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**“Petitions Without Number”: Widows’ Petitions and the
Early Nineteenth-Century Origins of Marriage-Based Entitlements**

Kristin Collins*

INTRODUCTION

In 1858, Catharine Barr sent a letter to the Pension Commissioner in Washington, D.C., seeking reinstatement of her widow’s pension. Barr had been married three times in her life: once to George Bundick, “a young and beloved husband” who had died in the War of 1812; once to William Davidson, who had died in 1836 of injuries sustained while serving on the USS *Vandalia*; and a final time to James Barr. Barr acknowledged to the Commissioner that she was not, strictly speaking, a widow, as James was still living and they were still married. She nevertheless sought reinstatement of the pension she had been granted as Davidson’s widow. Pursuant to the terms of the relevant pension statute, Barr’s first pension had terminated upon her remarriage to James. However, as she explained to the Commissioner, James “has neither been with me or given me one Dollar for my support since 1849, and I know not his whereabouts.”¹ Having also lost her father in the War of 1812, Barr saw herself as particularly deserving of the federal government’s assistance and believed that she, as well as other widows in her position, had a claim on the national coffers. “It is no more than right that our Country should allow us that mite for our own Exclusive use and for no other. . . . I for one,” she implored, “have no Dependence on Earth only what comes through my relations.”²

Catharine Barr was one of tens of thousands of women who, from the 1790s through the onset of the Civil War, sought assistance from the federal government as military widows. During a period known for its paltry and punitive local poor laws, Congress enacted

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approximately seventy-six public law statutes granting cash pensions to large classes of widows of soldiers and veterans who had served in the United States military.³ Although war widows’ pensions were not unknown in Anglo-American law, this system of social provision for military widows departed from English and colonial precedent in significant ways. First, starting in the 1810s, Congress gradually began providing widows’ pensions to widows of rank-and-file soldiers, thus deviating from the class-based approach of eighteenth-century widows’ pensions – both English and American – which had privileged the widows of officers. Second, and perhaps more significantly, in the 1830s, Congress began providing service-based pensions to large classes of widows of veterans, also regardless of rank, thereby providing a kind of old-age pension to tens of thousands of women whose husbands had not died in battle. By the 1830s, widows’ military pensions were no longer an entitlement tied to privilege and status, but were instead a means of alleviating pinching poverty for a significant class of women. Catharine Barr’s plea for a pension was thus part of the first centralized broad-scale system of marriage-based entitlements in American social policy.

Given recent debates concerning the scope and propriety of marriage-based entitlements in American law and policy, scholars have asked surprisingly few questions about the earliest origins of this form of centralized social provision.⁴ Through an investigation of pre-Civil War widows’ military pensions, this article takes a fresh look at the history of social provision for women, marriage-based entitlements, and women’s experience of and with the law in the early nineteenth century. More generally, it helps illuminate how marriage-based entitlements became entrenched in American law and social policy, forming part of our common socio-legal understanding of what it means to be married.

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Although publicly-funded marriage-based entitlements are commonplace today, they were a novelty in the early nineteenth century. After all, one of the primary purposes of marriage was to contain liability for women’s financial needs within the private family, not open up government coffers to claims by wives and other family dependents.⁵ While the forces leading to the development of a significant and complex system of widows’ military pensions were many, this article focuses on the important role played by widows’ petitions to Congress. Women’s petitioning practices of the early nineteenth century have not escaped the notice of historians. Much of that attention has focused on women’s overtly reform-oriented petitioning efforts such as the abolitionist petitions that flooded Congress in the 1830s and 1840s, and the petitions opposing Indian removal of the same period.⁶ However, over the course of the early nineteenth century, hundreds of women petitioned Congress for pensions based on their status as military widows. Their stories, and the role of widows’ petitions in the transformation of widows’ military pensions from a rarefied class-based privilege to a broad-scale entitlement, are the focus of this article.

To explain the petitioning process and the various forces that shaped these early marriage-based entitlements, this article details the experiences of two early nineteenth-century widows, Susan Decatur and Catharine Barr. Decatur and Barr took very different routes to obtaining their pensions. Decatur, the widow of the famous commodore Stephen Decatur, petitioned Congress directly in pursuit of a private act – a law enacted for the benefit of a named individual. Barr sought pensions pursuant to several of the public or general law widows’ pension statutes that had been enacted in the early nineteenth century. Standing alone, the stories of Decatur and Barr provide a window into women’s negotiation of state power in the early nineteenth century – experiences undoubtedly marked by class and circumstance. But precisely

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because of the differences in Barr’s and Decatur’s experiences, their stories also provide important clues to how an extremely limited system of class-based entitlements for widows of officers – the system America inherited from England – evolved into a system of broad-scale marriage-based entitlements for women across the socio-economic spectrum. By situating these two women’s experiences within the more general legislative history of the widows’ pension system, we see that an important force leading to the development of the first centralized system of marriage-based entitlements was the assertion by widows that, in certain circumstances, marital status should serve as a basis for government support, and not just for the Susan Decaturs of the world, but for common women like Catharine Barr as well.

Two preliminary remarks are in order. First, this is not a story about boundless congressional generosity to “worthy widows,” or about the radical democratization of women’s rights as wives. Many widows’ petitions for individual relief were, in fact, denied. However, considered *en masse*, such petitions prompted substantial legislative debate concerning the scope and basis of the government’s obligation to support widows (even of the rank-and-file), and gave rise to the development of programmatic support for women through general legislation. Second, it should go without saying that widows’ pension petitions to Congress did not do all of the work. Rather, they were part of a complex set of circumstances and events that shaped government policy. Forces well beyond the immediate control of the petitioning widows and national legislators – economic trends, cultural and ideological changes, political developments – influenced the development of widows’ military pensions in crucial ways. By focusing on the importance of widows’ petitions, my goal is not to diminish the significance of such factors, but rather to highlight the particular political and legal processes through which women helped to bring about a significant transformation in government policy. Of course, the petitioning process

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was itself bound in part by gender-conventional expectations concerning women’s engagement with the state. But however humble their discursive conventions, widows’ petitions put women’s financial needs on the national legislative agenda, brought attention to the inequity of inherited class-based practices, and informed the way national legislators reasoned about women’s claims on, and their position within, the polity. To overlook widows’ petitions in our analysis of the origins of marriage-based entitlements and their entrenchment in American law and social policy would result in an anemic account of the evolution of social provision for women.

A secondary goal of this article is to consider how we might understand these unfamiliar artifacts – the widows’ pension petitions – in light of existing trends in women’s legal history. Understandably, much of women’s legal history has emphasized women’s exclusion from political and legal processes: they were unable to vote, hold office, or serve on juries, and married women were unable to contract or sue without their husband’s permission and participation.⁷ Although historians have done much over the last three decades to illuminate the many ways that, cultural and legal barriers notwithstanding, women played central roles in political life,⁸ legal historians nevertheless tend to focus on how the law perpetuated or challenged women’s legal and political disability and marginalization.

But widows’ pension petitions are not easily classifiable in such terms. On the one hand, the vision of tens of thousands of women seeking military pensions, whether by petitioning Congress or by navigating a complex administrative system, at the very least stands out against accounts that focus on women’s significant lack of socio-legal agency. On the other hand, these women did not challenge traditional gender norms. Rather, through the age-old process of petitioning, they premised their claims to federal monies on their roles as wives and mothers, and

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sought cash relief that would reward those roles. And it was precisely the gender-traditional location and purpose of their claims that made widows’ petitions effective. Widows’ pension petitions thus serve as evidence of women’s pragmatic and instrumental use of law in a manner that materially improved the lives of tens of thousands of widows by precipitating the development of the first marriage-based entitlement for women in American social policy, while simultaneously drawing on and reinforcing women’s status as legal dependents.

I. THE FIRST SYSTEM OF MARRIAGE-BASED ENTITLEMENTS

Today, the death of one’s spouse can trigger all manner of public and private law compensation for the surviving widow or widower, including Social Security survivors’ benefits, workmen’s compensation, life insurance benefits, and tort remedies in wrongful-death actions. But the law has not always been so focused on ensuring the financial security of surviving spouses. While early nineteenth-century law provided for widows and widowers through intestacy law, and related doctrines such as dower and curtesy, the scope of such provision was extremely limited by modern standards.⁹ Certainly, the notion that a spouse’s death could trigger the allocation of *public* assets was not understood as a natural, or even possible, consequence of the marital relationship. Under eighteenth-century Anglo-American law and policy, the vast majority of war widows – women who would seem to have had the greatest claim on the polity’s sympathy and resources – went uncompensated for the deaths of their husbands. The system of federal widows’ military pensions that developed in America over the course of the early nineteenth century thus marked an important development: the first public, broad-scale system of marriage-based entitlements.

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To be certain, Anglo-American governments had provided for some war widows, but such provision was of a different scope and kind. In eighteenth-century England, pensioning the widows of *officers* was a fairly common practice, but systematic provision for widows of *soldiers* was not available until the end of the nineteenth century.¹⁰ American colonial governments adopted a similar class-based approach to war widows’ pensions, generally providing significant pensions to the widows of officers as a matter of course, but providing for the widows of soldiers, if at all, through poor-law type statutes that were based on need and limited to subsistence-level support.¹¹ A similar pattern persisted from the Revolutionary era to the 1810s: In 1780, the Continental Congress granted pensions to the widows of Revolutionary War officers – an act that Congress later ratified, and a general practice that Congress continued through the early 1810s.¹²

Congress’s first innovation with respect to widows’ pensions was to substantially expand the socio-economic reach of the pension system as it applied to what one might call “traditional war widows” – those women whose husbands died in the line of duty – by making such pensions available regardless of the husband’s rank. This equalization of widows’ pensions was an evolutionary rather than a revolutionary process. Two years into the War of 1812, Congress began to provide for traditional war widows of the rank-and-file – first to widows of navy seamen, and next to widows of army soldiers.¹³ In subsequent years, Congress regularly provided pensions to widows of soldiers of ongoing naval encounters and military efforts to settle the frontier.¹⁴ Until the 1830s, however, the default rule in military pension statutes was to provide pensions to widows of officers only.¹⁵

In 1836, Congress enacted two watershed widows’ pension statutes that brought cash assistance to tens of thousands of women. First, in March of that year, it provided five-year

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pensions to widows of “officers, non-commissioned officers, musicians, artificers and *privates*, of volunteer and militia corps, who shall die in the service of the United States.”¹⁶ By including widows of privates among the categories of pensionable women, Congress departed from the class-based default rule that had tended to characterize traditional war widows’ pensions for at least two hundred years.¹⁷

Then, in July of the same year, Congress took the equally significant step of introducing broad-scale *service-based* pensions to large classes of widows, including widows of soldiers. Widows’ service based pensions were awarded to women whose husbands died long after their military service had concluded, and of causes unrelated to that service. The July 4, 1836 Act awarded life-time pensions to widows of “any officer, non-commissioned officer, musician, *soldier*, Indian spy, mariner or marine” who had served in the Revolutionary War for at least six months, whose husband had died any time prior to 1836, who had been married to the soldier during the war, and who had never remarried.¹⁸ The women pensioned under this Act were not the young widows of fallen soldiers who usually come to mind when we think of “war widows.” As one committee report explained, “[t]he provisions of the act [of 1836] were clearly intended to sustain the widow in her declining life.”¹⁹ Through several general pension statutes enacted between 1836 and 1853, Congress expanded the categories of widows eligible for service-based pensions, thus promising cash assistance to the many thousands of women who had been married to a Revolutionary War veteran at some point.²⁰

These two significant shifts – the leveling of traditional war widows’ pensions and the creation of a broad-scale system of service-based widows’ pensions – marked the development of “programmatic entitlements” for women: a shift away from the ad hoc provision of relief by private bills and toward the use of general or public laws to create entitlement programs for the

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benefit of large classes of individuals.²¹ This system was not completely free of the rank-based obsession of the military, as the amount awarded to individual widows was calibrated largely to her husband’s rank.²² Nevertheless, and although it would be a serious overstatement to characterize this complicated constellation of military widows’ pension statutes as a system of universal entitlements, these statutes created a far-reaching program of social provision that benefited tens of thousands of women. In the years between 1836 and the outbreak of the Civil War, over 47,000 widows collected pensions under federal pension laws, and approximately half of the widows’ pensions awarded during that period were life-time pensions.²³

Of course, numbers do not tell the entire story. Widows’ military pension statutes not only created new entitlements for a significant group of women, but also reflected and disseminated important social knowledge about women’s legal rights and claims as wives. Widows’ pension applications reveal the unsurprising but important fact that military widows were aware of the pensions awarded to other widows, and that they talked with each other – in town, in church, at the market – about the pension laws and the availability of pensions for different categories of widows.²⁴ These new statutory rights for widows were routinely and prominently reported in newspapers around the country, creating a direct connection between the federal government and individual women, between Washington and scattered localities, between nation and neighborhood.²⁵ Pension claims agents – a class of middle-men who, for a fee, assisted both widows and veterans with their military pension applications – disseminated information about widows’ new statutory rights while pedaling their services.²⁶ And through the public law pension statutes, large classes of widows gained entry into a significant federal administrative system that evolved to determine individuals’ eligibility for military pensions. Widows of soldiers and veterans thus became a community of women – both real and

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“imagined” – who, by virtue of their former marriage to a soldier or veteran and their presumed financial need, had been deemed worthy recipients of government assistance.²⁷ The widows’ pensions informed social knowledge of these widows’ rights, identifying marriage as a common condition of women’s status in, and claim on, the national polity, while also codifying gender-traditional ideals of women’s and men’s socio-political roles – the republican wife and mother and the citizen-soldier.

The blossoming of the widows’ pension system also marked a shift in marriage’s socio-legal significance. Congress’s rejection of the petition of one Ruth Roberts in 1790 betrays the early attitudes toward widows’ pensions. Roberts’s husband had suffered serious injuries in the Revolutionary War that prevented him from working his farm and ultimately led to his death. In a report recommending that Congress reject Roberts’s pension petition, Secretary of War Knox advised that “although the situation of the petitioner may entitle her to the assistance of all humane persons, yet the circumstances of the case do not appear to be such as to constrain the United States to depart from the principles, practice[s], and limitations established by the late Congress.”²⁸ Those principles, practices, and limitations did not provide for widows like Ruth Roberts – at least not in 1790. But by 1854, pension treatise writers Robert Mayo and Ferdinand Moulton could announce that “widows and orphans, being the natural and civil dependents of their husbands and fathers whilst living, might therefore be considered as justly entitled to the continuance, nay the inheritance, of the right, *virtually as a vested right*, of [a] pension, at the death of their said natural and civil protectors.”²⁹ Married women and children had long been the “dependents” of husbands and fathers, but such a condition had not given rise to routine public liability for their care, even in the case of war widows. It had taken national legislators several decades to reach the conclusion that marriage could give large classes of women claims

on the public treasure, and to enact and implement a body of laws and administrative processes that recognized this understanding.

II. THE EXPANSION AND LEVELING OF WIDOWS’ PENSIONS

Why did Congress get into the business of providing widows’ military pensions to such a broad cross-section of women? In particular, why the shift from a limited and relatively inexpensive class-based pension system that privileged the widows of officers to one in which large classes of women became entitled to military pensions on the basis of their marriage to a man who had died during his service, or possibly simply served, in the military? Of course, there is no single explanation for such a complex phenomenon. But any answer must be sensitive to political and legal strategies open to women, and to women’s very limited formal agency, while also accounting for contemporary changes, pronounced and subtle, in the ideological valences of family and gender. Widows’ pension petitions have received little sustained attention, but they are an obvious and important source of evidence of how the financial needs of large classes of widows became a politically legitimate, and at times pressing, subject of federal legislation.³⁰

Women’s petitioning activities in the early nineteenth century are not new news to students of the period. Women’s abolitionist petitions have been of particular interest, both because they evidence the close relationship between the abolitionist movement and the early women’s suffrage movement, and because they resulted in a backlash by Congress in the form of the gag rules imposed in 1836, 1837, and 1840.³¹ But before mass suffrage, petitioning was not only a means of registering protest; it was also central to the legislative process, giving both women and men a means of seeking legal redress for individual grievances and a means to initiate more general legislative change, or both.³²

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Unlike female abolitionists, who used petitions to enter the political fray, and in so doing transgressed socio-legal proscriptions against women’s participation in politics,³³ widows who petitioned Congress for pensions conformed to gender-based norms by making claims *as wives*. The widows’ pension petitions are in many respects a study in the perpetuation of gender-traditional norms. As demonstrated below, widows’ petitions relied upon, and reinforced, the centrality of men’s and women’s accepted modes of service – men’s service as citizen-soldiers, and women’s service as wives and mothers. The widows’ petitions thus reaffirmed women’s status as dependants and subordinate members of society, even as they sought recognition of that status in the form of material relief from Congress.

It would be a mistake, however, to understand widows’ pension petitions, or the pensions themselves, as wholly conventional in their ambitions and influence. After all, women had long been considered men’s dependents under the law – and men their protectors and providers – yet before the early nineteenth century, such private dependency had not translated into public support for the vast majority of military widows, even when their husbands died in service to the country. Not only did widows’ pension petitions signal that women’s domestic responsibilities and dependent status were matters of public, and even national, significance;³⁴ they helped inaugurate the understanding that married women’s domestic and dependent status could in certain circumstances serve as a justification for *public* support for widows of all socio-economic classes. Widows’ pension petitions put women’s material well-being on the national legislative agenda and provided a novel understanding of the purpose of widows’ pensions: alleviation of financial need, rather than reward based purely on the husband’s rank or his particular acts of military service. In so doing, widows’ pension petitions prompted substantial debate concerning the role of government entitlements in a republic, and initiated the gradual equalization and

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expansion of widows’ military pensions from class-based privilege to broad-scale entitlement. In short, attention to widows’ pension petitions illuminates the process by which contemporary socio-legal norms concerning men’s and women’s respective roles in the polity were translated into government support for a substantial class of widows.

To help understand this shift in widows’ military pensions, and the role of widows’ petitions in bringing it about, it is useful to consider the experiences of two widows, Susan Decatur and Catharine Barr. Decatur’s saga is a story of old-world mores and patronage politics of Washington D.C. As a woman of extraordinary wealth and political connections, her experience petitioning Congress for a pension simultaneously sheds light on the significant role of petitioning and reveals Congress’s increased skepticism of the hierarchical, class-based widows’ pensions that typified both English and colonial pension laws of the eighteenth-century. Catharine Barr, on the other hand, was a woman of little means or influence. Her navigation of the pension system and her success (albeit mixed) in obtaining a pension demonstrates the class-based equalization and expansion of the widows’ pension system, as well as the entrenchment of widows’ pensions as a widely available form of government entitlement.

Neither Decatur nor Barr is perfectly representative of the tens of thousands of widows who sought military pensions during the early nineteenth century. Nevertheless, a careful look at their cases, and contextualization of their claims within the legislative debate concerning the propriety and scope of widows’ military pensions, illustrates how women’s use of petitions helped give rise to a broad-scale system of social provision for widows, shaping – sometimes in unintended ways – women’s rights, women’s legal consciousness, and, ultimately, women’s relationship to the polity.

A. Susan Decatur

In 1806, Susan Wheeler married the young naval hero Stephen Decatur. Although she came from a prominent Norfolk family, her marriage to Stephen, which took place just as he began his meteoric rise to fame and fairly outrageous fortune, catapulted her into the most rarefied social and political circles of the period. When the couple met, Stephen was already well known for his first widely celebrated act of heroism: During the Barbary Wars, he had led the capture of the frigate *Intrepid* in Tripoli and the strategic destruction of a captured vessel, the USS *Philadelphia*.³⁵ This feat of daring earned Stephen, then aged twenty-five, world-wide fame, including the attention of none other than Lord Admiral Nelson, who is said to have commented that it was “the most bold and daring act of the age.”³⁶

In addition to the honorifics and medals, over the course of Stephen’s ten years of active service in the Navy he accumulated another kind of reward: prize money.³⁷ Stephen amassed a substantial fortune by fighting the good fight, and in 1818, just after he was appointed Navy Commissioner, the socially and politically ambitious couple built a mansion on President’s Park, near the White House, taking their place among the Washington elite.³⁸

Theirs was a society of old-world tradition, including – especially among its military members – the honor-bound tradition of dueling.³⁹ Thus, in 1820, when James Barron challenged Stephen to a duel in response to allegedly slanderous remarks he had made concerning Barron’s activities during the Chesapeake-Leopard Affair, as an officer and gentlemen Stephen had little choice but to accept the challenge.⁴⁰ Myth has it that Stephen was perhaps too staunchly a gentleman and, at the critical moment, intentionally aimed low and only slightly wounded Barron. Barron shot to kill. Stephen’s honor was preserved, but his life was not. And although it may have been of little solace to Stephen, it is testimony to his status as a

national hero that President Monroe, the Supreme Court Justices, and most of Congress attended his funeral.⁴¹

At the moment that she had assumed the role of grand hostess in the nation’s capital, Susan Decatur was left a widow. The couple was childless, and under her husband’s will Decatur inherited Stephen’s entire fortune, including \$75,000, the mansion near President’s Park, and sundry other property holdings.⁴² Profligate spending and mismanagement of her fortune left Susan Decatur in dire straits.⁴³ Decatur did not qualify for a pension under a general pension statute because Stephen had not died “in the line of duty,” as the extant navy pension laws required.⁴⁴ Hence, in 1825, Decatur did what any sensible widow of a famous Navy officer steeped in the capital city’s culture of society and patronage would do: she petitioned Congress for support. In so doing, Decatur not only called on well-established traditions in Anglo-American law of providing pensions to officers’ widows, she also participated in the distinctive culture of patronage that had developed in Washington D.C. by the 1820s.⁴⁵

Decatur’s initial petition was not styled as a pension bill. Rather, she asserted a petition “on behalf of herself and others” for substantial prize money allegedly owed to Stephen’s estate for the destruction of the USS *Philadelphia* in the Harbor of Tripoli in 1804.⁴⁶ Although her petition did not deign to propose a dollar amount for the prize money owed, her advocates in the House of Representatives did: \$100,000, a princely sum at the time.⁴⁷ Because Stephen had been a high-ranking officer in command of that particular mission, Decatur stood to collect at least \$15,000.⁴⁸ Decatur’s claim languished in Congress for over a decade, during which time she indeed became near penniless, at least by the standards of the American gentry. During that period, Decatur renewed or resubmitted her petition to Congress several times,⁴⁹ resulting in at least eight significant committee reports concerning her petition, and prolonged and repeated

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floor debates.⁵⁰ In 1836, she was forced to sell the President’s Park mansion for \$12,000, and much of that handsome sum was likely used to pay off her creditors. But in 1837 Decatur’s friends in Congress finally prevailed, securing enough votes for a private bill for her relief.⁵¹ When the Joint Resolution granting her private relief was finally adopted, it was styled in the form of a pension in the amount of \$600 per year for five years and arrearages of nearly \$14,000, to be administered by the Secretary of the Treasury as trustee.⁵²

One might think that, after eleven years of seeking relief from the federal government, the success and the financial security she had achieved by securing a private pension would bring closure to Decatur’s pursuit of relief from Congress. However, on the very same day that Congress passed the Joint Resolution for Decatur, it also enacted a general pension law granting a life-time pension to every widow of an “officer, seaman, or marine” who “died in the naval service,” effective as of the date of her husband’s death.⁵³ In theory, Decatur was also eligible for a pension and substantial arrearages under this general law provision: Stephen Decatur had been “in the naval service” when he died, and hence Decatur was also pension eligible under this unusually broadly worded widows’ pension statute.⁵⁴ Never one to shy from asserting her rights, Decatur claimed her private pension from the Secretary of the Treasury, and also applied to the Secretary of the Navy for a pension under the general law.⁵⁵

Decatur’s dual applications presented a serious legal quandary. It was true that, at least by the letter of the law, Decatur had a right to a private pension and to a pension under the public law. But Secretary of the Navy Mahlon Dickerson simply could not countenance what today we would call double-dipping. After seeking the formal opinion of the Attorney General, Dickerson wrote to Decatur personally, informing her that she could choose to collect under one of the pension laws – the public act or the private act – but not both.⁵⁶ Under protest, and “without . . .

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waiving her claim to the latter,” Decatur chose to receive a pension under the public act, which provided generous arrearages, and which also provided Decatur an annual pension of \$600 for life (rather than for a limited term of five years).⁵⁷ Hopeful that the appointment of James K. Paulding as Secretary of the Navy would increase her chances, given that he had been a personal friend and admirer of her husband, Decatur renewed her claim under the private act in 1838. But despite this personal connection, she was denied again.⁵⁸

Having exhausted her administrative options, Decatur pursued an aggressive and very unusual course: she sued in federal court, seeking a writ of mandamus “to be directed to the said James K. Paulding, Secretary of the Navy of the United States, commanding him, that he shall fully comply with, obey, and execute, the aforesaid resolution of Congress, of the 3d of March, 1837, by paying your petitioner . . . the full and entire amount of the aforesaid sum or sums of money, with interest thereon . . .” which, according to her calculation, totaled \$18,597.⁵⁹

Decatur’s efforts in federal court were also fruitless. In an opinion by Justice Taney, the Supreme Court rejected Decatur’s application for a writ of mandamus, finding that the duties imposed on the Secretary of the Navy by the congressional acts like the one that awarded Decatur a private pension were “not mere ministerial duties,” but “executive duties.”⁶⁰ The “interference of the Courts with the performance of the ordinary duties of the executive departments of the government,” Taney reasoned, “would be productive of nothing but mischief.”⁶¹

Decatur undoubtedly believed that such interference with the executive branch would produce substantial income, not mischief, and she continued to seek payment of the private pension in Congress. Her efforts to secure the private pension must have become even more urgent when, in 1842, Congress took the exceptional step of repealing the general pension law

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enacted on March 3rd, 1837 – the law that Decatur had elected as the basis of her pension when she was initially given a choice by Secretary Dickerson.⁶² Congress repealed the general law for reasons unrelated to Decatur’s case, but the repeal left Decatur pension-less and, if her champions in Congress were to be believed, relatively penniless.⁶³ In 1856, after a failed effort to pursue her case in the newly created Court of Claims, and several resubmissions of her petition to Congress, Decatur finally convinced Congress to reinstate her private pension, but without the substantial arrearages she sought.⁶⁴ She died four years later.

B. *Catharine Barr*

Catharine Barr was a near-exact contemporary of Susan Decatur, and, based on her marriage to a military man (actually, two marriages to two different military men), she also pursued military pensions from the federal government. Beyond those similarities, however, Barr and Decatur had little in common. Barr’s experience navigating the pension system was far more typical of the experiences of the tens of thousands of women who sought widows’ pensions based not on their husband’s valor, social status, and political connections, but on their claims to poverty and their marriage to a military man. But Barr’s efforts to secure a pension were exceptional in one regard: Barr was fully literate and, although she had occasional help, it appears that she capably represented herself in her efforts to secure a pension.⁶⁵ Barr’s letters to various administrators thus provide us with a fragmented but first-person account of her navigation of the federal pension system, and of her personal understanding of widows’ pensions and their meaning for women. If Decatur’s story resonates with aristocratic sensibilities and entitlements, Barr’s story provides a window into the new world order of widows’ military pensions: the gradual development of a broad-scale, relatively equalized system of social

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provision for widows as an effort to redress their financial need, rather than as a class-based entitlement for widows of the more privileged classes.

From her correspondence with various pension administrators, we learn that Barr was likely born in 1797 and married her “young and beloved husband,” George Bundick, when she was sixteen or seventeen.⁶⁶ From that point forward, however, Barr explained in an 1842 letter to pension administrators, “my prospects in life have been overcast.”⁶⁷ Soon after they married, Bundick was killed “in an engagement between an English Brig and the Privateer Schooner Surprise of Baltimore.”⁶⁸ After his death, and thanks to a series of statutes that made pensions available to War of 1812 widows regardless of their husbands’ rank, Barr “received a small [annual] pension of 72-Dollars for five years or as long as I remained his widow.”⁶⁹ Thus, by the time Barr was eighteen years old, she was a pensioned widow.

At this point, there is a significant gap in Barr’s narrative. We do not know how long she collected the pension awarded to her as Bundick’s widow, for example, although most pensions awarded to War of 1812 widows were granted for five years and repeatedly extended, by statute, for additional five-year periods.⁷⁰ But whatever the status of her pension in 1835, on October 15th of that year Barr, now aged thirty-seven or thirty-eight and living in Brooklyn, married her second husband, William Davidson.⁷¹ Davidson was a quartermaster in the Navy, and within one year of their marriage he died in a Navy hospital due to complications associated with a “broke vessel” in his lungs, which had developed during one of his voyages.⁷² Barr explained in a letter to the Secretary of the Navy that Davidson’s death “cut me of [sic] the little dependance [sic] I had and my health will not allow me to work very hard to support my self [sic].”⁷³ More important for her pension eligibility from the pension administrator’s perspective, there was no doubt that Davidson had died “in the publick service,” and hence that his widow was eligible for

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a pension under an existing general pension statute.⁷⁴ Pursuant to the Act of June 30, 1834, Barr collected a pension of six dollars per month following Davidson’s death. In 1837, the 1834 Act was effectively replaced by another general pension statute – an act that awarded Navy widows a life-time pension – and there is clear evidence in Barr’s file that in 1837 or 1838 she began receiving six dollars per month under the Act of March 3rd, 1837.⁷⁵ (Coincidentally, this was the very same general pension statute under which Susan Decatur, as the widow of a high-ranking officer, collected a monthly pension of \$50, and arrearages of nearly \$14,000.)

At this point, Barr’s account of her marital history again becomes unclear. In 1840, while she was still collecting a pension, Barr married James Barr, thus forfeiting her pension.⁷⁶ All widows’ pensions terminated if and when the widow remarried, under the presumption that the widow was once again receiving support from her husband and hence was no longer in need of government assistance.⁷⁷ However, it appears that, cultural and legal norms notwithstanding, James provided Barr with little in the way of financial support. Two years into her third marriage, Barr wrote to the pension administrators seeking renewal of the pension she had received as Davidson’s widow. “My object,” she explained, “is to ascertain if in any case you have the power to continue the pension allowed the widow of an officer or seaman who dies in the naval service.”⁷⁸ With no mention of her current marital status, she explained that “poverty and ill health forces me to turn to my country and ask as a Boon that the pension allowed me at the death of Mr. Davidson may be continued to me a few years that I may enjoy through the liberality of my country of few of the comforts of life wich [sic] advancing age and a sickly constitution stand so much in need of.”⁷⁹

In the final line of the 1842 letter, Barr references the possibility of a Congressional appeal by way of petition: “[T]he clerk of the postal office here promised me he would write for

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me and send to Congress last session [but] I have not heard that he did owing to some difficulty on his part at the office.”⁸⁰ It is not clear whether Barr ever petitioned directly to Congress, but had she done so, she would have taken a path that was used by many widows, sometimes with success, as discussed in greater detail below. But regardless of whether Barr ever petitioned directly to Congress, her efforts to have her pension reinstated were unavailing.

In 1858, now likely sixty-one years old and writing from Mobile, Alabama, Barr renewed her quest for a pension yet again, making clear what had been implicit in her 1842 letter to the pension administrators: James, she explained, “has neither been with me nor given me one dollar for my support since 1849, and I know not his whereabouts.”⁸¹ She added in closing, “I hope sir if possible you will consider all this I am Old now and cannot want a great while longer.”⁸²

After another ten years, we find Barr back in Brooklyn, making one final attempt to secure the pension she had been awarded based on her year-long marriage to William Davidson. In 1868, she renewed her application to the Pension Office, this time with the help of a pension claims agent. But an anonymous notation in her pension file indicates that her efforts were once again fruitless: “Application for reinstatement rejected the widow has remarried.”⁸³ It is uncertain whether Barr ever secured additional assistance from the government, but her last statement to the pension administrators in 1868 is her most emphatic and desperate: “It is no more than right that our Country should allow us that mite for our own Exclusive use and for no other.” “I for one,” she implored, “have no Dependence on Earth only what comes through my relations.”⁸⁴

Although the final resolution of Barr’s final pension claim is unclear, what is evident from the letters she submitted to various pension administrators is that over the course of her

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adult life, from age seventeen to age seventy-one, Barr acquired a fairly detailed understanding of the inner workings of the pension system’s procedures. In 1836, soon after her second husband died, Barr wrote to the Navy hospital seeking a pension, and was promptly directed to the Navy Department and provided with “a newspaper containing the forms necessary in this proceeding.”⁸⁵ Eager for her pension, Barr immediately wrote to the Navy Department, providing all of the necessary evidence and certifications.⁸⁶ Over the years, Barr’s letters recorded her familiarity with different public law pension statutes, such as the fact that some provided life-time pensions and others five-year pensions. She knew that remarriage meant an end to any pension she received, a fact that she especially lamented with respect to her third marriage, to James Barr. Thus, when she asked for her pension to be reinstated despite her remarriage, she understood that she was asking for an exception to the general rule that remarriage terminated a widow’s pension. She also understood that pension administrators were hesitant to create something called “precedent” that another widow might use to support a claim. For a woman of little means and with little professional assistance, Barr knew a great deal about the pension laws and their operation.

As striking, Barr’s letters to the pension administrators also reveal that she understood the merits and equities of her claim in light of her more general perception that financial need should, and sometimes did, serve as a justification for financial assistance for women from the government. “I have understood,” Barr wrote in 1842, “that there was something Extra allowed for those who was [sic] killed or wounded in the time of the war, and as I understand you have a kind and generous feeling for the poor of your country, I have taken the liberty of asking for information from you and I feel in the hopes sir you will not deny it.”⁸⁷ As notably, Barr was very aware that the widows’ military pension system favored wealthy women – the Susan

Decatur of the world – and believed that the system should instead be used to alleviate the poverty of women such as her:

When I reflect on the facts that there are many rich in this world . . . who receive there [sic] pension that can well do without it, when the poor woman who marries to find herself a home and then has to work hard for littel [sic] nescisaries [sic] she may want, could be allowed to retain our pension. I mean the poor like myself for our own use it would be a great comfort as a poor woman cannot expect to marry a rich man⁸⁸

III. WOMEN’S PETITIONS AS LEGAL AND POLITICAL PROCESS

Women’s petitioning activities in the early nineteenth century are not new news to students of the period, especially reform-oriented petitioning campaigns, such as those led by abolitionist and anti-removal organizations. In light of the expansion of white manhood suffrage in the early nineteenth century, however, women’s petitions sometimes appear to have operated as a degrading substitute for the ballot. Indeed, the discursive conventions of petitioning mark the petition as a political-legal tool of the early modern subject, rather than the modern citizen. As Linda Kerber has suggested with respect to women’s petitions of the Revolutionary era, petitioning was a particularly suitable mode of political behavior for women because the petition “begins in the acknowledgement of subordination . . . [t]he rhetoric of humility is a necessary part of the petition as a genre, whether or not humility is felt in fact.”⁸⁹ As a process, petitioning appears to stand in contrast to the progressive-liberal tradition in which disgruntled groups *declare* their rights – a tradition that some American women joined in 1848 with the *Declaration of Sentiments and Resolutions*. Seen in this light, the experiences of Decatur and Barr seem to be best understood as individual legal episodes of little significance to the grand arc of women’s legal history, or to the history of social provision.

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But despite the humble generic conventions of the petition, as a legal process it provided a means by which individuals could, and regularly did, assert formal claims against the government at both the state and federal levels. Men and women petitioned for compensation when the government destroyed their personal property, or when troops consumed their provisions or livestock.⁹⁰ Disasters both natural and man-made precipitated waves of petitions for emergency relief to Congress.⁹¹ Government officials frequently petitioned Congress for indemnification after being held liable in court for tortious conduct in the execution of their official duties.⁹² Veterans petitioned Congress for pensions and land bounties,⁹³ and towns petitioned Congress for postal routes and post offices.⁹⁴ And, at the state level, women petitioned legislators for all manner of relief, including divorce, protection of their assets from their husbands’ creditors, and recognition of feme-sole status for purposes of trading.⁹⁵ On the more altruistic end of the spectrum, women petitioned legislators, state and federal, for recognition and incorporation of various benevolent societies, and for appropriations of cash and land subsidies to assist in the societies’ missions.⁹⁶ When widows like Susan Decatur, as well as widows of little means, petitioned Congress they engaged in a well established and, presumably, well understood legal process.

By the 1810s, widows seeking pensions petitioned Congress in one of two ways. A widow who clearly did not qualify for a pension pursuant to one of the general laws described above would often petition Congress directly for a bill for private relief – an appropriation for her as an individual. But many of the widows who petitioned Congress for a pension had already sought a pension pursuant to one of the many general pension statutes then on the books using the administrative claim procedure that had been established to implement the pension system – this was Barr’s route to a pension. If a widow’s claim was denied by the administrators, she

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could appeal to Congress by way of a petition – an option used by hundreds of widows, perhaps including Barr.⁹⁷ Women who used the petition as a mode of appeal generally urged that they were eligible under one of the existing general laws (and that administrators had erred in denying their claim) or that, while not strictly eligible, Congress should make an exception in their case.

Regardless of which route a widow took to Congress, she rarely traveled it completely alone. A widow like Susan Decatur received the assistance of a vast network of men with high level connections in Congress, the President’s office, and in the Department of War. But widows of little means also received help from pension claims agents, from family members and neighbors, and, occasionally, from town officials or groups of supporters.⁹⁸ Barr’s pension application suggests that even postal clerks were willing to help widows with their pension petitions. It would be a mistake, however, to discount the widows’ personal involvement in the petitioning process. With respect to appeal petitions, for example, widows received help from others not because they were women, but because the administrative process was extremely complex and because the statutory eligibility requirements for pensions mandated that the widow to gather written testimony from neighbors and family members who had personal knowledge of particular facts relevant to the widows’ circumstances and eligibility.⁹⁹ It would also be a mistake to understand widows’ petitions as the result of collective action of the sort that was obviously behind abolitionist and anti-removal petitions. Widows sometimes petitioned in small groups, but the vast majority of the widows’ pension petitions were submitted by an individual widow seeking individual relief.

In short, widows’ pension petitions evidence neither the widows’ heroic individualism navigating the legal system, nor their participation in reform-style organization. Rather, they evidence the widows’ sensibility – which others shared – that it was right and proper for them to

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reach out to the federal government for cash assistance, and that it was right and proper that the federal government would provide that assistance.¹⁰⁰ And although widows’ petitions were not always successful in the immediate term, a closer look at the legislative development of widows’ pensions reveals the centrality of the widows’ petitions to the development of the first system of marriage-based entitlements in American law and social policy.

A. Women on the National Legislative Agenda

An important way that widows’ petitions influenced the legislative development of the military pension system was by ensuring that widows’ needs – and their claims on the polity – were on Congress’s agenda. Although this may seem like a trivial point, in the world of legislative process, whether then or now, agenda setting is a crucial step in the transformation of an idea or need into a codified, enforceable right or duty. In this respect, the widows had legislative custom and the federal Constitution on their side. Under the First Amendment, widows had a right to petition Congress. That right did not ensure that their petition would be answered affirmatively, and there is evidence to suggest that it did not even ensure that their petition would be formally “submitted” through Congressional procedures, but it imbued national legislators with a felt obligation to consider citizens’ petitions, including widows’ petitions.¹⁰¹

Other aspects of the legislative process affected Congress’s substantive response to widows’ pension petitions. By the 1810s, Congress had developed several standing committees to investigate the merits of pension petitions.¹⁰² Hence, widows’ pension petitions were routinely sent to the same committees in each chamber. Although the membership of committees varied slightly from session to session, depending on elections and committee

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assignments,¹⁰³ the committee system brought some measure of consistency to the petition-review process. As a consequence, a relatively small, stable group of legislators evaluated the merits of individual widows’ petitions, thus ensuring that the merits of petitions of widows like Decatur were evaluated by the same legislators who assessed the merits of petitions submitted by widows of lesser means or status.

The clearest example of the agenda-setting function of widows’ petitions is the series of petitions that led to the enactment of two important general widows’ pension acts in 1836. By the 1830s, widows of soldiers killed in battle were frequently awarded pensions through retrospective general pension statutes, but the default rule was that only officers’ widows were granted traditional war widows’ pensions.¹⁰⁴ In March of 1836, in direct response to a “a petition in behalf of the widow of children of Major Dade, Captain G.W. Gardiner, Lieut. Bessinger, and other such widows and children of officers, non-commissioned officers and men,” Congress abandoned the piecemeal manner in which it had addressed the needs of traditional war widows – women whose husbands died in battle. Invoking and reaffirming the centrality of the citizen-soldier ideal for men, as well as married women’s dependence, the lengthy committee report resolved that widows’ pensions (for all ranks) “should be permanent . . . as to give a pledge to the citizen soldier, if he dies in the service, his wife and children should not beg their bread.”¹⁰⁵ About two weeks later, Congress enacted a general pension statute that provided for widows of “officers, non-commissioned officers, musicians, artificers and *privates*, of volunteer and militia corps, who shall die in the service of the United States.”¹⁰⁶

A similar pattern of petitioning precipitated a shift away from ad hoc legislation in the development of widows’ service-based pensions – cash assistance for the often-aging widows of veterans of the Revolutionary War. One of the many widows’ petitions received by the Senate in

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1829 was a petition of “Mrs. Caroline Langdon Eustis and others” – all widows of the Revolutionary War.¹⁰⁷ Caroline Eustis was the widow of William Eustis, James Madison’s Secretary of War, and her four co-petitioners were of similar social status.¹⁰⁸ These widows sought service-based pensions for their deceased husbands’ services in the Revolutionary War, and certainly called attention to the particular merits of their husbands’ military services. But, importantly, they also emphasized their own contributions in the war, and their current financial woes – and these are the facts that the committee report emphasized: “In the arduous struggle for the independence of these American States, they shared with their now deceased partners in many of the perils, and suffered with them many of the hardships incident to . . . [the] period.”¹⁰⁹ Because of their “humble circumstances,” these widows sought pensions “to assist and comfort them in their declining years.”¹¹⁰ The following year, Congress received another petition, signed by four widows – Mary Hunter, Susanna Armstrong, Susan Dayton, and Sarah Cumming – who also sought service-based pensions as Revolutionary War widows.¹¹¹ They, too, were widows of relatively high-ranking officers, and they also drew attention to women’s war-time experiences as basis for a pension. Although they did not “partake of the dangers and hardships and privations of their husbands, yet it was their lot to endure constantly the far more exquisite pains which the heart of woman feels when he to whom she is connected . . . is engaged in battle . . .”¹¹² Despite the merits of their claims, and despite these widows’ access to power, neither of these petitions resulted in a private act for the individual petitioning widows.

However, that does not mean that they were ineffectual. By the 1830s, Congress was regularly refusing to grant ad hoc pensions to widows. But widows’ petitions, along with reports to Congress by federal officials who routinely received widows’ administrative claims,¹¹³ brought significant legislative attention to the issue of military widows’ financial need. The

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Senate committee report concerning Caroline Eustis’s petition evidences how widows’ petitions prompted consideration of more general legislation even when they did not lead to private relief. The Committee recommended against granting Eustis’s petition on the ground that it could not “consider this case as embraced in the meaning of any of the [general] pension acts,”¹¹⁴ but noted that “the case of the petitioners presents a very strong and powerful appeal to the justice of the Government.”¹¹⁵ Similarly, three years later, in a report on the petition of Revolutionary War widow Anne Royall – another widow with significant connections in Washington¹¹⁶ – the House Committee on Military Affairs “frankly stated that, while they cannot command special care for any particular widow,” it was nevertheless “worthy of the most serious consideration whether a general provision ought not to be made for all the surviving widows . . . of the revolution.”¹¹⁷ The petitions of widows like Eustis and Royall – well connected in Washington’s world of patronage – were considered along with the petitions of widows of lesser means and status.¹¹⁸ Together, these widows’ petitions focused Congress’s attention on the issue of widows’ service-based pensions.

In July of 1836, in response to “several petitions, memorials, and resolutions” by widows seeking service-based pensions, the House Committee on Revolutionary Pensions returned a favorable report, concluding that “the wives of those persons engaged in the revolutionary struggle” were “entitled” to pensions.¹¹⁹ Rather than focus exclusively on the husband’s service to country, this report picked up the logic of petitions like those submitted by Eustis and Hunter, which called attention to women’s war-time experiences. When men left for the battlefield, the report explained, “the labors of the hardier sex devolved upon females, and the services and sufferings were, in very many instances, equally shared.”¹²⁰ The report continued, “it is rightly urged that the wife has an interest in her husband’s services, and her claim to partake in the

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recompense will not be denied.”¹²¹ On July 4, 1836, Congress took a significant step when it recognized a substantial class of widows’ “interest in [their] husbands’ services,” by enacting a general service-based pension law for the benefit of all widows of Revolutionary War veterans who had married their husbands prior to or during the war.¹²²

Once Congress enacted a general pension law, widows eligible under that law applied for a pension through an involved procedure administered by the Pension Office in the Department of War or, in the case of Navy widows, in the Department of Navy. But the delegation of widows’ pension eligibility determinations to administrative agencies did not slow the flow of widows’ petitions to Congress. Through the 1850s, women – acting individually but in substantial numbers – continued to petition Congress for material support, either by petitioning directly to Congress, or by way of an appeal from the Pension Office. For example, the Twenty-Fifth Congress (1837-1839) issued committee reports on at least 162 widows’ pension petitions – a figure that likely underestimates the numbers of widows’ petitions actually received by Congress during that term.¹²³

Widows petitioned Congress seeking private relief completely outside the general pension laws, and they petitioned for inclusion in the existing system by challenging pension administrators’ determinations and seeking exceptions to statutory eligibility requirements. Regardless of their specific requests, widows’ pension petitions prompted Congress to continually reconsider the lines it had drawn between the eligible and the ineligible.¹²⁴ For example, in 1839, the House Committee on Revolutionary Pensions reported on the petition of Margaret Wade. By that point, the July 4, 1836 Act had been extended to include all Revolutionary War widows who had married a soldier or veteran prior to January 1, 1794.¹²⁵ Widow Wade had married a Revolutionary War veteran in June of 1794, and her petition

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challenged legislators to articulate a principled distinction between her and a widow who had married a veteran six months earlier. The Committee could articulate none, and instead declared that “the committee think the distinction made by the act of 1838 . . . invidious and unjust.”¹²⁶

Although Widow Wade’s petition did not yield a direct legislative response (nor result in a pension in her case), over the years the pressure of other widows’ petitions pushing Congress to expand the eligibility criterion for widows’ pensions resulted in a steady enlargement of the scope of the Act of July 4, 1836. By 1853, virtually any woman who had ever married a Revolutionary War veteran was eligible for a federal pension.¹²⁷ The broad-scale system of centralized marriage-based entitlements for widows that developed in part as a consequence of widows’ petitioning efforts – through which nearly 50,000 widows received cash payments from the federal government – marked a decided and important departure from the limited, class-based military widows’ pensions that had characterized Anglo-American law in the eighteenth century.

B. *Leveling Up: Every Widow’s Pensions*

While it seems fairly evident that widows’ petitions put widows’ pensions on the legislative agenda, this function alone cannot explain why, slowly but surely, Congress responded to widows’ petitions through the enactment of general pension statutes for large classes of widows. Undoubtedly, a certain amount of institutional momentum gathered around widows’ pensions, so that once Congress began awarding pensions to large classes of widows *en masse*, it was difficult for it to find, or adhere to, a principled stopping point – a dilemma underscored in the committee report responding to Margaret Wade’s 1839 pension petition. But widows’ petitions were effective in significant part because they presented their claims in terms that drew on an understanding of men’s and women’s socio-political roles in a republic that was

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well established – although certainly contested – by the 1820s and 1830s: men’s primary role as citizen-soldiers, and women as their domestic helpmates.¹²⁸ Widows reminded national legislators of their wartime contributions as mothers and wives, while also claiming an interest in their husbands’ service as soldiers. The latter rhetorical strategy enabled widows to align their claims with contemporary understandings of men’s contributions as citizen-soldiers. By the 1830s, the image of the citizen-soldier had been successfully harnessed in efforts to secure pensions for significant classes of veterans as well as universal manhood suffrage.¹²⁹ Widows’ pension petitions tapped into the same political-cultural reservoir, reaffirming men’s status in the polity by reminding Congress of women’s correlative dependency.

But even as widows’ pension petitions anointed a particularly prevalent understanding of men’s and women’s gendered status in the polity, the development of the widows’ pension also signaled an important change: the significant expansion of the social-welfare function of marriage in the early nineteenth century. In this respect, the widows’ pension system was part of a much larger trend. While dower, the widow’s right to one-third of her husband’s real property, had long functioned as a limited source of financial stability for widows of propertied husbands, dower was by definition circumscribed in its socio-economic reach.¹³⁰ Moreover, by the early nineteenth century, it was waning as a source of support even for the women whose interests it had generally served.¹³¹ In the early 1800s, several other legal devices emerged which tended to protect the financial interests of a much broader category of married and widowed women, even as they left the basic doctrines of coverture in tact. Several state legislatures enacted intestacy provisions that gave widows the option of an “elective share” of her deceased husbands’ assets (both real and chattel property), rather than the traditional promise of dower.¹³² In the 1830s, state legislatures also began enacting married women’s property acts which, at this early stage,

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often served as a kind of quasi-bankruptcy protection for families by shielding the wife’s assets from the husband’s creditors.¹³³ The market for life insurance in the United States began to expand in the 1840s, in significant part thanks to legislators’ willingness to recognize the life insurance contract as a valid means by which men could provide for their widows and children from beyond the grave, rather than as a sacrilegious wager on one’s own life.¹³⁴ In the 1840s and 1850s, state legislatures also began to enact homestead exemption acts which protected the family home from creditors.¹³⁵ All of these legal developments expanded the social welfare function of marriage by protecting certain family assets from the risk of financial calamity that – by all appearances by the 1830s – seemed to be an inherent part of American life.

Animated by similar concerns, developments in tort law took the social welfare function of marriage one step further by creating the possibility of third-party liability for widows’ material support. As John Witt has demonstrated, starting in the 1840s state legislatures began to enact the first wrongful-death statutes, which provided a cause of action for widows of men killed in accidents.¹³⁶ This new cause of action gradually replaced the common law rule that had allowed the master to sue for the loss of the services of a household dependent, but had not allowed a dependant, including a widow, to sue for the loss of support of the master upon his death.¹³⁷ The wrongful-death statutes that replaced the “loss of services” model were decidedly gender based, Witt explains, as they provided a remedy for widows but not widowers. In this way, the wrongful-death statutes were part of a shift in tort law that recognized and reproduced the emergent “family wage ideal” – the male-breadwinner, female-dependent norm.¹³⁸ And the wrongful death action did so not only by protecting family assets, but also by requiring tortfeasors – especially industrial employers – to pay damages to widows. As a consequence,

developments in tort law helped to ensure a baseline financial security for a class of women for whom it had generally provided very little: the widows of working men.¹³⁹

Although there is no direct relationship or perfect parallel between these various doctrinal developments, all of them enshrined married women’s dependent status in law, while also providing for the material interests of a significantly larger class of women than had previously been the case. Widows’ military pensions are properly understood as building on this trend, and extending it even one step further. While the changes to intestacy, property, contract, and tort affected the liabilities and rights of private parties, widows’ military pension statutes recognized *public* liability for the support of a significant class of widows. Thus, at a time when judges and legislators were beginning to recognize and exploit the social-welfare function of marriage for a substantially larger set of women, widows’ pension petitions sounded the horn of common women’s dependency and need. Widows’ petitions pushed Congress to recognize the claims of common widows like Catharine Barr – widows for whom emerging laws protecting family assets had little significance because neither they nor their husbands had appreciable assets for creditors to claim against or, conversely, for the law to protect.

Changing norms regarding the laws’ role in protecting wives and widows from extreme poverty helps explain why widows did not simply frame their petitions in terms of their husband’s service to country. Certainly, the award of pensions to military widows reaffirmed and solidified the importance of military service as a basis of men’s status in a republican polity. But even as widows drew attention to their husbands’ services as a basis for their claims, they also used their petitions to provide legislators with first-hand testimonies of women’s own service to country and husband, and of the poverty that frequently befell widows. We see this in the petitions of high-status widows like Eustis and Hunter, and it resonates throughout the

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pension petitions of common women. Hannah Duboise, for example, sought a pension from Congress following the death of her husband, David, who enlisted in the army during the War of 1812 and was never seen again. Writing to Congress in 1844, at the age of seventy-two, she explained that she had supported her two small children after her husband’s death but that now she “cannot support herself any longer, and asks for relief from her country.”¹⁴⁰ With help from a supporting declaration from her town’s overseer of the poor, her petition was granted.¹⁴¹

Another typical committee report by the House Committee of Claims recounted the assertions of a small group of widows seeking pensions, explaining that “petitioners say . . . that [Congress] can, and they trust will, alleviate their distresses by feeding the widows and enabling the mothers to feed and educate their children.”¹⁴² In 1833, the House Committee on Pensions and Revolutionary Claims paraphrased the widow Ann Barron’s petition: “unless some recompense be made for her early and irreparable loss, the remainder of her life may be such that no nation would in justice permit.”¹⁴³ Such pathetic pleas collectively informed the way legislators reasoned about the function of widows’ pensions, shifting attention away from widows’ military pensions as “mere inducements” for military service to “charity . . . extended to bereaved widow[s].”¹⁴⁴ In this way, widows’ petitions tapped into, and reinforced, broader changes in the law’s approach to married women’s financial needs, and, more generally, the legal salience of marriage as a source of support for widows of a much broader socio-economic spectrum.

We hear the resonance of common women’s petitions in legislative debates held in 1818, a period of substantial leveling and expansion of traditional war widows’ pensions.¹⁴⁵ In debates concerning various public law pension bills, congressmen sought to broaden the scope of pensions for traditional war widows to include widows of the rank-and-file. “Equality, in the

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contributions for the public service, is one of the first principles of our Government,” explained Representative (and future President) William Harrison of Ohio.¹⁴⁶ “The public burdens are to fall equally upon all in proportion to their means. No individual, and no family, are to furnish more than their just share, either of money or of personal service, without an equivalent.”¹⁴⁷ To underscore this point, Harrison imagined a horde of petitioning widows marching on Washington, children in tow:

Imagine many hundred widows and orphans, the relicts of the late war, were to be brought before us. The thing cannot be – but I beg gentlemen to give some scope to their imaginations, and persuade themselves that they really see it. Here a venerable matron, followed by a large family of children; there, another, in the full bloom of beauty, a widow through choice and under a sacred vow that the hero who had once filled her arms should never be supplied by another; the lovely boy she holds by the hand was an orphan before he saw the light; and more and more unfortunate than Astyanax, had never been pressed in his father’s arms and dedicated to his country.¹⁴⁸

In the same year, in the context of a different general widows’ pension bill, Senator Richard Johnson of Kentucky employed a similar rhetorical device. “Bring this unfortunate groupe [sic] in review before us; let the image, not of imaginary but of real bereavement, and consequent distress, dawn in its full magnitude. Behold fourteen hundred and fifty-four weeping widows, and more than a thousand helpless orphans, in all the despondency of wo [sic] . . .”¹⁴⁹ Johnson then provocatively and dramatically suggested that the “destitute female, the widow, would have to languish and die, or, by seeking the bounty of the world, must subject herself to insults, and, in many cases it would lead to more disastrous consequences.”¹⁵⁰

For Johnson and Harrison, the injustice of the current system lay not only in the failure to provide for widows whose husbands had “sacrificed their all” to the country, and who were frequently left in pinching poverty. It also lay in the fact that the system already pensioned widows of officers, and, worse, allowed men of means to escape military service entirely,

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creating a system of privileged citizenship for men and their families that was decidedly unrepublican. The “rich married man,” explained Harrison, “is allowed to furnish a substitute – the poor married man, unable to hire one, is obliged when called upon to serve in person. And the poor, then, fight all your battles, which is perhaps, unavoidable, it is just and right the consequences of their service should fall as lightly as possible on their families.”¹⁵¹

Harrison’s defense of the equalization of widows’ pensions was part of an ongoing debate over the propriety and consequences of the military pension system more generally. Although private charities and benevolent societies dedicated to the care of poor widows and their children proliferated in the early nineteenth century,¹⁵² efforts to expand the federal pension system routinely encountered resistance on the grounds that *government*-funded relief was inappropriate in a republic. Pension opponents argued that military pensions would lead to a class of aristocratic placemen in America, while simultaneously calling the military pension system into question because it looked too much like government charity for the poor. The frequently invoked analogies to the British pension and poor law systems worked their way into debates over widows’ pensions.¹⁵³ Senator Eldred Simkins opposed a bill that would expand the pensions afforded traditional war widows, warning that America would go the way of the motherland: “The history of England . . . afforded a commentary on such policy; by the operation of her poor law and her pension system, she had slid [sic] into an expense so great that even the air they breathed and the light of heaven, were become subject to taxation.”¹⁵⁴

For Harrison, this critique missed the more striking comparison: to the extent that America’s pension system treated citizens and families differently based on their class-based status, America’s system already resembled the despotic pension regimes of Europe. There could be no “analogy between that of this Government and of the Government of Europe,”

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Harrison contended, “the one being of moderate extent, and for actual service, the other of enormous extent, and bestowed upon the principle of favoritism merely.” Here, he said, “were one thousand four hundred individuals concerned, as appeared by the pension list, who have contributed their all to the service of the country – the parent who supported and educated the child; the husband on whom the wife depended for protection and subsistence.”¹⁵⁵ Echoing the insistence that “equal claims or sacrifices should meet with equal rewards,” Representative Henry Southard of New Jersey explained that “in monarchal and despotic Governments, injustice and oppression may answer; but in a Republic, a different line of conduct must be pursued.” If the “interest of despots is . . . by oppression to extort obedience and command their services. . . . our interest is to be just and liberal to that class of citizens upon whom the liberty and independence of their country so much depend.”¹⁵⁶ In the minds of pro-pension legislators, equalization of widows’ military pensions followed from elementary republican principles.

C. Leveling Down: Disestablishing Class-Based Widows’ Pensions

It is in the context of pension petitions by a wide array of widows, and the acrimonious and high-minded congressional debates concerning republicanism’s meaning, that we can best understand congressional resistance to Susan Decatur’s petitions, and the significance of petitions like hers for the equalization of widows’ military pensions generally. While actual petitions of widows, along with visions of hordes of impoverished widows arriving in Washington, prompted legislators to reason about at least certain women’s poverty as a problem that should be addressed by the national government, reactions against aristocratic privilege also played a central role in shaping the widows’ pension system.

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If any widow’s petition to Congress in the early nineteenth century bore the imprint of European “wild profusion and extravagance,” it was Decatur’s.¹⁵⁷ Although she was ultimately successful in obtaining private relief from Congress, many legislators resisted her petitions precisely because her claim was cut from the cloth of old-world privilege and entitlement. Decatur’s extraordinary legal saga is therefore significant as a legal artifact, not only because her case resulted in a significant Supreme Court opinion concerning mandamus,¹⁵⁸ but because her petitions to Congress, and the petitions of women like her, prompted reconsideration of whether – and, if so, how – the federal government should use marriage as a basis for public entitlements.

Decatur’s petitions to Congress leave little doubt that her claim to an entitlement was founded on a class-based understanding of widows’ pensions. Although Decatur pled poverty, the papers submitted with her claim and considered by Congress spoke of Stephen’s heroic deed in Tripoli – “admirable for the chivalry of its conception, and the brilliant and decisive manner of its execution” – and bore endorsements of Decatur’s powerful connections in Washington, D.C.¹⁵⁹

Such patronage gave Decatur a level of access to legislators that few widows would have enjoyed and, undoubtedly, such connections secured the votes of many legislators. But Decatur’s bald resort to connections outraged the sensibilities of others. In 1834, Representative Thomas Chilton of Kentucky spoke in fairly plain terms about Decatur’s petition, which by that point had been before Congress in various forms for eight years. Chilton complained that Congress was being called upon to “appropriate an enormous sum” to benefit “a lady, having, as I understand, a large realstate [sic] in this city [and] not a child on earth to provide for,” while “countless hosts of widows were left, with crowds of helpless children around them in double orphanage, for whom no provision has ever yet been made.” These women, Chilton observed,

would have little chance of securing a pension, or even obtaining acknowledgement of their petition, from Congress:

And what Suppose, sir, that some poor and obscure woman should come here, who has eight or ten children, in the rags of poverty, and, perhaps without even bread to eat? Suppose she should say to Congress – Gentlemen, my husband, the father of these suffering children, left his humble fireside and his home – he left me and these. He went forth and fought your battles. . . . Give me and my children thirty thousand dollars.’ What would be the reply? Ah me! How few the eloquent tongues that would respond, Here take it, it is yours. And should she even ask, more modestly, for one thousand, or five hundred – the reply would be in substance, ‘Depart, for we know you not.’ Sir, this is a shameful, and yet a shameless invidiousness in all of this. An officer having a great name, has only to demand and receive his thousands, or his tens of thousands; while the poor soldier [is forgotten]. . . . His wife, his children, may supplicate; but they supplicate in vain.¹⁶⁰

Chilton’s disillusionment with Decatur’s case was of a particular moment: In 1834 Congress was actively considering dramatic expansion of widows’ traditional and service-based military pensions. But antipathy to Decatur’s quest for a pension also registered in legislative debates that took place two decades later. In 1856, Senator Clement Claiborne Clay similarly objected to Decatur’s claim. “There are petitions without number,” he exclaimed, referring to the unsatisfied claims of other widows, and then noted that his “recollection is that [Decatur] has already been the recipient of more bounties from this Government than the widow of any other officer in our navy.”¹⁶¹ Impatience with Decatur’s claim was palpable even in discussions of parliamentary procedure. Objecting to a motion to take up Decatur’s bill out of order under Senate rules, Senator Richard Brodhead of Pennsylvania, former Chairman of the House Committee on Revolutionary Pensions, sniped, “I hope we shall not go beyond one o’clock with this bill of relief of Mrs. Susan Decatur. I have heard a great deal of Mrs. Susan Decatur since I have been in Congress for the last ten years.”¹⁶²

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In Decatur’s case, the backlash against privilege and private petitions appears to have had an unusually direct role in shaping the public law. By the time Decatur submitted her first petition in 1825, private and public acts that provided only for the widows of officers had become increasingly anomalous and were giving way to a new, more egalitarian understanding of widows’ military pensions. As discussed above, in the 1810s and 1820s, Congress had made significant piecemeal adjustments to the general pension laws in order to provide for the traditional war widows of soldiers. In 1836 – in part due to awareness created by widows’ petitions – Congress continued and elaborated that trend by enacting two important general pension statutes that made pensions for widows of the rank-and-file the statutory norm and granted service-based pensions to Revolutionary War widows, also regardless of their husband’s rank.¹⁶³

Seen in light of this leveling trend, it was not simply a coincidence that on the same day Congress finally enacted a private pension act for Susan Decatur – March 3rd, 1837 – it also enacted the extraordinarily broad general pension statute for the benefit of Navy widows, which was appropriately titled “An Act for the More Equitable Administration of the Navy Pension Fund.”¹⁶⁴ This general pension statute for Navy widows not only reached widows of the rank-and-file, but also awarded lifetime pensions – retroactively and with arrears – to all navy widows whose husbands had “died while in service” rather than “in the line of duty,”¹⁶⁵ as was the case with most traditional war widow’s pension statutes. Given resistance to special treatment for Susan Decatur, the extraordinary generosity of the general law might very well be explained as part of a reaction to, or a compromise with respect to, Congress’s private act for Decatur.

Contemporary commentary supports this analysis. Although no legislative debate seems to have survived for the March 3rd, 1837 public act, three years later Representative Joshua

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Giddings of Ohio speculated that the extraordinary reach and liberality of that act was directly attributable to the private act for Decatur enacted on the same day. In 1840, Congress was contemplating the repeal of the March 3rd, 1837 public act. This would be an extraordinary, perhaps even singular, event. Congress routinely expanded and extended general widows’ pension acts, but was not known to repeal them. But the March 3rd, 1837 act was particularly generous, both because it reached widows whose husbands simply died while in service (rather than “in the line of duty”), and because of the generous arrears provision. As a consequence of its broad scope, the act had nearly bankrupted the Navy pension fund. Giddings had been charged with trying to determine why Congress would have enacted such a broad statute. In a lengthy address, he explained that “a portion of the [Navy pension] fund had been given to Mrs. Decatur by a *special act*, and therefore it was thought reasonable to invite other widows and orphans to partake of what had been sacredly devoted to a different purpose.”¹⁶⁶ In other words, in a reaction to the relief awarded to Decatur by private act, Congress had attempted to secure a “more equitable administration of the Navy pension fund” by passing a general pension law that entitled an enormous class of Navy widows to a pension on the same generous terms as those provided for Decatur.

Congress’s begrudging attitude toward Decatur’s petition was undeniably part of a more general suspicion of patrician widows’ petitions for private relief. Although reactions to Decatur’s petitions were perhaps particularly hostile and concrete, senators and representatives frequently expressed their distaste for the pension petitions of widows of famous high-ranking men and little need. For example, as early as 1815, the Annals of Congress contain a brief summary of a “debate of some interest” concerning a pension petition by the widow of Vice President Elbridge Gerry. “The general principle asserted by those opposed to the pension was

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the impropriety of setting a precedent of pensions for civil services which would entail on the United States the evils so grievously felt in the despotic Governments.”¹⁶⁷

We have a fuller account of the debates concerning a petition submitted by the widow of President Harrison – a man who had spent his early days in Congress advocating for the equalization of widows’ pensions. Anna Harrison petitioned Congress for a pension of \$25,000 upon the untimely death of her husband.¹⁶⁸ Anna’s pension petition, which (unfortunately for her) was presented at the same time that the legislators were considering the repeal of the overly-generous Act of March 3rd, 1837, became another lightning rod for debate concerning the propriety and scope of widows’ pensions generally.¹⁶⁹

On the first day of floor debates, Senator Thomas Benton proceeded to “exemplify the evils of [a] system of civil pensions, by showing what it had produced in England” by reading off a long list of well-known “placemen and place-ladies” who lived off the public treasury.¹⁷⁰ Although some senators used debate over Harrison’s petition as an opportunity to criticize the widows’ military pension system more generally, the great weight of the concern was that Harrison’s petition smelled of aristocratic pretension and privilege.¹⁷¹ Senator Oliver Smith of Indiana was willing to concede that Harrison was a “worthy lady,” but he was especially concerned that an appropriation bill had been presented despite a general understanding that, were an inquiry made, “it would be found that she had a better property than many that are considered wealthy in the United States.” He summarized what by then appeared to be the prevailing view of Congress: “Was not the sympathy of Congress more appropriately due to the widows and orphans of those who had equal claims and who were left in poverty and destitution?”¹⁷² Anna Harrison’s petition was denied.

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The individual petitions filed by widows of high-ranking officers and prominent public servants undoubtedly received more attention from Congress than the individual petitions of common women, but in the longer run congressional debates over their merits likely benefited the Catharine Barrs of the world rather than the Decatur or Harrisons. Petitions submitted by the widows of high-ranking men often drew attention to the inequalities of the inherited practice of providing for the widows of officers only, and of the unrepublican dangers of a system of selective, ad hoc entitlements.

Meanwhile, petitions filed by widows of little means, considered collectively, became a means by which ordinary women’s understandings of their rights as wives were brought to bear on the legislative process, creating a feedback loop between women and national legislators. Whether through firsthand knowledge or newspaper reports, women like Catherine Barr knew about other widows who had received pensions – both poor widows like herself and wealthy widows like Decatur.¹⁷³ Barr used that knowledge to frame her claim, defending the merits of her view that poverty and dependency, not class-based status, was a proper reason to allocate *public* monies for military widows’ public support. Others like her did the same in their petitions to Congress, thus serving as a conduit for a new way of understanding the purpose and function of widows’ military pensions. The result: Over the course of the early nineteenth century, Congress passed more than seventy public law widows’ pension statutes, the majority of which provided for widows of men of all ranks.

The point is neither to overstate the significance of women’s petitions, nor to underplay the significance of other political and cultural forces that influenced legislators’ voting practices. Rather, it is to assert that widows’ petitions should be counted among the political and legal forces that helped to bring broad-scale centralized social provision for widows into being. As

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demonstrated by the string of widows’ petitions that prompted the enactment of the watershed statutes of 1836, widows’ petitions were the legal and political tool that widows used to put their needs – as individuals, but with shared experiences – on the legislative agenda. Widows’ pension petitions also functioned as an important vehicle for communicating and solidifying gender-based socio-political roles that, by the 1830s, had taken shape in political and cultural discourse: Women’s important, but dependent, function as domestic helpmates, and men’s idealized status as wage-earners and citizen-soldiers. The widows’ petitions and the pensions themselves thus support the conclusions of a significant number of historians who have focused on the social, cultural, and political construction of gender in the early nineteenth-century, but they also reveal a underappreciated dimension of that process: National legislators gradually responded to widows’ requests, allocating public monies to a pension system that reinforced and subsidized these roles – not just among widows of the middle and upper classes but, to a certain extent, among widows of all classes. In short, the widows’ pension petitions rendered Catharine Barr’s spirited proclamation concerning widows’ pensions – “It is no more than right that our Country should allow us that mite for our own Exclusive use”¹⁷⁴ – intelligible to her and women like her, and intelligible to men in Congress.

IV. FEMINIST LEGAL HISTORY AND WOMEN’S LEGAL AND POLITICAL AGENCY

Recognition of the salience of women’s petitions in the development of broad-scale marriage-based entitlements challenges us to situate the legal claims of women like Decatur and Barr on the spectrum of early nineteenth-century women’s legal and political activities. Historians have done much over the last three decades to illuminate the many ways that, cultural and political barriers notwithstanding, women played central roles in public life in the early

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nineteenth century.¹⁷⁵ Nevertheless, among historians who focus on women’s lived life of the law, there is a tendency to categorize laws regulating women’s lives and livelihoods in terms of their perpetuation or repudiation of coverture and the related limitations on women’s legal and political rights. As Hendrik Hartog has recently observed, in accounts that focus on the perpetuation of coverture, women are sometimes portrayed as the docile and dependent receptors of a legal tradition that so disempowered women that historical study of legal documents can illuminate little, if anything, about the self-understanding of ordinary women.¹⁷⁶ In the alternative tradition, legal historians focus on women’s efforts to repudiate coverture and related limitations on women’s citizenship. Such accounts gravitate toward instances in which women appear to have reasoned outside the gendered ideology of their own moment, such as the suffragists’ rejection of women’s status as legal dependents, and, in particular, the notion that such dependency necessitated women’s disenfranchisement.¹⁷⁷

Neither of these descriptions captures the experiences of widows who pressed for military pensions – women who publicly sought government entitlements based on their status as wives. On the one hand, it would be wholly misguided to conclude that widows seeking military pensions challenged the gendered values of antebellum society, or the powerful hold of marriage as a source of legitimacy and structure for women’s contributions to society. For example, women did not generally petition for their direct services as nurses or camp aides. Although at least one woman petitioned Congress for her individual services as a nurse in the Revolutionary War, her claim was rejected by legislators and drowned out by the petitions of women seeking support on the basis of their status as widows.¹⁷⁸ Similarly, although there were a few known instances of women cross-dressing and serving in various military encounters, there was no general sense among women, or even among proto-feminists of the period, that women should be

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able to serve in the military and benefit from any of the entitlements granted to men on the basis of such service.¹⁷⁹ And unlike the abolitionist women who collected thousands of women’s signatures on anti-slavery petitions submitted to Congress, widows who petitioned for individual pensions did not claim a non-traditional role for women in politics, and did not threaten the social-legal gender hierarchy.¹⁸⁰ Rather, widows seeking pensions reasoned from and within traditional gender norms, and employed the petition in a way that harnessed those norms for their individual material security and that of their families.

We hear this in many of the widows’ pension petitions. Widows urged that they merited pensions because of their husbands’ service to country, their own status and service as wives and mothers, and the financial dependence and need that was an all-too-common consequence of widowhood. Such assertions of rights based on women’s traditional role as wives resonated with the contemporary claims of women who sought wages for household labor through legislation that would have secured women’s joint property rights. As Reva Siegel has chronicled, these women did not challenge the gendered divisions of labor in the family, and they reasoned quite comfortably within a “separate spheres” tradition. Nevertheless, by claiming a right to wages for household labor, they were undoubtedly seeking rights as women, or, as we would say today, women’s rights.¹⁸¹ More idiosyncratically, a woman like Catherine Barr might also have found a kindred spirit in Elizabeth Ware Packard, who in the 1860s publicly fought against her husband’s despotic and abusive treatment by seeking the protection of the legislature, not to free her from his despotism, but to secure for her the “right to be a married woman” – the right, in other words, to the protection and support that the institution of marriage was supposed to afford women. She sought, in Hartog’s words, “legal confirmation of some version of a distinctively female dependent status.”¹⁸²

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To observe that proponents of widows’ military pensions reasoned within traditional gender norms does not mean that the very public activities of women petitioning for military pensions can be neatly folded into an account of “domestic feminism” advocated by women like Catharine Beecher, who insisted on the private, moral, and even anti-legal foundation of women’s sphere.¹⁸³ Beecher herself criticized women’s participation in the abolitionist petition drives at least in part because she feared that petitioning would lead women away “from their appropriate retirement” and into an “arena of political collision.”¹⁸⁴ Widows’ pension petitions made no claims to an overtly political role for women, but they certainly drew women into a domain of formal legal and political processes that were dominated by, if not reserved for, men. In this regard, women’s pension petitions nicely illustrate the ways in which women used their domestic authority to make demands on the state, and to shape public law and policy – in this case, at the highest level of government.

Taken as evidence of the law’s force in the everyday life of nineteenth-century women, the experiences of the widows who petitioned Congress in order to secure military pensions provide a textured picture of how the law shaped women’s lives and how women shaped the law. Like much legal argumentation today, the contemporary rationales offered in support of widows’ pensions seem more expedient and improvisational than overtly political with respect to women’s place in the polity. Whether operating in the rarefied world of Susan Decatur or, like Catharine Barr, navigating the humbling and byzantine bureaucracy of the Pension Office, widows did their best to harness the law’s processes and authority to secure cash assistance.

Of course, the fact that widows’ petitions – and the reasoning they employed – were expedient does not render widows’ military petitions any less ideological in nature. After all, ideology is one’s commonsense understanding of the way the world works – “the conception of

the world which is uncritically absorbed” and reproduced through culture, social convention, political practices, and law.¹⁸⁵ Expedience led at least some widows and proponents of widows’ military pensions to reason about widows’ military pensions as a “right” of married women, a right that grew out of widows’ former status as wives. Widows’ military pensions thus stand as an example of women’s instrumental use of law in a way that materially improved their lives by gradually giving rise to statutory claims for cash assistance and, simultaneously, emboldening and entrenching marriage as a source of women’s legal status and dependency. We risk overlooking the power of everyday women harnessing and expanding their rights as women and as wives if we are drawn exclusively to the ways in which women either challenged or capitulated to the law’s patriarchal norms.

¹ File of Catharine Barr, National Archives and Records Administration (“NARA”), Records of the Dep’t of Veterans’ Affairs, RG 15, Old Wars Pension Files, Widow’s File 322, Letter from Catharine Barr to George C. Whiting, Comm’r of Pensions (Sept. 8, 1858).

² *Id.*

³ See, e.g., statutes cited *infra* notes 12, 13, 14, and 16. See also Kristin A. Collins, *Administering Marriage: Administering Marriage: Marriage-Based Entitlements, Bureaucracy, and the Legal Construction of the Family*, 62 VAND. L. REV. 1805 (2009).

⁴ Theda Skocpol’s path-breaking study of Civil War military pensions highlighted the significance of military pensions as a form of social provision, and in particular provision made for widows and other family dependents. See PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES (1992). Alice Kessler-Harris’s study of the Social Security Act of 1939 and related early twentieth-century legislation probes the modern history marriage-based entitlements. See IN PURSUIT OF EQUITY: WOMEN, MEN AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH-CENTURY AMERICA (2001). Others have focused on the development of mothers’ aid statutes in the Progressive period. LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE, 1890-1935, at 1-4 (1994). But attention to social provision for women in the early nineteenth century has largely focused on local poor law legislation and charity, rather than centralized, government-funded systems of entitlement. See, e.g., MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 181-213 (1989).

⁵ See Ariela R. Dubler, *In the Shadow of Marriage: Single Women and the Legal Construction of the Family and the State*, 112 YALE L.J. 1641, 1656–59 (2003).

⁶ See, e.g., SUSAN ZAESKE, SIGNATURES OF CITIZENSHIP: PETITIONING, ANTISLAVERY, & WOMEN’S POLITICAL IDENTITY 152 (2003); ALISSE PORTNOY, THEIR RIGHT TO SPEAK: WOMEN’S ACTIVISM IN THE INDIAN AND SLAVE DEBATES (2005); Mary Hershberger, *Mobilizing Women, Anticipating Abolition: The Struggle Against Indian Removal in the 1830s*, 86 J. OF AM. HIST. 15 (1999).

⁷ See, e.g., LINDA K. KERBER, WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA (1980); NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE,

AND PROPERTY IN NINETEENTH-CENTURY NEW YORK 67 (1982); Gretchen Ritter, *Jury Service and Women’s Citizenship Before and After the Nineteenth Amendment*, 20 LAW & HIST. REV. 479 (2002).

⁸ See ROSEMARIE ZAGARRI, *REVOLUTIONARY BACKLASH: WOMEN AND POLITICS IN THE EARLY AMERICAN REPUBLIC* (2007); CATHERINE ALLGOR, *PARLOR POLITICS: IN WHICH THE LADIES OF WASHINGTON HELP BUILD A CITY AND A GOVERNMENT* (2000); CYNTHIA A. KIERNER, *BEYOND THE HOUSEHOLD: WOMEN’S PLACE IN THE EARLY SOUTH, 1700-1835* (1998); ELIZABETH VARON, *WE MEAN TO BE COUNTED: WHITE WOMEN AND POLITICS IN ANTEBELLUM VIRGINIA* (1998); JOHN MARSZALEK, *THE PETTICOAT AFFAIR: MANNERS, MUTINY, AND SEX IN ANDREW JACKSON’S WHITE HOUSE* (1997); MARY P. RYAN, *WOMEN IN PUBLIC: BETWEEN BANNERS AND BALLOTS, 1825-1880*, at 130-141 (1990). Despite women’s involvement in public life and the emerging political parties in the early nineteenth-century, it does not appear that women’s participation in such matters translated into advocacy for policies that were specifically relevant to women. For example, it is very clear by Zagarrì’s account that even politically-minded and party-minded women did not attempt to marshal party support for women’s causes or interests, however defined. See *id.* at 132-41 (describing how women played an important role in Whig and Democrat spectacle, symbolism, and rhetoric). See also KIERNER, *supra*, at 218 (noting southern white women’s involvement in party politics in the antebellum period, and observing that women functioned “always as supporters of men’s political programs and never as advocates of gender or racial equality”)

⁹ See Collins, *supra* note 3, at 1107.

¹⁰ See MYNA TRUSTRAM, *WOMEN OF THE REGIMENT: MARRIAGE AND THE VICTORIAN ARMY* 92 (1984) (“Pensions for widows of officers originated in the early eighteenth century. NCOs and privates had to wait for almost two centuries before the needs of their families were recognized.”).

¹¹ For examples of revolutionary-era colonial and state poor law provision for families of soldiers, see *An Act for Relieving Such as Shall be Maimed in the Colonies Service, and the Widow, Parents or Relations of Such as Shall be Kill’d in the Colonies Service, and Shall not Be Able to Subsist or Maintain Themselves* (1718), *reprinted in* THE EARLIEST ACTS AND LAWS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE PLANTATIONS 1647–1719, at 228–29 (John D. Cushing ed., 1977); *An Act for Speedily Recruiting the Virginia Regiments on Continental Establishment* (1778), ch. 45, 9 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA 588, 589 (William Waller Hening ed., Richmond, J.& G. Cochran 1821).

¹² For examples of acts granting pensions to officers’ widows only, see: 17 J. CONT. CONG. (1774–1789) 415, 772–73 (1780) (providing pensions to widows of Revolutionary War officers); Act of June 7, 1794, ch. 52, § 1, 1 Stat. 390, 390 (providing five-year half-pay pensions to widows of commissioned officers who “die by reason of wounds received in actual service of the United States”); Act of Mar. 16, 1802, ch. 9, § 15, 2 Stat. 132, 135 (providing five-year half-pay pensions to the widows of commissioned officers of the United States who “die by reason of any wound received in actual service of the United States”); Act of Jan. 11, 1812, ch. 14, § 15, 2 Stat. 671, 673 (providing five-year half-pay pensions to widows of “any commissioned officer in the military establishment of the United States” who died “by reason of any wound received in actual service of the United States”).

¹³ Act of Mar. 4, 1814, ch. 20, § 1, 3 Stat. 103, 103; Act of Apr. 16, 1816, ch. 55, §§ 1-2, 3 Stat. 285, 285-286.

¹⁴ See, e.g., Act of Mar. 3, 1817, ch. 60, § 1, 3 Stat. 373, 373-74 (providing five-year half-pay pensions to the widows of Navy officers, seamen, and marines who died or die in the line of duty after June 18, 1812); Act of Apr. 20, 1818, ch. 101, 3 Stat. 459 (granting five-year half-pay pension to widows of militia who “prosecut[ed] the war against the Seminole tribe of Indians”); Act of May 23, 1828, ch. 72, 4 Stat. 288, 288 (granting five-year extension of pensions awarded to widows of all “officers, seamen and marines” killed in the War of 1812); Act of June 30, 1834, ch. 134, § 1, 4 Stat. 714, 714 (granting five-year half-pay pension to widows of all “officers, seamen, and marines” who “died in the naval service” after Jan. 1, 1824).

¹⁵ See sources cited in *supra* note 12.

¹⁶ Act of Mar. 19, 1836, ch. 44, §§ 1, 5, 5 Stat. 7.

¹⁷ In English law, there was a brief but important exception to the class-based approach to widows’ military pensions in the mid-seventeenth-century. Following the English Civil War, soldiers’ war widows were eligible to receive pensions from a fund established by the short-lived republican Commonwealth government, so long as the widow could demonstrate poverty due to her husband’s death. See Geoffrey L. Hudson, *Negotiating for Blood Money: War Widows and the Courts in Seventeenth-Century England*, in WOMEN, CRIME AND THE COURTS IN EARLY MODERN ENGLAND 146, 151-52 (Jennifer Kermode & Garthine Walker eds., 1994). Hudson explains, however, that after the demise of that system with the Restoration of the monarchy, widows of English soldiers would not receive pensions “for over 200 years.” *Id.* at 146. Isser Woloch has excavated another republican experiment with soldiers’ widows’ pensions in France at the end of the eighteenth century. However, France’s experiment with *pension alimentaire* for soldiers’ widows was also short lived, ending in the 1810s. See Isser Woloch, *War-Widows Pensions: Social Policy in Revolutionary and Napoleonic France*, 6 SOCIETAS 235, 238–40 (1976)

¹⁸ See Act of July 4, 1836, ch. 362, § 3, 5 Stat. 127, 128.

¹⁹ H.R. REP. NO. 235, 24th Cong., 2d Sess., at 1 (Feb. 16, 1837).

²⁰ See, e.g., Act of Mar. 3, 1837, ch. 42, § 2, 5 Stat. 187, 187 (granting life-time pensions to widows who had married a Revolutionary War veteran prior to 1783); Act of July 7, 1838, ch. 189, § 1, 5 Stat. 303, 303 (granting five-year pensions to all widows who had married a Revolutionary War veteran prior to 1794); Act of Mar. 3, 1843, ch. 102, § 1, 5 Stat. 647, 647 (granting one-year extension of pensions awarded to widows pursuant to the Act of July 7, 1838); Act of June 17, 1844, ch. 102, §§ 1–2, 5 Stat. 680, 680 (granting four-year extension of pensions awarded to widows pursuant to the Act of July 7, 1838); Act of Feb. 2, 1848, ch. 8, §§ 1–2, 9 Stat. 210, 210–11 (transforming widows’ pensions awarded under the Act of July 7, 1838, into life-time pensions); Act of July 29, 1848, ch. 120, § 1, 9 Stat. 265, 265–66 (granting life-time pensions to all Revolutionary War widows married prior to 1800); Act of Feb. 3, 1853, ch. 41, § 2, 10 Stat. 154, 154 (granting life-time pensions to all Revolutionary War widows, regardless of when their marriage to a veteran took place).

²¹ See LAURA JENSEN, PATRIOTS, SETTLERS, AND THE ORIGINS OF AMERICAN SOCIAL POLICY 9 (2003).

²² The amount received by an individual widow was established according to her husbands’ rank because the pensions were calculated based on the soldier’s or officer’s pay, though generally capped at half-pay of a lieutenant colonel. See, e.g., Act of June 7, 1794, ch. 52, § 1, 1 Stat. 390, 390; Act of Mar 16, 1802, ch. 9, § 15, 2 Stat. 132, 135; Act of April 10, 1812, ch. 54, § 2, 2 Stat. 704, 705.

²³ My estimate that at least 47,000 widows collected pensions from 1836 to 1860 exceeds estimates offered by William Glasson and John Resch, both of whom placed the number at approximately 23,000. See WILLIAM H. GLASSON, FEDERAL MILITARY PENSIONS IN THE UNITED STATES 95-96 (1918) JOHN RESCH, SUFFERING SOLDIERS: REVOLUTIONARY WAR VETERANS, MORAL SENTIMENT, AND POLITICAL CULTURE IN THE EARLY REPUBLIC at 203, app. A (1999). In large part, this is because Glasson and Resch included only Revolutionary War widows in their estimates, while my calculation includes certain classes of traditional war widows who received pensions between 1836 and 1861. Accordingly, there is no actual inconsistency between the estimates provided. My calculation is based on careful examination of data contained in early nineteenth-century reports by the Commissioner of Pensions to Congress. The vagaries of early nineteenth-century recordkeeping make any estimation imperfect, and when in doubt I erred on the side of undercounting the number of widows receiving pensions. See LOREN PINCKNEY WALDO, REPORT OF THE COMMISSIONER OF PENSIONS, H.R. EXEC. DOC. NO. 33-1, vol. 1, at 488, 495 (1st Sess. 1853); LOREN PINCKNEY WALDO, REPORT OF THE COMMISSIONER OF PENSIONS, S. EXEC. DOC. NO. 33-1, vol. 1, at 558–59 (2d Sess. 1854); J. MINOT, REPORT OF THE COMMISSIONER OF PENSIONS, H.R. EXEC. DOC. NO. 34-1, vol. 1, at 594 (1st Sess. 1855); J. MINOT, REPORT OF THE

COMMISSIONER OF PENSIONS, H.R. EXEC. DOC. NO. 34-1, vol. 1, at 848 (3d Sess. 1856); GEORGE C. WHITING, REPORT OF THE COMMISSIONER OF PENSIONS, H.R. EXEC. DOC. NO. 35-2, vol. 2, at 706–09 (1st Sess. 1857); GEORGE C. WHITING, REPORT OF THE COMMISSIONER OF PENSIONS, H.R. EXEC. DOC. NO. 35-2, vol. 2, at 676–79 (2d Sess. 1858); GEORGE C. WHITING, REPORT OF THE COMMISSIONER OF PENSIONS, S. EXEC. DOC. NO. 36-2, vol. 2, at 825–28 (1st Sess. 1859); GEORGE C. WHITING, REPORT OF THE COMMISSIONER OF PENSIONS, S. EXEC. DOC. NO. 36-1, vol. 1, at 470–73 (2d Sess. 1860).

²⁴ See, e.g., COMM. ON REVOLUTIONARY CLAIMS, HEIR OF RICHARD WILDE, 27-357 (Mar. 8, 1842) (petition reports that the “widow of Lieutenant Wilde had often applied to *her friends* to get her an allowance for her husband’s services, and was always told by them that *they knew of no law* that would entitle her to receive anything”). See also Collins, *supra* note 3.

²⁵ See, e.g., *War Department, Pension Office*, BERKSHIRE J., MAY 5, 1831 (reporting widows’ right to arrears under the Act of March 2, 1829, setting forth application procedures, and noting that “printers in the city and country are requested to insert the above for the benefit of revolutionary pensioners”); *Pensions to Widows*, SALEM GAZETTE, May 21, 1837, at 2 (reporting that Congress has granted pensions to widows of those who have died in the Navy, “whether they were seamen or marines”); *Information to the Widows and Children of the Revolution*, THE FARMERS’ CABINET, Dec. 6, 1839 (providing basic information regarding widows’ pension eligibility under extant acts of Congress).

²⁶ For a detailed discussion of the pension claims agents, their function in the pension claims process, see Collins, *supra* note 3.

²⁷ The phrase “imagined community” is, of course, Benedict Anderson’s, and it refers to the power of various mechanisms – including newspapers – to build a sense of nationalism in the absence of direct contact. BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1983).

²⁸ 1 AM. STATE PAPERS: CLAIMS, No. 1 (1790) (Report of Secretary of War Knox to Congress on the claim of Ruth Roberts).

²⁹ See ROBERT MAYO AND FERDINAND MOULTON, *ARMY AND NAVY PENSION LAWS, AND BOUNTY LAND LAWS OF THE UNITED STATES*, at XXVI-XXVII (Washington, D.C. 1854).

³⁰ By focusing on widows’ petitions as an important factor in the emergence of widows’ military pensions, this article builds on and attempts to synthesize two analytical approaches that have tended to dominate discussions of the development of broad-scale systems of social provision: the institutional-political process approach favored by political scientists, see, e.g., MARGARET WIER, ANNA ORLOFF, THEDA SKOCPOL, *THE POLITICS OF SOCIAL POLICY* 40-41 (1980), and feminist historians’ keen attention to the role of gender ideology in the evolution of redistributive systems, see KESSLER-HARRIS, *supra* note 4, at 87; ABRAMOVITZ, *supra* note 4; Barbara Nelson, *The Origins of the Two-Channel Welfare State: Workmen’s Compensation and Mothers’ Aid*, in *WOMEN, THE STATE, AND WELFARE* (ed. Linda Gordon, 1990).

³¹ See ZAESKE, *supra* note 6, at 152.

³² See text accompanying *infra* notes 90-96

³³ See ZAESKE, *supra* note 6, ch. 5.

³⁴ Widows’ pension petitions thus reinforce Nancy Cott’s important observation that, in the early nineteenth-century, “women’s view of their domestic role established the substructure of their for their nondomestic pursuits and self-assertion.” NANCY F. COTT, *THE BONDS OF WOMANHOOD: “WOMEN’S SPHERE” IN NEW ENGLAND, 1780-1835*, at 9 (1977). See also KATHRYN KISH SKLAR, *CATHARINE BEECHER: A STUDY IN AMERICAN DOMESTICITY* xii (1973).

³⁵ JAMES TERTIUS DE KAY, *A RAGE FOR GLORY: THE LIFE OF COMMODORE STEPHEN DECATUR* 45-60 (2004)

³⁶ *Id.* at 59.

³⁷ For a recent discussion of the prize-money system and its dissolution in the nineteenth century, see Nicholas Parillo, *The De-Privatization of American Warfare: How the U.S. Government Used*,

Regulated, and Ultimately Abandoned Privateering in the Nineteenth Century, 19 YALE J.L. & HUM. 1 (2007).

³⁸ DE KAY, *supra* note 35 at 174. For a discussion of elite Washington society during this period, and especially the role of women in patronage politics, see ALLGOR, *supra* note 8, at 128-130.

³⁹ For a discussion of the code of honor that governed dueling in the early nineteenth-century America, see Alison LaCroix, *To Gain the Whole World and Lose His Own Soul: Nineteenth-Century American Dueling as Public Law and Private Code*, 33 HOFSTRA LAW REV. 501 (2004).

⁴⁰ DE KAY, *supra* note 35 at 190-191.

⁴¹ CHARLES LEE LEWIS, *THE ROMANTIC DECATUR*, 232-233 (1937).

⁴² DE KAY, *supra* note 35 at 279 n.103.

⁴³ *Id.* at 279 n. 104.

⁴⁴ Act of Apr. 9, 1824, ch. 34, 4 Stat. 18 (granting five-year extension of pensions awarded to widows of “persons slain in the public or private armed vessels of the United States”). *See also* SUSAN DECATUR, H.REP. NO. 34-306 (June 28, 1856, reprinting letter from J. Minot, Pension Comm’r to Sen. Comm. on Naval Affairs (May 14, 1856)).

⁴⁵ *See* ALLGOR, *supra* note 8.

⁴⁶ COMM. ON NAVAL AFFAIRS, ON THE CLAIM OF MRS. SUSAN DECATUR, WIDOW OF COMMODORE STEPHEN DECATUR, H. REP. NO. 19- 281 (Jan. 24, 1826).

⁴⁷ COMM. ON NAVAL AFFAIRS, DESTRUCTION OF FRIGATE PHILADELPHIA, H. REP. NO. 19-74, at 10 (Feb. 7, 1827).

⁴⁸ *See id.*; ON THE CLAIMS OF THE SURVIVORS AND LEGAL REPRESENTATIVES OF THE OFFICERS AND CREW OF THE KETCH INTREPID, Rep. No. 24- 595 (1836).

⁴⁹ *See* DIGESTED SUMMARY AND ALPHABETICAL LIST OF PRIVATE CLAIMS PRESENTED TO THE HOUSE OF REPRESENTATIVES FROM THE 1ST TO THE 31ST CONGRESS (Washington, D.C. 1853).

⁵⁰ COMM. ON NAVAL AFFAIRS, DESTRUCTION OF FRIGATE PHILADELPHIA, H. REP. NO. 19-74, at 10 (Feb. 7, 1827); COMM. ON NAVAL AFFAIRS, ON SENATE BILL NO. 50 – SUSAN DECATUR, H.REP. NO. 20-201 (March 18, 1828); COMM. ON NAVAL AFFAIRS, ON SENATE BILL NO. 50 – SUSAN DECATUR, H.REP. NO. 20- 37 (Jan. 5, 1829); CASE OF SUSAN DECATUR, H. REP. NO. 21-60 (Jan 7, 1830); ON CLAIM OF MRS. SUSAN DECATUR, H. REP. NO. 21-398 (Jan. 7, 1830); CASE OF SUSAN DECATUR, ET AL., H. REP. NO. 22-27 (Dec. 23, 1831); COMM. ON NAVAL AFFAIRS, ON THE CLAIM OF SUSAN DECATUR, H. REP. NO. 23-45 (Dec. 19, 1833); COMM. ON NAVAL AFFAIRS, ON THE CLAIMS OF THE SURVIVORS, H. REP. NO. 24-595 (Jan 27, 1836).

⁵¹ Susan Decatur’s supporters in Congress were numerous, and included: Rep. John Patton (Va.), Rep. George McDuffie (S.C.), Rep. Edward Everett (M.A.), Rep. Samuel Carson (N.C.), Rep. Henry Horn (P.A.). Lewis Cass, Secretary of the War from 1831-1836, was also supportive of her claim. *See* File of Susan Decatur, Georgetown Univ. Archives, Box 1, Folder 31 (Corresp. of Susan Decatur).

⁵² *A Resolution Granting a Pension to Susan Decatur, Widow of the Late Stephen Decatur*, No. 2, 24th Cong., 2nd Sess. (Mar. 3, 1837); CONG. GLOBE, 34th Cong., 1st Sess. 1600 (July 11, 1856).

⁵³ Act of Mar. 3, 1837, ch. 38, § 1, 5 Stat. 180, 180 (providing a life-time pension to the widow of any “officer, seaman, or marine [who] have died, or may hereafter die, in the naval service”).

⁵⁴ *Id.*

⁵⁵ Transcript of Record in *Decatur v. Paulding*, 39 U.S. 497 (1840).

⁵⁶ Transcript of Record in *Decatur v. Paulding*, 39 U.S. 497 (1840), Letter of B.F. Butler to Hon. Mahlon Dickerson (April 11, 1837); *Id.*, Letter from M. Dickerson to Susan Decatur (April 14, 1837).

⁵⁷ CONG. GLOBE, 34th Cong., 1st Sess. 1600 (July 11, 1856).

⁵⁸ *Decatur v. Paulding*, 39 U.S. 497, 498 (1840). Paulding knew Stephen Decatur in the 1810s, when they both boarded in the same Washington D.C. boarding house. *See* RALPH M. ADERMAN, WAYNE R. KIME, *ADVOCATE FOR AMERICA: THE LIFE OF JAMES KIRKE PAULDING* 60-61 (2003).

Paulding, who was a significant literary voice for the Democratic party, also wrote a “Biography of Commodore Decatur” in 1813, which was published in Paulding’s *Analectic Magazine* in 1813. *Id.* at 55⁵⁹ Transcript of Record in *Decatur v. Paulding*, 39 U.S. 497 (1840), Petition to Circuit Court (Nov. 25, 1837); *Id.*, Amended Petition to Circuit Court (Dec. 14, 1839).

⁶⁰ 39 U.S. 497, 515 (1840). For a discussion of the *Decatur* case and its significance for early nineteenth-century administrative law, see Jerry L. Mashaw, *Administration and “The Democracy”*: *Administrative Law From Jackson to Lincoln, 1829-1861*, 117 YALE L.J. 1568, 1673–77 (2008).

⁶¹ 39 U.S. at 516.

⁶² Act of Aug 16, 1841, ch. 8, s. 1, 5 Stat. 440 (1841).

⁶³ On occasion, Decatur, or at least her defenders in Congress, claimed poverty for Decatur. *See* CONG. GLOBE 34th Cong., 1st Sess., 1582, 1600 (July 11, 1856). Others found this assertion implausible given that Decatur had received substantial arrearages of approximately \$13,000 under the March 3rd, 1837 public law before it was repealed. *Id.* at 1600.

⁶⁴ *A Resolution to Grant Susan Decatur a Pension*, No. 5, 34th Cong., 1st Sess., 3 CONG. GLOBE APP. 55 (1856).

⁶⁵ The vast majority of widows and veterans were represented by a pension claims agent who took a percentage of the pension as payment for their services. *See* Collins, *supra* note 3, at 1124-1125.

⁶⁶ File of Catharine Barr, NARA, Records of the Dep’t of Veterans’ Affairs, RG 15, Old Wars Pension Files, Widow’s File 322, Letter of Catharine Barr to Comm’r of Pensions (June 20, 1858).

⁶⁷ *Id.*, Letter of Catharine Barr to Sec. of Navy (Feb. 14, 1842).

⁶⁸ *Id.*

⁶⁹ *Id.* Barr collected a pension under the Act of June 30, 1834, ch. 134, 4 Stat. 714.

⁷⁰ *See, e.g.*, Act of Apr. 16, 1818, ch. 65, § 1, 3 Stat. 427, 427–78 (granting five-year extension of pensions awarded to widows pursuant to the Act of Mar. 4, 1814); Act of Jan. 22, 1824, ch. 15, § 1, 4 Stat. 4, 4 (granting five-year extension of pensions awarded to widows of all “officers, seamen, and marines” killed in the War of 1812); Act of June 19, 1834, ch. 55, 4 Stat. 679 (granting five-year extension of pensions awarded to widows pursuant to the Acts of Mar. 4, 1814 and Apr. 16, 1818); Act of Feb. 3, 1853, ch. 41, § 1, 10 Stat. 154, 154 (granting five-year extension of pensions awarded to widows of numerous military encounters, including “various Indian wars”).

⁷¹ *See* File of Catharine Barr, NARA, Records of the Dep’t of Veterans’ Affairs, RG 15, Old Wars Pension Files, Widow’s File 322, Marriage Certificate of William and Catharine Davidson (Oct. 15, 1835).

⁷² *Id.*, Letter of Catharine Barr to Sec. of the Navy (Aug. 22, 1836). A hospital administrator added that Davidson was an “old sailor, of depraved constitution, & has been a hard drinker.” *Id.*, Letter of Thomas Williamson (Aug. 14, 1836).

⁷³ *Id.*, Letter of Catharine Barr to Sec. of the Navy (Aug. 22, 1836).

⁷⁴ *Id.*, Letter of Catharine Barr to Sec. of the Navy (Aug. 22, 1836); *Id.*, Pension Certificate of Catharine Barr (Sept. 2, 1836).

⁷⁵ Act of Mar. 3, 1837, ch. 38, § 1, 5 Stat. 180.

⁷⁶ *See* File of Catharine Barr, NARA, Records of the Dep’t of Veterans’ Affairs, RG 15, Old Wars Pension Files, Widow’s File 322, Declaration for Obtaining a Renewal Widow’s Navy Pension, Sept. 17, 1868.

⁷⁷ *See, e.g.*, Act of June 30, 1834, ch. 134, 4 Stat. 714 (“every pension hereby granted shall cease on the death or marriage of such widow”).

⁷⁸ File of Catharine Barr, NARA, Records of the Dep’t of Veterans’ Affairs, RG 15, Old Wars Pension Files, Widow’s File 322, Letter of Catharine Barr to Sec. of Navy (Feb. 14, 1842).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*, Letter of Catharine Barr to Comm’r of Pensions (Sept. 8, 1858).

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- 82 *Id.*
83 *Id.*, anonymous folder notation, n.d.
84 *Id.*, Letter of Catharine Barr to Comm’r of Pensions (June 20, 1858).
85 *Id.*, Letter of M.G. Delancy, M.D. to Catharine Davidson (July 27, 1836).
86 *Id.*, Letter of M.G. Delancy, M.D. to Hon. M. Dickerson, Sec. of the Navy (Aug. 29, 1836).
87 File of Catharine Barr, Letter of Catharine Barr to Sec. of Navy (Feb. 14, 1842).
88 *Id.*, Letter of Catharine Barr to Sec. of Navy (Feb. 14, 1842).
89 KERBER, *supra* note 7, at 85. For a wonderful examination of the differences in the rhetorical
modes of men’s and women’s anti-removal petitions, see PORTNOY, *supra* note 6, at 73-78.
90 KIERNER, *supra* note 8, at 97-99;
91 Michele L. Landis, “*Let Me Next Time Be ‘Tried by Fire’*”: *Disaster Relief and the Origins of*
the American Welfare State, 1789–1874, 92 NW. U. L. REV. 967, 979 (1998).
92 See James E. Pfander and Jonathan L. Hunt, *Public Wrongs and Private Bills: Indemnification*
and Government Accountability in the Early Republic (forthcoming in N.Y.U. L. REV. 2010).
93 See JENSEN, *supra* note 21, at 68-69; RESCH, *supra* note 22.
94 See RICHARD JOHN, SPREADING THE NEWS: THE AMERICAN POSTAL SYSTEM FROM FRANKLIN
TO MORSE (1995).
95 See KIERNER, *supra* note 7, at 125-27, COTT, *supra* note 7, at 7; Ruth Bogin, *Petitioning and the*
New Moral Economy of Post-Revolutionary America, 45 WM. & MARY QUART. 391 (1988).
96 See SUZANNE LEBSOCK, THE FREE WOMEN OF PETERSBURG: STATUS AND CULTURE IN A
SOUTHERN TOWN, 1784, at 196-201 (1984). At the federal level, from 1848 to 1854, Dorothea Dix
famously petitioned Congress for a land grant with the intention of selling the land to provide relief and
support for the poor and insane. See THOMAS J. BROWN, DOROTHEA DIX: NEW ENGLAND REFORMER
148-214 (1998).
97 For a fuller description of this administrative process, see Collins, *supra* note 3, at 1123-1145.
98 *Id.*
99 See Collins, *supra* note 3, at 1123-1145.
100 One plausible theory is that some of the pressure to enact military widows’ pensions came from
men – men who risked their lives in war and who were gradually being incorporated into the ranks of the
enfranchised. It is clear that men and groups of men sometimes pressed for widows’ pensions. See, e.g.,
J. House of Rep. 341 (Feb. 5, 1844) (Representative D.L. Seymour presenting a resolution of the State of
New York urging extension of Revolutionary War widows’ pensions); J. House of Rep. 343 (Feb. 5,
1844) (State of Vermont, Joint Resolution Relative to Pensions to Widows of Revolutionary Officers and
Soldier). However, upon closer analysis this explanation is only partial, and may even be misleading. As
an initial matter, many of the widows’ military pensions — even for traditional war widows — were
granted retroactively, suggesting that men did not insist on widows’ pensions as a condition for service.
See, e.g., Act of July 4, 1836, ch. 362 § 1, 5 Stat. 127; Act of Mar. 4, 1814, ch. 20, § 1, 3 Stat. 103; Act of
Apr. 16, 1816, ch. 55, §§ 1-2, 3 Stat. 285, 285-286. Moreover, as classes of potential pensioners, veterans
and widows were sometimes in direct competition for resources, revealing a misalignment of interests
between a veterans (at least some of whom were enfranchised) and widows (none of whom were
enfranchised). Indeed, in the 1830s and 1840s, officers actively petitioned against proposals that would
fund officers’ widows’ pensions from a tax levied on officers’ regular pay. See, e.g., PETITION AGAINST
BILL TO PROVIDE FOR WIDOWS OF OFFICERS, H. Rep. No. 23-205 (1834); MEMORIAL OF A COMMITTEE
OF OFFICERS STATIONED AT FORT MONROE, H. Rep. No. 23-130 (1834); REMONSTRANCE OF OFFICERS
OF THE ARMY AND MILITARY ACADEMY AGAINST TAXING THEIR PAY FOR THE SUPPORT OF WIDOWS
AND ORPHANS OF DECEASED OFFICERS, S. Rep. No. 23-563 (1834); MEMORIAL TO CONGRESS
REMONSTRATING AGAINST THE PASSAGE OF THE “BILL TO PROVIDE FOR THE SUPPORT OF WIDOWS AND
ORPHANS OF SUCH OFFICERS OF THE ARMY AS MAY DIE WHILE IN SERVICE OF THE UNITED STATES.”
See 23rd Cong., 1st Sess., No. 74 (Feb. 6, 1841). In short, while men – fathers, brothers, adult children,

neighbors, and town officials – had an interest in securing assistance for widows, widows themselves were the most active proponents of widows’ pensions.

¹⁰¹ I take no position on whether the First Amendment petition clause obliged Congress, or any other branch of the federal government, to formally consider the petitions it received. *Compare* James E. Pfander, *Sovereign Immunity and the Right to Petition: Toward a First Amendment Right to Pursue Judicial Claims Against the Government*, 91 NW. U. L. REV. 899, 905 n.2 (1997), with Gary Lawson & Guy Seidman, *Downsizing the Right to Petition*, 739 NW. U. L. REV. 739, 739-40 (1999). As a matter of practice, it is almost certain that some widows’ petitions were not considered at all. However, the fact that legislators appear to have been generally responsive to women’s pension petitions for individual relief, even if they did not usually act on them affirmatively, suggests that the legal tradition mandating some sort of response was a strong one, indeed. *See* Gregory Mark, *The Vestigial Constitution: The History and Significance of the Right to Petition*, 66 FORDHAM L. REV. 2153, 2160 (1998) (“The government . . . felt a socio-political obligation to hear those grievances [expressed in petitions], to provide a response, and often to act upon the complaints.”)

¹⁰² *See* Norman K. Risjord, *Congress in the Federalist-Republican Era*, in I ENCYCLOPEDIA OF THE AMERICAN LEGISLATIVE SYSTEM 99-109 (Joel H. Sibley, ed. 1994)

¹⁰³ *Id.* at 103 tab. 2.

¹⁰⁴ *See supra* Part I.

¹⁰⁵ COMM. OF CLAIMS, MAJOR DADE, ET AL – PENSIONS TO WIDOWS AND CHILDREN, 34-1, Rep. No. 415 (Mar. 3, 1836).

¹⁰⁶ Act of Mar. 19, 1836, ch. 44, §§ 1, 5, 5 Stat. 7.

¹⁰⁷ COMM. ON PENSIONS, REPORT ON THE PETITION OF MRS. CAROLINE LANGDON EUSTIS AND OTHERS, S. REP. NO. 21-70 (1830).

¹⁰⁸ Petition of Caroline L. Eustis, NARA, RG46, Records of the US Senate, 32A-H15, Petitions Committee Pensions, Tray 1, Folder 4.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ SELECT COMM., PETITIONS OF WIDOWS OF OFFICERS OF THE REVOLUTIONARY ARMY, H. REP. NO. 31-4 (1830) (reporting the petitions of widows Hunter, Armstrong, Dayton, and Cumming, and the petition of widows Adams, Fogg, Emory, Tenny, and Eustis).

¹¹² *Id.*

¹¹³ *See, e.g.*, RECOMMENDATION OF THE COMMISSIONERS OF THE NAVY PENSION FUND THAT PROVISION BE MADE FOR WIDOWS OF SEAMEN, ETC., NOT NOW PROVIDED FOR, 22nd Cong., 1st Sess., No. 473 (Feb. 29, 1832).

¹¹⁴ COMM. ON PENSIONS, REPORT ON THE PETITION OF MRS. CAROLINE LANGDON EUSTIS AND OTHERS, S. REP. NO. 21-70 (1830).

¹¹⁵ *Id.*

¹¹⁶ Anne Royall was the widow of William Royall, who served in the Revolutionary War. Her quest for a pension allegedly brought her to Washington D.C. in 1824, where she established herself as the first professional woman journalist in America. *See* BESSIE ROWLAND JAMES, ANNE ROYALL’S U.S.A (1972).

¹¹⁷ COMM. ON MILITARY AFFAIRS, ANNE ROYALL, H. REP. NO. 23-100 (1833).

¹¹⁸ *See, e.g.*, COMM. ON NAVAL AFFAIRS, ABIGAIL APPLETON, H. REP. NO. 21(1829); COMM. ON REVOLUTIONARY CLAIMS, MARTHA YEOMANS, H. REP. NO. 21-154 (1830); COMM. ON REVOLUTIONARY CLAIMS, ELIZABETH DANDRIDGE, H. REP. NO. 21(1830); COMM. ON PENSIONS, REPORT [ELIZABETH ANDERSON], S. REP. 21-69 (1830); COMM. ON NAVAL AFFAIRS, SOPHIA GARDINER, H. REP. NO. 21 (1831); COMM. ON MILITARY AFFAIRS, GEORGE LUDLUM – WIDOW OF, H. REP. NO. 23-66 (1833); COMM. ON INVALID PENSIONS, THANKFUL RANDALL, H. REP. NO. 23-89 (1835); COMM. ON INVALID PENSIONS, ANN EVANS, H. REP. NO. 24-462 (1836).

¹¹⁹ See COMM. ON REVOLUTIONARY PENSIONS, REVOLUTIONARY PENSIONS, H. REP. NO. 24-210, at 2-3 (1836).

¹²⁰ *Id.* at 3.

¹²¹ *Id.* (emphasis added).

¹²² Act of July 4, 1836, ch. 362, §§ 1-3, 5 Stat. 127.

¹²³ This number is based on references in the Senate and House journals to widows’ pension petitions formally submitted to Congress, as reflected in a search for the term “widow” in the text searchable on-line versions of the journals on the Library of Congress Website. See <http://memory.loc.gov/ammem/hlawquery.html>. This likely leads to underestimation of the number of widows’ petitions submitted to Congress. First, technological limitations almost surely prevent retrieval of all widows’ pension petitions. Perhaps more significantly – and a problem that riddles any effort to fully grasp the number of widows who petitioned Congress during this period – it is far from clear that every petition received by a representative or senator was formally submitted to Congress.

¹²⁴ See, e.g., COMM. ON REVOLUTIONARY CLAIMS, ANN MORTIMER BARRON, H. REP. NO. 23-58 (1833) (navy widow seeking benefit of army widows’ pension statute); COMM. ON REVOLUTIONARY PENSIONS, JERUSHA RIPLEY, H. Rep. No. 24-77 (1837) (widow petitions Congress for pension despite lack of adequate evidence of marriage); COMM. ON REVOLUTIONARY PENSIONS, HANNAH ELDRIDGE, H. REP. NO. 24-124 (1837) (widow petitions Congress although she had been remarried following the death of her soldier-husband).

¹²⁵ See Act of Mar. 3, 1837, ch. 42, § 2, 5 Stat. 187, 187 (extending coverage of Section 3 of the 1836 Act to include all widows married prior to 1783).

¹²⁶ See COMM. ON REVOLUTIONARY PENSIONS, MARGARET WADE, H. REP. NO. 25-309, at 2 (1839).

¹²⁷ See sources cited *supra* note 20.

¹²⁸ See KERBER, *supra* note 7. See also COTT, *supra* note 7; SKLAR, *supra* note 34, at xii.

¹²⁹ See RESCH, *supra* note 22; ALEXANDER KEYSAR, THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES 31-32 (2000).

¹³⁰ In the majority of American jurisdictions, dower was limited to one third of the husband’s real property, though there was some regional variation on this point. See MARYLYNN SALMON, WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA (1986) 147-84.

¹³¹ For a probing discussion of dower, its shortcomings as a means of securing widows’ financial stability, and dower reform statutes of the early twentieth century, see Dubler, *supra* note 5, at 1660-1700.

¹³² See Richard Chused, *Married Women’s Property Law: 1800-1850*, 71 GEO. L. J. 1359, 1394-1395 (1983).

¹³³ See *Id.* at 1398-1401.

¹³⁴ See Susana Blumenthal, “Death by His Own Hand” “Death by his own hand”: Accounting for Suicide in Nineteenth-Century Life Insurance Litigation (unpublished manuscript on file with author); Sharon Murphy, Security in an Uncertain World: Life Insurance and the Emergence of Modern America 183-92 (PhD Diss., University of Virginia, 2005).

¹³⁵ See Alison Morantz, *There’s No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteenth-Century America*, 24 LAW & HIST. REV. 245, 252-253 (2006).

¹³⁶ See John F. Witt, *From Loss of Services to Loss of Support: The Wrongful Death Statutes, the Origins of Modern Tort Law, and the Making of the Nineteenth-Century Family*, 25 LAW & SOC. INQ. 717 (2000). See also JOHN FABIAN WITT, THE ACCIDENTAL REPUBLIC: CRIPPLED WORKINGMEN, DESTITUTE WIDOWS, AND THE REMAKING OF AMERICAN LAW (2005).

¹³⁷ Witt, *supra* note 136, at 732 (“[W]hat is remarkable about early actions to recover damages for wrongful death is that . . . they all revolved around masters, husbands, or fathers suing to recover damages for the loss of the services of a servant, wife, or minor child.”).

¹³⁸ *Id.* at 737, 745.

¹³⁹ Upon the death of their husbands, a claim to dower was unlikely to be particularly valuable to such women. And unlike women of means, they were also unlikely to have any independent resources held in trust for their benefit, Marylynn Salmon, *Women and Property in South Carolina: The Evidence from Marriage Settlements, 1730 to 1830*, 39 WM. & MARY Q. 655, 656 (1982), or even to benefit from other emerging legal tools, such as the married women’s property acts.

¹⁴⁰ COMM. ON INVALID PENSIONS, WIDOW HANNAH DUBOISE, H. REP. NO. 28-482 (1844).

¹⁴¹ *Id.*

¹⁴² COMM. OF CLAIMS, MAJOR DADE, ET. AL. – PENSIONS TO WIDOWS AND CHILDREN, H. REP. NO. 34-415 (1836); 34th Cong., 1st Sess., S. Rep. 67 (Feb. 24, 1830).

¹⁴³ COMM. ON REVOLUTIONARY CLAIMS, ANN MORTIMER BARRON, H. REP. NO. 23-58 (1833).

¹⁴⁴ COMM. ON PENSIONS AND REVOLUTIONARY CLAIMS, PETITION GRANTED TO THE WIDOW OF A CAPTAIN IN THE ARMY WHO DIED IN SERVICE, H. REP. NO. 14-285 (1816).

¹⁴⁵ See, e.g., Act of Apr. 16, 1818, ch. 65, § 1, 3 Stat. 427, 427–78 (granting five-year extension of pensions awarded to widows pursuant to the Act of Mar. 4, 1814); Act of Apr. 20, 1818, ch. 101, 3 Stat. 459 (granting five-year half-pay pension to widows of militia who “prosecut[ed] the war against the Seminole tribe of Indians”); Act of Mar. 3, 1819, ch. 60, 3 Stat. 502 (granting five-year extension of pensions awarded to widows of all “officers, seamen, and marines” killed in the War of 1812).

¹⁴⁶ 33 ANNALS OF CONG. 378 (Dec. 1818) (statement of Rep. Harrison).

¹⁴⁷ *Id.*

¹⁴⁸ 33 ANNALS OF CONG. 383 (Dec. 1818) (statement of Rep. Harrison).

¹⁴⁹ 33 ANNALS OF CONG. 873 (Feb. 1818) (statement of Rep. Johnson).

¹⁵⁰ 33 ANNALS OF CONG. 873 (Feb. 1818) (statement of Rep. Harrison).

¹⁵¹ 33 ANNALS OF CONG. 378-379 (Dec. 1818) (statement of Rep. Harrison).

¹⁵² See LORI D. GINZBERG, *WOMEN AND THE WORK OF BENEVOLENCE: MORALITY, POLITICS AND CLASS IN THE NINETEENTH-CENTURY UNITED STATES* (1990); RONALD G. WALTERS, *AMERICAN REFORMERS, 1815-1860* (1978); Anne M. Boylan, *Women in Groups: An Analysis of Women's Benevolent Organizations in New York and Boston, 1797-1840*, 71 J. AM. HIST. 497 (1984).

¹⁵⁶ 33 ANNALS OF CONG. 876 (Feb. 1818) (statement of Rep. Southard).

¹⁵⁷ 33 ANNALS OF CONG. 378 (Dec. 1818) (statement of Rep. Harrison).

¹⁵⁸ See *Decatur v. Paulding*, 39 U.S. 497, 498 (1840).

¹⁵⁹ COMM. ON NAVAL AFFAIRS, ON THE CLAIM OF MRS. SUSAN DECATUR, H. REP. NO. 281, 19-281 (1826).

¹⁶⁰ 10 CONG. DEB. 3820 (1834).

¹⁶¹ CONG. GLOBE, 34th Cong., 1st Sess. 1582 (Aug. 16, 1856) (statement of Sen. Clay).

¹⁶² CONG. GLOBE, 34th Cong., 1st Sess. 1600 (1856) (statement of Sen. Brodhead).

¹⁶⁴ Act of Mar. 3, 1837, ch. 38, § 1, 5 Stat. 180.

¹⁶⁵ *Id.* The phrase “died while in service” was particularly generous in the context of navy service, given that navy sailors were often “in service” when not immediately engaged in battle, and given the high-risk nature of sailing generally.

¹⁶⁶ CONG. GLOBE, App., 16th Cong, 2nd Sess. 80 (1840).

¹⁶⁷ 28 ANNALS OF CONG. 1173 (Feb. 20, 1815). Not all petitions of famous men met with such challenges. For example, the widow of Arnold Dohrman successfully petitioned for a pension in 1817. See 30 ANNALS OF CONG. APP. 1242 (1817). The Committee of Claims explained that Arnold Dohrman had “rendered important services to the United States during the Revolution by acts of exalted beneficence and liberality toward American seaman thrown captive on the shores of Portugal.” COMM. OF CLAIMS, ANNUITIES TO THE WIDOW AND CHILDREN OF ARNOLD HENRY DOHRMAN, DECEASED, H. REP. NO. 14-341 (Jan. 27, 1817). The committee also fixed on the fact that Rachel Dohrman was left with eleven children to care for. *Id.* Alexander Hamilton’s widow received five-years of back-pay allegedly owed her husband. See COMMITTEE ON PENSIONS AND REVOLUTIONARY CLAIMS, CLAIM OF

THE WIDOW OF COLONEL ALEXANDER HAMILTON FOR COMMUTATION, H.REP. No. 14-299 (1816), but she was denied a pension.

¹⁶⁸ See CONG. GLOBE, 27 Cong., 1st Sess. 104 (1841).

¹⁶⁹ Debates over Harrison’s pension petitions yielded over twenty-six pages of debate in the very small font of the *Congressional Globe*. See CONG. GLOBE, 27 Cong., 1st Sess. 67-77; 104-121 (1841).

¹⁷¹ CONG GLOBE, 27th Cong. 1st Sess. 105 (1841).

¹⁷² CONG GLOBE, 27th Cong., 1st Sess. 108 (1841) (Statement of Sen. Smith).

¹⁷³ See *supra* note 26.

¹⁷⁴ File of Catharine Barr, NARA, Records of the Dep’t of Veterans’ Affairs, RG 15, Old Wars Pension Files, Widow’s File 322, Letter from Catharine Barr to Comm’r of Pensions (June 20, 1858).

¹⁷⁵ See, e.g., RYAN, *supra* note 8; ZAGARRI, *supra* note 8; KIERNER, *supra* note 7; ALLGOR, *supra* note 8; Lori D. Ginzberg, “Moral Suasion is Moral Balderdash”: Women, Politics, and Social Activism in the 1850s, 73 J. OF AM. HIST. 601 (1986).

¹⁷⁶ HENDRIK HARTOG, MAN AND WIFE IN AMERICA: A HISTORY, 317 n.4 (2000).

¹⁷⁷ As Reva Siegel has suggested, the notion that feminists of any era can reason about gender in ways that transcend gender ideological is implausible. Rather, in different eras, feminists tend to challenge different ways of reasoning and talking about gender, without wholly transcending contemporary norms. See Reva B. Siegel, *Home As Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850-1880*, 103 YALE L.J. 1073, 1213-14 (1994).

¹⁷⁸ See, e.g., COMM. OF CLAIMS, MARTHA TWIST, H. REP. NO. 28- 29 (Jan. 11, 1845). Martha Twist was the widow of Stephen Twist, who she observes “was in the service of the United States for about the period of fifty years.” But Martha also based her pension claim on the fact that “she herself was . . . attached to the army for about the same length of time in the capacity of a nurse and laundress and therefore asks that she may receive such assistance as will prove adequate to support her during the rest of her life.” The Committee recommended against the pension, noting that “[t]he valuable services of the petitioner are not called into question” but that “they cannot consent to establish a precedent that will open a new class of cases to be adjusted and paid at the treasury.”

¹⁷⁹ The exceptions, though famous, prove the rule. For example, Deborah Sampson (later Gannett) is believed to have enlisted in the Fourth Massachusetts Regiment in 1781 as “Robert Shurtleff.” She fought in several engagements and was honorably discharged after she was discovered to be a woman. She was pensioned by the state of Massachusetts in the 1790s and her *husband* was later granted a pension by Congress in 1837. See BENJAMIN Gannett, 24th Cong. 2nd Sess., H. Rep. No. 172 (1827). Jensen, *supra* note 21, at 85n.11. Julia Ward Stickle, *The Records of Deborah Sampson Gannet, Woman Soldier of the Revolution*, 4 PROLOGUE 233 (1972); Vera O. Laska, “REMEMBER THE LADIES:” OUTSTANDING WOMEN OF THE AMERICAN REVOLUTION 61-94 (1976)

¹⁸⁰ This distinction can be overdrawn. Women involved in the abolitionist and anti-removal petitioning campaigns also drew on women’s role as protectors of the domestic sphere, and related beliefs concerning women’s virtue, to justify their intrusion into the political domain. See ZAESKE, *supra* note 6, at 106-115; PORTNOY, *supra* note 6, at 6. But, unlike abolitionist and anti-removal petitioners, women seeking pensions petitioned in order to prompt legislative action that would itself reinforce women’s primary role as wives and mothers.

¹⁸¹ For a probing discussion of the joint property claim to wages for household labor, see Siegel, *supra* note 177, at 1146-89.

¹⁸² See Hendrik Hartog, *Mrs. Packard on Dependency*, 1 YALE J.L. & HUM. 79, 93 (1988).

¹⁸³ See SKLAR, *supra* note 34.

¹⁸⁴ CATHARINE E. BEECHER, AN ESSAY ON SLAVERY AND ABOLITIONISM WITH REFERENCE TO THE DUTY OF AMERICAN FEMALES (Philadelphia 1837), quoted in ZAESKE, *supra* note 6, at 115. Alisse Portnoy’s account of Catharine Beecher’s involvement in the anti-removal petition campaign calls into question Beecher’s claim later suggestion that women’s involvement in the abolitionist campaign was

problematic because it brought women into an “arena of public collision.” Instead, Portnoy argues, Catharine Beecher objected to the abolitionist petition campaign because of her support for African colonization as a remedy for slavery, instead of emancipation. PORTNOY, *supra* note 6, at 13.

¹⁸⁵ ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 242-46 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971).