"The Financial Frontier: Slave Mortgaging and the Creation of the Deep South"

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INTRODUCTION

Security in Slaves:

Finance and Frontier Development

Violet and her son Jack would remember June 2, 1831 as a grim day. In front of the courtroom steps in Iberville, Louisiana, the two were placed atop an auction block to be sold to the highest bidder—or, as they likely feared, to the two highest bidders.[1] Upon the death of their owner, the slaves were listed for sale in the local newspapers, on broadsides plastered throughout the town, and announced at the town's meeting places. The executors of Samuel Neal's will were anxious to resolve the estate and to ensure that the deceased's wife, Honorine, and young daughter, Elizabeth, would have adequate provisions. With slave prices high on the southwestern frontier, Violet and Jack were sure to bring a good deal of cash for the widow and orphan of the planter household as well as Samuel's other heirs. As the auction proceeded, the two played their parts well and successfully caught the attention of Jean Maillant. For $800, the

[1] In courthouse auctions, it was likely that slaves would be sold one at a time, dramatically increasing the chances of the separation of families. Thomas D. Russell, "Articles Sell Best Singly: The Disruption of Slave Families at Court Sales," *Utah Law Review* (1996), 1161-1209.

bidder received the enslaved pair, who were transferred from their plantation and surrounding network of friends and relations.[2]

Anticipating a payment of $800, however, Neal's executors would not receive the full sum for at least a year. Instead of an outright sale, Maillant negotiated a mortgage agreement with the estate's administrators. For one-third of the purchase price, Maillant would take possession of the two slaves. In order to secure the remaining debt on this human property, the slaves themselves would serve as collateral. In the event that Maillant defaulted on the loan, the original owners could seize the slaves and resell them, hopefully at an equal or higher price, while keeping the original down payment.

In the slaveholding economy of the southern United States, mortgaging agreements like Maillant's were vital. With little cash on hand, planters and smaller farmers relied on access to credit to pay for agricultural supplies, household goods, and other staple items for themselves and their families. Yet men did not limit their credit purchases to seed or new clothing for the children. Credit was also used to make larger capital investments, such as farm implements, land, and slaves themselves. In order to make these debts more secure, men collateralized their most valuable assets, much like home mortgages in the modern era. Unlike homes, however, slaves held unique characteristics that differentiated them from other forms of property. As historian Walter Johnson has termed the "chattel principle," slaves could be converted into cash

[2] Petitions of Honorine Villiers and Faustin Dupuy, 1835, Iberville, Louisiana, **Circuit** Court, in Loren Schweninger, *Race, Slavery, and Free Blacks*, Series II, Part F, (Bethesda, Md.: Lexis-Nexis Academic, 1990-), #20883526. [hereafter *RSFB*]

through sale in the slave market.[3] In addition to their liquidity, slaves were mobile assets who could be sold in markets where demand for them was highest. Moreover, women of a childbearing age were particularly valuable based on their ability to reproduce.[4] As highly prized property, slaves underwrote the antebellum South's credit economy, and at times, they even served as the security for their own purchase. As owners leveraged slaves' bodies in order to sustain their plantations, enslaved individuals financed the very system that perpetuated their bondage.

By the time of Violet and her son's sale in 1831, slavery was entrenched in the economy of the young United States. Although debate raged over slavery's westward expansion, the raw materials produced in the slaveholding South were essential to industrial development in the North. Shipments of cotton and sugar to England and other nations across the Atlantic further integrated the southern United States, and slavery, into a global economy. By 1840, the South grew more than 60 percent of the world's cotton, which was shipped not only to New England and Britain but also to Russia and industrializing parts of continental Europe.[5] Rather than giving way to a more efficient system of production or

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[3] Walter Johnson, *Soul by Soul: Life in the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999), 19-24.

[4] One distinctive feature of slavery in the United States was the natural increase in the slave population. Unlike the slave population in the Caribbean and South America, the number of slaves in the United States grew after the embargo on the transatlantic slave trade in 1808 dramatically reduced the importation of slaves into the nation. For more on the natural growth rate of slavery in the United States relative to other societies in the Caribbean and South America, see Michael Tadman, "The Demographic Cost of Sugar: Debates on Slave Societies and Natural Increase in the Americas," *American Historical Review* 105 (2000): 1534-75.

[5] David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (Oxford: Oxford University Press, 2006), 184.

retarding the development of international capitalism, American slavery fostered frontier development in the South, industrial growth in the North, and modern finance across the Atlantic.[6]

With the chance to take part in the Deep South's boomtown economy, men continued to invest in the human capital that made the region's economic system so profitable. While the planter elite represented only a small portion of southerners, other classes were also invested in the institution.[7] The expansion of slavery into Louisiana, Texas, and other states in the southern frontier gave non-slaveholding whites new prospects for slave-backed wealth. The distribution of newly acquired land by the federal government and the growing flexibility of credit meant that slaveholding seemed like a less-distant dream for many men in the Deep South.[8]

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[6] Though this point was long contested by both historians and economists, a broad consensus has emerged over the last several decades that plantation slave labor was a highly efficient system of labor exploitation. For more, see Robert M. Fogel Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown, and Company, 1974); Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: W. W. Norton & Company, 1989). Prior to these path-breaking works, Kenneth M. Stampp also challenged the ideas that American slavery was a backward and inefficient system. For more, Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Alfred A. Knopf, 1956), 383-418.

[7] Davis, *Inhuman Bondage*, 184. Davis identifies poor whites' racial animosity toward free and enslaved blacks as one source of support for slavery. For more on divisions of the poor and working class along racial lines, see Jonathan Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge, MA: Harvard University Press, 2004), 161-187. Regarding the number of slaveholders in the United States, James Oakes reports that 36% of southern white families held slaves in 1830. By the Civil War, that number had dropped to approximately 25%. James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: Alfred A. Knopf, 1982), 229.

[8] It is important to note that historians have also explored the resistance of certain rural populations to the commercialization of agriculture, largely due to fear of an unpredictable market, unpayable debts, and the potential loss of self-sufficiency. Nevertheless, the boom of cotton and other cash crops starting in the early 1820s brought renewed interest to cash crops and played a large role in the settlement of the Deep South. For more on the resistance of yeoman farmers to commercial agriculture, see Stephen Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry* (New York: Oxford University Press, 1983);

Following the United States' victory over Britain in the War of 1812, men from near and far, including recent European immigrants, made their way to the southern frontier, hoping to make their visions of wealth into reality.[9] Amidst the vast wilderness, frontiersmen set out to convert their new tracts of land into fields of cotton or other cash crops that might bring them a fortune. Yet the transformation of this forested and marshy land was not simply the product of pioneer labor. In order to hew plantations from the backcountry of Alabama or the banks of the Mississippi River, landowners utilized enslaved men and women. In some cases, settler families carried their enslaved property with them on a journey that might take over a year to plan and undertake.[10] For others, purchasing slaves in the western territories presented the better option.

Due to the United States' embargo on the transatlantic slave trade in 1808, however, men and women arriving in ships from West Africa could not meet the rising demand for slaves in the frontier states. In its place, a domestic slave trade arose in the early nineteenth century. A waning need for slave labor in the Upper South meant that owners were willing to ship their valuable property southwestward to the new center of American commercial agriculture. For slaveholders in states like Virginia, for instance, the interregional slave trade

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Gavin Wright, *The Political Economy of the Cotton South: Households, Markets, and Wealth in the Nineteenth Century* (New York: W.W. Norton, 1978).

[9] For more on the presence of immigrants in the Deep South, see Sean M. Kelley, *Los Brazos de Dios: A Plantation Society in the Texas Borderlands, 1821-1865* (Baton Rouge: Louisiana State University Press, 2010), 20-58. For more on the role of the War of 1812 in the settling of the southwestern frontier, see Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005), 119-162.

[10] Martin, *Divided Mastery*, 34-42.

offered an important opportunity for greater economic gain. Between 1820 and 1860, approximately 875,000 slaves were transported through the domestic slave trade to the western frontier. The massive transportation of slaves—which some scholars have referred to as the "second middle passage"—transformed the geography of American slavery and shifted its center from the Atlantic seaboard to the lower southern interior.[11]

As men moved westward, credit was central to their economic success. Like slaveholders in the Upper South as well as factory owners or merchants in the North, settlers in the Southwest relied on loans to finance their speculative ventures and the day-to-day operations of their plantations, whether purchasing shoes for their slaves, seed for the coming season, or new tracts of land. This system of credit, however, was not standardized as it is today. For elite planters, local merchants, known as factors, provided the loans necessary for cotton production, usually "advances" on the next season's crop which factors would sell on commission into the Atlantic market.[12] Through more casual arrangements, smaller farmers might borrow from neighbors, while local storekeepers or merchants would supply provisions on easy credit, with terms

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[11] Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (Oxford: Oxford University Press, 2005); Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: The University of Wisconsin Press, 1989); Robert H. Gudmestad, *A Troublesome Commerce: The Transformation of the Interstate Slave Trade* (Baton Rouge: Louisiana State University Press, 2003); Rothman, *Slave Country*.

[12] Harold Woodman, *King Cotton and His Retainers: Financing and Marketing the Cotton Crop of the South, 1800-1925* (Lexington: University of Kentucky Press, 1967), 3-199.

recorded in a ledgerbook rather than formalized in a note.[13] These lending networks extended beyond the local, connecting southern planters to northern businessmen, bankers, manufacturers, merchants, and ultimately, financial institutions in England. As cotton or other crops were produced on a plantation, it took a series of negotiations and financial transactions to turn this slave-produced product into cash for the original slaveholding planter. After brokering cotton from the town in which it was produced to nearby cities, a commission merchant would then continue to negotiate the crop's sale in larger regional cities and ultimately its sale to northern or overseas locations. Throughout this lengthy process, planters prepared for the upcoming season without a precise knowledge of the cash that their previous harvest had brought in. Nevertheless, they continued to borrow money on the expected value of their past, present, and future crops, assuming that cotton prices would only rise.[14]

In the antebellum United States, lending was risky. Credit networks extended over great geographic expanses, and loans remained unpaid for long periods of time. Moreover, as the United States took on a greater percentage of

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[13] Lewis E. Atherton, *The Southern Country Store, 1800-1860* (Baton Rouge: Louisiana State University Press, 1949). Unlike modern lending networks, banks played a less prominent role in the early nineteenth century. As Tony Freyer writes, "to some degree, banks played a role in credit distribution, primarily in cotton or sugar production, urban commerce, and construction of internal improvements." Toney A. Freyer, "Law and Antebellum Southern Economy," in *Ambivalent Legacy: A Legal History of the South*, David J. Bodenhamer and James W. Ely, Jr., ed. (Jackson: University Press of Mississippi, 1984), 55. For more on antebellum banking, see Bray Hammond, *Banks and Politics in America from the Revolution to the Civil War* (Princeton: Princeton University Press, 1957); Richard Holcombe Kilbourne, Jr., *Slave Agriculture and Financial Markets in Antebellum America: The Bank of the United States in Mississippi, 1831-1852* (London: Pickering & Chato, 2006); Robert E. Wright, *Origins of Commercial Banking in America, 1750-1800* (Lanham: Rowman & Littlefield Publishers, Inc., 2001.

[14] For further understanding of the role of credit for the financing of southern slaveholding, see Woodman, *King Cotton and His Retainers*.

global production of cotton throughout the 1830s and sugar following the Haitian Revolution, the increasing returns on these cash crops pushed planters to make riskier investments.[15] In order to increase the chances that they would recuperate loaned money, creditors relied on a variety of security mechanisms. In addition to mortgages, which assigned a specific piece of property as security for a loan, debtors relied on friends or family to co-sign loans.[16] Confessions of judgment gave creditors the ability to foreclose on all of a debtor's property in the case of default.[17]

Whether or not a creditor used legal instruments to secure his loans, slaves themselves were often the most crucial factor for ensuring the repayment of debt. Without men and women to cultivate the land and to produce products to be sold in the market, planters' loans would never be paid off. Yet it was not only the long hours of deforesting, planting, and harvesting that made slaves so essential to this financial system. In the context of a precarious financial system, the importance of slaves as a form of *property* was particularly evident. Viewed in this light, owners could gain wealth—or repay debts—not only by extracting greater labor from their enslaved men and women but also, as historian Bonnie

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[15] Edward Baptist, "Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1837," in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J. Kornblith (Chicago: The University of Chicago Press, 2011), 69-92.

[16] Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge: Harvard University Press, 2002), 14-16.

[17] Thomas Russell, "The Antebellum Courthouse as Creditors' Domain: Trial-Court Activity in South Carolina and The Concomitance of Lending and Litigation," *The American Journal of Legal History* 40.3 (1996), 331-364.

Martin has argued, by pledging and selling their human property, essentially working them both physically and financially.[18]

As a highly valuable form of property, slaves were essential assets, invariably listed alongside household furniture or tracts of land as security for loans. In estate inventories, slaves almost always made up a family's most valuable assets.[19] As Robin Einhorn has argued, tax codes also reflected the exceptional wealth stored in slaves, with virtually every southern legislature choosing to discount assessments on human property that would otherwise dwarf all other taxable assets in value.[20] Moreover, slaves' mobility made them a particularly desirable form of collateral for lenders. While the value of a tract of land was completely dependent on the local market, slaves could be auctioned locally, transported to the regional market, or even sold into the domestic slave trade, where prevailing prices in Natchez and New Orleans set the value of slaves in places as remote as Maryland and Delaware.

The creditors and debtors featured in this study both benefitted from the collateralization of slaves. Whether they were neighboring slaveholders, elite planters, or local merchants, creditors preferred slaves for the exceptional value that they embodied as laborers and products marketed on auction blocks throughout the South. By collateralizing their human property, debtors entered

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[18] Bonnie Martin, "Slavery's Invisible Engine: Mortgaging Human Property," *The Journal of Southern History* 76.4 (2010), 866. For more on slavery as not only a labor but also a property regime, see Gavin Wright, *Slavery and American Economic Development* (Baton Rouge: Louisiana State University Press, 2006).

[19] Wright, *The Political Economy of the Cotton South*, 41-42.

[20] Robin Einhorn, *American Taxation, American Slavery* (Chicago: The University of Chicago Press, 2006), 111-115.

the world of speculation more easily. If they were savvy managers of their financial portfolios, planters not only could benefit from the cotton that their slaves produced but could also leverage this human property to access more land and slaves. Frequently, slaveholders even pledged the same human property to multiple creditors at once. Securitizing slaves brought these men one step closer to the fortunes that had originally driven them westward.[21]

In her recent work on slave mortgaging, Bonnie Martin argues that this financial practice was "slavery's invisible engine." By offering a slave as security, men were able to able to purchase a slave, piece of land or other plantation product without having cash to pay off the entire purchase price initially. In addition to expanding the potential number of borrowers as well as the rate of slave acquisition, mortgaging allowed slaveholders to maintain their workforce in the fields even as the same enslaved men and women were worked financially. In other words, without necessarily exploiting a slave's labor in the field and without having to sell a slave outright, slaveholders could nonetheless reap tremendous financial benefit as the owners of human property. As Martin shows in her study of more than 8,000 mortgages made after the American Revolution, 41% included slaves as collateral and accounted for 63% of the capital generated.[22]

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[21] Joshua D. Rothman, "The Contours of Cotton Capitalism: Speculation, Slavery, and Economic Panic in Mississippi, 1832-1941," (paper presented at the conference Slavery's Capitalism: A New History of Economic Development, Providence, Rhode Island, April 8-10, 2011); Baptist, "Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1837."

[22] Martin, "Slavery's Invisible Engine," 822.

Specifically, Martin identifies two kinds of mortgages that placed slaves at their center. Purchase-money mortgages allowed men to buy a slave or slaves without paying in full. Like mortgages made on homes today, these agreements stipulated a payment plan and required that the slaves being purchased serve as collateral for the loan. Until the loan and its interest were paid in full, the original owner kept the title to the slaves. Through equity loans, men were able to collateralize slaves that they already owned in exchange for loans from wealthy neighbors or merchants. As slaves' bodies were mortgaged, these men and women—and the financial value that they embodied—accelerated the flow of credit, giving planters cash without relinquishing their full property rights.[23]

Despite the value of slaves, mortgaging was not perfect insurance for repayment. The emerging laws of chattel mortgages in the antebellum United States came amidst broader legal transformations in contract law. Although debtors and creditors had certain legal rights that were regularly upheld in court throughout the 1700s, legal historian Thomas Morris writes that there was no body of mortgage law that specifically addressed *chattel*.[24] As he writes, "chattel mortgage law, then, was in gestation."[25] With this legal murkiness, courts worked to differentiate between mortgages and other conditional sales, in which

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[23] Martin, "Slavery's Invisible Engine," 822-823.

[24] Debtors had the right to an "equity of redemption," which meat that they could redeem their land whenever they were able to repay a loan, even if it was past the loan's due date. Creditors, on the other hand, had the right to foreclosure. Thomas D. Morris, "'Society is not marked by punctuality in the payment of debts': The Chattel Mortgages of Slaves," in *Ambivalent Legacy: A Legal History of the South*, ed. David J. Bodenhamer and James W. Ely, Jr. (Jackson: University Press of Mississippi, 1984), 149-150.

[25] Morris, "The Chattel Mortgages of Slaves," 150.

the purchaser traditionally took possession of the asset at the time of the negotiation. In an era of poorly written contracts and fraudulent money lenders, courts walked a fine line between protecting vulnerable debtors and upholding the emerging will theory of contract, which was a legal cornerstone of the emergent market capitalism in the 1800s.[26]

Even when mortgages were straightforward, creditors were not always able to lay claim to the property they were due. Because it was difficult to determine who held the actual title to a slave, creditors often agreed to make loans that were backed by previously pledged slaves. In some instances, the debtor could then determine which creditor would be the beneficiary of his assets' sale.[27] Moving beyond the jurisdiction of the court or death could also make collateralized slaves unredeemable. Because mortgages only bound specific pieces of property to the repayment of a loan, the disappearance of that asset—which was especially probable with mobile pieces of property—would make the mortgage no longer binding.[28]

Although the law of chattel mortgages was still in development, the majority of cases brought to court in the early nineteenth century were not criminal but civil cases, a large portion of which concerned debt.[29] By the 1840s, courts were a crucial aspect of credit transactions, argues historian Thomas

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[26] Morris, "The Chattel Mortgages of Slaves," 152-155.

[27] This practice was known as using "preferential creditors." In these instances, a bankrupt debtor "could choose to pay off one or several creditors while giving little or nothing to the rest." Freyer, "Law and Antebellum Southern Economy," 57.

[28] Russell, "The Antebellum Courthouse as Creditors' Domain," 352.

[29] Russell, "The Antebellum Courthouse as Creditors' Domain," 339.

Russell. Through simple paperwork, creditors could initiate a legal process for judgment of a debtor—essentially a call for the sheriff to seize the debtor's property—if he failed to repay the lender.[30] While mortgages did not put all of a debtor's property on the line, it is clear that the law and its implementation was important for creditor-debtor relations in the postrevolutionary period. However, the laws that determined the shape of these relationships remained contested in the period. Whether or not the law would protect collateralized property from creditors was a matter of debate well into the nineteenth century.

In a labor and financial system that was built on commodified bodies, risk was inherent. Though debtors and creditors took on different forms of risk through mortgaging, each needed protection from the fluctuations of the market as well as the health or price of their human assets. Toward this end, those who stood to benefit from the exploitation of slaves worked to stabilize this system. As Robin Einhorn argues, "if property rights have enjoyed unusual sanctity in the United States, it may be because this nation was founded in a political situation in which the owners of one very significant form of property thought their holdings were insecure." In order to preserve the institution of slavery in the United States, slaveholders "consistently demanded antidemocratic protections for property rights they thought would be vulnerable in regimes based on majority rule."[31]

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[30] Russell, "The Antebellum Courthouse as Creditors' Domain," 352-355.
[31] Robin Einhorn, "Slavery," *Enterprise & Society* 9.3 (2008), 500.

Changes in property law and slave mortgaging in the southern United States add support to Einhorn's thesis. As participants in the frontier's speculative economy repeatedly leveraged their slaves and sunk themselves into deeper and deeper debt, southwestern legislatures passed married women's property laws and new inheritance statues that would shield certain property from seizure by angry creditors. By protecting a portion of men's property for the sake of his family's well-being, the state subsidized highly risky economic ventures. Men could continue to leverage this protected property in the hopes of striking it rich without taking on the full risk of their loans. Spurred by their ties to a highly volatile, flexible, and lucrative form of property, the Southwest states passed legislation that perpetuated speculative investments and contributed to the rise of a slave-backed economy in this region. Central to westward expansion was a slaveholding regime that kept millions in bondage.

Even amidst the legal contestation and transformation of the antebellum years, lenders were more likely to be repaid for loans backed by slaves than those with no assets attached as collateral. Nevertheless, the credit-based economy of the United States could never escape the incredibly vulnerable and volatile commodities that it was built upon. Planters frequently overleveraged their slaves, who underwrote both the production and finance of cash crops. As the Panic of 1837 would demonstrate, securing ten loans with one slave, who was worth one-fifth of the total debt, was far from a sound financial gambit. Yet it was not only the financial practices that made this economic system so precarious. As slaveholders sought to maximize their profit, they extracted slaves' physical labor through the mobilization of violence and neglected the health of their bondsmen and bondswomen. Not surprisingly, illness and death were common to this system. Moreover, slaves themselves challenged the system that kept them in bondage. As Walter Johnson and other social historians have shown, the commodification of men and women could never be fully carried out.[32] From feigning sickness to stopping work to running away, slaves resisted their exploitation.

In the following pages, I will explore the financial system that undergirded the expansion of slavery into the western frontier and was central to the rise of the Deep South. Particularly, I hope to show the ways that the practice of slave mortgaging affected the lives of slaves themselves, the households of planters, the development of the antebellum southwestern frontier, and the economic trajectory of the nation at large. In order to explore mortgaging practices from these various vantage points, I have primarily drawn from a microfilmed collection of southern county legal records compiled by the historian Loren Schweninger under the auspices of the Race and Slavery Petitions Project at the University of North Carolina Greensboro. By the publication of the last cases in 2005, Schweninger had collected more than 3,000

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[32] Johnson, *Soul by Soul*; Martin, *Divided Mastery*; Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: The University of North Carolina Press, 2004). In these studies, resistance is explored in its every-day form. For more on the historiography of resistance in American Slavery Studies, see Stephanie M. H. Camp and Edward E. Baptist, "Introduction: A History of the History of Slavery in the Americas," in *New Studies in the History of American Slavery*, ed. Edward E. Baptist and Stephanie M. H. Camp (Athens: The University of Georgia Press, 2006), 1-3.

petitions filed with state legislatures and more than 14,500 petitions from more than 170 courthouses in 15 slaveholding states and the District of Columbia. The cases in the *Race, Slavery, and Free Blacks* collection span from 1775 to 1867 and fill 128 reels of microfilm.[33] As one scholar involved in the editing project recently observed, these cases offer "an unparalleled documentary history of southern society from the American Revolution to the beginning of Reconstruction. Slaveholders, slaves, and free people of colour 'speak' in these petitions, testifying to their personal experiences with slavery."[34]

Through pages made doubly illegible through scrawling nineteenth-century handwriting and the inadequacies of microfilm reproduction, historians in the twenty-first century can nonetheless catch a glimpse of the formulaic language that the law employed in the early nineteenth century. These documents also reveal the messiness of the legal regime—judges were ruling on often poorly constructed contracts and determining how the law should be implemented as they went.[35] Moreover, the scrawled handwriting of court stenographers gives a sense of the closeness of court officials to their subjects. From the content of cases as well as the indirect quotes of enslaved men and women, historians are able to glean insights into the distinctive brand of slavery that arose in the southern United States and the daily experiences of those whom this system kept in bondage.

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[33] Jennifer Dorsey, "A Documentation History of African-American Freedom: An Introduction to the *Race, Slavery, and Free Blacks* Microfilm Collection," *Slavery and Abolition* 30.4 (2009), 546-547.

[34] Dorsey, "A Documentation History of African-American Freedom," 546-547.

[35] Morris, "The Chattel Mortgages of Slaves," 153.

From this expansive collection, I read every slave mortgaging case filed from 1800 to 1860 in eight frontier states: Kentucky, Tennessee, Alabama, Mississippi, Louisiana, Texas, Arkansas, and Missouri. Although the cases are not evenly distributed between the states, I believe that reading and analyzing over 300 cases has given me a broad understanding of the complexities that arose from the collateralization of slaves. To add to my comprehension of this financial practice and its legal underpinnings, I have traced these cases up the appellate ladder when possible. While it is likely that many disputes over mortgaged slaves never made it to formal court proceedings, the records that are available offer an important glimpse of this financial practice that structured slaves' daily lives and the nation's geographic expansion.

Despite their limitations, these legal sources provide important insight into the ways that slaves themselves operated within this financial system. Although slaves were never able to testify directly against a white man by law, depositions made in court—and recorded in the legal petitions—reveal the ways that the words and actions of slaves reverberated in the public sphere. As Laura Edwards describes, white men were seen as credible witnesses based on their reputation, rather than their ability to provide firsthand accounts of a certain event or individual. In order to gain such knowledge, these men often relied on the testimony of their dependents, including their slaves.[36] While Edwards cautions that "what white southerners attributed to slaves did not necessarily

[36] Jonathan Martin's study of slave hiring is a testament to this. Without slaves' reports about their treatment while in the care of a temporary master, slaveholders were unable to contest improper treatment in courts. Martin, *Divided Mastery*, 101-102.

reflect what those slaves would have said had they been able to testify themselves," she also points out that slaves' words gained credibility as they were repeated in local communities.[37] As Loren Schweninger also reflects, petitions often included a witness's immediate and candid observations about a certain situation. Thus, they "provide a remarkably clear view of the institution of slavery, one not diluted by conventional mores or the passage of time" for historians.[38] From this perspective, I have used legal depositions to understand the ways that slaves were able to indirectly participate in the legal proceedings of debt suits that directly affected their own well-being.

Additionally, I have supplemented these records with other legal petitions that were filed under the Federal Bankruptcy Law of 1841 and are now housed in the National Archives of the Southeast Region. From these petitions, I was able to see the ways that new laws for individuals facing bankruptcy complicated the practices of mortgaging. Though these cases do not feature prominently in the coming chapters, they provided me with a better understanding of legal responses to the rise in insolvency that came with the spread of speculation in the early nineteenth century. Lists of assets provided in bankruptcy cases also affirmed the tremendous value of slaves within southern society. Supplementing

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[37] Laura Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, NC: The University of North Carolina Press, 2009), 111-121. See also Ariela Gross, "Pandora's Box: Slave Character on Trial in the Antebellum Deep South," in *Slavery and the Law*, ed. Paul Finkelman. (Lanham: Rowman & Littlefield Publishers, 1997). For more on the use of slave testimony in court, see Thomas D. Morris, "Slaves and the Rules of Evidence in Criminal Trials," in *Slavery and the Law*, ed. Paul Finkelman (Lanham: Rowman & Littlefield Publishers, 1997).

[38] Loren Schweninger, ed. *The Southern Debate over Slavery: Volume 1: Petitions to Southern County Courts, 1775-1867* (Urbana, IL: The University of Illinois Press, 2008), xxxii.

legal sources in this investigation, I have used newspaper advertisements, broadsides, and other printed materials to gauge slavery's financial importance to the geographical expansion of the American nation.

In the following chapters, I will explore approximately twenty cases in depth. Yet these explorations are not meant simply to explain the verdict that was reached by a single southern judge. From these petitions, I hope to share a fuller picture of antebellum life in the South, the sophistication and innovativeness of the slave-backed financial system, and the frontier's transformation. Beginning in the first chapter, I will focus specifically on the vulnerabilities and opportunities that mortgaging created for slaves as they went through daily plantation life. Although mortgaging may have translated into better health care for the collateralized slaves, it simultaneously made them vulnerable to foreclosure and to the dissolution of their family and communal ties.

In the second chapter, I will explore changes made in the frontier states to inheritance laws and married women's property rights, legal transformations that, I argue, must be understood within the economic and geographic context from which they emerged. By focusing on women's property rights in this region, I will explore the ways that arguments for women and children's financial and property provision were used to shield mortgaged property from creditors and, thus, to create a safety net for men engaging in highly speculative economic ventures. From this vantage point, I will further argue that these legal innovations demonstrate the importance of slaveholding to law in the United States. Due to both the vulnerability and profitability of slaves, lawmakers provided special protection for these assets and, in a sense, subsidized speculation.

In the final chapter, I will move to the national plane to explore the ways that slave-backed credit was essential to westward expansion. As settlers arrived in the Deep South, slaves added security to the vital credit networks that connected the frontier to the eastern seaboard, New England, and beyond. However, credit was an important factor in debtors' decisions to resettle in the Southwest. The popularity of phrases like "gone to Texas,"—a euphemism for debt evasion—suggest that frontier settlement was more accurately a form of fugitive capitalism. In hopes of protecting their most prized possessions from seizure, debtors chose to dodge sheriffs' notices of foreclosure and take the arduous journey from the Upper South into the marshes and forests of the Deep South.

The coming pages share stories of westward expansion, speculation, and the ways that people and institutions adapted to geographic and economic transformation. Whether they struck it rich or lost it all, the men and women who inhabited the Deep South experienced profound changes as they relocated in the early nineteenth century. At the center of these transformations, however, were enslaved men, women, and children whose exploitation made the West. It is the stories of these lives that animate the ensuing chapters.

CHAPTER ONE

Beyond Bodies:

Mortgaging and Everyday Life on the Frontier

The house had not burned down, but tales of attempted arson at David Graham's home in Nacogdoches County in eastern Texas spread like wildfire to the neighboring plantations. Like other market-based economies, southern slavery relied on the exchange of information among networks of trusted men in the slaveholding class.[1] Enslaved men and women also shared information "through the grapevine," to their extended kin, who may have worked on plantations across the region.[2] From one plantation to the next, information circulated rapidly on topics ranging from the scandalous relations between a master and his slave to anticipated prices for cotton and sugar.[3] Yet the news from the Graham home in 1841 was explosive: a slave new to the plantation had

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[1] For a longer discussion of the centrality of informational circuits to capitalism, see John J. McCusker, "The Demise of Distance: The Business Press and the Origins of the Information Revolution in the Early Modern Atlantic World," *The American Historical Review* 110, no. 2 (2005), 298.

[2] Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Belknap Press of Harvard University Press, 2003), 13-61. For more on the spread of information across regions through the domestic slave trade, see Stephen Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (Oxford: Oxford University Press, 2005).

[3] For more on the geography of plantations, slaveholders' networks for control, and slaves' networks for resistance, see Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South* (Chapel Hill: University of North Carolina Press, 2004).

devised a plan to burn everything to the ground. In a society predicated, both socially and economically, on the submission of a slave to his master, such acts of overt resistance shook the foundations of this economic system and served as a frightening reminder to owners that slaves were no ordinary pieces of property. Unlike their grazing cattle or plantation fields, slaves were able to challenge their own commodification as they went about their daily lives—slowing down the pace of work, for instance, or in moments like this, undertaking larger acts of rebellion.

The situation on John Graham's plantation, however, was particularly complex. David, the suspect slave, was not Graham's property, but instead, that of another Nacogdoches resident. Weeks before, Robert Lane had mortgaged David to Graham in order to secure the purchase of several barrels of corn, and the two men had agreed that David would work as a field hand until Lane could pay the remaining bill.[4] In other words, David's body constituted the collateral on a loan that David's labor was devoted to paying off. In the wake of the attempted arson, Graham struggled to determine the best course of action. As a slaveholder, he had several duties to perform—to prevent further rebelliousness, to quell the fears of his neighboring plantation owners, to abide by the agreement and maintain a cordial relationship with Lane. But, fundamentally, Graham had to protect his own economic interests as a creditor whose prospects for repayment began and ended with the rebellious slave David.

[4] Deposition of Robert Lane, 1842, Nacogdoches County, Texas, Circuit Court, in *RSFB* #21584208.

While a harsh physical punishment may have restored order on the plantation and the neighbors' confidence in his mastery, Graham also had to consider the possibility that David might ultimately belong to him. Due to the mortgage agreement, it was possible that David would be on the plantation for a matter of weeks or indefinitely. With the latter as a real possibility, Graham could not afford to pay attention only to his short-term interests. Instead, he also had to take account of his long-term investment in the slave—an investment that relied not only on the slave's subjugation but also on his ability to labor physically and to be repackaged for sale.[5] Slavery was predicated on violence, but the other core premise of the institution—the profitability of the physical and financial labor of human property—simultaneously constrained the level of violence that a master could deploy.

Although slave mortgaging added security to credit networks that extended throughout the South and into the rest of the nation, this financial practice also challenged the "near-total authority" of a master over his slave, a concept that was foundational to the slaveholding regime. As historian James Oakes has observed, "from the middle of the eighteenth century until the closing days of the Civil War, the defense of slavery rested firmly, consistently, and unshakably, on the inalienable rights of property…at its core, the right of property was an individualistic defense of the master's authority over and

[5] Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 1999), 117-134.

against the claims of state and society alike."[6] However, mortgaging muddled the lines of slave ownership. While slaveholders claimed absolute rights over their slave property, practices like mortgaging meant that multiple men had an interest—or rather, diverse interests—in a single piece of property. As historian Thomas Russell argues, "property in slaves took a fragmented form, with different aspects of property divided among different non-slave persons."[7] In this sense, slave property must be understood as neither absolute nor unified.

Cases like Graham's, which found its way into the District Court of Texas, demonstrate the ways in which this divisibility of slave property structured the entire realm of plantation politics. From healthcare to punishment, slaves' everyday lives were affected by the blurred boundaries of ownership. Just as mortgaging altered owners' treatment of their slaves, it also opened new opportunities for slaves' resistance, including extraordinary acts of rebellion like arson. In order to gain a fuller picture of antebellum life in the Deep South, understanding the divisibility of property is crucial. By tracing the financial transactions that divided the interests in slave property between debtors and creditors, it is possible to write the social history of slavery.

Starting in the colonial period, collateralization of slaves sped up the pace of economic as well as geographic expansion in the United States. With the

[6] James Oakes, "'I Own My Slaves, but They Also Own Me': Property and Paternalism in the Slave South," *Reviews in American History* 38, no. 4 (2010), 591.

[7] Thomas D. Russell, "A New Image of the Slave Auction: An Empirical Look at the Role of Law in Slave Sales and a Conceptual Reevaluation of Slave Property," *Cardozo Law Review* 18 (1996): 502. In the context of slave hiring, specifically, Jonathan Martin has referred to this as the "triangulation of mastery." Jonathan Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge: Harvard University Press, 2004), 2-3.

advent of slave-backed mortgages, men could purchase slaves, goods for their plantation, or invest in companies or fledgling banks without having the full amount of cash necessary for these transactions. As Bonnie Martin argues, this generation of cash and credit enabled the expansion of the United States into new frontier territories and made the institution of slavery viable in these new spaces.[8] Acting as financial assets to be managed by their owners, slaves were perversely forced to perpetuate a system that denied their freedom and extracted their physical labor. Underneath these agreements that pledged slaves' bodies to neighbors or the boards of a new railroad company were the enslaved men and women who would bear the burden of foreclosures.

While Martin focuses on the economic implications of "slavery's invisible engine" and presents extensive statistical information on the mortgaging trends from the eighteenth and nineteenth centuries, she is also careful to note that her aggregated data does not tell the full story of this financial practice. With the rise of mortgage contracts, a larger number of slaves were in danger of being separated from their families, "either when slaves were purchased with mortgages and taken away or when loans were not repaid and slave collateral was seized."[9] Moreover, mortgaging was not limited to slaves who might otherwise be desirable in the slave market. Elderly slaves and children were often used to secure loans, along with those who were regularly sold at slave

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[8] Bonnie Martin, "Slavery's Invisible Engine: Mortgaging Human Property," *The Journal of Southern History* 76.4 (2010), 817-866.

[9] Martin, "Slavery's Invisible Engine," 859.

sales—skilled slaves, prime field hands, adolescents, and women in their reproductive years.

The significance of mortgaging for slaves themselves was not, however, simply relegated to the public auctions of foreclosure proceedings or the days when neighbors took possession of a pledged slave. Rather, slave mortgaging was part of a broader logic that reinforced slaves' dual roles as financial and physical laborers.[10] Although it is unlikely that slaves knew when or to whom they or a member of their family had been mortgaged,[11] foreclosure sales alerted these men and women to the practice and the power that slaveholders held in choosing whom to pledge. Similar to the role that slave sales played, mortgaging was another means by which to discipline slaves in their everyday lives.[12] From the negotiation of mortgages to public auction sales, mortgaging structured not only the early American economy but also the quotidian experiences of enslaved men and women.

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[10] As Gavin Wright notes, it was not so much the incredible physical productivity of slaves that made this institution so important, but rather the property rights associated with this regime that made it "so vital to the emerging economy." After all, slaves were working most of the time at "tasks and in locations that could not attract free workers on commercially viable terms." Gavin Wright, *Slavery and American Economic Development* (Baton Rouge, LA: Louisiana State University Press, 2006), 14-15.

[11] Martin, "Slavery's Invisible Engine," 820.

[12] For a lengthier discussion of the chattel principle, see Johnson, *Soul by Soul*, 19-44.

Reading Bodies and Value: The Negotiation of Slave-backed Mortgages

Credit has long been understood as the life-force of the American economy, and facilitated by the overlapping authorities of local, state, and national government, loans could take on a variety of forms—from a spoken promise to repay a loan to a written promissory note to a secured bond. One thing was fairly constant: lenders wanted to maximize their chances of being repaid. To provide the most security for a debt, a creditor would, as the foremost historian of early American lending explains, "hold the title or a lien against a particular item of the debtor's property as a pledge for the debtor's promise to pay the debt." In the event that a debtor could not return the loan by the agreed upon due date, the creditor—ahead of all other men who had loaned money to the same debtor—could lay claim to the property. Commonly, men would pledge a plot of land, which the creditor could closely estimate the value of. Although mortgages like this would have offered more protection for the creditor than an unbacked note or bill, these credit instruments were "not perfect security—creditors might misjudge land values, or they might not discover that the property already secured other debts, or prices might have declined so much that land became worth less than the debt it secured." Making loans was risky, even when valuable assets were attached to them.[13]

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[13] Bruce H. Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, MA: Harvard University Press, 2002), 15.

As men negotiated the terms of a loan, they considered not only the stated value of the securing assets but also the likelihood that they could actually receive cash in exchange for these items. Although they may have been appraised at a high price, tracts of land or other household goods were often subject to the demands of a small, local market. Even if there were interested buyers, the scarcity of cash made the sale of property at auction particularly difficult. Property auctions in the eighteenth century, including those that triggered the famed Shays' Rebellion in 1780s Massachusetts, had taught these lessons well. A glut of foreclosed farms drove property values to fractions of their original worth, especially as potential purchasers offered only to pay in produce rather than currency. In one instance, the sheriff overseeing an auction in colonial Connecticut "bartered levied goods for rum and other items that he hoped would be more salable after there had been no buyers at auction for want of cash."[14]

Because it relied on the demands of potential buyers and their ability to pay, the precise value of land or other commonly leveraged goods may have been difficult to predict. Likewise, human property was subject to the desires of planters or slave traders. The characteristics that differentiated slaves from other assets, however, offset the unpredictability of buyers in the market for slaves. Unlike pieces of farmland, enslaved men and women were portable assets, making them less subject to fluctuations of a small local market. Coffles, carts,

[14] William Samuel Johnson to Sidney Breese, Nov. 4, 1763, quoted in Mann, *Republic of Debtors*, 31.

railcars, sailing ships, and steam boats conveyed slaves from places where prices were low to markets where demand was greatest and prices high enough to recoup transportation costs and still reap substantial profit.[15] As physical laborers, slaves could perform a variety of tasks, ranging from domestic work to the literal transformation of the wilderness into fields of cotton.[16]

Nevertheless, slaves were not a perfect form of security. As a class of assets, slaves were valuable, but from one piece of property to another, the value might differ dramatically. Debilitating illness could dramatically decrease a slave's worth over the period of a mortgage, while death could obliterate it altogether. As slaves aged into adulthood over the course of a mortgage, their values rose; yet the same passage of years diminished the value of an adult slave now considered elderly. For lenders—like all other participants in the speculative economy—establishing a system with which to assess not only the current but likely future value of a mortgaged slave was crucial. After all, maintaining a pledged slave's value was of utmost concern to creditors, whose compensation was ultimately tied to the worth of a slave's body.

The challenges of appraisal, however, differed based on the types of mortgages being negotiated. For creditors involved in equity mortgages—those that were backed by slaves or other property already owned by the person

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[15] Slave portability was essential for the domestic slave trade and thus, the viability of westward expansion. See Deyle, *Carry Me Back*.

[16] In a study of Los Brazos de Dios, Texas, Sean M. Kelley recounts the ways that land was sold and leveraged in order to purchase more slaves, which were fundamental to the literal transformation of the western frontier. See Sean M. Kelley, *Los Brazos de Dios: A Plantation Society in the Texas Borderlands, 1821-1865* (Baton Rouge, LA: Louisiana State University Press, 2010), 31; Edward Baptist, *Creating an Old South: Middle Florida's Plantation Frontier before the Civil War* (Chapel Hill, NC: University of North Carolina Press, 2002).

seeking a loan—sound loans relied on the information circulating locally about both slaves and slaveholders themselves. Although the details of such a system are largely absent from the archival record, lenders likely had a set of criteria, such as age, gender, certain physical features, that may have alerted them to a slave's likelihood to depreciate over time, even if they were personally unable to assess the collateralized individuals.[17] Nevertheless, even facts like these would have been difficult to ascertain with much certainty. As masters and slave traders sought to market their human chattel for sale or convince a potential lender of a slave's worth, they presented information about a slave that minimized the troubling aspects of the commodified individual's pasts and emphasized qualities that would make him or her productive as a laborer and effective value-holder.[18] Without health records, birth certificates, or even a full history of a slave's previous owners, lenders had few ways to confirm information given to them by a slaveholder seeking to mortgage his property.

In negotiating a mortgage, creditors assessed slaves' bodies, when possible, and also sought out information about the particular slave. As they worked out these financial agreements, however, creditors also appraised the men who managed the human collateral. Knowing a master's typical methods of punishment or his reputation—whether he was known to have a hot temper or

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[17] This problem of appraisal seems particularly challenging in the context of loans made by larger institutions such as banks or corporations. Because the focus of this thesis is on loans made between neighbors, which comprise the bulk of cases documented in the RSFB Collection, I will not take up the question of appraisal within these more impersonal loans specifically. However, this seems like a relevant question and one that remains largely unanswered within the current historiography.

[18] See Johnson, *Soul by Soul,* "Turning People into Products," 117-135.

to make honest sales of his slaves—would have also been crucial for making sound loans. Just as slaves built the social and economic status of their owners,[19] masters were reflected in the bodies of slaves. A slaveholder's use of violence may have reinforced his authority over a recalcitrant piece of property, but it also held longer-term implications for the value of the chattel. Scars from a whip or even the continual negligence of a slave's health were signs—and ones that could later be read on a body—that he or she may be less fit for physical labor. Lenders, who assessed the value of a mortgaged slave, were aware that these permanent signs of a master's mistreatment would forever affect the usefulness of a slave as a financial asset.

While the details of negotiating equity mortgages remain largely speculative, arranging purchase-money mortgages would not have differed so dramatically from the workings of a traditional slave sale. In such instances, two parties would agree on the purchase price of a slave as well as a payment plan for the transaction. Rather than pay the bill of sale up front, the purchaser would place a down-payment on his new property, but would not receive the title to the slave until he had paid in full, similar to modern mortgages made on houses.[20] As an 1837 broadside advertised, payment for slaves purchased at a probate sale could be made in three installments over the course of three years and "secured

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[19] See James Oakes, *The Ruling Race: A History of American Slaveholders* (New York, NY: Vintage Books, 1982); Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Reations, and the Political Culture of the Antebellum South Carolina Low Country* (New York, NY: Oxford University Press, 1995); Johnson, *Soul by Soul*, 78-116.

[20] Martin, "Slavery's Invisible Engine," 822.

by mortgage made upon the property sold."[21] Through these purchase-money mortgages, slaves were used as financial tools not only to secure other loans but also to enable the extraction of their very own labor. This perverse practice, however, may have also given enslaved men and women small opportunities in which to thwart their use in both capacities.

After choosing a set of eight slaves to purchase, Aldophe Flécheux, a resident of Pointe Coupee, Louisiana, a parish near Baton Rouge, took his new property into possession, only to find that his merchandise was defective. Prior to his acquisition, Aldophe had acted like other slaveholders and inspected these men and women. As he examined prospective slaves, he considered the histories that were inscribed on the bodies of this human property as well as the future productivity that these men and women embodied. Yet Mr. Flécheux also knew that even the bodies on display were not easy to read. Asking specifically about the health and character of the slaves that were on sale, Flécheux received a positive response from the slaves' current owner, Stephen Vanwickle. In fact, Mr. Vanwickle agreed to a warranty that the slaves were free of any "redhibitory vices and defects."[22] Despite both the visual and verbal assurances, however,

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[21] "Probate Sale, Parish of Iberville," 14 February 1837, Louisiana & Lower Mississippi Valley Collections, #4892, Louisiana State University Libraries, Louisiana State University, Baton Rouge, LA.

[22] It was standard procedure for men selling slaves to give "warranties that the bondsmen involved in a transaction were slaves for life and sound in body and mind." Courts repeatedly ruled in cases that contested the actual soundness of slaves. "In cases where bondsmen were warranted sound by sellers but died shortly after the transaction from some proven long-standing defect, the courts ruled that the purchaser deserved compensation." If a slave had been purchased for reasons beside physical and mental soundness, however, the buyer had less legal recourse and courts often ruled in the buyer's favor. For instance, if a planter purchased the wife of his current slave and the wife proved not to be sound, the court would have likely forced the

Flécheux quickly realized that the slaves were far from sound investments. As he stated in his petition to the Circuit Court, five of the new acquisitions suffered from "vices and defects," including eating dirt, rheumatism, epilepsy, running away, infirmity following miscarriage or botched childbirth, or very poor eyesight.[23]

Frustrated by this list of ailments, Flécheux decided to take action before he took a great financial loss. After all, slave health was reduced to what historian Sharla Fett has termed "soundness." From this rubric, health was important to the extent that it made slaves productive and sellable.[24] Although disciplining his slaves or possibly hiring a doctor to care for them may seem like the most likely recourse, Flécheux instead challenged the slaves' previous owner in court. While warranty law would have given him some ground on which to petition the court, another aspect of his arrangement was at stake in the courtcase. Rather than pay the full bill of sale—a steep $6,400—up front, he had paid a down payment of $500 and signed four promissory notes to cover the remaining debt. Yet the notes on their own were not enough to assure Vanwickle that Flécheux would actually stick to his word.[25] The men had also agreed to

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purchaser to suffer the financial loss. See Randolph B. Campbell, "The Law of Slavery in Texas," in *The Laws of Slavery in Texas*, ed. Randolph B. Campbell (Austin, TX: The University of Texas Press, 2010), 58-59.

[23] Deposition of Adolphe Flécheux, 1837, Point Coupee, Louisiana, **Circuit Court,** in *RSFB*, #20883702.

[24] Sharla Fett, *Working Cures: Healing, Health, and Power on Southern Slave Plantations* (Chapel Hill: University of North Carolina Press, 2002).

[25] Despite the reliance on mortgages—which gave debtors a distinct financial interest in paying back their loans—it is also important to note that making good on promissory notes was in itself important for a slaveholder's economic interests. In an era in which "credit-worthiness" was largely based on one's local reputation, maintaining others' perceptions of oneself as honest,

mortgage twelve of Flécheux's already-owned men and women as well as the entire new group being sold. The ostensible purchase of eight slaves postponed actual title transfer until future payments were made, and incentivized the buyer to make those payments by putting ownership of another twelve slaves on the line; twenty slaves were ultimately negotiable in the purchase of eight. While the mortgage was intended to protect Vanwickle from financial loss, the fact that he maintained title to the eight slaves being sold meant that the sale—the emblematic moment in the larger system of human bondage—was hardly decisive, neither terminating Vanwickle's stake in the property being sold, nor ending his responsibility for the slaves themselves. Effectively, purchase-money mortgages also created an avenue that would hold slave salesmen more accountable for the quality of their products.

The record of Flécheux's case leaves few details about the twelve slaves that were pledged to Vanwickle. However, the traces of the five "defective slaves" in question reveal the interesting consequences of mortgaging for the mortgaged. The complaints that Flécheux had of his new slaves cover a range of offenses. Although both epilepsy and running away—to take two of the items on Flécheux's list—clearly limit the productive capacity of a laborer, these two "vices and defects" are not traditional bedfellows.[26] While it is possible that

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reliable, and a good master were extremely important in order to thrive not only in certain social circles but also in the local economy. For one study on the role of reputation in accessing credit, see Scott Sandage, *Born Losers: A History of Failure in America*, (Cambridge, MA: Harvard University Press, 2005), 129-138.

[26] Later, Samuel Cartwright medicalized running away, making it and epilepsy more likely to be viewed in a single category. As Sharla Fett writes, Cartwright "pathologized the resistance of African Americans to slavery by naming defiance as disease." Fett, *Working Cures*, 170.

epilepsy is part of the slave's performance to evade work, Flécheux never suggests this within his petition. Instead, he places physical ailments and limitations within the same category as more overt acts of rebellion. For Flécheux, the assignment of blame for these product flaws unites this disparate list of "vices and defects." In his petition to the court, Flécheux does not acknowledge that a run-away slave is an example of an unruly human, a piece of property that is not fully acting out his commodification. The legal system required that dissatisfied customers demand compensation from the original owner of the defective property rather than the property itself.

As Flécheux's case shows, the use of a mortgage did not dramatically alter the process of negotiating the slave sale. In this instance, the slaves played their parts effectively, hiding any flaws of body and character as they were appraised by their future owner.[27] Nevertheless, mortgaging effectively lengthened the period and expanded the geographic location of the appraisal and negotiation. Once outside of their master's gaze and in a new work setting, the slaves began to reveal information about themselves that was unavailable in the more limited time and space of the appraisal. Although this new information revealed not only the ability and value but also the will of these enslaved individuals, it was Vanwickle's intent to defraud Flécheux—not the wayward acts of the slaves—that was considered actionable in court.[28]

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[27] For more on slave's performance of commodification during the slave sale, see Johnson, *Soul by Soul*, "Acts of Sale," 162-188.

[28] Furthermore, it is interesting to note that Flécheux specifically cites his limited understanding of the English language as what made him a target for Vanwickle to defraud.

Mortgaging may have legally shifted the blame for slaves' actions and held owners accountable for the information that slaves themselves revealed over the course of an "extended" appraisal. Despite the power that this may have given slaves, it was only on the premise that slaves were property, unaccountable for the very things that they did with their bodies. Although men and women of the nineteenth century certainly recognized that this premise was hardly true,[29] the mythical denial of slaves' agency was integral to a broader logic that enabled enslavement and perpetuated the idea that a slave needed a master to act on his or her behalf.[30]

Moreover, it would have been unlikely for slaves to make a direct connection between mortgaging and their diminished culpability for certain acts that would have otherwise been punished severely. As Bonnie Martin writes, mortgage negotiations could often be made without a slave ever knowing. Rather than being a source of power for slaves to leverage personally, the abstract idea of mortgaging loomed as a reminder that slaveholders could assign

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Again, this emphasis places the blame on Vanwickle rather than the slaves whose bodies were generally considered the more reliable source of information in the slave market. See also Malick Ghachem, "The Slave's Two Bodies: The Life of an American Legal Fiction," *William and Mary Quarterly* 60, no. 4 (2003), 809-842.

[29] The use of violence to punish slaves for unruly behavior, as well as laws that attempted to reconcile the understandings of slaves as both human and property, are two clear examples that slaveholders did not fully believe the myth that underwrote the institution of slavery. The laws of slavery were continually working to reconcile the absolute right of property that slaveholders claimed over slaves while also recognizing slaves' volition when necessary. For instance, planters who sold their slaves were held accountable for any defective merchandise. At the same time, however, laws were passed that made slaves punishable for capital punishment for offenses against whites—such as burglary or murder. This subject will be taken up again at the end of this chapter. See Campbell, "The Laws of Slavery in Texas," 61.

[30] Going back to the late eighteenth century, the importance of this legal fiction can be seen in the passage of the Three-Fifths Clause, which allowed slaves to be counted as partially human for the sake of representation and taxation. See Ghachem, "The Slaves's Two Bodies," 813.

a price and pledge his property to whomever he pleased. Like the slave trade or the market stalls, mortgaging may have held a special place in the imagination of slaves, one that was integral to the broader governing logic of the institution of slavery. Without ever using violent force, slaveholders could mobilize these imagined spaces to discipline their property. The threat of sale—albeit through the "second middle passage" westward or the proceedings of a foreclosure auction—largely served to maintain the power of masters over their slaves.

Vulnerable Bodies: Slave Health and Reproduction

Slave mortgaging had implications beyond the intangible logic of commodification and the possibility of a future foreclosure auction. The everyday lives of mortgaged slaves, whether in the hands of the debtor or creditor, were affected by their uncertain status as collateral. Even when slaves did not know that they had been mortgaged, this undisclosed information would have informed a master's treatment of his slave. In a property regime that relied on the fiction of total subjugation of a slave to his master, mortgaging complicated the traditional relationship between the two. Whether a slave's former owner continued to hold his title—in the case of purchase-money mortgages—or a current owner had pledged him as collateral in another loan—in the case of equity mortgages—mastery was not as clear-cut for owners who leveraged their slaves' bodies as financial assets. In general, slaveholders sought to balance their long-term interest in maintaining a slave's value with their more immediate interest in maximizing the productivity of their property. In the case of mortgages, however, a slaveholder's long-term interests in a slave were less certain. Without knowing whether he or one of his debtors would be able to pay an outstanding bill, slaveholders were less equipped to make long-term decisions about the everyday treatment of their slaves.

This uncertainty had specific repercussions for the health of slaves. Whether or not an owner would treat a slave's ailments depended on his long-term investment in the property. If he were going to lose a slave through foreclosure, for instance, it was unlikely that he would pay for a doctor to visit the plantation. Similarly, an owner's care of a mortgaged slave's newborn child hinged on his legal rights to this piece of property. In this way, mortgaging impacted the most intimate aspects of plantation life.

Like mortgaging, the practice of "hiring out" challenged the governing logic of the master-slave relationship. In these short-term arrangements, an owner lent his slave to another party for a given period in order to pay off a small loan or to make additional money without actually selling the slave outright. As Jonathan Martin writes in his book on this practice, *Divided Mastery*, hiring arrangements forced property rights to be "divided into separate spheres with awkward temporal boundaries." After signing a contract, hirers assumed their full right to mastery, "including the power to force slaves to work and to punish them for substandard displays of submissiveness." Thinking of their own long-term interests—including their rights to a slave's "future labor, future hiring earnings, and future sales"—owners sought to curb the rights of hirers.[31] Hirers triangulated a traditionally two-way relationship between master and slave, often pitting the owner of a slave against the slave's temporary manager.

While hiring represents one form of dividing mastery, mortgaging demonstrates another. Unlike hiring, however, the practice of mortgaging did not pit the short- and long-term interests of two slaveholders against one another. Rather, the uncertainty of future ownership prompted both "masters" to consider slaves as long-term investments. In addition to shaping a slave's tasks and punishments, this long-term interest affected the physical wellbeing of human chattel.

In September of 1815, the Superior Court judge for Louisiana's 5th District denied the appeal of Mr. Alexander Porter. Nearly three years before, Porter was brought to court by Mr. William Pitt Higbee in order to contest the seizure and sale of a woman and her child. The two pieces of human property originally belonged to Mr. Porter, but in 1812, he had agreed to sell them to Higbee. Yet like many other slave sales of the time, Higbee purchased the slaves with credit and listed the newly purchased slaves as collateral for the loan. Although Porter retained the title to the two slaves, Higbee took the woman and child into his

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[31] Martin, *Divided Mastery*, 3.

own possession, intending to utilize the mother as a fieldhand while she simultaneously served as a financial tool.[32]

To Mr. Higbee's consternation, he soon realized that his plans for Dinah were impossible. As Higbee testified to the court, Dinah was afflicted with a "chronic disease in the abdomen or matrix" that made her unable to "answer the purposes for which [he] had purchased her." Moreover, Higbee claimed that Porter knew about the ailment prior to the sale but chose to deceive Higbee rather than disclose this information.

Although Higbee's story first appears to be a standard case of misrepresentation during a slave sale, the legal turns that follow demonstrate the complexity not only of mortgaging but also of the vested interest of both stakeholders, Higbee and Porter, in claiming ownership of the ill woman. After learning of Dinah's malady, Higbee contested the sale, citing Porter's deception as cause for nullification. In response to Higbee's contestations, however, Porter took an unexpected course of action. Rather than deny his knowledge of the sickness and argue that Higbee would simply have to suffer the financial loss of his own poor purchase, Porter applied for—and received—an order for the seizure and sale of the two slaves. Because he still maintained the title to the loans, Porter intended to forego the formal legal proceedings brought by Higbee and instead, minimize any financial losses before Dinah's health deteriorated further.

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[32] Petition of William Pitt Higbee, 1815, St. Landry Parish, Louisiana, Superior Court, in *RSFB*, #20881515.

The legal record does not ultimately divulge who won Higbee's original contestation of the slave sale. Nevertheless, it is clear that Porter's legal title did not provide full rights to the property that he had sold but not received payment for. After Higbee petitioned the court to prevent the seizure and sale of Dinah and her child until his original case had been settled, the Superior Court sustained this decision, protecting the right of Higbee, the debtor.

While the court's ruling on behalf of the debtor is interesting, foregrounding the experience of Dinah throughout the cases reveals another set of insights about the effects of mortgaging on slaves' lived experiences, including their health. As a mortgaged slave, Dinah had two masters invested in maintaining at least a semblance of her health. Uncertain of his success in nullifying the original sale, Higbee paid for the care of a local physician even as he sought to sever his ties from his unproductive slave. For Porter, Dinah's illness was a liability that he hoped to rid himself of as quickly as possible. Yet even arranging for her sale to Higbee or another buyer required some investment in her physical well-being.

Dinah's status as a mortgaged slave meant that not only one but two men had some interest in her health. Yet this interest had a very specific form. While Porter and Higbee sought to prevent Dinah's health from worsening, it was their own financial interests that motivated their efforts. As Sharla Fett argues, "enslaved men and women confronted a political economy that cast the shadow of the marketplace over the most intimate events of birth, sickness, and death."

Although enslaved African-Americans developed their own healing practices and a sharp critique of the influence of property interests in plantation health, "the medicine of white slaveholders…was deeply implicated in southern legal and economic institutions, which translated slave health into slaveholder wealth."[33]

Slaveholders' concerns about health, however, were not limited to illness and death. The reproductive capacity of enslaved women was also of primary concern to their owners, whose wealth relied on "a steady flow of cheap, largely unskilled labor."[34] Unlike all other slaveholding societies of the New World, the American South was marked by the natural increase of its slave population. While other slave economies were sustained "by constant injections of new slaves from Africa,"[35] black women—whose status as enslaved automatically transferred to their children—reproduced the workforce and made possible the system that denied their freedom. As Adrienne Davis writes, the antebellum South was a "sexual political economy" at its core. Sexual exploitation of enslaved women was "inextricably tied not only to economic viability, but also to maintaining and defending the social order, ranging from pleasure to punishment to politics…Slavery's legal and cultural institutions systematically

[33] Fett, *Working Cures,* 15-16.

[34] Adrienne Davis, "'Don't Let Nobody Bother Yo' Principle': The Sexual Economy of American Slavery," in *Sister Circle: Black Women and Work*, ed. Sharon Harley and The Black Women and Work Collective (New Brunswick, NJ: Rutgers University Press, 2002), 117.

[35] Peter Parish, *Slavery: History and Historians* (New York: Harper and Row, 1989), 23.

made enslaved women's reproductive and sexual capacity available to serve any number of political and economic interests of elite white men."[36]

Although several historians have argued that reproduction and labor were the "twin pillars of female exploitation" in slavery, it was reproductive work, rather than physical labor, that distinguished black women from enslaved men.[37] Unlike their white counterparts, enslaved black women often performed the same work as men of their same race and status.[38] Divisions arose between men and women, then, not in the fields but in birthing beds. Based on the legal principle *partus sequitur ventrem*, the status of newborn children followed that of their mothers, meaning that enslaved men could conceivably father free children while enslaved women could not. As historian Adrienne Davis writes, "laws of race and gender merged with *partus sequiter ventrem's* status classifications to condemn the wombs of enslaved black women," the sole class responsible for the reproduction of the enslaved workforce.[39]

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[36] Davis, "'Don't Let Nobody Bother Yo' Principle': The Sexual Economy of American Slavery," 117-118.

[37] Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004), 1. For other studies on women in slavery, see Barbara Bush, *Slave Women in Caribbean Society, 1650-1838* (Bloomington: Indiana University Press, 1990;, Hilary Beckles, *Natural Rebels: A Social History of Enslaved Black Women in Barbados* (New Brunswick: Rutgers University Press, 1989); Marietta Morrissey, *Slave Women in the New Word: Gender Stratification in the Caribbean* (Lawrence: University of Kansas Press, 1988); Deborah Gray White, *Ar'n't I a Woman? Female Slaves in the Plantation South* (New York: Norton, 1985).

[38] Deborah Gray White, "Female Slaves: Sex Roles and Status in the Antebellum Plantation South," in *Half Sisters of History: Southern Women and the American Past*, ed. Catherine Clinton (Durham, NC: Duke University Press, 1994). See also Brenda E. Stevenson, *Life in Black and White: Family and Community in the Slave South* (New York: Oxford University Press, 1996); Leslie A. Schwalm, *A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina* (Urbana: University of Illinois Press, 1997); Carole Shammas, "Black Women's Work and the Evolution of Plantation Society in Virginia," *Labor History* 5 (1985).

[39] Davis, "'Don't Let Nobody Bother Yo' Principle': The Sexual Economy of American Slavery," 113.

Given the importance of their reproductive work—and its direct translation into slaveholder wealth—young women of a childbearing age were increasingly valued by slaveholders. In the colonial North and urban South, slaveholders sometimes decried the reproductive ability of their slaves, bemoaning women's inability to work in the fields during pregnancy and seeing offspring as another set of mouths to feed. By the late eighteenth century, however, planters began to see this ability to reproduce as a source of great value. In addition to mentioning particularly fecund women in newspaper advertisements, some slaveholding men in the Upper South began to write in their wills that any excess money should be "laid out in Negroe Wenches or Girls" in order to increase the value of their estates.[40] By the early nineteenth century, a slave woman's ability to reproduce was a major factor in determining her value. In fact, many farmers began to make their initial investment in a young woman capable of reproducing rather than a male slave.[41] As Thomas Jefferson articulated, "a woman who brings a child every two years is more profitable than the best man of the farm."[42]

Although childbearing may have had clear implications for the overall value of enslaved women, it is less obvious how this distinctive value affected their likelihood to be used as financial assets, either as temporary hires or collateral for loans. As one hiring agent R. H. Adams wrote in a letter in 1855, women "without encumbrances" were more desirable hires, for childcare might

[40] Deyle, *Carry Me Back*, 27-30.
[41] Gray White, *Ar'n't I a Woman?*, 67-70.
[42] Deyle, *Carry Me Back*, 28.

limit the number of hours that women could work.[43] In some cases, administrators of estates would even *pay* another slaveholder to care for the maintenance of a woman and her children. If a woman were to give birth while she was hired, it was expected that the slave's owner would pay an additional sum of money to cover the costs of the newborn child. William Campbell, who hired the slave Chaney in 1860, felt "deceived" when she became pregnant and was unable to work. Writing to Chaney's owner, Campbell complained that he "could not raise young negroes that [did] not belong to [him] without pay."[44] Whether used by temporary masters to secure additional pay from a slave's owner or by enslaved women to avoid an unwanted hiring arrangement,[45] pregnancy was an important consideration for all three parties involved in the temporary rental of slaves.

While pregnancy may have been a liability for temporary masters of slaves—men who sought to extract the maximum amount of physical labor from his slave in a fixed period of time—a woman's reproductive capacity would have been considered differently in the context of slave mortgaging. Although slaveholders mortgaged men and women who would have been otherwise

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[43] R. H. Adams to Mary E. C. Gilliam, 26 November 1855, quoted in Martin, *Divided Mastery*, 58.

[44] William Campbell to Caroline Foscue, 23 October 1860, quoted in Jonathan Martin, *Divided Mastery*, 59.

[45] Jonathan Martin argues that enslaved women may have used pregnancy as a means of influencing their own hires and essentially, as a form of resistance. As he writes, "if they wished to avoid being hired out, women like Katy and Harriet could time their pregnancies so that they began to show in December of January, when they would be inspected by prospective hirers inclined to want, as one hirer did in 1826, 'such young women as…are not likely from appearances to be breeding in the course of the year.'" Martin, *Divided Mastery*, 56.

difficult to sell, including young children and the elderly,[46] they also used mothers and women of a childbearing age to secure loans. Given the volume of mortgages and the fact that many of them were never filed in official mortgage registries, it is difficult to ascertain the prevalence of mortgaging one group of slaves over another.[47] Nevertheless, it is clear that women's labor was often at the center of mortgage disputes.

Facing the seizure and sale of his property, including a sixteen-year-old slave Jim and another slave Lucy, Harwood Goodwin asked his son-in-law, Benjamin Camp, to pay off his debt for him. In turn, Goodwin promised Camp the labor of his two slaves at the rate of five dollars a month. Since the arrangement and an initial appeal to the Circuit Court of Alabama, eleven years passed, yet Camp still had Jim and Lucy in his possession. Petitioning the Circuit Court of Alabama again, Goodwin argued that Jim and Lucy's work should have resolved the debt years ago, but Camp had given no indication that he would return the two chattels. Moreover, Lucy had given birth to four children, whom Goodwin believed he had the right to. Concerned that Camp was planning to move Lucy and her children outside of the Court's jurisdiction and had already

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[46] Martin, "Slavery's Invisible Engine," 859.

[47] It is also important to consider the lack of choices that a slaveholder may have had in determining which slaves to list as collateral in loans. As the Alabama case discussed in the subsequent paragraphs shows, men may have used their only slaves as collateral. For more information on the mortgage registries, see Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill, NC: The University of North Carolina Press, 1996), 124-125.

sold Jim to a slave trader, Goodwin called for a writ of attachment and the repossession of the slaves by the Sheriff until the case was resolved.[48]

Goodwin's petition shows the ways that property and particularly, valuable financial assets like slaves could become sources of division among slaveholding men, even men of the same family like Goodwin and Camp. Yet these same men invoked the language of paternalism—arguing that they must keep a specific set of slaves together based on their relationships not simply to one another but to the master and his family—when it was to their financial benefit. In fact, Goodwin convinced Camp to sell his own slaves so that he could pay off Goodwin's debt and thus, keep Goodwin from losing Jim and Lucy, slaves that were not only "likely" but ones that he would "prefer to remain in the family."[49] As financial troubles generated tenuous alliances and fractured deeper relationships, they also revealed the larger fiction of many paternalistic claims. Citing a specific connection to slaves or utilizing another familial relationship to protect one's financial standing may have required rhetoric like Goodwin's. Yet the simultaneous fissures that developed between men like Camp and Goodwin exposed the harsh reality of these relationships.

Men sought to protect their individual rights to property and their own financial interests, despite the negative outcomes for their human chattel and at times, their own family members. Even popularly used paternalistic rhetoric did

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[48] Petition of Harwood Goodwin, 1830, Bibb County, Alabama, Circuit Court, in *RSFB*, #20183002; Petition of Harwood Goodwin, 1834, Bibb County, Alabama, Circuit Court, in *RSFB*, #20183403.

[49] Deposition of Benjamin Camp, 1830, Bibb County, Alabama, Circuit Court, in *RSFB*, #20183002.

not deny the importance of financial interest for understanding the treatment of slaves by their masters. As historian James Oakes has argued, "far from representing a rejection of 'market' values, southern paternalism rested on the assumption that slaves were too valuable a 'species of property' not to be cared for adequately. The slaveholders developed a popular rhetorical trope for expressing their distinctively materialistic paternalism: the slaves were treated well, it was said, thanks to a happy conjunction of 'humanity and interest.'"[50]

Goodwin's case does not simply point to the resources—both financial and rhetorical—that a master's family possessed. The court record also reveals the distinctive ways that women were regarded, given their status as the reproducers of the enslaved workforce. According to Goodwin, Lucy was in good health when she was originally put under Camp's control. By the time that she was returned, however, Goodwin claimed that "she had been greatly injured & her value greatly decreased." Responding to Goodwin's demands for monetary compensation for these damages to his property, Camp stated that Lucy was "a sickly negro before she came into possession of [Camp]…and did [him] little or no work being most of the time sick and since that, has been of little or no actual value to him." Instead, Camp claimed that he had to spend over fifty dollars in medical fees for Lucy and had maintained her four children, who were also of little value to him. Ultimately, the court ordered that the maintenance of Lucy's health as well as the cost of her children had to be paid by

[50] James Oakes, "'I Own My Slaves, but They Also Own Me': Property and Paternalism in the Slave South," *Reviews in American History* 38, no. 4 (2010), 591.

Goodwin. Without any guarantee of this compensation, however, Camp chose to take the necessary steps to keep Lucy alive, if nothing else. Even though he was being repaid through his temporary possession of Jim and Lucy, Camp still had an interest—albeit for the short-term—in maintaining the slaves' health.[51]

While Camp may have seen Lucy's children as a financial drain when they were first born, it appears that his interest in the slave-children changed with time. Over the course of Lucy's stay with Camp, her first child would have grown into adolescence and thus, into his or her role on the plantation. As his agreement with Goodwin stipulated, Camp had full right to work not only Lucy but also her "offspring in future and increase." Though this would have been of little value at birth, Camp sought to hold onto Lucy and her children as they matured and gained new value as workers on the plantation.[52]

Whether Lucy and her offspring enhanced Camp's financial standing or not, the law articulated the rights and responsibilities of a slave's owner as well as temporary master to the children of enslaved women. Based on the legal principle of *partus sequitur ventrem*, a child's status as free or enslaved followed that of his mother. Yet this same principle was invoked to understand the relationship between offspring and an owner who had mortgaged the child's mother. Similar to laws that children under the age of ten could not be separated

[51] Petition of Harwood Goodwin and deposition of Benjamin Camp, 1830, Bibb County, Alabama, Circuit Court, in *RSFB*, #20183002.

[52] Indenture exhibit, petition of Harwood Goodwin, 1830, Bibb County, Alabama, Circuit Court, in *RSFB*, #20183002.

from their mothers,[53] the offspring of mortgaged women were considered to be the property of the man who held legal title to the slave.[54] In a certain sense, laws provided a way for women to remain with their children, even if for only a few years more.[55] Nevertheless, these same laws condemned women's wombs, making them subject to the laws of property.

Disciplining Bodies: Punishment and Mortgaging

As the process of mortgaging shifted the short- and long-term interests of slaveholders, slaves felt the effects of this financial tool in their everyday lives. Aside from the process of appraisal and the types of healthcare that enslaved men and women received, mortgaging also influenced the forms of work that they did each day. As Rhoda Stephenson stipulated in 1855, her slave Jefferson was "only to be worked as a farm hand." Forbidding her slave to be worked in "ditches, shingle swamps, or public works projects," this slaveholder ensured that her property would not be forced to do any particularly dangerous jobs

[53] There were laws that prevented the separation of mother from children under the age of ten in three states—Alabama, Georgia, and Louisiana. Martin is careful to point out that these laws were not always followed, particularly in Alabama and Georgia. Martin, *Divided Mastery*, 59.

[54] Morris cites three specific cases from the states of Maryland, Kentucky, and Louisiana passed in 1836, 1822, and 1848, respectively. Morris, *Southern Slavery and the Law, 1619-1860*, 128.

[55] Like other gains for mortgaged slaves, the legal connection between mother and child also had downsides. Regardless of having children, women were often given the same food allotment, making them suffer greater material deprivation than men. Martin, *Divided Mastery*, 59.

while he labored for a short-term master.[56] When he hired Edwin as a temporary worker, for instance, Edmund Pendleton Barbour agreed that he would "specially in no case suffer him to cross the mill pond at liberty mills, or water course when high."[57] Since few slaves could swim, rivers and streams transformed from a source of drinking water or even energy for a mill to a far more dangerous liability. Aware that their slaves were vulnerable to being overworked or otherwise hurt physically, slaveholders took special care to mitigate such possibilities by selecting only those short-term masters with the best reputations as well as specifically prohibiting certain kinds of work in hiring contracts or mortgaging agreements.

Yet hiring and mortgaging affected more aspects of work than the forms or location of labor that slaves were assigned. Motivating slaves' work was the threat of violence—more strenuous labor, the overseer's whip, the rupture of a family as slaves were sold to a neighbor or worse, to a trader who would shackle a slave and send him or her to a distant region for sale. As slaves were hired or used as collateral for loans, however, the deployment of violence and forms of punishment shifted.

Through restrictive contracts, owners of slaves often designated the types of brute force that could be wielded by men who temporarily possessed their property. As Frederick Douglass recounted in his famous narrative *My Bondage*

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[56] Hiring contract, [?] to Rhoda Stephenson, 2 January 1855, quoted in Martin, *Divided Mastery*, 99.

[57] "Agreement of Dr. Sextus Barbour with Edmund Pendleton Barbour," quoted in Martin, *Divided Mastery*, 99.

and My Freedom, the hired workers on his master Edward Covey's farm "escaped flogging."[58] Another Virginina slave, Henry Bruce, recorded similar practices in his narrative *The New Man*, writing that his owner always "notified the hirer that he did not whip any of his grown slaves, and would not allow it to be done by anyone else." Instead, Bruce's owner expected that any unruly hired hands would be returned to him.[59] Concerned with their own long-term interest, slaves' owners worked to maintain as much control as possible over their slaves' bodies—the right that they had as masters and property owners—even as they infused flexibility into their fixed labor force through temporary loans. Because this practice threatened hirers' status as full-fledged masters, it often pitted masters against one another. In some instances, short-term masters abided by the full owners' requests and thus, slaves were accorded greater physical safety during their periods of hire. Yet it is also clear that the long-term interests of slaveholders were not always potent enough to curb the actions of some hirers.[60] Hirers sought the status of "master," and, in order to gain this title, they often asserted themselves and punished their hired hands, even when it went against a contract with the slaves' owner.

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[58] Frederick Douglass, *My Bondage and My Freedom*, quoted in Martin, *Divided Mastery*, 133.

[59] Henry C. Bruce, *The New Man: Twenty-Nine Years a Slave, Twenty-Nine Years a Free Man*, quoted in Martin, *Divided Mastery*, 133.

[60] It is worth noting that slaves' owners did not universally wish to protect their slaves from harsh punishment. In some instances, hiring was a way of getting rid of particularly obstinate slaves. As Jonathan Martin writes, "sometimes owners hired out refractory slaves whom they wished not only banished but punished. In these cases, they cared little about how much money they made, intent solely on putting unmanaged slaves into the harshest and most punishing situations possible." Martin, *Divided Mastery*, 79.

With the practice of mortgaging, however, the interests of debtors and creditors were not so clearly correlated to the short- and long-term. Unlike hirers and masters, debtors and creditors each sought to maintain the long-term value of their human collateral, even as they worked him or her in the short-term. The tale of attempted arson at John Graham's home, which introduced the chapter, shows just this. After the slave David was accused of setting fire to his temporary master John Graham's house, David's owner—Robert Lane—and Graham himself sought to balance their competing interests and obligations. Rather than being pitted against one another, however, the two men held overlapping interests. While they worked to minimize the risk of any further rebelliousness and avoid the legal recourse that such a crime warranted, Graham and Lane foregrounded their own financial concerns. Although Lane ultimately accused Graham of fabricating the entire story of arson in order to defraud him, the narrative presented in the case demonstrates the underlying motivation for both mortgagers and mortgagees as they chose how to punish recalcitrant and potentially dangerous slaves. The subversive actions of enslaved men and women did not simply affront a mastery that could only be reasserted through violence. Rather, acts of rebellion and masters' responses to them had financial implications. Aware that prosecution for arson might result in the loss of a slave—representing not only a fieldhand but also a financial asset—or that bad scarring from a whipping might reduce a slave's resale value, slaveholders were careful to consider their own economic interests as they disciplined their human chattel.

As David's plot was revealed on Graham's plantation, his temporary master worked to respond quickly to his rebelliousness. Perhaps acting to stop any other slaves from following David's example or responding to his own personal rage, Graham "ironed" the truculent slave. Arguing that this punishment and its consequent mark on David's body decreased the slave's overall value, Lane later contested Graham's decision in court. In the aftermath of attempted arson, however, Graham likely tried to weigh several interests quickly as he decided how to handle the slave as well as the other men and women—enslaved and free—who were characters in the unfolding plot.

Although there is little information left in the record about Graham's own reputation or his financial standing, the court petitions and depositions do indicate that he had other slaves as well as neighbors who would have been affected not only by the devised arson but also would have had an interest in seeing the slave punished. While David's punishment was certainly intended to show him the consequences of his actions and thus, prevent any future acts of rebellion, the slave's body also became an example for other slaves. As word spread about David's thwarted plans throughout Graham's farm, news of his punishment would have quickly followed suit. However Graham chose to discipline David would send a message to the rest of his laborers about his willingness to exert the violent power that he held.

Beyond the boundaries of the plantation fences, Graham's choice of punishment also resounded. While neighborhood slaves may have known that their own masters' responses would not have necessarily mirrored Graham's, neighboring slaveholders were afraid that an unpunished slave would continue to hatch plots or incite others to follow his lead. As the court depositions repeatedly state, Graham felt tremendous pressure from nearby planters not only to punish David but also to follow the proper legal proceedings. Prosecuting David in court presented a dilemma, though. According to the law, the slave would be subject to capital punishment. While this punishment would have likely reduced the productivity of Graham's farm, the slaveholder was also aware that his relationship with his neighbors—men with whom he may have made hiring deals, purchased slaves, or borrowed money—was at stake.

While Graham worked to reconcile his competing interests within the immediate aftermath of the attempted arson, he was also beset with another set of considerations—the longer-term financial goals that both he and Lane had for David. Aware of the negative repercussions of a physical punishment or, worse, the possibility of an execution as the neighboring plantation owners desired, Lane and Graham came together to create an alternative plan, one that would hopefully prevent any major financial loss for either the mortgager or mortgagee. In an attempt to evade the legal procedure that could have resulted in David's death, the two men worked together to sell David off in the western part of the state, where they were less likely to encounter law enforcement officials or legal barriers to sale.

Despite this intention to sell David, the two men ultimately renegotiated their original deal. Rather than finding a third party to sell the slave to, Lane sent his son, John, to determine a bill of sale for David to Graham himself. As Lane later argued in court, however, Graham cheated him in the sale, negotiating a lower price than David was worth. Rather than a case in which David was tried for his arson, Lane held accountable for a faulty asset, or Graham fined for his physical harm to David, one arose out of a concern over adequate compensation for the slave—the very one known to have disciplinary problems. While this case provides insight into the pressures slaveholders may have felt to punish their slaves, it also elucidates the larger goal of the institution—to create wealth and ensure the financial standing of slaveholders. For slaves like David, this financial interest may have prevented his sale into a completely new territory or harsher punishment by his owners or the law. Yet, these protections only came with his own commodification.

Conclusion: Possibilities and Vulnerabilities

For mortgagers and mortgagees, the murkiness of short- and long-term interests challenged their mastery and consequently, opened up certain possibilities for enslaved men and women. As the various legal cases in this chapter demonstrate, the overlapping interests of two "owners" translated into greater attention to slaves' health, limitations on risky working conditions, and restrained punishment, even if slaves were unaware of their own status as mortgaged.

Despite the possibilities for such gains, mortgaged slaves remained at the center of an institution that sought to generate wealth from the labor and financial management of their own bodies. If mortgaging provided greater protections for slaves, it simultaneously reinforced the commodification of these men and women. Moreover, owners' long-term interests could never fully protect enslaved men and women from the instinctive reactions and vendettas of their masters nor did these interests fundamentally challenge the governing logic of the institution of slavery—violence. Even as mortgaged men and women received an extra visit from the local doctor or avoided trials for subversive plots, they were still within reach of their master's whip or the auction block. While mortgaging opened new possibilities for bodily care, it simultaneously reinforced slaves' role as assets, like farmland or household furniture, and exposed their bodies to new vulnerabilities.

CHAPTER TWO

Promoting Risk:

Women's Property and Legal Innovations in the Deep South

After her husband Ira's death in 1810, Susana Kneeland was confronted with more than the loss of her companion. Ira's passing also held deep financial implications for his wife, for the other men and women who made claims to his estate, and for the enslaved men and women who comprised his most valuable assets. Although Ira had left a will behind, outstanding debt—including a loan of over $4,000—posed a significant obstacle for the executors of his estate. Those working to administer the will and resolve his overdue loans faced a difficult situation. According to Susana, much of Ira's estate had been used to secure a portion of his unpaid loans. While this added security made him more favorable in the eyes of his creditors, it left his widow and other heirs in a vulnerable position. In an attempt to ensure provision for herself, Susana entered the local courthouse to contest the validity of her late husband's deals. As she testified in two separate petitions to the Feliciana Parish and Louisiana Superior Courts, Susana had entered the marriage with a large number of assets, property to which she believed she still held a unique right. As her husband's executors sought to distribute the estate's assets, she turned to the court to protect this property from her husband's creditors.[1]

Susana Kneeland's claims to the property she brought to her marriage reflected a broader change in women's property rights—both as separate property holders from their husbands and as widows and heirs—during the early national period. Following the Revolution and through the early nineteenth century, women gained greater rights to property. While historians have tended to focus on the married women's property acts that were passed in the late 1830s, other key legal changes—including greater access to divorce and equal inheritance rights between widowers and widows—indicate that those much-heralded statutes merely marked what historian Marylynn Salmon called "the end of an evolutionary process, not a radical break from postrevolutionary trends."[2] In particular, gradual shifts in marriage and inheritance laws gave women like Susana Kneeland a stronger legal basis on which to make claims to their husband's property and also to protect *their own* property from his creditors.

Despite these legal transformations that gave women greater standing in court, other trends in the antebellum years showed the constraints on women's influence, particularly following the death of their husbands. Unlike their colonial predecessors, men rarely left more than the legally required third of

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[1] Deposition of Susana Kneeland Thompson, 1811, Feliciana, Louisiana, Parish Court, in *RSFB*, #20881105; Deposition of Susana Kneeland Thompson, 1812, Territory of Orleans, Louisiana, Superior Court, in *RSFB*, #20881206.

[2] Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: The University of North Carolina Press, 1986), xvi-xvii.

their property to their wives in the postrevolutionary period. Instead of allowing their wives to act as executors of their estates, men increasingly left that job to other men, giving widows less leverage in settling their husbands' finances and allocating their property to heirs.[3] Moreover, the variation in laws from one state to another—and the tremendous discretion in local implementation of these statutes—added greater complexity to the administration of wills. As men and their families moved across the frontier in this period, unsettled debts often connected these adventurers to their original homes. Although men may have hoped to escape these tangled webs of credit, they often passed them off to their estate administrators, heirs, and widows. Confronted with differing definitions of real and personal property, laws of inheritance, and assumptions about the repayment of debts in various states, executors of estates—and those whose livelihood depended on access to their inheritance—had little guarantee that wills would be administered quickly or smoothly.

For widows of slaveholding men like Susana Kneeland, the administration of estates was especially crucial. Many widows struggled to survive on only a third of their husband's property and to cope with the loss of an important laborer in the household. Under such circumstances, all eyes fell on the household's slaves, the men, women, and children whose labor and market value made the difference between a widow's prosperity and a widow's privation. After her husband's death, a widow could choose to hire, sell, or keep

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[3] Kirsten Wood, *Masterful Women: Slaveholding Widows from the American Revolution through the Civil War* (Chapel Hill: The University of North Carolina Press, 2004), 17.

her enslaved men and women on the plantation. Whatever option she chose, slaves were crucial for the livelihood of the deceased's dependents.[4] However, the laws of slaveholding states, including those that determined inheritance, did not always reflect the importance of these human assets. To give adequate provisions for widows and the other heirs of deceased men, states began to update their legal codes so that they would reflect the shifts in value of human and other assets. The importance of slaves—especially for a widow working to make ends meet—prompted legal innovation in the early nineteenth century.

Changes to women's property rights, however, must be understood in the broader economic and geographic contexts of the expanding cotton frontier. As new plantation lands were brought into production in states that had been Indian territory only a generation earlier, the legal regime of property had to be configured to promote development. In the Deep South, credit was readily available at low interest rates and with long periods for repayment, and pioneering men and women were eager to borrow. But the allure of Cotton Country often led to hasty investments that put men and their families in financially vulnerable positions. Though they had much to gain, men, particularly those who already owned valuable human assets, had much to lose in the boom and bust cycles of the Deep South. In a period of tremendous economic transformation for the western frontier, property law would play an important role in making such risky investments a worthwhile option for men

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[4] Wood, *Masterful Women*, 35-60.

who had their most prized assets on the line. In the Southwest, new property and inheritance rights were intended to stabilize an economy in flux.

Women like Susana Kneeland were both the beneficiaries and victims of these changes in property law. If the property women brought into a marriage could be understood as distinct, it could presumably be protected from mismanagement. But precisely because such property could be screened, husbands like Ira Kneeland hoped to leverage his wife's dowry into easy credit without incurring the risk of losing that property to foreclosure. With the expansion of white women's property rights, husbands like Ira Kneeland were able to utilize these assets in speculative economic ventures but later shield the property from seizure in instances of miscalculation by arguing that the property was, in fact, their wives'. In this way, transformations in women's property rights and inheritance law represent a site of legal innovation that helped to make viable, and thus perpetuate, a larger system of risky debt-financing that transformed the entire American economy.

In this chapter, I will focus specifically on the ways that legal changes to women's inheritance and property rights affected the practice of slave mortgaging. First, I will offer a brief history of women's rights in marriage and the laws of inheritance in the antebellum United States. In order to understand the ways that women were gaining greater legal standing as property holders, I will consider cases in which women successfully shielded their slave property, which had been offered as security for loans, from their husband's creditors. In the second section, I will show how these new property rights for women must be considered within the economic and geographic context from which they emerged. Both the volatility of a speculative economy and its basis in highly valuable but vulnerable commodities prompted greater legal protections for those who participated in it. Finally, I will look to the ways that new property rights for women represent one piece of a broader change in property rights that frontiersmen relied on in order to make an economic regime centered on slaveholding and credit viable. As men and women leveraged their human property, they saw the speculative market as a source of great wealth. However, this did not preclude the intervention of the state on behalf of slaveholders. Instead, speculators relied on legal institutions to protect the wealth that they generated from the commodification of human property.

Laws in Flux: Women's Property and Inheritance

At the time of Susana Kneeland's marriage to Ira in 1804, the laws of marriage and the rights that women held within the institution were in flux. Following the tradition of the English common law, early American laws of marriage upheld coverture: unless a woman had been widowed, she was never legally recognized as a separate person from either her father or husband. In addition to representing their wives and daughters as they acted in the public and political spheres, men had certain financial obligations to their wives. With marriage, a woman's property—property received from her father—was transferred to her husband. In turn, men were expected to provide for their wives and children. In widowhood, women had a legal claim, known as dower, to one-third of her husband's estate, which prevented her from becoming financially dependent on the community. Although dower laws gave women some access to property, these rights were premised on the assumption that women needed protection and economic provisions made for them by their husbands.[5] This patriarchal presumption would persist as the basis of social welfare policy into the twentieth century, but the particular ways in which society provided for "dependent" women would change repeatedly.[6]

By the nineteenth century, women's social value—at least that belonging to the white women of modest, middling, and substantial wealth—began to grow. Within the domestic sphere, women gained greater authority as they reared the nation's next generation. In addition to reproducing the nation biologically, women were also integral to its moral reproduction. Because early ideas of republicanism emphasized the importance of civic virtue, women had an important role to play as they instructed their children. In this way, women's influence extended beyond the private realm of the home. As they educated their

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[5] Kermit L. Hall and Peter Karsten, *The Magic Mirror: Law in American History, Second Edition* (New York: Oxford University Press, 2009), 168-178.

[6] Linda Gordon, *Pitied but not Entitled: Single Mothers and the History of Welfare, 1890-1935* (Cambridge: Harvard University Press, 1995).

sons, who would later participate in public life, mothers were indirectly taking part in a man's world.[7]

As women's roles in the household shifted, the laws that governed marriage and other aspects of their lives also changed. While the principle of coverture did not disappear fully in the nineteenth century, new understandings of individual rights spilled into the institution of marriage. In the postrevolutionary period, Americans began to articulate rights that were not simply protections from a potentially intrusive state but also from other people. As some historians have argued, the extension of rights into private relationships meant that women were able to lay claim to rights against their husbands, including greater access to shared property and divorce.[8]

However, these legal changes did not always translate into greater power for women. In her study of the central piedmont region of North Carolina, for instance, Victoria Bynum focuses on the lives of women who chose to claim public streets as their domain and were convicted for their complaints of abusive treatment, their transgression of sexual boundaries, and their challenge to government during the Civil War. Bynum argues that a study of "unruly women" reveals a society that relied on the constraint and marginalization of women. As early as the 1820s, women were experiencing a conservative backlash in response to the greater political power that they had secured during the

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[7] Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800* (Ithaca, NY: Cornell University Press, 1996); Mary Kelley, *Learning to Stand and Speak: Women, Education, and Public Life in America's Republic* (Chapel Hill: University of North Carolina Press, 2006).

[8] Hall and Karsten, *The Magic Mirror*, 168-186.

Revolutionary War and exercised in the early years of the United States, says historian Rosemarie Zagarri. Concerned with the prospect of women becoming more active in political life, the growing partisanship between North and South, and other problems in the Early Republic, men turned to women as both the cause and solution to their woes. As Zagarri argues, "the era of democratization for men thus produced a narrowing of political possibilities for women." Although historians disagree about the precise power that women had in this era, it is clear that the role of women both in private and public life was a source of deep contestation. Embedded in questions about women's proper place and the power that they should wield were key ideas about political and social life in the young nation.[9]

Laws concerning women's rights in marriage were reflections not only of social debates but also of rapid economic changes that were taking place in the United States. Following the tradition of the English common law, most states still guaranteed a widow one-third of her husband's real property, which referred to immovable property, such as land, as well as the improvements made to it by humans. The increasing importance of slaves and other personal property, such as stocks, however, challenged the easy distinctions made between real and personal property in English common law. As a result,

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[9] Victoria Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: University of North Carolina Press, 1994); Rosemarie Zagarri, *Revolutionary Backlash: Women and Politics in the Early American Republic* (Philadelphia: University of Pennsylvania Press, 2007), 2; For other studies of the constraints on women in the antebellum period, see Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006); Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006).

Maryland, Virginia, and North Carolina redefined dower rights to guarantee portions of a husband's real *and* personal property, allowing women to access her husband's most important assets within a changing economy.[10]

It was in this context—a world shaken by legal and social transformation—that the Louisiana woman Susana Kneeland moved into widowhood at the turn of the nineteenth century. In order to make her claims in court, Kneeland relied on many of the new rights that were emerging in this period.[11] In an original petition to the parish court of West Feliciana, Susana called for the annulment of her late husband's will and the delivery of her rightful property. According to Susana, she had entered the marriage with property worth more than $7,000, including three slaves as well as some animals, household furniture, seed, and farming implements. Rather than the property simply being transferred from her father to her husband, however, it was intended, at least according to Susana, "for her separate use and benefit." Moreover, Susana argued that Ira had little property of his own when they were first married and that by the time of his death, much of his property was actually

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[10] As Shammas et al. write, "the value of slave property combined with the difficulty of operating plantations without slaves had caused southerners to deal with the issue of personalty earlier than northerners." Carole Shammas, Marylynn Salmon, and Michael Dahlin, *Inheritance in America From Colonial Times to the Present* (New Brunswick, NJ: Rutgers University Press, 1987), 69-70. Even in the will of George Washington, these new laws regarding widows' access to slaves were apparent. While Washington freed his slaves in his will, fewer than half actually gained their freedom upon his death due to the large number that Martha Washington held in a separate estate. For more, Francois Furstenberg, *In the Name of the Father: Washington's Legacy, Slavery, and the Making of a Nation* (New York: Penguin Press, 2006), 72-73.

[11] It is notable that Kneeland filed her lawsuit in Louisiana. In 1810, Louisiana was still two years from statehood, and its laws were the product of Spanish, rather than English, common law. Nonetheless, I have included Louisiana in this study due to the importance that it played in the developing frontier states. During the early nineteenth century, Louisiana became the commercial epicenter of the Deep South. Consequently, Louisiana's laws would have been significant throughout the region, despite its unique legal heritage.

the product of the couple's "mutual industry." Based on her personal inheritance and her own role in the family's economic success, Susana found Ira's will to be unacceptable. According to her legal plea, Susana deserved more than the one-third of her deceased husband's property that dower laws mandated. Instead, she requested all of the property she originally brought to the marriage in addition to one-half of the remaining estate. Like other women of her time, Susana felt that her dowry should be considered when determining the property she received in her dower.[12]

Susana's claims to a larger portion of her husband's estate and the property that she brought to the marriage certainly reflected the shifting understanding of women's property rights in the early nineteenth century. Yet these claims also reflected the ongoing assumption that women needed special protection by men. As Susana stated in her deposition, "Ira C. Kneeland in his last will and testament has not only neglected to make such just and equitable provision for her, but has imposed upon her very unjust conditions." While Susana argued that she had not received the property that she was "intitled to by law" of inheritance, she also argued that her husband had not fulfilled his legal obligations to her. Rather than claiming the property based solely on her original ownership of it and thus, challenging the assumptions of dower law, Susana framed herself as a dependent on her deceased husband.

[12] For later cases invoking the relationship between property brought to the marriage by the widow and the property that she could claim as part of her dower, Thomas Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: The University of North Carolina Press, 1996), 95.

In 1811, the court of West Feliciana, Louisiana decided against Susana's plea. While the full legal ruling is not recorded in the extant court documents, it is possible to glean the several factors influencing the court. First, Susana had remarried since the death of Ira Kneeland, giving less validity to her claims of inadequate provision.[13] Moreover, the transformation of women's property laws took place gradually and inconsistently across states and regions.[14] While certain states had begun to pass legislation to give women greater access to property, such laws were not introduced in each state nor implemented without delay or contestation.[15] Moreover, the local administration of these laws added unpredictability to Susana's legal claim. As Thomas Russell writes, probate sales, which occurred during the administration of an estate, were "administered by local trial court judges, masters in chancery, sheriffs, ordinaries, magistrates, justices of the peace, and other miscellaneous and now-forgotten low-level legal officials."[16] Between Susana's marital status, discrepancies between state laws, and the influence of local administration, the initial denial of Kneeland's petition is not surprising.

Changes in inheritance laws during the postrevolutionary period provide further context for Kneeland's case and the court's eventual reversal. In the years

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[13] Although remarriage did offer women greater financial assistance, there was much at stake in such a decision. As Kirsten Wood points out, men were more likely to remarry than women in the antebellum period, likely because widows gave up their legal personhood and risked their property by remarrying. Wood, *Masterful Women*, 38.

[14] Salmon, *Women and the Law of Property in Early America*, 3-13.

[15] Laura Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009).

[16] Thomas D. Russell, "South Carolina's Largest Slave Auctioneering Firm," in "Symposium on the Law of Slavery," *Chicago-Kent Law Review* 68 (1992-1993), 1242.

following the American Revolution, most inheritance laws continued to follow the tradition of the English common law despite the nation's new independence. However, some changes did occur as states began to legislate the process for distributing the assets of men and women. Most notably, the principle of primogeniture, which stipulated that family land should pass from a father to the eldest son, ended throughout the United States. As historians Carole Shammas, Marylynn Salmon, and Michael Dahlin write, the older English system "had functioned primarily to perpetuate an aristocratic social structure and political system, [but] it could be abandoned in a republic. In the new United States, lawmakers acted to encourage wide ownership of property and, thus, widespread participation in government."[17] By 1800, land was distributed evenly among a family's children. In Maryland, Virginia, and South Carolina, there were even provisions for a man's illegitimate children to receive a portion of his property.[18]

In addition to the legal articulation of dower rights, other developments in inheritance law offered women new ways to claim their husband's property and protect their own, whether their spouse was living or not. Challenging the legal principle of coverture, separate estates could be established, in which married women "owned and controlled property independently of their husbands."[19] While separate estates were recognized under English common law, they became

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[17] Shammas, Salmon, and Dahlin, *Inheritance in America*, 65.
[18] Shammas, Salmon, and Dahlin, *Inheritance in America*, 63.
[19] Salmon, *Women and the Law of Property in Early America*, 81.

easier to establish in the early nineteenth century. Rather than creating a separate trust that had to be administered by a third party, wives could make contracts—known as simple marriage agreements—directly with their husbands.[20] Despite the increased flexibility of these laws, however, separate estates were used only in small numbers. As Marylynn Salmon reports in *Women and the Law of Property in Early America*, records from South Carolina show that only "one to two percent of couples marrying between 1790 and 1810 wrote marriage settlements."[21]

In addition to separate estates, other legal mechanisms protected the property that women either brought to the marriage or inherited during its course. Jointure agreements, an alternative to dower, allowed women to specify certain property that they would later be guaranteed in the event that they outlived their husbands. These marriage settlements "were often made as compensation for the loss of property a woman suffered at marriage," though women were not able to exercise these special rights until their husbands' deaths.[22] Furthermore, women had certain rights to the property that they inherited during the marriage itself. Because the donor could stipulate the terms of inheritance with his heir, husbands were unable to interfere with such agreements. When a married woman inherited real property, in particular, her

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[20] Shammas, Salmon, and Dahlin, *Inheritance in America*, 75.

[21] Salmon, *Women and the Law of Property in Early America*, 88. It is important to note that the United States had not established a clear, landed upper class by this period, which may account for the surprisingly low number of marriage settlements. As Salmon writes, settlements were originally seen as a means to preserve "landed estates for the proper support of widows and heirs" rather than on the recognition of women's property rights (83).

[22] Salmon, *Women and the Law of Property in Early America*, 89-90.

husband "could not permanently alienate it without her consent, although he was entitled to the rents and profits during his life."[23]

At the turn of the nineteenth century, inheritance laws and marriage settlements increasingly protected the property that women had at the time of their marriage, inherited during its course, or gained in the wake of their husbands' deaths. Nevertheless, these new mechanisms did not offer the former Susana Kneeland much protection. Although she claimed to have had a significant dowry, there is no indication that she entered into a legal settlement with her husband that would allow her to retain or reclaim this property after his death. Without such documentation or other evidence, the court chose to dismiss her petition for the annulment of her late husband's will. Although she had a legal right to her dower, there were no laws that supported her claim to disregard his last will and testament entirely.

Unlike Kneeland, some women—particularly those who were not remarried—were better able to contest the provisions that their husbands had made for them. For several years, Mary Stutes L'Enclos's husband, Antoine, had "squandered and wasted almost all his estate" and no longer was able to pay off several of his debts. "Instead of reforming his habit," Antoine "seem[ed] to become more hardened and confirmed and [left] but little hope of a change for the better." Fearful that she and her children would be left without any property or other financial provisions, Mary successfully petitioned the court to sell

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[23] Shammas, Salmon, Dahlin, *Inheritance in America,* 66-67. For a longer discussion on the concept of "alienability" in American law, see Claire Priest, "Creating an American Property Law: Alienability and Its Limits in American History," *Harvard Law Review* 120.2 (2006), 385-459.

Antoine's remaining estate in order to secure her a separate estate of $1,000, the amount of money that she brought to the marriage. While the court was certainly influenced by the documented evidence of L'Enclos's dowry, there was also significant concern about the "maintenance of the children." Although Mary's case invokes the rhetoric of protection, it demonstrates the power that women held in relation to their husband's creditors. Not only did the court grant Mary her original dowry but also ordered the sale of her husband's property prior to his death, including a slave woman who was already pledged to someone else.[24]

Even as courts worked to provide sufficient protection for widows and their children, other factors, such as states' laws and the reputations of the individuals involved influenced the likelihood of courts to intervene within the administration of estates. For Susana Kneeland, outstanding debt was also an important consideration. After she lost her original case, the actions of a specific creditor brought her back to court. Less than a year later, Vincent Pintado, a creditor of Ira Kneeland, appeared in court to demand the seizure and sale of land and slaves that Kneeland had mortgaged in order to secure a loan of over $4,000. As part of the original deal, Kneeland had listed Susana's three slaves—Dick, Will, and Toni—as collateral, along with sixteen other slaves. Although the Parish Court had denied her right to contest Kneeland's distribution of his estate, Susana and her new husband, Jason Thompson, filed a counter-petition to the Superior Court of Louisiana. In this new petition, Susana and Jason asked the

[24] Petition of Mary Stutes L'Enclos, 1813, St. Landry, Louisiana, District Court, in Loren Schweninger, *Race, Slavery, and Free Blacks*, Series II, Part F, (Bethesda, Md.: Lexis-Nexis Academic, 1990-), #20881313.

court to prevent the seizure and sale of the three men and several other pieces of property. In addition to Susana claiming that Kneeland had mortgaged part of her dowry without her knowledge, a judge from Feliciana Parish testified in the Superior Court that Susana had in fact entered her marriage with an extensive list of assets.[25]

Although Susana still could not prove that she had arranged a separate estate with her husband, her second petition gained greater traction in the court. With her three slaves now specifically in danger of being sold, the court intervened on her behalf and ordered a halt on the seizure and sale of these valuable pieces of property. The court's distinctive responses—first, denial of Susana's claim to a greater proportion of her husband's estate and then, an affirmation of her right to specific property that she brought into the marriage—demonstrate the nuances of women's shifting rights with regard to dowry and dower.

While Kneeland's case suggests that women had greater success in demanding their dowry than in challenging the content of their dower, the case should not necessarily be understood as representative of a specific set of laws and their implementation. As women argued their cases in front of judges, the judicial verdict relied on their ability "to craft an image for public consumption," that of a distressed widow in need of the court's protection. For example, a petitioning widow, Martha Richardson, argued that her case "was so plain" that

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[25] Deposition of Susana Kneeland Thompson, 1812, Territory of Orleans, Louisiana, Superior Court, in Loren Schweninger, *Race, Slavery, and Free Blacks*, Series II, Part F, (Bethesda, Md.: Lexis-Nexis Academic, 1990-), #20881206

it would easily be won without dispute. Yet she still "wreathed herself in feminine fragility" as she publicly made her plea to the court.[26] As women tested their new legal rights in the courtroom, they continued to perform their assigned roles, striking the traditional poses of dependence rather than making claims as independent property holders.[27]

The success of a widow's claims was not limited to their own performance before a judge or in the backrooms of a court. In the 1840s, Ruth Hairston, the widow of a wealthy planter, tried to settle an estate that sprawled across Virginia, North Carolina, Mississippi, and Tennessee. In addition to navigating the inheritance laws in each state, the outcome of the elderly widow's case "hinged not only on the actual facts and jurisprudential expertise but also on the ways that family members represented themselves and each other in personal and official papers." Although "trained lawyers could not easily unravel" Hairston's case, she utilized other forms of influence, including the testimony of her blood kin and a negative portrayal of her in-laws, to collect vast property holdings from her late husband's estate.[28] As Richardson and Hairston's cases demonstrate, the outcome of women's inheritance cases were influenced by individual judges, the cooperation of extended family and the executors of wills,

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[26] Martha Richardson to James Proctor Screven, April 16, 1817, quoted in Wood, *Masterful Women*, 77.

[27] In her description of Confederate women during the Civil War, Stephanie McCurry similarly describes the identity that women created as legal petitioners of the state. In order to gain certain protections from the government during the war, women similarly took up these poses of dependence. Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge: Harvard University Press, 2010), 133-177.

[28] Henry Wiencek, *The Hairstons: An American Family in Black and White*, quoted in Wood, *Masterful Women*, 77-82.

local political circumstances, and even the performance that women gave in the courtroom.

As these cases suggest, verdicts were not always predictable as women entered the courtroom. In addition to local variation in the administration of law, statutes regarding the types of property guaranteed through dower, other rights of inheritance, and the process of administering estates were different from state to state. Moreover, courts ruled on behalf of women who were mired in debt and others who were devoted to collecting unpaid loans alike. Due to the variety of petitioners, laws, and administrators across the southwest, it is difficult to ascertain if any set of cases is representative of both the era and the region. Nevertheless, these cases are instructive in other ways. As women or their husband's executors entered the courthouse to protect her property from creditors, it is clear that the protection of women's property cannot be seen simply as a part of women's shifting roles in the public and private spheres. Rather, these legal changes must be understood within the specific economic and geographic context from which they emerged. New inheritance laws and property rights for women were part of a broader effort to reconceptualize the protection that legal institutions should offer to men in a region built on speculation and the most vulnerable of commodities, enslaved men and women.

Slave-Backed Speculation and Women's Rights

By the early nineteenth century, the relative value of real and personal property—as well as the distinctions between the two—began to shift in the United States. Stocks and other new forms of personal property "played a role in the rise of capitalism," allowing wider speculative investment and the rapid movement of financial capital. As Thomas Morris writes:

> the precise relationship between the ownership of slaves and this process is not clear, but a reasonable conjecture would be that it was close…if this interpretation is accurate, slavery played a critical part in the emergence of market capitalism. It performed a major role in the change in legal thought about property, and it preceded the spread of national commodities markets.[29]

In a recent paper, Alfred Brophy similarly argues that slavery shaped American conceptions of property, ideas that were crucial for the emergence of capitalism in the United States. Particularly, American judges often used utilitarian logic—that is, the ruling that would result in the greatest economic good—to determine the outcome of cases. Based on these considerations, judges often arrived at proslavery decisions, as exemplified in North Carolina Judge Thomas Ruffin's famous case *State v. Mann*. As Brophy writes, "the technology of law, with its focus on utility and stability of property, worked to facilitate both the market and slavery."[30] Due to the incredible value of slaves, agents of the law worked to

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[29] Morris, *Southern Slavery and the Law*, 122.

[30] Alfred Brophy, "The Market, Utility, and Slavery in American Legal Thought," (paper presented at the conference Slavery's Capitalism: A New History of Economic Development, Providence, Rhode Island, April 8-10, 2011), 1, 5.

provide legal protection of human assets and, simultaneously, affect broader ideas of the sanctity of property in the United States.

In addition to the basic importance of human chattel, slaveholding men sought special protections of their property due to the high risk associated with the investments that they were making. In the credit-based economy of the Deep South, men took big chances as they leveraged their assets. At times, men even used the same assets to secure multiple loans simultaneously.[31] While such speculative ventures may have resulted in great financial rewards, it could also lead to potentially disastrous outcomes, particularly when there were few legal measures to protect men from total financial ruin. The deprivation of wives and children whose fathers speculated recklessly was one potential outcome that evoked great concern among Southerners.

It was precisely this fear that drove Carmélite Constant to file for a separate estate from her husband in 1850. Inherited from her late parents, Carmélite's property had been of little use to her. According to her deposition, her husband, Benjamin, had "enjoyed its benefits uninterruptedly" since their marriage in 1825. By 1850, however, Benjamin was heavily indebted and without sufficient property to satisfy his creditors, making Carmélite fear for the protection of her dowry. Already, her husband had mortgaged the two sons of her deceased slave, Louise, and they had now been seized for foreclosure by the

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[31] Edward Baptist, "Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1837," in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J. Kornblith (Chicago: The University of Chicago Press, 2011), 69-92.

sheriff. By petitioning for the separation of her estate, Carmélite hoped to circumvent her husband's creditors, men who were otherwise able to lay claim to her slaves and other assets.[32]

Claims like these prompted legislatures to take action, at least nominally, on behalf of slaveholders and their families. In the wake of the Panic of 1837, states began to pass a series of married women's property acts that protected families from excessive debt and the loss of slaves.[33] Under these laws, women's dower was specifically protected from seizure by their husband's creditors.[34] Ironically, it was precisely these laws that enabled men like Benjamin Constant to speculate even more and without fear of losing their leveraged property.

To further protect women's property from lenders, states passed laws that made separate estates more accessible. As historian Suzanne Lebsock writes, many women, like Carmélite, created separate estates for the explicit purpose of protecting their property from their husbands' creditors. While separate estates may have afforded women of the middle and upper classes some power over their dowries, they were more often a matter of "expediency, a response to the

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[32] Petition of Carmélite Constant, 1850, St. James, Louisiana, Superior Court, in *RSFB*, #20885008.

[33] For more on the origins of the Married Women's Property Acts, see Richard Chused, "Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures," *American Journal of Legal History* 29.1 (1985), 3-35; Chused, "Married Women's Property Law: 1800-1850," *Georgetown Law Journal* 171 (1983), 1359-1425; Woody Holton, "Accidental Beneficiaries: Women, Capital, and the Constitution," (paper presented at the conference Slavery's Capitalism: A New History of Economic Development, Providence, Rhode Island, April 8-10, 2011); Sandra Moncrief, "The Mississippi Married Women's Property Act of 1839," *Journal of Mississippi History* 47 (1985), 116-119; Evan Roberts, "Women's Rights and Women's Labor: Married Women's Property Laws and Labor Force Participation, 1860-1900," (paper presented at the Economic History Association Annual Meeting, Pittsburg, PA, September 14-16, 2006).

[34] Morris, *Southern Slavery and the Law*, 93.

failures of scores of individual men."[35] Widows, including the wives of smaller yeoman farmers, were often left mired in debts that they could not afford to pay outright. As Kirsten Wood writes, "simply sorting out the tangle of indebtedness could take years. In the meantime, widows had to produce the income needed to feed and clothe themselves and often an entire household… In many yeoman widows' households, the income for all these purposes came from their own as well as their slaves' labor."[36] By passing laws to separate women's property from their husbands, there was a greater chance that they could scrape by and avoid losing some of their most valuable assets, such as slaves, to men seeking to cash in on promissory notes.

Additionally, several states changed their laws regarding the types of property to be used for the repayment of debt in order to aid slaveholder families. Although it was previously understood that executors of estates should use personal property to pay off a deceased man's debts, new laws either redefined slaves as real property or found other means by which to protect these valuable, yet moveable assets. In Louisiana, for example, the legislature stipulated in 1808 that executors must "sell all 'perishable goods' except those specifically bequeathed. 'If such perishable goods' were insufficient, the executors or administrators would 'sell the other personal estate disposing of the

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[35] Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York: W.W. Norton & Co., 1984), 60-61; Salmon, *Women and the Law of Property in Early America*, 93.

[36] Wood, *Masterful Women*, 37.

slaves last, until the debts and legacies be all paid.'"[37] Despite these reforms, however, slaves remained vulnerable when owners died. Although states may have passed laws similar to Louisiana or recategorized slaves as real rather than personal property, Morris is careful to stipulate that "most of the time courts ruled that slaves as personal chattels were *assets* in the hands of executors. That meant that they were a fund out of which debts were to be paid, and that they did not go to the legatees in the will until the executor assented."[38] Because slaves were "the most liquid, valuable, and in demand" assets that a debtor might have, they were usually the first to be sold, even when statutes ordered otherwise.[39]

As women's property and inheritance laws increased the likelihood that slaves would remain in the possession of their deceased master's family, the daily experiences of slaves did not necessarily improve. While these legal changes may have resulted in fewer slave sales, the financial strain of a master's death often meant that slaves were expected to increase their output and work with fewer rations. Although slaveholding widows may have utilized physical violence less often than their male counterparts, women's mastery did not otherwise differ dramatically from their husbands'. Pressured by heirs and

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[37] Morris, *Southern Slavery and the Law*, 97.

[38] Morris, *Southern Slavery and the Law*, 97-99.

[39] It is possible that these statutes to protect slaves during probate and foreclosure sales were more successful in the Deep South. Nevertheless, Thomas Russell's study, which is based on research in South Carolina, is a reminder of the tremendous gaps that often existed between statutes and local implementation of the law. For more, see Russell, "South Carolina's Largest Slave Auctioneering Firm," 1254.

creditors, women often disregarded the medical needs of slaves and often pushed to "economize" their households.[40]

Amidst all of these changes in both the economy and the laws that regulated it, Susana Kneeland Thompson brought her case before the Superior Court of Louisiana to protect her three slaves from sale. The legal trends of the era may have given Susana a better position than she would have had a decade earlier. The testimony of another parish judge and the recent law that ordered slaves to be the last property used in paying off debts added strength to Kneeland's argument. However, she still had no legal documentation of a marriage settlement with her husband, so she could rely only on a claim to her dowry as a part of her "widow's thirds." Moreover, her claims pitted her interests against that of a creditor, who did not know that Ira Kneeland was not able to deliver on the pledges that he made.[41] Nevertheless, the court intervened on Susana Kneeland's behalf to protect the slaves that she brought to her marriage, even after refusing to safeguard her other assets. Based on this distinction, the outcome of Susana's second case suggests that slave assets

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[40] Wood, *Masterful Women*, 35-60.

[41] This problem—creditors not knowing that the collateral they were accepting was otherwise committed or the holdings of a debtor's spouse—was not unique to dealings with widows. Often, men would offer the same assets as security for multiple loans. In order to ensure that they would be the first creditor to benefit from the sale of collateral, lenders would seek judgments against their debtors at the time the loan was made. For more on this practice, see Thomas Russell, "The Antebellum Courthouse as Creditors' Domain: Trial-Court Activity in South Carolina and The Concomitance of Lending and Litigation," *The American Journal of Legal History* 40.3 (1996), 331-364. In the case of bankruptcy, debtors could also establish one or several "preferential creditors" who would receive cash generated from auctions while leaving the remaining creditors with little or no compensation. For more on this practice, see Tony A. Freyer, "Law and the Antebellum Southern Economy: An Interpretation," in *Ambivalent Legacy: A Legal History of the South*, ed. David J. Bodenhamer and James W. Ely, Jr. (Jackson: University Press of Mississippi, 1984), 57.

figured prominently in the statutory changes and judicial decisions regarding women's property rights. Not only were the performances of feminine dependence important to the administration of the law but also the assets that were stake.

The protection of women's property and provisions set aside for them allowed women, like Kneeland, to evade their husband's creditors. However, concern for widows' financial security was not limited to those who were indebted. In some instances, administrators of estates or widows themselves articulated their concern for a widow's protection as they collected loans that the deceased had made. Similarly, widows and administrators could invoke such rhetoric as they worked to secure payment for sales made from the deceased's estate. Petitioning on behalf of her "two minor children," Mariew Breau, widow of the late Joseph Mollere, filed a case against another heir to the estate who had purchased eleven slaves from Mollere's estate in addition to his allotted inheritance. Without his payment for these slaves, Breau and her young children were in financial danger.[42] As this case demonstrates, changes in inheritance laws and women's property rights did not universally coincide with the interests of debtors or even those of the deceased's extended family. Nevertheless, in a system that often left men and women with outstanding credits and debts simultaneously, these laws were significant for the new spaces that they opened

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[42] Deposition of Mariew Breau, 1818, Iberville, Louisiana, Superior Court, in Loren Schweninger, *Race, Slavery, and Free Blacks*, Series II, Part F, (Bethesda, Md.: Lexis-Nexis Academic, 1990-), #20881812.

for legal negotiation on behalf of women and families, debtors and creditors alike.

Conclusion: Property Rights Reconsidered

The speculative economy of the southern frontier constantly put slaveholders and their families at risk of economic ruin. If bad weather destroyed the cotton crop or slaves fell ill, settler families would not be able to pay off their outstanding debts to local merchants or cotton factors. With the threat of angry creditors, families needed ways to insulate their wealth, including their human property, from the fluctuations of the market. While creditors relied on mortgages and other securities to shield themselves from the swings of the speculative economy, debtors looked to legal institutions, including the legislative chambers and courtrooms, for a safety-net. From the inclusion of personal and real property in a widow's dower to the passage of the Married Women's Property Acts of the late 1830s, southern states worked slowly to reflect the importance of slaves in property and inheritance laws and, consequently, to protect the wealth of families even as they entered into risky ventures.

In certain accounts of the role of law in debt cases, it has been argued that "the prevalence of debt actions…makes clear that the courthouse was the "creditor's domain." Rather than the traditional image of commercial slave sales, the majority, in fact, took place on the steps of local courthouses. As Thomas Russell claims, "creditors' use of the courts had become sufficiently mundane [by 1840] that the legislators were willing to devolve the paperwork to lesser judicial officials." No longer did debtors file suits with judges. Instead, courts were a reliable and effective administrative tool for creditors to use in recuperating their loans.[43]

While Russell presents a compelling argument about the role that courts played on behalf of creditors, it is worth considering the legal constraints that were increasingly placed on lenders, particularly in states that were more heavily involved in the speculation of cotton and sugar. As Russell recognizes, lenders' ability to collect on their loans was perpetually limited by the amount of cash in circulation and the assets that debtors actually had on hand to sell.[44] However, new laws passed in the heart of Cotton Country further limited the power that creditors had. With the laws of chattel mortgages and bankruptcy in flux,[45] "law in the South favored debtors," says historian Tony Freyer, "but not to the point of singling out merchants at the expense of either poor whites or planters."[46] Changes to women's property rights, particularly laws that protected property threatened by creditors, provide a new lens through which to see the law's increasing protection of debtors.

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[43] Russell, "The Antebellum Courthouse as Creditor's Domain," 344.

[44] Russell, "The Antebellum Courthouse as the Creditor's Domain," 350.

[45] Thomas D. Morris, "'Society is not marked by punctuality in the payment of debts': The Chattel Mortgages of Slaves," in *Ambivalent Legacy: A Legal History of the South*, ed. David J. Bodenhamer and James W. Ely, Jr. (Jackson: University Press of Mississippi, 1984), 150**.**

[46] Freyer, "Law and Antebellum Southern Economy," 57-58.

By focusing on the ways that new property protections for women and families affected debtor-creditor relations, a new relationship between the law and slaveholding emerges. In order to make their speculative ventures viable, slaveholders needed some assurance that they would not be fully exposed to the oscillations of the market economy, particularly when their most valuable assets were at stake in these gambles. As Robin Einhorn argues, American political institutions "were forged around preferential treatment for the property of a vulnerable elite."[47] A closer look at the relationship between women's property rights and the evasion of creditors bolster such a claim. As a corollary to Einhorn's claims, new conceptions of property rights for women and families were a product of the lucrative but speculative economic regime that developed in the Deep South and the slaveholders who stood to benefit from it.

[47] Robin Einhorn, "Slavery," *Enterprise & Society* 9.3 (2008), 501.

CHAPTER THREE

"Gone to Texas":

Debt Evasion and the Move Westward

In 1834, three men from South Carolina appeared in the Chancery Court of Franklin County, Tennessee to collect a loan of several hundred dollars that they had made to Andrew Park six years before. As James Copeland, William Park, and James Park argued for the loan's repayment, they called on the court to seize Andrew Park's collateral before it—or more accurately, she—got away. After pledging his slave Phillis to secure the original 1828 loan, Andrew Park sold her to another man without informing his creditors of the deal. Even if the judge ruled in the petitioners' favor, they feared that Phillis's current owner would sell this valuable asset beyond the court's jurisdiction, likely into the domestic slave trade, and make it impossible to collect a payment from Andrew Park, who was otherwise insolvent.[1]

As the United States acquired new territories in the postrevolutionary period, planters in the Upper South, including men like Andrew Park, began to sell their chattel to slave traders, who would transport the slaves from their

[1] Petition of James Copeland, James Park, and William Park, 1834, Franklin County, Tennessee, Chancery Court, in *RSFB*, #21483410.

tobacco, wheat, rice, and indigo plantations into what would later become the states of Alabama all the way to Texas. With the turn toward less labor-intensive crops in Virginia and the Carolinas, slaveholders in those states could afford to ship their human property to markets stalls in New Orleans or Natchez. On the other end of this domestic slave trade, new settlers in the burgeoning Cotton Country were eager to purchase these enslaved laborers. Since the often-swampy land needed extensive work before it was even ready for planting new crops, western settlement relied heavily on the labor of enslaved men and women. For frontiersmen who relocated from the eastern seaboard into the Deep South, cheap land and the chance to turn a profit with cash crops represented both adventure and a tremendous opportunity. Without enslaved laborers, however, they would never realize these hopes of wealth.

If the region was a haven for those trying to make a fortune, it was also a refuge for those trying not to lose a fortune. As discussed in Chapter 2, men in the West found innovative legal mechanisms to shield their leveraged property from creditors. But debtors further east took another route to dodge foreclosure sales. Rather than relying on the law, men ignored it, fraudulently moving beyond the legal jurisdiction of their creditors into the frontier states. After all, title to slaves was difficult to ascertain without well-established government registries, and the newly-won territories of Mississippi, Louisiana, and Texas still had shaky legal apparatuses and loose law enforcement. By moving themselves and their collateralized slaves to a distant territory, southern men were able to evade those demanding repayment.

The domestic slave trade gave indebted men yet another means to preserve their own wealth and safeguard their vulnerable property from seizure. Without making the trek westward, debtors could cash in their slaves before their creditors were able to. At times, selling slaves "down the river" into the Deep South left debtors in an even better position than they would have been if they kept the pledged chattel. In the Cotton Country, prices for slaves were high. By shipping their slaves westward, debtors could make fast cash while still benefitting from the loans the same slaves had helped to secure. Lenders like Copeland and the Parks knew of these opportunities. Wary that their collateral would slip from their reach, these men petitioned that the sheriff take hold of Phillis and her eight-month-old child until the case had been settled. Unlike Copeland and the Parks, however, all creditors were not able to be so proactive. As other cases featured in this chapter will demonstrate, indebted men or their slaves often made it past state lines without legal recourse. Eventually, creditors got savvy and sought to use the domestic slave trade to their own advantage, foreclosing on mortgaged slaves for the express purpose of reselling them in excess of the amount of the original loan.

In the coming pages, I will discuss the expansion of slavery into the Deep South and the ways that credit shaped the development of this region. First, I will provide a brief history of the region. In particular, I will focus on the ways that changes in the international economy, federal policies for land distribution, the United States victory in the War of 1812, and the rise of the domestic slave all paved the way for the booming cotton economy of the 1820s and 1830s. In the second section, I will discuss the importance of the financial capital that slaves embodied to the rise of speculation in the region and, thus, the attractiveness of the Deep South for settlement. Third, I will focus on the westward migration of debtors who were on the brink of losing their mortgaged slaves. Here, I will consider the legal murkiness of slave titles and the difficulty that creditors—and the law—faced in preventing fraud. I will conclude with a discussion of the effects that slave mortgaging has on our understanding of the West, a place that holds particular importance in the American imagination. By providing financial leverage for newcomers and pushing debtors to move beyond the court's reach, slave-backed mortgaging not only made the region's settlement possible but also drove this migration.

Origins of the Deep South: Economic and Political Change

In the decades following the nation's founding, the American citizenry did not restrict itself to the eastern seaboard. By 1820, six new slaves states—Kentucky, Tennessee, Louisiana, Mississippi, Alabama, and Missouri—had joined the United States. Like the rest of the nation, the Deep South saw the cultural embrace of entrepreneurialism and a political economy to sustain it. As settlers moved into these new territories, the Jeffersonian notion of an agrarian society gave an ideological grounding for expansion. Yet this impulse to create an "empire for liberty," in which farmers might live as independent landholders and act as responsible republican citizens, was not enough to make expansion feasible for most Americans. While Southerners relied on an international demand for cotton, they were far from passive in their political lives. As historian Brian Schoen writes, "planters, farmers, and the politicans who represented them jealously guarded and constantly sought to improve their position within the world economy in ways that would advance their own wealth and that of their communities." Forming a coalition across class, planter elites and yeoman farmers alike worked to elect political leaders who would support free trade and other policies favorable to the emerging cotton frontier. Profitable settlement of the southwestern frontier states relied on numerous governmental supports, changes in the international economy, and global politics.[2]

As the United States acquired new territory, including the Mississippi Territory and the Louisiana Purchase, the federal government set out to develop a system for the efficient distribution of new land to purchasers. While still operating under the Articles of Confederation, the Continental Congress passed the Land Ordinance of 1785, which served as a model for settlement in the Lower South. In this plan, surveyors were to create rectangular plots of land, in the

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[2] Brian Schoen, *The Fragile Fabric of the Union: Cotton, Federal Politics, and the Global Origins of the Civil War* (Baltimore: The Johns Hopkins University Press, 2009), 4-5.

hopes of making land purchases run smoothly and efficiently. To the dismay of those overseeing this project, creating plots proved difficult. Tracing their titles to land back to the times of French, British, and Spanish rule in the area, many men claimed that they still owned what amounted to several million acres. In addition to these claims, indigenous groups were slow to cede their land, despite pressure from the federal government.[3] While these various groups' claims restricted the federal government's sale of public lands, the remaining areas were sold at the cheap rate of two dollars per acre. Nevertheless, "the Jeffersonian land system did not create a yeoman's paradise in the Deep South." As historian Adam Rothman argues, "public land was cheap but not free, and at two dollars per acre, the market favored the wealthy." Repeatedly, Congress rejected plans to donate land to settlers, including such a proposal by Jefferson in 1806. With concerns about the national debt looming, public officials saw enhanced revenue from public land sales as more important than distribution to men who would cultivate small farms.[4]

As the federal government molded the distribution of lands, other governmental policies gave even greater favor to the wealthy planter class, who quickly bought large tracts of land on the southwestern frontier. With low prices for indigo and tobacco, men who were already settled in the region began to

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[3] As Adam Rothman explains, "The United States recognized southern Indians' right to the soil based on prior occupancy, but it was also committed to extinguishing Indian title. Most American policy makers believed that the Indians had too much land and failed to use it productively—that indigenous dependence on hunting amounted to a monopoly that stunted the progress of civilization." Adam Rothman, *Slave Country: American Expansion and the Origins of the Deep South* (Cambridge: Harvard University Press, 2005), 41.

[4] Rothman, *Slave Country,* 39-45; Daniel Feller, *The Public Lands in Jacksonian Politics* (Madison: The University of Wisconsin Press, 1984), 3-38.

transform their plantations into rows of cotton and, in a smaller area along the Mississippi River, fields of sugarcane. In order to smooth this transition, the territorial government of Mississippi stepped in. By inspecting cotton gins and presses and grading cotton based on its quality, officials in the Mississippi Territory intended "to promote the interests of this territory, by establishing at foreign markets the good reputation of the staple of this country."[5] With the help of the territorial and federal governments, southwestern cotton and sugar producers were making their entrance onto the international stage and drawing the attention of other Americans to this burgeoning region of the nation.

The success of planters in the Deep South was a product of more than their own ingenuity and governmental support. Also important to the frontier's development were shifts in the international economy. The creation of textile mills in England in the late eighteenth century provided a new market for the "upland" cotton grown on North American plantations. By 1803, the United States made up nearly 45 percent of the British market, surpassing producers in the Caribbean, Brazil, and the East Indies. The prospect of participation in this global trade drew men from along the eastern seaboard into the swampy lands of the frontier. As the French naturalist Michaux noted in his 1805 memoir, "the great profits derived from cotton entice an immense number of foreigners into that part."[6] Moreover, the Haitian Revolution transformed the international

[5] "Copies of Laws Enacted by the Governor and Judges of the Mississippi Territory, from the 30th of June until the 31st of December 1799," as quoted in Rothman, *Slave Country*, 49.

[6] Reuben Gold Thwaites, ed., *Early Western Travels, 1748-1846*, as quoted in Rothman, *Slave Country*, 48.

production of sugar. Although producers in Jamaica, Cuba, and Brazil largely compensated for the loss of Haitian sugarcane, planters in lower Louisiana also began to cultivate this lucrative crop.[7] With changing supply and demand in cotton and sugar worldwide, established planters and newcomers alike saw an opportunity to make a fortune in the fertile lands of the frontier.

The economic development of the Deep South was not without bumps, though. Tensions mounted between the United States and Europe following an American embargo on all exports in 1807, and the effects of global politics made their way to regional markets, including the once-booming cotton industry of the frontier states. The War of 1812 devastated the European demand for American cotton and further strained relations with the Native Americans of the southwestern backcountry. After a civil war had erupted over the United States' civilizing programs for the Creeks in late 1812, soldiers led by Andrew Jackson entered the fray. Hoping to wipe out hostile Creeks and also lay claim to Spanish Florida, Jackson's troops fought for several years in what Adam Rothman describes as "one of the worst episodes of violence in the tragic history of antagonism between the people of he United States and the indigenous inhabitants of North America." Emerging triumphant, Jackson negotiated a treaty with the Creek Indians, delivering more than twenty-three million acres of fertile Creek land to the United States.[8]

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[7] Rothman, *Slave Country*, 75.

[8] Rothman notes that the terms of Jackson's treaty were "more punitive" than those stipulated by the United States Secretary of War. Moreover, the Creek leaders who negotiated the treaty had

By 1815, the Deep South was well positioned for prosperity, despite its recent devastation. Having secured New Orleans, defeated the Creeks, and emerged victoriously over Britain, the United States was now prepared for another wave of expansion and economic vitality. Writing in April of 1815, a naval officer commented on the economic and social resurgence in New Orleans. "Now Every one is in bustle & commotion… The wharves crowded with merchantmen continuously pouring in—carts rattling through the streets—& beautiful Girls to be seen in all directions."[9]

Among these crowded markets and streets, however, were also men and women who were less able to relish in the bustle of a revived city and the triumph over the nation's former colonial power. Central to the origins of the Deep South, both before and after the War of 1812, were enslaved laborers, who worked the land and served as valuable financial assets to be leveraged in the region's developing economy. As other scholars have noted, the history of the United States' expansion into the West is not a story short of violence. For Patricia Limerick, whose seminal work *The Legacy of Conquest* paved the way for a New Western History, the moral significance of the West lies in its unjust conquest and the ongoing effects of this conquest on the peoples who originally inhabited the land.[10] The story of this exploitation must also consider those who

overwhelmingly been supporters of the United States. By the end of the war, most of the Red Stick leaders, the Creeks who battled the United States, had escaped to Florida. Rothman, *Slave Country*, 119-139.

[9] L. C. Hardy to William M. Reid, 3 April 1815, as quoted in Rothman, *Slave Country*, 162.

[10] Patricia Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W.W. Norton & Co, 1987).

were forced to claim this already inhabited land and to transform its fertile soil into profit for their owners.

With the passage of the Northwest Ordinance in 1787, public officials initiated a contentious debate about the future of slavery in the United States. Prohibiting slavery in the territory north of the Ohio River but making the institution legal in land to the south was only a short solution to a much longer fight. As the fear of slave rebellion and opposition to the transatlantic slave trade mounted among the American public, the question of slavery reemerged with the acquisition of the Mississippi Territory in 1798 and the Orleans Territory in 1804. Although slaveholders would ultimately win this debate, some state and national policies reflected American concerns about the brutality and breadth of slavery. By 1808, the federal government put an end to the transnational slave trade, and individual states began to bar the sale of slaves between states. With the passage of its state constitution, for example, Kentucky stipulated that newcomers could bring their slaves with them but could not import slaves "as merchandise for sale."[11]

Despite these regulations of the domestic slave trade, the laws were only loosely enforced, particularly as the demand for slave labor grew along with cotton and sugar in the new Louisiana territory. As western planters and new arrivals to the region protested the Congressional prohibition of the international slave trade and, specifically, the loss of new African slaves, they saw the

[11] Rothman, *Slave Country*, 19-20.

domestic slave trade, regulated or not, as the answer to their needs. Between 1820 and 1860, approximately 875,000 slaves were transported from the Eastern seaboard to the new frontier of the Deep South through the interregional slave trade, accounting for sixty to seventy percent of the incoming slaves into the southwest.[12]

Like domestic policies, development in international politics, and changes in the global economy, the shipment of slaves through what came to be called the "second middle passage" was central to the successful settlement of the Deep South. As newcomers arrived in these lands, they were often faced with a landscape far less than ideal for rows of cotton or sugar. As Thomas Freeman noted in 1798, he and his fellow men were "immersed in an impenetrable Forrest condenced by Cane & cemented by grape vines, so that a dozen trees must be cut before one can fall, & this on the most irregular hilly broken & unfinished part of the globes surface."[13] In their first years on new land, many slaveholders recounted the transformation of land into plantations, complete with fences, slave quarters, and, of course, fields of crops. For many men, this domestication of the wilderness was an important part of their personal acclimation to the

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[12] The rest of slaves in the Deep South likely came with owners who chose to resettle from the eastern seaboard. Although historians have generally agreed about the tremendous movement of slaves from the Upper to the Lower South beginning in the 1820s, there has been a larger debate about the role of the domestic slave trade in this geographic transformation of American slavery. For a longer delination of this debate, see Appendix A, "Total Slave Migration, 1820-1860, and Percentage of Migration Attributable to the Interregional Slave Trade," in Stephen Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (Oxford: Oxford University Press, 2005), 283-289. For more on this figure of sixty to seventy percent, see Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: The University of Wisconsin Press, 1989), 44; Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999), 5-6; Deyle, *Carry Me Back*, 289.

[13] Todd Ashley Herring, "Natchez, 1795-1830: Life and Death on the Slavery Frontier," PhD diss., Mississippi State University, 2000, 64, as quoted in Rothman, *Slave Country*, 37.

"new" territory, according to historian Conevery Bolton Valencius. However, this task was not easy, particularly for one man working alone. Without the aid of both enslaved men and women, this process would have been far slower, if not impossible.[14]

Once plantations were cut out of the swamps and forests of the West, slaves continued to be central for successful harvests of labor-intensive crops. In addition to planting vegetables and other food for the plantation household's consumption, enslaved laborers toiled in the fields to produce cash crops. The value of these laborers did not escape planters in the region, who continuously worked to prevent a federal ban on the regime in newly acquired territories. In a petition pressing Congress not to abolish slavery, Natchez residents wrote that without slaves, "the farms in this District would be but of little more value to the present occupiers than equal quantity of waste land."[15]

For outsiders, a successful entrance into the cotton or sugar industries was linked to ownership of slaves. Convincing his friend to sell his lands in Kentucky and move into Mississippi, Nathaniel Cox wrote that "if you could reconsile it to yourself to bring your negroes to the Miss. Terr, they would certainly make you a hansom fortune in ten years by the cultivation of Cotton."[16] Moreover, the simultaneous transformation of the wilderness and cultivation of staple crops meant that all of the laborers, including young children, had a role to play on

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[14] Conevery Bolton Valencius, *The Health of the Country: How American Settlers Understood Themselves and Their Land* (New York: Basic Books, 2002), 15-52.

[15] Memorial to Congress, 23 October 1797, as quoted in Rothman, *Slave Country*, 49.

[16] Robert E. Roeder, "New Orleans Merchants, 1790-1837," as quoted in Rothman, *Slave Country*, 49.

western plantations. As a government collector of customs wrote to his wife in 1803, "hands from 10 years old & upwards of both sexes clear upon an average 12 to 1500 weight of clean cotton besides corn & meats for their own consumption."[17] With the growing importance of cotton in the 1820s and 30s, Joseph Ingraham noted that newcomers to Mississippi could only fulfill their dreams of wealth by one path. "To sell cotton in order to buy negroes—to make more cotton to buy more negroes, 'ad infinitum,' is the aim and direct tendency of all the operations of the thorough-going cotton planter; his whole soul is wrapped up in the pursuit…[W]ithout slaves there could be no planters…Without planters there could be no cotton; without cotton no wealth. Without [slaves] Mississipi would be a wilderness, and revert to the aboriginal possessors. Annihilate them to-morrow, and this state and every southern state might be bought for a song."[18] At the center of the southwestern economy was a force of coerced laborers, without whom the region would have faltered.

Although access to land was essential, slave labor represented the most valuable resource—and the one that was increasingly under national scrutiny. As some compensation for national attempts to further limit the slave trade, territorial officials, often from the planter class themselves, leveraged political resources in favor of slaveholders when they could. Winthrop Sargent, the governor of the Mississippi Territory, for instance, utilized his position to

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[17] Hore Browse Trist to Mary Brown Trist, 7 January 1803, as quoted in Rothman, *Slave Country*, 49.

[18] Ingraham, *The South-West by a Yankee* (New York, 1835), Vol. 11, 91, as quoted in Joshua D. Rothman, "The Contours of Cotton Capitalism: Speculation, Slavery, and Economic Panic in Mississippi, 1832-1941," (paper presented at the conference Slavery's Capitalism: A New History of Economic Development, Providence, Rhode Island, April 8-10, 2011), 12.

prevent unrest among slaves in the region. Following the enslaved man Gabriel's plot in Virginia, Sargent ordered local militia to "regard the enforcement of the slave code as a point of honor."[19] With local governmental support, slavery became further entrenched in the western territories.

Slave-Backed Speculation and the Cotton Boom

Along with the role that enslaved men and women played on the growing number of plantations, the importance of slaves as financial assets was particularly pronounced on the frontier. During the expensive process of relocation, slaveholders in the coastal states often hired out their slaves to those already on the frontier. By sending their slaves ahead as they prepared to move, soon-to-be frontiersmen were able to gain extra cash for the labor of their valuable assets, while also supplying coerced labor to process of felling trees and building plantation homes in the West. During his move from Virginia to Kentucky in the early 1790s, John Breckinridge hired his slaves to future neighbors almost a year in advance of his own move. While he wrapped up business in Virginia, Breckinridge was able to avoid losing any money on his idle

[19] Winthrop Sargent, "Address to Militia Officers," 12 January 1801, as quoted in Rothman, *Slave Country*, 50.

laborers and could use this additional income to finance the expenses of migration.[20]

As men and their families arrived in the western states, slaves continued to be an essential point of leverage. Between 1790 and 1859, cotton production in the southern United States rose from 1.2 million pounds to 2.1 billion. By the 1830s, American cotton accounted for more than eighty percent of the cotton used by the British textile industry.[21] This expansion of cotton production meant that frontiersmen increasingly put their money into the men and women who could produce this lucrative product.[22] However, slaves made good investments for other reasons. Because of the high demand for slaves and the formal closure of the international slave trade, slaves were increasingly valuable commodities, which could be quickly changed from cotton-producing laborer to cash payment at the local or regional slave market.[23] As historian Edward Baptist has argued, slaves were the "ultimate hedge," due to the cash they embodied as relatively liquid and fungible assets and laborers in a booming industry.[24] Although the Panic of 1837 ultimately proved that the price of cotton and slaves would not

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[20] Samuel Meredith to John Breckinridge, 17 May 1792, William Russell to John Breckinridge, 19 May 1792, and John Breckinridge to "Dear Sir," 23 July 1793, as quoted in Jonathan Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge, MA: Harvard University Press, 2004), 35-37.

[21] Edward Baptist, "Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1837," in *Capitalism Takes Command, The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J.Kornblith (Chicago: The University of Chicago Press, 2011), 75.

[22] Between 1830 and 1840, for instance, the number of slaves in Mississippi tripled, accounting for 52% of the state's totally population. For more on the rising value of slaves and cotton, see Rothman, "The Contours of Cotton Capitalism," 11.

[23] Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 1999), 19-24.

[24] Baptist, "Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1837," 79.

necessarily continue to rise as most men on the frontier assumed, slaves were consistently seen not only as sound but the preferred investment.[25] In many instances, families worked to trade their landholdings, even particularly fertile ground, for slaveholdings.[26] As he prepared to move from Tennessee to the Mississippi Territory, planter Robert Butler wrote that he would "invest my funds in Negroes, and as I am informed that land can be purchased very low on the west side of the [Mississippi] river."[27] With dreams of wealth at the forefront of their minds, men new to the southwestern region and established planters alike saw enslaved men and women as the ideal investment.

In addition to planters, men engaged in the sale of slaves also stood to benefit dramatically from the rising cotton and sugar industries in the West. For those settling the frontier regions of states further east, access to land and slaves often depended on kin networks and their willingness to extend loans to the family member setting out for the wilderness.[28] When John Parkhill could not afford to pay off a loan of $530 on the Florida frontier in 1830, for instance, he turned to his father-in-law, who lived in Richmond, Virginia, for assistance.[29] As Edward Baptist argues, relatives were often crucial providers of cash and capital, both of which were scarce on the Florida frontier. The boom of cotton, however,

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[25] Rothman, "The Contours of Cotton Capitalism," 13.

[26] Sean M. Kelley, *Los Brazos de Dios: A Plantation Society in the Texas Borderlands, 1821-1865* (Baton Rouge: Louisiana State University Press, 2010), 31.

[27] Robert Butler to Thomas Butler, 12 November 1808, as quoted in Rothman, *Slave Country*, 51.

[28] For one study on the frontier region in southwest Georgia, see Susan O'Donovan, *Becoming Free in the Cotton South* (Cambridge: Harvard University Press, 2007).

[29] John Parkhill to Charles Copland, March 30, 1830, as quoted in Edward Baptist, *Creating an Old South: Middle Florida's Plantation Frontier before the Civil War* (Chapel Hill: The University of North Carolina Press, 2002), 31.

reshaped the credit economy. Though lending remained integral in the Deep South, the importance of kin likely declined. Alongside neighbors and storeowners, slave traders and bankers got into the business of loaning, which offered another avenue to wealth in the region where risk reigned.

Planters often disdained slave traders, who were seen as engaging in a sordid business and commonly referred to as "negro speculators." Nevertheless, these men were crucial to the explosive growth of speculation on the frontier. While banks financed loans for slaves as well as land or animals, slave traders themselves began to sell slaves on credit by the 1830s. As more and more traders arrived with the hopes of making it big, these salesmen extended the length of loans—often with little property to underwrite them—in the hopes of making themselves more attractive to potential buyers. In 1836, the Natchez *Courier*, publishing from the site of the largest slave market in Mississippi, reported that residents of the state purchased 10,000 slaves on credit in the preceding year. With slaves selling at an average cost of $1000, the *Courier* concluded that cotton planters had thus "created a debt for slaves alone, to be paid out of the crop of 1836, equal to ten millions of dollars."[30]

As slaves were increasingly bought on credit, this same human property was also essential for receiving other loans, which could be reinvested in slaves or other items. In the simplest form, slaves were listed as collateral for loans made between planters, storeowners, or even bankers. If the slave's owner

[30] Natchez *Courier*, in *Christian Secretary*, May 20, 1837, as quoted in Rothman, "The Contours of Cotton Capitalism," 15.

defaulted on his loan, the creditor was able to seize this valuable property in lieu of repayment.[31] In addition to writing slaves as assets, slaveholders developed other, more sophisticated mechanisms for leveraging enslaved men and women. By the late 1820s, the Consolidated Association of the Planters of Louisiana, which was later mimicked by other institutions, created a system in which potential borrowers mortgaged slaves and cultivated land to the C.A.P.L. In turn, these borrowers were able "to borrow up to half of the assessed value of their property from the C.A.P.L. in bank notes," notes that were then backed by bank bonds from the Louisiana legislature and the international securities market. Through this practice, planters were able to create a "pool of high-quality credit" that was lent back to themselves "at a rate significantly lower than the rate of return that they could expect that money to produce." In order to gain even more from "securitizing and then leveraging [slaves] multiple times on the international financial market," historian Edward Baptist writes that "clever borrowers could pyramid their leverage even higher—by borrowing on the same collateral from multiple lenders, by also getting unsecured short-term commercial loans from the C.A.P.L., by purchasing new slaves with the money they borrowed and borrowing on them, too."[32] With cotton prices rising and the

[31] Utilizing slaves for collateral was not an uncommon practice. As Richard Kilbourne writes, "slaves accounted for most of the collateral for both short-term and long-term credit in antebellum East Felciana Parish." Moreover, Bonnie Martin has demonstrated the high volume of cash generated through slave mortgaging, both in the southwest and elsewhere. For more, see Richard Kilbourne, Jr., *Debt, Investment, Slaves: Credit Relations in East Feliciana Parish, Louisiana, 1825-1885* (Tuscaloosa, AL: The University of Alabama Press, 1995), 49; Bonnie Martin, "Slavery's Invisible Engine: Mortgaging Human Property," *The Journal of Southern History* 76.4 (2010).

[32] Baptist also argues that this practice "also allowed a much wider group of people to profit from the opportunities of slavery's expansion," demonstrating the importance of slavery outside of the American

potential for wealth so great, planters and other southwestern financiers were eager to maximize their capital's potential through strenuous labor as well as creative financial management.

Some residents of the western states and territories, however, were not seduced by the delirium of speculation. Monetizing slaves may have distributed risk widely among the owners of the human assets and other investors; yet, the practice remained highly risky. Whether or not it received the backing of state and international banks, this financial system could never escape its fundamental basis in commodified human beings. Not only did it rely on the continually rising prices of cotton and sugar but also the vulnerable—and often resistant—bodies of enslaved men and women. Concerned with the explosive growth of speculation, particularly in the stalls of the slave markets, some states tried to reign in the interstate slave trade, which fuelled risky economic ventures on the frontier. By implementing bans on the importation of slaves as merchandise in the early 1830s, Mississippi, Georgia, Louisiana, and Alabama all sought to prove themselves secure places for investment.[33] However, the slaveholding economy of the Southwest held tremendous opportunities for wealth, which were hard to legislate away. Bypassing state legislatures' cautionary measures, speculation plunged forward at full speed. With the prospect of slave-created wealth, men continued to flock westward. The droves of settlers, however, were not

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South. For more see, Baptist, "Toxic Debt, Liar Loans, Collateralized and Securitized Human Beings, and the Panic of 1837," 80-82.

[33] Rothman, "The Contours of Cotton Capitalism," 17-18.

comprised solely of men looking to make a quick fortune. Among the newcomers were men who simply wanted to hold on to what little they had.

The High Stakes of Debt and the Ease of Fraud

As slaveholders along the eastern seaboard accumulated debts, angry creditors' demands for repayment weighed heavily. For some, selling everything in their possession, down to their last chairs and silverware, would not have equaled the cost of unpaid loans. Moreover, the prevalence of slave mortgaging meant that men's most valuable pieces of property, their "hands," were often likely to be foreclosed upon first. Faced with such potentially high losses, debtors sought ways to protect themselves from total financial ruin and, more specifically, to prevent the foreclosure of their human assets. While some likely sought financial assistance from family members, others agreed to lend their slaves to creditors until the enslaved laborers had worked off the debt. Like those who utilized separate estates to shield their property, debtors often used their technical knowledge of the law to evade creditors. By conveying property to another person, for instance, a party facing insolvency could avoid the confiscation of their assets.[34]

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[34] Edward J. Balleisen, *Navigating Failure: Bankruptcy and Commercial Society in Antebellum America* (Chapel Hill: The University of North Carolina, 2001), 94-96.

The manipulation of the law was an important way for debtors to protect their wealth. Yet for others, flight from their creditors offered better prospects. Moving their households, or only their slaves, westward onto the frontier allowed men to preserve more than the few extra assets they could conceal from the prying eyes of the court. And once they were settled, Cotton Country offered a chance to start anew. As settlers set out to establish farms and larger plantations in the Deep South, men mired in debt accompanied the fortune seekers. Together, these groups fed the growing populations of both free and enslaved men and women in the southwestern United States.

In 1821, John Erwin of Missouri loaned William Sublett a sum of money. In exchange, Sublett agreed to place his slave Milly in the care of Erwin as a form of security, until the loan was repaid. By February 1822, however, this asset was no longer so valuable. Milly passed away while still in Erwin's possession and, more importantly to him, while the debt remained unsatisfied. Wary of this loss of security and the outstanding balance, Erwin worked quickly to guarantee his repayment. After hearing that William Sublett had fled to nearby Illinois, Erwin became even more concerned with his impending loss and entered a plea in Cape Girardeau County's Chancery Court. Seeking to prevent the loss of his money, Erwin called on the court to impose an injunction, which would keep Erwin's two other slaves, within the state. Erwin knew that state lines were easily traversable but detrimental to the successful seizure of a debtor's property. By keeping these other pieces of property within the court's jurisdiction, Erwin hoped to quash any of Sublett's potential schemes to escape or sell these assets without resolving his outstanding debts first.[35]

As Erwin's petition demonstrates, creditors were certainly concerned about the potential loss of human collateral. These fears, however, were not limited to death or slaves' running away. Creditors also worried that debtors themselves might be responsible for the loss of assets that underwrote their debts. Through removal across state lines or sale into the interregional slave trade, planters sought to hold onto their best assets or to convert them to cash before someone else had the chance to do so. Similar to Erwin, James Copeland and the Parks, the defendants mentioned at the chapter's outset, worked to prevent the removal of Phillis and her young child from the state of Tennessee.[36] Unlike these sets of petitioners, however, many creditors were less successful in forestalling the removal of collateralized humans from the legal jurisdictions in which they resided. Instead, many indebted men were often able to make it across the borders along with their pledged slaves before any legal action could be taken.

For Henry Hunt, moving from territory to territory represented an important opportunity—and one with high stakes. By 1816, Hunt had accumulated debts totaling more than $20,000 from lenders in multiple states. As one creditor in Tennessee sought to collect ten percent interest on top of an

[35] Petition of John Erwin, 1823, Cape Girardeau County, Missouri, Chancery Court, in Loren Schweninger, *Race, Slavery, and Free Blacks,* Series II, Part E, (Bethesda, Md.: Lexis-Nexis Academic, 1990-), #21182301.

[36] Petition of James Copeland, James Park, and William Park, 1834, Franklin County, Tennessee, Chancery Court, in *RSFB*, #21483410.

$8,600 loan, the executors of Daniel Clark's estate in Mississippi called for the repayment of $12,500. Fulfilling his creditors' greatest fears, Hunt fled "from various territories to avoid repayment" as ordered by the courts of each state. By the time he reached Louisiana, two charges awaited him in Louisiana's District Court. To Hunt's dismay, his plan to evade his past and hold onto his property in the western frontier failed to materialize—the Court sided with the petitioners.[37] Between the two loans, Hunt had mortgaged 88 slaves, which were now subject to a foreclosure sale.[38] The court records do not disclose how many slaves actually made it to the auction block or how much money Hunt's creditors recuperated. It is possible that Hunt successfully sold some of his enslaved men before they could be tracked down or that the distant creditors emerged financially unscathed from their loans. No matter the outcome, it is clear that western territories provided a haven for indebted men, even if imperfect. With so much wealth—embodied by enslaved men and women—at stake, men like Hunt took their chances, hoping to move undetected by their lenders as well as law enforcement.

Over time, westward migration became so closely linked to debt evasion that "gone to Texas" was used as a euphemism to describe fugitive creditors. While the nature of court records makes it nearly impossible to prove that Texas

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[37] Petition of John Nichols, 1816, Pointe Coupee, Louisiana, District Court, in *RSFB*, #20881612; Petition of Beverly Chew and Richard Relf, 1816, Point Coupee, Louisiana, District Court, in *RSFB*, #20881656.

[38] It is important to note that Hunt may have had fewer than 88 slaves in his possession. As discussed previously, men often pledged the same human property to multiple lenders. In Hunt's case, it is certain that he possessed at least 64 slaves, which he mortgaged to Tennessee resident John Nichols.

was the preferred destination of men in debt, the existence of this phrase suggests that the territory held an important position in the imaginations of such men and their families.[39] The settlement of slaveholding debtors in the territory is even more interesting due to the institution's shaky legal ground in the 1820s and 1830s. Initially prohibited by the Mexican government, Texas settlers worked to defend the institution, which they saw as a necessity for the economic prosperity of the region. Ultimately, slavery would be an important rallying cry for men who fought for the territory's independence from Mexico. As historian Randolph Campbell argues, histories of Texas—which he refers to as "an empire for slavery"—have overlooked the significance of slaveholding.[40]

But for newcomers to the area, including men and women overwhelmed by debt, the institution could not be understated. Among those who arrived in the Lone Star State was Jane Sawyer. Before the death of her husband in the late 1830s, Jane left Alabama for Harrisburg County, the location of modern-day Houston, to avoid a looming debt of $12,560. Despite these efforts, her late husband's lender, Henry Smith, tracked her down and, in 1838, demanded the proper sale of the sixteen slaves mortgaged to him. The distance between Alabama and Texas was ultimately not enough to deter Smith from getting the money he was owed. Nevertheless, Sawyer and her husband "fraudulently"

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[39] In some instances, the original debtors may not have "gone to Texas" but other planters who underwrote their loans may have. For one example, see Deposition of George and Sarah M. Walton, 1845, Mobile County, Alabama, Chancery Court, in *RSFB*, #20184515.

[40] Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: Louisiana State University Press, 1989), 1-34; For more discussion of slavery in Texas, see Andrés Reséndez, *Changing National Identities at the Frontier: Texas and New Mexico, 1800-1850* (Cambridge: Cambridge University Press, 2005), 161-163.

smuggled sixteen bondsmen and women, including seven young children, into this western region for several years without reproach.[41]

With the hopes of protecting their assets from foreclosure and also reaping the benefits of booming cash crops, many men relocated their families into the Deep South during the antebellum years. Yet, the southwestern frontier offered men other means through which to preserve their wealth. As the domestic slave trade flourished, traders were eager to purchase sound laborers who could be shipped westward and sold at a profit in the cotton country's major slave markets. Inspecting their potential investments, traders paid close attention to the slaves' physique and their ability to be repackaged and sold after making an arduous trek.[42] But only some features were legible on the bodies of enslaved men and women. Despite their keen eyes, speculators in human property were unable to tell whether their potential purchases were already pledged to other men. Though official registration of pledges were required by the law, less formal mortgage agreements as well as legal gray areas about titles left open the possibility that men might deceive traders or other purchasers about the status of their slave. In this way, the slave trade offered an important escape valve for men sinking in debt. Here, owners could liquidate their human assets and, thus, prevent their seizure by the men to whom they were already mortgaged.

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[41] It is important to consider which loans were worth pursuing across state lines. While it may be an artifact of the source collection, it appears that petitions that address flight across state lines involve larger sums of money and higher numbers of mortgaged slaves. It is conceivable that creditors with several thousand dollars at stake would press charges against debtors, even if they were a few states away, while lenders with a only a few hundred dollars to lose would not. Petition of Henry A. Smith, 1838, Harrisburg County, Texas, District Court, in *RSFB*, #21583807.

[42] Johnson, *Soul by Soul*, 45-77.

After her husband Andrew's death in the early 1820s, Jane Campbell took on the role of administratrix for his estate. In addition to distributing Campbell's property among his heirs, Jane was first charged with another challenging task—recovering the outstanding debts owed to her husband. As she wrote in her petition to the court of Maury County, Tennessee, two men in particular, Charles Boyles and Brice Garner, intended to defraud Campbell. With a bill of more than $6,000, Boyles and Garner looked beyond the court's jurisdiction to evade their financial obligation. According to Jane, the two men were not leaving the state themselves but were, instead, "carry[ing] beyond the process of [the] Court" the twenty-six slaves that underwrote the loan. By selling these pieces of property, Boyles and Garner were not only able to "deprive [Campbell] of a satisfaction of the demands due to her," but were also able to prevent their own losses.[43]

While schemes like this may have benefitted debtors, men who purchased these already-pledged slaves in other states sometimes found themselves involved in legal disputes that they did not knowingly create. In 1815, Joseph Hendrick sold a slave that he had recently purchased in Kentucky across state lines. Likely looking to make a small profit, Hendrick was probably surprised to receive a subpoena from the Circuit Court of Barren County soon after. Arriving in Court, Hendrick soon learned that he had sold a slave that was already owed to Mr. Charles Hudson. In order to amend this faulty sale, Hendrick and Tucker

[43] Petition of Jane Campbell, 1823, Maury County, Tennessee, District Court, in *RSFB*, #21482306. For other examples of slaves being sold westward, see Petition of William Teague, 1823, Christian County, Kentucky, District Court, in *RSFB*, #20782307; Petition of Franklin K. Beck, 1858, Washington County, Mississippi, District Court, in *RSFB*, #21085827; Petition of John C. Bird, 1844, Montgomery County, Tennessee, District Court, in *RSFB*, #21484402.

and Samuel Woodson, the two men who sold him the previously promised slave, were now responsible for Hudson's compensation. Even when Tucker pled insanity, the Court maintained its ruling. Although he had never interacted with the petitioner, Hendrick was still held financially accountable to Hudson, whose mortgage carried more legal weight than Hendrick's subsequent bill of sale.[44]

Underlying these cases were fundamental questions about the relationships between bills of sale, mortgages, and other legal transfers of property. In petitions like Joseph Hendrick's, judges probably intended to rule consistently and with a basis in established legal doctrine. Yet as one appellate judge wrote, "there is a class of cases which cannot be seen certainly," and is rather "in the twilight which borders the line of demarcation." Isaac Webb's prosecution of John Marsh and John Hundley in 1823 fell within this blurry category. In 1820, John Marsh mortgaged two of his slaves, Westley and Liddy, to Isaac Webb in exchange for a loan of $512. Unknown by Webb, Marsh had just recently sold these same slaves to another man, John Hundley. At the time of this sale, however, it was inconvenient for Hundley to transport the slaves back to his home, and, thus, the two men arranged for Westley and Liddy to stay with Marsh for a few extra days. Though Marsh no longer held the legal title to these pieces of property, this small window of possession allowed the former owner to benefit one last time from the financial capital that these two slaves embodied.[45]

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[44] Petition of Charles Hudson, 1815, Barren County, Kentucky, Circuit Court, in *RSFB*, #20781504.
[45] Petition of Isaac Webb, 1823, Fayette County, Kentucky, Circuit Court, in *RSFB*, #20782303.

By 1823, Webb had not received repayment from Marsh. Seeking to collect the two slaves that he had been mortgaged, Webb found that they were no longer in Marsh's possession. In fact, Hundley had sold the slave Westley "down the river" and into "the lower Country." With neither cash nor collateral, Isaac Webb petitioned the Circuit Court of Fayette County, Kentucky to foreclose on the mortgage and force Marsh and Hundley to repay the debt and interest. Although the court eventually issued a decree in favor of the petitioner Webb, this decision was made too late for it to affect Marsh, the man who had pitted the interest of two unassuming men against each other. In 1825, Marsh died, and rather than "revive" the case against the administrators of his will, the court let the case fall to the remaining petitioner, John Hundley. In 1828, a jury was "empanneled" and ultimately handed down a verdict. The decision stipulated that Hundley would have to sell Liddy and pay the value of Westley, whom he no longer possessed, to satisfy Marsh's debt to Webb and make good on the mortgages that Marsh had negotiated.

Although Webb was pleased with the jury's decision, it did not satisfy Hundley, who also felt that he was a victim of Marsh's deceit. Unwilling to accept the Circuit Court's ruling that his purchase of Liddy and Westley was "fraudulent," Hundley brought his case before the Appellate Court of Kentucky. In a lengthy opinion, the Court argued that Hundley's purchase was voided and considered "fraudulent," despite his "fair and upright intentions" in the transaction. Although Hundley signed an absolute bill of sale for Liddy and

Westley before the slaves were ever mortgaged to Webb, the Court stated that a bill of sale was only valid if the purchaser actually took possession of his property. If not, the sale was void, and in this instance, the purchaser had to either return the property to the rightful owner, Webb, or compensate him otherwise.

While it might seem strange that the bill of sale was deemed fraudulent rather than the subsequent mortgage, the Court offered two explanations for this. On the one hand, possession of property might enable the former owner to "enjoy a delusive credit, whereby he may be able to deceive and injure those who may not be [sic] into the secret that the property has been transferred to some other person," as was the precise problem for Webb. Secondly, the Court stated that "the retention of possession by the former owner, after an unconditional sale of the property to another is incompatible with the sale, and therefore a badge of collusion." As these legal principles indicate, the Court was concerned with men pretending to sell their slaves, most likely to friends or acquaintances, in order to protect their property from foreclosure when they failed to repay slave-backed loans. To this end, the Court was unrelenting. Hundley was responsible, whether he and Marsh had colluded or not, whether he still possessed the slaves ten years after the original agreement. Recognizing the strictness of its decision, the opinion continued that

> The contract in this case exhibits no badge of fraudulent intent by Hundley. His purchase may have been perfectly fair. But it must stand or fall, not according to its moral aspects but its legal character. Its legal invalidity may furnish a peculiarly striking example, of the inflexibility of a general rule of

> law established to prevent fraud of the great importance attached to the efficacy of the rule, and the eminent advantages, which are expected to flow from its enforcement.

While the law may have been designed to protect against fraudulent purchases, it sometimes caused "cases of individual hardship." Despite his efforts to prevent this, Hundley was forced to "suffer in consequence of [the law's] unrelenting and universal operation."[46]

For men like Hundley and Webb, the domestic slave trade and the broad appeal of the Deep South's frontier added further complexity to competing claims for slaves. As the previous cases have shown, slave purchasers, such as Hundley, and indebted men alike were inclined to sell their greatest sources of cash—enslaved men and women—to traders or others heading for the slave markets in Natchez or New Orleans. However, other classes of men were also lured by the promise of turning a profit in the slave trade. The demand for slaves in the cotton country and, thus, the high prices that slaves yielded also tempted creditors who negotiated slave mortgages in exchange for loans. For debtors who relinquished possession of their mortgaged assets, there was no guarantee that they would be able to repossess these valuable pieces of property, even if they were able to repay their loans in full and on time. Because a slave was a fungible asset and one that was often worth more in a distant rather than local slave market, creditors saw mortgaging as a way to generate cash not through the productive capacity of their assets but through a series of financial transactions.

[46] Appellate Court Opinion, 1830, Fayette County, Kentucky, Appellate Court, in *RSFB*, #20782303.

When John Hatfield moved to the banks of the Tennessee River in the "most obscure part of Jackson County, Alabama," he was not simply leaving his home "for the only purpose of planting, or farming or carrying on any lucrative occupation," according to a petition brought before the county's Circuit Court. Instead, Hatfield was looking for a way to sell his enslaved laborers "by the facility of the said River" into lands further west. While this plan may have been lucrative, it was also illegal, as the Court soon determined. In 1807, Hatfield had acquired a slave-woman Melinda from Mr. Hugh Montgomery. However, the conveyance was not meant to be permanent. Instead, Montgomery had mortgaged this slave to Hatfield in exchange for a $300 loan, and upon repayment, Montgomery would repossess the woman. Due to Hatfield's "fraudulent and evasive conduct," however, Montgomery has been unable to repay the money and reclaim his human property in more than twenty years. By 1830, Montgomery stood to lose more than just this one woman. During the course of the mortgage, Melinda had given birth to six children, who would also generate cash in slave markets "down the river." By loaning the small sum of $300, Hatfield now had slaves "worth fully the sum of two thousand dollars." Rather than accept repayment, Hatfield took a more profitable, if unlawful, route.[47]

Even without possession of child-bearing women, mortgages often presented an opportunity for creditors to make fast cash, particularly with the

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[47] Petition of Benjamin R. Montgomery and Wiley Belcher, 1830, Jackson County, Alabama, Circuit Court, in *RSFB*, #20183005; Petition of Benjamin R. Montgomery and Wiley Belcher, 1831, Jackson County, Alabama, Circuit Court, in *RSFB*, #20183106.

growing demand for slaves on the frontier. In great need of money, Horatio and Lucinda Brayton allowed their friend James to arrange for the slave, Anache, to be mortgaged to a man by the name of Tolliver Dawson. Back on their feet after a few months, the Braytons were “anxious to redeem” their slave. Yet their attempts to repay Dawson were unsuccessful. Though the owners offered more than the original loan of $350, Dawson “refused to give up said slave for less than $550.” Without even taking the slave on a trek westward and into an area where slave prices were high, Dawson was able to profit from the mortgaged slave. With such valuable commodities at stake, debtors and creditors alike sought to generate or preserve the most money in mortgage transactions. As these cases demonstrate, the West proved a valuable point of leverage in such negotiations.[48]

Conclusion: Rethinking “The West” in American History

For debtors and creditors, movement westward represented an opportunity to escape financial and legal obligations. Whether leaving with loaned money, absconding with slaves before they could be foreclosed, or selling temporarily loaned slaves into the domestic trade for a profit, mortgagers and mortgagees found creative ways to preserve their wealth, either embodied in or

[48] Petition of Horatio H. Brayton and Lucinda Brayton, 1849, Davidson County, Tennessee, Circuit Court, in *RSFB*, #21484904.

generated by slaves, and the frontier proved crucial to many of these schemes. Yet the drive westward was not without tremendous human costs. As creditors and debtors thought about their bottom lines, they disregarded the very men and women who created their wealth. For a slave by the name of John Solomon, the West signified the loss of his mother, who was sold to a "negro trader" and "soon after taken out of the Country."[49] For Anache, mortgaged by Horatio and Lucinda Brayton, moving westward meant that he would be expected to produce a different crop, work in a different climate, and leave behind his network of friends and even family.[50] For Lucinda and her six children, auction blocks and market stalls waited on the other side of shipment "down the River."[51] Though hailed as a site of American prosperity and liberty, the southwestern frontier was a far gloomier place for those who made it so profitable.

By foregrounding the role that slaves played in the settlement, cultivation, and finance of the West, the typical image of the frontier—a place for freedom and the preservation of democracy—quickly fades away. The frontier may have been crucial to the American spirit and success, as Frederick Jackson Turner famously wrote in 1893, but in a different way than he argued. Western territories were crucial for the continuation of slavery in the United States, an institution that shaped the lives of millions of men and women who were kept in

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[49] Petition of Joel and Polly Lowrence, 1851, Bedford County, Tennessee, Circuit Court, in *RSFB*, #21485144.

[50] Petition of Horatio H. Brayton and Lucinda Brayton, 1849, Davidson County, Tennessee, Circuit Court, in *RSFB*, #21484904.

[51] Petition of Benjamin R. Montgomery and Wiley Belcher, 1830, Jackson County, Alabama, Circuit Court, in *RSFB*, #20183005; Petition of Benjamin R. Montgomery and Wiley Belcher, 1831, Jackson County, Alabama, Circuit Court, in *RSFB*, #20183106.

bondage as well as the political, social, and economic underpinnings of the nation.

CONCLUSION

The Effects of Speculation:
Two Perspectives on Mortgaging

Credit—and slave mortgaging, specifically—were crucial to American expansion and the development of a booming agrarian economy. Without access to loans, men would have been unable to pay for the maintenance, let alone the startup, of plantations in an area filled with swamps and forests. However, slave mortgaging was important to expansion in other ways. Precisely because slaves were such valuable assets, men who put their human property on the line sought ways to protect it. Through the legislature, slaveholders shaped laws that would shield portions of their property from creditors. Though these laws were nominally for the protection of families, they effectively propped up risky speculation. With an eerie resonance in the twenty-first century, legislators rewarded recklessness.

Taking a different route, some debtors chose to move under the law's radar. By pushing west, settlers moved beyond the reach of their creditors or sheriffs with a writ of seizure or foreclosure notice. In a region where titles to land and slaves were hard to ascertain, debtors hoped to find the ideal hiding place, one where they could continue speculating without ever making good on their overdue loans back home. In this sense, slave mortgaging was more than an innovative financial practice for those participating in the Deep South's economy. The practice also spurred movement westward by those overwhelmed by debt or the enslaved men and women who underwrote it.

By identifying the important role of slavery in the rise, and viability, of a speculative economy in the Southwest, a close investigation of slave mortgaging also brings a new perspective on the relationship between slavery and American capitalism to the fore. While the understanding of southern slaveholders has slowly shifted from anti-capitalist paternalists to men interested in material accumulation, the embeddedness of slavery and industrialization—and the connections between the southern and northern economies in the antebellum period—has more recently become the site of historical contestation.[1] Whether or not slaveholders were resistant to the rise of large, national markets or the expansion of slavery into the southwestern frontier, the flow of raw materials and manufactured goods between the North and South was essential for the successful rise of regional and national markets and accompanying social and political transformations.[2] Without the raw cotton that slaves produced on frontier plantations, textile factories in the Northeast and across the Atlantic

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[1] Eugene Genovese, *The World the Slaveholders Made: Two Essays in Interpretation* (New York: Pantheon Books, 1969); James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: Knopf, 1982).

[2] Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (Oxford: Oxford University Press, 1991); Melvyn Stokes and Stephen Conway, ed., *The Market Revolution in America: Social, Political, and Religious Expressions, 1800-1880* (Charlottesville, VA: University of Virginia Press, 1996); Stephen Hahn, *The Roots of Southern Populism: Yeoman Farmers and the Transformation of the Georgia Upcountry* (New York: Oxford University Press, 1983); Gavin Wright, *The Political Economy of the Cotton South: Households, Markets, and Wealth in the Nineteenth Century* (New York: W. W. Norton, 1978).

Ocean would not have produced goods for sale or provided jobs for unskilled laborers in those areas. As northern factories produced consumer goods, it was not only the small farmers nearby that purchased them. Slaveholders bought hats and shoes for their slaves as well as farm tools and cotton bagging from northern industrialists. While northerners may have viewed slavery as an antiquated labor system, their own region's capitalist expansion was intimately linked to the productivity of unfree men and women. As Robert Fogel argues, the development of manufacturing, banking, and commerce in the North and abroad would have been nearly impossible without southern cotton production.[3]

But, as this study shows, the South was not simply a source of raw materials for other parts of the country and globe. The financial system that undergirded the slaveholding economy was also intimately linked to that of the North and other countries. Slave-backed loans connected chattel property in the Deep South to New England merchants and international houses of finance.[4] In some cases, northern merchants even became the unexpected owners of slave property in the South.[5] Moreover, as Southerners created innovative property laws to protect slave-backed speculation, northern states' adopted these legal

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[3] Robert Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: W. W. Norton, 1989).

[4] Kathryn Boodry, "The Common Thread: Cotton, Slavery, and the Development of Merchant Banking, 1837-1848), (paper presented at the conference Slavery's Capitalism: A New History of Economic Development, Providence, Rhode Island, April 8-10, 2011); John Killick, "The Cotton Operations of Alexander Brown and Sons in the Deep South, 1820-1860," *The Journal of Southern History* 43.2 (1977).

[5] Seth Rockman, "Northern Manufacturers, Southern Slavery, and the Antebellum Origins of American Business Ethics," (paper presented at the American Origins Seminar, **location**, March 26, 2011).

measures, deepening the connections between slavery and American economic development.

As we consider the intimate relationship between slavery and the macroeconomic development of the United States and nations beyond, it is important not to lose sight of the corresponding ways that this regime structured the lives of those whom it enslaved. Mortgaging, in particular, accelerated the pace of development in the Deep South and drove speculation in this frontier region. But this practice was also a source of rupture in the lives of many. In the most extreme examples, slaves who had been guaranteed their freedom were, instead, seized for foreclosure.[6] While mortgaging may have at times afforded enslaved men and women better treatment from their owners, this financial practice relied on the exchangeability of their bodies for money. Ultimately, it was enslaved men and women that would bear the burden of their owners' financial irresponsibility, American expansion, and the growth of speculative capitalism.

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[6] Petition of Mary, "a negro woman," 1844, St. Louis County, Missouri, Circuit Court, in *RSFB*, #21184417.

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