Making Consumer Capitalism Through Law:
The Doctrine of Necessaries and the Rise of Budget Rationality in Domestic Routines

Anat Rosenberg

This essay examines the doctrine of necessaries which regulated the consumer credit of married women, and by implication household consumption, in nineteenth-century England. Under the doctrine, courts set the terms of enforceability of consumer transactions on credit. I argue that legal developments reveal the emergence of a new way to evaluate consumption, that of domestic budget rationality. The new paradigm displaced an older assessment of the luxuriousness of commodities. With this shift, law required consumers to self-police their commodity choices through budgeting daily life, while leaving them freed from the weighty historical critique of luxury, effectively opening the door to modern consumer capitalism.

The paradigm shift has not been previously observed. Historians who have examined consumer law, including those interested in developments in the doctrine of necessaries in particular, have focused on allocations of symbolic and economic power along fault lines of class, gender, and trade. These social tensions and the political consciousness they involved were indeed crucial for the history recounted here. In particular, I argue that the paradigm change can be explained as a response to fears of working class- and female consumption. However, this essay's overriding concern is to expose the deep conceptual shift which took place in consequence: the paradigmatic change from luxury critique to domestic budget rationality. As argued in conclusion, it is vital to understand the social tensions which originally drove the change, but also to see that the change exceeded those tensions. While not conceived as an embrace of mass consumption, but rather as a timid attempt to contain economic expansions to the masses, viewed in retrospect the process was supportive of expansions and speaks to the role of law in the making of consumer capitalism.

Law’s role in evolving conceptual structures surrounding consumption is part of consumption’s cultural history. That history has exploded in the last two or three decades with the shift of historians from supply to

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\[\text{\footnotesize 2 On such historical ironies compare, Jean-Christophe Agnew, Worlds Apart (1986), 25, 194}\]
demand, and the identification of consumer culture as almost synonymous with late western modernity. As I observe in conclusion, cultural historians of consumption have essentially reoriented the Weberian question about the spirit of capitalism to account for the rise of mass consumer culture. The era reviewed in this essay, late nineteenth century, was particularly significant. From midcentury to WW2 the British enjoyed the highest standard of living in Europe. In the last three decades average real wages rose by 84%, while population increased from 22.7 million to 32.5 million. Significant parts of society, including its lower strata, attained means exceeding subsistence needs. Producers, meanwhile, collectively offered unprecedented ranges of consumer goods.3 Concurrently, consumption was politicized, its trivialization by political economists challenged as it emerged as a social force rather than epiphenomenon.4 Yet treatments of law within this context are, with few exceptions, overly neglected despite law’s central role as a site of social meaning-making in late modernity. This essay offers one contribution in that direction.

Methodologically, the discussion draws on a wide array of sources, from parliamentary debates to fin de siècle literature – specifically Gissing’s Eve’s Ransom which was deeply insightful about the meaning of the shift to budget rationality. The analysis also moves between “mandarin” legal sources5 and a social history immersed in debates about consumer credit provided by the drapery trade. It will not be my purpose to weave all of these into a seamless whole, but rather to bring them into dialogue which is significant enough to expose and explain the historical shift in legal treatments of consumption.

Part I introduces the doctrine of necessaries and its historical approach to consumption, described as the order of appearances. Part II examines the emergent sense in late nineteenth century that the order of appearances could no longer make sense of consumption, and the fears of working class- and female consumption in that context. Next I study the shift that responded to those fears. The shift involved two moves. The first move (Part III) was an

3 As Thompson says, the figures support a compelling argument about a "consumer revolution" in this period. Noel Noel Thompson, Social Opulence and Private Restraint: The Consumer in British Socialist Thought Since 1800 (forthcoming Oxford University Press; copy on file with author), ch. 2. For a review of debates about the implications of these changes (relief or misery) see Jan De Vries, The Industrious Revolution (2008), 37-39.
4 Matthew Hilton, Consumerism in Twentieth Century Britain (2003), ch. 1.
assault on the older logic of the doctrine and its replacement by the rationality of budget management – particularly suited to working classes potentially constrained by wages. The second move (Part IV) was an association of budget management with household routines – particularly suited to women potentially constrained by domesticity. Part V shows something of the force of the new paradigm in early twentieth century discussions of consumer credit. I conclude by reflecting on the cultural role of law in the development of consumer capitalism.

I. The Order of Appearances

Doctrine: Function and Culture

Managing domestic consumption in nineteenth century England was a tricky business. Women were often placed in charge of it while their husbands worked away from home, yet with limited property and even more limited contractual capacity. Various practices allowed women to obtain consumer goods for themselves and their families without property or capacity. The formal contractual venue was the common law doctrine of necessaries; it provided that women had a presumed authority to contract for commodities qualifying as necessaries – as opposed to luxuries – by pledging their husbands’ credit. Focused on credit trading in this manner, the legal framework inextricably tied women’s contracts and domestic credit with the trade in consumer goods.

6 These limitations emerged from the doctrine of coverture. While in equity women could contract to the extent of their separate property (that property itself a limited possibility), until the Married Women’s Property Acts they could not do so at common law. Limitations on contract were actually made stricter in early century, Tim Stretton & Krista Kesselring, Married Women and the Law (2013), 11; James Oldham, Creditors and the Feme Covert (2013), http://ssrn.com/abstract=2197268. Exceptions are less crucial here.

7 Married women were barred from obtaining loans in other forms, with some exceptions in equity. Women could also pawn goods, a standard strategy for working classes. Paul Johnson, Credit and Thrift and the British Working Class, 1870-1939, in The Working Class in Modern British History (Jay Winter ed., 1983) 147; E.M. Rousseau, The Law of Married Women’s Contracts (1907), 2. Credit trading was not institutionalized and so impossible to quantify, yet researchers estimate that it was the most important form of working classes credit, Johnson, supra, 147, 151.
Necessaries, Luxuries and Social Hierarchies

The doctrine, as its name implied, invoked the age-old distinction between necessaries and luxuries. "Luxuries" and "necessaries" were acknowledged as socially relative concepts, graded according to hierarchic concepts of class and gender; consider those in turn.

In early century two ideas were broadly agreed. One was the presumptive responsibility of a husband for credit given to his wife while they were living together, for necessaries defined as goods suitable for the husband’s degree and estate. This liability was habitually located in the seventeenth-century case Manby v. Scott. The early grounding in assumpsit evolved into a concept of agency in which the wife was an agent for her husband. Consent, originally based in a man’s government over his wife according to laws of God and nature, turned into more abstract ideas of express and implied consent. Yet, the basic logic carried through from Manby was that commodities fitting for one’s class were obviously appropriate objects of consumption. This obviousness carved conceptual spaces for symbolic consumption (that is, consumption undetermined by perceived subsistence needs), which courts would enforce even contra the express wishes of male heads of households.

Another idea was an extension of the necessaries’ construction to a woman’s appearance in society. If a woman assumed the appearance of a “station” beyond her husband’s, he would be liable for goods matching the false appearance. As Chitty’s treatise explained, this liability did not depend “strictly on the real circumstances of the husband.” The accepted reference was Waithman v. Wakefield of 1807. Mrs. Wakefield appeared at a linen-drapers shop accompanied by a man dressed as a livery servant, and talked of her husband’s new house

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8 It is hard to exaggerate the role of luxury critique in late-modern thought on consumption. The literature is formidable, but see generally Christopher Berry, The Idea of Luxury (1994).

9 Though acknowledged to have had earlier authorities. See Smith’s reproduction of Manby, J.W. Smith. A Selection of Leading Cases on Various Branches of the Law (9th American from the 9th English ed., Boston, 1888-89) Vol. 3, at 1718. Katherine Scott left her husband; when she wanted to return (after 12 years(!)), he refused, and prohibited traders from supplying her goods on his credit. The plaintiffs sold her silk and velvet nonetheless. The case was decided in 1662 “before all the judges of England,” who agreed that husbands were liable in assumpsit in law for their wives’ necessaries; what necessaries were depended on the husband’s degree and estate. The plaintiffs lost because a husband could prohibit specific traders from extending credit to his wife, as Scott did with the plaintiffs.

10 Important discussions in Manby concerned remedies available in ecclesiastical courts. These issues were largely lost on a nineteenth-century audience. My aim is merely to locate the set of concepts that would inform later discussions of married women’s credit.

11 Joseph Chitty, A Practical Treatise on the Law of Contracts (1850), 133.

(1807) 1 Campbell 120, 170 E.R. 898.
about to be fit up in a “style of elegance.” Having left with drapery on credit, her husband was soon asked to pay the bill. He demanded that she return the goods, but she refused with “very violent language.”

Lord Ellenborough was of two minds. He stated that “[w]hatever may be the husband’s degree, he sends his wife out into the world with a credit corresponding to the rank in life in which, by his sanction, she affects to be placed.” At the same time, he was inclined to lay the risk on the trader who failed to inquire into Mrs. Wakefield’s trustworthiness, possibly perceiving that she was not one to be sent out or called back by anyone, least of all her husband. But, to no avail: the jury made the husband pay, and Ellenborough’s abstract statement, holding a husband liable for his wife’s appearance on an assumption of control, was more consequential than his actual inclination. In cases which followed, courts uncomfortable with wives riding in borrowed fancy carriages to buy dresses beyond their husbands’ degrees managed to get around Ellenborough’s ruling, without, however, contradicting its logic.

The sphere of consumption falling within the doctrine of necessaries was expanded through assumptions about men’s control over their wives.

In the first decades of the nineteenth century courts consolidated various issues arising in the doctrine’s litigation through a focus on the commodities obtained for credit and their appropriateness, commenting on wardrobes and living rooms to allocate risks and liabilities, and tying the inference of consent – that is, of a woman’s agency on behalf of her husband – with the qualities of the commodities.

The emergent picture is one we might think of as an order of appearances. The animating assumption behind the analysis of necessaries was that commodities and consumers could be matched. “Degrees” and “estates” (the latter meaning actual assets and income, not just ranks), or a person’s “condition” – another favorite term, were knowable in a way which could be associated with appropriate quantities and qualities of goods, from meats to dresses. These images had colors and looks, and were readable on the plane of social interaction. The

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12 Id. 898.
13 Often by finding that traders gave credit to the wife, not her husband, e.g., Bentley v. Griffin (1814) 128 Eng. Rep. 727. Another exception was carved for a disloyal wife whose husband was away from England, Dennys v. Sargeant (1834), 172 E.R. 1302.
15 I borrow and adapt the term from Alan Hunt, Governance of the Consuming Passions (1996), 42.
point moves beyond the observation that consumer credit was socially embedded, as historians have shown.\textsuperscript{16} There was an external quality to all of this which was not just about face to face transactions in non-anonymous markets, but about an imagery and perception of a social order at large.\textsuperscript{17} The external quality of gender and class informed the necessaries/luxuries analysis which channeled an increasingly confusing flow of goods.

II. Unanchored Consumption

In the closing decades of the nineteenth century the order of appearances informing the doctrine of necessaries lost grounds. Its ability to stabilize the world of goods when class and gender hierarchies were in flux gave rise to increasing anxieties. This was a crisis of representation, to borrow Agnew’s terms,\textsuperscript{18} creating of sense of mistrust in social appearances, and implicated in particular with fears of the uncontrollable social roles of the masses of people who were never minorities, only minoritized: the working classes and women. Processes of democratization and mobility created a novel problem of social identity.\textsuperscript{19} The crisis implicated contexts of working class- and female consumption and explains, I suggest, the adoption of an alternative conceptual basis for the doctrine: With consumption unanchored from its traditional bases, not only were socio-cultural boundaries breached, but the logic and language of boundaries, and for my purposes the logic of necessaries and luxuries, were losing sense, and so required a new basis. To avoid overly broad claims I examine the historically-concrete implications of the crisis through a specific and dominant context of domestic consumption, that of the credit-drapery trade.

\begin{itemize}
\item \textsuperscript{16} Margot Finn, \textit{The Character of Credit: Personal Debt in English Culture, 1740–1914} (2003); Erika Rappaport, \textit{Shopping for Pleasure: Women in the Making of London’s West End} (2000).
\item \textsuperscript{17} Dror Wahrman’s account of regimes of identity in England is both helpful and intriguing in considering the order of appearances. Wahrman describes the “ancien’ regime,” dominant until late eighteenth century, as outwardly turned, lacking the modern sense of essential innateness. The outward leaning of identity meant that surfaces, or appearances, were not of secondary importance, but rather constitutive; not something to “see through,” but the thing itself. Wahrman argues that by the end of the eighteenth century the modern regime, of innate selfhood, had captured the cultural imagination; in that context, class and gender categories underwent processes of essentialization. Dror Wahrman, \textit{The Making of the Modern Self} (2004). The order of appearances was a complex phenomenon in relation to Wahrman’s account: while it treated class and gender in rigid terms which Wahrman would link with the modern cult of innateness, social visibility was inextricably bound with these identities in a manner more readily explicable in terms of his ancien’ regime. The transformation at stake in this essay was a further development in which, as we shall see, the instability of class and gender perceptions led to a move away from appearances altogether, which were cast away as shallow.
\item \textsuperscript{18} Agnew, \textit{supra} note 2.
\item \textsuperscript{19} Eric Hobsbawm, \textit{The Age of Empire 1875-1914} (1989), ch. 7.
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Credit drapers, also known as tallymen, packmen, or Scotchmen\textsuperscript{20} called at houses of the working classes\textsuperscript{21} to supply textiles: dress, bedding, curtains, linen and other materials, and an assortment of household goods, which they offered on credit. Payments were usually made weekly in small installments, collected by the draper and his agents during travelling rounds. Visiting homes during the day, credit drapers dealt primarily with women while their husbands were at work; as one county court registrar described it, “as she cannot go to market, the market has contracted the habit of coming to her.”\textsuperscript{22} Coming to women, credit drapers depended on the doctrine of necessaries; they therefore figured prominently in legal discussions focused on working class- and female consumption.\textsuperscript{23}

\textsuperscript{20} For the history and contestation over these and other terms see Gerry Rubin, From Packmen, Tallymen and ‘Perambulating Scotchmen’ to Credit Drapers’ Association, c. 1840-1914 (1986) 28 Business History. For ethnic aspects of debates about the trade see Margot Finn, Scotch Drapers and the Politics of Modernity: Gender, Class and National Identity in the Victorian Tally Trade, in The Politics of Consumption (Martin Daunton & Matthew Hilton eds., 2001) 89. See also Sean O’Connell, Credit and Community: Working-Class Debt in the UK since 1880 (2009), ch. 1 (tracing the history into the 1980s).

\textsuperscript{21} Not only, but mainly.

\textsuperscript{22} Report 1873(348) q. 2464.

\textsuperscript{23} Nothing better than something from this poem, published in the trade’s gazette, to get a sense of a draper’s half winking self-imagery:

He went on his round with a hop, skip, and bound,
Feeling fresh from his rest on the Sunday,
Keeping time with the clock, and kind words he spoke,
As he “tickled the knocker” on the Monday.

“How do you do?” Said A. “I’ve the shilling, sir, to-day,”
Mrs. B had two “bob” and an order –
Then dear old Mrs. C took a half-pound of tea
But D was much engaged with the Recorder.

“How are you Mrs. E? delighted I shall be
To shew you of my patterns one or two;”
But she hissed out, “Never more will I deal, sir, at the door
With such run-about take-ins, sir, as you.”

Tho’ rudely thus denied, quite calmly he replied,
“I really thank you, ma’am, for the scorning;
I mistook you, ma’am just now – tho’ I really can’t think how-
For a lady; so I wish you a good morning.”

…
With excuses G and H his soft side essayed to reach,
’Twas “job work” or “dull times” or else the weather;
Their worry was so big, they would have to kill the pig,
And then next time they’d pay up all together.

…
An old adage good to use is “Mind the P’s and the Q’s;”
The drapers' trade was rapidly changing with the advent of modern consumer markets and new forms of competition – both new forms of credit and anonymous cash sales, most famously in department stores; Rubin described the process as the trade's "modernization program." Their public visibility peaked as they activated, in the midst of these changes, two important legal institutions: the county courts, and the debtors’ prison, both occupied in significant volumes by “tally business.” Their business was expanding in late nineteenth century, especially in urban areas, yet credit drapers were facing a legitimacy challenge.

Drapers were denounced for preying on female acquisitive foolishness, forcing credit "on ignorant women by pandering to their vanity" behind the backs of male heads of households; this in turn ruined working-class families, with wages gone and husbands imprisoned for debt. As one enthusiastic preacher suggested, they were "the curse of the land." Such critiques made headways precisely when women and working classes seemed less constrained by their social roles. Dealing with drapers meant facing the threat that the order of appearances, based

But 'tis too late, I sorry to say,  
They are gone to the West, well togged in all their best,  
At the expense of the young Scotchman, so they say.

...  
Then said R, “Bring a dress, like the one you sold S”-  
(Mrs. S left the shilling with friend T),  
At the temperance hotel where he dined he could sell  
Table linens and sheetings very free

...  
He sticks to his trade, calls on X and Y and Z,  
In rough weather or fine I will be bound;  
And he keeps better time than this sadly jumbled rhyme,  
And will have soon a rare good paying round.

Credit Drapers’ Gazette (CDG), Oct. 22, 1888, 281 (poem by “G. Double-U”). The full poem goes from A to Z.

24 Rubin, supra note 20.
26 Liberal M.P. Michael Bass argued that since the county courts’ establishment, 183,000 persons were sent to prison for tallymen debts. Bill (1872)19, 2nd reading. He may have exaggerated, but numbers were in tens of thousands, Stephen Ware, A 20th Century Debate About Imprisonment for Debt (2014), http://ssrn.com/abstract=2431342. As for county courts, credit drapers accounted in some for as many as a third of all plaints. Finn, supra note 20, 96. The linkage between the county courts, debtors’ prison, and credit drapers, loomed so large in popular imagination that it colored the debates about these institutions in general.
27 Finn, supra note 20, 89. From 1831 to 1911 itinerant traders reported in the census rose from 9,459 to 69,347 – an increase in the ratio of peddlers to population from 1:1,470 to 1:520. Id. 90. Working-class expenditure on clothing increased from 6% of total household expenditure in 1845, to 12% in 1904. Id. 92. For further data see O’Connell, supra note 20, 28-29.
28 Lloyd's Weekly, June 12, 1864. Curiously, these ideas echoed socialist complaints about proletariat acquisitive desires. Thompson, supra note 3, ch. 2. However, while socialists worried about the corruption of agents of revolution, discussions of women were detached from utopias of collective consumption.
29 CDG, Feb. 1, 1887, 62-64. Examples of this critique are numerous.
as it was on gender and class hierarchies, could no longer make sense of consumption. Discussions of consumption in the language of necessaries and luxuries were becoming opaque. This is the starting point which must be appreciated in order to understand the change of paradigm which the next Parts explore.

To see the difficulty of making sense of consumption take legislative responses, such as the Married Women’s Bill read in parliament in 1892. Section 1 stated: “[N]o authority shall be implied that a married woman living with her husband… has authority to bind him by any contract for the purchase of any articles of dress, millinery, jewellery, furniture, ornaments, books, pictures, or any article of luxury which may be hereafter made by any such married woman whose husband is an artisan … in the name or on behalf of her husband unless made with his express assent ….”

The memorandum explained that the “legal presumption of a woman’s authority may be readily extended by very slight evidence to an implied general authority to pledge her husband’s credit, and in that way operates prejudicially on husbands engaged at their work away from home.” The bill, therefore, was “intended to prevent any implied power of the wife to pledge her husband’s credit for articles that are not strictly necessaries…” The tallyman, who gets “judgment by default” after summons are served to a woman without her husband’s knowledge, was the bill's chief target.

Almost concurrently, another bill dealing with the conundrums of lower-class consumption went through a few versions without success in parliament. The Homestead Bill was an attempt to protect “the goods of any householder, the tools, necessary furniture, books for the education of the children, wearing apparel and bedding of such person, his wife and children” to a value of up to £20, from seizure or sale under execution. A similar setup was in place in bankruptcy law, but was unavailable to failing debtors of the lower classes. Here too credit drapers were central targets. Commentators from the “Homestead Law Association” readily admitted that despite

30 1892(81) Married Women. A Bill to Amend the Law by Limiting the Power of a Married Woman to Bind Her Husband by Contract in Certain cases, and to Further Limit the Time of the Recovery of Small Debts and Demands. 55 Vict.
31 The Committee on County Court Procedure indeed concluded that judgment by default ending in imprisonment was the frequent case, and recommended a change in rules of procedure to avoid it. Report 1909(71), 33.
32 From 1887 to 1906. 1886 (43-Sess. 2) A Bill to Protect (to a Limited Value) from Seizure and Sale Under Legal Process the Necessary Furniture, Books, Tools, Wearing Apparel, and Bedding of a Householder and His Family.
33 Above £5.
the generalized language the bill was aimed at the drapers whose use of the county courts for the “selling up of homes” was iniquitous.\textsuperscript{34}

While identifying the drapers as common enemy, in conceptualizing commodities the bills parted ways: items which the Married Women’s Bill sought to ban as luxuries were necessary enough under the Homestead Bill to justify immunity from legal process. Luxuries and necessaries were never “free from ambiguities”\textsuperscript{35}; here, however, classificatory difficulties seemed to leave them entirely up for grabs.

The embarrassment we see in bills speaks to the inability to perform this kind of categorization of commodities; it had become fuzzy. The difficulty inflected multiple discourses on consumption throughout the last decades of the nineteenth century. For instance, socialist critique about skewed distribution of goods sounded calls for comforts for all instead of luxuries for the few.\textsuperscript{36} Whatever one’s political inclinations, the language of luxury and necessary no longer offered a sense of order. Anxious commentary on who consumes what revealed the embarrassment: “The working classes have by a course of combination and agitation obtained…the means of enjoying considerable leisure and the sensual gratification which springs from what is called ‘good living’…whilst the middle-classes are suffering from a positive reduction in the comforts of life…”\textsuperscript{37} Women were likewise targets of critique for their luxurious tastes which confused any order: “There never was such a rage for dress and finery amongst English women as there is now.”\textsuperscript{38}

A century earlier, this kind of anxiety inflected urban centers and was driven by fears of rising commercial classes.\textsuperscript{39} Here, however, the lower classes and women were the locus of attention as a just-established commercial society faced its own (huge) margins. Categories of identity which could potentially stabilize this quickly evolving economy were failing, spawning fear and mistrust where historically they offered a sense of security. In the doctrine of necessaries this was manifested in an assault on the order of appearances, which

\textsuperscript{34} E.g., CDG, Sept. 15, 1886, 238.
\textsuperscript{35} Jolly v. Rees (1864) 143 E.R. 931, 937.
\textsuperscript{37} The Derby Mercury, Apr. 23, 1873
\textsuperscript{38} Samuel Smiles, Thrift (1875), 116.
\textsuperscript{39} Wahrman, supra note 17, ch. 5.
suddenly seemed not just meaningless, but suspicious. A search for alternative schemes which would give conceptual shape to consumption, particularly that of marginalized groups, resulted in a shift of paradigm in the doctrine. The shift was led, seemingly, by high-court precedents which saw little of lower classes and their consumer credit. However, to be historicized precedents must be read as part of broader discourses on working class- and women consumers.

III. Move 1: Reframing Men’s Consumer Agency Through Budget Rationality

The Assault on Appearances; the Rise of Budget Rationality

Historically, the order of appearances represented a very deep sense of social order. The rise of an alternative was intertwined with a dramatic reconceptualization of the very reference to appearances: they were recast as mere shallowness, a superficial layer contrasted with intrinsic moral worth. Moral worth was associated – astoundingly – with doing the arithmetic of budgeting. This reconceptualization changed the form of evaluation of consumer activity.

The double flip which made appearances shallow and contrasted them with the morality of budgeting was clearly articulated by Samuel Smiles, who famously saw himself as a guide to the masses, and offered a way to think about consumption through the idea of budget management.

Smiles set out to educate the English about the uses and abuses of money. The problem, as Chapter 12 of his 1875 *Thrift* had it, was “Living Beyond the Means.” Smiles’ principles of economy urged keeping a regular

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40 His main appeal was a direct one to the working classes through the medium of the Sunday-school prize and the guidebook of the self-taught man. Asa Briggs, *Victorian People* (1955), 131.
41 It might seem unlikely Smilean-style thought was significant for evolving paradigms of consumer credit, particularly their modernization, because Smiles opposed credit, foremost working-class credit. In *Thrift* Smiles proclaimed that the English workman was industrious, but “improvidence is unhappily the defect of the class,” and identified debt as ultimate evil. Credit drapers were particularly weary of these arguments which threatened their business. Drapers were accused of being among “[t]hose who derive most benefit” from the unsaved wages of working classes.1893-94 [C.6894-XIV], Royal Commission on Labour, 136 s. 52-53. There was therefore no end to their dismay when one of their own accepted the same logic, and declared that their trade was truly catering “for the national defects of the people with whom they were identified.” CDG Jan. 17, 1889, 20. Heated responses followed. There were also arguments that consumption on credit was a form of saving which encouraged “punctuality and abstinence,” CCC, June 1, 1869, 430. Though critics ridiculed the thought, the disciplining effect of installment credit systems which require long-term commitments should not be discounted. See Lendol Calder, *Financing the American Dream* (1999). Historically, if thrift was simply the opposite of credit, or of spending, the history of expanding consumption tells us that it failed. The deeper point of Smilee thought, which was significant, was the logic of spending it inculcated; the question was not whether, but *how* to spend.
account of all that you earn and all that you expend. His imagery was itself a balancing act in which you could abuse money by spending as much as by over-attachment. People had to learn “arithmetic.” Ignorance of arithmetic, which could end up in imbalanced budgets, was intimately tied with the “pervading sin of modern society”: extravagance. The failure, according to Smiles, lay in the pursuit of appearances: “They put on appearances, live a life of sham, and endeavour to look something superior to what they really are.” Modern respectability, he urged, “consists of external appearances. It means wearing fine cloths, dwelling in fine houses, and living in fine style. It looks to the outside – to sound, show, externals.” The important contrast Smiles posed was thus between external and internal determinants of consumption; this contrast allowed him to relate arithmetic with a moral sense. Improvement depended on people being educated in both arithmetic and an appreciation of intrinsic moral worth.

Understanding the Smilean logic illuminates the precedential decision of judge Erle in Jolly v. Rees, which marked the most dramatic shift in doctrine of necessaries analyses.

Mrs. Rees ordered drapery and millinery goods which were conceded as “suitable for persons in the position of Mrs. Rees and her daughters.” Mr. Rees, however, refused to pay. He had given his wife sufficient allowance, and, he testified, “distinctly told her not to pledge my credit” but rather come to him if she wanted anything necessary. The plaintiffs were not aware of this prohibition. The goods being necessaries, the main question became whether a “private prohibition” could rebut the presumption of a husband’s assent to his wife’s contract for necessaries. Or, as Erle now put it, the question was “whether the wife had authority to make a contract binding on her husband for necessaries suitable to his estate and degree, against his will and contrary to his order to her, although without notice of such order to the tradesman.” The answer was no, and in reasoning Erle pulled the rug from under the order of appearances. Observe how close the logic is to that articulated by Smiles. Husbands, explained Erle, should have the power to regulate domestic expenditure by their own discretion.

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42 Smiles, supra note 38, 113.
43 Id. 114.
44 (1864) 143 E.R. 931.
45 Id. 932.
46 Id. 936.
wife who could act against her husband’s will would make his liability depend on the estimate by a jury of his estate and degree, hence “the law would practically compel him to regulate his expenses by a standard to be set up by that jury”; the problem was not simply that the standard was not the husband’s, but that is was “a standard depending on appearance, perhaps assumed for a temporary purpose…”

Degree and estate, which were observable to courts under that order, were reconceived as somehow innate and so not prone to external observance; the only person who could control credit orders was the male head of household, who was presumably able to manage expenditure. These ideas resonated in lower courts as well: “The fault of the debtor”, one county-court judge explained, “was simply not living within his income… he can still live on something less than he actually receives, and it is his duty to do that if he is in debt… it is for breach of that duty that he is really imprisoned.”

Judge Cockburn provocatively doubted Jolly in 1865, in a decision which clarifies the emergent shift that Jolly represented. Morgan v. Chetwynd dealt with a debt for “ordinary cloths” as well as riding articles for Mrs. Chetwyd, who, as Cockburn repeated to the jury, “hunted, she went to the balls, she visited in the best society,” and to these merriments, which her husband suffered her to indulge in, “there must be dresses fit and becoming.”

Cockburn insisted that appearances must be relied upon, and highlighted the traditional basis of the doctrine. He hoped that Jolly would turn out incorrect. It did not, at least not by way of reverting to the order of appearances.

Appearances in the formal doctrinal sense were magnificently undermined in Phillipson v. Hayter in 1870. At stake was a debt for stationary items, from a gold pen to “music.” Mrs. Hayter used to come to the shop alone, but on one occasion she came with a gentleman appearing to be of a status above her husband’s degree as a clerk. The question of Mr. Hayter’s liability was troubling because his wife eventually eloped with the useful gentleman, while he was asked to pay the bill. The jury returned a verdict for the trader despite proof of private prohibition, a decision which led to another round. Mr. Hayter now prevailed in the Court of Common Pleas.

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47 Id. 937.
48 Report 1873(239) q. 1736.
49 (1865) 176 E.R. 641.
50 Id. 644.
51 (1870-71) L.R. 6, C.P. 38.
Judge Bovill insisted that wifely authority is always subject to the condition that the goods are suitable “to the position which the husband allows his wife to assume,” and here there was no evidence of express authorization. Observe the flip Bovill performed here: the “position which the husband allows his wife to assume” had been, since the 1807 Waithman v. Wakefield, a way of exposing husbands to extended liability for appearances on an assumption of control. Here, however, Bovill turned the vocabulary on its head by interpreting “allows” as express authorization. In Debenham, which I soon turn to discuss, Thesiger made the move complete in arguing that it was contrary to principles of justice to “cast upon a husband the burden of debts which he has no power to control at all ....”

Willes thickened Bovill’s stand: a wife, he thought, has authority to contract for things in the domestic department “that are really necessary and suitable to the style in which the husband chooses to live.” What, then, made the jury decide for Phillipson when no evidence supported the authority of Mrs. Hayter? Willes offered two hypotheses, both problematizing the order of appearances in contrast to notions of innateness and their association with budget management. One option was that the jury mistakenly “chose to take upon themselves to judge what ought to be the expenditure of a person living in the manner the defendant did”; another was “the general luxury and degeneracy of the age, which induces men to keep up appearances which are not warranted by their means.” Here was the Smilean spirit: the important thing was to match means and ends, and fall not for appearances. Montague Smith was less certain than his fellows that the jury was wrong, but yielded to “the greater experience” – or new mood – of his Lord and his Brother.

**Budget Rationality as Containment of Working Class Consumers**

The rise of budget rationality was cast in the language of contractual consent, and as I show in a moment was encouraged by classical contract theory. Consent language, however, obscures more than it reveals. If we note that

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52 [Id. 42.](#)
53 [Id. 42.](#)
54 [Waithman v. Wakefield 5 Q.B.D. 394, 404.](#)
55 [Phillipson 42.](#)
it was used in the context of consumption in particular (rather than contract in the abstract),\textsuperscript{55} and supported the emergent notion of budget management rather than abstract deferral to husbands’ discretion, its association with freedom and power, even for male heads of households, becomes more doubtful. Budgeted consumption, more than a way to confer power on men as the autonomous individuals of classical theory, was an idea which could constrain workmen’s consumption without explicit reference to class: they were the class most significantly dependent on fluctuating wages which set their budgets. The emergent paradigm of budget rationality was an attempted containment of unanchored working-class consumption, rather than mere commitment to individual male freedoms. Put otherwise, we should not be tempted to read this history as another forward-looking embrace of capitalist expansions; it was more circuitous and fearful than that.

To see this point we should first appreciate the significance that classical contract theory did have for doctrinal change. Classical theory made it hard for lawyers to reconcile contract – conceived as the par excellence locus of individual freedom, with state-imposed liability.\textsuperscript{56} If a husband had no power to countermand his wife’s authority, it began to be argued, how could a wife’s credit be his contract of agency? This point was, until midcentury, still unclear. Until then, judges could analyze women’s credit contracts for necessaries – which could bind a husband despite his wishes, and luxuries – which required a husband’s actual consent, both in terms of consent.\textsuperscript{57} Around midcentury, using the same vocabulary as before, courts began to separate the question of necessaries from the question of consent.

\textsuperscript{55} This was clear in Erle’s solidification of his Jolly position in \textit{Harrison v. Grady}, (1865) All E.R. 663. Erle discussed necessaries within the notion of “fixing the standard of living of the family.” He repeated that the husband could fix his standards, “and no tradesman... ought to be able to go to a jury to ask if that is a proper standard.” This discourse could almost make one forget what was so central before: the relation of particular commodities to particular classes. Nonetheless, Erle denied that Grady’s actual notice to the creditor that his wife could not pledge his credit could assist him. His puzzling position emerged from the fact that the creditor was a doctor who provided needed care to Mrs. Grady, not a supplier of goods. Erle’s logic had to do with domestic commodities, rather than a broader revision of family caretaking.

\textsuperscript{56} For a review see Anat Rosenberg, Contract’s Meaning and the Histories of Classical Contract Law, 59 McGill L.J.165 (2013).

\textsuperscript{57} \textit{Freestone v. Butcher} (1840) 173 E.R. 992 is demonstrative. Lord Abinger used a contractual logic which moved with little concern between policy-based implications of consent arising from wifely needs, and a search for indications of actual consent. Abinger’s decision was then challenged in \textit{Lane v. Ironmonger} (1844), 153 Eng. Rep. 152. The discussion moved toward objective signs of actual consent, and away from the question of securing necessaries for wives, yet the classical problematic of differentiating these two routes to implying consent was not confronted.
The separation of questions was visible in the 1853 *Reid v. Teakle*. Mr. Teakle was asked to pay for his wife’s debt for “musical publications.” The jury decided that they were a quantity of music necessary for a person in Mrs. Teakle’s station. The judges at the Court of Common Pleas, however, accepted the husband’s appeal on the grounds of misdirection: even if the music was necessary, they said, it is possible that Teakle repudiated his wife’s agency. The possibility of rebuttal must be examined if a decision for the tradesman is to have any legitimate basis. This possibility was present at least since the seventeenth-century *Manby*; *Reid* marked a shift in setting apart the question of assent from the question of identifying necessaries.

For a short while judges could still insist, in a preclassical way, that the principle of agency underlay the doctrine, but that a private agreement between husband and wife would not make a difference for she had "all usual authorities of a wife." The resonant analysis for classicists came with *Jolly*. Erle’s attack on appearances in *Jolly* was premised on classical contract: if the basis of a wife’s authority was agency, he explained, then “it is a solecism in reasoning to say that she derives her authority from his will, and at the same time to say that the relation of wife created the authority against his will, by a *presumptio juris et de jure* from marriage.” The freedom of the individual (male) will thus undermined the order of appearances and encouraged deference to the rational budget manager of family expenditure.

From the perspective of husbands, this development could seem power-conferring, as this little anecdote suggests:

Only a few weeks ago a most respectably-dressed lady… called … at night, and asked to be supplied with a silk dress. She chose one and paid a deposit of 20s, and said she would always bring the money to my shop and that my traveler need not call. I informed her that we could not

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58 (1853) 138 E.R. 1346.
60 *Jolly* 936
61 See Shoolbred v. Baker, (1867) 16 L.T.R. 369, 360 for another strong statement: "The husband has a right to be master in his own house, and to determine what the expenses are to be. A man may have 10,000l. a year and yet his wife may not be entitled to live in a manner proportionate to that income" (judge Willes).

Another way in which the same trend was strengthened emerged from the many cases in which husbands gave allowances to their wives. Courts came to conceive allowances as prohibitions to pledge husbands’ credit. See Remmington v. Broadwood, 17 T.L.R. (1902) 270.
send the parcel to her home at that late hour, but would attend to it in the morning. By that night’s
post my clerk wrote the lady’s husband a private note enquiring if it was all right. What his reply
was you may more easily imagine than I care to explain; but, afterwards, the husband personally
thanked me for not giving credit to his wife, and requested me not to supply her with goods
without his written consent.62

This was the heroic tale the draper Renwick told his fellows for their education. Renwick declined the appearance
of respectability and turned to husband approval. The advice was hard to follow: No plan, declared a worried
commentator “would more rapidly reduce a list of customers….”63 Drapers indeed framed legal changes as an
unreasonable shift of risks which benefited husbands: “[T]he present state of the law places all the protection on
the husband and all the risk on the vendor. Some method of a more equitable adjustment of the risk might surely
be discovered.”64

However, if we expand our purview to additional discourses of the same era we can place developments
within a more complex context in which the shift of risks is but a triviality, and the story is one of containment of
workmen. The view of the emergent budget rationality as an attempted containment of working-class
consumption was embedded in debates ongoing in the second half of the century. Credit drapers were key figures
in those debates; the bills I have mentioned were part of a series: “legislation was against them,” drapers
complained, “in every shape and form.”65 Debates exposed not only fears of the working classes, which tell half
of the story, but also the complexity of meanings involved in reframing their consumer agency through budgets,
which tells the second half.

A central controversy in debates about consumer credit was how to conceptualize equality for the lower
classes. Proponents of measures like abolition of imprisonment for debt, or protection of property from seizure,
argued that protection from such measures was practically available to the upper classes, and should be extended
to working classes. Opponents, like the drapers, accepted that equality was required, but argued for equality in

63 CDG, Aug. 15, 1887, 237, reproducing, apparently, an opinion from Sale and Exchange.
64 CDG, Jan. 1, 1887, 4.
access to credit, not in exposure to enforcement. Protecting the lower classes as you protect the upper ones would leave the former with nothing to offer as security – for they could only offer their bodies, their future wages, or what domestic goods they managed to get with those – hence credit would become an upper-class privilege.66 This point, in itself, called attention to the delimiting prospects involved in evaluating consumption according to budget constraints: with small wages, the body itself was actually and symbolically at risk. But note also a further complication.

Credit that was cast as equality and agency by drapers, was viewed as oppression by others, or for those who were less liberally minded, as a disastrous liberality toward workmen – “men of no principle, unthrifty, extravagant, drunken….”67 Paradoxically, no side to these debates was pleased with practical outcomes. Proponents found it hard to pass their bills, and reactionaries were sad to see working-class credit expanding; the drapers, meanwhile, found that their rationalizations of credit on the basis of wages were accepted – the budget management paradigm fit them perfectly – but backfired in practice, as judges declined to enforce contracts under the new construction of the doctrine of necessaries. These confusing outcomes exposed that claims which based consumer agency on budget-rationality made headways without, necessarily, the attendant ideological framing of consent, freedom or equality. From both paternalistic and prejudiced perspectives it looked like a danger to workmen, imposed without conferring obvious benefits on those who could argue otherwise. The overall picture looked bleak from all established positions in debates.

A novel by George Gissing, of the era’s better known commentators on class and gender upheaval, provided one of the sharpest commentaries on the delimiting sentiments involved in budget rationality. Eve’s Ransom was published in 1895. Part of fin de siècle experimentation with literary Realist conventions, and in line with Gissing’s interest in cultural tension, the novel explored with curiosity changing social structures, or as Pearson

66 E.g., CDG, March 1, 1887, 83-84; 1878(267) Reports from the Select Committee on County Courts Jurisdiction, q.q. 711-716, 1190-1191, 4197-4199 (judge Stonor).
67 Leeds Mercury, May 14, 1864.
put it, “the collision between outmoded systems of thought... and the emerging formlessness of modernity,” and offered formal and thematic expressions of concerns with the shaky grounds of the order of appearances and the unruliness of working class and female consumption.

The stories of the novel’s two protagonists, working class Maurice Hilliard and his female counterpart Eve Madeley, share parallel beginnings. Hilliard’s story has its roots in an old debt owed to his father. The debt was cancelled in bankruptcy proceedings, leaving the father penniless and the young Hilliard suddenly responsible to provide for a family. Eve’s adventure too begins before she knows it, with an obscure married woman who gets her husband into debt. The husband was apparently “ruined”, after “[h]is wife had brought him into money difficulties; she ran up bills that he was obliged to pay, and left him scarcely enough to live upon.” This, of course, resonates with the doctrine of necessaries. The indebted husband apparently embezzled money to pay his debts, and would soon be uncovered.

These beginnings, which occur outside plotted time, invoke familiar scenes of the Victorian credit economy, and are classed and gendered in ways which would be familiar to readers. We have the business male debt and the domestic female one. The former could often be resolved to some extent through bankruptcy, while there was no financially feasible way out of consumer debts for lower classes, a difference which led to nineteenth-century debates about class law. Eve’s Ransom’s plot, however, gets going when Eve and Hilliard get in touch with these old beginnings through unlikely encounters.

Hilliard accidentally meets his father’s debtor. Despite there being no “legal debt” the debtor repays the principal amount, £436. Eve finds a cashbox full of letters and returns it to the owner. Like the debtor, the owner does not formally owe Eve anything, but she, like Hilliard, thinks he is morally obligated to pay, and he too pays – £20. The person who delivers the money to Eve is the indebted husband, who becomes her lover. Hilliard and Eve decide to go mad with their money. With these beginnings the novel replaces too much debt – found in its

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off-stories – with too much money – the alternative way to consume “too much.” While the debts were of a middle-class man and a husband, the money is of a workman troublingly verging on middle class and of a troublingly unruly woman. These inversions call attention to the consumption of two marginalized groups, which becomes the heart of the novel. Hilliard and Eve soon meet and he falls for her, a relationship I shall explore further later. The novel’s interest for this essay is its ability to follow through the complex entanglement of the discourses of agency and freedom with structures of class and gender containment in treatments of consumption.

Let me return at this point to the containment of workmen through budgets.

Budget rationality plays an important role in a textual representation of the containment of Hilliard, a workman who consumes outrageously, without the usual class shackles. The starting point seemingly aligns with contract theory. Hilliard frames his consumer adventure as a release from the “iron gods”70 – the machines of industrialism, to be replaced with freedom: "I want to know the taste of free life." The question posed is whether uninhibited working-class consumption can lead to freedom. And seemingly Hilliard does free himself. At the end of the novel he is paving a place for himself as an architect: “Hilliard's professional value, which was beginning to be recognised by the Birchings [architects’ office] otherwise than in the way of compliment, had overcome the restraints at first imposed by his dubious social standing.” His class constraints melt away; this is the fantasy tale of liberalism. However, the novel doubts the success.

Hilliard was introduced to Birching by Narramore – his affluent middle class friend. The novel then creates an exchange in which Narramore gives Hilliard the job he wants, but takes the woman he loves – he marries Eve. The exchange is structural: Narramore does not know about Hilliard’s relation to Eve, he is innocent plot-wise. Nonetheless, the price of Hilliard's success is heavy, and determined by a middle-class figure who, in formal terms, contains Hilliard's consumer adventure and sets its limits. The novel ends accordingly, “Maurice Hilliard, a free man in his own conceit, sang to himself a song of the joy of life.” The pun is on Proverbs 26:12, “Seest thou a man wise in his own conceit? there is more hope of a fool than of him.” Eve's Ransom ridiculed the notion of freedom from class constraints; Hilliard's ending, in which his raving emotions and "wrathful imagination" are

70 Gissing originally intended to call his novel "The Iron Gods."
replaced by toned-down content, underlines his containment within the seemingly benign treatment of the middle class.

The root of difficulty lies in the terms determined already at the outset: Hilliard from the start says that he is free "to live a man's life" only in a budgeted way – "for just as long as the money would last." Eve disappears when the budget ends: her switch to middle-class Narramore coincides with the limits of money, linking class containment directly with budgeting. The plot/structure gap which locates containment at the level of structure, moreover, offers a deterministic statement: budget-based freedoms override the better intentions of sympathizers with workmen, a persistent element of this history.71

Eve's Ransom associated the final dissatisfaction with male freedom with the budget constraints which frame it. When the discourse of freedom is read as a history of containing the working classes within the broader context of concerns with their consumption, as this novel suggested, the account is much less forward-looking in its mood than contract's association with the rise of liberal ideology. Male freedom to control domestic consumption through the budget was less about the ideal (middle-class) type of an emergent hegemony, and more about who that hegemony did not include.

Containment of workmen within their role as domestic budget managers did not end legal developments. Byles gave a minority opinion in Jolly for the disappointed trader which acknowledged the consumer agency of Rees' wife. He thought that Mrs. Rees was entitled to buy her drapery on credit. In establishing a wife’s authority within the logic of classical contract, Byles suggested a change of terms: the expression “presumed authority” was the source of difficulty, he thought; the point was “apparent authority.”72 Mr. Rees was responsible in a manner reconcilable with the law of agency, because cohabitation invested his wife with an apparent authority on which tradesmen could rely, and which could not be secretly revoked. His fellows did not concur, but that would soon

71 To return to Hobsbawm’s broader story, he argued that the major tool of differentiation for the middle classes was formal education, which was kept private and expensive. The role of budget in relation to this strategy is clear, as is the problem of Hilliard’s lack of formal accreditation in his questionable success. Hobsbawm, supra note 19.
72 Jolly 938.
change, with the final consolidation of the conceptual structure through domestic routines, which, again, can and should be read as a form of containment – this time of women.

IV. Move 2: Reframing Women’s Consumer Agency Through Domestic Routines

Domestic Routines

Wives could no longer be seen as controlled subordinates, an impossibility candidly admitted in the assault on appearances.73 Responses sought new grounds for female consumer agency, found in the technical role of the guardian of domestic routine.

To see the judicial reorientation of wifely agency in the doctrine of necessaries, one might start with Phillipson. Judge Bovill focused on the wife’s sphere in terms of routine: “The domestic arrangements of the family being usually left to the control of the wife, her authority extends to all those matters which fall within her department….”74 These kind of statements were hardly new, but their conceptual centrality was, a point which became clear with the 1880 Debenham v. Mellon.75

Mrs. Mellon was a hotel manageress, and lived there with her husband “in the ordinary way.” She bought clothes from William and Frank Debenham which were concede by all sides to be necessaries. Mr. Mellon, however, gave her an allowance and forbade her to pledge his credit. This seemed a case perfectly set for the application of Jolly, and the Debenhams indeed lost in the first round before Bowen. In the appeal, their counsels worked hard to convince the court that Jolly was wrong. Litigation here was backed by the drapery trade which hoped to overturn Jolly.76

While the Court of Appeal struggled somewhat incoherently to let Mellon off while acknowledging that wives may be entitled to support, the House of Lords managed to impose conceptual order on conflicting intuitions. The court made much of the fact that the Mellons did not run a regular household – the hotel supplied

73 See supra note 53 and accompanying text.
74 Phillipson 41.
75 I refer to two rounds: Court of Appeal, (1880) 5 Q.B.D. 394, House of Lords, (1880) H.L. (E.) 24.
76 Rappaport, supra note 16, 59.
their food and shelter. Seizing on this point was an opportunity to make more sense of Byles’ minority opinion in *Jolly*, which continued to trouble courts. The House offered a separation of issues in two moves.

First, the court set the context in the everyday of married life, rather than dramatic moments of breakdown. The question of urgent necessity of a wife, in the sense of survival, which may merit a right to pledge her husband’s credit despite his wishes, was beside the point in the ordinary case of marriage. This framing of the context was suggestive: while the court acknowledged that "necessaries" were about social convention, or symbolism, rather than subsistence needs, being a social creature was hardly about the excitements of dressing up, showing off, and “appearing” in public; it was a matter of banalities of the everyday.

Then came the question of consent: Mr. Mellon forbade his wife to buy commodities on credit, and so the credit contract had no basis according to *Jolly*. The court, however, went on to deal with Byles’ question of representation: There remained the possibility that Mr. Mellon created a representation of authority ("holding out") for which he was responsible, and which could not be secretly revoked. Lords Selborne and Blackburn, in a majority opinion, both conceded the point despite their embrace of *Jolly*. Yet they marked a difference from older attributions of liability: Cohabitation would not in itself sustain a presumption of authority, except perhaps, said Selborne, in the usual case in which the wife is charged with the household management, and the husband therefore habitually consents to acts which hold the wife out as agent. This idea could make sense of Pollock’s insistence on agency as a basis for holding Mr. Sumner liable in 1858 despite a private arrangement to the contrary. What Pollock meant, said Selborne in an anachronistic rereading, was that the husband was liable for an appearance of authority created by his letting his wife manage the establishment. In the Mellons’ case, however, with no household management there was no basis for a tradesman to assume that Mrs. Mellon had authority.

With contractual representation the court newly contextualized the locus of liability: liability lay in the pragmatics of household management, and wives had authorities too. As another judge later described it, the age-old statement that there was a “presumption of law” that a wife had her husband’s authority to pledge his credit

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77 Note 59 and accompanying text.
was simply wrong; it was “quite clear that there is … at most a presumption of fact.” With Blackburn’s similar analysis, the House of Lords was able to pull together the conflicting ideas emerging from the classical contract of agency – both the idea of autonomous decision by male budget managers, and liability for representation in which women were the main players, into a doctrine hinging on the going-through-the-motions of routinized domestic life.

Observe the turn inwards: Just as budget management became the innate morality contrasted with shallow respectable appearances, so here the routines of household management became the innate truth, literally hidden inside the domestic walls, contrasted with the appearance of a functioning marriage. No wonder that the County Courts Chronicle celebrated Debenham for placing “the law with regard to the power of a wife to pledge her husband’s credit on a very firm footing.”

The change in emphasis toward household routines was also visible in differences between treatises dealing with married women’s contracts. Chitty, for instance, was a text reproduced and updated from early century, and for a long time oriented toward the order of appearances. In the 1876 edition the editor still repeated the presumed authority of a married woman to enter contracts for necessaries. Leake’s 1867 treatise, by contrast, was not committed to the early tradition and discussed “necessaries” as a form of necessity arising from neglect. A wife’s presumed authority in regular married life, meanwhile, applied to “all matters which are usually entrusted to a wife, as for the supply of goods for the use of herself and household suitable to the condition in which they live.” By 1892 Leake was even more careful, and discussed “reasonable supply of goods … for the use of the husband, his wife, children and household … suitable in kind, sufficient in quantity, and necessary in fact according to the condition in which they live.” Chitty’s editors began to change terms after a lag. In the 1890

78 Weston v. Smith, CCC June 1, 1892, 432. This was also acknowledged in the 1892 bill.
edition, under a new arrangement of issues, the general authority to contract for socially-determined necessaries was replaced by reference to “goods supplied and consumed by the joint household…”

Domestic Routines as Containment of Female Consumers

As with discussions about workmen and their budget, so with regard to women and routines within that budget, a complexity of meanings informed the legal reframing of female agency; while doctrinal developments articulated women’s ability to act as consumers within the new budget rationality, containment was a dominant part of the logic informing them. Women’s unanchored consumption was plainly threatening to a sense of social order. As we have seen, fears were often channeled through accusations about reckless credit extended to feeble minds. The wife, said critics of symbolic domestic consumption, was “often the greatest sinner.” Framing her consumer agency in terms of domestic routine offered a potential containment of the threat, just as budget management met the fear of workmen.

The drapers’ history is revealing on this front too. As with concerns about workmen’s consumption – where drapers joined calls for equality, here again drapers accepted the conceptual grounds of their critics in order to defend themselves, and here too their responses expose the delimiting elements embedded in new articulations of agency.

When accused of relying on women, drapers agreed that women were a problem. However, they denied that they preyed on women, and tread a fine line between their refusal to ask husbands for approval, and an insistence that they only proceeded when husbands knew about the credit: “No, no, good Judge Barker,” they replied to an accusing county-court judge, “it is diametrically opposed to our best interest to deal with the wives unknown to the husbands. Oh, the humiliation of the confession that there are, here and there, to be found amongst us men

82 Joseph Chitty, A Treatise on the Law of Contracts (12th ed. 1890), 233. Elsewhere in the chapter the editors returned to the language of necessaries, apparently reproducing older versions without subjecting them to a new interpretation.
83 There is a rich literature on budgeting as a site of gender oppression, e.g. Jan Pahl, Patterns of Money Management Within Marriage (1980) 9 Journal of Social Policy 313, hence the argument in this Part should be more familiar.
84 Report 1909(239) q. 2249 (county court judge Bray).
who degrade their calling by such questionable courses….”

Drapers also claimed that as much as ¾ of their supplies were for men’s clothes. Cumulatively, drapers’ representations framed women’s consumer agency as a limited idea. Women, far from vicarious consumers whose public appearance expanded male valor in the Veblenian sense, were their husband’s long arms in almost technical terms. As we have seen, the technical role of household management became crucial for doctrinal developments.

With emphasis on routine on the rise, the centrality of fashion attracted scrutiny. Victorian gender anxiety was often channeled through discourses on female fashion consumption. Female dressing up was the reason that consumer credit provided by drapers attracted so much fire. In the 1873 discussion of imprisonment for debt, “dresses and shawls” served as a double trope which signaled both female frivolousness and the despised drapers themselves. Fashion invoked the complexity of mobility and social hierarchy.

Gissing’s Eve’s Ransom captured the historical urge to delimit female fashion consumption and its entanglement with discourses on women’s agency, just as it did with workmen’s budgets and discourses of freedom. Attention to its details offers deep insights.

In the novel, fashionable dresses are one important commodity on which Eve spends her unexpected windfall. Her dresses baffle Hilliard, who pursues Eve after having seen her old picture: “He had thought of her as very plainly, perhaps poorly, clad; but this attire was ornate, and looked rather expensive; it might be in the mode of the new season”, and then, “She had the look, the tones, of one bent on enjoying herself, of one who habitually pursued pleasure, and that in its most urban forms.” Eve’s incompatible images are matched by her physical absences throughout the plot; often failing to arrive when expected, her presence is discontinuance, and Hilliard

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85 CDG, Mar. 29. 1890, 91-92.
86 Report 1873(348) qq. 4338, 4536, 4785; Rubin 1986, 214.
88 E.g., Report 1873(348) qq. 1226, 1525, 2139, 3462, 4747. Drink was the curse of men, dresses of women, it was suggested, e.g., q. 5431. For a similar analogy see The Newcastle Courant, Jan. 31, 1845. The analogy drew on debates about the evils of alcoholism, and made the drapers’ case all the harder. Drink and dresses were close also because of claims that women pawned dresses obtained on credit and used the money for drink (which could not be obtained on credit). E.g., CDG, Jan. 1, 1887, 3-4; Daily News, Sept. 24, 1855.
always on the edge: "He was again in an anguish of fear lest Eve should not come." All of this is part of the novel’s interest in the meaning of appearances, and their perceived fuzziness.

Anxious Hilliard responds with an attempted containment. He ends Eve’s independent consumer play and pulls her into his own consumer circle. "I will make a bargain with you," says Hilliard to Eve, "She looked at him with startled eyes. ‘You shall have your thirty-five pounds [money needed for the lover in debt] on condition that you go to live, for as long as I choose, in Paris.’" She will pay for nothing, Hilliard says, and Eve accepts. The Paris bargain exacerbates the instability of Eve's identity: is Eve potential wife or prostitute? Eve’s interpretations are contradictory as are Hilliard's. On the one hand, he resents Eve’s submissiveness: “That was the note he dreaded, the too well remembered note of pathetic submission.” He wants to buy something which cannot be mere commodity, and cannot stand reminders that he forced her into the relationship. On the other hand, he resents her attempts at independence, and disregards her obvious reluctance: "Your gratitude be hanged! Pay me back with your lips – so – and so! … What is it to me how I won you? You are mine for good and all – that's enough."

Seemingly, Hilliard's attempted containment of Eve fails, and he loses her to the middle class Narramore. The deeper point, however, is existential containment signaled by the ending, as with Hilliard's consumer plot. The scene is worth a pause. Eve, in her new middle-class role, is hardly recognizable to Hilliard:

There before him stood Eve. He had only just persuaded himself of her identity; his eyes searched her countenance with wonder which barely allowed him to assume a becoming attitude. But Mrs. Narramore was perfect in society's drill. She smiled very sweetly, gave her hand, said what the occasion demanded. Among the women present – all well bred – she suffered no obscurement. Eve is attuned to his reaction:

"Your contempt for me is beyond expression, isn't it?" …

"You are quite mistaken. I admire you very much."

"What—my skill? Or my dress?"

"Everything. You have become precisely what you were meant to be." …

"What am I, then?"
"An English lady—with rather more intellect than most."

Eve flushed with satisfaction.

Eve's cynicism ("my skill? Or my dress?") echoes the Smilean critique of appearances. She is willing to accept that manners and dresses are superficial. Hilliard, however, will not let her both play the role and be its critic; his refusal to admit contempt is aggressive; in the fine lines of flattery he degrades the type to which she now belongs, “English ladies,” a type with little intellect. Eve gives in when she flushes, a figure of an internalized role implicating her body; enjoying the compliment about her cleverness, she is made to accept the general degradation. The rest of the exchange deepens the irony, as Eve's increasingly emotional gestures are met with Hilliard's patronizing smile. The scene mocks the paradigmatic identity of the English lady; she is aggressively confined to social role. The dilemma between prostitute and wife seems almost false if these are the terms of wifely success. The wifely role is troubling, like Hilliard’s “free man” trope; they are far from opposite representations.90

Eve’s fate, like Hilliard’s, is structurally determined, as we can see in the repetitions of gender hostility in the plot which appear inescapable. The first woman to encounter hostility is actually the spending wife of the doctrine of necessaries. Though Eve’s lover baffles her into a compromising relationship with fashion (having “the external attributes of a gentleman”), she is hostile to the wife and willing to help him. The plot then makes her undergo the same sense of moral compromise which wives experienced when their consumption served to question their agency. She emerges from the Paris ordeal only to again experience containment when she finally becomes a legal wife. No womanly role, the novel implied, can escape the gendered suspicions of this age.

*Eve’s Ransom* highlighted the historical association between unease with female consumption, epitomized in fears of fashion, and processes of containment of women within routinized roles. It offers a deeper conceptual context to statements like those we find in *Debenham*. There, Blackburn talked of domestic management

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involving "butcher's and baker's bills and such things." This discourse made fashion consumption – and in particular women’s orders of dresses – seem odd, and so the widely held assumption that husbands grant authority to their wives to buy dresses on credit was questioned. Manchester county court judge Heywood made much of this language: he was not at all sure, he said, that the presumption of women’s authority extended to dress. Or again: “it might have been bread, or butcher's meat, or anything necessary for the household….”

Overall, a newly framed female consumer agency involved a delimiting element. No wonder the credit drapers were still upset; here was another round in which their wishes backfired.

The paradoxes in treatments of married women’s consumer agency are most patent when we look at the relation of the doctrine of necessaries to the Married Women’s Property Acts. Those Acts merit attention in concluding this discussion. Debenham, which centralized household routines, was decided at the height of legislative developments.

The Married Women’s Property Acts extended property rights to women, and an ability to contract with respect to that property. The 1882 and 1893 expansions in particular encouraged traders' attempts to sue women when the prospects of recovering from their separate estates seemed better than those of recovering from their husbands. These attempts involved a double inversion: A woman, not man, was now sued; in response, she could attempt to obtain a decision for what had been the claim of traders: that she had acted as agent for her husband (therefore her property was not liable).

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91 Debenham 36.
92 CCC, June 1, 1892, 432. While county courts sometimes disregarded higher courts, they were not detached from them, as mixed reports testify. For example, a Law Times article recommended judge Hugh’s “admirable course” of refusing drapers' suits if they did not obtain the husband’s consent, to judge Ingham who tended to allow suits against husbands. CDG, Oct. 22, 1888, 276. A Northern Echo commentator complained that “nearly every County Court Judge has a law of his own” Id. 292. Historians’ assessments are similarly mixed. E.g., Rappaport argues that county courts were unsympathetic to drapers as were higher courts, while Finn argues that they did not observe precedents. Rappaport, supra note 16, ch. 2; Finn 2003, 265.
93 Judge Collins in Paquin, Ltd. v. Beauclerk (1906) A.C. 148, 151.
94 E.g., CDG, June 21, 1888, 182.
95 1870, 1874, 1882, 1893. The reform was motivated by claims that trusts, which protected women’s property in equity, were available only to rich women, Ben Griffin, Class, Gender and Liberalism in Parliament, 1868-1882: The Case of the Married Women's Property Acts (2003), 46 Historical J. 59.
96 Married women were not personally liable – they could not be imprisoned like men. See Scott v. Morley (1887) 20 Q.B.D. 120.
For a while the default position for a woman buying consumer goods on credit was unclear: was she, or her husband, responsible? One county-court judge declared that after the 1882 Act he would not enforce debts against husbands unless he had instructions from higher quarters,\(^97\) and he soon did. The default position for domestic consumption made the husband liable. This was solidified in the interpretation of section 1 of the 1893 Act which explicitly noted exceptions to women’s independent liability: "Every contract hereafter entered into by a married woman, *otherwise than as agent*, … shall be deemed to be a contract entered into by her with respect to and to bind her separate property…." Household consumption on credit was deemed a case of agency excepted from section 1, and was subjected to a doctrine-of-necessaries analysis.\(^98\) The logic, however, was present even earlier. As Chitty’s 1890 edition explained, credit for household consumer goods was usually given to the husband (a statement which was descriptively correct, obviously), therefore, the fact that the goods were of that kind was “strong evidence that she [the wife] did not intend to bind her separate property.”\(^99\)

The doctrine of necessaries, which was an exception to married women’s general inability to consume on credit, now became an exception to their ability to do so. Daily household management, in turn, was the central imaginative paradigm used to navigate the paradoxical process. The gendered implications were debatable: one could argue that they were protective of women’s new property – as the drapers indeed complained (just as they complained that husbands got all the benefit from the new budget management paradigm), or that they were symbolically and morally destructive.\(^100\) As with workmen, the paradoxes expose how the reading of doctrinal developments as containment was already embedded in the terms of debate, and raised its head precisely at moments which seemed progressive from the perspective of women, when their agency was articulated. Just as the trope of the "free man" who was a budget manager was disabling no less than enabling, so was that of the

97 CDG Nov. 1, 1886, 282.
98 Paquin, Ltd. v. Beauclerk (1906) A.C. 148. Milliners tried their luck suing a bankrupt’s wife for her purchases on credit. The majority in the Court of Appeal decided that the contracts were prima facie "a sale to a lady acting in the ordinary capacity of a married lady living with her husband….” The House of Lords divided equally and thus left the decision in place. For an application see, e.g., Brighton and Hove Supply Ass. Ltd. v. Butcher, CCC, May 1, 1907, 111-12.
99 Chitty, supra note 82, 233.
100 Another difficulty from the perspective of doctrine of necessaries analyses was that upper-class women often received property restrained from anticipation, for which they could not obtain credit. This is beyond my scope.
guardian of routines; and with both, the fears of these groups captured the cultural imagination more often than hopes.

V. Deserved Consumer Credit

Patty, only a deceptively simple character in Eve’s Ransom, captures the process in which unanchored consumption emerged in a break with the familiar: The consumption whirlpool of her friends, Eve and Hilliard, “spoilt her for such a man as Mr. Dally [her fiancé]. She got all sorts of new ideas, and can't settle down to the things that satisfied her before.” Patty's distress is the figurative essence of a search for forms of thinking which could seem satisfying. New directions, like those taken by Hilliard and Eve – the “free man” and the “lady,” however, were already conditioned by their points of departure, and represented containment more than path-breaking thought; the main message from Patty is, therefore, dissatisfaction.

The distress captured in Patty navigated legal attention away from questions of luxuriousness, appearances, and social display, towards budget management of household routines conceived in almost technical terms. As Earl of Halsbury said in a 1904 decision applying the new logic of the doctrine, “I prefer keeping to those terms [agent and principal] because it gets rid of the confusion which arises from the peculiar relation of these parties [husband and wife] to each other.” It also got rid of much else. If the implications for workmen and women were suspect, the implications for a broader and more abstract assessment of domestic consumption were striking: Moralizing views of commodities were displaced by an alternative paradigm of consumer rationality.

Pollock's decision in 1897, which held a husband liable for expensive wifely orders of flowers, exemplified the full span that had taken place: "[T]he word 'necessaries' was not now generally used to decide whether a wife had power to pledge her husband's credit," he said. "The question was, whatever might be her domestic position,

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103 For the culture which then emerged to guide the “bewildered housewife… through the plethora of commodities on offer” see Judy Giles, Class, Gender and Domestic Consumption in Britain 1920-1950, in Gender and Consumption (Emma Casey & Lydia Martens eds., 2007), 15.
whether she was wife, sister, mistress, or housekeeper – was her position such, and was the character of the
articles supplied such, that a jury ought fairly to assume that she was entitled to pledge the credit of the person
with whom she was living…. The couple … gave sumptuous entertainments, but a man was entitled to do that if
he liked.”

A decision which, a few decades earlier, would have been premised directly on the order of
appearances, was now navigated through a laborious discourse of what a man might do within his budget and
what a woman’s domestic role is, only to release restraints on consumption at last.

The reach of this shift could be glimpsed when yet another parliamentary committee considered
imprisonment for debt in 1909. Dresses and shawls largely gave way to watches and jewelry, foolish wives
starred alongside their husbands, and the drapers’ credit was in competition with new forms which made
headways, like hire-purchase. Yet, the committee’s approach to consumer credit was in close dialogue with
those beginnings.

The committee adopted the proposal of Sir William Selfe, a county court judge whose plan for abolishing
“classes of business which are of no benefit to the working man” – money lenders, and “firms who send out
agents all over England, inducing working men and others to buy jewellery, watches, Bibles…” – was to
rekindle the luxuries/necessaries distinction, and bring it to bear on working-class consumer debts at large. He
proposed that a creditor seeking imprisonment would need a court-issued certificate that the debt was for
necessaries. Presumably, only credit for necessaries would be offered, and other credit be gone.

The committee asked its witnesses whether a distinction could be made between necessaries and luxuries.
Witness after witness, the majority of men summoned argued against the small group of supporters that, for
various reasons, it was impossible. One judge figured that the committee did not understand the terminology:
“You see the word “necessaries” in a court of law does not mean merely those things which are absolutely
necessaries for existence, a sufficient amount of food to sustain life, and a sufficient amount of clothing to be

105 Report 1909(239).
106 Id., 375 (Appendix 19).
decent, but it has always been held to mean such things as are suitable having regard to the position and means of the person in question."\(^{107}\)

The committee shifted grounds: it began to ask about necessaries vs. non-necessaries, rather than necessaries vs. luxuries, and for a reason. Its final recommendations described two possible venues for working-class consumer credit. In the extreme case character – the basis of credit – failed.\(^{108}\) The committee thought these were “probably not nearly 5 per cent of the total number of credit transactions which come before the courts.” The debate about necessaries targeted those cases. The whole necessaries discussion, in other words, was marginalized. Then, because marginal, “necessaries” were reduced to an almost naturalized idea of bare necessities “for the support or maintenance of the debtor or his family,”\(^{109}\) while luxuries were altogether beside the point. This move fell in line with the conceptual investment in daily routines, far from appearances. It reaffirmed the move to contain female consumption which we have seen in the doctrine of necessaries, on a broader scale applicable to consumer credit at large.

The more important case of credit, which the report pronounced emphatically, was the rest of life: Workmen required credit habitually, and, when at work, were “justified in obtaining goods on credit.” Everything depended on budget restraints: “A workman is as justified in obtaining reasonable credit in proportion to his wages as a trader is justified in giving such credit, if the one gets and the other gives credit with due regard to the future potential ability of the workman to earn wages.” Working classes, whose credit had been deeply unsettling, now fit into a "national life … based almost entirely on a system of credit".\(^{110}\) Budget-rationality and household routines gained an undeniably claim to account for the imaginative universe of consumer credit.

\(^{107}\) Id., q. 5621.

\(^{108}\) According to the report character failure was the only case in which imprisonment was used O'Connell, supra note 20, 14-15 discusses complexities in this factual picture. This argument was rejected by the 1873 committee, and was contentious in 1909; the report passed six-to-five, with three members absent. The minority supported full abolition of imprisonment and was less enthusiastic about credit. My interest is less the factual than the conceptual picture which was now available and dominant.

\(^{109}\) Report 1909(239), iv-ix. The minority opinion too naturalized necessaries, but thought that they represented the majority of cases. Id., xix.

\(^{110}\) Id., iv.
VI. Law and Consumer Capitalism

At the beginning of the last century Max Weber wondered, “Now, how could activity, which was at best ethically tolerated, turn into a calling …?"¹¹¹ He was curious about the accumulation of capital (or “economic acquisition”) which he defined as the spirit of capitalism. Cultural historians of consumption, however, have reformulated the question to answer that which Weber’s account of Protestantism did not include: the emergence of consumer capitalism, a world of seemingly uninhibited and indiscriminating mass consumption. If Weber’s problem was to explain how a deep moral condemnation of the pursuit of wealth had been overcome, the problem for historians of consumption has been to explain how the condemnation of the spending of wealth, and particularly the policing of luxury consumption, which on Weber’s account were part of the Protestant ethic conducive to accumulation and reinvestment, was overcome. The underlying assumption behind this concern is that consumption is a category of human interaction vulnerable to moral and political critique; its patterns depend on historical processes which draw and redraw the lines of legitimacy. To arrive at modern consumer capitalism, therefore, must have involved deeply transformative changes in the cultural environment.

As noted in introduction, late nineteenth century was important in the history of consumer capitalism. What were the cultural sides of these processes, and, more particularly for this essay, how should the turn to budget rationality in law be read in relation to these processes?

Budget rationality in domestic routines was a legally-framed cultural construct. One salient implication of the new paradigm was that it brought the material excesses which the industrial revolution produced under an individualized form of control, anchored in the consumer who was expected to internalize the apparently universal, neutral demands of budgeting the everyday; it was disciplining in a Foucauldian sense. At the same time, and more crucially for understanding law’s role in the rise of consumer capitalism, the new perspective offered an immense historical release; focused on consumers rather than commodities, it professed political indifference to the content of consumption choices (recall, "a man was entitled to [give sumptuous

entertainments] if he liked\textsuperscript{112}, and so removed age-old moral restraints on consumption – “luxury’s shadow.”\textsuperscript{113}

Commentators who view today’s acquisitive consumerism as far removed from the prudence implied in budgeting prescriptions\textsuperscript{114} might be correct, but miss the fact that historically such prudence offered a release. The development redrew the lines of legitimacy in ways which were enabling from the perspective of mass consumption.

The complexities of motivations which fueled the rise of budget rationality contribute new perspectives to cultural history. Existing cultural histories often explain the rise of consumer capitalism as a celebratory turn. On such accounts, the pursuit of worldly enjoyments, and “luxuries” in particular, which had been a moral sin and social danger in the Christian and Classical traditions, was recast as virtue and benefit in religious thought, social philosophy and economic theory; the cultural change opened the door to mass consumption.\textsuperscript{115} In the doctrine of necessaries, as we have seen, the cultural change was hardly a celebration of consumption. Far from embracing expanding consumption and turning it into a virtue, this legal framework attempted to tame it, and offered a supportive cultural construct for consumer capitalism virtually despite itself. Early paradigms of rationality, usually associated with hopeful accounts of consumption as emancipatory,\textsuperscript{116} were in fact deeply entangled with its dangers, and reflected despair more than conviction. The cultural framework which gave rise to change was not all celebratory. But change there was.

Consumers expected to adjust to wages and household routines had to navigate the world of goods with care, but, within those confines, their whims were freed from the critique of luxury which carried enormous

\textsuperscript{112} Supra note 104 and accompanying text.

\textsuperscript{113} As Hilton has termed it, Hilton, supra note 4.

\textsuperscript{114} E.g. Stephen Walker & Sue Llewellyn, Accounting at Home: Some Interdisciplinary Perspectives (2000) 13 Accounting, Auditing & Accountability J. 425. The question of prudence is related to discussions of the calculative spirit of capitalism. Accounting history is directly important here. See generally, The Routledge Companion to Accounting History (John R. Edwards & Stephen P. Walker eds., 2008). The discussion usually starts with Sombart and Weber. Accounting history centered on the home, which is even more closely related to the concerns of this essay, is a recently burgeoning field.

\textsuperscript{115} E.g., Berry, supra note 8, Maxine Berg, Luxury & Pleasure in Eighteenth-Century Britain (2005), Deborah Cohen, Household Gods (2006); De Vries, supra note 3, ch. 2.

\textsuperscript{116} For accounts of the endless debate on whether consumption in late capitalism is manipulated and dangerous, or rational and emancipatory see e.g. Jean-Cristophe Agnew, Coming Up for Air, in Consumer Society in American History: A Reader (Lawrence B. Glickman ed., 1993) 373; Ulrich Wyrwa, Consumption and Consumer Society: A Contribution to the History of Ideas, in Getting and Spending (Susan Strasser, Charles McGovern & Matthias Judt eds., 1998); Viviana Zelizer, Culture and Consumption, in Handbook of Economic Sociology (Neil Smelser & Richard Swedberg eds., 2d ed. 2005) 331.
historical weight. “The rationalization of life”, argue Carruthers and Espeland, “has been more than an overall increase in the ‘calculability’ or rationality of decisions. It has also been a change in the rhetoric used to represent decisions”; rhetorical frames, in turn, are ways to “establish the legitimacy of action.” It is in such terms that we should understand the shift in legal analyses from the perspective of the history of consumer capitalism: it was part of a new cultural channeling of consumption with profound unleashing effects. As Hilliard is told when given money without restraints: “Four hundred and thirty-six. You'll go to the devil with it, but that's no business of mine.”

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