Women, men, property, and inheritance: gendered testamentary customs in Western Massachusetts, 1800-1860: or, diligent wives, dutiful daughters, prodigal sons, westward migration, reciprocity, and rewards for virtue, considered.

Glendyne R. Wergland
University of Massachusetts Amherst

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WOMEN, MEN, PROPERTY, AND INHERITANCE:
GENDERED TESTAMENTARY CUSTOMS IN WESTERN MASSACHUSETTS,
1800-1860

Or, diligent wives, dutiful daughters, prodigal sons, westward migration, reciprocity, and rewards for virtue, considered.

A Dissertation Presented
by
GLENIDYNE R. WERGLAND

Submitted to the Graduate School of the University of Massachusetts in partial fulfillment of the requirements for the degree of
DOCTOR OF PHILOSOPHY
February 2001

Department of History
WOMEN, MEN, PROPERTY, AND INHERITANCE:
GENDERED TESTAMENTARY CUSTOMS IN WESTERN MASSACHUSETTS,
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A Dissertation Presented

by

GLENDYNE R. WERGLAND

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In more or less chronological order, I want to thank those who made this study possible. First, my husband, Gerry Wergland, was kind enough to relieve me of the necessity of supporting myself during my years as an undergraduate and graduate student. Without that sort of financial aid, I would never have made it through school. He also took on household chores after our last daughter left home, so I didn’t have to fold his laundry, clean up the kitchen after supper, or vacuum. (I will admit, however, that because vacuuming has always enraged me, after several pieces of furniture and one wall fell casualties to my vacuuming, Gerry may have felt obliged to vacuum in terms of economic self-protection. But he also walked the dog when I had to leave for a very early class, and he never complained. Well, almost never.

The next person in line for my thanks is Jane Crosthwaite, professor of religion at Mount Holyoke College, who suggested near the end of my senior thesis, an outgrowth of her Shaker seminar, that I should go to graduate school. I had literally never considered the possibility. She opened that gate for me, and I will be ever grateful for her encouragement. Furthermore, Mount Holyoke gave me a grant to support my first year of graduate study -- a real boon as well as a needed vote of confidence.

I am also grateful to the University of Massachusetts Amherst history department for not excluding me on the basis of my age. Furthermore, I could afford graduate school only because of UMass’s generosity in providing research and
teaching assistantships. In addition, Mount Holyoke awarded a graduate study grant, for which I am truly grateful.

At UMass, Bruce Laurie accepted me as an advisee in spite of his own heavy load, and maintained his equanimity when I walked into his office with no ado and announced that I had figured testation rates, or asked an obscure question, then drifted out again, or repeatedly theorized on the meanings of outmigration. His focus was and is remarkable, and I appreciate his help as an editor. Any remaining errors are mine alone.

Barry Levy provoked me to think about families in ways that I never intended. He forced me to question the function of families, the hierarchy of family members, and the varying degrees of fathers' patriarchal control.

And then there was Kathy Peiss. Her graduate seminar on gender provoked me into seeing the gendered patterns in testamentary customs. And she has reminded me that though I study the nineteenth century, I actually live in the twentieth. Her good humor has been a boon to my perspective.

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UMass also provided an outstanding library with excellent staff in the departments I used most, including interlibrary loan and government documents. They saved me hours and days of searching for sources. Bill Thompson, in the Government Documents department, cheerfully met my requests for elusive
Massachusetts sources, even bringing one back from Boston on one occasion.

The Berkshire Athenaeum's local history staff, beginning with Ruth Degenhardt, were helpful beyond the mandates of professionalism, and to them I owe my gratitude. Their interest in the history of women spurred me on when my own interest flagged.

I also want to thank my parents and my daughters: my parents, whose testamentary examples prompted me to think about what bequests mean to the survivors; and my daughters, whose existence forces me to consider my own testamentary assumptions. In addition, both daughters briefly served as my research assistants, learning thereby the joys of reading in old dust.
ABSTRACT

MEN, WOMEN, PROPERTY, AND INHERITANCE: GENDERED TESTAMENTARY CUSTOMS IN WESTERN MASSACHUSETTS, 1800-1860

FEBRUARY 2001

GLENDYNE R. WERGLAND, B.A. MOUNT HOLYOKE COLLEGE 1992
M.A. UNIVERSITY OF MASSACHUSETTS AMHERST 1995
Ph.D. UNIVERSITY OF MASSACHUSETTS AMHERST 2001

Directed by Professor Bruce Laurie

This study uses probate records to explore gender patterns in testamentary customs from 1800 to 1860 as well as heretofore-unexamined shifts in testamentary relationships between men and women in the mid-1800s.

In western Massachusetts, beginning in the 1830s, fathers favored wives and daughters over sons as their primary beneficiaries. This finding counters conventional wisdom that nineteenth-century fathers preferred to bequeath property to sons. Fathers’ favoring wives and daughters as heirs, plus increasing numbers of "sole and separate" bequests to women, indicates that men protected women with bequests well before the passage of Married Women’s Property Acts in the 1840s and 1850s, so this cultural change predated changes in the law. One possible explanation for favoring female beneficiaries is that sons were devaluing themselves as heirs by emigrating, thereby making themselves unavailable for supporting widowed mothers and dependent sisters. Another explanation might be that fathers had already made premortem land grants to sons, reserving only the residue for female heirs. A less quantifiable possibility is that propertied and prudent fathers may have had rising
respect for women at a time when men’s character issues such as debt and drinking were a target of public concern. "Sole and separate" bequests, which protected married women’s property from husbands and husbands’ creditors, suggest that men’s debt and/or character were primary areas of willmakers’ concern.

This evidence, along with declining bequests of dower thirds, shows that men challenged socioeconomic traditions to benefit female heirs. If it is true, as Marylynn Salmon asserts, that "control over property is an important baseline for learning how men and women share power in the family," then testators were engaged in a redistribution of power in western Massachusetts from 1830 to 1860.¹

Finally, because women favored female heirs from 1800 to 1860, property women acquired tended to remain in women’s hands, and because many women served as moneylenders in small towns where creditors were often individuals, women wielded economic influence behind the scenes.

¹ Marylynn Salmon, Women and the Law of Property in Early America (1986), xii.
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<td>Berkshire Athenaeum, Pittsfield, Massachusetts</td>
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<td>BA/BCP</td>
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<td>Berkshire County Court of Common Pleas records, 1760-1860 (microfilm at BA)</td>
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<td>HCP</td>
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<td>HCRD</td>
<td>Hampshire County Registry of Deeds, Northampton</td>
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<td>HNFL</td>
<td>Henry N. Flynt Library, Deerfield</td>
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<td>MVR</td>
<td>Massachusetts Vital Records (microfiche and microfilm at BA)</td>
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<tr>
<td>NEHGS</td>
<td>New England Historic Genealogical Society, Boston</td>
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<tr>
<td>PVMA</td>
<td>Pocumtuck Valley Memorial Association, HNFL, Deerfield</td>
</tr>
<tr>
<td>UMass</td>
<td>University of Massachusetts, Amherst</td>
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<tr>
<td>SBRD</td>
<td>Southern Berkshire Registry of Deeds, Great Barrington</td>
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SSB  Sarah Snell Bryant diaries, originals at Houghton Library, Harvard microfilm at Old Sturbridge Village Research Library

VR  Town Vital Records to 1850 (published)
INTRODUCTION

A will is a legal document for transmitting property from one person to another, usually within the family. As intentional messages from individuals to posterity, wills can say a lot about the relations between testators and beneficiaries -- as well as willmakers' views of potential heirs not favored with bequests. Taken collectively, wills show community social values as well as strategies for family protection and how those strategies change over time. Changes in testamentary patterns show how individuals reconsidered traditional assumptions about what was right and proper in postmortem disposal of assets.

This two-part study, based on the wills of a thousand women and men in Western Massachusetts’ Berkshire, Franklin and Hampshire counties from 1800 to 1860, reveals gendered protection strategies as well as larger patterns of change.^


^3 In round numbers, I read wills by 350 Berkshire County women (in my early excess of zeal, all the wills probated for Berkshire County women 1800-1860), followed by 200 Berkshire County men, 70 Franklin County women, 140 Franklin County men, 70 Hampshire County women, and 130 Hampshire County men. Some wills were useless for certain purposes, being too convoluted to understand who was the preferred beneficiary, or naming a church or mission society as beneficiary. Many wills lacked inventories.

Various sections of the study, as will be indicated, are based on subsamples of wills -- men in each county, women in each county, widows, single women, individuals with inventoried property or real estate, those contracting for lifetime care, and so on. Documentation of demographic trends such as the growing proportion of households headed by women was based on census records, and originally collected for my master’s thesis. Supporting documentation from nineteenth-century town tax records, still available for many western Massachusetts towns, augmented other primary sources. Glendyne R. Wergland, "Daughters of Rural Massachusetts: Women and Autonomy, 1800-1860," University of
Changing testamentary patterns shed new light on women’s evolving legal, economic and social status in the early nineteenth century; such changes also show that willmakers revised their testamentary customs to put more property under women’s control well before Massachusetts passed Married Women’s Property Acts in the 1840s.

In the decades under consideration, most adult decedents did not make wills. Many had too little property to concern probate court, and some undoubtedly handed much of their property over to their offspring before they died. Many died intestate, either because death overtook them before they had a chance to make wills, or because they were willing to let probate court handle the division of their assets. Those people do not concern us here because we have no way of knowing their motives. In wills, however, we can often see testators’ and testatrices’ hopes, fears, and strategies for protecting their heir, and sometimes, themselves. Others lost their property to debt before they could make wills. And who were these property owners? It is important to know that the majority of willmakers in this study were not the propertied elite. Many men and women had so little that inventories were not filed. ("Little" could be surprisingly small: one woman’s inventory showed property worth only seven dollars.) Though these wills represent only a minority of decedents, their reasoning may well speak for others who disposed of property before they died, and thus left no paper trail.

Western Massachusetts wills made specific statements about relationships between family members. Some of those statements were explicit, and others can be

Massachusetts, 1995.
inferred. But in making a will, the testator or testatrix identified himself or herself in a certain way, making what has been described as the last and most important "identity pronouncement." Wills were opportunities for men and women to assert their wishes and impose their will on others. Many willmakers thought death was imminent. They commonly referred to being weak in body. A few made specific references to their condition. Mary Rice was "blind and of advancing age." Luther Bartlett was "apprehensive of approaching dissolution." George Upton was "admonished by the weakness of my body, that I must soon leave this world with all its cares and concerns." Rufus Forbush was "dangerously sick, and sensible of [his] constant liability to mortality." Eli Cooley had "several premonitions in the last few months" that he was "liable to die suddenly and at any time." And Miner Owen was "far advanced in years . . ." So they thought their days were numbered -- realistically, considering the fact that most wills were probated within a year of being written.

As they considered making wills, they must have realized that their bequests determined how they would be remembered -- unless most of their property had been distributed already. And that was the case for a few. Some bequests were merely tokens of remembrance, sometimes to heirs who had already received a share of the estate. Other bequests were based on the willmaker's desire to protect loved ones by conferring the benefits of property. Though some believe that the purpose of a

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property transfer is to authenticate or validate the existence of certain relationships between individuals, particularly in recognition of the fact that a particular relationship has a monetary value, I believe that while this idea is often true, it is not necessarily so.\textsuperscript{5} It may have been true of fathers who favored women beneficiaries because sons -- the traditional form of security in old age -- had migrated. But many nineteenth-century wills appear to have been the last in a series of strategies for family protection and support, and were thus more than mere validation of economic relationships. Thus this study may confirm James Henretta's thesis that farmers tried to maintain family integrity through property. Henretta, however, does not address the issue of gender.\textsuperscript{6} Before addressing overall patterns in testamentary practice, it should be useful to examine individual willmakers' reasoning and how that reasoning differed between men and women.

The first part of this study explores testamentary philosophy in terms of the gendered reasoning behind testators' and testatrices' choice of heirs. Those patterns illuminate a sea change in men's collective testamentary practices, which is the subject of the second part of this study. From 1830 to 1860, men's wills changed to resemble single women's bequests by favoring female heirs, evidently due to changing social conditions, many of them based on widely-perceived and publicly-examined deficiencies in men's character: indebtedness, drinking (also leading to debt), outmigration by sons. In addition, women's increasing singleness convinced testators

\textsuperscript{5} Sussman et. al. 118-119.

that previous testamentary customs were inadequate to support widows and single daughters. Because of the increasing outmigration of young men who left home to seek opportunity in the west or in cities, women rose in testators’ esteem to equal or surpass the value of outbound sons who could no longer be counted on to care for elderly fathers. Women were not only caregivers, but also became the stewards of family assets as sons abandoned New England and their aging parents. These views of nineteenth-century women may seem contradictory: the first suggests women’s dependency, while the second is based on their agency. Yet both are true. First, men did feel compelled to provide for women who had been partners in their household enterprise and feared the consequences that could befall the women in their families if they neglected that responsibility. Second, women always had had agency; even when their agency was not recognized in their capacity as "deputy husband" or as a source of reserve labor, women had acted to further their families’ interests. Men who wrote wills favoring female heirs recognized the rising comparative value of women’s contribution to the family and accordingly conferred on those women the economic protection that bequests could provide.

In addition to representing reward (or punishment) to selected heirs, testamentary philosophy was based on strategies for supporting surviving family members. As the family changed, so did testamentary philosophy. Family studies, most referring to the colonial era, show that earlier generations of New England men favored sons as heirs. This study of nineteenth-century Massachusetts not only challenges the common assumption that men continued to favor male heirs; it also documents a sharp shift in testamentary patterns, as well as several reasons for that shift.
A number of factors affected testamentary practices. Land -- its type, scarcity or availability -- influenced whether fathers had enough property to settle their children nearby, or whether offspring had to move away to obtain enough property for their own families. Economic opportunities in mill towns meant that sons and daughters forsook upland homesteads for towns that provided more cash and less land to be handed down to their own offspring. Departure of children to other locales meant that those who stayed behind were, by default, often the recipients of the family homestead.

Wealth was not necessarily a prerequisite for a will. The propertied were undoubtedly overrepresented in comparison to the rest of the population of adults, due to the nature of probate as a means of property transfer, but only a handful of these thousand-plus willmakers could be called wealthy. So abundance of property was not necessarily correlated with which relative was the favored beneficiary. Some

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7 The earliest studies of inheritance focus on male farmers and their sons. In a study of Dedham, Massachusetts, Kenneth Lockridge describes the seventeenth-century "mentality of scarcity" in England, where family land had been divided until further division could no longer support the family. Land scarcity promoted primogeniture, or leaving the entire estate to the eldest son, which left younger sons to fend for themselves. In New England, however, land was available in large quantities, and abundance promoted partible inheritance or equal division among sons. Lockridge notes that partible inheritance was one of the factors preventing outmigration as long as land supplies were ample. But when the population reproduced beyond the carrying capacity of Dedham's land, the younger generation, impoverished by partible inheritance, had to seek another source of income.

studies of willmakers focus on the testator’s life cycle to explain who left what to whom. In western Massachusetts, a farmer with a young wife or minor children often left his wife the farm outright. But so did men with elderly widows and no minor children -- and they were the vast majority of testators.\(^8\) Anglo-American inheritance practice favored male heirs -- but male heirs were not necessarily favored beneficiaries in western Massachusetts.\(^9\)

Regional differences, length of settlement, religion and laws that differed from state to state have been used to explain why women possessed property in some times

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\(^8\) In considering testators’ criteria for choosing heirs, Jack Goody writes, "Clearly the individual’s choice will depend on his position in the life-cycle." "Strategies of Heirship," *Comparative Studies in Society and History* 15.1 (January 1973), 7.

Joan Jacobs Brumberg believes "An individual legatee’s plans for his estate depended to a very large extent on the life-cycle of the family, in particular the age of the widow and her surviving children." "History That Approaches Ethnography," *Reviews in American History* (June 1981): 159.

Likewise, Linda Auwers’ study of colonial Windsor, Connecticut, shows that men with very young children were most likely to leave their estate to their wives, with later distribution at the wife’s discretion. "Fathers, Sons and Wealth in Colonial Windsor, Connecticut," *Journal of Family History* 3 (1978): 143.

Using the federal census, I tracked 72 testators whose wills were probated in the 1850s. Only 17, or 24\%, were under 60. The testator’s age or place in the normal life cycle seems to bear little relation here.

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\(^9\) In Concord, Robert Gross briefly addresses women’s status but views land as being an issue in fathers’ control of their sons. *Minutemen and Their World* (1976), 78-83, 211. One wonders if any of the daughters who "married down" brought land to their marriages, and if so, how many (if any) may have executed prenuptial contracts.

In Plymouth Colony in the 1600s, John Demos found little evidence of men favoring women as heirs. Apparently the father’s obligation of support of the mother was transferred to the son when the father died. Fathers provided sons with property, but beyond dower law’s requirements, a husband had no property obligations to women unless their assets were governed by a prenuptial contract reserving a woman’s property to her own control. *A Little Commonwealth: Family Life in Plymouth Colony* (1970/1971), 75-77, 85, 99, 177-178. On prenuptial contracts, see Demos 85-87 and Edmund S. Morgan, *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (1944/1966), 58-59.
and places and not in others.\textsuperscript{10} Among the Quakers of Pennsylvania, wealth predisposed fathers to bequeath land to their daughters.\textsuperscript{11} But that was not necessarily true here. In nineteenth-century western Massachusetts, the only clear correlation with wealth appears among parents who had so much property that they

\begin{quote}
\textsuperscript{10} Lois Green Carr and Lorena Walsh surveyed Maryland men’s wills from 1640 to 1776. They found that from three to six percent left their whole estate outright to wives with children; thirty to 33 percent willed their wives life use of the whole estate; and twenty to 24 percent gave their wives more than dower. Most Maryland testators did not restrict their wives’ portions to the duration of their widowhood. "The Planter’s Wife: The Experience of White Women in Seventeenth-Century Maryland," William and Mary Quarterly 34 (1977), 542-571.

Linda Speth found another gendered pattern in colonial Virginia. In her investigation of eighteenth-century Virginians’ testamentary practices, Speth discovered that practice diverged from laws regarding intestacy. For instance, 26 (17 percent) of 149 fathers -- usually the elite -- bequeathed land to daughters, even though colonial statutes on intestate distribution excluded daughters. Disaggregated by decade, the figures show that 27 to 29 percent of fathers devised land to daughters between 1735 and 1755, the early decades of settlement. Such bequests dropped sharply after 1755. Perhaps testators lost interest in supporting daughters with land as the population grew, which indicates that daughters’ worth as heirs was viewed in a family context where sons took precedence when assets ran short. Speth’s work shows the advantages of using disaggregated numbers to provide a more detailed view of testamentary patterns.

Speth also found that testators’ bequests to wives hinged on the age and presence of minor children. Elderly men tended to give everything to adult children while charging a son with maintaining the widow. Sixty-two percent of the men with young children gave wives more than dower. Sixty-five percent of widows received control of real estate, though Speth does not specify whether those were lifetime estates or outright bequests. As for the 32 widows who made wills, Speth found gender differences in their bequests. Women frequently made bequests to other women at the expense of male relatives. Speth suggests that through their wills, men "often transferred the twin hallmarks of patriarchy, authority and property, to their wives." "More than Her ‘Thirds’: Wives and Widows in Colonial Virginia," Women and History 4 (1982): 5-41.

\textsuperscript{11} Barry Levy shows that some second-generation Quaker men granted land to their daughters, and that phenomenon was positively correlated with wealth. Though a minority of daughters received land from second-generation fathers, this custom was a marked departure from first-generation fathers who rarely bequeathed land to daughters. Quakers and the American Family (1988), 243-246.

Another possible correlation was among the wealthiest landowning men, a tiny minority in my rural western Massachusetts samples: they may have made \textit{inter vivos} transfers to their sons. Without doing serious genealogical study of those families, however, I cannot be sure the transfers were made to sons, and not brothers. In the several cases where I’ve found the sons’ birthdates, the transfers may have been made to brothers because the sons would have been under ten years old at the time the transfers were made.
\end{quote}
could afford to divide it equally among all heirs. Perhaps the wealthy could afford to be generous.

The legacy of repressive Puritan views of women may have suppressed women’s property ownership in New England before 1800. In New York, however, liberal Dutch customs in the Hudson River valley favored women’s property ownership. David Narrett found that testamentary customs in colonial New York City depended on the ethnicity of the testator. Dutch men of the late 1600s simply transferred their entire estates to their widows, who were expected to become head of the family regardless of the age or sex of their children. English fathers, on the other hand, were most generous to wives when they had minor children. Adult sons, "the primary claimants to land," effectively eroded men’s beneficence to their wives. By the mid-1700s, as English customs superseded Dutch, wealthy New Yorkers shifted their inheritance customs to restrict wives’ authority over property and the transfer of assets to children. Narrett found that Dutch testamentary customs ended before 1800 in urban New York.12 Yet it is possible that pockets of resistance persisted in rural areas, including the parts of Berkshire County settled by the Dutch. Even though few Dutch surnames appeared among Berkshire County willmakers, and the Dutch had been largely subsumed into the Anglo-American population by the nineteenth century, it is possible that collective recollection of Dutch customs provided an alternative to a stressed Anglo-American population shifting their tradition. Other studies show that testamentary customs could and did change when circumstances dictated. In western Massachusetts, most men who favored female heirs had English surnames.

James Somerville offers insight into changes in women's status in Salem, Massachusetts, from 1660 to 1770. His examination of 465 wills shows fluctuations in types of bequests made to women. The first phase provided the wife/mother with use of the testator's entire estate for her lifetime or during widowhood. Often she was bequeathed the estate outright, with no restrictions -- quite a change from the traditional widow's dower of a third of the productive value of the estate for life. In the second phase between 1720 and 1750, increasing numbers of men began to bequeath property not to their wives, but to their sons or married daughters, while providing for the widow's lifetime support in the family dwelling. Somerville suggests that this change stemmed less from a decline in widows' status than from the growing assertiveness of the younger generation's demands for a parcel of Salem's shrinking available land. Though Salem's younger generation was unlikely to farm their land, they still needed houselots and space for a shop, store or dock if they were to remain in town. More than a quarter of wills made such provisions for daughters. By leaving wives less property or leaving them only a lifetime estate, men were willing to sacrifice their wives' autonomy to meet their children's demands. Fathers may have responded to those needs to keep children from relocating. From 1751 to 1770, a third phase appeared in testamentary patterns: first, an increase from under half to 62 percent of wills giving widows the entire estate, whether outright or for life; and second, the percentage of wills granting land to unmarried and widowed daughters rose sharply, from eight percent to 21 percent. At the same time, fewer children (mostly sons) received their portions before the will was made: that percentage dropped from 24 percent to 12 percent. Evidently fathers' attempts to arrest outmigration had been futile. Somerville rightly suggests that women's status
within the family varied over time and by generation. I would add that these changes appear to have varied by locale as well as by era, so that there was not a single testamentary pendulum oscillating to one rhythm, first toward males, then toward females -- but dozens of pendulums, each swinging to a local beat affected by ethnicity, migration, and economic opportunity, among other factors.

Some locales' patterns favored women at surprisingly early dates. Carol Karlsen has shown that in Salem, Massachusetts before 1650, fifty percent of a small sample (10) of second and third generation men bequeathed not a dower share, but full control of their remaining estate to their wives. Karlsen does not ask why early Salem men favored their wives as heirs, but if those men were mariners, they may have recognized wives' contribution to maintaining the family during their lengthy absences. She does note that later, as men lived longer and more sons survived to inherit, it became so difficult to settle sons due to the scarcity of nearby land that fathers accordingly adjusted their bequests to favor sons. From 1651 to 1700, therefore, only 28 percent of testators left their widows with full control of the estate. Thus widows were in decline as preferred beneficiaries. Karlsen also suggests that sons could not always be counted upon to support mothers. This explains the elaborate protection clauses (food, livestock, provisions, barn and houseroom, and firewood to be provided to the mother by male heirs) that appeared in Salem wills.

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during the late seventeenth century when fewer widows were bequeathed full control.  

In my study, the same sort of protection clause commonly appears in western Massachusetts wills before 1830. As the use of protection clauses declined, however, outright bequests to wives increased. Perhaps fathers came to believe that their widows might support themselves better than sons would support them. Thus, we can postulate that when sons ceased to meet their reciprocal obligations to their mothers (perhaps because the sons had gone west or to factory towns), fathers fulfilled their own reciprocal obligations to women by handing over the farms to their widows or an unmarried stay-at-home daughter rather than to the absent son. From this view, women's value as heirs did not change, but sons' shrinking worthiness increased women's comparative value. In other words, women's value rose when sons' value fell, in an inversely proportional relationship. Somerville's study may also support this hypothesis, which further suggests that gendered bequests may have created ongoing tensions between adult sons and daughters as well as between mothers and sons in the eighteenth and nineteenth centuries.  

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14 Carol Karlsen, The Devil in the Shape of a Woman (1987), 209-211. Demos found similar protection clauses in Plymouth colony wills. Demos 75-77.  

The general view of women and property that can be derived from colonial testamentary studies is that women were favored as heirs only under certain conditions and in very limited numbers. When sons remained near their parents, they were the favored heirs. The logic behind this choice was simple. First, in a system where men were heads-of-households and almost every woman married, a daughter marrying "out" was not favored as an heir because giving her land or other major assets would have transferred property into the realm and responsibility of another family. This system rested on the assumption that virtually all women would marry. Second, by the same reasoning, a son who married was still of the same familial lineage, and his responsibility included taking care of aging parents -- though the caregiving was probably done by his wife while he carried the financial burden of his parents' support.

Two social changes disrupted these social assumptions in early nineteenth century New England. Women’s increasing singleness meant that a man did not support every daughter and that daughters would not transfer wealth to another family if she were favored as an heir. Widows’ increasing reluctance to remarry meant that


16 Daniel Blake Smith notes that a propertied daughter who married took land away from her own family and so parents rarely bequeathed land to daughters in the eighteenth-century South. And when daughters did inherit real estate, it usually was a life estate which allowed her to use the land for her lifetime with the provision that it be returned to a male heir, perhaps a nephew, at her death. Yet real estate was not the whole story; fathers occasionally provided daughters with more personal property than they gave sons. Daniel Blake Smith, Planter Family Life in Eighteenth-Century Chesapeake Society (1980), 245-247. The two cases he cites are enough to make Smith’s point, but his table showing the division of property has no heading for daughters beyond what may be assumed under "equal division [to] sons and daughters."
widows were thrown on the mercies of their sons -- who coincidentally were deserting New England in droves. And so nineteenth-century testamentary patterns had to change for the protection of single daughters and widows. More women inherited, and more women made wills. Toby Ditz studied 186 Connecticut probate cases, both testate and intestate, from 1750 to 1820. Though fathers accounted for most of the cases, women made 16 percent of the wills in the colonial era and 22 percent in 1820 and 1821, indicating that women were a rising proportion of the probate population in Connecticut, as they were in western Massachusetts. Ditz's figures show that in the colonial era, 61 percent of daughters inherited land, and in the 1820s, 72 percent inherited land. Though their ideal may have been to reserve land for sons, most property owners "violated that ideal because they had too little personal" property to provide adequate inheritances for daughters. Ditz finds that daughters in colonial Connecticut received personal property worth one and a half to two times more personal property than their brothers received -- but brothers received more land. As for widows, only eight of the hundred widows inherited land; 85 received life estates. In the 1820s, gender distinctions persisted in Connecticut, but the sample towns' testamentary practices diverged. Two-thirds of upland landowners either excluded daughters from land bequests or gave them portions worth no more than half of what their brothers received; 71 percent of widows got a dower share, and none got more. But in Wethersfield, daughters inherited 54 percent of all the land devised to children, and 59 percent of widows got more than a dower share.\footnote{Toby Ditz, "Ownership and Obligation: Inheritance and Patriarchal Households in Connecticut, 1750-1820," \textit{William and Mary Quarterly}, 3d ser. 157.2 (April 1990): 235-265.} Wethersfield men's preference for female heirs might be explained by women's local custom of
raising commercial crops of onions -- the famous Wethersfield Red. As early as 1780, women and girls planted the onion seed, weeded the crop and tied the harvested onions into bunches for sale. Their husbands and fathers may have rewarded their economic contributions with bequests.

In 76 antebellum Boston men's wills with provisions for children, Jane and William Pease found that 61 percent made an equal division of their property among the children, while 21 percent favored daughters. Some fathers were "especially generous to spinster daughters unlikely to receive future support from a husband." A third of Boston willmakers from 1825 to 1843 were women, and women were *twice* as likely to favor daughters as sons -- a gendered pattern that also appeared in western Massachusetts wills. Of another sample of men's wills, half gave their wives only the traditional dower third, while more than a quarter left their wives absolute control of the entire estate. The Peases point out that marital status and economic status are both measures of women's autonomy or dependence -- a highly relevant point in the nineteenth century when increasing numbers of women remained unmarried, especially when contrasted with earlier centuries when Anglo-American written records provide only limited evidence of women's autonomy. But the Peases add,

Great wealth, high social rank, inherited property could not guarantee meaningful power to a married woman, though it could provide them, as it did some widows and spinsters, a significant measure of independence. Yet even for those with only a small property, its possession might modify a marriage relationship . . .

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Property promised women a greater chance for autonomy by allowing them to remain comfortably unmarried, or for married women, by "creating a more equal balance between spouses, or by providing an escape route from an unworkable marriage." Property could also confer influence within marriage as well as increasing a wife's potential for independent action, if she were willing to protect her assets with a prenuptial agreement or if property she inherited after marriage was reserved by the testator to her "sole and separate" use.

Mary Ryan's study of Oneida County, New York, includes wives' inheritances. She found that before 1824, 37 percent of men left their entire estate to their wives, and that from 1845 to 1865, 56 percent of men did the same, though she also maintains that few widows received independent title to family property. These facts show an illogical and unexplained tension (presumably because she did not distinguish between a life estate and an outright bequest), but her data indicate that wives were increasingly favored as heirs in the nineteenth century. Oneida County's changing pattern of bequests may show that testamentary customs shifted to favor women well before New York's Married Women's Property Acts were passed, as was the case in western Massachusetts. But without knowing which ultimate heirs

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were favored at the end of widows' life estates, it is impossible to state with authority the degree to which women were actually favored as beneficiaries.\footnote{21}

Suzanne Lebsock's study of antebellum Petersburg, Virginia also considered women's wills and the patterns of women's bequests -- and Lebsock read more than a hundred women's wills, which provided her with a wealth of detail lacking in studies using smaller samples. She found that women were "particularly sensitive" to other women's "precarious economic position," and they showed that sensitivity by favoring

\footnote{21 Other nineteenth-century studies confirm the idea that local customs differed in how women were treated as heirs. Norma Basch studied Westchester County, New York wills in 1825 (n = 43) and 1850 (n = 62). In 1825, 12 wills (27 percent -- a higher-than-expected proportion) were made by women (nine widows, three single women, and no wives). A quarter of testators of both sexes aimed for an equal division of assets among children regardless of sex, about a quarter favored sons over daughters, and the remainder were idiosyncratic, though the family farm was likely to go to a son. Farmers left daughters personal property rather than land. Of thirteen life estates to widows, five ended if the widow remarried -- yet most husbands allowed their wives far more than the dower third. The wealthier the husband, the more likely a widow would get assets held in trust. The 20 percent-plus rate of equal division among children may have reflected a lingering Dutch influence or the general prosperity of Westchester farmers -- or both. The 1825 wills included only one trust for an adult male (two percent of wills).

Basch's 1850 wills show little significant change in testamentary patterns (though more wills showed stocks and New York real estate as assets). The number of trusts for adult males increased to four (6.5 percent of the 1850 wills). Of the 62 wills, 13 (21 percent) were made by women (six single, six widows, and one married). In this sample, unmarried testatrices were on the increase -- a pattern that also appeared in western Massachusetts. Inequality in bequests to sons and daughters remained about the same, with sons usually receiving the farms. But testators showed increasing concern for unmarried daughters.

One strength of Basch's study is that she examines women's wills as well as men's; another is that she considered women's marital status significant, which provides additional information about the status of women. A weakness lies in the small number of women's wills examined. Though women were a minority of willmakers, more of their wills must be read to identify the patterns in their testamentary customs.

Some wills, however, mirror the tendency Lawrence Friedman found in 1850 wills in Essex County, New Jersey: twice as many men gave wives life estates as outright bequests (six). So Essex County, New Jersey and Westchester County, New York men favored children to the detriment of the widow -- much like Somerville's second phase in Salem. Norma Basch, \textit{In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York} (1982), 100-108; Lawrence Friedman, "Patterns of Testation in the 19th Century: A Study of Essex County (New Jersey) Wills," \textit{The American Journal of Legal History} 8 (1964), 34-53. Friedman also found women writing an increasing percentage of wills: 3.3 percent in 1850, 21.6 percent in 1875, and 40 percent in 1900.}
female heirs, particularly with "sole and separate" estates. Lebsock suggests, and I concur, that women's values are visible in their testamentary patterns. Furthermore, women were an increasing percentage of taxpaying landowners in Petersburg.\textsuperscript{22}

Western Massachusetts women showed many of the same patterns, which will be addressed in detail in Chapter Six.

One problem with many studies of testamentary patterns is that they equate lifetime use of an estate with an outright bequest. In most studies, many women inherited only life estates.\textsuperscript{23} But a fundamental difference separates the two. An

\textsuperscript{22} Suzanne Lebsock, \textit{Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860} (1984), 104, 132-142. Unfortunately, studying only women's wills leaves an information gap in determining how those women got their land.

\textsuperscript{23} Kim Lacy Rogers found women in seventeenth-century Essex County, Massachusetts and Hartford, Connecticut probate records. Most (80 percent in Essex, 85 percent in Hartford) landed men willed their realty to their widows, usually as life estates. Rogers also described various types of life estates or provisions for lifetime support, but does not address outright bequests as a separate issue, probably because she found so few of them to women. "Relicts of the New World: Conditions of Widowhood in Seventeenth-Century New England," \textit{Woman's Being, Woman's Place: Female Identity and Vocation in American History} (1979), 34-40.

Also in terms of life estates, Alexander Keyssar's study of early-eighteenth-century Woburn showed that men often left their wives more than a dower third, either to prevent hardship or to provide more comfort in widowhood -- yet Woburn widows received few outright bequests. Many men limited their widows' life estates to the duration of their widowhood. Apparently, a first husband's property was not intended for catching a subsequent husband, and accordingly, few widows remarried. The town as well as the General Court provided support for some widows through various sorts of relief, so widows' rights \textit{could} be expanded to meet economic need. But that support, as well as the traditional care in the home of an adult son, simply enforced dependence on women. Though Keyssar's study was limited in scope, he points out the problems of dower, wherein the widow's greatest asset, real estate, could not be turned into a cash income. But Keyssar's Woburn seems to have contained no widows who owned property outright. Alexander Keyssar, "Widowhood in Eighteenth-Century Massachusetts: A Problem in the History of the Family," \textit{Perspectives in American History} 8 (1974), 83-119.

Some seventeenth-century studies exposed tantalizing hints of men favoring female heirs in other times and places, apparently in response to local conditions. James Deen, for example, maintains that "many testators gave their entire estates to the spouse" in tidewater Virginia from 1660 to 1679. Bequests of land to daughters, however, were rare. Of several
outright bequest implies no limitations on the recipient’s disposal of the assets. A lifetime estate, however, had strings attached. A widow could not sell land if it had been willed to her only for lifetime use. Other heirs could challenge a widow’s life use if they thought the widow was mishandling the legacy that would ultimately pass into their hands. And many lifetime estates ended if the widow remarried. Such restrictions gave a widow fewer options than an outright bequest provided. Thus in my study, I view a lifetime estate as a bequest not to the lifetime user, but to the ultimate heir stipulated by the testator.

One study makes thoughtful and effective distinctions between life use and outright bequests, as well as examining both women’s and men’s wills. Lisa Wilson’s comprehensive study of Pennsylvania widowhood from 1750 to 1850 examines a ten percent sample of wills in Philadelphia (177 widows and 285 married men) and a twenty percent sample (82 widows and 639 married men) in Chester County, Pennsylvania. Her large sample, like Lebsock’s, gives substance to her findings. Before 1830, rural Chester county’s men most often (41 percent in the 1820s) bequeathed their wives lifetime support of houseroom and supplies, while only about ten percent left their wives the whole estate. After 1830, the percentage of Chester County men who left their wives the entire estate doubled, while those who bequeathed only house room and supplies halved.24 Men increasingly left their

hundred men’s wills, only 14 devised land in fee simple to daughters; most received personal property, usually livestock. After 1679, lifetime estates were more popular than outright bequests to wives; furthermore, the lifetime estate was a practice with a positive correlation to wealth. The number of generations of settlement, crowding and land scarcity, or outmigration by sons may have been factors in bequests to women. “Patterns of Testation: Four Tidewater Counties in Colonial Virginia,” American Journal of Legal History 16 (1972), 159, 160-161, 176.

widows the means for self-support, as appears to have been true in western Massachusetts.

Wilson suggests several factors that may have influenced men to leave everything to their wives. First, a husband and wife were an economic unit, with the wife often serving as a silent partner in her husband’s business whether he was a shopkeeper, craftsman, or farmer. Pennsylvania testators "valued their wives’ business sense," and Wilson shows that their confidence was well founded. Second, industrialization and the cash economy provoked husbands to be less concerned with land and more concerned with survival in an economy based on industry and commerce as well as agriculture. Dower became less common after 1830. During economic fluctuations of the 1830s and 1840s, a husband left everything to his wife because, according to Wilson, he wanted to give her enough "room to maneuver, to weather the storm of economic change." A life estate would have restricted widows’ maneuverability. This strategy worked for many capable women: widows’ inventories show an increase in their net worth after husbands switched to giving outright bequests.25

Richard Chused’s study of Dukes County, Massachusetts, wills from 1800 to 1850 shows much the same result that I will report for a larger geographic area with a greater number of wills. Along with describing significant shifts in patterns of testamentary disposition which reflected changes in the family economy between 1800 and 1850, he explains how sons lost their preferred status as heirs: they left. Chused also notes that changing private behavior preceded the state’s statutory reforms

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25 Wilson Chapter 4.
through Married Women’s Property Acts. The 157 wills Chused read included only 37 by women, who (like western Massachusetts women) favored female heirs by a substantial margin. Chused speculates that because most of those women were widows, they probably took into account gifts already made by their husbands. Though Chused does not quote any willmakers’ explicit reasons, I found a number of wills wherein testators and testatrices stated the reasons for their testamentary choices. Those reasons most often rewarded assistance, but occasionally punished misbehavior, which will be addressed in further detail in following chapters.

From this historiographic overview, it is clear that testamentary patterns varied according to time, location, ethnicity, family demographics, class, and perhaps the relative value of widows, daughters and sons. Gender differences have been little studied because few scholars have examined women’s wills in depth; Suzanne Lebsock and Lisa Wilson remain rarities. Furthermore, different areas were cycling through different phases in testamentary customs at different times. Thus, the best generalization to make about testamentary customs in the East from 1650 to 1850 is that the patterns were changing. Another generalization is that men and women alike tried to ensure that women would survive economically as traditional support systems eroded. Perhaps no generalizations should be made without wider studies using standardized data categories. Unfortunately, the problem with wider studies is that interesting local idiosyncrasies disappear into aggregate numbers.

Based on the findings of the first part of this study, it is clear that people who wrote wills often wanted to protect capable and deserving heirs by providing them with property. I suspect, but will not try to otherwise document, that as women's educational level rose with the concept of republican motherhood, men's confidence in women's abilities also increased, eventually to match the testamentary confidence women had in each other all along -- another gendered testamentary behavior. Certainly a farmer could not have prospered without the partnership of a farmwife. A number of farmers either said so, implied as much, or indicated it by leaving their wives the land, which the widows continued to farm with apparent success.

At the same time, gender expectations produced new patterns that were increasingly visible in the 1830s. To judge from nineteenth century publications, intemperance and debt interfered with men's image as providers\(^\text{27}\) at the same time that women were flocking to factory work and either supporting themselves or


sending money home to the farm. Furthermore, women’s dairying on marginal uplands provided a significant part of cash income or store credit during hard times or when cash crops failed. And sons, who were traditionally farmers’ favored heirs, seemed determined to escape these rocky New England hills, whether to farm better soils in the Midwest, to find factory jobs, or to chase adventure in the West. By the 1830s Berkshire County, Massachusetts probate records included heirs’ locations -- in itself ample evidence that court officials expected many heirs to have left their parents’ community. Undoubtedly some farmers favored wives and daughters as heirs because sons were not fulfilling filial responsibility by supporting elderly parents.

While the first part of this study examines testamentary philosophy, the second part uses the testamentary reasoning documented in the first part to explore a startling change in testamentary practice. In the 1830s, testators shifted their favor away from sons as heirs and toward women -- wives, and to a lesser degree, daughters. The change is remarkable in the aggregate figures for Berkshire, Franklin and Hampshire counties. From 1800 through 1809, 87 percent of testators made males their primary beneficiaries. This percentage dropped steadily for thirty years, until only forty percent of men writing wills favored male beneficiaries in the 1830s. This pattern was most pronounced in Berkshire and Franklin Counties. (Though Hampshire County men favored female heirs more often after 1830 than before, their


29 Dairying was a traditional source of economic support for unmarried women: “Thou shalt have goats’ milk enough for thy food, for the food of thy household, and for the maintenance of thy maidens.” Proverbs 27:27, King James version.
performance was lackluster in comparison with the other two counties.) This finding disputes the conventional assumption that nineteenth-century rural fathers preferred to bequeath property to the sons who traditionally inherited the family farm. Men’s favoritism of female heirs was most marked in areas where women’s role in dairying, one of the few ways to turn marginal uplands into a cash income, may have spurred recognition of their role in getting the most out of the land. This is not to suggest that those farmers were politically liberal — an attitude for which farmers were not known. But I will suggest that farmers were pragmatic, and that because they left the major part of their property to their wives, it was because they believed their widows either most deserved it, or could and would support themselves best managing it themselves — or both. Furthermore, farmwives were not necessarily more involved in the market economy than they had been in earlier decades. But as the nineteenth century’s deepening economic downturns impacted family farms, those farmwives’ butter-and-egg money may have been increasingly essential to keeping the farm afloat, the same way some daughters’ mill wages helped their farmer fathers.

In addition, life estates for widows fell into disfavor. More men bequeathed their wives full control of their entire estates. Men’s testamentary practices after 1830 resembled single women’s custom of favoring women heirs. Thus the gendered definition of a testator’s most appropriate beneficiary — formerly male, and preferably a son — opened to allow women greater access to inheritance. Gender relations

30 Furthermore, clusters of female-prefering testators in Williamstown and Sheffield (at opposite ends of Berkshire County) suggest further examination of men’s testamentary practices there, to seek other commonalities — a Dutch influence, perhaps.

adjusted to social changes that made sons less desirable beneficiaries. The result was that more widows and single women were able to live independently into old age, many of them in woman-centered households of mothers, adult daughters, and other females.

My thesis involves the interlocking issues of gender along with widows' and sons' relative status. First: economic change in the early nineteenth century showed men the inadequacy of dower and convinced them that their widows deserved greater protection than the dower third provided. This confirms Lisa Wilson's results in her study of Pennsylvania widows. In western Massachusetts, bequests similar to dower were common through the 1810s, but by the late 1820s, husbands committed to the concept of lifetime estates were leaving their widows half or all of the estate for life — rarely just a third — and increasing numbers of husbands were bequeathing their wives the entire estate outright, perhaps with a "sole and separate" clause for protection against subsequent husbands' creditors. Though the dower third was in decline, a few diehards, most of them prosperous, whose third would support a widow, continued the practice after 1840.

Second: men reassessed widows' needs, abilities, and value to the family, in contrast with sons' devaluation, probably due to the population shift of westward-bound sons who in earlier generations had traditionally contributed to their mothers' support in widowhood. Other factors such as alcohol abuse and debt, both masculine prerogatives, were increasing at the same time. Patterns of testamentary distribution changed when customs or expectations of reciprocity changed; views of father-son and male-female reciprocity (or mutual responsibility) mutated. Dower declined along with fathers' use of detailed instructions to sons who in previous decades had
often been ordered to provide specific types of support to their widowed mothers. If fathers had come to believe that sons would not adequately support widows, then many sons probably had ceased to recognize the reciprocity they owed their widowed and aged mothers. Furthermore, sons who went West could not provide for a widowed mother. Faced with this prospect, fathers altered their testamentary customs to reflect their own responsibility toward their wives by devising property to them outright. In other words, shifting testamentary patterns indicate that gender relations within the family were in a state of flux. Evidently both dower and sons were found wanting.

According to legal scholars, variations in testamentary customs occur because of changing cultural prescriptions, "as acts of familial responsibility and intergenerational behavior that are congruent with the aims of family continuity." Supporting widows through bequests may have been testators' last act of family responsibility to support family continuity. Men's increasing preference for widows as beneficiaries can be explained by family reciprocity, where a woman traded lifetime service for lifetime support in spite of the expectation that she would outlive her husband. But some men favored daughters as heirs, even when the widow was still living. Daughters received outright bequests as well as ownership after the widow's life estate. After 1830, men apparently realized that spinster daughters were increasingly unlikely to marry, especially when those daughters were middle-aged. Spinster or widowed daughters may have become "deputy wives" in some households and thus "earned" their right to a major bequest. But that cannot be the whole story.

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32 Sussman et. al. 3.
It is true that the anticipation of inheritance (and a rightful claim to that inheritance) may prompt potential beneficiaries to provide services to potential testators in expectation of compensation for lifetime care to that testator. But compensation was not necessarily guaranteed. In western Massachusetts, many middle-aged children who shared households with their parents received little more than a place in the family home for their years of servitude. Though the family inheritance system may show the reciprocity and exchange mechanisms that tie the family together, it does not necessarily do so.\textsuperscript{33} Furthermore, husbands and wives or fathers and daughters already had reciprocal obligations without considering a bequest as compensation for services rendered. These changes in western Massachusetts testamentary practices suggest that another obligation was not being met. Sons were not adequately supporting their widowed mothers or dependent sisters at a time when women were increasingly capable of self-support.

\textbf{Landscape}

A view of the landscape of western Massachusetts explains a lot when regional economics are examined in the context of the land. Hampshire County is bisected by one of New England’s great rivers. Before it was dammed for mill power in the nineteenth century, the Connecticut River was the primary north-south highway for

\textsuperscript{33} In addition, family members serve each other less reciprocally than serially: parents help their young children, while middle-aged children, in turn, help aged parents. This is one expected life cycle, and probably more the norm in the nineteenth century than today, when Social Security and Medicare provide what previously were traditional forms of support to elders, according to Sussman et. al, 9.
western Massachusetts commerce. The river was thus a source of commerce as the market economy expanded.

Illustration 1. Massachusetts, as shown in Frederick W. Cook, *Historical Data Relating to Counties, Cities and Towns in Massachusetts* (Boston, 1948).

In terms of farming, the Connecticut River created a wide and fertile floodplain with topsoil which, according to local lore, was as much as twenty feet deep. A farmer could hardly have asked for more, unless he arrived too late to put his name on a piece of the rich bottomland. Latecomers without great cash reserves found themselves searching Berkshire or Franklin county uplands for real estate they could afford. Unfortunately, affordable land was not necessarily a bargain.

Berkshire and Franklin counties were another world. The originally settlers found that in the uplands the season was too short and the soil too scanty to grow a good crop of corn. Many a farmer was broken after years of scratching through a boulder train for enough soil to grow food to feed his family. And the skimpy dirt
wasn't the worst of it; only the south-facing slopes warmed up early enough in the spring to plant a good kitchen garden. Accordingly, many planted apple orchards, tapped sugar maples, and turned their rocky hillsides into pastures for sheep and cattle. Blessed with abundant sites for water power, some upland towns built up around paper, cotton or woolen mills in the early 1800s, which gave poor farmers' sons alternative employment. Franklin County had the advantage of the Connecticut River for transportation. Berkshire County did not, and many nineteenth-century visitors described terrifying stage trips into the county on narrow tracks above precipices via so-called roads over the Hoosac range on the east side of Berkshire County and the Taconic range on the west. Furthermore, Berkshire County residents did their business with New York rather than Springfield or Boston. Because the Hudson River was closer than the Connecticut, Berkshirites had little reason to trade to the east when the west was more convenient.

Land, whether prime or poor, was inherited, purchased, and seized for payment of debts. After relieving the Housatonic/Stockbridge Indians of their title to Berkshire County, the Massachusetts General Court parceled land out in grants to investors and early white inhabitants who farmed it or sold it for a profit. Many of those early owners passed it on to their children. John Williams, one of the original
proprietors of Great Barrington, gave his forty-acre home lot and buildings to his spinster daughter Hannah in 1779, "in consideration of the love and natural affection I have and bear unto my daughter." Some fathers presented their children with land at marriage or when they reached adulthood. In 1838, King Strong deeded his daughter Patty Robinson five acres and half of his house "for one dollar and my good will."

In some families, land was passed from relative to relative informally without deeds ever being registered. A few squatted on land for generations, literally from the time the first grants were issued until the last survivors of the family departed, which explains why residency is not necessarily documentable through deeds. Local custom sanctioned that practice in Berkshire County.  

Demography

As for the population of western Massachusetts willmakers, some demographic information is in order, in terms of race, sex, class, age, marital status, and occupation, to better set these people into context. The demography of the "participants" of this survey of wills fairly reflects the demography of the older propertied white farm population of New England's rural areas and small towns, which were primarily of English (and in Berkshire County, Dutch) ancestry. A few Irish surnames appeared in will indices, but not in significant numbers before 1860.

Most adults did not make wills, though testation rates fluctuated. In western Massachusetts, a sample of 62 adult decedents around 1830 showed that only eleven

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34 Berkshire Middle District Registry of Deeds (hereafter CBRD) 13.294; CBRD 99.451 (1838).
of 33 men (33 percent) made wills, as did one of 26 women (four percent). A wider
survey of 103 decedents in 1860 showed that thirteen of 57 men (23 percent) and
three of 46 women (seven percent) made wills, for an overall rate of sixteen
percent.\textsuperscript{35} Women’s rates may have been rising as men’s fell. The increasing
numbers of women making wills is confirmed by another way of figuring testation
rates: comparing numbers of wills with population. Figured that way, Berkshire
County women’s testation rate ranged from .033\% in 1780-1799 to .05\% in the 1810s
to .156\% in the 1830s and .265\% in the 1850s. At the same time, men’s ranged
from about .5\% in the 1800s to .7\% in the 1810s and 1820s, .85\% in the 1830s and
1840s, and .98\% in the 1850s.\textsuperscript{36} The following chart shows the rising numbers of
women’s wills charted against population from 1800 through the 1850s.

\textsuperscript{35} VR of Dalton, Williamstown and Great Barrington, and MVR: Deaths v. 138 (1860)
for Dalton, Egremont, Great Barrington, Lanesborough, Savoy, Stockbridge and
Williamstown, compared with Berkshire County Probate Court index, 1761-1900 (microfilm
at BA). N.B. Of the 1860 sample, only two of 46 women and eleven of 57 men’s estates
were administered through intestacy proceedings. Thus more than half of male decedents and
nearly all female decedents avoided probate entirely.

In Narrett’s study of colonial New York, only about a fifth of white men (and a much
smaller percentage of women) made wills. Narrett 10-11. In Connecticut from 1750 to
1820, Toby Ditz found that 48 percent of the probate (presumably the propertied decedents)
population made wills. Women accounted for 16 percent of the probate population in the
colonial era and 22 percent of the probate population in 1820 and 1821. Ditz, "Ownership
and Mary Quarterly} 3d ser., 47.2 (April 1990), 241-242.

In Essex County, New Jersey, in 1850, probated wills accounted for 4.5\% and
intestate administrations for 3.5\% of the decedents. Lawrence M. Friedman, "Patterns of
Testation in the 19th Century: A Study of Essex County (New Jersey) Wills," \textit{The American
Journal of Legal History} 8 (1964), 35. Friedman did not specify whether he meant deceased
adults or all decedents including minors.

Richard Chused found in Dukes County, Massachusetts, that women’s testamentary rate held
steady at about .3\% while men’s ranged from .9\% to 1.3\%, so if the gender ration were
about even, three to four times as many men as women made wills. "Married Women’s
In Berkshire County, the number of testatrices rose in each decade, and rose at a rate higher than population increase, which indicates two things. First, more women had property to bequeath. Second, more of those propertied women preferred making a will -- a custom-tailored alternative to what Probate Court would have done with their property: split it equally among all heirs, which was the standard intestate division.

Race, ethnicity, gender and age affected testamentary patterns. Comparatively few Irish or people of color made wills in rural Massachusetts before 1860. A few people of color have been identified through censuses, tax lists with the designation "Colored," or family history information on "part Indian" individuals. Most

37 Berkshire was the only county where I used a hundred-percent sample in assessing women's testamentary patterns.
willmakers were white men,\textsuperscript{38} typically farmers over age 60. The least likely to make wills were women under age 60.

Contrary to expectations, willmakers spanned a wide range of economic classes. Willmakers ranged from a poor woman in dependent old age with only seven dollars' worth of personal property to a rich widow with more than $70,000 in assets. Apart from the few truly wealthy men, testators were generally of the middling sort, as compared with other propertied men in western Massachusetts. Of 213 testators whose probate records included inventories, 85 fell between 1800 and 1829, and averaged $3456 in total estate. The other 128 were probated from 1830 to 1860 and averaged $4810. Several were insolvent.\textsuperscript{39}

More women made wills after 1830 than before, and though they had less property than men had, later wills showed increasing assets. Of 200 women's wills with inventories from 1800 to 1860, only 38 (average assets $802) were from the decades before 1830. From 1830 to 1860, 162 women's wills averaged $1860 in total

\textsuperscript{38} James Henretta suggested "ultimogeniture," which Hal Barron found in his study of Chelsea, Vermont: youngest sons were the preferred heirs for the family farm, probably because they came of age when the parents were ready to retire. If an unmarried daughter still lived at home, then the son was required to support her. In describing dower, Henretta suggests that protection of the estate and the line of succession was more important than the widow's economic freedom. While that may have been true in the eighteenth century, it was on the wane by 1830 in western Massachusetts. James Henretta, "Families and Farms: Mentalité in Pre-Industrial America," \textit{William and Mary Quarterly}, 3d series, 35 (1978), 27-30. In addition, birth order could affect inheritance among sons. Hal Barron, \textit{Those Who Stayed Behind: Rural Society in Nineteenth-Century New England} (1984/1987), 94-5.

\textsuperscript{39} Narrett found that 65\% of colonial New York's male testators were in the lower or middling classes. Narrett 10. Correlation of tax lists with testators lacking inventories might flesh out their economic status, but the prospect of tracking assessors' valuation lists in dozens of towns is daunting at best, and nightmarish at worst.
Though it is impossible to know precisely what these assets meant in terms of class, they can be related to the cost of housing. In 1860, *Godey's Lady's Book* provided plans for a six-room frame cottage costing $550, which Alan Dawley suggests was close to a minimal competence (one to two times annual income) for a male industrial worker in Massachusetts. But inventoried property was not the whole story of women's assets. Some widows had dower rights that gave them the use and improvement of assets that were not inventoried at their demise because dower, as a lifetime estate, passed to the husband's designated heirs outside of widows' probate. Thus widows often had life use of property not inventoried in their own probate records, and that property may have raised their standard of living.

As increasing numbers of women made wills, they distributed increasing assets. So women had more property to bequeath than before. This in itself was a revolution in testamentary patterns. Previous generations of New England women

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40 Inventories' bias favors the prosperous. Many women's probate records lacked inventories, even when their wills referred to specific parcels of real estate. And widows' dower would not have been inventoried because their husbands' wills would have made provisions for distribution of those assets after the widow's demise.


42 That property, if real estate, could be tracked through husbands' wills and followed through deeds, which I lack the time and inclination to do. If not real estate, it might be traceable through town tax records, or not.

43 From 1800 to the 1820s, more women bequeathed personal estate than real estate (though the real estate was worth more in the aggregate). Most testatrices bequeathed clothing, featherbeds, household furniture, livestock, and occasionally books or a string of gold beads rather than real estate or liquid assets. For examples of the earlier pattern, see HCP 2.36 (midwife Elizabeth Allen 1800), 14.40 (Billings 1815), 52.20 (Eastman 1824), 77.38 (Ingram 1806), 112.27 (Perkins 1822), 165.59 (Young 1827), 169.46 (Baker 1824); early Franklin County wills in HCP: 3.32 (Allis 1806), 102.16 (Morton 1808); 1084 (Coleman 1822), 1133 (Cook 1824), 1833 (Gale 1820), 4821 (Thayer 1825).
were not expected to have economic assets; they were supposed to be economic assets to the men who owned the property. Unless exempted by a prenuptial agreement, married women's assets were controlled by their husbands during marriage -- and every woman was expected to marry. Yet more and more spinsters violated gender norms by remaining single. According to evidence from wills, spinsters not only controlled assets for their own self-support, they also willed those assets to other women. In other words, once property came into the hands of unmarried women, it stayed in the hands of women, many of them single -- another gendered behavior in testamentary customs. The cult of single blessedness protected their own.

As for occupation: fifty-nine men identified themselves as yeomen or husbandmen, but most of the occupationally-unidentified others were also farmers, judging from inventories and testators' detailed descriptions of pasture, tillage, woodlots, and other real estate. Other self-identified occupations included twelve "Gentlemen" (one of them a spendthrift, according to probate records), seven

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44 Prenuptial contracts were rare and used primarily by wealthy women, usually, as Mary Beth Norton suggests, remarrying widows. David Narrett suggests that women who executed such agreements were "strong-minded," and I concur. A woman who brought property to a marriage and limited her husband's use of it, had a degree of authority that the propertyless woman may have lacked. In my study of nineteenth-century western Massachusetts, only a handful of wills mentioned prenuptial agreements, perhaps the one percent that Narrett estimated. Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (1996), 155; Mark Friedberger, "The Farm Family and the Inheritance Process: Evidence from the Corn Belt, 1870-1950," *Agricultural History* 57.1 (January 1983), 4; Narrett 80-81.

lawyers, five physicians, five clergymen, two manufacturers, two merchants, and one (each) carpenter, joiner, shoemaker, cordwainer, tinman/stove dealer, and painter. (From vital records and inventories, two others were identified as a laborer and a clerk or bookkeeper.) Occupationally, most men were what we would consider middle-class, and what nineteenth-century Americans called the "middling sort."

Though many men identified themselves by occupation, women did not. Even self-employed women -- a midwife, several milliners, and a tailoress -- identified themselves by marital status: widow, singlewoman or spinster, "wife of" or relict. The prosperous milliner Lury Davis of Pittsfield identified herself as a "single lady," rather than by her occupation, even though she used her millinery business to amass enough capital to speculate in downtown real estate. Davis owned a $4000 building and lot in a prime business location on the main street, and held a $2000 mortgage against the city of Pittsfield -- but identified herself by her marital status." Of the Berkshire County women who explicitly identified their marital status, 88 were widows, 86 single, and fourteen married.47 Eighty-seven of those women had

46 BCP 7630 (Davis 1851); BCRD grantor and grantee indexes; MVR, Pittsfield 1851. The 1860 census shows the following women's occupations in Pittsfield: washerwoman, tailoress, nurse, operative, dyer, weaver, spinner, cloth dresser, seamstress, cook, dressmaker, boardinghouse keeper, milliner, teacher, housekeeper, liquor seller and domestic. Theodosia Herrick was a paper hanger and occasionally drove the stage. The Berkshire Hills (January 1905), 39. And R.G. Dun and Co. assessed the credit ratings of a number of Berkshire businesswomen between 1840 and 1870: 72 milliners, seamstress, dressmaker, clothier, mantuamaker, shirtmaker, 4 proprietors of fancy goods shops, 5 women who ran a restaurant, hotel boardinghouse or tavern, four who ran dry goods, dress goods, grocery or general stores, and a baker, drug seller, drum maker, farmer, moulder, braid and switchmaker, and a tobacco dealer. Massachusetts Volume 3, R.G. Dun and Co. Collection, Baker Library, Harvard Graduate School of Business Administration, Boston.

47 Judging from a surname the same as a father or brother, another seven women were probably single. An additional 110 women who listed children as heirs were probably widows but did not identify themselves so. And two women identified themselves as spinsters, yet had children not designated as adopted. In colonial New York wills from 1664
inventoried real estate. Of those landowners, 54 (62 percent) were widows; 25 (29 percent) were single; and 8 (nine percent) were married. Massachusetts women's singleness, about fifteen percent in the 1830s and seventeen percent in the 1850s, climbed to about 23 percent in the 1870s -- consistently double the national average. Even so, spinsters were overrepresented as landowners in western Massachusetts.

As for men's marital status: nearly all of the testators were married and fathers. Contrary to popular views of nineteenth-century women as dependent on men, these men were evidently more likely to believe that they needed a spouse than women did! Few men lacked children. Most had both daughters and sons, so their collective testamentary preference for one or the other could not be based on having no heirs of the other sex.

But willmakers were not limited to their own offspring in their choice of recipients. Testators who lacked sons but were determined to leave their property to males could and did make bequests to sons-in-law, grandsons, nephews or friends. Childless women found other recipients. Because so many testatrices were spinsters, and because only a few wills acknowledged children born out of wedlock or adopted, unmarried women also had to find other objects of their benevolence; they usually chose other women. From these facts, we can deduce that, collectively speaking,

to 1775, Narrett found 28 married women (eleven percent), most of them before 1700, 196 widows (77 percent), and 28 single women (eleven percent) who made wills. Interestingly, the percentage of single women making wills rose from zero to nearly nineteen percent during the decades of his study. Narrett 239.

48 Wergland, chart 9, p. 73.

people who wrote wills entered the process understanding that all options were open to them, whether they favored sons, daughters, parents, spouses, siblings, fictive kin, or the American Board of Foreign Missions.

To judge from the 72 testators whose ages I have documented through vital records and censuses, most fathers were in their sixties or seventies when they made their wills. Remarkably, though the husband-testator’s average age was about 70, his wife’s average age was 59, showing greater-than-expected difference in spousal age. Men made wills at earlier ages only when they perceived an immediate need, such as an illness they reasonably believed to be terminal.

Most of the spinster daughter-heirs whose ages I have documented were in their forties and some were over fifty. As for the 51 spinster-testatrices I have tracked, five were in their twenties; nine were in their thirties; eleven were in their forties; six were in their fifties; five were in their sixties, and fourteen were in their seventies. Their median age at death was fifty.\(^\text{50}\)

In the chapters following, I will address a number of issues documented through local newspapers, censuses, court records, deeds and other primary sources. Part One deals with testamentary philosophy, or why willmakers chose certain heirs over others. Chapter One shows that distributive justice was a gendered concept. Women and men, in the aggregate, wrote very different kinds of wills. Chapter Two details trusts and lifetime bequests by and to men and women. Willmakers assessed

\(^{50}\) MVR, VR, 1850 U.S. census and 1855 Massachusetts state census. Spinster-testatrices’ leading cause of death was consumption (20), followed by dropsy (3), and one each of apoplexy, tumor, typhoid, pneumonia, lung fever, unspecified fever, dysentery and old age.
heirs’ ability and character when they decided who would receive their largest bequests. Chapter Three is about "Sole and Separate" bequests, or reserving a bequest to a woman to her ownership, separated from any control by her husband or his creditors. Chapter Four concerns Berkshire County African Americans’ property ownership and testamentary patterns. Part Two focuses on changes in testamentary patterns after 1830. Chapter Five discusses men’s shift to favor women as heirs after 1830. Chapter Six addresses women’s bequest patterns and the significance of men and women putting increasing amounts of property into women’s hands.
PART ONE: TESTAMENTARY PHILOSOPHY, 1800-1860
CHAPTER 1

DISTRIBUTIVE JUSTICE: A GENDERED CONCEPT

Testamentary Philosophy Overviewed

This study begins by examining wills to determine the reasoning behind bequests. Several patterns of testamentary customs were evident in who received what. Aside from outright bequests, which will be addressed in part two of this study, common customs included acknowledging heirs who had already received their portion during the testator’s life and thus received nothing at probate; widows’ dower and alternatives to dower; lifetime estates and trusts. Some heirs’ disabilities provoked identifiable patterns of bequests. Willmakers’ need for lifetime support or nursing care generated other patterns. Each pattern meant something different in terms of family protection through asset management.

Most adults did not make a will. The percentage of adult decedents who left wills varied by race and gender. African American women’s testation rate was about 2.6 percent while 4.8 percent of African American men made wills from 1841 to 1855. Seven percent of white women and 23 percent of white men made wills in 1860.\textsuperscript{51} Thus willmakers were a small minority of adult decedents.

\textsuperscript{51} A single-year testation rate for blacks was untenable because I found too few decedents for a valid sample. For the African Americans, my daughter, Karyn Wergland, and I checked probate records for the name of every adult decedent identified as Negro, black, or African in each of the Berkshire County towns and each of the Hampshire County towns known to have a black population in the mid-nineteenth century. For whites, I sampled
Men and women who took the trouble to make wills were evidently dissatisfied with the division of property provided by the customary administration of an intestate estate in Massachusetts. Intestate distribution gave a dower third to a widow, the full estate to a surviving husband, or an equal division of property among all surviving children. Had propertied individuals been satisfied with such a division, they could have simply allowed probate administration to take its course. According to a study of twentieth-century testamentary patterns, "the intestate succession may be interpreted as representing society's image of a universally just distribution." Yet western Massachusetts testators made personal decisions about "just distribution" when they wrote wills with provisions different from the standard set by intestacy proceedings. By going to the trouble of making wills, many incurred the expense of an attorney -- no small thing to thrifty and shrewd Yankees. These 900 individuals were so determined to personalize their bequests that they were willing to part with cash. Their ideas of distributive justice diverged sharply from the state's definition. Accordingly, some gave specific reasons for providing one heir with more or less than others, and their reasoning points out serious issues that families faced. Support for elderly spouses or unmarried daughters or handicapped offspring had to be weighed against those individuals' needs for autonomy or support and other heirs' needs for property. Each of those issues could be a problem in itself; taken together,

52 Sussman et. al. 84. Sociologists' advantage in studying testation patterns lies in the fact that they can interview testators. A sizeable minority of Sussman's samples (23% of one and 37% of the other) said they had made wills or intended to make wills because they preferred not to have their property distributed according to intestacy laws. Sussman et. al. 205.
in light of the assets available to the willmaker, they meant that hard decisions had to be made.

In nineteenth-century Massachusetts, some willmakers were remarkably candid in explaining the reasoning behind their bequests, whether they gave outright bequests with no strings attached, provided lifetime use of an estate, set up trusts or attached conditions to their bequests, favored one heir over others, or rejected a particular heir. Their reasoning casts light on family relations in nineteenth-century New England and shows parents' strategies for protecting family assets from the folly of debt, intemperance, or other character flaws. Furthermore, testators' and testatrices' bequests followed gendered patterns according to their marital status as well as their sex.

According to conventional wisdom about twentieth-century testamentary practice, property transfer within the family was and is based on one of three ideas. As Marvin Sussman sees it, these are *distributive justice*, with each beneficiary receiving according to his or her contribution to the family welfare; *equality*, whereby each survivor gets an equal share; or distribution based on grounds *other* than acts of service, such as economic need or ability to make the best use of assets thus transferred. Generally, western Massachusetts bequests dovetailed with those concepts.

In one point, however, nineteenth-century patterns diverged sharply from later ones: equal distribution of assets was a concept whose time had not yet arrived. In none of the western Massachusetts county samples did more than fifteen percent of

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53 Sussman et. al., 10.
willmakers provide for an equal division among all heirs. They thus rejected the state’s standard intestate distribution: equal division of assets among all heirs (reserving a dower third to support the widow). For most men and women who made wills, equalizing bequests was not a preferred strategy and widows’ dower third was often considered inadequate for lifetime support. In most cases, however, it is impossible to measure whether unequal bequests were used to equalize shares already distributed. Though a few wealthy landowners may have settled sons on farms of their own, as land transfers indicate, most wills specifying inter vivos gifts show only $200 to $500 premortem advances to children -- too little to buy a farm of adequate size to support a family, though perhaps enough for a down payment.\footnote{In 1850, a sample of 70 Berkshire County men’s farms averaged 156 (improved and unimproved) acres worth $3258, while 34 women’s farms averaged 130 acres worth $2677. U.S. census agricultural schedule, 1850 (UMass microfilm collection D311, reel 1). Though a family could be self-supporting on fewer acres of good land (a Mennonite farmer told me that 50 to 70 acres would do in Pennsylvania in the 1980s) Berkshire County’s uplands are so rocky that more acres would be necessary. An inter vivos gift or sale from parent to child was possible, but I found little evidence of either in Berkshire County land records.}  

The overall thesis of this study is that testamentary patterns were gendered in ways that reveal the changing relative status of women and men within the family. The first part of the study shows that men and women dissatisfied with the standard distribution of intestate probate administration chose to tailor their bequests based on one or more of three factors: who most needed the bequest, who most deserved it, and who was most capable of making the most of the property. Which factor or factors took priority depended on the specific family situation. Evidently the willmaker asked herself or himself, "Where will this bequest do the most good?"
Willmakers saw hierarchies of needs among potential beneficiaries, and bequeathed accordingly. This pattern remained the same throughout the decades of this study. The results, however, changed after 1830, and those results will be addressed in the second part of this study.

*Need*, in this context, could be equated with protection from dependency, suffering and want. A bequest of property conferred benefits that varied according to the ability of the beneficiary and also according to conditions placed on the bequests. Testators intended to support and protect their favored beneficiaries.

*Deserving* heirs were rewarded for sound character and/or good behavior. Which child or children had helped elderly parents at home while siblings abandoned the farm for wage work in a factory town or went west seeking adventure and wealth? Which ones devoted their labor to making the family farm a going concern? Which heir was sober and reliable? Who was canny and astute in business or agriculture? Conversely, who was intemperate or in debt? The prodigal son was rarely rewarded in nineteenth-century Massachusetts wills, while the diligent wife or daughter often reaped the benefits of pouring a lifetime of work into a cash-poor family farm dependent on family members as a labor source.

*Capable* heirs were compensated for their ability, perhaps in proportion to their effort on behalf of family interests. Testators evidently asked themselves, "Who could put this property to the best use?" On the other hand, heirs with some sort of incapacity -- a character flaw, mental disorder, or physical handicap -- were provided the protection of property through a lifetime trust. Parents’ love for their children on occasion took the form of protecting a son from himself. (That statement is intentionally gender-specific and based on evidence from wills and court records.)
When willmakers recognized that multiple heirs had competing claims, particularly when only a small amount was available, they often explained their reasons for favoring for one heir over others. Women's wills were particularly enlightening in this respect.

The Phenomenon of "Heretofore Received" or "Already Got"

In western Massachusetts, testators and testatrices followed their own versions of distributive justice in allocating assets. Both the wealthy and the poor wrote wills for the express purpose of discriminating among heirs. The most common reason willmakers gave for favoring one heir over others was that the others had already received a share of the property as gifts or advances on the estate. Such was the case more often with men than with women who wrote wills, because fathers were more likely to have distributed inter vivos gifts to children reaching adulthood or at marriage. This is not to suggest that all heirs benefited equally; it merely means

55 Marvin B. Sussman et. al., *The Family and Inheritance* (1970), 203, found in their mid-twentieth century study that will-makers saw three advantages of a will: ability to alter standard distribution, faster and cheaper than intestacy proceedings, and need to establish guardianship for minor children.

56 Land wasn't necessarily what they had already received. Though many testators noted that certain heirs had already received their portion, I cannot tell what they had received. A check of 40 testators' real estate transactions in Central Berkshire Registry of Deeds showed that even though those men said they had already distributed assets to certain offspring, only a small handful of men, usually the most prosperous with inventoried real estate worth $3000 or more at probate, had previously distributed assets in the form of land. Furthermore, some of those men had brothers with the same names as their minor sons, and may have been trading land to the brothers, rather than the sons. Other men made explicit reference in their wills to money for the education of minor children, so a son's start in life was not necessarily predicated on land for farming.

James Easterlin suggests that farmers sought to give their children the same sort of financial start in life that they themselves had received, with daughters receiving a third to
that each heir had received what the testator thought was due. *Inter vivos* gifts may have been *the* reason for making a will, because intestacy proceedings might have divided all remaining property equally among the children. Heirs who had already received their portion (or most of it) would have benefited overmuch, while minor or dependent heirs would have received less than their rightful portion. By making a will a parent could make sure that each heir received a fair share. Willmakers’ language was a variation on "I give nothing by this will having already assisted them in various ways to the amount of their share in my estate," or "they having received their portion of my estate in my lifetime . . . ." Some bequeathed a token amount, "which with what [the heir] has heretofore had is a full proportion of my estate." Women and men used similar language when trying to achieve distributive justice based on what had already been distributed and what was left to hand out. Dorothy Thayer favored her daughter and left nothing to her sons, "they having previously received their share of my property."

As for the form *inter vivos* gifts took, Berkshire County land records show little evidence of fathers having transferred land to sons. Apparently only a few of the elite could afford that practice. In Hampshire County wills, a handful of individuals set aside enough money, usually about a thousand dollars, to educate their youngest children to the degree older siblings had been educated. And daughters in half of what sons received. Sons who did not want to become farmers received an education for a profession or capital for starting a business. "Population Change and Farm Settlement in the Northern United States," *Journal of Economic History* 36 (March 1976): 64, 69. If Easterlin’s hypothesis is true, my evidence suggests that most Berkshire testators’ sons who intended to become farmers did not do so in Berkshire County, because they neither received nor purchased farms locally.

57 HCP 10.44 (Bartlett 1855); 77.13 (Ingham 1827); 46.34 (Dickinson 1824); 146.12 (Taylor 1845); 146.38 (Thayer 1828).
all three counties received setting-out gifts, which will be discussed in detail later. What can’t be effectively or easily measured is the amount of money "average" fathers may have handed sons when they reached their majority. Hal Barron points out that historians have not examined nineteenth-century farm families’ transfer of land to the next generation and how or whether they provided for children who did not take over the home farm. Those questions will not be answered here. At best, my findings might suggest where not to look.58

Distributive justice was not only subjective; it was also patterned according to the gender of both willmaker and beneficiary. Vivian Conger found that widows were more likely to bequeath according to their heirs’ relative needs than according to the patriarchal prescriptions men were likely to follow in the seventeenth and eighteenth centuries. Men’s wills often reserved life use of a third of the real estate to the widow and gave daughters household goods and "movables," while sons received real estate worth much more than what daughters received. Nineteenth-century western Massachusetts women -- widows, wives, and single women -- followed the same patterns Conger found.59

Women’s reasoning differed from men’s. In addition to applying different standards of distributive justice, women frequently felt compelled to justify their actions, while men rarely did so. Thus women’s wills often provide insights into


59 Vivian Leigh Bruce Conger, "Being weak of body but firm of mind and memory . . . Widowhood in Colonial America, 1630-1850," Cornell dissertation, 1994, 224. In the few wills and inventories where prior distributions’ dollar values were specified, it appears that some fathers gave sons more than daughters during their lifetimes.
testamentary reasoning beyond the "already got" clauses. Interesting details were concealed behind simple phrases explaining why one heir was preferred over others. For instance, Lois Lathrop's two unmarried daughters, Lucy and Fanny, might have expected to be treated equally. But Lathrop willed more to Lucy "in consideration of her having been more constantly at home while Fanny has been [away] earning something . . .." Lucy received preference because she had stayed with her mother while Fanny had been away improving her own prospects. Earlier I pointed out that the prodigal son was rarely rewarded in western Massachusetts. Neither was the prodigal daughter. Offspring who stayed home, though, were sometimes rewarded for doing their duty. Entitlement was subjective and depended as much on the behavior of heirs as on a testator's expectations and testamentary traditions.

Another gender difference appeared when widows distributed their own property after their husbands' deaths. Widows often used their own assets to even out discrepancies in their husbands' bequests. Prudence Mattoon noted that she had bequeathed nothing to her son Chauncey because "in the division of his father's estate he . . . had more than an equal share." In some cases, women's efforts to balance distributive justice resulted in daughters and granddaughters inheriting most of those testatrices' estates. When widows felt that certain heirs had already profited enough, they used their own assets to compensate for their husbands' lopsided bequests. And because their favored beneficiaries were usually female, women's distributive justice was gendered differently from -- and contrary to -- men's. Amanda Whiton

60 BCP 5393 (Lathrop 1833).
bequeathed her sons nothing because they "were provided for by my late husband."

Phebe Ingram left her property to a namesake-granddaughter, explaining that her children had already been adequately provided for in her husband’s will. Ingram’s estate may have made quite a difference to her granddaughter; though her probate file included no inventory, the executor’s bond was $5000, which indicates an estate of around $2000. Mary Rust, who also favored her daughters, noted that she had bequeathed nothing to the heirs of her two deceased sons because they had previously received their portion from her husband’s estate. But her estate was so small that it may have mattered little to her heirs aside from knowing that they were equal in the eyes of their mother if not their father.61

Sometimes widows favored a son or sons in their effort to compensate for husbands’ lack of planning, premature death, or both. Major Dan Cadwell, Esq., died at 65, "suddenly and without making a will" in 1799, leaving an administrator’s nightmare of debt, guardianships, and absentee heirs. When his widow Abigail made her will the following year, she explained why she favored the two sons who were still under her roof.

The reason I have given all my property to William and Dwight and none to my other sons and daughters is because my other [children] had considerable property given and advanced them by my late husband, and the said William and Dwight have not received so much . . . .62

Widow Cadwell’s notion of distributive justice differed from the standard mandated by intestacy, which gave each child an equal share of the estate without taking

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61 BCP 5592 (Mattoon 1835): Her views were significant because she had $1272 to allocate; 7013 (Whiton 1847); HCP 77.38 (Ingram 1806), 126.29 (Rust 1810).

62 BCP 2387 (Cadwell 1805).
premortem advances into account. In her will, Cadwell sought to compensate for her husband’s lack of foresight and used her own assets to benefit the two sons who had been slighted. But she may have had other reasons for favoring them. When Major Cadwell died, his son William was named co-administrator with Abigail -- a logical move for the court. Dwight was a "minor over age fourteen" so he was eligible for the widow’s preference on exactly the grounds she gave. But there was more to it than that. During the probate process, William’s siblings agreed that he should also be allowed and have the sum of Four hundred and twenty two Dollars and twenty three Cents out of the Estate . . . for his services, during the Term of Six years and Four months, performed for our said father, in his Lifetime.

Dan Cadwell had advanced nothing to William though William had remained home to work the farm for his father for more than six years after he turned twenty-one. At a time when all his other siblings were grown and gone, William Cadwell remained on his father’s farm and invested his labor for the benefit of his parents. His siblings recognized his value to the family farm, and acted accordingly.

We can piece together additional reasons for Abigail Cadwell’s choice of William as a favored heir. Dwight required a guardian because of his age; William, not Abigail, was appointed guardian -- a curious move for the court unless Abigail

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63 IGI, BCP 1980 (Cadwell 1799), CBRD. For that matter, I could find no evidence of Dan having advanced land to his other two sons, either; he sold twenty acres to his oldest son, Elias, when Elias was 27. His other son, Daniel Jr., was a blacksmith in Rensselaer County, New York, and those land records would not have been recorded in Berkshire County, Massachusetts. And if Dan advanced cash to his sons, those sums should have appeared with the amounts listed for his married daughters. According to the court, Daniel Cadwell had advanced money only to his married daughters: Abigail Powers had received $143.33; Rhoda Weller had received $191.83; and Esther Hale had received $127.67. Accounts listed no advance to another married daughter, Anna West.
expressly wanted William to be Dwight’s guardian. The fact that William accepted
the responsibility and posted bond suggests that he was a conscientious son and
brother. The Cadwells also had a stickier problem to solve: Sarah, William and
Dwight’s handicapped sister. Abigail and William asked the court to have her
examined, and the probate judge directed the Pittsfield selectmen to have an
"Inquisition" to determine whether Sarah was a "non compos person." They did; she
was; and Abigail was appointed her guardian, though William later assumed
guardianship, not only for her, but also for two children of another sister.⁶⁴ William
Cadwell thus earned his preferred status. He stepped into the role of parent without
having married, kept the family together during the last years of his mother’s life, and
established the youngsters as adults. Furthermore, he kept the family farm intact,
buying out his siblings’ one-ninth shares of his mother’s dower land after she died.⁶⁵
William Cadwell was a dutiful son, and Abigail rewarded him for it.

Women and men also showed marked gender differences in their messages to
loved but nonfavored heirs. Some women expressed love or goodwill to assure them
that unequal bequests did not imply a lack of affection; few men did so. When
Electa Jackson favored one daughter with her property, she gave her blessing to her
other four children, stating that she had done in her lifetime all that she was able.
Likewise, when Lucretia Hemenway cancelled her daughters’ debts and left them her

⁶⁴ BCPR 1799-1801, reel 6 (BA).

⁶⁵ Pittsfield Tax Records reel 2, 1798-1808; BCRD land records; Pittsfield Town
Meeting Records v. 3 1796-1822 (BA). A Sarah Cadwell was supported as a pauper by the
town in the 1810s, when selectmen complained of the intemperance of the poor.
property, she stated that her husband had already provided adequately for their sons and concluded "I have nothing to give or bequeath them except my blessing."

Testatrices expressed similar sentiments to other relatives. Widow Lydia Henshaw said, "I remember with love and affection [my siblings] but it is not my will to give them nor their heirs any of my estate." Jane Ayres had so little property that she said, "My blessing is all I have to bestow . . ."66

Only a few men used expressions of personal affection or gave their blessings. James Alvord favored his wife and one unmarried sister with his bequests, adding that he left nothing to his parents, nephews and nieces, "not for want of affection," but because they were well provided for already. Thus Alvord explicitly applied the same reasoning many women used when they favored female heirs. Isaac Bates was one of the few men who used loving or affectionate language apart from the conventional naming of the "well-beloved" wife. When he bequeathed his entire estate to his wife, Martha Henshaw Bates, he added that their children well knew his "deep love" for them and he commended them "to the considerate regard of their mother, and the protection of a kind Providence." Bates ended his benediction with, "May God bless them, and preserve them from all evil." Farmer Alfred Twitchell left Alfred King (probably a nephew or grandson) half of his acreage "for the love and affection I bear him."67 Such expressions, however, were more the exception than the rule.

For most heirs who had already received their portions, willmakers' provisions were less value-laden. Testators usually just pointed out that certain individuals had

66 HCP 213.27 (Jackson 1858); 70.32 (Hemenway 1824); 207.41 (Henshaw 1861); FCP 190 (Ayres 1825).

67 FCP 101 (Alvord 1839); HCP 12.12 (Bates 1845); FCP 7610 (Twitchell 1841).
already received their fair share. The norm was neutral, matter-of-fact language and in most cases the willmaker did not belabor the point. Other such bequests, however, imply that the property-holder balked at further distribution to particular individuals. Some language was quite terse. For instance, Sarah Joy stated, "I have given to my connexions all that it is my intention to give." She implied that she had already given enough to them and could have given more, but chose not to for reasons she left unstated.

Other testators were wordier, though their intent was similar to Joy's. Yeoman Eliphalet Town bequeathed most of his estate to Ansel Phinney, husband of his daughter Nancy. He did not leave even a token to his other five children,

having previous to this time given and delivered unto my sons Timothy and Isaac and to my three daughters Jerusha, Orpha and Susannah their respective portions or shares of all my estate so that they . . . of right or in Justice and equity ought [not] hereafter have or receive any part or portion of my estate.

Town began his explanation with standard "already got" expressions, but at the end of the sentence, his vocabulary and syntax were heavy with the weight of law. Most nineteenth-century testamentary legalese lacked the force implied by redundancy: of right or in Justice and equity. In Town’s view, his other children had no right to more of his estate, and it would be unjust or inequitable to give them more. They had already received as much as they deserved.69

Though it was rare, sometimes a willmaker’s disapproval bordered on hostility. Spinster Keziah Markham crustily noted, "To my brothers and sisters . . . I

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68 BCP 6931 (Joy 1846).
69 FCP 4895 (Town 1827).
give nothing, because it would do no good." By age 77, she presumably knew her siblings well enough to justify her opinion, and she felt no need to acquiesce to convention by splitting her estate among them. Yet she was not lacking in thoughtfulness. With her health failing, she bequeathed her house, lot and personal property to two nephews. One of them, Calvin Gunn, an ambitious carpenter-joiner, lived next door and may have been a source of comfort or help in her old age. Markham felt her nephews most deserved and needed her property, or would make the best use of it. She was probably right; Gunn expanded his business to sashes, blinds, glazing and lumber, and made it a going concern.\(^70\)

To appreciate the strength of Town’s and Markham’s sentiments, we must remember that their wills were literally their last words -- words which would express their wishes posthumously when they could no longer explain their reasoning -- words for which they would be remembered by heirs favored and unfavored. In meeting the willmaker’s standard of distributive justice, some bequests may have settled old scores against the unfavored as they benefited the deserving.

Gender in Accounting Heirs’ Portions

Some men (but very few women in my samples) kept tabs on their premortem gifts to their children. Uriah Lathrop’s will allocated a token dollar to a son who had already received $508 in land; the remainder of his $2700 estate was to be divided equally among his other eight children, taking into account what Lathrop had

\(^{70}\) BCP 7961 (Markham 1853); 1850 census; MVR: Deaths v. 75 p. 42 (Pittsfield); Pittsfield Sun ads, 1860 (BA).
previously granted each. Levi Hare kept book accounts on his offspring. He provided for an equal division among four sons, "deducting from each one’s share the amount I have advanced to them severally as per charges made in my book."

Franklin Ripley, who ordered an equal division of his $35,000 estate, deducted sums charged against each heir in his account book. Ebenezer Eastman listed each heir’s allocation: ". . . son Tilton $150 in addition to what he has received . . . son Samuel $50 in addition to what he has received . . . son Zebina $400 in addition to what he has received . . . son Theodore $500 in addition to what he has received . . .," and married daughters Polly Dickinson, Salome Adams, Clarissa Adams, and Achsah Warner $50 each in addition to what they had already received, probably as their marriage portions.71

Sarah Kilburn was one of the few women who listed advances to children. Her son Jonathan had been both intemperate and imprudent in business and had lost most of his $15,000 advance, for which he had signed a promissory note. When he died, his net worth was a paltry $543.72 Notes were a gendered testamentary custom. Men rarely listed notes against their children. Several women, on the other hand, loaned money to their sons or sons-in-law, then cancelled the notes with their wills. Caroline W. Davis, a prosperous Greenfield widow, bequeathed her son George "all the sum heretofore advanced to him," with his "promissory notes to be cancelled and annulled."73

71 BCP 4836 (Lathrop 1829), 9031 (Hare 1860); FCP 3941 (Ripley 1860); HCP 52.7 (Eastman 1821).

72 BCP 6342 (Kilburn 1842), 8085 (Kilburn 1854).

73 FCP 1231 (Davis 1849).
Some fathers gave more to sons than to daughters. The "double share" for sons was a well-known tradition, and may have been figured on the basis of men's accounting for daughters' productivity relative to sons'. James Easterlin suggests that because female hired help was paid about forty percent of what male hired help was paid, that the difference in cost reflected the difference in return. Using the same logic, men may have apportioned out their assets by the same formula, to give daughters one-third to one-half as much as they gave sons.74

But fathers' favoritism for sons varied, so their individual assessment of the value of daughters may also have varied. Plynna Karner, for instance, ordered that his sons and daughters were to receive shares according to a three-to-two ratio, so each son received fifty percent more than each daughter. Abner Bates' widow's life estate was to be followed by distribution of his $1000-plus property among all their children, with daughters receiving half of what sons received. John Conable gave his sons double shares, first stipulating that each son should receive $220 "including what they have or shall receive of me previous to my decease," while each daughter got $110 under the same conditions. And when the residue was divided, each son received twice what each daughter got.75

From some wills, it is possible to deduce the amount already advanced, and in most such cases, sons' portions were much larger than daughters'. James Dresser left $500 to each son and $400 to each daughter, "less any advanced to them," but did not

74 Easterlin 69.

75 BCP 7917 (Karner 1853); HCP 12.5 (Bates 1817); FCP 1110 (Conable 1813).
specify what might have been advanced. David Carpenter stipulated that the amount heirs had already received should be reckoned into their respective portions. Each daughter was allotted a total of about $470, one-half what each son received ($940). But each heir received a different amount at Carpenter’s death, because advances had ranged from $1000 for an oldest son to nothing at all for two younger sons.

Carpenter was not the only father so meticulous in his record keeping. When Daniel Fisk made his will, he left the children of his deceased oldest daughter Polly Barnard nothing but his "best wishes," because she had already received her $350 share of his estate, as had his single daughter Chloe. His youngest daughter, Betsey, received her $350 in cash at probate. But an older son had already received $800, and another son received the rest of the nearly $3000 estate. Thus Fisk gave sons more than a double portion.

Some fathers figured bequests to the penny as they tried to equalize their children’s shares. Philip Mattoon listed the amount each heir was to receive in addition to what they had already received: Nathaniel $33.33, Charlotte Corse $21.20, John $42.45, Elisha $54.89, Philip $26.37, grandson Charles Mattoon $91.66. Other testators did the same. After noting what seven of his children had already received, from $71 to $214 (plus change), Justus Olds added that he had not yet advanced his daughter Eliza anything but intended to leave her as much as her

76 BCP 8407 (Dresser 1856).
77 FCP 731 (Carpenter 1840).
78 FCP 1721 (Fisk 1843).
siblings. He concluded by stipulating that "all shall be made equal." Olds did not favor sons over daughters in his bequests.79

Fathers seem to have kept accounts for the express purpose of balancing their children's portions, whether their idea of balance was an equal division of assets or double portions to sons. None of the mothers who made wills -- not even those who favored sons over daughters -- left all sons a double portion. Women's testamentary practices were clearly based on a norm different from men's. Most women either divided their estate equally or favored female heirs. They did not view masculinity as prima facie evidence that a male heir needed or deserved preference as beneficiary. (This may have been because few of these women were farmers in need of farm labor.) Most women also rejected the minutiae of accounts that many men used as a matter of course.

"Setting-Out" Gifts

Some fathers left unmarried daughters the same amount that their married sisters had received for wedding presents. Elisha Alexander wanted his four

79 HCP 95.32 (Mattoon 1811), 232.3 (Olds 1847). To an unbecoming degree, some sons reciprocated in their accounting. Sarah Smith intended for her estate to be equally divided among her ten children, deducting small sums from two sons' shares and giving another son the barn if he would pay half its value to his brother. But when Sarah died in 1826, her son, Samuel, who was not the preferred heir, charged his mother's estate $650 (exactly what her 19 acres and personal property were worth) for the work he had done for her since 1797, thus cutting his nine siblings, including his unmarried sister, out of their inheritance. In a remarkably detailed account, he charged Sarah's estate for farm labor, cutting, chopping and sledding firewood, laying stone wall, shoeing horses, haying, carting manure, keeping her two cows, and paying her taxes, while he credited her for the livestock he bought from her, spinning, grain grown on her land, knitting stockings, making his clothes, and paying him small amounts of cash. FCP 4508 (Smith 1826).
daughters to have equal shares of his Warwick land "after my daughters Fanny, Martha and Mary have each of them taken $150 worth of said land to make each of them equal to my daughter Sarah Lyman, to whom I have advanced the sum of $150." When he wrote his will, Fanny, Martha and Mary were still single. Sarah's $150 advance may have been her marriage portion. Likewise, when woolen manufacturer Duty Tyler wrote a will, he mandated an equal division of assets, except for the $555 he had advanced his married daughter Maria Louisa Perry. And James Avery advanced $230 to each of his two married daughters -- probably their marriage portions -- which was then deducted from their one-eighth shares of his estate.

Other fathers provided for single daughters who might marry at some future date. Levi Barton willed $160 and house rights to his single daughter, Mary. His married daughters received only $10 apiece; each had already received $150 at marriage. Peter French gave his married daughters $20 legacies, while his single daughter Lydia received $90 -- $70 of which was intended to equal what the other daughters had received at marriage. Daniel Fairbanks was inexact in accounting for his single daughter's setting-out, but his intention was clear: "If she should marry, she is to be set out equal to either of her sisters who was married before her." David Aldrich made the same provision for his daughter Mary; she was to receive "enough and sufficient to make her fixing out equal to the fixing out of our daughters already married." Aldrich must have given his daughters $300 when they married, because his married daughters received $250 each, while Mary got $550. William C. Bennett asked his wife Almena to provide their adopted daughter Florence with $300 at

80 FCP 42 (Alexander, 1843); BCP 8551 (Tyler 1857); FCP 5578 (Avery 1860).
marriage or age 21. Rodolphus Morton left his daughter Mary $400 at age 24 or at marriage, whichever came first. And Varnum Tanner left $75 for his daughter Clementine to have when she married.  

Based on their views of single daughters and setting-out gifts, these fathers separated themselves into two categories. Alexander, French, Barton, Bennett and Morton decided that their daughters deserved gifts whether they married or not. Fairbanks, Aldrich and Tanner, on the other hand, assumed that their daughters would marry someday, and also took for granted that their daughters did not need cash gifts before marriage. The latter view rested on the assumption that those daughters would have been unlikely to set up housekeeping unless they married. And though that assumption may have been reasonable in an earlier era, it was unreasonable by the mid-1800s when increasing numbers of women, spinsters as well as widows, headed their own households. On the other hand, fathers may have had reason to believe that their daughters would marry; perhaps they were already betrothed.

Thus unmarried adult daughters raised all sorts of issues about lifetime support, but few fathers addressed the issue of parents’ fiscal responsibility for daughters lacking husbands. Most men avoided the issue entirely, perhaps leaving that unfinished business for their widows. Women, on the other hand, acknowledged their daughters’ potential for dependency, as well as their need for a competence, and made bequests accordingly -- a concept to be further addressed in the second part of

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81 HCP 172.8 (Barton 1859); BCP 8694 (French 1858); FCP 1521 (Fairbanks, 1854); BCP 5645 (Aldrich 1835); HCP 173.64 (Bennett 1859), 102.23 (Morton 1853), 254.61 (Tanner 1859).

82 See Wergland, "Daughters of Rural Massachusetts," chapter 6.
this study. Furthermore, considering that many women used their own bequests to "even out" the portions received by daughters and sons, it is evident that women did not assign reduced value to daughters' labor as did men.

Bequests to Caregivers

Some wills confirmed gifts that had already been made or promised. A handful involved *inter vivos* gifts of land, usually farms, to adult children who already occupied that property. More significant were the wills of 24 sick and/or elderly women and men who transferred property in their wills in exchange for lifetime support. Those wills reveal views on filial duty, reciprocity and gender relations within the family. Vivian Conger's study of colonial probate records shows that a third of widow-testatrices and a fifth of male testators attributed their favoritism to the fact that their favored heirs cared for them. From 1640 to 1750, greater numbers of willmakers rewarded daughter-caregivers, rising from 33 percent in the years from 1639 to 1689, to 57 percent for the decades 1720 to 1750. Needless to say, caregivers lived near or with the willmakers who rewarded them -- an increasingly significant fact as the frontier moved westward and potential caregivers left home.

83 Mark Friedberger found "Bond of Maintenance Agreements" between retiring parents and sons: the elder generation deeded over the farm for a very low price in exchange for specific support services for life. "The Farm Family and the Inheritance Process: Evidence from the Corn Belt, 1870-1950," *Agricultural History* (1982), 8-12.

84 Conger 314, 321.

85 Many other will-makers probably rewarded caregivers without using their wills to contract for care or to explain that their bequests were rewards for nursing services. Most spinsters and a number of widows appear to have been in this position, to judge from their ages and/or household composition. Among Berkshire County women, this appears to have
The moving frontier was as much an issue in the nineteenth century as it had been in the seventeenth and eighteenth centuries.

The simplest bequests to caregivers were written as contracts. These were simple versions of the "bond of maintenance" agreements farmers in some midwestern communities adopted to ensure economic security in old age. Sophia Arms, for instance, willed $1450 in real estate to her sister, Martha Barnard, explaining that she expected Martha to take care of her. Eunice Preston gave her grandson several hundred dollars' worth of Granby real estate, in the expectation "that he will faithfully provide for me and kindly support and treat me as long as I live, both in sickness and health." Preston's words have the ring of a covenant that might be broken if her grandson reneged on his obligations. Dolly Keet assigned most of her $259 estate along with an acre of land and half of a house to her daughter Philinda Taylor, "to support me in sickness and health during my natural life clothing included." Perhaps Widow Keet's afterthought was that Philinda might not clothe her if she did not stipulate it. Lucinda Smith willed most of her $580 estate to her grandson Franklin Denison Bliss and his wife Lydia, while reserving for herself, been the situation for Susannah Bliss, Lydia Briggs 88, Nancy Brown 67, Jane Butler 30, Eliza and Sarah Chamberlin, Mary Ann Griswold 19, Mary Hubbard 78, Louisa Lindsey 50, Keziah Markham 77, Mary Pynchon 85 and Nancy Smith 70 (estimated ages when wills written). For that matter, this could have been the case for most if not all of the two-thirds of will-makers who lived in the household or next door to their beneficiaries. (See discussion of proximity of will-makers to preferred beneficiaries.)

Sereno and Lydia Bliss "the privilege of a home and support out of said estate" as long as they lived.87

A few men wrote wills as contracts for lifetime support, most of them favoring male heirs. Farmer Jesse Trask made a bequest to his son John "if s¹ John shall continue to take good and faithful care of myself during my life." In 1832 Benjamin Dyer deeded his son Alvan half of his homestead plus tools and livestock in exchange for "a good Decent and Comfortable and Honorable Support and maintenance in Sickness and in health During my Life . . ." Dyer lived a dozen years more, presumably with his "well-beloved granddaughter Roxanna D. Fuller," whom he had willed house rights, and Alvan, who had previously received the other half of the homestead, inherited a hundred acres worth $810 plus $368 personal estate for fulfilling his part of the bargain. Likewise, Josiah Curtis traded his $2080 in real estate to his son Ashbel in exchange for lifetime maintenance, a horse, and five dollars per year "pockett money during my natural life." William Chandler bequeathed all of his real and personal estate to his son Aaron on the condition that Aaron "support and maintain" him and his wife for life

with suitable meat, drink, nursing, doctoring, clothing, houseroom and firewood, and all other necessaries which I or my wife may want for our comfort and happiness . . .

87 HCP 5.22 (Arms 1844), 118.43 (Preston 1835); FCP 2663 (Keet 1858); BCP 8153 (Smith 1855). Arms assigned that real estate to be at Martha's "own disposal," a stipulation meaning that Martha could hold that property outside of coverture, thereby bypassing the control of a present or future husband.
Because Aaron, as the executor, also had to distribute $1550 in bequests to his siblings or their heirs, he could have ended up with nothing to show for his trouble.88

Sometimes a relative or friend was rewarded without a prior agreement. Attention paid off. Jane Backus left fifteen acres to her married sister "in consideration of her kindness to me." Hannah Knapp rewarded her daughter Eliza Ann Benjamin "for her kind care of me . . ." Susan Seymour, a "lunatic" who was "so furiously mad as to render it dangerous for her to remain at large," was committed to the state hospital at Worcester, but was sane enough to appreciate her daughter's emotional support. Widow Seymour gave her tiny estate to her daughter, Mary Ann Woodbridge, "in consideration of the kindness and attention she has shown." Spinster Julia Bridges left $55 to Naomi Wright to distribute as she saw fit, "intending it as a recompense, small though it be, for the manifest kindesses I have received from that dear family."89

Men as well as women reaped testatrices' generosity in return for their own. Margaret Hamilton gave most of her small estate to one son,

in consideration of [his] kindness, in supporting me heretofore in my old age, and expecting always during my stay here on earth, to live with him, and receive his care and attention, in consideration of the affection I bear him . . ."90

88 FCP 7572 (Trask 1850), 7175 (Dyer 1844); BCP 6546 (Curtis 1843); FCP 802 (Chandler 1841).

89 BCP 3309 (Backus 1815), 8369 (Knapp 1856); HCP 129.34 (Seymour 1846), 20.4 (Bridges 1840).

90 FCP 2135 (Hamilton 1846).
Since Hamilton's will was not probated for ten years, her son supported her for nearly a decade, and, because her estate was small, he received little recompense. But considering the qualities he showed toward his mother -- kindness, care and attention -- he probably was not doing it for the money. To women, kindness counted. It also paid off. Women with more money made similar provisions for male heirs. Electa Ballard rewarded her nephew, Zebina Stebbins, with the bulk of her estate. Stebbins had "kindly and generously invited me to make his house my home, for the residue of my life, and desired me to consider myself as a member of his family . . . as if I were his natural parent." The elderly widow's estate may have been large enough for her to live independently, but she clearly preferred the kind and generous Stebbins household.91

Some testatrices made bequests to repay debts incurred during terminal illness. Singlewoman Rebecca Wing bequeathed her sister Sally "reasonable compensation for nursing me during my present sickness." Sometimes the bequest was less compensation than recognition for a time-consuming, frustrating and exhausting job well done. Jerusha Burghardt favored her daughter Hannah Hurlbut as heir because Hannah had been her "faithful nurse by night and by day through a long and tedious illness . . . ." Some caregivers were not faithful and could not be counted on for compassion through the process of a slow death when the patient needed round-the-clock attendance by someone willing to carry out disagreeable personal services, but Hannah had served her mother well. Likewise, Miss Eliza Henshaw gave her sister Louisa double the amount she left her other siblings, because Louisa had "been much

91 FCP 246 (Ballard 1833).
with me during my sickness." Women’s appreciation for nursing care was usually directed at women caregivers. Women knew the nastiness of jobs such as washing soiled bedclothes, scrubbing bloody rags, mopping up vomit, emptying full chamberpots or dressing oozing lesions because those tasks were women’s work. Knowing how awful such work could be, they valued it accordingly when it was done for them.

Testators expressed appreciation for care much less frequently than did testatrices, possibly because men considered wives and daughters obligated to care for them. Yet even the traditional caregiver, a wife, was sometimes rewarded for her effort. In precarious health, farmer Thomas Cobb gave his wife an eighty-acre homestead worth $1300 as well as $543 in personal estate. Because it was traditionally uncommon for a farmer to leave his wife the whole farm outright, Cobb felt he had to justify his actions. He said,

This I do in consideration of the faithfulness and diligence ever exhibited in all her actions and the care and attention extended toward me in my declining state of health . . .93

Ideally, a good wife was faithful, diligent, caring, attentive -- and Rebecca Cobb evidently embodied all those virtues.

Men’s bequests to caregivers were gendered in yet another way. Though women were probably the actual providers of care, men usually rewarded a male head-of-household for the care they received. When physician Elijah Carpenter fell ill, he rewarded not a woman, but a son, Timothy, with an extra $100 "in

92 BCP 7096 (Wing 1847), 4044 (Burghardt 1822); HCP 70.44 (Henshaw 1823).
93 FCP 1063 (Cobb 1834).
consideration of extra service and attention in sickness, etc." In 1855 Timothy had interrupted his apprenticeship to Greenfield cabinetmaker Joel Lyons and returned to his father's household to farm. (His brother Edward Jenner Carpenter, on the other hand, remained at his business in Brattleboro, Vermont.) In this rare case a son was rewarded for female-gendered behavior -- nurturing, attentiveness, service, and help to the infirm, which included sticking close to home in time of need as well as making a career change.

Another type of gendered behavior appeared in the will of Lucius Sanderson. He left his small estate to Henry, the son next door who was already providing for him, perhaps by contractual agreement. But Sanderson worried that his small estate, a $600 two-acre homestead in Sunderland, was perhaps insufficient to defray the expense of my support including what my son Henry has already done for my comfort and support . . . . I do not feel that I can in justice to him (who has generously promised to provide for me, whether I have property sufficient to repay him or not) give anything [to my other children].

Sanderson, a member of a generation of men who often kept accounts on their children, appreciated Henry's generosity but feared that his son would catch him with more debits than credits. Though he was afraid he would come up short, Lucius Sanderson rewarded a dutiful son in an era when sons could not necessarily be counted on to do their duty.

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94 FCP 734 (Carpenter 1856); Timothy Carpenter: 1850 census, 1855 Massachusetts census; Edward Jenner Carpenter: American Antiquarian Society (hereafter AAS) catalog.

95 FCP 4063 (Sanderson 1854), 1850 census.
Sanderson was lucky to have a son to help him. When nursing care was needed, a single person was at a serious disadvantage. So when Samuel Caldwell, a bachelor farmer, got sick, he showed his appreciation for his sister-in-law’s help by bequeathing her a yearling heifer "for her particular attention in taking care of me in my sickness."96

Though spinsters in need of nursing care could be as disadvantaged as bachelors, single women were more likely than bachelors to have adopted children, especially daughters. Miss Abigail Walker’s adopted child Sarah Hatch had lived with her for years, and Walker validated Hatch’s help with a bequest. Her "kind and affectionate attention . . . at all times and especially in sickness" merited reward: $285 in real estate, which was the bulk of Miss Walker’s estate. Other spinsters lived with relatives. Singlewoman Polly Rankin divided several hundred dollars of her estate among her father, sister and two brothers, assigning the residue to her uncle "in consideration of what I am now indebted to him for services heretofore rendered for nursing attendance . . . while I yet live in his family."97

Sometimes the willmaker appreciated not just an individual but also a whole family. Guy Severance favored Enoch Moore’s family with a bequest of real estate, "in compensation for board, nursing etc. in sickness . . . and in consideration of his kindness and the kindness and attention of his family during my sickness . . ."98 A family’s care was what many willmakers needed. Single persons -- spinsters,

96 FCP 698 (Caldwell 1822).
97 BCP 4758 (Walker 1828); HCP 121.22 (Rankin 1823).
98 FCP 4201 (Severance 1843).
bachelors, widows and widowers -- made almost all of the bequests explicitly recognizing their own need for support. They appreciated the help precisely because they had no spouses to care for them. Because married couples seldom made such bequests, it is evident that couples soldiered on together as long as both lived, managing with occasional help from adult children, neighbors, grandchildren or other relatives. But if they lived long enough, elders male and female were often forced to seek residence in another household (or to turn their own homes over to others) because they needed daily assistance. Before nursing homes and convalescent hospitals were established, the family was the primary source of care in old age. These willmakers were fortunate: they had both family and property to support them. Massachusetts towns provided for the less-fortunate elderly and disabled by contracting out their maintenance, so those unfortunates often spent their final years in the households of strangers who viewed them solely as a source of income or expense.

Bequests to caregivers followed two distinctively gendered patterns. First, more women than men made bequests to caregivers, probably because women’s longer lifespans meant that married women were likely to outlive their husbands. Wives may have spent years being caregivers before they needed care themselves.

A second pattern involved the sex of both willmaker and beneficiary. Of the nine men who explicitly favored caregivers as heirs, eight (89 percent) rewarded males the most. Though woman may have rendered their actual care, men rewarded a male head-of-household’s economic support. The one man who favored his wife as beneficiary and another who gave a smaller bequest to a sister-in-law expressly recognized nursing care. Perhaps they made a reasonable distinction between
"normal" levels of care (such as room and board) and service above and beyond the call of duty (such as special diets, hand-feeding, changing linens, or doing extra laundry necessitated by invalidism). On the other hand, men may have simply taken women's work for granted, because the value of such work, done well, does not become apparent until it is done badly or not at all. Of fifteen women's bequests to caregivers, nine (sixty percent) favored female beneficiaries. Fourteen testatrices (93 percent) expressly mentioned either illness or kindness or both as the reason for their bequests, whether or not a prior agreement had been made. Though four women appreciated the attention of a male relative, and remunerated them accordingly, most testatrices who needed nursing services rewarded the women who provided it.

In short, for those who needed care, men usually favored male beneficiaries and women usually favored female beneficiaries. As Vivian Conger noted, "colonial America constructed same-sex social and economic responsibilities and same-sex rewards for living up to those responsibilities." In nineteenth-century western Massachusetts, most willmakers appear to have rewarded others for the types of support most closely associated with their own gender roles: men compensated men for economic support, while women repaid women caregivers, often explicitly for nurturing or nursing care. Furthermore, this sample of caregiver-rewarding testators should be viewed as more significant than their small numbers might indicate because they represent others who rewarded their caregivers without explanation.

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99 Conger 324.
Proximity Counted

Only the few previously-noted willmakers documented the individuals who were their caregivers "in sickness and in health," a term echoing the Christian marital vows of reciprocal duty. Yet many aged parents expected their children and sometimes their grandchildren to provide lifetime care. When Ebenezer Snell wrote his will, he left half of his farm to his daughter Sally Bryant and half to her son, Austin. Snell did not thank Sally for providing care for him, yet in 1801 her husband had added an office to the Snell home, and her diary reveals that she was with her parents daily; she was there when her mother died in March 1813, and in August, she was the one who found her father dead in his bed.  

Parents such as Ebenezer Snell rewarded the dutiful adult child, a dutiful family, or one of the most dutiful offspring. A partial measure of this phenomenon lies in the frequency with which willmakers made bequests to the family members they lived with before they died. Aside from the caregiver sample, about two-thirds of western Massachusetts willmakers lived close to or with their beneficiaries.  

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100 HCP 138.10 (Snell 1813); Letters of William Cullen Bryant v. 1, William Cullen Bryant II and Thomas G. Voss, eds., 10; Sarah Snell Bryant diary, 1813 (Old Sturbridge Village Research Library microfilm of Harvard original).

101 From county-wide samples, it was possible to locate 50 men and 54 women and their primary heirs in the (mercifully-indexed) 1850 census or local histories. In a few additional cases, the heir may have been nearby, but if the name was a common one, I chose to omit it from the sample. Thus this sample is biased in favor of those with unusual names. In addition, because my Berkshire County samples were larger than Hampshire or Franklin, the Berkshire County men and women "carry more weight" here. Yet the results were so nearly the same in all three counties that the differing sample size is irrelevant. Even so, there were some anomalies: the Berkshire County sample, for instance, included many more men whose primary male heirs were minors when the men wrote their will. In most cases, those minors were at or near adulthood by the time of probate.
31 (62 percent) lived with or near the heirs who were their primary beneficiaries. Of 54 testatrices, 35 (65 percent) shared that degree of proximity. So when widow Mary Hubbard left most of her estate to her granddaughter Pamelia Bosworth, who lived with her, in consideration of Pamelia’s wrapping up the business of paying debts and erecting a monument to her memory, Hubbard was following a standard practice.\textsuperscript{102}

Willmakers tended to favor those who were nearby, if not in the same household, then either in the same town or one nearby. Berkshire County probate records contain the location of every heir. In no case was a major bequest made to an heir "of parts unknown." Though James Henretta believed that testators tried to preserve the stem family in order to preserve the continuity of the family farm, he focused on the era up to the industrialization of the 1830s. I concur that marked change appeared at that time, and that before 1830, men’s testamentary practices followed traditional patterns of bequeathing land to sons and indoor movables to daughters, which could be construed as attempts to preserve assets for the lineal family.\textsuperscript{103} But after about 1828 in western Massachusetts, those traditional types of bequests were declining except among the most wealthy or most conservative men, whose success encouraged them to stick to the status quo. The wealthy could afford the luxury of dividing their assets equally among their children, or leaving whole farms to their sons, and leaving property in trust to support their wives.

Less prosperous testators did not enjoy those options. By 1850 more bequests may have been made out of self-preservation to ensure lifetime support for the

\textsuperscript{102} BCP 8807 (Hubbard 1853?).

conjugal couple -- particularly those with small subsistence farms and precarious means. As the younger generation moved out, parents may have been less concerned about their land than about who would care for them in old age when they could no longer draw water, chop firewood or milk a cow. Reciprocity was an increasingly difficult thing to achieve when so many offspring were too far away to render the services elderly parents needed.
CHAPTER 2

BEQUESTS FOR A BENEFICIARY’S LIFETIME

Testamentary Provisions for Lifetime Estates

Bequests varied. Most were outright transfers of property from testator to beneficiary with no strings attached. Some willmakers, however, employed the alternative of the lifetime estate, which meant that the first heir would have the use of property until death, when that property would be handed over to another heir. The life estate showed that the testator or testatrix recognized his or her responsibility to the lifetime beneficiary but wanted that property ultimately to pass into other hands. Most life estates provided for a succession of bequests, often to a surviving spouse or child, then to another heir. Their provisions, however, varied widely in style and intent and thus in the freedom they allowed the beneficiary. The most common type of lifetime estate gave the beneficiary access to all or part of the estate throughout life without the right to sell or otherwise dispose of the property. Such restrictions, however, did not necessarily keep the property from being reduced in size, particularly if it was a cash bequest. Though the theory may have been to preserve and pass it intact to the next heir, economic reality sometimes intervened to reduce the lifetime estate.

Western Massachusetts willmakers used a variety of testamentary devices to restrict bequests. According to legal scholars, these devices existed less to control a
beneficiary than to conserve the estate left in trust. In this context, conserving the estate does not necessarily mean preserving it intact. It may mean preventing waste or loss by regulating the distribution of assets to make the estate last longer, or to prevent a spendthrift heir from frittering it away. Trusts (to be addressed in detail later) and guardianships put property under the control of a trustee who extended disbursement of assets over a number of years. Conditional bequests had strings attached. A "precedent condition" limited the acquisition of the bequest. In other words, the testator stipulated that certain conditions had to be met before the beneficiary could receive the bequest, as when Sarah Kilburn stipulated that her son could not invade his legacy until he became both temperate and prudent in business. A "subsequent condition" limited the beneficiary's retention of the bequest. For example, if the testator bequeathed a life estate that ended at remarriage, and the beneficiary remarried, then that life estate ended and the property was distributed to the ultimate heir or heirs. Married white men commonly included this marriage penalty in early nineteenth-century wills. Amariah Ballou made the most common stipulation; his wife Mary was to have life use of his real estate as long as she remained his widow. Other men varied that standard. Orrin Bills, for instance, left his wife Sally $10,000 in notes, stocks and bonds, but added that if she remarried, $5000 of that was to go to the church. Married black men less commonly used the remarriage penalty. Of the ten African-American testators located from 1800

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104 BCP 6342 (Kilburn 1842); Sussman et. al. 193-195.
to 1861, only Agrippa Hull and Hackaliah Jones decreed that their wives would lose their bequests at remarriage.  

Other restrictive devices include contingency provisions, which established a priority of beneficiaries: first this heir, then the next one, and then to the ultimate heir. Some wills listed multigenerational chains of beneficiaries. Conditional bequests may be interpreted as an effort to control the heir from beyond the grave. But besides protecting assets until they passed into the hands of the ultimate heir, such provisions could also be interpreted as attempts to spread the benefits of property over as many loved ones as possible, sometimes while protecting heirs from their own excesses.

Such bequests in western Massachusetts imposed the will-writer’s view of distributive justice on beneficiaries. But before delving into the motives of nineteenth-century men and women, I would add what legal scholars sometimes overlook: the probability that each of those devices of control operated in some way to protect the beneficiary, or in some cases, a chain of beneficiaries, as well as the assets which provided that protection. In other words, the ultimate goal was to promote family members’ economic survival, not just to preserve an estate.

Both men and women bequeathed life use of part or all of an estate, and their bequests showed distinct gender patterns. In western Massachusetts between 1800 and 1860, men often willed lifetime estates to wives and/or unmarried daughters;

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105 Sussman et al. 193-195; BCP 6058 (Ballou 1839), 8127 (Bills 1854), 7171 (Hull 1848), 9252 (Jones 1862).

106 Sussman et al. 193-195.
women gave life use of property to a wider circle of family members and fictive kin. In the early decades of this study, when men had enough property, they usually left life use of a dower third to their wives. A man with less property or more confidence in his wife's abilities left her half or more of his property for life. If she remarried, in most cases she lost her rights to her dower share or her life estate and it passed to the ultimate heirs, usually their children or grandchildren. Thus a man's property passed only to his own lineage, not to a subsequent husband or that man's children.

From 1800 to 1860, the dower third or life use was gradually supplanted by outright bequests. The decline of dower could be explained in several ways: public recognition of the fact that widows were unlikely to remarry, men's increasing confidence in women's ability to manage property, recognition of wives' roles in accruing property, women's active stewardship in husbanding property effectively -- or any combination of these. The decline of dower could also reflect propertied men's changing views of marriage; some men may have recognized wives as equal partners in the business of running a family, or what might be termed companionate marriage. Finally, widows' dower in real estate hindered land sales. To better see the significance of what supplanted dower, it is necessary to understand how dower worked.

Dower Law

In Massachusetts, most widows' property was governed by dower. Dower may have been "a recognition of [a wife's] role in contributing to his prosperity, whether by the property she had brought to the marriage or by the labor she
performed in his household, but it was also intended to keep the widow from becoming a public charge. Massachusetts dower rights severely restricted widows' independence as property owners in the early nineteenth century. Most widows had only a life interest -- not outright ownership -- in one-third of their husbands' estates, and after the widow died her interest was parceled out as her late husband had instructed in his will or as the court ordered in cases of intestacy. (If the husband's estate were too small for a third to adequately support the widow for life, probate court would allow her a larger portion or even the whole estate.) Most widows therefore acted as stewards for the estate, which was intended to support them for life, but which they were not allowed to sell, damage, or otherwise diminish.

Accordingly, few dowered widows left wills: their husbands' wills served as the means for bequeathing property, and a woman could claim as her own only her clothing and personal belongings (and sometimes precious little of that, judging from some husbands' property inventories). Most early women's probate did not distribute real estate, which was usually men's; women's property commonly included wearing apparel, household furnishings and occasionally livestock. This is the baseline against which later changes in women's property ownership can be seen.

In the late eighteenth century many western Massachusetts women's wills resembled widow Mary Dillingham's, with personal property, not real estate, to pass on to her children. She bequeathed a bed and her best gown to her daughter Patience; a sidesaddle, bed with bedding and the rest of her wearing apparel to her daughter Dorothy Eddy; a bed and half the remaining bedding to her son Richard

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Wilbur; and the feathers for a bed and the other half of the bedding to her son Samuel Wilbur. Richard received her supply of corn, grain, and meat along with instructions to pay the funeral charges and the costs of her sickness. Even without the reference to Dillingham's illness, we could infer from her property that she lived in someone else's home, probably Richard's, as a dependent. She had no furniture except for beds, no kitchenware or tools, no livestock on the hoof at a time when most widows owned a milk cow. When a woman owned only her wearing apparel, beds, grain and meat, someone else must have provided her other furniture, firewood, the rest of the food she ate, and cash to cover incidental expenses. Dillingham may have had a dower share in land, but may have turned it over to Richard in exchange for other necessities.

Though wealthy eighteenth-century widows sometimes owned real estate outright, they more often enjoyed a dower share in their husbands' lands. The prosperous widow usually had more personal property than Dillingham. When "Gentlewoman" Anner Dewey wrote her will in 1798, she had outright ownership of no real estate, but her personal property was extensive. The $789 inventory covered two closely-written legal-sized pages and shows that she had rented out some of her dower lands for a share of the crop, suggesting that she was an astute businesswoman who took a chance on a sharecropper to keep her land working for her. Her livestock plus eleven milk pans indicate that she made dairy products, probably beyond what her immediate household could use, so she may have operated in the growing market

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108 BCP 1716 (Dillingham 1795). The earliest woman's will I found was by Dorothy Russell of Hadley, written 1681 (HCP 125.41). She owned 24 acres of land, which she left to her son Samuel Smith.
economy. The yoke of oxen indicates that she may have been farming some of her
dower lands in addition to renting out land on shares, or perhaps the oxen were
loaned to her sharecropper. Her 93 bushels of grain, 60 bushels of Indian corn, and
50 bushels of potatoes in her barn show that her land was productive. Two bushels
of flax seed and 72 pounds of flax are evidence that some of the linens in her
inventory were made within her own household. Anner Dewey was a widow of
means, but she was also a busy farmwife who actively managed the farm business left
under her stewardship. Dower did not necessarily imply inactivity or dependence on
the part of the widow who received it.

Though dower restricted women’s property ownership, it was designed to
protect a woman in widowhood by providing her with enough assets for self-support.
In theory, a man could not leave his wife an interest in less than a third of his
property. If he did, his widow could petition the court for her full third or enough to
sustain her, and the court usually acquiesced. Without court-awarded dower, some
women could have been left destitute and dependent on community charity. Lucy
Remington’s situation began just that way. Her husband Caleb, 33, a clerk with 18
acres worth $540 and $55 in personal property, lived only three weeks after he made
a will leaving his pregnant wife nothing. Caleb bequeathed his entire estate to their
unborn child. Lucy petitioned the court for relief and the court assigned her dower.
Without dower, Lucy would have been entirely dependent on her occupation in

\[109\] BCP 1922 (Dewey 1798).
manufacturing -- a precarious living for a pregnant widow. With dower and a job, she supported herself well enough to become a taxpayer.\footnote{BCP 2634 (Remington 1809).}

If a third of the real estate would not support a widow, she could make "just complaint" to the court and receive a larger portion.\footnote{Ditz 244; George L. Haskins, *Law and Authority in Early Massachusetts* (1960), 181-182; Marylynn Salmon, *Women and the Law of Property in Early America* (1986), 143-144; Andrew Keyssar, "Widowhood in Eighteenth-Century Massachusetts: A Problem in the History of the Family," *Perspectives in American History* (1974), 102.} If an intestate's estate was exceptionally small, the court might award a larger share without the widow having to petition, as was the case for Orilla Stanley. When her husband died intestate in 1835, he left no real estate and only $228 in personal estate. Probate records note that the widow was "entitled to her wearing apparel according to the degree and estate of her said husband; and such further necessaries as [the judge should] see fit to order having regard to the family under her care." Judge William Walker allowed her to choose from the estate property to the amount of $189.16.\footnote{BCP 5669 (Stanley 1835).}

A widow could not be deprived of her right to a third of her husband's estate by any act of her husband without her consent. If a husband wanted to sell real estate, his wife had to sign a quitclaim before the court to relinquish her dower rights in the property being sold. If she refused to sign, a purchaser would be unlikely to buy, knowing the property would come with the encumbrance of dower.

A widow labored under the legacy of coverture even after the death of her husband, because by law she could not risk the property he had accumulated. She could use it, spend the profits that accrued from it, or even use the profits to
accumulate additional property (which she could will, sell or waste) but she could not sell dower lands. Astute widows used the income from dower lands to purchase additional real estate in their own names. As Alexander Keyssar points out, "The widow's thirds in real property were a kind of trust fund, designed to give her support while protecting the estate and the line of succession." Also, real estate dower as well as the personal estate that was "necessary for the upholding of life" was protected from the claims of creditors: if the husband died insolvent, the widow still received life use of her third, in theory at least, and after her death, it would be distributed among her husband's creditors.\(^\text{113}\)

Sometimes the theory did not hold up in practice. Andrew Drean was the son of one of the early African American settlers of southern Berkshire County, London Drean, a former slave who had secured his freedom by serving in the Revolution. London Drean had a small freehold in Sheffield, and had passed it on to his sons, encumbered by widow's dower. When Andrew Drean died intestate and in debt, his widow requested dower. But the land was already encumbered by the dower share of Sarah Drean, London's widow. To further complicate matters, Eliza had been married to Andrew for only three years, which probably attenuated her claim to Drean's property. Even though she had brought substantial personal property to their marriage, she had not protected her assets with a prenuptial agreement. Though she was represented by her employer, attorney H.W. Dwight, Eliza's pleas went unheeded. Judge William Walker allowed her only "wearing apparel according to the degree and estate" of her husband, plus her choice of $50 worth of personal property.

(His real estate alone was worth $525.) The rest of the estate was liquidated to pay Drean’s debts. Even the court-appointed administrator received more of the estate than Eliza got.\

Though dower law did not work for Eliza Drean, it did work for other women with children or longer marriages. Without dower, many widows and orphans would have been left destitute. (Women who owned property outright will be addressed in greater detail in the second part of this study.)

**Men’s Bequests of Lifetime Estates: More than Dower**

In the early nineteenth century, the dower third was common practice among men whose estates were so substantial that a third of the estate’s productive value was adequate to support a widow. When Daniel Palmeter left his wife Judith life use of a third of his estate which included a hundred-acre Sheffield farm, he could be reasonably sure that his bequest would provide her with a comfortable maintenance. Gad Cook was similarly situated when he left his wife a dower third of $2442 worth of real estate, plus a cow and all the household furniture. Many testators bequeathed a cow or two to their wives; a dairywoman contributed to her own support by making butter and cheese and selling calves. According to longstanding tradition, most men left their real estate to sons while daughters received cash bequests, cows, and the right to a share in the household furniture at the widow’s demise. Rev. Jesse Ives, Zebediah Chapman, Aaron Bagg, Elienai Robbins, Amariah Wood, Humphrey

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114 Sheffield Tax List, 1811, Sheffield Family History Center; BCP 6627 (Drean 1843).
Taylor, Elijah Arms, Adoniram Bartlett, and dozens of other men, most of them farmers, followed this pattern before 1830 in western Massachusetts.\textsuperscript{115}

Poorer men often rejected the "widow's thirds." Men with little property generally allowed their wives life use of the entire estate, as did yeoman Obadiah Janes when he wrote his will in 1816 to distribute his $413 in real estate. Edmund Sylvester did the same with his 75 acres valued at $400, but when his estate was probated, it was insolvent.\textsuperscript{116} In such cases, even if only a dower share had been bequeathed, the probate judge usually allowed the widow life use of the entire estate. But sometimes so little property remained that without intervention from kind friends or relatives, the widow must have joined the ranks of poor widows whose near-destitution was lamented throughout nineteenth-century New England.

Fewer men continued the practice of dower after 1830. Undoubtedly many saw its limitations. Aretas Scott provided his wife with a dower third, which by 1848 had become a minimal level of support for most widows, but was probably more than adequate for Scott's wife due to the value of his $7000 Hatfield acreage and homestead. When Phinehas Norton wrote his will in 1836, he owned enough land for a dower third to support a widow. But when his estate was actually probated in 1844, the dower third he had willed his wife could not have been adequate because he owned only $25 worth of real estate.\textsuperscript{117}

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\begin{itemize}
\item BCP 2460 (Palmeter 1806); HCP 37.29 (Cook 1828); 77.46 (Ives 1806); BCP 2331 (Chapman 1804); 2441 (Bagg 1806); 2510 (Robbins 1807); 2442 (Wood 1806); FCP 145.24 (Taylor 1804); 5.18 (Arms 1803); 10.41 (Bartlett 1805).
\item HCP 78.19 (Janes 1817); FCP 144.64 (Sylvester 1802).
\item HCP 244.8 (Scott 1849); BCP 6666 (Norton 1844).
\end{itemize}
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Though the dower third persisted among a minority of men, by the 1840s most who willed lifetime estates to their wives had increased their portions to half or more commonly *all* of the estate remaining at probate. (Many men favored the outright bequest rather than life use, but that subject will be addressed in the second part of this study.) When Platt Whitney wrote his will in 1840, he gave his wife all the personal property outright, and life use of all the real estate. Job Childs did the same with his 1846 will, as did farmers Miner Owen, David Clark, Malachi Jenkins, and carpenter Alpheus Demond in the 1850s. Perhaps the change in testamentary custom reflected a change in men’s attitude as they recognized the value of women’s contributions in accruing and "husbanding" property. Such husbands may have viewed their wives as equal partners in the marriage enterprise -- well before the law changed to provide property rights for married women. In addition, those men probably wanted to give their wives more room to maneuver in an uncertain economy.

**Men’s Bequests of Lifetime Support**

Lifetime support was a variation on the life estate but left little or no property at all in the hands of the beneficiary and set aside no assets in trust. This type of bequest presupposed a high level of dependency because food, housing and clothing were to be provided by a third party. Most provisions for lifetime support were made

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118 BCP 6462 (Whitney 1842); 7325 (Childs 1849); 7499 (Owen 1850); 7796 (Clark 1852); HCP 78.32 (Jenkins 1851); FCP 191.30 (Demond 1859).
by men for women's benefit, and though this practice was not common after 1800, a few men persisted in using it to the 1850s.

Aretas Scott divided most of his estate among three sons on the condition that they support Martha Guild, a woman of unspecified relationship who resided with Scott. Martha Guild was probably the widow of Revolutionary pensioner Joseph Guild. They had no children, but Scott had cared for Joseph Guild in his declining years, and had received Guild's property in return. Scott did not detail the support he expected his sons to provide Martha Guild, yet his bequests to them were clearly contingent upon their taking care of her. Many men failed to list specific instructions to guide their sons. Those testators evidently assumed that their heirs would know what was expected. For instance, William Carter left most of his property to three sons and simply told them to maintain their mother. James Cook asked his primary heir, son-in-law David Bartlett, "to make adequate and secure provision for the maintenance of my wife during her life." John Bement of Ashfield left $300 worth of land (half of his estate) to his five sons for the support of their sister Sarah, with the stipulation that the land would be equally divided among the sons at Sarah's death. And Elijah Arms left his widow Naomi life use of a third of his real estate, a bequest terminated if she remarried, then further stipulated that "if in

\[\text{\textsuperscript{119}}\text{HCP 244.8 (Scott 1849); "Reminiscences of Samuel D. Partridge," in Daniel W. Wells and Reuben F. Wells, History of Hatfield, Massachusetts, 1660-1910 (1910), 289-290. What is unusual about this bequest is that Guild's relationship to Scott is unspecified. Beneficiaries' relationship to the testator was generally made explicit.}\]
any future day her situation or circumstances require it . . . the said Naomi shall have an honorable support out of my estate."^120

A few men stipulated support without specifying house rights (which will be addressed momentarily). Buckland husbandman Gershom Colman clearly intended for his wife to contribute to her own support after his demise. His will ordered his other heirs to provide her with one good milk cow, one saddle horse, eight good sheep to be kept winter and summer, two hundred pounds of good pork and fifty pounds of beef yearly, 35 pounds of good flax, the use of the house and firewood at the door as long as she was his widow. At the other end of the economic scale was Christopher Wright of Northampton, who ran the Hampshire County jail. He left substantial legacies to his daughters and wife Vesta, while the bulk of the nearly $15,000 estate went to his son James, who was to provide "board, rooms, fuel, clothing, nursing and medical attendance" to Vesta.^121

All these bequests were fathers' straightforward instructions to sons to take care of dependent women, or women who might later become dependent. Most stipulations involved their physical care. Though many testators apparently believed that their primary heirs would understand the type or degree of support required, occasionally the testator added a detail conducive to the happiness, comfort or convenience of the dependent, as when cordwainer Kendall Bancroft stipulated that his widow was to have a horse for her own use, or Phinehas Norton left his wife "one

^120 BCP 5661 (Carter 1835); HCP 37.33 (Cook 1841); FCP 13.36 (Bement 1810), 5.18 (Arms 1803).

^121 FCP 1085 (Colman 1822); HCP 266.51 (Wright 1856), 1850 census.
good steady horse worth $40. Occasionally, however, a testator added a condition -- or perhaps an admonition -- to a bequest of lifetime support.

Men's Supplications for Tenderness, Care, Peace and Harmony

Though men were less likely than women to use expressions of love in their wills, they were more likely to express protective sentiments. That protectiveness was usually directed toward a widow or daughter sharing the family home with other beneficiaries. Jonathan Babbitt asked that his widow, Betsey, be allowed to live with his primary heirs Susan and Polly, "free and unmolested by any of my children." Free and unmolested: surely these words allude to the problems that could accompany a bequest of lifetime support. Because Babbitt knew his children in 1843 better than we can today, we must assume that he -- and his family -- knew exactly what he meant by "free and unmolested." And though his bequests lack the authority to prevent harassment by other family members, he foresaw a time when Betsey, Susan or Polly would be pestered by Betsey Abercrombie, who inherited the other half of the farm, or one or more of their other six siblings. Babbitt's bequest thus alludes to the darker side of a lifetime estate. Even when lifetime support provided material security, it exposed the beneficiary to lifelong contention.

David Aldrich hoped that while his widow lived with two of their daughters, his other children would "not grieve their Mother." Probably they already had

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122 FCP 8.38 (Bancroft 1806); BCP 6666 (Norton 1844).
123 HCP 7.4 (Babbitt 1843).
grieved their mother; he would not otherwise have thought to include that admonition. He added that he hoped all might "live in love and unity."\(^{124}\) By invoking those terms, he showed his fear that offspring’s hateful divisiveness might plague his widow. Like Babbitt, he would not have said such a thing unless he had cause for concern.

Some versions of lifetime support, surely less simple in practice than on paper, involved interlocking stipulations binding family members into relationships they may not have appreciated. Yeoman Samuel Babbitt trusted his preferred heirs, sons Harry and Hiram, to support their mother unless she asked for dower, in which case they were not bound to support her. Babbitt also willed his single daughters Mary and Celia "a peaceable home in my now dwelling house at all times" as long as they remained unmarried, but stipulated that they had to provide their own support and firewood. His daughters must have had either another source of income or the ability to grow their own food and cut, haul and split wood. Because Harry and Hiram received Babbitt’s real estate undivided, their father had narrowly defined the parameters of the household, even to ordering peace "at all times" for his daughters while he barred his wife from the benefits of dower. Harry and Hiram were stuck, not only with each other, but also with a mixed assemblage of women, some of whom had to fend for themselves, even though they lived under the same roof.\(^{125}\) Clearly a bequest of lifetime support rested on a shaky foundation of favored heirs’ goodwill, health and longevity.

\(^{124}\) BCP 5645 (Aldrich 1835).

\(^{125}\) HCP 7.5 (Babbitt 1824).
In another case of lifetime support, Levi Bates enjoined his son Philander to care for his widow Lavina, who had life use of half of the real estate plus two cows, and who received all the household furniture outright. Bates asked his son "to treat her with all tenderness and care and see that she has every comfort that age and infirmities may demand." Because the real estate went to Philander, it is safe to assume that Lavina and Philander would share the house and barn as long as she lived. Levi was more emotionally explicit than most testators male or female: his widow was to have tenderness, care, and comfort, if Bates' instructions carried any weight with his son. Probably Levi suspected that Philander needed a nudge in that direction.\(^\text{126}\)

When Levi Barton left real estate to his sons and house rights to his widow and an unmarried daughter, he pleaded that he was "intensely desirous that [they] may always live in peace and harmony." With a $4000 estate and houseroom to squabble over, the family surely had fodder for contention. But perhaps the Bartons were already argumentative. If they had enjoyed peace and harmony, Barton would not have felt compelled to advocate it. Another father, William Williams, was evidently confident that his children would do right by their mother in terms of house rights and lifetime support, but nevertheless reminded them of his expectations:

The known filial feelings of my children towards their mother and the great obligations they are under to her will render any special injunctions on them to make her future life comfortable and easy quite needless.\(^\text{127}\)

\(^{126}\) HCP 12.18 (Bates 1854).

\(^{127}\) HCP 172.8 (Barton 1859); BCP 2569 (Williams 1808).
Such language was significant. Concerns about free, unmolested, peaceable, comfortable households and tender treatment show that these testators suspected that their surviving loved ones might fall into discord. Out of love, affection, and obligation -- and with a dollop of worry -- those men tried to continue their protection from beyond the grave. Lifetime support was open to abuse, and they knew it. But only a handful of men included such provisions -- perhaps the few who felt free to express their feelings before the third party who actually recorded the will.

House Rights and Mandated Parameters

The most restrictive of lifetime support bequests was life use of part of a household. Unlike most women bequeathing life estates, male testators specialized in setting parameters. The most obvious problem with this type of bequest was that its efficacy depended entirely on the goodwill of a third party -- the owner of the house. House rights were a certain source of dissention in some families.

The most simple and common of these restrictive bequests provided for cohabitation and the use of assigned space. Benjamin Baker willed house rights to both his widow and his son-in-law as long as they agreed to live together, conditional upon his son-in-law improving the farm. Had the son-in-law opted out of the arrangement, the widow would have had full use, profit and benefit of the 72 acres along with the responsibility of taking care of it. Baker assigned space to neither, but other testators narrowed the parameters.¹²⁸

¹²⁸ FCP 209 (Baker 1829).
Amos Allen, in addition to leaving his wife a dower share, left his daughter, Miranda, the use of the "blue room," the loom and loom shop, and if she requested it, the use of one cow, six pounds of wool and twenty pounds of flax. Most of his estate went to his son Warren, who was to provide these things to Miranda as long as she remained unmarried. But unless Warren was especially attentive to her needs, Miranda was placed in the position of having to ask for what she wanted, which reduced her to a low position in the household hierarchy, perhaps to a dependent supplicant.

Free and full access was better. Liberty Bowker allocated his wife Kata house and garden rights plus fifteen dollars annually from his $4300 estate. (Presumably she was also allowed to sit in one of his "slips" in Savoy's Baptist meetinghouse.) Yeoman John Avery left most of his small estate to his son and executor William, who was expected to provide lifetime support to the widow, Beulah, in lieu of dower. Beulah and her single daughter Polly Avery were allocated the southeast room on the lower floor of the house. Avery added, "I give her the privilege of storing in my cellar any articles of provision she may need for her own use." Unmarried daughters were often the beneficiaries of house rights. Husbandman Benjamin Kilton left his single daughter Mary $100 plus houseroom, outside privileges, and "wood sufficient drawed and chopped at the door and to have one Cow kept for her so long as she shall remain unmarried." These women were clearly expected to earn

129 FCP 51 (Allen 1842); BCP 6935 (Bowker 1846); FCP 182 (Avery 1840).

130 FCP 2736 (Kilton 1840).
their own keep through weaving, growing vegetables and making dairy products, and their rights and privileges followed even though they were ostensibly dependent.

Other testators left even more instructions. Peleg Babcock detailed a complicated arrangement. To his widow, Phebe, he assigned lifetime use of the southeast room in the house, plus

- privilege in the kitchen, chamber, cellar, buttery, and all the out buildings, except the barns and corn barn, and a privilege of using the well, and the use of one-third of the garden, and to have firewood as much as is necessary, and to have two barrels of cider, and a privilege in the orchard for her use yearly and six bushels of rye and corn yearly, and one hundred pounds of good pork and fifty pounds of good beef yearly; and all the property she brought to our marriage. . ..131

Some of these provisions bound adult children to provide labor for their mothers. In Babcock’s case, firewood had to be cut, drawn and chopped; apples had to be gathered and pressed; grain had to be planted, harvested and threshed; and livestock had to be butchered. But in most cases, it was not a youth who rendered that labor; many adult children were in their forties or fifties by the time they were called upon to support a widowed mother who oftentimes lived under the same roof.

But this widow did not require custodial care, just space and supplies. What Babcock seems to have allocated his wife was the means for her to support herself in the family home owned and presumably occupied by one or more of their adult children. Offspring were not expected to support her entirely; she was expected to use the kitchen, cellar, buttery, well, garden, and orchard -- all facilities within the

131 FCP 195 (Babcock 1835).
domain of a farmwife -- to feed herself, assisted by contributions of cider, grain and
meat, usually the purview of males on the farm.\(^\text{132}\)

When Comfort Bates made similarly itemized provisions for his widow in
1812, he added that she was also to have $75 per year and the use of the front pew in
the meetinghouse, thereby providing her a cash income not bequeathed to most
widows, plus the status of the front pew. Two unmarried daughters received $200
each plus pew rights and houseroom.\(^\text{133}\) Bates was not the only testator concerned
about status. When the prosperous Samuel Merriman made out his will, he provided
for his wife to have, in addition to a dower share of the real estate, continued access
to farm assets that would ensure her self-support, including

seventeen trees standing on a small hill southwest of the barn . . . two
good cows and six good sheep . . . the use of a horse . . . [and] meats,
bread and liquors suitable for a person of her rank and condition.\(^\text{134}\)

Once again, a testator required labor of other heirs: ownership of a horse the widow
would have the right to use, pasturage for the livestock, and provisions, which meant
that other survivors were bound to render those benefits. In addition, "Gentleman"
Merriman wanted to maintain his wife's "rank and condition;" he intended for her to
be supported in the manner to which she was accustomed. There was to be no loss in

\(^\text{132}\) On the gendering of farm space: the term "kitchen garden" speaks for itself. On
men's outdoor space, see Harriet Beecher Stowe, "The Lady Who Does Her Own Work," in
_The Oven Birds: American Women on Womanhood, 1820-1920_, Gail Parker, ed. (1972), 188.
On the buttery or dairy as women's space, see: Stowe, op. cit.; "Women Milking," _New
Genesee Farmer_ 1.5 (May 1840), 77; "For Farmers' Wives and Daughters," _New Genesee
Farmer_ 1.10 (October 1840), 151; and Sally McMurry, _Transforming Rural Life: Dairying
Families and Agricultural Change, 1820-1885_ (1995), 95, and _Families and Farmhouses in

\(^\text{133}\) BCP 3015 (Bates 1813).

\(^\text{134}\) HCP 97.29 (Merriman 1804).
class status for the widow of a gentleman; his responsibility for maintaining her extended beyond his own death. In the nineteenth century, the "poor widow" was both a cultural icon and an appalling reality because some widows were not supported adequately. A gentleman of character would not want it said, even posthumously, that he had not fulfilled his responsibility. The trees, cows and sheep indicate that she was expected to contribute to her own upkeep, yet her economic support was the duty of a husband, and in his absence, their children.

Though these bequests involve more-than-average minutiae, some men actually specified which doors their widows could use, or what path they were to follow to the well. The only possible reason for such attention to detail was that each of these testators had a valid reason for concern about his widow’s or daughter’s access. Perhaps offspring or their spouses had been known to bar widows from needed space, or to withhold provisions. By making specific bequests, men sought to shelter their wives and daughters from abuse or neglect. Carol Karlsen characterizes these stipulations as "protection clauses" -- a fair assessment of their intent.

Protection clauses were not unusual in early nineteenth-century western Massachusetts. Many men evidently distrusted dower by the 1820s. A life estate without protection clauses had somehow become inadequate. But probate court might be called upon to ensure that a widow would receive the support due. Testators

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136 Karlsen 209-211. Demos found similar clauses in early Plymouth colony wills.
evidently had faith in the court’s ability to carry out their will despite the postmortem barriers family members might create. So men made provisions they believed were in some way superior to dower because those stipulations gave women more specific rights, more property, more control over the property, less responsibility for the property, or more freedom from other heirs’ meddling while still providing lifetime maintenance. Unfortunately, like many other testators, Avery, Babcock and Bates did not understand that after death, houseroom would no longer be theirs to allocate, nor provisions theirs to command. Words on paper, lacking effective penalties against noncompliance without resorting to lengthy and tedious legal action, might have had little force after the testator’s death.

By replacing dower with lifetime maintenance, the testator could circumvent dower entirely by detailing specific rights that a widow or unmarried daughter might need while relieving them of full responsibility for the property. The increasing preponderance of unmarried daughters meant that they, though ineligible for dower, might need lifetime support from a near relative in lieu of a husband. Because dower impeded land sales as long as the widow lived (unless she waived her dower rights), that impediment prevented land transfers deemed desirable by other heirs. To elaborate: dower tied a widow to particular property, usually real estate, which could not be sold or distributed until after the widow’s death. Dower therefore impeded outmigration by sons who might have been the ultimate recipients of dower lands. A propertied father who wanted to tie his sons to the land could have used dower or a widow’s lifetime estate to do so. On the other hand, a father who wanted to maximize his heirs’ options would have circumvented dower by making a different type of bequest.
Lifetime support, for instance, was mobile and could be transferred to another location if adult children wanted to relocate, though it carried risks of noncompliance and may have created additional tension between heads-of-households and aging dependents. Thus fathers’ declining use of dower could be attributed in part to their recognition of their sons’ increasing outmigration in the nineteenth century.

Lifetime support was gendered in two ways. First, most lifetime support provisions were made by men for the maintenance of female dependents.\(^{137}\) (Though I will address wives’ bequests of lifetime estates to their husbands, testatrices with living husbands were a small minority.) Second, women who wrote wills were much less likely than men to make lifetime support provisions for the care of their dependent relatives. Women often willed lifetime estates but rarely stipulated lifetime support or life use of limited house space. Perhaps propertied women were more understanding than men of the disadvantages of human territoriality, or less confident than men of their authority from beyond the grave; or perhaps women in their exchanges with other women (some undoubtedly chafed by the provisions for their lifetime support) knew more than men did of the inadequacy of that system of maintaining dependents. As a form of social welfare or social security, it was open to abuse. A good milk cow could have fallen through the holes in that safety net.

\(^{137}\) Mary Beth Norton reports that Massachusetts Bay Governor Richard Bellingham left life estates to his son and daughter in 1672, and the idea than a propertied man would will only a life estate to a son was so radical that the will was set aside because Bellingham was clearly "Discomposred in his mind." Norton, Founding Mothers and Fathers: Gendered Power and the Forming of American Society (1996), 112-114.
Because more men than women owned property, and because of dower customs, men commonly supported dependent relatives. Simply put, women were expected to have been dependents, not to have had dependents. Yet women often willed lifetime estates to parents, husbands and/or sons and daughters, usually stipulating that at the death of the lifetime beneficiary, the property was to pass to siblings or children. Some of those estates were negligible and may have had little impact on recipients' lives; others were substantial and must have improved needy beneficiaries' standard of living.

**Wives' Bequests of Life Estates**

Because women usually outlived men, and because men typically married women younger than themselves, wives usually outlived husbands. Furthermore, before the Married Women's Property Acts passed, most wives (whose property was controlled by their husbands) needed husbands' permission to write wills. It comes as no surprise that married (not widowed) women were a small minority among the testatrices in this study, and generally limited to those who either had separate property in their own names or whose husbands allowed or encouraged them to distribute the personal property and household furniture they brought to marriage or acquired through their own efforts.

What was exceptional about the small group of wives who wrote wills is that most did not favor their husbands as heirs. Most wives left their husbands only a
lifetime estate. But though many husbands' wills stipulated a penalty for remarriage -- usually loss of the life estate -- wives did not force a widower to relinquish property if he remarried. And widowers were much more likely than widows to remarry.¹³eight

Some wives' property was so minimal that a husband's lifetime estate meant little in practical terms. Caroline Powers bequeathed five dollars to each of eight children, with the residue to go to her husband Rufus. Her estate was so small that no bond was posted.¹³nine Other women's estates were modest but may have made the difference between a widower's comfort and penury. Hadassah Lyman left life use of her $600 real estate and $9.75 personal estate to her husband Elijah, with later distribution to her niece Rachel Moody, who may have been able to support herself on the proceeds. When Sarah Barnum wrote her will in 1840, she gave lifetime use of her $247 real estate to her husband, later to be divided among four of her seven

¹³eight In Philadelphia, 83 percent of widows did not remarry. Wilson 172. In Hingham, Massachusetts, in marriages begun before 1760, 55 percent of widowers remarried, while only 27 percent of widows did. For the period 1760 to 1840, 40 percent of widowers remarried, compared with only 8 percent of widows. And widows past childbearing age were the least likely to remarry. Daniel Scott Smith, "Inheritance and the Social History of Early American Women," Women in the Age of the American Revolution (1989), 55.

John Faragher found that 66.6 percent of widowers and 30.8 percent of widows remarried. Of those under 50, 84.2 percent of widowers and 44.4 percent of widows remarried. Faragher, "Old Women and Old Men in Seventeenth Century Wethersfield, Connecticut," Women's Studies 4 (1976), 18-19. Alexander Keyssar found that only 10% of women married more than once in Woburn. Keyssar 90, 93. For the seventeenth and eighteenth centuries, see also Susan Grigg, "Toward a Theory of Remarriage: Early Newburyport," Journal of Interdisciplinary History 8 (fall 1977): 183-220.

¹³nine HCP 116.50 (Powers 1852). Esther White's probate records (BCP 8336, 1856) included no inventory but she left life use of the real estate to her husband, with later descent to two unmarried daughters and with a reversion clause that would divest ownership from a daughter who married.
children. Sybil Morey willed her husband life use of $555 in real estate and $288 in personal property, less $140 in cash bequests to four brothers. 

Women with more substantial estates made similar provisions. Hannah Norton’s $2000 in real estate was her husband’s only for his lifetime; she stipulated that when he died, it would pass to her daughters. And Bridget Grennan owned $1519 in real estate including two houses, four acres and a blacksmith shop that she allowed her husband to use for his lifetime. Mrs. Grennan’s property was, in fact, her husband’s business location, indicating that her real estate and his trade may have been the basis of the family’s income. Other women used their property to protect and support their loved ones. After Electa Jackson distributed her blessing to four of her children, $600 to missionary societies, personal property to a daughter, Electa Quigley, and her real estate to that daughter’s husband, she stipulated that the real estate was to be used to support her husband Benjamin for life. In 1850, laborer Benjamin, 66, and Electa, 62, lived next door to the Quigleys who may have already been helping the Jacksons. (A favored beneficiary often lived with or next door to the willmaker -- evidence that physical proximity counted in distributive justice.) The census taker attributed the Jacksons’ $1000 real estate to Benjamin’s ownership even though Electa was probably the landowner in the household. The executor’s bond was only $2500, indicating that her estate probably amounted to between $1000 and $1200, and after $600 was diverted to missions, the remaining real estate probably was not substantial. Its rental or proceeds, however, may have been adequate to reimburse the Quigleys for whatever expenses they incurred in supporting Benjamin

140 HCP 91.23 (Lyman 1851); BCP 6876 (Barnum 1845), 8154 (Morey 1855).
Jackson. Considering that William Quigley was also employed as a laborer -- not a lucrative occupation -- Electa Jackson's real estate may have been a substantial boon to the propertyless Quigleys.¹⁴¹

Other wives owned the farms they lived on. Asenath Russell, "having estate in [her] own right," willed her husband a life estate of $2198 in land including an island in the Green River. Josephine Catlin owned 73 acres of Deerfield pasture and meadowland including a homestead worth nearly $4000. When Catlin willed lifetime use of most of the estate to her husband John in 1847, it must have provided him a comfortable living. Yet this woman of substance restricted her husband’s ability to alienate the property, which was ultimately to be equally divided among her children.¹⁴²

Widows and Spinsters' Bequests of Life Estates

Like most testators', most testatrices' bequests of life estates were straightforward, following a direct line of descent. But some testatrices left life estates that deviated from the masculine testamentary tradition. Spinster Salina Bushnell gave her parents life use of her property, which at their deaths was to go to her unmarried sister. When singlewoman Jane Butler made out her will at age 30, she had $900 in real estate. She gave her landless parents life use with the property ultimately going to three siblings. Clara Stone left her husband a life estate in her

¹⁴¹ BCP 8865 (Norton 1859), 8714 (Grennan 1858); HCP 213.27 (Jackson 1858), 1850 census.

¹⁴² HCP 124.36 (Russell 1837); FCP 778 (Catlin 1848).
house and other real estate, with the proviso that it pass to her sisters Roxy and Betsy Squire at his death. It probably made little difference to the Squire sisters; they already lived in the Stone household.\textsuperscript{143} Spinsters and women with spinster sisters and daughters deviated from the traditional male norm which in earlier generations had promoted female dependency.

Other life estates were more complicated. Elizabeth Wylys created a convoluted lifetime estate involving three generations. Wylys gave a life interest in her real estate to her son William A. Willis and his children, who lived with her, with ultimate descent to Wylys' daughter Maria Younglove. With this bequest Wylys simultaneously showed her faith in Maria, her desire to protect William and his children, and her wish to prevent William or his children from depriving Maria of what Wylys considered Maria's rightful inheritance. Wylys, however, added an unusual twist to her bequests. If Malinda Carrsel (presumably a relative), wife of Darius, was widowed, Malinda had the right to cohabit with William and his two children "to protect her from want." Wylys had little faith in Darius's ability to provide for Malinda's widowhood, or in Malinda's ability to provide for herself. Wylys also evidently considered Maria Younglove, her ultimate heir, to have the least immediate need for the property -- thus Maria was at the end of this chain of interconnected dependencies.\textsuperscript{144} Elizabeth Wylys intended her property to support and protect as many as five individuals who had varying levels of need in different

\textsuperscript{143} BCP 7907a (Bushnell 1858); 8569 (Butler 1857) & 1850 census; BCP 8034 (Stone 1853), 1850 census.

\textsuperscript{144} BCP 7830 (Wylys 1853).
stages of their lives, so she tailored her bequests accordingly, allowing widely varying degrees of freedom to each individual, depending on ability and need for support.

Unlike men, whose bequests had the force of orders, the occasional woman worded her will as a request. When Nancy Smith wanted her brother’s daughter, Clara Wells, to provide for her sister Clarissa, she wrote, "It is my wish that said Clara would do all she may feel able to promote the happiness and comfort of Clarissa Wells her aunt by letting her reside in the house with her." Smith, her brother Isaac Wells, their sister Clarissa and Clara Wells already lived under the same roof, but perhaps Smith worried that the thirty-year-old Clara would not continue to honor the arrangement if she were not asked to do so. Though Smith’s intention was clear, she couched her request as a "wish" for what Clara "would" -- not should -- do. Smith’s bequest was not an order. Unlike most willmakers, she made her intentions clear without imposing her will on her niece. We can only speculate on Clara’s response to her aunt’s request.

Smith’s "wish" may have been significant in yet another way, because it lacks authority. Most women’s bequests, like most men’s bequests, were written as orders or commands; Smith’s tone lacks the assertiveness most testatrices displayed. Using Smith as a foil, then we can see that most women who wrote wills exhibited as much authority over their property as men had over theirs.

145 BCP 7551 (Smith 1851), 1850 census.
In her study of the bonds of affection between grandmothers and grandchildren, Terri Premo found a closeness that some parent-child relationships lacked. These bonds also appeared in western Massachusetts women's bequests. Though both men and women bequeathed life estates in property that was ultimately intended to descend to grandchildren, women favored grandchildren as their ultimate heirs more frequently than men did. For instance, Deborah Bartlett willed a lifetime estate in realty to her son Samuel, stipulating that at his demise, it would pass to his children. Naomi Beebe gave her single daughter Susan a life estate, with the property then passing to the children of Susan's deceased brother.

Most of these women had small estates, but occasionally women with substantial assets made similar provisions. Rachel Cole had a 230-acre farm in New Marlborough, and gave her sister, Susan Cole, life use of $1600 worth of the real estate. At Susan's death, it was to pass to the children of their deceased brother. Because most spinsters lacked children, they often made nieces and nephews their heirs -- usually after life use by the testatrix's sister.

A few truly wealthy women left lifetime estates. When Mary Hall bequeathed the income from $19,000 in real estate to her daughter Sarah Crockett for life, she

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146 Premo chapter 3.

147 Widow Elizabeth Brown left a life estate to her son, intending it to pass to his sons. Lydia Barber left a life estate to her son and daughter-in-law with the property ultimately going to their children. Nancy Brown bequeathed her son a life interest in her New York real estate, intending it to pass to his children at his death. Prudence Church did the same with $550 in real estate. BCP 5116 (Bartlett 1831); HCP 21.8 (Brown 1837); BCP 6642 (Barber 1844); 8937 (Beebe 1860); 8677 (Brown 1858); 8260 (Church 1855).
stipulated that the property go to Sarah’s children, if any, at her death. Sarah, however, was evidently an exceptional woman because Hall also stipulated that her $48,000 in securities was to be invested *only* after consultation with her daughter — more evidence of women’s confidence in other women’s financial abilities. Yet Hall left Pittsfield realty and Central Railroad bonds and stocks not under Sarah’s control, but in the hands of her brother as trustee for Sarah Crockett’s life estate. Because Sarah’s husband was entirely bypassed, the trust may have served the purpose of shielding the property from him, or from Sarah’s inability to keep it out of his hands.  

The number of women who made these provisions rose after 1830 because more women owned property outright. Women’s increasing property ownership meant that testatrices could reconfigure testamentary customs, liberalizing them in women’s favor, or attenuating them to protect property from female heirs’ husbands. And because most women did not favor male heirs, property increasingly moved into women’s hands.

**Trusts**

Many trusts were more restrictive than the life estate Mary Hall left for Sarah Crockett, which allowed Crockett to expend the income as she wished, and gave her a say in how the principle was to be invested. Both men and women set up trusts to provide lifetime support for parents, siblings, spouses or children, though women

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148 BCP 7671 (Cole 1851); 8554 (Hall 1857).
were more likely to support parents or siblings than were men. The rationalizations behind trusts varied and though some reasons can be inferred, as in Hall’s trust estate for Crockett, others were made explicit. Much of the rationale was rooted in the willmaker’s view of the beneficiary as incapable of competently managing the bequest.

The most common type of trust involved naming a trustee and bequeathing a sum to dole out at intervals to the beneficiary. Thus, widow Thankful Smith willed $300 to her executor to hold in trust for her brother Rufus Graves, "to pay over the same . . . in such sums and at such times as shall best promote the comfort of the said Rufus." She extended the provision to provide for Rufus’s widow after his death. The prosperous singlewoman Julia Bridges of Westhampton willed most of her substantial estate to her sister Susan Norton in 1839, adding that the proceeds of certain notes "be expended for the use of [her] only and loved Brother Jabez Cooke Bridges at such times and in such sums . . . as shall best promote his welfare."

Farmer Jonathan Babbitt of Pelham willed $400 to his single daughter Judith, naming as trustees Susan and Polly, his other unmarried daughters and preferred heirs who received the farm and livestock. Susan and Polly were to "take upon themselves the trust of securing and appropriating the sum . . . for the faithful maintenance of Judith." Why Judith needed maintenance is unclear. She may have been intemperate, profligate, or physically handicapped in a category the census did not recognize.

Susan and Polly maintained Judith in their household, though by the time she died in 1858 at age 61, she was contributing to her own support as an outworker braiding straw for hats. Other fathers set up trusts. Jacob Cutler’s trust for his son was to be expended in a prudent manner. Chileab Hale left $500 "to be providently used" to
support his eldest son Amos. Liberty Bowker asked a son to give his daughter, Sarah Johnson, five dollars a year "as long as she is in needy circumstances."\(^1\)

(Emphasis has been added to expressions showing the willmaker’s intent.) Similar terms appeared in a number of other western Massachusetts wills, indicating that more than the occasional isolated individual was concerned about assets being used prudently or providently.

Sometimes a trust was implied, or established in form without using the terms trust or trustee. In 1836, Sarah Ball set aside $120 for Micah B. Ball, "if he should call for it himself or by his attorney." Her language implies that Micah was a male relative, perhaps a brother, who had left home without maintaining contact. Until -- or unless -- the sum was called for, the interest would be "appropriated to such Benevolent object as Charlotte Woodbury . . ." with whom the principle would be entrusted.\(^2\) Thus Ball provided for the potential return of an absent loved one as well as the interim benefit of someone near and dear. (The second part of this study will address the issue of absentee heirs.)

Key concepts in these trusts are comfort, welfare, maintenance, prudence, need, support, and provident use of money. Each willmaker believed the beneficiary was not or could not be fully self-supporting; we can infer, also, that handing over the whole estate would not enhance the heir’s well-being. A trustee was considered more capable of managing money than was the beneficiary; otherwise, why incur the

\(^1\) FCP 4512 (Smith 1833); HCP 20.4 (Bridges 1840); 7.4 (Babbitt 1843), 1840, 1850 & 1860 censuses, MVR: Deaths v. 121 p. 59 (Pelham); FCP 7152 (Cutler 1844); 2076 (Hale 1820); BCP 6935 (Bowker 1846).

\(^2\) FCP 240 (Ball 1848).
trouble, expense, and potential risk involved in trusteeship? A trustee had to be recruited with care; only the most conscientious individual could be entrusted with such a responsibility. Trustees who received fees from the estate could diminish the residue or even steal. Multiple risks attended trusteeship. Thus a trust points to the incapacity or vulnerability of an heir even when no other specifics are available.

Occasionally a testator was candid about why he left property in trust. According to John Jepson, Sr., his son, John Jepson, Jr. was "not . . . capable of taking care of himself." This reference to incapacity specifies neither a physical nor a mental condition presupposing incompetence, yet John Sr. had clearly assessed his son’s ability and found him incapable of self-support as other willmakers surely did when they established trusts. Other testators were pragmatic about their heirs' disabilities. Aaron Dyke named his wife and daughter joint tenants for life in his 99-acre $1300 estate because his daughter Susan was "lame and feeble and unable to maintain herself." He trusted his wife to earn their living from the family farm, but their daughter was incapable of doing the same.151

In a few cases, additional records provide more insight into the reasons behind a trust. When Phebe Jordan wrote her will, she left all of her $154 in personal property in trust for the care and support of her son Martin D. Jordan due to his "mental and bodily condition." Martin worked as a laborer on his sister’s farm, but was illiterate at a time when most of New England’s native-born population knew how to read and write. During those decades, he lived in a household including a widowed sister, Ruth Angeline Matthews (whose shoemaker husband had left her the

151 HCP 78.43 (Jepson 1830); FCP 7184 (Dyke 1842).
farm), plus a spinster sister and an unmarried niece. And though his mother’s small legacy undoubtedly was expended for Martin’s benefit before he reached middle age, his sisters maintained him, while he evidently earned his keep as a farm worker. But in later years, as his sister-caregivers aged, ailed, and died, his niece petitioned for guardianship of Martin D. Jordan, "an insane person incapable of taking care of himself." Guardianship was granted to his younger sister Josephine.¹⁵² Yet by that time, 46 years after his mother wrote her will, Martin Jordan may have been suffering from an age-related mental disability that had not afflicted him earlier. Though we cannot deduce his precise condition, it is clear that he was his sisters’ dependent for most of his life.

Likewise, possible reasons for other trusts can be deduced. When Jacob Cutler, Sr. died, he left house rights, the best wagon and harness and a pair of three-year-old steers to his son Jacob Jr., and also provided a trust for lifetime support. Jacob Jr. never married, and after his mother died, he boarded with another family and worked as a laborer. Vital records show a possible reason for Jacob Sr.’s belief that his son required lifetime support: the cause of death was "Fitts and being burnt," suggesting that Jacob Jr. may have had epilepsy, which in the nineteenth century was little understood, often feared, and considered a mental rather than a physical disability. By the time of his death, Cutler had given up farming and was working as

¹⁵² BCP 7452 (Jordan 1850); 1850, 1860, 1870, 1880, 1900, 1910 censuses, New Ashford; BCP 19148 (Jordan 1896). Insanity is culturally determined. Depending on the values of different cultures at different times, a behavior might be considered either sane or insane. According to the 1860 U.S. census of Northampton, patients at the "Insane Hospital" were admitted for a variety of reasons that would be unacceptable causes for committal today: hard study, epilepsy, tobacco, disappointment, fright, homesickness, intemperance, masturbation, death of a spouse, loss of property, hard work, domestic trouble, ill health, grief, jealousy, religious excitement, and old age. Regardless of Martin Jordan’s affliction, he was cared for at home, and not committed.  

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a shoemaker, so he was evidently capable of learning a trade in spite of his perceived limitations.\(^{153}\)

Other limitations may have been relative. In 1825 when Nathan Peirson bequeathed the bulk of his nearly $40,000 Richmond estate to three daughters and one son, he left nothing to his sons Sanford and David. But Peirson asked his favored heirs to expend whatever was necessary for David from time to time to "preserve him from actual suffering and want," and to provide board and clothing for Sanford. Peirson's reasoning is obscure, yet family lore offers some clues. Nathan Peirson was a wealthy tanner who taught his children business skills. His daughters accompanied him on business trips to New York, and one daughter, Catharine, proved such an astute businesswoman that the family referred to her as "Lawyer Cate." Conversely, one of the younger sons spent time in an institution in upstate New York, for reasons unknown.\(^{154}\) It might have meant nothing more than treatment for tuberculosis, the scourge of youth. Or it could point to insanity, chronic depression or substance abuse; intemperance sufficed

\(^{153}\) FCP 7152 (Cutler 1844), 1850 & 1860 census; MVR: Deaths v. 138 p. 310 (Wendell).

\(^{154}\) BCP 4465 (Peirson 1826); interviews with Peirson descendant Margaret Kingman, 2-1-94 & 6-22-94.
for committal to an asylum in the nineteenth century. On the other hand, the issue may not necessarily have been the sons’ incapacity, but rather, their sisters’ competence. Lacking further information beyond Catharine Peirson’s remarkable business abilities, it may be logical to conclude that her capability outshone David’s and Sanford’s.

Debt was also a handicap. Regardless of whether debt pointed to a lack of business savvy or a breach of character, some parents would not support a debtor. When Christopher Deane wrote a will in 1850, he stipulated that his bequest not be exposed to another heir’s liability, so he put assets in trust until the debt was paid:

And whereas my son Adam has become liable by signing a note for my son John and it is not my desire or wish that my property or any part of it should go to pay any such debt or liability I therefore give said Adam’s share . . . of my property to my son Charles to be held in trust . . . so long as [Adam] shall remain liable for signing said note, so that none of my property shall ever go to pay said debt . . .

Deane protected one son’s inheritance from potential liability that son incurred by cosigning a note for another son. Considering how many businesses were wiped out and how many families were impoverished by cosigning bad notes, Deane’s caution was well advised.

155 See the 1860 census listings for Northampton state hospital.

156 FCP 1272 (Deane 1854).
Mental soundness, intelligence and fiscal prudence were not the only yardsticks parents used when measuring an heir for a trust. Bequests and trusts were often made contingent on heirs' good behavior, or in some cases, on eliminating bad behavior. Like competence and debt-avoidance, character was a measure of worth. And some parents quite readily denied testamentary benefits to offspring who did not measure up. Furthermore, parents made little distinction between ability and character. When Charles Segar made his will, he wrote at length about why he favored some of his children and provided only an annuity to another.

It appears that to do justice to my children, I have to base the division of my property among them on their capacity to do the necessary business society requires first to possess sufficient virtue to control their acts. As my son Edwin & my daughters Eliza and Augusta remained longer at home and under my care than the rest of my children, I had a better chance to make them more familiar with those necessary qualifications and in general to give them a superior elevation. This induces me to bestow more of my property on them by this will, convinced of their greater capacity to manage their affairs, and of their virtuous bias to assist the others who may want for advice and support.

Virtue was not just its own reward in Dr. Segar's view; it was worth money. The children he favored received nearly $2000 apiece in real and personal estate, while a son in Louisiana received half as much -- very possibly showing the benefits of proximity as well as punishment for absence. A daughter in another state was allotted nothing but an annuity of $78 per year, because "she lost the considerable legacy she received from her grandfather's estate in Charleston, South Carolina, owing to her not investing it in a safe manner." She lacked either "the capacity to do the necessary
business society requires," or "sufficient virtue to control [her] acts." Because she had already thrown away a legacy, Segar was unwilling to entrust her with more. She was also to have house rights if she ever returned to Northampton. He instructed his other children that they must "not refuse an asylum" to her, counting on their "virtuous bias to assist" her. Segar was unwilling to take the chance that she had learned nothing from her inept investment strategies. He also foresaw her potential for destitution, and did what he could to ensure her survival, if little else. (Favoring stay-at-home heirs over distant offspring was a pattern accompanying outmigration from New England, which will be further addressed in the second part of this study.)

While nonfavored heirs were sometimes measurably imperfect, favored heirs were occasionally reminded to work on their character. Testators admonished heirs to behave themselves, as did David Aldrich, who directed that his unmarried son and daughter have "a reasonable support out of the profits of said farm and stock, while they remain single and unmarried, provided they are dutiful and obedient children" living with their mother. Likewise, Nathaniel Clark left a small legacy to a granddaughter for "her dutiful and good behavior and conduct." Both men realized that even the best children sometimes had to be reminded of their duty. (Had they not been reasonably good, they probably would have received nothing.)

Eli Ashmun set aside enough for each of his minor children to have $500 when they came of age, but directed the trustees to take into consideration "the

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157 HCP 244.60 (Segar 1848).

158 Emphasis added. BCP 5645 (Aldrich 1835); HCP 32.35 (Clark 1773).
character and conduct" of the children before they handed over the legacy.  

Ashmun empowered others to assess his children's faults before they handed over the cash. In a similar vein, widow Jerusha Austin added in a codicil to her will,

In case the conduct of either [Samuel or Julius Hubbard] . . . should be such as to induce my trustees to believe that the said money designed for them will not be profitably expended, or in a manner calculated to promote their best interest and greater usefulness in society . . . [the trustees should] withhold in part, or in full, any appropriations . . . .

Jerusha Austin was a woman of high principles, willing substantial bequests to missions foreign and domestic, and though she was willing to pay for the Hubbards' education, she was definitely not willing to subsidize anyone who was less than a credit to her.  

Using similar logic, when Sarah Kilburn established a $7000 trust in 1839 for her son Jonathan's support and maintenance, she stipulated that if certain conditions were met, the principle could be paid over to him. Her reasoning was quite clear. The purpose of the trust was

that he may be secured on the one hand from the wants consequent upon dissipation and aided on the other hand for the industrious and prudent prosecution of business. And should my Son be temperate and industrious and in the opinion of the trustee prudent in the management of his business . . .

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159 HCP 6.12 (Ashmun 1819).

160 HCP 6.34 (Austin 1841). Jerusha (Hopkins) Austin (1762-1841) was the daughter of the late Rev. Samuel Hopkins, D.D., former Hadley minister, and she was the relict of the late Rev. Samuel Austin, D.D. Her sister Mabel (1758-1829) had married Moses Hubbard in 1779. Mabel and Moses were probably too old to have been parents of Samuel and Julius Hubbard, but the Hubbard boys might have been their grandchildren, and thus Jerusha Hopkins' nephews. Hadley Vital Records, Corbin Collection microfilm reel 8 (BA); Hadley Families, 71.
Only then could the trustee pay over the remainder of the trust to Jonathan.\(^{161}\)

Jonathan evidently had a serious drinking problem which had materially impaired his ability to engage in business. And his mother, who had already advanced him thousands of dollars, was unwilling to throw good money after bad. Thus trusts also worked to counteract losses by a dissipated, imprudent, intemperate and possibly lazy son who may have been a bad businessman to boot. (Intemperance and debt were gendered issues which will be further addressed in Chapter Three.)

Gender in Life Estates

We have already seen several gender patterns in lifetime estates. For instance, unlike most men’s lifetime support bequests, few women’s wills set parameters on use or limits on house rights. Women were more likely than men to name sisters or grandchildren as the ultimate beneficiaries of life estates. As for the few willmakers who expressed sentiment: women’s language showed love while men’s was more likely to be protective. But those were only a few of the many gendered patterns in wills. Women also conferred testamentary protection upon a much larger assortment of relatives than did men. While men usually favored wives, children and occasionally grandchildren, women could and did enlarge upon those relations to include parents, siblings, nieces, nephews, and friends. For women, the family circle was more inclusive than men considered it to be. Sophia Williams left most of her small estate in trust for "a child called and known at this date by the name of Egbert

\(^{161}\) BCP 6348 (Kilburn 1842).
French, the reputed and acknowledged son of my son." She was willing to accept even an apparently illegitimate grandchild. Though this case was uncommon, it was not unheard-of, and serves as an example of women’s wider family circles.

But gender patterns could appear in another guise: women could adopt testamentary customs usually associated with men. When wives made life use bequests resembling dower for their husbands and sons, they used male-gendered testamentary behavior in withholding full control. Women, even ordinary wives who were not the Lucy Stones of western Massachusetts, were quite capable of defying gendered testamentary customs that most often assigned dependent status to women. Other women’s provisions for life estates were gendered to follow men’s custom in assigning dependent status only to women. For instance, when Lois Lathrop bequeathed her $2500 house, lot and seven acres to her son Uriah, she stipulated that he was to allow his unmarried sisters Lucy and Fanny to live in the house as long as they remained single. He was also to provision them appropriately with

a comfortable supply of firewood to be delivered at their door . . . a comfortable supply of apples and other fruits on the premises and the use of the dairy and dairy utensils for a week at a time in suitable seasons . . .

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162 BCP 5212 (Williams 1832). Vivian Leigh Bruce Conger cites studies of English inheritance showing that widows made bequests to a wider variety of kin and non-kin than men did. Conger’s study of colonial widows showed that Massachusetts widows bequeathed to a larger variety of heirs beyond the nuclear family than widows in either Maryland or South Carolina. Vivian Leigh Bruce Conger, "Being Weak of Body But Firm of Mind and Memory . . . Widowhood in Colonial America, 1630-1750," Cornell University dissertation, 1994, 223, 264.

In western Massachusetts, women, especially spinsters, also favored churches and mission societies with bequests more often than men did. That pattern was so pronounced that it could almost be used as a predictor of the sex and marital status of the will-maker.

163 BCP 5393 (Lathrop 1833).
Lathrop thus used a testamentary device most often associated with men. Though most women trusted their heirs to provide full and reasonable benefits, Lathrop felt compelled, as did many men, to mandate support. She also assigned her daughters specific house rights and relegated them to what appears to be dependent status. By engaging in a gender-specific male testamentary behavior in leaving real estate to a son with house rights and support to unmarried daughters, Lathrop serves as a reminder that gender was and is a continuum, and that no learned behavior can be defined as purely masculine or feminine. And as the occasional woman engaged in male-gendered testamentary practices, men could employ practices usually seen as feminine (as we will see in men’s changing testamentary customs after 1830).
CHAPTER 3
"SOLE AND SEPARATE" BEQUESTS

After 1830, western Massachusetts willmakers increasingly used a legal device, the "sole and separate" bequest, to protect married women’s property from the abuses of coverture. "Sole and separate" estates should be viewed as the precursor to Married Women’s Property Acts, both in intent and in effect, though they protected only inheritance, and not earnings, from the hazards of Anglo-American common law. When Clara Barton wrote of women friends being "dead or married," her juxtaposition of the terms was accurate because wives experienced "civil death" when their legal identity merged with their husbands’ at marriage. After marriage, a husband had legal control of his wife’s property unless she had either protected it with a prenuptial agreement or received it with a "sole and separate use" clause attached. In addition, some "sole and separate" provisions set up barriers not only between the female beneficiary’s property and her husband, but also between her property and her husband’s creditors.

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164 Clara Barton to Bernard Vassall, July 28, 1860, Clara Barton Papers, Library of Congress, quoted in Stephen Oates, A Woman of Valor: Clara Barton and the Civil War (1994), 393. This view was not unique to Massachusetts women. A Maine native, Sarah Holmes Clark, wrote to her friend, "I had given up all hopes of ever hearing from you again and concluded you was either dead or married." Sarah Holmes Clark to Sarah Carter, October 12, 1852, quoted in Karen V. Hansen, A Very Social Time: Crafting Community in Antebellum New England (1994), 66.
To prevent a husband from being able to legally seize a bequest left to his wife, a testator had only to attach language to the bequest to reserve it to the woman's "sole and separate use, free from the control of her husband." This clause provided some women's inheritances with the same protection Married Women's Property Acts would later give to all married women's property. Some willmakers attached "sole and separate" clauses to all their bequests to women. Others applied it selectively. Because the majority of testators did not use "sole and separate" stipulations, the willmakers who used this strategy should be viewed as the most pessimistic -- or the most prudent -- of all who used their bequests to confer property's maximum benefit on women they loved.

Protecting Married Women's Property

All propertied classes used the "sole and separate" bequest. Near the top of the economic scale was Adams cotton and woolen manufacturer Duty S. Tyler, whose estate was worth more than $70,000 in 1857. Tyler wanted his married daughter Maria Louisa Perry to have her half of his estate "free from the interference and control of her husband." Because her husband was also a manufacturer, it made sense to insulate Louisa's inheritance from Perry's finances.165 It is not surprising that the elite would invoke such protection, but poor and middling testators did the same for their wives and daughters. Charles Delano attached a "sole and separate"

165 BCP 8551 (Tyler 1857); Beers History of Berkshire County, Massachusetts, v. 1 (1885), 522-523, 542; Biographical Review containing Life Sketches of Leading Citizens of Berkshire County, Massachusetts (1899), v. 31, 142, 302, 305.
provision to $258 in realty and personalty combined, as did Cyprian Branch, whose total estate was worth only $251. In western Massachusetts, most "sole and separate" stipulations were attached to such small bequests. To these testators, women of slender means needed property protection as much as heiresses did.

Some have speculated that the "sole and separate" bequest proliferated well before passage of married women's property acts because predatory creditors were confiscating family assets. The language of western Massachusetts "sole and separate" bequests, however, suggests that husbands, not creditors, were the predators under consideration. About twice as many bequests warned against the husband alone, rather than against him and his creditors. If the paramount worry had been that creditors would invade family assets, every "sole and separate" bequest would have invoked the husband's creditors -- a fine point, perhaps -- but it may be necessary to take willmakers at their word when they include admonitory language in their final instructions to posterity.

The only problem with "sole and separate" was that it did not go far enough. It did not, for instance, protect married women's wages. But the "sole and separate" bequest was significant in foreshadowing the Married Women's Property Acts, allowing individuals to confer protection the law would later provide. Because

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166 FCP 1306 (Delano 1851); BCP 6770 (Branch 1845).

167 From 17 western Massachusetts wills' "sole and separate" bequests. Many named neither husband nor creditors. I did not record the full text of all "sole and separate" bequests.

168 In 1845, Massachusetts passed its first Married Women's Property Act, which undermined coverture. Married Women's Property Acts were significant in several ways. First, they recognized that many women brought property, whether inherited or earned, to marriage. Second, such laws implied that husbands were not necessarily conscientious providers. Third, legislators recognized that some married women's property required
the potential benefits extended to women of all classes, from the wealthy heiresses to the poor women who accumulated assets through manual labor, the potential beneficiaries of such laws spanned class boundaries. To better understand how "sole and separate" worked (and indeed, the rationale for Married Women’s Property Acts themselves), let us consider the interlocking problems of marriage and property.

**Married Women’s Property: Husbands as Hazards**

For a woman unprotected by separate property provisions, an unfortunate marital choice could lead to loss of an inheritance, wages, or dowry. As early as the 1690s, ministers warned widows against second husbands who would "count Hers more than Her." Moneyed women had to be cautious, for trusting the wrong man protection from husbands’ creditors. And fourth, family assets could be shielded by women to prevent those families from requiring town support.

The first part of the Massachusetts Married Women’s Property Act specifically reserved property a woman already owned "to her sole and separate use, free from the interference and control of her husband." The second required her to file a schedule of her separate property at the Registry of Deeds so her husband’s creditors could "distinguish it from all other property." "State Laws," Pittsfield Sun, May 1, 1845. The first law codified common-law practices allowing a married woman to hold separate property and to sue and be sued. A year later the legislature addressed banking practices: wages could be paid to a married woman for her own labor, and she could hold and make withdrawals from her own bank account without her husband’s permission. In 1855, a new law ensured that the property of married women was not subject to their husbands' disposal, nor liable for his debts. Those laws ensured that all married women would have the protection of separate property even when they did not acquire it through bequests with "sole and separate" clauses attached. *Massachusetts Acts and Resolves: 1845, 531-532; 1846, 139; 1855, 710-711.*

Though Married Women’s Property Acts are widely perceived to have benefited only the elite, the second, passed in 1846, applied to women’s wages. Clearly the legislature recognized that working-class women’s income was as essential to family support as elite women’s property. Working women’s wages were thus protected in a small measure from husbands, but not from husband’s creditors, until 1855, when another law declared a woman’s earnings to be her sole and separate property. George A.O. Ernst, *Law of Married Women in Massachusetts* (Boston: 1897), 140-141.
could mean losing everything. In the erratic economy of the mid-nineteenth century, willmakers must have seen wives' property taken to pay husbands' debts or wasted by ne'er-do-well men. Indeed, that was the situation of a woman who demanded legislative action to prevent such abuses. Mary Upton Ferrin (1810-1881) was such a woman. A native of Danvers, Ferrin had married at age 35. Her husband, a grocer supposedly "of unimpeachable moral character," turned out to be a drunken tyrant who exploited her property and had her committed to an asylum. She took refuge with an aunt and asked the Massachusetts legislature to protect married women's property, walking hundreds of miles to collect signatures for her petitions. Ferrin cited an example of a wealthy woman whose husband frittered away her estate:

A very estimable and influential lady, whose property was valued at over $150,000, married a man, in whom she had unbounded, but misplaced confidence, as is too often the case; consequently the most of her property was squandered through intemperance and dissipation, before she was aware of the least wrong-doing.

Misplaced confidence was an economic disaster for a woman of any class, because a scoundrel could fleece even a family of modest assets. Ferrin described how another man reduced his wife to poverty.

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169 Cotton Mather, Ornaments for the Daughters of Zion, part IV, quoted in Conger 69; see also "The Heiress," Pittsfield Sun, April 8, 1830; Elizabeth B. Warbasse, "Mary Upton Ferrin," Notable American Women 1607-1950 (1971), 611-612. Other battered wives received support from women. An anecdote attributed to Sarah Snell Bryant described just such a situation in Plainfield. One Chris Colson was rumored to "be in the habit of beating his wife." Jane Robinson, an unmarried "amazon in strength and spirit, full-chested and large-armed," decided to end Colson's bad habit. At the annual regimental review of several towns' militia, before crowds of both sexes, "Jane Robinson headed a party of women, who took a rail from a fence, seized upon Colson, put him astride of it, held him on, carried him round the field, and dismissed him with an admonition to flog his wife no more." Related by William Cullen Bryant in his autobiography in Parke Godwin, A Biography of William Cullen Bryant, vol. 1 (New York: Appleton, 1883), 7-8.

170 Elizabeth Cady Stanton et. al., History of Woman Suffrage, v. 1 (1881), 213.
A woman of a neighboring town, whose husband had forsaken her, hired a man to carry her furniture in a wagon to her native place, with her family, which consisted of her husband's mother, herself, and six children, the eldest of which was but twelve years old. On her arrival there, she had only food enough for one meal, and nine-pence left. During the summer, in consequence of hardships and deprivations, she was taken violently sick, being deprived of her reason for several weeks. Her husband had not as yet appeared to offer her the least assistance . . . . But, being an uncommonly mean man, he had sold her furniture, piece by piece, and reduced her to penury, so that nothing but the aid of her friends and her own exertions, saved her and her family from the alms-house.171

Intentional removal of family resources, like waste or creditors' seizure of assets, could leave a family destitute, but under the doctrine of coverture, waste and debt were husbands' prerogatives. Many propertied families were horrified by the possibility that their female kin could be reduced to penury through misplaced confidence and abuse of coverture. Protection of married women's property, in fact, was based on a negative assessment of men's character. Ferrin was not the only one to make such an assessment. The idea was so marketable that the press kept the issue before the public.

In Print

"Sole and separate" stipulations show that well before the first Married Women's Property Acts passed, propertied men and women recognized the dangers profligate, intemperate or incompetent husbands posed to family assets. In 1829,

171 Stanton et. al., 213-214.
Nathaniel Parker Willis published "Justice’s" succinct condemnation of the worst aspects of coverture.

The property, taken from the wife, may go into the hands of a kind and provident husband, or fall into the possession of an idiot, a tyrant, a miser, or a spendthrift; it may pamper a mistress, or be staked at a gaming table; be dissipated by the intemperate, or take to itself the wings of a desperate speculation; it may pay not only the debts of the husband, contracted on the credit of it, but the debts of others, for which, in a moment of credulity, or vanity, he may have been bound.

"Justice" pointed out that workingwomen lost their assets the same way heiresses did.

How frequently has the scanty pittance, amassed by minute savings [by] the school-mistress, the seamstress, or the female domestic, been abandoned by this law to the swift expenditure of the idler and the profligate! The rich heiress become poor, is more pitied than these, but property . . . increases in value as it diminishes in quantity.  

But idlers and profligates were not the only ones who dissipated their wives’ property. Even husbands with the best intentions lost their families’ entire means of support during the Year Without a Summer in 1816 or in the panic and depression of the late 1830s. In fear of insolvency and destitution and determined to protect female heirs and their children, western Massachusetts testators acted on the published advice advocating protecting women’s assets. In Godey’s Lady’s Book, Sarah Josepha Hale promoted passage of New York’s Married Women’s Property Act, to protect women  

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173 One measure of parents’ inability to support their children at that time was the three-fold increase in numbers of children, some as young as two years of age, who were indentured to the Shakers in 1837. New York State Library Shaker Collection microfilm, reel 5, Hancock Shaker Village, Pittsfield.
from "the worst propensities of a brutal husband, tyranny and injustice to his wife and family, intemperance, gambling and idleness in his own person." She excoriated the barbarous custom of wresting from a woman whatever she possesses, whether by inheritance, donation, or her own industry, and conferring it all upon the man she marries, to be used at his discretion and will, perhaps wasted on his wicked indulgences . . . .

But she offered no practical advice on how women could protect themselves from such legal abuses before such legislation was enacted. Across New England in the 1830s, Fanny Wright and the Grimké sisters told large audiences that "a man may spend the property he has acquired by marriage at the ale-house, the gambling table, or in any other way he pleases." Their message was so popular that their lectures were published. But they did not advocate the "sole and separate" alternative, perhaps because it was an incomplete solution left to the discretion of willmakers. They simply warned of the hazards of marriage for propertied women. As one newspaper counseled starry-eyed girls, "Marriage is a lottery after all. Few prizes, and many blanks."

Alcohol contributed to the "blanks" in the marriage lottery. Alcohol abuse was a gendered concern, because by 1830 the public perceived drunkenness as a

174 Sarah Josepha Hale, "Rights of Married Women," Godey's Lady's Book 14 (May 1837), 212-214. In 1852, Mrs. Hale was still advocating legislative action to protect married women's property in states where the actions already taken was incomplete or inadequate. See "Marcellus" ["an eminent Boston lawyer"], "Ought a Married Woman to Hold Property?" Godey's 45 (December 1852): 542-548.


176 "Engaged at Sixteen," Pittsfield Sun, January 2, 1845.
masculine character fault that victimized women. One Boston attorney commented on
covertry's assignment of a married woman's property to her husband,

We have often regarded this law as the ally of the dram-shop and
gaming-table. The little earnings of many a laundress, nurse, school-
mistress, fruit-seller, and seamstress are a common supply to the thirst
of their intemperate husbands. We have known instances of a husband,
absent for years at a time, sweeping into his empty pockets, on his
occasional visits, the earnings of his wife in his absence.\textsuperscript{177}

That author included details of a specific case he had recently heard.

We heard a case in humble life, of peculiar hardship, detailed lately,
where a seamstress had furnished comfortably, by her earnings, her
two rooms; her furniture, after her marriage, disappeared article by
article, sold by her profligate husband to buy liquor.\textsuperscript{178}

Accordingly, women flocked to temperance societies. One observer wrote that a
woman joined not because of her own weakness for drink, but to express "her opinion
of the monster that has broken the hearts of thousands of her sex."\textsuperscript{179} Prescriptive
tales described fathers falling into intemperate habits, neglecting their business and
abusing their families. Drunkenness led to idleness and ruin, with the father earning
less, drinking more, and leaving wives and children destitute.\textsuperscript{180} The decline of a
hard drinker was described in verse:

\begin{quote}
\textit{Marcellus}, "Ought a Married Woman to Hold Property?" \textit{Godey's} 45 (December
1852): 547.
\end{quote}

\begin{quote}
"Marcellus," 547.
\end{quote}

\begin{quote}
\end{quote}

\begin{quote}
Join a Temperance Society?" \textit{Berkshire Journal}, December 31, 1829 and Temperance Meeting
report, January 7, 1830 (BA).
\end{quote}
And joined with this, an evil came
Of quite another sort
For while he drank, himself, his purse
Was getting *something short.*
For want of cash, he soon had pawned
One-half that he possessed;
And drinking showed him *duplicates*
Beforehand of the rest.
So now his creditors resolved
To seize on his assets,
For why, they found that his *half-pay*
Did not *half pay* his debts.

This fictional character committed suicide. In addition to such poetry, articles described links between alcohol, debt, and married women’s misery. In one story, a young shoemaker of good habits married, had children, and through hard work and thrift acquired a little cottage and some land. Then he relaxed his strict habits and began to visit the tavern, a practice which grew imperceptibly until he was a constant lounging about the ale-house, living in idle dissipation.

The inevitable consequence soon followed; he got in debt, and his creditors soon stripped him of all he had. His poor wife used all the arts of persuasion to reclaim him.

Before he reformed, they had lost everything. The shoemaker may have been fictional, but many spendthrifts followed the same path. For alcoholics who drank peacefully, debt followed drunkenness; newspaper accounts (and the public records to be addressed shortly) linked the two. A drunkard imbibed bankruptcy when he lifted the bowl of cheer.

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*181 "Lieutenant Luff," *Pittsfield Sun*, May 6, 1830.

*182 "Instructive Tale," *Pittsfield Sun*, February 5, 1835.

*183 "Death and the Drunkard," *Pittsfield Sun*, May 20, 1818.*
The theme of male depredations on females' property also gained expression in Massachusetts fiction. In Susanna Rowson's 1828 novel, *Charlotte's Daughter*, the central character Mary Lumly was a woman "foolish enough to surrender not only her body but [also] her property" to a man. Her guardian wanted Mary to let him negotiate a prenuptial agreement for her, but she said, "When I make him master of my person, I shall also give him possession of my property, and I trust he is of too generous a disposition ever to abuse my confidence." Needless to say, Mary was promptly robbed and abandoned. Rowson had first-hand experience on the subject. Her husband was a serious drinker whose failures forced her to teach and write to earn their living. Oppressed by the law of coverture and a delinquent husband, she, like Ferrin, Grimké and Wright, warned women against the same hardships.  

Other writers chimed in with similar admonitions. Mrs. A.J. Graves reiterated the message about profligate and idle men who lived on the earnings of industrious wives. Margaret Fuller also wrote on the subject, and Horace Greeley advocated married women's property rights in his introduction to Fuller's classic *Woman in the Nineteenth Century*. Even temperate men with the best intentions might prove to be inept money managers. Mrs. A.M. Richards described just that situation with her first husband. She married in her teens, against the advice of her clear-sighted mother, who counseled waiting until the fellow had accrued enough for a competency

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185 Mrs. A.J. Graves, *Woman in America* (New York: 1843), 167, 178 or 193?

and both had gained some experience in life. Disregarding that good advice, the couple married anyway, but neither bride nor groom had essential management skills.

Of economy we knew nothing -- and with our best management, we found that the practice of a new physician failed to meet expenses. My husband could not live by way of "barter;" else he might have been successful. He loved his profession ardently -- but he hated to present a bill! It seemed to him so uncourteous, after being consulted in confidence, to charge for it.\(^\text{187}\)

They quickly went broke despite what should have been a lucrative profession -- and without the help of alcohol.

Such scenarios were anathema to shrewd New Englanders. Married men were supposed to conserve and increase their assets, not lose them. And alcohol only contributed to profligacy. Because intemperance was a male-gendered issue, and because men were typically the breadwinners in New England's white population, drunkenness was closely associated with thrifty and hard-working New Englanders' fear of debt. Thus concern about alcohol use must be viewed in terms of its effects on family assets. George N. Briggs, a temperance man who later became governor of Massachusetts, remarked that in Troy, New York, fifty husbands had been "swept into the grave by intemperance, leaving their wives and [300] children houseless and unprovided for."\(^\text{188}\) Briggs' comment should be interpreted in light of New England's tradition that families should take care of their own. Concern about alcohol abuse provoked the western Massachusetts elite -- ministers, politicians and

\(^{187}\) [Mrs. A.M. Richards], *Memories of a Grandmother, by a Lady of Massachusetts* (Boston: 1854), 65.

newspaper editors -- to form temperance societies and publicize the results of excessive alcohol use. Newspapers show those concerns, charted below.

**Chart 2. In/Temperance References**

When the public is complacent, few newspaper articles criticize alcohol use. On the other hand, when concern peaks in a crusade against substance abuse, numerous critiques are printed. In the late 1810s and early 1820s, a steady trickle of newspaper stories reflected concern over intemperance. But after 1830, their frequency shot up, and the press maintained that level, presumably to stimulate public support, until after Massachusetts passed the Fifteen Gallon Law. The "log cabin and hard cider" presidential campaign of 1840 resurrected the debate, though the temperance crusade waxed and waned afterward. Newspapers show that men's alcohol use was a concern.

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189 I counted the number of articles on temperance or intemperance, including announcements of meetings and speeches addressing the problem, and crime reports where alcohol was specified as contributing to the misdeed. I read the *Pittsfield Sun (BA)* January through June in 1820, 1826, 1828, 1830, 1835, 1840, 1845, 1850, based on the fact that newspaper editors try to stay in business by printing what their public wants to read, which in this case was a combination of temperance poems, prescriptive articles and accounts of violent crimes committed by drunkards.
credit reporters contrasted her steadiness and business acumen with her husband's deficiencies. While Mrs. Mitchell was smart, honest, industrious, energetic, paid bills promptly and had property in her own name, her husband was dissipated, reckless, irresponsible, and insolvent. "Her domestic relations have been unfortunate," the credit reporter wrote, "but she isn't a widow." Her credit was probably secured by the house and millinery shop that she -- not her husband -- built on Holden Street, a new neighborhood developed in North Adams in 1843, or the house lot her father Otis Blackinton had bequeathed her in an 1847 codicil to his will. (Blackinton also left her a cash bequest of about a thousand dollars.) The Baptist Blackintons may have had a clearer view of William Mitchell's deficiencies than Julina realized when she married him, and separate property was a boon for a woman.

Illustration 5. Julina Mitchell's house and shop at the corner of Holden and Center streets, just off Main Street, North Adams, 1881. (Detail from Library of Congress panoramic map.)
at the same time that testamentary patterns indicated rising preference for women as heirs and increasing "sole and separate" bequests to protect property left to women. But publishers were not the only ones concerned about husbands' prerogatives.

In Credit Reports

Credit reports are full of commentary on businesswomen's husbands' lack of character. Reporters assessing business risk had to pay close attention to husbands who might run businesswomen into debt, and because milliners used credit, their husbands came under scrutiny. Milliner Julina Blackinton opened a shop in North Adams in 1829, when she was just about 20. Her business grew with the town's industrial expansion, which attracted hundreds of female employees. She married newspaper publisher William Mitchell and probably had to stay in business because Mitchell could not keep his newspapers afloat. His *Adams Gazette and Farmers' and Mechanics' Journal* took eighteen expensive months to sink in the early 1830s. The biweekly *Greylock Mirror* expired after only six months in late 1836, leaving him with unpaid debts. His milliner wife may have bailed him out. Dun and Company

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190 As early as 1830, thirteen cotton mills, two calico mills and four satinet mills employed 320 women who earned an average of 39 cents a day, six days a week. McLane Report, a.k.a. *Documents Relative to the Manufactures in the United States*, v. 1 (1832), 148-149. Also available in 22d Congress, 1st session, House documents, v. 7, n.308, fiche 3: Doc. 3, n.27+. My thanks to Bruce Laurie for bringing this source to my attention.

If each of those factory operatives worked 50 weeks a year, she would have earned $117, or for the whole 320 women, $37,440 which would have gone back into the local economy. Because mill girls typically bought a new bonnet as soon as they could, it is reasonable to believe that many of them spent part of their first paychecks in Julina Mitchell's shop. On bonnet purchases, see Harriet Hanson Robinson, *Loom and Spindle*, 65-66, quoted in Thomas Dublin, *Women at Work* (1979), 81.
who supported her family through her own labor with no help from her husband. Many western Massachusetts residents knew local women like Julina Mitchell who had to cope with the same property issues that prescriptive literature described.

Mrs. Mitchell was not the only married businesswoman burdened with such a husband. Of 21 credit reports commenting on western Massachusetts milliners' husbands from 1841 to 1870, fifteen were negative. Assessments ranged from the laconic "Husband not remarkable for his enterprise," and "Husband not of much use," to "No change, except her husband is dead, which is a source of principal gain." A common refrain was, "Afflicted w/ a drunken husband." Alcohol ruined several milliners' husbands. Joel Fuller was a drunken, miserable, "man of bad habits."

Mrs. Penniman of Williamstown was a "smart woman with a dissipated good for 00 husband." Mrs. Hazlett of North Adams had "no capital but her good character and a poor husband." Other milliners had shiftless, indolent or dishonest spouses. Mrs. T.J. Bascom's debtor spouse was "stopped, attached, was about being off, arrested." Because credit reporters ferreted out this information, these milliners' misfortunes must have been common knowledge. Probably the public sympathized with businesswomen married to improvident mates -- and milliners' problems may

191 "Interesting Facts in the Early History of North Adams, 1859-1860, compiled from Transcript Clippings," Hamilton Morris, comp., 78 (North Adams Public Library); Beers' History of Berkshire County, Massachusetts (1885), 485, 490-491; Massachusetts v. 3 (Berkshire County), pp. 49 & 69G, R.G. Dun and Company Credit Reports, Baker Library, Harvard School of Business Administration, Boston; BCP 7284 (Otis Blackinton 1849), Probate records microfilm reel 72 (v. 4, pp. 17, 58-60) (BA). Mitchell's credit career extended from 1846 into the 1860s. At his death, age 53, he was a painter. MVR 1863.

192 Dun: Mass. v. 3, 25, 31, 32, 36, 37, 139, 150 & 208, 186, 251, 252 & 255, 284, 291.3. Dun reports were not always entirely accurate. Though the credit reporter noted in 1866 that Lorenzo Chapman was dead, Chapman was enumerated in the 1870 census and appeared on the 1870 tax list for Pittsfield.
have prompted others to make "sole and separate" provisions for their female heirs' property -- just in case. In New England, the "land of steady habits," sobriety, industry and thrift were valued while drink was publicly condemned. Drunkenness, debt and loss of assets created family hardship unless the wife owned separate property. It was hardly coincidental that from 1830 to 1840, the increase in "sole and separate" bequests paralleled increasing concern about alcohol.

Alcohol, Debt, and the Rise of the "Sole and Separate" Bequest

The reasoning behind increasing numbers of "sole and separate" bequests probably had more to do with men's perceived inadequacies than with a vast increase in numbers of profligate men. Men were caught between the Scylla of their traditional role as family finance managers and the Charybdis of debt due to economic fluctuation. Western Massachusetts was stressed by fluctuations in the economy. Male heads-of-households were increasingly at the mercy of economic change. Some simply could not rise to the challenge. Farmers overextended themselves in bad years; when crops failed, they could not pay debts or taxes. Even an abstinent temperance man could lose his property in that economic climate. Others were trapped by their own generosity when they were caught between their own creditors and debtors for whom they had co-signed. Undoubtedly the rise of market capitalism, increasing land prices, and creditors' rising reluctance to carry delinquent accounts

were more than some men could cope with after a lifetime of book accounts left open for years without stipulated due dates. But debt based on economic cycles was rarely mentioned in the press or public records. Insolvency was attributed primarily to one thing: intemperate use of ardent spirits. And in truth, some men did drink up their assets or made bad business decisions when under the influence. It did not require many alcoholic debtors for the public to link debt with liquor.

Furthermore, drunkenness was largely gender-specific, both in perception and in public records. Arrest records show that alcohol was a contributing factor in many crimes. Western Massachusetts newspapers reported on alcohol and the havoc it caused. When the Pittsfield paper preached, "Drunkenness is an inlet to all wickedness," it backed up that claim with reports of accidents, drownings, infanticide, spousal abuse and fratricide attributed to alcohol use -- and most of the perpetrators were men. Alcohol was related to crime: 90 of 100 male offenders and seven of every eight female offenders were drunkards or "grossly intemperate."

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194 Alcohol use was linked with violence as well as debt. Men were the primary (or at least the publicly acknowledged) offenders. Berkshire County District Court records for one year show 226 cases of drunkenness. Sixteen (seven percent) were women; 210 (93 percent) were men. Of 26 cases of "liquor nuisance," three were women; 23 were men. Four cases of indecent exposure were related to drunkenness, as were dozens of cases of "affray," assault and battery, "railing and brawling," carrying a dangerous weapon, disturbing the peace, disturbing public worship, evading railroad fares, false pretenses, keeping a house of ill fame, trespass, threatening, riot and vagrancy. Tracking individuals through arrest records shows that alcohol lubricated a slippery slope downward for one Joseph Smith, as well as six Fullers, six Hogans, two Jordans, six Joneses, and three Mullets who were charged with multiple offenses involving alcohol. Drunkenness contributed to at least half of the crimes in district court. Index, Criminal Docket . . . 1871," Berkshire County District Court records, Berkshire County Superior Court (basement), Pittsfield.

195 Pittsfield Sun, October 10, 1817; Berkshire Courier (Great Barrington), May 23 and June 6, 1839 (BA); newspapers reported temperance societies by the mid-1830s; the Lenox paper ("neither rash nor diffident") suggested that it was possible to raise a house without spiritous liquors: Berkshire Journal (Lenox), October 1, 1829 (BA); Daily Hampshire Gazette (Northampton), November 19, 1817, June 1, 1819, February 27, April 2, 9, 16, May
Milliners' husbands and criminals were not the only men with alcohol problems; farmers, also, were afflicted. Articles on farming and debt often mentioned alcohol. "Uncle John" made a gender-specific statement, "When I see a farmer, respectable for his intelligence and property, who ought to be an example for his neighborhood, reaching for the fifth glass of whiskey at the tavern, I would arrest his hand and save him from destruction." An agrarian reformer seeing a rundown farm with shabby children was sure the farmer was "either a rum guzzler, or he had a fancy yoke of oxen." To combat farmers' impoverishment and the increasing loss of family farms, the means of support for much of the population, agricultural societies exerted their influence "to arrest the use of ardent spirits." Debt stalked the drunkard, and debt was a farmer's bane. Prescriptive literature advised the unwary farmer that debt was a millstone that would "sink him

Illustration 6. The Drunkard's Tree, Berkshire Courier, January 10, 1839. (Berkshire Athenaeum)
beyond the possibility of hope or rescue," and that warning proved correct for many men.\textsuperscript{196}

Public records link alcohol with fiscal irresponsibility. Insolvency may have resulted from drunkenness, though cause and effect cannot be disentangled. Men may have abused alcohol, which caused them to lose their livelihood -- or men unable to meet the demands of the cyclical economy may have foreseen failure and drowned their sorrows. Townspeople in small Massachusetts villages were aware of alcohol abuse before financial ruin. Probate Court files on spendthrifts and insolvency (the former being a pre-emptive action to forestall the latter) show how alcohol and debt were related. And spendthrifts were almost invariably men.\textsuperscript{197}

Men as Spendthrifts

A spendthrift was by definition a propertied individual who wasted assets to the point of endangering his ability to support himself and his family. Massachusetts towns had a process for staving off individuals' insolvency. If townsmen could see it

\textsuperscript{196}Pittsfield Sun, "Agricola No. 4," May 21, 1817, September 28, 1815 (BA); T.J. Pinkham, \textit{Farming As It Is: An Original Treatise on Agriculture} (Boston: 1860), 262; Samuel Griswold Goodrich in \textit{We Were New England: Yankee Life by Those Who Lived It} (1937), 134-136; Elkanah Watson, \textit{Men and Times of the Revolution: or, Memoirs of Elkanah Watson . . . 1777-1842}, Winslow C. Watson, ed. (New York: 1856), 449-450. "Agricola" asked "Would it not be better for our health, as well as our business, if the general consumption of \textit{ardent spirits} was reduced three-fourths of what it now is?" Ministers preached against "dramming, dramming, dramming at all hours of the day . . .;" "What Should a Farmer Be?" Pittsfield Sun, March 5, 1840.

\textsuperscript{197}Insolvency was a male issue for both blacks and whites, probably because under the Anglo-American system of coverture, men were expected to manage family finances. Because married women were less likely to be in charge of family finances, women had less opportunity to be held accountable for fiscal mismanagement.
coming, they could use spendthrift proceedings to petition probate court for oversight of the endangered person's finances. Selectmen were empowered to intervene to prevent bankruptcy when a family or individual might otherwise become a charge upon the town. Berkshire County probate court files include 37 spendthrifts reported by selectmen of twenty towns from 1800 to 1860. Only one of those spendthrifts was a woman. Nearly all abused alcohol. At least 21 of the male spendthrifts supported families, which meant that their actions damaged not only their own well-being, but also wives' and children's well-being. Spendthrifts were a mixed lot, black, white, farmers, merchants, artisans and laborers guzzling their assets. According to the twenty inventories filed, their property levels ranged from nearly indigent with only forty-some dollars in property, to an old Berkshire family's wealthy scion determined to drink up $6000. Aside from being propertied males, all they had in common was tippling to the point of ruin.198

The significance of spendthrifts lies not in their numbers, which were less than one percent of the population. These cases are more important for showing Yankees' horror over waste of hard-won property. "Waste not, want not" was part of the New England credo of thrift and hard work. But a steady stream of alcohol eroded the property that upland farmers had to struggle to preserve in the best of times. Nothing about farming was easy, and farming was the basis of the western Massachusetts economy well into the nineteenth century. In fiction and prescriptive literature, being declared a spendthrift was "fraught with shame and dishonor" for good reasons.

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198 Most of the spendthrifts were clustered in the 1820s and 1830s. For 1800-1809, two cases were filed; 1810-1819, four; 1820-1829, eleven; 1830-1839, seven; 1840-1849, five; 1850-1859, eight. Berkshire County guardian spendthrift files.
Thriftlessness and idleness went hand-in-glove with intemperance, not only in fiction, but also in real life. The worst sin of spendthrifts in fiscally-prudent and industrious New England was not their drinking but their irresponsibility with time and money.

Spendthrift files begin with a standard request. A town's selectmen petitioned the court, writing in one of the earliest nineteenth-century files,

Ozias Case of Loudon does by excessive drinking and idleness so spend waste and lessen his estate as thereby to expose himself and family to want and suffering circumstances and does thereby endanger and expose the Town of Loudon to a charge and expence for their maintenance and support.

The selectmen asked the judge to appoint a guardian to conserve yeoman Case's $990 estate, most of it notes against Stephen Pelton (who in a remarkable conflict of interest was assigned with another of Case's debtors to take the inventory). In most spendthrift cases, a citizen evidently respected for fiscal prudence was appointed guardian. In this case, his own son, Ozias Case, Jr., was assigned.

Details of other cases illuminate additional sins of intemperance: gaming or debauchery or both. One farmer (not described as insane) had to be shackled to restrain him. Domestic violence accompanied alcohol abuse. Adams selectmen wrote that John Lapham did "by excessive drinking so threaten and abuse his family as to make them very unhappy and appears to us dangerous;" he caused "distress misery and ruin." Two spendthrifts were considered deranged, and according to the

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199 For a fictional portrayal, see W. Harrison Ainsworth, "The Spendthrift," Bentley's Miscellany XL (1856). For other commentary, see: "A Farmer on Temperance," Hampshire Gazette, March 14, 1832.

200 BCP 2267 (Case 1803).
selectmen, William Thompson of New Marlborough drank to the point of insanity. Henry Dwight of Stockbridge was also labeled insane, with the following note.

Although he has for the present means of living & may have for some time yet, his course of conduct and management of his property is such as must in the end [reduce?] him to want and poverty unless stopped.

The selectmen believed that Dwight was drinking away his assets and had to be stopped before it was all gone. They were right. What initially appeared to be an estate worth more than $8000 in 1838 shrank to less than $3000 over the next three years as mortgages were retired and land was sold to pay his debts.201 The victims in most of these cases were wives and children left without resources.

Such stuff was the New England nightmare. Incompetent money management evidently occurred when a man was under the influence. Though most files described how men spent, wasted and lessened their estates, a few added illuminating details to show how liquor destroyed business acumen. William Wilcox was "deeply in debt and wholly neglected his business." Arba Boyington engaged in "the practice & habit of trading & trafficking while intoxicated . . . & making foolish & indiscrete bargains . . ." James Brown made "many bad bargains" and was "not a man well calculated to procure, take care of, or keep property," possibly because he was "subject to fits of mental aberration." In 1839, Austin Davis was "wasting and spending his property needlessly & foolishly." His wife Lettica complained that "the conduct of said Austin is such that she cannot live with him as a Wife and wished measures taken to prevent him the said Austin [from] squandering the property left her and her children by her

201 BCP 2829 (Wilcox 1811), 4113 (Lapham 1823), 2872 (Thompson 1812), 5927 (Dwight 1838).
late Father." Lettica's plea was too little and too late; the Austins' $1600 farm was gone by 1842. Laborer Emory Conn wasted his property and his earnings -- showing that workingmen were also subject to scrutiny, as were merchants, farmers, and the sons of wealth. Ansalem Parsons' drinking injured his own health and endangered his life, which exposed his family to fiscal ruin. Another spendthrift, Ira Sprague, misspent his time as well as his money.\textsuperscript{202} In New England, wasting time was tantamount to wasting money, and alcohol contributed to both. It is also evident that alcohol consumption was, in and of itself, not considered evil. But alcohol lubricated the slippery slope down to foolish business practices, idleness, waste, debt, debauchery, violence and crime.

Idleness was mentioned in 27 (73 percent) of the 37 spendthrift cases. Because most of the spendthrifts' identified occupations were farmer or yeoman, and because most of the spendthrift actions were initiated in spring and summer, we might reasonably infer that idleness for a farmer in planting season or at haying time was a particular sin in the eyes of selectmen. (On the other hand, frigid weather may have dissuaded selectmen from making a trip to court during winter.) The New England credo of thrift and industry was built on the adage, "Those who don't work, don't eat," and most spendthrifts spent more time drinking than working. Furthermore, a man who did not work was less than a man; and in spendthrift proceedings, he was reduced to a state of dependency on a guardian. A dependent, like a woman, child, idiot or criminal, was not entitled to the rights of a citizen.

\textsuperscript{202} BCP 2829 (Wilcox 1811), 3959 (Boyington 1821), 6310 (Brown 1841), 6074 (Davis 1839), 8572 (Conn 1857), 8657 (Parsons 1858), 7351 (Sprague 1849).
Most spendthrift files end when a guardian was appointed. Sometimes (nine of 27, or 33 percent of the cases), however, the spendthrift went on the wagon or mended his ways, and he or his guardian, or both, requested his release from guardianship. Ozias Case, Jr., wrote a touching appeal in 1808 when he requested his father's liberation from supervision. Case noted his "present embarrassment and delicate situation as son & Guardian to a Father" and wrote that if liberated from guardianship, and his

Father restored to the privileges of a Free Citizen in this Town -- the circumstances would conduce much to the convenience of both [father and son] and perhaps comport with the principles of humanity.²⁰³

In most cases, the spendthrift was "restored to the rights of a free citizen." But restoration required reform, and some spendthrifts did change. When Levi Nye stopped drinking, he regained his "capacity to manage his own concerns with prudence and discretion." James Brown stopped drinking, joined a temperance society at the Methodist Church (and the Washingtonians, too) and petitioned for release from guardianship with 59 signatures supporting his claim.²⁰⁴

Ozias Case's story, however, did not end with his reform. In 1808, he remarried a Mrs. Baldwin, by whom he "acquired considerable property -- and with whom he live[d] on terms of intimacy and friendship." Her money purchased enough land to support them. Ozias Jr. deposed that his father had become "temperate, regular and steady in his habits," and two selectmen made qualified statements that Case had "pretty much renounced the too frequent use of spiritous liquors" and had

²⁰³ BCP 2267 (Case 1803).
²⁰⁴ BCP 3971 (Lyon 1821), 3443 (Nye 1816), 6310 (Brown 1841).
resumed "close attention to business." In "the land of steady habits," those qualities were a prerequisite for success. Accordingly, Case was liberated from guardianship, only to tumble off the wagon. By 1810, his "excessive drinking and idleness" hauled him back into court again as a spendthrift. Another guardian was appointed -- not his son, this time -- and there the matter rested until late 1816, when Case’s son-in-law gave bond for his support and the judge once again released him from guardianship.²⁰⁵

Ozias Case’s example shows that recidivism was possible even with good intentions and supportive family members. He and other Berkshire County spendthrifts demonstrated how alcohol was linked to fiscal recklessness and inattention to business in what might have otherwise been assumed to be a stable population of propertied family men.

According to nineteenth-century values upheld by the selectmen and the courts, excessive drinking was a handicap on citizenship, because a competent citizen was self-supporting. A spendthrift, on the other hand, endangered not only his own assets and his family’s means of support, but also risked sponging off the town. These views gave the court the right to limit the spendthrift’s fiscal freedom.²⁰⁶

²⁰⁵ BCP 2267 (Case 1803).

²⁰⁶ Neither the court nor the court-appointed guardian could be counted on to limit the spendthrift’s alcohol consumption. In several cases, drinking continued unimpeded. When the spendthrift and Revolutionary pensioner Francis Duncan or Dunkins died in 1828, his court-appointed guardian charged the estate the entire amount of Dunkins’ pension; his accounts noted that he had purchased rum, two gallons at a time, for his ward. Dunkins had evidently consumed at least a gallon of rum a month with the expenditure approved by his guardian. As a spendthrift, a pensioner, and a member of a not-too-prosperous African American community, Frank Dunkins had little money to spend in his seven years under guardianship. But other guardians also charged their wards’ estates for remarkable amounts of liquor. Plynna Karner, guardian to Daniel Van Gilder, another Revolutionary pensioner, purchased more than twenty gallons of brandy in less than two years, more than two gallons
Spendthrift proceedings were biased in favor of protecting the property of men, who owned most of it, and who evidently did most of the excessive drinking. The one woman spendthrift was an inebriate, suggesting that some women did drink to excess. Yet if all else were equal, when the relative proportions of male and property owners are compared, several more women should have appeared as spendthrifts. A logical conclusion is that compared to male property owners, a smaller percentage of female property owners endangered their property through alcohol abuse.

Such observations may have been obvious to nineteenth-century inhabitants of the small towns in western Massachusetts. Gender differences in the use of money and alcohol promoted women’s moral authority in the nineteenth century. As men lost in public opinion, women gained. (More evidence on this change will be presented in Chapter Five.)

Some spendthrift proceedings worked; men stopped drinking and regained control of their financial affairs, thereby fending off bankruptcy. In other cases, drinkers had sunk too far into debt before they were declared spendthrifts, and their estates were insolvent before the selectmen acted. But spendthrifts were not the only insolvents. Wills show that some testators (and a tiny minority of testatrices) had a negative net worth at death.

Because native-born women alcoholics were less likely to own property and were more likely to drink in private, their intemperance probably went unnoticed. And women's addiction to alcohol-laden patent medicines may not have been recognized at all. Even so, the occasional woman drinker showed up in newspapers, court cases and diaries. Sarah Snell Bryant wrote of a local woman who drank herself to death, "Mr. Abner Brown's foolish daughter killed a drinking rum." SSB July 17, 1818.
Men as Insolvent

Insolvency files can also be used to measure men’s and women’s relative fiscal responsibility. Though some women undoubtedly helped run men into debt, and some men probably spent down their wives’ estates, insolvency cases were overwhelmingly attributed to men. Of 182 insolvent estates in Berkshire County Probate Court from 1838 to 1858, 167 (92 percent) were men. Only 15 (eight percent) were women. Many were insolvent from overextending their credit or entering into unwise partnerships or making other bad business decisions. Massachusetts native Mary Abigail Dodge described how one acquaintance’s husband lost everything. Her husband’s [former business] partner failed, and the firm not having been legally dissolved, he became responsible [for the former partner’s debt] and they lost the whole they had made -- about $7,000. Then her first streak of luck came in the death of her husband.

Conventional wisdom would suggest that a husband’s death would *not* be a "streak of luck." In this case, however, the widow lost a financial *drain* when her husband died. As the credit reporter said of the milliner’s spouse, the loss of her husband was a principal gain.

To spend more than was earned, using credit unwisely, was a particularly human failing, but it ran contrary to the New England credo of thrift. And when women were perceived as fiscally prudent and temperate creditors as compared to men as hard-drinking spendthrifts and debtors, it becomes evident that the New

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208 Berkshire County Probate Records: reel 112, Insolvent Estates 1838-1858 (BA).

England virtue of fiscal prudence was often associated with women in the mid-nineteenth-century. Though all men were not drunken spendthrifts, and all women were not saints -- or business successes -- but men were considered more susceptible to debt and alcohol. These views were widely held. When Massachusetts spinster Keziah Kendall commented that debt was not generally a failing of women, hers was a common attitude. "I never heard of a yankee woman marrying in debt," Kendall wrote in the late 1830s, explicitly comparing women and men. Even so, Yankee women may have managed to avoid indebtedness simply because fewer women than men controlled property.

Furthermore, women often helped men repair their fortunes after a lapse. Thomas Dublin reports mill girls who sent money home to help fathers and brothers. Farmers' daughters were reputed to have helped pay off mortgages on family farms. Farm wives also pitched in with their own earnings from outwork, sewing and dairying. Sally Bryant's earnings were more than "pin money" for her family. "Married men falling into misfortune," wrote one author, were "more apt to retrieve their situation in the world than single men . . ." not only because they had a reason to do so, as the author suggested, but also because they had help in recovering.

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211 Thomas Dublin, Women and Work: The Transformation of Work and Community in Lowell, Massachusetts, 1826-1860 (1979), 35-36; Carolyn E. Sachs, The Invisible Farmers: Women in Agricultural Production (1983), 10; Sarah Snell Bryant's diaries are replete with references to sewing and dairying, and she sold cheese.

Because women were expected to be stewards and conservators within the family economy, evolving societal views of alcohol and debt as masculine mismanagement promoted women’s public image as "better" than men’s. This dualism marked a shift in the values of popular culture. While masculine alcohol-oriented and risk-taking prerogatives were devalued, women’s attributes as careful money managers were promoted. These widely-held views of men and women contributed to the re-gendering of virtue in the early nineteenth century.

How "Sole and Separate" Worked

Interrelated concerns about alcohol and debt provoked farsighted willmakers to protect their female heirs’ inheritances with "sole and separate" clauses. A willmaker could shield property from the potential depredations of a husband or his creditors by bequeathing it to a woman "for her sole and separate use, free and clear from all claim of her husband or his creditors," or "free from the debts, control or interference of her husband," with "no part subject to the control of her husband," or some variation on that theme.213 (As already mentioned, creditors were included in only about a third of "sole and separate" bequests.)

These provisions were radical in three ways. First, the "sole and separate" bequest was designed to circumvent coverture, or to negate the concept that a

213 Some testators made this provision even after the 1855 legislation was passed, possibly to ensure that the property would remain separate even if the law was later repealed.

woman's identity merged with her husband's at marriage. By providing an alternative, "sole and separate" bequests ensured that increasing numbers of women had economic identities separate from their husbands. These bequests indicate rising confidence in women's abilities compared with men's. It was, after all, men's misdeeds that required women's property to be protected. Such bequests also show that testators increasingly believed that women should have economic identities separate from their husbands, a radical change from eighteenth-century concepts of husbands and wives.

Second, in the early decades of the nineteenth century, a husband's bequest to a wife was usually limited to her lifetime or the duration of her widowhood, so that if she remarried, she lost use of the property. A "sole and separate" bequest was a dramatic departure from a life estate in that it did not punish remarriage, but did hamper future husbands' predation on or invasion of a woman's property. When "sole and separate" bequests were left to a widow outright, and did not revert to her previous husband's other heirs even if she remarried, the widow's chances for autonomy increased, as did her potential economic power in a second marriage. A woman with property, moreover, did not necessarily have to marry to keep a roof

214 For a prospective bridegroom, therefore, an unmarried woman with a dowry was a much better catch than a propertyless widow. This view was so common that some propertied women declined to marry, afraid that suitors were courting them more for their acreage than for their hearts. Such was the case with a wealthy Richmond heiress, Catharine Peirson, and a likeminded Lanesborough spinster, Susan Baker. Peirson feared that suitors were after her money and declined to marry. And at age 81, tavernkeeper Baker jilted Capt. John M. Brown of Cheshire, who chiseled his frustration into a boulder, "May God bless Susan and all her barren land and when she gets to heaven I hope she will find a man." Her 110 acres worth $4600 may have attracted the younger man to the "intelligent but somewhat odd" spinster -- and Susan Baker may have considered that possibility. Springfield Sunday Union and Republican, Sept. 5, 1943; censuses: 1850-1870; Lanesborough assessors' valuation lists, 1859-1860 (Lanesborough Town Hall vault); BCP 14583 (Baker 1884). Re: Peirson: Margaret Kingman interviews, 1995.
over her head. But in all likelihood "sole and separate" provisions reduced a
woman's appeal because if a fortune hunter married a woman with a separate estate,
he would not automatically gain access to her assets; he would have to inveigle her
out of them or employ legal stratagems which risked revealing his ulterior motive.
We may conclude that testators who made "sole and separate" bequests deliberately
protected them from conniving suitors. Another result, enhancement of women's
antonomy, may have been entirely unintended, or deliberate and intentional. We do
not have enough evidence to make the call, either way, for most will-makers. In
addition, it is important to remember that despite the growing numbers of women
receiving property by bequest, some of them with "sole and separate" provisions
attached, most decedents in western Massachusetts did not leave wills. We can only
speculate on their reasons. Some, of course, died suddenly and did not have time to
make a will. Others may have handed over their assets informally. Many may have
been satisfied with intestate division of the estate. On the other hand, perhaps they
were too suspicious of government or the legal system to trust the probate process.
Finally, they may have been too poor to incur the expense of an attorney. It is
comparatively easy to determine the reasoning behind an action taken, especially
when testators explain their logic, but more difficulty attends analysis of the reasoning
behind an action not taken. Regardless, it is important to remember that the decision
to not take action can be an important decision in itself. Considering the fact that
many decedents' estates did not attract the attention of probate court, it might be fair
to conclude that most of those decedents lacked enough property for the court to
notice.
Third, though "sole and separate" bequests were nothing new, they multiplied in western Massachusetts well before the Married Women's Property Acts passed between 1845 and 1863. Such bequests suggest increasing public confidence in women as property owners, particularly in comparison with men. The following graph shows the extent of the increase from 1800 to 1860.

**Chart 3. "Sole and Separate" Bequests by Women and Men, 1800-1860**

The low number of "sole and separate" bequests from 1800 to 1830 was the baseline, the hard core of ultraconservative risk-averse testators. The increase of the 1840s was probably a response to changing public awareness of the issues due to the economic downturn of the late 1830s, which saw unprotected property increasingly seized for debt. The Grimkés' and Fanny Wright's speaking tours in the 1830s, criticism of coverture, and increasing recognition that alternatives were available as legislation to protect married women's property was debated in neighboring New York state -- each played a role as well.

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215 From 85 "sole and separate" bequests.
It is important to recognize that women's increased control over property came at a cost to men who could no longer freely and legally invade their wives' holdings. But spreading the wealth reduced financial risk as it protected the family. Furthermore, assets that passed into women's hands often benefited more than one woman, and sometimes several generations of women, because women were more likely than men to favor female heirs.

"Sole and Separate" in Practice

The most common type of "sole and separate" bequest resembled joinder William Loomis's. Loomis assigned a legacy to his widowed daughter Maria Buel with the stipulation that it was "to be paid to her upon her personal receipt and in no way subject to the control or interference of any future husband."²¹⁶ Relief Thayer left her entire estate to her only child Mindwell Wilder, "for her own use, profit, and benefit and for her own disposal." Though the estate was a modest $100 house on a quarter-acre lot plus $230 in personal estate, the homestead could have been the means of support for Mindwell. Farmer Samuel Bell left a farm worth $1050 and $338 in personal property to his wife Clarissa "for her sole and separate use forever." Managed well, it might have provided a living for Bell's widow and their two sons.²¹⁷

²¹⁶ HCP 90.8 (Loomis 1851).

²¹⁷ FCP 4821 (Thayer 1825); BCP 8204 (Bell 1855).
Some single women's "sole and separate" bequests were pointed. Polly, Lucinda and Fanny Trowbridge made wills favoring each other and their married sister as heirs. The Trowbridge spinsters apparently understood that their singleness was permanent, because they attached no "sole and separate" clauses to their reciprocal bequests. But bequests to their married sister Laura Derbyshire were worded quite differently. They willed her only a life interest in their real estate, and further stipulated that the lifetime estate was to be "for her sole and separate use free from the control or interference of her husband." Life use plus a separate estate amounted to double protection -- an unusual redundancy implying that Polly, Lucinda and Fanny suspected their brother-in-law had designs on Laura's property -- or that Laura would be unable to resist him. Some of that property was to be passed at her death to her daughters, thus benefitting the next generation of women. The result of the life estate, therefore, was to preserve property for the Trowbridges' nieces.218 Other spinsters made similar bequests. Unmarried women well understood women's precarious economic position as well as the benefits of property, and tried to keep theirs out of men's hands.

The Trowbridge sisters were not the only spinsters with a mutual understanding that they would never marry. Like the Trowbridges, Sarah and Eliza Chamberlin and Sally and Lucy Parsons did not feel it necessary to make their bequests separate estates -- but most of them were over fifty when they made wills. By that age, they evidently took spinsterhood for granted. Property transmitted as

218 BCP 7239 (Trowbridge 1849), 7240 (Trowbridge 1849), 4365 (Trowbridge 1825).
separate estates were not the *only* assets withheld from men's control.\textsuperscript{219} Some estates entered closed loops of testatrices and female beneficiaries wherein a "sole and separate" clause was evidently considered unnecessary.

Men's "sole and separate" bequests often augmented lifetime estates. In 1804, Samuel Merriman willed his wife Lydia only life use of a third of his real estate, essentially a dower share. But he mitigated that restriction with a separate bequest of seventeen trees on a small hill southwest of the barn, all the household furniture, two good cows and six good sheep, "at her sole disposal during her natural life." With a cash income from the timber, dairy products from the cows and wool from the sheep, plus a garden and rental income from the land, her inheritance could have provided her a comfortable living. Likewise, in 1818 Jonathan Chapman left his wife, Nabby, half of his real estate for life with later distribution to his siblings, plus all the household furniture and half of the $1815 real estate "for her sole use." Combining lifetime use with a "sole and separate" estate provided the widow with what she needed to live, allowing her to dispose of part of the estate as she saw fit, while protecting it from a potential second husband and preserving the rest for eventual distribution to other heirs according to the husband's will.\textsuperscript{220}

Sometimes a bequest resulted in a multi-generational transfer involving a "sole and separate" bequest at the end of the chain of lifetime estates. In 1824 Joel Clark left his wife Ruth life use of $3000 worth of land -- more than a comfortable support -- and outright ownership of $744 in personal property. When Ruth died in 1857, she

\textsuperscript{219} BCP 8644 & 8645 (Lucy & Sally Parsons 1858), 7507 & 7672 (Eliza & Sarah Chamberlin 1850 & 1851).

\textsuperscript{220} HCP 97.29 (Merriman 1804), FCP 849 (Chapman 1818).
willed life interest in the personal estate to her sister Abigail Kellogg, ordering that it pass next to Abigail Ensign, "to her sole and separate use, free and clear from all claim of her said husband, or his creditors." By the time Abigail Kellogg got it, however, the personal property had shriveled to only $266. Little may have remained for Abigail Ensign.221 Joel Clark's initial bequest thus benefited his wife, sister-in-law and niece -- but it diminished as it passed through the chain of beneficiaries.

The efficacy of the "sole and separate" bequest depended on the strength of the woman who received it. If a female beneficiary seemed likely to relinquish her separate estate to her husband, a willmaker might make other provisions. For instance, Perez Cook bequeathed his daughter Pamela a featherbed and "$100 if she outlives her present husband." He was not alone in attaching such a condition to a daughter's bequest. George Chapman, a prosperous Shelburn tinman and stove dealer, left his daughter Lydia Baldwin life use of one-seventh of his estate, but stipulated that "if she should outlive her present husband E.A. Baldwin, she [could] have it at her disposal as her own." One-seventh of his estate amounted to the tidy sum of $1500.222 Both bequests effectively branded sons-in-law as undeserving recipients of property. Cook and Chapman evidently felt that the legacy would be misspent if given to their daughters while their husbands lived; perhaps they believed

221 BCP 4223 (Clark 1824) & 8809 (Clark 1857).

222 HCP 37.53 (Cook 1836), FCP 846 (Chapman 1858). Perhaps Cook wanted to help his daughter only if she were widowed. But Pamela derived no benefit at all from the money unless her husband died; the bequest had the added disadvantage of making it necessary for the executor to preserve that money intact until the survivor died as well. Chapman, on the other hand, allowed Lydia life use of property which would be exempt from Baldwin's creditors and whose damage or wastage could be policed by probate court.
the women would have relinquished -- or been coerced out of -- "sole and separate" bequests.

On occasion a testator left a "sole and separate" bequest not to a wife or daughter but to a daughter-in-law, a radical step in what must have been unusual circumstances. In 1855, Chauncey Hulet, a Lee farmer aged 65, and his sister Electa Hulet, 62, shared a home with Chauncey's son Orrin, 37, also a farmer, plus daughter-in-law Harriet Hulet, 33, and three grandchildren ages 2, 4 and 6. Chauncey Hulet probably had few illusions about Orrin's or Harriet's comparative abilities in parenting, stewardship and money management. When Chauncey Hulet wrote his will in June 1857, he departed from the custom of bequeathing his property to his son by leaving his largest bequest to his daughter-in-law. In the 1850s, daughters often inherited real or personal property from their fathers, but daughters-in-law rarely did. Yet Hulet bequeathed $700 to Harriet R. Hulet, wife of his son Orrin, "in her sole right, to be held by her, independent of any control by her husband, the sd Orrin Hulet, to her and her heirs forever." We are not certain why. Because western Massachusetts farmers were known for caution, except *when their property was threatened*, the logical conclusion is that Chauncey Hulet felt that his property would be better protected from loss or waste and more likely to reach his ultimate heirs, the grandchildren, under the stewardship of his daughter-in-law. She may have been a thrifty housewife or a good businesswoman, the pillar and comfort of the household, thereby earning her bequest. Hulet, like many other testators,

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223 1855 Massachusetts census.

224 BCP 8541 (Hulet 1857).
tailored his bequests to meet the circumstances, a family strategy for using his property to support future generations.

Chauncey had not settled Orrin on his own land (though Chauncey may have been farming his father’s land). Orrin’s first land acquisition was in 1858, well after his father’s death, and came not from his father, but from his aunt Electa. Thus Chauncey’s rejection of Orrin could not be attributed to an earlier inter vivos gift which would have been proof that Orrin had already received his portion. On the other hand, Chauncey may have made his will to warn his son, while making a private agreement with his sister that if Orrin improved in some way, she would give him her property. This, however, is speculation. Only the faintest clue to Chauncey’s disfavor is in Lee’s 1850 federal census list, where one Harriet Hulet lived in the Merrill boardinghouse without Orrin. The fact that Harriet was in a boardinghouse suggests that she was self-supporting. And the fact that she had a child around age six by 1855 indicates that she was pregnant or had given birth during Orrin’s absence. He may have been a Forty-niner, leaving Harriet stranded in Lee while he joined the Gold Rush or went elsewhere to pursue the adventure and opportunities for profit that lured young men away from home in the nineteenth century. If ninety percent of western Massachusetts’ young men were on the move in the 1850s as historian Robert Doherty shows, Orrin undoubtedly spent some time

225 BCRD grantee and grantor indexes.

226 1850 census.

away from home. Other men were expressly cut out of wills because they were intemperate, profligate with money, in debt, criminal, or weak in mind or body. Was Orrin slighted in his father's will for such a reason? Why did Hulet make these provisions when other testators surely bequeathed property to weak or incompetent sons? Hulet's choice may reveal as much about him as it does about his son. Court records reveal Chauncey Hulet as a shrewd businessman, a carriage-maker as well as a farmer, who was quick to resort to litigation when a debtor was slow to pay or a tenant lagged in relinquishing property. At the same time, he was slow to pay his own debts, or to return a yoke of oxen he had borrowed.²²⁸ Orrin Hulet, on the other hand, did not engage in litigation, either as plaintiff or as defendant. Chauncey Hulet may have felt Orrin did not make as much of his opportunities as he might have. But Orrin was probably not a scoundrel deserving punishment for misdeeds.

When he served in the Massachusetts Forty-ninth Volunteers in 1863 (his second enlistment), another soldier, Henry Johns, wrote of him,

> We retain in our department as wagon-master . . . Orrin Hulet, one of those men you can always count on, and implicitly trust; an old soldier and consistent Christian, who only needs the absence of his employer to do nearly double the work that an employer would have required at his hands.

In a later passage, he wrote that Hulet made repeated trips from camp to Baton Rouge, night and day, to bring wagon loads of ammunition through guerilla-infested country. Johns expected him to be captured or killed on those sorties.²²⁹ From

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Johns’ description, Orrin Hulet appears to have been hard-working, trustworthy, brave, and a cut above other men not described as Christian. To have been named wagon-master, he must have known enough about such vehicles to keep them repaired and running, probably having learned the trade from his father.

From what we know of Chauncey Hulet and of his son, Orrin, it is impossible to be sure why father shortchanged son in his will. We can only speculate that this father, like many fathers, somehow disapproved of, or was disappointed in, his son. Perhaps they had a longstanding disagreement that was manifested in Chauncey Hulet’s will? It is hard to know for sure. What is certain is that a woman was the favored beneficiary despite the presence of a male heir.

Debt, however, was probably not the problem, because Orrin did inherit something. If Orrin had been in debt, Chauncey probably would have put his portion in trust beyond creditors’ grasp. Along with two married sisters, Orrin received an equal division of the residue of Chauncey’s estate. How much they inherited is unknown, but it was probably less than Harriet’s share. Furthermore, if bequests to women (the first to daughter-in-law Harriet, the second, $50, to "well beloved" sister Electa, and the last to daughters Adaline Louise and Mary Ann along with Orrin) are tallied and balanced against bequests to the one male heir, women inherited more from Chauncey Hulet than did the usual farmer’s preferred heir, the resident

\[ \text{\textsuperscript{230}} \] Unfortunately, Chauncey Hulet’s property inventory is incomplete so it is impossible to determine exactly how much he owned. Lee’s tax lists are missing and the 1850 U.S. census report of $1250 in real estate could be inaccurate. The executor’s bond (property pledged to ensure fiscal responsibility), however, was set at $4000. Because local custom was to set the bond at two to three times the expected value of the property to be inventoried, Chauncey Hulet’s total real and personal estate probably was $1300 to $2000. (This level of property ownership indicates he was in the middle class of landowners.) If the estate’s value was within that range, Harriet R. Hulet received her father-in-law’s single largest bequest.
son. To press this analysis further: Chauncey Hulet’s placement of Orrin with his married sisters in the last bequest of the will effectively gave his son the status of a married woman, who was stereotyped as a dependent, not responsible for carrying on the public business of the family. In addition, Hulet did not feel it necessary to attach a "sole and separate" clause to his sister’s and daughters’ bequests. Had he done so, it would have shown general distrust of husbands or potential husbands. Because he attached the "sole and separate" provision only to Harriet’s bequest, he indicated that his fear of loss applied only to Orrin. Chauncey Hulet’s bequests showed his view of a woman as stronger and more capable while a man was weak or lacking ability.

Chauncey Hulet was not the only father who favored a daughter-in-law over a son. In 1849 Levi Taylor of Granby bequeathed a life interest in his substantial estate to his daughter-in-law Sophronia, noting that her portion was to be "for her own exclusive benefit and use . . . no part apportioned to the payment of any debts of my son Milo . . ." In Taylor’s case, the son’s misbehavior before 1849 was

231 Considering that Hulet’s inventory was incomplete, it could be possible that he held substantial longstanding notes against his son, which would present this case in a different light. The fact that the inventory was incomplete, however, makes it more likely that Hulet was not a creditor whose notes would have to be called in by the executor. My thanks to Hal Goldman for pointing out this possibility.

232 Hulet’s evident mistrust of his son’s ability mirrors the bequests of the majority (10 of 14) of Berkshire County married women who wrote wills denying property control to their husbands.

233 When Roxana Garfield made her will she referred to a gift received from her father-in-law: "To my beloved husband all rights and title to the real estate deeded me by the late Abner P. Garfield," but it is not clear whether that was a gift, a sale, or a bequest. BCP 7435 (Garfield 1850).

234 HCP 145.50 (Taylor 1849). Note that Levi Taylor protected his estate in two ways: by providing only a life interest in it for Sophronia so the court was required to police it for
clearly linked to the father’s protection of the estate. Levi Taylor had documented cause for concern. In 1850, Granby’s federal census taker listed Milo A. Taylor, 38, as a *convict* living with his wife Sophronia, 34, and three children ages 6, 8 and 10. The family’s $2500 in real estate was attributed to Sophronia, not Milo.\(^{235}\)

In 1853, Milo Taylor and his business partner applied for credit. The R.G. Dun and Company credit reporter assessed the two as natives of Granby, young men with real estate to secure their credit. Milo’s partner was an experienced businessman of "unblemished character," but Milo was another case. According to the credit report, Milo was

> trying to do well & retrieve a heretofore lost character . . . friends now have great confidence in him -- but some few years since, after a reckless course of life for several years, he was detected in passing "counterfeit money" -- convicted & sent to State Prison -- but by the intervention of friends was pardoned on his solemn promise of reformation. He returned here & for 3 or 4 years has been industrious & prudent & had the name of conducting himself honestly & doing his best to regain a character & public confidence & seems to have succeeded very well among those who know him best. Still, such men will be watched, & will bear watching.\(^{236}\)

"*Such men will be watched.*" That statement could have applied to many husbands whose wives had received bequests of "sole and separate" property. Concerned relatives protected loved ones insofar as it was possible and separate property was a sound economic strategy. When Levi Taylor wrote his will in 1849, Milo had not yet

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wastage or loss, and also by including the "sole and separate" provision, so that Milo could not access the profits of the estate Sophronia controlled.

\(^{235}\) 1850 census.

\(^{236}\) Massachusetts vol. 46, p. 75 (Hampshire County), R.G. Dun & Co. Collection, Baker Library, Harvard University Graduate School of Business Administration, Boston.
redeemed himself. And so in all the ways the law allowed short of assigning a trustee, Levi protected property ultimately intended for his grandchildren. Taylor, like Hulet, did not see his property as belonging to an individual, but as a means of continuing support for the family across the generations.

Protection of assets was essential when men misbehaved or made bad investments or abandoned families for the West, leaving behind dependents in want, sometimes for years at a time.²³⁷ Sons who left may have already received their portion or forfeited their right to inheritance (in the eyes of their father, if not in the eyes of the law); many testators with absent heirs preferred leaving property to nearby children unless they lacked ability or misbehaved. Parents with property made bequests to protect what they had spent a lifetime accruing, as well as to protect kin who might otherwise have been deprived of the necessities of life.

In most cases, however, fathers' specific reasons for favoring female heirs are unknown. Judging from the size of some estates, we might infer that wealthy fathers protected their daughters from male gold diggers. Even when there was no particular male from whom female heirs' property needed protection, fathers made those provisions in the mid-nineteenth century; by then protecting married women's property was in vogue.

In addition to the men whose wills included "sole and separate" clauses, many men used less precise language in apparent attempts to secure property to female heirs. Rufus Forbush, for instance, left his small estate to his wife Mabel "to her

²³⁷ See Nancy Coffey Heffernan and Ann Page Stecker, Sisters of Fortune (1993) for the story of four children left in New England while their widower father joined the California Gold Rush and left them parentless for years.
own use and disposal forever." When Elienai Robbins provided that his widow's half of the real estate was to be "wholly at her disposal," or when Ahab Hill bequeathed his entire estate to his wife Ruth "forever," their bequests were open to question. So was Ichabod Emmons' stipulation that his wife Mindwell should be "sole Judge of such necessity" to sell property. Conventional testamentary language specifying the testator's intentions could make the difference between the will being honored or challenged. Preserved Fish bequeathed all but $25 of his $4600 holdings in Cheshire to his wife Amy "to have and to hold and dispose of as she pleases," but the will was challenged by siblings dissatisfied with $5 shares. Though Fish probably meant for Amy to have most of his estate, he neglected to nail down his bequest with standard language. Gabriel Matthews, on the other hand, made his intentions reasonably clear. He earmarked his estate for his wife Ruth Angeline, noting that he was "relying on her good sense and discretion in using, occupying and disposing of the same during her natural life and meaning to place [his] whole property real and personal entirely at her disposal through life and at her death," even though his language did not follow the norm.\(^\text{238}\) His will was not contested.

\(^\text{238}\) FCP 1791 (Forbush 1846), BCP 2510 (Robbins 1807), 5741 (Hill 1836), 6046 (Emmons 1839), 7519 (Fish 1851), 8313 (Matthews 1856). The Matthews' farm was valued at $500 in the 1850 census population schedule but the 1860 agricultural schedule valued Ruth Angeline's 320 acres at $2400. (1850 census population schedule, 1860 census agricultural schedule.)
"Sole and Separate" Bequests by Men and Women

Men and women made "sole and separate" bequests at varying rates in different locations, as the following table shows. This variation may have resulted from different rates of insolvency or indebtedness, from local lawyers' idiosyncrasies, or from varying views of women's needs -- all of which are beyond the scope of this study.

Table 1. "Sole and Separate" Bequests by Men, 1800-1860

<table>
<thead>
<tr>
<th>Sole/Separate Bequests</th>
<th>Hampshire</th>
<th>Berkshire</th>
<th>Franklin</th>
</tr>
</thead>
<tbody>
<tr>
<td>n = 120 testators</td>
<td></td>
<td></td>
<td>120 testators</td>
</tr>
<tr>
<td>to daughters/in-law</td>
<td>6</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>to widows</td>
<td>13</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>to other</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>21/120 = 17.5%</td>
<td>20/200 = 10%</td>
<td>11/120 = 9%</td>
<td></td>
</tr>
</tbody>
</table>

Overall, about twelve percent of male willmakers included "sole and separate" provisions in their bequests to women. Hampshire County men were clearly the most concerned about protecting women's property. Men of all classes made such provisions. Those men's estates ranged from $162 to over $50,000. Most were in the $1000 to $2500 range, which shows that the "sole and separate" provision was not just a stratagem of the wealthy; it was also used by the middle and upper-middle class, and occasionally by men with tiny estates. This evidence shows a spanning of

239 Though the differences cannot be accounted for without additional research, it might be interesting to see if there might be a correlation between insolvency rates in each county and the percentage of "sole and separate" bequests in the probate population in each decade.
class lines that contradicts assumptions made by historians who theorize about the
effect of laws protecting married women's property without investigating the property
that actually passed into women's hands. The very fact that increasing numbers
of married women owned property suggests that the propertied population took
women's property seriously and that "sole and separate" provisions generally worked.

Thus testamentary conservatism, which previously had taken the form of
favoring sons as beneficiaries, enlarged to include protection for women's -- or families' -- assets. Men who favored female heirs may have been dubious about
unknown future husbands' potential for wastage while they trusted known women's
management abilities. But male testators were not the only ones concerned. Women
writing wills also made "sole and separate" bequests. Women who wrote such
provisions into their wills were not necessarily wealthy. Their assets were generally
lower than men's, largely because women owned less property than men in all three
counties. Among women who made "sole and separate" bequests, total estates ranged
from a low of $146 in personal estate to a high of $4610 in real and personal

240 Elizabeth Warbasse suggests that married women's property acts were driven by the
upper class, to protect their own interests. And that may have been true, even though all
women potentially reaped the benefits thereof. Warbasse also believed that the popular press
did not address women's property rights, but that was not the case in western Massachusetts.

After investigating the adjudication of married women's property, Sarah Ziegler
concludes that the court upheld the law of baron and feme in circumscribing women's liberty
and reinforcing their dependence on husbands. If a man allowed his wife freedom over her
own property, a court could nonetheless restrict her use of or rights to that property.
"Uniformity and Conformity: Regionalism and the Adjudication of the Married Women's

The weakness in Ziegler's argument is that, in focusing on case law, it applies only to
the small minority of cases that ended up in court. She ignores the vast majority of women
with separate estates who managed their property successfully without judicial intrusion.

Marylynn Salmon's focus on the law likewise misses the reality of growing numbers
combined. Most were around $500. With less-than-middling estates, these women, whether single, married or candidates for marriage, appreciated the benefits of protected property. Such bequests were about evenly divided between single and married women beneficiaries, as the following table shows.

<table>
<thead>
<tr>
<th>Sole/Separate Bequests</th>
<th>Hampshire</th>
<th>Berkshire</th>
<th>Franklin</th>
</tr>
</thead>
<tbody>
<tr>
<td>n = 70 testatrices</td>
<td>220 testatrices</td>
<td>70 testatrices</td>
<td></td>
</tr>
<tr>
<td>to daughters</td>
<td>3</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>to sisters</td>
<td>0</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>to other^241</td>
<td>3</td>
<td>9</td>
<td>0</td>
</tr>
<tr>
<td>6/70 = 8.6%</td>
<td>23/220 = 10.5%</td>
<td>1/70 = 1.4%</td>
<td></td>
</tr>
</tbody>
</table>

Overall, about eight percent of women who made wills included "sole and separate" bequests -- a slightly lower percentage than among men. Women apparently had a bit more confidence in men -- or in their female beneficiaries' husbands (or potential husbands) than did men. Of the three counties, Berkshire women and men came closest (at ten percent) in their relative assessments of the need for protecting bequests to women, while Hampshire men and women diverged the most (17.5 percent of testators and 8.6 percent of testatrices). Franklin County's low rate may be a regional variation based on local attorneys' idiosyncrasies or entrenched traditions, or just an artifact of the sample.242

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241 "Others" included mothers, nieces, granddaughters and friends of unknown relation.

242 Berkshire County's 550 wills should give it the most weight for accuracy.
Interestingly, women protected their female heirs' assets at a lower rate than men -- an unexpected gender difference. If a "sole and separate" clause shows lack of confidence in men's ability to manage women's money wisely, then men had less confidence than women did. Women appear to have had slightly more confidence in men's financial management than men thought men deserved.

This is not to suggest that men utterly lacked confidence in other men. But male family members clearly inspired a level of confidence not extended to a wife's or daughter's future husband. And though the willmaker may have trusted the female heir's judgment in all things, both women and men knew that a devious man could conceal his designs on a woman's estate until after they were married, when, if her property were unprotected, he could invade it at his leisure -- or so the popular press led them to believe.

Increasing confidence in women's ability to manage property suggests that the propertied population had come to view women as family caretakers charged with protecting their families' resources, as Richard Chused suggests. Men and women who wrote wills did not reject women's domestic sphere, but rather, enlarged it to include financial considerations. The timing of the increase in "sole and separate" bequests is intriguing, coming as it did at a time of economic upheaval when women's assets may have propped up sagging family fortunes. This expansion of women's sphere was essential under those conditions because some husbands misused their wives' property, and experienced women felt free to say so.

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243 Chused, 1412, 1414-1415.
Boardinghouse keeper Rebecca Hull Clarke, a widow trying to raise six children, told Caroline Dall,

Women ought not to give up their property to men, or even ask their advice about it. The best men will prop up their shaky plans with a woman's money; but women should watch men, see where shrewd men put their money, and do as they do, not as they say.244

In western Massachusetts, mothers, grandmothers, sisters, daughters, fathers and husbands wrote wills with "sole and separate use" clauses to keep men from propping up shaky plans with women's money. They promoted women's economic survival by allowing them to manage and secure their assets from either a husband's perfidy or his unwise business decisions and his plundering creditors. Economic change was hazardous for men as well as for women; late-eighteenth-century business skills involving barter and book accounts did not necessarily work well in the cash and credit economy of the mid-nineteenth century. Some men were not deliberately profligate, but simply found themselves overextended and strapped for cash at a time when cash was essential. In this context the separate estate was an attempt to ensure that the willmaker's view of distributive justice would be upheld while protecting family assets from economic change as well as from male depredations. Though the separate estate did not guarantee that a woman would maintain control over those assets, it did give her the choice to do so.

In a radical departure from traditions vesting property ownership in men, "sole and separate" bequests protected family assets by putting them under the control of

women, rather than in the hands of the men traditionally viewed as the mainstays of family finances. By shifting assets to women *specifically* for the purpose of shielding them from men, willmakers made a private choice about the relative competence or worthiness of women and men. Those individual choices to promote women’s control of property while limiting men’s access sent a message to lawmakers years before Massachusetts passed laws to protect the property of married women. And though most willmakers did *not* make "sole and separate" bequests, the rise in such bequests foreshadowed the Married Women’s Property Acts. Because times had changed, customs -- and eventually laws -- had to be altered.

"Sole and separate" bequests thus set a precedent which caused a ripple effect of far-reaching significance. Women with property met the historical prerequisite for the right to vote. And propertied women paid taxes, which gave them a vested interest in voting for the governments assessing, collecting, and expending those taxes. Within living memory, propertied American men had invoked "taxation without representation" as a rationale for revolution. As later generations of women acquired property, they would co-opt that rhetoric and invoke it as they sought enfranchisement.
CHAPTER 4

AFRICAN AMERICANS AND PROPERTY, 1800-1860*

Because many nineteenth-century Massachusetts African Americans were recently freed from slavery, they had little property but much to prove. Edward Augustus Croslear, a veteran of the Massachusetts 54th Regiment and son of a former slave, wrote in earnest after the Civil War, "The Colard People are trying to bee some body." But they had a tough time of it before as well as after the war, even in an area that had harbored runaway slaves and accepted them as free men and women. The newspaper editor who printed Croslear's letter ridiculed it for his misspellings -- an example of racist condescension not generally directed at whites. Poor blacks, like poor whites, found upward mobility a rocky path strewn with obstructions; among those obstacles was debt, which could wipe out the gains of

Illustration 7. Edward A. and Lucy Croslear in later life. (Carrie Smith Lorraine photo, Sheffield Historical Society)

* This chapter would not have been written without the research assistance of my daughter, Karyn Wergland, who spent many tedious hours reading Massachusetts Vital Records, U.S. Census, and Albany newspapers on microfilm. For information on methodology and the results which prompted the choice of Berkshire County as the primary area of investigation, see the "Note on Methodology" in the Appendix.
a lifetime. Yet for African Americans, potential indebtedness was exacerbated by the economic racism which limited upward mobility.²⁴⁶

Black Population of Western Massachusetts

From 1800 to 1860 the greatest concentration of western Massachusetts' black population was in southern and central Berkshire County, with sizeable African-American communities in Sheffield, Great Barrington, Pittsfield, Stockbridge, Lee and Lenox. As late as 1870, Hampden County had only 813 blacks, compared to Berkshire’s 1300-plus. Perhaps more important than raw numbers are the percentages. In 1855, African Americans represented less than one percent of Hampshire and Franklin counties and 1.1 percent of Hampden’s population while Berkshire’s population was 2.4 percent black, with some towns approaching six percent. Berkshire’s population of "colored" persons exceeded the other three counties of western Massachusetts combined, which somewhat facilitated finding African-American testators there.²⁴⁷ Fifteen African Americans (eleven men and four women) with wills were located in Berkshire County from 1800 to 1861 (with the willmakers cross-checked against vital records and censuses to confirm race).²⁴⁸


²⁴⁷ It appears that a population threshold of 60-90 individuals had to be passed before blacks in a particular town began to leave wills.

²⁴⁸ My daughter and research assistant, Karyn Wergland, and I located three wills from 1763-1799, 15 wills written 1800-1861, and 20 dating from 1862 to 1890; plus 47 intestate administrations (21 from 1800-1860 and 26 from 1861 to 1890. Most wills in my 1800-1861 sample date from the 1840s on. Carol Buchalter Stapp comments on the fact that black Bostonians wrote few wills before 1830. Afro-Americans in Antebellum Boston: An Analysis
Among other things, those wills show that late-eighteenth-century and nineteenth-century black men were well ahead of white men in one testamentary practice: preferring women as beneficiaries. Though western Massachusetts' racial demography was overwhelmingly white, the black population's testamentary patterns are significant because they anticipated the change in the white majority's patterns. But before addressing those wills, a snapshot of the Berkshires' black population is in order.

Berkshire County as a Destination of Choice for African Americans

Why did African Americans settle in Berkshire County? According to Great Barrington's town historian, this population concentration resulted from the first freeing of slaves by legal process in North America. During the Revolutionary era, Berkshirites fervently debated slavery; Sheffield's citizens questioned the slave system and added an article to the warrant for the town meeting of March 14, 1774, "To take into consideration the present inhuman practice of enslaving our fellow creatures, the natives of Africa."

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249 Massachusetts' abolition followed the town's earliest (1744-1769) Congregational pastor, Dr. Samuel Hopkins, becoming one of "Ten New England Leaders" of the first abolition movement among whites. George E. MacLean in Taylor, History of Great Barrington (1928), 519; Taylor 167; Williston Walker, Lectures on Southworth Foundation, 1898-1899, cited in MacLean, 441.

250 Lillian Preiss, Sheffield, Frontier Town (1976), 129.
Runaway slaves from New York, which borders Berkshire County on the west, sought refuge from slavery -- but they did not have to go there. The "pull" factors were the convenience of proximity; the mountainous terrain provided sanctuary for runaways. Later, a line of the Underground Railroad ran through the Berkshires, aided by men and women both black and white. Many who fled slavery in New York used their services.

Massachusetts had declared slavery illegal after Mum Bet, also known as Elizabeth or Betsey Freeman, sued her master Colonel Ashley for freedom in 1781. She had served the Ashley family faithfully until Mrs. Ashley raised a red-hot fireplace tool to strike Bet's sister; Bet took the blow on her own arm, receiving a wound which permanently scarred her. Bet had listened to the Sheffield patriots' discussions of freedom and independence. Though she could neither read nor write, she had heard the Declaration of Independence read aloud; and after being abused by Mrs. Ashley, she visited attorney Theodore Sedgwick to ask if the law that said "all men are born equal, and that every man has a right to freedom" could
not be used to emancipate her. "I am not a dumb critter," she reportedly said, "Won't the law give me my freedom?" Sedgwick filed suit on her behalf and won.\textsuperscript{251} Elizabeth Freeman's initiative ultimately benefited every slave in Massachusetts and many from other states, as well.

The success of Bet's lawsuit meant that slaves from Claverack, Kinderhook, and other towns in neighboring New York's Hudson River Valley could reach freedom in Berkshire County, Massachusetts, by several miles' flight uphill through the sparsely-settled woods along the Taconic Range. In 1799 New York enacted a system of gradual abolition that kept slaves' children in servitude into their twenties, and did not free their parents, either. Because New York maintained slavery until 1827,\textsuperscript{252} Berkshire County became a destination of choice for freedom-minded New York slaves as well as free blacks who feared being kidnapped into slavery. Some simply passed through; Catharine Sedgwick noted that she had seen runaways in


\textsuperscript{252} Laws of the State of New York Passed at the Sessions of the Legislature held in the Years 1797, 1798, 1799 and 1800, inclusive . . . . (Albany: 1887), 388-389; "Pretends To Be Free:" Runaway Slave Advertisements from Colonial and Revolutionary New York and New Jersey, Graham R. Hodges and Alan E. Brown (1994), xxxiv. Others have commented on the Berkshires as a destination of choice for runaways, as did Lillian Preiss, Sheffield, Frontier Town (1976), 129.
transit in Stockbridge. But many blacks who had been slaves in New York
relocated to the Berkshires and stayed; the Berkshires’ African-American population
more than doubled from 1790 to 1810 and more than tripled before 1830. By
contrast, Hampshire County’s black population grew much more slowly, essentially
stagnating from 1800 to 1840, in part because of local whites’ racial conservatism.

Illustration 9. Western Massachusetts, from The American Atlas (1796).

253 Sedgwick, Power of Her Sympathy, 68. The Sedgwicks worked for abolition. See
Theodore Sedgwick to D. Jenkins letter referring to his services in the case of the slaves of
the Amistad, The Liberator, January 14, 1841, 78; letters of Sidney to Theodore Sedgwick,
Genius of Universal Emancipation, May 13, 1826, 289 and May 20, 1826, 297; also
[Theodore Sedgwick], The Practicability of the Abolition of Slavery: A Lecture Delivered at
the Lyceum in Stockbridge, Massachusetts, February, 1831 (New York: 1831).
According to Henry Gere, editor of the Hampshire Gazette in Northampton, "The abolitionists were a despised set and were regarded as meddlers with the affairs of other parties." Gere described them as few, scattered, and bitterly resented.254

The New York origins of many Berkshire County blacks can be documented. Of 80 African-American adults with race-specific death records from 1841 to 1855, the largest number, 29 (36 percent) gave no birthplace; many of them may have been born into slavery but chose to be discreet about their origins. If those unknowns are dropped from further consideration, the next-largest number, 14 (27 percent of those with known origins) had been born in New York. Only two decedents in that sample were identified as having been born in the South and both were from Maryland; another claimed origins in "Hayti."255

The Berkshires' reputation for harboring runaways was well known. Slaveowners in adjacent New York state advertised their runaways not only in the New York papers but also in the Berkshire Chronicle; such masters clearly expected their slaves to head for Massachusetts when freeing themselves. Thus appeared ads such as the following:

255 MVR, Berkshire County, 1841-1855.
RUN AWAY
from the subscriber, on the night of the 17th inst. July, a NEGRO MAN, named FORTUNE, is about 60 years old, of a very black complexion, is much pitted with the small-pox, has one crooked middle finger. Also, a NEGRO WOMAN, named DEAN, about 28 years old, of a yellow complexion. Stole when they run away, TWO MARES, who have left their sucking colts at home; both the mares natural trotters, the one a bay, and the other a black -- also stole a saddle and bridle, some pork and bread.

Whoever will take up the said man and woman slaves, and the mares, saddle and bridle, and bring them to me, or secure the slaves in some gaol, so that the owner can have them, shall have THIRTY DOLLARS reward, and for the slaves only, TWENTY DOLLARS.

ABRAHAM VAN ALLEN
Kenderhook, July 17th, 1788.256

Fortune and Dean may have been conspicuous, travelling fast, but on two good horses, they may have gotten away before the runaway notice was published. They probably would have been safe, once they got into Massachusetts. Either Abraham Van Allen had not heard of the Berkshires' reputation for abolitionism, or he counted on mercenaries to return his chattel.

Van Allen was not the only New York slaveowner to resort to such an ad. Hudson River Valley newspapers regularly published ads to recover slaves and the

256 Berkshire Chronicle, July 24, 1788 (original at American Antiquarian Society, hereafter AAS, microfilm at BA).
property they had taken. Many of those men and women were talented or possessed skills that made them lucrative assets for their masters. William Denniston of Ulster County, New York, lost a slave blacksmith who may have been a source of income. Denniston advertised for "a young Negro man, named PRINCE, about twenty years of age, and about five feet eight inches high, speaks good English," and whose return was worth a twenty-dollar cash reward. In an ad published in 1756, a master requested the return of "a Mulatto Fellow named Tom," who could "talk good Dutch and English, and . . . play very well upon the fiddle . . . read, write and cypher." Tom had left Dutchess County, New York, and was expected to head for Massachusetts. Tom was bilingual, literate, and musical, and may well have been able to translate those skills into paying work after he escaped the slave system.

Though an individual traveling alone might have expected to attract less notice from slave catchers, bondsmen and women sometimes decamped in family groups larger than a couple such as Fortune and Dean. Two masters, who had each owned part of a family, placed separate ads for the return of a husband, wife and children who had escaped about the same time, evidently according to a well-devised plan. They left their masters in Troy and Albany and were thought to have headed for Massachusetts:

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257 Berkshire Chronicle, February 20, 1789 (AAS microfilm at BA). Graham Hodges and Alan Brown have documented other New York and New Jersey slaves who freed themselves by fleeing to New England; see Pretends to Be Free, 64.
Twenty Dollars Reward.

Ran away from the subscribers on the night of the 23d inst, a Negro Woman, named BETT, with her two children. She stole and carried away a large Cheese, a number of silver Tea spoons, and several other articles. --- Said Negro Woman is rising thirty years of age, of a yellow complexion, and rather fleshy: one of the Children is a Boy named CHARLES, about 6 or 7 years old: the other is a Girl named JANE, about 4 or 5 years old. The Wench speaks good English and Dutch; she has probably gone towards the State of Massachusetts. Whoever will secure the abovementioned Run-aways so that the subscribers may have them again, or return them to the subscribers, shall be entitled to TWENTY DOLLARS reward, and all reasonable charges paid.

TEN EYCK AND ELMENDORF.
Troy, June 25, 1798.

Bett’s husband had fled Albany two months earlier. His master, John Bogart, advertised that "he was at Troy at the time mentioned in the preceding advertisement, and induced the abovementioned Negro Woman, (whom he calls his wife,) to go off with him, so that it is probable they will be found together."258

Such ads prompted slave-catchers to pursue fugitives into Massachusetts decades before the Fugitive Slave Law of 1850 was passed. Some cases were recounted in town histories and local lore. About 1802, a slave woman from New

258 Albany Centinel, June 29, 1798. My thanks to Karyn Wergland for combing the Albany newspapers for runaway ads.
York fled to Adams, slave-catchers in hot pursuit. She was directed to Jeremiah Colgrove, a miller known for "warm sympathy with misfortune [and] ready faculty for circumventing rascals . . ." She had been beaten; her lower lip was torn and a large wound on her face dripped blood; and her pursuers were in sight. Colgrove stopped his water wheel and hid her there. The kidnappers galloped up and pounded on his door, demanding the woman, and the miller let them search his house, woodshed, and mill -- all in vain. They overlooked her in the water wheel. When they threatened to search a second time, Colgrove told them that once was enough, and if they entered his premises again, it would have to be over his dead body. They left empty-handed and the fugitive remained in Adams.259

Another Berkshire woman of color, Flora, was kidnapped from Africa and taken to the West Indies where she was sold as a slave. When she was re-sold in New York, she ran away from her master and settled in Pittsfield.260

Town records show other black residents born in slavery or descended from New York bondsmen. Laura Davis Todd was born in Williamstown, but the town clerk noted in her death record that her parents, John and Ann Davis, had been "Slaves."261 Phillip Hoose, a runaway from New York about 1800, settled in


260 Rosalie A. Wesley, "Underground Railway in Berkshire County . . .," Berkshire Sampler, Sunday May 23, 1976, 15. Other black Berkshirites had been kidnapped from their homelands. Rosanna Richards of Lanesborough was the daughter of Cato Freedom, who was born in Africa. Freedom was surely the surname Cato adopted when he left slavery. MVR: Lanesborough 1869.

261 MVR: Williamstown 1877.
Hinsdale, married Hannah Persip and raised twelve children. Agrippa Hull’s second wife, Margaret Tinbrook, had been born a slave in New York, as had Aaron Croslear of Sheffield, and many other black Berkshirites. The gravestone for Pompey and Jane Phillips says that they were born slaves in New York, but "They found refuge and friends here."

All the African Americans who settled in Berkshire County were not runaways. Some were free blacks, as was Coffee Negro, a "free Negro and trader," and Nana, a woman he had manumitted, as well as black men who served in the Revolution, such as Tom Burghardt, Agrippa Hull and Frank Dunkins. Others were slaves brought to the county during early settlement. A Stockbridge historian traced the first mention of Berkshire slaves to Jonathan Edwards, who owned a woman named Rose, said to have been stolen from Africa in childhood. Her husband, Joab, may have been the tanner Joab Binney who left an early (1784)

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262 Hamilton Child, *Gazetteer of Berkshire County, Massachusetts, 1775-1885* (Syracuse, New York, 1885), part 1, p. 178.


264 Great Barrington Tombstone Inscriptions v. 1, Berkshire Collection typescript (BA), 22.

265 BCP 762 (Negro 1763). Except as otherwise noted, wills cited were written between 1800 and 1861. Footnotes show the probate year, which sometimes was more than a decade after the will was written. According to Lion Miles, Coffee and Nana Negro had been manumitted by Elias Van Schaack.

Orville Dewey described Peter and Toah, a couple who had belonged to his grandfather. Other white settlers brought Joe Walker and Tamar, and Prince Wanton and his wife Sarah. Colonel Ashley bought Elizabeth (later Freeman) from Mr. Hogeboom of Claverack, New York, when she was six months old, and took her to Sheffield in the depth of winter, covered with straw in a sleigh. Violet (later Burghardt) had been owned by the Williams family. And Coonrodt Burghardt had owned Tom, the first of the free black Burghardts in Great Barrington.

Such individuals established the African American population of Berkshire County. And as the black population increased, so did the margin of safety for runaways who wanted to blend into those communities. A black fugitive in all-white New Ashford, for instance, would have been conspicuous in a way that he or she would not have been in the African-American enclaves of Great Barrington, Sheffield, Stockbridge or Pittsfield.

After the Fugitive Slave Law passed, the black population began to emigrate yet again. The Pittsfield newspaper made this report in 1850:

The movements of our colored population continue both here and in Alleghany. Upward of 100 fugitive slaves have gone hence for Canada, and a party left Alleghany last evening for the same destination. All who go are armed to the teeth, and express a determination to die rather than suffer an arrest. The principal hotels are left without servants. The number that have fled is surprisingly

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269 Jones 239-240.

270 BCP 2126 (Hannah Williams 1801); Lion Miles.
great. A number of Southerners have recently arrived, who are suspected of being slave hunters.\textsuperscript{271}

The hundred-plus fugitives evidently had little faith that Berkshirites would defy federal law or divert federal marshals to protect them. Yet despite outmigration provoked by politically-induced turmoil, many descendants of the early black residents put down roots in Berkshire County, acquired property and left historical footprints.

**Divisions within Berkshire County’s African American Communities**

The black population of Berkshire County by the mid-1800s varied widely. Individuals such as the Sedgwicks’ coachman, Cato, ended his days in jail, and John Ten Eyck culminated a life of crime with a walk to the gallows. On the other hand, Ten Eyck’s foster parents, Joseph and Nancy Kelson, took in orphans and eked out a respectable living. Joab Binney was known as "a man of good sense and steady, Christian deportment;" his children were baptized in the Congregational Church and his grandson Thomas Kellis became a physician.\textsuperscript{272} Orville Dewey described the black laborers of his acquaintance as faithful and efficient workers.\textsuperscript{273} The Cooleys were prosperous Sheffield farmers, while the Dreans lost their land to debt and Mumbet’s descendants were "riotous and ruinous."\textsuperscript{274} Revolutionary pensioner

\textsuperscript{271} *Pittsfield Sun*, September 24, 1850.

\textsuperscript{272} Sedgwick, *Sympathy* 100; Bill Gillooly, *John Ten Eyck, The Sheffield Murderer* (SHS, 1983); Jones 298; Kellis: Stockbridge VR, Stockbridge Church Records (BA), 1850 census.

\textsuperscript{273} Dewey 24.

\textsuperscript{274} BCP 5637 (Drean 1835), 6627 (Drean 1843), 7895 (Drean 1853); Sedgwick, *Sympathy* 69.
Agrippa Hull adopted temperance, while his peer Frank Dunkins, a fellow pensioner who boarded with the Hulls, consumed at least a gallon of rum a month when he could get it.275

Many of the Berkshires' black families were related. W.E.B. DuBois, born in Great Barrington in 1868, counted among his cousins the families of Burghardt, Gardner, Van Ness, Jackson and Jones. He believed that his great-grandfather, Jacob Burghardt, had first been married to Elizabeth Freeman, which would have connected him by marriage if not by blood to the Dreans, Humphreys and Van Schaacks. The Hooses married into the Hamilton, Duncan, Williams, Murray, Prime and Tucker families, and Tuckers married a Smith and a Persip. Agrippa Hull married a Darby first and his children married a Potter, a Humphrey and a Gunn -- one of whom married a Feathergill. A Schermerhorn married a Newport who was related to the Burghardts. And like the Kelsons, several black families adopted children; Peter Peters raised Georgianna Gardner and made her his sole beneficiary, and James Jacklin noted in his will that he had "brought up" Augustus Jacklin.276 Family ties and networks joined many of the Berkshires' African Americans.

They were not, however, a united community. Class and education divided blacks just as they did whites. Some were literate, though literacy was no guarantee of financial acumen. Of 15 black willmakers between 1821 and 1861, five, or 33 percent, signed their names to their wills. Thus, if a signature can be considered as partial evidence of literacy, only a third of black willmakers were literate -- a much

275 BCP 4725 (Dunkins 1828) and spendthrift file 3918 (Duncan 1821).

276 BCP; Cooke Collection (BA); MVR.
lower rate than that of native-born whites at the same time. Blacks' literacy may have been rising; four of the five wills made from 1859 to 1861 were signed, while nine of the ten made from 1821 to 1852 were not. As Carol Buchalter Stapp notes in reference to her antebellum sample of Boston African Americans, a signature is not the only evidence of literacy. (Conversely, a mark made in lieu of a signature may be evidence of the feebleness of the willmaker, rather than evidence of illiteracy.) A signature without corroborating evidence of literacy, such as letters or diaries, is inadequate proof. Inventoried books or a desk do not definitely establish the literacy of the decedent. Therefore, as Stapp suggests, "pronouncements about reading and writing skills when based on probate records alone have to be couched speculatively."

Even so, the majority of her antebellum black Bostonians had acquired signature literacy -- a much higher rate than Berkshire's. Yet her sample included widows and descendants of testators, and even in the Berkshires, the apparent literacy rate was much higher for those who died later. And both samples are too small to be definitive. 277

Literacy, however, was not necessarily correlated with property ownership. The three willmakers unable to sign their wills (and having inventories or appearing in extant town tax records) owned property ranging from $67 to $2329, while the five who did sign their wills had property valued from $200 to $2035.

According to W.E.B. DuBois, Great Barrington blacks were class-conscious; he thought the Burghardts "felt above" other people of color "because of our

education and economic status." Yet the Burghardts were not wealthy. Some Berkshire blacks achieved propertied middle-class status, working farms with more than a hundred acres and passing their land to the next generation. Others just managed to scrape by. Some lost everything to their creditors. Debt was as much a problem for African Americans as it was for whites.

Property Ownership by Rural and Small-Town African Americans

People of color acquired property in several ways. Some former slaves were given property by their masters upon manumission or by bequest. Some early residents of southern Berkshire County received land grants from the original proprietors, as did distiller James Jacklin; in the days before the temperance movement, when a distillery was viewed as a public service, Jacklin was deemed worthy of such a grant. Other black Berkshirites saved their money and purchased real estate which they bequeathed to their descendants. Occasionally they received land to settle a debt. In short, the process worked with blacks much as it worked

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279 Yet another factor divided African Americans. W.E.B. DuBois commented on the status of color; he was especially sensitive to color differences within the black community, probably because his father was light-skinned enough to pass for white, while his mother was brown. His maternal grandfather, Othello Burghardt, was dark, while his grandmother Sally was triracial -- Indian, Dutch and African -- and lighter-skinned. DuBois 64, 71-72. Though other scholars have related skin color to status, I have seen little evidence of that in this small sample.
with whites, the main difference being that the Berkshires' black willmakers had only modest holdings.\textsuperscript{280}

Complicating this study is the fact that many propertied African Americans did not leave wills. Town tax records show many propertied blacks without probate files. Some of them, such as farmer Christopher Askin who died at age 100 in 1842, were comfortable though not rich. Askin owned 25 acres and two buildings worth $305, and was a principal in other real estate.\textsuperscript{281} Laborer John Tucker owned a rocky homestead, which doubled as a station on the Underground Railroad, in The Gulf, a narrow boulder-strewn glen where the towns of Dalton, Lanesborough and Pittsfield met.\textsuperscript{282} London Drean, who died about 1822, owned little acreage; he was below Sheffield’s median.\textsuperscript{283} None of these propertied men left probate records. I suspect that each of them fell below the threshold where probate court felt it necessary to call for an accounting. In addition, white elites’ assumptions of the comparative poverty of African Americans may have served in insulate people of color from judicial

\textsuperscript{280} Though the extent of western Massachusetts’ intestates’ wealth has not yet been investigated, one black man, David Ruggles, who died intestate in 1849 owned $6050 in real estate and personal property valued at $2583, total $8633, which put his assets well above the white men’s average of $4810. Unfortunately his debts totalled $9000, including those outstanding from his defunct New York abolitionist newspaper, \textit{Mirror of Liberty}. His business, the Northampton Water Cure, was started with investments by men and women sympathetic to Ruggles, who had worked as an abolitionist and was reputed to have been one of the Underground Railroad conductors who helped Frederick Douglass escape slavery. HCP 242.51; "Death of Dr. David Ruggles," \textit{The Liberator}, December 21, 1849. My thanks to Karyn Wergland for introducing me to David Ruggles.

\textsuperscript{281} Pittsfield Assessors’ Valuation List, 1842 (BA); CBRD 48.51, 51.271, 97.539, 111.45; MVR: Pittsfield 1842. His son ended up with a half-interest in Askins’ 56 acres valued at more than $1000, purchased in partnership with clothier Daniel Stearns.

\textsuperscript{282} \textit{Boston Herald}, February 24, 1985, p. 12.

\textsuperscript{283} Sheffield Tax List, 1811; Minister’s Tax List, 1822: "Estate of London Drean," (SHS).
intrusion, so that men like Askin were simply overlooked. In addition to those reasons, all the possibilities explored in the previous chapter -- sudden death, actual poverty, distrust of the system, satisfaction with intestate division -- apply to African Americans.

Fortunately, other people of color did leave wills. Testators who left wills with inventories (or tax listings, land records, or other estate valuations) ranged from poor to middling. At the low end, laborer Prince Jackson of Sheffield had a $67 estate: four acres and a steer. Handyman Thomas Burghardt had $200 at interest. Joseph Kelson owned three acres and buildings worth $275 in Lenox. Shorom Billings of Peru farmed 65 acres and had a pew in the Congregational meetinghouse along with a horse shed, all worth $532, plus $180 worth of personal belongings and livestock at probate in 1849. Lee shoemaker Hackaliah Jones owned a home and one-acre houselot valued at $250, and $101 in personal estate including a cow, fowl and several rooms of furniture.284

Between such men and the more prosperous black Berkshirites lay a world of difference. Agrippa Hull was "immortal" in Stockbridge -- literally so because his portrait was painted, preserved, and published. He had served in the Revolution as valet to General Kosciuszko; known as a "faultless" servant, he was much more. With "a fund of humor and mother-wit," he was "a sort of Sancho Panza in the village [Stockbridge], always trimming other men's follies with a keen perception, and the biting wit of wisdom." His services, according to townspeople,

284 BCP 7839 (Jackson 1853); 9116 (Burghardt 1861) and Great Barrington Assessors' Valuation List, 1850; BCP 7537 (Kelson 1851), 7191 (Billings 1849), 9252 (Hackaliah Jones, 1861).
were constantly in demand to help with parties. He would leave off cracking jokes or telling the village children stories -- of how he had once dressed in his master Kosciuszko's clothes, and of how that master had discovered and punished him -- to get the tables ready for a feast. His wife, Peggy, was also a village institution, ready to make a wedding cake at anyone's request.

Hull was willing to function as a "well-trained and adroit servant," and the Sedgwicks viewed him as such. Yet Hull was much more than a servant; he was an independent businessman with a lively intelligence, quick to seize an opportunity to profit from his popularity, as well as his ability to spot a good business deal. In addition to being a jack-of-all-trades, Hull dealt in Stockbridge real estate. At the end of his life, Agrippa Hull had 28 acres, a home lot and buildings worth $992 (and $167 in personalty) -- not a substantial amount -- but thousands more dollars' worth of realty had passed through his hands as he bought and sold property in partnership with other Stockbridge notables. Yet though Hull was one of the more prosperous of Berkshire African Americans, his assets were at the level of the white working class or poor farmers -- emblematic of the black social structure.  

Illustration 10. Agrippa Hull, 1759-1848, portrait at Stockbridge Library (Berkshire: The First Three Hundred Years, 1676-1976)

285 Sarah Cabot Sedgwick and Christina Sedgwick Marquand, Stockbridge, 1739-1974 (1974), 170-171; Catharine Sedgwick, Sympathy 68-69; BCP 7171 (Hull 1848); CBRD (transactions from 1784 to 1833).
Less prominent black Berkshirites included Pittsfield farmer Henry Hoose, with only three acres and a house valued at $650; his real estate totaled $1800, while his personal property was valued at $235. At the top of the county’s black economic hierarchy was Harmon Cooley with a 160-acre Sheffield farm valued at $2109 and fields of hops, plus a hop press and a hop kiln for making beer and ale -- a lucrative business. Cooley also owned seven cattle, 27 sheep and a personal estate of $220. (By comparison, those at the top of the white men’s sample owned over $10,000 in total estate.) The five black testators with inventories averaged $1317 in total estate, well below that of white testators from 1800 to 1860. But when testators without inventories are factored in, using estate valuations from town tax records and selling prices from real estate transactions, the average drops to $891. This average is higher than the age-specific averages Jeremy Atack and Fred Bateman reported for northern blacks. Those averages, from age 23 to age 73, were consistently less than $500 for black heads-of-household, with a peak just below $1000 only at age 58. At the same time, the pattern for all Northeastern households rose from about $1000 at age 18 to age 53, when it peaked at about $4200, then declined.

286 BCP 8944 (Hoose 1860), 1850 census, Pittsfield Assessors’ Valuation List, 1849 (BA); 5518 (Cooley 1834); 8116 (Arnold 1854). Cooley’s grave is marked by an expensive stone with an engraved verse, in Barnard Cemetery (South). Courtesy of Dennis Picard, SHS.

287 Atack and Bateman, To Their Own Soil: Agriculture in the Antebellum North (1987), 97-98. The property of most testators at the low end of the scale was not inventoried, as Daniel Scott Smith and Carol Stapp point out, and to get at their estate value requires searching beyond probate records and accepting some inconsistency in using assessors’ property valuations as substitutes for inventories.

Values factored in for men lacking inventories: BCP 9116 (Burghardt 1861): $200, Great Barrington Assessors’ Valuation List; BCP 7839 (Jackson 1853): $67, Sheffield Assessors’ Valuation List, 1851 (SHS); BCP 7537 (Joseph Kelson 1851): $275, CBRD 135.201: Nancy Kelson conveyance to Daniel Sullivan of land "which came to me by the will of my said Husband." Daniel Scott Smith, "Underregistration and Bias in Probate Records: An Analysis of Data from Eighteenth-Century Hingham, Massachusetts," William
Like white farmer-testators, black farmer-testators owned more real estate than average. Four African American farmers' inventoried real estate averaged 84 acres worth $1307. Laborers, on the other hand, rarely had more than a one-acre house lot. (Most laborers, black or white, owned none.) Black farmers, like white farmers, used wills to ensure that their hard-won farms in the stony Berkshire hills would continue to support their loved ones, but they provided less than white men. The inventoried property of white men averaged $4810 and white women's was $1860, when $550 was a competence for the average industrial worker.\(^{288}\) Black willmakers did not approach the white average. Most lacked the security of enough estate for self-support into old age. Retiring on the earnings of investments was a luxury limited to the white elite.

Fewer black women than men left wills from 1800 to 1861. In that respect, black women's testamentary practices resembled white women's customs. But black women's wealth more closely approximated black men's. Lucinda Burghardt Freeman, a domestic for the Kelloggs, paid taxes on $200 of Great Barrington real estate and bequeathed untaxed silver and horses (none of it inventoried).

Housekeeper Elizabeth Freeman had gold jewelry, household furniture and silk gowns

\(^{288}\) See Introduction.
not inventoried, but her tax assessment showed twenty acres with house and barn, plus $85 worth of livestock, worth a total of $392. Lucretia Feathergill Youngs, a nurse, owned a house and lot worth $1000 in Pittsfield plus a bit of personal property worth $21. These women averaged $537 in total estate, less than a third of white women’s average, but only about $350 less than black men’s. African-American testatrices were thus closer to economic parity with African-American testators than white women were to white men.

Undoubtedly African Americans’ employment patterns contributed to their gender parity, as well as to their small holdings. Deborah Gray-White asserts that historically, male domination is based on male control of property and/or subsistence goods. Lacking property, black men could not easily dominate black women. Gray-White suggests that the absence of such dominance mechanisms in slave society contributed to female slaves’ independence from slave men. Jacqueline Jones also believes that black women had a "more equal relationship" with their husbands in the sense that the two partners were not separated by extremes of economic power. Black women "rivaled their menfolk as primary breadwinners," so the economic dependence that bound white wives to their husbands did not apply. The fact that white women worked and that their work in the home or on the farm had economic

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289 White women’s average would have been lower if uninventoried estates were factored in. Lucinda Freeman: Great Barrington Assessors’ Valuation List, 1856; Elizabeth Freeman: Stockbridge Assessors’ Valuation List for 1829; BCP 12008 (Young 1874). It was necessary to use valuations from tax lists to derive this average; I have compared the women’s average thus derived to the men’s average derived the same way, for the sake of consistency.

290 Deborah Gray-White, Ar’n’t I a Woman? (1985), 153.

value is not in dispute here. Regardless of their contribution to the family economy, however, white women's work was rarely valued as equal to their husbands' work. For black families in which the husband often earned no more than a laborer's income, the wife's earnings made her "more equal" in the household economy.

Perhaps because free black women contributed as much, or nearly as much, as did black men to their households' wealth, black testators did not exercise the prerogatives of financial control that wealthier white men took for granted. A sense of entitlement seems to have accompanied wealth. While wealthier men felt justified in exerting control through their wills, trusting in the law to carry out their wishes, poorer men of both races left their scanty property with no restrictions to their wives or daughters, trusting their female heirs to derive maximum benefit from the slender means available. This boils down to a class-based difference: men with greater wealth evidently trusted the legal and economic system which had rewarded them and used it even beyond the grave, while men with less wealth entrusted their estates to the women who had helped them accrue and conserve it. The same may have been true of white men.

Employment

The economic elite among nineteenth-century western Massachusetts African American testators were middling farmers and distillers. Of eleven black testators, five were farmers or described themselves as yeomen (though acquaintances called one a distiller and another a servant, so occupation may have depended on point in time or point of view). The second tier consisted of skilled workers or artisans.
Because most black male decedents were laborers while a tiny minority were farmers, farmers were clearly overrepresented among black testators -- as they were among white testators.

Testators' occupations, however, were not representative of the male African-American population as a whole. Nineteenth-century black men's occupations ranged from working class (a violin-owning teamster, a coachman and many laborers) to farmers and professionals. Skilled tradesmen included distiller James Jacklin, shoemaker Hackaliah Jones, tanner Joab Binney, carpenter Pharoah Daborn, basketmaker Isaac Jones and barbers Charles H. Coles and Samuel H. Robinson, a former slave from Maryland. Berkshire County's African-American professionals included physicians Joab Kellis and Dudley Leavitt as well as minister Harry Doty of Sheffield and "Preacher" Siberman Johnson of Lee -- but they did not leave wills.292

This small-town occupational diversity is paradoxical when compared to William Lloyd Garrison’s assessment of Boston blacks’ employments. According to Garrison, among 2,000 people of color in Boston, no merchants, doctors or blacksmiths were to be found.\(^{293}\)

Black laundresses, domestics, nurses and cooks followed the second tier of artisans but were above most laborers. (Thus a working woman married to a laborer may have had an income greater than her husband’s.) African-American women’s occupations were generally domestic -- cook, house-cleaner or housekeeper predominated. Betsey Williams Jones, Emily Hoose, and Caroline Reed were testatrices in those occupations. One woman, Sophia Askin, was listed as a laborer in her record of death in 1877, and as a cook in the 1860 census. Lucretia Feathergill Young was a nurse. And Jane Prime was a beer maker in Lenox in 1860.\(^{294}\)

In their middle years most black women, like their white counterparts, were married. Yet unlike most native-born white wives in the Berkshires’ small towns and rural areas, black wives were often employed at home doing laundry or sewing. Such occupations continued to support them in widowhood, when some women of color joined forces as did washerwomen Diana Hulbert, Lucinda Williams and two daughters. Like many white needlewomen, black women formed women-centered


\(^{294}\) Women’s occupations: house-cleaner or housekeeper: Elizabeth Freeman d. Stockbridge 1829, BCP 4959; Emily Hoose d. Pittsfield 1873, BCP 11835; Caroline Reed d. Pittsfield 1865, BCP 9989. Sophia Askin d. 1877, BCP 12789. Cook: Betsey Williams Jones d. Pittsfield 1863, BCP 9728. Nurse: Lucretia Feathergill Young d. Pittsfield 1874, BCP 12008. Jane Prime was listed as a beer-maker in the 1860 census, Lenox family 609. In MVR, the occupation of most older women was "widow."
households supported by needlework, as did the propertied widow Lena Grant with her family of dressmakers and seamstresses and their dependents.\textsuperscript{295}

African Americans, however, acquired no great estates. Except for the farmers, who were small-to-middling, most Berkshire County blacks with property owned houselots of an acre or so -- enough to raise food for home consumption, but not enough to farm for market. Some had houseroom sufficient for a boarder or two.\textsuperscript{296} Most evidently made their living through wage work, day labor, or service jobs. W.E.B. DuBois commented that even the better-off blacks were not as well-off as the better-off whites.

I early realized that most of the colored persons I saw, including my own folk, were poorer than the well-to-do whites; lived in humbler houses, and did not own stores. None of the colored folk I knew were so poor, drunken and sloven as some of the lower class Americans and Irish. I did not then associate poverty or ignorance with color, but rather with lack of opportunity; or more often with lack of thrift, which was in strict accord with the philosophy of New England and of the 19th century.\textsuperscript{297}

DuBois observed that the poorest "colored folk" were better off than the lowest of whites, particularly the Irish, who entered the same occupational niches as black

\textsuperscript{295} To judge from censuses, many black women followed a predictable employment pattern. In their mid-teens, like white girls of the same era, they went out to work, usually as live-in help for elite white families. Mary Miller worked for the family of a Methodist clergyman; Cornelia Sharts served the family of a retired merchant; Cornelia Spencer was employed in the household of a wealthy widow and her physician son. In their later years, some older women without dependents worked as live-in domestics, usually for white widows, as did Margaret Van Ness at age 86 and Rosanna Schermerhorn at 58. 1860 census, Lee & Lenox, MA.

\textsuperscript{296} One Pennsylvania farmer advocated intensive market gardening on very little land, but even he required more acreage to support a family. Edmund Morris, \textit{Ten Acres Enough}, fourth edition (1865).

\textsuperscript{297} DuBois, \textit{Autobiography} 75.
laborers, domestics and laundresses. Like white New Englanders, DuBois associated poverty with drunkenness and lack of thrift -- a nineteenth-century New England credo linking fiscal irresponsibility with low economic status regardless of race. Blacks as well as whites absorbed nativist anti-immigrant views; yet their fear of debt and poverty was well-founded during the cyclical economy of the nineteenth century. In some families debt was a multigenerational problem, and it often appeared in intestates' probate administration files.

Intestacy

Many of Berkshire County's propertied blacks were evidently satisfied with standard intestate distribution of their property because few of them made wills. African Americans' testation rate (the percentage of adult decedents who made wills) was about 2.6 percent for women and 4.8 percent for men from 1841 to 1855, compared with seven percent for white women and 23 percent for white men in 1860. Most decedents had little property when they died, either because they had not accrued enough for probate court to bother with, or because they had already passed it on to their heirs through inter vivos gifts. A will-less decedent who was relatively poor, but solvent, with one competent adult heir (and no competing claims

\[298\] A single-year testation rate for blacks was untenable because I found too few decedents for a valid sample. Note that these percentages are much lower than the 40 percent Gloria Main estimated for nineteenth-century Massachusetts. "Probate Records as a Source for Early American History," *William and Mary Quarterly* (January 1975), 98. Main's comment that testators were likely to be older and wealthier than intestates proved true among black Berkshirites: male intestates were an average of age 68 at death, and female intestates were 58, while testators both male and female were 73.
to the estate or guardianship issues) was unlikely to be subjected to intestate proceedings.

Yet African Americans without wills had enough property for probate court to notice when debt was an issue. In the testation rate sample of 80 black adult decedents from 1841 to 1855, of 40 black men without wills, three (7.5 percent) had their modest holdings administered through intestacy proceedings. Of 37 black women without wills, four (10.8 percent) had estates administered. Most of those intestates were insolvent, which may be why the court appointed administrators and processed such tiny estates. Berkshire County Probate Court required intestacy proceedings for at least 21 African Americans in the six decades when only 15 wills were found.

Intestacy could be expensive for the heirs, since in many cases the court-appointed administrator pocketed the largest part of the estate, sometimes down to the last cent. When laborer Darby Moss died intestate in 1832, his single acre of Sheffield land was appraised at $35, while his debts amounted to $63, in addition to the $26 the court-appointed administrator billed the estate. Moss's wife was dead, so the administrator summoned his heirs by leaving notice at his daughter's "usual place of abode." When no next-of-kin appeared to take responsibility for the estate, the land was sold at auction for $50 and Moss's debts were settled at a discount. Other intestates were subjected to the same process. In some cases, the lack of heirs served as an invitation for the court-appointed administrator to bill the estate for every

\footnote{BCP 5274 (Moss 1832).}
penny, as did Lorenzo Gamwell when he settled Sophia Thorne’s small estate in Pittsfield in 1852.300

Intestacy could be particularly expensive for a surviving widow. When Solomon Toby’s estate was administered in 1811, Judge William Walker allowed Widow Toby only $3.58 in bedding, utensils and household implements, while administrator Asa Baird collected $27.59 -- the total value of the personal estate inventoried! Fortunately for Martha Toby, the court assigned her dower in her husband’s hundred-plus acres in Becket, which may have been enough to live on.301

In some families, several generations followed the pattern of intestacy complicated by debt. Such was the case with the Dreans. London Drean was a propertied black head-of-household in Sheffield from 1800 to 1820. He accrued land and signed over to his sons acreage in the "Blackamore lot" in Sheffield plus the family homestead before he died about 1822. Drean’s sons Darius and John were left enough real estate for a competency to support themselves and their widows for life. Unfortunately both ran into debt, and neither made a will.302

Darius died in 1835 and his real estate aside from his "one undivided sixth" was worth $848. But he owed creditors more than $1200 -- $440 of it to his mother,

300 BCP 7780 (Thorne 1852).

301 BCP 2771 (Toby 1811).

302 Drean’s sons’ probate records indicate that they received their land from him; his widow had dower in the acreage. But his name did not appear in BCP, SBRD or CBRD, so we can only speculate on how he received the land, or when. In spite of that gap, he regularly paid taxes on the real estate, and appears as "estate of London Drean" on the Sheffield tax list for 1822 (Sheffield Historical Society, hereafter SHS). Their records show that though they had substantial assets, their debts were even more substantial; there could be a great discrepancy between inventoried assets and net worth, as was true of David Ruggles, and as Carol Stapp also observes. Stapp 119-124.
Andrew Drean, the son of Silas Drean who was Darius’ brother, died in 1843, leaving a widow and daughters who might have received his $525 in real estate and $183 personal estate. But he, too, was in debt. Though he was not quite insolvent, probate required the sale of his share of the Blackamore lot and most of his personal estate to settle his debts. John Drean purchased Andrew’s 30 acres (more or less) for $400, which kept the land in the family. But Andrew’s widow Eliza suffered in the settlement of the estate, as I have already described. Eliza asked her employer, attorney H.W. Dwight, to intervene before the property was sold because she had brought to the marriage “a great number of articles of household furniture, good wearing apparel, a pair of steers, a cow and other articles too numerous to mention.” Eliza Drean, like many other women who brought property to their marriages, paid for her lack of a prenuptial agreement by seeing her property confiscated to settle her husband’s debts. When John Drean died in 1853, he too was insolvent; his widow was allowed only $75 of his estate -- again rather less than a dower share. Massachusetts law did not protect these widows’ interests. Thus intestacy often accompanied insolvency for black families in Berkshire County. Like white men’s debt, black men’s debt created hardship for their widows.

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303 BCP 5637 (Darius Drean 1835); Berkshire County Probate Records (BA microfilm): reel 63, Dockets 1835-47; reel 30, pp. 452-453.


305 BCP 7895 (John Drean 1853); BA probate records microfilm reel 30, p. 66 & reel 80, docket 1847-69. Sarah, widow of London Drean, had died in the late 1840s, which settled the issue of her dower. Sarah Drean’s death was reported in 1846; "Mrs. Drean" died in 1848. Sheffield list of deaths for 1846 (SHS); MVR: Sheffield, 1848.
Unlike white testators, most black Berkshirites who left wills, like those who
died intestate, were lower- or working-class. Few made it into the middle class.
Furthermore, Berkshire County’s black willmakers’ average inventoried estate was not
a fair representation of the actual average of all black testators, because only the
larger estates of landowners were inventoried. Testate laborers’ property was not
appraised in most cases.

In one significant respect the small number of African Americans who left
wills resembled the larger number of their white counterparts: will-making was a
family affair. Many testators left their property to others who also wrote wills.
Testatrice Charlotte Potter was testator Agrippa Hull’s daughter. Testators Joseph
and Paul Kelson were father and son. Willmakers Thomas Burghardt, Lucinda
Freeman and Maria VanNess were siblings. If this study were extended into the
1870s, more family ties could be cited. And other individuals may have been related
without their relationships being obvious. In short, nearly half (47 percent) of these
fifteen willmakers were related to one or more other testators between 1800 and 1860.
Making a will can justifiably be described as characteristic of some families but not
others.

Another testamentary pattern shows that people of color mined their employers
for information. Those who worked in attorneys’ households demonstrated advanced
knowledge of how the law worked and used it to protect their estates and
beneficiaries. Certainly that was the case for Elizabeth Freeman, who saw how the
law might serve her and employed it to gain her freedom. She also learned, probably
from the Sedgwicks, that probate law in the form of a trust could be used to protect her property, ensuring its continued benefits to her heirs. Freeman trusted the advice of her longtime employers, the Sedgwicks. A Sedgwick sued for her freedom; Catharine Sedgwick witnessed her will, and Charles Sedgwick, Esq. was her designated trustee. Elizabeth Freeman, like the whites already discussed, had good reason for leaving most of her property in trust. As Catharine Sedgwick described Freeman's family relations, "her judgment and will were never subordinated by mere authority; but when she went to her own little home . . . she was the victim of her affections, and was weakly indulgent to her riotous and ruinous descendants." (Sedgwick apparently did not realize that after working for other families, Freeman may have been too exhausted to discipline her own.) In the small towns of Berkshire County, where everyone knew everyone else's business, Freeman had seen inherited property wasted by other "riotous and ruinous" heirs. Furthermore, her surviving daughter and primary heir, Betty, "grew up a shiftless creature, a mere pensioner upon the family in which her mother had been a trusted friend." Thus to protect her real estate (20 acres, enough to support a cow and raise enough food to eat) and preserve it so it might continue to benefit her loved ones, she left it in trust.307

Several Burghardts who worked in the household of Ezra Kellogg, Esquire, did the same. Thomas Burghardt spent his lifetime working for the "Misses Kellogg" and their girls' school in Great Barrington. He assigned Mary Kellogg, Ezra's

306 The Sedgwicks trusted Freeman, who raised Catharine during Mrs. Sedgwick's "two or three turns of insanity," and who was the only one who could "tranquillize" Mrs. Sedgwick when her mind was disordered. Life and Letters of Catharine M. Sedgwick, Mary E. Dewey, ed. (New York: 1872), 21.

307 Sedgwick, Letters, 326-327; BCP 4959 (Freeman 1830).
daughter, to be trustee of his small estate and directed her to use her own discretion in disbursing the income or principal to benefit his "dear brothers and sisters." His sister Lucinda Burghardt Freeman also worked for the Kelloggs, and she, too, wrote a will that left a lifetime estate to two brothers, then to descend to a third brother and finally to two nephews, with personal property to her sister Maria Burghardt VanNess and several nieces and nephews. Such a chain of bequests was characteristic of white women such as the Misses Kellogg; but no other African Americans devised property in that fashion. And Maria VanNess, who had been the Kelloggs' "faithful domestic and a member of [the] household for more than forty years," also made a will.\(^{308}\) Their wills show an ingrained perception of probate law and the ends to which it could be applied. None of their other siblings left wills (or, for that matter, registered deeds to their land). Few whites or blacks with so little property used such sophistication in setting up trusts to benefit their loved ones, as did Elizabeth Freeman and the Burghardts.

**Black Men's Testamentary Practices**

African-American men who made wills and had inventories averaged $1317 in total estate, about a quarter as much as white men's average of $4810. Thus men of color had less to distribute, which surely influenced their will-making patterns. As we have already seen, black farmers, like white farmers, were overrepresented among

\(^{308}\) BCP 9116 (Burghardt 1861), 9115 (Freeman 1861), 5413 (Kellogg 1833), Freeman "in family of Ezra Kellogg Esq.,” Great Barrington Tombstone Inscriptions, Berkshire Collection typescript (BA), 23; BCP 11542 (Kellogg 1872), 11457 (VanNess 1872).
testators. And black testators, like white testators, were more likely to be debtors than were testatrices. Here the similarities between the races ended.

In the late 1700s African American men’s testamentary practices diverged sharply from those of white men. Western Massachusetts’ white men before 1800 rarely favored women as beneficiaries, though many devised lifetime estates and house rights to their wives, often including detailed parameters for access to buildings, gardens and wells. But among men of color, two of the three wills written between 1763 and 1795 favored females as the primary heirs without restrictions, without delineated house rights, and without a dower share. Joab Binney divided his real estate between two daughters, but allowed his wife life use of a third of his real estate (plus outright ownership of half of his personal property and his livestock) on the condition that she relinquish her right to dower. He did not want his daughters’ rights in his acreage to be encumbered by dower. Tony "Negro Man," former servant of Hezekiah Park of Preston, Connecticut, bequeathed his entire estate (personalty valued at $33.73 plus acreage in Woodstock, Vermont) to the daughters of Moses Park, Esquire, of Preston. Though this sample is tiny, it suggests that black men may have been in the vanguard of the testamentary shift to favor women as primary beneficiaries well before white men came to the same conclusion.

On the other hand, those testators may have lacked male heirs; no sons appeared in several of the wills favoring females. As pointed out earlier, however, a man determined to leave his property to a male could always find one willing to

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309 BCP 1211 (Binney 1784), 1965 (Negroman 1799). This seems very odd! Did they buy his freedom? Persuade their father/brother to free Tony? Help him escape? Arrange for his support in his old age? His will doesn’t say.
accept it. Among whites, sons-in-law, grandsons and occasionally friends were recipients of such largesse. Coffee Negro followed that custom in his 1763 will. He named a non-kin male the ultimate beneficiary of a trust fund. Though Coffee Negro, a "free Negro and trader" supported Nana, a former slave, he left his property to Samuel Brown, who was to support her so she would not become a charge upon the town. At Nana's death, Brown could pocket whatever was left.\textsuperscript{310}

Nineteenth-century black men followed their eighteenth-century predecessors in favoring female beneficiaries. Of eleven testators between 1800 and 1861, the largest number favored female beneficiaries: seven (64 percent) made their major bequests to wives, daughters, and sisters. Thomas Burghardt started a chain of bequests similar to those of white women, leaving most of his property to his sister Lucinda Freeman, who then bequeathed most of her estate to their younger sister Maria VanNess.

Henry Hoose established a trust for his wife with the residue after her death to go to two missionary societies. Agrippa Hull bequeathed his estate to his daughter Charlotte Potter after lifetime use by his widow. Laborers Joseph Kelson, Paul Kelson, James Michael and Prince Jackson left their acreage to their wives with no restrictions or conditions. Their estates were the smallest in the sample, and therefore perhaps requiring the most effort from the women who had contributed to household income. Thus it might have been logical to have rewarded the women whose

\textsuperscript{310} BCP 762 (Negro 1763); \textit{Charters and General Laws of the Colony and Province of Massachusetts Bay . . .} (Boston 1814), 745-746. A 1703 law required a bond to be posted for any manumitted mulatto or negro slave, to indemnify the town from having to support former slaves incapable of supporting themselves. It was profitable for masters to free slaves worn out by their years of service. It is unclear whether Coffee Negro meant Deacon Samuel Brown or attorney Samuel Brown, or another Samuel Brown as yet unidentified.
partnership was essential to family economics. Married men applied the criteria of who needed or deserved the property the most, and chose to benefit their wives.

Only two black testators followed customs white men used before 1830 in preferring male beneficiaries. Shorom Billings allowed his wife lifetime use of the whole estate, which would then pass to his son and grandson. James Jacklin left half of his estate to a male heir with the other half divided between two daughters -- thus following the old practice of the double share to sons (or to a son).[^11] Though a few whites continued the custom, favoring male heirs was clearly on the wane after 1830. Black men’s view of distributive justice tilted toward women much earlier. They may have valued their wives and daughters for their financial contributions; the income of women who worked as domestics, cooks, nurses and laundresses may have propped up the family economy, prompting men’s bequests. This logic would explain why Joseph Kelson favored his wife, Nancy, over their son as beneficiary. Nancy took in lodgers and raised orphans at town expense, so she had contributed to the accrual of their estate.[^12] And the less a black testator owned, the more likely he was to leave it all to his wife without restriction, a result of economic parity between African-American husbands and wives. Though we do not have enough data to say that African Americans had egalitarian marriages, at least their marriages may have been more fiscally symmetrical than whites’. It is also possible that the marriages of poor white farmers were more egalitarian than has yet been determined. Considering

[^11]: BCP 7191 (Billings 1849), 5176 (Jacklin 1831).

[^12]: BCP 9116 (Thomas Burghardt 1861), 8944 (Hoose 1860), 7171 (Hull 1848), 7537 (J. Kelson 1851), 7629 (P. Kelson 1851), 7723 (J. Michael 1852), 7839 (Jackson 1853), Gillooly 13.
the fact that many of the white men who left wills followed the same pattern that
black men had begun using earlier, the same logic could apply. Perhaps these
husbands who favored their wives as their primary beneficiaries had something in
common, regardless of their race. They may have viewed their wives as competent
partners capable of taking over the family property and stewarding it wisely in
widowhood. Of course, many other factors may have come into play: no children,
absent children, unreliable children such as those examined in Chapters One and Two.
Conversely, the estate may have been too small to divide. Women may have received
their husbands' property by default. On the other hand, wives may have been the
ones best qualified as deserving, needing and capable, in the eyes of their husbands.

On the other hand, two other factors may have come into play. First, if these
black families had intermarried extensively with Native Americans, or with families
of Native ancestry who had preserved matrilineal traditions, then perhaps the resulting
favoritism for widows as beneficiaries should be explained as the residue of other
customs rather than a class-based strategy promoting family subsistence. In either
event, the outcome was the same: women received property. Second, if black
testators died at younger ages than white men, at an earlier stage in their life-cycle
with minor children at home, then leaving property to a widow would have made
sense in providing her with assets necessary for supporting the children. This
possibility, however, shrinks upon discovery that black testators wrote wills at about
the same age (69) as white testators (70), and very few had minor children.

Blacks used equal distribution of assets as little as whites did. Two testators
provided for an equal division between males and females after their wives' lifetime
use of the entire estate. Hackaliah Jones left his personal estate to his wife, but allowed her the use of his real estate only as long as she remained his widow; thus he, like Shorom Billings and Agrippa Hull, incorporated the same remarriage penalty many white men used. At her death or remarriage, the real estate was to be divided among his children. Harmon Cooley stipulated that his estate be held in trust to support his wife, Eliza, for the rest of her life. At Eliza’s demise, the remaining real and personal estate was to be divided equally among their nine children.\footnote{BCP 7191 (Billings 1849), 9252 (Jones 1861), 5518 (Cooley 1834), 7171 (Hull 1848), 9252 (Jones 1862).}

None of the black testators referred to property previously distributed to children; the "already got" phenomenon was apparently practiced only by whites. Neither did black testators mention "setting-out" gifts to daughters, though such gifts were so seldom mentioned in white men’s wills that this gap could be attributed either to the small sample of African Americans’ wills or to differing customs. And black willmakers did not use wills to plead for family harmony.

In this sample of wills from 1800 to 1861 only one was a contract for lifetime support. James Jacklin used his will to contract with Augustus Jacklin, whom I have brought up, provided he the said Augustus shall continue to live with me during my life & the life of my said wife Bulah & shall at all times during our lives conduct towards us in a kind and tender manner & faithfully to take care of us during our lives . . . But provided the said Augustus shall neglect to fulfill & perform his duty towards us the said James & Bulah, then in that case the foregoing bequest shall be null & void & of none effect . . . he shall at all times . . . provide for us respectively in a kind & comfortable manner, both in sickness & in health.
The repetition of "kind and tender" and "kind and comfortable" shows Jacklin's concern. Augustus would have received half of the real estate outright if he had met those obligations; the other half was to be divided between James Jacklin's two daughters, Betsy Miller and Sally Eaton. Augustus, however, did not last the decade between the writing of the will and its probate, so he evidently did not carry out his side of the bargain. He may have tired of waiting and left to pursue his fortune elsewhere -- a common practice of young men in the 1820s. Like the white fathers described earlier, James Jacklin was concerned enough about Augustus' performance to execute a contract -- and his concern was evidently well-founded.314

Jacklin also bequeathed lifetime use of his entire estate to his wife Bulah "for her sole benefit and comfort," as did each of the men whose ultimate beneficiaries were male. Unlike Agrippa Hull and Hackaliah Jones, Jacklin did not include a remarriage penalty; most men of color did not.315

Finally, proximity counted to black men just as it did to whites. Most black testators devised their property to those who lived either with them or in the same town. Departure from the family circle often meant forfeiture of anything more than a token bequest.

314 BCP 5176 (Jacklin 1831). A later will also included a contract for lifetime support; see BCP 16,032 (Peters 1888).

315 BCP 5176 (Jacklin 1831).
Women of color, some of them widows of testators, also acquired property. Black testatrices averaged $849, or about half of what white testatrices had at probate. Yet black women with wills left more property than the poorest of white women who left wills; no woman of color made a will to bequeath as little as the white woman who left only seven dollars. White women may have been more accustomed to using the legal system for their own benefit, and even though their means were sparse. White women may also have trusted the judicial system more than black women did. Poor black women, on the other hand, like poor black men, may have shied away from contact with the legal system, especially after it endangered them and their children with the passage of the Fugitive Slave law. Knowing how Anglo-American law enslaved their race may well have promoted distrust of the system. Those who had run away from slavery might have been well advised to have as little contact with officialdom as possible.

In addition, black and white women had different employment patterns. After the arrival of industrial expansion, many white girls worked in textile mills, but did not seek outside employment after marriage unless it became imperative. Because many black women's husbands were employed as laborers, their earning power was low, so it was necessary for most women of color to seek employment. Black women were likely to work for wages as cooks, dressmakers, nurses, and housekeepers. Black workingwomen in this study included Sophia Askin and Betsy Williams Jones, both cooks, Betsy Freeman, housekeeper and surrogate mother for the Sedgwicks, Eve Shoemaker, a dressmaker or seamstress, Sophia Thorne, a laundress, and
Lucretia Feathergill Young, a nurse. In fact, only one of the African-American testatrices located through the 1870s lacked an occupation. Such was not the case for white women.

As for African-American women's testamentary patterns: four wills do not a sample make. But black testatrices did not follow the same pattern white women used in favoring other women in their wills. Two of the four wills favored male heirs. One testatrice, Charlotte Hull Potter, wrote a will to bequeath her husband her share of the residue of the lifetime estate of her mother or stepmother, Margaret Tinbrook (or TenBroeuck) Hull.

Lucretia Feathergill Young left her Pittsfield property to her brother and a nephew. The other two favored female beneficiaries. Lucinda Burghardt Freeman divided her property -- land, horses, silver and money at interest -- between male and female heirs, but her sister appears to have received the largest share.\footnote{\textit{BCP} 7265 (Potter 1849), 12008 (Young 1874), 9115 (Freeman 1861). N.B. Freeman did not pay taxes on all of the property listed in her will. \textit{Great Barrington Assessors' Valuation List}, 1860.}

Elizabeth Freeman's will, on the other hand, does not tell the whole story of whom she favored and in this respect it resembles the wills of many white men and women who alluded to property they had already distributed to their heirs. Freeman
left female heirs her best wearing apparel and gold jewelry. But she gave a male heir, her great-grandson Amos Josiah Van Schaack, her bedding, bed, chest, two chairs, writing desk and $5 gold piece, noting that she had already given him some of her real estate. Because Freeman recorded no conveyances of land to Van Schaack, it is hard to tell who might have truly been her favored heir. Freeman’s will resembles elite white testatrices’ in another way. Unlike most black women whose property was inventoried, Freeman’s included both real estate and luxury items: silk and satin garments, velvet and lace headgear, and gold.317

Summing Up

Though fifteen wills may not be a statistically valid sample, black Berkshirites’ wills resemble whites’ wills in some ways and differ in others. Several patterns are clearly evident. More black men had property -- and more of it -- than black women had, though the disparity was much smaller than the difference between white women and white men. Wills ran in families among blacks just as they did among whites. In addition, like a few white men, an occasional black man wrote a will as a contract for lifetime support. Such a will served as a means of self-protection in dependent old age because probate court could be requested to enforce a maintenance agreement that might not otherwise be carried out.

More importantly, black men favored women as heirs earlier and to a degree well beyond that of white men. In most cases African-American men confidently put

317 BCP 4959 (Freeman 1829).
their estates into the hands of their wives, daughters and sisters. Like poor white men, black men with scanty means were likely to leave their wives the entire estate outright, while more prosperous testators left only a lifetime estate. Black women's employment patterns may have contributed to this custom; their income may have propped up the family economy. Because of their employment and resulting economic contributions, black women may have been seen as more nearly equal partners in the family and were thus trusted to use their resources wisely. Black husbands were at least fifty years ahead of white husbands in deciding that their wives deserved the benefits and control of the estate they had helped accrue. Two factors may have been at work in this testamentary favoritism of women. First, African Americans had marriages that were more economically symmetrical than whites had (or were perceived to have had). A black man may have recognized that his wife's contribution to the family economy was equal to his own, and acted accordingly. Second, their estates were so small that this practice may have been a matter of economic necessity. Most holdings were simply too small to divide.

Though the sample of black women's wills is tiny, a few generalizations might be made. Black testatrices, like white testatrices, were less likely than males to be encumbered by debt. And though they did not follow the same pattern white women used in favoring women as heirs, they did follow other patterns. For instance, black women, like white women, made bequests to grandchildren. And like white willmakers, when black testatrices feared their heirs would not make the best use of the estate, they left the property in trust. Those who worked for attorneys used trusts to conserve their estates, usually assigning members of the white elite to act as trustees, as did whites with reason to fear that their beneficiaries would not properly
manage their property. Like whites, blacks used their wills not only to support their loved ones, but also to protect them, sometimes from their own fiscal indiscretion.
PART TWO: TESTAMENTARY PATTERNS, 1800-1860

In Part One we considered why certain heirs were favored and others rejected in the larger patterns of distributive justice. Proximity counted. Heirs who were geographically close were more highly rewarded. Though all potential heirs who lived nearby did not necessarily receive bequests, primary beneficiaries in most cases were close, if not in the same household. Rarely did a preferred heir live farther away than the next town. Character and ability were also valued, for potential heirs who lacked either quality were slighted.

Testamentary philosophy was also gendered. Women’s patterns of giving sharply diverged from men’s. Women extended their largesse to a wider circle of relatives and fictive kin than did men, evidently expanding the family circle to be more inclusive than men saw it. In short, women’s values were different from men’s -- not necessarily opposed, just different. Though women and men may have shared the values inherent in protecting loved ones, their priorities diverged.

In Part Two, we will consider the changing patterns of outright bequests reflected in the testamentary philosophy of whites. We will look at their collective practices in much the same way we have already examined those of African Americans. Bequests of life estates were addressed in Chapter Two. Outright bequests are considered here. In separating the two types of bequests, I have made a distinction that may have been meaningless in practice. Some life estates, especially those of personal property without a trustee assigned, may have been consumed
before the lifetime beneficiary died. If little or nothing was left at the end of the life estate for the ultimate beneficiary to receive, such an estate differed little from an outright bequest. A life estate of realty was another matter because land endures. But the subject at hand is the willmaker's intent, not the final result; Part Two focuses on an individual’s use of a will to make a personal statement about distributive justice in allowing rather than denying complete control to a beneficiary. The issue of control is significant, so much so that this is the rationale for treating life estates separately from outright bequests.
CHAPTER 5

TRADITION AND CHANGE, 1830-1860

White Men's Testamentary Traditions Before 1830

Conventional wisdom has long held that fathers preferred sons as beneficiaries. Philip Greven has documented as much in colonial Andover, Kenneth Lockridge in Dedham, and Robert Gross in Concord.\(^{318}\) Though their reasoning and conclusions vary, the basic facts are similar. Landed fathers might have enjoyed a degree of authority that propertyless men did not have, and some propertied fathers may have exploited their control of land to delay their sons' independence. But studies of fathers and sons tell only part of the story. By the early nineteenth century, women had significant roles both as willmakers and as beneficiaries.\(^{319}\) And by looking at changes in bequests to women, we can see fathers' changing views of their sons.

In late eighteenth- and early nineteenth-century western Massachusetts, fathers' testamentary traditions included wills of the patterns documented by Greven, Lockridge and Gross. Sons were the preferred beneficiaries, and were often assigned

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the task of supporting dependent women. Wives received a dower third (the lifetime
estate of one-third of the productive value of the estate), which gave them no
authority to dispose of property. Single daughters typically received only a setting-
out gift and houseroom until they married, the presumption being that they would
marry eventually. Men based such bequests on the traditional assumption that women
required support by men -- and that sons or brothers could be counted on to support
widows and sisters after the father died. These traditions favored sons by giving them
authority over property along with responsibility for supporting female dependents.

In 1812, Comfort Bates wrote a will in the eighteenth-century tradition.
Yeoman Bates left his wife a life interest in one-third of his estate plus $75 cash per
year while she remained his widow, plus firewood "delivered to the door" by their
son Ira, and the use of a cow, horse, and their front pew in the meeting-house. Bates
also willed his wife lifetime use of specific parts of their house. Ira received the rest
of the home farm. Son Otis Bates received only a cow; he had already received his
share. Son Dexter Brown Bates received the farm he lived on, on the condition that
he pay Ira $300 within three years. Dexter and Ira each received half of their father’s
rights in the Savoy Library. Daughters Sally and Chloe Bates each received one-third
of the household furniture, $200, and house and pew rights as long as they were
single.\footnote{BCP 3015 (Bates 1812).}

Many early nineteenth-century testators in western Massachusetts retained the
tradition of widow’s dower or lifetime estate, sometimes withholding a patrimony
until sons were adult (or even middle-aged), and providing single daughters only with
setting-out gifts and indoor movables.\textsuperscript{321} This remained men’s most common
testamentary pattern into the 1820s.

Change After 1830

After 1830, male willmakers abruptly changed their preference in
beneficiaries. Though testators clearly preferred their male heirs before that time,
they began changing direction about 1828. Beginning about 1830, sons collectively
declined in testamentary favor as women increased in favor to match or surpass the
value of sons. The shift was dramatic in Berkshire and Franklin counties, areas of
colder uplands viewed as undesirable for market farming. Though a shift also
occurred in relatively conservative Hampshire County, which had a wide and fertile
floodplain at lower elevation, male Hampshirites remained closer to the eighteenth-
century tradition. Several possibilities should be considered here, though full
exploration of any is beyond the scope of this study. First: as sons abandoned the
uplands, fathers may have punished them accordingly. Sons’ outmigration could
explain testators’ favoring female heirs by default; demography alone could be
behind this testamentary shift. Second: economic forces may have been at work as
white women’s employment patterns, particularly through mill work, may have

\textsuperscript{321} Even as those traditions declined, a few holdouts continued to practice them well into
the nineteenth century. I have not done the research necessary to determine birth order of
sons who inherited farms from fathers. The fact that some of the farm-inheriting sons
remained on the family homestead might indicate that they were younger sons, as Hal Barron
found in nineteenth-century Chelsea, Vermont. But Chelsea farmers typically transferred
their farms to those sons as \textit{inter vivos} gifts, which does not appear to have been the case in
Berkshire County. Barron 94.
brought more cash into their dowries, giving them increased economic authority within the family. Third, the regendering of virtue may have left sons in the lurch. Finally: perhaps fathers had already handed over cash to their sons to get them started in life, so that what widows and daughters received was merely the residue of the father’s estate.

This testamentary change can be documented through western Massachusetts probate records. Wives were men’s most-favored beneficiaries after 1830, but daughters’ favor also increased relative to sons. An old saying, "A son’s a son until he takes a wife, but a daughter’s a daughter for the rest of her life," may have special resonance in the nineteenth century, when sons made a mass exodus westward while spinster daughters remained nearby. But sons’ devaluation was not absolute; it was only relative to the value of wives and daughters. Had sons’ devaluation been complete, fathers would have left them nothing, or made no *inter vivos* gifts such as those represented in the "already got" custom examined earlier.

As the following chart shows, nearly ninety percent of male willmakers at the start of the century preferred male heirs for their primary beneficiaries of outright bequests, a pattern resembling the previous century’s testamentary tradition. Western Massachusetts men’s preference for male heirs began to taper off just after 1800, but plummeted between 1820 and 1840.
The greatest decline was in the 1820s, but even at the height of the 1840s rebound, more than half (55 percent) of western Massachusetts men still favored females as their primary beneficiaries. Though men did not favor women by a huge margin at any time after 1830, the increase in numbers of female heirs is significant not only because it shows great change in the comparative value of male and female heirs, but

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322 From 360 men's wills: 120 each from Berkshire, Franklin and Hampshire counties. The ten to fifteen percent of men who ordered equal division of assets are not charted.

323 The drop of the 1850s could have been prompted by the Forty-niners' outmigration to the California gold fields -- and the reports after April 1849 that filled local newspapers, showing gold fever was folly and that mining camps were filled with the worst examples of masculine culture run amok: drunkenness, gambling, improvidence, and violence. See Pittsfield Sun (BA): "California Intelligence," June 28 and August 9, 1849; "A Westfield Lady in California," and the following columns, July 4, 1849; "From California," August 16 and 23, and September 20, 1849; George W. Dresser, "Letter from California," November 1, 1849; Franklin Brown, "Letter from California," January 31 and February 21, 1850.
also because this change put previously unthought-of amounts of property under women's control.  

In one respect, this was not a difficult transition. Some men had always given control of their estates to wives with minor children. Joseph Ballard made such a provision for his wife as early as 1810, when he wrote of his wife, Rhoda, that he had "the greatest confidence in her good Judgment prudent management and tender affection for the said children all of whom are minors . . ." From that tradition, it was not so great a leap of faith for a father with grown children, some of them absent, to bequeath full control of the major part of his estate to his wife or daughter.

Men's changing views of women as heirs can also be seen in the quantities of land men bequeathed to women. Though most women received nothing more than a

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324 If the figures were further disaggregated, they would show conservative Hampshire County men to have had less favoritism for female heirs, while Berkshire and Franklin men favored women at a higher rate. This difference may have been caused by Hampshire County's relatively mild climate, as well as its wide and fertile river bottoms which rewarded production of cash crops and thus provided sons with greater economic opportunity at home. Berkshire and Franklin counties' soil-less uplands, farther north and with higher elevations, simply did not offer the same support for market agriculture.


326 HCP 8.25 (Ballard 1811).

327 Few testators had minor children. A testator with minor children was usually younger than the average will-maker, but for most men who favored female heirs, age mattered little. Tracking the age of 72 white testators in western Massachusetts from 1800 to 1860 showed only a small variation in age between those who favored male heirs and those who favored females. The average age of white men who favored male heirs was 70 and the average age of eleven African-American testators was 71, while the average age of those who favored females was 67. From MVR 1841-1860. Men with no sons or no daughters were dropped from this sample. For men with wives living at probate, the widows' average age was 59.
houselot of a few acres, a few women received substantial acreage -- and the acreage they received from husbands and fathers increased as women rose in favor as beneficiaries. Twenty-five testators' inventoried estates from 1800 to 1829 showed a total of 4091 acres bequeathed. When those testators are disaggregated according to sex of preferred beneficiary, 18 testators bequeathed 3323 acres to male heirs, or an average of 184 acres apiece, while seven testators left 768 acres to female heirs, an average of 109 acres per woman. After 1830, the change was dramatic. From 1830 until 1860, 35 testators bequeathed 3934 acres. Eighteen testators gave 1572 acres to male heirs, for an average that had dropped to 87 acres, while 17 testators left 2362 acres to women, for an average of 139 acres, an increase of 30 acres. Even as farm size shrank, the acreage women received surpassed what men received.328

These figures show that testators' average acreage was shrinking.329 Yet in this sample, women received more, not less, real estate. If the issue had been merely a shortage of land, women would have received less. But women's average rose from 109 to 139 acres at the same time that male heirs' average plummeted from 184 to 87

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328 Many inventories had to be eliminated from this particular sample because much of the property had no acreage measure. Many heirs received property whose acreage I could not document, like "Jones lot," or "home farm" or "Mountain lot." Some probate files lacked inventories, but the wills so clearly stated how much acreage each individual received that the will itself served as an inventory. But the acreage measures were so generally deficient that these figures are from a batch of wills too small to be representative of what all favored female beneficiaries received. Even so, many testators with inventories should be viewed as the elite. An inventory was a class marker even when the testator in question owned relatively little.

329 Though inter vivos gifts were a possibility, I have already pointed out that men whose offspring had already received their share rarely appeared in land records as having transferred real estate to their sons. Perhaps family farms had been divided until the average acreage was reduced for all. When the farm had shrunk to the point where it would not bear further division, that was traditionally the signal for the next generation to hive off or move west and settle new lands, unless good land was affordable nearby. And in western Massachusetts' upland counties, affordable land was rarely as good as that touted in the West.
acres; women's acreage increased thirty percent while men's was halved. Perhaps more significant is the fact that women's aggregate acreage tripled, so that women collectively held increasing amounts of land. More women were receiving land -- and more women were receiving more land than men. Clearly women were viewed as worthy and capable recipients of real estate at the same time that men received less. The question remains why. Perhaps a real-life example will illustrate the issues involved.

Proximity, ability and caregiving counted, as already observed. As mentioned earlier, Ebenezer Snell bequeathed half of his farm to his caregiver-daughter Sarah Snell Bryant, but there is more to the story than proximity and caregiving. Her husband, Dr. Peter Bryant, was incompetent with money. Though a physician -- and an excellent surgeon whose skills were summoned from afar -- he was unable to collect a debt. A doctor who cannot bear to collect fees from his patients is handicapped in his ability to get ahead financially. Such men do best when they work on salary, and when his fortunes ebbed, Dr. Bryant escaped debtors' prison by taking a salaried job. He went to sea while his wife and children moved in with her parents. Some people might have viewed Sally Bryant as a dependent in her father's home. But that would be a limited and incomplete view, because she was the pillar of the household. She may well have been Peter Bryant's economic mainstay. Even after he returned, Dr. Bryant shrank from collecting fees, so Sally compensated for what their son called his

Illustration 12. Sarah Snell Bryant. (Massachusetts Trustees of Reservations)
"want of attention to the main chance." She sold dairy products, made and trimmed bonnets, cut and sewed wearing apparel, and wove carpets for other families. Her management skills and willingness to work made her an economic asset, perhaps more so than her husband, whose will noted that his medical instruments might have to be sold to meet his pecuniary obligations. (He was evidently unsure, but thought his assets would "probably" be insufficient to pay his debts.) So when Ebenezer Snell made his will, he trusted Sally with all his livestock and half of his farm (the other half going to her oldest son). And when Peter Bryant died of consumption in 1820, he left Sally everything "necessary for the purposes of Agriculture" including the flax seed and the dairy. In his will, Dr. Bryant cited her "discretion and good management." Both her father and her husband recognized her ability to manage the farm. Sally's economic competence stood in sharp contrast to her husband's ineptitude in fiscal affairs. Like many women who worked for pay or to augment the income of the family farm, Sarah Snell Bryant was part of an extensive local network of women whose economic transactions showed up only in their journals or account

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330 Parke Godwin, *A Biography of William Cullen Bryant* (New York: 1883): I, 4. One millinery guide alluded to just this circumstance writing with appalling nineteenth-century circumlocution, "It is often felt that the means placed at her disposal by the husband's and the father's industry are inadequate, without much contrivance, to support the mother and daughters in the respectability of appearance they are, very properly, desirous of maintaining ..." *The Ladies Hand-book*, 7. Sarah Snell Bryant's moneymaking activities: Diary for 1798: March 16, May 12, 14, 18, 19, June 29, October 10; June 8, 1818; October 1, November 12, December 1 and 12, 1829. Old Sturbridge Village Research Library microfilm of original at Houghton Library, Harvard (hereafter SSB); William Cullen Bryant II, *Letters of William Cullen Bryant* (1989), 249. She also made clothing and outerwear for men.

Thus her contributions to the household economy remained hidden until multiple sources, including her own diaries, were investigated with close attention.\textsuperscript{333}

Snell was not the only father to favor a woman with his largest bequest. We can infer his reasons only because they are evident in sources such as his son-in-law's affirmation of Sally Bryant's fine management and his grandson's commentary on Dr. Bryant's poor business skills. Other men made similar judgments about the comparative ability of their heirs and made bequests accordingly. Furthermore, eighteenth-century precedents existed for this custom; a few men had always been willing to reward their female family members. Spinster Hannah Wheeler, a woman who bequeathed a herd of cattle to her siblings, had received twenty acres from her father in 1785 "in consideration of her long service at home."\textsuperscript{334} Proximity and caregiving counted in this case, too.

Many men had faith in their wives as well as their daughters, and like Peter Bryant, some recorded their reasons for posterity. In 1822, Alvah Benjamin of Worthington left his $1664 estate to his wife Nancy "with the full right and power to settle the division of said farm in the same manner as I could . . .." Likewise, Isaac

\textsuperscript{332} Local transactions are often overlooked or undervalued and women's more so than men's. As Hezekiah Niles wrote in 1814, "There is no word in the English language that more deceives a people than the word commerce," because most people "associate with it an idea of great ships, passing to all countries -- whereas the rich commerce of every community is its internal; a communication of one part with other parts of the same . . .. In the United States (were we at peace) our foreign trade would hardly exceed a fortieth or fiftieth part of the whole commerce of the people." Niles' Weekly Register VI (1814), 395, quoted in Gordon S. Wood, Radicalism of the American Revolution (New York: 1992), 421, n24.


\textsuperscript{334} BCP 1290 (Wheeler 1785), 3347 (Wheeler 1815).
Bates of Northampton had "entire confidence in the good discretion and sound judgment" of his wife Martha Henshaw Bates when he turned over his substantial estate to her. Gabriel Matthews of New Ashford bequeathed his entire estate to his wife, Ruth Angeline Jordan Matthews, "relying upon her good sense and discretion." She was not, in Matthews' view, a dependent female. Though his reasoning was clear, he, like Benjamin and Bates, may have been speaking for numerous men who trusted their wives' good sense but did not bother to state the obvious. Ruth Angeline Matthews never remarried and kept the farm a "going concern" supporting herself, her sister, their dependent brother, and a niece for more than twenty years. Gabriel's confidence in her was well founded.\(^{335}\)

Some men attached precedent conditions to their bequests to favored female heirs. Matthew Anderson, for instance, left his real estate to his single daughter Fanny -- but she was not to receive it until after her mother's and brother's lifetime estates. Fanny was 38 when the will was written, and still at home. Proximity counted for her, too, though she may have had a long wait for full control.\(^{336}\)

Other men made bequests expressly as a reward for a loved one, as did Washburn Frost of Gill. He gave his estate to his wife Sally, his "faithful partner for many years."\(^{337}\) Most men recorded no explanation at all. They simply bequeathed everything to their wives, and that was that.\(^{338}\)

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\(^{335}\) HCP 13.40 (Benjamin 1823); BCP 8313 (Matthews 1856); HCP 12.12 (Bates 1843).

\(^{336}\) FCP 118 (Anderson 1854).

\(^{337}\) FCP 6040 (Frost 1858).

\(^{338}\) A few declined to put property in their wives' hands; Samuel Purple delayed making his will until after his wife's death, then stipulated that her relatives were on no account "ever have any control or management" of any of the property his children received from him!
Up to now, we have discussed the alterations in testamentary patterns while only alluding to the changing attitudes that provoked willmakers’ shifting customs in rewarding women’s proximity, prudence and ability. Social changes, some subtle, and others less so, swept through western Massachusetts late in the first half of the nineteenth century. The most basic was a change in social relations between women and men, which along with massive outmigration by native-born young men served to devalue sons as preferred beneficiaries. Gender relations changed in other ways, as women reaped the rewards of their perceived virtues.

Re-Gendering of Virtue

The idea of virtue changed in several ways. First, it expanded to include closer scrutiny of men’s private behavior. Second, though virtue had always been gendered in some ways (consider women’s sexuality), men’s private virtue, especially in terms of debt and alcohol, became a matter of growing public concern. Third, women’s virtues were recognized in the public sphere with their roles in benevolence, teaching, temperance, and abolition. As the perceptions of virtue changed, those changes affected testamentary patterns because willmakers assessed their heirs on the basis of those perceptions.

FCP 6527 (Purple 1857).

Though these changes may have occurred throughout New England, the uplands had a reputation for lacking allegiance to the status quo, and therefore may have more readily embraced change. Dixon Ryan Fox, Yankees and Yorkers (1949), 211. Shays’ Rebellion might also be viewed as western Massachusetts’ rejection of the status quo.
Part One of this study suggests that willmakers rewarded beneficiaries for ability, good judgment, caregiving and proximity. Such traits might collectively characterize filial virtue. Because all potential beneficiaries did not have those virtues, some heirs were favored over others. As already documented, heirs in disfavor were distant, intemperate, lacked sound judgment in money management, or were incapable of making the best of an inheritance. As proximity, ability and judgment were increasingly associated with women, individuals' private choices about their heirs' relative worthiness may have reflected the public perceptions of men and women, which changed radically in the nineteenth century. Those changing perceptions can be measured not only in rising numbers of "sole and separate" bequests as already described, but also in other gendered bequest patterns.

Previously, men were associated with the concept of virtue. The word itself, *virtue*, is from the same root as virile, or manly, and was linked to men's public spirit. But by the mid-nineteenth century, men were under attack and lost their mantle of virtue, which women promptly claimed. While Ruth Bloch concludes that the sharpening of gendered social values over issues of virtue worked to deny power to women by promoting domesticity, I would suggest that women embraced that concept and made it work for them by moving their recognized authority over private morality into the public sphere just when male culture was under attack.³⁴⁰

Women were already the majority of church members, and the nineteenth-century public recognized women as more virtuous than men. For instance, women

were increasingly hired as teachers because they had "purer morals" than men.341 This concept sold newspapers, too: prescriptive tales and advice extolled women's character as better than men's because women were kinder and more benevolent.342 Furthermore, daughters were often dutiful, working in mills or teaching school and sharing their pay with the folks at home. Considering the thousands of girls who worked for their living, including hundreds in paper, cotton and woolen mills, plus the estimated one-quarter of New England women who taught school, the perceived potential for daughterly benevolence could have been staggeringly high, even if the reality fell short of the possibilities. While women were seen as pious and benevolent, sons had another image entirely.343

Other historians have alluded to this shift in popular culture as public opinion grew against men's abuse of their traditional prerogatives surrounding alcohol and debt while women's piety, sobriety and good sense were extolled. Peggy Pascoe writes of the ideology of female moral authority in the late nineteenth century,


342 See "Woman," Pittsfield Sun, February 14, 1828. If we are to believe the mass media, this concept holds true in this century, as sociologists have shown. See Anne Petersen, "Job Study Puts Daughter First in Family Aid," New York Times, April 20, 1941, D-4, which showed that unmarried daughters under 30 were financially the "supporting pillars" of the families studied in Ohio and Utah. See also Tamala Edwards, "The Power of the Purse: More and more, it's women who control the charity," Time, May 17, 1999, 64. And a column on the U.S. women's soccer team winning the World Cup points out that "Women are better than men, especially at things that don't involve brute strength, like soccer, school and being sensible." Rob Morse, "The feminine soccer mystique," Berkshire Eagle, July 12, 1999 (reprinted from the San Francisco Examiner).

explaining how women "fought to turn their private moral influence into public moral authority." Alcohol was a point of contention. Temperance reformers pointed out that drunkenness was a woman’s issue even though women were not the heaviest drinkers, because women and their children had the most to lose when men drank to excess. This view gave women authority in the temperance crusade. As Barbara Epstein suggests, alcohol and its associated ills provided "an arena in which old concerns, rooted in the relations between men and women, could be expressed in a new and more socially effective way," in a revolt against masculine values. Though Epstein focuses on women’s work in temperance, men also believed that alcohol-related male prerogatives had gone too far. Most of Ian Tyrrell’s work on temperance reform addresses men’s efforts, but he shows that where temperance society membership lists survive, a third to a half of the members were women. Tyrrell notes, "Women had good reason to be incensed with the intemperance of men because excessive drinking was predominately a male vice." Thus both women and men participated in devaluing the alcohol-related norms of traditional masculine culture, and the results showed in increasing numbers of "sole and separate" bequests, as documented in Chapter Three. "Sole and separate" bequests to women were insurance against husbands’ potential depredations on their wives’ property. Such

344 Pascoe, Relations of Rescue (1990), chapter 2 (quote p. 36).


346 Ian Tyrrell, Sobering Up: From Temperance to Prohibition in Antebellum America, 1800-1860 (1979), 181, 68. Sarah Snell Bryant noted temperance activity: a Washington Society met at Cummington’s hall (September 12, 1813); she went to the meetinghouse to hear an address (August 12, 1829), and reported a temperance society meeting October 30, 1829.
bequests protected women's property not only from the husband, but also from the
debt stalking besotted men and the creditors nipping at their heels.

Furthermore, the concept of women's virtue was marketable. It may have
begun with republican motherhood, but by mid-century, the virtuous female, usually
set against an iniquitous or weak male, was a staple of popular culture. Catharine Maria Sedgwick, a resident of Berkshire County, Massachusetts, published
books based on virtue, "a concept increasingly associated with women," according to
Mary Kelley, "more in keeping with than set against prevailing gender conventions." Kelley adds that "although the precise meaning of virtue was contested . . . all
generally agreed that dedication to the common good was central to its definition and
that women's potential for such dedication exceeded men's."

Sedgwick was not alone in marketing women's virtue in the media. The
quintessential literary magazine of young working women in Massachusetts, Lowell
Offering, offered fiction portraying deeply-mortgaged men who died of delirium
tremens, leaving widows and orphans unprovided-for -- a situation lamented in real
life, as noted earlier. This publication and others overflowed with negative
depictions: wives abandoned by men who failed in business and absconded, a
drunken bridegroom whose wife became "a bounteous sacrifice for the altar of
abomination." Though these views were common in fiction, they were also

347 See Linda Kerber, Women of the Republic: Intellect and Ideology in Revolutionary
America (1980) and Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early

348 The Power of Her Sympathy: The Autobiography and Journal of Catharine Maria
Sedgwick, Mary Kelley, ed. (Boston, 1993), 35.

349 See in Lowell Offering: "Recollections of an Old Maid," (December 1840); Bride's
known in reality. In 1809 Andrew Everett, a deacon of the Dalton Congregational Church, absconded "on account of his debts," having "forfeited his word and honor." Though he returned, confessed, and was received again into fellowship, he remained under a cloud.\(^ {350} \) It might have been said of Everett, as was said of counterfeiter Milo Taylor, that "such men will be watched." Neither could have inspired much confidence. And Taylor's father made Milo's wife, not Milo, his preferred beneficiary -- a bequest favoring a woman because of a son's misbehavior. Female virtue was as recognized as male profligacy. (The occasional depraved female was horrible because she contradicted prevailing proscriptions of women's culture.)

This conception of character shows the gendering of virtue in nineteenth century. As Suzanne Lebsock reminds us, we have good reason to believe the nineteenth-century testimonials about the relative virtues of women who collectively demonstrated good character. And Ruth Bloch points out, "'virtue' is usually a term for female sexual prudence and benevolent activity," but also includes other character traits: piety, temperance, frugality, and work in a useful calling.\(^ {351} \) The outcry against men's intemperance has already been described, and women were credited with piety. In terms of frugality, debt was most often incurred by men, if we are to believe court records on men's indebtedness. Women's "work in a useful calling" could be interpreted variously as motherhood, republican womanhood, teaching school, reform, or even factory work by farm girls who sent money home for family use. By these standards, women excelled. In contrast, men in print and court


\(^ {351} \) Bloch 37.
records appear duplicitous, drunken, violent, spendthrift, profane, self-centered and irresponsible. Though these are gender stereotypes, those stereotypes were based on a germ of truth; measures of public behavior showed that men were more likely to engage in high-risk activities than were women. Simply put, women had moral authority in the nineteenth century; men did not.

Women's increasing moral authority pushed the very meaning of the word virtue away from its original basis in manliness. Public virtue, formerly the province of men, was re-gendered to include women. The re-gendering of virtue had results far beyond the increase in "sole and separate" bequests. Propertied women and men seeking to preserve family assets may have closely examined potential heirs' character and decided to give the benefit of the doubt to female heirs rather than to males.

With about half of testators favoring women as beneficiaries after 1830, the unprecedented shift in patterns of property ownership transferred increasing assets to women by the 1850s. Western Massachusetts men joined women as allies in boosting the autonomy of their female heirs by leaving property in women's safekeeping.

352 The Berkshire Athenaeum has a collection of transcribed church records; women are the majority in most. See Peggy Pascoe, Relations of Rescue (1990), chapter 2 on the ideology of female moral authority; Jo Anne Preston, "Domestic Ideology, School Reformers, and Female Teachers: Schoolteaching Becomes Women's Work in Nineteenth-Century New England," New England Quarterly 66 (December 1993), 541, suggests that women's moral purity made them better schoolteachers. For the classic description of women's attributes: Barbara Welter, "The Cult of True Womanhood," Dimity Convictions: The American Woman in the Nineteenth Century (1976).
Outmigration

As we have already seen, men were perceived as being less virtuous than women, largely because they were associated with drunkenness, debt and crime. However, such vices paled in comparison with another misbehavior. The uplands were being emptied by outmigration. Sons were streaming down out of the hills, heading away from home, westward- or city-bound. Hal Barron notes that we know little about nineteenth-century migration and persistence in older farm communities or its social consequences. In western Massachusetts, outmigration's social consequences showed not only in the dismay Barron documented in Vermont, but also in testamentary patterns after 1830.

Homebound New Englanders saw outmigrants as truants, deserters or prodigals who dodged their filial duty to care for aged parents. The Bible, familiar to the nineteenth-century population, described the essence of filial duty in Luke 12:48, "For unto whomsoever much is given, of him shall much be required." Because parents were obligated to provide for children, children were duty-bound to reciprocate. But that duty was often neglected. In the biblical tale of the prodigal son, the son wasted his substance with riotous living, effectively rendering himself unable to help his parents, then slunk home to grovel in shame. And the prodigal

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was always a son; the very concept was gender-specific. But the biblical prodigal returned home and was forgiven. Most outmigrating sons did not return to western Massachusetts, and by not returning, they escaped their obligation to support parents in old age. The result of outmigration was, therefore, a serious lapse in filial duty.

Two conflicting views of outmigrants cropped up at the 1844 Berkshire Jubilee, an event organized to mark the centennial of the settling of Berkshire County (or the establishment of Fort Massachusetts in 1744), as one of the organizers wrote, "for the purpose of renewing acquaintance and strengthening our attachment to our natal soil." (The Berkshire-born organizers were residents of New York City.) Three thousand emigrants returned to Berkshire County for a visit, perhaps to parade their success before those who had stayed home. Speeches published in the event's program showed that returnees saw themselves as pilgrims gone away to seek their grail -- a noble act. Significantly, pilgrims did not mention ambition or greed among their virtues, nor did they explain
who took care of elderly parents they left behind in the Berkshires. Yet each returnee must have prospered enough to have had the assets for making an expensive return trip to visit.\textsuperscript{355}

Stay-at-homes, on the other hand, described outmigrants as \textit{truants}, with references to the prodigal son. They disapproved of both the absence and the success of outbound sons. Oliver Wendell Holmes read a poem which began, "Come back to your Mother, ye children, for shame, who have wandered like truants, for riches or fame!" Though pages of sentimental stanzas followed, extolling the emigrants' values.

\textsuperscript{355} A Sandisfield native warned potential outmigrants that a move to the west would not necessarily promote their children's interests, and pointed out that all outmigrants did not prosper in the west. \textit{The Berkshire Jubilee, Celebrated at Pittsfield, Mass., August 22 and 23, 1844} (Albany: Weare C. Little, E.P. Little, Pittsfield, 1845), (hereafter \textit{Berkshire Jubilee}) 8, 170, 168-169.
return, that first line must have been a shocker significant for its placement as well as the use of the words truants and shame.

At the Jubilee dinner, a native son back from Rochester, New York, toasted returnees to remind them of their responsibilities to their Berkshire fathers, insisting that whatever the emigrant's lot, "he cannot be delinquent without being degenerate." Departure did not absolve offspring of their filial duty, regardless of whether they prospered or not. Another observed that returnees' circumstances were the reverse of the prodigal son, because unlike the biblical prodigal, they returned cloaked with prosperity. Even so, their fathers figuratively killed the fatted calf for them by welcoming them back to the Berkshire Jubilee. The tension between the two views was palpable. It may have been aggravated by outmigrants' self-assurance, prosperity, and romantic view of the old homestead they had abandoned. The original prodigal, after all, returned home humbled and poor. Not so those at the Berkshire Jubilee. Such opposing views of outmigrants grated against each other -- which may be why that event was not only the first but also the last Berkshire Jubilee. As former Berkshirites returned to their new homes, they must have realized how deeply the land of their birth resented their departure from the virtuous path of filial duty.

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356 Berkshire Jubilee 163, 183. Barron reports an 1848 Vermont agricultural society speaker who called the Yankee emigrant a "deserter." Barron 35. Emigrant sons who remained in the West often viewed themselves as prodigals. Mary Hallock Foote, who lived in a number of western mining towns in the 1870s and 1880s, described a Colorado boomtown where the "younger sons" bachelor club held a "Prodigal Sons' Ball" every fortnight. "As sons go," she wrote, "they represented a tolerable filial average." The Led-Horse Claim (1882/1968), 40-42.
Outmigrants had good reasons for leaving. The push factor for New England youth was the difficulty of farming in stony soil. According to Clarence Danhof, "Either farming in the West or an eastern urban occupation offered far more attractive prospects" than farming in New England. By 1858 some said that the average New England farmer's son hated the farm and would flee at the first opportunity. "If the New England farmer's life were a loved and lovable thing," one author wrote, "the New England boys could hardly be driven from the New England hills." Many fled to more fertile ground.

In nineteenth-century New England, soil was a serious topic. Farmers living along the floodplains of the Connecticut River, for instance, had the luxury of topsoil ten or more feet deep -- topsoil that had washed down from the hills over eons. The uplands, on the other hand, lacked soil. Much of the ground was so rocky that less than six inches of dirt covered the underlying rocks. Such soil would support only marginal farming, with grazing as a fallback. Regardless, upland farming required great labor and yielded minimal returns. An 1831 paean to Massachusetts began,

Yes, Massachusetts! though a stubborn soil condemn thy sons to lives of ceaseless toil; Though Winter visits thee with many a blast, and annual snows their mantle o'er thee cast . . .

Those discouraging lines began what was otherwise a laudatory poem. But the point is well taken: much of New England's climate and soil were inhospitable for

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farming. Even so, the area was filled with farmers, most too poor to pass farms down to their sons, as is evident from land records and wills mentioning *inter vivos* gifts of farms. For Yankee youth whose ambition was farming, cheaper land and better soil beckoned elsewhere. By 1815, New England’s scanty soil and rigorous climate were held responsible for the outmigration of thousands who deserted the area "seeking a more favored clime, where they can procure a better subsistence with less labor."360 Upland New Englanders were tired of mixing manure, straw and vegetable waste to make enough soil to support a garden plot for food. Newly opened western lands, on the other hand, offered level, deep and productive soil. Westward emigrants sent letters home to Cummington, extolling the rich fertile fields of the west, compared to the Berkshires’ stony fields and steep hillsides. A granddaughter of Sarah Snell Bryant wrote that her parents left because they "were tired of picking stones and making soil . . ."361

What was true of most of New England was doubly so for Berkshire County, where the climate was the coldest in all of western Massachusetts. A good weather map shows that Vermont’s Zone 3 climate invades the western end of the state just where the Berkshires rise above the fault lines of the Hudson River to the west and the Connecticut River to the east. Thus most of Berkshire County has a climate that more closely resembles Vermont’s. Likewise, Franklin County’s uplands are colder than Hampshire County to the south.

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360 "Emigration," *Pittsfield Sun*, October 19, 1815.

If the thin soil and the chilly climate were not bad enough for upland farmers in normal years, 1816, the Year Without a Summer, was an agricultural disaster. That year, the eruption of the Tambora volcano (in what is now Indonesia) produced such heavy clouds of ash that the sun was obscured. In her diary for 1816, Sarah Snell Bryant of Cummington wrote, "Black spots seen on the sun at times through the summer and fall," then added, "Weather backward." A Hawley historian detailed, "Severe frosts occurred every month; June 7th and 8th snow fell, and it was so cold that crops were cut down, even freezing the roots . . . . In the early autumn ... the corn ... was so thoroughly frozen that it never ripened . . . ." One eastern Massachusetts woman recalled a trip on June 1, 1816, wearing winter clothing on "a raw, pitiless day," when "fires were as acceptable as in January." Samuel Griswold Goodrich wrote that the summer of 1816 in Connecticut was the coldest of the century. In June, the hills were as barren as in November. The corn crop was destroyed and the supply of other staples -- potatoes and oats -- was perhaps half the usual amount, as was hay. Cattle died for lack of fodder that winter. Many people nearly starved. Some "felt that New England was destined, henceforth, to become a part of the frigid zone." The result was a panic to leave. "A sort of stampede took place from cold, desolate, worn-out New England," Goodrich wrote, to the western "land of promise." The following year, a "tide of emigration" fled, many of the

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362 SSB diary for 1816, "Remarks."

363 Harrison Parker, Hawley, Massachusetts: The First Fifty Years, 1770-1820 (1992), 62. See also Hampshire Gazette and Public Advertiser, "The Season," July 31, 1816. During summer and fall 1816, The Hampshire Gazette and Pittsfield Sun simultaneously reported crop damage and suggested that things weren't as bad as they seemed.

364 Sarah (Smith) Emery, Reminiscences of a Nonagenarian (1879), 289.
emigrants impoverished and begging their way west, using directions (and misinformation) available in newly-published gazetteers. If the situation was that bad in comparatively balmy Connecticut, it must have been worse in Massachusetts' uplands.

Some outmigrants were pushed off their farms. A farmer in debt stood little chance of making enough money on his 1816 crop to pay down a mortgage. Only the most astute husbandmen could make ends meet. Farmers who had not upgraded their farming practices to "modern" nineteenth-century standards ended up "either in the poorhouse or the state of Ohio." Both the Pittsfield Sun and Hampshire Gazette advertised increasing numbers of sheriff's sales or auctions that fall.

Town tax lists confirm that the population was on the move. From 1816 to 1817, town tax assessors marked "Gone" by the names of 43, fully sixteen percent of

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367 Speculators profited from the Year Without a Summer, both by selling scarce goods at a premium and by buying up farms at auction to rent out to others -- though profiteering brought social opprobrium. By January 1817, those speculating in necessities were called "vile sharpers" for preying on the needs of the less fortunate. Thomas Ewell, "Remedy for Scarcity," Pittsfield Sun, January 8, 1817.
west Pittsfield's 265 taxpayers. Most were propertyless men. At the same time, the West beckoned. "The Inducements for young and enterprising men to migrate presented by the immense unoccupied and fertile tracts of land to be found in the western country, are great," remarked the *Pittsfield Sun*.  

The Year Without a Summer had an additional local effect apart from the stampede westward. Berkshire County Probate Court changed its paperwork

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368 Pittsfield Assessors' Valuation List (West Side), 1817 (microfilm at BA). From 1800 to 1806, the assessors wrote the number of polls removed from and added to their tax list, and the total number removed (for the west side plus the east side) were roughly equal to the number of new polls added, 19-23. From about 1810 to 1816, departures were noted silently, simply by showing no total tax due.

369 "Emigration to the West," *Pittsfield Sun*, August 27, 1817.
requirements in 1818, adding a new document, the Statement of Facts.\textsuperscript{370} By October 1818, most probate files contained the executor's handwritten statement showing the decedent's date of death plus the names \textit{and locations} of all heirs, who were no longer expected to sign a Certificate of Heirs. By 1818, then, probate court did not assume that heirs lived near enough to their parents and grandparents for an executor to secure their signatures.\textsuperscript{371} The shift from the collection of signatures to the unsigned list of heirs was significant in that it shows that the rise in outmigration mandated a change in the bureaucratic process. Contacting heirs in person had become difficult because the heirs were gone.

Probate documents increasingly showed absent heirs. In 1825 David Clark of Sheffield left probate records with a Statement of Facts showing that New Englanders were, indeed, becoming a scattered people. His son Henry and daughter, Elizabeth Austin, lived in Erie, Pennsylvania. Elizabeth's three daughters were "all residing in some place or places unknown." Daughter Huldah Dickinson lived in Vermont and

\footnote{\textsuperscript{370} Previously, most probate files included a Certificate of Heirs, a list showing that all heirs had been located and contacted; they signed the document to show they had been notified of probate. Obtaining those signatures on one sheet of paper was possible only if all heirs lived so close that the executor could visit them. This practice became unworkable as more and more of the younger generation relocated westward.}

\footnote{\textsuperscript{371} In 1825, the process evolved yet again to include pre-printed forms, which the executor or administrator filled out, and which were included in most probated estate files. This practice was not followed in either Franklin or Hampshire County Probate Court, which may indicate that court officials in those areas were less concerned about absent heirs, perhaps because outmigration was less extensive there. Accounting for heirs may have been more difficult, especially in the uplands, because during the nineteenth century many towns in Massachusetts were "emptied" of native-born inhabitants.}
daughter Cynthia Hubbard was "some place unknown [in] Indiana." Only one son remained in Sheffield to exercise the virtues of filial duty.372

The Clarks were only one of many families dispersed beyond the executor's reach. Thus the court adapted its methods. Governmental paperwork changes for a reason, and the reason has to be compelling enough to overcome the inertia of the system. The Certificate of Heirs worked as long as most heirs remained near home, but it was inadequate when many of the heirs lived "away," as Berkshirites say today. As a result, it was replaced by the Statement of Facts, which became a printed form after a seven-year trial as a handwritten document. By 1825, outmigration was so common that the court required the standardized form to remind the executor or administrator that all heirs had to be accounted for even if they could not be located. Clearly the court tried to exert bureaucratic control over the process to ensure that absent heirs would be contacted. Outmigration was problematic for probate court well before western Massachusetts fathers began to write wills reflecting its results.

Though outmigrants' push factors were rooted in agriculture, pull factors varied with destination. Lee's 1878 centennial history noted that "the Genesee Valley, the open prairies, or the rich alluvium of the river bottoms of the far West drew heavily from the farming population of this town." Many a farm boy followed that path. Other records document migration from agricultural hilltowns to "more prosperous areas where industry or intensive agriculture offered other employment" even before the Gold Rush lured men west to get rich quick. Many rural New Englanders feared that the best of their young people had left. To some, it seemed

Illustration 17. North Adams
Transcript, May 17, 1849 (BA). The same ad ran in the Hampshire Gazette, April 24 (UMass).

that the "choice spirits" of the rising generation departed. The younger generation's mass desertion of their elders threatened to drain the region "of the vital part" of the population and "exhaust the very fountains" of the area's strength. The brighter young men, according to one author, had gone to college, become mechanics, or emigrated to the West. "There have been taken directly out from the New England farming population its best elements -- its quickest intelligence, its most stirring enterprise . . ." A Sandisfield historian wrote that the cause of the town's decay was that the emigrants consisted "mostly of the cream."

Those with ambition to farm went west; those with enterprise went to the cities; educated youth "scattered everywhere." A town as small as Middlefield lost 190 families between 1800 and 1820, many of them "restless and uncongenial." By mid-century the Sheffield minister Orville Dewey cried, "What is it that is coming over our New England villages, that looks like deterioration and running down? Is our life going out of us to enrich the great
West?" It was indeed. Persisters felt real sorrow as they watched their towns empty out. A Worcester observer speaking of the Berkshires said, "I know of nothing more sad in our American life than the decay of those townlets." In the end, most prodigal sons did not return, unlike the biblical prodigal, who crept home chastened and humble to serve his father.

Evidence of outmigration from Massachusetts "townlets" is not just anecdotal. It can be statistically rendered, but population figures must be disaggregated from county totals for the full effect to be visible. "Destination towns," or those with increasing commerce and industry, attracted upwardly mobile young men as well as English and Irish immigrants. Thus the population of towns such as Great Barrington, Pittsfield, and Northampton grew from 1800 to 1860 at the same time outmigration drained smaller towns. Though in-migration replaced the population except in the smallest villages, new neighbors, many foreign-born, offered little solace to aging natives left behind.

In Berkshire County, agrarian villages declined from twenty to 25 percent from 1810 to 1840. Cheshire dropped 25 percent; Hancock, 22 percent;

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373 Rev. C.M. Hyde, Lee: The Centennial Celebration . . . (1878), 274; Margaret Richards Pabst, 46. Cities and milltowns also lured youngsters away from the family farm, horrifying farmers who saw their sons doomed to a future of dependency or subordination when they became employees instead of agrarian freeholders. An employee was, after all, not a freeman in any sense of the word, and civic virtue was traditionally based on the freehold, which ensured that a voter could make civic decisions independent of a boss or lord. "Choice spirits:" Granville Jubilee (1845) 23; "vital parts:" Emigration," Pittsfield Sun, October 19, 1815. "Best elements:" N.G. Holland, "Farming Life in New England," Atlantic Monthly (August 1858), 340; Aaron Field, "Sandisfield: Its Past and Present," Collections of the Berkshire Historical and Scientific Society (1894), 82. Hal Barron also reports individuals who believed that Vermont's "cream," or her "best sons," left (Barron 34); Commonwealth History of Western Massachusetts, Albert B. Hart, ed. (1930), v. 4, 355; Autobiography and Letters of Orville Dewey, Mary E. Dewey, ed. (1883), 28; townlets: Harry Andrew Wright, The Story of Western Massachusetts, v. 2 (1949), 907. In retrospect, their departure was viewed as leaving Middlefield "to its peaceful and harmonious, but decadent, solidarity."
Lanesborough, 21 percent. Higher-elevation towns suffered even more because of their shorter growing season and rockier land. Peru's population fell 37 percent from 1810 to 1840. Others grew steadily till the late 1830s, then dipped, as Sandisfield, Windsor, Northfield, Amherst and Granby did. Everyone had kinfolk or neighbors on the move.\textsuperscript{374}

One could easily imagine that profligate n'er-do-wells might have departed. But in western Massachusetts,

even the virtuous exercised the option of leaving. Church dismissals show that outmigration rose from the late 1810s through the 1830s. Worthington, Great Barrington and Belchertown Congregational church records show surges in the 1820s and 1830s, as in the following chart.

\textsuperscript{374} Jesse Chickering, \textit{A Statistical View of the Population of Massachusetts, from 1765 to 1840} (Boston: Little and Brown, 1846), 23-28. In 1860, 244,503 Massachusetts natives were censused in other states and territories. More than 50,000 were in New York and 16,000 in Ohio. The Commonwealth was hemorrhaging, and had been for quite some time. This bleeding-out was most visible in small towns. According to the 1865 Massachusetts census, 166 towns dropped in population from the 1850s to the 1860s. Of the 57 towns which declined more than ten percent in that decade, 26 were in the three westernmost counties. The agricultural towns were hardest hit. Oliver Warner, \textit{Abstract of the Census of Massachusetts, 1865} (Boston, 1867), 272 and 291.
These figures apply only to church members, a group theoretically easier to trace than rootless youth, who left fewer tracks, but even church members departed western Massachusetts towns in increasing numbers, sometimes for larger towns, sometimes for the West. Even Great Barrington, ostensibly a destination town, showed an increase in dismissals from nine in the 1810s to 77 in the 1830s. Belchertown’s peak was in the 1820s, with 58 dismissals. Worthington’s dismissals increased steadily -- six from 1800 to 1809, sixteen in the 1810s, thirty in the 1820s, and 49 in the 1830s -- even though Worthington’s population ended those four decades little changed.

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375 Congregational Church Records for Great Barrington, Washington, and Worthington, Cooke Collection typescripts (BA); Mark Doolittle, Historical Sketch of the Congregational Church in Belchertown, Massachusetts (Northampton: Hopkins and Bridgman, 1852). Other towns with decades-long gaps were not included for this chart, but also show spikes in the 1820s. Dalton, for instance, had only four dismissals from 1800 to 1809, and two from 1810 to 1819, but 30 in the 1820s and 24 in the 1840s. Dalton Congregational Church Records, Stockbridge [Congregational] Church Records, Cooke Collection (BA).

376 Congregational Church Records for Great Barrington, Washington, and Worthington, Cooke Collection typescripts (BA); Mark Doolittle, Historical Sketch of the Congregational Church in Belchertown, Massachusetts (Northampton: Hopkins and Bridgman, 1852); Jesse Chickering, A Statistical View of the Population of Massachusetts, from 1765 to 1840.
Outmigrants were young. Of 156 native-born male outmigrants who returned to the Berkshire Jubilee in 1844, 133 (85 percent) had been under the age of thirty when they left. If those under age twenty (not yet old enough to work on their own account) are eliminated, 74 of the remaining 97 (76 percent) of the outmigrants had been in their twenties when they departed.\textsuperscript{377} Young men were, indeed, deserting western Massachusetts for greener pastures.

According to Robert Doherty, \textit{ninety percent} of the young men left most of his Massachusetts study towns.\textsuperscript{378} Cummington alone lost at least 160 families.\textsuperscript{379} The result was that many farms were left empty. By 1834 the \textit{Hampshire Gazette} protested that emigration of men and capital "left farms upon the hills without tenants, without purchasers, and without price," and warned that "bleeding at every vein for a

\begin{itemize}
    \item[(Boston: Little and Brown, 1846), 23-28.]
\end{itemize}

\textsuperscript{377} \textit{Berkshire Jubilee}, appendix. Only eight women listed among the "emigrant sons" had birthdates listed. One left at 18, four in their twenties, two in their thirties, and one at age 41. Most of them went to cities.

This group of men and women returnees is clearly biased toward those who were both interested and prosperous enough to have returned from their new locations, which may make them unrepresentative of outmigrants as a whole.

Joseph Kett found that the majority of young men left home between ages 18 and 21, but his assessment was not of outmigration but rather departure from the parental home, which probably preceded outmigration. Kett, "Growing Up in Rural New England, 1800-1840," \textit{Growing Up in America: Historical Experiences}, Harvey J. Graff, ed. (1987), 184.

Some wills show that even the sons of relatively prosperous landowners scattered to the four winds. By 1860, when Levi Hare's will was probated, he owned $3500 in Egremont real estate and had only one son left to use it. His other three sons were in New York City and Illinois, and one daughter was in Binghamton, New York. BCP 9031 (Hare 1860).


\textsuperscript{379} Streeter and Morris xxvii.
succession of years will reduce any subject to depletion." Farms without tenants or purchasers was a real estate disaster confirming the exodus from the hilltowns. And that bleeding-out was blamed on men, not women.

Results of Outmigration

If we are to believe those who reported on young men’s mass "desertion" of New England, the youth with the greatest initiative packed up and left, while parents who remained on the homestead felt fear, outrage, indignation and sorrow at the exodus. With the younger generation gone, who would support the elders? One of the virtues of children, after all, is the safety net they traditionally provided the aged. Sons’ mass departure yanked that safety net from underneath their parents. Thus outmigration turned tradition on its head, because sons who left removed assets -- labor and old-age security -- from their family of origin. That removal alone justified testators’ shift to favoring female heirs. Retention of parental assets within the family had long been a reason for sons’ preferred treatment in distribution of parental property; a son was expected to remain in the family at marriage, while a daughter married "out" into another family. Spinster daughters and outbound sons, however, turned testamentary patterns upside-down. The rising rate of singleness among Massachusetts women promoted their virtues as caregivers of elderly parents while sons decamped to seek personal gain. Of necessity, wives and unmarried daughters dutifully contributed labor and cash to the family economy to provide a semblance of

380 Quoted by Pabst, 26. By the 1880s and 1890s, even relatively good farmland in New Marlborough and Sandisfield was left fallow to grow up in forest.
security to aging men. Such men might logically have rewarded that devotion when they wrote their wills.

Much can be said about the virtues required by filial duty. As already documented, many men rewarded wives' loyalty and devotion. Some parents favored children who stayed home. Dr. Charles Segar rewarded two daughters and a son who remained with him. Other fathers explicitly rewarded children for dutiful behavior. Ebenezer Arms bequeathed $1600 more to his son Chester than to other heirs, "considering it to be an ample compensation for all the services that he has already performed for me or the family more than either of his other brothers or sisters." 

When dutiful adult children were considered assets, outmigrating sons drained the family and the community. As Richard Easterlin points out, "the fact that one's children might eventually migrate to urban areas or the frontier in no way relieved one of the costs of providing for them." By the time children were grown, parents had invested in offspring who might offer little return. Seen in this context, parenthood as a strategy for old-age support resembles long-term roulette, a gamble on the rootedness and stability of adult children. Traditionally, the rising generation

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381 FCP 132 (Arms 1812); HCP 244.60 (Segar 1849). Hal Barron reports a native son of Chelsea, Vermont, who commented on those who "tarry in familiar places and do the routine duties" as being held there "by the sheer sense of obligation and necessity." And in Chelsea, those who stayed behind usually ended up owning the family farm. Barron 133. It must be said that a few daughters also were punished for their misdeeds. Dr. Segar rebuked his daughter Louisa for having lost the considerable legacy she received from her grandfather's estate. Segar left her only $78 per year and the promise of houseroom if she ever returned from the South, while her three siblings who remained in Northampton shared an estate worth more than $8000.

were expected to support their parents in old age, as the parents had provided for them in youth. The system was based on reciprocity. But when adult sons did not reciprocate, that system had to change.\(^{383}\)

In the absence of sons, other individuals were rewarded for fulfilling those obligations. Testators and testatrices made bequests to dutiful children and grandchildren. Duty, a filial virtue, was perhaps the glue that held many families together, as when a son left his apprenticeship and returned to run the family farm while his father was dying, or when an elderly parent contracted with an adult child for lifetime care. Some western Massachusetts sons shouldered that load. But newspapers offered constant reminders that others did not fulfill their reciprocal duties. A father was to show his sons "the road to industry and wealth," knowing that in turn there would come "a period when his sons should aid him." In the end, a son was "in duty bound to arrest the cares and toils of his parent, and make his declining years comfortable." Sons' primary duty was to be "the pillars of the house, 

\(^{383}\) Some have suggested that outmigration may have been part of a cooperative family strategy, as it surely was for some families, but children "of parts unknown" did not appear to be engaged in such a strategy. Others have commented on the issue of "elderly farm couples 'abandoned' by their children" when those children defaulted on their implied contract with their parents. Though land may have been the whip farmers held in the eighteenth century, that whip lost its sting when nineteenth-century children had the options of factory work, commerce, or farming level western land with deep soil and no rocks. William Sundstrom and Paul David, "Old Age Security Motives, Labor Markets, and Farm Family Fertility in Antebellum America," *Explorations in Economic History* 25 (1988), 177-178. Nancy Folbre ("Patriarchy in Colonial New England," *The Review of Radical Political Economics* 12.2 (summer 1980), 6) believes -- as do many of the other historians mentioned herein -- that "patriarchal control grew out of fathers' control of cleared, improved land." But colonial patriarchs did not traditionally use land to control their daughters, so land could not have been the instrument of control over female offspring. Also, propertyless fathers were supposedly authorities within their households just as propertied fathers were, which also undermines the idea of patriarchal control through land.
the sure, safe reliance of their parents in adversity." Such advice shows that many sons did not so honor their parents. Sons in New York or Ohio or Michigan could not carry out those responsibilities for Massachusetts parents. As Sally McMurry puts it, "Sons were leaving to take paid employment or to farm elsewhere, while wives and daughters did the work." It is significant that the press directed such reminders to men -- not women.

An agricultural columnist suggested that when the farmer's "hour is come," he would be buried by his children in the same location where he laid his parents to rest. This suggestion was based on the belief that the farmer would still have children nearby to bury him. Though that view might have been realistic in 1810, it was sadly out of date when it was printed in 1850, after mill employment, cheap western land, war with Mexico, and the Forty-niners' rush to California siphoned native-born young men out of New England farms by the thousands. James Henretta notes that young adults' outmigration implicitly rebuked their parents, and to judge from their commentary, many parents took it that way. Though some may have approved their offspring's departure in the belief that children had to make their own way in the world, other parents did not let that rebuke pass unnoticed.

Thus a final pattern showing outmigrants' loss of filial virtue (already alluded to in David Clark's family) appeared in western Massachusetts testamentary patterns.

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384 "Domestic Economy," Pittsfield Sun, June 21, 1820.


386 Edward Everett, "Agriculture: The Yeoman," Pittsfield Sun, January 10, 1850.

Outmigrants not only lapsed in their duty by permanently departing; many compounded that lapse when they did not bother to stay in touch with their homefolks. Wills that show parents dealing with outmigrant children also show that many of those children had lost contact with their families. Some, like Elisha Chamberlin, whose story I have already told, left his estate to his spinster daughters at home. Even though Chamberlain thought he knew where his son resided, his son had moved on to another location before Chamberlain's executor could track him down. That particular son not only left; he also neglected to tell his family where he was. He was not the only son who did not stay in touch.

Many other wills mention absent relatives. Justus Olds stipulated that if his son Heman "ever come home again," he should receive his share. Olds did not know what Heman's plans were -- but intended Heman to have nothing unless and until he did return. Most willmakers had a contingency plan in case an heir could not be found. Rebecca Cobb's plan was to turn over the money to the Methodist Episcopal Church for missionary work if her heirs did not reappear. Mary Ball left Micah B. Ball $120 "if he should call for it himself or by his attorney," stipulating that his heirs could also call for it. Benjamin Briggs had two daughters nearby, but his other heirs were strewn from Maine to Wisconsin, several with "place of residence unknown." John Sweet's widow-executrix, Ruth, noted with frustration that she could not find Sweet's four heirs, "none of whom are residents of this state nor are their residences now known." These bequests show that many who departed did not write home. And they would not necessarily have had to write home often; some willmakers

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388 BCP 5699 (Chamberlain 1836); HCP 232.3 (Olds 1847); FCP 1060 (Cobb 1855); FCP 236 (Ball 1848); BCP 7140 (Briggs 1848), 7216 (Sweet 1848).
allowed for lengthy periods between letters. A year was common, but a few testators allowed even more time than that. When Ezekiel Nelson left token legacies to his children, he gave them two years to call for the cash. When widow Rebecca Cobb devised $300 to the children of John Cobb, she set a deadline of five years after her demise for them to either "call for or demand" the legacy. Losing contact with outmigrants must have been remarkably common, to judge from the many wills with such commentary. Many testators and testatrices did not know the whereabouts of family members -- or even whether they were alive or dead. As punishment for their neglect, they lost legacies.

Outmigration was, therefore, only the most conspicuous abrogation of filial duty. In theory, an outbound son could still have supported his parents -- by sending money home, for instance. But if adult children had sent money home, their location would have been known, and in reality, such was not the case for the families examined here.

Evidently proximity counted as a virtue -- but it had to be accompanied by a sense of responsibility. In the mid-1820s, an elderly Vermont man wrote of his situation, which must have resembled that of many Berkshire men. John Clark had been plagued by debt for years. After his wife died, he had to hire a housekeeper to care for himself and an invalid daughter who had been bedfast for years. Medical expenses accrued beyond his ability to pay, until he decided to deed part of his farm to his youngest son, Sheldon, and give him $200 cash in exchange for taking over his

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389 FCP 3329 (Nelson 1854), 1060 (Cobb 1855).
debts and providing lifetime care. That plan did not work; Sheldon refused to honor his part of the deal. In 1824, John Clark wrote,

This day arrived my youngest Son Sheldon after an absence of a year and five months. On him I depend for support the remainder of my old age and the payment of my debts. I flattered myself that he would be able to do something towards it but not so. He tells me he is not able to do any thing towards it and no prospect that he ever can & wishes to give up all he has done and give up all he has received and be quit of the debts. Thus I must be left in my old age to wade through the difficulty of payment of at least $700 which as times are will swallow up nearly all my property and a very trifle left to support me and my sick Daughter.

Several months later, Clark returned home from a trip to settle a debt and learned he had also been abandoned by his eldest son, Asahel, who moved his family out of Clark’s home without warning. A grandson stayed behind as caregiver. Clark had nine living children, but none willing to be his caregiver. His offspring evaded their filial duty. He was fortunate indeed to have a faithful grandson.

A sensible farmer’s son, faced with the choice of outmigration or cultivation of uplands with more rock than soil, owed it to himself and his family to try the alternatives. But what was best for himself and his children was not necessarily the best for his aging parents. It is no wonder, then, that fathers had to consider the very real possibility that sons would depart and leave widowed mothers and spinster sisters stranded. Understanding that younger men might fail to provide for female relatives, fathers wrote wills to protect their wives and daughters.

Sons paid the price for abrogation of filial duty when fathers wrote wills favoring wives or daughters over male heirs. If land no longer tied sons to the family homestead, and the sons departed, then it follows that the wife, or sometimes a daughter, as those supporting a man in his old age, might by default become primary beneficiaries of a man’s testamentary largesse. And that appears to have been the case in much of western Massachusetts after 1830.

Thus the re-gendering of virtue, based on outmigration as well as on sons’ other perceived deficiencies, resulted in women receiving an unprecedented amount of property. This change was not limited to the fortunate elite. While the liberal literati supported women’s rights, significant evidence of middle-class men’s support of women’s autonomy has been minimal. Yet most western Massachusetts men favoring female heirs owned middling property or less, indicating that they had more confidence in individual women than in traditions favoring sons. They, like those who attached “sole and separate” clauses to their bequests, rewarded women’s duty and promoted women’s independence by conferring property on them. The consequences of this transfer of wealth are staggering, because as increasing numbers of propertied women became taxpayers, they gained what had historically been the basis for the right to vote.\footnote{See William I. Bowditch, \textit{Taxation of Women in Massachusetts} (Cambridge, 1875).}
CHAPTER 6
WHITE WOMEN'S TESTAMENTARY CUSTOMS

Testatrices Described

Hundreds of western Massachusetts women wrote wills. More than 350 white women in Berkshire County alone wrote wills from 1780 to 1860. Those women ranged from poor widows, such as Eliza M. Hubbard, whose total estate consisted of a rocking chair, a bureau and two chair frames worth seven dollars, to wealthy widows such as Mary Hall, whose estate was worth more than $70,000. Testatrices appeared at every level in between, though according to the inventories of about 197 Berkshire County women, most of them (120, or 61 percent) owned less than a thousand dollars in total estate. Some of those women may have eked out a living, but others -- those with only a few hundred dollars in assets -- may have been dependents in others' households. The next largest group (52, or 26 percent) owned between $1000 and $2999 in property. Many of them had houses and some acreage, and may have been able to support themselves by hard work and thrift. Only 25 Berkshire County women with wills owned more than $3000 in property -- but they were clearly prosperous. Considering, however, that many women were widows with life estates or dower lands that would not have shown up in their inventories, it is impossible to say that their inventoried assets accurately reflect all the property they
controlled. Thus a woman's inventory did not necessarily reveal her standard of living.\textsuperscript{392}

Testatrices had two things in common -- property and a desire to control its disposal -- but they had few other commonalities. Though nearly all were white and most were widows, women who wrote wills were otherwise a mixed group. And when testatrices are disaggregated according to marital status, we wind up with the statistical anomaly of many single women.

\section*{Singlewomen}

In the Massachusetts population of the 1830s, \textit{fifteen} percent of women were single,\textsuperscript{393} while the other 85 percent married. If all else were equal, then we might logically expect to find that spinsters made fifteen percent of the wills while married women and widows wrote eighty-five percent. But among 468 Berkshire, Franklin and Hampshire county testatrices, fully 28 percent (132) were single (and the remaining 72 percent were widowed or married). In western Massachusetts, therefore, single women left wills at \textit{almost twice the percentage} of spinsters in the population; more single women owned property than might have been expected. Because single women were overrepresented among property-holding testatrices, perhaps we should reconsider the stereotype of the poverty-stricken spinster forced to

\textsuperscript{392} BCP 6974 (Hubbard 1829), 8554 (Hall 1855); Berkshire County women's wills, 1800-1860.

board around with relatives and friends. In western Massachusetts, the spinster may have boarded around or cohabited with other women, but she was not necessarily penniless. She may have preserved an inheritance or an unused "setting-out" gift thoughtfully provided by parents as far-sighted as those described in Chapter One, or saved her pay from her job.

This is not to suggest that all spinsters were well-off. Considering that one woman wrote a will to bequeath seven dollars’ worth of personal property, it is clear that having a will denoted a desire to apportion property more than it denoted wealth. To further confuse the issue, some women with property did not make wills. In seven sample towns in 1860, only one spinster-decedent left a will; two other spinsters’ estates were administered through intestate proceedings, which implies that they also had property. So more women owned property than made wills, but they did not necessarily own much. Probate officials may not have noticed female decedents with only a little property, as they ignored many African American decedents. And women appearing in probate did not in any case include those who divested themselves of property before they died.

Only nineteen percent of the 102 wills by identifiable singlewomen in Berkshire County were made before the watershed year of 1830; the other 81 percent

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394 Terri Premo, Winter Friends, 133-134, addresses the issue of dependent old women in Pennsylvania; Philadelphia opened the first Widows’ Asylum in 1817, and Massachusetts passed legislation to protect divorced and abandoned women in the late eighteenth century. Richard Chused suggests that unsupported women were a rising concern in the new republic. As western lands opened, men left the Northeast, leaving behind penniless women to be supported at public expense. But abandoned women were less an issue by 1830, because women had expanded opportunities for self-support, which is evident in probate records. Chused, "Married Women’s Property and Inheritance by Widows in Massachusetts: A Study of Wills Probated between 1800 and 1850," Berkeley Women's Law Journal 2 (fall 1986), 49.
were made between 1830 and 1860. Franklin County followed the same pattern. The spinster-testation rate in conservative Hampshire County before 1830 was lower yet. Berkshire County showed a sharp increase in singlewomen making wills in the 1840s; the 23 spinsters' wills between 1840 and 1849 surpassed the total of spinsters' wills filed from 1800 to 1839. This upward trend continued into the 1850s, perhaps reflecting increased economic opportunities open to women.

Berkshire County mills provided jobs for thousands of native-born white women before the Irish migration of the late 1840s. In 1837 alone, 31 cotton mills employed 766 women, 23 woolen mills employed 272 women, and 16 paper mills employed 185 women. Franklin and Hampshire mills employed fewer women in 1837: 248 and 583, respectively, compared with more than 1200 in Berkshire County. More pay went into women's hands in Berkshire than in the other two counties combined. The figures were similar in 1845. (In 1855, the number of female mill operatives increased to 992 in Hampshire County, but this increase came too late to have had much effect on this study.)

Berkshire County's rocky hills, so hostile to large-scale market farming, were well-suited to water-powered industry which added to women's incomes.

Singlewomen who left wills generally possessed more personal property than real estate. Before 1830, their personalty consisted primarily of the traditional indoor movables such as featherbeds, linens, wearing apparel, household furniture, and

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395 John P. Bigelow, Statistical Tables: Exhibiting the Condition and Products of Certain Branches of Industry in Massachusetts, for the year ending April 1, 1837 (Boston: 1838), 169-173; John G. Palfrey, Statistics of . . . the Branches of Industry . . . 1845 (Boston: 1846), 330-332, 244; Francis Dewitt, Statistical Information Relating to Certain Branches of Industry in Massachusetts . . . 1855 (Boston: 1856), 571, 573, 589.
perhaps livestock. Only three of the early spinsters -- all apparently gentry -- had investments such as notes that recorded personal loans, usually to men. But after 1830 many singlewomen (even those with real estate) invested heavily in stocks or notes which constituted fifty percent of their total estate. Such assets ranged from Sally Hitchcock's $153 to Sarah Chamberlin, who parlayed a modest inheritance into an estate worth more than $3000. Only about half of the unmarried women owned real estate, before 1830 and after as well. Their holdings rarely included a farm. Landed spinsters typically owned a home on a town-sized lot, such as Abigail Field's three-quarter-acre house lot in Northfield or Huldah King's five acres in Great Barrington. Some spinsters had outlands like Hannah Janes' half of a ten-acre woodlot in Gill. Very few owned as much as Anna Temple's 44 acres in Orange, or Rachel Cole's 230-acre farm in New Marlborough.

Inventories show that singlewomen's assets were rising. Spinster-testatrices with inventories from 1800 to 1829 averaged $184 in real estate and $335 in personal estate, for an average total estate of $569. From 1830 to 1860, their holdings nearly doubled to $308 in reality and $707 in personalty, for a total of $1015. Singlewomen who distributed property through wills were increasingly capable of self-support, particularly considering their propensity for banding together in exclusively-female households. Spinsters' estates, however, were lower than married women's estates.

396 BCP 7019 (Hitchcock 1847), 7672 (Chamberlin 1851).

397 FCP 1591 (Field 1837), 2571 (Janes 1837), 4760 (Temple 1851); BCP 2583 (King 1808), 7671 (Cole 1851).
Single testatrices died at earlier ages than widows, the other substantial demographic group. Early death may have contributed to the lower value of their estates.\textsuperscript{398}

Female-headed households proliferated in the early nineteenth century. Keeping "Old Maids' Hall" was not unusual.\textsuperscript{399} In 1800, only two percent of the western Massachusetts population lived in such a household; by 1850, six percent did, indicating that over time more women banded together for mutual support. Males of all ages, boys as well as men, were substantially underrepresented in female-headed households, a pattern that grew more pronounced to 1860.\textsuperscript{400}

Increasing numbers of female-headed households, like the rising numbers of spinsters and widows who avoided remarriage, may substantiate Carroll Smith-Rosenberg's "Female World of Love and Ritual," indicating women's unwillingness to admit men, members of "an alien group," to their households.\textsuperscript{401} The rarity of males in female-headed households might merely show spinsters' and widows' preference for female "help" or their adoption or raising of girl-children.\textsuperscript{402} Because most women were

\textsuperscript{398} Though spinster-testatrices' ages ranged from 23 to 92, their median age at death was 50 and the mean was 51. Wives' and widows' average age at death was 73. From MVR and probate files. The cause of death was found for 31 spinster-testatrices; 20 died of consumption, the most frequent killer of young Massachusetts women. I wonder if early death among spinsters points to textile mill work, where a woman weaver, usually young and single, would put a shuttle to her mouth to suck the thread through its eye. Though some widows also succumbed to consumption, their rate was dramatically lower: of 25 widow- and wife-testatrices, only three died of consumption. Their later deaths indicate later exposure.

\textsuperscript{399} Elizabeth Stuart Phelps, \textit{Chapters from a Life} (Boston: 1897), 242: "Old Maid's Paradise."

\textsuperscript{400} Wergland, "Daughters of Rural Massachusetts," chapter 6.


\textsuperscript{402} These women-centered households would be invisible without "disaggregating" census data. "Disaggregating evidence," according to Carole Turbin, "paints a more subtle picture . . . and reveals fine distinctions" that would otherwise remain hidden. \textit{Working Women of Collar
not farm operators, they did not need to house male help. Finally, some women may have simply preferred living with women, as a kind of literal expression of the notion of women’s separate sphere.

Though Smith-Rosenberg equated spinsterhood with economic dependence, western Massachusetts women were not necessarily dependent. The assumption that women were dependent on men misrepresents the many women who supported themselves, as well as the women who made substantial contributions to the family economy, as did Sarah Snell Bryant, married milliners and many African-American women whose work I have documented.

Many female-headed households contained women who preferred mutual support to potential subordination in a male-headed household. In Deerfield, the Arms sisters and their mother lived interdependently in a female-headed household after Aaron Arms died in 1806. One-third of his $5700 estate became dower for his

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City: Gender, Class and Community in Troy, New York, 1864-86 (1992), 12.

403 Smith-Rosenberg 81.

404 In many families, women’s assets rivaled men’s. The view that women were dependent on men is culturally determined and ethnocentric, pertaining as it does to middle- and upper-class white women, who were not expected to be engaged in gainful employment. As Sarah Nelson points out, non-Western cultures expect men and women to support each other, rather than one sex being economically dependent on the other. Sarah M. Nelson, "Widowhood and Autonomy," On Their Own: Widows and Widowhood in the American Southwest, Arlene Scadron, ed. (1988), 35. That appears to have been the case with many New England families: farmwives wove and sewed clothing and produced, processed and preserved food for home consumption as well as for sale, so in even the most conservative of rural New England’s agrarian towns, men would have been naked and hungry without women’s help. Furthermore, many working-class women’s paychecks propped up the household economy. And women entrepreneurs such as milliners and dressmakers, as well as part-timers like Sarah Snell Bryant, whose husband was such a poor businessman, may well have brought in more cash than their husbands did. Thus complementary roles, rather than one-sided support, may have been more the rule than the exception in the majority of households with both men and women. On milliners, see Wergland, "Designing Women," Dublin Seminar for New England Folklife, Annual Proceedings, 1997: 203-211.
widow, Lucy Arms Sr. Most of the remainder was apportioned to sons Aaron and Ralph who received $726 apiece in land. Daughters Mary (1783-1863), Lucy Jr. (1785-1840), Sophie (1793-1857) and Martha/Patty (1796-?) inherited acreage worth $121 apiece. Patty was the only sister to marry, and she waited until she was nearly 29. Lucy Jr., Sophie and Mary lived single into their fifties, sixties, and eighties, respectively. According to the 1820 census, Lucy Arms Sr. headed a household of four women, probably including her daughters, whose separate small landholdings combined to provide a comfortable subsistence, all the more so if supplemented by wage labor or outwork or dairy sales. Living in the family homestead and supporting each other, the Arms women remained independent.

The Arms sisters' woman-centered household may well have been by choice rather than the result of a scarcity of marriageable men. Lucy Jr., Sophie and Patty Arms were charter members of a secret society which excluded males; the bylaws enjoined a vow of secrecy on members. Their Young Ladies' Literary Society, organized in 1813, "render[ed] mutual assistance" in understanding science and literature, the "greatest promoters of human happiness." These young women valued education and worked together to extend their own knowledge. Considering how many New England spinsters supported themselves as teachers, education was,


406 Sheldon 828. According to the published vital records of Deerfield, the Arms children were born into Deerfield's First Congregational Church. Lucy Jr.'s death, however, was recorded by the Second Congregational Church, so she may have departed from family tradition in more ways than are immediately evident.
for many single Massachusetts women, the road to intellectual self-actualization, and perhaps to economic independence. By organizing this society and excluding men, this sisterhood showed initiative in defying cultural values of female submissiveness. Though their forum may not have been the norm, the Arms sisters' interdependent independence was not unusual for Massachusetts' single women.

The Arms sisters were not the only women who felt that way. By excluding men from their households the same way the Deerfield "young ladies" banned men from their literary society, women householders exercised one of women's prerogatives: refusing to marry, or in the case of widows, refusing to remarry. By not marrying, and by joining the secret society, Mary, Lucy, and Sophie Arms made a statement about the undesirability of marriage. They appear to have been members of the nineteenth-century sisterhood who extolled the virtues of singleness over the hazards of marriage.

All unmarried women were not as well-off as the Arms sisters. Still, if singlewomen had starved on a large scale, New England would not have had such an abundance of them. Many propertyless women coped by banding together, not just for emotional support and mutual aid, but to minimize expenses by sharing quarters, as Lisa Wilson inferred from Philadelphia's pauper lists showing clusters of widows.  

As Helen Kessler points out, women "drew together to share the trials they had to bear."  

Like their household demographics, women's wills show their commitment to mutual support.

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Western Massachusetts women who were widowed or married were the majority of testatrices. Of the women who made wills, 72 percent were widowed or married, with married women representing only a tiny six percent. Most wives and widows did not need to write wills because their financial affairs were theoretically submerged in coverture before Massachusetts passed Married Women’s Property Acts. Yet at death, married and widowed women owned more property than did single women.

Relief Thayer may have been a typical widow of the 1820s. Widow Thayer owned a small house on a quarter-acre lot and $230 in personal estate, which included her lutestring gown, loom, foot wheel, great wheel, quill wheel, yarn, milk pans, churn, and other household items necessary for a farmwife to clothe and feed her family. She left all of it to her only child Mindwell Wilder “for her own use, profit and benefit and for her own disposal.”

Thayer was neither at the socioeconomic bottom nor at the top of Franklin County, but below middling.

During the antebellum decades increasing numbers of widows left wills. From 1800 to 1829, only 39 widows appeared in the women’s probate records sampled — a logical result of coverture, dower and husbands’ use of life estates in bequests to their wives. But after 1830, widows plunged into probate in droves; 114 widows’ wills were filed from 1830 to 1860. Their property levels changed, as well; far more of them owned larger amounts of property. This increase in propertied widows was the

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409 FCP 4821 (Thayer 1825).
logical result of husbands’ shift in testamentary customs around 1830, when they began leaving their land to their wives, rather than their sons.

From 1800 to 1829, widowed and married testatrices averaged $656 in real estate and $329 in personal property for a total estate of $985 -- or 73 percent more than spinster-testatrices. Between 1830 and 1860, the averages rose to $883 in realty and $1331 in personalty for a total of $2214, more than twice the average total estate of spinsters. After 1830, marriage evidently put more land under women’s control. But real estate was not their only property.

Widows without real estate ranged from the near-poor to the quite wealthy. In the era of early industrialization, rural women’s wealth, like men’s wealth, departed from the traditional measure of land. Rather than being loaded with the visible accoutrements of prosperity -- large landholdings, factories, mansions, gold, silver or jewels -- widows of modest means as well as the rich controlled thousands of dollars of paper wealth in notes, mortgages, and shares of railroad, bank and bridge stock.

Compared to singleness, marriage was profitable for the married women and widows who held onto property until death. Widows’ relative prosperity reflects the fact that their households had contained another propertied or wage-earning individual, probably with assets more substantial than his wife’s, and that they received that property unencumbered by a life estate. Wives’ and widows’ wills suggest that even married women controlled more property after 1830 than before. As women acquired more, they made wills with increasing frequency.
Women's Rising Testation Rate

The distribution of women's wills by decade mirrored the rise in women heads-of-households, which increased from 1800 to 1860. The percentage of women making wills also increased. As can be seen in the right-hand columns of the following chart, though men's testation rates increased from 1800 to 1860, women's rates increased even faster.

<table>
<thead>
<tr>
<th>Decade</th>
<th>Wills</th>
<th>Population</th>
<th>✔ Wills/Pop</th>
<th>✰ Wills/Pop</th>
</tr>
</thead>
<tbody>
<tr>
<td>1800s</td>
<td>15♀</td>
<td>168♂</td>
<td>33,670</td>
<td>.045%</td>
</tr>
<tr>
<td>1810s</td>
<td>18♀</td>
<td>256♂</td>
<td>35,787</td>
<td>.05%</td>
</tr>
<tr>
<td>1820s</td>
<td>24♀</td>
<td>259♂</td>
<td>35,570</td>
<td>.068%</td>
</tr>
<tr>
<td>1830s</td>
<td>59♀</td>
<td>325♂</td>
<td>37,706</td>
<td>.156%</td>
</tr>
<tr>
<td>1840s</td>
<td>75♀</td>
<td>352♂</td>
<td>41,745</td>
<td>.18%</td>
</tr>
<tr>
<td>1850s</td>
<td>128♀</td>
<td>477♂</td>
<td>48,258</td>
<td>.265%</td>
</tr>
</tbody>
</table>

While men's testation rate doubled from 1800 to 1860, women's rate increased by a factor of five. Once again a big increase can be seen in the 1830s -- possibly an

410 Lacking countywide mortality figures, this estimate serves to show the testation rate. Chickering, 28; DeBow, 254. For Dukes County, Massachusetts, 1821-1850, Chused found his 35 females' wills to be a steady .3% of the population. A higher rate might have been predicted in a maritime community where many women ran their families' financial affairs while mariners were at sea. For the same three decades, the male testation rate ranged from .9% to 1.3%, so in Dukes County, if the gender ratio were about even, three to four times as many men wrote wills as did women. Richard Chused, "Married Women's Property Law: 1800-1850," Georgetown Law Journal 71, #5 (June 1983), 1374-1375.
attempt to provide financial security in an increasingly uncertain economy. Thus the greatest increase for women preceded the first Massachusetts Married Women's Property Act in 1845 and its more comprehensive successor in 1855, indicating that the population liberalized its attitude toward women's property ownership well before the Commonwealth's legislative change. Richard Chused points out that women "were making a subtle statement of goals by attempting to control the disposition of their assets" at the same time that "constraints on the ability of women to hold property were being released so that the opportunities for taking dispositional control" were available to more women. Chused, "Married Women . . .," 1375-1376. I would suggest that many women seized dispositional control before those constraints were formally released.

Rising numbers of wills might not be significant if women continued to dispose of only their traditional property, indoor movables, as women had done since the 1600s. But women's property also underwent a radical change from 1800 to 1860, as we shall see shortly. Needless to say, property did not just fall from the sky like manna from heaven into the open hands of western Massachusetts women. Aside from earning money to purchase it or inheriting it from their husbands and fathers, women acquired property from other women who willed it to them.

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411 Chused, "Married Women . . .," 1375-1376.

412 For an early western Massachusetts woman's will, see Dorothy Russell of Hadley, HCP 125.41 (written 1681, probated 1694). Her property holdings included 24 acres of land worth £127. She left most of her land to her son, Samuel Smith, a four-acre lot to her daughter, Dorothy Hall, and divided £56 in moveable estate between her daughter and daughter-in-law.
Some wills were clearly exercises in self-assertion (or retribution), but all mirrored the individual's sense of distributive justice. Women's idea of distributive justice usually meant leaving their property to women. Most testatrices favored female heirs in western Massachusetts as they did in Dukes County, Massachusetts, and in Petersburg, Virginia. Favoring female heirs began as a logical extension of a traditional custom. In the early decades of the nineteenth century when few women owned real estate, their property consisted primarily of personal belongings, so they bequeathed their wearing apparel, linens, featherbeds, and household furniture, sometimes in excruciating detail, to the women they had chosen to receive it. Because many women owned nothing but personal estate, it made sense for them to bequeath it to other women. Most men, after all, had no use for aprons, silver thimbles, gold beads, silk gowns, or lace-trimmed caps. But in later decades when women had real estate to bequeath, they often handed it on to other women. They expanded their testamentary tradition to include land as soon as they had land to bequeath.

In favoring female beneficiaries, women made bequests based on their personal interpretations of distributive justice. When Naomi Savage explained that she had left more than half of $808 in real estate to niece Naomi Gains "because I consider. . . . Naomi entitled to my charity above all others," she resembled the majority of testatrices who favored female beneficiaries with their largesse. Whether they stated
their reasons or not, they considered certain heirs to be entitled to what they received.\(^{413}\)

Though testatrices’ favoritism for female heirs fluctuated by decade and according to the economy, the general trend was upward. Of 70 women who wrote wills in the 1850s, fully 52 (74 percent) favored female heirs.\(^{414}\) But when the aggregate data from women’s wills are broken out by the testatrices’ marital status, different patterns emerge to confirm what we might have suspected: singlewomen’s ideas of distributive justice differed from married women’s views.

**Singlewomen’s Outright Bequests**

Western Massachusetts spinsters’ testamentary patterns anticipated those of the women of the 1850s by favoring female beneficiaries by a huge margin. Of 89 singlewomen whose marital status and preferred beneficiaries were clearly expressed, 64 (72 percent) left their biggest bequests to females, while 25 (28 percent) favored males. Singlewomen’s bequests included a wide variety of beneficiaries.

Some spinsters left their property to children they identified as their own. Miss Anna Taylor, singlewoman, left 44 acres in Orange and most of her personal estate to her daughter, Nancy Ward. Spinster Mary Baker left a bequest to a

\(^{413}\) BCP 7438 (Savage 1850). Naomi Savage was the wife of Asahel Savage Sr., who added a note to her will to assure probate officials that she had made the will with his "entire approbation and agreeable to [his] views."

\(^{414}\) Wills showing equal division of assets have been disregarded here, partly because equal division in itself precludes a clear gender preference, and partly because some wills appear to have been attempts to divide estates equally without expressly saying so, leaving the intended outcome in doubt. In that respect, this sample is biased against the convoluted and in favor of the simple wills.
daughter. Williamstown's self-described spinster Naomi Beebe mentioned two daughters and a son in her will, and singlewoman Abigail Brown left property to a son, Calvin Gunn. Adoption was a common practice among unmarried women, especially cohabiting spinster sisters, but none of these offspring were identified as adopted. Some girls were simply taken into households or businesses and became spinsters' daughters by default and perhaps claimed as adopted without formal adoption proceedings; others were officially adopted. That appears to have been the case with the Clapp sisters of Montague. The thirtyish Sybil and Eunice Clapp opened a millinery in Montague in 1845, which they operated until Sybil died in 1877. Between 1850 and 1855 they had acquired an apprentice, Margaret Murphy, 15, whom Sybil Clapp adopted in the early 1860s. The Irish-born Murphy made a good marriage to a local physician decades older than she was, and inherited Sybil's estate and the Clapp Millinery. Maggie Murphy earned her preference as Sybil Clapp's heir. Proximity counted more than blood ties.

Illegitimacy, though rarely acknowledged by willmakers, was another possibility. A note in one woman's probate file commented that Prudence Callender had left her property to an illegitimate daughter "whom she called Catherine Stebbins after the reputed father." The male executor's tone can be summed up in the condemnation implied by the adjective "reputed," as though Callender might not have

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415 Some of these "spinster" testatrices appear to have been widows; one mentioned a "late husband" though she identified herself in her will as a spinster. Another "spinster" had eight children! FCP 4760 (Temple 1851); HCP 169.46 (Baker 1824); BCP 8937 (Beebe 1860), 5380 (Brown 1833).

416 Greenfield Gazette ad, May 6, 1845; 1850 U.S. census; 1865 Massachusetts census, Montague; FCP 946 (Clapp 1877); Greenfield Gazette millinery ads, October 1877 to 1880.

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actually known who was the father of her child, suggesting that she had multiple sexual partners. Another possible interpretation was that she attributed her pregnancy to a man she knew was not the father. Though Callender loved and approved of her daughter to the extent of leaving property to her, the executor condemned her. In another will, a Stockbridge woman, Sophia Williams, acknowledged a grandchild her son had apparently begotten out of wedlock.\footnote{BCP 4222 (Callender 1824), 5212 (Williams 1826).} Herein lies another difference in women's and men's testamentary customs. Though some men made bequests to children brought up in their families, none in these samples explicitly acknowledged out-of-wedlock offspring or grandchildren. Again, women were more inclusive than men in their definition of family.

Other singlewomen favored their mothers as heirs. Lydia Bartlett of Ashfield bequeathed her real estate, wearing apparel, notes, accounts and cattle to her mother Sarah Bartlett; Miss Eliza Henshaw left most of her $2000-plus estate to her mother. Nieces also received bequests, as did women of unspecified relationships. Sisters were often favored. Hannah Janes willed her real estate and most of her personal estate to her widowed sister, Sally Chapin. Achsah Taylor left most of her land and personal property to two sisters. But many singlewomen with unmarried sisters wrote wills with reciprocal bequests, as did the Chamberlin sisters of Dalton, the Trowbridge sisters of Lenox and the Parsons sisters of Egremont.\footnote{HCP 11.14 (Bartlett 1807), 70.44 (Henshaw 1823); FCP 2571 (Janes 1837); 4703 (Taylor 1843); BCP 7507 (Eliza Chamberlin 1850), 7672 (Sarah Chamberlin 1851); 7239 (Fanny Trowbridge 1849), 7240 (Lucinda Trowbridge 1849); 8644 (Lucy Parsons 1858) & 8645 (Sally Parsons 1858).} The
Chamberlin family serves as an example of how some spinsters acquired and preserved property and how their system worked.

The Chamberlin sisters typified spinsters whose estates appear in probate records. They inherited property from their father and willed it to each other. Their father, Elisha, was a tanner with a five-acre homestead and fourteen acres of pasture, enough for a substantial garden, a horse, and a cow or two. With $683 in real estate, he ranked in the twentieth percentile of Dalton's mixed industrial and agricultural economic hierarchy in 1820. Not rich, but above average, he and his wife Ruth had five children who survived to adulthood: William B. Chamberlin and his sisters Abigail, Henrietta, Eliza and Sarah. Abigail married, relocated to New York and died there. William went west.

When Elisha died a widower at age 71 in 1836, he left an estate worth $2059. He had prospered in his daughters' adulthood, perhaps with their help, and like other Massachusetts fathers, he had lost his son to the West. (William may actually have been "of parts unknown," because his father thought William was in Kentucky, but Elisha's executor listed William as a resident of New York, and William later turned up in Iowa.) As a result, Elisha fashioned his will as did many Massachusetts fathers after 1830, leaving nothing to his peripatetic son and only $100 and $50 legacies to the sons of his deceased daughter Abigail Willey. The remainder of his estate including the tan yard, homestead and pasture went to his three spinster daughters. Eliza received an additional $50 over and above the other two daughters' shares and

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419 Assessors' Valuation Lists, 1820 (Dalton Town Hall).
she was listed first in the bequests, which usually followed birth order. But Eliza was singled out not because she was oldest; Eliza was about 32; Henrietta was about 36; and Sarah was about 24. Elisha evidently considered Eliza the most deserving.

Elisha apparently believed that his daughters were competent managers because he did not leave his property in trust. He also assumed they would be capable of self-support by combining his property with their own talents. He was right. Though Henrietta was the only sister with an occupation on record, all three may have worked in her dressmaking business, probably out of their home near the town center. So the Misses Chamberlin stayed in Dalton after their father's death. With a cow or two and income from needlework plus their own investments, they must have been quite comfortable, gliding along through small-town life with only a minor hitch when the Congregational church called Sarah to repent and publicly confess her sin in absenting herself "for a long time from the Lord's Supper, thereby disregarding her covenant vows." (She repented and was restored to fellowship.)

When change did come, it came hard. Henrietta and Sarah had acquired several parcels of real estate in the late 1830s and 1840s. But in late 1848, Henrietta began to sell off land, first a parcel of real estate in downtown Pittsfield. Significantly, it was not land she had inherited from her father. She got $600 for the lot -- and may have needed the money because of another development in the family.

420 BCP 5699 (Chamberlin 1836).

421 Dalton Vital Records.

422 Dalton Congregational Church Records (Cooke Collection typescript, BA), 68.
Eliza was seriously ill and may have realized her time was short, because she wrote her will in April and died of consumption the following year.\textsuperscript{23} If Eliza had been in the dressmaking business and could no longer work or needed nursing care, then the extra cash may have been necessary to ease her last few months of life and relieve her sisters of the burdens of employment.

More tragedy followed. In 1851, barely a year after Eliza’s death, Dalton had a small epidemic that claimed six lives, one of them a Chamberlin cousin. Another was Sarah. As was customary for single sisters, two Chamberlin sisters wrote wills favoring the others. Perhaps because of their ages and confirmed spinsterhood, they did not feel it necessary to attach "sole and separate" provisions to their bequests. The "impoverished but genteel needlewoman" stereotype might suggest that they barely eked out a living at the poverty level. But in fact, the Chamberlin sisters managed their assets so wisely that their estates were worth substantially more than their father’s. When Sarah died, Elisha’s nineteen acres and the tanyard were gone, sold or deeded away. Even so, Sarah’s estate -- alone -- exceeded her father’s estate. Most of Sarah’s $3025 in assets consisted of notes she held against five Dalton men who owed her from $51 to $1234. Like many women, Sarah had become a creditor who loaned money at interest. So was Henrietta. In the nine years between Sarah’s death and her own, Henrietta \textit{more than doubled} her money.\textsuperscript{24}

\textsuperscript{23} BCRD (volume.page) 123.323, 119.550, 147.141, 80.652; BCP 7507 (Chamberlin 1850); MVR: Dalton.

\textsuperscript{24} MVR: Dalton, 1851; BCP 7672 (Chamberlin 1851); Dalton Assessors’ Valuation Lists, 1859.
After losing two sisters in two years, Henrietta must have thought the Chamberlin homestead seemed dreadfully empty. But she continued on as a dressmaker-seamstress, perhaps more to keep busy than because she needed the income. Prosperity, however, was not enough to keep Henrietta Chamberlin going. Life evidently was unbearable for Henrietta as the sole survivor, and on August 29, 1860, she killed herself. Unlike her sisters, she had not bothered to make a will; the people she loved best -- those who needed her help and support -- were already gone.  

Women's Bequests to Religious Institutions

Other women may have been more closely attuned to matters spiritual than was Sarah Chamberlin. If bequests to missionary societies and religious institutions are a measure of the relative value men and women assigned to religion, then religion was much more important to western Massachusetts women than it was to men. Spinsters particularly valued religion, which reveals another pattern among singlewomen's wills: they left bequests to churches and missionary societies much more often than any other demographic group of willmakers. Though men may have controlled most of western Massachusetts property, as well as churches' and missionary organizations' assets, and widows controlled more than spinsters, singlewomen were the most likely to leave bequests to religious organizations. Achsah Lyman, for instance, left two-thirds of her estate to the American Board for

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425 BCP 9047 (Chamberlin 1860); MVR: Dalton, 1860.
Foreign Missions; Eliza Henshaw left $100 to the American Bible Society; Anna Roe left $700 to a Baptist missionary society "for the spread of the gospel in foreign countries." Though the occasional single testatrix allowed the executor to pick and choose among certain missionary organizations to receive the bequest, as did Mehitable Noyes when she left the residue of her estate to "the missionary cause," most specified either the American Board for Foreign Missions or its domestic equivalent. One or two made bequests to the American Tract Society.\(^{426}\)

In these bequests, women extended their traditionally private local customs of charity outward across the globe. Contributions to missionary work gave pious Christian women an opportunity to promote their religious views in an acceptable public sphere, worldwide, without the inconveniences of tedious travel, tropical climates, or exotic diseases. By contributing money, women could avoid confronting Buddhist, Hindu, Muslim or other potentially ungrateful recipients of their largesse. Such women donors may have been pious and domestic but definitely were not passive. Money trumpeted their piety worldwide.

Other women divided bequests between foreign and domestic missions. Eunice Kendall left money to the Baptist Church and to the American Board of Commissioners for Missions "for the benefit of the Western Indians." Her division of bequests between the local and the international was not unusual. Sally Curtis also assigned bequests to three missionary societies and St. Luke's Episcopal Church in Lanesborough. A few donors favored churches they knew and loved, as did Lucy Mather, who left the surplus of her estate for the poor members of Northampton's

\(^{426}\) HCP 90.54 (Lyman 1850), 70.44 (Henshaw 1823); BCP 6148 (Roe 1849), 5170 (Noyes 1831), 8029 (Wentworth 1854).
First Church of Christ, and Sally Hitchcock, whose $122 in notes went to Great Barrington’s Congregational Church with her gratitude for "many kind attentions and assistance from many of the Brethren and Sisters."427

A few widows favored churches and missionary societies with bequests. Northampton widow Roxana Starkweather left most of her $3800 estate to missionary societies, with other legacies totaling $1100 to eleven individuals. She also sought to set a positive example for those she loved, saying,

> These are all special gifts . . . not intended as pecuniary considerations merely, but as a means of doing good, to inspire a spirit of justice, humanity and benevolence, and prompt to more activity and diligence in securing for themselves a personal interest in that treasure that fadeth not away.428

Widow Starkweather chided her family for not being as active and diligent in benevolence as she expected. Her gentle rebuke made clear what was to many testatrices an essential part of will-making: their obligation as Christian women to be charitable. Ordinary men rarely spread their wealth around in like fashion. In antebellum New England, women were responsible for their children’s religious education as well as their training in the doctrine of private charity. Widow Starkweather’s bequest shows that that particular responsibility was not only a mother’s lifelong duty -- but a duty that could be carried out posthumously, as well.

To judge from western Massachusetts wills, antebellum missionary organizations depended heavily on the generosity -- and the property -- of women.

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427 FCP 2702 (Kendall 1822); BCP 6601 (Curtis 1843); HCP 95.13 (Mather 1827); BCP 7019 (Hitchcock 1846).

428 HCP 140.24 (Starkweather 1847).
Widows' Outright Bequests

Like spinsters, widows had gendered views of distributive justice. And like other women, widows put their bequests where they thought they would do the most good. As Lydia Pratt, a Belchertown "Lady," explained when she left nothing to three sisters, "I remember them and their heirs but feeling they don't stand in need it is not my will to give them anything."429

Western Massachusetts widows showed less favoritism than singlewomen did for female heirs, though females still had the edge. Of 128 widows, 72 (56 percent) showed clear preference for women as their primary beneficiaries, while 56 (44 percent) favored males. Like Richard Chused's Dukes County widows, these western Massachusetts counterparts favored daughters over sons, and left sons out of their wills more often than daughters, sometimes explicitly because husbands had already given enough to their sons.430 Widows' effort to meet their ideal of distributive justice may explain why increasing numbers of widows made wills at all. As Suzanne Lebsock points out, "Women were more likely to be dissatisfied with what would be done with their property if they died intestate . . ."431 Intestate distribution, which would give an equal share to all heirs, prevented a widow from pursuing distributive justice or "evening the score" between daughters and sons. Thus wills serve as "documentable components of a women's value system," as Lebsock puts it, showing

429 HCP 237.8 (Pratt 1856).
430 Chused, "Married Women's Property and Inheritance . . .," 85.
431 Suzanne Lebsock, Free Women of Petersburg, 135.
how women's priorities differed from men's. This difference was evidently widespread because testatrices in Virginia and Massachusetts followed similar testamentary strategies.

Perhaps because of the traditional tendency to bequeath land to male heirs, usually sons, some women left land to sons even when they favored female heirs with more valuable bequests. Susannah Bliss, for instance, left her son a houselot while bequeathing the rest of her $4600 estate to two daughters. A few widows gave sons realty, and daughters personalty: Mary Hollister left cash to her daughters while her sons got the real estate, and Zerviah Paul willed her son Joseph about 25 acres worth $425 but left her daughter Nancy Shearman personalty valued at $61. One woman gave a double share to the son who acted as her executor. On the other hand, some women defied the traditional convention of leaving land to sons, as did Elizabeth Howland when she left a dollar to each of her sons and $1612 in real estate to her single daughters Harriet and Cynthia. Susanna Shrefe made a similar bequest of $550 in real estate to Olive Pierce. Howland and Shrefe may have been balancing their husbands' versions of distributive justice, though they did not explain their reasoning for lopsided bequests. Lucretia Hemenway, on the other hand, explained that her husband's prior actions prompted her to favor daughters. "Whereas it has pleased my beloved husband, Ichabod Hemenway in his life-time, and by his last will and testament, to make suitable provision for our sons," Hemenway wrote, "I have

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432 Lebsock 142.

433 BCP 7963 (Bliss 1853), 6973 (Hollister 1846), 6734 (Paul 1844); HCP 125.36 (Russell 1837); BCP 6175 (Howland 1840), 7386 (Shrefe 1850).
nothing to give or bequeath them except my blessing." When husbands favored sons, some of their widows balanced the scale with their own views of distributive justice. Many widows believed that daughters deserved equal treatment.

Most widows left their largest bequests to daughters, often naming a daughter executrix. Dorothy Thayer of Northampton, for one, bequeathed her real estate and personal property to one daughter and left the other daughter a note for $242. Some widows felt their children had already received their due and made grandchildren beneficiaries, as did Phebe Ingram. (As already described, grandchildren were usually the ultimate beneficiaries after children's life estates.)

In western Massachusetts, equal division of an estate was as unpopular as it was with Lebsock's testatrices in Petersburg, Virginia. From 1800 to 1860, equal division was used in less than fifteen percent of wills and was most often practiced by the elite, who could afford an equal division of assets. Northampton widow Sarah Adams, with her gold jewelry and silver coffee service, fell into this category when she placed most of her $11,000-plus estate of railroad, bridge and bank stock into trust for a niece and nephew, each to receive half of the proceeds. Middling folk had to be more discriminating if their smaller bequests were to be of much benefit.

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434 HCP 70.32 (Hemenway 1824).

435 HCP 146.38 (Thayer 1828), 77.38 (Ingram 1806).

436 Lebsock 135.

437 HCP 166.48 (Adams 1857).
Wives' Outright Bequests

Wives -- that is, married women with husbands living when the wives made their wills -- were the smallest demographic group of testatrices, but their bequests say much about family relations. The first comprehensive Massachusetts Married Women's Property Act in 1845 heralded a growing number of wills by married women. In Berkshire County, only three married women had written wills before that time: Maria Louisa Chartier MacKay Debonne in 1802, who left her son luxury items including jewels and swords; Nancy Champlin in 1838, whose husband signed a deposition to allow her to make a will; and Sarah Barnum in 1840, who set the standard for other women in willing her husband only a life estate in her property. A few wives in the Pioneer Valley owned estate in their own right, as did Asenath Russell, whose real estate was worth $2198.438

In the three counties of western Massachusetts, 25 wives' wills were located. All but three were written after Massachusetts passed its first comprehensive Married Women's Property Act in 1845.439 Ten (40 percent) left their husbands only life estates, the same limitation that men in earlier decades had assigned their wives. (Wives did not, however, attach a remarriage penalty to their husbands' life estates.) The irony is that husbands' bequests of life estates to wives was on the wane at the

438 BCP 2424 (Debonne 1806), 7020 (Champlin 1847), 6876 (Barnum 1845); HCP 125.36 (Russell 1837).

439 Though Nancy Champlin wrote her will in 1838, her husband did not sign a deposition allowing her to execute a will until 1846, the year before she died. Neither Sarah Barnum nor Maria Louisa Chartier McKay Debonne's files offered explanations of their ability to write wills while in the married state, but both must have owned separate property. BCP 2424 (Debonne 1806), 6876 (Barnum 1845), 7020 (Champlin 1847).
same time. But the married testatrice, like earlier testators, simply wanted to be certain that the property would end up in the hands of her intended beneficiary rather than going to her husband's next wife. Most of wives' ultimate beneficiaries were female kin: daughters (four wills), children of both sexes (three wills), sisters, granddaughters and a niece (one will each). Only five wives (twenty percent) left estates to their husbands outright. As for the rest of the married women's bequests, they followed no clear pattern. But daughters and other female heirs eventually gathered in most of the wealth from wives who in earlier generations had lacked the option of making wills unless they had received property with a "sole and separate" clause attached or had the presence of mind to execute a prenuptial contract.

Theorizing based on testatrices' position in their life cycle (as has been done for testators⁴⁴⁰), we might have expected women who left their husbands life estates to have had young children who would require their fathers' support until maturity. But that was not the case with these testatrices any more than it had been the case with western Massachusetts testators. Of the twelve women who left life estates to husbands, and who were identifiable in the 1850 census, only two had minor children still at home when their wills were probated. The ages of those twelve testatrices at death (using their censused ages plus the number of years from 1850 to probate) ranged from 31 to 74. Three were in their 30s, four in their 50s, and four in their 60s. One in her 70s. Thus bequests of life estates to husbands could not be attributed to their age or that of their children. Clearly other factors came into play.

What seems particularly striking is that at the same time when married men were collectively liberalizing or enlarging their views of women as heirs and loosening the controls on their bequests to women, married women were tightening their posthumous control over bequests to men, either by bequeathing life estates or by assigning trustees, as discussed earlier. But women who left life estates, like women who put property in trust, may have had good reasons for exerting posthumous control. Some of their reasons involved typically male-gendered nineteenth-century issues, particularly debt.

Occasionally a wife attached an unusual precedent condition to be met before her husband received her bequest. Such a wife evidently used a carrot, rather than a stick, to prod him toward her desired outcome. In her will, Clarissa Coffing Bostwick stipulated that her husband William would receive thirty shares of Berkshire Railroad stock and her $1500 in real estate only if he relinquished custody of their three children to her brother John Coffing.\textsuperscript{441} In effect, she tried to buy her husband off; it was worth more than $2000 to her to place her children in another home. She did not explain why, but the historical record provides clues. In 1847, two years before Mrs. Bostwick died, her husband fell into debt. William Bostwick, a tailor, and his partner, Lee merchant Henry Pattison, could not pay bills totaling more than $4000. Bostwick pleaded insolvency and was discharged; Pattison "came not" to court, thereby losing the judgment. While court proceedings dragged on, Bostwick initiated lawsuits not only against his partner, understandably enough, but also against his brother-in-law, William Coffing. Bostwick, who defaulted on both,

\textsuperscript{441} BCP 7292 (Bostwick 1849).
was involved in *seventeen* court actions from 1847 to 1851. Because insolvency was a shameful blot on the family’s reputation, Bostwick had exposed them to humiliation. William Coffing, on the other hand, appears to have been a wealthy and stable creditor. Bostwick was either attacked or attacking other men through the courts for years, while Coffing avoided litigation. The last straw for Clarissa may have been her husband’s lawsuit against her brother. She rightly feared for her children’s upbringing if they stayed with their father, and felt confident that her brother would take care of them. She was right. When John Coffing wrote his will, he generously provided for his relatives from a $300,000 estate, handing out more than $10,000 to Bostwick nieces and nephews, and still more to others. Tellingly, most of his bequests to Bostwicks were put in trust.

Other wives did not resort to such extreme measures as Clarissa Bostwick’s bribery. Yet this will is significant because it shows the power married women *could* wield with property of their own.

### Characteristics of Women’s Property Ownership

In the early nineteenth century, most women did not appear on tax lists because their property was not deemed valuable enough to tax. Before 1830, most widows bequeathed property traditionally considered women’s domain. Northampton midwife Elizabeth Allen left only $34 in personal estate: clothing, a sidesaddle, and

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442 Berkshire County Court of Common Pleas microfilm, 1847-1848 (BA).

443 BCP 14198 (Coffing 1882). I found no guardianship records for the Bostwick children, so I do not know if Clarissa’s attempt to transfer guardianship succeeded.
her library on midwifery, and Sarah Jagger owned only wearing apparel plus seven head of livestock. Abigail Cook's 1819 will bequeathed a silk gown, featherbed, Bible, gold necklace and loom, as well as other personal property.\(^{444}\) Such personal items, perhaps with the increase from a milk cow or two, typified pre-1830 widows with little to distribute. In these estates, only the livestock would have appeared on assessors' valuation lists, and if those widows lived with male kin, the animals may well have been taxed on the man's account, rather than the widow's.

Aside from real estate, early assessors typically demanded information on money at interest, money on hand, ounces of silverplate, goods and wares, livestock, produce, and carriages.\(^{445}\) For a married woman living under coverture, anything of value not exempted by a prenuptial agreement or set aside by a "sole and separate" clause would have been subsumed into her husband's property. As a result, married women's property did not often appear on tax lists under their own names. And though widows paid taxes on their dower property, it was not theirs to bequeath because it had already been allocated through their husbands' wills. Such limitations mean that tax lists show neither a full nor an accurate picture of women's property.

Yet increasing numbers of bequests to women, like increasing employment opportunities for women, had the predictable result of creating more women property owners. And those women paid taxes. Western Massachusetts tax lists show few women taxpayers before 1830, but more each succeeding decade to 1860. Both

\(^{444}\) HCP 2.36 (Allen 1800); BCP 3310 (Jagger 1815); FCP 1133 (Cook 1824).

\(^{445}\) Pittsfield Assessors' Valuation Lists, 1817 (BA microfilm). Every town taxed a little differently. Some years, Dalton taxed the "faculty" of men with income from particular technical skills such as papermaking.
probate inventories and town assessors’ valuation lists showed women’s increasing property holdings. This was not just a local pattern. Richard Chused says that fifty percent more Dukes County, Massachusetts, women left wills after 1830 than before. Beyond Massachusetts, Lisa Wilson reports increasing numbers of Philadelphia widows with enough property to be inventoried after 1830, and Suzanne Lebsock notes that Petersburg’s white women who owned real estate increased from 8.5 percent of the total in 1810 to 24.5 percent in 1860.446

Western Massachusetts tax assessors’ lists likewise show increasing numbers of women landowners: six sample towns’ tax lists disclosed an increase from 37 women landowners in 1800 to 127 in 1850 -- an impressive 343 percent increase.447 By 1850 more women controlled land than had ever owned real estate in the history of the Commonwealth. Women’s rising landownership rates after 1830 indicate a qualitative as well as a quantitative increase in women’s property ownership -- a remarkable divergence from tradition. In addition, it shows that increasing numbers of female heads-of-households were householders, or at least partially so. In 1819, for instance, the "distracted" Tamar Pell of Sheffield owned a quarter of a house, a sixth of a barnyard, and eight acres that had been her mother’s.448

446 Chused 60; Wilson 123; Lebsock 104.

447 Assessors’ Valuation Lists, tax lists and/or the Massachusetts and Maine 1798 Direct Tax Census (NEHGS microfilm, BA) for Pittsfield, Lanesborough, Sheffield, Granby, Blandford and Deerfield. Though widows paying taxes on their dower lands were a sizeable proportion of the total, their proportion probably did not cause the increase in the numbers of women landowners unless western Massachusetts experienced a heretofore unreported mass extinction of propertied men.

448 BCP 3752 (Pell 1819). Pell’s property was specified, but a cautionary note is in order here, for three reasons based on the limitations of the records cited. First, women with life estates look the same in tax lists as women with outright ownership. Widows, especially early in the century, may have been paying taxes on life estates or dower which they did not fully
Whether women owned their real estate or simply controlled it for life, most were *not* farmers in the sense of market farming on a commercial scale. From 1800 to 1860, women’s real estate holdings declined in size to plots too small to farm. Public records show that few women controlled large amounts of acreage and those who did have large holdings rarely worked the land themselves. In 1798, a handful of Sheffield women owned (or possessed life estates in) farms but rare was the woman who ran a farm herself. For instance, Gad Austin occupied Polly Austin’s 105 acres and two-thirds of a house, and Daniel Palmeter was in Sarah Benton’s house on 96 acres. The men may have been renters or relatives, but their occupancy of women’s land indicates that the women had traded away some of their control over it -- or perhaps leveraged the use of their land into lifetime support or rental income.

Other women’s control can be questioned on the basis of their occupancy of only part of a house. Rachel Bush owned and evidently occupied a third of a house and 146 acres, and Mary Kellogg was taxed only on a half-house and 113 acres.\(^449\)

\(^449\) 1798 Massachusetts and Maine Direct Tax Census (NEHGS microfilm at BA); Records, Great Barrington Fire District [assessors’ valuation list] 1855-1858 (Great Barrington Town Hall); 1850 census agricultural schedule. Tracking agricultural schedules’ farmeresses through deeds.
Other women retained full control of their realty. Lydia Goodrich was taxed on two houses and 97 acres. Sheffield’s other women landowners, Elizabeth Peet, Sarah Tyler, and Tamar Pell owned a house plus eight acres, thirty acres, and eight acres, respectively, and their holdings followed what would become the pattern for nineteenth-century women landowners with acreage insufficient for a traditional working farm. In 1850, the average size for a Berkshire County farm was 154 acres, which included 94 acres of improved land. In 1860 the averages were 145 and 98 acres, respectively. Lillis Knight’s and Ruth Sweet’s holdings were the exception. Very few women’s holdings approached those numbers. More typical were Great Barrington singlewomen Sarah Turner with a house, barn, and ten acres, and Marilla Townsend with a house, barn and lot. Widow Lucy Whiting was taxed on $3400 worth of buildings and lots, but Whiting had only 36 acres, which could not have been a farm in the traditional sense.450

The agricultural schedules for the 1850 and 1860 censuses confirm the evidence that comparatively few women ran farms. In Berkshire County, census takers found only 34 farmeresses in 1850 and 58 in 1860. And few of them were testatrices before 1861. The fact that most of the other farmeresses on the agricultural schedules did not make wills suggests that they had only life estates in

and probate might be an interesting exercise to learn where they got their land, how much they had, what they did with it, when, and why.

450 1798 Massachusetts and Maine Direct Tax Census (NEHGS microfilm, BA); J.D.B. DeBow, Statistical View of the United States, [from the 1850 census] v.5 (1970), 256; Ninth Annual Report of the Secretary of the Massachusetts Board of Agriculture . . . 1861 (Boston 1862), 240; BCP 7754 (Knight 1852), 7655 (Sweet 1851); Records, Great Barrington Fire District [assessors’ valuation list] 1855-1858 (Town Hall, Great Barrington). In most cases, appraisers themselves made the distinction between farms, lots and houselots. In only one case was minimal acreage called a farm: Candace Tarbox’s 22 acres in Granby in 1849. She was also one of the few wives who wrote wills. HCP 145.8 (Tarbox 1849).
their farms, or sold their property or gave it to their children before probate.

Comparatively few women owned working farms. According to the Massachusetts Board of Agriculture, in 1860 Berkshire County had a total of 3008 farms. Farmeresses ran only about two percent of them.\textsuperscript{451}

A survey of 72 testatrices whose inventories listed specific amounts of acreage shows that their landholdings fell into three distinct groups: farms of 65 acres or more, lots of eight to 58 acres, and houselots of five acres or less. (About a third of those testatrices owned undivided fractions of land, ranging from one-half to one-seventh of houses, farms or woodlots, indicating that they had inherited it along with siblings. Joint ownership of undivided property suggests that the testator who willed it to them believed that the smaller portions, if divided, would not support the individual, much less a family.) Hannah Janes, for instance, owned only an undivided half of a ten-acre woodlot in Gill. Others owned a variety of outlands, including woodlots and mountain lots. Most owned houses, but sixteen owned acreage without appraised buildings; thus about twenty percent of testatrices could not have resided on the land they owned. The must have lived elsewhere and rented out their land, traded it for habitation, or otherwise put it to work. Even a ten-acre woodlot could have yielded a small income from lumbering, firewood or maple sugaring.\textsuperscript{452}

\textsuperscript{451} Berkshire County 1850 and 1860 census agricultural schedules, in nonpopulation schedules, UMass microfilm D-311, reels 1 and 11. The increase in farmeresses from 1850 to 1860 is intriguing, though whether it was the start of a trend, or just a temporary blip, I cannot say without further investigation that would take me beyond the scope of this study.

\textsuperscript{452} FCP 2571 (Janes 1837). Because many inventories have been lost from Berkshire County Probate Court files, and because courthouse staff did not know the location of the nineteenth-century volumes which had been microfilmed, much of the data from this survey came from the
Only thirteen testatrices (18 percent) owned 65 acres or more. Widow Mary Perkins of Becket owned 515 acres, including a 450-acre farm, but she was exceptional. Josephine Catlin was well-landed with 73 acres, most of it meadow and pasture in Deerfield. A few testatrices, however, owned *more than one farm*, with the second occupied by an individual with a different surname. Lillis Knight, in addition to her undivided third of the 224-acre $5000 Knight Farm in Adams, owned the "house and lot of land on which the house of Edward Norman" stood. Edward Norman might have been a renter or sharecropper. On the other hand, Knight may have subdivided her property, bought a lot on speculation or acquired land to settle a debt when the debtor could not pay. She would not have been the first creditor to foreclose.⁴⁵³ The fact that women with substantial acreage had other individuals living on it indicates that their land may have produced income. Canny New Englanders did not let their land lie fallow unnecessarily.

Forty (56 percent) of this sample of 72 testatrices owned middling acreage that might have supported a cow or two but could not have been considered farms. Many of these were the women in the middle range of property owners. In 1813 Mary Millikan was the earliest of these propertied nineteenth-century testatrices with acreage specified in her inventory; she owned one undivided third of 25 acres on the south side of the Millikan Farm. Hannah Card owned seventeen acres of Sherwood Farm and fifteen acres of Bee Hill land. Fifteen testatrices owned a scattered variety of lots, as did Thankful Brewer with a houselot, nine acres of pasture and a two-acre

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⁴⁵³ FCP 778 (Catlin 1848); BA/BCP 30: 54.318 (Knight 1852).
woodlot, presumably not contiguous. But all could have garnered rental income.

Hannah Austin, like several other testatrices, was evidently a landlady; in addition to her own house and 26 acres, she owned the three acres on which stood the house of Chester Thorpe.454

Nineteen (26 percent) of these testatrices owned houselots of five acres or less, but only four of them owned more than an acre. This pattern appeared in Hampshire and Franklin counties as well as Berkshire. Electa Nims of Deerfield had only four acres and Dolly Keet had just an undivided half of a house on one acre in Leverett. Few owned as much outright as Hannah Burrall's 156-acre farm and 56-acre woodlot or Naomi Barnes' 67 acres in Westfield. (Though most widows were not farmers, many kept a cow and may have raised enough to feed themselves.)455 The most common size of houselot was half an acre -- but it was not necessarily cheap land. In Amherst, Lois W. Smith owned half an acre with a brick house worth $2850 opposite the college in 1838. Relief Thayer, on the other hand, owned a quarter-acre lot with a house in Heath, and her holdings were worth only $100. In some cases, the lot was commercial real estate. Milliner Lucy Davis owned a quarter-acre lot with a brick building in downtown Pittsfield. At $4250, her real estate was the most valuable per square foot of any spinster's holdings (and more than most widows'). Davis, like many successful businesswomen, was an astute investor with decades of entrepreneurial experience. Women other than milliners turned their business acumen

454 Berkshire County Probate Records, microfilm at Berkshire Athenaeum (hereafter BCPR/BA) 10: 17.347 (Millikan 1813); 21: 37.355 (Card 1833); 20: 35.74 (Brewer 1831); 26: 47.362 (Austin 1843).

455 FCP 3438 (Nims 1834), 2663 (Keet 1858); BCP 4971 (Burrall 1830); HCP 10.18 (Barnes 1840).
to a profit. Susanna Stanton owned only a house and 68-rod lot worth $1100 in the village of South Egremont, but held a note against Nathan Benjamin for $390; he also owed her $37 in rent. Stanton, like Lillis Knight, Hannah Austin and Lucy Davis, made her land work for her.

Another morsel of information shows one of the variety of ways women turned a profit on their realty. In January 1851, Sarah Chamberlin sold Alexander Whyte and Samuel Hurlbut, paper manufacturers in Lee, "the right of flowing with water all real estate owned by [Sarah] in said Lee (being situated near the Housatonic River and above the Crow Hollow mill dam), water not to exceed in depth the height of the Crow Hollow mill dam, said real estate . . . occupied by Edward Bates." Miss Chamberlin received $50 for the flooding rights, even though she apparently had a tenant living on the property. The significance of such a minor transaction lies in the three ways Chamberlin found to make money from this acreage. First, she owned it outright, in her own name, and might have sold it if she wished. Second, she rented it out, presumably reaping an annual income from Edward Bates, who may have farmed it as a rich bottomland subject to periodic renewal from flooding. Third, she took advantage of an opportunity, however small, offered by the expanding paper industry in Lee. If Bates' dwelling and hopefully some of his cropland was above the level of the Crow Hollow dam, she could continue to collect rent from him while also profiting from expansion of the millpond. Finally, we should also consider the possibility that Chamberlin purchased that particular parcel specifically for its

456 HCP 136.23 (Smith 1838); FCP 4821 (Thayer 1825); BCP 7630 (Davis 1851), Pittsfield Assessors' Valuation List, 1849; BCP 8449 (Stanton 1856).

457 BCRD 109.389, 136.396.
proximity to an expanding mill, gambling that she would be able to reap profit from it one way or another.

The size of women's average acreage continued to shrink through the antebellum period. This evidence does not contradict the evidence in Chapter Five that women were receiving increasing acreage from the men who willed it to them. Though the acreage men willed to women rose from an average of 108 acres before 1830 to 139 acres after 1830, women overall did not experience such an increase. Most women owned much less, and when they bequeathed their quarter-acre lots to other women, that brought the overall average down. The trend toward women's smaller amounts of acreage is most clear after 1850, when only three testatrices owned farms or parts of farms, nine owned lots, and seven owned house lots.

Though time does not currently permit a comprehensive search of land records to ascertain ownership and acreage, it is evident from some testatrices' outright inheritances that they may have divested themselves of realty. Some women shed land as quickly as they acquired it. Caleb Hyde predeceased his wife Rhoda by only a year, but the $2500 in real estate he willed her was gone before her estate was inventoried. And Seth Backus left his daughter Jane 33 acres in 1813, but her holdings shrunk to 15 acres before she died in 1815. Other women who quickly followed their benefactors in death may not have had time (or need) to sell off land. For instance, Delilah Arnold and Clarissa Bell inherited land outright from their husbands, then died within a year or two, and their inventories showed the same real
estate their husbands' inventories had shown. Ruth Sweet also retained her half-interest in her husband's 95-acre farm. 

Though many women divested themselves of land, others accrued land after their husbands' demise. Zerviah Paul died with 25 acres her husband had not left her in his will fourteen years earlier. She was not the only acquisitive widow. Mary Perkins might have taken the prize for land acquisitions. In 1813 her husband willed her 100 acres, but when she died in 1816, she owned not only an undivided fourth of the home farm, but an additional forty-acre lot and the 450-acre Hill farm, worth several times as much as her husband's bequest. Widow Perkins may have inherited it from someone else, or perhaps she was a woman creditor who acquired land through debtors' default. Or she may have been a smart investor who knew a good deal when she saw it, and snapped up property to re-sell at a profit. Canny New England women could speculate just as men did.

Few women, however, owned as much real estate as Widow Perkins. Most owned only a fraction as much. As land holdings shrank for New England men in the nineteenth century, they probably shrank for women, too. This is not to suggest that women relinquished realty; on the contrary, more testatrices held real estate after the watershed year of 1830 -- but they owned less of it. Homeownership must have been advantageous for women, considering how many of them owned houses. If a man

458 BCP 8116 and 8155 (Arnold 1854 and 1855); 8204 and 8213 (Bell 1855 and 1855); 5911 and 6006 (Hyde 1838 and 1839); 7216 and 7655 (Sweet 1848 and 1851); 3006 and 3309 (Backus 1813 and 1815).

459 BCP 5042 and 6734 (Paul 1830 and 1844); 3003 and 3413 (Perkins 1813 and 1816).
was "king of his castle" in his own home, then a woman in a man-less household might have been considered sovereign in hers.

**Rising Numbers of Women Landowners**

The following chart shows the increase in numbers of testatrices with real estate holdings -- arguably the most conservative of all investment possibilities, traditionally the last for men to relinquish, and perhaps the most indicative of increasing autonomy for women.

**Chart 6. Landowning Testatrices: Berkshire County, 1800-1860**

Landowning testatrices not only increased in numbers from 1800 to 1860; they increased faster than the population grew. In Berkshire County, the numbers of testatrices with real estate rose from four in the first decade of the nineteenth century

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460 I have used only Berkshire county in this chart, for the advantage in comparing its 100 percent sample to the population, but women's landownership also increased in Franklin and Hampshire Counties.
to 62 in the 1850s. Their rate of landownership more than quadrupled from 1820 to
1830, leveled off, then nearly doubled again between 1850 and 1860. *Women
evidently profited from the economic conditions that ruined many men in those
decades.* Women gained because their husbands sheltered property by putting it in
their wives' names. Women collectively benefited from "sole and separate" clauses
attached; not only did the first recipient gain from it, but the women she willed it to
also profited. Thus women collectively consolidated their holdings by bequeathing
their property to other women.

The greatest proportion of women property-owners were widows. Before
1830, only eleven of 39 widow-testatrixes with inventories (28 percent) owned real
estate in their own names. Though more widows appeared in probate after 1830, just
37 of 79 with inventories (47 percent) had land. Comparatively few wives -- women
still married when they died -- left wills, but they, too, owned real estate. Though
some wives' estates were minimal, others were substantial. Josephine Catlin's 73
acres were worth $3951; Hannah Norton had $2000 in realty; and Bridget Grennan
owned $1519 in real estate including two houses, four acres and a blacksmith shop
that she willed to her husband for his lifetime. Her real estate literally kept a roof
over her family's heads and gave her husband a place to ply his trade. Other wives
owned from a few hundred to several thousand dollars' worth of property in their
own right, whether inherited with a "sole and separate" clause attached, bought from
their own wages, or protected by prenuptial agreement.461

461 FCP 778 (Catlin 1848); BCP 8865 (Norton 1859), 8714 (Grennan 1858).
Despite the general shrinkage of the size of women's real estate, their land increased in value. Women's realty was worth more in later decades: from 1800 to 1829 landed testatrices' realty averaged $470, then rose to $713 between 1830 and 1860. The data from wills is confirmed by town tax records. Assessors' lists collected by the state show that the value of western Massachusetts women's average estate more than tripled, from $486 (for the years 1829 to 1831) to $1857 (1859 to 1861). These figures show a sea change in women's property ownership patterns. And the fact that the state gathered such extensive and detailed information shows that the Commonwealth saw the implications of women's property ownership inherent in their resulting status as taxpayers.

Furthermore, women's increasing property ownership was geographically widespread, appearing across the state in maritime communities and south in Pennsylvania and Virginia. Richard Chused shows that Edgartown, Massachusetts widows' property holdings shot up between 1817 and 1832. Lisa Wilson's Philadelphia widows' estate values also increased, as did Lebsock's women's realty in Petersburg, Virginia.

462 From women's inventories, including all of Berkshire County and samples from Franklin and Hampshire Counties.

463 Assessors' valuations, however, include widows' dower property as well as what they owned outright. The difference between assessors' average and testatrices' average might be seen as the difference between widows' life estates and the property women owned outright. Massachusetts Public Document No. 15: Twenty-fifth Annual Report of the Bureau of Statistics of Labor, March 1895 (Boston: 1895), 238-241, 246-247, 250-251.

464 He read 71 Edgartown widows' wills from 1800 to 1851. Chused, "Married Women's Property and Inheritance . . .," 68. His 22 Tisbury widows show a uniformly higher level, but the smaller sample is suspect.

465 Wilson 130; Lebsock 104.
With increasing total estate, women had more to distribute, and what they distributed shows the extent of economic change in western Massachusetts. At the top of Berkshire County women’s economic hierarchy was Mary Buckley Hall with $19,000 in real estate and $50,930 in personal property, most of it stocks and bonds. Lucy Campbell owned $4992 in real estate and $40,967 in personal property, three-quarters of it in notes. Though their real estate was accrued by industrialist husbands, these widows participated fully in market capitalism. Even after their husbands died, they continued to profit from market investments, moneylending and astute trading. Furthermore, they did not rely solely on the advice of men in their dealings; Widow Hall specified that her daughter was to be consulted before any new investments were made. After 1830, though the number of women with real estate increased, and the value of their land increased, their realty was not as valuable as their personal estate (usually in the form of notes, bank or railroad stock).

Women as Creditors and Institutional Investors

Suzanne Lebsock found in Petersburg, Virginia that the numbers of women participating in credit transactions increased substantially from 1810 to 1860. The same increase occurred in western Massachusetts. At the opening of the nineteenth-century, women creditors loaned money to their families, neighbors and townsmen. Some debtors were evidently relatives; a few women’s wills explicitly

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466 BCP 8554 (Hall 1857), 7767 (Campbell 1852).
467 Lebsock 130.
forgave loans to sons, fathers, brothers, brothers-in-law, sons-in-law, and other male kin. More women lent to men beyond the family circle. Though widows were often a source of charity in their small towns, the evidence indicates that women did not become moneylenders as a community service. Instead, they put their cash reserves to work, whether they loaned to local individuals, banks, or corporations. The fact that many women did so, and that their lending increased over time, suggests that they were canny investors who spread their risk. Furthermore, widows had a collective reputation for being careful with their money. In 1829, Nathaniel Parker Willis wrote in an article about women's property, "The care women take of property is shown by the conduct of widows, who as a class, as has often been observed, are remarkable for caution." 468 Women may have been cautious, but they were not too cautious to put their money to work.

From 1800 to 1829, only eleven testatrices had notes listed in their inventories, with a total of $10,964 due. 469 Most women note-holders of this time lent only one to two hundred dollars at a time, but the amount loaned to an individual ranged from a few cents to more than a thousand dollars. At the end of this period, widow Lois Snow's loans varied from one with a balance due of sixty cents to a longterm loan with $266 due from Pliny Ames. Two women owed Snow $205 -- more than most women borrowed -- or, for than matter, loaned to other women. Twenty men owed her $1270, or an average of $63 each. The executor considered


469 To better understand the significance of this sum, consider that it equaled more than $160,000 in 1999 dollars. S. Morgan Freeman, Inflation Calculator: www.westegg.com/inflation/
one man's nineteen-dollar note uncollectible; such were the risks of being a moneylender, male or female.470

The risk must have seemed acceptable, because after 1830, the number of creditor-testatrices rose to 98 women with $162,413 in outstanding loans -- an astonishing ten-fold increase in female moneylenders with fifteen times as much in loans.471 In Berkshire County alone, 60 women held $126,296 in notes, or about $2300 per creditor-testatrix -- not paltry sums. Singlewomen creditors averaged only $950 in notes held. Matrimony or widowhood, however, increased women's cash reserves, because more than twice as many widows as spinsters were moneylenders, and widows had more than twice as much money to loan out.

Though most of these creditor-testatrices were white, we saw in Chapter Four that black women also were creditors more often than they were debtors. Sarah Drean was a major creditor (more than $500) to her son and grandson, and Elizabeth Freeman may have been a creditor for her great-grandson Van Schaack. One did not have to be wealthy to loan money; women with modest means were creditors, as well. Sally Hitchcock's $153 estate included a note for $122. Greenfield spinster Fanny Coleman typified female moneylenders in early decades: she held $337 in notes due, including a $100 note against her brother, Thaddeus Coleman, Esq. Sally Curtis loaned money at interest to three of her brothers. But being a creditor was not

470 BCP 5581 (Snow 1835).

471 Equivalent to almost $3 million in 1999 dollars. Freeman, Inflation Calculator.
without risk, even when the borrower was kin. Mary Ford held Job Ford's $1280 note, but it was deemed worthless by the men who appraised her estate.472

Mary Ford may have been a soft touch, but other women were not. They could not afford to be. If many women creditors had lost money by lending it, the numbers of women moneylenders would not have multiplied. Keziah Markham was a tough old maid who resorted to court proceedings to demand overdue debts. In 1827 Markham sued tanners Julius Smith and John Shores, as well as James Brown, who endorsed their $156 note over to her. The judge awarded her $167 in damages. A year later, she sued Brown again for nonpayment of a $300 note from 1826, and won again. In 1841, Markham sued William Renne, Gentleman, for past-due rent, goods and work done at his request, and was awarded $54. This businesswoman was so aggressive that she sued her own attorney as well as the Deputy Sheriff who seized $150 worth of her personal property in execution of a judgment against her in another lawsuit!473

Most creditor-testatrices were less litigious than Markham. The majority of the sixty Berkshire county women with notes in their probate inventories brought no lawsuits to the Court of Common Pleas. But those who did sue tended to do it frequently. Only ten testatrices were plaintiffs, but they initiated more than forty lawsuits. Most sued to recover debts. In 1808, Abigail Willard sued Ebenezer

472 BCP 5637 and 6627 (Drean), 4959 (Freeman 1830), 7019 (Hitchcock 1847); FCP 1084 (Coleman 1822); BCP 6601 (Curtis 1843), 8880 (Ford 1859). Many more women were creditors than appear in probate files. Court of Common Pleas records show many female creditors who did not leave wills.

473 Berkshire County Court of Common Pleas, 1761-1854, (hereafter BCCCP volume.page (year) (BA microfilm).
Williams for the eighteen sheep she loaned him in 1806. He had reneged on his promise to return them in 1807, along with an additional four and a half sheep as the interest on the note -- a return of 25 percent per annum. The court awarded her $24.16 plus court costs of $7.81. That was Willard's only suit.\(^{474}\)

Later women were more likely to loan cash than livestock, and they found ample opportunities to do so in the expanding market economy. They loaned money primarily to local men, some of them businessmen in need of capital. Cheshire singlewoman Chloe Brown loaned $700 to Adams businessmen Isaac Hoxie and David Anthony on a demand note. When they did not render payment, she took them to court.\(^{475}\) Spinster Mary Strong, a woman without real estate, had $5699 in notes due -- a small fortune -- when she died in 1817. But Strong worked hard to secure her money, and sued several men for different reasons. One was indebted to her on a plea of trespass, and when he did not pay up, she hauled him into court again. In 1814, she sued Woodbridge Little's estate for $500 she had loaned him in 1800. She won consistently.\(^{476}\)

Other women also had trouble collecting, particularly in years when debt-laden men decamped for the West. Henry Cooley, "late of Sheffield, otherwise of California," borrowed money from widow Mary Canfield and signed a note saying,

\(^{474}\) BCCCP 25.501 (1808); BCP 6222 (Willard 1840).

\(^{475}\) BCCCP 55.116 (1833). Chloe probably had acquired some notoriety when still a minor in 1833: she sued Bushrod Buck for breach of contract. In 1831 she had agreed to marry "and be coupled to him in lawful matrimony," and had declined the opportunity to marry another man. But Buck deceived her, marrying another woman -- so Chloe sued him for $10,000 in damages! When the court ruled in Buck's favor, Brown said she would appeal to the Supreme Judicial Court. She was still single when she died in 1846. BCCCP 56.345 (1834).

\(^{476}\) BCCCP 35.89 (1816), 27.12 (1809), 33.73 (1814).
Three years from date for value received I promise Mary Canfield to pay her on order one thousand dollars with interest annually.
Sheffield April 8, 1846.
Henry Cooley.

Cooley paid the six percent annual interest as agreed, sixty dollars in 1847, 1848 and 1849, and then stopped paying. In 1853 Widow Canfield sued and the court awarded her $1253.50 plus $16.47 in costs. Whether she was able to collect or not remains unknown. Unlike most women creditors, Canfield was wealthy. But she didn’t rest on her inheritance from her husband. She worked to increase her assets, and had $21,675 in notes due when she died.477

Because some men bequeathed notes to their wives, their widows were sometimes forced to pursue their late husbands’ debtors through the courts. Ruth Ives is a good example. Her widowhood from 1814 to 1822 included fourteen lawsuits in her capacity as executrix. Though she brought three suits on her own behalf, she also had to clean up the legal mess her creditor husband left behind. But when she died, she was a woman of means with $7100 in notes and $4600 in stocks and bonds.478

For the most part creditor-testatrices loaned small amounts of money and collected their profits without going to court. In Berkshire County, at least seventeen percent of testatrices (60 of 350) were creditors -- and this percentage probably substantially underrepresents the actual number of women who loaned out money (or livestock) at interest, because many women without wills appeared in court to collect from their debtors. Even those who were not litigious were thoroughly embedded in

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477 BCCCP 75.162 (1853); BCP 8590 (Canfield 1857).

478 BCCCP index, 1760-1854 (BA microfilm); BCP 7712 (Ives 1852).
their communities' market capitalism. Aside from probate inventories and court records, they left little evidence of their moneylending practices. But because most creditor-testatrices died solvent, they evidently knew how to loan money safely, though they reaped varying gains. The interest women collected on loans ranged from the usual four or six percent to the 25 percent that Abigail Willard collected on her sheep. Because a personal loan paid a fixed percentage, many women with some money to invest undoubtedly decided to forego the opportunity to subject their cash reserves to the market fluctuations of speculation in land or securities. The fact that many women held men's notes suggests that women had confidence in their ability to do business face to face with men and get the best of the deal. The fact that women had surplus money (which they did not need for immediate use and could therefore afford to lend) indicates that spinsters and widows were not necessarily penniless, whether they made wills or not.

These women knew how to manage money. Rarely were probated women insolvent. As Massachusetts spinster Keziah Kendall pointed out, debt was not generally associated with women. "I never heard of a yankee woman marrying in debt," Kendall wrote in the late 1830s.\textsuperscript{479} Nor did the courts see many women debtors. Of 182 insolvency cases in Berkshire County Probate Court from 1838 to 1858, 167 (92 percent) were men; only 15 (eight percent) were women.\textsuperscript{480}

Furthermore, the court rarely declared women spendthrifts. Of 37 individuals


\footnote{\textsuperscript{480} BCPR/BA: reel 112, Insolvent Estates 1838-1858.}
brought to the attention of Berkshire County Probate Court for assignment of guardians to curtail their spendthrift ways between 1800 and 1860, only one was a woman.481

Some women who could afford to diversify their investments found it prudent to do so. Canny investors put some of their money in interest-bearing securities such as bank stock, railroad stock, and notes. In addition to her real estate and $7100 in notes, Ruth Ives held $4600 in stocks and bonds. The landed elite such as Ives were not the only ones who broadened their investing beyond real estate to include stocks, bonds and loans. Harriet Young held $229 in notes and $170 in railroad stock within her $934 personal estate.482 Like Ives and Young, dozens of women gave loans to institutions as well as individuals. By the 1840s and 1850s, 37 percent of western Massachusetts testatrices used such instruments of investment. In the decades from 1800 to 1819, only a handful of testatrices had followed suit.483 By the 1870s, however, 43 percent of First Agricultural Bank’s and 34 percent of Pittsfield National Bank’s stockholders were women.484 Those banks may have needed women’s cash reserves to survive -- and women may have appreciated the opportunity for institutional investing on a local scale. Western Massachusetts women put their assets to work in increasingly diversified ways.

481 BCPR/BA Index, 1763-1900, Guardian/Spendthrift files.

482 BCP 7712 (Ives 1852), 8751 (Young 1858).

483 Midwife Elizabeth Allen $10 in a note of $34 TE, HCP 2.36 (1800); Miriam Wait $89 of $388 TE, HCP 151.51 (1807); Anna Briggs $217 of $544 TE, HCP 20.29 (1814); Susannah May $75 of unknown total, HCP 95.42 (1817); Clarissa Gale $622 of $753 TE, FCP 1833 (1820); Elizabeth Churchill: $590 of $716 TE, BCP 3653 (1818), Mary Strong: $5699 of $7302 TE, BCP 3477 (1817), Rebecca Wright: amount unspecified, BCP 3066 (1813).

484 Bank Stockholders, Pittsfield Tax Records, reel 12 (BA).
The following chart shows the changing asset mix of testatrices’ inventoried estates from 1800 to 1860.

**Chart 7. Testatrices’ Assets, 1800-1860**

Testatrices’ average total estate paralleled their average real estate from 1800 to the 1830s, about the time that men began to favor female heirs. Women’s gains in realty topped at a modest $1651, about the price of a small homestead with a few acres of pasture and a woodlot. But that asset mix changed in the 1840s, and the rise in women’s personal estate skyrocketed in the 1850s, pushing their average total estate to unprecedented heights. The greatest increase lay in instruments of investment. The massive increase of the 1850s accounted for two-thirds ($2600) of the $3800 average estate. Knowing that outbound children might not support widowed mothers or single sisters, and knowing that real estate might be difficult to unload in an economic downswing, fathers may have made a special effort to leave their wives and daughters a competency in assets more liquid than land. In addition, women took
advantage of their increasingly varied opportunities. A look at a particular family will show how women profited from the market economy with increasing confidence.

A few woman-centered families exemplified many of the characteristics of western Massachusetts testatrices: earning an income from their own labor, inheriting property, and stewarding their estate so it increased in value. By remaining unmarried, living in a woman-centered household, and adopting or raising others' children, such women ended their lives by making wills showing a preference for female beneficiaries, often with a linked chain of bequests from one kinswoman to another, sometimes including bequests to religious or charitable organizations. The Misses Kellogg were such a family.

Mary and Sarah Kellogg were twins born November 12, 1789, the fifth and sixth children of Lt. Ezra and Mary (Whiting) Kellogg. They grew up in Great Barrington, near the center of town. The death of their brother Henry in 1805 left the family without a male heir. When Ezra Kellogg died in 1833, he left a life estate in his personal property to his wife, who outlived him by only four years. He
bequeathed all his real estate to his unmarried daughters Mary, Sarah and Nancy, who were also to receive the residue of his personal estate after his wife died. His will noted that his other children, daughters Tacy L. Hopkins and Lydia Sherwood, had already received their share (presumably at marriage, like the "setting out" gifts described earlier). Kellogg's property was not inventoried but it must have been substantial; he was an upper-middling taxpayer in Great Barrington's tax assessors' lists.\footnote{Timothy Hopkins, The Kelloggs in the New World, v. 1, 175-176; BCP 5413; Great Barrington tax list, 1799, Treasurer's Office, Town Hall.}

Before her father's death, Sarah Kellogg founded Rose Cottage Seminary, which the Kellogg sisters ran until 1853.\footnote{Charles J. Taylor, History of Great Barrington (1882), 354; Sarah Kellogg obituary, Berkshire Courier, September 11, 1862: "On Friday September 5, Sarah Kellogg, formerly for a

Illustration 20. Rose Cottage Seminary, Great Barrington, 1850s (from Letters of William Cullen Bryant, original at St. James Episcopal Church, Great Barrington).
boarding school, for in 1850 it had 35 students from France, New York, Connecticut,
and New Jersey as well as Massachusetts. Each student paid $150 per year for the
basic course. Music, drawing and needlework classes cost extra, and laundry services
were provided at 37 cents per dozen pieces. The sisters kept two cows, swine and
chickens and raised grain, corn, hay, potatoes, and fruit, which supplied the tables at
the school. They employed Lucinda Freeman and her siblings Maria VanNess and
Thomas Burghardt, whose help enabled the Kelloggs to keep their school going.487

The Misses Kellogg, as Sarah, Mary and Nancy were called, collected a
steady income of perhaps $5000 per year from their school for two decades, probably
grossing more than $100,000 for their labor as teachers. Clearly all New England
schoolteachers were not the boarding-around starvelings whose low pay has so often
been lamented. They took winter vacations in the Deep South and put their remaining
profits into an evolving series of investments. In 1841 their real estate included two

487 U.S. census population schedule, 1850, Great Barrington, p117 and agricultural
schedule, (UMass-Amherst nonpopulation schedules microfilm D-311, reel 1); tuition and
fees from Lila S. Parrish, "The Great Wigwam: A History of Searles Castle, Great
Barrington, Massachusetts" [1984 typescript, loaned by the author], 6.
houses valued at $1600, two barns worth $200, the $600 schoolhouse, outbuildings assessed at $100, a three-acre home lot, $400, thirty acres of woodland, $400, and 26 acres improved land, $700. The sisters parlayed that $4000 in assets into a $12,350 estate by 1856.488 The pressure of population and relative scarcity of land in New England drove up the value of good land, particularly along a major road near a town center. The Kelloggs took advantage of the opportunity to unload some of their acreage in 1856, divesting themselves of property upkeep the aging sisters might have preferred to avoid. (They also donated land to the town for a new high school, where their portraits hung for decades.) Real estate proved a good investment even though they did not trade it as they did stocks and bonds.489

The Misses Kellogg began buying stocks in 1842 in a small way. After their initial purchase of 12 shares of Berkshire Railroad stock had fluctuated for several years from $50 to $80 per share, they began to diversify their holdings. Through the late 1840s they invested steadily in stocks such as Mahaiwe Bank and Southern Berkshire Railroad. In the 1850s they bought shares of Erie Railroad, Housatonic Railroad, Madison and Indianapolis Railroad, and Stockbridge and Pittsfield Railroad.

488 Letters of William Cullen Bryant, v. 3 (1849-1857), William Cullen Bryant II and Thomas G. Voss, eds. (1981), 18; Great Barrington assessors' valuation lists, mostly separate volumes, 1841-1874. Lists for 1800-1840 are missing, possibly destroyed in a fire.

489 On portraits and land donated to the town: Sandy Abriola Larkin, Great Barrington Tax Collector, who attended that school. Though land-rich, the Kelloggs may at times have been cash-poor. W.E.B. DuBois wrote that the unpaid wages of his uncle Thomas Burghardt kept the Kelloggs' household going at times. DuBois 103.
In this way the maiden ladies helped fund the nation's internal improvements, many of them local, but their motives were not altruistic. At a time when country banks paid from three to five percent interest on deposits, railroad stocks paid as much as ten percent. Even so, they protected themselves by spreading their wealth across a number of investments. In the 1840s, they also put $700 out at interest and in later years increased their loans to individuals as they began to divest themselves of stocks.\textsuperscript{490} They may have viewed personal loans to local men as lower in risk. Diversification was the mark of astute investors; by spreading money across several investment media, they reduced their exposure to loss.

At times, investing must have been a harrowing experience, especially after they sold their school or when they needed investment income. A case in point was their Erie Railroad stock, which rocketed from $75 per share in 1850 to $110 in 1853, then plunged to $20 in 1858 and on down to six dollars in 1859, only to soar to $100 again in 1865. Probably relieved, they sold it then, harvesting a profit of 33 percent for 15 years or only slightly more than 2 percent per annum at a time when other investments paid four to six percent. They began to divest themselves of stocks around 1860, putting more money at interest. By 1872, they had $12,400 loaned out.\textsuperscript{491} Increasing their loans to individuals in their old age indicates that they may have sought a safe, stable and local investment medium as an alternative to stocks. Speculation was for the young, who would have time to recoup losses.

\textsuperscript{490} Great Barrington assessors' valuation lists; \textit{Massachusetts State Record and Year Book of General Information}, ed. Nahum Capen, v. 4 (Boston: James French, 1850), 206-212.

\textsuperscript{491} Great Barrington valuation lists.
The Misses Kelloggs' investments show why some women invested in stocks and bonds, and may also show why others did not. Massachusetts land was not a spectacular investment, but it was not liquid. Land could actually be a burden because, as any farmwife knew, land required attention even if it was only pasture. Pasture had to be drained, seeded, hayed, and sometimes fertilized. Land required an investment of time, attention and money that many women did not care to literally plow into it. And the return on land was as chancy as the weather. It required nerve, but if it were rented out on shares, the renter bore the brunt of the risk involved in land.

Bank or railroad stock, on the other hand, during an era of westward expansion, could be an excellent investment yielding greater returns with less work on the part of the investor, and had the advantage of liquidity. Despite the unnerving volatility of one of the Kellogg sisters' stocks, other such investments paid a steady four to eight percent return without drama and without the concerns attending land. Even so, that liquidity depended on the market -- just as did the value of land -- and had to be considered highly speculative. Still, the combination of land and securities, perhaps tempered by notes lent to townsmen, would have been seen as safer in their diversity than was any of those investments alone. This may be why women's investments broadened to include securities, and why their real estate dwindled as other investments proliferated. A woman with a house and enough acreage to pasture a cow could choose to take in boarders or not, as need arose. A woman without a house and lot lacked that means of potential self-support in hard times. A woman with realty in addition to more liquid investments may have felt doubly blessed.
By 1860, the Kellogg sisters’ lives must have slowed considerably. Their siblings had died or moved far away. Their household had shrunk to just themselves, in contrast to earlier days when it had included dozens of students plus the extended Burghardt-Freeman-VanNess family. They no longer farmed on their former scale. Life was winding down for the sisters, whose close-knit, female-centered household had supported them for decades. Foreseeing the time when there would be still fewer faces at their table, they wrote their wills. Sarah Kellogg died of old age in 1862. Sarah left everything to Mary and Nancy, whom she named executrices. By the time Mary Kellogg died of paralysis in 1872, the sisters’ remaining real estate had appreciated to $10,500 and they had more money loaned out at interest than in negotiable securities. Mary bequeathed her estate to Nancy, providing that her own bequests were to be distributed after Nancy’s death, when their Great Barrington real estate would be divided between two nieces. When Nancy died (also of paralysis) in 1877, several $1000 bequests went to nieces and nephews, with smaller bequests to female friends and to children they had raised. Like many other spinsters, Mary left substantial bequests to various missionary societies and Andover Seminary. Significantly, it was the last sister in the chain who distributed major assets outside of the family. Though the Kelloggs began life in a propertied household, their careful stewardship of assets increased their holdings over the decades, giving them more to distribute. And like most western Massachusetts testatrices, their property went primarily to women.

492 1850 & 1860 censuses; BCP 9464 (Sarah Kellogg 1862), 11542 (Mary Kellogg 1872) and 12770 (Nancy Kellogg 1877).
CONCLUSION

For Anglo-American will-makers in western Massachusetts around 1800, distributive justice was a gendered concept. White men bequeathed their property to men, and women bequeathed to women in traditional patterns. Men passed on the property necessary for fulfilling their traditional roles as providers, while women handed down the personal estate essential for housekeeping. That pattern, however, broke down around 1830 when men departed from testamentary tradition of preferring sons as heirs, and began favoring women as beneficiaries. Women, however, continued to give female heirs their largest bequests.

One clue to the shift in white men's testamentary behavior may be extrapolated from wills left by African American men. If it is valid to infer that black men favored female heirs because of their financial contributions to the family economy, perhaps it is also valid to infer that white men recognized women's contributions. Though black women's paid labor has been recognized as essential to their families, white women's work has been studied primarily in the context of "visible" occupations, in most cases beginning with those listed in the 1860 census, or through the study of individual businesswomen, rather than in the context of their comparative

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493 Possible further study could include expanding this information on African Americans into a regional study, including western Connecticut and the Hudson River Valley, and extending it through the 1870s.
value to the family. Yet white women were also assets to their households.\footnote{494}

Wives and daughters had pitched in to keep family farms running during men’s absence throughout the Revolution and War of 1812, increasing their household manufactures during those conflicts, whether from patriotism or necessity. Men making wills from the late 1820s into the 1840s would have remembered those contributions. As internal improvements such as railroads and canals speeded transportation from rural areas to cities, women’s dairying became increasingly lucrative -- to the point where men stepped in to reap the rewards. Looking beyond the family farm, women’s increasing participation in outwork meant that they brought more money into the household. In addition, thousands of Yankee girls entered the workforce outside the home, sometimes sending money home, which not only augmented family cash flow but also relieved their parents of another mouth to feed. Those women brought unprecedented sums of ready cash into the family economy regardless of whether it went to their farmer-fathers or into their own pockets.\footnote{495}

During those decades, male heirs devalued themselves in their parents’ views through risky business practices, outmigration, intemperance, and criminal misconduct. Rising numbers of "sole and separate" bequests show will-makers’ increasing suspicion of men’s ability to husband property wisely, even as it shows

\footnote{494} Using the internet, it may be possible to expediently track down enough women’s or family account books to show just how women’s economic contributions fit into the family economy. In addition, local tax records have been little used in exploring women’s finances. Bowditch’s study shows which towns had a high percentage of women taxpayers, and that might be a good place to begin.

increasing confidence in female heirs. Furthermore, to achieve favored-heir status, a beneficiary almost had to live nearby -- if not under the same roof, then next door. And wives and daughters -- not sons -- were the most likely to be there. When sons left the homestead (or the path of virtue), fathers often made their wives or daughters primary beneficiaries. Thus, testamentary patterns from 1800 to 1860 show willmakers' growing skepticism of men as stewards of family assets at the same time they show more faith in women's management. The increase in women's favored-heir status, compared to that of men, has been documented here. And though women were not the overwhelming majority of men's heirs, their increase in favor from under ten percent to around fifty percent effectively overturned two centuries of Anglo-American probate customs.

In western Massachusetts, such changes in men's testamentary customs transferred more real and personal estate into women's hands. If it is true, as Marylynn Salmon asserts, that "control over property is an important baseline for learning how men and women share power in the family," then testators individually engaged in a collective redistribution of power in western Massachusetts from 1830 to 1860. The beginning of that redistribution predated Massachusetts' Married Women's Property Acts by more than a decade. Hundreds of men made individual choices which collectively increased and protected women's property well before lawmakers showed interest in doing so. As a popular movement, this change began in the households of many villages and towns, and worked its way up.

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496 Marylynn Salmon, Women and the Law of Property in Early America (1986), xii.
It must be said that these men did not necessarily share power with these women during their lifetimes. This aspect of domestic relations cannot be measured from these sources. Rather, such men were passing their economic resources on to those closest to them.

Men were not alone in this redistribution. Women continued to bequeath their property to other women. And they had more to distribute, not only because more men were leaving their estates to them, but also because several other changes put more property into women's control. First, mill work gave women new opportunities for employment and self-support. Second, women with money made it work for them, using increasingly diversified investments. Third, as has been amply documented by other historians, more women stayed single and widows declined remarriage. Because "conventional thinking about family relations," according to Gerald McFarland, "put the husband's needs first" in the nineteenth century, and because some women were not willing to be less than equal partners in marriage, they maximized their autonomy by refusing to marry, or in the case of widows, by refusing to remarry, as Lee Chambers-Schiller's study of single women confirms.\textsuperscript{497} Rising singleness or extended widowhood, along with increasing numbers of female heads-of-households, are important in the study of testamentary property allocation because unmarried women often retained control over whatever property they acquired. Because widows often lived years after their husbands died, this change, along with husbands' increasing bequests to wives, meant that the widows of

propertied men would spend a significant part of their lives independently controlling and managing an increasingly-diverse range of assets.498

The implications of women's increasing property ownership, along with the implications of single women's and widows' independence, were enormous and far-reaching. Property, or a freehold, was the traditional prerequisite for the right to vote before Massachusetts abolished the property requirement in 1821. And with women's rising singleness, the concept of the independent male property owner, or "freeman" could be extended to a free woman property holder.

Traditionally, woman's representation in government had been through her male head-of-household who voted. But after 1830, many women lived in households headed by women, not men -- which meant that those women were unrepresented. Though only a small percentage of households headed by women may have been unrepresented by affiliated men voting in elections in the 1700s, fifteen percent were in that position by 1850 in some Massachusetts towns, particularly the growing market and industrial towns such as Pittsfield.499 A woman head-of-household, like a woman property owner, had to exercise independent judgment, which was the root of the propertied man's traditional right to vote.

498 Because the average age of widows (59) was so much lower than the average age of their will-making husbands (70), further research might address the cause of such a wide disparity in ages, including comparative poverty which forced these men to marry late, second marriages, ownership of poorly producing uplands, sons who left home so early that the farmer derived little benefit from their productive working years in their teens and early twenties.

The Commonwealth of Massachusetts recognized the significance of increasing numbers of women property owners. Reformers had long protested all-male government supported by women's tax dollars. Sarah Grimké argued, "Man never can legislate justly for woman because 'he has never entered the world to which she belongs.'"\(^5\)\(^0\)\(^0\) Caroline Dall echoed that sentiment in 1861, noting that "it is a woman's judgment in matters that concern women that the world demands."\(^5\)\(^0\)\(^1\) Others agreed that women should have a say in government. As early as 1839, the *Boston Quarterly Review* demanded women's enfranchisement, noting that women could not be "justly excluded" from government because they were *subject to* government. Because taxation and representation were considered reciprocal, and because women were not given the right to consent to their own taxation by being allowed to vote for their government, then laws requiring women to pay taxes were not just, because they were not based upon the consent of the unrepresented taxpayer.\(^5\)\(^0\)\(^2\)

Using that logic, Massachusetts women loudly protested. Harriot Hunt refused to pay her taxes in 1852. Her objections were widely publicized.\(^5\)\(^0\)\(^3\) Lucy Stone's 1857 tax revolt likewise attracted attention when her meager household goods were auctioned on a bitter winter day to pay her tax debt.\(^5\)\(^0\)\(^4\) Lydia Maria Child wrote in 1866,

\(^5\)\(^0\)\(^0\) Grimké 162.

\(^5\)\(^0\)\(^1\) Dall, *Woman's Rights*, viii.

\(^5\)\(^0\)\(^2\) "Rights of Women," *Boston Quarterly Review* 2 (July 1839), 363, 367.

\(^5\)\(^0\)\(^3\) Linda Kerber, *No Constitutional Right to be Ladies* (1998), chapter 3 and fn. 43, p. 334.

I believe it to be right and just that women should vote, for many of them are taxed to support the Government, and 'taxation without representation' is contrary to the principles on which our republic was founded. Women are imprisoned and hung by the laws, and therefore they have a right to a voice in making the laws.\textsuperscript{505}

Her point was well made. Resistance continued. In Connecticut, Abby Smith withheld her taxes starting in 1869 and the assessors auctioned her dairy cows. The Smiths had additional reasons for demanding the franchise: they disapproved of their town's lavish expenditures. According to the Misses Smith, if women could vote, "the town would never have been so in debt. It is very hard for [women] to earn their money, and they are more careful whom they trust . . ." Lucy Stone used the \textit{Woman's Journal} to champion their cause.\textsuperscript{506}

In western Massachusetts from 1800 to 1860, men who favored female beneficiaries surely knew that enfranchisement traditionally followed property ownership. Most of the testators in this study would have remembered (or were subject to) the property qualification for the right to vote. This is not to suggest that they intended for women to have the vote; quite the contrary. Many individual testators may not have realized that they were collectively redistributing assets on an unprecedented scale. But in handing over property to a woman, each was very likely aware that he was doing something radically different from what his father or grandfather had done. There is no question that they would have recognized the phrase "taxation without representation," not because reformers invoked it, but

\textsuperscript{505} Lydia Maria Child: Selected Letters, 1817-1880, eds. Milton Meltzer and Patricia G. Holland (1982), 467-468. 

\textsuperscript{506} Kerr 188; Julia Smith, Abby Smith and Her Cows (New York: Arno Press, 1972 reprint of 1877 ed.) 11.
because it was central to the rhetoric of the Revolution their fathers or grandfathers had fought and they continued to cherish. Thus tax revolts were not new in Massachusetts; the "shot heard 'round the world" had been fired over such issues, and suffragists benefited from that tradition.

Government was not deaf to reformers' message. The Commonwealth began collecting data on women taxpayers in 1874, expressly to show that taxing women without allowing them to vote -- or, as William Bowditch wrote in his report, "taxation without representation" -- was unconstitutional. Bowditch found that in Massachusetts, women paid more than eight percent of the tax revenues collected statewide, and more than ten percent of the taxes paid in Boston. In some towns, women paid twenty percent of the taxes collected. By the 1870s, women's property had surpassed the trivial.

Furthermore, according to Bowditch, women taxpayers who were potential voters were so numerous that they could have swung a close election. That assessment showed the concern behind his study. Massachusetts women did gain the right to vote in school elections in the 1870s, as a tribute to their educational accomplishments. But Massachusetts' male voters were reluctant to face the prospect of "petticoat government" beyond their local school boards.

The significance of this study lies first in the unprecedented shift in men's testamentary customs, which reshaped women's economic landscape, and second, in women's preference for female heirs which helped maintain that shift. Due to those

changes, women owned increasing amounts of property, and ownership -- with resulting taxation -- laid the groundwork for women's enfranchisement. Nineteenth-century women themselves were the first to point out that their taxpaying entitled them to a say in government. And though male voters collectively declined to give women the unrestricted franchise, by 1860, testators had already expressed their faith in women's economic ability by putting property into women's hands. Among thrifty and hard-working Yankees, there could have been no better vote of confidence.
APPENDIX A: AFRICAN AMERICANS: A NOTE ON METHODOLOGY

Collecting evidence on western Massachusetts African-Americans' testamentary practices was tricky for several reasons. First, it was necessary to sort out black from white families of the same name. Both races are represented among most of these surnames: Billings, Burghardt, Cooley, Davis, Deming, Duncan, Eaton, Fields, Gardner, Hamilton, Handler, Houghtaling, Jackson, Johnson, Jones, Lee, Pell, Roberts, Schermerhorn, Smith, Thompson, Tucker, Williams, and Young. To further confuse matters, after the passage of the Fugitive Slave Law in 1850, some western Massachusetts town clerks stopped recording race in records of death. Perhaps the omission was simply a coincidence; some towns rarely if ever recorded the race of decedents. But in a town such as Sheffield, with a large population of African Americans and where race had previously been dutifully recorded, the town clerk discontinued recording race for individuals known to be of African descent, one begins to wonder if that discontinuation may have been a deliberate strategy for protecting citizens of color.

Second, some nineteenth-century public officials were clearly unsure of the race of some individuals, who were probably light-skinned enough to be mistaken for white. Lucretia Feathergill Young, a Pittsfield nurse, was a case in point. On some lists, she was categorized as Negro; on others, she was white or mulatto. When an aged pauper named Hannah died in Great Barrington in 1842, the town clerk noted she was "colored or Indian." Race was and is an ambiguous concept. This is not to suggest that race was ambiguous to people of color, who most certainly knew their own racial background; but race was sometimes ambiguous to the white census workers and town clerks who made the records. On the other hand, the town clerk of Peru recorded after Abigail Billings' death that she was "1/8" white and the rest "Afr" so some town clerks made an effort to track down full information to be precise in their record-keeping, while others did not.

Third, town clerks varied in commitment, ability and expertise, as did census enumerators and tax assessors who assembled lists of "Negro" taxpayers. In 1842 Great Barrington Town Clerk E.P. Woodruff noted that his list of deaths was "correct according to the best Information I can obtain," but his list showed cause of death for only half the decedents and first names for fewer than half. Woodruff could not muster adequate information on the majority of the town's white or "colored" decedents including "Hannah" (no last name), the "Colored or Indian" female pauper "above 75 years old," or "a black child . . . female . . . eighteen months old;" with

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508 MVR: Great Barrington 1842.

509 MVR: Peru 1868.
The New Marlborough Town Clerk, Henry A. Sheldon, wrote on his list of deaths,

The above is as came to my knowledge (not one handed in), it must be very incomplete. I will endeavour to perfect my return more in future. The Law is a dead Statute, as yet, but I hope its good designs will yet be realized.511

Fortunately Woodruff and Sheldon were the exception to the general rule that New England town clerks were conscientious about their record-keeping. But undoubtedly a number of individuals were omitted from this African American sample because their race could not be positively determined.

Fourth, the black population was small. To locate the African Americans on whom this chapter is based, varied public records were mined: tax lists in the towns with the highest black populations -- Sheffield, Great Barrington, Pittsfield, which designated African Americans as "Colored," "Negro," "Black," either within the alphabetical list or segregated them in a separate list such as "Gentlemen of Colour," which effectively eliminated the women of color), 1790 census abstract of black heads of households, 1850 census listings for blacks and mulattoses with real estate in every town in Berkshire and Hampshire counties, Massachusetts Vital Records for those who died in Berkshire County 1841-1860.512 Hampshire and Franklin counties proved virtually worthless for this purpose; five years of vital records yielded only a handful of individuals, all of whom lacked wills. Censuses for 1800-1840 were then used to identify black heads-of-households.513

510 Massachusetts Vital Records (microfilm at BA), hereafter MVR, Great Barrington 1842.

511 MVR: New Marlborough, 1842.

512 Those lists yielded about 250 people of color in Berkshire County and about 50 from the Pioneer Valley. All the propertied "Colored" individuals located in the census or tax lists and found in probate records were then re-checked in vital records to confirm their race. In a few cases, probated individuals' race could not be verified and those individuals were omitted even though I suspected that the town clerk simply had not bothered to record race.

APPENDIX B: AFRICAN AMERICAN POPULATION STATISTICS\(^{514}\)

<table>
<thead>
<tr>
<th>Town/Township</th>
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<th>1790</th>
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<td>4</td>
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<td>83</td>
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<td>166</td>
<td>202</td>
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<td>Ttl 31 towns</td>
<td>137</td>
<td>323</td>
<td>494</td>
<td>653</td>
<td>862</td>
<td>991</td>
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<td>62</td>
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<td>Franklin</td>
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</table>

\(^{514}\) Jesse Chickering, *A Statistical View of the Population of Massachusetts, from 1765 to 1840* (Boston, 1846), 116-118; Francis DeWitt, *Abstract of the Census of the Commonwealth of Massachusetts . . . 1855 (1857)*, 4-9, 23-30; Francis A. Walker, *Compendium of the Ninth Census* (1872), 217-218. Springfield, usually viewed as an African American population center, was less than three percent black.
APPENDIX C: IMPLICATIONS OF SLAVERY FOR VITAL RECORDS

A note on the Vital Records used to identify African American testators and testatrices: Unlike the majority of native-born white population, a striking percentage of blacks' death records listed their birthplaces and/or parents unknown. Of 67 adult people of color who died in Berkshire County between 1841 and 1855, 53 (79 percent) death listings were recorded with parents unknown, while only 14 (21 percent) showed one or both parents' names or a surname. A few town clerks were obviously remiss in recording vital records: the occasional individual filed nearly all death reports with incomplete information. In other cases, however, the town clerk offered a sort of explanation for incomplete information pertaining to an African American. In 1849, for instance, the Peru town clerk explained of his lack of information for the late Shoram Billings, "He was once a Slave and came from Con [Connecticut]." During the Civil War, a time of massive dislocation for the black population, the Pittsfield town clerk, who normally filed complete death reports, apologized for his lack of information on a thirty-year-old "African" waiter, who was "contraband brought in from NO [New Orleans]." Barber Samuel H. Robinson, a native of Maryland, was a former slave who "was set at liberty in 1845." Several other death records alluded to the decedents or their parents as slaves: farmer Samuel Backus had been born in New York state of parents known to have been slaves. And in cases already cited, the decedents' parents were from Africa.515

For the African American population, the implications of this minimal information are enormous -- and not just because of the difficulties incomplete records create in tracing family history. Gaps in the record reflect the disconnects bondage imposed on slaves' lives, the dislocation between generations which did not end when the enslaved reached freedom. Those gaps also show the distance between the nineteenth-century white establishment and the eighteenth-century origins of most of these black individuals. And that gap did not close when slavery ended. Runaways, for instance, were unlikely to advertise their origins, so their friends and family in Massachusetts may have known little of their birthplace or birth parents, and thus could not or would not report complete information to the town clerk.

515 Of the 80 in the original list, 13 showed only the name of the decedent's spouse, so those were not included in these percentages. MVR, Berkshire County, 1841-1855 (microfilm at BA). MVR: Shoram Billings, Peru 1849; Samuel Backus, Lenox 1864; Samuel Robinson, Williamstown, 1866.
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