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Fantasies of Consent:
Black Women's Sexual Labor in 19th Century New Orleans

A dissertation presented

by

Emily Alyssa Owens

to

The Department of African and African American Studies

in partial fulfillment of the requirements
for the degree of
Doctor of Philosophy
in the subject of
African American Studies

Harvard University
Cambridge, Massachusetts

July 2015

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Dissertation Advisor: Professor Evelyn Brooks Higginbotham Emily Alyssa Owens

Fantasies of Consent: Black Women's Sexual Labor in 19th Century New Orleans

Abstract

Fantasies of Consent: Black Women's Sexual Labor 19th Century New Orleans draws on Louisiana legal statutes and Louisiana State Supreme Court records, alongside French and Spanish Caribbean colonial law, slave narratives, and pro-slavery writing, to craft legal, affective, and economic history of sex and slavery in antebellum New Orleans. This is the first full-length project on the history of non-reproductive sexual labor in slavery: I historicize the lives of women of color who sold, or were sold for, sex to white men. I analyze those labors, together, to understand major elements of sexual labor in the history of slavery. I theorize the meaning of sexual labor and imagine the kinds of world(s) these arrangements brought into existence, and the ways that sex and its attendant affects articulated pleasure and violence within those worlds.

This project offers the framework *racialized sexual commerce* to name the capacious intersection of sexual commerce and racial commerce, in order to imagine a singular, integrated sexual economy. This project also frames sexual labor outside of dominant scholarly approaches that seek out evidence of rape and consent. Building on these two foundational frameworks, this project argues that the antebellum sex market trafficked in *affective objects*, that is, affective experiences attached to labor (sex) and made into the primary commodities of this market. *Fantasies of Consent* asks what kinds of pleasures the bodies of women of color were called upon to produce for white men within the sex economy, what kinds of pleasures they themselves were able to inherit, and how both sets of pleasures emerged from and were therefore imbricated within the violence of the market. I argue that in the sex market, there was no pure consent—no pleasure, no freedom—that was not already shaped by the market through which it was articulated. Affective objects *remade* the violence of a sex trade that lived and breathed because of slavery *as pleasure*, revealing the impossibility of disentangling pleasure from violence within antebellum sexual commerce.

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Acknowledgements

The writing of this project is marked by serendipity: it is only because the books I needed to read had already been written, because the conversations I needed to hear bubbled up around me, and mostly, because the people I needed to learn from crossed my path and offered help, advice, and cups of tea. For all the stars that aligned just so, I am grateful.

I am enormously grateful to my committee, who shepherded this project from its infancy and through many twists, turns, pauses, and false starts since then. Evelyn Brooks Higginbotham has been my guide for a decade; her abiding belief not only in my project, but in me, is quite simply the reason I am here. Robin Bernstein, who taught me how to "read like a superhero" and give gifts to my readers, is a model of outstanding feminist teaching and mentorship. Walter Johnson's wit and his practice of teaching and writing with unwavering commitment to justice have buoyed me along at many points in this journey. Vincent Brown has been a delightful conversation partner, and has inspired me to keep creativity at the center of my method.

Several institutions have supported my research. I am grateful to Meg Brooks Swift and the Mellon Mays Undergraduate Fellowship of the Woodrow Wilson Foundation, which has supported my research since I was an undergraduate; to the Charles Warren Center for American History and Arthur Patton-Hock and Larissa Kennedy, the always-friendly faces of the CWC; to the Program in African American History at the Library Company of Philadelphia and especially to Erica Armstrong Dunbar, who is a fierce mentor and is changing the landscape for scholars of color doing research in Early America.

I conducted research at various archives throughout this project, and am grateful to the knowledgeable archivists who provided guidance and insight. Thanks first to Bruce Raeburn at Tulane's Hogan Jazz Archive, whose insight about the collection's Storyville holdings structured my earliest digging in archival sources, and to the Historic New Orleans Collection, whose collection of Storyville's *Blue Books* shaped early iterations of this project. I am indebted to Irene Wainwright, who helped me sift through collections of emancipation papers at the New Orleans Public Library. Many thanks go to The Library Company of Philadelphia's Krystal Appiah, curator of African American history, for being deft with the collection and for, just as importantly, being a kind face in the reading room. Mindy Kent at Harvard University's Law School Library showed me the ropes of legal research and was always generous with time, enthusiasm, and new avenues of inquiry. Finally, enormous thanks goes to Florence Jumonville and James Lien at the University of New Orleans's Earl K. Long Library, keepers of the Louisiana State Supreme Court Collection, which is the backbone of this project.

In order to do any work in these archives, I needed a place to sleep. Luckily for me, folks in far away places offered places to lay my head, but even more luckily, they offered new and lasting friendships. Jeff Lockman and Mark Townsend welcomed me to New Orleans many times, and introduced me to the very best red beans and rice (to be eaten, properly, on a

Monday) I have had to date. Teresa Wallace and John Chou opened their home to me for a whole semester in Philadelphia. The two of them filled my time there with evenings filled with delicious dinners and lively, heartfelt conversation, and feline companionship in the form of the inimitable Rosie and Sammy that kept words flowing during the day, staving off loneliness while I was far from home. I look forward to many, many happy returns to these new friends.

Back at home, I was lucky to be able to produce this project from the home-base of a rich university community. In the Department of African and African American Studies, I am grateful for many teachers, interlocutors, and friends, including Lawrence Bobo, Glenda Carpio, Marla Frederick, Alejandro de la Fuente, Henry Louis Gates, Elizabeth Hinton, Biodun Jeyifo, John Mugane, Tommy Shelby, Werner Sollors, and Ashley Farmer, Peter Geller, Amber Moulton, Lizzy Cooper Davis, and Lisanne Norman. The staff of the department have a way of making things tick, and I am incredibly thankful for Leanne Chaves, Kathleen Cloutier, Cassandra Fradera, and Gisele Jackson for the zillions of appointments made, funding secured, emails answered, technology wrangled**,** and, above all, friendly words day after day after day. The Committee on Degrees in the Study of Women, Gender and Sexuality, including Brad Epps, Alice Jardine, Caroline Light, Afsaneh Najmabadi, Amy Parker and Linda Schlossberg taught me to think as an undergraduate, and has remained an intellectual home in my time in graduate school. The Graduate Consortium of Women's Studies led me to a writing group that provided structure and support in a key phase of this project. The Hutchins Center has provided constant stimulation. The Warren Center's seminar communities, "Empire, Sovereignty, Migration, and Diaspora: Transnational America from Above and Below" and "Everyday Life: The Textures and Politics of the Ordinary, Persistent, and Repeated" each left an indelible mark on this project.

I have been mentored by a network of feminists of color who have shepherded me through this process: Jayna Brown has uplifted me with humor, honesty, and imagination; Kimberly Juanita Brown has read drafts, strategized next steps, and provided pep talks; Adrienne Davis has understood and encouraged this project; Marisa Fuentes has been an early reader and a inspiration in the study of sex and slavery; Jeffery Q. McCune, Jr. has been a source of energy and excitement; C. Riley Snorton has been a model of drive, focus, and friendship; and Kyla Tompkins has offered sage advice and a source of support on many levels.

I am grateful for the sustaining friendships I made at Harvard. Scott Poulson-Bryant and Rhae Lynn Barnes were my first friends in graduate school, and remain my favorite people to run into in the Yard. Getting to know and learning from my students, and especially Christina Twicken and Ry Browne, has been one of the great thrills of this experience. My writing group, composed of Elizabeth Jemison, Balbir K. Singh, Sandy Placido and Lizzy Cooper Davis has been a source of support as well as the single most effective way of getting me to put words on the page. And, to my dear, dear cohort, Ernie Mitchell, Giovanna Micconi, Erin Mosely and Carolyn Roberts: making this journey beside you all has been a distinct pleasure that I have cherished.

To my chosen family, I am immensely grateful. To Lizzy Cooper Davis, thank you for commiserating with me about work and life and balance, for countless life-giving walks and coffee dates, and most of all, for sharing your amazing children with me and Katie. To the

Forman Hurst-Hiller claim (Caleb, Rosha, Ezra, and Phoebe), for breaking up the monotony of work with dinosaurs and smoothies, and the kinds of dinners that leave everyone sleepy and content at the end. To Kyle Frisina, thank you phone calls across long distances, and for holding space for feeling deeply, and for loving the written word even more than I do. To Lucia Hulsether, thank you for taking the time to learn this project inside and out, for swimming in the current of these ideas with me, and for a friendship that is perfect and ordinary. To Jennifer Nash, my homegirl, my mentor, my big sis; thank you for bringing sanity, kindness, hilarity, black-girl realness, and pleasure to our many collaborations.

Finally, I give thanks to my family: To my very sweet cat, Lena, who kept me company during the many long days of writing, and who also sat on my keyboard as if to say "Enough is enough!" more than once.

To my in-laws, Karen Edwards and John Rieser, for welcoming me into your lives with enthusiasm, love, and thoughtfulness. Thank you for interspersing this work with canoe trips and whale-watching and plum pudding, and for never forgetting to ask how it's going.

To my sister, Camille Owens. Although it sometimes looks like you have followed in my footsteps, I know that I am the one following. Thank you for setting a clear-eyed, dedicated, steady example of life inside the academy, and for bringing abundant love, silly dancing, and joy to all the other corners of life. I count myself remarkably lucky to have had you as my traveling companion along every road I have ever walked. Here's to the next adventure.

To my mother, Cindy Owens, who taught me very early on two critical lessons: one, read as much as possible, and two, "Remember who you are." To my father, Dennis Owens, who inspired me to be a writer. Without these lessons, and without your enduring love and support, these pages would not have been possible. I wrote this project for both of you.

Finally, to my wife, Katie, my first listener, my last reader, my confidant and companion for all the time in between. Every word that describes the ways that you support me seems to minimize how very important you are. Instead, I hope that in all the quiet moments of our life together, you hear again and again my deepest, most daily truth: thank you, sweet girl.

Introduction

Racialized Sexual Commerce

The evening of May 7, 1851, began in an altogether ordinary way at 221 Gravier Street in New Orleans. As ever in Louisiana summer, the weather was warm and muggy, and Eliza Turner, an enslaved woman, was collecting fees and selling coffee in the brothel that she managed. As the clock turned from one day into the next, Turner collected $2.50 from Abraham Parker, a riverboat pilot who had visited before. She then gave him permission to join Eliza Phillips, a white woman, in the adjoining bedroom. No one questioned this dynamic: it was ordinary for a white man to exchange money for sex on any given evening in antebellum New Orleans, perfectly normal for him to be involved with a woman of color in that exchange, utterly plain for an enslaved woman to be the arbiter of a trade that involved white women and sex.

What happened next is what brought this night and its characters onto the historical record: when the pair returned from the bedroom, Abraham Parker drew his pistol and shot Eliza Phillips in the neck and killed her. He escaped the brothel but was apprehended later in the morning by police, who took him in for questioning. Parker was prosecuted, though it should be noted that Eliza Turner could not testify against him, because of her status as a slave. Nonetheless, the prosecution gathered evidence from Eliza Turner's owner, Sumpter Turner, and from the resident pimp, Eugene Suchet. Testimony confirmed that Parker had killed Phillips in cold blood—he suspected that she had stolen a $10 bill from his pocket—

but he was not convicted. That Parker never served a day in prison for this crime suggests, then, the ordinariness of extreme violence within the sex trade of antebellum New Orleans.[1]

Our story opens not with the violently abridged life of Eliza Phillips, but with the historically elusive presence of Eliza Turner. Turner's enslavement did not prevent her from participating in the world of sexual labor, but rather located her squarely in that space. The tale of *State v. Parker* has been told in terms of violence against Phillips, a white woman, but the life of Turner was similarly structured by the everyday violence of the sex trade.[2] Although in this instance Eliza Turner's life was spared, her life remained bound to both the slave market and the sex market, regimes that would produce her as exceedingly vulnerable. Turner's life was structured by violence—at any and every moment, she could be killed, as Phillips had been, or she could be tortured, beaten, or sexually violated because of her status as a slave. Yet the labor that she was forced to perform was centrally focused on pleasure. Turner's location in a brothel cracks open a fundamental tension in the history of sex and slavery, for the violence that structured her life was also fully imbricated in the pleasure economy.

Eliza Turner was part of American slavery's open secret,[3] the furtive but everyday practice of extracting sex from women and girls as part of the larger market in flesh and labor that was the slave trade. *Fantasies of Consent* traces the labors of women like Eliza

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[1] *State v. Parker* no. 2393 Supreme Court of Louisiana (unreported) February 1852. For more on *State v. Abraham Parker,* see Judith Schafer, *Brothels, Depravity, and Abandoned Women: Illegal Sex in Antebellum New Orleans* (Baton Rouge: Louisiana State University Press, 2009).

[2] Judith Schafer's exploration of *State v. Parker* focuses primarily on the ways that the court and the press exonerated Abraham Parker, which demonstrates the social climate surrounding sexual labor in antebellum New Orleans. Schafer argues that the treatment of Eliza Phillips, Parker's victim, reveals a culture that vilified women involved in sex work while allowing the men who were customers of the sex trade to remain socially unscathed by their uncouth interactions. For Schafer, Eliza Turner is a background character of this story; in this dissertation, it is women like Eliza Turner who take center stage. For more on Schafer's account of *State v. Parker*, see Schafer, *Brothels, Depravity, and Abandoned Women* (Baton Rouge: Louisiana State University Press, 2009), 110-125.

[3] For more on the relationship of "open secrets" to black sexuality, see C. Riley Snorton, *Nobody is Supposed to Know: Black Sexuality on the Down Low* (Minneapolis and London: University of Minnesota Press, 2014).

Turner, asks what kinds of pleasures their bodies were called upon to produce for white men, what kinds of pleasures they themselves were able to inhabit, and how both sets of pleasures emerged from and were therefore imbricated within the violence of the market.

In the thousands of pages penned on the history of slavery, only a few remember the various marketplaces in which enslaved and free women of color sold (or, were sold for) sex in the antebellum period. This project reconstructs an archive of their experiences and asks how they labored and why their labor was so valuable. The lives and labors of "fancy maids," brothel laborers, *placeés*, and concubines both affirm and denature the prevailing paradigm that suggests that all aspects of slavery were always already sexualized: while sex was indeed everywhere in the slave market, the lives of these women demonstrate that sex was also localized and rendered explicit on the bodies of certain people. These women participated in an economy that represents the *explicit* merging of sex and commerce in slavery, scenarios which throw into crisis categories of willingness, freedom, commerce, and pleasure.

In the bodies and practices of these women, sex was not the hidden meaning of slavery, but rather its explicit content. Uncovering the wide-reaching social structures and the quotidian experiences that shaped and constituted the explicit sex market of antebellum New Orleans, I argue that slavery was pleasurable (for some), and that violence and pleasure were bound to one another (for everyone). The sale of sex in slavery challenges the opposition of violence and pleasure by exhuming the ways that the objects of value in the sex market could remake violence as pleasure and the ways that those pleasures were always tied to the violence of the market.

Fantasies of Consent is a legal, affective, and economic history of sex and slavery in antebellum New Orleans. This is the first full-length project on the history of non-

reproductive sexual labor in slavery: I historicize the lives of women of color who sold, or were sold for sex, to white men. I analyze those labors, together, to understand major elements of sexual labor in the history of slavery. I theorize the meaning of sexual labor and imagine the kinds of world(s) these arrangements brought into existence, and the ways that sex and its attendant affects articulated pleasure and violence within those worlds.

This project imagines the confluence of sex and slavery through the lens of the transactions at the heart of these sexual arrangements. I trouble the notion that the primary commodity of the sex trade was sex. I assume that what was for sale in the sex trade was never *just* sex. It was not only sex *acts* that captured the attention and the capital of white men in antebellum New Orleans, but the context in which it was acquired, the way that it was delivered, and the contract that governed those interactions. I therefore ask: What *else* was being bought and sold? I argue that consent, promises, quadroons, and freedom were not pure ideals or feelings, but rather were objects of value that were traded in sexual transactions. In other words, this project is both a history of sex in slavery and a commodity history, in which the commodities in question were the affects that attached to sex in the sex trade.

In the New Orleans sex trade, utterances like consent—the "yes" of a sexual subject—were tied to, and made possible by, the market. A woman's willingness was an object of value, not unlike the promises, quadroons, and freedoms that also circulated in the trade. The presence of these objects—what I call *affective objects*—in the sex trade indexes the ways that pleasure was always bound up with market logics. If, as in antebellum New Orleans, that market was one that trafficked in human flesh, then those pleasures could not be unbound from violence. In the sex market, there was no pure consent—no pleasure, no freedom—that was not already shaped by the market through which it was articulated.

Affective objects *remade* the violence of a sex trade that lived and breathed because of slavery *as pleasure*, revealing the impossibility of disentangling pleasure from violence within antebellum sexual commerce.

Racialized Sexual Commerce

Despite the presence of sex at all levels of the slave trade—the extent to which, Adrienne Davis argues, "every sale of an enslaved woman was a sale of sexual labor,"[4]— the particular labors that populate this project are those that were hailed as sex, explicitly, within the slave system. There were many different kinds of sex that were sold *as sex*, as opposed to, for example, the people who were sold as field laborers but used for sex in addition to field labor, or were coerced into childbearing as a part of their role as laborers. I am interested in situations in which sex acts themselves were sutured to affective meaning and were commodified.

Multiple and distinct forms of sexual labor together constituted a network that offered white men access to sex from women of color. Some women labored for a lifetime while others labored for an evening; some labored under written contracts, while others labored under informal contracts; some labored as enslaved women, while others accessed nominal freedoms through their work. Together, these multiple, discrete locations of commercial sex made up what I call *racialized sexual commerce* in antebellum New Orleans.

All kinds of people participated in commercial sex in antebellum New Orleans, but this dissertation focuses on sexual transactions that included two sets of people: white men and women of color. The category "women of color" stands in for a diverse set of people who would not necessarily have understood each other as part of the same group. I group all

[4] Adrienne Davis, "Slavery and the Roots of Sexual Harassment" in *Directions in Sexual Harassment*, Catherine MacKinnon and Reva B. Siegel, eds. (New Haven and London: Yale University Press, 2003), 459.

of these people under the category "women of color" because their very different lives were fundamentally connected by the logic of racialized commodification that governed the entirety of antebellum New Orleans society. That is to say, whether or not a woman of color was free, whether or not she owned slaves, whether or not her skin was so light as to pass for white, if her ancestry included African people, the law, the economy, and the social custom of the slave society determined that her life would be shaped in some way by the possibility of slavery. Any link to black ancestry meant that her life was in some way inflected with the possibility of enslavement, if not the reality of enslavement. For example, when hundreds of free Haitian immigrants showed up in New Orleans in 1810, their status was in question despite their long-standing, sometimes even generational, experience of freedom.[5] Similarly, when Ann Maria Barclay, who had been freed by the man who owned her and had lived free for twenty years, showed up in court, her freedom was immediately questioned.[6] Indeed, as Walter Johnson explains, "It was not unheard of in the antebellum South" for people "to live as free for many years before being dragged into court as slaves."[7] Thus in this dissertation the phrases "women of color" and "black women" might be imagined as synonymous with a subjunctive experience of slavery, that is, "women who *could be* slaves."[8]

My use of "women of color" and "black women" as placeholders for the category "women who *could be* slaves" intervenes in a historiography that is concerned with the

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[5] Rebecca Scott and Jean M. Hébrard, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA and London: Harvard University Press, 2012), 69-72. Shirley Thompson, *Exiles at Home: The Struggle to Become American in Creole New Orleans* (Cambridge, MA and London: Harvard University Press, 2009), 3-5.
[6] See Chapter 5 for more on Ann Maria Barclay. *Barclay, fwc v. Sewell, curator* (1 La. Ann. 262, no. 4622; 1857).
[7] Walter Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s," *The Journal of American History* 87, no.1 (2000): 23.
[8] As Rebecca Scott and Jean Hébrard's brilliant micro-history, *Freedom Papers: An Atlantic Odyssey in the Age of Emancipation* (Cambridge, MA and London: Harvard University Press, 2012) conveys, freedom in the Atlantic world was porous, contingent, and precarious for women of color, and unfreedom haunted their experiences, regardless of official status. My logic here is also influenced by Evelyn Brooks Higginbotham's "African American Women's History and the Metalanguage of Race," in *Signs* 17, no.2 (1992).

distinctions between free and enslaved women by arguing that race—even accounting for diversity—is nonetheless a meaningful category of analysis for women in antebellum New Orleans.[9] I do not group together free and enslaved women because the differences between their experiences did not matter; they did. However, the similarities between their experiences, as articulated within the world of sexual labor, were more important than their differences. Within sexual labor, women across statuses were similarly eroticized, similarly traded, similarly thrown into contracts that fetishized their willingness and their skin color, and were similarly bound to white men who determined much of the structure of their lives. Furthermore, the world of sexual labor tended to blur the boundaries of slavery and freedom for the women involved, incorporating women who claimed to have been born free but became enslaved through sexual labor, and others who were born enslaved but became free or sought their freedom through sexual labor. In addition to *de jure* transitions in status that some women experienced in the sex trade, a woman like Eliza Turner, with whom I began this dissertation, could experience a dominant, managerial position over white women and white men in the space of a brothel, challenging the definitional quality of her own enslavement. The stories that I tell in this project will complicate the category of "women of color" even as they reaffirm its power.

I preserve the category of "white men" in this study to underline the racial logic that structured all interactions in antebellum New Orleans. Like the rest of the Mississippi Valley, antebellum New Orleans was a polyglot society, in which the meaning of whiteness was cross-cut with the meanings of immigrant statuses, national ancestry, class, and language. The white men of this study were mostly Creole: white men who identified with and

[9] For more on race in antebellum New Orleans, Shirley Thompson explains: "New Orleanians of African descent recognized the limitations that the *mere hint* of impurity placed on their aspirations in their Americanizing city, and they responded to these strictures with a variety of contradictory strategies." Shirley Thompson, *Exiles at Home* (Cambridge, MA and London: Harvard University Press), 6.

benefited from the distinctly American brand of slavery that defined New Orleans, but who also preserved strong ties to their nations of origin, including France, especially, but also Spain, what would become Germany, and Ireland.[10] Indeed, as Walter Johnson writes, the white men of the Mississippi Valley "represented a potentially insurgent foreign presence at a time when the sovereignty of the United States over its Creole inhabitants…was anything but certain."[11] The men in this study were also mostly slaveholders, although the shadowy presence of men whose slaveholding identity is unknown—the Johns who anonymously visited brothels—also inflects the meaning of whiteness, here. Regardless of national allegiance or class status, however, their whiteness remained meaningful. I follow Shirley Thompson, who argues, "in antebellum New Orleans, as elsewhere in the United States, 'whiteness' was a particularly powerful tool…[that] produced a condition of equality before the law and created opportunities for economic gain and social prestige."[12] Just as the women of color in this study were always haunted by the possibility that they could be enslaved, the white men of this study *could not*, legally, become enslaved. Further, these men either were or, again, *could be*, slave*holders*.[13]

White women and black men were also present in the sex trade. As Judith Schafer has shown, white women labored in the brothels of antebellum New Orleans alongside women of color. She explains, "racial integration seems to have been accepted both by the women who staffed [brothels] and by the brothel keepers and customers."[14] She continues,

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[10] Schafer, *Brothels, Depravity, and Abandoned Women*, 2.
[11] Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2013), 7, 9, 33.
[12] Thompson, *Exiles At Home*, 10.
[13] White men and black men appear in the archive as people who bought sex. However, it is fair to assume that other women (white or non-white) also received sexual services from the sexual laborers in this study. For more on sexual violence committed by white women in the antebellum South, see Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge and New York: Cambridge University Press, 2008).
[14] Schafer, *Brothels*, *Depravity, and Abandoned Women,* 40.

some brothels were "staffed with other free women of color, others with white women, and still others with women of both races."[15] By the same token, men of color also participated in the New Orleans sex market. Schafer explains that free men of color visited brothels, and "even slaves appeared as customers."[16]

Despite the interracial character of the public sex trade in antebellum New Orleans, this project focuses exclusively on liaisons that included women of color and white men. This is for several reasons. First, where interracial liaison between white women and black men was seen as taboo and punishable by law in antebellum New Orleans, interracial sex between women of color and white men was permitted and even encouraged by the laws and social customs of the day. Schafer concurs, explaining "the people who were most always charged" with crimes associated with interracial sociality "were almost always white women and black men, not because white men did not have sex with black women but because white men were generally protected from this kind of publicity."[17] This project takes as a starting point the permissibility of white men taking sex from black women.

That permissibility underwrote the production of social norms and tropes around interracial sex between white men and women of color. In particular, the bodies of light skinned women of color became objects of great value in the sex trade. This fetish has long been understood as a key element of antebellum Southern sexual cultures, a trope that both belonged to and exceeded the imaginary of New Orleans. As Emily Landau explains, "Many planters used slaves for sex…[b]ut in New Orleans, the institutionalization of interracial sexual subordination had a special character."[18] She continues, "The city's longstanding

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[15] Ibid., 41.
[16] Ibid., 40.
[17] Ibid., 31.
[18] Emily Landau, *Spectacular Wickedness: Sex, Race, and Memory in Storyville, New Orleans* (Baton Rouge: Louisiana State University Press, 2013), 56.

reputation for general licentiousness and sex across the color line…focused special attention on the light-skinned victims of planter lust" and also "fixed New Orleans as the natural milieu for these degradations, associating the city in thousands of minds with the fancy trade, octoroons, and interracial sex."[19] My project follows the lead of this sexual mythology, focusing on liaisons between women of color and white men in order to ask what made this pairing so present, so titillating, and so decidedly Southern in the minds of New Orleanians and people who thought about them.

Finally, this project focuses on the involvement of women of color and white men in the sex trade because it was through those bodies that the sex market developed and thrived beyond the space of brothels and bawdy houses. While excellent scholarship details the life-world of 19th century New Orleans' sexual underworld,[20] more work is needed on the full expanse of sexual commerce in the Crescent City. It was through the bodies of women of color and white men that the sex trade bled beyond the houses of prostitution concentrated on Gallatin Street,[21] into the slave markets and the private bedrooms of the rest of the city. This project follows women of color and white men because their liaisons reveal the vast network of sexual labor that thrived in, and was normalized by, the culture of antebellum New Orleans.

This project focuses on the distinctly commercial nature of the sexual interactions between women of color and white men. Adrienne Davis describes slavery as "a 'sexual political economy,' to make explicit the connections between its markets, labor structure,

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[19] Landau explains that this national antebellum obsession with interracial sex between light-skinned women of color and white men was renewed in Storyville, the legal red-light district that emerged in New Orleans at the end of the 19th century. Landau writes, "There, brothels specializing in octoroon women repackaged and commodified the longstanding image of the light-skinned black woman not as a slave, but *literally* as a prostitute." Landau, *Spectacular Wickedness,* 56, 65.

[20] See Schafer, *Brothels, Depravity, and Abandoned Women* (2009) and Alecia P. Long, *The Great Southern Babylon: Sex, Race, and Respectability in New Orleans, 1865-1920* (Baton Rouge: Louisiana State University Press, 2004).

[21] Schafer, *Brothels, Depravity, and Abandoned Women,* 126.

and sexual exploitation."[22] I distinguish the sexual commerce of this study from the sex that was everywhere implied in the sex market. Walter Johnson writes that "The slave market was *suffused* with sexuality."[23] Edward Baptist adds that "coerced sex was the *secret meaning* of the commerce in human beings."[24] I focus not on the ways that slavery suggested sex, or spoke the language of sex, but on acts that were understood in an everyday sense as sex and sexual liaison. I extend Davis's claim that sexual economics pervaded the entire landscape of slavery by paying attention to scenarios in which sex, itself, was exchanged as a commodity. Selling sex was normalized in antebellum New Orleans, where it was possible for a white man to purchase an enslaved woman for sex in the slave market, to find a black courtesan at a ball, and where, Judith Schafer explains, "prostitutes worked in at least three-fifths of all houses in a large part of the city."[25] My use of *sexual commerce* denotes the specific sale of sex and its idioms, including brothel keeping and management, romantic courtship, the performance of romantic liaison in public, co-habitation, and in some cases, childrearing.

Furthermore, I deploy *sexual commerce* and *sexual labor(er)* to eschew the language of prostitution. The language of "prostitution" has been historically tied to ideas about agency. For example, Ruth Rosen writes, "Although in general sexual and economic exploitation may be considered the preconditions of prostitution, a complicated web of particular economic, social, and family difficulties left individual working-class women to choose prostitution as a survival strategy."[26] Similarly, Judith Schafer writes, "becoming a woman of the town was at once a social and economic choice—a means of supporting oneself and

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[22] Davis, "Slavery and the Roots of Sexual Harassment," 457.
[23] Walter Johnson, *Soul by Soul: Life Inside The Antebellum Slave Market* (Cambridge, MA and London: Harvard University Press), 113. My emphasis.
[24] Edward Baptist, " 'Cuffy,' 'Fancy Maids,' and 'One-Eyed Men': Rape, Commodification, and the Domestic Slave Trade in the United States," *American Historical Review* 106 no.5 (2001): 1621. My emphasis.
[25] Schafer, *Brothels, Depravity, and Abandoned Women,* 3.
[26] Ruth Rosen, *The Lost Sisterhood: Prostitution in America, 1900-1918* (Baltimore: Johns Hopkins University Press, 1982), xiv. My emphasis.

bargaining with men at a time when few other strategies existed for economic subsistence."[27] Narratives that suture sexual labor to agency—in which a woman engaged in sexual labor because she has at some level decided to do so—do not map onto the lives of women of color in my archive, whose vulnerabilities in the slave system complicated questions of liberal subjectivity and "choice." I follow Marisa Fuentes who asks "How does one write a narrative of enslaved 'prostitution'? What language should describe this economy of forced sexual labor? How do we write against historical scholarship that too often relies upon the discourses of will, agency, choice and volunteerism…? If 'freedom' meant free from bondage but not from social, economic and political degradation what does it mean to survive under such conditions?"[28]

I replace the vocabulary of prostitution with the more general lexicon of labor, also, as a way of underlining the ways that sex and its idioms could function as a distinct form of labor in antebellum New Orleans. Just as feminist studies of slavery have highlighted the importance of reproductive labor (in which labor was *indirectly* tied to capital), [29] alongside productive labor (in which enslaved people's labor was *directly* tied to capital), investigating racialized sexual commerce reveals the importance of *sexual* labor in the slave system. This third form of labor was neither precisely productive labor (like picking cotton, or bending

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[27] Schafer, *Brothels, Depravity, and Abandoned Women,* 13.

[28] Marisa J. Fuentes, "Power and Historical Figuring: Rachael Pringle Polgreen's Troubled Archive," *Gender and History* 22, no. 3 (2010): 565.

[29] Angela Davis explains that enslaved women's reproductive bodies were utilized by the slave system, where she writes, "slave women were not mothers at all; they were simply instruments guaranteeing the growth of the slave labor force" and explains that enslaved women were seen as "'breeders,'…whose monetary value could be precisely calculated in terms of their ability to multiply their numbers." Deborah Gray White expands on this message where she argues that the "life cycle of the female slave" was primarily governed by the processes of reproduction. She writes, "Slave masters wanted adolescent girls to have children, and to this end they practiced a passive, though insidious kind of breeding" because they "figured that at least 5 or 6 percent of their profit would accrue from natural increase." Jennifer Morgan's seminal *Laboring Women* concludes that slavery "resulted in work and sex becoming intrinsic to one another" in the form of reproduction. See: Angela Davis, *Women, Race & Class* (New York: Vintage Books, 1983 (1981)), 8; Deborah Gray White, *Ar'n't I A Woman?: Female Slaves in the Plantation South* (New York and London: Norton Company, 1999 (1985)), 98; Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004), 7.

iron into a tool), nor reproductive labor (like cooking food that fueled people who picked cotton or bent iron, or growing a body that would eventually be sold in a market for a slaveholder's profit, or would pick cotton or bend iron), but some other kind of labor. I define this third form of labor as *sexual labor*. Sexual labor involves the sexual body but can be imagined as having either the most direct relation to capital (trading sex, the action itself, for money, where nothing is made from the action) or, alternatively, as having no relationship to the primary flow of capital in this economy (trading sex for money, where neither the sex nor the money involved picks cotton or bends iron, nor produces, fuels, or supports bodies to do the same). The women in this study participated in sex that had an exchange-value that was separate from the reproduction of the enslaved labor force.

Locating sex as *labor*—alongside other kinds of labor within the system—troubles narratives of choice while preserving the extent to which the women in this study acted like other enslaved and free laborers of color. They shaped their own sales, they participated in the everyday negotiations of power with the men with whom they had liaisons, and they made a way despite, in, through, and because of the circumstances in which they lived.[30]

I deploy *racialized sexual commerce* to describe the intersection of sexual commerce with racial commerce. This intersection includes the sale of sex across racial lines but, importantly for this study, can also include instances that highlight existing tropes of racial commerce within the space of a commercial sexual encounter. Thus the most straightforward example of racialized sexual commerce is an interracial scene, in which a white, slaveholding man bought the sexual labor of an enslaved woman of color from another slaveholding white man, where the meaning of the sexual transaction was overlaid with the vocabularies of racial power—color, legal status, and commodity—inherited from the slave society. The

[30] Thanks to Vincent Brown for offering me the language of "making a way" for thinking about the negotiations of enslaved people in their own contexts.

transaction mirrored the market of racial slavery, even as the object was sexual, not productive, labor. However, the intersection of racial and sexual commerce is capacious, and includes other instances. For example, when a free woman of color sold the sexual services of another woman of color to a white man, as in the case of Françoise Doubrere selling Carmélite to Jean Lacaze in Chapter Three, the transaction may have challenged the rigidity of slavery's market structure by troubling the gendered and racial expectations of an accepted slave trader, but the scene nonetheless remained laden with racial meaning. When a white woman sold sex to a white man by standing on a table and invoking an auction block,[31] their racial sameness was twisted through the memory of the erotics of power and racial difference in the slave market. Thus *racialized sexual commerce* signals instances in which the sale of sex invoked, played with, memorialized, or otherwise signaled the histories and practices of racial commerce (slavery).

If *racialized sexual commerce* invites investigation of histories of the sex trade that invoked slavery's logics, then some sexual histories will be excluded from the investigation. For example, when black men bought or otherwise had sex with white women, as we know they did, this interaction *disrupted* the logics of racial slavery instead of reinforcing them.[32] Where *racialized sexual commerce* is concerned with the reproduction of slavery's racial codes in the world of sexual commerce, this instance could be understood as disidentifying from those norms. This form of interracial liaison, then, maintains an oblique relationship to *racialized sexual commerce*, but is not its central purview. Thus heterodox or disruptive sexual

[31] Joseph Roach, *Cities of the Dead: Circum-Atlantic Performance* (New York: Columbia University Press, 1996), 228.
[32] Another instance of interracial sexual liaison could, in theory, include a woman of color buying sex from a white man, but as far as I know that never happened in antebellum New Orleans. For more on the history of sex between black men and white women, see Martha Hodes, *White Women, Black Men: Illicit Sex in the 19th Century South* (New Haven and London: Yale University Press, 1997).

interactions do not feature in this study, which focuses on instances in which white men were purchasers and black women were (sometimes forced) purveyors of sex.

Racialized sexual commerce, then, specifies commercial sexual labor as one aspect of the broader racial economy in the Crescent City. Although the women of this study labored in distinct and individuated sexual arrangements, and although they themselves occupied different positions of power in the slave society, this project proceeds from the assumption that those labors were deeply intertwined in antebellum New Orleans. I attempt to draw out the tropes and patterns of behavior that tie them together, rather than distinguish them, staking a claim in the overarching sexual culture of commercial sex. Even as there are discernable differences between the modes of sexual commerce—in terms of the shape of a transaction, the longevity of sexual service, the status of the women involved, and the kinds of compensation at stake—these categories reflect historiographic constructions more than historical patterns. Indeed, various "types" of sexual labor could evolve into one another: where a child might begin a life of sexual service as a fancy girl, she might later be sold into a brothel, or gain her freedom through the liaison and later position her daughter as a *placée*. Similarly, a white man might keep a *placée* in his early life, abandon her upon marriage to a white woman, and subsequently purchase a fancy girl, perhaps visiting brothels all the while. Imagining racialized sexual commerce in antebellum New Orleans as a network of sexual labors makes it possible to make meaning of the sexual culture of this economy as a whole.

In this economy, meaning was attached to sex through a set of tropes that revolved around consent, light skin, and freedom. Together, women of color sexual laborers existed under the tent of racialized sexual commerce, where white men fulfilled their own desires through the traffic in affective objects attached to these women's eroticized bodies.

Sex in Slavery

Histories of black sexual labor are haunted by the problem of historiographic respectability. As much as historians of slavery have hesitated to write about the history of black sexuality generally,[33] we have shown even greater hesitation to think about black women in prostitution.[34] This reflects a tradition of black women's political responses to historic discourses that named black women *as* prostitutes as a way of justifying sexual violence and political disenfranchisement against them. Hannah Rosen has shown that Reconstruction era police officers and newspaper editors created a "discourse representing all black women as without virtue…as prostitutes" and that "sexual violence was justified by associating black women as prostitutes."[35] Similarly, Evelyn Brooks Higginbotham has shown that in the 20th century, "black womanhood and white womanhood were represented as diametrically opposed sexualities."[36] As a response to this violence and the discourse that underwrote it, in the late 19th and early 20th centuries, Higginbotham explains, black women developed "a politics of respectability that equated public behavior with individual self-

[33] For more on the hesitation of scholars to write about the history of black sexuality, see Michelle Mitchell, "Silences Broken, Silences Kept: Gender and Sexuality in African-American History," *Gender and History* 11, no.3 (1999): 433-444. See also Evelynn Hammonds, "Toward a Genealogy of Black Female Sexuality: The Problematic of Silence" in *Feminist Genealogies, Colonial Legacies, Democratic Futures*, M. Jaqui Alexander and Chandra Talpade Mohanty, eds. (New York and London: Routledge, 1997).

[34] For important exceptions to this rule, see Tera Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors After the Civil War* (Cambridge, MA and London: Harvard University Press, 1998); Cheryl Hicks, "'Bright and Good Looking Colored Girl': Black Women's Sexuality and 'Harmful Intimacy' in Early Twentieth-Century New York," *Journal of the History of Sexuality* 18, no.3 (2009); and Cynthia Blair, *I've Got To Make My Livin': Black Women's Sex Work In Turn-of-the-Century Chicago* (Chicago: University of Chicago Press, 2010).

[35] Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009), 50.

[36] Evelyn Brooks Higginbotham, *Righteous Discontent: The Women's Movement in the Black Baptist Church, 1880-1920* (Cambridge, MA and London: Harvard University Press, 1993), 190. Higginbotham also gives the (now infamous) example of a white woman's commentary in a local newspaper: "'I cannot imagine such a creation as a virtuous black woman,'" in "Experiences of the Race Problem. By a Southern White Woman," *Independent* 56 (17 March 1904), quoted in Higginbotham, *Righteous Discontent,* 190.

respect and with the advancement of African Americans as a group" and emphasized "temperance, industriousness, thrift, refined manners, and Victorian sexual morals."[37]

Historians' response to black women's enlistment in sexual labors of the past—and particularly those *free* women in commercial sexual arrangements—reiterates a politics of respectability by discrediting the possibility of those labors. When sexual labor appears in the historiography, analyses tend to be preoccupied with the unfreedom of the women involved.[38] Additionally, historians have leaned on preoccupations with the fallibility of sources and the unfreedom of women involved to fortify the unlikelihood—even impossibility—that black women willingly had sex with slaveholding white men during the antebellum period. Questions of willingness, agency, and consent around which anxieties converge have created analytical (and political) bind that has been answered with respectable conclusions: either the labor didn't happen, or if it did, the women involved must have been coerced into it.

The focus on willingness in the debate about sexual labor indexes the larger framework for understanding sex in slavery as *either* rape *or* consent. Although this framework has created a useable heuristic for understanding black women's experiences of sexuality within the totalizing violence of slavery, the lexicon of rape and consent ultimately limits our capacity to make intelligible the deep and complex vulnerabilities that these women faced. Rape, the opposite of sex with consent, is the primary metaphor for the sexual violence that enslaved women experienced; the presence of rape within slavery is a truism for the field.[39] Where interracial sex is not described as rape, some historians have relied on

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[37] Higginbotham, *Righteous Discontent*, 14.

[38] This historiographic preoccupation with unfreedom in the sexual histories articulates in a trope that women of color were "raped in slavery." For more, see Chapter Two.

[39] Where historians have described black women's experiences of sex in slavery, they have relied heavily on the language of "rape." Eugene Genovese argues that "plantation miscegenation…occurred…under circumstances

the trope of consent, as well as those of love and romance, again reifying the rape-consent binary.[40] The question of a woman's willingness haunts histories of sexual liaisons that were long-term or lacked the obvious presence of physical force, even where consent is not an explicit claim; this preoccupation with consent makes women's willingness the rubric for adjudicating the authenticity of the sex acts.

Historiographic reliance on the poles of rape and consent, and, in particular, the emphasis on black women's experience of rape, represents a potent political move on the part of historians. In a world where black women continue to experience the highest incidences of sexual violence and intimate partner abuse in the United States,[41] to name

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that varied from seduction to rape." Angela Davis explains that "the punishment inflicted on women exceeded in intensity the punishment suffered by their men, for women were not only whipped and mutilated, they were also *raped*" and "slaveowners encouraged the terroristic use of rape." Deborah Gray White writes that "the rape of black women…[was a] manifestatio[n] of racism and sexism." Jacqueline Jones writes that "black women were always vulnerable to rape by white men." Stephanie Camp writes that "the white men who seduced or raped bondwomen…were understood to be a flourishing population." Edward Baptist argues that the fancy trade was "selling the right to rape a special category of women" and, later, that slaveowners retained "the legal right to rape one's human property." See Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1972), 415; Angela Davis, *Women, Race & Class*, (New York: Vintage Books, 1981), 23, 24 (emphasis in original); Deborah Gray White, *Ar'n't I A Woman?: Female Slaves in the Planation South* (New York and London: W. W. Norton and Company, 1985), 5.; Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family, from Slavery to the Present* (New York: Vintage Books, 1985), 33; Stephanie Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Planation South* (Chapel Hill: The University of North Carolina Press, 2004), 64; Edward Baptist, " 'Cuffy,' 'Fancy Maids,'…"*American Historical Review* 106 no.5 (2001): 1642; Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014), 235.

[40] Where historians have described black women's experiences of sex in slavery, they have sometimes relied on vocabularies of consent. Eugene Genovese writes, "Many white men who began by taking a slave girl in an act of sexual exploitation ended by loving her and the children she bore."[40] Trevor Burnard exclaims that the Jamaican planter, Thomas Thistlewood, and his enslaved concubine, Phibbah, "had a warm and loving relationship." This was evidenced, he argues, by the "vigorous sex life [that] was an obvious manifestation of the bond between them."[40] He continues, "Their active sex life appears to have been *consensual*…[and] demonstrated *unforced* affection for each other." Eugene Genovese, *Roll, Jordan, Roll*, 415; Trevor Burnard, *Mastery, Tyranny, and Desire: Thomas Thistlewood and His Slaves in the Anglo-Jamaican World* (Chapel Hill: University of North Carolina Press, 2004), 238. My emphases.

[41] Planty, et. al, "Female Victims of Sexual Violence: 1994-2010," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, http://www.bjs.gov/index.cfm?ty=tp&tid=317, March 2013: 3 (table 1). See also "Black Women in the United States, 2014: Progress and Challenges 50 Years After the War on Poverty, 50 Years After the 1964 Civil Rights Act, 60 Years After *Brown v. Board of Education*," National Coalition on Black Civic Participation, Black Women's Roundtable, http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2014/03/27/National-Politics/Stories/2FinalBlackWomenintheUS2014.pdf, March 2014. The Black Women's Roundtable explains, "Black women are especially likely to be a victim of violence in America. In fact, no woman is more likely to be murdered in America today than a Black woman. No woman is more likely to be raped than a Black woman. And no woman is more likely to be beaten, either by a stranger or

historical violence in the legal and socially legible language of the violent present is to construct a usable context for communicating the continuity of a sexual culture that targets black women for abuse. This strategy is particularly salient given the well-documented cloak of silence that has characterized black women's experiences of sexuality, generally, in both the history and the historiography.[42] As ever, we write histories of the past for our present. This is adamantly not to claim that this practice is bad history, presentist history, or anachronistic history. Rather, it is to acknowledge the opposite—that all practitioners of history write through our very real political investments, and to name the ways those investments shape the work. It is also to hold up the ways in which those investments remain important, necessary, and driving forces for those producing so-called histories "from below." As Vincent Brown writes, historical study "suggests a new perspective on the history of the present."[43]

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by someone she loves and trusts than a Black woman" (vi). For more on the effects of sexual violence against black women, and black women's responses to that violence, see the work of Chicago-based organization A Long Walk Home (alongwalkhome.org).

[42] On one hand, normative sexual cultures have sought to invalidate the sexual trauma of black women (and black people generally) by silencing those experiences. For example, as Robin Bernstein has shown, the cultural production of black children as insensate beings divested claims that they could feel pain. Similarly, as Hannah Rosen has shown, normalizing sexual violence against black women during and after slavery prevented black women and their families from making claims against that violence. On the other hand, as Darlene Clark Hine and others have shown, black women have strategically used silence ("the culture of dissemblance") to protect themselves from injury in contexts of sexual exposure, denial of privacy, and violation. Similarly, Jeffery Q. McCune, Jr. has shown that black queer men have strategically used silence ("sexual discretion") to protect themselves from exposure. My commentary about historians' practice of framing sexual violence does not simply reiterate second-wave feminist critiques of silence that suggest that "breaking silences" is the best or only way to prevent violence against women. Rather, I locate this practice as *one* way that that black women historians have challenged violence (in the past and in the present) in the context of a complex legacy of silences that have been both violent and self-preserving. See Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (New York: New York University Press, 2011); Hannah Rosen, *Terror in the Heart of Freedom,* Darlene Clark Hine, "Rape and the Inner Lives of Black Women in the Middle West," *Signs* 14, no.4 (1989); Jeffrey Q. McCune, Jr. *Sexual Discretion: Black Masculinity and the Politics of Passing* (Chicago: University of Chicago Press, 2014). Thanks to Robin Bernstein for challenging me to complicate my engagement with silence in this project.

[43] Vincent Brown, *The Reaper's Garden: Death and Power in the World of Atlantic Slavery* (Cambridge, MA and London: Harvard University Press, 2008), 238. There is much to be said about the work of historical study to shape the historical present. Take, for example, C. Vann Woodward's classic *The Strange Career of Jim Crow*. As William McFeely writes, Dr. Martin Luther King, Jr. called the book "historical Bible of the Civil Rights Movement," a "book not only altered our picture of the past but also changed the history of the times in which

Drawing from these histories as both foundation and challenge, this study asks: what possibilities for understanding the history of sexuality does the truism of rape in slavery foreclose? As I will discuss further in Chapter Two, women of color occupied a vexed position with respect to "rape" in the antebellum period, a position that structured all of their sexual interactions in terms of vulnerability, while denying the possibility that they could be legally recognized as anything but sexual predators. This unique vulnerability is elided in the transhistorical application of the language of "rape." Similarly, classifying black women as consenting to sexual interactions—another legal category not available to them in the antebellum period—obscures the fundamental relation of domination that was ever present between white men and black women in that period.

Finally, the truism of rape in slavery sacrifices the possibility of pleasure despite or even as a result of overarching superstructures of domination and vulnerability. My project takes the politics of pleasure as a central concern, a set of questions that can only emerge outside of the analytically restrictive poles of rape and consent. In my interest in pleasure as a category, I am influenced by the work of scholars like Saidiya Hartman, who made it possible to imagine the "erotics of terror."[44] I also follow scholars such as Aliyyah Abdur-Rahman, who understands black sexuality as a site of creativity as well as injury, and Jennifer Nash, who points to the possibilities of racialized pleasure for black protagonists.[45]

To even make the suggestion of pleasure in the space of a history of slavery is a dangerous move, because our existing vocabularies around sexual violation mean that invoking the possibility of pleasure slips too easily into the sexist presumption that "she

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it was written." See William McFeely's afterward in C. Vann Woodward, *The Strange Career of Jim Crow* (New York and Oxford: Oxford University Press, 1955, 2002), 221.

[44] Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York and Oxford: Oxford University Press, 1997), 81.

[45] See Aliyyah I. Abdur Rahman, *Against the Closet: Black Political Longing and the Erotics of Race* (Durham: Duke University Press, 2012) and Jennifer C. Nash, *The Black Body in Ecstasy: Reading Race, Reading Pornography* (Durham: Duke University Press, 2014).

wanted it."[46] Neither recovering the history of a sort of "pure" pleasure, nor refuting the sexism that makes the embrace of pleasure so difficult for black women (and all women) are my project. Disentangling narratives of sex in slavery from the polarity of *either* rape *or* consent opens up space for investigating the ways that pleasure and violence could exist simultaneously. Moving away from questions that seek to determine and define sexual acts in the context of slavery either as rape or as consent, it becomes possible to ask what kinds of work pleasures could do, and for whom, and when.

Pleasure Economy

The question of pleasure remains vexed in the history of sex and slavery. Hortense Spillers offers, "Whether or not the captive female and/or her sexual oppressor derived 'pleasure' from their seductions and couplings is not a question that we can politely ask."[47] I ask, what does 'pleasure' mean in a world of everyday violence?

Investigating pleasure in the history of sex in slavery poses a problem because to ask about pleasure seems to assume the presence of the liberal subject. If, as Walter Johnson argues, studying enslaved people requires "consideration of human-ness lived outside the conventions of liberal agency," then this line of inquiry undoes itself.[48] Indeed, to ask about pleasure in the life of a woman of color who labored in slavery's sex market—to imagine her as a desiring individual—would seem to minimize the structural violence—the context—in which her life played out.

Thus although in this project I insist on the importance of pleasure as a category, my investigation of pleasure begins not with the individual, but with the superstructure. This

[46] Many thanks to Walter Johnson for giving me the language to articulate this problem.
[47] Hortense Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book," *diacritics* 17 no.2 (1987): 76.
[48] Walter Johnson, "On Agency," *Journal of Social History* 37, no.1 (2003): 115.

project arrives at pleasure via questions of economy, trade, and commodification: What was being bought? What was being sold? Unearthing the presence of *affective objects* in the sex market reveals the structural production of pleasures as *objects* rather than as the expression of an individual. This move emphasizes that although racialized sexual commerce was built on and shot through with constant and inescapable violence, it was also, at once, a pleasure economy. The following chapters reveal the ways that the laws, social customs, and discourses through which racialized sexual commerce flourished were set up to produce desires, fantasies—that is, pleasurable affective payoffs—in the sex trade. Those pleasures, in the form of affective objects, were the primary objects trafficked in the sex market.

Thus my contention is neither that pleasure did not exist, nor that the presence of pleasure was coterminous with the presence of willing, desirous individual subjects. Rather, I historicize the commodification of pleasures, and argue that pleasure was not only possible, but everywhere present within racialized sexual commerce. I argue that even as pleasure was everywhere in this economy, it was also fully sutured to the marketplace, and therefore inseparable in our historical imagination from violence.

The presence of affective objects demonstrates the ways that the market both shaped desires and accommodated them. For example, when a white man bought sex with a woman of color, he was not only buying the sex act, but the consent that was implied by the contracted purchase. And when he bought consent, he was buying the fantasy of a relation shaped by the free will of two equal subjects. Thus even as he entered into a relationship with a woman of color whose social location determined her vulnerability with respect to him, he could buy the feeling that he was not dominating her. Just as, Walter Johnson explains, would-be slaveholders bought fantasies of themselves through their purchase of people in the slave market—"they imagined who they could be by thinking about whom

they could buy"[49]—the Johns of racialized sexual commerce purchased fantasies about themselves and the relations they desired through their purchase and sale of affective objects in the sex market. Affective objects mitigated the presence of violence within racialized sexual commerce by remaking scenes of fundamental power imbalance into a scenes of egalitarianism, articulating domination in the vocabularies of consent, and thus, in the language of pleasure. Affective objects circulated within racialized sexual commerce to conjure fantasies of non-dominance in a world of totalizing violence.

This project proceeds thematically and episodically, tracing the affective objects that were traded in racialized sexual commerce throughout the antebellum period. Together, these chapters reveal the ways that affective objects—consent, promises, quadroons, and freedom—offered pleasures that were never dissociated with the violent market from whence they came. In Chapter One, I elaborate the concept of *affective objects* in light of prevailing historiographic taxonomies of sexual labor, setting the stage for subsequent chapters focused on individual affective objects in the sex trade. In Chapter Two, I demonstrate how the law made the legal categories of rape and consent inaccessible to women of color. This chapter unravels the imagined authenticity of consent and argues that, rather than a legal reality or an essential sexual truth, *consent* operated as an object within the sex market. Chapter Three reads *Carmelite, statu liber v. Lacaze* (1852) against the backdrop of the antebellum period's changing manumission laws, to trace the association of *the promise* of freedom with sexual labor within racialized sexual commerce. This chapter argues that the promise operated as an affective object that had purchasing power for sex, and also altered the shape of enslavement for sexual laborers. Chapter Four returns to *Alexina Morrison v. James White* (1861) to trace the production of the erotics of racial ambiguity through the

[49] Johnson, *Soul by Soul*, 79.

quadroon. This chapter argues that the quadroon was an affective object that white men attached to the bodies of light-skinned women of color, which explains their collective fascination with and desire for those bodies and that created pleasure out of violent erotic contact with them. Chapter Five uses *Ann Maria Barclay v. Edward Sewell* (1854) to unpack the lives of enslaved women who "lived as free" because of their status as sexual laborers. This chapter argues that *freedom* became an affective object in these scenarios, which was a fragile structure that could afford some distinction from slavery, but could not guarantee a full departure for women of color from bondage. The Epilogue returns to the fundamental question of this dissertation—how did historical actors make pleasures in a world of totalizing violence?—and opens up the role of *desire* in the history of sex and slavery.

1

Affective Objects

> On the first night that we were on board the steamboat, he directed me to put her into a state-room he had provided for her, apart from the other slaves. I had seen too much of the workings of slavery not to know what this meant. I accordingly watched him into the state-room, and listened to hear what passed between them. I heard him make his base offers, and her reject them. He told her that if she would accept his vile proposals, he would take her back with him to St. Louis, and establish her as a housekeeper on his farm. But if she persisted in rejecting them, he would sell her as a field hand on the worst plantation on the river…Without entering into any further particulars, suffice it to say that Walker performed his part of the contract at that time. He took her back to St. Louis, established her as his mistress and housekeeper at his farm, and before I left, he had two children by her.[50]
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> -William Wells Brown, 1848

Cynthia, who William Wells Brown introduced to the world in his *Narrative*, was a light-skinned, beautiful, and Wells Brown noted, virtuous enslaved woman. She had been "made a housekeeper" by Mr. Walker, the man who owned her; it was a title that barely covered over the sexual labor she had been purchased to perform.[51] Although she was enslaved and retained no right to disobey the man who owned her, she challenged his sexual desires and expectations. In response, Walker offered her something—a place as a housekeeper on his farm, some modicum of mobility and power in a world in which Cynthia had very little. Despite her status as an enslaved woman, despite her exclusion from any legal right to defy this man, the question of her *willingness* was nonetheless at stake.

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[50] William Wells Brown, *Narrative of William W. Brown, A Fugitive Slave.* (New York: Cosimo Classics, 2007 (1848)), 18.

[51] Walter Johnson explains that slaveholders used verbal subterfuge to describe the women they purchased for sex. Johnson writes, "When [slaveholders] stepped into the notary's office to register their stake in the high-priced women they had bought, slaveholders described them not as 'mistresses' or 'fancies' but as 'cooks' or 'domestics' or 'seamstresses,' or, most commonly, not at all. Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA and London: Harvard University Press, 1999), 114.

This glimpse into Cynthia's experience reveals the endless, quotidian transactions that shaped the erotic arrangements between women of color and white men in antebellum New Orleans. This moment looks plainly like a scene of coercion, in which Walker gave Cynthia a choice that was really no choice at all—she could either have sex with him or suffer the consequences of an unknown and brutal plantation down the river. But Wells Brown does not call this coercion. He calls this a "contract." This "contract" emblematized an exchange, in which Walker offered Cynthia something for her willingness. Cynthia's willingness, itself, was coveted in the eyes of the slaveholder.

What matters, here, is not whether Cynthia resisted sex with Walker. Rather, what matters is the centrality of her willingness to the daily sexual transactions of which she was compelled to be a part. It is possible, even normative, to claim that when Cynthia stopped "rejecting" Walker's "vile proposals," she was *not* consenting to sex with him, but rather caving under the weight of coercion. Yet I want to take seriously her eventual acquiescence, and the transaction of which it was a part.

The sexual labors that Cynthia performed—her role as a fancy girl—located her within the world of racialized sexual commerce. Like other women within racialized sexual commerce—other fancy girls, as well as brothel laborers, *placées*, and concubines—the value of sex with her was tied to its context. In other words, her willingness had a market value.

The specter of Cynthia's willingness is critical to understanding the interaction she had with Mr. Walker; his verbal cajoling and manipulation suggests that his desire did not include taking sex from Cynthia with explicit physical force. Her willingness was a prized object—which Walker moved toward, desired, and made equal to other valuable things—that was laden with affective meaning. In the interaction of Cynthia and Mr. Walker, then,

Cynthia's eroticized willingness was an *affective object* around which the sexual transaction revolved.

The imagined willingness of black female sexual subjects was just one of the affective objects that circulated within racialized sexual commerce. As the balance of this dissertation will show, the affective objects of the sex trade were its prized commodities. This chapter will describe the varieties of sexual labor at stake in the rest of this project, and argue that although there are meaningful differences between them, their similarities matter more than their differences. Primary among the similarities that joined these forms of sexual labor were the affective objects that circulated in all of the transactions I describe. Over and above differences in the length of a transaction or the status of women involved, the trade in affective objects cohered a vast sex trade in antebellum New Orleans.

Varieties of Sexual Labor

Historians have uncovered important distinctions between varieties of sexual labor in antebellum New Orleans. These distinctions have been articulated through the categories of: enslaved women positioned as "fancy girls," enslaved women laboring in brothels, free women of color laboring in brothels, and free women of color engaged in *plaçage* or concubinage. These distinctions usefully amplify the difference between freedom and slavery for women performing sexual labor as well as distinctions in the location or longevity of sexual service. These categories provide the foundation for understanding the vast and various economy of racialized sexual commerce in antebellum New Orleans.

However, as Stephanie Camp explains, heuristics "obscure as much as they reveal."[52] The heuristic that amplifies *differences* among varieties of sexual labor enables students of this history to organize and understand the ways in which women could have meaningfully different experiences under the heading of "sex work." Focusing on distinctions, however, can obscure our vision of meaningful similarities that cross cut varieties of sexual labor. A focus on distinction can also obscure the ways that varieties of sexual labor bled together, or the ways that a single woman could occupy a variety of roles within racialized sexual commerce through the course of her single lifetime.

To that end, I return to *racialized sexual commerce* to envision the world of sexual labor in antebellum New Orleans. I offer this framework not as a replacement for the separation of sexual labors, but as another way of seeing that sits "*beside*" existing visions of this history.[53] Racialized sexual commerce, as a heuristic, embraces dynamism in the history of sexual labor, acknowledging, for example, the ways that the legal category of "concubinage" could describe multiple kinds of liaisons, or, for another, the ways that the boundaries between what happened on auction blocks, in brothels, and in private homes could be porous. This broadening move also captures the ways that enslaved and free women of color could occupy similar roles within the sex trade, and could also occupy different locations throughout the course of their singular lives. Some women spent their lifetimes in slavery, while others found avenues toward freedom through their work; some experienced temporary slavery through sexual labor, while others were able to live as free despite their

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[52] Stephanie Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: University of North Carolina Press, 2004), 3.

[53] In attempting to think through varieties of sexual labor in new ways, I take instruction from Eve Kosofsky Sedgwick, whose last project moved forward by attempting "to explore some ways around the topos of depth or hiddenness, typically followed by a drama of exposure, that has been such a staple of critical work of the past four decades," and attempting "to get a little distance from *beyond*, in particular the bossy gesture of 'calling for.'" Sedgwick offers instead the proposition of scholarly work that can sit "*beside*" existing ways of thinking. Eve Kosofsky Sedgwick, *Touching Feeling: Affect, Pedagogy, Performativity* (Durham: Duke University Press, 2003), 8.

legal status as enslaved; some labored in brothels while others brokered sales of other women into those spaces. Above all, understanding varieties of sexual labor as part of a singular economy reveals a similar focus on affective objects, in which the affective meaning attached to sex acts became the primary object of value in a transaction.

I hold in tension the differences between types of sexual labor, on one hand, and the ways that the archive tends to blur the boundaries between them, on the other. This tension gestures toward debate within the historiography around categorization of some labors, and also begins to unravel the coherence of categories around which there is little debate. As the section on *plaçage* and concubinage reveals most clearly, strict categories begin to break down when there is little consensus about where one form of sexual labor ends and another begins. Debate around *plaçage* and concubinage alerts us to the fallibility of a strict taxonomy in the history of sexual labor, and acts as a foil for certainty in categorization of sexual labors in general. In the following pages, I will outline the accepted ideas about varieties of sexual labor and note historiographic consensus where it exists. I will also point to places where debate either already exists in the historiography, or where the archive challenges existing consensus.

Unlike the categories of the fancy trade and brothel labor, *plaçage* is a contested term. *Plaçage* generally describes long-term sexual liaisons between free women of color and white men in antebellum New Orleans. The term is generally used to connote an explicitly transactional relationship between those players, in which a woman of color traded sex and companionship for lodging and inheritance rights both for herself and for any children born of the liaison. *Plaçage* is typically associated with the notion of placement—deriving of the French *placer*, "to place"—wherein the woman in question would have been set up, or

"placed," with a white man through negotiations between that man and the woman's mother.[54]

Conflict in the historiography of *plaçage* revolves around three problems. First, the word "*plaçage*" is rarely found in the archive of antebellum New Orleans. The earliest use of the term in an American context is found in the work of E. Franklin Frazier and Melville Herskovits, who used "plaçage" to describe long-term sexual liaisons in the 19th century.[55] Emily Clark explains that they uncovered *plaçage* in the vernacular of 19th century Haitians and subsequently used the term to describe arrangements in New Orleans. They extrapolated from the Haitian context, where, she writes, "*plaçage* referred to long-term relationships between men and women of the same racial ancestry, and to be a *placé(e)* was to be a partner, male or female, in such an arrangement."[56] Frazier and Herskovits represent the first use of "plaçage" and "placée" to describe relationships in which a free woman of color in antebellum New Orleans was "placed" with a white man ("protector") and, so positioned, traded sexual services for goods and status. Despite its apparent non-presence in the vernacular of antebellum New Orleanians—Clark writes, "it is impossible to find good evidence for the use of the term *plaçage* by antebellum New Orleanians"[57]—the term remains present in contemporary historiography.

Second, the sources that form the core archive of relationships that have been historicized under the sign *plaçage* are travel narratives, which sensationalized interracial

[54] "Plaçage," *Oxford English Dictionary*, Accessed June 24, 2015, http://www.oed.com.ezp-prod1.hul.harvard.edu/view/Entry/264984?rskey=wJa3zy&result=2&isAdvanced=false#eid.
[55] E. Franklin Frazier, *Free Negro Family* (Taylor & Francis Group, 1932), 31; Melville J. Herskovits, *The Myth of the Negro Past* (Boston: Beacon Press, (1941) 1990), 168.
[56] Clark notes that the root of the word *plaçage, plaçer*, appears in the 1845 poem by free man of color Armand Lanusse, "Épigramme." See Emily Clark, *The Strange Career of the American Quadroon: Free Women of Color in the Revolutionary Atlantic World* (Chapel Hill: University of North Carolina Press, 2013) 159, 160, 156.
[57] Ibid., 148.

sexuality as part of a myth-making project that framed New Orleans as a "sin city."[58] Diana Williams explains, "Racially mixed courtesans have been central to this myth of New Orleans…stories of racially mixed people, especially Louisiana 'quadroons,' have flourished for nearly two centuries as an important sub genre of their own."[59] Travel literature that includes New Orleans has, Clark writes, "a repertoire of standard elements" that describe *plaçage*, which called up and reinvigorated the trope of the "tragic mulatta" in the form of the quadroon, and used that figure to provoke anti- or pro-slavery sentiment.[60] Among these stock characteristics and plot points, Clark explains, was the belief that women of color chose quasi-marriage relationships with white men over and above legitimate marriages to men of color in a bid for status and money; these relationships were imagined to have been brokered by the parents of a young woman, and were imagined to last until the man involved found a suitable white woman to marry, at which point he would abandon his *placée*.[61] These narratives insist that free women of color were conniving seductresses who used their sexual prowess to ensnare white men and pull them away from the white women imagined to be their appropriate partners. Further, Diana Williams writes, this archive "conjures an image of a market in sexual slavery run by women of color" and suggests that "women of color willingly trapped themselves in prisons of their own making."[62] Here, the question of a woman's willingness is a trope in both the archive and in the analysis of *plaçage*.

In the midst of debate, *plaçage* remains operative alongside other key terms that describe similar arrangements. Shirley Thompson describes *plaçage* as "a practice with many

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[58] For more on tourism of New Orleans and the use of race and sexuality to mark New Orleans as exceptional, see Jasmine Mir, "Marketplace of Desire: Storyville and the Making of a Tourist City in New Orleans, 1890-1920," (Ph.D. Dissertation, New York University, 2005).
[59] Diana Williams, "'They Call It Marriage': The Interracial Louisiana Family and the Making of American Legitimacy" (Ph.D. Dissertation, Harvard University, 2007), 7.
[60] Clark, *The Strange Career of the American Quadroon*, 133.
[61] Ibid., 148.
[62] Williams, "'They Call it Marriage,'" 165, 33.

faces," a catch-all term that includes "relationships that took on the qualities of legitimate marriages," "a right of passage for a young white Creole man," and "relationships [that] gestured toward contractual accountability."[63] Diana Williams side-steps the language of *plaçage* by relying on "concubinage," the language of Louisiana's 19th century legal code, which described "marriage-like cohabitation arrangements."[64] She argues that *plaçage* was "untranslatable" in the American legal context.[65] Most recently, Emily Clark has attempted to reconcile debate about the history of *plaçage*-like relationships and the discourse that enveloped them with "the plaçage complex," which encompasses both the literal migration of Dominguan women and social customs to New Orleans, as well as the discursive context of New Orleans myth-making and the trope of the tragic mulatta that structured the meaning of their liaisons.[66]

I generally sidestep "*plaçage*" in this project, and rely more heavily on *concubinage* to describe long-term non-marital sexual arrangements between white men and women of color in the early 19th century, in which a transaction was at the heart of the arrangement. Further, I use *concubinage* to denote relationships that included both free women of color and enslaved women who gained or sought to gain their freedom through these liaisons. In this project, *concubinage* and, occasionally, *plaçage* denote relationships that inherited some of the rituals and traditions of *ménagère* relationships in French San Domingue, in which women—many, but not all, mixed-race women of color—occupied the position of both "housekeeper and sexual partner" for unmarried white men, under contracts that often stipulated that she would be paid at the end of the term of the relationship.[67] As Emily Clark writes, these types

[63] Thompson, *Exiles at Home*, 194.
[64] Williams, " 'They Call It Marriage,'" 33.
[65] Ibid., 195.
[66] Clark, *The Strange Career of the American Quadroon*, 149.
[67] Ibid., 63, 64, 65, 66.

of relationships traveled to New Orleans with the wave of Dominguan refugee immigration in 1809, and were amplified by the introduction of quadroon balls, where attendance was restricted to mixed race women and white men.[68] The uniquely New Orleanian institution of *plaçage* and *concubinage* was also informed by the history of *coartación*, a legal code that governed Louisiana during Spanish rule (roughly 1763-1800).[69] Under *coartación*, Jennifer Spear writes, "female slaves were more likely to receive freedom than male ones" at least in part because "they were more likely to enjoy intimate relationships (sexual or otherwise) with their masters that might lead to unconditional manumissions."[70] Like the *ménagère* system, *coartación* created an avenue for black female autonomy through an exchange of long-term sexual service for goods and/or freedom. I argue that together, the histories of the *ménagère* system and *coartación* informed the emergence of a specifically American cultural formation that was unique and internally diverse, in which women of color and white men transacted long-term sexual arrangements in the antebellum period.

Debate about *plaçage* demonstrates that the contested nature of categorization for sexual labor arrives because the archive of the same is scattered, broken, and sometimes inconclusive. Yet when we soften the requirements to "fit" elements of sexual commerce into the category of *plaçage*, it becomes possible to understand long-term liaisons as loosely related to *both* the history and the mythology associated with the category. Perhaps the language of *plaçage* is not necessary to describe the life of a woman like Ann Maria Barclay, who lived a life of semi-freedom because of a long-term sexual liaison.[71] Yet fully discarding the term may obscure connections that her life bears out to longer histories of long-term

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[68] Ibid., 67. Clark reports that the first quadroon ball was hosted by Haitian refugee Auguste Tessier in 1805 (Ibid., 67). For more on quadroon balls, see also Monique Guillory, "Some Enchanted Evening on the Auction Block" (Ph.D. Dissertation, New York University, 1999).

[69] For more on *coartación*, see Chapter Three.

[70] Jennifer Spear, *Race, Sex, and Social Order in Early New Orleans* (Baltimore: Johns Hopkins University Press, 2009) 112.

[71] For more on the life of Ann Maria Barclay, see Chapter Five.

interracial liaisons, mythologies of long-term interracial liaisons, and historiographic debate over the same. To welcome *plaçage* as a loose, imperfect, and malleable terminology can at once locate a woman like Barclay within a tradition of sexual labor, while also preserving skepticism about the difference between mythology and history, and attention to the specificity of her own experience. Thus even as I generally rely on the less controversial *concubinage* over *plaçage*, I am hesitant to discard *plaçage* all together because it serves as a useful reference to other historical work and to a set of incomplete archives about which many, many questions remain.

Unlike in the conversation about *plaçage*, historians tend to agree about the history of the fancy trade. Historiographic consensus asserts that the fancy trade was one arm of the broader slave trade, in which the bodies of women and girls like Cynthia, with whom I began this chapter, were traded among white male slaveholders specifically for the purposes of sex and companionship. Adrienne Davis writes, "the South established markets that sold enslaved women for the explicit purpose of sex. In so-called 'fancy girl' markets, principally in southern port cities, enslaved women could be bought to serve as 'sexual concubines' of one man, or to be prostituted in the more contemporary understanding of the term."[72] Walter Johnson explains that "fancy" had a double meaning in the slave market, describing both the imagined beauty of the women being bought and sold, and the fantasies that they were meant to fulfill for white men. He writes, "the word in its other meaning describes a desire: 'he fancies…' The slave-market usage embarked from this second meaning: 'fancy' was a transitive verb made noun, a slaveholder's desire made material in the shape of a little girl."[73] Edward Baptist explains that, for slaveholders, buying a "fancy girl" "delivered to

[72] Adrienne D. Davis, "Slavery and the Roots of Sexual Harassment" in *Directions in Sexual Harassment Law*, eds. Catharine MacKinnon and Reva B. Siegal (New Haven and London: Yale University Press, 2003), 459.
[73] Johnson, *Soul by Soul,* 113.

these men the sense of illicit discovery that accompanies pornography."[74] Although all trading in slavery was eroticized, the designation of "fancy" created a special class of women, who were meant to perform *exclusively* sexual labor—related to, but different from the kinds of sexual labor that all black women were called upon to perform in the slave society. The presence of the fancy trade within the slave market indexes the brashness of the market in general and of the sexual market specifically.

The fancy trade was best known for the high prices for which the women involved were typically sold, marking the fancy trade as one boutique market of slavery. Edward Baptist understands the fancy trade as a market in twin fetishes, including a "historically specific form of sexual fetishism [that] worked together with commodity fetishism…amplifying and accelerating each other's force…implying psychological and physical—including explicitly sexual—pleasures."[75] These fetishes produced the middle ground as desirable, Baptist continues, for a "fancy" girl was "neither precisely black nor white, and neither [for] field labor nor cooking and cleaning" and imagined as always sexually accessible.[76] Frederic Bancroft explains that "owning a 'fancy girl' was a luxurious ideal,"[77] that "the French Exchange, in the rotunda of the St. Louis hotel" trafficked in "superior-looking girls, varying from mulatto to octoroon."[78] Indeed, these women-turned-luxuries sold for, Johnson writes, "occasionally…three hundred percent of the prices paid in a given year"[79] for enslaved field hands and domestic servants.[80]

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[74] Edward Baptist, *The Half has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014), 241.
[75] Edward Baptist, "'Cuffy,' 'Fancy Maids,' and 'One Eyed Men': Rape, Commodification, and the Domestic Slave Trade in the United States," *The American Historical Review* 106 no.5 (2001): 1641.
[76] Ibid., 1642.
[77] Frederic Bancroft, *Slave Trading in the Old South* (Baltimore, MD: J.H. Furst Company, 1931), 329.
[78] Ibid., 333.
[79]Johnson, *Soul by Soul*, 113.
[80] Bancroft writes: "Mulatto girls would sometimes bring from $2,200 to $2,500; the best hairdressers might sell for as much as $3,500, for they could each earn many hundreds a year for their owners by going to regular

The most obvious place to locate the fancy trade is in the initial scene of transaction, where women were traded in public auctions. In New Orleans, Bancroft explains, women were sold for sex in "two grand hotels," the St. Louis, on St. Louis street, and the St. Charles, on Baronne, as well as in the yards and backrooms of smaller markets that lined Gravier, Baronne, Magazine, Common, Esplanade, Chartres, or Exchange Place and St. Louis Streets that cut through the French Quarter.[81] This initial transaction involved two white men trading sex. Having been sold at auction, these enslaved women were transported to home spaces, where they negotiated an endless set of sexual transactions.

The life cycle of a woman sold as a sex slave is difficult to trace, because the most persistent appearances of these women in the archive are during moments of sale. Although these sales foretell a lifetime of sexual servitude, a second set of sales suggest the limits of that vision. The stories of these women have a vanishing point—when the man married, he deserted her, or when he died, she was left in the often disdainful hands of that man's white family. Solomon Northup provides unique insight into the precarious lives of enslaved sexual laborers where he describes Eliza, whose early life was structured by the attentions of the man who owned her. Northup writes, "Leaving his wife and daughter in the house they had always occupied, he erected a new one nearby, on the estate. Into this house he brought Eliza." There, "she resided with him there nine years, with servants to attend upon her, and provided with every comfort and luxury of life," as well as the promise of emancipation upon the death of her owner."[82] Yet Eliza's existence was marked with the threat of instability because, Northup continues, "in consequence of the position she was compelled to occupy, she and [her daughter] Emily became the object of Mrs. Berry and her daughter's

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patrons. (The New Orleans ladies prided themselves on an artistic *coiffure*, daily.)" Bancroft, *Slave Trading in the Old South*, 337.

[81] Ibid., 312, 319, 320.

[82] Solomon Northup, *Twelve Years a Slave* (Lexington: Soho Books, 2011 (1853)), 20.

hatred and dislike,"[83] a version of events that reverberates within histories and mythologies of slavery's sexual culture. When the master died, Eliza was not emancipated as promised, but was instead sold as a field slave in New Orleans and permanently separated from her children. Other possible paths of these women include being pushed into field labor, or, upon being sold away from a plantation, being sold to men who owned or operated brothels, and made to work in those spaces.

Yet even as consensus exists, the archive troubles a neat definition of the fancy trade. In the same narrative, Solomon Northup describes the life of Patsey, who was a prized field hand as well as the object of her owner, Mr. Epps's, sexual attention. Northup describes her tortured existence as "the slave of a licentious master and a jealous mistress."[84] He continues, "She shrank before the lustful eye of the one, and was in danger even of her life at the hands of the other, and between the two, she was indeed accursed…Patsey walked under a cloud."[85] Because Patsey was not purchased *solely* or even *primarily* for the purpose of sex, and because she continued to be forced to perform field labor alongside sexual labor, it is possible to argue that she was not a fancy girl. It is unknown whether or not Epps purchased her because he wanted to use her for sex, or if that practice only emerged later in her life on his plantation. However, it is also possible to argue that Patsey was caught up in racialized sexual commerce, as an enslaved woman whose life was profoundly structured by the sexual desires of the man who owned her. Because she was a sex servant, but not only a sex servant, she represents one edge of the fancy trade narrative. Similarly, Marie, a woman who sued for her freedom in New Orleans in 1819, seems to have begun her life as a fancy girl. She was traded between several men in her young life, and was used for sex in those

[83] Ibid., 20.
[84] Ibid., 91.
[85] Ibid., 91.

arrangements.[86] However, later in life Marie began to bear children by Robert Avant, the man who owned her. The long-term and child-bearing aspects of her life with Avant begin to suggest the history of concubinage as much as they indicate the presence of the fancy trade. Thus just as the terminology of *plaçage* or concubinage can be complicated by the archive, so too does the dominant narrative of the fancy trade falter slightly under the weight of specific women's lives. Just as in my preservation of *plaçage*, this project preserves the fancy trade as a useful narrative for scaffolding one aspect of sexual labor, but imagines its frame as loose in order to account for the variety of the lives of women in this archive.

Not unlike the conversation about the fancy trade, historians have come to relative consensus about the presence of women of color in brothels. Historians agree that enslaved women worked in and managed brothels. Judith Schafer explains that "prostitutes worked in at least three-fifths of all houses in a large part of the city," and that women of color made up some of the group of women who worked in brothels.[87] She explains that numerous enslaved women were found working in or managing brothels during antebellum police raids spurred on by neighborhood complaints, reporting that between 1850 and 1860 at least 20 enslaved women were arrested for working in brothels and, she writes, "the evidence in the court records and newspapers probably constitutes only a fraction of incidents that occurred."[88] These women were placed in brothels by their owners: Schafer writes, "not infrequently, slave owners forced their slave women into prostitution and then collected their fees."[89] Schafer explains that this practice had roots in Spanish rule, wherein "the practice of allowing slaves to purchase their freedom…held that placing a slave in a brothel

[86] *Marie, a slave v. Robert Avant* (6 Mart. (o.s.) 731 no. 352), 1819.
[87] Judith Schafer, *Brothels, Depravity and Abandoned Women: Illegal Sex in Antebellum New Orleans* (Baton Rouge: Louisiana State University Press, 2009), 3.
[88] Ibid., 41.
[89] Ibid., 11.

where her master could make a profit from her meant that the slave would automatically gain her liberty."[90] Although "this benefit disappeared under American rule,"[91] the practice of masters placing enslaved women in brothels persisted into the American period.

The scene of enslaved prostitution involves multiple transactions. First, the scene of enslaved prostitution points to an initial transaction, presumably taking place off-site from the brothel, in which a slaveholder could purchase the body of a woman of color, perhaps explicitly for the purpose of sex or perhaps, as in the case of Carmélite, purchased in 1844 in New Orleans by Jean Lacaze, as a "marchande," (merchant-woman), who would also be called upon to labor in Lacaze's brothel.[92] The actors who dictated the shape of the initial transaction—the transaction that landed the woman in a brothel—included the purchaser and trader. The temporality of that transaction might vary, but generally determined the labor throughout a woman's lifetime. We must assume that the enslaved woman was *also* an actor in this scene, as, for example, the same Carmélite was known to argue with and even physically resist her pimp, Lacaze, though the powers that she wielded to shape the conditions of her enslavement were scarce.

The second set of transactions emerged when this woman was moved to the brothel space. There, she independently managed the next set of transactions, the financial trade between herself and the men who purchased sex from her. Enslaved women like Eliza Turner even managed other women's—including white women's—sexual transactions, and were responsible for passing profits back to the brothel owner, which may have created opportunities for some financial autonomy.[93] This second transaction troubled the normative

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[90] Ibid., 41.
[91] Ibid., 41.
[92] *Carmelite, a Negress, Slave v. Jean Lacaze*, 7 La. Ann. 629/631; 2506 (1852). For more on Carmélite and Lacaze, see Chapter Three.
[93] Schafer, *Brothels, Depravity, and Abandoned Women*, 110.

power arrangements of a slave society, because although the profit that the woman pulled in from the sexual transaction likely filtered back to her owner, she may have had control over some of that money herself. The temporality of this transaction is much more brief, because white men were purchasing sex for a bounded amount of time, though some men, like Abraham Parker who committed murder within Eliza Turner's brothel, might return again and again to visit the same woman. The extent to which women of color worked at every level of the brothel economy—selling their own sexual labor and purveying the sexual labor of enslaved or white prostitutes in the brothel—further destabilizes these expected power dynamics.

Enslaved women were not the only women of color working in brothels in antebellum New Orleans. Free women of color were well known for their role as innkeepers in antebellum New Orleans—this dovetailed with their presence in brothels. Again, Judith Schafer has accounted for the presence of free women of color managing and working in brothels, explaining that "[a] number of Louisiana-born free women of color worked as public women," and that in the late antebellum period, multiple free women of color were arrested in conjunction with keeping or participating in "disorderly houses."[94] These women were arrested because they "kept a brothel," "kept as boarders… 'certain white women of a lewd and abandoned character,'" or because they worked in brothels kept by other women.[95] Schafer notes that it was not unusual to find "racially integrated houses of prostitution" in antebellum New Orleans, in which free women of color worked beside, or were in charge of, enslaved women of color or white women.[96]

[94] Schafer, *Brothels, Depravity, and Abandoned Women*, 11.
[95] Ibid., 42-46.
[96] Ibid., 43.

The transactions of free women of color involved in brothels mirrored those that enslaved women were part of, but differed because of the key difference of status. Where enslaved women labored in brothels and sent money back to the person who owned them, free women of color turned profits that funneled into their own coffers. Thus, when free women of color sold sex—their own, or that of other women—they reaped the financial benefits of those transactions.

The key issue in the historiography of antebellum brothel labor involves the relationship of freedom and slavery in these spaces. Judith Schafer, the authority on antebellum brothel labor, has emphasized the difference between free and enslaved women in brothels. However, as the lives of women like Eliza Turner, Carmélite, and Françoise Doubrere show, the categories of slavery and freedom lost meaning in brothel spaces. In the case of Eliza Turner, an enslaved woman who managed a brothel full of white women, the enslavement she experienced—indexed by her inability to keep the profits of her labor—was cross-cut by her ability to command authority over the white women who worked in the house, and over even the white men who were the brothel's customers. The enslavement of Carmélite was complicated by the fact that her enslavement was time-bound because of her work in the brothel. And finally, the life of free woman of color Françoise Doubrere reveals the work of women of color in the sex trade on the edges of brothel spaces, because although she did not work in a brothel, herself, she sold another woman of color, Carmélite, into sex work. (For more on the interconnection of Carmélite and Francoise Doubrere, see Chapter Three.) The lives of these women challenge the relevance of the categories of slavery and freedom in the space of brothel labor, and also challenge the notion that the brothel, itself, constituted a boundary of the sex trade.

The categories of *plaçage*, the fancy trade, and brothel labor, then, are at their most useful as loose frameworks through which to understand the shifting, dynamic, and vast world of racialized sexual commerce. Beyond understanding the ways that women's lives could include multiple forms of labor, and the ways that the boundaries of these labors could collapse into one another, these labors were joined through the purchase and sale of intangible objects that made the sex at the heart of these transactions meaningful.

Affective Objects

Sex acts gain meaning through their context, and in antebellum New Orleans, the context through which those acts were delivered mattered. "Sex" is a category that takes on different meanings depending on the affects with which it is, in a given instance, associated. When the men who involved themselves in racialized sexual commerce paid for sex—as opposed to taking it for free—they were purchasing something in excess of the sex act, itself. We might ask, for example, why a man like Mr. Walker, who had been endowed by both law and social custom with full control over the actions of Cynthia, would bargain with and cajole her into having sex with him? In other words, given that the laws and customs of antebellum New Orleans offered white men unequivocal access to sex with women of color, why would those same men *pay* for that same sexual access to those same women? The sale of sex with light-skinned women of color in antebellum New Orleans constituted a boutique market in which the value of that which was explicitly for sale—sex—was inflated by the intangible affective objects attached to the act.[97]

[97] Thanks to Robin Bernstein for offering the language of "boutique" to describe the sex market in antebellum New Orleans.

Sex is a peculiar kind of commodity.[98] At the most basic level, "sex" is a capacious term that designates an innumerable and ever proliferating set of individual and interactive physical acts that are laden with social meaning. The social meanings of sex are various and historically located and include associations with lust, desire, reproduction, pleasure, love, power, and violence. As a commodity, sex could theoretically resemble other kinds of sets of actions with an exchange value, or what we commonly think of as labor. As labor, sex might be similar to chopping wood, seeding cotton, or hauling grain.

Yet the notion of sex-as-commodity has historically posed a problem for economic theorists, because the high ideals associated with sex—pleasure, reproduction, love, etc.—have been imagined as in opposition to the base qualities of the market. Indeed, the confluence of sex and money has marked that sex inauthentic, alienated from its truer iterations outside of the marketplace. For example, Georg Simmel explains, "money is never an adequate mediator of personal relationships—such as the *genuine love relationship*" such that prostitution represents "the nadir of human dignity" because "a woman surrenders her most intimate and personal quality…for a totally impersonal, purely extraneous and objective compensation," that is, "money."[99] Similarly, for Karl Marx, prostitution is the "abomination" that acts as a metaphor for the alienation of labor.[100] Sex has been imagined as exceptional, so that prostitution comes to symbolize "the most terrible degradation" of

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[98] "Peculiar," here, intentionally invokes the phrase "peculiar institution," which was used in the 19th century to unveil the sexual perversity of slavery, and also to point to the strange capacities of a system that purported to turn people (those who should not be able to become commodities) into commodities. See also Kenneth Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1956).
[99] Georg Simmel, *The Philosophy of Money*, ed. David Frisby, trans. Tom Bottomore and David Frisby (London and New York: Routledge: 1978, 1990 (1907)), 377.
[100] Karl Marx, "Economic and Philosophic Manuscripts of 1844," in *The Marx-Engels Reader*, (New York and London: Norton and Co, 1972), 82, footnote 7. For an extended meditation on the metaphorics of prostitution, see Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998).

humanity.[101] Commodification has been understood to alienate sex acts from the social ideals that make sex desirable in the first place.

Yet the exchange of money for sex in antebellum New Orleans did not separate sex from those ideals, but rather monetized them and made them fungible. When a man paid for sex acts he could otherwise get for free, he was paying not simply for the sex *act*, but also for a set of feelings associated with that act. As Sara Ahmed explains, "To experience an object as being affective or sensational is to be directed not only toward an object but to what is around that object."[102] When a man paid for sex, he was purchasing the act alongside its affective associations, that is, sex with "what [was] around" it. As Pamela Haag explains, mid-19th century jurisprudence understood "the single woman as a self-interested figure in a manner that would conjoin her pecuniary and sexual appetites," who was "sexually and economically calculating or self-interested."[103] The alignment of sexual and economic "appetites" made "morally and sentimentally abhorrent yet possible,"[104] even likely, the coexistence of sexual willingness alongside a financial transaction. This inference derived from prevailing notions of liberal contract, the basic premise of which is that the willingness of each party guaranteed the contract.[105] The presence of money changing hands indicated such a contract for 19th century jurists, which produced prostitution as an index of a woman's consent. In other words, as Sharon Block explains, "money could buy [a woman's] consent."[106]

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[101] Simmel, *Philosophy of Money*, 377.
[102] Sara Ahmed, *The Promise of Happiness* (Durham: Duke University Press, 2010), 25.
[103] Pamela Haag, *Consent: Sexual Rights and the Transformation of American Liberalism* (Ithaca: Cornell University Press, 1999), 41.
[104] Ibid., 41.
[105] Stanley, *From Bondage to Contract*, 3-12.
[106] Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006), 27.

Prostitution in antebellum New Orleans, then, did not evince simply the sale of sex. Instead, prostitution produced the sale of sex as a vehicle for the sale of consent. The financial transaction sutured sex to consent, or, to put it another way, sex became fungible through its association with consent. Commodified sex was a compound product that included both sex acts and affect.[107]

Therefore what was *in excess* of the sex act mattered, because that excess was precisely what made that sex valuable. To say that sex had an exchange value within racialized sexual commerce is to say that *sex and its attached affects* had an exchange value in that marketplace. (Indeed, as Louisiana law declared, "consent is not free.")[108] In this project, I deploy *affective objects* to describe those affects—including, but not limited to, consent—that were the hidden objects attached to the labors explicitly for sale in the sex trade of antebellum New Orleans.

My use of *object* departs from the definition of materiality and relies instead on its definition as a noun in the accusative case. Though the more general use of "object" denotes "a material thing that can be seen and touched," I am more interested in the original definition of object, "relating to the presentation of something to the sight, senses, understanding, etc."[109] In other words, an "object" is an accusative noun, where something *has been done to it*—it has been "placed" or "presented." The tertiary definition of object continues, an object is "a person or thing to which a specified thought, or feeling, is directed; the person or thing to which something is done, or on which something acts or operates."[110]

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[107] The importance of affect attached to sex also accounts for the proliferation of other acts that were for sale in the market—such as companionship, appearance together in public, or cohabitation. Like sex, these were actions whose association with particular affects made them valuable, desirable, and worthwhile to purchase.
[108] A General Digest of the Acts the Legislatures of the Late Territory of Orleans and the State of Louisiana and the Ordinances of the under the Territorial Government, (New Orleans: Peter K. Wagner,1816), 14.
[109] "Object," *Oxford English Dictionary*, Accessed February 6, 2015, http://www.oed.com.ezp-prod1.hul.harvard.edu/view/Entry/129613?rskey=GiTip6&result=1&isAdvanced=false#eid
[110] Ibid.

For Sara Ahmed (via Edmund Husserl) an object is that which is perceived or apprehended.[111] Something becomes an object by being acted upon, which is to say that an object is that which has been objectified.

By leaning on the definition of object as that which has been acted upon, I want to dislodge object from its material attachments. I depart from phenomenology's concern with objects as *matter* and instead emphasize that an object is that which has been objectified. Where "object" can encompass that which has been acted upon, it does not need to be material. For example, intellectual property constitutes an immaterial object. Intellectual property can manifest within a tangible thing, such as a book, but it exceeds the materiality of that book. Intellectual property describes the intangible ideas that emerge from a person or persons, but despite the inability to hold those ideas in one's hand, they still belong to that person or those people. Belonging to someone, those ideas become the property of that person. As property, the ideas can be *acted upon*: they can be copyrighted, they can be profited from, they can be traded.[112] Materiality and objectification, then, are not mutually exclusive, making way for the possibility of immaterial, intangible, ephemeral objects.

My use of *affect* follows Ann Cvetkovich's definition, where she "use[s] *affect* in a generic sense…as a category that encompasses affect, emotion, and feeling, and that includes impulses, desires, and feelings that get historically constructed in a range of ways."[113] I use the vocabulary of affect to encompass what Cvetkovich calls "the undifferentiated 'stuff' of feeling."[114] My search for affect in the past is rooted in historic specificity, where feelings such as "love," "desire," "hope," and acts such as "sex" or "companionship" gain meaning

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[111] Sara Ahmed, *Queer Phenomenology: Orientations, Objects, Others* (Durham: Duke University Press, 2006), 25, 37.
[112] Many thanks to Evelyn Brooks Higginbotham for making the connection between sex commodities and intellectual property.
[113] Ann Cvetkovich, *Depression: A Public Feeling* (Durham: Duke University Press, 2012), 4.
[114] Ibid., 4.

through their context. I take seriously what Nicole Eustace calls "the fundamental social assumptions and daily social negotiations"[115] of the actors of early 19th century New Orleans, and seek to deconstruct categories like "consent" and "freedom" rather than reify their contemporary meanings before grafting them onto the past. In particular, my use of affect attends to what Eustace describes as "the shifting nature of the self" over time, including, especially, the ways that the actors in this study were encompassed by or excluded from notions of liberal subjectivity that shaped not only their actions but also the affective registers of the same.[116]

Affects can attach to objects. As Eve Kosofsky Sedgwick explains, "Affects can be, and are, attached to things, people, ideas, sensations, relations, activities, ambitions, institutions, and any number of other things, including other affects."[117] Sara Ahmed confirms, affect "creates objects, then such objects are passed around."[118] In other words, objects can act as containers for affects, such that the object becomes imbued with affective meaning. Ahmed continues, specifically exploring the affect of happiness, "Happy objects could be described simply as those objects that affect us in a happy way."[119]

The sex trade in antebellum New Orleans was crowded with affective objects that were, as Ahmed writes "gathered around"[120] sex and other actions that were explicitly for sale. For example, consent was attached to sex through the contract of a financial exchange. As the foundation of contract, consent carried with it the implication of non-dominance: although 19th century sexual partners entered into a gendered "relation of authority and subordination," the presence of both parties' consent insured that that relation was willingly

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115 Nicole Eustace, *Passion is the Gale: Emotion, Power, and the Coming of the American Revolution* (Chapel Hill: University of North Carolina Press, 2008), 11.
116 Walter Johnson, "On Agency," *Journal of Social History* 27, no.1 (2003): 113-124.
117 Kosofsky Sedgwick, *Touching Feeling*, 19.
118 Ahmed, *The Promise of Happiness*, 21.
119 Ibid., 22.
120 Ibid., 24.

chosen and therefore still an articulation of each member's freedom.[121] Consent was also mingled with the possibility of pleasure, as Estelle Freedman explains that "persistent beliefs that conception required female orgasm" tied the imagined positive-good of reproduction to a matrix of pleasure and consent. The idea of consent therefore carried the affects of egalitarianism, freedom, and pleasure into the sexual exchange.

Money was not the only thing that changed hands in exchange for the compound commodity of sex with its attendant affective object, consent. On the contrary, affective objects were the primary form of currency within racialized sexual commerce. For example, a white man might exchange the promise of freedom for sex-with-consent instead of money. The promise was itself an affective object, something acted upon (traded) and laden with affective meaning. Promises attach to commitments about the future. Sara Ahmed explains, "A promise can be a declaration of will…an assurance, a positive declaration intended to give confidence and trust that an expectation will be met."[122] Ahmed continues, "Promises ground our expectations of what is to come." Indeed, one can hardly imagine a more attractive object to an enslaved woman than a promise of freedom. The promise was a valuable commodity because it towed the affective freight of futurity, possibility, and hope into the scene of a sexual exchange.

While I do not want to foreclose the possibility that affective objects were present in multiple forms in the sex economy, the affective objects that I describe and analyze in this project shared a similar form: they were all performatives, "in which to *say* something is to *do* something."[123] The speech act "I promise (to free you)" was both an affective object—the promise, itself, was laden with affective meaning and could be traded—and the speech act

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[121] Stanley, *From Bondage to Contract,* 10.
[122] Ahmed, *The Promise of Happiness*, 29.
[123] J L Austin, "How to do things with words, Lecture II," *The Performance Studies Reader*, ed. Henry Bial (London and New York: Routledge, 2004), 177.

through which the affective object could be discerned. The promise was a performative because it had its own verbs. As Chapter Three demonstrates, the promise *produced* a new set of possibilities, including freedom in the future, that *reshaped* the relationship of promisor and promisee. Manumission-related speech acts work in a similar way, where to utter "I free you" actually makes someone free, while freedom itself was also an affective object that was laden with affective meaning (hope, possibility, happiness) that could be given or traded.

Affective objects could also attach themselves to performative utterances that were not, themselves, the affective object. For example, the affective object of the *quadroon*, discussed in Chapter Four, was made manifest in speech acts that produced and fetishized racial ambiguity. The quadroon, an affective compound made up of the simultaneity of safety and danger that inhered in racial ambiguity, hovered around the repetitive speech acts of white men who incessantly described the physical form and color of an enslaved woman. Those speech acts *produced* the racial ambiguity of the woman in question and *eroticized* that racial ambiguity through lingering; the quadroon was the affective by-product of those speech acts.

Within the archive of racialized sexual commerce, actors traded, exchanged, bought, and sold affective objects. Where affective objects were traded, they existed within "a qualitative relation, as the proportion in which values in use of one sort are exchanged for those of another sort,"[124] that is, they had an exchange-value equal to one another. Sex-with-consent, promises, quadroons, and freedom—each an affective object—became what Karl Marx termed "a commodity…an object outside us, a thing that by its properties satisfied human wants of some sort or another."[125] While I am primarily interested in the ways that

[124] Karl Marx, *Capital* (*Das Kapital*) in *The Marx-Engels Reader: Second Edition*, ed. Robert C. Tucker (New York and London: W. W. Norton & Company, 1978, 1972), 304.
[125] Ibid., 303.

affective objects have been commodified, I nonetheless preserve the vocabulary of "object" over "commodity," here, because I want to leave open the possibility that immaterial objects can be acted upon in ways other than exchange and trade.

Affective objects, then, played an important role in the sex trade. The presence of these intangible yet very valuable affective objects—essentially, the promise of an affective experience attached to a more tangible commodity—begins to explain the central contradiction of the sex trade with which I began this section. When the men of this study paid—and paid dearly—for sex with the women of color who they could legally take sex from, they were purchasing more than *just* sex. They were purchasing sex with particular affective meaning attached to it.

Visualizing affective objects enables an historical vision of the sex trade that encompasses the elusive world of historical desires without relying on universalizing emotion-claims about individual subjects. Locating affective objects provides a structural, institutional, market-oriented lens on desire, by emphasizing not the desires that were experienced by participants in the sex trade, but by close-reading the products that invited particular desires. Robin Bernstein's term "scriptive thing" offers an instructive example here, where "a script is a dynamic substance that deeply influences but *does not entirely determine live performances*."[126] Like a scriptive thing, an affective object, such as a promise, cannot reveal what an enslaved woman who received it actually felt or wanted. However, like "scriptive things," affective objects offer "a tool for analyzing incomplete evidence—and all evidence is incomplete—to make responsible, limited inferences about the past."[127] An object like a promise is tool for understanding what the sex economy offered and invited this

[126] Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (New York: New York University Press, 2011), 71. My emphasis.
[127] Ibid., 79.

enslaved woman. Because it is possible to close read a promise—embedded in a promise of freedom, for example, is a sense of futurity and liberation—we can learn more about the "structures of feeling" that are critical to understanding the sex trade.[128] What is crucial here is that affective objects can crack open the questions of pleasure and violence that are definitive of the sex economy, while also avoiding making universalizing claims about the emotional life of historical actors whose lives were utterly different from our own.

Affective Objects in Racialized Sexual Commerce

Locating affective objects within racialized sexual commerce provides a new lens for understanding the sex trade. The presence of affective objects in the sex trade reconciles the imagined inauthenticity of sex acts traded for money, by demonstrating that the social meanings associated with sex were part of the bargain. This denaturalizes affective concepts like consent, revealing that such concepts were not pure, untouchable ideals, but rather objects that could be commodified and traded.

Imagining the various pleasures associated with consent, promises, quadroons, and freedom as affective objects that could be commodified invites us to detach those lofty ideals from their own (and our own) discourses of authenticity. In offering affective objects and arguing that a commercial sexual transaction includes the sale of consent, for example, I am *not* suggesting that *the consent of a prostitute is not real*. On the contrary, I want to take seriously the extent to which the presence of consent was not mutually exclusive with the presence of commerce. Uncovering the ways that affect was commodified in the sex trade pulls back the curtain on the power dynamics that the presence of consent (or pleasure, or freedom) would otherwise hide.

[128] Raymond Williams, "Structures of Feeling" in *Marxism and Literature* (New York and Oxford: Oxford University Press, 1977).

The affective objects within racialized sexual commerce were not inauthentic expressions of feeling; they were real without being ideal. They were pleasures tied to the marketplace. Thus, even as it becomes possible to locate and describe pleasure in the history of racialized sexual commerce, the extent to which those same pleasures emerged from the market makes it impossible to forget the simultaneous presence of violence.

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Consent:
Sexual Violence in Liberalism's Void

"If the definition of the crime of rape relies upon the capacity to give consent or exercise will, then how does one make legible the sexual violation of the enslaved when that which would constitute evidence of intentionality, and thus evidence of the crime—the state of consent of willingness of the assailed—opens up a Pandora's box in which the subject formation and object constitution of the enslaved female are no less ponderous than the crime itself or when the legal definition of the enslaved negates the very idea of 'reasonable resistance'? We might also consider whether the wanton and indiscriminate uses of the captive body can be made sense of within the heteronormative framing of sexual violation as rape."[129]

As expressed in the racialized appearance and absence of rape law in Louisiana between 1805 and 1806, women of color were unprotected by rape law and so the sexual violence that they endured was illegible to society. Legal and pro-slavery discourses of antebellum Louisiana worked to suspend the categories of rape and consent for black women, scaffolding a legal and social world in which men had unfettered access to the bodies of women of color, a world in which sexual terrorism against black women was not criminalized as rape, nor criminalized at all.[130]

Distinguishing the violent sexual experiences of women of color from the term "rape" illuminates the complexity of their oppression during slavery. Revealing how the law divorced women of color from the very possibility of claiming rape demonstrates not only that the state refused to protect those women from sexual violence, but also that the state refused to acknowledge its existence. Outside the law, Saidiya Hartman explains, it becomes

[129] Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth Century America* (New York and Oxford: Oxford University Press, 1997), 80.
[130] My use of "sexual terrorism" signifies on Angela Davis's use of the phrase in *Women, Race, and Class*. See Angela Davis, *Women, Race, and Class* (New York: Random House, 1981).

a question of "whether the wanton and indiscriminate uses of the captive body can be made sense of within the heteronormative framing of sexual violation as rape."[131] The specific way that women of color were excluded from the category of people who could be raped meant both that their sexual lives were marked by extreme vulnerability and that their consent was fetishized in the sex trade.

The Black Code, the legal mechanism that governed the lives of people of color and white people who interacted with them, and the *Acts* of the Louisiana legislature, the tool that governed white people's actions in the Territory, worked together to configure black women's sexual experiences as "an absence" or "a void," to use Evelynn Hammonds's terms.[132] The contours of that absence were shaped by the law's articulation of two sets of people: white "chaste" women, who the law sought to protect, and "public" women, or prostitutes, who rape law ignored and excluded in practice.[133] I argue that the law configured black women as both *unlike* white women because they were *unable to consent*, and *like* prostitutes, because they were *unable to refuse consent*, that is, they were *unable to be raped.* Unlike white women whose claim to marriage and the reproduction of male lineage protected their capacity to consent to sex, black women's exclusion from marriage, their status as property, and their capacity to reproduce property, not lineage, excluded them from the capacity to

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131 Hartman, *Scenes of Subjection,* 80.

132 Evelynn Hammonds, "Toward a Genealogy of Black Female Sexuality: The Problematic of Silence," *Feminist Genealogies, Colonial Legacies, Democratic Futures*, ed. M. Jacqui Alexander and Chandra Talpade Mohanty (New York and London: Routledge, 1997), 171.

133 This portion of my analysis rests on a false dichotomy, that is, the idea that in antebellum Louisiana, "prostitutes" were always white and black women were never prostitutes. I work within this framework, here, because this is the framework of the legal discourse that I am reading—the law makes this assumption. However, the reality of antebellum Louisiana (and particularly New Orleans) was more complex, because both enslaved and free black women worked in brothels, sometimes alongside white women. Because this analysis is interested in the way the legal discourse, itself, works, I will not explore the presence of black sexual laborers in this chapter. However, understanding these discursive structures enables my investigation of black women's sexual labor—including black women who labored as prostitutes—in the balance of this dissertation. For more on enslaved prostitution, see Judith Schafer *Brothels, Depravity, and Abandoned Women* (Baton Rouge: Louisiana State University Press, 2009). Also see Marisa Fuentes, "Power and Historical Figuring: Rachael Pringle Polgreen's Troubled Archive," *Gender and History* 22, no.3 (2010): 564-584.

consent. Conversely, like white prostitutes, black women's sexual bodies were treated as public, made available through a commercial transaction and not a marriage contract, and were thus imagined as always already consenting to sex.

This chapter will show that the legal categories of "rape" and "consent" were suspended for black women in antebellum Louisiana, where the law rendered them as both lacking the capacity to consent, and as always already consenting. This had two consequences. First, the suspension of rape and consent demonstrates that the vocabulary of rape limits our understanding of the fundamental vulnerability that the law structured into the lives of women of color in racialized sexual commerce. The legal and social frameworks of this economy made women of color *more* vulnerable to sexual violence than those women who were encompassed by the juridical category of "rape." Second, the suspension of rape and consent denaturalizes consent as an authentic expression of legal or sexual truth. Consent persisted in the marketplace of racialized sexual commerce as, instead, an affective object that was valuable because it could hide relations of dominance and remake a violent sexual encounter into a site of pleasure.

Rape and Race in the Louisiana Black Code

In the First Session of the First Legislature of the Territory of New Orleans in 1806, William Claiborne, then Governor of the Louisiana Territory, approved a set of legislative acts. These acts governed everything, and so doing, indexed emergent American sovereignty in this formerly French and Spanish colony. The minutiae covered by these acts touched every corner of the territory, forming the legal foundation for this newly American land.

It is well known that legislators added a special section to this foundational document. Nearly half of the document was committed to the *Black Code* (*Code Noir*).[134] The *Black Code* would form the fundamental legal framework for the lives of enslaved African Americans and the people who claimed ownership over them by, as the preamble states, **"**Prescribing the Rules and Conduct to be Observed with Respect to Negroes and Other Slaves of This Territory."[135] The *Black Code* outlined the legal rules and expectations for being a slave and also for being a white person in a slave society. Importantly, the *Black Code* also occasionally invoked the presence of free people of color living in the territory, signaling their legal association with enslaved African Americans. Through the regulation of both people of color and white people, this document expressed both fantasies and anxieties surrounding white domination in Louisiana. In the context of Louisiana's early 19th century ascendance as a slave society central to the entire institution of US slavery, the *Black Code* is among the most important pieces of legislation passed in the antebellum period.

Much of the *Black Code* is dedicated to articulations of crime and punishment. The chapter "Crimes and Offenses" details the legal consequences—sometimes death, but also sometimes more gruesome punishments, like "to work in the fields for two years with a chain around his leg"—of all kinds of crimes.[136] The *Code* was exceedingly specific in

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[134] The 1806 version of *Black Code/Code Noir* appears in both English and French. The duality of this legal document is one hallmark of Louisiana's unique status as a "mixed jurisdiction," and an emblem of the influence of the French *Code Noir* and *Code Napoleon* on Anglo-Louisianan law. All English language quotations of the *Black Code* in this essay reflect the language of the original document. For more on the influence of French law on American Louisiana, see Richard Kilbourne, *A History of the Louisiana Civil Code: The Formative Years, 1803-1839* (Baton Rouge: Louisiana State University Press, 1987), Judith Kelleher Schafer, *Slavery, the Civil Law and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Clark, N.J.: The Lawbook Exchange, 2009), George Dargo, *Colony to Empire: Episodes in American Legal History* (Clark, N.J.: The Lawbook Exchange, 2011).

[135] *Acts Passed at the Second Session of the First Legislature of the Territory of Orleans: Begun and Held in the City of New-Orleans, on the 12th Day of January, in the Year of our Lord One Thousand Eight Hundred and Seven, and of the Independence of the United States of American the Thirty-First: Published by Authority.* New Orleans: Bradford & Anderson, Printers to the Territory, 1807. Slavery and Anti-Slavery: A Transnational Archive, Accessed September 2013: 150. Hereafter cited as "*Black Code* 1807."

[136] *Black Code* 1807, 200.

describing actions considered criminal when enacted by an enslaved person: burning grain, poisoning any person (Section 7), striking a master or mistress (Section 9), rebelling against an overseer (Section 10), causing or attempting to cause an insurrection (Section 11), striking a white person (Section 15), or striking a white person for the third time (Section 15).[137] The redundancy of this document suggests that legislators refused to leave any stone unturned in their quest to legally underpin the full discretion of slaveowners in their regulation of enslaved peoples' behavior. Further, some of these criminal statutes extended beyond the actions of enslaved black people to the actions of non-enslaved people of color as well, citing "Indians," "mustees," "mulattos" and "free persons of color" as people who could be regulated by the slave code, a discursive move that demonstrates the slippage between race and unfree status that was becoming increasingly solid in this period.

In addition to governing enslaved African Americans and other people of color, the *Black Code* also concerned the actions of white people. The *Code* outlines the fact that white men could serve as witnesses in court (Section 13), the remuneration slaveholders would receive if a slave was executed by the law (Section 12), and the expectation that slaveholders would hire non-black overseers to control their slaves (Section 18).[138] Again the *Code* pays special attention to violent activity and articulates the edge of what was considered an appropriate level of the violent expression of mastery within the criminal section of the code. Section 16 explains,

> [I]f any person whatsoever shall willfully kill his slave, or the slave of another person, the said person being convicted thereof, shall be tried and condemned agreeably to the laws of the territory, and in case any persons should inflict any cruel punishment, except flogging, or striking with a whip, leather thong, switch, or small stick, or putting in irons, or confining such slave, the said person shall forfeit and pay for

[137] Ibid., 198-206.
[138] Ibid., 202-208.

> every offence a fine not exceeding five hundred and not less than two hundred dollars.[139]

This line of code was written to regulate slaveholders but was, at the same time, almost entirely symbolic. The regulation of enslaved peoples' behavior was largely a private matter in this period, so the existence of the law does not reliably describe what white people were or were not doing on their plantations. The kind of violent discretion that slaveholders were allowed is betrayed by this section, where the law distinguishes slavery from "cruel punishment," and goes further to distinguish "cruel punishment" from "flogging, or striking with a whip, leather thong, switch, or small stick, or putting in irons, or confin[ement]."[140] Finally, as Judith Schafer has pointed out, a critical loophole was written into this section of the *Code*, so that even in the unlikely case of a white man being accused of mistreating an enslaved person, he need only "clear himself by his own oath,"[141]—that is, in order to free himself of the regulation he only had to deny before the court that he enacted a crime.[142] Despite these legal and social slights of hand, however, the *Black Code* has enormous symbolic value, and points to accepted ideas about which behaviors should be regulated, even if that regulation did not carry through into practice. At least at the symbolic level, the legal discourse of American Louisiana sought to limit the dominion of white people over their enslaved and free black counterparts in the territory.

Section 7 of the *Black Code*, entitled "Capital Crimes," discusses several major offences and does some very specific work with respect to rape. The section reads:

> [B]e it further enacted, That the different crimes and offences hereafter particularly described, are hereby declared to be capital crimes, that is to say, that if any slave, free negro, mulatto, Indian…shall commit or attempt to commit rape upon the body

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139 Ibid., 208.
140 Ibid., 208.
141 Ibid., 208.
142 Judith Schafer, *Slavery, The Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), 30.

> *of any white woman or girl*, this slave, free negro, mulatto or mustee, shall suffer death…"[143]

This law—and reiterations of this law in 1818, 1855, and 1857[144]—is clear: only "the body of any white woman or girl" could be legally recognized as a victim of sexual violence. So doing, this law performs a double erasure: both white men and black women are invisible in this statute. This double erasure not only erases these categories of people from the document, but also erases any relationship between those people.

Where the law sought to regulate the interactions of men of color and white women, it defined rape as a crime that only ever happened to white women, and legally un-defined black women with respect to sexual violence. The specific naming of white women and girls in this statute is significant. Here, rape is not defined as whiteness, but is modified by whiteness—in other words, rape might exist as a category without whiteness, but in this statute, it only enters the space of criminality through "the body of any white woman or girl." By extension, the bodies of all other women assaulted by men of color cannot be considered victims of the crime of rape. Where the statute explains that "only" white women and girls can be considered as rape victims, it erases all other women and girls from that category.

These other women and girls include enslaved women but may also include free women of color as well. The *Black Code* specifically regulates "Negroes and Other Slaves," a move which makes "Slaves" a capacious category that includes "Negroes," but does consider "Negroes" a category that could include non-enslaved people. As the rape statute shows, there are moments in the *Black Code* that specifically regulate free men of color, which

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[143] *Black Code* 1807: 198. My emphasis.
[144] Diana Williams, "'They Call It Marriage': The Interracial Louisiana Family and the Making of American Legitimacy" (Ph.D. Dissertation, Harvard University, 2007), *fn* 176.

suggests that the erasure that the rape statute performs applies to free women of color as well. On the other hand, free people of color are also mentioned variously in laws that pertained to free members of the territory, making it unclear whether they fall within the jurisdiction of the *Black Code*. This lack of clarity points to the liminal and precarious legal and social landscape in which free people of color lived in antebellum New Orleans. However, because this particular statue *does* include free men of color, this analysis assumes that, at the very least *this* statute included free women of color as well.[145]

In addition to erasing women of color from the statute, it also produces another erasure through its specificity about men of color. The law specifically regulates the sexual interactions of men of color—enslaved and free—with white women. Yet it remains silent both on men of color violating women of color, and on white men violating white women. If the aim of the *Black Code* is to regulate the interactions of people of color among one another while also regulating interracial interactions, then it would be logical to exclude sexual violence perpetrated by white people against other white people in this section of the code; that regulation would (and, as I show below, does) belong in the law, but not in the *Black Code*. This piece of code could logically include the regulation of violence perpetrated by men of color against women of color, because other moments in the *Black Code* make claims about interactions *among* people of color, but it does not make any claims about that kind of violence.

The management of white men's sexual violence against enslaved women could also logically belong in this section of the law but, similarly, is absent. Because the *Black Code* regulates white men elsewhere in this document, it is implied that they are relevant to this

[145] For more on the legal liminality of free women of color (*femmes deu coleur*) in antebellum Louisiana, see: Shirley Thompson, *Exiles at Home: The Struggle to Become American in Creole New Orleans* (Cambridge and London: Harvard University Press, 2009).

line of code, even if not explicitly mentioned. Indeed, in instances where the *Black Code* was interested in regulating white men, it is clear about that, as we see within statutes about citizenship, testimony, and violence against enslaved people. In the same way that the statute on violence against enslaved people holds within it an articulation of a reasonable limit of white men's behavior against people of color, the absence of such an articulation does similar work. The two locations where white men's sexual violence against women of color might have been regulated—in the section of the *Black Code* that describes white men's violence of all kinds, on one hand, and in the section that describes sexual violence, on the other—are void of talk about white men's sexual violence. This is not an accident—white men are regulated all over this document, and there are two specific locations where it would be logical to regulate their sexual behavior. The blankness of these sections suggests the sexual interactions of white men and women of color did not need to be regulated.

Thus, the statute simultaneously (and conspicuously) produces the absence of women of color as victims of sexual violence perpetrated by men of any race, and produces the absence of white men as sexual predators. The production of one absence is dependent on the other. And yet these legal absences have treacherously divergent consequences for each of these subjects: for enslaved women of color, absence in the law creates vulnerability, while for white men, absence in the law protects their sexual predation. Through the simultaneous erasure of both white men and black women, then, the law erases the possibility of all sexual violence against enslaved women. Where the *Black Code* refuses to even mention the possibility of rape against enslaved women, their sexual lives become undefined and unprotected.

Louisiana Rape Law and the Meanings of Consent

To understand the implications of black women's exclusion from the category of people who could be considered victims of rape within the *Black Code*, it is important to understand the context of legal regulation of sexual violence in general. The *Black Code* reveals that men of color can be convicted of the crime of rape against a white woman, and by exclusion tells us that men of color cannot be convicted of raping a woman of color. But it is silent on how the sexual behavior of white men might be regulated against either white women or black women. So, to further explore the absence of black women in rape law, I turn to the rape law that was written to regulate the behavior of white people, the *Acts of the Legislature*, passed a year before the *Black Code*. Here, the actual statute that defines rape as a crime is racially unmarked, but another statute marks the entire document in terms of free status: together, these two laws exclude women of color from rape law (again), confirming their non-status with respect to rape law.

Given this exclusion, the question arises: *how* are enslaved women of color legally configured outside of rape law? The context of Louisiana as a "mixed jurisdiction" that relies on English common law to define rape begins to unpack that question.[146] Beyond the patriarchal roots of rape law that exclude women of color from protection because of their marginal relationship to the benefits of patriarchy, the language of the rape law itself smuggles in a notion of citizenship which further excludes women of color from protection. This legal logic excludes women of color from protection by, first, reaffirming the value of their wombs for producing capital as opposed to lineage, and by, second, imagining that they were unable to consent to sex.

[146] Vernon Valerie Palmer, ed., *Louisiana: Microcosm of a Mixed Jurisdiction* (Durham: Carolina Academic Press, 1999), 4, 5.

Where white women are explicitly protected under the *Black Code* of 1806, an earlier statute implicitly protected them under laws that regulated white people. The January 1805 law is relatively straightforward, explaining:

> Every person who shall hereafter be duly convicted of any manner of rape, or of the detestable and abominable crime against nature, committed with mankind or beast, shall suffer imprisonment at hard labor for life.[147]

This is a standard iteration of rape law for the United States in the early 19th century.

For clarity, in the next session (July 1805), legislators signed another act that specifically referred to enslaved people. Section 43 explains, "The provisions of this act shall not extend to any slave," presaging the writing of the *Black Code* by explicitly excluding enslaved people from this set of laws.[148] This foreshadows the *Black Code* by suggesting that enslaved people could not claim victimhood under any of the crimes stated in the *Act.* (Here again, the legal liminality of non-enslaved people of color comes into view—they are not explicitly excluded from these laws by their status, but their presence in the *Black Code* suggests that their exclusion was nonetheless implicit.) Together, these two statutes exclude women of color from the category of people who could be victims of rape.

This rather terse exclusion of women of color from the category of people who could be victims of rape is undergirded by a deeper legal logic. The depth of this exclusion emerges in Louisiana law's adherence to the Anglo-American tradition of defining rape through the idea of consent. Again in 1805, the law explicitly calls out its association with this tradition and explains, "All the crimes, offences and misdemeanors herein before named, shall be taken, intended and construed, according to and in conformity with the

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[147] Francois-Xavier Martin, *A General Digest of the Acts the Legislatures of the Late Territory of Orleans and the State of Louisiana and the Ordinances of the under the Territorial Government.* (New Orleans: Peter K. Wagner, 1816), 228. Hereafter referenced as "*LA Digest* 1816."
[148] *LA Digest* 1816, 256.

common law of England."[149] This is a self-conscious choice on the part of the lawmakers, because American sovereignty in this territory was very much in the making in this period of Louisiana law. These Anglo-American definitional origins of Louisiana rape law tell us much about how women of color were excluded from protection under the law, along the lines of both patriarchy and consent.

The criminalization of rape in the Anglo-American legal tradition originates in the protection and maintenance of patriarchy. Estelle Freedman explains that early Anglo-American rape law articulated rape as a crime not against the person of a woman, but against the men to whom she belonged, that is, the men whose lineage depended on her reproductive capacity (her father or her husband). As early as the 15th century, the definition of rape described "the theft of a woman's virtue," a theft which "appropriated the sexual rights of a husband, his assurance of paternity, and family honor."[150] Just as rape interfered with "a husband's sole sexual access to his wife" and assurance of his paternal line, rape was also originally criminalized because "virtue had a calculable worth when fathers negotiated marriages for their daughters." Rape "undermined both the honor of the family and a daughter's marriageability."[151]

By the Age of Revolution, rape law transformed and began to recognize a woman's injury instead of just that of her male kin.[152] Thus, this Louisiana law was citing not just a law that protected the sexual bodies of women in order to protect the social lives of the men to whom they were attached. Yet even with these conceptual changes, the patriarchal roots of rape remained strong and attached themselves to the prosecutorial requirements of rape

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[149] Ibid., 244.
[150] Estelle Freedman, *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Cambridge, MA and London: Harvard University Press, 2013), 4.
[151] Ibid., 22.
[152] Ibid., 22.

cases. In the 18th century, the cultural idea of women as temptresses and vixens made it difficult for women to have credibility when they attempted to press charges about rape. Freedman writes, "As images of the female temptress or seductress gained prominence throughout the early republic, women who charged rape seemed more complicitous, and their claims of resistance were discounted more easily."[153] By the early 19th century, on the other hand, the idea of white women being unreliable plaintiffs in rape cases dwindled, but was replaced with a stronger onus on white women to prove that they were good, pure, and chaste enough women to have been raped.[154] Here, women's chastity and virtue—key elements of the emergent cult of white womanhood—became the central part of rape cases. Freedman explains, "Despite variations across states and regions, two major conditions emerged as key determinants of whether a sexual act constituted rape: the character of the woman and the evidence of her resistance."[155] Here, Freedman's reference to "character" is a direct reference to chastity. This chastity requirement underlined the still salient role of patriarchy in rape law and prosecution, because white women had to prove that they had been upholding patriarchal order until they were raped, and that they resisted the rape in order to protect their own chastity, which translates to the purity of their reproductive line and the honor of the men in their families.

To the extent that rape law was based on the ascendancy of patriarchy, women of color were unprotected by rape law because their male relations were divorced from the benefits of patriarchy. The exclusion of women of color from rape law begins with these long-standing patriarchal assumptions within the law. First, as Freedman has pointed out, "for groups in which men had weak or no claims to citizenship, female vulnerability

[153] Ibid., 16.
[154] Ibid., 21.
[155] Ibid., 21.

intensified…the denial of citizenship to men of conquered groups weakened their ability to protect female kin."[156] These 18th and 19th century Anglo-American rape laws were structured to protect white women as a conduit to protecting the marriage and paternity claims of white men; those men who were excluded from protection under racialized patriarchy thus had little recourse to protect their women. Because the unions of enslaved people were not recognized under slavery, the patriarchal line through which rape law established women's protection from sexual violence was disrupted to the point of becoming completely irrelevant.

Secondly, the exclusion of women of color from rape law had roots in the entwined relationship of race, gender, patriarchy, and property. Where white women's capacity to benefit from rape law was rooted in the sanctity of their wombs, the very different cultural meaning attached to the wombs of women of color supported their exclusion from rape law. White women's reproductive capacity tied them to white men via *lineage*—white men had an interest in protecting their sole access and control of a white woman's womb in order to protect the authenticity of their paternal line. (This logic explains why, Freedman writes, "[A] husband's forced sexual relations with his wife broke no laws.")[157] Further, as Nancy Cott explains, the institution of marriage conflated white women's legal personhood with that of their husband, who claimed responsibility for their lives and bodies through the principle of coverture.[158] Neither were white women full people under patriarchal social custom, nor were they chattel property; their bodies and lives bore a close relationship to capital, in which their reproductive capacity was used as a tool that supported the social status of white men *yet* white women were not themselves legally possessed as property.

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156 Ibid., 18.
157 Ibid., 27.
158 Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA and London: Harvard University Press, 2000), 11.

Women of color, on the other hand, occupied a different position with respect to patriarchy and property. Enslaved women's reproductive capacity tied them to white men via *property*—they themselves were held as property and their wombs were understood as producing property. Where the establishment and protection of *lineage* requires an assurance of paternity, the propagation of property in persons, that is, the seizure of a woman's womb for the reproduction of property, does not require an assurance of paternity. Indeed, as Jennifer Morgan has shown, heritage laws that designated that the social status of a child would follow the mother ensured that enslaved women's children would have the opposite relationship to patriarchy as white women's children, whose social status would follow the father (lineage). She writes, "Slaveowners appropriated [enslaved women's] reproductive lives by claiming children as property," and adds that this property relation put enslaved women's "reproductive lives at the heart of the entire venture of racial slavery."[159] To the extent that enslaved women's wombs could produce only *property* and not lineage, the culture of white patriarchy within a slave society did not need to protect the paternity of the children that enslaved women would bear; on the contrary, slaveholders actually served to benefit from a lack of transparency around the paternity of enslaved women's children. Thus the paternity-protectionism that underwrote 19th century rape law made the distinction between wombs that produced lineage and wombs that produced property significant. Here, the kind of service that enslaved women's reproductive capacity was called upon to perform in the slave society left her unprotected—indeed, unprotectable—under rape law.

Finally, the discursive scaffold of the definition of rape in the law worked to exclude black women from protection at the level of their relationship to citizenship. From its earliest iteration, rape was defined as "the carnal knowledge of a woman when achieved

[159] Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004), 1, 4.

by force and against her will by a man other than her husband."[160] In other words, at its most fundamental level, rape was defined as a sexual act that included the *presence of force* and the *absence of consent*. By the early 19th century, truth of "force" was imagined as written on the body—a lack of pregnancy, also often bruises or evidence of a physical assault were required—and the truth of lack of "consent" became uncoverable in a woman's past—in her prior chastity (or lack thereof) or other markers that might suggest whether or not she would have accepted sex out of wedlock.[161]

Although Louisiana's 1805 rape law does not actually use the word "consent," it gestures at the idea of consent through its reference to English common law. The idea of consent (or, the lack of consent) is important for understanding the exclusion of women of color from rape law because it cites the history of American liberalism and, so doing, makes claims about the citizenship status of people who can be raped. By the same token, uncovering who could consent in this social context reveals much about who can consent in a legal context. And who could consent in a legal context is one key to understanding how women of color are excluded from rape law.

Consent is the founding principal of liberal democracy, the premise of which is that (certain) people can consent to be governed. As such, a consent claim is a claim about citizenship. Estelle Freedman explains:

> The Enlightenment ideas that influenced the American experiment in republicanism rested heavily upon a social contract that required the consent of the governed. The ability to consent was a prerequisite for autonomous personhood in nineteenth-century liberal thought, which idealized self-sovereignty. At their origins, both the social contract and classical liberalism intentionally applied only to white males.[162]

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[160] Freedman, *Redefining Rape*, 4. See also Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill: University of North Carolina Press, 2006), 29.
[161] Freedman explains: "For a single woman, even a child, to convince a jury that she had been raped required a chaste past, a violent assault, and a valiant but unsuccessful struggle that culminated in penetrative sex but did not result in pregnancy." Freedman, *Redefining Rape*, 27.
[162] Ibid., 6.

In 1805 Louisiana, a white woman was excluded from the polity because her legal person was subsumed by her male kin, rendering her unable to autonomously consent to being governed. Yet, "a growing emphasis on [white] women's ability to make independent choices in love and marriage" in this period suggested that white women's capacity to consent was increasingly honored in another domain—that of sexuality and marriage.[163] Even as white women were excluded from the capacity to participate in government—they could not consent because they were not fully citizens and/or were not fully citizens because they could not consent—their consent was considered meaningful and valuable within the realm of their sexual lives. Putting aside for a moment the evidentiary requirements that, in practice, upheld white men's indiscriminate sexual access to all women, and severely curbed white women's capacity to (deny) consent, the discursive implications of rape law nonetheless remain important.[164]

Thus the discourse of rape law positioned white women uniquely with respect to citizenship, rights, self-ownership and self-government claims. In a way that paralleled their relationship to property, white women's capacity to consent in sexual space but not political space put them in a middle ground. Just as they occupied neither the position so inhuman as property nor the position of full autonomous personhood through the principle of coverture, white women neither occupied the position of full incapacity to consent nor the capacity to consent in a fully public space. Rape law was one location where white women's autonomy was confirmed as being restricted to the private sphere—they had *some* legally recognized autonomy, but it could not extend to the public sphere. Their legal personhood

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[163] Block, *Rape and Sexual Power in Early America*, 37.

[164] The higher standard of "evidence" of force and consent in the 19th century severely curbed the number of convictions that were possible for rape cases. Low reporting and low conviction rates continue for rape cases to this day. See Freedman, *Redefining Rape*.

was attached to and confirmed by their capacity to consent but also was delimited, as it was attached to their capacity to consent *only* in the private sphere, in the context of their own bodies. And even where their consent existed, the law recognized it only to the extent that it served patriarchal norms of marriage and reproduction.

When viewed through the lens of capacity to consent as an indicator of legal personhood within 19th century American liberal democracy, the origins of enslaved women's exclusion from rape law becomes more clear. If the capacity to be raped relies on the capacity to deny consent to sex, and if the capacity to consent is rooted in a person's relationship to the liberal state, and if enslaved women were understood as property and not people within that liberal state, then it follows that they would have no legally recognized capacity to consent. Thus enslaved women's exclusion from the protections of rape law rests not only on their marginal relationship to the protections of patriarchal marriage, but also on their own position as abjected women in the slave society. At the root of enslaved women's exclusion from rape law is their lack of legal autonomous personhood, which translates into rape law through the vector of consent. The lack of legal personhood suspends enslaved women's claims to consent (or the denial of consent). Where the possibility of consent is suspended, so too is the possibility of rape, which relies on a recognition of a person's ability to deny consent to sex.

Public Women and the Law

Louisiana's 1806 *Black Code* and its 1805 rape law suspended enslaved women's claims to either rape or consent, but enslaved women were not the only people who the law did not protect from sexual violence. Although the legal language of rape law theoretically protected all white women from sexual violence, in practice the chastity requirements of rape

law excluded women who performed public sexual labor—"public women," "loose women," "lewd women," prostitutes—from protection. This chastity requirement implied that any sexual misconduct would undermine and even obliterate the possibility of a claim to rape, under the assumption that "once a woman consented she would consent again."[165] This assumption emptied the claims of any public woman who might deny consent, and effectively named public sexual laborers as people who could not *not* consent, that is, who were always already consenting. Where the law figured enslaved women as *unlike* chaste white women and thus unable to consent, antebellum social norms also figured enslaved women as *like* prostitutes, women who were unable to refuse consent.

The heart of the prostitution encounter is a financial transaction for sex, and it is at that level that the practice of rape law excluded prostitutes from protection. This financial transaction positioned commercial sex squarely in the realm of the public—hence, sellers of sex were known as "public women"—which posed a problem for a patriarchal system that sought to locate sex exclusively in the realm of marriage and the private sphere. The problem that prostitution posed for patriarchal marriage was the problem of extramarital sex.

Importantly, the problem of extramarital sex did not stand alone, but was linked to the problem of rape. Indeed, as Sharon Block writes, "Rape law grew out of more general laws against nonmarital sex."[166] The sexual culture of antebellum Louisiana aligned with the sexual pattern of the rest of the United States in this period in its expectation of female chastity and its valuation of virginal brides; the chastity expectation maintained both (female) monogamy and the idea that any white women would refuse to consent to sex with anyone who was not her husband.[167] Thus the structures of Louisiana's sexual culture rendered

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165 Freedman, *Redefining Rape*, 4.
166 Block, *Rape and Sexual Power in Early America*, 29.
167 Freedman, *Redefining Rape*, 22.

extramarital sex inaccessible without force. The prostitution encounter, then, had to contend with two problems: first, the issue of extramarital sex and second, the association with rape.

The prostitution scene contains the first level of sexual transgression through the practice of discretion. This discretion worked spatially in antebellum urban spaces like New Orleans, where brothels and "streetwalkers" were relatively segregated in the city. Judith Schafer explains that "certain areas became known for their concentration of brothels and barrooms" in antebellum New Orleans and that "the most notorious [area] was Gallatin Street, a two-block thoroughfare that bordered on the Mississippi River near Esplanade Street."[168] Alecia Long confirms that "Brothels and assignation houses" existed at "the geographic margins" of New Orleans before the Civil War.[169] This combined with the temporal expectations associated with prostitution, wherein sexual arrangements were meant to be short term and nonbinding. These structures provided safeguards against the potential social disruption that these spaces could produce by containing prostitution's social risks. The antebellum men who bought sex were not just buying sex, then, but also were buying the possibility of extramarital sex without chastisement, because with sex they would also buy the protections of discretion and privacy.

Yet the promise of discretion cannot contain the second problem that prostitution poses, that is, the association with rape; that problem is solved through money. The right to purchase absolves the purchaser of the more problematic, moral quandary of extramarital sex, that is, the fact that he should have to use force in order to achieve sex with a woman other than his wife (in this fantasy world full of chaste women). Block explains that the monetary transaction guaranteed a woman's consent in the eyes of the law, because jurists

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[168] Schafer, *Brothels, Depravity, and Abandoned Women*, 126.
[169] Alecia Long, *The Great Southern Babylon: Race, Sex, and Respectability in New Orleans, 1865-1920* (Baton Rouge: Louisiana State University Press, 2004), 61.

assumed "that money could buy [a woman's] consent."[170] In this scenario, money displaces force in an exchange for sex.

If the social norms of prostitution rested on two key practices—discretion and non-rape—that could enable prohibited extramarital sex, then the law provided reinforcements. Judith Schafer explains that attempts to curb prostitution in antebellum New Orleans were lackluster at best, because "selling one's body for sex was not a distinct criminal act" and because police crackdowns on prostitution were piecemeal, disorganized, and "feeble" in comparison to the major economic interests that supported sexual commerce in the city.[171] Moreover, a legal culture that understood the capacity to refuse consent through the lens of chastity underlined and made permanent the prostitute's sexual availability. The juridical principle "that once a woman had consented she would consent again" combined with the idea that money could buy the consent of prostitutes at all times, both left sexual laborers unprotected by rape law and guaranteed commercial sex purchasers' evasion of the social prohibition against rape. The practice of rape law rendered the non-consent of sexual laborers ineffectual and irrelevant because it produced them as always already consenting.

This exclusion from rape law extends to enslaved women as well, because they, too, were imagined as always consenting in a culture that associated them with prostitutes. Louisiana law does not make an explicit link between enslaved women and prostitutes, but the social norms of slavery make that link. The marriages of enslaved people were not respected in slave societies because, as Nancy Cott explains, "African American slaves could *not* marry legally; their unions received no protection from state authorities."[172] The prohibition against slave marriage excluded enslaved women from the possibility of entering

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[170] Block, *Rape and Sexual Power in Early America*, 27.
[171] Schafer, *Brothels, Depravity, and Abandoned Women,* 17, 126.
[172] Cott, *Public Vows*, 32.

the private sphere because, despite the public character of marriage, Cott writes, "marriage certainly does design the architecture of private life."[173] In addition to the prohibition against slave marriage, black women's role as laborers excluded them from the private sphere. Thavolia Glymph explains that "the notion of public/private assumes that the household is a family and thus private," but that "the plantation household was also a workplace…that…was not private."[174]

The sexual lives of enslaved women were thus made "public," which creates an important slippage with prostitutes—antebellum Louisiana's "public women." Understanding enslaved women as the antebellum South's other "public women" reveals that they, like the similarly unchaste "public women" were denied the capacity to deny consent. If, within the eyes of the law, the refusal of consent rests on a record of chastity, then exclusion from the possibility of chastity troubles the ability to deny consent and thus, leaves one vulnerable to sexual violence without means of recourse.

The connection between enslaved women and prostitutes that social norms around marriage and work imply is made explicit in pro-slavery writings of the antebellum South. Famously, William Harper's *Memoirs on Slavery* makes sweeping claims about sex that erodes any difference between enslaved women and prostitutes. In an attempt to defend the sexual morality of the slave South, he begins by suggesting that the prevalence of extramarital sex in the South—pointed out by abolitionists—was due to the preponderance of "this class of female who set little value on chastity, and afford easy gratification to the hot passions of

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173 Cott, *Public Vows*, 1.
174 Thavolia Glymph, *Out of the House of Bondage*: *The Transformation of the Plantation Household* (Cambridge: Cambridge University Press, 2008), 2, 3.

men."[175] Initially, "these instances of intemperate and shameless debauchery" are racially unmarked in his writing, and it is unclear which "class of females" he means to describe. He continues to describe this class, explaining that they are "very loose," and have "easy chastity."[176] This vague description becomes clear later in the essay, where he makes a direct comparison between "these prostitutes of our country" (he is careful to locate them all in Northern cities) and "the female slave," both of whom belong to the "class of females" that are his subject.[177]

Ultimately Harper mobilizes this comparison to argue that slavery creates a more sexually moral society than free market capitalist society,[178]and he does so by underlining the likeness of prostitutes and enslaved women at the level of their similar sexual availability. He explains that, like prostitutes, enslaved women "so often yield to [illicit sexual] temptation" that they display "a want of chastity."[179] The moral "weakness" of enslaved women, he continues, is inevitable because they belong to "an enslaved class of more relaxed morals," and thus tempt and "taint" the otherwise upstanding men who have sex with them.[180] This lack of chastity or morality and the extent to which enslaved women are themselves temptresses in Harper's view suggests that their consent is not in question: as morally weak

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175 William Harper, *Memoirs on Slavery* in *The Pro-Slavery Argument, As Maintained by the Most Distinguished Writers of the Southern States, Containing the Several Essays on the Subject* (Charleston: Walker, Richards and Company, 1852), 40.
176 Ibid., 41.
177 Ibid., 41.
178 Amy Dru Stanley explains: "The ideological conflict over American slavery drew much of its moral energy from opposing uses of prostitution as a metaphor for the worlds of bondage and freedom. Both abolitionists and slaveowners tapped this well of symbolism to attack the venality of relations between men and women on the other side of the Mason-Dixon line. But the metaphor's meaning transcended sex. In the debate between slavery and freedom, prostitution stood for the social system in which all was for sale, in which the market operated as the arbiter of human relations—this paradoxically was how antislavery represented life in the Old South and how proslavery represented the Yankee culture of free contract. After emancipation it was both the ambiguities and polarities of these charged metaphors that framed the understanding of prostitution as a social problem." Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge and New York: Cambridge University Press 1998), 240.
179 Harper, *Memoirs on Slavery*, 43.
180 Ibid., 43, 44.

sexual aggressors, these women are always already consenting. Ultimately Harper's argument rests on the interchangeability of enslaved women and prostitutes—both are sexually available, "unrestrained by the motives which operate to restrain," but, he argues, only enslaved women can perform sexual labor without becoming a burden to society.[181]

Harper's pro-slavery argument magnifies the imagined sexual availability that marked both prostitutes and enslaved women under antebellum law. Both figured as lacking chastity and embodying licentiousness and sexual indiscretion, enslaved women and prostitutes become marked as always already consenting and thus unable to refuse consent. As similarly public women, they were lumped into the category of people who, to return once more to Freedman, had "consented" and thus "would consent again" in the eyes of the law.[182] Where their consent is taken as a given, Louisiana's rape law could not protect them, because it relied on the denial of consent to prove rape. Where enslaved women are configured as prostitutes, then, they are configured not only as people who *can* consent, but also as people who can never *not* consent, once again suspending the possibility of consent by rendering it irrelevant.

The Impossibility of Rape and the Fantasy of Consent

On one hand, the *Black Code* and the Louisiana legal code produced enslaved women as non-subjects who, *unlike* white women, were *unable to consent* to sex. On the other hand, the social norms of antebellum Louisiana produced enslaved women as *like* prostitutes, who were *always already consenting* and thus *unable to deny consent*. Neither the inability to consent nor the presupposition of consent meet the requirement of explicit non-consent, which is a pre-requisite for any claim to rape. Under the law, then, the categories of rape and consent lost

[181] Ibid., 43.
[182] Freedman, *Redefining Rape*, 4.

meaning for women of color. The loss of meaning of these categories had two consequences: the impossibility of rape meant that enslaved women were exceptionally vulnerable to sexual violence and consent became a fantasy, one that was traded in the sex market as an affective object of great value.

Yet, the law isn't everything.[183] As Annette Gordon-Reed explains, "legal regimes are not omnipotent. Powerful as they may be, they never have (and never will, because they cannot) control all human feelings and arrangements."[184] Although the law does not describe the experiences of historical actors, it *can* reveal the system and the conditions of possibility for those experiences. In this case, the extent to which sexual violence against women of color was not criminalized as rape reveals that those acts were not imagined as criminal, which is to say, they were not imagined as out of line with the values of the society. The law reveals that sexual violence against women of color was intrinsic to the system, and invites us to question the meaning of *everyday* nature of sexual violence. The system permitted that violence, even encouraged that violence, making it an everyday occurrence and not an aberration. So even as that violence could never be "normal" for the women who survived it, that violence was normalized within the system.

The absence of prevention and regulation of sexual violence against women of color changes what we know about that violence. To know that it happened at all is always to know, no matter what vocabulary we use, that women of color were sexually brutalized, terrorized, and tortured during and because of slavery. But to know that that violence did not belong to the legal definition of rape tells us that the women involved were even more

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[183] Many thanks to Annette Gordon-Reed and Amy Dru Stanley for challenging me to think through the ways that the law does—and doesn't—tell us about the historical past of sexual violence in slavery. Thanks also to both for offering me the language that informs my arguments, here.

[184] Annette Gordon-Reed, *The Hemingses of Monticello: An American Family* (New York and London: W.W. Norton and Company, 2008), 28.

vulnerable to sexual violence; it tells us that that violence could occur at any moment, and it tells us that those women could never seek official redress for that violence. Just as Walter Johnson has argued there was "no clear separation"[185] between torture and the dailyness of work in the experiences of enslaved people, the way the law made sexual violence the commonsense of slavery suggests the constant terror under which enslaved women lived.

Recognizing the *un*regulation of sexual violence allows us to ask the question: did the way a society refused to recognize or problematize acts of violence change the survivor's experience of her own trauma? I am not arguing that sexual violence was somehow less terrible because it was not criminalized; I am arguing the opposite. The impossibility of rape against a woman of color structured her life in terms of fundamental sexual vulnerability.

The absence of prevention and regulation of sexual violence against women of color also changes what we know about consent. The impossibility of rape rested on the suspension of the category of consent, wherein women of color were not simply excluded from the ability to consent, but rendered both always consenting and unable to consent. The inability to consent that might have protected them from sexual assault—as it did children[186]—was balanced by the inability to refuse to consent, which opened up and even encouraged sexual contact with these women. This middle ground opened up another kind of violence against women of color, in the form of the fetishization of their willingness.

The foundation of the notion of consent is the presence of an authentic autonomous subjectivity: consent is imagined, in both its juridical[187] and sexual[188] formations, as an

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[185] Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2013), 174.

[186] Emily Landau, "With Her Consent": The Conundrum of 'Carnal Knowledge' in Turn-of-the-Century New Orleans," paper delivered on the panel "Race, Sex, and the Law in Louisiana's Long 19th Century" at the American Historical Association's Annual Meeting, New York City, January 2-5, 2015.

[187] As a juridical formation, the category of consent forms the cornerstone of Anglo-American liberal social theory. Pamela Haag calls consent, or the assertion of self-will, "the soul of liberalism's social practices." The rule of consent thus relies on the presence of the individual with autonomous will, and proves that same

expression of a subject's true will and desires. Women of color were not recognized under Louisiana's *Black Code* as liberal citizen-subjects, which was both an effect of and the reason for the law's non-recognition of their capacity to consent to be governed. As A. Leon explains, "the purpose of the legal system was to convince each slave that he had 'no will of his own.'"[189] Or, again, Amy Dru Stanley demonstrates, "As a species of property, slaves had no legal control of their own persons and no proprietary rights or contractual capacities…the master's total dominion dictated the slave's 'want of free consent.'"[190] Even acknowledging that legal reality, it would still be possible to imagine that women of color possessed an authentic capacity to consent, and that the problem lay in a lack of recognition of that consent rather than its nonexistence. Yet to make that leap would be to ignore the capacity of such social structures to shape subjective experience. Walter Johnson argues that the study of slavery requires historians to grapple with "human-ness lived outside the conventions of liberal agency."[191] Refusing to "smuggl[e] in a notion of the universality of a liberal notion of selfhood" denatures consent as a category that women of color experienced as such. If the heart of consent is the liberal subject's individual will and volition, and if enslaved African Americans "lived outside the conventions of liberal agency,"[192] then

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presence by articulating that individual's essential truth. Within liberal social theory, consent both establishes the coherence of the individual and guarantees the greater social good. (It is in this way, also, that consent is directly tied to property.) See Pamela Haag, *Consent: Sexual Rights and the Transformation of American Liberalism* (Ithaca: Cornell University Press, 1999), xvii.

188 As a sexual formation, consent carries with it the notion of liberalism's autonomous, self-knowing subject into what Michel Foucault has called "the confession of the flesh." Consent belongs to the "incitement to discourse" that, Foucault argues, emerged in the 18th century in the West. Foucault explains, "Western man has been drawn for three centuries to the task of telling everything concerning sex" wherein "one had to speak of [sex] as a thing to be…managed…made to function according to an optimum." If, as he continues, "sex was constituted as a problem of truth," then consent—the "yes" of the authentically desiring sexual subject—became a form of truth-telling codified in social custom and in law. See Michel Foucault, *The History of Sexuality: An Introduction, Volume 1* (New York: Vintage Books, 1990 (1978)), 19, 23, 24.

189 A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process: The Colonial Period* (New York and Oxford: Oxford University Press, 1978), 8.

190 Stanley, *From Bondage to Contract*, 18.

191 Walter Johnson, "On Agency," *The Journal of Social History* 37, no.1 (2003): 115.

192 Ibid., 115.

consent was not just a legal fiction for antebellum women of color, it was also a subjective impossibility for them.

Thus where rape was a suspended category, consent also shifted. White men went to great lengths to secure the liaisons they had with women of color—they paid extraordinary amounts of money, made promises of freedom, or lavished their courtesans in fine goods and jewelry. All of these actions index a prevailing concern with consent: although the legal and social world in which these men lived unequivocally sanctioned forced sex with women of color, they sought sexual liaisons that did not require the blatant use of force. The way that women of color were constructed as unable to consent *and* unable to refuse to consent simultaneously upheld the allure of consent's presence, while also leaving open the possibility of forced sex without consequence. Within this legal and social matrix, consent became an object of value in the sex market.

Consent creates the fantasy of free will in the midst of an imbalanced power relation. Consent belongs to the notion of contract, wherein, Amy Dru Stanley explains, consent "established the symmetry of the relation" and guaranteed "the reciprocity of the rights and duties" of parties involved in an agreement.[193] The notion of contract presumes a scenario in which the will of each person—and whatever social power propped up that will—acts upon the other. The mutual action of wills undercuts the imagined freedom of the actors within a contract; where a contract presupposes actors shaping each other's will to come to an agreement, the consent that codifies the agreement cannot exist outside of another's will. The fantasy of consent lies in its masquerade that the will of historical actors is free from interference, from circumstance, from the pressures of power.

[193] Stanley, *From Bondage to Contract,* 2.

The fantasy that consent indexes the will of a person untarnished by power lends itself to the fantasy that the presence of consent indexes an egalitarian relation. Consent legitimates power relations, for Amy Dru Stanley explains, "Legitimate political power arose from consent."[194] When men bartered money, promises, housing, and freedom with women of color, they created a contract that could cover over the vast gulf of power that existed between the actors. Their *purchase* of sex—instead of taking by force—created a contract that absolved them of the violent power dynamic of that encounter. This purchase ushered in the fantasy that the woman involved did not act because of coercion, circumstance, and vulnerability, but because she was willing. Marisa Fuentes concurs, "the men who purchased sex from…enslaved women purchased the illusion of consent—an imaginary erotic of mutuality that was performed in spite of their enslavement and powerlessness."[195] The exchange could hide the fact that rape was a suspended category for the women involved in the encounter; the fantasy of consent could hide that the men had every right to use force to acquire sex from those women.

Consent was an affective object that possessed great value in the sex market of antebellum New Orleans. It is possible to suspect the authenticity of consent while arguing that black women nonetheless *did* possess the capacity to truly consent to sex (or to withhold consent), though their capacity was somehow buried beneath layers of discourse and power. That is not my argument. Instead, I am arguing that there was no consent unbound from its attachments to the bargains of racialized sexual commerce. Moreover, I am arguing that the women of color who participated in these bargains participated from a location of utmost vulnerability. Even as their consent was a highly sought after commodity, their exclusion

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[194] Ibid., 4, 5.
[195] Marisa Fuentes, "Power and Historical Figuring: Rachael Pringle Polgreen's Troubled Archive," *Gender and History* 22 no.3 (2010): 577.

from the category of rape made that consent legally irrelevant. Their consent, then, was a bargaining chip, an object of value, which carried with it the fantastic affective weight of egalitarianism and mutuality in a world saturated with racial and sexual violence. The presence of consent in the archive of racialized sexual commerce does not index the mitigation of violence, but rather, the *negotiation* of violence, an object that circulated within the sex trade to create white men's pleasures out of violence, that is, to create pleasurable violences.

3

Promises:
Sexual Labor in the Space Between Slavery and Freedom

"*a female slave will become free when her master puts her in a brothel that he may profit by her*"
-The Laws of Las Siete Partitas
Which Are Still In Force in the State of Louisiana,
New Orleans, 1820

In July of 1851, Carmélite, a woman of color about age twenty five,[196] owned by Jean Lacaze and working in his brothel, approached the Second District Court in New Orleans with a plea to be placed in prison. This was odd not least because she was *already in* prison. Signing her "X" on the affidavit, she begged the court to put her in the protective custody of the sheriff while she awaited the trial through which she would seek her freedom. She was worried that Lacaze, who had refused to set her free despite his previous promise to do so, and who had already thrown her in prison to prevent her from running away, would "send her out of the state or sell her elsewhere"[197] rather than lose his investment. She argued that he "very badly maltreats her," and asked to be sequestered out of his custody until she could prove her case, that is, until she could prove her right to freedom.

The ground that Carmélite's case stood on was the Act of Sale under which she had been transferred to Lacaze in the first place. Françoise Doubrere, the free woman of color who was the original vendor, argued that this document had transferred "nothing but the

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[196] *Carmelite, Statu Liber v. Lacaze* 7 La. Ann. 629 (631) 2506, 1852, 65. Hereafter cited as *Carmelite v. Lacaze*. For more on this case, see Judith Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), 238-239; See also Judith Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003), 68 *n*11; Judith Schafer, *Brothels, Depravity and Abandoned Women: Illegal Sex in Antebellum New Orleans* (Baton Rouge: Louisiana State University Press, 2009), 165 *n*23-24.
[197] *Carmelite v Lacaze*, 5.

services of said Carmélite for the space of seven years," but not her whole person, to the purchaser, Lacaze.[198] Indeed, Carmélite had not become a *statu liber*, a special category of enslaved person who experienced time-bound enslavement, upon filing suit for her freedom. Rather, she had "acquired the right of being free at a time to come, or on a condition which is not fulfilled, or in a certain event which has not happened, but who, in the meantime, remain[ed] in a state of slavery" when she was sold. Doubrere explained that Carmelite "was sold...as a statu liber" to Lacaze.[199] It was the term of her labor, not the fact that she was suing for her freedom, that put her in this category. Bounding the period of Carmélite's enslavement was Doubrere's way of repaying Carmélite for "important and faithful services" the latter had performed.[200] Doubrere claimed that she would never have sold Carmélite except under these special circumstances, because she wanted so much to make that donation of Carmélite, eventually, to herself. Carmélite was, this contract determined, was "a negress statu liber"[201] who "was to be set free by said Lacaze"[202] after seven years of service. The contract was marked June 17th 1844, meaning that she was entitled to her freedom from July 1851.

The time-stamp of the contract made Carmélite a *statu liber*, Doubrere's lawyer argued. Although this category was not limited to sexual servants, and although the nature of her work was not described in the original Act of Sale, it was not surprising to the court that the labor she had been purchased to perform was sexual. Testimony from the case reveals that Carmélite's purchased services were uncontested from the beginning: Lacaze had

198 Ibid., 18. Carmélite was sold by Françoise Doubrere to Jean Lacaze for $800. See *Carmelite v Lacaze*, 55.
199 "Book I: Of Distinction of Persons, Title I: Of Persons, Art 37." *Civil Code of the State of Louisiana* (New Orleans: J.C. De St. Romes, 1825), 12. *Carmelite v. Lacaze*, 55. Also see Act of Sale (Fig. 1), 36.
200 Ibid., 18.
201 Ibid., 4.
202 Ibid., 4.

purchased her to staff his brothel. From the initial formation of the contract, Carmélite's temporary enslavement was established through her performance of sexual labor.

Upon trading Carmélite, Jean Lacaze and Françoise Doubrere—the free woman of color who sold Carmélite—cited and reproduced a practice that was at least as old as 1763 (when New Orleans was held under Spanish sovereignty), in which the placement of enslaved women in brothels constituted a pathway for their freedom. As Carmélite's lawyer would argue before the Louisiana State Supreme Court, the contract between Lacaze and Doubrere was rooted in the Spanish law that "a female slave will become free when her master puts her in a brothel that he may profit by her."[203] Signing this contract before the notary Louis F. Maureau on that summer day, Lacaze and Doubrere engaged in a practice that had persisted in Anglo New Orleans: the creation of a state of limited slavery for an enslaved woman engaged in sexual labor.

But perhaps Jean Lacaze also knew something else—by the 1840s when he signed the Act of Sale, his rights as a slaveowner were more protected against such contracts than they had ever been before. His claim against Carmélite appeared to be consistent with current Louisiana law: she had committed "misconduct" because of her work in the brothel, which would disqualify her from the possibility of manumission.[204] He had put her in an impossible situation, having promised to free her *because* she worked in a brothel, but subsequently *refusing* to free her on the grounds of her uncouth conduct *in* that brothel.

The clause that described the practice that Lacaze and Doubrere invoked when they contracted for Carmélite's temporary enslavement belonged to the two volumes of *Las Siete Partidas*, the Spanish colonial laws deemed "still in force" in the middle of Louisiana's

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[203] "Vol. 1, Partida Fourth, Title XXII, Of Liberty, Law 4," *The Laws of Las Siete Partidas Which Are Still In Force in the State of Louisiana, 2 Volumes*, L. Moreau Lislet and Henry Carlton, eds. (New Orleans: James M'Karaher, no 60 Chartres Street, 1820), 590.
[204] *Carmelite v. Lacaze*, 16.

antebellum period. The words "will become free" inserted a very particular temporality of freedom into the practice of enslaved sexual labor. In this clause, sexual labor became codified as a state defined by futurity—a set of acts that determined, or at least offered, the possibility of freedom, creating a class of people understood to be temporary slaves. Yet, nearly three decades after this brothel statute was declared "no longer in force," it remained relevant in the eyes of the plaintiff and her lawyers. The appearance of this clause in their arguments indexes the ways that antebellum New Orleanians struggled with—and within—the fissures of a palimpsestic and sometimes indecisive legal code. Despite the way that the brothel clause had been written out of the law, Carmélite's lawyer claimed that it defined the particular formation of labor with which she had been involved. Their struggle inheres in the tension between long-held social customs and layers of different statutory regulations; their struggle points to the ways that enslaved people strategized with and through existing and repealed legal formations to make a way in the seemingly totalizing world of the slave system. Carmélite's case exposes that brothel labor mattered to the Spanish Crown—and, later, to the American democratic government—enough to create a legal loophole in the overwhelmingly normative reality of slavery-for-life. In this case, the appearance of a years-ago repealed law in front of the Louisiana State Supreme Court at the tail end of the antebellum period suggests the longevity of much older patterns of sexual labor, and the persistence of the linkage between sexual labor to a pathway to freedom for enslaved women.

Carmélite's case provides a window into the longstanding and persistent relationship of enslaved women's sexual labor and the promise of freedom in antebellum New Orleans. The laws of antebellum New Orleans made space for liaisons that carved avenues of freedom out of sexual servitude, but also constricted those inroads over time. Meanwhile,

historical actors on the ground responded to, manipulated, challenged, and reaffirmed those legal structures as they continued to make relationships that tied sex and freedom through various kinds of exchange—including the exchange of affective objects.

In the space between law and custom, sexual labor constituted a location of quasi-slavery, a space that blurred the lines of slavery and freedom for women of color engaged in sexual labor. The blurring of those lines was predicated on a *promise*, an affective object of great value to women like Carmélite, who could receive it in exchange for their sexual service. Although still a slave who lacked almost any rights in the eyes of the law, Carmélite's entrance into the world of sexual service located her in the midst of an exchange. The existence of a promise of freedom created the notion of some semblance of willingness on her part, for in this promise she entered a formal contract in which she would work for her freedom. This promise changed the shape of her enslavement by delimiting it. It articulated the hope of something else to be, the possibility that there would be an *other side* of slavery for her.

The Legacy of Coartación

When Carmélite filed her petition to the court, she entered into a story that began long before she was born. She was capitalizing on a unique aspect of slave law in Louisiana, in which enslaved people could access a few rights with respect to their own freedom that others in the United States could not access. These laws reflect Louisiana's status as a 'mixed jurisdiction," and reflect as well the previous sovereignties of French and Spanish rule. In particular, the long history of Spanish rule in Louisiana's 18th century (roughly 1762-1803, with a bit of confused sovereignty at the tail end) left a lasting impact on the shape and regulation of emancipation, and thus on cases like that of Carmélite. Several key statutes that

either came from the Spanish, or were part of the Anglo system but reflected Spanish norms, shaped sexual labor in antebellum New Orleans. On the one hand, the legal tradition of *coartación* created avenues for freedom regardless of sexual labor, and on the other, the brothel clause created an avenue for freedom that was directly tied to sexual labor. While I follow Judith Schafer in the claim that *coartación* and the brothel clause were distinct from one another, I depart from her in my demonstration of the ways that the two legal frames, together, formed the legal genealogy that shaped *Carmelite v. Lacaze*. *Coartación* and the brothel clause were distinct legal formations that belonged to the same legal system, which was articulated in the Spanish legal code. Together, this constellation of legal traditions informed the evolution of emancipation processes and ultimately sutured the possibility of freedom to sexual labor in antebellum New Orleans.

The Spanish *Código Negro* was one origin moment for the formations that made up antebellum Louisiana's legal culture.[205] Within the *Código Negro*, the law of *coartación* would ultimately bear a critical imprint on the culture of emancipation in Louisiana's early American period. *Coartación* was the cornerstone of relatively liberalized manumission policies during the Spanish period, which allowed enslaved people to contract for their freedom and purported to legally favor freedom over slavery. Jennifer Spear explains, the Spanish challenged more restrictive French policies when they "imposed a new legal apparatus that encouraged manumission and strengthened the rights of both slaves and freed

[205] The *Código Negro* arrived in Spanish New Orleans in 1790. See Jennifer Spear, *Race, Sex and Social Order in Early New Orleans* (Baltimore: Johns Hopkins University Press, 2009), 107. The *Código Negro* replaced the earlier French *Code Noir*, which arrived in Louisiana in 1724. Jennifer Spear explains that "the Crown looked to the islands to determine how to govern Louisiana, and in 1724, it rewrote the Code Noir that had been implemented there in 1685 to regulate the relationships between slaves and their masters, the enslaved and the free, and those of African and European descent…Codifying status and ancestry as important determinants of rights, privileges, and obligations, the 1724 Code Noir reflected the transition from a status-based hierarchy to one rooted in race." Spear, *Race, Sex and Social Order in Early New Orleans*, 53.

persons of African descent."[206] The practice of *coartación* was codified in a number of statutes that created pressure-valves in the system of racial slavery.

The concept of *coartación* was developed in Cuba as early as the 1590s, and constituted the right of self-purchase.[207] *Coartación* responded to the much earlier code of *Las Siete Partidas*, which the Spanish established in the thirteenth century to regulate slavery.[208] As Alejandro de la Fuente explains, *Las Siete Partidas* established three principles: "First, slavery was against nature and freedom…[and] justices and laws should favor freedom"; "Second, although masters had total control over their slaves…masters' rights were limited in several ways"; and "Third, some rights of slaves were recognized and protected."[209] The right of self-purchase was held up, in part, by the enslaved person's right to be protected in making only one kind of contract, a contract for their freedom with their owner. Spear explains that this "allowed slaves to be freed at their own initiative," and, because the Spanish law sought to favor liberty whenever possible, this could also create an avenue for freedom "even if they did not have their owners' consent."[210] De la Fuente continues, "Through *coartación* slaves were allowed to agree with their masters on a fixed price for their freedom and make payments toward it," in a context in which these agreements were legally binding.[211] The binding nature of *coartación* meant also that enslaved people could sue for their freedom in the case of contracts that had not been upheld.[212] In other words, a promise of freedom,

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[206] Spear, *Race, Sex and Social Order in Early New Orleans*, 100.
[207] Alejandro de la Fuente, "Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited," *Law and History Review* 22 no.2 (2007): 339-369.
[208] Ibid., 348.
[209] Ibid., 348, 349.
[210] Spear, *Race, Sex and Social Order in Early New Orleans*, 109.
[211] de la Fuente, "Slave Law and Claims-Making in Cuba," 349.
[212] Spanish Louisiana was not the only territory in early America in which enslaved people retained the right to make contracts or have those contracts upheld by the law. Evelyn Brooks Higginbotham explains that Francis Payne, who was purchased as a slave in Virginia in 1637, "successfully sued a white Marylander for money owed him" while he was still enslaved. Payne eventually gained his freedom through a bargain he made with the woman who owned him, in which he could "keep a portion of the profit from the sale of tobacco in order to

even if not made in the form of a written contract, had the weight of a contract under Spanish law.

The contracts created through *coartación* and upheld by an enslaved person's right to sue for her freedom under the Spanish rule created a particular form of enslaved temporality that challenged any binary between slavery and freedom. In this early period of slavery in Louisiana, such a challenge was not devastating to the system. Indeed, as Ira Berlin has shown, the earliest periods of slavery in North America were characterized by more permeable boundaries between freedom and slavery, whiteness and blackness.[213] Within Spanish Louisiana's society with slaves, then, *coartación* created a liminal form of existence in which a promise—in the form of a contract—could attach present-day enslavement to future freedom; that attachment fundamentally altered an enslaved person's status that would otherwise be associated with heredity and permanency. That the promise took the form of a contract cemented the challenge to an enslaved person's status, because the ability to contract was a marker of free status. Thus even in the midst of enslavement, *coartación* ensured that those enslaved people who accessed it experienced a form of slavery that was inflected with one experience of freedom alongside a temporal location that was fundamentally forward-looking.[214]

Many enslaved people took advantage of this liberalized manumission policy by throwing themselves into this form of *in futuro* freedom during the Spanish period. Spear continues: "Within the first decade of Spanish rule, the number of free people of color in New Orleans more than tripled…and their numbers continued to increase significantly

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buy his freedom." See Evelyn Brooks Higginbotham and John Hope Franklin, *From Slavery to Freedom: A History of African Americans*, 9th ed. (New York: McGraw Hill, 2011), 51.
[213] Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America.* (Cambridge, MA and London: Harvard University Press, 1998), 17.
[214] Ibid., 187.

through the end of the century."[215] This differed starkly from manumission rates under the previous French regime, which required explicit permission of the government in addition to the consent of an owner, to free an enslaved person. The majority of people who gained freedom through *coartación* were women; women with lighter skin were more likely to be freed than those with darker skin, and were more likely to be freed at a younger age than darker skinned women or enslaved men of any color. Spear writes, "nearly two and a half times as many adult women were manumitted as men," at least in part because they were more likely to participate in intimate relationships with the people who owned them.[216] De la Fuente concurs, explaining that "Rates of manumission…were much higher for creole slaves (as opposed to Africans), for women, and for mulattos," explaining that the king in the 1590s instructed that soldiers in Havana who had fathered mixed-race children should be given preference in their purchase if their intention was to free them.[217] Thus from its inception the practice of *coartación* and Spanish manumission policies more generally were linked to interracial intimacies.

Despite the apparent contrast with French manumission practices, Spanish *coartación* was not accessible to most enslaved people in Louisiana. Furthermore, it is important not to confuse these liberalized manumission policies with a more benevolent form of slavery. To the contrary, Spear explains, Spanish *coartación* and other policies imagined as "protective" of enslaved people "had far more to do with preserving tranquility and perpetuating the institution of slavery than with protecting individual slaves."[218] On the other hand, de la Fuente observes a ripple effect, since "even if instances of legal claims-making were a minority, they still represented avenues for advancement and goals for other slaves struggling

[215] Spear, *Race, Sex and Social Order in Early New Orleans*, 127.
[216] Ibid., 112.
[217] de la Fuente, "Slave Law and Claims-Making in Cuba," 349, 350.
[218] Spear, *Race, Sex and Social Order in Early New Orleans*, 105.

for freedom."[219] Ultimately, the Spanish tradition of *coartación*, which created the avenues toward freedom of self-purchase (through contract) and suit for freedom, constituted the liberalized manumission policy that would influence the changing policies under American rule.

With the return to French rule in 1800 and then to American rule in 1803, enslaved people in Louisiana lost the right to *coartación*, a move within the law that indexed a culture of greater delineation between slavery and freedom. The 1807 American *Black Code*, which established regulations pertaining to enslaved people and to their treatment by those who owned them, explicitly annulled enslaved people's capacity to contract for their freedom. Section 13 of the *Black Code* explains, "no owner of slaves shall hire his slaves to themselves, under penalty of a fine," disabling an enslaved person's ability to work for his or her own freedom.[220] This statute was reinforced by Section 15, which prevented enslaved people from accumulating enough money to purchase themselves. Section 15 reads, "as the person of a slave belongs to his master, no slave can possess any thing in his own right."[221] Enslaved people also lost the right to sue for their freedom or to make any civil claims on their own

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[219] de la Fuente, "Slave Law and Claims-Making in Cuba," 351.

[220] "Black Code, An Act Prescribing the rules and conduct to be observed with respect to Negroes and other Slaves of this Territory," *Acts: Passed at the First Session of the First Legislature of the Territory of New Orleans, Begun and Held in the City of New-Orleans, on the 25th Day of January, in the Year of Our Lord One Thousand Eight Hundred and Six, and of the Independence of the United States of America The Thirtieth.* (New Orleans: Bradford & Anderson, Printers to the Territory, 1807), 156. Hereafter *Acts* (1807). Despite legal prohibition, "hiring out" was a common practice across the antebellum South. Ira Berlin explains that in early America, "hired slaved generally worked independently, outside the direction of an owner or overseer," and "[s]ome hired themselves to do odd jobs, earning cash or receiving payment for 'overwork.'" See Berlin, *Many Thousands Gone*, 136. Evelyn Brooks Higginbotham expands, "The practice of slave hiring was integral to the urban economy of the Old South. Some slaves were sent from plantations to cities specifically for hire, when owners sold their services to townspeople in the period between harvest and the new planting. In some cases, urban slaves found their own employment, a practice known as self-hire…A few slaves were able to save a portion of the money they earned and buy their freedom, if the master permitted." See Higginbotham and Franklin, *From Slavery to Freedom,* 146. Here, lawmakers were concerned with the practice of a slaveholder hiring "his slaves to themselves," that is, creating an opportunity for enslaved people to reap financial gain from their own labor. The fact that Louisiana law forbade this practice does not foreclose that the practice continued. Rather, the presence of this law suggests that the practice constituted an area of concern for American Louisiana's early lawmakers.

[221] *Acts* (1807), 153.

that had been implied by *coartación*, as their persons became absorbed, as property, into the persons of their masters. Section 16 explains:

> *And be it further enacted,* That no slaves shall be parties to a suit in civil matters, either as plaintiffs or defendants, nor be witness in any civil or criminal matters against white persons: *Provided however,* That their masters may act and defend in civil matters, and prosecute in criminal cases, to obtain satisfaction of the outrages and abuses which might have been committed against their slaves.[222]

Thus, in the period immediately following the imperial handoff of Louisiana, Americans reacted with strong opposition to the Spanish policies by stripping enslaved people of the meager rights they had enjoyed under the previous regime. This movement reflected an earlier, and more draconian, period of manumission policy under French rule.[223]

Yet just a year after the *Black Code* was passed, one statute within the *coartación* genealogy was revised. The 1808 *Digest of the Civil Laws Now in Force* reaffirmed the extent to which the *Black Code* had excised enslaved people's right to self-purchase or contract, writing, "The slave is incapable of contracting any kind of engagement," and undercutting enslaved people's capacity for accumulation toward self purchase with: "He possesses nothing in his own right…for whatever he possess, is his master's property."[224] But the following statute articulated a critical shift. Article 18:

> The slave is incapable of exercising any public offices or private trusts, he cannot be tutor, curator, executor, nor attorney, he cannot be a witness in either civil or criminal matters…*except when he has to claim or prove his freedom.*[225]

Article 18, in this very early moment of American rule, reaffirmed Spanish legal custom for the first time, creating legal space for enslaved people to sue for their freedom. This was accompanied by statutes about manumission, which explained that any master had

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[222] Ibid., 153.

[223] Spear, *Race, Sex, and Social Order in Early New Orleans*, 52-78.

[224] "Book I: Of Persons, Title VI: Of Master and Servant," *A Digest of the Civil Laws Now in Force in the Territory of Orleans, With Alterations and Amendments Adapted to its Present System of Government* (New Orleans: Bradford and Anderson, Printers to the Territory, 1808), Article 17, 40. Hereafter *Digest* (1808).

[225] Ibid., Article 18, 40. My emphasis.

the right to free any slave, as long as said manumission was not "made in fraud of creditors, or of the portion reserved by law to forced heirs."[226] These statutes created space for masters to free their slaves, and although these of course did not force masters to do so, they nonetheless created the legal precedent for such an act within the American territory. As Judith Schafer explains, "Although the right of *coartación* did not survive the Spanish period…the civil law for the antebellum period maintained the capacity of slaves to sue directly for their freedom."[227] Thus, excluding the year between the establishment of the *Black Code* (1807) and the writing of the *Civil Laws Now in Force* (1808), the spirit of Spain's liberalized manumission policies remained partially intact in the early American period.

Outside of claims related to the specific history of *coartación*, the *Civil Laws* established American Louisiana's policies toward manumission broadly. This set of laws stated "Manumitted persons are those who having once been slaves, are legally made free."[228] Later, Article 25 explains, "A master may manumit his slave in this territory" either through an "express and formal" act during his life, or by an act in prospect of death.[229] Manumission could not be made "in fraud of creditors, or of the portion reserved by law to forced heirs."[230] Like manumission law across the South in the early part of the nineteenth century, Louisiana's stance on manumission was more liberal than it would later become.

Manumission laws were closely linked to laws regulating the donation of property, because manumission was a form of passing property-in-person back to oneself.[231] With

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[226] Ibid., Art. 25, 26, 42.
[227] Schafer, *Becoming Free, Remaining* Free, 3-4.
[228] "Book I: Of Persons, Title I: Of the Distinction of Persons, and the Privation of Certain Civil Rights in Certain Cases, Chapter II: Of the Distinctions of Persons Which Are Established by Law," *Digest* (1808), Art. 14, 10.
[229] "Book I: Of Persons, Title VI: Of Master and Servant," *Digest* (1808), Art. 25, 40.
[230] Ibid., Art. 26, 42.
[231] This definition of manumission was described in a later statute, where "the emancipation of a slave is a donation to him of his value." See Meinrad Greiner, *The Louisiana Digest Embracing the Laws of the Legislature of a General Nature, Enacted from 1804 to 1841, Inclusive, and in Force at this Last Period. Also, an Abstract of the Decision of*

respect to acquiring property by donation, the new *Civil Laws* also invoked the French *Code Napoleon*[232] when it regulated the linkage of intimate relationships to property exchange. Article 10 of the book "Of the Different Manners of Acquiring the Property of Things" explains that "Those who have lived together in open concubinage, are respectively incapable to make to each other any universal donation, or on an universal title, whether between *inter vivos* or *mortis causa*."[233] Although the tradition of *coartación* that was reinvigorated in this 1808 code linked manumission (i.e., property donation) to sexual relationships, Article 10 in the code disrupted that pattern. While "concubinage," as legal category, described *any* long-term sexual liaison that took place outside of the bounds of a marriage contract in antebellum Louisiana,[234] and included interracial concubinage relationships. Article 10 challenged the Spanish tradition of liberating enslaved women more frequently than enslaved men, likely because of intimate relationships with the people who owned them. Here, the *Civil Laws* disrupted that tradition by disallowing people in concubinage relationships to inherit property from one another. To the extent that manumission was a donation of property, the law now obstructed an owner's capacity to free an enslaved woman with whom he had a sexual relationship. The law created a special class of people who could not receive donations from one another, and so doing, it targeted illegitimate interracial relationships.[235]

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the Supreme Court of Louisiana on the Statutory Law, Arranged under the Appropriate Article in the Digest (New Orleans, Benjamin Levy, 1841): Article 3426, *fn* 1, 510. Hereafter *Digest* (1841).

[232] See the annotated version of the 1838 Civil Code: "in the analogous articles in the Code Napoleon, that in … All concubines were made incapable of receiving a donation from those with whom they lived." See "Book III: Of the Different Modes of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa, Chapter 2: *Of the Capacity necessary for disposing and receiving by Donation inter vivos and mortis causa.* Art. 1456," *Civil Code of the State of Louisiana; with Annotations*, Wheelock S. Upton and Needler R. Jennings, eds., (New Orleans: E. Johns & Co., Stationers' Hall, 1838): 221. Hereafter *Civil Code* (1838).

[233] Ibid., 221.

[234] For more on concubinage, see Diana Williams, "'They Call It Marriage': The Interracial Louisiana Family and the Making of American Legitimacy" (Ph.D. Dissertation, Harvard University, 2007).

[235] Ironically, the law held out the possibility of a servant inheriting property from an owner as long as the two did not maintain a sexual relationship. This is not unlike the legal loophole created in the French *Code Noir*

The institution of American sovereignty through the 1807 *Black Code* and the 1808 *Civil Laws* significantly revised the manumission policies and rights of enslaved people that had been upheld by the Spanish. The first phase of American laws obliterated the Spanish rule of *coartación* by establishing that an enslaved person could neither accumulate property nor hire himself by way of making a contract (for freedom), nor sue for his freedom. The immediate next phase of American sovereignty remained firm on the inability of enslaved people to make contracts, yet crucially changed with respect to an enslaved person's right to sue for freedom, and in so doing, partially returned to the tradition of *coartación*.

The Laws of Las Siete Partidas Which Are Still in Force in the State of Louisiana, published twelve years later in 1820, further complicates the story of the Spanish impact on the earliest period of American manumission policy. The descriptor "*still* in force" suggests that these laws had been in force for the duration of the period between formal Spanish rule of Louisiana and their reaffirmation in 1820. On the other hand, the need to explicitly reinforce the presence of these statutes as the law of the land in Louisiana suggests instability or unevenness in their enforcement under American rule. In any case, what is possible to know is that in 1820, Louisiana again partially reaffirmed its commitment to *coartación*.

First, Partida Third, Title XXII, Law 18 rearticulates the heart of Spanish *coartación* where it explains, "all laws should protect [liberty] when an opportunity presents itself."[236] The "opportunity" imagined in this statute is a slim one: "that whenever two or more judges

(1724), which attempted to disincentivize interracial sexual liaisons, but so doing created other avenues of illicit or cross-status relationships. Jennifer Spear explains: "[I]n 1685, fines were levied against fathers and masters (300 livres each) and slaves were confiscated, never to receive freedom, if they had children by their own masters. A slave woman and her children could still receive freedom through such a relationship but only if she were 'living in concubinage with' an unmarried 'black man, manumitted or free [l'homme noir, affranchi ou libre]' who married her. This change from the earlier code meant that enslaved women no longer had an incentive to engage in relationships with European men but only with free men of African ancestry." See Spear, *Race, Sex, and Social Order in Early New Orleans*, 63.

[236] "Vol 1. Partida Third, Title XXII, Of Judgments," *The Laws of Las Siete Partidas Which Are Still in Force in the State of Louisiana, 2 Volumes*, L. Moreau Lislet and Henry Carlton, eds., (New Orleans: James M'Karaher, no. 60 Chartres Street, 1820), 282. Hereafter *Las Siete Partidas…Still in Force.*

assemble together, to determine a question of liberty or slavery; and at the time of rendering their judgment, they disagree among themselves, being equally divided; the one being inclined to decide in favor of liberty, and the other of slavery; then *the opinion in favor of liberty shall prevail* and not the other."[237] This is a narrow affirmation of liberty, but it is nonetheless important because in order for the circumstance described to present itself, an enslaved person would have to sue for his or her freedom. In other words, the statute in 1820 implicitly reaffirmed the right of enslaved people to sue for their freedom, which had been established in 1808.

Second, in reaffirming the already established Anglo right to emancipate enslaved people, *Las Siete Partidas…Still in Force* once again formally sutured manumissions to intimate relationships. Partida Fourth, Title XXII, explains, "the master may give liberty to his slave, in, or out of church; before the judge, or elsewhere; by will, or without it, or by writing."[238] This essentially changed nothing about the previous Anglo statute, but elaborated upon the specific conditions under which emancipation could take place. Among these situations, the statute explains, emancipation may take place when the "the person enfranchised be [the master's] son, or daughter, whom he had by his female slave," when the person to be freed "had been reared up by him," or "were a female slave whom he enfranchised in order to marry her."[239] Not all of the types of relationships named in this statute are explicitly sexual, but they all bespeak the intimate economies that enslaved people and the people who owned them participated in. For example, where this statue offers the suggestion that a slaveholder might emancipate "his nurse who had reared him up…or the child of his nurse who had been suckled with him," it reveals the multiple kinds of intimacies—including obliquely

[237] Ibid., 282. Author's emphasis.
[238] "Vol. 1, Partida Fourth, Title XXII, Of Liberty," *Las Siete Partidas…Still in Force in the State of Louisiana, 2 Volumes*, Law 2, 587.
[239] Ibid., 588.

erotic intimacies—that were linked to emancipation.[240] Although this statute changed nothing of the legal reality already present in the Anglo statute, it captured the intimacies to which manumission practices were historically tethered, and it normalized manumissions linked to sexual intimacy by validating those manumissions over and above others not named.

Finally, *Las Siete Partidas…Still in Force* manipulated the prohibition on enslaved people's capacity to make contracts. Louisianans reaffirmed the American law's disabling of enslaved people's right of accumulation in Partida Fourth, Title XXI, Law 7: "*That the gains made by slaves belong to their masters.*"[241] As in the 1808 *Digest*, this statute undercut any ability of enslaved people to self-purchase, since it made illegal enslaved people's ownership of property. The logic of enslaved non-ownership continues in the latter part of the statute, wherein "if one put his slave in a shop, or vessel, or any other place, commanding him to exercise any trade or commerce; then every contract made by the slave with any other person, in the way of such trade, or commerce in which he is employed, must be observed and executed by the master, in the same manner as if he had contracted them himself."[242] Again, this portion of the statute affirms that an enslaved person could not make a contract in his or her own name, and could not benefit from or accumulate property from that contract—all of those responsibilities and gains would be transferred to the slaveowner. What is important about this clause of the statute is what it implies about the intersection of slavery and other forms of commerce. Despite their legal inability to make contracts, enslaved people could *act as surrogates* for their owners in making contracts in "a shop, or vessel, or any other place." Thus, their ability to make contracts—in the material sense of

[240] *The Laws of Las Siete Partidas…Still in Force,*" Law 2, 588.
[241] "Vol. 1, Partida Fourth, Title XXI, Of Slaves," *The Laws of Las Siete Partidas…Still in Force*, Law 7, 585. Author's emphasis.
[242] Ibid., Law 7, 585.

agreeing to something or selling something to another person—was preserved despite the fact that in those moments the enslaved person was not legally an agent but rather the agent of someone else. Enslaved people became imbued with the status of a legal agent *temporarily*, and only in commercial space; that agency was imagined as returned to the owner whenever the contract needed to be made good on, but of course it is possible to imagine that there were many transactions in which the owner need not have participated at all (as in a single sale of an object, for example). This statute also reveals that enslaved people were acting on that sliver of legal status, because slaveowners had been placing the people they owned *as their agents* in commercial spaces at least frequently enough that the practice required regulation. Therefore commerce was a place where enslaved people were allowed to experience a tightly bound version of the legal status of people who could make contracts, despite the general prohibition on enslaved people's contract-making.

This takes on even greater importance in the case Partida Fourth, Title XXII, Law 4, which expands one instance in which enslaved laborers could make a contract. The law reads:

> *That a female slave may become free, when her master puts her in a brothel, that he may profit by her.*[243]

First, this statute suggests that the practice of masters putting their enslaved women in brothels for their own profit was common enough to require regulation. Second, this statute suggests that the practice was tied to a contractual obligation, or at the very least the suggestion of contractual obligation. That "a female slave may become free, when her master puts her in a brothel" qualifies the obligation of the slaveowner—she only *may* become free—but nonetheless offers freedom as a possible exchange for brothel labor.

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[243] "Vol. 1, Partida Fourth, Title XXII, Of Liberty," *Las Siete Partidas…Still in Force*, Law 4, 590.

In this instance, a contract for freedom is established where the commercial surrogate-contract involves not the sale of material goods "as in a shop or a vessel" but the sale of the sexual body of the person who is performing the contract surrogacy.

The law constructed the enslaved brothel worker's body within a double entendre that tied sexual labor to freedom. On one hand, she was like any other enslaved person in a commercial space—a surrogate of her owner—because "he may profit from her." That is to say, she would engage in contracts (sales) and collect fees on his behalf. On the other hand, because her body, her labor (or, in the case of enslaved women who managed brothels, the bodies of other women) was for sale, and not an abstract external object, she was also unlike other enslaved laborers/surrogate-agents. Indeed, an enslaved person "hiring out" to himself—selling his own labors for a profit—was illegal in this period, and yet brothel labor required a form of selling one's own labors for profit. Perhaps to suggest an enslaved woman was acting as the surrogate of her owner when she hired out her body for sex was a homoerotic perversion that antebellum New Orleanian lawmakers could not stomach. Or perhaps lawmakers agreed that sexual labor was necessarily tied to compensation—unlike other forms of enslaved labor—to the extent it must be attached to privileges that other labor was not. The explicit financial gain to an enslaved person was already rendered illegal for such hiring out maneuvers, but here, it was replaced simply by freedom, a form of payment in property and the ultimate goal of whatever financial accumulation might have occurred through sexual labor. Regardless of *why* lawmakers came to produce such a statute, what is possible to know is that the brothel clause tied sexual labor to both the behaviors of free people—the participation in contract—and to the possibility of freedom in the future.

Though not itself a tenet of *coartación*, the space of brothel labor reincarnated the crucial element of *coartación* that American New Orleans had otherwise excised: as a worker

in a brothel, an enslaved person could *contract for her freedom*, where her labor fulfilled the "installment"[244] payments toward her self-purchase price. Although this aligns with *coartación* for the Spanish period, this is a sharp turn from the norm of the American period, in which enslaved people were explicitly obstructed from contracting for their freedom with their own labor or financial gains. The brothel clause was not explicitly written in the language of self-purchase, but it nonetheless invoked that history.

All of this is made more confusing by the last part of the statute, which reads "Not in force."[245] This statement raises the question of *when* this law stopped being "in force." It also raises the question of why it needed to be articulated in this volume at all, given that the volume includes laws that were considered "*still* in force" in 1820. This contradiction may indicate the persistence of the practice of linking brothel labor to freedom. The presence of this statute in this volume suggests that the law was being treated as still in force through the early antebellum period, and thus needed to be explicitly repealed, here, in order to be effectively curtailed. Unlike other portions of Spanish (or French, for that matter) law that were implicitly repealed with the establishment of American sovereignty and the production of new legal codes, particular residual customs may have been so common as to need explicit un-doing in the law. The persistence that resulted in the unwriting of the brothel statute points to the tension between law and custom that was an important part of the story of sexual slavery and manumission.

Ultimately, the laws of *Las Siete Partidas…Still in Force* had two major outcomes. First, this set of laws upheld the American partial-affirmation of the tradition of *coartación. Las Siete Partidas…Still In Force* upheld the portion of the new American laws that affirmed enslaved people's rights to sue for their freedom (by presuming the suit for freedom in its affirmation

[244] de la Fuente, "Slave Law and Claims-Making in Cuba," 10.
[245] "Vol. 1, Partida Fourth, Title XXII, Of Liberty," *Las Siete Partidas…Still in Force*, Law 4, 590.

of liberty when possible), and even specified manumission policy to highlight the intimacies that bubbled up within the culture of manumission. *Las Siete Partidas…Still in Force* also slightly expanded the American reference to *coartación* by partially reincarnating enslaved people's right to contract: by 1820, enslaved people had regained a semblance of the right to contract through their capacity to make contracts as temporary surrogates of their owners. Second, *Las Siete Partidas…Still in Force* simultaneously created a possibility and took it away when they articulated that the full right of contract for freedom or self-purchase should extend to enslaved women who worked in brothels. The legacy of *coartación* culminated in an articulation of the tie between sexual labor and the promise of freedom.

Five years later, when legislators penned the 1825 *Civil Code*, which would become the basis for law for the duration of the antebellum period,[246] they continued the liberalizing trend set forth in the two previous iterations of the law. The *Civil Code* reaffirmed the original rights of *coartación*, the right of contract and the right of suit for freedom, once again opening up space for enslaved people to experience a form of slavery linked to future freedom. The section *Of Slaves* explains, "The slave is incapable of making any kind of contract, *except those which relate to his own emancipation.*"[247] Contracts for self purchase through accumulation would exist, but would be constricted by the overwhelming presence of the owner, because the enslaved person "can do nothing, possess nothing, nor acquire anything but what must belong to his master"[248] and "all that a slave possesses, belongs to his master: he possesses nothing of his own, except…which his master chooses he should possess."[249] This did not represent a full return to Spanish *coartación*, in which an enslaved person's

246 Schafer, *Becoming Free, Remaining Free*, 4.
247 "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code of the State of Louisiana* (New Orleans: J.C. De St. Romes, 1825), Art. 174. 52. Author's emphasis. Hereafter *Civil Code* (1825).
248 "Book I: Of Distinction of Persons, Title I: Of Persons," *Civil Code* (1825), Art. 35, 12.
249 "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code* (1825), Art 175, 52, 54.

freedom did not always require an owner's consent, but it did make a move in that direction. The *Civil Code* thereby reaffirmed the now well-established right of enslaved people to sue for their freedom where, again, "The slave…cannot be party in any civil action, either as plaintiff or defendant, except when he has to claim or prove his freedom."[250]

Despite liberalized policies through which enslaved people could seek their freedom, the 1825 *Civil Code* placed certain restrictions on general manumission policies. As before, the *Civil Code* affirmed the right of a slaveowner to free a person whom he owned, writing, "A master may manumit his slave in this State, either by an act *inter vivos* [between living persons] or by a disposition made in prospect of death."[251] Whereas *Las Siete Partidas…Still in Force* had specified an age restriction on the *slaveowner*, the *Civil Code* took away the age restriction for the slaveowner, and introduced an age restriction for the enslaved.[252] Those to be freed now must have "attained the age of thirty years."[253] It also added a behavior requirement, where the enslaved person to be freed must have "behaved well for at least four years preceding his emancipation."[254] By 1825, manumission had to take the form of an "express and formal" written document, and could not "be implied by any other circumstances of the testament, such as a legacy, an institution or heir,"[255] and once again, manumission could not be made "in fraud of creditors, or of the portion reserved by law to forced heirs" without becoming null and void.[256] Newly, the *Civil Code* required "The master

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[250] Ibid., Art 177, 54.
[251] Ibid., Art184, 60.
[252] See Law 2 of "Vol. 1, Partida Fourth, Title XXII, Of Liberty": "And if he wish to enfranchise him by will, he cannot do it unless he be fourteen years of age. Or if he desire to enfranchise him in any other way by writing, or before witnesses, or friends, he can not do it, except he be twenty years of age;" and "the master, who is a minor under twenty years of age, and over seventeen, may enfranchise his slave; provided he act always under the consent of his guardian" (where the enslaved is always referred to as "the person enfranchised" or "his slave") in *Las Siete Partidas…Still in Force*, 588.
[253] "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code* (1825), Art. 185, 60.
[254] Ibid., Art. 185, 60.
[255] Ibid., Art. 184, 60.
[256] Ibid., Art. 190, 60, 62.

who wishes to emancipate his slave" would "make a declaration of his intentions to the judge of the parish where he resides" and that the judge would post a public notice of the person's intention to emancipate for forty days before the emancipation could take place.[257] (This was presumably so that any creditors could come forward if they understood the manumission to be "in fraud" of debts owed to them.)

Even as the thrust of the *Civil Code* affirmed the legacy of Spanish rule with respect to manumission and its historic link to sexual intimacies, the *Code* also contained tension to that effect. Invoking the French *Code Napoleon* once again, the *Civil Code* reiterated restrictions on donation within all concubinage relationships, regardless of the races of the participants. In 1825, the law explained that "Those who have lived together in open concubinage are respectively incapable of making to each other...any donation of immoveables."[258] This affirmation corresponds with earlier versions of the American Louisiana law, but it directly contradicts the work of *Las Siete Partidas…Still in Force* in 1820. To the extent that manumission constituted a donation of property, the restriction on property donation to concubines contradicts *Las Siete Partidas'* claim that manumission may take place in the context of—even because of—intimate relationships such as the manumission of "a female slave whom [an owner] enfranchised in order to marry her."[259] This also contradicts the brothel clause in *Las Siete Partidas*, where manumission was linked to sexual service.

However, volleying back toward the liberalized Spanish regulations on sexual intimacy, this time the restrictions were softened. The law explained: "if they make a

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[257] Ibid., Art 187, 60.
[258] "Book III: Of the Different Modes of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa, Chapter 2, *Of the Capacity necessary for disposing and receiving by Donation inter vivos and mortis causa*," *Civil Code of the State of Louisiana* (1825), Art. 1468, 474.
[259] Vol. 1, Partida Fourth, Title XXII, Of Liberty," *Las Siete Partidas…Still in Force*, Law 2, 587.

donation of moveables, it cannot exceed one tenth of the whole value of their estate."[260] Here the 1825 *Code* relaxed the social penalty for long term sexual relationships outside of marriage, but nonetheless upheld some prohibitions for those relationships. The lawmakers of American Louisiana both acknowledged the presence of concubinage relationships and patterns of property exchange that existed within those relationships, while also maintaining the norm that those relationships were social aberrant and could not be allowed to tear the fabric of a society based on legitimate, state-sanctioned relationships between white men and white women. Over time, the law vacillated between acknowledging and even encouraging manumission-based property donations linked to intimate relationships, on the one hand, and disavowing and prohibiting that connection, on the other.

The *Civil Code* was next updated in 1838, and very little had changed. The law did not specifically mention Spanish or French legal heritage, but implicitly reaffirmed the unique freedoms inherited from *coartación*. The law stated that that an enslaved person was "incapable of making any kind of contract, except those that relate to his own emancipation"[261] and that "The slave…cannot be a party in any civil action, either as plaintiff or defendant, except when he has to claim or prove his freedom."[262] These claims were accompanied, as before, with the statute that would curb an enslaved person's capacity to accumulate property: "he possesses nothing except…which his master chooses he should possess."[263] Similarly, the *Code* preserved the previous law of manumission: emancipation could only happen through a formal, written petition, and the person to be freed had to be over thirty years old and had to have a record of good behavior for four years prior to the

[260] Book III: Of the Different Modes of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa, Chapter 2, *Of the Capacity necessary for disposing and receiving by Donation inter vivos and mortis causa*," *Civil Code* (1825), Art. 1468, 474.
[261] "Book I: Of Persons, Title VI: Of Master and Servant," *Civil Code* (1838), Art. 174, 27.
[262] Ibid., Art. 177, 28.
[263] Ibid., Art. 175, 27.

manumission.[264] The manumission would be considered null and void if made in fraud of creditors, but would be irrevocable once perfected.[265]

By the 1840s, the *Laws of the Legislature of a General Nature* (1841) introduced new restrictions on enslaved people's capacity to seek or gain freedom. In 1841, the law rescinded enslaved people's right to sue for their freedom, replacing this right with the right of slaveholders to stand in for the people they owned in court. The clause begins as usual: "No slave shall be parties in a suit in civil matters either as plaintiffs or defendants" but concludes without the usual exception for cases involving their own freedom. Instead, the statute returns to the language of 1807, ending, "however, that their masters may act and defend in civil matters, and prosecute in criminal cases, to obtain satisfaction of the outrages and abuses which might have been committed against their slaves."[266] Replacing a slave with his owner in the context of a court obliterated an enslaved person's ability to seek freedom without the consent of the person who owned him. This pairs with a reiteration of a much older law (1807) that undercut any remaining influence of *coartación*: "3374. No owner of slaves shall hire his slaves to themselves,"[267]and the more common: "no slave can possess anything in his own right."[268]

Finally, the 1841 laws also put stronger restrictions on manumission itself. A manumission petition had to be submitted to a judge and posted for the sake of creditors' knowledge. Unlike previous laws that made emancipation "once perfected, irrevocable,"[269] by 1841, the law created incentives to contest emancipations even after they had been finalized. The law explains that "emancipation shall be valid to all intents and purposes,

[264]Ibid., Art. 184, Art. 185, Art. 187, Art. 188, 28, 29.
[265] Ibid., Art. 188 and Art 190, 29.
[266] "SLAVES," *Digest* (1841), Art. 3377, 500.
[267] Ibid., Art. 3374, 499.
[268] Ibid., Art. 3376, 500.
[269] "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code* (1825), Art. 189, 60.

unless the same should be contested afterwards."[270] The law also newly expelled emancipated people from Louisiana, and tied the person who emancipated them to that process. By 1841, people could only be emancipated on condition "that the slave or slaves emancipated shall permanently depart from the state, within one month from and after the passage of the act of emancipation."[271]

As Françoise Doubrere prepared to sell Carmélite to Jean Lacaze in 1844, the legacy of *coartación* was uneven. In early years, the rights of enslaved people inherited from the Spanish had gradually increased, to the point where a contract that linked a woman's enslaved labor to her freedom would not be out of place. By the time Doubrere actually made the sale in 1844, those kinds of contracts and the manumissions they foretold had become highly restricted. Furthermore, the specific kind of contract she engaged in—one that linked freedom to sexual service in a brothel—had long been discredited by the law in 1820. Why, then, did Doubrere and Lacaze move forward with such a contract? How, in the context of the waning presence of *coartación* and the increasingly tight rules surrounding emancipation, could the notary J. Maureau place his seal in validation of such an act?

Statu Liber

The contract for Carmélite's labor was shaped not only by the Spanish past, but also by the laws of conditional labor that emerged in distinctly American Louisiana. The promise of Carmélite's freedom that Doubrere and Lacaze agreed on in 1844 was determined by another important legal trope: the category of *statu liber*. When the vendor and purchaser codified Carmélite's status as *statu liber* in the Act of Sale, they invoked a more recent history of conditional freedom that similarly created a state of temporary slavery and futural

[270] "SLAVES," *Digest* (1841), Art. 3423, 509.
[271] Ibid., Art. 3509, 523.

freedom. Thus the contract for Carmélite's labor was not only shaped by the Spanish past, but was shot through, also, with the laws of conditional labor that emerged in distinctly American Louisiana.[272]

In 1825, as part of the *Civil Code*'s turn toward a more liberalized manumission policy, American lawmakers introduced a new category of personhood, the *statu liber*. This category could account for, resolve, and incorporate the problematic presence of laborers who were conditionally enslaved in the state. Book I, Of Distinction of Persons, introduced this category: "slaves for a time or *statu liberi*, are those who have acquired the right of being free at a time to come…but who, in the meantime, remain in a state of slavery."[273] The introduction of *statu liber* revised the 1808 statutes that delimited the possibilities of personhood as slaves, manumitted persons, and free men.[274] This category codified a form of temporary slavery that was distinct from indentured servitude, a formation of enslavement that was tempered by imminent freedom. *Statu liber* constituted a kind of purgatory, in which an enslaved person could gain a credible—yet, fragile—hope for freedom at a specific time in the future. This challenged the overwhelming norm of lifetime enslavement for people of color and reshaped the affective landscape of some enslaved experiences by punctuating the

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272 Although never in practice in French Louisiana, the early French colonial regime of slavery also created a liminal space that some enslaved people experienced that may also be part of the genealogy of conditional enslavement in American Louisiana. In the French case, liminal enslavement was articulated in *space* instead of in *time*. Bernard Moitt explains that some enslaved women in the French Antilles accessed the "status of *libre de savane* (liberty of the savanna) or *libre de fait* (liberty of action)—both unofficial forms of freedom" that permitted an enslaved person to be in control of her own mobility and her own action. This existed before 1685 and lasted until 1848. This form of limited manumission was linked to sexual labor, for "conjugal relations were behind most of the *libre de savane* or *libre de fait* manumissions—an unofficial and incomplete freedom granted by slaveowners mostly to mixed-race slave women and their children without the authority of the state." This form of limited manumission was never part of French Louisiana law, and does not appear in any explicit form in the legal documents of American Louisiana. However, it is possible to speculate that the custom of granting *libre de savane* and *libre de fait* manumissions traveled to or influenced practices in antebellum Louisiana such as the legal status of *statu liber*. For more, see Bernard Moitt, *Women and Slavery in the French Antilles, 1635-1848* (Bloomington: Indiana University Press, 2001), xvii, 151-166.

273 "Book I: Of Distinction of Persons, Title I: Of Persons," *Civil Code* (1825), Art. 37, 12.

274 "Book I: Of Persons, Title I: Of the Distinction of Persons, and the Privation of Certain Civil Rights in Certain Cases, Chapter II: Of the Distinctions of Persons Which Are Established by Law," *Digest 1808*, Art. 13-15, 10.

monotony of permanent enslavement with the specific and legally substantiated promise of freedom. This category was both an emblem of liberalized manumission in the state, and had a special relationship to sexual labor.

The category of *statu liber* resolved the problem of *in futuro* manumission that had been secured with the *Civil Code*'s more liberalized manumission policies. In a system organized by the sharp dichotomy of slavery and free status, the presence of laws that allowed people to be *in process, in between* slavery and freedom might disrupt the strength of the binary. The law organized that disruption with *statu liber*, which explained and stabilized this special experience of temporary enslavement. Indeed, the law disciplined the insecurity and messiness of the categories of slavery and freedom in the face of manumission and *in futuro* freedom through the introduction of the category of *statu liber*.

The creation of this category enabled legislators to account for and to regulate the people who lived in the space of not-yet freedom, that is, people who had made a contract for their freedom but who had not yet achieved it. Again, the section "*Of Slaves*" clarifies the distinction of *statu liberi* and enslaved persons with respect to accumulating property. Article 193 explains, "The slave who has acquired the right of being free at a future time, is from that time, capable of receiving by testament of donation."[275] The *statu liber* could not himself hold the property—as an enslaved person, "he possesses nothing of his own"[276]—but that property "must be preserved for him, in order to be delivered to him in kind, when his emancipation shall take place."[277] This created a loophole in which someone designated *statu liber*, that is, someone who had contracted for his freedom, could accumulate the property necessary to buy his own freedom after the contract had begun.

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[275] "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code* (1825), Art. 193, 62.
[276] "Book I: Of Distinction of Persons, Title I: Of Persons," *Civil Code* (1825), Art. 35, 12.
[277] "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code* (1825), Art. 193, 62.

The law also resolved the thorny issue of *women* who lived as *statu liberi*. As Thomas Morris explains, the central concern of Southern jurists around *in futuro* freedom was the question of reproduction, because the status between freedom and slavery would complicate the question of slavery's heritability. If slavery followed the condition of a mother, and a mother was only *sort of* enslaved, what would the status of the child be? The *Civil Code* clarified this point: "The child born of a woman after he has acquired the right of being free at a future time," that is, the child born of a *statu liber* mother, "follows the condition of its mother, and becomes free at the time fixed for her enfranchisement, even if the mother should die before that time."[278] This maintained the logic of *partus sequitur ventrem*, where the child followed the condition of the mother, but accommodated the middle category of imminent freedom. As with the case of property rights, the law, here, resolved and stabilized the potential confusion that the space between slavery and freedom could create.

The stabilizing work of *statu liber* continued into the antebellum period. The 1838 *Code* also reaffirmed the presence of a legal status between slavery and freedom when it ruled on the status of mothers and children. Article 196 explains, "The child born of a woman after she has acquired the right of being free at a future time, follows the condition of its mother, and becomes free at a time fixed for her enfranchisement, even if the mother should die before that time." Though the category of *statu liber* was not itself present in this volume, the concept of "being free at a future time" invoked this same legal tradition.

Yet by the time legislators wrote the 1841 *Digest*, the legal recognition of a space between slavery and freedom was in jeopardy. Where earlier laws created the category of *statu liber* to stabilize a malleable social system of freedom and slavery, by 1841 legislators gutted the core promise attached to that category. A footnote to the now normalized law

[278] Ibid., Art. 196, 62.

prescribing the necessary age and good behavior of an enslaved person to be emancipated demonstrates the new fragility of *in futuro* freedom. The footnote explains, "Freedom given to a slave by notarial act under the condition that he would serve his master until his death, may be annulled by his heirs," which is to say that a promise of freedom could be undone by those who survived the promisor.[279] This undercut an enslaved person's capacity to ask the people who owned her to make good on a commitment to free her—if the person who actually made the promise died, she would have no recourse in the law to protect her promised freedom. Furthermore, the footnote explains, "A slave who had a deed of emancipation, which is to take effect at a future period, in the mean time a *statu liber*, and children born from her while in that state, *are not free*, even at the expiration of the time when the mother becomes free."[280] This reversed the earlier ruling that the children of *statu liberi* would become free at the time their mothers became free, reaffirming instead the hereditary nature of slavery and freedom over and above any potential heredity of *in futuro* freedom.

The Consolidation and Revision of Statutes of State, of a General Nature, published in 1852, made further restrictions on the middle category of *statu liber*. As in 1841, these statutes reverted back to the earliest version of American Louisianan law (1807) by restricting enslaved people's capacity to sue, including for their freedom.[281] Within this restricted context, the law indicated increased anxiety in regard to the presence of people who could confound the logic of slavery and freedom in an explosion of regulations about *statu liberi*. These regulations were particularly concerned with the emergence of *new statu liberi*, restricting those that were already present in Louisiana and attempting to prevent the introduction of new cases. Act 56 explains "It shall no longer be lawful to bring into this

[279] "SLAVES," *Digest* (1841), Art. 3422, 509, fn.
[280] "SLAVES," *Digest* (1841), Art. 3422, 509, fn. Author's emphasis.
[281] "SLAVES," *The Consolidation and Revision of Statutes of the State, of a General Nature*, Levi Pierce, Miles Taylor, and Wm. W. King, eds., (New Orleans, Printed at the BBR Office, 1852), Art., 3, 522.

State any slave entitled to freedom at a future period or a 'statu liber."[282] This clause attempted to curb overall rates of manumission by restricting the introduction of new enslaved people who would become free at a future time. This statute also suggests the presence of *statu liberi* beyond the boundaries of Louisiana, people who might be imported into Louisiana through the interstate slave trade, with the promise of freedom already attached to them. The law explains that "It shall not be lawful for any person residing in this state, knowingly to purchase any such statu liber" under the penalty of forfeiting the slave and paying for her transport out of state.[283] Finally, the law attempted to diminish the presence of imminently free people in Louisiana's midst, by expelling *statu liberi* when they became free. Article 139 explains: "All statu liberi now in the State shall, when they become free, be transported out of the State, at the expense of their last owner…and such statu liberi, when transported out of the State shall, on returning to the State, be liable to all the penalties provided by law against free negroes or persons of color coming into the State."[284]

Statu liberi, in these 1841 and 1852 statutes, inhabited the positions of either enslaved people or free people of color, but no longer enjoyed a special liminal status. During the period of continued and conditional enslavement, *statu liberi* would be treated as slaves—their children would inherit the status of enslavement, and their potential freedom would be more fragile than ever before. When they attained the status of free people, they would be banished from the state as other manumitted former slaves would be. The law worked hard to prevent the introduction of more people in the middle ground into the state in the first place, and when they were present, the law determined that their experience of enslavement would not be dissimilar from that of other enslaved people. Where the earliest articulations

[282] Ibid., Art., 56, 534.
[283] Ibid., Art., 57, 534.
[284] Ibid., Art. 139, 566.

of *statu liber* sought to stabilize the middle ground created by *in futuro* freedom contracts, these later iterations continued to acknowledge its existence while nonetheless obliterating any real meaning attached to the category.

Carmelite v. Lacaze: Sexual Labor and Conditional Freedom

When Carmélite first brought suit in 1851, the status of *statu liber* was unstable and endangered by the law, but still in existence and thus still viable as a category that could protect her promised freedom. Despite rules that would shortly be written to banish *statu liberi* from the state of Louisiana, in 1851, Carmélite's status remained a protected category. Yet even as Jean Lacaze agreed that he was legally bound to free her as a *statu liber*, he argued that he could not do so. To free her, he argued, would be to defy reigning manumission laws. He simplified her *statu liber* status by emphasizing that she had engaged in "gross misconduct and criminal misdemeanor"[285] that disqualified her from claiming her freedom. This conduct, his logic suggested, made her simply a slave whose bad behavior had forfeited "all rights to emancipation under our laws."[286] His argument about Carmélite's behavior erased her special status as an enslaved person entitled to imminent freedom, and reinscribed her status as simply a slave, whose conduct disqualified her from liberty under the "good conduct" clause of manumission law.[287] As a slave of *bad* behavior, he could not "with Justice to himself and to the country," undertake to emancipate Carmélite."[288]

Lacaze initially side-stepped his implication in her bad behavior, emphasizing only her violent conduct against him and other white people. He explained in an early rebuttal to

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[285] *Carmelite v. Lacaze*, 16.
[286] Ibid., 17.
[287] 1825: *Civil Code of the State of Louisiana* "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*," *Civil Code* (1825), Art 185, 60; "Book I: Of Persons, Title VI: Of Master and Servant," *Civil Code* (1838), Art. 185, 29.
[288] *Carmelite v. Lacaze*, 16.

Carmélite's petition that "the said Carmélite has wrongfully disposed of and embezzled goods and effects which this defendant, her master, has entrusted to her care and safe keeping," and that "the said Carmélite has notoriously committed larceny whilst in this defendant's service."[289] He claimed she was violent, explaining that Carmélite "often abused and threatened, and on one or two occasions even struck…her master," that she "struck and iltreated a white person," and that she had "always lived in a state of insubordination and insolence."[290] Under the *Black Code*, these were capital crimes that, at the very least, disqualified Carmélite from freedom, but could even come with punishments of their own.

It was only later in the trial proceedings, however, that the real cause for Carmélite's so-called bad conduct was revealed, alongside Lacaze's own involvement in that conduct. The trial revealed that "at the time Lacaze purchased the plaintiff, he lived with her in a state of concubinage" and that "subsequently he kept her with others for the purpose of profit in a house of prostitution."[291] By the time the case reached the State Supreme Court, these facts were articulated up front. Doubrere's lawyer, Charles Maurian, claimed in opening arguments that "the situations in which [Lacaze] placed her, and the associations by which she was surrounded, were such as necessarily corrupted her mind and character."[292] Thus it was Lacaze's doing—Lacaze's fault—that Carmélite had committed what he called "the gross misconduct."[293] It was possible that this fact could excuse that conduct and once again open the door to her freedom.

Carmélite's suit hinged on the answers to key questions: Did Carmélite inhabit the category of *statu liber*, or had she forfeited her status and become simply and indefinitely a

[289] *Carmelite v. Lacaze*, 15, 16.
[290] Ibid., 16.
[291] Ibid., 38.
[292] Ibid., 53.
[293] Ibid., 16.

slave?[294] Were her time-bound services sold in the Act of Sale, or was her person sold? Had she committed misconduct? And if so, how would that impact her claim to freedom? It was this last question that most vexed the court, which vacillated on the question of whether Carmélite's "misconduct" existed within a legal loophole that would enable her to gain her freedom. The presiding judge of the Second District was so appalled by the sexual nature of the problem at hand as to suggest that the case raised "questions which have no place in jurisprudence."[295] His comment exposed the legal past that informed this case, one which erased such "questions" from the law, but which could not erase the practices themselves. *Las Siete Partidas…Still in Force* had removed any special treatment for enslaved brothel labor under the law nearly a quarter-century prior, when the clause that tied enslaved brothel labor to freedom had been declared "no longer in force." In 1820, Louisiana legislators struck the clause from the Civil Code without any replacement regulation, thus delegitimizing the presence of enslaved brothel labor in Louisiana. And yet Carmélite's case pulled back the curtain on a once lawful labor (sex work), linked to freedom, that contemporaneous law had erased. How would the court in 1851 reckon with the presence of this formation of sexual labor and futural freedom?

Before the case came to court, Carmélite's labors were myriad. The record of her service began not with Lacaze, but with Doubrere, for whose child Carmélite acted as a nursemaid. Here, Carmélite was involved in the intimate economy of slavery before becoming involved with the explicit sex trade. While under the ownership of Doubrere,

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[294] Judgment at Second District Court explains this problem: "The question to be determined then re-solves itself into one of title, and on this point, it appears to me that the Counsel for the intervenor has correctly urged that the defendant bought nothing but the services of the slave for a term of years, say 7 years from the 17th June 1844. This was all the purchaser paid for, all that was intended to be transferred. A construction by which the misconduct of a statu liber should convert him or her into the slave for life of the conditional purchaser, would not only be a violation of the spirit of the contract, but would be holding forth a for the demoralization of slaves thus purchased. The case at bar furnishes a forcible illus-tration of the pernicious tendency of such a construction." See *Carmelite v. Lacaze*, 39.

[295] *Carmelite v. Lacaze*, 55.

Carmélite had an intimate relationship to the family, as described in a brief for the intervenor: "she having nursed one of the intervenor's [Doubrere's] children."[296] Doubrere's use of Carmélite in this way and subsequent sale of Carmélite to Lacaze indexes her own involvement at the edge of the intimate or pleasure economy more broadly.[297]

Later, the trial record revealed, Lacaze purchased Carmélite to be his concubine. It is unclear whether their sexual relationship preceded his purchase of her from Doubrere, or how he came to know of Carmélite. Witnesses agreed that "Mr. Lacaze purchased the servant to make a wife of her,"[298] that they "lived together, never saw but one bed,"[299] and that he "lived with her in a state of concubinage."[300] The witness F.J. Robert declared that he had even heard from Lacaze himself, that "From what witness heard from Lacaze he concludes that he bought her so as to make a mistress of her."[301] This was despite his knowledge that "Mr. Lacaze is a married man"[302] with a wife and daughter who lived in France and who occasionally came to New Orleans, where they would stay at the corner of Custom House and Rampart Street.[303] Another witness, Miss Kennedy, explained that he "Does not know whether Lacaze is a married man, but he had a colored woman with him as his wife." (Lacaze was careful to stay with her in his other house, on Burgundy Street.)[304] Jn. Lacoste claimed that his knowledge derived of watching the two together: "Lacaze came on

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296 Ibid., 53.
297 Françoise Doubrere may have played a larger role in New Orleans' pleasure economy than her presence in *Carmelite v. Lacaze* demonstrates. In the same year that she sold Carmélite to Jean Lacaze, she sold two other women of color, Priscilla and Hannah, to white men. Further research is needed to illuminate the kinds of labor that these women performed for Doubrere and the kind of labor they were sold to perform, that is to say, whether or not Doubrere was an agent of the trade whose human traffic was geared toward the sex economy. Notarial Records of Louis F. Maureau, Vol 1., record no. 55, 69, 107 (1844), New Orleans Notarial Archives.
298 Testimony of F.J. Robert, *Carmelite v. Lacaze*, 30.
299 Ibid., 30.
300 *Carmelite v. Lacaze*, 38.
301 Testimony of F.J. Robert, *Carmelite v. Lacaze*, 30.
302 Ibid., 31.
303 Ibid., 31
304 Testimony of Miss Kennedy, *Carmelite v. Lacaze*, 25; testimony of F.J. Robert, *Carmelite v. Lacaze*, 31.

Sunday with Carmélite …arm in arm….Lacaze told him he was satisfied with Carmélite in 1845 or 1846."[305]

But the story was more complex than a simple situation of long-term sexual liaison between two people. Lacaze was a peddler by trade,[306] and he had officially purchased Carmélite as a marchande, a merchant woman, who would take care of his business affairs while he was away. He had, as the law prescribed, "put his slave in a shop"[307] in his stead while he traveled to France. In this arrangement, Carmélite traded goods from a room in the Burgundy street house during his absence and then Lacaze received "money from his servant…whenever she would bring him some."[308] She had considerable autonomy over these goods, which included "fitted gloves, Hose, buttons, thread" and "were worth from $1200 to $1500."[309] She was initially "a good marchande and could make $2 a day," but when Lacaze returned from France three months later, "at least half of the goods he had left with Carmélite was lacking."[310] Jn. Lacoste recalled that Lacaze had suggested that he might purchase Carmélite from him, "in order to make a marchande" of her.[311]

In addition to her role as a merchant of these items, Carmélite also performed sexual labor during her time under Lacaze's ownership. Madame Somer explained that Carmélite had rented a room from her at 150 Dauphine Street— Carmélite had been apprenticing as a hair dresser.[312] But her night-time antics were what concerned Somer. She explained, "[Carmélite] used to be dancing til midnight with other people in her room in a complete state of nudity." To make matters worse, "There were both negroes and white people

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305 Testimony of Jn. Lacoste, *Carmelite v. Lacaze*, 32.
306 Testimony of B. Diard, *Carmelite v. Lacaze*, 29; testimony of Mrs. Dofou, *Carmelite v.* Lacaze, 26.
307 "Vol. 1, Partida Fourth, Title XXI, Of Slaves," *Las Siete Partidas…Still in Force*, Law 7, 585.
308 Testimony of F.J. Robert, *Carmelite v. Lacaze* 29.
309 Testimony of B. Diard, *Carmelite v. Lacaze* 28.
310 Testimony of F.J. Robert, *Carmelite v. Lacaze* 31.
311 Testimony of Jn. Lacoste, *Carmelite v. Lacaze* 32.
312 Testimony of Mme. Somer, *Carmelite v. Lacaze* 23.

there."[313] Somer "watched these once," which confirmed her suspicions.[314] Lacaze "came several times" to that location, she suspected, "to claim from said slave her wages."[315]

Whether he collected wages for hair dressing or for dancing is unclear, but Somer, and later Miss Bernard, explained that the two had quarreled there. When Lacaze came to collect Carmélite's wages, she refused him, at which point he "was obliged to strike her."[316] But "she was always talking…and was impertinent to her master…[and] she spoke angrily all the time following him."[317] In this fight, he continued to strike her, but she resisted, holding his hands at bay and, boldly, she "did not hush when her master ordered her to do so, and her master had to submit."[318] (Carmélite's boldness was not infrequent, for Miss Kennedy—who had also "been in [Lacaze's] service"—also quarreled with her, and Carmélite had "struck her down by pulling her by the hairs of her head.")[319]

Finally, witnesses revealed that Carmélite's primary role in Lacaze's world was as a laborer in his brothel. A. Brouet explained that "Lacaze has kept a house of prostitution on Burgundy street" and that "Carmélite lived in that house."[320] D. Laborde confirmed, "the brothel House [was] Kept by Lacaze; the house was on Burgundy Street. Carmélite was in the house."[321] Indeed, Laborde added, he "Knows personally that the house Kept by Lacaze was a brothel."[322] The brothel served "both white and colored people," who were "going in and coming out from said house" and was staffed by "several white ladies and negro

313 Ibid., 23.
314 Ibid., 23.
315 Ibid., 22, 23.
316 Testimony of Miss Bernard, *Carmelite v. Lacaze*, 23.
317 Ibid., 24.
318 Ibid., 24.
319 Testimony of Miss Kennedy, *Carmelite v. Lacaze*, 25.
320 Testimony of A. Brouet, *Carmelite v.* Lacaze, 32.
321 Testimony of D. Laborde, *Carmelite v. Lacaze*, 34.
322 Ibid., 34.

wenches" who "sometimes danced in the yard on Sundays."[323] A. Gaillibardy explained that the house was "on Burgundy St between Conti and Bienville," and that Lacaze rented the property from one Mr. Clay. He added that he "has seen the girl Carmélite in that house.[324] The house contained, Gaillibardy continued, "several negro wenches" who were enacting "disorderly conduct."[325] It was clear: Lacaze kept Carmélite "with others for the purpose of profit in a house of prostitution."[326]

With these facts in play, lawyers argued over whether or not Carmélite's behavior disqualified her from freedom. Witness testimony corroborated Lacaze's claims that Carmélite had defied the rules regulating enslaved women's behavior. The opinion of the lower court thus nearly dismissed the possibility of Carmélite's emancipation all together. Even as her emancipation was the major problem of the suit, and as the court reiterated her claim that "it was stipulated by the vendor that [Jean Lacaze] should…at his own proper cast and expense emancipate the said slave Carmélite," the behavior requirements of manumission law superseded those concerns.[327] She had clearly not met the requirements, under Article 185 of the *Civil Code*, to have "behaved well at least four years preceding [her] emancipation."[328] By the time the case reached the Supreme Court, "in consequence of her forfeiture of all rights to emancipation under our laws," the case would become "a special matter" between Doubrere and Lacaze.[329]

With the horizon of Carmélite's emancipation moving farther away, the proceedings continued, because Françoise Doubrere entered as an intervenor. She argued that if Carmélite's emancipation could not be perfected, at least Doubrere should regain ownership

[323] Testimony of A. Brouet, *Carmelite v. Lacaze*, 32; Testimony of F.J. Robert, *Carmelite v. Lacaze* 30.
[324] Testimony of A. Gaillibardy, *Carmelite v. Lacaze*, 34, 35.
[325] Ibid., 35.
[326] *Carmelite v. Lacaze*, 38.
[327] Ibid., 36.
[328] "Book I: Of Persons, Title VI: Of Master and Servant," *Civil Code* (1838), Art. 185, 29.
[329] *Carmelite v. Lacaze*, 53.

of Carmélite. Regardless of Carmélite's behavior, she was still a *statu liber*, Doubrere argued, which meant that only her services, but not her person, had been sold. The collaborative possibilities of this claim were never made explicit, but it is possible to speculate that Doubrere sought custody of Carmélite in order to free her, or perhaps to allow her to live as free.[330] After all, Carmélite and Doubrere shared an intimate relationship that led to Carmélite's *statu liber* status in the first place. Moreover, by the time of the trial's height, the two were represented by the same lawyer, Charles Maurian. Perhaps their interests were aligned.

With Doubrere's intervention, the case turned to the legal weight of the category of *statu liber* not in terms of Carmélite's right to self ownership at the end of her contract, but in terms of the delimited enslavement that would position Doubrere as owner. If, as the Act of Sale attested, Carmélite had been *statu liber*, not slave, for the past seven years, then who legally owned her? The legal category of *statu liber*, so anxiously overdetermined by the law by this late moment in the antebellum period, transformed here into a question of property and commodity exchange. The judge of the lower court agreed with Doubrere and Carmélite, asserting that Doubrere had "sold nothing but the services of said Carmélite for the space of seven years"[331]and that if Lacaze would break the contract by remaining "unwilling to emancipate the said slave" that "he cannot keep her as his property, but that she must revert to the intervenor."[332] The opinion continued, "The question to be determined then resolves itself into one of title," that is, a question of whether services or person had been sold.[333] Thus although the case initially hinged on Carmélite's right to gain her freedom through

[330] For more on enslaved women who "lived as free," see Chapter 4.
[331] *Carmelite v.* Lacaze, 37, 38.
[332] Ibid., 38.
[333] Ibid., 39.

contract, the court eventually cared about who should own Carmélite given that her behavior had disqualified her from ownership of herself.

The claim that only services, but not the person of Carmélite, had been sold, was revived on appeal. Maurian argued that "the sale of a slave coupled with an obligation imposed on the vendee to manumit such slave…is nothing else but the sale of the services of the slave during the period beginning at the sale, and ending at the manumission."[334] His argument was an attempt to both reveal and to shape the meaning of the category of *statu liber*. This may not have entitled the bad-behaving Carmélite to her freedom, but it certainly disqualified Lacaze from ownership of her. The court agreed, stating, "A condition in the sale of a slave that the slave shall be emancipated at a future time has always been held as a stipulation…in the same manner as in ordinary cases of stipulations in contracts for the benefit of *hired persons*."[335] Here, the court claimed, entering into a contract for freedom made an enslaved woman like Carmélite more like a free person whose labors had been sold or an enslaved person whose labors had been leased—temporarily "*hired*"—than like a slave who could not legally sell her own labor. That she might lose the right of freedom because of "a breach of the contract," affirmed her right to participate in contract in the first place, rather than occupying the position of an enslaved person who could not contract.[336] As a *statu liber*, Carmélite had special rights to contract, plus access to the promise of freedom that other enslaved people could not access; she could lose those special rights because of her behavior, reverting back to the ownership of another, as simply, a slave.[337]

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[334] Ibid., 54.
[335] Ibid., 56. Author's emphasis.
[336] Ibid., 57.
[337] The court describes Carmélite differently at different stages of the trial. The lower courts all list Carmélite as "negress, statu liber" but by the time the case goes to the State Supreme Court—after the judgment that Carmélite should revert to the ownership of Doubrere—she has lost her title as *statu liber* and is instead referenced as simply "Carmelite, a slave."

But even as the question had boiled down to who the new owner of Carmélite would be, and not whether or not she would be liberated all together, Carmélite and Doubrere's lawyer made a final effort to free Carmélite after all. He reminded the Supreme Court of the particular kind of labor that Carmélite had been forced to perform, and pointed to that scenario as the reason for what had been codified as her misconduct. In the final scene of the trial, the person who bore blame for the behavior that caused Carmélite to lose her special *statu liber* right to (contract and) freedom became central. The question that had haunted the entire trial was made explicit: Would the law absolve an enslaved woman of disorderly conduct—prostitution, itself, as well as the other behavior she had exhibited in the brothel—if she had been forced into that conduct by the man who owned her? Did sexual labor challenge the binary of freedom and slavery?

To make this claim, Charles Maurian dug up a law that, even when it had been penned nearly three decades prior, had been declared no longer in force. To the court, he explained with much theatricality, "Alphonso the Wise gave to his subjects a code of wise laws. The *siete partidas* were for a long time laws in Louisiana."[338] He continued, "The Law 4 of Title XXII of Partida 4 provided that *a female slave might become free when her master puts her in a brothel that he may profit by her.*"[339] "That," he continued, "is exactly what Lacaze has done in the case at bar" and even if the law had been repealed, "every honest man, every good citizen, must deplore the repeal of that law."[340] That law, he argued, protected those enslaved women who held "a precarious title," and created a loophole that absolved their wanton sexual conduct (and the conduct of a society that condoned it). Ruling against Carmélite

[338] *Carmelite v.* Lacaze, 61.
[339] Ibid., 61, 62. Author's emphasis.
[340] Ibid., 62.

would be to punish her "for the same cause" as this previous law had determined she *should* be made free.[341]

Invoking the Spanish past was the flourish at the end of Maurian's statement, a final argumentative triumph that could only be invoked in the context of a palimpsestic legal code and a complex colonial past. When he explained that *Las Siete Partidas* "were for a long time the laws in Louisiana," he suggested that the longevity of the law had an influence on custom, and even where repealed, that old laws could continue to influence contemporary jurisprudence. He called up the lower court's decision that "the misconduct of the slave, which was the obstacle to her emancipation, was the necessary result of the vile…employment and associates to which Lacaze subjected her" and that it "cannot permit a man to fortify his title by his new infamy."[342]

That the high court did not agree does not diminish the importance of this particular argument. Here, Maurian called attention to the implicit message that was written into the very contract that began this debate, the Act of Sale that linked Carmélite's sexual labor to the possibility of her emancipation. His argument pointed out the *customary* linkage of sexual labor and the promise of freedom that had been recognized by the earlier laws, and that had continued in the form of contracts like this one in spite of the law's refusal to recognize and regulate the practice. Although the argument did not, in the end, work to free Carmélite, it *almost* worked: the lower courts agreed that Lacaze, anyway, should not benefit from forcing Carmélite into sexual servitude, and the argument was replayed in even more explicit terms at the highest court in the state. The presence of these arguments indexes the common-sense nature of the connection between enslaved women's sexual labor and the possibility, the specter, of their futural freedom. That connection was embedded in the contract, woven into

[341] Ibid., 62.
[342] Ibid., 57.

the arguments, and finally made plain in the conjuring of *Las Siete Partidas*' brothel clause in front of the Louisiana State Supreme Court.

Promises

Carmélite's case demonstrates the multiple middle grounds that vacillations in the legal code created, and that racialized sexual commerce inhabited. The law codified the connection between sexual labor and the promise of freedom, which was then reinvigorated in a contract made years later. Together, the law, the contract, and the legal case that emphasized the connection between the two, point to the liminal space between slavery and freedom in which racialized sexual commerce flourished. Together, they demonstrate the way that a promise could be at the heart of a sexual exchange, and the ways that that promise could challenge the binary of slavery and freedom to change the shape of a woman's enslavement. They demonstrate just how valuable that promise could be.

The Act of Sale, through which the affective object of the promise was declared and bartered, and through which Carmélite was transferred to Lacaze, suspended the difference between slavery and freedom temporarily by introducing the possibility of freedom within the space of enslavement. The Act was a contract for freedom to which Carmélite could not legally be an agent and co-signer, but through which she could enter into the space of temporary enslavement. The category of *statu liber* created a middle ground between slavery and freedom that indexed a new temporality—a futural form of freedom that reshaped the very meaning of enslavement.

The extent to which this sense of futurity reshaped Carmélite's experience of slavery is evident in her pursuit of freedom through the courts. The promise of freedom gave Carmélite ground to stand on in a court system that could recognize her right to pursue

liberty in the face of some kind of contract. The contract that Carmélite claimed located her in a long history of Louisiana's enslaved population and specifically those enslaved people who took advantage of their slim right to contract—the moment her Act of Sale was approved, she became part of the legacy of *coartación*. Despite the ways that her enslaved status precluded her from being party to the actual Act of Sale that determined the course of her life, the promise of freedom in that Act entered Carmélite into a contract. As an enslaved person who had gained the right to contract, she was hurled into an area of the law that had changed again and again in the antebellum period. And even though, by the time the Act of Sale was notarized in 1844, her right of contract should have been foreclosed by increasingly restrictive slave codes, this official piece of parchment suggested that she had maintained that right. She became less like a slave, and more like a laborer with a contract, from the moment the notary J. Moreau signed the document.

Finally, the prominence of sexual labor in the contract that Carmélite was nominally a part of marked out another middle space that characterized racialized sexual commerce. Carmélite's participation in sex work was not just a term of her contract, but also its guarantor. Sex was the hired labor that Carmélite was purchased to perform—the "services" that were transferred when Doubrere sold her—but sex was also the thing that tied her labor to the promise of freedom. When Doubrere and Lacaze signed the contract that determined Carmélite's seven years of work, they reinscribed a practice that the law had called up many years before. When they linked her brothel work to a promise of freedom, they reenacted the custom of knitting together sex and freedom. Additionally, sex-as-labor could mitigate the behavior requirements that endangered the possibility of her freedom. At multiple levels, sex was the genesis and the guarantor of the futural temporality of Carmélite's enslaved experience, the space between slavery and freedom in which she lived.

The legacy of Spanish *coartación* and manumission law continued to inflect the laws of American Louisiana throughout the antebellum period in ways that highlighted the instability of slavery and freedom in the context of sexual labor. The actors of racialized sexual commerce—the space of sexual commerce that intersected with and highlighted larger patterns of racial commerce—troubled the norms of slavery-for-life by trading in a promise, the affective object that Lacaze and Doubrere sold to one another and to Carmélite. That promise, an object that took no material form but that nonetheless fundamentally shaped the contours of a woman's experience of enslavement was at once laden with possibility, futurity, even hope, but was also marked by impossibility in a legal context that increasingly restricted the freedoms of all people of color. This tension—between the possible and the impossible, between the custom and the law—specifically described the experience of Carmélite and the world of sexual labor to which she belonged. The specific sexual labor that Carmélite performed determined her experience of the liminal space between slavery and freedom that characterized the legal history of commercial sex in antebellum New Orleans.

4

Quadroon:
The Erotics of Safety and Danger in Racial Indeterminacy

"the general appearance of said girl Alexina was that of a white girl, with fair complexion inclined to be sallow, blue eyes, and light colored straight hair. She is now I supposed between fifteen and sixteen years old and was rather small in size, she had a scar on her forehead which was plain to be seen, she was noted for being an outrageous liar."[343]
-*Alexina Morrison v. James White*, 1861

In 1857, Benjamin F. Giles of Pulaski County, Arkansas, testified remotely in the case of *Morrison v. White*. He explained that, years earlier, he had owned this Alexina for a few months before he sold her under, he explained, "somewhat notorious"[344] circumstances to James Anthony. He had been called upon to give evidence about Alexina Morrison's status, despite the fact that he lived quite far away from New Orleans. The court's commission transcribed his testimony on behalf of the New Orleans slave trader James White, another man who (several owners later) had purchased Alexina as a "fancy girl." Giles was testifying in the first place because fifteen year old Alexina Morrison was suing the slave trader James White for her freedom—her claim was that she was entitled to her freedom because, she argued, she was white, that is, too white to be a slave.

The defense went through the regular motions of trying to prove that Alexina Morrison was a slave, identifying the chain of custody to which she had been subjected, and bringing in the various men who had owned her during her short life to testify to that fact. Their argument relied on the infallibility of the slave system, essentially claiming that

[343] Testimony of Benjamin F. Giles, *Alexina Morrison v. James White*, 16 La. Ann. 100 6439 (422 Unreported), 1861, 53.
[344] *Morrison v. White*, 50.

Morrison's enslavement proved her status as a slave. White's defense went so far as to prove that Alexina had been born in the house of the man who owned her enslaved mother, thus confirming her status as a slave.

Yet the preponderance of testimony in this case did not revolve around Morrison's formal legal status, but around her race.[345] The bit of Giles's testimony, above, crystallizes the key puzzle that this case purported to resolve: Giles was one of many people who would testify that Alexina Morrison had fair skin, blue eyes, and straight hair, affirming Morrison's central contention that she was white. Her whiteness was obvious to anyone who looked at her (and there was a lot of looking going on): it was as impossible to avoid as her status as a slave. The combination posed a problem not merely for Morrison, but also for a system that could accidentally enslave its own white women. And so the case turned on a set of questions: Was she *white*, as she claimed? Or, as Giles attempted to indicate in his testimony, was she *lying*?

This case arrived on the historical record through what Walter Johnson has called "the politics of racial determination."[346] Johnson explains that *Morrison v. White* revealed New Orleanians' anxious desire to locate—to *determine*—Alexina Morrison's race, and demonstrated that those attempts laid bare the fictions of slavery's racial logics. Johnson

[345] This chapter uses the language of racial certainty more than any other section of this dissertation; this is the language of the law. I also occasionally use the language of "truly white" and "truly black," as a means of ventriloquizing the racial authenticity that these historical actors and that the law imagined. It may be important to point out that I have no stake in Morrison's "real" race, but instead understand the entire enterprise to be rooted the fictitious nature of an authentic race that could be found "in the blood" or in the body. However, the language of this chapter reflects the language of my historical actors, and of the law, both of which were rooted in a moment in which race *was* imagined as knowable. Even as I reproduce the language of racial knowledge in this chapter through the language of the archive, these historical actors, while relying on a wider *discourse* of certainty, are themselves unable to make certain claims about Morrison's race.

[346] Walter Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s," *The Journal of American History* 87, no.1 (2000): 13-38.

argues that witnesses' invocation that Morrison was a "quadroon mistress" became both the proxy for their eroticization of her and "proof of an essential blackness" in her body.[347]

And yet identifying Morrison as a quadroon did not end the discussion. Rather, witnesses repeatedly pondered about her race, ultimately producing a rich archive of argument and discussion. Although "quadroon" spoke the language of blackness—if experts could locate it, her "one drop" of black blood would make her definitively black—the invocation was not, as Johnson argues, an expression of witnesses' desire for racial determinacy. Rather, the witnesses' insistence on *dis*satisfaction with an answer about Morrison's race, as expressed in the undercutting of their own testimonies and the invocation of "quadroon," is evidence of their attachment to her racial *indeterminacy*. Where Johnson's analysis takes seriously individual testimonials as quotidian attempts at racial *determinacy*, I want to read the *sum total* of the testimony, and the looking that each restages, as evidence of fascination with *indeterminacy*. The explicit aim of this case was the determination of Morrison's race, but the implicit obsession of this case was the erotics of her racial *indeterminacy*.

The idea of the quadroon body that members of the courtroom lingered over and invoked again and again did not simply affirm Morrison's blackness, but insisted on the simultaneity of her possible blackness amidst her non-ignorable whiteness. Witnesses lingered over the question of Morrison's race, producing her, as Werner Sollors articulates, as "neither black nor white yet both."[348] *Quadroon* was not simply a descriptor, but rather, it was an affective object. Together, members of the court reproduced *quadroon*, the notion of eroticized racial ambiguity that attached to the body of a light-skinned woman. This racial

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[347] Ibid., 28.

[348] Werner Sollors, *Neither Black Nor White Yet Both: Thematic Explorations of Interracial Literature* (Oxford and New York: Oxford University Press, 1997).

fantasy, made real on the body of Alexina Morrison and women like her, ushered in a unique form of sexual silence for these men, in which dangerous erotic contact with her—and here I include sex acts alongside the deep looking, undressing, touching, and owning that witnesses partook in before and during the trial—could be consistently insured by the possibility that that contact was actually socially acceptable, or safe.

Thus, within racialized sexual commerce, "quadroon"—as an idea, as a body—was not a synonym for "black." Rather, *quadroon* maintained the possibility of an absence of hidden blackness that could absolve onlookers of the social impropriety of sexualizing a white woman in public space and against her will, while also maintaining the possibility that essential blackness could be found. If she were a woman of color, it would have been entirely appropriate to engage with her body so lewdly in public, but if she were actually white, it would have been entirely inappropriate to do so.[349] Similarly, if she were a white woman, it would have been entirely appropriate to maintain sexual fantasies about her or to engage in sexual activity with her, but if she were a black woman, that interracial sex would have been forbidden.

It was not unusual for slaveholding men to encounter light-skinned enslaved people; it was normal for them to understand them as black. What the persistence of racial curiosity that witnesses obsessed over in *Morrison v. White* exposes is the mechanism through which slaveholders nurtured their well known fetishization of sexual contact with enslaved light-skinned women.[350] The affective object of the *quadroon*—eroticized racial indeterminacy attached to the body of Alexina Morrison—was valuable to these men because it insured

[349] Johnson concurs: "These witnesses…did things to Alexina Morrison that they would never have done to a white woman in public—not to a maid, not to a dancing girl, not to a prostitute." See Johnson, "The Slave Trader, the White Slave, and the Politics of Racial Determination," 34.
[350] For more on the fetishization of light-skinned women of color see Emily Epstein Landau, *Spectacular Wickedness: Sex, Race, and Memory in Storyville, New Orleans* (Baton Rouge: Louisiana State University Press, 2013).

socially dangerous activity with the promise of social safety, that is, it offered them sexual license over the body of this woman.

"Probably," or, Vocabularies of Uncertainty

Much of witness testimony in the case of *Morrison v. White* focused on Alexina Morrison's race. Witnesses drew on their expertise in science and medicine as well as their expertise as long-time residents of Louisiana to authenticate their statements. Yet even with various forms of racial authority to support their claims, they remained uncertain. Often, after entering much racial evidence into the record, a witness would claim that, ultimately, he could not be sure.

Drawing on race science of the day was an appropriate gesture, but it did not ultimately create surety. J. L. Riddell explained that "he is attached to the medical part of the university of Louisiana" so that when he "cut off a piece of her hair," his investigation was a form of scientific inquiry.[351] Riddell did not find that "this hair…would indicate that the girl had any negro blood in her."[352] Peter Brown, "a distinguished savant of Philadelphia," went into greater scientific detail. He explained that "in the hair of the caucassion race the cross section of the hair is an oval…in which the long diameter would be five the short diameter about three" but in "the negro hair the cross section shows a greater difference in diameter and has a more elongated oval."[353] He took Morrison's lock of hair and "prepared a careful examination…with a proper apparatus," including an examination of "the cross sections of the hair of the Girl" under a microscope—his conclusion was that her hair had "the

351 Testimony of J.L. Riddell, *Morrison v. White*, 96.
352 Ibid., 96.
353 Testimony of Peter A. Brown, *Morrison v. White*, 96.

moderate oval characteristic," so, he determined, she was white.[354] He explained in detail "what is called pigmentary matter in the hair."[355] He continued, "The hair groes beneath the skin" and "while growing it is saturated with fluid" but it "possesses no hollow structure…no more hollow than a cork."[356] Brown also went on to describe the results of racial "crossings," ultimately conveying that "The caucassian race is superior to the negro in a temperate climate" and that "the superior race will absorb the inferior race where there is an amalgamation."[357] His winding remarks thusly suggested that although Alexina Morrison's hair had taken on the "moderate oval" shape of a white person's hair upon inspection, that form could have been the result of a racial crossing in which the "superior race" had "absorbed"—but perhaps not entirely nullified—the presence of the "inferior." The science of her whiteness was equally matched by the potential of her blackness the same science had uncovered. Indeed, Brown admitted, "he is not a physiognomist nor does he profess to be" which made his testimony unsure. Ultimately, he undercut his entire testimony when he exclaimed at the end, "he does not feel disposed to testify in the case."[358]

Dr. Samuel Choppin similarly lingered in unknowing even as he professed scientific racial knowledge. Choppin was born in Louisiana and "is a professor in the School of Medicine."[359] He "examined the plff in his office," a professional setting that lent credibility to his claims. He had "examined her body, her legs, back, breast, hair, looked at her eyes" and compared her to "the different grades of color of persons of african origin."[360] Though he began his statement with the conclusive claim that "he found nothing in her organisation

[354] Ibid., 96.
[355] Ibid., 97.
[356] Ibid., 97, 98.
[357] Ibid., 99.
[358] Ibid.,, 97.
[359] Testimony of Samuel Choppin, *Morrison v. White*, 104.
[360] Ibid., 105.

that would satisfy him she had any african blood in her,"[361] the duration of his testimony was less sure. He first explained "the Prominent features of the Caucassion race are…well marked and well pronounced Whereas in the African race you have…features not at all prominent but mashed in as it were" alongside differences like "pigment," hair texture, and the shape of the lips. [362] But when he arrived at the question of amalgamation, Choppin became less sure. He was sure that "The Caucassian race is superior of course in health, strength, and other physical qualities" but wavered when discussing "if the Caucassion and African race would mix together and amalgamate for 5 or 6 generations." [363] In that case, "the Caucassion race would preponderate *probably*."[364] Indeed, even when "the weaker race" would have been mixed "in six or seven generations" he "does not think it would ever be abrupted" entirely.[365] When pushed, he answered that in fact he "*has* seen quadroons as white as the Plff and with skin as white…also with as straight hair."[366] He "can't say that he has seen the forehead of an acknowledged [mixed race] subject as high as that of Plff" but then again, he had "never measured the same," and had "never analysed the blood of the quadroon," so, really, he couldn't be sure.[367] His testimony anxiously uncovered the possibility of Morrison's blackness even in the midst of what seemed at first like proof of her whiteness.

Other witnesses relied less on science and more on cultural instinct to make claims about Morrison's race, but they, too, dwelled in uncertainty. As slaveholders and life-long Louisianans, these witnesses produced racial knowledge from the depths of their own judgment. J.B. Clauson claimed that Morrison was white because he knew that "the

361 Ibid., 104, 105.
362 Ibid., 104.
363 Ibid., 106.
364 Ibid., 106. My emphasis.
365 Ibid., 106.
366 Ibid., 106. My emphasis.
367 Ibid., 107.

characteristic between the white Race and the black are in the eyes, the hairs, and the color of skin."[368] He continued, "At the fifth degree a woman can not tell," but, he insinuated, a knowing man could.[369] Yet of course, he offered the caveat, "When removed to the fourth degree, there are som [sic] times peculiarity in the features, some time there is and some time there is not."[370] J. H. Breaux authenticated his knowledge with the claim that "He is a creole of this state" whose "father was a planter and owned many slaves."[371] He claimed that "she has African blood," but back-pedaled later, when he admitted that he "has never been to Mexico," and "never has visited the West Indies."[372] The plaintiff's attorney pressed him here, to the point that he admitted that upon being introduced to one "Mr Hall," a member of the jury who had to have been legally white to be in the room, "he does not describe him as having high cheek bones," the characteristic feature of white people.[373]

The instinct claims culminated in the testimony of P. C. Perret, "a creole of the state of Louisiana and raised on a sugar plantation among slaves."[374] Perret explained that he knew Morrison did not "have negro blood in her veins" despite the fact that he "Has…seen quatroun girls in his place much whiter than the plaintiff."[375] He knew "from a natural instinct" that Morrison was white but "why he feels this to be so he cannot explain."[376] But he quickly changed his mind—he *could* explain. Perret offered that being "a creole of this place, being among colored persons of so many different shades of color from snowy white to get [sic] black…the creole can always detect in a person whether that person is of African

368 Testimony of J.B. Clauson, *Morrison v. White*, 28.
369 Ibid., 28.
370 Ibid., 29.
371 Testimony of J.H. Breaux, *Morrison v. White*, 31.
372 Ibid., 32.
373 Ibid., 32.
374 Testimony of P.C. Perret, *Morrison v. White,* 83.
375 Ibid., 83.
376 Ibid., 83.

origin."[377] But even better, he offered, that racial knowledge "is an impulse with him, and the creoles generally…the same instinct in some measure as the alligator." Perret insisted:

> The alligator…knows three days in advance that a storm is brewing—in December the whether may be ever so fair but the alligator will be seen in sink and the next day or the day after the storm will be seen to shew itself.

Even as Perret made the claim that Alexina was white, his metaphor of the alligator and the storm foreshadowed the ominous stakes of the eroticized racial subterfuge she might be partaking in. Here, Perret is the alligator, waiting for the storm. And even though he claims to know that Morrison's race is white, he imagined that the storm—ominous, dangerous, risky, and literally dark—was on the horizon. He would dwell "in sink," allowing it to approach. His instincts were good, he argued, but his fantastical metaphor seemed to suggest otherwise.

The wealth of testimony in this case, then, was certain only about the uncertainty of Alexina Morrison's race. Witnesses lingered in this uncertainty, tarried with it, and doubled back upon it in their individual remarks. They vacillated between claims that Morrison was white, or black, so that individual testimony often undercut itself, and so that their collective testimony was reflected general *in*determination with respect to Morrison's racial body.

Social Safety and Social Danger

The uncertainty that witnesses produced in their testimony was bigger than their individual imaginations about Alexina Morrison. When they vacillated in their assertions of black and white, they made statements about what kind of contact would, or would not, be socially acceptable. The law expressed that specific rules applied to white women and others

[377] Ibid., 84.

applied to women of color. The law therefore sanctioned some kinds of erotic contact and forbid others; these lines marked the distinction between social danger and social safety.

If Morrison's body was white, then it was socially safe for these white men to have erotic contact with her. Intra-racial sex was, after all, the norm of Louisiana society. Sex within the same race was not explicitly present in the law because it was silently present throughout the law, in the form of marriage and inheritance norms. Where interracial sex was forbidden, then, intra-racial sex was tacitly permitted.

On the other hand, if Morrison were black, then sex with her was prohibited. This emerged from Louisiana's regulation and prohibition of interracial sex.[378] The prohibition of interracial sex was expressed through marriage regulations.[379] As marriage offered the only state-sanctioned space for sex, the prohibition on interracial marriage constituted a prohibition on interracial sex. In 1808, the *Civil Laws* declared that "The law considers marriage in no other view than as a contract."[380] Because the marriage contract was not explicitly a contract for freedom, all enslaved people were excluded from the right of marriage; a marriage contract was one that only *already free* people could enter into. The *Civil Laws* explained that a marriage contract could only exist where "the parties, at the time of

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[378] The 1808 law described here was reiterated, almost verbatim, in 1816, 1825, 1838, 1854, and 1861. There is no mention of race and marriage in the 1841 *Code*.

[379] Louisiana law was most explicit about prohibiting interracial sex in marriage law. However, as Martha Hodes explains, Southern states used a variety of legal frameworks to indict parties for interracial sex. She writes, "The word *miscegenation* was invented during the Civil War, and until then liaisons between white women and black men went on record as a result of other crimes of legal disputes. Given the laws against marriage between blacks and whites, such liaisons could be prosecuted as fornication or adultery; if children were produced, the protagonists would be guilty of bastardy as well…A liaison between a white woman and a black man could also be revealed through rape charges…Other liaisons entered the record under civil and criminal categories unrelated to sex crimes, including illegal enslavement, contested inheritance, libel, slander, and murder." See Martha Hodes, *White Women, Black Men: Illicit Sex in the 19th Century South* (New Haven and London: Yale University Press, 1997) 2-3. In New Orleans specifically, Jennifer Spear explains that "Marriage regulations show most clearly how political authorities imagined the social order," but that "manumission legislation contributed to the development of racial orders" as well. For more on the regulation of sex at the intersection of marriage and manumission law see Jennifer Spear, *Race, Sex, and Social Order in Early New Orleans* (Baltimore: Johns Hopkins University Press, 2009), 4-8.

[380] *A Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alternations and Amendments Adapted to its Present System of Government* 1808, "Book 1: Of Persons, Title IV: Of Husband and Wife, Chapter I: On Marriage, Article 1," 94. Hereafter cited as "*Civil Laws* (1808)."

making them, were, 1stly, Willing to contract; 2ndly, Able to contract; and, 3rdly, Did contract pursuant to the forms and solemnities prescribed by law."[381] This underscored the exclusion of enslaved people from the right to marriage because enslaved people's right to contract in Louisiana was restricted to the right to contract for freedom.[382] The exclusion of enslaved people from the marriage contract was finally indicated by the consent clause of marriage regulation, wherein "No marriage is valid to which the parties have not freely consented."[383] To the extent that consent was a suspended category for enslaved women, they lacked the right to enter into a marriage that required on consent.[384]

Even as the law implicitly excluded enslaved people from the institution of marriage entirely, and thus also from interracial marriage, the *Civil Laws* underscored the prohibition on specifically interracial marriage; this prohibition also encompassed free people of color. Article 8 explains,

> Free persons and slaves are incapable of contracting marriage together; the celebration of such marriages is forbidden, and the marriage is void; it is the same with respect to the marriages contracted by free white persons with free people of color.[385]

Here, the law articulates marriage regulations in terms of *both* race and status, so that neither inter-status relationships *nor* inter-racial marriages of any kind would be permitted. This statute thus exceeded the previous statutes that implicitly prohibited inter-status marriages by specifically regulating the racial make up of marriageable parties, excluding enslaved people from any access to the institution of marriage.

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[381] Ibid., Article 4, 94.
[382] For more on the restriction of enslaved people's retention of the right to contract for freedom and the right to sue for freedom, see Chapter 2.
[383] *Civil Laws* (1808), Article 5, 94.
[384] For more on the suspension of rape and consent for women of color, see Chapter 1.
[385] *Civil Laws* (1808), Article 8, 24.

The laws that prohibited interracial marriage established legal precedent for social behaviors. These laws declared, first, that enslaved people would be excluded from the institution of marriage all together. Second, and of great import to the case of *Morrison v. White*, the laws that named interracial marriage null and void argued that sex across the color line would not be recognized by the state. To the extent that marriage constituted the socially normative location for sexual contact, this was tantamount to the state forbidding interracial sexual contact. Third, the state made a positive claim through the apparatus of marriage law. Through the prohibition of inter-racial marriage and the requirement of consent, the state explicitly permitted *intra*-racial marriage. Thus marriage law established that inter-racial sexual contact would be socially abhorrent and transgressive, where intra-racial sexual contact would be socially normative and encouraged.

Thus marriage law made a clear distinction between the kinds of erotic contact these white men could have with Alexina Morrison depending on her race. If she was white, these men having sex with her would be appropriate, even encouraged; sex with her would be a socially safe decision. If Morrison was black, sex with her would be formally forbidden by the law; it would be socially dangerous for these white men to have sex with this black woman.

Yet the scenario was complicated by the fact that Morrison was not free; if she was, indeed, white—but was at the same time in bondage—then sex with her would be considered against her will. In that case—sex with a white woman without her consent—erotic contact would be against the law. This prohibition grew out of the multiple protections that white women retained over their right to consent to sex. First, marriage law implicitly protected a white woman's right to consent to sex. Her consent was not protected within marriage because her consent *to* the marriage blanketed the any sexual contact *within*

the marriage. Despite this, the protection of her initial consent was crucial and constant in antebellum Louisiana law, and no marriage could be considered valid without it. Again, all marriages required that each party to the marriage was "Willing to contract," to the extent that "No marriage is valid to which the parties have not freely consented."[386] That consent would not be valid "when given to a ravisher" or "when it is extorted by violence."[387] Together, these laws protected a white woman's right to consent to be married, which in turn protected her right to (at one time) consent to (all) sex that would (ever) happen during that marriage.[388] Through requiring a white woman's consent to validate a marriage contract, the law prohibited sex with a white woman without her consent.

The second way that the law protected white women's capacity to consent to sex was through rape law, which remained constant through the antebellum period. The law prohibited unwanted sex with a white woman in two ways. First, white women's right to consent to sex was protected by the earliest iteration of *Acts of the Legislature,* wherein "Every person who shall hereafter be duly convicted of any manner of rape…shall suffer imprisonment at hard labor for life."[389] This prohibition of rape excluded women of color to the extent that "the provisions of this act shall not extend to any slave."[390] Second, white women were explicitly named and protected from rape by men of color in the *Black Code*. The *Code* explains in no uncertain terms that any man of color who "shall commit or attempt

386 *Civil Laws* (1808), Articles 4 and 5, 94.
387 Ibid., Article 5, 94.
388 The extent that a white women's right to consent to a marriage constituted her having consented to any and all sexual contact within that marriage—that is, the deregulation of sex within marriage—of course left her vulnerable to sexual violence within the marriage. However, it is crucial that, unlike women of color, white women retained some semblance of a right to consent to sex, some legal protection over their bodies in some circumstances.
389 *A General Digest of the Acts the Legislatures of the Late Territory of Orleans and the State of Louisiana and the Ordinances of the under the Territorial Government*, (New Orleans: Peter K. Wagner, 1816), 228. Hereafter cited as *Acts* (1816).
390 Ibid., 256.

to commit a rape upon the body of *any white woman or girl*…shall suffer death."[391] This racialized version of rape law specified and reinforced the protection of white women's capacity to consent, or refuse to consent, to sex.

The effects of these twin laws were two-fold. First, the law was unequivocal in its protection of white women's capacity to consent to sex; the law announced this in both marriage law and in rape law. The law's clarity on the protection of white women's consent established that sex with a white women *without* her consent—as in the case of her white body being enslaved, as Morrison's was—was a criminal offense, a social transgression that was so abhorrent as to come with a significant punishment. The state did not want men to have sex with white women unless those women had "freely" consented.[392] Thus sex with a white woman without her consent—as in the case of sex with a white woman in bondage—constituted a major transgression.

However, if her body were black, the law would permit these white men to have sexual contact with Morrison regardless of her assent to it. The law was silent on the question of the consent or rape of women of color, legally *un*regulating sex with those women and excluding them from the capacity to consent or the capacity to be raped. In other words, these laws suspended the categories of rape and consent for women of color. The law's silence on the consent of women of color excluded them from the category of women whose sexuality the law would protect, rendering them vulnerable to sexual contact of any kind, by any person. By suspending the category of rape for women of color, the law announced that sexual contact with a woman of color did not require that woman's consent.

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[391] *Acts: Passed at the First Session of the First Legislature of the Territory of New Orleans* (New Orleans: Bradford & Anderson, Printers to the Territory, 1807), 198. Hereafter cited as *Black Code* (1807).

[392] I put "freely" in scare quotes here because the relative unfreedom of white women meant that their consent was flimsy, and that their vulnerability to sexual violence was prominent. However, it is crucial to distinguish between the vulnerabilities that were *hidden* in the *practice* of rape law in the courts, to which white women often fell victim, and the vulnerabilities that were *explicit* in the *law*, *itself*, to which black women fell victim.

There would be no obstruction to sex with a woman of color, for without the law's protection, she could not refuse sex, that is, she became entirely sexually available. Where her consent did not matter, erotic contact with a woman of color in bondage was perfectly legal. Thus the law's silence made sex with a woman of color permissible. Despite the way that the law did not acknowledge sex with women of color—did not make that sex normative—the law nonetheless produced that sex as socially safe because it was not attached to negative consequence.

The overarching indeterminacy of Alexina Morrison's race in the eyes of her many beholders manifested in a volley between declarations of her whiteness and declarations of her blackness, which each produced its own version of social safety and social danger. If the possibility of her whiteness made the lewd erotic contact that these men undertook with her socially dangerous, a transgression of the consent required of a white woman, the possibility of her blackness insured that same contact as socially safe, because no consent was necessary and bondage represented no obstruction to sex. If the possibility of her blackness made erotic contact socially dangerous, because it crossed the color line, the evidence of her whiteness excused that contact and made it socially safe, because that contact was intra-racial. The *simultaneous* possibilities of her blackness and her whiteness allowed social danger to haunt all erotic contact with Morrison, so that the men involved tempted danger whey touched, examined, prodded, and described her. Yet that simultaneity of blackness and whiteness also meant that danger could, and would, always volley back to the realm of social safety by slipping away from one possibility toward another. When these men testified to their indecisiveness, they engaged in an endless cycle of problem and resolution. Social danger could be ever present—tempting, alluring, transgressive, sexy—but always insured by the presence of social safety.

Quadroon Erotics

If witnesses could not agree—even with themselves—about whether Morrison was white or black, they collectively agreed that she looked like a quadroon. Their invocations of "quadroon" would at first seem to resolve Morrison's racial indeterminacy, because as a quadroon she could look white and still have just "one drop" of black blood, making her black. "Quadroon" could maintain the mystery of race, because it would be impossible to know for certain what, if anything, her white features were hiding, but it would welcome the possibility that "African blood" lurked beneath the surface. The value of "quadroon" in this space was that the notion would fuel continued investigation—the specter of the quadroon meant that the mystery could never be fully resolved—and eroticize it. The maintenance of that mystery created the sexual license that came from the play between social safety and social danger.

The words of witness discourse eroticized Morrison's body and the racial ambiguity that required so much examination. Witnesses verbally undressed Morrison over and over in the very public space of the courtroom, putting her body on display.[393] They produced an incessant racial rhythm to the case, as nearly every witness to the stand describes Morrison's body: "light, sallow complexion, blue eyes, and flaxen hair,"[394] "even the complexion is very white,"[395] "light colored hair,"[396] "the hairs were remarkably straight,"[397] "rather well

[393] The woman's flesh that witnesses exposed through their speech acts remembered the exposed bodies of the slave market. Joseph Roach explains that "the centrality of naked flesh signifies the abundant availability of all commodities: *everything* can be put up for sale, and everything can be examined and handled even by those who are just looking. In the staging of New Orleans slave auctions, there is a fiercely laminating adhesion of bodies and objects, the individual desire for pleasure and the collective desire to compete for possession." Joseph Roach, *Cities of the Dead: Circum-Atlantic Performance* (New York: Columbia University Press, 1996), 215.
[394] Testimony of Moses Morrison, *Morrison v. White,* 35.
[395] Testimony of J.B. Clauson, *Morrison v. White*, 29.
[396] Testimony of Benjamin F. Giles, *Morrison v. White*, 53.
[397] Testimony of J.H. Breaux, *Morrison v. White*, 32.

formed girl,"[398] "had a scar on one side of her forehead,"[399] "Taking the whole together…as to the hair, eyes, nose, skin, & general appearance, he bases his opinion that the girl is white."[400] This undressing had been predicated upon examination: when he "examined her…he did so carefully,"[401] and "he examined the girl…the part of the skin usually covered by garments,"[402] and, "has examined the girl down to the waist,"[403] [404] further, "he saw her naked to her waist and examined her closely."[405] Testimony revealed that Morrison's body had been examined in doctor's offices, in the Hotel at Carrolton, in the prison where she had sought safety and the living room of the house where she lived during part of the trial; these examinations were deliberate and planned, or impromptu, by chance. These many examinations—and their verbal restaging in the courtroom—invoked the poking, prodding, touching, probing and, above all, looking, of the slave market.[406] Witness testimony put Morrison's undressed body on display, and made clear that such displays had happened all over town. Witnesses undressed her in a desire to know her body, and, coming up short of that knowledge, were left with the excess erotics of her naked body in a public space.

Witnesses further eroticized Morrison's exposed body by penetrating her skin; by discussing her *blood*, witnesses went *inside* Morrison's body in public. Seaman Hopkins, a surgeon, after having "examined plaintiff's back, in fact saw her naked to the waist," imagined himself able to deduce the nature of her blood.[407] Dr. Brickell, an obstetrician, also

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[398] Testimony of James C. Anthony, *Morrison v. White*, 46.
[399] Ibid., 46.
[400] Testimony of Seaman Hopkins, *Morrison v. White*, 92.
[401] Testimony of Thomas Dakcraw, *Morrison v. White*, 73.
[402] Testimony of G.H. Lyons, *Morrison v. White*, 27.
[403] Ibid., 27.
[404] Walter Johnson explains that the phrase "examined…down to the waist" was a "*leitmotiv*" of this case. See Johnson, "The White Slave, The Slave Trader, and the Politics of Racial Determination," 34.
[405] Testimony of Seaman Hopkins, *Morrison v. White*, 91.
[406] Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA and London: Harvard University Press, 1999), 135-161.
[407] Testimony of Seaman Hopkins, *Morrison v. White,* 91.

partook in the observation in Dr. Choppin's office, from which he determined that "she has African blood in her."[408] (He claimed shortly thereafter that "he would swear she had not" any African blood at all.) Thomas D. Harper, a harbor master at the Port of New Orleans, also described Morrison's blood, explaining that when he examined her body he decided that "she has no negro blood in her," because he "always thought he could detect something that indicated the presence of colored blood."[409] Peter Brown decided during his testimony that he "ought to have attentive comparison" between the blood of mixed race people and whites.[410]

The erotics of this testimony were made plain through the introduction of the category of the quadroon. The defense argued the paradox of a white slave could be easily answered in late antebellum New Orleans, for there *was* a racial-sexual category, they would argue, for this very light skinned woman to belong to as a slave. Regardless of whether the witness actually *deemed* her a quadroon, the comparison proved enough to make the connection: "From the appearance and features of the plaintiff witness judges that she has African Blood, though distinctly removed, perceives it from something between the eyes and cheeks also something in the lips, the peculiarity of the eyes and a dark shade of the talk which are characteristic with quadroons,"[411] or "[Witness] Does not believe he ever saw a quatroon with the same skin as that of the plff, has never seen a person whom he knew to be a quatroon with as straight hair as that of plff has never seen quatroons with blue eyes has seen them with white eyes."[412]

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[408] Testimony of Dr. Brickell, *Morrison v. White,* 93.
[409] Testimony of Dr. Thomas D. Harper, *Morrison v. White,* 95.
[410] Testimony of Peter Brown, *Morrison v. White,* 87.
[411] Testimony of J.H. Breaux, *Morrison v. White*, 32.
[412] Testimony of Seamon Hopkins, *Morrison v. White*, 92.

More importantly, the defense effectively brought in the possibility that she participated in notorious quadroon balls and plaçage-like relationships. They asked questions that received answers like "Never saw her at balls,"[413] or, conversely, the man with whom she was staying during the trial was reported to have "dressed her up, and [has] taken her to public and private balls"[414] and "was even seen dancing at a ball at Carrolton."[415] Many witnesses observed Morrison at a Hotel in Carrolton, where she had been seen "several times," where her body was on display.[416] P. E. Laresche acknowledge that he had "himself cut a lock of hair from plaintiff's head…the same day she came there…she was at his house."[417] This last statement was hastily followed up with the witness's exclamation that "Witness is a married man and was at the time when the plaintiff was with him."[418] But it hardly mattered what the excuse was, for Alexina Morrison's whiteness had been effectively troubled by the possibility that she was involved in the sex trade—cavorting at notorious balls, living with strange white men, losing locks of her hair to them—that her whiteness was only a façade, covering the so-called "African blood" of the quadroon mistress. Finally, the implications of her status as a quadroon were made plain when S. N. Cannon, who was attempting to post a bond to release Morrison from prison was asked by the defense, "Are you the father of the child of the plaintiff?" and "Is not the plaintiff in the family way for you now?"[419]

By determining that, as a mixed raced woman, Morrison was *really* black, the quadroon claim marked Morrison as *both* black and white, and made that simultaneity erotic.

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413 Testimony of S.N. Cammon, *Morrison v. White,* 30.
414 Petition filed by C. Roselius and A. Phillips, *Morrison v. White*, 66.
415 Petition filed for change of venue, *Morrison v. White*, 69.
416 Testimony of P.C. Perret, *Morrison v. White,* 84; Testimony of S. Castera, *Morrison v. White*, 108. For more on Morrison's appearance in Carrolton, see Walter Johnson, "The White Slave, the Slave Trader, and the Politics of Racial Determination."
417 Testimony of Wm. Denison, *Morrison v. White*, 88, 89.
418 Ibid., 89.
419 Testimony of S.N. Cannon, *Morrison v. White,* 156, 157.

The possibility that Morrison was a quadroon worked alongside speculation about sixth- and seventh-generation mixed raced people, who could pass for white despite some essential blackness that could never fully disappear. Where witnesses produced Morrison as a quadroon, they affirmed and lifted up her racial ambiguity, her both-and status, her indeterminacy. Additionally, the quadroon claim eroticized Morrison's racial ambiguity. By pointing to her presence at balls and other public spaces, by noting her many male visitors and admirers, and by asking about a contemporaneous (and obviously extramarital) pregnancy, these actors situated Morrison within the well-worn script of quadroon mistress and enslaved concubine.

Witnesses attached the object of "quadroon," then, to Morrison's body to continue, not halt, the project of racial indeterminacy. The *both/and* quality of the quadroon body maintained the uncertainty that allowed them to keep looking by making her white enough to sanction intra-racial contact with her, and black enough to sanction public sex with her. Indeed, if they would decide on Morrison's race, then the jig would be up, and it would be clear which kinds of contact would, or would not be acceptable. Instead, the invocation of quadroon erotics provided a reason to continue testing the limits of transgressive sexual behavior.

Alexina Morrison's case was interrupted by the arrival of the Civil War in New Orleans. It is apt, perhaps, that the historical record does not announce the high appeal court's decision about whether she would be classified as "black" or as "white."[420] Yet the dramatization of her race speaks to the larger currency of "quadroon" racial indeterminacy within racialized sexual commerce. The quadroon mistress was a common figure in the

[420] Morrison did win in lower court, by a jury verdict of 10-2 in her favor. Thomas Holt, "Understanding the Problem of Race through the Problem of Race-Mixture," paper presented at the American Anthropological Association, "Race and Human Variation: Setting an Agenda for Future Research and Education, September 12-14, 2004 Alexandria, Virginia, 7.

imaginations of antebellum New Orleanians. Indeed, Alexina Morrison likely looked like Carmélite,[421] who looked like Ann Maria Barclay,[422] and countless other women who labored in racialized sexual commerce as sexual servants. When light-skinned women sold for enormously high prices on the slave market, their value was attached to their imagined beauty and exoticism. But, above all, their value emerged from the opportunity that slaveholders imagined onto their bodies: mastering the dangers of sex with white women *and* black women. Slaveholders sought enslaved light-skinned women—women to which they attached the moniker *quadroon*—for sex because their ambiguous bodies, like Alexina Morrison's, offered up the chance to transgress social mores while remaining perfectly safe in their own social positions. The notion of *quadroon* was valuable in the slave market because it created a racial mystery that allowed white men to travel between social danger and social safety in their erotic contact with women like Alexina Morrison. The simultaneous possibility of whiteness *and* blackness allowed these men to keep looking, because they could always rely on the social safety of the possibility of one race or another to absolve the impropriety they committed. This was a form of sexual license. As Johnson explains, "To buy a 'fancy' was to flirt publicly with the boundaries of acceptable sociability."[423]

In the bodies of light-skinned enslaved women, slaveholding men who owned them, looked at them, or simply spoke of them, found a floor on which to dance between danger and safety. Edward Baptist claims that slaveholding white men purchased, in the form of

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[421] One Mrs. Dufou remembered, in her testimony, that Carmélite could be mistaken for a white women. She recalled an argument in which "Carmélite came the next day and insulted her and threatened to strike her" and in which Dufou replied by saying that "if she, Carmélite, was a white woman, she would pay for it." *Carmelite, Statu Liber v. Lacaze* (7 La. Ann. 629 (631) 2506; 1852), 26.
[422] Ann Maria Barclay could pass for white. As witness Charles Cameer explained, "I thought that she was a white woman & I think so yet." *Barclay, fwc v. Sewell, curator* (1 La. Ann. 262, no. 4622; 1857), 23.
[423] Ibid., 114.

the fancy-girl, "the right to rape a special category of woman,"[424] but it was not the right to *rape* that they were purchasing. After all, they owned that right already. Rather, they purchased the right to play in the space where rape and consent came in and out of view, in which they could explore and express varieties of domination and benevolence. The idea of the quadroon, attached to the living, breathing body of a light-skinned woman, made erotic the formidable violence entitled to slaveholding men.

[424] Edward Baptist, "'Cuffy,' 'Fancy Maids,' and 'One-Eyed Men': Rape, Commodification, and the Domestic Slave Trade in the United States," *American Historical Review* 106 no.5 (2001): 1642.

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Freedom:
Long-term Liaison and the Price of Consent

Ann Maria Barclay was not unique.[425] She was an enslaved woman who lived with the man who owned her in a state of long-term sexual liaison. There were many such women of color.[426] Enslaved women like Josephine, Arsene, Eugenie (all without surnames in the court records), and others, each lived in a long-term sexual relationship with the respective men who owned them. Ann Maria Barclay's case, like the many others, rehearses the familiar situation of women of color who experienced some version of freedom through their liaisons with white men. Her situation stands out because her freedom was codified in formal emancipation documents, and because the court decided that her case fit into a loophole that could maintain her freedom.

Ann Maria Barclay was fifteen years old when she was purchased by slave dealer George Ann Botts on February 21, 1838.[427] She was known at the time of her sale by the name Nancy. She lived with Botts in a state of concubinage, and in return, he freed her promptly. In this way, Barclay's position was different from many of the other concubines

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425 *Barclay, fwc v. Sewell, curator* (1 La. Ann. 262, no. 4622; 1857).

426 See *Josephine v. Poultney* (1 La. Ann. 329; 1846), where an enslaved woman went with the man who owned her to a free territory and successfully sued for her freedom; *Eugenie v. Preval et. al.* (2 La. Ann. 180; 1847), where an enslaved woman went with her mistress to France, and won her suit for freedom with back wages; *Arsene v. Pigneguy* (2 La. Ann. 620; 1847), where an enslaved woman went to France for two years and successfully sued for her freedom, with back wages, upon her return to New Orleans; *Mary f.w.c. et. al. v. Daniel L. Brown* (5 La. Ann. 269; 1850), in which a woman unsuccessfully sued for freedom for herself and her children after they were freed in Ohio by the man who owned them, but were sold back into slavery by his executor upon his death; *Liza C.W. v. Dr. Puissant et. al.* (7 La. Ann. 80; 1852), in which an enslaved woman went to France and unsuccessfully sued for her freedom upon return to New Orleans; and *Henriette, alias Mary v. Heirs of Charles Barnes* (11 La. Ann. 453; 1856) in which an enslaved woman was bequeathed part of her deceased owner's estate, but she was disinherited because of her status as an enslaved concubine.

427 Judith Schafer names George A. Botts as a slave dealer. Judith Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003), 111.

who came to court upon the death of the man who owned them, for Botts's intention to free Barclay prompted his sending her to Ohio in 1839. The laws there permitted her emancipation; while in Louisiana, she could not be freed at such a young age.[428] She returned from Ohio two months later, and continued to live with Botts for nearly twenty years.

Barclay's freedom was predicated on the sexual and companionate relationship that she and Botts shared. During their years together, she lived with him on a lot he picked out and in a house they designed together. They had a child together, and he spoke of Barclay widely. He even brought her fine clothes when he traveled. Indeed, many witnesses would testify in court that she lived with him "as his wife" for several years. Yet in their testimony inhered a contradiction—one that created a possibility but took it away in a single breath. When witnesses stated that she lived "*as* his wife" they at once suggested that she *was* his wife and undercut that claim. She lived only ever *as* his wife, *like* his wife, as a false copy of the real thing. In the legal sense, she was never bona fide.

Moreover, the simile "as his wife" was integrally connected to another simile that marked this case—her claim that she had lived "*as* free" during her time with Botts. Living "as his wife" betrayed the instability of her freedom, since just as the "as" in her wife claim betrayed the instability of the statement, the "as" in her freedom claim suggested that something *other* than freedom structured her experience. While George Botts was living, Ann Maria went about her business as a free woman. And perhaps she had no concerns for her status. She had documents of manumission that insured her claims to freedom and her lifestyle. She held property in her own name, she traveled on her own, and she made

[428] The *Civil Code* of 1825 declared that an enslaved person could not be emancipated before the age of 30: "No one can emancipate his slave, unless the slave has attained the age of thirty years, and has behaved well at least for four years preceding his emancipation," Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*, Art 185, *Civil Code of the State of Louisiana* (New Orleans: J.C. De St. Romes, 1825), 60.

contracts. However, when George Botts died in 1854, the fragility of Barclay's freedom became all too apparent. The lawyer in charge of his succession, Edward Sewell, was owed money by Botts, and came to collect on that sum in the form of the property held in Barclay's name. He wanted her house and the parcel of land beside it. She not only refused, but also took him to court in defense of her own property; that is to say, she became the plaintiff in this case. The confidence of that gesture backfired, however, because Sewell argued that Barclay could not be the holder of the real estate. She could not hold property, he said, because her freedom was nonexistent, null and void. She was, said Sewell, a slave.

The fact that her free status could so easily be questioned in court points not only to the fallibility of emancipation claims in general, but also to something more fundamental in regard to her presumed freedom: if it could be taken away, what kind of freedom had it been in the first place? If, as the *Civil Code* of 1825 declared, "An emancipation once perfected, is irrevocable"[429] then what state had Ann Maria been living in for these many years? If her freedom had been dependent on the continued presence of the man who had previously owned her, was it really freedom at all?

Ann Maria Barclay ultimately retained her freedom through the decision that her case fit into a loophole. Judge Spofford's decision declared, "We conclude, that the plaintiff is a free woman of color" and not enslaved, because although the mechanism by which she gained her freedom would *not* free her under the current laws, it did free her *under the laws of the moment* in which she was freed. Judgment explained that when she was emancipated in 1839 in Ohio, no prohibition in Louisiana law existed that undermined that method of

[429] "Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*, Art 189," *Civil Code of the State of Louisiana* (New Orleans: J.C. De St. Romes, 1825), 60. Hereafter cited as *Civil Code* (1825).

emancipation; her freedom could not be retroactively revoked.[430] Other women in her situation would not be so lucky, because although Barclay survived her legal battle with her legal freedom intact, she did so by the skin of her teeth. Barclay's case maintained her own freedom, but set precedent for the continued enslavement of women who would come after her. Thus the arguments that she used to fight for her freedom, and those that were used against her, remain instructive for understanding the overwhelming fragility of freedom for women of color like Barclay.

Ann Maria Barclay's case demonstrated the extent to which her capacity to live out her claim to freedom was both tied to and contingent upon the life of George Ann Botts. Although she had been emancipated by Botts, as the events after his death proved, her emancipation could only be real as long as he was alive to say it was so. By the same logic, her freedom could only be real as long as he *continued to* say it was so. When he was no longer living, he freedom was suddenly up for discussion—her freedom had been bound by his life, and his whims and wishes. Barclay was legally emancipated in 1839, but her freedom was predicated on her continued life with Botts, in his house, in sexual liaison: "as his wife."

This contingency shattered the idea that freedom was a simple concept for women like Ann Maria Barclay. Something called freedom was tied to sexual service within racialized sexual commerce, and that tie revealed the ways that freedom was conditional for women of color in Louisiana. Ann Maria Barclay accessed that freedom—she argued vociferously in court that she *felt* free and *acted* free—but she could not escape the fundamental vulnerability that structured her black, female life in the world's slave-trade metropolis. Her freedom was dependent on people like Botts and Sewell. Her freedom was not free; her freedom was

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[430] Ann Maria Barclay, f.w.c. v. E.W. Sewell, Curator. 12 La. Ann. 262; 1857 La. LEXIS 155, *LexisNexis Academic*, accessed May 20, 2015, http://www.lexisnexis.com.ezpprod1.hul.harvard.edu/hottopics/lnacademic/.

never unmoored from its own exchange value. Barclay's freedom was worth her participation in a relationship with Botts; her continued existence "as his wife" was the condition of possibility for her life "as free."

Freedom was an affective object that circulated between Botts and Barclay. He allowed, offered, and solemnified her freedom in exchange for her continued service and performance "as his wife." Freedom, then, did not exist as an ideal wholly outside of the commercial scene, but rather was woven into its fabric. It took the form of affective associations—for Barclay, freedom meant mobility, and belonging to a community of landowners. It even meant the power to own other human beings. For Botts, Barclay's freedom meant that she had the power to consent, which hid the disciplinary power he maintained over her. Freedom became an object that was packaged and bartered between the pair, and its exchange value equaled Barclay's role as wife. Where *freedom* was an affective object, it was not divorced from or outside of the slave economy, but rather imbricated within its logics. Barclay's freedom was made possible by a market that had also created her unfreedom. The liaison between Botts and Barclay had created a context that looked egalitarian and consensual, for being "as his *wife*" smuggled in the specter of consent. Yet Barclay could not avoid her freedom's fundamental connection to slavery; she could never fully cover over the deep power imbalance inhered in her relationship with Botts, or the extreme vulnerability in which she lived. *Barclay v. Sewell*, then, reveals not only the practice of long-term sexual liaison between women of color and white men in antebellum New Orleans, but it also unravels the paradoxical freedom that those women experienced through those relationships.

Legislating Freedom

Several legal issues informed the case of *Barclay v. Sewell*. The case turned on Barclay's claim to property: a house and a plot of land adjacent to it. Yet it came to turn ultimately on Barclay's claim to property in *herself*.[431] Sewell's arguments transformed this case from a case of property-in-things into a case of property-in-persons, by arguing that the case turned on the legitimacy of Barclay's emancipation. Sewell posited that Barclay was legally enslaved in the state of Louisiana, which disqualified her from property ownership and thus ceded the property in question to him. (There was no mention of what might happen to Barclay and her child if she were found legally enslaved, though presumably she would have been considered part of the George Ann Botts's succession and, alongside the real estate, would have been ceded to Sewell for his profit.)

The first legal issue constituted the question of freedom by prescription. The laws of freedom by prescription mirrored what is called "adverse possession" in the Common Law tradition, and "natural possession" and "prescription" in the Roman Law tradition.[432] Laws of adverse possession and prescription declare that property can be transferred away from the owner of title, if he/she abdicates the use and responsibility for that property and someone else picks it up and uses it for a proscribed duration of time. Regulations in regard to freedom by prescription worked similarly, declaring that an enslaved person could

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[431] It is interesting that she makes no mention of her children in the case—the only time her daughter is mentioned in this case is as a tool of Sewell's legal team, who attempt to make the daughter into evidence of Barclay's deception. However, because of the hereditary nature of status in this period, Barclay's claims to her own freedom made an implicit argument that her child was also free. For more on the oblique mention of Barclay and Botts's daughter in this case, see Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA and London: Harvard University Press, 1999), 114.

[432] For more on Louisiana's mixed juridical history, see *Louisiana: Microcosm of a Mixed Jurisdiction*, Vernon Valerie Palmer, ed. (Durham: Carolina Academic Press, 1999) and *The Louisiana Purchase Bicentennial Series in Louisiana History,* Vol. XIII "An Uncommon Experience Law and Judicial Institutions in Louisiana, 1803-2003), Judith Kelleher Schafer and Warren M. Billings, eds. (Lafayette, LA: University of Southwestern Louisiana, 1997).

become free if the owner gave informal and implicit consent to her freedom over a long period of time. In other words, if an owner abdicated his right to use an enslaved person for a proscribed period, that enslaved person could be entitled to her freedom.

Freedom by prescription statutes emerged in Louisiana law with the laws of *Las Siete Partidas*, and were re-affirmed in the American code in 1820. *The Laws of Las Siete Partidas Which Are Still in Force in the State of Louisiana* (1820) explained that an enslaved person "may acquire his freedom by prescription." The statute continues: "If a slave enjoy his freedom, during ten years, in good faith, believing he was free, in the country where his master lives; or during twenty years, in any other country, although his master should not see him, he becomes thereby free."[433] The law delimited the circumstances under which freedom by prescription could take place, for the enslaved person was required to "believ[e] he was free"; if he had "not acted in good faith" and was "knowing that he was a slave" then he would not become free.[434] Similarly, if he had fled during that time—that is, if in full knowledge of his legal status as a slave he ran away—and the person who owned him found him, he could not then claim his freedom. Only if he had been away thirty years could he avoid this prohibition, and become free even if his freedom commenced with escape. Even then, for the first thirty years, the enslaved person could only claim freedom if he had been living as free *with the knowledge and consent* of his master for ten years or twenty years, depending on his location.

The later statute, declared in the 1825 *Civil Code* links the logic of *Las Siete Partidas* freedom by prescription law to prescription and possession laws pertaining to other forms of property. In the *Civil Code* of 1825, both civil and natural possession denotes simply the

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[433] Vol. 1, Partida Fourth, Title XXII, Of Liberty, Law 7, *The Laws of Las Siete Partidas Which Are Still In Force in the State of Louisiana, 2 Volumes*, L. Moreau Lislet and Henry Carlton, eds. (New Orleans: James M'Karaher, no 60 Chartres Street, 1820), 591.
[434] Ibid., 591.

holding an object, with or without a formal title, in one's possession. The law of adverse possession determines that "A possessor of an estate loses the possession against his consent" when he "allows it to be usurped, and held for a year, without, during that time, having done any act of possession, or interfered with the usurper's possession."[435] Thus if an owner did not act like the owner of a thing, but someone else stepped in to act like an owner, the original owner could lose his right to the thing. This form of property transfer had strict requirements: the new "possessor shall have held the thing in fact and in right, as owner" and "the possession shall have been continuous and uninterrupted, peaceable, public, and unequivocal; a clandestine possession would give not right to prescribe."[436] Adverse possession and prescription—together, the mode of transferring property only implicitly and sometimes without the original owner's consent—had to take place over a long period of time, where the new owner could prove that he had been acting as an owner, and the new owner had acted as an owner in full view of the public (and therefore the former owner).

Freedom by prescription conveyed the spirit of natural/adverse possession and prescription laws by creating a loophole for enslaved persons to become the legal owners of their own bodies over time. Like the laws regarding property-in-things, however, this form of implicit property transfer had limitations. The law of freedom by prescription explains,

> If a master suffer a slave to enjoy his liberty for ten years, during his residence in the State, or for twenty years while out of it, he shall lose all right of action to recover possession of the slave, unless the slave be a runaway or fugitive.[437]

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[435] "Book III: Of the Different Modes of Acquiring the Property of Things, Title XXIII: Of Occupancy, Possession, and Prescription, Chapter 2: *Of Possession*, Article 3412" *Civil Code* (1825), 1076.
[436] "Book III: Of the Different Modes of Acquiring the Property of Things, Title XXIII: Of Occupancy, Possession, and Prescription, Chapter 3: *Of Prescription,* Article 3453," *Civil Code* (1825), 1088.
[437] "Book III: Of the Different Modes of Acquiring the Property of Things, Title XXIII: Of Occupancy, Possession, and Prescription, Chapter 3: *Of Prescription,* Article 3510" *Civil Code* (1825), 1108. An earlier clause in the same section uses the language of "good faith": "Art. 3445: To acquire the property of immoveables and slaves by the species of prescription which forms the subject of the present paragraph, four conditions must concur: 1. *Good faith* on the part of the possessor; 2. A title which shall be legal, and sufficient to transfer the

This statute in the 1825 *Code*, which inherited its ten-year and twenty-year stipulation and its "good faith" measure from *Las Siete Partidas*, was written in the context of more recent possession and prescription laws. It differed from the latter laws, since ten- and twenty-year residence in the law of freedom by prescription is longer than the one-year required for prescription of objects and land. The difference between the in-state and out-of-state regulation, as well as the prohibition on running away, harkens back to the requirements of prescription—where prescription had to be "public," and not "clandestine," that is, in full view of the original owner. For an enslaved person to "enjoy his freedom" would suggest that the owner had relinquished, in practice, his right to "absolute ownership," that is, his "right to enjoy and dispose of [his] property in the most unlimited manner."[438]

Freedom by prescription departed from emancipation in the usual manner of manumission by explicit declaration. As stated in the 1825 *Civil Code* and reiterated in codes and acts through the Civil War, "The master who wishes to emancipate his slave, is bound to make a declaration of his intentions to the judge of the parish where he resides."[439] This declaration could only be formalized by its advertisement in a public place, where it could be examined by the creditors of the owner to avoid fraud. The formality of manumission demanded in the 1825 *Code* remained the norm through the end of the antebellum period and changes to the laws served to tightened restrictions to manumission over the next three decades.

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property; 3. Possession during the time required by law, which possession must be accompanied by the incidents hereafter requires; And finally an object, which may be acquired by prescription." *Civil Code* (1825), 1086.

438 "Book II: Of Things and Different Modifications of Property, Title II: Of Ownership, Chapter 1. *General Principles* Article 483," *Civil Code* (1825), 148.

439 **"**Book I: Of Persons, Title VI: Of Master and Servant, Chapter 3. *Of Slaves*, Art. 187, 60.

Ann Maria Barclay made freedom by prescription the cornerstone of her case against Sewell. Where the law of freedom by prescription relied on the spirit of adverse possession, Barclay did the same, emphasizing her own "continuous and uninterrupted, peaceable, public and unequivocal" experience of freedom.[440] Barclay's witnesses testified to their presumptions that "she has acted as the owner of this property,"[441] and that "she went where she chose and purchased other slaves,"[442] both of which she could only do as a free person. Even more clear was the claim that "Botts always treated her as a free person."[443] These witnesses corroborated Barclay's claim to freedom, affirming that she was living the life of someone who experienced freedom in good faith and with the consent of the person who owned her. Her ability to express her freedom in full view of the person who owned her, according to Barclay's lawyer, nullified Sewell's claim to ownership. This type of claim was Barclay's first line of defense in her case. It is important to note that Barclay's initial defense did not involve the emancipation papers that she had retained in 1839 in Ohio. Instead, her lawyer, Christian Roselius, made arguments about her actual freedom, her *lived* freedom, more important than any piece of paper.[444] This move signals both the fallibility of freedom papers—as the rest of the case would make clear—as well as the strength of a claim in the style of an adverse possession claim.

Statutes that opened the door to freedom through location in a free territory constituted a second legal argument because Ann Maria Barclay's emancipation had taken

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[440] Book III: Of the Different Modes of Acquiring the Property of Things, Title XXIII: Of Occupancy, Possession, and Prescription, Chapter 3: *Of Prescription*, Article 3453," *Civil Code* (1825) 1088.
[441] Testimony of Chas. Cameer, *Barclay v. Sewell,* 23.
[442] Testimony of J.A. Beard, *Barclay v. Sewell,* 53.
[443] Ibid., 54.
[444] Christian Roselius, the lawyer who argued for Barclay's freedom, is the same lawyer who represented James White in *Alexina Morrison v. James White.* Judith Schafer writes, "Christian Roselius, a German immigrant, arrived in New Orleans in 1819 at the age of sixteen. After serving as a printer's apprentice, he developed an interest in Louisiana law. In 1828, he applied for admission to the Louisiana bar and become one of its most distinguished members. He also served as attorney general of Louisiana and dean of the law school at the University of Louisiana (now Tulane University)." See Judith Schafer, *Becoming Free, Remaining Free,* 32, *fn*28.

place in Ohio. Statutes that regulated the status of a person who had experienced *de jure* legal emancipation in a free territory also encompassed the possibility of an emancipation that took place because of, or in relation to, time spent in a free territory.

The earliest regulation of freedom by location in a free territory appears in 1841, in *The Louisiana Digest.* The law was born of case law,[445] and it appears in a convoluted footnote to a normative manumission law. The footnote explains that if an enslaved person was taken to a free territory—in the examples, Ohio or France—the enslaved person would not automatically become free. Similarly, if the enslaved person was *hired out* by the owner to a free territory—that is, in the case of an owner continuing to reap the financial benefit of an enslaved person's labor despite his location in a place that did not condone slavery—the enslaved person would not automatically become free. However, the footnote continues, if the enslaved person simply "resided in a state, the laws of which do not tolerate slavery, with the consent of his owner…[for] two or three years," the enslaved person *would* be entitled to his freedom.[446] In other words, an enslaved person's change of permanent residence to a free state, with the knowledge and consent of the owner, unraveled the person's enslaved status.[447] This law leaves much gray area because it has an embedded contradiction. It is clear that an owner would forfeit his right to hold a slave if he moved, permanently, to a free territory. But sending an enslaved person to a free territory, with or without the owner present, could go either way: if the owner consented to the enslaved person becoming free because of his new residence, he could become free, but if the owner did not consent, then freedom would become moot.

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[445] See: Lunsford v. Coquillon (2 N. S. 402); Smith vs. Smith (12 L.R. 444);Marie Louise v. Marat (9 L.R. 475); Frank v. Powell (11 L.R. 501); Louis v. Cabarus (7. L. R. 172).
[446] Meinrad Greiner, *The Louisiana Digest Embracing the Laws of the Legislature of a General Nature, Enacted from 1804 to 1841, Inclusive, and in Force at this Last Period. Also, an Abstract of the Decision of the Supreme Court of Louisiana on the Statutory Law, Arranged under the Appropriate Article in the Digest* (New Orleans, Benjamin Levy, 1841): Article 3422, 509, fn. Hereafter *Digest* (1841).
[447] *Digest* (1841), 509.

The possibility of freedom by location in a territory whose laws "do not tolerate slavery" was revised in 1852, two years before Barclay and Sewell arrived in court. By 1852, the law of ownership had been bolstered by the Fugitive Slave Act (1850), which made it mandatory for escaped slaves to be captured and returned to slavery. The Louisiana state statute explained,"No slave shall be entitled to his or her freedom, under the pretense that he or she has been, with or without the consent of his or her owner, in a country where slavery does not exist, or in any of the States where slavery is prohibited."[448] This statute avoided the question of an owner's consent, so that the default position was absolute ownership over enslaved people until an explicit and formal act of manumission could be produced in the state where ownership began—in this case, Louisiana. This 1852 law coincided with increasingly restrictive manumission policies by obstructing informal emancipation by location.

The genealogy of freedom-by-location laws informed the arguments of *Barclay v. Sewell*, but could not fully account for the situation at hand. Even as Ann Maria Barclay had gained her freedom by location in another state, it was not simply her location that created (or nullified) her legal freedom. Perhaps anticipating this quandary, during a period before this legislation and before the courts dealt with cases of people who attempted to gain freedom by location, to various ends, George Ann Botts marshaled the services of his acquaintance Daniel Gano, whom he authorized with his power of attorney to free Barclay. Through the power of attorney vested in Gano in Cincinnati, Barclay was legally freed before an Ohio judge. Thus Barclay's case raised two thorny questions in regard to the legality of her emancipation in another state. Did Barclay's presence in Ohio actually

[448] *The Consolidation and Revision of Statutes of the State, of a General Nature*, Levi Pierce, Miles Taylor, and Wm. W. King, eds., (New Orleans, Printed at the BBR Office, 1852), Act 16, 524. Hereafter cited as *Statutes* (1852).

constitute a path to freedom? Could an enslaved person owned in Louisiana be freed by the procedures of a state other than Louisiana?

Sewell's defense answered "no" to both questions and attempted to prove that neither Barclay's presence in Ohio, nor her retention of free papers in Ohio, could constitute freedom in Louisiana. The motions of J. S. Whitaker and John C. Larue relied on the 1852 statute to disclaim Barclay's presence in Ohio as a reason for her freedom. They continued to hollow out her freedom claim by arguing that an emancipation that took place outside of Louisiana did not follow the procedures required in Louisiana, and thus could not be valid within Louisiana. Meanwhile, Barclay's lawyer, Roselius, argued that she had been legally emancipated and that that freedom would stand up in Louisiana even though it was codified out of state.

The other legal precedent that influenced this case was the prohibition of inheritance to concubines. Sewell's defense team frequently mentioned Barclay's status as a concubine to Botts, a claim that Barclay's lawyer could not and did not deny. Defining Barclay as a concubine could not completely overturn her property claim because she had not inherited property from Botts but had become the owner of the property during his lifetime. Nor had there been a clear paper trail that indicated the property was a gift from him. Nonetheless, Sewell's team invoked the legal genealogy of the prohibition on the transfer of property to concubines to weaken Barclay's claim to her property holdings, and to associate her with ongoing enslaved status.

The *Civil Code*'s prohibition on concubines inheriting property derived of the French *Code Napoleon* and was rearticulated in *Digest of Civil Laws Now in Force* (1808). Article 10 of the Book Of the Different Manners of Acquiring the Property of Things explains, "Those who have lived together in open concubinage are respectively incapable of making to each

other any universal donation, or on an universal title, whether *inter vivos* or *mortis causa.*"[449] This outlawed "any" gift made during life or after death, which would have included the case of Botts gifting money and perhaps also land to Barclay during the span of his life. However, this prohibition was relaxed slightly in the 1825 *Civil Code,* where "any donation of immoveables" remained off limits during life or after death, but "a donation of moveables…cannot exceed one tenth part of the whole value of their estate."[450] Again, the restrictions remained tight on the donation of property to a concubine, even as some space opened up for small donations. This possible one-tenth donation was made smaller by the restriction that a donation to a concubine—much like a donation to an enslaved person—could not interfere with the legally required donations to heirs and creditors after death.

Whitaker and Larue repeatedly invoked Barclay's status as Botts's concubine, using the term no less than six times in their two-page appeal to the Supreme Court. They explained, "That she was the concubine of Botts does not entitle her to hold property belonging to her master."[451] Moreover, they claimed, Botts's emancipation of Barclay in Ohio was only an attempt to bypass the concubinage inheritance prohibition. They asserted that he "sought to remove his concubine to another state and to emancipate her for the purpose of leaving her a portion of his estate."[452] They further claimed that the property did not truly belong to Barclay, because as "his concubine living with him at the time of his decease" she would come into "pretty much all the property of any value that he has left behind"[453] by, they argued, her own cunning design.

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449 "Book III: Of the Different Manners of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa," *Digest* (1808), 210.
450 " Book III: Of the Different Modes of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa, Chapter 2, *Of the Capacity necessary for disposing and receiving by Donation inter vivos and mortis causa*, Art. 1468" *Civil Code* (1825), 474.
451 *Barclay v. Sewell,* 73.
452 Ibid., 73.
453 Ibid., 74.

In emphasizing Barclay's role as a concubine, Larue and Whitaker sought not only to undermine her ability to inherit property, but also to locate her within the logic of an interracial, trans-status sexual liaison that once again inscribed Barclay's status as enslaved. Their explicit claims that Barclay was a concubine both disqualified her from property ownership and reinforced the defense's case that she was a slave. As an *enslaved* concubine—a familiar figure within the scene of racialized sexual commerce in Louisiana—she would lose her right to property ownership because, she, according to the law, "cannot dispose of, or receive by donation [any property] *inter vivos* or *mortis causa*"[454] and "can do nothing, possess nothing, nor acquire any thing, but what must belong to his [her] master."[455] Thus the emphasis on Barclay's role as a concubine worked through double entendre—she could not inherit property as a concubine, nor inherit property as a slave, which her concubine status suggested she was.

All of these legal questions came to rest on the specific jargon deployed in the courtroom. Such phrases—that Barclay lived "as his wife" and "lived as free" indicate something much larger than the case. They reveal the imbrication of freedom and sexual labor in the world of racialized sexual commerce in antebellum New Orleans.

"As His Wife"

Both plaintiff and defendant agreed that Ann Maria Barclay lived "as" George Botts's wife toward the end of his life. This phrase appears frequently in the transcript of this case. However, each side used this phrase differently, making new meaning by emphasizing

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454 **"**Book III: Of the Different Modes of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa, Chapter 2, *Of the Capacity necessary for disposing and receiving by Donation inter vivos and mortis causa*, Art. 1462" *Civil Code* (1825), 472.

455 "Book I: Of Persons, Title I: Of the Distinction of Persons, and the Privation of Certain Civil Rights in Certain Cases, Chapter II: Of the Distinctions of Persons Which Are Established by Law, Art 13" *Digest* (1808), 10.

select parts of the phrase. For Barclay, "as his wife" was a way of designating her own special status, her proximity to freedom, and the extent to which she inhabited the role of a free (white) woman.[456] For Sewell, the use of "as his wife" pointed to Barclay's *distance* from the norms and actuality of freedom and the lifestyle of a free person. The tension between these two meanings of "as his wife" begins to point to the contingency of Barclay's lifestyle during Botts's lifetime.

Barclay's argument deployed the phrase "as his wife" to underwrite her claim to freedom. Within Barclay's argument, the key words in this phrase were "his wife," ignoring the simile embedded in "as" and rhetorically replacing it with the meaning of "was." This claim conveniently ignored the fact that, as a woman of color, regardless of her free or unfree status, she could not have been Botts's legal wife. Her claim to wifeliness relied on her light skin to elide the racial difference that would have made any claim to legal marriage to Botts impossible. The "as" in her claim shored up this problem, but again, she deemphasized that and moved forward with the "his wife" argument. Claiming—by elision and de-ephasis of "as"—that she *was* Bott's wife rather than *like* his wife bolstered her claim to freedom and property ownership.

Barclay attempted to prove that she was "his wife" by pointing to the other people who believed that she held that role. One witness explained that he "was under the impression that Miss Barclay was Botts' wife" and that "Mr. Botts and Miss Barclay seemed to be living together as man and wife."[457] Another corroborated: "I thought that Mr. Botts &

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[456] Here, I am close reading the work that "as" does in this case, in attempt to analyze the discourse surrounding the long-term sexual liaison that Barclay and Botts undertook. For more on the cultural history of "marriage-like" relationships in 19th century Louisiana, see Diana Williams, "'They Call It Marriage': The Interracial Louisiana Family and the Making of American Legitimacy" (Ph.D. Dissertation, Harvard University, 2007).

[457] Testimony of William Wilz, *Barclay v. Sewell,* 22.

Miss Barclay were living together as husband & wife—I use to call her Mrs. Botts."[458] This witness was the singular voice claiming that Barclay had, at least under some circumstances, taken Botts's name. The two lived together, another witness testified, explaining that "Mr. Botts has been living in this house beside Miss Barclay."[459] Another explained that "This woman was then living with him," and "she lived with him as man and wife up to his death."[460]

Other witnesses testified that Botts, himself, described Barclay using the term "wife." One of Barclay's witnesses, her contractor William Wilz, explained that "Mr. Botts told me that his wife had no more money" in the midst of their transaction, which is to say that Botts, himself, used the moniker "wife" to refer to Barclay. [461] Barclay disabused the judge of evidence of a master-slave relationship and instead emphasized a husband-wife relationship, where a witness testified that "Botts always treated her as a free person, & always said she was free."[462] Botts doted on her, she showed: J. A. Beard explained that, while he and Botts were together in London, Botts had run out of money, and asked Beard for a loan; when they met again later in the trip, Botts "was again out of funds and had bought a large number of dresses for Nancy [Ann Maria] as he called her."[463]

Barclay offered proof that she was in charge of the property in which she and Botts lived, that she was the mistress of the house. It was Barclay, the contractor explained, who

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458 Testimony of Chas. Cameer, *Barclay v. Sewell,* 23.
459 Ibid., 23.
460 Testimony of J.A. Beard, *Barclay v. Sewell,* 55.
461 Testimony of William Wilz, *Barclay v. Sewell,* 22.
462 Testimony of J.A. Beard, *Barclay v. Sewell*, 54.
463 Ibid., 54. Ann Maria Barclay's name presents an interesting curiosity in this case. Here, a witness suggests that George Botts referred to her by the name under which she was sold, "Nancy," and earlier (see *fn*32) a witness recalls using the name "Mrs. Botts" to describe her. She is also called "Mrs. Barclay" at points in the record, suggesting that others recognized her status as a married woman, even as they did not include the name of the man with whom she was living in her title. It is interesting to note that although she did not take Botts's last name—she filed suit under the name Barclay and was referred to by that name throughout—she *did* take his middle name, "Ann" as her first name. It is unclear from the record when this change occurred, or whether George Botts called her by the name "Ann Maria" or "Nancy," or if, when the two were living together, she went by the name "Mrs. Botts" consistently.

"signed the checks" that Botts had filled out; they shared finances.[464] It was she, he continued, who "got me to measure the furniture for the house."[465] Another witness explained that "she seemed to be the mistress of the house…there were servants in the house."[466]And another explained, "She went where she chose and purchased…slaves."[467] It appears that she purchased several enslaved people—"a negress" sold to her by J. A. Beard, along with "an old woman & and young man & 2 little negro boys."[468]

Barclay also established that she and Botts had a child together. A young girl, one witness testified, "was generally supposed to be Botts's child."[469] Botts had educated this child "at Mobile," this witness continued, and she has grown to have "some accomplishments and was a teacher of Piano."[470] Barclay and this child traveled, without Botts, to Boston in 1842; they visited family there.[471]

Barclay fleshed out the story of her life "as *his wife*" from many angles, and in sum told a story about her legal personhood. Embedded in her claim of being "his wife" was an argument that their sexual relationship was consensual. In the location of "his wife," Barclay occupied the position of *feme couver*, not fully a citizen, but neither a slave.[472] As *feme couver*, Nancy Cott explains, "a wife could not use legal avenues such as suits or contracts, own

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464 Testimony of William Wilz *Barclay v. Sewell*, 22.
465 Ibid., 22.
466 Testimony of Chas. Cameer, *Barclay v. Sewell,* 23.
467 Testimony of J.A. Beard, *Barclay v. Sewell,* 53.
468 Testimony of Chas. Cameer, *Barclay v. Sewell,* 23.
469 Testimony of J.A. Beard, *Barclay v. Sewell,* 53.
470 Ibid., 53.
471 Ibid., 53.
472 Nancy Cott explains the law of *coverture*, through which "the common law turned the married pair legally into one person—the husband. The husband was enlarged, so to speak, by marriage, while the wife's giving up her own name and being called by his symbolized her relinquishing her identity." The relevance of coverture to this case is not in Barclay's claim to property ownership, which would have been complicated by Married Women's Property Law. Rather, the importance of coverture rests in Barclay's wife claim. Claiming that she was a wife allowed Barclay to position herself as a person who had more rights than an enslaved person, which opened up the possibility that both parties—Barclay, and Botts—had freely consented to the arrangement. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA and London: Harvard University Press, 2000), 11. See also Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986) and Richard H. Chused, "Married Women's Property Law, 1800-1850," *Georgetown Law Journal* 71 (1982): 1359-1424.

assets, or execute legal documents without her husband's collaboration."[473] Despite being stripped of the trappings of legal personhood, one became *feme couver* through her consent to marriage because marriage was "understood to be founded on consent…an analogue to the legitimate polity."[474] Louisiana law confirmed this precedent, explaining that "No marriage is valid to which the parties have not freely consented," using the plural "parties" to require the consent of both the husband and the wife.[475] Thus to occupy the status of a wife was to indicate a past act of consent, an act made impossible in the law for enslaved women.

Locating herself "as *his wife*," then, rhetorically subverted the notion of her belonging to that class of persons deemed property. As "his wife," Barclay would not attain full personhood, but would retain the key right to consent that was suspended for enslaved women. The specter of her sexual consent, then, became the hinge on which Barclay's case balanced: she was "as his wife" because she had consented to the relationship, and she had consented to the relationship because she existed "as his wife." That is to say, her personhood claim rested on her claim that consent for her was not a suspended category.

In contrast to Barclay's legal team's use of the oft-repeated claim that she existed "as his wife" to her advantage, Sewell's team dramatized the "as" in that phrase to erase the possibilities of marriage, consent, contract, and inheritance. A central strategy of the defense was to emphasize the simile in order to prove that Barclay may have been *like* a wife, but could never have been *truly* Botts's wife. To do this, Sewell's team organized their case around the word "concubine" instead of "wife." They relied on testimony that "She has lived to my certain knowledge as the wife *or concubine* of Botts"[476] and repeated that language

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[473] Cott , *Public Vows*, 11.
[474] Ibid., 16.
[475] "Book 1: Of Persons, Title IV: Of Husband and Wife, Chapter 2, *How Marriages may be contracted or made*," *Civil Code* (1825), 30.
[476] Testimony of J.A. Beard, *Barclay v. Sewell,* 53. My emphasis.

in their arguments to the court. Whitaker argued that her status as "the concubine of Botts does not entitle her to hold property."[477] Later, he juxtaposed "his concubine" with an italicized quotation of Botts's language: "Nancy, '*his wife,*"'[478]making ludicrous the claim to marriage. According to Sewell, Barclay belonged to "such a class of people… regarded under our law"[479] as unable to inherit property—here, he referred to the language of the 1838 *Civil Code*, which designated concubines as a class of "persons…the law expressly declares incapable" of disposing or receiving by donation any property.[480] As a concubine, he argued, she lacked the inheritance rights of a wife.

The deployment of "concubine" in place of "wife" was laden with the common-sense logic of racialized sexual commerce—if she were a concubine, Sewell's lawyers insinuated, she was likely enslaved. Indeed, Whitaker's argument that her status as a concubine could not entitle her to property ended with the language of Botts's continued mastery. He argued, "That she was the concubine of Botts does not entitle her to hold property *belonging to her master*."[481] This argument emphasized Barclay's past as an enslaved woman by entering into evidence the chain of ownership to whom she belonged. She was sold by Theodore Weeks to George Ann Botts at the age of 15 for "seven hundred and seventy five dollars cash in hand," the defense asserted, while repeatedly calling her by the name she was sold under, "Nancy."[482] Both of these rhetorical moves placed Barclay in the context of enslavement, whence she could never become Botts's wife.

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[477] *Barclay v. Sewell*, 73.
[478] Ibid., 74. Author's emphasis.
[479] Ibid., 73.
[480] "Book III: Of the Different Modes of Acquiring the Property of Things, Title II: Of Donations Inter Vivos and Mortis Causa, Chapter 2: *Of the Capacity necessary for disposing and receiving by Donation inter vivos and mortis causa.* Art. 1456" *Civil Code* (1838), 221.
[481] *Barclay v. Sewell*, 73.
[482] Ibid., 27, 28.

Sewell's team presented additional evidence that located Barclay within the logics of racialized sexual commerce. The use of "concubine" and Barclay's enslaved name, "Nancy" dovetailed with testimony that Barclay was "a quateroon [quadroon]" who "was residing with [Botts] as his House Keeper."[483] This invoked the image of an enslaved or semi-enslaved quadroon mistress and a *plaçage*-like arrangement. Indeed, when Whitaker and Larue addressed Barclay as enslaved, mixed-race, and housekeeper, they brought the figure of the *ménagère* (and later, *placée*) into the courtroom. The *ménagère*, explains Emily Clark, was "one of the mainstays of *mûlatresse* identity in Saint-Domingue" in the eighteenth century and was "a combination of housekeeper and sexual partner."[484] The figure of the *ménagère* traveled to New Orleans, but in a slightly different form. Clark continues, by the nineteenth century, "the beauty who captivates white lovers is no longer a *mûlatresse* but a quadroon,"[485]retaining the trappings of housekeeper and sexual partner and remembered as a purveyor of "illicit pleasures of white men."[486] Whitaker and Larue evidenced this connection by arguing that "the position of the claimant seems to us one cunningly devised,"[487] which offered up the trope of bargains made between quadroon mistresses and white men that would disinherit white women by "tempting" white men "away from their proper roles as faithful husbands and fathers."[488] Together, such arguments painted a picture of Barclay not only in the role of a legal concubine—one belonging to a "concubinage" relationship that could include people of any race—but in the role of a quadroon mistress whose link to unfreedom was made plain in the relationship of sexual servitude to which she was bound.

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[483] Ibid., 26.
[484] Emily Clark, *The Strange History of the American Quadroon: Free Women of Color in the Revolutionary Atlantic World* (Chapel Hill: University of North Carolina Press, 2013), 63.
[485] Clark, *The Strange History of the American Quadroon*, 69.
[486] Ibid., 69.
[487] *Barclay v. Sewell*, 73.
[488] Clark, *The Strange History of the American Quadroon*, 54.

While the most explicit right that a concubine lacked in contrast to a wife was the right to inherit, Whitaker and Larue's arguments pointed to something more sinister. By highlighting Barclay's status as a concubine, they inverted the claim of Barclay's lawyer, Roselius, who used "wife" to smuggle in the notion of mutual consent in the relationship. Instead, Sewell's lawyers, by locating Barclay in the position of (enslaved) concubine, held that Botts retained mastery over her, making her not a consenting wife, but a woman living in the space of suspended consent. The law would protect the consent of the wife—at least in terms of her entering into the marriage—but it would not protect the consent of the enslaved concubine. By locating Barclay as a concubine, Whitaker made Barclay's *de jure* legal status irrelevant; as a concubine whose consent was not protected, she existed in a state of bondage.

At the heart of the dispute about what "as his wife" could mean to either Barclay or Sewell was the presence of the affective object of consent in Barclay's relationship with Botts. On one hand, Barclay's personhood claim—her claim that she was more wife than not—was comprised of her ability to consent to the relationship, such that consent was not a suspended category for her. She excluded herself from the category of enslaved women by asserting her ability to have her consent recognized by the law in the form of a marriage contract. On the other hand, Sewell's claim that Barclay was not wife but concubine was also grounded in a notion of consent: Barclay, as concubine, lacked the ability to have her consent recognized by the law and thus lost her property right. First, as a concubine, Barclay's inability to consent made her more like a slave, and second, as a concubine it was more likely that Barclay was actually enslaved. The arguments over "as his wife" revealed the importance of Barclay's consent to the exchange through which she gained her freedom. Despite Sewell's protestations, Barclay's claim that she existed "as his wife" evidenced the

presence of a fantasy of consent in her relationship with Botts, a performance, she proved, that Botts had participated in. Though Sewell showed how shaky that consent claim really was—and we must assume that everyone involved in this relationship was well aware of that instability—Barclay's insistence on the vocabulary of her consent points to the composition of their exchange. In their arrangement, Barclay's role "as his wife"—the performance that structured the fantasy of her consent—was equal in value to his allowance of her freedom.

"Lived As Free"

Whether or not Barclay had "live[d] as free" was the other major contest of this case. Just as the phrase "as his wife" had a double meaning in *Barclay v. Sewell*, the phrase "lived as free" held different meanings for each side. Barclay's case attempted to make the "as" in this phrase irrelevant and to emphasize that she had "lived…free," while Sewell's legal team emphasized the "as" to discredit the possibility of Barclay's freedom. Even as Barclay argued that she had felt free and acted free for several years, Sewell's insistence that she had only experienced a simulacrum of freedom that could be quickly taken away revealed Barclay's fundamental predicament. Whatever freedom she had achieved had, at base, depended on Botts's presence, affirmation, and *allowance*. Born of the market, Barclay's freedom could be a casualty of that market's changing conditions.

Barclay's case rested on the notion that she was free because she had inhabited structures of freedom for the past several years. Thus much of her case was dedicated to demonstrating evidence of her free actions. In Barclay's case, "lived as free" became "lived…free," denouncing the simile that undermined the credibility of her life as a free person.

Barclay demonstrated that she embodied free status by verifying that she was a property owner. It was critical to prove that she, herself, held the title to the land on which her house had been built. Affirming the contemporary statute that "As the person of a slave belongs to his master, no slave can possess any thing in his own right,"[489] she argued that she could not be enslaved because she was in possession of property, the grounds of personhood. Roselius's opening statement explained that Barclay "is the owner and has been in the peaceable and undisturbed possession as such, of the following property, to wit, two certain lots of ground, with all the buildings and improvements therein."[490] This included "all the household furniture, and a piano forte."[491] The petition continued with details of the lot, "plan no. 7 measures 28 feet front on Pleasant Street by 141 feet, 11 inches and 7 lines in depth, and lot NO. 8 measured 30 feet front on said Pleasant Street by 138 feet 1 inch and 4 lines in depth on one side, and 140 feet and 5 lines in depth on the side of said No. 7."[492] Barclay's lawyer established her ownership by demonstrating that plans for the land and for the house that she subsequently built on that land had, "on the First of December 1836 [been] deposited in the office of H. Davis, notary public of this city" and "on the 27th November 1849 [had been] deposited in the office of Theodore Guyol, notary public."[493] Public officials had legally certified her ownership. The petition revealed the Bill of Sale for the property, which included the standard declaration "to have and to hold the said property unto the said purchaser, her heirs and assigns forever."[494] Witnesses corroborated this claim, explaining that "she has acted as the owner of this property."[495]

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489 "Slaves," *Digest* (1841), 500.
490 *Barclay v. Sewell,* 8.
491 Ibid., 9.
492 Ibid., 9.
493 Ibid., 9.
494 Ibid., 11.
495 Testimony of Chas. Cameer, *Barclay v. Sewell,* 23.

Barclay also defined her freedom in terms of her ability to make a contract. She entered into evidence the notarized contract that she had made with Wilson Wurtz, who would "erect upon a Lot belonging to the said Miss Barclay…a one Story frame House."[496] This contract included an inventory of excruciating detail, which evidenced the specificity of the contract and the control that Barclay had executed in the building of her house. The house would have "four rooms, with a gallery in front," and "a fireplace in each room," on a "foundation…of good brick pillars placed six feet apart."[497] It would be "covered with good sheathing and slats and english ridge tiles" and "weather boarding…of the best Cypress."[498] Inside, the walls would be "neatly dressed with neat mouldings and caps," with "three coats of plastering…done in a good and workmanlike manner" and the "mantel pieces in front to be of imitation marble, the rest black and varnished."[499] Beyond the actual contract, Barclay's builder would testify that he had made the contract with her, and not with George Botts. Wurtz explained, "I have made a building contract before a notary with Ann Maria Barclay" and "this building was erected under the contract."[500]He continued, "Mrs. Barclay give in part payment a black boy worth $800 & the balance she paid me as the building went on…she paid me in price of the work, in accordance with the contract—she paid me all this money herself."[501] Through the combination of the actual contract and Wurtz' testimony, Barclay confirmed that she had the capacity to make a contract and, so doing, had fulfilled an action exclusive to a free person.

Barclay augmented her claim of having lived free through the testimony of neighbors and peers who would argue that she passed as a free person. Together, they verified her

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496 *Barclay v. Sewell*, 15, 16.
497 Ibid., 16.
498 Ibid., 16, 17.
499 Ibid., 18.
500 Testimony of William Wurtz, *Barclay v. Sewell*, 22.
501 Ibid., 22.

freedom, claiming that she had been "residing here as a free person of color"[502] and that she "was visited by families here…as being free."[503] As a free person, "she went where she chose"[504] and participated in the prevailing economic model as a slave holder, herself, who "purchased a negress…[and] other slaves."[505] She had not only passed as a free person, but as a free *white* person, claimed another witness. He explained, "I thought that she was a white woman & I think so yet."[506] He continued, "she seemed to be the mistress of the house."[507] The summary of her case was that "she has enjoyed uninterruptedly her freedom…as not subject to the control of a master."[508] These various claims testified to how easily the presence free *behavior* in Barclay could slip into a conclusion of free *status*.

Finally, but almost as an afterthought, Barclay's lawyers entered her free papers into evidence. These were not their first line of defense of her freedom—perhaps they suspected that out-of-state free papers would not be protected in a Louisiana court. Nonetheless, they eventually entered the free papers into evidence, which declared unequivocally that Barclay was free. The papers made plain that Barclay had been enslaved: they included the original act of sale that transferred "a certain quateroon slave, named Nancy, aged about fifteen years"[509] to Botts. But the papers then declared Barclay's freedom, documenting "An act of emancipation of the aforesaid slave…dated the ninth day of August, Eighteen hundred and thirty nine."[510] Entering the freedom papers into evidence only late in the case, Barclay's lawyer expressed the extent to which they were nearly unnecessary in establishing the free status that she had already proven through her actions. Even after accounting for the papers

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[502] *Barclay v. Sewell,* 25.
[503] Testimony of J.A. Beard, *Barclay v. Sewell,* 53.
[504] Ibid., 53.
[505] Ibid., 53.
[506] Testimony of Chas. Cameer, *Barclay v. Sewell,* 23.
[507] Ibid., 23.
[508] *Barclay v. Sewell,* 44, 45.
[509] Ibid., 26.
[510] Ibid., 27.

in evidence, Roselius argued that freedom by prescription was more important. He argued that "there can be no slave without a master, and when the master's right of ownership or dominion ceases"—by either free papers or the implicit manumission that allowed her to live free—"the former slave necessarily becomes free."[511]

Sewell vehemently disagreed. He claimed that Barclay's emancipation was "pretended…unreal, void…illegal, and in violation of the Statutes of Louisiana."[512] Sewell was much more interested in the act of sale through which Benjamin Moon George would "grant, bargain, transfer, sell, convey, and deliver unto George Ann Botts…a certain quateroon slave named Nancy, aged about fifteen years"[513] in the first place. He underlined this point, explaining "she was certainly then, at that date, a slave."[514] Sewell's lawyers, Whitaker and Larue, argued that Barclay's freedom papers were worthless because they were produced in Ohio, not in Louisiana. They argued, "such emancipation decreed in the State of Ohio can not have, and has not any legal effects within this state."[515] They continued that "the laws of the State, at the time in force, permitted emancipation, on certain conditions, and in certain forms" but that, in this case, "This woman was emancipated under none of the forms prescribed by law."[516] They ceded the point that "up to the date of these proceedings, she has lived in this state, has passed for a free woman," but, critically, this could not supersede the legal problem. They argued, "this woman might under all these circumstances, be her own mistress,"[517] but in this case that was impossible because of the age prohibition written into Louisiana's manumission law. Manumission law contemporaneous with Barclay's manumission required that "No one can emancipate his

[511] Ibid., 84.
[512] Ibid., 24.
[513] Ibid., 28.
[514] Ibid., 72.
[515] Ibid., 24.
[516] Ibid., 72.
[517] Ibid., 72.

slave, unless the slave has attained the age of thirty years,"[518] and Barclay had been only a teenager when she was freed. Even if the court ignored the age prohibition, the emancipation was "a mere nullity" because she had "not…been emancipated by virtue of any recognized law of this State."[519] Furthermore, her emancipation out of state could not be protected by freedom by location in a free territory precedent because "nothing but permanent residence abroad, with the consent of the master, will be sufficient to satisfy our laws."[520] Thus her actions as a free person would be void, they argued, because "There is no legal emancipation shown…it is evidently impossible." Sewell argued that legal status—articulated on paper—was more meaningful than any set of actions, and had the power to void the lived freedom of a former slave.

Sewell's attempt to invalidate the freedom papers highlighted the importance of Botts's continued life and stated will to the protection of Barclay's freedom. To the extent that freedom papers could arbitrate a freedom claim, and to the extent that those papers could be questioned and invalidated in court, Barclay's freedom was vulnerable in the face of Botts's absence. Her freedom claim was not in danger so long as Botts remained alive—only in the wake of his death had her freedom been questioned. The repeated gestures of Botts's consent within the transcript and the constrained ability of Barclay to attain her freedom by prescription only by acting free in the presence of and with the consent of Botts, both implicitly required Botts's testimony for Barclay's freedom. Only Botts could decide to release Barclay from his dominion, and where he was absent, her release from dominion lacked a testator and therefore vanished.

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518 "Book I: Of Persons, Title VI: Of Master and Servant, Art. 185," *Civil Code* (1838), 29.
519 *Barclay v. Sewell,* 72.
520 Ibid., 73.

Sewell's attempt to take down Barclay's freedom illuminated the paradoxical character of Barclay's freedom claim. The unintended consequence of Sewell's insistence that freedom could be defined (or undefined) by papers was the implication that Barclay's freedom relied only on the person who formerly owned her. That is to say, Sewell inadvertently made the argument that the freedom of a *formerly* enslaved woman *remained* embedded in a relation of dominion. Only with Botts's consent, even if a whim, could she be free; without his continued affirmation of that decision, her freedom was in danger. Her release from dominion through a formal act of emancipation was not, then, a release at all, but a continuation of the relation of his control over her life in a different form.

Sewell's arguments did more than merely poke holes in Barclay's claim to freedom. His arguments demonstrated that her freedom was dependent on her relationship to Botts, that it existed only because of his affirmation, and that Botts maintained his power as a slaveholder in a circumstance that, she had argued, was marked by her release from bondage. By showing that she was not *really*, authentically free, Sewell exposed freedom itself to be a commodity in the exchange that took place between Botts and Barclay.

The Market in Freedom

Barclay's concubinage produced her freedom, and her freedom required her concubinage, such that freedom became an affective object that circulated within the sexual transaction between Barclay and Botts. This object changed the shape of their relationship, by ushering in the fantasy of Barclay's consent—in the form of her wife claim—and covering over Botts's dominance—in the form of her freedom claim. Yet this cover could not hide what Sewell's lawyers pointed out, that Barclay's freedom was tied to the affirmation of freedom's grantor, Botts. Barclay's freedom papers alone would be subject to

scrutiny, which revealed that Botts's continued allowance of her freedom had been crucial to protecting her ability to "live as free." To the extent that Botts's continued consent to Barclay's freedom was tied up with their relationship, Barclay's living "as his wife" was the condition upon which she was able to "live as free." It was impossible to hide that her freedom was born of an exchange on the sex market, and thus her freedom was not mutually exclusive with the logics that had enslaved her in the first place, not mutually exclusive with Botts's dominion. Regardless of whatever free status Barclay claimed and occupied, Botts retained much of "the power of a master"[521] because without his continued affirmation of her freedom, she could "do nothing, possess nothing, nor acquire any thing" to which he did not consent.[522]

The relation that made possible Barclay's freedom was oxymoronic for where he *let* her live as free, her state of imagined non-bondage was nonetheless defined by a master-slave, owner-owned relation. But the relation was also oxymoronic because it produced not freedom, the ideal, but rather an object traded under the sign "freedom." The market of racialized sexual commerce was the avenue through which freedom became available to Barclay, which ensured that her freedom would be entangled with the constraints of slavery even as it disavowed them.

As a woman of color in antebellum New Orleans, Barclay's freedom was in danger because it was at odds with the prevailing racial norms of the slave society. Though she had freedom papers, they might be meaningless in court, because she had gained them out of state and at a young age (and because freedom papers were always vulnerable). Her freedom might remain intact because she had lived as free for so long, but that was not guaranteed,

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[521] Book I: Of Persons, Title I: Of the Distinction of Persons, and the Privation of Certain Civil Rights in Certain Cases, Chapter II: Of the Distinctions of Persons Which Are Established by Law, Art 13," *Digest* (1808), 10.
[522]Ibid., 10.

again, because of her age, and because of the fickle nature of freedom by prescription decisions. Her freedom might hold up because she belonged to a community of people who believed she was free and even believed she was white, but there was no guarantee. Ann Maria Barclay lived in a world where her recently attained freedom could—and, as it turned out, would—be interrogated.

Barclay's case disrupts the image of the woman of color who achieved freedom through sexual liaison. Such freedom proved unstable because its condition of possibility was the very market that had enslaved her. Whatever freedom Barclay and others accessed had a price within racialized sexual commerce—a the price amounting to the consent that ushered in a fantasy of non-dominance in a world of ubiquitous violence, a world in which Barclay, herself, had very few options. If the price were not paid properly, or if the condition of the exchange disappeared (if Botts died), then freedom could also evaporate.

Thus even as Barclay achieved her freedom, that she did so only expresses her ability to attain *more* mobility, *more* security, *more* recognition by the law, but nothing absolute or permanent. Her freedom was marked by the "as" that she used to describe it. As an object in the market of racialized sexual commerce, freedom could hide, but it could not extricate Barclay from, the logics that maintained Botts's ability to govern her body.

Epilogue

Desire

"Whether or not the captive female and/or her sexual oppressor derived 'pleasure' from their seductions and couplings is not a question that we can politely ask. Whether or not 'pleasure' is possible at all under conditions that I would aver as non-freedom for both or either of the parties has not been settled. Indeed, we could go so far as to entertain the very real possibility that 'sexuality,' as a term of implied relationship and desire, is dubiously appropriate, manageable, or accurate to *any* of the familiar arrangements under a system of enslavement, from the master's family to the captive enclave. Under these arrangements, the customary texts of sexuality, including 'reproduction,' 'motherhood,' 'pleasure,' and 'desire' are thrown into unrelieved crisis."[523]

"While the daily record of such abuses, no doubt, constitutes a history of slavery, the more difficult task is to exhume the lives buried under this prose…The dream is to liberate them from the obscene descriptions that first introduced them to us."[524]

The balance of this project has addressed the role of pleasure in the history of sex and slavery. Pleasure—and the question of which erotic, violent, or liberatory pleasures historical actors involved in the slave system may have experienced within, despite, and even because of that system—is a problem.

Hortense Spillers articulates this problem in terms of decorum, asserting that pleasure is "not a question that we can politely ask." And even as it is possible to account for the simultaneity of pleasure and violence, Spillers's caution about what is "polite" still holds. If this project began with a critique of historiographic respectability in the history of sex and slavery, Spillers's comments, alongside Saidiya Hartman's comments on the archive, launch us into the terrain of historical *responsibility*. Their respective provocations point to the difficulty of unearthing the world of sexuality and what Rinaldo Walcott calls its "shameful

[523] Hortense Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book," *diacritics* 17, no.2 (1987): 76.
[524] Saidiya Hartman, "Venus in Two Acts," *Small Axe* 12, no.2 (2008): 6.

and funky"[525] pleasures in the context of a history so wrought with violence, the difficulty of imagining pleasures while remaining loyal to an archive that overwhelms with pain.

Moreover, Saidiya Hartman explains, looking for pleasures in the history of slavery "is a story predicated upon impossibility" where the reader must be "listening for the unsaid, translating misconstrued words, and refashioning disfigured lives."[526] This is particularly true in an attempt to recuperate the pleasures of women of color, whose representations in the archive are "impossible to differentiate from the terrible utterances that condemned them to death, the account books that identified them as units of value, the invoices that claimed them as property, and the banal chronicles that stripped them of human features."[527] Thus the problem of pleasure in the history of sex and slavery is as much about what is or is not "polite" as it is about what it is possible to know, what kinds of documentary claims can be made. Historical *responsibility* highlights the problem with pleasure in terms of the analytic and archival constraints that invite us into new methodological avenues.

This project has answered this problematic by offering the tool *affective objects*. As a tool, affective objects cracks open the question of pleasure by uncovering the ways that affective responses were structured into the everyday encounters of the sex economy. Affective objects were feeling-experiences that were packaged and sold alongside sex acts in antebellum New Orleans; locating affective objects provides a window into the imbrication of experience, relation, feeling, and commerce in the sex trade. Even as locating affective objects can explain the particular feeling-experiences that were made valuable in the sex market, these objects reveal more about the structure of the economy than the ways that individual historical actors actually felt. Affective objects allows us to make responsible

[525] Rinaldo Walcott, "Outside in Black Studies: Reading from a Queer Place in the Diaspora," in *Black Queer Studies: A Critical Anthology* (Durham and London: Duke University Press, 2005), 93.
[526] Hartman, "Venus in Two Acts," 3.
[527] Ibid., 3.

claims—that is to say, claims that derive from the archive and that can be documented—about the felt world of historical actors by mapping the contours of the pleasure economy, while eschewing claims about actors' actual responses to various invitations to feel.

Yet the problem of pleasure that Spillers articulates—the question of "whether or not the captive female and/or her sexual oppressor derived 'pleasure' from their seductions and couplings"—is not fully satisfied by an examination of the affective objects that structured the economy in which historical actors lived and worked. Indeed, the question of historical responsibility is not fully satisfied, either, for the onus of the historian of African American women's history is as much about honoring the archive as it is about conjuring the full humanity of our subjects on the page. Investigating the ways that antebellum New Orleans society *invited* historical actors to feel—by marketing consent, promises, quadroons, and freedom as experiences and ideas that made sex valuable—tells part of the story, the ways that those actors *actually felt* remains to be understood. The connection between the two is important: the structures of feeling presented by the economy created the conditions of possibility for actors' responses, and yet we must assume that actors' responses exceeded and challenged expectations as well as conformed to them. If it has been possible to trace the structural world of "pleasure," it has been difficult to engage the more minute and more elusive world of "desire," the will toward pleasure expressed by an individual. In particular, while it has been possible for historians to make claims about the ways that white slaveholding men reacted to the eroticized slave market in which they took part,[528] it has been unthinkable to approach the desirous life of women like those who populate this study in accordance with what is "polite," and especially in terms of what is in the archive. (We

[528] For example, Edward Baptist peers into the desirous attitudes of slave traders in the fancy trade through the papers of Rice Ballard. These papers offer rich documentary evidence of the felt world of white men in antebellum Louisiana. See Edward Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014), 234-243.

might ask, for example, if a *confession* in the archive is necessary to make an historical claim about desire, and if so, whose desires are automatically excluded from our accounting.)

By way of conclusion, I want to put the desires of women of color who lived through slavery on the table, and to acknowledge the gulf that exists between what we can know that she was invited to feel, and what is much more difficult to understand, that is, what she actually felt. To do so requires a commitment to documentary evidence as well as a tentative and restrained experiment with speculation and a willingness to embrace failure, or the extent to which we cannot always know, or perhaps, know *enough*. In this way, the archive of black women's sexuality may expose something larger about the project of historical study, wherein we operate within conventions about the amount of documentary evidence required to claim that something happened or someone felt something. We might ask how those norms are shaped by the particular contours of the archives of white men, and what it might mean to *begin* the project of recovery with a lens to historical "others" instead of asking their histories and their archives to conform to established standards. If Jennifer Morgan asserts that "the impossibility of recovery is inextricable from the moral imperative to attempt it," then we might ask what exactly makes the history of black women's sexuality so impossible—so disrespectable and irresponsible—in the first place.[529]

The desires of the women in this study offer many lingering puzzles, but here I will address only one: Ann Maria Barclay represents countless women of color in the archive, who achieved some modicum of freedom through long-term sexual service. She is extraordinary because she achieved freedom on paper, and away from the person who owned her. Like other enslaved women, Barclay's sexual service brought her to a free territory, where she could not be legally enslaved.

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[529] Jennifer Morgan, *Laboring Women: Reproduction and Gender in New World Slavery*, (Philadelphia: University of Pennsylvania Press, 2004), 198.

And yet: she went back.

The question that arises, then, is: Why did Ann Maria Barclay return to George Botts in New Orleans, when she had already gained her freedom and was located in a free territory? Why would a woman who had made her way to a free territory despite her enslavement then return to New Orleans, a city where she would live in the shadow of her slave past? [530]

Asking "Why did she go back?" addresses Barclay's desires over and above the structural pleasures that she might have been exposed to (including the "freedom" that was discussed in Chapter Five). That query presents several challenges. First, the archive refuses to answer questions about Barclay's interior life. Without a diary or other source penned by Barclay, historians are left only with oblique references to her inner life through court documents. Not only have we no documents in which Ann Maria Barclay declared her own feelings, those documents that we do have are products of the system that endangered her very existence. Barclay's ghost lives in what Hartman calls "the daily record of…abuses" so that the "difficult task is to exhume the lives buried under this prose."[531] Second, querying Barclay's desire entangles us in the liberal notion of consent, where desire is the province of liberal subjects and consent forms the bridge between that individual's desires and the outside world. As this project has attempted to show, the scene of racialized sexual commerce throws consent into what Spillers calls "unrelieved crisis."[532]

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[530] This puzzle is inspired by and emerged from Hortense Spillers's 2015 W.E.B. Du Bois Lectures, "Women and the Early Republics: Revolution, Sentiment, and Sorrow" at the Hutchins Center for African American Research at Harvard University, October 14-16, 2015. Spillers's lectures, which centered on sentiment/intimacy and slavery, included a meditation on Sally Hemings. Through an archive of historical fiction, Spillers asked her audience to puzzle with her over Sally Hemings's return to Virginia after spending a period of her early life with Thomas Jefferson in France, a free territory. Her query, "Why did she go back? Why didn't she just run away when she had the chance?" inspires my comments here.

[531] Hartman, "Venus in Two Acts," 6.

[532] Spillers, "Mama's Baby, Papa's Maybe," 76.

The combination of a broken archive, on the one hand, and the entanglement of notions of desire with the liberal subject and her imagined consent reveals the danger embedded in the question of desire. This set of issues funnels the question of this woman's desire into two directions. These analytic restrictions present limited logical options. (I fear that neither of these directions can fathom, to riff on Kathleen Stewart's phrase, "the situation she found herself in.")[533] One: If women of color were not autonomous, individual, liberal subjects, and if desire is the province of autonomous, individual, liberal subjects, then we cannot claim that women of color had desires. Two: If women of color were excluded from the liberal category of consent, but we assume that they did experience desires, then it is possible to imagine desire outside of consent.

The first of these claims erodes the basic presumption that black women historical actors had full human lives. To claim that black women did not or could not experience desire because they were not subjects hailed by liberalism is to flatten their personhood in our historical imagination. That claim imagines that slavery was a totalizing system that perfected its aim of obliterating black souls and personhood. We know this is not true. We know that, Walter Johnson writes, enslaved people "talked, they sang, they laughed, they suffered, they remembered their ancestors and their God, the rhythms of their lives working through and over those of their work."[534] We know that although, Hartman writes, "the archive is…a death sentence," it is only ever hiding "a counter-history of the human, as the practice of freedom."[535] A claim that black women did not experience desire succumbs to an archive that refuses to share them with us.

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[533] Kathleen Stewart, *Ordinary Affects* (Durham: Duke University Press, 2007), 1.
[534] Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge, MA and London: The Belknap Press of Harvard University Press, 2013), 9.
[535] Hartman, "Venus in Two Acts," 2, 3.

The second of these claims, that desire could exist outside of consent, is politically dangerous. Even if we are suspicious of consent as a panacea of sexual safety—as it is my hope this project has asked us to be—it remains politically dangerous to imagine desire outside of consent. It is dangerous to make this theoretical leap because we continue to exist in a political climate in which the fight to recognize the consent of women, who in this time *do* possess the formal legal right to accept or refuse sexual interaction, is both active and urgently necessary. It is dangerous to suggest that desire (and its embedded pleasures) could exist outside of consent in the context of a history in which *precisely that claim* abetted the sexual terrorization of women of color. Even if this claim, this time, refuses to cite that history, it nonetheless resonates with it. Thus while it is necessary to historicize the ways in which the category of consent has not served women of color, and to therefore be cautious of consent's capacity to protect us, we cannot as yet afford to discard consent as a tool of anti-violence work in our political present.[536]

A final problem emerges because asking "Why did Ann Maria Barclay go back?" is another way of asking "What did she want?" Asking what she "wanted" dislocates desire from the other processes that were happening simultaneously in the enslaved woman's life. Asking (only) "what she wanted" imagines a set of desires without context, and forgets that desire always intersected with what she needed, what she was forced to do, what stopped her in her tracks, what she had lost, what she feared, what she forgot, what she could do for her community. This erasure of context is part of the logic of desire, and especially intimate desires, which are easily imagined as exceptional. This is the case within the mythology of erotic desire, especially as it is articulated through vocabularies of "love." The problem with

[536] This reflection on the retention of consent as a political tool is influenced by George Lipsitz's discussion of "rights" in his lecture, "Inured to Suffering: Ferguson as a Failure of the Humanities" (Charles Warren Center, Harvard University, March 27, 2015).

"desire" as a heuristic, then, is that it compresses a complex reality into a binary—to want or not to want—which excludes the many factors that intersect with and influence sentiment. Desire is defined as an expression of a true, pure, ideal feeling, but as I have attempted to show in the balance of this project, it is difficult, if not impossible, to locate pleasure-responses outside of their complex and violent context. If there is no unadulterated affect, how can we describe desire? Instead of imagining desire as a metric for understanding what historical subjects wanted or didn't want in a vacuum, how can we locate the desires of women like Ann Maria Barclay, who existed, to use Lauren Berlant's evocative term, in a state of the "crisis ordinary"?[537]

It is crucial to imagine that freedom and slavery—what we might easily assume she wanted and didn't want, respectively—were not the only things on her mind. It is possible to use other indexes, including the needs, the impulses, the yearnings, the pains, that might have cut across her experiences. Perhaps it is only in the collage of these multiple registers that we can begin to piece together something like desire.

For example, Barclay's circumstance calls us to consider *belonging*. What does it *feel* like to know a place, to have a community? Belonging explains at least one set of reasons that might have motivated Barclay to return to New Orleans, the land of her enslavement. Although Ohio, where Barclay procured her free papers, offered legal freedom, she may not have had meaningful or protective connections there. She may not have known anyone or, specifically, she may not have known any white people who could vouch for her existence. Perhaps it was better, safer, even more pleasurable, for Barclay to return to New Orleans, where she knew the street names, she spoke the language, and, for better and for worse, she was connected to George Botts, a white man who could back her up when she claimed

[537] Lauren Berlant, *Cruel Optimism* (Durham: Duke University Press, 2011), 9.

freedom. In New Orleans, also, she could find a powerful place in society as a slaveholder. She had a place in this world, even if that position was precarious. There are other women in the archive like Ann Maria Barclay, who perhaps sought belonging alongside other forms of pleasurable existence.

And bearing that in mind, it is possible to return to the scene of desire—asking "Why did she go back?"—with a sense of the crisis that was her day-to-day. It becomes impossible to collapse desire or *wanting* with freedom because "freedom" was a complicated category no matter her location. By the same token, it becomes impossible to define her return to New Orleans as simply about desire—something motivated by devotion to Botts, for example. Instead, it becomes possible to imagine that her return, and whatever desires shaped that journey, were bound up in other categories of affective experience, including the pleasures of belonging alongside any intimate desires that she may have experienced.

These final words are not a forthright commitment to speculation, but a curiosity about it. In closing this project, I am struck by what I do not know, perhaps cannot know, and with a set of curiosities both intellectual and ethical: when recovery is impossible, is (moderate, restrained, bounded) speculation the task? As Hartman writes, this practice asks us "to imagine what cannot be verified" and to produce "a history written with and against the archive."[538] We cannot afford to ignore desire, because it points us to the complex personhood of a woman like Ann Maria Barclay. The problems that desire presents, and the impetus toward speculation, may also point to other histories in which impossibility, indiscretion, and irresponsibility collide, other histories that might benefit from this form of methodological unruliness. Thus begins the imaginative methodology that is necessary in the

[538] Hartman, "Venus in Two Acts," 12.

attempt to write the history of sex and slavery that includes—or at least attempts to invoke—the complex personhood of women of color.

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