This paper is drawn from a very early draft of the first chapter of my dissertation, which considers how changing ideas about the self and the market influenced financial regulation and financial relief in the United States from the mid nineteenth century to the mid twentieth century. This chapter and the second one together make the argument that in the period after the Civil War, an understanding of the self as highly plastic, often expressed through narratives of racial and sexual transformation spurred by indebtedness, provided resources for raising a restrictive regulatory regime designed to set firm limits on what could be bought, sold, or seized in the financial marketplace, and when. The workings of that regime are explored in chapter one (and hence this paper), and the arguments and ideas that supported it are explored in greater detail in chapter two.

At this early stage, there are three areas in which I am most eager for feedback. First, the organization of the paper/chapter feels disjointed to me, and I’m not sanguine about the larger organizational strategy of exploring law in chapter one and culture in chapter two. I am happy to speak more in the workshop about the material that isn’t presented here and the problems I see with the current organization, and any advice on how to reorganize the narrative would be greatly appreciated. Second, this research has brought me to themes that I had not previously read deeply in, like notions of the family, and I am eager for secondary-source suggestions that might help me to improve the analysis (on the family point or any other dimension of the argument). Lastly, I have struggled to determine what information about this legal regime is interesting/important and what would drag the narrative down, and for this shorter paper, I have leaned toward concision. Taking this is a baseline, are there nuts-and-bolts questions about anything discussed in the paper that you would want or expect the larger chapter to answer?

Those are just a few issues that seem especially pressing to me at this point. I am happy, of course, for any and all feedback at this very early stage of things. Thank you for your time, and I look forward to discussing the paper with you all!
In the summer of 1864, Congressman Thomas Jenckes’s mailbox swelled with letters from the nation’s insolvent debtors. They wrote to applaud the Rhode Island representative’s efforts to enact a permanent bankruptcy law that would allow borrowers to be discharged from obligations they had no chance of repaying. Expunging these debts, a power explicitly and exclusively granted to Congress by the Constitution, would not simply vivify stagnant and knotted corners of the national economy, Jenckes’s correspondents assured. It would also perform moral work, liberating commercial men from fetters that struck doubly at their sense of self, as sovereign subjects and as distinguished members of a graded social order. “After a moderately long life of commercial integrity, rare to find in these days, I have passed ten years in worse bondage than that of the black man of the South,” wrote one Philadelphian of his embarrassed condition. It was a dependency made more intolerable for the fact that “I was no longer regarded as an equal amongst my old associates,” he continued. The dozens of letters that echoed these claims expressed universalist and particularist concerns. Inescapable contracts that bound men of standing to their creditors in an unpredictable market offended liberal commitments to self-possession. They also threatened conservative commitments to preserving sound social hierarchies from the vagaries of time and chance.¹

Jenckes’s mailbox archived more than bourgeois anxieties, however. Each letter the congressman received reflected an attempt to invite the law into the intimate relations of credit to allay these moral problems. The Philadelphia merchant and his compatriots awaited legislation that would seal off parts of their identities from the vicissitudes of market entanglements, rooting their status as free and elite individuals in something firmer than commercial life. These aspirations were not rare in the nineteenth century. Indeed, what was exceptional about the

debtors’ movement of the 1860s was not that it called for legal intervention in the credit economy, but that it was directed at the federal government rather than the state level, where most financial regulation in this period was enacted. State and local law comprised the primary line of defense for traders, farmers, mechanics, and others who wished to insulate a fragile social and moral order from the lurking dangers of the debt relation. Between the 1840s and the 1890s, provisions that limited allowable interest rates, suspended the collection of debts in times of depression, and exempted land, personal property, and the body from seizure by creditors formed the basic infrastructure of a prohibitionary regulatory regime. These laws, many of which traced a long historical lineage but were substantially enhanced in the mid nineteenth century, did not seek to stabilize the credit economy, as twentieth-century regulations would. Instead, they sought to establish firm limits on what could be bought, sold, or seized in the financial marketplace, and when. They aimed, in one jurist’s estimation, to shield the debtor and his family like “a sea-wall uplifted against the tide.”

The existence of this regime has been obscured in U.S. historiography by what William J. Novak calls “the myth of statelessness” and “the myth of liberal individualism” in American history. According to these myths, Novak argues, America was “born free, without elaborate bureaucratic, governmental, or political-philosophical traditions,” and Americans were, from their colonial origins, “suffused with a passion for private right” that made them “predestined for market capitalism.” State intervention in economic affairs was minimal until the early twentieth century, when the pressures of industrialization spurred the belated construction of a modest regulatory and welfare apparatus. This narrative finds its most explicit airing in postwar texts like Richard Hofstadter’s *The American Political Tradition* (1948) and Louis Hartz’s *The Liberal* 

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2 McDonald v. Campbell, 57 Tex 614 (1882).
Tradition in America (1955), which make much of the variance between America’s quiet
embrace of capitalism and the noisier transition in Europe. It continues in recent scholarship that
casts “the personal assumption of risk,” particularly financial risk, as central to the “vision of
freedom” developed by nineteenth-century Americans. Unfortunate merchants and anxious
farmers turned not to the state but to insurance, this literature contends, to hedge against the
looming threat of financial ruin. They coped with risk through capitalism rather than against it,
ironically advancing the financial system that fomented so much instability in the first place. A
legal regime that, in contrast, drew bright lines around the exactions permissible in financial
relationships and that, as critics often protested, diluted the power of contract in the waters of
sympathy, fits poorly in this liberal narrative. Its uncovering thus offers new perspectives on law

This paper draws on legislative and judicial records to explore how the prohibitionary
regulatory regime was constructed, how it functioned, and how it was contested in an era that
increasingly equated civilizational progress with the movement “from Status to Contract.” Its
first half surveys the legal mechanisms that lawmakers refined for governing credit relations in
this period. Usury, moratory, and exemption laws, the paper argues, were not intended to
stabilize the financial economy. Instead, they were meant to protect particular privileged
identities from the dislocations inherent in credit entanglements. Enforcing these provisions often
required judges, lawyers, and litigants to struggle over the boundaries of those cherished social
categories, a subject the paper analyzes in its second half. Exemption laws in particular raised
pressing questions about who counted as a member of one class or another, who was engaged in
which professional pursuits, and, most importantly, what constituted a family. Fixing the appropriate ambit of the financial economy was thus an epistemological project that forced Americans to define more firmly the elements of the social order they wished to preserve. That they did so in an era conventionally characterized as a heyday of laissez-faire suggests, the paper concludes, the presence of important and neglected interventionist currents within the politics of classical liberalism.4

The volatility of the midcentury marketplace did much to confirm John Quincy Adams’s assertion that “Time and Chance” were the true arbiters of man’s financial fate. Panic after panic, striking at least once each generation in the several decades before and after the Civil War, tempered optimism about American opportunity with anxiety about sudden, crushing loss. Wealth could be easily gained in the United States, T. S. Arthur wrote in 1842, but it was held “by a very uncertain tenure,” always subject to dramatic reversals. Nationwide catastrophes, like the Panics of 1837 and 1857, were not the only disruptions to be feared. Local and regional crises, from bank runs to crop failures, sowed ruin with equal rapacity, leaving those who had borrowed money on the assumption of a steady future scrambling for cash in the midst of a financial tempest. “There is a gale blowing always in commercial life,” Congressman William Frye of Maine declared in 1873, “and beneath that gale there are wrecks every day and every hour unnoticed by the world.” For centuries, debt had attracted the moralist’s censure because it suggested profligacy and indulgence. In nineteenth-century America, it earned further suspicion as a potentially weighty gamble on the economic tidings of an uncertain future.5

These suspicions animated efforts to bring the relations between debtor and creditor under the watchful care of the law. Americans who advocated for financial regulation in this era did not believe that the broad swings of economic time were amenable to state intervention. Tariff and currency policies surely influenced the nation’s economic fortunes, but the true agents of boom and bust lay outside the scope of human control, in the realms of Providence or chance. “Not even the angels of heaven can govern [such] events,” one antebellum southerner declared. The state could no more calm the economic seas than legislate the “temperature of the globe,” an Ohioan similarly affirmed. What the law could do, many Americans believed, was set limits on how exposed indebted men and women were to market crisis when the next storm struck. Statutory law, properly deployed, could form a prohibitionary bulwark separating social, economic, and moral identity from the hazards of market entanglements.6

Usury provisions, which placed a legal limit on the rate of interest lenders could charge borrowers, were an essential part of this prohibitionary project. State governments divided on whether charging excessive interest should be barred by criminal or civil law, and whether victimized borrowers were entitled to be repaid some of the interest, all of the interest, or even have their entire debt discharged. They agreed, however, that the rate of interest could not be left to the whims of the open market, where necessity or ambition might trump prudence and trap debtors in oppressive bonds. Despite opposition from bankers and liberal intellectuals, regulation of interest remained a legislative priority throughout the nineteenth century. Rate caps appeared in some form in almost all the states in the 1840s and in thirty-nine states by the 1890s. Such

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measures, long a feature of Anglo-European law, not only endured during this increasingly commercial period but were frequently strengthened. In 1837, New York legislators attached criminal penalties to usury violations, and in the depression of the 1870s, they and their counterparts in dozens of other capitals lowered the maximum allowable interest rate from seven percent to six. States that heeded calls to abandoned these prohibitions were often disappointed with life under a more permissive regime and frequently reversed course with little delay. Warned W. W. Wick after Indiana’s brief experiment in free financial trade in 1849, “The moral desolations created by the absence of usury laws will tell upon any community to an extent almost infinitely beyond the ruin of estate.”

Bankers and larger businessmen often resisted these regulations, arguing that money was no different from other commodities and should be free to find its true price in the open market. Political economists routinely cited Jeremy Bentham’s *Defence of Usury* (1787) as the final word on the irrationality of rate caps. But the usury law’s allies, drawn from the ranks of farmers, mechanics, and small proprietors, invoked a range of arguments to defend the august regulation against such challenges. Many pointed to the biblical injunction to lend at interest only to the stranger, never the neighbor. The meaning of this mandate, they held, was that the relations between members of a single community, defined in religious, geographic, or political terms, should not be poisoned by commercial avarice. While the clerical interpretation of usury had shifted in the early modern period from denoting all interest to simply excessive interest, nineteenth-century Americans continued to understand Christian teachings as fundamentally at

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odds with financial exaction. Debt for speculation ran contrary to the work ethic, and debt for urgent need was never to be a source of profit in a Christian social order.\(^8\)

These religious arguments were elaborated in more modern idioms by advocates who emphasized the plasticity of the self in the face of economic temptation. Those who called for the loosening of usury laws were “unmindful of the power of gold upon the human mind,” they cautioned. Borrowers could always be found who, facing urgent need or eager to speculate, were “ready and willing to place themselves, their property and their entire future under bonds,” one editorialist informed in 1868. Refusing these actors the right to assume debts that only the most fortunate tidings would make repayable provided a moral floor beneath which the desperate and the ambitious could never fall. Lenders too required discipline to prevent their transformation into agents of oppression. “It is quite a new doctrine to me that mankind have approached so near a state of perfectibility, that all restraints upon their lusts, their ambition and their avarice, may safely be removed,” the jurist John Whipple wrote in 1855. “If it is so, I am very grateful … but until I have a little experience that men in power, unless curbed by constitutions and written laws, will [not] overlook the interest of the public for their own selfish purpose,” bars on cupidity could not be withdrawn.\(^9\)

Usury laws did not tether borrowers and lenders as effectively as their defenders desired. They were difficult to enforce and were often skirted by carefully constructed contracts that hid interest in ambiguous charges for credit investigations or paperwork. Yet by creating legal risks for lenders – that they might never collect an illegal debt or that they might face criminal penalties for contracting it – these measures partially fulfilled their purpose, denying creditors

\(^8\) Christopher Clark, “A Wealth of Notions: Interpreting Economy and Morality in Early America,” *Early American Studies* 8:3 (Fall 2010): 679.

the legal basis for holding debtors in obligations that the vicissitudes of time might turn intolerable. Temptation and necessity were too powerful to be tackled by proverbs alone. “A strong legal restraint” was required to hold commercial men in the righteous positions prescribed by moral discourse.10

Yet even debts contracted at reasonable rates of interest could become unreasonable when economic circumstances twisted just so. Collapsing agricultural prices, a shortage of cash, or the dislocations of war at home or abroad could wreak havoc with the relative value of obligations that had to be met at a specific time. Last year’s crop, for example, might have fetched enough in the market to pay the mortgage, and perhaps next year’s would as well, but if in the present, when payments were due, a hiccup in prices made a bushel or a bale worth half what it was in ordinary times, the mortgage became a millstone. Indeed, the debt contract’s imperviousness to time, its persistence unchanged through the merciless cycles of boom and bust, was a defining feature of the experience of financial entanglement in the modern era. Tamara Plakins Thornton finds that “the principle of punctuality” ranked atop Massachusetts farmers’ grievances against their Boston creditors in the 1820s and 1830s. Elizabeth Lee Thompson notes a similar anxiety in the postbellum South. “The property is gone, the labor is very uncertain,” and yet still, South Carolina’s A. P. Aldrich lamented, “the debts remain.” Bringing credit relations into alignment with moral expectations required the law to regulate more than just interest rates. Nineteenth-century Americans also asked it to govern the passage and power of time.11

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Moratory laws, which placed a moratorium on the collection of debts or the execution of property during designated periods, were a controversial yet consistent answer to the problem of market fluctuation in an age of commercial expansion. Observed the legal historian Charles Warren in 1935, “whenever there has been any serious economic or financial upheaval in this country,” the states have almost universally preferred “a policy of conservation and extension” to the enforcement of credit obligations at “sacrifice prices.” By decoupling debts from economic time and affixing them to a kind of moral time, moratory provisions diminished the power of chance in economic life and affirmed credit’s secondary status as a servant of productive industry rather than a master. Such legislative endeavors took a number of different forms. Appraisal laws, like the one passed in Illinois in 1843, forbade seized property from being sold to satisfy a debt at any price lower than what the debtor’s neighbors believed the property would bring in ordinary times. “In payment of debts,” an incredulous New Yorker declared, “Illinois enables her citizens to sell wild lands at old prices!” Redemption laws offered another model of relief, allowing insolvents to reacquire seized land within a designated term by paying off the original debt plus a modest interest charge. The right of redemption typically extended for one year but could stretch as long as three, as a Minnesota statute prescribed in 1860. Scaling laws provided a third, albeit rarer, method of adjusting obligations to present circumstances, by converting debts out of depreciated currency and into their more favorable present value in gold.12

Most common, however, were statutes that simply closed the courts to creditors or delayed the point at which delinquency resulted in an execution on property. Stay laws, as they

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were known, effectively suspended financial obligations until they could be resolved in an environment closer to the one in which they were originally contracted. A North Carolina measure passed in 1866, for example, mandated that all creditors seeking legal assistance with debt collection bring evidence of their overdue obligations to the Superior Court of Law within a specific amount of time. A hearing would then be set for the court’s spring session. If at the opening of the session, “the defendant [was to] pay to the plaintiff … one-tenth of the debt or demand,” further proceedings would be discontinued until the following spring. If at that point the defendant paid “one-fifth of the residue of the debt,” he could delay the hearing for another year. Twelve months later, a payment equal to one-half of the remaining sum would activate another, final suspension. North Carolina’s moratory law never dissolved the original financial obligation. Instead, it purposefully held the bulk of it at bay for as long as three years, giving the borrower and the broader economy time to return to more ordinary conditions.13

The postwar South, deep in debt and bereft of an enslaved workforce, was a hotbed of moratory legislation. “Proposition after proposition is being offered on stay laws, homesteads, Bankruptcy etc etc,” one state senator wrote his wife in 1866. Eight of the eleven states of the former Confederacy enacted some form of moratory law in the half decade after Appomattox. Yet the governance of time was not an exclusively southern preoccupation. Massachusetts passed an appraisal law in the wake of the Panic of 1837. Most of the Midwestern states enacted some kind of appraisal or redemption provision in the 1850s. Eastern states like Pennsylvania joined western neighbors like Ohio in suspending debt collection during the depression of the 1870s, and the Far West was notorious for passing stay laws throughout the late nineteenth

century. The farmers of that region “wish to pay all they owe … [and] do not desire to defraud,” S. L. Rogers wrote during the doldrums of the 1890s, but they must “have time to make the best of the materials at their hands.” Moratory measures became a favored remedy of populist legislatures seeking to afford their constituents an opportunity to return to solvency in a stable and more prosperous future. By suspending the passage of financial time, laws of this nature forced the erratic rhythms of the credit economy to follow the steadier beat of moral expectations and support rather than squelch traditional republican industry.14

What these measures did for economic time, raising barriers around periods deemed inappropriate for financial exaction, exemption laws did for economic space. Regulations guarding land, personal property, and the debtors’ body from judicial execution were added to the American legal landscape gradually between the 1830s and 1870s, in derogation of the stringent insolvency regime that prevailed in the colonial and early national periods. Unlike moratory laws, exemption measures aspired to permanency. Indeed, they were frequently engrafted onto state constitutions, where they would be insulated from “party quarrelling and party capital.” Their aim, announced one statesman, was to provide men, women, and children with a legal anchor that was “fixed and immutable,” a bulwark there always to shield them from the inevitable “storms of life.”15

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The most basic exemptions enacted in the nineteenth century were those that severed the ancient link between outstanding debts and the borrowers’ body. Despite powerful objections to debtors’ prison dating to the nation’s founding, imprisonment for debt remained a legal, if limited, practice in every state of the Union deep into the antebellum period, and in some locations until far later. Let “no New-Yoker throw slavery into the teeth of a Virginian,” declared one reformer in 1818, for as long as the debtors’ prisons of the North remained opened, corporeal self-possession remained contingent on solvency throughout the country, irrespective of race or region. The earliest legislative efforts to soften this regime were laws that exempted women and Revolutionary War veterans from imprisonment in New England, passed in the 1820s at the urging of groups like the New York Humane Society and the Boston Prison Society. The Panic of 1837 spurred a second wave of reform, as legislatures throughout the Northeast closed the debtors’ prison’s doors to the indigent, those with small debts, and those with young children. By the mid 1840s, the borrower’s body had largely been exempted from seizure in the region north of Maryland, and it was beginning to be released in the South. Imprisonment of white debtors was prohibited by most slave states before the Civil War, and total abolition was completed by the Reconstruction governments in the 1870s.\(^1\)

More significant for everyday credit relations in the United States was the suite of property exemption laws that crept through the nation in the same period, setting land and personal belongings beyond the reach of creditors and the courts. English common law had long assured the insolvent debtor of the clothes on his back and perhaps a small supply of food and tools, but all other property, including real estate and home furnishings, was generally eligible for seizure. Homestead exemptions, like one passed by the Republic of Texas in 1839 and

\(^1\) Joseph Fay, Essays of Howard; or, Tales of Prison (New York: Joseph Desnoues, 1835). On the decline of debtors’ prison, see George Philip Bauer, “The Movement Against Imprisonment for Debt in the United States” (PhD diss., Harvard University, 1935); Coleman.
quickly imitated by neighboring states keen to attract eastern settlers, raised a wall within that largely undivided field of alienable objects. In the form in which they were initially legislated in the 1840s and 1850s, homestead exemptions mandated that tracts of land owned and occupied by family units were unavailable to creditors so long as the family persisted and its residence remained unchanged. Land was typically limited by size, up to 100 or 150 acres, but sometimes it was fixed by monetary value, at anywhere from $1000 to $5000. Between 1840 and 1860, twenty-six states added homestead exemptions to their organic and statutory laws, and with each new jurisdiction to join the fold many others went back and enlarged their provisions in a fevered race to prove that their insolvency guards were “more liberal than that of any other State!”

That competitive spirit spurred jurists and policymakers to stow other items beneath the protective covering of prohibitionary law, particularly during the financially tempestuous decades following the Civil War. The definition of “homestead” grew in the 1860s and 1870s to include not just the family tract and dwelling but also the business resources used to support family life, like carts, horses, and stock. Added to the category of inviolate tools, once limited to basic farming implements, were small machines, artisanal instruments, and even the professional libraries used by dentists, doctors, and lawyers. Necessary wearing apparel too was subject to increasingly generous interpretation, embracing “the clothing requisite for different kinds of weather, different seasons of the year, work days and holidays … [and anything which] the exigencies of the society in which [one] moves may require.” Fine furniture was likewise protected so that insolvents might maintain themselves in accordance with “their station” and “in

harmony with their associations.” “Articles of taste and vertu [are now] saved from the official auctioneer’s hammer” by the widening scope of exemption measures, the jurist Rufus Waples observed in 1893. This did not happen overnight but rather was the result of a long postbellum trend that found legislatures and judges paying greater and greater deference to the debtors’ “rank in life” and the “social status of his family.”

Exemption laws were neither charitable nor redistributive. In fact, they resisted the notion that the law ought to promote economic equality or raise a minimum guard against deprivation. Instead, their aim was expressly preservationist: they were meant to identify where debtors had placed themselves on the social ladder prior to their misfortune and to hold them there through “storm or adversity.” In this, they were not uncontroversial, but nor were they unique. A concern with relative rather than absolute injustice ran through many of the campaigns that contributed to the rise of the prohibitionary regulatory regime. “A more perfect image of pitiable helplessness … can hardly be found in all the dark varieties of woe, than a wealthy family, reduced to indigence, and then bereft of their last adviser, supporter and friend,” wrote Joseph Fay of imprisonment for debt in 1818. The man who had failed for the larger sum, he continued, who had been wealthy and whose family had been accustomed “to the luxuries and elegancies of life,” was more deserving of legal assistance than the destitute wage-earner, who could be restored to his “usual competence, by a day’s labour.” Moratory laws too were meant to stop “society [from being] leveled by pulling down its heights” and “the best elements of our population” from being cast out of their homes, while exemption laws were designed to benefit he who “by dint of the closest economy and prudence has succeeded in securing to himself a forty acre lot.” They were “not intended as mere boons to secure against starvation,” but rather

sought to preserve distinction and prevent unexpected and ostensibly inappropriate suffering. “If the value of a man’s home stands up to five hundred thousand dollars – if his labor and a wise location have made it so,” a Kansas reformer averred in defense of this preservationist ethos, “let him have the benefit of it – let him have and enjoy his home and the society of his friends.”

Guarding status against the arbitrary power of a capricious market likely broadened the base of Americans willing to champion these interventions into economic life, but it was also productive of vexing quandaries for judges, lawyers, and litigants. If the purpose of the exemption law was to protect particular privileged identities from the dislocations of insolvency, how was the veracity of those identity-claims to be determined? How were courts to keep the desperate debtor from hiding his wealth in clothing that was appropriate to one man’s “rank in life” but not truly to his, or from “inviting strangers to live with him” in order to transform a private house into a family homestead? Fraud was not the only danger jurists feared. It was also the nature of these protections that they be used in moments when the normal arrangements of people’s lives were out of sorts, confusing efforts to discern what their true place in society might be. “If, for instance, owing to the general stagnation of business, [a borrower] cannot for a season find remunerative employment” in his usual field and should “resort temporarily to some other department of industry,” one justice asked, how were the courts to determine his rights under laws that privileged some professional pursuits over others? Indeed, were not present conditions a part of one’s essential identity? As the counsel from one disgruntled creditor

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caustically queried, how could any property be considered “‘suited to the condition or occupation in life’ of an insolvent debtor”?\textsuperscript{20}

Issues of occupational identity were among the most common sites of dispute in the enforcement of exemption law. As one purpose of these provisions was to secure to debtors those items that were essential to their station in economic affairs, knowledge of that specific station was highly important. “The tools and instruments of a dentist, surgeon, or watch-maker, could [do little to] relieve the distress, or add to the comfort, of an insolvent farmer,” a Minnesota judge explained in 1858. Debtors thus had cause to cast themselves as being employed in those pursuits that would yield the greatest exemptions, and creditors had incentive to contest those claims as false or exaggerated. In \textit{Perkins v. Wisner} (1859), for example, an insolvent borrower identified himself as a mechanic in order to shield some tools from seizure under Iowa law, but his creditor argued that he did not “habitually earn his living” by manual labor and was, in fact, primarily a lawyer, an occupation entitled to far fewer protections in the populist West. \textit{Springer v. Lewis} (1853) found a Pennsylvania jury divided over the similar problem of whether a farmer who also ran a tavern was entitled to exemption provisions favoring agrarians, while \textit{Jenkins v. McNall} (1882) presented a Kansas court with the question of whether one could claim multiple professions in order to activate multiple exemptions. In these suits and countless others, judges were forced to determine both how the law was to be applied and who the men and women before them truly were.\textsuperscript{21}

The case of \textit{Harris v. Haynes} (1874) reveals some of the strategies jurists and litigants employed to resolve these nettlesome issues. Albert Harris was a hardware dealer in Grand


Rapids, Michigan, who had come to possess the tools used in the manufacture of tinware. Isaac Haynes was the sheriff of Kent County who on January 16, 1873, seized all of Harris’s business property on a writ of execution secured by Harris’s creditors. Harris sued Haynes for effecting an illegal levy, arguing that his tinning tools were exempt under a Michigan law that shielded workmen’s instruments of trade from execution. Before the circuit court, Haynes retorted that Harris was no tinner because he had never actually tinned, leaving the tools beyond the scope of his trade and thus within the realm of the alienable. Harris countered that he had bought the tools in order to learn the tinning trade and, after two years of private practice, had tentatively agreed to manufacture and deliver some tinware to an acquaintance in the near future. The circuit court ruled that Harris’s expertise and intent to tin did not matter. Harris had “bought no stock for the prosecution of his business as a tinner,” nor had made any money from the trade. He was therefore “not so engaged” in the occupation as to render “said tools and machines exempt from sale.”

Yet when Harris appealed to the state Supreme Court, another logic of occupational identity prevailed. What mattered to Justice James Campbell, who ruled on the case, was not expertise as such or past or present business affairs but a combination of intent and capacity. The purpose of the law was to secure for “men who may have become unfortunate” a suitable, productive, and familiar position in the economic order. Harris knew how to tin, the work was not world’s apart from his previous role in the hardware trade, and he had not the interest nor the training to make a living in any other business. The fact that he was not currently or recently tinning for profit was irrelevant. “It is not presumed [by his present unemployment] that he means to become an idler,” Justice Campbell explained. Instead, the court considered Harris a

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22 Ruling of the Circuit Court for the County of Kent, Harris v. Haynes, 1874, Case File No. 2332, Record Group 96-169, Box 123 (Archives of Michigan Supreme Court, Archives of Michigan).
tinner because the occupation fit at an agreeable midpoint between his expertise, his ambitions, and Campbell’s sense of where he belonged in economic life. The lower court’s ruling was reversed, and Harris’s tools were returned.23

Harris v. Haynes did not establish an authoritative precedent, and it does not illustrate the way all questions of occupational identity were resolved in these types of disputes. Instead, it catalogues the different measures judges and litigants used to determine the debtor’s transcendent economic role and thus the protections to which he or she was entitled. What Harris had done, what he was doing, what he planned to do, what he was capable of doing, and what he seemed suited to do were all considered in the process of fixing the permissible limits of economic exaction in a moment of financial misfortune. Exemption law was an exercise in social and moral epistemology, and these were the divining rods that pointed toward intrinsic identity. In order to shield the vulnerable self from the volatile market, the courts drew on a range of knowledge-forms to determine what one truly and essentially was.24

Occupation was not the only site of conflict and confusion in exemption law. Class position furnished further dilemmas for nineteenth-century jurists, particularly in cases dealing with the protection of “necessary” furniture and clothing. In the common law, “necessary” had denoted living accessories essential to survival and, at least in Puritan New England, dignified worship. In the mid and late nineteenth century, however, the ambit of “necessary” grew dramatically, encompassing not simply the minimal equipment for life but also all that the debtor

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required to live in the manner he or she had “been accustomed to” before misfortune struck. Thus it was that years of familiar and habitual use rendered “necessary” William A. Richardson’s “bronzes, statuary, and pictures,” John S. Dunlap’s pianoforte, Phillip Smith’s diamond shirt stud, a Mr. Montague’s two sofas, two mahogany tables, two portraits, and one looking-class, and Elizabeth Barnum’s jewelry and lace shawl, the former valued at $800 and the latter purchased in Paris in 1864 for $300. Also protected in other suits were family libraries, carriages and buggies, silver watches, diamond rings, pianos and guitars, spare beds, cloaks, and clocks. Against the notion that such items were too far removed from the realm of necessity to be protected by the law, Justice William Storrs of Connecticut offered a civilizational defense of judicial generosity. Exemption statutes were not intended to “protect merely those rude contrivances which are used only in a savage state,” but rather were meant to “enable the debtor … to live in a convenient and comfortable manner.” Both personal and social progress, Storrs and others suggested, depended on shielding justly earned and genuinely enjoyed luxuries from the leveling power of financial misfortune.²⁵

Prior use helped to legitimize the necessity of a particular item, as did domestic context. One fur coat in a working woman’s closet made a poor case as essential apparel, but a diamond stud worn by a man of “large fortune, high social rank, and luxurious habits” fit in a larger portrait of established affluence. Judges and juries also considered debtors’ associations and the level of comfort enjoyed by other members of their social circle. In deciding whether to shield a man’s gold watch from execution, for example, an Alabama court weighed the man’s relations amongst other local merchants of means as well as the style that appeared to pervade that social stratum. The law’s objective, Judge Andrew McCormick explained, was to assure that “all the

articles of dress generally worn by persons in the calling and condition of life and in the locality of the residence of the person claiming the exemption” be protected from execution. Finding a watch essential in an era “when everything moves on schedule time” and a gold watch not out of step with the style of the Alabama middle class, Judge McCormick ruled that the item was necessary apparel and hence beyond the reach of its owner’s creditors.26

While the courts generally favored liberal constructions of exemption statutes in cases dealing with personal and domestic adornments, there were limits to their generosity. In Hitchcock v. Holmes (1876), Judge Dwight Pardee of Connecticut was asked to determine whether a set of lace curtains, a large mirror, and a clock encased in a glass globe, all together valued at $350, were necessary items for one who traveled in the upper echelon of New Haven society. While the judge took “notice of the wealth of the parties interested and of their station in life,” he could not group these items along with those which were truly essential for “comfort and convenience.” There were, he ruled, “many families of refinement, taste, and culture, living in homes of comfort and convenience in which these articles are not to be found,” rendering them, in the court’s view, an “extravagance … beyond the debtor’s degree and station.” Status, Pardee suggested, was relational. Exemption law contemplated not luxury in the abstract but the social associations that certain possessions did or did not make possible.27

This contextual reasoning appeared again and again in exemption disputes that turned on claims of class position, comporting with the holistic notion of fit that also tended to resolve issues of occupational identity. A similar approach shaped efforts to determine the boundaries of another, and perhaps the most, privileged category in insolvency law: the family. Despite the exemption principle’s march further and further into the domains of occupation and class in the

27 Hitchcock v. Holmes, 43 Conn. 528 (1876).
late nineteenth century, the family remained the most important element in moral economy discourse and regulatory law. The original exemption statutes of the 1840s and 1850s had been completely contingent on the creation of a family home, and in the postbellum period heads of household continued to garner the most generous protections in insolvency proceedings. Sympathy for dependent women and children in part subtended this dispensation, but so did arguments about the moral ligatures that ran from hearth and home up to national character. “The family is the unit of human society, upon which all good society must rest and all free institutions,” Congressman James Dolittle of Wisconsin declared in 1862. “In a free Government, under a republican system, it should be the duty [of all lawmakers] to acknowledge that relation, to defend it, [and] to throw every safeguard around it.” Shielding the family from the dislocations wrought by an arbitrary and unfeeling market was morally right, Dolittle intimated, and essential for nurturing those public virtues that made democratic governance possible.  

Yet as one student of exemption law noted in 1909, it was not always easy “to tell just where the outer limits of one’s family lay.” Nineteenth-century homes might be composed simply of parents and children, but they also might include aunts and uncles, nieces and nephews, grandmothers and grandfathers, and servants and slaves. Just as common were bonds of kinship that exceeded the home and stretched across cities, counties, and states. Patriarchs frequently left their wives and children behind when searching for prosperity in the West, waiting to establish themselves before calling for their kin, and sons and daughters were often sent away to live with more prosperous friends or relatives during times of economic distress.

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Composite households, featuring, for example, an unmarried woman living with her deceased brother’s child or a widower raising his deceased wife’s progeny from another marriage, presented further complications, as did those relationships that were not bound by wedlock. Arguments about the family-like bonds between employers and employees or masters and slaves offered a final layer complexity to an already vexatious problem. While a broad consensus underwrote the family privilege in American regulatory culture, few Americans could state with confidence just what the family unit was and what it was not. 29

The most common dilemmas were claims of family status that involved either kin without dependency or dependency without kin. In Searcy v. Short (1878), for example, widower Robert Searcy contended that he was entitled to be returned $250 worth of domestic property that had been seized in violation of Tennessee’s homestead law. The law applied to him, he maintained, because he was a father, a claim the jury accepted. His creditor appealed, however, and presented a superior court with important details about the nature of Searcy’s domestic situation. At the time of the execution, “Searcy had not for two years or more kept house, or had any fixed place of abode. His little boy lived in another county with his, the boy’s, relations.” “Such a family as this,” the creditor averred, “certainly was not in the contemplation or object of the statute,” which was intended to protect “families living together as families.” A judge agreed and reversed the lower ruling, just as the Illinois Supreme Court did in Rock v. Haas (1884), a case turning on a similar claim of householder status based on out-of-state children. As in Searcy, an aggrieved creditor argued that family was more than a bloodline. “There must be a

condition of dependence upon the head of the family,” the lender’s counsel declared. Since Annie Pierce, the debtor in the case, was not actively supporting her children or otherwise evincing the pull of a “moral obligation” towards them, she effectively “had no family” in the eyes of the law. The court agreed and allowed her Chicago lot to be sold to service her debt.30

Dependency without blood was often equally problematic. In *Calhoun v. McLendon* (1871), bachelor Joseph Calhoun’s claim that living with hired servants rendered him a householder was promptly rejected by the Supreme Court of Georgia. “A single person, without dependents of kindred whose maintenance the law imposes on him, is not the head of a family,” Justice C. J. Lochrane tersely insisted. Dozens of similar rulings in courts across the country substantiated the precedent that familial sympathies could not change the character of relationships that were primarily economic. The family, Waples concluded of the precedent, was a “relation of status” and not merely one “of contract.” Troublesome too were composite households which were not tainted by commercial interest and yet likewise lacked the bonds of blood. Sarah Lathrop was living with her husband and his children from a previous marriage on land that she separately owned when she applied for a homestead exemption in 1872. Despite the outward appearance of maternal cares and responsibilities, Chief Justice Hiram Warner, also on the Georgia Supreme Court, found that Lathrop was in fact “under no legal or moral obligation to support [her husband’s] children” and thus was “not the head of a family” under the meaning of the law, making her property eligible for execution. Even adoption, Waples noted, was not in all jurisdictions endowed with the same homestead-conferring power as “the natural relation.”31

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30 Brief for W. A. Short, Short v. Searcy, 1878 (Supreme Court Files, Tennessee State Library & Archives). Reply for Appellants, Rock v. Haas, 1884, Vault No. 24326 (Supreme Court of Illinois Records, Illinois State Archives), 15, 44.

Families were generally asked, then, to present with both biological links and evidence of care and support. Exceptions to this rule abounded, however. A husband’s adultery would not render him any less a head of household in matters of exemption, while a wife’s abandonment of her husband and children would not necessarily impair her claim to homestead rights at the time of her estranged husband’s death. So long as the marriage legally endured, a California judge decided in *Lies v. De Diablard* (1859), the wife maintained an option to resume her parental duties and reacquire her householder rights despite years of absence and neglect. In *Race v. Oldridge* (1878), an Illinois judge conducted a deep, historical investigation of the family concept to determine if Louisa Oldridge, a widow living with a long-time female friend and two female servants, was entitled to shield her furniture from creditors as a head of household.

“Lexicographers derive the word [family] from the Latin word *familia*, which means ‘the whole of the slaves in a household,’” Justice Pinkney Walker explained. Contemporary dictionaries, he continued, define it presently as “‘the collective body persons who live in one house and under one head or manager … including parents, children and servants.’” According to these authorities, the family “includes all individuals who live under the authority of another,” Walker reasoned, and there was thus no reason he could conceive that “servants employed by [one] to perform household duties should not be so regarded.” That all of the involved parties were women, unfit for poverty in moral thought, and that Oldridge had passed through a conventional marriage before making a family of less traditional form no doubt helped her case. Ultimately, however, it was Walker’s searching study of the family concept through history that led him to the opinion “that the friend of appellee and her two female servants were each a part of the
family, and that appellee was the head of the family, within the meaning of the statute, and she was entitled to its benefits.”

Cases such as these became increasingly common in the final decades of the nineteenth century, as industrialization and urbanization placed new pressures on men and women’s economic competency, were encouraging of novel domestic and occupational relationships, and often resulted in insolvencies that the courts were asked to manage. The legal attention they garnered suggests an important corrective to populist discourse, both historical and historiographical, casting the postbellum period as a Manichean struggle between family-based producerism and the predatory forces of finance capitalism. At the level of the law, finance was as much productive of the cherished identities it was said to squelch as it was threatening. Farmer, worker, and family gained definition through contact with the impersonal market and a popular efforts to contain it.

These lawsuits and the broader array of prohibitionary measures created and contested in this period gesture toward a second important revision. The decades following the Civil War are typically offered by scholars as a high-point for classical liberalism, inhospitable to interventions in economic life that could be seen to recall “slavery, serfdom, [and] villeinage.” Indeed, it was in this era, William J. Novak and others argue, that the myth of America’s stateless history was invented, obscuring the regulatory traditions that prevailed in the early national and ante-bellum years. Yet the path of probationary financial law indicates that the political culture of possessive individualism was not uniformly the servant of laissez-faire and could, in fact, support policies designed to temper markets and even destroy them. To be sure, the prohibitionary regime at

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33 For an example of the trope of the embattled family in neo-populist historiography, see Christopher Lasch, Haven in a Heartless World: The Family Besieged (New York: W. W. Norton, 1958).
times advanced as an exception to contractualism, through the subtle distinction between the contract and the remedy, for example, maintained by the constitutionalist Thomas M. Cooley and others as a sufficient legal cover for homestead exemptions. By and large, however, it was through the discourse of liberal self-possession, ascendant in the Age of Emancipation, rather than against it that advocates for regulation raised usury, moratory, and exemption laws. “When you run in debt you give another power over your liberty,” these reformers warned, casting “creditors [as] but the life long masters and the debtors [as but] chained slaves.” “Pass a stay law” or one of the other measures in the suite of policies intended to insulate the fragile self from the volatile market, and “debt will be eliminated from the social fabric, and with debt would go the cause of modern slavery.” Why and how these deployments of possessive individualism succeeded in buoying regulatory guards and others struggled remains to be answered. That they did, however, illuminates a more complicated history of social protection in the late nineteenth century than conventional narratives suggest.\(^34\)

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