

**Protecting Women and Children “in the hour of  
their distress”: Insuring Lives after the Panic of 1837**

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## **Insuring Lives after the Panic of 1837**

The Panic of 1837 and the ensuing depression was a period of economic unrest, uncertainty, and failure which left many American families asking how they could better insulate their families from potential hardship. As Americans moved from agricultural regions into the burgeoning (anonymous) cities, as families became dependent on the income of the head of household rather than a more holistic family economy, and as businessmen became aware that their economic fortunes were as much dependent on the booms and busts of the business cycle as on their own abilities, the fate of families after a breadwinner's death became increasingly uncertain and fraught with anxiety.

The first American life insurance firms emerged in the 1810s to mitigate this more modern face of death, yet by 1825 there was still only \$168,000 of life insurance in force (the total death benefit payable on all existing policies); most Americans remained unaware – or uninterested – in the protection offered by such policies. In spite of that slow start, the young industry grew rapidly in both size and complexity during the 1830s, and by 1837 they had already begun to establish their product as one of the necessities of life for the emerging middle class. Life insurance in force stood at \$2.6 million on the eve of the panic (1835), increasing to \$4.5 million during the depression (1840), and reaching almost \$16 million as the economy recovered from this unsettled period (1845) – a consistent real rate of increase of just over 10% per annum.<sup>1</sup> Thus in contrast to the thousands of individuals and businesses who struggled to find their economic footing during the depression, life insurers capitalized on the period as an opportunity to expand knowledge of and interest in the protection they offered.

Among the many challenges facing the antebellum life insurance industry was how to convince Americans that they needed this new product. By providing numerous anecdotes of

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widows and orphans saved from poverty, of creditors able to recover the amount of their loans, and of students, artisans, small businessmen, and diverse kinds of entrepreneurs who benefited from life insurance, firms endeavored to induce people of all income levels and all non-hazardous occupations to insure. During the depression of the 1840s, these hypothetical predicaments were given increased potency as companies began to provide specific (real or composite) examples of people who insured in each category, including their age, occupation, date and amount of insurance, and if the person died prematurely; these examples quickly became standardized across company brochures. There was the “highly respectable and wealthy merchant” who had the misfortune of going bankrupt and then dying within 2 years of taking out his insurance policy, the widow in Indiana who “was so forcibly impressed with the advantages of life insurance” after the death of her husband that she took out a policy on herself, a bookkeeper who died within 10 days of contracting scarlet fever, the farmer in Dutchess County, NY who “died very suddenly, from an attack of apoplexy,” and the southern merchant who insured the life of a debtor who soon died “and by this precautionary measure he unexpectedly and suddenly realized a doubtful claim.”<sup>2</sup>

Particularly after the Panic of 1837, insurance firms specifically targeted middle-income groups for whom insurance could serve as savings bank, loan collateral, and investment, as protection for their current class status, and as a means of guaranteeing their future class status – enabling them to pursue greater risks in the present. Insurance firms catered to the unique needs of this group by permitting premium payments in easier semi-annual or quarterly sums, by

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<sup>1</sup> All growth rates and amounts in 1860 dollars, adjusted according to the consumer price index in Paul A. David and Peter Solar, “A Bicentenary Contribution to the History of the Cost of Living in America,” *Research in Economic History* 2 (1977): 16.

<sup>2</sup> Mutual Life Insurance Company of New York 1846 brochure, HCR 8-9, Nautilus Insurance Company of New York 1848 brochure, HCR 26-30, *Life Insurance: Its Principles, Operations and Benefits, as presented by the Connecticut Mutual Life Insurance Company of Hartford* (Hartford: Case, Tiffany & Burnham, 1846) 23-4, and *Life*

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providing loans against the value of the policy, or by paying cash for surrendered policies.

Companies marketed life insurance both as a middle-class savings bank and as a high-return, low-risk investment that appealed to their status-consciousness.<sup>3</sup>

The industry recognized that this growing segment of the population faced opportunities and anxieties which made them unique among Americans – and they tried to highlight those anxieties in the advertising literature. Each of these companies believed that their most lucrative business would come from middle-income fathers, whose death would leave their families in “pecuniary distress,”<sup>4</sup> “in want,”<sup>5</sup> in a state of “poverty, in the hour of their distress,”<sup>6</sup> suffering “sacrifice and loss,”<sup>7</sup> or exposing them “to insult and poverty” or “the horrors of destitution, of want, and of misery”<sup>8</sup> – language which surely struck at the core fear of people during and in the aftermath of the panic and depression. A life insurance policy was the investment of funds by a father during his lifetime to provide for the needs of his family upon his death. It was neither the social obligation of rural society, nor the pity of urban charities, but rather a market solution for a market dislocation.

Thus the industry capitalized on the economic downturn by placing increasing emphasis on the potential hazards of *not* insuring, and they further accommodated their current and potential customers with more lenient policy terms. Yet by far the most important innovation of the industry during these years of depression was the passage of a New York law in 1840 which established the right of a married woman to enter into a contract of insurance on the life of her

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*Insurance: Its Principles, Operations and Benefits, as presented by the North Carolina Mutual Life Insurance Company* (Raleigh: Seaton Gales, Publisher, 1849) 25-6.

<sup>3</sup> Sharon Ann Murphy, *Security in an Uncertain World: Life Insurance and the Emergence of Modern America* (University of Virginia: Ph.D. Dissertation, 2005), chapter 6.

<sup>4</sup> Ohio Life and Trust 1835 brochure 7.

<sup>5</sup> *A Letter to David E. Evans* 6, and Girard Life 1837 brochure 8.

<sup>6</sup> *A Letter to David E. Evans* 12.

<sup>7</sup> New England Mutual Life Insurance Company 1846 brochure, HCR 4.

<sup>8</sup> New York Life Insurance Company 1858 brochure, HCR 12, 18.

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husband, with the proceeds of this policy placed out of the reach of his creditors; several other states quickly followed suit. This historic law reflected the complex interaction of political, legal, economic, and social forces at work in post-Jacksonian America. For the new Whig majority in Albany, the law represented their ongoing agenda of promoting commercial development, both by facilitating the growth of new business endeavors such as the emerging life insurance industry, as well as by providing debtor relief in the midst of the 1839-1843 depression.

This law additionally exhibited the intricate balance of relations within the early American household, and particularly the economic realities of an emerging urban middle class. As the money-earning capacity of the family increasingly became focused on its adult male members working outside of the house, the responsibility for ensuring the stability, efficiency, and decorum of the middle-class household itself rested all the more with the wife. This growing separation of public and private spheres placed the wife in a position of complete economic dependence, yet left her long-term monetary security in question. By helping her to prepare for the financial difficulties of widowhood, the protection offered by a life insurance policy gave middle-class widows many more options for the future. The lobbying efforts of the life insurance companies in favor of the law demonstrated their recognition of the central role played by women in both the consumptive and economic decisions of the household. On the other hand, men supported this moderate expansion of the rights of women because it allowed the paternalism of the husband to extend from beyond the grave. The industry was willing to compromise its strict regulations regarding taking out an insurance policy on someone else's life in order to tap into this potential market segment.

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### *The Setting for a Law*

As had been the case in colonial times, during the first half of the nineteenth century marriage fundamentally altered the legal status of a woman. Under the married condition of coverture, a woman sacrificed the rights and privileges she had enjoyed as an individual or feme sole in order to gain the protective cover of her husband as a feme covert. In its purest form, the woman “could neither sue nor be sued in her own name, she was limited in making contracts and wills, and all of her personal property as well as the management of her real property went to her husband.”<sup>9</sup> In return, common law required that the husband provide adequate support for his wife, and not leave her penniless when he died.<sup>10</sup> As Edward D. Mansfield outlined in his 1845 treatise *The Legal Rights, Liabilities and Duties of Women*: “As a general rule, the maintenance of the wife and of the entire family devolves upon the husband as head of the family. It is his *duty* legal and moral; and it is the corresponding *right* of the wife to demand it. . . . The general rule is, that the husband is bound to provide his wife with necessaries *suitable to her situation and his condition in life*”<sup>11</sup> [emphasis in the original].

Yet both families and the court system also recognized that the ideal of coverture did not always reflect the reality of married life in early America; a woman sometimes needed additional protection against husbands who either intentionally shirked these duties or unintentionally placed the financial security of their families at risk. As early as the seventeenth century in England, courts recognized the right of a woman to protect property – either brought into the marriage or acquired through gift or inheritance during the marriage – through the use of

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<sup>9</sup> Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York*. (Ithaca, New York: Cornell University Press, 1982), 17.

<sup>10</sup> Basch, 17, Nancy Cott, *The Bonds of Womanhood: “Woman’s Sphere” in New England, 1780-1835*. (New Haven: Yale University Press, 1977), 21-23, Marylynn Salmon, *Women and the Law of Property in Early America*. (Chapel Hill, NC: The University of North Carolina Press, 1986), 14-15, 41, 76-77, and Elizabeth Bowles Warbasse, *The Changing Legal Rights of Married Women, 1800-1861*. (New York: Garland Publishing, Inc., 1987), 21.

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marriage settlements (antenuptial or postnuptial contracts) or trusts. In his *Commentaries on American Law*, Chancellor James Kent of the New York Court of Chancery noted that the purpose of these legal mechanisms was to shield a woman from “being overwhelmed by the misfortunes, or unkindness, or vices of her husband” and that trusts, in particular, “usually proceed from the foresight of friends” or from “the warm and anxious affection of parents.”<sup>12</sup>

These devices enabled the wife to maintain property separate from that of her husband, which she could then use (depending on the terms of the contract) at her own discretion during the marriage, at the discretion of a trustee (who may or may not be her husband), or upon the death of her husband. Most importantly, this property was usually free from the claims of the husband’s creditors. Thus some husbands actively sought to create marriage settlements in order to protect certain family assets from being used to pay off debts. However, most women did not take advantage of these legal loopholes, since they were predicated on a woman coming into possession of property independent of her husband. As historian Norma Basch concludes, the majority of women were “neither . . . sufficiently wealthy [n]or legally sophisticated to create a separate estate. Most wives continued to live with the harsh disabilities and limited rights of coverture.” Although Mississippi would pass the first married women’s property act in 1839, it was not until 1848 with the passage of the married women’s property act in New York that the property of married women was automatically kept separate from that of their husbands.<sup>13</sup> Yet even married women’s property acts largely benefited wealthier women who were in possession of property when they entered into marriage.

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<sup>11</sup> Mansfield, Edward D., A. M., *The Legal Rights, Liabilities and Duties of Women*, Salem: John P. Jewett & Co. 1845, 244, 246.

<sup>12</sup> Basch 21, 72; Salmon, 83; Kent as reprinted in Basch 63.

<sup>13</sup> Mansfield, 281-3; Richard H. Chused, “Married Women’s Property Law: 1800-1850,” *Georgetown Law Journal*, (June 1983) 19-20; Scott A. Sandage, *Born Losers: A History of Failure in America*. (Cambridge, MA: Harvard University Press, 2005) 31; Salmon 83, 88, 93, 101; Basch 25, 74, 90, 156-60; Warbasse 31, 36, 227-28.

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Historians of the married women's property acts trace their origins not to the emerging women's rights movement of the mid-nineteenth century, but rather to changing economic conditions which both created the ideal of separate spheres for men and women, while simultaneously challenging the ability of middle-class families to maintain this ideal. Rapid urbanization was a hallmark of the early nineteenth century, and this new environment drastically altered domestic and communal relationships. The family and home shifted from primarily being units of production to ones of consumption as the entire family economy was now becoming dependent on the income of the primary male breadwinner.<sup>14</sup>

This shift outside of the home did not merely represent an economic reorganization; rather, it allowed the creation of two separate spheres, one domestic (and female) and the other public (and male). Although always ultimately subject to the authority of her husband, the ideal middle-class woman was expected to exercise executive control over all matters relating to the home, while simultaneously minimizing her contact with the public sphere.<sup>15</sup> Mid-nineteenth-century advice manuals often described what historians now call the resulting cult of domesticity:

Woman is the presiding genius of home. These words, woman and home, are almost synonymous. . . . Home should form the centre of a wife's affections, plans, and thoughts. She should view it as a little kingdom, in the ruling and managing of which, she must act the most important part, and assume the greatest

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<sup>14</sup> Basch, 29-41, 121, 124-5; Chused 20-21; Cott, 43; Warbasse, 180; Jack Larkin, *The Reshaping of Everyday Life: 1790-1840* (New York: Harper & Row, Publishers, 1988) 265; Cambell Gibson, ed. *Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1900*. June 1998. U. S. Bureau of the Census; Shawn Johansen, *Family Men: Middle-Class Fatherhood in Early Industrializing America* (New York: Routledge, 2001) 23-24; Mary P. Ryan, *Cradle of the middle class: The family in Oneida County, New York, 1790-1865* (Cambridge: Cambridge University Press, 1981) chapter 1; Carroll Smith-Rosenberg, *Disorderly Conduct: Visions of Gender in Victorian America*. (New York: Alfred A. Knopf, 1985) 12, 86; E. Anthony Rodundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era*. (New York: Basic Books, 1993) 22-24; Jeanne Boydston, *Home & Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York: Oxford University Press, 1990) 99.

<sup>15</sup> Ryan, 146-155.

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responsibility – a kingdom which will altogether the most sensibly feel *her* influence, and which will exhibit such characteristics as she pleases to enstamp [sic] upon it. Home is the sphere in which woman can exhibit all the valuable traits of her nature. . . . Is a wife economical, industrious, and tasty? In what place can she more visibly or more successfully display these qualities than at home? Is she ambitious? There is no ambition so worthy a woman, as that which prompts her to discharge faithfully and efficiently her duties as a wife, a mother, and the mistress of a household! . . . Let no wife despise this ambition. . . . Home is the only proper theatre for the display of a wife's ambition.<sup>16</sup>

But even in its most ideal form, the cult of domesticity could not completely remove the woman from the public realm. In order to fulfill her duties as the “genius of the home,” the woman reentered the public sphere as the person who made the primary decisions regarding consumption for the family. “The female manager of the middle-class home, in other words, was expected to mediate between the family and the marketplace in a parsimonious but active manner, to consume enough to accommodate a growing commodity production and yet to save enough for the continuing accumulation of capital during this early period of industrialization. In both respects . . . shopping was vitally connected to the larger economy.”<sup>17</sup> In the day-to-day life of the ideal woman, this symbiotic relationship between the public and private spheres created a substantial gray area in which women became the targeted market segment for many businesses. “Increasingly as the century passed, women were *expected* to shop for their families, so they had to buy these goods and services in order to supply their households and meet their

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<sup>16</sup> John Mather Austin, *A Voice to the Married; Being a Compendium of Social, Moral, and Religious Duties* (New York: J. Bolles, 1847) 228-9.

<sup>17</sup> Ryan, 199-200.

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personal needs; and men had to sell these goods and services to women or they would fail in business.”<sup>18</sup>

Among the many industries that viewed women as an important market segment was life insurance; middle-class women and families formed the core of company marketing campaigns as the sentimental victims of a father’s untimely death.<sup>19</sup> And these firms increasingly recognized that, as the moral guardians of the household, these women were not just passive victims. Rather, as they increasingly asserted control over all aspects of household consumption and governance, whether or not to purchase a life insurance policy on the head of household often fell under their purview. However, women faced two basic problems – their inability to contract for insurance on their spouses (both due to the legal bar on signing contracts in the coverture system, and the industry’s strict rules regarding insurable interest), and the legal status of the policy as part of the deceased’s estate. During the late 1830s and early 1840s, life insurance companies sought to remove each of these barriers in order to attract the attention of the female head of family. By empowering her to take control of her own economic future, this potential “victim” of her husband’s untimely death might be more likely than he to seek out the protection offered by an insurance policy.

The anxiety created by the unpredictability of death was only compounded by the credit foundations of the economy and fluctuating economic fortunes. The antebellum economy was heavily dependent on credit networks. Businesses of all types and sizes relied on borrowing not only in the initial creation or later expansion of their firms, but for day-to-day transactions as

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<sup>18</sup> Rotundo, 209.

<sup>19</sup> For more information on these marketing campaigns, see Sharon Ann Murphy, *Security in an Uncertain World: Life Insurance and the Emergence of Modern America* (University of Virginia: Ph.D. Dissertation, 2005), chapter 6.

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well – “they took on debt as purchasers and extended credit as sellers.”<sup>20</sup> While this system operated reasonably well under normal circumstances, if debts were called in at inopportune times – such as during an economic panic or when settling an estate – the effect on businessmen and their families could be devastating. In *Debtors and Creditors in America*, Peter Coleman estimates that “by the early nineteenth century one householder in every five would, during his working lifetime, fail outright rather than merely default on a particular debt.”<sup>21</sup> In particular, the panic in 1837 and the depression of 1839-1843 had a significant long-term impact on middle-income urbanites, as the nominal value of commodities, land, and other assets fell by 40 percent under the deflationary pressures of the period.<sup>22</sup>

Whereas Americans had once assumed that failure was the result of a character flaw, this general economic downturn caused many Americans to question their personal responsibility in light of circumstances beyond their control. As Scott Sandage points out in *Born Losers: A History of Failure in America*, at a time when even honest, hardworking men were going into bankruptcy, some people began to place blame on the apparent shortcomings of the capitalist system itself. This changing attitude helped the new Whig majority in Congress to win passage of the short-lived Bankruptcy Act of 1841, which enabled many American debtors to break free from their overwhelming debts and start their economic lives anew.<sup>23</sup>

In addition, numerous states enacted valuation and stay laws during periods of economic crisis to protect the property of debtors from being sold in distress sales. And while colonial law had traditionally exempted certain items such as “essential clothing, bedding, furniture, eating

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<sup>20</sup> Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: The University of North Carolina Press, 2001) 28.

<sup>21</sup> Peter J. Coleman, *Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900*. (Madison, WI: The State Historical Society of Wisconsin, 1974) 287-288.

<sup>22</sup> For a summary of the causes and results of the panics of 1837 and 1839, see Balleisen, 32-41.

<sup>23</sup> Sandage, 15; Balleisen 102-108, 206.

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utensils, and tools” from attachment by creditors in order to prevent the debtor and his family from being reduced to complete squalor – and thus becoming a burden on the community – early nineteenth-century legislators began debating more general exemptions. In 1842, for example, the New York legislature enacted a bill that permitted families to select up to \$150 worth of property to be exempt from the claims of creditors, in addition to the already existing list of enumerated household goods.<sup>24</sup>

Yet even these remedies left middle-income families vulnerable if the head of household died. What if death intervened before the bankruptcy proceedings were completed, or before the person was able to reestablish himself in business? And while a solvent businessman could rest assured that his firm would provide for his family after death (either through continuance by another family member or profitable liquidation), the salaried man could take no such comfort since his money-earning potential died with him. Whereas the negative economic impact of death was always present, panics and depressions served to highlight middle-class fears.

Early life insurance companies manipulated both their advertising literature and the structure of their policies in order to target these needs and anxieties of this emerging urban middle class – people with economic and social aspirations but who were dependent on the existence of a regular income and generally eschewed risk for fear of failure. Yet, as the panic and depression at the end of the 1830s highlighted, life insurance could not always deliver the promised shelter from hardship. While their advertising literature preached the protection offered by an insurance policy for widows and orphans, a father could not guarantee that his family would benefit since insurance payments were considered part of the deceased’s estate. This was in direct contrast to the law of dower where – with the distinct exception of

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<sup>24</sup> Coleman, 9, 275; Charles W. McCurdy, *The Anti-Rent Era in New York Law and Politics, 1839-1865*. (Chapel Hill, NC: University of North Carolina Press, 2001) 65-68, 88-89.

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Pennsylvania – the rights of a woman to her dower came before the claims of any creditors.<sup>25</sup>

Yet with life insurance, if the person named in the policy died intestate, creditors could claim the proceeds of the policy and leave the widow and children penniless. During the depression years of 1839-43, policyholders became acutely aware of this problem.

### *Insurable Interest*

Even if policies were exempt from the claims of creditors, women still depended on their husbands to take the initiative in obtaining life insurance. Not only were married women legally unable to enter into contracts, but they were additionally prevented from obtaining insurance on the lives of their husbands due to the industry's strict observance of the principle of insurable interest. One of the chief objections to the sale of life insurance in both the United States and continental Europe was its reputation as a gambling contract and its association with murder. While many European governments banned the sale of life policies between the sixteenth and eighteenth centuries,<sup>26</sup> England attempted to reform the system when it passed a 1774 law (St. 14 Geo. III, c. 48 ) banning life insurance policies “except in cases where the persons insuring shall have an interest in the life of the persons insured,”<sup>27</sup> i.e. an insurable interest.

Early British court rulings initially favored a conservative reading of this law. In the famous case of *Godsall v. Boldero* (9 East, 72), the courts enforced the idea that a creditor could not collect more on an insurance policy than the amount of debt owed. When the British

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<sup>25</sup> Salmon 143, 160.

<sup>26</sup> Viviana A. Rotman Zelizer, *Morals and Markets: The Development of Life Insurance in the United States* (New York: Columbia University Press, 1979) 36-39, R. Carlyle Buley, *The American Life Convention, 1906-1952: A Study in the History of Life Insurance*. (New York: Appleton-Century-Crofts, Inc., 1953) 18-19, Morton Keller, *The Life Insurance Enterprise, 1885-1910: A Study in the Limits of Corporate Power* (Cambridge, MA: Belknap Press, 1963) 4, “Life Insurance in the United States,” *Hunt’s Merchants’ Magazine* February 1843: 111, 114, and “What is Said Against Life Insurance by its Enemies,” *The Insurance Gazette* April to October 1864 73-4.

<sup>27</sup> Buley, *The American Life Convention* 18-19, Zelizer 71, Keller 4, and David Jenkins and Takau Yoneyama, eds., *History of Insurance. Volume 4: Life* (London: Pickering & Chatto, 2000) 3.

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minister William Pitt died insolvent in February 1806, Parliament allocated funds to pay all of his debts, including £1000 owed to his coachmakers. The coachmakers, who in 1803 had taken out a £500 policy on the life of Pitt, sued the Pelican Life Insurance Company for payment on the policy (for an additional £500 above the £1000 already paid by Parliament), but were rebuffed by the court: “It was held that this assurance, like every other to which the law gives effect, was a contract of indemnity as distinguished from one by way of wagering or gaming . . . that if the debt, which was the foundation of the indemnity, is paid, it matters not from what source the fund is derived.”<sup>28</sup> Several companies likewise stated specifically in their rules that insurable interest must exist at the time of the death of the insured. For example, the conditions of insurance of the Scottish Widows’ Fund and Life Assurance Society, published in 1814, stated: “and providing also, that the assignee shall have an interest in the life upon the *termination* of which the benefit arises” [emphasis added].<sup>29</sup>

This principle of insurable interest was crucial to maintaining the actuarial soundness of the industry. Companies predicted from the mortality tables that, on average, a given number of people would die each year from a given age group, but *which* individuals would actually die was a random event for which the companies could do nothing to control beyond attempting to select good risks at the onset. On the other hand, crimes such as murder – when committed for the express purpose of collecting on a life insurance policy – specifically targeted an individual *because* of the money value of their demise, thereby rendering the actuarial tables useless as long-term predictors of risk.<sup>30</sup> Gambling policies, in which the party assuring would benefit

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<sup>28</sup> “Life Insurance,” *The United States Democratic Review* November 1846: 360 and “Insurance: its History, Legal Philosophy, and Morals,” *Hunt’s Merchants’ Magazine* May 1849: 503.

<sup>29</sup> *Deed of Constitution, and Articles and Regulations of the Scottish Widows’ Fund and Life Assurance Society* (Edinburgh: Caledonian Mercury Press, 1814) 16.

<sup>30</sup> “Subrogation as Applied to Life Policies. Insurance for Suicides and Murders,” *Insurance Monitor* January 1872: 48-50.

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from the death of the insured, were merely temptations to negligence and outright murder. Whereas gambling was defined as a risk-bearing activity with a positive outcome (for the gambler) resulting from the risk coming true, insurance was distinguished as a risk-avoiding endeavor.<sup>31</sup> A strict adherence to the concept of insurable interest thus served both to preserve the integrity of mortality tables and the reputation of the industry in the public mind.

As life insurance increased in popularity in England and new companies emerged to challenge the British giants, competition for business drove many companies – particularly those newly entering the market – to relax these rules. By the mid-nineteenth century, insurable interest in England was ascertained only with the initial application for insurance and rarely challenged once a claim was made.<sup>32</sup> At first glance, this development may appear to be counterintuitive since the principle of insurable interest was a protection to companies against people criminally driving up mortality rates, as well as a protection of the life of the insured. However, a reputation for settling claims swiftly and with few legal challenges attracted business both from those with a gambling or criminal instinct, as well as from legitimate policyholders who feared a prolonged, expensive, unfair court dispute over their claims. If companies refused to contest questionable claims, there was little the British courts could do to enforce the spirit of the law.<sup>33</sup>

As a result of this emerging leniency among British companies, gambling policies soon reappeared in England. The most prevalent offense to the idea of insurable interest was the auction of life insurance policies by legitimate policyholders to speculators. In an effort to raise

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<sup>31</sup> Jenkins and Yoneyama 2.

<sup>32</sup> “Life Insurance,” *The United States Democratic Review* November 1846: 360.

<sup>33</sup> *Godsall v. Boldero* would be officially overturned in the 1855 case of *Dalby v. The India and London Life Assurance Company and St. John v. American Mutual Life Insurance Company*. *St. John v. American Mutual Life Insurance Company*. 13 N.Y. 31. Court of Appeals of New York. September 1855. See also *Loomis v. Eagle Life and Health Insurance Company*. 72 Mass. 396. Supreme Court of Massachusetts. September 1856.

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money, elderly, sick, and poor policyholders would gather at the Royal Exchange in London on a weekly basis and auction off their policies. Based on the age and physical condition of the policyholder, bidders would attempt to estimate the number of premiums remaining before the death of the insured to determine the net gain from payment of the policy's face value to the new owner. These auctions were regularly reported in both the English and American press in a matter-of-fact manner reminiscent of the sale of cattle, grain, or American slaves (in southern papers).<sup>34</sup>

Upon witnessing one of these auctions in 1844, Elizur Wright, the most famous American actuary and life insurance reformer (as well as avid abolitionist), stated: "What I saw at that sublime center of trade was a sale at auction of several old policies on very aged men to speculators . . . to be kept up by them by their paying annual premiums to the company till the decease. This was done, I was told, because the companies made it a rule '*never to buy their own policies.*' A poor rule, it seemed to me! I had seen slave auctions at home. I could hardly see more justice in this British practice."<sup>35</sup> Although the bidders held no insurable interest in the life of the insured, these claims were declared to be legal since by the mid-nineteenth century the British law was interpreted as only requiring insurable interest at the time the policy was issued; policies, once issued, could continue as legal contracts even after such interest had ceased to exist.<sup>36</sup>

Early American insurance companies were well aware of the association between life insurance, gambling, and murder in Britain and, from the very beginning, sought to prevent the

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<sup>34</sup> For an example of this practice, see "Sale of British Life Policies," *The Insurance Gazette* April to October 1858: 151.

<sup>35</sup> Lawrence B. Goodheart, *Abolitionist, Actuary, Atheist: Elizur Wright and the Reform Impulse* (Kent, OH: Kent State University Press, 1990) 141-143, Buley *The American Life Convention* 59, Jenkins and Yoneyama 2, and Elizur Wright, "Life Insurance," *North American Review* August 1886: 145.

<sup>36</sup> Wright would later cite this experience as one of the main reasons for his crusade to pass a Non-Forfeiture Law in the United States.

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same abuses from occurring in the United States. Thus, the meaning and application of the idea of insurable interest became central to the industry's early development in order both to preserve the actuarial foundations of the fledgling industry and to create a reputation for life insurance in the United States that was free from the taint of crime. Statements made by American companies in their rules or conditions of insurance reflected the wording of the 1774 British law: "Every person desirous to make assurance with the Company must sign a declaration, . . . in case such assurance is made upon the life of another person, that the interest which he has in such life is equal to the sum assured" (Pennsylvania Company, 1814),<sup>37</sup> "A person must have an interest in the life he insures, if it be not his own life" (Union Insurance Company and Massachusetts Hospital Life Insurance Company, 1818),<sup>38</sup> or "No person can insure the life of another, unless he has an interest in such life" (New York Life and Trust Company, 1830).<sup>39</sup> But whereas English companies interpreted the law with a strict adherence to its wording, American companies and courts embraced the spirit of the law by rigorously enforcing the idea of insurable interest from the moment a policy was issued through to the payment of the final policy claim.

The most common instances of insurable interest in practice involved debt contracts. A creditor who insured the life of a debtor could only collect payment up to the amount owed at the time of the insured's death (as the 1806 case of *Godsall v. Boldero* had decided), with the remainder of the policy claim being remitted to the estate of the insured. Nathaniel Bowditch, president of the Massachusetts Hospital Life, stated as much in 1831 to one potential customer,

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<sup>37</sup> *An Address from the President and Directors of the Pennsylvania Company for Insurances on Lives and Granting Annuities, to the Inhabitants of the United States, upon the Subject of the Beneficial Objects of that Institution* (Philadelphia: J. Maxwell, 1814) 19.

<sup>38</sup> *Prospectus of the Union Insurance Company, Incorporated by the State of New-York, for Making Insurance on Lives, and Granting Annuities* (New-York: J. Seymour, 1818) 13, and "Life Insurance in the United States," *Hunt's Merchants' Magazine* March 1843: 231-2.

<sup>39</sup> *Rates and Proposals of the New-York Life Insurance and Trust Company, No. 38 Wall-Street, for Insurance on Lives, Granting Annuities, Receiving Money in Trust, and the Management of Trust Estates* (New-York: Clayton & Van Norden, Printers, 1830) 17.

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“The insurance could be made payable to creditor, & if the amt [amount] should exceed his debt, he to pay over the balance to the Exs [Executors] or Adms [Administrators] of the assured.”<sup>40</sup> A similar letter from William Bard, president of the New York Life Insurance and Trust Company, advised a creditor in 1833, “This Company will insure the Life of your debtor and pay on his death the sum insured. . . You can only insure the amount due by him. On his death reasonable advice will be required of the amount of your Interest.”<sup>41</sup> And again in 1834 Bard wrote: “If I understood your question and understood the law, a party insuring the life of another can not recover more than the other owes him at the time of his death, what that is the insuring party will have to show.”<sup>42</sup>

In late 1838 and early 1839, the Baltimore Life Insurance Company exchanged a series of letters with their agent in Washington, D. C., James H. Causten, on the subject of policies issued on the lives of debtors. Causten was not only the company’s agent at the time, but was also one of the Baltimore Life’s biggest customers. Between 1831 and 1847, he insured the lives of nineteen different people (including himself) on 31 policies worth a total of over \$45,000. In January 1839 (during the aforementioned discussion of insurable interest), Causten held 15 policies accounting for over \$17,000 of insurance in force. Company president John J. Donaldson first wrote Causten in November 1838 to express his concern that the agent was taking out so many policies for his own benefit: “You know it is the rule of all Life Insurance made on the Life of another, that there is an interest in the Life to the amt insur’d. Altho we do not doubt such to be the case on these policies, yet we wish it to be so understood before new

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<sup>40</sup> Letter from Nathaniel Bowditch to Thos C. Perkins of Hartford, April 11, 1831, Massachusetts Hospital Life Insurance Company Collection (MHL), MS 783, Outgoing Letters Book LA-1, Baker Library, Harvard Business School.

<sup>41</sup> Letter from William Bard to Philip Viele, February 19, 1833, New York Life Insurance and Trust Company Collection (NYL&T), MS 797, Letter Book GA-3, Baker Library, Harvard Business School.

<sup>42</sup> Letter from William Bard to J. B. LaForge of Albany, September 10, 1834, NYL&T Letter Book GA-4.

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ones issue, because if your interest ceases or diminishes before death occur, the Board might not consider itself bound to a greater amount than the real interest.”<sup>43</sup>

Causten, however, strongly disagreed with this policy statement made by the president, declaring that he was “very desirous to remove from my files . . . that passage of your letter of Nov 28 last” which was quoted above. The agent viewed the policy as “untenable” and asserted that “As you insure the Life and not the Debt of the assured, I do not see how the amount or validity of the debt can be drawn in question; or, if it be the thing actually covered by the policy, then, you would of course be responsible for the whole debt, even though it exceed the amount insured.”<sup>44</sup> Despite Causten’s protest, the Baltimore Life refused to budge on the topic of insurable interest: “The principle to which you object, is that which governs every Life Insurance in the World. . . . I consider this as the definitive action of the Board.”<sup>45</sup>

As the Baltimore Life insinuated in their response, this basic rule was not only adopted by individual companies but was an industry-wide standard (at least in the United States). Causten’s argument, however, was not unreasonable. In court cases argued throughout the antebellum period, the state supreme courts were divided on the subject. At issue was whether the 1774 British statute was an expression of common law – which would have rendered it applicable in the United States – or a statute addressing a topic not covered or contradicted by common law – which would require the enactment of similar laws in each of the states for it to be relevant. The Supreme Court of New Jersey in the 1854 case of Trenton Mutual Life and Fire Insurance Company v. John Johnson ruled that the demonstration of insurable interest on life

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<sup>43</sup> Letter from John J. Donaldson to James H. Causten, company agent in Washington, D. C., November 28, 1838, Baltimore Life Insurance Collection (BLIC), MS 175, Letter Book 1833-1841, H. Furlong Baldwin Library, Maryland Historical Society.

<sup>44</sup> Letter from James H. Causten, company agent in Washington, D. C., to John J. Donaldson January 17, 1839, BLIC Correspondence Box 4.

<sup>45</sup> Letter from John J. Donaldson to James H. Causten, company agent in Washington, D. C., January 21, 1839, BLIC Letter Book 1833-1841.

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policies was unnecessary unless a law was specifically passed to that effect. “Until the legislature shall think proper to interfere, the courts can only adhere to the common law as they find it established.”<sup>46</sup> In 1856, the Supreme Court of Massachusetts reached a similar conclusion in the case of *Loomis v. Eagle Life and Health Insurance Company*, stating that “As the English statute in terms has never been in force in this country, the case must be governed by the principles of the common law.”<sup>47</sup> But that same year, the Vermont Supreme Court ruled that a creditor “can not retain the surplus” of a life policy above the amount of the debt,<sup>48</sup> and in the 1861 case of *Ruse v. The Mutual Benefit Life Insurance Company* (on appeal from the New York Supreme Court), Judge J. Selden stated, “My conclusion, therefore, is, that the statute of 14 George III, avoiding wager policies upon lives was simply declaratory of the common law, and that all such policies would have been void, independently of that act.”<sup>49</sup>

Most states during the 1850s and 1860s did eventually incorporate the necessity of insurable interest into their insurance laws, but even without these laws – and despite the contradictory state court rulings – the companies themselves consistently required such interest to remain present upon the death of the insured. By 1846, an article describing the operation of the American life insurance industry positively asserted: “If a creditor is in danger of losing his debt, in case a person who owes him should die suddenly, he may insure his debtor’s life. It is necessary in this case, however, that the party insuring should have not only a legitimate interest in the person whose life is insured at the time the policy is taken out; but that the interest should continue down to the hour of his death.”<sup>50</sup>

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<sup>46</sup> *Trenton Mutual Life and Fire Insurance Company v. Johnson*. 24 N.J.L. 576. Supreme Court of New Jersey. November 1854.

<sup>47</sup> *Loomis v. Eagle Life and Health*, 1856.

<sup>48</sup> *Coon v. Swan and Meeker*. 30 Vt. 6. Supreme Court of Vermont. December 1856.

<sup>49</sup> *Ruse v. Mutual Benefit Life Insurance Company*. 23 N.Y. 516. Court of Appeals of New York. September 1861.

<sup>50</sup> “Life Insurance,” *The United States Democratic Review* November 1846: 360.

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Of course, instances of creditors insuring the lives of debtors were probably the simplest cases of insurable interest, since pecuniary interest (in the form of a debt contract) would be relatively easy to prove. Demonstrating a direct *financial* interest in the life (and not the death) of another was virtually the only means of establishing insurable interest in the early years of American life insurance. As an article entitled “Illustrations of Life Insurance” from the October 1846 issue of *Hunt’s Merchants’ Magazine* declared, there were only two means of obtaining a life insurance policy, the first being on one’s own life. “The second is, that all persons having a pecuniary interest in the existence of a life, can secure that interest.”<sup>51</sup> Thus, a husband or father who wanted to insure the life of his wife or children needed to establish the monetary benefit to him of their continued existence.

In numerous letters to potential policyholders written during the 1830s, William Bard stressed this point: “It would be well for you to state your interest in your daughters life independent of that you have as a parent,”<sup>52</sup> “According to the laws of this State a husband cannot insure the life of a wife, unless she has a separate Estate in which he has an interest dependent on her life,”<sup>53</sup> “Does Mr. Smith know that to insure the Life of his wife he must have some other interest in her Life than that of affection. He must have some estate or property in which he has an interest depending on her Life of equal value with the insurance in this case \$5000,”<sup>54</sup> “We can not insure your Wife’s life unless you have an Interest in it beyond affection. You must have a money Interest,”<sup>55</sup> “The Board decline insuring the life of a Parent or child for

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<sup>51</sup> “Illustrations of Life Insurance,” *Hunt’s Merchants’ Magazine* October 1846: 424.

<sup>52</sup> Letter from William Bard to J. L. McHenna of Alexandria, July 17, 1830, NYL&T Letter Book GA-1.

<sup>53</sup> Letter from William Bard to P. Lythoff of Patterson, February 3, 1832, NYL&T Letter Book GA-2.

<sup>54</sup> Letter from William Bard to P. Lythoff of Patterson, June 6, 1833, NYL&T Letter Book GA-3.

<sup>55</sup> Letter from William Bard to James Foley, August 16, 1834, NYL&T Letter Book GA-4.

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the advantage of the one not insured unless that one has an interest in the other besides affection,"<sup>56</sup> and finally:

I would send you the papers you desire as the Company would be willing to insure your Daughters life, but from your statement to me it appears doubtful whether you have such an interest in her life as can be insured which if you have not, the contract would not be binding on us . . . If the income from the Stock is payable to you during her life, then you have such an interest as can be insured. But if this is not so, if the stock & the interest arising from it is absolutely hers & you have no claim till her death, then you have not.<sup>57</sup>

All of the early companies were extremely strict in the application of their rules regarding pecuniary interest, repeatedly turning down inquirers with inadequate proof of interest, or insuring them for amounts below that which was originally requested.

In theory, a vigilant application of pecuniary interest should have been adequate both to protect the insured from becoming the victim of a crime as a result of the life insurance policy and to preserve the actuarial soundness of the industry. In practice, however, the need to demonstrate a direct monetary interest worked to the disadvantage of those targeted as the prime beneficiaries of life insurance – women and children. Ironically, even if women could have taken out insurance policies on the lives of their husbands, they still would have had to demonstrate that they possessed an insurable interest in his continued existence – despite their status as economic dependents.

### *Protecting Widows and Orphans*

When one married couple applied to the New York Life and Trust for policies on each of their lives in 1833, Bard responded: “Mrs. Starr, a married woman, can not enter into a contract.

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<sup>56</sup> Letter from William Bard to Henry White, January 25, 1836, NYL&T Letter Book GA-5.

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I have therefore insured Mrs. Starr[']s Life in the name of her husband. This even is not good unless Mr. Starr has an interest in his wife[']s life, that is has an interest in property depending on her life. He can then insure her life to the amount of that interest.”<sup>58</sup> Even if Mrs. Starr had been legally able to take out a policy on her husband’s life, she likewise would have had to demonstrate an insurable (i.e. monetary) interest in her husband’s life.

One way around this problem was for a husband to set up a trust for his wife or children, whereby a certain sum of money would be deposited with the company (either in one lump sum or repeatedly over time) and held in trust until the occurrence of some specified contingency such as the death of the husband or father, the attainment of a certain age, or the marriage of a child. The main advantage of such a trust was “to afford the means to Parents & Husbands to secure to their Widows & Children the property they may leave without being liable to the debts of their Husbands or to the accidents which may befall them.”<sup>59</sup> Almost all early American life insurance companies were chartered to conduct business in both trusts and life insurance (as well as endowments, annuities, etc.), and for most of these companies the trust side of the business far outperformed the insurance side, partially as a result of this advantage over life insurance. But trusts were effectively a type of savings account for the rich; the beneficiaries only received the sum of money deposited plus accumulated interest, furnishing no protection to those who could not afford to make a large initial outlay of money.

Another alternative was for a trustee to take out a life policy on the wife’s behalf. One inquirer to the Massachusetts Hospital Life was advised: “Making any sum payable to a wife gives her no right to it in case any creditors have a claim, in case of insolvency. This can be

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<sup>57</sup> Letter from William Bard to J. L. McHenna of Alexandria, October 15, 1830, NYL&T Letter Book GA-1.

<sup>58</sup> Letter from William Bard to J. L. Starr, August 24, 1833, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-3, Baker Library, Harvard Business School.

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secured to her in no other way than having the insurance made by a Trustee for the use of a wife and children.” This arrangement proved to be rare, however, since the wife or children would still have to establish a specific pecuniary *risk-avoiding* interest in the life of the husband or father. Although the Massachusetts Supreme Court in the 1815 case of Lord v. Dall had ruled that a child could obtain a policy on the life of a parent (or a sister on the life of a brother when he acted *in loco parentis*) without demonstrating a direct monetary interest, life insurance companies did not extend this idea to wives insuring the lives of husbands. Indeed, both companies and the insuring public appear to have remained largely ignorant of the ruling during the first decades of the industry’s existence.<sup>60</sup>

A third possibility was for the husband to take out the policy on his own life and assign his wife or children as the beneficiary. Yet this too was flawed since the policy, being considered part of the husband’s estate, could be claimed by any creditors of the insured. Bard warned one inquirer in 1834:

A Policy of Insurance is a part of the personal property of the party who insures his life. If he is in good Circumstances and not a bankrupt at the time he insures he may assign the Policy as he may any part of his property for the benefit of his Wife, and if he pays down the insurance in one payment, Creditors cannot interfere in future. But if at the time of making the payment he is a Bankrupt the assignment of the insurance is good for nothing. The policy is his Creditors.<sup>61</sup>

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<sup>59</sup> Letter from William Bard to William P. Sherman, March 18, 1834, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-4, Baker Library, Harvard Business School.

<sup>60</sup> Letter from GHH [position unknown] to John T. Coffin of Meredith, NH, August 25, 1837, Massachusetts Hospital Life Insurance Company Collection, MS 783, Outgoing Letters Book LA-1, Baker Library, Harvard Business School, Outgoing Letters Book LA-2; Lord v. Dall. 12 Mass. 115. Supreme Court of Massachusetts. March 1815.

<sup>61</sup> Letter from William Bard to William P. Sherman, March 18, 1834, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-4, Baker Library, Harvard Business School.

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Thus at the same time that American life insurance companies were trying to establish a reputation for themselves as the protectors of widows and orphans, the majority of women were legally barred from taking full advantage of this protection.

Public demand for a remedy to this dilemma did not pass unnoticed by the presidents of early American life insurance companies; they viewed it as one of the main stumbling blocks to the continued growth of the industry. The New York Life and Trust (the largest life underwriter in 1840) stood at the forefront of a campaign to pass a state law enabling women to procure life insurance policies protected from the claims of creditors. In early 1840, President Bard wrote to Gulian C. Verplanck, an influential member of the New York State Senate (as well as a founding stockholder of the NYL&T and a current member of its board of trustees), stressing the importance of passage of such a law – particularly during the ongoing depression. “The above is a draft of a law by Chancellor [sic] Kent” – former Chief Justice of the New York State Supreme Court, Chancellor of New York State, professor of law at Columbia College, as well as an incorporator and a current member of the board of trustees of the NYL&T:

It is certainly a good one and more especially in the present times, where hundreds are ruined who were in good circumstances a few years since, and who now out of a salary or some little income would willingly see their wives and children secured against absolute want in case of their death. The applications to this Office are frequent, but without a law, the board have lately determined a wife can not insure.

A week later, Verplanck introduced the bill to the state Senate.<sup>62</sup>

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<sup>62</sup> *Rates and Proposals of the New-York Life Insurance and Trust Company* 3, 5, and “New-York Life Insurance and Trust Company” advertisement, *Daily Albany Argus*, February 20, 1840, p. 3; Letter from William Bard to Gulian C. Verplanck of Albany, January 13, 1840, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-8, Baker Library, Harvard Business School; “Legislature of New-York. In Senate.Thursday, January 16,” *Daily Albany Argus*, January 17, 1840, p. 2.

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The proposed law fit perfectly with the professed image of the Whigs as “the party of commerce and credit, the party of progress, the party of collective striving by a republican body politic for economic growth and the equalization of opportunity.”<sup>63</sup> On the one hand, the law would remove a major hurdle which insurance executives believed might dampen growth of this new industry, thus promoting the general economic expansion of the country by aiding an emerging commercial sector. Yet it would likewise address other issues of importance for the Whigs, including the removal of any shackles restraining economic growth. Like the federal Bankruptcy Law of 1841 which “release[ed] the economic energies of honest debtors through legal discharges from past debts,”<sup>64</sup> the law would allow the families of debtors to emerge from the settlement of the estate with adequate means for continued participation in the economy. Households could maintain their consumption of goods and services, while providing young males with the education necessary to become productive economic actors in the future. Finally, the law would help to save the public money by reducing the instances of pauperism. In making the case for the passage of a married woman’s property act in 1837, Thomas Herttell’s argument to the New York State Legislature could just as easily have been in favor of the 1840 life insurance law:

Daughters not being so liable to be impoverished, [sic] would not so frequently as now, be thrown back, with their increased and suffering offspring, as paupers depending for subsistence on the charity and benevolence of their sympathizing and sorrowing parents and friends; -- and who would in many instances, as a necessary consequence, be exempted from the trouble and expense of such domestic revulsions. . . . It would serve or assist to maintain the family; -- to keep them together -- and to sustain their standing and respectability in society. It

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<sup>63</sup> McCurdy 9.

<sup>64</sup> Balleisen 103.

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would serve or assist to prevent pauperism and save the public from the burden and expense of supporting many unfortunate and distressed females. It would serve or assist to educate the children, to prevent their being reared in gross ignorance, to lessen the chances and inducements to associate with bad company, to acquire vicious habits, and to become thereby irreclaimably debased.<sup>65</sup> The marketing literature of life insurance companies adopted identical rhetoric.<sup>66</sup>

The law which smoothly passed the New York State Legislature on April 1, 1840 accomplished three important tasks.<sup>67</sup> First, it established the right of a woman to enter into a contract of insurance on the life of her husband “by herself and in her name, or in the name of any third person, with his assent, as her trustee.” Whereas the courts had previously upheld the legality of the contracts of married women in specific instances – such as when acting in the name of her husband when he was away on business, or when acquiring necessities for the operation of the household – this was the first instance in which married women were given blanket legal authority to enter into certain contracts without the express authority of the husband.<sup>68</sup>

Second, that insurance would be “free from the claims of the representatives of her husband, or of any of his creditors” unless the annual premiums on the policy exceeded \$300.<sup>69</sup> This clause was very generous for the time. Whereas the New York State Exempted Property Law of 1842 allowed just \$150 in exempt property, this law permitted as much life insurance as could be purchased with twice that amount. In 1840, a \$300 annual premium would purchase a

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<sup>65</sup> Thomas Herttell, *Remarks in the House of Assembly of the State of New-York to restore to married women "the Right of Property"*. (New York: Henry Durell, 1839) 81-83.

<sup>66</sup> Sharon Ann Murphy, *Security in an Uncertain World: Life Insurance and the Emergence of Modern America* (University of Virginia: Ph.D. Dissertation, 2005), chapter 6.

<sup>67</sup> If the bill met with any debate in the Senate or Assembly, such discussions were not recorded by the journalists covering the legislature for the *Albany Evening Journal* or the *Daily Albany Argus*.

<sup>68</sup>“Life Insurance,” *The United States Democratic Review* November 1846: 360 and The Nautilus Company 1848 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School; Basch, 51-2.

<sup>69</sup> In the event of the wife predeceasing the husband, the policy reverted to the children who were granted the same protection from creditors.

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policy worth approximately \$12,700 on the life of a 30 year old (age when first insured), \$9,375 on the life of a 40 year old, or \$6,700 on the life of a 50 year old.<sup>70</sup> This was more than adequate to maintain most middle-class households for several years. In 1840, the average novice civil engineer earned \$737, his more experienced colleagues \$1,281, with those at the highest levels of the profession earning \$2,888. In that same year, the annual income for the average American clerk was about \$548, and for a small-town lawyer about \$1,000.<sup>71</sup> Thus with a life insurance policy, a middle-class husband could maintain the livelihood of his wife and family – carrying out his legal and moral duty as provider – from beyond the grave. His wife would neither be forced into poverty, nor forced to leave the domestic sphere in search of work, nor forced to find a new husband. And by giving preference to wives in taking out such policies, the legislature was – in effect – empowering women to lay claim to this domestic space. Thus one of the unintended consequences of the legislation was the greater financial autonomy granted to widows.

Finally, as the law was interpreted, wives were not required to “make proof of interest,” legally establishing for the first time an instance of insurable interest independent of pecuniary interest in the life of another. The legislature was thus validating the concept of separate spheres. Wives, by definition, were economic dependents of their husbands, rendering additional proof of interest in her husband’s life unnecessary. This was upheld by several court rulings in the ensuing decades, including the 1881 case of *Brummer v. Cohn* which declared “The pecuniary

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<sup>70</sup> During the 1830s and 1840s, the maximum most companies were willing to insure (and only on the very best risks) was \$10,000. In 1840, the average policy issued by the New York Life and Trust was for less than \$4,000. In a sample of 750 New York Life and Trust policies from between 1830 and 1866, only 3 exceeded the \$300 premium maximum established by the law. See Sharon Ann Murphy, “Security in an Uncertain World: Life Insurance and the Emergence of Modern America” (Ph.D. dissertation., University of Virginia, 2005), chapter 6.

<sup>71</sup> New York Life Insurance and Trust Company Collection, MS 797, Register of Life Insurance EB-1, Baker Library, Harvard Business School; *Historical Statistics of the United States*, volume 2 (Cambridge: Cambridge University Press, 2006) 261-262; Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic*. (New York: Oxford University Press, 1990), 70.

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interest of a wife in her husband's life is incapable of exact measurement. The insurer, by issuing a policy to the wife, agrees that her interest is at least equal to the sum insured, and the policy is in the nature of a valued policy, and the full amount insured is recoverable in case of death, without proof of actual damages.”<sup>72</sup>

A week after the law's passage, Bard sent a letter to Francis F. Smith, the NYL&T agent in Baltimore, informing him of the new legislation and requesting that he advertise the law in some Baltimore papers. By December of that same year, Maryland had enacted an identical law – copied word for word from the New York statute. The Massachusetts legislation of 1844 went one step further by protecting from the claims of creditors all policies procured “for the benefit of a married woman, whether effected by her, her husband, or any other person” while the Tennessee act of 1846 affirmatively declared “that any husband may effect a life insurance on his own life, and the same shall in all cases enure [sic] to the benefit of his widow and heirs . . . without being in any manner subject to the debts of said husband.” The 1851 New Jersey law was the most stringent, limiting annual premiums to only \$100.<sup>73</sup>

In those states where a general law did not exist, new companies often had the New York law inserted into their charter, with these provisions being upheld by the state courts. For example, the Connecticut Mutual Life Insurance Company (chartered 1846), the Penn Mutual Life (1847), the North Carolina Mutual Life Insurance Company (1849), the Charter Oak Life

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<sup>72</sup> Letter from D. Thompson to I. H. Rathbone of Utica, New York, October 12, 1849, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-8, Baker Library, Harvard Business School; Brummer, Respondent v. Cohn, Appellant. 86 N.Y. 11. Court of Appeals of New York. 4 October 1881.

<sup>73</sup> Letter from William Bard to Francis F. Smith, Baltimore agent, April 10, 1840, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-16, Baker Library, Harvard Business School; Mutual Life Insurance Company of Baltimore 1849 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 5; New England Mutual Life Insurance Company 1846 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 4 and Abram T. Collier, *A Capital Ship: New England Life, A History of America's First Chartered Mutual Life Insurance Company 1835-1985* (Boston: New England Mutual

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Insurance Company of Hartford, Connecticut (1850), the United States Life Insurance, Annuity, and Trust Company of Philadelphia (1850), the National Life Insurance Company of Vermont (1850), and the Jefferson Life Insurance Company of Cincinnati, Ohio (1850) all provided this protection in their charters despite the silence of their respective states on the issue. And as late as 1869, companies were still advertising this as a prominent feature of their policies. For example, the International Life Insurance and Trust Company of New Jersey (1868) declared that their charter permitted insurance on husbands without the \$100 limitation of the New Jersey law.<sup>74</sup>

This widow protection legislation applied to all policies written by companies chartered in that state, even when policyholders resided out-of-state. Dr. Beverly R. Wellford, agent for the Baltimore Life in Fredericksburg, VA, wrote to the company in 1842 on behalf of the widow of a policyholder named Fayette Johnston. Although Johnston's policy was made payable to his wife, Wellford "fear[ed] an effort on the part of some of his creditors to divert the payment from the course provided in the policy." He requested that the company pay the claim as quickly as possible – before the creditors realized the existence of the policy. "These suggestions . . . are made because I am anxious that no difficulty occur not only on Mrs. J[ohnston]'s account, but as others are similarly situated it would of course operate against this mode of making provision for families and to great extent against insurance on lives." The Baltimore Life, however, remained

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Life Insurance Company, 1985) 38-9; Act of 1846, ch. 216, § 3, as quoted in *Rison v. Wilkerson & Co.* 35 Tenn. 565. Supreme Court of Tennessee. April 1856.

<sup>74</sup> *Life Insurance: Its Principles, Operations and Benefits, as presented by the Connecticut Mutual Life Insurance Company* (Hartford: Press of Case, Tiffany, & Burnham, 1846) 12, "Legal Construction of Wife's Policies," *Insurance Monitor* December 1867: 755, Penn Mutual Life 1847 Prospectus, Historic Corporate Reports Collection, Baker Library, Harvard Business School 7, *Life Insurance: Its Principles, Operations and Benefits, as presented by the North Carolina Mutual Life Insurance Company* (Raleigh: Seaton Gales, Publisher, 1849) 12, 20, Charter Oak Life Insurance Company 1865 Brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 24, National Life Insurance Company of Vermont 1856 Prospectus, HCR 11, and Harvey Tuckett, *Practical Remarks on the Present State of Life Insurance in the United States. Showing the Evils which Exist, and Rules for Improvement* (Philadelphia: Published by the Author, 1851) 49, 58; *The Spectator* October, 1869 248.

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unconcerned. “I do not think that any difficulty can occur respecting the payment of the money to the widow. . . . There is an act of our Legislature authorising [sic] wives to insure the lives of their husbands. I thought that I had sent you a Copy.” Although Johnston’s policy “was not made strictly under this act” since the Maryland law only specifically covered policies taken out by the wife or by a trustee for her benefit (in contrast with the Massachusetts or Tennessee legislation which protected wives as beneficiaries even when the policy was in the husband’s name), the Baltimore Life remained confident that Mrs. Johnston was protected under the spirit of the law.<sup>75</sup>

Considering the size of the American life insurance industry in 1840, these new laws proved to be a boon for companies. The New York Life and Trust Company sold more policies during 1840 than any other year of its existence. By February 1, 1841, Bard wrote back to Senator Verplanck thanking him for his help in securing the legislation and stating: “It has operated most beneficially and been received favorably by the public. We have made between one and two hundred such insurances since the law was passed.” Several existing policyholders wrote to the company requesting to change their policies to conform with the new law; husbands who had taken out policies on their own lives for the benefit of their wife and children now desired the policies to be in their wife’s name (with the wife becoming the insurer rather than the assignee). And Mrs. Starr, the woman rejected for insurance by the New York Life and Trust in

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<sup>75</sup> Letter from Dr. Beverly R. Wellford, Fredricksburg, VA agent, to John J. Donaldson, September 22, 1842, Baltimore Life Insurance Collection, MS 175, Correspondence Box 7, H. Furlong Baldwin Library. Maryland Historical Society; Letter from John J. Donaldson to Dr. Beverly R. Wellford, Fredricksburg, VA agent, September 26, 1842, Baltimore Life Insurance Collection, MS 175, Letter Book, 1841-1851, H. Furlong Baldwin Library. Maryland Historical Society.

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1833 because she was a married woman (and many others like her), was now able to secure an \$8,000 policy on the life of her husband, commencing September 1, 1840.<sup>76</sup>

The Baltimore Life likewise benefited from this new law. Whereas only 0.3% of non-slave<sup>77</sup> policies had been taken out by women on the lives of their husbands between the company's inception in 1831 and the passage of Maryland's law at the end of 1840, over 18% of policies written by the company from 1841 through its closing in 1867 were on the lives of husbands (and in a handful of cases, children on their fathers). On average, these policies were much more lucrative to the company than other types of policies. In the first place, wives insured their husbands for a longer period of time than the average policyholder. While one-quarter of Baltimore Life policies taken out by wives between 1841 and 1867 were for the whole term of life (as opposed to term policies which were written for a fixed amount of time – usually 1 or 7 years), less than 11% of the remaining policies written were whole life. Even among term policies, the average time insured was 5.2 years for policies on husbands compared with 4.4 years on other policies. Additionally, the dollar value of these policies was much greater than that of other policies. The average Baltimore Life policy taken out by a wife had a death claim of approximately \$3024, 50% higher than the \$2020 average on the remaining policies.<sup>78</sup>

Approximately one-third of the husbands insured by their wives in the Baltimore Life previously held a policy on their own life in the same company – but many of these policies were cancelled in order to take out ones which specifically met the stipulations of the law. For example, William Price Stewart of Norfolk, VA, who had possessed a \$5000 whole life policy

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<sup>76</sup> Letters from William Bard to Gulian C. Verplanck of Albany, February 1, 1841, to R. D. Searle of Ogdensburgh, May 9, 1840, and to J. L. Starr of Halifax, Nova Scotia, August 15, 1840, New York Life Insurance and Trust Company Collection, MS 797, Letter Book GA-8 and GA-9, Baker Library, Harvard Business School.

<sup>77</sup> Slave policies were not included in any of the Baltimore Life Insurance Company policy calculations mentioned herein.

<sup>78</sup> Maryland Historical Society; Baltimore Life Insurance Collection, MS 175, Policy Book, H. Furlong Baldwin Library. Maryland Historical Society.

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on himself since 1838, wrote to the company in 1845 inquiring how he could guarantee that the payment would be made for the benefit of his wife and children. The company secretary replied that a “better mode for you to secure the proceeds of your Policy to your wife & children will be to have a new policy in the name of your wife which this office is expressly authorized to do by an Act of our Legislature. You can have this policy payable either to your wife and her heirs or assigns or to her and her children or any of them who you may designate.”<sup>79</sup> Within a few months, Sarah Stewart had taken out a new \$5000 whole life policy with the Baltimore Life, payable upon the death of her husband William.

Companies located in states operating under this law promoted the fact in their marketing campaigns. Institutions such as the Mutual Life of New York, the Nautilus Insurance Company (later renamed the New York Life), and the Mutual Life of Baltimore published the text of the law in full in their brochures during the 1840s and 1850s. The New England Mutual Life of Massachusetts advertised in 1855, “Insurance may be effected for the benefit of a married woman beyond the reach of her husband’s creditors” while the Knickerbocker Life of New York declared in that same year, “Married Ladies may insure the lives of their husbands according to a Law of this State, beyond the reach of their husband’s creditors.” Stories of mortgages being foreclosed and widows and orphans being thrown out of their homes upon the death of their breadwinner began to fill the advertising literature. The Mutual Life Insurance Company of New York published a pamphlet in the late 1860s entitled *Life Insurance Illustrated* which stated: “Many a man has saved his estate to his family by Life Insurance. They would have been driven from their homes if the money immediately received from his policy has not been paid. . . So

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<sup>79</sup> Letter from Richard B. Dorsey, secretary, to William Price Stewart, Norfolk, VA, April 19, 1845, Baltimore Life Insurance Collection, MS 175, Letter Book, 1841-1851, H. Furlong Baldwin Library. Maryland Historical Society; Baltimore Life Insurance Collection, MS 175, Policy Book, H. Furlong Baldwin Library. Maryland Historical Society.

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Life Insurance comes as a rescue in the day of storm and misfortune that sooner or later comes to all.” Likewise, the 1866 brochure of the Economical Mutual Life Insurance Company of Rhode Island affirmed: “A few years since, it was ascertained, by examination, that only one-sixth of all the estates entered for Probate in the county of Suffolk, Mass., were solvent. A strong argument in favor of Life Insurance.”<sup>80</sup>

New York and Massachusetts companies, in particular, used the existence of this law as a competitive edge to extend their business into other states while simultaneously limiting competition from out-of-state companies in their own states. In its 1848 brochure, the Nautilus Insurance Company maintained:

This liberal law exists but in two or three other States of the Union, and is not to be found on the statute books of any country in Europe. Now, as corporate associations are everywhere subject to local law, it follows, that upon the death of a person, whose life is insured with a company located where no such law exists, any creditor living there or elsewhere, may legally overreach the claims of the family, for whose benefit the insurance was intended, and by intercepting the amount insured, leave them in utter destitution.

Likewise, the New England Mutual stressed that “policies issued for the benefit of widows and orphans” were only “by the Laws of Massachusetts and New York, protected from the Husband’s Creditors.” Although in practice the assumption of a wife’s insurable interest in the

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<sup>80</sup> The Mutual Life Insurance Company of New York 1846 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 33, The Nautilus 1848 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 16, The New York Life Insurance Company 1851 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 18, and The Mutual Life of Baltimore 1849 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 5; “Insurance Advertising Sheet.” *The Insurance Gazette* November 1855 to April 1856; The Mutual Life Insurance Company of New York, *Life Insurance Illustrated*. (1868), Historic Corporate Reports Collection, Baker Library, Harvard Business School 37; The Economical Mutual Life Insurance Company of Rhode Island 1866 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 35.

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life of her husband was upheld by most state courts after passage of the New York State law – particularly when it was included in the company’s charter provision – companies in states with widow protection legislation continued to employ the law differential in their advertising campaigns throughout the 1850s and 1860s.<sup>81</sup>

With these laws, pecuniary interest went from being at the very heart of insurable interest to being merely a subset of it. Once women were granted the right to insure the life of their husbands without needing to prove direct monetary interest, it was only a matter of time before other family members sought the same protection. As soon as February 1841, Bard was again lobbying the New York State Legislature for an expansion of the law to include children.

You were kind enough last winter to have passed the law relative to the insurance of lives for the benefit of married women. . . We have been frequently applied to and this morning a gentleman has been in the Office enquiring [sic] whether, he a widower could not be insured by his children for their benefit. As the Law stands he cannot, but the desire that infant children might be authorized to insure their parent have been so frequently expressed, and that the law might be amended in this particular so warmly urged, that I am induced to ask you whether in your opinion it would be advisable to make the application.<sup>82</sup>

Although the New York State Legislature did not act upon this particular request, in practice companies and courts gradually expanded their interpretation of non-monetary insurable interest to include the interest of a husband in the life of his wife,<sup>83</sup> a woman in the life of her

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<sup>81</sup> The Nautilus 1848 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 16; The New England Mutual Life Insurance Company 1858 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 2.

An identical statement as that made in 1848 was still being made 13 years later by the (now renamed) New York Life Insurance Company. The New York Life Insurance Company 1861 brochure, Historic Corporate Reports Collection, Baker Library, Harvard Business School 22.

<sup>82</sup> Letter from William Bard to Gulian C. Verplanck of Albany, February 1, 1841, NYL&T Letter Book GA-9.

<sup>83</sup> Baker, Respondent v. Union Mutual Life Insurance Company, of Maine, Appellant. 43 N.Y. 283. Court of Appeals of New York. 24 January 1871.

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fiancé,<sup>84</sup> a parent in the life of a child or a child in the life of a parent,<sup>85</sup> and even a woman on the life of her ex-husband (particularly when there existed children for whom she needed to provide).<sup>86</sup> The interest of a sibling in the life of another sibling when one was dependent on the other for support, originally decided in the 1815 case of *Lord v. Dall*, was also reaffirmed.<sup>87</sup>

Companies believed that the expansion of insurable interest to other family members would substantially raise the profile of life insurance in America, establish its reputation as a socially beneficial institution, and consequently, greatly increase the number of policies sold without undermining the basic soundness of the industry. Not all agreed, however. The Insurance Commissioners of Massachusetts in their Ninth Annual Report (1864) deplored this liberalization of the idea of insurable interest, contending that “if the life of a husband or father contributes nothing, in a pecuniary way, to the maintenance of the wife or the children, it is not justly insurable for their benefit, no matter how great the loss of his life might be to them in point of love. . . . A policy of Insurance on the life of a beloved relative, when there is really no insurable interest, that is, where the life is a pecuniary burden rather than otherwise, if not felt to be so, is a very awkward and uncomely piece of gambling.”<sup>88</sup>

Despite this warning, the courts continued to support the interest of a person in the life of a relative by blood or marriage. All of these instances were affirmed by the Supreme Court of the United States in the 1881 case of *Warnock v. Davis* when Justice Field stated:

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<sup>84</sup> *Chisholm, Respondrix v. National Capitol Life Insurance Company*, Appellant. 52 Mo. 213. Supreme Court of Missouri, St. Louis. March 1873.

<sup>85</sup> *Loomis v. Eagle Life and Health Insurance* 1856, *Mitchell v. Union Life Insurance Company*. 45 Me. 104. Supreme Judicial Court of Maine, for the Eastern District, County of Piscataquis. 1858, and *Reserve Mutual Insurance Company v. Kane*. 81 Pa. 154. Supreme Court of Pennsylvania. 6 March 1876.

<sup>86</sup> *McKee v. Phoenix Insurance Company*. 28 Mo. 383. Supreme Court of Missouri. March 1859.

<sup>87</sup> *Lord v. Dall* 1815.

<sup>88</sup> “Abstract of the Ninth Annual Report of the Insurance Commissioners of Massachusetts,” *The Insurance Gazette* April to November 1864: 61.

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It is not easy to define with precision what will in all cases constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest, arising from the relations of the party obtaining the insurance, either as creditor of or surety for the assured, or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life. It is not necessary that the expectation of advantage or benefit should be always capable of pecuniary estimation; for a parent has an insurable interest in the life of his child, and a child in the life of his parent; a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful – as operating more efficaciously – to protect the life of the insured than any other consideration.<sup>89</sup>

Whereas “affection” was repeatedly deemed inadequate in demonstrating insurable interest during the 1830s, by the 1880s the courts had ruled that affection was a better determinant of a risk-avoiding interest in the life of another than was pecuniary dependence. The industry universally accepted this interpretation as providing the best balance between public reputation and actuarial stability.

### *Conclusion*

The rapidly changing economic environment of the early republic placed enormous stress on the centuries-old system of coverture in the United States. As fathers began engaging in salaried occupations outside of the household, the urban middle-class home increasingly became an idealized milieu. The wife was no longer considered an active producer on the family’s behalf; instead, her role was now that of teacher, moral leader, and efficient manager of the household. But the reality of nineteenth-century life created much anxiety for middle-class families trying to maintain this ideal. As the Panic of 1837 and the Depression of 1839-1843

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<sup>89</sup> Warnock v. Davis, 104 U.S. 775. Supreme Court of the United States. October 1881.

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demonstrated, the income of the main breadwinner could be lost in a general economic downturn, through his own personal business failure, or by his death. And it was this latter contingency that the life insurance industry hoped to address. By expanding the rights of women – giving them the power to contract for insurance on their husband’s lives – the industry was helping to preserve this domestic ideal. A woman could now prepare for her own widowhood, ensuring her ability to remain nestled in the private sphere and shielded from the hardships that were unbecoming for a proper middle-class wife. Like the married women’s property acts passed later in the decade, the life insurance legislation of 1840 was an attempt to preserve the concept of separate spheres, even as they both revealed chinks in the armor of this ideal.