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Wreck and Ruin

The Civil War wrought havoc on the southern economy and the personal finances of the region's white residents. It ruined many of the most prominent slaveholding families who had possessed the bulk of southern wealth – of which human property comprised the vast majority. The infamous Calhoun clan, once led by fire-eater politician and zealous slavery supporter John C. Calhoun, was among those facing financial calamity. By 1866, the family's South Carolina plantation, Fort Hill, faced foreclosure. The Calhoun estate, like so many others, included more chattel property than real – much of which had been mortgaged. When the Civil War ended in Confederate defeat and Black freedom, the estate became instantly insolvent. Court records state unequivocally that Fort Hill, like so many other plantations, had "been rendered by the result of the late revolution to its present condition of wreck and ruin."[1] In 1872, Fort Hill was put up for auction.

When the majority of courts ruled in favor of the enforcement of debts for enslaved people, they established who would absorb the financial cost of emancipation. And when they nullified other debt relief provisions included in new state constitutions, they broadened the allocation of those losses. The cost of emancipation, most judges believed, fell "upon the party *who owned*

[1] *Floride Calhoun et. al. v. M.M. Calhoun et al.* Clemson University Special Collections Unit University Archives. *Lee v. Simpson* Mss 256, Box 1, Folder 3.

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the property ... at the time of emancipation."[2] In making such an assessment, judges determined a great deal more than financial winners and losers. They ultimately settled the degree to which slavery would remain embedded in the American economy. To justify the ongoing exchange of money for enslaved people and the rejection of financial relief for some planters, judges relied not only on contract doctrine but also on the tenets of commercial capitalism that had developed over the course of the nineteenth century.[3] Despite all antebellum evidence to the contrary, they declared that government-mandated abolition had *always* been an inherent risk to slave ownership.[4] It had been built into the price paid for every enslaved person. As the Circuit Court noted in the case that emerged from the Calhoun family's crisis, "At the time, property in slaves, as in everything else, was subject to be destroyed by revolution; and it has been so destroyed."[5] Those who participated in the economy of slavery "took the chances of emancipation into consideration, and paid such a price as he supposed the intrinsic value of the slaves, lessened by such chances, would justify him in doing."[6] They had gambled, in other words, on investments that did not pay off.

Generally, American capitalism in the mid-nineteenth century was governed by a few core tenets. Chief among them, the laws of nature – including the law of supply and demand – should control the market, not the state.[7] Unregulated markets fostered free competition, capital accumulation, the ownership of private

[2] *Hand v. Armstrong* 34 Ga. 232 (1866), 237. Emphasis in original.

[3] This stood in contradistinction to Great Britain's emancipation policy. When it ended slavery, it compensated slaveholders for the loss of their property.

[4] As economic historian Gavin Wright contends, throughout most of the pre-emancipation period, the property rights of slaveholders were "accepted and enforced, built into economic behavior that implied expectations of long-term viability" of slavery as a commercial practice. It required unanticipated "extraordinary national military upheaval" to disrupt those rights and expectations. Gavin Wright, *Slavery and American Economic Development* (Baton Rouge: Louisiana State University Press, 2006), 11.

[5] *Calhoun v. Calhoun*, 2 S.C. 283 (1870), 6.

[6] *Calhoun v. Calhoun,* 2 S.C. 283 (1870), 6.

[7] This is not to say that the United States lacked any regulation, or that Americans universally agreed on how much the state should intervene the economy. But, as Harry Scheiber has argued, any state intervention in the forms of tariffs, a centralized Bank of the United States, or subsidies for transportation projects tended to be "receptive

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property – including ownership of one's self – and, ultimately, innovation and dynamism.[8] Individuals assumed the risks of speculation and investment, while law facilitated economic growth by protecting private property, enabling the free exchange of goods and labor (i.e., through contract), and resolving disputes between economic actors.[9]

To slaveholders, emancipation violated the basic rules of capitalism by which they had abided and in which they had trusted. Government action had destroyed slave property, and enslavers feared they would have nowhere to turn for redress of what many considered an illegal taking. In a stinging rebuke to enslavers, the majority of judges concluded that the rules of property and contract, coupled with the cold calculus of the market, left no other option but for slaveholders to shoulder the financial loss, absent other significant relief. Judges effectively ensured that the business of bondage survived emancipation, even if enslavement did not, thus allowing some people (those to whom money was owed) to continue reaping the financial rewards of the slave economy – diminished though they may have been. To fully understand how and why the transactional aspect of slavery outlived its practice, we must confront post-emancipation judicial deference to the logic of capitalism.

Historians have long accepted that New World slavery was a profitable economic enterprise.[10] Slavery's connection to the emergence of capitalism, however, has been the subject of robust scholarly debate

to enterprise" and either came in response to "popular demands" or provided for "the public good." Scheiber, "Economic Liberty and the Modern State," 145–47.

[8] Of course, not all Americans ascribed to this view of capitalism. For instance, there were plenty of factions who opposed worker exploitation as the nation industrialized, and states, including Louisiana, that adopted more robust economic regulations. See Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848* (New York: Oxford University Press, 2007), chap. 14. See also, James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956); Horwitz, *The Transformation of American Law 1780–1860*; Scheiber, "Economic Liberty and the Modern State."

[9] On risk, see Jonathan Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America* (Cambridge, MA: Harvard University Press, 2012).

[10] See, e.g., Eric Williams, *Capitalism and Slavery* (Chapel Hill: University of North Carolina Press, 1944); Robert William Fogel and Stanley L. Engerman, *Time on the Cross* (New York: W.W. Norton & Company, 1974).

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for decades.[11] Recently, scholars of what is known as the new history of capitalism have contributed to that debate by chronicling the many ways that slavery – and the cotton economy in particular – undergirded the development and form of capitalism in the United States and around the globe.[12] Slavery, they insist, was implicated in the exploitation and oppression of labor, resource extraction, and legal regimes that supported free markets and unequal wealth distribution.[13] The proliferation of scholarship linking capitalism and slavery has prompted many institutions – including universities, medical schools, banks, and insurance companies – to confront their own lingering ties to the wealth generated by both the labor and ownership of enslaved people.[14]

[11] See, e.g., David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, NY: Cornell University Press, 1975); John Ashworth, *Slavery, Capitalism and Politics in the Antebellum Republic*, vol. 1: Commerce and Compromise, 1820–1850 (New York: Cambridge University Press, 1996); Eugene D. Genovese, *The World the Slaveholders Made: Two Essays in Interpretation* (New York: Pantheon Books, 1969).

[12] Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York: Basic Books, 2014); Sven Beckert, *Empire of Cotton: A Global History* (New York: Knopf, 2014); Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*; Caitlin Rosenthal, *Accounting for Slavery: Masters and Management* (Cambridge, MA: Harvard University Press, 2018); Sven Beckert and Seth Rockman, eds., *Slavery's Capitalism: A New History of American Economic Development* (Philadelphia: University of Pennsylvania Press, 2016); Daina Ramey Berry, *The Price for Their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation* (Boston: Beacon Press, 2017). Economic historians have challenged some of the findings of this work, especially Baptist's. See in particular, Alan L. Olmstead and Paul W. Rhode, "Cotton, Slavery, and the New History of Capitalism," *Explorations in Economic History* 67 (January 2018): 1–17, https://doi.org/10.1016/j.eeh.2017.12.002; Marc Parry, "Shackles and Dollars: Historians and Economists Clash over Slavery," *The Chronicle of Higher Education* LXIII, no. 17 (December 16, 2016): B6–9.

[13] For an overview of the historiography that considers the relationship between slavery and capitalism, see Manisha Sinha, "The Problem of Abolition in the Age of Capitalism," *American Historical Review* 124, no. 1 (February 2019): 144–63.

[14] Craig Steven Wilder, *Ebony & Ivy: Race, Slavery, and the Troubled History of America's Universities* (New York: Bloomsbury Press, 2013); Leslie M. Harris, James T. Campbell, and Alfred L. Brophy, eds., *Slavery and the University: Histories and Legacies* (Athens: University of Georgia Press, 2019); Sharon Ann Murphy, *Investing in Life: Insurance in Antebellum America* (Baltimore: Johns Hopkins University Press, 2010); Matthew Desmond, "In Order to Understand the Brutality of American Capitalism, You Have to Start on the Plantation," *New York Times Magazine*, August 14, 2019, www.nytimes.com/interactive/2019/08/14/magazine/

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Modern abolitionists and scholars of the Black radical tradition agree that law, slavery, and capitalism have always been connected. As abolitionist legal scholar Anthony Paul Farley bluntly articulates, the linkage began with the Middle Passage, "the primal scene of accumulation that became these United States," and continues to this day.[15] Indeed, many modern calls for reparations are specifically based on the "economic evisceration" produced by the "continuing harms of colonialism and slavery."[16] Such calls, however, typically focus on forms of institutionalized racism that have caused direct injury to Black people (and other people of color), such as lawful segregation, housing discrimination, and wage inequality. Examining private lawsuits reveals that slavery continued to shape post-emancipation economic development in unexpected ways. These, too, helped facilitate the institutionalization of racism observed by modern scholars.

Law facilitated slavery's relationship to capitalism. In fact, "to understand the place of slavery in American economic development," economic historian Gavin Wright urges, we must look to its "legal aspects" because they have been "more enduring and pervasive – more robust in the parlance of economics – than the particularities" of slavery's day-to-day practice.[17] By the early nineteenth century, the law had come to view enslaved people as movable property – as fully alienable "chattels personal" that were not fixed to the land.[18]

slavery-capitalism.html; David Teather, "Bank Admits It Owned Slaves," *The Guardian*, January 21, 2005, www.theguardian.com/world/2005/jan/22/usa.davidteather. On medical schools' purchase of Black cadavers, see Berry, *The Price for Their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation*, chap. 6.

[15] Anthony Paul Farley, "Accumulation," *Michigan Journal of Race and Law* 11, no. 1 (2005): 57–58.

[16] Rodríguez, "Abolition as Praxis of Human Being: A Foreword," 2019, 1611; "Movement for Black Lives," The Preamble, accessed August 8, 2021, https://m4bl.org/policy-platforms/the-preamble/. For modern abolitionists, racial capitalism includes the "extraction of Black labor and the expropriation of indigenous land." Policing and incarceration further the aims of exploiting labor. There is, in other words, a symbiotic relationship between racism, neoliberalism, and mass incarceration. Amna A. Akbar, "Toward a Radical Imagination of Law," *New York University Law Review* 93, no. 3 (2018): 449–50.

[17] Wright, *Slavery and American Economic Development*, 7.

[18] Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: University of North Carolina Press, 1996), chap. 3.

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This legal determination made possible the full commodification, monetization, and securitization of people. In short, it enabled the free exchange of chattel slaves in the United States, and the development of lucrative secondary markets fueled by slavery's expansion. Antebellum legal doctrine – particularly the liberalization of the rules of contract and commercial law doctrine in general (Chapter 1) but also the law of inheritance – further supported the development and expansion of slavery's capitalism.[19]

This chapter locates the link between slavery and capitalism in the mundane transactions between and the financial plans of white southerners that were adjudicated following the Civil War. Decisions in these suits helped ensure that the relationship between slavery and American economic development remained undisturbed, and reveal an underappreciated aspect of the incompatibility of liberal capitalism with abolition.

During Reconstruction, judges in the United States stood at a crossroads. Abolitionists had long decried the commodification of persons, and, after emancipation, they insisted that upholding the financial instruments and arrangements of slavery perpetuated the immoral trade that the Constitution banned forever. Judges such as James Taliaferro came to believe the same, and decided that money for slaves could not continue to change hands because the ongoing enforcement of financial agreements related to slavery contradicted the Thirteenth Amendment – they were manifestations of slavery. But the majority of rulings rejected the abolitionist critique that slavery was antidemocratic, immoral, or – by late 1865 – unconstitutional in all regards.[20] Judges denied the Thirteenth Amendment's capacity to fully destroy the business of bondage.

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[19] Beckert and Rockman, *Slavery's Capitalism: A New History of American Economic Development*; Horwitz, *The Transformation of American Law 1780–1860*; Simard, "Slavery's Legalism: Lawyers and the Commercial Routine of Slavery"; Kreitner, *Calculating Promises: The Emergence of Modern American Contract Doctrine*.

[20] Antebellum abolitionists understood the incompatibility between slavery and capitalism, but only some rejected capitalism entirely. Most nevertheless "possessed a biblical political economy, not a classical liberal one," and rejected that people could be property. James L. Huston, "Abolitionists, Political Economists, and Capitalism," *Journal of the Early Republic* 20, no. 3 (Autumn 2000): 488.

While judges could not prevent the financial losses of uncompensated emancipation from devastating the southern economy and many of the region's families, they could and did preserve and protect the system of capitalism that slavery had made. By upholding both the specific legal agreements and the specific rules of capitalism that had developed within the context of Atlantic World slavery, judges salvaged aspects of slavery's marketplace and safeguarded the racial privilege that participation in it had long afforded.

In so doing, judges failed to consider that their combined reliance on commercial law doctrine and tenets of liberal capitalism ensured that aspects of slavery survived beyond 1865. That is, most judges did not appreciate how the law facilitated the racial subjugation of bodies and labor and thus left in place the assumptions and doctrines that would allow for new forms of racial exploitation, including tenant agreements and convict leasing, to arise. Intentionally or not, judges effectively ensured the proliferation of what scholar Cedric Robinson would later call "racial capitalism": the development and evolution of "social structures emergent from capitalism" "permeate[d]" by "racialism," by leaving residues of slavery embedded – and unchallenged – in law and in the American economy.[21]

The participants in the antebellum economy of slavery had no reason to believe that investing in chattel property had unduly exposed them to financial risk. They certainly understood the financial hazards of the modern commercial economy and had shown their aptitude for navigating the complexities of domestic and international markets. By speculating on slaves, land, and cotton, they generally prospered.[22] They saw investments in slaves as particularly safe and responsible, since human assets provided protection against the vagaries of the larger economy. When crops failed, or the cotton market bottomed out, slaves could be sold or mortgaged until circumstances improved.

[21] Cedric Robinson, *Black Marxism: The Making of the Black Radical Tradition* (Chapel Hill: University of North Carolina Press, 1983), 2.

[22] See, e.g., Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*; Wright, *Slavery and American Economic Development*.

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As George Fitzhugh wrote in 1854, "Slavery insurance never fails, and covers all losses and misfortunes. Domestic slavery is nature's mutual insurance society."[23]

Slavery's unique legal protections bolstered that view. Slavery enjoyed constitutional sanction, the protection of increasingly strong federal legislation, and support from the Supreme Court – even from antislavery justices – in landmark cases.[24] The risk of emancipation that postbellum judges identified during Reconstruction materialized only with Confederate defeat and a dramatic constitutional transformation. The revolution occasioned by the Civil War – Black freedom itself – exposed the liability.

Custom and culture provided southerners with an additional sense of security, which further sheltered them from the harsh realities of the market. During the antebellum period many lived according to a set of practices governed by notions of honor, mastery, and social respectability – all of which derived from one's race, gender, and

[23] George Fitzhugh, *Sociology for the South: Or the Failure of Free Society* (Richmond, VA: A. Morris Publisher, 1854), 168. More recently, historian Jonathan Levy corroborates the same: "[M]any white southerners hedged against the perils of capitalism by owning slaves." Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*, 62–63.

[24] See in particular, *Dred Scott v. Sandford,* 60 U.S. 393 (1857) and *Prigg v. Pennsylvania* 41 U.S. 539 (1842). Congressional legislation included both Fugitive Slave Acts. While scholars debate the degree to which framers specifically intended to protect slavery in the Constitution, congressional and Supreme Court actions gave explicit sanction to the notion that slaves counted as a special kind of constitutionally protected property. Southern jurists believed similarly. See Alfred L. Brophy, "The Market, Utility, and Slavery in Southern Legal Thought," in *Slavery's Capitalism*, ed. Sven Beckert and Seth Rockman (Philadelphia: University of Pennsylvania Press, 2016), 263. Reconstruction-era judges also say as much in their own rulings. For example, Chief Justice E. Woolsey Peck of the Alabama Supreme Court cited both federal Fugitive Slave Acts and *Prigg* in his opinion for *McElvain v. Mudd* 44 Ala. 48 (1870). On antislavery justices' enforcement of slavery, see Cover, *Justice Accused: Antislavery and the Judicial Process*. On scholarly debates on slavery and the Constitution, see, e.g., George William Van Cleve, *A Slaveholder's Union* (Chicago: University of Chicago Press, 2011); Christopher Tomlins, *Freedom Bound* (Cambridge: Cambridge University Press, 2010); Gordon S. Wood, *The Creation of the American Republic* (Chapel Hill: University of North Carolina Press, 1998); Sean Wilentz, *No Property in Man* (Cambridge, MA: Harvard University Press, 2018); Robin L. Einhorn, *American Taxation, American Slavery* (Chicago: University of Chicago Press, 2008); Don E. Fehrenbacher, *The Slaveholding Republic* (New York: Oxford University Press, 2001); David Waldstreicher, *Slavery's Constitution* (New York: Hill and Wang, 2009).

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status as a slaveholder.[25] Social standing, in other words, depended on slave ownership and the economic success begotten by the effective oversight of land and labor. For generations, historian Walter Johnson writes, white men had been "constructing themselves out of slaves."[26] An integral part of that process of self-making was reinforced in law and through legal contests.[27] Going to court to defend one's honor as a man and a master defined what Ariela Gross has called the "cultural meaning of whiteness."[28] Masculinity, mastery, status, and white privilege were largely coconstructed in antebellum southern courtrooms.

After emancipation, litigants hoped that by appealing to a common feature of their agreements for slaves – warranties – they could use their status and commercial aptitude to shield themselves from their debts and the dishonor of financial failure. Warranties for enslaved people conventionally guaranteed title, soundness, and that the property would be "a slave for life."[29] After emancipation, buyers insisted that since the slaves had not remained in bondage for the duration of their natural lives, the warranty had been breached and they were entitled to an abatement from sellers.

Warranties had emerged in older slave societies specifically to protect buyers. They served as an exception to *caveat emptor*, or buyer beware.[30] Though not required, warranties were common features of

[25] Though recent scholarship details women's involvement in slavery and slave ownership, they were not presumed to be the primary agents of the slave economy. Women do not often appear as litigants in the post-emancipation contract cases examined here. In some cases, male agents represented the interests of slave-owning women in court. For a detailed account of women's role in the economy of slavery, and male representation of women's interests in slavery, see Stephanie E. Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven, CT: Yale University Press, 2019).

[26] Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, MA: Harvard University Press, 2001), 88. See also Gregory S. Alexander, *Commodity & Propriety* (Chicago: University of Chicago Press, 1997). Alexander argues that "property is the material foundation for creating and maintaining the proper social order, the private basis for the public good."

[27] "The law worked to establish what it meant to be a master, and therefore what it meant to be a white man." Gross, *Double Character*, 99.

[28] Ibid., 120.

[29] *West v. Hall* 64 N.C. 43 (1870). North Carolina Library and Archives Case #9571.

[30] Gross, *Double Character*, 99–102; Morris, *Southern Slavery and the Law, 1619–1860*, 104–13.

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slave sales. Without such a guarantee, buyers had reason to question both the "soundness" of the bondsperson they wanted to purchase and the integrity of the seller.[31] Typically, a buyer without a warranty had little recourse to recover funds from a seller in the event of a slave's death or unsoundness, though a verbal promise – taking a seller at his word – could carry legal weight if a dispute arose.[32]

Antebellum warranty suits pitted white men against each other in symbolic duels in which one party sought satisfaction after a perceived slight by the other. They exposed both buyer and seller to attacks on their characters and challenges to their honor.[33] Sellers faced charges of being liars, cheats, speculators, and swindlers. Buyers endured accusations of being easily duped or manipulated, or – worse still – lacking the gentleman's skill of mastery when the enslaved people they purchased failed to live up to expectations.[34] Defenses against such charges became part of elaborate performances of social and racial superiority, and helped defend and cement the status of those who participated in and prospered from the slave trade.[35]

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[31] Gross, *Double Character*, 55; Morris, *Southern Slavery and the Law, 1619–1860*, 109–11; Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, 183–84.

[32] "Unsoundness" became a contested category during the antebellum decades. It came to include mental as well as physical "defect." Morris, *Southern Slavery and the Law, 1619–1860*, 109–11. Gross, *Double Character*, 55. Some states had unique rules regarding warranties for enslaved people. North and South Carolina, for example, recognized implied warranties, but were the only common-law states to do so. Louisiana permitted *quanti minoris* – a reduction in price of an object because of some defect – or redhibition, which canceled the sale altogether if the defect were significant enough to merit the action.

[33] On Southern honor generally, see Orlando Patterson, *Slavery and Social Death* (Cambridge, MA: Harvard University Press, 1982), 94–97; Bertram Wyatt-Brown, *Southern Honor* (Oxford: Oxford University Press, 1982). For a discussion of honor in the context of the antebellum Southern courtroom, see Gross, *Double Character*, chap. 2.

[34] Gross, *Double Character*, 55–57. Slaves themselves often shaped the outcomes of warranty suits. Some developed infirmities – through self-mutilation or feigned illness – after being sold so they would be returned to loved ones or a preferable living situation. Others, through indirect testimony, shaped legal outcomes. Ibid., 73; Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, 184–86.

[35] Some slave traders, seeking to protect their businesses and avoid the "unmasking" of questionable practices that could accompany accusations of fraud, simply allowed purchasers to return enslaved persons they found unsatisfactory rather than go to court. But this resolution may not have been available for those transactions that took place between neighbors or other individuals. Gross, *Double Character*, 54; Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, 169.

Emancipation appeared to disrupt the traditional antagonism in antebellum contract litigation. The U.S. government, not an individual participant in the slave economy, had enacted the ultimate dishonoring and emasculation by prohibiting enslavement and thereby obliterating slave ownership as a marker of status. Nevertheless, former slave owners did sue those from whom they had purchased their human property in traditional ways. If the federal government would not compensate former slave owners for their losses – both financial and social (an open question until the ratification of the Fourteenth Amendment) – then white litigants would use familiar, time-tested methods to perform the rites of white masculinity by turning on one another.

Relying on the logic of the market, judges rejected the argument that warranties protected buyers from emancipation. Warranties did not specifically protect against the destruction of slavery itself; therefore, purchasers had no remedy for recovering monies paid for slaves. Critically, judges distinguished, warranties did not include language to imply a future status; they only stipulated that bondspeople "were slaves for life in contradistinction to slaves for a shorter period of time," such as those bound "for a term of years."[36] Justices throughout the old slaveholding republic made the same fundamental claim. Warranties only guaranteed enslaved status for the life of the *institution*, not the for the natural lifetime of the individual bondsperson. Put another way, the warranty did not "guarantee" forever a slave's "*political status*."[37]

Judges indicated that they would make an exception for warranties that specifically protected against the end of slavery itself. But the preponderance of warranties followed a standard formulation, which included no such stipulation. If the parties to a contract intended the warranty to protect against emancipation, then they would "have been more explicit in making known that intention than by adopting a stereotyped formula, which had been in use … for more than two hundred years."[38] As the war progressed, a few people did include provisions for the loss of labor, especially in hire contracts, and

[36] *Hand v. Armstrong* 34 Ga. 232 (1866), 238.
[37] *Walker v. Gatlin* 12 Fla. 9 (1867), 12, emphasis in original.
[38] *Walker v. Gatlin* 12 Fla. 9 (1867), 15.

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judges honored them.[39] But in most suits, litigants were effectively asking courts to apply an *ex post facto* "policy of insurance" against an unanticipated – and therefore unspecified – event. Therein lay the fundamental problem. The contracting parties would have needed to foresee emancipation by government action and agree to include it in their agreements if they had wished their warranties to protect against it.

Without such a provision, judges declared, white southerners had inadvertently exposed themselves to an ever-present risk of emancipation by government action. The Florida court reminded litigants that the government could always have deployed "'eminent domain,'" which vested the government with "ultimate title to all property." Ownership of enslaved people had always been "subservient to that limitation and condition."[40] Perhaps most bluntly of all, the Kentucky Court of Appeals asserted that "the abolition of slavery, by the action of the government, was a contingency, like that of the death or escape of the slave to be risked by the purchaser."[41] In one refrain after another, judges made clear that people who had traded in slaves "took them subject to any change in the laws by which such property was held that the people of the United States, or their legally constituted agents might make."[42]

Judges' assertions implied that slaveowners, as rational economic actors, should have accounted for the intrinsic risk of emancipation. "It was possible, though not so probable, that the slaves might all … cease to be slaves by the effects of the war or the action of the government. … [A]ll these perils were known to the parties, and the risk of all was assumed and encountered" with every purchase or lease.[43] Instead, judges articulated, southerners had deceived themselves into believing that enslaved property was safer than other market commodities.

The risk to slavery that Reconstruction-era judges described was all but unfathomable before the war. It not only contradicted everything white enslavers believed about the financial benefits of slave ownership but also belied their historical experience. Slave ownership had a

[39] See, e.g., *Noland's Executor v. Golden*, 66 Ky. 84 (1867).
[40] *Walker v. Gatlin* 12 Fla. 9 (1867), 15.
[41] *Thomas v. Porter*, 66 Ky. 177 (1867), 177.
[42] *Bailey v. Howard,* 2 Ky. Op. 294 (1868), 295.
[43] *Scott v. Scott* 59 Va. 150 (1868), 176.

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proven track record. Investment in human property had helped people weather economic panics, including in 1837 and 1857, because they could be hired out for wages or liquidated through sale or mortgage.[44] Black freedom could have been realized only with Union victory in the Civil War *and* the political will to abolish slavery. As the attorneys for one Mississippi man noted, "[N]o human foresight contemplated the events that have transpired."[45]

Post-emancipation, the formerly responsible act of acquiring slaves was retrospectively transformed into a potentially reckless deed that imperiled households. Not only had slave ownership failed to protect the enslaving class, but individual slave owners had failed as men and masters. In what must have further frustrated litigants seeking relief, some judges agreed, even as they presumed an inherent risk to slavery and forced debtors to pay. The Alabama Supreme Court considered emancipation "the result of *vis major* of political events," which could never have been anticipated. It must be "put on the same footing as an act of God."[46]

Some rulings lamented the cost of emancipation to white slaveholders, but they also indicated the judicial constraints with which they were working. Judges were "not unmindful of the hardship and ruinous loss which have very often arisen out of circumstances connected with the late war, by which individuals, in consequence of acts not their own, have been made to suffer, but can not, on account of such hardship, depart from the well established principles of law."[47] It would otherwise open the floodgates to "every such warranty of servitude of slave thus emancipated," which most judges believed to be "a wide and disastrous field of litigation" that called all warranties for enslaved people into question.[48] This particularly revealing statement illustrates the rationale behind the majority position. Judges made a choice not to consider the alternative – nullifying

[44] Levy, *Freaks of Fortune: The Emerging World of Capitalism and Risk in America*, 94.

[45] *Bradford v. Jenkins* 41 Miss. 328 (1867). R. O. Reynolds, *Reports of Cases Argued and Determined in the High Court of Errors and Appeals for the State of Mississippi*, vol. XLI (New York: Banks Brothers, Publishers, 1868), 333.

[46] *Glover v. Taylor & Co.* 41 Ala. 124 (1867), 130–131. Alabama Department of Archives and History, SC268.

[47] *Haskill v. Sevier* 25 Ark. 152 (1867), 157.

[48] *Haskill v. Sevier* 25 Ark. 152 (1867), 157.

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the agreements – because it would have been too disruptive to court business and to the economy, not necessarily because it was unjustified. Judges, in other words, had no interest in being the perpetual censors of slave contracts. They concluded, therefore, that the laws that had permitted slavery may have changed but the rules of capitalism and doctrine of contract had not.

When litigants went to court seeking compensation for their own individual lost causes, they challenged jurists to consider the relationship between slavery and capitalism. Abolitionists, such as Louisiana's James Taliaferro, believed that contracts "arising from the traffic in slaves" violated the Thirteenth Amendment.[49] The amendment necessarily ended the business of bondage and destroyed slavery's connection to capitalism. Financial losses, therefore, had to be borne by those to whom money for bondspeople was still owed or who owned chattel property outright. In this interpretation (see Chapter 1) judges considered slaves to be a unique form of property that lacked support in natural law. Thus, when the majority of the nation no longer wished to tolerate slavery's existence, little else existed to secure it permanently in place. The rules that governed the slave trade may have appeared identical to the commerce in any other commodity, but in fact, judicial abolitionists argued, they had been artificially sustained by positive law. Enforcing debts for bondspeople violated the very premise of abolition by validating that monetary value could be assigned to human bodies and allowing some to continue profiting from their monstrous trade.

This position need not have threatened American capitalism any more than it undermined contract doctrine. It required the acceptance that persons could not be property, and that the Thirteenth Amendment prohibited the enforcement of any agreements that stipulated the opposite.[50] Beyond that, judges did not fault liberal economic theory or practice. In this way, judicial abolitionists were far more conservative than abolitionists writ large. Many abolitionists, including William Lloyd Garrison, Wendell Phillips, and for a time Horace Greely, harbored much stronger anticapitalist views. Some even advocated land redistribution and utopian socialism alongside

[49] *Wainwright v. Bridges* 19 La. Ann. 234 (1867), 240.
[50] Huston, "Abolitionists, Political Economists, and Capitalism."

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abolition. These activists saw the plight of the enslaved person and the wage laborer as intertwined, and grasped the connection between the development of slavery and the growth of liberal capitalism in the United States and abroad.[51] But even the far more modest claims of judicial abolitionists proved too radical for most judges. They agreed with dissenting Louisiana justice John Ilsley, not Taliaferro. While the Thirteenth Amendment prohibited the continued ownership of slaves, it did not prevent the completion of transactions already contracted. Perhaps more revealing of the majority view, slavery's capitalism had benefitted the economic development of the United States, and "but for the rebellion … [no] change would have been wrought."[52] To the contrary, Ilsley wrote, "'no one' (to use the language of Mr. Chief Justice Taney) 'questioned the opinion that slavery and the traffic in slaves was morally right. It was regarded as an axiom … which no one thought of disputing, or supposed to be open to dispute.'"[53]

Indeed, for most, the overall benefit of slavery remained indisputable. Even as disappointed litigants sought relief from emancipation, judges maintained that the rules that had always governed the market remained unaffected and universal. That was unfortunate for those who still owed debts for bondspeople, but enforcement of those debts affirmed the fundamental tenets of the system of capitalism that slavery had engendered. Money for slaves, even if reduced in amount, would continue to enrich some white southerners. The rules of American law and capitalism combined to validate the financial value once vested in people.

The post-emancipation effects of slavery's capitalism were amplified in litigation related to southern estates. In contrast to the money

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[51] Manisha Sinha, *The Slave's Cause: A History of Abolition* (New Haven, CT: Yale University Press, 2016), 347–58. Sinha overturns the thesis of David Brion Davis, who argued in *The Problem of Slavery in the Age of Revolution* that abolitionist ideology not only promoted, but justified, capitalism's accumulation of wealth and discipline of labor. See also, Sinha, "The Problem of Abolition in the Age of Capitalism."

[52] *Wainwright v. Bridges* 19 La. Ann. 234 (1867), 244.

[53] *Wainwright v. Bridges* 19 La. Ann. 234 (1867), 244.

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involved in individual sales or leases, this type of litigation involved the wealth accumulated over generations. Slave ownership was supposed to provide financial security for families – especially for wives, children, and other dependents, since land was typically passed down to sons (or the eldest son alone), while wealth in other forms of property was bequeathed to wives and daughters. While most southerners did not own any slaves at all, those who did often invested more of their wealth in slaves than in real or other personal property.[54] For elite planters especially, economic historian Gavin Wright reminds us that "wealth and wealth accumulation meant slaves, and land was distinctly secondary."[55]

On the eve of the Civil War, roughly $3 trillion of the South's $6.3 trillion in wealth was invested in slave property.[56] This degree of financial reliance on slavery made emancipation utterly devastating.[57] For those who had mortgaged or used their slaves as collateral, it was completely ruinous. One Virginia judge questioned whether any estate composed significantly of enslaved property could have survived emancipation. It was unclear to him "whether" anyone "would have been able to carry it, or any part of it, safely through a war which has wrecked the hopes and the fortunes of so many."[58] Estates were left insolvent. Bequests went unfulfilled. The effects of these outcomes remain observable to this day.

Southern women often bore the brunt of the burden when estates crumbled. For example, Florida woman Rhoda Kilcrease Gibbes, the widow of William Kilcrease, challenged her husband's will after

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[54] Approximately 394,000 out of roughly 8 million free people in the South owned enslaved people in 1860 (or about 5 percent). Most owned between 1 and 5 bondspeople. Jenny Bourne, "Slavery in the United States," EH.net, March 26, 2008, https://eh.net/encyclopedia/slavery-in-the-united-states/. See also, U.S. Bureau of the Census, Historical Statistics of the United States, 1970, collected in ICPSR study number 0003, "Historical Demographic, Economic and Social Data: The United States, 1790–1970."

[55] Gavin Wright, *Old South, New South: Revolutions in the Southern Economy since the Civil War* (Baton Rouge: Louisiana State University Press, 1997), 19–20.

[56] Wright, *Slavery and American Economic Development*, 60.

[57] Southerners did occasionally raise concerns about the regional dependence on slavery and the perceived inequality between North and South. Recently, Walter Johnson has explored some of those fears. Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*.

[58] *Mason v. Jones* 67 Va. 271 (1875), 277.

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"the estate suffered a loss amounting to not less than $150,000 from the emancipation of the slaves," leaving it insolvent.[59] The Florida Supreme Court invoked the same logic that informed rulings in contract suits. It would not "relieve her … upon a ground of loss, occurring in the natural order of things."[60] It would not "establish a principle of insurance" after the fact.[61] Similarly, Susan Lewis, the widow of prominent Texan John Lewis, managed to salvage only a small portion of her husband's estate.[62] When he died in 1862, "Lewis was doubtless solvent … but … Emancipation reduced the estate to insolvency."[63] Ultimately, Susan's efforts to save her family's legacy failed. By 1898, land that had comprised the original Lewis plantation had changed hands three times. Descendants of John Lewis hoped to reclaim what they knew as Elmwood Plantation but never managed to do so.[64] Owing to the property's proximity to a reservoir, it became a "pulsating Gulf States Utilities plant" in the 1960s.[65] The company, now known as Entergy, still owns the property but few, if any, recognize the role emancipation played in opening that acreage to outside purchase.

Some suits pitted family members against each other. The children of Benjamin Skinner, a member of a distinguished North Carolina family that had lived in the region since the colonial period, ended up in court when emancipation made their father's will impossible to honor.[66] "By the results of the war the estate, other than the

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[59] *Stephens v. Gibbes* 14 Fla. 331, 360.
[60] *Stephens v. Gibbes* 14 Fla. 331, 360.
[61] *Stephens v. Gibbes* 14 Fla. 331, 360.
[62] John Lewis had emigrated from Virginia with 200 slaves, and made his home and plantation in Montgomery County, Texas, in 1842. In addition to being a well-respected planter, Lewis distinguished himself in state government, where he served as the last speaker of the House for the Republic of Texas. Sondra Hernandez, "Civil War Vet Returns to Willis, Becomes Active in Politics," *The Courier of Montgomery County*, March 15, 2017, www.yourconroenews.com/125years/article/Civil-War-vet-returns-to-Willis-becomes-active-11003364.php#item-85307-tbla-5.
[63] *Lewis v. Nichols* 38 Tex. 54, 55.
[64] Hernandez, "Civil War Vet Returns to Willis, Becomes Active in Politics."
[65] Josie Patrick, "The General Lewis Plantation," *Willis Centennial*, 1970, 19.
[66] As a consequence of their Quaker heritage, the Skinner family had a complicated history with slavery. For example, Reverend Thomas Harvey Skinner, Benjamin's brother, believed slavery was a great evil, but also acknowledged that the law protected it. Mary Maillard, ed., "Skinner Family Papers," accessed October 26, 2018, https://skinnerfamilypapers.com/?page_id=535.

lands … is insufficient to pay the … legacies … to each of his four daughters."[67] Skinner's daughters, disproportionately affected by the change in the estate's worth, sued their brothers, to whom the land had been bequeathed. They demanded an accounting of the lands not specifically left to their brothers, and if selling them would not cover their pecuniary legacies, they argued their brothers' lands should also be sold in order to honor their father's desire "to make all his children equal."[68] The North Carolina Supreme Court recognized that to allow the daughters' legacies to become "a charge upon the real estate" meant "exhaust[ing] the whole of the real estate and leav[ing] the sons nothing."[69] But not doing so entailed the sons "tak[ing] almost all the estate from the daughters."[70] Either scenario "would do violence to the intention of the testator."[71] In the end, Skinner's explicit desire for parity among his children prevailed. The court ordered the accounting desired by his daughters, and demanded that the lands left to his sons be "ascertained and applied" to the legacies of the four daughters. Benjamin Skinner's children ended up luckier than others. The generational wealth accrued in significant part through their family's longstanding participation in slavery ultimately did pay off.

But that was not always the case, as the Calhoun saga demonstrates. A family dispute was also at the heart of the sensational *Calhoun v. Calhoun*. During the antebellum years, the Calhouns were one of South Carolina's most prestigious families.[72] When John C. Calhoun died in 1850, he bequeathed his sizeable estate, which included the Fort Hill plantation, enslaved people, and other valuable

[67] *Lassiter v. Wood* 63 N.C. 360. S.F. Phillips, *Cases Argued and Determined in the Supreme Court of North Carolina*, vol. LXIII (Raleigh, NC: Nichols & Gorman, Book and Job Printers, 1869), 362.

[68] *Lassiter v. Wood* 63 N.C. 360, 363.

[69] *Lassiter v. Wood* 63 N.C. 360, 363.

[70] *Lassiter v. Wood* 63 N.C. 360, 363.

[71] *Lassiter v. Wood* 63 N.C. 360, 363.

[72] The family's wealth came from the legacy of family matriarch Floride Bonneau Colhoun Calhoun. Her family had owned the land prior to John C. Calhoun. The Bonneaus made their fortune as the owners of rice plantations in the low country and from opportunistic purchases of Cherokee lands after the American Revolution. Ernest McPherson Lander, *Calhoun Family and Thomas Green Clemson* (Columbia: University of South Carolina Press, 1989), 12. John C. Calhoun, famous for his pro-slavery rhetoric, served in the House of Representatives, in the U.S. Senate, and as vice president for both John Quincy Adams and Andrew Jackson. These positions did not add much to the family's coffers, but they certainly added to the family's social position.

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possessions, to his wife (and first cousin), Floride Bonneau Colhoun Calhoun.[73] When the aging Floride decided four years later that she no longer wished to oversee and maintain the large property, she sold the plantation (1,110 acres), fifty bondspeople, and all the personal property on thereon to her son, Andrew P. Calhoun, for $49,000 (approximately $1.7 million today[74]). Characteristically, the slave property made up the majority of the value of the estate.[75]

In order to buy the expensive property – real, chattel, and personal – Andrew Calhoun borrowed from his mother. In 1854, he "executed two separate mortgages, one for the Fort Hill plantation, and the other for the fifty negro slaves, each, by its terms, to secure the payment of the whole amount of the bond to Floride Calhoun" and her disabled dependent daughter Cornelia.[76] The family agreed that Andrew would pay back the loan plus interest in regular installments over a fifteen-year period. By 1869, when the final payment of the mortgage was scheduled, Andrew Calhoun was slated to pay a total of $88,720 for the estate (Figure 2.1).[77] Andrew agreed to the terms, certain that the investment would bring prosperity to his family. And then the war came.

[73] Even at this time, debt imperiled the estate. In 1850, Charleston friends raised the necessary funds to save the family from ruin and paid off their debt as a symbol of appreciation for the work John C. Calhoun had done on behalf of their state.

[74] Calculation determined using www.measuringworth.com/index.php.

[75] The real estate that made up the Fort Hill Plantation had been valued at $15,000; the slaves had an estimated worth of $29,000; and additional tools and equipment amounted to $5,000.

[76] *Calhoun v. Calhoun* 2 S.C. 283 (1870), 2. This information was included in the Circuit Court's Decree, which was reported along with the South Carolina Supreme Court ruling.

[77] "Whereas I the said Andrew P. Calhoun in and by my certain bond or obligation bearing date the 15th day of May one thousand eight hundred fifty four stand firmly held and bound with Floride Calhoun and Cornelia Calhoun of the same state and District in the penal sum of ninety eight thousand dollars and determined for the payment of the full and just sum of Forty nine Thousand Dollars that is to say forty thousand two hundred dollars to the said Floride Calhoun and eight thousand eight hundred dollars to the said Cornelia M. Calhoun the whole amount to be paid in fifteen years from the first day of April AD one thousand eight hundred and fifty four, payment to commence in ten years from that date and to be fully completed in five equal annual installments there after with interest on the whole amount for the first ten years at the rate of five and one half per cent per annum, and for the remaining five years at the rate of three percent per annum upon the installments as they fall due" Bond between Floride, M.M. and A.P. for the Purchase of the Fort Hill Farm, May 15, 1854. Clemson University Special Collections Unit University Archives. Lee v. Simpson Mss 256, Box 1, Folder 54.

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A Schedule of Slaves with their names and ages –

No.	Name	Age	No.	Name	Age
No 1	Sawney aged	59	No 34	Mary aged	23
2	Tilla "	50	35	Delphi "	8
3	Ned "	25	36	Sally "	2
4	Nicholas "	18	37	Edward "	4
5	Jonas "	16	38	Peggy "	8
6	Jim "	12	39	Isaac "	2[illegible]
7	Matilda "	10	40	Cloe "	37
8	Chapman "	8	41	[illegible] "	20
9	Moses "	22	42	Katy "	60
10	Gargar "	23	43	Kitty "	21
11	Lucinda "	5	44	Child "	2
12	Armstead "	3	45	Nancy "	9
13	Binah "	3	46	Richmond "	23
14	Tom "	1	47	Phebe "	100
15	Cato "	2	48	Lucy "	[illegible]
16	Baby "	1	49	Grandison "	4
17	Daniel "	37	50	Jackson "	2
18	Rosanna "	32			
19	Willis "	21			
20	Peter "	12			
21	Dice "	8			
22	Fany "	19			
23	Hannah "	3			
24	Daniel "	1			
25	Billy "	35			
26	Jane "	30			
27	Mack "	10			
28	Sawney "	8			
29	Moses "	6			
30	Suckey "	4			
31	Pegg "	2			
32	John "	1			
33	Caty "	0			

FIGURE 2.1 A schedule of Slaves with their names and ages
The schedule of enslaved people purchased by Andrew Calhoun from his mother, Floride Calhoun, May 15, 1854. Courtesy of Special Collections and Archives, Clemson University.

Mortgages like this one had long sustained the antebellum slave economy. Most contracts for enslaved people included promises to pay in installments, using the property being purchased as collateral for the debt. These purchase-money mortgages, as they were known, allowed those without sufficient capital on hand – such as Andrew Calhoun – to purchase enslaved people and transform their labor and prospective value into financial resources and social capital.[78] Conversely, such agreements permitted those with sufficient liquidity – such as Floride Calhoun – to use existing assets to generate additional wealth, and so the cycle continued as slavery expanded throughout the era.

From the colonial period onward, historian Bonnie Martin has shown, neighbors, friends, and family members executed mortgages largely on their own. Banks and other formal lending institutions rarely became involved, except as locations for deposit.[79] In South Carolina, for instance, of all interpersonal loans that used slaves as collateral, individuals arranged 81 percent of them among themselves, while "banks, churches, merchants, and building societies" supplied the rest.[80] South Carolina borrowers were more likely than residents in other states to use their bondspeople as security for loans, but the common financial practice took place everywhere, creating a "matrix of overlapping local credit networks" that had sustained some enslavers through periods of economic contraction.[81]

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[78] An alternative arrangement, an equity mortgage, used other property as collateral for the purchase of a slave or other property.

[79] Bonnie Martin, "Slavery's Invisible Engine: Mortgaging Human Property," *The Journal of Southern History* 76, no. 4 (2010): 817–66; Bonnie Martin, "Neighbor-to-Neighbor Capitalism: Local Credit Networks and the Mortgaging of Slaves," in *Slavery's Capitalism* (Philadelphia: Pennsylvania University Press, 2016), 107–21.

Andrew and his mother entered into this kind of arrangement; he paid his debts to the Bank of Charleston into her account.

On the securitizing of slaves in international financial networks, see Edward E. Baptist, "Toxic Debt, Liar Loans, and Securitized Human Beings: The Panic of 1837 and the Fate of Slavery," in *Capitalism Takes Command: The Social Transformation of Nineteenth-Century America*, ed. Michael Zakim and Gary J. Kornblith (Chicago: University of Chicago Press, 2011).

[80] Martin, "Slavery's Invisible Engine: Mortgaging Human Property," 846.

[81] Martin, "Neighbor-to-Neighbor Capitalism: Local Credit Networks and the Mortgaging of Slaves," 108.

In some instances, these local networks were institutionalized. For example, enslaved property provided the security for 80 percent of mortgages in East Feliciana Parish, Louisiana, and served as collateral for the white planters of means who bought shares in the state's investment banks.[82] In some locations – frontier settlements especially – enslaved people may have been the chief source of liquidity and the primary engine for further development of slave-based agriculture.

Before emancipation, a borrower who defaulted on a mortgage for a bondsperson would have been forced to sell or face repossession by the lender.[83] After the war, however, this option disappeared; the enslaved collateral used to secure the loans had been destroyed. So long as states required the repayment of debts for slaves, as all but Louisiana ultimately did, these obligations had to be paid out of other resources. And for those such as Andrew Calhoun, who had also mortgaged their other assets, or for those who had no other resources with which to pay back loans for slaves, financial disaster loomed.

Even before the war ended, the Calhoun family suffered a tragic blow. Andrew P. Calhoun died suddenly of a heart attack in March 1865, just months before emancipation. At that time, he had paid only $9,000 of the money he owed on the Fort Hill mortgage, and had accrued other sizeable debts by investing heavily in the Confederacy. With emancipation and the removal of slaves as assets, the estate became insolvent. The newly widowed Margaret Calhoun, wife of Andrew, would not be able to pay her mother-in-law the mortgage debt her husband had incurred.[84]

Floride Calhoun was not at all sympathetic to her daughter-in-law's plight. On March 12, 1866, she and her son-in-law Thomas Green Clemson initiated foreclosure proceedings against Andrew's family.[85] If her son's family could not repay his loan, Floride would not allow her daughter-in-law or her grandchildren to remain at Fort Hill.

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[82] Johnson, *Soul by Soul: Life inside the Antebellum Slave Market*, 26.

[83] Of course, financial risks taken by debtors could translate into personal disaster for the enslaved people whose value had been leveraged. Countless personal accounts of enslaved people recall the trauma of forced separation that accompanied masters' insolvency.

[84] Margaret is sometimes called "Marguerite" in court documents.

[85] Clemson acted on behalf of the disabled Cornelia Calhoun.

Margaret found no relief in court either. The Circuit Court's decree from 1866 stated plainly that the estate "like many others, was almost entirely swept away by the results of the late war."[86] Fort Hill itself was "the only property remaining for the payment of the bond."[87] Andrew's widow either had to pay or face the loss of her home.

In her appeal to the state's supreme court, Margaret Calhoun attempted to finesse the interpretation of her agreement in her favor. Because the enslaved property had been mortgaged, she argued, the creditor still owned them. In this case, that meant her mother-in-law, Floride, who died just before the suit commenced. The fifty bondspeople "were, at the time of emancipation, the absolute property of the mortgagees, both by law and the terms of the agreement. Their loss was the misfortune of the complainants," not the liability of Margaret and her children.[88] It was a claim of desperation, as Floride owned the mortgage, not the slaves. Margaret's counsel almost certainly understood that such an argument would fail, but they, and lawyers and litigants elsewhere, tried any tactic that might offer relief.

The Supreme Court of South Carolina was not persuaded. It followed the lead of the other state courts that enforced contracts for enslaved people and denied Margaret's claim in its entirety. "Slaves, in South Carolina, when this contract was made, were the legitimate subjects of sale and purchase. To impeach such a transaction now as illegal, or against public policy, is not only to ignore the history of the State in regard to the institution, but to view the events of the past by the reflected light of the present day."[89] Moreover, the court declared that "the mortgage, in fact, is but a security for the debt."[90]

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[86] *Calhoun v. Calhoun,* 2 S.C. 283 (1870), 4. The widow and children of Andrew P. Calhoun did rent out the land of the plantation in an attempt to raise the funds necessary to pay Floride Calhoun and Thomas Clemson. However, given the financial circumstances southerners experienced in the immediate aftermath of the Civil War, they could not command enough money to pay their debts.

[87] *Calhoun v. Calhoun,* 2 S.C. 283 (1870), 4. Though it seems heartless of Floride to evict her own grandchildren, scholars of the family have documented that Floride did not have a particularly good relationship with her son Andrew, and seemed to care less for him and his children than she did for her daughter Anna Clemson and her children.

[88] *Calhoun v. Calhoun,* 2 S.C. 283 (1870), 13.

[89] *Calhoun v. Calhoun,* 2 S.C. 283 (1870), 307.

[90] *Calhoun v. Calhoun,* 2 S.C. 283 (1870), 308.

Any argument to the contrary misunderstood the commercial instrument. The South Carolina court's opinion relied on a firm belief in an uninterrupted economy. The "history of the State in regard to the institution," judges believed, included the economic system that evolved within it.

None of the cold calculations revealed in the opinion considered that antebellum wisdom instructed men of Andrew Calhoun's class to build their estates out of slaves. Doing so purportedly insulated dependent family members from destitution and ruin should tragedy strike, and grew the wealth of the estate for future generations. Though Andrew had made a number of other poor investment decisions (including investing heavily in the Confederacy), purchasing Fort Hill did not count among them. He intended, as many prominent men did, to use the estate as security for his family and to safeguard the prominence of his family's social stature. After Andrew's death, Confederate defeat, and the destruction of slavery, Margaret and her children realized just how deceptive that security had been. Unable to find the funds needed to save it, they watched helplessly as Fort Hill was auctioned off in Walhalla, South Carolina, on January 21, 1872.[91]

Yet this was not the end of the Calhoun story or of the family's ties to Fort Hill. In her will, written before initiating the original order of foreclosure, Floride Calhoun bequeathed Andrew's bond and mortgage to her favorite daughter, Anna Clemson, and her granddaughter and namesake, Floride Clemson. In her diary, the younger Floride stated, with a full grasp of the stakes, that "Fort Hill, all the rest of her personal property & furniture, silver & jewels, [shall pass] to mother first, then to me, then to [my brother] Calhoun, in case I die without either will or issue." In addition, "a fourth part of the Ft. Hill bond & mortgage is mine now. … Grandma has done a noble part by me."[92] When the property went up for auction, Thomas Green Clemson, Anna's husband, bought Fort Hill on behalf of his wife and

[91] Lander, *Calhoun Family and Thomas Green Clemson*, 239.

[92] Floride Clemson, *A Rebel Came Home* (Columbia: University of South Carolina Press, 1961), 109. Calhoun was Floride Clemson's brother, Floride Calhoun's grandson. The remaining three quarters of the Fort Hill bond passed to Anna Clemson.

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daughter using Andrew's original bond as security plus $7,000 of his own funds. The property remained in the Calhoun family.

After the untimely deaths of his children Floride Clemson and Calhoun Clemson in 1871, and his wife Anna Clemson in 1875, Thomas Clemson alone inherited Fort Hill. After yet another extraordinary and protracted legal battle (*Lee v. Simpson*) that contested this inheritance and ultimately ended up in the U.S. Supreme Court, the ownership of the old Calhoun plantation remained Clemson's.[93] The property became Clemson College in 1889, according to Thomas Clemson's last will and testament.[94] The Fort Hill plantation house still sits at the center of what is now Clemson University. Periodically, distant relatives of Floride and John C. Calhoun have challenged Clemson's right to the property and the subsequent establishment of Clemson College by an interloper on their family's land. None have succeeded.

Some state legislatures and state constitutional conventions adopted measures specifically intended to provide postbellum financial relief. Recall (Chapter 1) that state constitutional provisions that nullified agreements for enslaved people were part of a multifaceted plan to alleviate debt. So too were homestead exemptions (which shielded a set amount of property from creditors), stay laws (which allowed debtors more time to pay their debts than originally stipulated), and statutes that allowed the scaling of Confederate currency.[95] Those who favored such provisions sought ways to transfer economic power that had traditionally rested in the hands of large slaveholders to the politically ascendant men of more modest means, including Black Americans and members of the yeomanry. In this way, debt relief provisions represented the antithesis of slavery's capitalism; they offered financial assistance to the very people who once comprised the estates of the region's wealthiest families.

[93] *Lee v. Simpson* 134 U.S. 572 (1890).

[94] Clemson, *A Rebel Came Home*, 119–20.

[95] Kull, "The Enforceability after Emancipation of Debts Contracted for the Purchase of Slaves," 496. On debt relief measures, see Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, 326–29. These issues will also be discussed at length in subsequent chapters.

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Relief measures attracted interracial support, from struggling small farmers who sought debt alleviation to African Americans, who wanted to establish low homestead exemptions that would force large, indebted landholders to part with some of their real estate.[96] With more land available, African Americans would have a chance to purchase their own homesteads at more affordable prices. Freedmen and other Radicals believed that providing land and breaking up plantations were essential for Black success.[97] Some reasoned that the measures would aid poorer whites by shifting financial losses to those large planters considered wealthy enough to absorb them, and who were guilty of leading the southern states into a devastating war. They, or equally maligned slave traders, had presumably sold or hired out the slaves in question.[98] Of course, this ignored reality. For one, all southerners, including the old planter elite, faced dire financial straits.[99] For another, plenty of those who sought payment for slaves counted among the middling classes the delegates thought they were shielding from loss. As one legal scholar asserts, the "creditor, in fact, was far more likely to be a widow or an orphan than" a slave trader or wealthy planter.[100] After all, credit often originated in local communities – sometimes between neighbors – rather than from commercial traders or well-heeled financial institutions.[101]

Debt relief provisions prompted litigation that mirrored contract cases. More often than not, judges overrode the intent of lawmakers, preferring instead to bolster the rules of liberal capitalism – particularly that the state should not create artificial barriers to the exchange of capital. The homestead exemption, for instance, was hotly debated among jurists, but it was not a new legal device. Exemptions had already been adopted in state codes or constitutions to shield real

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[96] Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, 326–27.
[97] Ibid., 329.
[98] Kull, "The Enforceability after Emancipation of Debts Contracted for the Purchase of Slaves," 524.
[99] Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, 326.
[100] Kull, "The Enforceability after Emancipation of Debts Contracted for the Purchase of Slaves," 528.
[101] Martin, "Neighbor-to-Neighbor Capitalism: Local Credit Networks and the Mortgaging of Slaves"; Richard Holcombe Kilbourne, Jr., *Debt, Investment, Slaves: Credit Relations in East Feliciana Parish, Louisiana, 1825–1885* (Tuscaloosa: University of Alabama Press, 1995).

property from creditors or tax collection when an owner was in dire financial straits. States across the nation had instituted them during the antebellum period to help protect small independent property owners against periods of economic panic – especially from opportunistic, predatory creditors.[102] Ideally, such statutes would ensure that families would keep their homes and means of production despite market busts, crop failures, or derelict husbands who failed to provide adequately for wives and children.[103]

Over the course of Reconstruction states that lacked homestead exemptions adopted them, and those with preexisting laws expanded the amount of property they protected. For example, Alabama quadrupled the acres covered, while Georgia exempted "ten times the value of town lots protected in 1845."[104] Virginia came late to this practice; it was one of only three slave states (Kentucky and South Carolina were the others) that had failed to adopt a homestead exemption prior to the end of the Civil War.[105] Virginia, a state that experienced a significant degree of physical destruction in the Civil

[102] In other states, such exemptions were called "poor man's laws." Texas was the first state to adopt a homestead exemption, doing so in 1839. This should not be surprising, since the device was far more common in Spanish law than in English or American law. See Goodman, "The Emergence of Homestead Exemption in the United States." "The ten Southern states passed their first homestead exemption laws in the following years: Texas in 1839; Georgia in 1841; Mississippi in 1841; Alabama in 1843; Florida in 1845; South Carolina in 1851 (repealed seven years later); Louisiana in 1852; Tennessee in 1852; Arkansas in 1852; and North Carolina in 1859. The remaining four states – Missouri, West Virginia, Kentucky, and Virginia – did not pass their first laws until 1863, 1864, 1866, and 1867, respectively." Alison D. Morantz, "There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family, in Nineteenth-Century America," *Law and History Review* 24, no. 2 (Summer 2006): 253n24.

[103] Paul Goodman, "The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840–1880," *Journal of American History* 80, no. 2 (September 1993): 470–98. Goodman argues that antebellum homestead provisions were adopted to support the republican ideal of self-sufficiency that was threatened by tenant farming, wage slavery, and the market revolution. It's worth noting that there was a negative side to adopting homestead exemptions. Creditors were less eager to loan money without strong assurances that the note would be repaid. This meant that often, the economy was constrained by a lack of financial liquidity.

[104] Ibid., 492.

[105] There was a $500 exemption that existed in Virginia before this was passed, but it was not a homestead exemption. Kentucky adopted its homestead exemption in 1866.

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War, attempted to forestall total economic collapse by adopting a retroactive homestead provision in its new state constitution.[106]

Even a retroactive exemption was not particularly unusual. Georgia, North Carolina, and Mississippi all structured their exemptions in this way. The U.S. Congress also saw the benefit of such protective legislation. Compelled by western states, Congress enacted The Bankruptcy Act of 1867, which gave preference to state homestead exemptions adopted before 1864, and was then revised to acknowledge exemptions enacted before 1872 – even if they were retroactive.[107] Protecting property in the postbellum context safeguarded the foundations of the agricultural economy – real property ownership and the indebted landowners of all classes.[108] Land reformers and abolitionists alike favored the provisions.[109]

The use of homestead exemptions by indebted former slaveowners predictably led to legal showdowns with creditors. In Virginia, suits against those who invoked the exemption also became referendums

[106] Article XI of Virginia's Constitution of 1870 protected $2,000 worth of property from creditors, on "any debt heretofore or hereafter contracted." This constituted a high amount by antebellum standards (e.g., Indiana only exempted $300 in 1852), but a general trend toward more liberal exemption laws emerged after the war, and Virginia's enactment aligned with other states' Reconstruction-era protections.

Article XI, Section 1 of the Constitution of Virginia of 1870 read: "Every householder or head of household shall be entitled, in addition to the articles now exempt from levy or distress for rent, to hold exempt from levy, seizure, garnisheeing, or sale under any execution, order, or other process, issued on any demand for any debt heretofore or hereafter contracted, his real and personal property, or either including money and debts due him, whether heretofore or hereafter acquired or contracted, to the value of not exceeding two thousand dollars, to be selected by him …"

The Virginia Assembly enacted the Homestead Exemption Laws in the same year, pursuant to this new constitutional provision. See Chapter 157 – "An ACT to Prescribe in What Manner and on What Conditions a Householder or Head of a Family shall Set Apart and Hold a Homestead and Personal Property, for Benefit of Himself and Family, Exempt from Sale for Debt." *Acts of the General Assembly of the State of Virginia Passed at the Session of 1869–'70* (Richmond, VA: James E. Goode, Printer, 1870), 198.

Goodman, "The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840–1880," 492.

[107] Goodman, "The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840–1880," 492.

[108] James W. Ely, Jr., "Homestead Exemption and Legal Culture," in *Signposts: New Directions in Southern Legal History*, ed. Sally E. Hadden and Patricia Hagler Minter (Athens: University of Georgia Press, 2013), 294.

[109] Sinha, *The Slave's Cause: A History of Abolition*, 354.

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on the state's new political order. The enactment of a homestead exemption in Virginia signaled a new political willingness to protect the yeomanry over the interests of creditors. In a state once dominated by large slaveholders, this became possible because smaller planters and freedpeople had managed to wrest control of the state constitutional convention and the legislature away from the gentry who had historically controlled the state's politics.[110] As an "interracial group of Virginia Republicans" at the convention submitted, "The courts re-established under the auspices of the last Legislature, through their law officers, are now demanding the heart's blood of the poor debtors – and for whom? No one, save the capitalists and landed proprietors who were and are the secessionists of Virginia. … As long as they are allowed to control the people by the ledgers, just so long with they be the greatest enemies the Republican party will have to contend with."[111] A homestead exemption offered welcome relief from this financial oppression.

Litigants in *The Homestead Cases*, themselves men of the middling class, reinforced the claims made at Virginia's Constitutional Convention. Counsel argued, "[T]he truth is the creditor class of the community have moulded [*sic*] the legislation, and even the public sentiment, of the States, on the subject of contracts. They have applied their own commercial code of morals to the subject – a code which ignores all other relations and obligations but that of creditor and debtor."[112] They implored the Virginia Supreme Court to consider Virginia's postbellum circumstances and to remember the words and motivations of the lawmakers – Black and white – who had devised the exemption. Debtors insisted that "[T]he courts should not and cannot declare the action of the conventional power to be null and

[110] William W. Freehling, *The Road to Disunion Volume I: Secessionists at Bay, 1776–1854* (Oxford: Oxford University Press, 1991). See especially Part III. Class conflict between planters and the yeomanry had existed long before the outbreak of the Civil War, and Reconstruction presented an opportune moment to level the political playing field.

[111] Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, 327; W. H. Samuel, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia, Assembled at the City of Richmond, Tuesday, December 3, 1867* (Richmond, VA: Office of the New Nation, 1868), 88.

[112] *The Homestead Cases* 63 Va. 266 (1872). State Law Library of Virginia, Case file 458. Grattan, for the appellants.

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void on the ground that it is contrary to public policy," because the people of Virginia, through their delegates, had determined the policy themselves.[113]

In statehouses and courthouses, a clear and pointed argument emerged. The recklessness and moral bankruptcy of antebellum elites had led the southern states to war and subsequent defeat, and their interests should no longer be protected at the expense of others. "The war having swept off their slaves and nearly all their personal property, leaving them little less than their lands, these lands are insufficient to pay their debts; and therefore they ask for some relief from the overwhelming ruin which has been brought upon them, not by any misconduct or extravagance of their own, but by a calamity for which creditors and debtors are alike responsible."[114] Here, we find a postbellum condemnation of the "slave power," made by white southerners – some ex-enslavers – themselves. The courts should recognize, litigants argued, that there were "relations even more important than that of creditor and debtor to the well-being of a State, prior in time, and based upon higher sanctions."[115] By invoking God, some appealed to a higher law to prove just how much was at stake (not unlike abolitionists who used the same moral suasion to condemn the slave trade).

Yet creditors had also taken financial risks on slavery. They had lent the money necessary for individuals to buy the slaves that toiled across the region, and they too, as institutions, or more often as individuals, faced insolvency at the end of the Civil War. Though small farmers decried the power of creditors, the capital these lenders made available had long greased the wheels of the slave-based economy. They initiated mortgages, funded investments, and infused badly needed liquidity into a regional economy short on big financial institutions and on cash. The former slave states, seeking to make themselves anew, desperately needed both.

Creditors sought relief in court when homestead exemptions prevented the repayment of loans. As in other contract litigation, they

[113] Case file 458, Brief for Hill, *The Homestead Cases,* 63 Va. 266 (1872), 3.

[114] *The Homestead Cases* 63 Va. 266 (1872). State Law Library of Virginia, Case file 458. Grattan, for the appellants.

[115] *The Homestead Cases* 63 Va. 266 (1872). State Law Library of Virginia, Case file 458. Grattan, for the appellants.

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argued that retroactive homestead exemptions were "contrary to article I. sec. 10th constitution of the United States."[116] The Virginia court agreed, and treated the suit like any other contract dispute. The state's legislature, it held, "Cannot, by retrospective legislation, annul the force of prior obligations. If it could do this, then the integrity of contracts, and the security for their faithful execution, in every State in the Union, would no longer be placed under the protection of the constitution of the United States, but would rest entirely upon the discretion of the legislatures or conventions of the several States. And where would be found the limit upon that discretion?"[117]

There was more disagreement about the constitutionality of homestead exemptions than over the enforcement of contracts for the sale or lease of enslaved people. The courts in Georgia, Alabama, Mississippi, and North Carolina all upheld retroactive exemptions. North Carolina's Justice Edwin Reade noted that homestead exemptions represented lawmakers' "commendable spirit" that allowed debtors with "the most prudent and honest purposes" to "escape from misfortune."[118]

Reade strongly preferred the exemptions over stay laws, which he thought enabled debtors "to be profligate and dishonest."[119] Stay laws, which applied to wealthy and indigent alike, allowed debtors more time to pay their creditors than contracts originally stipulated. Some believed the measures did more harm than good.[120] In 1869, Reade noted, "eight years of stay laws have left considerable indebtedness, with interest and cost accumulated and creditors and

[116] *The Homestead Cases* 63 Va. 266 (1872), 2. State Law Library of Virginia, Case file 458.
[117] Opinion, *The Homestead Cases,* 63 Va. 266 (1872).
[118] *Jacobs v. Smallwood* 63 N.C. 112 (1869), 116, 115.
[119] *Jacobs v. Smallwood* 63 N.C. 112 (1869), 115–116.
[120] Homestead Exemption: Constitution of North Carolina 1868, Article X. Chapter CXXXVII "An Act to Lay Off the Homestead and Personal Property Exemption" *Public Laws of the State of North Carolina, Passed by the General Assembly at Its Session 1868–1869* (Raleigh, NC: M.S. Littlefield, State Printer & Binder, 1869), 331. See also Goodman, "The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840–1880," 492; Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, 327. Stay Laws: Chapter XIX, "An Ordinance to Change the Jurisdiction of the Courts and the rules of Pleading Therein," *Ordinances Passed by the North Carolina State Convention* (Raleigh, NC: Wm. E. Pell, State Printer, 1867), 31–37.

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sureties impoverished, without any corresponding benefit to the principle debtors … some of whom will not pay, although their means are abundant and are used in speculation and extravagance."[121] The stay laws delayed repayment of obligations, exacerbating the already illiquid market, and they could lead to spiraling debt as interest compounded over time. Similarly, some insisted they aided immoral behavior when they permitted those otherwise capable of repayment to withhold their funds. The North Carolina Supreme Court overturned the stay laws for impairing contract rights. (For their part, Black southerners supported low homestead exemptions because they thought such measures would force large land holders to sell off some of their property to cover debts.[122])

Ultimately, however, the U.S. Supreme Court struck down retroactive homestead exemptions for the same reasons Virginia's Supreme Court did: They violated the constitutional protection against the impairment of contract.[123] But embedded within appeals to contract doctrine, slavery's capitalism survived. The bulk of the cost of the court's ruling would be borne by those small property owners – Black and white – that many homestead exemptions had been specifically instituted to protect, but also those like Andrew Calhoun, who counted among the region's elite. Those who were left with few resources would indeed be exposed to the perils of the postbellum economy, and the demands of creditors. Perhaps more important, judges proved their commitment to liberalism, even over the expressed wishes of state legislatures.

In *Black Reconstruction*, Du Bois wrote that "Reconstruction was an economic revolution on a mighty scale." But, he clarified, it was "not simply a fight between the white and black races in the South or between master and ex-slave." Instead, "it was much more subtle," and challenged the fundamental economic organization of American capitalism. Reconstruction, Du Bois concluded,

[121] *Jacobs v. Smallwood* 63 N.C. 112 (1869), 115.
[122] Foner, *Reconstruction: America's Unfinished Revolution, 1863–1877*, 327.
[123] See *Edwards v. Kearzey* 96 U.S. 595 (1877). Ranney, *In the Wake of Slavery*, 94–97; Goodman, "The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840–1880," 492.

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"was a desperate effort of a dislodged, maimed, impoverished and ruined oligarchy and monopoly to restore an anachronism in economic organization by force, fraud and slander, in defiance of law and order, and in the face of a great labor movement of white and black, and in bitter strife with a new capitalism and a new political framework."[124] Du Bois did not appreciate, however, that judges facilitated the survival of "an anachronism" – slavery – by failing to address the rules of capitalism that had supported it throughout the nation's history.

The consequences of that failure can be traced directly. Recent economic research has shown that despite their immediate losses, the financial costs of emancipation had a limited effect on the long-term generational wealth or status of the old planter elite.[125] Many of these families reestablished their social and fiscal footing within just a few decades. By 1900, the sons of slaveholders had recovered their family's losses. They married into other former slaveholding families to join resources and shifted to white-collar employment. As a class, that is, former slaveholders consolidated their remaining wealth, mobilized their market and managerial acumen, and reasserted themselves as gentlemen – aided by the romanticism and burgeoning veneration of the Lost Cause.[126] More important, they quickly regained access to credit, often from northern financiers, allowing investment into the novel ventures that would come to define the New South (e.g., textile mills and railroads). By 1940, the grandsons of planters had surpassed the relative wealth of their ancestors. The slaveholding elite may have lost in the short run, but within two generations their descendants had made significant economic advances. And they did so by using many of the same strategies as their forebears, including the exploitation of Black labor.

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[124] Du Bois, *Black Reconstruction*, 346–47.

[125] Philipp Ager, Leah Platt Boustan, and Katherine Eriksson, "The Intergenerational Effects of a Large Wealth Shock: White Southerners after the Civil War," *National Bureau of Economic Research Working Paper Series* Working Paper 25700 (March 2019), https://doi.org/10.3386/w25700.

[126] On managerial expertise, see especially, Rosenthal, *Accounting for Slavery: Masters and Management*. On romanticism and the Lost Cause, see C. Vann Woodward, *Origins of the New South* (Baton Rouge: Louisiana State University Press, 1951); David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge, MA: The Belknap Press of Harvard University Press, 2001).

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Thomas Clemson exemplifies the pattern. He infused the capital necessary to save the Calhouns' Fort Hill and then used his cachet to transform the property into a public college dedicated to educating the next generation of elite southerners. Clemson, a former U.S. secretary of agriculture and Confederate Army officer, believed that the New South would be led back to prosperity by white men educated in the cutting-edge agricultural science and technology of the day. Clemson's history also illuminates the new ways that white southerners used the tools of capitalism to facilitate the development of new forms of racial subjugation. Clemson College's buildings were constructed by Black convict laborers, leased by the first trustees of the college who had been tasked with bringing Clemson's vision of a "high seminary of learning" to life. The Fort Hill plantation home, required by Clemson's will to remain a central feature of the college, was restored in the 1930s by the John C. Calhoun chapter of United Daughters of the Confederacy, and remains open to the public.[127] In countless other circumstances, land, capital, and financial access remained squarely in the hands of white elites.

Freedpeople – and poor whites, at least economically – made far less headway. For one, courts invalidated many of the protections instituted by state legislatures, which had been designed specifically to protect the financially disadvantaged. For another, even when large planters defaulted, their property was not redistributed to those of more modest means, either by policy or by free market forces. Recent scholarship has shown instead that northern capitalists bought up large portions of southern land for resource extraction.[128] When Congress repealed the Southern Homestead Act in 1876, which had been enacted to encourage the redistribution of land to freedpeople and loyal white southerners, it facilitated an increase in corporate acquisition of southern land. Those who were dispossessed from their properties or unable to purchase real estate of their own were often left to work as laborers for the corporations, including Georgia Land & Lumber Company

[127] Rhondda Robinson Thomas, "Reconstruction, Public Memory, and the Making of Clemson University on John C. Calhoun's Fort Hill Plantation," *American Literary History* 30, no. 3 (Fall 2018): 584–607.

[128] Emma Teitelman, "The Properties of Capitalism: Industrial Enclosures in the South and the West after the American Civil War," *The Journal of American History* 106, no. 4 (March 2020): 879–900.

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and Phelps, Dodge, & Co. But racial harmony was elusive, despite common challenges. As Emma Teitelman writes, "These [B]lack and white southerners perhaps shared an enemy in the same lumber corporation but not common relationships to capital, landlessness, or each other. In this period, white farmers channeled their experiences of post-emancipation capitalism into renewed racism."[129]

Emancipation had ended enslavement, leaving formerly enslaved people free to contract their own labor for the first time. Self-ownership, a long-venerated tenet of liberalism, had been central to the discourse of antebellum abolitionists. The right to sell one's own labor became synonymous with freedom, and contract, as Amy Dru Stanley has written, became "a worldview" that "idealized" the "voluntary exchange between individuals who were formally equal and free."[130] An approach that viewed the contract rights of all citizens on equal terms might have helped Black Americans gain an independent financial footing for the first time. But without some kind of abolitionist reform of slavery's capitalism, the notion that the labor, and even bodies, of non-white people could be exploited for white gain remained largely unopposed, and the legal devices once used to convey bondspeople were merely redeployed to new ends. Judges could and did extol the virtues of self-ownership for white Americans, while simultaneously upholding the contracts that commodified freedpeople into bonded sharecroppers, contract workers, or convict laborers. As W. E. B. Du Bois wrote in *The Souls of Black Folk*, "So skillfully and so closely has [the white merchant-landowner] drawn the bonds of the law about the tenant, that the black man has often simply to choose between pauperism and crime; he 'waives' all homestead exemptions in his contract; he cannot touch his own mortgaged crop, which the laws put almost in the full control of the landowner and the merchant."[131] Judges, lawmakers, and laymen alike used the logic of the market and the rules of contract to fashion new technologies of subjugation that kept freedpeople, their descendants, and poor whites alike in peonage for another century. And they did so all while claiming they were upholding American legal and economic tradition.

[129] Ibid., 894.

[130] Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), x.

[131] W. E. B. Du Bois, *The Souls of Black Folk* (New York: Penguin Books, 1989), 121.

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