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

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Abstract

Between 1792 and 1858, Congress enacted approximately seventy-six public law statutes granting cash subsidies to large classes of military widows. War widows’ pensions were not wholly unknown in Anglo-American law before this time, but the widows’ pension system of the early nineteenth century was distinctive in both scope and kind: Congress rejected the class-based approach that had characterized war widows’ pensions of the eighteenth century by pensioning widows of rank-and-file soldiers, not just widows of officers, and by extending pensions to widows of veterans. This significant equalization and expansion of widows’ pensions resulted in the creation of the first broad-scale system of marriage-based entitlements in America. This article seeks to explain the blossoming of this system and argues that widows’ petitioning efforts played a central role. Unlike the women who used the petition to oppose slavery and Indian removal during the same period, widows seeking pensions did not overtly challenge socio-political conventions by petitioning Congress. Rather, in both locution and purpose, widows’ pension petitions conformed to and reinforce dominant views concerning men’s and women’s social roles and responsibilities. And it was precisely the conformist nature of widows’ petitions that made them effective in precipitating the development of a substantial system of public marriage-based entitlements. Attention to these overlooked sources helps explain the emergence of marriage-based entitlements in American law, and enables us to construct a more textured picture of how, in the early nineteenth century, the law shaped women’s lives and women shaped the law.

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