

Changing Sovereigns and Settling Land Claims in Florida

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Over a span of six decades (1763-1821) the residents of Florida found themselves under a sequence of four sovereign nations—Spain, Great Britain, Spain again, and the United States. None of the three nations truly endeavored to fulfill their promises made in treaties to their own subjects or citizens or to their newly acquired, holdover citizens. Change swept across North America with the agreements set forth in the Treaties of Paris of 1763 and of 1783 and the Adams-Onís Treaty of 1820 as well as some secret arrangements. Each treaty redrew the map of North America and redrew the lives of ordinary persons.

In Florida (later East Florida) and its capital city of St. Augustine, each treaty uprooted residents and jeopardized their ownership of real property. The high-level negotiators did not forget colonial residents, for the diplomats included clauses in each of the aforementioned treaties to protect ownership of real property or at least mitigate losses. Verbiage in the treaties succinctly expressed the philosophical positions of the party nations that private ownership of land deserved consideration but did not offer any prescriptions for resolving owners' claims. Defeated and departing nations looked to protect their subjects, while it was the victorious and incoming regimes that handled the claims of the “conquered.”

The Treaty of Paris ended the French and Indian War (Seven Years' War) and redrew the map of North America. France departed the North American continent. Great Britain acquired French Canada and La Florida. Spain changed its venue in the continent from *La Florida* to *Luisiana*, as agreed in the secret Treaty of Fountainebleau (November 1762) between France and Spain. Thus Great Britain came to control the entire Atlantic coast of North America. The Proclamation of 1763 issued by the Board of Trade declared that the king had issued letters patent to

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create the two colonies of East Florida and West Florida, divided at the Apalachicola River.¹

Twenty years later, with the end of the War of the American Revolution, a nation not even imagined in 1763 or even in 1773, appeared on the continent—the United States of America. After the Treaty of Paris of 1763 Great Britain gave up its continental holdings south of Canada; Spain returned to a Florida that was smaller than its previous Florida colony. France gained no territory on the continent. For Great Britain the year 1763 marked the end of the Old Empire or First Empire that was focused on the Americas, and British leaders and diplomats changed their emphasis to the New Empire or Second Empire in Asia.² Later the Adams-Onís Treaty or Transcontinental Treaty of 1820 effectuated Spain's 1821 transfer of East Florida and West Florida to the United States.³

For the residents of East Florida and its capital of St. Augustine the pen was truly mightier than the sword, for there was no war-related conquering or occupation of colonial Florida that brought the transfers.⁴ Diplomats faraway and often across the Atlantic Ocean made agreements for changes in the southeast that did not reflect the events or realities of the region. The forces that drove “the impermanence of boundaries” translated into impermanence of a home for residents ensnared by the

1. CHARLES LOCH MOWAT, *EAST FLORIDA AS A BRITISH PROVINCE, 1763-1784*, at 12 (photo. reprint 1964) (1943).

2. J. LEITCH WRIGHT, JR., *ANGLO-SPANISH RIVALRY IN NORTH AMERICA* 135 (1971). *The Oxford History of the British Empire* Series sets forth five British empires: the First Empire, 1651-1783, and the Second, 1783-1860, are pertinent here. 5 *THE OXFORD HISTORY OF THE BRITISH EMPIRE* (Robin Winks ed., 2001).

3. U.S. sources usually use the year 1819 for the date of the treaty, while Spanish sources use the year 1820. Agreement was reached between negotiators John Quincy Adams and Luis de Onís in 1819. Political changes in Spain and the status of the Spanish Constitution delayed agreement by Ferdinand VII until October 24, 1820. Treaty of Amity, Settlement, and Limits Between the United States of American and His Catholic Majesty (Adams-Onís Treaty), U.S.-Spain, Feb. 22, 1819, TEX. A&M U., <http://www.tamu.edu/faculty/ccbn/dewitt/adamonis.htm> (last visited July 7, 2017). The version of the treaty in this link includes the “Spanish Instrument of Ratification” signed in Madrid by Spain’s Secretary of Despatch of State Fernando Evaristo Pérez de Castro on behalf of the king. The version of the treaty offered by Avalon Project of Yale Law School does not include the “Ratification”: Treaty of Amity, Settlement, and Limits Between the United States of America and His Catholic Majesty, 1819, U.S.-Spain, Feb. 22, 1819, YALE L. SCH.: AVALON PROJECT, http://avalon.law.yale.edu/19th_century/sp1819.asp (last visited July 7, 2017).

4. Events in West Florida did impact treaty-making. The 1781 Siege of British Pensacola by Spain’s Bernardo de Gálvez was a pivotal battle during the War of the American Revolution.

international negotiations.⁵ While diplomats thought in terms of thousands of square miles and about defining and defending international boundaries or navigational rights, ordinary persons in Florida worried about their own small pieces of property. Florida residents, whether Spanish or British, owned lots with shops, homes, and gardens in St. Augustine and Pensacola that were perhaps no larger than about fifty feet by seventy-five feet or fifteen by twenty-five Spanish *varas*. Land grantees in the countryside hoped to retain their several hundred acres. Preserving moveable property in the confusion of changes of sovereigns could be even more challenging than settling land claims, and personal property was often more valuable than land. Great Britain offered the possibility of restitution to its own citizens and the United States agreed in the Adams-Onís Treaty to compensate their new citizens in Florida for losses suffered from U.S. insurgency while the Floridians were still Spanish subjects. With valuations of lost personal property, such as enslaved workers, tools, or horses often exceeding the price of land, such claims were definitely worth the effort to pursue. Yes, treaty makers did attempt to protect ownership of private property as they ceded away colonies and the Treaties of Paris of 1763 and of 1782 and the Adams-Onís Treaty did address the issue of land ownership. But the fate of ordinary residents was not the foremost issue for treaty makers, and once the transfers of sovereignty were completed, private property claimants had to look to their own efforts to defend their ownership. The previous sovereign did not assist with the claims.

The first group to deal with the transfer of sovereignty and thus the fate of their privately owned land were the Spanish residents of La Florida in 1763. Surely these *floridanos* (Floridians) were stunned when a representative of the British governor of South Carolina sailed into St. Augustine on March 16, 1763, bearing an account of the ratification of preliminary articles of peace.⁶ After more than two centuries, Spain was relinquishing Florida. South Carolinians and Georgians had been trying to oust the Spanish from Florida for decades. How ironic that the victory came through no actions within the American southeast. Ink on treaties in Paris counted for more than cannon and muskets that might be fired in St. Augustine. Spain's King Charles III made a gross error when he joined France in the Seven Years' War in January of 1762. In the end there was no benefit of the war to Spain, and the invaluable harbor at

5. For reference to the "impermanence of boundaries," see DAVID NARRETT, *ADVENTURISM AND EMPIRE: THE STRUGGLE FOR MASTERY IN THE LOUISIANA-FLORIDA BORDERLANDS, 1762-1803*, at 257 (2015).

6. MOWAT, *supra* note 1, at 7.

Havana, Cuba, was captured by British forces, endangering the existing sea route for delivery of goods from the Americas to Spain. Florida was sacrificed in the treaty to regain Havana. By the time of the 1763 treaty Spain's effective claims to *La Florida* were much diminished from its sixteenth-century claims, which had stretched north to Newfoundland and far too vague limits in the west. In fact, British claims reached south of Spanish St. Augustine.⁷

St. Augustine was a presidio, a military town, thus the evacuation of 3100 persons proceeded in an orderly fashion. Spanish royal funds sustained most of the population of St. Augustine with the defense payroll—soldiers or support personnel and their families. Spanish schooners, brigantines, and sloops, as well as a few English vessels, evacuated the residents to Havana. The first evacuees composed of seventy-five persons with more than half of them children, sailed on April 12, 1763, only a month after the arrival of the initial news borne by a British agent.⁸ But orderly did not mean it was not disruptive and costly for the evacuees. For example, in October of 1763, Juana Navarro, with a five-week-old baby in her arms, her husband, and as many as six other children boarded the brigantine *San Antonio* to evacuate St. Augustine and sailed for Havana. Two decades later the middle child of Juana Navarro would return to St. Augustine and delineate what properties the family had been forced to abandon.⁹ By January 22, 1764, the last of the emigrants had sailed away.

Historian Robert L. Gold asserts in his study of the “Triple-Nation Transfer” that “Article 20 definitely stipulated that the Spanish residents of Florida could sell their estates to English subjects within an eighteen-month period.” Regarding the property owned by the evacuees, a portion of Article XX of the 1763 treaty states:

7. WRIGHT, JR., *supra* note 2, at 70.

8. Letter from Melchor Feliú and Eligio de la Puente to Julián de Arriaga, in ROBERT L. GOLD, *BORDERLAND EMPIRES IN TRANSITION: THE TRIPLE-NATION TRANSFER OF FLORIDA* 71-74 (1969). A few English ships were also hired for transportation. Thirty-three of the evacuees from St. Augustine were transported to Campeche.

9. Baptisms of Catalina Gerónima Rafaela de Porras (Jan. 9, 1753) and Génera Antonia de Porras (Sept. 9, 1763) (on file with St. Augustine Cathedral Parish Records); Claim of Juana Navarro (on file with Claims for Town Lots, Spanish Land Grant manuscripts [hereinafter SLG], Florida Department of State, Division of Historical Resources, Tallahassee, Bundle 320 [hereinafter Bnd.], Claims no.15, 80) (microfilm copies on file with St. Augustine Historical Society). Juan José Solana, Report on Conditions of St. Augustine (Apr. 9, 1760) (on file with Archivo General de Indias [hereinafter AGI] John b. Stetson Collection [hereinafter SC], P. K. Yonge Library of Florida History) (microfilm copies on file with St. Augustine Historical Society) stated that Porras was selling English dry goods and other things. Translations of the inventories of both of “Porras’s” real properties appeared in Charles W. Arnade, *The Architecture of Spanish St. Augustine*, 18 *AMERICAS* 149, 175-79 (Oct. 1961).

His Britannick Majesty farther agrees, that the Spanish inhabitants, or others who had been subjects of the Catholick King in the said countries, may retire, with all safety and freedom, wherever they think proper; and may sell their estates, provided it be to his Britannick Majesty's subjects, and bring away their effects, as well as their persons without being restrained in their emigration, under any pretence whatsoever, except that of debts, or of criminal prosecutions¹⁰

Officials of newly British East Florida had little to deal with regarding the properties of Spanish-era residents; Spanish officials had arranged for the handling of private property sales. Two men were appointed to deal as agents for the evacuees: Juan José Eligio de la Puente to be the man in Havana and Jesse Fish in St. Augustine.¹¹ Jesse Fish, a British subject, had been in St. Augustine intermittently since 1735. Fish was to hold properties as agent and make sales agreements for East Florida property, contact Eligio de la Puente in Cuba, and transfer the funds in gold, silver, or notes of exchange to Eligio after Fish withheld his agent's fees. Fish also intended to withhold what he claimed were debts of Spanish residents that he had absorbed as agent/purchaser of properties. Gold comments that this arrangement "encouraged" the Spanish-period proprietors to "anticipate later profits." Gold asserts that the Eligio de la Puente-Fish transactions were "clearly illegal and arbitrary." Fish engaged in treasonous activities, and Eligio disregarded the terms of the Treaty of Paris. Had Fish not purchased the property titles, they would have reverted to the British government. However hopeful the evacuees might have been, newly British St. Augustine was a buyers' market. British residents moved onto the former Spanish home sites with impunity and often without purchase. Eligio de la Puente and Fish accused each other of non-performance.¹² Floridanos who had moved to Cuba in 1763 would claim that they did not receive their money for purported sales.

In East Florida, British officials were exasperated to find that Fish and others claimed to hold titles to almost all of the lands, six million acres, which the officials had envisioned for plantation development.

10. Treaty of Paris 1763, art. XX, YALE L. SCH.: AVALON PROJECT, http://avalon.law.yale.edu/18th_century/paris763.asp (last visited July 7, 2017).

11. Juan José Eligio de la Puente, *El Presidio de San Agustín de la Florida* . . . (Jan. 22, 1764) (on file with Royal Depository of Hydrography, Madrid) (copies at St. Augustine Historical Society) (depicting representational buildings). A key that frames the map noted the apparent owner, lot dimensions, and building material for each parcel. Anglophone researchers called this the "Puente" map although the mapmaker referred to himself as "Eligio" or in full "Eligio de la Puente."

12. GOLD, *supra* note 8, at 47.

The officials refused to recognize the legitimacy of the titles claimed by Fish et al. British-era cartographer and surveyor Bernard Romans observed that “the crown would not allow the transfer of Spanish landed interest to be good, although mentioned in the articles of peace.” Gold concludes that “[Great Britain’s] new colony was settled, however, without particular regard to the treaty regulations.” Adhering to the treaty was not always compatible with maximizing the land for profit.¹³ “Florida fever” gripped entrepreneurs in England, and they did not intend to be hindered by the treaty. Foremost among the investor-enthusiasts was British East Florida’s first governor, General James Grant. All participants ignored the treaty agreements regarding private property, except the evacuees whose property was in question.

Twenty-odd years later, in consequence of the Treaty of Paris of 1783, as Great Britain left East Florida and Spain returned to the peninsula, British subjects were given eighteen months beginning in March 1785 to leave or to remain in East Florida and become Spanish subjects, if they qualified. East Florida had become the new home to thousands of British loyalists, who had fled British colonies during the last years of the American Revolution. Loyalist refugees, especially those from South Carolina or Georgia, headed to other British colonies, such as East Florida or the Bahamas. In the last years of the war perhaps as many as 13,000 persons entered East Florida as loyalists or were the enslaved workers brought by the loyalists. Loyalist evacuee Hugh Rose lamented that he had believed that East Florida “offered a safe and not unpromising asylum for people in his unfortunate situation.” Rose claimed that in Florida “he invested what little remains of fortune was left to him.” Like other loyalists, Rose had believed that Great Britain would surely maintain East Florida as a home for King George’s loyal subjects.¹⁴ Historian J. Leitch Wright observed that “the 1783 peace treated British subjects in the Floridas almost the same way as the 1763 treaty dealt with Spanish subjects”—as “conquered populations.”¹⁵

Separate from the treaties’ agreements, the departing governments, Spain in 1763 and Great Britain in 1784-1785, offered compensation to their own subjects for losses arising from departures brought by the changes of flags. In anticipation of the cession in 1763, two Spanish

13. Daniel L. Schafer, *St. Augustine’s British Years, 1763-1784*, 38 *EL ESCRIBANO* 1, 7-9 (2001); GOLD, *supra* note 8, at 26; BERNARD ROMANS, *A CONCISE NATURAL HISTORY OF EAST AND WEST FLORIDA* 223 (New York, 1774), <http://purl.flvc.org/fcla/dl/UF00000163.pdf>.

14. 2 WILBUR HENRY SIEBERT, *LOYALISTS IN EAST FLORIDA, 1774-1785*, at vii-ix, 105 (1929).

15. J. LEITCH WRIGHT, JR., *FLORIDA IN THE AMERICAN REVOLUTION* 123 (1975).

engineers were sent from Havana to St. Augustine to appraise both royal and private buildings in St. Augustine.¹⁶ Two decades later British evacuees from East Florida were left on their own to make claims for losses to review boards in London or in the Bahamas and provide testimony of witnesses about the existence, condition, and value of the abandoned property. This study focuses on treaties and clarifying titles to land, but it is still important to include the process of claims for loss of personal property and the performance of the governments in handling and paying the claims as part of the analysis of officials and sovereigns. Departing loyalists filed for compensation for their chairs, tables, clocks, cooking utensils, and the timbers of their dismantled buildings left on the shore when there was no space on ships leaving East Florida or which washed overboard in bad weather.¹⁷

East Florida's Spanish officials after 1784 dealt with property claims by British loyalists who wished to remain in East Florida as well as claims by Spanish families who had returned after evacuating to Cuba in 1763. *Floridano* evacuees now had some pragmatic recourse for their losses. With the return of East Florida to Spain, restitution of their lands, which was unavailable while Great Britain held the Floridas, was now a possibility. After Spain regained Florida, that nation was also eager to provide land to settlers. The initial requirement that Florida's residents adhere to Roman Catholicism delayed settling of claims made by British-era, mostly Protestant, residents. Some converted, at least nominally, others left East Florida, still others waited for clarification. The indecision contributed to the unsettledness and rancor in an already disturbed countryside, especially near the East Florida-Georgia border, which at that time was an international boundary with mostly loyalists living on the East Florida side and American Revolutionaries across the St. Mary's River in Georgia.

The absence of Spanish-period records complicated assessing the Floridanos' claims for town property. Local records for St. Augustine's first two centuries sailed away with the town's Spanish residents in 1763

16. WORKS PROGRESS ADMIN., HISTORICAL RECORDS SURVEY, SPANISH LAND GRANTS IN FLORIDA xiv n.28 (1941) [hereinafter SPANISH LAND GRANTS IN FLORIDA]. All five volumes of *Spanish Land Grants in Florida* have the same introduction in pages i through lxi. The five-volume set is translated abstracts of the claims for affirmation of Spanish Land Grants. The Claims for Town Lots are included in the Spanish Land Grants manuscript collection, but the Town Lots are not included in the volumes of abstracts.

Engineers Juan de Cotilla and Pablo Castelló relied on assistance by local masons and carpenters. Amade, *supra* note 9, at 161-69.

17. SIEBERT, *supra* note 14, at vii-viii. Claims had to be filed in London by January 1, 1787, and in the Bahamas by May 1, 1787.

and with only a few exceptions remain unavailable, still in Cuba today if they have not disappeared or deteriorated.¹⁸ Notarial records, probate records, and legal cases were relocated to Cuba and not returned to St. Augustine with the Spanish regime in 1784. Records of St. Augustine's Roman Catholic parish that memorialized baptisms, marriages, and deaths, the vital-statistics records of their day and useful in establishing inheritance of property, were eventually returned to St. Augustine, but not until 1906—much too late to benefit colonial claimants.¹⁹ Documents that were never recorded in official archives but remained with an interested party probably did not survive the dislocations of twenty years. Dowry agreements, account books “of the amounts I still owe, and those owed me,” in the verbiage of a death-bed will, and other unrecorded agreements were taken to Havana in chests or strong boxes. In the colonial era, testators described the location, usually within the residence, where such a chest might be found.²⁰ Worse yet for claimants, other agreements may have been only verbal over sequential generations and known to only family members and not to neighbors who might be able to offer other corroborating evidence. Commenting about family or personal agreements in the province of León in Spain, anthropologist Ruth Behar noted that personal records were considered as binding as those that were recorded. Castilian law prevailed in the Spanish America, but *peninsular* (Iberian) soldiers who had served in Florida before evacuating might have still followed some traditions of their native regions.²¹

With minimal judicial structure in the small colony of Spanish East Florida, the military governor judged the claims, sometimes with assistance of a legal officer (*auditor de guerra*). At times a returning Floridano and a loyalist who chose to remain in Spanish Florida made a

18. Pablo Castelló, *Plano del presidio de San Agustín de la Florida y sus contornos . . .* (July 21, 1763) (on file with Library of Congress) (original in the Spanish Ministry of War, LM 8a-1a); Eligio de la Puente, *supra* note 11; GOLD, *supra* note 8, ch.5.

19. MICHAEL GANNON, *REBEL BISHOP: AUGUSTIN VEROT, FLORIDA'S CIVIL WAR PRELATE 235* (Univ. Press of Fla. 1997) (1964).

20. Father Pedro Camps pointed out in his will where to find the chest that held his accounts. Estate of Pedro Camps (1790) (on file with East Florida Papers [hereinafter EFP], Library of Congress Manuscript Collection, Bnd. 308) (microfilm copies on file with St. Augustine Historical Society); Will of José Guillén (Dec. 17, 1743) in Claim of Antonia de Avero (on file with Bnd. 320, Claim no. 19, or Town Lots, SLG, Tallahassee); Will of Francisco Menéndez Marquez (Sept. 2, 1742) (on file with AGI, Seville, Spain, SC, P. K. Yonge Library of Florida History, 58-1-34/73).

21. Behar noted that many documents were not retained beyond a period of reasonable usefulness: “[M]ost villagers throw away records that involve people whom they no longer remember. . . . the records are mainly of interest if they have some bearing on the present.” RUTH BEHAR, *SANTA MARÍA DEL MONTE: THE PRESENCE OF THE PAST IN A SPANISH VILLAGE* 69 (1987).

claim for the same parcel of property. At times East Florida Governor Juan Nepomuceno de Quesada (1790-1795) took his inspiration from King Solomon's attempt to "split the baby," in one instance dividing property to accommodate, but probably not satisfy, either Floridano claimants or holdover British residents.²² The attempt to regain the property of Floridana Victoria Escalona offers an informative example of procedures, problems, and unwritten dowry agreements. Victoria's family was quite proactive in reclaiming their property. The dossier for the claim contains a petition, a report of a search of archives in Havana, and a power of attorney all completed before the British had relinquished East Florida. The claims process could be expensive for persons who had little cash; each of these documents required a payment as noted by the four-*cuartillo* stamp at the top of the pages. A *cuartillo* was one-fourth of a real or two pesos or four days' pay of an artilleryman's funding. The initial petition was dated April 19, 1783, five months before the final treaty had been signed in September.²³ In the petition Victoria's children, Rosalía and Joaquín Martínez, asserted that the lot of their mother Victoria had never been sold. (Women kept their own surnames after marriage; the children usually used the surname of the father.) In marginal notes on the petition, a typical manner of response, the Intendant of Cuba Juan Ignacio de Urriza affirmed that among archives of the *Tribunal y Real Audiencia de Cuentas* (Exchequer) there was indeed no record by the Floridanos' property agent, Eligio de la Puente, that he had received money for Victoria's lot. Rosalía and Joaquín designated Aunt Lucía Escalona (their mother's sister) to be their attorney-in-fact to pursue affirmation of ownership in Florida. Aunt Lucía appeared at the St. Augustine property of her deceased sister Victoria (d. 1743) and claimed it for Victoria's children. This rather brash aunt verbally evicted the astounded British-period occupant, a man who had been paying rent for years to some self-proclaimed owner. She ordered him to vacate immediately—and apparently he did. Victoria's masonry house had not survived the intervening years, and a wooden house built by the British occupant now sat upon the lot.

The claims process moved slowly. In 1800, sixteen years after submitting the petition, three witnesses testified, in the absence of paper

22. See Claim of Juana Navarro, *supra* note 9 (including the claim of her daughter Catalina de Porras).

23. Support for soldiers is listed in Don José Antonio Gelabert to the Crown, General List of All Who Serve and Are Paid by the King at the Presidio of San Agustín (1752) (on file with AGI SC 87-1-14/2, Havana). Perhaps Victoria's family was aware of the Preliminary Articles of Peace between Spain and England, signed January 20, 1783, at Versailles.

evidence, that Victoria's family had possessed the property in the prior Spanish period and that they knew of "no other residents or owner" than Victoria and her family. The term "no other . . . owner" suggests that this was dowry property. There is no mention of Victoria's widower, Martín Martínez Gallegos, and his children of his subsequent marriage. The dowry property reverted to Victoria's children as the heirs of her body when her widowed husband no longer needed it. The practice in St. Augustine of residential properties' serving as dowry further complicated the claims. Residences passed from mothers to daughters over several generations without documents, or so the absence of such evidence suggests. The claim on behalf of Victoria's children was affirmed, and Lucia moved into the house on the lot confirmed to Victoria's children.²⁴ Other claimants for real estate in St. Augustine were able to submit copies made in Havana of deeds, wills, or other documents to support the claims. The earliest date cited of a conveyance of property was February 17, 1717, as an item in deraignment of a title.²⁵

A number of the potential claims for lots in St. Augustine was resolved when the town lots reverted to the sovereign for delinquent taxes. The lots had been claimed by Jesse Fish, the agent on the mainland side of the Florida Straits. Governor Quesada held tax sales and conveyed them to new owners.

In the summer of 1821 the cession of the Spanish Floridas, agreed in the Adams-Onís Treaty, took place. On July 10, 1821, the Spanish flag was lowered for the final time at St. Augustine as the United States took control of East Florida, and the ceremony was repeated in West Florida the following week. With the transfer of St. Augustine to the United States, most of the residents of St. Augustine and Spanish East Florida remained. Spanish soldiers and government employees, their dependents, and prisoners departed for Cuba on the day of the change of flags. Spanish East Florida Governor José Coppinger had encouraged relocation to other Spanish lands and informed Florida residents of "the immunities, favors and protection" offered to those who wished to move to other locations in the Spanish realm. During the remainder of the year

24. Claim of Joaquín Martínez and Rosalía Martínez [children of Victoria Escalona] and Lucía de Escalona (on file with SLG, Claim 79, Bnd. 320). For a discussion and other examples of dowry practice in St Augustine, see Susan Richbourg Parker, *In My Mother's House: Dowry Property and Female Inheritance Patterns in Spanish Florida*, in *SIGNPOSTS: NEW DIRECTIONS IN SOUTHERN LEGAL HISTORY* 19-44 (Sally E. Hadden & Patricia Hagler Minter eds., 2013). Page 27 deals with the claim of the Martínez siblings.

25. Deed from Juan Méndez and Micaela González to José de Escalona (Feb. 17, 1717) (on file with Towns Lots, Claim of Juan Bautista de los Ríos on behalf of his wife, María Marcelina de la Rosa, Bnd. 320, claim no. 75).

1821 more left St. Augustine for new lands and opportunities in Spanish America.²⁶

Florida's U.S. Territorial Governor Andrew Jackson initially seemed conciliatory toward the holdover residents from the Spanish period, concurring with the suggestion of Governor Coppinger that St. Augustine's municipal representatives be retained under U.S. sovereignty. Jackson's beneficence lasted about six weeks, when St. Augustine's city councilmen were required to abjure Spanish citizenship on August 22. Four of the five aldermen refused to take the oath and resigned. They were replaced with recently arrived Americans.²⁷ Persons from outside of Florida were appointed to top Territorial Government positions. The holdover residents were being supplanted. Geographer Richard Campanella's description of New Orleanians after the 1803 transfer of Louisiana to the United States probably well describes Spanish Floridians two decades later:

Compared to their new compatriots, they spoke a different language, practiced a different religion, and followed distinct legal philosophies. They perceived race and managed slavery differently. . . . They ate different foods, celebrated different festivals, and honored different heroes. . . . [They] fretted, then resented, then resisted the onslaught of [in the case of Louisiana] les Américains.²⁸

The tenured Floridians faced another unexpected disappointment and burden—proving ownership of their private properties when the Board of Land Commissioners for East Florida was appointed on August 4, 1823.²⁹ After more than two years since the transfer of flags and of property owners' believing that their private land claims were accepted at face value, property owners in St. Augustine and Fernandina became disgruntled when they learned that they would have to submit their land claims to the Land Commission's scrutiny. Property owners held that Article II of the treaty implied that all private claims in those towns were accepted as valid. Article VIII of the Adams-Onís Treaty stated that Spanish grants made prior to January 24, 1818, were to be "ratified and confirmed to the persons in possession of the lands, to the same extent

26. L. David Norris, *The Squeeze: Spain Cedes Floridas to the United States*, 20 *EL ESCRIBANO* 127-29 (1988) (quoting Jose Coppinger's Proclamation of 7 July 1821 on page 127). There were also some civilian residents who moved to Cuba at the time of the transfer.

27. Letter from Acting Governor of East Florida W.G.D. Worthington to Andrew Jackson (Aug. 1821), *in* 22 *TERRITORIAL PAPERS OF THE UNITED STATES, FLORIDA TERRITORY* 193 (Clarence E. Carter, ed., 1956-1962) [hereinafter 22 *TERRITORIAL PAPERS*].

28. RICHARD CAMPANELLA, *BOURBON STREET: A HISTORY* 30 (2014).

29. Land Commissioners for West Florida had been appointed more than a year before the examiners for East Florida.

that the said grants would be valid if the territories had remained under the domain of His Catholic Majesty.”³⁰ Floridians expected that only public (formerly royal or crown) properties would have to be examined.

The treaty also offered other hope to former Spanish subjects. In Article Nine the United States committed to “cause satisfaction to be made for the injuries, if any, which by process of Law, shall be established to have been suffered by the Spanish Officers, and individual Spanish inhabitants, by the late operations of the American Army in Florida.” In 1812 American troops and insurgents invaded Spanish East Florida attempting to annex the colony into the United States. Known as the Patriot War, American troops and adventurers occupied northeast Florida from the spring of 1812 until 1814, except the city of St. Augustine, and destroyed the Spanish Floridians’ crops, buildings, and possessions, and slaughtered cattle.

Newly American claimants for real property held mass meetings and petitioned Congress to exempt them from exhibiting their titles.³¹ Appointed officials for East Florida initially held the same opinion as the residents. Colonel Alexander Hamilton, Jr., District Attorney for East Florida, wrote to Secretary of State John Quincy Adams in December of 1822 about the hardships that the Florida residents would suffer from delays, which were “a source of positive sacrifice.” The experience of the late 1700s under the returned Spanish regime was to be repeated for a subsequent generation “whose claims [would] most probably be confirmed [could] not sell and dare[d] not cultivate.” Hamilton asserted that the “present law” would cause unexpected hardship upon the heirs and representatives of such persons who have held their lands “by descent for centuries, particularly in the Cities” The individuals would be “put to great expense and exposed in the deraignment of their titles, to much subsequent vexatious litigation.”³²

The East Florida Land Commissioners faced a severe lack of resources of evidence and information. The Commission did have second-Spanish-period documents to consult. At the time of East Florida’s transfer to the United States, U.S. officials had broken the lock on the Spanish governor’s office and confiscated every document in the room.³³ All documents for claims had to be submitted in the English language, but there was insufficient funding or personnel to translate

30. SPANISH LAND GRANTS IN FLORIDA, *supra* note 16, at xxxii.

31. *Id.* at xlii.

32. Letter from Alexander Hamilton [Jr.] to Secretary of State John Q. Adams (Dec. 15, 1822), *in* 22 TERRITORIAL PAPERS, *supra* note 27, at 580-82.

33. Norris, *supra* note 26, at 131-32.

papers. Congress did not supply the commissioners with published copies of Spain's land laws, and such copies were difficult to acquire in the United States. Finally Joseph M. White compiled information from his own research and from published works finally obtained from Spain in his *Spanish And French Ordinances Affecting Land Titles in Florida and Other Territories of France and Spain*. This would serve as an "adequate guide" for adjudicating land titles in Florida. Secretary of State Adams had provided to Governor Jackson the Laws of Congress enacted for the Louisiana Territories, which might provide information and precedents. Among them was an act passed in March of 1805 "for ascertaining and adjusting the titles & claims to Land within the Territory of Orleans and the District of Louisiana."³⁴

Holdover Florida residents feared for the ownership of the St. Augustine parish church, so essential to the spiritual and social life of the community. Hamilton had written so supportively of the plight of the Spanish title holders, yet earned their animus with his opinion that property of the Roman Catholic Church during Spanish rule had been property of the Spanish crown and that with the cession of Florida Church property passed to the United States—from sovereign to sovereign.

Electoral politics entered the land claims process. Hamilton, in his capacity of a land commissioner in addition to district attorney, had threatened to look unfavorably upon the land claims of anyone who he might learn had voted for his opponents during his campaign for Territorial Delegate in 1823. Fearful and irate former Spanish residents petitioned Secretary of State John Quincy Adams to resolve the problem with Hamilton. In addition to sending the petition to Secretary Adams, the document was published in the St. Augustine newspaper, *The East-Florida Herald*, in English and Spanish, listing the petitioners who signed.³⁵

For the Land Commissioners rural lands did not present the same problem of missing documents as did city lots, for few claims were made to affirm first Spanish period titles for lands in the countryside. Only a few originally British grants for thousands of acres were submitted to the Commission. Most of the rural claims arose from headrights grants made by Spanish governors during the second Spanish period.

34. SPANISH LAND GRANTS IN FLORIDA, *supra* note 16, at xxxvi; Letter from Secretary of State John Q. Adams to Andrew Jackson (Aug. 20, 1821), *in* 22 TERRITORIAL PAPERS, *supra* note 27, at 172-73 (Acts listed in correspondence).

35. Letter from Bernard Segui et al., to Secretary of State John Q. Adams (June 23, 1823), *in* 22 TERRITORIAL PAPERS, *supra* note 27, at 702-04.

Disappointment and frustration plagued claims made for personal property. The claims by British loyalists were an “internal” matter as the dynamic of the claim involved the British government dealing with British subject-claimant. Claimants received about one-fourth, £170 million, of the total amount claimed of £647 million. As for the Patriot War claims, Congress initially attempted to renege in the 1820s on Article Nine of treaty. Finally more than a quarter of a century after the invasion, the claims, made by almost the entire free population of East Florida in 1812, were reviewed between 1836 and 1842 by the U.S. Treasury Department and judges in Jacksonville, Florida. James Cusick comments that “the claims cases reflected almost as poorly on American justice as the conflict [the Patriot War] itself.” Cusick reveals that “impoverished families received little in the way of restitution while . . . the richest inhabitants ate up the lion’s share.”³⁶

Assessing the succession of these three nations in handling the matter of private real property ownership or its loss would seem to allow us to compare and contrast the philosophies of laws and legal systems. But what is truly notable about the three nations is the similarity of their performance, not the differences in laws and systems. None of the three nations truly endeavored to fulfill their promises made in the treaties to their own subjects/citizens or to their new, holdover citizens.

Comparisons between Spanish and British legal systems and practices emphasize the role of an individual’s ability in Spanish colonies to appeal for justice to the King or the Council of the Indies in the face of the actions of colonial officials. In contrast, as Richard Ross comments that “the English empire preferred regulating government structures rather than assuring individual justice.”³⁷ Studies have also contrasted the intentional centralization of Spain as a colonial power while noting the individuality of the laws among the British American colonies. Historian Marylynn Salmon contends that the pervasive problem with studying property rights in early British America is the remarkable diversity in the laws because of the diverse situation in the home islands. Yet in the Iberian peninsula too, laws varied among the old kingdoms that formed the nation of Spain, but the laws of Castile applied in the Indies and

36. JAMES G. CUSICK, *THE OTHER WAR OF 1812: THE PATRIOT WAR AND THE AMERICAN INVASION OF SPANISH EAST FLORIDAS* 305-06 (2003).

37. Richard J. Ross, *Legal Communications and Imperial Governance: British North America and Spanish America Compared*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA, EARLY AMERICA (1580-1815)* 104-42, quote at 142 (Michael Grossberg & Christopher Tomlins eds., 2008).

offered, at least ideally, a consistency throughout the colonies.³⁸ The acquisition of the Floridas by the United States would seem to be a more peaceful action that would result in a more considered treaty than the treaties of 1763 and 1783, which were the products of post-war negotiations. Yet the U.S. Government seemed surprisingly unprepared to review land claims although Florida was not the first territory to be transferred to the United States.

Perhaps Spain did the most to compensate its Florida evacuees, but doing so was a happenstance. The return of Spain to the Florida peninsula after the War of the American Revolution offered the possibility for Spain to make good on compensation for the losses arising from the 1763 evacuation with the very land abandoned two decades before. Compensation by restoring property ownership from 1763 took place after more than two decades and even then not quickly; the beneficiaries were the children or even grandchildren of the “owners” of 1763. Spanish Florida officials, no doubt, preferred restoration of lands to cash compensation, for the former made no demand on the funds in the Spanish colonial treasury.

Incoming governments looked as well to resolve property ownership issues so that the respective government could discern what land was available for granting to individuals or for use by the government itself. Great Britain’s Board of Trade was eager to turn East Florida into a “plantation” and granted large tracts to (usually absentee) investors.³⁹ Later, when the United States took possession of the Floridas in 1821, the demand for live oak for building ships pressured the U.S. Government to move quickly to resolve the ownership of timber stands so the U.S. Navy could exploit timber lands that were without valid claims as soon as possible. But the U.S. Navy began cutting timber or contracting for timber on land it viewed as “public” before the claims process was begun.⁴⁰ Once again claims of private citizens were subordinated to the needs of the sovereign nation and the private citizens were holdover residents of the departed regime, their reluctant or undeveloped loyalty to the new sovereign making them expendable.

38. MARYLYNN SALMON, *WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA* 1157 (1986); JOSÉ MARÍA OTS Y CAPDEQUÍ, *MANUAL DE HISTORIA DEL DERECHO ESPAÑOL EN LAS INDIAS Y DEL DERECHO PROPIAMENTE INDIANO* 112-77 (1945).

39. Schafer, *supra* note 13, ch. 3.

40. Letter from Louis McLane to the Secretary of the Navy, Washington D.C. (Mar. 1, 1822), *in* 22 *TERRITORIAL PAPERS*, *supra* note 27, at 370; Letter from Worthington to U.S. Marshall James G. Forbes, St. Augustine (Mar. 5, 1822), *in* 22 *TERRITORIAL PAPERS*, *supra* note 27, at 375-76; Letter from John H. Elton, U.S.N. to Secretary of the Navy, U.S. Brig *Spark* at Sea (May 16, 1822), *in* 22 *TERRITORIAL PAPERS*, *supra* note 27, at 430-42.

Departing nations were reticent to compensate and equivocated about doing so. Arriving nations dawdled and did not follow through quickly on commitments to “the conquered.” The U.S. Congress tried to renege on its treaty commitment to compensate for Patriot War damages.⁴¹

All three sovereign governments—Great Britain, Spain, and the United States—followed some sort of a delaying strategy, hoping holdover claimants would weary of the delays and move out of Florida. Their departure would open up lands and lots to the subjects/citizens of the now occupying nation and would encourage immigration of the supposedly like-minded into Florida.

41. SIEBERT, *supra* note 14, at viii; CUSICK, *supra* note 36, at 305.