

Commentary on Claire Priest's *Credit Nation: Property Laws and Institutions in Early America*

Laura F. Edwards*

It is such an honor to have the opportunity to engage with Claire Priest's *Credit Nation: Property Laws and Institutions in Early America*. Priest's articles have long been on my graduate students' lists for comprehensive exams, and they are often cited as among the most influential of their readings. This past spring, when a student was asked in her oral exam to come up with turning points in the colonial era, she immediately said 1732. Why, asked the questioner, a bit confused, expecting the usual dates associated with wars or political events or even the dates associated with the development of slavery. In fact, the questioner followed up with one of those dates: Why not 1619? The student replied with remarkable confidence: 1732 was the date of the Debt Recovery Act, which made real estate and enslaved property available to satisfy creditors' claims. That, in her mind, changed everything.

Credit Nation explains how the Debt Recovery Act and a host of other legal measures did just that: changed everything, by building the availability of credit into the legal order and, thereby, fueling capitalist development.¹ The implications upend basic assumptions in the scholarship of early America. They shift the chronology of economic change from the nineteenth century to the eighteenth century. They shift the location of legal innovation, bringing Virginia and its agricultural economy into focus alongside New York and its commercial economy. They shift the means of legal change, from appellate decisions to statutes and from centralized states to local governments, which developed in the way that they did to keep all the necessary records. And they shift the targets of law, from the property usually associated with industrial development to that associated with the agricultural economy, in the form of real estate and enslaved people.²

* Class of 1921 Bicentennial Professor in the History of American Law and Liberty, Princeton University.

1. CLAIRE PRIEST, *CREDIT NATION: PROPERTY LAWS AND INSTITUTIONS IN EARLY AMERICA* 1-18 (2021).

2. CHRISTINE DESAN, *MAKING MONEY: COIN, CURRENCY, AND THE COMING OF CAPITALISM*

Credit Nation's recalibration of the legal landscape then challenges longstanding scholarly presumptions about economic change. In the book, creditors supplant merchants, manufacturers, and slaveholders at the top of the early American economic hierarchy, although the resulting power dynamics end up being much more complicated than that because the focus on credit puts the relationship of people to property in a different light. Instead of owners, interested in amassing property, there were creditors and debtors, who were often one and the same, interested in leveraging the value of property. As *Credit Nation* shows, the operation of early American law extended that economic logic into all areas of life, even those assumed to be governed more by religious, cultural, and social considerations in the colonial period. In particular *Credit Nation* makes it impossible to consider slavery and patriarchy outside the legal edifice constructed to favor the interests of creditors. Issues that scholars have attributed to race (in the case

(2015) makes a similar point about the importance of law in structuring the basic terms of economic exchange. In U.S. legal history, the focus has been on the nineteenth century, the developing commercial and industrial economy, and the regions of the country most associated with that kind of economic development, particularly the Northeast and the Midwest, although the content of the analyses and their conclusions vary widely. The classic statement is the work by JAMES WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* (1950) [hereinafter HURST, *GROWTH OF AMERICAN LAW*]; JAMES WILLARD HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES* (1956) [hereinafter HURST, *CONDITIONS OF FREEDOM*]; and JAMES WILLARD HURST, *LAW AND ECONOMIC GROWTH: THE LEGAL HISTORY OF THE LUMBER INDUSTRY IN WISCONSIN, 1836–1915* (1964) [hereinafter HURST, *ECONOMIC GROWTH*]. See also MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860* (1977); BRUCE H. MANN, *NEIGHBORS AND STRANGERS: LAW AND COMMUNITY IN EARLY CONNECTICUT* (1987); WILLIAM E. NELSON, *THE AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830* (1994); WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* (1996); CHRISTOPHER L. TOMLINS, *LAW, LABOR, AND IDEOLOGY IN THE EARLY AMERICAN REPUBLIC* (1993); BARBARA Y. WELKE, *RECASTING AMERICAN LIBERTY: GENDER, RACE, LAW, AND THE RAILROAD REVOLUTION, 1865-1920* (2001); and JOHN FABIAN WITT, *THE ACCIDENTAL REPUBLIC: CRIPPLED WORKINGMEN, DESTITUTE WIDOWS, AND THE REMAKING OF AMERICAN LAW* (2004). New York, in particular, takes center stage because its legal reforms were widely copied elsewhere and is seen as representative: HENDRIK HARTOG, *PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730-1870* (1983); DANIEL HULSEBOSCH, *CONSTITUTING EMPIRE: NEW YORK AND THE TRANSFORMATION OF CONSTITUTIONALISM IN THE ATLANTIC WORLD, 1664-1830* (2005); and WILLIAM E. NELSON, *THE LEGALIST REFORMATION: LAW, POLITICS, AND IDEOLOGY IN NEW YORK, 1920-1980* (2001). By contrast, scholarship that takes southern states as its focus generally does so to illuminate the dynamics of slavery and race, which is often considered apart, legally, from the rest of the United States. One of the classic statements is EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* (1976). See also THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1619-1860* (1996); JUDITH KELLEHER SCHAFFER, *SLAVERY, CIVIL LAW, AND THE SUPREME COURT OF LOUISIANA* (1994); PHILIP J. SCHWARTZ, *TWICE CONDEMNED: SLAVES AND THE CRIMINAL LAWS OF VIRGINIA, 1705-1865* (1988); MARK V. TUSHNET, *THE AMERICAN LAW OF SLAVERY, 1810-1860: CONSIDERATION OF HUMANITY AND INTEREST* (1981); ALAN WATSON, *SLAVE LAW IN THE AMERICAS* (1989). Recent work emphasizes enslaved people's interactions with the legal system and engages with scholarship that considers questions of slavery and freedom in the United States as a whole. But it still tends to use the South as a site to study slavery and race, not other questions about law in the United States: KELLY KENNINGTON, *IN THE SHADOW OF DRED SCOTT: ST. LOUIS FREEDOM SUITS AND THE LEGAL CULTURE OF SLAVERY IN ANTEBELLUM AMERICA* (2017); ANNE TWITTY, *BEFORE DRED SCOTT: SLAVERY AND LEGAL CULTURE IN AMERICA'S CONFLUENCE, 1787-1857* (2016); KIMBERLY WELCH, *BLACK LITIGANTS IN THE ANTEBELLUM AMERICAN SOUTH* (2018).

of slavery) and gender (in the case of patriarchy) were also about credit.³

If anything, *Credit Nation*'s emphasis on law in shaping the trajectory of economic change is even more important to those working outside the fields of legal history and economic history—the fields represented in this forum. With notable exceptions, practitioners of what is called the “new history of capitalism” still tend to treat law as an afterthought. In that scholarship, “the market” or “the economy” are conjured into being by the actions of individuals and the collective forces they create. Law then responds, usually at the insistence of powerful individuals, who have vested interests in the economics that they created and that favor them.⁴ Cultural historians, particularly those with grounding in social history, treat law much the same: as expressions of existing power relationships and the arena in which contests over those power relationships are fought, not as the means of creating that playing field in the first place. By contrast, *Credit Nation* goes to the law first, showing how it constitutes the economic context that other historians assume. As such, the book has lessons for early Americanists more generally, showing how the economic, social, and cultural dynamics at the center of the field were far more complicated and contingent than those historians now assume.⁵

3. The presumption, often unstated, in much of the literature is that social relations in the colonial period were governed by religious and cultural considerations that increasingly gave way to those of purely economic character as commercial development took hold in the nineteenth century. The narratives often trace the transition of status to contract, with some analyses emphasizing that status allowed more space for subordinated people and others emphasizing the freedoms associated with contractual relations. Recent scholarship has pushed those developments into the eighteenth century and emphasized the continuation of the negative implications of status relations for women, the working poor, and people of color. See, for instance, NORMA BASCH, *IN THE EYES OF THE LAW: MARRIAGE AND PROPERTY IN NINETEENTH-CENTURY NEW YORK* (1982); HOLLY BREWER, *BY BIRTH OR CONSENT: CHILDREN, LAW, AND THE ANGLO-AMERICAN REVOLUTION IN AUTHORITY* (2005); CORNELIA HUGHES DAYTON, *WOMEN BEFORE THE BAR: GENDER, LAW, AND SOCIETY IN CONNECTICUT, 1639–1789* (1995); MICHAEL GROSSBERG, *A JUDGMENT FOR SOLOMON: THE D'HAUTEVILLE CASE AND LEGAL EXPERIENCE IN ANTEBELLUM AMERICA* (1996); LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* (1998); MANN, *supra* note 2; ROBERT J. STEINFELD, *THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350-1870* (1991); AMY DRU STANLEY, *FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION* (1998); and TOMLINS, *supra* note 2.

4. For recent examples, see: EDWARD BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM* (2014); SVEN BECKERT, *EMPIRE OF COTTON: A GLOBAL HISTORY* (2014); and WALTER JOHNSON, *RIVER OF DARK DREAMS: SLAVERY AND EMPIRE IN THE COTTON KINGDOM* (2013). That said, the work in this field ranges widely and is difficult to characterize, particularly in its handling of the law: *AMERICAN CAPITALISM: NEW HISTORIES* (Christine Desan & Sven Becker eds., 2018).

5. The influence of Robert Gordon is evident in this aspect of the book. PRIEST, *supra* note 1, at 66. See Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57 (1984). For work that views law as a field for conflict, see: SHARON BLOCK, *RAPE AND SEXUAL POWER IN EARLY AMERICA* (2006); VICTORIA E. BYNUM, *UNRULY WOMEN: THE POLITICS OF SOCIAL AND SEXUAL CONTROL IN THE OLD SOUTH* (1992); SARA T. DAMIANO, *TO HER CREDIT: WOMEN, FINANCE, AND THE LAW IN EIGHTEENTH-CENTURY NEW ENGLAND CITIES* (2021); ELLEN HARTIGAN-O'CONNOR, *THE TIES THAT BUY: WOMEN AND COMMERCE IN REVOLUTIONARY AMERICA* (2009); CLARE A. LYONS, *SEX AMONG THE RABBLE: AN INTIMATE HISTORY OF GENDER AND POWER IN THE AGE OF REVOLUTION IN PHILADELPHIA, 1730-1830* (2006); TED MARIS-WOLF, *FREE BLACKS AND RE-ENSLAVEMENT LAW IN ANTEBELLUM VIRGINIA*

Credit Nation also opens up new conceptual space for further work. I want to draw out the implications of three such topics: (1) the close association of writing and recordkeeping with the law as it developed in the geographic area that became the United States; (2) conflicts over conceptions of property as a communal resource and an individual possession; and (3) women's relationship to property.

The U.S. legal system relies on written documentation that is made publicly available through widely accepted standards of recordkeeping. This is true throughout the system, with published collections of statutes and appellate decisions at the state and federal levels as well as the receipts, contracts, and deeds that constitute evidence of property ownership, even in everyday transactions that never make their way to court. All that now seems normal—so much so that it is hard to imagine that it was not always that way. *Credit Nation* reconstructs the history of the processes that we now take for granted, revealing the institutional work that had to be done to normalize expectations about written documentation and recordkeeping. As the book shows, early American lawmakers developed a distinct legal culture in this regard, one that privileged written documentation in property transactions, made those records available to secure those exchanges, and developed an administrative structure at the local level to oversee those practices.⁶

Those insights highlight the connection between writing and law in early America more generally. Writing fixed facts on paper and made those facts portable. But writing, itself, did not necessarily carry authority in law. The legal measures described in *Credit Nation* did that, giving the facts recorded in writing more authority than facts recorded in other ways.⁷ The findings fit with those of other historians, who also have noted the increasing emphasis on writing, which is often linked to the development of a formalized legal system dominated by lawyers. As lawyers took over, written documentation replaced oral testimony and other means of establishing facts. Still, the existing literature tends to portray the ascendance of written documentation and its legal power as a given: as the inevitable response to the ascendance of legal professionals and the needs of a developing society. *Credit Nation* reveals the legal work necessary to produce that result. Written documentation, in certain forms, acquired legal power because of proactive measures that included legislation mandating its use and the building of institutions to manage the resulting work.⁸

(2015); DIANNE MILLER SOMMERVILLE, *RAPE AND RACE IN THE NINETEENTH-CENTURY SOUTH* (2004); KIRT VON DAACK, *FREEDOM HAS A FACE: RACE, IDENTITY, AND COMMUNITY IN JEFFERSON'S VIRGINIA* (2012).

6. PRIEST, *supra* note 1, at 38-56, 153-58.

7. *Id.* at 52.

8. For the point about the written word and the law, see MANN, *supra* note 2. Also see Hannah Farber, *Sailing on Paper: The Embellished Bill of Lading in the Material Atlantic, 1720-1864*, 17 *EARLY*

Those changes marginalized other forms of fixing facts and even moved them outside the law altogether. Scholars have tended to accept that portrayal as an accurate description of an inevitable outcome, not a legal construction. In fact, alternate evidentiary standards actually lingered in the legal system into the nineteenth century. People sued using established practices that privileged materiality and orality to make claims to widely held forms of personal property, such as clothing and household goods—items that seem inconsequential now but held considerable value then. Materiality was key. Ownership depended on the actual connection between the goods and the people who claimed them. For that reason, people often brought in the property in question to show that connection. Materiality also involved oral testimony, in the form of witnesses who saw the disputed property in the owners' hands: they saw the shirt on someone, the bedlinens in someone's trunk, or the length of cloth exchange hands from one person to another. While those ways of establishing ownership still had purchase in some areas of the legal system in the nineteenth century, they were handled differently than the kinds of legal exchanges documented in writing. Scholars now tend to follow the law's framing, treating exchanges based in orality and materiality as informal, underground, illicit, and largely outside the law and those based in written documentation as part of the legitimate, formal economy regulated by law. *Credit Nation* suggests the law's implication in those assumptions.⁹

AM. STUD. 37 (2019); Kellen Richard Funk, *The Lawyers' Code: The Transformation of American Legal Practice, 1828-1938* (Nov. 2018) (unpublished Ph.D. dissertation, Princeton University) (on file with Princeton University Library), <http://arks.princeton.edu/ark:/88435/dsp01n583xx756>; Hugh MacGill & R. Kent Newmyer, *Legal Education and Legal Thought, 1790-1920*, in 2 THE CAMBRIDGE HISTORY OF LAW IN AMERICA 36 (Michael Grossberg & Christopher Tomlins eds., 2008); Farah Peterson, *Constitutionalism in Unexpected Places*, 106 VA. L. REV. 559 (2020); Carol M. Rose, *The Ancient Constitution vs. the Federalist Empire: Anti-federalism from the Attack on 'Monarchism' to Modern Localism*, 84 NW. U. L. REV. 74 (1990). For the developing importance of published texts within governing institutions in the United States, see LAURA F. EDWARDS, *All Was Chaos in Our Legal World: Excavating Localized Law from beneath the Layers of Southern History*, in THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH 26 (2009). Scholarship on the importance of freedom papers is also telling. See, in particular, REBECCA J. SCOTT & JEAN M. HÉBRARD, *FREEDOM PAPERS: AN ATLANTIC ODYSSEY IN THE AGE OF EMANCIPATION* (2012).

9. For the rules governing the exchange of textiles and their enforcement in the new republic's courts, see LAURA F. EDWARDS, *ONLY THE CLOTHES ON HER BACK: CLOTHING AND THE HIDDEN HISTORY OF POWER IN THE NINETEENTH-CENTURY UNITED STATES* (2022). Those claims were made by people without property rights and were handled as criminal rather than civil matters, a legal framing that made similar kinds of disputes look different. The rules echo those in DYLAN C. PENNINGROTH, *THE CLAIMS OF KINFOLK: AFRICAN AMERICAN PROPERTY AND COMMUNITY IN THE NINETEENTH-CENTURY SOUTH* (2003). For characterizations of such practices as informal or underground and outside law, see for instance the essays in CAPITALISM BY GASLIGHT: ILLUMINATING THE ECONOMY OF NINETEENTH CENTURY AMERICA (Brian P. Luskey & Wendy A. Woloson, eds., 2015). See also KATHLEEN HILLIARD, *MASTERS, SLAVES, AND EXCHANGE: POWER'S PURCHASE IN THE OLD SOUTH* (2014); SIMON P. NEWMAN, *EMBODIED HISTORY: THE LIVES OF THE POOR IN EARLY PHILADELPHIA* (2003); SETH ROCKMAN, *SCRAPING BY: WAGE LABOR, SLAVERY, AND SURVIVAL IN EARLY BALTIMORE* (2009); and MICHAEL D. THOMPSON, *WORKING ON THE DOCK OF THE BAY: LABOR AND ENTERPRISE IN AN ANTEBELLUM SOUTHERN PORT* (2015). Scholarship in women's history tends to see these rules of exchange as embedded within social relations, not connected to law: HARTIGAN-

Credit Nation underscores the legal importance of writing in other ways as well, given that creditors' claims included enslaved people as well as real estate. Those measures meant that all people of African descent, in particular, lived the developing connection between writing and law in ways that other Americans did not. Written documentation defined their status. It attached them to their owners and was the means by which they were exchanged from one owner to another. To move around, enslaved people needed written permission that outlined the parameters of what was possible. The bar to establish their freedom was even higher. They needed to carry written proof at all times because their status could always be questioned—and was. Writing not only had the power to fix their status among people who did not know them, but it also had the power to fix their status in courts of law, where oral testimony mattered but written documentation was definitive. No wonder that literacy was so important to free Blacks and to formerly enslaved people following emancipation. Recent scholarship also links advocacy for education to efforts to obtain equality within the law, particularly by securing rights that severed the presumed link between Black bodies and the written documentation associated with property. Those connections—literacy, legal status, and rights—were artifacts of the legal order that *Credit Nation* reveals.¹⁰

The tension between the interests of creditors and those of families and communities runs through *Credit Nation*. In Britain, the protection of real estate from creditors' claims was based in conceptions of land as the possession of families, not just its present members, but all its members through the generations, past, present, and future. Other property could belong to individuals. It was personal. Real estate was different. It was not only the family's means of support, but also its connection to the community, of which families were a part and to which they were responsible. To be sure, other historians have noted changes that turned real estate into something more like personal property: an individual possession that could be alienated easily. But *Credit Nation* underscores the novelty of that conception as applied to real estate. As with written documentation, the legal handling of this particular form of property was not an inevitable development, reflective of economic dynamics. It was a construction of law, which elevated the claims of creditors over those of family members.¹¹

O'CONNOR, *supra* note 5; MARLA R. MILLER, *THE NEEDLE'S EYE: WOMEN AND WORK IN THE AGE OF REVOLUTION* (2006); and LAUREL THATCHER ULRICH, *THE AGE OF HOMESPUN: OBJECTS AND STORIES IN THE CREATION OF AN AMERICAN MYTH* (2001).

10. MARTHA JONES, *ALL BOUND UP TOGETHER: THE WOMAN QUESTION IN AFRICAN AMERICAN PUBLIC CULTURE, 1830-1900* (2007); MARTHA JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA* (2018); STEPHEN KANTROWITZ, *MORE THAN FREEDOM: FIGHTING FOR BLACK CITIZENSHIP IN A WHITE REPUBLIC, 1829-1889* (2012); and HEATHER WILLIAMS, *SELF-TAUGHT: AFRICAN AMERICAN EDUCATION IN SLAVERY AND FREEDOM* (2005).

11. PRIEST, *supra* note 1, at 150-52. That transformation underpins key narratives in legal history, including HURST, *CONDITIONS OF FREEDOM*, *supra* note 2; HURST, *LAW AND ECONOMIC GROWTH*,

With innovation came resistance, as people refused to let go of longstanding legal principles and practices that treated real estate as family property. The fate of entail is telling. As Priest shows, when Virginia abolished entail, its statute turned fee tail estates into fee simple estates; gave current possessors individual rights to the property; and allowed creditors' claims to it. Other states did not go that far and only reformed entail, allowing families to shield property, although with more limits than previously. They also enacted stay laws and homestead exemptions, which protected family property from creditors, as entail had. There were work-arounds, even in Virginia. The state did not enact homestead exemptions until after the Civil War. But people turned to separate estates as another way of keeping property within families and away from husbands and their creditors. Separate estates, which lodged property in women's names, became more common after the panic of 1819. It was no coincidence that Virginia passed its married women's property act in the 1870s, in the wake of the economic upheaval that followed the Civil War.¹²

Virginians, moreover, did not let go of the entail. John A. G. Davis, the University of Virginia Law School professor, published a treatise dedicated to entail in 1837. Volume two of the influential *Institutes of Common and Statute Law of Virginia*, published in 1877, also included a lengthy discussion of entail.¹³ Why the need? Because people were still trying to

supra note 2; HORWITZ, *supra* note 2; MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780-1860: THE CRISIS OF LEGAL ORTHODOXY (1977). See also GREGORY S. ALEXANDER, COMMODITY AND PROPRIETY: COMPETING VISIONS OF PROPERTY IN AMERICAN LEGAL THOUGHT, 1776-1970 (1997); CHRISTOPHER MICHAEL CURTIS, JEFFERSON'S FREEHOLDERS AND THE POLITICS OF OWNERSHIP IN THE OLD DOMINION (2012); Carol M. Rose, *Property as Wealth, Property as Propriety*, 33 NOMOS 223 (1991); and Rose, *supra* note 8.

12. For entail, see PRIEST, *supra* note 1, 93-111. See also Priest, *The End of Entail: Information, Institutions, and Slavery in the American Revolutionary Period*, 33 L. & HIST. REV. 277 (2015). For separate estates in Virginia, see SUZANNE LEBSOCK, THE FREE WOMEN OF PETERSBURG: STATUS AND CULTURE IN A SOUTHERN TOWN, 1784-1860, at 54-86 (1984). For the use of separate estates more generally in the South, see Marylynn Salmon, *Women and Property in South Carolina: The Evidence from Marriage Settlements, 1730-1830*, 39 WM. & MARY Q. 655 (1982).

13. J.A.G. DAVIS, EXPOSITION OF THE PRINCIPLES WHICH DISTINGUISH ESTATES TAIL FROM OTHER LIMITATIONS (Charlottesville, Va., 1837); and 2 JOHN B. MINOR, INSTITUTES OF COMMON AND STATUTE LAW 84-87 (Richmond, 1877). For cases in Virginia's appellate court, see Deane v. Hansford, 36 Va. (9 Leigh) 253 (1838); Pryor v. Duncan, 47 Va. (6 Gratt) 27 (1849); Nowlin v. Winfree, 46 Va. (8 Gratt) 346 (1852); and Camp v. Cleary, 76 Va. 140 (1882). There is no clear transition in the court's handling of separate estates, suggesting both the continuing tension between conflicting priorities: the claims of families, particularly wives and children, and those of creditors. Over time, Virginia's Supreme Court of Appeals carved out more ways for creditors to claim property lodged in married women's names and made married women's claims more contingent, although those principles were unevenly applied. For examples of cases, through the 1870s, that protected property, particularly real estate, in separate estates from husbands and creditors, see West v. West's Ex'rs, 24 Va. (3 Rand.) 373 (1825); Vizonneau v. Pegram, 29 Va. (2 Leigh) 183 (1830); Roper v. Wren, 33 Va. (6 Leigh) 38 (1835); Williamson v. Beckham, 35 Va. (8 Leigh) 20 (1837); Stinson v. Day, 40 Va. (1 Rob.) 435 (1842); Davis v. Turner, 45 Va. (4 Gratt.) 422 (1848); Smith v. Flint, 47 Va. (6 Gratt.) 40 (1849); Charles v. Charles, 49 Va. (8 Gratt.) 486 (1852); Parker v. Wasley's Ex'r, 50 Va. (9 Gratt.) 477 (1852); Cleland v. Watson, 51 Va. (10 Gratt.) 159 (1853); Nickell v. Handly, 51 Va. (10 Gratt.) 336 (1853); Taylor v. Yarbrough, 54 Va. (13 Gratt.) 183 (1856); Armstrong's v. Adm'r v. Pitts, 54 Va. (13 Gratt.) 235 (1856); Sayers v. Wall, 67 Va. (26 Gratt.) 354 (1875); Darnall v. Smith's Adm'r, 67 Va. (26 Gratt.) 878 (1875); Bedinger

leave property to their family members in ways that fell afoul of the state's prohibition on entail. To determine what was not allowed after the abolition of entail required lengthy considerations of what entail had been. Virginia's Court of Appeals was still hearing entail cases into the late nineteenth century because people expected familial conceptions of property to have legal standing. They were not wrong. Legal principles that upheld such claims continued in other areas of Virginia law, particularly in equity with separate estates. Conceptions of familial property also had purchase in practice. In fact, wills and other conveyances similar to those that wound up on appeals court dockets were regularly honored in practice. Lower courts even honored them in principle. Once in court, however, the logic of the law transformed familial disputes, with litigants and their lawyers wielding established legal principles instrumentally, often leaning on conceptions of individual ownership, not because they believed in them, but because it was in their interests to do so. The appellate court responded, toggling back and forth between familial and individual conceptions of real estate, because Virginia law continued to allow for both. Conceptions of real estate as familial property did not go away quietly. By underscoring the novelty of innovative legal principles that elevated the claims of creditors over families, *Credit Nation* reveals the links among what otherwise seem like unrelated legal currents, from entail to separate estates, stay laws, homestead exemptions, and ordinary disputes over wills, deeds, gifts, and other conveyances.

That so many efforts to protect property from creditors involved women

v. Wharton, 68 Va. (27 Gratt.) 857 (1876); Hawley v. Twyman, 70 Va. (29 Gratt.) 728 (1878); Bank of Greensboro v. Chambers, 71 Va. (30 Gratt.) 202 (1878); Price v. Thrash, 71 Va. (30 Gratt.) 515 (1878); Justis v. English, 17 Va. (30 Gratt.) 565 (1878); Irvine v. Greever, 73 Va. (32 Gratt.) 411 (1879); and Ropp v. Minor, 74 Va. (33 Gratt.) 97 (1880). Equitable principles limited married women's control of real estate, not personal property, including stocks, bonds, and other negotiable instruments. The fact that, over time, the property in separate estates took those forms, magnified women's control over it. Even then, the appeals court became more particular about the wording necessary to set up separate estates and more willing to allow married women to alienate real estate. For changes that gave wives more authority and also made it easier for creditors to seize property, see: Pullen v. Mullen, 39 Va. (12 Leigh) 434 (1841); Woodson v. Perkins, 46 Va. (5 Gratt.) 345 (1849); Brown v. George, 47 Va. (6 Gratt.) 424 (1849); Penn v. Whiteheads, 53 Va. (12 Gratt.) 74 (1855); William and Mary College v. Powell, 53 Va. (12 Gratt.) 372 (1855); Rayfield v. Gaines, 58 Va. 1 (17 Gratt.) (1866); Penn v. Whitehead, 58 Va. (17 Gratt.) 503 (1867); Brent v. Washington's Adm'r, 59 Va. (18 Gratt.) 526 (1868); Muller v. Bayly, 62 Va. (21 Gratt.) 521 (1871); Powell v. Manson, 63 Va. (22 Gratt.) 177 (1872); Campbell v. Prestons, 63 Va. (22 Gratt.) 396 (1872); Buck v. Wroten, 65 Va. (24 Gratt.) 250 (1874); McChesney v. Brown's Heirs, 66 Va. (25 Gratt.) 393 (1874); Burnett v. Hawpe's Ex'r, 66 Va. (25 Gratt.) 481 (1874); Leake v. Benson, 70 Va. (29 Gratt.) 153 (1877); Campbell v. Bowles' Adm'r, 71 Va. (30 Gratt.) 652 (1878); Shackelford's Adm'r v. Shackelford, 73 Va. (32 Gratt.) 481 (1879); Morriss' Ex'r v. Morriss, 74 Va. (33 Gratt.) 51 (1880); Stroud v. Connelly, 74 Va. (33 Gratt.) 217 (1880); and Frank v. Lilienfeld, 74 Va. (33 Gratt.) 377 (1880). For a case where the tensions between family claims and those of creditors are clearly stated, see Haymond v. Jones, 74 Va. (33 Gratt.) 317 (1880); Triplett v. Romine's Adm'r, 74 Va. (33 Gratt.) 651 (1880); Fink Bro. & Co. v. Denny, 75 Va. 663 (1881); Finch v. Marks, 76 Va. 207 (1882); Hayes v. Va. Mut. Prot. Ass'n, 76 Va. 225 (1882); Scott v. Jones, 76 Va. 233 (1882); and Etheridge's Adm'r v. Parker, 76 Va. 247 (1882). See also M. P. BURKS, NOTES ON THE PROPERTY RIGHTS OF MARRIED WOMEN IN VIRGINIA (Lynchburg, Va., J. P. Bell 1894).

made women's relationship to property problematic. Entail, stay laws, separate estates, homestead exemptions, and even married women's property acts were often associated with fraud: with attempts to shield property from the claims of creditors. In case after case, creditors routinely accused those indebted to them of transferring property to their female relatives, particularly their wives and married daughters, in order to defraud them.¹⁴ In one sense, that was entirely accurate. The point of all these legal arrangements was to elevate the interests of families, particularly those of women whose property rights could be extinguished by coverture, over those of creditors, who were privileged in other areas of law. Entail enabled families to pass property through their married daughters to their grandchildren, bypassing coverture, which would have put their daughters' husbands in control of that property. Separate estates allowed families to do the same, although not in perpetuity. The discussion surrounding homestead laws, which experienced a renaissance in the late nineteenth and early twentieth centuries, was explicit on this score: they were seen as measures akin to welfare, providing wives a claim to family property that they needed to carry on their lives after their husbands lost everything else to creditors. A legitimate means of shielding family property in one area of the law eased imperceptibly into fraud in the context of laws that elevated the claims of creditors over those of families.¹⁵

The connections between women's property and fraud depended on a rigid definition of coverture that, as recent scholarship suggests, replaced a more varied set of legal principles that had previously defined the status of married women. Much of the scholarship has explained the trajectory of coverture's restrictions in the nineteenth century—about which there is considerable debate—in terms of ideas about women. To be sure, debates about women's nature and duties mattered in shaping the laws that defined

14. For examples of fraud cases in Virginia, see: *Penn v. Whiteheads*, 53 Va. (12 Gratt.) 74 (1855); *William and Mary College v. Powell*, 53 Va. (12 Gratt.) 372 (1855); *Price v. Thrash*, 71 Va. (30 Gratt.) 515 (1878); *Campbell v. Bowles' Adm'r*, 71 Va. (30 Gratt.) 652 (1878); *Frank v. Lilienfeld*, 74 Va. (33 Gratt.) 377 (1880); *Triplett v. Romine's Adm'r*, 74 Va. (33 Gratt.) 651 (1880); *William v. Lord*, 75 Va. 390 (1881); *Fink Bro. & Co. v. Denny*, 75 Va. 663 (1881); *Walters v. Farmers' Bank of Virginia*, 76 Va. 12 (1881); *Hayes v. Va. Mut. Prot. Ass'n*, 76 Va. 225 (1882); *Scott v. Jones*, 76 Va. 233 (1882); and *Etheridge's Adm'r v. Parker*, 76 Va. 247 (1882). As those cases suggest, the connection to fraud clouded all women's claims to property. For this point also see LAURA F. EDWARDS, *Rags*, in *ONLY THE CLOTHES ON HER BACK*, *supra* note 9.

15. For connection between measures to put family property in married women's names and either debt relief or efforts akin to welfare relief for needy women and children, see: Richard H. Chused, *Married Women's Property Law: 1800-1850*, 71 *GEO. L.J.* 1359 (1983); Bernie D. Jones, *Revisiting the Married Women's Property Acts: Recapturing Protection in the Face of Equity*, 22 *J. GENDER, SOC. POL'Y & L.* 91 (2013); Suzanne D. Lebsock, *Radical Reconstruction and the Property Rights of Southern Women*, 43 *J.S. HIST.* 195 (1977); Alison D. Morantz, *There's No Place Like Home: Homestead Exemption and Judicial Constructions of Family in Nineteen-Century America*, 24 *L. & HIST. REV.* 245 (2006). As Reva Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 *YALE L.J.* 1073 (1994), has argued, women's rights advocates wanted legal change that would unwind the presumption that family property belonged to the husband, which would have given married women more economic security.

status. But, as *Credit Nation* suggests, a restrictive definition of coverture was also about the credit regime: in a legal order that favored creditors, it made sense to consolidate title to property in the person of the husband, rather than dispersing it through other family members. Coverture's restrictions, however, also created problems. It tied the hands of married women, many of whom had no choice but to manage their own economic affairs and those of their children and extended families. (As it turns out, the legal authority granted to husbands did not turn all men into competent managers and providers or render them immune from misfortune.) Perhaps more importantly, coverture conflicted with deeply held conceptions of property, particularly real estate, as a collective possession to which family members could make claims. Hence the perceived need for legal interventions such as separate estates, stay laws, homestead exemptions, and married women's property acts, all of which gave women the ability to control property.¹⁶

All these legal interventions, even married women's property acts, only went so far in modifying rigid conceptions of coverture. Married women's property did not change elements of coverture that prohibited women from contracting in their own names. They owned property because of a work-around, not because they had the same legal status as men or unmarried women. They were still limited in what they could do with their property and, by implication, their access to credit. Creditors' claims, for instance, only extended to the property that was encumbered, not against the married woman and what she could amass or earn in the future. Those and other key elements of coverture relating to credit persisted well into the twentieth century. Notably, married women could not make claims to family property, which was linked to their inability to access credit in their own names. The implications extended to unmarried women: they might be separated, but still married, because divorce was hard to obtain; they might get married without notice or the legal arrangements necessary to secure their property; or they might be a front for other men in their families. Bottom line, when women had property, it was legally suspicious. It always had the whiff of

16. The analysis draws on my recent work, particularly Laura F. Edwards, *The Material Conditions of Dependency: The Hidden History of Free Women's Control of Property in the Early Nineteenth Century South*, in *SIGNPOSTS: NEW DIRECTIONS IN SOUTHERN LEGAL HISTORY* 171 (Sally E. Hadden & Patricia Hagler Minter eds., 2013); Laura F. Edwards, *The Legal World of Elizabeth Bagby's Commonplace Book: Federalism, Women, and Governance*, 9 *J. CIV. WAR ERA* 504 (2019); and EDWARDS, *supra* note 9. The classic statement of coverture's fluidity is MARY RITTER BEARD, *WOMEN AS FORCE IN HISTORY: A STUDY OF TRADITIONS AND REALITIES* (1946). For recent work that emphasizes the fluidity of coverture in the late eighteenth and early nineteenth centuries, see Holly Brewer, *The Transformation of Domestic Law*, in 1 *CAMBRIDGE HISTORY OF AMERICAN LAW* 288 (Christopher L. Tomlins & Michael Grossberg eds., 2008); DAMIANO, *supra* note 5; Joan R. Gundersen and Gwen Victor Gampel, *Married Women's Legal Status in Eighteenth-Century New York and Virginia*, 39 *WM. & MARY Q.* 114 (1982); HARTIGAN-O'CONNOR, *supra* note 5; Reva B. Siegel, "The Rule of Love": *Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117 (1996); and LINDA L. STURTZ, *WITHIN HER POWER: PROPERTIED WOMEN IN COLONIAL VIRGINIA* (2002).

something fraudulent designed to undercut the claims of creditors. That link then undermined all women's relationship to property and placed them at a definite disadvantage in an economy that ran on credit.¹⁷

The legal regime so brilliantly described in *Credit Nation* is not just about the colonial economy. The implications reach through the nineteenth and twentieth centuries and into the present, where they continued to shape the ways in which Americans interacted with law and the economy. The book reveals the contingency of legal dynamics that now seem so natural that they now seem outside of history, from the legal system's basic recordkeeping practices to assumptions about creditors' claims that made familial conceptions of property and, particularly, women's property claims look problematic. We are still living in Claire Priest's *Credit Nation*.

17. For the limitations of married women's property acts, see: Norma Basch, *Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America*, 5 FEMINIST STUD. 346 (1979); BASCH, *supra* note 3; JOAN HOFF, LAW, GENDER, AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN 117-50 (1991); Richard D. Chused, *Late Nineteenth Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures*, 29 AM. J. LEGAL HIST. 3 (1985); Joan Hoff-Wilson, *The Unfinished Revolution: Changing Legal Status of U.S. Women*, 13 SIGNS 7 (1987); Linda K. Kerber, *Why Diamonds Really Are a Girl's Best Friend: Another American Narrative*, 141 DAEDALUS 89 (2012); and Siegel, *supra* note 15