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## The Trials of Louis Benecke

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**THE TRIALS OF LOUIS BENECKE**

A Masters Thesis

Presented to

The Graduate College of  
Missouri State University

In Partial Fulfillment

Of the Requirements for the Degree

Master of Arts, History

By

David A. Whitby

May 2017

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# **THE TRIALS OF LOUIS BENECKE**

History

Missouri State University, December 2016

Master of Arts, History

David A. Whitby

## **ABSTRACT**

The Civil War was the bloodiest war in American history, and the country felt its impact in many ways. One of those ways was in the expansion of the pension system. The scale of the war left thousands of wounded soldiers in need of care, and a government that recognized its duty to help. In this thesis, I examine the new pension laws that not only benefitted veterans, but also their dependents. Women and children were included within the laws of the ever changing and expanding pension system. This system was not just for white veterans, but also for African-American soldiers who served in the United States Colored Troops. I will further examine how even though lawmakers in Congress meant for the system to be colorblind, black veterans and their dependents faced a great number of additional obstacles when applying for their pensions – obstacles not faced by white veterans. Even if the veteran could afford to make an application, racism within the pension bureau and among the government-appointed doctors created an additional hurdle that could reject a claim, or delay it for months, even years. I conclude that Louis Benecke represented another kind of obstacle – a lawyer who was entrusted by his clients to help them, but instead took advantage of them. Benecke’s actions would result in a series of trials that would lead all the way to the Supreme Court – a court whose limited reading of the law favored Benecke. These obstacles were detrimental to veterans and further hindered their ability to create a new life after the war.

**KEYWORDS:** back pay and bounties, arrears, general-law system/period, African-Americans, U.S. v. Benecke.

This abstract is approved as to form and content

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**THE TRIALS OF LOUIS BENECKE**

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## INTRODUCTION

As the Supreme Court began to hear cases during the October term in 1878, Louis Benecke anxiously awaited his opportunity to defend his reputation before the Court. A ten count indictment brought against him in Missouri, accusing him of taking money that belonged to others, tainted his good name and led him into a legal struggle that led to the highest court in the land. He could not let those accusations stand. After all, he was considered a hero in his hometown of Brunswick, Missouri, for his service as a Union officer during the Civil War, had been the town's mayor, and even served a term as State Senator. Unfortunately, Benecke had also served as a pension agent after the war who represented African American veterans and their families – and he took advantage of these families in order to take their money.

Pension care for the soldiers who served in the American armed forces is not a modern invention. A system of care for veterans can be traced back to the Revolutionary period. Yet this system was dramatically affected by the scope and destruction of the Civil War. Never before had so many Americans fought and never before had there been the number of wounded veterans that needed aid. In response to this, Congress expanded the pension system throughout the second half of the nineteenth century to accommodate the large number of wounded veterans. The new laws covered “veterans with disabilities (invalid pensions) and the widows of veterans,” as well as “dependent children, dependent parents (if there was no widow), and other dependents (special circumstances).”<sup>1</sup>

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<sup>1</sup> Russel L. Johnson, “‘Not One Jot of Tittle of Evidence’: The Civil War Pension Files,” *Australasian Journal of American Studies*, Vol. 30, No. 2 (December, 2011): 78.

While African American veterans were meant to receive pensions just like white veterans, black soldiers and their families endured obstacles and hindrances that white veterans did not have to face nearly as often. Illiteracy, proof of identity, and extra financial burdens were some of the initial obstacles faced by black veterans, but they also had to contend with a deep level of racism that existed within the Pension Bureau from both agents and doctors alike.

Yet there is one further type of obstacle that most historians do not focus on – the lawyers and pension agents who were supposed to help. These were men who looked to take advantage of the people they were meant to help so that they could “exploit the system for their own profit.”<sup>2</sup> Men like Louis Benecke.

This paper looks at the pension system as it developed over the years and how the Civil War affected the need for its expansion. The changes examined within the system look at how these changes related to the Army only and do not focus on the Navy. It examines what the system meant to cover, how it changed, why, and how that system put extra barriers in the way of African American veterans. Finally, this paper examines the case of Louis Benecke in order to reveal one example of the lengths one man went to in order to take advantage of black veterans.

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<sup>2</sup> Johnson, ““Not One Jot of Tittle of Evidence,” 77.

## THE GROWTH OF VETERAN CARE

Among the numerous innovations and changes that came about as a result of the Civil War, the expansion of a national pension system to care for wounded soldiers is not one that most think about when considering the cost of the war. The scale of devastation and death caught the nation unprepared and the need “to care for him who shall have borne the battle” was quickly recognized in Washington.<sup>3</sup> Yet taking measures to give aid to wounded veterans did not originate during the Civil War. While the magnitude and scope of the war caused the Federal government to expand pension care for veterans to new heights, a system of veteran care already existed within the country.

Ever since the days of the Revolutionary War, government distribution of pensions for wounded soldiers and their dependents became a heated topic. At that time, the Continental Congress considered setting up a disability pension “for wounded soldiers and lifetime service pensions (at half-pay) for officers.”<sup>4</sup> This was contingent on whether the soldier received his debilitating wound, or died, as a direct result of fighting in the war. This debate resulted in the passing of the first Federal Pension Law on August 26, 1776.<sup>5</sup> According to the law, aid would be given until the wounded man recovered from his injuries. One can see that law was meant to be temporary. A wounded soldier deserved to be cared for as long as he could not work for himself. As soon as he was able, the soldier would resume taking care of himself and no longer need

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<sup>3</sup> Abraham Lincoln, Second Inaugural Address, April 10, 1865, accessed September 15, 2016. <https://www.ourdocuments.gov/doc.php?flash=true&doc=38&page=transcript>.

<sup>4</sup> Theda Skocpol, “America’s First Social Security System: The Expansion of Benefits for Civil War Veterans,” *Political Science Quarterly*, Vol. 108, No. 1 (Spring, 1993): 92.

<sup>5</sup> Judge Parry, “The Pension System in the United States,” *Journal of Comparative Legislation and International Law, Third Series*, Vol. 1, No. 3 (1919): 248.

aid from the government. If the man never fully recovered, then the man would receive a pension for life.

However, the idea of the national government creating a pension system for former soldiers received a good deal of opposition. Opponents argued that the ideals and principles of the new Republic did not allow for a pension system or any other form of “federal charity.”<sup>6</sup> This opposition faded in the wake of the War of 1812, however, when public sentiment felt a resurgence of national pride. To abandon those brave soldiers who risked their lives fighting for American liberty to a life of suffering and poverty became unacceptable. How would it appear to outside observers if the American government did not look after its own heroes? Would that not diminish us in some way? The public sentiment after the War of 1812 was that it certainly would. Many felt the nation owed these men a debt.<sup>7</sup>

As a result of this public outcry, Congress passed the Revolutionary War Pension Act in 1818. Under this act, privates received \$96 a year and officers who served at least nine months received \$240 a year. Soldiers were required to swear that they were “in reduced circumstances” and “in need of assistance from [their] government for support.”<sup>8</sup> Public support for this act was high – mostly because of assurances that the pension program would not last long, nor would it cost a great deal. It was believed that fewer than 2000 former soldiers were eligible for pensions, with a projected first year cost of

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<sup>6</sup> John P. Resch, “Federal Welfare for Revolutionary War Veterans,” *Social Service Review*, Vol. 56, No. 2 (June, 1982): 172.

<sup>7</sup> Resch, “Federal Welfare for Revolutionary War Veterans,” 172.

<sup>8</sup> Resch, “Federal Welfare for Revolutionary War Veterans,” 172.

\$115,000.<sup>9</sup> This would be among the first of many times the government underestimated the eligibility and cost of caring for soldiers.

As a result of the act, thousands of former soldiers applied for a pension. So many came forward that in 1820 Congress added a means test to the application process. All new applicants, as well as veterans already on the rolls, had to list their place of residence, what their occupation was and their income, their personal health, any and all debts, and an inventory of all personal property. This was then submitted to the War Department along with the age, health, gender, and personal relationship with each member of the soldier's household. Further, all applicants were required to obtain a codicil – a document that entailed the assessment of a court as to the value of a soldier's property.<sup>10</sup>

One final provision created by the War Department was the establishment of a poverty line. While this line was un-official – simply an additional mechanism for the War Department to determine who should or should not get a pension – only those applicants whose income fell below this line would be considered worthy of a pension. Despite the creation of these additional provisions, however, over 18,000 of the 20,000 soldiers who applied still qualified for a pension.<sup>11</sup>

The Revolutionary War Act of 1818 laid the groundwork for the additional acts that would follow throughout the nineteenth century.<sup>12</sup> It was the first federal assistance program instituted on a wide basis to address the needs of veterans and poverty. By

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<sup>9</sup> Resch, "Federal Welfare for Revolutionary War Veterans," 172.

<sup>10</sup> Resch, "Federal Welfare for Revolutionary War Veterans," 172.

<sup>11</sup> Resch, "Federal Welfare for Revolutionary War Veterans," 172.

<sup>12</sup> Resch, "Federal Welfare for Revolutionary War Veterans," 172.

establishing a pension for veterans of the Revolutionary War, the government gave back the ability to live a productive life for many of its poorest and most deserving citizens.

Over the next two decades Congress expanded the provisions for pension coverage which, coincidentally, grew as more white males were given the right to vote. Then, in 1832, Congress authorized service pensions for all living veterans. This affected over 33,000 former soldiers whose average age by this time was 74.5 years.<sup>13</sup> The broadening of the pension system for aging veterans would be something Congress would revisit toward the end of the century. Four years later, the parameters of the pension system were broadened again so that the widows of Revolutionary War soldiers began receiving pensions as well.

As the number of veterans receiving pensions increased over the first few decades of the nineteenth century, Congress decided to create a separate bureau under the War Department, the Pension Bureau, and appointed a Commissioner to it in 1833. The Pension Bureau remained under the supervision of the War Department until 1849, when the Department of the Interior was created. By the time of the Civil War, the number of people on the pension rolls totaled roughly 10,700 – this included widows as well as soldiers – and the cost for providing pensions for the “fiscal year ending June 30, 1861, was \$1,072,000.”<sup>14</sup> The largest number of these were veterans of the Mexican War and the number of those receiving a pension declined “at the rate of five or six hundred each year.”<sup>15</sup>

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<sup>13</sup> Skocpol, “America’s First Social Security System,” 92.

<sup>14</sup> William H. Glasson, “The National Pension System as Applied to the Civil War and the War with Spain,” *The Annals of the American Academy of Political and Social Science*, Vol. 19 (March, 1902): 42.

<sup>15</sup> Glasson, “The National Pension System,” 42.

For the Pension Bureau, any of the wars fought before the Civil War were classified as “old wars.”<sup>16</sup> While the pension system itself underwent a number of changes from the first law in 1776, these were small compared to what was to come because of the outbreak of the Civil War. The immense scale and numbers involved with running the war greatly impacted the way veterans would be cared for in the years following the war. It also created opportunities for corruption, bigotry and prejudice that hindered the ability of some veterans, namely soldiers who fought in the United States Colored Troops (USCT), from gaining the benefits they deserved.

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<sup>16</sup> Glasson, “The National Pension System,” 42.

## THE GENERAL-LAW SYSTEM

As a result of the Civil War, the American Pension system for veterans and their dependents received a remarkable degree of change over the next few decades. The first substantial change took place between 1862 and 1890, and is often referred to as the General-Law System. An examination of this time period reveals the dilemma faced by the federal government in dealing with the scale of wounded veterans and their dependents, while at the same time recognizing a sense of duty and responsibility towards the care of veterans for the sacrifices made by these men.

Despite the patriotic fervor generated throughout the North and the South from the opening of hostilities in April 1861, the country was not prepared for the large numbers of men needed to fill the ranks of both armies. Never before had Americans gone to war on such a scale as they did during the Civil War. Men left their families by the hundreds of thousands and a great number of them never returned home.

Initially, volunteers overflowed recruitment offices – volunteers who thought that the war would be brief and did not want to miss the action. By the fall of 1862, however, all notions of a short war vanished and the reality of a long, bloody conflict became apparent. As casualty rates went up, public support for the war went down, as the hardship felt by the wives and children left behind at losing their main source of financial support grew day by day.

Care for those left behind was initially done at the state and local level. In towns and communities across the country, a combination of different types of public and private assistance to the families of men who volunteered provided some relief to the

strain of losing their primary providers.<sup>17</sup> This kind of community recognition and aid made it possible for men to more willingly join the army. After all, the pay for an enlisted man only amounted to eleven dollars a month for a private. A soldier could not support a family on this alone. Through these kinds of efforts at the state and local levels, one can see that families and communities understood the importance of taking care of not only the soldiers, but their families as well. As historian Megan McClintock put it, “State, local, and individual efforts to diminish the destructive impact of war and disunion on families went hand in hand with preparations to preserve the nation by military means.”<sup>18</sup>

The public and private interests behind local aid designed these measures as a temporary system of aid – something to provide help for a short time during a short war with few casualties. These systems were not meant to extend over a period of years.<sup>19</sup> Then in the spring of 1862, in the wake of the carnage of Shiloh in the west and the Peninsula Campaign in the east, many in the North began to rethink their support of the war. The war became a much bigger, as well as longer, endeavor and men were no longer eager to enlist in a prolonged affair that kept them from home for an extended period. Needing additional troops for longer periods of time forced the government to adopt, what John William Oliver called, a “policy of persuasion.”<sup>20</sup>

One of the main ways established to entice men to enlist came through the offer of a “bounty,” or bonus. Any man willing to enlist in the Union army would receive a \$100 bounty from the government after his enlistment was over – a substantial amount of

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<sup>17</sup> Megan J. McClintock, “Civil War Pensions and the Reconstruction of Union Families,” *The Journal of American History*, Vol. 83, No. 2 (September, 1996): 460.

<sup>18</sup> McClintock, “Civil War Pensions,” 460.

<sup>19</sup> McClintock, “Civil War Pensions,” 460.

<sup>20</sup> Skocpol, “America’s First Social Security System,” 92.

money for most during this time. In the summer of 1862, recognizing the strain at home created by an extended war, the War Department authorized each new recruit to receive \$25 of the \$100 promised up front.<sup>21</sup> This was so each man could provide at least some aid for his family at the time of enlistment instead of having to wait for several years. The remainder of the bounty was to be paid to the soldier when his enlistment was over – provided that he received an honorable discharge.

Regardless of government efforts to encourage enlistment, the prospect of being away from their families, and leaving them without means, kept many men away from the army. In addition, there was a serious flaw in the state and local aid efforts established to help soldiers' families: once a soldier was either dead or discharged, their families no longer received help. Aid was based on having a loved one fighting in the army. If a soldier was killed, his family would not receive any more aid. Likewise, if a soldier was alive, but seriously wounded, his family received no more aid.<sup>22</sup>

This last instance might not seem like much of a problem – after all, if you are still alive could you not simply go home? The problem with this is that many men with serious injuries had to spend long periods in army hospitals recovering from their wounds. Even though their service might be over, they could still not go home right away. What would their families do in the meantime? The idea that their wives and children would be left to fend for themselves was an idea that kept many men from wanting to enlist in the army.

The realization of having to engage in a prolonged war, as well as the ever-growing casualty lists, made the issue of aid for both soldiers and their families a major

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<sup>21</sup> McClintock, "Civil War Pensions," 461.

<sup>22</sup> McClintock, "Civil War Pensions," 461.

concern for the Republican controlled Congress in the summer of 1862. Some, such as the Commissioner of Pensions, Joseph H. Barrett, recognized the need to reform the pension system with the wives, widows, and children of soldiers in mind. Barrett received support from Attorney General Edward Bates, who noted in March of 1862 that the “pension provisions for widows and orphans were insufficient or nonexistent.”<sup>23</sup> It was not acceptable to support veterans while at the same time neglecting the families of those veterans.

The growing sentiment for change regarding care for soldiers and their dependents led an enthusiastic Republican-controlled Congress to pass a new pension act on July 14, 1862. According to this new law, pension benefits would be granted to veterans whose service left them with disabilities “incurred as a direct consequence of...military duty,” or “from causes which can be directly traced to injuries received or disease contracted while in military service.”<sup>24</sup> This new pension system followed strict guidelines about what was considered a “total disability,” which under the new law meant an “inability to perform manual labor.”<sup>25</sup> It applied to “all military service subsequent to March 4, 1861” and to all future wars in which the United States might be involved.<sup>26</sup> This lasted until World War I, when Congress changed the pension requirements.

According to the 1862 law, rank determined how much money a veteran received each month, despite concern within Congress that to give more money to those of higher rank would be unfair. Any soldier ranked lieutenant colonel or higher received \$30 every month, while a private received just eight dollars a month for the same level of disability.

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<sup>23</sup> McClintock, “Civil War Pensions,” 463.

<sup>24</sup> Skocpol, “America’s First Social Security System,” 93.

<sup>25</sup> Glasson, “The National Pension System,” 44.

<sup>26</sup> Glasson, “The National Pension System,” 43.

Ever increasing debate over disability coverage prompted Congress to change the law two years later by making fixed rates for the various types of disabilities incurred by soldiers. In addition, the pension system awarded special benefits for “severe mishaps or for disabled veterans who required special attendants.”<sup>27</sup> It became important to recognize the injuries of each soldier, both big and small, and provide compensation.

For example, if a soldier lost both of his hands in battle, he would be eligible to receive \$25 a month. This was also the rate for a soldier who lost both eyes in combat, (although the loss of both eyes could provide as high as \$72 a month depending on a soldier's rank – the loss of both feet would get the same amount also).<sup>28</sup> This amount doubled over the next ten years. The highest rate that a soldier could receive for the loss of both hands was \$100, although the number of people who received this rate was low.

In the years that followed the war, distinct categories of disabilities broadened further. For instance, claiming a disability for the loss of an arm had different grades. If a veteran lost an arm at the shoulder joint then that soldier received \$18 a month. If the loss occurred at the elbow joint, however, then the soldier received only \$15 a month. These fixed rates for various disabilities were not just affected by Congress. The Commissioner of Pensions, by the authority of additional laws enacted in 1873 and 1888, fixed rates himself for nearly fifty additional disabilities.<sup>29</sup> If the total amount a soldier was to receive did not go over \$17, then any minor disabilities the soldier might have could be added in to his pension amount.

For example, if the soldier lost his big toe, he would receive \$6 a month; likewise, if the soldier was rendered deaf in one ear, he would receive \$6 as well. The loss of a

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<sup>27</sup> Skocpol, “America’s First Social Security System,” 93.

<sup>28</sup> Glasson, “The National Pension System,” 43.

<sup>29</sup> Glasson, “The National Pension System,” 44.

finger or a toe (not counting the big toe) received \$2 a month.<sup>30</sup> Going by these amounts, a soldier who lost his big and little toe, a little finger, and was made deaf in one ear would receive a monthly pension of \$16. In addition, the act of March 2, 1895 put a \$6 minimum on disabilities.<sup>31</sup> This means that a soldier who lost a little toe or a little finger, which carried a rate of \$2, received no less than six dollars a month.

According to a report issued from the Commissioner of Pensions, the number of soldiers receiving the \$6 rate was more than any other rate – the second highest rate received was twelve dollars followed by those who received \$8.<sup>32</sup> This reveals that, while there were many who received a full disability check each month, there were a great number of veterans who received only a partial pension for their injuries.

While the Pension Act of 1862 began the expansion and improvement of benefits for soldiers, its greatest impact came in what it did for dependents. The act of 1862 specifically included widows, orphans, and even mothers of troops. The amount widows received was still based on their husbands' rank, and would be awarded to her after his death – provided that the death resulted from injuries or disease brought about by the war.

A widow received her husband's pension for as long as she was a widow.<sup>33</sup> This was a crucial part of the 1862 law because as soon as a widow remarried she lost her husband's pension. The only way for her to get it back was if she was to once again become a widow, or divorced, or be left without means. Of course, she had to provide proof of her lack of means and demonstrate that her annual income did not exceed \$250 a

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<sup>30</sup> Glasson, "The National Pension System," 44.

<sup>31</sup> Glasson, "The National Pension System," 44.

<sup>32</sup> Glasson, "The National Pension System," 45.

<sup>33</sup> Glasson, "The National Pension System," 45.

year.<sup>34</sup> Extra restrictions such as these may have been in place to discourage widows from making future attempts to regain a pension.

Having to constantly prove one was a widow created interesting wrinkles in how the pension of a widow was monitored. Pension Bureau agents soon learned that it was not easy to verify a widow's marriage or that she remained a widow. After all, since remarriage meant the loss of a pension, widows had an incentive to hide a new marriage from the government. This fear of possible fraud led the Pension Bureau to enact some invasive requirements on widows.<sup>35</sup>

First, a widow must show proof of a valid marriage and she had different ways in which to do this. She could provide something in the public record that recorded the marriage took place or she could get an affidavit from the minister who performed the ceremony. A widow could also provide testimony from two or more witnesses who attended the wedding or, if available, she could provide a record of baptism of her children – though bureau agents tended to give more credibility to documents than to the testimony of witnesses.<sup>36</sup> The inability to provide such proof – due to loss of public records or inability to find witnesses – would result in the rejection of a claim until such proof could be collected.

Once a widow established a valid marriage, however, she was not done. Since bureau agents suspected widows of trying to conceal illicit affairs or remarriage, they “added moral supervision to its regulatory and investigative capacities.”<sup>37</sup> This began in 1866 with the passing of a bill that directly targeted widows and monitored their activities

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<sup>34</sup> Glasson, “The National Pension System,” 46.

<sup>35</sup> McClintock, “Civil War Pensions,” 476.

<sup>36</sup> McClintock, “Civil War Pensions,” 472.

<sup>37</sup> McClintock, “Civil War Pensions,” 476.

in order to prevent them from doing anything improper – such as defrauding the government. Fraud was thought to be so pervasive that in 1868 Commissioner of Pensions Christopher C. Cox asked Congress for “discretionary power” over the claims of widows in order to oversee what he called “flagrant violations of morality.”<sup>38</sup>

Cox believed that the number of widows who attempted to hide illicit affairs grew constantly, even to the point where he declared that some lived “openly in prostitution.”<sup>39</sup> Whether or not Cox was correct about his assumptions regarding the character of widows, his remarks do indicate a serious mistrust of widows who received a pension.

The attempt by Cox to gain control over the monitoring of a widow’s private life did not receive sufficient support during the 1860’s and 1870’s. Congress did not feel it was the place of government, nor was it the place of Pension Commissioners, to police the morality of American citizens. When a bill to terminate pensions for widows guilty of cohabitation (living with someone with whom you are not married, but receiving a pension) was defeated in 1869, it was due to this over-extension by men like Cox.<sup>40</sup>

Judging whether or not a widow was virtuous enough was not an authority Congress was willing to give to a Pension Commissioner – at least, not then. It would take thirteen more years, but, in 1882, Congress did pass a law that canceled the pensions for widows guilty of cohabitation.<sup>41</sup>

While intensive scrutiny was placed on the widows of veterans, the need to care for the children of veterans received attention as well in the decades after the war. Any dependent children under the widow’s care, at first, did not receive any additional aid.

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<sup>38</sup> McClintock, “Civil War Pensions,” 477.

<sup>39</sup> McClintock, “Civil War Pensions,” 477.

<sup>40</sup> McClintock, “Civil War Pensions,” 477.

<sup>41</sup> McClintock, “Civil War Pensions,” 477.

They were simply under the care of a widow who received her husband's pension. This changed, however, in 1866 when Congress decided to pay an extra \$2 for each child of the deceased soldier under the age of sixteen.<sup>42</sup> This was a crucial and much needed addition for many widows who had larger families. The base pension for a private was \$8 – not enough to provide for a widow with multiple children to feed.

What became of children who lost their father, yet had no mother to look out for them? The act of 1862 provided for them as well. A legitimate orphan, under the age of sixteen, received the same pension amount that a widow received.<sup>43</sup> If, for whatever reason a widow lost her right to the pension of her husband – through remarriage for instance – the Pension Bureau turned the pension over to the children. This only lasted, however, until the child turned sixteen. An exception could be made if the child was incapable of self-support. For instance, if the child was determined to be mentally deficient, or declared insane and in need of institutional help. If this was established, children were eligible to receive their fathers pension for life, or until their disability was healed.

Yet, what if a Civil War soldier died and left no wife or children behind? Here is where the 1862 law changed the system in a great way: should a soldier have no wife or children, then the pension could go to the soldier's dependent mother. This was a major addition to the pension system. As Megan McClintock points out, "This law made mothers and sisters of deceased servicemen eligible for federal pensions *for the first time*...and paved the way for an 1866 amendment that extended pensions to fathers and

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<sup>42</sup> Glasson, "The National Pension System," 45.

<sup>43</sup> Glasson, "The National Pension System," 46.

brothers.”<sup>44</sup> These rates were, again, based on the rank of the soldier, but now the reach of the pension system extended beyond the nuclear family into a much broader scope that included the extended family.

This was not always an easy task, however. In order for a mother or father to receive a pension on account of the death of a son, the parents must provide proof that their son provided them with assistance and that they had to have this assistance in order to live. Proof could be accomplished in several ways. For instance, if the parent had a letter from their son in which he stated that he was sending money home to help them, this could be offered as proof of dependence. Likewise, if the parent obtained testimony from their son’s previous employer about how much the son made and the way he gave money to his parents, this, too, could be offered as proof.<sup>45</sup> A parent who provided this type of proof to the Pension Bureau did not have much trouble applying for a pension.

What if the parent was dependent of their son and was not able to provide proof? Was the parent of a veteran to be left out? This was certainly a concern in the first decade after the war – big enough that in 1872, Pension Commissioner J.H. Baker submitted a report to Congress in which he warned that many aging parents, with “increasing infirmities,” would have their claims rejected and would therefore be left without help.<sup>46</sup> He convinced Congress that a change was necessary and that it needed to expand the definition of dependency.

As a result of Baker’s report, in 1873, Congress passed a new law that stated “that parents were entitled to federal assistance ‘if by actual contributions or *in any other way*’

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<sup>44</sup> McClintock, “Civil War Pensions,” 463. Emphasis included.

<sup>45</sup> McClintock, “Civil War Pensions,” 467.

<sup>46</sup> McClintock, “Civil War Pensions,” 468.

their deceased son had aided in their support.”<sup>47</sup> This was quite a broadening of the definition of dependency. From this law, a parent no longer needed to provide solid proof that their son provided support by way of testimony or letters that stated he sent money home. Now all a parent had to do was show that the son had *intended* to help in order to become eligible to receive a pension.

In her article, “Civil War Pensions and the Reconstruction of Union Families,” Megan J. McClintock provides an example of this through the story of Mary Harth, whose son, Henry, was a Civil War soldier who died in 1864. Mary had no proof that she could offer that demonstrated that she was dependent on her son for assistance. In fact, Henry had only sent money to his mother one time during the two years prior to his death. What Mary did have, however, were letters from Henry in which he stated his *intention* to help her. With evidence of his intentions, along with evidence of her own difficult financial situation, Mary claimed that the death of her son deprived her of the aid that “she would have a natural right to expect to receive from him.”<sup>48</sup> In other words, since Henry *would have helped her* had he lived, she deserved his pension – a pension she was granted in 1884.

Despite the expanded definition to the law of 1873, difficulties still existed within the application process for parents and the process itself could often be rather lengthy due to the larger number of applicants after the war. One reason for this is that the longer a parent waited to apply for a pension – some waited years after the death of a son to apply – the more difficult it was to provide the evidence needed to be accepted.<sup>49</sup> Another reason is that the Pension Bureau viewed the chain of support for a woman as first

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<sup>47</sup> McClintock, “Civil War Pensions,” 468. Emphasis added.

<sup>48</sup> McClintock, “Civil War Pensions,” 469.

<sup>49</sup> McClintock, “Civil War Pensions,” 469.

through her husband and then through her son. The husband was always seen as the primary bread winner. Therefore, if a mother of a veteran applied for a pension, the Pension Bureau wanted to fully investigate the status of the husband – his health and finances – in order to determine why the mother was dependent on her son. This could extend the application process by years.

Another difficulty rested in the fact that the burden of proof was different for a father claiming dependence on his son than for the mother. A dependent father was one who could not provide for his family as he was supposed to. McClintock provides an example of this as well through the claim of James Lumsden. Lumsden applied for a pension in 1875 and claimed that at the time his son Calvin died he was dependent on him because he could not support his family. Lumsden, however, could not provide sufficient evidence for this and the Pension Bureau rejected his claim. It took Lumsden several years to acquire enough evidence – documents that showed outstanding debt, inability to pay mortgage on his home, and poor health – to demonstrate his claim that he could not adequately support his family of thirteen children.<sup>50</sup>

One can see from the examples above that even though the Pension Act of 1862 expanded the pension system in new ways, getting one's claim approved by bureau agents was not a given. The many requirements enacted by the bureau and its officials, while trying to accurately verify legitimate claims, often kept many from receiving the benefits due them – even when the claims were real. While the government felt a sense of duty to take care of those brave soldiers who served their country, and their families, as the years passed from 1862 to 1875, the government also fostered a sense of distrust

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<sup>50</sup> McClintock, "Civil War Pensions," 469.

about many of the same people they were trying to provide help for. Despite this, the act of 1862 laid the groundwork for every pension act to follow throughout the remainder of the nineteenth century and into the twentieth century.

## THE ARREARS ACT

Given the brutal nature and scope of the Civil War, as well as the addition of a new pension law like the one passed in 1862, the number of wounded soldiers and their families applying for pensions grew tremendously compared to before the war. A key figure demonstrates the magnitude of this growth. Before 1862, the number of veterans and their dependents receiving a pension from the federal government was 10,700, which cost the government just over \$1,000,000 a year.<sup>51</sup> While thought to be high, this number declined each year as aged veterans from previous wars died. However, by 1866 the number of claimants on the pension rolls numbered 126,722 and the amount paid each year jumped to \$15.5 million.<sup>52</sup> These costs were staggering each year to a country reeling economically from four years of war and the costs of expanding the pension system grew each year throughout the remainder of the 1860's.

Although staggering, the growth of pensions did not appear to be long lasting. While the initial wave of applicants greatly expanded the rolls, by 1873 the number of applicants declined to the point that the rolls no longer grew. By the following year the annual cost for providing pensions seemed to hit its peak. In her article, "America's First Social Security System: The Expansion of Benefits for Civil War Veterans," historian Theda Skocpol gives several reasons for the slowdown of applicants in the mid-1870's. Among these are a "desire to forget the war" and begin their post-war lives, "an absence of financial need," and "a reluctance on the part of some to take handouts from the

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<sup>51</sup> Skocpol, "America's First Social Security System," 94. Glasson gives an exact figure for the fiscal year 1861 of \$1,072,000.

<sup>52</sup> Skocpol, "America's First Social Security System," 94.

government.”<sup>53</sup> Skocpol also suggests that a primary reason for the decline in applications was that “the subjectively most pressing needs of the veterans...had already been addressed.”<sup>54</sup> This is a curious conclusion given the growing number of changes to the pension system that were still to come in the decades following the mid-1870’s.

Perhaps the most compelling indication for the reduction in veteran applications for pensions Skocpol gives for this period has to do with the application process itself. Many soldiers did not know about the possibility of receiving a pension, nor were they knowledgeable about how to go about applying for it. Each soldier needed to fill out the proper paperwork and provide proof of their claims. They then needed to travel (at their own expense) to the nearest government authorized doctor to be examined. This was to verify that the injuries suffered by the veteran were due to the war. If the application was too confusing a veteran might seek assistance from a lawyer, but this would add to the cost as well.

Even after a veteran completed his application process, saw a doctor, and provided all the proof required by the government, there was still a good chance that the Pension Bureau would reject the claim. Between 1862 and 1875, “the Pension Bureau refused to accept about 28 percent of the applications it received.”<sup>55</sup> Twenty-eight percent is a large percentage of veterans who were unable to receive the pension due them and perhaps the biggest reason applicants chose not to apply for a pension at all. If better than one out of every four veterans who went through the long application process were rejected, this might have discouraged many from wanting to undertake the process themselves – which is why the percentage of veterans who applied in the decade after the

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<sup>53</sup> Skocpol, “America’s First Social Security System,” 95.

<sup>54</sup> Skocpol, “America’s First Social Security System,” 94.

<sup>55</sup> Skocpol, “America’s First Social Security System,” 94.

war was so low. By 1875, only 6.5 percent of eligible veterans chose to apply for a pension.<sup>56</sup>

Despite the trend of lower numbers of applicants during the 1870's, legislation at the end of the decade turned the declining numbers around and started the number of applicants climbing again. The Pension Act of 1879: Arrears Law was passed by Congress on January 16, 1879, and signed into law by President Rutherford B. Hayes on January 25, 1879.<sup>57</sup> The law basically states that veterans of the Civil War who filed pension claims after the war were eligible to have their cases reopened in order to receive pay due them from the time of their leaving the army.

For instance, if a wounded soldier serving in the Union army was discharged in 1864 and filed a claim for a pension in 1869, then that soldier would receive back pension pay dating back to the date of his discharge from the army – five years' worth. This back pension pay was issued to the soldier in one lump sum, or "Arrear." If a dependent made the claim for a pension – widow, mother, etc. – then the pay would go back to the date of death of the soldier.

This act did not just affect veterans and families who already filed claims with the Pension Bureau, but it applied to all new applications submitted from 1879 on. If a soldier filed a claim in 1879, and was discharged from the army in 1865, that soldier not only received a regular pension, but they also received a lump pension payment for money they would have received for the past fourteen years. This was a monumental piece of legislation that impacted the country in two key ways.<sup>58</sup>

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<sup>56</sup> Skocpol, "America's First Social Security System," 95.

<sup>57</sup> U.S. Congress, The Arrears of Pension Act 1879, accessed September 15, 2016, [www.drbronsontours.com/pensionpensionactofjan251879arrearslaw.html](http://www.drbronsontours.com/pensionpensionactofjan251879arrearslaw.html)

<sup>58</sup> Skocpol, "America's First Social Security System," 102.

First, it dramatically increased the number of applicants who filed claims with the Pension Bureau. The average number of veterans who applied each month, before 1879, was roughly 1600 people a month. After the passing of the Arrear law, however, that number jumped to over 10,000 people a month.<sup>59</sup> Those who may have been dissuaded from the application process for whatever reason now had a rather large incentive to make a claim. The lump sum payments could turn the financial situation of veterans and their dependents from one of hardship and struggle to one of optimism and comfort.

By the early 1880's, the average arrear payment to a wounded veteran was \$953.62, while the average payment for dependents (widows, mothers, children, etc.) was \$1,021.51.<sup>60</sup> In today's money, that would roughly be a lump payment between \$42,000 and \$43,000 for a soldier, and between \$45,000 and \$46,000 for a dependent.<sup>61</sup>

One can begin to understand the importance of receiving a lump payment like these. It is even more striking when one considers, as Theda Skocpol pointed out, that "the average annual money earnings of nonfarm employees totaled about \$400," which made payments such as these a cornerstone on which a struggling veteran or his dependents could build a better life.<sup>62</sup> A veteran or his dependents could afford a home, pay off outstanding debts, and better provide for their children in order to ensure they have a better future.

In order to aid veterans or their dependents further when applying to the Pension Bureau, the Arrear Law struck out a previous provision that reduced testimonial evidence

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<sup>59</sup> Skocpol, "America's First Social Security System," 104.

<sup>60</sup> Skocpol, "America's First Social Security System," 102.

<sup>61</sup> Bureau of Labor Statistics, CPI Inflation Calculator, accessed September 15, 2016. [www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) This is going by the CPI Inflation Calculator. Their calculator only goes back to 1913, so the numbers used are based on an additional calculation, which is the reason for the approximation.

<sup>62</sup> Skocpol, "America's First Social Security System," 102.

as secondary to documented evidence. This was another advantage for applying veterans. Before, when showing evidence of service and that a soldier's injuries were war related, a soldier could provide testimony from those with whom he served, or from others he knew, who could vouch for the truth of the claim. This kind of evidence was viewed as less credible than actual documentation from the War Department. With the passing of the Arrear Law, testimonial evidence could be given more weight, making it easier for an applicant to receive approval for a pension.<sup>63</sup>

Unfortunately, the desire to help wounded veterans and their dependents did not come about simply from patriotic notions of helping America's wounded heroes. Even though the passage of the Arrears Law swept through both houses of Congress and received a great deal of bi-partisan support, both parties also saw potential in using the growing sentiment for veteran support as a political tool. Both sides wanted to appear as the champions of wounded soldiers and their families and, in the wake of the passing of the Arrear Law, both parties wanted to take credit for it.<sup>64</sup>

By 1875, Reconstruction was slowly drawing to a close and the Democratic Party regained control of many of the southern states. Its ability to gain support in the north, however, was a difficult undertaking. Democratic politicians began to see the expansion of the pension system as a means to prove their patriotism to people in the north, as well as undermine Republican attempts to use the "bloody shirt" rhetoric to keep Democrats on the defensive. Both sides looked to court voters by appearing to be the most energetic on the topic of veteran care – this might have something to do with the fact that while the Senate debated the Arrear Law, "twenty-five senators faced reelection in their state

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<sup>63</sup> Skocpol, "America's First Social Security System," 105.

<sup>64</sup> McClintock, "Civil War Pensions," 464. This is an assessment by McClintock of Skocpol's arguments.

legislatures.”<sup>65</sup> It became clear to politicians in both parties that support for veterans through expanding their pensions could be a useful political tool to gain influence during election cycles.

One of the main ways politicians used pension legislature to their benefit was based on the fact that Congress had some control on when and where pension benefits were distributed. Even though the bills passed on the pension system laid out guidelines that were to be used by bureau agents to determine the validity of claims, by 1879 the system had been amended so many times that it developed room for a good deal of personal interpretation by officials. With the passing of the Arrear Law, tens of thousands of applicants came forward to apply and tens of thousands more previous cases came under review in order to determine back pension pay. This created a backlog of applicants that opened the door “for the manipulation of the timing of case processing.”<sup>66</sup> By carefully playing the needs of their constituents, politicians on both sides could craft support from veterans by focusing aid to areas that made a difference in upcoming elections.

Essentially, congressmen became a type of lobbyist for veterans. For instance, if a soldier felt that his application did not receive adequate attention, or took longer than it should, that soldier would write to his congressman for assistance with his claim. Michigan Representative Roswell G. Horr, remarking in 1882 of the assistance requests of former soldiers, said, “I think it is safe to say that each member of this House receives fifty letters each week; many receive more... One-quarter of them, perhaps, will be from

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<sup>65</sup> Skocpol, “America’s First Social Security System,” 103.

<sup>66</sup> Skocpol, “America’s First Social Security System,” 107.

soldiers asking aid in their pension cases.”<sup>67</sup> Congressmen spent a good deal of time contacting the Pension Bureau in order to check on the status of claims for the veterans who wrote them.

In a very short time, the Pension Bureau became flooded with requests from politicians wanting to know what was going on with this claim or that. Consider these numbers: “In 1880 it was reported as amounting to nearly 40,000 written and personal inquiries; in 1888 it had more than doubled (94,000 items); and in 1891 it reached a peak of 154,817 congressional calls for information of the condition of cases, an average of over 500 for each working day.”<sup>68</sup> In this way, congressmen put a great amount of pressure on the Pension Bureau to provide answers for all these numerous daily requests – thus they became, whether intentional or not, a lobbying group for veterans in order to court their favor.

Whenever possible, bureau agents were encouraged by politicians to give claims the benefit of the doubt or to move them along as quickly as possible. This did not always mean that the Pension Bureau would approve the claims that politicians wanted them to. When this occurred, “private pension bills” were used to get certain claimants on the rolls, or to increase the benefits for those already receiving a pension.<sup>69</sup> It should be noted that even though these “private pension bills” did exist, they did not make up a large number of new applicants, nor did they effect a great number of those already on the rolls. This did not, however, stop congressmen from spending a great amount of effort to get them passed. In just the 49<sup>th</sup> Congress alone – serving from 1885 to 1887 – “40 percent of the legislation in the House and 55 percent in the Senate consisted of

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<sup>67</sup> Skocpol, “America’s First Social Security System,” 107.

<sup>68</sup> Skocpol, “America’s First Social Security System,” 108. Skocpol here quotes the work of White.

<sup>69</sup> Skocpol, “America’s First Social Security System,” 108.

special pension acts.”<sup>70</sup> Even if the total number of claims aided by the help of congressmen was not a high percentage, just the fact that politicians from both parties spent so much time aiding veterans reveals how important it was to them – both because they wanted to be their champions, and because both parties wanted to use them to gain majority control over Congress.

Throughout the remainder of the nineteenth century, private bills became the standard operating procedure within Congress. With the emergence of veterans groups who worked to help potential veterans apply, as well as to work for better and broader benefits for soldiers and their families, it is not surprising that both Democrats and Republicans recognized the potential benefit of cultivating support from a growing block within America. And the lengths to which some politicians went to curry favor seem rather bold. Theda Skocpol, one of the leading researchers on Civil War pensions and the pension system overall, claims that some bills by congressmen “actually changed the military records of former soldiers classified as deserters in order to make them eligible for pensions.”<sup>71</sup> One can see in this the pervasiveness of the impact the issue of veteran care became, both in the everyday life of veterans and politicians.

However, with the rapidly rising cost of funding pensions, which resulted following the passing of the Arrears Law, Democrats and Republicans began a split on the issue of support for Civil War pensions. While Republicans represented themselves as the party who oversaw the preservation of the nation, Democrats were concerned with the tremendous cost of funding the pension system. They wanted to lower tariffs and check the rising spending on pensions, as well as examine cases of fraud that existed with

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<sup>70</sup> Skocpol, “America’s First Social Security System,” 108.

<sup>71</sup> Skocpol, “America’s First Social Security System,” 109.

some claims. The Republicans, by contrast, wanted to keep the tariffs – especially the extra money they generated that could then be used to expand federal programs, such as the Pension Bureau.

The plan to cultivate pension recipients as a solid voting block (a block comprised of “an electorate in which more than 10 percent of the potential voters were Union veterans”) was a success for the Republicans.<sup>72</sup> By pushing for continued tariffs and expanded benefits for veterans and their dependents, Republicans gained significant support among northern and western states, and helped secure the White House in 1888. It led them to a majority in both houses of Congress that year.

By 1890 the pension system in America grew to unprecedented heights. Never before had so many veterans received assistance from the government. By 1890, Civil War pensions became, what Megan McClintock calls, “a social welfare system of vast dimensions.”<sup>73</sup> Tens of thousands of former soldiers, as well as their dependents, had the ability to better manage the turbulent times of the late nineteenth century. Of course, as the number of recipients on the rolls went up, so did the cost each year. Yet Americans felt a sense of duty to take care of those who had sacrificed for the nation. In this sense, America’s wounded veterans became a national investment: an investment by the people to take care of the wounded and needy, and an investment by politicians who recognized not only the need to support veterans, but also the importance of having this new voting block on their side.

From the passing of the pension act in 1862 until 1890, veterans saw their ability to claim a pension from the government expand in great ways. Over these years the

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<sup>72</sup> Skocpol, “America’s First Social Security System,” 112.

<sup>73</sup> McClintock, “Civil War Pensions,” 463.

definition of who could file a claim, who could benefit from a claim, and the criteria needed to be approved, all broadened making it easier for more soldiers to apply. As dramatically changing as the General-Law period was, it represents only the first period of expansion. In 1890, new considerations emerged that would, once again, cause a dramatic shift in how the pension system would be defined, and who it would provide aid for.

## THE DEPENDENT PENSION ACT OF 1890

Since the passing of the Pension Act of 1862, the pension system for Civil War veterans underwent various reforms over the next twenty-eight years. Whether done out of a sense of duty to those who wore the uniform, political opportunism, or a combination of these and other things, the result was an increased number of veterans and their dependents receiving aid from the federal government. It also increased the cost needed to maintain an ever-growing group of claimants, a situation that caused both Democrats and Republicans to hotly debate the best course of action for monitoring the system.

As revolutionary in scope as the General-Law period was, legislation passed in 1890 expanded the pension system to an even greater degree. The Dependent Pension Act (or Disability Act), passed on June 27, 1890, created a system specifically designed for veterans of the Civil War, and relaxed previous restrictions of evidence in order to broaden the criteria for applicants with elderly veterans in mind. Those who might obtain a pension were:

All persons who served ninety days or more in the military or naval service of the United States during the late war of the Rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter by suffering from a mental or physical disability of a permanent character, not the result of their own vicious habits, which incapacitates them from the performance of manual labor.”<sup>74</sup>

This new law changed the nature of the pension system dramatically.

This was a measure for former soldiers of the Civil War, or “war of the Rebellion,” who served in the Army or Navy for at least ninety days and were honorable discharged. A soldier must have a disability that keeps him from working, but this is

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<sup>74</sup> U.S. Congress, The Disability Act of June 27, 1890, accessed September 15, 2016, [www.drbronsontours.com/pensiondisabilityactofjune271890.html](http://www.drbronsontours.com/pensiondisabilityactofjune271890.html)

*apart* from the ninety day service requirement. There is no requirement that one's disability be the result of the war.

As discussed earlier, under the General-Law system a soldier or his dependent had to show an abundance of proof that he not only had a debilitating injury, but that the injury was a direct result of fighting in the Civil War. A soldier had to file his claim, get verification from the War Department, have a federally approved doctor examine the injuries to verify they came from the war, and even then it was not certain that the soldier would receive a pension. Widows and mothers had to provide documentation that the marriage was real, that the children were legitimate, and (for widows) be under moral scrutiny to ensure there was no remarriage or cohabitation. None of these things were a focal point anymore as a result of the Dependent Pension Act of 1890. Now all a soldier had to do was provide proof that he served for a ninety day period and were honorably discharged. The only other restriction is that the disability cannot be a "result of their own vicious habits." In other words, get drunk and fall off your horse and injure yourself – do not try to claim a pension for that. It is also interesting that the disability can be either "mental or physical." If someone were to have a mental breakdown and become insane, he was still eligible for a pension. A widow needed only to show that her husband died – not that it had anything to do with the war. She must, however, "have married him prior to June 27, 1890," and be "without other means of support than her daily labor."<sup>75</sup> Additional pension benefits, such as an additional two dollars for each child, still applied as it existed before 1890.

While much of the new act helped veterans and their dependents and provided an easier means to receive aid, the new law did not make things better in all ways. For

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<sup>75</sup> Glasson, "The National Pension System," 49.

example, some types of disabilities that were considered valid under the General-Law system were no longer covered under the new act of 1890. This was because “they do not materially interfere with the performance of manual labor.”<sup>76</sup> If a soldier was deaf in one ear, for instance, he would no longer be covered as he was before 1890.

Under the new act, the rating system for disabilities could, for some, be lowered and put those affected in a difficult position. If a veteran was completely unable to perform on the job, then the rate for total disability was twelve dollars under the new act. While this was an improvement for a veteran who before received less than twelve dollars for their disabilities, what about someone who received a pension at a higher rate? According to historian William H. Glasson, it could be severely reduced: “A degree of disability that would entitle a claimant to the thirty dollar rate under the general law is pensioned under this act at twelve dollars per month.”<sup>77</sup> By this new scale, a soldier could have their pension cut by almost two-thirds.

While the act of 1890 changed the pension system with Civil War veterans in mind, it also introduced into the pension process something that had been absent under the General-Law system: age. Never had a soldier’s age been important when deciding what their pension might be. Veterans applied at different times in different years, some applying soon after the war, some applying years later. The determining factor did not factor in the age of the soldier. Under the new law, however, the older the claimant was, the more likely that person was guaranteed a pension. A veteran who was seventy-five years old was eligible for a full pension “for senility alone,” and as long as a veteran was

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<sup>76</sup> Glasson, “The National Pension System,” 48.

<sup>77</sup> Glasson, “The National Pension System,” 48.

at least sixty-five years old, that person could do no worse than the minimum.<sup>78</sup> In a way, these new regulations became an extra protection for aging veterans and insured that they received some aid into their old age.

It would not take long before additional laws were passed by Congress that simply made a veterans age the sole requirement to receive “disability for manual labor.”<sup>79</sup> Of course, as the new century approached, Congress understood that veterans of the Civil War were getting older and it became harder for them to maintain a place in the workforce. This might help explain why politicians began using age as a determining factor. By 1907, Congress made the age of an applicant a sole criteria by which to receive a pension: “the age of sixty-two year and over shall be considered a permanent specific disability within the meaning of the pension laws.”<sup>80</sup> With the passing of laws such as this, veteran pensions became a sort of retirement pension granted in order to care for aging veterans and their dependents.

As one might expect, the opening up of the pension laws so that *all* veterans, not just wounded ones, could be eligible for a pension brought thousands of new applicants to the Pension Bureau. The 1890’s saw record highs in both numbers of veterans on the pension rolls and government costs for maintaining them. In 1891, just thirty-nine percent of all Civil War veterans received a pension. By the turn of the century that number rose to seventy-four percent – almost double.<sup>81</sup> The percentage of Civil War veterans on the rolls continued to rise over the next two decades when, in 1915, the

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<sup>78</sup> Glasson, “The National Pension System,” 48.

<sup>79</sup> Skocpol, “America’s First Social Security System,” 115.

<sup>80</sup> Skocpol, “America’s First Social Security System,” 115.

<sup>81</sup> Skocpol, “America’s First Social Security System,” 114.

number of Civil War veterans receiving a pension reached ninety-three percent.<sup>82</sup> By extending the pension laws and making it easier for veterans to get aid, Congress had gone about as far as it could go in regard to lending a hand to veterans.

As the number of veterans on the rolls increased, so did the cost. In response to the growing need pay for veteran pensions, the 1890's saw the first billion dollar Congress. By the end of the century, America was spending over forty percent of its annual budget on pension payments. This put a great strain on the national economy at a time when the country faced other financial hardships as well. This caused the political fervor around the issue of helping veterans to lessen as neither party, not even Republican, liked reminding people of the growing cost of supporting former soldiers.

This was one of the great weaknesses of the 1890 law, pointed out by Glasson, which by making a pension available to anyone who served ninety days did not seem too many to be fair. What if the person who applied did not really need a pension to help with his finances? What if they were well off with plenty of means to provide a home for their family and take care of their needs? According to the law, this did not matter. The law made no distinction between a rich man and a poor man. By this measure, a man from a prominent, wealthy family, who never saw combat a day in his life because he was stationed somewhere far away from the fighting, could sustain an injury that took away his ability to perform manual labor and receive a monthly pension for the rest of his life. The injury did not have to be related to military service. All he had to do was show he served for ninety days and receive certification from a government doctor that his injury was debilitating to the point of inability to perform labor. A pension could be obtained, even if the person did not need it.

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<sup>82</sup> Skocpol, "America's First Social Security System," 114.

For Glasson, and others, this was a flaw in the system. The system moved away from being one of aid and comfort to the poor, disabled veterans who served the nation because whether one was poor or rich was no longer taken into consideration. It put the rich and the poor on the same level – just as it put someone who saw the worst and most horrific battles on the same level as someone stationed at a fort in Washington D.C. who never once heard a shot fired from a hostile enemy.

Despite its weaknesses, the Dependent Pension Act of 1890 ushered in the second crucial period after the General-Law system in 1862. It expanded the pension system beyond simply caring for wounded veterans and established a type of military retirement plan for elderly soldiers who were growing too old to work by the end of the century. In so doing, the military pension system became one of the greatest social programs in the history of America – or as Megan McClintock described it, a “social welfare program of vast dimensions.”<sup>83</sup> However, aid for America’s veterans was not just limited to dispersing a monthly fee. There was another system of care for the most needy of veterans – a second system of care that would go hand-in-hand with the pension system.

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<sup>83</sup> McClintock, “Civil War Pensions,” 463.

## THE ESTABLISHMENT OF VETERAN HOMES

When considering how best to help veterans, one group arose that could not be ignored: soldiers unable to care for themselves even with a pension. Unfortunately, by the time of the Civil War, former soldiers who could not live on their own were often left to find residence in an asylum – a place that many looked down on as a refuge of those who lived off the charity of others. Yet former soldiers who sacrificed for their country were not the same as someone living off the kindness of others. They had earned the right to receive help from their country and many officials recognized the importance of making sure veterans who needed assisted living would get it.

Yet Congress also recognized that providing care meant more than simply building structures throughout the country. It also meant striving to remove the negative stigma attached to the word “asylum.” The National Asylum Board, created by Congress during the Civil War to devise a national system of care for wounded soldiers, wanted to change the discourse by referring to the new residence for soldiers as “homes.”<sup>84</sup> It understood that by making it about building new “homes” for veterans, more support could be generated not only in Congress, but from a populace who wished to provide aid and comfort for those who sacrificed, as well as for their dependents. Eventually, in 1873, Congress “officially changed the name of this system to the National Home for Disabled Volunteer Soldiers (NHDVS)”<sup>85</sup> The decision to give the new organization a domestic feel helped shape public opinion and support so that both federal and state officials could work together in creating it.

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<sup>84</sup> Patrick J. Kelly, “Establishing a Federal Entitlement,” in *The Civil War Veteran: A Historical Reader*, ed. Larry M. Logue and Michael Barton (New York: New York University Press), 229.

<sup>85</sup> Kelly, “Establishing a Federal Entitlement,” 228.

There was a stigma attached to the word “asylum” and the officials worried that soldiers would “equate the National Asylum with the poorhouse.”<sup>86</sup> These bad perceptions were an early obstacle not easily overcome. Even though poorhouses dated back to the colonial period, and were meant to act as a means of reforming as well as helping those who resided in them, by the start of the Civil War these places were little more than shelters for America’s poor. These poorhouses could be found in cities all across the country and sheltered not only men, but women and children as well – and they were not good places in which to find oneself.

Many viewed poorhouses as nothing more than a den of thieves, full of men who looked to take advantage of the system in order to get a free ride (much similar to some arguments in modern times against government assistance). In this way, former veterans and their families, as well as others who really benefited from aid, were lumped in with those of an unsavory nature. National Asylum officials did not want the new facilities meant to help veterans seen in this light. It therefore became an “immediate priority of the Board of Managers of the National Asylum” to assure “veterans and the general public that the federal sanctuary created for ex-soldiers differed fundamentally from the local poorhouse.”<sup>87</sup> It was important that veterans and their families receive a higher level of care separate from other institutions or charitable asylums.

Here is an example, however, where political ambition played a somewhat positive role in the establishment of veteran homes. While the failure of past attempts to help house the veterans of previous wars were still well within memory of veterans, and the skepticism it aroused in veterans against any potential attempt in the future, the newly

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<sup>86</sup> Kelly, “Establishing a Federal Entitlement,” 229.

<sup>87</sup> Kelly, “Establishing a Federal Entitlement,” 230.

in power Republican party wanted to be seen as having the ability to fix the old problems and develop a system of veteran housing that actually worked. To be sure, Republicans cared about the brave soldiers who fought for the Union, but they also cared about their own political careers as well. This dual drive of wanting to help both the soldiers and their own political careers motivated many Republicans to push cooperation with state agents in order to establish new homes for veterans.

In his article “Establishing a Federal Entitlement,” historian Patrick J. Kelly gives a good insight into why board officials pushed to change the language away from “asylum” and to “homes.” In the late nineteenth century, the “home” was seen as the domain of the woman – the husband was considered by many as the primary bread winner, but the home was where the wife took care of things. The “home” was a private place where one received care and sanctuary. This was the ideal that Asylum Board members wanted to portray about the new homes for veterans. As Kelly points out, these new homes were a new equivalent for the mother or wife – a veteran home was where a former soldier received “food, shelter, clothing, and medical care, as mother and wives assumed for their families.”<sup>88</sup> In a sense, the government took the role of a mother to the wounded children who had served her.

Even though the desired perception the NHDVS wished to portray was one of a caring “home,” that did not mean a true “home” was what they had in mind regarding the dependents of veterans. The new veteran homes were designed to accommodate men exclusively, not their dependents. Women, children, and mothers were not given any special status on their own. While they did receive pension benefits, these were contingent on the man, whether that man be a husband, father, or son. Even though from

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<sup>88</sup> Kelly, “Establishing a Federal Entitlement,” 231.

1862 to 1874 “the number of dependents receiving pension checks...slightly surpassed the number of ex-soldiers receiving pension,” the NHDVS considered the new homes as places for veteran care and no one else.<sup>89</sup>

This exclusion of wives and children did not last long. Congress quickly realized that keeping a recovering soldier's wife and children away from him and forcing them to live somewhere else did little to help the recovery process. It also discouraged many veterans from wanting to seek help in a veteran's home because none liked the idea of being separated from their families. Not wanting to alienate the soldiers with whom they were seeking to help, board officials devised a plan in which separate “detached cabins” would be built on the grounds by the homes in order that a veteran and his family could stay together.<sup>90</sup> After all, it was reasoned, what better way to promote healing and “home” than by making sure families stayed together?

One of the key figures in the establishment and reform of the National Asylums into National Homes was Benjamin Butler, a veteran of the Civil War himself. Butler recognized early that not only did the asylum institution need to be changed to better give veterans the care they needed, but that the government did not do enough for dependents. Butler was one of the main leaders that helped shape the NHDVS into a successful system for veterans. In fact, he helped improve the system to the point that “by 1876, ten years after its founding, the system had sheltered nearly twenty thousand men.”<sup>91</sup> Butler helped change the minds of ex-soldiers who were hesitant about leaving their families in order to go into one of the homes.

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<sup>89</sup> Kelly, “Establishing a Federal Entitlement,” 236.

<sup>90</sup> Kelly, “Establishing a Federal Entitlement,” 236.

<sup>91</sup> Kelly, “Establishing a Federal Entitlement,” 236.

Congress, however, did not change the system to allow family members to join veterans in the homes, despite the urging of men like Butler. The dependents of an ex-soldier might be eligible to receive a pension, but they were not eligible to receive any of the further benefits a soldier was.

This reveals something about the government and the system of care that it gave to its former soldiers – *two* different forms of aid developed for veterans.<sup>92</sup> The first being a pension for service injuries incurred during the war (amended in 1890 to simply serving at least 90 days), and the second was a system of government run assisted living homes that provided support and medical care for recovering veterans. In other words, a veteran could not only apply to receive a monthly pension, he could also join a veterans home that provided them with the comfort and medical care they needed to recover and live their lives again.

This kind of assistance was crucial in the aftermath of the Civil War. Hundreds of thousands had perished and many more suffered terribly from service in it. Homes were destroyed and families ripped apart. Yet, the United States government did not abandon its citizen volunteer soldiers after they went back home. The government took steps to ensure that these men, and their dependents, were provided for. This was a key step in the recovery process of the nation.

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<sup>92</sup> Kelly, “Establishing a Federal Entitlement,” 237.

## UNBALANCED SCALE: BARRIERS FOR BLACK APPLICANTS

In all the various forms of the pension system that developed over the years from 1862 to 1890 and beyond, Congress (especially when it was a Republican controlled Congress) intended its measures for pension care to apply to all military men who wore the uniform and needed aid. Ideally, race was not to be a factor in determining which veterans deserved a pension. As long as an applicant showed the appropriate evidence that he was, in fact, a veteran with a disability, then the government agreed to provide him with a monthly pension.

This was an attempt by the government to keep the ever changing pension laws neutral on the issue of race. After all, black soldiers suffered and died just like white soldiers did in defense of the Union and earned their right to a pension just like white soldiers. As one Congressional committee put it, there is “no reason why the heirs of colored soldiers should not be put on the same footing as to bounty and pensions as the heirs of white soldiers, and many reasons why they should.”<sup>93</sup> While racism still existed throughout the country, at least in the pension laws Congress understood that soldiers, both white and black, should be viewed on equal footing.

Yet despite all attempts at equal treatment through the law, the percentage of black claimants and their dependents who received a pension was much lower than that of whites. An examination conducted by Donald R. Shaffer on a sample of pension claims shows that “92 percent of white Union veterans...made at least one successful

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<sup>93</sup> Larry M. Logue and Peter Blanck, “‘Benefit of the Doubt’: African-American Civil War Veterans and Pensions,” *The Journal of Interdisciplinary History*, Vol. 38, No. 3 (Winter, 2008): 377.

application, compared to only around 75 percent of former black soldiers.”<sup>94</sup> In addition, Shaffer also notes that “nearly 84 percent of the white widows managed to receive pensions, while only around 61 percent of African American widows made at least one successful application.”<sup>95</sup> How could that be? In a system designed to be neutral on the subject of color, why was there such a disparity in the success rate between white veterans and black veterans?

One main reason for this, as pointed out by historians Larry M. Logue and Peter Blanck, is that while the laws may have been color-blind, the people administering the pension laws were not. The racist attitudes toward black men and women still prevailed after the conclusion of the Civil War, and many officials simply did not view black people as equal. As Logue and Blanck put it, “they were at once devious (‘those of that race who can be counted reliable and absolutely truthful, are a rarity indeed’) and naïve.”<sup>96</sup> These attitudes affected how an application by a black veteran or his dependents got processed and, in the long run, whether or not it was approved.

Shaffer points out an additional reason for the disparity of success between white and black soldiers – “special disadvantages.”<sup>97</sup> The majority of black applicants had difficulty in meeting the criteria laid out by the Pension Bureau for things such as proving their identity or, for the widow, proving a valid marriage existed. Having to demonstrate their worthiness, as well as provide proper documentation, when combined with the inherent racism and bigotry held by administration officials left many African American

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<sup>94</sup> Donald R. Shaffer, “I Do Not Suppose That Uncle Sam Looks at the Skin,” in *The Civil War Veteran: A Historical Reader*, ed. Larry M. Logue and Michael Barton (New York: New York University Press), 202.

<sup>95</sup> Shaffer, “I Do Not Suppose,” 202.

<sup>96</sup> Logue, “Benefit of the Doubt,” 377.

<sup>97</sup> Shaffer, “I Do Not Suppose,” 201.

veterans at a serious disadvantage when applying for a pension that caused many to be rejected.

It must be stressed again that the pension application process was not easy. There were a number of steps to the process that made it not only time consuming, but costly. First, a veteran sent his application, which detailed his military service and the nature of his disability, to the Pension Bureau. The Pension Bureau then made a request to the War Department to verify the information given by the applicant, and could also ask for additional confirmation from the applicant in the form of testimony from fellow soldiers and commanding officers. Once the first step was completed, the second step required the applicant to undergo an examination from a government approved doctor who determined the validity of the disability and rated the level of the disability. Finally, the Pension Bureau either determined what the monthly payment was or rejected the claim.

This was a lengthy process from the beginning, and a risky one. A veteran might go through this entire process and still be rejected. An applicant could file a new claim as additional disabilities arose, but this was an additional cost to a process that was already taxing on most applicants. These expenses were burdensome for all veterans, but even more so for African Americans – especially those who were former slaves. White veterans did not face the problems of identity, literacy, and cost to the same degree that African American veterans did.

For example, the first step in the application process dealt with proving the identity of the applicant – who was he and where did he serve? Just this first step was a difficult obstacle for many African American veterans for several reasons. The first was the name used by ex-slaves who fought in the army. As Shaffer points out, “many former

slaves joined the army under their master' last names but after the war took new surnames to assert family connections and their identity as free men."<sup>98</sup> This did not just stop with the veterans. It was possible for members of the same family to have different surnames, which made proving family connections more difficult. If the mother of a son who fought with the United States Colored Troops had a different surname than her son, this proved to be an additional hurdle as well.

There were also cases of African Americans joining the army under a false name in order to hide their identity from anyone looking for them – whether it be because they were runaways, or perhaps they joined without the blessing of their pro-Union owners. This caused problems with the application process because the War Department looked for the name used during service in the army. If the new surname used by a black veteran did not match the name he gave during the war, his claim might be rejected or, at the least, be severely delayed. The Pension Bureau could send someone to investigate the claim, but this could delay approval for weeks or even years.

Even something as simple as a date of birth, which most people take for granted, was a huge obstacle for African American veterans. Many former slaves did not know their date of birth, usually because records no longer existed or because their “owners had deliberately kept such knowledge from them.”<sup>99</sup> This became crucial as age became more important for determining a pension. In 1907, “Congress made old age itself...the legal basis for a pension,” which it defined as sixty-two years of age – an age that included most Civil War veterans.<sup>100</sup> This was an important change because the older you were, the more pension money you could collect each month. If a former slave who fought for

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<sup>98</sup> Shaffer, “I Do Not Suppose,” 204.

<sup>99</sup> Shaffer, “I Do Not Suppose,” 205.

<sup>100</sup> Logue, “Benefit of the Doubt,” 382.

the Union could not validate his date of birth, this alone could cause his claim to be rejected or delayed. White veterans did not face this kind of obstacle.

Literacy was one of the most difficult obstacles for African American veterans to overcome. This is an area where the effects of slavery on former slaves can be clearly seen; where place of birth can, as Logue and Blanck point out, be the “basis of an excellent proxy for gauging postwar African-American deprivation.”<sup>101</sup> Just being able to complete an application for black veterans proved to be a difficult obstacle. Any mistake in filling out the proper forms would delay the claim. Further still, since they were not able to read, if an agent or someone hired to help with the application misspelled the name of an applicant, the veteran filing the claim could not tell and this could also delay the claim or even cause its rejection.

According to the census of 1860, “99.6 percent of the black population in the thirteen southern states...were slaves.”<sup>102</sup> This was a population that was forbidden, by law in most southern states, to learn how to read and write. They were deprived of any kind of knowledge that could prepare them for life outside of slavery because their masters saw their education as a potential problem. Whereas nearly two-thirds of African Americans born in free states could read and write by 1870, only 13 percent of African Americans born in slaves states could do likewise.<sup>103</sup>

This meant that black veterans who were from slave states usually had to hire someone to fill out the forms for them. This meant the hiring of an intermediary such as a lawyer or a claim agent (someone who might be a lawyer or might be someone looking to earn extra money). This was an additional cost that most black veterans could not

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<sup>101</sup> Logue, “Benefit of the Doubt,” 383.

<sup>102</sup> Logue, “Benefit of the Doubt,” 383.

<sup>103</sup> Logue, “Benefit of the Doubt,” 383.

afford. Yet without these lawyers and agents, most illiterate black veterans would never have been able to apply at all.

Unfortunately, while there were a good many lawyers who helped many black veterans receive the pension due them, many lawyers and agents did a terrible job helping their clients. A good number presented false evidence and false documentation in order to get a claim approved. Others, as will be shown later, did the disservice of depriving back pay and bounty money from veterans and their families by claiming to have paid the families what was due them, and then keeping the money for themselves.

If a black veteran or his dependents were able to deal with the extra expense required to hire a lawyer to aid in the application process, the next hurdle would be the examination by an officially sanctioned medical examiner. These examiners were located throughout the country, but in specific cities. This means that in order to comply with the examination process many veterans, both black and white, had to travel to the examiner that was closest to them. In other words, if a veteran wanted to be examined, they had to come up with the money to travel, and some had to cover long distances. While this was a burden for white veterans and their families as well, when one considers that the average annual income for a black family was only \$250 (which was not all that much), one can see how having to come up with extra money for lawyers and travel became an overwhelming burden for black veterans and their families.<sup>104</sup>

As challenging a problem as extensive extra costs and low literacy was for black veterans, most pension historians trace the main obstacle for black veteran pension claims to the examining doctors and bureau administrators who were to oversee the process. A great many bureau agents did not like African American veterans and viewed their claims

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<sup>104</sup> Shaffer, "I Do Not Suppose," 204.

with greater suspicion than they gave to white applicants. Each time an agent had problems with verifying the name of an applicant, or had problems receiving proper documentation, or even getting an applicant to remember a specific date, the agent viewed the claim with more skepticism.

This greater scrutiny shown toward the claims of black veterans and their dependents was not extended to the claims of white veterans. In fact, as Shaffer pointed out, deficiencies with white claimants were given a pass more often than black claimants: “While pension bureaucrats more often overlooked defects in white pension cases, they were less likely to do so for African Americans or to give them the benefit of the doubt.”<sup>105</sup> This was even more true in the General-Law period before 1890 when “black applicants were less than one-third as likely as white veterans to be approved” for a pension. In other words, black veterans had to work extra hard and go to extraordinary lengths to get approval from a system that was supposed to treat them as equals.

As mentioned above, it was not just the bureau agents who discriminated against black claimants. The medical examiners did so as well. They, too, were more likely to reject the claims of a black soldier who struggled to provide the proper documentation a white soldier could. Even if they did provide the proper forms, as Logue and Blanck revealed, it did not always mean they would receive verification from an examiner: “Not even black veterans with military records of service-related trauma to support their cases or with the rank of corporal or sergeant...were as likely as their white peers to receive a pension.”<sup>106</sup> Medical examiners were not as bad as bureau agents in terms of their willingness to distrust black claims, but their racism and bigotry, when added to that of

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<sup>105</sup> Shaffer, “I Do Not Suppose,” 211.

<sup>106</sup> Logue, “Benefit of the Doubt,” 394.

the bureau agents, created yet another obstacle for black veterans to have to overcome that white applicants did not have to face.

For many agents, the mere fact that an applicant was a black man, or one of his dependents, was enough to turn them against the claim.<sup>107</sup> This is not to say that all white applicants were approved and all black applicants were rejected, but there was an inherent amount of racism within the Pension Bureau that made it more likely that a black applicant would be denied the pension they deserved.

This additional racism and prejudice that made it harder for black veterans to receive their pensions had lasting effects beyond just a denial of pension funds. This put the lives of veterans at risk. If a black applicant had a serious disability and needed help, a rejection of his claim could shorten his life. A widow or mother who was dependent on the soldier to provide for them could be left helpless to take care of themselves without great struggle. For a black veteran to be awarded the pension they deserved could improve their lives and the lives of their families.

In other words, “pensions were associated with longevity.”<sup>108</sup> An improved quality of life, through the aid of a pension, meant a longer life. This is what a racist medical examiner or pension agent put at risk. As Logue and Blank pointed out, “if pension officials’ evaluations had not been susceptible to the race of applicants, some veterans’ time ‘on this side of the grave’ would have been prolonged.”<sup>109</sup>

Not only was the health of the veteran put at risk, but also the potential for providing a better life in the future for their families. Consider this example, at the time of the census of 1900, roughly half of all African Americans who drew a pension owned

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<sup>107</sup> Logue, “Benefit of the Doubt,” 394.

<sup>108</sup> Logue, “Benefit of the Doubt,” 396.

<sup>109</sup> Logue, “Benefit of the Doubt,” 397.

their own homes. By contrast, of those African American veterans who were not awarded a pension by the 1900 census, less than a third owned their own home.<sup>110</sup>

Having the support of a pension not only meant a chance at a better life in the present, but meant having something to leave behind for your family so that they might have a better future.

Difficulties within the pension system affected both white and black applicants. The process could be long and difficult, taking many years, and still result in an applicant being rejected for various reasons. Yet African American veterans not only faced the same difficulties as white applicants, they faced additional obstacles as a result of the system of slavery – a system that left the overwhelming majority of former slaves without the ability to read and write; without the ability to provide adequate information about their date of birth, marriage records, or the funds necessary to pay for lawyers and travel expenses.

Combine these extra hurdles with a Pension Bureau laced with racism and prejudice and it is not hard to understand why so few black veterans applied for a pension in the early years after the Civil War. Nor is it surprising that the success rate for black veterans was so much lower than their white peers. Yet as unbalanced as the system was in regard to fairness, this injustice came from an external source – the government. More disturbing is the injustice committed against black veterans and their families by the men they hired to help them: their lawyers. Men who gained the confidence of these families and offered their assistance in gaining the money owed to them, and then took from these families at a time when they needed help the most.

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<sup>110</sup> Logue, “Benefit of the Doubt,” 395.

What follows is an example of just such an injustice – an injustice that saw the pain and suffering faced by the families of black veterans in the wake of the Civil War multiplied and enhanced by those who sought to take advantage – and injustice that would make its way to the highest court in the land, only to find that the court offered no protection from fraud and theft. The trials of Louis Benecke were an episode in the past that reveal the lengths one group of men would go to in order to create additional obstacles for black veterans for their own gain.

## **CAPTAIN LOUIS BENECKE**

As mentioned in the previous section, a good many African American veterans and their families, especially those who lived in former slave states, often lacked the ability to read and write. To help with their applications, these veterans and their families turned to a lawyer or a claim agent – someone who specialized in helping veterans file the appropriate forms for their pension – to send off the application for them, for a fee. These agents acted as the intermediary and handled all contact with the Pension Bureau. It was their job to make sure the application met all requirements for approval, and then, in cases of retrieving back pay and bounties due, collect the money from the Bureau and give it to the person who made the claim.

One such person who acted as an intermediary agent for the families of African American soldiers was a man named Louis Benecke. After the Civil War, Benecke, and some close colleagues who joined him in his practice, represented a number of veterans who fought for the Union and their families for all back pay and bounties due them. They also assisted in setting up their pension claims. Benecke's role was to make sure the claims were properly filled out, receive the money due from back pay and bounties, then, after collecting his fee, disperse the money to the veteran or family member he represented.

Benecke, however, did not comply with this arrangement for some of his clients. Instead of turning over the money sent to him from the Pension Bureau to the families, he kept it, while at the same time claiming that he paid all money due to the families in full. This resulted in Benecke being indicted on 10 counts of “wrongfully withholding back

pay and bounty” from veterans and their families.<sup>111</sup> These indictments led Benecke, a man of otherwise good standing in his community, into the first of his trials – trials that would end in front of the United States Supreme Court.

Louis Benecke was born May 1, 1843 in Stiege, Germany. He was the son of Heinrich Ludwig Theodore Benecke and Johanna Auguste Bock, German immigrants who settled in Brunswick, Missouri in 1856.<sup>112</sup> Louis’s father had been a teacher and forest supervisor in Germany, but due to his democratic leaning political views decided to come with his family to America. Louis attended only three months of high school before finding work to help his family. In the years leading up to the war, Louis worked as a clerk at the Hotel Harry House and William Ladd & Co., a dry goods store. It was at Ladd & Co. that Louis learned book-keeping and first began studying law.<sup>113</sup>

At the outbreak of the Civil War, Benecke decided to join the Union company that formed in his town – a company he happily joined as the tactics he saw there were similar to those he learned as a student of Blankenburg College in Germany. It is difficult to say just how much military experience Benecke gained at Blankenburg since he was only there one year and did not graduate, unlike his brother Robert who did. In any case, Benecke jumped at the opportunity to serve as a loyal Union man. He was seventeen years old.<sup>114</sup>

However, Benecke’s newly formed Union company was not as it first appeared to the new young soldier. After leaving town by steamboat in order to report to a military

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<sup>111</sup> Edwin B. Smith, “Brief for the United States”, in *U.S. Supreme Court Transcript of Record, U.S. v. Benecke*, U.S. Supreme Court (1878), 1.

<sup>112</sup> Louis Benecke, *Historical Sketch of the “Sixties” in Chariton County, Missouri* (1909), in the Yale University Library, 36, accessed January 28, 2016, [http://www.hathitrust.org/access\\_use#pd](http://www.hathitrust.org/access_use#pd). This book was written some years after the war and the information used is that of Benecke’s personal account of his experiences.

<sup>113</sup> Benecke, *Historical Sketch*, 36.

<sup>114</sup> Benecke, *Historical Sketch*, 5.

camp to begin drill instruction, Benecke's company received new orders to report to Lexington, Missouri. The following morning after arriving in Lexington, Benecke awoke to a shock. The commander of the forces gathered at Lexington gave orders that the American flag be taken down and replaced with "a new strange flag."<sup>115</sup> The commander then gave orders "requiring all to take a new oath which left out the clause 'to support the Constitution of the United States.'"<sup>116</sup> This was not what Benecke signed up for.

Benecke's "Union" company was part of the State Militia commanded by former Missouri governor Sterling Price. While publicly neutral, Price had given his allegiance to the Confederacy and turned the Missouri State Militia into a virtual arm of the Confederate army. When Benecke received the order to take the new oath he refused and sought out Price to inform him that he did not wish to fight against the Union. Price granted any man who did not wish to take the new oath permission to leave the camp and asked those who wished to do this to step forward. Benecke and several others did, under tremendous jeers and threats from the remaining troops. According to Benecke, he and the others that stepped forward "were marched back to our quarters, and then and there stripped of our uniform and left without any clothing other than our drawers and shirts."<sup>117</sup> After gaining some new clothes in Lexington, Benecke began the long walk back to Brunswick.

Despite the negative beginning to his military career, Benecke promptly joined in the organization of the 18<sup>th</sup> Missouri Volunteer Infantry, which was a new regiment formed in Brookfield, Missouri. According to Benecke, the regiment did not wait long

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<sup>115</sup> Benecke, *Historical Sketch*, 6. Although Benecke never identifies the "strange" flag, he was not referring to the Confederate Flag – that flag had not yet become the standard for the entire south. Benecke may be referring here to the flag of the Missouri State Guard, but this is not certain.

<sup>116</sup> Benecke, *Historical Sketch*, 6.

<sup>117</sup> Benecke, *Historical Sketch*, 6.

until it tasted success. During a celebration of the Fourth of July, 1861, at the Filzer Farm outside of Brunswick, Benecke, many of his new recruits and local men and women gathered to drink lager and enjoy the Fourth – “enough lager beer to become less fearless and more than ordinarily patriotic.”<sup>118</sup>

When the men at the party discovered that the beer had all been consumed, a “squad” was sent to the local brewery in town to obtain more. One of the men decided to carry the American flag as the squad marched off – something quickly noticed by another company of men already in town. This other company was a pro-Confederate company who practiced their drills on Broadway Street in Brunswick, although the men practicing were doing so without any rifles with them. When they saw this Union squad marching into town waving the American flag, they “imagined that the St. Louis Dutch had arrived, and at once broke ranks, and at a double-quick went up the Seminary hill into the woods.”<sup>119</sup> Apparently, the fleeing men did not realize that these Union men were without weapons as well.

The success of the Brunswick Beer Invasion might strike the reader as a peculiar event – one of those odd things that happened during the Civil War. Yet Benecke described the event as “the first capture of Brunswick without arms and without a fight.”<sup>120</sup> It seems strange that Benecke would describe the event, which amounted to little more than a glorified beer-run, as the “first capture” of the town of Brunswick. It is possible this was an attempt at humor (he does speak of the second capture that took place two days later by a Union unit after writing of this event), but there is nothing to indicate that his description of the event as a capturing of the town was a joke. While

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<sup>118</sup> Benecke, *Historical Sketch*, 7.

<sup>119</sup> Benecke, *Historical Sketch*, 7.

<sup>120</sup> Benecke, *Historical Sketch*, 7.

humor may have been his intention, it may also reveal another side to Benecke – a side that is not afraid to misrepresent events to make them seem grander than they were.

As relatively uneventful as his military experience was in 1861, although it was a bit odd at times, 1862 was the complete opposite as Benecke's military experience took a dark turn. Benecke and his fellow soldiers of Company H, 18<sup>th</sup> Missouri Volunteer Infantry were part of the Union campaign moving south down the Mississippi River into Confederate-held territory. He participated in the taking of Island No. 10, a Confederate stronghold near New Madrid, Missouri, designed to guard the Mississippi from the North, and afterwards moved into Tennessee as part of General U.S. Grant's Union forces at the Battle of Shiloh.<sup>121</sup>

At Shiloh, Benecke's regiment became one of the units defending the Hornet's Nest during the first day of fighting on April 6. He was among those troops captured by the Confederate army at 5:30 pm and sent south.<sup>122</sup> Benecke spent the next "seven terrible long months" moving from various prison camps throughout the South – a period described by Benecke as "the saddest part of my military service."<sup>123</sup> He notes that this time also resulted in his acquiring "disabilities," but he does not go into detail about what those disabilities were.<sup>124</sup> Whatever his disabilities were, they were enough to ensure his being honorably discharged after a prisoner exchange near Richmond, Virginia.

Benecke's injuries did not keep him out of the war entirely, however, as the wounded teenager returned home to Brunswick to receive care. He spent the next two years recovering from the injuries at his family home. In 1864, Benecke rejoined the war

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<sup>121</sup> Benecke, *Historical Sketch*, 8.

<sup>122</sup> Benecke, *Historical Sketch*, 8.

<sup>123</sup> Benecke, *Historical Sketch*, 8.

<sup>124</sup> Benecke, *Historical Sketch*, 8.

effort by enlisting in Company E, 35<sup>th</sup> Enrolled Missouri Militia (E.M.M.) and, due to his previous experience, was made first lieutenant. This new company was headquartered at Keytesville, Missouri, and it was their job to patrol the area of Chariton County – Benecke’s home county – for any Confederate guerillas that might be operating in the area.<sup>125</sup>

Benecke did not remain a first lieutenant long. The man in charge of Company E, 35<sup>th</sup> E.M.M. was Captain Joseph Stanley. Stanley owned a farm in the northern part of Chariton County and decided to make a trip home one day without taking any men with him for protection. Once there, his home was attacked by a group of Confederate raiders and Stanley was taken prisoner. The Confederates agreed to spare Stanley’s life and grant him a parole in exchange for his vow to leave the Union army and to “keep the volunteer militia company in camp so as to allow the bushwhackers free hand and recruit for the Confederate service without molestation.”<sup>126</sup> Stanley complied with the first demand and left the army. As to the second demand, that now fell to the new commander of the company, Louis Benecke, whom Stanley put in charge before leaving. Benecke, however, had no intention of leaving his home county to the mercy of Confederate guerillas. He was soon promoted to captain, and did not waste time showing his ability to hunt Confederate guerillas.

Once in command, Benecke immediately set out to attack a Confederate company he learned was planning to cross the Missouri River at the town of Frankfort.<sup>127</sup> He planned a night attack that occurred on August 7, 1864, and drove the Confederate company off, capturing horses, a wagon load of ammunition, and two prisoners. This

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<sup>125</sup> Benecke, *Historical Sketch*, 11.

<sup>126</sup> Benecke, *Historical Sketch*, 12.

<sup>127</sup> Benecke, *Historical Sketch*, 12.

raid helped establish Benecke as a capable commander not just in the eyes of his superiors, but in the eyes of the people of Chariton County as well. For the remainder of the war, Benecke's role in the army was to maintain Chariton County and keep all enemy raiders out – to protect the people and towns in and around his home county.

Benecke was largely successful at this and won the admiration of the people of Chariton County who saw him as a man to restore order. This can be seen in an excerpt from an editorial that appeared in the *Missouri Republican* in November 1864:

We are glad, however, to learn that lately changes have been made in the command, and that there is a hope indulged by those directly interested, that this will tend to restore quiet and order to that distracted county. The militia, stationed in Chariton County (sic) for some seeks past, is placed under the command of Captain Benecke, a young, but active, experienced, and efficient officer. Those who know him, speak of him as a man and officer, in terms of the highest commendation.<sup>128</sup>

And it was not just those who supported the Union who received Benecke's protection and aid. Even those who supported the South were treated with respect by Benecke who made sure that they received badly needed supplies during such a chaotic time. "It is now a source of gratification to me," writes Benecke, "to know that I had the opportunity of securing relief to many, the political opinions of whose fathers, husbands or brothers were opposed to those of my own."<sup>129</sup> It was the ability to show fairness, as well as to maintain law and order, that people remembered about him – traits that they remembered in the years after the war as well.

Benecke's war record was quite good. His list of accomplishments elevated him and made him into a prominent figure in Chariton County. After he and his company were mustered out of the army on August 2, 1865, Benecke returned home to Brunswick

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<sup>128</sup> Benecke, *Historical Sketch*, 18.

<sup>129</sup> Benecke, *Historical Sketch*, 22.

only to find it in an uneasy state after the war. While Benecke attests to a common understanding between the returning soldiers from both sides – each side understanding who won the war and now it was time to move on – the problem came from the “stay-at-home fellows who were just getting ready to fight” who were causing problems.<sup>130</sup>

The good people of Brunswick were dissatisfied with the mayor for not doing more to put an end to the trouble. Once Benecke returned home, the townspeople immediately suggested that he should run for mayor. After all, Benecke had proven his ability to maintain order during the war. He did so and became the new mayor of Brunswick in 1866.<sup>131</sup> That was a busy year for Benecke, for not only was he elected mayor, he was also elected justice of the peace and admitted to the Bar of Chariton County – and he was still in his early twenties.<sup>132</sup>

Despite his good war performance and the various commendations he received, Benecke did recall two instances during the war when accusations were made and charges were brought against him for knowingly allowing his men to kill enemy prisoners. Although Benecke refers to the first instance as being perpetrated by “irresponsible parties” and of the second as mere “malicious rumor,” it was enough of an incident to require his appearance before a court of inquiry in the first case, and to cause Benecke to investigate the second to clear his name.<sup>133</sup> He had built his post-war political career off of his war record – he could not allow that record to be tarnished.

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<sup>130</sup> Benecke, *Historical Sketch*, 28.

<sup>131</sup> Benecke, *Historical Sketch*, 28.

<sup>132</sup> Benecke, *Historical Sketch*, 36.

<sup>133</sup> Benecke, *Historical Sketch*, 39.

The first instance involved charges that Benecke “had killed or caused to be killed a peaceful citizen named Charles Paul.”<sup>134</sup> Paul was arrested by Benecke’s men when they found him carrying a revolver and going under the alias, Charles Bauer. Benecke’s men then promptly turned Paul over to the 17<sup>th</sup> Illinois Cavalry for transport to a prisoner of war camp. Sometime during the trip, Paul attempted to escape and was killed in the attempt. Some charged Benecke with being complicit with the act, but it was quickly shown that Paul was killed while in custody of the 17<sup>th</sup> Illinois Cavalry, not Benecke’s men. In his book, written many years after the events in order to help clear his name, Benecke reprints the report given by General Clinton B. Fisk, which stated that Benecke was “in no way responsible for the killing.”<sup>135</sup> According to the findings of the inquiry, the charges were completely false.

The second instance did not result in a second inquiry, but it did produce rumors that bothered Benecke a great deal. So much so that he investigated the matter himself in the years after the war just so he could clear his name from any scandal. To Benecke, these accusations were merely an attempt to destroy his credibility – vicious rumors put forth by “sneaks and cowards” whose “sole object was to poison the minds and prejudice the parties against myself.”<sup>136</sup>

The incident, as recounted by Benecke in a special section at the end of his book, began on August 8, 1864, when a Union soldier named William Carter of Company B, 35<sup>th</sup> Regiment, E.M.M., was visiting his mother at the family farm just outside of Keytesville, Missouri. Carter’s mother was ill and he went alone to take care of her. While at his farm, he was ambushed by a Confederate “bushwhacker” named Jim

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<sup>134</sup> Benecke, *Historical Sketch*, 26.

<sup>135</sup> Benecke, *Historical Sketch*, 27.

<sup>136</sup> Benecke, *Historical Sketch*, 40.

Jackson.<sup>137</sup> Jackson, and his “gang,” took Carter to a nearby tree, stripped him naked, and tied him to the tree for target practice. Carter was “shot at by the gang till his body was riddled with over thirty bullets, and he was then left dead, still tied to the tree.”<sup>138</sup> This is how Carter was found by Union troops who came looking for him.

Several months later, Union troops captured John W. Leonard, a man believed to have taken part in the murder of Carter. Leonard was captured by scouts under Benecke’s command and held as a prisoner. He was later found shot and his body dumped in a nearby river. It was claimed that Leonard had tried to escape and the soldiers guarding him had no choice. Benecke’s enemies said this incident happened with his knowledge and approval.

Benecke, however, goes to great lengths in his account to show that he was somewhere else on a scout at the time of Leonard’s murder. He reprints sworn testimony by some of the men involved that states he was not present and that the man left in charge, first lieutenant Fredow B. Wrockloff, took Leonard from the place he had been held and never returned with him.<sup>139</sup> Benecke also reprints a scout record that shows he left on a scout the same day Leonard was captured and brought in.<sup>140</sup> Although, there is not agreement between the record and some of the testimony about where Benecke was at the time of the incident (one soldier testified that Benecke was on a scout by Macon City, while the scout record indicates that he was sent to Lake Creek).<sup>141</sup>

It must be pointed out, however, that while these records and accounts are useful in proving Benecke was not present when Leonard “escaped” and was found dead, they

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<sup>137</sup> Benecke, *Historical Sketch*, 39.

<sup>138</sup> Benecke, *Historical Sketch*, 39.

<sup>139</sup> Benecke, *Historical Sketch*, 47-50.

<sup>140</sup> Benecke, *Historical Sketch*, 46.

<sup>141</sup> Benecke, *Historical Sketch*, 46, 48.

do not reveal whether or not Benecke approved of the act at the time. He certainly condemns the event, but does so not because a group of Union soldiers killed a man in revenge and threw his body in a river, he condemns it because people blamed him for the actions of his men. He did not want his reputation tarnished because of the actions of a few men serving under him. Whether or not he actually disapproved of the revenge killing of John W. Leonard is not clear.

Despite these two incidents, Benecke's military career was very successful and he was seen as a capable commander – a man who could get things done and maintain order. After returning home in 1865, he built a successful political career and became one of the most prominent citizens in Brunswick. He was not only elected mayor, justice of the peace, and admitted to the bar in 1866, he would go on in the second half of the 1860's to be elected Director of Public School, Trustee of the German Lutheran Church of Brunswick, delegate to the State Republican Convention in 1868, and Director of B. & C. Railroad, just to name a few.<sup>142</sup> He would even be reelected mayor in 1869 and then immediately resign because he was also elected a state senator the same year.

Among the great many accomplishments and public appointments Benecke received in the late 1860's, he also began another practice – using his legal experience to begin helping veterans of the Civil War, and their families, apply for pensions and all back pay and bounty money due them. Benecke had a large number of clients, a good portion of who were African American veterans, who sought his help and whose files Benecke kept. These files, which are now in the State Historical Society of Missouri, contain personal information, receipts, and other various information on those he offered to help represent.

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<sup>142</sup> Benecke, *Historical Sketch*, 36.

It is curious, however, that while listing his many accomplishments and noting the changes that occur during the 1860's, Benecke never once mentions his practice of helping former Civil War veterans, like himself, collect pensions and back pay from the government. He mentions being a part of the School Board, Mayor, Director of the B. & C. Railroad, even Trustee of the Brunswick Lutheran Church – yet he does not share anything about his legal practice, apart from mentioning his admission to the Chariton County bar in 1866.<sup>143</sup>

This omission could be because Benecke merely wanted to present a list of his important political and business appointments and did not feel his private practice was worth mentioning with the rest. However, the omission could also be because it was during this time that Benecke began to take advantage of a good number of his clients – his African American clients, former Civil War veterans and their families. As will be shown, Benecke, along with some of his colleagues, began withholding money from the families of his clients – money for back payments and promised bounties from the war.

This withholding of money would lead Benecke into an indictment that resulted in his being put on trial in federal court. However, before introducing the trial, an introduction to his clients and their backstory will help provide better context for the ensuing trials of Louis Benecke.

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<sup>143</sup> Benecke, *Historical Sketch*, 36.

## THE CLIENTS

When given the opportunity to do so, a great number of African Americans stepped forward to volunteer for the Union Army during the Civil War. These brave men recognized that the moment had come for them to strike back against not only the unjust institution of slavery, but at the region of the country that promoted it and justified it on the grounds of white supremacy. Their bravery and sacrifice was pivotal to the war effort and as part of the United States Colored Troops (USCT) these men earned their right to be called citizens of America.

Yet, as mentioned previously, these veterans and their families met numerous hurdles in their struggle to obtain the pension benefits they rightly earned. Two key elements added to this struggle: illiteracy and poverty. The average African American household did not earn a great deal of money. Add to this the extra expense of travel for doctors and application fees and one can start to see how the process of applying for a pension could be long and costly. Add further still that most African Americans who lived in a slave state could not read or write, and therefore needed to hire a lawyer to help them.

Despite these obstacles, a great many African American veterans and their families were willing to hire a lawyer to help them – after all, if they had a legitimate claim for a pension, then every dollar from the government made a difference in the wake of a tragedy like the Civil War. Louis Benecke was that lawyer for many veterans and their families in Chariton County. Benecke does not discuss any aspect of this legal help in his book, but his personal records contain the files on his African American clients.

One of those clients involved with his eventual indictment was Emma Warden. According to the hand written copy of the indictment against Benecke, Warden had lived in Missouri for the past ten years and was the widow of Private Asbury Warden who served in Company D, 65<sup>th</sup> Regiment, USCT.<sup>144</sup> In 1869, Emma Warden filed a pension claim over her husband's service and for all back pay and bounty money due. She saw Benecke at his office in Brunswick and hired him to make out all the appropriate forms for her. Benecke agreed to help her and, after writing up the correct documents, sent Warden's claim in to the Pension Bureau.

Benecke's contact with the Pension Bureau was through a man named Franklin A. Seely, a supervising agent in the St. Louis office of the Bureau. On December 23, 1869, Seely received approval for Warden's claim. All back pay and bounty money due to Asbury Warden was to be paid to his widow in the amount of "One hundred and twenty two and twenty three hundredths Dollars."<sup>145</sup> This was not the date of payment, only the date of approval of the claim. In 1869, much like the present, government agencies tended to take a good deal of time getting things done and the enhanced scope that the Civil War brought to the Pension Bureau added to the wait time.

It was not until April 13 of the following year that Seely received the funds for Warden. Yet, instead of sending the money directly to Emma Warden, Seely sent payment of one hundred eight dollars and ninety-eight cents to Louis Benecke (the indictment does not specify where the missing \$13.25 went, possibly for fees).<sup>146</sup> This is how the system of payment worked – if a claimant was assisted by a lawyer, as in the

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<sup>144</sup> *U.S. v. Benecke* Subseries, File #2425, Benecke Family Papers, 1816-1989, n.d., State Historical Society of Missouri, Columbia, Missouri; hereafter cited as Benecke Papers.

<sup>145</sup> Benecke Papers, File #2425.

<sup>146</sup> Benecke Papers, File #2425.

case of Emma Warden, then instead of sending the money directly to the claimant, the agent (Seely) would pay all money due to the lawyer representing them.<sup>147</sup> Benecke was then to give Warden the remainder of the funds, minus his own fees.

According to the claim against him, however, Benecke never gave Warden the bounty money she was supposed to get, but instead kept it. It was for this amount, plus “lawful interest and cost of suit,” that the U.S. Attorney brought an indictment against Benecke.<sup>148</sup> While one hundred eight dollars does not sound like a large amount by today’s standards, this was equivalent to between roughly four or five thousand dollars in today’s money.<sup>149</sup> This, however, was just the tip of the iceberg. There were other clients of Benecke who were awarded even greater amounts.

A second client who claimed Benecke failed to pay the money owed to her and kept it himself was a widow named Sophronia Farmer. Farmer grew up in Chariton County on a farm about six miles north of Brunswick.<sup>150</sup> She lived there ever since she was four years old. While there, she married a man named Wilson Farmer who, sometime after the Civil War began, joined the USCT to fight for the Union. Although Farmer could not remember what regiment he fought with, Wilson died during his time of service in the war and Sophronia became eligible for his pension.<sup>151</sup>

Like Emma Warden, and so many others, Farmer could not read or write. She needed a lawyer to help with her claim and hired Benecke to handle the necessary paperwork in order to file her claim. The amount due her for back pay and bounty totaled three hundred sixty-nine dollars and thirty-five cents – over three times what was due

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<sup>147</sup> Benecke Papers, File #2428.

<sup>148</sup> Benecke Papers, File #2425.

<sup>149</sup> CPI Inflation Calculator – rough estimate.

<sup>150</sup> Benecke Papers, File #2428.

<sup>151</sup> Benecke Papers, File #2428.

Emma Warden.<sup>152</sup> This is roughly equivalent to over sixteen thousand dollars in today's money. Although the amounts differed between their claims, Farmer, like Warden, failed to receive all the money due her.

Initially, Farmer's claim seemed to be moving along without any problems. Benecke had Farmer put her mark on a number of documents she was told were for her claim.<sup>153</sup> She did not know what she was putting her mark to, only that she trusted Benecke when he told her what to sign. Periodically, Farmer contacted Benecke to find out if any word of her claim came through and each time Benecke told her that he had not heard anything new.

One day, while visiting Benecke's office in Brunswick, Farmer found Benecke not there, but instead an associate of Benecke's named John Cox was present. According to Farmer, Cox was there to make a partial payment to Farmer: "I got 80 \$ from Mr. Cox, this is all I ever got."<sup>154</sup> The eighty dollars Cox gave to Farmer was merely the first of more payments to follow – an installment plan, so to speak. Cox promised that more money would follow and told her that Benecke wanted her to check in with him every time she came to town.

Yet despite checking in with Benecke and Cox from time to time, no more money ever came, although Farmer was always told it would. Farmer was, however, asked to put her mark on more paperwork that, again, she could not read so she never knew what documents she put her mark to, nor what they said. While she did receive the one-time payment of eighty dollars, that still left a balance of two hundred eighty-nine dollars and

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<sup>152</sup> Benecke Papers, File #2428.

<sup>153</sup> Benecke Papers, File #2428.

<sup>154</sup> Benecke Papers, File #2428.

thirty-five cents – an amount totaling almost thirteen thousand dollars in today’s money.<sup>155</sup> This balance was something Farmer never saw.

It was not long before Benecke and Farmer had no communication at all. Farmer claimed that Cox eventually told her that there would be no more money for her “for a while,” and that Benecke “had not spoken to me for over a year.”<sup>156</sup> Since Benecke refused to pay Farmer the balance of the money due – a charge Benecke denied because he claimed that she received all money due - Farmer added her name to those who brought suit against Benecke.

Between both Warden and Farmer, there was \$398.33 in unpaid money that was dispersed from the Bureau by Seely, to Benecke, and that Benecke failed to pass on to his clients. Although Benecke, and his associate John Cox, continuously promised that more money was on the way, neither Warden nor Farmer ever received it. Yet even this sum was not a big loss when compared to the person who lost the most from dealing with Benecke – a person whose loss, both economically and financially, was more than double that of both Warden and Farmer.

It is never easy to lose a loved one in war. Whether it be a husband, a son, or a brother, the tragedy of loss is devastating. Yet, what of those families during the Civil War who lost multiple family members? Ann Parks was one of those unfortunate family members. She lost three sons to the war – three times the grief. Dependent on her sons to help her, Parks was eligible to receive a pension for her sons, as well as collect all back pay and bounty money due each. It was for this reason that she sought out Benecke and to hire him to take care of all the necessary paperwork for her claim.

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<sup>155</sup> Benecke Papers, File #2428.

<sup>156</sup> Benecke Papers, File #2428.

At the time she sought help from Benecke, Parks lived about ten miles outside of Brunswick on the Bowling Green Prairie and had lived there seven years.<sup>157</sup> There she did some farming, as well as worked for a family at a nearby mill. Parks had four children, a daughter and three sons, Thomas, John, and Robert. After the outbreak of the Civil War, all three of Parks' sons volunteered for the army, and all three men served as privates in Company K, 65<sup>th</sup> Regiment, USCT. Unfortunately for Parks, all three of her sons died while in service.

Several years after the end of the war, Parks traveled to Brunswick to hire Benecke to help her with her claim. Benecke's associate, John Cox, was also present, but did not participate in the drawing up of papers, he just sat in a chair and watched.<sup>158</sup> All the forms were submitted to the government and on June 23, 1868, the Bureau approved the claims for all three of Parks's sons.<sup>159</sup>

The claim on her first son, Thomas, was awarded \$300 in bounty money and a back pay amount that totaled \$69.72 for a total of \$369.72. The Treasury Department did not release the funds to Franklin Seely until October 23. Yet even though Seely received the funds in October, it was not until February 16 of the following year that Seely sent the money, \$358.22, to Brunswick – and he did not send it to Parks, he sent it to Benecke.<sup>160</sup>

The claim for Parks's second son, John, was even greater than his brothers. The total amount for back pay and bounty due for John's service, after expenses, was \$430.08. Even though the claim on John was approved on the same day as his brother Thomas, Seely did not receive this money from the government until February 23 of the

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<sup>157</sup> Benecke Papers, File, #2429.

<sup>158</sup> Benecke Papers, File, #2429.

<sup>159</sup> Benecke Papers, File, #2425.

<sup>160</sup> Benecke Papers, File, #2429.

following year. Seely, as before, did not send the money to Parks, he sent it to Benecke on March 13, 1869.<sup>161</sup>

The claim on Parks's remaining son, Robert, was considerably lower than it was for her other two sons. The total for his back pay and bounty, minus expenses, was \$163.12. This may be due to the time of death for Robert, but this is speculation – the date of each son's death is never mentioned in the indictment. This money was also released to Seely on February 23, 1869, and he sent the money for this claim along with the claim money for John on March 13.

By adding all claims together, Ann Parks was due a total of \$952.15, which is roughly around \$42,000 in today's money. This was a huge amount of money for any person to get, let alone an older African American woman from Missouri in the wake of a tragedy like the Civil War. Yet despite Seely receiving and sending the amount due to her lawyer, Benecke did not give Parks the money she was owed.

According to Parks, after sending off the claims, Benecke was to let Parks know when the claim was approved and when she could get her money. However, when Parks went to Benecke's office for an update, all Benecke ever told her was that he had not yet heard anything about her claims. On one occasion, Benecke was not in his office, but his associate, John Cox, was and told Parks that Benecke was in St. Louis.<sup>162</sup> Since Benecke was in periodic contact with Seely, it is doubtful that Seely would have neglected to inform Benecke about the approval for the claims.

The main reason for this is that Seely would have sent a voucher to Benecke for Parks to sign once the claims were approved. This was meant to verify that the person

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<sup>161</sup> Benecke Papers, File, #2425.

<sup>162</sup> Benecke Papers, File, #2429.

receiving the money from Seely was the right person. Even though Parks could not read, it was Benecke's job to inform her of what she needed to sign in order for Seely to send her the money. Because of this, Benecke knew that the claims had been approved and received the money from Seely *without informing Parks*. This means that when she was told by Benecke that he never heard any developments regarding her claims, he was being dishonest.

That is not to say that Parks never heard from Benecke or his associates about her claims, nor that she did not receive any of the money. Sometime in the spring of 1869, after Benecke received payment from Seely, Cox contacted Parks at her home and told her that he wished to buy her claim.<sup>163</sup> Parks, not wanting to give up all her claims, told Cox that she would be willing to sell one to him, but not all three. According to Parks, Cox offered her three hundred dollars for one of her claims.<sup>164</sup> It is difficult to know from this offered amount which claim Cox offered to buy, since this is not the amount due any one of the individual claims.

When Cox showed up at the home of Parks, however, he brought with him a package that was marked to contain two hundred forty dollars – much less than his original offer. Upon counting the money Cox brought, it was discovered that there was only two hundred thirty dollars. This might have been a simple mistake, or perhaps a way of shorting Parks even further because Parks needed someone else present to count the money for her – a nearby friend that Parks asked to come named Andrew Johnson.<sup>165</sup> Without Johnson's help counting the money, Parks may not have known she was shorted the amount indicated.

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<sup>163</sup> Benecke Papers, File, #2429.

<sup>164</sup> Benecke Papers, File, #2429.

<sup>165</sup> Benecke Papers, File, #2429.

In addition to receiving the two hundred thirty dollars – an amount just under a quarter of the total she was supposed to get – Benecke also had Parks put her mark to papers that he told her she needed to sign. She put her mark on the papers as she was asked, but at no point did she ever know what she signed nor what the papers said.<sup>166</sup> Parks later claimed that she had never signed any voucher, nor any receipt of money. However, since she could not read or write, and yet signed papers as instructed, she did not know what she signed – whether it be a receipt, voucher, or something else. She also never received the remaining \$722.15 that she was due.

A close look at the above three clients reveals a similar chain of events: a mother or widow hires Benecke to help them with their claims for back pay and bounty; Benecke agrees, then draws up and sends the appropriate documents; the claim is approved and the money owed is dispersed from the Treasury Department to Franklin A. Seely, the agent in contact with Benecke; Seely sends the money owed to Benecke and instead of giving the money to his clients, he keeps it – or, in the case of Ann Parks, keeps three quarters of it; he then has the women sign documents, documents which are never explained to them and for which they do not know the content because they cannot read or write; the women never receive the money due them.

Between the three clients listed above, there is already over eleven hundred dollars missing – money sent to Louis Benecke and never forwarded to the appropriate party. Benecke claimed that all clients received all money due them and refused to pay these women any more than he claimed he had. It was for this unlawful withholding of money from veterans families that Benecke would be indicted and brought to trial.

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<sup>166</sup> Benecke Papers, File, #2429.

Emma Warden, Sophronia Farmer, and Ann Parks would not be alone. Four other names would join the indictment of Louis Benecke. Although it took several years to bring together, the ten count indictment brought a dark chapter to the otherwise illustrious career that Benecke promotes in his book. A chapter that called into question the integrity and character he had cultivated after the war. It is little wonder why he does not mention it.

## THE FIRST TRIAL

All of the incidents involving the withholding of money, to the clients mentioned above and the other four families, took place between the years of 1866 and 1870. Over the next several years, Benecke's former clients came forward to accuse him of taking their money and sought legal help in gaining it back. That help would come from U.S. Attorney James S. Botsford. Botsford brought together the case against Benecke over the first half of the 1870's. He compiled testimony from the victims, gathered his evidence, and brought a ten count indictment against Benecke on September 11, 1875.<sup>167</sup>

The indictment was not only against Benecke, but also his colleague John Cox who played a role in aiding Benecke in withholding the money from his clients. Both men were charged with "retaining pay & bounty from claimants as attorneys & agents."<sup>168</sup> This was the same charge for each count.

The ten count indictment was listed as follows: Counts 1-3 for each of Ann Parks' three sons, Thomas, John, and Robert in the amount of \$721.92; count 4 for Sophronia Farmer on behalf of her husband Wilson Farmer in the amount of \$369; count 5 for Emma Warden on behalf of her husband Asbury Warden in the amount of \$59;<sup>169</sup> count 6 for Polk Lard, a veteran who survived the war, in the amount of \$210; count 7 for David Price on behalf of his son Dallas Price in the amount of \$81; count 8 for David and Letty Price on behalf of their son Dallas Price in the amount of \$87; count 9 for Jackson

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<sup>167</sup> James S. Botsford, "Indictment: United States vs. Louis Benecke & John Cox," in *U.S. Supreme Court Transcript of Record, U.S. v. Benecke*, U.S. Supreme Court (1878), 11.

<sup>168</sup> United States vs. Louis Benecke & John Cox, "Transcript from district court," in *U.S. Supreme Court Transcript of Record, U.S. v. Benecke*, U.S. Supreme Court (1878), 4.

<sup>169</sup> This amount does not match the amount given on the hand written copy of the indictment given to Benecke which states \$108.90 – the amount of \$59 is what is recorded on the official court transcript filed in 1875. The amount dropped between the initial filing of the charges and the filing of the indictment in 1875.

Rowlett, a veteran who survived the war, in the amount of \$47; and count 10 on behalf of Silke Eikhoff on behalf of her brother Karsten Thede in the amount of \$469.<sup>170</sup> The total amount allegedly withheld from Benecke's clients totaled \$2,042.92 – an amount that in today's money would be just over \$90,000.

Benecke, for his part, spent the first half of the 1870's beginning an even more prominent chapter in his political career as a member of the Missouri State Senate.<sup>171</sup> He served as a State Senator until 1874. Although it is not clear, Benecke's election to the Senate may have contributed to Botsford not filing the indictment until 1875, the year after Benecke left his Senate seat. Benecke was already a prominent, well-connected politician when Botsford began compiling his case. To try and bring charges against a sitting State Senator could have proven difficult, which may be why Botsford filed the charges when he did. However, this is just speculation.

The trial took place at the District Court of the United States for the Western District of Missouri in Jefferson City.<sup>172</sup> Botsford brought the charges on behalf of the plaintiffs, while the law firm of Lay & Belch & Waters & Winslow argued for the defense of both Benecke and John Cox.<sup>173</sup>

The two strongest cases brought by Botsford centered on indictments six and ten. These were the cases of Polk Lard and Silke Eikhoff. These two cases are referred to here as the strongest cases because, of the ten indictments charged, Benecke was only found guilty on these two counts. The accusations of Parks, Warden, Farmer, and the other families were found not credible enough for Botsford to obtain a conviction on

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<sup>170</sup> Smith, "Brief for the United States," 9-11.

<sup>171</sup> Benecke, *Historical Sketch*, 36.

<sup>172</sup> United States vs. Louis Benecke & John Cox, "Transcript from district court," 1.

<sup>173</sup> United States vs. Louis Benecke & John Cox, "Transcript from district court," 15.

those counts. This means that out of all the money owed to the remaining families, especially to Parks who had the most money taken, they received none of it.

Polk Lard resided in the town of Dalton, in Chariton County, and lived there for ten years. After the war broke out, Lard joined Company B, 62d Regiment, USCT and served with this unit through the duration of war.<sup>174</sup> After the conclusion of the war, Lard knew he was entitled to receive all the back pay due him, as well as all bounty money promised. It was for this reason that Lard traveled to Brunswick and hired Benecke to help him with his claim.

As with the other clients who hired Benecke, Lard checked in with him at his office from time to time to find out if his claim had been approved. According to Lard, in 1869 he went in to see Benecke in order to ask him about whether or not he would be willing to buy his claim.<sup>175</sup> At that time, Lard was in financial difficulty and was looking to get his money as quickly as possible. Benecke, however, informed him that he was not legally able to buy his claim and put Lard in touch with an associate of his named Bosse.<sup>176</sup> Bosse informed Lard that he would be willing to buy his claim for \$65 and asked Lard if he knew of anyone else who would be willing to sell their claim. Lard told him that he knew of a couple of others who might be willing to sell and agreed to meet Bosse at a later time to sell his claim.

Three weeks later, Lard meet with Bosse and told him he was still willing to sell his claim, but he did not find anyone else who wanted to sell. Much to the surprise of Lard, Bosse told him that the likelihood of him getting his claim was “doubtful” and at

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<sup>174</sup> Benecke Papers, File, #2426.

<sup>175</sup> Benecke Papers, File, #2426.

<sup>176</sup> Benecke Papers, File, #2426.

that time only offered \$55 for the claim instead of \$65.<sup>177</sup> Lard looked to Benecke for advice about whether or not to sell and asked Benecke how much he thought the claim was worth. Benecke advised him that he felt the claim was worth between \$75 and \$80 dollars and that Lard should not sell unless “he did need money,” and that “\$55 would probably do him more good than \$75 or \$80.”<sup>178</sup>

Lard decided to sell to Bosse and accepted the \$55 he offered. Further, Lard was then directed by Benecke and Bosse to sign a piece of paper when giving Bosse the money. Lard testified that, even though he could read a little, he did not have any idea of what the paper said.<sup>179</sup> It was revealed at the trial that the paper Benecke had Lard sign was an acknowledgment letter from Franklin A. Seely, the disbursement agent in St. Louis who was in contact with Benecke. The letter was as follows:

Col. F.A. Seely, U.S.A.D.O. Mo., St. Louis, Mo.

Col.—I have the honor to acknowledge receipt of check, No. 241, on Mchts. Nat. B’k., St. Louis, for \$289.50 for my services in the U.S. service, and with many thanks for your promptness in helping a sick colored man. I remain.

Very respectfully your obedient servant,  
Polk Lard<sup>180</sup>

After having Lard sign this letter, Benecke sent it to Seely as proof that Lard received the money due him. What this letter revealed was that Benecke knew about the approval of Lard’s claim the entire time he was directing him to Bosse. He had Bosse tell Lard that his claim was doubtful and offered him a low amount knowing that his claim had been approved and the money was coming. This also means that when Benecke told Lard that he could get between \$75 and \$80 for his claim, he was lying. He allowed his

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<sup>177</sup> Benecke Papers, File #2426.

<sup>178</sup> Benecke Papers, File #2426.

<sup>179</sup> Benecke Papers, File #2426.

<sup>180</sup> Benecke Papers, File #2426.

client to accept \$55 when he knew it was worth \$290. This was a strong piece of evidence that Benecke’s lawyers could not argue away.

Seely testified that he disbursed the money due Lard to Benecke along with the acknowledgment letter.<sup>181</sup> Seely always contacted Benecke directly instead of trying to deal with clients like Lard because he knew that most of them could not read or write. He would send notification of the approval of a claim along with a voucher – the acknowledgement letter. Seely further testified that he would not send the money until “vouchers were returned duly executed with instructions how to send the money.”<sup>182</sup> In order for Benecke to have Lard sign the paper, he must have received notification from Seely about the approval of the claim and how much it was worth. Seely’s testimony further solidified the case against Benecke and led to his conviction on this count.

The tenth count, for which Benecke was also found guilty, centered on claimant Sarah “Silke” Eikhoff. Eikhoff was the sister of Karsten Thede, a Union soldier who died fighting for the Union during the war. At the time of the war’s conclusion, Eikhoff lived near Brunswick, but moved shortly after the war to Forks of the Chariton, a place roughly 20 miles from Brunswick.<sup>183</sup> She very quickly decided to file a claim on her brother for his back pay and bounty money.

Eikhoff’s claim was unique from the others for two reasons: 1) Karsten Thede was a white soldier; 2) Eikhoff filed two separate claims on her brother’s back pay – both of which involved Benecke. The first claim filed did not involve Eikhoff in direct contact with Benecke. Instead, power of attorney was given to General John B. Gray “and was

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<sup>181</sup> Benecke Papers, File #2426.

<sup>182</sup> Benecke Papers, File #2426.

<sup>183</sup> Benecke Papers, File #2426.

executed before Louis Benecke as notary public.”<sup>184</sup> Like Benecke, after the war Grey helped veterans file their claims against the government to receive money due them. He knew Benecke and even sent cases to him on occasion. Grey acted as the intermediary between the government and Benecke on behalf of Eikhoff.

According to Grey’s testimony, he received notice of the approval of Eikhoff’s claim in 1866 for the amount of \$469. After deducting his fees, Grey sent the balance of the claim to Benecke in the amount of \$420, but never informed Eikhoff that her claim had been approved, nor did he inform her that he received the money.<sup>185</sup> He merely informed Benecke of the approval and sent the money directly to him. There was even a certificate of deposit for \$420 through National Loan Bank paid to the order of Louis Benecke and endorsed by him.<sup>186</sup>

Just like with his other clients, Benecke did not give Eikhoff the money that she was owed, although he did claim to have paid her.<sup>187</sup> Eikhoff testified that she went to see Benecke “two or three times” trying to ascertain what was going on with her claim, but Benecke “put her off,” telling her that he did not have time to talk to her.<sup>188</sup> Just as with Lard, Benecke had received confirmation about Eikhoff’s claim being approved, yet did not tell his client about it. He learned about it from Grey and Grey sent him the money that he was to give to her, yet he refused to do so.

In 1871, Eikhoff remarried to a man named Charles Strota, whom she told about her claim. Strota, on her behalf, went to see Benecke about the missing money and Benecke assured him that he would write a letter to the bureau to check on what

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<sup>184</sup> Benecke Papers, File #2426.

<sup>185</sup> Benecke Papers, File #2426.

<sup>186</sup> Benecke Papers, File #2426.

<sup>187</sup> Benecke Papers, File #2426.

<sup>188</sup> Benecke Papers, File #2426.

happened to the money – knowing full well that the claim was paid and he collected the money. Just as he had done with Eikhoff, Benecke told Strota that the government informed him that there was no money because the claim had been paid. Strota testified that he told Benecke that a mistake had been made and his wife was still due money from the government on account of her brother.<sup>189</sup>

In 1873, when no progress had been made regarding her first claim, Eikhoff and her husband once again went to see Benecke about filing out a second claim for the money. It had been seven years since her first claim was filed and a certified check from John Grey was sent to Benecke to pay her for the claim. Eikhoff, however, knew nothing of this – Grey never informed her that her claim was approved, and Benecke never gave her the money sent to him to give to her. Yet, even in 1873, Benecke acted as if he knew nothing of what happened to the first claim and, according to Strota, told both Eikhoff and himself that “he would fix the claim so they would get it.”<sup>190</sup> Unfortunately for Benecke, there was a paper trail that led directly to him in the form of deposit receipts from Grey.

While Botsford made a compelling case for the guilt of Benecke regarding Lard and Eikhoff, Benecke’s defensive team mounted a strong, although in some instances strange, repudiation of the charges. The first argument they leveled was that the charges brought by Botsford did not show that Benecke or Cox “have been guilty of any crime punishable under the laws of the United States.”<sup>191</sup> While Botsford provided some evidence and the testimony of the victims, nothing revealed that Benecke was guilty of any crimes.

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<sup>189</sup> Benecke Papers, File #2426.

<sup>190</sup> Benecke Papers, File #2426.

<sup>191</sup> United States vs. Louis Benecke & John Cox, “Transcript from district court,” 15.

The second argument made by the defense was much more striking. They argued that the plaintiffs had not had “any valid or lawful claim against the United States, nor is it alleged for what services the alleged pay and bounty was due, nor that the same was due for any service, in the Army or otherwise, authorized by law.”<sup>192</sup> They are saying, in effect, that the claims made by Benecke’s clients were not credible because there was nothing to indicate that the soldiers on whom the claims were made were ever in the army to deserve pay and bounties.

This is a remarkable claim to make, due to the fact that government records from the Treasury Department indicated that funds were disbursed to Franklin Seely, the agent in St. Louis, and Seely then passed the money on to Benecke. In the case of Eikhoff, the money was disbursed to John Grey and then to Benecke. The very fact that Benecke received the money he did from Seely is testament to the validity of the claims made. The Treasury Department would not have disbursed the money if the claims were not valid. This was a weak argument on the part of Benecke’s defense.

The defense based their strongest arguments on two key points: that there was no provision in the pension acts that prohibited withholding money from clients and that the statute of limitation for the claims had expired. The defense would give much more attention to the first point than the second because they felt that if the first point was proved in their favor, the second would follow easily.

The argument for the first point was based on the amended version to the General Pension Act that was enacted in July of 1864. In section 13 of the act it states “any agent or attorney...who shall wrongfully withhold from a pensioner or other claimant the whole or any part of the pension of claim...shall be deemed guilty of a high misdemeanor” and

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<sup>192</sup> United States vs. Louis Benecke & John Cox, “Transcript from district court,” 15.

be subject to either a fine or prison.<sup>193</sup> Benecke’s lawyers argued that this section was *not* talking about back pay and bounty money. In fact, they argued that the updated versions of the Pension Act that likewise appeared in 1870 and 1873 also did not refer to back pay and bounty. The focus of these acts were on pensions and claims, and they were meant to set financial limits on the lawyers working on the behalf of their clients – back pay and bounties were not included in the intent of the act.

The defense pointed to the language from the most recent update to the Pension Act, which took place in 1873. Like the earlier acts, section 31 of the 1873 act stated that should anyone “wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim” then that person is guilty of a misdemeanor.<sup>194</sup> While all the previous acts lay out the restrictions on what a lawyer can be paid, according to the defense there was no specific language that stated it was against the law to withhold money for back pay and bounties.

The second of the main arguments for the defense regarded the statute of limitations. Benecke’s lawyers pointed out that even if the charges against Benecke were true, the statute of limitations for the charges against Benecke was only five years – and the clock for this “would commence to run from the time said claimants acquired said knowledge,” meaning knowledge that they had been denied their money.<sup>195</sup> Since the initial claims against Benecke happened more than five years before Botsford filed the indictments in September of 1875, the five year statute of limitations had expired and no charges could be brought against Benecke on these issues.

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<sup>193</sup> U.S. Congress, Pension Act of 1864, accessed September 15, 2016, [www.drbronsontours.com/pensionspensionactof1864.html](http://www.drbronsontours.com/pensionspensionactof1864.html)

<sup>194</sup> United States vs. Louis Benecke, 98 U.S. 447 (1878), “Statement and Brief for Defendant,” in *U.S. Supreme Court Transcript of Record, U.S. v. Benecke*, U.S. Supreme Court (1878), 4.

<sup>195</sup> United States vs. Louis Benecke & John Cox, “Transcript from district court,” 16.

While a good deal was revealed during the trial about the legal practices of Benecke and his associates, one counter argument by his defense revealed something interesting about the charges brought forth by Botsford. Jackson Rowlett, the individual who made up the ninth count in the indictment and who was brought to the trial by Botsford to be a witness for the plaintiffs, testified that he had not wanted to be a part of the indictment. Rowlett signed a statement in which he stated that he “never authorized anyone to make any complaint against said L. Benecke for said charge nor made any charge against said L. Benecke at any time.”<sup>196</sup> Rowlett further claimed that the first time he ever spoke to Botsford about the case was when Botsford called him into his office on the night before the trial.<sup>197</sup> If this is true, then it is curious why Botsford would call him in as a witness and not surprising that Benecke was found not guilty on count nine.

Another one of the objections raised by the defense was that “the court refused to allow proper and competent evidence on the part of the defendant.”<sup>198</sup> One of the things referred to by this objection is the dismissal of a witness for the plaintiffs who had evidence that supported Benecke’s case. This evidence came from an express agent named Granville D. Kennedy. Kennedy had access to receipts books that showed in the case of counts seven and eight, the counts involving David and Letty Price, that the money sent from St. Louis to Brunswick did not go to Louis Benecke as Botsford claimed.<sup>199</sup> Botsford subpoenaed Kennedy and his receipt books, but when they revealed evidence that went against the charges, Botsford dismissed Kennedy “without having been called upon to testify as to said Express receipt book or any other transaction

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<sup>196</sup> Benecke Papers, File #2435.

<sup>197</sup> Benecke Papers, File #2435.

<sup>198</sup> United States vs. Louis Benecke & John Cox, “Transcript from district court,” 16.

<sup>199</sup> Benecke Papers, File #2435.

concerning it.”<sup>200</sup> Although he was trying to present as strong a case as he could against Benecke, Botsford did not do his case any good by these kinds of tactics, especially since this helped lead to eight of the ten indictments being found to have no merit.

When the trial was over, Louis Benecke was found guilty on counts six and ten for illegally withholding back pay and bounties from his clients. Only Polk Lard and Silke Eikhoff seemed to find some measure of justice. Yet, the trial raised as many questions as it answered – legal questions that allowed Benecke’s lawyers to appeal the decision all the way to the highest court in the land. Benecke’s trials were not yet over and the ultimate outcome would be decided by an ever-increasingly anti-equal protection Supreme Court.

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<sup>200</sup> Benecke Papers, File #2435.

## THE SUPREME COURT OF THE 1870'S

Even though Benecke was convicted on two counts of withholding money, he still had one more chance to clear his name – the Supreme Court. However, the court was, by the time of the trial in 1878, a court emerging from the failure of Reconstruction – a failure they helped bring about. Benecke did not go before a court that was interested in preserving the legal rights of African-Americans, but a court that helped weaken those rights in favor of a strict interpretation and reading of the law that enabled a resurgence of racist attitudes towards the policies of Reconstruction.

During the first decade after the Civil War between 1866 and 1876, a time which corresponds to when Benecke's offenses and trial took place, Reconstruction became the focus of the American government. Many questions arose about what the role of former slaves would be in America moving forward, as well as what kind of rights these former slaves would have. In response, new laws and amendments, enacted at both the state and federal levels, "established as a matter of federal law the principle of equal rights for all citizens regardless of race."<sup>201</sup> Just as pension care expanded in the wake of the war, the Republicans in Congress tried to use the legal system to expand the notion of equality for black people in America.

In order to accomplish this, Congress passed the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> amendments to the Constitution, better known today as the Reconstruction amendments. These amendments ended slavery, granted due process and equal protection under the law to African Americans, as well as gave them the right to vote. This was a radical change for

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<sup>201</sup> Eric Foner, "The Supreme Court and the History of Reconstruction – and Vice-Versa." *Columbia Law Review*, Vol. 112, No. 7, *Symposium: The Thirteenth Amendment: Meaning, Enforcement, and Contemporary Implications* (November, 2012): 1586.

Americans north and south, most of whom were not comfortable with “the establishment...of civil and political equality” with black people.<sup>202</sup> Many did not feel that black people should have the right to vote believing that they were not capable of making competent decisions. Nor did they feel that black people were equal to whites – racist attitudes did not vanish after the Civil War.

As Reconstruction entered the 1870’s, public sentiment began to change and turn against the efforts of Reconstruction. Not just Democrats, but even Republicans began accepting the notion that Reconstruction was a mistake – that “the efforts of the federal government to uplift and protect former slaves came to be seen by many white Americans as a form of favoritism, which in effect discriminated against the white population.”<sup>203</sup> This argument of reverse-racism began to permeate sentiment in Congress, even to the point that many Republicans reversed themselves on the importance of helping former slaves. Instead, they began to believe that the best course of action was “to re-establish national harmony by sacrificing the Negro.”<sup>204</sup> And sacrifice them they did with the help of the Court.

The decisions rendered by the Supreme Court in the 1870’s would help feed these notions of racial inequality by undermining the amendments that were meant to help black people, as well as the ability of Congress to enforce them.<sup>205</sup> This was further done to gain some credibility back with the American people. Ever since the disastrous decision in *Dred Scott*, the Court needed to improve its reputation with the public, which reveals that the Court not only helped shape public opinion, but was also influenced by

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<sup>202</sup> Foner, “The Supreme Court,” 1586.

<sup>203</sup> Foner, “The Supreme Court,” 1588.

<sup>204</sup> Richard Bardolph, ed., *The Civil Rights Record: Black Americans and the Law, 1849-1970* (New York: Thomas Y. Crowell Company, 1970), 59.

<sup>205</sup> Foner, “The Supreme Court,” 1588.

it.<sup>206</sup> Three cases stand out during this period as key rulings for the Court, rulings that specifically undermined the 14<sup>th</sup> and 15<sup>th</sup> amendments, rulings that were the most instrumental in eroding the essence of what the amendments were created for – the upliftment and protection of black Americans.

The first of the three cases are commonly known as the Slaughterhouse Cases, and were decided by the Court in 1873. Even though this case was not brought about due to any violation of the rights of African Americans, it was the first “severe contraction of the scope of the Fourteenth Amendment’s command” to protect a citizen against a state’s attempt to deny privileges or due process.<sup>207</sup>

The case originated in New Orleans when the State of Louisiana granted one slaughtering company exclusive rights to operate in the city “for the landing, keeping, and slaughter of livestock.”<sup>208</sup> Feeling unjustly left out, the excluded butchers, known as the Butchers’ Benevolent Association, tried to block what they perceived to be a forced monopoly and argued that they were unfairly prevented from operating their businesses. They based this argument on the grounds that their 14<sup>th</sup> amendment rights to due process had been violated. When the state courts upheld the law, the BBA appealed to the Supreme Court.<sup>209</sup>

By a five-to-four vote, the Court voted to uphold the law that allowed the state sanctioned slaughterhouse. In the majority opinion, the Court ruled that the 14<sup>th</sup> amendment was specifically created to help newly freed black people, not everyone else.

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<sup>206</sup> Foner, “The Supreme Court,” 1590.

<sup>207</sup> Bardolph, *The Civil Rights Record*, 59.

<sup>208</sup> Gary Hartman, Roy M. Mersky, and Cindy L. Tate, *Landmark Supreme Court Cases: The Most Influential Decisions of the Supreme Court of the United States* (New York: Checkmark Books – An Imprint of Infobase Publishing, 2007), 19.

<sup>209</sup> Hartman, et al., *Landmark Supreme Court Cases*, 19.

The Court further stated that state citizenship and federal citizenship are two different things, and that since “most civil rights are attributes of state citizenship, [they are] therefore beyond the reach of the amendment.”<sup>210</sup> In other words, the 14<sup>th</sup> amendment protected federal citizenship, but it was not meant to keep a state from being able to regulate the people in it.

The impact of this decision was to limit the scope of the 14<sup>th</sup> amendment in a way that would open the door for southern state legislatures to pass acts that could infringe on the rights of black people. This was significant because the Slaughterhouse cases were the first instance in which the Court was called on to interpret the new Reconstruction laws. By ruling the way they did, the 14<sup>th</sup> amendment was severely weakened, which made it “ineffective in protecting individual rights against invasion by state governments.”<sup>211</sup> This became a significant factor in the following years.

The second critical case during this period came in 1876 with the Court’s decision in *United States v. Reese*. This case came about when an electoral officer in the state of Kentucky refused to allow a black man to register to vote. This official was indicted for violating the 15<sup>th</sup> amendment and the Enforcement Act of 1870. Both of these prohibit anyone from excluding or infringing on the right of a person to vote because of their race or color. However, just as the court had weakened the 14<sup>th</sup> amendment earlier, they would now do the same to the 15<sup>th</sup> amendment.

In their majority opinion, the Court ruled that “the Fifteenth Amendment extends no positive guarantees of the franchise, and does not ‘confer the right of suffrage upon anyone,’ but merely prohibits both the federal and state governments from excluding

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<sup>210</sup> Bardolph, *The Civil Rights Record*, 59.

<sup>211</sup> Hartman, et al., *Landmark Supreme Court Cases*, 20.

persons from voting by reason of ‘race, color, or previous condition of servitude.’”<sup>212</sup> In other words, African Americans don’t really have a *right* to vote, it’s just that the state and federal government can’t stop them if they want to. This greatly weakened the 15<sup>th</sup> amendment and made it easier for southern states to find new ways to construct obstacles to put in the way of black voters. It did not take long before poll taxes, literacy tests, and grandfather clauses began to emerge throughout the south.<sup>213</sup>

The third case to make a dramatic impact on the Reconstruction amendments was also decided in 1876 – the case of *United States v. Cruikshank*. This ruling came about as a result of the Colfax massacre that took place on Easter Sunday, April 13, 1873. Dozens of armed white men descended on the courthouse in Colfax, which was being defended by a large group of African Americans. Fighting broke out, and when the shooting was complete, over 100 African Americans had been shot, many of whom were shot after surrendering to the white mob. Of the dozens of white men arrested for the murder of such a large number African-Americans, only three were convicted. Their case went all the way to the Supreme Court – a case that should have been an easy verdict to make.

Despite being convicted of numerous murders, the Court ruled that the men in question did nothing wrong because the 14<sup>th</sup> amendment only applied if the *State* was trying to keep black people from voting, not private citizens: “The Fourteenth Amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against

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<sup>212</sup> Bardolph, *The Civil Rights Record*, 61.

<sup>213</sup> Bardolph, *The Civil Rights Record*, 61.

another.”<sup>214</sup> Despite the State having a responsibility to protect and defend its people from those who violate the law, this ruling gave sanction to the actions of private citizens, including organized groups of citizens such as the Klan and other white supremacy groups, to do whatever they felt necessary to prevent African Americans from exercising their right to vote. Protecting the right to vote for black people was one of the main reasons the equal protection clauses of the 14<sup>th</sup> amendment were created, but the Court completely ignored this in their ruling – a decision that had disastrous consequences for African-Americans in the South.

Historian Eric Foner has noted that “for most of its history, when faced with the task of interpreting Reconstruction measures, the Supreme Court has generally chosen a narrow reading.”<sup>215</sup> Due to these “narrow” readings, the Court undermined the very laws that were meant to help black Americans join society in a way that enabled them to enjoy the same basic rights as other men. They helped bring about the failure of Reconstruction and made the lives of all black people, north and south, vulnerable to attack.

This was the Court Louis Benecke came before in 1878 – a Court that no longer cared about the plight of African Americans and whose “narrow” legal interpretations would once again aid in a group of African Americans being deprived of what was due them.

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<sup>214</sup> Bardolph, *The Civil Rights Record*, 62.

<sup>215</sup> Foner, “The Supreme Court,” 1591-1592.

## BEFORE THE SUPREME COURT

As soon as the verdict came down against Benecke on counts six and ten in the spring of 1876, the appeals process began. One of the main arguments made by Benecke's attorneys was that there was not enough evidence presented to warrant a conviction on those two counts. However, this was but one question that arose from his trial before the District Court. Six legal questions emerged from the trial and were sent up the ladder to the Supreme Court for them to decide. It would take two years for the trial before the Supreme Court to occur, and it was scheduled for the October term in 1878.<sup>216</sup>

The six questions raised by the District Court were as follows: 1) "Is wrongfully withholding back-pay or bounty by an agent or attorney from a claimant an offense under section 13 of the act of July 4, 1864, or under act of March 3, 1873?"; 2) "Are sections 12 and 13 of the act of July 4, 1864, repealed by the act of July 8, 1870?"; 3) "Are the crimes set out in the indictment continuous down to the finding of the indictment?"; 4) "Does the statute of limitations constitute a bar to this prosecution?"; 5) "Can the defendant be punished under the act of March 3, 1873?"; 6) Are the sixth and tenth counts sufficiently certain to authorize a judgment thereon?"<sup>217</sup> Since the District Court did not feel it had the ability to rule on these questions, they referred them to the Supreme Court to determine.

While these questions appear to raise legitimate questions regarding the lower court's decision, one can notice in the phrasing of the first question that the emphasis is

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<sup>216</sup> Smith, "Brief for the United States," 1.

<sup>217</sup> Smith, "Brief for the United States," 2.

on a strict reading of the acts. It isn't asking whether or not withholding money from a client is wrong, it is only asking if it is wrong according to the acts. By the very nature of this question, it is raising the possibility that lawyers withholding money from their clients is perfectly legal because there is no specific language in the previous pension acts that precludes it. In other words, even though back pay and bounties are mentioned in the acts above, if there is no specific language against keeping money that belongs to one's clients, then keeping it is legal. To get this kind of ruling, one would need a Supreme Court that showed a tendency to read the exact letter of the law without any consideration of further intent or meaning. Fortunately for Benecke, that was the Court he was facing.

The man in charge of making the case against Benecke was Assistant Attorney-General, Edwin B. Smith. Smith addressed the questions above by letting the acts in question speak for themselves. Regarding question one, Smith pointed to the clear language in section 13 of the 1864 act:

That any agent or attorney...who shall contract or agree to prosecute any claim for a pension, *bounty*, or *other allowance*, under this act, on the condition that he shall receive a per centum upon any portion of the amount, or *who shall wrongfully withhold from a pensioner* OR OTHER CLAIMANT *the whole of any part of the pension or claim allowed and due to such pensioner or claimant*, shall be deemed guilty of a high misdemeanor.<sup>218</sup>

Smith then followed by showing the clear language from the act of 1873:

any *agent* or *attorney*, or any other person instrumental in prosecuting a claim for pension or bounty land, ...who shall wrongfully withhold from a pensioner or *claimant* the whole or any part of the pension or *claim* allowed and due such pensioner or *claimant*, ...shall be deemed guilty of a high misdemeanor.<sup>219</sup>

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<sup>218</sup> Smith, "Brief for the United States," 3.

<sup>219</sup> Smith, "Brief for the United States," 3-4.

Notice the emphasis on the words “claim” and “claimants” that Smith added here. These, argued Smith, indicate that there were more things to make a claim for than just a pension. For Smith, the language spoke for itself – if a lawyer or agent withholds money due for a claim, that lawyer or agent is guilty of a “high misdemeanor.” This, according to Smith, covered the offense committed by Benecke.

Regarding question two, Smith argued that the language in the act of 1870 covers how “pensions are made payable directly to the pensioner” and that a different formula for what fees and agent can receive was made.<sup>220</sup> It did not, however, refer to any prior statutes, “nor does it relate at all to the subject of bounty; therefore, the implication of a repeal as to this is repelled.”<sup>221</sup> In other words, since the act of 1864 laid out the penalties for withholding money due a claimant, and since there was no language in the act of 1870 that altered the ’64 act, then the ’70 act could not be interpreted as repealing something stipulated earlier.

Smith linked questions three and four together. Regarding whether withholding money is a continuous crime, Smith argued with an analogy – if person A received money that belongs to person B a year ago, still has it today and refuses to pay it to person B, then person A is withholding person B’s money today as much as person A has been withholding it for the past year. According to Smith, the very fact of someone withholding money over an extended period of time constitutes “a continued denial of that which is demanded as a lawful right.”<sup>222</sup> Therefore, withholding money is a continuous crime.

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<sup>220</sup> Smith, “Brief for the United States,” 4.

<sup>221</sup> Smith, “Brief for the United States,” 4.

<sup>222</sup> Smith, “Brief for the United States,” 5.

Smith then links this with question 4 by suggesting that “if the first knowledge of the receipt of the money, and its demand and refusal, were within the statutory time, the prosecution ought not to be considered barred.”<sup>223</sup> Smith may be referring here to the moment the plaintiffs came forward to pursue a legal remedy to their problem. For some, like Ann Parks, the realization that they did not receive the money due them came in 1869 – and for Eikhoff it was even earlier. This would put them past the statute of limitations, which was five years. Smith is perhaps referring to the moment the clients realized they had been cheated and came forward when he suggests the statute of limitations still applied.

Smith based the continuous nature of the crime as his position on the remaining two questions. If the Court ruled in the affirmative on question 3, then the others would follow the same.<sup>224</sup> This was a big assumption on the part of Smith; he assumed once an affirmative was given to question three, the questions that followed would be affirmed as well. However, he felt the language of the acts was clear and that Benecke’s actions were in clear violation of those acts.

It is hard to tell just how vigorously Smith argued on behalf of the government and the plaintiffs. The arguments in the U.S. Brief to the Court rely on a plain interpretation of the acts and an understanding that back pay and bounties are included. Yet his arguments are short and do not elaborate much at all. One has to ask whether he felt confident in the obviousness of the case or merely gave a token effort in trying to convince the Court of his arguments.

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<sup>223</sup> Smith, “Brief for the United States,” 5.

<sup>224</sup> Smith, “Brief for the United States,” 6.

By contrast, the Brief from Benecke’s lawyers was massive. His legal team took great pains to completely break down and dissect the language of each of the aforementioned pension acts in order to show that they had nothing to do with back pay and bounties. In fact, Benecke’s team spent 14 pages on the first question alone, whereas Smith spent only one. The core of the defense was centered on this first question. If they could demonstrate that the various pension acts did not mean to include back pay and bounties, then the government’s case would fall apart.

The defense pointed to the terms “claimant” and “other claimant” that appeared in the various forms of the pension acts. They contended that when the acts talked about how it was wrong to withhold money from “a pensioner” or “other claimant,” the acts referred to someone else and did not refer to people seeking their back pay and bounties – these people were not intended to be included under the law.<sup>225</sup> The defense called on a strict reading of the acts without any further consideration as to whether or not people seeking pay and bounties were protected by the pension laws.

Due to the lack of specific language in the acts that forbids lawyers and agents from keeping money from their clients, Benecke could not be charged with a crime. As his defense team argued, it is a “well defined rule, which is, that crimes cannot be made out by implication merely, but must be clearly defined in the statute upon which they are predicated.”<sup>226</sup> They further argued that back pay and bounties were not even a part of the pension system: “The act of July, 1864, was but *supplemental to the act to grant pensions*, and embraced no other subject of legislation...Arrears of pay and bounty are

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<sup>225</sup> U.S. vs. Benecke, “Statement and Brief for Defendant,” 9.

<sup>226</sup> U.S. vs. Benecke, “Statement and Brief for Defendant,” 10.

not even mentioned.”<sup>227</sup> If there is no legislation specifically speaking about pay and bounties, and it is wrong to withhold them, then how could one commit a crime for doing it?

This was the heart of Benecke’s defense – the government could not charge Benecke with a crime because nothing he did violated any provision in the various pension acts. In fact, Benecke’s lawyers went further and accused the government of trying to manufacture a reason to convict Benecke – to “import an offense into [the pension acts] by construction, which has no legitimate place there.”<sup>228</sup>

As to the remaining questions, Benecke’s lawyers spend hardly any time addressing them. If the premise be held in the affirmative that he committed no crime, then the remaining questions were mute. They summed up their argument this way: “From this review of the subject, it seems clear that there is nothing in the language of the legislation itself, the context and subject matter, or the course of contemporaneous legislation, from which the intention of the legislature to denounce withholding arrears of pay and bounty can be deduced.”<sup>229</sup>

Having heard both sides of the argument, the case now rested in the hands of the nine justices of the Court. The Court was led by Chief Justice Morrison R. Waite, a Republican from Ohio who was appointed to the top seat in March of 1874, after the death of Salmon P. Chase.<sup>230</sup> The Waite Court was comprised of justices Ward Hunt, a Republican from New York who was appointed to the Court in 1873, William Strong, a Republican from Pennsylvania appointed in 1870, Samuel F. Miller, a Republican from

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<sup>227</sup> U.S. vs. Benecke, “Statement and Brief for Defendant,” 17.

<sup>228</sup> U.S. vs. Benecke, “Statement and Brief for Defendant,” 21.

<sup>229</sup> U.S. vs. Benecke, “Statement and Brief for Defendant,” 20.

<sup>230</sup> “Justices of the United States Supreme Court,” The Green Papers, last modified October 2, 2016, accessed October 15, 2016, [www.thegreenpapers.com/Hx/JusticesUSSC.html](http://www.thegreenpapers.com/Hx/JusticesUSSC.html).

Iowa appointed in 1862, Joseph P. Bradley, a Republican from New Jersey appointed in 1870, Noah H. Swayne, a Republican from Ohio appointed in 1862, David Davis, an independent from Illinois appointed in 1862, Stephen J. Field, a Democrat from California appointed in 1863, and finally Nathan Clifford, a Democrat from Maine and longest tenured member of the Court who was appointed in 1858 – six Republicans, two Democrats, and one Independent.<sup>231</sup>

With all those Republicans on the Court, some of whom were appointed by Abraham Lincoln, one might assume that a man like Benecke, found guilty of not giving black veterans and their families the money they were due, might have cause for concern. After all, the Republicans were the party of emancipation and were known for helping former slaves find equality in America. Yet one must remember that this was the very court that had helped erode the protections within the Reconstruction amendments, which enabled more injustice and inequality to emerge in the south – and the Court would not change this trend in the Benecke case.

The decision rendered by the Court would be short and direct – in fact, it could almost be taken right out of the defense brief. Justice Miller, writing the opinion of Court, summed up the case in one of the shorter Court opinions one will read. For comparison, the opinion of Chief Justice Taney in the Dred Scott case was well over fifty pages – Justice Miller would write just three.

Justice Miller’s opinion focuses entirely on the first question and on how the term “claimant” should be defined.<sup>232</sup> According to Miller, the pension acts do not mention anything about back pay and bounties. Regarding the term, “claimant,” the Court

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<sup>231</sup> The Green Papers.

<sup>232</sup> *United States v. Benecke*, 98 US 447 (1878).

decided that a limited definition would be appropriate. Even though when one petitions the government for one's back pay and bounty and files a claim, this is not the kind of claim that the pension acts cover. The Court could have ruled otherwise, since they also recognized that the word "bounty" does appear in the language of the acts, however the Court ruled "that this would be an unjustifiable extension of a penal statute beyond its terms and against its purpose."<sup>233</sup>

In other words, the Court ruled that since the acts speak directly of "pensions" and "claims," the claims referred to are strictly meant to be interpreted as pension claims, not claims for pay and bounties. Even though Smith argued that seeking one's pay and bounty was done through a "claim," the limited reading of the acts by the Court rejected Smith's argument. Therefore, since Benecke could not be charged with violating a law that did not exist, he could not be guilty of a crime: "The first question is therefore to be answered in the negative and we need not inquire if the statute was repealed, since the offense described in the indictment is not within it."<sup>234</sup>

What remained of the decision covered the issue of the statute of limitations. Since Benecke decided to withhold the money of his clients when he did in the late 1860's, "the law then in existence did not make the act charged a crime."<sup>235</sup> Since there was no specific law that prohibited a lawyer like Benecke from keeping money that belonged to his clients at that time, he could not be said to have done anything wrong.

The Court based this decision on an assumption about the intent of Congress regarding the law: "the party might very well be criminally wrong in failing to pay when he received it, but Congress could hardly be supposed to intend to punish as a crime his

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<sup>233</sup> United States v. Benecke, 98 US 447 (1878).

<sup>234</sup> United States v. Benecke, 98 US 447 (1878).

<sup>235</sup> United States v. Benecke, 98 US 447 (1878).

failure to pay afterwards what was in law but a debt created five years before.”<sup>236</sup> This is quite an assumption to make about the intent of Congress, especially since the men who passed the laws still lived and could be asked what their intentions were. It is almost as if the Court is saying ‘Yes, he might well be guilty and should be charged with a crime, but who are we to say that is what Congress wanted?’ – They were the Supreme Court, the very branch that could decide to interpret the law in a way as to prevent this crime, but they chose not to do so.

The decision went right along with the main arguments from the defense, namely that if question one was answered in the negative then the other questions were not valid and that the statute of limitations had passed. Benecke could not have gotten a more favorable verdict and all the money he refused to pay to the clients he represented, thanks to the Court, he got to keep.

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<sup>236</sup> United States v. Benecke, 98 US 447 (1878).

## CONCLUSION

The magnitude of the Civil War not only changed the nature of American society, but changed the way the government treated and cared for veterans through enhancement and expansion of the pension system. What started as a way for taking care of soldiers directly wounded in combat became a system that cared for not only the veterans, but also their widows, children, and even parents. The evolution of the pension system was a recognition on the part of Congress, and all Americans, that the country owed a debt to the brave men who fought to preserve it – and the country would repay that debt by standing by those men in their time of need, just as they had stood by their country.

Yet the racism and prejudice towards African Americans that existed prior to 1861 did not evaporate in the wake of the Civil War. It remained and has tainted the nation up until the present day. That taint was reflected in the Pension Bureau in the years following the Civil War due to the racism and prejudice of men within the system who were supposed to monitor its operation. The unwillingness of some men to see past the color of the very veterans and families they were meant to help had lasting effects. This was true not just for the veterans themselves, but also on future generations. Denying a veteran or their families the money due them meant denying them a chance at a better life; it meant denying them the opportunity to move forward and leave something behind for their children; it meant denying them the basic dignity and respect they earned by standing up to defend their homes and their nation.

This is not to say that white veterans did not have difficulties either, nor that no white veterans were denied pensions themselves, they certainly had their struggles too, as

did many Americans recovering from four years of war. However, the added obstacles that black veterans had to overcome were far greater and made even worse due to the bigotry of the day – bigotry that resulted in many black veterans and their families being rejected by their country and left with nothing.

Ann Parks was one of those people, as was Sophronia Farmer and Emma Warden. Parks lost more than most as a result of the war. She not only lost all three of her sons in the fighting, but, due to the ruling of the Supreme Court, she was denied the back pay and bounty money that she was eligible for as well. None of the clients who were a part of the indictment against Louis Benecke ever received the money due them. The little they did receive was only a small portion of what was owed. The system that was supposed to help them, failed them.

On the other hand, Louis Benecke emerged from his trials unscathed. After his victory before the court in 1878, he returned home to Brunswick and resumed a life of prominence and public service. He was re-elected mayor of Brunswick the following year and would hold that position until 1887, when he was elected a city councilman.<sup>237</sup> Benecke also served as a member of the school board in Brunswick and was elected Director of Public Schools in 1890, a position he would hold off and on again until his resignation from that post in 1908.<sup>238</sup> He would also serve as a director for many prominent businesses such as First National Bank, Brunswick B & T Co., and Elliot Grove Cemetery. He was even elected President of the Board of Trustees for the State Soldiers' Home in 1897, a position he would hold until 1901.<sup>239</sup>

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<sup>237</sup> Benecke, 36-37.

<sup>238</sup> Benecke, 37.

<sup>239</sup> Benecke, 37.

The trials of Louis Benecke reveal one example of how a system that was created to be equal for all ultimately cannot be equal if those operating within the system refuse to treat all people fairly. When this is the case, an unbalanced system driven by prejudice emerges. Congress can pass laws and regulations, but if the institutions designated to enforce and oversee those laws and regulations contain people who will deny equal treatment to others based on race, skin color, gender, or sexual orientation, then the system will be inherently flawed and ultimately fail those it is supposed to help. This is a problem still faced by Americans today, just as it was during Reconstruction.

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