New Freedom, New Law:
The Southern Claims Commission and the Recognition of Slave Independent Will, Legal Standing, and Rights to Property in the Era of Reconstruction

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Abstract

Congress founded the Southern Claims Commission in 1871 to compensate Southern loyalists for their property seized by the Union army during the Civil War. In this thesis, I argue that in allowing the claims of former slaves, the commissioners construed into existence, retroactively, a rule of law and due process that did not exist for slaves at the time they acquired and were dispossessed of the property claimed. I will compare key rulings from antebellum case law with several decisions made by the Southern Claims Commission. I will elaborate more on the process of submitting a claim, the role of the commissioners, and the historical significance of the commission in Chapter Two. In Chapter Three, I present my analysis of several important cases from the antebellum South to isolate the major contradictions of the American slave system and how they were preserved in the rule of law. In Chapter Four, I argue that the Southern Claims Commission addressed the legal contradictions of antebellum case law by retroactively recognizing certain rights denied to former slaves in their terms of bondage. My analysis is significant because it explores how the Southern Claims Commission, as an agent of an expanding federal government, participated in the reinterpretation of slave law in light of the new laws that destroyed slavery and protected fundamental rights.

Acknowledgments

Words cannot express my sincerest gratitude for all the individuals who made this thesis the crowning experience of my time at Columbia.

First and foremost, I must thank my primary advisor, Professor Alan Brinkley and my second reader, Professor Barbara J. Fields. Professor Brinkley, without your constant support, advice, and expertise, this project would never have been finished. Thank you for encouraging me to pursue the complexity of this topic and for always being available to guide me along the way. Professor Fields, words truly cannot express how much you have contributed to the success of this work. The time, energy, and critical feedback you provided for my drafts was nothing short of inspiring and, at the very least, a perfect example of why I came to Columbia. Furthermore, I cannot thank you enough for accepting yet another advisee and for introducing me to the Southern Claims Commissions files, pointing me in the right direction from day one. Having the experience of working with such world-renowned historians on this project has been nothing short of remarkable.

I must also thank Professor Eric Foner, Maria John, and Robert Neer for their methodological suggestions and for constantly challenging me to look beyond the nineteenth century to see the extent of the legal challenges addressed in this paper. Additionally, thank you to Mary Cargill for your enthusiasm and for your help navigating the wealth of potential source material. To my colleagues in the senior thesis seminar: thank you for being there for me throughout this entire process. We did it!

Finally, I would like to thank four people whose love, support, and wisdom continue to inspire me. My family (Dad, Mom, and CJ): thank you for being my strongest advocates and for never questioning my passion for history. Last but certainly not least, Devinn Lambert, for staying up late so many nights listening to me babble about authority, slavery, and legal standing - here's to a few more!

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Chapter 1: Introduction

Congress founded the Southern Claims Commission in 1871 to compensate southern loyalists for their property seized by the Union Army during the Civil War. The commission's role was to examine claims using depositions from claimants and the testimonies of their witnesses. After reviewing evidence, commissioners evaluated the merit of the claim and the value of the property in question. Commissioners required claimants to prove the following: that they were present in the South during the Civil War, that they were pro-Unionists, and that their property had been officially taken or utilized by the Union Army. The commission received about 22,298 claims, but approved only thirty two percent for compensation.[1] Although Congress intended the commission to address the claims of Southern *white* Unionists, many former slaves submitted petitions for consideration. In this thesis, I argue that in allowing the claims of former slaves, the commissioners construed into existence, retroactively, a rule of law and due process that did not exist for slaves at the time they acquired and were dispossessed of the property claimed.

Historical Context – Congressional Reconstruction

The Southern Claims Commission emerged amidst a struggle between the executive and congressional plans for Reconstruction. Upon Abraham Lincoln's assassination in 1865, there was no agreed upon direction for the nation after the Civil War. The nation's new president, Andrew Johnson, implemented a plan for reconstruction that was less severe than what Congress had in mind. Johnson released a revised proclamation of amnesty in May 1865, which pardoned all former Confederate citizens who took an oath of loyalty and allowed them to reclaim a portion of their land.[2] Although those who owned more than $20,000 worth of property needed

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[1] Reginald Washington, "The Southern Claims Commission: A Source for African American Roots" *Negro History Bulletin* 27, no. 4 (1995), 376.
[2] Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 183.

to request a pardon from the president directly, Johnson pardoned most former confederates in this category.[3] When Congress met in December of 1865, Johnson's plan was well underway, resulting in the re-election of many former Confederates. Invoking the authority to decide the qualification of its own members, Congress rejected the congressmen-elect that were formerly allied with the Confederacy and used its power to implement a more stringent reconstruction plan.

In its 1866 session, Congress passed the Civil Rights Act over Johnson's veto, which granted citizenship to all people born in the United States (except non-taxed Indians) and allowed African Americans to own property and have equal standing in courts. Congress also drafted the fourteenth amendment during this time, a more explicit and permanent version of the Civil Rights Act. Believing the Fourteenth Amendment too controversial, Johnson made it the central issue in the 1866-midterm elections.[4] Unfortunately for Johnson, the public supported the amendment and Radical Republicans won a three to one majority as a result.[5] With the power to override a presidential veto, Congress passed the Military Reconstruction Act in March 1867, which erased the president's prior efforts and divided the South into five military districts each controlled by a Union general.[6] Each state also had to hold a new constitutional convention to draft a plan suitable to Congress. The new constitutions had to include the right to vote for all male citizens and needed to ratify the Fourteenth Amendment.[7]

Several standoffs between the president and Congress over the course of the next year resulted in a vote to impeach Johnson.[8] Although the final tally was one vote short of the amount needed for impeachment, Johnson finished his term quietly, paving the way for Ulysses

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[3] Ibid., 191.
[4] Ibid., 271.
[5] Ibid., 228.
[6] Ibid., 276.
[7] Ibid.
[8] Ibid., 334-335.

S. Grant's election in 1868. Once Grant assumed office, Congress felt it had a strong ally in the White House and proposed the Fifteenth Amendment in 1869, which prevented the government from denying the right to vote on the basis of "race, color, or previous condition of servitude."[9] It was during this cooperative period between the executive and legislative branches in the reconstruction process that Congress created the Southern Claims Commission.

Method – Using the Southern Claims Commission Files

Examining the claims filed under the Southern Claims Commission provides insight into how the federal government sought to answer pressing legal questions regarding the end of slavery and the rights of freedmen. Slaves could neither own property nor testify in courts, under the state slave regimes in the South. Furthermore, slaves were considered property and were often bartered and sold as such. This paper turns to the rulings of the commission, several of which awarded damages to freedmen, who claimed to have their property taken by the Union Army at a time when they were still slaves. Such instances are historically interesting for several reasons. First, the commission acknowledged claims to property where no such legal claim existed. Secondly, black persons were recognized as having legal standing in a court, with the authority to testify for themselves. Finally, through the Southern Claims Commission, the federal government placed value on a black person's claim to national identity in a way never seen before.

The purpose of this project is to use the sources available through the Southern Claims Commission to isolate how a former slave's legal status and claim to property shifted after emancipation. Whereas one might believe that the federal government granted former slaves rights after their emancipation, the story is more complicated. Through the Southern Claims Commission, Congress recognized as valid a former slave's legal status before the law and his

[9] US Const, Amend XV, § 1. The Fifteenth Amendment was proposed in 1869 but not ratified until 1870.

claim to property. While many claims submitted by ex-slaves were disallowed, the questions asked during the interrogations presuppose that slaves had the standing to claim property. Among such questions are, "Did you own this property before or after you became free… how did you become the owner, and from whom did you obtain it… where did you get the means to pay for it… What was the name and residence of your master, and is he still living? Is he a witness for you; if not, why not?"[10] These questions are written in such a way that their answers should establish whether an ex-slave truly owned the property in question or whether it belonged to a master. Throughout the claims files, the federal government implied that slaves had property rights under slavery, which was a clear departure from the previous legal understanding of the slave regime.

To best illustrate how the Southern Claims Commission elicited a rule of law and due process that did not exist for former slave claimants when they owned the property in question, I will compare key rulings from antebellum case law with several decisions made by the Southern Claims Commission. Although the Southern Claims Commission was not part of the judicial branch, it functioned in a similar manner to the American court system. Claimants would present their cases before the commissioners, who would then evaluate all the evidence and testimonies provided to render a decision. Much like judicial opinions, the commissioners also submitted a one page brief with each file detailing the rationale for their decisions. I will elaborate more on the process of submitting a claim, the role of the commissioners, and the historical significance of the commission in Chapter Two. In Chapter Three, I present an analysis of several important cases from the antebellum South to isolate the major contradictions of the American slave system and how the rule of law preserved them. In Chapter Four, I argue that the Southern Claims Commission addressed the legal contradictions of antebellum case law

[10] Claim of Robert Bryant, 1879, Beaufort County SC, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#264158163>, 12.

by retroactively recognizing certain rights denied to former slaves in their terms of bondage. Though the commission operated after the abolition of slavery, the commissioners needed to confront a slave's legal rights during slavery to decide whether a former slave claimant should receive compensation. My analysis is significant because it explores how the Southern Claims Commission participated in the reinterpretation of slave law in light of the new laws that destroyed slavery and protected fundamental rights.

In my research I have used the resources collected by the Freedmen and Southern Society Project, which include claims submitted by ex-slaves to the Southern Claims Commission. I have also looked to the collection of the claims filed in the National Archives.

Chapter 2: The Southern Claims Commission and Fundamental Rights Federalism

The Establishment and Mission of the Southern Claims Commission

On his last day as a congressman, Representative Oliver Dockery asked his peers to establish a committee to award claims to loyal Southern Unionists who had their property seized by the Federal Army during the Civil War:

> "Mr. Speaker, why not recognize the claims of the loyal man of the South for stores taken from your armies? Why bar the door to his claim… The southern Union man lost all, save his attachment for his government and his principles which sustained him amid the fiery ordeal of blood and ruin… Why not organize a commission at once in each Southern state authorized to investigate the facts and report the same to the Congress of the United States?"[11]

March 3, 1871 was not the first time Congress had considered the creation of an agency to adjudicate Southern claims. Congress voted down a similar measure in 1866 amidst the conflicts with President Johnson.[12] As Congress became the major agent of Reconstruction, however, the professed duty to compensate Southern Unionists for their contributions to the war effort gained more traction throughout the late 1860s and early 1870s. Such a commission was "a step in the right direction… It is a recognition to some extent of the loyal men of the South, who are as deserving as any loyal man residing anywhere," according to Senator George Edmunds of Vermont.[13] It is important to note that Congress did not address any ulterior motives behind the commission's establishment. The main concern before the House and Senate was not who might claim property and what allowing these claims would entail, but rather whether the commission would be perceived as buying Southern votes. For example, Representative Philadelphia Van Trump, a democrat from Ohio, became a vocal opponent of the commission's foundation during the congressional debates, asking his colleagues, "Why this expansive court is created when this

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[11] *Cong. Globe*, 41st Congress 3rd Sess. 239 (1871).
[12] *Cong. Globe*, 41st Congress 3rd Sess. 1968 (1871).
[13] Ibid.

whole matter of claims might have been remitted to the jurisdiction of the Court of Claims."[14] The final vote to establish the commission was divided along geographic lines rather than by party affiliation, with congressmen from the border and Southern states uniting in favor of the commission.[15]

On its last day in session, the 42nd Congress approved the creation of the Southern Claims Commission. President Grant appointed Asa Owen Aldis (a judge from Vermont), former Congressman Orange Ferris of New York, and former Senator James Howell of Iowa to oversee the bureaucratic processes of the agency.[16] In addition to these commissioners, 106 special commissioners were sent throughout the South to collect the testimonies required for the claims.[17] Any given claimant had to demonstrate both loyalty and ownership of the property in question in order to be allotted the amount requested. Claimants were encouraged to call witnesses to testify on their behalf for both loyalty and the claim to property. The depositions gathered by the commissioners were organized by responses to a list of questions every claimant was to be asked. These questions varied considerably depending on the claimant. For example, there were a different set of questions for "colored claimants," "female claimants," "male claimants," and claimants who were enslaved before the war.[18] Each file also contained a summary report in which the commissioners would summarize the case and inform the House of Representatives of the reasoning that led to their decision. After the claims were compiled, the commissioners would send an annual report to the House of Representatives who would then

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[14] *Cong. Globe*, 41st Congress 3rd Sess. 1915 (1871).
[15] Frank Klingberg, *The Southern Claims Commission* (Millwood, NY: University of California Press, 1980), 53-54.
[16] Frank Klingerg, "The Southern Claims Commission: A Postwar Agency in Operations," *The Mississippi Valley Historical Review* 32, no. 2 (1945), 199.
[17] Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill: The University of North Carolina Press, 2003), 114.
[18] Claim of Robert Bryant, <http://www.fold3.com/image/#264158163>, 12.

debate and authorize the dispersal funds.[19] Because no single standard was articulated for adjudicating these claims, the rationale for allowing or disallowing a claim varied amongst commissioners. The commissioners realized quickly that it would be nearly impossible to prove property ownership.[20] Whereas richer whites might have been able to produce documentary evidence of their property, poorer whites and slaves relied heavily on witness testimonies to demonstrate ownership.[21]

At the end of its tenure on March 10, 1880, the Southern Claims Commission received roughly 22,298 claims and allowed $4,636,920.69 of the $60,258,150.44 requested.[22] Although neither congressmen nor the commissioners expected to receive claims from former slaves, the influx of applications from freedmen required the agency to look behind strict legal proof of property ownership and evaluate what it meant for a slave to own property.[23] In reflecting on a slave's claim to property, the commission went beyond its intended purpose and acknowledged the "legal and extralegal processes" of slavery before the postwar law.[24] What began as an opportunity to reward Southern Unionists for their loyalty evolved into an analysis of slave society and its law in a new era of expanding federal power. With the Southern Claims Commission, the federal government was forced to reconcile the postwar American legal tradition with the customs and inherent contradictions of its predecessor.

Frank Klingberg's book, *The Southern Claims Commission* (published in 1955), remains the only book devoted to a study of the Southern Claims Commission and therefore, serves as an excellent resource for navigating the source material. Klingberg's purpose is to isolate and examine Southern Unionism during the war. This work is ambitious yet also problematic. The

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[19] H.R. Doc. No. 16, 42nd Cong., 2nd Sess. (1871).
[20] Penningroth, *The Claims of Kinfolk*, 126.
[21] Ibid.
[22] Reginald Washington, "The Southern Claims Commission: A Source for African American Roots," *Negro History Bulletin* 27, no. 4 (1995): 376.
[23] Penningroth, *The Claims of Kinfolk*, 116.
[24] Ibid., 126.

claims filed to the commission take place more than six years after the end of the war and, by way of the nature of the commission, may not be a true representation of Southern Unionist sentiment. Receiving compensation for property under the commission was contingent upon a demonstration of true union sentiment during the war, which, no doubt, may have been exaggerated in many testimonies. My project frees itself of Klingberg's methodological flaws by emphasizing the significance of these testimonies in their own era and what this commission can tell us about the legal discourse during Reconstruction. I am interested in the Southern Claims Commission in and of itself, whereas Klingberg uses it as a vantage point for looking backwards.

Reconstruction's Federalism

Before examining the Southern Claims Commission as part of the changing postwar legal climate, I will first contextualize the commission within the expansion of federal power that took place during Reconstruction. The Civil War changed the relationship between the state and federal government in the United States. Les Benedict argued that during the Reconstruction Era, Congress was struggling to maintain a balance between the state and federal government while extending the rights protected by the federal government. Benedict wrote against the argument that, during the Reconstruction Era, Congress sought to expand federal power to protect rights guaranteed under the Thirteenth, Fourteenth, and Fifteenth Amendments, thereby replacing the states' rights and dual federalism ideologies.[25] The strong regard for state authority that was imbedded in the political landscape before the Civil War did not disappear, according to

[25] Michael Les Benedict, "Preserving Federalism: Reconstruction and the Waite Court," *The Supreme Court Review* 1978 (1978): 47. In the states' rights argument, the rights of individual states in the Union should be valued over and not superseded by the federal government's power. In the "dual federalist" ideology, the federal and state governments have essentially equivalent authority, an assertion which was challenged by the Supreme Court in *McCulloch* v. *Maryland* (*McCulloch* v. *Maryland*. 17 U.S. 316. Supreme Court of the United States. 1819. LEXIS 320.) The Supreme Court acknowledged that the states did have substantial authority, but that the national government was generally considered supreme to the state governments.

Benedict, once the war ended.[26] On the contrary, "all the evidence of the congressional discussions, the ratification debates, and the public controversy indicates that Republicans intended the States to retain primary jurisdiction over citizens' rights."[27] In searching for a balance between state and federal authority, the Republicans of the Reconstruction Era "attempted to write into the Constitution an obligation that antislavery theorists already believed incumbent on the States: the requirement that they protect all citizens equally in fundamental human rights."[28] Republicans soon learned, however, that though statute demanded the recognition of fundamental rights, society did not. As a response to the mounting Ku Klux Klan violence from 1868 to 1872, Republicans again attempted to broaden federal authority without impeding on states' rights; they argued that congressional intervention was justified because the states did not uphold their duty to protect the fundamental rights of the Constitution.[29] Although Republicans tried not to disrupt the pre-war balance between the federal and state authority, it was nearly impossible to enforce the Reconstruction amendments without expanding the federal government's power.

Randy Barnett calls this expansion of federal authority during Reconstruction an emergence of "Fundamental Rights Federalism."[30] With the passage of the Thirteenth and Fourteenth Amendments, states were mandated to uphold the fundamental rights of all their citizens.[31] According to Barnett, the Reconstruction amendments specified a new enumerated power of the federal government over the states.[32] The Reconstruction Era modified the

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[26] Ibid., 41.
[27] Ibid., 42.
[28] Ibid.
[29] Ibid., 50.
[30] Randy Barnett, "Three Federalisms," *Georgetown Law: The Scholarly Commons*, 1. http://scholarship.law.georgetown.edu/fwps_papers/23. Accessed Feb 25, 2013.
[31] Ibid., 5.
[32] Ibid., 6.

American concept of federalism, expanding the federal government's power to secure the fundamental rights of all its citizens.

Although politicians and policy-makers during the Reconstruction era did not necessarily intend to expand the concept of federalism, they saw the federal government as the entity responsible for ensuring fundamental human rights denied under the slave regime. Amidst the federal government's increased role in preserving human rights were the lingering logistical challenges of healing the nation from four years of war. While the Southern Claims Commission was established simply to arbitrate claims of seized property during the war, the testimonies collected in and the reasoning that either allowed or disallowed such claims provide a unique insight into how Congress, as an agent of the federal government, saw its role expanding to protect the fundamental human right denied to former slaves thus far in American history.

Chapter 3: The Contradictions of Antebellum Case Law

The United States was by no means the first government to have slavery, however its unique judicial system forced slavery to co-exist with the concept of equality. Through the judicial system, judges rationalized how slavery could operate under a government founded in the name of universal equality before the law.[33] A slave had no legal claim to property in the American legal tradition. The reasoning behind this legal doctrine took form through a complex history of case law. As I argue in this chapter, several key complexities, mainly the authority to exercise one's independent will, legal standing, and property rights, arose throughout antebellum case law and were revisited during Reconstruction in the work of the Southern Claims Commission. I will proceed by examining both the work of historians and legal opinions to isolate how the complexities of slavery built a case law tradition that preserved and defended America's peculiar institution.

Master's Absolute Power, Slave's Absolute Submission

At the center of the American slave system was the relationship between the slave and the master. Eugene Genovese argued that the validity of this relationship originated from an unspoken negotiation of power and authority. The master was not significantly more powerful than the slave and, therefore, could not depend solely on physical force to subject his slave to a task. Likewise the slave would recognize the power of the master only to a certain extent. According to Genovese, the survival of the master slave relationship was contingent upon how much power a master could exert over his slave before it became 'too much.' Alternatively, the

[33] US Const, Amend VI. I cite here the Sixth Amendment to the United States Constitution because it is one example of how the founding fathers did not specify that only free men were entitled to Constitutional rights. The Sixth Amendment states that "in all criminal proceedings, the accused…" without limiting who may or may not be accused of a crime. It is also worth noting that the Declaration of Independence, the document that outlined the principles of the American republic, does not single out rights as belonging to only select groups. All men, not just citizens, are created equal and endowed with unalienable rights.

slave would only give as much as was necessary to avoid being subject to a master's physical assertion of power, be it through the lash, starvation, or sale. These exchanges created a "paternalist society," which, to the slaveholder, represented, "an attempt to overcome the fundamental contradiction in slavery: the impossibility of the slaves' ever becoming the things they were supposed to be."[34] According to Genovese, the slave became more than simply an object, but "acquiescent human beings."[35] Likewise, paternalism created a world of "mutual obligations – duties, responsibilities, and ultimately even rights – implicitly [recognizing] a slave's humanity."[36] Genovese's groundbreaking work on master-slave relations in the South demonstrates that slaves, as human beings, could not be and were not seen as simply property in the social sphere. The law of the period, however, tells a different story. Throughout antebellum case law, slaves were reduced to nothing more than objects in judicial opinions and were unable to benefit from the judicial process.

Judge Ruffin, a justice of the Supreme Court of North Carolina, addressed the legal consequences of the slave's submission and master's dominion in his opinion for the *State* v. *Mann* case of 1829. Elizabeth Jones entered into a contract with John Mann, allowing him to hire her slave Lydia for one year.[37] During this period, Lydia committed a small offense and ran off to avoid being punished by Mann. Mann repeatedly called her to halt and, upon being ignored, opened fire, severely wounding her. In the first stage of the court proceedings, Judge Daniels instructed the jury to find the defendant guilty only if they felt Mann's punishment was

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[34] Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1972), 5. Whereas social relations governed through a negotiation of power, legal doctrine ruled through the attribution of authority. I must clarify that power and authority are not inherently connected. One may have power, yet not authority, and vice versa. It was through the law that the social relations developed under slavery became more than simply tradition, but rather a system. The law provided an official protection of the master's power by giving him legal authority, thereby justifying the master's complete dominance over a slave and the dismissal of a slave's humanity.

[35] Ibid.

[36] Ibid.

[37] *The State* v. *John Mann*. 13 N.C. 263. Supreme Court of North Carolina. 1829. LEXIS 62.

"cruel and unwarrantable, and disproportionate to the offence committed by the slave."[38] Daniels instructed the jury in this manner because he determined Mann only had a "special property in the slave," and not full dominion over Lydia.[39] The jury found that Mann's punishment was overly cruel and not justifiable in light of Lydia's misbehavior, leading the judge to find Mann guilty of assault and battery of a slave.[40] In the first court's ruling, there is an element of standing that will be discussed shortly. The significance of this case, however, comes from the appeal to the Supreme Court of North Carolina, which overturned the lower court's decision and cleared Mann of all charges.

Ruffin's opinion is legally significant because he directly compared a slave's inherent humanity with a master's authority, arguing that such considerations could not exist within the master's dominant relationship to his slave. Ruffin made two arguments in this case, which set important precedents throughout antebellum case law. The first is that there was no such thing as 'special property' in these types of cases; an individual either had authority to completely control a slave, or no authority to exercise such dominion. Particularly in this case, the contract between Jones and Mann invoked the reality that "the master or other person having the possession and command of the slave, [is] entitled to the same authority… the object is the same—the services of slave; and the same powers must be confided."[41] A careful analysis of this argument reveals that a master's authority is not solely derived from full legal ownership or the purchase of a slave, but rather the possessor's relationship of dominance to the slave. Whether or not Mann had the authority to punish his slave is not a question of whether he had full ownership of Lydia; Ruffin asserted that because Mann was in custody of the slave, he received authority from the fact that he was in a position to utilize the slave's labor.

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[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.

Furthermore, Ruffin argued that any question of a master's right to punish a slave was not a justiciable question in a court of law: "that there may be instances of cruelty and deliberate barbarity, where, in conscience the law might properly interfere, is most probable… the difficulty is to determine where the courts may properly begin … the slave to remain a slave, must remain sensible, that there is no appeal from his master."[42] Again, Ruffin acknowledged the tension between recognizing a slave's inherent humanity and the master's authority to rule over the slave, yet asserted such considerations should be left out of a legal discourse. In this opinion, so far as the law is concerned, the slave's humanity ought to be considered as secondary to a master's authority.

The second significant precedent established in this case is Ruffin's notion of full domination. Slavery, in this view, can only be preserved if the law grants full authority to the master. "The power of the master must be absolute, to render the submission of the slave perfect… as a principle of moral right, every person in his retirement must repudiate it…but in the actual condition of things, it must be so."[43] In this reasoning, Ruffin gave us an interesting insight into the separation between morality and the law. So long as slavery remained legal, the dominance of the master had to be unconditional, though one may have taken moral umbrage to this determination. Ruffin also argued that this relationship between master and slave "cannot be disunited, without abrogating at once the rights of the master and absolving the slave from his subjection."[44] Here, Ruffin asserted that the master and the slave cannot be mutually exclusive in the eyes of the law; for the system to work, the master must always maintain full dominance, no matter what moral considerations arise. Ruffin concluded this opinion by taking his argument one step further, declaring, "this dominance is essential to the value of slaves as property, to the security of the master, and to the public tranquility … and, in fine, as most effectually securing

[42] Ibid.
[43] Ibid.
[44] Ibid.

the general protection and comfort of the slaves themselves."[45] Ruffin's opinion also regarded slavery and the dominant relationship between master and slave as a protector of public peace. The *State v. Mann* case gives critical insight into the legal defense of the absolute authority of the master and informs us how the inherent contradictions in the slave system were dismissed through the legal process in the antebellum South. The precedents established in the *Mann* case are just a few examples of how slaves lost the authority to exercise their own independent wills before the law. As long as a slave was in bondage, the legal dominance of the master made it impossible for the slave to have his own legal authority.

The master's dominance was not the extent of this relationship, however; as Thomas Morris illustrated, the slaves were expected to offer something as well. In his research on slavery in the law, Morris wrote that in addition to acknowledging the master's dominance, the slave "possessed a duty of obedience, even allegiance."[46] The tension in this standard is obvious: on the one hand, slaves were expected to be completely subservient to their masters, but such subservience required the master to 'earn' his slave's allegiance. Morris identified this mentality as particularly evident in the proslavery writings of the nineteenth century, which portrayed the master as the protector and provider in an attempt to 'win' the slave's obedience.[47] The acknowledgement that the master needed to 'earn' the obedience of the slave casts doubt on the belief that slaves could be complete property. Indeed, the legal tradition that developed in the South put limits on the ways masters could treat their slaves and afforded slaves, in limited cases, a defense against violence.[48] Though the master retained great flexibility in how he treated his slaves, society in the antebellum South was one of "a conservative social order in which everyone had a station and duties – at least that was the more sophisticated proslavery

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[45] Ibid.
[46] Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: The University of North Carolina), 263.
[47] Ibid., 288.
[48] Ibid.

view."[49] What Genovese classified as a negotiation within the social sphere, the collective case law in the South established as a legal precedent. In law and practice, a master never fully retained 'absolute' authority over his slave without inviting the slave to participate in the relationship. Accompanying the expectation of obedience was the surrender of unconditional authority. Similar contradictions from the social realm entered into the legal tradition, more broadly in cases addressing a slave's standing in courts.

The 'Problem' of Standing

Although slaves were considered property, they had some special element that made them distinct from other types of property: their humanity. Even in the antebellum era, slaveholders conceded that slaves had some sense of rationality to think and act. Such acknowledgement of a slave's humanity were evident in the lingering fear of slave uprisings, laws prohibiting slaves from learning to read, and the many masters refusing to give them weapons. Mark Tushnet, in *The American Law of Slavery 1810-1860*, illustrated that the tension in case law between a slave's humanity and bondage was a function of social relations organized by the institution of slavery. "Southern slave law as a whole," Tushnet argued, "can be viewed as reproducing this interplay between humanity and interest… concern with humanity arose from one set of social relations, whereas concern for interest arose from another set."[50]

Among the most important types of social relations slavery created in the South were master to slave and master to master. In the first, an individual was established as dominant to another and, as a function of this hierarchy, received full control to manage the relationship as he choose.[51] The antebellum legal tradition legitimated this distinction and gave the master full authority over his slave within the social sphere and before the law. To own a slave meant

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[49] Ibid.
[50] Mark Tushnet, *The American Law of Slavery, 1810-1860* (Princeton: Princeton University Press, 1981), 5-6.
[51] Ibid. 6.

assuming the responsibility of another human being, however, and ignoring this fact would risk the success of the master's 'investment.'[52] According Tushnet, the consideration of economic interest forms a second social relationship born into slavery. The mistreatment of a slave could challenge the economic benefits of owning a slave; this, of course, did not mean that a master never mistreated his slave, yet brought to light another facet to the relationship between the master and slave Genovese described. Tushnet said that it was in a master's best interest to treat his slaves well in case he wanted to bring them to market.[53] The slave trade placed the humane treatment of a slave at the forefront of master-to-master market relations. The coexistence of these relationships yielded a law of "internal contradiction."[54]

My point here is not to make generalizations about every slave owner in the South, but to demonstrate that masters knew (or at least should have known) their slaves were capable of more than a any other type of owned property. Whereas Ruffin argued that courts should not decide the extent of a slave's humanity, other judges asserted that even with an inherent element of humanity, slaves did not have legal standing.[55] The opinion in *Creswell's Executor* v. *Walker*, decided in January 1861 amidst the secession crisis, demonstrated the more extreme considerations of a slave's humanity and his lack of standing before for the law.[56] The opinion written for *Creswell* proceeds by citing an impressive collection of legal precedents throughout the South to affirm the lower court's decision. In doing so, however, the opinion illuminated the tensions and inherent contradictions that took form in the antebellum legal code.

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[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Though standing often refers to an individual interest in a case, I use the term more broadly to refer to an individual's legal authority to act. It is worth noting that not all slaves in the South lacked standing before law. There are isolated cases where slaves could sue in courts, however this is not the case for the majority of slaves in the South. Although most slaves could not sue in courts, they could be tried for crimes as criminals.
[56] *Creswell's Executor* v. *Walker*, 37 Ala. 229. Supreme Court of Alabama.1861. LEXIS 58.

In his will, John T. Creswell demanded that his faithful slaves Tom, Dublin, Ann, and Maria be set free with certain conditions.[57] Each slave had the option of deciding whether he or she wished to be taken to a non-slave state, at the expense of Creswell's estate, or to be transported to Liberia. The slaves were to be furnished with clothing and other materials that would leave them "comfortable" as determined by the executor.[58] If a slave wished to remain in bondage, however, Creswell instructed that he or she be bequeathed to his sister, Zernula Walker, who would become their new owner. Interestingly, Creswell instructed that if Walker was to become the owner, she was responsible bequeath them upon her death only to "such person or persons as she may believe will treat them with kindness and humanity." While Samuel Creswell (the assigned executor) was carrying out the will, however, Walker insisted that trusts meant to benefit slaves were void and claimed that she had ownership of the slaves, regardless of their intent to be free. The lower courts found in favor of Walker, citing *Carroll and Wife* v. *Brumby*, and determined that trusts benefiting slaves were void.[59]

That the Supreme Court of Alabama agreed with the lower court is not surprising, but that Judge J.W.R. Walker revisited the reasoning in many other cases from the antebellum era is significant for an analysis of a slave's standing before the law. Judge Walker affirmed the *Brumby* case's reasoning: "a slave is incapable of making a choice between freedom and slavery… so far as their civil status is concerned, slaves are mere property, and their condition is that of civil incapacity." Walker did not argue that slaves have no mental capacities, but rather that they have no legal capacity. In fact, later in his opinion, Walker conceded, "It is true that slaves are human beings, and are endowed with intellect, conscience, and will… their moral and intellectual qualities determine, to some extent, their value, and are often looked to in ascertaining the rights and liabilities of others in relation to them as articles of property." Walker

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[57] Ibid.
[58] Ibid.
[59] *Carroll and Wife* v. *Brumby*, 13 Ala. 102. Supreme Court of Alabama. 1848. LEXIS 42.

attempted to articulate the clear legal distinction between slavery and freedom, but relied on case law rather than acknowledging the contradiction that arises when an individual is a rational being yet is not entitled to make his own legal decisions. Walker referred to laws that attributed rationality to slaves, but ends his analysis here, failing to articulate the clear flaw in this reasoning: "because slaves are rational beings, they are capable of committing crimes; and in reference to acts which are crimes, are regarded as persons…because they are slaves, they are necessarily, and so long as they remain slaves… incapable of performing civil acts; and, in reference to all such, they are things, not persons." Slaves could commit crimes, yet "so far as civil acts are concerned, the slave, not being a person, has no legal mind, no will which the law can recognize."

Southern law acknowledged that slaves have the rational capacity to commit crimes, yet, simultaneously, do not have the legal authority to commit a civil act. The definition of 'civil act' is unclear, and therefore, problematic in Walker's opinion. Even if one were to assume a civil act in this usage referred to political participation such as voting or running for office, this argument would still fail to hold up against legal precedent of the time. Women and children, for example, could not vote or hold political office, yet were still considered to possess a 'legal mind;' in particular, a woman could legally own property, a direct acknowledgement of her 'legal capacity.'

Walker (in the tradition of other antebellum judges in the South) justified slavery, rather than addressing the institution's basic impossibility: that one person could be an extension of another person's will. Walker's opinion left room for doubt, however: "There is nothing inconsistent with the views expressed in this opinion, in the fact that a master may make his slave an agent." The fact that Walker needed to state that there are no contradictions in his argument, suggests that he still had some lingering doubt as to the effectiveness and clarity of his argument. In discussing the *Creswell* case, I do not mean to discuss the normative role of judges

or even what southern judges were or were not trying to do through their legal opinions. Rather, this discussion highlights the tensions that appear within southern law when attempting to reconcile humanity and slavery. We have seen in these cases that the notion humanity, as undeniable as the judges proclaimed, does not ensure that slaves had standing under the law.

Property Owning Property

It was a common understanding that, under southern law, slaves were considered property. As Morris demonstrated, however, fitting slavery into a legal tradition regulating property was much more complicated. If a slave was considered property, what type of property was he? The answer, as Morris argued, was not so simple. Throughout the seventeenth and eighteenth centuries, jurists held that there were two classifications of property: personal (movable) and real (unmovable).[60] Slaves were generally considered personal or chattel property, as the master could move them around as he pleased much like a tool or wagon. This distinction became formalized in *Dunlap* v. *Crawford*, a South Carolina equity case, in which the court argued, "How then is it to be expected that ordinary men should suppose that more formality was required in disposing of an hundred acres of pine land, than is disposing of two or three prime negroes?"[61] In this 1827 opinion, the court drew a distinction between slaves and real estate (a form of real property); certainly, a slave was more movable than an acre of land. As Morris's research shows us, however, several Southern states regarded slaves as real property in certain circumstances and chattel property in others. For example, for a time in Virginia law, slaves were considered real estate, yet could be seized as chattel property if a master died without a will.[62] Similarly, Chief Justice George M. Bibb, in *Cox* v. *Ex'r of Robertson* (1809), argued that slaves were considered real estate, yet could also be classified as "assets in the hands

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[60] Morris, *Southern Slavery and the Law*, 63.
[61] *Dunlap* v. *Crawford* 2 S.C. 171, in Morris, *Southern Slavery and the Law*, 63.
[62] Morris, *Southern Slavery and the Law*, 66.

of the executors."[63] This confusion was no doubt a byproduct of the internal contradictions of the slave system, as illustrated by the discussions of humanity and standing in the slave code.

Although the categorization of slaves as property varied by state, one legal principle remained constant: slaves, as property, could not claim property for themselves. The 1860 case *Love* v. *Brindle* is just one of hundreds that state this principle explicitly:

> "It is against the policy of our law for a master to permit his slave to own a jackass, horse, or other animal of the like kind, and to have control and management of it, as if he were a free person… the obvious and direct tendency of such things is the encouragement, in the slave, of such habits and disposition as is entirely inconsistent with his social position."[64]

The contradictions of the slave system still linger, however, even in such a seemingly clear matter of law. Although slaves were not allowed to own property, many in fact did. Where and how slaves claimed property in the antebellum era is a site in which legal principle and social relations conflict. Whereas the law could (and tried to) restrict any claim to rights or privileges on behalf of the slave, in the 'real world' a slave's humanity and a master's convenience was much more difficult to ignore.[65] Once again, we return to the truth that slaves were individuals and had wills of their own, even when not recognized by the law. 'Property' could in fact own property, whether by legal means or via de facto claims. I will proceed by illustrating how, even in certain legal situations, slaves had legitimate 'claims' to property. I will continue by synthesizing the work of historians who find that, in some social situations, masters would recognize a slave's claim to property. There is a distinction that must be made however. Whereas a slave's claim to property was accepted in the social sphere, the slave was never regarded as 'owning' said property.

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[63] *Cox* v. *Ex'r of Robertson* 1 K.Y. 605, in Morris, *Southern Slavery and the Law*, 71.
[64] *Love* v. *Brindle* 52 N.C. 560. Supreme Court of North Carolina. 1860. LEXIS 111.
[65] Allowing slaves to 'hold' property alleviated some of the master's responsibility for the custody of that property.

The complexities that arise with slaves owning property are particularly evident in the execution of a master's will. In the 1845 case of *Waddill* v. *Martin*, the North Carolina Supreme confronted a situation wherein two executors were disputing the administration of the testator's estate and its assets. Among the property in dispute were several slaves owned by the testator before his death. The testator had permitted his slaves to grow their own cotton and would bring their product to market. He then paid the slaves a small portion of the profits. The venture created a debt of $143.97, which one executor (Waddill) disputed. The lower court held, regarding a debt incurred on the estate by the slaves' cotton production, "that the executor [Waddill] properly was allowed a credit for an amount he paid to slaves on the estate where it was for a small amount of cotton the slaves grew themselves, and it had been the testator's tradition to permit the slaves to grow their own cotton and sell it through the testator."[66] Judge Ruffin (the same judge that presided over the *State* v. *Mann* case), held that Waddill was not responsible for paying this portion of the estate's debt as, "we have never known or heard of an attempt hitherto, to charge an executor in favor of a legatee or even creditor, with the little crops of cotton… made by slaves by permission of their deceased owners."[67]

Ruffin's reasoning in this case is interesting for several reasons. First, he conceded that slaves could participate in this quasi-capital venture wherein they received a direct portion of the fruits of their labor. Furthermore, such transactions were not isolated to a select number of cases, but were "almost universal in North Carolina."[68] Secondly, Ruffin compared the rights of slaves in this situation to that of women, arguing, "Those petty gains and properties have been allowed to our servants by usage, and may be justified by policy and law, upon the same principle, that the savings of a wife in housekeeping, by the sales of milk, butter, cheese…

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[66] *Waddill* v. *Martin*. 38 N.C. Supreme Court of North Carolina. 1845. 562. NEXIS 194.
[67] Ibid.
[68] Ibid.

[become] by the husband's consent, the property of the wife."[69] In this view, slaves were not portrayed as property since they had comparable legal rights to women and were considered able to hold property.

Later in the opinion, Ruffin explicitly stated slaves could hold property: "Now we do not say, that negroes can hold any thing against the executor, because they and what they have belong, as property to the executor… But we do say, that an executor is not bound to strip a poor negro of things his master gave him, nor to take away his petty profits from a patch."[70] Again, we see that slaves cannot 'own' property but Ruffin acknowledged they could 'hold' property. While he did not assert slaves had a right to property, he did admit there were certain situations in which their 'property' need not be taken away. In another sense, Ruffin also appeared to advocate for this type of venture, stating that permitting a slave to have limited access to the fruits of his labor was beneficial because it "promote[s] his health, cheerfulness and contentment, and enhance[s] his value."[71] Again, Ruffin recognized "a sort of ownership by slaves of certain articles, by permission of the master."[72] This back and forth in Ruffin's opinion between law and custom is yet another example of how the inherent contradictions of the slave system transferred into a legal precedent based in exemptions, confusion, and contradictions of its own. Slaves could not be 'just property,' even in a racist and slave based society. Ultimately, jurists were not able to create an absolute separation between a slave and his independent will before the law.

As the *Waddill* v. *Martin* cases illustrated, slaves did have de facto claims to property throughout the South. Dylan C. Penningroth demonstrated in his work, *The Claims of Kinfolk*, the multitude of slaves who claimed property throughout the South. In some states, such as

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[69] Ibid.
[70] Ibid.
[71] Ibid.
[72] Ibid.

Virginia and Alabama, slaves accumulated substantial amounts of property, some of which were recognized by the Southern Claims Commission.[73] Though the allowance of property to slaves was present throughout the South, the practice was most prevalent in the Low Country, states that bordered the Atlantic seaboard.[74] Penningroth suggested that because of the task system of labor utilized in these areas, slaves generally had time to themselves after they had completed their assigned tasks for the day.[75] It was quite common for slaves to use land allotted to them by their masters to grow their own crops. Such practices also facilitated a trading network amongst slaves, who formed something like a market system throughout the Low Country.[76] Slaves in the Low Country had easy access to land and many masters reserved a few plots for the personal use of their slaves.[77] Philip Morgan emphasized that such practices were implemented because of "the sense of personal responsibility in inculcated."[78] Many masters throughout the Low Country did not even challenge their slaves' claims to property, but rather encouraged it so as to keep their slaves at work.[79]

Penningroth isolated three mechanisms through which slaves accumulated land: "some slaves could save time by working faster at their tasks and then use the leftover time to earn property… slaves working in gangs… earned money by working beyond the customary expectations for a week – on Saturday afternoons, Sundays, and holidays… third, for some slaves, a skill was a valuable and portable kind of 'property' that could generate more income."[80] In his analysis, Penningroth emphasized that slaves did in fact have access to limited forms of

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[73] Dylan C. Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth Century South* (Chapel Hill: The University of North Carolina Press, 2003), 46.
[74] Ibid.
[75] Ibid.
[76] Ibid., 47.
[77] Ibid.
[78] Philip D. Morgan, "The Ownership of Property by Slaves in the Mid-Nineteenth Century Low Country" *The Journal of Southern History* 49, No. 3 (1983), 401.
[79] Ibid., 411.
[80] Penningroth, *The Claims of Kinfolk*, 50-51.

income and could even be paid for overtime in certain circumstances. Such customs revealed a society in which slaves were not simply seen as property, as the law dictated. Whereas the law attempted to be explicit and leave little room for interpretation, social relationships in the South tell a different story about the status of the slave as an individual, not simply an owned thing.

Chapter 4: Addressing the Contradictions of Slave Law through the Claims Process

Throughout my analysis, I have seen in the Southern Claims Commission files several key trends that acknowledge a slave's independent will, legal standing, and right to own property. It is important to mention, however, that any claims adjudicated through the Southern Claims Commission were not binding laws. For example, an argument made in one case did not apply in any other claim; the commissioners sought to operate on a case-by-case basis. That is not to say, however, that these files tell us nothing about the reconstruction of American law during this time period. On the contrary, the House of Representatives was required to approve the commissioners' recommendations for the amount allowed to an individual, requiring members to evaluate the commissioners' rationale. Whether by intent or effect, approving the recommended allotment to a claimant meant that the House agreed with the commissioners and the logic put forth in their recommendations.[81] Once again, while this is not necessarily a legal precedent, the allotment in any given file provides historians with insight into how Congress interpreted the remnants of the slave code in the wake of slavery's demise. I argue that in the Southern Claims Commission files, we see a glimpse of how the commissioners (and Congress) addressed the inherent tensions in American slave law in the post-slavery legal climate. Although the Southern Claims Commission was not the type of institution that could revisit the slave code or afford rights and legal standing to former slaves, it was an avenue through which the federal government could acknowledge them.

Recognizing A Slave's Independent Will

The Commission recognized a slave's authority to exercise his own independent will in several ways. In some testimonies, a slave was accepted as the agent of his own time. In others,

[81] While the commissioners are the primary agents in this process, I assume for the sake of this argument that when the House of Representatives elected to allow the recommended funds, they agreed and adopted the methodology of the commissioners. In this sense, the commissioners and the House acted in unison. Congressmen had every opportunity to disagree with the claims put forth by the commission.

a slave was the agent of his own person; he could come and go as he pleased, even in light of slavery's constraints. The commissioners demonstrated that slaves had an independent will by adjudicating claims via the same standards as former masters, a method on which I will elaborate more. I will proceed by eliciting these methods in the testimonies of several former slaves and the decisions made by the commissioners.

On March 3, 1877, the United States House of Representatives authorized the payment of $75 to Samuel Harris of Liberty Country, Georgia for a mare he claimed to have purchased as a slave.[82] Harris was fifty-five years of age and regarded himself as a farmer, by occupation.[83] At the beginning of the war, "I was a slave until the army came through here."[84] The commissioners were particularly interested in how Harris accumulated the property he claimed the army had confiscated. In his testimony, Harris described a market-based relationship with his master in which he "hired" out his time to others in the neighborhood: "I worked and paid for the property by doing work… I paid [my master] $15.00 a month regularly, for 30 odd years… My master said he could get $15.00 for me if I was to be sold but he would not sell me… I am not indebted to him in anyway… No one has an interest in this claim but myself."[85] The notion of nineteenth century joint responsibility (as discussed previously) is evident in Harris's account. While he was a slave, Harris still worked for his time and paid his master. Why he paid his master the particular amount he did, however, is not clear in the claim. Harris illustrated that such a practice was a "privilege," and that "I know others that enjoyed the same privilege."[86] In handing over his wages, Harris appeared to have enjoyed a great deal of liberty to live with his

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[82] Excerpts from testimony of Samuel Harris, 1876, claim of Samuel Harris, Liberty County GA, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#221442222>, 40.
[83] Ibid., <http://www.fold3.com/image/#221442144>, 11.
[84] Ibid., <http://www.fold3.com/image/#221442150>, 12.
[85] Ibid., <http://www.fold3.com/image/#221442153>, 13.
[86] Ibid., <http://www.fold3.com/image/#221442158>, 14.

family away from his master's plantation.[87] Harris was permitted to keep the remainder of his funds if he did more than fifteen dollars worth of work a month; it was with these funds that Harris acquired the livestock.[88] Harris was also able to keep his 'property' on his master's land without having to pay a rent. The commissioners awarded Harris only a partial amount of the reimbursement requested because they determined the colt mentioned in the claim was too young to have been seized by the army and that the mare would have been worth less than appraised.[89]

The Harris file is significant because the commissioners hinged their decision on the premise that Harris had the authority to exercise his own will. In his testimony, Harris described the basic framework of the task system. Slaves would be given an assignment for the day and, so long as they completed it in a timely manner, were given free time. In this case, Harris's master, along with other slave owners in the area, was in the practice of allowing slaves to hire their time. Implicit in this arrangement is the notion that the slave has some element of choice in completing his task; if Harris wanted to get paid, he needed to work. Even if Harris's master allowed the servants to hold property, they could not legally own it in the eyes of the law because a slave lacked the standing to do so. Nonetheless, the commissioners found that Harris had a sufficient claim to the mare in question. Because Harris had worked and used the resulting funds to purchase the property, he had a legal claim to it, even as a slave. At the focal point of this decision is the reasoning that, because Harris was able to hire out is time, he was able to dispose of the earnings as he pleased. Furthermore, the commission acknowledged that Harris and other slaves "bought their time and worked out."[90] There was room in the antebellum slave code for a master to allow his slaves to hire out their time however there was no legal basis for a slave to have a legal claim to any property acquired from such an arrangement. On the contrary,

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[87] Ibid.
[88] Ibid.
[89] Claim of Samuel Harris, <http://www.fold3.com/image/#221442117>, 2.
[90] Ibid.

the Southern Claims Commission recognized that a slave had the authority to hire out his time and even permitted an individual to be reimbursed for the property acquired in these situations. The commission's decision went against legal precedent. By acknowledging that slaves could hire out their time, they were entitled to the fruits of their labor. While the commissioners, even with Congress's acquiescence, could not establish a new legal precedent, this 'new' analysis of a slave's right to his time demonstrates at least some of the ways in which the federal government was interpreting the Constitution's new laws in a legal climate without slavery. Files such as Harris's demonstrate that the federal government finally acknowledged a slave's authority to be the master of his own time before the law.

Sandy Bynum's claim further demonstrates that the commissioners recognized slaves as owning their own time and, by extension, had the authority to exercise their own will. Bynum and his mother were the slaves of Drew Bynum, his father.[91] In this capacity, Bynum claimed to have enjoyed more freedom than the average slave and was entitled to hire out his time.[92] Regarding the horse claimed in his case, Bynum informed the commissioners, "I worked for the money for which I paid for it."[93] In the summary report, the commissioners cite custom as sufficient grounds for a slave's authority to own property: "He was allowed to own property before the war, and carried on the lively business."[94] The fact that Bynum's master permitted him to own property and carry out a business was sufficient proof for the commissioners that he had the capacity to own the property in question.

The commissioners also acknowledged a slave's independent will by accepting he had the legal authority to purchase his freedom. Although the commission decided to disallow the

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[91] Excerpts from testimony of Sandy Bynum, 1878, claim of Sandy Bynum, Madison County AL, Barred and Disallowed Claims, Southern Claims Commission, fold3.com, <http://www.fold3.com/image/#775578>, 15.
[92] Ibid.
[93] Ibid.
[94] Claim of Sandy Bynum, <http://www.fold3.com/image/#775505>, 2.

claim of John Monroe, this case demonstrates that the commissioners seemed to take for granted that a slave had the authority to freely exercise his will. John Monroe of Chatham County, Georgia, bought his freedom "about two years before the war closed and paid $4,200 for himself… he made his money in the market and paid for the property claimed in that way."[95] Monroe also informed the committee that at the time he was freed in the fall of 1863, he owned no property.[96] Despite having no property and becoming free less than a year and a half before the war's end, Monroe claimed $2,642.50 of property confiscated by the Union Army. In the file's summary, the commissioners made it quite clear that they found this claim exaggerated: "How could the claimant accumulate all this property in one year… We cannot place any reliance whatsoever… [on] the claimant and his witnesses, and if he really did own any small amount of property which was taken, we cannot pick it out and discriminate… it from the mass of fraudulent and false items."[97]

A close examination of this reasoning reveals that the commissioners found nothing wrong with the fact that Monroe could buy his freedom. On the contrary the commissioners based their decision on the fact that, because Monroe owned no property when he was freed, he only had a year to accumulate the amount in question before the end of the war. The commissioners considered whether Monroe could have owned the property before he was freed, a situation that was illegal under antebellum law. They also did not find any issue with Monroe purchasing his own freedom. Under southern law, only a master could set his slave free. If a master decided to have a price at which the slave could free himself after working a set amount of time, that was up to the master's discretion; there was no law allowing a slave to purchase his or her freedom without the master's consent. While the commission may have disallowed

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[95] Excerpts from testimony of John Monroe, 1873, claim of John Monroe, Chatham County GA, Barred and Disallowed Claims, Southern Claims Commission, fold3.com, <http://www.fold3.com/image/#555464>, 21.
[96] Ibid., <http://www.fold3.com/image/#555667>, 62.
[97] Ibid.

Monroe's claim, they also indicated that, in their opinion, a slave had the capacity to purchase his freedom, regardless of the antebellum legal precedent.

Considering Humanity and Legal Standing

Even at the height of slavery, where the law regarded slaves as mere property, their slave owners acknowledged them as human beings. Throughout the nineteenth century, antebellum case law established precedents that protected slaves from severe treatment, but never fully recognized their personhood in the eyes of the law. The Southern Claims Commission files not only expose the complexity of these social relations in a 'legal' forum but also suggest that, even as a slave, a claimant's legal standing was an integral part of his claim to property. I argue that the commission conceded a slave's legal standing where antebellum law did not, as illustrated by its enlistment of former slaves to testify on behalf of their former owners.

Loyalty was among the most important factors the commissioners considered in adjudicating claims. In some sense, former slaves had softer burdens of proof to overcome, especially if they escaped slavery to join the Union cause. The commissioners and congressmen who established the commission were rather distrusting of white southerners, however. Whereas many of the former slave files are relatively short (between 30-50 pages), many of the allowed claims for white southerners reach upwards of 100 to 150 pages of testimony. In many such cases, the testimony of former slaves was vital to proving loyalty.

Thomas Watts of Chesterfield County, South Carolina claimed $937.50 worth of property seized by the Union Army.[98] As a farmer for most of his life, Watts accumulated a large estate before the outbreak of the war.[99] Watts included the testimony of nine witnesses to prove his loyalty before the commission, many of which included former slaves.[100] Although the

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[98] Claim of Thomas Watts, 1876, Chesterfield County SC, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#264208679>, 3.
[99] Ibid., <http://www.fold3.com/image/#264208774>, 16.
[100] Ibid.,<http://www.fold3.com/image/#264208712>, 7.

commission only allowed him $445.00, the commissioners wrote that the testimonies provided "fairly established the loyalty of the claimant."[101] The testimony of Edward Wadsworth, a former slave in Chesterfield County, is useful for a discussion of slave humanity and legal standing. Wadsworth was neither Watts's slave nor an employee of Watts.[102] Wadsworth was simply a neighbor: "I have know the claimant for the last 30 years – During the war he lived all the time on his own farm… I lived in same county on my master's plantation all the time during the war… about one mile from the claimant's residence."[103] Wadsworth also shared with the commissioners his thoughts on an intimate conversation he had with Watts:

> "Just before the war began I was over at his farm on a work day while a camp meeting was being held near his farm – He asked me about the meeting and if I thought the people attending it were Christians… They were all white people, I replied that I supposed they were – he then asked me if I thought it was right for them to be at camp meeting while their slaves were working in their fields for them… he also said slaves had souls as well as white people… I was afraid to say what I thought then… on many occasions afterwards I became satisfied that he was a friend of the Yankees and the colored people – he had slaves after the war began and he told me that he was willing to give up his slaves at any time, that he had never felt it was right to hold slaves and that the war would make all slaves free."[104]

Wadsworth's anecdote demonstrates the type of valuable evidence a former slave could contribute the commissioners' decision. It also illustrates the character of social relations in the South. Slaves were certainly not seen as property in the eyes of slave owners. In the above example, Watts specifically asked for a slave's opinion, a departure from Ruffin's arguments that slaves have "no legal mind."[105] Wadsworth's testimony presented evidence of a slave's humanity (his capacity for thought and analysis), which the commissioners used to authorize a reimbursement of seized property. Furthermore, the 'result' of Wadsworth's analysis, that Watts was a Union supporter, satisfied the federal government's proof of loyalty: "The evidence of

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[101] Ibid., <http://www.fold3.com/image/#264208679>, 3.
[102] Testimony of Edward Wadsworth, Claim of Thomas Watts, <http://www.fold3.com/image/#264208831>, 27.
[103] Ibid.
[104] Ibid., <http://www.fold3.com/image/#264208834>, 28.
[105] *Creswell's Executor* v. *Walker.*

Agerton and Wadsworth shows that [Watts] was loyal, and seems to be fair and credible… We find him loyal."[106] By accepting the testimony of Wadsworth and using it to prove Watts was loyal, the commissioners recognized that, contrary to antebellum law, the humanity of a slave could be recognized in the legal arena.

Further evidence of the commissioners' recognition of a slave's legal standing may be seen in the case of Mary Allen of Carroll County, Tennessee. Ms. Allen lived in a predominantly Union sympathizing area of Tennessee and had several family members join the Union army. Nonetheless, she still decided to include the testimony of Peter Allen, her father-in-law's slave. Peter Allen's testimony is brief, but another example of the weight a former slave's words could hold in these claims. Allen testified, "I lived in the same place with her during the war… I never knew of claimant doing anything to help the rebels; if anybody did anything to help the rebels in this neighborhood they had to be mighty sly about it… I have often heard her say if she was a man, she would go into the U.S. Army."[107] Allen used his personal experience with the claimant to prove her loyalty; he assumed the role of a neighbor, an equal with the Allen family and his community. He had become an active participant in his environment and was able to describe his interaction with his neighbors in a legal forum. As seen in the Watts claim, Allen's role in the testimony was pivotal for proving that Ms. Allen "sympathized with the Union cause."[108]

The acknowledgement of a slave's independent will and legal standing are not mutually exclusive. There are a myriad of cases that demonstrate both independent will and legal standing and I have separated these two categories simply for the ease of analysis. The purpose of the past two sections is to suggest that the Southern Claims Commission was in a unique situation to

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[106] Claim of Thomas Watts, <http://www.fold3.com/image/#264208679>, 3.
[107] Excerpts from testimony of Peter Allen, 1875, claim of Mary Allen, Carroll County TN, Allowed Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#115168852>, 100.
[108] Ibid., <http://www.fold3.com/image/#258655633>, 3.

address slavery's relationship to the post-war legal climate in a way that case and constitutional law never would. The Thirteenth and Fourteenth Amendments changed the American legal system without explicit instructions on how to do so. Case law, however, held a binding precedent, especially if an issue reached the Supreme Court. In the Southern Claims Commission, commissioners were selected to use their interpretations of the laws of slavery and the facts before them to adjudicate a case. Although the commissioners approached their work on a case-by-case basis, the commission was not the type of body that could do so. The reasoning used in each of these cases was debated and approved by Congress, thereby establishing some unified rationale for future claims. Whereas the commission mimicked the judiciary in its approach, it was always an agent of the legislative. Though the commission could never make laws, it did convey the will of Congress on a fundamental level. The commissioners' acknowledgement of a slave's claim to property is a prime example of the unintended role the commission played in the expansion of the federal government.

A Slave's Right to Property

Slaves could not legally claim property in the antebellum era, yet many possessed de-facto claims to property via their master's approval, the region's labor system, or societal customs. With the end of the slavery however, freedmen had a right to own property. The question that the Southern Claims Commission had to answer was whether or a newly freed individual had a claim to property he 'held' as a slave. Were these de facto claims to property legitimate? Were such claims equivalent to de jure property claims? Did the situation in which the property was held make a difference? Repeatedly, the commissioners found that former slaves did have a legal claim to property they held as slaves. I will proceed by citing several cases in which the commission both allowed and disallowed claims operating with the notion that slaves could own property legally.

Edward Brown of South Carolina became free by running away from his home in Beauford, South Carolina to join the Union Army in 1863.[109] The property claimed in this case was a mule that Brown inherited from his grandfather.[110] According to Brown, his master never owned the property in question and, as a result, Brown took the mule with him when he ran away.[111] Brown informed the commissioners that he did not leave South Carolina until it was safe to do so and joined the Union army within a month of crossing over Union lines.[112] Throughout the testimony, however, the commissioner of claims and the attorney present kept asking Brown to elaborate on his use of the mule. In responding to a follow up question regarding his claim to the mule, Brown stated, "I do swear that I owned the mule in my own right… I had possession of the mule about three years before I cam to the Union Army. My master, Mr. Middleton, allowed some particular men among his slaves to horses and use [of] personal property as their own. My grandfather… left the mule when he died to his youngest grandson."[113] The language Brown used to describe his claim to the property is interesting in that he emphasized his possession of the property rather than articulating a legal claim to it. Brown seemed to acknowledge that under antebellum law a slave could not 'own' such property, yet he still portrayed himself as a custodian of the property; while he could not own the property legally, he was able to utilize it customarily.

In antebellum law any property to which a slave was entitled to use belonged to the master. However, the commission allowed Brown $125, even though Brown took the property with him to Union lines.[114] One explanation for this rationale is that the commissioners ignored

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[109] Excerpts from testimony of Edward Brown, 1875, claim of Edward Brown, Beaufort County SC, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#264176432>, 4.
[110] Ibid., <http://www.fold3.com/image/#264176478>16.
[111] Ibid.
[112] Ibid., <http://www.fold3.com/image/#264176481>, 17.
[113] Ibid., <http://www.fold3.com/image/#264176497>, 21.
[114] Ibid., <http://www.fold3.com/image/#264176427>, 3.

the fact that Brown was a slave and were rewarding him for bringing supplies to the Union Army. That the commissioners repeatedly asked Brown to elaborate on how he came to own the property casts doubt on this explanation, however; the commissioners were interested in the history of the mule's ownership. According to the Emancipation Proclamation, as of January 1, 1863, all slaves in states of rebellion were considered free out of military necessity.[115] From the viewpoint of the United States, slavery in Brown's home state of South Carolina had officially ended on January 1, 1863. When Brown left to join the Union Army, he was a free man, according to federal law. In order for the commissioners to allow him compensation for the mule, they would have needed to accept that Brown had a legal claim to the property before he was set free. Otherwise, Brown would have been stealing the mule from his former master and would not have a viable claim for reimbursement. The argument and resulting allotment in this file is a strong example of how the commissioners adjudicated their claims on the belief that slaves were entitled to property under slavery.

George Washington's file also suggests the commissioners believed that slaves had some claim to property. Washington, a former slave from Mississippi, was freed via the Emancipation Proclamation in 1863.[116] He requested $1090 from the federal government for property taken from him in 1864, but was only allowed $30 for a calf and cow.[117] The commissioners believed that Washington had unsatisfactorily proven that the army seized the other property in question.[118] In the summary report, the commissioners offered a glimpse into their thought process behind the case: "The claimant was a slave… The claimant owned no property when set

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[115] Emancipation Proclamation, January 1, 1863. Presidential Proclamations, 1791-1991. Record Group 11. General Records of the United States Government. National Archives.
[116] Claim of George Washington, 1876, Warren County MS, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#263681733>, 3.
[117] Ibid.
[118] Ibid.

free after the fall of Vicksburg."[119] A careful analysis of the commissioners' decision reveals that the commissioners were willing to believe that, even as a slave, Washington had a legitimate right to own property for he could be reimbursed. The problem with this claim is that Washington collected all his property in 1864 and that he and his wife were the only individuals that could attest to the majority of the property.[120] That the commissioners specifically mentioned Washington owned no property before he was freed is significant. The commissioners sought to evaluate claims to property before slaves were freed and, unlike antebellum law, were willing to acknowledge that slaves could have a legal claim to property.

The commissioners did not always clarify whether an individual owned the property in question during or after his time in slavery. Arthur Foreman of Norfolk County Virginia was allowed his entire claim, an amount of $400. Foreman was a slave before the war but freed when the U.S. army arrived in Norfolk.[121] Foreman testified that he was engaged in the lightering business in Norfolk when the property was seized in 1864.[122] Although the file stated Foreman was freed in 1862, he was in the lightering business from April 1, 1861 to June 1, 1865. The commissioners never clarified how or when he obtained the property during this period, however.[123] In the summary report, the commissioners were satisfied with Foreman's loyalty and summarized the claimant's deposition as follows: "Foreman was a slave engaged in lightering a boat in Norfolk Harbor… He was set free in '62 when Union forces came to Norfolk… Not strong enough to go into the army – carried wood to the Union bakeries."[124] Unlike the Washington file, the commissioners were not interested in the origin of the property

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[119] Ibid.
[120] Ibid.
[121] Claim of Arthur Foreman, 1873, Norfolk County VA, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#222026684>, 2.
[122] Ibid. In the lightering industry, workers would transfer cargo off of a ship in port.
[123] Testimony of Arthur Foreman, Claim of Arthur Foreman, <http://www.fold3.com/image/#222026732>, 18.
[124] Claim of Arthur Foreman, <http://www.fold3.com/image/#222026684>, 2.

or whether Foreman 'owned' the property as a slave. Rather, that so many witnesses testified that Foreman's boat was taken in March of 1864 was enough proof for the commission to believe Foreman owned the claimed property. He was allowed $400.

Foreman's file is also relevant because it is one of the few reports addressed to the House of Representatives. The summary report begins with, "The Honorable Speaker of the House of Representatives – Sir."[125] This is further evidence that the commissioners were operating under the impression that members of Congress would analyze their decisions. It is difficult, when working with sources from the Southern Claims Commission, to separate the reasoning of the commissioners from the approval of Congress.

Synthesizing Independent Will, Legal Standing, and Property

As mentioned previously, the Southern Claims Commission's acknowledgement of a slave's independent will, legal standing, and legal claim to property are not mutually exclusive. The reason I have analyzed these three themes separately was to demonstrate how the commission's work recognized these rights and to illustrate how these themes appeared in many of the commission's cases. In the final file I analyze, the commission addressed all three to award a former slave $1320 for property seized during the war. The following case validates that a slave's independent will, legal standing, and right to own property were relevant to the commissioners collectively; each played a significant role in determining the legitimacy of a large claim to a former slave.

Horace Page of Fauquier County Virginia began purchasing his freedom during the Pierce administration by means of a complex business agreement.[126] To fund the $1200 he bargained his freedom, it was necessary for Page to find a white man to conduct the agreement

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[125] Ibid.

[126] Excerpts from testimony of Horace Page, 1875, claim of Horace Page, Faquier County VA, Approved Claims, Southern Claims Commission, RG 217, fold3.com, <http://www.fold3.com/image/#4145303>, 33.

on his behalf, as it was "understood that a slave man could not transact business in Virginia without having a white man stand for him."[127] The claimant found two men, Spillman and James, to advance the payment for his freedom; it was these two gentlemen that Page paid for his freedom during the course of the war.[128] Even after being legally freed by the Emancipation Proclamation, Page continued to pay Spillman and James the debt incurred on his behalf.[129] Page's master, Alexander Craig, permitted Page to be hired by the year.[130] With these funds, Page began "keeping a livery stable… and I hired my own time there."[131] Page began selling the livestock he raised from this business even before the war began.[132] He testified that the Union army had taken his livestock and supplies on several occasions during the war and requested a total of $2375, for which he was awarded $1320.

The Page file illustrates how the commissioners were considering a slave's independent will, legal standing, and right to own property in their deliberations. Page established his business before the outbreak of the war and, therefore, a large portion of the property he acquired was collected while he was a slave. Not only do the commissioners award Page funds for such property, but in doing so, they acknowledged his right to purchase his own freedom and enter into business transactions with white men, activities that were not condoned in the antebellum era. In acknowledging Page's access to property and the market, the commissioners went against antebellum precedent and recognized that Page had legal authority to exercise his own will by hiring out his labor and that he had the ability to legally hold property as a slave. The commissioners also asserted that even a slave could be a businessman, validating the notion that Page had the standing to legally engage in business transactions on his own behalf (as opposed to

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[127] Ibid., <http://www.fold3.com/image/#4145278>, 8.
[128] Claim of Horace Page, <http://www.fold3.com/image/#4145273>, 3.
[129] Testimony of Horace Page, Claim of Horace Page, <http://www.fold3.com/image/#4145305>, 35.
[130] Ibid., <http://www.fold3.com/image/#4145304>, 34.
[131] Ibid.
[132] Ibid., <http://www.fold3.com/image/#4145280>, 10.

on behalf of his master).[133] The Page file is an excellent synthesis of how the commissioners approached a slave's independent will, legal standing, and claims to property. It is through these considerations that we may isolate how the government interpreted the antebellum slave code after its collapse.

[133] Ibid.

Chapter 5: Epilogue

In this paper, I have explored the transition from slavery to freedom in the law during Reconstruction. With the fall of the Confederacy and the passage of the Thirteenth and Fourteenth Amendments, American jurisprudence had to confront the issue of removing slavery from its legal system and its society. Whereas the Thirteenth Amendment ended slavery, the transformation to a legal world without slavery was not so simple. As I have argued, the antebellum slave code preserved the inherent contradictions of the slave system. Slaves were denied the authority to exercise their own independent will, legal standing before the law, and a right to property, yet were granted all three in many social spheres throughout the South. In the wake of slavery, the federal government was at the forefront of ensuring that rights of slaves were built into the Constitution through legislation and constitutional amendments. Amidst this expansion of federal authority was the creation of the Southern Claims Commission, an agency initially established to reimburse Southern Unionists for their property seized by the Union Army during the war. Somewhat unexpectedly, however, the commissioners found themselves addressing a slave's claims to property, a slave's authority to exercise his own will and his legal standing during his time in bondage. While the Southern Claims Commission did not explicitly revisit southern case law (as neither the legislative or executive branch can legally override a court's decision), the commissioners placed these considerations before Congress, attaching Congressional approval to the each claim.[134] Through an analysis of several claims, I have demonstrated that the commissioners recognized the independent will, legal standing, and the claims to property of slaves in Reconstruction.

On the most fundamental level, this study explores the tensions between slavery and freedom, law and practice, and authority and ability. Throughout the nineteenth century, judges

[134] Note that throughout American history, presidents and Congress might have ignored a judicial ruling. This does not mean either branch did so legally or in accordance with the separation of powers in the Constitution.

and policy-makers built a comprehensive slave code that legalized the impossibility of the slave system: that one person could be the extension of another person's will. While most of the scholarship on the Southern Claims Commission focuses on southern loyalism during the Civil War, this paper uses these sources to examine how the government carried out major legal changes on a 'practical' level. Although the judicial system had the final determination of how the laws abolishing slavery should be interpreted, the Southern Claims Commission needed to make its own evaluations of these new laws in adjudicating claims. In working through the claims of former slaves, the commissioners had to consider the new law and the law of slavery, under which the individual owned the property in question. This paper suggests a new way of using the Southern Claims Commission in historical analyses and emphasizes several legal complexities facing the government that were not explicitly identified in similar studies on the subject. The new way of interpreting the work of the Southern Claims Commissions presented in this thesis can inspire a greater understanding of the Reconstruction Era and the legal transition to a post-slavery America.

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