

## “A Bonanza of Tory Goods: Property Confiscation in Revolutionary New York”

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Historians of the revolutionary era have overlooked the challenge of transforming a collapsed colonial government into a stable constitutional polity. They have examined the colonial period before the war and the federal Constitution after. But the war years have gone missing from these accounts. However, when royal government collapsed, independent states were not waiting fully formed. Americans had to build and legitimize those states in the middle of a war. The central legal challenge proved to be ending popular violence and replacing it with a stable state. As royal authority dissolved, people took the law into their own hands and enforced a kind of rough justice through physical assaults, public humiliation, and intimidation. In rebellions in other times and places, such behavior has triggered an even bloodier cycle of anger and revenge. And yet Americans managed to contain popular aggression even at a time when the legal infrastructure for maintaining order had collapsed. This achievement invites us to reconsider the character of the Revolution as an orderly transition from colonial status to independence.

By studying revolutionary New York in detail, I analyze how a group of Americans made revolution work, how over seven long years of war they restrained a popular uprising and redirected its unruly energy through the legal institutions of a fledgling state. Analyzing one polity allows us to begin to understand how they achieved that change. My paper examines how New Yorkers accomplished the feat through property confiscation as a means of dispelling popular animosity and extralegal violence. They harnessed law to an aggressive partisan mission, seizing the real and personal property of British sympathizers and selling it to supporters of independence. I demonstrate how confiscation proved crucial in transforming a chaotic popular rebellion into a stable state.

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## Constituting Law and Literature through Slavery

From the seventeenth through the nineteenth centuries, slavery profoundly shaped the distinctive American law and literature that evolved out of British legal and cultural traditions. Not coincidentally, from Robert Cover to Edlie Wong, successive generations of Americanist scholars have repeatedly found law and literature to intersect at the crossroads of slavery.

Three decades on, law-and-humanities scholars' ongoing preoccupation with slavery would seem to suggest something more than a vindication of their interdisciplinary approach. Indeed, the time has come to ask if race slavery is as constitutive of the law and literature of the period as these discourses are to each other. Treating slavery as more than a mere topic in studies of law and culture need not be a normative endeavor – i.e., all law-and-humanities scholarship must address race slavery and its legacies. But it would entail a rather matter-of-fact acknowledgment of slavery's formative influence on the traditions that we tend to categorize under the rubrics of American law and U.S. culture.

To illustrate how such a methodological reassessment might produce a fresh perspective on legal history, the paper offers a reading of Samuel D. Warren and Louis D. Brandeis' "The Right to Privacy." The landmark 1890 *Harvard Law Review* article holds a special place in law and letters as the rare instance when published legal scholarship, rather than legislative or judicial action, created a new area of law: the tort of privacy. As silent on the topic of bound servitude as the original Constitution, Warren and Brandeis' controversial narrative of the tort's doctrinal origins (in intellectual property rather than defamation law) is nonetheless underwritten by the intertwined, albeit unacknowledged, legal and literary discourses of slavery. Their essay's vision of the newly nationalized citizen's equally novel right to privacy thus demonstrates the continuing impact of slavery on law and culture – and thus American civic identity – in a reconstructed United States.

## How the Antebellum West sheds light on the Reconstruction Amendments

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### Abstract

From 1805 until the Civil War, much of the Northwest Territory was considered the American West. During that period, government was established on all levels. The Northwest Ordinance of 1789 required a minimum population for the recognition and establishment of statehood. Well before these individual dates of statehood, governors, jails, and courts held authority in the territories.

Although land grants were made to territorial governors in the range of thousands of acres of land, there was a pronounced labor shortage throughout the Territory. This labor imbalance was remedied by the introduction of slaves, despite the Northwest Ordinance's proscription that slavery and involuntary servitude shall not exist.

This paper will focus on how Black indentured service developed in lands that became Indiana, Illinois, Wisconsin, Iowa, and Minnesota. These indentured servants often engaged the courts and the paper will borrow from dozens of cases that I have been uncovering in early courthouses in these areas. The paper will also focus on the selective amnesia brought about by the Civil War, so that the case most famously remembered in that era is *The Case of Mary Clark, Woman of Color*, 1 Blackf. 122 (Ind.1821).<sup>1</sup>

On a jurisprudential level, these cases challenge the basic Lockean precept that all men are free in a state of nature, as the Antebellum frontier was closer to a state of nature than many of the settlement communities. These cases also illustrate how domestic enslavement aids an advancing empire.

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<sup>1</sup> See ROBERT STEINFELD, *THE INVENTION OF FREE LABOR IN THE UNITED STATES* 144-49 (1991) (discussion of case).