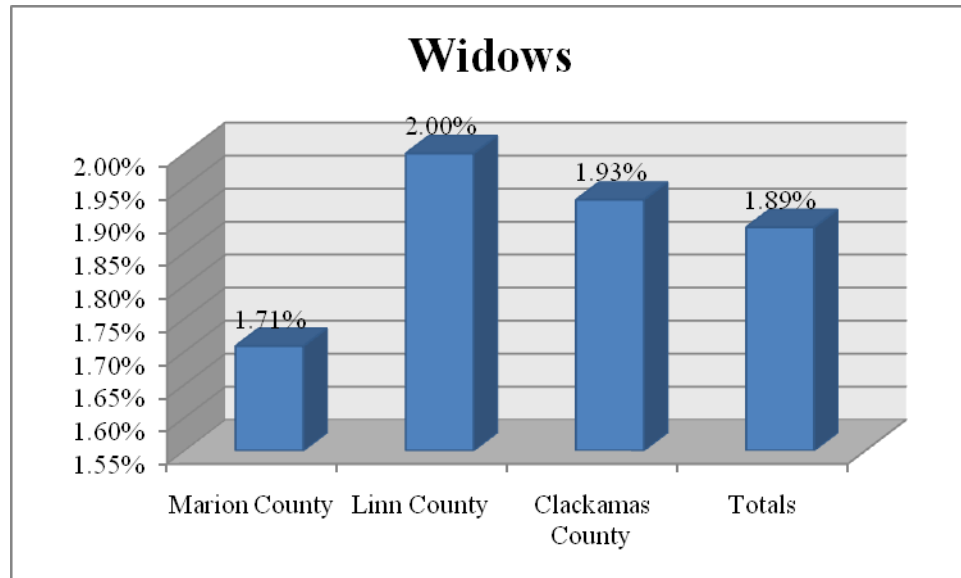
<sup>244</sup> Hoff, *Law, Gender and Injustice*, 128.

<sup>245</sup> For more on married women's property acts see Chused, “The Oregon Donation Act of 1850;” Chused, “Married Women's Property Law;” Chused, “Late Nineteenth-Century Married Women's Property Law,” *American Journal of Legal History* 29 (January 1985): 3-35; Evan Roberts, “Women's Rights and Women's Labor: Married Women's Property Laws and Labor Force Participation, 1860-1900,” paper presented at the Economic History Association annual meeting (September 2006); Carole Shammas, “Re-Assessing the Married Women's Property Acts,” *Journal of Women's History* 6 (Spring 1994): 9-30; Michael Dougan, “The Arkansas Married Women's Property Law,” *Arkansas Historical Quarterly* 46 (Spring 1987): 3-26; Norma Basch, “The Emerging Legal History of Women in the United States,” *Signs* 12 (Autumn 1986): 97-117; Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York* (Ithaca, New York: Cornell University Press, 1982); Kathleen Elizabeth Lazarou, *Concealed Under Petticoats: Married Women's Property and the Law of Texas, 1840-1913* (M.A. Thesis, Rice University, 1980); Peggy A. Rabkin, *Fathers to Daughters: The Legal Foundations of Female Emancipation* (Westport, Connecticut: Greenwood Press, 1980); and Mary P. Ryan, *Cradle of the Middle Class: The Family in Oneida County New York, 1790-1865* (Cambridge: Cambridge University Press, 1980).

**FIGURE 5.15  
NUMBER OF WIDOWED CLAIMANTS IN ALL COUNTIES**



**FIGURE 5.16  
PERCENTAGE OF WIDOWS AS CLAIMANTS**



certain that there were widows eligible for land who did not file claims, but those widows who did ensured that the land was theirs and could be passed on to heirs, even if they remarried.

The donation land files reveal little about these women. For the sample of 50 widows with land claims in these counties, it can be determined that nearly half were literate, signing their names on their paperwork rather than simply making a mark. The age of these women at the time of their claims can be determined for only 24 of them. Among that group, the average age is 44, with only one under the age of 30 and one over the age of 60. This suggests that most widows who followed through with land claims following the death of a husband were at a stage in life where they were likely to still have children at home, and could possibly have a son old enough to take responsibility for farming the land, but too young to be eligible for his own claim. It can be determined that at least 21 of the women had children.

This group contained a small contingent of widows who were technically ineligible for claims. Mary Canada, Delilah White, Lydia McFarland, Elizabeth Thorp, and Elizabeth Ritchey had all been widowed before arriving in Oregon and claiming their lands. In each case, their husbands died several years before the women traveled to Oregon, and in each case the women paid cash for the land claims they filed.<sup>246</sup> Each of these women initially claimed eligibility for a claim under the terms of the Donation Act before purchasing their acreage. Mary Canada was the oldest among the group, being aged 69 when she filed the claim. Canada had been born in Roan County, North Carolina in 1784 and married Peter Canada in Adam County, Illinois in 1837. This was likely a

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<sup>246</sup>DLF 376, 380, 445, 490, and 508.



second marriage for her. She did not settle in Oregon until August, 1853, nearly 15 years after the death of her husband.

Of this sample, only Elizabeth Ritchey was not yet widowed when she began planning her migration to Oregon. Ritchey's husband died in Iowa in 1848, before beginning the journey, but having "obtained several wagons and teams for the prospects of going to Oregon that season." Ritchey left for Oregon "as soon as she could after the death of her husband." Had Adam Ritchey lived and the couple migrated according to their plans, they would have been eligible for a 640-acre claim, yet Elizabeth claimed her right only to 160 acres of land. There is nothing in the files to indicate opposition to the women's purchase of their halves of the claims.

Other widows also failed to meet the eligibility requirements yet still received land claims under the Donation Act. Sarah Farlow received the patent to her claim in November 1859; she first settled on the land in October 1850, as a widow. Her husband John had died in Rock Island County, Illinois, in February 1846. Sometime following his death Sarah migrated to Oregon, and was granted 316.83 acres of land. She did not meet the eligibility requirements, in that her husband had not died either after arriving in the territory, or on his way to Oregon.<sup>247</sup> Similar cases can be found in the claims of Amy Moore, whose husband died nearly 20 years before she settled in Oregon, and Jane Casner, widowed in Iowa three years before claiming her land in the territory.<sup>248</sup> There is nothing in these women's files to indicate why their situations were deemed eligible for land grants, when they appear to be ineligible by virtue of having been widowed prior to beginning their journeys to Oregon. It is possible that land office officials overlooked the

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<sup>247</sup> DLF 784.

<sup>248</sup> DLF 2734 and 2753.

discrepancies and granted these women land because they were long-term settlers in the territory who had likely been living on their claims for years. It is apparent from their files that no one contested their claims, a circumstance that undoubtedly would have prompted closer scrutiny of their applications.

While these claims raise interesting questions about how strictly the General Land Office enforced the eligibility standards established by the Donation Land Act, there were cases in which widows' right to the land was challenged when they remarried. Sarah Stoddard was among the handful of widows who faced questions about the legitimacy of their claims. Stoddard was twice widowed. Her first husband, William Sogsden, had died in Missouri in 1837, leaving a daughter Mary. Sarah then married Gerard Wilson, with whom she had four children. He died in California in 1849, apparently having left the family's claim to work the gold fields. Sarah and Gerard had established themselves on their Oregon home in September 1846. Following Gerard's death, Sarah married a third time, to Thomas Stoddard on April 10, 1851. They had no children, and at the time of Sarah's death (date unknown, but probably sometime before 1855) her children from previous marriages were minors whose guardianship was given to John Switzler. It is unclear what relation, if any, Switzler had to the family.

Initially the local land office negated Sarah's claim to the 318 acres she had settled on with Gerard Wilson, ruling that it was only her 1851 marriage to Stoddard that made her an eligible wife under the terms of the Donation Act. The General Land Office later overturned this ruling, granting her eligibility under the 1850 act by virtue of her marriage to Wilson, and granting the final patent in 1873 to her children.<sup>249</sup> These issues of eligibility in the case of marriage and remarriage would become central to the

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<sup>249</sup> DLF 3994.

operation of the Homestead Act in the following decade, but the rules regarding marriage for claims under the Oregon law seemed to only rarely be challenged.

As explained in Chapter Two, the Oregon Donation Act was a law designed to facilitate the establishment of an American settler colony in the territory. Its provisions for property ownership rewarded those who could best contribute to the re-creation of American society, in particular the gender order that governed male/female relationships. In this light, marriage served as a critical tool of empire building. This becomes particularly clear when examining the actual operation of the Donation Land Act and women's property rights as created by the law. This legislation not only established American norms of marriage in a land where marriage according to the "custom of the country" had been common, but also increased male claims to the land through the family unit; it did not significantly alter women's status.<sup>250</sup>

Land decisions stemming from the Donation Land Act support the idea that it was marriage itself that mattered more than outside factors. In 1862 the U.S. Attorney General Edward Bates ruled that a married male settler was entitled to the full acreage (640 or 320, depending upon the year of migration) even if his wife had not gone to Oregon with him. Bates justified his decision by noting that the wife had, in his mind, earned her half of the claim by "enduring his absence on the other side of the continent,"

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<sup>250</sup> See Sylvia Van Kirk, *Many Tender Ties: Women in Fur Trade Society, 1670-1870* (Norman: University of Oklahoma Press, 1983); Susan Armitage, "Making Connections: Gender, Race, and Place in Oregon Country," in *One Step Over the Line: Toward a History of Women in the North American Wests*, Elizabeth Jameson and Sheila McManus, eds. (Edmonton: The University of Alberta Press, 2008), 68-69. Armitage suggests that land claims required married couples to possess a marriage certificate, however, it should be noted that the donation files typically do not include marriage certificates, but signed statements by at least two witnesses attesting to the validity of the marriage. Thus, the land office did not absolutely require a marriage certificate, though there is little doubt that both Congress and the land office intended to award claims only to couples married under American law and custom rather than native traditions.

rather than “encumbering his energies with her presence, and imposing on him the burden of her support and protection.”<sup>251</sup>

Decisions regarding divorce also stand as evidence that it was the existence of a wife, not her race or presence on the land that was of primary importance. Where divorce occurred before the claim had been proved up on—the completion of a four-year residence—the courts ruled that the male claimant was entitled only to the acreage due a single man. Women lost all rights to their land claim in this case. Yet, where a couple had fulfilled the legal requirements that entitled them to a patent on the claim, women’s rights to their portion of the donation claim were protected.<sup>252</sup>

In the 1854 case of *Vandolf v. Otis* the Oregon Supreme Court issued a ruling that cemented the provisions of the law that allowed women property rights only as wives, but in doing so, the justices also ruled on issues of race which were tied to the colonial project. Louis Vandolf was legally married to an Indian woman who was to be the owner of the southern half of the couples’ 640-acre donation claim. Another settler, Daniel Otis, disputed Mrs. Vandolf’s claim to the land, arguing that because she was a Native American she could not legally hold land under the terms of the Oregon Donation Act, and attempted to establish his own claim on the land. The Oregon Supreme Court ruled in favor of Vandolf, declaring that his wife’s race was essentially immaterial in the case because she did “not take on account of her color, age, or conduct as a settler, but by virtue of her matrimonial relations to a legal settler.”<sup>253</sup> Had she attempted to claim her acreage as a settler she would have been disqualified because of her race. The court went

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<sup>251</sup> Quoted in Head, *Oregon Donation Acts*, 121-122.

<sup>252</sup> Head, *Oregon Donation Acts*, 122. Also see Richard Chused, “Late Nineteenth Century Married Women’s Property Law.”

<sup>253</sup> *Vandolf v. Otis* 1 Or. 153-154 (1854). Also see Pascoe, *What Comes Naturally*, 96-98.

on to justify its decision, laying out the connection between race, marriage and citizenship:

Now, is not a man, legally married to an Indian woman, as much a “married man,” to all intents and purposes, as though his wife were the “fairest of the fair?” Is not an Indian woman, married to a white male citizen of the United States, “a wife in every sense of the law?” If two women are married in the same way to the same sort of men, can it be said that one is a “wife” because she is white, and that the other is not a “wife” because she is copper-colored? Are the children of a white man and an Indian woman, legally married, bastards, because their mother is not white? The conclusion is irresistible that an Indian woman, married to a “settler,” is a “wife,” within the meaning of the donation act, and, therefore on account of her wifeship, entitled to one-half of her husband’s claim.<sup>254</sup>

The decision here clearly valued the gender order over considerations of race, establishing that the wife’s subordination to her husband mattered more than her nativity.

In *Vandolf v. Otis* the court suggested that Congress must have known that white men had married Indian women and that they would, by virtue of the law, be extending rights to native women that were equal to those of white women. The justices insisted that the inclusion of native women as beneficiaries, though unintended, had to be honored in the operation of the law. The justices, while not suggesting that the marriage between a white man and native woman would “civilize” the native woman, as was demonstrated in Chapter Three, such a belief did exist in nineteenth-century America. The Oregon Supreme Court’s ruling buttressed the white imperial order by upholding the gender order, even as it held the potential to damage the racial system embedded in the colonial enterprise by recognizing an Indian woman’s property rights. The judges justified their decision in part by declaring that “Indian women, as the wives of white men, and the

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<sup>254</sup> *Vandolf v. Otis* I at 155-156.

offspring of such marriages, are unavoidably a part of our people, and it is better that they should have property and homes, than that they should be worthless and wandering vagabonds in the country.” Thus, Indian women could, in their submissive roles as wives, be allowed to participate in the empire, at least in a limited role.

### **“THE MRS OF OREGON”: MARRIAGE PATTERNS IN OREGON 1850-1860**

Indian wives were not uncommon in the Oregon Territory, though they did not occur at dramatically high rates. The 1850 census reported only a total of sixty-four intermarriages between whites and native women, though it is likely that other unions existed, many of which were never legally sanctioned.<sup>255</sup> Elizabeth Hutchinson, an early settler in the territory, noted the presence of native wives in her tongue-in-cheek description of the “Mrs of Oregon,” who were “from eight to twelve hands high, and some a lily white, others a light chestnut sorrel and dark brown hair, dressed in all sorts of pretty prints . . . .”<sup>256</sup> Historians have long reported that the passage of the Donation Land Act resulted in an increase in marriage rates and child brides.<sup>257</sup>

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<sup>255</sup> Gray H. Whaley, “Oregon, *Illahée*, and the Empire Republic: A Case Study of American Colonialism, 1843–1858,” *Western Historical Quarterly* 36 (Summer 2005): 157-178. See also Matthew Aeldun Charles Smith, “Wedding Bands and Marriage Bans: A History of Oregon's Racial Intermarriage Statutes and the Impact on Indian Interracial Nuptials” (M.A. Thesis, Portland State University, 1997) and William G. Robbins, “Extinguishing Indian Land Title in Western Oregon,” *Indian Historian* 7 (Spring 1974): 10-14.

<sup>256</sup> Elizabeth M. B. Hutchinson, “Letter I” in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1853-1854*, Volume 6, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1986), 26-27.

<sup>257</sup> See Johansen & Gates, *Empire of the Columbia*, 231-232; Johansen, “The Roll of Land Laws in the Settlement of Oregon;” Armitage, “Making Connections,” 69; Cynthia Prescott, *Gender and Generation on the Far Western Frontier* (Tucson: University of Arizona Press, 2008), 61-64; Head, *Oregon Donation Acts*, 121; Carey, *History of Oregon*, 508. It is harder to determine at what age couples married. Historians have found that the age of first marriage generally decreased in frontier settings.<sup>257</sup> One Oregon historian found an average age of 18.6 years for women at first marriage; another study found that in Washington County women’s median age at marriage was 17.4. Both of these figures are significantly lower than the national average age of 23 years old for women at first marriage in 1860. See John Mack Farragher, *Sugar*

Where evidence is cited, proof of these claims is found in the reminiscences of early settlers or the work of earlier historians citing the stories told by early settlers. These types of stories and amusing references pepper the diaries and letters of first-generation Oregonians. For example, Keturah Belknap's daughter and granddaughter wrote, based on her reminiscences, that "In those days many boys married young girls just in order to get the 320 acres of land they could claim."<sup>258</sup> Lucia Loraine Williams noted the lack of eligible women for the bachelors of Oregon as she deplored the lack of young women available to serve as "house girls." "Girls," she declared, "are foolish that they do not come to Oregon Territory to marry. There is no end of bachelor establishments." She went on to relay that she had already picked out two potential husbands for her friends, Mrs. Marian (assumed to be a widow) and Jane Wilson.<sup>259</sup> In a letter to her grandfather Margaret Scott, sister to Abigail Scott Duniway, decried the lack of young women her age. There had been a fair number of her peers in town during the

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*Creek: Life on the Illinois Prairie* (New Haven, Connecticut: Yale University Press, 1986), 87-88 and Prescott, *Gender and Generation*, 62.

County marriage records often do not indicate the age of either bride or groom. Of the ten women whose ages are listed in the index to Marion County marriages for the time period, the youngest married at 14, the oldest at 28. Other brides were 15, 16, 17, 18, 19, and 22 years old. The average age of these ten women is 17.4. Such limited information cannot, of course, stand as solid evidence that the age of marriage did not significantly decrease as a result of the Donation Land Act. This small sample mirrors the findings of other historians about a decrease in age at first marriage for women in frontier settings; this is important to note as these other studies include frontier settings outside of Oregon, where there was no Donation Act to spur an increase in child brides.

It is certain that there was a perceived need for additional marriageable women in the Oregon country. Johansen and Gates note that the 1852 migrations brought sizeable numbers of women eligible for marriage to the territory, but Bowen's meticulous research on the Willamette Valley indicates a significant sex ratio imbalance between men and women in their 20s.<sup>257</sup> Thus, while the overall sex ratio for the territory was not terribly skewed, there was a noticeable disparity among the men and women in the age range who were most likely to marry. See Faragher, *Sugar Creek*, 87-88; Prescott, *Gender and Generation*, 62, and Paul Bourke and Donald DeBats, *Washington County: Politics and Community in Antebellum America* (Baltimore, Maryland: Johns Hopkins University Press, 1995), 121.

<sup>258</sup> "The Commentaries of Keturah Belknap," in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1840-1849*, Volume 1, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1983), 193.

<sup>259</sup> Lucia Loraine Williams, "A Letter to Mother," in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1851*, Volume 3, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1984), 148.

winter, but, she observed, most of them had since “gone into the country or are married off.”<sup>260</sup>

Oregon historian T. T. Geer related the story of his own parents’ marriage, recalling that his mother was a month shy of fifteen when she married her 20 year old fiancé. Geer cautioned his readers that in those days his mother was considered to be “approaching the period of old maidhood” in comparison with other Oregon girls marrying at the time. Geer went on to claim that marriage at the age of twelve was not unusual for girls, and that he knew of at least one instance where a ten-year-old girl was married to a man twice her age.<sup>261</sup>

Oregon’s total white population in 1850 numbered 13,087.<sup>262</sup> Of these, 994 resided in Linn County, 2,740 in Marion County, and 1,836 in Clackamas County. (See Figures 5.17 and 5.18) For the territory as a whole, white men numbered 8,138, while white women accounted for 4,949 inhabitants. Men, then made up 62.18 percent of the population, compared to women at just 37.82 percent. Within each county, similar numbers appear. Linn County’s population of 994 included 557 men (56.04 percent) and 437 women (43.96 percent). In Marion County the population included 1,603 men (58.50 percent) and 1,137 women (41.50 percent). In Clackamas County the 1,836 residents included just 730 women (39.76 percent) and 1,106 men (60.24 percent). (See Figures 5.19-5.22)

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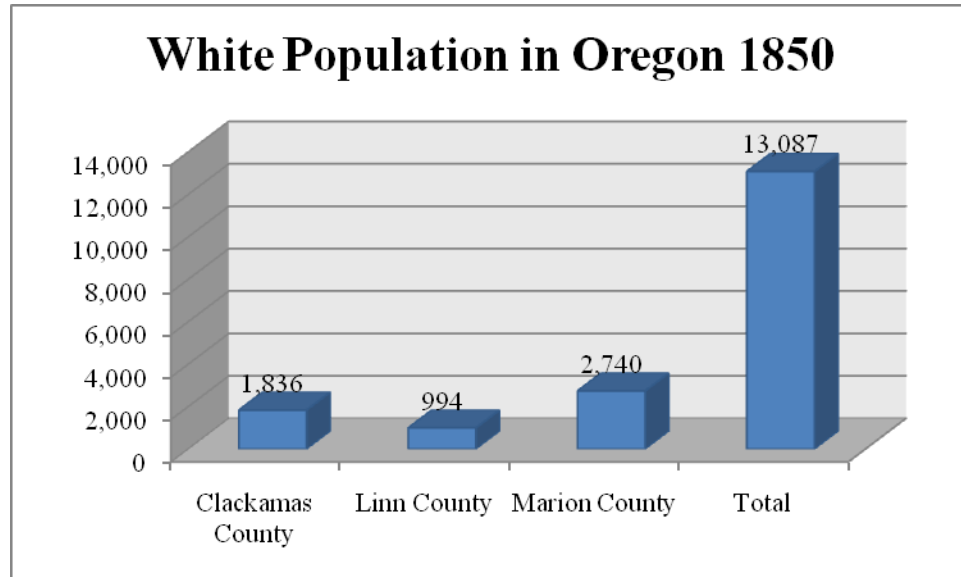
<sup>260</sup> Margaret Scott to James Scott, August 17, 1853, in *Covered Wagon Women: Diaries & Letters from the Western Trails, 1852*, Volume 5, Kenneth L. Holmes, ed., Bison Books Edition (Lincoln: University of Nebraska Press, 1986), 172.

<sup>261</sup> T. T. Geer, *Fifty Years in Oregon* (New York: Neale Publishing Company, 1912), 216.

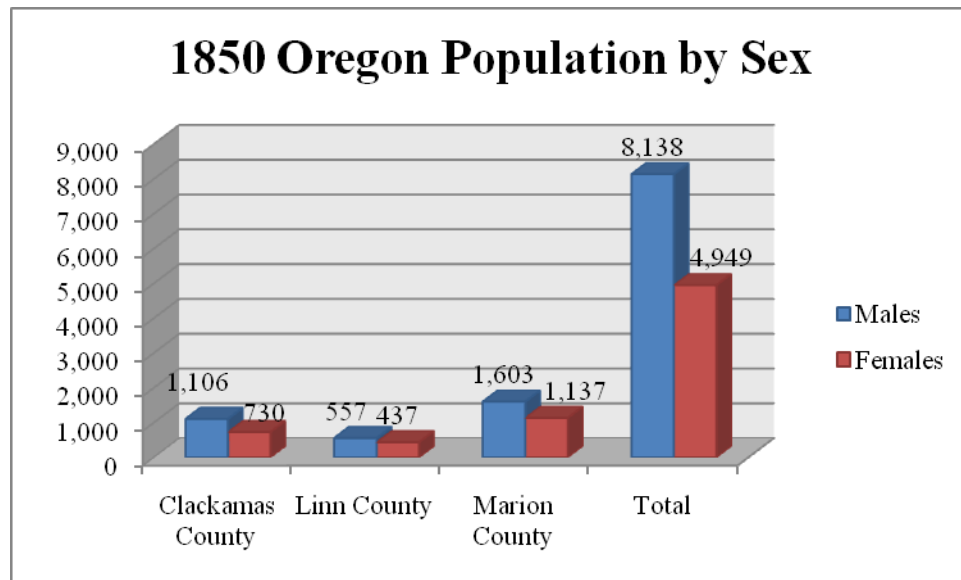
<sup>262</sup> I am using the numbers for the white population of Oregon in the following calculation, as it was the establishment of white families through marriage and births that underlay the efforts of constructing an American empire. The total population in 1850 Oregon numbered 13,294 with 120 free black men and 87 free black men in addition the white population noted above. *The Seventh Census of the United States: 1850, An Appendix* (Washington, D.C.: Robert Armstrong Public Printer, 1853), 993.



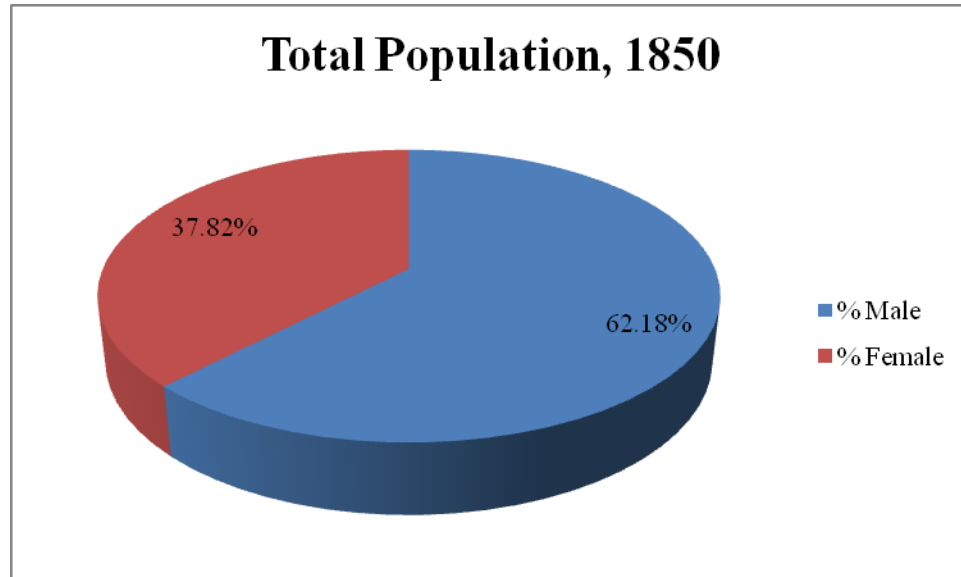
**FIGURE 5.17**  
**WHITE POPULATION OF OREGON IN 1850**



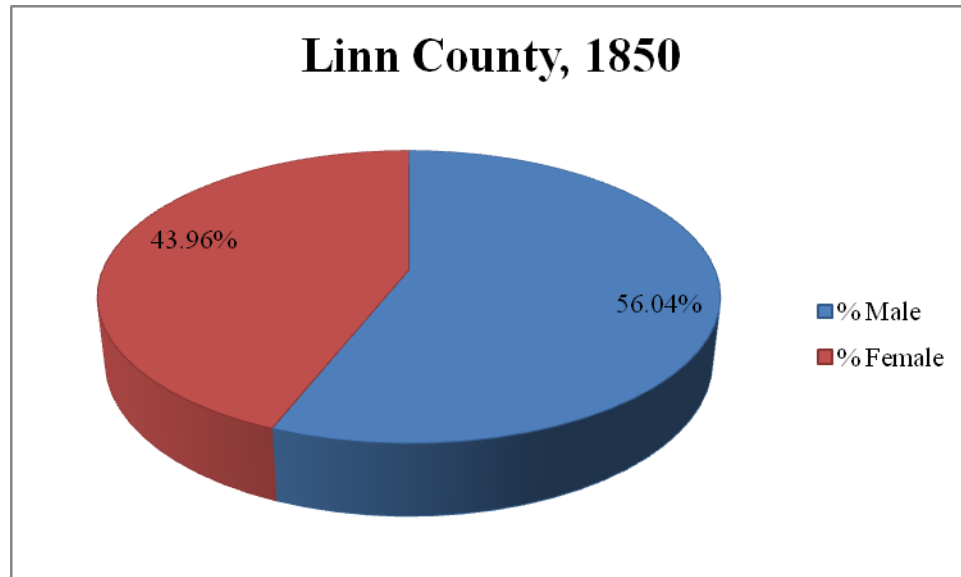
**FIGURE 5.18**  
**WHITE MALE AND FEMALE POPULATION OF OREGON IN 1850**



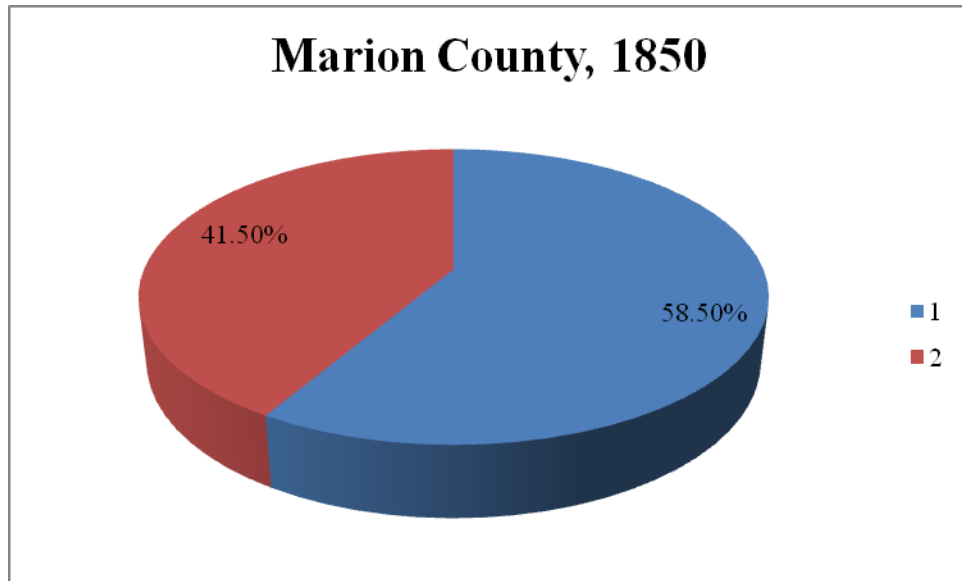
**FIGURE 5.19**  
**PERCENTAGE OF MEN AND WOMEN IN 1850 OREGON POPULATION**



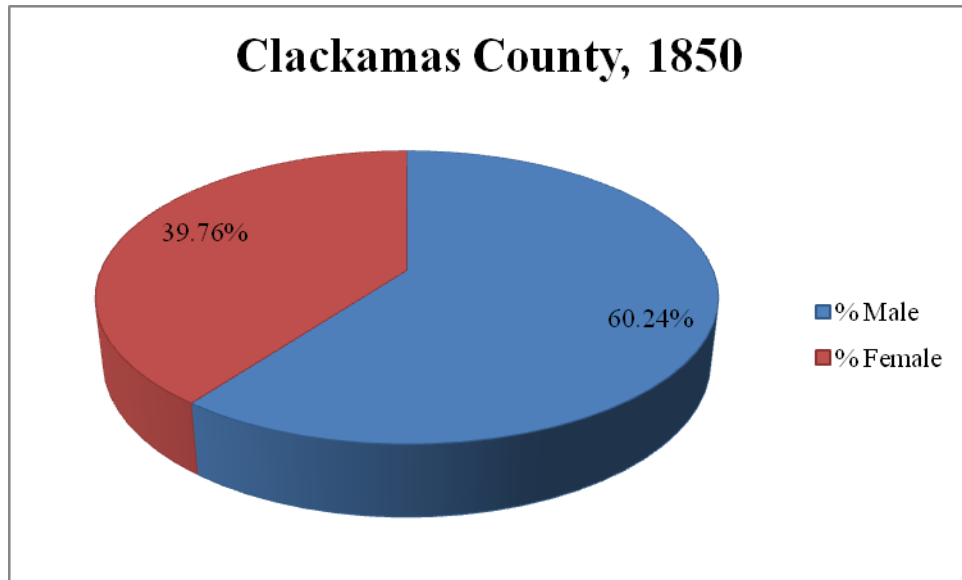
**FIGURE 5.20**  
**PERCENTAGE OF MEN AND WOMEN IN 1850 LINN COUNTY**



**FIGURE 5.21**  
**PERCENTAGE OF MEN AND WOMEN IN 1850 MARION COUNTY**



**FIGURE 5.22**  
**PERCENTAGE OF MEN AND WOMEN IN 1850 CLACKAMAS COUNTY**



While the anecdotal evidence about marriages indicates that weddings were frequent and the brides might have been considered young for marriage, a careful examination of the numbers of marriages conducted in Clackamas, Linn, and Marion Counties from 1850-1855 indicates that there was no significant increase in the marriage rate as compared with marriages recorded from 1856-1860.<sup>263</sup> (See Figures 5.23 and 5.24) In fact, only Clackamas County showed an increase in marriages, while the numbers for Marion and Linn Counties remained nearly equal. For the year ending June 1, 1850 the counties reported their marriages as twenty-two in Clackamas, twenty-seven in Linn, and twelve in Marion, for a total of sixty-one. This accounted for 36 percent of all marriages in Oregon during that year. (See Figures 5.25-5.32)

Most claimants were already married when they settled in Oregon. Of the 2,648 claims in this sample, 2,159 were filed by married couples. Among the sample, only 574 married between October 1850 and December 1855, representing just over 21 percent of all claimants. These numbers support the reading of the Oregon migrations as a settler movement built upon the family unit, rather than an advance force of single men. They also suggest that the anecdotal evidence of increased marriage rates in Oregon following passage of the law are merely incidental stories. The report of one newspaper that “Matrimony is a brisk business in Oregon, and is no doubt encouraged and promoted by the land law, which holds out inducements by doubling the quantity of land to a married occupant,” is best understood as editorial hyperbole rather than fact.<sup>264</sup>

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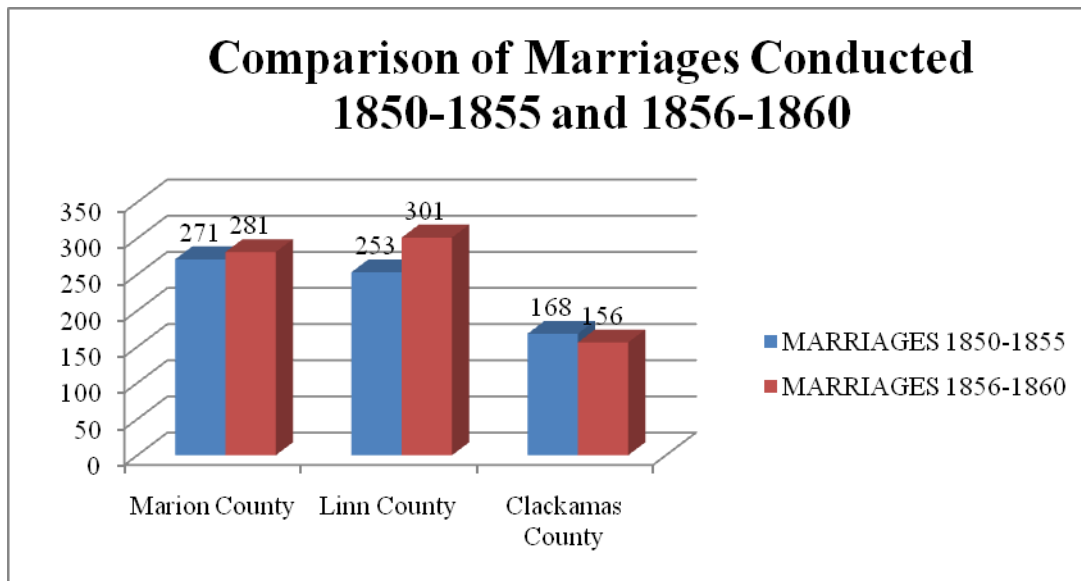
<sup>263</sup> I use the dates October 1850-December 1855 for purposes of determining marriages conducted when having a wife entitled a male settler to additional acreage. The law was passed in September 1850, but allowing time for news of the law and its particulars to make its way to Oregon, marriages contracted prior to October 1850 would have been conducted before the couple could have knowledge that their marriage would in any way benefit their land claim.

<sup>264</sup> “Oregon,” *North American and United States Gazette*, November 4, 1851.

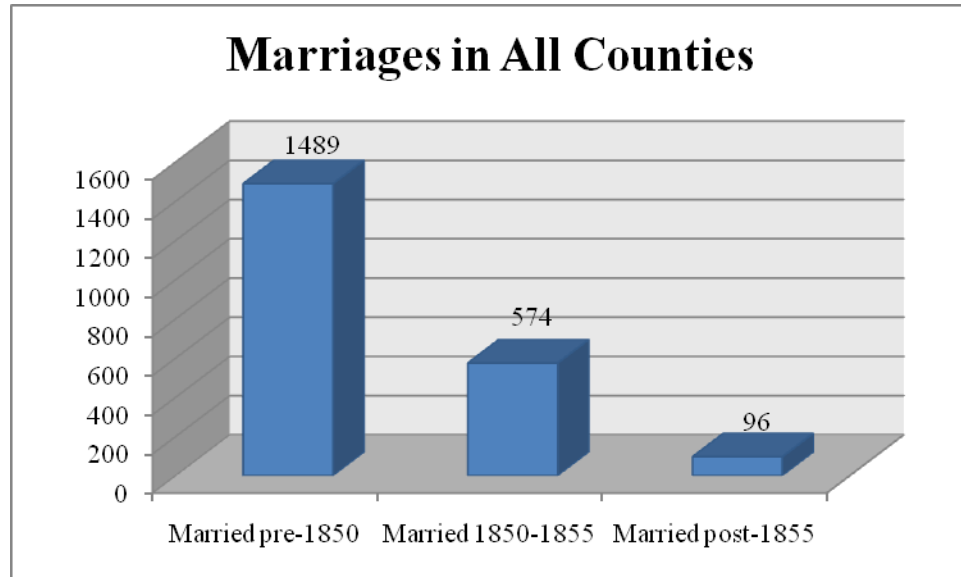
**FIGURE 5.23  
MARRIAGES CONDUCTED 1850-1860**

County	Marriages 1850-1855	Marriages in Claims not Listed in County Records 1850-1855	Marriages 1856-1860	Total Marriages 1850-1860
Marion	212	59	281	552
Linn	209	44	301	554
Clackamas	152	16	156	324
TOTALS	573	119	738	1430

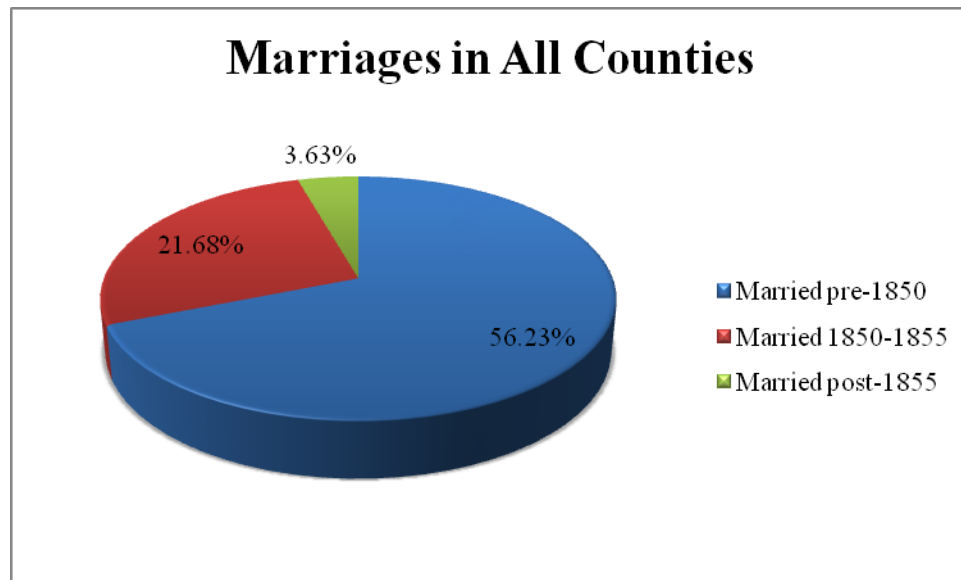
**FIGURE 5.24  
COMPARISON OF MARRIAGES 1850-1855 AND 1856-1860**



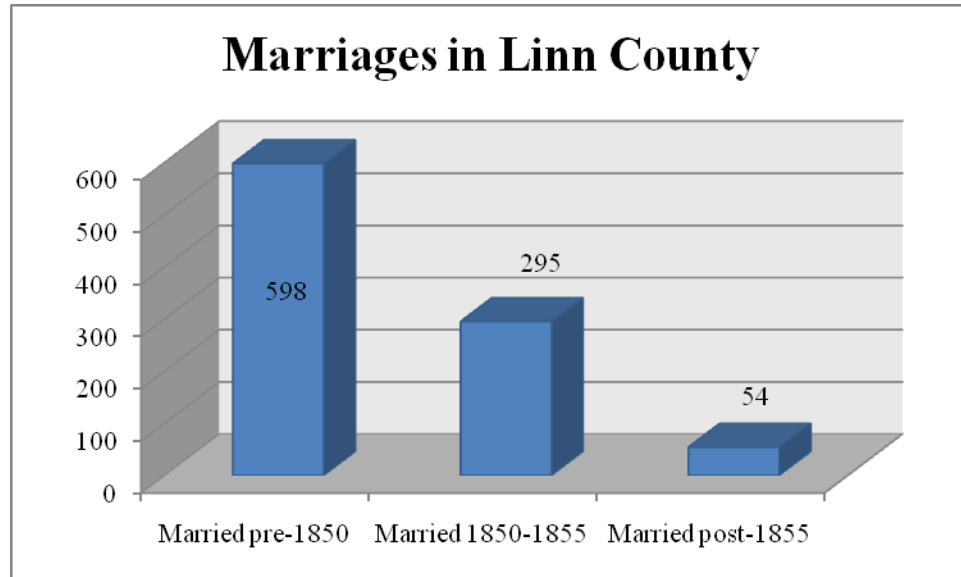
**FIGURE 5.25**  
**NUMBERS OF MARRIAGES IN ALL COUNTIES**



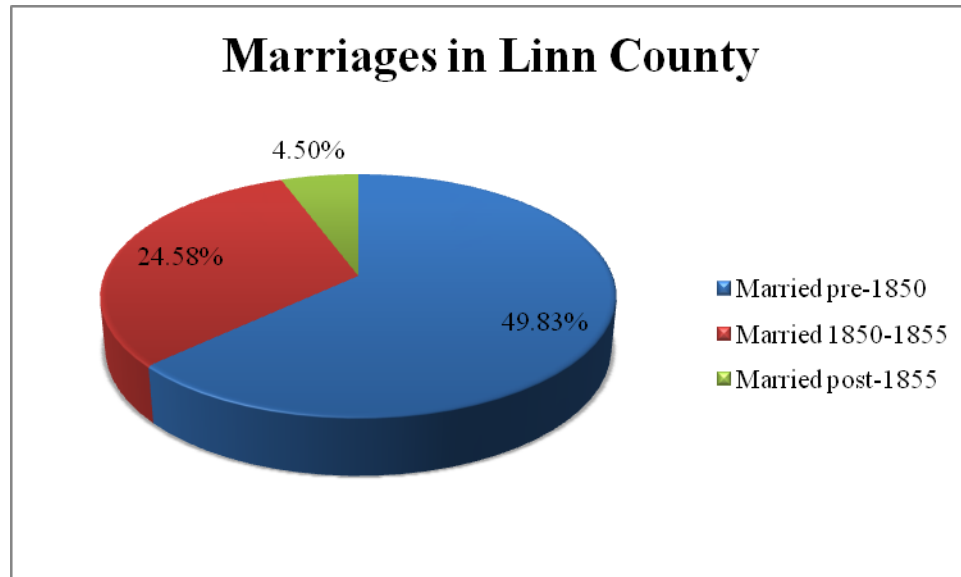
**FIGURE 5.26**  
**PERCENTAGES OF MARRIAGES IN ALL COUNTIES**



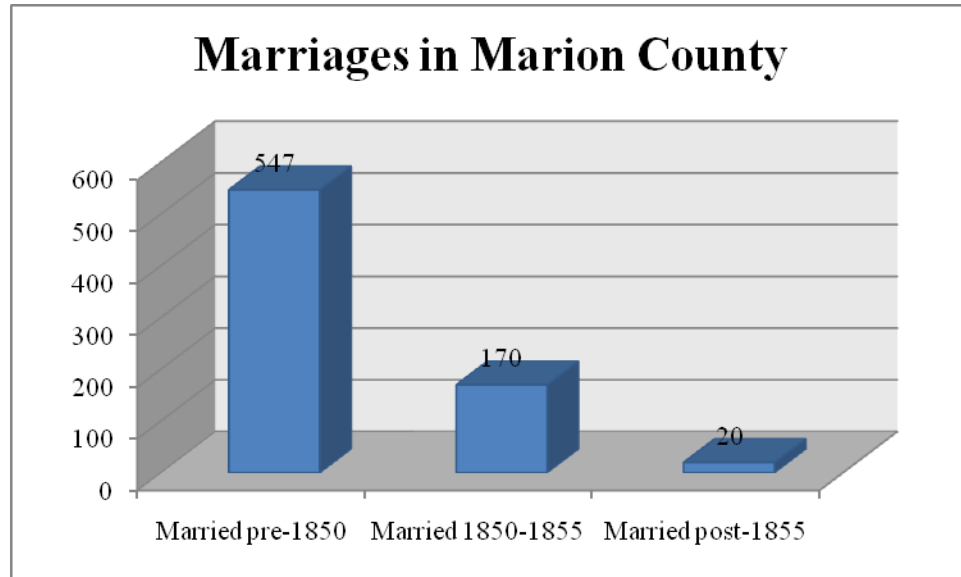
**FIGURE 5.27**  
**NUMBERS OF MARRIAGES IN LINN COUNTY**



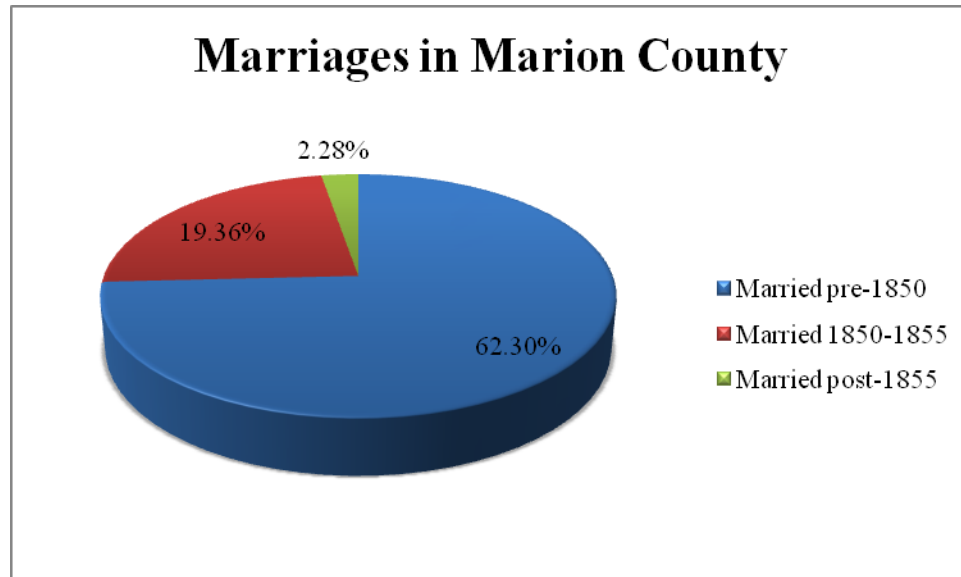
**FIGURE 5.28**  
**PERCENTAGES OF MARRIAGE IN LINN COUNTY**



**FIGURE 5.29**  
**NUMBERS OF MARRIAGES IN MARION COUNTY**

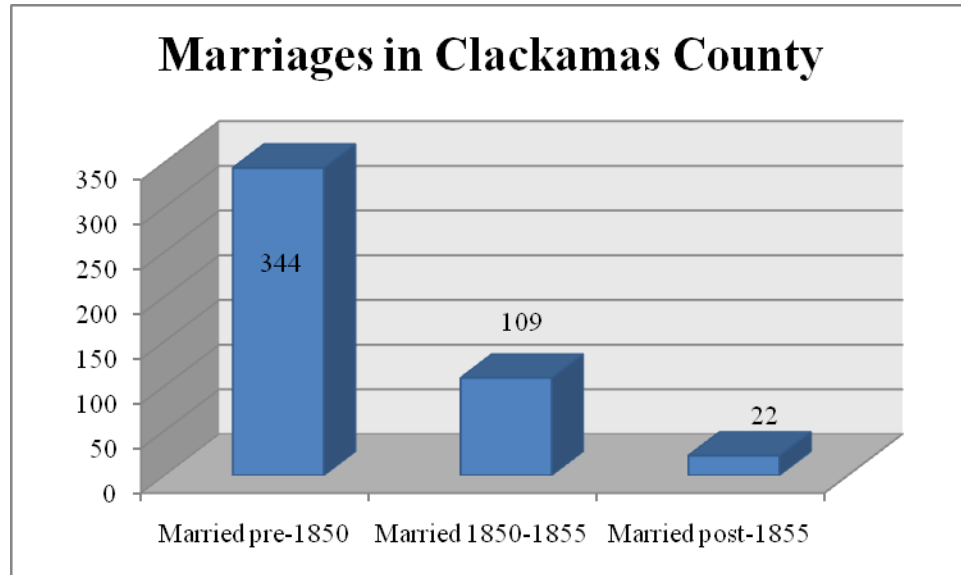


**FIGURE 5.30**  
**PERCENTAGES OF MARRIAGES IN MARION COUNTY**

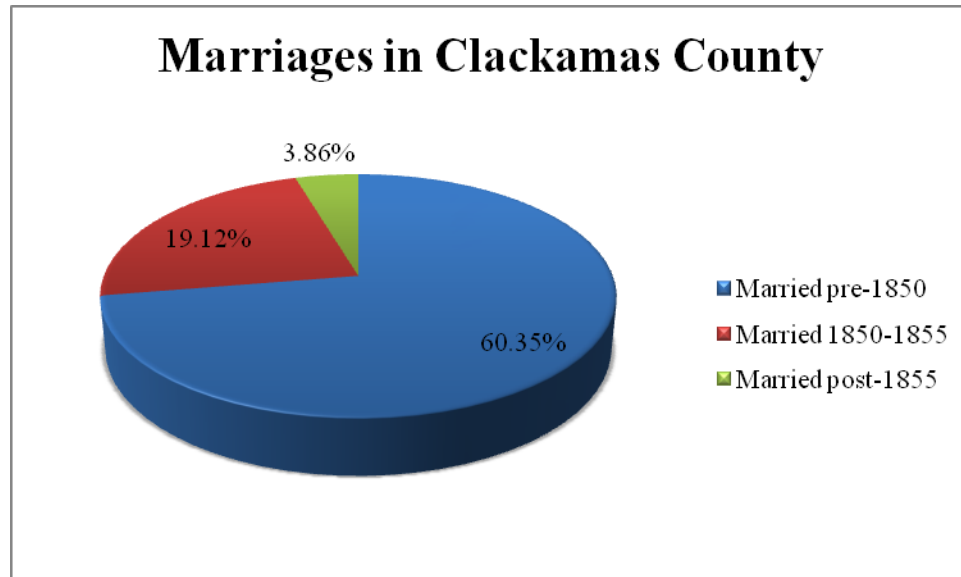




**FIGURE 5.31**  
**NUMBERS OF MARRIAGES IN CLACKAMAS COUNTY**



**FIGURE 5.32**  
**PERCENTAGES OF MARRIAGES IN CLACKAMAS COUNTY**



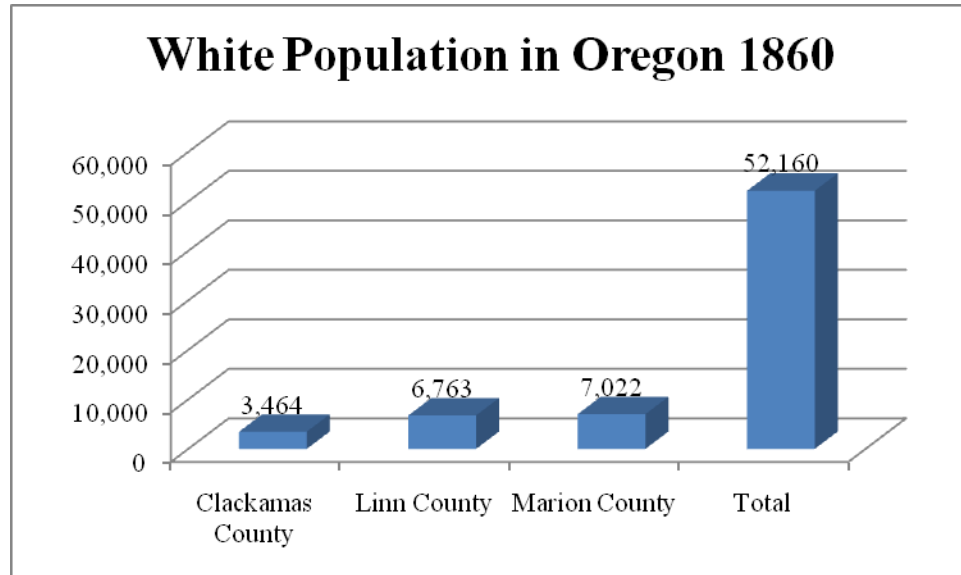
The county records show that a total of 573 marriages occurred in Linn, Clackamas and Marion Counties between October 1850 and December 1855. Information from the claim files indicates an additional 119 marriages that did not appear in the county record. (See Figure 5.23) The county records for this time period are not always complete, especially for the years 1850 and 1851. Using both the claims and the county records, however, it can be determined that at least 692 marriages occurred during the above-referenced time frame.

In the same counties for the following five-year period, January 1856-December 1860, records show 738 marriages. Even taking into account missing marriage records from the first two years of the decade, these numbers reveal that there was no marked difference in the number of marriage conducted during the years when claimants received additional land if they were married than for marriages conducted in years when such eligibility no longer existed.

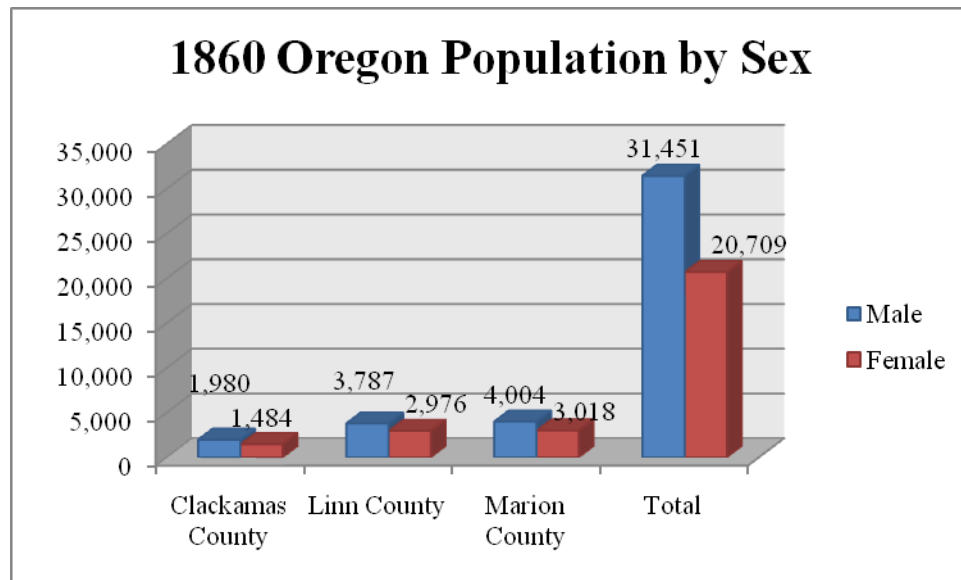
By 1860 Oregon's white population had grown to 52,160. Of these, the 20,709 women made up just 39.70 percent of the population while the 31,451 men comprised 60.30 percent. (Figures 5.33 and 5.34) In each county similar percentages between men and women prevailed. Linn County's 3,787 men were 56 percent of the populace while the 2,976 women made up the remaining 44 percent. Marion County included 4,004 men and 3,108 women, 57.02 and 42.98 percent of the population respectively. In Clackamas County 1,980 men accounted for 57.16 percent of the inhabitants, while 1,484 women made up 42.84 percent. (See Figures 5.35-5.38)

While the overall sex ratios remained nearly constant between 1850 and 1860, the disparity between men and women aged 15-30, those most likely to marry, diminished

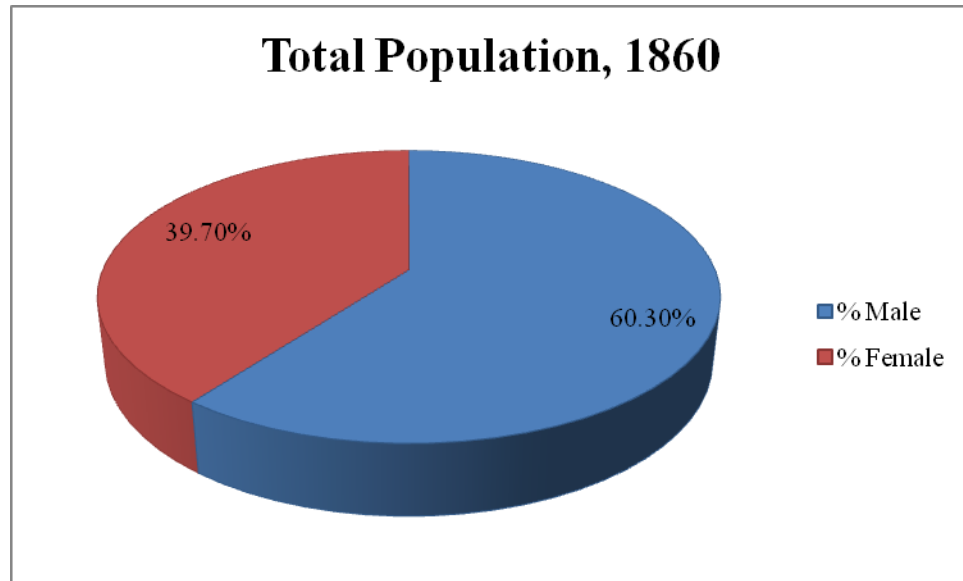
**FIGURE 5.33  
WHITE POPULATION OF OREGON 1860**



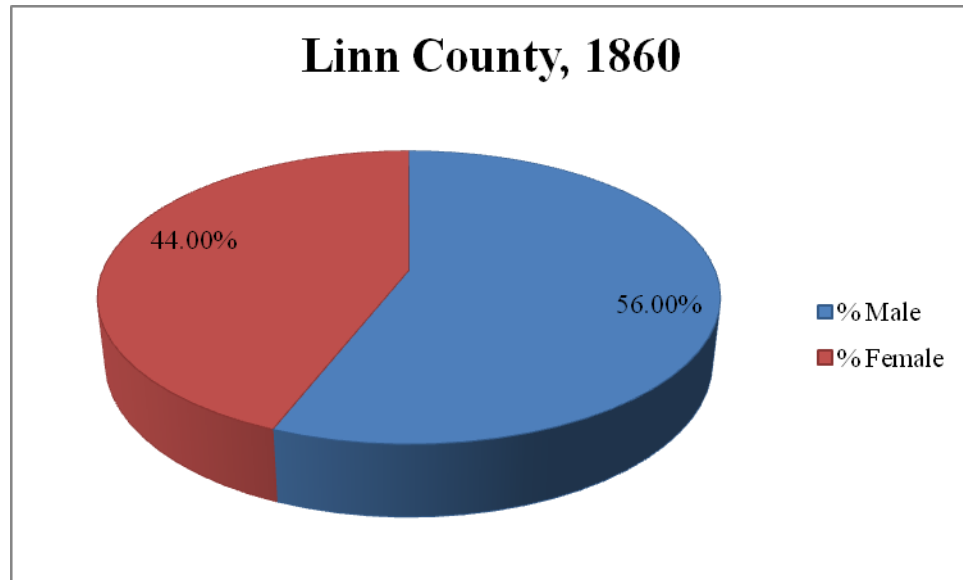
**FIGURE 5.34  
1860 WHITE POPULATION OF OREGON BY SEX**



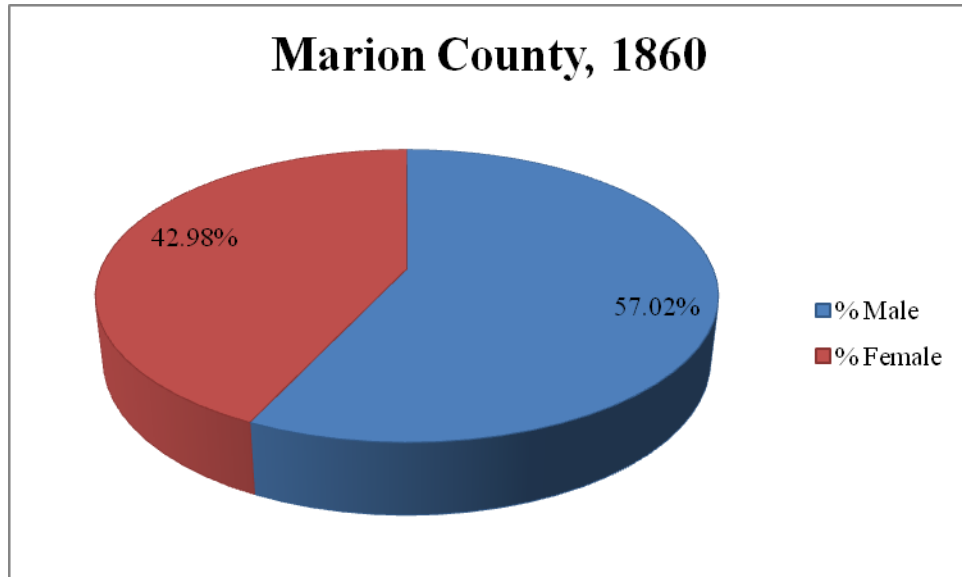
**FIGURE 5.35**  
**PERCENTAGE OF WHITE MEN AND WOMEN IN 1860 OREGON**  
**POPULATION**



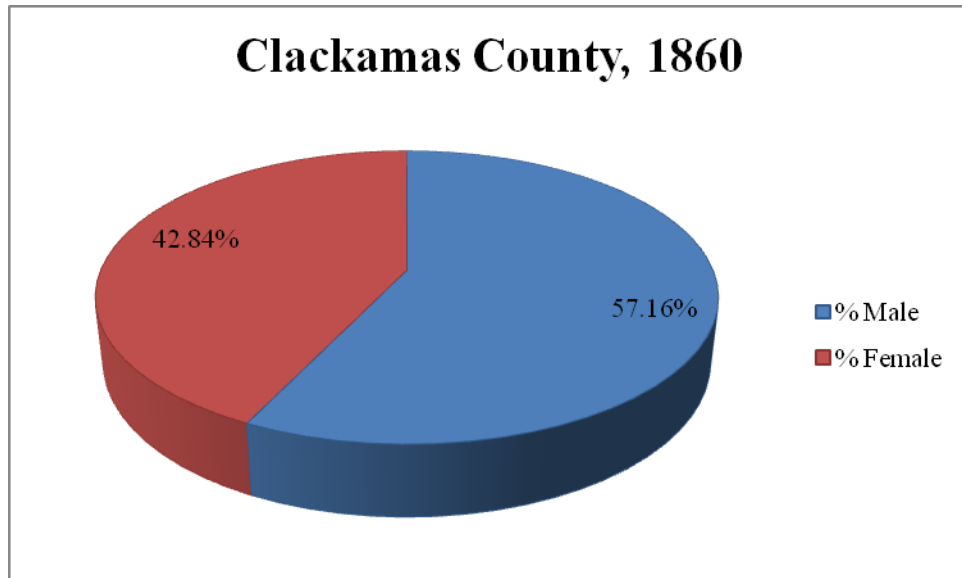
**FIGURE 5.36**  
**PERCENTAGE OF WHITE MEN AND WOMEN IN 1860 LINN COUNTY**



**FIGURE 5.37**  
**PERCENTAGE OF WHITE MEN AND WOMEN IN 1860 MARION COUNTY**



**FIGURE 5.38**  
**PERCENTAGE OF WHITE MEN AND WOMEN IN 1860 CLACKAMAS COUNTY**



over the course of the decade. (See Figures 5.39 and 5.40) In 1850 women aged fifteen to thirty made up just 30 percent of the territory's population in that age range, making the ratio more than 2:1 for men to women in this category. The difference increased among those aged twenty to thirty, with women making up just 25.24 percent of the population for a male to female ratio of 3:1 in this age range. By 1860 the numbers had improved somewhat, though a significant imbalance remained. Men aged fifteen to thirty made up 63.31 percent of that age range, compared to the 36.69 percent of women. Again, among those aged twenty to thirty, the disparity was even more marked, with women comprising only 31.51 percent of the category compared to men's 68.49 percent, though again, those numbers indicate a decline in the gap between men and women in this age category. (See Figures 5.41-5.48)

In light of these numbers, one would assume that the marriage rate in Oregon would remain stable or increase in the years between 1850 and 1860, but that was not the case. In the 1850 census the territory reported just 168 marriages conducted in the year ending June 1, 1850. The rate of marriages, however, was much higher than that in other states in 1850. The national marriage rate in 1850 was .99 percent; in Oregon that number jumped to 1.26 percent. Only Arkansas and Texas had higher rates (1.30 and 1.45 respectively) and the Indiana rate equaled that in Oregon. By 1860 the marriage rate in Oregon had dropped, reaching only .69 percent, a ratio of 1 in every 146 persons marrying, compared to the national average of 1:122 (.99 percent).

While the above data suggests that the Oregon Donation Act did not encourage an increase in the marriage rate in Oregon, the marriage rates in other parts of the country indicate that there may have been a rise in marriages in response to the act in states from

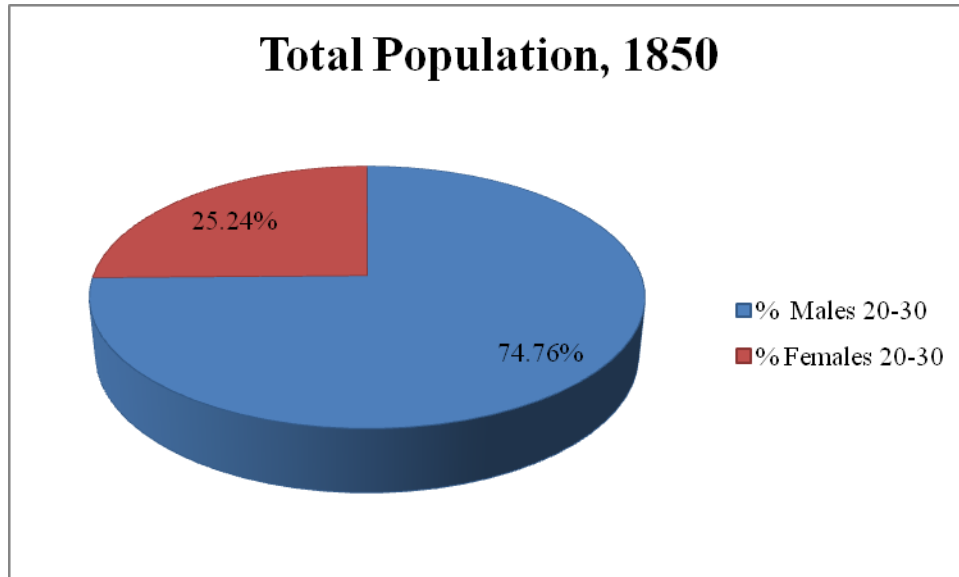
**FIGURE 5.39**  
**1850 WHITE POPULATION AGED 15-30**

County	Males 15-20	Males 20-30	Females 15-20	Females 20-30	Total Males	Total Females	Total Population 15-30	Total Population 20-30
Clackamas	95	326	91	139	421	230	651	465
Linn	57	126	37	87	183	124	307	213
Marion	152	343	119	175	495	294	789	518
Total Population	677	2,375	525	802	3052	1327	4379	3177

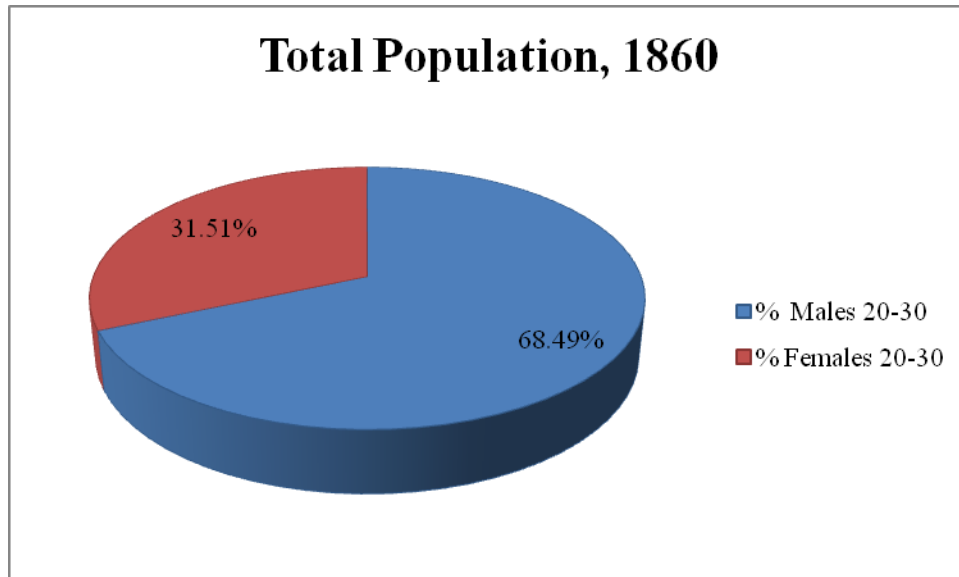
**FIGURE 5.40**  
**1860 WHITE POPULATION AGED 15-30**

County	Males 15-20	Males 20-30	Females 15-20	Females 20-30	Total Males	Total Females	Total Population 15-30	Total Population 20-30
Clackamas	148	332	154	201	480	355	835	533
Linn	322	703	299	438	1025	737	1762	1141
Marion	353	761	338	477	1114	815	1929	1238
Total Population	2,225	7,237	2,154	3329	9462	5483	14945	10566

**FIGURE 5.41**  
**1850 WHITE MALE AND FEMALE POPULATION AGED 20-30**

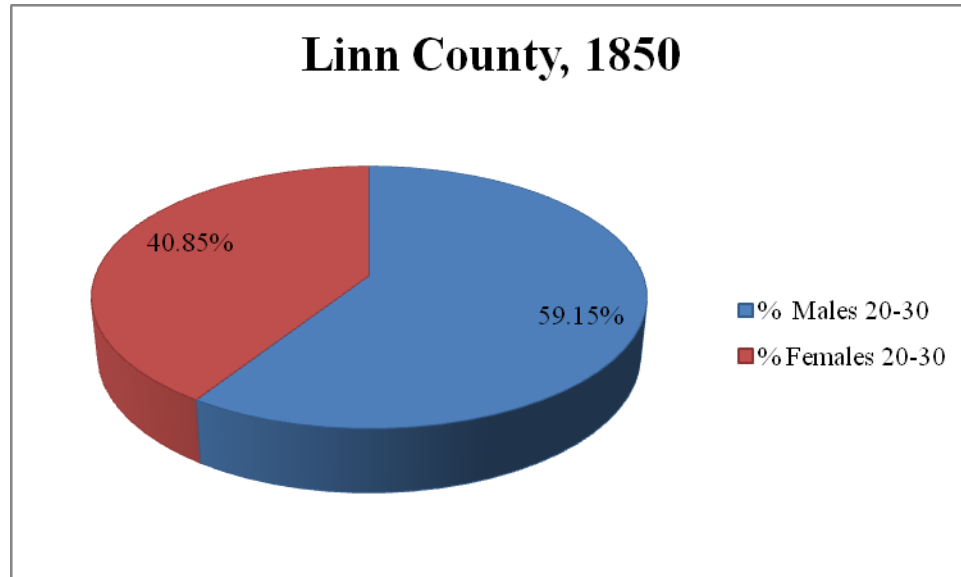


**FIGURE 5.42**  
**1860 WHITE MALE AND FEMALE POPULATION AGED 20-30**

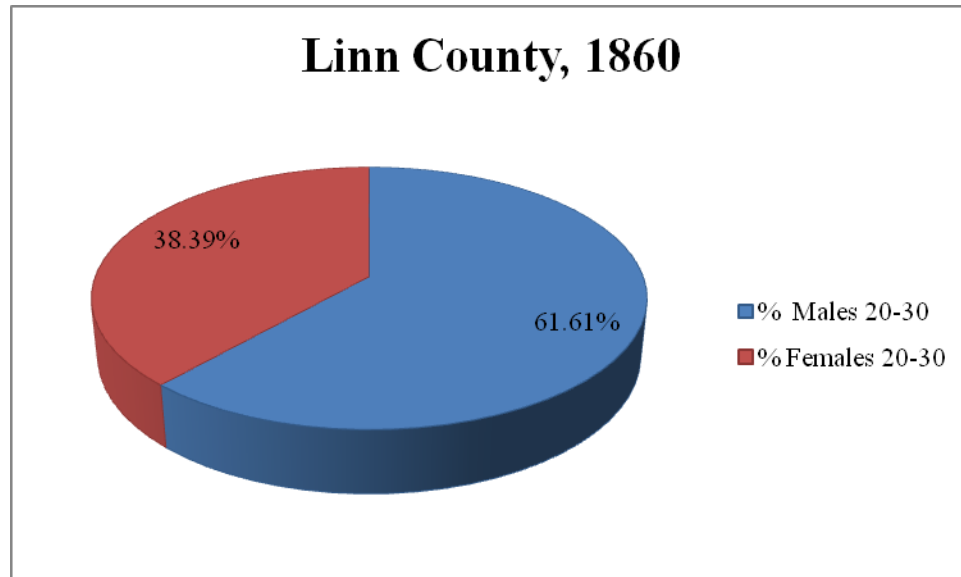




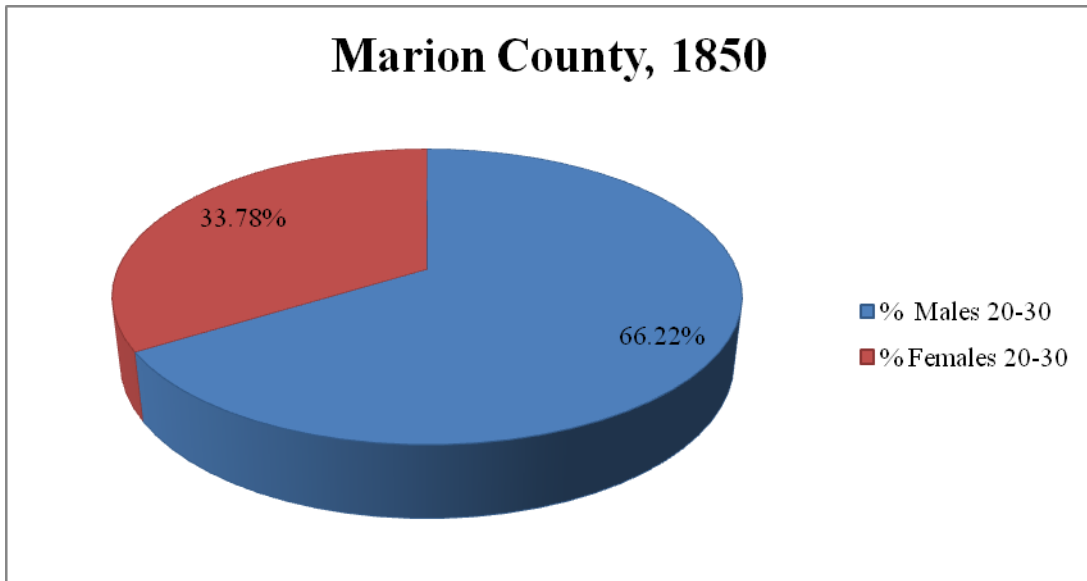
**FIGURE 5.43**  
**1850 WHITE MALE AND FEMALE POPULATION AGED 20-30 LINN COUNTY**



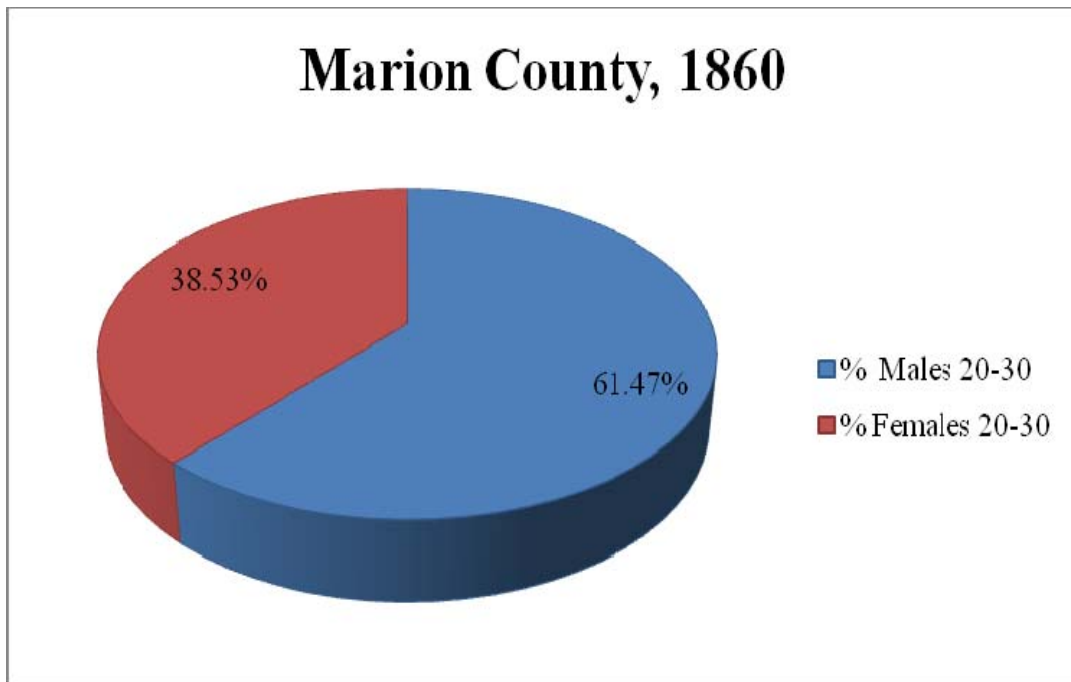
**FIGURE 5.44**  
**1860 WHITE MALE AND FEMALE POPULATION AGED 20-30 LINN COUNTY**



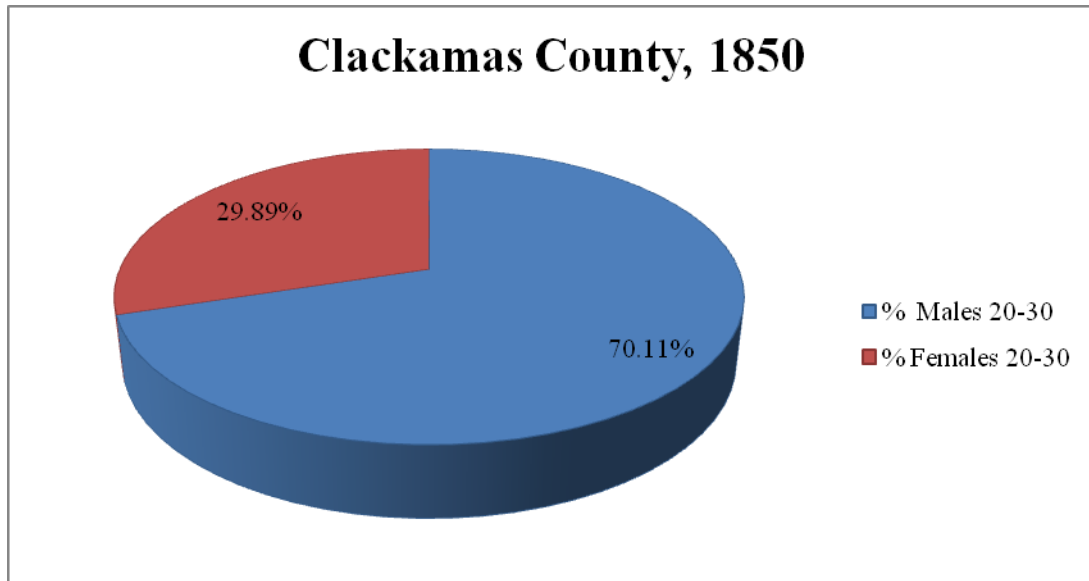
**FIGURE 5.45**  
**1850 WHITE MALE AND FEMALE POPULATION AGED 20-30 MARION COUNTY**



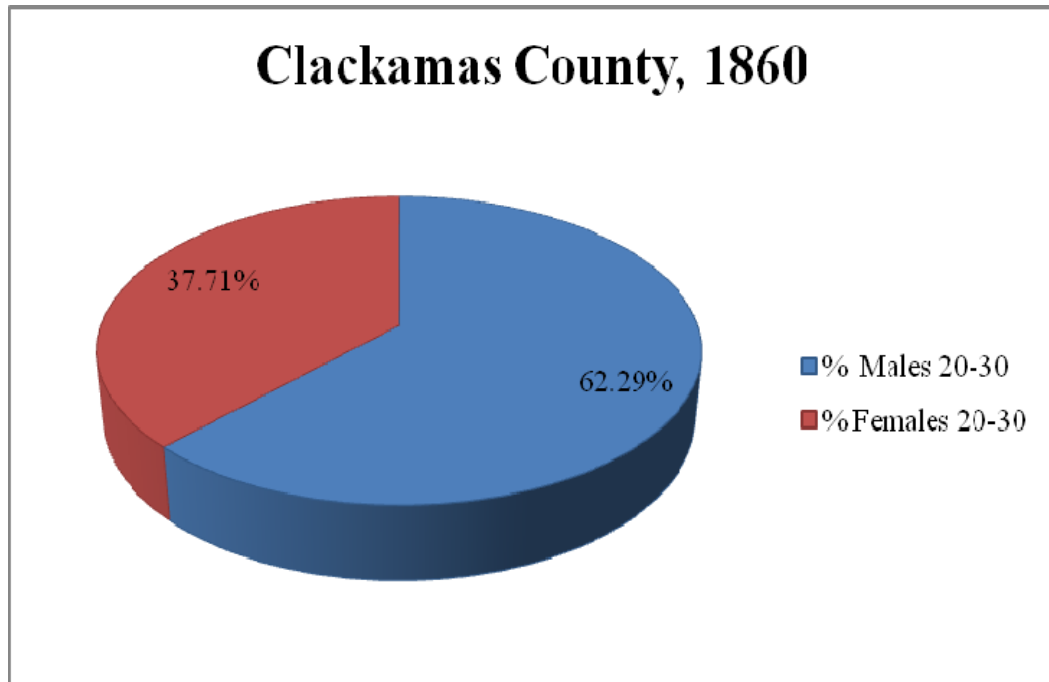
**FIGURE 5.46**  
**1860 WHITE MALE AND FEMALE POPULATION AGED 20-30 MARION COUNTY**



**FIGURE 5.47**  
**1850 WHITE MALE AND FEMALE POPULATION AGED 20-30 CLACKAMAS COUNTY**



**FIGURE 5.48**  
**1860 WHITE MALE AND FEMALE POPULATION AGED 20-30 CLACKAMAS COUNTY**



which emigrants originated. The 1860 census reported marriage rates above the national average in Illinois, Indiana, Louisiana, Michigan, and Missouri in both 1850 and 1860.<sup>265</sup> Of these states, Missouri, Illinois, and Indiana were the originating homes of much of the territory's population in 1850. (See Figure 5.12) It is possible, then, that marriages prior to emigration may have increased in the 1850s, as couples sought to become eligible for the larger land grants provided for under the Oregon Donation Act.

Marriage was established as a central component of settling Oregon from the very beginning, and as the above data demonstrates, marriage remained important in the first decade of settlement under the Oregon Donation Act. Congress created land laws that encouraged familial migrations, and created opportunities for men and women to recreate in Oregon the gender order of the eastern United States. Men and women complied in this mission, with most land claims being filed by married couples. The donation land files, census data, marriage records, and married women's property registers reveal the absolute success of the Congressional plan to populate the Pacific Northwest with men and women whose homes would firmly establish the American presence and identity among the indigenous peoples of the area. It is tempting to see the Donation Land Act as a missed opportunity for women to use newly-established property rights to challenge traditional gender roles. Instead, this decade of expanded female property ownership should be seen as a key component of the larger establishment of an American empire in the West, with white women as central to its success as their husbands, brothers, and sons.

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<sup>265</sup> *Population of the United States in 1860; compiled from the Original Returns of the Eighth Census* (Washington, D.C.: Government Printing Office, 1864) xxxvi.

**CHAPTER 6**  
**“SO HAPPY AND SO PORE TOGETHER”:**  
**BLACK AND WHITE FEMALE HOMESTEADERS IN KANSAS**

On July 9, 1883 Mary Hayden began her career as a homesteader when she filed her initial claim to land in Graham County, Kansas. Hayden appeared at the land office in Colby to register her rights to 160 acres of land in sections 3 and 10 of township 8S, 21W. Hayden came to Kansas from Kentucky and worked as a housekeeper for John Lored. The 1880 census lists Hayden as a mulatto woman, 38 years of age, and a member of the Lored household. On April 3, 1885, Hayden made the final proof on her claim and became the legal owner of the land on which she lived. The story of Mary Hayden is not, however, as simple as it seems on the surface, its telling complicated by factors such as her race, her employment, and the location of her land.

The women in this chapter claimed their land (for the most part) under the provisions of the 1862 Homestead Act. However, the specific rules impacting their ability to participate as homesteaders faced significant challenges from the General Land Office (GLO), which wielded a great deal of power in establishing rules that clarified the basic, and generally vague, eligibility descriptions laid out in the law itself. Thus, it is imperative to understand how the GLO viewed female homesteaders, and how the assumptions about gender and empire held by the men who ran the GLO shaped the experiences of female homesteaders across the West.

The Homestead Act, like the Oregon Donation Act, had particular goals for women wrapped up in both its legal provisions and the assumptions about empire and gender that motivated passage of the act. While the law provided for single women to become homesteaders, as was noted in Chapter Three, the ultimate vision for them was

one of domestic bliss, whereby they surrendered their independent living as single women to become wives, mothers, and builders of empire. This exploration of women homesteading in Kansas, reveals that while white women did participate in the American imperial project, they did so as land owners, as well as through more traditional gender roles. Women's land ownership also propelled them to assert their political rights, resulting in significant female civic activity in at least one Kansas county.

What role African American women might play in homesteading received no attention in the legislation. In the wake of significant black migration to Kansas in the 1870s and 1880s, white men and women would articulate their assumptions about the proper place for African Americans in the imperial order. They envisioned the former slaves not as fellow land owners and (re)creators of proper American society, but as laborers who must be trained and scattered throughout the state. African American women challenged these restrictions, and while many did work as laborers, they also successfully asserted their rights to become land owners under the provisions of the Homestead Act.

### **GENDER IDEALS AND FRONTIER REALITY: THE GENERAL LAND OFFICE AND IMPLEMENTATION OF WOMEN'S HOMESTEADING RIGHTS**

Passage of the Homestead Act was merely the first step in the process that would allow women to claim a portion of the public domain in the western lands. The implementation of the Homestead Act and its rules occurred largely under the authority of the General Land Office (GLO), a bureaucracy housed within the Department of the Interior that wielded exceptional power in its ability to make decisions about a claimant's eligibility for a homestead claim. Many of the cases that came before the GLO dealt

directly with women's right to homestead benefits. Over the latter half of the nineteenth-century GLO decisions affirmed a single woman's right to the land, firmly denied homestead claims to married women, and provided protections for deserted and widowed women.<sup>266</sup>

These decisions handed down by the GLO reaffirm the dualistic view of women's roles that Congress struggled with in its debates over female beneficiaries of homesteading. The GLO, like Congress, did not want to impede settlement of the west with proper American families by limiting women's homesteading rights, but at the same time they faced the constraints of nineteenth-century ideals about gender roles and women's abilities, conflicting ideologies that played out in the cases brought before the GLO.

Decisions made by the GLO typically affirmed the ideal of the husband as head of household and the proper person in whom to vest legal title to the land. This became particularly evident in cases where deserted wives attempted to make final entry of homestead claims in their own names. In 1872 Levi A. Card entered a homestead claim in Minnesota. Two years later his wife, Keziah, informed the local land office that her husband had deserted the family and that she intended to obtain a divorce. Keziah also wanted to contest her husband's claim to the homestead and make final entry in her own name, claiming credit for her Levi's military service toward the terms of settlement. The GLO commissioner Samuel Burdett ruled in the case that Keziah could not make final entry in her own name, arguing that allowing her to contest her husband's claim was "in

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<sup>266</sup> See James Muhn, "Women and the Homestead Act: Land Department Administration of a Legal Imbroglia, 1863-1934," *Western Legal History* 7 (Summer/Fall 1994): 283-307, and Nancy J. Taniguchi, "Lands, Laws, and Women: Decisions of the General Land Office, 1881-1920, A Preliminary Report," *Great Plains Quarterly*, 13 (Fall 1993): 223-236.

violation of the fundamental principles governing the relation of husband and wife in the matter of property rights . . . .”<sup>267</sup> Burdett’s ruling revealed an ongoing belief in the sanctity of the male head of household.

It would not be until 1914 that Congressional action provided real protection of deserted wives’ property under homesteading laws. Yet, the next commissioner of the GLO would attempt to reverse Burdett’s ruling, appealing to Congress for a legislative remedy, and, in the wake of congressional inaction, adopting an internal rule that allowed deserted wives to make final proof on homestead claims in their own names. Rule 27 operated for nearly a decade until the 1884 case of *Bray v. Colby* established new rules for deserted wives.<sup>268</sup> Rule 27, while providing a practical remedy, also granted women a right not given them in law, and, according to GLO Commissioner Henry Teller, violated the husband’s rights to due process when depriving him of the claim.

Teller’s decision in *Bray v. Colby* established a series of rules that allowed a deserted wife to make final proof as her husband’s agent. Teller’s rules also allowed a deserted wife to make her own entry, providing that seven years had elapsed since her husband’s entry and that she had maintained residence on the land. She did not, however, receive credit for her time of residence toward her own claim. Teller’s reasoning included an assertion that the law recognized the wife only as a widow; Congress’s provision for widows indicated to Teller that there was no other status by which a wife might make a homestead entry.<sup>269</sup>

Christina Anderson’s case illustrates again that the GLO was often torn between protecting the ideal of the nineteenth-century family and the reality of deserted wives and

<sup>267</sup> “Mrs. Keziah Card,” *Copp’s Land Owner*, 2 (July 1875), 50.

<sup>268</sup> “Suspended Entries: Rules and Regulations,” *Copp’s Land Owner* 4 (July 1877), 54.

<sup>269</sup> “Bray v. Colby,” *Decisions Relating to the Public Lands* 2 (1884), 78-82.



children. In 1875 Anderson's homestead claim was contested for abandonment by D. W. Thompson. The Anderson homestead, near Eureka, Nevada, was inhabited by Christina and her children. In 1873 Peter Anderson left the homestead, an apparently mutual arrangement between husband and wife. During the contest over her homestead claim Christina submitted as evidence of her abandonment a separation agreement between them, as well as a copy of the deed and Peter's declaration to give the property to his wife. Recognizing the unusual circumstances of the desertion, GLO commissioner Williamson noted it was unimportant to "inquire what part Mrs. Anderson took in the matter of her husband leaving her and the land." Williamson's comment suggests that he believed the voluntary separation could have stemmed largely from Christina's actions, thereby partially absolving Peter for having left his family. Yet Williamson concluded that "he left her to support herself and family; and if he has finally abandoned her, she will be recognized as the head of a family," and granted the rights due her in that role.<sup>270</sup>

GLO decisions generally reaffirmed a husband's rights, though as the Anderson case reveals, there was a growing emphasis on ensuring that men were fulfilling their proper roles in the gender order. This is evident even in the case of divorce. In *Larsen vs. Pechierer, et.al.*, the claim held by Mary Larsen was challenged by another settler, Elias Davis. Peter Larsen had filed a declaratory statement for the land in 1868; nine years later the local land office in Los Angeles, California, cancelled Peter's claim for abandonment, and allowed Mary to enter a declaratory statement for the homestead. Mary's statement dated her occupation of the tract to March 1868, the date that Peter had filed on the claim. Mary's status as an abandoned wife was never in question. She testified that he did not live on the land, did not provide any support for the family, a

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<sup>270</sup> "Thompson vs. Anderson," *Copp's Land Owner* 6 (November 1879), 125.

situation that compelled her to work outside the home in order to provide for her children, and that she had obtained a divorce in 1876. Yet, the GLO refused to recognize Mary's right to the land, declaring that she could not base her claim upon a settlement date begun during her marriage, as she was then under the rules of coverture, and therefore ineligible to enter a homestead claim. The GLO further ruled that coverture rendered the husband and wife as one legal entity, therefore as long as Mary was legally Peter's wife, "his abandonment of the land was her abandonment."<sup>271</sup> Again, the GLO adhered strictly to the dominant legal views of marriage, protecting a husband's role as head of household and the sole legal and political body of a married couple.

While most GLO decisions reinforced the prevailing views of marriage and the roles of husband and wife, there were cases when the tension between traditional gender roles and the reality of frontier settlement resulted in rulings that favored wives. In *Havel v. Havel* the GLO commissioner upheld Mrs. Havel's right to the homestead claim, despite her husband's attempt to sell it away from them. John Havel had filed his Kansas claim in 1880, then abandoned his wife and children two years later, finally obtaining a divorce in Nebraska in 1885. During that time Mrs. Havel maintained her residence and cultivation of the land, and filed final proof in 1885, but was disallowed under the rules governing abandoned wives. Her only alternative was to file the claim as her husband's agent or to contest her husband's entry and file a claim in her own name. During this time her ex-husband returned to Kansas and purchased the land as a commuted cash entry, then sold the tract to another settler. While technically Mrs. Havel had no legal recourse according to the rules governing homestead entry for abandoned wives, the commissioner argued that "To allow the husband, who had deserted her and her four

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<sup>271</sup> "Larsen vs. Pechierer et.al.," *Copp's Land Owner* 9 (August 1882), 98.

small children, to come back quietly and sell their home from them at a time when she was asserting her adverse claim, would be to allow the perpetration of a great wrong.”<sup>272</sup>

The ruling in favor of Mrs. Havel rested on the legal grounds that her adverse claim was already in process at the time that her ex-husband purchased and re-sold the land, making his actions invalid, but the commissioner’s statement reveals a sympathy and respect for the abandoned wife who had made good the homestead claim despite her difficult circumstances.

In some cases, the GLO decisions praised women who adopted the role of head of household, assuming the duties of a husband in order to provide for her spouse and children. Theresa Landry made final proof on her homestead claim in La Grande, Oregon in 1885. A married woman and mother of three, Landry filed her claim as head of household because she supported and cared for her invalid husband. The denial of final proof prompted Landry to appeal the decision, at which time she submitted proof that her husband was helpless, “unable to walk, stand or feed himself,” and that she was the sole source of support for him and their children. In upholding Landry’s right to the land the commissioner declared that she had “in the exercise of the noblest attributes of wife and mother . . . taken his [her husband’s] place at the head of the household, and has become his ministering angel in affliction.”<sup>273</sup> Theresa Landry could have been seen as violating traditional wifely roles, but instead, the ruling elevated her to the ideal wife for her willingness to take on duties to which she was unaccustomed for the benefit of her husband or the good of her family.

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<sup>272</sup> “Havel v. Havel,” *Decisions Relating to the Public Lands* 12 (1892), 321.

<sup>273</sup> “Theresa Landry,” *Decisions Relating to the Public Lands* 13 (1893), 541.

Mormon polygamy complicated the GLO's position on wives as heads of household. In 1879 the GLO ruled in the case of Rachael Stevens that "no woman, however, who voluntarily maintains and acknowledges her position to be that of a plural or polygamous wife, should be permitted to make a homestead or pre-emption entry of public land, as the very fact that she retains such relation is conclusive evidence that the entry is not made in good faith, for her own exclusive use and benefit."<sup>274</sup> In part, this ruling relied upon the traditional view of the husband-wife relationship as the basis for this decision. Rachael Stevens was the second wife of John G. Holman; the two had married in 1856 and had seven children. Holman would later marry a third wife, Sarah Loda. All three of the Stevens wives lived on adjoining quarter sections of land, sharing the crops they raised.

While Rachael admitted that U.S. laws did not recognize her as a legal wife, the commissioner's decision in the case charged that she "still recognizes Holman as her husband, and he, to all intents and purposes, governs and controls her acts."<sup>275</sup> This maintenance of a traditional marital relationship, even without legal sanction, formed the basis for the GLO decision that the land was not being used for her own benefit as a head of household, but was utilized for the benefit of Holman. Even in the non-traditional arrangement of plural marriage, beliefs about the husband-wife relationship retained their power in the decision making process of the GLO.

While GLO decisions repeatedly upheld a single woman's right to homestead, and also ruled that marriage after making a homestead entry did not negate a woman's rights, subsequent decisions relating to women who married after making an initial homestead

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<sup>274</sup> "Lyons vs. Stevens," *Copp's Land Owner* 6 (October 1879), 107-108.

<sup>275</sup> "Lyons vs. Stevens," *Copp's Land Owner* 6 (October 1879), 107-108.

entry relied upon traditional nineteenth-century beliefs about marriage and home in making judgments. The GLO consistently ruled that a woman's place of residence following her marriage must be with her husband, a decision that often prohibited women from making final proof on their claims. In 1890 Angie Williamson appealed the denial of her final proof, a decision that had been made based on the reasoning that "The proof here shows that the claimant's alleged residence upon the tract was subsequent to her marriage, and at which time she must be considered as living with her husband on his farm near this tract, and as having no legal residence upon said tract."<sup>276</sup> The GLO reaffirmed this decision the following year, declaring it impossible for a husband and wife to maintain separate residences.<sup>277</sup>

The GLO decisions revealed attitudes much like those in Congress in relation to single, unwed mothers as heads of household. An 1883 letter relating the rights of single women to the land specified that single women who were heads of household could, in fact, make a homestead entry, but this declaration included the parenthetical description "such as widows having children."<sup>278</sup> Despite the ongoing assumption that proper female heads of household were only women who had been widowed or (in some cases) abandoned, the GLO did recognize the rights of unwed mothers to homestead. In the case of George Male the GLO ruled that "the mother of an illegitimate child is regarded as the head of a family," even while recognizing that the duties for care of a family

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<sup>276</sup> "Angie L. Williamson," *Decisions Relating to the Public Lands* 10 (1890), 30-31. See also "Thomas E. Henderson," *Decisions Relating to the Public Lands* 10 (1890), 266 where the GLO ruled that a husband and wife residing in a home built across two adjoining claims could not be considered in compliance with residence requirements, as "a husband and wife, while they live together as such, can have but one and the same residence," which must have been on one claim or the other, but could not be on both.

<sup>277</sup> "Bullard v. Sullivan," *Decisions Relating to the Public Lands* 11 (1891), 22-23.

<sup>278</sup> "Single Women," *Copp's Land Owner* 10 (December 15, 1883), 294.

“usually devolve upon the husband or father, if living,”<sup>279</sup> but that the mother of an illegitimate child had full rights to custody, and must therefore be considered a head of household. Congress had only jokingly considered such a possibility in the course of debating women’s eligibility for homestead claims, but again, the GLO faced the necessity of interpreting the law when confronted with the reality of women’s lives rather than the ideal imagined by lawmakers.

When viewed as a body of rules, the GLO decisions impacting women’s homesteading rights clearly echo the paradox about gender roles that shaped the Congressional debates over female homesteading. America needed white women in the West as wives and mothers, the cornerstones necessary for building civilized society in an untamed land, and homesteading provided one way of helping to place women there. At the same time, however, the inclusion of women as homesteaders challenged traditional views of women as weak and in need of protection from the wilds of the frontier, and unsuited to the harsh realities and work required for success in the West.

**“EVERY BLACK MAN IS HIS OWN MOSES NOW”:  
AFRICAN AMERICAN MIGRATIONS TO KANSAS**

The Homestead Act held out the promise of land ownership not only to women, but also to African Americans at the close of the Civil War. Passage of the Fourteenth and Fifteenth Amendments recognized blacks as citizens, making them eligible to claim a share of the public domain in the West. The failure of Reconstruction to provide former

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<sup>279</sup> “George Male,” *Copp’s Land Owner* 13 (August 1, 1886), 102. The GLO also ruled that the legal adoption of a child by an unmarried woman constituted her as a head of household, eligible for homesteading rights. See “Bush v. Leonard,” *Decisions Relating to the Public Lands* 25 (1897), 132.

slaves opportunities for land ownership in the South elevated the appeal of western land ownership.

By the 1870s African Americans began a concentrated effort to establish themselves as land owners in the West. In Washington, D.C. the Western Emigration Society, a group of “colored citizens” appealed to Congress for help to establish homes in the West. The Society submitted a memorial in 1878 that requested funds to “enable the helpless poor of our race in this section to locate as farmers (under the homestead laws) in one of the great, fertile, and comparatively unoccupied territories of the West.”<sup>280</sup>

The Western Emigration Society laid out for Congress a clear plan to accomplish relocating the indigent black population of Washington, D.C. to the West. First, they requested that western lands be set aside solely for black settlers, who would claim their 160-acre portions of the land upon their arrival. Second, the society requested that homes be built on each plot. The plan also called for funds to purchase the necessary farming implements and seed needed for the settlers to succeed. Finally, the plan requested an advance on the cost of transportation, up to \$150 per family, with the intent to repay the government within five years.<sup>281</sup>

The memorialists justified their ambitious plan on several grounds. They pointed to the temporary efforts to aid the indigent black population of Washington, D.C., what they termed “soup house charity” as exacerbating the problem by encouraging idleness among the population. The authors claimed their citizenship as a second justification for the plan, arguing that the republic was best served by citizens who contributed to its well

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<sup>280</sup> *Memorial of the Western Emigration Society*, April 29, 1878, Papers of the Committee on Washington, D.C., NARA, 1.

<sup>281</sup> *Memorial of the Western Emigration Society*, 8.

being. The memorial warned Congress that “no man can become a proper citizen of a republic who is wholly dependent upon others for his subsistence,” and offered their relocation plan as a solution to the problem.<sup>282</sup>

This line of argument reflected the concern expressed in Congress regarding citizenship in the debates over homesteading. In order to secure the empire, the West had to be settled with the right sort of citizens. In the Congressional mind, these citizens would always be white, and the debates revealed a belief that blacks would never be citizens of the United States. The Civil War and subsequent constitutional amendments rendered that assurance moot, and legally opened the western lands to blacks. The Society claimed those rights, not just as free men and women, but as citizens doing their duty to the country.

The leaders of the Society argued that they could play a key role in settling the West, drawing comparisons between blacks and Native Americans. “The native Indian, it would seem, has rightfully established a perpetual claim upon the land of the continent by simply roaming across it like the wild herds of the forest, with no appreciation of its value. Surely his claim is not greater in the judgment of a civilization-loving government than that established by the faithful son of toil whose labor has reclaimed it and cause it to bud and blossom as the rose,” they declared. In claiming their superiority to the West’s indigenous population, the Society asserted the right of blacks to participate as builders of the American empire. The authors went on to argue, “If, in other words, it is right that millions should be expended upon the noble red man who still hurls his defiant lances in the sun and resists the encroachments of civilization, surely it is not wrong that a small loan should be made to the no less noble black man who promises an abundant

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<sup>282</sup> *Memorial of the Western Emigration Society*, 6.



return for all he may receive.”<sup>283</sup> The Western Emigration Society’s memorial was referred to the Committee on the District of Columbia, where it received no further attention. Congress did not enact a plan to help blacks relocate to the West, but still the African American population insisted on becoming a part of western America and the empire being created there.

African Americans settled all across the American West. Colonies of black settlers appeared in Nebraska, Kansas, Oklahoma, Colorado and California.<sup>284</sup> The most successful and well-known colonies were planted in Kansas and Oklahoma. Over the course of the 1870s more than 13,000 blacks settled in Kansas, some 4,000 former slaves from Louisiana and Mississippi arriving in 1879 alone. Much of this migration occurred with the encouragement of two key “migrationists”: Benjamin “Pap” Singleton and Henry Adams, but the exodus of former slaves out of the South into Kansas was not an organized and concerted effort.<sup>285</sup> Nell Irvin Painter argued that “the Exodus had no anointed leader.” In the words of one migrant, “Every black man [was] his own Moses.”<sup>286</sup> In the mid-1870s Kansas became the desired destination for many black settlers from border states, especially Kentucky, Tennessee and Missouri, with African Americans from states in the deep south following at the end of the decade.<sup>287</sup>

Though not an organized effort, the African American migrations to Kansas did generate widespread interest through the work of some promoters like Singleton, who in 1875 publicized a meeting in Nashville for “the purpose of looking after the interests of

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<sup>283</sup> *Memorial of the Western Emigration Society*, 10-11.

<sup>284</sup> For more on African American migrations to the West in the late nineteenth century see Quintard Taylor, *In Search of the Racial Frontier: African Americans in the West, 1528-1990* (New York: W.W. Norton & Company, 1998).

<sup>285</sup> Nell Irvin Painter, *Exodusters: Black Migration to Kansas after Reconstruction* (New York: W.W. Norton & Company, 1986) 147.

<sup>286</sup> Quoted in Painter, *Exodusters*, 188.

<sup>287</sup> Painter, *Exodusters*, 149-150.

the colored people.” At the May meeting attendees established a board of commissioners to encourage and facilitate migrations to Kansas. Other groups elected emissaries to visit Kansas and report back to them the conditions of settling there. The Kansas governor’s office was bombarded with inquiries from individuals and groups wanting details about the possibility of relocating to the state. One Arkansas man requested of the governor information specifically about the availability of land, noting that people in his county had “been informed about government lands, money and means of living,” and he sought to verify the information. “Some of us,” he noted, “are living independently here and don’t wish to immigrate there unless those reports are true.”<sup>288</sup>

The reports that filtered back to the South about the Promised Land of Kansas were not always true, but still blacks chose to undertake the journey. One woman declared her preference to starve in St. Louis along the way to Kansas rather than return to the South.<sup>289</sup> Many believed that conditions in Kansas could not be worse than those they left behind, and this belief, coupled with the hope for land ownership propelled blacks to Kansas. One poem “The Black Man’s Hope,” described the goals of black migrants: “Homes! Homes! we want for our down-trodden race/Homes! Homes and farms, by God’s favor and grace. For those we’ll hope and labor with zeal’s holy fire./For them we’ll work day by day and never tire.”<sup>290</sup>

The widespread migrations of the 1870s brought large numbers of blacks into the state, and they did not always arrive with adequate preparation. In response to this, several organizations worked to aid the migrants, including one group that formed in St.

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<sup>288</sup> R.K. Whiting to Your Excellency Governor, Kansas, May 19, 1879, Negro Exodus Papers Collection, 1879-1881, MS 79, Kansas State Historical Society, Topeka, Kansas. (Hereafter NEPC)

<sup>289</sup> Painter, *Exodusters*, 191, 194.

<sup>290</sup> “The Black Man’s Hope,” NEPC.

Louis to aid blacks on their way across Missouri. In Kansas, Governor St. John led the establishment of the Kansas Freedmen's Relief Association (KFRA), which operated from April 1879 to May 1881. Much of the real work of the organization came under the leadership of two Quaker women, Elizabeth Comstock and Laura Haviland.<sup>291</sup> The KFRA declared as its purpose providing relief to the "destitute, freedmen, refugees and immigrants coming into this State," including "necessary food, shelter and clothing," and to "aid them in procuring work, and in finding homes, either in families, or, when they wish, to locate on Government or other lands."<sup>292</sup> The qualifying phrase "when they wish" is telling, for the KFRA never actively encouraged black migrants to become homesteaders, despite their recognition that it was land ownership that spurred many migrants. In his 1880 report to the KFRA, J. E. Gilbert, president of the Board of Directors, noted among the root causes of the migration "the desire of certain intelligent ones among the freedmen . . . to secure for themselves home and farms at prices and upon conditions within their means and control." Gilbert went on, however, to insist that the improvement of conditions in the South would spur the return of the "laborers" to their homelands.<sup>293</sup>

Overall, much of the work of the KFRA occurred with an underlying desire to stem the flow of migration into Kansas. In October 1879 the board voted to send Pap Singleton to Indiana for the purpose of exploring the opportunities for blacks there so that they could "turn a portion of the refugee emigration to that state." Again in 1880 the board discussed the need to "consider the propriety of turning if possible the tide of

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<sup>291</sup> Painter, *Exodusters*, 231.

<sup>292</sup> Kansas Freedmen's Relief Association (KFRA), "Articles of Incorporation," *Second Semi-Annual Report of the Kansas Freedmen's Relief Association*, 1880, NEPC.

<sup>293</sup> KFRA, *Second Semi-Annual Report*, 7.

emigration of destitute colored people from the Southern States into other states.”<sup>294</sup> At that meeting the board voted to send Elizabeth Comstock to Nebraska for the purpose of “finding homes and work for a few carloads of these people,” and “perhaps see if an opening would not be found for a colony or colonies also.”<sup>295</sup>

The Kansas Freedmen’s Relief Association sought to aid the migrants in finding work, and also wanted to ensure that groups of blacks did not settle too heavily in one area. The rationale for this was the desire to prevent an area from becoming overly-populated with laborers, thereby making it difficult for workers to find sufficient jobs, but it is likely also that relief workers hoped such a strategy would prevent whites from feeling overwhelmed by large populations of blacks.<sup>296</sup> Not everyone who supported the KFRA agreed with their efforts to encourage wage labor rather than land ownership. C. C. James wondered if the group’s decision to “divide [blacks] among the settled counties” was “better for them or the State.” It might, he argued, be better to “assist them to get a start on lands which they could call their own,” and leave them to prosper or fail according to their own abilities.<sup>297</sup> The KFRA did not encourage the migrants to become land owners, despite their stated purpose. In response to the proposal for a home loan fund, Governor St. John supported the effort, suggesting that “a colored family would get a good deal toward a living off an acre of land, and also could hire out by the day to the farmers around, and his wife and boys and girls also.”<sup>298</sup> The Association and its leadership did not envision blacks as land owners, and when they did recognize that

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<sup>294</sup> Minutes from the KFRA board meeting, October 31, 1879, NEPC.

<sup>295</sup> Minutes from the KFRA board meeting, March 25, 1880, NEPC.

<sup>296</sup> KFRA, *Second Annual Report of the Kansas Freedmen’s Relief Association*, 1880, NEPC.

<sup>297</sup> C.C. James to J.P. St. John, April 25, 1879, NEPC.

<sup>298</sup> “Mrs. Comstock’s Remarks,” *Monthly Reports of the Kansas Freedmen’s Relief Association*, January and February 1881, NEPC, 4.

many African Americans sought to own their own farms, they did not conceive of them as homesteaders with the rights to 160 acres, but only as the farmers of very small acreages.

The gender order was also a part of the KFRA vision for the migrants. The Association's secretary, Laura Haviland, reported proudly that Mrs. J.M. Watson, the assistant secretary's wife, had "in her relation as housekeeper . . . impart[ed] most valuable instruction to a number of the female portion of the refugees, and prepar[ed] them to fill desirable [sic] positions in the department of cooking and general housework."<sup>299</sup> Later associations would continue to focus their energies on properly training black women to work as domestic servants. The KFRA ceased its operations in 1881, and its faithful worker Elizabeth Comstock went on to found the Agricultural and Industrial Institute for the Refugees, which declared among its special aims the "training of girls and women in all kinds of housework."<sup>300</sup>

The KFRA was not alone in its assumption that black migrants provided a ready pool of laborers, particularly women who could work as domestic servants. The Association and the Kansas governor's office received numerous letters indicating a willingness to hire the migrants. One man wrote that he was seeking "colored help, good house women." He could take two, he declared, aged twenty-five to thirty-five and without families, but he wanted only "those from the South who have been house servants."<sup>301</sup> The letter invokes images of the slave markets, with potential purchasers laying out their demands, and while the author was requesting domestic servants who

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<sup>299</sup> Secretary's Report, Second Annual Report of the Kansas Freedman's Relief Association (1880), NEPC.

<sup>300</sup> Elizabeth Comstock, "Announcement of the Agricultural and Industrial Institute for the Refugees," April 15, 1881, NEPC.

<sup>301</sup> C.E. Jenkins to J.P. St. John, May 5, 1879, NEPC.

would be paid for their labor, the tone of the missive suggests that the prejudices about black laborers stemming from slavery followed the freed men and women into Kansas. Elizabeth Comstock noted at one point that “upwards of one thousand letters have been received by us . . . inquiring for women, skilled in the different departments of housework, and out of the sixty thousand Refugees in the State of Kansas, we find very few who are competent to do the work required.”<sup>302</sup>

African Americans, it must be noted, did not eschew wage labor in Kansas. In fact, Pap Singleton’s pamphlet, “Ho for Kansas!” described his Real Estate and Homestead Association as having been established “for the benefit of the colored laboring classes, both men and women,” but for the express purpose of “purchas[ing] them large tracts of land, peaceful homes and firesides, undisturbed by anyone.”<sup>303</sup>

Comstock’s work with the KFRA and later the AIIR mirrored the maternalistic and civilizing language employed by groups who aimed to aid the country’s Native American population. The purpose of the AIIR was “to teach the colored people how to do all kinds of work, and furnish labor for those who may arrive from time to time till it can be obtained elsewhere.” In addition to being trained as laborers, the refugees were also to receive “the best religious and educational advantages.”<sup>304</sup>

During her tenure with the KFRA, Comstock had spearheaded a “Homestead or Building Fund.” In many ways Comstock’s efforts in this arena mirrored those of Sarah Kinney who oversaw operation of the Women’s National Indian Association’s home loan fund (see Chapter Four). The group sought to aid black families in establishing homes. Comstock noted that in the early days of the plan for the KFRA they sought to find small

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<sup>302</sup> Comstock, “Announcement of the Agricultural and Industrial Institute for Refugees,” NEPC.

<sup>303</sup> “Ho for Kansas!,” Singleton Scrapbook, Kansas State Historical Society, Topeka, Kansas.

<sup>304</sup> Comstock, “Announcement of the Agricultural and Industrial Institute for Refugees,” NEPC.

acres in locations where black families “would be surrounded with a white population who could employ and assist them.”<sup>305</sup> Comstock’s vision paralleled that of Indian reformers who believed that allotment would civilize the indigenous population by placing them in homes with white neighbors who would model proper behavior, though it diverged in the expectation that black families would be the employees of their neighbors. Comstock and the various relief associations founded to aid black migrants arriving in Kansas in the late 1870s clung to their vision of an empire built by white Americans who were best suited to participate in a republican government, but the persistence of African Americans in engaging in empire-building challenged their assumption that the only place for blacks within the empire was as laborers.

Comstock and her peers did not consider African Americans’ desire to be land owners, nor the gender relations that marked black families when establishing their relief efforts. Some scholars suggest that in the aftermath of the Civil War black families sought to assert their rights as freed men and women by adopting the gender behaviors of middle-class white families. Darlene Clark Hine and Kathleen Thompson argue that “upholding masculinity became a part of the black woman’s duty to the race, and the way she did that was to embrace, as best she could, white standards of femininity.”<sup>306</sup> While this was true for some African Americans, femininity itself did not encompass the whole of the black gender order that former slaves carried with them out of bondage and onto the Kansas prairies.

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<sup>305</sup> “Mrs. Comstock’s Remarks,” *Monthly Reports of the Kansas Freedmen’s Relief Association*, January and February 1881, NEPC, 5.

<sup>306</sup> Darlene Clark Hine and Kathleen Thompson, *A Shining Thread of Hope: The History of Black Women in America* (New York: Broadway Books, 1998) 109.

The experience of slavery created a specific gender order that did not mirror white behaviors. Jacqueline Jones argues that because slave owners did not recognize gender differences when assigning tasks, blacks “whenever possible adhered to a strict division of labor within their own households and communities.” Like many Native American societies, however, this division of labor did not indicate inequality, but a complementary system. As Jones notes, this allocation of tasks by gender reflected a deeply entrenched respect for the work that women did, but that while “men might regard women’s domestic labor as intrinsically valuable, this type of activity was nevertheless labeled ‘women’s work,’ on the assumption that it was the special province of females.”<sup>307</sup>

The demise of slavery resulted in black men and women together making choices about labor, both in and out of the home. For most families, this included the continued work of women at agricultural tasks as needed. This labor occurred, according to Jones, in harmony with the family’s needs and priorities. While women’s work within the black gender order was equally valued to that of men, the public face of the black family existed in the husband’s presence, a decision that Jones describes as a “cultural preference.”<sup>308</sup> For the black migrants who settled in Kansas, then, the goal was for women to first be able to provide for their own families, but there was no stigma attached to women engaging in wage labor as domestic servants or field workers.

Katherine M. Frank argues that in the aftermath of slavery blacks did not “enter civil society on their own terms and accompanied by their own values, but rather did so on the nonnegotiable terms set by the dominant culture.” In a multitude of ways American society attempted to ensure that previously enslaved blacks adopted behaviors

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<sup>307</sup> Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work and the Family from Slavery to the Present* (New York: Basic Books, 1985) 13, 42.

<sup>308</sup> Jones, *Labor of Love*, 62.



and roles that met white standards, particularly in regards to the gender order. Frank suggests that marriage became a key site of “domestication” for the black population because marriage “accomplishes a kind of colonialism by domesticating more ‘primitive’ sexuality.”<sup>309</sup> Frank’s analysis demonstrates that ensuring proper marriages among African Americans in the post-Civil War years can be seen as a natural counterpart to lawmakers’ concern with marriage practices in the American West, for many of the same reasons. At stake was the gender and racial order, and the success of the American empire. If then, African Americans can be understood to be subject to colonization efforts, then it follows that white America could not conceive of them as colonizers of indigenous peoples. Thus, the vision for blacks in the West generally, and particularly for those who migrated to Kansas in the 1870s, centered on their roles as wage laborers, not land owners.

**FEMALE MULATTO HOUSEKEEPER:  
WOMEN HOMESTEADING IN GRAHAM COUNTY, KANSAS**

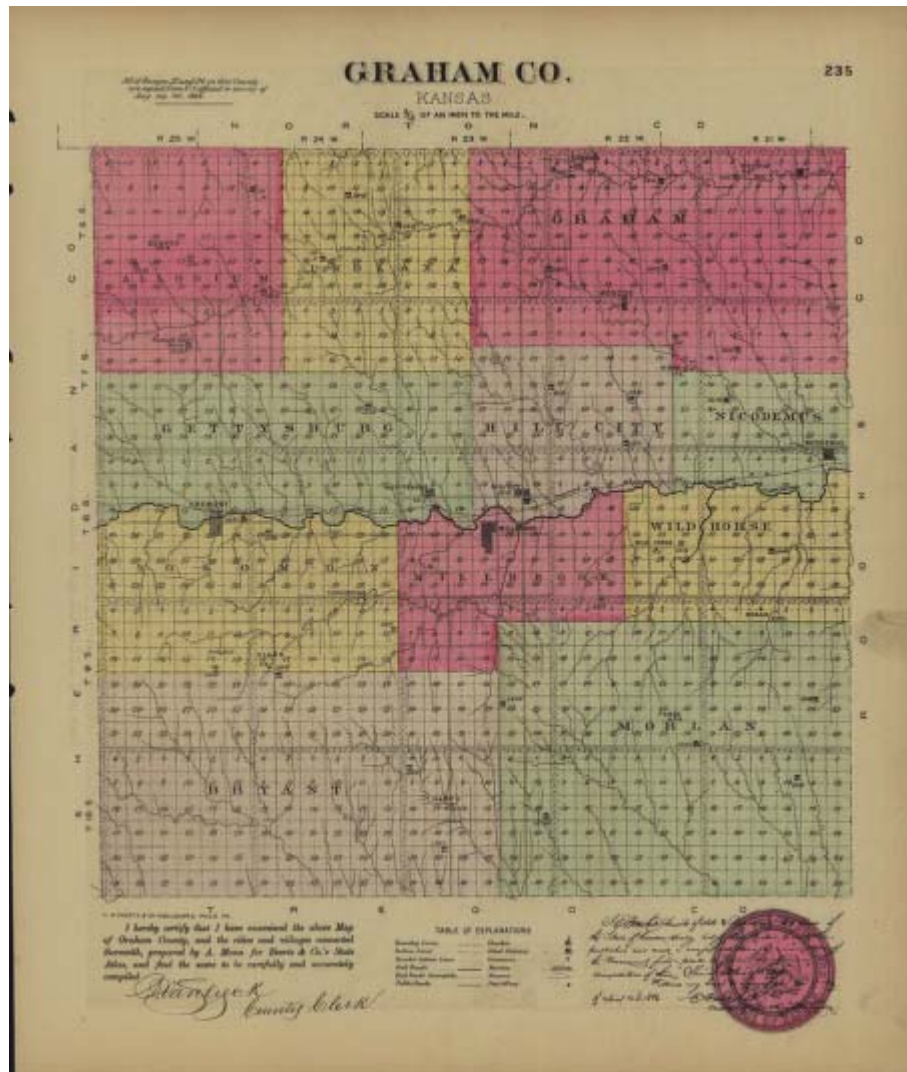
Graham County is located in the north-central part of Kansas, and is home to Nicodemus, the most famous African American settlement in the state. Black settlers first arrived at the Nicodemus town site in July 1877. (Figure 6.1) This group of thirty colonists arrived there as part of the efforts of the Nicodemus Town Company. Other groups followed, so that by 1878 there were nearly 600 black settlers at Nicodemus.

The rapid growth of Nicodemus alarmed white Kansans in Graham County who attempted to delay official organization of the county until they reached a minimum of

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<sup>309</sup> Katherine M. Frank, “Becoming a Citizen: Reconstruction Era Regulation of African American Marriages,” *Yale Journal of Law & the Humanities* 11 (Summer 1999): 251-252. See also Laura F. Edwards, “‘The Marriage Covenant is at the Foundation of all Our Rights’: The Politics of Slave Marriages in North Carolina after Emancipation,” *Law and History Review* 14 (Spring 1996): 81-124.

**FIGURE 6.1**  
**GRAHAM COUNTY, KANSAS<sup>310</sup>**



<sup>310</sup> From the *Official State Atlas of Kansas*, 1887 at <http://www.lib.ku.edu/mapscoll/ksatlas/graham.shtml>.

1,500 white settlers (the state law required a population of 1,500 but did not specify that they be white). The black migrants did not settle in Graham County without facing racial prejudice. One early black settler recalled that the community at Nicodemus had trouble finding a surveyor because “some opposition developed in this and adjoining counties at the settlement of the negroes in the vicinity, and no surveyor in Graham county could be induced to take the job of making the survey.” The man who eventually agreed to the task, John Landers, was killed in an ambush shortly after completing his work in Nicodemus.<sup>311</sup> A white settler, writing about Graham County disputed the idea that there had been tension between white and black, declaring that “There has been no race prejudice in Graham County. For so long, we were all ‘so happy and so pore’ together.”<sup>312</sup> Despite the racial prejudice that did occur in Graham County, African American residents began to flourish, with two of them, Edward McCabe and A.T. Hall, Jr., receiving appointments to county positions. McCabe would go on to win election as the state auditor for Kansas in the 1880s.<sup>313</sup>

Nicodemus and its settlers enjoyed their greatest prosperity in the 1880s, until declining agricultural prices at the end of the decade forced many settlers to abandon their farms and find wage labor in the nearby towns. This is reflected in the homesteading records that form the basis of this chapter. Most of those who filed claims in the Graham County township under consideration did so in the early 1880s and, if they succeeded, made final proof later in the decade. There were very few claims initiated after 1890.

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<sup>311</sup>George A. Rosh, “Biographical Sketch of Rev. Daniel Hickman,” NEPC, 3.

<sup>312</sup>John S. Dawson to George W. Martin, December 7, 1906, NEPC.

<sup>313</sup>Painter, *Exodusters*, 152-153.

The sample for this study is composed of men and women who entered homestead and timber culture claims in Township 8S, 21W in Graham County between 1879 and 1899. The series of tables and charts on the following pages present these findings.<sup>314</sup> (Figures 6.2-6.13) Within the township 201 individuals filed claims of these sort (some more than once), for a total of 230 claims. Of these, women numbered only fourteen, representing just under 7 percent of homesteaders within the township. Of the fourteen women, at least three were African American. Among those who filed claims in this township, eighty-seven proved up, receiving the final certificate of ownership on their land. This is a success rate of 43.3 percent. Women make up almost 7 percent of those who proved up on claims in this township. Roughly 13 percent (twenty-seven) of the entries in the township resulted in ownership through commutation to cash entry. Only three women gained patents in this way, making them 11 percent of those who utilized cash entries. In all, nine of the fourteen women who filed claims in this township became the legal owners of their land. This is a success rate of 64 percent. Men, who make up 93 percent of those who filed claims in the township, became land owners through proving up or cash entry in 105 cases, giving them a success rate of nearly 59 percent. For the township as a whole, seventy claims were either relinquished or abandoned—sixty-seven by men, and just three by women. Only 21 percent of women lost claims in this way, compared to the 36 percent of male entrants who either relinquished or abandoned their claims. A closer look at these numbers and the women whose stories are the foundation for this analysis reveals several important elements about women homesteading in this township.

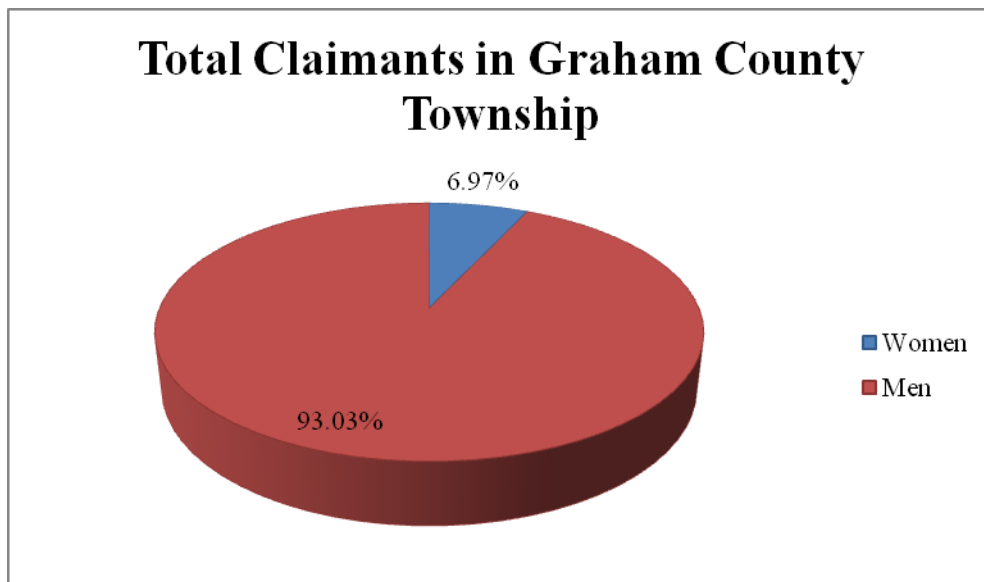
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<sup>314</sup> The data for Graham County homesteading is from the Kansas Tract Book, Volume 104, pages 97-108, NARA and from the individual homestead claimants' land entry files, RG 49, NARA.

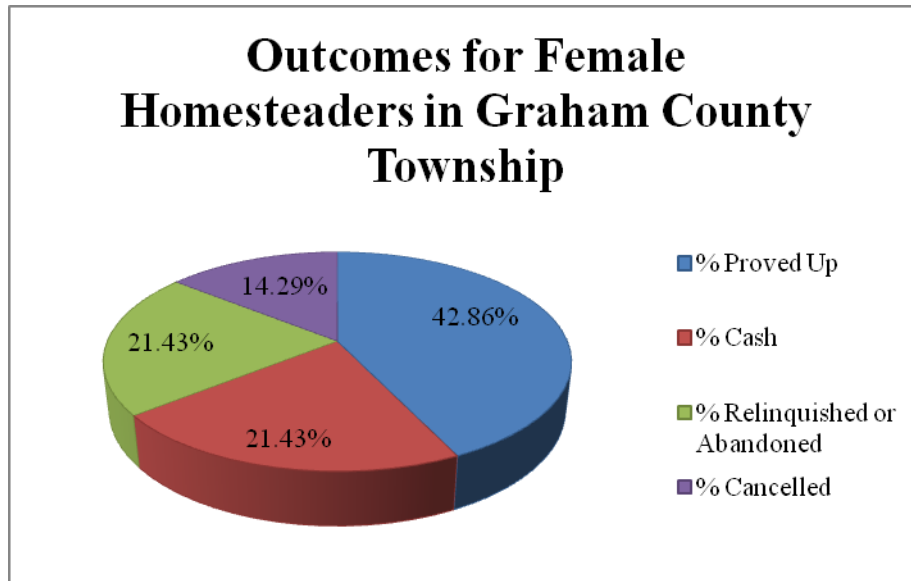
**FIGURE 6.2  
HOMESTEAD ENTRIES IN GRAHAM COUNTY TOWNSHIP, 1879-1899**

	<b>Total Entries</b>	<b>Total Claimants</b>	<b>Final Certificates</b>	<b>Cash Commutations</b>	<b>Total Land Ownership</b>	<b>Relinquished or Abandoned</b>	<b>Cancelled</b>	<b>Outcome Unknown</b>
<b>Women</b>	16	14	6	3	9	3	2	0
<b>Men</b>	214	187	81	24	105	67	7	8
<b>Total</b>	230	201	87	27	114	70	9	8

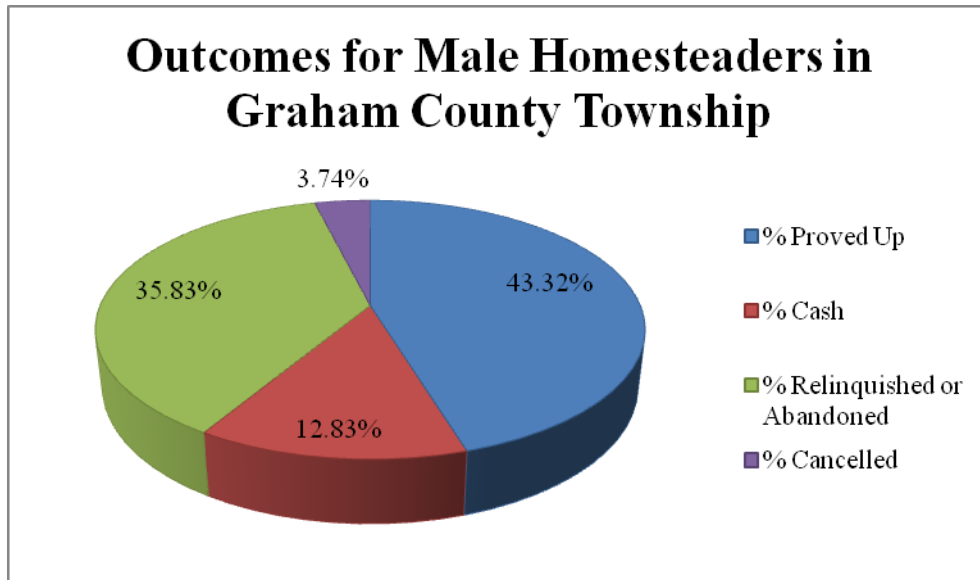
**FIGURE 6.3  
PERCENTAGE OF FEMALE CLAIMS IN GRAHAM COUNTY TOWNSHIP**



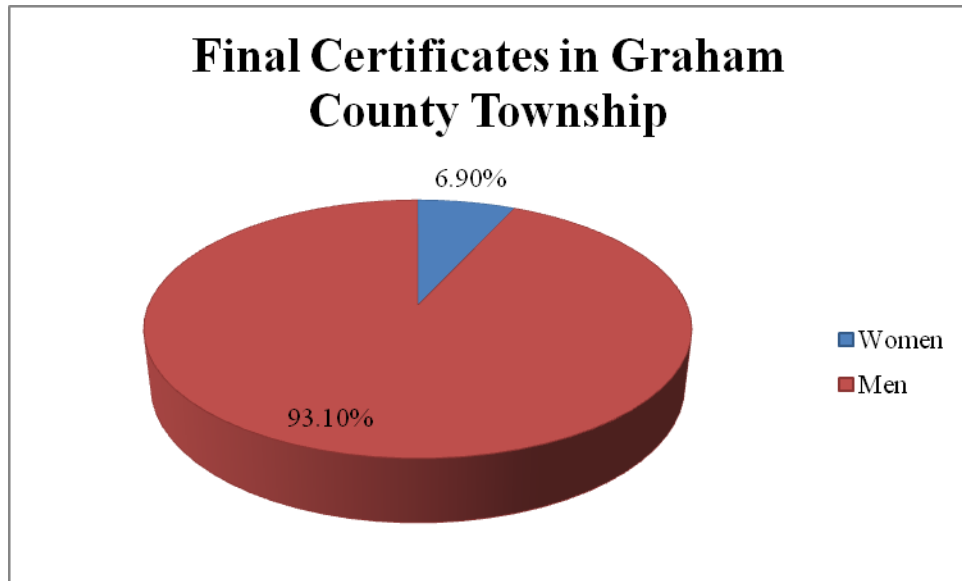
**FIGURE 6.4**  
**OUTCOMES FOR FEMALE HOMESTEADERS IN GRAHAM COUNTY TOWNSHIP**



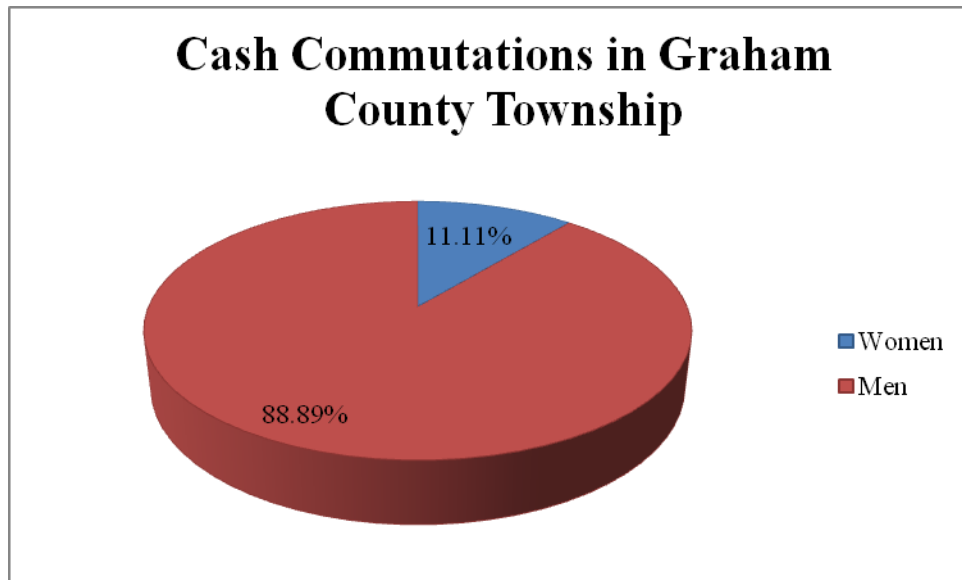
**FIGURE 6.5**  
**OUTCOMES FOR MALE HOMESTEADERS IN GRAHAM COUNTY TOWNSHIP**



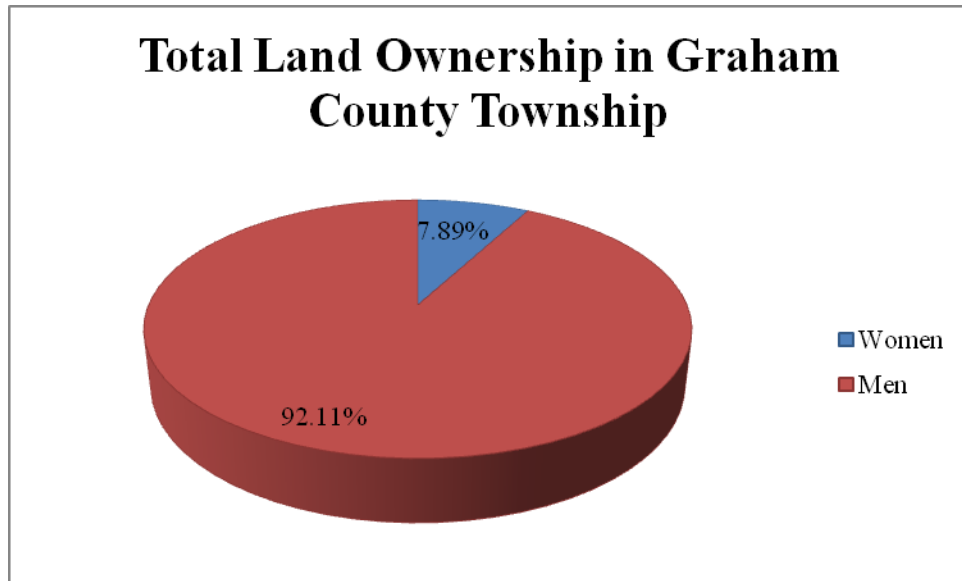
**FIGURE 6.6**  
**HOMESTEADERS MAKING FINAL PROOF IN GRAHAM COUNTY TOWNSHIP**



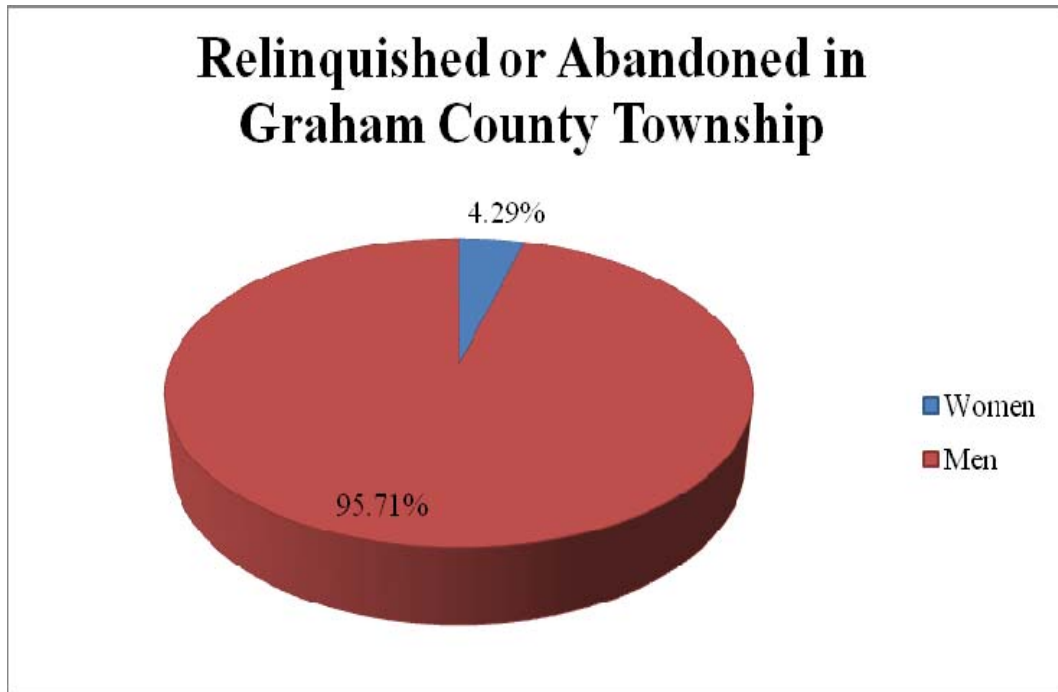
**FIGURE 6.7**  
**HOMESTEADERS WITH CASH ENTRIES IN GRAHAM COUNTY TOWNSHIP**



**FIGURE 6.8**  
**HOMESTEADERS WHO BECAME LAND OWNERS IN GRAHAM COUNTY TOWNSHIP**

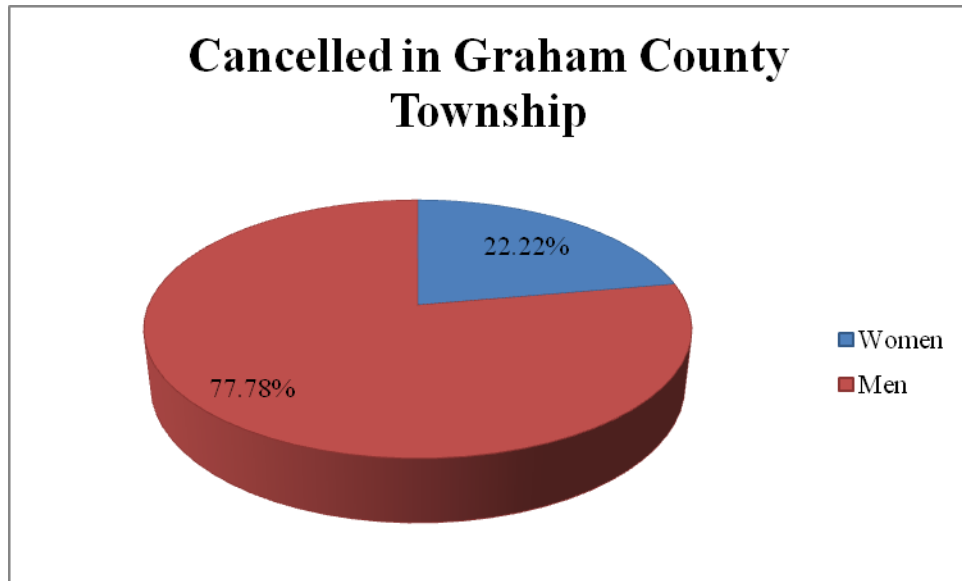


**FIGURE 6.9**  
**HOMESTEADERS WITH RELINQUISHED OR ABANDONED CLAIMS IN GRAHAM COUNTY TOWNSHIP**

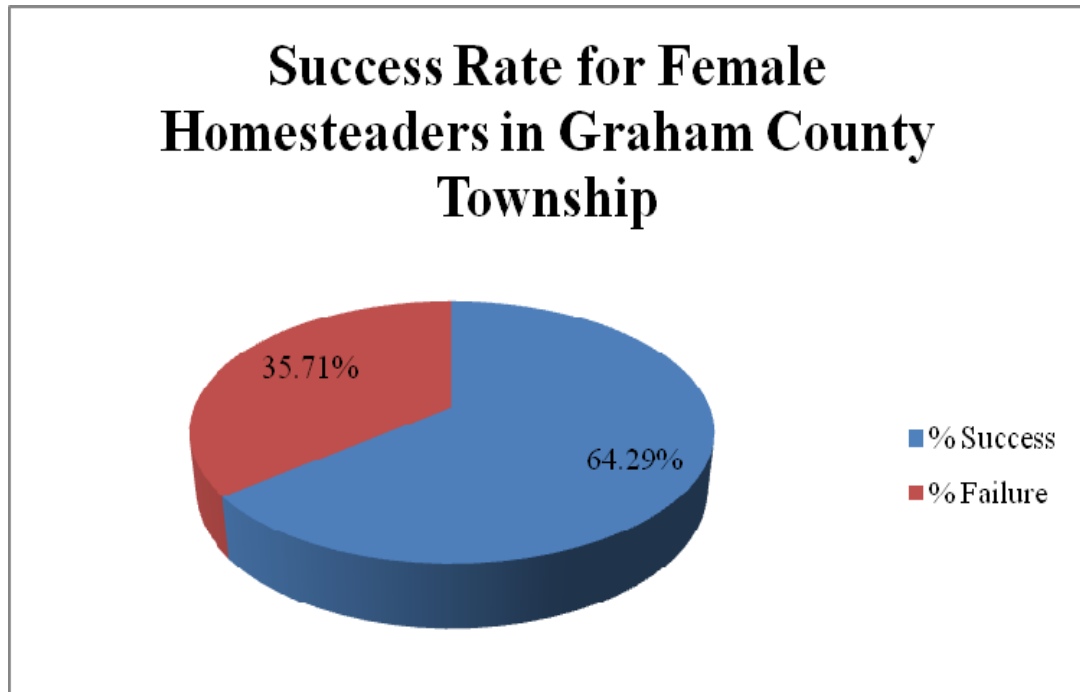




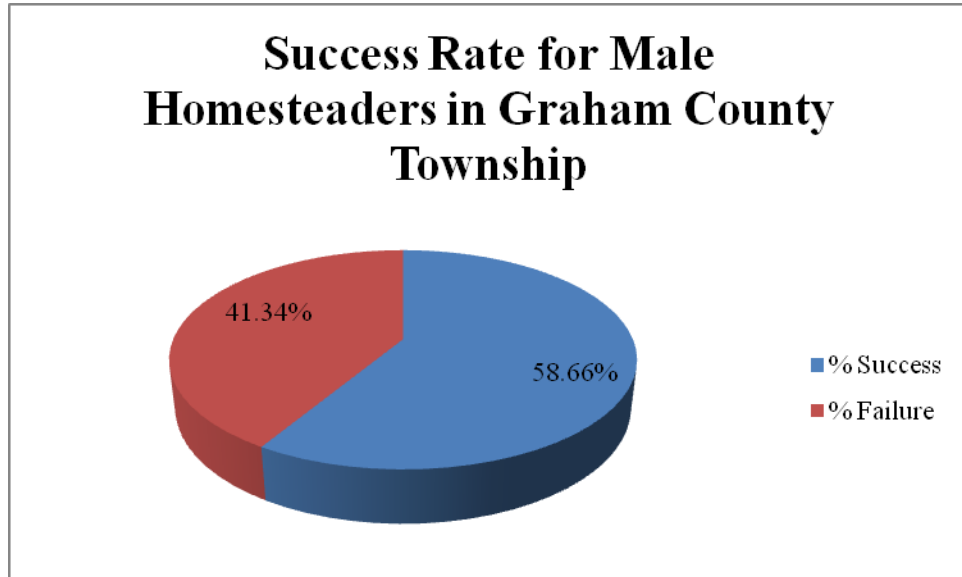
**FIGURE 6.10**  
**HOMESTEADERS WITH CANCELLED CLAIMS IN GRAHAM COUNTY**  
**TOWNSHIP**



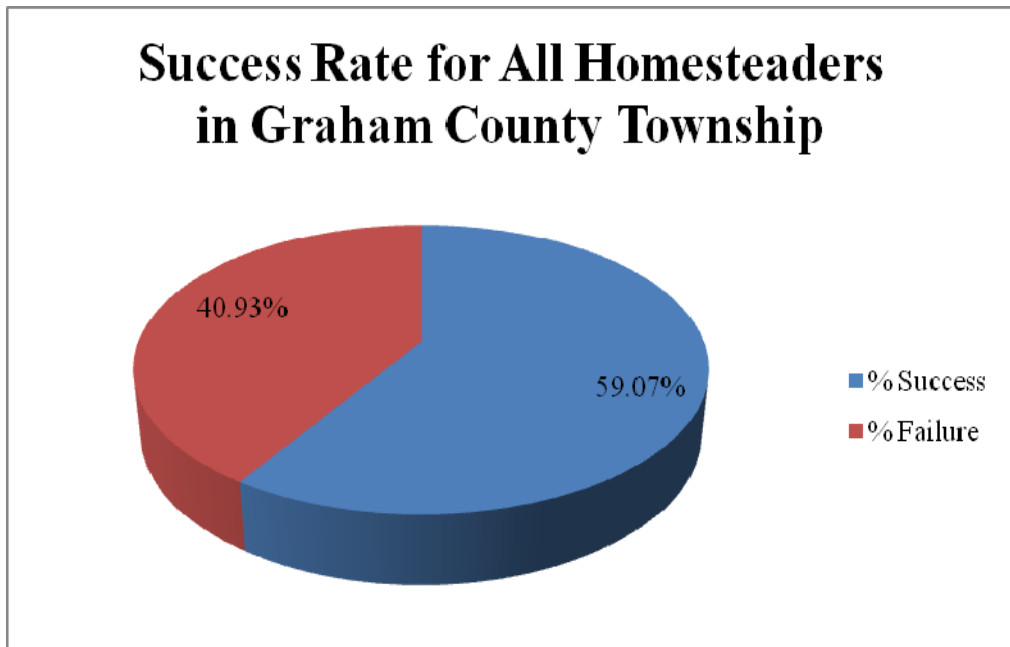
**FIGURE 6.11**  
**SUCCESS RATE OF FEMALE HOMESTEADERS IN GRAHAM COUNTY**  
**TOWNSHIP**



**FIGURE 6.12**  
**SUCCESS RATE OF MALE HOMESTEADERS IN GRAHAM COUNTY TOWNSHIP**



**FIGURE 6.13**  
**SUCCESS RATE FOR ALL HOMESTEADERS IN GRAHAM COUNTY TOWNSHIP**



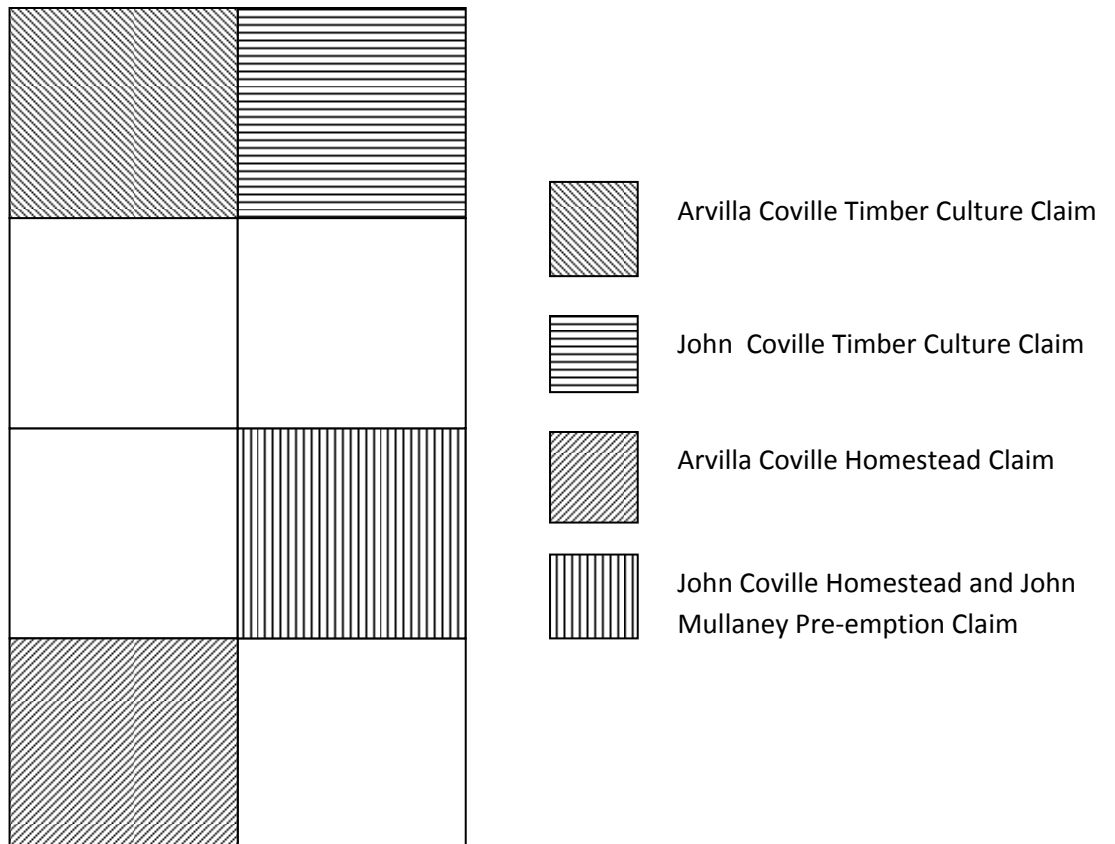
First, women were more likely than men to become the owners of their land, though they did not prove up on claims at a higher rate than men. Nine female claimants in the township became land owners; six made final proof on their claims, among them two single women, and four widows. Arvilla Coville, one of the single women, received the patent to her land in 1894; by that time she had married and signed her documents as Arvilla Mullaney. Arvilla Coville's timber culture claim occupied the northwest corner of section 30 in the township; her future husband, John Mullaney, had filed a preemption claim (later canceled by the GLO) in a neighboring section. (Figure 6.14-6.15) It is possible that the two met through a relative of Coville's. In October 1885 John Coville filed a homestead claim on the northwest quarter of section 31; the following April, Mullaney filed a preemption claim on the same section. Neither man made final proof on the claim, with Coville's being cancelled by the GLO in 1890, and Mullaney's claim to the land cancelled in 1896. While there is no documentation to illuminate the murky relationships that likely existed here, it is probable that John Coville and John Mullaney were not competing for the land, but were already acquainted and had some sort of agreement between them.

Three of the widows who made final proof on their claims were mothers. Barbara Rudeman, age sixty-four, who immigrated to the United States from Germany with her husband, had two children, but they did not reside with her. Both Harriet Sadler and Martha McKenzie, however, had dependent children in their households. Sadler was mother to six children, and had been deserted by her husband prior to her arrival in Kansas. McKenzie was a seventy-one-year-old grandmother raising a grandson and granddaughter on her claim.

**FIGURE 6.14**  
**SECTIONS 30 AND 31 IN TOWNSHIP 8S 21W**

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

**FIGURE 6.15**  
**COVILLE AND MULLANEY CLAIMS IN SECTIONS 30 AND 31 OF**  
**TOWNSHIP 8S 21W**



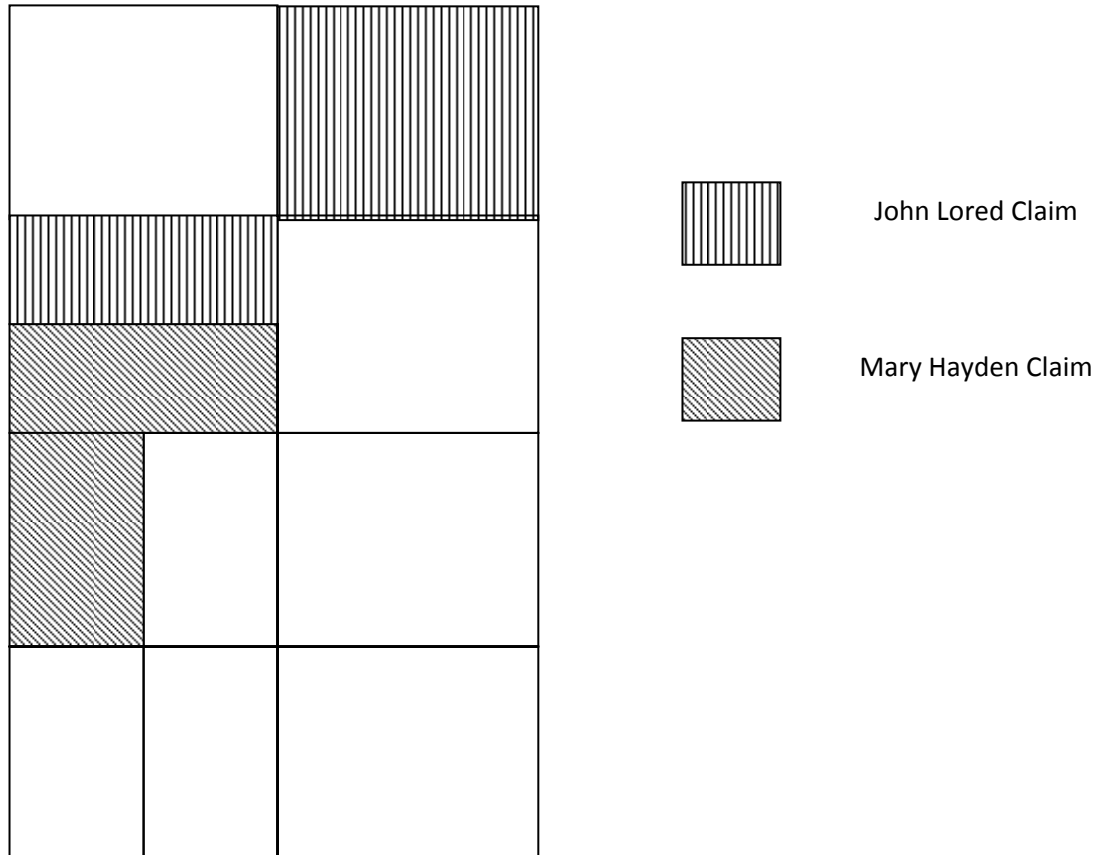
Mary Hayden presents the most interesting story among the Graham County women who made final proof. Identified as a mulatto woman from Kentucky, Hayden became the owner of 160 acres in sections three and ten. According to the 1880 federal census, Hayden, who was forty-three when she made final proof, worked as a housekeeper for John Lored (forty-five years old), a mulatto man from Kentucky with four young children. The youngest, Fred, was three, and had two older brothers, Levi who was nine years old and Eugene, who was five. The boys had one sister, eight-year-old Elizabeth. Lored did not file a homestead or timber culture entry in the township. In the same newspaper advertising Hayden's homestead entry, the notice of Lored's homestead entry in section three also appears. Together, the two made entry on 320 acres of adjoining land (Figure 6.16 and 6.17). Hayden apparently maintained a separate residence on her land, and was not a live-in housekeeper for Lored, although the 1880 federal census listed her as a member of the Lored household. The shared origins in Kentucky, the common racial background, and the simultaneous filing of homestead claims all suggest that the two likely were acquainted before their arrival in Kansas, and may have had a more intimate relationship than that of employer/employee.

Second, women more frequently gained their land through cash commutations than did men. There is no obvious explanation for this particular trend, though it is possible that women may have saved wages from working as domestic servants, or inherited money that allowed them to purchase their land. Interestingly, of the three women in the township who commuted their entries to cash, all were single, never-married women, one of whom, Jane Sykes, was a forty-three-year-old, African American single mother.

**FIGURE 6.16**  
**SECTIONS 3 AND 10 IN TOWNSHIP 8S 21W**

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

**FIGURE 6.17**  
**MARY HAYDEN AND JOHN LORED HOMESTEAD CLAIMS IN SECTIONS 3**  
**AND 10 OF TOWNSHIP 8S 21W**



A third detail that emerges from the data is that the women in this sample did not relinquish or abandon their claims at the same rate that men in the sample did. Only two women, Mary Quiggle and Jennie Barber, relinquished their claims. Quiggle was a widow and Barber a single, African American woman. There is nothing in their files to indicate the reason for which these women ceased their homesteading efforts, but it is important to note that they represent a very small portion of the sample. These claims make up only 21 percent of all female claimants in the township and less than 5 percent of all claimants. Within the sample, sixty-eight male claimants forfeited their land, a total of 36 percent of all male claimants.

Finally, this data demonstrates that women more often than men, lost land entries through cancellation by a GLO decision than did men. While only two women, Harriet Crow and Annie Tilley, were subject to GLO cancellation, they represent more than 14 percent of all female entrants in the township, and 22 percent of all GLO cancellations in the township. The seven men subjected to GLO cancellation represent less than 4 percent of the male entrants in the sample. The reason for cancellation in all nine cases is unclear, but when compared with the data from Hamilton County and when both townships are considered together, it becomes overwhelmingly obvious that women more often than men failed to meet the requirements for homesteading enforced by the General Land Office.

## WOMEN HOMESTEADERING IN HAMILTON COUNTY, KANSAS

In Hamilton County the sample for this study comes from homestead and timber culture entries filed in Township 24S, 40W. (Figure 6.18) As with the data from Graham County, the following numbers appear in a series of tables and charts on the subsequent pages.<sup>315</sup> (Figures 6.19-6.29) In this township, ten women entered claims for land. They made up just over 9 percent of the 108 entrants who filed 113 claims in the township. Of the women who made claims, 30 percent of them made final proof and became land owners. Unlike their counterparts in Graham County, no women in the township commuted entries to cash payments. These women make up nearly 6 percent of all successful entrants in the township (the combined total of final proof and cash entries), and are over 7 percent of all entrants who made final proof. Women filed nearly 11 percent of all relinquished or abandoned claims in the township.

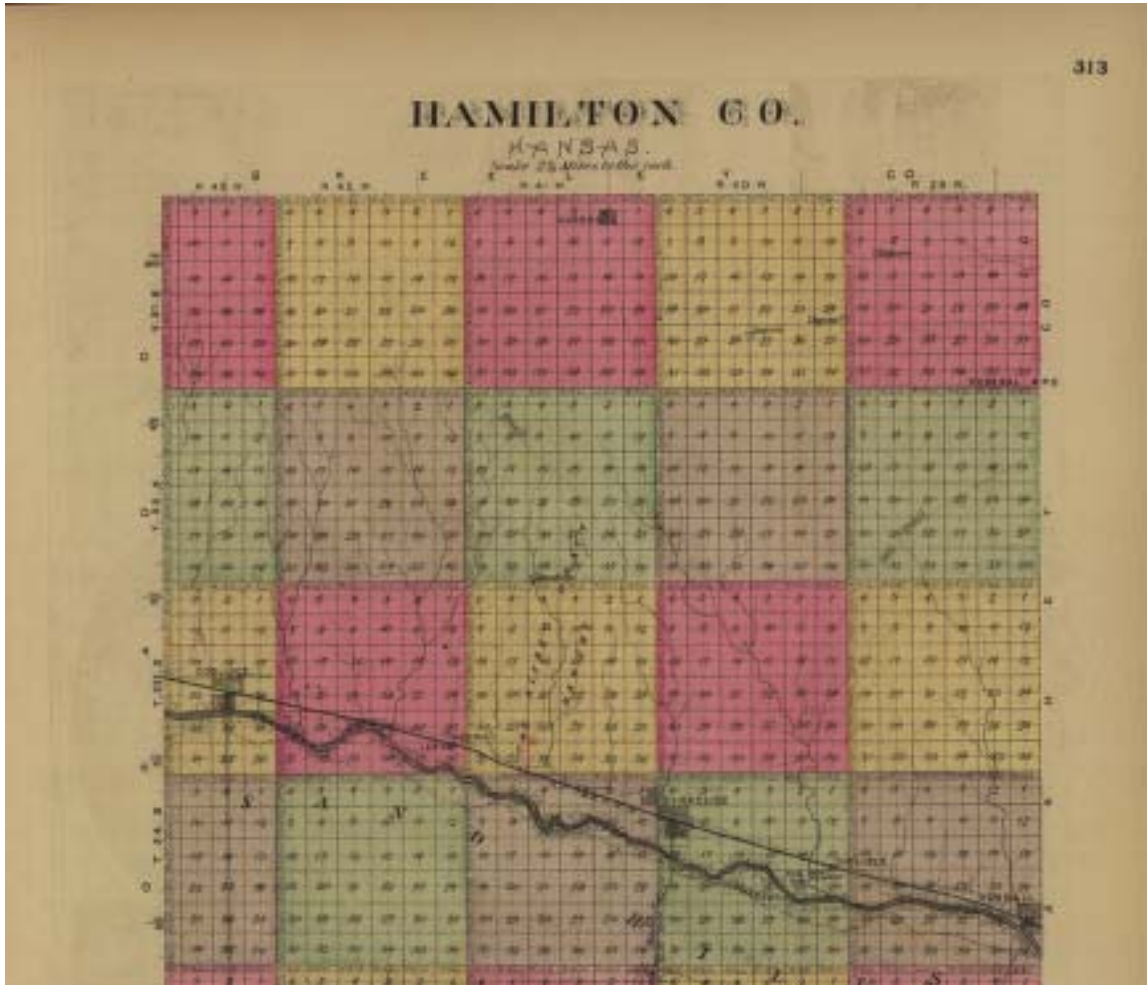
The portrait of female homesteading in this Hamilton County township is notably different than that from Graham County. The women in this sample achieved less success at gaining ownership to their claims than did women in Graham County. Of the ten women in the sample, three made final proof on their claims—Ellen Evans, Sarah Bonds, and Caroline Hobble. Both Evans and Bonds had been widowed, but Hobble's marital status cannot be determined from her homestead file. She does not appear in the 1880 or 1900 federal censuses, nor is she listed in the 1885 or 1895 Kansas state censuses. Evans made final proof at age forty-six and was the mother of one child. Her husband Mark served for four years in the U.S. army during the Civil War, and the couple moved to Kansas following the war's end. Her husband died in February 1886

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<sup>315</sup> The data for Hamilton County homesteading is from the Kansas Tract Book, Volume 104, pages 205-216, NARA and from the individual homestead claimants' land entry files, RG 49, NARA.



**FIGURE 6.18**  
**HAMILTON COUNTY, KANSAS<sup>316</sup>**



<sup>316</sup> From the *Official State Atlas of Kansas*, 1887 at <http://www.lib.ku.edu/mapscoll/ksatlas/hamilton.shtml>.

and Evans filed her homestead claim in November of that year. She met the conditions for final proof just two years later, being able to claim her husband's years of military service toward the time for final proof on the homestead claim.

Sarah Bonds was sixty-six years old in 1892 when she made final proof on 159.25 acres of homestead land composed of lots five through nine of section eighteen in the township. Bonds, who appears in the 1880 federal census (though her name is misspelled), listed as a member of her household John Durfee, her stepson. Durfee, aged thirty in 1880, had filed a timber culture claim on the same acreage as Bonds in 1882. Three years later, Bonds filed a homestead claim on the land, probably in order to ensure the family home. Durfee relinquished his timber culture claim on July 21, 1885, the day after Bonds had filed her homestead claim on the same lots.

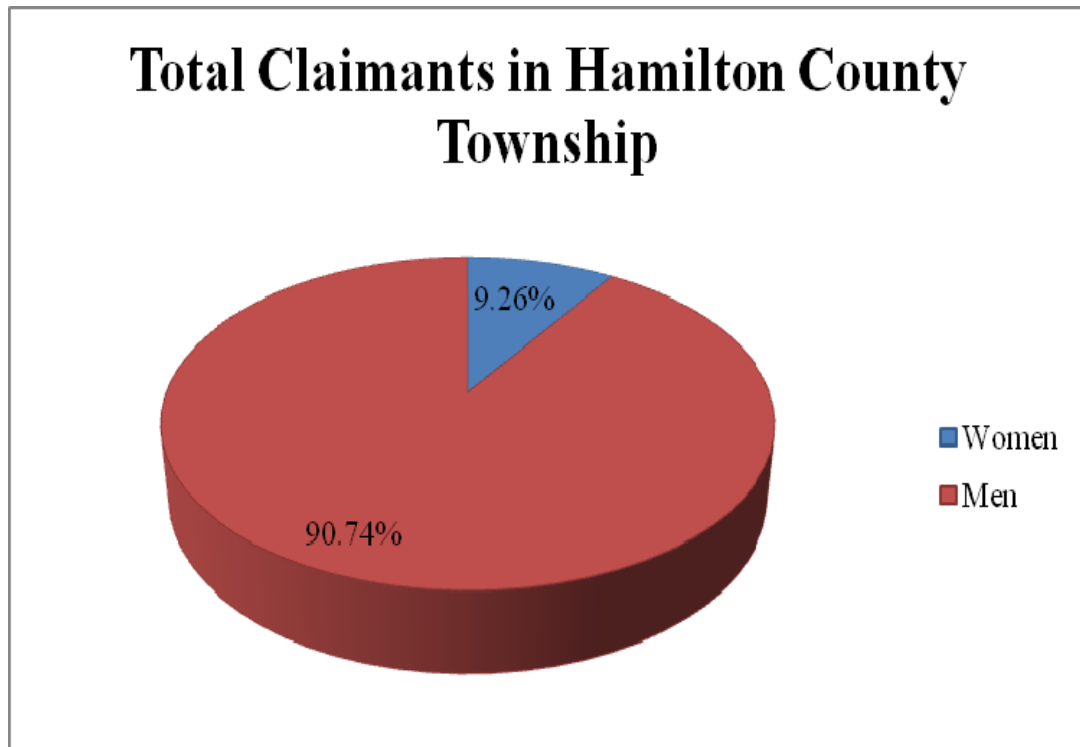
In another contrast with the women of the Graham County township, the women in Hamilton County lost claims to relinquishment or abandonment in greater numbers. Three women in this sample—Ida Eastman, Kate Russell, and Lucy Hill—relinquished their land, making up 40 percent of all female entrants, and 10.5 percent of lost claims for the township as a whole. All three women were widows, though there is precious little other information to be found about their lives. Hill filed her claim under the Soldiers and Sailors Homestead Act of 1872, claiming her husband's prior military service toward time required for final proof. She was widowed in 1883, two years before she submitted her homestead entry at the land office in Garden City.

The women of Hamilton County faced challenges to their claims from the GLO at an equal rate with male entrants in the township. They also comprised a much smaller percentage of total GLO cancellations than did women in Graham County (8.7%

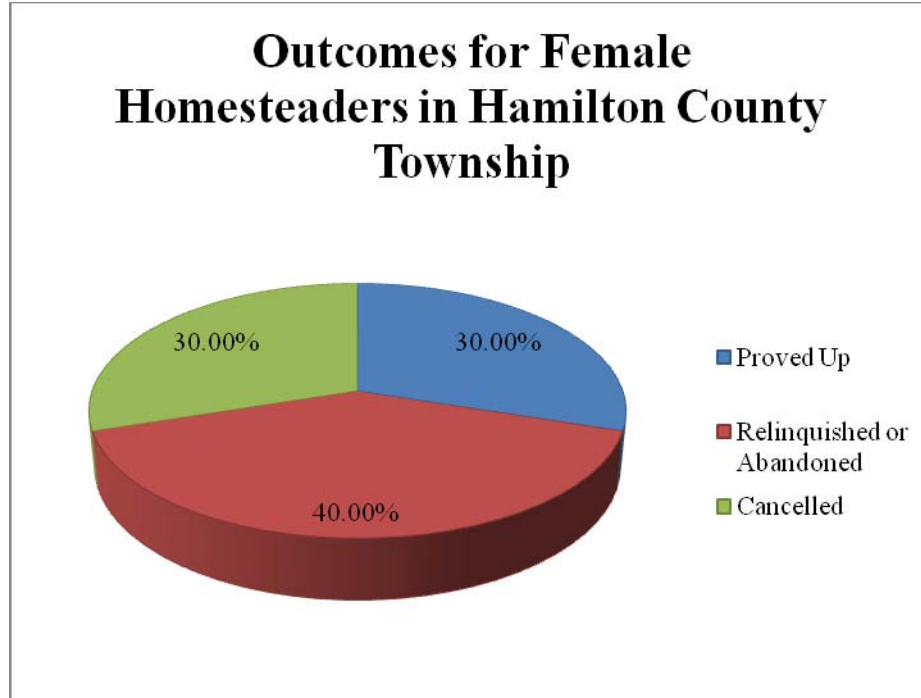
**FIGURE 6.19  
HOMESTEAD ENTRIES IN HAMILTON COUNTY TOWNSHIP**

	<b>Total Entries</b>	<b>Total Claimants</b>	<b>Final Certificates</b>	<b>Cash Commutations</b>	<b>Total Land Ownership</b>	<b>Relinquished or Abandoned</b>	<b>Cancelled</b>
<b>Women</b>	<b>10</b>	<b>10</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>2</b>
<b>Men</b>	<b>103</b>	<b>98</b>	<b>39</b>	<b>10</b>	<b>49</b>	<b>34</b>	<b>21</b>
<b>Total</b>	<b>113</b>	<b>108</b>	<b>42</b>	<b>10</b>	<b>52</b>	<b>38</b>	<b>23</b>

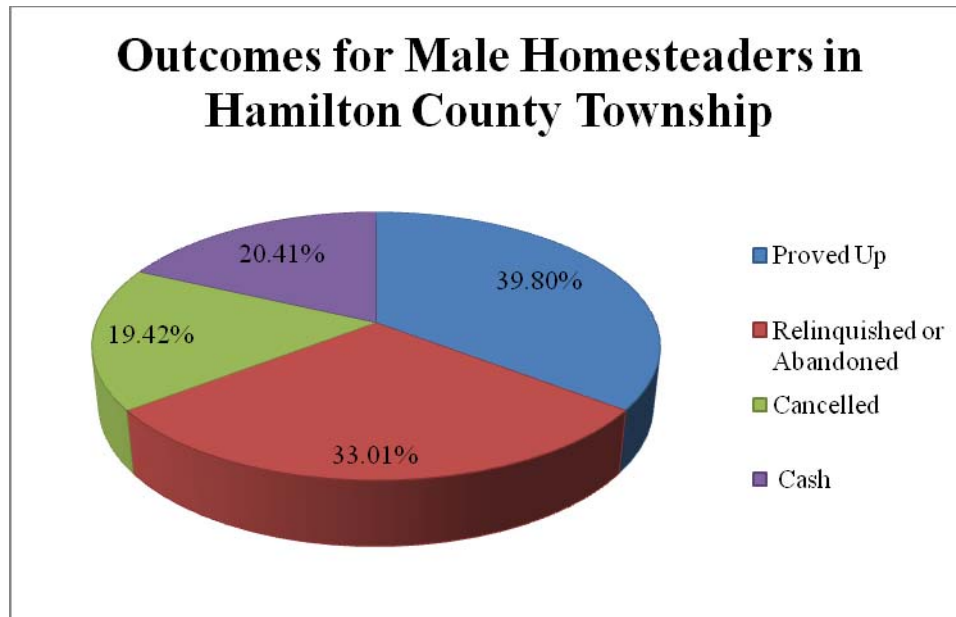
**FIGURE 6.20  
CLAIMS IN HAMILTON COUNTY TOWNSHIP**



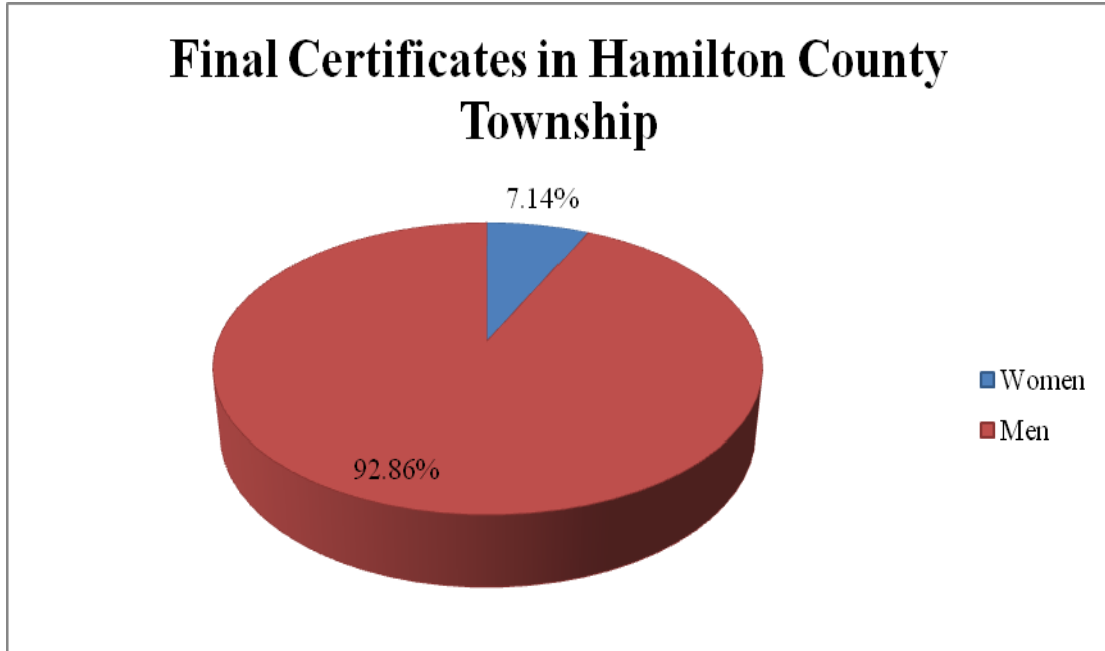
**FIGURE 6.21**  
**OUTCOMES FOR FEMALE HOMESTEADERS IN HAMILTON COUNTY TOWNSHIP**



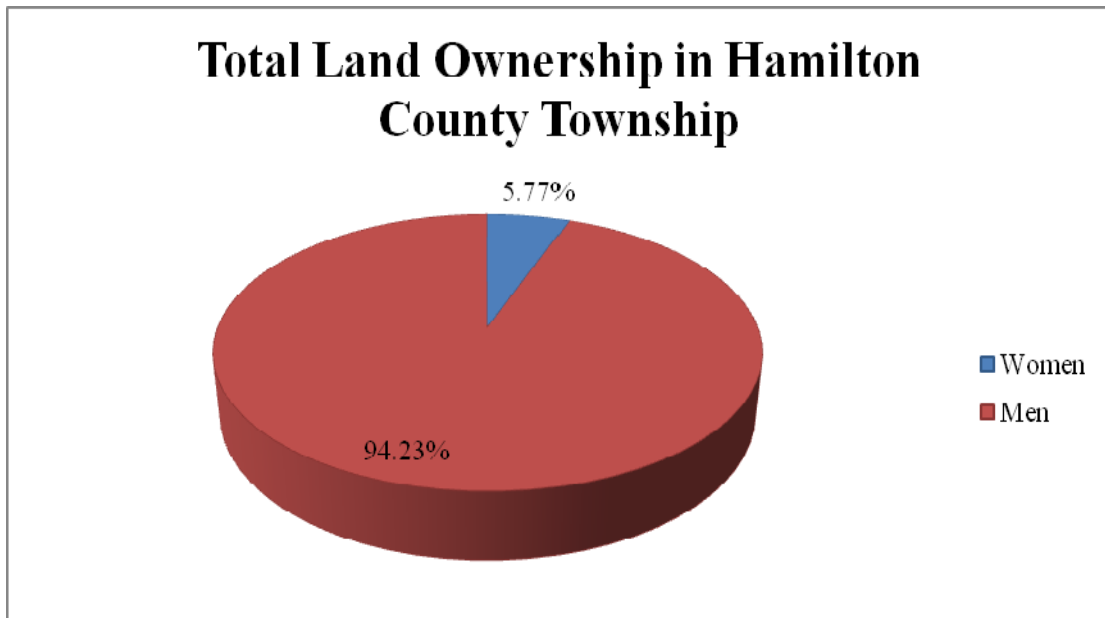
**FIGURE 6.22**  
**OUTCOMES FOR MALE HOMESTEADERS IN HAMILTON COUNTY TOWNSHIP**



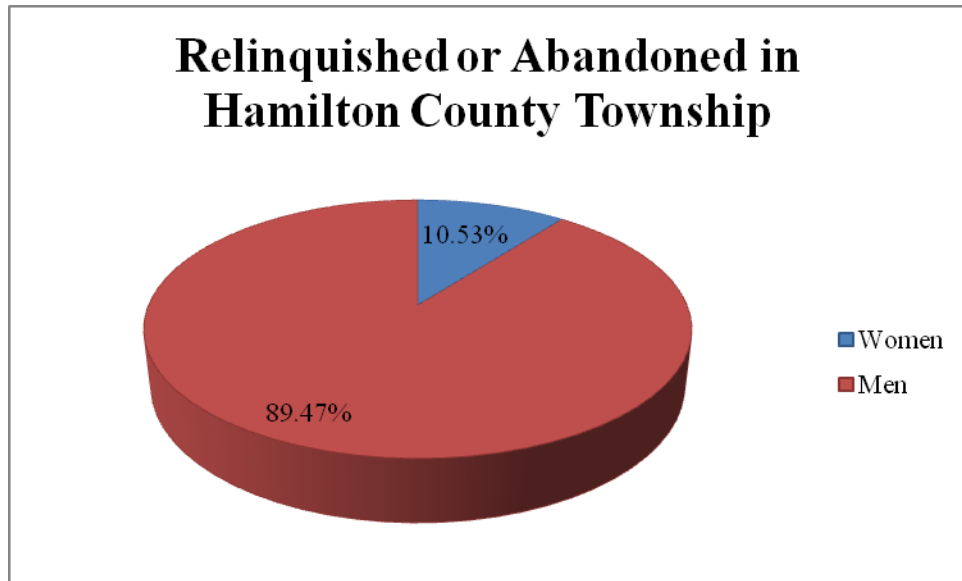
**FIGURE 6.23**  
**HOMESTEADERS MAKING FINAL PROOF IN HAMILTON COUNTY**  
**TOWNSHIP**



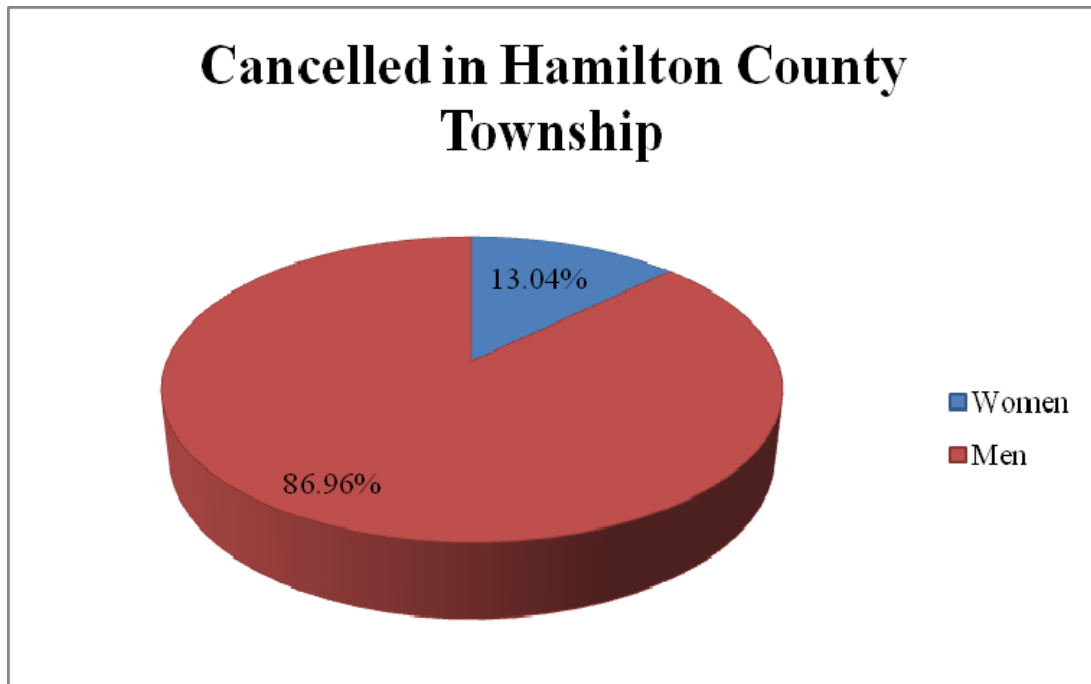
**FIGURE 6.24**  
**HOMESTEADERS WHO BECAME LAND OWNERS IN HAMILTON COUNTY**  
**TOWNSHIP**



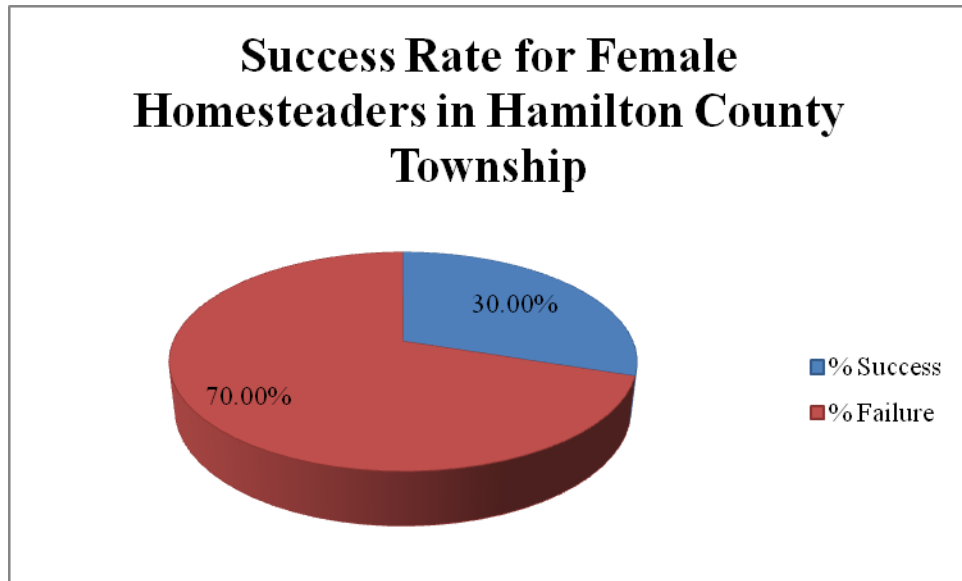
**FIGURE 6.25**  
**HOMESTEADERS WITH RELINQUISHED OR ABANDONED CLAIMS IN HAMILTON COUNTY TOWNSHIP**



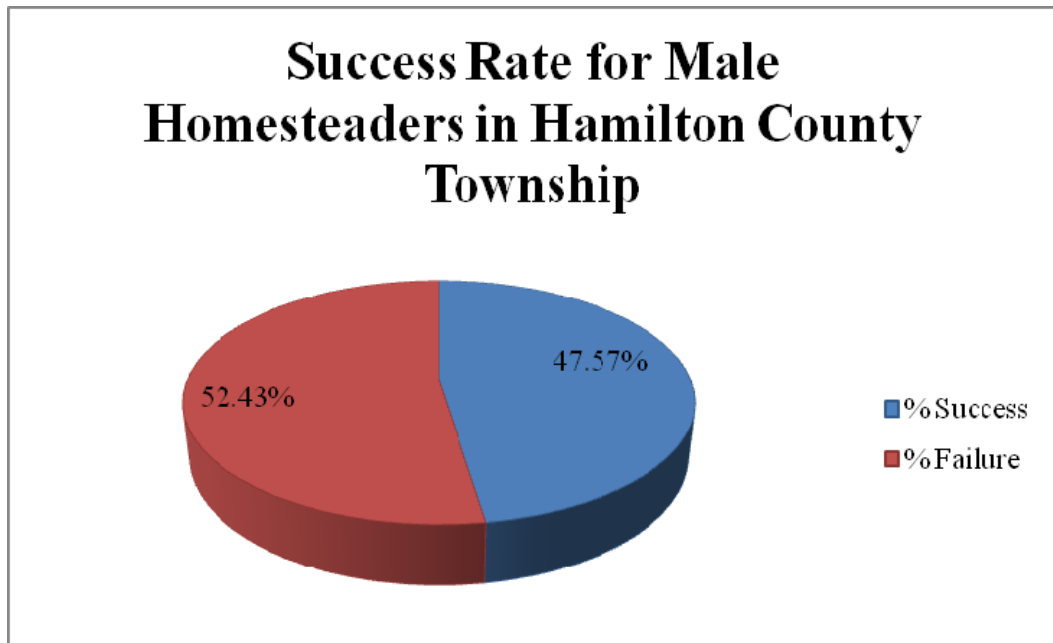
**FIGURE 6.26**  
**HOMESTEADERS WITH CANCELLED CLAIMS IN HAMILTON COUNTY TOWNSHIP**



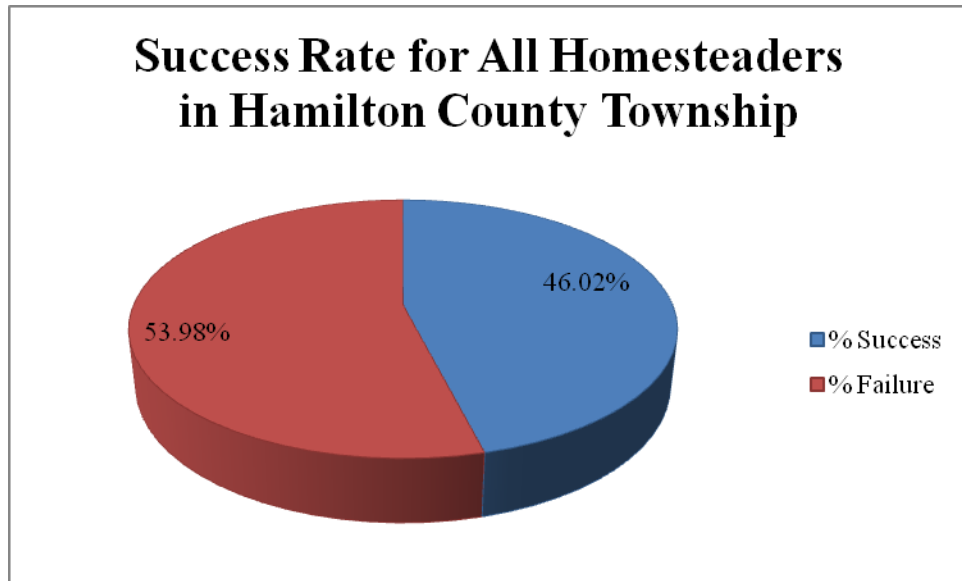
**FIGURE 6.27**  
**SUCCESS RATE FOR FEMALE HOMESTEADERS IN HAMILTON COUNTY TOWNSHIP**



**FIGURE 6.28**  
**SUCCESS RATE FOR MALE HOMESTEADERS IN HAMILTON COUNTY TOWNSHIP**



**FIGURE 6.29**  
**SUCCESS RATE FOR ALL HOMESTEADERS IN HAMILTON COUNTY TOWNSHIP**





compared to 22.2%). The three women whose claims were cancelled—Mary Brown, Margaret Van Slyke, and Elizabeth Stiles—have left frustratingly light footprints in the historical record. The scant records in their homestead files and their absence from both federal and state censuses make it impossible to determine the marital status for Brown and Stiles. While we do know that Van Slyke had never married when she made initial entry on 80 acres of land in section 12 of the township in 1886, the sources reveal nothing else of her life story. It is probable that Van Slyke and the other female homesteaders in this sample were familiar with, if not participants in, the women’s rights movement in Hamilton County that challenged the gender order in the 1880s.

Women in Hamilton County challenged the gender order by involving themselves in county politics from the earliest days of settlement. Hamilton County, nestled in the far southwest corner of Kansas, was formed in the 1880s; the county’s population centers, Syracuse and Coolidge had been settled in 1873 along the old Santa Fe Trail. By 1887 the county had grown enough to spark strident conflict over the location of the county seat. In the midst of this growth, the Kansas Supreme Court validated the state’s female municipal suffrage law. The women of Syracuse County quickly took advantage of the franchise. In April 1887 Syracuse elected an all-female town council.<sup>317</sup>

The election of an all-female town council drew national attention to the small town, particularly generating significant female suffrage activities, including an equal suffrage society in Syracuse. The so-called “city mammas,” succeeded in making Syracuse “renowned as a city of good government, good morals, [and] fine streets.” One

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<sup>317</sup>Rosalind Urbach Moss, “The ‘Girls’ from Syracuse: Sex Role Negotiations of Kansas Women in Politics, 1887-1890,” in Susan Armitage and Elizabeth Jameson, eds., *The Women’s West* (Norman: University of Oklahoma Press, 1987), 253-255.

of their first tasks had been the grading of the streets and an order requiring business owners to build sidewalks.<sup>318</sup>

None of the women elected to the 1887 council ran for re-election, but other women did remain involved in county politics, including Kate Warthen, who also homesteaded a claim in the southeastern portion of the county. Warthen, who studied law and became the first woman admitted to the county bar, was described by one newspaper as a “shining example of the bright, versatile western girl who, while possessing all the fine womanly instincts of her eastern and southern sister[s], has besides the pluck and indomitable [sic] energy peculiar to western progress and independence.”<sup>319</sup> This seemingly contradictory description of the woman who served as the county superintendent beautifully captures the paradox that shaped white women’s participation in the American empire. As Congress had recognized in the debates over the Oregon and Homestead Acts, women must be both feminine and masculine in order to succeed on the frontier, though the assumption was always that as civilization progressed, women would abandon their more masculine pursuits. Warthen, however, did just the opposite. As Hamilton County became more established, she pursued the political opportunities extended to women by virtue of the Kansas female municipal suffrage law. Perhaps it was her 1894 marriage that saved Warthen’s reputation, for, though she had transgressed the gender order in her work as a county official and lawyer, she fulfilled her womanly duty in becoming a wife.

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<sup>318</sup> *Syracuse Sentinel*, April 8, 1887; *Syracuse Journal*, April 5, 1888.

<sup>319</sup> *Syracuse Journal*, November 30, 1894.

**THE BIG PICTURE:  
THE REAL STORY OF FEMALE HOMESTEADERS IN KANSAS**

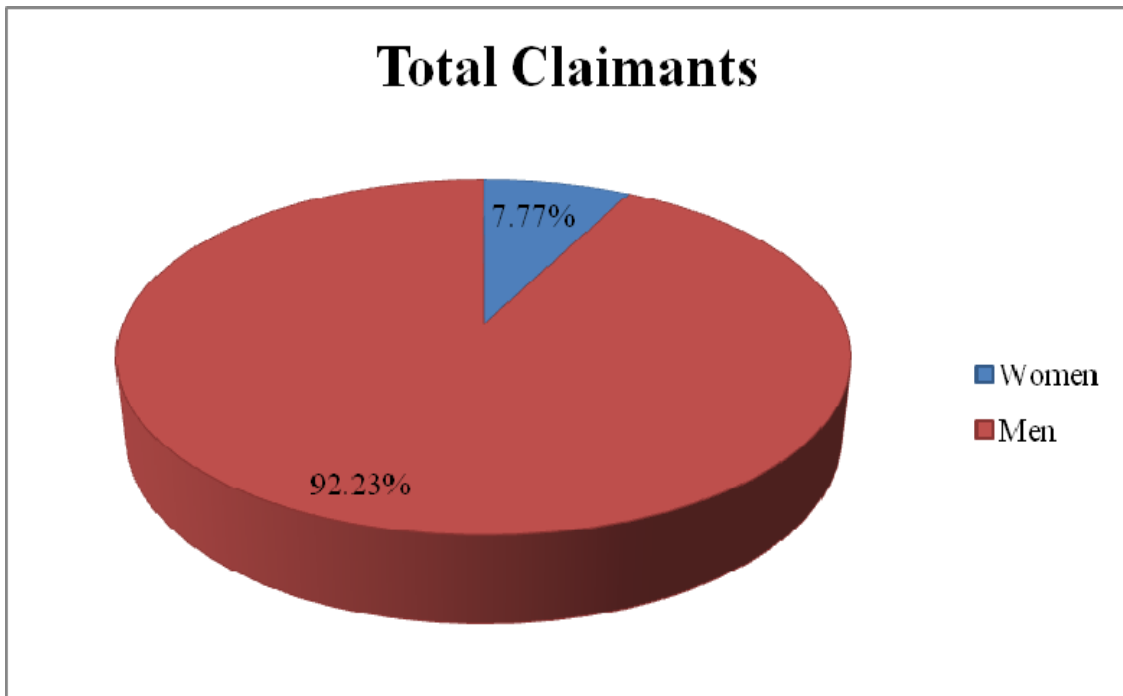
As has been demonstrated, the experiences of female homesteaders in Graham and Hamilton Counties differed significantly. Women more frequently filed homestead claims in Graham County and enjoyed greater success in their bids to become land owners. The disparity between the two stems in part from the geographical differences between the two locations. Graham County, situated in north-central Kansas, proved to be better agricultural lands than did the arid terrain in Hamilton County, thereby making it easier for anyone, male or female to prove up on a homestead claim. The difficulty of farming the land in Hamilton County may also explain the higher rates of relinquishment or abandonment among female homesteaders in comparison with those in Graham County. The data also suggests that Graham County was home to larger numbers of single women than Hamilton County. Fewer women were eligible to be homesteaders, then, in the Hamilton township. Where the women in Graham County succeeded as homesteaders at greater rates than female settlers in Hamilton County, the women in Hamilton County challenged the gender order in ways that extended beyond claiming land.

Though the stories for the women homesteading in these two townships differ, the combined statistical picture provides a starting place for understanding these trends for all female homesteaders in Kansas. (See Figures 6.30-6.41) Together, women make up a small percentage of homesteaders in these townships, comprising less than eight percent of all entrants. It is not surprising that women homesteaded in smaller numbers than men, as married women were not allowed to participate in the land grant program, and marriage was still the option that most women chose in the late nineteenth century.

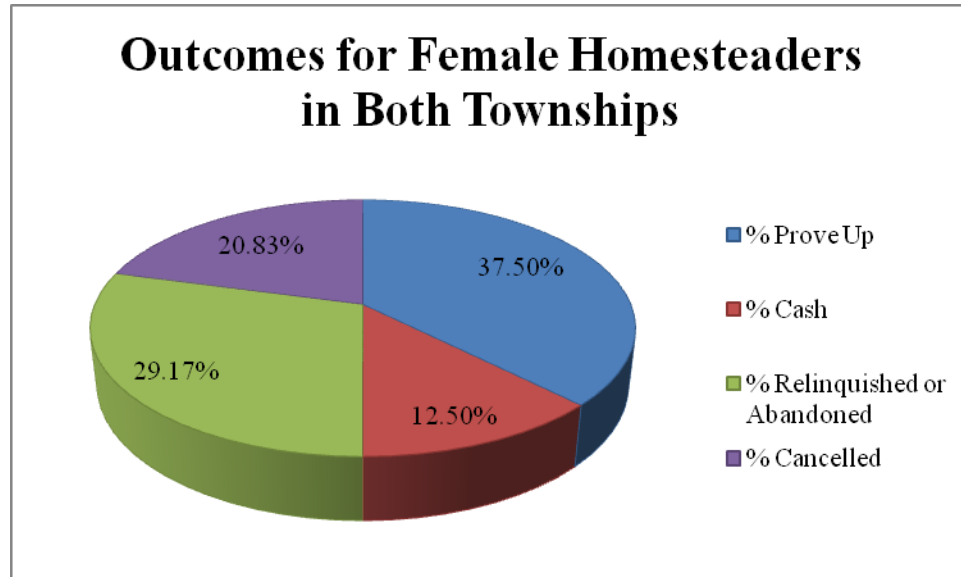
**FIGURE 6.30  
HOMESTEAD ENTRIES IN COMBINED SAMPLE (GRAHAM AND  
HAMILTON COUNTY TOWNSHIPS)**

	<b>Total Entries</b>	<b>Total Claimants</b>	<b>Final Certificates</b>	<b>Cash Commutations</b>	<b>Total Land Ownership</b>	<b>Relinquished or Abandoned</b>	<b>Cancelled</b>	<b>Outcome Unknown</b>
<b>Women</b>	26	24	9	3	12	7	4	0
<b>Men</b>	317	285	120	34	154	101	28	8
<b>Total</b>	343	309	129	37	166	108	32	8

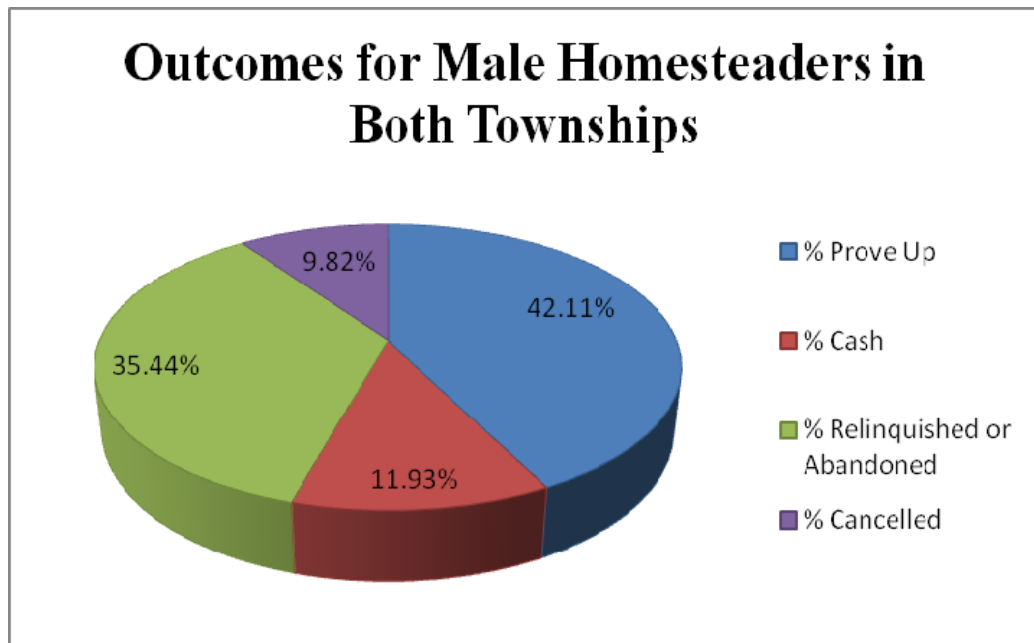
**FIGURE 6.31  
CLAIMANTS IN COMBINED SAMPLE**



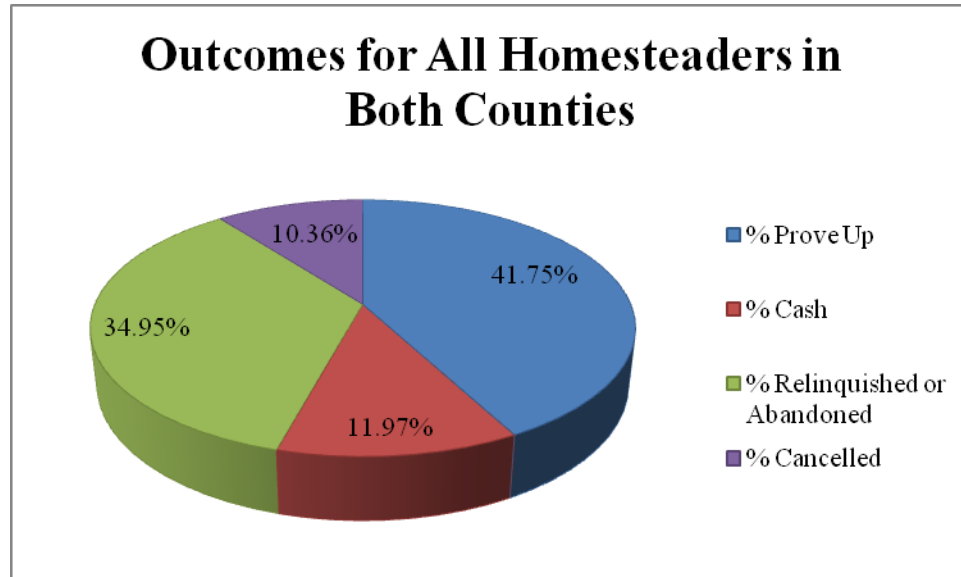
**FIGURE 6.32**  
**OUTCOMES FOR FEMALE HOMESTEADERS IN COMBINED SAMPLE**



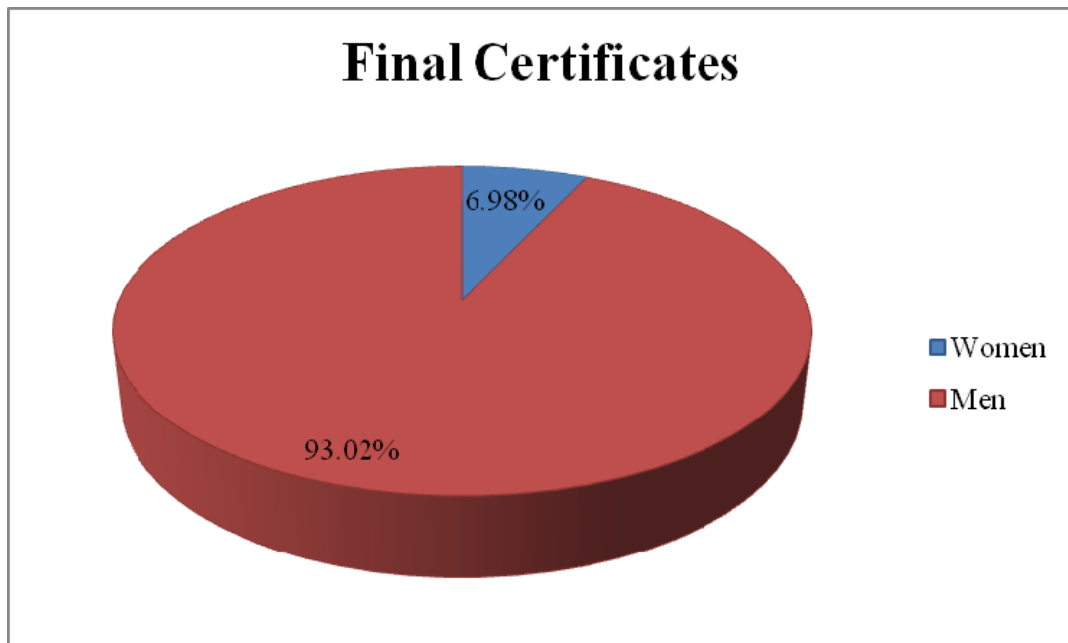
**FIGURE 6.33**  
**OUTCOMES FOR MALE HOMESTEADERS IN COMBINED SAMPLE**



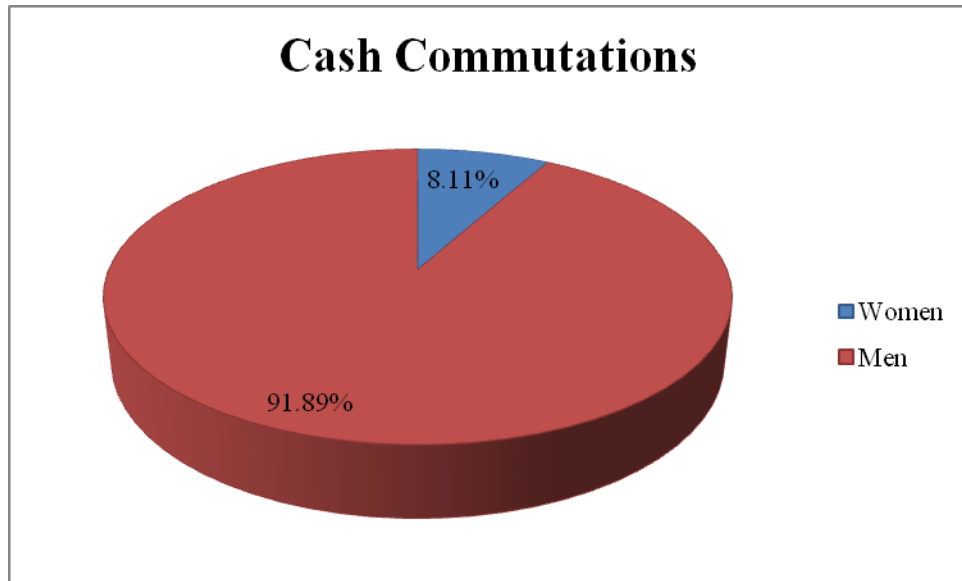
**FIGURE 6.34**  
**OUTCOMES FOR ALL HOMESTEADERS IN COMBINED SAMPLE**



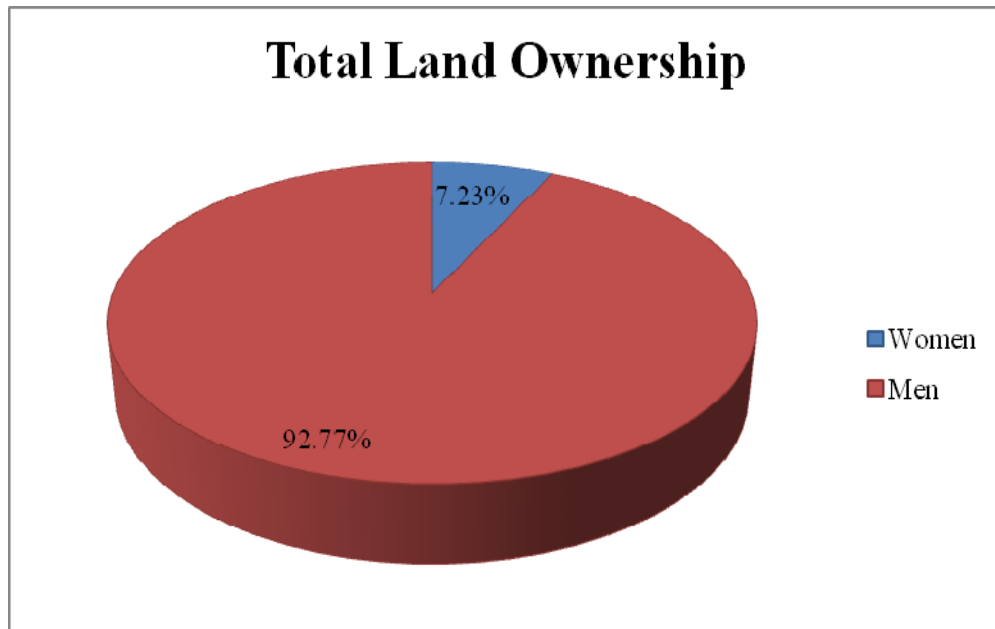
**FIGURE 6.35**  
**HOMESTEADERS MAKING FINAL PROOF IN COMBINED SAMPLE**



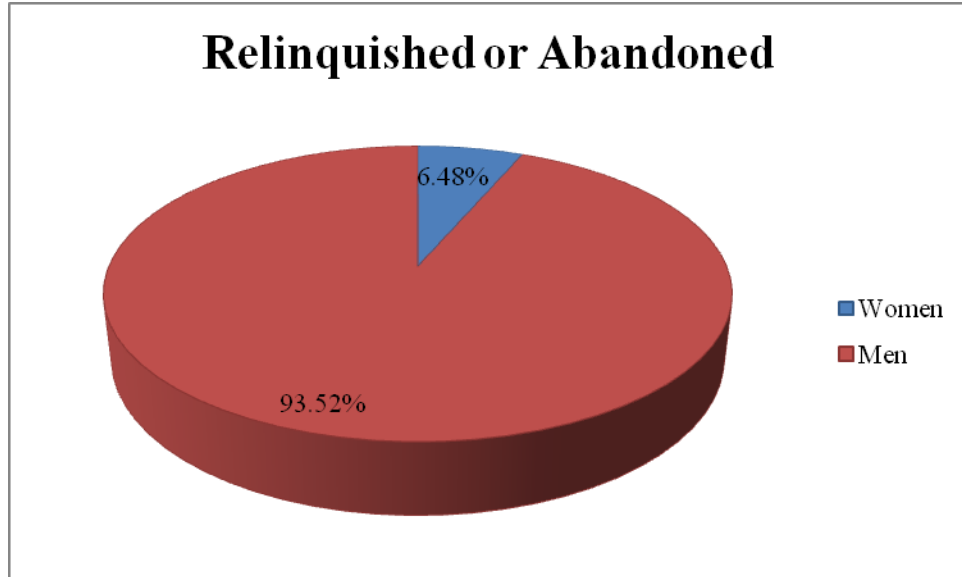
**FIGURE 6.36**  
**HOMESTEADERS WITH CASH ENTRIES IN COMBINED SAMPLE**



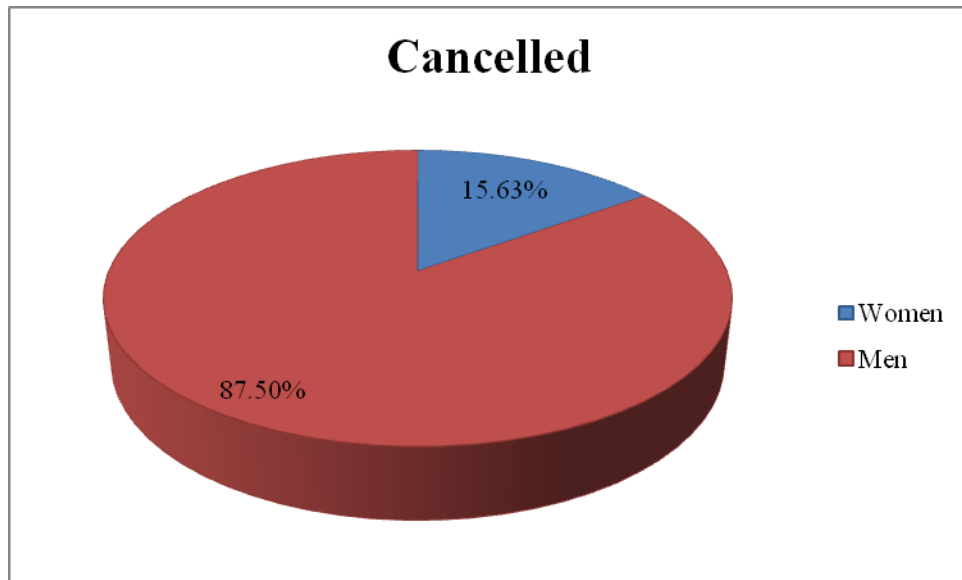
**FIGURE 6.37**  
**HOMESTEADERS WHO BECAME LAND OWNERS IN COMBINED SAMPLE**



**FIGURE 6.38**  
**HOMESTEADERS WITH RELINQUISHED OR ABANDONED CLAIMS IN**  
**COMBINED SAMPLE**

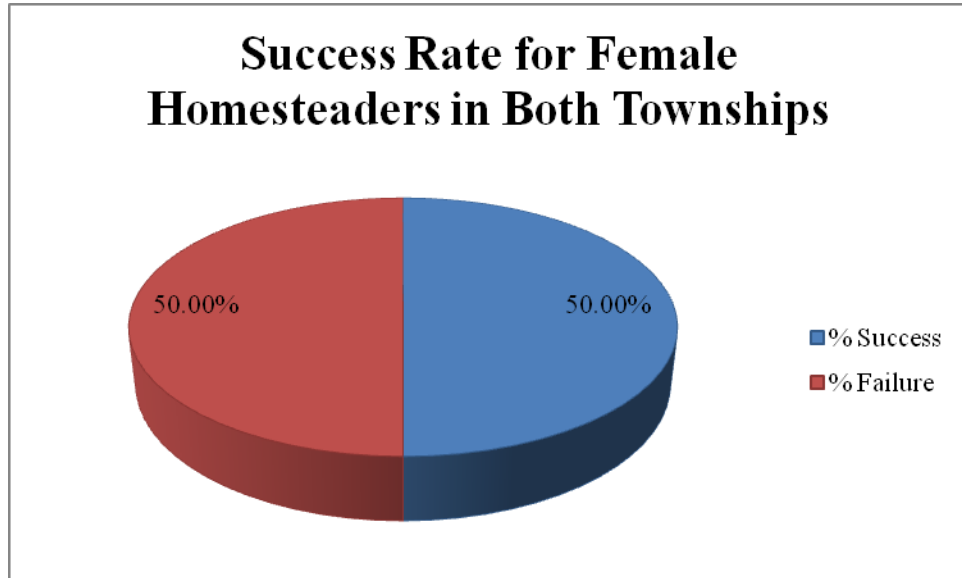


**FIGURE 6.39**  
**HOMESTEADERS WITH CANCELLED ENTRIES IN COMBINED SAMPLE**

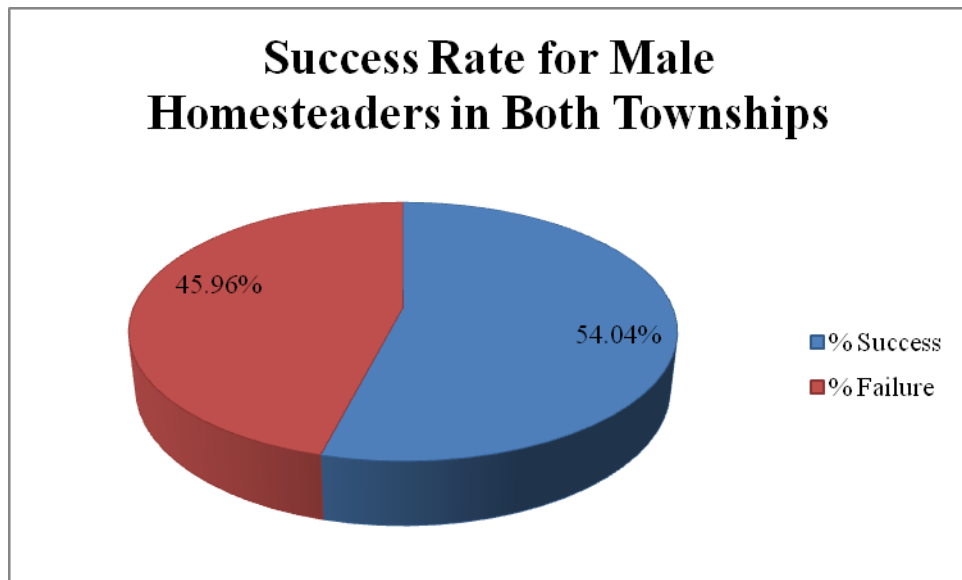




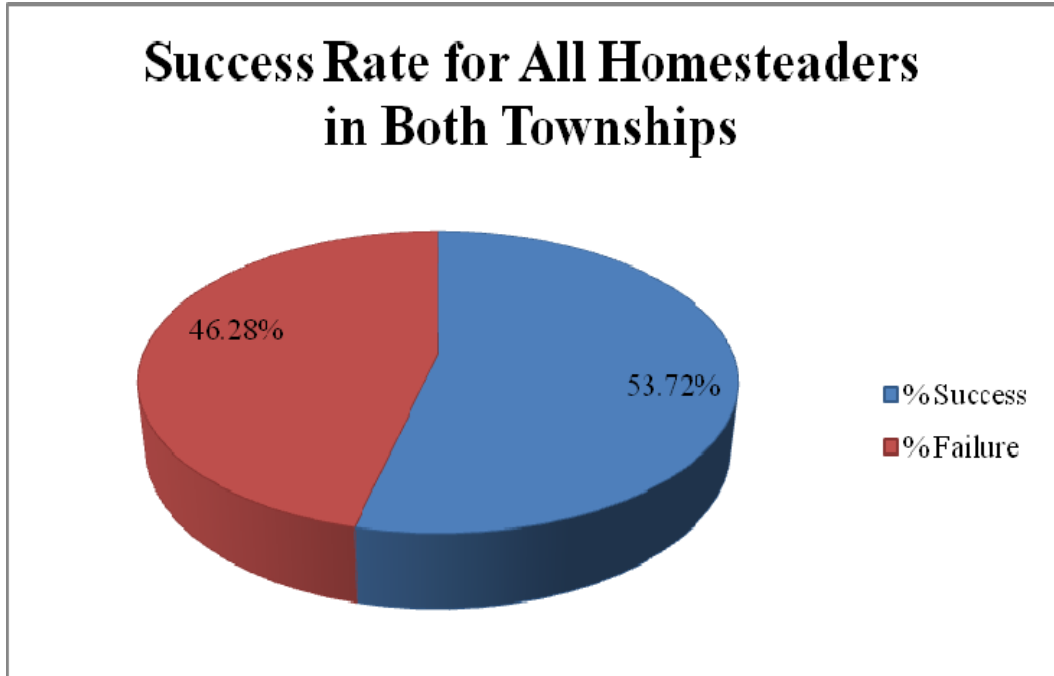
**FIGURE 6.40**  
**SUCCESS RATE FOR FEMALE HOMESTEADERS IN COMBINED SAMPLE**



**FIGURE 6.41**  
**SUCCESS RATE FOR MALE HOMESTEADERS IN COMBINED SAMPLE**



**FIGURE 6.42**  
**SUCCESS RATE FOR ALL HOMESTEADERS IN COMBINED SAMPLE**



The data suggests that women in Kansas generally became land owners at lower rates than did male homesteaders, and less frequently proved up on their claims. In the combined sample, women were roughly seven percent of those who made final proof. However, women did use the method of cash entry in greater numbers than male claimants. This suggests first, that women found cash funds for purchase more frequently than did men, and second, that women were less likely to risk losing their land by attempting final proof when cash commutation was an option.

The most striking fact that emerges from this data is the significant difference between the rates at which women's homestead claims were cancelled by GLO decisions in comparison with men's claims. Women were far more likely to face challenges to their claims by the General Land Office. In the combined sample, nearly 21 percent of female claims were cancelled, compared with the less than 10 percent rate of cancellation for male claims. (Figures 6.32 and 6.33) Women comprise nearly 16 percent of all claims cancelled in the sample; in other categories, such as relinquishment, final proof, or cash commutation, women make up between six and 8 percent of each category. (Figure 6.38) While the details of the cancellations for the men and women in this sample are unknown, most often the GLO cancelled homestead claims because they determined the claimant to be ineligible. Given the GLO record for establishing rules and interpreting the Homestead Act in gendered ways that limited women's access to the land, it is not surprising that women, whose claim to the land challenged the gender order of the empire, came under closer scrutiny by fellow homesteaders and the GLO than did their male counterparts, resulting in higher losses due to GLO rulings than men.

The picture painted here is one of women who persisted in asserting their property rights, though in small numbers. Those who did so enjoyed significant rates of success at becoming land owners, despite frequent challenges from the rules stemming from GLO decisions. As noted above, the GLO exercised a great deal of authority in making on-the-ground decisions that often radically reduced women's access to the land. Women whose behavior failed to comply with what had been deemed appropriate for establishing the gender order frequently found themselves on the losing end of a GLO case. Despite this, the women in this sample suggest that additional research on Kansas homesteaders would likely reveal a widespread persistence of women's efforts to become land owners.

Mary Hayden challenged the Homestead Act as a basis for building the white American empire in the West in multiple ways. As a woman she did not fit the favored mold for land owners. As a mulatto, she did not bear the proper complexion for a civilizing woman. It is also likely that her sexual behavior would have failed to meet the rigorous standards of propriety heralded by the dominant gender order. Her counterpart in Hamilton County, Kate Warthen, challenged the expectations for female behavior through her homestead claim and her public service, but in the end, Warthen, like Hayden, made decisions that best suited her personal desires, regardless of whether or not they were deemed acceptable. In many ways Hayden and Warthen were typical among black and white women homesteading in Kansas. They worked as wage laborers when necessary, claimed their right to homestead lands, participated in their communities, and in doing so insisted on carving a space for themselves in the imperial order that did not fit the grooves reserved for women in the overall project of colonization.

**CHAPTER 7**  
**“WE WERE ALREADY LIBERATED IN OUR SOCIETY”:  
 THE IMPACT OF ALLOTMENT ON NEZ PERCE WOMEN**

The Legend of Tsagaglalal “She Who Watches” tells the story of a chief who built her house high above the village of Nixluidix where she could survey the lives of those who lived below. This was before Coyote arrived and “people were not yet real people.” Coyote climbed to the chief’s house and asked her, “What kind of living do you give these people? Do you treat them well or are you one of those evil women?” Tsagaglalal responded “I am teaching them to live well and build good houses.” Coyote warned her, “Soon the world will change and women will no longer be chiefs,” before changing her into a rock so that she could stay there and always watch over the people who lived there.<sup>320</sup> This traditional tale from the Columbia Plateau region could easily have been a warning to Nez Perce women about the changes that the United States government intended to implement through the Dawes Act.

As noted in Chapter Four, allotment was intended to further the process of civilizing indigenous peoples, including, among other things, changing the ways in which native peoples utilized the land, and replacing traditional gender relations with the patriarchal American model. As Patrick Wolfe notes, settler colonialism “strives for the dissolution of native societies . . . [while] it erects a new colonial society on the expropriated land base,” creating a “logic of elimination,” that erodes the native culture and population.<sup>321</sup> This did not always mean death for native peoples (though depopulation was certainly one outcome of reproducing white societies among

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<sup>320</sup> Emory Strong, “The Legend of Tsagaglalal ‘She Who Watches,’” in *A Song to the Creator: Traditional Arts of Native American Women of the Plateau*, Lillian Ackerman, ed. (Norman: University of Oklahoma Press, 1996), 3.

<sup>321</sup> Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* 8 (December 2006): 388.

indigenous peoples), but also indicated the need to “civilize” the native inhabitants so that they blended in with white society. Native ways had to be eliminated in order for settler colonialism to succeed. Because gender relations are so fundamental to society, it became an absolute of imperialism that native practices that did not conform to white definitions of appropriate gender behavior had to be eliminated. Thus government efforts at civilizing the Indians inevitably included attempts to force them to adopt the American gender order—male head of household who was the primary provider for a dependent and submissive wife who managed the family’s domestic space and children. This family structure also required less acreage than did a nomadic or semi-nomadic lifestyle, thus institution of new gender roles had the added advantage of making more indigenous lands available to white settlers.

Although intended to fundamentally alter gender relations among the Nez Perces, the allotment of Nez Perce lands did not significantly change women’s status in the tribe. Like other Columbia Plateau cultures, the Nez Perces valued gender equality, recognizing the importance of women’s provision for the family, tracing their kinship bilaterally, and granting women significant rights in the questions of marriage and divorce. One of the primary goals of allotment was the establishment of a patriarchal American gender order, where men were primary providers for the family through their production as farmers, and women were relegated to the domestic sphere where they maintained a proper home and raised the children. While the introduction of individual land holdings did drastically impact Nez Perce culture, it did not establish a gender hierarchy that valued male property owners. Nez Perce women retained their rights as property holders and as providers for family needs.

Three key variables came together in the process of allotting the Nez Perce reservation that made it possible for allotment to reinforce rather than undermine existing gender structures among the Nez Percés. The Dawes Act had been revised to grant eighty acres to every tribal member, allowing married women to claim their own land; Alice Fletcher, the allotting agent, had a proven record of concern for native women and their property rights; and Nez Perce culture already recognized women as owners of personal property. While the clear intent of the Dawes Act was the “civilization” of the Indians, including inscribing the patriarchal American gender order on native populations, among the Nez Percés, allotment reinforced the gender equality practiced by the tribe, and in some cases made women powerful land owners who controlled significant acreage.

### **THE IMPACT OF ALLOTMENT ON NEZ PERCE WOMEN**

In 1889 Alice Fletcher estimated after her first summer working among the Nez Percés that tribal population could be as high as 2,500, which was double the number reported by the Nez Perce agent in 1887.<sup>322</sup> In 1896, following the completion of allotment, the reservation agent, S.G. Fisher, reported a population of 1,685, a number that more closely reflects the population as estimated by the number of allotments, though far below Fletcher’s early suggestion. (See Figure 7.1)

The Nez Perce reservation included 750,000 acres under the terms of the 1863 treaty. The allotment process would see their land holdings decline to roughly 208,000 acres, most held in individual allotments. The exact acreage of the allotments is

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<sup>322</sup> Alice Fletcher to the Commissioner of Indian Affairs, December 26, 1889, Fletcher Papers, NAA.

**FIGURE 7.1**  
**1896 NEZ PERCE POPULATION STATISTICS<sup>323</sup>**

<b>Age</b>	<b>Population</b>
Males over 18	458
Females over 14	593
Children over 6 (females under 14; males under 18)	342
Children under 6	292
Total Nez Perce Population	1685

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<sup>323</sup> From S.G. Fisher, "Report of the Nez Perce Agency," in the *Annual Report of the Commissioner of Indian Affairs*, 1896, 141.



uncertain. In 1896 Fisher, reported that 179,000 acres had been allotted.<sup>324</sup> Deward Walker claims allotments amounted to 175,026 acres.<sup>325</sup> The extant allotment patents confirm 134,614 acres divided into private holdings, but these records do not include the full count of allotments.<sup>326</sup> Assuming a minimum allotment of 80 acres for the 579 patents not extant, it is likely that the figure is closer to the 179,000 acres cited by Fisher than Walker's lower estimate. Out of those 179,000 acres includes, Fletcher issued 1,995 allotments; patents for 1,416 of these records exist and form the basis of this analysis.

Nez Perce women represented more than 50 percent of allottees, and held nearly 50 percent of the known acreage allotted. (See Figures 7.2-7.4) These numbers generally reflect the sex ratio of adults among the tribe, as estimated by Fisher in 1896. The nearly equal amounts of acreage reveal that Fletcher did carefully follow the parameters of the law, issuing roughly equal allotments of 80 to 100 acres to all Nez Percés rather than making allotments of 160 acres for male heads of household.

One method of assessing the impact that allotment had on women's power within the tribe is through an analysis of those who signed the allotment patents issued in 1895. The exact rules established for the process are unclear, but it is likely, given the overall aims of revising the gender order and the ways in which reservation agents wielded significant power as administrators of tribal resources, that the awarding of the patents to individual land owners was overseen by the reservation agent. Such a practice suggests

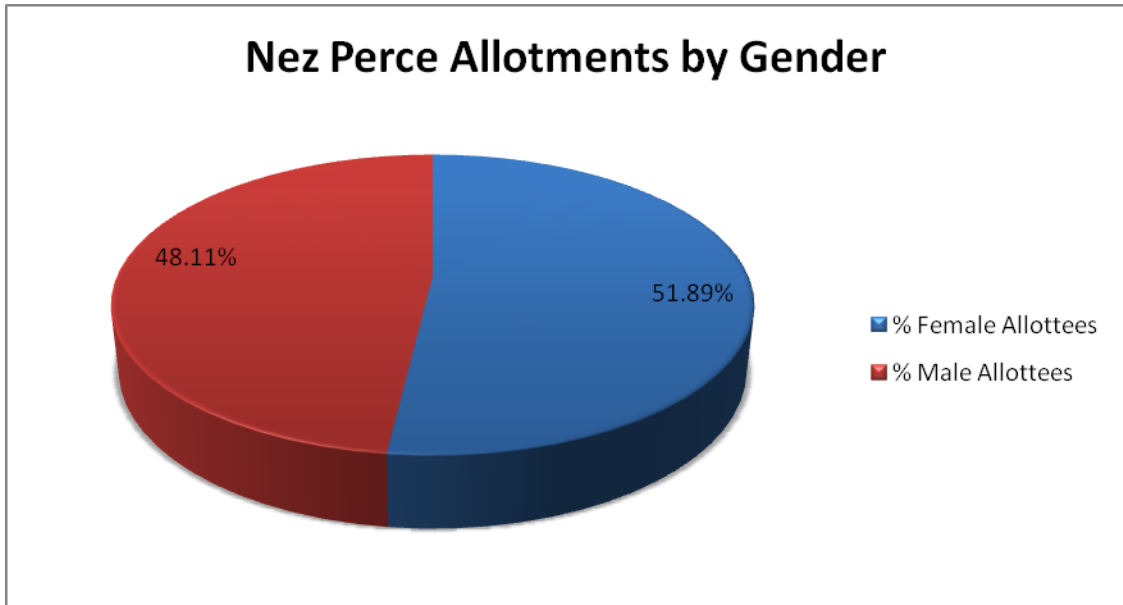
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<sup>324</sup> *Annual Report of the Commissioner of Indian Affairs*, 54<sup>th</sup> Congress, 2<sup>nd</sup> Session, House Document 5, Volume 2 (1896), 141.

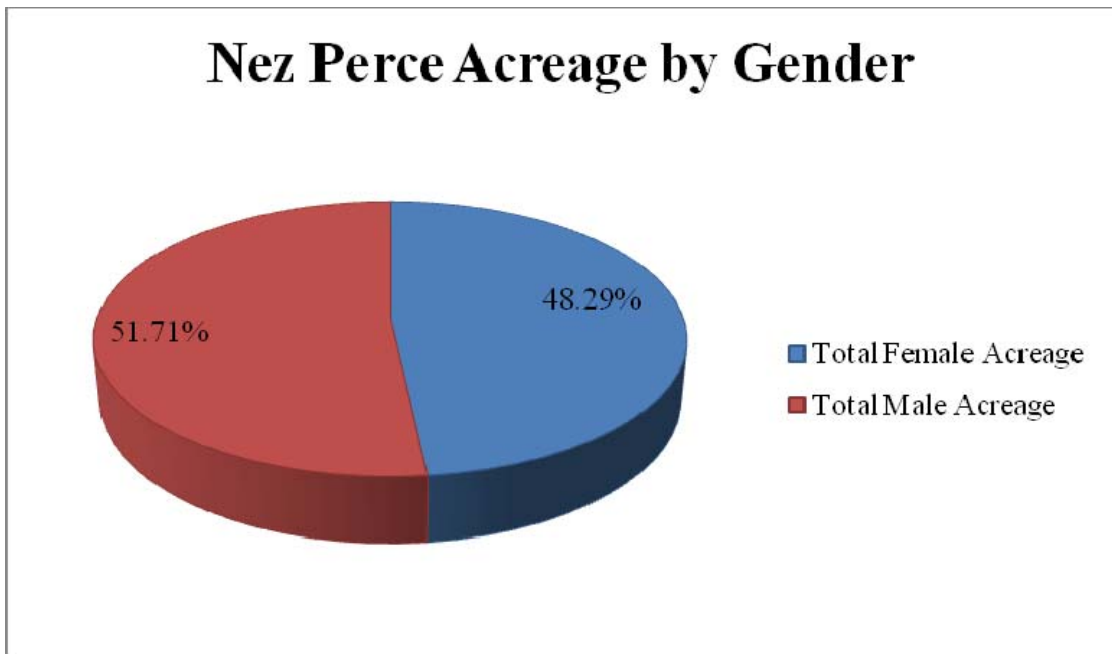
<sup>325</sup> Deward E. Walker, Jr., *Conflict and Schism in Nez Perce Acculturation: A Study of Religion and Politics* (Pullman: Washington State University Press, 1968), 77.

<sup>326</sup> The data for this analysis of allotment on the Nez Perce was generated from the 1,416 patent certificates held by the Pacific Regional Branch of the National Archives and Records Administration in Seattle, Washington. These records include the legal description of the land, the total acres awarded, the allottee's name (often both Nez Perce and English) and the signer of record to receive the patent. The patents number from 1-1,995, but there are significant portions of the sequentially numbered certificates missing from these records.

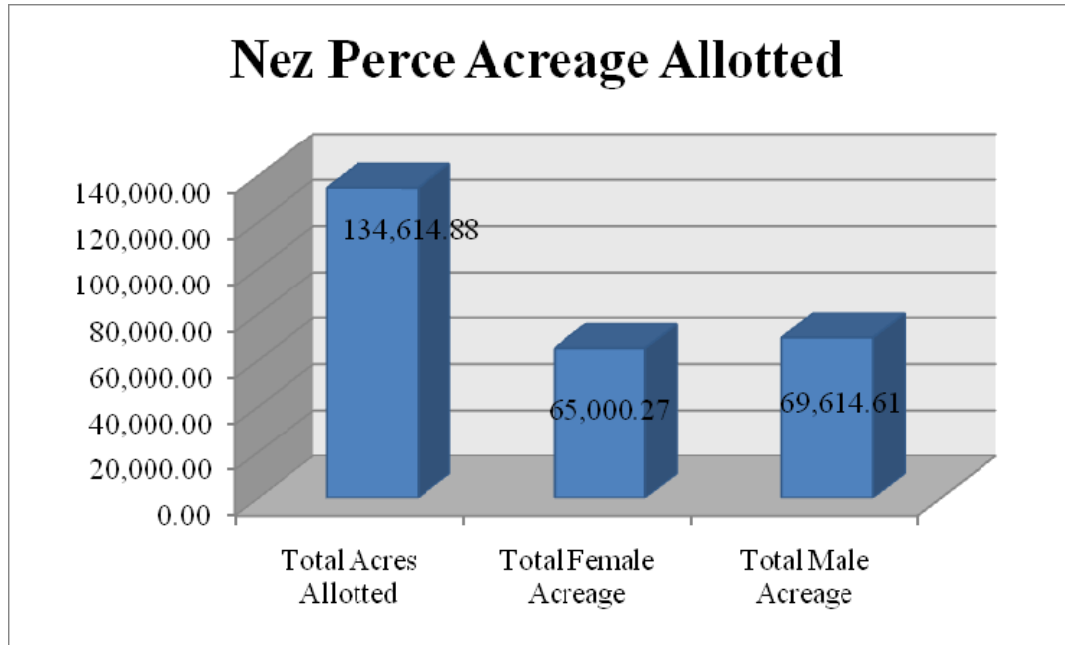
**FIGURE 7.2  
NEZ PERCE ALLOTMENTS BY SEX**



**FIGURE 7.3  
NEZ PERCE LAND HOLDINGS BY SEX**



**FIGURE 7.4  
NEZ PERCE LAND HOLDINGS**



that efforts to force the adoption of white gender roles on the Nez Perces as part of allotment emerged during the distribution of patents when husbands signed the official documents for their wives and fathers for those of minor children.

Fletcher was not a part of this final process. Once she submitted the allotments to the Office of Indian Affairs, her work was finished. Following receipt of the allotments, the OIA approved each recommendation made by the allotting agent, then issued the patents to the reservation agent for final distribution to the native land owners. It is likely, that had Fletcher been involved in this final stage of conveying property rights, she would have urged native women to sign for their own allotments. During the course of her work with the Omahas, Fletcher emphasized to them the importance of one's signature upon a government document. Fletcher wrote that a "considerable formality attended the making out and signing of the paper of 'selection.' Each man and woman made his or her mark in the presence of witnesses chose by the signer."<sup>327</sup>

This atmosphere stemmed from Fletcher's insistence that upon signing the selection paper their choice of allotment was final and "could no longer be open to reconsideration." She also noted that "this formality brought each Indian in direct responsibility with his choice of land and taught the importance attached to the signing of the name and the guards placed about the act by our forms and customs."<sup>328</sup> Fletcher does not write about engaging in a similar process during the allotment among the Nez Perces, but it is likely she would have stressed to them the importance of signing these legal documents, particularly given the tension and distrust that pervaded the reservation during her work there.

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<sup>327</sup> Alice Fletcher to the Commissioner of Indian Affairs, June 1884, Fletcher Papers, NAA.

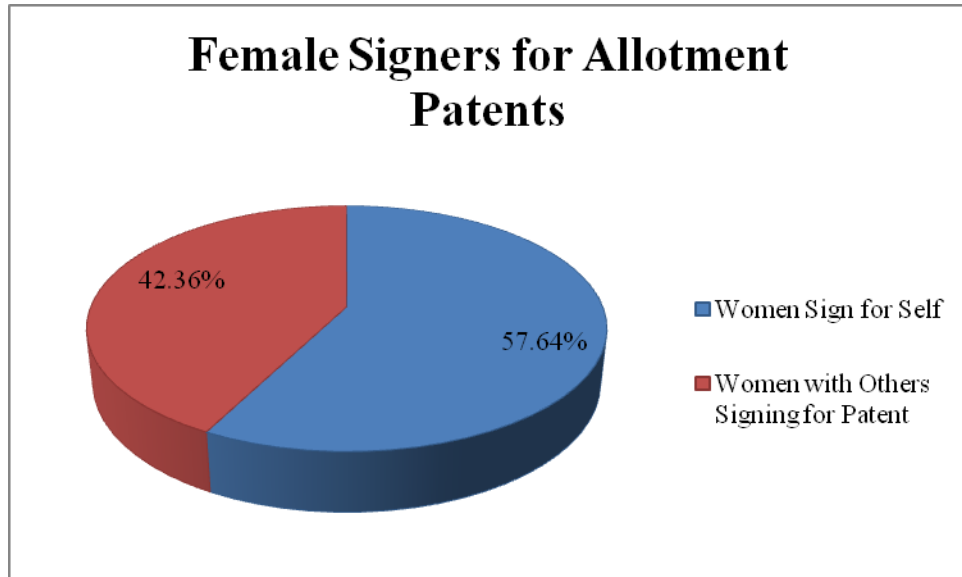
<sup>328</sup> Alice Fletcher to the Commissioner of Indian Affairs, June 1884, Fletcher Papers, NAA.

Nez Perce women signed the final patents for their allotments in significant numbers. (See Figure 7.5) Of the 687 women who received allotments, more than half of them signed the patents themselves, including married women. Husbands signed for roughly 14 percent of female allottees, with fathers or other male relatives or guardians signing for fewer than 20 percent of female allottees. (See Figure 7.6)

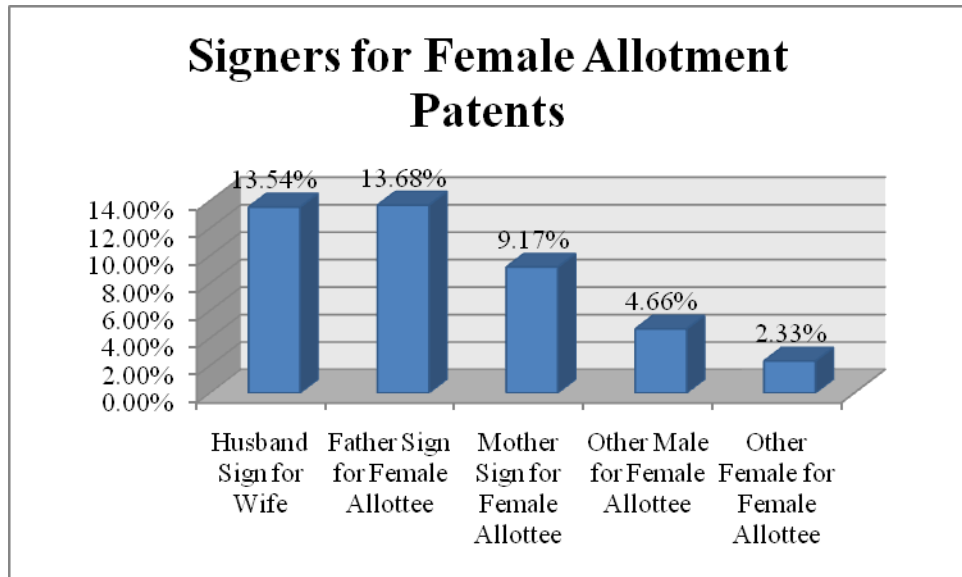
The persistence of female signatories for allotment patents suggests first, that Nez Perce women actively preserved their property rights by signing for the land themselves. This practice reflected the traditional Nez Perce culture wherein women owned their own property, and retained their rights to such property in marriage and divorce. Second, the low proportion of husbands as signatories for female allotments, indicates that Nez Perce men supported the practice of female property ownership, and did not assert their rights to sign for wives property. Overall these numbers reveal that the Dawes Act failed to restructure the Nez Perce gender order. This outcome is the result of both the existing Nez Perce practices of gender equality and Fletcher's commitment to making allotments to all women in the tribe. In this then, the Dawes Act did not succeed in advancing civilization through a restructuring of gender roles. In fact, some women among the Nez Perce emerged as controllers of significant family acreages.

Although fathers were more likely to sign for a minor child's allotment, Nez Perce women also frequently signed for these acreages. (See Figures 7.7 and 7.8) Out of the 1,416 allotments, sixteen women signed for four or more total allotments, including their own. While only a fraction of the total allottees, these women together controlled over 7,000 acres. Individual family holdings for these women ranged from

**FIGURE 7.5**  
**NEZ PERCE FEMALE SIGNERS FOR ALLOTMENT PATENTS**



**FIGURE 7.6**  
**NEZ PERCE SIGNERS FOR FEMALE ALLOTTEES**



320 to 580 acres. (See Appendix 4) For example, Cecille Teillor managed 580 acres of family land, eighty of which she owned, the remaining 500 allotments to her six minor children. (See Figure 7.9-7.10) These groups reflect the strategy employed by both the Nez Perces and Fletcher of choosing adjoining acreages for family members in order to secure larger areas of land that could be used for grazing. These families again demonstrate the failure of the Dawes Act to overwhelmingly institute a patriarchal system of property ownership among the Nez Perces and the persistence of Nez Perce cultural practices.

### **THE NEZ PERCE GENDER ORDER**

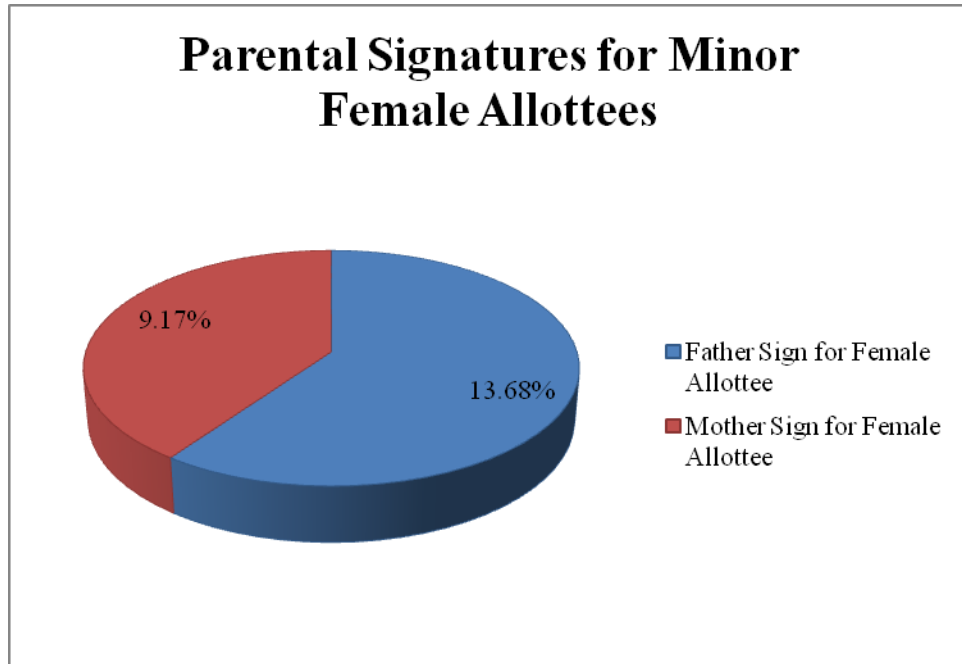
“I think [women] are an important part of the whole social setup of the Nez Perce Indians,” declared one Nez Perce woman to an interviewer in the mid-1990s. Another Nez Perce estimated that women provided as much as 85 percent of the work necessary for household and family maintenance.<sup>329</sup> The division of labor among the Nez Perces operated along gender lines, but Nez Perce women did not enjoy a lower status than men. The gender equality that marks Nez Perce culture stems from their bilateral kinship system, meaning that ancestry is tracked through both the mother and the father.<sup>330</sup> Scholar Lillian Ackerman argues that in the Columbia Plateau cultures women and men share power within the tribes, each sex wielding separate, but not unequal, duties and

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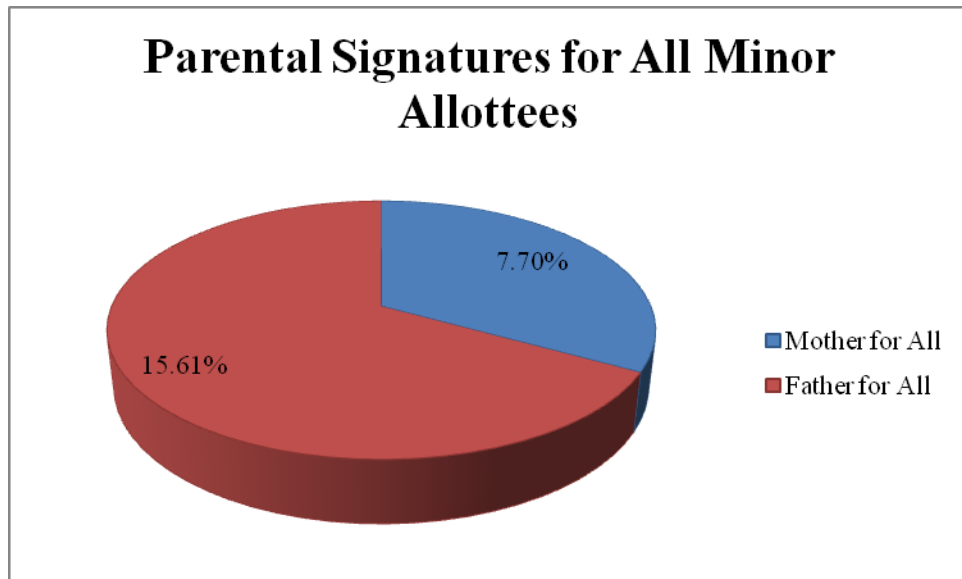
<sup>329</sup> Quoted in Caroline James, *Nez Perce Women in Transition 1877-1900* (Moscow: University of Idaho Press, 1996), 11.

<sup>330</sup> See Lillian Ackerman, “Nonunilinear Descent Groups in the Plateau Culture Area,” *American Ethnologist* 21 (May 1994), 286-309.

**FIGURE 7.7**  
**NEZ PERCE PARENTAL SIGNATURES FOR MINOR FEMALE ALLOTTEES**



**FIGURE 7.8**  
**NEZ PERCE PARENTAL SIGNATURES FOR ALL MINOR ALLOTTEES**

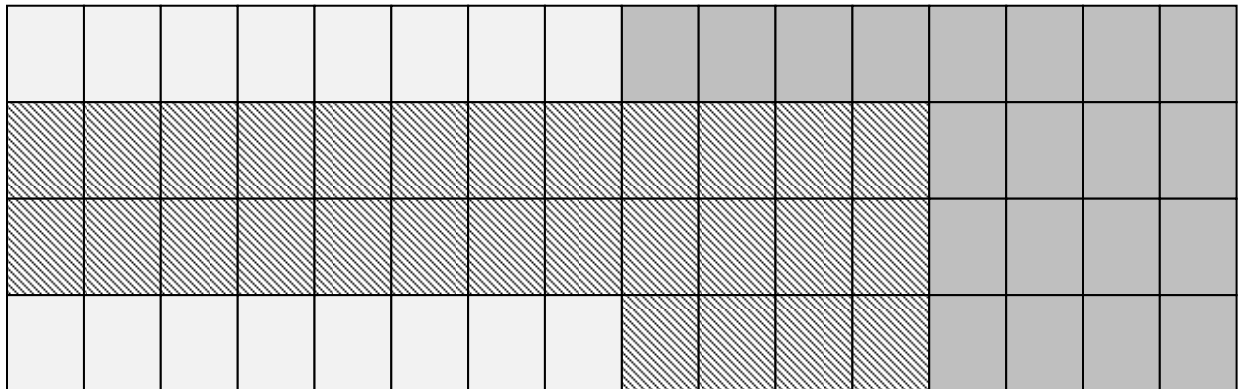







**FIGURE 7.9  
SECTIONS 34 AND 35 IN TOWNSHIP 34N 1W**

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

**FIGURE 7.10  
TEILLOR FAMILY ALLOTMENTS**



-  Section 34
-  Section 35
-  Teillor Allotments

privileges in the areas of economy, the domestic sphere, politics and religion.<sup>331</sup> Thus, gender equality infuses the everyday lives of men and women among the Nez Percés. One Nez Perce woman described the ways in which men and women each contributed to providing for their families, declaring “It seems to me they kind of work together because each one had their own role, own responsibilities. It was a man’s job to furnish the meat and fish, take care of the horses, and to protect them. Women always provided the roots, berries and took care of the meat and fish to dry for the winter, fixed up the tipi and took care of the fire.” Nez Perce women exercised a great deal of power and autonomy in their care of home and children. Their primary work as providers included gathering, preparing, and storing roots and other plants to feed their families, as well as assisting with the preparation of game and fish. Nez Perce women also constructed and maintained the family home. The Nez Percés lived in communal family dwellings called longhouses during the winter months. During the nomadic summer months, women provided tipis to shelter the family.<sup>332</sup>

Women isolated themselves from the rest of the tribe during menstruation and at childbirth. The women’s lodges provided a separate space for this. Young girls marked the start of their menses with a puberty ceremony. After being isolated in the women’s lodge during the course of her period, going outside only at night for a brief time, the girl would return to the community as a marriageable woman. She received gifts and clothing and adopted a new hair style to mark her transition to adulthood. For young

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<sup>331</sup> Lillian Ackerman, *A Necessary Balance: Gender and Power among Indians of the Columbia Plateau* (Norman: University of Oklahoma Press, 2003). See also Nancy Shoemaker, “Introduction,” in Shoemaker, ed., *Negotiators of Change: Historical Perspectives on Native American Women* (New York: Routledge, 1995) for the concept of complementary labor roles in Native American societies.

<sup>332</sup> James, *Nez Perce Women in Transition*, 32-33.

men, the transition to adulthood was marked by a move to the *la-we-tas*, separate sleeping quarters for single men.<sup>333</sup>

Nez Perce marriage practices placed no restrictions on the choice of spouse, except for a ban on marriage to close relations, but arranged marriages and child betrothals were common, and family reputation often figured into these decisions. An elder female relative of the prospective husband typically conducted the marriage negotiations with the bride's family, who would move into the girl's home to observe her behavior and determine her potential as a wife. The couple began living together when the negotiator gave approval of the relationship, and a ceremony with the exchange of gifts marked the official marriage.<sup>334</sup> This practice granted women among the Nez Perce a great deal of power over marriage relationships, though the brides themselves might have had little say in the matter.

Polygyny, the practice of plural wives, was also a part of Nez Perce culture, though the practice typically occurred only among village headmen and chiefs who could afford to support more than one wife. The desire to further strengthen kinship ties and the economic contribution of wives motivated the decision to have multiple wives.<sup>335</sup> While Nez Perce historians note the practice of polygyny among the tribe, Alice Fletcher stated that "Polygamy did not exist in the Kamiah Valley until after the white people came into the country."<sup>336</sup> During the course of her work among the Nez Percés Fletcher befriended one of the tribal elders, Jonathan Williams, called Billy, and recounted his

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<sup>333</sup> Allen P. Slickpoo, Sr. and Deward E. Walker, Jr., *Noon Nee-Me-Poo (We, the Nez Percés): Culture and History of the Nez Percés*, Volume 1 (Lapwai: Nez Perce Tribe of Idaho, 1973), 47.

<sup>334</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 48.

<sup>335</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 48; James, *Nez Perce Women in Transition*, 81.

<sup>336</sup> Alice Fletcher, "Notes from Billy," p. 2 in *Ethnologic Gleanings Among the Nez Percés*, n.d., Fletcher Papers, NAA.

story. She noted of Billy that “his memory was remarkable and his character for truthfulness made his reminiscent statements of peculiar value.” Billy was among the Christianized Nez Perces, and it is likely that his conversion colors the stories he told Fletcher. In particular, his discussions about the practice of polygamy suggest that he may have shifted blame for the practice to whites rather than admit its existence among the Nez Perces prior to first contact with Euro-Americans.

In Fletcher’s account of Billy’s life story, she tells about his father and interactions with the Northwest Fur Company. Fletcher declares that the men of the company encouraged Nez Perce men to adopt the practice of polygamy so that they could become chiefs—more wives equaled additional workers to process furs, and would translate to an increase in business for both the company and the men with whom they traded. Billy recounted the story to Fletcher:

To this village came many words from King George down the trail. Here lived one of the chiefs he had created. This was how it happened: ‘How many wives have you?’ asked King George. ‘One’. ‘I give you one and a half foot of tobacco; get another wife, and next year I will give you more’, said King George. The man obeyed, and the next year when he appeared at the trading post he received a larger gift of tobacco and King George put a wide tin band about his hat—a sign that he was a chief.’<sup>337</sup>

The lure of this story and the suggestion from white traders that he take another wife prompted Billy’s father to take a second wife.

While the suggestion that white men introduced the practice of polygyny to the Nez Perces is suspect, the story of Billy’s mother indicates the autonomy and equality that Nez Perce women enjoyed in the tribe. When Billy’s father left to get a second wife,

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<sup>337</sup> Alice Fletcher, “The Nez Perce Country,” p. 3-4, Fletcher Papers, NAA.

his mother took Billy, his two sisters, and the family supplies (including the horses) and left her husband. Billy did not see his father again until he was an adult.

Divorce was not common among the Nez Perces, who refer to a formal separation, *peweeyuin*. The close-knit network of kinship ties that were so much a part of marriages and Nez Perce culture in general discouraged the dissolution of marriages, but women retained the right to return to their families if a husband could not support them, and acceptance of the separation by the community allowed both spouses to remarry. Women gained custody of children in the case of a separation, and also took their household belongings and tipis, while men were given the horses.<sup>338</sup>

Modern Nez Perce women often view the tribe as matriarchal. Caroline James argues that “the use of this term . . . for the autonomy and authority enjoyed in their traditional community is quite understandable give the contrast with what they perceive to have been the lowly position of women—the property of men—in traditional Euro-American society.”<sup>339</sup> One Nez Perce woman declared that “Socially, and economically, the roles [of women] have gotten greater to this day so that the majority of the women are socially more prominent than the men, and even though men do hold some jobs that are leadership roles, it is the women behind them that keep them there.”<sup>340</sup>

As this woman’s perception of modern Nez Perce gender roles suggests, traditional Nez Perce culture did not escape white colonization unscathed. While allotment did not immediately result in a significant decline for women’s position in Nez Perce society, it did alter their way of life, just as earlier contact with whites and the U.S.

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<sup>338</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 48; James, *Nez Perce Women in Transition*, 91.

<sup>339</sup> James, *Nez Perce Women in Transition*, 214.

<sup>340</sup> Quoted in James, *Nez Perce Women in Transition*, 216.

government had. In order to understand the eventual changes wrought by allotment, it is important to understand the Nez Perces' history.

### **THE NEZ PERCES BEFORE THE DAWES ACT**

The Nez Perce homeland lies between the Bitterroot Mountains on the east and the Rocky Mountains on the west, encompassing all of the Clearwater River Basin. The Salmon River marks the southern boundary, with the Snake River cutting through the western half of the region. This vast area, estimated to be approximately 13 million acres, is home to both the highest and lowest points of elevation in what is now the state of Idaho.<sup>341</sup> (See Figure 7.10) The canyons and plateaus that mark the land are home to many of the roots that provided the basis of the Nez Perce diet, including khouse, the camas root, bitterroot, and wild onions and carrots. The Nez Perces were a semi-nomadic people, living along the rivers in the canyons during the winter months and moving to higher elevations during the summer months when hunting and fishing provided the tribe with food.<sup>342</sup>

The reservation's landscape is tied to the Nez Perces' history. Situated near Kamiah is the Monster's Heart. It is here that the people, the *Nimiipuu* (Nee-Me-Poo) emerged after Coyote tricked the monster into swallowing him and then killed the monster from within, freeing the people. Coyote distributed the parts of the monster across the land, placing other peoples in their homeland. The monster's heart remained where Coyote had killed him, and from the blood of the heart the Nez Perces were created.<sup>343</sup>

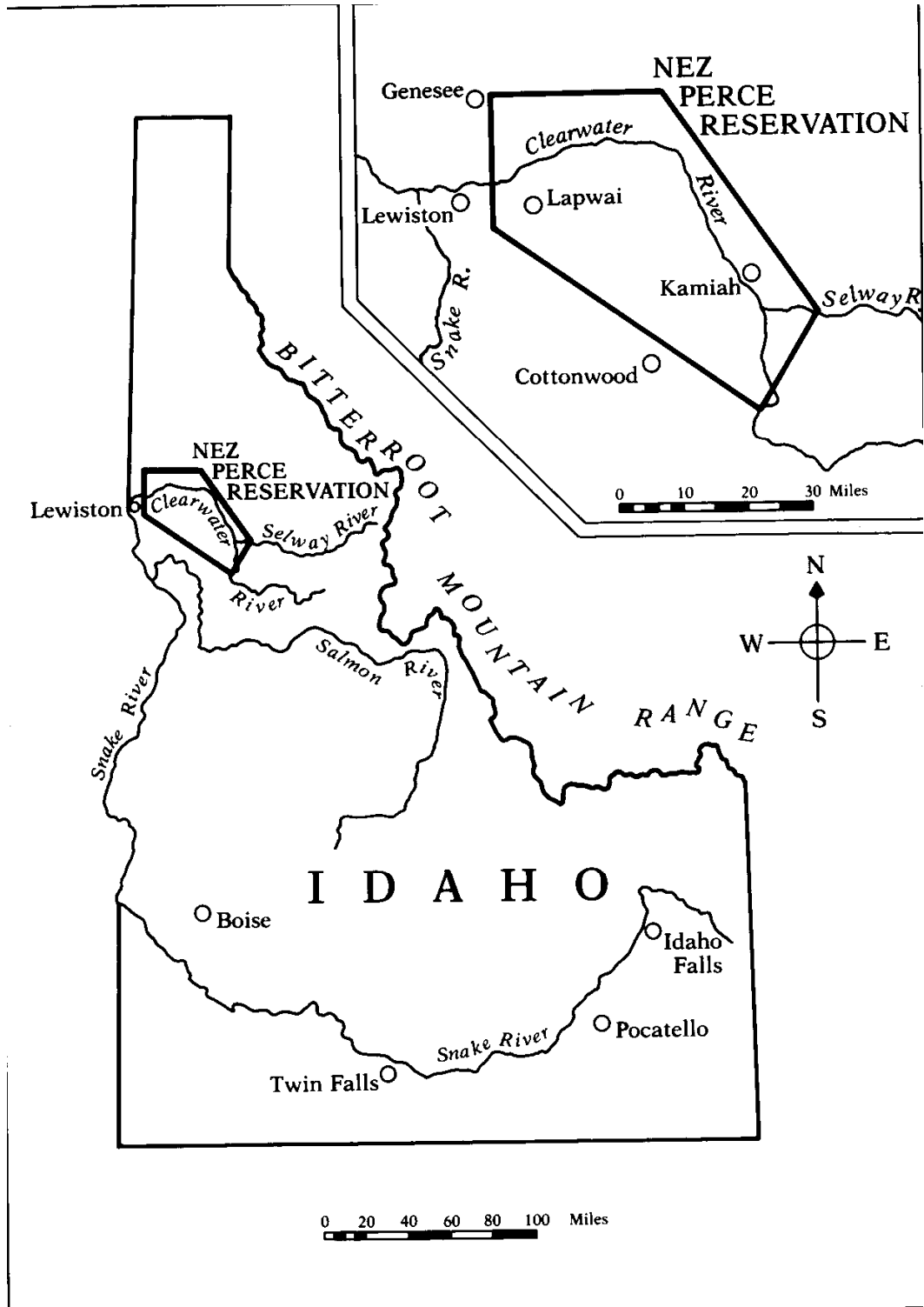
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<sup>341</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, 29 and Alvin M. Josephy, Jr., *Nez Perce Country* (Lincoln: University of Nebraska Press, 2007), xi.

<sup>342</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, 30.

<sup>343</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, Frontispiece.

**FIGURE 7.10**  
**NEZ PERCE RESERVATION<sup>344</sup>**



<sup>344</sup> E. Jane Gay, *With the Nez Percés: Alice Fletcher in the Field, 1889-92*, Frederick Hoxie and Joan T. Mark, eds. (Lincoln: University of Nebraska Press, 1981), xii.

The Nez Perce people first encountered whites when the Lewis and Clark expedition traveled through their land during the party's exploration of the country in 1805-1806. They had first heard of white men from a woman in the tribe who had been captured by the Blackfeet and was eventually purchased by a white man. She escaped and found her way back to her homeland, earning the name Wet-khoo-weis, which means "to wander back or return home."<sup>345</sup> When the Corps of Discovery arrived among the Nez Perce, Wet-khoo-weis argued that they would be friends like the white people she had met.

Lewis and Clark gave the name Nez Perce to the *Nimiipuu*, a misnomer from the French meaning "pierced nose." The Nez Perces dispute this name, arguing that piercing of the nose was not commonly practiced among their ancestors. They suggest that Lewis and Clark had come in contact with a member of a different Columbia Plateau tribe, where the practice was common, thus arriving at the moniker.<sup>346</sup> Such a misunderstanding was not uncommon, and there were other difficulties in communicating between the Corps and the tribe. For example, when the men of the expedition approached the Nez Perces saying "Peace, peace, we come in peace," the Nez Perce men quickly agreed to what they believed was a request for needed materials. In the Nez Perce language "peese" is the word for animal sinew used as thread for sewing.<sup>347</sup> The men of the expedition developed a friendly relationship with the Nez Perces, establishing the first contact between the United States government and the tribe.

In the years following the encounter with Lewis and Clark, the Nez Perces engaged in the fur trade, though to a limited extent. The fort established at Lewistown

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<sup>345</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, 67.

<sup>346</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, iii.

<sup>347</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, 68.



failed, in large part because the Nez Perces did not demonstrate an interest in the fur trade as some of their neighbors did. Extended contact with whites came in the 1830s after four members of the tribe journeyed east to St. Louis. The story is generally told that the four men went east in 1832 to seek missionaries who could teach the Nez Perces about the “Book of Heaven.”<sup>348</sup> Kate McBeth, a Presbyterian missionary among the Nez Perces, related this story, depicting the Nez Perces as seizing upon the sun when “groping for an object of worship.” This, according to McBeth, brought to mind the gestures of men in the Hudson’s Bay Company and the Corps of Discovery who continually pointed upward. McBeth credited the Nez Perces as saying “Oh! now we understand. They wanted to tell us that the sun is God and to worship him, but they had no interpreter and we could not understand them. Now we see. Now we know. The sun is our father, the earth is our mother.” According to McBeth, their sun worship soon failed to satisfy the Nez Perces, particularly as rumors of a power greater than the sun reached them, and so they undertook their journey to the East to find knowledge of this superior power.<sup>349</sup>

Alice Fletcher recorded another version of the journey from Billy. According to Billy, four Nez Perces, Tip-ye-lak-na-jek-nin (Speaking Eagle), Ka-ou-pu (Man of the Morning or Daylight), He-yonts-to-han (Rabbit Skin Leggings) and Ta-wis-sis-sim-nin (Old or Worn-Down Horns of the Buffalo) undertook the journey as a quest for knowledge. Tip-ye-lak-na-jek-nin was “of a philosophic turn of mind,” and questioned the word of the “King George Men” that the “sun was father and the earth mother of the human race.” He did not understand how the sun could make a boy and such teachings

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<sup>348</sup> Slickpoo and Walker, *Noon Nee-Me-Poo*, 71.

<sup>349</sup> Kate McBeth, *The Nez Perces since Lewis and Clark*, 1908, reprint with an introduction by Peter Iverson and Elizabeth James (Moscow: University of Idaho Press, 1993), 27-29.

contradicted what they had learned from Lewis and Clark, thus the men decided to return east to find Lewis and Clark to get their questions about the sun answered.<sup>350</sup>

Francis Haines argues that the timing of the mission suggests the Nez Perces undertook the journey as a means of increasing their prestige among other tribes in the region. The neighboring Spokane people had among them a member of the tribe who had been educated at the Red River settlement of the Hudson's Bay Company. Spokane Garry's education gave to his people a measure of power within the region because he could read and write, and often read aloud from the Bible. According to Haines, it was an attempt to level the playing field, not a quest for Christianity that prompted the infamous eastern journey.<sup>351</sup>

Whether or not the four emissaries intended to bring missionaries to the Nez Perces, the result was the same. The arrival of the men in St. Louis eventually made news in papers across the country, and their journey emerged in the religious press as a cry from the west for missionaries to convert that indigenous population. In 1836 the first missionaries arrived. Henry and Eliza Spalding established their mission at the mouth of Lapwai Creek, taking the settlement's name from the creek. They had traveled west with Marcus and Narcissa Whitman who established a mission at Waiilatpu in the Walla Walla Valley.

At the mission the Spaldings built a grist mill, sawmill, and school, improvements that encouraged the United States government to place its agent to the Nez Perces at Lapwai. The Spaldings and later associates who worked with them during their tenure among the Nez Perces sought to educate the native population not only in the ways of

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<sup>350</sup> Alice Fletcher, "The Nez Perce Country," 6, Fletcher Papers, NAA.

<sup>351</sup> Francis Haines, *The Nez Percés: Tribesmen of the Columbia Plateau* (Norman: University of Oklahoma Press, 1955), 55.

Christianity, but to civilize them as well. Mrs. Spalding began her work by opening a school to teach reading and writing, and “the domestic arts.” Henry Spalding traveled the Nez Perce country preaching, translated their language, and attempted to make the men into farmers. During their time with the Nez Perces, the Spaldings printed a series of Nez Perce language books as they worked to convert the people to Christianity. Spalding was, according to McBeth, as much a missionary when he was “hoeing his corn and potatoes as when translating the book of Matthew into the native tongue.”<sup>352</sup> The Spaldings remained at Lapwai until the outbreak of the Cayuse War in 1847 following the massacre of the Whitmans at Waiilatpu. They eventually traveled further west and settled in the Willamette Valley.

The missionary presence fundamentally altered Nez Perce culture. Along with translating the language, the missionaries imposed upon the people a law code in 1841. Written by the Indian Agent Dr. Elijah White, who worked and resided at the mission, the code established firm punishments for murder, horse thieving, and property damage. In subsequent years the Nez Perces would interpret this era as “the softening up process.” Missionaries, according to one Nez Perce, proved key to “breaking down our way of life, demoralizing and weakening our cultural values, and ending our power and freedom so that we would be dependent on the whites.”<sup>353</sup>

Prior to allotment the Nez Perces signed two treaties with the United States government. In 1855 Nez Perce leaders, along with chiefs from the Umatilla and Yakima tribes met with federal representatives led by Washington Territory Governor Isaac Stevens. Stevens, along with Joel Palmer, superintendent of Indian affairs for Oregon

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<sup>352</sup> McBeth, *The Nez Perces since Lewis and Clark*, 46.

<sup>353</sup> Quoted in Slickpoo and Walker, *Noon Nee-Me-Poo*, 72.

Territory, and a contingent of soldiers established the meeting grounds at Mill Creek in the Walla Walla Valley. Here, the negotiations were conducted that established the first boundaries of the Nez Perce reservation.

Under the terms of the treaty the Nez Percés ceded more than seven million acres of land to the U.S. government.<sup>354</sup> In exchange, the Nez Percés retained their hunting, grazing and fishing rights and the reservation land, and received promises of annuity payments and improvements such as schools and blacksmith shops on the reservation. The treaty obligated the Nez Percés to recognize the United States government and to adopt the principal chief system, designating a single individual with the authority to negotiate on behalf of the tribe. Under these terms Lawyer, a member of the Kamiah band, became Principal Chief. Lawyer represented the Christianized faction of the tribe, and was not recognized as a chief by portions of the tribe. The Nez Perce maintain that “Lawyer was really a camp crier and not a chief at all.”<sup>355</sup> The 1855 treaty also established the principle of allotment. Section Six of the treaty reserved the right of the President of the United States to order the division of the reservation into private property holdings under the terms of the 1854 Omaha treaty. Allotment clauses became common in treaties with Native American tribes at the time, but few were acted upon until after passage of the Dawes Act.

During the course of the negotiations, Stevens laid out the government’s plan for the Nez Percés. His speech included a depiction of the changing gender roles envisioned as a result of the treaty and reservation living. The United States, Stevens declared,

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<sup>354</sup> The Nez Perce Tribe Environmental Restorations & Waste Management Program, in association with the United States Department of Energy and Confluence Press, *Treaties: Nez Perce Perspectives* (Lapwai: Nez Perce Tribe of Idaho, 2003), 40.

<sup>355</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 78.

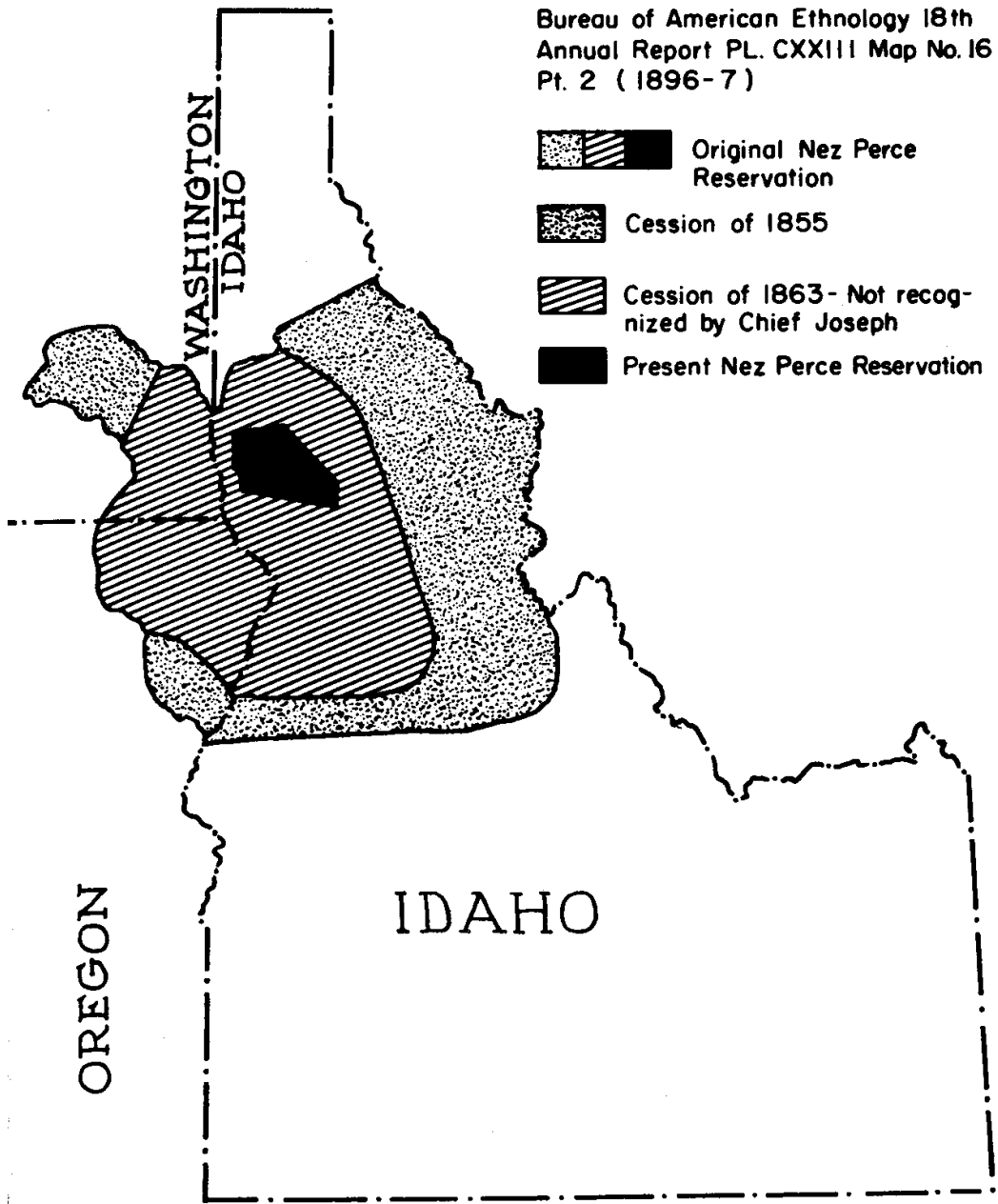
wanted “your women and your daughters to spin, and to weave and to make clothes.” Life on the reservation would further mean that “you men will be farmers and mechanics, or you will be doctors and lawyers like white men; your women and your daughters will then teach their children, those who come after them to spin, to weave, to knit, to sew, and all the work of the house and lodges. . . .”<sup>356</sup> As Stevens words indicate, the establishment of reservations was a key precipitator to the civilization process as envisioned by the federal government, and central to that process was a reordering of gender roles so that native women occupied the traditionally female world of domesticity while their husbands provided for the family.

The treaty of 1855 had promised to protect the Nez Perce reservation from encroachment by whites, but the discovery of gold in the region washed those assurances away with the flood of white men and women who entered the reservation seeking wealth. The Nez Perces asked the government to enforce the terms of the treaty but received, instead of the requested aid, a new treaty which further destroyed their land base. The 1863 treaty established the current boundaries of the reservation, diminishing Nez Perce land to only 750,000 acres. (See Figure 7.11) The treaty, signed by only a portion of the tribal leaders, clearly revealed the divisions that had plagued the tribe since the arrival of missionaries decades earlier. The leaders who refused to sign the 1863 treaty represented bands whose lands lay outside the newly-established boundaries. This non-treaty faction continued to resist removal onto the smaller reservation, a stance that ultimately precipitated the 1877 Nez Perce war, when under the leadership of the young chief Joseph (Hin-ma-toe-yah-laht-khit) they chose to flee to Canada rather than submit to forced removal. After Joseph and his followers surrendered to the Army, the

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<sup>356</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 92.

**FIGURE 7.11**  
**NEZ PERCE LAND CESSIONS<sup>357</sup>**



<sup>357</sup> Walker, *Conflict and Schism*, 47.

government relocated them to Indian Territory until 1885, when they were allowed to return to reservations in Idaho and Washington.<sup>358</sup>

For the Nez Perces on the reservation, the years following adoption of the 1863 treaty continued the disruption of traditional life. Indian agents and missionaries implemented “civilization” programs designed to force the Nez Perces into a way of life that mirrored white American living styles. These programs, combined with a decrease in the supply of and access to traditional resources such as roots and game, resulted in the Nez Perces slowly adopting practices like small-scale farming, wage labor, and the purchase of supplies from stores in nearby towns.

Missionary efforts continually placed the question of Christianity at the center of tribal interactions, though following the departure of the Spaldings in 1847, missionaries only sporadically worked among the Nez Perces until the 1870s. The initial conversions to Christianity that occurred under the Spalding precipitated a division within the tribe that persisted, even without ongoing missionary activity. It was not until the arrival of Sue McBeth, a teacher and missionary for the Presbyterian Church, that another significant attempt to Christianize the Nez Perces occurred. Spalding had returned to Idaho in 1871, and three years later McBeth arrived, her official appointment as a teacher in the government school. Under McBeth’s tutelage, several Nez Perce men trained to be ministers and others became deacons and elders of the church. Among the first deacons in the Kamiah church were Lawyer, who had been appointed a chief in the treaty negotiations of 1855, Soloman Whitman, and Jonathan Williams, called Billy. The men who received religious training under McBeth also rose to positions of power within the

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<sup>358</sup> For more on the war see Bruce Hampton, *Children of Grace: The Nez Perce War of 1877* (Lincoln: University of Nebraska Press, 1994).

tribe, serving as judges and police.<sup>359</sup> The church at Kamiah began in 1871, with the government providing a building in 1873, making it the “oldest Protestant church in continuous use in the state of Idaho.”<sup>360</sup> The missionary presence and the subsequent conversion of some tribal members further entrenched the division over religion and acculturation that marked Nez Perce history in the years after contact with Euro-Americans.

### **ALLOTMENT ON THE NEZ PERCE RESERVATION**

It was into this environment of tribal division and halting acculturation that Alice Fletcher arrived to allot the Nez Perce reservation into individual land holdings. The Dawes Act authorized the President to initiate the allotment process “whenever in his opinion any reservation or part thereof of such Indians is advantageous for agricultural and grazing purposes.”<sup>361</sup> The Nez Percés were among the first tribes to be selected for allotment in 1887, along with 27 other tribes approved by President Grover Cleveland.

Two distinct factors marked the Nez Percés for allotment along with other tribes “where the Indians are known to be generally favorable to the idea,” the criteria asserted by the President, according to Commissioner of Indian Affairs J.D.C. Atkins.<sup>362</sup> First, the Nez Percés seemed to have accepted Christianity, a key factor indicating their readiness for other markers of civilized living, that when combined with the relative success of small-scale farming operations appeared to indicate that the Nez Perce were ripe for

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<sup>359</sup> Peter Iverson and Elizabeth James, Introduction to McBeth, *The Nez Percés Since Lewis and Clark*, xxii-xxiii.

<sup>360</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 203-205.

<sup>361</sup> *United States Statutes at Large*, 24 Stat. 388 (1887).

<sup>362</sup> Report of the Secretary of the Interior, 50<sup>th</sup> Congress, 1<sup>st</sup> Session (1887), House Executive Document 1, part 5, 4-5.



assimilation. Second, the presence of mineral wealth and agricultural land on the Nez Perce reservation generated pressure from white settlers for the opening of the reservation to settlement, a process that could occur only after allotment and the sale of the so-called surplus tribal lands to the U.S. government.<sup>363</sup>

Alice Fletcher arrived in Idaho to begin the work of allotting the Nez Perce reservation in June 1889, accompanied by E. Jane Gay, a friend who served as cook, photographer and companion to Fletcher during all of her trips to the Nez Percés. Fletcher was born in Cuba in 1838, the only child of Thomas Fletcher and Lucia Adeline Jenks. Raised in Brooklyn, Fletcher described herself as being educated in the city's best schools, but left little other information about her early life. Fletcher's affinity for women's rights emerged with her involvement in Sorosis, a women's society organized by Jane Croly and Sara Parton in 1868. Five years later Sorosis became the foundation for the Association for the Advancement of Women (AAW), an organization for which Fletcher served as secretary. Sorosis and the AAW boasted among its membership some of the leading female scientists of the nineteenth century, including Maria Mitchell, as well as women who would become suffrage activists. Fletcher's involvement with this group undoubtedly shaped her career, giving her critical experience in executive work, political petitioning and public speaking, and allowing her to learn from women like Mitchell, Julia Ward Howe, and Mary Livermore, who were the driving forces behind the AAW in its formative years.<sup>364</sup>

In 1881 Fletcher began her transition to scientist and friend of the Indian after meeting Susette La Flesche, a member of the Omaha tribe who was traveling the country

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<sup>363</sup> See Greenwald, *Reconfiguring the Reservation*, 59.

<sup>364</sup> Joan T. Mark, *A Stranger in Her Native Land: Alice Fletcher and the American Indians* (Lincoln: University of Nebraska Press, 1988), 16-29.

speaking out against the United States government's treatment of the Ponca Indians, who had been forcibly removed to Indian Territory in 1877. The conditions they faced there were so terrible that in 1879 the Ponca chief Standing Bear attempted to lead his tribe back to their homeland, and were captured and detained at Fort Omaha in Nebraska. Their case garnered the attention of the *Omaha Herald's* assistant editor Henry Tibbles, who launched a campaign to fund Standing Bear's legal defense. Following Standing Bear's release, he and Tibbles embarked on a national campaign to draw attention to the plight of the Poncas, who were allowed to remain in Nebraska, though they had no land there. Sulette LaFlesche served as translator for Standing Bear, and when the lecture circuit brought them to Boston, they met Alice Fletcher, who spent much time there at the Peabody Museum of American Archaeology and Ethnology at Harvard University, training as an archaeologist with the museum's director, Frederic Putnam.

LaFlesche and Tibbles, who married in June 1881, invited Fletcher to accompany them on a trip to the Dakota Territory to spend several weeks living among the Sioux Indians. Fletcher seized the opportunity and departed for Omaha, Nebraska, where she was to meet Tibbles and LaFlesche. Over the next several weeks Fletcher traveled across Nebraska and the Dakota Territory. In the course of her journey she met the leader of the Hunkpapa Sioux, Sitting Bull, who was imprisoned at Fort Randall. During their conversation the chief appealed to Fletcher to help Indian women, insisting "You are a woman. You have come to me as my friend. Pity my women." Sitting Bull shared with Fletcher his belief that the changes facing Indians would be particularly severe for native women, who would lose their work in a life lived according to the dictates of white civilization. "For my men," he told Fletcher, "I see a future; for my women I see

nothing.”<sup>365</sup> Fletcher, already impressed by the autonomy and place of honor she saw native women enjoying in their societies, took Sitting Bull’s charge to heart, and concern for native women’s welfare remained a cornerstone of her approach to the Indian question.

Fletcher began her professional work among Native American peoples with a distinct interest in the lives of native women, and her experiences with Sitting Bull and among the Winnebagos cemented her interest in and concern for Indian women. In 1881 just before she began her first travels in the West among the Sioux Indians, Fletcher wrote to her friend Lucian Carr that “there is something to be learned in the line of woman’s life in the social state represented by the Indians that . . . will be of value not only ethnologically but help toward the historical solution of the ‘woman question’ in our midst.”<sup>366</sup>

Given Fletcher’s affinity for the elevated status that she witnessed among native women, it is surprising that in her role as allotting agent she would encourage women to agree to one of the basic premises of the civilizing mission, which was a reordering of gender relations. Allotment was intended to bring with it a male-dominated household, which would mean, for native women, a loss of status. Why would Fletcher, given her admiration of native women’s roles and her own affinity for the women’s rights movement agree to be the force that brought such change?

Fletcher did not accept the American gender order which shaped her own experiences as being the best for women. Her teenage years were likely marked by the abuse of her stepfather, and that experience, combined with her tutelage under the women

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<sup>365</sup> Quoted in Mark, *Stranger in Her Native Land*, 62.

<sup>366</sup> Quoted in Mark, *Stranger in Her Native Land*, 42.

of Sorosis and the Association for the Advancement of Women would only serve to further entrench her resistance to a patriarchal system.<sup>367</sup> However, Fletcher firmly believed that native peoples would inevitably face destruction if they did not change their ways and accept civilized living practices. In encouraging native women to agree to allotment, Fletcher helped make it possible for them to make the transition to civilization at least in part, on their own terms. Her overwhelming desire to protect native peoples from the onslaught of white civilization, an attitude that stemmed from her vision of herself as a mother to the Indians, drove her involvement in anthropology and her work as an allotting agent, and while skeptical (at best) of the white gender order, her work with native women and allotment can be seen as another attempt to protect them from the worst possible outcomes of resistance to white civilization efforts.

By the time Fletcher arrived in Idaho to begin allotting the Nez Perce reservation she had already completed similar work on the Omaha and Winnebago reservations in Nebraska. Fletcher's biographer notes that the Nez Percés represented one extreme of the responses to allotment in their resistance to the process. The Omahas had sought individual land ownership in order to protect their lands and keep from being removed to Indian Territory. The Winnebagos accepted allotment as they had learned to accept most other government decisions in the preceding years, having been moved from reservation to reservation.<sup>368</sup> The Nez Perce resistance brought new challenges to Fletcher, and other developments during the course of the four years it took to complete allotment made the overall experience a trying one for Fletcher.

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<sup>367</sup> Mark, *Stranger in Her Native Land*, 10.

<sup>368</sup> Mark, *Stranger in Her Native Land*, 200.

From the beginning, tribal divisions complicated Fletcher's task. Arriving initially at Lapwai, site of the Indian agency and home to tribal members who for the most part had not accepted Christianity, Fletcher made little progress in beginning her work, and relocated to Kamiah. At Kamiah, home of the Presbyterian mission, Fletcher found a more receptive audience for the plan of allotment among the Nez Perces who had converted to Christianity. It is likely that these "progressives" saw allotment as a means of combatting the influence of the "heathen" faction at Lapwai.<sup>369</sup> Despite the warmer welcome she received at Kamiah, Fletcher noted that the Nez Perces were generally unaware of and opposed to allotment.<sup>370</sup>

Fletcher, finding the Nez Perces ignorant of the details regarding allotment, requested the tribe hold councils for her to explain the law and her process to tribal members. Three councils were held in June, during which time Fletcher detailed the provisions of the Dawes Act and her own plans to have each tribe member select land for their allotment. Gay described Fletcher, a noted public speaker, at one of these sessions: "But now, as Allotting Agent, you stand before them, and with reddened cheeks and stammering tongue you try to impress them with the advantages of the proposed arrangement. You had prearranged your arguments and expected to convince this docile people as easily as you had convinced yourself, but somehow you weaken."<sup>371</sup>

Gay suggests that Fletcher appeared uncertain of herself in these council meetings, which likely reflects Fletcher's lack of familiarity with the people rather than any wavering of her support for allotment. Fletcher's work among the Omahas and Winnebagos carried with it a much more personal mission than did her work among the

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<sup>369</sup> Frederick E. Hoxie and Joan T. Mark, Introduction to Gay, *With the Nez Perces*, xxiii.

<sup>370</sup> Alice Fletcher to the Commissioner of Indian Affairs, December 26, 1889, Fletcher Papers, NAA.

<sup>371</sup> Gay, *With the Nez Perces*, 23-24.

Nez Perces. She had made friends with members of the Omahas in the years before she conducted the division of the reservation there, and her time among the Omahas allowed her the opportunity to develop familiarity and friendships with their immediate neighbors, the Winnebagos, so that the allotment process on their reservation was similar to her experiences among the Omahas. Fletcher had no prior experience with the Nez Perces, and this, in combination with their open hostility to allotment, proved to make the experience much more difficult than her previous work had been.

During the first year of field work Fletcher completed only 169 allotments. Her initial time at Lapwai, hindered by opposition to allotment, distrust of Fletcher, and threats against her interpreter and the surveyor, Edson Briggs, produced no allotments and propelled the party to the friendlier setting at Kamiah. There some followed the example of native minister Robert Williams who agreed to select land for his allotment. While this marked the beginning of some success for Fletcher, Williams support for allotment also likely further entrenched opposition to it among many Nez Perces. Not only did Williams symbolize the divide between the Christian and non-Christian tribal factions, but he was also the lightning rod for a schism within the church itself, thus a portion of the Christianized Nez Perces opposed allotment because Williams favored it.<sup>372</sup>

The summer and fall months did not improve for Fletcher, and on her return trip to Washington when the party stopped at Lapwai, Fletcher reported that “the resistance to allotment [is] still in force.” The leaders of the opposition threatened to harm anyone who selected land and held nightly councils where the “curse of the medicine man [was]

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<sup>372</sup> Frederick E. Hoxie and Joan T. Mark, Introduction to Gay, *With the Nez Perces*, xxiii; see also Gay, *With the Nez Perces*, 51.

invoked to stop the work.” Despite the dismal results of her first stint on the Nez Perce reservation, Fletcher remained optimistic, reporting to Commissioner John T. Morgan that while it might not be possible to complete the remaining allotments, which she estimated to be an additional 1,500, the following year, that she hoped to finish the work by December 1890.<sup>373</sup>

Fletcher returned to the Nez Perce reservation three more times before finally completing allotments there in 1892. The resistance at Lapwai continued, and it was not until the final summer that she was able to make allotments to most of the Nez Percés in that region. Her work was hindered not only by ongoing tribal divisions, but also by politics. Fletcher had, from the beginning of her work, made it clear to white settlers in the area that her priority was to secure the best agricultural lands for the Nez Percés. While allotment proved to be a policy that drastically eroded native land holdings, Fletcher saw it as the only way to provide natives with any protection from white settlers, and conducted her allotting work with that agenda firmly in place.<sup>374</sup> This stance did not win her friends among the whites in Idaho, and she became embroiled in a special investigation over one of the decisions she made to deny lands to a white man and his wife when the woman could not prove her Nez Perce ancestry and the tribe refused to adopt her.

Gay reported the story with her usual acerbic wit, noting that the man, Mr. Box, claimed an allotment for his second wife, the first a Dalles Indian having been traded to another man. Mrs. Box “was as wax in the hands of her husband. He said she was a Nez Perce and she tried to be, to the best of her ability.” Box failed to convince Fletcher that

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<sup>373</sup> Fletcher to the Commissioner of Indian Affairs, December 26, 1889, Fletcher Papers, NAA.

<sup>374</sup> See Mark, *Stranger in Her Native Land*, 202 and Greenwald, *Reconfiguring the Reservation*, 65-66.

he was entitled to land, and her decision was upheld, despite his appeals, and he was ordered off the reservation.<sup>375</sup> Ultimately the Box case resulted in the dispatch of a special agent to investigate Fletcher's work in November 1891. Fletcher and Gay seemed to be the only ones who did not know about the investigation. Fletcher wrote of her surprise in a letter to John Morgan the day after Special Agent Parker arrived, declaring that she had believed it impossible that "the thoroughness or justice of my conduct of these cases has been questioned," and announced her outrage that the Office of Indian Affairs would take such action on the advice of a politician rather than trusting her record of service.

Fletcher saw the entire Box affair as an effort to embarrass her and force her resignation. In many ways it must have been tempting to simply walk away from the unfinished project for Fletcher. She had not the kind of intimate connection with the Nez Perce people that she had enjoyed among the Omahas and the Winnebagos; she faced continual resistance in accomplishing the task, and that resistance left her with no time to pursue her ethnological interests; and she had awaiting her a fellowship that would allow her to work full-time as a scientist. Yet, Fletcher stayed, telling Commissioner of Indian Affairs John Morgan that "God has placed me here where I stand apparently the sole bulwark between the progressive Christian Indian and the helpless ones on this reservation and the corrupt forces marshaled against them." This role, she determined, would be fulfilled, though she found it a "distasteful and harassing task at the sacrifice of personal interests and comforts."<sup>376</sup> She would not tender her resignation. She later wrote to Fredrick Putnam at the Peabody Museum that "My honor is involved in getting

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<sup>375</sup> Gay, *With the Nez Percés*, 125-126.

<sup>376</sup> Alice Fletcher to John Morgan, Commissioner of Indian Affairs, November 2, 1891, Fletcher Papers, NAA.



this done,” and recounted for him her intent to protect the Nez Perces who “cling to me like children” from those who would do them an injustice.<sup>377</sup>

This attitude of protectionism infused Fletcher’s work as an allotting agent. It motivated her to aid the Omahas when they recounted for her their fears that they would lose their land. It prompted her to accept the position as allotting agent for the Omahas and the Winnebagos, and resulted in the thorough and careful work of detailing family names and relationships on the reservations where she allotted lands. While problematic, in that Fletcher clearly saw Indians as child-like and unable to care for themselves, her devotion to the people also resulted in a fierce determination to carry out allotment in ways that she believed would best benefit the tribes. Among the Nez Perces, this meant that she categorized as many allotments as possible as grazing rather than agricultural land, creating larger land holdings for families on a land that would require huge acreages to support enough cattle to provide for a family.<sup>378</sup> The Dawes Act allowed for allotments to exceed 80 acres where the land was best suited to ranching, rather than agriculture; Fletcher’s liberal use of this provision allowed her to expand Nez Perce land holdings and decrease the amount of surplus lands that would be made available to white settlers.

Fletcher’s determination, combined with her own sentiments about women’s rights, meant that as much as possible, native women would benefit from the allotting process. Fletcher did not become a woman’s rights activist, per se, in the course of her career, but her early work with the AAW kept these issues in her mind, at least peripherally. Small comments reflect Fletcher’s continual awareness of women’s rights

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<sup>377</sup> Quoted in Mark, *Stranger in Her Native Land*, 197.

<sup>378</sup> See Mark, *Stranger in Her Native Land*, 178.

issues. When writing to Putnam of her decision to accept the position of Special Agent to the Winnebagos she noted, “The pay is excellent, just the same as men.”<sup>379</sup> Jane Gay reported Fletcher’s approval for the freedom that native women enjoyed, crediting her with saying, “The Indian woman can take down the tent, if she so pleases, and depart with all her property, leaving the man to sit helpless upon the ground; for the husband is only a guest in the lodge of the wife.”<sup>380</sup> Gay shared Fletcher’s sentiment, pointing out that Indian women enjoyed a freer life than their white counterparts. Society, Gay argued, had “been built up largely upon the altruism of the woman, at the cost of her independence; and is still an expensive luxury to her.”<sup>381</sup> When a Nez Perce man came to Fletcher with complaints about white settlers illegally fencing in a portion of his allotment she promised him that as she was “a free and independent citizen of the United States of America, with the privilege of free speech, if not a vote,” she would resolve the situation in his favor.<sup>382</sup>

In 1887 when she began work among the Winnebagos, Fletcher also began her quest to see the original Dawes Act amended to include allotments for all tribe members, including married women, in large part because the Winnebagos insisted that all women receive land. The tribe traced their lineage through the mother’s clan, recognizing the mother’s brother as the family head, and wanted the division of the land to properly recognize the place of women among the tribe.<sup>383</sup> Fletcher, despite some misgivings, agreed to 80 acre allotments for everyone rather than the 160 acres provided for male heads of household in the legislation, and went on to insist that the law be changed so that

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<sup>379</sup> Quoted in Mark, *Stranger in Her Native Land*, 157.

<sup>380</sup> Gay, *With the Nez Perces*, 35.

<sup>381</sup> Gay, *With the Nez Perces*, 35.

<sup>382</sup> Gay, *With the Nez Perces*, 161.

<sup>383</sup> Mark, *Stranger in Her Native Land*, 160-161.

this practice could be enacted on all allotted reservations. In 1890 Jane Gay wrote that Fletcher “plans an amendment to the Severalty Act which shall give to every Indian his 80 acres, independently of his age, sex, or previous condition of marriage.”<sup>384</sup> As noted in Chapter 4, Fletcher’s testimony on this issue helped propel the 1891 revisions to the Dawes Act that established this pattern of allotment, granting native women widespread property rights. It is important to note that Fletcher firmly believed that allotment and citizenship would bring to native peoples civilization, with all of its privileges and benefits, but it is doubtful that she saw the imposition of white gender ideals as something to be gained from the process.

While Fletcher faithfully executed the law, other allotting agents were less conscientious in adhering to the requirement that married women be included as separate allottees. In 1895 allotting agents began work on the Southern Ute reservation in Utah, where married women received no land rights, and found themselves with no property protections in the case of divorce.<sup>385</sup>

This gendered analysis of allotment on the Nez Perce reservation demonstrates that while women did undergo change, they ultimately did not lose power or position within Nez Perce society, and may in fact have gained power in the short term. Ultimately the Dawes Act brought mixed changes for women among the Nez Perce. Their traditional gender roles persisted, but could not stand unchanged in the face of determined civilization programs, from both white missionaries and administrators and

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<sup>384</sup> Gay, *With the Nez Percés*, 82.

<sup>385</sup> See Katherine M. B. Osburn, *Southern Ute Women: Autonomy and Assimilation on the Reservation, 1887-1934* (Albuquerque: University of New Mexico Press, 1998), 39-45 and Osburn, “Dear Friend and Ex-Husband: Marriage, Divorce and Women’s Property Rights on the Southern Ute Reservation, 1887-1930,” in Nancy Shoemaker, ed., *Negotiators of Change: Historical Perspectives on Native American Women* (New York, New York: Routledge, 1995): 157-175.

tribal leadership. This is reflected in the divergent statements made by two contemporary Nez Perce women. One declared, “Women’s liberation has let us speak aloud again, but I don’t think that Nez Perce women need women’s liberation. We were already liberated in our own society.”<sup>386</sup> Another woman, however, suggested that perhaps Nez Perce women were in need of liberation, noting that despite the relative power they wielded, there were still key issues on which women’s voices were not being heard because “[There] seems to be kind of a Western type of mentality within our own tribe about women.”<sup>387</sup>

This tension between Nez Perce and Western gender roles is a legacy of the allotment process and acculturation. In 1923 the Nez Perce Business Committee, one arm of the tribe’s emerging representative government, established the Nez Perce Indian Home and Farm Association (IHFA). This stemmed directly from the 1922 Merriam Report, authorized by the Bureau of Indian Affairs. The Merriam Report seemed to indicate to its authors that the younger generation of Nez Percés lacked the Puritan-work ethic that had made their parents and grandparents successful in the years after allotment, and prompted the search for a solution to “idleness, poverty, vice and intemperance.”<sup>388</sup>

The Nez Perce IHFA developed a five-year plan to combat these negative attributes. This plan included specific goals relating to marriage and gender roles that would have made the supporters of the Dawes Act proud. In the first year the IHFA aimed to settle each married family in a home of their own, rather than maintaining the practice of living as extended families; to “induce all Nez Perce men between the ages of

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<sup>386</sup> Jameson, *Nez Perce Women in Transition*, 215.

<sup>387</sup> Jameson, *Nez Perce Women in Transition*, 215.

<sup>388</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 242.

20 and 65 who are not already farming, to plant a good garden . . .”; and to encourage improvements to the home and inducements to educate children.<sup>389</sup>

The second year of the plan called for the establishment of a women’s auxiliary to “get the women interested in home improvement,” so that by year three they could interest women in “poultry and garden activities whenever possible and encourage them in producing something for market.” The fourth year called for the training of young Nez Perce women in homemaking skills and to “get the educated women to subscribe to ‘Good Housekeeping’ or some other woman’s home magazine.”<sup>390</sup> This ambitious plan aimed to have accomplished by the fifth year what the Dawes Act supporters had envisioned: “Every married family between the ages of 20 and 65 legally married according to the laws of the state and living in their own home and earning through their own industry all of the greater part of their support.”<sup>391</sup> These homes would be well cared for by mothers and wives who not only ensured that their children received a proper education, but who also contributed to the household economy and participated in community activities. It is little wonder then, that modern Nez Perce women feel the tensions between a heritage of gender equality and an imposed and accepted change to a Euro-American patriarchal order.

When Tsagaglallal told Coyote “I am teaching them to live well and build good houses,” the Nez Perces did not yet know that white American settlers would attempt to overturn the lessons she taught them and instill in their place the values of “civilization.”<sup>392</sup> The Dawes Act, with its private property ownership, and the purported

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<sup>389</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 245.

<sup>390</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 248-249.

<sup>391</sup> Slickpoo and Walker, *Noon-Nee-Me-Poo*, 250.

<sup>392</sup> Strong, “The Legend of Tsagaglallal ‘She Who Watches,’” 3.

benefits of civilized living sought to do just that—to teach the Nez Percés to live as whites and build American homes in which to raise their families. In order for the American empire to thrive in the West, the indigenous population had to be eliminated, either physically or culturally, and allotment attempted to eradicate the Nez Perce way of life, along with the gender order which structured the lives of Nez Perce women. As this chapter has shown, the attempts to alter the Nez Perce gender order through the process of allotment, and thereby facilitate the establishment of a settler colony, did not immediately succeed. Tsagaglalal in her stone form, would watch as Nez Perce women navigated the currents of assimilation, persisting in their traditional gender roles as they adapted their newfound property rights to the changing society in which they lived.

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## CHAPTER 8 CONCLUSION

The nineteenth-century American West has often been described as a place that generated especially liberating experiences for women, expanding their rights and removing the constraints of Eastern society on their behavior. Consider, for example, this passage from an essay on the legal status of women in Utah: “The national campaign [for suffrage] kept the issue before the national conscience and found its initial success in the West, where the expansiveness of its land and resources matched the breadth of its attitudes and vision . . . Western women came to enjoy more legal rights, greater political power, and more employment opportunities much earlier than their Eastern counterparts.”<sup>393</sup> While it is true that Western states extended full female suffrage earlier than did Eastern states, it is less certain that this measure is a true indicator of expanded women’s rights in the West.

Other scholars have suggested that the West was a place of expanded property rights for women. Historian Mari Matsuda declared that “the Homestead Acts encouraged separate land ownership by women,” and that the inclusion of married women’s property acts in Western state constitutions made “the promise of women’s rights part of their fundamental law,” but failed to note that the homesteading measures did not open the public domain to *all* women.<sup>394</sup>

This project has evaluated to what extent women gained expanded property rights in the American West, what national and imperial objectives prompted the creation of

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<sup>393</sup> Lisa Madsen Pearson and Carol Cornwall Madsen, “The Legal Status of Women” in *Women in Utah History: Paradigm or Paradox?*, Patricia Lynn Scott and Linda Thatcher, eds., (Logan: Utah State University Press, 2005), 38-39.

<sup>394</sup> Mari J. Matsuda, “The West and the Legal State of Women: Explanations of Frontier Feminism,” *Journal of the West* 24 (January 1979), 50.

these rights, and how women utilized these new opportunities. It is clear that the federal laws under consideration here—the Oregon Donation Act, Homestead Act, and General Allotment Act—did create new legal rights for women as property owners; however, by understanding that these laws emerged as part of an overall project to establish the American empire, it becomes clear that women’s property rights were only incidental to the imperial project of westward expansion. Had Congress been able to devise a settlement scheme that did not require women to populate the West and recreate the American gender order, they would have done so. However, the success of settler colonies hinges upon the presence of white women who can establish the dominant culture in various ways, but most importantly by fulfilling their designated roles within the gender order, therefore nineteenth-century federal land laws included provisions for female property rights.

Women’s property ownership under federal legislation provides an important crossroads from which to better understand western women’s history. In her 1991 essay Peggy Pascoe called for historians to undertake “the study of western women at the cultural crossroads.” In the same piece, Pascoe asserts that the field itself “cut its teeth” by challenging “the belief that the West was somehow freer, more democratic, more individualistic, and more egalitarian than the East.”<sup>395</sup> This project builds on such early scholarship by questioning the extent of women’s rights in the West and the ways in which historians evaluate those rights. In addition, this project serves as the multicultural crossroads which Pascoe advocated, placing women of different ethnic backgrounds, class backgrounds, and marital statuses into the equation. Finally, the use of federal

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<sup>395</sup> Peggy Pascoe, “Western Women at the Cultural Crossroads,” in *Trails: Toward a New Western History*, Patricia Nelson Limerick, Clyde A. Milner, and Charles E. Rankin, eds., (Lawrence: University of Kansas Press, 1991), 44, 41.



legislation as a benchmark for measurement brings to the study a broader understanding of the political history behind these laws and the public perception of these initiatives, fulfilling Pascoe's charge that western women's history be "more concerned with connecting itself to the rest of American history."<sup>396</sup>

Yet, the creation of these federal laws is only one half of the story, as this project has shown. Women utilized the property rights generated by national laws in a variety of ways to both uphold and challenge the imperial enterprise, and the racial and gender orders upon which the colonial system depended. White women particularly benefitted from new property rights, but in Oregon, they did not challenge the status quo. Instead, they used their status as land owners to recreate the society they had left behind, remaining in their roles as wives and mothers whose legal identity existed within the person of their husband. Thus, very few women in Oregon registered the land claims which they owned as separate property to be protected from a husband's creditors or from a husband himself in case of divorce.

White women in Kansas adopted a different tactic for utilizing their property rights. Here, women actively challenged the gender order by pursuing their rights as homesteaders and succeeding at proving up on claims and gaining title to their land. While these women did utilize the Homestead Act to push the boundaries of female propriety in regards to land ownership, they also challenged the gender order by asserting their rights to other benefits of citizenship, including the franchise and elective office. Yet even these women who ran the city council in Syracuse and served as school superintendents, did not fully overthrow the gender order. The all-female Syracuse council used their one term in office to clean up the city, carrying out the traditionally

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<sup>396</sup> Pascoe, "Western Women at the Cultural Crossroads," 43.

female role of housekeeping on a grander scale by improving the city. Kate Warthen and Elizabeth Culver both gave up their political offices in favor of marriage. White women in Kansas, while struggling against the constraints of the gender order that shaped their lives, did not protest the imperial project. Indeed, they benefitted from it, for it was the need to populate the West with white settlers, even if that meant allowing single women to homestead, that created the opportunities for them to become land owners in the first place.

African American women challenged the imperial order at both of its most basic levels—race and gender—through their persistence as homesteaders. Congress never intended for blacks to be among the army of homesteaders that would build the American empire in the West, for it was white empire that was being constructed. Yet, blacks migrated to the West with the intent of becoming land owners, and succeeded, despite the efforts of whites to relegate blacks to the status of laborer. For black women, their land ownership did not defy the gender order that shaped their homes, but it did challenge the white gender order, just as single white female land ownership did.

Among Native American women the extension of property rights was intended to radically alter the gender order of their traditional culture. Nez Perce women enjoyed equal status with the men of the tribe, their role as procurers and producers of foodstuffs making them essential to the family's survival. Allotment, however, was meant to reorder this pattern of living by ensuring that native men became the primary providers for their families while native women became caretakers of the home. The attempt to eliminate indigenous traditions, thereby enabling the establishment of the American empire, failed to immediately achieve the desired results on the Nez Percés' Idaho

reservation. Instead, native women retained their property rights and in some cases gained power as the controllers of large land holdings.

In the end, the laws designed by Congress to facilitate American empire worked, but they also faced challenges from the women who became property owners under these legislative initiatives. The American empire in the West was established, and white Americans became the dominant society, complete with the imposition of their gender order on the region. As this study has shown, however, the reality of these laws in action revealed patterns of resistance among women of different races.

As with any project, there are still questions about each of these laws and women's use of them that remain to be addressed in further research. Did women in Oregon follow the trend of women in the three counties considered here and choose not to register their donation claims as separate property? Were there other widows or single, never-married women who asserted their claims to land grants, though the law did not specify their eligibility? There also remain questions about women's actual use of the land, the answers to which may allow scholars to better understand to what extent women asserted their role as property owner within the family. For example, were the family residences located on the portion of the claim designated to the wife, or did they tend to be on the husband's portion? To what extent did women determine how the land was used for agriculture and grazing purposes? Did wives exercise power within the family in discussions about inheritance or sale of the land?

The discussion of women homesteaders begs for additional data. The suggestion that African American women actively homesteaded in Kansas that emerges in the study of one township in Graham County engenders a desire to know about black women land

owners throughout Graham County and in other Kansas counties with significant migration populations, like Chautauqua County in southeastern Kansas. The assertion of women's political rights in Hamilton County suggests that additional research may reveal more significant numbers of women homesteaders in the region, allowing for further exploration of the connection between property and other rights of citizenship. In addition, this analysis of legislation considers only the Homestead Act, but Congress extended similar property rights to women under later free land policies, including the Kinkaid Act and Expanded Homestead Act, the Timber Culture Act, Desert Homestead Act, Three Year Homestead Act, and Stock Raising Homestead Act. Did Congress directly address women's rights in the debates over these measures, or had they resolved the tension between expanded women's rights and the dominant gender order in their discussions over homesteading?

There are also additional areas for research to be explored in relation to allotment and women's property rights. Further research may reveal even more significant changes to the Nez Perce gender order. For example, this study does not consider the impact of leasing and sales on women's real property ownership. It is likely that women lost substantial amounts of land as these practices became more common. It is also possible that administrative efforts eroded women's rights as property owners, particularly in relation to the collection of lease payments. Since reservation agents had a great deal of control over the receiving and distributing of lease payments, it is probable that they gave these monies to male heads of household rather than wives when the situation allowed them to do so. Additionally, there is room to explore the impact that citizenship had on women's property rights in relation to their marital status. The extension of citizenship

that accompanied the Dawes Act placed the Nez Perces under Idaho state law. Thus, in cases of marriage, divorce, and inheritance, Nez Perce women received only the rights extended to white women, and may have lacked some of the property protections built into the Dawes Act and Nez Perce culture.

While there are clearly still questions to be asked and answered, this study demonstrates that under nineteenth-century federal land laws, women experienced property ownership in numerous ways that were often transformative and did not always coincide with the ideal picture of a white American society envisioned by the men of Congress who drafted these laws. For Polly Coon, land ownership in Oregon provided her the opportunity to be a town mother, but following the establishment of Silverton, she chose, like so many other women in Oregon, to establish a life that recreated the eastern society which she had left behind. Kate Warthen, too, established herself as a land owner and challenged the prevailing gender order in southwestern Kansas through her political activities, but ultimately chose to be a wife and mother, fitting herself into a gender order that was marginally freer than it had been when the Homestead Act was passed in 1862. Mary Hayden seized her opportunity as a land owner to create a home for herself, but also used her property in conjunction with John Lored to allow the two of them to manage a combined 320-acre spread that defied white expectations about African American land owners in Kansas. Cecille Teillor emerged as one of the most powerful property owners on the Nez Perce reservation, controlling the family holdings that comprised nearly a full section of land, retaining her traditional place within the Nez Perce gender order, while gaining power within the imperial order through her role as property owner and manager. These women, made contemporaries by a series of laws

that united them across time and space, demonstrate both the potential and the reality of expanded women's property rights in the nineteenth-century American West.

## APPENDICES

**APPENDIX 1:  
WIDOWS IN OREGON DONATION LAND CLAIMS SAMPLE**

<b>Widow</b>	<b>Husband</b>	<b>Notes</b>	<b>Age</b>	<b>Literacy</b>	<b>Children</b>
Janett Pugh	William		40	Yes	
Sally Goodman	Richard			No	
Mary J. Willard	Abner S.			Yes	
Amanda Miller (Millar)	James		47	Yes	
Ellen Smith (Young)	William		39	No	
Susan E. Hayes	Henry W.	She proved up on the claim as noted in letter from her son dated October 25, 1854	30	Yes	
Elizabeth Taylor	John	He died August 26, 1853		Yes	Yes
Lydia Vaughan	John	He died in Platte County, Missouri in 1843/44.	59	No	
Catharine Hagey	Andrew	He died April 26, 1851 leaving 10 children.			10
Rosaline Purvine	John	2nd wife; he died August 1852, leaving one child by 2nd wife and others by 1st wife			1
Mary Marlett	Peter	Died on Platte River on way to Oregon in 1852; she has 4 sons	37	No	5
Angeline M. Blanchey	Edwin				
Celeste Laird	Tanis	He died in Spring of 1852			
Mary Ann Matte	Charles P.	He was killed by Indians in June 1850 in California, leaving one child; she married Jehiel Kendall February 2,	26	No	1



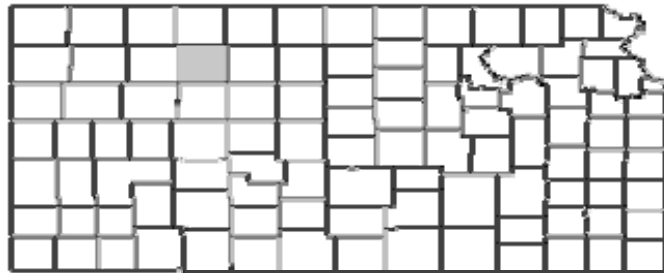
		1853.			
Anna Woodsides	Thomas	He died on the Snake River in Oregon in 1847.	53		
Mary Canada	Peter		69	No	
Delilah White	Daniel			Yes	
Lydia McFarland	William		37	Yes	
Elizabeth Thorp	William		51	No	
Elizabeth Ritchey	Adam		51	No	
Agnes B. Courtney	John				
Sarah Farlow	John		45	Yes	
Mary Ann Miller	John				
Margaret Henderson	Ira	He died in Missouri on way to Oregon from Illinois.	47	Yes	Yes
Electa Scott	Joseph				
Amy Moore	David	He died February 1831; she states she has been a widow 24 years	38	No	
Jane Casner	Henry			Yes	
Elizabeth Kager	William P.	She proved up on the claim as noted in letter from her son dated October 25, 1854			
Elisabeth Coyle	John	He died in 1847 in Peoria, Illinois.	48	No	
Eliza Denny	Christian	He died October 20, 1853, Linn County	42	Yes	
Polly T. McGohon	William				
Catherine Parrish	Evan	He died in 1852 on the road to Oregon.		No	Yes
Lucy M. Russell	Alpheus	He died in 1852 on the way to Oregon, leaving 5 children.			5
Sarah Sherer	David	He died on the way to Oregon in 1852, leaving 5 children.	53	Yes	5

Ruth Marshall	James	He died October 4, 1852 near the Umatilla River on the way to Oregon.		Yes	
Martha Morgan	Richard	He died June 11, 1852 near Ft. Laramie on the way to Oregon.			
Catherine Smith	Elijah	He died near last crossing of Platte River on way to Oregon in 1852; she married John Wiseman December 1854.		No	
Ann Splawn	Moses	He died 8 miles west of Fr. Laramie on June 28, 1850 on the way to Oregon, leaving 6 children.			6
Elizabeth Warner	Jabez		52	No	Yes
Elizabeth R. Alfrey	Joseph			Yes	6
Lucinda Offield	James	James died on the road to Oregon on Platte River about 30 miles west of Ft. Laramie, June 28, 1852	34	No	5
Rachel Larkins	William				10
Susannah Merrill	Ashbel		59	No	
George Crow	Marietta			No	5
Susan Creighton	Nathaniel	He died on April 30, 1851		Yes	1
Elizabeth Buff	John	John Buff died on the way to Oregon, August 22, 1852			
Polly Phillips	Hiram	He died September 1849 on his return from a temporary visit to California.	45		Yes

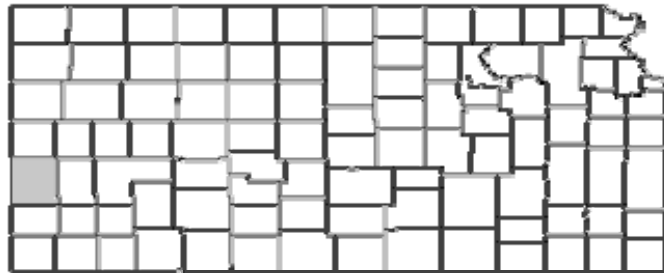
Mary Gilliam	Charles		52	No	Yes
Sarah Stoddard	A. Wilson	They emigrated to Oregon in 1845; he died in California in 1849; Sarah married Thomas H. Stoddard April 10, 1851 in Clackamas County; she died on April 6, 1852, leaving 5 children; 4 by Wilson, one by Longsdon (first husband; Wilson was 2nd husband).			5
Lydia A. Mognett	L. V. Nelson Howlett	They started for Oregon in 1851 and he died on the way near Ft. Boise; she married George Mognett December 29, 1855 in Clackamas County.	39	No	

**APPENDIX 2:  
KANSAS MAPS<sup>397</sup>**

**LOCATION OF GRAHAM COUNTY, KANSAS**



**LOCATION OF HAMILTON COUNTY, KANSAS**



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<sup>397</sup> From the Kansas University Library Map Collections website, at <http://www.lib.ku.edu/mapscoll/ksatlas/graham.shtml> and <http://www.lib.ku.edu/mapscoll/ksatlas/hamilton.shtml>.

**APPENDIX 3:  
MARITAL STATUS OF FEMALE HOMESTEADERS IN SAMPLE**

<b>Township</b>	<b>Single</b>	<b>Widowed</b>	<b>Unknown</b>
<b>Graham</b>	Arvilla Coville	Barbara Rudeman	Mariah Reed
	Jane Sykes	Harriet Crow	
	Jennie Barber	Harriet Sadler	
	Lucy Smith	Martha McKenzie	
	Sarah Crittenden	Mary Hayden	
	Sarah Jenkins	Mary Quiggle	
	Annie Tilley		
<b>Hamilton</b>	Margaret Van Slyke	Ellen Evans	Mary Brown
		Ida Eastman	Caroline Hobble
		Kate Russell	Madeline Wilson
		Lucy Hill	Elizabeth Stiles
		Sarah Bonds	

**APPENDIX 4:  
STATUS OF HOMESTEAD CLAIM FOR WOMEN IN SAMPLE**

<b>Township</b>	<b>Final Certificate</b>	<b>Commuted to Cash</b>	<b>Relinquished</b>	<b>Cancelled</b>
<b>Graham</b>	Martha McKenzie	Jane Sykes	Mary Quiggle	Harriet Crow
	Mary Hayden	Sarah Jenkins	Jennie Barber	Annie Tilley
	Sarah Crittenden	Lucy Smith	Martha Reed	
	Harriet Sadler			
	Arvilla Coville			
	Barbara Rudeman			
<b>Hamilton</b>	Ellen Evans		Ida Eastman	Mary Brown
	Sarah Bonds		Kate Russell	Margaret Van Slyke
	Caroline Hobble		Lucy Hil	Elizabeth Stiles
			Madeline Wilson	

**APPENDIX 5:  
LARGE FAMILY ACREAGES CONTROLLED BY NEZ PERCE WOMEN**

<b>Name</b>	<b>Acreage</b>
Lily Phinney Porter	80
Nellie Porter	80
Harriet Porter	100
Lily Porter	100
Mabel Porter	105.32
<b>Family Acreage</b>	<b>465.32</b>
Jah tot kikt (female)	80
Theresa High Eagle	100
Antoine High Eagle	80
Sophia High Eagle	80
<b>Family Acreage</b>	<b>340</b>
Pish wah ne or Henry Cowpo	120
Ayah toe we non my or Julia Moore Campo	120
Rosa Campo	120
Annie Campo	80
<b>Family Acreage</b>	<b>440</b>
Louisa Agnes Fogarty	80
Andrew Richard Fogarty	74.52
Agatha Louise Fogarty	74.6
Clydena Agnes Fogarty	100
Charles Bartlett	80
Robert Benjamin Fogarty	74.56
<b>Family Acreage</b>	<b>483.68</b>
Tin nah how lis or Laughing George	120
He yume te pin my (female)	80
Ha sa pis nute or Harry George	80
Ah lew ya or Ned George	80
Ah lew we yah or James George	80
Tah wen tal la son my	80
<b>Family Acreage</b>	<b>520</b>
Annie Fairfield	100
Minnie Fairfield	100
Ida Fairfield	100
Julia Fairfield	100
Jessie May Fairfield	100
<b>Family Acreage</b>	<b>500</b>

Mrs. Agnes Henry	120
Samuel Henry	120
James Henry	100
Alice Henry	120
George Henry	120
<b>Family Acreage</b>	<b>580</b>
Ka kook see	80
Pa ka kan ke kikx	80
E lul mark	80
Toe lotz	80
Jane (daughter of Pa ka kan ke kikx)	80
<b>Family Acreage</b>	<b>400</b>
Olive Meek Riley	80
Stanley Riley	80
Kate Riley	80
Jennie Riley	80
<b>Family Acreage</b>	<b>320</b>
Jennie Meek Newhard	80
Courtney Newhard	80
Charles Newhard	80
Olive Newhard	80
Victor Newhard	80
William Newhard	80
<b>Family Acreage</b>	<b>480</b>
Mary Holt	100.79
Alletha Holt	80
Irvin Holt	80
Celia Holt	80
Lulu Holt	80
<b>Family Acreage</b>	<b>420.79</b>
Julia Harsche	80
Tsue tsue tsue yah or Annie Harsche	119.2
Josephine Harsche	80
Khor yei sua or Adair Harsche	80
William Harsche	98.52
<b>Family Acreage</b>	<b>457.72</b>
Alice Holt White	100
Nettie White	80
Sidney White	80
Guy White	80



	<b>Family Acreage</b>	<b>340</b>
Mrs. Agatha Evans		80
Thomas Evans		80
Joseph Evans		110
Rosa May Evans		90
	<b>Family Acreage</b>	<b>360</b>
Cecille Tellior		80
Rose Tellior		80
Esther Tellior		80
Clanpact Tellior		80
Laurett Tellior		80
Albert Tellior		80
Lilly Complainville		80
	<b>Family Acreage</b>	<b>560</b>
Keh Ken		80
John Reuben		80
Lula ko tsan my		80
Ewr ton my		80
We yeh tul wi nan my		80
	<b>Family Acreage</b>	<b>400</b>
	<b>Total Acreage</b>	<b>7067.51</b>

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