

## Ain't I...?:

# The Dehumanizing Effect of the Regulation of Slave Womanhood and Family Life

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### INTRODUCTION

Much literature has been dedicated to the subject of family formation under the institution of slavery,<sup>1</sup> albeit not without controversy.<sup>2</sup> Many contemporary historians criticize earlier studies of slave families, arguing that such studies substantiated the myth that slaves' relationships were "fleeting and casual affairs, resulting in a preponderance of single mothers and unattached (indeed indifferent) men."<sup>3</sup> This misjudgment of slave relationships is grounded in the fact that, throughout the period in which African-Americans' status as property trumped their status as human beings, many African-Americans were separated from their families for their owners' economic benefit. While it is certainly true that the involuntary separation of family members proved to be an obstacle to the formation of stable slave families, characterizing slave relationships as categorically incapable of permanence, like many stereotypes, has harmful repercussions. In devoting too little attention to which players had the ability to split up slave families, scholars shifted the blame, so to speak, from the powerful slave owners to the powerless slaves. This in turn led to pervasive generalizations about African-Americans who lived and are living long after the abolition of slavery.

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1. See generally DANIEL P. MOYNIHAN, U.S. DEP'T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965), <http://web.stanford.edu/~mrosenfe/Moynihan%27s%20The%20Negro%20Family.pdf>; ROBERT WILLIAM FOGEL & STANLEY L. ENGERMAN, *TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY* (1974); HERBERT G. GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM, 1750–1925* (1976).

2. See Damian Alan Pargas, *Boundaries and Opportunities: Comparing Slave Family Formation in the Antebellum South*, 33 J. FAM. HIST. 316, 316 (2008) ("Few aspects of slave culture have been the subject of more heated scholarly debate than the marriage strategies and family formation of American slaves.").

3. *Id.*

This harmful myth of slave promiscuity, which permeated throughout scholarship on the subject,<sup>4</sup> was used by historians to explain patterns in contemporary African-American families.<sup>5</sup> The resulting versions of history, riddled with misconceptions regarding slaves' relationships and emotional capacity, have fostered a flawed view of slave families. For decades, scholars assumed that the infrequency of stable slave families was indicative of a character deficiency afflicting all African Americans.<sup>6</sup> Scholarship in the 1950s "attributed the perceived failure of the slave family to the inhumane system of bondage, which . . . destroyed any possibility for slaves to establish cohesive families."<sup>7</sup> A decade later, Daniel P. Moynihan released his infamous study on African-American families, colloquially known as the "Moynihan Report,"<sup>8</sup> in which he drew upon past studies to postulate a new theory: "It was by destroying the Negro family that white America broke the will of the Negro people."<sup>9</sup>

Moynihan blamed the institution of slavery, as well as the players involved, for the deterioration of the African-American family and for the burden placed on African-American women to be the heads of their households.<sup>10</sup> On the latter point, he wrote:

In essence, the Negro community has been forced into a matriarchal structure which, because it is so out of line with the rest of the American society, seriously retards the progress of the group as a whole and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well.<sup>11</sup>

Slavery and the racism that followed emancipation "worked against the emergence of a strong father figure,"<sup>12</sup> ultimately leaving African-Americans disadvantaged compared their white counterparts.<sup>13</sup> Moynihan argued that "the

4. See, e.g., BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 55 (Routledge 2015) (1981) ("Whites saw the sexual activity of the manumitted female slave as further evidence to support their claim that black women were sexually loose and innately morally depraved.").

5. See ANGELA DAVIS, *WOMEN, RACE & CLASS* 13 (1983).

6. See Pargas, *supra* note 2, at 316 ("Early historians such as U.B. Phillips assumed that such behavior was the result of character deficiencies among African Americans . . .").

7. Pargas, *supra* note 2, at 316.

8. The Moynihan Report was released in 1965. This year signified two important conclusions in American history: not only did this year mark the hundredth anniversary of the end of the Civil War, but it was also the beginning of the end of the politically-tumultuous Civil Rights Era. This historical aside is important because it contextualizes many of Moynihan's assertions regarding the plight of African-Americans.

9. GUTMAN, *supra* note 1, at xvii.

10. See MOYNIHAN, *supra* note 1, at 47 ("Three centuries of injustice have brought about deep-seated structural distortions in the life of the Negro American.").

11. *Id.* at 29.

12. *Id.* at 16.

13. *Id.* at 29 ("There is, presumably, no special reason why a society in which males are dominant in family relationships is to be preferred to a matriarchal arrangement. However, it is clearly a disadvantage for a minority group to be operating on one principle, while the great majority of the population, and the one with the most advantages to begin with, is operating on another. This is the present situation of the Negro. Ours is a society which presumes male leadership in private and public

establishment of a stable Negro family structure" should be a national goal,<sup>14</sup> as the crumbling family structure of African-Americans contributed to the "cycle of poverty and disadvantaged" endured by many African-Americans.<sup>15</sup> By arguing that slavery was the root of the African-American family's problems, Moynihan linked the disorganized African-American family of the present to unstable slave family of the past.<sup>16</sup>

Perhaps not surprisingly, Moynihan's arguments were not universally accepted. For example, Angela Davis, a renowned African-American activist and scholar, accused Moynihan of touting male supremacy as the cure for the oppression experienced by many African-Americans.<sup>17</sup> However, Moynihan's assertions were not entirely unfounded. Or, to be a bit less forgiving, the premises upon which his assertions were founded, regardless of their veracity, were not the product of his own creation.<sup>18</sup> Throughout the report, Moynihan drew on the work of older historians and sociologists.<sup>19</sup> Further, even nineteenth century histories wrote of slavery's role in the deterioration of African-American families.<sup>20</sup>

In the 1970s, several other historians rejected "the myth of the loosely organized and unstable slave family" sustained by those who had come before

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affairs. The arrangements of society facilitate such leadership and reward it. A subculture, such as that of the Negro American, in which this is not the pattern, is placed at a distinct disadvantage.").

14. *Id.* at ii.

15. *Id.*

16. GUTMAN, *supra* note 1, at xvii ("Drawing upon the influential historical studies of such writers as E. Franklin Frazier and Stanley M. Elkins, Moynihan identified these troubles with 'the deterioration of the Negro family' and rooted those difficulties in a historical process that had its origins in the enslavement of seventeenth- and eighteenth-century Africans . . .").

17. See DAVIS, *supra* note 5, at 13.

18. Gutman also refused to place the blame solely on Moynihan for perpetuating these misconceptions. GUTMAN, *supra* note 1, at xvii ("Moynihan, it should be emphasized, had not created a fictive history; he reported what was then conventional academic wisdom. His most severe critics shared that historical perspective with him. 'The most rudimentary type of family organization,' Abram Kardiner and Lionel Ovesey had written years earlier of the slave family, in *The Mark of Oppression: Explorations in the Personality of the American Negro*, 'was not permitted to survive, to say nothing of the extensions of the family. The mother-child family, with the father either unknown, absent, or, if present, incapable of wielding influence, was the only type of family that could survive.'").

19. See, e.g., MOYNIHAN, *supra* note 1, at 5-14 (quoting several figures to support his arguments on the effects of American slavery on the black family).

20. See, e.g., JOHN SPENCER BASSETT, SLAVERY IN THE STATE OF NORTH CAROLINA 91 (Herbert B. Adams 1899), <http://docsouth.unc.edu/nc/bassett99/bassett99.html>. ("The conjugal and parental instincts in the slaves were lessened on account of the frequent breaking of family ties by masters. 'I have known some instances,' said [Dr. Eli W. Caruthers], 'in which [the slave family] have been permitted to live on in great harmony and affection to an advanced age, but such instances, so far as my observations have gone, have been 'like angels' visits, few and far between.' Generally, in a few weeks at most, they have been separated, sold off under the hammer like other stock and borne away to a returnless distance.' An evil result of this condition of affairs was that the negroes did not regard marriage as strictly as they ought. They married carelessly and separated easily. The result was much licentiousness. A few Christian owners did what they could to prevent the separation of their married slaves, but after their death, if not before, the slaves were sold for debt or to satisfy less scrupulous heirs.").

them.<sup>21</sup> Their arsenals equipped with “previously untapped sources such as ex-slave interviews, letters, and autobiographies,”<sup>22</sup> these historians “uncovered ample evidence of stable and loving slave marriages and families throughout the South, indicating a resilient determination on the part of slaves to weather the storm of bondage in cohesive family groups.”<sup>23</sup>

In 1976, Herbert Gutman published a groundbreaking study of the African-American family, titled *The Black Family in Slavery and Freedom*, as a response to Moynihan’s work.<sup>24</sup> This study, which drew upon a rich body of slave narratives and other primary sources, debunked many of the arguments in the Moynihan report,<sup>25</sup> including the assertion that two-parent households were uncommon under slavery.<sup>26</sup> As groundbreaking as it was, even Gutman’s work could not escape mild disagreement: while Gutman posited that the prevalence of two-parent households was a result of slaves’ own commitments to their families,<sup>27</sup> scholars such as Robert Fogel and Stanley Engerman attributed the prevalence to “the interference and incentives of profit-minded slaveholders, whose interest in encouraging the establishment of stable slave families stemmed from their desire to discourage flight and increase the labor force through natural reproduction.”<sup>28</sup>

This paper will attempt to illuminate the work of the scholars mentioned above, providing a lens through which the reader may inspect the histories presented herein. The subject of this paper is one that has, throughout both the history of the United States and its historiography, received scarce attention<sup>29</sup>: the African-American woman. By focusing on an identity group that has often, albeit not always consciously, been forgotten, this paper will endeavor to highlight the areas in which the cruel institution of slavery uniquely affected the lives of African-American women, while it left their African-American male and white female counterparts untouched. Additionally, this paper argues that, in such

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21. Pargas, *supra* note 2, at 317.

22. *Id.*

23. *Id.*

24. GUTMAN, *supra* note 1, at xvii (1976).

25. See DAVIS, *supra* note 5, at 13–14.

26. See Pargas, *supra* note 2, at 317 (“More recent studies of slave families (by historians such as Brenda Stevenson, Wilma Dunaway, Larry Hudson, and Emily West) have consistently shown that two-parent households were nowhere near universal among American slaves.”).

27. GUTMAN, *supra* note 1, at 155 (“The very fact that commitment to the two-parent household survived enslavement with the strength it did strongly suggests that the slaves dealt with family disruption in social ways that were consistent with their larger belief system.”).

28. Pargas, *supra* note 2, at 317.

29. See HOOKS, *supra* note 4, at xiii (“Friends and strangers were quick to question and ridicule my concern with the lot of black women in the United States. I can remember a dinner where I talked about the book and one person, in a big booming voice choking with laughter exclaimed, ‘What is there to say about black women!’ Others joined the laughter. I had written in the manuscript that the existence of black women was often forgotten, that we were often ignored or dismissed, and my lived experience as I shared the ideas in this book demonstrated the truth of this assertion.”). See also *id.* at 7 (“No other group in America has so had their identity socialized out of existence as have black women. We are rarely recognized as a group separate and distinct from black men, or as a present part of the larger group ‘women’ in this culture.”).

areas, the treatment of enslaved women was a tool meant to challenge or deprive the slaves of their humanity.

Like bell hooks's feminist classic, this paper alludes to Sojourner Truth's famed "Ain't I a Woman?" speech in its title. The purpose of this allusion is to highlight the intersection of slave women's social identities, thus applying a contemporary theory—the theory of intersectionality—to perennial social categories—like woman, wife, and mother—that are frequently studied separately. When Sojourner Truth, a former slave frustrated by the stark differences between the treatment of African-American women and white women, asked "ain't I a woman?" at the 1851 Women's Rights Convention,<sup>30</sup> she inspired a discussion on how race shapes female identity that would endure for centuries to come. Unpacking the effect of Truth's powerful question, Professor of Afro-American Studies Evelyn Brooks Higginbotham writes:

Sojourner Truth's famous and haunting question . . . laid bare the racialized configuration of gender under a system of class rule that compelled and expropriated women's physical labor and denied them legal right to their own bodies and sexuality, much less to the bodies to which they gave birth. While law and public opinion idealized motherhood and enforced the protection of white women's bodies, the opposite held true for black women's. Sojourner Truth's personal testimony demonstrated gender's racial meaning.<sup>31</sup>

Truth's short but impassioned speech drew attention to the dual oppression of enslaved women: they were exploited due to their race by the institution of slavery and, through that institution, were additionally exploited due to their gender<sup>32</sup> through the various means in which slave owners exercised of control over their bodies.<sup>33</sup>

To further demonstrate the dual oppression of enslaved women, this paper relies on both primary and secondary sources. The collection of primary sources used for this paper is mostly comprised of narratives and interviews from ex-

30. Sojourner Truth, *Ain't I a Woman?* (Dec. 1851) ("That man over there says that women need to be helped into carriages, and lifted over ditches, and to have the best place everywhere. Nobody ever helps me into carriages, or over mud-puddles, or gives me any best place! And ain't I a woman? Look at me! Look at my arm! I have ploughed and planted, and gathered into barns, and no man could head me! And ain't I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain't I a woman? I have borne thirteen children, and seen most all sold off to slavery, and when I cried out with my mother's grief, none but Jesus heard me! And ain't I a woman?"), <https://sourcebooks.fordham.edu/halsall/MOD/sojtruth-woman.asp>. Note that this is only one, of many, versions of Truth's speech.

31. Evelyn Brooks Higginbotham, *African-American Women's History and the Metalanguage of Race*, 17 J. WOMEN SOC'Y 251, 257 (1992).

32. Although it would be an error to conflate gender with sex in a discussion of women's experiences today, this paper will use "gender" to refer to female-bodied individuals, as that is how the term was understood during the period referenced. *Gender*, WILLIAM G. WEBSTER, EXPLANATORY AND PRONOUNCING DICTIONARY OF THE ENGLISH LANGUAGE WITH SYNONYMS, 1758–1843, 150 (1856) (defining "gender" as "sex; difference of words to express sex").

33. See Higginbotham, *supra* note 31, at 258 ("Black women experienced the vicissitude of slavery through gendered lives and thus differently from slave men. They bore and nursed children and performed domestic duties—all on top of doing fieldwork. Unlike slave men, slave women fell victim to rape precisely because of their gender.").

slaves living in North Carolina during the antebellum period.<sup>34</sup> A few themes will reveal themselves throughout the utilization of these narratives: many of the stories told by ex-slaves involve slaves being torn away from their families, seeking to buy the freedom of their loved ones, and celebrating their legally-unrecognized unions. These themes reveal that, despite the dehumanizing intent of those exercising control over their lives, enslaved individuals had the same desires and reverence for family as did their free counterparts.

Occasionally, ex-slaves expressed deep affection for their masters, claiming that their masters treated them well.<sup>35</sup> This can be shocking considering the evils committed under the institution of slavery and in light of the main argument of this paper—that slave owners used their control over enslaved women as a weapon of dehumanization. While it may seem paradoxical that someone struck by such a weapon could hold the individuals wielding that weapon in such high regard, it is important to examine these narratives in context. Although many of these ex-slaves professed the benevolence of their masters, it could be that these individuals knew of the horrors experienced by other African-Americans—the rapes, whippings, extreme hunger, and so on—and recognized that they fared better than they might have under the control of a different master.<sup>36</sup> Another possible explanation is that the ex-slaves misattributed their masters' taking care of them to their masters' kind characters, when in reality the masters were doing what anyone with property might do; since their success depended upon the condition of their "property"—whether a field of crops, a mule, or a human

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34. Occasionally, sources depicting slave experiences in other Southern states will be used to supplement the North Carolina materials. In such instances, certain generalizations apply to regions including North Carolina.

35. See Interview by T. Pat Matthews with James Turner McLean, in Lillington, N.C. (n.d.) in 11 FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2 at 82, 86 (1938), <https://www.loc.gov/item/mesn112/> ("Marster was a mighty good man, a feelin' man. He cried when some of his slaves finally left him. . . I loved him as well as I did my daddy. . . He taught me to be honest, to tell the truth, and not to steal anything."); Interview by Mary Hicks with Henrietta McCullers, in N.C. (n.d.) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 72, 73 ("Yo' ax me iffien Mis' Betsy wus good ter us? She wus so good dat I loved her all her life an' now dat she's daid I loves her in the grave."); see also Interview by Mary A. Hicks with Ben Johnson, in N.C. (May 20, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 8, 10 ("I knows dat de marster wuz good ter us an' he fed an' clothed us good. We had our own gyarden an' we wuz gittin' long all right."). Note that these interviews, although conducted orally, were transcribed to reflect the workers' (biased) perceptions of the African-American speaker's literacy.

36. In many of the interviews in which the ex-slave expresses affection for his or her former master, the ex-slave mentions the rarity in which slaves experienced certain hardships. See, e.g. See Interview by T. Pat Matthews with James Turner McLean, *supra* note 35, at 88. See also Interview by Mary Hicks with Henrietta McCullers, *supra* note 35, at 75 ("Niggers ort ter be back in slavery now, dey'd be better an' happier dan dey is. I ain't neber had a whuppin' in my life an' dat's more dan most of dese free niggers can say."); Interview by T. Pat Matthews with Simuel Riddick, in N.C. (n.d.) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 207, 208 ("I saw only one slave whupped. I had mighty fine white people, yes, mighty fine white people. They did not whup their slaves, but their son whupped my mother pretty bad because she did not bale enough corn and turnips to feed the fattening hogs.").

being—it was in the slave owners' best interests to protect it.<sup>37</sup> Lastly, when slaves were emancipated, they had nothing: no sources of meals, no homes, and no direct means of making a living.<sup>38</sup> Having been recently deprived of their property, former slave owners offered these ex-slaves all that they lost due to emancipation in exchange for their labor.<sup>39</sup> Many ex-slaves claimed that African-Americans fared better under slavery than they did immediately after emancipation; yet, their post-emancipation struggles would likely never have materialized but for the institution of slavery itself.<sup>40</sup>

#### I. "AIN'T I A WOMAN?": THE DISPARATE TREATMENT OF ENSLAVED WOMEN AND FREE WHITE WOMEN

In the nineteenth century, a culture of "True Womanhood" emerged in American society.<sup>41</sup> With its four primary values of "piety, purity, submissiveness, and domesticity", this culture pressured women all over the country to maintain the appearance of virtuosity.<sup>42</sup> Throughout the nineteenth century, both women and men shared a conception of what constituted an ideal woman: she was of inferior strength, requiring a man's protection; confined "within the domestic circle"; "kept aloof from the bustle and storm of active life"; and "not familiarized to the out of door dangers and hardships of a cold and scuffling world."<sup>43</sup> Furthermore, a "True Woman" was "destined to the office of nursing and rearing her children," as a result of women being able to naturally provide for their

37. Interview by T. Pat Matthews with Willie McCullough, in N.C. (Oct. 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 76, 77 ("They were looked after very well in regard to their health, because the success of the master depended on the health of his slaves.").

38. See Interview by T. Pat Matthews with Amy Penny, in N.C. (Aug. 17, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 158, 159–61 ("We had good clothes on de plantation. I am more naked now den I ever been before in my life. . . I think slavery was not such a bad thing 'pared wid de hard times now."); Interview by T. Pat Matthews with Patsy Mitchner in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 116, 121–22 ("Slavery was better for us den things is now in some cases. Niggers den didn't have no responsibility, jest wurk, obey an' eat. Now dey got to shuffle around an' live on jest what de white folks min' to give 'em.").

39. See e.g., Interview by T. Pat Matthews with Jane Lassiter, in N.C. (Aug. 6, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 37 ("We stayed on at marsters when de surrender come cause when we wus freed we had nothin' an' nowhere to go. Dats de truth. Mister, dats de truth. We stayed with marster a long time an' den jest moved from one plantation to another. It wus like dis, a crowd of tenants would get dissatisfied on a certain plantation, dey would move, an' another gang of niggers move in. Dat wus all any of us could do. We wus free but we had nothin' 'cept what de marsters give us.").

40. This assumes that, had slavery not existed, these individuals would have had experiences similar to those of free white people. Without the setbacks created by the institution of slavery, they would have been able to acquire property, form legally-recognized unions, and otherwise exercise control over their own lives.

41. Barbara Welter, *The Cult of True Womanhood: 1820–1860*, 18 AM. Q. 151, 151–52 (1966).

42. *Id.* at 152.

43. John Hope Franklin & Loren Schweninger, *Wither Thou Goest*, in MAJOR PROBLEMS IN THE HISTORY OF THE AMERICAN SOUTH: THE OLD SOUTH 301, 319 (Sally G. McMillen ed., 2011).

babies.<sup>44</sup> For a woman to attempt to compete with a man in labor would be to “desert the station and defeat the ends for which nature intended her.”<sup>45</sup> However, most nineteenth-century women did not fit the mold of True Womanhood, as the gender proprieties created within this culture were often impossible to live up to.<sup>46</sup>

Perhaps not surprisingly, African-American women had no place in culture of True Womanhood.<sup>47</sup> Enslaved women did not fit within the culture of True Womanhood’s idea of purity, as their reproductive lives were significantly controlled by white men.<sup>48</sup> Nor were they able to devote themselves entirely to domestic work within their own homes. Slaves did not occupy “ordinary” gender roles, as both male and female slaves labored outside of their homes. While “True Women” were confined within the domestic circle, most enslaved women worked in the field.<sup>49</sup> Even those slaves who were given domestic jobs occasionally had to work in the fields, depending on the season.<sup>50</sup> Furthermore, in labor assignment, striving for the ideals established by the culture of True Womanhood would have been dangerous for enslaved women. Because the assignment of domestic work meant that slaves worked inside their master’s house, it increased the likelihood that slaves would be sexually assaulted by white men.<sup>51</sup>

Slave labor was heavily gendered. In the field, women were seldom given tasks that required a high degree of specialization.<sup>52</sup> Professor Leslie Schwalm argues “the almost exclusive assignment of what planters and overseers considered specialized or skilled occupations to male slaves raise important points about how ideas about gender shaped the way both slaves and planters perceived agricultural production.”<sup>53</sup> For instance, the gendered division of labor could be explained by the carrying over of gender norms from Africa.<sup>54</sup> Or, alternatively, the assignment of specialized tasks to male slaves could have been the product of the overseers’ conception that men were best able to acquire these special skills. Regardless of the explanation, the gendered division of labor had material effects:

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44. *Id.* at 320.

45. *Id.*

46. See WILMA A. DUNAWAY, *WOMEN, WORK, AND FAMILY IN THE ANTEBELLUM MOUNTAIN SOUTH* 262–63 (2008) (detailing what she terms “the seven commandments of gender propriety”).

47. See *id.* at 196 (“[M]ost women failed to observe the sharp dichotomy idealized by separate spheres advocates between home and the outside economic world. Because of their race, class, and stigmatized work, poor white and nonwhite women did not meet cult of domesticity standards of female moral superiority or of idealized motherhood.”). The culture of True Womanhood was also referred to as “the cult of True Womanhood” and, by contemporary scholars, “the cult of domesticity.”

48. See Welter, *supra* note 41, at 154–58 (discussing the virtue of sexual purity). While “True Women” could exhibit their purity by remaining virgins until marriage, enslaved women were often unable to defend themselves against sexual assault and were required by their masters to have children. See *infra* Part V.

49. See DUNAWAY, *supra* note 46, at 146.

50. *Id.* at 146–47.

51. *Id.* at 149

52. LESLIE A. SCHWALM, *A HARD FIGHT FOR WE: WOMEN’S TRANSITION FROM SLAVERY TO FREEDOM IN SOUTH CAROLINA* 21 (1997).

53. *Id.* at 20–21.

54. *Id.* at 21.

"The few specialized occupations slave women did occupy brought none of the relative advantages enjoyed by slave men in skilled jobs—not the mobility, not the option of earning cash for extra work, not the prestige or power accrued by drivers."<sup>55</sup>

Women's labor in the field was just as strenuous and demanding as men's labor. In an interview conducted during the New Deal as part of the Works Progress Administration's Federal Writers' Project, Plaz Williams, a former slave woman from North Carolina, commented, "I worked in de fiel's like a man an' I liked it too."<sup>56</sup> Another former North Carolina slave similarly remarked, "De women plowed an done udder work as de men did."<sup>57</sup>

Even where female slaves performed the same work as their male counterparts, gender stereotypes shaped the owners' and overseers' judgment of this work. For example, one task shared by both male and female slaves was cotton picking. Bell hooks argues that "it was believed that the more delicately tapered fingers of the black female made it easier for her to gather the cotton from the pod."<sup>58</sup> Because of this gender stereotype, overseers expected enslaved women to work more efficiently than men.<sup>59</sup> If an enslaved woman failed to meet these often unreasonable expectations, she was punished.<sup>60</sup> Unfortunately, "[w]hite men may have discriminated against black women slaves in choosing to allow only males to be drivers or overseers, but they did not discriminate in the area of punishment."<sup>61</sup> While their free white counterparts were being praised for their womanhood, enslaved women were punished for theirs.

The failure of the culture of True Womanhood to idolize African-American women as it had white women makes it seem as if African-Americans were not even considered "women." While the literature promoting the cult never expressly said that African-Americans were excluded from the image of a "woman,"<sup>62</sup> it was almost impossible for African-American women, especially those that were enslaved, to meet the already unrealistic standards set forth.

This is not to say, however, that African-American women were not affected by the culture sweeping the nation. On the contrary, the culture of True Womanhood "had an intense demoralizing impact on [some] enslaved black females. They were not proud of their ability to labor alongside men in the fields and wanted more than anything for their lot to be the same as that of white women."<sup>63</sup> While it would be incorrect to assert that all enslaved women were ashamed of their ability to work equally with men, the fact that one class of women

55. *Id.* at 45.

56. Interview by Mary A. Hicks with Plaz Williams, in N.C. (n.d.) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 406, 407.

57. Interview by T. Pat Matthews with Jacob Manson, in N.C. (n.d.) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 95, 98.

58. HOOKS, *supra* note 4, at 23.

59. *Id.*

60. *Id.*

61. *Id.*

62. See, e.g., Welter, *supra* note 41, at 151 (producing examples of publications).

63. HOOKS, *supra* note 4, at 48. *But see* Interview by Mary A. Hicks with Plaz Williams, *supra* note 56, at 407 (expressing pride in being able to do the same work as male slaves).

was idealized by men while the other class was not certainly could have had significant psychological effects.

## II. "AIN'T I A WIFE?": THE DENIAL OF THE RIGHT TO MATRIMONY

Not only were enslaved women denied their womanhood, but they were also denied their status as wives. However, unlike in the culture of True Womanhood, the denial of enslaved women's rights in the area of marriage and family formation was legally sanctioned.

During the colonial period, a group of laws titled the Slave Code of 1715 was enacted in North Carolina to control slaves' lives. The 1715 Slave Code included a provision requiring that slaves carry tickets from their masters whenever they were away from the plantation, detailing their purpose for travel and their destination, as well as provisions inhibiting their ability to socialize and practice their religion. In 1741, North Carolina passed an even more stringent set of laws, this time tightening the process of manumission, prohibiting slaves from raising livestock, and restricting the ability for slaves to bear arms. Additionally, this set of laws made it legal for runaway slaves to be killed, as the murderers would face no legal consequences.<sup>64</sup>

The Slave Code also restricted slaves' ability to form unions. The law refused to recognize unions involving one enslaved individual, regardless of whether the other individual was white,<sup>65</sup> a free black person,<sup>66</sup> or another slave.<sup>67</sup> This deprivation of the right to matrimony manifested through statutes, as well as through judicial proclamation. In *State v. Samuel*, the court held that, because the marriage of slaves was not a marriage *de jure*, the common law principle disqualifying the testimony of a witness-spouse against a defendant-spouse did not apply to slaves.<sup>68</sup> Additionally, a court in 1853 held that "[o]ur law requires no solemnity or form in regard to the marriage of slaves, and whether, they 'take up' with each other, by the express permission of their owners, or from a mere impulse of nature, in obedience to the command 'multiple and replenish the earth,' cannot, in contemplation of law, make any sort of difference."<sup>69</sup> Five years later, the same judge wrote:

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64. THE GROWTH OF SLAVERY IN NORTH CAROLINA 2 (2009), <http://www.learnnc.org/lp/pages/5252>.

65. The Act of 1838 provided: "It shall not be lawful for any free negro or person of color to marry a white person; and any marriage hereafter solemnized or contracted between any free negro or free person of color and a white person, shall be null and void." *State v. Melton*, 44 N.C. 49, 50 (1852).

66. An Act Concerning Slaves and Free Persons of Color, ch. 4, sec. 3, 1855 N.C. Laws 79 provided:

It shall not be lawful for any free negro or free person of colour to intermarry or cohabit and live together as man and wife with any slave; and any free negro or person of colour so intermarrying or cohabiting and living as man and wife with a slave, shall be liable to indictment, and upon conviction shall be fined and imprisoned or whipt at the discretion of the court; the whipping not to exceed thirty-nine lashes: Provided, That this section shall not extend to any case where an intermarriage or cohabiting or living together took place before the passing of this act.

67. Because the latter situation involves parties sharing the same legal status, this section will focus exclusively on relationships between enslaved individuals.

68. *State v. Samuel*, 19 N.C. 177, 182-83 (1836).

69. *Alvany v. Powell*, 54 N.C. 35, 39 (1853).

A slave, being property, has not the legal capacity to make a contract, and is not entitled to the rights or subjected to the liabilities incident thereto. . . . Marriage is based upon contract; consequently the relation of 'man and wife' cannot exist among slaves. It is excluded, both on account of their incapacity to contract, and of the paramount right of ownership in them, as property.

. . . .

The relation between slaves is essentially different from that of man and wife joined in lawful wedlock. The latter is indissoluble during the lives of the parties, and its violation is a high crime; but with slaves it may be dissolved at the pleasure of either party, or by a sale of one or both, dependent on the caprice or necessity of the owners.<sup>70</sup>

The inability of slaves to enter marital contracts was recognized even after the abolition of slavery. In 1868, a North Carolina court, citing *State v. Samuel* as support for its holding, recognized the validity of a marriage between former slaves only because the individuals had renewed their consent to marry after acquiring their freedom, in accordance with the law.<sup>71</sup>

The refusal to recognize slave marriages was not unique to North Carolina. Boston abolitionist Charles K. Whipple concluded that, in most American jurisdictions, slaves had no ability to contract.<sup>72</sup> Using this fact, he argued that the institution of slavery should be dismantled:

Hence the slave can have no wife. He is allowed to cohabit with a slave woman, because the master's interest is double favored by it; in the production of children, which are money in his pocket, and in the formation of a new tie to keep the slave submissive, and prevent his running away. The slave woman had, and can have, no husband. The whole policy of the slave system is to induce her to bear children, the more the better. But the law is absolutely indifferent as to who is the father of a slave woman's child. It follows the condition of the mother, and is money in her master's pocket. But this mother can not have a husband, sharing with her the delightful right and privilege to dwell together "until death them do part." As soon as it becomes the master's pecuniary interest to part them, the laws and customs, of both State and Church, allow him to do so, and actually interfere no more in the question by what male partner the separated slave woman shall bear another child, than in the case of a cow or a mare owned by the same master.<sup>73</sup>

The institution of slavery was perceived by abolitionists as immoral not only because it held humans as property, but also because it could corrupt the souls of enslaved individuals; because slaves could not be legally married, they could also not be prosecuted for bigamy, fornication, or adultery.<sup>74</sup>

70. *Howard v. Howard*, 51 N.C. 235, 236–39 (1858) (holding that, because former slaves are required to marry according to the law after they have been freed, children of former slaves married pre-manumission could not be heirs of their father).

71. *State v. Harris*, 63 N.C. 1, 4–5 (1868) (holding defendant's wife was incompetent to testify against the defendant because they were legally married under the Act of 1866).

72. CHARLES K. WHIPPLE, *THE FAMILY RELATION, AS AFFECTED BY SLAVERY* 12 (1858) ("The slave laws decide that 'A slave can make no contract, not even matrimony.'").

73. *Id.*

74. *Id.*

### A. Unions Between Slaves

Even though slave marriages were not legally recognized, many slaves formed romantic associations with other slaves. In fact, slave owners often encouraged slaves to find partners. Importantly, slave owners did not encourage slave coupling purely for the benefit of the slaves. As Jacob Manson, a former slave, reported in an interview:

A lot of de slave owners had certain strong healthy slave men to serve de slave women. Ginerally day give one man four women an' dat man better not have nuthin' to do wid de udder women an' de women better not have nuthin to do wid udder men. De chillum was looked atter by de ole slave women who were unable to work in de fields while de mothers of de babies worked. De women plowed an done udder work as de men did.<sup>75</sup>

Through the encouragement of slave coupling, slave owners could increase the slave population, and thus their own wealth, as they knew slave unions were likely to result in slave children. Further, many slave owners thought that allowing slaves to couple would make the slaves more content,<sup>76</sup> reducing the likelihood that those slaves would run away.<sup>77</sup> Permitting slaves to build families actually allowed slave owners to maintain control over their slaves.<sup>78</sup> Moreover, many slave owners, "ignorant of the slaves' own systems of morality and values, viewed slave marriage ceremonies as a part of the planter's obligation to impart Christian values to their slaves."<sup>79</sup> Additionally, organizing slaves into family units was a cost-effective means of distributing food, clothing, and shelter.<sup>80</sup>

Despite the dehumanizing effects of slavery, enslaved individuals were unquestionably human. Considering the fact that one of the most basic human instincts essential to the survival of the human species is the instinct to procreate, slave owners probably did not even need to encourage slaves to couple. In several narratives, former slaves expressed their desire to find spouses. For instance, Friday Jones told a story of how he asked his master to buy him a wife.<sup>81</sup> Thomas Jones also wrote about wanting a wife:

About this time, I began to feel very lonely. I wanted a friend to whom I could tell my story of sorrows, of unsatisfied longing, of new and fondly cherished plans. I wanted a companion whom I could love with all my warm affections, who should love me in return with a true and fervent heart, of whom I might think when toiling for a selfish, unfeeling master; who should dwell fondly on my memory when we were separated during the severe labors of the day, and with whom I might enjoy the blessed happiness of social endearments after the work of each

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75. Interview by T. Pat Matthews with Jacob Manson, *supra* note 57, at 98.

76. SCHWALM, *supra* note 52, at 49. And they were not misguided. See THOMAS JONES, EXPERIENCE AND PERSONAL NARRATIVE OF UNCLE TOM JONES (1854) 23 ("I loved [my wife] with all my heart, and she gave me a return for my affections, with which I was contented.")

77. WILMA A. DUNAWAY, AFRICAN-AMERICAN FAMILY IN SLAVERY AND EMANCIPATION 117 (2003).

78. *Id.*

79. SCHWALM, *supra* note 52, at 53.

80. DUNAWAY, *supra* note 77, at 117.

81. FRIDAY JONES, DAYS OF BONDAGE: AUTOBIOGRAPHY OF FRIDAY JONES. BEING A BRIEF NARRATIVE OF HIS TRIALS AND TRIBULATIONS IN SLAVERY 6-7 (1883).

day was over. My heart yearned to have a home, if it was only the wretched home of the unprotected slave, to have a wife to love me and to love.<sup>82</sup>

Unfortunately, the permanence of slave unions was never guaranteed.<sup>83</sup> With “the full knowledge of thy desperate agony that the slave husband and father is exposed,” Thomas married Lucilla Smith, a slave from a nearby plantation.<sup>84</sup> Lucilla and Thomas had many children together, but both “constantly dreaded a final separation.”<sup>85</sup> Eventually, their fears came true. Another couple, Lunsford Lane and Martha Curtis, were able to keep their family together after Lunsford purchased his own, his wife’s, and his children’s freedom.<sup>86</sup> “God may at any time sunder that band in a freeman; either master may do the same at pleasure in a slave. The bond is not recognized in law,” Lunsford explained, “[b]ut in my case it has never been broken; and now it cannot be, except by a higher power.”<sup>87</sup>

Like all humans, slaves often succumbed to their own irrationality. Knowing that separation from their loved ones was possible, if not inevitable, did not cure slaves’ longing for family. In what became one of the most famous female-authored slave narratives, Harriet Jacobs asked, “Why does the slave ever love? Why allow the tendrils of the heart to twine around object which may at any moment be wrenched away by the hand of violence?”<sup>88</sup> Against her best interests, Harriet fell in love with a free person of color, only to have her heart broken when the father of her mistress forbid Harriet’s marriage to her lover.<sup>89</sup> As Harriet’s story shows, the tendency for slaves to act unreasonably, unable to exercise complete control over their emotions, reemphasizes their humanity.

### B. Slave “Weddings”

Although legally defined as property, slaves could not always subdue their human tendencies or suppress their human longing for love and companionship in favor of reason. Consequently, many “[s]lave couples joined together in quasi-marital unions that were sanctioned by the plantation owners.”<sup>90</sup> Within slave

82. JONES, *supra* note 76, at 22–23.

83. See Darlene C. Goring, *The History of Slave Marriage in the United States*, 39 J. Marshall L. Rev. 299, 304 n.20 (1992) (quoting WILBERT E. MOORE, *AMERICAN NEGRO SLAVERY AND ABOLITION: A SOCIOLOGICAL STUDY* 101 (1971)). (“The union between slaves might be as permanent or temporary as the interests of the slaves, or especially of the masters, might dictate. The union was subject at any time to being broken through sale of one of the slaves. Moreover, the charge of adultery could not be made against a slave, and the male slave had no legal action against another, whether slave, free Negro, or White, for intercourse with his ‘wife,’ nor could he present such evidence in his defense on a criminal charge of assault and battery or murder. The slave had no honor to defend. In this the slave codes of the South went much further than the Roman civil code, where a type of marriage (contubernium, not connubium) was recognized.”)

84. JONES, *supra* note 76, at 23.

85. *Id.* at 24.

86. LUNSFORD LANE, *THE NARRATIVE OF LUNSFORD LANE, FORMERLY OF RALEIGH, N.C.* (1842).

87. *Id.* at 11.

88. HARRIET JACOBS, *INCIDENTS IN THE LIFE OF A SLAVE GIRL* 58 (1861).

89. *Id.* at 58–59.

90. Goring, *supra* note 83, at 307.

communities, these unions were regarded as marriages.<sup>91</sup> As Professor Schwalm notes, “more permanent slave unions, while not invulnerable to human foible, were often the culmination of carefully developed relationships, and marriage ceremonies—although unrecognized by law—were important, memorable events” in the lives of slaves.<sup>92</sup>

In North Carolina, slaves on neighboring plantations interacted with each other frequently.<sup>93</sup> Many spouses in slave marriages had different owners and thus couples oftentimes did not live together.<sup>94</sup> Courtships among slaves sometimes lasted for several years.<sup>95</sup> For these off-plantation relationships, the courtships typically went something like this:

If a young slave took a fancy to marry a slave girl, he first obtained the consent of the girl herself, which, if he was good looking and belonged to a good family, was easily obtained . . . After obtaining the girl’s consent he would go to his master or mistress, and ask for permission to marry, and if he stood well with them he had no difficulty getting their consent. He would get permission to go to the plantation where his girl lived to obtain the consent of her master. When he arrived at the plantation where his girl lived, he would go directly to the owner, or master as he was called, and with whom he [sic] was most likely acquainted, and who had perhaps been informed by the young slave’s master of the intended visit and its object . . .<sup>96</sup>

After an informal “interview,” during which the slave owner would usually inquire of the slave’s life on his own plantation,<sup>97</sup> the slave owner would consent if he believed it were in his interests to allow the union—and it usually was, as children born of slave marriages would increase the wealth of the mother’s owner since they would be his property.<sup>98</sup> Occasionally, an enslaved man seeking to marry would also have to obtain the consent of his intended wife’s family.<sup>99</sup>

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91. *Id.*

92. SCHWALM, *supra* note 52, at 52.

93. THE GROWTH OF SLAVERY IN NORTH CAROLINA 2 (2009) (explaining that “[b]ecause they lived on farms with smaller groups of slaves, the social dynamic of slaves in North Carolina was somewhat different from their counterparts in other states, who often worked on plantations with hundreds of other slaves.”).

94. For example, Martha Curtis and Lunsford Lane were married, although they belonged to different owners. LANE, *supra* note 86, at 10. *See also* ALLEN PARKER, RECOLLECTIONS OF SLAVERY TIMES 22 (1895) (claiming that, on some plantations, husbands and wives did not live on the same plantation).

95. SCHWALM, *supra* note 52, at 52; *see also* Interview by Mary A. Hicks with Clara Jones, in N.C. (n.d.) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 30, 32 (“I can’t tell yo’ much ‘bout our courtin’ case hit went on fer years an’ de Marster wanted us ter git married so’s dat I’d have chilluns. When de slaves on de McGee place got married de marster always said dat dere duty was ter have a houseful of chilluns fer him.”).

96. PARKER, *supra* note 94, at 22–23.

97. *Id.* at 23–27.

98. *Id.* at 25.

99. SCHWALM, *supra* note 52, at 52–53.

In some areas, marital ceremonies received little attention.<sup>100</sup> However, a typical slave wedding consisted of “jumping the broom” ceremony, wherein the slaves would hold hands and jump over a broom, which took place either “at the plantation chapel, at ‘the white folks’ house,’ or in the slave quarters.”<sup>101</sup> As evident from how frequently ex-slaves mentioned jumping the broom, this ceremony was very common in North Carolina.<sup>102</sup> These ceremonies were presided over either by a fellow slave or by a white preacher or planter.<sup>103</sup> Both white and black residents of the plantation would attend these weddings.

Slave communities put great emphasis on wedding ceremonies.<sup>104</sup> In an interview, Anna Wright described the manner in which slaves celebrated the union of two slaves:

De weddin’s wus somethin’ fine, believe me. De niggers dressed lak a white folks weddin’ an’ de circuit parson married dem in de big house parlour. De marster an’ de missus was dere, an’ dey always gived presents ter de bride too. After de ceremony wus over dar’d be a feas’ an’ a dance. Most likely dar’d be a heap or noise. I’ve heard mammy tell of seberal big weddin’s.<sup>105</sup>

Many ex-slave narratives and interviews show that weddings marked a momentous point in the lives of enslaved women. For instance, Alice Baugh shared a story of her parents’ wedding:

“My mammy marry my pappy dar an’ she sez dat de preacher from de Methodist’ Church marry ‘em, day she w’ar Miss Mary’s weddin’ dress, all uv white lace, an’ dat my papper w’ar Mr. Charlie’s weddin’ suit wid a flower in de button hole.

100. PARKER, *supra* note 94, at 22 (“In the locality where I lived there was no attention paid to the ceremony of marriage by the slaves. In fact on many plantations many of the slaves were not married at all but herded together very much like cattle, living in common quarters. On other plantations, slaves were allowed to marry, though it often happened that the husband lived on one plantation and the wife and her children upon another, but even in this case there was seldom any marriage ceremony performed.”); *see also* Interview by Mary A. Hicks with Aunt Laura, in N.C. (Aug. 6, 1937) in 11 FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1 at 99, 101 (1938) (“I’se hearn her tell ‘bout how he axed Marse Mack iffen he could cou’t mammy an’ atter Marse Mack sez he can he axes her ter marry him. She tells him dat she will an’ he had ‘em married by de preacher de nex’ time he comes through dat country.”).

101. SCHWALM, *supra* note 52, at 53.

102. *See* Interview by Mary A. Hicks with Cornelia Andrews, N.C. in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 27, 30–31; Interview by Mary A. Hicks with Willie Cozart, in Zebulon, N.C. in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 182, 185; Interview with Clay Bobbitt, in Raleigh, N.C. in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 117, 118 (“I wuz married onct ‘fore de war by de broom stick ceremony, lak all de rest of de slaves wuz but shucks dey sold away my wife ‘fore we’d been married a year an’ den de war come on.”).

103. SCHWALM, *supra* note 52, at 53.

104. Peter Kolchin, *Antebellum Slavery: Slave Community*, in 1 Major Problems in the American South 298, 299 (Sally G. McMillen et. al. eds. 2012).

105. Interview by Mary Hicks with Anna Wright, in N.C. (Aug. 17, 1937) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 420, 422.

Dey gived a big dance atter de supper dey had, an' Marster Charlie dance de fust set wid my mammy."<sup>106</sup>

Similarly, Tempie Herndon Durham recalled her own wedding in great detail.<sup>107</sup>

After the wedding, the spouses remained the property of their respective owners. As such, "each would continue a slave and must do his or her master's bidding no matter how much it might conflict with their own ideas of right and wrong."<sup>108</sup> Eventually, slave owners would build slave-wives cabins which would become their household.<sup>109</sup> In the slave marriages where the spouses belonged to different plantations, they would have to visit each other in their free time.<sup>110</sup> However, because the law limited slaves' ability to meet with one another,<sup>111</sup> it was only by the permission of their owners' that slaves were able to meet.<sup>112</sup> When visiting their families, some slave men were provided rations to share with their wives and children.<sup>113</sup>

Slave owners attempted to exercise control over slave marriages by imparting their own values to the slaves. They prohibited slaves from "liv[ing] double lives or hav[ing] two wives or husbands on the plantations" and from leaving their current spouses for another.<sup>114</sup> However, regulating slave relationships was a difficult task. Also, since slave families were frequently broken up, it was not always reasonable for slaves to share their masters' monogamous values.<sup>115</sup> Nonetheless, most of the accounts from former slaves do not support the notion

106. Interview by Mary A. Hicks with Alice Baugh, in N.C. (May 18, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 82, 84

107. See Interview by Travis Jordan with Tempie Herndon Durham, in Durham, N.C. (Aug. 23, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 284, 287–88.

108. PARKER, *supra* note 94, at 27.

109. *Id.*

110. THE GROWTH OF SLAVERY IN NORTH CAROLINA 2 (2009), <http://www.learnnc.org/lp/pages/5252>; see also PARKER, *supra* note 94, at 27.

111. An Act Concerning Slaves and Free Persons of Color, ch. 406, sec. 2, 1855 N.C. Laws 35 ("No person shall grant permission for any meeting or meetings of the negroes of others, or people of colour, at his, her or their houses, or on his, her or their plantation for the purpose of drinking or dancing, under the penalty of forfeiting twenty dollars on conviction of such offence, in any court having jurisdiction thereof, unless such slave shall have a special permit in writing or otherwise from his or her owner for that purpose.").

112. PARKER, *supra* note 94, at 27.

113. Interview by T. Pat Matthews with James Turner McLean, *supra* note 35, at 88 ("When any of his men went to visit their wives he let them ride the stock, and give them rations to carry.").

114. SCHWALM, *supra* note 52, at 53.

115. Interview by T. Pat Matthews with Hilliard Yellerday, in Raleigh, N.C. (Oct. 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 431, 434–35 ("[T]here were cases where these young girls loved someone else and would have to receive the attentions of men of the master's choice. This was a general custom. This state of affairs tended to loosen the morals of the Negro race and they have never fully recovered from its effect. Some slave women would have dozens of men during their life. Negro women who had half a dozen mock husbands in slavery time were plentiful. The holy bonds of matrimony did not mean much to a slave. The masters called themselves Christians, went to church worship regularly and yet allowed this condition to exist.").

that slaves did not care about their marital commitments. As evidence of this fact, plantation records and ex-slave accounts reveal that enslaved men mating with multiple slave women was uncommon.<sup>116</sup> Only one out of 175 former slaves interviewed in North Carolina recollected his father having children by other women besides that former slave's mother.<sup>117</sup>

### C. The Act of 1866

After the Civil War ended, the North Carolina legislature enacted the Act of 1866, which provided:

That in all cases where men and women, both or one of whom were lately slaves and are now emancipated, now cohabit together in the relation of husband and wife, the parties shall be deemed to have been lawfully married as man and wife at the time of the commencement of such cohabitation, although they may not have been married in due form of law. And all persons whose cohabitation is hereby ratified into a state of marriage, shall go before the clerk of the court of pleas and quarter sessions of the county in which they reside, at his office, or before some justice of the peace, and acknowledge the fact of such cohabitation, and the time of its commencement; and the clerk shall enter the same in a book kept for that purpose; and if the acknowledgement be made before a justice of the peace, such justice shall report the same in writing to the clerk of the court of please [sic] and quarter sessions, and the clerk shall enter the same as though the acknowledgement had been made before him; and such entry shall be deemed *prima facie* evidence of the allegations therein contained.<sup>118</sup>

While several other southern states enacted laws recognizing marriages between formerly enslaved individuals, the Act of 1866 was unusual.<sup>119</sup> Most state laws did not have the formal requirement of registration; they simply made slave marriages legally valid.<sup>120</sup> Nearly 19,000 former slaves registered their marriages in accordance with the Act.<sup>121</sup>

Throughout the time during which slavery dominated American society, pro-slavery actors used purported character weaknesses of African-Americans to justify the evils committed. They argued that African-American women, as a result of their inherent licentiousness, intentionally evaded lasting, monogamous relationships.<sup>122</sup> They insisted that family was of little value to African-Americans.

116. GUTMAN, *supra* note 1, at 59. This is not to say, however, that enslaved women having children by multiple men was uncommon. Due to the reproductive pressures put on them by slave owners, many enslaved women were forced to have as many children as possible. See Interview by T. Pat Matthews with Hilliard Yellerday, *supra* note 115, at 434 ("A slave girl was expected to have children as soon as she became a woman. . . . Some slave women would have dozens of men during their life.").

117. GUTMAN, *supra* note 1, at 59, n.f.

118. An Act Concerning Negroes and Persons of Color or of Mixed Blood, 1866, ch. 40, sec. 5, 1866 N.C. Laws 100–01.

119. See Goring, *supra* note 83, at 313–15 (describing the legislative and judicial models used to confer upon former slaves the right to marry).

120. GUTMAN, *supra* note 1, at 417–18.

121. *Id.* at 17; see also Interview by T. Pat Matthews with Willie McCullough, *supra* note 37, at 78 ("Mother said she loved my father before the surrender and just as soon as they were free they married.").

122. Perhaps, as Professor Melissa Harris-Perry argues, "[t]he myth of black women as lascivious,

They denied the slave woman's affection for her children. Similarly, in their analysis of the harmful effects of slavery, white individuals maintained that slavery was the cause of African-American promiscuity.<sup>123</sup> Because slavery interfered with African-Americans' ability to form and maintain relationships, it encouraged African-Americans to have casual relations, and was thus responsible for the deterioration of the African-American family, even after the abolishment of slavery.<sup>124</sup>

The number of marriages registered under the Act of 1866 counters these assertions in two important ways. First, the registrars recorded the names of the cohabiting ex-slaves, as well as the length of their cohabitation.<sup>125</sup> In *The Black Family in Slavery and Freedom*, Herbert Gutman noted that many slaves were able to maintain long marriages, contrary to the belief of other historians.<sup>126</sup> Gutman argued that the prevalence of long slave marriages during the antebellum period provided an opportunity for enslaved youth to learn about marital roles and familial obligations:

Adult slaves in long marriages were direct 'models,' making it possible to pass on *slave* conceptions of marital, familial, and kin obligation from generation to generation. The domestic arrangements visibly accessible to young slaves were not just those of shattered slave families and the more secure families of owners, other whites, and free blacks. How married slaves dealt with family life and social existence over time taught them much more than what they could learn from better-advantaged whites or from scattered communities of free blacks.<sup>127</sup>

Second, registration of marriages showed that many African-Americans actually did respect the institution of marriage. Had they not found family important, ex-slaves certainly would not have paid the hefty twenty-five cent registration fee<sup>128</sup> associated with formalizing their marital unions. Although many white individuals must not have paid attention to the results of the Act of 1866, the registration of former slave marriages contradicted the racist assumptions prevalent during the antebellum period.

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seductive, and insatiable was a way of reconciling the forced public exposure and commoditization of black women's bodies with the Victorian ideals of women's modesty and fragility." MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 55 (2011). According to Professor Harris-Perry, "[t]he idea that black women were hypersexual beings created space for white moral superiority by justifying the brutality of Southern white men." *Id.*

123. See BASSETT, *supra* note 20, at 91 ("An evil result of this condition of affairs was that the negroes did not regard marriage as strictly as they ought. They married carelessly and separated easily. The result was much licentiousness.").

124. See MOYNIHAN, *supra* note 1, at 47 ("Three centuries of injustice have brought about deep-seated structural distortions in the life of the Negro American.").

125. GUTMAN, *supra* note 1, at 14.

126. *Id.* at 11-15.

127. *Id.* at 17 (emphasis in original).

128. An Act Concerning Negroes and Persons of Color or of Mixed Blood, 1866, ch. 40 Sec. 5., 1866 N.C. Laws 99, 100 ("For making such entry and giving a certificate of the same, the clerk shall be entitled to a fee of twenty-five cents, to be paid by the party for whom the services are rendered.").

### III. "AIN'T I A MOTHER?": STRUCTURAL INTERFERENCE IN PREGNACY AND CHILDREARING

Through the formation of families and slave communities, enslaved women could transcend their status as property. Slaves' conceptions of their families included many extended family members, both living and dead.<sup>129</sup> Schwalm argues:

Not only in death, but in many important life events—including marriage, the naming of infants, and involuntary separation through sale or estate dispersal—slaves demonstrated the great importance they placed on family ties. Some of the early historians of the slave family and community far underestimated the strength and resiliency of slave family formation and conflated planters' disregard for slave husbands or fathers with slaves' attitudes about family life. As noted earlier, slaves seeking to marry off their own plantation were forced to seek the permission of both planters, but, conscious of their community's own standards, they might also seek the permission of parents. By choosing a father's or grandfather's name for a newborn, slaves etched patrilineal descent onto the family tree, perhaps explicitly in opposition to planters' disregard (especially in estate dispersal) for ties between slave fathers and their children. When former slave men changed their last names to reflect their free status, their sons adopted their fathers' new names and again asserted and protected the importance of patrilineal descent.<sup>130</sup>

While slave owners only maintained records of nuclear slave families, for slaves, "family" extended far beyond that.<sup>131</sup>

#### A. Interference in Pregnancy

Pregnant slaves were not accorded any sort of formal maternity leave and were forced to labor right up until delivery. When asked if pregnant women were given fewer tasks, ex-slave Harry McMillan replied, "No, sir; most of the times she had to do the same work. Sometimes the wife of the planter learned the condition of the woman and said to her husband you must cut down her day's work. Sometimes the women had their children in the field."<sup>132</sup> Many pregnant women

129. SCHWALM, *supra* note 52, at 54.

130. *Id.* at 55.

131. See e.g., Interview by T. Pat Matthew with Parker Pool, in N.C. (n.d.) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 183, 185 (listing the members of his family).

132. *A Freedman Describes His Bondage*, in 1 MAJOR PROBLEMS IN THE HISTORY OF THE AMERICAN SOUTH: THE OLD SOUTH 275, 276 (Sally G. McMillen et. al. eds. 2012). See also Interview by Mary A. Hicks with Clara Jones, *supra* note 95, at 31 ("One day, right after my fifth chile was borned, I fell out in de fiel'. Marster come out an' looked at me, den he kicks me an' 'lows, 'a youngin' ever' ten months an' never able ter wurk, I'll sell her."); see also Interview by Mary A. Hicks with Lucy Brown, in N.C. (May 20, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 152, 153–54 ("My mammy said dat slavery wuz a whole lot wusser 'fore I could 'member. She tol' me how some of de slaves had dere babies in de fiel's lak de cows done, an' she said dat 'fore de babies wuz borned dey tied de mammy down on her face if'en day had ter whup her ter keep from ruinin' de baby."),

asked overseers to reduce their tasks and were almost always denied.<sup>133</sup> Although white women were treated properly during their own pregnancies, enslaved women did not receive any prenatal care.<sup>134</sup> Enslaved women were only given a break from fieldwork for about twenty days of their pregnancies, on average.<sup>135</sup> Since the majority of field workers in many southern farms and plantations were women, “any ‘generous’ accommodation to pregnant slaves or new mothers might have seriously impinged on the plantation workforce and threatened the overseer’s ability to cultivate a large and profitable crop.”<sup>136</sup> Instead of accommodating pregnant women, masters and overseers “offered material rewards to slave women with new babies; after all, extra cloth and rations were cheaper than prime hands.”<sup>137</sup>

After delivery, women were given as little as a few weeks away from the field. According to Harry McMillan, only the “best masters” gave mothers a break for three months.<sup>138</sup> This led to early weaning of babies which inhibited the formation of the crucial mother-child bond.<sup>139</sup> During her interview, Celia Robinson remembered what her own mother told her about enslaved mothers’ experiences: “de overseer would come ter when she had a young child an’ tell her ter go home and suckle dat thing, and she better be back in de field at work in 15 minutes. Mother said she knowed she could not go home and suckle dat child and git back in 15 minutes so she would go somewhere an’ sit down an’ pray de child would die.”<sup>140</sup>

The refusal to accommodate enslaved women during and after pregnancy took a physical toll on them. Occasionally, pregnant slaves would collapse on the field due to them being overstrained, only to be punished by overseers.<sup>141</sup> Furthermore, the little time women were given to recover after giving birth contributed to “increased back problems and prolapsed uteruses” among enslaved women.<sup>142</sup>

133. SCHWALM, *supra* note 52, at 42.

134. DUNAWAY, *supra* note 46, at 241 (“Masters denied to enslaved women the prenatal care they afforded to their own wives in the way of nutrients and rest, for owners assigned black women to work during pregnancy that they considered to be too taxing for their own wives and daughters when they were not pregnant.”).

135. *Id.*

136. SCHWALM, *supra* note 52, at 43–44.

137. *Id.* at 44.

138. *A Freedman Describes His Bondage*, *supra* note 130, at 276.

139. See JACOBS, *supra* note 88, at 14 (“...my mother had been weaned at three months old, that the babe of the mistress might obtain sufficient food.”).

140. Interview by T. Pat Matthews with Celia Robinson, in Raleigh, N.C. (n.d.) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 216, 218–19.

141. See Interview by Mary A. Hicks with Analiza Foster, in Raleigh, N.C. (n.d.) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 311, 312 (“Dar wuz one woman dat I hyard mammy tell of bein’ beat clear ter death. / De ‘oman wuz pregnant an’ she fainted in de fiel’ at de plow. De driver said dat she wuz puttin’ on, an’ dat she ort ter be beat. De master said dat she can be beat but don’t ter hurt de baby. De driver says dat he won’t, den he digs a hole in de sand an’ he puts de ‘oman in de hole. . .”).

142. SCHWALM, *supra* note 52, at 41–42.

## B. The Effect of Involuntary Separation

Enslaved women were denied one of the most basic human rights: the right to a family. Many ex-slave women described the ease in which slave owners took slave children away from them, as if to make abundantly clear that children never belonged to their mothers in the first place.<sup>143</sup> Often, the women were not even permitted to grieve the loss of their child.<sup>144</sup>

The involuntary separation of slave families significantly affected the ability of slaves to do their work.<sup>145</sup> Knowledge that their family members were about to be sold “created a ‘general gloom’ that settled on the plantation slaves ‘at the idea of parting with each other.’”<sup>146</sup> Harriet Jacobs corroborated this fact in her narrative, in a particularly unnerving description of the slaves’ New Year’s Day:

But to the slave mother New Year’s Day comes laden with peculiar sorrows. She sits on her cold cabin floor, watching the children who may all be torn from the next morning; and often does she wish that she and they might die before the day dawns. She may be an ignorant creature, degraded by the system that has brutalized her from childhood; but she has a mother’s instincts, and is capable of feeling a mother’s agonies.

On one of these sale days, I saw a mother lead seven children to the auction-block. She knew that *some* of them would be taken from her; but they took all. The children were sold to a slave-trader, and their mother was bought by a man in her own town. Before night her children were all far away. She begged the trader to tell her where he intended to take them; this he refused to do. How could he, when he knew he would sell them, one by one, wherever he could command the highest price? I met that mother in the street, and her wild, haggard face lives to-day in my mind. She wrung her hands in anguish, and exclaimed, “Gone! All gone! Why don’t God kill me?” I had no words wherewith to comfort her. Instances of this kind are of daily, yea, of hourly occurrence.<sup>147</sup>

According to Schwalm, “[s]laves’ response to involuntary separation from their families so disrupted the peace and efficiency of the slave workforce that it became common wisdom among nineteenth-century rice planters that slaves should be purchased and sold in intact family groups.”<sup>148</sup> Professor Dunaway also describes this belief: “Appalachian owners verbalized a social mythology in which

143. See, e.g., Interview by T. Pat Matthews with Hannah Crasson, in N.C. (n.d.) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 187, 190 (“We never saw any slaves sold. They carried them off to sell ‘em. The slaves travelled in droves. Fathers and mothers were sold from their chilluns. Chilluns wuz sold from their parents on de plantations close to us.”); see also Interview by Mary A. Hicks with Willie Cozart, *supra* note 102, at 185 (“I ‘members seberal slave sales whar dey sold de pappy or de mammy ‘way frum de chilluns an’ dat wuz a sad time.”).

144. See Interview by Mary A. Hicks with Cornelia Andrews, *supra* note 102, at 29 (“While I could ‘member dey’d sell de mammies ‘way from de babies, an’ dere wuzn’t no cryin’ ‘bout it whar de marster would know ‘bout it nother. Why? Well, dey’d git beat black an’ blue, dat’s why.”).

145. See SCHWALM, *supra* note 52, at 56.

146. *Id.*

147. JACOBS, *supra* note 88, at 26–27.

148. SCHWALM, *supra* note 51, at 56.

they idealized themselves as ‘trying to keep their people together.’<sup>149</sup> Occasionally families were sold together, but it is unclear how often that actually occurred.<sup>150</sup> While some slaves were fortunate enough to never see families being separated,<sup>151</sup> the narrative and interviews make it clear that the threat of separation haunted many slaves.<sup>152</sup>

Some slave owners justified the involuntary separation of families by arguing that slaves did not care about their family members. Like the myth in the adjacent paragraph, this assertion was also unfounded. During Reconstruction, many former slaves attempted to reunite with their loved ones. Some placed advertisements in newspapers, like the *Southwestern Christian Advocate*, looking for their family members.<sup>153</sup> Slave narrative and interviews further dispel this myth.<sup>154</sup> Finally, the fact that many runaway slaves were motivated by the desire to reunite with their family members counters this falsehood of familial detachment.<sup>155</sup>

#### IV. “AIN’T I A PERSON?”: THE SEXUAL EXPLOITATION OF ENSLAVED WOMEN

The institution of slavery attempted to deny the humanity of slaves in every conceivable way. Before 1774, killing a slave was not even a criminal offense,<sup>156</sup> which demonstrates the reluctance of lawmakers to value slave lives, as opposed to slave bodies. When it did finally become a crime, a white person convicted of murdering a slave could be imprisoned for as little as twelve months.<sup>157</sup> However, if the slave died as a result of moderate punishment, the killer could escape conviction.<sup>158</sup> It was not until 1837 that the North Carolina legislature officially

149. See DUNAWAY, *supra* note 77, at 51.

150. See PARKER, *supra* note 94, at 93 (listing four family members, presumably father, mother, son, and daughter, for sale).

151. *E.g.*, Interview by T. Pat Matthews with Hannah Crasson, *supra* note 142, at 187 (stating that her master never sold his slaves and speaking about several members of her extended family).

152. See, *e.g.*, LANE, *supra* note 86, at 7–8.

153. See Lost Friends: Advertisements from the *Southwestern Christian Advocate*, THE HISTORIC NEW ORLEANS COLLECTION (2016), <https://www.hnoc.org/database/lost-friends/index.html>.

154. Interview by T. Pat Matthews with Lizzie Baker, in N.C. (n.d.) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 66, 69 (describing how she hoped to hear from her siblings that were sold away from her plantation); see, *e.g.*, Interview by Mary A. Hicks with Mattie Curtis, in Raleigh, N.C. (Aug. 31, 1937) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 216, 221 (“Right atter de war northern preaches come around wid a little book a-marrying slaves an’ I seed one of dem marry my pappy an’ mammy. Atter dis dey tried to find dere fourteen oldest chilluns what wus sold away, but dey never did find but three of dem.”).

155. SCHWALM, *supra* note 52, at 41 (“Oftentimes, running away was more a matter of visiting with family and community of origin than effort to secure permanent escape from slavery, a point understood by overseers and planters. Although rice plantation slaves most often ran away individually, their intent—especially slave women’s—probably was to protect, maintain, or restore social and familial ties. Maintaining the community and family ties that planters neither recognized nor respected was an important, and particularly female, manifestation of slave resistance.”).

156. MARVIN L. MICHAEL KAY & LORIN LEE CARY, *SLAVERY IN NORTH CAROLINA, 1748–1775*, at 75 (2000).

157. UNC Libraries, *The Life of a Slave*, in *SLAVERY IN NORTH CAROLINA*, 2, (2009).

158. *Id.*; see also *State v. Weaver*, 3 N.C. 54, 55 (1797) (“This is the law with respect to a freeman

classified the killing of a slave a “homicide,” essentially acknowledging the “human” in “human chattel.”<sup>159</sup>

The homicide laws are but one way that slaves were degraded and dehumanized throughout the history of slavery. From punishment, in which slaves were trained to subdue their instinctual desires<sup>160</sup> to avoid the swat of an overseer’s whip, to the auction block, at which slaves were treated like merchandise, this cruel institution stripped African-Americans of the right to feel human.<sup>161</sup>

Yet slaves were undeniably human. Slave owners chose to buy people, rather than animals, for a reason: by virtue of them being human, slaves were capable of thinking, learning, and working in ways that animals were not. They also had human instincts, such as the desire to form intimate relationships, which slave owners could exploit for their own benefit. That African-Americans were of a lower social status than white Americans did not revoke African-Americans’ status as human. Nor did their legal status as property mean that the biological classification *Homo sapiens* excluded African-Americans.

Although whites could not deny that slaves were human beings, they could strip African-Americans of their human dignity. That is, they could refuse to confer personhood upon slaves, while continuing to exploit African-Americans’ human status. African-Americans were humans by nature, but were they persons?<sup>162</sup>

The following sections describe just a few of the countless modes in which slaves were deprived of the basic rights of human dignity. While slavery degraded

who is killed, but with respect to a slave it is somewhat different; for if a free servant refuses to obey the commands of his master, and the master endeavour to exact obedience by force, and the servant offers to resist by force in such a case, and the master kills, it is not murder, nor even manslaughter, but justifiable; much more is it justifiable if the slave actually uses force and combats with the master.”).

159. Act of 1817, ch. 18 § 3, 1817 NC Pub Laws 18-19 (“The offence of killing a slave shall be denominated and considered homicide, and shall partake of the same degree of guilt, when accompanied with the like circumstances, that homicide now does at common law.”).

160. For example, slaves were whipped to suppress their desires to learn, Interview by T. Pat Matthews with Lizzie Baker, *supra* note 153, at 69; to protect their children, Interview by T. Pat Matthews with Robert Glenn, in N.C. (Oct. 25, 1937) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 328, 329; and to be free, Interview by T. Pat Matthews with Charity Austin, in N.C. (June 26, 1937) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 58, 62.

161. See, e.g., *Dred Scott v. Sanford*, 60 U.S. 393 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV. In the infamous *Dred Scott* decision, the Supreme Court—the highest court in the country—reasoned that the preamble to the Declaration of Independence, which states that “all men are created equal,” was never meant to include slaves—despite the fact that the words in the preamble “would seem to embrace the whole human family.” *Id.* at 410.

162. For an explanation of what is meant here by “persons”, see Charles Taylor, *The Concept of a Person*, 1 in *Philosophical Papers* 97–114, 97 (1985) (“Where it is more than simply a synonym for ‘human being’, ‘person’ figures primarily in moral and legal discourse. A person is being with a certain moral status, or a bearer of rights. But underlying the moral status, as its condition, are certain capacities. A person is a being who has a sense of self, has a notion of the future and the past, can hold values, make choices; in short, can adopt life-plans. At least, a person must be the kind of being who is in principle capable of all this, however damaged these capacities may be in practice.”).

both enslaved men and enslaved women, there is one area in which the women were uniquely exploited: the infliction of sexual violence.

#### A. The Control over Enslaved Women's Reproductive Lives

Slavery provided for the sexual and reproductive exploitation of enslaved women. After the abolishment of the international slave trade in 1808, the reproductive ability of slaves became more important, as slave breeding was the only means of increasing the number of slaves available in the United States.<sup>163</sup> As a result, slave masters "trapped their slaves in a vicious cycle of frequent family breakups, structural pressures for mothers to remarry, and the economic reality that women must be fertile to prevent their own sale"<sup>164</sup> and "systematically promoted high slave fertility rates through structural interference in the lives of slave families and women."<sup>165</sup> Owners pressured enslaved women and girls to begin to have children as soon as they experienced menarche.<sup>166</sup> Hilliard Yellerday, an ex-slave woman from Raleigh, NC, recounted:

When a girl became a woman she was required to go to a man and become a mother. There was generally a form of marriage. The master read a paper to them telling they were man and wife. Some were married by the master laying down a broom and the two slaves, man and woman would jump over it. The master would then tell them they were man and wife and they could go to bed together. Master would sometimes go and get a large hale hearty Negro man from some other plantation to go to his Negro woman. He would ask the other master to let this man come over to his place to go to his slave girls. A slave girl was expected to have children as soon as she became a woman. Some of them had children at the age of twelve and thirteen years old. Negro men six feet tall went to some of these children.<sup>167</sup>

Willie McCullough, the son of two former slaves, told a similar story: "Mother tole me that when she became a woman at the age of sixteen years her marster went to a slave owner near by and got a six-foot nigger man, almost an entire stranger to her, and told her she must marry him."<sup>168</sup> After being read a paper by her master, Rilla McCullough, Willie's mother, was told that she was now married and her now-husband was given permission to take her to bed.<sup>169</sup> Although by the time the Civil War ended, Rilla loved her husband, all of this was done without her consent.<sup>170</sup> Willie's grandmother, Luna Williams, was also forced to give up her sexual autonomy. Willie reported: "[S]everal different men were put to her just about the same as if she had been a cow or sow. The slave owners treated them as if they had been common animals in this respect."<sup>171</sup> One ex-slave woman claimed that the masters didn't care who enslaved women copulated with,

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163. See DUNAWAY, *supra* note 46, at 239.

164. *Id.*

165. *Id.*

166. See *id.* at 243.

167. Interview by T. Pat Matthews with Hilliard Yellerday, *supra* note 115, at 434.

168. Interview by T. Pat Matthews with Willie McCullough, *supra* note 37, at 78.

169. *Id.*

170. *Id.*

171. *Id.*

as long as the women had children.<sup>172</sup> “Getting married an’ having a family was a joke in the days of slavery, as the main thing in allowing any form of matrimony among the slaves was to raise more slaves in the same sense and for the same purpose as stock raisers raise horses and mules, that is for work,” another ex-slave stated.<sup>173</sup> “A woman who could produce fast was in great demand and brought a good price on the auction block in Richmond, Va., Charleston, S. C., and other places.”<sup>174</sup> In another ex-slave interview, Tempie Herndon Durham recalled being a valuable asset to her owners because she was able to give birth to eleven children.<sup>175</sup>

Because of this pressure to reproduce, enslaved women in the United States did not generally have many years in between their pregnancies.<sup>176</sup> In the Mountain South, enslaved women averaged 10.4 live births during their childbearing years, while nationally, enslaved women averaged about 9.2 live births.<sup>177</sup> Harry McMillan, a freedman living in Beaufort, South Carolina during the Civil War, knew of an enslaved woman who had twenty-three children.<sup>178</sup> “In general the women have a great many children,” Harry remarked, “they often have a child once a year.”<sup>179</sup>

Enslaved women who bore children frequently were considered more valuable than those who had fewer children or were unable to procreate.<sup>180</sup> Women who were barren, and thus could not respond to the pressures toward high fertility, often suffered physical and psychological abuse.<sup>181</sup> Not only did they accuse enslaved women of miscarrying intentionally,<sup>182</sup> masters also blamed mothers for the high child mortality rate among enslaved children.<sup>183</sup>

172. Interview by T. Pat Matthews with Hattie Rogers, in N.C. (Aug. 4, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 226, 227.

173. Interview by T. Pat Matthews with Thomas Hall, in N.C. (Sept. 10, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 359, 360.

174. *Id.*

175. Interview by Travis Jordan with Tempie Herndon Durham, *supra* note 107, at 288 (“We had eleven chillun. Nine was bawn befo’ surrender an’ two after we was set free. So I had two chillun dat wuzn’ bawn in bondage. I was worth a heap to Marse George kaze I had so many chillun. De more chillun a slave had de more dey was worth.”).

176. See DUNAWAY, *supra* note 46, at 243.

177. DUNAWAY, *supra* note 77, at 127.

178. *A Freedman Describes His Bondage*, *supra* note 130, at 277.

179. *Id.*

180. Interview by T. Pat Matthews with Jacob Manson, *supra* note 57, at 97 (“Marster had no chilluns by white women. He had his sweethearts ‘mong his slave women. I ain’t no man for tellin false stories. I tells de truth an dat is de truth. At dat time it wus a hard job to find a marster dat didn’t have women ‘mong his slaves. Dat wus a ginerall thing ‘mong de slave owners.”); Interview by T. Pat Matthews with Willie McCullough, *supra* note 37, at 77 (“A slave occupied the same place on the plantation as a mule or horse did, that is a male slave. Some of the slave women were looked up on by the slave owners as a stock raiser looks upon his brood sows, that is from the standpoint of production. If a slave women had children fast she was considered very valuable because slaves were valuable property.”).

181. See HOOKS, *supra* note 4, at 40–41 (retelling a story from a North Carolina citizen about slave breeding on South Carolina plantations).

182. DUNAWAY, *supra* note 46, at 244.

183. *Id.* at 244–45.

Frequently, masters themselves were the fathers of slave children—a historical fact which is absent from most plantation records.<sup>184</sup> Although the enslaved women in such situations may have assented to intimate relations with their masters, this can arguably be considered sexual exploitation. Because of the power imbalance between slaves and the masters, intimate relationships between these two classes may have an ineradicable undertone of coercion.<sup>185</sup>

Accounts of master-slave relations were prevalent in slave narratives and interviews. For instance, Hattie Rogers, an ex-slave born in New Bern, North Carolina, detailed her master's relationship with one of his slaves:

The man we belonged to never was married. He bought a woman who had two little girls, on named Lucy and the other Abbie. He took Lucy for a house girl to wait on his mother. She had eleven children by him. They're all dead except one. All the missus I ever had was a slave, and she was this same Lucy. Yes, sir he loved that woman, and when he died he left all his property to her.<sup>186</sup>

Several other former slaves communicated this pattern of paternity. For instance, an ex-slave, Jacob Manson, recollected, "Marster had no chilluns by white women. He had his sweethearts 'mong his slave women. . . . At dat time it wus a hard job to find a marster dat didn't have women 'mong his slaves. Dat wus a general thing 'mong de slave owners."<sup>187</sup> Another former slave, Hannah Crasson, remarked, "dey nebber wouldn't a been so menny half white niggers, but the old marster wuz to blame for that."<sup>188</sup>

#### B. Other Patterns of Sexual Abuse

The actions described above, which bestialized enslaved women, also caused them great emotional and physical distress.<sup>189</sup> Perhaps most traumatic for enslaved women, however, were the instances in which they were raped by masters and overseers. According to historian Wilma A. Dunaway, "1 in 10 Appalachian slave families was headed by a woman whose children were the outcome of her sexual exploitation by white males."<sup>190</sup> After analyzing hundreds of slave narratives, Dunaway found that almost fifteen percent of these narratives detailed instances of sexual exploitation, which most of those stories involving force and physical

184. SCHWALM, *supra* note 52, at 51.

185. For a contemporary argument that relationships between authority figures and their subordinates constitute exploitation, see Galia Schneebaum, *What Is Wrong with Sex in Authority Relations? A Study in Law and Social Theory*, 105 J. CRIM. L. & CRIMINOLOGY 345, 378–79 (2016).

("Criminal law assumes that, in everyday life, subordinates find it hard to act upon the rational assumption that the person standing in front of them asking for sex is operating in his capacity as a private person and should be acknowledged as their equal rather than an authority figure. Instead, they tend to submit to such sexual requests or to feel as if they are not in a position to refuse them. At the moment of truth, they tend to perceive the authority figure as holistically powerful rather than merely professionally authorized, and certain officeholders on their part take advantage of this tendency and manipulate subordinates into having unwanted sex.").

186. Interview by T. Pat Matthews with Hattie Rogers, *supra* note 171, at 230.

187. Interview by T. Pat Matthews with Jacob Manson, *supra* note 57, at 97.

188. Interview by T. Pat Matthews with Hannah Crasson, *supra* note 142, at 190.

189. See DUNAWAY, *supra* note 46, at 239–43.

190. *Id.* at 240.

violence committed by white men.<sup>191</sup> Enslaved women were also vulnerable to sexual abuse by fellow slaves. One slave, Phoebe Brown was “taken advantage of” and impregnated by a married male slave.<sup>192</sup>

Sexual exploitation was both demoralizing and dehumanizing.<sup>193</sup> Bell hooks argues, “[t]he female slave lived in constant awareness of her sexual vulnerability and in perpetual fear that any male, white or black, might single her out to assault and victimize.”<sup>194</sup> This argument can be corroborated by the testimony of former slaves. As mentioned in a previous section of this paper, enslaved women preferred to work in the fields, rather than indoors, as they knew domestic work would bring them closer to sexually abusive masters.<sup>195</sup>

Domestic workers were not the only victims of rape under slavery. Enslaved women who refused to obey commands to procreate often “had men forced upon them by their overseer or master.”<sup>196</sup> Many enslaved women were unsuccessful in resisting sexual exploitation. For example, Marjorie Jones remarked during her interview, “Plenty of the colored women have children by the white men. She know better than to not do what he say.”<sup>197</sup> Those women that could resist had to bear physical and psychological abuse. Martha Allen, a former slave from North Carolina, described to an interviewer the abuse her mother endured as a result of her resistance: “De young marster sorta wanted my mammy, but she tells him no, so he chunks a lightwood know an’ hits her on de haid wid it.”<sup>198</sup> When one slave girl attempted to report her abuse to her mistress, she was told, “Well go on you belong to him.”<sup>199</sup> In addition to the desire to keep their families together, the avoidance of rape may have also motivated many runaway slaves.<sup>200</sup>

Many enslaved women had little, if any, hope of escaping this system of sexual oppression. During the period of slavery, an African-American woman did not have any legal cause of action if she were forced to be intimate with another person. While forcing a woman to engage in intercourse constituted a criminal offense,<sup>201</sup> the law did not penalize the assault of an African-American women,

191. *Id.*

192. SCHWALM, *supra* note 52, at 52

193. HOOKS, *supra* note 4, at 24.

194. *Id.*

195. *See id.* at 25 (“Sexual exploitation of young slave girls usually occurred after they left the hut or cabin of their parents to work in the white domestic household. It was a common practice for a young slave girl to be forced to sleep in the same bedroom with a master and mistress, a situation which provided a convenient setting for sexual assault.”).

196. *Id.* at 40.

197. Interview by Marjorie Jones with W.L. Bost, in Asheville, N.C. (Sept. 27, 1937) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 138, 142.

198. Interview by Mary A. Hicks with Martha Allen, in N.C. (June 7, 1937) in FEDERAL WRITERS’ PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 1, *supra* note 100, at 13, 14.

199. Interview by T. Pat Matthews with Jacob Manson, *supra* note 57, at 97–98.

200. *See* SCHWALM, *supra* note 52, at 44 (“According to the testimony of former slaves, much of women’s most overt resistance to slavery was a consequence of their efforts to avoid sexual abuse and rape.”).

201. 1 N.C. REV. STAT. ch. 34, § 5 (1837) (“Any person, who shall ravish and carnally know any female, of the age of ten years or more, by force or against her will, or who shall unlawfully and carnally know and abuse any female child under the age of ten years, shall be adjudged guilty of felony, and

free or enslaved.<sup>202</sup> This was true not just in North Carolina. In *State of Missouri v. Celia*, the court held that the meaning of “woman” in a Missouri rape statute did not apply to an enslaved woman.<sup>203</sup> This case, like Sojourner Truth’s speech, illuminated the importance of race to the meaning of gender. In another case, a Mississippi court overturned the conviction of a slave who had been accused of raping another slave.<sup>204</sup> The defense attorney argued, “[t]he crime of rape does not exist in this State between African slaves. . . . The regulations of law, as to the white race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse is promiscuous, and the violation of a female slave by a male slave would be a mere assault and battery.”<sup>205</sup> The notion that African-American women were naturally promiscuous and, thus, could not be raped was used to justify incalculable acts of sexual violence against black women for centuries.<sup>206</sup>

Even if the law had recognized enslaved women as potential victims of rape, there would be no way for the enslaved woman to bring the complaint to court. An African-American could not sue<sup>207</sup> or testify against a white person during the antebellum period.<sup>208</sup> However, the enslaved woman’s owner might have been able to sue under trespass to chattel.<sup>209</sup> Assuming he was not the perpetrator of the sexual offense, the owner could argue that he had been deprived of his property and thus required redress. When the Civil War ended, the North Carolina legislature modified its rape laws to include *any* female in the category of potential victims.<sup>210</sup>

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shall suffer death without benefit of clergy.”).

202. Higginbotham, *supra* note 31, at 264 n.37 (“Neil R. McMillen observes for the early twentieth century that courts did not usually convict white men for the rape of black women, ‘because whites generally agreed that no black female above the age of puberty was chaste.’”).

203. *Id.* at 257–58.

204. *George v. State*, 37 Miss. 316 (1859).

205. *Id.* at 317.

206. See GERDA LERNER, *BLACK WOMEN IN WHITE AMERICA: A DOCUMENTARY HISTORY* 163 (1972) (“A myth was created that all black women were eager for sexual exploits, voluntarily ‘loose’ in their morals and, therefore, deserved none of the consideration and respect granted to white woman. Every black woman was, by definition, a slut according to this racist mythology; therefore, to assault her and exploit her sexually was not reprehensible and carried with it none of the normal communal sanctions against such behavior.”).

207. *The Life of a Slave*, *supra* note 156, at 2.

208. *Id.*; see also Act of 1821, ch. 1123, which provided, in part: “All negroes, Indians, mulattoes, and all persons of mixed blood, descended from negro and Indian ancestors, to the fourth generation inclusive (though one ancestor of each generation may have been a white person) whether bond or free, shall be deemed and taken to be incapable in law to be witnesses in any case whatsoever, except against each other.”

209. See *State v. Flowers*, 6 N.C. 225 (1813) (recognizing that taking a slave could be considered trespass, although it was not therein). See also *State v. Mills*, 13 N.C. 420 (1830) (affirming holding of lower court that where “the Defendants, with strong hand, unlawfully, violently and forcibly did seize, arrest and take” the slave from his or her owner, the defendant could be convicted of forcible trespass).

210. Act of June 12, 1866, ch. 21 sec. 1 (“*Be it ordained by the Convention of the State of North Carolina, and it is hereby ordained by the authority of the same, That any person convicted by due course of law of an assault, with intent to commit a rape, on the body of any female, shall be punished by fine, imprisonment not exceeding two years, standing in the pillory for one hour, one or more public*”).

## CONCLUSION

As evil as slavery was, it was no match for enslaved women's love. Despite the inevitability of separation, enslaved women loved their children and their spouses. Their unfaltering, selfless love for their families often ended up causing harm.<sup>211</sup> In forming deep emotional attachments, enslaved women refused to succumb to the dehumanizing pressures of slavery, regardless of how irrational it was for them to do so. This pattern of irrationality demonstrates one important fact: whites could call slaves "property" all they wanted, but, whether they liked it or not, slaves were still human.

Slave narratives and interviews allow contemporary scholars to peer into the lives of the individuals who lived during the period of slavery. However, some of the comments from former slaves, like the comment below from Patsy Mitchner, can be quite unsettling:

De marsters kindness to de niggers after de war is de cause of de nigger havin' things today. Dere wus a lot love between marster an' slave en dar is few of us dat don't love de white folks today.

Slavery wus a bad thing an' freedom, of de kin' we got wid nothin' to live on wus bad. Two snakes full of pisen. One lyin' wid his head pintin' north, de other wid his head pintin' south. Dere names wus slavery an' freedom. De snake called slavery lay wid his head pinted south an' de snake called freedom law wid his head pinted north. Both bit de nigger, an' dey wus both bad.<sup>212</sup>

While slavery had demoralizing and dehumanizing effects on enslaved individuals, especially women, it can be disheartening to know that many of those

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whippings, not exceeding thirty-nine lashes, at any one time, on his bare back, all or any of them, at the discretion of the Court, due regard being had to the nature and circumstances of the offence."'). Ordinances Passed by the North Carolina State Convention, Sessions 1865–66.

211. See Interview by Marjorie Jones with Fannie Moore, in Asheville, N.C. (Sept. 27, 1937) in FEDERAL WRITERS' PROJECT: SLAVE NARRATIVE PROJECT, NORTH CAROLINA, PART 2, *supra* note 35, at 127, 130 ("She stan' up fo' her chillum tho'. De ol' overseah he hate my mammy, case she right him for beatin' her chillum. Why she git more whuppins for dat den anythin' else. She hab twelve chillum."').

212. Interview by T. Pat Matthews with Patsy Mitchner, *supra* note 38, at 123. Although these warm feelings could be attributed to the fact that it is harder to accurately recollect the past the further removed one is from it, it appears that these sentiments were similarly positive during slavery. Frederick Douglass gave some insight into this unexpected admiration of slave masters:

It is partly in consequence of such facts, that slaves, when inquired of as to their condition and the character of their masters, almost universally say they are contented, and that their masters are kind. The slaveholders have been known to send in spies among their slaves, to ascertain their views and feelings in regard to their condition. The frequency of this has had the effect to establish among the slaves the maxim, that a still tongue makes a wise head. They suppress the truth rather than take the consequences of telling it, and in so doing prove themselves a part of the human family. . . . Moreover, slaves are like other people, and imbibe prejudices quite common to others. They think their own better than that of others. Many, under the influence of this prejudice, think their own masters are better than the masters of other slaves; and this, too, in some cases, when the reverse is true. Indeed, it is not uncommon for slaves even to fall out and quarrel among themselves about the relative goodness of their masters, each contending for the superior goodness of his own over that of the others. . . . They seemed to think that the greatness of the masters was transferable to themselves.

FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE 19–20 (1849).

individuals victimized by slavery did not celebrate its abolition. Slavery tore thousands of families apart, ripped babies from mothers' arms, refused to honor marital commitments, and debased the dignity of an entire class of Americans. Yet, some African-Americans would rather have remained in its cruel embrace than face the destitution accompanying emancipation.

Enslaved women bore the brunt of slavery's assault more than any other group. They were the ones who carried children for months only to have them claimed as someone else's property. They were the ones who witnessed other women being praised for their womanhood—a classification which they eventually learned was not meant to include them. And they were the ones whose bodies were not their own, as they were persistently robbed of their sexual autonomy. Yet history often forgets these women—and the agony only they were forced to endure.