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Law in East Florida 1783-1821

by M.C. Mirow*

I am delighted to dedicate this article to Larry Reilly who has shepherded the American Journal of Legal History *for many years. Despite the challenges presented to the* Journal, *Larry never lost sight of its academic mission and its important place in the world of legal history. It was my pleasure to serve as a book review editor for the* Journal *from 2002 to 2010 and to correspond frequently with Larry about our work. I remember meeting him in person, perhaps at the Austin ASLH meeting in 2004, where he, Hamilton Bryson, and I discussed aspects of the* Journal. *It was clear that he deeply cared about its future. Because Larry is a librarian, I thought it fitting that this contribution focus on a particular source, the* East Florida Papers, *and discuss their use and potential in telling us something about colonial Spanish law and society in North America. It is also a happy coincidence that this study seeks in some ways to expand on the work of Charles R. Cutter, whose book I reviewed in this* Journal *in 1998.*[1]

In 2013, at a roundtable discussing the works American legal historian William E. Nelson, Nelson himself described one of his first meetings with his supervisor at Harvard, Bernard Bailyn, the United

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* Professor of Law, Florida International University, Miami. Member of the Advisory Board of the *American Journal of Legal History*. A version of this article was delivered as a talk at the Centre for Latin American Studies' Easter Term Research Seminar, University of Cambridge, May 13, 2014. I thank the Centre's director, Dr. Charles Jones, for his hospitality and for suggesting a flattering alternate title for this work, "Montaillou, East Florida." I thank Dean Teresa Stanton and Dr. Marisol Floren-Romero, of the FIU Law Library, and Dean R. Alexander Acosta for acquiring the materials used here and for suporting my research.

[1] M.C. Mirow, Book Review, 42 Am. J. Legal Hist. 414-415 (1998) (reviewing Charles R. Cutter, The Legal Culture of Northern New Spain, 1700-1810 (1995)).

States and Atlantic World historian. Nelson, embarking on his Ph.D. dissertation work in the mid-1960s, recalled Bailyn's instructions, "Find some documents no one has looked at and say something interesting about them."[2] When I made my way up the stairs to Skye Hall at St. Catharine's College, Cambridge, in 1988 to begin my Ph.D. on legal history with Sir John Baker, I was full of quickly memorized theories and methodologies of historical practice. I asked him about methodology and theory, and he quietly responded the same way, "Find some materials in the archive no one has read and say something interesting about them." While these pieces of advice are, of course, not the totality of the practice of the legal historian, they are not a bad starting point. Today, twenty-six years later, I think have found some archival material that no legal historian has read and hope to say something interesting about it.[3]

The *East Florida Papers* were microfilmed by the Library of Congress in 1964 and 1965.[4] Covering almost every conceivable aspect of Spanish government and administration in East Florida from 1783 to 1821, the papers, now preserved on 175 reels, have an unusual provenance. Under the terms of the Adams-Onís Treaty of 1819, Spain transferred East Florida to the United States in 1821. The

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[2] William E. Nelson, Remarks at William E. Nelson, Scholar and Historian: a Roundtable Discussion, Miami (November 7, 2013). *See also*, William E. Nelson, *A Response: The Impact of War on Justice in the History of American Law*, 89 CHI.-KENT L. REV. 1109 (2014). Nelson was an Assistant Editor of the *American Journal of Legal History* from 1973 to 1982.

[3] This contribution draws upon three published or to-be-published longer works exploring the areas described here. They are M.C. Mirow, *Causas civiles en la Florida Oriental, 1785-1821*, in ESTUDIOS EN HOMENAJE AL PROFESOR DOCTOR DON ABELARDO LEVAGGI (Ricardo Rabinovich-Berkman & Agustín Parise, eds., Buenos Aires: Editoral de la UBA, 2014, forthcoming); M.C. Mirow, *Testamentary Proceedings in Spanish East Florida, 1783-1821*, in STUDIES IN HONOR OF RICHARD H. HELMHOLZ (Troy L. Harris, ed., Berkeley: Robbins Collection/University of California Press, forthcoming), and M.C. Mirow, *The Constitution of Cádiz in Florida*, 24 FLA. J. INT'L L. 271-330 (2012). The *East Florida Papers* are listed as a source for law in Christopher A. Vallandingham, *Tracking Down Legal Sources on Prestatehood Florida, in* 1 PRESTATEHOOD LEGAL MATERIALS: A FIFTY-STATE RESEARCH GUIDE, INCLUDING NEW YORK CITY AND THE DISTRICT OF COLUMBIA 249, 263 (Michael Chiorazzi & Marguerite Most eds., 2005).

[4] East Florida Papers (Manuscript Div., Library of Cong.) (hereafter "EFP"). The Library of Congress has not established a system of identification for each document in this collection. When using these documents, I attempt to specify the location of the document on the reel with as much precision as possible, sometimes with an existing date, identification number, folio number, page number, or bundle reference, according to what is available from the reel and the index of the papers.

Spanish records were supposed to be shipped to Cuba but were kept by the United States.[5] They were shuffled between various territorial and federal authorities in Florida until they were transferred to the Library of Congress in 1905.[6]

Maintaining the overall structure of that materials based on Spanish administrative institutions and personnel, the collection is divided into 100 series of different topics.[7] It has approximately 65,000 folios arranged in 372 bundles.[8] The papers include official correspondence and documents related to the colonial administration of St. Augustine and its surrounding province. Subjects covered in the papers include taxation, military matters, ecclesiastical matters, the Royal Hospital, civil engineering, smaller municipalities, census returns, marriage licenses, shipwrecks and captures, notarized instruments, slave titles, relations with indigenous communities, relations with the United States, and city council proceedings, among others.[9] For legal historians, there are materials on civil and criminal cases, the Royal Court of the District (the *audiencia*?), miscellaneous legal instruments and proceedings, court-martials, testamentary proceedings, treasury accounts, state prisoners, exchequer proceedings, notarized instruments, and slaves.[10]

There are a number of reasons these documents have not received the attention they deserve. First, for historians of Latin American law, the Library of Congress as an institution is somewhat off the beaten path. Legal historians of Latin America spend their time in national archives and in Spain, especially in the Archivo General de

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[5] Laura J. Kells, *East Florida: A Register of Its Records in the Library of Congress (A Finding Aid to the Collection in the Library of Congress)* (2011), 2-4, http://lcweb2.loc.gov/service/mss/eadxmlmss/eadpfdmss/20050ms005002pdf.

[6] *Id.* at 4. A brief description of the papers may be found at Mabel M. Manning, *The East Florida Papers in the Library of Congress*, 10 HISP. AM. HIST. REV. 392-397 (1930). For a detailed history of the provenance of these records see Irene A. Wright, *The Odyssey of the Spanish Archives of Florida, in* HISPANIC AMERICAN ESSAYS (A. Curtis Wilgus ed., 1942) 169-207. *See also*, Sherry Johnson, *East Florida Papers, 1784-1821*, 71 FLA. HIST. Q. 63-69 (1992). A searchable index to the East Florida Papers may be found at http://web.uflib.ufl.edu/spec/pkyonge/eflapap.html.

[7] A complete list of the series topics can be found at Kells, *supra* note 5, at 4-20.

[8] LIBRARY OF CONGRESS, HANDBOOK OF MANUSCRIPTS IN THE LIBRARY OF CONGRESS 121 (1918); LIBRARY OF CONGRESS, REPORT OF THE LIBRARIAN OF CONGRESS 50 (1905).

[9] Kells, *supra* note 5, at 4-10.

[10] *Id.* at 19, 21, 33, 39- 45, 45-48, 54-55.

Indias in Seville. Second, historians of the United States who have come across the *East Florida Papers* may have been put off by the linguistic and, in rare moments, the paleographical challenges they present. Third, Florida's unique place in colonial North America with over 300 hundred years of Spanish domination, punctuated by twenty years as a loyal British province during the formative decades of North American independence, make it an oddball that does not easily fit into established narratives of colonial and early republic North American history. Florida history still has to establish its place in the history of North America, of Latin America, and of the Atlantic World.[11] Too many scholars still see the history of the region beginning with the availability of domestic air conditioning or, if pressed, the construction of Henry Flagler's railway.[12] Where history goes, legal history goes; and the legal history of Florida from first contact with Europeans, through the Spanish and English periods, and as a territory and state remain, for the most part, unknown.[13]

St. Augustine and its province of East Florida formed a rather unusual border society during the second Spanish period and has already been described well in the secondary literature.[14] The legal documents and proceedings examined here add depth and definition to these works. The focal point of the city and its territorially permeable province was the Castillo de San Marco, constructed in 1672. The province was under British rule from 1763 to 1783, and

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[11] *See*, however, Sherry Johnson, *The Spanish St. Augustine Community, 1784-1795: A Reevaluation*, 68 FLA. HIST. Q. 27-54 (1989); DAVID J. WEBER, THE SPANISH FRONTIER IN NORTH AMERICA 276-78 (1989) (adopting Johnson's assessment).

[12] The Florida Historical Society and its members has done much to increase awareness of the region and state's history. Connecting this work to other fields of history remains a challenge.

[13] Another contributor to this volume has lit a candle in the darkness. KERMIT L. HALL & ERIC W. RISE, FROM LOCAL COURTS TO NATIONAL TRIBUNALS: THE FEDERAL DISTRICT COURTS OF FLORIDA, 1821-1990 (1991); WALTER W. MANLEY II, E. CANTOR BROWN, JR., & ERIC W. RISE, THE SUPREME COURT OF FLORIDA AND ITS PREDECESSOR COURTS, 1821-1917 (1997). *See also*, Nancy O. Gallman, American Constitutions: Life, Liberty, and Property in Colonial East Florida (forthcoming Ph.D. dissertation, University of California, Davis); Susan Richboug Parker, *In My Mother's House: Dowry Property and Female Inheritance Patterns in Spanish Florida, in* SIGNPOSTS: NEW DIRECTIONS IN SOUTHERN LEGAL HISTORY 19-44 (Sally E. Hadden & Patricia Hagler Minter eds., 2013).

[14] Susan R. Parker & William S. Coker, *The Second Spanish Period in the Two Floridas, in* THE HISTORY OF FLORIDA 162-179 (Michael Gannon ed., 2013).

British, United States, Spanish and Native American interests abutted and interacted though trade, battle, invasions, rebellions, raids, and smuggling throughout the second Spanish period.[15]

I. ST. AUGUSTINE AND EAST FLORIDA

St. Augustine's linguistically and racially diverse population in this period hovered around 3,000 individuals with about half the population composed of black slaves.[16] There were also old Floridanos (families established in the first Spanish period), English settlers who remained in the region after the English period from 1763 to 1783, new individuals from other parts of the Spanish world, many settlers from the United States, a sizeable Minorcan population (many of whom were British subjects), a substantial Spanish and Cuban military housed in the fort, merchants, sailors, mix-race freemen, mix-raced slaves, and a few dozen free blacks.[17] Florida historian Susan Parker has noted the mix of cultures in St. Augustine during the second Spanish period and speculates that "English was heard on the streets almost as often as Spanish."[18] These were not only settlers from the United States but also British loyalists who came to wait out, in their minds, the eventual collapse of the United States. Legal records and proceedings reveal all these aspects of St. Augustine society.

Native Americans, while an essential part of the economy, and theoretically Spaniards under the Constitution of Cádiz during constitutional periods, were not integrated into the city.[19] There were

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[15] Mirow, *The Constitution, supra* note 3, at 274-278. See, JAMES G. CUSICK, THE OTHER WAR OF 1812: THE PATRIOT WAR AND THE AMERICAN INVASION OF SPANISH EAST FLORIDA (2003); Sherry Johnson, *The St. Augustine Hurricane of 1811: Disaster and the-Question of Political Unrest of the Florida Frontier*, 84 FLA. HIST. Q. 28-56 (2005); REMBERT W. PATRICK, FLORIDA FIASCO: RAMPANT REBELS ON THE GEORGIA-FLORIDA BORDER, 1810-1815 (1954).

[16] Census of 1814, EFP, Reel 76, October, 5, 1814, f. 221.

[17] A trove of information concerning the national origin of East Florida's population awaits analysis in Oaths of Allegiance, 1790-1821, EFP, Reels 163-164, which contain oaths and detailed lists of resident non-Spaniards who swore allegiance to the king to remain in St. Augustine and the province of East Florida. The lists associated with the oaths contain information on the country or state of origin, religion, and the resident's family members, cattle, goods, and slaves.

[18] Susan R. Parker, Spanish Colonial St. Augustine, http://www.vivaflorida.org/St_Augustine.21.lasso.

[19] Mirow, *The Constitution, supra* note 3, at 274-278.

nine Indian towns that belonged to East Florida in this period.[20] Nonetheless, these towns were not included in the censuses.

Commerce included trade with Native Americans, shipping, agriculture, land speculation, and slave dealing.[21] Between 1783 and 1817, the Scots trading companies of Panton, Leslie and Company and its successor John Forbes and Company, located across the river from St. Augustine, traded with Native Americans and handled large transactions sometimes exceeding hundreds of thousands of pounds.[22] The fort was a central and constant consumer of food and provisions that were supplied locally and by sea.

With this brief description of the city and province in mind, I should like to address three aspects of the legal and constitutional world of the city in this period. They are, in fact, three pieces of a jigsaw puzzle from which I hope an entire view of St. Augustine's colonial legal world will emerge, but so far, my work has been merely to construct these three pieces: the impact of the Constitution of Cádiz in the city and province, the civil causes held before the governor, and the testamentary causes held before the governor. These are three important pieces but they can only provide a hint at the entire and complex legal world to be uncovered in these records. I also hope that these three areas will illustrate that these materials have the potential to shed light on broader aspects of colonial legality in North America, on the use of law in the construction of empire, and on the nature of Spanish colonial law and procedure, or *derecho indiano*, in Spain's North American territories.

II. THE CONSTITUTION[23]

East Florida was in political flux during this period. From 1783 to 1812 the city was under the military jurisdiction and the Spanish crown. The Governor of St. Augustine reported to the Captaincy General of Cuba and the Two Floridas in Havana, Cuba, which, in turn, reported to the central government in Cádiz or Madrid, de-

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[20] EFP, Reel 76, May 22, 1815, No. 11, f. 243.

[21] WILLIAM S. COKER & THOMAS D. WATSON, INDIAN TRADERS OF THE SOUTHEASTERN SPANISH BORDERLANDS: PANTON LESLIE & COMPANY AND JOHN FORBES & COMPANY, 1783-1847 (1986).

[22] *Id.*

[23] This section is adapted from Mirow, *The Constitution, supra* note 3.

pending on the particular period examined.[24] The Constitution of Cádiz was signed in southern Spain on March 18, 1812. Official documents requiring its promulgation in St. Augustine, East Florida, arrived in October of the same year, and the city and the region of East Florida experienced two periods of constitutional government; the first from the Constitution's initial promulgation in 1812 until 1815 and the second from 1820 until 1821 when East Florida was turned over to the United States.[25]

Although the governor remained the political chief, the Constitution brought new local and regional structures including a Constitutional Mayor, and Constitutional City Council, both in St. Augustine, and a Provincial Deputation in Havana with authority over St. Augustine. These all reported to the Cortes in Cádiz, in the south of Spain.[26] From 1812 to early 1815, St. Augustine was under and complied with the provisions of the Constitution of Cádiz.[27]

For example, St. Augustine complied with the requirements for the Constitution's promulgation later in October, 1812.[28] There were three days of public processions, oaths of loyalty to the Constitution and King, military displays, religious ceremonies, music and parties. The Constitution was put into effect. Local elections were conducted to select a Constitutional City Council consisting of a mayor, four councilmen, and a city attorney-treasurer. The documents studied here reveal the city's high level of electoral, political, and legal compliance with the Constitution.[29] In 1813, Florida's first elected representative, Gonzalo Herrera, arrived in Cádiz and its Cortes.[30]

Another example of St. Augustine's constitutional exuberance and fealty was the construction of a monument to the Constitution in the city's central plaza. A few months before the Constitution's

[24] Alejandro Quiroga Fernández de Soto, *Military Liberalism on the East Florida 'Frontier': Implementation of the 1812 Constitution*, 79 FLA. HIST. Q. 444 (2001). See also, Duvon Clough Corbitt, *The Administrative System in the Floridas, 1783-1821, II*, 3 TEQUESTA 57 (1943).

[25] Mirow, *The Constitution, supra* note 3, at 272-288, 309-322.

[26] Quiroga, *supra* note 24, at 445.

[27] Mirow, *The Constitution, supra* note 3, at 279-302.

[28] *Id.* at 279-288.

[29] *Id.* at 279-329.

[30] M.C. Mirow, *Gonzalo Herrera y las Floridas frente a las Cortes de Cádiz, in* ACTAS DEL XVIII CONGRESO DEL INSTITUTO INTERNACIONAL DE HISTORIA DEL DERECHO INDIANO (forthcoming).

promulgation in St. Augustine in 1812, the Spanish Cortes in August, 1812, decreed that main plazas throughout the empire be renamed "Plaza de la Constitución" with some sort of memorial tablet.[31] St. Augustine, poor and surrounded by North American troops who were later denounced by the United States, decided that compliance should include a large obelisk to bear the tablets. Many have asserted that such monuments sprang up all over the Spanish constitutional world and were later dismantled either under royal order (it appears there were no such orders) or through the common sense of inhabitants. Recent scholarship has argued that this was an unusual step—most cities complied by affixing a stone or tile tablet to the side of a prominent building on the plaza rather than constructing a monument.[32] Indeed, the only other contender as an extant constitution monument from the period in the Americas is in Comayagua, Honduras.[33] I believe the obelisk in St. Augustine reflected the city's constitutional spirit and was a product of an intense local power struggle that ensued after the implementation of the Constitution. It was a struggle between the Governor and the newly elected Constitutional Mayor. I have argued elsewhere that the monument, the most important public work of the period and very likely a unique structure in the Spanish empire, must be viewed in light of these local political tensions resulting from the implementation of the Constitution.[34]

When Fernando VII returned to the throne in 1814, he rejected the Constitution that established a constitutional monarchy in his name and announced that he would rule with absolute power. This change in political structure reached St. Augustine in late 1814 and the last meeting of the Constitutional City Council was in January, 1815.[35] Fernando VII was later forced to acquiesce to the Constitu-

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[31] Paul L. Weaver, III, *The Constitution Obelisk of St. Augustine, Florida: A Unique Historical Monument*, 48 El Escribano 48 (2011); EFP, Reel 89, January 19, 1813, bundle 209A17.

[32] Weaver, *supra* note 31, at 48-49.

[33] It dates from either 1812 or 1820. See, http://ccet-aecid.hn/monumento-constitucion/ (dating this monument to 1812) and http://www.honduras.com/walking-city-tour-of-comayagua/ (dating this monumment to1820).

[34] M.C. Mirow, Translating into Stone: The Monument to the Constitution of Cádiz in St. Augustine, Florida (1813-1814) at University of Oxford's Interdisciplinary Research Network *Translations in Transnational Context*, St. Peter's College, Oxford, May 10, 2014.

[35] Mirow, *The Constitution, supra* note 3, at 302-309.

tion in 1820, and St. Augustine and East Florida returned to a constitutional regime under the Constitution of Cádiz until their transfer to the United States on July 10, 1821.[36]

The monument provided both a figurative and literal focal point for assertions of imperial power, constitutionalism, and St. Augustine's status within the Spanish Empire. Powerful figures of the city fought over control of the project that enshrined their constitutional status. When the constitution was no longer sanctioned, the tablets were removed, but the obelisk remained. When the Constitution was in force again, constitutional structures sprang to life and the tablets were reaffixed to the monument. When St. Augustine passed from Spain to the United States, the city and its obelisk did not pass from royal absolutism to constitutional democracy. Instead, these lands passed from one constitutional regime to another constitutional regime, a political shift that permitted a monument to a constitution to survive the transition. It stands today in Constitution Plaza in St. Augustine.

III. CIVIL CAUSES[37]

Of the 372 bundles of papers in the *East Florida Papers*, 21 bundles are labeled as dealing with civil causes.[38] These records of civil litigation reveal the mix of populations and economic activities one might expect. While many cases concerned small amounts and local parties, other cases involved transnational commercial transactions and significant sums. The court often needed documents in English translated into Spanish for its work, and public interpreters were employed to handle this task and, on occasion, to translate Native American languages. For example, the records identify Alonso Gil and Antonio Huertas as Indian interpreters.[39]

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[36] *Id.* at 309-327.

[37] This section is adapted from Mirow, *Causas civiles, supra* note 3.

[38] LIBRARY OF CONGRESS, HANDBOOK OF MANUSCRIPTS IN THE LIBRARY OF CONGRESS 121-122 (1918); LIBRARY OF CONGRESS, REPORT OF THE LIBRARIAN OF CONGRESS 59 (1905).

[39] EFP, Reel 151, July 13, 1790, Item 1790-2. Indian interpreter Alonso Gil complains that soldiers have occupied part of his land; EFP, Reel 151, January 8, 1791, Item 1791-1, Indian interpreter Antonio Huertas sues Francisco Pellecier; EFP, Reel 161, February 10, 1814, Item 1814-1, Juan Bautista Collins sues int treasuer Jose Antonio de Yguiniz for debt (mentions Huertas as Indian interpreter).

There are over 500 entries for civil causes from 1785 to 1821. Disputes concerning debt, commercial transactions, slaves, landholding and houses provided a staple of legal work. Other areas that arise frequently are admiralty questions concerning shipping, compensation, and other disputes touching sailors and the commercial aspects of navigation.

These cases were heard by the governor of the province at the time of the case. For example, many of the judgments in the early 1790s were signed "Quesada," who was more fully "Señor Don Juan Nepomuceno de Quesada, Brigadier de Infanteria de los Reales Exercitos, Gobernador Comandante General Vice Patrono Real y Subdelegado de Real Hacienda" of St. Augustine.[40] It appears that the governor was usually assisted by a legally trained *asesor* who used the title *Licenciado* before his signature in documents related to the case. In the 1790s, José de Ortega, was busy with legal cases and held the title of "Abogado de los Reales Consejos, Teniente de Governador Auditor de Guerra y Asesor General de esta ciudad" as he assisted the Governor.[41]

At other times, it appears that there was simply no trained legal official or private lawyer in St. Augustine and the province. In a complex cases dealing with compensation for lands taken in the center of city in 1792 to build the new parish church (now the Cathedral-Basilica of St. Augustine), Doña Humbert y Perpall's most easily accessible source for legal expertise was in Havana, Cuba, approximately 700 km to the south. She explained that as there was not a lawyer in the city or province to consult, she had to turn to a lawyer in Havana, Licenciado Don Bentura Perez.[42] Thus, much of St. Augustine's significant legal work was done without a trained lawyer present or participating in the decisions of the Governor who had to work from his own knowledge or with the input of advisors who appear not to have been legally trained.

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[40] EFP, Reel 152, April 4, 1794, No. 18, Item 1794-10, f. 17v, Artemus Elliot Ferguson sues Capt. Timothy Hollingsworth. N.B. For the sake of consistency, I will use the official entry for each case as recorded in the index in English, when available, even though these are frequently translations from the Spanish found in the manuscripts.

[41] EFP, Reel 152, April 4, 1794, No. 18, Item 1794-10, f. 18.

[42] EFP, Reel 151, February 11, 1792, No. 37, Item 1792-5, detailed proceedings of purchase of land for parish church.

With a dearth of legal personnel and the only *abogado* in the employ of the tribunal, it is not surprising that the documents reveal, in my rapid readings, no citation to legal authorities. It is, however, important to remember that even trained judges did not typically motivate their decisions with a great deal of citation. They were to motivate their decisions through their conscience and legal knowledge. Thus, citation was infrequent.[43] The cases indicate at times a rather sophisticated knowledge of the general principles of private law and the parties' willingness to engage in the legal substance of their dispute. For example, the Perpall dispute contains over 140 pages and goes into substantial detail concerning the wife's legal power to carry forward her claim.[44] Indeed, the use of powers to represent plaintiffs before the tribunal was common, especially for non-Spanish litigants such as Thomas Fitzsimmons, a Philadelphia merchant who in 1792 valued his claim at over 490,000 U.S. dollars.[45] Parties might also seek arbitration established under the governor's power to settle disputes.[46] Thus, the lack of lawyers did not prohibit the Governor's court from considering complex matters or from matters concerning substantial sums in dispute.

As might be gleaned from the two cases mentioned above, the number of cases that cross international borders in one way or another indicates the complexity of St. Augustine's economic and commercial life. The Governor heard cases for the recovery of sums in a variety of currencies that demonstrate the mixed nature of St. Augustine's economic life. These include reales, pesos, dollars, pounds sterling, guineas, and "dollars money of Mexico." The culturally mixed

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[43] Carlos Garriga, *La recusación judicial: del derecho indiano al derecho mexicano*, in LA SUPERVIVENCIA DEL DERECHO ESPAÑOL EN HISPANOAMÉRICA DURANTE LA ÉPOCA INDEPENDIENTE, Cuadernos del Instituto de Investigaciones Jurídicas (México: Universidad Nacional Autónoma de México, Instituto de Estudios Jurídicos, 1998), 207-208; M.C. Mirow, LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA 52-53 (2004); Mauricio Alfredo Novoa-Cain, The Protectors of Indians in the Royal Audience of Lima: History, Careers and Legal Culture, 1575-1775, at 198 (April, 2014) (unpublished Ph.D. dissertation, University of Cambridge) (on file with author).

[44] EFP, Reel 151, February 11, 1792, No. 37, Item 1792-5.

[45] EFP, Reel 151, February 11, 1792, No. 13, Item 1792-5, f. 13.

[46] *E.g.*, EFP, Reel 156, May 12, 1801, Item 1801-15, Agustin Buck requests arbitration to settle accounts with George Clark; EFP, Reel 159, March 9, 1807, Item 1807-2, Mariano de Lasaga, Henry Hunter and Francisco Phelipe Fatio request arbitration of claims of property of deceased Brigida Forrester.

nature of disputes in the region is evidenced from the very first case from 1785 concerning debt for the sale of a slave. Individuals mentioned in the case include "Robert Johnson," "Guillermo Enrique Mills" (William Henry Mills), and "Alexander Ross." Also mentioned are "Maria de Gracia Perpal", "Catalina Acosta", and "Bernardo Segui', among others.[47] In fact, a mix of Spanish and English surnames in these cases is common. In another example from 1800, William James, described as U.S. citizens, brought an action to recover property based on a will executed in New York state, against apparently another U.S. citizen, raising a number of evidentiary and substantive questions and documents.[48] Local agents might be appointed for such long-distance litigation. In 1800, in a case involving over £1,000, the collection activity of a New York firm was handled by "Richard M. Laurence, Apoderado."[49]

Cases dealing with slavery in one way or another accounted for approximately 15 percent of the cases studied. There were cases concerning the determination of status, manumission, and *coartación* where the slave was able to purchase his or her own freedom after paying a just price. Cases related to slavery often involved documents and proceedings from the nascent United States, with South Carolina and Georgia often playing into the provenance of particular slaves. Slaves might also have passed through England with settlers arriving in the area, as many had earlier during the period of English plantations.[50]

To the surprise of some Anglo slaveholders in the area, *coartación* and even *coartación* initiated by the slave was observed in St. Augustine, most likely because it was a common feature of Cuban slave law.[51] On August 6, 1794, a "mulata slave," Margarita Sanders, ini-

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[47] EFP, Reel 150, March 31, 1785, Item 1785-3, Isabel Perpall sues Antoni Canter.

[48] EFP, Reel 154, January 11, 1800, No. 3, Item 1800-1, William James, agent for Bernard Connolly, claims properties and debts belonging to Michael Connolly (brother).

[49] EFP, Reel 155, July 17, 1800, No. 13, Item 1800-13, Richard M. Laurence, agent for House of Roe & Metcalfe (New York) sues James Cashen.

[50] EFP, Reel 152, September 19, 1793, No. 14, Item 1792-19, slave Nancy sues John McQueen.

[51] BERGAD, LAIRD W., FE IGLESIA GARCÍA & MARÍA DEL CARMEN BARCIA, THE CUBAN SLAVE MARKET 1790-1880, at 122-142 (1995); E.g. EFP, Reel 151, September 19, 1792, Item 1792-19, slave Nancy sues John McQueen; EFP, Reel 152, December 23, 1793, Item

tiated proceedings to purchase her own freedom. The owner, John Sanders, objected with the concern that if Margarita were permitted to do this, all his slaves might do the same.[52] The tribunal disagreed with the owner's argument and appointed experts to assess Margarita's value. After a factual dispute over her value, she was permitted to purchase her freedom and her new status was recognized by the court.[53] John Sanders's fears were not without merit; another slave Lucia Sanders petitioned and was granted the same opportunity in 1795.[54]

Slaves might also sue for the manumission of their relatives.[55] They might also sue for the manumission of their entire families at once.[56] Some cases involved entire shipments of slaves, irregularities associated with their transportation, capture, and mortgage.[57] Slaves might also sue for documentation regarding their status or for legal determination of their status.[58] There are instances of testamentary manumission as well.[59] In cases dealing with solutions less than freedom, slaves might sue to be sold to keep them near their spouses

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1793-12, slave Antonio (Antonio Colman) solicits manumission; and EFP, Reel 160, November 6, 1810, Item 1810-10, slave Tiny requests decision on her value for purchase of freedom from owner Ana Sanders.

[52] EFP, Reel 152, August 8, 1794, No. 23, Item 1794-20, f. 3, slave Margarita Saunders solicits manumission from owner John Sanders.

[53] EFP, Reel 152, August 6, 1794, No. 23, Item 1794-20, ff. 6v-13v.

[54] EFP, Reel 152, September 4, 1795, No. 9, Item 1795-10, slave Lucia Saunders solicits manumission from owner John Sanders.

[55] *E.g.*, EFP, Reel 151, June 10, 1792, Item 1792-12, Josefa Fernandez, slave of John Frean, solicits manumission of her daughter, Maria Dolores.

[56] *E.g.*, EFP, Reel 152, March 3, 1794, Item 1794-5, Felipe Edembourgh solicits manumission from Fransico Xavier Sanchez.

[57] *E.g.*, EFP, Reel 152, March 27, 1794, Case initiated by Governor Juan Nepumuceno de Quesada against Henry MacBest concerning passport irregularities and importation of slaves; EFP, Reel 156, October 9, 1802, Item 1802-8, Pedro Cosifacio sues Samuel Heron (for wages for crew of slave ship *James*); EFP, Reel, 159, February 28, 1807, Item 1807-13, Thomas Napier sues Donald McDonell for return of slaves; and EFP, Reel, 162, February 27, 1818, Item 1818-2, Josiah L. Grey and John Borward initiate suit to determine ownership of 11 slaves found on property of Henry Yonge.

[58] *E.g.*, EFP, Reel 152, December 31, 1794, Item 1795-2, slave Maria Josefa Perpal solicits proper papers for her sale in St. Augustine; and EFP, Reel 159, July 19, 1808, Item 1808-8, slave Ben solicits confirmation of his free status.

[59] *E.g.*, EFP, Reel 153, January 19, 1797, Item 1797-10, slave Catalina solicits manumission promised by owner, William Hull, upon death.

or to prevent their sale to a slaveholder of incompatible religion.[60] Just as slaves might seek different levels of redress in the governor's court, indentured servants also brought claims to ensure their proper treatment.[61] Slave successfully gaining manumission were free, and free blacks were present in the community. Other free blacks were also in the region and were recognized in the records of the court. In 1799, one finds the mention of "Juan Malla Negro Libre y vecino de esta ciudad."[62]

As mentioned, the presence of non-Spaniards and non-Spanish speakers seeking redress through the Governor's tribunal in St. Augustine was not unusual. Many disputes had original documents in English that were translated into Spanish in the record. On March 14, 1793, "Juan Parkinson" brought suit on a promissory note against "Juan Saunders" both of whom appear as "John" on the note itself.[63] By this time at the tribunal one notices the regular appearance of a "public interpreter" whose costs are frequently part of the itemized costs of litigation at the end of the documents related to each case. In the case of the slave Antonio, several documents were entered into the record and translated into Spanish. These included a statement of the Governor of Georgia, George Matthews, identifying the source of the documents as a Justice of the Peace whose records he requested be given faith and credit in the Spanish tribunal.[64] These documents were translated by the public interpreter Don Miguel de Iznardy, who appears to have worked fluently in Spanish and English.[65] With foreign litigants, procedures might have to be adjusted. For example, in this particular case, the oath

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[60] *E.g.*, EFP, Reel 156, October 22, 1802, Item 1802-12, slave Francisco, owned by Francisco Xavier Sanches, requests his sale to Col. Bartolome Morales (to prevent being taken to Havana and separation from his wife Catalina, slave of Morales); EFP, Reel 162, September 28, 1818, Item 1818-11, Antonio Proctor requests sale of son to Catholic rather than Protestant.

[61] *E.g.*, EFP, Reel 158, February 4, 1804, Item 1804-1, Indentured servants Adam Shudi and Christian Mazemberg protest mistreatment by George Taylor.

[62] EFP, Reel 154, July 13, 1799, No. 14, Item 1799-10, Isabel Ridabeth and husband Juan Paredes sue Pedro Perez.

[63] EFP, Reel 152, March 14, 1793, No. 2 (No. 314), Item 1793-3. John Parkinson sues John Saunders.

[64] EFP, Reel 152, December 23, 1793, No. 16, Item 1793-12. slave Antonio AKA Antonio Colman solicits manumission.

[65] EFP, Reel 152, December 23, 1793, No. 16, Item 1793-12.

was taken "segun la secta protestante."[66] The tribunal also had to deal with indigenous languages.[67]

Economic hard times might lead to the court setting out a process for the dissolution of enterprises, the liquidation of assets, and the paying off of creditors, activities within the scope of the court.[68] Such decisions might be assigned to arbitration where *arbitros* made the final decision and, at times, included extensive inventories of goods. In a case from 1801, the inventory from the arbitration provides an extensive and detailed list of the assets of the shop of Margaret Ryan, including linens, muslins, jeans and cottons, calicoes, mosquito netting, silks, handkerchiefs, hosiery, stationery, hats, canvas, ammunitions, provisions, groceries, paints, jewelry, hardware, brushes, crockery, brushes, and fans.[69] Such actions might include the inventory and sale of slaves to satisfy the demands of creditors.[70]

As might be gathered from the mentions of Isabel Perpall and Margaret Ryan (apparently also known as Margaret Frean), women were prominent legal actors before the tribunal. Margaret Ryan was an active shopkeeper who advanced merchandise on credit. In the records, she is described not only as a legal resident (*vecina*) but also as being a merchant (*"del comercio de esta ciudad"*).[71] She

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[66] EFP, Reel 152, December 23, 1793, No. 16, Item 1793-12, f. 36.

[67] EFP, Reel 151, July 13, 1790, Item 1790-2. Indian interpreter Alonso Gil complains that soldiers have occupied part of his land; EFP, Reel 151, January 8, 1791, Item 1791-1, Indian interpreter Antonio Huertas sues Francisco Pellecier; EFP, Reel 161, February 10, 1814, Item 1814-1, Juan Bautista Collins sues int treasurer Jose Antonio de Yguiniz for debt (mentions Huertas as Indian interpreter).

[68] EFP, Reel 150, February 12, 1789, Item 1789-11, Various creditors sue John Hudson and his wife Maria Evens; EFP, Reel 151, June 5, 1792, Item1792-7, Various creditors sue smith Slvador Pedrasa; EFP, Reel 155, August 21, 1800, Item 1800-20, Juan de Pierra requests distribution of income from John Sanders' slaves to Sanders' creditors.

[69] EFP, Reel 155, March 10, 1801, No. 14, Item 1801-12, f. 2, Margaret Ryan requests accounts of goods left with Miguel Ysnardy as her agent in 1795 to allow payment of creditors.

[70] EFP, Reel 152, July 31, 1795, Item 1795-11, John Sanders solicits permission to sell slaves to pay debts to numerous creditors; EFP, Reel 155, August 21, 1800, Item 1800-20, Juan de Pierra requests distribution of income from John Sanders' slaves to Sanders' creditors.

[71] EFP, Reel 154, March 5, 1799, No. 11, Item 1799-5, ff. 11v, 15, John McCleery sues Margaret Ryan.

brought several actions based on promissory notes and was ready to resort to the tribunal to enforce the payments owed her.[72]

While there are no indications in the records that Native Americans were parties in litigation before the court, the presence of Indians in the commercial and social sphere of the city is observed in the records. First, the Indian trading firm Panton Leslie & Co. was near St. Augustine, on the St. John's River.[73] It was a plaintiff in many debt collection cases and as a party in disputes with smaller shop keepers and merchants in the region.[74] The largest single collection of documents in the civil causes is related to this firm. In 1802, the citizens of St. Augustine protested the re-establishment of a Panton Leslie warehouse for commerce with the Indians. The documentation of their concerns exceeds 1200 pages.[75] Apart from the Panton Leslie dealings, indigenous people appear only infrequently in the records. In 1799, John Hampton a U.S. citizen brought a claim before the Governor against Felipe Aguirre and Antonio Huertas for a horse and mare with distinctive brands. Aguirre and Huertas defended by stating that they had purchased the animals from *indios*, and that because "los Indios tienen guerra con el Americano" they could transfer good title to the animals.[76] Similarly, a receipt in a dispute

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[72] *E.g.*, EFP, Reel 151, October 31, 1792, Item 1792-25, Margret Frean sues John Sanders; EFP, Reel 152, February 19, 1794, Item 1794-2, Margaret Frean sues Artemas Elliot Ferguson; EFP, Reel 152, February 19, 1794, Item 1794-3, Margaret Frean sues Sub Lt. Robert Clark Maxey; EFP, Reel 152, July 16, 1794, Item 1794-16, Margaret Frean sues Francis Goodwyn; and EFP, Reel 155, March 10, 1801, Item 1801-22, Margaret Ryan requests accounts of goods left with Miguel Ysnardy as her agent in 1795 to allow payment of creditors.

[73] COKER & WATSON, *supra* note 21.

[74] *E.g.*, EFP, Reel 150, February 19, 1789, Item 1789-3, Panton Leslie and Co. sue Isabel Perpal and Gabriel William Perpal; EFP, Reel 151, April 10, 1790, Item 1790-3, Panton Leslie & Co. solicit release of goods embargoed in suit between Guillermo Moss and Honorio Clarke; EFP, Reel 151, September 10, 1792, Item 1792-26, Detailed proceedings in suit initiated by Panton Leslie & Co. against Margret Frean (Ryan); EFP, Reel 154, November 7, 1799, Item 1799-16, Philip Roberto Yonge, agent for Panton Leslie Co., sues George Cook and his mother Rebecca Pengrie.

[75] EFP, Reel 157, June 14, 1802, Item 1802-14, Citizens of St. Augustine petition Governor protesting re-establishment of Panton Leslie Co. warehouse at Picolata for commerce with Indians.

[76] EFP, Reel 154, April 19, 1799, No. 6, Item 1799-6, John Hampton claims horses stolen by Indians and purchased by Antonio Hertas and Felipe de Aguirre.

from 1792 lists a payment "To Indian Nations."[77] Another case involved the payment to Indians for the purchase of meat.[78] Thus, apart from the commercial activities of Panton Leslie, disputes related to Indian Country rarely found their way to the governor's tribunal.

A brief review of the records of the civil causes in St. Augustine from 1785 to 1821 indicate an active tribunal handling various matters related to commerce, slavery, and landholding. While many cases concerned relatively small amounts and local parties, others involved transnational transactions and significant sums. The resolution of cases appears to have been based on factual distinctions rather than fine legal argumentation; but many such disputes around the colonial world were more dependent of factual determinations than legal doctrine for their resolution. The tribunal functioned with a legally trained *asesor* for part of its existence, but other lawyers were not present and only unusually entered into the proceedings.

IV. TESTAMENTARY CAUSES[79]

The index of records of testamentary proceedings contains 370 separate entries dated from 1783 to 1821.[80] These entries corre-

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[77] EFP, Reel 151, September 4, 1792, Item 1792-11, Juan Baptista Collins sues Alexander and Randolph Macdonell.

[78] EFP, Reel 160, January 20, 1810, Item 1810-4, Juan Bautista Collins sues int treasurer Jose Antonio de Yguinez for payment for meat purchased from Indians.

[79] This section is adapted from Mirow, *Testamentary Proceedings, supra* note 3.

[80] The last estate is Jorge Later testamentary proceedings (hereafter only the decedent's name is used). EFP, Reel 145, June 18, 1821, Item 1821-24. The final document for the Jorge Later proceedings is dated June 26, 1821, when the Spanish government was already well into preparing the transfer of the territory to the United States which occurred on July 10, 1821. Mirow, *The Constitution, supra* note 3, at 322-327.

Although the records are almost entirely in Spanish, I have adopted the title in English assigned by the *Index to the East Florida Papers*, George A. Smathers Library, University of Florida. I have also removed the phrase "testamentary proceedings" that follows almost every entry listed in the index. Reel numbers in this index are often off by one or two digits, perhaps because of the existence of Reel 134A, a continuation of Reel 134. Where possible, I have used the corrected reel number, instead of the reel numbers as found in the *Index*.

It would be useful to study the testate proceedings and their wills in light of the wills recorded in the notarial records for the same period (Escrituras, 1784-1821,

spond to 166 decedents, with a rough estimate of about 60% of the decedents with Spanish surnames and about 40% with Anglo or other European surnames.[81] Approximately 15% of the decedents were women. Of the decedents, approximately 40% died testate. Of these testate estates, about one-half can be associated with Spanish surnames and about one-half with Anglo or other European surnames. Testatrices accounted for only 11 of the 72 wills, or approximately 15%, again in the same rough proportion they bear to the decedent population as a whole found in these records. Thus, will making seems to have been spread quite evenly across the Spanish and non-Spanish residents with women accounting for a much smaller slice of the will-making population.

The governor, serving as the judge of these matters supervised the inventory and safeguarding of the decedent's property, the accounts and activities of executors (*albaceas*), the accounts to royal officials, the retrieval of wills from public archives and scribes, the payment of claims against the decedent, and the distribution of property.[82] He exercised jurisdiction in testate and intestate estates.[83]

The Castilian law of succession appears to have been applied in the Americas. Under the *legítima*, legitimate male and female descendants of were entitled to four fifths of the decedent's property divided equally. Adopted, assumed, natural, and spurious children generally did not receive a share, but might, however, take from the testator's share subject to devise under a will or might take a portion by intestacy. Some rights of support for natural children were recognized under Castilian law and in the Americas, and in turn, such children might obtain a smaller shares of the decedent's property. Providing some limited testamentary freedom over a fraction of the property, the *mejora* could be employed by the decedent

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EFP, Reels 167-173). Wills were deposited in these archives. See, Emily L. Wilson, *Spanish Wills, East Florida, 1784-1816, in* Escrituras (St. Augustine: St. Augustine Historical Society, 19—). Wilson identified 102 wills in the notarial records for the period she examined. Twenty five of these wills apparently were used in the testamentary proceedings studied here.

[81] The nationality of non-Spanish decedents might be found though the Oaths of Allegiance, *supra* note 17.

[82] Recopilcación de Leyes de los Reinos de las Indias (1680), Leyes 17-56, Tit. 32, Lib. 2.

[83] *Id.* at Ley 42, Tit. 32, Lib. 2.

to supplement a devise to benefit certain family members. The portion not allocated for these shares or for other obligations was subject to the testator's testamentary freedom and often left for pious purposes. Entails (*mayorazagos*) were known in the Americas, but I have not yet observed any reference to them in these records.[84] A Royal Order prohibited them in 1821.[85]

For the thirty-eight year span from 1784 to 1821, the court accepted on average approximately 10 proceedings each year, with a low of only one in 1789 and a high of 30 in 1815. Documents related to an estate range from a couple to several hundred pages. Documents may include a claim for debt against an estate, a will, a petition to the court, or a full assortment of estate documents including petitions, wills, claims against the estate, determinations of children, settlements between interested parties, and final orders.

The estate of well-known Jesse Fish, with 41 separate entries, takes up over ten percent of the all entries combined. Just one entry for this estate yields over 550 pages of materials.[86] Fish's estate is particularly worthy of exploration because he attempted to hold lands in trust for Spaniards who were "old Floridanos" during the English period from 1763 to 1783. When the territory was ceded back to Spain, many of these landholders or their heirs returned to reclaim their property from Fish, and subsequently Fish's estate. These claims raised the nature of his holding of the property and the validity of these secret arrangements to foil English claims against the real property held by returning Spaniards.[87] In addition

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[84] MIROW, LATIN AMERICAN LAW, *supra* note 43, at 64-65, 67-68. See, generally, HUMBERTO GUTIÉRREZ SARMIENTO, EL DERECHO CIVIL EN LA CONFRMACIÓN DE AMÉRICA 95-123 (1992); Francisco Luis Pacheco Caballero, *El acto* mortis causa *en los derecho hispanicos durante la edad moderna (notas sobre sucesión testamentaria)*, 60 RECUEILS DEL LA SOCIÉTÉ JEAN BODIN POUR L'HISTOIRE COMPARATIVE DES INSTITUTIONS 225-256 (1993).

[85] Ignacio Escobo to Florida Juez de Letras, EFP, Reel 37, March 15, 1821, Item 1821, Section 24.

[86] Jesse Fish: meeting of creditors, EFP, Reel 134, October 9, 1790, Item 1790-14.

[87] "Fish reputedly made money as an *hacendado*, land dealer, slaver, smuggler, usurer and cunning crook. . . Fish's name conjures up lucid images of money, land, and commerical enterprise. In such imagry, he becomes a successful but unscrupulous businessman, a swindler of St. Augustine property, and Florida's first orange exporter." Robert L. Gold, *That Infamous Floridian, Jesse Fish*, 52 FLA. HIST. Q. 1

to Jesse Fish, there are other decedents of interest found in these papers. The estate of Jorge Biassou, the Haitian revolutionary general, is among these papers.[88] These materials also include papers related to the estates of Governor Enrique White and Maria Evans, a wealthy trader and shopkeeper.[89]

Separate individual claims of debts owed by the estate, usually to individual creditors, represent the most numerous entries. These records contain a petition to the court stating the nature of the debt and requesting payment. They are often accompanied by written instruments setting out the debt, frequently recorded on scraps of paper signed by the decedent. Such claims are often covered in ten to twenty pages of documents.[90]

Sets of documents related to a fuller administration of estate are well represented. These sets usually contain some or all of the following stages: a petition to the court for the administration of the estate by the executor, the will, an inventory of the assets of the decedent, claims of creditors, some plan or process of distribution of the property under the will, final orders of the court, and notations by the scribe that notice has been delivered to the interested parties at each stage of the proceedings. Such sets of documents often run several hundred pages.[91]

(1973). See also, Robert. L. Gold, *Politics and Property during the Transfer of Florida from Spanish to English Rule, 1763-1764*, 42 FLA. HIST. Q. 16-34 (1963). Jesse Fish has a Wikipedia page, http://en.wikipedia.org/wiki/Jesse_Fish. His property dealings were legion and created many legal disputes. Some disputes reached England. FOWLER WALKER, THE CASE OF MR. JOHN GORDON, WITH RESPECT TO THE TITLE TO CERTAIN LANDS IN EAST FLORIDA, PURCHASED OF HIS CATHOLICK MAJESTY'S SUBJECTS BY HIM AND MR. JESSE FISH, FOR THEMSELVES AND OTHERS HIS BRITANNICK MAJESTY'S SUBJECTS IN CONFORMITY TO THE TWENTIETH ARTICLE OF THE LAST DEFINITIVE TREATY OF PEACE (1772).

[88] Jorge Biassou, EFP, Reel 138, July 15, 1801, Item 1801-2 (193 pages).

[89] Enrique White, EFP, Reel 142, April 17, 1811, Item 1811-2; Maria Evans, EFP, Reel 135, October 17, 1792, Item 1792-8.

[90] *E.g.*, Tomas Carballo: claim of Antonio Llambias, EFP, Reel 135, May 21, 1792, Item 1793-33 (suit for payment for bed built for decedent with the record containing the receipt for payment, 16 pages); Tomas Carballo: claim of July Boby, EFP, Reel 135, January 18, 1793, Item 1793-39 (suit for back rent owed by Carballo, again with receipt, 16 pages).

[91] *See, e.g.*, Father Pedro Camps, EFP, Reel 134, May 19, 1790, Item 1790-12 (167 pages); Miguel Iznardy, EFP, Reel 139, April 13, 1803, Item 1803-1 (541 pages); Miguel Iznardy, EFP, Reel 139, April 13, 1803, Item 1803-8 (second entry, 340 pages); Isabel Mayar, EFP, Reel 139, March 7, 1805, Item 1805-3 (306 pages); Buenaventura Boix, EFP, Reel 140, September 20, 1806, Item 1806-9 (348 pages); John

Other petitions or documents reveal the many topics addressed by the court. These included petitions, for example, for the appointment or reappointment of executors,[92] to pay bequests or legacies,[93] to transfer a legacy,[94] to resolve claims of multiple creditors,[95] to annul the sale of a church as ecclesiastical property,[96] to collect debts owed the estate,[97] to verify debts,[98] to return a dowry,[99] to return a widow's separate property,[100] to determine the number of children of the decedent,[101] to account,[102] to collect taxes owed,[103]

McQueen, EFP, Reel 140, October 12, 1807, Item 1807-2 (380 pages); Francisco Xavier Sanchez, EFP, Reel 140, October 31, 1807, Item 1807-1 (363 pages); Juan Bautista Ferriera and Elizabeth Nixon, EFP, Reel 142, August 23, 1810, Item 1810-13 (409 pages); Juan Jose Bousquet, EFP, January 2, 1815, Reel 144, Item 1815-7 (429 pages); and Juan McClure, EFP, Reel 144, December 29, 1815, Item 1815-6 (391 pages).

[92] *E.g.*, Jose Sanchez, EFP, Reel 134, December 22, 1787, Item 1787-3; Mariana de Garro, EFP, Reel 135, November 10, 1791, Item 1791-9.

[93] *E.g.*, Maria Evans: claim of Antonio Palma, EFP, Reel 136, January 9, 1794, Item 1794-18; Maria Evans: claim of Manuel Marshall, EFP, Reel 136, January 9, 1794, Item 1794-15; Elisabeth Leslie, EFP, Reel 139, August 11, 1806, Item 1806-12; Father Miguel O'Reilly: claim of the Junta de Caridad, EFP, Reel 144, August 19, 1813, Item 1813-15 (petition by president of the Junta de Caridad for legacy left by the decedent).

[94] *E.g.*, Andrew Dewees: suit of Jose Joaneda against Catalina Cliken, EFP, Reel 136, October 29, 1794, Item 1974-26.

[95] *E.g.*, Jesse Fish: meeting of creditors, EFP, Reel 134, October 9, 1790, Item 1790-14.

[96] Jesse Fish: annulment of the sale of the Torre de Tolomato, EFP, Reel 135, April 27, 1792, Item 1792-12.

[97] *E.g.*, Maria Evans, EFP, Reel 136, May 12, 1795, Item 1795-5; Miguel Ceballos: debt of Julian Pani, EFP, Reel 138, December 16, 1800, Item 1801-8; Maria Evans, Reel 141, June 26, 1809, Item 1809-9.

[98] *E.g.*, Miguel Iznardy: claim of Bartolome de Castro y Ferrer, EFP, Reel 141, October 4, 1806, Item 1808-4.

[99] *E.g.*, Buenaventura Boix: claim of Josefa Meneses, EFP, Reel 142, May 23, 1807, Item 1807-15.

[100] *E.g.*, Martin Crosby: claim of Maria George, EFP, Reel 143, May 17, 1814, Item 1814-24 (for property brought to the marriage).

[101] *E.g.*, Antonio Matanza, EFP, Reel 141, November 18, 1807, Item 1807-20 (intestacy).

[102] *E.g.*, Perrachu, EFP, Reel 141, Feburary 8, 1808, Item 1808-22 (account of sale of French barber who disappeared).

[103] *E.g.*, Maria Evans: claim of Ministros de Real Hacienda, EFP, Reel 145, February 12, 1819, Item 1819-11.

and to correct an inventory.[104] Parties appeared to have been willing to assert their various concerns related to these proceedings to the court.

An important yet relatively small number of petitions relate to the devise or manumission of slaves who appeared in inventories and were counted among the assets of an estate when assessing the estate's ability to pay creditors and distribute assets to devisees and heirs. For example, James Wilson's records include the auction of 19 slaves, the claim of a creditor for transporting 29 slaves, and a claim for debts resulting from a slaving expedition to Angola with a contract the decedent entered into with two other slavers.[105] Similarly, the cost of transporting six slaves from St. Mary's, Georgia, to Fernandina, north of St. Augustine and within its jurisdiction, was asserted as a claim against an estate in 1815.[106]

Numerous petitions sought the disposition, transfer, and manumission of slaves. Slaves might be sold to satisfy the debts of the decedent or expenses of the estate.[107] Some petitions sought the return of slaves from an estate so they would not be subject to creditors' claims.[108] Others sought manumission of a slave on payment of money to the estate.[109] When slaves purchased their freedom from an estate, the executor might petition the court for permission to purchase another slave to replace the freed individual.[110] Claims of manumission on the death of the decedent were made on the

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[104] E.g., Juan McClure: claim of James English, EFP, Reel 145, April 20, 1816, Item 1816-41.

[105] James Wilson, EFP, Reel 143, October 28, 1811, Item 1811-4; James Wilson: claim of Fernando de la Maza Arredondo, Reel 143, January 28, 1812, Item 1812-12.

[106] Maria del Carmen Hill: claim of Simeon Sanchez, EFP, Reel 144, October 25, 1815, Item 1815-18.

[107] *E.g.*, Maria del Carmen Hill, EFP, Reel 144, July 6, 1815, Item 1815-23; Redin Blunt (Reddin Blunt), EFP, Reel 144, December 13, 1815, Item 1815-29 (petition to sell decedent's only asset, the slave Cloe, to cover costs to prosecute decedent's murderers).

[108] Jesse Fish: claim of Jesse Fish, Jr., EFP, Reel 135, April 16, 1793, Item 1793-16.

[109] *E.g.*, Maria Evans: request of Isabel, EFP, Reel 135, June 27, 1793, Item 1793-15; Maria Evans: request of Sambo, EFP, Reel 135, November 6, 1793, Item 1793-19.

[110] Juan Saunders, EFP, Reel 139, September 14, 1803, Item 1803-18. Saunders' estate included at least 17 slaves who were distributed to his heirs. Juan Sanders [*sic*], EFP, Reel 139, October 10, 1804, Item 1804-13.

past declarations of the decedent.[111] Still other petitions requested the court effect a transfer of slaves to devisees or heirs or to permit their sale.[112] Other proceedings addressed general questions of status and ownership of slaves left by a decedent.[113]

Several other petitions contained a request to investigate the nature of the decedent's death.[114] A maritime community, St. Augustine experienced deaths through shipwreck and drowning.[115] Other investigations revealed the hazards of daily life. For example, in the mid-1790s, an inebriated Alexander MacDonell fell from an upper story window in John Leslie's house and died.[116] In 1810, Juan Dary died from an overdose of laudanum.[117] There were also suicides and murders.[118] These investigations usually led to some form of administration of the property of the decedent after the determination of the cause of death.

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[111] John Forester: request of Pedro Sivelly, EFP, Reel 141, July 27, 1808, Item 1808-21.

[112] *E.g.*, Elizabeth Leslie: claim of John Forrester, EFP, Reel 139, January 30, 1806, Item 1806-13; Elizabeth Leslie: claim of Thomas Travers, Reel 139, February 5, 1806, Item 1806-14; Elizabeth Leslie: claim of Maria Fortune, EFP, Reel 139, February 7, 1806, Item 1806-11; Property of the minor Francisco Milles: request of Robert McHardy, EFP, Reel 145, January 17, 1818, Item 1816-6; Hepworth Carter: request of Horatio Dexter, EFP, Reel 145, December 18, 1818, Item 1818-9.

[113] *E.g.*, John Forrester: suit of Philip Robert Yonge and Company, EFP, Reel 141, July 27, 1808, Item 1808-14; Juan O'Reilly: suit of the estate of Father Miguel O'Reilly, EFP, Reel 143, August 6, 1813, Item 1813-6; Margarita McClean, EFP, Reel 144, August 5, 1814, Item 1814-23 (claim by former owner of slaves against decedent for slaves removed to the United States by the decedent's widower).

[114] *E.g.*, Robert Caldwell, Reel 139, November 12, 1804, Item 1804-11; Bryan Connor, EFP, Reel 142, February 15, 1808, Item 1808-12.

[115] Antonio Reguertas, EFP, Reel 136, May 23, 1790, Item 1794-3 (shipwreck); Pedro Casaly, EFP, Reel 137, October 3, 1799, Item 1799-14 (drowning); Manuel Lopez, EFP, Reel 143, March 18, 1814, Item 1814-19 (shipwreck); Jose Huis, EFP, Reel 143, April 26, 1814, Item 1814-17 (drowning); Manel Fernandez Bendicho and Maria Rafaela Rodriguez, EFP, Reel 144, August 11, 1814, Item 1814-18 (death of both in shipwreck); Joaquin Navarro, EFP, Reel 145, February 19, 1816, Item 1816-29 (river wreck).

[116] Alexander MacDonell, EFP, Reel 136, June 11, 1795, Item 1795-2.

[117] Juan Darcy, EFP, Reel 142, July 18, 1810, Item 1810-19.

[118] Valentin Pinzon, EFP, Reel 137, April 1, 1800, Item 1800-17 (suicide after killing a man in Charleston); James McEnery, EFP, Reel 138, December 16, 1801, Item 1801-1 (decedent murdered); Cuthbert Riggs, EFP, Reel 138, May 16, 1803, Item 1803-2 (suicide aboard ship); Manuel Tobar, EFP, Reel 141, March 11, 1809, Item 1809-1 (decedent murdered).

The records also illuminate will making in this border city. Petitions related to the existence, production, opening, or returning wills.[119] Some petitions requested the production of a sealed will left in the custody of scribe or notary.[120] A petition in 1795 requested that the will be sent to Georgia for the benefit of the heirs of the decedent's sole heir.[121] Another petition, in 1799, requested the return of a sealed will deposited with the scribe.[122] There is also one mention of a joint will of a couple who died together in a shipwreck.[123]

These proceedings also provide a window into family life and structure. Widows and legitimate and illegitimate children claimed shares. Baptismal records were presented to determine parentage. Minors and orphans sought protection through the court. Adopted children might claim a portion from the estate.[124] Another set of estate papers indicate that the natural children a wealthy Spanish decedent had with a free black woman, Beatriz de Piedra, took a share of the estate in addition to shares for his widow, Maria del Carmen Hill, and his legitimate children. The baptismal records of both the legitimate and natural children were included in the proceedings, and shares were assigned to both kinds of children.[125] In 1816, an individual petitioned the court to be named a *curador* for the decedent's children who were mistreated by their stepfather and ignored by their mother.[126] Similarly, in 1818, an individual petitioned to protect the property of a minor orphan.[127]

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[119] John Thorp, Reel 141, November 15, 1808, Item 1808-10 (petition to open will); Jorge Sibbald, EFP, Reel 143, February 10, 1810, Item 1810-12 (widow's petition to open will).

[120] Francisco Xavier Sanchez, EFP, Reel 136, May 12, 1795, Item 1795-3.

[121] Allan Keegan, EFP, Reel 136, December 14, 1795, Item 1795-1.

[122] Petition of Owen Sheridan, EFP, Reel 138, November 29, 1799, Item 1799-15.

[123] Manuel Fernandez Bendicho and Maria Rafaela Rodriguez, EFP, Reel 144, August 11, 1814, Item 1814-18.

[124] Estevan Divor, EFP, Reel 136, June 8, 1797, Item 1797-15.

[125] Francisco Xavier Sanchez, EFP, Reel 140, October 31, 1807, Item 1807-1.

[126] Juan Triac: suit of Pedro Rodriguez de Cala, EFP, Reel 145, December 3, 1816, Item 1817-2. See also, Roque Leonardy, EFP, Reel 145, January 5, 1819, Item 1818-15.

[127] Property of the minor Penelope Lee, EFP, Reel 145, March 14, 1818, Item 1818-7. The preceeding six paragraphs are taken verbatim from Mirow, *Testamentary Proceedings, supra* note 3.

The testamentary proceedings provide another glimpse into the legal world of St. Augustine and East Florida during the second Spanish period. The records indicate that the governor in his capacity of probate judge took his obligations seriously in both small and large matters related to the administration of estates. Extensive records exist concerning these activities and reveal an active and responsive forum for the resolutions of creditors' claims, the distribution of property, conflicts in administration, and related matters.

V. SOMETHING INTERESTING?

These pieces—the Constitution and its promulgation, civil causes, and testamentary causes—begin to provide an image of the unknown colonial legal world of St. Augustine and the province of East Florida. These studies are, of course, relevant for social, economic and political historians of colonial North America. They provide concrete instances of social and economic complexity and pluralism on the border where various groups of people with varying social, economic, and political interests competed and interacted. The region of Florida, and particularly its colonial Spanish and English periods, have long been neglected by historians of colonial North America and the United States.[128] East Florida, however, is no less important or fascinating than colonial New York, Virginia, or Massachusetts.

This is particularly true as historians of Empire and the Atlantic World grapple with the construction and manifestation of empire. Law and legal pluralism are at the heart of recent works by Lauren Benton and Richard Ross.[129] A better understanding of Spain's imperial legal practices in Florida can only help to inform and enrich the work of those working in these fields. Law as the tendrils of empire reached into East Florida and supported connection to other

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[128] *See*, however, Johnson, *The Spanish St. Augustine Community, supra* note 11, at 27-54; WEBER, *supra* note 11, at 276-78.

[129] LAUREN BENTON, LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY, 1400-1900 (2002); LAUREN BENTON, A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES, 1400-1900 (2010); Lauren Benton & Richard J. Ross, *Empires and Legal Pluralism: Jurisidiction, Sovereignty, and Political Imagination in the Early Modern World*, in LEGAL PLURALISM AND EMPIRES, 1500-1850, at 1-17 (Lauren Benton & Richard J. Ross eds., 2013).

nodes in the Spanish world. As the materials from the civil and testamentary proceedings reveal so clearly, law was exercised in the daily business of imperial affairs dealing with property, trade, and death. When required by the empire, the citizens of St. Augustine and East Florida swore to, enacted, and followed the imperial Constitution of Cádiz, the first written constitution to span the Atlantic World in the name of an absent king. They did so twice.

These materials also speak to the community of historians of *derecho indiano*, or colonial Spanish law, and they will supplement the massive and scholarly literature on this topic.[130] The Spanish-speaking world of historians of *derecho indiano* are generally unaware of the legal world of St. Augustine and East Florida. These studies are greeted with fascination, disbelief, or sometime a wonderful look of "of course, that must be, but I had never even thought of it" from my colleagues in Spain and Latin America. Such exchanges are enriching and satisfying. Our understanding of Florida and its place in the legal world of the Spanish empire is revealed through the study of these documents.

For the first time in the historiography of *derecho indiano*, legal historians have a new set of sources from the northern reaches of the empire to compare and contrast with the sources from Northern New Spain, or the Texas and New Mexico borderland areas. Charles Cutter's work on Northern New Spain broke new ground by examining the legal history of this unstudied area.[131] Cutter noted that the Spanish empire was populated by thousands of small municipalities, like those of Northern New Spain and East Florida. These municipalities had active and complex legal lives with few or no lawyers and scribes. If one compares these populations in the context of centers with great economic and legal sophistication and a peripheries with legal activities with fewer legal actors and sources, then, Cutter reminds us, "The centers, not the peripheries,

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[130] For a basic introduction to *derecho indiano*, see VICTOR TAU ANZOÁTEGUI, ¿QUÉ FUE EL DERECHO INDIANO? (2003). See also, CUTTER, *supra* note 1, at 31-43; Viviana Kluger, *Spanish Colonial Law, in* 5 OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY 290-291 (Stanley N. Katz ed., 2009); M.C. Mirow, *South and Central America: Overview, in* 5 OXFORD INTERNATIONAL ENCYCLOPEDIA OF LEGAL HISTORY 284-285 (Stanley N. Katz ed., 2009); MIROW, LATIN AMERICAN LAW, *supra* note 43, at 45-53.

[131] CUTTER, *supra* note 1.

were the exception."[132] Such shifts in perspective are consistent with the works of Benton and Ross mentioned above.[133]

A central part of Cutter's understanding of the cases he examined is the development of the idea of *derecho vulgar*, or "local modifications of Hispanic law," that gave flexibility to legal systems in the provinces he studied.[134] Thus, Cutter sought to highlight "local particularism" as "perhaps the most overlooked dimension of the Spanish colonial legal system."[135] Local practices were constructed from three elements: custom, *equidad*, and *arbitrio judicial*. In developing the notion of *derecho vulgar*, Cutter defines "*equidad*" as "a communally defined sense of fairness," and "*arbitrio judicial*" as "personal discretion in the judicial process" and "judicial will."[136]

In regions of present-day New Mexico and Texas, Cutter found "juridical simplicity" where those hearing cases avoided legalism and decided cases on "equitable" principles though a flexible system of sources.[137] Did St. Augustine and the other colonial communities in East Florida share the characteristics observed by Cutter? Was there such a thing as *derecho vulgar* along the east coast of North America in the Spanish colonies?

The materials explored here move us towards an answer but are not definitive. There is a problem of commensurability; Cutter's work is based almost entirely on criminal records, and this contribution focuses on constitutional and private law. Perhaps there was greater flexibility exercised in criminal cases and stricter application of rules when contracts, debts, testaments, and property were involved. Furthermore, in the context of Spanish colonial legality, the absence of citations to authority do not necessary imply a departure from the established rules of *derecho indiano*. Legal officials might be following well-known rules without citing them. Determining the level of compliance to the rules and practices of *derecho indiano* is particularly difficult in light of the common practice of not motivating judicial decisions with citations to authority. Cutter

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[132] *Id.* at 6.

[133] *See supra* note 129.

[134] CUTTER, *supra* note 1, at 34.

[135] *Id.* at 35.

[136] *Id.* at 34, 35.

[137] *Id.* at 10, 30.

wrote, "we can never be sure of the exact judicial reasoning in the verdict, because the Castilian and, by extension, colonial legal systems forbade magistrates from issuing a written explanation (*sentencia fundada*) of their decision."[138] He noted elsewhere that Castilian law "prohibited an explanation of the legal points on which a magistrate founded his *sentencia*."[139] An absence of citations to legal authorities in judicial sentences was the norm throughout the empire. There were also no requirements for motivating or explaining a particular decision which relied on the conscience of the individual judge and his legal training.[140] This makes tracing the level of compliance with the procedural and substantive requirements of *derecho indiano* by judges and tribunals a difficult task. Additional work on the civil and testamentary proceedings will shed more light on these questions. There are still entire sets of legal materials in the *East Florida Papers* that await exploration and interpretation that may aid in this determination. For example, the records relating to criminal causes and notarial documents are probably of great promise for advancing our understanding not only of East Florida's colonial legality but how it compares to other similarly situated regions of the empire.

The East Florida records do not seem to reveal the level of "local particularism" and use of *derecho vulgar* observed by Cutter in other similar North American Spanish colonial contexts. St. Augustine's officials were quite compliant with the requirements of the decrees of the Cortes and the provisions of the Constitution.[141] Furthermore, considering the complexity and sophistication of many of the disputes within the civil and testamentary proceedings, there appears to be a noticeable trend towards compliance with the requirements of *derecho indiano*. This included what might be considered a high level of legalism in the resolution of cases where the court was insistent on the quality of proof in factual disputes or the appropriate powers executed for legal representation before the tribunal. The carefully set out petitions dealing with procedural aspects of testamentary proceedings indicate that all involved de-

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[138] *Id.* at 36.

[139] CUTTER, *supra* note 1, at 130.

[140] Garriga, *supra* note 43, at 207-209.

[141] Mirow, *The Constitution, supra* note 3, at 327.

sired to meet the expected and required elements for dealing with the property and family of the decedent. This apparent insistence on compliance with the requirements of *derecho indiano* may have been informed by the input of the governor's *asesor* or other legally trained individuals in the city.

Beyond legal history, the *East Florida Papers* offer a wealth of information for social, political, and economic historians. The materials found in just the civil and testamentary causes bear this out. There is information about the failure and successes of businesses, maritime and terrestrial trade and commerce, and the roles and functions of the varied members of East Floridian society; there are records of men, women, and children who identify as Spaniards, Minorcans, English, Scots, Irish, citizens of states of the United States, and indigenous peoples among others. Inventories from arbitrations settling claims of creditors and inventories in testamentary proceedings give vivid and detailed snapshots of individuals' possessions and property held for trade. Professional activities such as medicine and engineering are found among the records. There is a great deal of informantion about the fort and its soldiers and their relationship to the town and its surroundings. There is a wealth of information about forced human property and the slave trade. There are disputes concerning animals, city lots, houses, and agricultural tracts. The records of criminal proceedings are sure to provide even greater detail about St. Augustine and East Florida society and the way the various members of its population interacted. Careful reading of these documents will provide substantial information concerning languages in this pluri-lingual Floridian city and region of the eighteenth and nineteenth centuries and how differences in language were negotiated and played. Religious information and practices can be culled from disputes, oaths, marriage records, and the religious affiliations found in the lists of Oaths of Allegiance. For political historians and historians of empire, government officials and their disputes are found throughout the *East Florida Papers*.

This contribution constructs a view, albeit partial, of the legal world of St. Augustine and East Florida during the second Spanish period. The effects of the promulgation of the Constitution of Cádiz, the records of civil causes, and the records of testamentary causes reveal a highly compliant community that sought to comport with

the requirements of colonial law. Government officials carried out the political and institutional demands of the Constitution. It also appears that the governor as judge and his legal advisors sought to comply with the procedural and substantive requirements of *derecho indiano*. To test these initial observations, much work is needed in the colonial legal history of Florida, and the *East Florida Papers* fortunately provide ample unexplored material for future investigation. Such future studies will undoubted reposition Florida legal history in the disciplines of the history of *derecho indiano*, Latin American legal history, and North American colonial and early Republic legal history. In turn, these studies will provide novel interpretations and evidence to improve our understanding of the Atlantic World, the history of empires (of Spain, England, and the United States), and the history of North American colonization, independence, and nationhood. Nonetheless, these archives continue to be mostly unread. Let us hope there will be something interesting to say about them.