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Uncovering the Widow Figure in Nineteenth-Century American Literature

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## ABSTRACT

## Uncovering the Widow Figure in Nineteenth-Century American Literature

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This dissertation examines the legal, economic, and social transformations experienced by American widowed women from the Salem Witchcraft Trials to the Civil War to expand how scholars of literature, the law, and American history define women's citizenship prior to suffrage. Emphasizing literature's importance to nineteenth-century nation-building during the era of forced Indian removal, institutional slavery, and the emerging Women's Rights Movement, my dissertation demonstrates how authors repeatedly relied on the figure of the widow in fiction and poetry to imagine a more feminized and inclusive Republic.

Although scholars theorize the affective registers of grief and mourning in nineteenth-century American literature, the political potential of the widow figure remains largely ignored. My project widens the critical conversation by concentrating less on the widow's bereavement than on what she *gains* from such loss: independent legal recognition, absolute sovereignty in the home, and autonomous access to the marketplace. Joining scholars of women's history and literature such as Mary Beth Norton, Linda Kerber, and Sandra Gustafson, I challenge privileging suffrage as the foundational moment of American women's citizenship. My project offers the extralegal autonomy of the widow and her adaptations in literature as profound iterations of independent women's citizenship in early- and nineteenth-century America.

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## Introduction

*You know women are always looked upon as nothing; but we are your Mothers, you are our Sons.*  
—Nan-ye-hi

*My master had power and law on his side; I had a determined will. There is might in each.*  
—Harriet Jacobs

*The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her.*  
—Elizabeth Cady Stanton

Upon the death of her first husband, Alice Morgeson of Elizabeth Stoddard's *The Morgesons* declares that she will "take care of the children, and manage the mills." As a widow, Alice considers herself "changed." While her married life was absorbed by "society, dress, [and] housekeeping," her widowhood makes her "business-like and observant" with "a larger interest in the world which gave her a desire to associate with men and women independent of caste." When the novel's protagonist, Cassandra, appears startled by Alice's practical reaction to the loss of her husband, Alice admits, "When perhaps I should feel that I have done with life, I am eager to begin it. I have lamented over myself lately."<sup>1</sup>

As a white woman of both financial and cultural capital, widowhood grants Alice psychological, social, economic, and civic autonomy through entry into the patriarchal market society of nineteenth-century America. Life begins for Alice only after her husband's death.<sup>2</sup> While society dictates that a woman's primary role is that of a wife, Alice feels no sadness for losing this status. She realizes, through her grief, that the originary loss was that of her younger,

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<sup>1</sup> Elizabeth Stoddard, *The Morgesons*, eds. Lawrence Buell and Sandra A. Zagarell (1862; New York: Penguin Books, 1997), 125.

<sup>2</sup> Alice will later remarry the protagonist's father, Locke Morgeson. But it is her first widowhood that sparks her realization that she regains independent selfhood outside of marriage.

individual self, who legally, socially, and economically ceased to exist upon her marriage. Her husband's death brings her dormant citizenship back to life.

Under the laws and customs of coverture, which were imported virtually unchanged from English common law into the founding legal structures of the United States and that persisted throughout the nineteenth century, women ceased to exist as legal individuals. "Covered" by the protection, authority, and civic status of their husbands, married women lost, among many other rights, the capacities to own her own property, to contract, or to represent herself in court. Wives, like children, were considered legally dependent.

However, widowed women like Alice Morgeson found themselves dramatically uncovered after their husbands' passing. Their independent status and economic and legal rights were restored. When the widow is released from coverture transformations happen. This dissertation uncovers the widow to examine the ways in which authors of the nineteenth century deployed widowhood thematically and metaphorically to challenge U.S. laws regarding women's citizenship.

As the women's rights movement gained traction in the mid-nineteenth century, improving married women's legal privileges emerged as the pillar of their agenda for equal participation in civic and political life. Through the figure of the wife, activists and authors in political works, fiction, and memoirs condemned the present parameters of women's national belonging more broadly. They utilized the widow, and her significant transformation from civilly dead to legally independent, as a figure in miniature through which they theorized alternative futures for women's official legal status in the United States. By destabilizing definitions of womanhood, citizenship, and marriage, widowhood exposes the fissures of America's legal foundations in the words of the women who protested it. While scholars have established



marriage reform as one of the key issues of the burgeoning women's rights movement, the way that the widow figure is employed and rejected by women advocating for equal rights has been heretofore ignored.

Widowhood meant different things to different peoples living within the imagined borders of the United States. White male authors, such as Nathaniel Hawthorne, explored with terror the independence of a widowed Hester Prynne who refuses to adhere to the marriage contract, as I will show in Chapter 1. Some women, such as Nan-ye-hi, Beloved Woman and symbolic Mother of the Cherokee Nation, and Lydia Maria Child, who upheld the virtues of Republican Motherhood, looked outside of marriage and widowhood entirely to focus on the roles of mothers in their respective national polities as the vehicle for political clout. They redefined concepts of nation through motherhood.

Enslaved and formerly enslaved African American writers, such as Hannah Crafts, Harriet Jacobs, and Elizabeth Keckley, challenged the logical principles of marriage law, proving the "official" dimensions of marriage to be a fiction, and in the case of the white-supremacist legal system of the U.S., a farce. Middle and upper class Anglo-American women of whaling towns lived liminally between marriage and widowhood, separated from their husbands working in dangerous professions and unsure at any given moment whether he was alive or dead. Such marriages frustrated the legal fiction of man and wife existing as one body, and disclose the ways in which the law attempted to mold itself to account for its inconsistencies.

Simply defined, a widow is a woman whose husband has died and who has not yet remarried.<sup>3</sup> Unlike single women, widows experienced the legal, economic, and social transformation of someone who has been formerly married. As opposed to some divorced women, widows experienced this change not of their own choosing. Crucial to this project, in early-America and throughout the nineteenth century a widow incurred a new formal legal and social status, invented by white male lawmakers and culturally influenced by logics of domesticity. She also occupied a particular emotional subjectivity, articulated through feelings of bereavement, befuddlement, relief, and even rage.

Yet variations of widowhood proliferated in law and literature beyond neat categorization. Echoes of widowhood existed in various non-legally recognized degrees of separation and husbandless that women of the nineteenth-century frequently faced. When husbands labored far from home, wives left behind often gained temporary legal powers. In-between states of widowhood endured by women whose lovers or spouses abandoned them, jilted them at the alter, or somehow failed to commit to marriage produced different emotional and social feelings of loss and independence.

I concentrate on three populations of women— Anglo-Americans, Cherokees, and African Americans— who encountered widowhood in distinctly different ways based on their varying legal statuses. These women deploy the widow in a number of genres, ranging from novels and short stories, to speeches, to memoirs, to didactic protest literature and bureaucratic legal documents to challenge constructions of womanhood and citizenship under construction

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<sup>3</sup> The *Oxford English Dictionary* states, “A woman whose spouse has died and who has not married again” (*OED Online*, s.v. “widow,” accessed August 2018, [www.oed.com/view/Entry/228912](http://www.oed.com/view/Entry/228912)).

throughout the century. Their texts reveal a focus on larger political definitions of womanhood and sovereignty of both the nation and the self rather than on collective racial identities during the eras of insitutionalized slavery and Indian Removal.

I read widowhood in nineteenth-century American literature as part of a larger, uneasy conversation across Anglo-American, Cherokee, and African American women who cohabitated under the legal jurisdiction of the United States. Throughout the century these groups critiqued their particular systemic subjugations and fought to redefine their distinctive relationships to the U.S. nation writ large. With the theoretical possibilities of independent citizenship for women untethered to marriage embodied in the state of widowhood, representations of widows offer insight into American literature as a mode of feminized nation-building and contestation. This story is the focus of the dissertation. I am less concerned, ultimately, with exactly how widows are portrayed, or represented, across American literature, than I am with the ways in which politics of gender, nation, and citizenship were negotiated in messy, unpredictable ways through her presence.

I argue more broadly that widowhood was a legal and social status invented by authors of both law and literature. Widowhood was a legal status affixed to wives after their husbands had died. This label was expediently applied to bereaved women by male lawmakers eager to define the parameters of their womanhood and their access to property and capital outside of marriage. For example, in Chapter 3, I argue that the U.S. pension system, debated at length in Congress, reinvented widowhood during the Civil War era. In Chapter 2, I show how Cherokee leaders, struggling to maintain their sovereignty outside of American demands for their ‘civilization,’ imported the status of the widow into their early codified laws. This restructured traditional matrilineal lines of inheritance and dramatically altered women’s roles in Cherokee Society. The

widow was a figment of the law taken up for various ends by male lawmakers of the nineteenth century.

Yet women writers seeking greater claims to citizenship and freedom within the U.S. legal framework also utilized widowhood in their works, as we see in Elizabeth Keckley's *Behind the Scenes*. Keckley's memoir thematically ties freedom to widowhood, making a larger argument about the importance of women of color releasing themselves from state institutions, particularly that of marriage, altogether. In slave narratives, as I discuss in Chapter 3, bound African American women frequently "widow" themselves extralegally. Since the status of "wife" was not legally allowed them, the rank of "widow" wasn't either. As I will show, authors of novels and short stories imaginatively construe widowhood to critique the institution of marriage and its various legal trappings.

Making sense of the myriad uses and functions of widowhood in nineteenth century reconceptions of women's citizenship requires a mode of analysis that allows for the reading of the widow across the legal, cultural, and literary landscapes of the nineteenth century. It demands attending to the divergent political practices of Anglo-American, Native American, and African American women rather than focusing on their racial identities. By focusing on widowhood I necessarily turn to passing references in lesser known works, and to the glances and glosses of a type of womanhood that emerges in texts not always recognized as canonical or as particularly literary; still, these are works this project nevertheless insists evoke a new literary and political history of nineteenth-century America.

The discussions of marriage, womanhood, and widowhood that follow do not reveal a coherent narrative of women's experiences. Rather, this dissertation reveals the irregularities of and deviations from the concepts of gender, nation, and freedom under construction in the

nineteenth century. The texts that I examine are not important because of the quantity of volumes they sold or because of their critical reception today. They are important because taken together they reveal the ways in which the widow ruptures nineteenth-century attempts to create a coherent a national history that accorded with its founding ideals of equality for all.

*I. A Brief History of the Fictions of Coverture and U.S. Marriage Law*

The emancipation of women from the bonds of marriage was a central tenet of the antebellum women's rights movement.<sup>4</sup> Of the 16 grievances proclaimed in the Declaration of Sentiments and Resolutions at the 1848 Seneca Falls Woman's Rights Convention, a quarter of them pertain to marriage law. Elizabeth Cady Stanton defines the tyrannies of marriage as rights lost by women when they enter the marriage covenant. Women lose their personal property as well as any money earned by their own labor; they lose custody of their children in the event of divorce; they lose their individual access to the courts, promising total obedience to their husband who serves as their only authority under law. Most significantly, Stanton declares that the men who have disenfranchised women and "compelled her to submit to laws, in the formation of which she had no voice," have also made her "if married, in the eye of the law,

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<sup>4</sup> Norma Basch writes at length of the ways in which nineteenth-century feminists' attacks on coverture were part of a larger political argument in *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, NY: Cornell University Press, 1982). She explains, "Antebellum feminists systematically exposed the patriarchal core of coverture, and in so doing constructed a bridge between spheres. In demanding greater legal autonomy for the wife in the domestic sphere, they increasingly challenged male economic and political power in the public sphere. By refusing to separate law from politics, and by stressing the inherently political nature of law, they contributed to the fuller integration of women into political thought." Basch, 162.

civilly dead.”<sup>5</sup> If, as Stanton argues, a woman in marriage became “civilly dead” in the eyes of nineteenth-century marriage law, this project asks: how is a widow’s civic status brought back to life, legally, socially, and economically, upon the demise of her husband? These imagined reincarnations were taken up with gusto by women’s rights proponents eager to imagine citizenship for women outside of marriage.

I join scholars of women’s history such as Nancy Isenberg, Norma Basch, and Teresa Anne Murphy, to focus not on suffrage, but on marriage reform as the defining issue of the early women’s rights movement.<sup>6</sup> However, I complicate historical scholarship on the importance to the movement of marriage reform by centering works by women of color who entered the debate. Cherokee and African American writers challenge the very definitions of ‘wife’ and ‘widow’ in a racist, patriarchal legal network that denied their humanity, and thus their right to citizenship. Engaging themes of marriage law and widowhood led Anglo-American, Cherokee, and African American women writers to the conclusion that married women’s lack of civic, social, and economic rights were not merely isolated, domestic issues. Focusing on the rule of

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<sup>5</sup> Elizabeth Cady Stanton, “Declaration of Sentiments,” in *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*, vol. 1, *In the School of Anti-Slavery, 1840 to 1866*, ed. Ann D. Gordon (New Brunswick, NJ: Rutgers University Press, 1997), 79.

<sup>6</sup> Teresa Anne Murphy notes, “While suffrage is the demand usually associated with this movement, a broad notion of citizenship actually suffused the concerns of woman’s rights activists in the antebellum period.” Teresa Anne Murphy, *Citizenship and the Origins of Women’s History in the United States* (Philadelphia: University of Pennsylvania Press, 2013), 1. Nancy Isenberg argues, “My approach begins with the assumption that although suffrage became the major plank of the late nineteenth-century campaign, antebellum activists had not only conceived of women’s rights in broader terms, but they also developed a rich theoretical tradition that contributed in significant ways to a national discourse on constitutional practices in a democracy. Feminist theories of representation had their beginning not in the idea of suffrage alone but in disputes surrounding changes in the polity of the church and family.” Nancy Isenberg, *Sex and Citizenship in Antebellum American Literature* (Chapel Hill: University of North Carolina Press, 1998), 6. Basch focuses on marriage law and property rights as the defining political issues of antebellum feminism. See Basch, *In the Eyes of the Law*.

marriage law and its antithesis, widowhood, revealed larger logical fallacies of the nation's designations of who was and wasn't legally considered a citizen and to what degree.

Citizenship can be described in its most simple sense as one's standing within the law.<sup>7</sup> Yet it can also be described as a fiction, an imagined fraternity among peoples sharing "geopolitical space."<sup>8</sup> Lauren Berlant, for example, defines citizenship as a "constellation of rights, laws, obligations, interests, *fantasies*, and expectations." [emphasis mine]. Citizenship was granted unevenly— not at all, partially, or completely— in the United States from the nation's legal founding.<sup>9</sup> I borrow my definition of 'full citizenship' for women from Teresa Anne Murphy, who defines it as "the ability to participate equally with men in the political, economic, and intellectual life of the nation."<sup>10</sup> As property requirements for the vote were abolished throughout the nineteenth-century, white manhood became the primary requirement for full citizenship; women, free blacks, enslaved men and women, immigrants, Native Americans, and the working poor were denied complete citizenship and many of the benefits and privileges therein.<sup>11</sup>

I trace how widowhood, as both an affective subjectivity and a particular legal and social status, became a conceptual battleground for white male lawmakers, women's rights proponents, Cherokees, African Americans, and authors of literature embroiled in debate over the 'woman

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<sup>7</sup> Lauren Berlant, "Citizenship," in *Keywords for American Cultural Studies*, ed. Bruce Burgett and Glenn Hendler, 2nd ed. (New York: New York University Press, 2014), 41.

<sup>8</sup> Berlant, 41.

<sup>9</sup> Nancy Isenberg argues, for example, "Because American democracy changed the gender dynamics of national identity, citizenship for men meant something quite different from what it meant for women. Despite the trend toward participatory democracy at mid-century, women occupied an ambiguous legal and political position that made them appear as both citizens and noncitizens." (*Sex and Citizenship*, 28).

<sup>10</sup> Murphy, *Citizenship and the Origins of Women's History in the United States*, 1.

<sup>11</sup> Isenberg, *Sex and Citizenship*, 28.

question,’ or the proper role of women in society, throughout the nineteenth century.<sup>12</sup> These actors heatedly disputed theories of citizenship for women outside of marriage and domestic ideologies. Widespread cultural anxiety ensued from the women’s rights movement’s demands for married women’s rights. Norma Basch describes how the movement instigated widespread fear of a “sexual revolution” that would “throw relations between the sexes into total chaos.”<sup>13</sup> The widow figure embodied, for many authors, the potential of such a revolution. She revealed the cracks in patriarchal law, and made visible both the way that marriage law subjugated women as well as carried the basis for their ideological and political freedom.

To understand the political potential of the widow in nineteenth-century debates over the ‘woman question,’ first one must dismantle the legal logics that created her. Yet, as Anglo-American, Cherokee, and African American women show, disassembling the legal fictions of marriage law reveals even larger national fantasies on which the American constitutional republic was founded. Many scholars have theorized the concepts of nation and citizenship as imaginary civic constructs.<sup>14</sup> The founding documents of the United States of America, archived in the Declaration of Independence, the Constitution, and the Bill of Rights, compose, from the very beginning, a fictive narrative of a nation based on the “self-evident” truths that “all Men are

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<sup>12</sup> Basch broadly defines the ‘woman question’ as “the question of what was the appropriate role for women in the family and in the larger polity.” Basch, *In the Eyes of the Law*, 40.

<sup>13</sup> Basch, 135.

<sup>14</sup> See, for example, Castiglia, *Interior States*; Berlant, “Citizenship”; Edmund S. Morgan, *Inventing the People* (New York: W. W. Norton, 1988); Russ Castronovo, *Necro Citizenship: Death, Eroticism, and the Public Sphere in the Nineteenth-Century United States* (Durham, NC: Duke University Press, 2001); and Dana Nelson, *National Manhood: Capitalist Citizenship and the Imagined Fraternity of White Men* (Durham, NC: Duke University Press, 1998).



created equal.”<sup>15</sup> Equality for all is a statement that the author, primarily the slave-owner Thomas Jefferson, wrote with “complete... consciousness of its falsity.”<sup>16</sup>

Women, who could not vote, and whose access to freedom of speech, freedom of the press, to protest, to fight in the military, and the right to protect their own property was extremely limited by social and legal structures, were not “created equal” with the men writing the documents, penning the rules. Native American nations were not included as part of the general “Men” that composed the national body of the United States. Enslaved African Americans, too, were counted as property rather than as men or women, and thus had no role in the fiction at all— they were not even included as part of the general “We the people” nor “all Men” for whom the document proposed to speak.

Joseph Roach establishes the imaginary coherence of the geographical borders of the United States as part of a larger, longer fantasy of the New World, a fabrication “truly invented” within the context of the circum-Atlantic world.<sup>17</sup> The contrived ‘newness’ of the New World forced an original form of what he terms surrogation, or the reproduction and reinvention of a society through the constant filling of cultural vacancies. In the American context, the founders

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<sup>15</sup> Linda Kerber’s groundbreaking work *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (1998) examines American citizenship as a fictive contradiction. She shows how the classic hail to citizenry in the Constitution’s sweeping “We the People” is ultimately “a wonderfully dynamic fiction” in that it explicitly omitted women and people of color. Linda K. Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998), 8.

<sup>16</sup> Lon L. Fuller, *Legal Fictions* (Stanford, CA: Stanford University Press, 1967), 9. I will engage Fuller’s work in full later in this section.

<sup>17</sup> Roach defines the term *circum-Atlantic world* in opposition to more conventional transatlantic scholarly approaches in the ways in which it insists on the “centrality of the Diasporic and genocidal histories of Africa and the Americas, North and South, in the creation of modernity” (*Cities of the Dead: Circum-Atlantic Performance* [New York: Columbia University Press, 1996], 4).

invented a new nation, a new England, “out of the memories of the old.” In so doing, however, it “conceptually erase[d] indigenous populations” and established an economy built from the violence of slavery.<sup>18</sup>

This dissertation documents the ways in which the new American legal system also relied on “memories” of English domestic law to restrict married women’s access to full and individual citizenship. More importantly, it chronicles the ways in which Anglo-American women and Indigenous, enslaved, and emancipated women of color protested marriage and property laws. Their literature worked to define citizenship for themselves outside of marriage and widowhood, in their own cultural, national, and ethnic contexts, and in their own terms. For despite the “unspeakable violence instrumental” to the creation of U.S. nation-state, as Roach insists, “the unspeakable cannot be rendered forever inexpressible.”<sup>19</sup>

Married women in particular found the obstruction of their individual rights at odds with principles of a democratic republic. Roach defines national “counter-memories” as “the disparities between history as it is discursively transmitted and memory as it is publicly enacted by bodies that bear its consequences.”<sup>20</sup> As I will show, the loss of married women’s rights reveal the counter-memories of the Founding, the establishment of a nation designed on the premise of liberty for all but that excluded women and people of color from those freedoms.

Male lawmakers after the Revolution strove to free themselves legally from monarchical patriarchy through a democratic and constitutional republic. Yet they left the patriarchal structure of the home, which functioned effectively as a “little monarchy,” with the husband serving as the

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<sup>18</sup> Roach, 4.

<sup>19</sup> Roach, 4.

<sup>20</sup> Roach, 26.

primary authority within the household and polity, almost entirely unchanged.<sup>21</sup> They did so by importing, nearly unrevised, the common law customs of coverture.

Coverture effectively “transferred a woman’s civic identity to her husband at marriage.”<sup>22</sup> As a legal fiction, it worked primarily through the principle of marital unity, a metaphor signaling the transformation of the husband and wife into one bodily and legal entity in marriage— that of the husband— as Norma Basch emphatically points out.<sup>23</sup> Once “covered” under her husband’s authority, a woman’s legal identity was essentially “obliterated.” Basch argues, “At common law a wife was a nonentity in most situations; her husband subsumed her legal personality. The law created an equation in which one plus one equaled two by erasing the female one.”<sup>24</sup>

Nancy Cott describes the legal diminishment of the wife as a personal loss of citizenship. The husband, on the other hand, found his legal and civic capacities augmented upon marriage:

The husband was enlarged, so to speak, by marriage, while the wife’s giving up her own name and being called by his symbolized her relinquishing her identity... the husband became the political as well as the legal representative of his wife, disenfranchising her.

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<sup>21</sup> Mary Beth Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996), 96. Also see, Kerber, *No Constitutional Right to be Ladies*, 11.

<sup>22</sup> Kerber, *No Constitutional Right to be Ladies*, 11-12.

<sup>23</sup> Basch notes, “From the time of the Norman Conquest, the common law developed a complex body of theory based on the simple presumption that ‘in the eyes of the law’ the husband and wife were one person—the husband” (*In the Eyes of the Law*, 17).

<sup>24</sup> Basch, 17. Marylynn Salmon makes this point somewhat less emphatically. She argues, “Under the common law, women and men gained certain rights and responsibilities after marriage. No longer acting simply as individuals, together they constituted a special kind of legal partnership, one in which the women’s role was secondary to the man’s” (*Women and the Law of Property in Early America* [Chapel Hill: University of North Carolina Press, 1986], 15).

He became the one *full* citizen in the household, his authority over and responsibility for his dependents contributing to his citizenship capacity.<sup>25</sup>

Thus this transmogrification of husband and wife into one legal and civil person though the principle of marital unity is a fantasy of jurisprudence to maintain patriarchal control in the private space of the home as well as in the larger national polity.<sup>26</sup> Like the fiction of equality espoused in the nation's founding documents, the concept of marital unity is built upon women's legal and political subjugation, which the women's movement would later seek to dismantle.

Lon L. Fuller, whose work on this subject remain the standard in legal scholarship, defines a legal fiction as "either (1) a statement propounded with a complete or partial consciousness of its falsity, or (2) a false statement recognized as having utility." Moreover, Fuller argues, "Fiction represents the pathology of the law." For, as he points out, "When all goes well and established legal rules encompass neatly the social life they are intended to regulate, there is little occasion for fictions."<sup>27</sup>

Fuller's definitions are useful for understanding the pragmatic limits of legal language to effect desired outcomes, such as women's legal subjugation to men's civic, social and economic authority upon entering the marriage contract. Yet to simply equate fiction with falsity flattens the nation-building possibilities of literature. The principle of marital unity is not merely a "false statement"; it is an intricately contrived metaphor that effectively made women disappear under the law. As I will show in the next section, widowed women, whose personhood eradicates the

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<sup>25</sup> Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000), 12.

<sup>26</sup> For discussions of the legal fiction of marital unity in American legal contexts, see, Basch, *In the Eyes of the Law*, 42–69; and Hendrick Hartog, *Man and Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000), 106–10.

<sup>27</sup> Fuller, *Legal Fictions*, 9.

power of marital unity, are also often made invisible in literary and legal archives by male actors eager to retain their power over women especially after she becomes uncovered from coverture.

A woman's bodily merging with her husband, if not her legal covering, was figurative, of course.<sup>28</sup> It was a metaphor designed to disenfranchise her from full citizenship, as I and others have shown. Yet the legal fiction of marital unity had powerful, real-life effects on married women's lives. Among other incapacities, wives could neither represent themselves nor their husbands in court; they could not sue; they could not form contracts separately from their husbands; unless they took legal action prior to marrying, all of their property legally belonged to their husband; the husband had all rights to monies derived from wives' labor; husbands used the principles of marital unity to justify abusive behavior toward their wives; and under the logics of marital unity, which viewed a woman's body as "instrumental" to the husband for procreation, marital rape was justified; through guardianship, children of the marriage legally belonged to the husband, not the wife; the husband selected domicile, sometimes removing a woman from family and kin networks; and a wife was subject to her husband's authority and regulation of her behavior as it was his right and duty to chastise her for aberrant behavior.<sup>29</sup>

The legal fiction of marital unity became in its most simplified form the central iteration of the antebellum women's rights movement. Activists used this metaphor and expanded upon it;

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<sup>28</sup>Hartog describes the legal fiction of marital unity as a "set of imaginary 'facts' created to achieve a legal result. It was a tool, not an explanation: existing only for particular purposes, to be discarded when no longer useful. Belief in the spiritual union of a couple did not require legal treatment of the couple as a unity. There existed a standard set of arguments to mobilize when a lawyer wanted to fracture unity, to challenge the fiction" (*Man and Wife in America*, 107). My fourth chapter will examine the capacity of men to fracture coverture for their own gains through Power of Attorney.

<sup>29</sup> See Hartog, 104–7; Isenberg, *Sex and Citizenship*, 162; Cott, *Public Vows*, 11–13; and Basch, *In the Eyes of the Law*, 17, 179–80.

they augmented the fiction, so to speak, creating new ideas, works of literature, and protest movements that employed the figurative legal mode that served as the basis of their subjugation to imagine different legal lives for themselves. By taking up the figure of the widow as the counternarrative to marital unity, nineteenth-century works by Anglo-American, Cherokee, and African American women show how widowhood, in its many iterations, renders nineteenth-century social and legal constructs of womanhood visible. Their works refigure widowhood as an interruption of U.S. marriage law to control women and their property, sexuality, and labor.

## *II. Law as Literature, Literature as Feminist Jurisprudence*

As I have outlined, the legal architects of the United States composed a new national narrative, enshrined today in the founding documents, which rewrote the rules and philosophies of monarchical government and began anew. Yet this new national narrative was ultimately fictive in its imaginary quality, its nonexistence in reality, and in its particular ideology of freedom for all that it claims but that was mere fantasy to women and people of color. It fabricated a nation that excluded the majority of the nation.

I understand the United States, then, as a literary and a legal project comprised of multiple fictions. When women's rights activists and authors of the nineteenth century began to dismantle the logical fallacies of the founding documents, as we see in Stanton's Declaration of Sentiments for example, they uncovered even more minute fictions that suppressed them under the law, such as coverture. By exposing one fiction, they revealed larger national tales of equality and citizenship. These stories are interwoven into the fabric of their own works, as they wrote their own stories of citizenship and national belonging throughout the century.

One work on the storytelling capacities of citizenship and nineteenth-century literature that is of particular interest to this project is Christopher Castiglia's *Interior States: Institutional*

*Consciousness and the Inner Life of Democracy in the Antebellum United States* (2008).

Castiglia traces how during the late eighteenth and early nineteenth centuries practices of democratic agency transferred from social interactions and interventions among citizens to the “interior state” of one’s own individual body and mind. He argues that when social relations became interior, so, too, did imagination, which erupted as “screaming dissent and murmured epiphany” in popular fiction, since only the imagination could reconceive of social relations outside of the internalized realities of the antebellum nation.<sup>30</sup> Castiglia thus reads antebellum fiction as “the archive of the socially possible,” reflective of not “what ‘was’ but what might have been, what citizens aspired to.”<sup>31</sup>

Extending Castiglia’s work on literature as a mode of civic imagination, I study the widow in early and nineteenth-century American literature as a figure through which lawmakers and authors imagined the possibilities and limits of full citizenship for women outside of marriage. Tied up in the figure of the widow are questions of women’s citizenship status, evolving cultural constructions of womanhood, and ways in which the state attempted (but in many cases failed) to regulate the lives of widowed women by forcing their dependency on the state after the death of their husband rather than fostering their independence. Nineteenth-century family law became an instrument of the state for bridging, as Michael Grossberg says, “the public and private spheres of American society. Slowly it became the most personal aspect of public law, the most public aspect of private law.”<sup>32</sup>

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<sup>30</sup> Christopher Castiglia, *Interior States: Institutional Consciousness and the Inner Life of Democracy in the Antebellum United States* (Durham, NC: Duke University Press, 2008), 13.

<sup>31</sup> Castiglia, 13.

<sup>32</sup> Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1985), 29–30.

This dissertation reveals how white male lawmakers and white male and female culture makers struggled throughout the nineteenth century to create a network of legal and social dependencies for widows. They redefined marriage property laws in ways that ultimately benefited white males; they reinvented pension laws to keep women and their resources under the legal control of men and the patriarchal state; they circulated patriarchal propaganda which attempted to define widowed women under the logics of the Cult of Domesticity. The fictions that I examine resist these interventions to reimagine women's citizenship over and over again, in a myriad of messy, competing, yet original ways.

Like the invention of the nation writ large, then, the invention and reinvention of the widow was also a literary and legal project. This project works at the intersection of literature and the law to tell the stories embedded in legal systems and to show how these stories are reimagined in American literature. In order to attend to the literariness of nineteenth century legal documents, and to the modes of legalese figuratively engaged in works of literature, most of the works studied in this project are not canonical works of American literature. I intentionally seek to trouble legal, historical, and literary studies of marriage, womanhood, and citizenship in nineteenth-century America by placing historical texts, legal texts, and literary artifacts in conversation with one another. Aside from cameos by Nathaniel Hawthorne, Herman Melville, and Harriet Jacobs, my chapters center on works by lesser known women authors. They also spotlight the diaries, memoirs, and other objects characteristic of nineteenth-century print culture and life writing created by historical widowed women not commonly identified, unfairly, I believe, as authors of literature. Readers might question whether the texts that comprise much of the focus of each chapter, such as laws, lawsuits, petitions to the government, pension applications, and Power of Attorney documents, even qualify as literature at all.



By placing these texts in conversation, I make concrete the ways in which the literary and the legal collide through the widow figure. I show how women writers and women's rights advocates explored the fallacies and fabrications of national legal fictions ranging from coverture, to manifest destiny, to the institution of slavery. Whereas the law and popular literature frequently characterized widowed women as dependent beings in need of pity and financial aid, in the works that I study the widow becomes a figure through which authors envision women's individual citizenship outside of marriage and other state structures.<sup>33</sup>

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<sup>33</sup> Scholars have shown how in nineteenth-century sentimental culture and publications the widow was portrayed as a victim to be pitied and financially supported. Norma Basch and Ann Douglas track this change in perception of widowhood to the changing antebellum economy that both legally restricted women and barred them from legal and medical professions. Douglas argues that "the independent woman with a mind and a life of her own slowly ceased to be considered of high value. Widows provide a good index of this change in opinion. Since a widow is by definition a woman suddenly deprived of male support, the opportunities her culture affords her, the attitude it adopts toward her, are especially revealing of its stance toward women more generally" (*The Feminization of American Culture* [New York: Noonday Press, 1998], 51). Whereas in the colonial era a widow held a powerful role in her community, even so much so as to be imbued with witchcraft, by the nineteenth century "widows were conventionally viewed as pitiful charity cases" (Douglas, 51). This can be seen in the numerous charity cases and organizations designed to relieve the needs of widows and orphans. Basch notes that the antebellum widow "was viewed as an object of pity, an unsupported woman, and a potential drain on the resources of the community" (*In the Eyes of the Law*, 122).

But as Lisa Wilson's study of widowhood in Pennsylvania has shown us, "the rhetoric regarding female conduct bears little resemblance to the actual behavior" of widowed women (*Life after Death: Widows in Pennsylvania, 1750–1850* [Philadelphia: Temple University Press, 1992], 5). She argues, "That is not to say, however, that ... widowed ... unwittingly or hypocritically violated cultural prescriptions. When proper femininity stood in the way of providing for herself and her family, cultural prescription was quietly put aside. Using her unfeminine skills in the public world of men allowed a widow to meet her family obligations. Widows' conduct reflects a necessary and sometimes seemingly contradictory layering of gender roles and family needs. The result is a whole larger than the parts, complex and yet completely compatible within the confines of an individual woman's life" (5). She argues, "The lives of widows ... suggest an answer to the apparent enigma of separate spheres: their world revolved around the family rather than issues of gender. Certainly gender definitions are part of family life; however, these women regarded their role as defined primarily within the context of the family. Issues of financial or legal power, of what could be deemed proper female behavior,

As a literary scholar, I am trained to read in between the lines of figurative language and to find meaning in even the smallest of authorial choices. By bringing literary interpretation to legal and historical texts, I engage the understudied legal narrative-making of women across nineteenth-century America. I consider these works as early articulations of what we now term feminist jurisprudence, or legal theory that articulates and seeks to complicate the ways in which women are systematically subordinated through the gender biases of American law.<sup>34</sup>

Reading such texts with a literary eye is also part of the larger political object of this dissertation. I seek to counter historical and literary archives that systematically worked to silence widowed women throughout American literary history. Each chapter runs up against problematic representations of widowed women, erasures, silences, and textual manipulation of their words, works, and characters by literary authors, lawmakers, treaty commissioners, and other actors and their respective archives. By focusing on lesser-known works that project the widow's voice, I recover stories often banished from official records, or, even more excitingly, buried within them.

### *III. Studies of Widowhood*

While studies of American widowhood are scarce, those that do exist narrow their scope to very specific regions or communities, more thoroughly to document the statistical and legal

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faded in comparison with the overall priority of family survival after the loss of a father and husband" (5). This dissertation focuses not on the popular portrayal of widowed women but rather on the ways she is taken up in narratives challenging the American legal system that subjugates and disenfranchises women.

<sup>34</sup>See Ann Scales, *Legal Feminism: Activism, Lawyering, and Legal Theory* (New York: New York University Press, 2006); Martha Chamallas, *Introduction to Feminist Legal Theory*, 2nd ed. (New York: Aspen, 2003); and Nancy Levit, *Feminist Legal Theory: A Primer*, 2nd ed. (New York: New York University Press, 2016).

histories of individual widows. In her work on literary and historical widowhood in colonial America, Vivian Bruce Conger argues that the “lives and experiences” of widows in Massachusetts, Maryland, and South Carolina were “remarkably similar” and only “varied slightly in their specific regional contexts.”<sup>35</sup> Although Conger focuses mainly on the English common law system that crossed the Atlantic and broadly informed the rights of widows across early America, I insist upon the unique economic, social, and political opportunities for widows that developed across the nation. For example, the economic resources and social norms available to widows in the whaling towns of New England, I contend, differ drastically from the modes of being available to Civil War widows of the plantation South.

Historians such as Conger and Arlene Scadron argue that widowhood changed the very identity of the woman bereaved through an intricate collapsing of her individual domestic and larger societal roles. Conger distinguishes between the “clearly defined gender roles” of the wife and mother that, upon widowhood, become scrambled as she adapts to “several contested sites of socially constructed gender roles,” such as when she assumes the paternal and economic role of the “head of the household.”<sup>36</sup> Scadron also emphasizes the “multiple loss of role” in wifely duties faced by widows, focusing on the “psychological stress of bereavement” and the individualized “coping strategies” adopted by women from various economic, ethnic, and historical backgrounds.<sup>37</sup>

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<sup>35</sup> Vivian Bruce Conger, *The Widows' Might: Widowhood and Gender in Early British America* (New York: New York University Press, 2009), 11.

<sup>36</sup> Conger, 2.

<sup>37</sup> Scadron, “Introduction,” in *Widows and Widowhood in the American Southwest, 1848–1939* (Urbana and Chicago: University of Illinois Press), 7.

While a woman's domestic and public roles are unquestionably altered by the loss of her husband, I hope to focus more heavily on the role that she *gains* through the social signifier of the widow in the literature of the long nineteenth century. Widowhood signaled a profound change in social and legal status, as women transformed from married and dependent to widowed and independent. Widowed women were forced to take on the economic and domestic duties of the head of the household, and thus existed as public figures in her community with unique access to the economic market, to civic rights, such as contracting, and to the law.

Despite the robust study of grief and mourning in American literature that has preoccupied scholars of the past decade, the figure of the widow, and the unique modes of individual bereavement, national mourning, and even, perhaps most terrifyingly, the ways that this figure eventually *ceases* to mourn, have gone completely undiscussed by literary critics.<sup>38</sup>

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<sup>38</sup> See, for example, Dana Luciano's groundbreaking work *Arranging Grief: Sacred Time and the Body in Nineteenth-Century America* (New York: New York University Press, 2007), which views the "grieving body" as an "instrument of affective time keeping" (5) that moved at the slower pace of sacred time to allow space for "maintaining an affirmative humanness" during the ever-increasing pace of modernization (6). In *Confidence Men and Painted Women: A Study of Middle-Class Culture in America, 1830–1870* (New Haven, CT: Yale University Press, 1986), Karen Halttunen examines the importance of genuineness to grieving practices for middle-class men and women hesitant to be seen as insincere in an era of drastic social mobility. Mary Louise Kete's book *Sentimental Collaborations: Mourning and Middle-Class Identity in Nineteenth-Century America* (Durham, NC: Duke University Press, 2000) examines the many ways that sympathy circulated through "sentimental collaboration," a practice that began with the writing and exchange of mourning literature by ordinary Americans seeking to cope with their grief. Glenn Hendler's study of the nineteenth-century public sphere, *Public Sentiments: Structures of Feeling in Nineteenth-Century American Literature* (Chapel Hill: University of North Carolina Press, 2001), reads sentimental literature as a public instrument designed to make citizens, both men and women, feel and identify with literature in particular ways. Desirée Henderson's *Grief and Genre in American Literature, 1790–1870* (Farnham, UK: Ashgate Publishing, 2011) defines a genre of grief in American literature and argues that it creates a literary form unique to the nineteenth century.

My dissertation widens the critical field to consider widowhood as a productive frame for rethinking the theoretical, political, and social ramifications of death beyond loss.

#### *IV. The Legal and Extralegal Dimensions of Widowhood as Portrayed in Literature*

Once we begin to examine the widow and her democratic potential in American literature, we find that iterations of loss and civic being radiate outward from her, revealing a web of female agency amidst untraditional marital roles that existed outside of true womanhood. My project will illuminate these multiple modes of being to consider the broader cultural anxieties that arose from the sexual and political ambiguities of the widow figure and her many iterations in American literature. I view varying modes of husbandlessness as iterations of widowhood that inhabit temporary moments of access to some of the social, economic, and civic freedoms granted to widows, but without the limited legal protection and benefits of that status. For example, a sailor or captain's wife whose husband works at sea for years at a time takes on the economic and social responsibilities of her husband during his absence. By identifying and studying the alternate versions of widowhood, I hope to expand the extent to which we understand women's civic agency prior to and outside of legal recognition.

My first chapter examines the intersections of widowhood, witchcraft, and property in early Massachusetts and its reverberations in Nathaniel Hawthorne's great novel, *The Scarlet Letter*. Colonial coverture laws, which persisted throughout the nineteenth century, dictated that married women did not legally exist apart from their husbands. I analyze character Hester Prynne's fearsome sexual and economic independence alongside the novel's portrayal of the historical widow-witch Anne Hibbins. This comparison allows me to explore how the principles of coverture legally grouped wives as possessions *of* their husbands and legally independent widows as consequently possessed *by* witchcraft. The figurative and phantasmagoric language of

witchcraft used to describe Hibbins and Prynne reveal Hawthorne's larger anxiety over the burgeoning women's rights movement and their demands to alter the marriage contract.

The project's second chapter considers the influence of Native American matrilineal inheritance practices on the first Married Women's Property Act (MWPA) in the United States. The MWPA was a state-based system of laws that allowed (white) married women to own property separately from their husbands and stated that such property could not be seized by their husbands' creditors. In 1839, Mississippi became the first state to pass its Married Women's Property Law as a direct effect of the *Fisher v. Allen* lawsuit, in which a half-Chickasaw woman, Betsy Love Allen, fought to defend her human property— an enslaved man named Toney— from her husband's creditors. Allen won her lawsuit based on Chickasaw marriage customs entailing that spouses separately owned their own property, managed their own finances and contracts, and acquired and managed their own debts in marriage. By reading the extant records of the *Fisher v. Allen* lawsuit alongside the codified laws of the Cherokee Nation, the petitions against Cherokee land cession by Beloved Woman (and widow) Nan-ye-hi, or Nancy Ward, and Lydia Maria Child's antiremoval and revisionist history text, *First Settlers*, I complicate our understanding of the influence of Native American customs on the increase of white women's property and marriage rights. This chapter turns to the widow in antiremoval protest literature as a figure of social, economic, and legal critique of the American justice system by Native and white women writers alike.

The third chapter turns to the role of marriage and widowhood in slavery and to the laws and literature of the Civil War. Male-authored accounts of slavery, such as Frederick Douglass's 1845 *Narrative* attribute literacy or physical resistance to psychological freedom from slavery. In contrast the enslaved widow in American literature, as we see in Elizabeth Keckley's *Behind the*

*Scenes*, Harriet Jacobs's *Incidents in the Life of a Slave Girl*, and Hannah Crafts' *The Bondwoman's Narrative* uses husbandlessness to propel her journey for freedom, selfhood, and economic independence in the North. I am especially interested in the passing of the 1864 amendment to the Pension Act, which sought to give the widows and children of black soldiers fighting in the Civil War the same pensions as those given to white soldiers. Early iterations of the law implied recognition of enslaved *widowhood* at a time when enslaved marriage went entirely unacknowledged by the state. Narratives written by African American women during this era reflect this legal development, as they tend to be structured in ways that associate marriage with slavery and freedom in the North with widowhood or husbandlessness more broadly.

Turning to the nineteenth-century whaling towns of New England, the final chapter explores the diaries, memoirs, and poetry of women who endured prolonged separations from their seafaring spouses and thus fell somewhere in between widow and wife. The transient civic agency given to near-widows, sometimes by custom and sometimes more officially through legally binding Mariner's Power of Attorney contracts, was more socially accepted. Thus it was less threatening to a patriarchal state than the legal progression of widows' rights throughout the nineteenth century. This chapter argues that, especially in seafaring towns whose main populations comprise communities of women, as we see in Sarah Orne Jewett's *The Country of the Pointed Firs*, it is the near-widow who can achieve, perhaps, the purest form of democratic agency prior to suffrage. When female bodies, however temporarily, replace those of men in the marketplace, the household, and other civic spaces, I find that female citizenship is often imagined in utopian and uniquely democratic ways.

Ultimately, in order to understand the fullness of American women's citizenship prior to suffrage, we must turn to histories of widowhood and the law; to fully recognize how authors imagined the nation populated by independent women citizens we must turn to fictions of widowhood in literature. My dissertation offers a woman-centered account of the literary building of citizenship throughout the nineteenth-century. Widowhood makes legible the legal and symbolic potential of independent women who exist outside of the paradigms of true womanhood and Republican motherhood.



## CHAPTER 1

### **Citizens by Proxy: The Politics and Paranormal Renderings of Widowhood**

Nathaniel Hawthorne's *The Scarlet Letter* dramatizes the moment in America's colonial history when widowhood, witchcraft, and the limits of women's citizenship collide. Joan Gundersen contends that prior to the American Revolution all inhabitants of colonial America existed as dependent subjects of the British crown, rendering speculation on their formal citizenship "irrelevant."<sup>1</sup> Yet the customs of coverture, which structured state, religious, and domestic hierarchies between men and women in the colonies, came to define the parameters of American married women's citizenship from its inception in the early republic to the end of the nineteenth century, with traces lingering well after.<sup>2</sup>

Coverture subsumed women's bodies, property, and their entire legal existence under their husbands' authority; historian Carol Karlsen maintains that male spouses "could exert full powers of ownership over" them.<sup>3</sup> Linda Kerber's foundational work on women's citizenship explores the paradox of coverture in the context of the fledgling ideals of the early-American state. While the patriarchs of the republic sought to articulate the limits of independent citizenship for themselves, they intentionally occluded such status for women by absorbing, "virtually unrevised, the traditional English system of law governing the relationship between

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<sup>1</sup> Gundersen. "Independence, Citizenship, and the American Revolution."

<sup>2</sup> For example, women were not allowed to serve as jurists across the United States until 1973; before the Equal Credit Opportunity Act of 1974, a married woman often required her husband's cosignature before she could obtain a credit card.

<sup>3</sup> Carol F. Karlsen, *Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: W. W. Norton, 1998), 83.

husbands and wives.”<sup>4</sup> However, despite its limits, Kerber emphatically insists that “the new nation made women citizens,” and that women’s paradoxical citizenship “contained deep within it an implicit challenge to coverture.”<sup>5</sup> The unique relationship that widowed women held in relation to the law and the fledgling national body, however, posed a most *explicit* challenge to coverture. Despite their status as dependent British subjects in the colonial era, and later as dependent citizens of the United States, Gundersen concedes, “for most women widowhood presented their first chance for legally recognized independence.”<sup>6</sup>

Aside from dower rights, which decreed that widowed women were entitled to one third of their husband’s estate, the colonial widow’s sovereignty existed almost entirely outside of formal written legal codes. The extralegal aspects of the widow’s autonomy, ranging from forging new economic and social contracts, to running her household independently, to managing her husband’s estate or continuing his business, intimidated state and religious authorities as well as ordinary members of the polity. This chapter examines the manifestations of the colonial widow’s autonomy that were repeatedly translated into accusations of witchcraft by those who struggled to regulate the place of her legal, economic, and sexual independence in the national body. Culminating in the Salem Witchcraft Trials of 1692, early American widowed women’s autonomy was systematically and violently, physically and archivally, suppressed.

The specter of the supernaturally charged body of the independent widow resonates throughout *The Scarlet Letter* and “The Custom-House,” the semi-autobiographical sketch that precedes the novel. In “The Custom-House,” Hawthorne dwells on the reputation of his great-

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<sup>4</sup> Kerber, *No Constitutional Right to be Ladies*, xxiii.

<sup>5</sup> Kerber, 12–13.

<sup>6</sup> Gundersen, “Independence, Citizenship, and the American Revolution,” 73.

great-grandfather, John Hathorne, the abusive examiner of the Salem Witchcraft Trials, as making “himself so conspicuous in the martyrdom of the witches, that their blood may fairly be said to have left a stain upon him. So deep a stain, indeed, that his old, dry bones, in the Charter-street burial ground, must still retain it, if they have not crumbled utterly to dust!”<sup>7</sup>

Although Hawthorne critiques the cruelties of his early ancestor, the irritation with which he describes the extremity of John Hathorne’s everlasting infamy in the national narrative is unmistakable. Referring to the Salem Witchcraft Trials as “the martyrdom of the witches,” Hawthorne, not without a tinge of bitterness, trivializes the crisis, characterizing the victims (a significant percentage of whom were widowed women persecuted by John Hathorne) as “witches.”<sup>8</sup> In his attempt to challenge the irrevocable judgment of the national archive, Hawthorne, himself working from a government position, repeats history, convicting, for a second time, the victims of the Salem Witchcraft Trials through the resuscitation of the supernatural specters that condemned them. Perhaps this is not surprising, as Hawthorne admits of his ancestors, “strong traits of their nature have intertwined themselves with mine.”<sup>9</sup>

*The Scarlet Letter* enables Hawthorne to imaginatively return to the colonial past of his ancestors to reckon with the legal, economic, and sexual autonomy of the widow (figured in *The Scarlet Letter* as both Hester Prynne and her bewitched counterpart Ann Hibbens). Their treatment at the hands of his terrified ancestors doomed them, in return, to perpetual vilification in the annals of national history. Hawthorne invents *The Scarlet Letter* at the same moment that nineteenth-century historians worked to document the American past in narratives that

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<sup>7</sup> Nathaniel Hawthorne, “The Custom House,” in *The Scarlet Letter and Other Writings*, ed. Leland S. Person (New York: W. W. Norton, 2005), 11.

<sup>8</sup> Hawthorne, 11.

<sup>9</sup> Hawthorne, 12.

functioned as part of what Lauren Berlant terms the National Symbolic, or the political, discursive “tangled cluster” of national spaces that strives to provide narratives “for a collective consciousness or national subjectivity.”<sup>10</sup> Hawthorne’s novel thus offers “the nation another archive and another mode of knowledge from which to gain material for the production of a historicized *and* utopian American heritage.”<sup>11</sup> Eighteenth- and nineteenth-century accounts of the Salem Witchcraft Trials, of which this chapter contends *The Scarlet Letter* participates, interpret the surviving records of the colonial widow through contemporary subjectivities. In so doing, writers silence characteristics of the widow’s anomalous mode of civic experience that do not fit their utopian understanding of the Puritan founding or their assumptions of women’s roles in the civic polity in the nineteenth century.<sup>12</sup>

Because Hawthorne intentionally blurs the line between fiction and archive, or romance and history, *The Scarlet Letter* rewards a reader attuned to the historical backbeat of the novel. This chapter explores the lives of Bridget Bishop, Ann Hibbens, and Hester Prynne as three widowed women on trial both in their early-American historical context as well as in their fictional portrayal in the nineteenth-century novel. Critic Edward Ingebretsen describes Hawthorne’s “oblique revisiting of the drama of Salem” as an “irresistible impulse to remember

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<sup>10</sup> Lauren Berlant, *The Anatomy of National Fantasy: Hawthorne, Utopia, and Everyday Life* (Chicago: University of Chicago Press, 1991), 20.

<sup>11</sup> Berlant, 179.

<sup>12</sup> The official records of the Salem Witchcraft Trials were not only extant in the mid-nineteenth century but frequently historicized as part of a national project to document the “American” past. In fact, Charles Upham, one of the men who “decapitated” Hawthorne from his position as Surveyor, published one such history, *Salem Witchcraft*, in 1867. See *Salem Witchcraft: With An Account of Salem Village and a History of Opinions on Witchcraft and Kindred Subjects* (Boston: Wiggin and Lunt, 1867).

and revise the history that was and to invent a history that wasn't."<sup>13</sup> Because Hawthorne's methodology simultaneously revisits, revises, and invents the history of the novel, I pair my reading of the fictional Hester Prynne in *The Scarlet Letter* with studies of the only surviving legal documents surrounding Bishop and Hibbens. These include seventeenth-century records of the women's court examinations, written and transcribed depositions and testimonies against them, the sermons that involve them, and the many historical narratives that are pieced together in the nineteenth century in an attempt to bracket them within the patriarchal national record.

Through a reading of the trial of Bridget Bishop, the first woman sentenced to execution for witchcraft by John Hathorne during the Salem Witchcraft Trials, this chapter will examine how the historical traces of the Salem crisis lurk in the subtext of *The Scarlet Letter*, rupturing the narrative during crucial scenes, and emerging particularly through the narrator's uncompromising judgment of Hester Prynne. As we see in the depositions culled by John Hathorne against Bridget Bishop, Hawthorne too expresses Hester Prynne's and her counterpart, Ann Hibbens's, widowed autonomy through the phantasmagoric language of the Salem Witchcraft Trials.

Hibbens, the figure through whom witchcraft emerges most literally in the novel, inherits a complicated documentary history that, I will show, aligns as closely with Hester Prynne's values and political theologies at times as with Anne Hutchinson, the revolutionary antinomian with whom Hawthorne more overtly aligns Hester. By reading the figures of Bridget Bishop,

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<sup>13</sup> Edward J. Ingebreetsen, *Maps of Heaven, Maps of Hell: Religious Terror as Memory from the Puritans to Stephen King* (Armonk: M. E. Sharpe, 1996), 56. See also Nina Baym in *The Scarlet Letter: A Reading* (Boston: Twayne, 1986), who argues that Hawthorne's "setting evokes the historical record without being committed to it, providing the atmosphere for characters who both are and are not beings in history" (36–37).

Ann Hibbens (both her fictional and historical iterations), and Hester Prynne in tandem with the patriarchal politics of national narrative making, this chapter investigates how the colonial widow's legal autonomy and unauthorized modes of civic participation challenged the coherence of the National Symbolic under construction in the Puritan state as well as its legacy in the nineteenth century.

This chapter builds upon three overlapping arguments that view the unique legal and civic status of colonial widows persecuted for witchcraft as central to understanding the role of Hester Prynne and thus the politics of *The Scarlet Letter*. First, I establish the ways in which both state and religious authorities and the general population of Puritan Massachusetts were threatened by the widow's legally independent and unregulated body. As such, Massachusetts's denizens frequently referred to widows in court cases, sermons, and other writings and oral testimonies as proxies of their husbands rather than as autonomous civic beings.

Informed by Joseph's Roach's foundational work on surrogacy and performance in *Cities of the Dead: Circum-Atlantic Performance* I will theorize the phenomenon of what I term 'proxying' to be a tactic of the state that seeks to repeatedly (re)cover the widow under her deceased husband's identity rather than acknowledge her as an independent member of the polity. Viewing the widow as acting in place of her deceased husband rather than as forging contracts and managing her affairs, her home, and her body for herself, strategically kept her within the patriarchal structure of the Puritan state. Hawthorne fictionalizes, distorts, and thus further complicates the phenomenon of widowed proxying, as Hester Prynne becomes not a proxy of her deceased husband, whom no one knows, but rather of the penal Puritan state signified and made legible through the 'A' which she is sentenced to bear.

Second, I explore the relationship between the widow's autonomy and her high likelihood of being persecuted for witchcraft. The many modes of legal and cultural independence that the colonial widow takes on, particularly her capacity to uphold and forge new economic and social contracts, frequently become refigured by state authorities and ordinary citizens in the courtroom as acts of witchcraft and made criminal. Accused of forging the ultimate contract against the state by aligning with the Devil, the autonomous widow becomes viewed as his proxy as well. Cast by the body politic as spectacular deviances of womanhood, independent widows moved beyond serving as a philosophical threat to the patriarchal structure of the colony to posing a distinct danger to the Puritan project.

In the case of the fictional Ann Hibbens, Hawthorne unflinchingly condemns the "bitter tempered widow of the magistrate" as a witch.<sup>14</sup> By exaggerating the records that describe Hibbens' witchcraft trial, Hawthorne inadvertently upholds the Puritan judgments against her. He strives to make her widowed autonomy repulsive both to the reader and to Hester Prynne, who runs the risk of becoming her protégée. Although Hester never explicitly engages in witchcraft in the novel, her radical breaking of the marriage contract between her and Roger Chillingworth becomes repeatedly cast as spectacular. Like his historical predecessors, the narrator of the novel also resorts to the fantasmagoria of the Salem Witchcraft Trials to both express and to suppress the moments where Hester's independence emerges most fiercely.

Finally, I consider the spectrality of the archive itself that preserves colonial widowed women's histories under the terms of their violent silencing and *The Scarlet Letter* as an extension of this archival history. In *Archive Fever* Jacques Derrida argues, "The structure of the

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<sup>14</sup> Nathaniel Hawthorne, *The Scarlet Letter, A Romance*, in *The Scarlet Letter and Other Writings*, ed. Leland S. Person (New York: W. W. Norton, 2005), 37.

archive is *spectral*. It is spectral *a priori*: neither present nor absent ‘in the flesh,’ neither visible nor invisible, a trace always referring to another whose eyes can never be met.”<sup>15</sup> The spectral evidence used against women like Bridget Bishop, Ann Hibbens, and Hester Prynne, and that bifurcates their physical and legal identities, also structures their archives and thus their place in the national narrative. Hawthorne suffers from the archive fever that Derrida describes as “a compulsive, repetitive, and nostalgic desire for the archive, an irrepressible desire to return to the origin, a homesickness, a nostalgia for the return to the most archaic place of absolute commencement.”<sup>16</sup> As we see in “The Custom House,” Hawthorne yearns to return to the origins of his family both in space (Salem) in occupation (working for the government), and in the national archive (which he characterizes as the aim of the novel to amend). Frustrated by the unalterable historical archive that damns his ancestors to infamy, Hawthorne turns to *The Scarlet Letter* to experiment with the power of national narrative making.

*I. “Thou that wast my wife”: Hester Prynne and Colonial Widowhood*

Despite Hester Prynne’s status as one of the most canonical and frequently studied women characters in American literature, scholars have not fully considered her liminal marital status within *The Scarlet Letter* as widowhood.<sup>17</sup> Yet readers must acquaint themselves with Hester as her fictive community grew to know her, specifically as an economically independent

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<sup>15</sup> Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: University of Chicago Press, 1996). 84.

<sup>16</sup> Derrida, 91.

<sup>17</sup> For example, in *Maps of Heaven, Maps of Hell*, Ingebreetsen refers to Hester as a “husbandless mother” (55). Ingebreetsen further notes that Brook Thomas, in his essay “Citizen Hester: *The Scarlet Letter* as Civic Myth,” identifies Chillingworth as her “former husband” (190), that Jeremy D. Weinstein refers to Hester as an “unwed mother” in “Adultery, Law, and the State: A History” (225n37), and that D. H. Lawrence in *Studies in Classic American Literature* refers to Master Prynne as Hester’s “former husband” (190).



and charitable widowed woman. Interpreting the ways in which Hawthorne both develops and distorts Hester's legal, economic, and sexual autonomy as a colonial widowed woman becomes indispensable to unsettling the novel's central rupture: the narrative chasm between the community's gradual reception of Hester into the Puritan milieu and the narrator's relentless persecution of her womanhood. Hawthorne reimagines the sovereignty of widowhood in ways that subsume Hester under patriarchal control, presenting her as a civic foremother yet ultimately precluding her actualization in the colonial, and thus the nineteenth-century, national body.

*The Lawes Resolutions of Womens Rights*, published in London in 1632 and written by anonymous lawyer T. E., was the first book written in English that specifically addressed the legal privileges of women. Structured by the stages of a woman's life, from dependence on her parents, to marriage, and finally to widowhood and remarriage, the lawyer, often wryly, defines the laws pertaining to seventeenth-century women's lives, both in England and across the Atlantic in colonial America. In his introduction to the section on the legal rights of widowhood, he writes, "Why mourne you so, you that be widowes? Consider how long you have been in subjection under the predominance of parents, of your husbands, now you be free in libertie, and free proprii juris at your owne law."<sup>18</sup>

A widow in colonial America certainly experienced the "libertie" of her "owne law," as she circulated in social, legal, and economic realms generally closed to married or single women.<sup>19</sup> Norton notes that although a widow assumed the familial role of head of the

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<sup>18</sup> T. E., *The Lawes Resolutions of Womens Rights: [. . .] Together with a Compendious Table, whereby the Chiefe Matters in this Booke contained, may be more readily Found* (London: John Grove, 1632), 232. For mention of *Lawes Resolutions* in histories of colonial widowhood, see, Conger, *The Widows' Might*; and Mary Beth Norton, *Founding Mothers & Fathers*, 138.

<sup>19</sup> E., *The Lawes Resolutions of Womes Rights*, 232.

household, a powerful “institutional structure of the state,” as a woman she could not inherit most of her husband’s political responsibilities, such as voting, serving on juries, participating in the militia, or holding any kind of public office.<sup>20</sup> She gained the rights, however, to legally make contracts and to sign wills, to manage her husband’s estate, and to rule her own household and rear her children independently, powerful roles in a Filmerian social system.<sup>21</sup> The widow’s freedom to make, break, and challenge social and economic contracts in the community is a crucial aspect of her citizenship that religious and political authorities, as well as ordinary members of the community, strove to control.

Vivian Bruce Conger’s book-length study of the history of colonial widowhood emphasizes the “important responsibilities” transferred to widows that “signified a change in a woman’s very being.”<sup>22</sup> This change necessitated the public circulation of widows as they conducted business beyond their household and, in so doing, “assumed new, more encompassing roles as both recipients and providers of charity, as friends, as neighbors, as female support

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<sup>20</sup> Norton, *Founding Mothers & Fathers*, 139.

<sup>21</sup> In *Founding Mothers & Fathers*, Norton studies colonial society through the lens of English paternal power theorist Sir Robert Filmer. Filmer saw the “family and the state as analogous institutions, linked symbiotically through their similar historical origins, aims, and functions” (4). In this system, “the institutional structures of the state were designed to control male household heads. In turn, they were expected to rule their subordinates of both sexes” (139). In a system dependent on hierarchies of power that emanated from the top down, a widow’s gaining of the position of head of the household was politically significant, even if she didn’t acquire her husband’s (or her own) civic rights to vote, to fight in the militia, or so on.

<sup>22</sup> Conger, *The Widows’ Might*, 82. Unlike John Demos, who characterizes widowhood as “relatively uncommon” in the colonies, or Mary Beth Norton, who claims, “widows of ordinary rank were of negligible importance in the broad context of colonial politics,” Conger’s study demonstrates the widespread reaches of widowhood in everyday colonial life. John Demos, *Entertaining Satan: Witchcraft and the Culture of Early New England* (Oxford: Oxford University Press, 2004), 299; and Norton, *Founding Mothers & Fathers*, 164.

networks, and, finally, as citizens in the polity who assumed both rights and responsibilities of citizenship even if they did so within the domestic realm broadly defined.”<sup>23</sup>

Hester Prynne possesses several characteristics of the colonial widowed woman defined by Norton and Conger: she is the head of her household and the sole guardian of her little daughter, Pearl, and she represents herself in front of the government to insist upon those rights; through her extraordinary skill as a seamstress she is economically independent and significantly contributes to the commercial fabric of the colony; and she serves as a “provider of charity” and a one-woman “female support networ[k]” to the sick, poor, and brokenhearted of Boston.<sup>24</sup> Yet Hester is not simply figuratively cast as a widowed woman. Adultery was one of a dozen capital crimes (shortly following witchcraft) in the Massachusetts Bay Colony. This chapter argues that Hester bears eternal, public punishment as opposed to the loss of her life because of her social status as a presumed widow in the community.

Yet Hawthorne troubles Hester’s widowhood from its inception. The scene in which Hawthorne establishes that her community understood her to be widowed occurs through a conversation between an innocent bystander and a man none other than Hester’s husband himself. At the exact moment that readers find Hester on the scaffold, Master Prynne (who will later rename himself Roger Chillingworth and take up residence near Hester in Boston) emerges from his captivity in the forest and pretends not to know his wife.

Querying the bystander as to Hester’s identity, the man replies that she “was the wife of a certain learned man,” who “was minded to cross over and cast in his lot with us of the

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<sup>23</sup> Conger, *The Widows’ Might*, 106.

<sup>24</sup> Conger, 106.

Massachusetts,” and had thus “sent his wife before him.”<sup>25</sup> He notes that in the two years “or less” that Hester has lived in the colony, “no tidings have come of this learned gentleman.”<sup>26</sup> The bystander explains that the magistrates believe that Hester was “strongly tempted to her fall,” and that “moreover, as is more likely, her husband may be at the bottom of the sea;- they have not been bold to put in force the extremity of our righteous law against her. The penalty thereof is death.”<sup>27</sup> Hester avoids execution for adultery entirely because the magistrates, and clearly the bystander relating the facts to Chillingworth, conclude that she has been widowed. Her assumed widowhood thus enables the conditions for her economic, sexual, and philosophical independence upon which the entire novel elaborates.

The magistrates’ assumption of Hester’s widowhood is a reaction to the early national development of written legislation. In the 1630s, Deputies of the Massachusetts Bay Colony “advocated a compilation of a code of laws ... which would enable the people to know the exact extent of their natural and political rights and to which the Magistrates would be required to adhere in the execution of their judicial duties.”<sup>28</sup> Although “The General Laws and Liberties of Massachusetts” would not circulate until 1648, “The Capitall Lawes of New England,” a broadside widely circulated and originally consisting of 12 capital laws, was augmented to 15, printed, and circulated in 1642, the same year that Hester Prynne finds herself on the scaffold.<sup>29</sup>

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<sup>25</sup> Hawthorne, *The Scarlet Letter*, 45.

<sup>26</sup> Hawthorne, 45.

<sup>27</sup> Hawthorne, 46.

<sup>28</sup> John D. Cushing, “Introduction,” in *The Laws and Liberties of Massachusetts, 1641–1691: A Facsimile Edition, Containing also Council Orders and Executive Proclamations*, ed. John D. Cushing (Wilmington, DE: Scholarly Resources, 1976), 1:xv, xvi.

<sup>29</sup> Cushing, a scholar of Puritan law, explains, “Each of the provisions [in “The Capitall Lawes”] was clearly a matter of fundamental law, and the list comported fully with the prevailing Puritan view of the proper nature of laws” (1:xix).

Of the 15 capital crimes, 6 of them are designed to regulate and punish aberrant sexuality and deviant sexual acts, ranging from bestiality to rape to homosexuality. Adultery ranks ninth on the list: “If any person committeth adultery with a married, or espoused wife, the Adulterer, and the Adulteresse, shall surely be put to death.”<sup>30</sup> The legal premise of the novel, then, in which Hester suffers a kind of life imprisonment through wearing the letter ‘A’ rather than face execution, hinges on the authorities’ hesitancy to put to death for adultery a woman socially presumed to be a widow and thus husbandless, making the act of adultery impossible. Hester’s consensual sex act outside of marriage merits harsh public punishment in the Puritan state, but the authorities decree that it ultimately does not warrant her death.

Perhaps the greatest challenge to the relation of Hester’s presumed widowhood to the capital law can be seen in the protest of the pitiless “self-constituted judges” that comprise the women onlookers in the crowd. One goodwife retorts, “This woman has brought shame upon us all, and ought to die. Is there not law for it? Truly there is, both in the Scripture and the statute-book. Then let the magistrates, who have made it of no effect, thank themselves if their own wives and daughters go astray!”<sup>31</sup> In this vocalized moment of political dissent, the goodwife directly refers to the “Capitall Lawes” of the colony, and criticizes the magistrates for failing to endorse the written law. By not enforcing the law to its full capacity, the goodwife implies that the magistrates condone Hester’s sinful behavior and put the religious, moral, and legal foundations of the colony at risk.<sup>32</sup>

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<sup>30</sup> “The Capitall Lawes of New-England,” in *The Laws and Liberties of Massachusetts, 1641–1691*, 1:1.

<sup>31</sup> Hawthorne, *The Scarlet Letter*, 39.

<sup>32</sup> Interestingly, the sexual deviance fictionalized through Hester appears to have precedent in the 1648 printing of “Laws and Liberties.” The law states:

The “autonomous female jurisprudence” of the women onlookers that Berlant argues characterizes “the female gender in *The Scarlet Letter*,” does not give Hester’s widowhood the benefit of the doubt.<sup>33</sup> Implied in the goodwife’s tirade is that the truth of Hester’s marital situation is unknown, and that Master Prynne could be just as alive as he is presumed dead. Her literal interpretation of the law, or what Berlant characterizes as “her fealty to the theory of the letter as opposed to its patriarchal embodiment,” demonstrates an “excess legalism” that the narrator uses to characterize the political participation of women in the novel, ultimately making them “appendages to, rather than the foundation of, the Colony’s utopian project.”<sup>34</sup> The women colonists’ harsh judgment of Hester, both on the scaffold and once she reenters the community, however, might be as much a critique of the magistrates to uphold the law as it is of Hester’s perceived immorality. For the women of the community, at least at first, Hester embodies not only the sin of her anarchical sexuality, but also the limits of codified law. She exemplifies the ways in which the widowed citizen exists in liminal relation to the state, challenging the patriarchal hierarchy of public and private governance.

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whereas divers persons both men and women living within this Jurisdiction whose Wives, and Husbands are in England, or else-where, by means whereof they live under great temptations heer, and some of them committing lewdness and filthiness heer among us ... and some of them live under suspicion of uncleanness, and all to the great dishonor of God ... it is therefore ordered by this Court & Authoritie thereof for the prevention of all such future evils that all such married persons as aforesaid shall repair to their said relations by the first opportunitie of shipping upon the pain, or penaltie of twenty pounds. As with the capital law against adultery, authorities of the colony sought to regulate the abnormal experience of separation from one’s family during the emigration process in order to protect the patriarchal structuring of the family that worked in tandem with the regulating objectives of the Puritan state. Hester’s affair with Dimmesdale, then, however threatening to a state dependent on women’s submission, appears not to have been uncommon during the period of early settlement in the Massachusetts Bay Colony. “The Capitall Lawes of New-England,” in *The Laws and Liberties of Massachusetts, 1641–1691*, 1:43.

<sup>33</sup> Berlant, *The Anatomy of National Fantasy*, 106.

<sup>34</sup> Berlant, 108.

When Hester is finally freed from prison, she begins the “daily custom” of life as an independent, though outcast, widowed woman in the colony.<sup>35</sup> The narrator never reveals how Hester survived in Boston before her fall while waiting for Master Prynne to join her. It is clear, however, that when Hester reenters the community as a widow figure, she embarks on an entirely new way of living.<sup>36</sup> “By the license of the magistrates, who still kept an inquisitorial watch over her,” Hester takes up residence in a small, abandoned cottage, “with some slender means,” and begins to run her own household, raise Pearl, and earn her living as an extraordinarily skilled and artistically creative seamstress. Over time, her “handiwork became what would now be termed the fashion,” and she became known for stitching the elaborate garments of magistrates, ministers, and military men for official ceremonies.<sup>37</sup>

Despite her success, the narrator emphasizes that Hester “bestowed all her superfluous means in charity,” and that she devoted time that she could have used to indulge her artistic creativity “in making coarse garments for the poor.”<sup>38</sup> In addition to publicly circulating throughout Boston as the head of her household to provide for herself and Pearl (two defining characteristics of widowhood in early America) Hester engages, then, in another social responsibility common to colonial widows: doing good works in the community. Conger argues that widows forced to circulate in the communal world of the colony “threatened the natural

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<sup>35</sup> Hawthorne, *The Scarlet Letter*, 55.

<sup>36</sup> Conger argues that widows “created an important place for themselves in the economic life of the community *and* in the wider market. These women embraced old and new economic values, assumed male and female economic agency, and pursued individual and communal economic goals. The deaths of their husbands, unexpected or not, brought widows face to face with the reality of being financial on their own and needing to provide for their family on a daily basis” (*The Widows’ Might*, 131).

<sup>37</sup> Hawthorne, *The Scarlet Letter*, 57.

<sup>38</sup> Hawthorne, 58.

order.”<sup>39</sup> One of the ways that a wealthy widow, or in the case of Hester, one who successfully makes her living in widowhood, could characterize herself as less threatening and more feminine was through charity work. Colonial widows had a responsibility “to the community, especially the sick, poor, and homeless among them.”<sup>40</sup> Moreover, she finds that widowed women often used “their benevolence and patronage to help other women.”<sup>41</sup>

Doing good works becomes a crucial part of Hester’s widowed life and identity in Boston, and ultimately facilitates her reentry into the social fabric of the community. The narrator emphasizes, “None so ready as she to give of her little substance to every demand of poverty ... None so self-devoted as Hester, when pestilence stalked through the town.”<sup>42</sup> Hester’s reputation for doing good works so greatly redeems her that “many people refused to interpret the scarlet A by its original signification. They said that it meant Able; so strong was Hester Prynne, with a woman’s strength.”<sup>43</sup> As Hester gradually takes on the role of the selfless, penitent widow in the community, the judging goodwives forgive her, and by the end of the novel turn to her as an extralegal authority on the limits of womanhood.

Hester reenters Puritan society after her release from prison as a widow not only in social, economic, and domestic senses, but in psychological fashion as well. When Chillingworth, acting as a physician, treats Hester for hysteria in prison after her afternoon on the scaffold, he forces her to agree to keep his identity a secret from the community. In so doing, he secures her social and psychological position as a widow. He orders, “One thing, thou that wast my wife, I

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<sup>39</sup> Conger, *The Widows’ Might*, 107.

<sup>40</sup> Conger, 118.

<sup>41</sup> Conger, 121.

<sup>42</sup> Hawthorne, *The Scarlet Letter*, 105.

<sup>43</sup> Hawthorne, 106.



would enjoin upon thee... Thou hast kept the secret of thy paramour. Keep, likewise, mine!

There are none in this land that know me. Breathe not, to any human soul, that thou didst ever call me husband!" He urges, "It is my purpose to live and die unknown. Let, therefore, thy husband be to the world as one already dead, and of whom no tidings shall ever come. Recognize me not, by word, by sign, by look! Breathe not the secret, above all, to the man thou wottest of."

He further threatens, "Thou and thine, Hester Prynne, belong to me ... betray me not!"<sup>44</sup>

By addressing her as the woman "that wast my wife" Chillingworth psychologically annuls their marriage while simultaneously attempting to keep Hester "covered" under the customs of coverture, reminding her that she and all that she owns technically belongs to him.<sup>45</sup> While relieving Hester of her role as wife, Chillingworth paradoxically wields his authority as husband to ensure her collaboration in obliterating his former identity and thus effectively widowing her. By taking up a new identity, though technically still alive and tangentially involved in Hester's life, Chillingworth ensures that her husband never will, in fact, join her in Boston. The narrator explains, "Unknown to all but Hester Prynne, and possessing the lock and key of her silence, he chose to withdraw his name from the roll of mankind, and, as regarded his former ties and interests, to vanish out of life as completely as if he indeed lay at the bottom of the ocean, whither rumor had long ago consigned him." Rhetorically becoming "one already dead," Prynne ends his former life (thus legitimately widowing Hester) and creates a new identity through which to persecute Dimmesdale.<sup>46</sup>

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<sup>44</sup> Hawthorne, 54.

<sup>45</sup> Hawthorne, 54. For more on ownership in the novel, particularly of Chillingworth over Hester, see Ellen Weinauer, "Considering Possession in *The Scarlet Letter*," *Studies in American Fiction* 29, no. 1 (2001): 93–112.

<sup>46</sup> Hawthorne, *The Scarlet Letter*, 54.

In the fictional landscape of the novel, then, Hester undoubtedly occupies the social position of a widow in her community; only the omnipresent narrator knows her truth and continually examines her persistent infidelity of loving Dimmesdale despite her husband's return. Because the narrator's positionality exists outside of the fictive world of the novel, the social fabric of the text is intermittently torn as he omnisciently interrupts the narrative to judge Hester's behavior. Whereas Hester exists as a widow both in her own psyche and in her community, the novel is repeatedly riven by the narrator's asides that insist upon her guilt.

As Hester's sovereignty grows throughout the novel, particularly into philosophical and political realms, the narrator seems almost ready to accept her plans for a social revolution for women. Yet he cannot condone her ultimate disregard for her sin. In the only other scene where Hester carries on a prolonged conversation with her former husband, seven years after their initial agreement, Hester confronts Chillingworth about his machinations against Dimmesdale and insists on telling the preacher the truth. She later vents her hatred for Chillingworth and how he manipulated her into marriage, bitterly asserting, "He betrayed me! He has done me worse than I did him!"<sup>47</sup> The narrator intervenes, crying:

Let men tremble to win the hand of woman, unless they win along with it the utmost passion of her heart! Else it may be their miserable fortune, as it was Roger Chillingworth's, when some mightier touch than their own may have awakened all her sensibilities, to be reproached even for the calm content, the marble image of happiness, which they will have imposed upon her as the warm reality. But Hester ought long ago to

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<sup>47</sup> Hawthorne, 114.

have done with this injustice. What did it betoken? Had seven long years, under the torture of the scarlet letter, inflicted so much of misery, and wrought out no repentance?<sup>48</sup> Clearly siding with Chillingworth, the narrator reproves Hester for the emotional and sexual agency she feels in rejecting her unhappy and misguided marriage.

Discomfited by her unrepentant passion for Dimmesdale, the narrator decries her lack of regard for the authority of her unsuspecting husband and worries for the patriarchal institution of marriage, in which a woman is expected to serve her husband as both his subordinate and his possession. The narrator seems to have a different understanding of the scarlet letter than the magistrates who sentenced her to wear it. State authorities seek to mark Hester's shame for the entirety of her natural life so that she might serve as an example of how sexual and social deviance is managed in the colony. The narrator, however, seeks personal repentance for her sin as well as continued obedience to her husband. Hester's refusal to atone for her affair combined with her philosophies that reimagine the body politic to include women as equals makes Hester a dangerous citizen indeed.

We learn that Hester's refusal to stop loving Dimmesdale is not simply a personal failing, according to the narrator, but also an intentional political transgression. When describing the ruin of Dimmesdale's body and intellect due to his own unconfessed guilt and Chillingworth's conniving, the narrator confesses of Hester, "Such was the ruin to which she had brought the man, once, -nay why should we not speak it?- still so passionately loved!"<sup>49</sup> While Dimmesdale physically and mentally decays under the weight of his unsentenced guilt, the narrator declares that for Hester, "The whole seven years of outlaw and ignominy had been little other than a

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<sup>48</sup> Hawthorne, 114–15.

<sup>49</sup> Hawthorne, 124.

preparation for this very hour.”<sup>50</sup> The narrator finally reveals that while Hester certainly suffered under the disgrace of the scarlet letter on her breast, she never once considered it an obstacle to her sexual and intellectual freedom. She bears the sentence of the magistrates, but she does not believe in it.

The form of *The Scarlet Letter* hinges upon the narrative device of Hester’s widowhood. While Hawthorne utilizes aspects of the sovereignty of widowhood to explore independent women’s citizenship (both during the time of his ancestor’s infamy and in the contemporary nineteenth-century moment), he subsumes Hester’s autonomy under the manipulative and patriarchal gaze of both her husband and the uncompromising historiography of the narrator. In a monstrous contortion of widowhood, Hawthorne forces Hester to reckon with a husband returned from the dead. He grants her the social sovereignty of a widow yet pinions her under Chillingworth’s control.

Whereas her community eventually recognizes her as a penitent, generous, and wise widow, the narrator forces another view upon the reader of Hester as unrepentant and outside the bounds of womanhood. Reading Hester as a widow illuminates the extent to which Hawthorne elaborately constructs the illusion of women’s autonomy in Hester but only under conditions in which her husband can lurk behind her, controlling the narrative and regulating her behavior. Like her widowed historical predecessors Bridget Bishop and Ann Hibbens, Hester Prynne finds herself on trial in *The Scarlet Letter* as the narrator struggles to subdue her sovereignty and to reposition her under the patriarchal control of the state.

## *II. Citizens by Proxy: The Politics of the Early American Widow*

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<sup>50</sup> Hawthorne, 129.

Hester is not the only widow on trial in *The Scarlet Letter*; Hawthorne portrays Ann Hibbens, “the bitter-tempered widow of the magistrate,” as an appalling iteration of independent womanhood who is always already presumed guilty of witchcraft.<sup>51</sup> Colonial widows frequently found themselves in the courtroom defending their womanhood in the face of accusations ranging from property disputes, to slander, and very often witchcraft.<sup>52</sup> The narrative of colonial widowhood thus plays out most often in legal documents, such as wills, or in records of legal disputes between either widowed women and the state or widowed women and their neighbors and family members. Such documents are invaluable for investigating the many ways in which legal authorities and ordinary community members alike encountered widowed women.

The legal life of the widow broadened the social, political, and economic structure of the Puritan state for women. By reading the extant legal histories of widowed women such as Bridget Bishop and Ann Hibbens side by side, I find that the colonial polity frequently viewed the widow as a proxy of her husband who physically, socially, and economically acted in his place after his death rather than as an individual entity in the public community. A proxy, or a person “appointed to act in place of another,” by definition possesses less agency than the person for whom she acts as a substitute; yet acting as a proxy for one’s husband had powerful potential in early America and, I argue, was a crucial characteristic of widowed women’s citizenship.<sup>53</sup> As I will show through readings of the colonial legal documents pertaining to Ann Hibbens and

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<sup>51</sup> Hawthorne, 37.

<sup>52</sup> Conger and Norton emphasize the difficulties that widows faced upon regaining their legal identities and managing estates and households, especially from communities resistant to behavior outside of the prescribed gender roles of the colony. These attitudes toward widows circulating in the private sphere clearly transfer to the ill will born by many members of the community that we see in their accusations of widowed or previously widowed women as practicing witchcraft.

<sup>53</sup> *OED Online*, s.v. “proxy, n.,” accessed June 1, 2015, [www.oed.com/view/Entry/153573](http://www.oed.com/view/Entry/153573).

Bridget Bishop and their symbolic relationship to Hester in *The Scarlet Letter*, the state attempted to refigure the customs of coverture to “cover” the widow and thus restrain the bounds of her newly enhanced citizenship. By displacing the widow’s agency onto her deceased husband, lawmakers employed a patriarchal tactic of the state that I term ‘proxying.’

My hypothesis on the proxying of widows builds upon, yet critically diverges from, Joseph Roach’s groundbreaking work on surrogacy, performance, and memory in *Cities of the Dead: Circum-Atlantic Performance*. Roach defines surrogation, a social phenomenon in which community members attempt to fill the place of those recently departed, as the process in which culture “reproduces and re-creates itself.”<sup>54</sup> He describes how society requires “anxious” survivors to step into the economic and social spaces vacated by the departed, perhaps even “reinvent[ing] themselves” to better carry on “the roles played by their predecessors.”<sup>55</sup> Yet, for many reasons, surrogation “rarely if ever succeeds.”<sup>56</sup>

In many ways the colonial widow could be seen as a classic example of the type of surrogation that Roach outlines. She is expected to fill the social and economic roles of her husband in her community and in her home. As a woman, she exists at the margins of Puritan society, making her presence threatening when she emerges as a legally independent citizen. The history of the widow, as I will show, becomes a history of erasure, as she is repeatedly rejected as her husband’s surrogate and physically and archivally silenced.

Yet Roach’s theory does not fully account for the experience of gender as a marginalizing force in societies seeking to define themselves. Proxying, as I theorize it, differs crucially from

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<sup>54</sup> Roach, *Cities of the Dead*, 2.

<sup>55</sup> Roach, 1.

<sup>56</sup> Roach, 2.

surrogation because the widow is not designated or elected by her society to take on the role of her husband, but rather inherits very specific roles that she must embody in order to survive after his death. Her acquiring of his domestic, social, and economic space is entirely outside of the state's control, especially as she gains legal independence, revealing a kind of juridical loophole in a patriarchal society built on the subordination of women.

Furthermore, the widow does not “reinvent” herself to more accurately take on her husband's place in society, but rather acts as his proxy *on her own*. She repeatedly finds her independent management of her husband's affairs at odds with how her family members, neighbors, and state authorities expect her to behave.<sup>57</sup> This unrecognizable mode of citizenship makes the widow an exceedingly threatening figure in a patriarchal society in the throes of defining itself, both during the colonial era of America's inception and at the contemporary moment of Hawthorne's writing. If, as Roach argues, “candidates for surrogation must be tested at the margins of a culture to bolster the fiction that it has a core,” I argue that the limits of independent women's citizenship are tested through the marginal subjectivity of the widowed woman who inherits the power to serve as a proxy for her deceased husband but who is ultimately rejected by the state for embodying that capacity.<sup>58</sup> Her unique civic autonomy becomes inverted through proxying, in which the state positions her not as an individual agent but as a facsimile of her husband out of control and in need of (re)covering.

The historical accounts of the accusations against Ann Hibbens for witchcraft clearly capture the authoritarian process of proxying. Because none of the legal records of Ann Hibbens's witchcraft crisis exist today, scholars must rely on the scant historical secondary

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<sup>57</sup> See Conger, *The Widows' Might*.

<sup>58</sup> Roach, *Cities of the Dead*, 6.

sources that reference her trials as the basis of our understanding of what might have convicted her. One of these, the *Memorial History of Boston*, edited in 1881 by Justin Winsor, the foremost librarian of the late nineteenth century, contains a chapter written by William F. Poole, who systematically chronicles each witchcraft execution leading up to the Salem Witchcraft Trials in 1692.<sup>59</sup> He writes of Hibbens:

The third execution for witchcraft in Boston was on June 19, 1656, and Mrs. Ann Hibbins was the victim. She was the widow of William Hibbins, a leading merchant of Boston and one of the most honored citizens of the colony, who died in 1654... That a woman occupying such a social position should have come to such an ignominious death, is a strange incident in the case. Another is, that not a particle of the contemporary evidence on which she was convicted has been preserved.<sup>60</sup>

Poole's introduction to Hibbens' dramatic social fall and execution exemplifies the ways in which men of authority viewed widowed women as proxies of their deceased husbands rather than as individual members of the polity. Poole characterizes Hibbens exclusively through her identity as the widow of William Hibbins, omitting any personal details of her life, to focus on

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<sup>59</sup> For more information on Winsor, see, for example, Lawrence Lowell, "Justin Winsor," *Proceedings of the American Academy of Arts and Sciences* 34, no. 23 (1899): 641–45; Edward Channing, "Justin Winsor," *American Historical Review* 3, no. 2 (1898): 197–202; and Clyde N. Wilson, "Justin Winsor," in *Dictionary of Literary Biography: American Historians, 1866–1912* (Detroit: Gale Research, 1986), 358–65. Also, Ann Hibbens's name appears in varied spellings and derivatives throughout her archive. I will use the spelling *Ann Hibbens* throughout for clarity and consistency.

<sup>60</sup> William F. Poole, "Witchcraft in Boston," in *The Memorial History of Boston, Including Suffolk County, Massachusetts. 1630–1880*, ed. Justin Winsor (Boston: James R. Osgood, 1881), 138.



how “strange” it was that the wife of a high-ranking official died in such a public and dishonorable manner.<sup>61</sup>

The entry illustrates one of the ways in which colonial widowed women achieved marital and thus legal independence through widowhood, yet did not fully inherit their husbands’ positions in society, as a surrogate under Roach’s terms might. Poole’s entry enacts a subordinated proxy state for Hibbens (rather than viewing her as a legitimate, independent agent acting in his stead), for when left to embody William’s place in society on her own she meets an “ignominious” death completely out of character as the representative of “one of the most honored citizens of the colony.”<sup>62</sup> Recast as a failed proxy for her illustrious husband, Hibbens’s autonomy is completely nullified in the national record as she becomes proxied by her male historiographer. Poole’s explicit indication of the lack of surviving documentation detailing her conviction for witchcraft is evidence of her “erasure” by an anxious society terrified of a woman joining men as independent citizens and thus potentially “replacing” them.<sup>63</sup> Despite the differences between the concepts of proxying and surrogation, their most central commonality is the systematic erasure of failed proxies and surrogates from the historical record in order to protect whichever national origin story the writer seeks to uphold and perpetuate.

The extant records of Bridget Bishop’s witchcraft trial also reveal the ways in which both ordinary citizens and legal authorities of the colony understood her to be a proxy of her first husband rather than an independent widowed woman *or* a remarried, and thus safely (re)covered woman. Several depositions refer to her by an “alias,” or by her previous husband’s name, as

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<sup>61</sup> Poole, 138.

<sup>62</sup> Poole, 138.

<sup>63</sup> Roach, *Cities of the Dead*, 6.

Goody Olliver, despite her remarriage to Edward Bishop. Mary Warren's deposition claims that "severall times after the Nynteenth day of April last when Bridgett Bishop als Olliver who was in the Gaol at Salem she did appear to this depon't tempting her to signe the book."<sup>64</sup> Susannah Sheldon accuses, "on the foarth day at night Came goody Olliver ... with books in their hands goody olliver bad mee touch her booke I would not I did not know her name shee told mee her name was goody Olliver and bid me touch her booke."<sup>65</sup> Even the court's formal indictment against Bishop refers to her as "Bridgett Bishop als Oliver the wife of Edward Bishop of Salem in the County of Essex."<sup>66</sup>

The repeated insistence on referring to Bishop as 'Goody Olliver' rather than by her remarried name belies the community's fixation on her widowhood. Bishop was an unpopular member of the polity; her Salem records show the extent to which people assumed she "engag[ed] in malefic practices" over a decade before the Salem Witchcraft Trials.<sup>67</sup> In fact, she went to trial for witchcraft, and was apparently acquitted of the charges, shortly after the death of Thomas Olliver (who died without a will).<sup>68</sup> Both official and ordinary members of the state proxy Bishop by referring to her as Goody Olliver, demonstrating that the status of widowhood could remain with a woman even after remarriage. Widowhood, at least in colonial Massachusetts, appears to be a perpetual state of existence unchanged by (re)marital status or the woman's return to coverture.

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<sup>64</sup> "Bridget Bishop," in *The Salem Witchcraft Papers: Verbatim Transcripts of the Legal Documents of the Salem Witchcraft Outbreak of 1692*, ed. Paul Boyer and Stephen Nissenbaum (New York: Da Capo Press, 1977), 1:103.

<sup>65</sup> "Bridget Bishop," 1:105.

<sup>66</sup> "Bridget Bishop," 1:87.

<sup>67</sup> Norton, *Founding Mothers & Fathers*, 112.

<sup>68</sup> See Norton; Karlsen, *Devil in the Shape of a Woman*; and Bernard Rosenthal, *Salem Story: Reading the Witch Trials of 1692* (Cambridge: Cambridge University Press, 1993).

Hester Prynne's unusual form of widowhood also causes her to act in the role of proxy for the entirety of her life. Yet because Master Prynne was never known in the colony, and Roger Chillingworth ensures that he will never return, Hester cannot act as a proxy to her deceased husband in the same ways that a colonial widow generally would. In place of navigating the colony as the earthly proxy of her unknown husband, Hester circulates, through the decree that she wear the embroidered 'A' for the remainder of her life, as a representation of her sin and thus of the penal Puritan state. Because there is no husband under whose memory the Puritan state and society can (re)cover her through proxying, the state seeks to take on that regulatory role in her life instead.

When Hester emerges from prison for the first time in her complicated role as both an adulteress and a presumed widow, Hawthorne describes her social transformation:

The point which drew all eyes, and, as it were, transfigured the wearer, - so that both men and women, who had been familiarly acquainted with Hester Prynne, were now impressed as if they beheld her for the first time, - was that SCARLET LETTER, so fantastically embroidered and illuminated upon her bosom. It had the effect of a spell, taking her out of the ordinary relations with humanity, and enclosing her in a sphere by herself.<sup>69</sup>

Hester's widowhood takes on particular political connotations through the donning of the scarlet letter. It is not her widowhood but the scarlet letter itself that removes her from "the ordinary relations with humanity" and encloses her "in a sphere by herself."<sup>70</sup> Just as the moment of widowhood changes a woman's entire legal, social, and economic status in the colony, so does

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<sup>69</sup> Hawthorne, *The Scarlet Letter*, 41.

<sup>70</sup> Hawthorne, 41.

the scarlet letter transform Hester's citizenship. Forcibly removed from her role as a married woman, she becomes instantly set apart as a proxy for the surveillance state. The narrator predicts that having given up "her individuality, she would become the general symbol at which the preacher and moralist might point, and in which they might vivify and embody their images of woman's frailty and sinful passion. Thus the young and pure would be taught to look at her ... as the figure, the body, the reality of sin."<sup>71</sup> Hester and her scarlet letter act in the place of state and religious authorities to regulate and reinforce the parameters of womanhood at the same time that the state utilizes her widowhood in an attempt to regulate and punish her body.

Hawthorne creates Hester to be a proxy of her sin, thus decreeing her sexual agency as a widowed woman criminal. Yet ultimately, to nearly everyone in the novel save Chillingworth, Dimmesdale, and the all-knowing narrator, Hester dangerously succeeds in her role as a proxy for the state. After bearing her sentence patiently, "the blameless purity of her life during all these years ... was reckoned largely in her favor," as the community believes that "a genuine regard for virtue" ultimately "brought back the poor wanderer to its paths."<sup>72</sup> Even though "the rulers, and the wise and learned men of the community" took longer to reaccept Hester into the Puritan milieu "their sour and rigid wrinkles were relaxing into something which, in the due course of years, might grow to be an expression of almost benevolence."<sup>73</sup>

Hester succeeds, then, in the eyes of the authorities proxying her, in becoming a genuine representative of her sin. Yet her uncanny ability to act as a proxy ultimately overpowers the signifying force of the scarlet letter, making her, particularly from the viewpoint of the narrator,

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<sup>71</sup> Hawthorne, 55.

<sup>72</sup> Hawthorne, 105.

<sup>73</sup> Hawthorne, 106.

as threatening as any other colonial widowed woman who failed to appropriately act as a proxy for their husbands. Hester works powerfully from within the Puritan penal system to take control of her proxying and to subvert it. Such maneuvering paralyzes Hawthorne's narrator, who is steadfast in his repudiation of Hester's betrayal of the marriage contract.

Published only two years after the Seneca Falls convention of 1848, where, in addition to demanding women's right to vote, activists attacked the patriarchal institution of marriage and coverture laws, *The Scarlet Letter* participates in the conservative backlash of the early women's rights movement. In New York, women's rights proponents forcefully argued that marriage stripped women of the basic rights of citizenship including their civil status, their right to own property, the wages of their labor, and even their right to guardianship of their children. Norma Basch argues that, as women demanded change to restrictive marriage laws, their work ignited a "far broader-based resistance" rooted in the "fear of a sexual revolution set off by changes in the laws of marriage." Contemporaries feared that reshaping marriage laws "would throw relations between the sexes into total chaos."<sup>74</sup> Like the terrified authorities documenting the lives of Ann Hibbens and Bridget Bishop, Hawthorne's nineteenth-century narrator ultimately turns to the language and imagery of the supernatural to depict Hester's widowed autonomy, the rejection of her marriage, and her larger philosophies on womanhood.

### *III. The Paranormal Renderings of the Early American Widow*

Many scholars of American literature have robustly theorized the metaphorical dimensions of death, politics, and the American woman citizen. Julia Stern imagines the substratum of the early American republic to be populated through the gothic live burial of the

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<sup>74</sup> Basch, *In the Eyes of the Law*, 135.

socially dead, declaring the nation to be “in fact a crypt,” that “prematurely inter[s]” the women and nonwhite citizens who “lie socially dead and inadequately buried.”<sup>75</sup> Building on Stern’s approach, Russ Castronovo’s dexterous theorization of necro citizenship finds that the “excessive and lethal embodiment” of gendered and raced bodies “financed” the “privileges of (white male) citizenship” throughout the nineteenth century.<sup>76</sup> He contends that the socially dead “refuse to remain dead, and instead return to haunt the public sphere.”<sup>77</sup> The moments where Stern and Castronovo identify the restrictive and symbolic dimensions of women’s citizenship through gothic depictions of live burial, social death, and haunting, are exactly where this chapter seeks to intervene: I argue that the citizenship of the early American widow is *brought to life* in powerful and actual ways through the *literal death* of the white male body.

Freed from the laws of coverture, the widow emerged from the realm of the socially dead as a living, breathing member of the polity that circulated as both a legally independent citizen and as a proxy of her disembodied husband’s “abstract citizenship,” inverting the laws of coverture so that his only official legal and social existence abided in *her*.<sup>78</sup> The widow thus turns the dead white male citizen into a socially undead spectre of American citizenship that haunts the living polity and makes the widowed body politically intelligible. Like Roach’s “effigies fashioned from flesh,” the widow performs the economic and social roles of her

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<sup>75</sup> Julia A. Stern, *The Plight of Feeling: Sympathy and Dissent in the Early American Novel* (Chicago: University of Chicago Press, 1997), 2.

<sup>76</sup> Castronovo, *Necro Citizenship*, 10, 17.

<sup>77</sup> Castronovo, 10.

<sup>78</sup> Castronovo, 4.

husband for her community to provide “a method of perpetuating themselves through specially nominated mediums or surrogates,” by circulating as the “corps[e]” of her late husband.<sup>79</sup>

The metaphorical dimensions of the widowed woman as a social specter of her husband resonated with a Puritan colony more equipped with language to depict the occult than the autonomous, husbandless woman with legal status. The widow’s capacity to act as a proxy for her deceased husband is thus refigured in the language most available to the Puritan public in times of uncertainty or threat: as accusations of witchcraft. When a widow acted outside of the limited bounds of prescribed womanhood in the marketplace, or against what her family or her neighbors believed to be her husband’s wishes, her business dealings repeatedly became subverted and unauthorized through judicial accusations that linked economic contract making to the breaking of the marital and religious covenants of the Puritan state. This social phenomenon is narratively transformed in the oral testimonies, written depositions, court examinations, and contemporary and nineteenth-century histories and fictionalizations of witchcraft in colonial Massachusetts. In both the historical archive and in fiction the possibilities and limits of early American widowed citizenship are rearticulated as acts of witchcraft and made criminal.

The most dramatic example of this social phenomenon is, of course, the Salem crisis of 1692, the largest witchcraft outbreak in American history. Of the twenty people executed for witchcraft in Salem, fourteen of the victims were women. Six, or roughly 40% of the women executed during the outbreak, were or had been previously widowed. This figure jumps to over 50% of widowed women killed during the crisis if we include the three widows who died in

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<sup>79</sup> Roach, *Cities of the Dead*, 36.

prison.<sup>80</sup> Yet scholars of the Salem Witchcraft Trials have traditionally paid little critical attention to the effects of widowhood on the crisis, despite the fact that half of the women who perished inhabited, or had once inhabited, that mode of being.<sup>81</sup>

Most historical studies aim to explain the cause of the witchcraft crisis, an aberrant moment in American legal and criminal history, by proposing hypotheses that seek to explain how and why the tragic events of 1692 occurred.<sup>82</sup> Literary scholars seem to have missed the

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<sup>80</sup> John Demos intentionally omits the Salem trials from his study in order to focus on the critically neglected history of witchcraft in America prior to the crisis of 1692. In his data, then, widowed women count for only 10 percent of those involved in witchcraft cases, leading him to conclude that “witches seem little different in their marital situation from their cultural peers” (*Entertaining Satan*, 72). Carol F. Karlsen provides a table listing the marital status of women during the Salem Witch Trials, but she only counts four widows as being executed (*The Devil in the Shape of a Woman*, 72). Demos’s low figures regarding the number of widowed women tried for witchcraft outside Salem emphasizes the importance of widowhood to the Salem trials. This chapter suggests that a woman’s marital situation in Salem played a crucial role in her legal experience. Karlsen counts only four executed widows, likely because she does not count Bridget Bishop or Sarah Good in her figures since they were remarried at the time of their trials. This chapter argues that the status of being previously widowed proved just as dangerous as being widowed during the time of the trials, as I will show in my discussion of Bridget Bishop’s witchcraft examination. Karlsen’s figures also does not include the three widows who died in prison, whom I see no reason of omitting from the statistics of the Salem Witchcraft Trials.

<sup>81</sup> The exception being of course, Karlsen, *The Devil in the Shape of a Woman*. In Karlsen’s study, “the history of witchcraft is primarily a history of women” (xiii). Karlsen maintains that most witchcraft cases stemmed from issues and anxieties around inheritance, particularly when property and resources fell into the hands of women (especially widowed women) with no male heirs, instances that challenged the Puritan “inheritance system designed to keep property in the hands of men” (101). Karlsen’s compelling arguments focus mainly on the age of widows accused of witchcraft and on the economic threats they posed to a patriarchal society. My chapter seeks to build on this history to broaden our understanding of the social and political nuances embodied by the widow throughout the Salem crisis.

<sup>82</sup> Scholars attribute the outbreak to cultural and political factors ranging from anxiety over the colony’s political and social instability due to the loss of its charter and near political independence in 1684, to brutal and repeated conflict with Native populations, to persistent small pox outbreaks, and even to the encroachment of individualism on the communal ideals of the Puritan colony. See especially: Rosenthal, *Salem Story*; Mary Beth Norton, *In the Devil’s Snare: The Salem Witchcraft Crisis of 1692* (New York: Alfred A. Knopf, 2002); Richard Godbeer, *The Devil’s Dominion: Magic and Religion in Early New England* (Cambridge: Cambridge



extensive papers of the Salem Witchcraft Trials—brimming with narrative-driven depositions, testimonies, confessions, and examinations filled with figurative and poetic language—almost entirely.<sup>83</sup> Attending to the language of the supernatural employed by the “afflicted” accusers, spooked deponents, and stern magistrates reveals their attempts to both understand and to ultimately quell dimensions of the widow’s autonomy deemed most threatening to the structure of the patriarchal Puritan state.

Widowhood played a crucial role in the examination of Bridget Bishop, the first woman hanged during the Salem Witchcraft Trials of 1692. Twice widowed, yet remarried at the time of her indictment, the status of having been previously widowed repeatedly comes to bear on Bishop’s examination. The opening line of the first version of her investigation observes, “As soon as she came near all fell into fits.” A few moments later John Hathorne accuses, “They say you bewitched your first husband to death.”<sup>84</sup> Hathorne brings Bishop’s earlier widowhood to the forefront of her examination, incriminating her as a woman bodily and legally out of control. By almost immediately linking Bishop’s alleged capacity to physically torment her accusers with her status as a widow (and a murderous one at that), the court conflates her previous state of widowhood with the supernatural. Hathorne urgently attempts to control both the unruly bodies of the afflicted and what he imagines to be Bishop’s own ungovernable body by expressly

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University Press, 1992); and Paul Boyer and Stephen Nissenbaum, *Salem Possessed: The Social Origins of Witchcraft* (New York: MJF Books, 1974).

<sup>83</sup> One notable exception is Gabriele Schwab’s reading of *The Scarlet Letter*, “Seduced by Witches: Nathaniel Hawthorne’s *The Scarlet Letter* in the Context of New England Witchcraft Fictions,” in *Seduction and Theory: Readings of Gender, Representation, and Rhetoric*, ed. Dianne Hunter (Urbana: University of Illinois Press, 1989), 170–91. See also Ingebreetsen, *Maps of Heaven, Maps of Hell*, especially chapter 2, “‘Entertaining Satan’: The American Rite of Deviancy.”

<sup>84</sup> “Bridget Bishop,” 1:83.

linking the unexplainable to her previous widowhood. Although many witches, both women and men, were accused of maleficium, or “magic used for harmful ends, to cause sickness, to injure, or even to kill” during the Salem crisis, these accusations hold uniquely threatening political and social valences when cast onto a widow’s body.<sup>85</sup>

The Book of the General Laws and Liberties of Massachusetts, “the first codification of laws since the time of Justinian,” and the foundation of American law, lists witchcraft as a capital offense second only to the crime of idolatry.<sup>86</sup> The law states, “If any Man or Woman be a WITCH, that is, Hath or Consulteth with a familiar Spirit, they shall be put to death.”<sup>87</sup> The *OED* defines a familiar spirit as “a spirit, often taking the form of an animal, which obeys and assists a witch or other person.”<sup>88</sup> In order to acquire a familiar spirit that can roam freely around the community to inflict torture and tempt souls, however, one must first form an agreement with the Devil. Paul Boyer and Stephen Nissenbaum describe this agreement as both a “covenant” and a “contract” that once forged gave the individual “the power to call up the Evil One, in the witch’s own shape, to perform a wide variety of malicious acts.”<sup>89</sup>

Viewing the widowed woman accused of witchcraft as commanding the devil to use the appearance of her body to wreak havoc in the wider community, is, I argue, a distorted, symbolic representation of the roles that she commands as the proxy of her deceased husband. As a proxy for her late spouse, she sends her own “shape,” her autonomous widowed body that has replaced

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<sup>85</sup> Elizabeth Reiss, introduction to *Spellbound: Women and Witchcraft in America*, ed. Elizabeth Reiss (Wilmington, DE: Scholarly Resources, 1998), xiv.

<sup>86</sup> Cushing, “Introduction,” xxi.

<sup>87</sup> “The Capitall Lawes,” 2:240.

<sup>88</sup> *OED Online*, s.v. “familiar, n., adj., and adv.,” accessed May 19, 2015, [www.oed.com/view/Entry/67957](http://www.oed.com/view/Entry/67957).

<sup>89</sup> Paul Boyer and Stephen Nissenbaum, introduction to Boyer and Nissenbaum, *The Salem Witchcraft Papers*, 1:10.

her covered married body, out into the world to manage her husband's affairs, an infiltration of the patriarchy that threatens to overthrow the structure of the Puritan state. Her power to perform these roles is thus reflected back onto her as her community sought to make sense of the social and legal changes in the widowed woman's body through the more familiar logic of witchcraft. Proxying in this sense, as a tactic of the state to subdue widowed women's sovereignty, characterizes the social, legal, and economic rights of colonial widows as evil, unchristian, and threatening to the stability and political structure of the state.

Throughout Bishop's examination, accusers insist that she or her shape inflicts mischief on them. Hathorne charges, for example, "they say it is your likenes that comes and torments them."<sup>90</sup> One accuser, John Louder, claims that Bishop appeared on his windowsill in the shape of a "black thing" that "looked like a Munky only the feete ware like a Cocks feete w'th Claws and the face somewhat more like a mans than a Munkey" (100). Louder's phantasmagoric claims physically alter Bishop's previously widowed body, both masculinizing and dehumanizing her.

Other male deponents vividly fantasize Bishop's alleged 'shape' in sexualized terms. Samuel Gray accuses that sometime in the night, "he felt some thing Come to his mouth or lipes Cold, & there upon started & looked up & againe did see the same woman with something betweene both her hands holding before his mouth upon which she moved."<sup>91</sup> Richard Soman contends, "The Curtaines at the fotte of the bed opened where I did see her and presently came And lay upon my Brest or body and soe oppressed him that he could not speake nor stur noe nor soe much as to awake his wife althow he Endeavored much soe to do itt."<sup>92</sup> Depicting Bishop as

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<sup>90</sup> "Bridget Bishop," 1:86.

<sup>91</sup> "Bridget Bishop," 1:94.

<sup>92</sup> "Bridget Bishop," 1:102.

hypersexualized and dominating, her male accusers imagine her economically circulating body as sexually mobile, casting her ambiguous sexual status (as a woman having been married, widowed, and remarried) onto the erotics of the supernatural.

In addition to policing her body, male deponents also attacked Bishop for business deals gone awry. Samuel Shattuck mentions in irritation, “Bridged Oliver formerly wife to old Goodman Oliver: now wife to Edward Bishop did come to my hous pretending to buy an old hh’d wc’h tho I asked very little for: & for all her pretended want She went away w’th out it.”<sup>93</sup> Shattuck simultaneously proxies Bishop (characterizing her through her previous husband’s identity) and yet insists upon her being (re)covered as wife to Edward Bishop. Obviously offended that Bishop opted out of making a deal with him, Shattuck seeks to bury her buying power under her various marital identities rather than as a (previously) independent widow. Although Shattuck goes on to describe that Bishop visited him many times after in “very Slighty Errants” that he has “thought Since on purpose to work Mischief,” he essentially maps this moment of failed contract making onto the supernatural, turning Bishop’s economic buying power into a deadly attribute used against her in court.<sup>94</sup>

Wariness over widows’ capacity to contract emerges more literally in Bishop’s trial through John Hathorne’s relentless accusations that she formed a contract with the Devil and attempted to get others to sign his “book.”<sup>95</sup> Hathorne accuses:

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<sup>93</sup> “Bridget Bishop,” 1:97.

<sup>94</sup> “Bridget Bishop,” 1:97.

<sup>95</sup> Karlsen notes, “All the powers a witch possessed ... were said to have derived from the covenant she had signed with the Devil ... The covenant was thus both a diabolical alliance and a mutual exchange of services. It was also evidence of witches’ rebellion against God and worship of the Devil; to the clergy in particular” (*Devil in the Shape of a Woman*, 9–10). In their introduction to *The Salem Witchcraft Papers*, Boyer and Nissenbaum argue, “In the Christian

(Mr Har) good Bishop what contract have you made with the devil

(Bish) I have made no contract with the devill I never saw him in my life...

(Mr Har) tell us the truth in this matter how comes these persons to be thus tormented and to charge you with doing

(Bish) I am not come here to say I am a witch to take away my life

(Mr H) Who is it that doth it if you doe not they say it is your likeness that comes and torments them and tempts them to write in the booke what Booke is that you tempt them with

(Bish) I know nothing of it I am innocent.<sup>96</sup>

Hathorne's fixation on Bishop's alleged contract with the Devil betrays the discomfort that arose when widows autonomously created contracts. Yet he raises the stakes, recasting the economic language of the marketplace to depict the widow as plotting against the state. Hathorne demonizes and seeks to disenfranchise the independent woman's capacity to govern herself. Not only would Bishop break the personal and religious covenants of the colony if she were to deal with the Devil; that she might actively recruit other men and women to do the same was viewed as a coup against the fledgling government, especially in the time of political turmoil and uncertainty between charters.<sup>97</sup> By talking back and refusing to be subdued by the system of

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world, witchcraft involved entering into a personal compact with the devil, and thereby gaining certain powers to do ill. ... It was a sin because it implied a brazen denial of God's supremacy, and as such it was explicitly condemned in the Bible. In Puritan England and New England, this sin took on a special heinousness because the witch's contract with Satan appeared as grotesque and disgusting parody of the covenant between the Lord and his saints that formed so central an element in Puritan theology" (1:10).

<sup>96</sup> "Bridget Bishop," 1:86.

<sup>97</sup> The idea of witches as simultaneously circulating bodily in the colony as well as legally and religiously through an alternate covenant with Satan, proved doubly threatening to a colony

power that Hathorne and the other magistrates attempted to activate in the Court of Oyer and Terminer (the special court erected to hear the cases in Salem), Bishop further threatens the state by denying complicity in her own punishment.<sup>98</sup>

Nearly two hundred years later, Nathaniel Hawthorne resurrects the colonial language of witchcraft to imbue *The Scarlet Letter* with metaphors linking the character of Hester Prynne to dimensions of the supernatural so familiar to his ancestor.<sup>99</sup> The scarlet letter “transfigures”

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technically functioning without a “legally established government.” In 1684 England nullified the charter between the Massachusetts Bay Colony and England, and in 1689 the governing structure that the king established in the wake was deposed in a mini revolution. From 1689 until 1691 the colony fought for the resintatement of the pre-1684 charter. In early 1692, when Sir William Phips, the colony’s new governor, arrived with a renewed charter, he responded with a “swift and bold, if of somewhat dubious legality” answer to the overflowing prisons and backlog of witchcraft cases by instating a special Court of Oyer and Terminer, composing six members of his advisory council. Prior to Phips’s arrival, it would have been “illegal (and quite possibly fruitless) to proceed with formal prosecution of the accused witches. Ironically, then, the most severe challenge to confront the judicial system of Massachusetts during the entire colonial period came at a moment when that system was nearly immobilized” (Boyer and Nissenbaum, *Salem Possessed*, 6). It was under these conditions that Bridget Bishop became the first woman to be tried. As Bishop was the first victim executed as a witch at Salem, her trial set the tone for how the remainder of the executions and examinations would go. See Boyer and Nissenbaum, *Salem Possessed* and Cushing, “Introduction,” *Laws and Liberties of Massachusetts*.

<sup>98</sup> When presented during the trials, testimonies showcasing moments of interaction with supposed familiar spirits, particularly if they were corroborated by other witnesses “possessed a superficial resemblance to firm empirical evidence” (Boyer and Nissenbaum, introduction to *The Salem Witchcraft Papers*, 1:19). The most reliable way to convict a person of witchcraft, however, was to extract a confession from the accused. Salem magistrates’ “interrogations” had “a single purpose: to elicit a confession of guilt” (Norton, *In the Devil’s Snare*, 25). Seeking confessions above all else, the magistrates viewed the accused as guilty and applied “intense psychological pressure” to get them to confess. Richard Godbeer’s study of magic and supernatural beliefs in early New England distinguishes between the official legal meaning of witchcraft and normal citizens’ understanding of it. Godbeer argues that because witchcraft was a form of heresy, “the courts followed theological principles: they wanted proof that the witch was in league with the Devil.” Laypeople, however, tended to understand witchcraft as a “misuse of occult power” (*The Devil’s Dominion*, 155).

<sup>99</sup> Literary critic Gabriele Schwab notes that even though *The Scarlet Letter* does not “directly focus on Salem witchcraft, it can still be seen as deeply influenced by the theme” (“Seduced by Witches,” 170).

Hester, meaning that it “alter[s] the figure or appearance of” or “change[s her] outward appearance.”<sup>100</sup> Such transfiguration recalls the imaginative depositions spoken against Bridget Bishop, which fantasized her widowhood as a transformation into ‘familiar’ shapes and spirits. The scarlet letter enacts a conversion of Hester’s body that so transforms her in the polity that it was as if she were “beheld ... for the first time.” Moreover, the letter “had the effect of a spell,” removing Hester from the ordinary realm of humanity to a world of isolation and disenfranchisement.<sup>101</sup>

Hawthorne frames Hester’s reintegration as a widowed woman signified by the letter A into the community as a supernatural event that physically and socially transforms her into a new kind of citizen. Hawthorne unmistakably links witchcraft with widowhood by exploring the capacity of a woman’s body to physically, legally, economically, and socially change in modes threatening to the ruling patriarchal state. By so doing, he perpetuates the fraught narrative of widowed women on trial in early America by defaulting to its language.

Yet, in place of overtly narrating the events of the Salem Witchcraft Trials, as dozens of literary and historical works published throughout the nineteenth century had done, *The Scarlet Letter* complexly fictionalizes the history of the real-life Ann Hibbens instead.<sup>102</sup> By displacing

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<sup>100</sup> Hawthorne, *The Scarlet Letter*, 37; and *OED Online*, s.v. “transfigure, v.,” accessed December 9, 2015, [www.oed.com/view/Entry/204719](http://www.oed.com/view/Entry/204719).

<sup>101</sup> Hawthorne, *The Scarlet Letter*, 41.

<sup>102</sup> For useful bibliographies of nineteenth-century fiction featuring the Salem Witchcraft Trials, see G. Harrison Orians, “New England Witchcraft in Fiction,” *American Literature* 2, no. 1 (1930): 54–71; and Marta María Gutiérrez Rodríguez, “Witches and Literary Justice: The Salem Witchcraft Trials in Nineteenth-Century Historical Fiction,” *GRAAT On-Line*, no. 14 (2013): 32–54, <http://www.graat.fr/2gutierrez.pdf>. Important nineteenth-century histories of the Salem Witchcraft Trials are as follows: Upham’s 1867 *Salem Witchcraft*; W. Elliot Woodward, *Records of Salem Witchcraft, Copied from the Original Documents*, 2 vols. (Roxbury, MA: W. E. Woodward, 1864–65); and Samuel P. Fowler, *Salem Witchcraft: Comprising More Wonders of*

direct representation of the Salem Witchcraft Trials onto Hibbens, Hawthorne invokes the climate of the witchcraft crisis but removes Hester from its dangers.

The absence of details regarding Hibbens's witchcraft conviction allows Hawthorne almost complete creative license in her fictionalization, though he appears to have relied mostly on Thomas Hutchinson's account of her trial. As the former lieutenant governor of Massachusetts before the American Revolution, Hutchinson paints a less than flattering portrait of the circumstances leading up to Ann Hibbens's witchcraft trial. In his historical work, *The History of the Colony of Massachusetts Bay*, published in 1765, Hutchinson suggests that losses to William Hibbens's estate "increased the natural crabbedness of his wife's temper, which made her turbulent and quarrelsome, and brought her under church censures, and at length rendered her so odious to her neighbors as to cause some of them to accuse her of witchcraft."<sup>103</sup>

According to all reports, a jury in front of the colony's Court of Assistants found her guilty of witchcraft in 1655, almost two years after William's death. The magistrates, some of whom knew Hibbens well, likely because of her husband's prominent role in the government, chose to defer the verdict. A few months later she was brought to retrial at the General Court, the

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*the Invisible World, collected by Robert Calef; and Wonders of the Invisible World, by Cotton Mather* [. . .] (Boston: William Veazie, 1865).

<sup>103</sup> Thomas Hutchinson, *The History of the Colony of Massachusetts Bay, From the First Settlement Thereof in 1628* [. . .], 2nd ed., (London: M. Richardson, 1765), 187. William Hubbard, in *A General History of New England from the Discovery to MCDLXXX* (Cambridge, MA: Massachusetts Historical Society, 1815), takes a similar stance toward Hibbens's character, noting that her husband's loss of estate "so discomposed his wife's spirit that she scarce ever was well settled in her mind afterward, but grew very turbulent in her passion and discontented, on which occasions she was cast out of the church, and then charged to be a witch, giving too much occasion by her strange carriage to common people so to judge" (574).



central artery of judicial and legislative power in the colony.<sup>104</sup> There, according to Hutchinson, “popular clamour prevailed against her, and the miserable old woman was condemned and executed.”<sup>105</sup>

The only other information we can glean from Hutchinson’s records, in addition to the community’s passionate ire toward Hibbens, was a hint about the trial quoted from a minister, Mr. Beach. Beach, more sympathetically, claimed that Hibbens was executed for witchcraft “only for having more wit than her neighbours,” reporting that she “unhappily guessed that two of her persecutors, whom she saw talking in the street, were talking of her; which, proving true, cost her her life.”<sup>106</sup>

Some historians link the age and marital statuses of colonial women to their likelihood of being accused of witchcraft, explaining that husbands’ social positions could offer powerful degrees of protection over the character and repute of their wives.<sup>107</sup> Hibbens commits transgressions during her husband’s lifetime severe enough to have her publicly admonished and later excommunicated by the church. But it is only upon being widowed that the community accuses Hibbens of witchcraft. From Hutchinson’s entry, we see Hibbens as a figure of ill-repute with acrimonious relationships within her community. Beach’s observation that Hibbens has more “wit” than others sets her apart as intellectually misunderstood, and perhaps as outspoken and clever in ways off putting to her more conservative neighbors.<sup>108</sup> Reading the histories

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<sup>104</sup> See Karlsen, *Devil in the Shape of a Woman*, 1. For historical accounts of Ann Hibbens’s witchcraft trial, see, Poole, “Witchcraft in Boston,” 138–41; Hutchinson, *The History of the Colony of Massachusetts Bay*, 187–88; and Hubbard, *A General History of New England*, 574.

<sup>105</sup> Hutchinson, *The History of the Colony of Massachusetts Bay*, 187.

<sup>106</sup> Hutchinson, 187.

<sup>107</sup> See Demos, *Entertaining Satan*, 75; and Karlsen, *Devil in the Shape of a Woman*, 74–75.

<sup>108</sup> Hutchinson, *History of the Colony of Massachusetts Bay*, 187.

regarding the Hibbens trial, we see a woman intellectually and socially othered by her community. Moreover, we see a bias in the histories that hand these few facts down to us over time. As white male historians painted the historical portrait of Hibbens as a “miserable old woman,” “turbulent and quarrelsome,” and as “odious” with “natural crabbedness... of temper” Hibbens eventually became cast in the witch-as-hag-motif developed in nineteenth-century literature. This would later become the foundation of her fictional character in Hawthorne’s *The Scarlet Letter*.<sup>109</sup>

Rather than questioning Hibbens’ portrayal in Hutchinson’s history, Hawthorne enlivens it, giving her history a life of its own, much like the chroniclers of his own ancestors. He illustrates an unflattering portrait of Hibbens throughout the novel, referring to her interchangeably as “the witch-lady,” as having a “sour and discontented face,” as “ugly-tempered,” as possessing “cankered wrath,” and as a “wrinkled witch.”<sup>110</sup> In the second chapter of *The Scarlet Letter*, readers are introduced to Hibbens before Hawthorne offers even a glimpse of Hester Prynne.

Setting the scene in which Hester will emerge from prison to face her public penance on the scaffold, the narrator speculates at length on the crime that might have brought the citizens of Boston to the doors of the prison, concluding by suggesting, “It might be, too, that a witch, like old Mistress Hibbins, the bitter-tempered widow of the magistrate, was to die upon the gallows.”<sup>111</sup> By using the same methodology as her historians, Hawthorne too proxies Hibbens, defining her solely as the widow of a powerful member of society rather than as a citizen in her

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<sup>109</sup> Hutchinson, 187–88. For more on the development of the witch-as-hag motif, see Rosenthal, *Salem Story*, 5, 204–12.

<sup>110</sup> Hawthorne, *The Scarlet Letter*, 79, 98, 120, 134.

<sup>111</sup> Hawthorne, 37.

own right. He also enacts the conditions of her execution: the novel's representation of Hibbens as a stigmatized witch performs the "verdict of public sentiment" that convicts her.<sup>112</sup>

While Berlant describes in detail the implications of Dimmesdale's proximity to Governor Bellingham, and Ellen Weinauer reads Hester's contiguity with Anne Hutchinson, I find Hibbens and Hester to be most intricately linked in the novel.<sup>113</sup> Hawthorne depicts Ann Hibbens simultaneously as Hester's antithesis and as her potential. As a wealthy widow ostracized by her community for her eccentricities, Hibbens circulates publicly and freely throughout Boston, just as Hester does. Although Hester is never accused of witchcraft in *The Scarlet Letter*, the narrator persistently links her to Hibbens' opinions, locales, and actions to insinuate her supernatural potential.

Hawthorne characterizes the fictional Ann Hibbens as the worst possible iteration of widowed women's citizenship in *The Scarlet Letter*, and contrasts her wickedness with Hester's more enlightened, though equally dangerous, political and social agendas. In fact, as many scholars have shown, Hawthorne appears to associate Hester with the intellectual tradition of Ann Hutchinson, the "sainted" antinomian banished from Massachusetts for "unlawful preaching" who briefly cameos in the novel. He does not admire the mental powers of Ann

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<sup>112</sup> Hawthorne, 37.

<sup>113</sup> Hibbens only appears to witness moments of interaction between Hester and Dimmesdale. She emerges before Hester approaches the scaffold donning the letter *A* for the first time; after Hester's meeting with the Governor in which she successfully lobbies to retain custody of Pearl; when Hester, Pearl, and Dimmesdale hold hands on the scaffold the night of Winthrop's death; before and after the infamous forest scene in which Hester tempts Dimmesdale to flee the colony with her; and, finally, in the crowd before Dimmesdale's public confession and dramatic martyrdom. The fictional Hibbens also actively attempts to recruit Hester and Pearl to join her in the forest and to sign the Devil's book.

Hibbens, who scholars generally read more as a stock character than as a direct influence on Hester and her politics.<sup>114</sup>

A review of Hibbens's history beyond the scant reporting of her witchcraft trial, however, yields a much more complicated portrait of her citizenship that I maintain substantially informs Hester's vexed widowhood in *The Scarlet Letter*. Some of Hester's most radical convictions on women's citizenship align with Hibbens's historical register, specifically the records of her excommunication trial, transcribed "verbatim" by John Keayne, a parishioner of Hibbens's church. Careful examination of Hibbens's expulsion proceedings reveal with much greater nuance her complicated character and outspokenness. Upon her widowhood both became too easily translated into suspicions of witchcraft.<sup>115</sup>

Between the fall and winter of 1640 and 1641 Ann Hibbens found herself in front of the elders of the First Church of Boston to give "satisfaction" to a slew of men whom she had

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<sup>114</sup> Hawthorne, *The Scarlet Letter*, 37n3. For some of many readings on the connection of Anne Hutchison to Hester, see Baym, *The Scarlet Letter: A Reading*, 7–8; Amy Schrager Lang, "An American Jezebel: Hawthorne and *The Scarlet Letter*," chap. 7 in *Prophetic Woman: Anne Hutchinson and the Problem of Dissent in the Literature of New England* (Berkeley: University of California Press, 1987); and Louise A. Desalvo, *Nathaniel Hawthorne* (Brighton, UK: Harvester Press, 1987), 70.

<sup>115</sup> Merja Kytö's linguistic study of Keayne's notebooks, which include notes on sermons preached at the First Church of Boston as well as recordings of conversations following church meetings, concludes that, unsurprisingly, "it seems unlikely that Keayne would have been able to produce his notes straight from the mouths of the speakers" ("Robert Keayne's *Notebooks*: A Verbatim Record of Spoken English in Early Boston?," in *Textual Parameters in Older Languages*, ed. Susan C. Herring, Pieter Van Reenen, Lene Schøsler [Amsterdam: John Benjamins, 2000], 279). However, Kytö suggests that while Keayne's recordings of the spoken speech events "must have suffered from scribal interference to some extent, he did not put words into the mouths of his speakers by way of 'imagined speech,' entirely from his own head. Instead, Keayne most probably used intermediary notes, which helped him to convey at least some of the features characteristics of the language spoken in both discourse situations" (305–6). Although Keayne did not likely transcribe the direct speech of Hibbens's trial, that he did not imagine or create these discourses in his recordings is significant as well and lends a uniquely unbiased account to Hibbens's archive despite its imperfections.

offended during a business deal gone awry.<sup>116</sup> With the permission of her husband, Ann had hired a joiner, or a carpenter, named Goodman Crabtree, to perform some work on their home. When the work was finished, however, the parties began bickering over prices of labor, with Hibbens growing increasingly dissatisfied by the quality of work performed on her house. She was also dissatisfied with the opinions of the second parties brought in to arbitrate the situation, particularly those of Brother Davis. Thus, on her own, she recruited men on from Salem to judge the situation, evidently slandering the Boston builders in many public arenas and damaging their reputations along the way.<sup>117</sup>

Jane Kamensky argues that Hibbens, a woman of wealth and high social standing in her community, occupied a “liminal position in the community’s speech-status hierarchy, expected to articulate both the social elevation of her wealth and the ‘natural’ submission of her gender.”<sup>118</sup> Although seen as superior in economic wealth and social rank to many in the community, this social capital did not extend to church elders, pastors, and other men of repute in the community, to whom she was seen as culturally inferior.<sup>119</sup>

The elders’ “expressed goal” in bringing her to publicly give satisfaction to the church and her offended brothers and sisters was to silent her “unbridled tongue” and to quiet her “troubled spirit.”<sup>120</sup> When Hibbens refused to properly repent for her actions toward her

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<sup>116</sup> Robert Keayne, “Proceedings of Excommunication against Mistress Ann Hibbens of Boston (1640),” in *Remarkable Providences, 1600–1760*, ed. John Demos (New York: George Braziller, 1972), 222–39.

<sup>117</sup> For more on Hibbens’s remarkable persistence see Winthrop’s account quoted in Norton, *Founding Mothers & Fathers*, 162–63.

<sup>118</sup> Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England* (New York: Oxford University Press, 1997), 83.

<sup>119</sup> Kamensky, 83.

<sup>120</sup> Kamensky, 84.

community members and toward God to their satisfaction, she was publicly admonished and later excommunicated from the church. This was, according to John Demos, “the most dire penalty that a New England church could inflict.”<sup>121</sup>

Hibbens was put on trial in front of her church and community because she “burst the limits of [her] verbal license with her public and confrontational—indeed *masculine*—style of talking.”<sup>122</sup> She did not merely make a business agreement with reputable men in her community, but she “fiercely negotiated,” and “impatiently ‘publish[ed] her own viewpoint’” loudly and widely throughout the community.<sup>123</sup> The business contract, the marriage pact, and the social and religious covenant between Hibbens and her neighbors thus become closely aligned during her hearings. Brother Davis is the first to speak at Hibbens’s hearing, claiming:

The offence was between Mrs. Hibbens and myself and some others. That which I have to lay to her charge was an untruth, or a lie or two, that she told, as also that she accused me of a combination and said that the timbers of the room would cry for judgment against me; and yet she did not deal with me according to the rule of the Word, and this day in the morning she desired me to give her a meeting, and instead of satisfaction she did more unsatisfy me. And further my offence is that she hath broken covenant with me in accusing of me and yet not dealing with me in the name of Christ.<sup>124</sup>

With his ego likely smarting from Hibbens’s unbridled critiques, Davis brings this seemingly private dispute into the public arena of the church in order to defend his reputation and to demand that the church intervene in curtailing Hibbens’s undesirable modes of contract making

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<sup>121</sup> John Demos, “A Sinner Cast Out,” in Demos, *Remarkable Providences, 1600-1760*, 220.

<sup>122</sup> Kamensky, *Governing the Tongue*, 84.

<sup>123</sup> Kamensky, 84.

<sup>124</sup> Demos, “A Sinner Cast Out,” 222.

and covenant breaking.<sup>125</sup> Davis's account of Hibbens's threat that "the timbers of the room would cry for judgment" against him reveals her feisty outspokenness as well as her flair for negotiation. Satisfaction in the sense that Davis searches for signals, "An act of compensation or amends."<sup>126</sup> Davis and the church elders essentially order Hibbens to make amends for acting unacceptably in economic, neighborly, and Christian arenas. Bringing the disagreement in front of the elders of the church essentially makes it an issue of the state. Just as we see Bishop's autonomy to forge business contracts (or not) cast, ultimately, as breaking the covenant of the Puritan state, Hibbens's ability to contract also becomes criminalized through the valences of breaking covenant with her neighbors.

Even more seriously, Hibbens is punished for pushing the bounds of the Puritan marriage contract. Throughout the course of her excommunication examination her most dire transgression appears to be of breaking covenant with her husband.<sup>127</sup> In the middle of Hibbens's examination Sergeant Savidge accuses:

I think if all other offences were passed by ... yet she hath shed forth one sin in the face of the congregation worthy of reproof; and that is transgressing the rule of the Apostle in

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<sup>125</sup> When Mr. Hibbens intervenes to defend Ann Hibbens, claiming that Davis did in fact "receive satisfaction" from Ann, and that God "had so much humbled her spirit, she confessing her error with tears," Mr. Hibbens wonders why Davis has to "make mention of this publicly, and to tell the church of it." To which Davis replies, "I refer myself to the church. The thing was public; and therefore, though I may be satisfied, yet the church may call for satisfaction" (Demos, "A Sinner Cast Out," 224).

<sup>126</sup> *OED Online*, s.v. "satisfaction, n.," accessed May 25, 2015, [www.oed.com/view/Entry/171223](http://www.oed.com/view/Entry/171223). Kytö defines giving "satisfaction" to church members as to "explain their inner feelings of remorse and penitence" ("Robert Keayne's *Notebooks*," 299).

<sup>127</sup> Hibbens is accused of various sins beyond breaking covenant with her neighbor by being a persistent businesswoman, such as that her satisfaction is "constrained and not free," that she "told a lie," that "she did contradict herself," that her carriage was too "proud and contemptuous and irreverent in the church," and that she possessed "Uncharitableness [and] a covetous frame of spirit" (Demos, "A Sinner Cast Out," 221-239).

usurping authority over him whom God hath made her head and husband, and in taking the power and authority which God hath given to him out of his hands. And when he was satisfied and sits down contented, she is unsatisfied and will not be content, but will stir in it—as if she were able to manage it better than her husband, which is a plain breach of the rule of Christ.<sup>128</sup>

The pastor follows up on this accusation, admitting, “That indeed is observed in her by diverse [persons] as a great aggravation of her sin, in so much that some do think she doth but make a wisp of her husband. Yet this she alleged for herself: that her husband did give her leave to order and carry on this business to her own satisfaction.”<sup>129</sup>

By asserting her independence in the public marketplace, Hibbens implies a more equal partnership with her husband that allows her to share in the role of the head of the household. Norton refers to Hibbens as a “fictive widow,” or as part of a group of “married women whose husbands, for one reason or another, were unwilling or unable to govern them.”<sup>130</sup> The major mistake that Hibbens makes, according to Norton, is failing to “comply with the unwritten rules by which the male members of the community resolved their differences,” leading her to a situation in which she was “expected to yield gracefully to the communal judgment that she had erred in her unrelenting obstinacy, even if not in her initial position.”<sup>131</sup>

Hibbens’s circulation in the public sphere as a *married* woman who negotiates contracts with men in the marketplace as a proxy for her husband, I argue, does not make her a “fictive widow,” but rather a woman bold enough to demand in sharing the rights and responsibilities of

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<sup>128</sup> Demos, “A Sinner Cast Out,” 229.

<sup>129</sup> Demos, “A Sinner Cast Out,” 229.

<sup>130</sup> Norton, *Founding Mothers & Fathers*, 140.

<sup>131</sup> Norton, 163.



the head of the household that only a widow could acquire *before* the death of her husband.<sup>132</sup>

That Hibbens is *not* a widow is crucial to the capacity to which she, and presumably widowed women, can threaten the state. Fulfilling the social roles of a widow before her husband dies both shows the agency available to widowed women and suggests that other women (married or single) seek to expand the boundaries of citizenship that cover them in the Puritan state.

Hibbens's insistence on acting jointly as head of the household implies a more radical equality in her marriage than was common in the social structuring of the Puritan state. It is this characteristic of her history that I find most influences Hawthorne's Hester Prynne, who also attempts to reimagine the world that she lives in as a more egalitarian space for women.

In the forest, characterized as a "wild, free atmosphere of an unredeemed, unchristianized, lawless region," Hester convinces the pastor, an integral component of the state and legal apparatus of the colony, to leave the law behind them and to "begin all anew."<sup>133</sup>

Hester commits a profound political transgression in her disregard for Puritan law as created and upheld by imperfect, earthly men. Convincing the pastor to abandon this system of power is a coup that directly undermines the social and legal structure of the state. By attempting to actualize their free wills and their more equal, partnership-driven relationship, in which Dimmesdale depends on her as much as she on him, Hester also attacks the state ideologically. Hester's and Hibbens's politics align in the outspoken ways in which they advocate for equality within and beyond their households and the structures of the Puritan state. Their assertive negotiations represent the potential of autonomous women's citizenship in colonial and nineteenth-century America.

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<sup>132</sup> Norton, 163.

<sup>133</sup> Hawthorne, *The Scarlet Letter*, 27, 29.

Although Hester is never explicitly accused of witchcraft in *The Scarlet Letter*, the narrator clearly implies that dark magic occurred in the forest to the detriment of Dimmesdale's citizenry. Hester's attempts to forge a new state and marital covenant based on equality for women and mutual love and authority so completely transfigure Arthur's character that he becomes almost unrecognizable both to himself and to the narrator, who mourns the loss of his soul. The moment Arthur leaves the forest, he acts as one bewitched, and demonstrates several of the behaviors that condemned the accused men and women of Salem to execution for witchcraft. He thinks blasphemous thoughts, forgets the words of Scripture, and even considers despoiling a maiden parishioner. In short, upon leaving the forest he experiences "a total change of dynasty and moral code."<sup>134</sup> The "same minister returned not from the forest."<sup>135</sup>

By agreeing to leave Boston with Hester to begin life anew, Dimmesdale breaks his covenant with the Puritan state and forms a new kind of covenant with Hester. His uncharacteristic actions upon leaving the forest, "at once involuntary and intentional," are described in supernatural terms that echo the behaviors attributed to those historically accused of witchcraft.<sup>136</sup> After suppressing yet another act of evil that he felt compelled to commit (this time teaching young Puritans how to swear), Dimmesdale asks himself, "Am I mad? Or am I given over utterly to the fiend? Did I make a compact with him in the forest, and sign it with my blood? And does he now summon me to its fulfillment, by suggesting the performance of every wickedness which his most foul imagination can conceive?"<sup>137</sup>

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<sup>134</sup> Hawthorne, 139.

<sup>135</sup> Hawthorne, 138.

<sup>136</sup> Hawthorne, 138.

<sup>137</sup> Hawthorne, 141.

People who confessed to witchcraft during the Salem crisis repeatedly admitted that they agreed to compact with the Devil in exchange for earthly benefits. For example, thirteen-year-old Mary Barker confesses that “she promised to serve worship and believe in him and he promised to perdone her sins.”<sup>138</sup> Mary’s uncle, William Barker Sr., acknowledges that he had “been in the snare of the devil three years” and that “the devil told him he would pay all his debts and he should live comfortably.”<sup>139</sup> Rebecca Eames claimed “she did do itt & that she would for sake god and his works: and the devil promised her: to give her powr: to avenge her selfe on them that offended her.”<sup>140</sup> Dimmesdale questions whether or not his decision to forsake the Puritan project to pursue a life with Hester might have actually been such an agreement, allowing him the promise of a fresh start while also subjecting him to the Devil’s bidding in the meantime.

Arthur’s doubt over the fate of his soul, however, has more serious implications for the moral of the novel as it doubly incriminates Hester and her proximity to the occult. On the one hand, his questioning over whether or not he made a compact with the Devil can be read as him debating whether or not the conversation with Hester actually happened. Was it was all an elaborate illusion designed by the Devil to use Arthur’s earthly weaknesses against him to convince him to break the Puritan covenant? In this scenario, Hester herself is not implicated in practicing dark magic, but her philosophies regarding equality, marriage, and the state’s authority are cast as the elaborate concoction of the Devil and thus as distinctly evil. On the other hand, Arthur’s doubts can be read as subtly accusing Hester herself of practicing witchcraft, thus casting their new covenant as a compact with the Devil that endangers Dimmesdale rather than

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<sup>138</sup> “Mary Barker,” in Boyer and Nissenbaum, *The Salem Witchcraft Papers*, 1:59.

<sup>139</sup> “William Barker Sr.,” in Boyer and Nissenbaum, *The Salem Witchcraft Papers*, 1:65.

<sup>140</sup> “Rebecca Eames,” in Boyer and Nissenbaum, *The Salem Witchcraft Papers*, 1:279–80.

mutually promoting them both. In either case, despite his sympathetic portrayal of the lovers' reunion in the forest, the narrator makes it clear that such a relationship cannot exist within the bounds of the Puritan state in any form other than dark magic.<sup>141</sup>

Another moment where the politics of (the historical) Ann Hibbens and (the fictional) Hester Prynne align can be seen is in the women's mutual questioning of Puritan doctrine that holds that women, according to the Bible, must submit to their husbands. During her excommunication trial, Hibbens employs a reading of Biblical scripture as part of her defense to justify usurping her husband's role as the head of the household:

Brother Eliot: I think thus should farther be pressed upon her spirit: her want of wifelike subjection to her husband ...

Mrs. Hibbens: You may remember, sir, that you have delivered it as an ordinance of God, that a man should hearken to the counsel of his wife- from that speech of God to Abraham, hearken to thy wife in all that she shall say to thee...

Mr. Cotton: If any told you so, they told you an untruth, for I dare confidently affirm that I never delivered any such thing.

Capt. Gibbens: I desire that our Sister would express who that was, which should tell her so; for myself sometimes dealing with her about her doing things contrary to the advice of her husband, she answered me thus: whether it is better to obey God or man, that judge you. By which she intimated to me that disobedience to the counsel of her godly husband was her obedience to God, and that God would have her to do what she did. So that it

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<sup>141</sup> Baym suggests a narrative sympathy for Hester and Dimmesdale in the forest, where they "seem free to act out their idyll without regard for consequences" (*The Scarlet Letter: A Reading*, 24).

argues, she takes it for a principle that the husband must hearken to his wife in the counsel she shall give, and not the wife to the husband. And so she makes a cipher of her husband and his authority, which she should have in great respect.<sup>142</sup>

Hibbens alludes to a passage in the book of Genesis where Sarah advises Abraham to cast out a slave woman and her son who threatens Isaac. When Abraham becomes distressed, God advises, “Do not be distressed because of the boy and because of your slave woman; whatever Sarah says to you, do as she tells you.”<sup>143</sup> Hibbens subverts the accusation that she does not appropriately submit to her husband by providing a scriptural counterexample in which God explicitly commands the opposite. John Cotton, the pastor, immediately disavows preaching on the topic, not without some desperation. Cotton’s and Gibbens’s flustered rebuttals illustrate the danger that Hibbens’s reading poses to the social and religious hierarchies of the colonial Puritan state.

Utilizing scripture in her own defense as opposed to having it used against her signals an independent mode of thinking that reads against the grain of the structures of religious authority imposed on women by men in the Puritan state. In the Genesis passage, Sarah does not disobey her husband, but rather advises him in matters of their home. Hibbens suggests with Biblical proof, then, that women have direct access to the word of God, and can thus, in some cases, overrule their husbands. This position, according to Gibbens, makes a “cipher of her husband and his authority.”<sup>144</sup> A cipher, or “a person who fills a place, but is of no importance or worth, a

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<sup>142</sup> Robert Keayne, “Church Trial and Excommunication of Ann Hibbens,” in *Root of Bitterness: Documents of the Social History of American Women*, 2nd ed., ed. Nancy Cott, Jeanne Boydston, Ann Braude, Lori D. Ginzberg, and Molly Ladd-Taylor (Boston: Northeastern University Press, 1996), 14–15.

<sup>143</sup> Genesis 21:12 (New Revised Standard Version).

<sup>144</sup> Keayne, “Church Trial and Excommunication of Ann Hibbens,” 15.

nonentity,” introduces another layer of proxying to Hibbens’s examination.<sup>145</sup> According to Gibbens, Hibbens’s independence in the marketplace as her husband’s proxy combined with her tendency to view herself as an authority, strips William (and the church) of their social power completely. In becoming a proxy of her husband, Hibbens nullifies familial and state authorities.

Hester Prynne also reads against the grain of Puritan and biblical law to the horror of both the narrator and the religious and state authorities of the novel, including Arthur Dimmesdale. After confessing to Dimmesdale that Chillingworth “was my husband,” she demands, “Thou shalt forgive me! ... Let God punish! Thou shalt forgive!”<sup>146</sup> Hester challenges the idea of corporate sin in favor of personal confession based not on Puritan law but on individual and interpersonal forgiveness. She also justifies her sexual independence, insisting that her physical and emotional love for Dimmesdale took on a particular form of holiness, asserting, “What we did had a consecration of its own. We felt it so! We said so to each other! Hast thou forgotten it?” Although Arthur hushes Hester for being bold enough to speak such blasphemous beliefs aloud, he concedes, “No! I have not forgotten!”<sup>147</sup> To not only admit to committing adultery but to forcefully rationalize and redefine the act are radical beliefs indeed for a Puritan polity that lists adultery as a capital crime, especially coming from the mouth of its minister.

Brook Thomas argues that Hester’s greatest sin in the novel is not adultery but rather her beliefs on consecration, claiming, “This proclamation is in fact sinful because it implies that Hester’s and Dimmesdale’s love is a self-contained act, not one in need of God’s sanction. As

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<sup>145</sup> *OED Online*, s.v. “cipher, cypher, n.,” accessed June 1, 2015, [www.oed.com/view/Entry/33155](http://www.oed.com/view/Entry/33155).

<sup>146</sup> Hawthorne, *The Scarlet Letter*, 125.

<sup>147</sup> Hawthorne, 126.

such their love exists in the realm of the natural, not civil, liberty, and must be contained.”<sup>148</sup> The new marriage contract that Hester proposes directly undermines the civil apparatus of a state built upon the disenfranchisement of women through coverture.

Yet importantly Hawthorne illustrates Hester’s and Dimmesdale’s love as existing both inside the “realm of the natural,” as Thomas suggests, but also in the realm of the supernatural. After Dimmesdale publicly reveals himself as Hester’s lover, Pearl kisses him, and in that moment Hawthorne declares, “a spell was broken.” Hawthorne refers primarily to the wildness of Pearl, whom the narrator (paternalistically) insists, now that the spell was broken, would now stop “doing battle with the world” and begin to “be a woman in it.” But it is also in this moment that Arthur chooses not to forge a new covenant with Hester, thus breaking whatever “spell” she might have cast on him in the forest. As she pleads with Dimmesdale to assure her that they will “spend our immortal life together,” she is rejected.<sup>149</sup> Succumbing to his God and to the dictates of the state Dimmesdale refuses, ultimately, to agree to the radical covenant that she proposes. Because of this denial, in the eyes of the state, of God, and of the narrator, he is justly saved.

Finally, this moment signals the breaking of the supernatural language that Hawthorne employs to explore Hester’s radical new covenant. With Dimmesdale’s silencing of Hester’s blasphemous insistence that their relationship was holy through her hope for their reconciliation in the afterlife, infamously propounded in his demand, “Hush, Hester, hush,” she is doomed to life under the scarlet letter anew.<sup>150</sup> Hester Prynne is (re)covered by watchful eye of the narrator

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<sup>148</sup> Brook Thomas, “*The Scarlet Letter as Civic Myth*,” *American Literary History* 13, no. 2 (2001): 187.

<sup>149</sup> Hawthorne, *The Scarlet Letter*, 162.

<sup>150</sup> Hawthorne, *The Scarlet Letter*, 162.

who continues to await her atonement for her rejection of the marriage contract, and as such the need for supernatural allusions and metaphors to describe her transgressions dissipates.

#### *IV. Early American Widowhood and the Spectral Archive*

Reflecting in “The Custom- House” on whether or not his ancestors may have repented for their “cruelties,” Hawthorne decides that he, “the present writer, as their representative, hereby take[s] shame upon myself for their sakes, and pray[s] that any curse incurred by them—as I have heard, and as the dreary and unprosperous condition of the race, for many a long year back, would argue to exist—may be now and henceforth removed.”<sup>151</sup> As a white male author serving the United States government, Hawthorne has a patriarchal privilege to rewrite the national narrative in a way that seeks to atone for his ancestors’ infamy. Yet in writing “The Custom-House” and *The Scarlet Letter* from the unique subjectivity of the “representative” of his ignominious ancestors reveals, as Derrida would call it, “the violence of the archive itself, as *archive, as archival violence*.”<sup>152</sup> As Hawthorne seeks to ameliorate his ancestors’ legacies through his creation of *The Scarlet Letter*, his privilege to add, omit, and to fictionalize details of the larger national narrative perpetuates the archival violence originally done to widowed women such as Bridget Bishop and Ann Hibbens in the body of Hester Prynne.

Derrida argues that the origins of the word ‘archive’ names both “the *commencement* and the *commandment*.” Hawthorne ‘finds,’ or rather elaborately engineers, the documents that supposedly comprise Hester Prynne’s archive, both commencing her story and commanding her fate. Hawthorne describes the alleged document, written by a previous surveyor (his “official ancestor” Jonathan Pue) as “many foolscap sheets, containing many particulars respecting the

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<sup>151</sup> Hawthorne, 12.

<sup>152</sup> Derrida, *Archive Fever*, 7.



life and conversation of one Hester Prynne.” He insists, “the main facts ... are authorized and authenticated by the documents of Mr. Surveyor Pue,” and based on “the verbal testimony of individuals, some of whom had known Hester Prynne, while others had heard the tale from contemporary witnesses.” He further specifies that the project was prescribed by the state as a “commission, under the hand and seal of Governor Shirley.”<sup>153</sup>

Hester’s “true” story thus comes down to Hawthorne filtered by the state who commissioned the project, Pue’s authentication and official transcription of witness interviews, and the oral histories and testimonies of the people in the community who still remembered Hester and her story. Like Keayne’s notebook and the records of Bishop’s examination, which contain oral testimonies, narrative-driven depositions, and legal matter surrounding the cases, so too is Hester’s story filtered through the archival apparatuses of the patriarchal state.

Hawthorne admits that he has not “confined” himself to Hester’s official archive in writing his novel, but rather has “allowed myself, as to such points, nearly or altogether as much license as if the facts had been entirely of my own invention. What I contend for is the authenticity of the outline.” To maintain his credibility he offers, “The original papers, together with the scarlet letter itself,- a most curious relic,- are still in my possession and shall be freely exhibited to whomsoever, induced by the great interest of the narrator, may desire a sight of them.”<sup>154</sup>

Derrida traces the meaning of the word ‘archive’ from the Greek *arkheion*, originally the place where the “superior magistrates” or the “archons ... commanded.” As such, the archons served as “the documents’ guardians” who both “ensure[d] the physical security of what [was]

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<sup>153</sup> Hawthorne, *The Scarlet Letter*, 27.

<sup>154</sup> Hawthorne, 27.

deposited” and thus had “the power to interpret the archives.”<sup>155</sup> With sole possession of the imaginary artifacts regarding Hester’s life as well as the creative license to interpret and deviate from these records, Hawthorne’s novel becomes an extension of the official state archive and an experiment in the authority of national narrative making.

The lives of Bridget Bishop, Ann Hibbens, and Hester Prynne, autonomous widowed women executed by the patriarchal state in life and silenced by the “patriarchive” in death, appear and disappear in histories and fictions only in carefully curated fragments of who they might have been.<sup>156</sup> As Derrida characterizes the spectrality of the archive as “neither present nor absent ... neither visible nor invisible, a trace always referring to another whose eyes can never be met,” so are these women spectral to modern readers.<sup>157</sup> Such archival spectrality is a legacy of the spectral evidence used against them in life as their communities struggled to understand their legal, economic, sexual, and social autonomy as anything less than witchcraft. Bishop, Hibbens, and Prynne emerge incompletely in the national narrative, yet their autonomy defines it.

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<sup>155</sup> Derrida, *Archive Fever*, 2.

<sup>156</sup> Derrida, 4. Roach depicts the transience of the failed surrogate, noting, “The anxiety generated by the process of substitution justifies the complicity of memory and forgetting. In the face of this anxiety ... the alien double may appear in memory only to disappear” (*Cities of the Dead*), 6.

<sup>157</sup> Derrida, *Archive Fever*, 84.

## CHAPTER 2

### **“We are your Mothers, You are our Sons”: Matrilineal Diplomacy, Republican Motherhood and Women’s Property Rights in the Era of Indian Removal**

On January 17, 1797, Mr. Dwight Foster, a congressman of Massachusetts and the Committee of Claims’s chairman, presented a report regarding a petition by the widow of Overhill Cherokee chief Scolacuttaw, or Hanging Maw, to the House of Representatives.<sup>1</sup> Referring to Scolacuttaw’s wife exclusively as the “Widow of the Late Scolacuttaw,” “his widow,” or as “the petitioner,” the report describes her entreaty to the United States government to compensate for damages to her body and property suffered during a raid by Captain John Beard. During the attack on her settlement, Beard and his party wounded and killed several “well-disposed Indians,” burnt and plundered their property, and injured the widow herself.

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<sup>1</sup> I have been unable to identify Scolacuttaw’s widow beyond her unnamed appearance in the Committee on Claims and John Adams’s brief mention of her in a letter to Abigail Adams in December 1796.

Founded on November 13, 1794, the Committee on Claims was one of the first committees in the House of Representatives. The committee’s job was to “take into consideration all petitions and matters or things touching claims and demands on the United States as shall be presented or shall or may come in question and be referred to them by the House, and to report their opinion thereon, together with such propositions for relief therein as to them shall seem expedient” (National Archives, “Guide to House Records: Chapter 6: Claims 1794–1946,” para. 6.15, last updated June 26, 2017, <https://www.archives.gov/legislative/guide/house/chapter-06-claims.html>). For more information on the history of the Committee on Claims, see the National Archives’ site, referenced in this note; and *Cannon’s Precedents of the House of Representatives of the United States*, vol. 7 (Washington, DC: Government Printing Office, 1935), p. 828, para. 1992.

In a letter written to Abigail Adams from Philadelphia on December 4, 1796, Adams mentions attending a dinner with George Washington, “in company with John Watts, the king of the Cherokees, with a large number of his chiefs and their wives; among the rest the widow and children of Hanging Maw, a famous friend of our’s [sic] who was basely murdered by some white people” (“Letter CCLXXIV,” in *Letters of John Adams, Addressed to His Wife*, ed. Charles C. Little and James Brown [Boston: Charles C. Little and James Brown, 1841], 2:231).

Despite acknowledging Beard's misconduct, the Committee found "some difficulty" in resolving the case, redeploying the widow's petition into a rumination on the legal obligations of the United States to Indigenous groups at the turn of the nineteenth century.<sup>2</sup> The committee debates: Who has the right to pecuniary recompense for property damages incurred during the long history of violence between peoples? Native Americans or white American settlers?

This chapter examines how the widow figure becomes imbued with property leading up to and during the Jacksonian era. Scolacuttaw's widow's petition encapsulates Cherokee women's roles in the contentious relationship between United States federal and state governments and Cherokee governing structures during this time. I investigate how redefining womanhood, motherhood, and widowhood through property became central to the ways in which the Cherokee Nation and the United States each sought to protect the lands and peoples they considered their own. This revision of gender norms was dynamic, with both governments resisting and appropriating from the other in ways that would have lasting effects on Cherokee and Anglo-American women. As I will show, both Cherokee and American women rejected the legal impulse to qualify their citizenship through property.

The chapter will proceed in three parts. First, I will interpret Scolacuttaw's widow's petition alongside the Cherokees' first codified laws, which emerged in 1808 and referred to Cherokee women using Anglo-American terminology and social signifiers, particularly 'widow.' By redirecting lines of inheritance and other responsibilities away from the matrilineal clan, the

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<sup>2</sup> *American State Papers: Indian Affairs* 4:621. In June 1793, only days after receiving an invitation to attend peace talks with George Washington in Philadelphia, Captain John Beard and a slew of Tennessee infantry attacked Cherokee leaders who had gathered at the governor's request for a peace talk. They killed and wounded a dozen people. See Colin G. Calloway, *The Indian World of George Washington: The First President, the First Americans, and the Birth of the Nation* (Oxford: Oxford University Press, 2018), 428.

law enacts both a symbolic and actual subordination of women in the emerging Cherokee republic; through the legal and social status of the widow, a status particularly employed at this moment to regulate and protect Cherokee men's private property, women became formally, if not always customarily, classified as dependents reliant on their husbands. I emphasize how this status detrimentally diverges from traditional Cherokee views on marriage and women's roles more broadly.

I situate Scolacuttaw's widow's petition in the larger context of Cherokee women's resistance to Anglicized conceptions of womanhood by turning in the second section to the diplomacy of renowned Beloved Woman Nan-ye-hi, or Nancy Ward. Through readings of two of Nan-ye-hi's speeches, I explore how Cherokee women advocated for themselves and challenged threats to their traditional authority in front of both the Cherokee and United States governments. Nan-ye-hi's international relations insist on Cherokee women's role as symbolic mothers of the nation, a metaphorical extension of the traditional Cherokee system of balance within their political and familial structures during times of centralization and removal.

The third part of this chapter examines U.S. debates over property in the context of the 'woman question' that coincided with forced Indian Removal. I investigate a major lawsuit based on a Mississippi Supreme Court case that featured a half-Chickasaw woman, Elizabeth Love Allen, who sought to protect her property (an enslaved man named Toney) from her husband's creditors. As a result of this lawsuit, the first of the state-based Married Women's Property Acts was passed in 1839, which challenged national coverture principles and gave married women access to their own property inside marriage.

The antiremoval literature of white activists at this time, notably Lydia Maria Child's *The First Settlers of New-England; Or, the Conquest of the Pequods, Narragansets, and Pokanokets*

*as Related by a Mother to her Children*, explicitly connects the forcible stealing of Cherokee lands to the increase of white women's property rights. I analyze how Indigenous matrilineal inheritance practices came to bear on American women's property rights as well as on larger women's rights conversations of the 1830s.

While the meaning of widowhood varies by nation and culture, this chapter explores how the U.S. acknowledges women's status, Indigenous or American, widow or mother, through claims to property. Whether that property is Native lands or enslaved Africans, the widow becomes a way for dominant governing structures to situate women's value as citizens in their property. I examine how both Nan-ye-hi and Child articulate womanhood in their own terms to critique their governments, reclaiming political agency through metaphors of motherhood rather than through property.

### *I. Property, Widowhood, Nationhood: The Codified Laws of the Cherokee Nation*

The Committee of Claims's decision regarding Scolacuttaw's widow's petition ultimately hinged on their ability to define the U.S.'s legal and ethical responsibilities to Native groups. The report debates at length "the mutual acts of aggression and hostility" between the "frontier settlers of Tennessee" and the "Indians in that quarter." The Committee acknowledges Scolacuttaw's reputation as a peacemaker, "uniformly friendly to the settlers." They attribute similar tendencies to his widow, who, "instead of exciting her people to acts of retaliation" after the unjust raid by John Beard, "has abated nothing in her friendship to white people." Such diplomacy, the report reasons, ought to make her eligible for a pension. Granting her request

might even encourage other Cherokees to act peacefully “under circumstances alike cruel and distressing” if they could look to the widow’s success as legal precedent for peaceful behavior.<sup>3</sup>

Yet the Committee also considers whether white settlers invading Cherokee land in Tennessee, and thus frequently made subject to similar attacks from “the Indians,” should themselves be entitled to compensation. The report questions whether the government would be able to financially support “all possible claims of this nature” and disputes whether “help can be extended, by law, to the one, and consistently refused to the other?” The Committee vaguely concedes the legal and ethical differences between the violence incited by white settlers intruding on Cherokee lands and the Cherokees’ need to defend themselves. They suggest that perhaps settlers’ claims would not be warranted since they “voluntarily assume all rights and risks” by knowingly settling on Cherokee land. On the contrary, they reason “policy requires that the minds of Indians, who may be roused to hostility by acts of the settlers, should be quieted by small pecuniary interpositions.”<sup>4</sup> Nevertheless the Committee decides against the widow, suggesting that she apply to the Executive Department. The House of Representatives would later uphold the Committee’s recommendation and deny the petition.<sup>5</sup>

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<sup>3</sup> *American State Papers: Indian Affairs* 4:621.

<sup>4</sup> *American State Papers: Indian Affairs* 4:621.

<sup>5</sup> At the present, the only significant information that I have been able to find regarding the petition of Hanging Maw’s widow is in tracing its progress through the House of Representatives as documented in the *American State Papers*. It appears that on Thursday, January 5, 1797, the petition of the widow was first “presented to the House and read.” On Tuesday, January 17, 1797, we learn that the petition had been presented to Mr. Dwight Foster in the Committee of Claims, who had made a report, which was “read, and ordered to be referred to the Committee of the Whole House” (*American State Papers: Indian Affairs* 4:621; *House Journal*, 4th Cong., 2nd sess., January 17, 1797). On Wednesday, March 1, 1797, the House convened the Committee of the Whole House to consider Hanging Maw’s widow’s petition. The Committee of the Whole House agreed with the recommendation of the Committee of Claims, the rest of the House agreed with the Committee of the Whole House’s approval of the suggestion, and the widow’s

The report reveals the complicated process in which both the Cherokees and the U.S. negotiated Cherokee women's political authority under the auspices of American federal law. First, the Committee's insistence on her title as a widow marks a significant alteration in how both American, and soon after, Cherokee legal structures, sought to label Native women as dependent members rather than as heads of the household under the traditional organizing principles of matrilineal clan kinship. Second, the Committee's celebration of the widow's restraint in "retaliating" against white violence signals another significant transformation in Cherokee cultural and legal structures that would, in the beginning decades of the nineteenth century, further disempower the matrilineal clan: the elimination of matrilineal rule of law. Lastly, the Committee's moralizing language, presenting Scolacuttaw and his widow as more "civilized" than other "Indians" for their peacemaking approach, reveals the "civilization" strategies of the newly cohered United States in defining their relationship to Native peoples.

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request was denied (US House of Representatives, *Report of the Committee of Claims, on the Petition of the Widow of the Late Scolacuttaw, or Hanging Maw, one of the Chiefs of the Cherokee Nation of Indians* [Philadelphia: William Ross, 1797]). For information on the workings of the Committee of the Whole House, which expedites considerations of bills and other matters through a parliamentary rule that allows the House to act with a quorum less than the required 218, see, *Guide to Legislative Process in the House*, "Committee of the Whole House," accessed May 2018, <https://archives-democrats-rules.house.gov/archives/lph-consid2.htm>.

There was also at least one printed and bound copy of the report created by the Committee of Claims, a copy of which is housed at the Newberry Library in Chicago, Illinois. Aside from the disclaimer that the report was "Published by Order of the House of Representatives," there is no other publication information listed in the bound copy, and it remains unclear why it was published and to whom it circulated (US House of Representatives, *Report of the Committee of Claims*).

According to Dorothy Alexander, a librarian at the Center for Legislative Archives at the National Archives and Records Administration (NARA), Scolacuttaw's widow's original petition is no longer extant. As reported by another NARA librarian, Rose Buchanan, a fire in the War Department in 1800 destroyed many important records from this time period. I have a few leads on how to search to see whether Scolacuttaw's widow did apply to the executive branch, but it will require a trip to Washington, DC, to comb through the archives myself.



Such “civilization” policies influenced how Cherokee lawmakers set about codifying laws in the emerging Cherokee Republic in 1807.

In the Committee’s report, and, presumably to some degree in the widow’s application for redress, she derives her authority for petitioning the government from her status as a widow of a Cherokee chief. Yet the concept of widowhood as understood under Anglo-American legal and social structures seems to have been nonexistent in the Cherokee worldview. In the eighteenth century, the heart of Cherokee governance centered on a matrilineal kinship system based on membership in one of seven clans.<sup>6</sup> Following customs of matrilineal descent, persons belonged to one of these seven Cherokee kinship groups through their mothers, and children were not related by blood to their fathers.<sup>7</sup> In order to be accepted as kin, one had to be born of or formally adopted by a Cherokee mother. Because kinship and citizenship in the Cherokee Nation were intertwined, womanhood, and by extension motherhood, offered women distinct political power that I will explore at length in the following section.<sup>8</sup>

Marriage was a more fluid concept in Cherokee society, with multiple-partner relationships common and divorce conventional; but, upon the death of a woman’s husband, very little about her everyday life changed because of the support of her network.<sup>9</sup> Women were

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<sup>6</sup> Pat Alderman, *Nancy Ward, Cherokee Chieftainess: Her Cry Was All for Peace* (Johnson City, TN: Overmountain Press, 1978), 3.

<sup>7</sup> Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700–1835* (Lincoln: University of Nebraska Press, 1998), 42.

<sup>8</sup> Perdue, 101.

<sup>9</sup> As Perdue notes in *Cherokee Women*, “The only permanent members of a household were the women. Husbands were outsiders; that is, they were not kinsmen. When a man married, he moved from the household of his mother to that of his wife. A man’s move to his bride’s residence did not mean that he became a part of her clan and lineage” (43). See also William G. McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton, NJ: Princeton University Press, 1986), 13. For an in-depth explanation of the kinship system as a form of social welfare,

rarely characterized as “dependent” on their husbands in the way that Anglo-American women were.<sup>10</sup> In fact, the legal and cultural status of the widow in Anglo-American terms seems to have rarely applied to Cherokee women until the turn of the nineteenth century, when the Cherokee government, under intense cultural pressure, transitioned into a Constitutional Republic in order to better protect their lands from dispossession and to satisfy the demands of the United States for their “civilization.” This section explores the ways in which to be endowed with widowhood by legally changing Cherokee governing structures was to be subordinated in white settler colonial nomenclature and marriage and family arrangements.

The first codified law of the Cherokee, dated September 11, 1808, reflects several of the issues at stake in the petition filed by Scolacuttaw’s widow eleven years earlier, but from the viewpoint of the centralizing government of the Cherokee Nation.<sup>11</sup> The legislation mainly served to establish a national police force called the Lighthorse Brigade. In the process, however, it radically redefined women’s roles in Cherokee society and governance by instituting patrilineal inheritance practices and by seeking to halt customs of clan vengeance. The law thus reveals the Cherokees’ turn toward the customs of private property and their struggle to regulate

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see Julie L. Reed, *Serving the Nation: Cherokee Sovereignty and Social Welfare, 1800–1907* (Norman: University of Oklahoma Press, 2016), 3–22.

<sup>10</sup> One notable exception to this generalization was the life of Peggy Scott Vann, the wife of James Vann, an influential and extraordinarily wealthy plantation owner. Tiya Miles describes how Peggy “stood in a position of disempowerment relative to her influential husband.” Instead of James moving to Peggy’s homestead, as was customary upon marriage between Cherokees, Peggy relocated to James’s plantation, leaving the social and emotional support of her kin network behind (*The House on Diamond Hill: A Cherokee Plantation Story* [Chapel Hill: University of North Carolina Press, 2010], 109).

<sup>11</sup> Toward the end of the eighteenth century, the Cherokee government centralized “out of the need to coordinate foreign policy and to protect the entire nation from violence provoked by the actions of individual warriors” (Perdue, *Cherokee Women*, 135). From this centralization of power, “The Cherokee republic, with written laws and constitution, centralized authority, and delegated power, emerged” (Perdue, 135).

and protect it. It established officers' pay rates and offered "protection" for their children and wives upon the event of their death:

*to give their protection to children as heirs to their father's property, and to the widow's share whom he may have had children by or cohabitated with, as his wife, at the time of his decease, and in case a father shall leave or will any property to a child at the time of his decease, which he may have had by another woman, then, his present wife shall be entitled to receive any such property as may be left by him or them, when substantiated by two or one disinterested witnesses.*<sup>12</sup>

By authorizing pay rates for officers that requires the Cherokee Nation to "give their protection to children as heirs to their father's property" while establishing a "widow's share," the first written law fundamentally retraces lines of inheritance.<sup>13</sup> In so doing, it enacts a symbolic subordination of women to the status of "dependent" in the emerging Cherokee Republic. Perdue contends that this particular facet of the law "dramatically reordered traditional lines of descent, which had been strictly matrilineal."<sup>14</sup> The law also privileges the "present wife," of the husband, regulating Cherokee tendencies to engage in multiple relationships at once.

In addition to rearranging lines of inheritance, the 1808 law also dealt a blow to women's authority by beginning to dismantle the customs of clan vengeance. It states:

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<sup>12</sup> *Laws of the Cherokee Nation Adopted by the Council at Various Periods* (Tahlequah: Cherokee Advocate Office, 1852), 3–4 (emphasis added).

<sup>13</sup> *Laws of the Cherokee Nation*, 3–4.

<sup>14</sup> Perdue, *Cherokee Women*, 139. Perdue explains, "Although the inheritance of property had normally been of little consequence to the Cherokees, since they lived at the subsistence level and buried personal items with the dead, this new inheritance law threatened to reorder descent and replace maternal blood ties with paternal material ties" (139).

should the accused person or persons raise up with arms in his or their hands, as guns, axes, spears and knives, in opposition to the regulating company, or should they kill him or them, the blood of him or them shall not be required of any of the persons belonging to the regulators from the clan the person so killed belonged to.<sup>15</sup>

Prior to the passing of this law, Cherokee governance and defense was largely managed through the principles of retribution and retaliation dictated by the customs of matrilineal clan kinship.<sup>16</sup> Early Cherokee law was straightforward: if one Cherokee killed another, or committed a smaller crime against him or her, the clan of the victim was responsible for avenging that death or crime. Until the victim's clan enacted vengeance, the cosmic balance was out of order; when retaliation occurred, both clans viewed the cosmic harmony as being rebalanced. Prior to the nineteenth century, "the responsibilities that today we associate with police forces and courts rested with families. No one outside the family, however respected, had anything to do with providing protection or dispensing justice."<sup>17</sup>

Although mothers and other women family members had always acted as heads of households, suddenly, and through the signifier of the widow, Cherokee wives and widows became legally classified as dependents reliant on their husbands and the state. White outsiders pressured the Cherokees to cease what they perceived to be the barbaric customs of clan vengeance; they also misunderstood the practices of matrilineal descent, viewing it as cruel that widows and children went uncared for by the Cherokee state.<sup>18</sup> This had broad-reaching effects

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<sup>15</sup> *Laws of the Cherokee Nation*, 3.

<sup>16</sup> Perdue, *Cherokee Women*, 135.

<sup>17</sup> Perdue, 51.

<sup>18</sup> See Perdue, 139–40.

for the status of Cherokee women generally during centralization, and can be seen as a direct result of the U.S. “civilization program” on Cherokee life. Tiya Miles explains:

Following the Revolutionary War, the United States had introduced a civilization program that instructed Cherokee men to abandon hunting and take up management of family farms, relegated Cherokee women to a diminished domestic sphere, and fostered plantation-based race slavery to replace and expand women’s agricultural work. This directive set in motion a restricting of power relations. It elevated Cherokee men as heads of their households; it precipitated a decline in Cherokee women’s economic and political standing, and it created a new class of subjugated people within the Cherokee Nation; African descended slaves ... The subjugation of Cherokee women to Cherokee men, of black slaves to Cherokee owners, of Cherokee leaders to American authority was all of a piece.<sup>19</sup>

As the government centralized, leaders struggled to balance in codified law traditional matrilineal values and political structures with evolving power relations centered on private property. By the time of the Cherokee Constitutional Convention of 1826, which disenfranchised women and “limited the privileges of citizenship” solely to men, “the great fortunes ... emerging in the early nineteenth century belonged to men, and many of these men wanted to bequeath their wealth to their children.”<sup>20</sup>

While white Anglo-American widowed women experienced a major shift in their legal and economic existence after their husbands died, there appears to be little evidence that Cherokee women’s positions within the matrilineal clan kinship system were altered much by

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<sup>19</sup> Miles, *The House on Diamond Hill*, 111.

<sup>20</sup> Perdue, *Cherokee Women*, 139–40.

widowhood during these eras much, if at all. Cherokee women already served as autonomous heads of their households and held land that their children would inherit.<sup>21</sup> That the legal and social status of the widow emerges in 1808 when the Cherokee government altered laws of inheritance and descent, then, is significant. Whereas white widows gained independent legal recognition upon their husbands' deaths, the Cherokee Republic ironically used the language of widowhood to extend Cherokee *men's* rights to property and patrilineal practices.

The formal enactment of the Cherokee widow's legal and social status in the 1808 law reflects the influence of Anglo-American attitudes toward women and property on Cherokee leadership as the need for the regulation of private capital began to emerge in earnest. As we see in the petition of Scolacuttaw's widow to the American government as well as in the Cherokee law of 1808, in the early nineteenth century both nations subtly pivot their governing strategies to refigure Cherokee women in formal legal contexts as widows to expand their relationship with, and their autonomy from, one another.

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<sup>21</sup> Perdue elaborates that prior to the 1808 law, "Cherokees had held land in common, families owned dwellings and improvements, and relatives normally interred personal property with the deceased. Any apparent line of descent was matrilineal, because that is how the Cherokees reckoned kin, houses passed from mother to daughter or maternal niece, and a man's claim on familial property went to his sister and her children rather than to his own offspring. The reordering of descent signaled an increase in the individual wealth of some Cherokee men and a devaluing of matrilineal kin ties" ("Clan and Court: Another Look at the Early Cherokee Republic," *American Indian Quarterly* 24, no. 4 [2000], 564). Fay Yarbrough also explains practices of matrilineal inheritance. She claims that Cherokee women "maintained their own property, property which was inherited matrilineally, even after marriage" ("Legislating Women's Sexuality: Cherokee Marriage Laws in the Nineteenth Century," *Journal of Social History* 38, no. 2 [2004]: 386). In *Cherokee Women*, Perdue notes the difference in values over property between hunters and warriors, who largely embraced individualism, and women, who as farmers "worked as a group on land shared by their matrilineage" (135). She explains, "As the Cherokees created their republic in the early nineteenth century, they struggled to reconcile these two value systems and to create a code of laws in which individual and community, private and public, men and women balanced each other" (135).

In the Cherokee context, there was a symbolic shift in legalese of women from the head of the household, or clan kinship system, with all of its cultural and legal autonomies, to dependent widowhood. The change reveals how the male-led centralizing government relied on the patriarchal economies of the Anglo-American nation-state to construct parameters that protected both individual private property as well as the wellbeing of commonly held lands and Cherokee peoples more broadly.

In the Committee of Claims report, legislators struggle to reconcile the power of Cherokee women with Anglo-American norms. The representatives acknowledge Scolacuttaw's widow's restraint of her power in choosing not to retaliate for the wrongs done to her property and persons upon the wrongful raid of John Beard on her village. Yet the Committee's refusal to even name her beyond her widowhood to Scolacuttaw, a subjectivity that didn't even exist in Cherokee culture, erases her more powerful role as the head of her household through clan kinship. By defaulting to her perceived status as a widow rather than as a family leader, the committee members employ patriarchal Anglo-American conceptions of gender and marriage to the couple. They rhetorically attach Scolacuttaw's wife to the Cherokee chief as his widow rather than as an individual in her own right who was part of a kinship network far more comprehensive than the Anglo-American marriage vow.

This mismatch between the balanced individuality that Scolacuttaw's wife would have understood herself to possess and the Committee's portrayal of her as nonexistent outside the "cover" of her husband is consistent with the United States' legal dealings with Native pension requests. Julie L. Reed's recent book, *Serving the Nation: Cherokee Sovereignty and Social Welfare, 1800-1907*, examines Cherokee pension claims after the War of 1812, when some 36 Cherokee died and 51 suffered wounds in battle. Reed elaborates on the distinct ways in which

pension application requirements “conformed to the federal government’s gendered ideas about family relationships intended to support patriarchal nuclear configurations, ideas that ... certainly did not represent Cherokee practices and Cherokee economic systems.”<sup>22</sup> U.S. pension laws privileged the rights of widows and children, which did not accord with Cherokee matrilineal clan family structures; in Cherokee culture, a soldier’s mother and her clan would have been privileged for support over that of his wife. As Reed notes, however, these discrepancies did not stop Cherokee people from applying for pensions for family members who fell outside of their own and the U.S.’s differing definitions of family.<sup>23</sup>

Scolacuttaw’s widow’s petition uniquely demonstrates, at least in one instance, strategies that Cherokee women might have used to adapt more traditional legal beliefs of the Cherokees to Anglo-American customs to negotiate with the United States on both American and Cherokee terms. Scolacuttaw’s widow seeks legal retribution for the violence done to her body and her property as much as or at least in addition to her desire for financial recompense. Because the actual record of her original petition presented to the House of Representatives appears to no longer exist, I can only speculate on what kind of pecuniary retribution she was seeking and on what grounds.

However, what is clear is that Scolacuttaw’s widow competently negotiates within the complex gender dynamics of two legal systems in flux at the turn of the nineteenth century. By applying for a pension from the U.S. for the violent wrongdoing instigated by one of their states, Scolacuttaw’s widow uses the legal technology of the dominant government to provoke

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<sup>22</sup> Reed, *Serving the Nation*, 40.

<sup>23</sup> Reed explains, “Within a matrilineal society, widows’ and orphans’ pensions should have been mothers’, brothers’, sisters’, nieces’, and nephews’ pensions, but since they were not, traditional Cherokee people attempted to adapt pensions to meet their families’ needs” (40).



acknowledgement of their wrongful violence to her people. In this way, she invokes a modified form of clan retaliation. Using the tools of the American government, Scolacuttaw's widow revises matrilineal retaliation practices to avenge the wrongs done to the Cherokee and to seek reparation.

The House's ultimate rejection of Scolacuttaw's widow's claim, in contrast to those awarded to Cherokee soldiers of the war of 1812, illustrates the degree to which representatives believe the United States federal government to be responsible for protecting Native peoples. In the case of Scolacuttaw's widow, the House rules that state-sponsored violence perpetuated outside of national conflict is not under the federal government's purview but is, rather, a state-based issue. To award Scolacuttaw's widow's request would set a dangerous precedent: that the United States could be considered culpable for exciting violence, damages, death, and injury to the very Native peoples they sought to either eliminate, remove entirely, or "civilize" and assimilate into one national fabric. Although the Committee acknowledges the latent power of matrilineal retaliation, they ultimately refuse to reward her for her "civilized" practices of peacekeeping, and simultaneously negate her right to retaliate by federal recompense as well.

I wish to emphasize that, despite evolving legal definitions of Cherokee widowhood and womanhood in both the U.S. and the centralizing Cherokee nation, Scolacuttaw's widow does not appear to present herself as a wife dependent on her late husband's support, as both the U.S. and the Cherokee government might have viewed her. Instead, her communal requests for redress suggest that she viewed herself as a political actor holding the American government accountable to the violence its citizens have perpetuated on her people.

Despite the Committee's incessant referring to her as a widow, she appears to request "provision" not only for herself but for her community as well. The committee documents how

she insists that Beard and his troops “killed and wounded a number of well disposed Indians” and “burnt and destroyed and carried away their property.”<sup>24</sup> Perhaps by performing the widow for the United States government, Scolacuttaw’s widow sought to continue the modes of social welfare for her people based in matrilineal clan kinship practices but updated to reflect the needs of the current political moment.

## *II. Matrilineal Diplomacy and the U.S. Nation-State*

As head of the Woman’s Council, Nan-ye-hi’s, or Nancy Ward’s, speeches at peace talks on Long Island at Holstons River and, later, in front of the Cherokee National Council in 1817, articulate a distinctly gendered mode of diplomacy in which Cherokee women advocated for themselves in the emerging ideologies of nationhood developing among the Cherokee and the United States. Nan-ye-hi recognizes the shift in Cherokee women’s status, symbolized in this chapter by the status of ‘widow’ granted in written Cherokee laws, and resists it, re-centering her politics on traditional matrilineal political structures and values. Her speeches shift the emphasis on women’s roles in Cherokee society away from the “civilization” program’s values, which understood women as dependent members relegated to the domestic sphere. Instead, she foregrounds the power of the mother in Cherokee cosmological, political, and social life.

In 1755, Nan-ye-hi, daughter of Tame Doe of the Wolf clan and wife of the prestigious warrior Kingfisher of the Deer clan, accompanied her husband to the Battle of Taliwa, where the Cherokees sought to defeat the Creeks for control over land currently known as North Georgia. When Kingfisher was killed during a crucial moment of the battle, Nan-ye-hi, in the face of her husband’s death, leapt into action; she took up Kingfisher’s gun and fought in his place, rallying

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<sup>24</sup> *American State Papers: Indian Affairs* 4:621.

the other warriors to victory. Nan-ye-hi shared in the spoils of the battle, receiving one slave and other property seized from the Creeks. She also earned the title of War Woman, granting her considerable influence in the Woman's Council and in national affairs more broadly.<sup>25</sup>

Stories of Nan-ye-hi's bravery circulated widely; there were likely dances and festivals held to honor her.<sup>26</sup> As such, the Cherokee Nation designated her as Ghigau, "Most Honored

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<sup>25</sup> Daniel Heath Justice, *Our Fire Survives the Storm: A Cherokee Literary History* (Minneapolis: University of Minnesota Press, 2006), 32. Scholars' accounts of the details of Nan-ye-hi's life and ascent to power vary greatly. Other helpful sources discussing Nan-ye-hi and her life include: Ben Harris McClary, "Nancy Ward: The Last Beloved Woman of the Cherokees," *Tennessee Historical Quarterly* 21, no. 4 (1962): 352–64; Carolyn Thomas Foreman, *Indian Women Chiefs* (Muskogee, OK: Star Printery, 1954); Norma Tucker, "Nancy Ward, Ghighau of the Cherokees," *Georgia Historical Quarterly* 53, no. 2 (1969): 192–200; Cynthia Cumfer, "Nan-ye-hi (Nancy Ward): Diplomatic Mother," in *Tennessee Women: Their Lives and Times*, ed. Sarah Wilkerson Freeman and Beverly Greene Bond (Athens: University of Georgia Press, 2009), 1:1–22.

In *Cherokee Women*, Theda Perdue defines War Women as women who acted bravely during battle and thus "occupied an exalted place in Cherokee political and ceremonial life" (38). Perdue attributes the title to William Bartram, a naturalist who traveled and observed the Cherokees extensively in the eighteenth century, and who translated the position of a woman who distinguished herself in battle as a "War Woman." Perdue observes that "some sources use the terms War Woman and beloved woman interchangeably, and they may have applied to the same women. But Cherokees distinguished between pre- and postmenopausal women, and evidence suggests that beloved women were elderly while War Women were of indeterminate age. War Women probably became 'beloved' when they passed menopause" (39). Daniel Heath Justice makes a similar distinction between the titles, adding that "the Beloved Men and Women of the Nation were generally warriors in their younger years; it was only after their war service had ended that they became Beloved elders and diplomats for peace" (*Our Fire Survives the Storm*, 30). Beloved women were "charged with maintaining peace within the community, and, when necessary, beyond it" (Justice, 229n34). Prior to delivering her speech at peace negotiations in 1781, Nan-ye-hi was introduced by the chief as a beloved woman, which accords with Perdue's and Justice's interpretation of the titles, since she would have been over twenty-five years removed from her act of valor in battle, and likely postmenopausal in her mid-forties. Ultimately, Nan-ye-hi possessed both titles, and scholars refer to her seemingly interchangeably as one or the other; Perdue refers to her as the War Woman of Chota, but Justice refers to her as a Beloved Woman. I will mostly rely on the title of Beloved Woman to refer to Nan-ye-hi's position in Cherokee governance, since the treaty and petition documents that I consider in this chapter refer to her as such.

<sup>26</sup> Alderman, *Nancy Ward, Cherokee Chieftainess*, 3.

Woman,” or “Beloved Woman,” a title that Cherokee literary scholar Daniel Heath Justice characterizes as a “lifetime distinction bestowed as an extreme mark of valorous merit.”<sup>27</sup>

Alongside other beloved women, Nan-ye-hi ranked among the most venerated officials in Cherokee culture. In her position as Beloved Woman, she spoke in front of the National Council, served as the head of the separate Woman’s Council, had sole authority over preserving or condemning criminals, and was believed to be a mouthpiece of the Great Spirit, who spoke through her.<sup>28</sup> Most importantly, Nan-ye-hi worked to preserve peace for her people, becoming one of the most noted diplomats of the eighteenth century.

Like white widowed women who acted outside of their normally prescribed gender roles to fulfill their husbands’ social and economic duties in order to survive, Nan-ye-hi abandoned her role as assistant to rise in Kingfisher’s place as a warrior instead. Cherokee women sometimes accompanied war parties to perform acts more customary for their roles in Cherokee society, such as nourishing the men by carrying water and preparing meals.<sup>29</sup> When Kingfisher died, Nan-ye-hi bravely fought in his place, and, according to many accounts, helped rally the

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<sup>27</sup> Justice, *Our Fire Survives the Storm*, 32.

<sup>28</sup> Pat Alderman describes eighteenth-century Cherokee governance as a “closely knit union of seventy or eighty tribal towns” that, though entirely independent of one another, “joined together in a sort of friendly compact of understanding for mutual safety” (*Nancy Ward, Cherokee Chieftainess*, 3.) A principal chief headed the national government, joined by a principal civil chief who ruled during times of peace, and a principal war chief who directed war councils. The chiefs or headmen of individual towns formed a National Council (see McClary, “Nancy Ward,” 354). Women participated in a separate council, and members of the local women’s councils chose leaders to represent them in the larger National Women’s Council. As Ghigau, Nan-ye-hi served as the head of the National Women’s Council from around 1755 to her death in 1822. In this capacity, she held both a seat and a vote in the National Council, becoming an influential part of Cherokee governance. Tucker also notes that Nan-ye-hi’s “counsel was welcomed” among the civil and war chiefs, and the Women’s Council “did not hesitate to overrule decisions of the men” (“Nancy Ward, Ghigau of the Cherokees,” 93).

<sup>29</sup> See Perdue, *Cherokee Women*, 38.

Cherokees to a difficult victory.<sup>30</sup> Despite the harmonious gender organization of Cherokee society, Nan-ye-hi would likely not have interfered in the battle as a result of rigid responsibilities to uphold the system of balance unless her husband had been killed.<sup>31</sup> Her husband's death, as it did for many Anglo-American women, opened an opportunity for Nan-ye-hi to act individually on the battlefield, which ultimately resulted in her achieving the highest political and cultural respect available to women in her society.

In the belief system of the Cherokees Nan-ye-hi was not vilified for her autonomous actions in place of her husband, as this dissertation's first chapter shows many Anglo-American women were. In fact, she was rewarded for her bravery. Crucially, such respect came not from her status as the "widow" of a prominent warrior, but because her independent actions served the Cherokee people after his death. In the system of balance that characterized the Cherokee worldview, Nan-ye-hi's substitution of herself for Kingfisher was seen as necessary and valiant, and, as I have shown, the status of "widow" would likely not have been imposed upon her in any meaningful way.

Whereas Scolacuttaw's widow worked within the parameters of the widow category to negotiate for her people, Nan-ye-hi's widowhood seems to have mattered far less to her strategies of diplomacy than did her status as a literal and symbolic "mother" within and of the

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<sup>30</sup> It should be noted that Nan-ye-hi's actions, as well as her role of War Woman, were anomalous. Although there are records of other Cherokee women who distinguished themselves in battle, for the most part women stayed within their own gender roles, not in a system of oppression but in their balance to society. See Perdue, *Cherokee Women*, 38–39; and Justice, *Our Fire Survives the Storm*, 229n34.

<sup>31</sup> Perdue in *Cherokee Women* notes, "The balance that Cherokees sought to achieve between their categories, and, in particular, between men and women may not have permitted equality in a modern sense, but their concern with balance made hierarchy, which often serves to oppress women, untenable" (13).

Cherokee Nation. Scolacuttaw's assumed widowhood allowed her to negotiate on more powerful grounds with the U.S. federal government; but Nan-ye-hi takes on the role of mother in her negotiations to refigure the forceful invasion of white settlers on Cherokee homelands in terms of fictive kinship. In so doing, she recenters negotiations with white invaders away from the language of "civilization" and toward Cherokee terms of matrilineal descent and clan kinship.

The mother's authority was embedded in Cherokee culture beyond the political and social makeup of matrilineal clan kinship; it derived from the larger Cherokee worldview of the cosmos. According to Theda Perdue's essential history *Cherokee Women: Gender and Culture Change, 1700-1835*, the Cherokee understood the world to be comprised of "separate categories that opposed and balanced each other."<sup>32</sup> In such a system, "women balanced men just as summer balanced winter, plants balanced animals, and farming balanced hunting."<sup>33</sup> The Cherokee strove to uphold the cosmic balance by non-hierarchically ordering gender roles and occupations within their societies. In such a system, women performed roles in balance with those performed by men in a worldview virtually unrecognizable to white Anglo-American men who negotiated with the Cherokee.<sup>34</sup>

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<sup>32</sup> Perdue, *Cherokee Women*, 17.

<sup>33</sup> Perdue, 13.

<sup>34</sup> Perdue writes at length about how until the mid-nineteenth century, "non-Natives generated the bulk of the written record about Native people," and that "they did not always understand what they saw" (*Cherokee Women* 3). In terms of white settlers' failure to understand the Cherokee worldview centered on a system of balance, Perdue writes, "Instead of viewing men and women as balancing one another, Euro-Americans regarded gender, like the rest of creation, as hierarchical, with women subservient to men" (62).

Perdue grounds her study of Cherokee women in the origin story of Kana'ti and Selu, documented in James Mooney's anthropological compilation *Myths of the Cherokees*.<sup>35</sup> The story introduces the first Cherokees on Earth, a hunter named Kana'ti, the "Lucky Hunter," and his wife, Selu, meaning "Corn."<sup>36</sup> Characteristic, or perhaps the foundation of Cherokee life as a system of balances, Kana'ti's and Selu's roles as hunter and farmer, respectively, complement each other.<sup>37</sup> The couple has one son together, as well as an adopted Wild Boy whom their son captures from the River that had "sprung from the blood of the game which Selu had washed off at the river's edge."<sup>38</sup>

Perdue insists that eighteenth-century Cherokees "constructed gender and created community based on the principles embodied in their account of Kana'ti and Selu."<sup>39</sup> Methodologically, she believes that readers should take the story of "Kana'ti and Selu as a "reference point" in Cherokee literature that reveals "a great deal about the world of Cherokee

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<sup>35</sup> Mooney collected the materials that would later compose *Myths of the Cherokee* (Washington, DC: Government Printing Office, 1902) from 1887 to 1890. In the introduction to the work, he claims to have relied primarily on members of the East Cherokee living in North Carolina, as well as those from the Cherokee Nation in "Indian Territory," primarily from "old men and women who had emigrated from what is now Tennessee and Georgia" (12). He assures that the "myths proper, but with few exceptions, are from original investigation" (12). Despite some cultural problems that exist around Mooney's larger body of work, I rely on his text for the myth regarding Kanat'i and Selu because it is the source that Perdue uses at length in *Cherokee Women* (see Mooney, 242–48).

<sup>36</sup> Mooney, 242.

<sup>37</sup> Perdue argues that the myth of Kana'ti and Selu "provided the Cherokees with an explanation for why men and women in their society lived the way they did" (*Cherokee Women*, 17). She argues that traditions of labor separated by gender was a direct result of the Kana'ti and Selu origin story: "Men hunted because the first man had been responsible for providing his family with meat. Women farmed because Selu gave birth to corn in the storehouse and then became the source of corn... for all Indians" (17).

<sup>38</sup> Mooney, *Myths of the Cherokee*, 242.

<sup>39</sup> Perdue, *Cherokee Women*, 15.

women, the lives that they lived, and the ways in which they bonded with others.”<sup>40</sup> Cherokee women’s cosmological, social, and political status as mothers emerges as the central concept from which Nan-ye-hi and other Beloved Women interpreted and spoke for their nation during early treaty negotiations with the U.S. and later in front of their own changing national government. As such, it is important to examine the narrative closely so that we might better understand the nuances of Nan-ye-hi’s and other diplomats’ approaches international dialogue.

The story tells how one day Selu’s and Kana’ti’s son and Wild Boy, after releasing all of the game from the rock under which Kana’ti hunted them, and thus, according to the legend, forcing the Cherokee to roam and hunt in the woods for perpetuity, they find themselves hungry and ask Selu for something to eat. She takes a basket to the storehouse, where the boys follow and observe her actions, unbeknownst to her. They see Selu lean over the basket where “she rubbed her stomach – *so-* and the basket was half full of corn. Then she rubbed under her armpits-*so-* and the basket was full to the top with beans.”<sup>41</sup> The corn and beans, crucial foods to the nourishment of the Cherokees, thus literally fall from the first woman’s body. The corn, coming from her belly, suggests pregnancy and progeny. The boys, however, deem Selu a witch and determine to kill her.

Selu foresees their plans and before she dies, she gives the boys instructions on how to disperse with her body. She orders, “when you have killed me, clear a large piece of ground in the front of the house and drag my body seven times around the circle. Then drag me seven times over the ground inside the circle, and stay up all night and watch, and in the morning you will

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<sup>40</sup> Perdue, 15.

<sup>41</sup> Mooney, *Myths of the Cherokee*, 244.



have plenty of corn.”<sup>42</sup> The boys violently murder Selu, and clear only seven little spots of land, which is why “corn now grows only in a few places instead of over the whole world.”<sup>43</sup> They also dragged her body over the ground only two times, “which is the reason the Indians still work their crop but twice.”<sup>44</sup> Yet despite their violence and laziness, wherever Selu’s “blood fell on the ground the corn sprang up.”<sup>45</sup>

Selu’s body thus quite literally becomes the Cherokee homeland as well as the origin of corn that feeds and sustains the Cherokees. By dying for her children the first mother becomes the primary nurturer and provider of food for the entire future of the Cherokee Nation; all Cherokees descended from and were sustained by her. Cherokee women’s cosmological, social, and political status as mothers thus emerges as the central concept from which Nan-ye-hi and other Beloved Women interpreted and spoke for their nation during early treaty negotiations with the U.S. and later in front of their own changing national government.

On July 26, 1781, Nan-ye-hi addressed several U.S. treaty commissioners via a translator in a series of peace negotiations following the destruction of several Cherokee villages and the capture of Chota.<sup>46</sup> Nan-ye-hi’s speech reveals powerful negotiating tactics grounded in the

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<sup>42</sup> Mooney, 244.

<sup>43</sup> Mooney, 245.

<sup>44</sup> Mooney, 245.

<sup>45</sup> Mooney, 244.

<sup>46</sup> Despite previous treaty attempts, by 1780, British North American settlers had intruded upon Cherokee lands once again, and resistance forces led by Cherokee warrior Tsiyu Gansini increased attacks. In return, militias commanded by Colonel Arthur Campbell from Virginia invaded Cherokee country. Nan-ye-hi attempted, against the wishes and plans of Tsiyu Gansini, to intervene as a diplomat, but despite her efforts, Campbell razed the important towns of Chota and Citico. The devastation of these towns prompted heavy diplomatic involvement by the Women’s Council throughout the 1780s. For more on the history of the conflicts that led up to the peace negotiations discussed here, see Cumfer, “Nan-ye-hi (Nancy Ward),” 1:9.

intertwined authorities of Cherokee mothers and Beloved Women. Nan-ye-hi attempts to explain “the cause of the late Troubles,” between the settlers and the Cherokees, insisting, “You came ... and settled on our Land and took it [by] Force ... Why then will you quarrel with us? ... We know the white people are more and stronger than us, but will you take everything from us and let us starve.”<sup>47</sup> Nan-ye-hi directly accuses the commissioners, as representatives of the larger settler population, of invading Cherokee land, “by force.” Cumfer argues that Nan-ye-hi’s

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General Nathanael Greene appointed a commission to conduct peace talks with the Cherokee from July 26 through August 2, 1781. For more information on these talks see, Nathanael Greene, *The Papers of Nathanael Greene*, ed. Dennis M. Conrad, Roger N. Parks, and Martha J. King (Chapel Hill: University of North Carolina Press, 1997), 118–19.

The document that I read was signed by three of the eight commissioners assigned to the talks, William Christian, Evan Shelby, and Joseph Martin. There are obvious archival limitations to this text. First, it is badly damaged, with tears and with holes obliterating significant portions of the text. The documentation of the proceedings also occurs through several layers of colonial filtration of Nan-ye-hi’s words, including both the translation from Cherokee to English via a translator, and then again through the “transcription” of the proceedings through the writing of the commissioners.

Despite these constraints, scholars of Cherokee literature regularly attribute the speech to Nan-ye-hi. Justice interprets Nan-ye-hi’s uncompromising stance toward land cession in the eighteenth and nineteenth centuries as a resurgence of the “implied War Woman within her Beloved status, the defiance inherent in Cherokee survival” (*Our Fire Survives the Storm*, 39). In this spirit, I view her 1781 speech, which survived both the ravages of time as well as the cultural misperceptions of her oppressors, who were unused to women speaking publicly with political authority, as an illustration of that Cherokee defiance.

<sup>47</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p. Library of Congress librarian Bruce Kirby sent me a pdf copy of the manuscript from the microfilm, which I use for my reading here. Though the extant records of these negotiations are badly damaged, making it hard to tell exactly where the Chief Old Tassel’s remarks end and Ward’s begin, there is a shift in the transcription from the speaker referring to the Cherokees as “our People” to “our Sons,” signaling a change in tone, particularly as Ward repeatedly emphasizes her role as Mother to the Cherokee people. I begin quoting Ward here after this shift in tone. Ben McClary attributes this speech to Nancy Ward in “Nancy Ward,” 359. Cynthia Cumfer also attributes these lines to Ward in “Nan-ye-hi (Nancy Ward),” 1:9–10.

censure was incredible since she “ignored the Cherokee custom in which diplomats avoided assigning blame in order to create an atmosphere conducive to peacemaking.”<sup>48</sup>

As Beloved Woman, Nan-ye-hi followed what Justice terms the “Beloved Path.”<sup>49</sup> She attempted to preserve peace between the Cherokees and the settlers, and she consistently placed “cultural continuity above potentially self-destructive rebellion.” Nan-ye-hi attempts a different kind of peacemaking strategy from the U.S. commissioners, one that renegotiates the terms of peace on distinctly Cherokee terms- those of both the Beloved Path of peace, as well as of matrilineal power. Nan-ye-hi positions the Woman’s Council as uniquely qualified to intervene in these talks, despite the apparent shock of the white commissioners at being addressed by a woman.<sup>50</sup> In a striking show of force she complains:

We did never concern in the [torn] Treaty, which has been broken, but we do in this, and on our account, who are your Mothers, let it never be broken. You know Women are always looked upon as nothing; but we are your Mothers you are our Sons. Our cry is all for Peace; let it continue because we are your Mothers. This Peace must last forever. Let your women’s sons be ours and let our sons be yours. Let your women hear our Words.<sup>51</sup>

Nan-ye-hi utilizes what Cumfer deems her “considerable matriarchal authority” to remind the commissioners of their political power; the Beloved Women accommodated an earlier treaty

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<sup>48</sup> Cumfer, “Nan-ye-hi (Nancy Ward),” 1:9-10.

<sup>49</sup> Justice, *Our Fire Survives the Storm*, 16.

<sup>50</sup> See McClary, “Nancy Ward,” 359.

<sup>51</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

without interceding, but its failure to ensure peace justifies their intervention in the present negotiations.<sup>52</sup>

Motherhood endows Nan-ye-hi with particular responsibilities not only to the Cherokee Nation, but, she implies, to the white settlers as well. Perdue argues that Cherokee use of kinship language in regard to Europeans was intentional and “far more than quaint figures of speech.” Such terms served to both define Cherokee bonds to other people as well as to prescribe the terms of those relationships.<sup>53</sup> By declaring herself and the other representatives of the Woman’s Council as the “Mothers” of the white male negotiators, and designating the invaders as her “Sons,” Nan-ye-hi works to theorize a new kinship connection between the settlers and the Cherokees.

Most scholars read Nan-ye-hi’s expressions of motherhood as a metaphorical extension of kinship. Perdue, for example, suggests that Nan-ye-hi’s “maternal concern was not based on any biological connection but on a more encompassing conception of kinship.”<sup>54</sup> Cumfer argues that in order to connect diplomatically with outsiders in mutual terms, that “the Cherokees reconstituted foreign communities as diplomatic kin.”<sup>55</sup> Cumfer also suggests that Nan-ye-hi

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<sup>52</sup> Cumfer, in “Nan-ye-hi (Nancy Ward),” notes, “Nan-ye-hi prefaced a plea for peace with an explicit indictment of white conduct that led to the war ... Invoking her considerable matriarchal authority, she chastised the Americans for breaking the 1777 Long Island treaty” (1:10). On the power of motherhood in Cherokee society, see Perdue, *Cherokee Women*: “The political power of Ward and other Cherokee women rested on their position as mothers in a matrilineal society that equated kinship and citizenship. In such a society, mothers—and by extension, women—enjoyed a great deal of honor and prestige, and references to motherhood evoked power rather than sentimentality” (101).

<sup>53</sup> Perdue, *Cherokee Women*, 48.

<sup>54</sup> Perdue, 101.

<sup>55</sup> Cumfer, “Nan-ye-hi (Nancy Ward),” 1:4.

“crafted a web of fictive motherhood” to challenge white assumptions that their land claims were “superior to those of the ‘savage’ Indians.”<sup>56</sup>

I expand on these readings by defining Nan-ye-hi’s appeal to the authority of Cherokee motherhood in her speeches as an intentional negotiating tactic that I term ‘matrilineal diplomacy.’ Matrilineal diplomacy harnesses the power of mothers in Cherokee culture and governance as a tool for communicating with U.S. commissioners to forge agreements more strongly representative of Cherokee views and needs, particularly those of women. Nan-ye-hi’s diplomacy offers a new iteration of kinship through a matrilineal worldview that redefines the parameters of white settler invasion in Cherokee terms to forge a more peaceful and equitable international relationship between Cherokees and white commissioners.

Justice notes that in order to “better understand the ways that Cherokees self-define concepts of peoplehood,” particularly in their literatures, we must pay attention to the dualistic structures of their worldview; these expressed themselves not through antagonism but in complementarity and balance.<sup>57</sup> Reading the metaphor of motherhood in Nan-ye-hi’s speeches reveals complementarities between land and women, violence and peaceful sacrifice, and women’s responsibilities toward men. Such complementarities resonate strongly, I argue, in the changing legal and cultural systems of the centralizing Cherokee nation as well as under the destructive “civilization” policies of the United States.

Using the complementarity of the Mother/Son kinship dialectic, Nan-ye-hi invokes both the power granted to mothers in Cherokee society, as grounded in the story of the first mother Selu, and establishes a social hierarchy between the Cherokee and the settlers that retains

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<sup>56</sup> Cumfer, 1:10.

<sup>57</sup> Justice, *Our Fire Survives the Storm*, 26.

Cherokee autonomy. She fully recognizes that the power of mothers in the Cherokee worldview has no equivalent in the culture of the white commissioners. The denunciation, “You know Women are always looked upon as nothing,” acknowledges the patriarchal hierarchy of the settler state.<sup>58</sup> Yet her concession prefaces the resounding rejoinder, “but we are your Mothers you are our Sons.”<sup>59</sup> Nan-ye-hi makes a careful distinction between women and mothers, suggesting that while the commissioners might not take the beloved women seriously as *women*, that as mothers they command the men’s respect. Women might have little authority in Anglo-American governance, but Nan-ye-hi suggests that the political power of Cherokee motherhood surpasses rigid gender and cultural hierarchies.

When she insists, “but we are your Mothers you are our Sons,” she seeks to incorporate the settlers into the matrilineal kinship system so that their influence might be balanced by the authority of Cherokee women. Her repeated invocations for peace also insinuate the troubled history of the Cherokee relationship of mothers to sons, and the violence that originated between the original first mother and son. She seems to pursue, in caution, a peaceful relationship between mother (Cherokee authority) and son (white settlers). Perhaps most radically, Nan-ye-hi extends this system of matrilineal kinship to the absent white women of the settler population. She declares, “let your women’s sons be ours and let our sons be yours,” and concludes with the emphatic order to “Let your women hear our words.”<sup>60</sup>

While it might be tempting to read these sentences as a moment of feminist solidarity between cultures, Nan-ye-hi does not equate Cherokee motherhood with white women’s

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<sup>58</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

<sup>59</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

<sup>60</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

motherhood. Distinguishing again between motherhood and womanhood, she addresses white women as the *women* of the commissioners, not as their mothers. Nan-ye-hi both recognizes that white motherhood does not carry the same political privileges as Cherokee motherhood and also refuses to extend that power to white women. Yet by proposing diplomatic motherhood, in which women of both nations recognize each other's kin as their own, Nan-ye-hi seeks to achieve intercultural peace through matrilineal lines. Her speech works to extend a matrilineal worldview into the ways in which the white commissioners negotiate. Peace between the nations will only occur, Nan-ye-hi suggests, when it is inherited matrilineally between cultures.

The commissioners, ultimately unfamiliar with Cherokee matrilineality, attempt to respond diplomatically to Nan-ye-hi's words, but they miss the nuance of her arguments. Defaulting to the notion of motherhood that falls under the patriarchal governing and social structures of the settler state, the commissioners' fail to enact the dualistic conditions of her matrilineal diplomacy. Though they respond respectfully to her pleas for a new kinship between the nations, they implicitly reject the cultural and political power of Cherokee motherhood. Colonel Christian condescendingly praises Nan-ye-hi, noting that "such words and thoughts from unlearned Women shows to the World" that "human nature is the same" between races.<sup>61</sup> Surprised that Nan-ye-hi, both of the Cherokee Nation and a woman, can speak so powerfully and eloquently on behalf of her people, he can see only her perceived humanity through his eyes, and misses her radical politics entirely.

Seemingly unable to see motherhood between the nations as anything more than a metaphor for their relationship, he addresses Nan-ye-hi literally as "Mother," and repeats her

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<sup>61</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

words back to her almost verbatim, ostensibly without fully understanding the complimentary relationship that she suggests for the two nations: “Let your Sons be brought up with Our [torn] be the same; and bring ours up with you, [torn] be the same as yours.”<sup>62</sup> Whereas Nan-ye-hi’s matrilineal diplomacy proposes a mutual cultural shift between white and Cherokee women on behalf of peace for their nations, Christian merely assures, “Our women shall hear your words and we know will feel and think of them.”<sup>63</sup>

Instead of offering a modification of settler patriarchal thought whereby white women might be recognized as an extension of Cherokee motherhood, with the power to act on behalf of the nation-state in their role as mothers, Christian reveals how patriarchal hierarchies negate the cultural power experienced by Nan-ye-hi. He assures that their women will “hear” their words and “will feel and think of them,” but it is clear that beyond the sentimental, affective political potential of Republican Motherhood that the commissioners’ worldview has not been modified to a matrilineal one, wherein women are entitled to a say in how peace is maintained between cultures. While Nan-ye-hi negotiates on behalf of Cherokee women, white women feel and think; they do not directly influence or govern their nation.

This disconnection between gender roles for white and Cherokee women can be seen most clearly in Christian’s proposed solution to Nan-ye-hi: “We will not quarrel with you, because you are our Mothers. We will not meddle with your People, if they will be still, and quiet at Home, and let us live in Peace.”<sup>64</sup> Christian proposes deference to the Beloved women as mothers, yet his caveat that the settlers will not “meddle” with “your people” as long as they are

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<sup>62</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

<sup>63</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

<sup>64</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.



obedient and “quiet at home,” reveals a cultural misunderstanding. Christian characterizes Nan-ye-hi as a Mother in the patriarchal Anglo-American sense of the role; Nan-ye-hi posits motherhood as a powerful extension of Cherokee personhood that balances the political and social structures of Cherokee society. By misunderstanding the concept of Mother, Christian misunderstands the mutual activism Nan-ye-hi seeks between her and settler women.

Nevertheless, despite the cultural misunderstanding of Nan-ye-hi’s matrilineal diplomacy, her words did, perhaps, have some effect on bringing women into the negotiations in ways that might have secured the treaty. The records for Sunday, July 29, 1781 show that “This day, the warriors all assembled at Col. Martin’s House and desired to have some conversation with the Commissioners.”<sup>65</sup> “After smoking awhile,” and once the commissioners were all present, First Beloved Man and Overhill Cherokee chief Old Tassel reviewed the proceedings of the week, repeating that they agreed:

to meet you at this place in order to talk ... and endeavor to make up the Dispute ... if we could, it was well; if not, you should return Home without Insult or Injury. We are [torn] *to see such great number of your People, of every age and sex attending.* It seems to prove the sincerity of your intentions, and we dare say we shall agree upon a lasting and firm Peace.<sup>66</sup>

Old Tassel’s pleasure in seeing “a great number of your people, of every age and sex attending” seems to “prove” the sincerity of the commissioners in negotiations, and makes great strides toward ensuring the treaty. As Nan-ye-hi suggested in her speech, only when women and men of both cultures work together will they be able to forge, in Tassel’s words, a “lasting and firm

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<sup>65</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p.

<sup>66</sup> Nathanael Greene papers, 1775–1785, microfilm reel #2, n.p. (emphasis added).

peace.” If matrilineal diplomacy serves the dual purpose of recasting settler invasion in Cherokee terms while also seeking to influence settler culture and governance itself, Nan-ye-hi’s negotiations seem to have had a particular impact at the peace negotiations.

### *III. Matrilineal Diplomacy and the Cherokee Nation*

Nan-ye-hi later fought for the protection of her people and their homeland during the removal crisis of 1817-1819, as the United States pressured the Cherokees to cede land once again. This time she spoke in front of her own people. At a National Council meeting in 1817, members of the Woman’s Council delivered the last documented speech attributed to Nan-ye-hi. By this time, Nan-ye-hi was too old to travel to the National Council meeting, though she sent her walking stick in her place to represent her and is widely believed to have inspired, if not completely authored, the petition.<sup>67</sup> Members of the women’s council presented the petition in front of the National Council. Although the petition was presented collaboratively, Nan-ye-hi’s voice is central in the document, and, at the end of the piece, she directly addresses the delegates.

The petition documents the growing tensions between the roles and values of Cherokee womanhood and the changing legal network of Cherokee governance and its relationship to the United States. The mother/land dialectic becomes central to the ways in which Nan-ye-hi adapts her matrilineal diplomacy to address such developments. Though now appealing to Cherokee elders and warriors instead of U.S. commissioners, the speaking members of the Woman’s Council once again open their remarks by claiming their authority as mothers: “The Cherokee

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<sup>67</sup> Tiya Miles, for example, claims that Nan-ye-hi was the “central author of the statement” (“‘Circular Reasoning’: Recentering Cherokee Women in the Antiremoval Campaigns,” *American Quarterly* 61, no. 2 [2009]: 226).

ladys [sic] now being present at the meeting of the chiefs and warriors in council have thought it their duty as mothers to address their beloved chiefs and warriors now assembled.”<sup>68</sup>

Nan-ye-hi’s earlier speeches carefully distinguished between white U.S. women and Cherokee mothers. Identifying as “Cherokee lad[ies],” perhaps, reflects the growing influence of “civilization” practices that sought to reorder cultural hierarchies of Cherokee society so that women remained in subordinate, domesticated spheres. The terminology of “ladies” diverges from the kinship term of Mother, signaling perhaps, like the appearance of the “widow” in Cherokee codified law, a change in Cherokee women’s status within the nation. Yet the women also declare it their “duty as mothers” to address the chiefs and warriors.<sup>69</sup> The dual identification of “ladies” and “mothers” balances, perhaps, the deference expected of women toward men under the “civilization” program, with their traditional authority as mothers. This modification of matrilineal diplomacy politically negotiates between their ancestral and permutating roles as women within the Cherokee Nation.<sup>70</sup>

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<sup>68</sup> “Petition: May 2, 1817,” in *The Cherokee Removal: A Brief History with Documents*, 2nd ed., ed. Theda Perdue and Michael D. Green (Boston: Bedford/St. Martin’s, 2005), 131.

<sup>69</sup> “Petition: May 2, 1817,” 131.

<sup>70</sup> Perdue, in her essay “Clan and Court,” argues that despite the changes that threatened matrilineal property descent and the clan system in the early codified laws of the Cherokee Nation in the early nineteenth century, that there is evidence that “many Cherokees apparently continued to attach considerable significance to clans, and they looked to clans rather than the national government to provide order and protection” (566). Although such instances are difficult to document as they do not appear in the official Cherokee court records, Perdue suggests that a “dual system of jurisprudence” likely existed in the Cherokee Nation in which “some people, perhaps most, applied customary methods of social regulation to a traditional code of behavior and others followed the laws of the republic” (567). She goes so far as to suggest that “the two legal systems operated simultaneously in the early Cherokee republic” (568). She cautions scholars to “remember that that surviving record does not always correlate precisely to the human past, and they must be ever alert to opportunities to redress imbalances” (568).

Symbolically, the women's speech seeks to restore customs of matrilineal descent through women's spiritual and material connection to the land. They formally address the men as "Our beloved children and head men of the Cherokee Nation," and continue, "We have raised all of you on the land which we now have, which God gave us to inhabit and raise provisions. We know that our country has once been extensive, but by repeated sales has become circumscribed to a small track, and [we] never have thought it our duty to interfere in the disposition of it till now."<sup>71</sup> Addressing the men as "*our* beloved children and head men of the Cherokee Nation" [emphasis mine] Ward recenters the power of women as the literal and symbolic mothers of the Nation, implicitly placing the men back under the authority of the matrilineal clan system.<sup>72</sup>

By reminding the warriors that they "have raised all of you on the land we now have, which God gave us to inhabit and raise provisions," Nan-ye-hi uses Christian language to invoke the origin story of the first mother Selu, re-centering Cherokee motherhood in the national debate over land cession and removal as well as of Indian "civilization." The women declare Cherokee homelands as theirs by divine right, and emphasize women's unique ancestral responsibility to "raise provisions" farming the land. Her emphasis on the land "which we now have" gently critiques and mourns the loss of land already ceded to the United States. The women assert their "duty" now because as descendants of the land they cannot sit by and watch it disappear.<sup>73</sup>

In perhaps her most powerful turn to matrilineal diplomacy, Nan-ye-hi equates Cherokee homelands with the physical and spiritual bodies of Cherokee women and thus the future of their race. The women oppose moving westward, demanding, "We do not wish to go to an unknown

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<sup>71</sup> "Petition: May 2, 1817," 131.

<sup>72</sup> "Petition: May 2, 1817," 131.

<sup>73</sup> "Petition: May 2, 1817," 131.

country [to] which we have understood some of our children wish to go over the Mississippi, but this act of our children would be like destroying your mothers.” Their forceful refusal to move to “an unknown country,” contrasts with the deep kinship they feel for their homelands.

Nan-ye-hi modifies her matrilineal diplomacy, previously tailored to persuade representatives of Anglo-America, to address instead women’s place in the new governing structure of the Cherokee Nation itself. Faced with receding homelands and pressure to remove, Nan-ye-hi’s matrilineal diplomacy aims to return the power of the Mother to Cherokee governance by equating motherhood with the land under threat. To sell or abandon their land would eradicate the spiritual power of Cherokee mothers; to ignore the instructions of mothers in the National Council would be a destruction of their right to influence the government. Either of these actions, Nan-ye-hi threatens, portends a dire future for the Cherokee Nation.

Nan-ye-hi fiercely insists on motherhood’s enduring cultural importance, pleading, “Your mothers, your sisters ask and beg of you not to part with any more of our land. We say ours. You are our descendants; take pity on our request.” Tiya Miles’ excellent reading of Nan-ye-hi’s petition notes that even though the customs of matrilineal descent were declining by the time this speech was presented, that “the symbolic power of the mother was still resonant, and these Cherokee women petitioners knew it.”<sup>74</sup> In contrast to American republican motherhood, which constrained women’s involvement in the state and politics to their moral upbringing of their sons and their influence on their husbands, Cherokee women “did not gain access to public life by proxy, through the moral and civic education of their sons.

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<sup>74</sup> Miles, “Circular Reasoning,” 227.

Rather, in their role as mothers, they had preexisting political authority, grounded in their stewardship of Cherokee land and their sustainment of the Cherokee population.”<sup>75</sup> By forcefully declaring, “We say ours. You are our descendants; take pity on our request,” the women use matrilineal diplomacy to reclaim the powerful position of motherhood in Cherokee society that existed (and continued to exist) before the printed laws that codified patrilineal systems of inheritance.<sup>76</sup> Matrilineal diplomacy also works to subvert the legal doctrines that privilege patrilineal inheritance, as Nan-ye-hi, and the women speaking on her behalf, claim matrilineal right to their homeland.

To conclude, the women present a message specifically from “Nancy Ward to her children”: “Warriors take pity and listen to the talks of your sisters. Although I am very old yet cannot but pity the situation in which you will here [sic] of their minds. I have great many grand children which [I] wish them to do well on our land.” Nan-ye-hi pities not the women of the council but the “situation in which” they find themselves, and the lessening political clout of Cherokee women and the women’s council. Again invoking her powerful maternal authority, she emphasizes that she desires her “great many grandchildren,” whom she raised and brought up on the land, to continue to succeed on Cherokee territory. Insisting on “our land,” Nan-ye-hi sides with her sisters; Cherokee land belongs to Cherokee women, and the future of their Nation depends on their continual presence on the land.

Nan-ye-hi’s petition reveals the ways in which matrilineal kinship and motherhood still retained much power in the Cherokee Republic. Nan-ye-hi, and the women speaking on her behalf, reject Anglicization of the centralized government, symbolic in the imposition of the title

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<sup>75</sup> Miles, 227.

<sup>76</sup> “Petition: May 2, 1817,” 132.

of ‘widow’ and other “civilizing” changes to their national status. Instead, they champion their role as mothers of the Nation and their connection to Cherokee land.

#### *IV. The Legacy of Indigenous Matrilineal Clan Kinship on American Women’s Property Rights*

After Nan-ye-hi’s retirement from the women’s campaign shortly after her 1817 speech was delivered to the National Council, Margaret Ann Scott, not only a relative of Nan-ye-hi but also the maternal niece of Charles Hicks, the second principal chief of the Cherokee Nation, took over the role of principal speaker.<sup>77</sup> By petitioning both the U.S. government as well as the Cherokee National Council, Scott continued Nan-ye-hi’s advocacy for the protection of Cherokee peoples from U.S. policies. In this way, Nan-ye-hi’s matrilineal diplomacy was literally matrilineal: handed down, sustained, and nourished by women kin.

Antiremoval politics came into vogue among wealthy white women activists in New England with Catharine Beecher’s famed “Circular Addressed to the Benevolent Ladies of the U. States,” published in 1829 on Christmas Day in the *Christian Advocate and Journal and Zion’s Herald*. Beecher petitioned the United States government to protect Indigenous nations’ rights to their homelands and insisted that it was the duty of the “females of this country” to do so.<sup>78</sup> Following the circular’s publication, over 1,500 women sent petitions to Congress in protest.

Beecher’s advocacy has become, unjustly, the most famous example of women’s antiremoval protests. Yet Tiya Miles’s brilliant article ““Circular Reasoning’: Recentering Cherokee Women in the Antiremoval Campaigns” questions scholars’ eagerness to label Beecher’s work and its aftermath of women’s activism as the first organized political movement

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<sup>77</sup> Miles, “Circular Reasoning,” 228.

<sup>78</sup> “Circular Addressed to benevolent Ladies of the U. States,” in *Christian Advocate and Journal and Zion’s Herald*, December 25, 1829.

by women in the United States. Miles convincingly demonstrates that Beecher's activism evolved out of the political work of Cherokee women such as Nan-ye-hi, and Margaret Ann Scott, whose work was popular among white Northern women activists such as Beecher and poet Lydia Sigourney.<sup>79</sup>

If, following Miles's scholarship, we consider Cherokee women's activism as the foundation of a "transnational, multigenerational antiremoval project," Lydia Maria Child's genre-bending text *The First Settlers of New England; or, Conquest of the Pequods, Narragansets and Pokanokets as Related by a Mother to Her Children. By a Lady of Massachusetts* (1829), falls squarely within these political and literary genealogies.<sup>80</sup> Furthermore, Child's book, like Nan-ye-hi's speeches, utilizes the figure of the mother as its political and moral agent.

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<sup>79</sup> By focusing on Ward's 1817 petition and its afterlife in the work of Margaret Ann Scott, a relative of Ward's as well as the niece of the Cherokees' second principal chief, Miles persuasively shows how antiremoval resistance, and thus cohesive political action by women in the United States, actually began as a "transnational, multigenerational antiremoval project" in the Cherokee Nation, whose efforts eventually reached the ears of powerful white women "culture maker[s]," such as Catharine Beecher and the poet Lydia Sigourney, in the North ("Circular Reasoning," 224). This chapter seeks to follow Miles's methodological model by centering Ward's antiremoval diplomacy and advocacy for Cherokee women at the heart of its argument. By exploring Child's work in relation to Ward's, I aim to show how white women's philanthropy toward Indigenous groups at this time is simultaneously indebted to and deeply appropriative of Native women's resistance.

<sup>80</sup> Child likely knew of Margaret Ann Scott's work, as she ran in the same literary and political circles as Beecher and Sigourney. Child was also exposed to the Cherokees' current political climate through the *Cherokee Phoenix*, the Cherokee Nation's official newspaper that was printed in both Cherokee and English and that advertised the Cherokees' "success" in civilization "to the world" (Carolyn L. Karcher, *The First Woman in the Republic: A Cultural Biography of Lydia Maria Child* [Durham, NC: Duke University Press, 1994], 87). Elias Boudinot, editor of the *Phoenix*, regularly exchanged copies of his newspaper with Child's husband, the editor of the staunchly anti-Jacksonian *Massachusetts Journal*.



*First Settlers* seeks to retell, from the perspective of a mother, named, simply, ‘Mother,’ to her two daughters, Caroline and Elizabeth, the history of New England through the eyes of the Native peoples of the Northeast. The text proceeds as a multigenerational, matrilineal didactic dialogue, with Mother explaining and rewriting historical episodes between settlers and various Northeast Native nations to her young daughters, who frequently interject to ask questions.

*First Settlers* explicitly protests Indian removal, with Child’s overall objective to impress upon her readers, through Mother’s lessons to her daughters, “the conviction of their obligation to alleviate, as much as in their power, the sufferings of the generous and interesting race of men of whom we have so unjustly supplanted.”<sup>81</sup> She also advocates forcefully for the protection of Cherokee lands and forced Removal. She concludes her introduction by asserting that if the state of Georgia cannot be dissuaded from their economic greed for land, that “it would assuredly be preferable to pay them an equivalent for their claims” which, Child argues, would “require a sum less exorbitant than would be expended in their [the Cherokees’] removal.”<sup>82</sup>

The politics of *First Settlers* are far-reaching, and at once stunningly radical and woefully limited. Child reproves New England’s romanticizing of the Puritans, disparages patriarchal omissions of American history regarding U.S. and Indigenous relations, and declares the principles of Indian removal to be immoral and contrary to the foundations of American democracy. She also demands women’s access to equal education and to their own property. Yet the text itself is split into chapters by Native nations “conquered,” Chapter One titled “Conquest of the Pequods,” Chapter Two titled “Conquest of the Narragansets,” etc. Mother also argues

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<sup>81</sup> Lydia Maria Child, *The First Settlers of New England; or, Conquest of the Pequods, Narragansets and Pokanokets as Related by a Mother to Her Children, By a Lady of Massachusetts*. (Boston: Munroe and Francis, 1829), iv.

<sup>82</sup> Child, vi.

from a viewpoint of implied white superiority, repeatedly justifying the Southeastern Native nations as worthy of saving because of their proven ability to become “civilized.”<sup>83</sup> Despite Child’s efforts to critique the nation-state, *First Settlers* cannot fully escape its white patriarchal logics.

Child’s politics operate through discourses of republican motherhood, an ideology developed in the aftermath of the American Revolution that merged women’s civic and domestic duties. As Linda K. Kerber has argued, republican motherhood vested women with the important responsibility of raising virtuous, sympathetic, patriotic, and politically educated sons for the polis. In other words, she “guaranteed the steady infusion of virtue into the Republic.”<sup>84</sup>

In many ways republican motherhood enhanced women’s political capacities by justifying their entry into the public and male-dominated political arena. Yet the limits of the ideology were vast, most obviously in that aside from seeking to influence the male members of their households, women had no real political outlet through which they could make or influence

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<sup>83</sup> For example, Child writes, “The Cherokees have ... become a civilized community, and have moreover parted with much land for the accommodation of the United States. Nevertheless, they are now urged to quit their territory, with all their improvements” (vi); “We must be convinced, therefore, that the primitive virtues, which elevate these children of nature in the scale of being, are congenial to the mind, and, if properly cultivated, will subdue the wayward and sordid passions which are nourished in a civilized society” (254); and “It has been unceasingly urged, that the Indians are incapable of becoming a civilized people, or assimilating with them ... witness with what regret the Creeks and Cherokees anticipate a removal” (259).

<sup>84</sup> Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980), 110. On republican motherhood see also, Shirley Samuels, *Romances of the Republic: Women, the Family, and Violence in the Literature of the Early American Nation* (Oxford: Oxford University Press, 1996); Shirley Samuels, *The Culture of Sentiment: Race, Gender, and Sentimentality in 19th-Century America* (Oxford: Oxford University Press, 1992); and Linda K. Kerber, “The Republican Mother: Women and the Enlightenment—An American Perspective,” in *Toward an Intellectual History of Women: Essays by Linda K. Kerber* (Chapel Hill: University of North Carolina Press, 1997), 41-62.

political change for themselves. As Kerber suggests, “If women were no longer prepolitical, they certainly were not fully political. The image of the Republican Mother could be used to mask women’s true place in the polis: they were still on its edges.”<sup>85</sup>

The central tenets of republican motherhood coalesced around devotion to the Republic, improved education, and recognition of women’s economic contributions to the household.<sup>86</sup> In *First Settlers*, Child focuses on dismantling the patriarchal prejudices engrained in official U.S. historical records and in children’s educational curriculums. Perhaps the most radical part of *First Settlers* is its form: Mother, a white woman, prepares not her sons but her two young *daughters* to challenge and rectify the historical record of the United States’ treatment of Indigenous peoples both in the present and in their future actions, thus allowing Child to critique America’s patriarchal past in order to imagine a woman-centered future.<sup>87</sup>

Child recirculates racist stereotypes of Native Americans in order to dismantle their logics piece by piece for her readers. In doing so through the subjectivity of a mother educating her daughters, *First Settlers* becomes a virtual how-to guide for discussing the evils of what scholars now define as settler colonialism with one’s children, spouses, or other relations. For example, when Caroline interrupts Mother’s lecture to ask, “Is it not generally believed, mother, that the Indians are a vagrant, idle race, who have no settled place of abode ‘here to-day, and there to-morrow,’ wherever they can find subsistence?” Mother quickly corrects, “The Indians

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<sup>85</sup> Kerber, *Women of the Republic*, 11–12.

<sup>86</sup> Kerber, *Women of the Republic*, 284.

<sup>87</sup> Carolyn L. Karcher refers to the format of the book also as “protofeminist” in that while republican motherhood dictated a woman’s right to educate and influence her husband and sons, here Mother trains two young women and teaches them to “question the authority of the Puritan patriarchs” (*The First Woman in the Republic*, 90). See also Sharon M. Harris, *Selected Writings of Judith Sargent Murray* (New York: Oxford University Press, 1995), where she makes a similar argument about Murray’s work (xxix).

have been strangely misrepresented; either through ignorance or design, or both; and men have given themselves little trouble to investigate the subject. People seldom forgive those whom they have wronged, and the first settlers appear to have fostered a mortal aversion to the Indians, whom they had barbarously destroyed.” Mother insists not only on the “misrepresentation” of Indigenous peoples in formal historical records, but she also pointedly critiques the intent behind those histories that “either by ignorance or design” perpetuate harmful stereotypes that justify ongoing violence to Native peoples.<sup>88</sup>

Mother situates history not as dogmatic truth, but as a narrative that can be manipulated through omissions and distortions to exploit vulnerable populations in order to benefit the needs of the nation-state. She challenges, “The facts recorded are sufficient to excite the utmost commiseration for the Aborigines, who appear to have been truly desirous to preserve peace with the settlers; *nor can it be doubted that many injuries were done them which have not been told.*”<sup>89</sup> Mother teaches her daughters not only to read the history of the American nation-state critically and with sympathy, but to actively question what chroniclers might not want to remember about the country’s past.

In her response to Caroline, Mother also reproves those unwilling to challenge history, or who have “given themselves little trouble to investigate the subject.”<sup>90</sup> She tries to impress on her daughters that history should always be questioned, and, when it seems designed to hurt or marginalize particular populations of the United States, it should be challenged. Caroline’s assumption that Native Americans live an itinerant way of life unattached to their homelands

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<sup>88</sup> Child, *The First Settlers of New England*, 13.

<sup>89</sup> Child, 167 (emphasis added).

<sup>90</sup> Child, 13.

perpetuates removal logics. By discrediting the historical vehicle that bolsters such suppositions, Mother lays the groundwork to open Caroline's mind for more explicit antiremoval arguments later in the text.

In short, Mother recognizes the limits of the national archive. However, at the same time that she critiques its legitimacy, she claims authority as a (white) mother to revise it, not only for her children but for the Native peoples comprising her history as well. As the work of Saidiya Hartman has taught us, there is an "uncertain line" in activist writings between witness and spectator, sympathy and voyeurism.<sup>91</sup> By using as evidence the terrors inflicted upon Indigenous peoples in the course of American history to critique the state and posit a new, more politically engaged future for women, Child creates an equally exclusive archive grounded in the tenets of civilization policies and Removal logics that posit Native peoples as always already extinct. In order to prop American women up as the forbearers for a more just, compassionate future, she minimizes the voices of Indigenous women activists before and contemporaneous with her.

In *First Settlers*, Child's advocacy for the Cherokees and other Southeastern Native nations attempts to use American Republican Motherhood as a tool to combat the wrongs of settler colonialism; but her strategy works from the "top," or the position of the nation-state, "down," to dispossessed Indigenous nations. Child, and by extension, Mother, sees Indigenous peoples only as in need of passive rescue, not as autonomous nations. Nan-ye-hi called for a mutual relationship between the United States and the Cherokee Nation centered in a co-constitutive kinship grounded in matrilineal logics. But Child advocates only for assimilation and protection of Indigenous peoples under the auspices of the nation-state. Republican Motherhood

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<sup>91</sup> Saidiya V. Hartman. *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 3–4.

and sentimentalism ultimately prevent the realization of international matrilineal diplomacy in Child's text; Mother wants her daughters to feel and act on behalf of Native Americans under threat of forced removal. Yet she doesn't recognize how she herself is complicit in the nation-state logics of assimilation and civilization.

Justice convincingly distinguishes between the "Nation-state nationalism" of the U.S. and "Indigenous nationhood."<sup>92</sup> Nation-state nationalism depends upon the "erasure of kinship bonds in favor of a code of patriotism that places loyalty to the state above kinship obligations."<sup>93</sup> It has historically conditioned inhabitants of the United States to self-identify first and foremost through the abstract, idealized signifier of *American*, in place of community or family oriented identities. In other words, in order for the U.S. to exist as a united conglomeration of states and peoples, citizens must passively trust in the ideal of the abstract nation, even if that means erasing more flexible and communal definitions of self. Nation-state nationalism also requires citizens' complicity in the erasure of the "specific geographic, genealogical, and spiritual histories" of themselves and other peoples to maintain the security of a united nation.<sup>94</sup>

In contrast, Justice defines Indigenous nationhood as more dynamic, "a concept rooted in community values, histories, and traditions that, at the same time, asserts a sense of active sociopolitical agency, not simply static separatism from the world and its peoples."<sup>95</sup> As opposed to the passive allegiance and historical erasure required by nation-state nationalism, Indigenous nationhood is defined as an "understanding of a common social interdependence within the community, the tribal web of kinship rights *and* responsibilities that link the People, the land,

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<sup>92</sup> Justice, *Our Fire Survives the Storm*, 23.

<sup>93</sup> Justice, 23.

<sup>94</sup> Justice, 23.

<sup>95</sup> Justice, 24.

and the cosmos together in an ongoing and dynamic system of mutually affecting relationships.”<sup>96</sup> Whereas subjects of the United States are expected to defer to the authority of the larger nation, Justice shows how Indigenous nationhood defines itself most clearly through relationships to other people, or kin, and to the land.

Child’s Republican Motherhood and Nan-ye-hi’s matrilineal diplomacy both emerge as political strategies within these structures of the American nation-state and Indigenous nationhood, respectively. When read side by side, the women’s seemingly similar approaches to their critiques of the state through motherhood reveal irreconcilable cultural differences that stymie any hope of a transnational, intersectional collaboration between nations.

Child’s *First Settlers* attempts to improve the American Republic specifically by holding it accountable to the troubled histories it continuously erases in order to justify Westward expansion and the violence done to Native peoples. By staging her critique through Mother, the literal characterization of Republican Motherhood, Child creates a new genealogy of the nation that utilizes a mother’s emotional and educational bond to her children as a powerful tool of the nation-state. Her advocacy for the protection of Cherokee lands, women’s improved education, and a more critical and self-reflective U.S. history, ultimately seeks not to dismantle the structure of the nation-state but to suggest ways in which men in power might improve upon it.

Nan-ye-hi, on the other hand, uses matrilineal diplomacy as a community- or peoplehood-based form of activism, consistent with Justice’s concept of Indigenous nationhood. She proposes, to quote Justice, “a common social interdependence,” or a new and active relationship with white Anglo-American women, while also reminding the Cherokee government

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<sup>96</sup> Justice, 24.

of the importance of matrilineal kinship to the health of their future nation.<sup>97</sup> Ultimately both Child, through Republican Motherhood, and Nan-ye-hi through matrilineal diplomacy, employ the figure of the mother as a political strategy to center the needs and powers of women in their respective nations in the early decades of the nineteenth century.

A major tenet of belonging, or citizenship, in the U.S. nation-state was property. As this chapter has shown, the equation of private property with citizenship influenced Cherokee leaders, who retraced lines of inheritance away from matrilineal clan kinship customs and toward a more patrilineal, patriarchal structure of the nation in their first written laws. During the decades leading up to forced Indian Removal, we can see the U.S. government and the Cherokee Republic both negotiating with and defining themselves against each other through the language of property ownership and gender norms.

As she attempts to overhaul the history of the American nation-state in *First Settlers*, Child also seeks to revise women's role in the polity, advocating for women's economic independence and their acute need for individual property rights as key to their sovereignty. Halfway through the very lengthy chapter, "Conquest of the Narragansets," Mother details the lives of illustrious women rulers, focusing on Weetamoo, the principal sachem of the Pocasets, and Anacoana, chief of Jaragua. She also, bizarrely, writes at length of Queen Isabella of Spain, quoting large chunks of Washington Irving's romantic history of Christopher Columbus. Isabella is praised in Irving's text as both compassionate toward Indians, whom she considered herself responsible for, viewing them as new "subjects," and also as independent of her husband.

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<sup>97</sup> Justice, 24.



Irving assures, for “though strongly attached to her husband, and studious of his fame, she always maintained her distinct rights as an allied prince.”<sup>98</sup> When Elizabeth intercedes to ask, “But, delightful as is the character of the queen of Spain, some may object to her acting so independently of her husband,” Mother replies:

Although Isabella treated her husband with much affection and respect, she was doubtless convinced that her power of doing good would be greatly diminished, had she yielded up her right to govern her own kingdom; and she would unquestionably have received less attention and respect. The common notion, that women are incapable of occupying high and responsible stations in society, is not sustained by history or experience. The few females who have attained sovereign power, have, in most instances, discharged the important duties which devolved on them, with dignity, and an attention to humanity and the rights of their subjects, which is not commonly found in kings.<sup>99</sup>

Citing Isabella’s refusal to yield her political sovereignty as the backbone of her illustrious career, Child implicitly links women’s independent personhood to the home, or the American mother’s “kingdom.” Mother equates Isabella’s reign to Republican Motherhood. She explains the importance of raising children to be compassionate and industrious and defends the worth of this work to the nation’s health. Yet she also insists that a “degree of independence,” for American women is also necessary to ensure their “respect and attention” and overall domestic happiness.<sup>100</sup>

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<sup>98</sup> Child, *The First Settlers of New England*, 180.

<sup>99</sup> Child, 241.

<sup>100</sup> Child, 242.

Mother claims that the “independence” which she “so anxiously desire[s] should be secured to females” is a result of the failings of the United States legal system, as women “receive so little protection from the laws of their country.”<sup>101</sup> The most glaring injustice that women face, in Mother’s opinion, is their loss of the right to their own property under marriage due to the customs of coverture.

As I showed in Chapter 1, under the English common law system of coverture, which transferred to the colonies, white women had no legal identity of their own once married. Women’s legal existence, as well as all of their possessions and any wealth that they might have inherited or brought into a marriage, technically belonged to their husband. Only when women were widowed did they become “uncovered,” and thus allowed independent legal recognition as well as the right to their own property.

Mother’s marital status remains unclear throughout the book. Whether a widow, and thus legally and economically independent, or not, Mother never once invites the spectre of dependence on her husband into the text. Instead, Child dogmatically focuses on Mother’s, and Caroline’s and Elizabeth’s (future) role as mothers rather than as wives, a distinction that unwittingly counters Nan-ye-hi’s conception of Anglo-American women in her 1817 speech. Regardless of how the American nation-state ranks the political importance of women and mothers, Child clearly draws her authority for the text from that very status.

The structure of *First Settlers*, then, models Mother’s demands for women’s rights to certain independences from their husbands. In contrast to the coverture principles that ruled in the United States, Mother praises the laws in “continental Europe” where women “posses the

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<sup>101</sup> Child, 244.

undoubted right to dispose of their own property.”<sup>102</sup> She views such an arrangement as “equally advantageous to both parties,” as the “happiness of domestic life” would increase when there is “no abject submission on one side, or arbitrary interference on the other.”<sup>103</sup>

Norma Basch’s influential monograph, *In the Eyes of the Law: Married Women, Marriage, and Property in Nineteenth-Century New York*, argues that the fight for married women’s property rights formed a “critical intermediary stage” between Republican Motherhood and the later campaign for women’s suffrage.<sup>104</sup> As property requirements for suffrage were abolished state-by-state yet the right to vote was restricted to white males, property rights became a focal point of women’s rights activists of the Jacksonian era, who embraced the injustices of marriage law as one of their core platforms.<sup>105</sup> Yet Child’s advocacy for women’s property rights extends beyond the mere ownership of property; she seeks economic and social equality in the home, and, by extension, in the larger American nation-state.

Basch’s study fails to consider the implications of the fight for married women’s property rights occurring simultaneously with federal Indian Removal policies. By advocating for property rights for white women in the middle of a text condemning the stealing of property from Native Americans, Child attempts to politically align her white women readers with the Native nations under threat. Yet rather than making the larger cultural critique of the patriarchal nation-state that depends on the submission and disenfranchisement of Native Americans, enslaved African Americans, and white women, Child appropriates the issue of Native American dispossession to argue solely for the betterment of white women.

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<sup>102</sup> Child, 245.

<sup>103</sup> Child, 242–43.

<sup>104</sup> Basch, *In the Eyes of the Law*, 41.

<sup>105</sup> Basch, 41.

Perhaps Child's text seeks to advocate first and foremost for the intellectual and economic sovereignty of American women, simply under the auspices of an antiremoval critique of the U.S. nation-state. In *The Making of Racial Sentiment* Ezra Tawil reads historical frontier romance novels as narrative sites where the inextricable issues of slavery and Indian removal collided and made it possible for authors "to use the figure of the 'Indian' to think about the problem of slavery in different terms."<sup>106</sup> In *First Settlers* Child uses the figure of the "Vanishing Indian" (and slavery, although in more secondary asides) as a way to think through women's autonomy through increased access to a more rigorous education and to property.

Because slavery and Indian removal were predominantly crises of property, and, by extension, of definitions of national citizenship, it makes logical sense for Child to broach women's role in the nation-state through a discussion of other disenfranchised groups. However, whereas Tawil argues that "the real power of domestic frontier romances in negotiating the conflicts surrounding slavery had to do not with any direct treatment of the themes of property and ownership, but rather with how they used ideas about kinship and courtship to bolster emergent ideas about racial difference," I contend that Child's *First Settlers*, explicitly privileges issues of property over race.<sup>107</sup> In so doing, and through the figure of the mother, no less, Child aligns Native Americans, enslaved African Americans, and white women through their lack of right to property rather than differentiating them from one another through race.

Child's connection of white women's married property rights to the issue of forced Indian Removal proved prescient. In 1839, after subjecting the Cherokees to the Trail of Tears,

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<sup>106</sup> Ezra Tawil, *The Making of Racial Sentiment: Slavery and the Birth of the Frontier Romance* (Cambridge: Cambridge University Press, 2006), 5–6.

<sup>107</sup> Tawil, 21.

the United States began passing a series of state-based Married Women's Property Acts modeled after Indigenous marriage customs in which women kept and managed their own property after they married.<sup>108</sup> Ironically, then, logics of matrilineal inheritance began to circulate in the United States to the benefit of white women, and, by extension, their husbands, at the exact time that the government stripped these rights of Southeastern Native nations.

Mississippi was the first state to pass the Married Women's Property Law in 1839, and it found its legal precedence in an 1837 lawsuit brought to the Mississippi Supreme Court by Elizabeth Love Allen, a Chickasaw woman seeking to defend her property. In *Fisher v. Allen*, Elizabeth Love Allen fought to defend her property (an enslaved man named Toney) from her husband's creditors. Allen won the lawsuit based on matrilineal Chickasaw marriage customs that held that property remained with the wife. As Chief Justice William L. Sharkey, who ruled on the case along with Justice P. Cotesworth Smith, noted, since Allen married under the customs of Chickasaw tradition, she could, "in most things act as a feme sole."<sup>109</sup>

The Married Women's Property Act was the first and only step taken in the nineteenth century to dismantle coverture. Megan Benson in her insightful article, "Fisher v. Allen: The Southern origins of the Married Women's Property Acts," notes that in ruling in Allen's favor, the judges effectively overturned coverture for Indigenous women by allowing them to maintain the handling of their property "in an unrestricted, traditional, matrilineal descent."<sup>110</sup>

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<sup>108</sup> Megan Benson claims that there was a "clear connection between Allen's 1837 Mississippi court case, *Fisher v. Allen*, and [Mississippi's] 1839 legislation" ("Fisher v. Allen: The Southern Origins of the Married Women's Property Acts," *Legal History* 6 [1998]: 98).

<sup>109</sup> *Fisher v. Allen*, 3 Miss. 611 (1837).

<sup>110</sup> Benson, "Fisher v. Allen," 106.

Chickasaw matrilineal customs proved crucial to ruling in Allen's favor. In their written opinions for the majority that summarized the court case and its verdict, Justices Sharkey and Smith centralize the issue of who should have access to whose property during the era of forced Indian Removal. Smith emphasizes that when the Mississippi government extended state jurisdiction over Native land in 1829 and "abolished the tribal character of the Choctaws and Chickasaws" that the state conceded that Indian marriages that took place before state jurisdiction were "equally valid at their commencement as at the passage of the law," and that in fact, "The law of the place where contracts are entered into forms part of their essence."<sup>111</sup>

After declaring the Allens' marriage valid in the eyes of the state jurisdiction, Justice Smith reasons that ruling in favor of Allen's husband's creditor would actually "bring the case in conflict with the constitution." Because by Chickasaw marriage custom Allen's husband "acquired no interest in the property of his wife," the property in question was always already hers. The court agreed that to rule in favor of Allen's husband, or his creditor, would "work a divesture of her rights." Further, Justice Smith emphasizes that state jurisdiction over Chickasaw land sought to incorporate the Chickasaws under "the full protection of the law" and to make them "members of the civil community."<sup>112</sup>

Focusing again on Chickasaw women's individual property rights, he emphasizes, "It was not the intention of the legislature, nor could they, if they had so intended, violate the sanctity of private property."<sup>113</sup> Tellingly, although the state of Mississippi found it constitutionally necessary to strip the Chickasaws of their indigenous nationhood by forcefully

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<sup>111</sup> Fisher v. Allen, 3 Miss. 611 (1837).

<sup>112</sup> Fisher v. Allen, 3 Miss. 611 (1837).

<sup>113</sup> Fisher v. Allen, 3 Miss. 611 (1837).

incorporating them into the U.S. nation-state, matrilineal concepts of private property are viewed as sacred. Because citizenship in the nation-state depends on who owns property, or on who is considered to *be* property, preserving Chickasaw property customs proved integral to their rights within their new nation-state.

Latching onto women's property rights as the "essence" of Chickasaw marriage customs, Justice Smith uses a magnanimous tone to recognize Chickasaw women's property rights as legal under state jurisdiction. In granting these rights during the era of Indian Removal, however, the court worked in its own best interests, giving Chickasaw women the legal right to sell their land to white speculators and thus to accelerate the removal process.

The same kind of political reasoning informed the subsequent passing of the nation's first Married Women's Property Act, clearly using Allen's case as its precedent.<sup>114</sup> After the economic Panic of 1837, which affected nearly all households in Mississippi, white men found, as Allen's husband had, that "by granting their wives a separate legal identity by law, they could shelter assets –primarily slave property- from hungry creditors."<sup>115</sup>

Just as the property under dispute in the *Fisher v. Allen* case revolved around an enslaved man, Toney, so does the Married Women's Property Act center on slavery; four of the five sections of the act specify the ways in which a woman can legally own, inherit, manage, and dispense of her slaves. The Mississippi government's particular interest in regulating women's management of slave property reveals the state's larger economic motivations: allowing married women independent ownership of property separates and theoretically protects her assets from her husband's creditors, thus preserving the larger household economy.

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<sup>114</sup> Benson, "Fisher v. Allen," 112.

<sup>115</sup> Benson, 112.

Although the Mississippi Married Women's Property Act was the first in American history to allow white women to own property, "in her own name and as of her own property," Benson insists that such equality had only "been extended in response to a particular threat, at a particular time, in order to ease financial pressure of white males."<sup>116</sup> Both Nan-ye-hi and Child, in their separate cultural contexts, strove, through the figure of the mother, to recenter women's roles in their nations' political structures, societies, and homes outside of the parameters of property used by men to both define and limit their citizenship statuses.

A crucial part of this chapter's story of widowhood, property, and governmental machinations to control it during the era of forced Indian removal is the history of slavery. Nan-ye-hi acquired one slave in reward for her valor; Betsy Love Allen won a significant lawsuit that legally recognized Chickasaw marriage customs by fighting to retain her property, a slave named Toney. Although the complicated relationship and history of slavery to the Cherokee Nation is beyond the scope of this chapter, it must be considered that at the same time that the Cherokee Republic was modifying, diminishing, and insisting on certain property rights for Cherokee women, they were also building their legal system (modeled in part on that of the United States) around the racial and economic oppression of enslaved labor. As Ward, Child, and Allen negotiated for their individual and collective rights to independently own or keep property under

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<sup>116</sup> Benson, 114. Basch also views the passage of the Married Women's Property Act to be a failure of the revolution that early women's rights activists were seeking. She explains that the property acts passed to benefit first and foremost the material interests of white men, and that the laws "failed to obliterate the historic barriers the common law had thrown around married women. Failure stemmed from the sheer inability of piecemeal, remedial legislation to reconstruct comprehensively the vast body of domestic relations law which was an intrinsic part of the Anglo-American legal tradition" (*In the Eyes of the Law*, 200).



the confines of the American nation-state, the structures of that state made them complicit in extending the American plantocracy.

### CHAPTER 3

#### **“Let Charity Draw Around Him the Mantle of Silence”: African American Widowhood in Bondage and in Freedom**

Marriage was legally impossible for nineteenth-century African Americans living in bondage. Yet as the literature of slavery shows, ranging from slave narratives such as Ellen and William Crafts’ *Running a Thousand Miles for Freedom*, to documents collected under the Freedmen’s Bureau, to testimonies from the Federal Writers’ Project, marriage formed an integral part of enslaved and emancipated persons’ lives. Frances Smith Foster’s book, *’Til Death or Distance Do Us Part: Marriage and the Making of African America*, revises how scholars understand marriage and family under slavery. She argues that in spite of the lack of formal legal recognition of their marriages, “slaves could and did marry ... slave marriages were valued ... [and] love among slaves could and often did last despite distance and beyond death.”<sup>1</sup> This chapter builds on Foster’s and other scholars’ studies of marriage law and slavery to consider how the legal and social construct of widowhood impacted African American women’s lives and writings, both in bondage and in freedom.

The complex legal statuses of previously enslaved African American widows come to life through narratives documented in the Civil War pension files at the National Archives. 179,000 Black men fought for the Union, most of whom had been formerly enslaved. Nearly 40,000 of

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<sup>1</sup> Frances Smith Foster, *’Til Death or Distance Do Us Part: Marriage and the Making of African America* (Oxford: Oxford University Press, 2010), xvi.

them died in service.<sup>2</sup> After the Civil War, African American and Anglo-American Union soldiers' widows sought financial aid from the government through federal pensions. As this chapter will examine at length, the burgeoning U.S. pension system negotiated and redefined marriage law, womanhood, and widowhood for all women in the contexts of slavery and emancipation.

The pension files contain particularly rich repositories of self-authored accounts of enslaved African American widows' lives. Because women married in bondage lacked official documentation such as a marriage license, the government required that they supply extensive records to prove the legitimacy of their marriages. As such, pension files are replete with affidavits, both by the widowed applicants as well as by friends and family members attesting to the validity of their unions.<sup>3</sup>

For example, "Lottie" Charlotte Duck's file, which preserves intimate details of her lasting marriage both during and after slavery to her husband, John, epitomizes Foster's claims: marriage mattered to enslaved couples and their communities even though such relationships were not legally recognized as binding by the federal, state, nor plantation law prior to the Civil War.<sup>4</sup> In a general affidavit submitted with her claim, Duck recites the history of her relationship.

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<sup>2</sup> See Elsie Freeman, Wynell Burroughs Schamel, and Jean West, "The Fight for Equal Rights: A Recruiting Poster for Black Soldiers in the Civil War," *Social Education* 56, no. 2 (1992): 118–20.

<sup>3</sup> See Noralee Frankel, "From Slave Women to Free Women: The National Archives and Black Women's History in the Civil War Era," *Prologue* 29, no. 2 (2007): n.p., <https://www.archives.gov/publications/prologue/1997/summer/slave-women>.

<sup>4</sup> By *planation law*, I refer to the particular, everyday rules inflicted on enslaved persons by their owners. Although marriage in slavery was not legally recognized by federal or state law, slave owners often allowed a wide spectrum of marriage practices to exist between slaves. My readings of Duck's, Keckley's, Crafts's, and Jacobs's stories will show the many varied ways in which marriage was, or was not, permitted based on the whims of slaveholders.

From her statements readers learn that John passed away on February 13<sup>th</sup>, 1894 from cardiac dropsy, though he also suffered from rheumatism and a persistent bowel disease that had plagued him since his service in Company B of the 58<sup>th</sup> U.S. Colored Troops Infantry Regiment during the Civil War. Duck describes at length how she met John “while a mere girl,” at the “place of her birth,” which we later learn was the estate of David Kinnison, by whom she was enslaved.<sup>5</sup>

As pension requests customarily required a claimant’s address during time of marriage to show that the enslaved couple lived together for at least two years, Duck lists the Kinnison residence as her place of residence. She describes how she was born only four miles away from John, who was enslaved on a neighboring plantation, and that an African American minister named Dick Folke married them in the summer of 1843 on the Kinnison property and with the consent of both their owners. She depicts John, who died at 72 years of age, as a farmer “5 ft 4 inches high, [with] yellow complexion, grey eyes, [and] light hair.” She confidently asserts, “that he had never been married before his marriage to her.”<sup>6</sup>

Historical records, such as the affidavits and documents that fill Civil War pension files, as well as the texts that Foster recovers in her scholarly work, illustrate innumerable instances of long-lasting and fulfilling marital relationships that existed within the institution of slavery and that endured beyond it. Yet, slave narratives written by freed African American women depict

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<sup>5</sup> Charlotte Duck, “Approved Pension File for Charlotte Duck, Widow of Corporal John Duck, Company B, 58th U.S. Colored Troops Infantry Regiment (WC-420984),” 9. In *Case Files of Approved Pension Applications of Widows and Other Dependents of the Army and Navy Who Served Mainly in the Civil War and the War With Spain, 1861–1934*, Records of the Department of Veterans Affairs, Record Group 15, National Archives Building, Washington, DC. Duck’s pension file has been digitized in full and is available at the website of the National Archives, <https://catalog.archives.gov/id/26419997>. For ease of the reader, I have included page numbers that refer to the pages of the PDF.

<sup>6</sup> Duck, 10.

marriage under slavery much differently: as an extension of institutionalized bondage. While male-authored accounts of slavery, such as Frederick Douglass's 1845 *Narrative of the Life of Frederick Douglass*, attribute literacy or physical resistance to psychological freedom from slavery, the enslaved widow in American literature uses husbandlessness to propel her journey for freedom, selfhood, and economic independence in the North.

This chapter engages primarily with Elizabeth Keckley's memoir, *Behind the Scenes: or Thirty Years a Slave, and Four Years in the White House*, because she directly addresses African American pension requests to characterize her life as a free Black widow in the North. I interweave my reading of *Behind the Scenes* with studies of Harriet Jacobs' *Incidents in the Life of a Slave Girl* and Hannah Crafts' *The Bondswoman's Narrative*. Although Jacobs and Crafts experience the horrors, frustrations and threats of marriage under slavery differently from Keckley, they structure their narratives similarly: critiquing the meaning and significance of marriage under the institution of slavery in the beginning, and ending their stories in the North not as free widows, per say, but able to choose their own partner, as we see with Crafts, or to live independently and untied to a man in general, as with Jacobs. Interspersing analyses of Jacobs' and Crafts' texts into my reading of Keckley's autobiography will also help to situate the many different types of marriage and widowhood that existed in slavery.

In the first section, I concentrate on the legal limitations of marriage and widowhood in bondage and the ways in which African American women writers in particular denounce these aspects of American law. Possibilities for the longevity of marriage originating in slavery, as Duck's pension file so poignantly illustrates, simply do not exist in Keckley's, Crafts's, and Jacobs's works. The formal literary structure of their texts hinges on metaphors differentiating

between the unofficial marriage practices available to the enslaved and the many forms of legal recognition, even beyond marriage, for the free.

In the second section, I focus on the passage of the 1864 amendment to the Pension Act, which sought to give the widows and children of Black soldiers fighting in the Civil War the same pensions as those of white soldiers. Although the bill ultimately passed with the caveat that the widows and children of black soldiers must be *free* in order to be eligible to receive a pension, I examine the fascinating distinction implied in early iterations of the law that sought to legally recognize enslaved *widowhood* at a time when enslaved marriage went entirely unacknowledged by the state.

I investigate especially the ways in which Keckley's widow pension request disrupts not only the form of her memoir, which at first glance appears to focus more intensely on the lives of Mary Todd and Abraham Lincoln than on her own; but the way it also questions the national narrative of womanhood, marriage, and widowhood during the Civil War era. Keckley authors her pension application, both in her memoir and in real life, in ways that excoriate U.S. marriage law for the enslaved and the free.

### *I. Marriage and Widowhood under the Institution of Slavery*

As generations of historians, sociologists, and legal theorists have documented, marriage under the institution of slavery was vexed.<sup>7</sup> Because African Americans were not seen as fully

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<sup>7</sup> For analyses of marriage under the institution of slavery that inform my study, see especially, Foster, *'Til Death or Distance Do Us Part*; Noralee Frankel, *Freedom's Women: Black Women and Families in Civil War Era Mississippi* (Bloomington: Indiana University Press, 1999), ix–27; Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York: Alfred A. Knopf, 1979), 229–47; Ann Patton Malone, *Sweet Chariot: Slave Family and Household Structure in Nineteenth-Century Louisiana* (Chapel Hill: University of North Carolina Press, 1992), 166–202, 205–30; Elizabeth Fox-Genovese, *Within the Plantation Household: Black and*

human in the eyes of the state, legal, formal matrimony was not an option; as property they could not enter into binding legal agreements on their own.<sup>8</sup> In her brilliant book *Novel Bondage: Slavery, Marriage and Freedom in Nineteenth-Century America*, Tess Chakkalakal positions marriages between slaves as always already a fiction due to the non-legally binding aspects of the union. She writes, “Performed without the law, the slave-marriage was a figment of the slave’s imagination inscribed in the form of fiction- but a fiction ... with very real effects.”<sup>9</sup>

The real-life effects of fictive slave marriages were far reaching. Slave owners could force enslaved men and women to marry; they could separate couples at any time, for any reason, which they frequently did; and owners could violate the sanctity of slave marriages through rape.<sup>10</sup> Even more permanent marital relationships faced daunting difficulties. Most enslaved couples lived apart from each other in an arrangement that African Americans called “abroad marriages,” traveling by foot to visit each other on nearby neighboring plantations after their work was completed or on Sundays. Abroad marriages were dangerous because the

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*White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988), 64–65, 296–97, 307, 326–27; Elizabeth Regosin, *Freedom’s Promise: Ex-Slave Families and Citizenship in the Age of Emancipation* (Charlottesville: University Press of Virginia, 2002), 80–82; Tess Chakkalakal, *Novel Bondage: Slavery, Marriage, and Freedom in Nineteenth-Century America* (Urbana: University of Illinois Press, 2011), 1–15; Emily West, *Chains of Love: Slave Couples in Antebellum South Carolina* (Urbana: University of Illinois Press, 2004); and Deborah Gray White, *Ar’n’t I A Woman?: Female Slaves in the Plantation South* (New York: W. W. Norton, 1985), 142–60.

<sup>8</sup> See Foster, *’Til Death or Distance Do Us Part*, 5; Regosin, *Freedom’s Promise*, 81. Fox-Genovese, *Within the Plantation Household*, 296–97, 326–27, and Chakkalakal, *Novel Bondage*, 3.

<sup>9</sup> Chakkalakal, *Novel Bondage*, 1.

<sup>10</sup> It should be noted that each of these scenarios is enacted in Keckley’s, Jacobs’s, and Crafts’s narratives: Crafts’s owners attempt to force her to marry Bill against her will; Dr. Flint forbids the marriage that Jacobs coveted; Keckley’s parents endured heart-wrenching and permanent physical separation; and Jacobs faced the continuous threat of sexual violation by Dr. Flint despite her attachments to other men.

privilege of visiting could be taken away at any time, and the traveling spouse was subjected to potential violence, inclement weather, and the physical demands of traveling great distances in one day.<sup>11</sup>

And yet, despite the limitations and difficulties of marriage in slavery, Foster reminds us that it is “both disingenuous and destructive” to dismiss enslaved couples’ hopes that their marriages would endure, even under the countless obstacles thrown at them in slavery.<sup>12</sup> Keckley, Crafts, and Jacobs fervently reprove the legal and cultural hypocrisies of marriage under slavery, while simultaneously upholding a deeply rooted respect for the vows undertaken in such a system.

I build on Chakkalakal’s reflection on marriage in slavery as fictive, or as commitments that existed only in the imagination of enslaved persons. I consider how women writers such as Keckley, Jacobs, and Crafts, flip the script to consider American marriage *law* as fictional, a figment of the national imaginary rooted in patriarchal white supremacy. As this dissertation and many other histories of nineteenth-century women’s lives and the law have shown, the legal structure of the U.S. was penned by white men eager to protect their own wealth, power, and interests through the disenfranchisement and legal subjugation of women and people of color. African American women writers attack the logical fissures of American marriage law in their texts, especially those that disavow marital unions forged in bondage.

Investigating how the extralegal, affective bonds of marriage unite couples outside of juridical recognition, Keckley, Jacobs, and Crafts question what *is* marriage? And how do

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<sup>11</sup> See Foster, *'Til Death or Distance Do Us Part*, 23; and Litwack, *Been in the Storm So Long*, 235.

<sup>12</sup> Foster, *'Til Death or Distance Do Us Part*, 69.



everyday people experience it differently than it is defined under the law? All three works expose an incommunicable breach between the affective experiences that constitute a union and the law's formal sanctioning of those feelings. Keckley's memoir directs attention to her parents' sustained commitment to one another despite their lifelong separation; Jacobs concentrates on the felt sacredness of vows taken by those in bondage; Crafts emphasizes the gravity of the duties and responsibilities of marital vows. A pattern emerges in the women's writings: they effectively divorce unions between couples from the legal institution of marriage. In doing so, they theorize that it is not marriages that are fictional for enslaved couples but rather the need for legal recognition of their unions that is both imaginary and arbitrary. By marking this tension between the everyday affective commitment between couples, which is a very real lived reality to them, and the abstract acknowledgement of the state for their unions, which is a creation of the American nation-state to keep white men in power, Keckley, Crafts and Jacobs stage sustained critiques of U.S. marriage law.

In *Behind the Scenes* Keckley repeatedly dwells on the shared emotional devotion of her parents to each other despite their physical separation; their connection endures mainly through written correspondences, the relics of which would become "the most precious mementoes of [her] existence."<sup>13</sup> Although quite close to her mother, Keckley admits, "I did not know much of my father, for he was the slave of another man, and when Mr. Burwell moved ... he was separated from us."<sup>14</sup> Parted by different owners and plantations, Keckley's parents had an

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<sup>13</sup> Elizabeth Keckley, *Behind the Scenes; or Thirty Years a Slave, and Four Years in the White House* (New York: G.W. Carleton, 1868), 25.

<sup>14</sup> Keckley, 22.

“abroad marriage” in which her father was granted permission to visit “only twice a year- during the Easter holidays and Christmas.”<sup>15</sup>

Keckley’s mother, Agnes, lived, to a certain degree, as a widow-wife during the times of the year when her husband was not allowed to travel to visit her. Foster astutely points out that “many marriages in the antebellum United States, including those among free people, were disrupted or destroyed by a spouse going to a distant place and the couple knowing or believing the separation was final.”<sup>16</sup> As I will theorize in the following chapter, in maritime communities of the nineteenth century, seamen’s wives, or widow-wives as I call them, endured prolonged separations from their spouses and fell somewhere in between the legal and social status of a widow and a wife.

For enslaved women, unprotected by the change in legal status that free white widows acquired, near-widowhood had none of the social, economic, or legal freedoms that white wives of seafaring men in whaling towns would have enjoyed.<sup>17</sup> White women who faced separations from their spouses did not do so under the conditions of forcible separation by the state; their unions were recognized by the federal government in ways that enslaved couples’ were not. As Elizabeth Regosin notes, “Slaves’ marriages possessed none of the protection, benefits, or obligations of marriage under the laws of freedom.”<sup>18</sup> The two groups of women seem to share in

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<sup>15</sup> Keckley, 22.

<sup>16</sup> Foster, *'Til Death or Distance Do Us Part*, 69–70.

<sup>17</sup> As Chakkalakal notes, “Unlike a legal marriage in which marriage altered the status of those entering into the institution, marriage did not change the condition of a slave. A slave-marriage could be dissolved at any time, by sale or gift. The fact that slave law did not recognize marriages formed by slaves was a central, but often neglected, feature of arguments against slavery” (*Novel Bondage*, 2).

<sup>18</sup> Regosin, *Freedom’s Promise*, 80.

similarity only their anguish at being separated from their loved ones and their distress at not knowing if their husbands were safe, healthy, or even still alive.<sup>19</sup>

Enslaved widow-wives experienced a particular mode of double-consciousness. W.E.B. Du Bois famously theorizes the “second-sight” through which African Americans see and experience the world as if behind a veil, constantly viewing themselves “through the eyes” of the white ruling class. He describes of such awareness: “One ever feels his twoness,- an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.”<sup>20</sup>

Widow-wives in bondage endured a “twoness” of self as wife and slave. As wives in spirit, they devoted their lives and hearts to another even as their bodies were legally not their own to bestow. The role of wife was thus perpetually shadowed by its very impermanence. Living as married in bondage always already entailed the loss of legal right to one’s spouse. This bereavement of selfhood resulted in a permanent mode of widowhood underlying all marital relationships in slavery.

The stress of living as a widow-wife on Keckley’s mother can be seen when her owner, Mr. Burwell decides to “reward” her hard work by arranging for the couple to live together, the news of which causes the “old weary look” to “fad[e] from her face.”<sup>21</sup> Shortly after this good news is delivered, however, Mr. Burwell retracts the offer, as Keckley’s father is ordered west with a family member instead. Orlando Patterson explains that the institutionalized alienation of slaves

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<sup>19</sup> As Foster notes, “many marriages in the antebellum United States, including those among free people, were disrupted or destroyed by a spouse going to a distant place and the couple knowing or believing the separation was final” (*Til Death or Distance Do Us Part*, 69–70).

<sup>20</sup> W. E. B. Du Bois, *The Souls of Black Folk*, ed. Stanley Appelbaum and Candace Ward (Dover, 1994), 2.

<sup>21</sup> Keckley, *Behind the Scenes*, 22.

from personal attachments “other than those chosen for him by the master” is what “gave the relation of slavery its peculiar value.”<sup>22</sup> In this iteration, “the slave was the ultimate human tool, as imprintable and as disposable as the master wished.”<sup>23</sup>

Keckley’s parents are forced to endure the challenges of an abroad marriage until Mr. Burwell “chooses” to allow their attachment; more than likely this is an economically motivated decision to encourage Keckley’s mother to work even harder, “as if her heart was in every task.”<sup>24</sup> The cruelty of the brevity of their time together seems specifically designed to reinforce the powerful role of the master and the “disposable” nature of the slave both on the Burwell plantation and in Keckley’s childhood home; she internalizes this ideology and later resists it in her own hesitation to marrying in slavery.

Keckley pointedly contrasts the endurance of her parents’ love with their owners’ compassionless rejection of their union as sacred or binding. After divulging the heart wrenching memories of her parents’ separation, Keckley recounts how her mistress discounts her mother’s grief. Urging Agnes to quit her “airs” and to “go and find another” husband if she wanted one “so badly,” the mistress fails to acknowledge the affective center of a marriage that persists whether or not the couple received formal sanctioning of their union.<sup>25</sup> Agnes’s double consciousness as a widow-wife can be seen when Keckley describes her reaction to this slight: “She turned away in stoical silence, with a curl of loathing scorn upon her lips which swelled in

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<sup>22</sup> Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Cambridge University Press, 1982), 7.

<sup>23</sup> Patterson, 7.

<sup>24</sup> Keckley, *Behind the Scenes*, 22.

<sup>25</sup> Keckley, 25.

her heart.”<sup>26</sup> Both a wife to her husband and a slave to her owners, Agnes sees her marriage through her mistress’s eyes and recoils at her cruelty, her willful misunderstanding of Agnes’s love behind the veil.

Harriet Jacobs’s *Incidents* takes as its central theme the failure of Anglo-American law to protect enslaved women from rape and sexual assault.<sup>27</sup> Jacobs views the lack of legal recognition of slave-marriages as an extension of this systemic inadequacy. She posits her extramarital relationship with the white father of her children as a direct consequence of these legal deficiencies. Forbidden to marry the man of her dreams, and hounded by her lascivious owner, Jacobs must look beyond the law to protect herself from rape. She confesses, “If slavery had been abolished, I, also, could have married the man of my choice; I could have had a home shielded by the laws.”<sup>28</sup> Directly addressing her white woman readers, whose purity and rights to marriage were protected by the state, Jacobs insists on the necessity of marital relationships in bondage.

When Jacobs takes advantage of one of Dr. Flint’s absences to quietly baptize her children, she contemplates the differences between her singleness and her mother’s own married state when she presented Jacobs for baptism. Jacobs recalls, “She had presented me for baptism, without any reason to feel ashamed. She had been married, and had such legal rights as slavery

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<sup>26</sup> Keckley, 25.

<sup>27</sup> Harriet Jacobs, *Incidents in the Life of Slave Girl, Written by Herself*, ed. Nellie Y. McKay and Frances Smith Foster (1861; New York: W. W. Norton, 2001). Jacobs’s narrative repeatedly denigrates the ways in which the law exclude the enslaved from marriage and property rights and that make literacy illegal and self-possession a farce. Jacobs takes on nearly every aspect of the legal injustices of slavery. For legal critiques of the threat of sexual assault under slavery, see 26, 52; of marriage, 32–38, 65; of the lack of self-possession, 108–9, particularly in the context of naming her children, see 53, 65; of public officials 56, 97, and especially the chapter “Candidate for Congress,” 99–101; of literacy, 143; and of the Fugitive Slave Act, 147–51.

<sup>28</sup> Jacobs, 46.

allows to a slave. The vows at least had been sacred to *her*, and she had never violated them.”<sup>29</sup>

Although I will discuss Jacobs’ particular cynicism toward marriage under slavery in greater detail later in this section, here she differentiates between the “sacred” vows felt and recognized by enslaved spouses and the negation of those commitments by law. She defines marriage, then, as comprised of hallowed vows faithfully forged between two consenting parties and dutifully maintained. Unlike hypocritical slave owners, most of whom were married and identified as Christians but who nevertheless regularly raped enslaved women, Jacobs denotes African Americans’ faithfulness to their vows as a defining feature of their marriages.

Jacobs employs dark irony when deeming her mother’s self-sanctification of her marriage official through “such legal rights as slavery allows to a slave.”<sup>30</sup> Calling attention to the “legal rights” of slaves accentuates the fact that enslaved men and women by law didn’t have any rights to their marriages or affections. Her mother’s personal devotion to her vows endured, despite the fact that her relationship went dishonored by U.S. law; undeterred, Jacobs’ mother demonstrates moral resiliency. It is not enslaved women who violate the bonds of marriage, Jacobs clearly implies, but the institution of slavery itself that turns marriage into a farce.

Hannah Crafts’ protagonist, Hannah, in *The Bondwoman’s Narrative* also esteems the personal marriage vows exchanged between enslaved couples. She censures not their devotion to each other but rather their hopefulness for a lasting relationship under a system rigged to stymie it. Upon witnessing the elaborate marriage ceremony at the Henry plantation between a “beautiful Quadroon” named Charlotte and “a young man belonging to a neighboring estate,” Crafts muses: “I thought of the young couple, who had so recently taken the vows and incurred

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<sup>29</sup> Jacobs, 65.

<sup>30</sup> Jacobs, 65.

the responsibilities of marriage- vows and responsibilities strangely fearful when taken in connection with their servile condition. Did the future spread before them bright and cloudless?"<sup>31</sup> Her repetition of the words "vows and responsibilities" of marriage signals her recognition of the verity of the commitment regardless of its formal legal status under Southern law. And yet such promises between one another, which in any Anglo-American relationship situation would be a source of celebration and rejoicing, become "strangely fearful" under the institution of slavery, when such happiness could be clouded at any moment.

We can further witness this 'unofficial' formality of marriage in Charlotte Duck's 'official' pension file. The documents reveal a distinct tension, negotiated by both white bureaucrats managing her case as well as by Duck's friends who spoke on her behalf, between the couple's unofficial marriage in slavery and their later legally sanctioned marriage post-Civil War. In the "Declaration for Widow's Pension" included in Charlotte's file, a man named Edward S. Bailey, acting as her attorney, resorts to acrobatics of both legalese and penmanship to account for the longevity of the Ducks' marriage.

The standard legal blank of the "Declaration for Widow's Pension" is designed to account for marriages already legally validated by the state, providing blank spaces for the applicant to document the official date, and just the one date, of her marriage. Bailey attempts to account for both the Ducks' unofficial commitment to each other in bondage as well as their legally condoned relationship post-emancipation in the one space provided by the blank. The result is visually striking. Bailey squeezes their long and complex marital history in between the lines and text of the official document, scrawling, "They were married long before the war but

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<sup>31</sup> Hannah Crafts, *The Bondwoman's Narrative*, ed. Henry Louis Gates (New York: Warner Books, 2002), 123.

remarried by license sometime in 1865 by officers in Adams Co. in the town of Washington Miss... Neither were ever married to any other.”<sup>32</sup> Bailey’s words, the physical act of writing the particularities of the Ducks’ relationship, simultaneously legitimize their extralegal marriage even as he emphasizes the overriding authority of their later marriage “by license.” Duck’s double-consciousness as wife and slave is thus made literal on the page.

More personal accounts of the Ducks’ marriage can be glimpsed in the several affidavits included in the widow’s pension file by neighbors and friends of the couple; they attested to the longevity and sincerity of their relationship. These documents authenticate the Ducks’ marriage in the absence of formal legal records. In a general affidavit spoken by Monroe Dixon and Alford Stample and signed with their marks, they aver:

We knew them from before the war up to present date. Their youngest child of a large family they raised was born during the rebellion [was] of 1865 and then they were remarried under the flag as we colored ones called it. Has been living together as man and wife up to John Duck [sic] death the 13<sup>th</sup> of Feb. 1894 and now she remains his widow- who saw her husband decently buried at her own expense neither of them during their lives had any other husband or wife. They lived together all the time peaceably kind to each other until death seperated [sic] them.<sup>33</sup>

Much about the Ducks’ commitment to each other can be gleaned from these statements: that Charlotte and John were married before the war in a manner wholly recognized by their communities; nevertheless, they made their vows legally official “under the flag” after the Civil War; that they shared a tender relationship spanning their entire lives, with their marriage enduring both the institution of slavery and the perils of the Civil War; and that Charlotte ensured John’s decent burial “at her own expense,” a certain sacrifice since later affidavits in the pension file attest to her financial insecurity.

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<sup>32</sup> Duck, “Approved Pension File,” 12.

<sup>33</sup> Duck, 19.



Attributes of marriage in bondage such as tenderness, commitment, and sacrifice, are epitomized in both Duck's file, and in literary works by Keckley, Jacobs, and Crafts. Such devotion begs the question, what makes slave-marriages any different than those experienced by Anglo-Americans and emancipated or free African Americans? As they define, justify, and educate their white readers about slave-marriages in writings, spoken affidavits, and signatures by mark, African Americans write their own marriage laws.

In contrast to Bailey's awkward finagling of the Ducks' marriage history, Dixon and Stample refer to Charlotte's and John's formal marriage "under the flag" after the Civil War simply as a remarriage. Although they too distinguish between the extralegal and legal ceremonies, the friends signal their recognition of the Ducks' marriage as always already valid.

In a general affidavit spoken in support of her claim, one of Duck's friends, Melburn Thompson, describes of their marriage:

That of her own personal knowledge he knows that John Duck and Charlotte Bingman the claimant herein-, were married according to the customs and usages of slavery many years about 1843 before the war. That they were recognized by John's master, her master and the community as husband and wife and that they lived and cohabitated up to the time of John's death in 1894.<sup>34</sup>

Another affidavit, spoken by Warren Felton echoes these claims: "That John Duck and Charlotte Bingman were married some 16 or 17 years before the war according to the customs and usage of slavery with the consent of their owners."<sup>35</sup> Both men use the idiom "the customs and usages of slavery," to describe the Ducks' wedding, a phrase of post-emancipation legalese that, ironically, establishes legal weight in slave marriages that did not exist under the institution of slavery.

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<sup>34</sup> Duck, 21–22.

<sup>35</sup> Duck, 34.

The Ducks' marriage, as narrated by members of their community, is, as Foster suggests, a "synthesis of memory and imaginations."<sup>36</sup> If we imagine marriage between enslaved couples as a kind of fiction, as Chakkalakal argues, Duck's pension file comprises another literature of slavery that compliments more aesthetically formal texts such as *Behind the Scenes*, *Incidents*, and *The Bondwoman's Narrative*. Melburn Thompson, Warren Felton, and many others from the community who testify on the Ducks' behalf, author for the United States government a picture of conjugal contentment and longevity. The "fiction" of the Ducks' marriage under slavery becomes a legal reality after emancipation, which Charlotte employs to ensure a pension for herself as an aging widow. Their earlier 'fictive' marriage in bondage becomes an integral part of their legally recognized marriage in freedom. This belated formality unmasks the whims of American law to be ultimately as fictive as marriage, formally recognized or not, itself.

Foster writes elegantly and persuasively of the power of marriage in African America during the antebellum period:

Basically, what people of African heritage in America had in common with people of non-African heritages in America was this: there was the official way, and there were alternatives. In practice, marriage was not a singular, one-size-fits-all construct. Marriage was a malleable and diverse institution formed as a synthesis of memory and imaginations, needs and options, desires and realities, theories and theologies, pragmatism and practicality. And early African Americans married because they wanted what most human beings want: to love and be loved, to have and to hold, to combine

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<sup>36</sup> Foster, *'Til Death or Distance Do Us Part*, 70.

one's destinies and resources with someone one holds dear. And they wanted this to last a lifetime.<sup>37</sup>

The unofficial vows taken by Charlotte Duck and by Keckley's parents, Jacobs' mother, and Charlotte and her husband in Crafts' narrative, all reflect the "alternative" ways of forming nuptial bonds under slavery, even as the authors express their wariness of forming such unions under an institution designed to thwart them.

Chakkalakal's book predominantly studies fictional representations of slave marriages as "a less strategic, more intensely religious, and more intimate form of marriage than those bound by the law," that influenced nineteenth-century Anglo-American conceptions of marriage.<sup>38</sup> Moreover, she focuses on fictions of slave-marriage that served a "form of nonviolent or passive resistance against the all powerful, legalized system of slavery."<sup>39</sup> She argues:

Without the sanction of public opinion or the protection of law, slave-marriages take on a different character and purpose in these antebellum fictions. Implicitly and explicitly, the novels suggest that slave-marriages- those that fall outside the legal and sentimental conventions of nineteenth-century marriage- are happier, tend to be more fulfilling, and have the potential for equality between the sexes that legal marriages lack. Taken together, these works challenge the supremacy of law in determining the form and function of marriage in the nineteenth century. By departing in crucial ways from legal

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<sup>37</sup> Foster, 70.

<sup>38</sup> Chakkalakal, *Novel Bondage*, 3.

<sup>39</sup> Chakkalakal, 4.

conventions of marriage, the slave-marriages these fictions describe illuminate slaves' intimate lives in surprising ways.<sup>40</sup>

The works that I consider here do not paint as rosy a picture of marriage in bondage as the works that Chakkalakal examines. Far from considering marrying an act of resistance, Keckley, Crafts, and Jacobs all posit it as a foolish mistake that further entraps enslaved women and endangers their prospects for achieving freedom. While their narratives do, ultimately, “challenge the supremacy of law,” by redefining marriage outside of Anglo-American legal constructs, they do not elevate marital commitments undertaken in bondage. Their works display a muted respect and admiration for those who choose to marry in slavery, all the while detailing their own personal refusals to do so. Although the women write for predominantly white audiences, there is an unmistakable cautionary tone to their stories. Early iterations of Black feminist praxis, these texts function as warning manuals for women still enslaved, and perhaps even for those who have found freedom and are considering marriage in their post-emancipation lives.

Marriage, as Keckley portrays it, extends the bondage of enslaved men and women. The autobiography ultimately unfolds in two parts: the first, often adhering to typical conventions of the nineteenth-century slave narrative, documents her experiences under slavery and her struggle to achieve her freedom; the second part narrates her life as a free woman and successful business owner in Washington D.C., where she designs and fabricates clothing for Mary Todd Lincoln and other wives of the politically elite.

The two sections of Keckley's narrative concentrate her larger critiques of both the institution of slavery and the systemic racism against free Black men and women that she

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<sup>40</sup> Chakkalakal, 11.

encounters in the North. Keckley deploys metaphors of marriage and slavery and widowhood and freedom, respectively, to amplify her argument. As I will show, the formal structures of Hannah Crafts' *Bondwoman's Narrative* and Harriet Jacobs's *Incidents* also hinge upon dichotomies of marriage and bondage and husbandlessness and freedom. All three accounts thus evolve into a sustained rumination on African Americans' legal relationship to the United States.

While Keckley romanticizes the ways in which her parents' marriage endures through their lifelong separation, she reflects bitterly on marriage in her own experience of slavery. When she finds herself thinking of Mr. Keckley "with more than friendship" she refuses to consider his marriage proposal, "for I could not bear the thought of bringing children into slavery- of adding one single recruit to the millions bound to hopeless servitude, fettered and shackled with chains stronger and heavier than manacles of iron."<sup>41</sup> Keckley's rejection of marriage becomes a political act that attempts to dismantle the institutional machinations of the state that relies on the procreation of Black bodies to perpetuate slavery.<sup>42</sup> It is also a personal refusal to reenact the historical trauma of her family. Viewing marriage as a privilege for the free, she only consents to marry Mr. Keckley after she has assured freedom for herself and her son.<sup>43</sup>

Keckley's marriage proves to be extremely unhappy, as Mr. Keckley falls into dissipation and, even more unforgivably, lies about his status, turning out to be "a slave instead of a

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<sup>41</sup> Keckley, *Behind the Scenes*, 36.

<sup>42</sup> Foster refers to Keckley's refusal to marry as "a form of birth control" (*'Til Death or Distance Do Us Part*, 64). The refusal to marry in slavery as an act of resistance can also be seen in Hannah Crafts's *The Bondwoman's Narrative* and in Harriet Jacobs's *Incidents in the Life of a Slave Girl*.

<sup>43</sup> As I will discuss at length in the next section, Keckley's only child, George, was born from her rape by a white man, Alexander Kirkland. Keckley describes the rape in *Behind the Scenes* on page 39.

freeman, as he represented himself to be.”<sup>44</sup> After spending seven pages transcribing the legal and financial documents that comprise “the history of my emancipation,” Keckley moves to the dissolution of her marriage. She justifies her reasons for leaving Mr. Keckley at length:

I had a conversation with Mr. Keckley; informed him that since he persisted in dissipation we must separate; that I was going North and that I should never live with him again, at least until I had good evidence of his reform ... Poor man; he had his faults, but over these faults death has drawn a veil. My husband is now sleeping in his grave, and in the silent grave I would bury all unpleasant memories of him.<sup>45</sup>

The simplicity with which Keckley describes freeing herself from a futureless marriage starkly contrasts with the legal, financial, and emotional toils of securing her physical emancipation. Because she and Mr. Keckley married in slavery, and because Mr. Keckley remained enslaved, their marriage had no formal legal standing. Although the failures of Southern law to protect the integrity of marriages among the enslaved irreparably harmed her family, and stifled the union of her parents, Keckley employs the lack of formal recognition of slave marriages for her own gain. Reversing the trope of the painful slave separation, Keckley determines to leave her husband of her own free will as she realizes that he hinders her plans for freedom.

Perhaps even more radically, she pointedly omits the details of their marriage, veiling her language in propriety that writes him out of her memoir completely and narratively widows herself. Not only does she leave Mr. Keckley of her own free will, but she rhetorically buries him in the same paragraph. In a scene that rewrites her parents’ painful separation to demonstrate her personal control over her body, affections, and freedom, Keckley offers a forceful legal critique;

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<sup>44</sup> Keckley, *Behind the Scenes*, 50.

<sup>45</sup> Keckley, 63–64.

she frees herself not only from slavery, but from the constricting marital bonds that threaten to undermine her literal freedom as well as her personal autonomy.

Hannah Crafts's autobiographical novel *The Bondwoman's Narrative*, written, according to the title page, by "a fugitive slave recently escaped from North Carolina," employs Gothic and sentimental literary conventions to recount the escape of the protagonist, Hannah, from slavery.<sup>46</sup> Although the novel ends in domestic contentment in the North, with Charlotte and her husband living happily together in freedom, and Hannah herself marrying a "fond and affectionate husband," Crafts lambasts undertaking marriage in slavery.<sup>47</sup>

Hannah describes in exquisite detail the marriage ceremony of Charlotte and her unnamed husband. In fact the wedding was so joyful and extravagant that Hannah became "quite confused and hardly knew what to do with myself."<sup>48</sup> She narrates, "The woods and fields had been ransacked for early spring flowers and violets to adorn the drawing room. Cakes, confectionary, and wine had been abundantly provided, and all the servants old and young big and little were invited to be present."<sup>49</sup> The bride and groom were "elegantly dressed" and

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<sup>46</sup> Crafts, *The Bondwoman's Narrative*, 3. It remains unclear to me why scholars use the penname Hannah Crafts to refer to Crafts's work instead of Hannah Bonds; we use the name Harriet Jacobs when referring to *Incidents* rather than Linda Brent, for example. But, following the model of scholars before me, I will refer to Hannah Crafts as the author of this text.

<sup>47</sup> Crafts, *The Bondwoman's Narrative*, 245. For a reading of the economics of slavery as a deterring force in slave marriages and on companionate marriage in gothic literature and its influences on *The Bondwoman's Narrative*, see Erin Elizabeth Smith, "'Not Because My Heart is Hard': *The Bondwoman's Narrative*, the Gothic, and Companionate Marriage," *MP Journal* 2, no. 6 (2010): 101–15.

<sup>48</sup> Crafts, *The Bondwoman's Narrative*, 122.

<sup>49</sup> Crafts, 122.

accompanied by “their attendants,” and because Mr. Henry was a clergyman as well as a slaveholder, he “pronounced the nuptial benediction.”<sup>50</sup>

Hannah’s discomfiture over the ceremonious “nuptial benediction” and traditionally elaborate Anglo-American reception confirms Crafts’s overwhelming misgivings over the practicality of marrying in slavery. As Hannah gazes from afar at the dancing, laughing, and socializing enjoyed by those enslaved by the Henrys throughout the night she wonders:

Did they anticipate domestic felicity, and long years of wedded love: when their lives, their limbs, their very souls were subject to the control of another’s will; when the husband could not be at liberty to provide a home for his wife, nor the wife be permitted to attend to the wants of her husband, and when living apart in a state of separate bondage they could only meet occasionally at best, and then might be decreed without a moment’s warning to never meet again.<sup>51</sup>

Hannah distances herself from the party both physically and emotionally. She strongly suggests that wedding vows taken in bondage are cause for suspicion rather than celebration. Her rhetorical questions to the couple reveal her larger doubts over the concept of marriage in slavery: How can two people vow to give themselves to the other when both legally belong to someone else? Can a couple really change status from man and woman to husband and wife if they cannot perform the roles (according to principles of the Anglo-American marriage contract) that such titles require? Can two willing participants consummate a lifelong commitment to one another when their relationship could be severed at any moment against their wills? In sharp contrast to the Ducks’ enduring marriage, and to the texts recovered by Foster that show the

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<sup>50</sup> Crafts, 123.

<sup>51</sup> Crafts, 123.



miraculous ways in which many African Americans sustained marriages despite the horrors of slavery, Crafts clearly views “long years of wedded love” for enslaved couples as mere fantasy.<sup>52</sup>

Ultimately, Crafts positions marriage as a complication to the condition of slavery that should be avoided to protect African Americans from further psychological manipulation and control by their owners. When Hannah later learns that Charlotte has been heard crying on numerous occasions, she conjectures, “I have always thought that in a state of servitude marriage must be at best of doubtful advantage. It necessarily complicates and involves the relation of master and slave, adds new ties to those already formed, and is at the bottom of many troubles and afflictions that might otherwise be escaped.”<sup>53</sup> Crafts approaches marriage through a business-like demeanor that privileges practicality over affect. She views marriage as a hindrance at best, and, like Keckley, as a novel extension of bondage.

Marriage offers no “advantage” to the already vulnerable slave, and can actually make her situation much worse. By further entangling herself with her owners, through the requisite permissions and negotiations of actualizing a marriage between those viewed as property, African Americans became more deeply bound to white masters. Crafts indicates that if there is one thing African Americans did not need, it was to further complicate “the relation of master and slave.”<sup>54</sup>

Most darkly, Crafts suggests that slaves should avoid cultivating “new ties to those already formed.”<sup>55</sup> The “ties” to which she refers can be interpreted in many ways. On the one hand, she refers to new bonds of subjection that African Americans offer to their owners when

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<sup>52</sup> Crafts, 123.

<sup>53</sup> Crafts, 135.

<sup>54</sup> Crafts, 135.

<sup>55</sup> Crafts, 135.

they decide to marry. On the other, she cautions African Americans against forging additional emotional attachments to one another that slavery will threaten. Crafts offers a cynical perspective on the risks of marriage indeed by suggesting it is better to avoid forming romantic relationships altogether than to risk sacrificing them to their owners' economic machinations.

Crafts focuses again on the realistic "advantages" of cultivating romantic relationships in slavery when Hannah declares, "The slave, if he or she desires to be content, should always remain in celibacy ... plain, practical common sense must teach every observer of mankind that any situation involving such responsibilities as marriage can only be filled with profit, and honor, and advantage by the free."<sup>56</sup> The protagonist views marriage strategically, as something that should benefit a person in "profit," "honor," and "advantage." Unless marriage will enhance one's social or economic status, there is no benefit into entering the contract. Like Keckley, Hannah appears to have no time for girlish fantasies of love while enslaved. Marriage is too important a responsibility to undertake, Crafts ultimately suggests, when one is not free to control her desires, her body, or her will.

Keckley's memoir never shares any desire to remarry after she emancipates herself from the bondages of both slavery and marriage and moves to the North. In contrast, Craft's protagonist sincerely believes in the institution of marriage and its responsibilities between two partners who choose to join their lives together out of mutual affection. Later in the novel, this deep-rooted conviction in the sacredness of marriage responsibilities becomes the narrative catalyst for Hannah's escape to the North. When her vain and cruel mistress, Mrs. Wheeler, orders Hannah out of the house and into the fields as punishment for a crime that she did not

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<sup>56</sup> Crafts, 135.

commit, she also commands that Hannah marry a man named Bill, who has “seen and admires you. In fact, he asked you of Mr. Wheeler for his wife, and his wife you shall be.”<sup>57</sup> Of all the fates of slavery, Hannah characterizes being forced into marriage against one’s will as the ultimate degradation. She describes her horror after Mrs. Wheeler’s pronouncement:

I had never felt so lonely and utterly desolate. Accused of a crime of which I was innocent, my reputation with my Mistress blackened, and most horrible of all doomed to association with the vile, foul, filthy inhabitants of the huts, and condemned to receive one of them for my husband my soul actually revolted with horror unspeakable. I had ever regarded marriage as a holy ordinance, and felt that its responsibilities could only be suitably discharged when voluntarily assumed.<sup>58</sup>

Disgusted and fearful of marrying against her will, Hannah chooses to flee the South and endanger her life as a fugitive rather than submit to “a compulsory union with a man whom I could only hate and despise.”<sup>59</sup> Like Keckley, then, Crafts also uses escape from a doomed marriage as a device to fuel Hannah’s flight to freedom and independence over her body, spirit, and heart in the North.

The final chapter, “In Freedom,” ends much more hopefully than Keckley’s memoir, however. Embracing tropes of sentimental and abolitionist fiction, *The Bondwoman’s Narrative* concludes with reunions. Hannah and her mother miraculously find each other, and Charlotte and her husband live together happily married in freedom. Of Hannah’s own affections she gushes, “I have yet another companion quite as dear- a fond and affectionate husband ... He is, and has

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<sup>57</sup> Crafts, 210.

<sup>58</sup> Crafts, 210–11.

<sup>59</sup> Crafts, 212.

always been a free man.”<sup>60</sup> Just as Keckley valued her husband’s free status until she learned it was untrue, Hannah ranks her husband’s freedom as one of his most important qualities. Only when she is removed from the institution of slavery entirely, in both her own body and her spouse’s, can she truly honor the vows and responsibilities of marriage.

Unlike Keckley and Crafts, who view marriage in slavery as an extension of bondage, Jacobs at first hopes for freedom through marriage to a free man. When this proves impossible, Jacobs frames the loss of her lover as the turning point in her life story, scaffolding the rest of *Incidents* as a scathing critique of the failures of Southern slave laws to formally recognize marriage under slavery. In an early chapter, “The Lover,” Jacobs recounts her romantic devotion to a free Black man whom she desires to marry, and the ways in which her psychotic owner, Dr. Flint, who craves Jacobs for himself, refuses to allow the union. Jacobs describes her lover as “a young colored carpenter; a free born man.”<sup>61</sup> Like Duck, who relates how she had known John for nearly her entire life prior to their marriage, Jacobs notes the longevity of her friendship with the carpenter, describing, “We had been well acquainted in childhood, and frequently met together afterwards. We became mutually attached, and he proposed to marry me.”<sup>62</sup>

Although the carpenter desires to buy Jacobs so that they might live together in freedom, she knows that Flint will never permit it. Moreover, she recognizes the artificiality of marrying the carpenter while still enslaved and subject to Flint’s will:

My lover was an intelligent and religious man. Even if he could have obtained permission to marry me while I was a slave, the marriage would give him no power to protect me

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<sup>60</sup> Crafts, 246.

<sup>61</sup> Jacobs, *Incidents in the Life of a Slave Girl*, 33.

<sup>62</sup> Jacobs, 33.

from my master. It would have made him miserable to witness the insults I should have been subjected to. And then, if we had children, I knew they must ‘follow the condition of the mother.’ What a terrible blight that would be on the heart of a free, intelligent father! For his sake, I felt that I ought not to link his fate with my own unhappy destiny.<sup>63</sup>

Like Crafts, who questions the roles of husband and wife for slaves who cannot uphold the responsibilities of such titles, Jacobs knows that even if she marries the man of her dreams that she will still be subject to the sexual and physical abuses of slavery.

By contrasting the limitations of enslaved marriage with the expectations of matrimony for a free man, Jacobs shows how the very concept of entering a marriage contract in bondage is specious at best. Everything that characterizes marriage to Jacobs, from the willingness of two partners to join their lives together, to the capacity of the marriage contract to allow two people to honor and protect one another without outside interference, to the extension of their union through a family, simply cannot exist under the legal conditions of slavery to which she is ultimately bound. Her repeated emphasis on the carpenter’s “intelligence” signals her acumen as well— despite their heartfelt devotion to one another, neither of them would be able to bear the warped conditions of marriage under the tyranny of Dr. Flint.

The chapter closes, ultimately, with Jacobs ending the relationship and sending her lover away. She sadly concludes:

He was going to Savannah to see about a little property left him by an uncle; and hard as it was to bring my feelings to it, I earnestly entreated him not to come back. I advised him to go to the Free States, where his tongue would not be tied, and where his intelligence

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<sup>63</sup> Jacobs, 37.

would be of more avail to him. He left me, still hoping the day would come when I could be bought. With me the lamp of hope had gone out. The dream of my girlhood was over. I felt lonely and desolate.<sup>64</sup>

Rather than tie the carpenter to any branch of slavery, Jacobs seeks to protect his freedom. While he, as a free man, can hope for reconciliation and a happy ending to their love story, Jacobs loses hope that such a relationship can ever belong to her in slavery. Like any other woman losing her first and truest love, Jacobs feels devastated. However, unlike other women, who almost always find love again, this loss for Jacobs is permanent and signals an abrupt narrative shift from girlhood to adulthood in *Incidents*.

Foster's literary anthology, *Love and Marriage in Early African America* compliments her scholarly monograph *'Til Death or Distance Do Us Part* and includes selections of lyrics, fiction, autobiography, letters, and nonfiction to depict the ways that African Americans represented love and marriage in literature. Foster explains that she had to learn to read "between the lines of the documents." She discovered: "The biggest thing I had to understand is that the selections in this book demonstrate not what was, but what was expected or desired. They are the definitions and behaviors that African American [sic] wanted to represent themselves and to guide their children and protect their unions."<sup>65</sup>

If we think of the themes of marriage taken up by Keckley, Jacobs, and Crafts in their autobiographies and novels, respectively, as representations of their experiences, as fantasies for how they wish to "protect their unions," we can read the women's deployment of marriage as a

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<sup>64</sup> Jacobs, 37.

<sup>65</sup> Frances Smith Foster, *Love and Marriage in Early African America* (Boston: Northeastern University Press, 2008), xviii.

metaphor of bondage more richly. Keckley rhetorically widows herself in self-protection, to avoid the fate of her parents and to free herself of a marriage that would have hindered her and her son's freedom in the North. Crafts uses her presumably self-styled character, Hannah, to teach readers about the underbelly of the institution of marriage that exists under slavery. In her refusal to submit to the bondage of slavery and its perversions of marriage, Hannah teaches her readers that marriage can only be truly experienced and advantageous to those living in freedom. Jacobs mourns the loss of her marriage that should have been, showing her readers the immoral consequences of the institution of slavery for young women. She also shows how the same laws that fail to protect her can be manipulated in ways that allow her to protect herself from the machinations of Dr. Flint.

In order to "protect their unions," these women portray marriage as an extension of bondage that must be avoided, for both self-preservation and larger resistance to the institution itself. Charlotte Duck's pension files and Foster's important literary findings revise the historical record that suggests that love in bondage was nothing but misery and heartache. In contrast, Keckley, Jacobs, and Crafts use their pens to illustrate completely different realities for their readers. The failures of marriage under slavery become the narrative lens through which these African American women critique the institution of slavery writ large.

## *II. Freedom, Widowhood, and Husbandlessness in the North*

The validity of African American slave-marriages took on a new urgency during the Civil War, as thousands of formerly enslaved soldiers died fighting for freedom for themselves and their loved ones. After the 1864 massacre of Black troops by Confederate forces at the Battle of Fort Pillow in Henning, Tennessee, a white widowed woman named Mary Wayt Booth publicly advocated for the legal recognition of slave-marriages; she believed that African American

solders' widows ought to be eligible for the pensions already available to bereaved Anglo-American women. Painted by the national press as a courageous and patriotic widow, Booth launched a protest that reached all the way to the White House. In 1864 Congress passed an amendment to the Pension Act that awarded African American widows pensions provided they were free.

Booth's activism and the political and cultural debate around the issue of enslaved widows' pensions reveal the ways in which the nation strove to redefine marriage, widowhood, and womanhood during and after the Civil War. Whereas marriage and widowhood in bondage occurred extralegally in the antebellum, during the Civil War and Reconstruction eras the legality of widowhood became crucial to women's citizenship status in the (re)United States. Keckley navigates this changing cultural climate in *Behind the Scenes*, leveraging her widowhood as a way to project competing modes of womanhood, especially emancipated African American women. Keckley uses widowhood to advocate for women's economic, emotional, and legal independence outside of the patriarchal confines of marriage.

Nancy F. Cott's history of marriage in the United States, *Public Vows: A History of Marriage and the Nation*, argues that from the moment of the Founding, marriage structured the political order of the United States. For the health of the nation, white men from the Revolution through the nineteenth century aimed to promote a very particular model of marriage: it must be monogamous; it must be mutually undertaken by both parties; and it must adhere to the principles of Christian religion and English common law that centered the husband as the head of the household and economic provider, with his wife solely dependent on him. Marriage, then, essentially constructed "the whole system of attribution and meaning that we call gender," which depends on the subjugation of women based on their sex for the economic, social, and political



power of the husband as a full citizen of the State. In the case of enslavement, the lack of legal recognition of marriages between African Americans, “quintessentially expressed their lack of civil rights.”<sup>66</sup> Marriage thus became an important way through which the patriarchal state retained its power.

Widowhood, as this dissertation has shown, fractures the patriarchal ordering of the State. The pension laws of the Civil War, Cott argues, “reinforced the standard that the husband and father was the provider and family members his dependents.”<sup>67</sup> With pensions, Cott asserts, the state created a different kind of coverture when “the government stepped in to take the dead soldier’s place for hundreds of thousands of widows and children.”<sup>68</sup> Theoretically Cott’s point is absolutely true; wives who benefited from the pension system often made the transition from being wives financially dependent on their husbands to widows dependent on the state. However, the pension system also enabled widowed women like Elizabeth Keckley to maintain their social and legal independence without remarrying. If women remarried, they forfeited the right to their pension. In providing for women dependent on the state for financial stability after their late husband’s death, the federal government actually scaffolded a system whereby women could achieve their independence as widows.

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<sup>66</sup> Cott, *Public Vows*, 33.

<sup>67</sup> Cott, 103.

<sup>68</sup> Cott, 103. Megan McClintock also expresses distrust over the state’s intervention in widowed women’s lives through the pension system. She notes that “only those pension claimants whose domestic arrangements met with approval received federal moneys” (“Civil War Pensions and the Reconstruction of Union Families,” *Journal of American History* 83, no. 2 [1996]: 466). As a result of the pension system, “Rather than simply benefiting from the expansion of federal assistance, widows were subjected to increasing government supervision of their private lives” (466).

Just as Reconstruction was meant, in its most basic form, to ease the transition from slavery to freedom for African Americans, the pension system was designed to cope with the mass widowing that occurred during the Civil War. For white women, the pension system offered a way to acclimate to their newly independent status as widows; for African American widows, as we see in the case of Keckley and Charlotte Duck, pensions allowed them to maintain their financial independence outside of marriage in ways similar to white women; but it also allowed them to assert their emancipated citizenship status under American law.

Whereas Jacobs's and Crafts's volumes conclude shortly after they gain their freedom, the majority of *Behind the Scenes* recounts Keckley's life as a free widow in the North, her budding activist work, and the many conversations and intimacies that she shared with the first family, and especially with Mary Todd Lincoln. One of Keckley's leading objectives in the second part of her memoir is to contrast her experiences under widowhood with those of Mrs. Lincoln. Keckley's industriousness, frugality, and generosity as an independent, free woman who has lost her husband powerfully juxtaposes with her portrait of Mary Todd Lincoln. Keckley depicts Mrs. Lincoln as an emotionally wrought, dependent widow at the mercy of the state and her debtors.

Crucially, the narrative persistently reminds its readers that at the time of its publication, Mrs. Lincoln never received a pension, nor any kind of pecuniary support from the government, for her husband's murder in office. Portraying Mrs. Lincoln's widowhood as a state of abject dependence, Keckley leverages her own independent widowhood to theorize citizenship-making for African Americans during the Reconstruction era.

In key moments of the memoir, Keckley disrupts her accounts of the Lincolns' lives to reassert her authorial voice. She stages her most intimate revelations, centered on the loss of her

only son, George, against significant moments in the Lincolns' domestic history. Namely, she punctuates the death of the Lincolns' son, Willie, with remembrances of George's death in battle, and she inserts the story of her successful pension application into the Lincolns' courtship story.

These interruptions, a crucial characteristic of the literary form of Keckley's memoir, place the first family's political privileges in conflict with free and still enslaved African Americans' struggles. By concentrating the significant portion of her memoir detailing her life in freedom on the trials and tribulations of the Lincolns, the literal and symbolic heads of the United States government, Keckley ultimately deploys the first family to allegorize her criticism of American laws and customs surrounding marriage, womanhood, and the home.

In Chapter 6, "Willie Lincoln's Death bed," Keckley interrupts the lengthy story of the Lincolns' grief over the loss of their son Willie to assert, "Previous to this I had lost my son. Leaving Wilberforce, he went to the battle-field with the three months troops, and was killed in Missouri ... It was a sad blow to me."<sup>69</sup> Keckley's nonchalant composure in explaining her bereavement over the grief of her own child rhetorically distances herself from Mrs. Lincoln's extreme grief over Willie. Keckley finds solace in the comfort that those around her sought to provide, such as the "kind womanly letter" that she receives from Mrs. Lincoln and finds "full of golden words of comfort." In contrast to her own experience she writes simply, "Mrs. Lincoln's grief was inconsolable."<sup>70</sup> Keckley details how Mrs. Lincoln was frequently thrown "into convulsions," and that she "was so completely overwhelmed with sorrow that she did not attend

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<sup>69</sup> Keckley, *Behind the Scenes*, 105. Wilberforce was one of the nation's first historically black colleges.

<sup>70</sup> Keckley, 104.

the funeral” of her youngest son.<sup>71</sup> She even reveals how the President ultimately suggests sending his wife to a “lunatic asylum” nearby if she cannot manage her misery.<sup>72</sup> As I will show, Keckley’s sorrow adheres to cultural norms surrounding grief in the Civil War era, whereas Mrs. Lincoln’s despair is considered inappropriate and excessive.

While her chapter purports to focus on Willie Lincoln’s death, Keckley actually opens with a long and beautiful rumination on the developments of the Civil War, anchoring the narrative arc more fully in the death of her own son. She emphasizes the deaths of soldiers, reminding her readers that on the battlefield “new graves were being made every day.”<sup>73</sup> Keckley poetically laments, “Oh, the front, with its stirring battle scenes! Oh, the front, with its ghastly heaps of dead!” and declares that “the life of the nation was at stake.”<sup>74</sup> By grounding the stakes of the chapter in the direness of ongoing civil war, Keckley moderates, and even passively criticizes, the overwhelming grief that envelops the White House upon Willie’s death.

Detailing the pomp surrounding Willie’s funeral that left the White House “draped in mourning. Black crepe everywhere met the eye,” Keckley shows the narrowness of the Lincoln’s mourning when the very “life of the nation,” and the lives of those fighting to protect it, were at risk.<sup>75</sup> Writing the loss of her son into her account of the Lincolns’ grief, Keckley ensures that his death becomes part of a larger national mourning; his is not simply an anonymous death on the battlefield. Keckley pans to the particular sacrifices of the previously enslaved African Americans fighting for the Union; she memorializes their lives as important of mention, if not

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<sup>71</sup> Keckley, 104–5.

<sup>72</sup> Keckley, 104–5.

<sup>73</sup> Keckley, 91.

<sup>74</sup> Keckley, 91.

<sup>75</sup> Keckley, 105.

more so, than the sad loss of the Lincolns' innocent child. Interrupting the first family's bereavement to tell of her own, she adds her son's death to the great pall of the White House. She suggests that the Lincolns might do well to remember the larger grief of a country at war.

In Chapter 13, "The Origin of the Rivalry Between Mr. Douglas and Mr. Lincoln," Keckley recounts the courtship of Mary Todd and Abraham Lincoln. She again shifts the focus of the narrative from the first family to her own experiences to ultimately make a political statement about U.S. marriage law on behalf of African Americans. She concludes:

After the death of my son, Miss Mary Welch, a dear friend, one of my old ... patrons, called to see me, and on broaching the cause of my grief, she condoled with me. She knew that I had looked forward to the day when my son would be a support to me- knew that he was to become the prop and main-stay of my old age, and knowing this, she advised me to apply for a pension ... She explained away all of my objections- argued that Congress had made an appropriation for the specific purpose of giving a pension to every widow who should lose an only son in the war, and insisted that I should have my rights.<sup>76</sup>

As a free widow in the North dependent on her son for financial assistance, Keckley ultimately benefitted from the 1862 Pension Act, which was designed to give modest financial relief to soldiers injured in the Civil War or to provide for their widows and families upon their deaths. In

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<sup>76</sup> Keckley, 236.

a significant expansion of the U.S. pension system, the 1862 act also allowed dependent mothers and sisters of deceased soldiers to be eligible for a pension.<sup>77</sup>

Keckley's placement of this particular anecdote of her widowhood immediately following her retelling of the Lincolns' love story is significant. In place of a loving marriage, Keckley had only one familial relation in her life as an adult woman: a child born into slavery from a rape by a white man. While juxtaposing the dissimilarity of love stories between white and enslaved couples, Keckley nonetheless presents her successful pension claim as a point of empowerment. While the chapter recounts Mary Todd's strategy in marrying a future President of the United States, Keckley's mention of her pension in this chapter underscores her own power in negotiating her marital destiny.

Surprisingly, Keckley only briefly alludes to her pension application, even though she transcribes the legal documents pertaining to her emancipation at length earlier in *Behind the Scenes*. Keckley's pension request, filed in April of 1863, has been digitized by the National Archives and made available to the public. Although almost entirely neglected by scholars, Keckley's pension file is an extraordinary piece of literary history that illuminates the gender politics of *Behind the Scenes*. Reading Keckley's narration of her relationship to her son, George, in the pension file alongside her memoir further show how she employs widowhood as a narrative vehicle for exploring women's freedom not only from slavery but from the patriarchal institution of marriage as well.

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<sup>77</sup> McClintock notes that members of Congress drafted the act of July 14, 1862, which made "mothers and sisters of deceased servicemen eligible for federal pensions for the first time" ("Civil War Pensions," 463).

I have shown how Keckley imaginatively widows herself from her husband, James, in the context of *Behind the Scenes* to stage her independence and economic self-reliance in the North. Her pension application reveals a shocking second fictional widowhood devised to account for the legitimacy of her son borne out of rape. The saga of widowhood formulated by Keckley in her affidavit delivers a damning excoriation of U.S. marriage law.

In a document titled “Statements of Mrs. Elizabeth Keckley,” Keckley describes her “bereavement” as follows:

I, Elizabeth Keckley, being duly sworn, do testify and say, that, about twenty three years ago, I being then, the slave of Hugh Garland, of Virginia, I was by him married to Alexander Kirkland (a white man) by whom I had one son, “George W.D. Kirkland,” whose father died when said “George” was eighteen months old.<sup>78</sup>

Alexander Kirkland, a merchant, a drunkard, and a brute known for abusing his wife, was also Keckley’s rapist.<sup>79</sup> Because George enlisted before Black troops were allowed to fight in the Civil War, he passed as white to enroll.<sup>80</sup> Keckley, however, could not pass as white. She had to attest not only to George’s whiteness but to his legitimacy, too, when applying for his pension.

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<sup>78</sup> Dependent’s Certificate No. 6135, George W. D. Kirkland, Private, Company D, 1st Missouri Infantry. In Case Files of Approved Pension Applications of Widows and Other Dependents of the Army and Navy Who Served Mainly in the Civil War and the War With Spain, 1861–1934, Records of the Department of Veterans Affairs, Record Group 15, National Archives Building, Washington, DC. Accessed February 14, 2018, through Fold3.com.

<sup>79</sup> For a short biography on Kirkland, see, Jennifer Fleischner, *Mrs. Lincoln and Mrs. Keckly: The Remarkable Story of the Friendship between a First Lady and a Former Slave* (New York: Broadway Books, 2003), 85–87.

<sup>80</sup> See Fleischner, 222.

As I have shown in the case of Charlotte Duck, the extralegality of life in bondage translated uneasily into pension documents.<sup>81</sup> Keckley is forced to rewrite the story of her rape into a lawful marriage in order to claim status as both a legal widow and as the legitimate mother of her son. Charlotte Duck's file showcases the extensive ways in which women married in bondage performed the validity of their marriages within the context of U.S. marriage law. Keckley's pension exemplifies how women accounted for the lawlessness within the institution of slavery that permitted her rape and transformed it in significant ways.

Rooted deeply in American marriage law, the pension system forced formerly enslaved African American women to translate and adapt their experiences into repackaged versions that would adhere to Anglo-American conceptions of marriage, wifeliness, and widowhood. Although Duck and Keckley must prove their former status as wives for white government bureaucrats, the pension system never actually recognizes them as such. Pension paperwork forces African American women to justify marriages forged outside of the law, but never recognizes those marriages as valid. In other words, the records acknowledge extralegal marriage, but only in service to the legalized widow. Pensions become a way for the federal government to transform the extralegal into the legal, transplanting formerly enslaved African American wives into the confines of patriarchal U.S. marriage law, extended through the pension system, in widowhood. Duck and Keckley ultimately achieve the legal recognition crucial to their eligibility for pecuniary support from the U.S. government through their widowhood. Their extralegal statuses in slavery as wives and mothers in bondage becomes irrelevant to their legal lives post-Civil War.

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<sup>81</sup> Fleischner's biography hypothesizes that Keckley frames her application through marriage to Kirkland in order to account for George's whiteness (257).



State and federal governments ultimately refused to recognize unions outside of Anglo-American marriage law until after the Civil War, and also failed to protect enslaved women from rape. Thus, Keckley was obliged to generate a fictional marriage for her pension application that would fit the government's ideals of eligibility. She thus reshapes her rape into a marriage, commanding legitimacy for herself in a symbolic protest of U.S. law.

Unlike Duck's application, which attests to the endurance of her marriage, Keckley, obviously, does not dwell on the details. Just as she writes actual, no-good James out of *Behind the Scenes*, Keckley linguistically widows herself from Kirkland in the same sentence in which she marries him. Taking control of her rape, her womanhood, and her status as mother and widow, Keckley powerfully reclaims the narrative of her life to demand reparation from the U.S. government for the wrongs done to her and millions of other formerly enslaved African American women.

Reading Keckley's pension application in the context of *Behind the Scenes* changes how scholars should understand the ways in which Keckley deploys widowhood as a narrative force in her memoir. In her biography on Keckley's and Mary Todd Lincoln's friendship, Jennifer Fleischner claims that Keckley would have heard of James Keckley's death by the time her son George died on the battlefield, which accords with the timeline that Keckley invents in *Behind the Scenes*.<sup>82</sup>

Yet Keckley's statements in her pension file reveal otherwise. Comparing narrative fiction to legal reality, we can see Keckley doubly widow herself. On the second page of her

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<sup>82</sup> Fleischner speculates that after George's death, Keckley may have revealed to Mary Lincoln "that her husband, James Keckley, had died, news she would have heard since leaving St. Louis" (223).

affidavit, after she explains at length her dependence on George for financial support, she notes, “About eleven years since, I was married to a “James Keckley,” a colored man, but have never received any support from Him: And for more than three years, He has lived in Missouri, and I in this, Washington City.”<sup>83</sup>

Between the two documents we see Keckley free herself from the two men who most dragged her down in life— her rapist and her dissolute husband. Keckley rhetorically murders Kirkland and James in the affidavit and in her memoir, respectively, to permanently rid them from her life. She employs widowhood, the absolute finality of separation from a husband that can only happen in death, and the social and legal recognition of that status, to obtain her justice. After leveraging Kirkland’s name and whiteness to legitimize her status as George’s mother, Keckley tosses his memory to eternal judgment.

By escaping a marriage that would have entrapped her in slavery by imaginatively widowing herself in *Behind the Scenes*, Keckley effectively kills James and produces the conditions whereby she could independently emigrate North with George. Furthermore, Keckley was entitled to a pension because George was free, a freedom bought of Keckley’s labor. Keckley, painstakingly, between both documents, compels the state to recognize her selfhood, her womanhood, her family, and her capacity to marry, all the while demanding that the government foot the bill. In essence, she forces the administration to pay for her citizenship.

The tensions between African American and Anglo-American marriage, widowhood, and womanhood played out on the national stage in 1864 when Congress passed a further amendment to the Pension Act. The revised legislation was allegedly inspired by Mrs. Mary

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<sup>83</sup> Dependent’s Certificate No. 6135.

Elizabeth Wayt Booth, whose husband, Major Lionel F. Booth, commanded a Heavy Artillery regiment of Black troops for the Union. He, and over 300 African American soldiers died at the hands of Confederate Cavalry General Nathan Bedford Forrest's massacre at Fort Pillow, Tennessee.

Although there are some discrepancies in the myth surrounding Mrs. Booth, one story claims that when she traveled to the Tennessee battlefield to find Major Booth's body and bring him home for proper interment, she was astonished to find a Black soldier buried under the stone marked with her husband's name.<sup>84</sup> Historian Ronald C. White Jr. claims that during her trip to Tennessee, Booth "encountered numerous wives of black soldiers who had come for the same purpose. Booth was struck that white women and black women were united in grief at the death of their husbands."<sup>85</sup> Whether these dramatic events actually occurred, or whether Booth was simply overcome by the overwhelming slaughter of African Americans in an attack that also claimed her husband's life, she left the battlefield determined to help the widows and children of the African American soldiers.

Booth likely felt moved by the plight of the soldiers of color not only because she encountered their bodies on the battlefield but also because she spent considerable time conversing with survivors. While she was in Tennessee searching for the remains of her husband,

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<sup>84</sup> For this history, see, Roy P. Basler, "And for His Widow and His Orphan," *Quarterly Journal of the Library of Congress* 27, no. 4 (1970): 291–94.

<sup>85</sup> Ronald C. White Jr., *Lincoln's Greatest Speech: The Second Inaugural* (New York: Simon and Schuster, 2002), 176. I am slightly skeptical of White's claim that Mary Booth was particularly affected by the grief of African American widows, since he cites Basler's essay, the most thorough source available on Mary Booth, and Basler makes no claims whatsoever about her meeting with the widows of fallen Black soldiers. No contemporary newspaper accounts make mention of this fact either, despite their emphasis on Mary Booth as a hero for being a widow and sacrificing herself to the Union cause.

she visited wounded soldiers of Major Booth's regiment at a local hospital. She also addressed a group of fourteen surviving soldiers in person at the site of the attack. There, she presented a flag, "red and clotted with human blood," that the men had protected and fought under during the battle at Fort Pillow.<sup>86</sup>

The speech that Booth delivered centers on her roles and national responsibilities as a woman, wife, and widow. The anti-slavery *New York Daily Tribune*, among many other newspapers, reprinted Mrs. Booth's speech to the soldiers in its entirety, making public for a national audience the intimate scene. Public response to the patriotism of the widow heightened the national climate of sympathy toward the victims of Fort Pillow. Booth's work also propelled new definitions of womanhood and citizenship into the national imaginary, which as I have shown, freed African American widows particularly resisted, advocating for themselves. These definitions would later be taken up in the language of the 1864 amendment to the Pension Act. Several newspapers reported on the "touching scene."<sup>87</sup> Booth's speech reads:

Boys, I have just come from a visit to the hospital at Mound City. There I saw your comrades; wounded at the bloody struggle in Fort Pillow. There I found this flag- you recognise it. One of your comrades saved it from the insulting touch of traitors at Fort Pillow! I have given to my country all I had to give- my husband- such a gift! Yet I have freely given him for freedom and my country. Next my husband's cold remains, the next dearest object left me in the world, is this flag- the flag that waved in proud defiance over

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<sup>86</sup> "Speech of Mrs. Booth—An Oath to Avenge the Massacre," *Union*, May 4, 1864.

<sup>87</sup> See, for example, "Speech of Mrs. Booth"; "The Bloody Flag of Fort Pillow; Touching Scene in Fort Pickering," *Memphis Enquirer*, reprinted in the *Nashville Daily Union*, May 5, 1864; and "The Fort Pillow Barbarity: Report of the Investigating," *New York Daily Tribune*, May 6, 1864.

the works of Fort Pillow! Soldiers! This flag I give to you, knowing that you will ever remember the last words of my noble husband: ‘Never surrender the flag to traitors!’<sup>88</sup>

After Booth presented the flag to Colonel Jackson, the journalist of the *Tribune* piece describes how the men fell to their knees and, “solemnly appealing to the God of battles, each one swore to avenge their brave and fallen comrades, and never- never to surrender the flag to traitors.”

Booth’s speech reveals a domestic economy of war whose currency consisted of the bodies of U.S. citizens, the women legally dependent on those bodies, and the ideals of the nation for which the country was at war. She emphasizes a profound separation between herself and the men on the battlefield. Referring repeatedly to the soldiers of Fort Pillow as “your comrades,” rather than using a possessive “we” or “ours,” curiously others the troops from her. While the men on the battlefield daily risk their lives for their freedom and country, Booth emphasizes instead women’s distinct sacrifices to the war. Unable to take up arms themselves, she, and other wives of the Union, must offer the lives of their husbands instead.

During the Civil War, and the large-scale widowing of American women that it entailed, journalists, statesmen, and authors attempted to control what that new form of national personhood should look like in law and in literature. As a widow, Booth makes the ultimate sacrifice to the Union. In willingly giving her husband to the nation, “such a gift!” as she exclaims, she offers “my country all I had to give.” Booth is not feared nor seen as threatening; she is not considered in terms of her property and its worth to the patriarchal state; and she does not temporarily inhabit her husband’s civic status. Unlike other widows of the nineteenth century

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<sup>88</sup> “Touching Scene in Fort Pickering—Thrilling Speech by Mrs. Booth,” *Memphis Bulletin*, reprinted in the *New York Daily Tribune*, May 6, 1864.

that this dissertation has examined, Booth is celebrated as a true patriot with concrete, legal recognition of this role marked, as I will show, in Civil War pension laws.<sup>89</sup>

Widowhood and the ideals of the cult of True Womanhood collide in Booth's speech and in her person, transforming her into a national hero, and a symbol of bravery and wifely sacrifice. Barbara Welter defines the "complex of virtues which made up True Womanhood" as piety, purity, submissiveness and domesticity.<sup>90</sup> Welter persuasively illustrates how women indoctrinated in the cult of true womanhood were essentially "hostage[s] in the home."<sup>91</sup> However Civil War widows, as we can see in both the journalistic and literary responses to Booth's speech, became singularly exalted not as symbols of the home but of the *nation* by performing these very values.

Welter cites the Civil War as one of the moments of the nineteenth century which "called forth responses from women which differed" from the code of True Womanhood, ultimately sowing "the seeds of its own destruction."<sup>92</sup> Yet the literature surrounding Booth reveals how print culture of the Civil War acutely appropriated these values to create an ideal widow, or what we might consider True Widowhood, for the newly bereaved wives to emulate.<sup>93</sup>

Booth dutifully performs the tenets of True Womanhood during her speech. Welter notes that according to the ideology, "women were the passive, submissive responders" (159) and

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<sup>89</sup> Interestingly, as Basler notes, despite her advocacy for women of color in receiving pensions for the loss of their husbands, Mrs. Booth never applied for a pension ("And for His Widow," 294).

<sup>90</sup> Barbara Welter, "The Cult of True Womanhood: 1820–1860," *American Quarterly* 18, no. 2 (1966): 152.

<sup>91</sup> Welter, 151.

<sup>92</sup> Welter, 174.

<sup>93</sup> J. David Hacker, "A Census-Based Count of the Civil War Dead," *Civil War History* 57, no. 4 (2011): 311.

“required to submit to fortune.”<sup>94</sup> Booth demonstrates both extreme piety and submissiveness in donating the “gift” of her husband “to [her] country,” and by trusting his fate to God and the battlefield. A True Woman’s place “was unquestionably by her own fireside,” yet the Civil War highlights how inalterably a woman’s hearth was changed upon the death of her husband.<sup>95</sup> By traveling to the battlefield to bring her husband home, and by addressing her husband’s soldiers, Booth shows absolute devotion to her family and to her husband’s legacy. As a martyr of the state, she regains her purity and wifely virtue that are put at risk upon the dissolution of her marriage contract by remaining devoted to her husband’s legacy.

Booth’s speech was so widely admired, that there was even a poem written about it. *Our Daily Fare*, a periodical devoted to a charity fair held in Philadelphia for wounded soldiers, includes in its seventh issue, amid reports on the war, literary contributions, and soldiers’ accounts, an anonymous poem dedicated “to the Widow of Major Booth,” who “addressed, in a brave speech, the soldiers under the command of her late husband at his burial in Fort Pickering.”<sup>96</sup> In its lyric expression, Booth’s response to her husband’s death becomes even further idealized, as the author imagines the larger cultural and political stakes of her actions.

The poem lauds:

O, most true wife! worthy that sacred name!  
 O, patriot! born for our great history!  
 O, thou possessor of the sole true fame,  
 Deep in all hearts, a loving memory!  
 We sit and weep to know thy stricken lot,  
 Then glow and kindle at thy noble plot,  
 Nobly performed; a heavy deed, and rare;  
 Thy husband’s glory thou hast made more fair,

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<sup>94</sup> Welter, “The Cult of True Womanhood,” 161.

<sup>95</sup> Welter, 162.

<sup>96</sup> “To the Widow of Major Booth,” *Our Daily Fare*, June 16, 1864.

And still wouldst follow on his sacred way;  
 In night thy lamp hath spread a golden day;  
 What breast so dark but feels its light is there?  
 Thy blood-stained flag, held by his shattered band  
 Shall quicken life and freedom through our land.<sup>97</sup>

In this piece of patriarchal propaganda, the anonymous poet transfigures Booth's virtues from those of True Womanhood that she displayed in her speech to their enhanced, nationalized forms. If the foundational tenets of True Womanhood included piety, purity, submissiveness, and domesticity under marriage, we might define the characteristics of True Widowhood, depicted here by the anonymous poet, as sacrifice, bravery in the face of bereavement, patriotism, and absolute devotion to a husband's memory.

Incredibly, but perhaps not surprisingly based on historical patterns of patriarchal law and culture that tend to emphasize widows' servility, Booth's status as a spouse becomes even more exalted in her widowhood. The poet extolls Booth as a "most true wife" who has become "worthy of that sacred name" both by sacrificing Major Booth to the nation and by preserving "a loving memory" of him. Her "noble plot" to find Major Booth's body on the battlefield and return the war-worn flag to his troops suggests that widows have a distinct responsibility to honor the memory of their husbands, and that their actions after his death extend as a part of *his* legacy. Ignoring the social, legal, and economic autonomies that Anglo-American women gained upon widowhood, the poet emphasizes instead her personhood as an important expansion of her husband's character. This refocusing of the widow as "possessor of the sole true fame" of her husband's memory employs the same logics of True Womanhood to subjugate women to patriarchal control even in widowhood.

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<sup>97</sup> "To the Widow of Major Booth."



Yet the poet also offers Booth a more politically significant title even than that of widow: “patriot.” “Born for our great history,” Booth morphs from a submissive wife into a heroic patriot upon her husband’s death, signaling a change in responsibility for Booth and other widows that makes the sacrifice of their husbands nationally significant to the fate of the Union. The poem radically suggests that Booth’s actions will “quicken life and freedom throughout our land,” arguing, then, that women who adhere to the tenets of True Widowhood, through Booth’s example, have the power to turn the tide of war. By sacrificing one’s husband to the Union, bravely accepting his possible death, and by devoting oneself to honoring his memory, women, as both wives and widows, will inspire soldiers fighting on the battlefield, encourage others to enlist, and patriotically bolster the morale of the Union. Setting Booth’s actions apart as ideal attributes of widowhood that all widows should cultivate, the poet illustrates True Widowhood as integral to the future of the United States.

Despite the poet’s representation of Booth as the passive preserver of her husband’s memory, she uses her widowhood to take independent political action on behalf of women of color. Turning the powerful reception of her actions in Tennessee to activist ends, when Booth returned to Washington D.C., she called on Abraham Lincoln himself to express her concern over the widows and children of Black soldiers left unprotected by the deaths of their husbands and fathers. While no records exist of Mrs. Booth’s meeting with the President, Booth advocated for Black women’s rights to receive pensions for the sacrifice of their husbands to the Union the same as any white woman.<sup>98</sup> Moreover, she argued that in order for this to be possible, the government needed to recognize, under law, African American marriages formed in slavery.

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<sup>98</sup> For this history, see, Basler, “And for His Widow.”

Lincoln was evidently moved by her arguments, and wrote her a letter of introduction to Senator Charles Sumner of Massachusetts to make her case:

The bearer of this is the widow of Major Booth, who fell at Fort-Pillow. She makes a point, which I think very worthy of consideration which is, widows and children *in fact*, of colored soldiers who fall in our service, be placed in law, the same as if their marriages were legal, so that they can have the benefit of the provisions made with widows & orphans of white soldiers.<sup>99</sup>

Lincoln identifies Booth as the “widow of Major Booth, who fell at Fort-Pillow,” as a means of staking out her cultural capital for the senator. Noticeably, however, besides attaching the signifier “widow” to her name, Lincoln does not tie her to her husband’s legacy at all, as the anonymous poet and journalist were wont to do, but rather emphasizes her autonomous political actions, conceding that she “makes a point ... very worthy of consideration.”<sup>100</sup>

Achieving cultural capital by adhering to the rules of true womanhood in her widowed state, Booth gains political power as well. The poet presumes that true widows would do best to stay at home enshrining their husband’s memory. But Booth takes on a mission entirely of her own free will and separate from Major Booth’s legacy, ultimately creating one for herself. By performing culturally appropriate widowhood, Booth changes the tide of legislation to better provide for African Americans.

By asking for legal recognition of African American marriages, Mrs. Booth, and Lincoln, by extension, seek to offer the same limited legal protections that belonged to white widowed women to Black women, whether they were enslaved or free. This was a radical move. *The*

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<sup>99</sup> Reprinted in its entirety in Basler, 292.

<sup>100</sup> Basler, 292.

*Liberator* reports approvingly of Mrs. Booth's actions. In an article titled "Justice to Fallen Heroes," the writer notes, the "claims" of the widows and children of the African American troops at Fort Pillow "are being forcibly presented by Mrs. Booth."<sup>101</sup> The article mentions, "Mrs. Booth, in an interview with Mr. Sumner, made some very interesting statements with regard to the condition of the children of colored soldiers and their mothers. In many instances large families are left unprovided for, and she urged that they receive the same back pay, pensions, &c., as they would had not slavery prevented legal marriages."<sup>102</sup> In spite of the poet's and the press's depiction of Booth as a "patriot" for the bravery and grace with which she performs her role as a widow on the battlefield, she ultimately harnesses the affective sentiment of such portrayals to generate awareness for the plight of African American wives and widows in the South.

Of course the politics of Booth's seemingly successful advocacy for the rights of women of color to Civil War pensions are mired in the complicated racial and gender politics of the nineteenth century. Brandi Clay Brimmer's work *All her Rights and Privileges: African-American Women and the Politics of Civil War Widows* shows at length how free African American widows in the North advocated on behalf of themselves for their rights to pensions. In her analysis of the 1862 General Pension Law, which the 1864 act amended, she notes free black women's irritation with and critique of the federal government's avid recruitment of former

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<sup>101</sup> "Justice to Fallen Heroes," *Liberator*, May 27, 1864.

<sup>102</sup> "Justice to Fallen Heroes."

slaves into the military without providing any source of support to their wives and families during their service.<sup>103</sup>

Rosanna Henson, for example, the wife of a Black soldier in New Jersey wrote to President Lincoln in July of 1864, describing the arm injury of her husband who has not “received any pay since last may and then only thirteen dollars.”<sup>104</sup> She explains, “I write to you because I have been told you would see to it. I have four children to support and I find this a great struggle. A hard life this! I being a colored woman do not get any State pay. Yet my husband is fighting for the country.”<sup>105</sup> Rosanna Henson, too, gives the gift of her husband to “the” country, not “her” country, an important distinction, I think, between her appeal and Booth’s. It is the white womanhood and widowhood of Mary Booth that makes national headlines as the country struggled to prescribe behavior for the thousands of women entering the ranks of widowhood, not the activism of free women of color critiquing the system itself.

Brimmer and other critics, such as Nancy Cott and Megan McClintock, write at length about the ways in which the pension system, much like the national language around Mary Booth, sought to define and regulate women’s relationships, sexualities, and womanhood during widowhood. Brimmer explains, “Bureau officials assumed several characteristics about the married lives of the women they aimed to support. They presumed that the husband and father was the principle bread winner; that women’s primary duties were those of a wife and mother;

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<sup>103</sup> Brandi Clay Brimmer, “All Her Rights and Privileges: African-American Women and the Politics of Civil War Widows’ Pensions” (PhD diss., University of California, Los Angeles, 2006), 23.

<sup>104</sup> Cited in Brimmer, 23. See also “Rosanna Henson, the Wife of a New Jersey Black Soldier to President Abraham Lincoln, 11 July 1864 (#290),” in *Freedom: A Documentary History of Emancipation 1861–1867, Series II: The Black Military Experience*, ed. Ira Berlin, Joseph Reidy, and Leslie Rowland (New York: Cambridge University Press, 1982), 680.

<sup>105</sup> “Rosanna Henson,” 680.

and that the woman did not live apart from her spouse.”<sup>106</sup> Freed African American women in particular, Brimmer argues, fought for their own version of womanhood and marriage and “rejected the Pension Bureau’s construction of widowhood and dependency. In short, they politicized the Bureau’s definition of marriage, morality, womanhood, and widowhood spelled out in pension rules.”<sup>107</sup>

In June of 1864 Senator Foster, who presumably conversed with Senator Sumner on the topic, brought House bill No. 406 to the Senate floor and forcefully defended it.<sup>108</sup> The senators voted on several amendments to the bill, but paused for more sustained argumentation of Section 13, which states that the widows and children of African American soldiers who died in battle, or who might later die of wounds or disease contracted during their service:

...shall be entitled to receive the pensions now provided by law, without other proof of marriage than that the parties had habitually recognized each other as man and wife, and lived together as such for a definite period, not less than two years, to be shown by the affidavits of credible witnesses: *Provided*, That if such parties resided in any State in which their marriage may have been legally solemnized, the usual evidence shall be required.<sup>109</sup>

The amendment specifically bypasses Southern state and plantation law to allow for the legal recognition of marriages among those previously enslaved, and in so doing, broadens the concept of the marriage contract under Anglo-American jurisprudence. By accepting the “affidavits of credible witnesses” as proof of African Americans’ unions, legislators legitimate the extralegal marriage practices of African Americans that were grounded interpersonally and in the support of their communities rather than in law.

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<sup>106</sup> Brimmer, 69.

<sup>107</sup> Brimmer, 11.

<sup>108</sup> Basler infers that it is likely that Senator Foster either talked with Sumner or perhaps with Mary herself before moving the amendment to the Senate floor (“And for His Widow,” 293).

<sup>109</sup> Cong. Globe, 38th Cong., 1st Sess. 3232 (1864).

Particularly through the government's recognition of the African American widow, marriages formed in bondage become not only formally recognized, but are done so through the words of formerly enslaved men and women themselves. As we can see in Charlotte Duck's pension file, enslaved marriages ultimately become legitimized not in Anglo-American terms, but in the words, stories, and vows of African American widows and members of their community who vouched for them.

The vehicle, then, for the legal recognition by the federal government of marriage under slavery, is African American widowhood. Senator Foster remarks at length on Section 13:

There is this unfortunate distinction between the widows and children of white and black soldiers: the blacks who come from the slave States, and who probably were slaves before they entered the service, although they had wives and children, were not, according to the laws of the States within which they lived, legally married, and of course if they were killed in service under circumstances which would entitle their wives and children to ever so much consideration from the Government, they could not by law be recognized as the wives or widows and children of the persons thus killed. We thought that this was unjust.<sup>110</sup>

Senator Foster calls attention to the fact that formerly enslaved men who were fighting for the Union army were not legally married in the eyes of the state, and thus the wives of the soldiers could never be legally recognized as widows. This distinction reveals the ways in which widowhood is a distinctly Anglo-American concept wedded to the legal structure of the United States that does not recognize enslaved African Americans as persons.

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<sup>110</sup> Cong. Globe, 38th Cong., 1st Sess. 3233 (1864).

Senator Foster and the Committee ultimately find it “unjust” that widows of African American soldiers cannot be legally recognized as such. By insisting on their widowhood, the congressmen implicitly legitimize both their marriages and their standing as citizens in need of protection by the government. As this chapter has shown, even though the government ultimately extends recognition to marriages formed in bondage, the amendment only works in service of the legalized widow. In order for African American women to receive a pension, their husbands have to have died. That African American wives can only receive legal recognition of their marriages as widows, displays the ways in which the patriarchal state sought to control African American women’s bodies. Seeking to label them as widows placed them under the patriarchal control of the institution of marriage extended through the pension system.

The Committee on Pensions eventually enacted the following bill, which included a crucial clause at the end of the amendment that entirely limited the legal recognition of marriage under slavery through widowhood:

That the widows and children of colored soldiers who have been, or who may be hereafter, killed ... shall be entitled to receive the pensions now provided by law, without other proof of marriage than that the parties had habitually recognized each other as man and wife, ... *Provided, however,* That such widow and children are free persons.<sup>111</sup>

In order for the bill to pass the House, the Senate conceded the clause in which pensions were to only be granted to free women of color, a striking negation of the progressive capacity of the bill as debated on the Senate floor by Senator Foster.

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<sup>111</sup> Cong. Globe, 38th Cong., 1st Sess. 3233 (1864).

Nevertheless, the amendment served as a precursor to the official legal recognition of slave marriages after the Civil War, when the Pension Act was amended again and allowed African American widowed women access to a pension regardless if she had been enslaved when she had married.<sup>112</sup> Despite the posturing and debates on the Senate floor over the equality of experience in losing a husband to the Union cause whether a woman was white or black, enslaved or free, this clause shows the incapacity of lawmakers to fully recognize marriages in slavery. It shows how women in bondage, even during the Civil War, as thousands of African Americans gave their lives for the nation, were still considered property by the federal government.

It should also be noted that Keckley's mentioning of her pension claim immediately follows her recounting of President Lincoln's assassination. Keckley's interruption of the Lincoln's courtship story to narrate her successful pension application also underscores a fundamental difference between Keckley's widowhood and that of Mrs. Lincoln. Despite her best efforts, at the time of *Behind the Scenes*' publication, Mrs. Lincoln still had not earned a pension from the United States government, a fact that she bemoans repeatedly, both as Keckley quotes her in the narrative and in the letters written to Keckley and appended to the text.<sup>113</sup>

When Mrs. Lincoln leaves the White House to return to Chicago after the assassination of her husband, she coerces Keckley into making the journey with her.<sup>114</sup> Even though Keckley assures Mrs. Lincoln that she cannot leave her business and her spring orders, particular that of a

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<sup>112</sup> Katherine M. Franke, "Becoming a Citizen: Reconstruction Era Regulation of African American Marriages," *Yale Journal of Law & the Humanities* 11, no. 2 (1999): 268.

<sup>113</sup> Mary Lincoln did eventually receive a lifetime pension of \$3,000 per month in 1870. See Fleischner, *Mrs. Lincoln and Mrs. Keckly*.

<sup>114</sup> Keckley confesses, "When Mrs. Lincoln first suggested her plan, I strongly objected; but I had been with her so long, that she had acquired great power over me" (*Behind the Scenes*, 209).



“spring trousseau for Mrs. Douglas,” Mary Lincoln replies, “Mrs. Douglas can get some one else to make her trousseau. You may find it to your interest to go. I am very poor now, but if Congress makes an appropriation for my benefit, you shall be well rewarded.”<sup>115</sup> Throughout all of her trials with Mrs. Lincoln, up until the end of the narrative when Keckley recounts her role in the ‘Old Clothes Scandal,’ Mrs. Lincoln consistently promises her financial recompense for the sacrifices of her time, money, business, and emotional labor if and when the government provides for her.

Yet by the time Keckley resorts to writing her memoir, the government had yet to step in to provide for Mrs. Lincoln, in part because of her divisive personality. Unlike Mrs. Booth, who performs the tenets of both true womanhood and true widowhood, and unlike Keckley, who displays frugality, generosity, and industriousness as a widow, Mrs. Lincoln is wholly unsympathetic to the public and to the state. Lambasted in the press and popular opinion for her excesses of grief, debt, and vanity, as well as for her unseemly persistence in petitioning the government for sustenance, Mrs. Lincoln casts a pall on both her husband’s legacy and her own. The government will not claim a widow like Mary Lincoln, but it will support those like Mary Booth and Elizabeth Keckley.

Under the institution of slavery, widowhood, like marriage, assumed a myriad of iterations outside the recognition of Anglo-American law. Yet African American widowhood, as this chapter has shown, ultimately became the catalyst through which marriage under slavery was eventually recognized by the United States government. In *Behind the Scenes* Elizabeth Keckley takes widowhood into her own hands as an instrument of freedom that propels her and

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<sup>115</sup> Keckley, 209.

her business into the most fashionable and politically elite drawing rooms of Washington, D.C.

In her actual pension application, she uses widowing to legitimize her relationship to her son, but also to psychologically annul and bury her rape.

Keckley's reception of a Civil War pension, in distinct contrast to Mary Lincoln, demonstrates her recognition by the state as a free woman of color in the North and as a valuable citizen. Keckley's memoir goes "Behind the Scenes" of the United States government at the absolute highest level. Yet by infiltrating the lives of the Lincolns, Keckley repeatedly turns the narrative to her own life experiences and to those of the free people of color who form her community in Washington, D.C. True citizenship, the memoir suggests, belongs to those who fight for their independence and maintain it, no matter whether free or enslaved, married or widowed, Black or white.

## CHAPTER 4

**“Hope On, Hope Ever”: Queer Time and Widow-Wives in the “Land of Whales”**

*Silently and surely move the wheels of time. As I take my pen from this Eve to write the sentiments of my heart I pause- for long is the time intervening between my former date and the present time ... A year will soon have past since that trying hour when I took the parting hand of my beloved husband and dropt the silent tear. He to travel the trackless deep to a foreign shore. I to return again to my native home. O it was a time of deep heartfelt sorrow such as it was never my lot to experience and I would wish it might never again be my fate but O it may be many times. Since the time of my husband's departure I have seen many a lonely hour. Many a day of deep and heartfelt sorrow, but now the thought cheers me continually. William will soon return. Soon it will be time for my husband to reach his native land and O does it not fill my soul with joy when I mediate on it.*

*-Hannah Rebecca Burgess, Diary Entry, West Sandwich Massachusetts, October 31, 1853*

On August 5<sup>th</sup>, 1852, at only eighteen years old, Hannah Rebecca Crowell, known as Rebecca, married William Burgess, a sea captain, in her childhood home in West Sandwich, Massachusetts. After a brief honeymoon, William and Rebecca settled in Boston with William's family as they awaited the completion of a new clipper ship assigned to him. Only three months later, William sailed to California on the *Whirlwind*, and Burgess travelled home to her family in Sandwich to await his return.<sup>1</sup> Burgess's rich archive of diaries, letters, poems, and annotated scrapbooks, narrates an important literary counter history to Herman Melville's *Moby-Dick*, or *The Whale*, the landmark text of nineteenth-century seafaring culture. Scholars today continue to privilege Melville's homosocial novel in their articles and literary monographs, at the expense of more women-centered works of seafaring life written by nineteenth-century authors such as

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<sup>1</sup> Megan Taylor Shockley, *The Captain's Widow of Sandwich: Self-Invention and the Life of Hannah Rebecca Burgess, 1834–1917* (New York: New York University Press, 2010), 28.

Harriet Beecher Stowe, Elizabeth Stoddard, and Sarah Orne Jewett.<sup>2</sup> In addition, countless stories exist in the extensive archives left behind by maritime wives and widows. I turn to these underutilized texts to explore how the uniquely female-dominated climate of maritime communities reveals fissures in larger national definitions of ‘wife,’ ‘widow,’ and ‘citizen.’

Traditional nineteenth-century marriage relations grounded in customs of coverture, which this dissertation has shown ‘covered’ wives under their husband’s legal, civic, and domestic authority, were repeatedly interrupted in seafaring towns. As men worked abroad for months and up to years at a time, women’s social, economic, domestic, and even legal statuses expanded. Many scholars, including myself, are eager to explore the distinct autonomies experienced by sea wives as temporary moments of liberation from the social and legal restrictions of coverture.<sup>3</sup>

Yet crucially, the women themselves, crucially, did not view their fluctuating statuses as particularly freeing. In contrast, their writings repeatedly bemoan the suspension of marriage. Mourning their husbands’ absence as deaths, which, in the lethal occupations of the sea, often eventually became the reality, maritime wives’ life writings reveal a constant turning to either the past or the future in order to elide their more uncomfortable, in-between present.

Burgess, for example, picked up her pen on Halloween of 1853, noting that it had been a long time, over a year, since she had last written in this particular volume; it had also been

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<sup>2</sup> For example, a quick search of the MLA International Bibliography on June 14, 2018, revealed citations for over twenty articles published in journals or edited volumes about *Moby-Dick* in 2017. The most recent article published on Jewett’s *The Country of the Pointed Firs* was listed for 2015. It was, apparently, the only article published on the sketches that year.

<sup>3</sup> See, for example, Lisa Norling, *Captain Ahab Had a Wife: New England Women and the Whalefishery, 1720–1870* (Chapel Hill: University of North Carolina Press, 2000), 3.

almost a year since she had seen her husband.<sup>4</sup> Burgess reflects on their prolonged separation using expressions of time and grief. Her entry emphasizes the difference of their physical locations— he in the dangerous unknown, “trackless deep” and her, in the security and comfort of her own “native home.”<sup>5</sup> She repeatedly ruminates, as a wife, on memories of the past or hopes for the future; she simultaneously grieves, as a potential widow, her indeterminate, decidedly in-between present. Although Burgess admits out loud her wish never to be separated from William again, she well understands her role as a captain’s wife. She concedes, albeit regretfully, that “O it may be many times,” that she will endure his long absences.<sup>6</sup>

I begin by defining characteristics of marriage in seafaring communities. I examine the unique subjectivity of sea wives, or widow-wives, as I will call them in this chapter, who existed somewhere in between the status of a wife and a widow, and who experienced an expansion of gender roles and duties as part of their daily life. I show how real political potential for women’s independent citizenship occurred, albeit in ultimately limited ways, for women of maritime

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<sup>4</sup> Burgess appears to have kept multiple diaries at once. All of her notebooks contain writings from different time periods, and she repeatedly goes back to previous entries and reflects on them, often annotating her thoughts, throughout the years. Although she stopped writing in this particular notebook a month or two after William’s departure, we have, from other diaries, a rich picture of what her life looked and felt like during William’s absence. After this first voyage she was never separated from William again, choosing instead to travel onboard ship with him. She made one successful voyage with William and was by his bedside on their second trip, when he died of illness in international waters as captain of the *Challenger*. During their voyages William taught Burgess basic navigation skills. Legend has it (a tale that Burgess herself composed, embellished, and circulated throughout her life) that it was her navigation skills that saved the ship and crew from loss when the first mate proved inept at steering and mapping the vessel. All except for one of Burgess’s diaries are housed in the Sandwich Glass Museum and Historical Society; the other can be seen at the Jonathan Bourne Historical Center. For a lengthy historical reading of Burgess’s life and of her diaries as “public diaries” used to “fashion a persona, create a legacy, or situate herself in the world around her, even as the cultural context of her world changed,” see Shockley, *The Captain’s Widow of Sandwich*, 4.

<sup>5</sup> Hannah Rebecca Burgess, *Diary 2*, Sandwich Glass Museum and Research Library.

<sup>6</sup> Burgess.

towns. Yet I also explore how widow-wives resisted such statuses for themselves, almost uniformly preferring to remain covered under the protection and authority of their husbands.

The chapter concludes by considering how author Sarah Orne Jewett, in her regionalist masterpiece, *The Country of the Pointed Firs*, published in 1896, reimagines the in-between statuses of mariner's wives to theorize a future citizenship for women outside of marriage. Jewett, too, explores the tension between the autonomies granted to sea wives and their perpetual mourning for marriages gone unfulfilled.

Yet she ultimately uses the landscape and personal dynamics of the fictional maritime town of Dunnet Landing to critique the institution of marriage more broadly in ways that the women of my archive, and women whose experiences Jewett would have known from her life in South Berwick, Maine, didn't seem to have been able or willing to see beyond. Advocating for the rich relationships that women can form amongst each other independent of the legal and social trappings of the marriage contract, Jewett gently observes how it is the power dynamics of heterosexual love that leave women in a constant state of mourning. She theorizes, then, a future independent citizenship for women at the turn of the century outside of the statuses of 'wife' and 'widow,' and, in fact, divorced from the institution of marriage altogether.

#### *I. Widow-Wives in the 'Land of Whales'*

Only twice in Herman Melville's *Moby-Dick* do readers catch a passing glance of Ahab's wife. First, in chapter 16, "The Ship," Peleg attempts to convince Ishmael of Ahab's "humanities" by furnishing as evidence that he has a wife, a "sweet, resigned girl," and a son.<sup>7</sup> In

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<sup>7</sup> Herman Melville, *Moby-Dick; or The Whale*, ed. Harrison Hayford, Hershel Parker, and G. Thomas Tanselle (Evanston: Northwestern University Press and the Newberry Library, 1988), 79.

Chapter 132, “The Symphony,” the moral climax of the novel, Ahab and Starbuck share a moment of transcendental domesticity centered on their wives that nearly averts the tragic ending of the narrative. As Ahab muses on his long career as a captain, he obsessively dwells on the continual “forty years” that he has spent at sea, admitting to Starbuck “out of those forty years I have not spent three ashore.”<sup>8</sup> His thoughts turn to the personal, domestic cost of his seafaring compulsion, which keeps him continually “away, whole oceans away, from that young girl-wife I wedded past fifty, and sailed for Cape Horn the next day, leaving but one dent in my marriage pillow.”<sup>9</sup> Ahab mulls, “Wife? wife?-rather a widow with her husband alive! Aye, I widowed that poor girl when I married her.”<sup>10</sup>

Whereas my previous chapters consider widowhood as a moment of legal and social transition instigated by the sudden cessation of marriage through the death of the husband, Ahab suggests that his wife’s widowhood occurs at the moment of their relation’s inception. This chapter investigates the conditions under which a woman of the nineteenth century could exist simultaneously as a wife and a widow. Turning to the experiences of sea wives separated for prolonged periods of time from husbands who labored in a constant state of lethal precarity, I explore the social, legal, and sexual subjectivity of “a widow with her husband alive!”<sup>11</sup>

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<sup>8</sup> Melville, 544.

<sup>9</sup> Melville, 544.

<sup>10</sup> Melville, 544.

<sup>11</sup> Melville, 544. Although this argument might be applied to any wife whose husband labored outside the home in a relatively dangerous industry, or, of course, to soldiers’ wives, this chapter will concentrate on the wives and widows of maritime towns, whose husbands, either through commercial shipping voyages, whaling voyages, or other work, took to the sea to make a living, often causing absences from home for at least a matter of weeks to months, to several years at a time.

While Peleg paternalistically refers to Ahab's wife as a "sweet, resigned girl," and Ahab diminutively calls her "that young girl-wife," I modify Melville's descriptors, referring to the mariner's wives whose writings I examine by a title that more accurately reflects their liminal status: 'widow-wife.' While Melville seeks to evoke an idealized true womanhood for Ahab's wife through his depictions of her as young, pure, and submissive to his mania, these monikers swiftly recirculate the gender-exclusive logics of the novel that relegate her to the margins in the first place. This chapter complicates the larger gender dynamics at play in *Moby-Dick*, and complicates the distinctions that I have made thus far about the laws and customs regulating married and widowed women's lives in the nineteenth century.

Widow-wives, at least from the archives of the New England maritime communities that I consider here, were largely upper- and middle-class white women who lived under legal, social, and economic conditions similar to those experienced by widowed women in the nineteenth century.<sup>12</sup> However, the ambiguity of never knowing whether her husband was still alive, all the while dutifully carrying on the role of wife in his absence, manifests itself legally and affectively in her daily life in ways different from that of actual widows. Widowed women, after all, did not

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<sup>12</sup> Seafaring was an important occupation for free African American laborers as well as for escaped enslaved men. For a sustained history of African American mariners, see W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge, MA: Harvard University Press, 1997). References to African American seafaring can also be found in canonical slave narratives of the nineteenth century, such as Frederick Douglass's *Narrative* and in Harriet Jacobs's *Incidents in the Life of a Slave Girl*. This chapter focuses on the widow-wives of white, upper- and middle-class women of prominent whaling communities such as Nantucket, New Bedford, and Sandwich, simply because of their intense archival presence granted to them by the privileges of wealth, status, and whiteness. As the project proceeds beyond the dissertation, I hope to expand this investigation to encompass the lives, affects, and legal capacities of African American widow-wives.



generally exist under the persistent yet elusive hope of their husband's possible, completely unpredictable, return.

Widow-wives of major ports such as New Bedford and Nantucket experienced particular, everyday autonomies as a result of the habitual mass absenting of men from their communities. For example, in a charming, handwritten travel account housed in the Nantucket Historical Association, an unidentified male author writes with fascination of the peculiar ways of life of the women of Nantucket, or the "Land of Whales," as he nicknames the island.<sup>13</sup> A nineteenth-century Crèvecoeur, the author admits to feeling "most surprised to see the numbers of Ladies walking in the streets, unattended by a gentleman," until his friend informs him "that it was a general thing amongst the females," to walk alone in the evening.<sup>14</sup> The friend gently notes that it was quite "uncommon" for Nantucket women to "receive an insult" about their habits except from "strangers, ignorant of their customs."<sup>15</sup>

Whereas women walking in the streets alone at night might be censured as culturally inappropriate in larger cities in the early nineteenth century. Yet the author's friend implies that there is something unique, yet not at all out of the ordinary in their community, about the habits of women on Nantucket. This changes the rules for what is deemed socially appropriate for women. The unspoken observation of this conversation concerns the lack of men in the community to accompany women at night. If all of the men are out whaling, the author's friend

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<sup>13</sup> "Visit to Nantucket," ca. 1821–1832, box 1, folder 1, p. 19., in Diaries and Journals Collection, Nantucket Historical Association, Nantucket, MA.

<sup>14</sup> "Visit to Nantucket," 26–27. For an earlier iteration of a voyeuristic man scandalized by independent lives of women on Nantucket, see Letter VIII, "Peculiar Customs at Nantucket," in J. Hector St. John de Crèvecoeur, *Letters from An American Farmer*, ed. Susan Manning (Oxford: Oxford University Press, 2009), 139–50.

<sup>15</sup> "Visit to Nantucket," 26–27.

suggests, there is nothing inappropriate about women walking alone, for they can't be faulted for committing a social taboo if the social conditions of the island are such that there are no men available to accompany them.

The cultural dynamics of life in a seafaring town, which Melville all but ignores, depend on the reciprocity of men laboring far away at sea and the heterosexual bond of the affective, social, and economic labor of women at home. Later in the anonymous traveler's visit to Nantucket, when swarmed by "about a dozen beauties" at a party, the speaker ruminates on the correlative forms of courtship and marriage that serve as the social foundation of whaling communities and of the larger whaling industry:

They make all their dates from some fortunate or disastrous voyage at the age of from 15 to 17 when they take leave of their friends and sweethearts for they must certainly be engaged, to some fair daughter of the Isle before they start. Then they go round the Cape are gone from three to four years, come home and stop a few months, marry their chosen, and off they go again for another 3 year trip and so on to the end of their lives- which is oftentimes cut short by venturing too near some enraged Whale. The females bear a 3 years separation with more patience and resignation than does our country girls on the main land, to part with their Jonathans even for three days to go down to town to buy them a new gown or perhaps to get ready for an approaching wedding.<sup>16</sup>

When courtships begin with the male member's three-year absence, women become indoctrinated to the unique social, affective, and domestic patterns of being a widow-wife. The widow-wife, generally, remains fully emotionally and physically committed to the relationship

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<sup>16</sup> "Visit to Nantucket," 43–44.

with her absent lover, carrying on in her role as betrothed or wife even in his absence and very possible non-return. Marking time on the island by either the fortunes or disasters of the sea reveals a fundamental climate of uncertainty that women endured, forced to organize their selfhood around life-altering events outside of their control.

Moreover, the inherent transience of the whaler's life composes a very different kind of marriage compared to those experienced by women in the larger national body and on the mainland, one rooted more in shared labor and long-distance interlocations between the couple rather than in more typical patriarchal dynamics of marriage. The many varied seafaring industries, then, were inextricably linked to the women left behind on shore. In the absences of men, women headed households, drove local economies, and generally lived lives onshore that were the economic, social, and narrative counterparts to a life at sea.

Widow-wives lived in an in-between space, not just between widow and wife but also between independent (male) citizenship and coverture, and in between personal and social autonomy and affective and domestic dependence. Laurel Thatcher Ulrich canonically theorizes women like widow-wives as "deputy husbands," who had a duty to temporarily act in their husbands' place both during his absences and in the event that "fate or circumstance prevent the husband from fulfilling his role."<sup>17</sup> For while the husband was "supreme in the external affairs of the family" as well as its "titular head" his wife "could appropriately stand in his place" under a broad range of incapacities ranging from the overstretched businessman to a mariner at sea.<sup>18</sup> Ulrich views the deputy-husband role not as a form of "independence" for colonial women but as

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<sup>17</sup> Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650–1750* (New York: Vintage Books, 1991), 36.

<sup>18</sup> Ulrich, 36.

a broader form of female responsibility that most wives undertook as part of their daily routinized lives and roles within the patriarchal family structures of the seventeenth century.<sup>19</sup>

In her exhaustive history of the women of Nantucket and New Bedford, *Captain Ahab Had a Wife: New England Women and the Whalefishery, 1720-1870*, Lisa Norling also refers to women of whaling towns as “deputy husbands.” She insists that despite their additional responsibilities both inside and outside the home during their husbands’ absences, “women’s efforts were not viewed as so much different from, and certainly not competing with, but rather as complementing men’s activities.”<sup>20</sup> Like Ulrich, Norling insists that mariners’ wives “routinely stepped in and served as their absent husbands’ surrogates.”<sup>21</sup> Furthermore Norling reminds readers that Nantucket, like other colonial towns, was “patriarchal, hierarchical, and corporate, held together by interpersonal connections of obligation and dependence.”<sup>22</sup> Despite maritime women’s many varied roles as helpmates inside and outside of the home during their husbands’ absences, Norling emphasizes the normality of these roles, particularly as nineteenth-century conceptions of romanticism and true womanhood reached the ports.

By employing the title widow-wives, I seek to recenter *women’s* subjectivities in the critical conversations that examine their compelling lives. My renaming of maritime wives is not simply an issue of wordplay. To be hailed as one’s “substitute” husband, or to imply that she is always the second in command in her person, home, and society, even during the husband’s prolonged absence, repackages the logics of coverture that deny women independent personhood in marriage in the first place. I fully recognize both the normalcy of widow-wives’ autonomy as

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<sup>19</sup> Ulrich, 37.

<sup>20</sup> Norling, *Captain Ahab Had a Wife*, 36.

<sup>21</sup> Norling, 36.

<sup>22</sup> Norling, 47.

well as its place in the larger patriarchal structures of marriage and the nineteenth-century home. Yet as this chapter will show, widow-wives do not merely exist within the confines of coverture—they trouble it. Their in-between selfhood frustrates the ways in which the marriage contract reinforces women's social and particularly legal dependence on men, even as they remain entrapped by coverture.

## *II. The Fictive Legal Lives of Widow-Wives*

Because maritime widow-wives never really knew, at least for long periods of time, whether their husbands were safe, healthy, or even still alive during their absences, they experienced day-to-day independent personhood completely separate from their husbands; simultaneously, they also remained legally, socially, and emotionally attached to him. This coinciding autonomy from and attachment to one's husband experienced by widow-wives ruptured the legal fiction of coverture. Once a woman was married, her body became "covered" under her husband's legal and civic body. Widowhood released women from the marriage contract and allowed them to regain their independent personhood in the eyes and laws of the state. The in-between designation of widow-wives, then, invites theorization around how such personhood frustrated the legal fiction of coverture that insisted on the husband and wife existing in one bodily entity (the husband).<sup>23</sup>

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<sup>23</sup> On the collapse of a wife's identity into her husband's upon marriage, see: Norma Basch, *In the Eyes of the Law*, 17. Legal scholars frequently turn to coverture as an example of legal fiction. For example, Natasha Korda argues, in the context of early modern women and drama, that "Although coverture was certainly quite real in its constraining influence on early modern women's lives and property relations, it was nonetheless grounded in a legal fiction—that of marital unity of purpose—a counterfactual premise known to be false, yet purportedly 'accepted' as true" ("Coverture and Its Discontents: Legal Fictions on and off the Early Modern English Stage," in Stretton and Kesselring, *Married Women and the Law*, 45).

Legal historians have explored the concept of the ‘legal fiction’ at length, perhaps most importantly in Lon L. Fuller’s theoretical work *Legal Fictions*. Fuller argues that legal fictions represent “the pathology of the law.”<sup>24</sup> They serve as “fixes” to particular inadequacies of law that arise from the complex negotiations between governing structures and human needs. He writes:

We may liken the fiction to an awkward patch applied to a rent in the law’s fabric of theory. Lifting the patch we may trace out the patterns of tension that tore the fabric and at the same time discern elements in the fabric itself that were previously obscured from view. In all this we may gain a new insight into the problems involved in subjecting the recalcitrant realities of human life to the constraints of a legal order striving toward unity and systematic structure.<sup>25</sup>

Fuller defines a fiction as either “a statement propounded with a complete or partial consciousness of its falsity, or ... a false statement recognized as having utility.”<sup>26</sup> Coverture is a state under which a woman is subsumed under her husband’s legal, economic, and domestic authority; she metaphorically loses herself by becoming “one” person under his civic identity. Coverture is thus a legal fiction concocted by white male lawmakers in the U.S. to “patch” the limits of American democracy. As a false statement it has a very particular utility: to keep white, property-owning men in power. The subjectivities of ‘wife’ and ‘widow’ thus become legal and social constructions designed to disenfranchise married women and to regulate their social and sexual behaviors and identities.

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<sup>24</sup> Fuller, *Legal Fictions*, viii.

<sup>25</sup> Fuller, viii–ix.

<sup>26</sup> Fuller, 9.

Widow-wives delegitimize the legal fiction of man and wife existing as one body, through their particular legal and affective embodiments, seen most concretely in Power of Attorney forms, and in personal writings, respectively. However, by consciously yoking together the patriarchal terms ‘widow’ and ‘wife’ to describe these women’s in-between personhoods, I indicate how their disturbing of the legal fiction of coverture does not make it disappear institutionally. As Ulrich argues, the role of deputy husband was “both fluid and fixed. It allowed for varied behavior without really challenging the patriarchal order of society.”<sup>27</sup> Widow-wives, for all of their unique autonomies, were always conscripted by social and state structures regulating wives during their husbands’ long absences, and, as the previous chapter on Civil War widows’ pensions shows, in widowhood as well.

However, to definitively declare that widow-wives or deputy husbands cannot ultimately break free from the confines of patriarchal law, as Ulrich and Norling argue, flattens the idiosyncratic effects that widow-wives *do* have on the law. It also underestimates the theoretical possibilities for women’s independent citizenship inherent in their in-between subjectivities. Although the women I discuss cannot or simply do not want to break free from coverture’s restrictions, their independent bodies during their husbands’ absences legally and affectively frustrate the institution of marriage.

Widow-wives vex customs of coverture most dramatically, perhaps, in legal documents granting them Power of Attorney. Although a wife often took on her husband’s duties while he was at sea out of custom, as Ulrich and Norling show, occasionally her husband granted her formal legal permission to act in his place through the Power of Attorney. The Power of

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<sup>27</sup> Ulrich, *Good Wives*, 38.

Attorney was a binding legal document crafted in seafaring communities by whalemens, sailors, merchants, and ship captains that granted their wives specific rights while they were at sea that women generally wouldn't have had access to before widowhood, such as buying and selling property, making contracts, and representing her husband's affairs in court.

In her essay, "The Sailor's Wife, War, and Finance in Late Seventeenth-Century London," Margaret R. Hunt defines the power of attorney as "a formal legal instrument by means of which one person endowed another (the 'attorney') with various 'powers' which might include the right to represent him in court, control over his assets, or the right to demand payment in his absence for his debts, including his choses in action."<sup>28</sup> Although a sailor could choose anyone he wished to serve as his power of attorney, "the most conventional choice was a wife."<sup>29</sup> The letter of attorney could be narrow, granting "power" over only certain responsibilities, or "quite broad, essentially allowing the 'attorney' to act in the man's name in any and all financial or legal matters in whatever way she (the attorney) thought best."<sup>30</sup>

Textually, the Power of Attorney is a legal form of blank that, among other bureaucratic documents, comprised a significant portion of business in what was known as the jobbing side of printing in early- and nineteenth-century America.<sup>31</sup> It contains printed universal language throughout the document interspersed with spaces for the "constituent" to write in his own words

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<sup>28</sup> Margaret R. Hunt, "The Sailor's Wife, War Finance, and Coverture in Late Seventeenth-Century London," in Stretton and Kesselring, *Married Women and the Law*, 143–44.

<sup>29</sup> Hunt, 144.

<sup>30</sup> Hunt, 144.

<sup>31</sup> See Matthew P. Brown, "Blanks: Data, Method, and the British American Print Shop," *American Literary History* 29, no. 2 (2017): 230; and Lisa Gitelman, *Paper Knowledge: Toward a Media History of Documents* (Durham, NC: Duke University Press, 2014), 24.



exactly which powers he sought to transfer and to what degree he expected the community to recognize his wife as his surrogate.<sup>32</sup>

The Power of Attorney places insistence upon handwritten pronouns to transfer the husband's powers to his wife; in so doing, it reveals fissures of coverture which does not allow a woman independent personhood outside of marriage. In *Paper Knowledge: Toward a Media History of Documents* Lisa Gitelman explores how blanks "worked to structure knowledge and instantiate culture in the United States during the second half of the nineteenth century."<sup>33</sup> Husbands' transferring of their legal identities to their wives reveals both the logical fallacies of the legal fiction that husband and wife exist as one civic body as well as its impenetrability, as coverture ultimately mutates in order to maintain its own power. The institution of marriage, comprised of binary gender roles prescribed by the state and dependent upon the restriction of women's civil rights also contains within it logics that dismantle those binaries.

Seafarers' marriages, punctuated by prolonged separations from one's spouse, dismantle the fiction that husband and wife exist as one legal entity out of pure necessity. As husbands labored at sea, they faced the uncomfortable reality of frequently needing to be two places at once. For while voyaging, they still needed to be able to protect property, buy and sell goods, receive payments and settle debts, represent their right to property or compensation in court, etc. onshore. In order to account for the practical necessity of managing their business at home during their voyages, Power of Attorney documents created a legal rupture whereby, allowing

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<sup>32</sup> Brown argues that this particular kind of blank, which incorporated typescript and handwriting "help measure the subjective life of their users." He emphasizes the "norms of personhood manifest in the blanks, norms marked by tensions between voluntarism and constraint" ("Blanks," 229).

<sup>33</sup> Gitelman, *Paper Knowledge*, 24.

for legal and gender fluidity, wives could temporarily be granted the legal identity of their husbands in the wives' own bodies during his absence.

Take, for example, the Power of Attorney form penned by William S. Beebe, a mariner, for his wife, Elizabeth H. Beebe. The form opens with the declaration:

Know all men by these presents, that [I, William S. Beebe, of Nantucket in the County of Nantucket, in the Commonwealth of Massachusetts, Mariner] have constituted, ordained, and made, and in [my] stead and place put ... [my wife Elizabeth H. Beebe] to be [my] true, lawful Attorn[ey] for [me] and in [my] name and stead, and to [my] use.<sup>34</sup> (brackets used to indicate handwritten responses by Beebe in the blank)

The paragraph following this opening states Elizabeth's overall rights to engage in financial transactions on behalf of the constituent, primarily ensuring that she can accept payment of any debts, goods, merchandise, etc. due to William. The Power of Attorney thus specifically transfers rights of financial transaction from the male body to a female one, who will act "for" the man "in [his] name and stead."<sup>35</sup>

The repeated use of the possessive pronoun "my" underscores the patriarchal legality of the Power of Attorney even as William transfers considerably enhanced financial responsibilities to his wife. That the Power of Attorney allows Elizabeth to serve "for [William] and in [his] name and stead" is coverture made literal.<sup>36</sup> In the transfer of rights contained in the Power of Attorney, she adopts, for all intents and purposes, his very own civic and legal identity.

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<sup>34</sup> DS by William S. Beebe giving power of attorney to his wife, Elizabeth H. Beebe, June 29, 1854, in Folder 83, Ships' Papers Collection, Nantucket Historical Association Research Library, Nantucket, MA.

<sup>35</sup> DS by William S. Beebe.

<sup>36</sup> DS by William S. Beebe.

Furthermore, she is subject to “his use,” emphasizing the underlying wife-as-property motif of coverture. Despite the enhancement of her civic rights under the Power of Attorney, Elizabeth, and women like her, are metaphorically covered in a more visible and literal way—made to take on her husband’s citizenship and to serve him *as* him in the civic body.

The stakes of this enactment of coverture can be seen even more clearly in both the standard rights issued by the blank as well as in the more specific rights that William writes over to Elizabeth. The customary paragraph at the end of the document grants her direct access to the law and the courts to act as William in these legal spaces; not as a woman, nor as his wife, she serves as his power of attorney and thus as a variation of himself. The Power of Attorney has the full right to represent her husband “before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature” and to answer completely “on [his] behalf.”<sup>37</sup> Furthermore, the blank allows the attorney, “generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever” as full as if the constituent were he present, “ought or might personally” do for himself.<sup>38</sup>

First, the document dramatically enhances women’s legal right to the courts. Under coverture, a husband generally represented his wife in court, even going so far as to be held responsible for her crimes. Yet the Power of Attorney opens the entire legal landscape up to women, provided that she act as, and representative of, her husband. In her analysis of the rights given to a British sailor’s wife, most of which were echoed a century later in Elizabeth Beebe’s power of attorney document, Margaret R. Hunt argues for the extreme addition of rights that the Power of Attorney granted. She notes, “She could, in short, act in all respects as if she were an

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<sup>37</sup> DS by William S. Beebe.

<sup>38</sup> DS by William S. Beebe.

autonomous legal personality with comprehensive rights to all forms of property and all the powers necessary to preserve them. Coverture virtually destroyed a married woman's ability to act as an autonomous legal subject, but this instrument goes to considerable trouble, point by point, to restore everything coverture took away."<sup>39</sup>

The Power of Attorney documents the ways in which Elizabeth's body can physically serve as a manifestation of William's with his very particular civil rights. This extends the fiction of coverture, in one way. Although Elizabeth obviously does not magically transform into William during his absences, for all intents and purposes the Power of Attorney, legally, does transplant all the powers of his legal subjectivity into her. Whereby coverture shields the wife and makes her legally and civically invisible, the power of attorney in some ways renders her doubly invisible. It is a swap of bodies— a woman's for a man's in the courts, the marketplace, and in her community. Yet the Power of Attorney, although it dramatically enhances her access to and participation in the civic spaces of the courts and marketplace, becomes not so much an extension of personhood for the wife as it is for the husband. Wives are merely transferred aspects of her husband's citizenship so that he can (figuratively) be two places at once. Her incapacity to represent herself in court, to forge contracts, or to buy and sell property in her own name remains in place.

Although, as I have shown, Power of Attorney in many ways extends the husband's rights under coverture through the body of his wife, it curiously and physically reverses the concept of a woman's body disappearing into her husband. For during her husband's absences, the *husband's* legal, civic, and social body transfers into his *wife's* physical body. Under

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<sup>39</sup> Hunt, "The Sailor's Wife," 151–52.

coverture the body of the wife is legally, economically, and socially subsumed under that of the husband; yet during men's long voyages, it is *his* body that is subsumed into *hers* to act on his behalf.

This embodied performance of acting for the husband as the male spouse in public spaces most clearly demonstrates the power of widow-wives, and the legal status extended to them, to serve not simply as stand-ins for their husbands in theory. They utilized their powers judiciously, and claimed for themselves the legal right of the Power of Attorney. Of the impact of the power of attorney on mariner's wives daily lives Hunt writes that "while women in these communities were already more than normally accustomed to operating assertively in the public sphere," that there is "no question but that these devices allowed many women to operate far more freely and securely in the marketplace, the law courts, and within some large bureaucracies than they would otherwise have done."<sup>40</sup>

Elizabeth corresponds with her husband's insurance company regarding the loss of a ship to piracy, which cost the vessel its "cargo and effects." She writes, "I hereby abandon all right title and interest so far as the same are covered by policy no. 4630 issued by your company, and claim from you a total loss."<sup>41</sup> She signs the letter "William S. Beebe, by his attorney, Elizabeth H. Beebe."<sup>42</sup> This request of the insurance company seems to show exactly how Power of Attorney works. Elizabeth writes in William's voice, making the legal request on his behalf to

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<sup>40</sup> Hunt, 157.

<sup>41</sup> Copy of Abandonment of policy because of crew's piracy by William and Elizabeth Beebe, June 29, 1854, in Folder 83, Ships' Papers Collection, Nantucket Historical Association Research Library, Nantucket, MA.

<sup>42</sup> Copy of Abandonment.

count the ship as a loss and to be reimbursed for it. By signing his name she allows his authority to override her own, even as his attorney.

Yet, at the very end of the document Elizabeth writes an additional sentence, stating, “I herewith send my abandonment of Policy No. 4630, also a copy [sic] (attested) of Power of Attorney showing my right to abandon,” and signing it, “Respectfully, Elizabeth H. Beebe.”<sup>43</sup> This qualification and signature insists on her rights as a power of attorney and brings her voice back into the transaction. She does not sign the document as William, nor as his attorney, but as herself, claiming *her* abandonment of the policy and her right to do so. She embodies those legal rights beyond a mere spokesperson of her husband, acting of her own volition. The Power of Attorney allows her the rights to manage her husband’s finances and affairs legally in ways that most married women were not allowed. In Elizabeth’s case, taking on aspects of her husband’s civic rights, or his citizenship, allows her, in a way, to temporarily embody male citizenship, with many of its rights and privileges generally denied to women.

The inherent temporariness of the document reveals the precariousness of widow-wives’ access to greater legal and economic freedoms. Hunt concedes, “The less beneficial side of all Powers ... was that they could be revoked and withdrawn at any time by the person who originally executed them.”<sup>44</sup> In other words, all of the newfound legal freedoms experienced by widow-wives during their husbands’ absences vanished when the husband returned from sea to regain the rights that, by virtue of his gender and whiteness, belonged to him. Hunt concludes that “comprehensive” as powers of attorneys were, they never “truly extinguished coverture.”<sup>45</sup>

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<sup>43</sup> Copy of Abandonment.

<sup>44</sup> Hunt, “The Sailor’s Wife,” 152.

<sup>45</sup> Hunt, 152.

Ulrich warns scholars to check our contemporary biases when considering the limits of the Power of Attorney, cautioning that we not “give undue significance to what were really rather peripheral enterprises. Acting as attorney to one’s husband is not equivalent to practicing law.”<sup>46</sup> Gitelman, too, attends to the limitations of blanks. She focuses on the bureaucratic functioning of the forms. They “help routinize, they dehumanize,” objectifying the subjects whose identities fill in the blanks rather than granting them any kind of agency.<sup>47</sup> In some ways, this is true of the Power of Attorney studied here. The transfer of rights from William to Elizabeth ultimately only works in William’s favor; shifting his privileges into her person only to protect his own interests surely objectifies her. Yet closely reading the language of mariners’ Power of Attorney forms, particularly the sections handwritten by husbands, uncovers, at least in theory, a transfer of rights generally granted to male citizens to female counterparts.

By essentially acting *as* her husband in economic and cultural affairs, and by having the legal right to do so with all of the power that his citizenship allows, widow-wives embodied, temporarily, independent citizenship even if it was neither for themselves nor on their own terms. By interrupting the legal restrictions of coverture, however, they expose both its capacity to transmutate itself to protect men’s property rights but also the very systems that make it weak. For if a woman can successfully for all intents and purposes legally as a man during her husband’s absences, why couldn’t she do so in his presence and for herself?

### *III. The Affective Lives of Widow-Wives, or Heteronormative Mourning in Queer Time*

The letters, diaries, and Power of Attorney documents of widow-wives display how sailors’ and merchants’ long absences from home evoked a different kind of time, or a queer

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<sup>46</sup> Ulrich, *Good Wives*, 42.

<sup>47</sup> Gitelman, *Paper Knowledge*, 31.

time, experienced in particular ways by women left ashore. Some women, as the previous section has shown, encountered expanded legal and economic freedoms during, and only during, the gaps of time between their husbands' voyages. An overwhelming majority of widow-wives' archives, however, reveal a psychic conscription of the social, cultural, and legal autonomies opened up by their in-between subjectivities. As they awaited their husbands' return, widow-wives measured time affectively through longing, grief, and reminiscence.

The emotional valences of widow-wives' timekeeping occurred as a side effect, so to speak, of the interruption of traditional, institutional times of marriage and domesticity, which dictated married women's daily lives in the nineteenth century.<sup>48</sup> Judith Halberstam's foundational work *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* defines queer time and space as a way of existing, unattached to sexual identity, in opposition to heteronormative structures such as family and marriage and the kinds of time that such institutions uphold. Halberstam writes:

Queer uses of time and space develop, at least in part, in opposition to the institutions of family, heterosexuality, and reproduction. They also develop according to other logics of location, movement, and identification. If we try to think about queerness as an outcome of strange temporalities, imaginative life schedules, and eccentric economic practices, we detach queerness from sexual identity and come closer to understanding Foucault's

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<sup>48</sup> Norling traces the history of seafaring wives through the emergence of the ideals of domesticity in their communities. She also notes the contrast between women's "considerable responsibilities during men's absences," and the sentimental expectations they brought to their marriages that were "so clearly dysfunctional in their own circumstances" (*Captain Ahab Had a Wife*, 4).



comment ... that ‘homosexuality threatens people as a ‘way of life’ rather than as a way of having sex.’<sup>49</sup>

Widow-wives existed in an in-between version of queer time particular to the patterns of maritime life and decidedly not of their own making. If we take Halberstam’s lead and “detach queerness from sexual identity,” in order to focus on the “strange temporalities,” unusual “life schedules,” and “eccentric economic practices” of maritime trades, we can begin to theorize a queer conception of time articulated as grief and mourning by white, heterosexual women embodying the in-between role of widow-wife.<sup>50</sup>

Seafaring laborers worked under extremely dangerous conditions for long periods of time with very little reliable means of communication with their wives and families during their voyages. Such conditions created a marital situation, particularly for women left behind, that was “in opposition” to nineteenth-century norms and beliefs centered on Republican Motherhood, True Womanhood, and the overall patriarchal institutions of marriage and family. Women’s domestic schedules were thrown off course when husbands departed for sea shortly after marriage, as they routinely did, thus delaying pregnancy, homemaking, and the social obligations of marriage. This queer time of maritime life, which develops outside of larger, national legal and social frameworks defining the institution of marriage, was met with emotional resistance from widow-wives. In their correspondence and diaries, widow-wives repeatedly express their experience of the queer time in which they live affectively, through language of grief and mourning.

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<sup>49</sup> Judith Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* (New York: New York University Press, 2005), 1.

<sup>50</sup> Halberstam, 1.

The correspondence of Eliza Russell, housed in the New Bedford Whaling Museum and Research Library in New Bedford, Massachusetts, forms an apt case study through which to examine widow-wives' conceptions of and reactions to the queer time in which they were suspended during their husbands' long absences. Russell's detailed letters to her husband, Thomas, reveal much about her day-to-day life as a widow-wife: her loneliness and constant fear of the wellbeing of her spouse (Russell repeatedly visited fortune tellers, presumably to relieve some of the uncertainty she must have felt with her husband's dangerous occupation and little reliable way of communicating with him); her social life centering on the visits of women family members and friends who also had men at sea; her work and hobbies that helped her stay afloat (so to speak) financially and helped to pass the time (Russell was a seamstress and played piano); her duty to upkeep social and familial networks.<sup>51</sup> Russell's letters even reveal her mother's frustration that four years after her daughter's marriage she still does not have a grandchild to dote upon.

Thomas and Eliza Russell married in Martha's Vineyard on June 3<sup>rd</sup>, 1851. Less than two months later, Thomas shipped out to the Pacific to hunt whales as the first mate of the *Isaac Howland*. Eliza's uncle, David P. West, served as the captain of the ship, and another family connection, Gustavus L. West, also worked onboard. Russell's letters to Thomas during this period frequently refer to the wives of David and Gustavus and their longing for their husbands. The *Isaac Howland* would not return until April of 1854.

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<sup>51</sup> Meaghan Fritz, "Melville Society Bezanson Archive Fellowship 2017," *Leviathan* 20, no. 2 (2018): 125–29.

Russell wrote dozens of letters to Thomas during his voyage, determined for him to “find a letter on board every ship that [he] meet from home.”<sup>52</sup> Her early letters focus closely on her emotional state as well as that of Laura, her Uncle David’s wife, and Mary, Gustavus’s wife. Russell admits, “I dare not tell you how often I cry for fear you will scold or laugh at me but you do not know how lonesome I feel. It seems as though time does look so long to the time of your return.”<sup>53</sup> She describes how Laura, “was in a dreadful way after Uncle David left. She talked and cried with vengeance. I went up to see her before she went home. I tried to console her all I could but she turned upon me and called me all the bad names that she could think of. I never saw any woman give away to passion as she did.”<sup>54</sup> Apparently David and Laura experienced marital difficulties punctuated by an argument before his departure. From Russell’s descriptions, Laura appears to have been wracked with guilt, and suffered a particularly grueling separation throughout his voyage.<sup>55</sup>

After a few letters Eliza began numbering them, both so that Thomas would know how many she had written to show her devotion, and also so that he could place them in chronological

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<sup>52</sup> Mss 136, Series A, Sub-series 1, in the Eliza Russell Papers, New Bedford Whaling Museum Research Library, New Bedford, MA.

<sup>53</sup> Mss 136, Series A, Sub-series 1.

<sup>54</sup> Mss 136, Series A, Sub-series 1.

<sup>55</sup> In a later letter to Thomas, Eliza advocates on Laura’s behalf, begging Thomas to influence David to resolve issues related to Laura. She writes: “I have got a most dreadful job before me. I have got to answer Laura’s letter, and I dread it. Oh I wish that you could read it. It was eight pages long, poor child. I pity her with my whole heart. How could Uncle David write and tell her that she will no longer be his wife? If he could read the letter she wrote Mother I believe that he would realize what he has written. She loves him and always has but her jealous imposition has been the ruin of her and the means of separating her from her husband, and it has separated many in the same way whether their [*sic*] is cause for it or not. Don’t you think that Uncle David will live with her again when he gets home? You must use your influence and eloquence in her behalf. Try to get him to write to her again. I know that Laura has been to blame in a great measure, but I fear that reason will be dethroned if she does not have something cheering or one ray of hope from her husband. I cannot get her out of my mind.” Mss 136, Series A, Sub-series 1.

order if and when he ever received them. In her twelfth letter she writes of Gustavus's wife, "Tell Gustavus that his wife has been in here today and left a letter to go with mine. She is very well only seems rather low spirited. Says if she does not have a letter soon she shall be discouraged."<sup>56</sup>

The crucial characteristic of widow-wives' descriptions of the queer time and spaces in which they lived was loneliness, anxiety, and grief. Emotionally in between a widow and a wife, widow-wives simultaneously mourned the immediate, temporary absence of their husbands while also processing the fearful emotional insecurity of being unable to know of their health and safety. Russell's letters frequently mention her own depressed state, how much she laments the loss of her husband, and her exasperation at how slowly time onshore seems to pass while Thomas is away. Her family members notice her change of character as well. She writes to Thomas, "Father says that he wishes that he knew what to do to bring me back to my old place and to seem like my self. He does not like my being so sober. I think that it is time to sober down if I am ever agoing to. But it is hard work to appear cheerful and lively when your feelings are right the contrary."<sup>57</sup>

Russell's letters clearly reflect the affective cost of the whaling industry on communities at home. This particular voyage not only directly influences Eliza through the prolonged absence of her husband, but also removes her uncle and Gustavus from home life as well. By reporting on the women at home, Eliza not only seeks to communicate that the women are healthy and when the men might receive a letter from them; she also reveals the interconnected web of community among widow-wives onshore. She depicts their shared grief over the loss of their husbands,

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<sup>56</sup> Mss 136, Series A, Sub-series 1.

<sup>57</sup> Mss 136, Series A, Sub-series 1.

expressed through tears, inconsolability, and discouragement. Dana Luciano's extensive study of grief and time argues that the culture of grief that emerged in nineteenth-century America, complete with mourning attire, advice books, and literature, advocated for a sacred, elongated time of mourning that was a direct reaction to the modernization of industrial time. The "luxury of grief," Luciano argues, offered "if not a way of stopping time, a means of altering the shape and textures of its flow."<sup>58</sup>

We can read the personal writings of widow-wives as part of the "culture of grief" that comprises Luciano's archive. Widow-wives articulate their experiences onshore during their husbands' absences through language of grief focused on the concept of time— both of the marked and measurable time that their husbands have been gone, and the indeterminate time that it will take for them to return. For example, in letter 13 Eliza writes:

I wish you were here to take a little bit of a walk with me or I could come and pace the deck with you and talk over old times or the future. I say old times, well, it does seem as though it was so long ago that you sailed. It is now nearly seven weeks. I wish it were seven months. If it is sinful to wish time gone I have sinned a great many times.<sup>59</sup>

Frequently reflecting on their past experiences together, and looking toward a hopeful future for their reunion, Russell lives in a state of grief that elides the present in order to maintain her attachment to Thomas. Widow-wives experienced a "slower" and "essentially nonlinear relation to the value of human existence" in the state of suspension under which they lived: as wives without the companionship or domestic patterns of traditional marriage.<sup>60</sup>

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<sup>58</sup> Luciano, *Arranging Grief*, 2.

<sup>59</sup> Mss 136, Series A, Sub-series 1.

<sup>60</sup> Luciano, *Arranging Grief*, 2.

In contrast to the grieving of full widows, and the grief of total loss that most fully comprises Luciano's study, widow-wives experience an in-between grief. Luciano chronicles how grief became "the body's spontaneous and natural testimony to the importance of interpersonal attachment; indeed, its persistence helped keep alive attachment even in the absence of the beloved object."<sup>61</sup> Yet widow-wives' writings show less interest in slowing time down to remain close to the memories of their husbands. Instead, they overwhelmingly favor an accelerated form of time, frequently fantasizing how time might move faster to the moment of their reunion. It is precisely the "slow time of deep feeling" of their grief over their husbands' absences that they experience every day that they wish they could alter.<sup>62</sup>

Luciano's work theorizes how the affective embodiment of mourning frustrated standard time. Her book considers how grief "might produce alternate perspectives on time, perspectives that not only challenge the content of official histories but also reimagine the arrangements of time upon which those histories are constructed and reproduced."<sup>63</sup> In direct contrast to the orderly, emotionless logbooks that chronicle a ship's voyage across the sea, the letters and diaries of widow-wives provide a crucial literary counterhistory to the industry of whaling.

Russell's serialized letters, written to Thomas but presumably shared with the wider audience of her Uncle David and Gustavus, create a domestic narrative grounded in the stories of Eliza's everyday life. Her letters are distinctly literary in the ways in which she uses figurative language to express her loneliness as well as to imagine fictive scenarios where she inserts herself into Thomas's life aboard ship. In letter 12 she playfully writes:

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<sup>61</sup> Luciano, *Arranging Grief*, 2.

<sup>62</sup> Luciano, 2.

<sup>63</sup> Luciano, 16.

How I should like to see you a flying around about your work. Don't you feel grand sometimes when you are on the quarter deck giving orders? How I should like to be a mouse in the wall watching you. I should feel sometimes as though I must jump out and help you a little and if I could do nothing more I would get a scratching somewhere about your berth and keep you awake but I would not serve you quite as bad as the bed bug gentry.

A stark contrast to adventure narratives of the sea penned by men, Russell's letters expand how scholars understand the more masculine time and space of the sea.

Yet although Russell's letters reveal the unique affective and domestic climates instantiated by the queer time of maritime industries on widow-wives, her grief fails to reimagine or to challenge the constructions of time that comprise the institution of marriage. In a letter from a later voyage, Russell pens:

I will allow that I have not got a great many cares, or troubles, but then they are cares and great ones, till great ones come; the old proverb says that each heart knows its own sorrow best, my greatest trouble now is your going away and leaving me. If I only knew that they would be your last voyage I would not say one word but if your life is spared (God grant it may) I cannot see any end. Poor whalemens they live rather a hard life, and the poor Cape Horn widow leads a lonely life always looking forward into the future and her motto has to be hope on, hope ever.<sup>64</sup>

In constant fear that Thomas' life "be spared," her future life as his wife is always in flux. This reads repeatedly as a foreclosure of her capacity as wife and as a kind of mourning rather than a

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<sup>64</sup> Mss 136, Series A, Sub-series 1.

moment of possibility in which a new life might be imagined “unscripted by the conventions of family, inheritance, and child rearing,” as Halberstam suggests.<sup>65</sup> Russell rejects the queer time established by her husband’s career and her constant in-between roles of wife and widow.

Unable and unwanting to shake the patriarchal confines of marriage, she expresses only sorrow at her very in-betweenness. Referring to herself as always already a “Cape Horn widow,” a term used to describe women whose husbands followed dangerous whale routes around Cape Horn and into the Pacific, Russell grieves as if Thomas has already died while simultaneously “always looking forward into the future.”<sup>66</sup>

#### *IV. Sarah Orne Jewett’s Queer Widow-Wives*

Sarah Orne Jewett’s regionalist masterpiece, *The Country of the Pointed Firs*, published in 1896, fast-forwards through the archives of widow-wives to imagine a maritime town in decline. Jewett’s sketches render the state of the widow-wife permanent, as she populates the fictional world of Dunnet Landing almost exclusively with widowed women. Yet, particularly in the characters of Mrs. Almira Todd, and her late husband’s cousin, Joanna Todd, she renders the very in-betweenness of life as a widow-wife irreversible, leveling a sustained critique of the institution of marriage and its social promises of happiness and fulfillment for women.

Jewett’s sketches depend on the particular space of maritime communities and their unique legal, economic, and affective possibilities for women living independently both outside of and within marriage. Her characters replace patriarchal cultural and legal structures with queer and women-centered articulations of civic life toward the end of the century. By exchanging the bodies of men with those of unattached women in the marketplace, the household, and other

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<sup>65</sup> Halberstam, *In a Queer Time and Place*, 2.

<sup>66</sup> For a definition of *Cape Horn Widow*, see Norling, *Captain Ahab had a Wife*, 310n4.



civic spaces in *The Country of the Pointed Firs*, Jewett reimagines women's lives in utopian and democratic ways. Yet, like the letters penned by Eliza Russell, the collection is suffused with the palpable grief of her characters for traditional marital happiness unfulfilled. With the narrator's departure from the island, even queer articulations of coupling are thwarted. Jewett ultimately leaves Mrs. Todd and the memory of Joanna on Dunnet Landing, while her single narrator remains stuck in permanent heteronormative mourning. It is the single narrator who escapes the marriage contract, and its promises of happiness and fulfillment for women.<sup>67</sup>

*The Country of the Pointed Firs* recounts the summer adventures of an unnamed single narrator, who has fled to the anticipated seclusion of Dunnet Landing to complete a writing project. While there, she develops deeply intimate relationships both with the landscape of Dunnet Landing itself and with her widowed landlady, Mrs. Todd, who serves as both apothecary and advisor to the community. In the first story of the collection the narrator sets the scene of Dunnet Landing opining, "When one really knows a village like this and its surroundings, it is like becoming acquainted with a single person. The process of falling in love at first sight is as final as it is swift in such a case, but the growth of true friendship may be a lifelong affair."<sup>68</sup> By romantically equating falling in love with a place to a sustained, intimate relationship with a person, the narrator creates a setting whereby the affective relationships between people and places become intertwined.

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<sup>67</sup> Margaret Roman's monograph points out Jewett's inability to forgive characters who uphold patriarchal power structures. She writes, "Whether men or women, if they subscribe to patriarchal norms, they become the inept, the distorted, the maimed. In the process of this reversal, gender differentiation as a social construct loses its power" (*Sarah Orne Jewett: Reconstructing Gender* [Tuscaloosa: University of Alabama Press, 1992], ix).

<sup>68</sup> Sarah Orne Jewett, *The Country of the Pointed Firs*, in *The Country of the Pointed Firs and Other Stories*, ed. Mary Ellen Chase (New York: W. W. Norton, 1981), 1–2.

Catriona Sandilands also focuses on the importance of place and personhood to Jewett's writings, arguing that scholars must read Jewett "*queerly* in order to understand her ecology."<sup>69</sup> In her environmental-feminist reading of Jewett's *Deephaven*, Sandilands understands the autonomy of women characters placed by Jewett in the natural environments of declining maritime communities as fleeting: "Jewett finds this life admirable; she also finds it fragile, the social and ecological conditions that enable rural women's independence rapidly disappearing."<sup>70</sup>

The increasing destruction of the environment of such spaces in the present moment in which Jewett penned her sketches leads many scholars to read a nostalgic wistfulness, or mourning in Jewett's texts. Yet Sandilands argues that Jewett's "sadness for the past needs to be placed directly alongside her gender and sexual *resistance*, and that her admiration for elements of passing rural nature coexists with and informs an un-nostalgic feminism based in a central valuation of women's ability to choose their futures."<sup>71</sup> By reading Jewett queerly, Sandilands argues, we can see how she replaced "deeply-cherished (and conservative) nature ideas drawn from an older rural universe, with an active and ongoing desire to resist the stifling Victorian gender and sexual conventions."<sup>72</sup> As such, Jewett offers her readers the thematic possibility of options for women, "the possibility of women *choosing* to live apart from society as a sound

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<sup>69</sup> Catriona Sandilands, "The Importance of Reading Queerly: Jewett's *Deephaven* as Feminist Ecology," *Interdisciplinary Studies in Literature and Environment* 11, no. 2 (2004): 60.

<sup>70</sup> Sandilands, 59.

<sup>71</sup> Sandilands, 60.

<sup>72</sup> Sandilands, 60.

moral possibility- perhaps even a superior one to marriage- appropriate to middle-class women and consonant with a view of nature as a site of spiritual purity.”<sup>73</sup>

I build on Sandilands’ readings not to think environmentally but culturally and historically about the fate and potential of widow-wives toward the end of the nineteenth century. In *Pointed Firs* it is not the natural landscapes that are under threat but the economic and gender norms of Dunnet Landing, a maritime town struggling toward a modernity that none of its characters seem to choose. Jewett is not nostalgic nor trapped in the past, but her characters, poignantly observed throughout the summer by a modern, single narrator outsider, are mired in their emotional, thwarted histories of love.

The narrator becomes incorporated into the community through her relationship with Mrs. Todd and the other inhabitants of Dunnet Landing, yet she always exists outside of it, as an outsider temporarily sharing their space. The liminal status of the narrator as both a citizen of Dunnet Landing and as an outsider allows Jewett to experiment anew with tropes of widowed women, sea-wives, and captain’s stories of maritime life that she grew up hearing from her grandfather. The narrator’s choice to leave the island at the end of the summer and return to the “real world” is experienced as both a death and as a future separate from the mourning of unachieved heterosexual love that infuses the community of Dunnet Landing.

The scenery of *Pointed Firs* both allows Jewett to think through not only the natural landscape of seafaring towns but their cultural landscapes as well. Turning to the independent widows and widow-wives of the community, Jewett can rethink gender and sexual roles for women not only in the persistent past of her characters but in the future of her narrator.

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<sup>73</sup> Sandilands, 72.

Sandilands dismisses *Pointed Firs* as too conservative in comparison to *Deephaven* regarding the characters' sexualities: "*Pointed Firs* has a single protagonist and nothing approaching an affectional bond among equals, even as it still privileges women's relations."<sup>74</sup> Yet, as I will show, *Pointed Firs* is not simply about Mrs. Todd but about her relationship to the unnamed narrator. The narrator chooses time and again to work with Mrs. Todd as an emotional and business partner rather than on her own writing—the work that brought her to the island in the first place.

As the narrator's friendship with Mrs. Todd develops over the course of the summer, the connection of place to person and person to place allows for a fluid intimacy to develop between the women undisturbed by the domestic ideals or patriarchal power structures of non-maritime towns. By setting her sketches in a decaying seafaring town where most of the men have quite literally died off at sea, Jewett experiments with a woman-centered locale anchored in the affective bonds between the remaining women and their physical surroundings in stark contrast to the town's past, in which men repeatedly returned to the community and their lovers only to quickly leave for the sea again. The relationship of the women to each other and to their grounded physical surroundings sets up new gender dynamics and relationships, which Jewett utilizes to examine a more woman-centered state.

The narrator localizes her relationship to Mrs. Todd even further through the association of her landlady to her abundant herb garden and to the cozy home that they reside in together. Getting to know and understand Mrs. Todd's herb garden becomes akin to understanding the woman herself; thus, Jewett tracks the women's growing intimacy through the narrator's

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<sup>74</sup> Sandilands, 62.

heightened intuition about the places that Mrs. Todd inhabits. Noting her bedroom window's proximity to a particular patch of aromatic thyme the narrator remarks, "You could always tell when she was stepping about there, even when you were half awake in the morning, and learned to know, in the course of a few weeks' experience, in exactly which corner of the garden she might be."<sup>75</sup> Although unassociated with grief, we might associate the slow accrual of time that signals the women's growing intimacy, metaphorically depicted in the crushed thyme of Mrs. Todd's footsteps, with Luciano's work on embodiment. The narrator's intuition of Mrs. Todd's presence relies on "alternate perspectives of time," her felt knowledge of the landlady's routines, as well as on the narrator's sense of smell.<sup>76</sup> The pleasant vulnerability of the narrator lying "half awake" yet knowing "exactly" where to find Mrs. Todd in any given moment reveals a growing empathy between the women rooted in the home they share.<sup>77</sup>

Their intimacy evolves into mutual embodiment when the narrator later confesses, "I had been living in the quaint little house with as much comfort and unconsciousness as if it were a larger body, or a double shell, in whose simple convolutions Mrs. Todd and I had secreted ourselves."<sup>78</sup> While the narrator at first individually marks her intimacy with Mrs. Todd by intuiting her presence around the home, as the summer progresses their relationship becomes mutually embodied.

As two creatures they share a second body personified in the house that they inhabit. Together the narrator and Mrs. Todd penetrate the patriarchal confines of the nineteenth-century American home and expand it to receive queerer articulations of womanhood and domesticity.

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<sup>75</sup> Jewett, *The Country of the Pointed Firs*, 3.

<sup>76</sup> Luciano, *Arranging Grief*, 16.

<sup>77</sup> Jewett, *The Country of the Pointed Firs*, 3.

<sup>78</sup> Jewett, 55.

The privacy implied in the women's ability to "secret" themselves into the folds of another body suggests both erotic and emotional intimacy. Refiguring the home not as an institution that traps or hinders women but one that might be woman-centered, providing mutual protection, nurturing, and physical and emotional understanding, Jewett idealizes the potential of a space in which patriarchal understandings of home and marriage are disrupted.

Jewett also revises the uniquely open economic roles shared by husbands and wives in the heyday of maritime industries. In fact, we can see echoes of the dynamics of the power of attorney in *Pointed Firs*. Women's independent business dealings play an important role in the sketches, but as with the dynamics of the home that Jewett modifies, the agreement between the narrator and Mrs. Todd takes on a decidedly extralegal tone. Because it is vital to Mrs. Todd's business that she collect the herbs for her concoctions when they bloom during the summer, the narrator, who is supposed to be spending her days writing, ends up filling in for Mrs. Todd, taking on her duties of greeting and helping customers when Mrs. Todd goes on her herb-gathering expeditions. The narrator describes:

Knowing Mrs. Todd to be a widow, who had little beside this slender business and the income from one hungry lodger to maintain her ... it became a matter of course that she should go afield every pleasant day, and that the lodger should answer all peremptory knocks at the side door. In taking an occasional wisdom-giving stroll in Mrs. Todd's company, and in acting as business partner during her frequent absences, I found the July days fly fast.<sup>79</sup>

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<sup>79</sup> Jewett, 6.

Mrs. Todd's "frequent absences" recall the wandering seamen of Dunnet Landing's heyday, but with one notable difference: Mrs. Todd takes not to the sea but to the landscape of Dunnet Landing for her excursions. Jewett reenacts in miniature and localized terms the dynamics of the maritime household but with two women sharing responsibilities, labor, and intimacies in the community of Dunnet Landing.

Just as Jewett establishes the narrator's and Mrs. Todd's domestic relationship as mutually embodied, so is their business relationship a shared endeavor. By having the narrator act as Mrs. Todd's "business partner," out of respect for her business and care for her person, the women intuitively form a more equal partnership without the cumbrance of legal agreements or contracts to formalize their working relationships or to define their identities in the community when one or the other is absent. Both women willingly give and take in the labor of each other—Mrs. Todd in presumably teaching the narrator about her garden during those "wisdom-giving stroll[s]", and the narrator in her goodwill to greet Mrs. Todd's customers when she is out gathering herbs.

Perhaps like any wife saddled with the freedoms yet also with the heavy responsibilities of acting in the place of one's spouse, either by custom or by legal power, the narrator ultimately sacrifices her progress on her own work for the good of Mrs. Todd. Later in the summer, when she realizes that her pleasure in assisting the landlady occurs at the expense of her own writing, she rents out the town's picturesque schoolhouse to use as a distraction-free office during the day. When she confesses the arrangement to Mrs. Todd, she notes with surprise:

Mrs. Todd and I were not separated or estranged by the change in our business relations; on the contrary, a deeper intimacy seemed to begin. I do not know what herb of the night it was that used sometimes to send out a penetrating odor late in the evening, after the

dew had fallen, and the moon was high, and the cool air came up from the sea. Then Mrs.

Todd would feel that she must talk to somebody, and I was only too glad to listen.<sup>80</sup>

That the narrator and Mrs. Todd enjoy even greater intimacy upon the cessation of their business partnership can be read as a subtle rebuke to the patriarchal legal structures of the United States that pin women into unequal power structures of home and economy.

For example, when William Beebe came home, Elizabeth's privileges ceased and she returned to her legal status as a married woman who could no longer sell property or have complete control over William's affairs. When William returned, he reembodies his full citizenship and Elizabeth resumed her domestic affairs. Elizabeth's enhanced citizenship was always temporary and quickly revoked by patriarchal authority upon William's return. Yet the narrator acts as Mrs. Todd's business partner without a contract, filling in for her out of good will and necessity without being legitimated by the patriarchal state. The narrator essentially takes away her "right" to the metaphorical power of attorney to act in Mrs. Todd's place during her absences, but she does it of her own free will; it isn't retrieved from Mrs. Todd or by any other authority of the state. Whereas aspects of William's citizenship are mapped onto Elizabeth Beebe only during his absences, the narrator and Mrs. Todd enjoy their citizenship as a co-constitutive creation between themselves and their community.

There are erotic undertones of the passage detailing their lives after their business partnership ends, such as the "penetrating odor" of the garden, Mrs. Todd's nighttime visits to the narrator, and the "spell" that they fall under; as a result the women's relationship grows into one of empathic communication. Giving up a business relationship in which one partner

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<sup>80</sup> Jewett, 7.



benefited more than the other offers the women shared languages of the garden, the sea, and each other. With women allowed to occupy different spaces— Mrs. Todd as apothecary, and the narrator in the school house— Jewett suggests that public, civic spaces taken over by women can set the foundation for a more equitable society for women and men alike. The women’s greater intimacy ultimately depends upon their mutual independence unrecognized by the state, illustrating the potential of women’s citizenship when they are unrestrained by patriarchal principles of the law. When women work outside of the contractual bonds that oppress or burden them, a greater intimacy grounded in communication, understanding, and mutual happiness ensues.

Yet concurrent with Jewett’s beautifully complex economic and emotional relationships between women lies a subtext of grief for heterosexual love deferred.<sup>81</sup> In addition to the narrator’s empathic, economic, and embodied connections to Mrs. Todd, the continuing depth of their relationship is marked by two instances in which Mrs. Todd reveals her past loves to the narrator. Immediately following the paragraph above, when the narrator marks the beginning of a “deeper intimacy” with Mrs. Todd after their business relations ceased, she mentions that on “one misty summer night,” when Mrs. Todd came to her to talk, she revealed “all that lay deepest in her heart.” The narrator explains, “It was in this way that I came to know that she had loved one who was far above her.”<sup>82</sup> Mrs. Todd explains of the doomed relationship to her former lover:

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<sup>81</sup> Sandilands writes of a “running theme in [Jewett’s] work of women’s emotional relation to each other” (“The Importance of Reading Queerly,” 61).

<sup>82</sup> Jewett, *The Country of Pointed Firs*, 7.

When we was young together his mother didn't favor the match, an' done everything she could to part us; and folks thought we both married well, but't wa'n't what either one of us wanted most; an' now we're left alone again, an' might have had each other all the time. He was above bein' a seafarin' man, an' prospered more than most; he come of a high family, an' my lot was plain an' hard-workin'. I ain't seen him for some years; he's forgot our youthful feelin's, I expect, but a woman's heart is different; them feelin's come back when you think you've done with 'em, as sure as spring comes with the year. An' I've always had ways of hearin' about him.<sup>83</sup>

Structures of class and custom, and the ways in which they inform the institution of marriage interfere and defeat what would likely have been a happy, fruitful relationship for both Mrs. Todd and her lover.

Yet the relationship was thwarted by the social and economic dictations of marriage, making Mrs. Todd a widow-wife in a different way. She not only becomes a proper, legal widow when her subsequent husband Nathan perishes at sea, but she also experiences the in-between nature of the widow-wife through her attachment to her former lover. The impossibility of their relationship leaves her in a state of mourning; she experiences the loss of her lover as she would the loss of a husband, but because their relationship was never consummated she mourns it differently. Whereas Eliza Russell grieves by looking forward to an uncertain future, Mrs. Todd grieves for an imaginary and elusive past—the what could have been, in place of the fear of what might be. Her grief does not wane over time as it might after the death of a loved one or

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<sup>83</sup> Jewett, 7–8.

spouse. The permanent impossibility of their relationship even while both partners are alive results in a persistent grief in her “woman’s heart.”

Mrs. Todd emotionally opens to the narrator again, in a further acceptance of their relationship, when the women go to collect pennyroyal after visiting Mrs. Todd’s mother. As they reach the field overlooking the sea Mrs. Todd admits, “There, dear, I never showed nobody else but mother where to find this place; ‘tis kind of sainted to me.”<sup>84</sup> Mrs. Todd explains how she, and her husband, Nathan, used to visit the field when they were courting, and how his ship was lost just offshore, in plain sight of their favorite spot. The narrator marks this new confidence placed in her, noting, “I had never heard her speak of her husband before, but I felt that we were friends now since she had brought me to this place.” Mrs Todd explains:

‘Twas but a dream with us ... I knew it when he was gone. I knew it’ - and she whispered as if she were at confession- ‘I knew it afore he started to go to sea. My heart was gone out o’ my keepin’ before I ever saw Nathan; but he loved me well, and he made me real happy, and he died before he ever knew what he’d had to know if we’d lived long together. ‘Tis very strange about love... I always liked Nathan, and he never knew. But this pennyr’yal always reminded me, as I’d sit and gather it and hear him talkin’ - it always would remind me of- the other one.’<sup>85</sup>

Revealing that her marriage with Nathan was never one of mutual love, but one of a resigned acceptance, Mrs. Todd mourns again for the marriage that could have been if society and class had dictated differently.

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<sup>84</sup> Jewett, 48.

<sup>85</sup> Jewett, 49.

Another character defined by her unhappiness as a result of thwarted heterosexual love is Joanna Todd. A cousin by marriage to Mrs. Todd, 'Poor Joanna,' as she is referred to by the women of Dunnet Landing, retreats to a small island to live out her life in seclusion after being jilted by her fiancé for another woman. Mrs. Todd and her visiting friend Mrs. Fosdick get caught up so entirely in their retelling of Joanna's story that they don't even notice when the narrator loses herself in her own musings. As they wondered about how she managed without basic domestic necessities or companionship, the narrator ponders "upon a state of society which admitted such personal freedom and a voluntary hermitage. There was something mediaeval in the behavior of poor Joanna Todd under a disappointment of the heart."<sup>86</sup>

Viewing Joanna's reclusiveness as a "voluntary" and "personal freedom," the narrator tunes out Mrs. Todd's and Mrs. Fosdick's handwringing over the loss of Joanna as a wife in the community to think of her as an independent woman. Viewing Joanna's behavior as extreme and archaic, the narrator seems to represent the next generation of womanhood less constrained (or interested) in the pressure to marry. The narrator, a single woman herself, is struck by Joanna's story not for its moralizing on the tragic failure of domesticity that results in a lifetime of penance and mourning for the widow-wife, but for the independence that erupted for this woman out of her loss.

Jewett repeatedly refigures the scenes of dependent widowhood sensationalized in novels such as Melville's *Moby-Dick* through her creation of the community of Dunnet Landing.<sup>87</sup>

Although the majority of the characters in the sketches of *Pointed Firs* are widowed women

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<sup>86</sup> Jewett, 69.

<sup>87</sup> Roman argues, "Jewett creates a woman's imaginative universe. She turns the tables and subverts the male-dominated form" (*Sarah Orne Jewett*, xi). I see Jewett's woman-centered text as a response to Melville's tome.

(Mrs. Todd, Mrs. Begg, Mrs. Balkcett, Mrs. Fosdick) these women are not merely characterized by their widowhood, as are Ahab's wife, or the women in Father Mapple's church, for example. In fact, the one character cast in perpetual grief and mourning over the loss of their spouse is a widower named Elijah Tilley. Mrs. Todd describes Elijah as "sore stricken and unconsolated" at his wife's death.<sup>88</sup> Caricatured as a clumsy housekeeper and a terrible knitter who barely manages the house without his wife, Elijah bemoans:

Folks all kep' repeatin' that time would ease me, but I can't find it does ... I set here an' think it all over, an' think considerable when the weather's bad to go outside. I get so some days it feels as if poor dear might step right back into this kitchen. I keep a-watchin' them doors as if she might step in to ary one. Yes, ma'am, I keep a-looking off an' droppin' o' my stitches; that's just how it seems. I can't git over losin' of her no way nor no how.<sup>89</sup>

Jewett rewrites the trope of the widowed sea captain's wife by centering the dependent, mournful widow into the body of one hapless male widower who lives amidst a population of economically and socially independent widowed women. Jewett flips the heteronormative trope of the dependent widow to suggest that it is the husbands who truly depend on their wives in a patriarchal society. She contends that when society is disrupted by mass death, such as that experienced by wives of the seafaring industry, and, as Chapter 3 showed, to the Civil War, that a new feminized and independent citizenship awaited women.

Mrs. Todd impatiently writes off Elijah when the narrator returns to the house to tell of her conversation. Calling Elijah "worthy enough" but a "plodding man," Mrs. Todd privileges

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<sup>88</sup> Jewett, *The Country of the Pointed Firs*, 118.

<sup>89</sup> Jewett, *The Country of the Pointed Firs*, 121.

her own friendship with Elijah's wife over understanding her as his wife.<sup>90</sup> She declares, "She was modest with strangers, but there ain't one o' her old friends can ever make up her loss. For me, I don't want to go there no more. There's some folks you miss and some folks you don't, when they're gone, but there ain't hardly a day I don't think o'dear Sarah Tilley ... yes, you knew just where to find her like a plain flower."<sup>91</sup> Considering Mrs. Todd's occupation, comparing the woman to a flower ranks at about one of the highest compliments that she can give to Sarah Tilley, and her annoyance at Elijah's obsessive grief points toward the gendered experiences of widows and widowers. Mrs. Todd remembers Sarah as a friend, not as Elijah's wife, yet Elijah continues to trap her memory into the patriarchal home.

Jewett modifies the quintessential seafaring town in one final way, as the narrator departs the island to return to the city after the summer has passed. Mrs. Todd, too resolute and stubborn to bear an emotional goodbye, leaves the house to call on a friend before the narrator's departure. When the narrator desolately remarks:

When I went in again the little house had suddenly grown lonely, and my room looked empty as it had the day I came. I and all my belongings had died out of it, and I knew how it would seem when Mrs. Todd came back and found her lodger gone. So we die before our own eyes; so we see some chapters of our lives come to our natural end.<sup>92</sup>

In this way, the narrator widows Mrs. Todd for a second time. Abandoning Dunnet Landing for the sea and the wider world, the narrator experiences both a metaphorical but also a very real death of herself and her place in Dunnet Landing. Such a desolate ending ultimately suggests that

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<sup>90</sup> Jewett, 128.

<sup>91</sup> Jewett, 128.

<sup>92</sup> Jewett, 130–31.

the unique relationship cultivated between Mrs. Todd and the narrator will die out with the narrator's departure. The cessation of the fluid relationship of the women to each other and to the civic life of the town was, on the one hand, at least at the turn of the century, still a fiction. However, the singleness of the narrator, and her willingness to escape the perpetual in-between mourning of the decaying town looks ahead to a new future, perhaps one with less mourning and an expansion of affective, economic, and social roles for women.<sup>93</sup> Unlike Hannah Rebecca Burgess and Eliza Russell, Jewett's narrator turns not to an unknown future dependent upon the instability and capriciousness of reconciliation and heteronormative love. Instead, she gestures in hope toward an unknown future for willfully independent women who choose to exist outside of the marriage contract.

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<sup>93</sup> On the theorization of a future for women outside of reproductive time in Jewett's work, see: Sarah Ensor, "Spinster Ecology: Rachel Carson, Sarah Orne Jewett, and Nonreproductive Futurity," *American Literature* 84, no. 2 (2012): 409–35.

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