

## Textiles: Popular Culture and the Law

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### INTRODUCTION

In October 1804, five women gathered in the New York City Mayor's Court to argue over a homespun linen sheet. The case was initiated by Sarah Allingham, who filed charges against Judith Friel, a washerwoman, for stealing the sheet as well as some other bedding. Those charges, however, fail to capture the conflict's complicated dynamics. Allingham claimed that Sally Riley had stolen the items nearly a year earlier, when she had been boarding with Allingham, and then later gave them to Friel, who knew them to be stolen, but would not return them. Allingham nursed her anger for months before she acted, waylaying Friel as she was leaving Rosannah Marara's house, where Friel was picking up dirty laundry. Grabbing Friel's bundle of wash, Allingham rummaged through it on the city street, certain that she would discover her property concealed within. On finding what she insisted was her sheet, Allingham then marched off with it to file charges. Her complaint not only brought Friel into court, but also cast doubt on Marara, who found herself justifying her own claims to the sheet. As Marara explained, she had purchased it from Sally Riley in the house of Margaret Barron earlier in the year, in the presence of Barron and another woman who lived in the neighborhood. Both women showed up to affirm Marara's story, answering questions about the date (they remembered it was the previous winter because there was snow on the ground) and the nature of the purchase (a coarse, linen, homespun sheet priced at six shillings). The court accepted the women's testimony in lieu of a written receipt as evidence of Marara's claims to the sheet, which was the issue that seems to have determined the outcome of the case. Marara could prove

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ownership of the sheet; Allingham could not. Therefore Friel could not have stolen the sheet from Allingham. Case closed.<sup>1</sup>

That determination, however, made little sense, given that both Sarah Allingham and Rosannah Marara were married women, which placed them under the rules of coverture. Recent scholarship suggests that coverture had not yet hardened into the form given to it by Sir William Blackstone, one that subsumed wives' legal identities within those of their husbands and one that historians still use to describe wives' legal status in the late eighteenth and early nineteenth centuries. But even in its less defined, more flexible form, coverture still limited wives' ability to prosecute cases and to own property in their own names.<sup>2</sup> The indictment gave a nod to those rules, identifying the sheet as the property of Sarah's husband and thus situating him as the prosecutor of record. But a rigid interpretation of

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1. People v. Judith Friel, Oct. 8, 1804, District Attorney's Indictment Papers, New York Municipal Archives.

2. Sir William Blackstone's *Commentaries on the Laws of England*, which became one of the most influential legal texts in the new republic, described that "husband and wife are one person in law" and theoretically eliminated married women's rights to act in law, to make contracts, and to own property of any kind. According to Blackstone, husbands retained a life-time interest in real estate that wives brought into the marriage; they could claim their wives' choses in action—instruments of promise and exchange, such as contracts and debt—if they reduced that property to their possession during their lifetimes; and they acquired legal ownership of wives' other personal property. The one exception was paraphernalia, which referred to personal apparel and ornaments. Although husbands legally owned those items during the marriage, wives could will them to whomever they wished, implying a certain kind of control over them that even marriage could not erase. 1 WILLIAM BLACKSTONE, COMMENTARIES \*430 (on coverture); 2 WILLIAM BLACKSTONE, COMMENTARIES \*129-39, \*433-39 (on dower, property). Many historians still cite Blackstone or simply assume his principles when describing married women's relationship to property in the early nineteenth century, even though historians have been arguing that the situation—in the colonial period and the early nineteenth century—was more complicated. See Joan R. Gundersen & Gwen Victor Gampel, *Married Women's Legal Status in Eighteenth-Century New York and Virginia*, 39 WM. & MARY Q. 114, 114 n.2 (1982) ("Scholars continue to cite Blackstone as the 'real' law and then note a few exceptions."). For a more recent critique that also explores how and why Blackstone's vision was normalized, see Holly Brewer, *The Transformation of Domestic Law*, in 1 THE CAMBRIDGE HISTORY OF LAW IN AMERICA: EARLY AMERICA (1580–1815), at 288, 288-323 (Michael Grossberg & Christopher Tomlins eds., 2008).

coverture neither described the dynamics of this conflict nor provided the means to resolve it, a situation that court officials tacitly acknowledged by abandoning it after filling out the obligatory information on the printed indictment form. William Allingham was nowhere to be found in the proceedings and, in fact, had nothing whatsoever to do with the case, which was prosecuted by Sarah Allingham to recover her own property. Similarly, court officials identified Rosannah Marara as a married woman, but did not factor that legal status into their treatment of her relationship to the property in question, which she claimed as her own and which was ultimately recognized as such. For the women involved in this conflict and the court officials charged with resolving it, the question was *which* woman possessed the sheet, not *whether* a woman could possess it. In this case, as in so many others, the legal framework that denied property rights to wives coexisted with other legal norms that recognized married women's control of certain kinds of property, namely textiles.<sup>3</sup> New York City was not unique in this regard. Textiles—cloth and, particularly, clothing—were forms of property that women, regardless of marital status, could buy, sell, and possess throughout the United States in the decades between the Revolution and the Civil War. In this sense, married women were representative of the vast majority of Americans, enslaved and free, who had tenuous claims to property, property rights, or both, but who could, nonetheless, sustain legal claims to textiles.

By shifting the conceptual perspective away from property that the minority owned to property that the majority possessed, textiles recast our view of state formation

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3. Other theft cases involving married women in the New York City Mayor's Court, District Attorney's Indictment Papers, New York Municipal Archives, followed a similar pattern, with the court listing the husband as the owner of the stolen goods and then hearing testimony from the wives and the other parties involved that treated the property as the possession of the wives. So did cases in rural North Carolina and South Carolina, although there were fewer of them. See LAURA F. EDWARDS, *THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH* 137-44 (2009).

in the founding decades of the United States.<sup>4</sup> The current historiography tends to frame analyses of the developing nation state in terms of the kinds of property that white men could own: land, slaves, and other forms of capital. For most Americans, however, those forms of property were completely out of reach. If they could claim anything at all, it was clothing or cloth. That situation has not figured prominently in the historiography, because nineteenth-century U.S. historians have tended to treat such items as disposable goods that held little value, a characterization that is not so much wrong as it is incomplete. The value of cloth and clothing did decline dramatically in this period, as they became mass-produced, and people increasingly treated them as things to be used up, discarded, and replaced.<sup>5</sup> But the process of converting what had been valuable forms of property into cheap consumer goods took much longer than

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4. This Paper is based on the research for a larger, book project, "Only the Clothes on Her Back: Women, Textiles and State Formation in the Nineteenth Century United States." The project is based in a range of archival research from all over the United States, and includes merchants accounts, business records of textile manufacturers and traders, and private correspondence as well as court records.

5. The literature in the colonial period focuses on the spread of consumer goods and their political, social, and cultural meanings. For foundational work in the field, see generally RICHARD L. BUSHMAN, *THE REFINEMENT OF AMERICA: PERSONS, HOUSES, CITIES* (1992); Timothy H. Breen, *An Empire of Goods: The Anglicization of Colonial America, 1690-1776*, 25 *J. BRIT. STUD.* 467 (1986); Timothy H. Breen, "Baubles of Britain": *The American and Consumer Revolutions of the Eighteenth Century* 119 *PAST & PRESENT* 73 (1988). While building on this scholarship, recent work has begun to explore the role of women, the enslaved, and the poor in the networks of trade in ways that position goods as more than just items of consumption. See *infra* notes 7, 12. The work in the nineteenth century has tended to focus on the labor process and social changes that resulted from early industrialization, mass production, and the spread of the market economy. For foundational work, see THOMAS DUBLIN, *WOMEN AT WORK: THE TRANSFORMATION OF WORK AND COMMUNITY IN LOWELL, MASSACHUSETTS, 1826-1860* (1979); KAREN HALTUNNEN, *CONFIDENCE MEN AND PAINTED WOMEN: A STUDY OF MIDDLE-CLASS CULTURE IN AMERICA, 1830-1870* (1986); SEAN WILENTZ, *CHANTS DEMOCRATIC: NEW YORK CITY & THE RISE OF THE AMERICAN WORKING CLASS, 1788-1850* (1986). Subsequent scholarship has traveled in similar paths, focusing on changes in labor or consumption, with the notable exception of work that melds labor history with material culture. See MARLA R. MILLER, *THE NEEDLE'S EYE: WOMEN AND WORK IN THE AGE OF REVOLUTION* (2006); LAUREL THATCHER ULRICH, *THE AGE OF HOMESPUN: OBJECTS AND STORIES IN THE CREATION OF AN AMERICAN MYTH* (2001).

U.S. historians have assumed.<sup>6</sup> In the period between the Revolution and the Civil War, cloth and clothing not only held considerable value, but also served economic purposes beyond their utility or their desirability. Textiles, moreover, acquired those economic meanings because they had distinctive legal qualities: people who could not legally *own* them could still legally *control* them. The legal status of textiles funneled free women and poor men of both races as well as enslaved women and men into their production and trade. That situation, in turn, encouraged the use of cloth and clothing as currency, collateral for credit, and a means to store and accumulate wealth.

The trade in textiles operated both within and outside the laws and legal institutions of the state—that is, state governments and the federal government, the institutions that comprise the state and that share governing authority within it, according to the U.S. Constitution.<sup>7</sup> When people dealt in textiles, they moved in a legal context that overlapped with the state, but that was not completely controlled by it. The laws and institutions associated with the state simultaneously ignored, accommodated, and condemned various elements of the textile trade, without ever bringing this part of the economy fully into its regulatory purview. That situation reveals Americans' complicated relationship to the law as well as the limits of the state's juridical reach in this period.<sup>8</sup> The people who

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6. BEVERLY LEMIRE, *DRESS, CULTURE AND COMMERCE: THE ENGLISH CLOTHING TRADE BEFORE THE FACTORY, 1660–1800*, 95–146 (1997); JOHN STYLES, *THE DRESS OF THE PEOPLE: EVERYDAY FASHION IN EIGHTEENTH-CENTURY ENGLAND* (2007); Beverly Lemire, *Consumerism in Preindustrial and Early Industrial England: The Trade in Secondhand Clothes*, 27 *J. BRIT. STUD.* 1 (1988).

7. Local courts were part of the state, and derived their authority from them. But, as I argued in *The People and Their Peace*, logic of law at the local level diverged from the legal logic that framed state laws. *See supra* note 3. The difference applied, particularly, in public matters, where state law delegated significant authority to local areas. Local courts had much less discretion in matters involving property, even true in public matters involving property, such as theft. In this area, local courts tended to follow state law more closely, although other legal principles filtered into these cases, as indicated by Judith Friel's case. *See supra* note 1.

8. The situation within the United States has resonance with those described in other times and places by historians of empires, who have described and

made legal claims to textiles were the same people who were excluded from the full array of rights necessary for legal standing in the state. Yet they moved more freely in another legal regime that, in the first half of the nineteenth century, overlapped with that of the state. That dynamic allowed a wide range of people to bring their legal experiences—what historians tend to describe as culture, separate from law—into the jurisdiction of the state, making it difficult to separate law and culture.

## I

The retailers and manufacturers of cloth and clothing built their businesses around the fact that everyone—even those without property or even property rights—possessed clothing. The laws followed by state and local governments also recognized that situation, although often indirectly. In this legal realm, clothing was personal property, a status that allowed for wider latitude in ownership than was the case for other forms of property, even for people without property rights. That legal status also reflected and reinforced a cultural context that connected clothing to individuals in ways that did not apply to other forms of property. That was particularly true in the late eighteenth and early nineteenth centuries, when clothing played a central role in defining individual identity and providing the markers that allowed people to navigate social relationships.<sup>9</sup> The cultural

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explored the implications of overlapping legal jurisdictions that do not correspond to the geographic borders of states. See, e.g., LAUREN BENTON, *A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES, 1400–1900* (2010); PHILIP J. STERN, *THE COMPANY-STATE: CORPORATE SOVEREIGNTY AND THE EARLY MODERN FOUNDATIONS OF THE BRITISH EMPIRE IN INDIA* (2011).

9. For interesting discussions of this issue in different contexts, see HALTUNNEN, *supra* note 5; KATE HAULMAN, *THE POLITICS OF FASHION IN EIGHTEENTH-CENTURY AMERICA* (2011); STYLES, *supra* note 6; Sophie White, “*This Gown . . . was Much Admired and Made Many Ladies Jealous*”: *Fashion and the Forging of Elite Identities in French Colonial New Orleans*, in GEORGE WASHINGTON’S SOUTH 86-118 (Tamara Harvey & Greg O’Brien eds., 2004); see also Beverly Lemire, *Second-hand Beaux and ‘Red-armed Belles’: Conflict and the Creation of Fashions in England, c. 1660-1800*, 15 *CONTINUITY & CHANGE* 391 (2000); Jonathan Prude, *To Look Upon the “Lower Sort”: Runaway Ads and the Appearance of Unfree Laborers in America, 1750–1800*, 78 *J. AM. HIST.* 124-59

significance of clothing was one reason why married women, enslaved people, and servants put on stolen clothing when they ran away: they were not just disguising themselves, but trying to change their identities in a very literal sense. Unfortunately, clothing could also betray fugitives, as long as they remained in the area, because they ran the risk that someone would recognize the garments. Sarah Allingham could recall the exact characteristics of a homespun linen sheet nearly a year after it had been stolen. People had even more intimate knowledge of their wearing apparel, which was known to others as well.<sup>10</sup>

In both common law and continental law, married women maintained control over paraphernalia—their wearing apparel and ornaments.<sup>11</sup> In states that followed common law, the presumption was so entrenched that it usually went unremarked, although it was evident in the disposition of estates, which rarely included the clothing of widows. The practice of memorializing legal proceedings in continental law meant that legal officials operating in that tradition were more likely to leave evidence of women's claims to paraphernalia. Such was the case with a New Orleans notary charged with inventorying the estate of Pierre St. Pé. The notary went through the deceased's house room by room, methodically writing down every piece of property that was part of St. Pé's estate. Most of the property was included, since there had been no marriage contract that

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(1991); Lorna Weatherill, *Consumer Behaviour, Textiles and Dress in the Late Seventeenth and Early Eighteenth Century*, 22 *TEXTILE HIST.* 297-310 (1991).

10. Such was the fate of Elizabeth Billings, a widow who worked as a hired servant in South Carolina in the 1790s. When she abandoned her post, she donned a new persona by dressing herself in clothing from her mistress's wardrobe, including a gown, petticoats, "a pair of Ladies florentine shoes," and other accessories. Unfortunately for Billings, clothing posed problems for the same reasons it was necessary: it was personal. Billings had not gotten far before someone recognized the clothes as stolen property and had her arrested. *State v. Elizabeth Billings, 1795, Indictments, County and Intermediate Court, Kershaw County, South Carolina Department of Archives and History.*

11. For Blackstone's treatment of paraphernalia, see BLACKSTONE, *supra* note 2. For the continental tradition in Louisiana, see *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* 334-36 (New Orleans, Bradford & Anderson, Printers to the Territory 1803).

kept specific items in the widow's name. But the notary stopped short in his perusal of one particular armoire, indicating that "the other effects" were "the wearing apparel of the widow." So, as he noted in his inventory, he closed the armoire door and moved on.<sup>12</sup>

Legal authorities emphasized a married woman's ability to reclaim paraphernalia at the time of her husband's death or to dispose of it when she died. But married women used the concept to claim textiles that they produced as well as wore. They traded what they spun, wove, or sewed with each other and with local shopkeepers, often using the proceeds to obtain imported and, as the century progressed, machine-manufactured cloth in patterns, textures, and colors that they could not produce for themselves.<sup>13</sup> In both urban and rural areas, married women also operated stores out of their homes, selling textiles along with groceries and liquor to people in the neighborhood. They bought goods in small lots at auctions, from peddlers, or acquaintances and friends, and then sold them in even smaller lots to customers in their neighborhood. These female-run establishments were popular with people of poor to modest means, particularly women. They were attractive because they extended credit and took payment in kind on terms that larger retailers would not do for all those whose marginal economic position or legal status made it impossible to sue them for default by the laws of the state.<sup>14</sup>

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12. Inventory of Pierre St. Pé, Acts of Hugues Lavergne, vol. 11, October to December 1823, Act 1874, Notarial Records, New Orleans.

13. For particularly illustrative examples of women's involvement in textile production, see Elizabeth Ann Cooley McClure, *Diary*, Virginia Historical Society; Amanda Jane Cooley Roberts, *Diary*, Virginia Historical Society. For a discussion of these diaries and other women who had textile businesses, see Laura F. Edwards, *The Material Conditions of Dependency: The Hidden History of Free Women's Control of Property in the Early Nineteenth-Century South*, in *SIGNPOSTS: NEW DIRECTIONS IN SOUTHERN LEGAL HISTORY 171-92* (Sally E. Hadden & Patricia Hagler Minter eds., 2013); see also MARLA R. MILLER, *BETSY ROSS AND THE MAKING OF AMERICA* (2011); MILLER, *supra* note 5; LINDA L. STURTZ, *WITHIN HER POWER: PROPERTIED WOMEN IN COLONIAL VIRGINIA 134-38* (2002); Laurel Thatcher Ulrich, *Wheels, Looms, and the Gender Division of Labor in Eighteenth Century New England*, 55 *WM. & MARY Q.* 3 (1998).

14. The existing literature tends to locate women's participation in trade in the colonial period. See ELLEN HARTIGAN-O'CONNOR, *THE TIES THAT BUY: WOMEN AND*

Married women's business ventures rested on an expansive interpretation of the property laws that most states followed, which prohibited wives from trading without their husbands' permission, beyond the necessities required for their basic maintenance.<sup>15</sup> When it came to textiles, merchants often assumed the husband's permission based on the fact of the wife's presence in the store. Of course, many shopkeepers knew the women they bought from and sold to well enough to gauge how much leeway to allow. But others regularly sold to female customers they did not know, without asking questions. The practice was clearly evident in New England newspapers, where husbands ran advertisements charging wives with abusing their credit, often specifying cloth and clothing as the source of the problem. The ads created the impression of dissolute women,

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COMMERCE IN REVOLUTIONARY AMERICA (2009); Patricia Cleary, "She Will be in the Shop": Women's Sphere of Trade in Eighteenth-Century Philadelphia and New York, 119 PA. MAG. HIST. & BIOGRAPHY 181-202 (1995); Kristi Rutz-Robbins, "Divers Debts": Women's Participation in the Local Economy, Albemarle, North Carolina, 1663-1729, 4 EARLY AM. STUD. 425-41 (2006); Serena R. Zabin, Women's Trading Networks and Dangerous Economies in Eighteenth-Century New York City, 4 EARLY AM. STUD. 291-321 (2006). But the sources suggest that women continued to trade, often informally, after the Revolution and into the nineteenth century. See Claudia Goldin, *The Economic Status of Women in the Early Republic: Quantitative Evidence*, 16 J. INTERDISC. HIST. 375-404 (1986); Marla R. Miller, *The Last Mantuamaker: Craft Tradition and Commercial Change in Boston, 1760-1845*, 4 EARLY AM. STUD. 372-424 (2006). Women in trade, particularly the trade in groceries, textiles, and liquor, are scattered through the sources. For examples, see Lea & O'Brien Journal, 1784-1786 (Historical Society of Pennsylvania) (women traders buy from them); Margaret Moulder, Ledger, 1794-1833 (Historical Society of Pennsylvania); John Oliver, Account Book (Historical Society of Pennsylvania); see also John E. Howard to William M. Lapsley, Feb. 3, 1810, folder 32, box 1, Lapsley Family Business Records, McAllister Collection, Library Company of Philadelphia (referring to trading with women involved in carpets). Meeting of the Creditors of Clara Larieux, Acts of Hugues Lavergne, vol. 11, October to December 1823, act 1798, Notarial Records, New Orleans, is one of many references to women shopkeepers in New Orleans. The New York City Mayor's Court, District Attorney Indictment Papers, and New York Municipal Archives also contains numerous references to women shopkeepers. For the advantages of trading with local shops and, particularly, with women, see MELANIE TEBBUTT, MAKING ENDS MEET: PAWNBROKING AND WORKING-CLASS CREDIT 37-67 (1983).

15. Edwards, *supra* note 13, at 171-92; Mary Beth Sievens, *Female Consumerism and Household Authority in Early National New England*, 4 EARLY AM. STUD. 353-71 (2006).

unable to control their spending. But the fault also lay with the merchants, whose business depended on selling to married women and who willingly defied existing laws to do so.<sup>16</sup>

The practice of dealing with married women was even more routine in the organized part of the secondhand trade—pawnshops, dealers, and auctioneers. Pawnshops, the most regulated of these businesses, provided short-term credit to the working poor, who regularly pawned property they were not using to make ends meet. The sheer volume of business is staggering. Between August 1838 and February 1839, for instance, John Simpson's New York City pawnshop listed over 27,000 transactions, many from repeat customers. The majority of those pawning property at shops like John Simpson's were women, and most of what they pawned were textiles. City ordinances generally prohibited licensed pawnbrokers from dealing with apprentices and enslaved people. But those prohibitions did not extend to married women, even though, technically, they had no property of their own to pawn. Auctioneers and secondhand dealers followed similar practices, accepting the trade of married women, without inquiring whether they had their husbands' permission.<sup>17</sup>

The ordinances that prohibited licensed pawnshops from dealing with enslaved people did not reflect business practices in the textile trade more generally. In cities, retailers sold wearing apparel to enslaved African Americans as a matter of course. So did businesses in the secondhand market, which bought as well as sold textiles from the

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16. Sievens, *supra* note 15, at 356-57.

17. John Simpson's Record Book, 1838-1839, New York Historical Society. For a detailed discussion of Simpson's accounts, see WENDY A. WOLOSON, IN HOCK: PAWNING IN AMERICA FROM INDEPENDENCE THROUGH THE GREAT DEPRESSION 86, 91, 93-94 (2009); Tebbutt discusses the legal conundrum of pawnbrokers dealing with married women, whose legal status meant that they had not property of their own and prohibited them from trading without their husbands' permission. TEBBUTT, *supra* note 14, at 42-43. According to Woloson, women comprised at least thirty-five percent and as many as seventy percent of John Simpson's customers. WOLOSON, *supra*, at 91. As both Woloson and Tebbutt argue, women traditionally formed the majority of pawnbrokers' customers. *Id.*; see also TEBBUTT, *supra* note 14, at 42.

enslaved.<sup>18</sup> Many storekeepers in the rural South also traded with enslaved people, some of whom carried accounts in their own names and paid them off on their own, in cash, kind, and labor.<sup>19</sup> The sources are filled with references to enslaved people's possession of wearing apparel, beyond the coarse uniform clothing provided by their masters. Many could afford only small items—a handkerchief, an apron, or a shawl. But the enslaved also purchased more substantial items, such as cloth for a gown or a ready-made coat, and even whole outfits.<sup>20</sup>

Enslaved people's accumulation of wearing apparel fell into a legally ambiguous area. In those states that sanctioned slavery, the laws did not extend property rights to enslaved people, although the enslaved still maintained claims to all

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18. The New York Mayor's Court, District Attorney's Indictment Papers, New York Municipal Archives, contains numerous cases in which merchants sold to African Americans they knew to be enslaved or to African Americans without asking whether they were enslaved or not.

19. It was not unusual for rural merchants to keep separate entries for enslaved people as well as free white women, while still attaching them to their masters, husbands, and fathers. *See, e.g.*, Cameron Family Papers, #133, subser. 6.5.1, vol. 73, 1792-1812, Southern Historical Collection, University of North Carolina, Chapel Hill; John W. Harris Papers, Special Collections, Duke University; John U. Kirkland Account Books, vol. 1, #405; Green & Coleman Account Book, 1827-1864, Accession 43842, Business Records Collection, Library of Virginia. Clothing featured prominently in the accounts of free women and slaves at rural stores. To be sure, some masters did give such clothing to the people they enslaved, particularly to domestic servants who held visible posts in urban households. The sources, however, are filled with evidence of enslaved people purchasing clothing for themselves.

20. For the kind of clothing masters gave to enslaved people, see Gerylyn G. Tandberg, *Field Hand Clothing in Louisiana and Mississippi during the Antebellum Period*, 6 DRESS 89, 89-103 (1980). The historiography that emphasizes the cultural meanings of clothing to African Americans, particularly to enslaved African Americans, also makes it clear that enslaved people purchased wearing apparel for themselves. *See, e.g.*, STEPHANIE M. H. CAMP, CLOSER TO FREEDOM: ENSLAVED WOMEN AND EVERYDAY RESISTANCE IN THE PLANTATION SOUTH 78-87 (2004); HELEN BRADLEY FOSTER, "NEW RAIMENTS OF SELF": AFRICAN AMERICAN CLOTHING IN THE ANTEBELLUM SOUTH 137-223 (1997); TERA W. HUNTER, TO 'JOY MY FREEDOM: SOUTHERN BLACK WOMEN'S LIVES AND LABORS AFTER THE CIVIL WAR 4-5, 182-83 (1997); Barbara M. Starke, *Nineteenth-Century African-American Dress*, in DRESS IN AMERICAN CULTURE 66-79 (Patricia A. Cunningham & Susan Voso Lab eds., 1993).

kinds of property, as Dylan Penningroth has shown.<sup>21</sup> Existing case law at the appellate level tended to compromise those claims, but those decisions tended to focus on property other than clothing. The resulting silence had the effect of making enslaved people's relationship to their clothes analogous to that of married women or, perhaps more on point, to that of free servants in England and the colonies, who had traditionally retained possession of their wearing apparel, including clothing given to them by their masters. Like servants, enslaved people took their clothing with them when they were sold. Some were allowed to return to the places where they had been living to collect their remaining clothing before relocating to the households of their new owners.<sup>22</sup> Of course, some masters might have considered clothing to be property they acquired as part of their purchase. But masters and mistresses tended to refer to wearing apparel, even clothing they had provided, as property over which the enslaved maintained control. So did

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21. DYLAN C. PENNINGROTH, *THE CLAIMS OF KINFOLK: AFRICAN AMERICAN PROPERTY AND COMMUNITY IN THE NINETEENTH-CENTURY SOUTH* (2003); see ROBERT OLWELL, *MASTERS, SLAVES, & SUBJECTS: THE CULTURE OF POWER IN THE SOUTH CAROLINA LOW COUNTRY, 1740-1790*, at 141-80 (1998); see also ANTHONY E. KAYE, *JOINING PLACES: SLAVE NEIGHBORHOODS IN THE OLD SOUTH* 103-18 (2007); *THE SLAVES' ECONOMY: INDEPENDENT PRODUCTION BY SLAVES IN THE AMERICAS* (Ira Berlin & Philip D. Morgan eds., 1991); JOSEPH P. REIDY, *FROM SLAVERY TO AGRARIAN CAPITALISM IN THE COTTON PLANTATION SOUTH: CENTRAL GEORGIA, 1800-1880*, at 58-81 (1992); JULIE SAVILLE, *THE WORK OF RECONSTRUCTION: FROM SLAVE TO WAGE LABORER IN SOUTH CAROLINA, 1860-1870*, at 5-11 (1994); LESLIE A. SCHWALM, *A HARD FIGHT FOR WE: WOMEN'S TRANSITION FROM SLAVERY TO FREEDOM IN SOUTH CAROLINA* 57-71 (1997); LOREN SCHWENINGER, *BLACK PROPERTY OWNERS IN THE SOUTH, 1790-1915*, at 29-60 (1990); Betty Wood, *'Never on a Sunday?': Slavery and the Sabbath in Lowcountry Georgia, 1750-1830*, in *FROM CHATTEL SLAVES TO WAGE SLAVES: THE DYNAMICS OF LABOUR BARGAINING IN THE AMERICAS* 79-96 (Marty Turner ed., 1995); John Campbell, *As "A Kind of Freeman"?: Slaves' Market-Related Activities in the South Carolina Upcountry, 1800-1860*, 12 *SLAVERY & ABOLITION* 131-69 (1991); Jeff Forret, *Slaves, Poor Whites, and the Underground Economy of the Rural Carolinas*, 70 *J.S. HIST.* 783-824 (2004); Philip D. Morgan, *The Ownership of Property by Slaves in the Mid-Nineteenth Century Low Country*, 49 *J.S. HIST.* 399-420 (1983).

22. For examples of enslaved people returning to their homes to collect their clothing after sale to a new owner, see *Petition 20782902*, DIGITAL LIBR. ON AM. SLAVERY, <http://library.uncg.edu/slavery/details.aspx?pid=6072> (last visited Jan. 4, 2016); *Petition 21682406*, DIGITAL LIBR. ON AM. SLAVERY, <http://library.uncg.edu/slavery/details.aspx?pid=15540> (last visited Jan. 4, 2016).

other whites. The moments when enslaved people's claims to textiles were legally questioned are particularly revealing in this regard. When accused of theft, it was because a specific item had gone missing, not because possession of cloth or apparel was suspicious in and of itself.<sup>23</sup>

## II

Because much of the scholarship on the nineteenth century treats textiles as consumer goods, the emphasis has been on their distribution through retail vendors. Retail, however, formed only one piece of the textile trade. Far more important—particularly to married women, the enslaved, and the poor—was the secondhand market, which included not just used textiles, but also unused cloth and clothing that circulated outside the purview of established wholesalers and retailers. This part of the economy, while vast and highly visible at the time, has left few traces in the sources, largely because so much of the business was done without the benefit of written records. The exception was licensed pawnshops, which were usually required to keep records; few of those records, however, have survived. In addition to pawnshops, which took in used goods as collateral, urban areas had auction houses and dealers, which sold off goods from estates and failed businesses, property that had been seized by local authorities, and items that individuals wanted to sell. Rural areas had less frequent, but similar auctions. And those venues were only the most organized part of the secondhand trade. Much of the trade in textiles was conducted through

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23. Such was the experience of Sukey, a slave in Camden, South Carolina. Sukey found herself in court, charged with stealing three yards of bottle green cloth, two yards of brown linen, one skein of black silk thread, and a quarter of a yard of black satin. Given that Sukey was enslaved, with no property rights, it might seem like possession would be proof enough of guilt. But it was not. It was so common to see enslaved people, particularly women, with textiles that people who had seen Sukey in possession of the cloth had not given it any thought initially. It was only after the daughter of a storeowner claimed that similar cloth had been stolen that Sukey's possession of the goods became suspicious. The case rested on proving that Sukey had been found in possession of *stolen* property and that, therefore, she was the thief. *State v. Sukey*, #8-1, #9, 1812, Court of Magistrates and Freeholders, Kershaw District, South Carolina Department of Archives and History.

peddlers, street sellers, and venders who sold at local markets, in their homes, or as part of other businesses, such as boarding houses and taverns. Individuals also sold cloth and clothing on an ad hoc basis, when they had goods and needed to trade for something else. This part of the trade is extremely difficult to track in the existing sources. For instance, the only reason why there is a record of Sarah Riley's sale of a sheet to Rosannah Marara is because another woman claimed the sheet and filed charges.<sup>24</sup>

Textiles served multiple economic purposes in the secondhand market. Rosannah Marara paid the equivalent of six shillings for a sheet, which she apparently kept and used. But the sheet also could be turned into cash at a pawnshop, an auction house, or by selling it to another woman in the neighborhood. In fact, cloth and clothing routinely circulated without fulfilling the material functions for which the items were intended. In New York City, Mingo Bowler, for instance, gave John Primrose muslin and cassimere (a type of wool cloth) in partial payment on a thirty-dollar debt. Primrose then took it to a market vendor to sell for him, agreeing to take payment in a combination of goods and cash. Whoever bought the fabric from the market vendor might have continued the cycle, passing it along to someone else to satisfy another obligation.<sup>25</sup> The executive committee of Philadelphia's Prison Society underscored the ubiquitous use of cloth as currency in addressing the inmates' poor state of dress, which was "partly owing to the length of time before trial [and] partly to the easy access, by various

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24. Instances of individuals trading with each other on an ad hoc basis appear regularly in the records of New York City Mayor's Court, District Attorney's Indictment Papers, New York Municipal Archives. The same happened in rural areas, although the transactions tended to be among people who knew each other and, therefore, only occasionally left traces in the records. The diaries of Elizabeth Ann Cooley McClure and Amanda Jane Cooley Roberts, both with the Virginia Historical Society, are illustrative. *See supra* note 13.

25. *People v Bowler*, 1805, District Attorney's Indictment Papers, New York Municipal Archives; *see also* HARTIGAN-O'CONNOR, *supra* note 14, at 114 (noting that women, the focus of her study, were more likely to trade in cloth, because of the legal restrictions on other forms of property).

means, to spirituous liquors, for which their cloths are disposed of.”<sup>26</sup>

Textiles were also a reliable way to accumulate and store wealth. For married women and enslaved people without property rights and for poor people whose claims to property could be tenuous, cloth had distinct advantages. Unlike other forms of property and instruments of exchange their possession of it was unremarkable and unlikely to raise suspicion. It also worked within the material circumstances of their lives. As historians of early America have argued, the actual living conditions of most people in the late eighteenth and early nineteenth centuries are best described a “housefuls.” In urban areas, families with their own houses lived cheek by jowl with servants, extended family, and boarders. Similar circumstances obtained in rural areas, where conditions could be even more crowded because the housing stock was so rudimentary.<sup>27</sup> Without a set space to call one’s own, it was difficult to store property or to keep it safe. Thus the ubiquitous references to chests and trunks, which served mobile storage units for all those without a house or a room of their own. Even wives and daughters who lived in the houses of their husbands and fathers had chests or cupboards, where they cordoned off their property and kept it separate from that of their household heads.<sup>28</sup> Within these chests, trunks, and cupboards lay textiles: they were relatively light and easy to store, in terms of the ratio of weight to value; they could be used—worn or slept on—when not needed for a loan or trade; and they could be converted easily into other goods. They also tended to hold their value,

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26. Representation to the Supreme Executive Council, Minutes, vol. 1, Jan. 12, 1789, Pennsylvania Prison Society Records, Historical Society of Pennsylvania. I want to thank Magaret Abruzzo for drawing my attention to this reference.

27. HARTIGAN-O’CONNOR, *supra* note 14, at 13-38. Much of the literature relies on the concept of “households,” which actually refers to the legal configuration of domestic authority, with a male household head and his dependents, not the material circumstances of everyday life.

28. Laurel Thatcher Ulrich, *Hannah Barnard’s Cupboard: Female Property and Identity in Eighteenth-Century New England*, in *THROUGH A GLASS DARKLY: REFLECTIONS ON PERSONAL IDENTITY IN EARLY AMERICA* 238-73 (Ronald Hoffman, Mechal Sobel, & Fredrika J. Teute eds., 1997).

at least in the short term, which made them more like coins than bank notes, the value of which not only fluctuated over time, but also diminished the further they traveled from the point of issue.<sup>29</sup>

The exchange of textiles in the secondhand market followed accepted, well-known practices. Elements of the secondhand trade were so localized that the dynamics can seem personal, centered primarily on the maintenance of human relationships, rather than the pursuit of profit. Given that situation, it is tempting to apply the term “moral economy” to those dynamics. But that concept, with its sharp distinction between morals and the market, does not really describe the trade in textiles, which was based in people’s deep familiarity with abstract conceptions of value, supply, and demand as well as their embrace of accumulation and accountability. The secondhand market accommodated individual circumstances primarily as a means of facilitating trade and amassing value, in both social and economic terms.

Transactions in the secondhand market had slack that was uncharacteristic in the business world governed by the laws of the state, particularly for people without the ability to contract debts or, consequently, to obtain credit that was recognized in that legal arena. When Rosannah Marara said that she gave six shillings for the sheet that she purchased from Sarah Riley that did not mean that she paid it for it in actual shillings, let alone at that moment. Six shillings was the value to which they agreed and which could have been settled in a number of ways, often at a later date. The women who ran small stores out of their homes worked from a complicated set of accounts, usually in their head, which involved payment over extended periods of time, in cash, kind, and labor.<sup>30</sup>

Exchanges also took the form of borrowing, creating dense webs of obligation in urban neighborhoods and rural

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29. For the difficulties that fluctuating notes posed to working people, see SETH ROCKMAN, *SCRAPING BY: WAGE LABOR, SLAVERY, AND SURVIVAL IN EARLY BALTIMORE* 174 (2009).

30. Women who traded rarely kept written accounts. *See supra* note 24. Many of the women shopkeepers who appeared in the New York City Mayor’s Court District Attorney’s Indictment Papers, New York Municipal Archives, were illiterate.

communities. When someone had textiles of value that they could spare, it was common to leverage their value. Individuals pawned such items, through a licensed shop or a vendor who took goods in payment on accounts. They also lent them to someone else. Those people, in turn, wore the item or otherwise put it to use in their households, pawned it, or put it back into the borrowing network. In this sense, lending and pawning constituted “uses” of textiles as much as wearing a shirt or putting a sheet on a bed. Problems arose when trust fell apart, particularly when circumstances suggested that someone who could return an item or make payment on a debt was avoiding those obligations.<sup>31</sup>

Given the kind of flexibility that characterized economic exchanges in the secondhand market, it could be difficult to distinguish between borrowing and theft. Eliza Cauchois inadvertently captured the ambiguity when responding to charges of stealing a shift—a woman’s undergarment, usually made out of white linen or cotton. “Sarah Bliss,” she stated, “loaned her the said shift and therefore she did not steal it.”<sup>32</sup> When weeks or months lapsed between the time that property had been stolen and charges were filed, it was often a case of borrowing gone awry. That Sarah Allingham filed charges nine months after her sheet had gone missing, even though she knew who had taken it, suggests that she may have initially loaned the sheet, with the expectation that it would be returned. It was only after she found out that it

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31. For discussions of borrowing, see Penelope Lane, *Work on the Margins: Poor Women and the Informal Economy of Eighteenth and Early Nineteenth-Century Leicestershire*, 22 *MIDLAND HIST.* 85-99 (1997); Lynn MacKay, *Why They Stole: Women in the Old Bailey, 1779-1789*, *J. SOC. HIST.* 623-39 (1999). Similar to borrowing was the shopping that wealthier women did for each other, in the sense that the procurement of cloth and clothing served to solidify social ties. See Ellen Hartigan-O'Connor, *Abigail's Accounts: Economy and Affection in the Early Republic*, 17 *J. WOMEN'S HIST.* 35-58 (2005). Dylan Penningroth has made a similar argument in reference to the social meanings of property among the enslaved. PENNINGROTH, *supra* note 21.

32. *People v. Eliza Cauchois*, Dec. 8, 1803, District Attorney's Indictment Papers, New York Municipal Archives. See MacKay, *supra* note 31, for the relationship of such borrowing networks to theft.

was in possession of a third party that she realized she was unlikely to get it back.<sup>33</sup>

Borrowing was so pervasive that some people did it without asking permission. They “borrowed” from the chests, drawers, and storerooms of the houses in which they boarded, with the intent of replacing the items. When they failed to do so and were charged with theft, their explanations hinged on the distinction between taking and stealing: they admitted to taking the goods, but insisted that they did not steal them. Such was the case of Benjamin Chamberlain, who was accused of stealing a coat. He admitted that “he did take the . . . [c]oat” and then “pledged” (pawned) it. By implication, he intended to return it and, therefore, had not stolen it.<sup>34</sup> The distinction Chamberlain made between taking and stealing also rested on expectations that textiles were property that could and should be put to use. Why leave something of value just lying around?

The operation of the secondhand economy confounded aspiring merchants, the majority of whom were white and male, who followed the laws of property as laid out by the State. As they saw it, customers were supposed to be *consumers*. Consumers bought new textiles and paid for them at the point of purchase with cash or through book credit, carefully laid out in written accounts, which enabled prosecution by state law should the debt go into arrears. Consumers then took their textiles home, where they set them around or used them up. Either way, they were supposed to come back and buy more, not turn them into currency, collateral, and savings. Storekeepers’ pursuit of theft is telling in this regard. New York City retailers waged a constant battle against petty pilfering, with owners and their clerks chasing suspected thieves down the street, tackling them, wrestling them to the ground, searching them,

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33. *People v. Judith Friel*, Oct. 8, 1804, District Attorney’s Indictment Papers, New York Municipal Archives.

34. *People v. John Benton*, Apr. 7, 1800, District Attorney’s Indictment Papers, New York Municipal Archives. It was customary for tradespeople, particularly those in the clothing trades, including washerwomen, to pawn goods that belonged to their customers, but had yet to be delivered to them. The practice was not considered theft. See *TEBBUTT*, *supra* note 14, at 72-73.

and then hauling them off to file charges—even when they recovered the lost goods. The effort expended seems way out of proportion to the severity of these offenses—a silk handkerchief, a rough shirt, or a cheap pair of shoes.<sup>35</sup> But prosecution was about enforcing a particular property regime, one that conflicted with the practices that governed the possession and exchange of textiles in the secondhand market.

### III

The state's position on textiles, however, was anything but consistent. While local courts prosecuted the cases of merchants and manufacturers, they also acted on behalf of people like Sarah Allingham, who enlisted the courts to enforce their vision of property. To complicate matters, many merchants and manufacturers maintained divided legal loyalties when it came to the state's regulation of property. They depended on the business of people with tenuous claims to property and without property rights, as defined by the state. They also operated in a context in which the state was not the only, or even the most dominant figure. The textiles that people bought and traded, even in the secondhand market, came from all over the world. While global in reach, the textile market was composed of numerous localities, with specific people, circumstances, cultural practices, and social networks that determined the quality, quantity, and price of what was bought and sold. In fact, merchants used the term "market" to refer to both aspects of the trade: the abstract market that was located nowhere and the geographically specific markets, often actual physical locations as designated in local ordinances, located particular towns, cities, or regions. In their correspondence, merchants moved from one sense of the market to the other, without acknowledging the transition. They routinely passed along information about the prices of goods in particular cities, as if those prices were set by impersonal forces. The same letter

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35. District Attorney's Indictment Papers, New York Municipal Archives. Merchants were so concerned with theft that they would drop what they were doing to intervene when they saw something suspicious at a neighboring establishment.

would also discuss the particular state of the local market. “We have the Calcutta goods (brightly printed cottons from Calcutta, India, which were popular in the “southern market”),” wrote the firm of Talcott and Parsons in New Orleans to Brown and Ives in Providence, “but no prospect of sales at present, this market is glutted.”<sup>36</sup>

Too much of the wrong thing was even worse than too much a good thing. Merchants and manufacturers had to know their markets, and they expended considerable effort researching the localities where they hoped to trade and then shuttling textiles around the globe in hopes of finding buyers. Goods that sold in England did not necessarily sell in New York. Goods that sold in New York did not necessarily sell in Philadelphia. Goods that sold in Philadelphia did not necessarily sell anywhere else. “I am sorry that I have not the pleasure of communicating to you something [sic] more favourable respecting your goods,” wrote an agent in Venezuela to a Philadelphia merchant, but “I expect I shall have great difficulty to Dispose of them as they do not Answer to the market.”<sup>37</sup> Places closer to home were equally impenetrable without local guides. That was why merchants cultivated contacts in smaller cities in the South, Midwest, and West, all of which were presumed to have their own “markets.” When one Philadelphia merchant sent shipments of goods to Augusta, Georgia, and Nashville, Tennessee, to test the markets, he sent silk that would not sell in Philadelphia, not just because he was trying to offload surplus goods (although that was a consideration), but also because he was certain that the markets in those cities were different.<sup>38</sup>

All those involved in the textile trade regularly moved between their local markets and the global market without really having much to do with the state. The people

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36. Letter from Talcott and Bowers to Brown and Ives (Jan. 20, 1817) (on file with John Carter Brown Library, Brown University).

37. Richard Gray, 1809, (JBL), folder 23, box 1, Lapsley Family Business Records, McAllister Collection, Library Company of Philadelphia. Gray was writing from La Quira, Venezuela, but the same held for the markets in the United States.

38. Letterbook, 1810-1825, Historical Society of Pennsylvania (particularly the letters from pp. 48-65).

enmeshed in these networks also experienced those spaces—local, national, global—differently from how that experience is imagined in conventional historiographical frameworks, which tend to characterize localities as isolated places, subordinated to the laws of the nation state and global economic forces (both of which were bigger than and separate from localities). Such a perspective upends some of the basic historiographical wisdom: that free women and the enslaved had little experience with or relationship to property because state and federal laws limited or prohibited property ownership for them; that the place of women and poor people within the developing capitalist market was solely as exploited labor; that these people's relationship to law and governance was primarily one of exclusion; that local areas and the people who lived there were provincial and unrepresentative of broader historical patterns; and that the experiences of propertied white men are the formative and representative ones of the nineteenth-century United States, such that the history in this period can be told in terms of the extension to marginalized groups of rights and privileges enjoyed by those white men.

Factoring in the presence of the textile market also changes our view of the relationship between culture and law. What we have conceived of as culture may have more to do with law than we thought. The United States, as a nation, developed in relationship to experiences with law, property, and government that Americans acquired outside the juridical purview of the State. When Americans did interact with the legal power of the State, as they increasingly did in the years during and after the Civil War, they brought those experiences with them. They often expressed themselves in the legal language of the State: the language of rights, of civic belonging, and the laws and duties of citizenship. But, as we know from recent scholarship, the content of their claims did not always match the formal definitions of terms that they used, at least not as those terms were defined within governing institutions at the state and federal levels. Americans made all kinds of substantive claims on the federal government during and immediately after the Civil War—claims that were outside the federal government's jurisdictional scope, but that nonetheless suggest experience with property and law gained elsewhere. Americans who

could not own property, for instance, had a sophisticated grasp of value and economic exchange such that they could readily translate goods and labor into abstract, commensurable units—not an easy concept or set of calculations. Americans who had no rights also had a sophisticated understanding of law as a sovereign authority that should regularize economic exchange and social relations. That was because those Americans imagined lives *within* the juridical confines of the nation state that resembled the one that they had lived *outside* it: a world where they could claim their labor, possess property, and define their own destinies. Those dreams and experiences were of America but not of the state.