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UN/RE/DIS COVERING SLAVE BREEDING IN THIRTEENTH AMENDMENT JURISPRUDENCE

Pamela D. Bridgewater*

I. INTRODUCTION

The traditional story of slavery in North America, specifically the United States, is one of forced labor. The unconstitutionality of involuntary servitude pervades the doctrine of the Thirteenth Amendment. Our legal culture generally recognizes that forcing people to work under certain conditions violates the Thirteenth Amendment. While the institution of slavery consisted of a carefully constructed web of conditions that included forced labor but was not limited to that alone, the Thirteenth Amendment’s potential to reach those conditions is yet to be fully realized.

The following discussion suggests that, while forced labor is the commonly thought of and protected against aspect of slavery, the institution also consisted of reproductive exploitation via forced sex and forced reproduction and the doctrine designed to protect against slavery should be broadened to recognize such conditions.

THE LOST CHAPTER: REPRODUCTIVE AND SEXUAL EXPLOITATION DURING SLAVERY

Traditional historians have largely overlooked the sexual and reproductive exploitation of female slaves in the story of American slavery. Indeed the slave experience has only relatively recently become a part of that story. The work of revisionist historians in the late 1970s and 1980s contributed a great deal by focusing on the lives of slaves and the impact of slavery on their descendants. However, even under this new approach, the experience of female slaves was only considered in the periphery.¹ When the specific issue of slave breeding finally was addressed, the initial debate was over whether

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¹  See ANGELA Y. DAVIS, WOMEN, RACE & CLASS 3-4 (1983) (noting the lack of attention historians have paid to the special situation of female slaves).
it had actually occurred. Due to the work of post-revisionist historians who focus on the female slave experience, the discourse around slave breeding and the female slave experience has shifted dramatically. Discussion is no longer limited to proof of existence, but also to the intricacies of a practice that consisted of sexual domination and reproductive exploitation designed specifically to facilitate, economically and psychologically, the institution of slavery.

From their work it is now recognized that, from the African woman’s brutal introduction to the Americas, her reproductive destiny during slavery was controlled by a culture based on discrete class, race and gender distinctions.

Traditional slavery stories’ failure to incorporate slave breeding affects the legal doctrines created to respond to the slave experience and the pursuit of reproductive freedom. These doctrines, as another form of narrative, developed without meaningful consideration of the impact of these incomplete historiographies. In exploring reproductive and sexual abuse of female slaves within the contexts of the institution of slavery and the American experience of reproduction and the fight for reproductive liberty, I will also illustrate how the legal doctrines developed to end slavery and to secure reproductive rights would be significantly impacted if this history were infused in the doctrine.

Part II of this section describes the female slave experience and the role of reproduction in the institution of slavery. I begin with a discussion of the history of reproductive and sexual abuse during the American slavery era. I then discuss the practice and methodology to illustrate that slave breeding was an integral aspect of what it meant to be a slave during this era. Next, I examine slave breeding’s role in the institution of slavery as well as the ways

2. There are three basic positions on the existence of slave breeding: (1) slave breeding did not occur; (2) slave breeding was an occasional practice or was occasionally profitable; and (3) slave breeding was a common practice designed to increase slaves and slave profitability. See generally Gerald Norde, From Genesis to Phoenix: The Breeding of Slaves During the Domestic Slave Era 1807-1863 and its Consequences (1985) (unpublished Ph.D. dissertation, University of Delaware (on file with author) (discussing theories interpreting evidence of slave breeding).

3. See, e.g., JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM: A HISTORY OF AMERICAN NEGROS 177 (1st. ed. 1947). Although his work does not deal specifically with the female slave experience, John Hope Franklin was one of the first historians to recognize the social consequences of breeding slaves. See id. In a later edition, Franklin describes slave breeding as “one of the most fantastic manipulations of human development in the history of humanity.” JOHN HOPE FRANKLIN & ALFRED MOSS, JR., FROM SLAVERY TO FREEDOM: A HISTORY OF AMERICAN NEGROS 115 (7th ed. 1994).

4. See DEBORAH GRAY WHITE, AR’NT I A WOMAN: FEMALE SLAVES IN THE PLANTATION SOUTH (1990) (noting that unlike males, female slaves traveled the Middle Passage unchained so slave traders could sexually exploit them).

5. See generally “WE SPECIALIZE IN THE WHOLLY IMPOSSIBLE”; A READER IN BLACK WOMEN’S HISTORY (Darlene Clark Hine et al. eds., 1995).

in which it influenced and was influenced by slave society and legal culture during slavery. After briefly discussing the economic analyses that establish slave breeding as a viable and profitable economic endeavor, I discuss the economic indicators that suggest that the practice was well established in the South after the close of the international slave trade. I end Part II with a discussion of the legal justifications and protections for slave breeding and then explore the extralegal methods of slave resistance to breeding as indicative of the substantial concern female slaves felt about reproductive control.

In Part III, I examine the potential impact of this history on the traditional slave narrative. In integrating the chapter of slave breeding into the story of slavery and reproductive rights, I explore the ways in which the stories are enhanced and thus become better representations of the relationship between slavery and reproduction in America. In the next discussion, I briefly outline the doctrinal hallmarks of the Thirteenth Amendment to illustrate its stark lack of application to reproductive issues and suggest how it might be enhanced by the history of slave breeding. Finally, in Part IV, I share my conclusions and observations regarding the future of the historiography of the female slave experience and its place in the story of slavery, emancipation, and reproductive freedom.

II. FEMALE REPRODUCTIVE SLAVERY: THE PRACTICE AND METHODOLOGY OF SLAVE BREEDING

Absent from the traditional story of slavery is the fact that slave breeding was an integral component of slavery and the slave experience for the majority of the female slave population. In order to better position slave breeding within the context of the larger story of slavery, the following discussion describes the distinct ways that slave owners enslaved African females and controlled their reproductive capacities in order to further their economic and social interests and further instill their dominion of female slaves.

A. Female Slavery and Slave Breeding

From the beginning, American slavery was a gendered experience for female Africans. Sexual exploitation of females aboard the slave ships bound for the colonies was widespread. Female slaves quickly realized that their particular gendered form of slavery would continue once they left the ships.

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7. WHITE, supra note 4, at 64-67. While initially enslaved men outnumbered women 2:1, by the end of slavery in America the population of female slaves outnumbered men. Id.
8. Id. at 63.
Enslaved females headed for the auction block were raped, fondled, and forced to remove their clothing for inspection by crowds of prospective buyers. Once sold to their respective owners, the female slave in America experienced slavery both generically and in ways uniquely female. They were expected to do the same work as male slaves while carrying the additional burdens based on their being women. For example, enslaved females worked in the fields as well as performed housework inside their owners' homes. With regard to fieldwork, slavery was genderless; the fieldwork for women was as grueling as that for male slaves. They did not enjoy the benefits of womanhood that many of their white counterparts did. They were expected to work as hard and as long as their male counterparts.

However, female slaves' sexual and reproductive uniqueness made them vulnerable to particular modes of enslavement. From the beginning of slavery, in addition to the general and daily dehumanization of being enslaved, their condition included sexual coercion. Male slave owners' control over female slaves, as well as female slaves' sexual vulnerability to all men, often manifested itself in the form of rape and other sexual abuse. Such sexual domination facilitated the economic and physical exploitation of female slaves and often led to another form of exploitation with physical and economic implications—coerced reproduction. Although the value of female slaves was not initially determined by their ability to reproduce, after the close of the international slave trade in the mid-eighteenth century, the only legal way to increase one's slave population was through reproduction. While slavery still included the non-reproductive labor performed, it now focused on the bearing, nourishing, and rearing of children to continually replenish the slave labor force.

9. See id. at 62 (noting that "within the institution of racial slavery there were two systems, one for women, the other for men).


11. See DAVIS, supra note 1, at 4. Slavery's genderless distinction regarding fieldwork began in the slaves early years, i.e., there was no distinction made in the type of work boys and girls were expected to perform. Id.

12. Id. at 7.

13. Id.


15. See DAVIS, supra note 1, at 7. See also Norde, supra note 2, at 172.

16. DAVIS, supra note 1, at 7.

17. See Norde, supra note 4, at 39. The Federal Act of 1808 significantly curtailed the importation of African slaves; however, the quantity of slaves in America "increased 500 percent in a period of sixty years following the prohibition." Id.

18. DAVIS, supra note 1, at 6-7. See also WHITE, supra note 4, at 68.

19. See WHITE, supra note 4, at 69 (stating that slavery "placed [a premium] on the slave woman's reproductive capacity).
Fundamentally, slave breeding can be thought of as a type of animal husbandry\textsuperscript{20} wherein the slave owner, much like a mule breeder, controls and manages reproduction in order to realize a profit from his initial economic investment through the sale or use of the resulting animals.\textsuperscript{21} This operational definition of slavery recognizes that since the slave was the property of the slave owner—much like a cow, horse, chicken or mule—the same propagation methods were available to him in order to increase his ownership interest.\textsuperscript{22} However, this description, while technically accurate in some contexts, is based on an insufficient understanding of the extent and type of encouragement necessary to breed humans as opposed to animals.\textsuperscript{23} It also understates the interference of slave owners in the conjugal, sexual, and reproductive lives of other human beings in order to increase economic profit and maintain the system of slavery.\textsuperscript{24} Further, this description fails to adequately convey the female slaves’ unique experience within slavery’s complex web of sexual and reproductive subordination.\textsuperscript{25}

The more factually complete definition of slave breeding describes the practice as a systematic mode of enslavement which was based on the sexual and reproductive exploitation of female slaves made possible by force, coercion and oppression—all done for the socio-economic uplift of slave owners.\textsuperscript{26} This definition is based on an economic model of slavery that is premised on the understanding that slave owners, concerned with maximizing profits, were aware that their slaves, as chattel, could be subjected to whatever conditions, practices or processes were necessary to achieve their economic objectives and solidify their domination.\textsuperscript{27}

\textsuperscript{20} See Norde, supra note 2, at 110-11. While some historians object to the use of the term “animal husbandry” because it suggests the use of barnyard techniques, Norde defines animal husbandry as the management and control of a branch of agriculture where the \textit{sin qua non} is the breeding of domestic animals. \textit{Id.} See also \textsc{Richard Sutch}, \textsc{The Breeding of Slaves For Sale and the Westward Expansion of Slavery, 1850-1860} 14 (1972).

\textsuperscript{21} \textsc{Lewis C. Gray}, \textsc{History of Agriculture in the Southern United States to 1860} 63 (1933).

\textsuperscript{22} Norde, supra note 2, at 110-11.

\textsuperscript{23} See Sutch, supra note 20, at 14 (noting that “[s]lave breeding was dehumanizing [and] it needed to be in order to allow the slave owners’ interference into the sexual life of his slaves for the sake of his own profit”).

\textsuperscript{24} Norde, supra note 2, at 111. Since slaves were also human, they presented more breeding alternatives than with other animals. \textit{Id.} The slave owner, or his agents, could propagate with the slave or the slave could propagate with another slave. \textit{Id.}

\textsuperscript{25} Sutch, supra note 20, at 4.

\textsuperscript{26} \textit{Id.} at 14.

\textsuperscript{27} \textit{Id.}
B. Methods

Generally, slave owners’ interest in increased slave reproduction was furthered through two methods. The most common method of slave breeding was a strict system of punishments and rewards. Although slave breeding required slave owners to dehumanize slaves and view them as commodities existing solely for the master class’s economic benefit, slave owners were nevertheless aware of the slaves’ humanity.28 Given this awareness, slave owners often appealed to the female slaves’ interest in avoiding severe punishments and their interest in earning rewards. Second, slave owners recognized the utility of sexual abuse and community influence in achieving satisfactory reproductive rates from their female slaves.

1. Punishments and Rewards

Not unlike her male counterpart, nearly every aspect of the female slave’s life was governed by her owner and his agents. As such, the threat and use of punishments, physical and otherwise, were ever present as a way to increase reproduction.29 In most cases, the female slave understood this vulnerability and reproduced often in order to avoid the wrath of those who exercised control over her life.30

There is evidence that the type, severity, and frequency of punishments received by female slaves were directly related to the increased interest in slave reproduction. The treatment of infertile slaves highlights the relationship between reproduction and increased punishment.31 Female slaves who did not yield to the reproductive wishes of their owners were often subjected to a heightened degree of cruelty,32 regardless of whether it was because they choose not to or because they did not possess the reproductive capability.33

28. Id.; Norde, supra note 2, at 30.
29. White, supra note 4, at 102.
30. See Resistance, in WE ARE YOUR SISTERS: BLACK WOMEN IN THE NINETEENTH CENTURY 56-69 (Dorothy Sterling ed., 1984). A number of female slaves did choose to resist the sexual and reproductive exploitation of the master class. Id. Whether it was by murdering their owners, running away, infanticide or self imposed abortions, it is clear that there were some female slaves who thought it better to risk personal safety than to add to the slave population. Id.
31. See generally Jennifer Wriggins, Note, Rape, Racism and the Law, 6 HARV. WOMEN’S L.J. 103 (1983). Infertile female slaves offer the best example because, as discussed infra, female slaves who attempted to exercise reproductive autonomy were often raped or otherwise forcibly impregnated. Also, considering the treatment of infertile slaves is useful due to the difficulty in distinguishing the reasons for punishment. Id.
32. See White, supra note 4, at 100-02. Slave owners also had the power to present sticks instead of carrots if slaves did not cooperate with reproduction directives. Id. While sale of infertile women was a major stick, some resorted to outright force to induce reproduction. Id.
33. See Herbert G. Gutman, THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750-1925 80 (1976). We now know that many slave women were infertile or unable to carry babies to term. Id. There
An infertile female slave became the pariah of the plantation. While contempt held for infertile slaves often resulted in abuse as punishment, being placed on the slave market and separated from family and friends was also a form of punishment for infertility. Further, slaves purchased for breeding who could not fulfill their intended purpose were considered an economic loss. In an effort to regain their initial investment costs, many displeased slave owners sold infertile slaves to unsuspecting buyers. Unless the sham was discovered, the slave’s new owner was likely to punish the slave for insolence.

However, more often than resorting to punishment, slave owners opted for a rewards system to coerce female slaves into reproducing. Slave owners offered gifts such as dresses, more food, and less work. Further, some slave owners made good on their promises to free female slaves after the slaves gave birth to a certain number of children. In light of most slave owners’ interest in increasing the slave population, female slaves knew that surrendering control over their reproductive capacity was a way to avoid punishment as well as to better the material conditions of their lives and those of their families and community.

Although breeder slaves were often able to improve the conditions of their lives by reproducing frequently, many were aware that receipt of benefits was directly related to their ability and willingness to further the slave owner’s interests in reproducing slaves and maintaining slavery. The benefits that breeder slaves received for reproducing were correlated to the benefit to the larger social order aimed at maintaining the institution of slavery.
example, when a pregnant slave woman was spared brutal beatings or excused from fieldwork, the leniency she received was often due to her owner's concern for the well-being not only of her as his property, but also of the property interest growing within her. The interest being protected was the increase of wealth and the maintenance of the existing social structure in order to facilitate further increase of wealth. The tokens of the slave owner's gratitude given to slave mothers served to perpetuate the notion that childbirth was good for him and therefore good for her. However, it is important to note that the calculus for determining "good" included only one factor: the interests of the master class, both individually and collectively.

2. Cultural Validation of Slave Breeding

Aspects of the culture of the slave South justified widespread sexual attacks on female slaves. The first facilitating factor was the socially accepted view of female slaves as deserving of sexual abuse because of their allegedly heightened sexual appetites and lascivious natures. The second factor was the lack of legal protection for female slaves against sexual assault. The third factor was the presence of laws that effectively encouraged the sexual assault of female slaves. These three factors combined to validate a slave culture that based its needs for labor on unlimited sexual access to female slaves. The following discussion addresses how the culture of sexual abuse facilitated the practice of slave breeding.

The white public imagination of female slaves' sexuality played an important role in the facilitation of slave breeding and the maintenance of slavery. Female slaves were forced to pose nude and were often fondled on the auction blocks. Incidents like these gave rise to the popular belief that female slaves were without morals or decency. With this understanding of female slave sexuality, sexual abuse was considered justified by the perpetrators and desired by the victims. Increased interest in the reproductive capacities of female slaves was another justification for sexual abuse fueled by the existing belief that female slaves had high sex drives and that their multiple births were but another manifestation of their heightened sexual

40. See DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION AND THE MEANING OF LIBERTY 40 (citing Michael P. Johnson, Smothered Slave Infants: Were Slave Mothers at Fault?, 1. OF S. HIST. 493, 513 (1997) (noting that one such example of the treatment women received while pregnant is presented in the instance where an overseer dug a hole in the ground before administering a lashing to a pregnant slave. After digging the hole, the overseer ordered the woman to lie down with her stomach in the hole so as not to injure the unborn child.)).
41. COLLINS, supra note 39, at 71.
42. BLACK WOMEN IN WHITE AMERICA, supra note 10, at 45.
desires.\textsuperscript{43} Their perceived heightened desires, and their slave owners’ interest in increased births, led to sanctioned rape, polygamy, and promiscuity among female slaves.\textsuperscript{44} Public opinion and custom supported the slave owners’ interest in increased births and female slaves’ vulnerability to sexual abuse.

Yet, casting female slaves in a negative light because of their perceived sexual desires was not the only way that custom during slavery exploited their reproductive capacities. When one could not attribute lascivious character to a slave because of her young age, economic interests in sexual access and reproduction proved sufficient. As one former slave explained during an interview with the Federal Writer’s Project, sex with girls as young as twelve was not frowned upon even if they were not married, so long as the sex was with white men or with the owner’s permission and would result in a birth.\textsuperscript{45} The interest in sexual domination and the profitability of forced reproduction was strong enough to adjust the sexual mores of the slave community as well as the slave owner class.\textsuperscript{46} The profits generated by breeding sanctioned child molestation with little or no consideration of the morality of the practice.\textsuperscript{47} Consider the testimony of another ex-slave who described his owner’s practice of taking “all the fine looking boys and girls that were thirteen years old or older and putting them in a big barn. They used to strip them naked and put them in a big barn every Sunday and leave them there until Monday morning. Out of that came sixty babies.”\textsuperscript{48}

\textbf{C. Slave Breeding as Essential to the Systematic Functioning and Character of American Slavery: Economic Analyses and Market Indicators}

At the end of the international slave trade, female slaves were appraised according to their fertility or lack thereof. Their value was primarily calculated in terms of their ability to multiply, although not to the exclusion of their ability to perform other types of labor.\textsuperscript{49} The thriving market for female slaves of childbearing age illustrates how important fertility became

\begin{itemize}
\item \textsuperscript{43} See, e.g., \textsc{Collins}, \textit{supra} note 39, at 78.
\item \textsuperscript{44} \textsc{Sutch}, \textit{supra} note 20, at 40.
\item \textsuperscript{45} \textit{Federal Writer’s Project Interview, in Slave Testimony: Two Centuries of Letters, Speeches, Interviews and Autobiographies} 373 (John Blassingame ed., 1977).
\item \textsuperscript{46} \textsc{Collins}, \textit{supra} note 39, at 76-78.
\item \textsuperscript{47} Child molestation was not only engaged in for slave breeding purposes. Perhaps an equally strong motivation, though not to the exclusion of economic interests, was the interest in sexual domination. For accounts of sexual abuse of children at the hands of their owners, see, e.g., \textsc{Linda Brent}, \textsc{Incidents in the Life of a Slave Girl} (Lydia Maria Child ed. 1973); \textsc{Melton A. McLaughin}, \textsc{Celia: A Slave} (1991).
\item \textsuperscript{48} \textsc{We Are Your Sisters: Black Women in the Nineteenth Century} 32 (Dorothy Sterling ed., 1984).
\item \textsuperscript{49} \textsc{Davis}, \textit{supra} note 1, at 7.
\end{itemize}
to the economic well-being of slave owners. The following discussion focuses on the economic justifications and motivations for breeding slaves for sale and on the economic indicators that reflect how integral the practice was to the domestic slave trade.

1. Economics of Slave Breeding

Slavery was driven in large part by the economic benefits it offered to slave owners and the national economy. A slave owners’ economic analysis included an assessment of the most efficient use of slave labor in order to realize a profit from his initial investment. While reproduction was always an important component of the slave system, female slaves became the life-line of slavery when the international slave trade closed and the western expansion created a growing market for slaves. Slaves’ economic importance was reflected in their market value. This was especially true in the border states (Delaware, District of Columbia, Maryland and Kentucky) and the mid-Atlantic states (North and South Carolina, Tennessee and Virginia) where the economic return on agricultural ventures was below those obtainable in other areas of the South. In these “breeding states,” the value of slave women was determined not only by the quantity and quality of the manual labor she produced but also for the quantity and quality of the children she produced. The main economic motivation for breeding was to supply slaves to the growing western territory and to the land-rich southern states. Given the rising demand for slaves in the importing states, slave breeding became one of the main vehicles for capital accumulation in exporting states.

50. See generally GUTMAN, supra note 33.
51. SUTCH, supra note 20, at 1.
52. Herbert G. Gutman, Marriage and Sexual Norms Among Slave Women, in BLACK WOMEN IN UNITED STATES HISTORY FROM COLONIAL TIMES THROUGH THE NINETEENTH CENTURY 545, 551 (Darlene Clark Hine ed., 1990) (“Enslavement required more than that human chattel produce commodities, it also required, especially after the abolition of the international slave trade, that the slave labor force reproduce itself ... Few recognized this better than the slave owners themselves”).
54. "The prospect of multiplying the value of slave property through natural increase was eyed with pleasure ... slave women's proved or anticipated fecundity was universally an important factor in determining her market value." AUGUST MEIER & ELLIOT M. RUDWICK, FROM PLANTATION TO GHETTO 56 (rev. ed. 1970).
55. SUTCH, supra note 20, at 5.
56. See Letter from Thomas Jefferson to Joel Yancy (Jan. 17, 1819), reprinted in THOMAS JEFFERSON’S FARM BOOK: WITH COMMENTARY AND RELEVANT EXTRACTS FROM OTHER WRITINGS 43, 46 (Edwin Morris Betts ed., 1953) for evidence that the reproductive capacity of female slaves was more important than her natural labor. “[A] slave woman is commonly esteemed least for her laboring qualities, most for those qualities which give value to a [breeding horse] ...” Id.
57. SUTCH, supra note 20, at 27.
during the domestic slave era. President Jefferson, founder of Virginia, recognized the value when he stated that his male slaves paled in comparison to that of his female slaves who bore children for sale. In light of the focus on breeding, slave owners in the exporting regions experienced rates of return on their investments in slaves comparable to, if not better than, those in the importing states.

Once slave owners realized that the reproductive capacities of female slaves could yield a profit and protect them against the losses from the end of the international slave trade, manipulation of procreative and sexual activities became an integral part of the female slave experience. In fact, southern, western and mid-Atlantic states favored ending the international slave trade because of the profitability and efficiency of breeding slaves for market. The economic returns of slave sales to western territories were attractive to those poorer plantation owners who wanted to make their operations as profitable as other alternative contemporary economic activities such as mule breeding. Further, slave breeding could be a very profitable endeavor: "since the market value of a young adult field hand undoubtedly exceeded the costs of raising him from childhood, there were those slave holders who would see the opportunity to specialize in raising slaves for slave." Slave women were faced with increased responsibilities and hardships. Not only were they expected to perform as laborers; slave women were expected to perform as breeders. In terms of their value, they were like farm machinery that was able to produce more farm machinery. Also, the ownership of a fertile female

58. See FRANKLIN & MOSS, supra note 37, at 131 (stating that "[s]lave breeding was one of the most approved of methods for increasing agricultural capital"). See also Norde, supra note 2, at 30.
59. Letter from Thomas Jefferson to Joel Yancy, supra note 56, at 46.
60. SUTCH, supra note 472, at 5-6.
61. WHITE, supra note 4, at 68.
62. MEER & RUDWICK, supra note 54, at 55. (stating that "[a]s far back as 1787 it was openly charged on the floor of the Constitutional Convention that Virginia's delegates favored prohibition of the foreign slave trade not for humanitarian reasons but because they wanted to increase the market value of their slaves.") See generally W.E.B. DUBOIS, BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA (1935).
63. See ALFRED H. CONRAD & JOHN R. MEYER, THE ECONOMICS OF SLAVERY, AND OTHER STUDIES IN ECONOMETRIC HISTORY 68-73 (1964). Many nineteenth century farmers in southern and mid-Atlantic states practiced mule breeding to augment declining agricultural activities. Id. Breeding was central to the mule market because, as a hybrid species, they are not able to reproduce themselves, therefore they must be bred. Id. For a more detailed discussion of southern agriculture and animal husbandry, see generally GRAY, supra note 21.
64. SUTCH, supra note 20, at 1-3.
65. See FRANKLIN & MOSS, supra note 37, at 131. There is some indication that reproductive technology during this period was also furthered by experiments on slave women. Id. In fact, experiments in slave rearing were carried on in much the same way that efforts were made to discover new products that would grow on the exhausted soil. Id. See also OUTFMAN, supra note 33, at 157 (noting that slavery required that the human chattel be able to reproduce itself).
slave reflected favorably on slave owners. Possession of slave women of reproductive age signified economic stability.66 Owning a female slave with reproductive promise was a must for people in pursuit of upward mobility.67 The economic forecast was especially bright if the owner was a man, as owners usually were.68 As one slave owner calculated: “I own a woman who cost me $400.00 when a girl in 1827. Admit she made me nothing—only worth her victuals and clothing. She now has three children, worth over $3000.00 . . . I would not this night touch $700.00 for her. Her oldest boy is worth $1250.00 cash and I can get it.”69 This illustrates the importance of slave breeding to the economy of slave ownership.

2. Market Indicators

Also reflective of the thriving market for breeding slaves and the importance of the practice to the slave economy on breeding is the frequency with which advertisements and information regarding the management of the breeding enterprise appeared in newspaper advertisement and planter journals. On any given day in the last decade of the domestic slave era, several advertisements for female slaves appeared in each of the leading newspapers in breeding states.70 Indeed, thousands of young girls and women, the majority under the age of twelve, were advertised in newspapers throughout the South.71 The prevalence of such advertisements illustrates that slave owners consciously saw slave breeding as a valuable commodity in the slave market.72 Many advertisements of slaves were found in newspapers targeted for the western territories. For example, newspapers in Virginia, a leading slave breeding state, advertised female slaves ready for export.73 As one commentator noted, sex and reproduction were at issue each time a female

67. See id. (noting that “the dollar and cents value of a good breeder woman was well known”). “When an overseer asked for a negro woman, young and likely, and be certain that she is sound, he was taking the first step toward becoming a man of property.” Id.
68. A male slave owner did not have to buy a male slave or rent a breeding stud (a male slave to inseminate the female slave) or use an agent; he could propagate himself and not share the profits with anyone.
69. GUTMAN, supra note 33, at 77-78.
70. Norde, supra note 2, at 108 (stating that “[h]istorical newspapers are an excellent data source for the socio-empirical investigations into the commodification of slaves . . . . These advertisements not only reveal that breeding was common, but also suggest how breeding accounted for the increase in slaves during the domestic slave era”).
71. Id. at 112. While advertisements do not equal sales, they do indicate the thriving market for female slaves for breeding purposes.
72. See id.
73. Id.
slave was brought to market.\textsuperscript{74} Language used to describe the products for sale supports this contention.\textsuperscript{75} Descriptions used in advertisements of the day include “breeding slaves, child bearing woman, breeding period, too old to breed,” all focusing on the reproductive capacities of the female slave for slave.\textsuperscript{76}

Additionally, agriculturalists, plantation owners, and overseers publicly discussed through the print media (planter journals, pamphlets, etc.) techniques, concerns, and advice regarding the practice of breeding.\textsuperscript{77} Additionally, the \textit{American Cotton Planter} told of a slave girl who could “breed like a cat.”\textsuperscript{78}

Along with the journals, planters and agricultural experts regularly corresponded regarding the practice of slave breeding. Some of their letters were published and circulated throughout the South. Frederick Law Olmsted published his impression of letters he received from planters. For example, he received a letter from a Virginia slave owner who stated that “his women were uncommonly good breeders; he did not suppose there was a lot of women anywhere that bred faster than his. He never heard of babies coming so fast as they did on his plantation.”\textsuperscript{79} In another letter, Olmsted recounts that a Southerner explained that his “girls and women (married or unmarried) [were commanded to have] children . . . A breeding woman is worth . . . more than one that does not breed.”\textsuperscript{80} These publications indicate that planters were indeed deeply involved in the process of developing slave breeding to realize its economic potential. The following discussion illustrates how laws were enacted to facilitate and protect slave owners’ sexual access to female slaves as well as their interest in slave breeding.

\textsuperscript{75} See Norde, \textit{supra} note 2, at 112. The ads usually related information about the female slave such as age, quality and quantity of children already born and type of labor she was able to perform when not pregnant. \textit{Id.} The use of such descriptions indicates that the advertising of female slaves was done to publicize her fitness as a breeder. \textit{Id.}
\textsuperscript{76} Katyal, \textit{supra} note 74, at 836 n.46.
\textsuperscript{77} U.S. Treasury Secretary Howell Cobb, in an 1858 speech to the Georgia Cotton Planters’ Convention; GUTMAN, \textit{supra} note 33, at 97.
\textsuperscript{78} \textit{Id.}
\textsuperscript{79} Norde, \textit{supra} note 2, at 98.
\textsuperscript{80} \textit{Id.}
D. Legal Protection of and Female Slave Resistance to Slave Breeding

1. Civil Laws

While the end of the international slave trade is considered the primary reason that breeding became so intrinsic a part of American slavery, laws effecting reproductive capacities of female slaves existed long before slave owners were limited to domestic slave trading. One of the first laws enacted in America dealt with the children of female slaves, which relegated children to the status of their mothers.81 Virginia, a leading proponent of the prohibition of the international slave trade which would ultimately become a leading slave breeding state, established its interest in providing slaves for market through natural increase early.82 In 1662, Virginia enacted the first “status-of-the-mother law” making slave status depend on that status of the child’s mother, not the father.83 As early as 1809, one year after the Federal Act of 1808 prohibiting involvement in the international slave trade became effective, nearly all slave states had enacted status-of-the-mother laws similar to Virginia’s. According to a South Carolina court, “[slave] children could be sold away from their mothers at any age because the young slaves . . . stand on the same footing as other animals.”84 Being equal to animals in the eyes of the law, female slaves, indeed all slaves, did not have access to civil claims. A Slave woman had no rights that did not flow from her owner. Slaves could not enter into legal contracts; therefore, they had no standing in court to protest the sale of a spouse by the owner. The law recognized no independent tort claims by slaves against their owners or third parties.

81. Act XII, 2 LAWS OF VIRGINIA 170 (Henig 1823) (enacted 1662). Status-of-the-mother laws were based on the legal rule of partus sequitur ventrem which declared a child’s status, free or enslaved, based on the status of his or her mother. This doctrine was a legal anomaly in the colonies, later states, because it departed from English law which greatly influenced the private law of property, contracts and torts. Unlike the status-of-the-mother laws, which were eventually enacted in every state, English law vested status according to the father. For a more detailed discussion of Virginia’s application of the law, see Karen A. Getman, Note, Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System, 7 HARV. WOMEN’S L.J. 115, 120-22 (1984). See also JUNE P. GUILD, BLACK LAWS OF VIRGINIA: A SUMMARY OF THE LEGISLATIVE ACTS OF VIRGINIA CONCERNING NEGROES FROM THE EARLIEST TIMES TO THE PRESENT 52-53 (Negro Univ. Press 1969) (1936).

82. See A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia, 77 GEO. L.J. 1967, 1970-75 (1989). As articulated on the floor of the 1787 Constitutional Convention, Virginia delegates favored the 1808 Act prohibiting the international slave trade, not because they disfavored slavery, but because they wanted to have a market advantage on supplying slaves to other states. MEIER & RUDWICK, supra note 54, at 58.

83. See Act XII, 2 LAWS OF VIRGINIA 170 (Henig 1823) (enacted 1662) The effects of the rule were concisely articulated by one judge who said, “[T]he father of slave is unknown to our law . . .” Frazier v. Spear, 5 Ky. (2 Bibb) 385, 386 (1811).

84. See, e.g., BARBARA WERTHEIMER, WE WERE THERE: THE STORY OF WORKING WOMEN IN AMERICA 109 (1977) (citing case holding that female slaves had no legal claim to their children).
Other legislated laws and common law policies protected slave owners’ property interests in their slaves from the interference of third parties or even the state in some cases.\textsuperscript{85} Court records during the era of the domestic slave trade indicate that slave owners and other interested parties brought cases to court seeking to enforce and protect their property interests in their slaves.\textsuperscript{86} The issue of slave breeding was legally salient in that many of the cases related to ownership interests in slaves related to female slaves and their reproductive capacities.\textsuperscript{87} These cases which ranged from fraud and misrepresentation regarding the reproductive capacities of female slaves\textsuperscript{88} to determinations of the future interests holder in slaves not conceived or born filled the courthouses in slave holding states.\textsuperscript{89}

2. Criminal Law Regarding Slave Breeding

There was no criminal penalty for raping one’s own slave.\textsuperscript{90} While state

\textsuperscript{85} See generally Wriggins, supra note 31 (discussing the differing levels of protection for slaves with protection against sexual abuse of female slaves being the least available). Of course, there were exceptions. For example, it was illegal for a slave owner to murder his slave. \textit{Id}. However, the reasons for such sanctions seem to convey the states’ interest in preventing wasteful conduct rather than its interest in protecting slaves. \textit{Id}.

\textsuperscript{86} Dorothy Burnham, \textit{The Life of the Afro-American Woman in Slavery}, 1 INT’L J. OF WOMEN’S STUD. 363, 363 (1978). “The customs and legal proscriptions surrounding the institution of slavery evolved and were reinforced solely for the benefit of the slave owning class. The concept of the slave as property was created by this class and the laws necessary to guard and safeguard these property rights became the laws of the colonies.” \textit{Id}.

\textsuperscript{87} Norde, supra note 2, at 94.

\textsuperscript{88} See generally CATTERALL, supra 36. Fraud in the sale of infertile females was a common civil action. \textit{Id}. The common law policy which governed most of these cases was that if a buyer took possession of a woman who had been certified as fit to bear children by the seller, and it could be demonstrated that the seller knew the woman was incapable of having children, the sale was voided and the proceeds were refunded. \textit{Id} at 65.

\textsuperscript{89} See ROBERTS, supra note 40, at 33 (noting that “[t]he law granted to whites a devisable \textit{in futuro} interest in the potential children of their slaves”). In one case, the child of a slave was willed away from his mother even before birth. See MONROE WORK, NEGRO YEARBOOK: AN ANNUAL ENCYCLOPEDIA OF THE NEGRO, 1925-1926 199 (1925). “In 1727, Isaac Warner bequeathed his wife, Ann, a Negro woman named Sarah. To his daughter Ann Warner, an unborn child of the above named Sarah.” \textit{Id}. See also STAMP, supra note 53, at 205 (telling of a case where South Carolina slave owner, Mary Kincaid, bequeathed a slave woman named Sillar to her grandchild and Sillar’s two children to other grandchildren in a will provided that, if Sillar should bear a third child, he or she would go to yet another grandchild).

\textsuperscript{90} See A. Leon Higginbotham Jr. & Anne F. Jacobs, \textit{The Law Only as an Enemy: The Legitimization of Racial Powerlessness Throughout the Colonial Period and Antebellum Criminal Laws of Virginia}, 70 N.C. L. REV. 969, 1055-56 (1992). For example, Louisiana’s rape law explicitly excluded Black women, free and enslaved, from its protection. \textit{See}, e.g., Judith Kelleher Schafer, \textit{The Long Arm of the Law: Slave Criminals and the Supreme Court in Antebellum Louisiana}, 60 TUL. L. REV. 1247 (1986). Even when statutes did not specifically exclude slaves, there were rarely prosecutions and even fewer convictions for raping female slaves. \textit{See} A. Leon Higginbotham Jr. & Anne F. Jacobs, \textit{The Law Only as an Enemy: The Legitimization of Racial Powerlessness Throughout the Colonial Period and Antebellum Criminal Laws of Virginia}, 70 N.C. L. REV. 969, 1055-56 (1992). Finally, female slaves were also vulnerable to sexual assault from male slaves. The law did not recognize a cause of action when a male slave raped a female child slave. \textit{See}, e.g., George v. State, 37 Miss. 315 (1859) (refusing to affirm conviction of a male slave charge with raping a female slave under the age of 10).
laws recognized criminal and civil claims against others for raping or otherwise interfering with a slave, thus vindicating the owner's property interest in slaves' reproductive capacities, state laws did not recognize the rape of female slaves by their owners. Protection against the rape of female slaves attached only to the slave owner and protected the female slave only indirectly. Therefore, a slave holder could grant any man, black or white, sexual access to his female slave with no consideration given to the will of the female slave. In short, the laws of the day reflected the public belief that female slaves were "rapeable." Further, due to the emphasis on breeding, status-of-the-mother laws had a significant influence on the sexual assault of female slaves. Under the laws, if the rape resulted in a pregnancy, the capital of the owner would increase. Therefore, the filing of a rape claim against a third-party perpetrator depended in large part on whether the victim became pregnant. Additionally, because the status-of-the-mother laws required no official documentation of lineage, the birth of a child by a female slave automatically increased the wealth of the slave owner, thereby making the paternal contribution legally irrelevant.

Slave owners were granted carte blanche to rape and impregnate their slaves. Since slave owners had unfettered sexual access to their slaves, a slave owner was able to be the biological father and owner of many slave children. This state of the law made sexual assault a wise investment strategy for a cash-strapped slave owner who was interested in increasing the number of his slaves. In order to create a viable slave system supported by the reproductive capacities of female slaves, it was necessary to deny legal protection against sexual assault to female slaves.

3. Female Slave Resistance to Slave Breeding

With no legal protection from violation of their reproductive and sexual

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91. See McLaurin, supra note 47, as a great example of this point. In fact, Virginia law offers a clear example of how laws facilitated sexual abuse and reproductive exploitation of female slaves.

92. This term was coined by Professor Margaret Baldwin's description of the plight of prostitutes. See Margaret A. Baldwin, Split at the Root: Prostitution and Feminist Discourses of Law Reform, 5 Yale J.L. & Feminism 47, 87 (1992).

93. WE ARE YOUR SISTERS: BLACK WOMEN IN THE NINETEENTH CENTURY 31 (Dorothy Sterling ed., 1984) (stating that "[m]ost slave owners did not care who fathered the children, as long as they kept on coming. A minority employed studs or forced couples to mate just like cattle").

94. See Wilson Armistead, Five Hundred Thousand Strokes for Freedom (1969) (noting that "[w]hen the decree was passed that the issue of slave mothers would follow the condition of their mothers it not only opened the door to a very profitable profession, slave breeding, it also guaranteed that the children of white men and slave owners would be slaves").

95. See Katyal, supra note 74, at 801 (noting that slave owners had every inducement from custom to pecuniary gain to rape female slaves).

96. ROBERTS, supra note 40, at 23.
capacities, female slaves developed intricate methods of slave resistance.97 Because slavery was a gendered experience, female slaves developed gendered forms of resistance to counteract reproductive exploitation.98 Through an understanding of these, we can gain insight into the pervasiveness of slave breeding.99 The following section discusses the practices of abstinence, self-imposed abortions, and infanticide as forms of resistance especially directed at the practice of slave breeding.100

Contrary to the public perception of female slaves as lascivious and sex-crazed, many female slaves intentionally avoided sexual encounters, especially when they involved a slave owner or his designee. Numerous female slaves took great pains to avoid the sexual advances as a way to avoid reproduction, despite the understanding that resistance would often bring about punishment or sale.101 As such, sex and reproduction avoidance became a definitively political form of resistance.102 In addition to abstinence, many historians and anthropologists believe that female slaves used a number of birth control techniques in order to avoid pregnancy in the event they could not avoid sex.103 By ingesting certain plants and berries, female slaves were avoiding conception and thereby resisting reproductive exploitation.104

Many slave women who could not successfully avoid sex consequently became pregnant, but did not carry their babies to term. One theory as to why these pregnancies were interrupted is that female slaves intentionally aborted their pregnancies.105 Although the prevalence of self imposed abortions among female slaves can never be fully assessed, a number of historians believe that many female slaves engaged in this practice as a form of resistance. Abortions were also performed by informal mid-wives in the slave community. Evidence suggests that there were frequently women to whom

97. See Elizabeth Fox-Genovese, Strategies and Forms of Resistance: Focus on Slave Women in the United States, in 2 BLACK WOMEN IN UNITED STATES HISTORY 409, 424 (Darlene Clark Hine ed., 1990) (discussing how the sexual vulnerability and reproductive capacities of slave women influenced the ways in which they resisted slavery).
98. Id.
100. Darlene Clark Hine, Female Slave Resistance: The Economics of Sex, in 2 BLACK WOMEN IN UNITED STATES HISTORY 657, 659 (Darlene Clark Hine ed. 1990).
101. See GUTMAN, supra note 33, at 84-85. The physical cruelty visited upon those who resisted was unbelievably brutal. Id. Punishments included whippings, branding, maiming, other forms of torture and sale. Id.
102. Hine, supra note 102, at 664 (stating that "[r]esistance to sexual exploitation . . . had major political and economic implications. A woman who elected not to have children [by practicing] sexual abstinence, abortion or infanticide, negated through individual or group action her role in the maintenance of the slave pool").
103. Fox-Genovese, supra note 99, at 423.
104. Hine, supra note 102, at 661.
105. Fox-Genovese, supra note 99, at 423.
women seeking to terminate a pregnancy would go. John Morgan, a Tennessee physician concerned about the rate of terminated pregnancies, reported that slave women, often with the help of other slave women, employed crude abortifacient techniques such as "violent exercise, external and internal manipulations" and stuffing rags in their vaginas. However, as with birth control, Morgan reported that slaves preferred herbal remedies including "rue, roots and seed of the cotton plant, cedar gum and camphor." The third and most controversial form of reproductive slave resistance was infanticide. The nature and extent of this form of slave resistance raises problematic substantive and evidentiary questions. It is difficult to isolate infanticide from other possible causes of infant mortality during slavery. Strenuous labor during pregnancy, poor nutrition and unhygienic conditions could all have contributed to the high rate of deaths among slave infants.

The issue of infanticide is difficult substantively because it is considered the most drastic form of slave resistance—it not only involved a killing, but it also presented the greatest potential for discovery and punishment. Female slaves who were believed to have committed infanticide were either severely punished or were criminally charged. Because of its tragic and traumatic consequences, the myriad of possible causes and motivation, and the public attention, infanticide was the least popular of the forms of reproductive resistance to slavery.

Indeed, it is difficult to ascertain the prevalence or motivations for any of these reproductive resistance strategies. Such matters were rarely if ever publicly discussed. Nevertheless, the available evidence shows that female slaves did resist reproductive exploitation and that their resistance, although not widely discussed or clearly understood as such, amounted to customized resistance strategies. The power of female slaves actually to affect the institution through such resistance is illustrated in Margaret Jane Blake's comment that "if all bond women had been of the same mind [regarding

106. GUTMAN, supra note 25, at 80.
107. WHITE, supra note 4, at 85.
108. GUTMAN, supra note 485, at 81.
109. ROBERTS, supra note 40, at 48.
111. See, e.g., Jane (a slave) v. The State, 3 Mo. Rep. 45 (1831) (convicting a slave of "knowingly, willfully, feloniously and of her malice of aforethought" murdering her infant child by poisoning her). For a more detailed analysis of this case, see A. Leon Higginbotham, Jr., Race, Sex, Education and Missouri Jurisprudence: Shelley v. Kramer in a Historical Perspective, 67 WASH. U. L.Q. 673, 694-695 (1989) (considering whether prosecutions for infanticide were brought because the state was concerned with the life and dignity of the child born into slavery or because the slave owners was denied the profit represented by the birth).
reproductive resistance], how soon [slavery] could have vanished from the face of the earth, and all the misery belonging to it."

III. THE POTENTIAL IMPACT OF THE INCLUSION OF REPRODUCTIVE AND SEXUAL ABUSE ON THE TRADITIONAL SLAVE NARRATIVE

A. Integrated Historical Narrative

Recovering the lost chapter on slave breeding alters our understanding of many of the key events during the Revolutionary era, slavery, Reconstruction, and the reproductive rights era. Such a narrative changes the way we experience the historiography of slavery and reproduction in that they can now be understood as greatly influenced by the reproductive and sexual exploitation of female slaves. Specifically, how the reproductive experiences of female slaves impacted the economics of the institution, the development of laws to dismantle the institution such as the Thirteenth Amendment, as well as the modern reproductive rights, policies, and experiences that shape our lives. The wealth of understanding gained by incorporating slave breeding into the reproductive continuum, better enables us to fashion a reproductive rights discourse and doctrine which is responsive to the interests of all women, especially those that are subjected to conditions related or similar to slavery era practices.

From the earliest days of slavery, the integrated narrative highlights concern over the ability to profit from the practice of breeding. The issue of slave breeding was raised at the Constitutional Convention in debates over representation. During the second Constitutional Convention in 1787, one delegate charged that Virginia's delegates' interest in providing slaves to the western territory and southern plantations was illustrative of the impact slave breeding had on the shaping of national economy and politics. Important figures in the development of the nation recognized and participated in the practice of slave breeding. Future Presidents Thomas Jefferson and James Madison, champions of freedom for the colonies, both approvingly referred

112. Hine, supra note 102, at 665 (citation omitted).
113. See JACOB D. WHEELER, A PRACTICAL TREATISE ON THE LAW OF SLAVERY (Negro Univ. Press, 1968) (1837). For example, in contesting the Constitutional provision that counted slaves as three-fifths a person for purposes of representation, one delegate argued that "I reduce 10,000 horses to the condition of personal chattel and the Constitution gives me no reward: I still count but one man in the government; but if I can turn the bodies and souls of 10,000 men into goods and chattel, it rewards me with the power of 6,001 honest freemen in the legislative, judicial and executive councils of the nation . . . who can doubt that every man would have sought to increase his stock of horses? It cannot be doubted that such a premium would have acted as a motive to . . . slave breeding." Id.
114. SUTCH, supra note 20, at 5-6.
to the profitability of breeding slaves. Even though Jefferson ultimately came to disapprove of slavery, he long participated in the institution and took profits from the reproductive capacities of his female slaves.

The question of slave breeding, although not discussed directly, played a central role during the Congressional debates over the 1808 prohibition of the international slave trade. The prohibition created a very specific need for the "natural" increase of slaves that turned slave owners’ attention toward more focused efforts of breeding. Virginia and other mid-Atlantic slave states favored the ban on the international slave trade; indeed, every slave state had enacted its own statewide ban on the international slave trade prior to 1808. Seeking to maximize their profit margin by becoming the sole source of slaves for the western territories, these states vigorously supported the ban. Further, the northern position regarding the ban was mixed. Some certainly wanted to limit slavery categorically and thought the 1808 ban was a step in that direction.

Other northerners, not necessarily opposed to slavery on moral grounds, nonetheless supported the ban because they hoped to shield northern labor from competition by slave labor in the western territories. For this latter group, the ban ultimately proved ineffective given the steady supply of slaves bred in the mid-Atlantic states for export into the west and lower south. In the end, their interests pushed them toward seeking to ban slavery in the western territories or ban slavery in the nation altogether. The traditional story fails to address the role of slave breeding in setting national policy and culture.

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115. See Letter from Thomas Jefferson to John W. Eppes, (June 30, 1820), in THOMAS JEFFERSON’S FARM BOOK WITH COMMENTARY AND RELEVANT EXTRACTS FROM OTHER WRITINGS (Edwin Morris Betts ed., 1953). In 1820, Thomas Jefferson instructed his plantation manager that he considered “a woman who brings a child every two years as more profitable that the best man on the farm.” Id.

116. See generally ANNETTE GORDON-REED, THOMAS JEFFERSON AND SALLY HEMMINGS: AN AMERICAN CONTROVERSY (1997). His sexual relationships with his female slave, Sally Hemings, is also legendary. Id. Some historians believe that after his first wife died, Jefferson took Hemings as a mistress and had several children by her. Id. Recent DNA tests on Jefferson’s remains show that he was indeed biologically related to Hemings’ descendants. Id.


119. See FRANKLIN & MOSS, supra note 37, at 128. “One of the most important single factors augmenting the westward movement was the domestic slave trade” and the need to supply slaves to the western territories. Id.

120. DUBOIS, supra note 62, at 42.

121. LEVINE, supra note 120, at 11-13.

122. Culture during the slavery era was greatly influenced by the experiences of female slaves regarding sexual and reproductive exploitation. For example, Henry Wadsworth Longfellow’s poem, “The Quadroon Girl,” drew popular attention to the rape of slaves. In it he writes of a planter “whose passions gave [his female slave] life, whose blood ran in, her veins but in the end because of his financial interests, sells his daughter to a slave trader to be slave and paramour.” Longfellow, Quadroon Girl, in HARRIET
The story of slavery and abolition would not have been the same had it not been influenced by the economic importance of reproductive exploitation during the time of early western expansion.

A second aspect of the traditional story of slavery concerns the efforts to abolish the institution. This story must also be recast in light of slave breeding because many abolitionists organized around the plight of the female slave. Again, such discussions were rarely direct in light of the standards for acceptable public discourse of the day, yet many abolitionists—black and white, male and female—frequently highlighted the sexual and reproductive abuses of slavery. They pointed to the thriving “fancy girl” market, the population of mulattoes, and the practice of slave breeding via sexual and reproductive abuse all as examples of the religious, moral, and political degeneracy of slavery. Gaining information from personal observations.

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BEECHER STOWE, A KEY TO UNCLE TOM’S CABIN: PRESENTING THE ORIGINAL FACTS AND DOCUMENTS UPON WHICH THE STORY IS FOUNDED, TOGETHER WITH CORROBORATIVE STATEMENTS VERIFYING THE TRUTH OF THE WORK 150-151 (Scholarly Press 1970) (1853). Additionally, one of the first anti-slavery novels described the plight of a female slave named Cassy. The novel describes how “Cassy... started up, but he caught her in his arms and dragged her towards the bed...[S]he looked him in the face, as well as her tears would allow her... Master-Father,” she cried “what is it you would have of your own daughter?” RICHARD HILDRETH, 2 THE SLAVE: OR, MEMOIRS OF ARCHY MOORE 9 (1836).

123. See PROCEEDINGS OF THE FIRST ANNUAL MEETING OF THE NEW YORK STATE ANTI-SLAVERY SOCIETY CONVENTION HELD AT UTICA, OCTOBER 21 AND NEW YORK STATE ANTI-SLAVERY SOCIETY, HELD AT PETERBORO, OCTOBER 22, 1835 44, 48 (1836). The attack was launched in large part because it dealt with the taboo—rape and breeding. See id. Abolitionists chose to speak directly and explicitly about these forbidden matters. See id. (stating that “[t]his is the land... where 500,000 mulattoes testify the affection and honorable love existing between the master and the female slave. This is the land where fathers sell children, and brothers and sisters, sell brothers and sisters”).

124. See MCLAURIN, supra note 47, at 98. (noting that “[t]he literature on slavery makes it abundantly clear that white men regularly abused female slaves sexually, indeed, deemed sexual access their right. Sexual abuse of female slaves was a popular theme in abolitionist propaganda”).

125. See EUGENE D. GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE 416, 460 (1974). Fancy girl markets, where slaves were sold explicitly for sex, “aroused the special ire of the northern abolitionists...” (stating that slavery as a system turned black women into prostitutes against their will) Id. See also WENDELL PHILLIPS, SPEECHES, LECTURES, AND LETTERS 98, 108 (1863) (stating that “[t]he South is one great brothel”).

126. See Speech by Sarah P. Redmond, Delivered at the Music Hall, Warrington, England (Jan. 24 1859) in WARRINGTON TIMES, Jan.29, 1859, reprinted in 1 THE BLACK ABOLITIONIST PAPERS 435, 438 (C. Peter Ripley ea., 1985). Abolitionist Sarah P. Redmond spoke publically about the connection between sexual abuse and reproduction in speeches about the evils of slavery. See id. In fact she exclaimed that the 800,000 mulattoes living in the U.S. were all the result of rape. Id. She also noted that the market for mulatto women was particularly vigorous because, “[t]he more Anglo-Saxon blood... the more gold... because they are sold to be concubines for white Americans. They are not sold for plantation slaves.” Id. See also CATHERINE CLINTON, THE PLANTATION MISTRESS, 1780-1835, 199-212 (1982) (noting the large mulatto population in the South as a central focus of the abolitionist dissent).

127. See WILLIAM G. BROWNLOW, OUGHT AMERICAN SLAVERY TO BE PERPETUATED? A DEBATE BETWEEN REV. W.G. BROWNLOW AND REV. A. PRYNE: HELD AT PHILADELPHIA, SEPTEMBER 1858 223 (1858). In his dramatic attack on southern Congressman, Rev. Pryne, a noted abolitionist, stated that: “We send to prison... our violators of female chastity... our abductors of young girls from their homes and parents; while the South sends to Congress her ruffians who commit rape—her robbers of cradles—her violators of wives, sellers of maidens...whippers of women.” Id.

128. See SIDNEY E. MORSE, PREMIUM QUESTIONS ON SLAVERY: EACH ADMITTING OF A YES OR NO
and from interviews with slaves,\textsuperscript{130} abolitionists often launched attacks on slavery based explicitly on the sexual and reproductive abuse of female slaves.\textsuperscript{131}

While the abolitionists did not use the term "slave breeding," their discussions usually focused on the components and consequences of such abuse. For example, Abraham Lincoln stated in his famous debate against Stephen Douglas:

Could we have had our way, the chances of these black girls ever mixing their blood with that of white people, would have been diminished at least to the extent that it could not have been without their consent. But Judge Douglas is delighted to have them decided to be slaves, and not human enough to have a hearing, even if they were free; and thus left subject to the forced concubinage of their masters, and liable to become the mother of mulattoes in spite of themselves, the very state of case that produces nine-tenths of all the mulattoes.\textsuperscript{132}

\textbf{ANSWER ADDRESSED TO THE EDITORS OF THE NEW YORK INDEPENDENT AND NEW YORK EVANGELIST 3 (1860).} When a New York evangelist publically challenged a pro slavery newspaper to defend slavery by answering eight questions, two of the question addressed rape and reproduction abuses of slavery. \textit{Id. See also} THEODORE PARKER, THE NEW CRIME AGAINST HUMANITY, A SERMON, PREACHED AT THE MUSIC HALL, IN BOSTON, ON SUNDAY, JUNE 4, 1854 38 (1854); Henry C. Wright, \textit{Spiritualism as a Practical Principle}, THE LIBERATOR Aug. 24, 1860, at 136.

129. \textit{See, e.g., THE SUPPRESSED BOOK ABOUT SLAVERY, 172-73 (George Washington Carleton ea., 1864) (1968) (quoting abolitionist witnessing South Carolina auction: "Her owner's (who was said to be her father) took off her hood, to show her countenance, and when she replaced it, again took it off; and in appraising her, by word and action, appealed to the lowest and basest passions of the assembled crowd. . . . [by saying that] by buying this magnificent specimen you will have an opportunity of indulging it to the fullest extent"). Also, Frederick Law Olmsted investigated and observed slavery in the south. His reports were used in abolitionist literature. \textit{See} DUBOIS, supra note 62, at 44. Regarding slave breeding, he noted that: "Planters command their girls and women (married or unmarried) to have children; and I have known a great many Negro girls to be sold off because they did not have children." \textit{Id.}

130. Many abolitionists took Frederick Douglass's suggestion that the only way for the abolitionists to get an accurate sense of the slave experience was to speak with slaves and ex-slaves and to involve them in the abolitionist movement. He contended that "Those who have endured slavery are the true advocates for freedom." ERIC FONER, THE STORY OF AMERICAN FREEDOM 87 (1998). In an slave's account of a trade that appeared in abolitionist writings, it was revealed that "A buyer would . . . grab a woman and try to throw her down and feel of her to see how she's put up. If she's purty strong, he'd say, 'Is she a good breeder?' . . .. Then the buyer'd pick out a strong, young nigger boy. . . . [W]hen he get them home he'd say to them, I want you two to stay together. I want young niggers." Jordan Smith, in \textit{LIFE UNDER THE 'PECULIAR INSTITUTION': SELECTIONS FROM THE SLAVE NARRATIVE COLLECTION} 287-288 (Norman R. Yetman ed., 1976).


Here, Lincoln follows the abolitionist trend of publically speaking about the unspeakable: the sexual and reproductive component of slavery.133 Likewise, Frederick Douglass frequently included sexual and reproductive matters into his abolitionist efforts.134 He spoke of his grandmother who “had been the source of all his [her owner’s] wealth, she had peopled his plantation with slaves.”135 He also told of a slave holder who was only able to purchase one slave, so he bought a woman as a breeder and hired a man to live with her and from them, twins were born.136

Finally, Harriet Martineau addressed the economic motivations for rape when she stated that “[e]very man who resides on his plantation may have his harem, and has every inducement of custom and pecuniary gain, to tempt him to the common practice.”137 Martineau went on directly to address slave breeding in the South by stating that, “Yet, these planters who sell their own offspring to fill their purses, who have such offspring for the sake of filling their purses, care to raise the cry of amalgamation against the abolitionists of the north.”138

Although the plight of female slaves was central to the abolitionist movement, abolitionism did not pretend to transform gender relations among men and women. White male abolitionists were particularly careful to couch their opposition to slavery in terms of slave owners’ sexual exploitation of female slaves violating natural law. They saw unbridled access and aggression as an exercise of the owners’ “unnatural power.”139 Borrowing from Revolutionary rhetoric, abolitionists also argued that such abuses were a denial of the slaves’ right to their own labor—a right that natural law granted to everyone regardless of race or status.140 This status however did not apply to gender. Natural law, as they constructed it, ordained the gender distinctions

133. See, e.g., 2 Harrriet Martineau, Society of America 320 (AMS Press, 1966) (1837). Many abolitionists referred to the code of silence around such matters as an incident of the insidiousness of slavery. Id.

134. See Letter from Frederick Douglass to His Old Master, in 3 The Non-Slaveholder 254, 256-257 (Samuel Rhoads & Geo. W. Taylor eds., photo reprint 1970) (1848). Douglass publically pleaded with his old master to prevent overseers from raping his sisters. Id.

135. Id. at 368.


137. Martineau, supra note 135, at 320, 328-30 (footnote omitted).

138. Id. See also Speech by Sarah P. Redmond, supra note 128, at 445-46 (making similar references to slave breeding in the South). The abolitionist publication, The Non-Slaveholder, illustrated that “a cotton planter . . . was asked what proportion of the young men of the South were clear of this practice [rape for reproduction and sale]. He answered, not more than one in ten!” Slavery As It Is, 4 The Non-Slaveholder 112, 115 (Samuel Rhoads ed., photo. reprint 1970) (1849).


between white men and women. Their analysis of slavery was framed as a power struggle between groups. Rarely, however, was their discussion of autonomy and political power applied to the plight of white women.\textsuperscript{141}

White female abolitionists had already begun to make such a connection. Because they, too, were not monolithic in their motivations for opposing slavery, different approaches emerged regarding the relationship of slavery to sexuality and reproduction. Some opposed slavery outright on religious and political grounds because of the pain it inflicted on the slaves.\textsuperscript{142} Others, foreshadowing the feminist movement, opposed slavery in part because it was a form of oppression of women.\textsuperscript{143} Finally, some white women opposed slavery solely because of the shame it brought them in light of their connection to white men who had sexual relations, and indeed children, with female slaves.\textsuperscript{144} These women argued that the abuse of slave women by their husbands and sons was the gravest breach of their religious convictions and their notions of freedom.\textsuperscript{145} For example, the famous white female abolitionist, Mary Boykin Chestnut, expressed this sentiment when she wrote that “our men live all in one house with their wives and their concubines and the mulattoes.”\textsuperscript{146} Regardless of their particular motivations for opposing slavery, white female abolitionists recognized the abuses endured by female slaves regarding sexual access and reproductive capacities as sufficient grounds to dismantle the slave system.\textsuperscript{147}

\textsuperscript{141} See Foner, supra note 132, at 83 (stating that “[a]mong the foremost aims of the American Anti-Slavery Society was to restore to the slave ‘the inalienable right to his own body’”) (emphasis added). Even when abolitionist focus went beyond that of strictly labor, it fell short of including white women’s right to their bodies. \textit{Id}. Their conversations were often directed at the plight of the slave, particularly male slaves. \textit{Id}. Foner also mentions the work of Henry C. Wright, a famous male feminist abolitionist, who stated that if a married woman was forced to submit to sex, she did not enjoy freedom, she was a slave. \textit{Id}.\textsuperscript{142} See ROBERTS, supra note 40, at 26. Consider a report presented to the General Anti-Slavery Convention held in London in 1820: “Where fruitfulness is the greatest of virtues, barrenness will be regarded as worse than a misfortune, as a crime and the subjects of it will be exposed to every form of deprivation and affliction. This deficiency, wholly beyond the slave’s power, becomes the occasion of inconceivable suffering.” \textit{Id}. (citing BELL HOOKS, AIN’T I A WOMAN? BLACK WOMEN AND FEMINISM (1981)).\textsuperscript{143} See Foner, supra note 132, at 81-82. The dichotomy between freedom and slavery powerfully shaped early feminists’ political language during the abolitionist movement. See \textit{id}. Actually, nineteenth century feminists did not invent the analogy between the plight of the white woman with that of the slave, Mary Wollenstonecraft invoked it in the 1790s. \textit{Id}.\textsuperscript{144} See generally MRS. L.J. BARBARIC INFLUENCES OF SLAVERY UPON THE WHITE POPULATION 7 (1855); See also SARAH M. GRIMM, LETTERS ON THE EQUALITY OF THE SEXES, AND OTHER ESSAYS 60 (Elizabeth Bartlett ed., 1988) (1838) (stating “[n]or does the colored woman suffer alone: the moral purity of the white woman is deeply contaminated”).\textsuperscript{145} See, e.g., GRIMM supra note 146.\textsuperscript{146} GENOVESE, supra note 127, at 426-27. See also WE ARE YOUR SISTERS: BLACK WOMEN IN THE NINETEENTH CENTURY 25 (Dorothy Sterling ed., 1984).\textsuperscript{147} See, e.g., GRIMM, supra note 146, at 60-61 (noting that many abolitionists contended that the gravest abuses of slavery was its treatment of slave women).
During the years after the 1808 prohibition and prior to the Civil War, female slaves were increasingly prolific.\textsuperscript{148} In fact, during the tumultuous last decade of slavery, the domestic slave trade reached its height.\textsuperscript{149} In their pleas to end slavery, many abolitionists attributed the heightened reproductive rates to exploitive and abusive treatment of female slaves.\textsuperscript{150} The direct link between the evils of slavery and the reproductive abuses of female slaves was drawn during a time when the abolitionists were most influential and Congress was their primary target.

Understanding the breadth of the practice and passion with which abolitionists cited reproductive exploitation as a primary evil of slavery suggests that the Congressional debates were greatly affected by the discourse of the day rather than merely simmering beneath the surface of the debates. Indeed, a closer look at the references made to sex, reproduction, and familial relations during slavery shows that both sides of the slavery debate were passionate\textsuperscript{151} in their respective desire either to stop slavery and its reproductive exploitation or to expand it by continuing a breeder supply of slaves to the western and southern states.\textsuperscript{152} Congressional opponents of slavery, while taking these sexual abuse experiences into account, did not speak as explicitly as abolitionists about such matters on the floor of the House of Representatives. However, the fact that they did not speak about slave breeding directly as a condition of slavery does not alone establish that they were not concerned with it. In fact, Congressmen rarely spoke specifically about any conditions of slavery or freedom. Even the most articulate members of Congress were short on specifics during the Congressional debates surrounding the Reconstruction Amendments. Consider Senator Trumbull’s attempt to describe the status of former slaves, “It is difficult . . . to define accurately what slavery is and what liberty is.”\textsuperscript{153}

While Congressional debates over the Thirteenth Amendment fell short of clearly delineating the precise conditions of slavery intended to be

\textsuperscript{148} See Reynolds Parley, Growth of the Black Population: A Study of Demographic Trends 21, 24 (1970). According to demographic data, the birthrate of slaves exceeded fifty per one thousand, meaning that each year more than one fifth of the female slaves of childbearing age (15-44) bore a child. See id.

\textsuperscript{149} Cooper Davis, supra note 6, at 299, 371.

\textsuperscript{150} See Jacqueline Jones, Labor of Love, Labor of Sorrow: Black Women, Work and the Family from Slavery to the Present 34 (1970) (noting that in 1860, ten percent of the slave population were mulatto).

\textsuperscript{151} The only fight to ever take place on the floor of the House of Representatives was over comments made referring to a slavery proponents’ desire for continuation of sexual access to female slaves.

\textsuperscript{152} See Levine, supra note 120, at 11. The acquisition of the Louisiana Territory in 1803 created a solely domestic market for slave labor that continued throughout the nineteenth century until the Civil War. Id.

\textsuperscript{153} Cong. Globe, 39th Cong., 1st Sess. 474 (1866).
eradicated by the constitutional declaration, references to reproduction, sex, and familial ties were made frequently when compared to specific references to other conditions. In other words, the degree of specificity and frequency that Congress mentioned reproductive and sexual abuse is on an equal footing with any other condition of slavery. For example, Senator Harlan of Iowa, in discussing what conditions should be comprehended under the term slavery, stated: "Too well [do] I know the vitality of slavery with its infinite capacity of propagation." Harlan also stated that the specific objective of the Amendment was to abolish all the necessary incidents of slavery including "the breach of the conjugal relationship and the parental relationship by robbing the offspring of the care and attention of his parents . . . [and the Amendment would also restore] to the oppressed slave his natural and God-given right . . . to the endearments and enjoyment of family ties." Further, Senator Wilson of Massachusetts referred to slavery’s impact on female slaves and the slave family when he stated:

If this Amendment shall be [enacted], it will obliterate the last lingering vestiges of the slave system . . . all it was and is, everything connected with or pertaining to it . . . Then the sacred rights of human nature, the hallowed family relations of husband and wife, parent and child will be protected by the guardian spirit of that law which makes sacred alike the proud homes and lowly cabins of freedom.

In one of the most powerful statements regarding the sexual and reproductive atrocities of slavery, Representative Shannon stated that: "Slave and barbarism are identical . . . Every form of incest is common in this, that assumes to be a paternal relation."

Sexual and reproductive exploitation of black women continued after the Civil War and beyond the enactment of the Thirteenth Amendment. Subsequent legislation aimed at southern intransigence was also designed to protect former slave women from abuse. Congressmen noted this in the debates over the Civil Rights Act of 1865. For example, in support of the decision to put the civil rights of United States citizens under the protection of the federal government, several Congressmen spoke specifically of the ways in which the Act would remedy slavery’s infringement on the intimate

155. CONG. GLOBE, 38th Cong., 1st Sess. 1439, 1440, 2989, 2990 (1864).
156. Id. at 1319, 1321, 1324 (emphasis added).
157. Id. at 2948. In addition to the common attack on slave owners for having sex with their daughters, evidence shows that incest between slaves also occurred in furtherance of the breeding schedule. Wesley Burrell, in BULLWHIP DAYS: THE SLAVES REMEMBER 297 (James Mellon ea., 1988).
158. See ROBERTS, supra note 40, at 29-30.
relations such as the right to marry and the right to have and raise children.\textsuperscript{159} These men recognized that the denial of these rights were an incident of slavery which the Act should protect against. Representative Creswell summarized the affect slavery had on these intimate relations by saying, "The slave could sustain none of those relations which give life all its charms. He could not say my wife, my child, my body . . . . The law pronounced him a chattel and these are not the rights or attributes of chattel."\textsuperscript{160}

Similarly, during the debates over the Civil Rights Act of 1866, Congressmen expressed sentiments regarding the lasting effects slavery had on familiar relations. For example, Senator Jacob Howard of Michigan cast the argument for the Act in terms of the rights that were denied slaves: "What is a slave?" He answered: "A slave had no rights, nor nothing which he could call his own. He had not the right to become a husband or a father in the eye of the law."\textsuperscript{161} In discussing "men who owned women and sold their offspring on the auction block for gold," Representative Ward stated, "[Reconstruction will] give these blacks citizenship, suffrage and freedom so that they can own themselves and protect themselves from this horrible system which slavery only engenders."\textsuperscript{162} In debating the Fourteenth Amendment, Representative Shannon again turned to the subject of sex and reproduction in the context of slavery and freedom when he asked: "What divinity [is there] in tearing from the mother’s arms the suckling child and selling them to different and distant owners."\textsuperscript{163} Representative Rainey noted that "occasionally it was plain to be seen that there was a strong family resemblance between [the slave and free children]."\textsuperscript{164}

The newly freed slaves embraced freedom and all its possibilities. Slaves "came to value freedom [and] to construct it as a powerful shared vision of life, as a result of their experience of, and response to, slavery."\textsuperscript{165} In particular, ex-slaves attempted to establish and re-establish family ties that were damaged during slavery.\textsuperscript{166} However, the Black Codes operated to

\textsuperscript{159} See Peggy Copper Davis, Neglected Stories: The Constitution and Family Values 38-40; 112-17 (1997) (discussing the anti-slavery ideology in the Reconstruction Congresses as represented in the debates over the Amendments and the subsequent legislation).

\textsuperscript{160} Cong. Globe, 38th Cong., 2d Sess. 120 (1865).

\textsuperscript{161} Cong. Globe, 39th Cong., 1st Sess. 503-504 (1866).

\textsuperscript{162} Cong. Globe 40th Cong., 2d Sess. 465 (1868).

\textsuperscript{163} Cooper Davis, supra note 6, at 379-80.

\textsuperscript{164} Cong. Globe, 42nd Cong., 2d Sess. 16A (1872).

\textsuperscript{165} Orlando Patterson, Freedom in the Making of Western Culture xiii (1991). Slaves saw freedom as the diametric opposition of slavery. In their view, when slavery denied them the right to control their person and progeny, freedom would confer that right. See generally, 1 Freedom: A Documentary History of Emancipation 1861-1867: The Destruction of Slavery (Ira Berlin et al. eds., 1985).

\textsuperscript{166} See Eric Foner, Reconstruction: America’s Unfinished Revolution 1863-1877 87-88 (1988) (stating that “[f]or blacks, liberating their families from the authority of whites was an indispensable element of freedom . . . . [B]lack men and women shared a passionate commitment to the stability of family
restrict the extent to which ex-slaves were able to control their lives, their families, and sexuality. The Reconstruction legislation, designed to counteract the effects of the Black Codes, were not particularly effective in protecting the newly freed blacks from infringements on their ability to take control over their families or their reproductive lives. One important incident of freedom was to make black men protectors of their families and avengers of black women’s virtue. Despite the new attention directed towards their virtue, black women continued to be particularly vulnerable to sexual abuse after emancipation. For example, in 1893, former slave Anna Julia Cooper, at the World Congress of Representative Women in Chicago, spoke of the political silence around the female experience in slavery as well as slave women’s demands for freedom: “[A]ll through the darkest period of the colored women’s oppression in this country her yet unwritten history is full of heroic struggle . . . . The painful, patient, and silent toil of mothers to gain a fee simple title to the bodies of their daughters . . . .” As for post-emancipation protection, the need for protection of black women was particularly urgent in light of the violent attacks they endured after slavery. Black women were targeted by agitated southern whites who used terrorist tactics to maintain racial domination. Black women were, at best, relegated to the private sphere much like their white counterparts. Their freedom was understood as dependent on and subordinate to that of black men.


168. See Cooper Davis, supra note 6, at 299,382-83. Consider Peggy Cooper Davis’s argument that, since the Black Codes were designed to compromise the right to parent by imposition of strict apprenticeship laws which removed children from their parents’ control and made the children the wards of whites, the legislation prohibiting the Codes should apply to matters relating to infringement of familial relationships. See id.

169. See Foner, supra note 168, at 86 (stating that “all blacks resented the sexual exploitation that had been a regular feature of slave life and shared the determination that the women no longer labor under the direct supervision of white men”). This protection also meant that black women were relegated to the private sphere within their community. See generally ROBERT F. ENGS, FREEDOM’S FIRST GENERATION: BLACK HAMPTON, VIRGINIA 1861-1890 (1979); see also James O. Horton, Freedom’s Yoke: Gender Conventions Among Antebellum Free Blacks, 12 FEMINIST STUD. 51-76.

170. See BEVERLY GUY-SHEPITAL, DAUGHTERS OF SORROW: ATTITUDES TOWARD BLACK WOMEN, 1880-1920 60 (1990) (citing a pamphlet entitled “The Black Women of the South: Her Neglects and Her Needs” which expressed that sexual exploitation of black women in the south was a primary concern after emancipation).


172. Id. at 30. In addition to the Black Codes, the Ku Klux Klan’s terrorism included the rape of black women. Roberts, supra note 40, at 29-30.

173. Roberts, supra note 40, at 85 (stating that “[w]ith freedom came developments that strengthened patriarchy within the black family and institutionalized the notion that men and women should inhabit separate spheres”).
Emancipation also shaped the thinking of white feminists who participated in the abolitionist movement. Many who opposed slavery for reasons other than the shame it brought them in their status as wives and mothers argued that:

the capacity for independence and rationality were male traits, that the world was divided into autonomous public and private realms, and that the family's internal relations fell beyond the bounds of scrutiny on the basis of justice and freedom. 'Women's rights . . . demand[ed] freedom and equal rights for her in the family.'

Understanding that this approach constituted a fundamental redefinition of freedom itself, many women in personal practices opposed white women's condition within marriage and regarding sex. Some women chose abstinence or self-imposed abortions as a way to improve their status within the family. However, the dramatic fall in the birth rate (from 278 to 130 births per thousand) among white women of childbearing age over the course of the nineteenth century had slowed substantially by the turn of the century. The Comstock Era laws and the eugenics movement proved successful in reversing the declining birth rate among certain white women. As the white birthrate leveled out, black women renewed their demands to achieve such reproductive self-determinism. Such reproductive patterns born from a common historical moment, gives new insight as to potential of the slave breeding narrative to enhance our understanding of the relationship between reproductive control and pursuits of freedom.

B. Integrated Legal Narrative

Despite the female slave experience of reproductive abuse, the abolitionist dissent and Congressional recognition of such abuse in enacting the Thirteenth Amendment, the judicial application of the Amendment has never reached reproductive exploitation. The Amendment's limited utility in protecting

174. See FONER, supra note 132, at 81 (citations omitted).
175. See id. at 84.
176. Id. at 83 (suggesting that many women were exercising personal freedom in their most intimate relationships).
177. See Cooper Davis, supra note 6, at 364. Peggy Cooper Davis connects the Comstockian and eugenics movement to the post slavery era. See id. She defines both efforts as "symptom[s] of the social dislocation caused by . . . the Civil War and as a tactic in a campaign of orthodoxy undertaken by native white Americans concerned about the apparent threat to their hegemony from European immigrants and free blacks." Id.
178. See COLLINS, supra note 39, at 118. As Patricia Hill Collins explains, based on their experiences during slavery, black women viewed reproduction as a site where they could "express and learn the power of self-definition." Id.
against reproductive abuse is due in part to nearly a century of narrow interpretations of the scope of the Amendment. Beginning with the *Slaughterhouse Cases*, where the Court restricted application of the Amendment to instances of chattel slavery only. Under this decision, slavery is so narrowly constructed that it made adding conditions of slavery, based on changing views of the ways in which slavery impacted all participants, nearly impossible. This is particularly true when the conditions that most affected women in slavery, whether white or black are at issue. Because the Court saw slavery as only applying to a finite and limited number and type of conditions, those who were unable to articulate their experience sufficiently during slavery and abolition would be forever silenced under this holding.

Similarly, the *Civil Rights Cases* illustrate that the Thirteenth Amendment doctrine developed without any connection to the history of women's experiences during slavery. This was a particularly stark omission given the fact that a plaintiff in one of the key cases was, Sallie Robinson, a woman. In deciding whether the Civil Rights Act of 1875 protected Miss Robinson's right to a seat in the "'ladies' car'" on a train, the Court held that the provision was beyond Congress's power to enact and was therefore invalid. In so doing, the Court failed to acknowledge Congress's recognition of the experiences of female slaves and the unique forms of abuse they endured. The Court's narrow application in these early cases makes recognition of the integrated narrative all the more important if women, especially the descendants of slaves, are to the receive gender specific protection from reproductive and sexual abuse under the Thirteenth Amendment.

In what has been described as signaling the rebirth of the Thirteenth Amendment, the Supreme Court decided in *Jones v. Alfred H. Mayer Co* to reverse the early narrow holdings of the Slaughter House Cases and the *Civil Rights Cases*. *Jones* provided, *inter alia*, that a condition or practice may

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179. 83 U.S.(16 Wall.) 36 (1872).
181. 109 U.S. 3 (1883).
182. *Civil Rights Cases*, 109 U.S. 3 (by invalidating the 1875 Civil Rights Act's ban on racial discrimination in public accommodations, the Supreme Court required that conduct at issue have existed during slavery).
184. *Id.* at 98.
185. *Id.* at 98-99 (discussing the *Civil Rights Cases* under a gender framework).
187. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) (expanding Congress's authority to identify and eliminate badges and incidents of slavery through legislation, thereby broadening the application of the
violate the Thirteenth Amendment even though that condition or practice did not exist during slavery. 188 Despite its promise, Jones's application to matters relating to reproductive oppression is severely limited without the integrated narrative which connects slavery to reproductive exploitation. While Jones acknowledges Congress's power to identify and suppress badges, incidents and relics of slavery, the Court did not reference sexual exploitation and made no mention of the fact that one of the first times the term "badges and incidents" was used was in reference to infringements on family and natal relationships. 189 Although the Court granted Congress broad power to legislate against conditions reminiscent of slavery even if they did not explicitly exist during the slave era, it has never held that the reproductive abuses that actually did occur during slavery fall under the holding in Jones. 190 Thus, many advocates who argue for an affirmation of Jones, especially regarding matters that implicate sexuality and reproduction, do so without addressing the fact that the Court has never directly applied the Amendment to reproductive matters. This perpetuates the separate spheres of slavery and reproduction although the history of slavery, and even the Congressional debates, suggest an integrated approach.

An integrated legal narrative which places slave breeding at the center of the conditions of slavery prohibited by the Thirteenth Amendment would indicate a true rebirth of the Amendment. The near century of restrictive holdings under Slaughter House and its narrow progeny would give way finally to a broad definition of slavery and would accept the notion that badges and incidences may come in forms otherwise overlooked by the judiciary and historians. Such a narrative would enable the Court's holding in Jones be more fully carried because reproduction abuse would be defined as a historically documented incident of slavery and Congress, according to Jones, would have the power to legislate accordingly. This would also enable legal scholars, activists and litigators who have struggled for decades to fashion viable Thirteenth Amendment theories since Jones.
IV. CONCLUSION

In advancing the utility of an integrated narrative, I have recounted several historiographies in order to show that they are but parts of the same story. For all legal discourse, theoretical and doctrinal, is interpretive work, as is all writing of history itself. The integrated narrative linking slavery with reproductive oppression suggests the need to extend its teachings to legal doctrine and scholarship. A comprehensive narrative enables us to ask new questions: what caused this important historical experience to be ignored? Why has the silence persisted even in the face of historical data establishing that such abuses occurred? Only when we have understood the forces that have relegated the experiences of female slaves to margins of intellectual, political, and legal discourse will we be able to engage in the important task of constructing an effective legal framework to prevent the continuance or reoccurrence of such practices.

The traditional stories become one comprehensive story in which the experiences of female slaves illuminate our understanding of the notions of reproduction and the pursuit of reproductive freedom in the United States. Such a narrative would enhance our understanding of the institution of slavery, its effects on slaves, and its complex legacy. It teaches us that Congress's failure to adequately confront the problem of slave breeding during debates on the Thirteenth Amendment—a problem known to Congress—is connected to the attitudes that enabled thousands of people to be forcibly sterilized during the eugenics movement. For female slaves, the story of slavery was the story of reproductive exploitation. How can the modern interpretation of the doctrine established to abolish slavery and protect reproductive rights logically co-exist without careful consideration of the point of intersection between the right to be free from slavery and the right to exercise reproductive freedom? The integrated narrative offers a possible approach to this question, which is owed to those who endured reproductive oppression and whose experiences have been written out of history. The integrated narrative also gives advocates and courts, who are so inclined, tools with which to begin constructing historical support for legal protection against

191. Professor Guyora Binder explains that:

[w]e do not arrive at normative judgments in a social and historical vacuum. We derive our values from roles and identities that are socially conferred. These social identities come equipped with collectively imagined histories—pasts we are constrained to accept not because they are 'true,' but because they are socially available. Thus normative decision making involves narratively situating ourselves in relation to a tradition shared with others.

modern reproductive oppression. The integrated narrative can assist us in developing doctrine which bridges slavery and reproduction.

Attainment of these objectives would certainly change the way we view the experiences of female slaves and the impact of those experiences on modern reproductive conditions. For example, an integrated narrative shows that the experiences of female slaves regarding reproduction and sexual abuse would inform our understanding of the institution of slavery in general. Slavery was not just about chains and forced labor as the traditional story suggests— it was about the gendered forms of bondage which had particular consequences in the lives of women. Female slaves had a slavery all their own—specifically designed to exploit what the institution valued in their bodies. As such, the integrated narrative expands our intolerance of slavery to include an intolerance for those modern day policies which perpetuate reproductive exploitation. The integrated approach to reproduction and slavery would shed light on and open new avenues of legal interpretation, e.g., the government sponsored Norplant incentives or private citizens paying women who are addicted to certain drugs to be sterilized. Reliance on or even recognition of the integrated narrative would assist advocates in creating challenges to such practices and gaining a new critique of the existing challenges. Therefore, the potential to build bridges can spill over to offer an enhanced view of what the institution of slavery entailed and how we might best fashion remedies to protect against the vast conditions that were integral to its creation and maintenance.