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Civil law rules were adopted in Florida that granted married women property rights long before legal reforms occurred in northern states. This article analyzes white wives' property and law in Florida between 1820 and 1860. Initially, married women's property rights were inadvertently protected by treaty law and limited to women who married before 1818. Wives' right to own separate property in Florida was subsequently reconfirmed in statute and extended to include later marriages. In contrast, nonwhites generally lost the rights and property they had enjoyed under Spain's civil law in the same period. This contrast reveals that in Florida (and other southern borderlands) it was not concern for women, or simply legal precedent, but the desire to incorporate new territory and expand slavery that influenced the development of marital property law. This challenges previous histories, which have excluded the earlier acts in the Southern borderlands and emphasized those passed in the Northeast beginning in the late 1840s. While those later acts were influenced by the early woman's rights movement and by concern for families reduced to poverty during the rise of market capitalism, this case study indicates that expansion of United States territory and slavery were responsible for the earlier married women's property rights in southern borderland territories such as Florida.

Although it may surprise historians of marital property law in the United States, there were protections in place for married women's property before the well-known 1848 New York statute, many of which were in southern states and territories. Twenty-four years before married women in New York won the right to own separate property, Florida granted wives the right to hold and control property. While the Florida law initially limited those rights to colonial women who had married before it became U.S. Territory, it extended them to all married women in 1845.

Although almost all married women in the United States fell under common law coverture before the well-known 1848 New York statute, in early Florida three legal systems shaped married women's right to separate property: treaty, civil, and common law. As a Spanish colony, Florida courts had followed civil law, which would have been supplanted by the territory's adoption of the common law in 1821, except for an important article of the treaty that ceded Florida from Spain to the United States. Article 8 of the

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Adams-Onís treaty protected the property rights of all Florida inhabitants, which included some married women who owned property under Spain's civil law rules. Through this treaty article, American expansion into Florida yielded an unintended consequence for marital property law: civil law marital property rights were upheld, and therefore common law coverture (the common law rule that married women cannot own separate property) was partially overturned. However, white wives in the new American territory of Florida retained and gained property rights beyond what was required by the treaty, I argue, not because of any desire to empower or protect them, but because they were slave owners and settlers on a hostile Indian frontier. The right of married women to own separate property, made possible by treaty law, was also the product of Florida's status as a developing slave state and a territory still populated by hostile Native Americans. In that context, it is significant that at the same time as Florida lawmakers were granting married women separate property rights, they began to limit the civil and property rights of nonwhites in Florida.[1]

In this article, I examine the legal status that protected married women's property, the kinds of property they held, and the importance of slave property, in particular, to women in territorial Florida. In counterpoint to the expansion of married white women's rights, I also examine how U.S. courts treated free blacks and Native Americans in territorial Florida, including women. Finally, I discuss how civil law marital property rules influenced the property rights of wives in other southern and western U.S. borderlands. By looking closely at the way women's property contributed to the expansion of slavery and settlement in Florida, I conclude that their right to separate ownership was shaped by the racial and gendered exigencies of expansion and slavery.

White women were important to expansion because their presence, labor, and property facilitated the construction of white households in Florida. Regardless of their location in Florida or relative degree of wealth, the records show that many married women owned separate property, which could include real (land, houses, slaves, livestock) and personal (household goods, apparel, specie) property. My research indicates that Florida wives owned and controlled more household goods and slaves than land. When white wives went to court to defend these kinds of property, they left historical traces of the significance of their property and labor in settling Florida. In the context of national and slavery expansion in the South, their ownership of those forms of property points to their role in the creation of southern households. Such households were rural, patriarchal, and the location of production and reproduction. They required the presence and labor of white women as well as other dependents to produce white male mastery and the means of subsistence and profit.[2] Creating such

households was directly related to the nationalist project of expansion, as their construction one-by-one on the Florida frontier eventually created permanent white American settlements.

While there were a few women who wrote diaries and letters about their experiences settling Florida, many more show up in court records during the territorial period and early statehood (1821–1860). The women uncovered in the court records examined for this study lived throughout Florida, including Escambia and St. Johns Counties (which contained the historic population centers of Pensacola and Saint Augustine), Jefferson, Leon, and Gadsden Counties (where the growing Middle Florida plantation belt was developing around the new state capitol Tallahassee), and in Hillsborough County (where Tampa Bay linked settlers with ports in the Gulf of Mexico).[3] As this geographic diversity indicates, the women's property disputes and inventories represented in this article came from both old and new settlements, and from east, west, and south Florida. They capture the kinds of property that wives who lived in towns, on farms and ranches, and on plantations contributed to their households. While clearly only those with separate property would end up in court, which excludes the poorest and property-less women from this analysis, the court cases included here involved a wide range of female-owned property, from kitchen utensils and cows to acres of land and hundreds of slaves.

Although lawmakers did not strategically target white wives to benefit from civil law marital property rules, political leaders did believe that white women were very important in frontier Florida. In 1840, Senator Thomas Hart Benton argued, "The country wants settlers, not an army," and the presence of women distinguished a settlement from a temporary military occupation.[4] Seminoles and their "negro Indian" allies fought three expensive and bloody wars against Americans in Florida between 1817 and 1855. Popular narratives of those conflicts played on images of threatened white women and their homes to garner support, reframing an expansionist war as the protection of white women and their homes. An 1837 U.S. Congressional Act promised food and shelter to the "suffering and indigent" widows of Florida in hopes of keeping them from abandoning the territory. As the war came to a close, the 1842 Armed Occupation Act (an early version of the Homestead Act) granted free homesteads to white men and women who would settle in territory still claimed by Seminoles, a policy that supported the rising population of white women in Florida in the 1840s (it more than doubled between 1840 and 1850.)[5] While the extension of separate property rights to Florida wives was more a passive than an active process, it protected women who lawmakers recognized as vital contributors of reproductive and productive labor to white settlements.

Similarly, when individual white women used these laws to protect their holdings, they did not understand them as policies or actions that supported colonization. Nevertheless, women used the property protected by these laws in ways that did just that. While domestic ideology coded women as passive and dependent, it also (somewhat ironically) granted them an active identity as mobile, homemaking agents, and the household and slave property that they owned in Florida facilitated that role.[6] Women were making Florida home and making homes in Florida with that property. White women, using their slaves and the household goods, constructed white homes in Florida; homes that collectively expanded American settlement and slavery.

While white wives, judges, and lawmakers may not have thought about married women's property as political, ultimately it had political implications. Those stakes are not often obvious in the records themselves, which contain the traces of family and community dramas that sometimes spanned generations. Legal petitions cannot reveal exactly what kinds of ideological investments women, their male kin, or presiding judges may have invested in women's property, nor can they reliably tell us what motivated these actors. While the law epistemologically defines action and actors, it cannot determine behavior.[7] What is clear is that as lawmakers expanded marital property rights over time, white women did not hesitate to exercise their property rights in the courts of territorial Florida. Although their use of these rights did not challenge the system of patriarchal household rule, it did sometimes help an individual woman protect her property from a husband who was profligate or abusive. More importantly, these legal rights protected property that was important and valuable to their households, in which these women were colonizing settlers and often slaveholding mistresses.

Married Women's Property in the Borderlands

In the borderlands, married women *as a class* enjoyed separate property rights under civil law. Married women's property rights began emerging in the early-nineteenth century in a broad arc from Florida along the Gulf Coast and on to the Pacific Ocean. Although each case differed, Texas, Louisiana, and California, like Florida, retained some civil law traditions and allowed wives to own separate property before 1848. In each new territory, the character of the population at the time of territorial acquisition and the issues at stake in settling the land affected the ways in which U.S. leaders adapted civil law married women's property rights. Furthermore, southern slave states that neighbored these formerly Spanish or French territories passed some of the earliest married women's property acts in common law states: Arkansas in 1835 and Mississippi in 1839.[8]

Scholars have not fully interpreted these laws in studies of the married women's property acts. The focus on the Northeast as the epicenter of U.S. and women's history has partly limited the conventional history of the married women's property acts. As this article illustrates, because of the distinctness of southern households and borderlands legal hybridity, married women in the early-nineteenth-century borderlands became legally entitled to hold separate property differently than women in the Northeast, where historian Norma Basch has shown that woman's rights agitation and a desire to protect family households from unstable market capitalism encouraged legal reform. Reform in the Northeast occurred after, and in the midst of, the retention of civil law property rules in newly acquired borderlands that had been Spanish or French territories. The revision of common law statutes happened *first* in the South and West.[9] A focus on the legal reforms achieved by the woman's rights movement has also resulted in the historiographical dismissal of married women's property rights in the borderlands. Indeed, none of the southern or western states that granted wives separate property before 1848 were populated by woman's rights agitators. Further, the adoption of civil law marital separate property did not necessarily grant wives much more control over their property than the common law did. Although their outcomes are disappointingly limited when framed by the history of women's rights, married women's right to separate property in the borderlands did have important outcomes for expansion, settlement, and slavery. It is for this reason that this study places the history of married women's property law in Florida into the history of southern expansion, rather than the history of women's rights.

Florida's Hybrid Legal Frontier

Spanish civil law granted the wife separate property rights and half of the marital property, not because it supported female independence but rather due to the continuation of her lineage in marriage. While American wives left behind their families of birth when they married, Spanish wives brought familial ties with them, retaining their maiden names in addition to their married ones. Under common law, by contrast, married women were *femes covert*, or women without a legal identity. Upon marriage, a husband became the legal owner of a wife's property, unless it was set aside in a separate trust. Due to the advantages that civil law granted them, many wives in Florida were able to protect and amass wealth even though the purpose of the law was to protect their lineage, not empower them.[10]

Under a provision of the treaty that ceded Florida to the United States, this distinction in the legal status of women under civil and common law created two classes of married women in Florida. From 1821 until 1845, com-

mon law rules limited American wives' property rights, but women who had married in Florida before 1818 continued to enjoy separate property rights as they had under civil law. Article 8 of the Adams-Onís treaty upheld Spanish residents' property rights in Florida, particularly the land grants made before treaty negotiations began in 1818.[11] Since many women had received or inherited Florida lands granted by Spain, Article 8 confirmed their right to own property, even though some of them were married and would not have enjoyed this right under common law.

Florida adopted common law in its first legislative session in 1822, repealing Spanish civil codes, and historians have often accepted this as proof that civil law no longer applied after U.S. annexation. Contrary to that assumption, since this measure contradicted the treaty provision, it created confusion about the legal status of married women's property.[12] Would common law or civil law prevail in matters of property belonging to married women? In 1824, the Florida Legislative Council addressed this confusion. "To obviate any doubts," it specifically confirmed the rights of "husbands and wives" married under civil law to treat their property "in the same manner as they could or might have done under the laws of Spain." Wives would be allowed to carry their property rights into the new regime. Thus, Florida passed the first married women's property act in a U.S. state or territory, though it was hardly a progressive move given its limitation to women who had married in Florida before 1818. Rather, it reveals that expansion enabled married women's property rights to become law in a U.S. territory long before northern states passed reforms. Lawmakers upheld and extended those rights because, as will become clear, white wives used that property to help build permanent white settlements in Florida.[13]

The common law, which prevailed throughout the United States, also allowed married women to own property through privately executed arrangements in Chancery courts (sometimes also known as equity courts). This allowed elite families, with the money and sophistication to pursue it, a way to circumvent common law coverture. They did so in order to protect property from unscrupulous husbands, and to preserve it for the woman's male heirs, rather than to empower her. Although elite women benefited from this loophole in the law, married women in the United States as a group did not enjoy the legal right to own property as women under civil law did. Even when they owned separate property in trust, male trustees still controlled and managed it.[14]

On a daily basis, the difference between a Spanish wife's separate property and an American wife's separate equity estate was small. Neither typically controlled her own property. However, differences in their access to the courts, consent requirements, and inheritance law, meant that when conflicts arose about property, civil law wives had more options than com-

mon law wives. They enjoyed direct access to the courts, had to consent to any property arrangements, and could also manage their own property or choose a new trustee. A married American woman with a separate estate usually did not appoint the trustee or consent to the management of her property. If she became concerned about her estate, she could only complain to the trustees, who might or might not agree with her concerns and might or might not choose to pursue legal action.[15]

Florida native Adeline Townsend learned that her position as a married woman with an equity estate was precarious in the early 1830s. Separated from her husband, Townsend had to appoint a new trustee for her estate when the previous one died. Her brother-in-law, Daniel Griswold, "cajoled" her into entrusting her $20,000 estate to him. After becoming her trustee, he "entirely changed his tone" towards her and was "now lording it over her in the most imperious manner." In an exasperated petition to the East Florida Court, she complained that "the niggardly sums he has supplied were not even sufficient for her absolute necessities." Noting that she had once had an estate "subject to her own control," she was now "compelled . . . to depend upon her own individual labour, and the cold charity of strangers for the common necessities of life."[16] Under common law, even wealthy white women could find themselves at the mercy of a judge—and virtually powerless over the trustee of their separate estates.

Inheritance rules also differed; civil law granted female heirs more property and control than the common law. Women under civil law inherited equally with male heirs of the same degree. As widows, they inherited their entire dowry plus half of the property made during the marriage, which they fully controlled. On the other hand, the common law entitled American widows only to the *use* of one-third of the husband's estate during their natural lives. This one-third share, or dower, was a life estate that she could use to maintain herself, but which would revert to his heirs after her death. Since she only got a third of it, the passing of her spouse meant that a widow faced relinquishing two-thirds of the property to which she was accustomed. While testators could leave a widow more than her "thirds," and give her permanent title rather than a life estate, they could also leave a widow less than a third, a legacy she would have to contest in court.[17] Under these rules, wives and widows under U.S. law were subject to the generosity of their spouses, rather than entitled to half of the marital property in addition to their own. While civil law required that all husbands treat wives equally, common law made it possible for men to decide how much property and control their wives and female heirs would inherit.

Although wives had more power over property under civil law, Spanish colonial wives had lacked one important option under the Catholic monarch that became available when Florida became a U.S. territory: divorce. While

Spanish law had forced women to remain in unhappy marriages, several sought relief in the 1820s and 1830s. In the hybrid legal environment of territorial Florida, such women held separate property, received half of the property amassed during their marriages, and got divorced—an empowering set of legal rights that were heretofore unavailable in the U.S. While women under the common law could petition for a divorce, they were often less secure in their property rights, and often had to petition judges to award them property, rather than bringing their marriage contracts and deeds into court (as civil law wives did).[18]

Beyond exercising their new right to divorce, several cases arose in the early territorial years that tested the application of the treaty rights and the 1824 statute protecting colonial wives' separate property.[19] Catherine Caro Duval's right to sell a town lot came into question after her death, when her husband's heirs tried to invalidate the sale. Her right to have done so was upheld. Margarita Bonifay de la Rua sought to protect her property from her husband's creditors after he died insolvent. De la Rua brought her marriage contract to court, which listed her separate property, and kept it from her husband's creditors. The outcomes of these cases established that Florida courts would recognize the separate property rights of women married under Spanish rule.[20]

Although a loophole created by the treaty initially allowed married women to keep their property rights in Florida, the 1824 act illustrates that it was no accident that American law ultimately upheld those rights, and Florida passed another law in 1845 to expand them. In other borderlands, U.S. law retained some marital property rights for women, but not under treaty law, so the influence of the treaty in Florida is unique.[21] Neither John Adams nor Luis de Onís said anything about women in their correspondence concerning Article 8 of the treaty. There was a controversy over three enormous land grants that Spain made after treaty negotiations began and, in the midst of that dispute, it appears that no one considered that some of those with property in Florida were women who would face an ambiguous legal position as the territory shifted from Spanish to U.S. governance.[22] Importantly, however, married women's right to separate property was actively upheld, rather than reversed to follow common law. The rights and property of women of color suffered a much different fate, which indicates that the protection of white wives' property rights was a conscious choice.

Married Women in Court

Wives used the legal protections available to protect and defend all kinds of property in Florida, ranging from large amounts of land and slaves to smaller holdings of household goods. Spanish colonial women often

owned land or town lots and houses, particularly in Florida where the colonial population was likely to vest brides with land in dowries.[23] Victoria LeSassier, a wealthy remarried widow, owned four houses and five lots in Pensacola and over 1600 acres of land nearby.[24] On a smaller scale, when Josephine Gagnet won a divorce from an abusive drunkard in 1829 she was awarded half of his town lot.[25] Comparatively, white wives in the countryside were less likely to own large amounts of land, and were a minority among large landholders. In 1827, Laura Wirt Randall received more than 1,000 acres in Middle Florida from her father, U.S. Attorney General William Wirt, but hers was an exceptionally large separate estate.[26] In 1860, by which time plantation agriculture was firmly established in Florida, there were 268 planters in Florida who held thirty or more slaves and sizeable acreage (from 75 to 15,115 acres); only thirteen of them were women.[27]

The court records reveal that far more women in territorial Florida owned household goods. In St. Augustine in 1824, seamstress Eliza Hutchinson found herself in court accused of stealing a shawl, sheets, and eggs from Amelie Nichols.[28] Mary Pemberton took William McVoy to court in 1828, accusing his slaves Lidia and Rachel of stealing clothes from her.[29] Compared to large plantation estates, these matters of personal support and property were small, but just as significant to the women who were protecting their property. These were also the kinds of property most Southern white women of any means held, in part because their families were likely to give them goods like clothes or kitchen utensils, and in part because they probably preferred and felt more entitled to "domestic" forms of property—the items they used on a daily basis.[30]

These records reveal the diverse kinds of household property that wives valued; from which one can deduce the kinds of work they did on an expanding frontier. Like women across the South, whether they were slaves, married to poor white "crackers," the wives of "countrymen" (yeoman farmers), or plantation mistresses, women in Florida worked hard—probably harder than those who did not live in a frontier territory.[31] White women did almost every kind of work on small farms, except for clearing and plowing new fields. They often raised poultry, dairy cows, and vegetable gardens. Only the most elite did not have to use their own hands to make candles, spin cotton, weave cloth, sew clothes, gather firewood, prepare meals, and plant, tend and harvest crops. Women, along with their families, cared for children, slaves, and livestock. Even slave mistresses had to oversee the labor, clothing, and feeding of their own children and the slaves, all while enacting the gentility that their class demanded.[32] In Florida, this work was more challenging, and nationally significant, because of its frontier context.

Due to the importance of household property in everyday life, women usually asked for it in divorce and estate cases. In her 1822 divorce petition,

Nancy Johnson requested the household goods that she had brought to her marriage, and a judge awarded them to her. In an 1834 suit to recover her portion of an inheritance, Caroline Dunham claimed a portion of the furniture and silver from the family home on the Hillsborough River. Household goods were the most basic form of women's property, and it was customary for women to claim it and consider it their own.[33]

Records from Florida after 1845 make clear married women's investments in household furnishings and farm implements. In 1845, Florida passed a married women's property act that extended civil law rights to all wives, not just those who had married under Spanish rule.[34] Allowing women to own separate property without arranging a separate equity estate brought women across the economic spectrum into courthouses with their inventories of separate property. As the wife of a small-time rancher, it is unlikely that Nancy Jackson would have had a separate equity estate prior to the 1845 law. When her abusive husband made off with thirty-two cattle in 1846, Nancy Jackson went to the courthouse armed with her receipts, evidence that she had had purchased and raised her livestock "on account of herself and children."[35] The new law allowed her to protect her property from her husband, who she claimed failed to provide for his family.

Nancy Robards' separate property furnished a well-appointed town house for her family, as befit the wife of a county clerk. The 1848 list included eight slaves, two cows, two horses, a lot in Tampa, a bedstead and furniture, cooking utensils, and forks and knives. In 1849, she updated the inventory, as she had acquired a carriage and more livestock and fancy furniture.[36] She brought quite a bit of wealth into her marriage, thus her holdings illustrate the higher end of these inventories. They are also widely representative of the many types of household property that wives protected under the 1845 law.

When an impending marriage or an irresponsible spouse threatened the property that white wives listed in courthouse inventories and marriage contracts, they used legal means to protect it. The livestock, furniture, and utensils in these Florida wives' inventories indicate that these women were making Florida home, populating the territory with white farms and plantations. As the owners of land, slaves, and household goods, in addition to the work they did to establish homes in Florida, white women facilitated the expansion of white settlement and slavery into Florida. With this property they created homes for white families in Florida—homes that national policymakers wanted to see become permanent settlements on an Indian frontier. Rather than assuming that marital property law changes were simply coincidental to expansion and settlement—accidents of a treaty—I argue that married white women received these rights because of the importance of their presence, property, and labor in settling Florida.

Slave Property and White Women's Role in Expansion

Many of the border territories, including Florida, became slave states in which the protection of slave property was a key concern. Court records make it abundantly clear that many women owned slaves, and in this way women's property furthered proslavery and expansionist goals. Slaves were also the only class of property to be specifically mentioned in borderlands married women's property laws. Although not specified in the Florida Acts, slave property was more common than any other single type in the court cases surveyed for this study.

Two other early married women's property acts make clear the importance of slaves on expanding frontiers. Laws passed in Arkansas Territory in 1835 and in Mississippi in 1839 were clearly concerned with women's slave property. In the Mississippi law, although the initial part of the bill granted married women the right to own both real and personal property separately, every other section of the law spoke only of slaves. When it expanded its first married women's property act in 1846, Arkansas copied the Mississippi law, adopting a law that protected a wife's slave property from debts her husband contracted after marriage.[37] These measures indicate that expanding slavery alongside white settlement influenced how lawmakers crafted married women's property laws in the Southern borderlands.

The emphasis on slave property in the Arkansas and Mississippi Acts was in line with a long tradition of planters giving slaves to their female heirs. Female slave owners were not unusual in the antebellum South, where women's dowries and inheritances often included slaves.[38] Throughout the South, slave property was often a woman's most important and valuable investment. In a new territory like Florida, slaves were perhaps a safer investment than land speculation (which men favored), and they were easier to sell quickly if needed.[39] Slaves could be used as collateral on a loan or hired out for wages if a woman needed cash. Their "natural increase" or reproductive labor would enhance the value of a woman's slaveholding over time. Finally, slaves could also be more easily divided than land, which made slaves a popular way to divide estates.

In addition to slavery's material benefits, whites built respectable households, social status, and "whiteness" out of slaves. White women's fortunes in the marriage market, in a marriage to a debtor, or in widowhood often rested upon whether they owned slaves, and how many they possessed. Owning slaves saved white women from labor and also established their white "ladyhood;" these material and social benefits conveyed that white women deserved their status and leisure because they were white. Even for white women in households without slaves, the privileges of whiteness were ensured by the existence of racial slavery.[40]

As U.S. borders and slavery expanded south, the slaves that white women contributed to their households in territorial Florida were an important source of labor. While land was static, household and slave property were dynamic and able to literally move with the changing boundaries of U.S. territory. Some wives' slave property was the only wealth that enabled their husbands to reach planter status, which was often the goal that prompted migration. Using slaves that belonged to their wives, aspiring planters like Thomas Randall and John Bunch carved plantations out of an "Indian wilderness." Slaves were also in short supply and high demand in territorial Florida, so women who owned slaves could easily rent them out for cash income. This practice enabled aspiring planters to clear fields and build homes much faster than they could have using only family labor, or if they had to wait for purchased slaves from the upper South. Rented slaves helped build Florida's infrastructure as they labored in sawmills, turpentine camps, and on the railroad. The slaves hired by the U.S. Military during the Second Seminole War were even more directly deployed in service to territorial expansion. In multiple ways, slaves—many of them the property of women—were vital to expansion and settlement in Florida. The enslaved people whom whites bought, sold, and hired suffered due to their value and mobility. Florida's slaves faced harsh working conditions, many were sent or sold away from kin in the upper South, and all experienced the privations of the frontier and the dangers of Indian warfare. [41]

The court records reflect women's material, and perhaps ideological, investment in slaves. When their slave property was threatened or damaged, women actively sought protection or redress in the courts. Suits involving slaves brought women into court more frequently than any other class of property. In a survey of County and Circuit civil court records in Escambia County, Florida, between 1821–1845, eighty-eight cases involved either a female defendant or plaintiff (or both), and forty-five of these cases also concerned a slave or slaves. One third of seventy-eight cases involving a woman and her property in St. Johns County between 1821–1845 included slave property.[42]

Some white women preferred slave property. They often specifically asked for their inheritance portion in slaves, or to sell land rather than slaves to satisfy debts against an estate, even though by law slaves were supposed to be sold before land in settling an intestate estate. In Gadsden County in 1833, Sarah Stone petitioned the court to settle her deceased husband's debts through the sale of land rather than slaves, as the money she made renting the slaves supported her family. As in Middle Florida, women in Pensacola also demonstrated a preference for holding their property in slaves. When Margarita Bonifay married John de la Rua in 1810, her mother gave her $1100 in separate property in the form of town lots in Pensacola. In 1832, Bonifay de

la Rua became concerned about the depreciation of real estate in Pensacola, so she asked her husband to sell the lots and use the money to purchase a slave and her four children for her separate estate. He complied.[43]

Women used slaves as investments in a variety of ways. It was not uncommon for them to use slaves as collateral in loans, for example, though that practice also opened the possibility of loss. In 1834, Julia Burgevin sued Ambrose and Mary Cooper in order to foreclose a mortgage on a slave named Sally in St. Johns County. Women also rented their slaves out. Hired slaves not only contributed to Florida's development, they were also a source of income for female owners. In 1842, Mrs. Davis took storekeeper Parsons to court to reconcile her bill at his store against what he owed her for the hire of her slaves. As such cases illustrate, the material value of a slave was not only what he or she would fetch at the slave market, but also the financial benefits he or she brought an owner when mortgaged or hired out. [44]

The significance women attached to slaveholding also comes across in their active control of this form of property. As mentioned above, women pursued legal action concerning slave property more often than any other type. The records rarely reveal the circumstances that motivated their actions, but Laura Randall's correspondence illuminates one instance from 1832. William Wirt purchased Sally, along with her parents and younger brother, for his daughter Laura's household in Middle Florida. After Sally participated in an attempt to poison the overseer, Laura wrote to her father that her dislike of Sally (which she explained was related not only to the poisoning attempt but also to Sally's insubordinate attitude) was "so strong & disagreeable . . . that I am resolved, if it be possible, to have her sold, that I may no longer have any connection with her, *or any property in her.*" Thomas Randall, Laura's husband, was reluctant to sell Sally away from her parents, because he had purposely reunited the family in 1829, worried that Sally's father, David, "would infest the whole body of the black community with his despondency" if he did not. In this household conflict, Thomas Randall's desire to manage David's emotions (and their influence among all the Randall slaves) clashed directly with Laura's desire to sell Sally. Rather than submitting to her husband's authority, Laura demanded action from her father, even though Sally was not part of her separate estate. Further, she closed her letter, "Mamma can better enter into my feelings on this subject than perhaps either you or Mr. Randall—and when she is told that it has been my most anxious wish to get rid of this girl . . . my unceasing endeavor for nearly two years she will not wonder that I have lost all expectation of doing so except by assistance." Laura Randall presumed that her mother would understand her frustrating position as a slave mistress subject to patriarchal limits. In this role, white women exerted daily authority over slaves, a role that might also translate into acting as manager of

slaves *as property*, as Laura did in this case (something she never did with land, which was also part of her separate estate).[45]

In Florida, a white woman's ownership and management of slave property illustrates more than her race, class, and gender status—it also highlights how her property rights and holdings intersected with the national project to expand American settlements and slavery into Florida. The legal protection of women's property, made possible by civil law traditions in Florida, supported expansion by allowing women to protect the household and slave property with which they and their families settled in the new territory. At the same time that white women's property rights expanded, those of nonwhites contracted severely, which highlights the degree to which women's property rights in Florida depended on race, as Americans installed southern slavery in Florida.

The Racial Limits of Legal Hybridity

For free women of African descent it was not only civil law marital property rules that the treaty might have preserved for them, but citizenship rights—the denial of which ultimately resulted in their loss of both civil rights and property. In an increasingly hostile racial environment, many free and enslaved women of color fought to retain the rights and property they had enjoyed in Florida under Spanish rule. Spain had granted free people of color almost the same rights as white subjects, and many of them were the consorts or descendants of prominent white patriarchs. As a result, free black women owned property in Florida as it changed hands.[46] However, in spite of two articles in the Adams-Onís Treaty, which might have protected their rights to this property, over the next four decades the very same courts that upheld the rights of married white women eroded the rights of "Spanish inhabitants" of African descent. Article 8 (mentioned above) protected the property rights of Florida's Spanish inhabitants (which turned out to include married women), while Article 6 promised to give them all U.S. citizenship rights. In the case of women of color, neither of these treaty articles ultimately guaranteed their civil or property rights. When it came to the rights of African-American or mixed race Spanish holdovers in Florida, U.S. courts inconsistently fulfilled the promises of the Treaty. This inconsistency reveals that U.S. courts and legislators granted separate property rights to married white women above and beyond the requirements of international treaty law, and that their decision to do so at least partly depended on race.

By contrast, Spanish wives who were not of African descent were not denied citizenship rights and retained their rights to separate property. As historian David Weber has noted, the status of Spanish colonists who

remained in Florida was quite different than that in other borderlands. In Florida, Americans greeted Spanish inhabitants of European descent who remained after the change of flags as allies rather than rivals because they were few in number, there was a desperate need for "civilized" settlers, and they were united against common enemies: Seminoles and escaped slaves. In the complex racial landscape of territorial Florida, those who might have been "too swarthy" elsewhere were incorporated into white American communities because Americans were far more concerned about distinctions from Indians and blacks than from Spanish Catholics.[47] While cultural distinctions remained significant to individual identity, they did not matter structurally. This was not the case for Floridians of non-European descent, especially those with African ancestors.

Article 6 of the Adams-Onís Treaty stipulated that "[t]he Inhabitants" of Florida "shall be incorporated in the Union of the United States . . . and admitted to the enjoyment of all the privileges, rights, and immunities of the Citizens of the United States." While U.S. officials might have interpreted this to include free blacks, who had enjoyed many civil rights in Spanish Florida, they did not. Local and territorial laws quickly limited their right to assemble, bear arms, serve on juries, testify against whites in court, or marry across the color line. By the 1840s, localities unfairly taxed free blacks and required them to have white guardians. Sheriffs coerced them into manual labor projects, whipped them for misdemeanors, and subjected them to curfews. Many free blacks did petition or sue for their rights under Article 6 of the treaty, but unlike married women's property rights, U.S. courts did not uphold the rights of free blacks. In their cases, the U.S. violated the treaty provisions in law and in practice. Furthermore, this violation benefited many whites, including women, as unfair taxes often resulted in selling the property of delinquent free black taxpayers at auction, where whites could buy it for next to nothing. If they went to court to protest, free blacks (including married women) typically lost their cases and their property.[48] While the treaty had protected Spanish colonial *white* wives' property, and even as the 1845 Florida law protected *all* white wives' property, new racially biased American taxation policies resulted in the loss of property for free blacks.

A few free black women appealed to U.S. courts in this period. Women of wealth and status, kin to prominent white men or to powerful Creek or Seminole leaders, met with some success. With the help of several trusted friends and lawyers, Anna Kingsley, the African-born first wife of white land baron Zephaniah Kingsley, managed to protect the enormous legacy that she had helped him build in Florida. In the 1840s, his (white) sister sued for control over the estate, worth upwards of $60,000, arguing that because Anna and her children were black they had no rights to property

in Florida under U.S. law. A Duval County judge ruled in Anna's favor, and she retained the estate. The Judge cited Article 6 of the Treaty (the article that promised citizenship rights) as the legal reason for upholding her property rights.[49]

The courts did not consistently uphold the rights of free blacks, however, and American law certainly did not confirm them in a separate statute. In 1845, two years *before* the decision in Kingsley's case, several free blacks in Florida invoked their treaty status to avoid paying a discriminatory state tax. The biracial descendants of another white patriarch, George J. F. Clarke, these litigants were denied citizenship by a disdainful American judge who opined that as "bastard" children born of a black woman, they could not inherit any of the rights their "reputed Father" might have had under Spain. In another case in which the free black plaintiff was the child of two legally married free people of mixed race, the Judge ruled that he was still not entitled to the same rights as a "Free White Citizen" because "such a thing" never "would have been admissible . . . and can never be tolerated." Although Treaty Article 6 protected the property of Anna Kingsley and her mixed race children, other free blacks did not find the same protection under the treaty. Shortly after this ruling, many of the biracial members of the Clarke family began a mass exodus out of Florida.[50]

The story of one of those Clarke descendants, Felicia Garvin (daughter of George J. F. Clarke and his freed black wife, Flora Leslie) illustrates that the courts also acted inconsistently in cases of free black women's citizenship rights and property, in ways that resulted in the loss of property to whites. In 1842, just before she moved to Philadelphia, Garvin paid Clarissa Anderson $1000 as down payment on a house in Saint Augustine. Garvin instructed her attorneys to pay the remainder of the mortgage with $4000 from a federal claim, which arrived eight days after she left. However, the attorneys kept the $4000 intended for the mortgage, and therefore Garvin defaulted. Anderson, a wealthy white widow, kept both the house and the $1000 down payment when she foreclosed. It is unclear whether Anderson was directly involved in the swindle, but she certainly did not lose anything in the bargain.[51] Although, like Kingsley, Felicia Garvin was related to prominent, wealthy white men, those connections did not help her in court, where U.S. law failed to protect her interests.

The citizenship promised by Treaty Article 6 also potentially included Native American inhabitants, but President Monroe had quickly announced that the Florida Indians would not become U.S. citizens.[52] Nevertheless, a few Indian women appear in Florida court records. In 1824 a Seminole of African descent, "Buckra Woman" (the only name given to her in the case file), sued Philip Yonge for $3000, money he owed for cattle purchased from her brother, deceased Seminole Chief Payne, in 1808. Surprisingly, a jury

of white men found in favor of her suit, which was based on a matrilineal pattern of inheritance in which a man's sisters, not his wife and children, inherited his property. However, the American judge dismissed the jury's finding, on the basis of "faulty evidence" and on the flimsy technicality that he had no jurisdiction because the case predated the act establishing county courts in the territory.[53] As President Monroe had promised, U.S. courts did not honor the rights of Native Americans who had lived in Florida under Spanish rule as they did the rights of white Spanish inhabitants, even if some of those inhabitants—acting as jurors—thought they should.

Strangely, as they did with civil law precedents, in spite of their apparent commitment to American common law, U.S. courts sometimes looked to Indian customary law to decide a case. The disputed ownership of a group of slaves that had once belonged to a mixed-race Creek called Black Factor elicited a lengthy court battle in St. Johns County in the late 1820s. Both Margaret Cook and William Everitt claimed to have purchased the same group of slaves from two different Creeks; Nelly and Nocosilly. Nelly, who sold the slaves to Everitt, was Black Factor's daughter, and so traced her inheritance rights through a paternal line (the record does not indicate whether Nelly was married since that was irrelevant to her right to sell property). Nocosilly, who sold the slaves to the Cooks, traced his inheritance rights through a maternal line, claiming that as the son of Black Factor's sister he had the right to sell them. This case spanned five years, during which witnesses across Florida, Georgia, and Alabama gave an unusually large number of depositions (over twenty-five). The questions asked in those depositions indicate that the judge's decision, which does not survive in the record, apparently hinged on *Creek* inheritance law. Creek inheritance custom was historically matrilineal, but at least one witness claimed that an 1819 Creek law instituted patrilineal inheritance. Since Black Factor died in 1811 or 1812, according to that same witness, the new patrilineal inheritance law would not have been in effect; therefore Nocosilly was the rightful heir, and Margaret Cook the legal owner of the slaves in question. This case only merited all this attention because of the interest that a white woman and man had in it, but it challenges the idea of common law's hegemony. Furthermore, this case also demonstrates that Native American inheritance customs were changing in antebellum Florida, as they came in contact with European and U.S. legal practices, a pattern that is consistent with the literature on Native American societies in the early-nineteenth-century American south. Rather than consistently subjecting Native American property to common law rules, U.S. judges sometimes relied upon Native American inheritance customs to determine the ownership of property. At the same time, patrilineal (common law) patterns were becoming more dominant within Native societies.[54]

These cases illustrate that U.S. courts were actively, if inconsistently, drawing a color line in the 1830s and 1840s, and that race mattered in court, as well as gender, and marital status. Although Anna Kingsley found protection for her property in U.S. courts, the territorial period witnessed Florida's transition from a "Spanish society with slaves to an American slave society," and by the 1850s free blacks lost many of their rights, property, and social status. Furthermore, local legal, tax, and social practices increasingly abrogated the rights of Native and African Americans in Florida in ways that favored whites, including women. [55]

In contrast to the intermittently declining status of nonwhite women's rights, U. S. courts upheld *white* women's property rights with great consistency in antebellum Florida. What might seem haphazard legal choices appear more logical when one considers the ways that letting white women hold property ultimately promoted the expansion of American settlement and slavery, interests that perhaps proved more important than retaining common law legal patriarchy (which was only slightly limited by these measures anyway). White female property-holders—many of them also slave owners—not only consistently exercised their rights in court but also used their property to help settle Florida permanently for the U.S. as a slave state.

Married Women's Property Law in the Borderlands

Married women's property rights originated in Spanish colonial law in Florida, remained there after U.S. rule because of treaty law, and did not get taken away by U.S. courts or legislators because white wives and their property facilitated colonization. Granting white wives separate property rights occurred over a twenty-five-year period that began with a treaty clause in which women were not even mentioned. In spite of legal decisions that explicitly denied treaty rights to nonwhites, the rights of white married women were upheld by the treaty, and made explicitly legal in the 1824 and 1845 laws. The 1824 law upheld an old rule rather than making a new one. The 1845 law marked the most active change in married women's property rights, but even it was mostly limited to the same rights that postcolonial wives with separate estates had enjoyed under the common law. This shift, then, was not a radical set of changes implemented as part of settlement policy. Rather, lawmakers mostly chose not to take away property rights from married white women. Since these laws did not effectively challenge the southern social system of patriarchal slavery, and because white women's property and labor were vital to settlement, they did not take away rights that they might otherwise have denied to white wives. Since white women were important partners in the colonization of Florida, they

got to keep civil law property rights even as coverture remained the norm outside of border states like Florida.

Seeking to explain why U.S. legislators adopted civil law's marital property regime, historians of other legal borderlands where civil law met common law also cite the expansionist benefits of granting white women these rights. In Louisiana, Texas, and California, married women kept their civil law rights to separate property, and that often benefited the Anglo wives who arrived to settle in these areas, usually to the detriment of nonwhites. It was not the need to support settlement, but the demands of those who had already settled, that caused the retention of the civil law in Louisiana.[56] Historian Mark Carroll argues that legislators in Texas employed civil law marital property rules in order to support Anglo-Texan women and their families and to dispossess Native Americans and Mexicans of their lands in Texas.[57] In California, pre-existing civil law, the recent married women's property law reform in New York, and an imbalanced sex ratio together formed the impetus for granting women separate property rights when married. Delegates believed that the measure would encourage "women of fortune" to come to California. Delegates from majority *Californio* districts were strong supporters of a married women's property provision, and argued for it as necessary to preserve rights already enjoyed by their constituents.[58]

Expansion brought states like Florida, Texas, Louisiana, and California into the United States where their colonial history of civil law marital property rules challenged the hegemony of common law coverture. While English common law was the most prevalent legal structure in the antebellum U.S., its privileged position was not one of total domination. This analysis indicates that the civil law of borderland territories changed the legal rights and perspectives of Americans in some southern states in the first half of the nineteenth century, in spite of their official adoption of common law. This history highlights how expansion changed the nation "at home" even as it remade conquered territories into new American states. Thus, the postcolonial insight that colonial encounters usually transform the colonizers as well as the colonized is also true in the legal history of North American expansion.

Considering the influence of expansion on married women's property rights prior to 1848 requires a shift in the history of married women's property law in the U.S. Married women's property law developed differently in the borderlands than it did in the Northeast. Rather than measuring their significance against later reforms made partially on a platform for women's rights, their importance lies in their support of the expansion of slavery and national territory. While borderlands marital property reforms did not emancipate women as a class, they did allow some women the right to protect their

property, which they used to their advantage. In Florida those advantages were race-based and nation-serving, extended to white wives who used their property to expand national borders and slavery in Florida.

NOTES

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[1]"An Act to Secure Certain Rights to Women," Laws of the Territory of Florida, 1845, 24–25; Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, NY: Cornell University Press, 1982).

[2]Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988); Stephanie McCurry, *Masters of Small Worlds: Yeomen Households, Gender Relations & the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University. Press, 1995).

[3]Jane Landers, *Black Society in Spanish Florida* (Chicago: University of Illinois, 1999), 82; Edward Baptist, *Creating an Old South: Middle Florida's Plantation Frontier before the Civil War*, (Chapel Hill: University of North Carolina Press, 2002), 13–14.

[4]"Armed Occupation of Florida," *Appendix to the Congressional Globe*, 26th Congress, 1st Session, January 7, 1840, 73.

[5]Laurel A. Clark, "Taming the Territory: Women and Gender on the Florida Frontier," (PhD diss., George Washington University, 2008).

[6]Amy Kaplan, "Manifest Domesticity," *American Literature* 70, no. 3 (1998): 581-606.

[7]Christopher Tomlins, "The Many Legalities of Colonization: A Manifesto of Destiny for Early American Legal History," in Christopher L. Tomlins and Bruce H. Mann, Eds., *The Many Legalities of Early America* (Chapel Hill: University of North Carolina Press, 2001), 3.

[8]George Dargo, *Jefferson's Louisiana: Politics and the Clash of Legal Traditions* (Cambridge, MA: Harvard University Press, 1975); Dolores Labbé, "Women in Nineteenth Century Louisiana," (PhD diss., University of Delaware, 1975); Kathleen Lazarou, *Concealed Under Petticoats: Married Women's Property and the Law of Texas 1840–1913* (New York: Garland Press, 1986); Deena González, *Refusing the Favor, The Spanish-Mexican Women of Santa Fe, 1820 –1880* (New York: Oxford University Press, 1999); Mark Carroll, *Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823-1860* (Austin: University of Texas Press, 2001); Jean Stuntz, *Hers, His and Theirs: Community Property Law in Spain and Early Texas* (Lubbock: Texas

Tech University Press, 2005); María Montoya, *Translating Property: The Maxwell Land Grant and the Conflict over Land in the American West, 1840–1900* (Berkeley: University of California Press, 2002); Michael B. Dougan, "The Arkansas Married Woman's Property Law," *The Arkansas Historical Quarterly*, 46 (Spring, 1987): 3–26.

[9]When noted at all, these earlier acts are dismissed as accidents of expansion. Richard Chused "Married Women's Property Law, 1800–1850," *Georgetown Law Journal*, 71 (June 1983): 1359–1425; Sara L. Zeigler, "Uniformity and Conformity: Regionalism and the Adjudication of the Married Women's Property Acts," *Polity*, 28, no. 4 (Summer 1996): 467–495, see especially footnote 22, 473; Carole Shammas, "Re-Assessing the Married Women's Property Acts," *Journal of Women's History*, 6, no. 1 (Spring 1994): 9–30. An exception is Patricia Seed, "American Law, Hispanic Traces: Some Contemporary Entanglements of Community Property," *William & Mary Quarterly*,52, no. 1 (January 1995): 157–162.

[10]Carole Shammas, "Anglo-American Household Governance in Comparative Perspective," *William & Mary Quarterly* 52, no. 1 (1995): 138; Charles Donahue, Jr., "What Causes Fundamental Legal Ideas? Marital Property in England and France in the Thirteenth Century," *Michigan Law Review* 78, no. 1, (1979): 80–81.

[11]"Treaty of Amity, Settlement, and Limits between the United States of America and His Catholic Majesty, 1819," in Francis Newton Thorpe, *The Federal and State Constitutions* (1909), http://avalon.law.yale.edu/19th_century/sp1819.asp.

[12]"An Act Providing for the Adoption of the Common Law," *Acts of the Legislative Council of the Territory of Florida, 1822*, http://palmm.fcla.edu/.

[13]"An Act to Secure the Rights to Property of Husband and Wife," *1824 Laws of Florida Territory,* http://palmm.fcla.edu/ . Texas was not part of the U.S. until 1846. Louisiana adopted civil law in 1808, but did not pass an act specifically about married women's property, Dargo, *Jefferson's Louisiana,* 156–160.

[14]Marylynn Salmon, *Women and the Law of Property in Early America* (Chapel Hill: University of North Carolina Press, 1986), 81–119.

[15]Susan Socolow, *The Women of Colonial Latin America*, (New York: Cambridge University Press, 2000), 9–12; Deborah A. Rosen, "Women and Property across Colonial America: A Comparison of Legal Systems in New Mexico and New York," *William & Mary Quarterly*, 60, no.2 (April 2003): 355–382.

[16]*Adeline E. Townsend v. Daniel Griswold et al* (1838) Saint Augustine Historical Society (Hereafter SAHS), 169–38.

[17]Kirsten Wood, *Masterful Women: Slaveholding Widows from the American Revolution through the Civil War* (Chapel Hill: University of North Carolina Press, 2004), 16–17. Shammas, "Anglo-American Household Governance," 136–137.

[18]*Victoria LeSassier v. Pedro de Alba* (1831) Records of the Probate Court, Escambia County Clerk of Court Archives (Hereafter ECCA), in Loren Schweninger, ed., *Race, Slavery, and Free Blacks: Series II, Petitions to Southern County Courts, 1775–1867* (Bethesda, MD: LexisNexis, 2003), reel 5; *Nancy Johnson v. William Johnson* (1822) ECCA, 52-CA-01; *J. G. Gagnet v. L. Gagnet* (1829) ECCA, 385-CA-01.

[19]See also *T. Pla v. C. Evans and P. Palmes, Executors of L. Pla* (1843) ECCA, 809-CA-01.

[20]*John Brosnaham v. Heirs of D. and Catherine Duval* (1833) ECCA, 469-CA-01; *In re: Margarita de la Rua, née Bonifay* (1833) ECCA, 2730-CA-01.

[21]The Louisiana Purchase Treaty protected the property rights of inhabitants under the U.S. Constitution, not as under the laws of Spain. "The Louisiana Purchase, Treaty between the United States of America and The French Republic," http://www.archives.gov/exhibits/american_originals/louistxt.html. Texas was annexed by a joint resolution of Congress 1 March 1845, not by treaty. Richard Peters, ed., *Public Statutes at Large of the U.S.A.*, Vol. V (Boston: Little and Brown, 1850), 797–8. Lands annexed at the end of the U.S.-Mexico War fell under the Treaty of Guadalupe Hidalgo, which did not include explicit provisions protecting the property and citizenship rights of Mexican residents, Montoya, *Translating Property*, 168–170.

[22]If upheld, those three land grants would have put almost all of the unoccupied land in Florida into private hands. Philip C. Brooks, *Diplomacy in the Borderlands: the Adams-Onís Treaty of 1819* (Berkeley: University of California Press, 1939), 62, 65, 135, 147–63.

[23]Susan Parker quoted in Staff, "Women Big Property Owners here in 18th century," *St. Augustine Record*, 22 February 1993.

[24]*LeSassier v. Alba* (1831).

[25]*Gagnet v. Gagnet* (1829).

[26]William Wirt to Laura Randall, December 8, 1827, Randall-Wirt Collection, Maryland Historical Society, Baltimore (Hereafter MHS), Mss 1912, folder 4.

[27]See "Appendix B" in Julia Smith, *Slavery and Plantation Growth in Antebellum Florida, 1821–1860* (Gainesville: University of Florida Press, 1973), 213–222.

[28]*Territory of Florida v. Eliza Hutchinson* (1824) SAHS, 169–70

[29]*Pemberton v. McVoy* (1828) ECCA, 1828–366.

[30]Property-holding patterns in Florida were typical. Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784–1860* (New York: Norton, 1986); Salmon, *Women and the Law of Property in Early America*.

[31]I use "cracker" here descriptively, not pejoratively. A "cracker" was generally a white, backcountry settler in the South. Americans in territorial Florida used it to refer to "cowhunters" (cowboys) and to independent pioneer settlers. Dana Ste. Claire, *Cracker: the Cracker Culture in Florida History* (Gainesville, FL: University Press of Florida, 2006).

[32]On women's work in antebellum Florida see Anya Jabour, "'The Privations & Hardships of a New Country:' Southern Women and Southern Hospitality on the Florida Frontier," *Florida Historical Quarterly*, 75, no. 3 (Winter 1997): 259–275; Tracy Revels, *Grander in Her Daughters: Florida's Women During the Civil War* (Columbia: University of South Carolina Press, 2004), 2–7; Baptist, *Creating an Old South*, 47–49.

On Southern women's work see Catherine Clinton, *The Plantation Mistress: Woman's World in the Old South* (New York: Pantheon Press, 1982); Fox-Genovese, *Within the Plantation Household*; McCurry, *Masters of Small Worlds*; Marli Weiner, *Mistresses and Slaves: Plantation Women in South Carolina, 1830–80* (Urbana: University of Illinois Press, 1998).

[33]*Johnson v. Johnson* (1822); *Caroline Dunham v. David Dunham, et al, Executors of Mary Dunham, deceased* (1834) SAHS, 106–57; Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: University of North Carolina Press, 1992), 59–87.

[34]The law protected a wife's property from her husband's creditors, and required mutual consent for any property decisions, but a wife could not sue her husband, "An Act to Secure Certain Rights to Women."

[35]Schedule of Nancy Jackson's separate property, December 16, 1846, Hillsborough County Court Archives (Hereafter HCCA), Deed Book A, 35. In the spring of 1848, Robert Jackson appeared in Hillsborough County court for Assault and Battery, "Sixth Judicial Circuit/Hillsborough County Court Dockets," Edgecombe Courthouse, Tampa.

[36]HCCA, Deed Book A, 103–104, 171–172, 234.

[37]On Mississippi and Arkansas laws see Dougan, "The Arkansas Married Woman's Property Law," 3–26.

[38]Wood, *Masterful Women*, 1–14, 35–60; Jane Turner Censer, *North Carolina Planters and Their Children, 1800–1860* (Baton Rouge: Louisiana State University Press, 1990), 123–126.

[39]Baptist, *Creating an Old South*, 43–44, 94–96.

[40]The upper South included Virginia, Kentucky, Tennessee, and North Carolina. Fox-Genovese, *Within the Plantation Household*, 30; McCurry, *Masters of Small Worlds*, 79-80; Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University. Press, 1999): 92–100.

[41]Joan Cashin, *A Family Venture: Men and Women on the Southern Frontier* (New York: Oxford University Press, 1991); Daybook of Thomas Randall, Randall-Wirt Papers, MHS, Mss 1912; *Elizabeth Bunch vs. Cicely Green Munnsings* (1835) SAHS, 352–63; Larry Rivers, *Slavery in Florida: Territorial Days to Emancipation* (Gainesville: University Press of Florida, 2000), 44, 80–82, 254.

[42]I surveyed the indices of County and Circuit court cases at the ECCA for all cases between 1821–1845, and read most of the cases in which a woman was involved. I surveyed the electronic database of St. John's County and Circuit Court cases at the SAHS for all cases between 1821 and 1845, and read a random sample of cases (78 of 215) that involved a woman's property.

[43]"Petition of Sarah Stone and John Robinson," in Loren Schweninger, ed., *Race, Slavery, and Free Blacks: Series I, Petitions to Southern Legislatures* (Bethesda, MD: University Publications of America, 1998), reel 23; "Petition of Mary Helen Alston,"

in Schweninger, ed., *Race, Slavery, and Free Blacks: Series II,* reel 6; *In re: Margarita de la Rua, née Bonifay* (1833); *Brosnaham v. Duval Heirs* (1833).

[44]*Andrew and Julia Burgevin v. Ambrose and Mary Cooper* (1834) SAHS, 92–46; *Francisco Moreno v. Maria Machado Caro* (1841) ECCA, 701-CA-01; *Davis v. Parsons* (1842) ECCA, 1842–757. See also *LeSassier v. Alba* (1831); William Rogers, "'As to the People': Thomas and Laura Randall's Observations on Life and Labor in Early Middle Florida," *Florida Historical Quarterly*, 75, no. 4 (Spring 1997): 441–446; *Eliza Bagley for minors v. Hart et al* (1831) SAHS, 95–25. On financial uses of slaves, see Rivers, *Slavery in Florida*, 44, 80–82, 254; Johnson, *Soul By Soul*, 78–115; James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: Norton, 1982), 170–179.

[45]Emphasis mine in first quote, all quoted in Rogers, 444–46. Thomas Randall to William Wirt, May 1, 1827, William Wirt Collection, MHS, Mss 1011, Reel 9; Daybook of Thomas Randall, pp. 1, 4, 12; William Wirt to Laura Wirt Randall, December 8, 1827.

[46]Frank Marotti, Jr. "Negotiating Freedom in St. Johns County, Florida, 1812-1862," (PhD diss., University of Hawaii, 2003), 8–29.

[47]David Weber, *The Spanish Frontier in North America* (New Haven, CT: Yale University. Press, 1992), 337. New Mexicans experienced annexation quite differently than Floridians, and most lost their land after 1848, see González, *Refusing the Favor*.

[48]"Treaty," in Thorpe. A $5 "head tax" was levied only on free black households. James Denham, *A Rogue's Paradise: Crime and Punishment in Antebellum Florida, 1821–1861* (Tuscaloosa: University of Alabama Press, 1997), 98; Russell Garvin, "The Free Negro in Florida before the Civil War," *Florida Historical Quarterly* 46 (July 1967): 15–17; Marotti, 98–132, 221–232, 26–28, 82–98. On taxation as an obligation of citizenship see Linda Kerber, *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship* (New York: Hill and Wang, 1998), 81–123.

[49]Since she never officially married Zephaniah Kingsley, Anna's case did not turn on her marital status, but on her citizenship rights. I include her here as an example of a free black person successfully using Article 6, not a wife claiming separate property. Daniel Schafer, *Anna Madgigine Jai Kingsley: African Princess, Florida Slave, Plantation Slaveowner* (Gainesville: University Press of Florida, 2003), 26, 70–76.

[50]Marotti, "Negotiating Freedom," 204–205.

[51]Marotti, "Negotiating Freedom," 121, 227–8.

[52]John Mahon, *History of the Second Seminole War, 1835–1842* (Gainesville: University Press of Florida, 1967), 39.

[53]*Buckra Woman v. Philip R. Yonge* (1824) SAHS, 174–59.

[54]*Margaret Cook v. William Everitt* (1826-1831) SAHS, 111–6, 7, 10, and 100–12. Black Factor (or "Philatouche") was of Creek and African descent. His name derived from his complexion and his role as a factor, or trading agent. In one deposition, the witness refers to the patrilineal inheritance rule as "M'Intosh's Law." Creek mes-

tizo leader William McIntosh supported the "plan of civilization" for the Creeks, which included promoting patrilineal descent, but that plan originated in the late eighteenth century, and there is no record that Creeks passed an 1819 law regarding inheritances. Prior to the nineteenth century, Creeks had been a matrilineal society, but patrilineal bequests also began to appear in the late eighteenth century. Perhaps patrilineal inheritance was called "McIntosh's law" in the 1810s because McIntosh was powerful in that period. Claudio Saunt, *A New Order of Things: Property, Power, and the Transformation of the Creek Indians, 1733-1816* (New York: Cambridge University Press, 1999); Andrew Frank, *Creeks & Southerners: Biculturalism on the Early American Frontier* (Lincoln: University of Nebraska Press, 2005), 101, 108; Robbie Ethridge, *Creek Country: The Creek Indians and Their World* (Chapel Hill: Univ. of North Carolina Press, 2003), 173–174. On similar continuities and changes among the Cherokee, Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835* (Lincoln: University of Nebraska Press, 1998); Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005).

[55]Marotti, "Negotiating Freedom," 99, 29.

[56]Louisiana's established white population continued to follow civil law rules as was their custom, as confirmed in legal statutes of 1808 and 1828, Dargo, *Jefferson's Louisiana*, 156–160.

[57]U.S. policies in Texas favored married couples by giving them more land, and by 1840 Texas wives could claim half of their homesteads. By 1848, Texas brought the "definition of separate property in line with the pre-independence Hispanic regime," Carroll, *Homesteads Ungovernable*, 105–106, 130.

[58]Leonard Richards, *The California Gold Rush and the Coming of the Civil War* (New York: Knopf, 2007), 76–78. *Report of the Debates in the Convention of California, 1849* (J. T. Towers, 1850), 258–9.