

The Sexual Economy of American Slavery
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This article makes the case for broadening the range of doctrine we understand to be implicated in American slavery's interplay of sex, law, and power. The law of rape and slavery's rules of reproduction—status, slave or free, was inherited from the mother, without regard to the father—have rightfully received much attention in studies of enslaved women's sexual exploitation. Scholars have also shown the impact of slave codes in institutionalizing sexual access. In contrast, common law rules governing private interactions among individuals would seem peripheral, especially when compared to the law of rape. But, as this article shows, the sexual control sought by southern slaveholders required subtle exercises of legal power beyond the command and control regulation of rape and forced reproduction. Through a comprehensive and detailed rendering of the doctrine, this article demonstrates how antebellum laws apparently unrelated to enslaved women's sexual coercion, ranging from tort to dower, contract to divorce, operated as sexual controls. Understanding these laws that regulated relations between free (whites), but were seemingly neutral with regard to slave relations, as key mechanisms regulating sexual access between blacks and whites does more than “add more law.” It also demonstrates the descriptive limits of the dominant understanding of sexual exploitation as solely overt exercises of legal and physical power by men of the planter class directed against only enslaved black women themselves. While this top-down understanding of sexual coercion, which I call a juridical account, plays a critical role in documenting the widespread sexual abuse that American slavery entailed, ultimately, it cannot describe the valence of enslaved women's sexual regulation

within slavery, and its effects on not only black women, but southern culture more broadly.

Specifically, I make three claims about how enhancing the juridical account will benefit the study of slavery's sexual dynamics. As an initial matter, attributing enslaved women's sexual exploitation solely to two doctrine, reproductive rules of *partus sequitur ventrem* and criminal rape, obscures the range of coercive sexual techniques slavery brought to the table. Moving beyond the juridical account exposes how other laws collaborated with rules of rape and reproduction in enslaved women's sexual manipulation and exploitation. Slavery constituted a new category of social relation, and it demanded much of the common law. Considering the sexual effects of these private law rules governing property and economic relations challenges current understandings of the interplay of slavery's legal ideology and sexual governance.

Second, when overt sexual violence and forced reproduction are viewed as the sum total of sexual exploitation, then the analysis of sexual coercion emphasizes only two groups: elite white men of the plantocracy and the enslaved women they sexually victimized. Such top-down accounts of sexual exploitation miss the full array of political, economic, and cultural interests at stake in controlling enslaved women's sexuality. "Black sheep" sons of the plantocracy; their grief-stricken and irate mothers; overseers seeking their sexual due; and, most vigorously and righteously, the enslaved community, battled continuously and mercilessly over sexual access to enslaved women's bodies. Through these gender, race, and class negotiations and rebellions, complex cultural norms and codes of behavior evolved to manage the processes of racial and sexual exploitation. I name slavery a sexual political economy to foreground the stunning array of legal, political, and economic forces implicated in enslaved women's sexual regulation and the

ways this regulation spilled over their bodies into antebellum southern culture more broadly.¹

Finally, engaging slavery as an explicitly sexual economy suggests the need for frameworks to better theorize the relation of sex, law, and power under slavery. The article ends by suggesting the benefits of a conversation between scholars of slavery and scholars of sexuality. Since Freud, brilliant theorists, including legal scholars, have redefined how we think about human sexuality. They have illuminated and proffered theories and sexual practices ranging from domestic violence to the erotics of power, from incest to adultery, from same-sex practices to sexual fantasy. How might these diverse and often contradictory frameworks of analysis illuminate the sexual dynamics of slavery? And how might the frameworks themselves adjust as 250 years of sex under slavery is filtered through? In sum, my argument is that adding a broader doctrinal lens to our comprehension of slavery's sexual regulation serves as an important corrective to our vision of slavery's legal and sexual dynamics, and even sheds considerable light on contemporary frameworks for theorizing sexuality.

This article does not make the standard challenge to replace the juridical account of sexual coercion. Nor does it mean to de-emphasize the regularity or diminish the brutality of rape and overt sexual violence in American slavery. (Or to represent enslaved women as complicit succubi in a pornographic sexual schema. There is real risk that what we might lose is

¹ In naming slavery a sexual economy, I don't mean to suggest that it was more sexual than other political economies; sexuality is implicated anywhere and everywhere. But, as the article describes, I do want to foreground both the shift from a juridical model and the theoretical and historical benefits of doing so.

an appreciation for the moral repugnance of the system.) To the contrary, I firmly believe that the scholarship on rape and forced reproduction implemented a critical paradigm shift in slavery studies. Scholarship on these rules drew attention (finally) to how endemic sexual exploitation was to slavery. It also contributed to the understanding of slavery as an institution of gender, as well as racial, supremacy. Rather, my concern is that in limiting our analysis to rules of rape and forced reproduction, we miss how tort and other doctrine were imbricated in slavery's sexual dynamics. These laws too shaped slavery's sexual landscape.