

*“Don’t Let Nobody  
Bother Yo’ Principle”*

*The Sexual  
Economy of  
American Slavery*

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Many . . . young women are afraid to speak,  
let alone write. When I witness their fear, their  
silences, I know no woman has written enough.

—bell hooks, *Remembered Rapture*

**PERSONAL  
STATEMENT**

I was an Afro-American studies major in college. Yes, Afro-American studies, so you can imagine this was the 1980s. Not the hard-edged black studies of the 1970s or the gentle chicness of African American or Africana studies in the 1990s. Afro-American. Language situates us in time and politics.

The two events that remain most impressed upon my mind from college occurred in the course of pursuing my major. I was a student of black feminist theorist bell hooks, Gloria Watkins, who taught courses in literature, specializing in fiction by black women. For Gloria, as we called the woman, and her classes into which we crowded, the rigorous study of literature yielded the greatest gift of all: mastery of language, the fundamental Western tool of self-articulation and representation. The students of all races who “took Gloria” learned how, through language, one acquires a voice, thus demanding recognition by others. Through these linguistic eruptions into existence, people achieve subjectivity, agency, humanity. Her courses, unable to contain the student excitement over the possibilities that language suggested for our agency, spilled over into her office. There, she encouraged black undergraduate women to use the study of literature to reclaim our sexuality, our lives, to realize that in a world structured to deny our humanity, we had choices, options. Through language, we could represent, and thus reclaim, our intimate selves.

This conversation, which continued over the course of two years, was punctuated by a moment when Toni Morrison came to campus to speak. Post-*Sula* and *The Bluest Eye*, pre-*Beloved* and *Paradise*, she talked about the paucity of

language to describe the horror of American slavery. What language can we use to represent human bondage, to describe the conversion of humans into property, to capture the experience of being possessed or, even more grimly perhaps, of *possessing* another? The emptiness of language to describe the process of enslavement mirrors the void of slavery in the nation's memory.

Yet slavery, like our sexuality, lies continually at the periphery of our consciousness; eluding representation, it hovers over us. It disrupts our lives with unpredictable eruptions. Mimicking the American conspiracy of silence around slavery, black women often avoid speaking of sex and intimacy. But in its repression, black women continually create images, representations, which we then either embody in flat unidimensional cartoons of "respectable good girls" or reject, thereby risking sanction by our sisters. Without language, slavery and black women's sexuality each remains unspeakable—repressed, yet ever present.

Comprehending and filling the linguistic vacuums around slavery and black women's sexuality are directly linked to the project of this book: representing black women's work. What I now realize, as a scholar and a woman with her own sexual battlegrounds to conquer, is how the unspeakability of slavery contains the seeds of the unspeakability, for black women, of our own sexuality. As I say in my essay, the economy of American slavery systematically expropriated black women's sexuality and reproductive capacity for white pleasure and profit. As their descendants, we continue to suffer from the silence. The failure of language to document and archive the sexual abuse of reproductive exploitation of enslaved women is the origin of the absence of language to articulate for contemporary black women sexual identities that are empowering, fulfilling, and joyous.

In much of my professional adult life, through my research and my writing, I have tried to restore and engage that voice, to offer myself and other black women a voice sketched through history and law. My essay in this volume tries to combine and, to an extent, reconcile those two defining moments from a decade ago in my life when Toni Morrison and bell hooks urged me and other black women students to see that understanding both history and ourselves lay in mastering language and its mysteries. Without a vocabulary to describe slavery, contemporary black women have been without a voice to describe and confront the history of sexual and reproductive expropriation and exploitation that slavery entailed. In my essay, I propose to label slavery as a "sexual economy," hoping that this may give us the tools we need to excavate black women's history, document our exploitation, and archive our resistance. We can use this vocabulary to understand our collective sexual histories and then confront our choices, realizing that each of us makes different ones.

Toni Morrison and bell hooks were right, without language we can't represent; without representation, we can't imagine; without imagination, we can't comprehend; without comprehension, we can't move forward.

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**B**eyond the backbreaking, soul-savaging labor that all enslaved people performed, American slavery extracted from black women another form of "work" that remains almost inarticulate in its horror: reproducing the slave workforce through giving birth and serving as forced sexual labor to countless men of all races. The political economy of slavery systematically expropriated black women's sexuality and reproductive capacity for white pleasure and profit. Yet what discourse has confronted and accused this national horror? What documents record its effects on enslaved women? In the face of this unspeakable work, chroniclers of American history have all but erased its existence. This essay attempts to initiate the beginnings of just such a conversation by naming the world of these legal conflicts a "sexual economy."

Voice and vocabulary are vitally important in antiracist and antisexist politics. Vocabulary is much more than grammatical choice, as represented in debates as diverse as the validity of Ebonics and whether "sex worker" or "prostitute" is the better word. Word choices represent political views of the world, especially when describing the topic of this book: work. We may need new terms, such as "sexual economy," to capture that history and reality and begin a discourse of national confrontation and, ultimately, of personal reconciliation.

This essay examines two cases in which enslaved black women's sexuality was at the heart of the dispute. It starts with an 1806 Virginia case in which two enslaved women used slavery's rules of reproduction and race to argue that they were not legally black and hence should be set free. The second case, an 1859 Mississippi case, involved the rape of an enslaved girl. I use these cases to investigate some of the primary legal doctrines that enabled elite white men to extract forced sexual and reproductive labor from enslaved women. Taken together, these cases and rules reveal how law and markets of the antebellum South seized enslaved women's intimate lives, converting private relations of sex and reproduction into political and economic relations. This interplay of sex and markets leads me to name this world a sexual political economy.

The idea of a "sexual economy of slavery" may seem odd on first impression. We divide our economic relationships in the workplace from our intimate, family interactions. We view these relations as taking place in two segregated spheres: the market and our intimate lives. It is in this latter space that we feel enabled to make our decisions, conduct our lives, love our own families. We

may experience dissonances when sex and economics are juxtaposed. In addition, many of us imagine slavery as an institution of racial hierarchies, not gender hierarchies. But the cases and rules I will examine expose a different relationship between sex and markets for enslaved black women. In the process, they expose the brutal gender subordination that slavery entailed.

One quick caveat: slavery varied from region to region and slaveholder to slaveholder. It also evolved and mutated during its 250-odd years. I use two cases from two significantly different regions and periods (Virginia in 1806 and Mississippi in 1859). I do not mean to suggest that these cases are representative of slavery. However, I use them because individually and taken together they raise intriguing questions about the central and distinctive role that black women's sexuality and reproductive capacity played in the southern political economy.<sup>1</sup>

### **A Life of Labor: Production and Reproduction**

When we think of enslavement, we think of labor. Recent studies of enslaved women have shown that they labored no less than enslaved men. As activist-scholar Angela Davis put it, "As slaves, compulsory labor overshadowed every other aspect of women's existence. It would seem, therefore, that the starting point for any exploration of Black women's lives under slavery would be an appraisal of their role as workers."<sup>2</sup> Historian Jacqueline Jones discovered that "in the 1850s at least 90 percent of all female slaves over sixteen years of age labored more than 261 days per year, eleven to thirteen hours each day."<sup>3</sup>

But the labor that slavery compelled of enslaved women was distinct from the way others worked in two ways. First, unlike white women, they performed the same work as men, while also doing the domestic work typically reserved for women, free and enslaved. In the middle of the nineteenth century, seven-eighths of enslaved people, regardless of sex, were field workers.<sup>4</sup> In 1800, when the Santee Canal was built in North Carolina, enslaved women constituted 50 percent of the construction crew.<sup>5</sup> Deborah Gray White notes: "[I]t appears that [enslaved women] did a variety of heavy and dirty labor, work which was also done by men. In 1853, Frederick Olmsted saw South Carolina slaves of both sexes carting manure on their heads to the cotton fields where they spread it with their hands between the ridges in which cotton was planted. In Fayetteville, North Carolina, he noticed that women not only hoed and shoveled but they also cut down trees and drew wood."<sup>6</sup> Thus, enslaved women performed much of the same productive labor done by men who shared their race and status as slaves.<sup>7</sup> Jones notes that while the form of *extracting* their

labor differed from that of a free labor system, the content of what enslaved men did could be analogized at some level to the work that all men did on farms, including in New England and on smaller southern farms.<sup>8</sup> This was not so for enslaved women, whose labor differed markedly from that performed by white women.

In colonial American society, privileged white women rarely worked in the fields. Occasionally, white female indentured servants were forced to work in the fields as punishment for misdeeds, but this was not a common practice. In the eyes of colonial white Americans, only debased and degraded members of the female sex labored in the fields. And any white woman forced by circumstances to work in the fields was regarded as unworthy of the title "woman."<sup>9</sup> Historians caution us not to overstate the point: there was gender differentiation in enslaved men's and women's labor.<sup>10</sup> Still, enslaved women did not perform gender-segregated labor nearly to the same extent that white women did.<sup>11</sup>

Performance by enslaved women of conventionally male work distinguished their labor from that of black men, white women, and white men. Enslaved men, and free whites of both sexes, worked in accord with gender roles. In fact, when enslaved men were assigned "women's work," it was often for the specific purpose of humiliation or discipline.<sup>12</sup> And historians Nell Painter and Chris Tomlins reinforce the intriguing point that, for those white women who did work in the fields, the reality of their daily lives departed from the rhetoric of white femininity.<sup>13</sup> The existence of this disjuncture in the lives of many working white women stemmed from the cultural and racialized importance of rigid gender roles. "[W]hile white women's field labor challenged gender roles, African women's field labor *confirmed* racial roles. Enslaved African women's substitution for white women field workers (occurring far earlier than the late 17th/early 18th century 'transition to slavery' would suggest) then increased opportunities for white women's participation in household formation, stabilizing white culture with an approximation of 'good wife' domesticity."<sup>14</sup> Within a society that enforced strict adherence to sex roles, only enslaved women were compelled to labor consistently across gender boundaries. This aspect of their physical work is one of the distinguishing features of their experience.

But slavery's political economy forced enslaved women to labor in a second way that was not required of any other group. As the remainder of this essay shows, enslaved women, and only enslaved women, were forced to perform sexual and reproductive labor to satisfy the economic, political, and personal interests of white men of the elite class. Even more so than crossing gender boundaries in physical labor, this second distinguishing feature of their

experience under slavery foregrounds their gender and demonstrates how embedded their sexuality was in slavery's economic markets.

In an 1806 case, *Hudgins v. Wrights*, two enslaved women, Hannah and her unnamed daughter, sued for their freedom.<sup>15</sup> They alleged the wrongful enslavement of the woman who was, respectively, their mother and grandmother, Butterwood Nan. Let me consider in some detail the arguments of both Hannah and her daughter (the plaintiffs) and the man claiming to be their master (the defendant). Ultimately, Hannah and her daughter's freedom turned on how the law decided to characterize Butterwood Nan's reproduction.

The defendant, who claimed ownership of Hannah and her daughter, did so based on a fundamental rule of slavery: *partus sequitur ventrem*, Latin for "the child follows the mother." Under this law, adopted in every enslaving state, children inherited their status as enslaved or free from their mothers. This rule dictated that enslaved women gave birth to enslaved children and free women gave birth to free children. Accordingly, the slaveholder argued that because the ancestral matriarch, Butterwood Nan, had been enslaved, her daughter Hannah had inherited her enslaved status and subsequently passed it on to her own daughter, akin almost to tainted blood.

As early as 1662, Virginia adopted the rule that enslaved black women gave birth to enslaved children.<sup>16</sup> By the time of the founding of our democratic nation, all of the enslaving states dictated that enslaved black women gave birth to enslaved children, regardless of the father's status or race. As one judge said, "The father of a slave is unknown to our law."<sup>17</sup> This is a striking conclusion, given the general patriarchal and patrilineal nature of antebellum Anglo-American law. But, it is not a surprising one, given the direction of the political economy and wealth holding. Historians agree that "land and slaves became the two great vehicles through which slaveholders realized their ambitions of fortune. . . . The usefulness of land increased in proportion to the availability of black slaves."<sup>18</sup> Peter Kolchin documents the need for growing numbers of forced laborers as early as the colonial period: "Cultivating [tobacco and rice], however, required labor; in an environment where land was plentiful and people few, the amount of tobacco or rice one could grow depended on the number of laborers one could command."<sup>19</sup> Of course, the United States was not alone in basing its economy on black slave labor. It did distinguish itself, however, in how it met the ongoing need to replenish its workforce.

Other New World slave systems continued to kidnap Africans through the international slave trade to meet their labor needs. Varying combinations of higher ratios of men to women, low fertility rates, and extreme mortality rates meant that natural reproduction did not sustain the enslaved populations of Latin America and the Caribbean. The demography of these slave societies

stood in stark contrast to the United States slave system. One "unquestionable—indeed unique—mark of slavery in the Southern states was the natural increase of the slave population. In all other slave societies of the New World, the slave population failed to reproduce itself and was sustained or increased only by constant injections of new slaves from Africa."<sup>20</sup> This had striking demographic effects. "Jamaica, Cuba, and Haiti each imported many more slaves than the whole of the North American mainland. Yet, in stark contrast, by 1825 the Southern states of the United States had the largest slave population of any country in the New World, amounting to well over one-third of the total."<sup>21</sup> Thus, the rule that children's status followed their mothers' was a foundational one for our economy. It converted enslaved women's reproductive capacity into market capital to serve economic interests. In the United States, it was enslaved women who reproduced the workforce.

Thus, childbearing by enslaved women created economic value independent of the physical, productive labor they performed. Southern legal rules harnessed black reproductive capacity for market purposes, extracting from it the profits one might expect from a factory or livestock. According to historian James Oakes, "The distinguishing function of slaves in the South's market economy was to serve not only as a labor supply but also as capital assets."<sup>22</sup> Law and markets operated synthetically in converting black reproductive capacity into capital creation. Slaveholders used the same logic of reproductive profits to get courts to void sales of enslaved women who couldn't bear children.<sup>23</sup> Functionally, reproductive relations were market relations of incredible economic significance. In its centrality to the political economy, enslaved women's reproduction was arguably the most valuable labor performed in the entire economy.

Thus, when the slaveholder in *Hudgins* invoked the rule that a child inherits its status from its mother, he was drawing on a foundational cultural assumption. Slaveholders owned all of the offspring of women they enslaved. The legal rule had immense economic and political significance for antebellum culture. Not only did slaves constitute the overwhelming proportion of the southern labor force, but this rule meant that it was a workforce that reproduced itself. Enslaved women gave birth to enslaved children and did so in a system that set considerable economic importance on this fact.

One of the nation's earliest and most prominent leaders, President Thomas Jefferson, personally proclaimed the unique, dual value of an enslaved workforce. Jefferson, who enslaved more than 144 people, said, "I consider a woman who brings a child every two years as more profitable than the best man on the farm; what she produces is an addition to capital."<sup>24</sup> The value of short-term productive labor, such as that provided by the male slaves, or by the

female slaves when viewed as mere field hands, "disappeared in mere consumption."<sup>25</sup> In keeping with this, Jefferson instructed his plantation manager to monitor the overseers and ensure that they were encouraging female slave reproduction, the source of his wealth. Repeated references to enslaved females' fertility in advertisements and negotiations for sales indicate that Jefferson was not alone in his sentiments.<sup>26</sup>

The secretary of the treasury and president of Georgia Cotton Planters Association estimated that a slaveholder's workforce would double every fifteen years through the process of normal reproduction.<sup>27</sup> Slavery scholar Deborah Gray White estimates that 5 to 6 percent of profit came from the increase of slaves due to reproduction.<sup>28</sup> Indeed, many members of the planting aristocracy owed their success to initial large gifts or inheritances of enslaved persons from their families.<sup>29</sup> Gray White notes, "Many farmers made their first investment not in a male slave, but in a young childbearing woman."<sup>30</sup> As one judge stated: "With us, nothing is so usual as to advance children by gifts of slaves. They stand with us, instead of money."<sup>31</sup> Historian Cheryl Ann Cody found that one of the men she studied "acquired slaves, once his estate was well established in the 1790s, primarily to give his sons their economic start rather than to expand his own labor force."<sup>32</sup>

Finally, southern judges drew analogies to rules governing livestock. Owners of female animals also got legal possession of their offspring. Should there be any doubt that southern whites grasped this analogy, one South Carolina judge declared that "the young of slaves . . . stand on the same footing as other animals."<sup>33</sup> Meanwhile a famous observer of the American South, Frederick Olmsted, concluded from his travels that "a slave woman is commonly esteemed least for her working qualities, most for those qualities which give value to a brood mare."<sup>34</sup>

The date of the case, 1806, is significant. The United States Constitution provided that no enslaved people could be imported (legally) from abroad after 1808.<sup>35</sup> Yet the expanding economies of the Deep South required larger and larger workforces. In 1806, Old South slave states, such as Virginia, were poised to take over the (legal) international slave trade with a domestic trade in slaves.<sup>36</sup> With enormous profits from reproduction anticipated, rules determining status became more crucial than ever.<sup>37</sup>

Therefore, the slaveholder in *Hudgins* drew upon the strong cultural expectation that personal economic profit would and should stem from an enslaved woman's childbearing. His lawyers cast his case as a question of "rights of *property*, those rules which have been established, are not to be departed from, because *freedom* is in question."<sup>38</sup> In other words, white economic rights trumped black liberty rights.<sup>39</sup>



Against this American backdrop of property rights in people, how could Hannah and her daughter have possibly responded? One would assume that the force of this law and custom would have dictated the outcome of the case: the law would side with the slaveholder, declaring him to be the legal owner of Hannah and her daughter. But, as central as these property rights were in the slaveholding South, they were countered by another, equally fundamental tenet of slavery, the rules of race. Hannah and her daughter argued that they could not be enslaved because, by law, they were *legally not black*.

Under Virginia law, only people of African descent could be enslaved.<sup>40</sup> Proving membership in the Native American or white races constituted a legal defense to slavery. Southern law dictated that blacks were presumptively slaves, while whites and Native Americans were presumptively free.<sup>41</sup> Judge Roane stated the law in *Hudgins*: "In the case of a person visibly appearing to be a negro, the presumption is, in this country, that he is a slave, and it is incumbent on him to make out his right to freedom: but in the case of a person visibly appearing to be a white man, or an Indian, the presumption is that he is free, and it is necessary for his adversary to shew that he is a slave."<sup>42</sup> Accordingly, Hannah and her daughter claimed that Butterwood Nan was Native American and therefore illegally enslaved. If Butterwood Nan had been wrongfully enslaved, then as a free woman she could not have transmitted any enslaved status to her daughter, Hannah, who, in turn, could not transmit it to her own daughter. In a fascinating instance of valuing white racial privilege over white wealth, the laws of race trumped the law that enslaved the children of female slaves. From within this legal box of race and status, Hannah and her daughter asserted the only legal argument that could win their freedom, their own nonblackness.

The plaintiffs' argument rested on gender as well as racial rules of slavery. Mother and daughter claimed their freedom through Butterwood Nan. To counter this, the slaveholder argued that Nan was, in fact, black and that it was her sexual partner who was Native American. Therefore, the nonblack (and legally free) ancestor was male. The establishment of nonblack ancestry had to be done through the maternal line to a female ancestor to be grounds for a claim of wrongful enslavement. Strikingly, within this deeply patriarchal culture, neither the father's race nor his status was relevant to the legal inquiry.<sup>43</sup> Free black men who took up with enslaved women fathered children who were enslaved by law. Moreover, showing white ancestry through one's father's side, indeed, showing that one's father was white, was no defense to enslavement. As noted before, by American law, the child of an enslaved black mother had no father. An enslaved woman who was black could not alter the status of her children through selecting either a free black or a white sexual partner.

Even more brutally, because the race of the father did not alter the status of an enslaved black woman's child, tens of thousands of white men were able to sexually abuse and coerce individual enslaved women without the risk that the women would bear children whose legal status would be affected in any way by their own. Such a child would not be construed by law as white or free, but as black and the father's slave.

Within what we now understand to be an absurd system, the assertions of both the slaveholder and the women he claimed as his property raise fascinating questions. Was Butterwood Nan exempted from the rule by virtue of being Native American? Had she lived her entire life held illegally as a slave? Were Hannah and her daughter free or enslaved? The arguments of both sides illustrate the centrality of enslaved women's reproduction to the political economy and culture of American slavery.

Let me finally reveal the outcome of the case. Judge Roane decided: "No testimony can be more complete and conclusive than that which exists in this cause to shew that *Hannah* had every appearance of an Indian. That *appearance* . . . will suffice for the claim of her posterity, unless it is opposed by counter-evidence shewing that some *female* ancestor [*sic*] of her's [*sic*] was a *negro* slave, or that *she* or some female ancestor, was *lawfully* an Indian slave."<sup>44</sup> The court never described Butterwood Nan's appearance. Most likely she was deceased or had been sold out of the area and away from her family. But because Hannah and her daughter did not look black, they were presumptively free. The burden was on the slaveholder to prove that Butterwood Nan had been legally enslaved. He failed to do so. Hannah and her daughter went free.

Hannah's successful efforts to seek a racial exemption from slavery's status classifications left intact legal assumptions that relegated the overwhelming majority of blacks to enslavement. So, is this a case to be celebrated? Condemned? How do we evaluate the efforts of Hannah and her daughter to escape from the grip of *partus sequitur ventrem*? Their lawyer started his argument before the court, "This is not a common case of mere *blacks* suing for their freedom."<sup>45</sup> Looking backwards from the twenty-first century, should we blame Hannah for seeking her family's freedom with such arguments? What other argument could she make within a racial logic that drew a legal equivalent between blackness and enslavement? What else could Hannah argue, except that she was not black?

Earlier, this essay identified black women's deployment across the conventional sexual division of labor as one of the things that distinguished their lives from those of other groups. The physical labor of enslaved women differed from white women's work both absolutely and relative to the work done by

enslaved men. The case of Hannah and her daughter exposes a second, more brutal way that the economic roles that slavery assigned enslaved women distinguished their labor from other groups. White men and black men (free and enslaved) could father children either free or enslaved, and white women could give birth only to free children.<sup>46</sup> Laws of race and gender merged with *partus sequitur ventrem*’s status classifications to condemn the wombs of enslaved black women. This is a point about race and gender: only black women could give birth to enslaved children, and every black woman who was enslaved and gave birth did so to an enslaved child. In other words, the class that reproduced the workforce was limited to black women.<sup>47</sup> It is this terrorizing aspect of enslaved women’s lives that also distinguished their role in the political economy from that of black men, white women, and white men. At labor in the fields and in labor in the birthing bed—the enslaved woman was both a mode of production and a mode of reproduction.

I turn now from reproductive relations to sexual relations. Like reproduction, from a contemporary perspective, many of us tend to think of sexual relationships as intimate, noneconomic relationships. But, again like reproduction, enslaved women’s sexuality played an essential role in the antebellum political economy. If the rule of *partus sequitur ventrem* reflected the southern investment in enslaved women’s reproductive capacity, then the law of rape reveals the interests, economic and political, in their sexuality.

### **Pleasure, Profit, and Punishment: Sexual Exploitation of Enslaved Women**

In Mississippi in 1859, an enslaved man was accused of raping an unnamed enslaved girl, under ten years old.<sup>48</sup> Convicted at trial, the defendant, named only as George, appealed to the Mississippi Supreme Court. The lawyer representing him argued: “The crime of rape does not exist in this State between African slaves. Our laws recognize no marital rights as between slaves; their sexual intercourse is left to be regulated by their owners. The regulations of law, as to the white race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse is promiscuous, and the violation of a female slave by a male slave would be a mere assault and battery.”<sup>49</sup> Influential legal commentator Thomas Cobb agreed: “The violation of the person of a female slave, carries with it no other punishment than the damages which the master may recover for the trespass upon his property.”<sup>50</sup> This meant that an enslaved woman’s master could prosecute her rape as a crime against his property, but the state would not prosecute her rape as a crime against her person. The court agreed and overturned George’s conviction.

Nearly every southern court that ruled on rape and enslaved women followed this ruling.<sup>51</sup> As Carolyn Pitt Jones, a student, succinctly summarized it, within slavery's sexual subtext, the female slave was an extralegal creature who could not use the law to protect herself.<sup>52</sup>

It would be folly to overgeneralize about a society's sexual norms based solely on its laws of rape. But criminal laws of rape define the boundaries of sexual access to bodies, especially women's and children's.<sup>53</sup> And the doctrine in *George v. State* shows how white institutions, including law, created and legitimized black women's sexual vulnerability. The refusal of law to protect enslaved women from rape institutionalized access to their bodies. Their exclusion from rape doctrine enabled their sexuality to be seized for multiple purposes.

First, slaveholders could force the relations they had with enslaved women as their laborers beyond the economic arena and into the sexual one without significant social disruption. Not only productive labor and reproduction could be demanded of enslaved women, but sexual gratification as well. The refusal of law to recognize sexual crimes against enslaved women enabled masters to compel sex.

"Since the white male could rape the black female who did not willingly respond to his demands, passive submission on the part of the enslaved black women cannot be seen as complicity. Those women who did not willingly respond to the sexual overture of masters and overseers were brutalized and punished. Any show of resistance on the part of enslaved females increased the determination of white owners eager to demonstrate their power."<sup>54</sup> Sexual relations were part and parcel of what women were expected to do as members of an enslaved workforce.

Under this theory of law, and on a brutal daily basis, enslaved women's sexuality was under the direct control of men in the slaveholding class. But it is important to note that sexual abuse of enslaved women was not limited to white men in slaveholding families. This group comprised only a small percentage of whites in the South. Other men, poorer, nonslaveholding whites and black men, took advantage of enslaved women's sexual vulnerability. Overseers frequently sexually assaulted or coerced enslaved women. In addition, a slaveholder could compel an enslaved woman to have sexual relations with his friends or to "initiate" a son or younger nephew, much as he might hire her out for her productive labor. In the alternative, he might by his silence authorize sexual access for men related to him by blood or economics. In short, law granted masters not only economic and political authority, but sexual authority as well.

Sadly, there is a need for intraracial as well as interracial critiques of sexual abuse. Recall that the case of *George v. State* involved the rape of a ten-year-

old enslaved girl by an enslaved man. This may be one of the reasons the case was ever prosecuted. While certainly many black men of this era respected black women's sexual integrity and rights over their own bodies even in the absence of legal dictates to do so, others did not. Black women's sexual vulnerability was created and legitimized by white institutions of law and social power, but black men as well as white took advantage of it. Intra-racial sexual abuse of black women surely has a different social meaning and significance than their abuse by white men. But that should not preclude our investigating what that different meaning is, and why some black men and not others took advantage of their sisters.<sup>55</sup>

Second, some white slaveholders embraced the sexual exploitation of enslaved women to defend slavery against abolitionists who charged sexual abuse as one of the evils of slavery. According to Chancellor Harper, a judge: "And can it be doubted that this purity [of the white woman] is caused by, and is a compensation for, the evils resulting from the existence of an enslaved class of more relaxed morals? . . . I do not hesitate to say that the intercourse which takes place with enslaved females is less depraving in its effects than when it is carried on with females of their own caste . . . [The white man] feels that he is connecting him with one of an inferior and servile caste, and there is something of degradation in the act. The intercourse is generally casual; he does not make her habitually an associate, and is less likely to receive any taint from her habits and manners."<sup>56</sup> Southern white men openly justified their exploitation of enslaved women as resulting in the better treatment of white women. The same sexual norms that protected (white) female chastity with vigilance and brutality (sometimes directed at the women themselves) construed enslaved women as perpetual "outlets."<sup>57</sup> Elite white women, represented as delicate and often asexual, found their own sexual relations closely guarded and monitored by these same men. "Whereas the lady was deprived of her sexuality, the black woman was defined by hers."<sup>58</sup> Sexual access to enslaved women was central in the creation and maintenance of this repressive ideology of white femininity. Black enslaved women were therefore excluded from, yet essential to, the gender ideology of white masculinity and femininity.

Third, sexual abuse of enslaved women must be understood as an exercise of political power as well as sexual license. Contemporary feminists have demonstrated that rape entails power relations as much as sexual relations. Men rape women not only for personal pleasure, but to discipline women into conforming to certain behaviors: to achieve women's submissiveness in personal relationships or adherence to conservative dress codes or to dictate physical activity, i.e., where and when women feel safe. Slavery offers a primary and stark example of the power relations embedded in forced sexual relations.

An enslaved woman might be sexually punished for any number of perceived or actual offenses. Forced sex reminded an enslaved woman of her powerlessness in the hands of her master or his agent, the overseer. It functioned to humiliate her and demonstrate that the legal system had given control over her body to the man who enslaved her. Angela Y. Davis offers the following characterization: "Rape was a weapon of domination, a weapon of repression, whose covert goal was to extinguish slave women's will to resist, and in the process, to demoralize their men."<sup>59</sup> Rape under slavery was an extremely powerful tool of disciplining women workers.<sup>60</sup>

In addition, rape helped to maintain racial hierarchy by reminding black women and men of black men's subordinate status to white men. As noted, a hallmark of southern antebellum culture was the protection of female chastity by male family members. An enslaved man who sought to do the same risked his life and that of the woman. "Clearly the master hoped that once the black man was struck by his manifest inability to rescue his women from sexual assaults of the master, he would begin to experience deep-seated doubts about his ability to resist at all."<sup>61</sup> Rape of enslaved women demoralized the entire black community. Law thus endorsed the use of sexual power as a mechanism of labor, racial, and gender control.

Finally, in addition to serving antebellum interests of pleasure and politics, enslaved women's sexuality was a source of economic profits for those inclined to reap them. Historians have identified an active market in enslaved women for prostitution, called the "Fancy Trade." "Slaves selected for their grace, beauty and light skins were shipped to the 'fancy-girl markets' of New Orleans and other cities. At a time when prime field hands sold for \$1,600, a 'fancy girl' brought \$5,000. Some ended up in bordellos, but the majority became the mistresses of wealthy planters, gamblers, or businessmen."<sup>62</sup> Sex might be extracted from any enslaved woman or girl. However, an enslaved woman sold primarily for sex commanded a higher price than other enslaved women.<sup>63</sup> The market assigned economic value directly related to sexual attractiveness. The seller reaped as extra profit the market's valuation of their sexuality, whether in skin color, hair, or whatever the buyer happened to personally value as erotic. As Brenda Stevenson incisively puts it, "What, after all, could be more valuable than a woman of 'white' complexion who could be bought as one's private 'sex slave.?"<sup>64</sup> To accommodate these buyers and ensure that they were getting what they expected, fancy-girl traders might allow the buyer to "inspect" his proposed purchase alone. At this juncture, sexual abuse and economic profits brutally collided.

The appearance of enslaved women as explicit sexual commodities in markets illuminates yet another way in which the South profited from enslaved

women’s sexuality. The fancy-girl trade offers perhaps the most vivid image of how enslaved women’s sexual relations were integrally tied to market relations in the antebellum political economy. Many historians now acknowledge that white men used enslaved women for sexual gratification. But with the above analysis I have tried to point out the nuances of their sexual labor. At the southern antebellum juncture of sex and markets, enslaved women were sexually exploited for a variety of purposes: pleasure, politics, punishment, as well as profit. In addition, as I have described earlier, slavery replenished its workforce through black women. This convergence of sexual and reproductive relations with market and political relations is what leads me to name slavery a sexual political economy.

### A Sexual Economy

A political economy is characterized in some part by how wealth is defined, who owns it, and who creates it. In their descriptions of expected profits, ways to maximize yield, and transmissions of wealth between generations, elite members of antebellum society characterized enslaved women’s reproductive capacity in the language of capital assets. Judges, cabinet members, and at least one president declared the economic value of enslaved women’s child-bearing capacity. This reproduction was integral to the plantation economy, which required a steady flow of cheap, largely unskilled labor. Hence black reproduction yielded economic profits, creating value for the slaveholding class. Enslaved black women gave birth to white wealth.

A political economy is also characterized by the interests it prioritizes and how those are served. White men established enslaved women as sexual outlets, forcing them to perform sexual labor. In the process, their sexuality could be exploited to reinforce gender conventions among elite whites and to defend slavery against northern charges. In addition, enslaved women could be sexually terrorized in order to coerce economic work or quell political resistance. Their exploitation could also be used to discipline enslaved men. Finally, as the fancy-girl trade illustrates, economic profits were to be made in slavery’s sexual markets. Pleasure, punishment, politics, and profit: once laws of rape authorized elite white male legal and economic control over enslaved women’s sexuality, their sexuality could be manipulated to serve any number of interests.

Taken together, *Hudgins v. Wrights* and *George v. State* show how law extracted and markets expected dual labor from enslaved women. Like enslaved men, they were coerced into performing grueling physical productive labor. But they were also compelled to do sexual and reproductive labor required of no other group. This suggests the need for attention to gender to

fully understand the economics and effects of U.S. enslavement. Economists of slavery have characterized the political economy of slavery as a system in which blacks transferred millions of dollars of uncompensated labor to white slaveholders. “[Slavery] directly enriched those who bought, sold, transported, financed, bred, leased, and managed slaves in agriculture. But it was also important in other sectors, including mining, transportation, manufacturing, and public works—roads, dams, canals, levees, railroads, clearing land—and so on.”<sup>65</sup> Wealth not only was transferred from blacks to whites, as scholars have noted, but, in addition, was transferred from black women to white men. Hence, the economics of slavery were gendered as well as racialized.

In addition, the economic impact of its sexual exploitation distinguishes the antebellum South from other enslaving systems. Other slave societies entailed sexual and reproductive exploitation.<sup>66</sup> Indeed, some cultures enslaved primarily women (and children). In this sense, they were more gendered than U.S. slavery with its relatively equal sex ratios. But, what I have tried to show in this essay is the extent to which enslaved women’s sexual and reproductive labor was an integral and critical part of the economic and political viability of the South. One measure of slavery is how central or peripheral it is to the immediate economic functioning of the society. People might be enslaved to serve primarily as servants, political officials, soldiers, wives, or concubines.<sup>67</sup> Enslavement in the United States stands in stark contrast to all of these. David Brion Davis elaborates the relationship of slavery to the U.S. market economy: “No slave system in history was quite like that of the West Indies and the Southern states of America. Marked off from the free population by racial and cultural differences, for the most part deprived of the hope of manumission, the Negro slave also found his life regimented in a highly organized system that was geared to maximize production for a market economy.”<sup>68</sup> Enslaved women both labored in and reproduced this workforce. I have also shown how their sexual exploitation was inextricably tied not only to economic viability, but also to maintaining and defending the social order, ranging from pleasure to punishment to politics. In sum, slavery’s legal and cultural institutions systematically made enslaved women’s reproductive and sexual capacity available to serve any number of political and economic interests of elite white men. For all these reasons, I name the antebellum South a sexual political economy. Rules of race, rape, gender, and *partus sequitur ventrem* formed the legal core of slavery’s sexual economy.

What, then, do we gain from viewing slavery as a sexual economy? I would suggest three things. One purpose in labeling the antebellum South a sexual economy is to draw attention to the extent to which slavery drew distinctions on the basis of sex as well as race. It was a gendered and sexualized as well as a



racial institution. Or, in the language of subordination, a language that may more aptly characterize slavery's brutal hierarchies, American slavery, while obviously racially supremacist, was also fundamentally a system of gender supremacy. Designating it as a sexual economy draws attention to its axes of male power as well as racial power, thereby shedding light on the lives and exploitation of both enslaved women and enslaved men.

Viewing slavery through the sexual economy lens also suggests insights about the very nature of gender itself. "Masculine" and "feminine" mean different things in different races, classes, and ethnicities. Sexual roles and norms evolve over time and across cultural boundaries. Enslaved women offer an early, dramatic example of the political, cultural, economic, and violent forces that can shape gender. Angela Davis offers an excellent description of the manipulation of enslaved women's gender: "Expediency governed the slaveholders' posture toward female slaves: when it was profitable to exploit them as if they were men, they were regarded, in effect, as genderless, but when they could be exploited, punished and repressed in ways suited only for women, they were locked into their exclusively female roles."<sup>69</sup> Jacqueline Jones concurs: "The master took a more crudely opportunistic approach toward the labor of slave women, revealing the interaction (and at times conflict) between notions of women qua 'equal' black workers and women qua unequal reproducers."<sup>70</sup> Against the feminine delicacy and chastity ascribed to most white women in this society, enslaved women were clearly gendered differently. They were gendered as masculine when performing conventionally male work or suffering the same brutal physical discipline as enslaved men. But an enslaved woman might have her sexuality or childbearing capacity seized for pleasure, profit, or punishment at any moment, suffering rape or giving birth to white wealth. She was male when convenient and horrifically female when needed. In this sense, she was "gendered to the ground," as legal feminist theorist Catharine MacKinnon would say.<sup>71</sup> Comprehending gender as brutally malleable may uncover deeply buried historical facts.

Finally, seeing slavery in this way challenges the way we divide the intimate from the economic. For enslaved women, sexual and reproductive relations were economic and market relations.<sup>72</sup> While their family lives and personal relationships offered some solace from the daily brutality of slavery, white men could invade this sphere at will, abusing women sexually or reproductively. Excellent work by historians Darlene Clark Hine and Nell Painter invites our attention to the ongoing sociological and psychological effects of slavery's sexual economy. Clark Hine makes the powerful argument that all of these manipulations and abuses of sexuality were primary factors in shaping cultures of resistance in southern black women. Dissemblance, flight northward, and,

most tragically, violence targeted at their own bodies were tactics black women employed.<sup>73</sup> And Painter argues that because sexual abuse of enslaved women was woven into the fabric of southern households and families, its cultural, sociological, and psychological effects reached far beyond enslaved females or even the larger enslaved and black communities.<sup>74</sup>

In the black community too often we still view sexuality as something to be kept private and not spoken about. Black women's magazines are filled with stories of the trauma and loss of self-esteem this repression causes. Perhaps understanding black women's sexual history as something under public control for so long can help us to see the inherently political nature of our sexuality.<sup>75</sup> For black women to reclaim our sexuality, our intimate selves, from all of the people and forces who would seek to expropriate it, regulate it, define it, and confine it, we must first become comfortable speaking about it. The language of the sexual economy may help in this process.

To summarize, enslaved black women shared the world of productive labor with white men, black men, and white women but also inhabited a separate world of compelled sexual and reproductive labor. By understanding American slavery as a sexual economy in which black women's reproduction and sexuality were appropriated for any number of white economic and political interests, we can see more clearly how slavery was a deeply gendered and sexualized institution in which there was a constant interplay between black sexuality and white economic profits. Such an understanding collapses the distinctions we draw between sex and work, families and markets, also showing how this distinction was itself largely under male control. It also enables us to see more clearly the institutions, including law, that slavery erected, institutions that systematically made enslaved women's reproductive and sexual capacity available for sale and consumption.

### **Afterword: Reclaiming Ourselves**

Grandma Baby said people look down on her because she had eight children with different men. Colored people and white people both look down on her for that. Slaves not supposed to have pleasurable feelings on their own; their bodies not supposed to be like that, but they have to have as many children as they can to please whoever owned them. Still, they were not supposed to have pleasure deep down. She said for me not to listen to that. That I should always listen to my body and love it.

—Toni Morrison, *Beloved*

Beyond the brutal exploitation and abuse of the slave economy, black women have reclaimed productive work as something that can be fulfilling and

affirming. But much of the labor that slavery extracted from women in the enslaved workforce was sexual and reproductive. Toni Morrison's Pulitzer Prize-winning novel, *Beloved*, is a story about a black woman who is thoroughly brutalized and haunted by the sexual economy of slavery described above. Morrison poetically renders her character's exhausting struggle to reclaim herself, and her family, from the terror of her past.

Have we, today, fully reclaimed our own intimate lives from that horror? What are the ongoing effects of slavery's systemic expropriation of black women's reproduction and sexuality for market and political purposes? How does the sexual economy of slavery continue to affect the policing of black women's sexuality? From current national debates about welfare reform to local debates within the black community about sexual aggression by black men against black women, our intimate lives cannot be tidily defined as and confined to a private space. This essay has used cases and legal doctrine that document and record the real lives and experiences of black women who were enslaved, not only for academic insight, but to enable us to combat the effects of sexual economies, past and present.

#### NOTES

The title of this essay comes from Minnie Folkes, a former Virginia slave. Her full statement was, "Don't let nobody bother yo' principle, 'cause dat wuz all yo' had." John Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York and Oxford: Oxford University Press, 1972), 163

1. On the specificity of slavery, see Peter J. Parish, *Slavery: History and Historians* (New York: Harper and Row, 1989), 3-6, 97-112.

2. Angela Y. Davis, *Women, Race, and Class* (New York: Random House, 1983), 5. Leslie Schwalm's study of enslaved women on South Carolina rice plantations also reinforces this point. Leslie A. Schwalm, *A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina* (Urbana: University of Illinois Press, 1997), 19-46.

3. Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (New York: Basic Books, 1985), 18.

4. Davis, *Women, Race, and Class*, 5.

5. *Ibid.*, 10.

6. 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, N.C.: Duke University Press, 1994), 56, 59.

7. See also Brenda E. Stevenson, *Life in Black and White: Family and Community in the Slave South* (New York: Oxford University Press, 1996), 159, 187-192; Schwalm, *A Hard Fight for We*, 19-23; Carole Shammas, "Black Women's Work and the Evolution of Plantation Society in Virginia," *Labor History* 5 (1985): 5-6.

8. Jones, *Labor of Love, Labor of Sorrow*, 12. Brenda Stevenson notes that this was not the case in many African tribes. Stevenson, *Life in Black and White*, 171 (under sexual division of labor in many African tribes, men did not perform agricultural labor, which was considered women's work).

9. bell hooks, *Ain't I a Woman: Black Women and Feminism* (Boston: South End Press, 1981), 22.

10. For instance, Deborah Gray White warns: "[I]t would be a mistake to say that there was no differentiation of field labor on southern farms and plantations. . . . Yet the exceptions to the rule were so numerous as to make a mockery of it." Gray White, "Female Slaves," 59–60 (emphasis added). In addition, "Pregnant women, and sometimes women breastfeeding infants, were usually given less physically demanding work." *Ibid.*, 60 (footnote omitted). See also, Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1998), 56, 135, 168 (describing the evolution of sexual division of labor); Stevenson, *Life in Black and White*, 192–193.

11. See hooks, *Ain't I a Woman*, 22–23. Ira Berlin notes, "Only rarely—for the very young and the very old—did household labor occupy slave women on a full-time basis." See also Berlin, *Many Thousands Gone*, 168, 270–271, 311–312; Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1972), 495; Schwalm, *A Hard Fight for We*, 19–28.

12. See, e.g., Peter Kolchin, *American Slavery: 1619–1877* (New York: Hill and Wang, 1993), 121–122 (describing one slaveholder who used this tactic).

13. Nell Irvin Painter, "Soul Murder and Slavery: Toward a Fully Loaded Cost Accounting," in *U.S. History as Women's History: Feminist Essays*, ed. Linda Kerber et al. (Chapel Hill: University of North Carolina Press, 1995), 125, 142; Chris Tomlins, "Why Wait for Industrialism? Work, Legal Culture, and the Example of Early America," *Labor History* 40 (February 1999): 5.

14. See Tomlins, "Why Wait for Industrialism?" 32.

15. *Hudgins v Wrights*, 11 Va. (1 Hen. and M.) 134 (1806).

16. Act XII, 2 Laws of Virginia 170 (Hening 1823) (enacted 1662). For further discussion of this rule in Virginia, see Karen A. Getman, "Note, Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System," *Harvard Women's Law Journal* 7 (1984): 115, 130–132; A. Leon Higginbotham Jr. and Barbara K. Kopytoff, "Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia," *Georgetown Law Journal* 77 (1989): 1967, 1970–1975; hooks, *Ain't I a Woman*, 39–44; Wilbert E. Moore, "Slave Law and the Social Structure," *Journal of Negro History* 26 (1941): 171, 184–191 (intriguing early discussion about definitions of enslavement).

17. *Frazier v Spear*, 5 Ky. (2 Bibb) 385, 386 (1811).

18. James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: Knopf, 1982), 73.

19. Kolchin, *American Slavery*, 6–7.

20. Parish, *Slavery*, 23. "[T]he North American mainland was one of the smallest importers of slaves from Africa, and yet became the home of the largest slave population in the Western hemisphere." *Ibid.*, 112, see also 16. See also Albert J. Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South* (New York: Oxford University Press, 1978), 91. Slavery in the United States was not static, however, and at times failed to reproduce by natural increase. See, e.g., Berlin, *Many Thousands Gone*, 149 (through most of the eighteenth century, the slave population in the low country did not naturally reproduce); Parish, *Slavery*, 16 ("the first generation of slaves did not even reproduce their own population, let alone produce a natural increase").

21. Parish, *Slavery*, 12 (footnote omitted).

22. Oakes, *The Ruling Race*, 26.

23. Margaret Burnham discusses such cases in her excellent article on the legal treatment of enslaved families. Margaret A. Burnham, "An Impossible Marriage: Slave Law and Family Law," *Law and Inequality* (1987): 187, 198–199.

24. Letter from Thomas Jefferson to Joel Yancy (17 January 1819), reprinted in *Thomas Jefferson’s Farm Book: With Commentary and Relevant Extracts from Other Writings*, ed. Edwin Morris Betts (Princeton: American Philosophical Society, Princeton University Press, 1953), 42, 43.

25. *Ibid.*

26. Stevenson, *Life in Black and White*, 245.

27. Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750–1925* (New York: Pantheon Books, 1976), 76.

28. Deborah Gray White, *Ar’n’t I a Woman? Female Slaves in the Plantation South* (New York: Norton, 1985), 177 n. 22. She describes the economics in excellent detail. *Ibid.*, 67–70.

29. In 1818, one southerner wrote: “For a young man, just commencing life the best stock, in which he can invest Capital, is, I think, negro Stock . . . ; negroes will yield a much larger income than any Bank dividend.” Oakes, *The Ruling Race*, 73. Quoted in Leslie Howard Owens, *This Species of Property: Slave Life and Culture in the Old South* (New York: Oxford University Press, 1976), 16. Similarly, an uncle advised his young nephew: “Get as many young negro women as you can. Get as many cows as you can. . . . It is the greatest country for an increase that I have ever saw in my life. I have been hear [sic] six years and I have had fifteen negro children born and last year three more young negro women commenced breeding which added seven born last year and five of them is living and doing well.” Oakes, *The Ruling Race*, 74 (quoting Alva Fitzpatrick to Phillips Fitzpatrick, Aug. 20, 1849, Fitzpatrick Papers, University of North Carolina, Chapel Hill, N.C.).

30. Gray White, *Ar’n’t I a Woman?*, 67–70.

31. *Jones v Mason*, 22 Va. (1 Rand.) 577, n. 1 (Aug. 1827) (Carr, J., concurring).

32. Cheryl Ann Cody, “Naming, Kinship, and Estate Dispersal: Notes on Slave Family Life on a South Carolina Plantation, 1786 to 1833,” in *Black Women in United States History: From Colonial Times through the Present*, ed. Darlene Clark Hine (New York: Carlson Publishing, 1990), 242.

33. *M’Vaughters v Elder*, 4 S.C.L. (2 Brev.) 307, 314 (1809). See also Parish, *Slavery*, 80 (describing a South Carolina planter who registered the births of enslaved children and of colts, naming the horses’ sires but not the slaves’ fathers).

34. Gray White, *Ar’n’t I a Woman?* 177 n. 22 (quoting *DeBow’s Review* 30 [1857]: 74, which is quoting Frederick Olmsted, *The Cotton Kingdom*, ed. David Freeman Hawke [Indianapolis: Bobbs-Merrill, 1971], 12, 72.)

35. U.S. Constitution, art. I, § 9, cl. 1.

36. See, e.g., August Meier and Elliott Rudwick, *From Plantation to Ghetto*, 3rd ed. (New York: Hill and Wang, 1976), 40–41 (describing the role of the United States in ongoing illegal trade). On the slave trade generally, see Philip D. Curtin, *The Atlantic Slave Trade: A Census* (Madison: University of Wisconsin Press, 1969); Herbert S. Klein, *The Middle Passage: Comparative Studies in the Atlantic Slave Trade* (Princeton, N.J.: Princeton University Press, 1978); Stanley L. Engerman and Joseph E. Inikori, eds., *The Atlantic Slave Trade: Effects on Economies, Societies, and Peoples in Africa, the Americas, and Europe* (Durham, N.C.: Duke University Press, 1992). On the domestic slave trade see, e.g., Stevenson, *Life in Black and White*, 175–176; Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, Mass.: Harvard University Press, 1999); Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989); see also Parish, *Slavery*, 56–57 (summarizing the debate over extent and effects of domestic slave trade).

37. The scope, design, and profitability of breeding enslaved females remains deeply contested among historians. See Parish, *Slavery*, 63 n. 33; Richard Sutch, “The Breeding of Slaves for Sale and the Westward Expansion of Slavery, 1850–1860,” in *Race and Slavery in the*

*Western Hemisphere: Quantitative Studies*, ed. Stanley L. Engerman and Eugene D. Genovese (Princeton, N.J.: Princeton University Press, 1975); Richard G. Lowe and Randolph B. Campbell, "The Slave Breeding Hypothesis: A Demographic Comment on the 'Buying and Selling' States," *Journal of Southern History* 42 (1976): 401–412.

38. *Hudgins v Wrights*, 11 Va. (1 Hen. and M.), 136 (italics in original).

39. The *Hudgins* ruling suggests a different outcome when the contest is between white economic versus white liberty interests. See *Hudgins v Wrights*, 11 Va. (1 Hen. and M.), 140–141. For further discussion of this point, see Adrienne D. Davis, "Identity Notes Part One: Playing in the Light," *American University Law Review* 45 (1996): 695, 702–707.

40. Native Americans could be enslaved in Virginia only during a certain period of time, and whites could not be enslaved at all.

41. In an earlier essay, I joined other commentators in arguing that the decision in the case exemplifies the role of law in shaping the existence and meaning of racial categories, such as black, white, and Native American, in the U.S. law that protected those who were not black from being enslaved. One of the judges, for instance, said, "The distinguishing characteristics of the different species of the human race are so visibly marked, that those species may be readily discriminated from each other by mere inspection only." *Hudgins v Wrights*, 11 Va. (1 Hen. and M.), 141. The essay calls this assignment of race based on visual appearance a "scopic" determination of race, which it contrasts with assignments based on ancestry or genealogy. While many slave laws protected white economic interests, I argue that *Hudgins's* scopic rule of racial classification identified a second legally protected interest, the white liberty interest. Not surprisingly, under such a rule, the definition of "black" itself became a matter of legal contestation. See, e.g., Davis, "Identity Notes Part One," 702–711; see also Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," *Yale Law Journal* 108 (1998): 109; Higginbotham and Kopytoff, "Racial Purity and Interracial Sex," 1975–1988.

42. *Hudgins v Wrights*, 11 Va. (1 Hen. and M.), 141 (italics in original).

43. See *Frazier v Spear*, 5 Ky. (2 Bibb) 385, 386 (1811).

44. *Hudgins v Wrights*, 11 Va. (1 Hen. and M.), 142 (italics in original).

45. *Hudgins v Wrights*, 11 Va. (1 Hen. and M.), 135 (italics in original).

46. At various points, white women, too, suffered regulations not unlike those suffered by enslaved black women. At times, white women giving birth to children deemed to be black could be sold into indentured servitude, and their children could be indentured. If an indentured white woman had a child, it could extend the period of her own indenture (the child would be indentured until an adult, as well). In one extreme iteration, in 1664, Maryland enslaved white women marrying enslaved men for the lifetime of the husband, enslaving also any children. This law was repealed due to fear of its abuse by white masters seeking to extend white female servants' period of service. See, e.g., James Hugo Johnston, *Race Relations in Virginia and Miscegenation in the South: 1776–1860* (Amherst: University of Massachusetts Press, 1970); 172–179; Thomas D. Morris, *Southern Slavery and the Law: 1619–1860* (Chapel Hill: University of North Carolina Press, 1996), 23; Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997), 24–25.

47. Darlene Clark Hine concurs: "Slave women were expected to serve a dual function in this system and therefore suffered a dual oppression. They constituted an important and necessary part of the work force and they were, through their child-bearing function, the one group most responsible for the size and indeed the maintenance of the slave labor pool." Darlene Clark Hine, "Female Slave Resistance: The Economics of Sex," in *Hine Sight: Black Women and the Re-Construction of American History*, ed. Darlene Clark Hine (New York: Carlson Publishing, 1994) 27, 34.

48. *State v George*, 37 Miss. 316 (1859).

49. *Ibid.*, 317.

50. Thomas Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America* (Philadelphia: T. & J. W. Johnson and Co.; Savannah, Ga.: W. T. Williams, 1858), § 107.

51. See, e.g., Higginbotham and Kopytoff, "Racial Purity and Interracial Sex"; Morris, *Southern Slavery and the Law*, 304–307.

52. Carolyn Pitt Jones, "Litigating Reparations for African-American Female Victims of Coerced/Uninformed Sterilization and Coerced/Uninformed Norplant Implantation," 1999, 41 (memorandum written for class, on file with author).

53. "Serious prohibitions of rape strengthen the bargaining power of the weaker sexual player by making the stronger obtain consent from the weaker rather than force the sexual transaction. The various possible incarnations of rape—stranger rape, statutory rape, marital rape, acquaintance rape, and rape by abuse of familial or professional authority—mark the boundaries of one person forcibly claiming access to another's body without their consent and accordingly are central in setting the terms of such consent. . . . The law governing forcible rape also reflects the core beliefs of a society about the role of sexual access." Linda R. Hirshman and Jane E. Larson, *Hard Bargains: The Politics of Sex* (New York: Oxford University Press, 1998), 6.

54. hooks, *Ain't I a Woman*, 25–26.

55. Brenda Stevenson, for instance, describes a variety of factors that may have led some enslaved men to sexually objectify enslaved women. Stevenson, *Life in Black and White*, 242–243.

56. Genovese, *Roll, Jordan, Roll*, 420, quoting Robert Goodloe Harper, *Cotton Is King and Pro-Slavery Arguments*, ed. E. N. Elliott (New York: Vintage Books, 1976), 44–45, 61. See also Painter, "Soul Murder and Slavery," 142 (describing the complex reasoning of apologists defending the sexual norms of slavery).

57. Darlene Clark Hine notes: "Another major aspect of black women under slavery took the form of the white master's consciously constructed view of black female sexuality. This construct, which was designed to justify his own sexual passion toward her, also blamed the female slave for the sexual exploitation she experienced at the hands of her master." Hine, "Female Slave Resistance," 28.

58. Katherine Fishburn, *Women in Popular Culture: A Reference Guide* (Westport, Conn.: Greenwood Press, 1982), 10–11.

59. Davis, *Women, Race, and Class*, 23–24.

60. Enslaved men may have been sexually victimized for similar purposes; this topic is underexplored in the literature. For discussion, see Painter, "Soul Murder and Slavery," 137–138; Stevenson, *Life in Black and White*, 181, 195–196. Judith Kelleher Schafer discusses the sexual torture of an enslaved boy in "Sexual Cruelty to Slaves: The Unreported Case of *Humphreys v. Utz*," *Chicago-Kent Law Review* 68 (1993): 1313. In *Beloved*, Toni Morrison alludes to sexual abuse of black men on the chain gang. Toni Morrison, *Beloved* (New York: Knopf, 1987), 107–108.

61. Angela Y. Davis, "Reflections on the Black Woman's Role in the Community of Slaves," in *The Angela Y. Davis Reader*, ed. Joy James (Malden, Mass.: Blackwell, 1998) 111, 124 (originally published in *The Black Scholar* 3/4 [1971]: 3, 13); see also Stevenson, *Life in Black and White*, 240.

62. Dorothy Sterling, ed., *We Are Your Sisters: Black Women in the Nineteenth Century* (New York: W. W. Norton, 1984), 27. Deborah Gray White notes that the cities of New Orleans, Charleston, St. Louis, and Lexington seem to have been the centers of the trade. Gray White, *Ar'n't I a Woman?* 37. One trader insisted on separating a mother and daughter, speculating that when the daughter was a few years older, "there were men enough in New Orleans who would give five thousand dollars for such an extra handsome, fancy piece as Emily would be." *Ibid.*, 38 (quoting Solomon Northrup, "Twelve Years a Slave: Narrative of Solomon Northrup," in *Puttin' on Ole Massa*, ed. Gilbert Osofsky [New York: Harper and Row, 1969],

268). See also Frederic Bancroft, *Slave Trading in the Old South* (1931; reprint, Columbia: University of South Carolina Press, 1996), 57, 102, 131, 328–330, in reprint; Stevenson, *Life in Black and White*, 180–181, 239.

63. “Only ‘fancy’ women commanded higher prices than skilled male slaves. . . . Joe Bruin of the Alexandria firm of Bruin and Hill placed Emily Russell, a beautiful mulatto whom he planned to sell as a prostitute in New Orleans, on the market for \$1800. Bruin and Hill realized the profit that could be garnered from the ‘fancy girl’ market and often purchased females in Virginia and Maryland for that purpose.” Stevenson, *Life in Black and White*, 180. This item appeared in a southern newspaper: “A slave woman is advertised to be sold in St. Louis who is so surpassingly beautiful that \$5,000 has already been offered for her, at private sale, and refused.” Bancroft, *Slave Trading in the Old South*, 329, see also 329–333. See also Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Knopf, 1956), 259.

64. Stevenson, *Life in Black and White*, 180.

65. Richard F. America, *Paying the Social Debt: What White America Owes Black America* (Westport, Conn.: Praeger, 1993), 6.

66. Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass.: Harvard University Press, 1982), 50, 229, 230, 261.

67. See, e.g., Kolchin, *American Slavery*, 4. The sexual labor of enslaved women in the United States differed from sexual exploitation in other societies. The South was practically alone among slave systems in denying and prohibiting any legal recognition of women who built sexual families with their masters. See, e.g., Patterson, *Slavery and Social Death*, 231–232, 260–261.

68. David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, N.Y.: Cornell University Press, 1966), 60.

69. Davis, *Women, Race, and Class*, 6.

70. Jones, *Labor of Love, Labor of Sorrow*, 12.

71. Catharine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass.: Harvard University Press, 1987), 173; Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989), 183, 198.

72. “When the profitability of slaves as capital became that great, as it did very early on, the market economy came to intrude deeply into the most intimate of human relationships.” Oakes, *The Ruling Race*, 26.

73. “Rape and the threat of rape influenced the development of a culture of dissemblance among southern black women” in the late nineteenth and early twentieth centuries. Darlene Clark Hine, “Rape and the Inner Lives of Black Women: Thoughts on the Culture of Dissemblance,” in *Hine Sight*, ed. Hine, 37. She continues, “Black women as a rule developed a politics of silence, and adhered to a cult of secrecy, a culture of dissemblance, to protect the sanctity of the inner aspects of their lives.” *Ibid.*, 41. She also makes the case that “the most common, and certainly the most compelling, motive for running, fleeing, or migrating was a desire to retain or claim some control of their own sexual beings and the children they bore.” *Ibid.*, 40–41. In addition, Hine argues that enslaved women understood their own sexual economic value and used that to resist slavery: “When they resisted sexual exploitation through such means as sexual abstinence, abortion, and infanticide, they were, at the same time, rejecting their vital economic function as breeders. . . . ‘The female slave, through her sexual resistance, attacked the very assumptions upon which the slave order was constructed and maintained. Resistance to sexual exploitation therefore had major political and economic implications.” Hine, “Female Slave Resistance,” 34. See also Stevenson, *Life in Black and White*, 245–246.

74. In two path-breaking essays, Painter argues that historians have failed to approach sexual abuse in the context of interracial households as families and enslaved women as workers and hence have missed critical psychological effects that spanned all of southern society.



Nell Irvin Painter, “Of *Lily*, Linda Brent, and Freud: A Non-Exceptionalist Approach to Race, Class, and Gender in the Slave South,” in *Half Sisters of History: Southern Women and the American Past*, ed. Catherine Clinton (Durham, N.C.: Duke University Press, 1994), 93; Painter, “Soul Murder and Slavery,” 126–128.

75. Darlene Clark Hine puts it powerfully: “The fundamental tensions between black women and the rest of the society—especially white men, white women, and to a lesser extent, black men—involved a multifaceted struggle to determine who would control black women’s productive and reproductive capacities and their sexuality. At stake for black women caught up in this ever evolving, constantly shifting, but relentless war was the acquisition of personal autonomy and economic liberation.” Hine, “Rape and the Inner Lives of Black Women,” 41.