2001


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WOMEN AND THE LAW OF PROPERTY UNDER LOUISIANA CIVIL LAW,
1782-1835

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of History

by
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Sara Brooks Sundberg
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ABSTRACT

This dissertation explores the influence of Louisiana civil law on women’s property ownership between 1782 and 1835. Louisiana civil law offered women significant advantages over the predominant common law tradition found in most early American states. Louisiana civil law, unlike common law, allowed a married woman to retain her legal identity, her personal property and her rights to monetary rewards from her labors within her family. A woman in early Louisiana owned half the property accumulated during marriage and she inherited her half of the property at the dissolution of the marriage. She also owned and could administer separate property. Data drawn from notarial and probate records from three parishes representative of early Louisiana’s population indicate that Louisiana women accumulated economic resources and they exercised economic authority within their families and communities. Regional comparisons of wealth accumulation between Pennsylvania and Louisiana demonstrate that overall women fared better under civil law than women under common law. These findings call into question traditional interpretations of legal dispossession and enforced dependence for early American women. They also illuminate ethnic and regional dimensions to the relationship between the civil law and women’s property. The study demonstrates that Anglos in Louisiana were less likely to conform to legal provisions economically beneficial to women, than was the French-speaking population in Louisiana.
CHAPTER 1
INTRODUCTION

_The Robber Bridegroom_, Eudora Welty's engaging, modern fairytale places the popular Cinderella story in the colonial South. The story takes place somewhere along the Spanish-controlled Natchez Trace near the end of the eighteenth century. The handsome and fearless bandit, Jamie Lockhart, kidnaps the beautiful Rosamond from her father's frontier plantation, a plantation which is dominated by Rosamond's ugly and materialistic stepmother, Salome. Rosamond loses her virginity and becomes pregnant, but the patient and submissive Rosamond falls in love with Jamie anyway. In fact, she patiently waits for Jamie throughout months of swashbuckling adventures. Upon his return, he rewards her patience with a proposal of marriage. Rosamond explains what has happened to the couple when she is finally reunited with her father,

"Father! She said, "Look, this wonderful place is my home now, and I am happy again!" And before the boat could leave, she told him that Jamie Lockhart was now no longer a bandit but a gentleman of the world in New Orleans, . . . a rich merchant in fact. All his wild ways had been shed like a skin, . . . They were the parents of beautiful twins . . . and they lived in a beautiful house of marble and cypress wood on the shores of Lake Pontchartrain, with a hundred slaves . . . They had all they wanted in the world . . ."¹

In the character of Rosamond, Eudora Welty offers readers the romantic image of a southern Cinderella - a girl who lifts herself up from her humble beginnings through the force of her superior, feminine qualities of beauty, goodness, patience and

submissiveness. These qualities allow her to capture Prince Charming who, in turn, transforms her life and makes her materially comfortable and secure.

Folklorists and psychologists differ over whether fairytales, such as those of Cinderella and Rosamond, provide real men and women useful models for strong, forthright behavior, or whether fairytales create problems by transmitting unrealistic expectations from one generation to the next. Folklorist Kay Stone argues that this question is particularly acute for women, because they are less likely to leave such stories behind in childhood. Instead, women frequently struggle on into adulthood with their inability to fulfill female roles as they are depicted in fairy tales. Despite this tendency, Stone argues that women have the ability to “reinterpret” or “rework” these stories. “It is the possibility of such reinterpretation,” she writes, “that gives hope that women can eventually free themselves from the bonds of fairy tale image.”

Stone’s observations are pertinent to a discussion of white women in early Louisiana because Welty’s romantic image in The Robber Bridegroom is strikingly similar to the well-documented ideal image of the “southern lady” in the antebellum South. Anne Firor Scott’s path-breaking study finds that the ideal southern lady is

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domestic, pious, and submissive, yet strong and enduring.³ Even more importantly, Scott argues that the submissive and restrained qualities of the southern lady reflect core assumptions about patriarchal, slave-owning culture where “any tendency on the part of any of the members of the system to assert themselves against the master threatened the whole, and therefore slavery itself.” ⁴ Middle and upper class white women, and all women who aspired to rise socially and economically, confronted this ideal in some form. Like modern-day readers of The Robber Bridegroom or the Cinderella story, white women in early Louisiana needed to reinterpret and rework the ideal to accommodate reality, and to actualize themselves as human beings. They rarely threw out the story entirely.⁵


⁴Scott, 17.

⁵Folklorist Corinne Saucier recorded a “Cinderella” folktale remembered by elderly French-speaking women from central Louisiana. Her informants first learned the story from their nineteenth-century forebearers. See Corinne Saucier, Folk Tales from French Louisiana (Baton Rouge: Louisiana State University Press, 1962), 22-23. For a discussion of images as ideal social types which people try to emulate in their every-day lives see John Shelton Reed, Southern Folk, Plain and Fancy: Native White Social Types (Athens: University of Georgia Press, 1986), 6.
The Civil Legal System

The civil legal system of early Louisiana provided women an uncommon opportunity to rework their stories. Women in Louisiana, unlike most women in early America, possessed legal rights to family property. Their attitudes and behavior toward exercising those rights are the crux of this study.

Legal history is a vital part of early American women’s history. Historians have long recognized the importance of the law in providing information concerning women’s status and roles in early America. Legal systems codify culturally accepted ideas about women’s place in society, appropriate relationships between men and women, and the limits of women’s authority within the public sphere. In sum, as historian Linda Kerber observes, “law shapes the terrain on which gender systems are

established and contested."7 Despite the usefulness of the law as an historical resource, legal historians caution that the task of analyzing law and legal records for an understanding of American women's experience is a complex one, for at least two basic reasons. First, the law offers a prescription for women's role and status. It did not necessarily describe men's and women's practical, every-day experience with the law or how the law was interpreted and implemented by them. Second, law was not uniform throughout the various colonies and states in early America. Women's roles and statuses within their communities varied with different legal systems and between legal traditions. This study responds to these concerns by examining a part of the diverse puzzle that comprises American law, that of the civil law tradition in early Louisiana, and by unraveling the day-to-day legal realities of early Louisiana women who lived and worked within that tradition.

The basic taxonomy of law illustrates why it is so diverse and, consequently, why it is so difficult to generalize about American law and its influence upon women's role and status. Legal specialist John Merryman distinguishes between a legal system which he classifies as "an operating set of legal institutions, procedures, and rules" and a legal tradition which he defines as "a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society . . . ." A legal tradition, according to Merryman, "relates the legal system to the culture of which it is

a partial expression." Using these classifications the United States developed at least fifty different legal systems which, in turn, drew upon two distinctive legal traditions transported to colonial America by immigrants from western Europe: the common law, brought by the English; and the civil law, brought by the French, Spanish, and the Dutch.9

Marylynn Salmon’s 1986 study, Women and the Law of Property in Early America was among the first to call attention to the remarkable variation in American legal systems. She focused on diversity within the most common legal tradition in early America, the common law. Her work underscored the variation in legal rules and procedures pertaining to American women’s property rights. Among the seven common law jurisdictions she examined no two were exactly alike in their treatment of women’s property rights. Early settlers in the Anglo-American colonies did not transplant the English common law system in total to the colonies, nor could they. Anglo-American law reflected the exigencies of the New World. Salmon argues that even in a region like

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the American South where immigrants were the most conscientious in their efforts to recreate English customs, the demands of a developing commercial economy based on slave labor required significant regional innovation in property law. These legal innovations, at times, undermined women’s property ownership, as was the case in the following example of Virginia.10

The discrepancy between Maryland and Virginia in legal rules pertaining to dower is a striking example. Dower, in English common law, is the share of real property, or immoveable estate, a wife inherited from her husband after his death. Designed to provide women with support during widowhood, dower usually amounted to one-third of the income from the decedent’s real property. Virginia and Maryland both followed English common law in that they granted dower to widows. Where the two differed was in the legal definition they gave to slaves as property and in the way they defined the property that comprised dower. Virginia law defined slaves as realty, while Maryland defined them as moveable property or personalty. This meant that Virginia widows inherited slaves only for life, since widows there received as dower only a life interest in a third of their husband’s realty. Maryland widows, on the other hand, received a third of all realty and a third of all personalty as dower. This resulted in Maryland widows enjoying a considerable advantage over their Virginia counterparts because Maryland laws allowed women absolute ownership rights over personalty.

including slaves, not just the life interest guaranteed in Virginia. Moreover, because
they inherited both a third of all realty and a third of all personalty Maryland women
stood to inherit more working property over all. Widows in Maryland, Salmon argues,
benefitted because they inherited both the land and laborers to work it. The property
laws in Maryland and Virginia demonstrate the impact on women’s wealth holding of
distinct legal systems even among the common law colonies and states and underscores
the significance and necessity of understanding the formal rule of law within various
regional legal systems.¹¹

Much of the previous historical literature pertaining to women and the law of
property in early America, like Salmon’s, concerns legal systems within the
predominant common law tradition in the United States.¹² The present study is intended

¹¹Salmon, 4-5.

¹²Some of the important legal and historical studies concerning women, property
and common law in early America include Cara Anzilotti, “Autonomy and the Female
Planter in Colonial South Carolina,” *Journal of Southern History* 63, no.2 (1997): 239-
268; Norma Basch, *In the Eyes of the Law: Women, Marriage and Property in
Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982); Victoria
Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South*
(Chapel Hill: University of North Carolina Press, 1992), 59-87; Richard Chused,
(1983): 1359-1425; John E. Crowley, “Family Relations and Inheritance in Early South
Carolina,” *Histoire Sociale/Social History* 17 (May 1984): 35-57; Toby Ditz,
“Ownership and Obligation: Inheritance and Patriarchal Household in Connecticut,
1750-1820,” *William and Mary Quarterly* 3d. ser. 47, no. 2 (1990): 235-265; Gwen W.
Gampel, “Married Women’s Legal Status in Eighteenth-Century Virginia and New
Wife Revisited: Women, Equity Law, and the Chancery Court in Seventeenth Century
Maryland,” in *Women and the Structure of Society, Selected research from the Fifth
Berkshire Conference on the History of Women,* eds. Barbara J. Harris and JoAnn
and Inheritance in America: Virginia and New York as Case Study, 1700-1860,” in

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to advance our understanding of early American women’s legal and social history by examining women and the law of property in the civil law system of Louisiana, rather than an Anglo-American common law system. Louisiana developed a legal system based upon the civil law traditions of France and Spain which colonized the area for nearly three-quarters of a century. The influential Franco-Spanish population that remained in Louisiana after it came into the hands of the United States resisted the replacement of civil law with Anglo-American common law. Although the influence of Anglo-American common law upon Louisiana’s legal system was, and is, strong, the sections of Louisiana law dealing with marriage and property were among the most

resistant to the influence of Anglo-American common law. Today, Louisiana remains the only state in the United States with a continuous history of civil law.\textsuperscript{13}

**Women in the Law**

To demonstrate the experience of women in Louisiana with the civil law tradition this study compares the lives and legal activities of women in three parishes. Their experience is largely reconstructed from their words and activities as they were recorded in probate and notarial records, and census and court records. Inventories, successions, partition records, wills, marriage contracts, conveyances and probate court proceedings comprise the bulk of the records. Where possible I have supplemented this information with personal papers, particularly letters and diaries and daybooks, genealogies and parish histories. The more than three hundred women who are represented in this study were single, married and widowed. Some were literate, most were not. All of them owned property, although some only a few dollars of probated wealth others vast wealth, indeed a few were among the wealthiest individuals in Louisiana. The women in the study were French, Spanish and Anglo-American. Because I am concerned with laws pertaining to property ownership as they pertain to women I did not examine the experience of African women who were typically

considered to be property themselves. Black women who were slaves are discussed only minimally in relation to property transactions. Although a small minority in these records are free blacks, most of the women were white.14

For the purposes of this study I selected three parishes that represent a mix of rural and town influences, ethnic make-up and degrees of wealth (Figure 1). I excluded the city of New Orleans because it is considered unusual within Louisiana, as well as within the South as whole. Although the data is drawn from one, relatively small region of south Louisiana, two of the three parishes, East Baton Rouge and West Feliciana, were the second and third largest in the state at the time in terms of population. The parish of Feliciana split into East and West Feliciana parishes in 1824 so up until that time the public records of the two parishes are combined. Before Louisiana became a state the records of the parishes fall into the Spanish West Florida

Figure 1. Locations of study parishes in Southeastern Louisiana. Enlargement locates the plantations of Catherine Turnbull and Rachel O’Connor in West Feliciana Parish and Constance Duplantier in East Baton Rouge Parish.
records, 1782-1810. East Baton Rouge parish included the town of Baton Rouge and was the home to a mixture of French, Spanish and Anglo inhabitants. Anglos predominated in (West) Feliciana parish whose wealthiest parishioners owned some of the grandest plantations in the state. West Feliciana ranked second only to Orleans parish in wealth. The third parish, West Baton Rouge, was comprised of small to middling farmers and planters most of whom were predominantly of French ancestry. Taking the demographic and cultural aspects of the parishes into account, these southeastern parishes represent a mix of characteristics present in Louisiana's overall population. They also provide a useful sample of women's experience across class and ethnic lines.15

I examine notarial and probate records from these parishes between 1782, when the Spanish still controlled part of the region to 1835. The choice of these dates is based on several factors. First, it allows me to compare women's experiences with late colonial civil law and subsequent Louisiana civil law. Second, it allows me to make these comparisons without reaching far back into the area's frontier period. Historians generally agree that women's frontier experiences differed substantially from those of women in older, more developed areas. Carving a home out of the frontier was a "family venture" that required cooperation and hard work. In some situations it also demanded that women assume unaccustomed tasks and authority. Historians debate whether women's partnership roles on the frontier made family life more equalitarian and less patriarchal than in more mature, civilized areas, even if only temporarily. To ensure exclusion of the frontier factor as a variable in women's implementation of the authority afforded them under civil law, I exclude the French colonial period which ended in 1763, before most of south Louisiana passed through the frontier stage.16


16See Joan E. Cashin, A Family Venture (Baltimore: John Hopkins Press, 1991). In 1890 the United States Census Bureau defined the frontier as less than 2 persons per square mile. I estimate based upon Spanish census figures for 1793 for West Feliciana and based upon U.S. Census Bureau figures for 1820 for West Feliciana, West Baton Rouge and West Baton Rouge parishes that these parishes passed through the frontier stage as early as 1800. See Antonio Rodriguez, La Poblacion de Luisiana española, 1763-1803 (Madrid: Ministerio de Asuntos Exteriores, Dirección General de Relaciones Culturales, 1979), 465; and United States Census Bureau, "1820 County Level Census Data," 1820 Census Data, 15 September 2000, <http://fischer.lib.Virginia.EDU/egi-local>; The historical debate over the influence of the frontier on early American women's experience is rooted in the concept of the
A third factor influencing the time frame of the study concerns the ending date. I chose 1835 because any significant difference in women’s authority over capital in common law states, compared to Louisiana, would be most apparent during that time.

Marital property acts, gradually enacted in common law states beginning in the late 1830's, allowed women varying degrees of ownership and management rights over their separate property. These laws would tend to lessen the advantages of the civil law guarantees of legal identity and property for women.17

I begin by establishing what the general rules of the laws of property are under Spanish civil law and early Louisiana codal law. Specifically, I describe the law as it

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Although historians now suspect the positive benefits of married women’s property acts did not take effect until later than 1835, the debate over precisely when these acts produced change makes the initial period of their enactment a useful cut-off date for this study. See Shammas, “Re-Assessing the Married Women’s Property Acts.”
pertains to community property, women's separate property, and provisions for widows and divorce and separation. I then reconstruct women's wealth-holding by parish using probate records, juxtaposing it against previously published information from a similar common law jurisdiction, Bucks County, Pennsylvania. I then reconstruct the details of the lives of a few women from each parish who represent patterns in women's wealth-holding and legal history. The conclusion offers a summary view of the significance of Louisiana's civil law system for women.

A study of women and the law of property that is rooted in a civil law jurisdiction has particular significance for the history of women in early America because the civil law tradition presented married women with opportunities for legal authority, unavailable to most women in early America. The civil law tradition guaranteed that women kept their legal identities after marriage, a privilege denied to women under common law. That meant women retained ownership of property even while married. In comparison, the common law concept of coverture virtually erased women's legal identity, declaring them *femmes couverts*, or under the legal cover of their husbands. Thus, women under Anglo-American common law lost legal ownership of property they brought to marriage as well as ownership of income earned by the couple during marriage. The dispossession of women's property on account of coverture created profound disabilities for married women. Women became wholly dependent on their husband's economic support unless the couple negotiated special legal devices prior to marriage. The use of devices such as marriage settlements and trusts that guaranteed women ownership and management of their property gradually
increased into the nineteenth century in common law jurisdictions. Nevertheless, the proportion of women who benefitted from these provisions cannot compare to the automatic rights to ownership of property enjoyed by women under civil law in Louisiana.18

The loss of citizenship and liberty that flowed from coverture comprised an equally devastating aspect of dependence for women. Americans had long connected civil rights with property ownership. Historian Elaine Crane explains that Americans believed that propertyless married women were incapable of making independent judgements. Married women, according to this view, were susceptible to their husband’s ideas and opinions because they did not possess the independence that came from property ownership. Of course, these beliefs supplied only part of the reasoning for denying women civil privileges such as the right to vote. After all, women in Louisiana, could not vote and yet they retained their legal identities and owned property during marriage. Crane explains that many Americans extended these beliefs to all women, even those with property. Assessments of female incapacity stemmed not only from women’s lack of property but also were rooted in traditional assumptions about women’s natural inferiority and subordination to men. These were assumptions the common law and civil law shared.19

18Salmon, Women and the Law of Property in Early America, 14-40.

The second advantage civil law offered married women stems from the first. Women, under civil law received ownership of greater shares of family property at the end of a marriage than women in common law systems. Civil law guaranteed married women one-half of marriage property as opposed to the one-third guaranteed under Anglo-American common law. This difference should not be underestimated. In their study, *Inheritance in America from Colonial Times to the Present*, authors Carole Shammas, Marylynn Salmon and Michel Dahlin note that, even today, “the bulk of household wealth in America, perhaps as much as 80 percent of it, is derived from inheritance, not labor force participation.” That is even more true in early America before industrialization transformed wage earning and before new forms of corporate capitalism replaced family capitalism.

A third advantage of the civil law tradition concerns women’s rights to own and manage their separate property and to write wills. Married women in the civil law jurisdiction of Louisiana always held these rights. Married women in common law jurisdictions did not obtain comparable rights to their separate property until individual states began to pass what came to be known as married women’s property acts beginning in 1839. These acts are commonly cited as watersheds in American


women's history because they are strong evidence for the improved status and increased economic freedom of women in the nineteenth century. Women in Louisiana had long enjoyed the status afforded by such rights to property. In fact, they had enjoyed these rights from the beginning of settlement under French and Spanish colonial rule, and they were carried over under American territorial and state jurisdictions.21

Inheritance provisions under civil law could also potentially work to women's advantage because of short life expectancies in early Louisiana. The climate of Louisiana is generally classified as humid subtropical making it an excellent environment for mosquito-born diseases such as yellow fever and malaria. During the period between 1817 and 1860, for example, Louisiana suffered twenty-three epidemics of yellow fever. Typhoid fever, cholera and dysentery also thrived in the Louisiana environment.22 Rachel O'Connor, a widowed, West Feliciana parish planter, noted her dread of the sickness in her neighborhood in a letter in 1834. Rachel wrote that, "people were constantly passing to and from court and everyone had some bad news of cholera being every place they heard from, which nearly turned my brains at the time."23 Life expectancies, at birth, for both men and women in Louisiana were shorter than for regions further to the north. Estimates for male and female life expectancy at birth in

21Shammas et al., Inheritance in America, 83-101.


Louisiana in 1830 were eighteen years and twenty years of age respectively. This compares to life expectancies of thirty-seven years for males and forty years of age for females in middle regions of the country during the same time period. Estimates of mortality rates for men were slightly higher than for women. Thus, both men and women stood approximately a fifty percent chance of losing their spouses to death at least once during their life cycle.24

As demonstrated by French-speaking Ursule Trahan of West Baton Rouge parish, the gradual improvement of women's economic status was often the result of widowhood and remarriage. Ursule Trahan petitioned the probate court after each of her first two husband's deaths to adjudicate all of their estate to her under her management on the grounds that it did not benefit her three children's economic interest to sell or divide it under forced heirship laws, or place it under someone else's management. The Court, after consulting with family, agreed that she should keep the estates in tack. Between 1829 when her first husband died and 1834 when she herself died, Ursule managed to increase the value of her estate by half. Each time she remarried Ursule protected the inheritance she received from her parents, and her marital portions from the previous marriage as separate property, preserved for eventual division among her children. By the time Ursule died she and her third husband owned

24Mortality rates and life expectancy are difficult to calculate because of the paucity of reliable data. My estimates are based upon calculations using the 1820 and 1830 Federal Censuses for Louisiana and model life tables developed for early America. See Model West Table for men and women in Ansley J. Coale and Paul Demeny, Regional Model Life Tables and Stable Populations (New York: Academic Press, 1955), 3-36; 37, 42, 46, 55, 63, 105 & 113.
a modest estate made up of two small tracts of land, six slaves, some livestock, farming equipment and a few household furnishings.²⁵

Ursule Trahan's experience, and the experiences of many other women like her, contradicts the interpretations of historians who claim that women lacked the confidence, knowledge and abilities either to use their legal authority or to make use of their property.²⁶ It also refines historical assumptions about American widows that claim widows did not inherit enough property to exercise independence. Widows under the civil law tradition inherited the same percentage as men, whether that amount was enough for a widow to thrive on her own did not depend on her gender; it depended on her class. Men in Louisiana automatically managed their deceased wives' share of the community on behalf of their minor children. The law required that a widow, like Ursule, petition the probate court for the same privilege. The fact is Ursule did petition the Court and she did receive and manage the community intact. Widowhood, under civil law, was not necessarily, or even ordinarily, a period of contracting resources for women, as some historians claim.²⁷


The comparatively advantageous position of women under civil law complicates
the story of legal dispossession and enforced dependence most often told about early
American women by historians. My intention in this study is to expose structures of
authority available to early American women under civil law and to illuminate the ways
women used their authority to shape their lives and the lives of their families. Indeed,
the perception that nineteenth-century women benefitted economically from the civil
law tradition, and that they were better off in terms of personal freedom than women in
common law jurisdictions, is apparent in the comments of some nineteenth-century
observers. English traveler and writer, Harriet Martineau, expressed her approval of the
equal division of property under community provisions of Louisiana Civil Law, and her
disapproval of common law practices in her widely read, Society in America:

If this condition of the marriage law would strike any English
persons as a peculiarity it is well that they should know that it is the English
which is peculiar, and not that of Louisiana. The English alone vary from
the old Saxon law, that a wife shall possess half... I never met any lawyer,
or other citizen with whom I conversed on the subject, who was not ashamed
of the barbarism of the law under which a woman’s property goes into her
husband’s hands with herself.28

Martineau’s perception of civil law as more equitable than common law is sometimes
repeated even today.29

28Harriet Martineau, Society in America (London, 1837), III, 121-122.

29See also Susan Boyle, “Did She Generally Decide? Women in Ste. Genevieve,
1750-1805,” 76; Donna C. Schuele, “Community Property Law and the Politics of
Married Women’s rights in Nineteenth-Century California,” The Journal of the Ninth
Cotton Kingdom (New York: Random House, 1984) 276-277. My initial interest in this
research topic came from comments often made to me by acquaintances in Louisiana
that women under civil law enjoyed greater freedom than those under common law.
Louisiana women, themselves, rarely commented on the law in their letters and diaries except, perhaps, to acknowledge indirectly, as Louisiana planter Rachel O’Connor did in 1834, that “a widow mother cannot manage her affairs as a father can; they are afraid to speak for themselves.” Despite Rachel’s reluctance to engage in legal matters, she did so anyway. It is in the language of the legal documents produced on the behalf of women like Rachel that women’s understanding of, and claims for, their legal rights and property surfaces. Sarah Cruise Richardson lived in what is now East Baton Rouge parish when it was still part of Spanish West Florida. Her 1805 petition against her husband’s will not only claims that the will is “contrary to law” in the portion of the estate it designates as her inheritance, but also that the will is “unjust” after years of joint domestic labor with her former husband:

... it being a fact that all the property of the said succession is community, having been acquired by their joint labor and industry during the term of forty years, both the [deponent] and her first, husband, Henry Richardson being entirely poor when they contracted marriage ... the [deponent] believing that the said testament is unjust and contrary to law, and that the intent is to defraud her and deprive her of her legal portion of the Property which corresponds to her ....

Sarah Richardson’s protest expresses her sensibility to her own worth and her legal rights to property. Her words challenge traditional assumptions that women were satisfied to subordinate their personal interests to male decisions. It is important to understand that both the common law and civil law traditions articulated concepts of

30 Webb, 141.


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marital unity, female inferiority and subordination to men, concepts that justified women's dependence in early America. Where the Anglo-America common law and civil law traditions differed was in the provisions of civil law that allowed women to exercise a measure of authority.

**Economic Partnership**

At the core of this study is an understanding that women, like men, sought personal dignity and economic security for themselves, and for their families, and that the legal tradition they operated within mattered in how successful women, in particular, were in accomplishing these goals. This understanding finds support in the arguments of critical legal theorists who contend that law has the power to shape the culture of which it is part at the same time that culture shapes law. In other words the law is not "autonomous" within culture. It is a partial reflection of its parent culture.32

Nowhere in early America is this kind of legal balancing act more complex and more interesting than in the civil law jurisdiction of Louisiana. Understanding Louisiana's culture is critical to understanding how the civil law tradition was implemented by ordinary citizens. First, early Louisiana, a slave-holding state in the deep South, is part of a region with a reputation for being more patriarchal than the North. By patriarchal I mean the intricate network of ideas and legal restrictions that

subordinated women to men and gave men control over women and their property. In the North, following the American Revolution, slow but steady urbanization and industrialization occurred. This trend, according to many historians, resulted in a separation of income-earning work from the home and the creation of an ideology of separate spheres of labor for men and women. The home became women’s sphere, especially for middle-class women who could afford to stay home. The rhetoric of domesticity touted female virtues connected with nurturing and it charged women to employ those virtues to create and maintain homes that would function as a family refuge from the male world of work outside the home. The ideology of separate spheres made the home a place where northern women could potentially exercise a measure of authority. It also provided a connection between women struggling with common domestic concerns. Women’s organizations slowly developed out of these connections, creating a foundation for activism first on behalf of female and family concerns and later on behalf of feminist concerns. Working-class women joined middle-class women in loosening the bonds of patriarchal control as they engaged in wage-earning work both within the home and as they moved outside the home into factories. Working-class women’s wage-earning work gradually eroded the control of husbands and fathers. Taken together, these developments provide the explanatory foundation for a slow, but steady loosening of patriarchal control in the North in the years following the American Revolution.33

33 Classic studies which stimulated discussion of gender and the ideology of separate spheres in American history include Barbara Berg, The Remembered Gate: Origins of American Feminism: The Woman and the City, 1800-1860 (New York:
By contrast, patriarchy in the South, appeared unchanged according to historians. The plantation or farm household continued to be the income-producing unit in the South throughout the first half of the nineteenth century, blurring the distinct gender boundaries inherent in the ideology of separate spheres. Likewise, the hegemonic control of masters over slaves inhibited change in women's role and status. Masters' patriarchal authority over slaves defined the ideology of power in the South and influenced all other relationships, including those within the slave-owner's family. Although historians disagree over how much freedom women exercised under southern patriarchy, patriarchy still comprised the predominant cultural explanation for both the plantation system and the plantation home. Just as chattel slavery reinforced patriarchy in the home, challenges to male authority in the home threatened masters' control over

their slaves. Pro-slavery ideologues made bold claims likening the institution of marriage to that of slavery. One would expect that such cultural conditions created formidable obstacles to the exercise of any personal authority on the part of women in the South. By implication, women in Louisiana, a southern slave-holding state, would be extremely reluctant to control property even if the law gave them that authority.34

The new ideal of companionate marriage that developed during the early decades of the nineteenth century provided an alternative for spousal relationships that redefined both the doctrine of separate spheres and family patriarchy. Historian Anya Jabour demonstrates that religious and secular prescriptive literature during the years following the American Revolution posited that “men and women should cherish equality, not hierarchy, in their relationships, and they should strive for reciprocity and mutuality . . . .” The “symmetrical” expectations for men and women in a companionate marriage blurred the sharp distinctions between male and female endeavors that were inherent in 

the ideology of "separate spheres." Economic partnership between husband and wife
emerged as an important ingredient of an ideal, companionate marriage. This
prescription was as true for marriages in the South, as in the North.

Economic partnership was not a new ideal for women in Louisiana who had
enjoyed economic partnership according to the law since colonial times. The legal
codes of France and Spain and the Civil Codes of Louisiana made specific provisions
for the economic partnership of husbands and wives in the concept of community
property of marriage. Wives owned half of the "fruits" of the marriage and they
inherited their half when the marriage terminated. This meant the civil law recognized

the economic value of women's domestic labor during and after marriage and
guaranteed women the benefits from it. In contrast under common law, the financial
contributions of women merged with those of their husbands as they became *femme covert*. A woman's right to dower was all that remained of a wife's economic
contribution at the end of a marriage. Some historians claim that women's rights to
dower and to equity provisions that guaranteed their separate property were either not
upheld or they were gradually eroded in the years following the American Revolution.
In the common-law South, according to historian Peter W. Bardaglio real change in
women's property rights did not develop until after the Civil War.

The fact that Louisiana women demonstrated a measure of economic authority in
what is today seen as a very restrictive sphere for women in the South raises questions
about the limits of patriarchy. Even as they demonstrated economic authority most
women in American plantation societies, including those in Louisiana, placed their

36Louisiana State Law Institute, *Compiled Edition of the Civil Codes of
Louisiana*, vol. 3, part 2 (3 volumes; Baton Rouge: State of Louisiana, 1941); see also
Joseph McKnight, "Spanish Law for the Protection of Surviving spouses in North
Pugh, "The Spanish Community of Gains, 1803: *Sociedad de Gananciales,*" *Louisiana
of Compromise and Demoralization, Together with Criticism and Suggestions for

37Bardaglio, *Reconstructing the Household*, 129-130. Carole Shammas also
argues that women did not benefit from changes in marital property law until the latter
decades of the nineteenth century. See Carole Shammas, "Re-Assessing the Married
Women's Property Acts," *Journal of Women's History* 6, no. 1 (Spring 1994)9-30. For
a discussion of the influence of the Civil War on slave-holding women in the South see
Drew Gilpin Faust, *Mothers of Invention, Women of the Slaveholding South in the
homes and family responsibilities first and foremost. Those responsibilities often meant that women's legal actions supported the social and economic order of plantation societies. This has led historians to assume that women in plantation societies contented themselves with maintaining the patriarchal status quo, even within their families, and that they were unable to develop an individual self-image. Evidence from Louisiana suggests that this is an invalid generalization. While many early Louisiana women used the authority available to them under civil law to promote their families' interests, they also felt, like Sarah Richardson, entitled to recognition and fair recompense for their efforts. The core of women's lives in this period was home and family. It is not surprising they did not use the law to seek autonomy. That does not mean they did not cherish the status and authority the civil law afforded them as individuals.  

With all that has been written about women in the early South, many historians still write the history of the early South in largely male-oriented terms. The political economy of the South, including slavery and its attendant brand of patriarchy, is the defining element of the region's pre-Civil War history. Politics and economics are activities more commonly associated with men than women during this era. Even those historians who have expanded the meaning of what is political to include the southern household describe the household in primarily male terms. "To write this history of the

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38Fox-Genovese, *Within the Plantation Household*, 100-145 & 372-373.
household," historian Stephanie McCurry claims, "one must follow the master home."

Women's activities in the household emerge as interrelated, but ancillary to the real business of the South of securing independence through mastery of one's slaves, as well as one's family.

Ever since Anne Firor Scott's 1984 study, *The Southern Lady From Pedestal to Politics, 1830-1930*, historians have struggled to explain the experiences of women in the South who did not conform to the image of a strong and enduring, yet patient and submissive southern lady. One explanation has been that women who actively engaged in customarily male activities such as managing a plantation or claiming property or running a business acted as surrogates for their husbands. They are classified as deputy husbands, helpmates or even fictive masters. None of these appellations captures the depth of women's experiences or fully describes them on their own terms. Women undertook double duties when they assumed traditional male tasks. They also risked societal criticism for stepping outside their sphere. It is little wonder that many women justified their non-traditional activities by claiming they were temporary or that others expressed relief when they relinquished such tasks altogether. Many others, like some

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of the women who are discussed in the pages to come, simply incorporated their non-
traditional responsibilities into an expanded view of their domestic responsibilities.

Another explanation has been simply that women were overwhelmed or failed in their efforts to act with authority outside the traditional female sphere. Historian Bertram Wyatt-Brown made this assumption about frontier woman and plantation mistress Rachel O’Connor of West Feliciana parish, Louisiana. Rachel owned a plantation of 1,000 acres and some 20 slaves before a lawsuit brought against her for repayment of her deceased son’s debts forced her to deed the plantation to her wealthy brother for his protection. In her letters to her family, Rachel clearly revealed her distress over the constant legal threats from the lawsuits. She pleaded with her brother to come to West Feliciana to convince the authorities that he actually owned the plantation and to act in her behalf. Wyatt-Brown interprets Rachel’s pleas as evidence of her incapacity to deal with the public world of the law. What Wyatt-Brown neglects to point out is that Rachel ultimately prevailed in the lawsuit against her in that she remained on the plantation and managed it for her brother and his family for twenty-three years. Rachel’s biographers depict her as unique. She was unique but only in the fact that her immediate kin (her two husbands and sons) died and that she mostly lived alone. Her brother’s family was nearly all of her family that remained. She was not unique in respect to her ownership and management of property. Many of her female friends and neighbors were doing much the same thing and, like Rachel, they were doing it for their families, however those families might be comprised.41

41Wyatt-Brown, Southern Honor, 240-242,
Home and family largely defined the experience of free women in early Louisiana. Race, class and ethnicity also influenced their experience. It is also modified by individual women's pluck and resourcefulness, as Rachel O'Connor's story illustrates so well. Sometimes, as historians have pointed out, women's individual characteristics in terms of class or ethnicity "superseded" the connections they shared with other women. This female experience is undeniably cemented into place by a patriarchy which limited women's opportunities. Nevertheless, if we are to fully comprehend the meaning of women's use of the authority afforded to them by the civil law tradition we must also recognize and understand their values. Women's rights to property under the civil law tradition are not contradictory to patriarchal society. In general, women did not use their rights to attain public power or openly challenge male economic superiority. Instead, women's rights to property are complementary to what many women, and men, most wanted to achieve: the security and prosperity of themselves and their families. To write about women's use of the legal opportunities afforded them under civil law one must separate the use of authority from the concept of autonomy in women's lives. The civil law granted women a chance, within traditional gender definitions, and within the limits of marriage, to exercise authority and to

42Betty Wood, Gender, Race and Rank in a Revolutionary Age. The Georgia Lowcountry 1750-1820, (Athens: The University of Georgia Press, 2000), xiii-xv, 57-82. See also Stephanie McCurry, Masters of Small Worlds, 121-29.
accumulate economic resources that would promote the economic well-being of themselves and their families. This authority was not the same thing as autonomy.43

The evidence from Louisiana demonstrates that many women accomplished their goal. In doing so, women exhibited agency in defining their own roles as wives, mothers, widows and economic partners. Along the way they made valuable economic contributions to their families and to the economy as a whole. The very existence of women’s economic authority in Louisiana demonstrates that southern patriarchy exhibited more elasticity, at least in relation to women’s role and status, than its rhetoric implied. In part this is because wives did not exercise their property rights in an effort to behave like men or to compete with them. Instead they exercised their rights because they shared their husbands’ interests in protecting and advancing family property as a necessary component of their families’ economic independence. The irony of women’s property rights under civil law is that because women in Louisiana possessed property rights, at all, this may have muted their overall resistance to patriarchal domination and male economic superiority. In comparison to women in common law jurisdictions Louisiana women were accustomed to considerable legal freedom. These freedoms

strengthened women’s resolve to protect their rights, as Sarah Richardson’s petition demonstrates, but not necessarily to advance them.\textsuperscript{44}

Ethnic Backgrounds

The ethnicity of settlement in Louisiana also shaped women’s rights under civil law. It is, as with southern patriarchy, important to an understanding of the interplay between culture and law in the region. Like most states settled prior to the American Revolution, Louisiana’s distinctive culture is rooted in its colonial origins. New France and New Spain once claimed vast areas of what is now the United States stretching from Canada in the north, to the Gulf of Mexico in the south, eastward through the Floridas and as far westward as California. Most of the “civil law fringe” that hemmed in the British common law colonies, and later common-law states in the east, succumbed to the common law influence after the 1803 Louisiana Purchase. The civil law tradition demonstrated its greatest resiliency on the Hispanic frontiers of the southeast and southwest. These two areas are not ordinarily linked in borderlands historiography because the Spanish did not link them in terms of civil, military or religious jurisdictions. What links the southeast and the southwest together is a common legal history under Spanish civil law. The American southwest, due to its strong historical ties to New Spain and Mexico, experienced the civil law tradition well into the nineteenth century, later than formerly Spanish states in the southeast. Not

\textsuperscript{44}I am indebted to Andy Daitsman who makes a similar point about civil law in Chile in relation to changes in Anglo common law. See “Unpacking the First Person Singular: Marriage, Power and Negotiation in Nineteenth-Century Chile,” \textit{Radical History Review} 70 (Winter 1998): 47.
surprisingly, given the length of the southwest’s colonial status and the Hispanic make-up of the region, many residents desired to retain elements of civil law, even after they became part of American territory and adopted Anglo common law. Thus, the civil law matrimonial property regime survived with some alteration within common law systems adopted in several southwestern states. Only Louisiana retained its civil law tradition continuously from its colonial period and adopted civil law as the basis for its entire legal system once it became American territory.

The vast territory known as Louisiana, from which the modern day state derived, lay west of the Mississippi and stretched from Canada in the north all the way to the Gulf of Mexico in the South. Early French inhabitants brought the French civil law or La Coutume de Paris with them to the new colony in 1712. In 1763, after French defeat in the Seven Years War, Louisiana became part of the Hispanic borderlands frontier of North America. The Spanish formally replaced the La Coutume de Paris with Spanish law in 1769. Spain receded the Louisiana Purchase to France in 1803. The retrocession brought little legal change, however, because France did not attempt to


reintroduce the *La Coutume de Paris* during the brief period between the retrocession and United States’ purchase of the area as part of the Louisiana Purchase of 1803.

Consequently, when the United States took over the region, Spanish civil law governed the territory.47

The Spanish colony of Florida, which was not part of the territory included in the Louisiana Purchase, also played a role in shaping the geographic boundaries and legal history of the state of Louisiana. The Spanish divided Florida into two distinct political jurisdictions: East and West Florida. West Florida encompassed the northern Gulf coast, bounded on the east by the Apalachicola River, on the north by the 31st parallel (after 1795), and on the west by the Mississippi River. East Florida consisted of all of the Gulf coast east of the Apalachicola River with the 31st parallel as its northern boundary. Spain ceded both of these colonies to Great Britain in 1763. The British governed the Floridas with Anglo common law until Spain invaded the colonies during the Revolutionary War. Britain formally returned the colonies to Spain at the end of the war. When the American government made the Louisiana Purchase in 1803 negotiators contended the purchase included much of Spanish West Florida. The Spanish disagreed with this assumption but were hard pressed to stem the tide of Anglo settlers rapidly flooding into the so-called “Florida Parishes” of the colony. The Florida parishes consisted of those parishes in the westernmost part of West Florida bounded on the west


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by the Mississippi River and on the east by the Pearl River and on the north by the 31st. parallel. Not long after their arrival, the new Anglo emigrants voiced discontent with Spanish colonial rule. In 1810 planters from heavily Anglo Feliciana Parish organized a rebellion against the Spanish. The West Florida Rebellion finally freed all of West Florida from Spanish rule. After a brief period of independence as the Republic of West Florida, the Florida parishes were incorporated into the Territory of Orleans, which had been formed from the Louisiana Purchase. With the addition of the Florida parishes, the Territory then comprised all of the area contained in modern-day Louisiana.

William Claiborne, the new Governor of the Territory of Orleans, faced a formidable task in uniting the ethnically diverse population of Spanish, French and Anglo inhabitants behind the rule of the American government and common law. Claiborne encountered intense pressure from President Thomas Jefferson to institute the common law tradition in the territory as a means of assimilating the territory’s diverse population into the American Republic. Living in the midst of such a population, Claiborne recognized their historic commitment to the civilian legal tradition and strove to avoid an outright clash of legal traditions between common law and civil law. As a result, Claiborne signed a territorial act in 1808 which adopted the Digest of the Civil Laws Now in Force in the Territory of Orleans as the rule of law in the territory. The Digest effectively continued pre-existing civil law in the Territory of Orleans, with only a few modifications.48

48Dargo, Jefferson’s Louisiana, 154-172.
That part of Louisiana's boundaries lying east of the Mississippi River changed hands five times and, that part west of the river changed hands four times. The Franco-Spanish or "Ancienne" inhabitants of Louisiana doggedly clung to the civil law tradition, with the exception of the period of British rule of West Florida between 1763 and 1782. The basic similarity between the French and Spanish civil law systems never created significant controversy between colonial Louisianans. The clash over legal cultures erupted, instead, when proponents of common law legal traditions attempted to replace the civil law. Historian George Dargo attributes Louisiana's faithful adherence to the civil law tradition to a combination of French and Spanish inhabitants' ethnic attachments to old ways and the inadequacies of common law itself. Americans, Dargo argues, had no "neat package" of law to replace the "customary law" of Louisiana.49

The Digest of 1808 emerged as the compromise. The Digest did not preclude the adoption of important elements of the American legal system such as trial by jury. But in matters related to private law, such as inheritance and marital property rights, the inhabitants of the Territory of Orleans, and later the state of Louisiana, remained firmly, and unusually, committed to their civil law tradition. Dargo explains that:

The Digest of 1808, and the customary law upon which it was based, became the main pillar of the civil law in Louisiana, and in the absence of the other landmarks of a complete civil law system, it was to occupy an even more pivotal position in Louisiana life than civil codes of private law normally do in civil law communities.50

49Dargo, 171.

50Dargo, 171, see also pages 151-172.
The substantive differences between the common law and civil law mattered to "Ancienne" inhabitants of early Louisiana. In 1812 the state adopted a provision effectively prohibiting the encroachment of common law principles. That provision remains in the Louisiana State Constitution, even today. The Franco-Spanish commitment to civil law is also evident in their overall adherence to legal provisions pertaining to women's property. The same is not true of Anglos planters in neighboring parishes who endeavored to circumvent the law.

To draw a full picture of women and property in early America Louisiana women's experience must be linked with that of other early American women from civil law jurisdictions, particularly women in plantation societies in the Spanish-American borderlands, early Latin America and in French Canada. For historian Herbert E. Bolton, the father of the Borderlands School of history, Spain's role in the development of what is now the United States was unduly overshadowed in historical literature by the influence of the English colonies. The scholarship pertaining to women and the law

51Dargo, 172.


54I use the term borderlands here in the sense expressed by Herbert Eugene Bolton as regions extending north and south, as well as east and west, where colonial
of property in the United States reflects that bias. The bulk of historical scholarship pertaining to women and law of property in the United States pertains to the common law tradition. Even a recent survey of the Spanish in North America pays scant attention to the influence of the civil law. Yet, the civilian legal tradition must be one of Spain's more lasting influences on American history. Spanish civil law governed thousands of colonial women in borderland areas that would eventually become part of the United States. Moreover, the community property system brought to America by the powers and indigenous people contest power, even though they might accommodate one another's culture. For a discussion of Bolton's work see David J. Weber, "Turner, the Boltonians and the Borderlands," American Historical Review 91 (February 1986):66-81; see also Michael C. Scardaville, "Approaches to the Study of the Southeastern Borderlands," in ed. Michael C. Scardaville, Alabama and the Borderlands From Prehistory to Statehood (University of Alabama Press, Tuscaloosa, 1985), 184-222; for a critique of more recent definitions for historical borderlands see Jeremy Adelman and Stephan Aron, "From Borderlands to Borders: Empires, Nation-States, and the Peoples in Between in North American History," American Historical Review 104, no. 3 (June 1999): 814-41.

Spanish continues to influence legal systems in several states, even today. The findings of those scholars who have addressed women's legal history in the borderlands frontier of the southeast and southwest document the active role women played in property transactions. The same is true for French colonial America. In both cases historians document the economic authority exercised by women under a civilian legal system. 56

Interpretations of Latin American women and the law of property are mixed in their conclusions about women's authority in using the law. On the one hand, scholars document the impressive economic involvement of women on account of civil law rules. On the other hand, scholars stress the limitations of civil law in terms of a woman's independence, particularly the husband's legal right to manage community property during the life of a marriage. Writing about nineteenth-century Chile, Andy Daitsman describes women's property rights under Spanish law as “fissures that lay at the very heart of the system of patriarchal domination. . . .” The “little subversions”

that occurred on account of these rights “were circumscribed, encapsulated by the very patriarchal system that had created them.” The nature of women’s property rights guaranteed that women would be “place markers” within lineages, useful primarily as temporary managers and as conduits through which wealth could pass from one generation to the next.57

This analysis eliminates lingering perceptions that civil law was somehow kinder and more gentle and progressive for women than common law. It does not, as historian John Mack Faragher argues, tell us “how women transform this male dominant situation into one that was more satisfying for them than the analysis of patriarchy . . . suggests.” Faragher’s kind of analysis requires crossing the threshold of

the household and following not just the master, but also the mistress inside.

Reconstructing women’s property ownership and their property transactions under civil law is one step in writing rural southern women’s history from “the inside out.”

CHAPTER 2

LEGAL DOCTRINE: WOMEN AND PROPERTY UNDER CIVIL LAW IN LOUISIANA

This chapter explains the Louisiana laws that influenced women's property ownership from the late Spanish-colonial period in 1782 to the antebellum period in 1835 when women's property rights became an issue of discussion and legislation nationwide. This chapter is not about the structural components of Louisiana legal system - the organization of the court system or the division of powers between the state and local legal authorities, although some discussion of the administration of the law within various institutions and parishes is necessary. The chief focus, instead, is the substantive component of Louisiana's civil law system - the codes, statutes and decrees that affected women's property ownership. It is also about the place of those laws within the state's "legal culture." Legal culture is the terminology applied to "the values and attitudes which bind the system together, and which determine the place of the legal system in the culture of the society as a whole." In examining laws pertaining to women's property ownership the chapter identifies values and attitudes which connected those laws to the legal system and society as a whole. Thus, women's property law encompassed more than property-specific rules about separate property or community of gains. It included laws that defined who women, and men, were in a social, as well as legal sense. Thus, this chapter provides a framework within which to interpret the results presented in chapter three.


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All women in early America experienced a legally inferior position to men, whether they were single or married, and whether they lived under a common law or civil law jurisdiction. However, the degree of inferiority women experienced, and how that inferiority affected women's property rights, varied both between and within the legal jurisdiction under which they lived. Some comparison of women's property rights under common law is necessary to understand the benefits women experienced under civil law. When scholars compare the civil law tradition with that of the common law they generally agree that the intent of the two legal traditions differed significantly in terms of the disposition of property. The civil law intended, through its legal principles, to place economic resources at the disposal of the living. The common law focused on preservation of family resources for transference across generations. For married women, living under the civilian legal system of early Louisiana, this difference translated into a patrimonial relationship between spouses that was legally very different, in terms of its opportunities to own property, from that which existed under common law. Women, under civil law, possessed the opportunity to own property. This was true for married women as well as single women and widows. As a corollary to these rights women retained their legal identities after marriage. In comparison, the patrimonial relationship under common law merged a woman's legal identity with that of her husband and abrogated most of her rights to own property.² Because so few of the legal-historical studies pertaining to early American women's property ownership

and status probe beyond the common law, and so few pertain specifically to Louisiana, it is essential for this study to describe civil law in Louisiana: how it defined marriage and female property rights, and how those rights changed over the time period of this study.3

Colonial Origins

Any understanding of women’s property rights under civil law in Louisiana begins with the colonial origins of the law and the ways in which that colonial legal heritage influenced the legal system after Louisiana became part of the United States. As Louisiana developed into a state it continued to create its own unique civil law system, mixing the venerable civil law systems of France and Spain with the common law heritage that geographically surrounded it.

Louisiana’s civil law history began in 1712 when France granted the wealthy merchant, Antoine Crozat, a commercial monopoly in the Louisiana territory. The Custom of Paris (La Coutume de Paris), a system of French feudal law rooted in civil law principles, arrived along with Crozat’s charter and remained in force until 1769.4

3 For a detailed list of legal-historical studies pertaining to early American women’s property under common law and civil law see n. 12 and 57 infra.

In that year, Spanish General Don Alejandro O’Reilly assumed control of Louisiana and Spanish law officially replaced the French Custom of Paris. O’Reilly’s Laws, divided into two parts, became the first official statement of Spanish laws in Louisiana. One of the parts dealt with the organization of government and judicial functions; the other with civil and criminal procedure, including provisions for testate (with a will) and intestate (without a will) successions. Neither part sufficed as a full statement of Spanish law, a fact that is acknowledged in the preamble to the laws that stated that the laws were to apply “until a more extensive information about the laws may be acquired.” Despite the tentative nature of the statement both sets of laws were drawn from classic Spanish law texts, the *Las Siete Partidas*, *Recopilación de las Indias* and *the Nueva Recopilación de Castilla.* Furthermore, by custom other bodies of Spanish law not replaced by the provisions of these codes also were in force.

Spanish civil law continually and officially influenced the substantive private law of Louisiana from 1769 through the first half of the nineteenth century. Even after Spanish colonial rule ended and Louisiana developed its own codes of law, the State Supreme Court reserved the option to refer back to “ancient,” pre-existing law in cases where legal issues were inadequately addressed in the Louisiana civil codes. The Court largely rejected legislative positivism which held, as legal-historian Richard Kilbourne explains, that “the law in all its complexity could be adequately embodied in a statutory

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enactment” such as the Civil Code. Provisions in the Codes that affected women’s property ownership were already primarily Spanish in origin. Pre-existing law applicable to those provisions, therefore, was also Spanish.

Strictly speaking, Spanish colonial rule prevailed for only thirty-four years. Spain provisionally retro-ceded Louisiana to France in 1800. The terms of the retrocession were not met until 1802, and transfer was not made until November 1803, just twenty days before Louisiana was transferred to the United States. In the short time available to them the French did not reestablish the Custom of Paris. “The return of Louisiana under the dominion of France,” explained legal experts Louis Moreau Lislet and Henry Carleton, “did not for a moment weaken the Spanish laws in that province.” International law held that in a case, such as Louisiana, where a new government did not override existing law, local law continued to apply. This meant Spanish civil law


remained in force in Louisiana. Consequently, in 1803, when Louisiana became a territory of the United States Spanish civil law officially prevailed.®

**Early American Period**

Controversy over whether, and how much, to change Louisiana’s customary Spanish law ignited soon after the American government assumed control. President Thomas Jefferson strongly favored Anglicizing the territory’s legal system as soon as possible as a means of assimilating Louisiana’s ethnically diverse population. Efforts to change the legal system to conform to common law principles began immediately. First, the American Constitution and federal statutes assumed force in Louisiana. Then in 1805, Americans successfully substituted common law concepts of criminal law and procedure in Louisiana.® Fierce resistance to any further changes in the substance and procedure of their customary law developed when the United States government by Congressional act extended provisions pertaining to the common law of the Northwest

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® See Dart, “The Place of the Civil Law in Louisiana,” 170.
Ordinance of 1787 to Orleans Territory. The local population interpreted this measure as an effort to completely erase civil law and replace it with common law. In response, the Territorial Council of Orleans Territory published a manifesto objecting to the imposition of common law in the territory. Matters related to private substantive law figured prominently in their objections:

Everyone knows today and from a long experience how successions are transferred, what is the power of parents over their children and the amount of property of which they dispose to their prejudice, what are the rights which result from marriages effected with or without contract, the manner in which one can dispose by will, the manner of selling, of exchanging or alienating one's properties with sureness and the remedies which the law accords in the case of default of payment. Each of the inhabitants dispersed over the vast expanse of the Territory, however little educated he may be, has a tincture of this general familiar jurisprudence, necessary to the conduct of the smallest affairs, which assures the tranquility of families; has sucked this knowledge at his mother's breasts, he has received it by the tradition of his forefathers and he has perfected by the experience of a long and laborious life. Overthrow this system all at once. Substitute new laws for the old laws; what a tremendous upset you cause.\(^\text{10}\)

The authors of the manifesto not only recounted areas of private law that long-time residents of Louisiana were particularly anxious to preserve, they also expressed their understanding of the important, informal ways that law was instilled in the public and of the social disorder that would result should change occur too rapidly. It is not surprising that private law, including among others matters laws pertaining to family and property, became the most important substantive area that distinguished the civil law in Louisiana from the common law practiced in other states.\(^\text{11}\)

\(^\text{10}\)Dargo, 139.

\(^\text{11}\)Dargo, 12.

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replacement of civil law practices with common law practices culminated successfully in 1806, when the Legislative Council of Orleans Territory commissioned James Brown and Louis Moreau-Lislet to create a code based upon "the civil law by which this territory is now governed." The authors' combined efforts resulted in the 1808 publication of a *Digest of the Civil Laws now in Force in the Territory of Orleans with Alterations and Amendments Adapted to the Present System of Government*. This work did much to clarify the customary laws, many of them Spanish, then in force in the Territory. Over time, the *Digest*, often mistakenly referred to as the Louisiana Civil Code (1808), emerged as a pillar of Louisiana civil law, serving as the foundation for civil law codes enacted after Louisiana became a state. Louisiana voters protected

12Stone, 12.

the civilian legal tradition embodied in the *Digest* even further by inserting a provision in the new state constitution of 1812 that effectively prevented the adoption of common law.\(^{14}\) The codal law adopted by Louisiana with the passage of the *Digest* differed in both form and substance from common law. Legal codes in civilian jurisdictions articulate general principles and ideas regarding appropriate conduct and then organize those elements into categories. The *Digest* (1808) and the Louisiana *Civil Code* (1825) divided these ideas and principle into three books. Book I, “Of Persons,” dealt with laws pertaining to family law, status and domicile. Book II, “Of Things,” included provisions concerning property. Book III, “Of the Different Modes of Acquiring Ownership of Things,” pertained to laws regulating inheritance, donations, and contracts among other matters. Some of the procedural elements originally included in the *Digest* were later incorporated into a separate *Code of Practice* adopted in 1825.

The format and wording of the codal law were flexible. To determine the law in a particular case, judges in Louisiana turned to a mix of sources including the civil code, judicial precedent, legislative acts and their own knowledge and understanding of the original sources of civil law in Louisiana. Taken together, this meant that the courts

\(^{14}\)Dargo, 171.

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played a significant role in perpetuating or revising principles and ideas established under colonial jurisdictions. This was true even though judicial decisions carried different weight under Louisiana civil law than under the common law practiced in most other states. Under common law, judicial decisions established precedent that judges drew upon in cases with similar facts. Civil law courts drew upon judicial precedent but civil law courts were not bound to adhere to the "judge-made" law of previous decisions as they were in common law jurisdictions. Judges under civil law consulted previous court decisions for guidance, not the rule of law. Even so, judicial decisions strongly influenced whether, or how much, Anglo ideas of female property rights encroached upon those of the civil law.15

Scholars debate whether the Digest, modeled after the Napoleonic Code of 1804, depended more for its substance on French or Spanish sources of law. It is clear that the Digest, as its full title indicates, respected custom as a critical source for legal rules. The Digest included a provision to that effect and defined custom as the "result from a long series of actions constantly repeated, which have by such repetition, and by uninterrupted acquiescence acquired the force of a tacit and common consent."16 The State Supreme Court affirmed in Cottin v. Cottin, handed down in 1817 after Louisiana became a state, that Spanish customs of civil law had been in force in Louisiana before


16Digest of the Civil Laws now in Force in the Territory of Orleans, with alterations and amendments, adapted to its present system of government (New Orleans, 1808) Prel. Tit., art. 3, 2-3.
the Digest. Moreover, Spanish law "... must be considered as untouched, wherever
the alterations and amendments, introduced in the digest, do not reach them; and that
such parts of those laws only are repealed, as are either contrary to, or incompatible with
the provision of the code." This decision made information about Spanish civil law
sources, as the official law, especially important to the Louisiana legal community. As
a consequence, the state legislature commissioned the distinguished legal scholar, Louis
Moreau-Lislet, to translate Las Siete Partidas, which was probably the most complete
source of Spanish law available to officials at the time. The translation was published in
1820 as The Laws of Las Siete Partidas, which are still in Force in the State of
Louisiana. The book served as an important legal reference for legal professionals in
early Louisiana.

The Laws of Las Siete Partidas did not eliminate the confusion over Spanish law
produced by Cottin v. Cottin so in 1822 the state legislature approved a resolution to
revise the Digest (1808). This resolution produced the much enlarged Louisiana Civil
Code (1825). Despite all its additions and amendments, the Louisiana Supreme Court
rejected the principle that the new code comprised a comprehensive statement of
Louisiana law. The Court effectively overturned legislative acts designed to "abrogate

17Vernon Palmer, "The Death of a Code-The Birth of a Digest," in An
Uncommon Experience: Law and Judicial Interpretations in Louisiana, 1803-2003,
eds. Judith Kelleher Schafer and Warren M. Billings, The Louisiana Purchase
those principles of law which had been established or settled by the decisions of courts of justice.”

Regardless of the fact that the State Supreme Court by virtue of this decision found Spanish law authoritative in regards to legal questions inadequately addressed by theDigest and the Louisiana Civil Code (1825) questions about the relative influence of French and Spanish law upon everyday legal practices or the “living law” in Louisiana are not easily answered today. French and Spanish legal systems differed from one another on substantive legal rules, just as individual states within the U.S. common law tradition differed significantly from one another. It did make a difference sometimes which civil law sources and practices legal authorities drew upon for a particular legal action. Moreover, legal folkways acquired through oral communication, rather than

18 Tucker, “The History and Development of the Louisiana Civil Code,” 18. In 1824 a Code of Practice, detailing civil actions and criminal procedure before the courts was devised to accompany the Civil Code (1825). The Practice Act of 1805 preceded this code of practice. The next revision of the Civil Code and Code of Practice came with the Civil Code (1870), which is outside the scope of this study. See Kate Wallach, Research in Louisiana Law, Louisiana State University Studies, Social Science Series, no.6, ed. Richard Russell (Baton Rouge: Louisiana State University Press), 52-56.

through reading of authoritative sources, undoubtedly influenced the actual practice of the law or “living law” of Louisiana. French-speaking inhabitants and notaries who executed the laws and who lived in rural areas remote from population centers most likely continued legal practices learned during the French colonial period. Still, French and Spanish systems were more alike than different in the three major areas of private law that pertain to women, that of persons, matrimonial regimes, and inheritance. Thus, differences between the French and Spanish systems did not produce controversy or confusion after the U.S. took control of Louisiana. The real source of controversy lay in the differences between civil law and common law.


Cultural anthropologist Nicholas Spitzer explains that “folklife includes the living traditions of ethnic, regional, and occupational groups. These are traditions learned outside formal institutions (schools, museums) and from sources other than the printed page . . . . Folklife . . . has the advantage of embracing the artistic and utilitarian performances, practices, products and worldviews that characterize . . . folk communities.” See Nicholas R. Spitzer, ed, Louisiana Folklife: A Guide to the State, (1988; Baton Rouge: Louisiana Folklore Program, Office of Tourism, Department of Culture, Recreation and Tourism) 6-7. See also Yiannopoulos, 102-103. There were few legal libraries in early Louisiana. See Mitchell Franklin, “Libraries of Edward Livingston and of Moreau Lislet,” Tulane Law Review 15 (1941):401-402.

Yiannopoulos, 102.
The Place of Women

The civil law systems of France and Spain have their earliest roots in the Roman law compiled and codified in *Corpus Juris Civilis* by Emperor Justinian in Constantinople in the sixth century AD. Justinian law competed and intermingled with tribal legal systems brought by invaders, including that of the Germanic tribes like the Visigoths. For example, scholars credit Visigoth invasions with the spread of the principles of marital community property to France and Spain. The twelfth-century revival of Justinian law combined with Germanic elements to produce the foundation for the civil law systems of France and Spain. In the particular case of Spain, the renewal of interest in Justinian law produced the comprehensive *Las Sietas Partidas* which was promulgated in 1348. Besides *Las Sietas Partidas*, Spanish sources of law applicable to early Louisiana included *Fuero Juzgo* from 693, *Fuero Viejo* from 692, *Fuero Real* from 1255, *Nueva Recopilación de Castilla* from 1567, *Recopilación de las Indias* (prior to 1680), along with the *Leyes de Toro* from 1505 and various *Cédulas* handed down by the Spanish government.22

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Spanish laws articulated in these sources, like the Roman laws before them, were predicated on inequality between men and women. This was true despite the fact that the very same laws granted women valuable property rights. Spanish law clearly differentiated between men and women in terms of their social status and legal rights. Title XXIII of the fourth Partida in *The Laws of Las Siete Partidas* . . . describes the “Status hominum” or “the state, or condition, or manner in which men live, and exist.”

The primary purpose of this section was to build the foundation for “knowing and understanding the state of men; [and] . . . one can more easily distinguish and determine what takes place in relation to persons.” Within the scheme of “status homium” the Partida confirms women’s lesser position, pointing out that “men are in a better condition than women, in many things, and in many ways, . . . .”

With the assumption of logic based upon long-accepted principles of hierarchy within society,
Spanish law equated women's position with that of the lesser condition of slaves to freemen, commoners to noblemen, laity to clergymen and so on.

The laws pertaining to the family, which are considered the most important in determining one's status, also clearly assigned women a subordinate status compared to men. Spanish law granted extensive power to fathers (patria potestas) as masters or heads of the family. Mothers, who did not share with their husbands in the power (potestas) over the family, were charged by the law to "live virtuously in her house."24

An important part of the rationale behind the ideology of hierarchy in relation to women becomes clear in the discussion of women and their role and responsibilities as it pertains to surety (fiador). A fiador, according to the Laws of Las Siete Partidas, is an individual who makes himself liable for another with, among other means, his property. Providing liability for someone presented individuals with an opportunity to engage in business transactions without actually engaging in that business themselves. With only a few exceptions, Spanish law did not allow women to act as a fiador. In the eighteenth and early nineteenth century most Europeans and Americans believed that women were unsuited for the public world of commerce and government. Women could not act as surety because they needed protection or, in the words of the law, "it is not becoming that women should be engaged in litigation about the suretyships they had

24The Laws of Las Siete Partidas, Partida Seventh, Title XXXIII, Law 6, vol. 2, 1231. See also, Buckland, 101.
contracted, or go into public assemblies of men where things take place, repugnant to the chastity and good morals which women ought to preserve."\textsuperscript{25}

An even more limiting evaluation of women’s role and capabilities is embedded in the explanation for why a woman could act as \textit{fiador} in a certain case. Women who represented themselves as men by dressing like a man or by some other means could act as a \textit{fiador}. The provision stressed that these rights “are not granted to enable them to practise fraud, but on account [of] their natural inexperience (simplicidad) and feebleness.”\textsuperscript{26} The law’s assumption of women’s frailty of reason did not always provide women a risk-free means to circumvent the law. In another exception to the provision prohibiting women as acting in surety, women who defied the law “well knowing that she cannot, and ought not to become security” were allowed to do so but were “warned that they automatically renounced any protections the law might have accorded in such matters.\textsuperscript{27}

Distrust of women’s ability to make sound judgements is also apparent in provisions requiring a woman to seek permission from her husband to make contracts, provisions prohibiting women from legally witnessing wills, and restrictions on

\textsuperscript{25}\textit{The Laws of Las Siete Partidas}, Partida Fifth, Title XII, vol. 2, 822. A similar rationale prevented women from acting as an advocate in court, even in their own behalf. “No woman, however learned she may be can appear in court as an advocate for others, as it is not decent and becoming, that a woman should take upon herself such a masculine office, and mix and argue publically with men; . . .” Partida Third, Title VI, vol. 2, 132.

\textsuperscript{26}\textit{Las Siete Partidas}, Fifth Partida, Title XII, Law 3, vol. 2, 823.

\textsuperscript{27}Ibid.
women's ability to act as guardians of orphaned children. 

Spanish civil law grouped women with minors, slaves, the deaf and dumb and the insane in their inability to witness wills. *Tutors or tutrixes* (guardians) assumed possession and management of a minor’s property with the admonishment of the law to act in the minor’s best personal and economic interests. To insure *tutors* would not act fraudulently they were required to demonstrate to the judge that they possessed “securities.” The law designated men as *tutors* of children, except in the case of mothers or grandmothers who were considered natural *tutors* if they desired the position. If a widowed mother chose to act as *tutor* the law prohibited her from remarrying because of her inability to determine a proper course of action: “she might, through the great love she has for her new husband, not take such good care of their [minors] person and property, or do something that might greatly prejudice them.” 

Under the *Digest* (1808) widows who wished to remarry could petition the court for a family meeting to decide whether she could remain as her children’s tutor. Spanish law did not extend this restriction to widowed men who were *tutors* even if they remarried.

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28 Women could petition judges to force their husband to grant them permission to make contracts. Laws restricting women’s right to contract appeared first in the *Leyes de Toro* (1505). See Sponsler, 1608 and n. 21.

29 *Laws of Las Siete Partidas*, Sixth Partida, Title 1, Law 9, Vol. 2, 964 and Seventh Partida, Law 4, 126; when minors reached the legal age of puberty they were allowed to choose their own guardians age 14 years for males and age 12 years for females, now known as *curators*. See for example *A Digest of the Civil Laws now in force in the Territory of Orleans* (1808), Bk. I, Tit. VIII, Sec. IX, Art. 78. [hereafter cited as *Digest* (1808)].

30 *A Digest of the Civil Laws* (1808), Bk. I, Tit. VIII, Section II, Art. 10, p. 60.
Spanish law discriminated against widows in other ways. A widow had to prove that possessions she claimed after her husband’s death belonged to her if another party such as other heirs sued for them. The law presumed that property in her possession belonged to her husband unless she had a “trade or profession by which she could have honestly acquired the property.”

Laws regarding legal emancipation of minors also effected women’s authority over property. Legally emancipated minors could manage their own estates. Spanish civil law defined minors as twelve years old and younger for girls and fourteen years old and younger for boys. These were the ages beyond which children attained a measure of legal consent. Children at the age of consent, for example, applied their own reason and made decisions in their personal selections of curators (guardians). Nevertheless, a father’s parental control (potestas) over his children did not fully and legally end until the father died or the children married or the father voluntarily chose to emancipate them. A father could not, however, emancipate his children before they were fifteen years old. Since females in early Louisiana frequently married in early adolescence, this meant that many young women did not achieve legal autonomy until their husbands died, well after their husbands were able to do so.

A married women depended on her husband’s consent for most civil actions. In 1809 in Spanish West Florida, John Pippen sued his wife Mary over 9,000 pesos worth

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32 See for example Digest (1808) Bk. I, Tit. 1, Sec. X, Art. 87 and Bk. I, Tit. VIII, Sec. VIII, Art. 10, p. 60.
of land, slaves, and horses. The dispute arose over property remaining from Mary's first marriage that Mary and her children from her first marriage had partitioned among themselves. Under Spanish law Mary's share of the property from this partition should have been part of her *paraphernal*, or separate property, of her second marriage to Pippen, not part of the community property she shared with Pippen. Even though John and Mary Pippen were no longer living together, John Pippen claimed a share of the assets from her first marriage because she made a contract with her children and "she is married for the second time and has not the authority to make a contract without the consent of her husband." Under Spanish law a wife could administer her separate property. Even so, the law required her husband's consent before she signed a contract and for court appearances. If a husband did not grant his consent she could seek a court order. There is no indication Mary sought such an order. Unfortunately, no decision from the court on the Pippen suit was located. It is likely she lost. In the eyes of the patriarchal ideology of the law married women lacked the capacity to act independently and they required the protection of their husbands.

Part of the reason married women required protection was rooted in the husband's liability for the debts she incurred. Presumably these debts were incurred because of her frailty and inexperience. Single women, whose fathers were deceased,  

33 Archives of Spanish West Florida, 7:217.

34 Pugh, "*Sociedad de Ganancias,*"15.

had no legal protector and acquired many more rights of self management than married women. But all women, single or married, existed in a kind of legal limbo, never reaching full legal independence.36

Of the Community or Partnership of Acquets or Gains

Given the legal disabilities of late eighteenth and early nineteenth-century women under Spanish civil law and, later, under Louisiana civil law, how could contemporary observers compliment the legal status of women in civil law jurisdictions? How can modern-day legal scholars, Harriet Spiller Daggett and Nina Nichols Pugh, claim that Louisiana women owe Spanish civil law credit for placing them in “a legal status far superior” to that of their counterparts under common law? One answer is that the Spanish Sociedad de Gananciales carried over to the American period as the community or partnership of acquets or gains. Community property rules guaranteed wives’ ownership and inheritance of half the fruits of marriage and it recognized women’s ownership and management of separate property.37

36Lucy A. Sponsler makes the observation that the husband’s duty to protect his wife is partly inspired by his financial liability for her management mistakes in “The Status of Married Women Under the Legal System of Spain,” 1605; Las Siete Partidas, Partida Sixth, Title XVIII, Law 4, vol. 2, 1149-1150. Women did not acquire full legal independence under common law either. See Nancy Isenberg, Sex and Citizenship in Antebellum America (Chapel Hill: University of North Carolina Press, 1998), 23.

The matrimonial regime under Louisiana civil law, like marital regimes in most civil law states, clarifies rules regarding the initiation of community property between spouses, the management and use of community property during marriage and the dispersal of the community at the end of a marriage either through death of a spouse or dissolution of a marriage. In addition, community property rules differentiate community property from separate property within marriage and define the management of each type of property by the husband and wife.38

A Spanish derived community of gains began with a “putative” or consensual marriage, unless a married couple contracted against it. Wealthy, Spanish West Florida couple Fulmar Skipwirth and his French bride Louise Barbé Vanderbooster devised such a marriage contract expressly eliminating any community property between them and separating all their revenues. They declined each other’s debts and divided all household expenses equally. The Civil Code (1825) included a provision allowing couples to stipulate that there would be no community between them. Wives, in this case, retained the ownership and management of their property. These actions were rare, however, and early Louisiana couples generally understood that community property came automatically into existence with marriage. In a series of early State Supreme Court cases, the court concurred with this popular understanding and protected discussion of the Spanish community of gains to the legal research of both of these scholars. See Nina Nichols Pugh “The Spanish Community of Gains in 1803,”1-43.

the sanctity of the community of gains into the American period. Couples attempted to decline the community through separation. Harvey Norton of Spanish West Florida negotiated an agreement with his wife, from whom he was separated in bed and board, "whereby the property which each will acquire shall be considered his or her own separate property and not to the community of assets and gains ordinarily existing between married couples." It is not known how Spanish authorities resolved Norton's petition. The Territorial Court, however later, threw out a similar case because the couple’s voluntary separation had not been legally sanctioned, and the Digest (1808)

\[39\textbf{The Laws of Siete Partidas,} Partida Fourth, Law 5, Vol. 2, 456 articulates the basis for a “putative” marriage. It decrees that “consent alone, joined with the will to marry, constitutes marriage, between man and woman.” This meant it was not necessary to have a legally sanctioned marriage. See De Funiak and Vaughan, 96-97. An informative study of marriage rules under Spanish rule is Hans W. Baade, “The Form of Marriage in Spanish North America,” Cornell Law Review 61, no. 1 (1976):1-89; the notarial records of West Baton Rouge parish include marriage bonds dated during the time period of this study, though they do not include the promise to solemnize the marriage with a priest at a future date that Baade identifies in a Texas marriage bond. See West Baton Rouge Parish, Notarial Archives, Marriage Bonds; Digest (1808). Bk. III, Tit. V., Sec. IV, Art. 63, and Civil Code (1825) Bk. III, Tit. 6, Sec.I, Art. 2369 make the same stipulations for the community of gains. The matrimonial property regime of the Custom of Paris differed from the Spanish in that it was called the community of moveable and acquests because it included antenuptial moveables. Legal scholar Hans Baade finds that this form of community of gains continued in Louisiana as “living law” or folk law in some parts of Louisiana. Baade acknowledges, however, that the real conflict in law was not between the French and Spanish version of community property but rather between the civil and common law legal traditions of matrimonial property. See Baade, “Marriage Contracts in French and Spanish Louisiana: A Study in “Notarial” Jurisprudence,” 81; ASWF, Vol. 19: 18. DeFuniak and Vaughan, 135-146. Civil Code (1825), Bk. III, Tit. Iv, Sec V, Art. 2394 and 2395 allow for separation of property. See Pugh, “The Spanish Community of Gains,” p. 2, n. 3 for State Supreme Court cases.

\[40\text{ASWF, Vol 19:19.} \]
expressly stated that “separation from bed and board does not dissolve the bond of matrimony. . . .”¹⁴¹

For most Louisiana couples the assets of the community of gains under Spanish law meant “all acquisitions, fruits, profits, and gains of whatever nature, which resulted from work, industry and skill of either or both of the spouses. . . .” This definition came into law in 1808 along with other articles that specifically delineated the nature of property held separately by spouses. Legal experts De Funiak and Vaughan wrote of the principles of the community property system:

In adopting the concept of a community of goods the law was realistic. It had regard for the industry and common labor of each spouse and the burdens of the conjugal partnership. . . . Thus the policy of community property was to establish equality between husband and wife in the area of property rights . . . in recognition of and to give effect to the fundamental equality between the spouses based on the separate identity of each spouse and the actual contribution that each made to the success of the marriage. Note the striking difference between this and the common law doctrine of the merger of the identity of the wife into that of the husband.⁴²

De Funiak and Vaughan referred to the unity of person doctrine, or femme couvert status, found in the common law tradition. Promoted by William Blackstone in his treatises on the common law, unity of person, or coverture, constituted a legal partnership whereby “the very being or legal existence of the woman is suspended in

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¹⁴¹Civil Code (1825), Tit. 6, Sec. V, Art. 2394 allows that “Married persons may stipulate that there shall be no partnership between them.” There is no corresponding article in the Digest (1808); Richard H. Kilbourne, Jr., “An Overview of the Work of the Territorial Court, 1804-1808: A Missing Chapter in the Development of the Civil Code,” An Uncommon Experience Law and Judicial Institution in Louisiana, 1802-2003, 615; Digest (1808) Bk I, Tit IV, Sec V, Art. 30.

⁴²De Funiak and Vaughan, 25.
marriage.” The husband’s legal rights to administration of property were superior so that “‘control’ [over property] by the husband carried with it virtual ownership and the exclusive right of enjoyment.” Wives lost their integrity as persons under common law. Husbands possessed property interests in their wives as ‘inferiors’ and as such under common law could sue wives for damages for loss of affection. This “individualistic” rather then community notion of property rights during the course of marriage compromised the notion of marriage as a cooperative enterprise. Wives under common law could not make contracts, convey property or act as executrixes without the consent of their husbands. The personal property single women brought to marriage became their husbands’. Their real property fell under their husbands’ management and administration, though they could not sell it without a joint deed. Because wives’ property merged with that of their husbands in this way, the property they brought to the marriage was liable not only for debts contracted during the marriage, but also for their husband’s debts prior to their marriage.43 Legal commentators assured critics of the system that common law provided much-needed protection for women. The law made husbands responsible for their wives’ debts and for their wives’ reasonable maintenance during the marriage.

Keziah Kendall, a single, thirty-two year old Massachusetts dairy farm owner, was among those who rejected such an argument and called for the female equality

stipulated in the Biblical “golden rule.” In response to a lyceum lecture defending
corrects in the Biblical “golden rule” In response to a lyceum lecture defending
women’s role and legal rights under common law Kendall wrote in 1839,

Nor do I think we are treated as Christian women ought to be, according to
the Bible rule of doing to others as you would others should do unto you.
I am told that if a woman dies a week after she is married that her husband
takes all her personal property, and the use of her real estate as long he
lives - if a man dies his wife can have her thirds - “this” does not come up
to the Gospel rule.4

Keziah Kendall knew first-hand the dilemma inequality under the law could cause for
female property owners. Her fiancé fell into debt and postponed their marriage, fearing
his creditors would take her portion of the family dairy farm should they marry.
Tragically, Keziah’s fiancé lost his life at sea while trying to earn his way out of debt.
Keziah Kendall never married. Keziah judged that whatever rationale legal experts put
forward to justify women’s inequality under common law, in reality the law worked to
women’s overall disadvantage. In the final analysis, it was the outcome of the law that
mattered.45

Husbands under Spanish and Louisiana civil law also possessed the power to
manage and administer the property of the marriage, but the power husbands exercised
under civil law did not negate women’s ownership of that property during the marriage.
Nor did women lose their legal identity under the law. Under Spanish law and
Louisiana codal law, the “wife ‘had,’ that is, owned the property - and also ‘possessed’

44Diane Avery and Alfred S. Konesfsky, “The Daughters of Job: Property Rights
and Women’s Lives in Mid-Nineteenth-Century Massachusetts,” Law and History
Review 10, no. 2 (Fall 1992): 344.
45Avery and Konesfsky, 346.
it - but did not ‘hold’ it. It was the husband who ‘held’ it... in order to administer it, as well as owning and possessing it equally with the wife.” Critics could speculate that if the wife did not own common property at the same time that her husband administered it she would likely not receive an equal share of the property when it was divided. Civil law also required that husbands manage the property for the benefit of the marriage. The control of property that husbands exercised under common law did not have to meet similar criteria. Husbands under common law could, if they chose, appropriate common funds for their personal benefit.46

Unfortunately, lawyers and judges trained under common law principles tended to interpret the civil law principles pertaining to ownership of property by women in common law terms. The authors of the Digest (1808) misinterpreted the Spanish sources, Anglicizing the concept of husbands’ powers. The Digest stated that “she [the wife] has no sort of right in them [property ownership rights] until her husband be dead.” Despite this error, the State Supreme Court initially held to the original Spanish principle that a wife’s ownership developed out of the marital partnership during the marriage. Lawmakers reworded the provision in the Civil Code, eliminating the language requiring a husband’s death before a wife’s ownership rights began. Wives’ ownership interests again diminished in 1847 with the State Supreme Court decision Guice v. Lawrence. The Court held that “the laws of Louisiana... recognizes no title in

46DeFuniak and Vaughan, p. 264 and Salmon, p. xv.

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the wife, during marriage, to any part of the acquests. She becomes owner of one-half, only after the dissolution of the marriage."47

It is difficult to document the impact these interpretations made on the attitudes and understanding of a population that had lived under Spanish law for more than thirty years. The community property system, as one 1930's legal scholar noted, gave women during those times when women primarily worked within the home “protection and a feeling of ownership.” We also know that as more and more Anglos poured into Louisiana the “ancienne” population sought to protect their heritage, even as the Anglo newcomers worked to bring the state more into line with the legal system in the rest of the country. It is clear from the Digest (1808) that the principle of equal partnership in the community of acquets and gains experienced pressure from common law ideas. Nevertheless, the Court resisted lawmakers’ power to revise and reinterpret Spanish law until 1847, more than ten years after the end date of this study.48

Regardless of the Court’s stand when confronted with questions concerning a wife’s ownership of community property after the dissolution of a marriage, the Louisiana State Supreme Court sided with the principles of equality embedded in the

47The Court did not fully correct its error in interpretation until 1926. DeFuniak and Vaughan, 263, Digest (1808), Book III, Tit.V, Sec.IV., Art. 66; Civil Code Bk. III, Tit. 6, Sec. Iv, Art. 2374; Guice v. Lawrence, 2 La. Ann. 226.

community property regime. It even guaranteed the community property of a wife who
had not lived in Louisiana at the time when much of the community accrued to the
marriage.

There are few, we believe, who think, at the present stage of society, that
the wife contributes equally with the husband to the acquisition of property.
If such cases exist, they are exceptions to the general rule. And yet, in this
state, neither idleness, wasteful habits, nor moral or physical incapacity,
would deprive the wife of an equal share of the acquests and gains; for
our code declares that every marriage in Louisiana, super induces, of right
partnership, or community, in all acquisitions. Such also, was the rule
in Spain.49

The judge’s negative assessment of wife’s economic contributions did not matter in the
eyes of the law. As one Spanish legal commentator put it, the marital partnership under
civil law was ordained by “the fact of their undivided habit of life ordained by both
natural and divine law, the fact of the mutual love between husband and wife, which
should be encouraged . . . .” The commentator surely based his assessment on a
statement repeated in every Louisiana civil code to the effect that the husband and wife
owe each mutually “fidelity, support, and assistance.50

The “parasitic” image of women reflected in the judge’s comments did not
matter to some ordinary people settling and working the land at the time either. What
counted was the measure of people’s lives. Tantalizing images evoked by early

49 Cole’s Wife v. His Heirs, 7 Martin, (N.S.) 41 (La 1828), quoted in Daggett, p. 6; See Digest (1808) Bk. III, Tit. V, Sec. IV, Art. 64 and Civil Code (1825) Bk. III, Tit. 6, Sec. IV, Art. 2371.

50 Daggett, “The Civil-Law Concept of the Wife’s Position in the Family,” 293. Digest (1808), Bk.1, Tit. I, Sec. IV, Art. 19; and Civil Code (1825) Bk. I, Tit. IV, Sec. 1, Art. 121.
Louisiana records conjour images of women very different from the Court’s assessment. Women such as Spanish West Florida resident Mary Routh Johnson, not only worked hard they were also bold and self-reliant. According to a translator’s note in the West Florida notarial archives, Mary Routh Johnson floated all her family’s belongings down the Mississippi River to Baton Rouge on a flatboat sometime before 1805. Mary and her daughter, who operated the plantation following her husband, Isaac Johnson’s death, mounted their horses and rode into the fields to confront an overseer who was reported to be threatening the life of one of the plantation’s slaves. Little wonder that her husband made her executrix of their more than 20,000 pesos estate and tutrix of their three minor children.\textsuperscript{51}

Baton Rouge resident Abijah Russ appreciated his wife’s business acumen enough to make her administrator of their considerable estate which included land, slaves and a tannery. He either did not understand or he did not accept the Spanish laws of community property that were still in force in West Florida in 1805. Russ willed his widow, Rachel, equal shares of the couple’s property along with each of their five children, four of whom were under the age of six years old. Rachel protested through her attorney,

that having contacted marriage while this province was under British rule, it is impossible to secure witnesses who could certify to the amount of property which the deceased husband brought in marriage, all the existing property being the product of thirty years of mutual duties and labors, during their married life, . . . the relatrix [Rachel] makes use of her legal rights and claims as she has always claimed,

half of the property of the said succession and her deceased husband all that property being community. The relatrix being in charge of the education and maintenance of four minors hopes that the court will please give immediate attention to her petition... Therefore to his Excellency she begs... that is that half of the said property be decreed to belong to her.52

The Governor’s decree in response to Rachel’s petition affirmed her position and the applicability of Spanish civil law stating that “according to our Royal Laws, the widow is entitled to half the community property, plus her dowry and hereditary rights.” The Governor’s decree settled the question of the Russ succession from the Spanish point of view. It could not address how Americans should handle the same question when the laws of community property applied to the marriages of Louisiana residents who originally contracted their marriages in common law states. According to the Digest (1808) husbands and wives could “stipulate that their matrimonial agreement shall be regulated by the laws statutes, customs and usages of any state or territory in the union...” Louisiana law couples could not change the disposition of their property to heirs nor could they change the husband’s claim as head administrator of the estate. Aside from these stipulations, as long as they notarized their marriage contract and provided two witnesses they could “regulate their matrimonial agreements as they please.” Under the Civil Code (1825) couples who married outside of the state of Louisiana claimed only that part of their property accumulated while living in Louisiana as part of their marital community property.53

52ASWF, Vol. 10: 255.

53Digest (1808), Bk. III, Tit. V, Art. 2; Civil Code (1825), Bk. III, Tit. VI, Sec. IV, Art. 2370.
Community property provisions were one of the most conspicuous advantages of female property ownership under Louisiana civil law. It is also important to note that the benefits of property ownership brought liability. The marital community ended when the marriage dissolved through death of a spouse or divorce. Early Louisiana law followed Spanish law in making the community property of both husband and wife equally liable for debts “contracted during the marriage, and not acquitted at the time of its dissolution.” This did not include debts arising during the marriage which only benefitted one of the spouse’s separate patrimony. The law debited each spouse’s separate property in those cases. Wives received important protection from creditors through the right of renunciation of the community which protected them from further claims from creditors. In exchange for this protection wives lost all claim to the community of gains. They recovered their dotal property and extradotal property. Husbands did not enjoy the same right to renounce their shares of the community, but remained liable for the debts of the community.54

Spanish civil law prohibited a wife from acting as surety for anyone, including her husband, unless it benefitted her patrimony. Under Spanish civil law wives could renounce this law, and provide surety for their husbands, in which case the wife waived her rights to restitution of their property in the event of any loss of property. Codal law

54Civil Code (1825), Bk. III, Title VI, Sec. IV, Art 2372 and Digest (1808) Bk. III,Tit. V, Sec. IV, Art. 65; Civil Code (1825), Art. 2379 and 2380; Digest (1808) Bk. III, Tit. V, Sec. IV, Art. 72 and 73.
in 1825 completely prohibited wives from binding themselves on behalf of their husbands.\textsuperscript{55}

\textbf{Management and Administration}

Without a doubt the most controversial provision of the community acquets and gains is the one that begins,

\begin{quote}
the husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce and may alienate them by an incumbered title, without the consent and permission of his wife.\textsuperscript{56}
\end{quote}

However, if a wife held title to community property her consent was required on sales and mortgages of that property. This provision included dotal property that was immoveable if it had been specified in a marriage contract. Despite these qualifications, some legal historians disclaim any advantages for women under civil law because without equal management rights a partnership could hardly be said to exist. Head and master of the partnership, they claim equated with lord and master.\textsuperscript{57}

Other legal scholars argue that under Spanish civil law and later civil codes in Louisiana, women received protections from creditors and against their husband’s mismanagement in exchange for unequal control over the marital community. The

\textsuperscript{55}Pugh, "\textit{Sociedad de Gananciales}," 21-22; \textit{Civil Code} (1825) Bk. III, Tit. 6, Sec. II, Art. 2412.

\textsuperscript{56}\textit{Digest} (1808), Bk. III, Tit. V, Sec. IV, Art. 66 and \textit{Civil Code} (1825), Bk. III, Tit. VI, Sec. IV, Art. 2373.

husband, under both Spanish civil law and later Louisiana codes, could not alienate or
dispose of community property with the intent to defraud his wife. Attempts to defraud
might include a wasteful or excessive lifestyle that imperiled her share of the
community. The law also required husbands to indemnify their wives’ share of the
community against losses their estate suffered on account of his providing surety for a
third party. Wives also held the legal right, described earlier, of renouncing the
community altogether. These provisions became especially important to women whose
community assets were heavily encumbered with debt. However, none of these
protections actually took effect until dissolution of the marriage and division of the
community occurred.

A wife’s legal right to stipulate against a community of acquets and gains in
marriage served as the surest protection against her husband’s mismanagement of
property. If a woman opted not to be a part of a community of acquets and gains she
retained ownership and administration over her separate patrimony. As reasonable as
this may appear, this remedy for female dependence, hardly suited the circumstances of a
region like Louisiana which was still in the early stages of economic development.
Couples benefitted from pooling their resources and labor. Both Spanish law and
subsequent Louisiana law permitted wives to form business partnerships with their
husbands or with others. Benefits derived from these partnerships accrued to the
community. In 1799, Elizabeth Henry and Janvier Longuepee of West Florida did just
that. They petitioned to unite their property for the purpose of trading. Elizabeth set
aside more than 400 pesos for her son by her first marriage as part of the petition.58

Separate Property

Rachel Russ’s petition, mentioned above, evidenced another component of
women’s property ownership, that of separate property. Separate property was owned
individually by a spouse. It did not fall within the marital community property of the
marriage. Rachel Russ’s petition suggested that Abijah Russ owned property before
their marriage, property which Rachel considered to be his separate property. Evidently,
he did not specify this property in writing. But then, he would not have needed to
because their marriage took place under British common law. According to the
common law principle of unity of persons during marriage, Abijah owned and
controlled all property of the marriage anyway. Rachel, under common law, could not
own and control property independently of her husband unless she established separate
estate through a marriage settlement. There is no evidence that Rachel negotiated a
marriage settlement with her husband. In fact, her petition suggests that when they
married the couple was not particularly propertied, “all the existing property being the
products of thirty years of mutual labors.” In general, marriage settlements,
administered by courts of equity, tended to be employed by those with considerable
property.

Recently, historians have questioned whether very many early American women
benefitted from marriage settlements and, consequently, whether they constituted, as


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legal historian Marylynn Salmon argued, "the most significant change in the legal status of women until the advent of the married women’s property acts in the nineteenth century."\(^{59}\) The very best of the marriage settlements devised allowed women the right to own, manage, devise, and convey property. But not all American colonies and early American states established courts of equity and those that did were not uniform in their interpretations of the rules of equity. Moreover, equity rules were not always adequately enforced. In sum, historians find that marriage settlements left much to be desired as a remedy for early American women’s legal disabilities in regard to property.\(^{60}\)

Under the Castilian model of separate property couples individually owned and could administer property separate from the community. In the case of the wife that property might be *dotal*, "that which the wife brings to the husband to assist him in bearing the expenses of the marriage" or *paraphernal*, "that which forms no part of the dowry." *Paraphernal* property included "all the effects of the wife which have not been settled on her as a dowry or property owned by each spouse before marriage and property by gift or inheritance after marriage." In line with the Spanish law’s emphasis on marital partnership, benefits derived from each spouse’s separate property accrued to the community as whole. Exceptions occurred when the benefits derived from an individual spouse’s property originated from expenditures or benefits from other separate property they owned. Louisiana women always held the right to manage their

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paraphernal property, if they chose. Their husbands managed their dotal property. A wife could not sell or form a contract with her separate property without her husband’s consent. Nor could she refuse an inheritance or institute a partition without her husband’s or a judge’s consent.61 Beginning with the Louisiana Civil Code of 1825 a wife could withdraw administration of their paraphernal property once it had been given to their husbands if she disliked his management. She could also demand restitution of her paraphernal property from their husbands, even during marriage. And if a wife managed her paraphernal property by herself, without her husband, Louisiana civil law entitled her to separate ownership of the earnings accrued from the separate property she personally managed. The husband alone administered the dowry, even though the wife retained ownership of it.62

Spanish civil law and the codal law of Louisiana protected wives’ paraphernal property from mismanagement by their husbands, by virtue of a tacit mortgage on their husbands’ estates for the value of their wives’ property. This protection took

61Digest (1808), art. 58, p. 334; Civil Code (1825) art. 236, LLA. 1310; Under Spanish law and under the Louisian civil does a wife required her husband’s approval for appearances in court and for signing contracts. See Civil Code (1825) Bk, III. Tit. IV, Sec. I. Art. 1775, 1779. Legal historian Nina Nichols Pugh argues the latter requirement was largely a formality. See Pugh, “Sociedad de Ganancias,” 15.

62Under Castilian law a wife’s separate property comprised three kinds: her dowry; her paraphernalia which consisted of property she brought for the use of the marriage, but owned separately; and bienes propios, property which she owned separately and was not for the use of the marriage. Community property states came to refer to all separate property as paraphernal property. De Funiak and Vaughan, 273; 71; Digest (1808) Book III, Tit. V, Sec. III, Art. 60; Civil Code (1825) Book III, Tit. VI, Sec. III, Art. 2330; Civil Code (1825) Bk. I. Tit. I. Art. 123 and Bk. III, Tit. 1, Sec.I, Art. 1012 and Book III. Tit. I, Sec. III, Art. 1239 severely restricted women’s management rights, even of their separate estates.
precedence over other creditors regardless of whether the debts incurred by her husband came prior to the marriage or during it. The same was not true for dotal property. After the *Digest* (1808) became law, the wife held a tacit mortgage on her husband’s estate for her dotal effects, which took precedence over her husband’s creditors, unless those debts were incurred prior to the marriage. In which case, creditors had prior claim to her husband’s estate. For someone like Keziah Kendall, mentioned earlier, whose fiancé accrued damaging debts prior to his marriage, it would have been necessary for her to designate her farm as *paraphernal*, not dotal, property through a marriage contract. Unlike the marriage settlement or trust in common law jurisdictions, such an act would not have demanded special understanding of an uncommon legal process. The process would have been well understood and accepted. When a wife held a tacit mortgage on her husband’s estate, creditors usually required the wife’s signature before a purchase so that the creditor’s mortgage was preferred over hers. The sale of immoveables to satisfy debt always required the wife’s consent so that the purchaser could avoid the wife’s mortgage over it.

A Wife could also sue for separation of property during marriage. She needed to demonstrate to the Court that her dowry or that her personal livelihood was in jeopardy from her husband’s mismanagement. A wife regained the full management and

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63 DeFuniak and Vaughan, 11-112 and *Digest* (1808), Bk. II, Tit., V, Sec. III, art.63.

64 Kilbourne, “An Overview of the Work of the Territorial Court,” 615-617; *Digest* (1808) Book III, Tit. V, Sec.II Art. 53.

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revenues from all her property if the Court granted her petition. Notarial and judicial records indicate that wives understood and exercised their property rights over separate property. In 1801 West Floridian Anne O’Brien petitioned the Spanish notary to sell a “Negress . . . making use of my rights for the administration of the property which belongs to me and which has been judicially set apart, without my husband having any right to them on account of a decree of insolvency.” She sold the woman for 400 pesos. According to legal historian Richard Kilbourne most of the litigation involving women in the Territorial Supreme Court concerned insolvency suits and wives’ efforts to protect their dotal properties.

Provisions for Widows

Unless a woman kept her property entirely separate from her husband, widowhood naturally brought diminished resources for early American women. Under civil law wives could stipulate against forming a community of acquets and gains with her husband. This option made sense for women who owned considerable property before marriage and who desired to retain administration of it, but for most women in early America marriage entailed a necessary economic pooling of labor and resources. A combination of the law, a husband’s bequests and court practices determined women’s economic circumstances or how comfortable she would be after the marital

65 See for example Civil Code (1825) Book III, Tit. IV, Sec. VII, Arts. 2399-2412.

66 ASWF, 15:116.

67 Kilbourne, Jr., “An Overview of the Work of the Territorial Court,” 615.
partnership ended. Widows under civil law usually fared better in terms of their inheritances than widows under common law. This did not happen because husbands were more generous in civil law jurisdictions. It happened because the laws were generally more equitable to women.

Common law guaranteed a widow with children one third of her husband’s estate in both real and personal property in dower; she received one half if there were no children. A widow did not own her dower property in fee simple. She received only a life interest in it, making it legal for her to collect rents or enjoy the fruits of the property but not to sell it or devise the property in any way. Husbands could give more than dower to their wives; they could even will their wives their entire estate since they were not required to leave any legacy for their children. This worked to the advantage of women as long as the estate was not encumbered with debt. Only dower property received legal protection from creditors.

In intestate successions under common law, legal heirs received the portion of the estate not given to the widow in dower. Some American colonies practiced primogeniture until after the Revolutionary War. This common law practice the eldest son received all the real estate. The remainder of the children, including daughters, received the personal property in equal shares. If a widow did not receive her dower from the estate she could sue the other heirs for her portion of the estate. However, the other heirs could evict her from her home. That appears to be what happened to Catharine Gibb in Chester County, Pennsylvania in 1780. Gibb’s son, who managed the

estate, refused to partition the debt-free property. After five years Catherine Gibb
complained to the court, that she “hath Been Driven from her hard Earned Residence to
seek her Bread. . . . After forty years in Labour & Industry.”69 There is no record of the
outcome of her petition. This would not have happened to a widower. Husbands
enjoyed the right of *curtesy*, or “life-time management” in their wife’s property death,
in addition of course, to their own property. They also did not have to divide their
properties with their children during their lifetimes.70

The enforced dependence of widows under common law stands in sharp contrast
to the position of widows under civil law in Louisiana. Spanish civil law and Louisiana
codal laws on inheritance guaranteed widows half of the community property of the
marriage. She had always owned this property; now she also possessed full
management rights to the property. Widows also had always owned their separate
property, both dotal and *paraphernal*. With the deaths of their husbands, widows gained
management powers over their dotal property and if they had granted their husbands
management over their other separate property they regained that control. These
provisions were a widow’s minimum rights to property under the civil law system in
Louisiana. How much more she received depended upon her husband’s generosity and
the rules of forced heirship in play at the time the property was divided.

Southeastern Pennsylvania, 1750-1850,” *William and Mary Quarterly* 3rd. ser., 44
(January, 1984): 44.

Civil law rules of forced heirship required intestate estates be divided equally, first, among their children or descendents, male and female. If there were no children, the ascendant heirs, for examples fathers or mothers, received the inheritance. If there were no ascendant heirs, collateral heirs such as nieces or nephews were next in line for the inheritance. Only if there were no collateral heirs could a widow receive the intestate estate in its entirety.

Both spouses possessed the legal right to devise their estates, after creditors were satisfied and subject to rules of forced heirship. The rules regarding testate estates varied depending on the codal system in force at the time. Under Spanish law and the Digest (1808) a decedent possessed the right to dispose of up to one fifth of his estate by testament. The decedent’s estate included not only his or her half of the community property, but also the separate property. If, for example, a deceased husband’s estate consisted only of community property and he chose to will the entire one fifth of that portion of the estate that did not descend to his children to his wife, then his widow would receive a total of 70% of the total community property (with her own share of the community property included). After 1825 and the promulgation of the new Civil Code the percentages changed. A decedent without children possessed the right to dispose of up to two thirds of his estate. A decedent with one child could dispose of up to one half of his estate and a decedent with more than one child could will up to one third of his estate. A husband’s testamentary instructions pertaining to a specific
property that had been part of the community would be followed only if they conformed to his actual share in that property.\textsuperscript{71}

Louisiana law recognized that equal shares in community property in some cases might not provide a widow with adequate support, particularly if she had little or no dotal property and her husband claimed most of his property as separate. In the event that a wife was left in "necessitous" circumstances when her spouse died rich, Louisiana law guaranteed wives a \textit{marital portion} of one fourth of the decedent's estate if there were no children. If the couple had fewer than three children the wife could claim the same portion in usufruct. If there were more than three children "the surviving spouse whether husband or wife, shall receive only a child's share in usufruct, and he is bound to include ... what has been left to him as a legacy by the husband or wife who died first." \textsuperscript{72}

A woman in early Louisiana did not have the right of usufruct over her deceased's heirs property but she did not necessarily have to partition the property to enjoy the benefits of her portion of the property. If a widow had minor children she could petition the parish probate court that it was not in the best interest of the children to divide the property. The family could then continue to live on the property all


together. When the children came of age at either fourteen, in which case approval of
their tutor or curator was required, or at twenty five, they chose whether to legally
consent to a partnership in the property with their mother or to have a partition of the
property. They could not just remain on the property all together without some kind of
agreement since that implied a tacit partnership. These rules held true for men as well
as women.

Separation of Bed and Board and Divorce

The sanctity of the family was a central theme in eighteenth and nineteenth
century civil law. Divorce stood against this theme and, therefore, was not encouraged.
Spanish law did not allow absolute divorce. Only death dissolved a marriage.
Consequently only death dissolved the community property between a married couple.
However, couples could sue for separation of bed and board. If a wife petitioned for
separation and it was granted, she received her dower, half the community property and
one half of her husband's community. She continued sharing in his gains even though
they were separated. If he sued for separation and the court granted it the same formula
applied for him. If it was proven that the wife committed adultery she lost her dowry
and community property. If the cause of separation was unavoidable, such as one
spouse turning insane, the community dissolved and each spouse collected his or her
own gains after the separation was granted.


74Pugh, "Sociedad de Gananciales," 36.

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In 1805 the Orleans Territorial Legislature passed a statute that gave parish courts jurisdiction over petitions from wives for alimony from husbands who had deserted them for a year or more. The Territorial Legislature formally recognized divorce as a means for dissolving marriages in 1807. For the first time this meant divorce also dissolved the partnership in community property between a couple.\textsuperscript{75} Despite the Legislature’s legal recognition of divorce, the \textit{Digest} (1808) continued its alimony provision in connection with separation of and bed and board, but not divorce, “reserving to the courts of justice always the right of allowing an alimony to the wife, according to the circumstance of the husband and to the nature and exigencies of the case.”\textsuperscript{76} The fact that divorce dissolved the community property possessed by a couple may explain why. Since only death and divorce dissolved a marriage, property settlements following divorce would occur in the same way as they did following the death of spouse. Presumably, a wife would not be in as much need of support from her husband as she would under separation of bed and board.

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These general rules of women’s property ownership in late colonial and early Louisiana indicate that the Spanish-derived marital property regime had much to offer women within the context of the time. Late eighteenth and early nineteenth century


\textsuperscript{76}\textit{Civil Code} (1825), Bk. I, Tit. III. Art 133, \textit{Digest} (1808), Bk. III, Tit. V, Art. 18.
secular and religious guidebooks in America generally assigned women a dependent and subordinate status within a narrowly defined female world of home and family. The predominant legal system in North America, the common law, gave the legal stamp of approval to women's enforced dependence. In theory, both civil law and common law endorsed the principle of marital partnership, but Louisiana civil law followed through on that endorsement with rules that gave each spouse legally defined, equitable rights in the fruits and earnings of marriage. This was true even though the law assigned the principle support obligations of marriage to husbands. The sociedad de gananciales under Spanish civil law and the community of acquets and gains under Louisiana codal law guaranteed that all property increases resulting from the labor and industry of a married couple accrued to both spouses, to share equally in during the life of the marriage and at the dissolution of the marriage. They also shared equally in the obligations derived from their mutual property since any credit obligations came out of the common fund. The law did not allow either spouse to employ or obligate the community property solely for individual gain.

Remarkably, given the context of the times, the marital regimes under Spanish civil law and Louisiana codal law also preserved intact the separate property of each spouse. Historians have traditionally viewed any legal changes which create or enhance women's opportunities for ownership and administration of separate property as landmarks along the winding road to female property rights in America. Women in early Louisiana always had these rights. Under both Spanish civil law and Louisiana codal law married women in Louisiana owned separate property, and they could...
administer it if they chose do so. Women could also legally stipulate against joining in any economic partnership with their husbands, keeping all their property and debts entirely separate. Neither spouse’s separate property, with the exception of a wife’s dotal property, was liable for debts incurred on behalf of the community. Neither was either spouse’s separate property, with the exception of the wife’s dotal property, liable for the antenuptial debts of the other spouse.

Where the community system fell short of an ideal equitable partnership was in the management of community property, which was placed solely in the hands of the husband. Wives could only convey property and write contracts with the consent of their husbands if those acts pertained to community assets. Courts could grant wives power of attorney if they chose to challenge their husbands’ refusal to give their consent. Wives did receive protection from their husbands’ mismanagement and from creditors through their right of renunciation of community, husbands did not enjoy the same right. They could also, of course, choose not to join in community with their husbands, though even then the law required their husbands’ consent when wives conveyed immoveable property. Wives were prohibited from surety for their husbands because it could potentially dissipate their patrimonies. She could contract with her husband and others, with her husband’s consent, and she could act independently as a public merchant.

At the dissolution of the marriage women under civil law in Louisiana received an equitable share of the property of the marital regime, in addition to whatever her husband chose to endow her with by testament. The property she received as part of her

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husband’s succession was hers to own, not to use just for life as it was in so many common law jurisdictions. It was unlikely a wife could ever receive the entire estate from a marriage because of forced heirship. But properties did not have to be partitioned or liquidated for widows to enjoy them. A widow could petition the court to remain in her home with her children. Later, if the deceased’s heirs agreed she could also form a new partnership with them and remain on the property. Overall, the marital regimes and inheritance provisions of Spanish colonial civil law and Louisiana codal law favor the living in terms of placing property at their disposal. This principle combined with the equality of contribution and equality of profit inherent in these civil law systems had the potential to enhance women’s economic circumstances, at least when their circumstances are compared with women under common law.

These rules changed little during the period between 1782 and 1835 even though this period spans the transition from the end of Spanish colonial jurisdiction through the beginning of American jurisdiction. In part, this was because the diverse population of Louisiana desired to retain its legal customs. The lack of change in the legal rules pertaining to marriage and marital property can also be attributed to the Territorial and Louisiana State Supreme Court’s resistance to legal positivism. The Courts persistently ruled that original Spanish sources were authoritative in matters not specifically addressed in Louisiana codal law, at least until 1828. The two most potentially damaging changes occurring in the transition from colonial law to codal law were the misinterpretation of wife’s ownership of property during marriage. Under codal law between 1808 and 1825, wife’s ownership was postponed until after the marriage
ended. Even here, the Court held off from assigning the new damaging interpretation until 1847. The other potentially damaging change from colonial rule was the 1825 codal provision that allowed wife’s dotal property to be liable for her husband’s antenuptial debts. This liability was counteracted somewhat by the fact that Louisiana codal law always made a husband’s estate liable for replacing his wife’s dotal property at the dissolution of their marriage.

The civil law systems in Louisiana were not completely equitable to women. The system viewed women as frail and inferior in judgement to men. As Louisiana civil law evolved it was conflicted over how it should treat women. It combined elements of economic equality for women at the same time as it includes special protections for them on account of their limitations. This dichotomy is not surprising when one considers that the same kind of division and debate exists today over the need for equality for women under law and the need for the law to be aware of their differences. The chief impediment to equality in women’s property rights during the eighteenth and nineteenth century was husbands’ management powers over the community property. That provision has now been revised. Critics of this change argue that the only real beneficiaries of these changes are creditors. Women gained equality in management but the price was a loss of their protections against liability.77

Historians that by about 1800 married couples shifted to a more equalitarian, companionate view of marriage. This view allowed women more partnership with their

77Pugh, “The Evolving Role of Women in the Louisiana Law,” 1576.

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husbands in the management of family affairs. If that is so, women in this study were on the cutting edge of that change. They already enjoyed greater economic equality under the law than most women in America.

\[7\] See n. 34, p. 25 infra.
CHAPTER 3

LAW IN PRACTICE: WOMEN AND WEALTH IN EARLY LOUISIANA

The preceding chapter defined the legal traditions of Louisiana civil law, particularly as they pertained to women. The primary aim of the present chapter is to explore how these laws of property and inheritance in Louisiana functioned in practice using as key indicators data on women’s wealth, property and business transactions. Wealth-holding is an informative indicator of how property laws operated within Louisiana’s legal culture because the amount of wealth women accumulated, and the ways in which they and their families disposed of their wealth when they died, reflected the interplay between the civil legal doctrines promulgated by law-making bodies such as the Louisiana State Legislature and State Supreme Court and the mentalité of the people that the laws governed. What women’s inheritances should be can be predicted based on application of the relevant laws. Thus the degree to which the laws were put into actual legal practice by early Louisianans, and the ways they departed from those rules, can be evaluated by examining the accumulation of women’s wealth.

Early residents of Louisiana who departed from civil law inheritance practices frequently substituted, or attempted to substitute, common law practices with which they were more familiar and which were less beneficial to women. Their actions comprised a kind of legal subculture virtually obscured by the official acceptance of civil law in Louisiana. This sub-culture has two-fold significance. First, the actions of those who attempted to follow common law rules comprised part of a larger, on-going “clash of legal cultures” between Anglo common law and west European civil law in Louisiana.
Second, and more importantly for women, this subculture represented the minority view on women’s property rights in Louisiana, even though Louisiana was a deep-South, slave-owning state reputedly committed to a paradigm of patriarchy and female dependence.¹

A Paradigm of Patriarchy?

Many current historians suggest that Southern women conceptualized their roles as tautly bound by dependency and male patriarchy.² Evidence from Louisiana expands the scope of this discussion because of the civil law and its treatment of women’s property rights. Does the evidence support this view of women constrained by a culture of male patriarchy? To answer this question we must first explore the role of women and their property holdings in Louisiana.

Most of the population in early Louisiana worked on farms and plantations that were not just homes, but were also family businesses.³ Like many rural women


²See pages 23-24 and fn 33-35 infra for discussion and sources relevant to this debate.

³This is particularly true of the early American South because of the widespread production of cash crops. There is more historical debate over the capitalist orientation of agriculture in other regions of the country during this period. For an overview of this argument see Edwin J. Perkins, The Economy of Colonial America, 2nd edition, (New York: Columbia University Press, 1988), 57-90.
throughout the United States, women in early Louisiana took part in building, maintaining and preserving these family enterprises. Indeed, The Southern Courier in 1844 counseled men who were in search of wives to:

Choose a woman who has been inured to industry, and is not ashamed of it. Be sure she has a good constitution, good temper, and has not been accustomed to "dashing" without knowing the value of means, is not fond of novels, and has not giddy and fashionable relations, and you need inquire no further - she is a fortune.

The Southern Courier's advice articulated strains of a traditional "farmwife" ideal prevalent throughout early America. In the South, this ideal conflated expectations for

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5 Juster, 24.

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the southern lady with those for the economic activities of an agricultural helpmate or partner on the farm.\textsuperscript{6}

Women's role as agricultural helpmates finds widespread support even into more recent times. Based on her interviews of twentieth-century farmwomen, historian Nancy Grey Osterud argues that for the women in her interview sample who made land claims and purchases with their families and then stuck to those farms and plantations "interdependence and agency were not opposed. Their identities had been formed by the fusion of land and family, and family farms provided the framework within which they sought to create meaning in their lives."\textsuperscript{7} Osterud's observations regarding twentieth-century farm women also have relevance for women who lived and worked on the land in eighteenth and nineteenth century Louisiana. The economic activities of the farmwife and plantation mistress took on enlarged meaning in Louisiana because civil law recognized women as equal partners in the farm/plantation enterprise. The Louisiana data make this interdependency plain.

From the beginning, women's partnership often began with the land itself. Land claims and original land purchases are good examples of how this interdependence worked. Throughout the late colonial and early American periods women sought land in Louisiana. For example, in Feliciana parish women made fifty-eight land claims in the

\textsuperscript{6}D. Harland Hagler analyzes this ideal in "The Ideal Woman in the Antebellum South: Lady or Farmwife?," \textit{The Journal of Southern History}, 66, No. 3 (August 1980):405-418.

late colonial period and early American periods. This amounted to five percent of all original land claims in the parish while it was under Spanish and American jurisdiction. The number of acres claimed by women in West Feliciana parish averaged 452 acres.8

Data on women’s land claims and grants in the colonial and early American South is largely uncollected, but the information that is available indicates the numbers in West Feliciana were fairly typical of women’s land claims in other areas and at other times. Historian Lee Ann Cadwalder found that 5.54% of all royal grants after 1755 in the colony of Georgia went to women. Women filed a similar percentage of land claims in South Carolina. Cadwalder estimates that in North Carolina less than 1% of claimants were women. Interestingly, data for the pioneer period in the midwest shows percentages of 4% to 5% for female homesteaders in Minnesota. Percentages of female land claimants in the pioneer far west are considerably higher, closer to 18%. The average size of women’s claims in the other areas of the southeast tended to be smaller than in West Feliciana, around 200 acres.9

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8Percentage of female land claimants and the average size of female land claims in West Feliciana parish compiled from Greensburg Land District, Tract Book, State Land Office, Baton Rouge, Louisiana. Land claims made during the Spanish period were recorded in arpents, approximately 6/7 acre, but these numbers were converted into acres as the titles were confirmed. For the history of land claims in this region see Francis Andrei Elliott, “The Administration of the Public Lands in the Greensburg District of Louisiana, 1812-1852,” (M. A. Thesis, Louisiana State University, 1961); Francis P. Burns, “The Spanish Land Laws of Louisiana,” Louisiana Historical Quarterly 11 (1928):557-581 and Harry L. Coles, “The Confirmation of Foreign Titles in Louisiana,” Louisiana Historical Quarterly 38 (1955):1-11.

The Greensburg District land records were silent about the marital status of claimants, or about whether the claimants intended to farm but some estimates can be made. Cadwalder suggests, with no supporting evidence other than a few anecdotal examples, that the majority of female claimants in Georgia and South Carolina were widows who intended to farm for themselves, or with their children. In West Feliciana parish 10% of the women who filed original land claims in the Parish were still living in 1830 and appeared in the Louisiana census as female heads of households with twenty slaves of more. It is possible, but unlikely, that the majority of these women were widows when they filed their land claims nearly twenty-five years earlier. It is more likely that they were wives who intended to add their claims to those of their husbands to create a more sizeable land holding. Given the fact that some of the women who filed land claims may have moved or died prior to the 1830 census, it is likely that many more women than the 10% were wives building a plantation interdependently with their husbands at the time they made their claims. Each of the women who were identified in the 1830 census as female heads of households eventually managed plantations of a thousand acres or more for periods of up to thirty years. The size of the land holdings of these female heads of households indicate they had worked interdependently with their


husbands and families to found farms and plantations that were intended as investments for the future.

Women's writings that can tell us about how Louisiana women felt about the land and their roles in developing it are scarce. Unquestionably the most informative and best-known collection of letters from a Louisiana plantation women is that of Rachel O'Connor. Rachel came to West Feliciana Parish with her husband Hercules O'Connor while it was still under Spanish rule. She herself made two land claims totaling 416 acres. Her contribution, when combined with the claims of her husband Hercules, resulted in a plantation of nearly a thousand acres with an average of twenty slaves. (The number of slaves they owned fluctuated during the years but their combined acreage remained constant.) In 1830, following the deaths of her husband and two sons, Rachel sold the plantation to her brother, David Weeks, to avoid its being seized on account of debts incurred by her son, Stephen. Rachel continued to live on the plantation and manage it on behalf of her brother and his family until her death in 1846. In 1835 she wrote to her brother's heirs about the plantation,

When you come up I hope you may find us very industrious people and all doing well. I wish the crop may prove more than good but should it please God not to grant my wishes I will try to make it up in taking care of what is here which has been the way that the greatest part of this property has been collected together... We began the world very poor when we came to this place the 5th of June, 1797. We had only provisions to last us two days and had to trust in Providence for the next.”

Rachel evidenced great pride in her hard work and the accomplishment of building the plantation she ultimately named “Evergreen.” Clearly, Rachel desired a secure home

Rachel O’Connor to Mrs. A. F. Conrad, April 12, 1835.

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for her remaining years, but she also wished to take care of the plantation for her brother’s heirs, as she would have for her own children had they lived. She exercised authority in managing the plantation but also worked interdependently with family to make the enterprise a success. Rachel fit Nancy Osterud’s assessment of farm women who developed a sense of identity through their combined connections to land and family.

If this experience of developing a sense of identity held true for women who lived on farms and plantations under both common law and civil law, was there any difference between them? Yes, there was. First, Louisiana women could preserve their land claims as separate property if they chose. Second, under civil law, Louisiana women experienced actual reward in the form of property for their interdependent work roles. They might continue to reap the benefits of their property as the increase from the property devolved into the assets of the marital community which they would eventually share when the marriage dissolved. Civil law recognized that wives’ labor comprised part of the capital of the marital partnership. Even if they were silent partners in terms of management, the capital women brought to marriage through their farm labor and through their donations to their marriages constituted working capital. Women were entrepreneurs in that sense and they expected to further both their own economic interests and those of their families with this role during marriage. We have already seen from evidence earlier in this study that wives understood their importance to the family economy. Attempts to dispossess wives of their legal portion of community property evoked eloquent testimony on behalf of women’s economic contributions to the marital economy. Women possessed this economic influence irregardless of whether they acted
autonomously in the management of property. Even if they were completely passive with their husbands and/or sons making all the decisions and their slaves accomplishing all the farm labor, women still owned property. They could reap financial benefits from their property or they could convert it into a home for themselves. In essence, they possessed some protection against the desperate circumstances of someone like Catherine Gibb who suffered so much under common law because her son would not release her inheritance.12

As I will show, a significant number of Louisiana women did act autonomously in the management of property, especially as widows. Many more women acted interdependently with members of their families or with an authority or agency in property matters rooted in their legal rights to personal and family property and in their commitments to further their families’ economic interests. The system worked to the advantage of women in Louisiana as is illustrated by the fact that real estate comprised one third of all the property of female estates probated in West Feliciana Parish between 1815 and 1835, approximately $390,000 of a total of $1,200,000 (Table 1).

The percentages of women’s probated estates and their real-estate values are conservative indicators of women’s property ownership that can be used for comparison with original land claims because individual claims may be combined into single estates. It is clear that women were able not only to claim land, they were able to build their estates through inheritance. During the period of a few decades, 5% of the original claims grew to about 20% of the value of land in probated estates. This is not what one

12See page 79.
Table 1. Land and Wealth in West Feliciana Parish, 1815-1835.\textsuperscript{13}

<table>
<thead>
<tr>
<th></th>
<th>Number of Estates</th>
<th>Value in Dollars</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Real-estate</td>
<td>Other</td>
<td>Total</td>
<td></td>
</tr>
<tr>
<td>Men</td>
<td>597</td>
<td>1,511,719</td>
<td>3,212,538</td>
<td>4,688,066</td>
<td></td>
</tr>
<tr>
<td>Women</td>
<td>110</td>
<td>389,250</td>
<td>776,348</td>
<td>1,185,076</td>
<td></td>
</tr>
<tr>
<td>% Women</td>
<td>16</td>
<td>20</td>
<td>19</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

would expect if the women's activities were restricted by a strict patriarchal society. In summary, although women in Louisiana, like their sisters elsewhere in the United States, filed 5% of the original land claims, and like them worked interdependently with their husbands, in Louisiana the operation of civil law resulted in their holding 20% or more of the value of land put into probate, something that was not possible elsewhere where women were dependents of patriarchal males.

Womens' Wealth

Little has been written concerning women's wealth in early America, primarily because data from most colonies and states is not readily accessible. In Louisiana, there is no uniform procedure for filing and indexing pertinent early documents in clerk-of-court offices. Parish probate records containing property inventories, successions, wills and partitions may be scattered throughout several collections of documents in one parish and filed all together in the next parish. For instance, West Feliciana has concise,

\textsuperscript{13}Figures compiled from Inventory Record Books A-C, 1815-1835, West Feliciana Parish Probate Records.

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separate inventory indices but some inventories are also mixed into the probate records. There are no inventory indices in the Baton Rouge parishes. East Baton Rouge Parish has duplicate probate records for the period of this study, “Flat Files” and “Old Style,” but only the former contain inventories, and the succession records of the two are not a clear match. Wills are not separated in any of the parishes, but are usually scattered in the inventory and/or conveyance records, although in West Baton Rouge some were also found in successions. The documents do not always designate whether a woman was married or not. Inventories also do not provide a completely accurate assessment of an individual’s wealth because they do not include full accounts of debts owed by, and to, the estate. Furthermore, even the categories of instrument used to describe transactions varies from parish to parish. Moreover, probate records are generally biased in favor of decedents who owned property, mostly middle or upper class property owners. Despite these limitations probate records, particularly inventories, are the best sources of information we have on the nature and size of wealth held by early Americans.¹⁴

For wealth information from the late Spanish colonial period I relied on the 18 volume collection “Archives of West Florida” transcribed and translated by the W. P. A. in the 1930’s. The colonial “West Florida” parishes of Baton Rouge and Feliciana comprise most of the area of the present study and includes present day East Feliciana, West Feliciana, and East Baton Rouge parishes. The “Archives” collection covers the

period 1782-1810. These volumes contain civil procedures carried out at the district level by the various commandants who provided direct civil and military government for Spain. The majority of the records contained in these volumes pertain to proceedings administered by commandants at Fort San Carlos in Baton Rouge, though other command posts are occasionally represented15.

Of the three American-era parishes considered in this study West Baton Rouge Parish and West Feliciana Parish have the most well-preserved and accessible inventory records extending back to the early nineteenth century. Very few records exist in East Baton Rouge Parish prior to 1819.16

For purposes of comparison of women's property ownership between common law and civil law jurisdictions I chose Carole Shammas' study of women's wealth holding in several common law areas during the colonial and post-Revolutionary War periods. The locality in Shammas' study most comparable to the present study is Bucks County, Pennsylvania, in the 1790's. Quaker farmers first came to Bucks County in 1683.


16 Archives, East Baton Rouge Parish, Clerk of Court’s Office, East Baton Rouge, Louisiana; Archives, West Baton Rouge Parish, Clerk of Court’s Office, West Baton Rouge, Louisiana; Archives, West Feliciana Parish, Clerk of Court’s Office, St. Francisville, Louisiana.
Because of its proximity to Philadelphia, farmers in Bucks County developed a market economy to supply the city rather early in the county’s development. This market economy made Bucks County as economically developed in the 1790's as the West Feliciana and West Baton Rouge parishes were in the 1820's with their cotton production. Both Pennsylvania in the 1790's and Louisiana in the 1820's were also similar in that both regions were only a decade or so into statehood. Although the Louisiana parishes had a much smaller population than Bucks county, as can be seen in Table 2, the population of at least Feliciana Parish in 1820 was at least the same order of magnitude as that of Bucks County in 1790.17

Inventory and succession records detail probated wealth for both real estate and personal property, indicating individuals’ ownership and access to wealth at the time of their decease. Not all adults went through probate. It is likely that most of those who did not go through probate probably had too little property to probate, as suggested by Figure 2. Between one third (32% in West Baton Rouge) and one half (52.48% in East Baton Rouge) of the men probated in all three parishes had a total probated wealth of less than $1000. A similar trend can be seen in the summary of womens’ wealth, although to a lesser degree and with less certainty, where 19.19% (West Baton Rouge) to 22.00% (East Baton Rouge) of probated women fall into the lowest wealth category, $0-1000 (Figure 3). Others may have tried to circumvent the law by transmitting property to heirs before they died. The question is, what is the relationship between those whose estates were

17Shammas, Inheritance in America, 13.
<table>
<thead>
<tr>
<th>County</th>
<th>Free White</th>
<th>Free Black</th>
<th>Slave</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Bucks</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1790)</td>
<td>12,423</td>
<td>11,951</td>
<td>581</td>
<td>261</td>
</tr>
<tr>
<td>EBR</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1820)</td>
<td>1,443</td>
<td>1,193</td>
<td>49</td>
<td>83</td>
</tr>
<tr>
<td>Felic</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1820)</td>
<td>3,234</td>
<td>2,360</td>
<td>37</td>
<td>32</td>
</tr>
<tr>
<td>WBR</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1820)</td>
<td>535</td>
<td>405</td>
<td>63</td>
<td>61</td>
</tr>
</tbody>
</table>

probated and the total decedents? That is, can useful and valid conclusions about women’s wealth be drawn from the surviving inventory records?

In order to determine how the number of probated estates in the three Louisiana Parishes studied compare to the probable deaths I calculated the number of expected decedents using census figures from 1820 and the average number of probates for the five years between 1819-1823 in West Feliciana and 1818-1822 in East and West Baton

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Figure 2. Percent of Individual Men in Wealth Group.

Charts represent East Baton Rouge, EBR; West Baton Rouge, WBR; West Feliciana, WFL parishes. Wealth Groups are: $0-1000, 0-1k; $1000-2500, 1-2.5k; $2500-5000, 2.5-5k; $5000-10,000, 5-10k; $10,000-20,000, 10-20k; $20,000-50,000, 20-50k; $50,000-100,000, 50-100k; greater than $100,000, >100k.19

19Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA.
Figure 3. Percent Individual Women in Wealth Group.

Charts represent East Baton Rouge, EBR; West Baton Rouge, WBR; West Feliciana, WF. Wealth Groups are: $0-1000, 0-1k; $1000-2500, 1-2.5k; $2500-5000, 2.5-5k; $5000-10,000, 5-10k; $10,000-20,000, 10-20k; $20,000-50,000, 20-50k; $50,000-100,000, 50-100k; greater than $100,000, >100k.20

21Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA.

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Rouge parishes following the model of Shammas. These data allowed a
direct comparison with published data for Bucks County probates between 1791 and
1801. The “West” model life table is best suited for populations in developing regions,
such as the Florida Parishes of Spanish colonial and early American Louisiana. The
“West” model is appropriate because relatively good vital statistics are available and the
ratio of males under sixteen to those over sixteen in the census was relatively high. However, rather than level 9, which was used for Bucks County, level 1 was used for the
Louisiana parishes because this level had values closest to the actual Louisiana mortality
rate for children under 5 years old. The relevant data are summarized in Table 3.

The expected mortality can be compared against the actual number of probates
recorded for the same time period to calculate the percent of decedents with probated
estates. These data are presented in Table 4 which demonstrate that adult decedents in
East and West Baton Rouge parishes were the most likely to be probated. In West Baton
Rouge half of the women (50%) and 86% of the men were probated. In East Baton
Rouge nearly as high a percentage of women (43%) and virtually all of the males (172%)
were probated. The latter number is an anomaly that cannot be explained at present. It
may be at least partially explained by the very large number of relatively poor men in East
Baton Rouge Parish (52.48%) whose estates went to probate (Figure 2).

\[^{19}\text{Shammas, } Inheritance in America, 219-20.\]

\[^{22}\text{Shammas, } Inheritance in America 219; Ansley J. Coale and Paul Demeny, Regional Model Life Tables and Stable Populations 12.\]
Table 3. Population and Expected mortality in Three Louisiana Parishes in 1820.

Census figures for total free population in East Baton Rouge (EBR), West Baton Rouge (EBR) and West Feliciana (WF) are presented. Number of adults, 25 years or older, and Expected mortality are calculated from Model “West”, Mortality level 1, r=20 life tables; The life table predicts that 17.5% of the males and 18.6% of the women were 25 or older. The predicted mortality rate for men was 65.4/1000 while that for women was 58.2/1000.2 3

<table>
<thead>
<tr>
<th>Gender</th>
<th>Parish</th>
<th>Total Free</th>
<th>Adults (≥ 25 yrs old)</th>
<th>Expected Mortality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Men</td>
<td>EBR</td>
<td>1492</td>
<td>261</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td>WBR</td>
<td>598</td>
<td>105</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>WF</td>
<td>3271</td>
<td>512</td>
<td>37</td>
</tr>
<tr>
<td>Women</td>
<td>EBR</td>
<td>1276</td>
<td>237</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>WBR</td>
<td>466</td>
<td>87</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>WF</td>
<td>2392</td>
<td>445</td>
<td>26</td>
</tr>
</tbody>
</table>

An anomaly may also be related to the more urbanized nature of the parish. A greater proportion of the parish population was concentrated in the principal town, Baton Rouge, than was true for either Bucks County or the other parishes. The average percent of probated estates for both men and women in the Baton Rouge parishes are extraordinarily high and this allows for confident estimation of the relative wealth of all decedents in both parishes. Although the lower numbers for West Feliciana suggest a

231820 County Level Census Data, 15 September, 2000, <http://fischer.lib.Virginia.EDU/egi-local>; expected values based on mortality rates in Coale, Regional Model Life Tables 3-36, 37, 42, 55 & 63; r=20 (death rate for 20 yr olds) was chosen as the column with data closest to the age of majority.

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Table 4. Average Percentage of Adult Decedents with Probated Estates

Bucks County, PA (Bucks); East Baton Rouge, LA (EBR); West Baton Rouge, LA (WBR); West Feliciana, LA (WF); Expected = decedents from Table 3; Actual = average number of probated estates during 5 year period indicated. 24

<table>
<thead>
<tr>
<th>County/Parish</th>
<th>Female</th>
<th></th>
<th></th>
<th>Male</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bucks (1791-1801)</td>
<td>-</td>
<td>-</td>
<td>11.0</td>
<td>-</td>
</tr>
<tr>
<td>EBR (1818-1822)</td>
<td>6.0</td>
<td>14.0</td>
<td>43.0</td>
<td>29.3</td>
</tr>
<tr>
<td>WBR (1818-1822)</td>
<td>2.5</td>
<td>5.0</td>
<td>50.0</td>
<td>6.0</td>
</tr>
<tr>
<td>WF (1819-1823)</td>
<td>5.4</td>
<td>26.0</td>
<td>20.8</td>
<td>14.0</td>
</tr>
</tbody>
</table>

24 Expected values based on mortality rates in Ansley J. Coale and Paul Demeny, *Regional Model Life Tables and Stable Populations*, 3-36; 37, 42, 55 & 63; Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA; Carole Shammas, Marylynn Salmon and Michel Dahlin, *Inheritance in America*, p. 16.

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lower degree of certainty, they remain very comparable to the corresponding numbers for common law Bucks County. The data that one third to one half of the men in the study parishes had a probated wealth of $1000 or less (Fig. 2) has a solid basis and it seems intuitively accurate that this is a most conservative estimate. It is more likely that a poor person would not be probated than a wealthier individual. Similarly, large numbers of probated women in these parishes fell into the poorest category (Fig. 3). Again, these data, which range from 19-22% are probably most conservative estimates. What is even more interesting is the distribution of wealth in higher categories.

The other wealth categories in figures 2 and 3 probably are more accurate values, especially for the top three or four categories of wealth. This fits an intuitive sense that wealthy owners would leave relatively few large estates that would escape probate or for which the records have been lost. Several trends are evident from comparing the wealthier categories. First, more wealth was concentrated in West Feliciana than in either of the Baton Rouge Parishes. Although true for both men and women, it is especially noteworthy for women. Twenty-nine percent of women's probates in this parish were worth at least $10,000 compared with 21% of men's. The figure for West Feliciana women was nearly double the percentages for women in East Baton Rouge (17%) or West Baton Rouge (16%). At the same level ($10,000) approximately the same percentage of men were probated in West Feliciana (21%) as West Baton Rouge (19%), with about half that percent in East Baton Rouge (9%). In each parish, and for both men and women, the percentage of decedents and the next higher category (at least $20,000) was approximately half the percentage at $10,000. There was an even greater
percentage drop, one-half to one-tenth, at the $50,000 or more category, but the trend was similar for both men and women across the three parishes. In absolute terms men controlled more wealth than women (Table 5), but in relative terms the wealth was distributed quite evenly. In fact, except for the categories above $50,000 in East Baton Rouge and above $10,000 in West Baton Rouge, the percentage of women is higher in each category than the corresponding percentage of men!

Table 5. Total Probated Wealth in the Study Parishes.25

<table>
<thead>
<tr>
<th>Parish</th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Baton Rouge</td>
<td>$1,717,832</td>
<td>$556,279</td>
<td>$2,274,111</td>
</tr>
<tr>
<td>West Baton Rouge</td>
<td>$935,393</td>
<td>$525,520</td>
<td>$1,460,913</td>
</tr>
<tr>
<td>West Feliciana</td>
<td>$4,688,065</td>
<td>$1,185,076</td>
<td>$5,873,141</td>
</tr>
</tbody>
</table>

The data in Table 4, especially the high percentages of women who left probated estates, can be used to investigate another aspect of the question at hand. They suggest that persons who lived in the Baton Rouge Parishes had a high compliance with civil law whereas those in West Feliciana Parish were not so compliant. Furthermore they suggest that Francophone West Baton Rouge was in even higher compliance than its eastern

25Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA; The data for East Baton Rouge represents only of 179 of 604 records.
neighbor. Since we know that West Feliciana Parish had a high percentage of Anglo settlers, it is worthwhile to compare that parish's figures on probated estates with those from Bucks County to see if common law practices might account for the lower numbers. In fact the percentages observed in West Feliciana, 20.8% for women and 37.8% for men, are more comparable to those of Bucks county, and are likely an indication of the stronger anglo influence in that parish.

To test whether the West Feliciana data do in fact indicate a strong common law influence a Chi-square Test, with Yates correction, was used to determine if the values for percent of probated estates in West Feliciana Parish are significantly different from those observed for Bucks County. They are (P=0.049), but just barely. The P-value is the statistical significance level, the probability of obtaining a significant event if there is in fact no difference between the values being compared. By convention, a level of 0.05 is usually chosen as the critical value. If the P-value is larger than 0.05 then the data supports the hypothesis that the values being compared are not significantly different. However, if the P-value is smaller than 0.05, then either the values being compared are significantly different, or a rare event has occurred. The smaller the value, the stronger the support for a significant difference.\textsuperscript{26} For the comparison of West Feliciana Parish with Bucks County, P=0.049 is just barely lower than the significance level of 0.05, thus the West Feliciana statistics are significantly different than those recorded for Bucks County. For women, the West Baton Rouge data was most different from that of Bucks

County (Table 4) so it is reasonable to predict that the values for the comparison of West Baton Rouge Parish, with Bucks County, are also significant different. Their difference is very significant (P=0.0138). On the other hand West Baton Rouge and West Feliciana values are not significantly different from each other (P=0.97) nor are the values comparing East and West Baton Rouge parishes significantly different (P=0.29) if the value for East Baton Rouge Males is assigned to 100%. These tests confirm a significant difference between the civil law Louisiana parishes and common law Buck County. They also suggest a real influence of common law among the Anglo inhabitants of West Feliciana Parish.

All of the Louisiana percentages of probates to deaths are higher than those observed in Bucks County. This is important because the Bucks County, for the period 1791-1801, represents one of the highest rates for probated decedents reported under common, even for much later and into the twentieth century. Yet in the present comparison, women in the common law jurisdiction of Bucks County were the least likely to go through probate with only 11% of female decedents probated. The restrictions of coverture which denied women the right to make wills or devise realty make this low percentage of female probates under common law understandable. What is even more interesting in relation to the present study is that again we have an indication of differential compliance with the civil law when comparing parishes. West Feliciana parish, bordering a common law state and inhabited by many Anglos, shows percentages of probated estates intermediate between the values reported in common law jurisdictions and those of the two Baton Rouge parishes where civil law seems to have held sway.
In summary, what the data presented to this point indicate is that adults, both men and women, in the Louisiana parishes studied were significantly more likely to be probated than their counterparts in Bucks County, PA or in other common law localities. This difference was especially true for women, who were two to nearly five times more likely to probate their estates than their counterparts in Bucks County.  

**Was the Law Equitably Followed?**

Did women receive their share of wealth according to the laws? Table 5 records the total probated wealth among men and women in East Baton Rouge, West Baton Rouge and West Florida parishes during the time period of this study while Figures 4 and 5 represent the concentration of that wealth at different levels. It is clear that considerable wealth was concentrated in the large plantations of East Baton Rouge and East Feliciana. In the former, nearly half of the mens’ wealth (45%) was concentrated in estates valued at greater than $50,000 (Figure 3) although no women were in this category (Figure 4). The comparable figures for men in West Feliciana were not so high (33%), but 37% of womens’ wealth was concentrated in this wealthy elite.

The average wealth in each wealth group is shown in Table 6. Here the concentration of wealth in the hands of the elite is even clearer. Only three planters in West Feliciana, two men and one woman, Maria Doherty, were worth more than $100,000 at their deaths. Two East Baton Rouge men were also among this elite.

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27 Carole Shammas and her co-authors compared Bucks County probated estates to the number of probates in counties in at least seven other states as far forward in time as 1980. See *Inheritance in America*, pp. 16-17.
Figure 4. Percent of Men’s Wealth in Wealth Group.

Charts represent East Baton Rouge, EBR; West Baton Rouge, WBR; West Feliciana, WF. Wealth Groups are: $0-1000, 0-1k; $1000-2500, 1-2.5k; $2500-5000, 2.5-5k; $5000-10,000, 5-10k; $10,000-20,000, 10-20k; $20,000-50,000, 20-50k; $50,000-100,000, 50-100k; greater than $100,000, >100k 28.

28 Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA.
Figure 5. Percent Women's Wealth in Wealth Group.

Charts represent East Baton Rouge, EBR; West Baton Rouge, WBR; West Feliciana, WF. Wealth Groups are: $0-1000, 0-1k; $1000-2500, 1-2.5k; $2500-5000, 2.5-5k; $5000-10,000, 5-10k; $10,000-20,000, 10-20k; $20,000-50,000, 20-50k; $50,000-100,000, 50-100k; greater than $100,000, >100k.  

29Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA.
Table 6. Average Probated Wealth by Wealth Group.

East Baton Rouge, EBR; West Baton Rouge, WBR; West Feliciana, WF. Wealth Groups are: $0-1000, 0-1k; $1000-2500, 1-2.5k; $2500-5000, 2.5-5k; $5000-10,000, 5-10k; $10,000-20,000, 10-20k; $20,000-50,000, 20-50k; $50,000-100,000, 50-100k; greater than $100,000, >100k; Dollar amounts rounded to the nearest dollar; Numbers in parentheses indicates number of probates within that group.  

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<td>(10)</td>
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<td>(5)</td>
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30 Bound Inventories, West Feliciana Parish Courthouse, St. Francisville, LA; West Baton Rouge Parish Succession Papers, Port Allen, LA.

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Twenty-four of the twenty-eight planters worth $50,000 to $100,000 also lived in West Feliciana, including: Martha Johnson, Lucy Pirrie, Catherine Turnbull, Pamela Flower, and Emily Bridges.

Table 7 records the percentage of women among all probated decedents (testate and intestate) in Spanish West Florida 1782 to 1808, West Feliciana parish between

<table>
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<th>Period</th>
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<th>Womens' % Wealth</th>
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<td>1831-1835</td>
<td>West Feliciana</td>
<td>166</td>
<td>18</td>
<td>30</td>
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<tr>
<td>1808-1835</td>
<td>West Baton Rouge</td>
<td>253</td>
<td>34</td>
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1819-1835 and West Baton Rouge parish between 1808 and 1835. In Spanish West Florida women decedents owned only three percent of the total probated wealth, even though they comprised twenty percent of all probated decedents. Spanish West Florida would be classified as a frontier area during much of the period between 1782 and 1808 so information is sketchy concerning the female population in West Florida during this era. A Spanish census does show that as late as 1805 single, white women, comprised more than half of the white female population in West Florida. These women, and girls, were young. Probated decedents tend to be older and wealthier than the population in general. It is likely that some of the women who are represented in the census in 1805 as single or married, turned up fifteen and twenty-five years later as wealthy female decedents in West Feliciana and East Baton Rouge parish censuses.

Approximately one out of every five probated estates in the study area belonged to women in the during the time period of this study. It is not surprising that women living in a plantation dominated, slave economy, such as that found in southeastern Louisiana, owned less wealth than men. What is notable about these figures is that Table 7 also demonstrates that the proportion of probated wealth owned by women was nearly the same after 1808 as their proportion of the overall number of probated decedents. This might be expected from the data already presented on compliance with civil law and it

32East Baton Rouge parish is not included in the Table because Parish inventories are not separated from other probate records.

33ASWF, Vols. 1-18; and “Provencia de la Florida Occidentalen dans 1805,” #1149, folder 2, Hill Memorial Library, Louisiana State University, Baton Rouge, Louisiana. This census only summarizes the population. It does not include individual names.
strongly suggests that these women owned their legal share of family wealth according to the civil law's community property. It is surprising that West Feliciana parish shows the same pattern. Even more striking is that even though women made up fewer than one in every five probates (18%) from 1831 through 1835 they owned nearly one-third (30%) of all probated wealth in this wealthy parish during the first decades of American ownership. These data also show that wealth among women in West Feliciana became more concentrated as the parish developed, a development dramatically illustrated in Table 7.

Although the kind of wealth women owned varied considerably, women in each of the Louisiana parishes owned working capital at their decease. The records indicate they owned real estate, slaves and personal property, and they owned it in almost exactly the same proportions as men. Wealth holdings in these parishes conformed to long term

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For purposes of comparing data concerning women's property ownership from a civil law jurisdiction with data from a common law jurisdiction this section is modeled after Carole Shammas, “Early American Women and Control Over Capital,” pp. 134-154; given the fact that many historians agree that slavery encouraged patriarchy, and the fact that civil law recognized males as the heads of household allowing husbands to administer property held in common between husband and wife, it is reasonable to conjecture that women in Louisiana would have less access to wealth. However, it is clear from the present study that these assumptions are not necessarily valid. See for example Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women in the Old South*, p. 53; and Bynum, *Unruly Women*, p. 8.; Alice Hanson Jones estimated no more than 7% of probates were female in the thirteen colonies. See *Wealth of a Nation to Be* (New York, 1980), p. 220 and Carole Shammas argues that no more than 10% of probates were females in various counties of Virginia, Maryland and Pennsylvania between 1660 and 1790. See “Control Over Capital,” p. 138.
trends in the growth of immoveables or personality as a proportion of the amount of wealth individuals owned.35

As further evidence that the civil law tradition was operating in Louisiana note that women in both East Baton Rouge parish and West Feliciana parish during the early period, through 1830, owned a greater share of the wealth in their localities than their counterparts in Bucks County, Pennsylvania. Female probates accounted for 17.0% of all decedents in Bucks County in the 1790's, compared to 17% -18% in West Feliciana parish, 21% in East Baton Rouge parish and 34% in West Baton Rouge Parish (Table 7). But, women in Bucks County owned only 7% of the probated wealth, considerably less than half of their 16.5% proportion of the probates. In contrast, West Feliciana women owned 14% of all probated wealth in the 1820's, almost the same as their proportion (17%) in the probate sample. In the Baton Rouge parishes, women's wealth was slightly more than their percentage of probates, 24% wealth vs 21% probates in East Baton Rouge parish and 37% wealth vs 34% probate in West Baton Rouge (Table 7).37

Female ownership of property in Bucks County, Pennsylvania did not reach the levels of West Feliciana and West Baton Rouge parishes until the 1890's. At that time the proportion of women in the probate sample nearly equaled their share of the probated wealth. Carole Shammas suggests that marital property acts passed during the mid-

35This trend began in the South with the designation of slaves as moveable property. Shammas, *Inheritance in America*, pp. 9-10; Louisiana law designated slaves as real estate. If slaves values are transferred to the moveable or personality column in Louisiana inventories than the growth in personality holds true. *Digest (1808)*, Bk. I., Title VI., Chapt. 3, Arts. 15-26.

36Shammas, “Inheritance in America” 119.

nineteenth century may have contributed to this positive change for women’s property ownership in Bucks County. Marital property acts finally allowed women to own and inherit more property because they owned property they brought into marriage and because they could write wills. These were property ownership rights women in West Feliciana and West Baton Rouge parish had always held under civil law. In addition Louisiana women always owned their half of the community property, a twentieth century innovation under common law.38

The comparison between women’s ownership of property in the predominantly Anglo West Feliciana parish and the predominantly French-speaking West Baton Rouge parish is as striking as the comparison between the Louisiana parishes and Bucks County, Pennsylvania. Many fewer women resided in West Baton Rouge parish than West Feliciana, but proportionately nearly twice as many of them owned wealth at their deaths, especially in the years through 1830 (Tables 2 and 7).

Why were women in West Baton Rouge parish so much better off in terms of ownership of property than women in West Feliciana parish? It is probably not an issue of class. Slaveholding and plantation agriculture predominated in both parishes. Most West Baton Rouge planters could not count themselves among the planter elite (Figures 2 and 3). But they were not non-slaveholding yeomen farmers either. Presumably, the same form of southern patriarchy, with its emphasis upon female submissiveness and dependence, existed in West Baton Rouge parish as in West Feliciana parish.

38Shammas, “Early American Women and Control Over Capital,” 139.
The answer to why West Baton Rouge differed so much in female property ownership from West Feliciana may lie in ethnicity and custom. Men and women of French ancestry in West Baton Rouge parish, accustomed to the civil law tradition, were more inclined to follow the spirit and letter of civil law statutes. For instance, unlike the case of Sarah Richardson described in chapter 1, I found no wills in the period of this study in West Baton Rouge parish that sought to circumvent the law, or control women from the grave.

That was not true in West Feliciana parish where Anglo immigrants from common law jurisdictions predominated or earlier among the Anglos in Spanish West Florida. There were some husbands like West Feliciana resident Archibald Palmer who gratefully acknowledged in his 1817 will that his wealth “was chiefly acquired by [his wife Hannah’s] industry, prudence and care. . . .” Archibald left Hannah full and complete ownership rights of his share of their community property in addition to her own share, even though the law required his share be divided among his adult children.39 He was an exception.

Most Anglo husbands who left wills were not so generous. Men often used their will-writing authority to restrict their wife’s ownership of property, even property that legally belonged to their wives. For example, in 1817 West Feliciana resident William Ratliff decreed that all of his property should be equally divided between his wife and three children, including one as yet unborn. Ratliff probably considered this equitable.


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In another instance the will of wealthy West Feliciana resident William Barrow chillingly represented the "unity of person" principle of common law. Barrow stipulated that "all the estate real and personal belonging jointly or separately to my wife or myself and considering the same in map ['Now rare, a detailed but condensed representation or account']\(^{40}\) of my own, I will and bequeath as follows..."\(^{41}\)

All of the wills in the Spanish West Florida archives derived from Anglo men restricted their wife’s legal legacy in some way. Table 8 indicates that 50% percent of wills written by married men in Spanish West Florida and West Feliciana parish left their wives more than intestacy laws required. Nevertheless, of that 50% percent, 39% (9 of 23) placed restrictions on their wives’ ownership of that property. For example Feliciana resident Ira Kneeland’s will from 1810 left his widow all of his estate for her lifetime as long as she did not remarry ("More for Widowhood" in Table 8). If she remarried the entire estate devolved to the couple’s as yet unborn heir. Only if there was no heir, and she remarried, would his wife receive her lawful half of the estate. Even in this last situation the remaining half of the estate would devolve to his other living relatives.\(^{42}\)

Restrictions such as those in the Kneeland will significantly diminished a woman’s access to property, and they diminished her freedom to make personal life choices.\(^{43}\) In each of


\(^{41}\) *Probate Records, West Feliciana Parish, Vol IV, 1824* p. 22

\(^{42}\) See “Provisions for Widows” section, Chapter 2.

\(^{43}\) ASWF, Vol. 1-18; *Probate Records, West Feliciana Parish, Vols. 1-6, 1811-1835; Probate Record, West Feliciana Parish, Vol. I, p.13, April 20, 1810*. See the protest
the above cited cases there is no evidence that the will was contested, although they were in violation of civil law.

Table 8. Comparison of Spousal Bequest, Spanish West Florida, and West Feliciana Parish, Louisiana, 1809-1835.44

“N” represents the number of husbands’ wills specifying a particular partition to a surviving wife. Percent is calculated based on a total of 46 wills. Bold face is for major categories that add to 100 % of the wills recorded. Light-type is for subcategories within each main category.

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<th>Condition</th>
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<td>MORE than Lawful 50%</td>
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<tr>
<td>More for Widowhood and/or More for Life Only</td>
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<td>LESS than Lawful 50%</td>
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<tr>
<td>Less of Widowhood</td>
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</tr>
<tr>
<td>TOTAL</td>
<td>46</td>
<td>100</td>
</tr>
</tbody>
</table>

of Rachel Russ, 70.

One of the few cases where a woman successfully challenged her husband's will is that of Sarah Lintot Rowell. Hubert Rowell's will, written in 1804, assured his wife Sarah that she could live on their plantation with the couple's only son for the remainder of her life. He also stipulated that all of the couple's substantial 80,000 pesos estate devolved to their son, presumably because Sarah contributed nothing to the estate.45 Hubert Rowell must have believed his wife would agree with his division of their property. He appointed her testamentary executor. She did not agree. In her protest Sarah explained her reasons,

> it being true that neither he nor I at the time of our marriage made any inventory nor marriage contract stating what each one brought in marriage, it being also known that said husband was owing several debts at the time of our marriage to different person, to whom we have paid our largest portion of the said debts with the proceeds of our industry and labor, I hereby declare that I do not agree with disposition of the said testament, considering that not to be according to law.46

The Court agreed with Sarah, decreeing that all the property of the estate was community property and that the estate should be divided in half. Sarah's case and her victory are unusual in the Spanish West Florida records, in part because few women protested their husband's wills.47

Almost as many husbands gave their wives less property than the law required as gave them more. Even those husbands who gave their wives less than the half that the

45 ASWF, Vol. 8, 93-95.
46 ASWF, Vol. 8, 95.
47 ASWF, Vol. 8, 97.
law stipulated placed restrictions on their wives’ meager legacies. All of the wills identified from Spanish West Florida that gave women less than the law stipulated came from Anglo households. Forty-two percent of the wills of married men in West Feliciana gave their wives less than they would have received had they not written any will. One explanation for why husbands gave their wives less than they were due might be that they intended their legacy for older children who would in turn care for their aging mothers. Yet, only 22% of the testators in West Feliciana who gave their wives less property had adult children.

As we have already seen, women could and did protest their husbands’ usurpation of legal rights to property. It needs also to be restated that forced heirship made the percentage of wealth testators could devise to heirs other than their wives much less than under common law. Under civil law forced heirship diminished the economic impact of wills and the degree of control wills afforded testators.\(^4\)^\(^8\)

Carole Shammas discovered a more pronounced trend to reduce women’s inheritance among male testators in Bucks County, Maryland. There, nearly 60% of testators gave their wives less than they would have received if the husbands had died intestate. Most of these testators had adult children. Twenty-nine percent of husbands gave their wives more property than the law required but one-quarter of these placed

\(^{48}\)A Spanish administration order (cedula) from the Spanish Governor of Puerto Rico, January 20, 1792 referred to in one of the wills reputedly enabled “fathers of families and others to make and form their wills and dispose of their property.” Probate Record, West Feliciana Parish, Vol. 1, p. 35, October 28, 1807. I have not been able to locate this order but, in any case, it would apply only to wills created and administered during the Spanish era.
restrictions on their ownership. Shammas concludes that given the large number of testators (approximately 50%) in her total probate sample in Bucks County, and the significant proportion of women who received less than they were allowed (60%), about one third of all women in the 1790's received smaller bequests than the third of property the law stipulated for intestate inheritances. In West Feliciana, given the small percentage of male testators specifying a spousal bequest in the probate sample (9%), and the number of testators granting less than the law decreed (35%, Table 8), only about 4% of West Feliciana women received smaller bequests than they should have according to the law.

The mean wealth of married men versus widows in each probate sample, Bucks County, West Baton Rouge and West Feliciana, support the data on bequests. Shammas argues "that if [Bucks County] widows had been getting their third of personalty and one-third of the income from realty, one would expect that their net wealth at death would be roughly one-third of the wealth of married male decedents." Instead, she finds it is one-quarter of the wealth of married male decedents. In West Feliciana and West Baton Rouge the difference in mean net wealth between widows and married male decedents is statistically insignificant. (P>0.05) This is precisely what you would expect in a community property state in which the profits of marriage are divided equitably.

50 Percent male testators computed by dividing 46 (Table 8) by 491 (Table 7).
Shammas and her co-authors acknowledge that “because for most couples the bulk of an estate was property acquired after marriage and not part of an inheritance, the community property system generally benefitted widows more than the common law rules.” She is right and the information here limns just how much they benefitted.

Married women in Bucks County, PA, Spanish West Florida and West Feliciana parish, Louisiana, could all rightfully rue the day when their husbands wrote their wills. All stood the chance of losing authority over property which legally should have been theirs. Nevertheless, this study shows that Louisiana widows subject to testate probates benefitted from civilian legal tradition. They fared much better than women in common law jurisdictions in terms of the amount of property they inherited. Their husbands were more likely to follow laws that were already more generous to women’s inheritance.

**Women and Property Management**

Critics of women’s property rights under civil law argue that civil law restricted married women’s management of property, almost as much as common law. They add that the civil law in Louisiana failed to produce a true economic partnership between spouses, in part, because the civil law assigned control over a couple’s community property exclusively to husbands during the life of the marriage. The reality of women’s ownership, and powers of administration over the community assets and gains through marriage did not occur until their husbands died. 

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52 Shammas et al., *Inheritance in America*, 84.

The data in the present study suggests that women in Spanish West Florida and West Feliciana not only fared better in their property gains, but also in their opportunities to manage property. A good index of this is how many women were appointed executors of their husbands' wills. In Spanish West Florida 83% of estates listed women as administrators or executors. In West Feliciana parish 46% of married male testators appointed their wives executors of their estates, either alone or with the assistance of others. Carole Shammas finds that by the 1790's, 77% of Buck County, Pennsylvania, testators "excluded" their wives as executors of their estates. That means that at most only 23% of male testators in Bucks County appointed their wives as executors, half as frequently as testators appointed women executors in West Feliciana parish.54

In West Baton Rouge parish the probate court commonly adjudicated husbands' shares of the community property to widows, especially when the widow still provided for minor children. French-speaking Ursule Trahan of West Baton Rouge parish petitioned the court after each of her first two husband's deaths to adjudicate all of their estate to her under her management, on the grounds that it did not benefit the children's economic interest to sell and divide it, or place it under someone else's management. After consulting with family, the Court agreed. Despite her illiteracy, Ursule understood her rights. Between 1829 when her first husband died and 1834 when she died, Ursule managed to substantially increase the value of her estate. Each time she remarried she

84.

54 ASWF, Vols 1-18; Probate Records, West Feliciana Parish, Vol. 1 -6, 1811-1835; Shammas, “Early American Women and Control Over Capital,” 143-144.
protected the inheritance received from her parents, as well as her marital portions from previous marriages. When she died Ursule and her third husband owned two small tracts of land, six slaves, some livestock, farming equipment and a few household furnishings.55

In addition to managing property upon the death of their husbands, women in Louisiana exercised property management during marriage. Married women could petition the court for the power to administer property, and Louisiana civil law permitted women's management of their separate property. Moreover, the limited sphere of Louisiana wives property management may not have always been rigidly followed. The civil law, after all, articulated contradictory principles. As was discussed in chapter two, women possessed substantive rights to property at the same time the law restricted women's control over it. How did early American women process these contradictory messages? Historian Joseph McKnight found that throughout regions, like Louisiana, where the influence of Spanish civil law held precedence, women joined with their husbands in economic activities, even though the law did not require their participation.56

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55Succession Records, West Baton Rouge Parish, West Baton Rouge Courthouse, Port Allen, Louisiana #’s 174; 213; and 250; Marriage Bonds, West Baton Rouge Parish, West Baton Rouge Courthouse, Port Allen, Book I; and Conveyances, West Baton Rouge Parish, West Baton Rouge Courthouse, Port Allen, Book F, p. 425 and Book I, p. 57.

Quantitative evidence from the regions of Louisiana surveyed for this study supports his contention. Women accompanied their husbands to the courthouse. They learned legal procedures, listened to arguments, signed documents and pursued litigation. In Spanish West Florida women acting on their own behalf without their husbands present accounted for 10% of all notarial transactions. Many more women accompanied their husbands to the courthouse to conduct legal business. Women pursued these tasks despite the fact that courthouses were sometimes daunting places for them. “A widowed mother cannot manage her affairs as a father; they are afraid to speak for themselves,” West Feliciana planter Rachel O’Connor admitted in 1834. Civil law, like common law, defined women as subordinate to men; consequently men dominated the legal world.

Writing about colonial Virginia Historian Rhys Isaac included the courthouse among the “communal” meeting places in southern colonial life “oriented more toward a striving for advantage in various forms of contest than toward peaceful exchange and sharing.” In fact, in its discussion of women’s frailty the law endeavored to protect women from exactly the kind of place the courthouse represented. It must have been difficult for Harriet Robins to appear before the West Feliciana Probate Court, even with her attorney at her side, in her own defense against petitions sworn against her by her husband’s testamentary executor. The petition claimed that she was not entitled to


58 Rhys Isaac, The Transformation of Virginia, 1740-1790 (New York: W. W. Norton, 1982), 88;
receive remuneration for her community and paraphernal property because her marriage to D. G. Robins took place in Maryland under common law. The Court judged in Harriet’s favor because even though their marriage took place in Maryland, their intended and actual residence was in Louisiana. Harriet eventually received over $7,000 from her husband’s estate. Her appearance in court worked to her economic benefit.\(^9\)

Despite her comments, Rachel O’Connor, too, had already confronted her fears of the public world. Writing to her brother in 1825 she explained that she wanted to clear her son’s land claim and the law required her to attend the local land office to clear it.

> I am at present very well and I expect much smarter than you think until I have told you of a journey that I have lately taken out to St. Helena Court House, Where the land office is kept, for the purpose of securing the 240 acres of land that formerly belonged to my poor James . . . . I considered it one hour of time and wished for you to be here, and then finally concluded to go myself if I lived to do so and started with no other than Arthur [her slave] . . . .\(^60\)

Rachel’s personal circumstances had already demanded that she take even more painful public action than her ride to the courthouse. She arranged for her alcoholic son to be legally “interdicted,” effectively barring him from managing his own affairs. Rachel’s case illustrates how the law, circumstance and personal abilities mixed to create a legal culture that enabled women to participate, particularly in matters related to property.

Rachel’s story will be covered in more detail in the next chapter.

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\(^{60}\)Rachel O’Connor to David Weeks, 1825, David Weeks Papers, Louisiana State University.
A survey of vendee/vendor indexes to conveyances in West Feliciana, West Baton Rouge and East Baton Rouge parishes provides quantitative evidence of women’s economic activities (Table 9). In East Baton Rouge parish, for example, 23%, or approximately one out of every five of all vendee transactions, involved women as either a vendee or a vendor. This percentages was comparable in the conveyance records of the two other Louisiana parishes. West Baton Rouge Parish women accounted for 21% of transactions and in West Feliciana, women participated in 25% of the transactions. In all three parishes sales with mortgages and cash sales were significant instruments for both men and women. Except in West Baton Rouge, cash sales were a more frequent category for women while men were more involved with mortgages. Women’s participation is to be expected because creditors preferred their involvement. The law afforded wives protection from debts through the right of renunciation of community property. The law also protected her separate property from her husband’s debts. Consequently, creditors preferred women’s written agreement to sales and mortgages, especially if the property were in her name. This is especially apparent in West Baton Rouge where a separate category for agreements was most active for women (28%) after cash sales (33%). Besides sales women were involved in property exchanges, donations, partitions, renunciations, quit claims and even emancipations. A total of 36 different instruments were listed in the conveyance records of the three parishes.

Unfortunately the indices to conveyance records do not explain whether the women involved in these transactions were single, married or widowed. One expects widows to be actively represented in the transactions, given the fact they could freely
manage their own property. In that case, female heads of household should comprise the group most likely represented. Surprisingly, the names of female heads of households in East Baton Rouge parish, pulled from the 1820 and 1830 censuses, accounted for only

Table 9. Vendee Conveyances as Percent of Total (In Categories Accounting for Greater than 5% of Total)

East Baton Rouge (EBR), West Baton Rouge (WBR), and West Feliciana (WF) Parishes. The latter includes Feliciana Parish before the split into East and West Feliciana. S/M = sales with mortgage, C/S = Cash Sale, Agmt = agreement, Conf = confirmation, D/Conv = deed of conveyance, S/note = sales note, Div/Est = division of estate.

<table>
<thead>
<tr>
<th>Category</th>
<th>Men</th>
<th></th>
<th></th>
<th>Women</th>
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<td>WF</td>
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<td>14</td>
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<td>28</td>
<td>-</td>
<td>32</td>
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<tr>
<td>S/note</td>
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</tr>
<tr>
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<td>-</td>
<td>7</td>
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<td>7</td>
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<tr>
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<td>-</td>
<td>-</td>
<td>5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Gift</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6</td>
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<td>1159</td>
<td>832</td>
<td>551</td>
<td>313</td>
<td>515</td>
</tr>
</tbody>
</table>

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7% of vendee transactions by women in East Baton Rouge. Women as a group accounted for 23% of the total transactions, therefore female heads of household represent only 1.6% (7% of 23%) of the total vendee transactions. Some of the names of female heads of households appeared multiple times within that 7%, making the number of different widows represented in the records smaller than expected.

The small number of female household heads represented in the transactions indicates that women, other than widows, participated in property transactions. John Pippen of Spanish West Florida sued his estranged wife, Mary, because he believed she made agreements regarding her first husband’s estate without his consent. There is no record of the outcome of the case, but it is likely he did not win, since Mary’s first husband’s estate comprised separate property. Constance Rochon Duplantier, wife of well-known East Baton Rouge Parish planter Armand Duplantier, appears numerous times in Spanish West Florida and East Baton Rouge records. Constance classified as woman of considerable means before she married Duplantier. In fact Constance, Armand and their family resided on the plantation she inherited from her first marriage. During her marriage to Duplantier, Constance sold property and signed agreements both with, and without, her husband present. The couple struggled with economic hard times. Despite her experiences in business affairs, Duplantier did not designate Constance executrix of the estate when he died in 1827. The executor finally sold the couple’s heavily mortgaged plantation to pay the estate’s debts. Constance managed to repurchase the
plantation in 1839, just two years before her own death. Her story will be told in more
detail in the next chapter.\footnote{ASWF, Vol. 17, 1809, 231; Vendee Records, East Baton Rouge Parish, Vol. D, 
pp. 32-32, Lois Elmer Bannon et al., \textit{Magnolia Mound} (Gretna: Pelican Publishing Co., 
1984) 33-44.}

East Baton Rouge resident Sarah Lintot Rowell demonstrates another type of 
experience. In 1804, when East Baton Rouge parish still comprised part of Spanish 
West Florida, Sarah protested her deceased husband's will because it deprived her of her 
portion of the community from the couple's substantial estate. It took Sarah four years 
and a petition to the Spanish Governor before the government declared her husband's will 
null and void. Unlike Ursule Trahan, Sarah never remarried despite the fact that she must 
have been only in her early twenties when her husband died. She made land claims with 
relatives and she bought and sold property. She is listed in the 1820 census as the head of 
a large plantation household with seventy-two slaves.\footnote{ASWF, vol. 9, 1805, 158.}

The experiences of Constance Duplantier, Sarah Rowell, Ursule Trahan, Rachel 
O'Connor and many others in this study illustrate both the opportunities, and the 
limitations of civil law in Louisiana. Many more women like them are represented in the 
records. Their stories illustrate the variety of ways civil law intersected with women's 
personal assessments of their abilities and needs. The information from this study 
confirms the observations of early nineteenth century observers who thought civil law 
benefitted women. The marital property regime, particularly the community property 
and separate property provisions, enabled women to accumulate economic resources. and
it gave legal recognition to the economic value of women’s domestic labor. Access to property allowed women opportunities to participate in the economic life of their communities. In an early America with few economic opportunities, or legal rights, for women these provisions meant a great deal to women in Louisiana. Women’s protests against husbands who tried to limit their lawful access to property demonstrate they understood the significance of their legal rights, not only to their economic well-being, but to a recognition of themselves and their labor.

Women bought and sold property, and they managed plantations households with slaves. They exhibited authority in their economic transactions, even if they did not always act autonomously, but rather interdependently. Women’s exercise of their legal rights did not pose a challenge to southern patriarchy. Instead, they worked with their husbands and families in what the law, and women, viewed as an economic partnership. Resistance to Louisiana women’s exercise of their economic rights under civil law appears to derive more from cultural differences than from fears for the erosion of southern male authority. Women like those of French ancestry in West Baton Rouge parish whose families by custom understood the civilian legal tradition endured fewer challenges to their legal rights. The information from predominately Anglo West Feliciana parish, when compared with predominately French West Baton Rouge parish, illustrates the encroachment of common law practices in areas where Anglos resided.
Nevertheless, West Feliciana parish women were still much better off in terms of access to property, than women in Bucks County, Pennsylvania, where common law prevailed.⁶³

⁶³For related findings that are similar concerning the effect on testamentary and inheritance practices as a result of transition from civil to common law see Biemer, *Women and Property in Colonial New York: The Transition From Dutch to English Law, 1643-1717*; David E. Narrett, *Inheritance and Family Life in Colonial New York City*; and Patricia Seed, “American Law, Hispanic Traces: Some Contemporary Entanglements of Community Property,” *William and Mary Quarterly* 3d., ser., 52, no. 2 (1995):157-166.
CHAPTER 4

LIVES AND LAW: CASE STUDIES OF WOMEN AND THE LAW IN EARLY LOUISIANA

"...a true southern lady... knew the whole duty of womankind, To take the burden and have the power And seem like the well-protected flower... And manage a gentleman’s whole plantation In a manner befitting your female station."1

The life histories of three women from early south Louisiana provide a personalized glimpse of early Louisiana women in this chapter. They are representatives from among the over three hundred females from East and West Baton Rouge and West Feliciana parishes surveyed the last chapter. It is a “truism” to say that no one woman’s story or in this case three women’s stories can by themselves stand for all women’s experiences with law and property. Individual women’s lives differed significantly depending on their race, class, ethnicity, marital status and where and when they lived in Louisiana. Individual women’s choices such as whether or not to remarry or whether or not to liquidate a husband’s estate also played a role in distinguishing their experiences. Historians Jane and William Pease argue “that individual choice and personal preference create significant variations within social structures bounded by gender and class, race and religion.”2 Given such qualifications, the three women’s experiences discussed here are representative, in some form, in the lives of numerous women in early Louisiana.


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These women are informative because they illustrate the importance of the life cycle in determining women’s legal rights and responsibilities for property, and they illuminate the possibilities, and the limitations, of the law for enhancing women’s economic status.

Catherine Turnbull and Rachel O’Connor lived for much of their lives in West Feliciana parish. Constance Duplantier lived for a number of years in East Baton Rouge parish. I begin with the stories of Catherine Turnbull and Constance Duplantier because their lives and fortunes intertwined through their spouses’ business partnership. Their husbands were part of an enterprising group of early entrepreneur who perceived commercial promise in the land and trade of late eighteenth and early nineteenth-century southeast Louisiana. Their business acumen brought wealth to their young wives and children, and their deaths delivered to their wives the heavy responsibility of managing their wealth and continuing their families’ legacies within a world of law and business dominated by men. The connection between the two women ends there. Catherine Turnbull and Constance Duplantiers made strikingly different life choices. Constance remarried and Catherine did not. The choice to remarry or not greatly influenced the degree to which they controlled and managed their individual estates and the degree to which they were able to find peace and security for themselves and their families.

Although Rachel O’Connor, the third case of the three case studies, had much in common with the other two women, her life took an uncommon turn. Rachel lived virtually alone, except for the slaves on her plantation, for much of her widowhood. Rachel’s story illustrates for the challenges a woman, alone, faced in managing her property and the strategies she employed in negotiating the often intimidating world of
law and property. Rachel left an engaging collection of letters which makes her story the richest in detail. Among the women considered in this study Rachel is the only one who left behind sources that reveal not only how she managed her property, but also how she felt about that property. Her letters reveal an abiding attachment to both her land and the people who lived there.

The Setting

Two of the women analyzed here, Rachel O'Connor and Catherine Turnbull made their permanent residence in what became West Feliciana Parish. Constance Duplantier resided in East Baton Rouge Parish. These Florida Parishes lay at the southern end of the Natchez District. East Baton Rouge parish bordered Feliciana up until 1824 when Feliciana divided into the two parishes of East and West Feliciana (Figure 5). These three parishes constituted part of what is still called the Florida parishes. The character of the region stayed the same despite the boundary changes. Farms and plantations, some of them substantial in size, lined the approximately forty-five mile stretch along the eastern bank of the Mississippi River from Bayou Manchac, which forms the southern boundary of East Baton Rouge parish, to the northern boundary of West Feliciana parish at the 31st parallel. Many of the settlers who came to the region chose to settle in the Florida parishes because they wanted to remain in British-held territory after the Revolutionary War and they sought the economic promise of the parishes' location along the Mississippi River. After 1779 the availability of Spanish land grants added incentive to settle there. In many cases these settlers were Anglo transplants who came first to the American
territory north of the 31st parallel, the heart of the Natchez District, and then filtered into Feliciana and plains of northern East Baton Rouge parish.³

In the years prior to the Civil War, the Natchez District became, the wealthiest cotton-growing region in the South.⁴ Late eighteenth-century settlers acknowledged the regions’ economic potential and beauty when they called their new home, “Happy Land.” “Heavily timbered rolling hills and grassy prairies” typified the region’s “lovely” scenery, according to one of its chroniclers.⁵ Underlying the prairie and timber areas of West Feliciana Parish are fertile soils, including rich deposits of silt and sand left by the Mississippi River. These soils combined with the region’s moderately dry and mild climate to make Feliciana a place where, as one cultural geographer put it, any small farmer “was with diligence and luck, likely to become a planter.”⁶ Planters might begin by farming the grassy areas. Later on, they cleared timber from other tracts as they were needed. “I have started the hands to burn and chop in the log ground. . . . I hope to get some more chopped down after the logs are rolled,” Rachel O’Connor reported to her


⁴I rely here on Michael Wayne’s explanation of the boundaries and character of the Natchez District, See his The Reshaping of Plantation Society (Chicago: University of Illinois Press, 1983), 1; and n 4, p. 7; See also Everett Dick, The Dixie Frontier, A Social History of the Southern Frontier from the First Transmontane Beginnings to the Civil War (New York: Alfred A. Knopf, 1948), 79-80.


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brother in 1820's. In 1784 Thomas Hutchins passed through the region just east of where Rachel and her husband would, a decade later, claim land and begin a plantation. Even then, Hutchins noticed that,

There were a number of inhabitants settled on the Amite and Comite, who had slaves, or who raised indigo, cotton, rice, hemp, tobacco and Indian corn in great abundance, and all excellent in their kind. They had plenty of horses, cows, hogs, poultry & etc. and the river stands with a variety of fish.7

Liberal land policies under French, British, Spanish and finally American government jurisdictions encouraged settlers, including women, to take advantage of the rich lands along and between the Mississippi, Comite and Amite Rivers in Feliciana and further south in East Baton Rouge parish. The coming of the cotton gin to the region in 1795 further stimulated settlement and cotton production. As a result the area including Feliciana and East Baton Rouge became one of the earliest in southeast Louisiana to receive heavy concentrations of settlers. The frontier of settlement - commonly defined as two people per square mile - had reached the area in and around Feliciana and East Baton Rouge by 1800 and then it moved on.8

7 Thomas Hutchins, An Historical Narrative of Louisiana, The Author, 1784.

Access to river transport facilitated the rapid settlement of Feliciana. Bayou Sara the trading-post, and then river settlement named after the Bayou that meanders through the center of what is now West Feliciana Parish, connects with the Mississippi River along West Feliciana’s southern boundary. Late eighteenth-century traveler George Pitot noted that “Bayou Sara is navigable all year, even as far as twelve to fifteen leagues during low water in small boats.” The settlement of Bayou Sara became an important shipping point between Natchez and New Orleans, carrying West Feliciana planter’s cotton, including that of Rachel O’Connor and Catherine Turnbull, down river to cotton factors in New Orleans. Even though St. Francisville, on the bluffs above Bayou Sara, boasted more residents and housed retail establishments, it was the region’s access, through the port at Bayou Sara, that gave it commercial ties to the port at New Orleans, and hence to world markets. Bayou Sara also connected parish planters to slave markets from which they could draw the labor necessary for large scale cotton and sugar production.

River transport also facilitated settlement in East Baton Rouge parish, where Constance Duplantier resided. Constance Duplantier owned a river plantation about a mile south of the town of Baton Rouge, located in southern East Baton Rouge parish. Even though the town of Baton Rouge was small, its’ location along the river connected it with the outside world, and the town was surrounded by prosperous planters who boasted wide commercial connections. As late as 1830 the residents of the town of Baton

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Rouge numbered less than 1500 people. Yet, by 1825 Baton Rouge was home to at least a dozen businesses, a dual-language newspaper, and a United States military arsenal and barracks. The visit of Revolutionary War hero and international celebrity General Marquis de Lafayette in Baton Rouge that same year did not seem out of place.\(^{10}\)

Although none of the three women considered in this chapter made their permanent residence in West Baton Rouge parish, the Duplantiers, like many others in East Baton Parish, they owned property there (Figure 1). West Baton Rouge planters and their families frequently journeyed across the river to socialize with the residents of Baton Rouge at horse races, parades and political rallies. Moreover, many West Baton Rouge residents counted family members among the residents of the town. West Baton Rouge until 1807 comprised part of the heavily French-populated, Point Coupee Parish.

Riverine-style plantations, with frontage along the Mississippi River and acreage extending backward in elongated rectangles, reflected the French origins of the settlement in the area. On this, the western side of the Mississippi River, the rich bottomland soils were particularly suited to sugar planting.

Taken as a whole the three parishes in the late eighteenth and early nineteenth-century were an area filled with opportunity for men on the make, "novi hommes," or self-made men, who sought to invest or build new fortunes.\(^{11}\) Such dreams were\________


\(^{11}\)Jennings, pp. 44-45; Nineteenth-century travel-writer, Timothy Flint, describes planters in Feliciana in these terms in Recollections of the Last Ten Years in Occasional
attainable according to the life stories of the three women in this chapter. While economic opportunities narrowed in this region later in the antebellum period, men and women, during the time period of this study, could with hard work, expect to advance themselves economically.12

**Catherine Rucker Turnbull**

Stately, camellia-lined Rosedown Plantation in St. Francisville, West Feliciana Parish, now a government-owned historical landmark, stands as a remembrance of the pre-Civil War cotton kingdom along the lower Mississippi and of West Feliciana Parish’s role in that economy and culture. Rosedown’s preservation also spotlights the historical legacy of the particular family that built it, the Turnbulls of West Feliciana. The preservation of the plantation assures that the Turnbull’s history will be remembered and interpreted. Although historians have recorded information about Daniel Turnbull, the builder of Rosedown Plantation, and about John Turnbull, Daniel’s father and the progenitor of the family fortune, relatively little has been written about Catherine Turnbull, Daniel’s mother and John Turnbull’s widow. The information that is available about her, mostly found in family business correspondence and official documents, indicates that it was Catherine Turnbull who preserved and carried the family legacy and fortune forward into the nineteenth-century after her husband’s death, making it possible...

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*Residence and Journeys in the Valley of the Mississippi* (1826; reprint ed. 1832), 28.

12Michael Wayne notes declining opportunity in the Natchez District. His criteria include land prices of $100 or more an acre and the purchase price of prime field hands for as much as $2000. Among the 1500 inventories I surveyed for this study, such prices were rare. See Wayne, *The Reshaping of Plantation Society*, p. 11.
for her son to have the means to build such a grand mansion and for us to commemorate Rosedown today.\textsuperscript{13}

Catherine’s story begins far away from West Feliciana Parish. Her father, Peter Rucker, was born in Virginia and probably raised there. He and his wife Sarah were married there and Catherine, the fourth of their six children, was born in Virginia in 1769. In 1775 Peter and Sarah Rucker sold their homestead and moved west to Natchez, Mississippi in what was then British-held territory. Peter Rucker and his family may have been among the hundreds of Loyalists who fled the eastern seaboard for asylum in British-controlled West Florida just before the outbreak of the Revolutionary War. Unfortunately Peter Rucker died just three months after the family’s move, leaving Sarah alone on the frontier with six young children. In 1777, Sarah petitioned the government to grant her “such quantity of land as may be proper,” in recompense for the improvements her family had already made on the land. In her petition Sarah Rucker called attention to the fact that she was a widow with children, among them, Catherine.\textsuperscript{14}

\textsuperscript{13} John Turnbull frontier activities are discussed in William S. Coker & Thomas D. Watson, \textit{Indian Traders of the Southwestern Spanish Borderlands, Panton, Leslie & Company and John Forbes & Company, 1783-1847} (Pensacola, FL: University of Florida Press), 166-201. Daniel Turnbull and his wife Martha, who is known for her horticulture, are discussed in many books about Louisiana plantation homes. See Martha Barrow Turnbull, \textit{The Sixty Year Garden Diary of Martha Turnbull 1836-1896: The Legendary Gardens of Rosedown as Viewed Through the Words of Its Creator} (St. Francisville: Rosedown Plantation and Historic Garden, 1996).

It is at this point that Catherine figures prominently in family folklore. For a long
time family descendants believed that it was Sarah Rucker who died, not Peter.
According to the story Catherine so disliked her father's second wife, that the
indefatigable young girl ran away from home, crossing the river in the middle of the night
with her little brother. The story continues with Catherine and her brother eventually
given shelter by the Alston family, neighbors who lived across the river from the Ruckers.
The Alstons, along with the Rucker children, fled West Florida and the Spanish, moving
on to the Indian district, probably just north of Mobile, Alabama. Catherine, now a
teenager, so the story goes, met John Turnbull, an Indian agent there.\footnote{Weller, Alexander Stirling and Ann Alston, n 8, p. 516 cites, Dr. Joseph Alston
Groves, The Alstons and Allstons of North Carolina and South Carolina, (Atlanta: The
Franklin Printing and Publishing Company, 1901), pp. 207-208 as the source for the
retelling of family folklore concerning Catherine Turnbull.}

The Alston family folk history contains elements that fit the overall picture of
Catherine's life that emerges from the documentary evidence. One of the Rucker parents
did die, Catherine went to Mobile where she eventually met John Turnbull, a merchant
and Indian trader, and she possessed a strong-willed personality. In fact Sarah Rucker,
Catherine's mother, survived her first husband and remarried twice. The first remarriage
produced a son, but Catherine's mother was apparently left a widow again soon after his
birth. Sarah Rucker remarried a third time, sometime in the early 1800s. Public
documents indicate that during the 1800's Sarah continued to press for verification of her
original land claim for four hundred acres in Claiborne County, Mississippi, part of the Natchez District. The Court denied her claim 1807.\textsuperscript{16}

Precisely how Catherine journeyed to the area in and around Mobile where she met and married John Turnbull is not clear. It is unlikely she came with her mother, given her mother’s marriages in the Natchez area. Family historians believe she came to the region around 1779 and met John Turnbull in a commissary that he and James Joyce, Constance Duplantier’s first husband, owned together. Again, family reminiscences describe Catherine as a motherless, somewhat precocious “belle.” She probably married John Turnbull around 1784, at the age of fifteen or sixteen. He was in his mid forties. Their first child, a girl, was born a year after they married. The couple had eight children altogether. They relocated to northern East Baton Rouge Parish around 1792, where both made land claims. Catherine moved to their “New Feliciana” plantation, following her husband’s death in 1799. It was there she lived for the next thirty years until she died in 1832 at the age of sixty-nine.\textsuperscript{17}


\textsuperscript{17}Weller, Alexander Stirling 521-523. The final inventory of Catherine Turnbull’s property in West Feliciana Parish indicates she resided on a 1800 arpent, West Feliciana Parish plantation, known as “Solitude.” Weller says she lived on and is buried in a cemetery on “Inheritance” plantation in West Feliciana Parish. That name is not given to any of the land she owned in the inventory. See Inventory Record Book C, 1832-1840, p. 191, Probate Records, West Feliciana Parish Court House, St. Francisville, Louisiana.
Catherine Turnbull’s marriage to John Turnbull lasted fifteen years. Those fifteen years took place during her formative, early adult years. To understand how her husband may have influenced her attitudes and knowledge about property and business, it is useful to know more about him. John Turnbull fits the description of the “self-made” men Timothy Flint met and described in his travels in Feliciana in the 1820s. John Turnbull and his brother, Walter, came to this country from Dumfries, Scotland, sometime in the 1770s. They probably arrived in what is now Mobile where they eventually became merchants trading furs with the Chickasaw Indians near Mobile, Alabama and Tupelo, Mississippi. These years brought substantial growth in the colonial population and heightened desire on the part of the British and later Spanish governments to stimulate international trade with furs and other trade goods from this region. John Turnbull fathered three illegitimate children with a woman from the Chickasaw tribe, a connection historians believe made him a particularly valued go-between for Spanish authorities who were worried about the growing influence of Americans over the Indians in the southeast after the American Revolution.¹⁸

During his business career Turnbull became a part of several merchant firms and ran into disagreements with at least one influential merchant firm, Panton, Leslie & Company. Although Turnbull secured a judgement against the Panton, Leslie & Company.


¹⁸Weller, Alexander Stirling 519
Company shortly before his death, in the final inventory of his estate the assessors determined that the debts owed by the firm to the Turnbull estate were irrecoverable.

John Turnbull made and lost money in trade. He also invested heavily in land, eventually owning land, in several parishes in Louisiana, and in Mississippi. It is also likely he was involved in the slave trade, perhaps even living at one time in the Caribbean. In the years just prior to his death in 1798 Turnbull combined planting with trade. The partnership of Turnbull and Joyce appears to be the last merchant firm Turnbull formed before his death, and the one Catherine would become involved with in settling, along with Constance Duplantier, his partner's wife.19

The assemblage of story and facts about Catherine suggest that John Turnbull probably made a good match when he married her. She was, at the time of their marriage, a young and spirited woman who had spent her adolescence on a developing frontier. Catherine probably knew hard work. There is no indication that her early life was especially privileged and the partition of the couple’s property does not show that Catherine brought any personal wealth to the marriage community, or that she declared any paraphernal property. We do know Catherine helped John Turnbull add to the family’s wealth in terms of developing a secure fortune in land. She personally made land claims in both East Baton Rouge and West Feliciana parishes. Her decision to

participate in the family business in this way was not unusual among the women in this region at this time. It was not unusual within her own family. Catherine had watched as her own mother endeavored to secure family land claims. It is tempting to see Catherine Turnbull as a “novi femme,” or self-made woman, who bettered her situation by marrying a wealthy man and then capitalizing on the open investment opportunities on the frontier. There is no evidence, beyond the land claims, that Catherine directly participated in family business affairs before her husband died. Her participation would surely have been limited by the births of their eight children, one approximately every two years, between 1785 and his death in 1798. At the time John Turnbull died the couple probably had seven living children. The youngest child could have been anywhere from an infant on up to three years old and the oldest thirteen years old.


21 I do not have records documenting the precise birthdates for all the Turnbull children. One of the Turnbull children preceded John Turnbull in death which may account for the statement in his will dividing his estate among “whatever children may be at may Decease.” See Weller, p. 522; John Turnbull’s will is transcribed in full in the Survey of Federal Archives, Archives of the Spanish Government of Spanish West Florida, Translations and Transcriptions (17 volumes, Baton Rouge, Louisiana, 1937-40) 3:334-335; [hereafter cited as ASWF]. I am also not counting John Turnbull’s three illegitimate children who were older and do not appear to have been cared for, on a regular basis, by Catherine Turnbull.
For women like Catherine Turnbull who did not own or declare *paraphernal* property when they married, the benefits of civil law ought to have become most apparent when they became widows. Catherine should have inherited half of all the property accrued during the marriage. But John Turnbull made a will before he died and his will, like many others made by wealthy Anglo men in West Feliciana, did not conform to the law. Turnbull desired that all his property be divided equally among his children and Catherine, after three thousand dollars was paid individually to each of his illegitimate children. He appointed Catherine executrix of his will as long as she remained unmarried, along with two trusted family friends. The law entitled Catherine to protest the will, but she did not. Instead she requested that all the property be adjudicated to her. This made sense given the ages of her children. It is likely that John Turnbull expected his estate would be handled in this way which would be similar to the way West Feliciana resident Robert Young stipulated in considerably more detail.\(^2\)

\[^2\]ASWF, 4:404.

\[^2\]Probate Records, Vol. 6, p.110, WF.

By not protesting John Turnbull's will Catherine gambled that as her children came of age over the next fifteen years, they would not demand the liquidation of the estate in order to receive their full share. Catherine would own a much reduced share if
her children demanded to liquidate the estate, even partially, before she died. Officials estimated John Turnbull’s estate at 6,185 piastres worth of property that he owned outright, and 19,012 piastres worth of property that were his share of the division of the partnership of Turnbull and Joyce. In addition John Turnbull’s owned 6,843.50 piastres from the half of the unsold property belonging to the partnership. Those sums together made a total estate worth 32,040 piastres. Another 7,456 in debts were owed to Turnbull’s estate. Assuming all debts to the Turnbull estate were collected in full, Catherine’s half of the estate would be 19,748 piastres. Her inheritance, according to her husband’s will, would be only 4,562 piastres.\(^{24}\)

The difference between the legally mandated share Catherine should have received and the share John Turnbull’s will stipulated translated roughly into the difference between Catherine falling into the lower middle class or remaining in the upper middle class. These class designations are based upon the wealth tabulations for West Feliciana in Figure 1 and Figure 2 in Chapter 3. The middle class is commonly defined as those who fall between the elite and the working class, including small landed proprietors. In Catherine Turnbull’s era the term “middling” denoted this class. The middling persons, among those who inventoried property in West Feliciana Parish, owned

\(^{24}\) ASWF, 3:334-335, 348-354; the French piaster is roughly equivalent to the Spanish peso and American dollar. See Jack D. Holmes, *Gayoso: The Life of a Spanish Governor in the Mississippi Valley, 1780-1799* (Baton Rouge: Louisiana State University Press, 1965) n. 32, p. 43; See Also Noah Webster, *An American Dictionary of the English Language*, (Springfield, Massachusetts:George and Charles Merriam, 1851), 824. Catherine’s share under John Turnbull’s will is determined by subtracting the 9000 piastres owed to Turnbull’s illegitimate children from the total value of John Turnbull’s estate, including debts owed, and then dividing by eight. Catherine’s share under civil law is determined by totalling the estate and dividing it in half.

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anywhere between one thousand dollars and fifty thousand dollars of property. In the process of settling the estate, Catherine received closer to 36,000 dollars of property from the division of the partnership of Turnbull and Joyce, which still placed her in the upper middling division. Catherine was only twenty-nine years old when her husband died. She would live for many more years and build upon the family's fortune and legacy for her children. The greater the resources she had at her disposal the easier that task would be.  

An interpretive problem develops when the discussion of the effects of civil law upon a woman such as Catherine Turnbull progresses from whether and how much property she received to how she managed it. The question becomes did she really manage it, and then did she manage in the same way a man would manage it? In other words, within the context of this study for it to truly make a difference whether a woman received a larger share of family property under the civil law than she would have received under common law, she must manage it like a man. Among her peers in the region of Spanish West Florida one important characteristic of the management of property was the development of a secure land tenure. According to one historian, families like that of Catherine Turnbull, “were the opening wedge of the Anglo-American influx into the lower Mississippi Valley” and “developed traditions of land tenure in the

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25 Armand Duplantier, acting on Constance Duplantier’s behalf, in determining her share of the division of the partnership of Turnbull and Joyce, noted that Catherine Turnbull had already received “thirty-six thousand and a small amount.” Catherine Turnbull’s inheritance was designated in the records as pesos, which were roughly equivalent to dollars. See ASWF 3:381. This increase in the amount received is probably offset by the fact that it is unlikely that Catherine was able to collect all the debts owed to the estate; for a definition of middling see Webster, An American Dictionary, 712.
lower Mississippi Valley which endured across the shifting era of domination by Great Britain, Spain and the United States.  

Catherine Turnbull continued the tradition of land tenure begun during her marriage. In her will Catherine made note of the fact that she had remained in West Feliciana “under the several changes of Government up to the present time.”

The total value of Catherine’s estate in West Feliciana in 1832 came to $75,211.38, double the amount she inherited at her husband’s death. She owned three tracts of land in West Feliciana Parish, including an 1,800 arpent plantation known as “Solitude” valued at $10,000, where she resided at the time of her death. She also owned another tract adjacent to Solitude that she purchased for $2,800 in 1809. Along with her West Feliciana real estate, Catherine owned a tract of 420 arpents in East Baton Rouge Parish and property in New Orleans. Catherine’s investments in slaves in West Feliciana far exceeded any of her investments in land. More than half the value, roughly $40,670, of her estate in West Feliciana was comprised of slaves. Catherine’s land holdings in West Feliciana provided her security, but she climbed into the ranks of the elite class of property owners in West Feliciana Parish not because of her investments in land, but because of her investments in slaves.

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26 Cummins, “Oliver Pollock’s Plantations,” 48, 47.

27 Notorial Record E, 1833-1836, p. 274, WF.

28 Catherine bought a small tract from Adomijah Harbour March 3, 1809. Vendor Index to Conveyances, WF. She bought a track of 500 arpents in 1807 for 500 pesos. That same land was worth $12,200 in 1822. Despite the rise in land values over the years, Catherine still owned more wealth in slaves than land. For land transactions on this property see ASWF, 12:133; and Inventory Record Book 1819-1825, 263, WF.
Besides the real estate holdings already mentioned, Catherine at one time owned a tract of 2,000 arpents of land in East Baton Rouge Parish and another tract consisting of 728 arpents of land she personally claimed from the Spanish. In addition her succession papers in East Baton Rouge included 470 arpents in present-day Livingston Parish. She jointly owned property with her son-in-law John Towles in St. Mary Parish and she rented property to her lawyer, Charles Norwood in New Orleans. Over the years following the death of her husband, Catherine either sold her property or divided it among her children. Parish documents confirm that Catherine paid her children the legacy that their father left them. Walter Turnbull, her fourth child received his share in payments between 1816 and 1821.

Catherine worked closely with Charles Norwood as they both tried to settle the accounts of the partnership of Turnbull and Joyce with Constance Joyce Duplantier and her new husband, Armand Duplantier. Norwood devised two petitions that he hoped Catherine would have signed by Spanish Governor Grand Pre. Norwood encouraged Catherine to work quietly with a local priest to obtain the signature. The documents would allow Catherine to avoid further entanglement with the Duplantiers and allow her to keep and watch over the partition of the partnership's assets at the price of estimation, including that portion that belonged to her minor children. Although Charles Norwood assisted Catherine in her business transactions, it is evident from their correspondence that Catherine and Norwood did not always agree. Catherine Turnbull asked for his

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29 Box 1, Folder 18, Turnbull-Allain Papers, Louisiana and Lower Mississippi Valley Collections, LSU Libraries, Louisiana State University, Baton Rouge, LA.[hereafter cited as LSU].

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advice, but she did not always follow it. When one of the debts to the estate was overdue,
Norwood believed it worthwhile to extend the deadline.\(^{30}\) He noted,

> however you will act as you please and if you are determined to wait no longer
> you will be necessitated to go to Baton Rouge, and obtain a decree from the
> Governor for a seizure and sale of property sufficient to pay you. . . \(^{31}\)

Norwood also appeared uneasy about Catherine’s business transactions with
James Fletcher. Catherine apparently had invested in two of Fletcher’s ships that were
later captured and their cargo seized “on suspicion” in Baltimore. Fletcher did not
explain the nature of the “suspicion” or why the ships were seized, but it was likely
because he was engaged in the illegal slave trade.\(^{32}\) Catherine wrote several letters asking
Charles Norwood to find out about the ships. Her involvement in these matters was
surprising. She did not lose or let go of property easily. When her son John Turnbull
died in 1822 she arrived at his plantation during the inventory claiming the $12,000
plantation as her own, first purchased by her in 1807 under the jurisdiction of the
Spanish. As her son’s widow stood by, Catherine also claimed the thirty-eight slaves on
the plantation estimated at $12,200.\(^{33}\)

\(^{30}\)Letter to Catherine from Charles Norwood, November 22, 1805, Box 2, Folder 4, Turnbull-Allain Papers, Louisiana and Lower Mississippi Valley Collections, LSU.

\(^{31}\)Letter to Catherine Turnbull from Charles Norwood, November 2, 1802, Box 2, Folder 4, Turnbull-Allain Family Papers, Louisiana and Lower Mississippi Valley Collections, LSU.

\(^{32}\)Letter to Mrs. Turnbull from James Fletcher, November 7, 1799, Box 2, Folder 2, Turnbull-Allain Papers, Louisiana and Lower Mississippi Valley Collections, LSU.

\(^{33}\)Inventory, p. 4, Turnbull-Bowman Family Papers, Louisiana and Lower Mississippi Valley Collections, LSU Libraries, Baton Rouge, Louisiana; [hereafter cited as LSU] see letter to Honorable Charles Tessaire, November, 1832, Flat File #531,
Historians point out that women such as Catherine Turnbull usually managed their properties with the help of male kin and that, even under civil law, "widows received only the right to freely benefit from family property until it was inherited by younger men and women." Catherine fits this pattern to a degree, though she demonstrated a marked hands-on approach to family property management even after her son, Daniel became actively involved. By 1816, Daniel Turnbull, then about twenty years old, was at work with his mother managing the family's business. Many women in West Feliciana remained actively involved in managing their plantations even after, it appears, their sons came of age. Fifty-four percent of all the female planters in the 1820 census reported white males living on their plantation that were twenty-five years old or over, the age young men would be most likely to take over full management of their mother's affairs. West Feliciana probate records indicate that a clear majority of the female planters who reported white males, presumably kin, living on their plantations continued to be actively involved in legal matters pertaining to their plantations buying and selling property, acting as executrixes of estates and so on. If these women were only acting as surrogates for their husbands, preserving their plantation to maintain their family's status and to pass

Successions, EBR; Inventory Record Book, 1819-1825, p.263, WF; for Catherine Turnbull's purchase of the plantation See ASWF 12:133.


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along property to their heirs, then they should have turned over their management to male
kin.35

Catherine, when he died, divided her property equally among her children and the
grandchildren of her deceased children. The law provided that women were carefully
watched over by parish-approved under-tutors who oversaw the financial decisions of
mothers concerning their children's inheritances. The Turnbull children had a court-
approved tutor to protect their interests. None of this appears to have diminished
Catherine's personal economic security or her influence over the management of Turnbull
properties. Despite the money involved in the Turnbull estate there does not appear to
have been many questions raised about Catherine's management of her children's
inheritances. The one documented exception is Hardey Percy's demand that his
granddaughter, Syliva Turnbull, one of John Turnbull's illegitimate children, receive her
share from her father's will. Catherine responded that collections must be made before
payment could take place.36

Catherine may have avoided questions about her management by not remarrying.
The civil law protected children's interests, especially in the event of their mother's
remarriage. If a woman remarried the law required a family meeting to approve a
mother's continued tutorship over her children. At the age of fifteen children could

35 Tax receipt, September 21, 1816, Box 1, Turnbull-Bowman Family Papers, Louisiana and Lower Mississippi Valley Collections, LSU Libraries, Baton Rouge, Louisiana.[hereafter cited as LSU]; in addition to the land sales and other activities Boxes 1 and 2 contain numerous examples of Catherine management of overseers, factors and slave sales.

36 ASWF, 4:74.
petition the probate court to change their tutors, if they were not satisfied with their current tutor’s oversight of their affairs. Families did not take the responsibilities of tutors lightly. Not surprisingly, the probate records of wealthy West Feliciana Parish are filled with petitions for family meetings and other matters related to tutorships. Children sometimes petitioned the probate court because their mothers remarried without first calling a family meeting. Such women ran the risk of losing the tutorship of their children. That happened to both Susan Black and Nancy Wall in West Feliciana in 1824.

A survey of West Feliciana probate records show that petitions concerning the appointment of tutors and/or undertutors accounted for 15% of all petitions made between 1811 and 1824 in the Parish. The only category of petitions larger were those pertaining to curators of estates at 33%. Family meetings accounted for 6% of all petitions.37

Catherine’s business acumen suggests that she probably understood the added scrutiny of family business affairs and legal entanglements that would result from remarriage. The family of West Feliciana resident Lewis Bingaman illustrated the rifts between family members that occurred with remarriages. Lewis Bingamon’s three children from his first marriage, and their paternal grandmother, sued their father’s second wife, Eliza Cobb. They claimed that they were forced heirs of their father’s estate and that the estate should only be divided four ways. Eliza responded by saying that she was “poor” and that “by the Laws of Louisiana she was entitled to marital portion out of the succession... over and above the said separate property.” The family agreement to

37Probate Records, WF., Vol. 3, p. 6; 8, Petitions of James Boone and James Davis (minors), January 15, 1824 and March 26, 1824. Percentages compiled from Probate Records, Volumes 1-4, 1811-1824, WF.
settle the dispute reflected the reasoning and concessions made on both sides of the dispute,

Now therefore in order to prevent the accumulation of costs by litigating these claims and to preserve a good understanding, Peace and harmony between the said widow . . . and the said forced heirs, and acknowledging that the law does provide for poor Widows when their husbands are rich,

the said heirs and the said Widow agree to fix the amount of separate property . . . and marital portion. 38

It is possible that the single most important factor in Catherine Turnbull’s story of economic success may have been her choice not to remarry. We can not know for certain whether she consciously made that choice. It is very probable she did since she was widowed at twenty nine with an inheritance. We also cannot know why she did not remarry. It is possible that she may have wanted to avoid having more children. She and John Turnbull produced eight children in just fifteen years of marriage since women in this time period expressed grave concerns about their frequent pregnancies.

Catherine Turnbull may also have been influenced not to remarry because she understood the uncertainty of making a good marriage. This is especially true if she did run away from home in her youth because of her dislike for her mother’s second husband. The risks of remarrying for someone such as Catherine who had a substantial inheritance were greater than for someone like Ursule Trahan from West Baton Rouge Parish discussed earlier in Chapter 1, who employed the law and the property from her marriages to create economic security for herself and her children. The potential problems

38Probate Records, Vol. 4, p. 289-290, WF.

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Catherine avoided by not remarrying are apparent in the story of the woman who is considered next.

**Constance Rochon Joyce Duplantier**

Constance Rochon Joyce remarried after the death of her first husband with unfortunate results for her property and the property of her children. Armand Duplantier, Constance's second husband, assumed management over her property; he significantly diminished the property she and her children held in the Baton Rouge area. As with Catherine Turnbull, most of the information we have about Constance, the Duplantier family and their property is from public documents. These sources are often limited in what they say about why people acted in a certain way. Consequently, while we may know the choices Constance made, we cannot say with any certainty why she made them. Historians are usually interested in Constance Duplantier because, like Catherine Turnbull, she is integrally connected with an historic property. The Duplantiers were the third owners of the Creole-style plantation in Baton Rouge, known as Magnolia Mound. Constance DuPlantier is historically important here as one illustration of how a married women utilized, or not, the structures of authority available under civil law in early Louisiana.³⁹

Mobility is characteristic of all three early Louisiana women considered here. The women migrated to the three parish area from somewhere else and then usually moved around within the region. Constance Rochon originally came from Mobile, Alabama. She

was one of five children born to Creole parents, Louis Augustin and Louise Fievre Rochon. Constance was born in 1766. Her parents participated in far-flung commercial activities in Mobile, New Orleans, Florida, Cuba and Mexico, exporting naval stores. It was in Mobile that Constance Rochon met John Joyce, her first husband, and the eventual partner of John Turnbull.40

Despite the fact that John Joyce came from Ireland he was cut from the same cloth as Constance’s father. He worked as a merchant and trader of furs, slaves and various other goods in Florida, Alabama, Mississippi and Louisiana. In 1798 he formed a trading partnership with John Turnbull. Joyce was also a contractor there. He constructed several prominent buildings in early Mobile. One final characteristic had a bearing on his relationship with Contance. John Joyce’s Anglo roots were strong and tested. He fought on the side of the British in Canada during the American Revolution.41

Constance Rochon probably married John Joyce at an early age and was married to him for at least a dozen years. She bore two children from this marriage, William and Marie Josephine. In 1798, just months after he and John Turnbull filed partnership papers, Joyce died from a suspicious fall from a ship as he was returning from New Orleans to Mobile. John Turnbull immediately became tutor for Constance’s children. He died soon after his partner, in 1799. Armand Duplantier then became tutor for the


41 Inventory, Turnbull-Bowman Family Papers, LSU; Hamilton,338;351;367;502.
Turnbull children. Duplantier and Constance probably first met during the settlement of the two estates.\(^{42}\)

Armand Duplantier became somewhat of a folk hero in Baton Rouge. Born in Grenoble, France, Duplantier reputedly came to this country to fight with other Frenchmen in the American Revolution. He became an aide-de-camp for Marquis de Lafayette. In 1825 when Lafayette stopped in Baton Rouge on a national tour he met with his former aide, Duplantier. This notoriety, along with his role as master on Constance’s Magnolia Mound plantation, provided Duplantier a prominent name in Baton Rouge.\(^{43}\)

Armand needed not only a prominent name but also exemplary business skills and a supportive wife to make his fortune in America. He believed he had found such a woman when he wrote to his sister in 1802,

> For almost a year I have made my court to a widow like me, who has two children, a girl of 12 years and a boy of 9. Since this time that I have known her, she came before from Mobile where she is a Creole, I believe to have recognized in her the qualities that made me strongly hope I will live happy with her, she is very sweet, extremely complaisant, tender with children, good for all. She joins with these qualities a very handsome fortune.\(^{44}\)

These last words presaged a possessive attitude toward Constance’s wealth. The marital union of Armand and Constance Duplantier, in 1802, stretched the resources of the couple. Armand had already been married and widowed when he met Constance. He

\(^{42}\)ASWF, 4:287-290 contains the testimony given pertaining to John Joyce’s death. ASWF, 4:293 is the tutorship of Joyce’s children.

\(^{43}\)Bannon, Magnolia Mound, 42-43.

\(^{44}\)Letter 28 January 1802, Magnolia Mound Archives.
brought four children to the marriage, for a combined total of six children. Armand and Constance added five more children of their own, making eleven children altogether for the couple to support.45

Armand Duplantier immediately assumed management of Catherine’s business affairs. John Joyce’s will, like his partner John Turnbull’s, did not conform to law. Joyce requested that after his debts were paid, “the rest of my property be given to my devoted and affectionate wife... and all my children living at my death, to be divided among them by equal shares.”46 Armand demanded an accounting of the succession and then protested the will,

> It being incontestable that my wife has half of the property left by her... first husband, as income from the property acquired during the time of her marriage: since they brought nothing to it and for the same reason, they did not make any contract or any act or writing: may it please Your Lordship in view of these well-known truths and legal principles to declare her the owner of the said half, annulling the clause of the will of her said first husband, in which he arranges that all of his property should be divided among his wife and children in equal parts; since the said clause should not be valid, ... as it is opposed to our wise laws which concede to women half of the property acquired during marriage, which she claims; ... 47

Duplantier’s petition refers to “well-known truths and legal principles.” Such language implies that provisions for widows were commonly understood by members of all ethnic groups throughout the region. James Joyce was an Irishman from County Cork who had

45Magnolia Mound Archives [Diocese of Baton Rouge, Catholic Church Records, 1770-1803, Vol.2 Armand of Dauphine France m. 4 January, 1802 at Natchez]; Letter, September 15, 1802; Bannon, 28.

46ASWF 4: 293.

47ASWF 3:381.
probably came to Mobile when the region was still under the control of the British. It
cannot be naturally assumed that he fully understood marital provisions under civil law.
On the other hand, some of the wills surveyed in Chapter 3 specifically declare their
wishes be carried without the interference of the law. This is a much clearer indication
that testators understood the law. Joyce just intended to defy it.

Either way, for Constance Duplantier, as for Catherine Turnbull, the difference
between the division under John Joyce’s will and the division according to law comprised
a significant loss of capital. Taking the total amount collected and dispersed at the time
of Armand’s petition and dividing it by half would give Constance 17,000 pesos.
Dividing the same 34,000 three ways among Catherine and her two children would only
allow Constance to receive 11,333 pesos, a 5,666 pesos difference.48

Armand Duplantier’s petition should have benefitted his wife; it does not work out that way because Armand mismanaged her property. Constance Duplantier’s
inheritance, once it was divided, belonged to her and the two Joyce children, not to the
marital community between Armand Duplantier and Constance Duplantier. She could
have declared it as separate or paraphernal property and administered it herself. Then
only the dividends from the property would legally accrue to the marital community. The
question arises why Constance Duplantier, a woman of French ancestry surely familiar
with civil law, chose not to protect her property to the fullest extent of the law. An
anonymous legal opinion, contained in a manuscript collection from an early nineteenth-
century plantation in Louisiana, offered an explanation:

48 ASWF 3:381.

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Almost all women, wither from motives of delicacy toward their husbands or for want of confidence in themselves, or perhaps from a want of knowledge of their rights, do permit their husbands, from the moment of their marriage to take charge of their separate property, and to administer it as their own, and this almost universal custom, with American citizens in our own states, has doubtful, been a cause of prevailing opinion, which is believed to exist upon this subject and that is that the husband has a right, by virtue of marriage, to administer his wife’s separate property, and to be committed to one half of its product on the dissolution of the marriage. Unless in the course of his affairs she should become entangled and the property of his wife put in jeopardy. And the records of our courts bear ample testimony of this, for it has rarely occurred that suits have been brought by the wife to recover of her husband her separate property without at the same time his embarrassed situation . . . I have no hesitation in pronouncing it as my decided opinion that the wife has the right to administer her paraphernal property.\textsuperscript{49}

The legal opinion clearly addressed the limitations of the law in addressing gender inequities within the prevailing culture. Even when provisions existed to protect their property women did not always use them. In Constance’s case it is doubtful that she misunderstood her rights. Constance came from a propertied background. She made a choice. She was not alone, according to Jane and William Pease, “However bound they were by society’s prescriptions defining their role, however limited they were by the class structure of their society,” they write, “women did select among options. . . .”\textsuperscript{50}

Whenever women made these choices,

in any one sphere of their lives [they] either expanded or contracted the choices they made in others as, consciously or unconsciously, they

\textsuperscript{49} Turnbull-Bowman-Lyons, Box 4, folder 60, Louisiana and Lower Mississippi Valley Collections, LSU.

\textsuperscript{50} Pease and Pease, \textit{Ladies, Women and Wenches}, 2.
balanced secure dependence against chanier independence, compliance
against rebellion, emotional comfort against intellectual fulfillment.31

Constance Duplantier exemplified the wife whose property was placed in jeopardy
by the “embarrassment” of her husband’s financial management. Constance requested
the adjudication of some of her property to her at the price of estimation, including the
Magnolia Mound property. Almost immediately Armand Duplantier began selling slaves
belonging to the Joyce estate, including slaves belonging to the Joyce minors. The
contraction of the Joyce legacy finally came to the point where Constance Rochon
Duplantier sued her husband in Orleans Parish for separation of property with “respect to
the property which she has brought to the marriage.” In her petition Constance cited “a
series of unforeseen events” as part of the cause.52

Constance’s decision to sue Armand was uncommon but it did happen. Only
eleven, or less than one percent, out of nearly three hundred suits filed between 1811 and
1833 in Third District Court, East Baton Rouge Parish involved cases of wives suing their
husbands or vice versa. Pamela Weeks Flower, Rachel O’Connor’s step-sister, sued her
husband Henry Flower to protect her separate property. Pamela Weeks specified that her
separate property consisted of 640 arpents of land and sixteen slaves. She was entitled to
recover losses of $14,973.16 through mortgages on his lands and slaves. Rachel Russ
Everard sued her husband for separation of bed and board on account of

51 Pease and Pease, Ladies, Women and Wenches 2.
52 ASWF, 4:341; 344; 6:197-226; 7: 8:170-180; Orleans Parish Louisiana, Parish
Court, #313 Constance Duplantier v Armand Duplantier, 1814-1815, microform; #767,
Guy Duplantier v. Armand Duplantier, 1815, microform, New Orleans Public Library,
New Orleans, Louisiana.
maladministration of their property. Rachel Russ had not protested her first husband’s will which did not conform to law. Now, almost twenty years later, she acted to protect her property.53

Besides Constance’s complaint against Armand, one of the Duplantier sons by his first marriage sued his father for selling “certain lands” that were part of the community between them. In 1817 Constance again sued her husband, this time in Third District Court in East Baton Rouge, for refusing to release properties that belonged to her children by her first marriage.54

Financial woes plagued Armand Duplantier for the remainder of his life. Duplantier died in October, 1827. The law allowed Constance recompense from Armand for the diminishing of her property. It is likely he had little or nothing left with which to repay her. There is no record within the Third District of an inventory or estimation of property for Armand Duplantier. Constance probably knew he had little but debts. She filed an affidavit renouncing the community between them, thereby protecting her still substantial property from his debts. Constance faced her own debts. The Louisiana State Bank sued her in 1831 for monies she owed. In 1836 the now mortgaged Magnolia Mound Plantation sold. Three years after the sale of the plantation, Constance Duplantier

53Figures compiled from Survey of Federal Archives, Third District Court Records, East Baton Rouge Parish, Louisiana and Lower Mississippi Valley Collection, LSU Libraries, Baton Rouge, Louisiana; Newspaper clipping, January 5, 1830, Box 3, Folder 5, Weeks Family Paper (Weeks-Hall Memorial Collection) LSU.; Third District Court Records, East Baton Rouge Parish, #20, Rachel Everard v. Charles Everard; see also ASWF, 10:259.

54Third District Court, #483, December 4, 1817, East Baton Rouge Clerk of Court Office, East Baton Rouge Parish, Baton Rouge, Louisiana.

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repurchased it. Fittingly, by the time Constance died in 1841 Magnolia Mound was
finally free from all mortgages against it.⁵⁵

Constance utilized the law to protect her inheritance before Armand Duplantier
irreparably diminished it. If the inventory and estimation of her property are correct, and
she did not have substantial debts outstanding other than those that were listed as
mortgages, then Constance Rochon Duplantier qualified as a member of the economic
elite within East Baton Rouge Parish with an estimated estate of $86,170 when she died
at the age of seventy-five.⁵⁶.

Rachel Swayze Bell O’Connor

Rachel Swayze Bell O’Connor did not leave behind an elegant plantation house to
remind us of her historical legacy. Her story differs dramatically from that of Catherine
Turnbull and Constance Duplantier, even though she shared similarities in background.
Among the three woman the appellation of planter most closely fits Rachel. She lived on
a working plantation in West Feliciana Parish for almost fifty years. Twenty-five of those
years, she headed the household and plantation, managing slaves, keeping watch over her
overseers and marketing crops. She became entangled in a legal suit on account of her

⁵⁵Baton Rouge Gazette, October 6, 1827; East Baton Rouge Parish Judges Book,
Vol. 2, 1825-1832, February 2, 1831, Louisiana State Library, microform L87, Roll #37;
Third District Court, #1864, Louisiana State Bank v Constance R. Duplantier, December
8, 1831, micro form, East Baton Rouge Clerk of Court Office, EBR; Bannon, 44; Probate
Record, Mortgage Office, East Baton Rouge Parish, Constance Rochon Duplantier,
February 15, 1842.

⁵⁶This is the estimated wealth for Constance Rochon Duplantier in East Baton
Rouge Parish. She and Armand also owned property in Orleans Parish. Probate Record,
Court of Probates, East Baton Rouge, Inventory and Estimation, April, 1841.

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son’s debts and, as a result she labored under the threat of eviction and seizure of her plantation for most of her middle years. Historians have sometimes referred to her experience as an example of southern women’s vulnerability under the law and women’s inability to deal with legal issues and planting on their own. In fact, Rachel endeavored to use the legal protections afforded women in terms of separate or *paraphernal* property. The Courts disagreed with her on legal grounds. She did not lose her case because she was a woman. The extra-judicial ways Rachel coped with her legal dilemma are a large part of her story, as is her work and affection for her plantation.\(^57\)

Rachel left a remarkable collection of letters documenting twenty-two of her years as a female planter. Her letters not only provide details concerning the practical day-to-day business of planting and supervising a farm common to all planters, they also introduce the reader to an engaging women who worked hard and cared deeply about the land and people around her. Her letters capture the ambiguity of her position as a female planter in a man’s world. They depict a woman who vacillates between authority and dependence as she navigates the bumpy road between the private world of her home on Evergreen Plantation in West Feliciana Parish and the public world of property management and agricultural business.

Like Catherine Turnbull, Rachel O’Connor’s birth family came to Feliciana as part of a wave of Anglo settlers in the years just prior to, and after, the American

Revolutionary War. Rachel came with her stepfather Englishman William Weeks, a sugar planter from St. Mary Parish, and her mother, Rachel Hopkins Swayze in 1778. Rachel was four years old when she came to the area where she would spend the rest of her life. Rachel’s mother had one other child from her first marriage, a son Stephen Swayze. William Weeks and Rachel Swayze Weeks raised Rachel and Stephen Swayze and added three more children to their family in the years after they arrived in Feliciana. Their youngest son, William Weeks, became a wealthy planter in the Bayou Teche area of St. Mary Parish. It was this step-brother to whom she would later turn for legal advice and financial help when she was in trouble. 58

Rachel married sometime in her early teens, as appears to be the custom among her peers. She lost her mother sometime around 1790 and her first husband, Stephen Bell, died in 1792. Eighteen-year-old Rachel and the two-year-old son from this first marriage returned to her widowed stepfather’s home to live. Rachel assisted her stepfather in the management of his household for five years. In 1797 at the age of twenty-three Rachel remarried, this time to an Irish immigrant, Hercules O’Connor. 59

Both Rachel and Hercules made lands claims during the late 1790’s. Rachel made two. She filed the first under her maiden name of Rachel Swayze in 1797, probably shortly before her second marriage. The Spanish Governor confirmed her claim for 276 arpents of land, or about 234 acres, in 1798. The United States government reconfirmed her claim in 1819. Rachel’s second claim, filed after her marriage to Hercules consisted


59 Webb, ix-xxvii.
of 182 acres. The U.S. Government confirmed this claim in 1826. “We began the world very poor when we came to this place [Spanish West Florida-West Feliciana Parish],” Rachel remembered in 1835. “We had only provisions to last us two days and to trust in Providence for the next.” The O’Connor’s probably built their first home, a rough-hewn cypress log cabin typical of English settlers, on Rachel’s second claim. Together with Hercule’s land claims for some 500 acres the O’Connor’s original land holdings in present-day West Feliciana Parish totaled almost a thousand acres.60

Rachel’s first land claim was not contiguous with Hercule’s land. It appears that she originally intended this claim for her young son by her first marriage, and that she “improved” or cultivated the claim as the law required. “My paper convinced them [the land office] that the land was granted in 1803, and that it had been surveyed the second time in 1804, and improved in 1807 and 1808.”61

Like Rachel, fifty-two other women, ke Rachel, filed original land claims or purchases in what later became West Feliciana Parish. Altogether their claims amounted to 5% of all original land claims or purchases in the parish. This percentage is consistent with research findings on the number of female land claims in Georgia, and North and

60Rachel O’Connor to Mr. A. F.Conrad April 12,1835, David Weeks (Weeks-Hall Memorial Collection); Louisiana and Lower Mississippi Valley Collection, LSU Libraries, Baton Rouge, Louisiana [hereafter cited as LSU] Greensburg Land District, Tract Book #4, Township 2 South, Range 3 West and Township 3 South, Range 3 West. Webb suggests that the O’Connor’s built their house on Rachel’s earlier claim. p.xxiv This is unlikely because Evergreen Plantation was located adjacent to the Pirrie’s Oakley Plantation. Oakley is located along side Rachel’s second land claim; Fred B. Kniffen, Louisiana Its Land and People, Baton Rouge: Louisiana State University Press, 1968, 132-133.

61Webb, p. 11.
South Carolina during their colonial periods. In West Feliciana, land claims by women, averaged some 452 acres a piece. In reality, the size of a woman’s claim might vary considerably. She might also add her claim to those of her husband, as Rachel did with hers, in an effort to create a larger property holding, especially as the government gradually restricted the amount of land individuals could claim as the century progressed.\textsuperscript{62}

Women have made land claims throughout the history of the settlement of the United States. In a civil law jurisdiction such as that of West Feliciana where women could declare their land holdings as separate property and where they could potentially see greater returns from their claims through community property provisions, one would expect the percentage of original land claims by women to be higher than in common law areas. That is not the case in West Feliciana. Nevertheless, the data from Chapter 3 indicates that in predominantly Anglo West Feliciana families tried to apply common law rules, even though they were within a civil law jurisdiction. Whether or not this tendency suppressed female land claims in the parish is not clear. In any case, West Feliciana fit land claim patterns from common law areas.

In 1821, at the age of forty Rachel experienced widowhood for a second time. Hercules O’Connor died from alcoholism, and tragically, the couple’s fifteen-year old son died of the same cause two years later. Rachel’s son, Stephen, by her first

\textsuperscript{62}The figure of 452 acres is compiled from land claims and purchases in Greensburg Land District, Tract Book #4; see also Swann, Lee Ann Cadwalder, “Land of Their Own: Land Grants to Women in the Lower Colonials,” University of Georgia, Ph.D. Dissertation, 1986.
marriage died the year before in 1820 of an unknown cause. The loss of her immediate family devastated Rachel.

Rachel relied on extended family for emotional support, especially her half-brother David Weeks, the successful sugar planter in the Teche country [New Iberia] in southwestern Louisiana. She addressed many of her letters to David, his wife Mary, and their children. Legal actions demanded an unaccustomed assertiveness on the part of women. “A widowed mother cannot manage her affairs as a father; they are afraid to speak for themselves,” Rachel’s remarked. Rachel O’Connor confronted the legal world anyway. Writing to her brother in 1825, she explained that she wanted to clear her son’s land claim and the law required her to attend the local land office to clear it.

I am at present very well and I expect much smarter than you would think until I have told you of a journey that I have lately taken out to St. Helena Court House, where the land office is kept, for the purpose of securing the 240 acres of land that formerly belonged to my poor James . . . I considered it one hour of time and wished for you to be here, and then finally concluded to go myself if I lived to do so and started with no other than Arthur [her slave]. . . .

Rachel’s comments illustrate her willingness to confront her fears and assume the duties of a head of household who can handle her own legal affairs. It must have required even greater fortitude to arrange, before his death, for her alcoholic son to be legally “interdicted, effectively barring him from managing his own affairs.”

By far the greatest legal challenge Rachel faced came from her responsibilities for her deceased son’s estate. Stephen Bell struggled throughout his early twenties to settle

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63Webb, Mistress of Evergreen Plantation, 11.

64Webb, Mistress of Evergreen Plantation, xxv.
on some kind of lucrative business venture. He tried sugar cane planting on Grand Cote Island with Rachel’s half-brother, David Weeks, sometime around 1816. Rachel’s first husband, Richard Bell, made a land claim there, along with William Weeks. William Weeks sold his grant to Stephen Bell to completely fill out Richard Bell’s 400 acres on the Island.65 “The place being so lonesome and my being so uneasy about him he concluded to return home,” Rachel wrote. Sometime afterward Stephen sold his land claim to David Weeks. Stephen Bell then turned to merchandising, operating a store first in New Orleans and later in St. Francisville where his mother owned town lots. Bell became significantly indebted to New Orleans supplier, William Flower. William Flower also just happened to be the brother of Rachel’s step sister’s husband. When Stephen Bell died in 1820 he must have been deeply in debt. Nevertheless, Rachel, with the approval of her husband Hercules, accepted the inventory and succession of Stephen’s estate as a forced heir.66

William Flower filed suit against Rachel for the recovery of his debts from Stephen’s estate. His suit raised a legal question concerning women’s management of paraphernal property. Flower claimed that because Rachel accepted Stephen’s estate she was responsible for his debts. She could have rejected the estate on account of its being

65 Box 1, Folder 1, Receipt, December 12, 1796, 1816; Box 1, Folder 4, David Weeks (Weeks-Hall Memorial Collection), Louisiana and Lower Mississippi Valley Collections, LSU Libraries, Baton Rouge, Louisiana [hereafter LSU]

66 “My Dear Sister,” April 17, 1844, Box 12, P77, David Weeks (Weeks-Hall Memorial Collection), Louisiana and Lower Mississippi Valley Collections, LSU; Probate Records, Vol. 2, 75, 76 and 79, WF; Webb, Mistress of Evergreen Plantation, xxvi; inventory records books do not show an inventory for Stephen Bell.
heavily indebted. Flower also claimed that Rachel entered into an agreement with him concerning the debts. Rachel countered in her defense that she was a married women and did not have the consent of her husband when she accepted the succession and entered into the agreement, so the agreement was not binding. The case went all the way to the State Supreme Court. The Supreme Court found that “after it was duly accepted by the defendant,” meaning Rachel, the property of the succession became part of Rachel’s *paraphernal* assets which she could administer without her husband’s consent. Rachel lost the suit. She and her lawyers employed an argument in her defense which William Blackstone most surely would have supported, protection for women. The protections common law afforded women were not harmful to women, according to Blackstone, “So great a favorite is the female sex of the laws of England.”

Rachel paid dearly for her son’s business failures. Flower attempted to have Rachel’s property and slaves seized by the Sheriff. Unable to pay the debts, Rachel appealed to her brother David for help. Rachel sold her plantation to David Weeks with the understanding that she could remain on the plantation and manage it during her lifetime. She held David Weeks’ notes while he paid the judgement and court costs, which were substantial. Even with her brother’s help creditors still harassed her. Rachel begged her brother to reassure the creditors with presence, “Do pray come here next month. If you can only stay one week, it will convince the people that you are not tired

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out with my trouble, which I am sure there is many praying for.” The Weeks family finally paid the judgement in full in 1837. All together with court costs and interest the suit cost Rachel $12,599.56.68

Rachel’s dependence on David Weeks for help and advice concerning plantation matters and legal affairs convinces some historians that lone women, like Rachel, who relied on male relatives for assistance were not truly heads of households. They were not planters in the traditional sense. The emphasis upon feminine virtues of submissiveness and duty meant few southern white women had the inclination or abilities to manage a plantation or conduct legal affairs. Even if a widowed, single women did manage plantations with the help of kin, they did so only until they could pass those duties along to elder sons or other male heirs.

These arguments obscure the fact that both male and female planters relied upon kin for advice and financial help. Harriet Flowers Mathews, Rachel’s neighbor, managed an 1,100 acre cotton and sugar plantation on the banks of Bayou Sara for several years after the death of her husband, then mortgaged the plantation to her son-in-law and daughter during the financially depressed years of the late 1830s and early 1840s. Harriet protected her plantation just as Rachel had, insuring the availability of capital to run the

68Box 8, Folder 55, David Weeks (Weeks-Hall Memorial Collection), LSU; Conveyances, Book C, p. 341; 342, September 10, 1830, WF; Rachel reconfirmed her agreement with her brother’s family Conveyances Book H, p.592, May 22, 1844, WF; Webb, Mistress of Evergreen Plantation, xxvii.
plantation, while still managing it herself and keeping it within the family. Male planters utilized relatives in similar ways.\textsuperscript{69}

A more precise measure of Rachel’s willingness to assume the responsibilities of the plantation and her own affairs is Rachel’s knowledge of plantation operations themselves. Modest in her own assessment, Rachel’s letter to her brother claims, “So my dear brother, you can see I am still trying to creep along slowly with the help of good friends bestowed by a kind God.” Yet, in 1824 at the age of fifty-three she hired an overseer only because she felt too ill to carry on alone, “Since I have been so poorly, I have hired an overseer at 25 dollars per month for two months, if he behaves well not otherwise.” Two years later, Rachel still actively oversaw work in the fields, despite her continued use of an overseer, “I . . . returned home from the fields, after taking a long ride all through them. . . .”\textsuperscript{70}

Rachel dutifully reported to her brother on “his” plantation affairs. “The last of your crop is pressed. It made forty bales, one hundred and eighty bales the whole crop of cotton, and they commenced hauling it to the river this morning.” There is no indication David Weeks restricted her management in any way, including purchases for the plantation. Even more compelling evidence of David Week’s trust in Rachel’s management is the fact that Rachel communicated directly with the New Orleans cotton factor who negotiated sales for the plantation and purchased supplies for her. In later


\textsuperscript{70}Webb, \textit{Mistress of Evergreen Plantation}, 45; 5; 18; 69.
years, when the heirs of David Weeks proved less reliable than David in meeting
Rachel's financial obligations concerning the plantation, she scolded them by saying,

> Whoever I send the cotton to must consider themselves bound to send me such
necessaries as I write to them for and to pay any drafts that I may draw on them to
carry on the farm. Otherwise my liberties would be less than a common
overseer.71

Rachel frequently reported to David on the current selling price for cotton in New
Orleans, and she modestly sought his advice. Yet, the fact that her letters often just report
that she already shipped the cotton to New Orleans confirm her ability to make immediate
on-the-spot decisions, without David's advice or consent.

Other female planters in West Feliciana Parish demonstrated similar autonomy in
handling plantation affairs. Harriet Flower Mathews instructed cotton factors concerning
the sale of her crops. Eliza Lyons of nearby Oakley plantation instructed factors about all
four of her plantations. "We have before us your return letter . . . From a remark in it we
have feared you did not approve of what we did with the business . . . we hope you will
agree with us." Eliza continued to manage plantation affairs even after her marriage to
her third husband in 1840. Her management built upon a strong example. Eliza's
mother, Lucy Pirrie, established the tradition of independent action when she made
original land claims and managed affairs concerning her plantation for a time following
the death of her husband.72

71Webb, Mistress of Evergreen Plantation, 55; 239.
72Andrei M. Mattei, "Women on the Plantation: Accounting for the Image,"(B.A.
Honors Thesis, Mount Holyoke College, 1976), Louisiana and Lower Mississippi Valley
Collections, LSU Libraries, Baton, Rouge Louisiana.
With the exception of Eliza Lyons the personal authority exhibited by the female planters who were Rachel’s neighbors emerged out of the experience of widows on an economically viable plantation. As historians point out, unmarried or widowed women lacked status in a society that placed great value on the domestic, dependent role of women. Historian Lee Chambers-Schiler explains that out of marriage “flowed all else of importance - a woman’s social role, her status, any economic security she might have, and her identity in the family and community, in the church and body politic.” For the women of means like Rachel O’Connor, Catherine Turnbull, and others it is reasonable to suggest that their plantations in a sense supplanted the role of marriage. From their plantations they derived economic security and social status within the family and community.73

In the closing years of her life Rachel became increasingly handicapped by ill health and loss of hearing. Her brother died in 1834 and, for a time, she feared she could not recover from his loss. She continued to manage the plantation for another eleven years even encouraging David’s heirs to purchase more land for her to manage. “Cotton brings a good price now,” Rachel advised the executrix of David Week’s estate and “I don’t think should be afraid to venture the price of the land. It is near and will be of great advantage...” Her attitude toward management of the plantation is best expressed

in a letter she addressed to David Week's heirs in 1835: "I have a great desire to manage
for the best the time I have to live, and by adding some more land to this place, would
afford me much fairer chance of doing so."\(^{74}\)

In 1844 David's heirs expressed their impatience with her continued residence on
Evergreen Plantation. Legally they owned most of the plantation. But Rachel could
rightfully claim to have built Evergreen and to have devoted most of her adult life to it.
As early as 1836 she tried unsuccessfully to persuade David's heirs to return her property
to her. Now in 1844, in her seventies, she desired only to remain on the land with her
slaves, managing all as she had always done. Rachel died on May 22, 1846 at the age of
seventy three. Her estate appraised at just over $33,000, a sizeable sum considering she
sold most of her property to her brother sixteen years earlier. The last line in Rachel's
final letter, penned just a few months before her death, is an account of the number of
bales of cotton she just shipped to New Orleans. The eloquent author of her own
experience, it is an appropriate way to remember Rachel - that is, as a female planter in
West Feliciana Parish.\(^{75}\)

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When historians Jane and William Pease examined the list of the wealthiest
women in Boston in the early 1800s they found that most of the women inherited their

\(^{74}\) Box 8, Folder 51, January 4, 1836; and Box 8, Folder 50, December 14, 1835,
David Weeks (Weeks-Hall Memorial Collections), LSU.

\(^{75}\) "My Dear William, February 3, 1844, Box 11, Folder 76, David Weeks (Weeks-
Hall Memorial Collection) LSU; Webb, Mistress of Evergreen Plantation, 204; 276.
wealth from their husbands. "The implication is clear," they write. "Women of vast wealth came to their riches not through their own exertions but through inheritance from the males in their families."76 If the stories of Catherine Turnbull, Constance Duplantier and Rachel O'Connor tell us anything it is that women of property did exert themselves in the maintenance and accumulation of wealth for themselves and their families, both before and after their husbands died. They claimed land, raised children and managed households and conducted business matters. After their husbands died some women managed plantations. Civil law offered an advantage to these women because it recognized their labors and gave it monetary value through the community of assets and gains.

A second finding from the stories of these three women is that the benefits of civil law did not automatically flow to women, especially if their husbands came from an Anglo common law background. John Turnbull and John Joyce fit the pattern identified in Chapter III that Anglo men were more likely to follow common law rules of inheritance that gave women less of the marital property. Armand Duplantier, a Frenchman familiar with civil law, understood Constance Duplantier's legal rights to her first husband's property and protested John Joyce's will on her behalf.

Third, the three women considered in this chapter appeared reluctant to exercise their property rights under civil law. We can not know for sure why that is true. Catherine Turnbull, like her husband may have been influenced by her Anglo background. Some Anglo Louisiana residents scorned civil law. The controversy over

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76 Pease and Pease, Ladies, Women and Wenches 104.
whether to adopt civil law in Louisiana after statehood is an indication of many Anglo Louisiana residents ambivalence toward civil law. Another indication is the fact that some wills by Anglo men included a statement asking the government not to interfere with carrying out the stipulations contained in their wills.

Another explanation why Catherine did not protest her husband’s will might be that Catherine simply did not know about community property provisions. That is unlikely. Even temporary visitors to Louisiana wrote about the advantages of civil law for women. Lastly Catherine may not have acted in behalf of her own property rights out of respect for her husband and traditional gender conventions that allowed men to make such decisions. This last explanation may also apply to Constance Duplantier who did not immediately challenge her husband’s will. Neither woman left any personal statements to confirm they were guided by this attitude.

Catherine Turnbull does not appear to have suffered economically from her decision not to take advantage of community property laws. Her children were too young to demand the liquidation of the estate, so she could keep it together. She did not remarry, giving her children no reason to challenge her administration of the Turnbull legacy. Her co-administrator, Charles Norwood a lawyer, and a family friend, was a disinterested party who had no hopes of financial profit from her inheritance.

Constance Duplantier did suffer economic losses by not taking advantage of laws concerning women’s rights to administer their paraphernal property. Armand Duplantier expressed interest in Constance’s property even before he married her. Even if Constance knew his personal interest in her property and if she had doubts about his management, as
a newly wed, she could have found it difficult to deny her husband the right to administer her property as an issue of trust. She, like Catherine Turnbull, was the mother of young children. It made sense under the circumstances to turn over management to him. In the end what matters is that she did take advantage of her right to separate her property before Armand Duplantier irreparably diminished it. That was an option not commonly available to women under common law during this period of time.

Rachel O'Connor's case is informative because it seems to indicate that she did not understand her rights to administer *paraphernal* property during marriage. It is not certain from the documents whether she really did not understand her rights or whether she claimed ignorance as a legal tactic. The fact that her case is cited as a clarification of the law indicates that there were others who were not fully informed on the law on this particular issue. Finally, Rachel's case is informative because she illustrates ways women, and men, utilized kin to cope with legal and financial difficulties. From a legal standpoint Rachel lost in the suit brought against her. In another sense Rachel prevailed. She surmounted her legal difficulties and stayed on the land she loved.
An examination of women and property under Louisiana civil law refines and extends our understanding of women and the laws of property in general in early America. Not all women in early America found themselves confined within systems of common law coverture that took away their identity, their personal property and their rights to monetary rewards from their labors within the family. Various provisions of Louisiana civil law allowed women to do all of these things. Women in early Louisiana kept their legal identity, they could own half the marital property and all their separate property during marriage and they could administer their separate property. While these provisions appear liberating in comparison to common law, legal theorists caution that law in general does not operate autonomously, separate from the culture at large. The law both shapes and is shaped by the culture of which it was a part. The larger culture in late colonial and early nineteenth-century Louisiana was that of a deep-south, slave-holding state which much of southern historiography since the 1970s depicts as rigidly patriarchal and limiting for females. Even contemporary Louisiana residents like David Weeks, Rachel O’Connor’s step-brother, found himself confronted by this reality when he sat down to write his will. He knew the equitable provisions of Louisiana civil law could not guarantee that his daughters would be provided for in the future. “My Dear Boys,” he wrote to his sons in 1834,

...you will see in the will that is annexed to this that I have left your sisters a little advantage over you it is not because my love or affection is any stronger for them than it is for you but my Dear Boys I think you will be better able to struggle through this hard hearted world than your sisters... and if you are not
you ought to be and I hope when you should arrive at the age of manhood that you will think I have acted right.¹

The provisions of civil law were there for David Week's daughters, and his wife, to take advantage of but David Weeks understood the law was only one of many factors that influenced the economic and social conditions of his daughters' lives. The question then becomes what real personal and material differences did civil law make for women within the cultural milieu of Louisiana?

A part of the answer to that question is indicated in Chapter 2 in respect to the law itself. One thing civil law did not do was to change women's subordinate position within marriage and society. In fact, the civil law confirmed women's subordination. In an effort to explain the apparent contradiction between women's subordination under civil law and women's possession of property rights under the same law historians have emphasized the patriarchal roots of civil law. What the law meant to do by allowing women ownership over capital, according to some legal historians, was to place property in the hands of the living and enable families to pass wealth along through generations. Women were "place markers" within male lineages. While that legal philosophy worked to the advantage of widows during the time they controlled wealth, according to these historians, women's economic influence translated into only temporary economic authority, passed along to sons or other male kin as they came of age. For married

¹Addendum "My Dear Boys," David Weeks Papers (Weeks-Hall Memorial Collection), Box 6, Folder 43, Louisiana and Lower Mississippi Valley Collection, LSU Libraries, Baton Rouge, Louisiana.

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women whose husbands legally managed their wife’s shares of marital property, women’s ownership existed in name only.

The problem with this interpretation, which is largely derived from Latin American women’s experiences under civil law, is that it concentrates solely on whether women achieved personal and economic autonomy under civil law. An alternative explanation is that the chief advantage of civil law for early America women like David Week’s daughters is that it allowed and even encouraged them to work interdependently with their families, without causing them to lose their legal identity and property as they did under common law. Civil law more closely mirrored the economic reality of women’s lives in early America. Many women in early Louisiana, even propertied women like Catherine Turnbull, Constance Duplantier and Rachel O’Connor, expended their energies toward the development and maintenance of family. Civil law recognized their economic contributions by allowing them half the economic fruits of marriage. It is true they did not have autonomous administrative control of their half of marital property during marriage. Yet, based on the sizeable percentages of women’s land claims and business transactions presented in Chapter 3 and the personal accounts in Chapter 4 it is clear that women worked interdependently with their husbands and families in managing property, even during marriage. They exhibited authority in these transactions even if they did not act autonomously.

The data from Chapter 3 also demonstrates that civil law provisions worked to the long-term advantage of women in terms of their individual accumulation of economic resources, especially in comparison to women in common law areas. Although women

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overall owned considerably less wealth than men, data from probate records demonstrates that women from East and West Baton Rouge parishes and West Feliciana parish received their share of wealth according to the provisions of Louisiana civil law. The advantage Louisiana women possessed under civil law becomes more apparent when female probates from the Louisiana parishes are compared to female probates from the common law jurisdiction of Bucks County, Pennsylvania. Women from all of the Louisiana parishes owned a significantly greater share of wealth than women from their common law counterpart of Bucks County. In part this was because women in Bucks County typically did not receive even their share of wealth according to the provisions of common law and in part because their share was less than that of women under civil law.

It is possible to see the benefits of strict adherence to civil law principles for women’s property ownership when comparing individual Louisiana parishes. When predominantly Anglo West Feliciana parish is compared to predominantly French-speaking West Baton Rouge parish nearly twice the percentage of women in West Baton Rouge parish owned wealth subject to probate at their deaths than in West Feliciana. This discrepancy likely resulted from ethnicity and custom. Men and women from West Baton Rouge parish were accustomed to civil law provisions on account of their French civil law heritage and were more likely to follow the custom and letter of the law. West Feliciana Parish, on the other hand, demonstrates the encroachment of Anglo common law principles among male testators. These Anglo will writers often sought to circumvent the law, by reducing women’s share of marital property. Even with the pattern of reducing female inheritance found among male testators in West Feliciana
Parish, women in that parish were still better off than in the common law jurisdiction of Bucks County where historian Carole Shammas found an even more pronounced trend to reduce women's inheritance.

Although some Louisiana women did challenge their husbands' wills successfully, probate and court records suggest that many women did not challenge them. We cannot know for sure if these women did not contest their husband's wills because of respect for gender conventions of the period which granted their husbands decision-making authority in such matters, or out of a lack of awareness of their legal rights under civil law. This likely varied from parish to parish. It is also evident from some documents that women's legal actions to protect their property rights, such as through the separation of a woman's property from that of her husband, resulted in public disclosure of their legal actions and neighborhood gossip. It is probably that most women would want to avoid notoriety from legal actions, whether on account of contesting a husband's will, separating their property or separating from bed and board.

To say that women might choose not to protest their husband's wills on account of the public attention it might bring is also to say that women made choices about whether or how they would use the law. Thus not only did race, class, ethnicity and gender prescriptions effect women's use of the laws of the property under civil law, but also individual women's character, knowledge and skills. Catherine Turnbull, Constance Duplantier and Rachel O'Connor illustrate a range of choices that widowed white women could make concerning their exercise of rights under civil law. Catherine Turnbull chose not to protest her husband's will even though it denied her a legal share of their
community property. She also chose not to remarry which may be part of the reason, along with her strong-willed personality, that she was able to cement her family together. Catherine held onto large portions of the Turnbull estate throughout her widowhood and continued to build upon them. She does not readily fit the characterization of a widow with a diminishing fortune, waiting to pass on management of the family estate to male relatives.

Constance Duplantier protested her Anglo husband’s will only to turn over management of her inheritance to her second husband. That choice did not turn out to be wise as her husband Armand mismanaged and diminished her property and the property of her children. Only then did Constance choose to exercise her rights to self manage her property. Her story highlights the important protections civil law afforded women in the ownership and management of their property. Her case also illustrates the potential consequences for women if they did not choose to act independently. Finally, twice-widowed Rachel O’Connor exchanged tenancy on her own plantation for protection from the law. Early on she made a poor choice in accepting her son’s succession and hence his debts. She probably made that decision out ignorance of the full extent of her son’s losses which included significant debts in New Orleans. Subsequently she made the decision to sell out to her brother to protect herself from creditors with the full realization that she could not combat the legal system alone. She, like many other planters both male and female, turned to kin to help them overcome difficult times in the administration of property.
Taken together these three women's stories demonstrate both the potential and limitations of the law in shaping free, white women's experience in the South. Regional comparisons of wealth accumulation between Pennsylvania and Louisiana demonstrate that overall women fared better under civil law than under common law. In the end how well an individual woman fared depended not just on the law but on a host of factors, not the least of which were a woman's personal choices and her courage to act independently.

Since the conclusions presented here call into question the legal dispossession and enforced dependence of women in early Louisiana then those same conclusions must also challenge the traditional view of southern patriarchy as uncompromising and ubiquitous. If Louisiana, a deep-South, slave-holding state, could make room for women's equitable ownership of property within marriage, then the connection between a master's ownership and control of his slaves and his ownership and mastery over his household is not as seamless as historians have thought. The fact that most women in early Louisiana did not use their rights under civil law to challenge male prerogatives or that civil law confirms women's subordination does not change the inherent challenge to patriarchy that some civil law provisions pertaining to women and property represented. The evidence from this study of Louisiana indicates that Anglo slave holders found it the most difficult to accept the alterations wrought by civil law in the basic framework of patriarchy.  

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Recall Eudora Welty’s tale about beautiful Rosemonde in *Robber Bridegroom*. I doubt whether white women in early Louisiana would have written the engaging story much differently than the author did. They would not have added to the story that Rosemonde actually owned half of the beautiful cypress and marble house on Lake Pontchatrain and half of the slaves. Explaining to the contemporary readers of the tale that she owned this property simply would not have been that important to the story in their eyes. What would be most important to Rosemonde and her hypothetical new nineteenth-century creators would be that she did own this property, just in case her husband ever returned to his former “wild ways.”
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