"The Most Solemn Act of My Life": Family, Property, Will, and Trust in the Antebellum South

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ABSTRACT

"The Most Solemn Act of My Life" combines an empirical study of probate in Greene County, Alabama, one of the wealthiest counties in the United States in the years leading into Civil War, with a qualitative examination of property doctrine and ideology at that time. The data address three key themes in recent trusts and estates literature. First, what testators did with their extraordinary wealth; in particular, how they worked to maintain property within their families—and especially how male testators were suspicious of loss of their families' wealth through their daughters' marriages. Second, how testators used sophisticated trust mechanisms for both managing property and keeping it within their families. In the antebellum period, Americans celebrated the ways they harnessed technologies, from the steam engine to the telegraph to the printing press, to create wealth and improve society. This study reveals that trusts should be added to that list of technologies that assisted in the creation and management of wealth. Finally, the data reveal the salience of enslaved human property—often managed through trusts after their owners died and also frequently divided between family members—to the maintenance of family wealth. While some in the United States at the time—including some jurists as well as politicians and novelists—questioned the desirability to our country of inheritance, the Greene County data show an extraordinary devotion to maintenance of family wealth. The findings in "The Most Solemn Act of My Life" invite further study in other Southern counties, as well as Northern, to gauge the extent to which wealth (particularly a wealth based on

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The descendants of those people still live there and some of the houses they lived in are still there. They were spared the torch during the Civil War because Greene County is so much at the heart of the South that the war was just about over by the time United States soldiers reached it in 1865. They hurried past it toward Selma and one of the last battles of the Civil War. So, too, some of the records of that wealth were spared. Thus, in the courthouse at Eutaw, along the town square where business has been conducted for nearly two centuries, lie the records of the transmission of wealth at death. This is the story of some of those records, the stories they record, and what those stories in turn tell us about families and wealth in the Old South.3

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In the years leading into Civil War, many in the United States spoke of the virtues of property. The power of property, many believed, brought civilization and commerce in its wake. But at the same time, others expressed skepticism about the concentration of wealth, particularly in corporations and in trusts. Thus, the Jacksonian era saw conflict over visions of property, of corporations, and of inherited wealth. Whigs like Chancellor James Kent and Joseph Story worried when Democrats like Chief Justice Roger B. Taney narrowly interpreted corporations' rights under public charters.4 Such conflicts appeared throughout the state courts as well. The

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4. See, e.g., Ackerman v. Sull., 26 Va. (5 Rand.) 446, 452 (1827) (“A sacred right of the respect of property is the foundation of all law and civilization; and the smallest scintilla of right ought not to be invaded.”). The recognition of property rights was also a sign of civilization. See, e.g., Ts. of McIntire Poor Sch. v. Zanesville Canal & Mfg. Co., 9 Ohio 203, 287 (1838) (“[O]f the earliest elements of every social community upon its lawgivers, at the dawn of its civilization, is adequate protection to its property and institutions which subsist its public uses, or are devoted to its elevation, or consecrated to its religious culture, and its establishments...”). The free alienability of property was another sign of civilization. See, e.g., Carder v. McDermott, 12 Tex. 546, 549 (1854) (“[W]herever restrictions of any rigor, from considerations of policy, well or ill-founded, have been imposed on alienation, history reveals the fact of incessant struggles against the thralldom. And the success of these efforts appears to have been commensurate with the advancement of civilization, and of more just and enlightened views relative to the true uses of property as subservient to the multiplied wants of refined social life.”).
5. See ‘Ts. of Davidson Coll. v. Chambers’ Ex’ns, 56 N.C. (3 Jones Eq.) 256, 266 (1857) (expressing concern in English law about concentration of wealth in hands of religious institutions and in the declining availability of that land for productive purposes); see also Gallego’s Ex’ns v. Attorney Gen., 30 Va. (3 Leigh) 430, 478 (Va. 1832) (resting law’s suspicion of charitable corporations on the fear of accumulation of property).
antebellum era was a time of change in wealth transmission for three reasons. First, some states had only recently departed from a regime of leasing property to the eldest male child and permitting the entail of property; second, the Married Woman’s Property Acts, beginning in the 1830s, allowed women increased power over the control and use of property; third, the increasing use of personal rather than real property, such as stock in corporations and bank notes, allowed greater flexibility in the distribution of property to family members. This study of testamentary devises in a Black Belt county in Alabama—the name given to the counties where the black, rich soil supported the huge plantations for which the Old South is remembered—allows a partial measurement of how wealth was preserved within families and how the process of transmission worked across generations. It is motivated by demographic questions about the probate process: what proportions of men and women used it, and what was their status within the family? It is also motivated by questions about the use those people made of the probate process. In what circumstances did people leave property to their spouses, children, siblings, or charities? What kind of property did they leave and when did they employ trusts? How were wills and trusts used to keep property within families? This is an attempt to capture a picture of the transmission of wealth in one of the wealthiest counties in the United States in the years leading into Civil War.

Others have studied such questions for the Colonial Era in Massachusetts, New Jersey, and Pennsylvania and for certain areas of the

7. See, e.g., Shriver v. Smith, 9 Ga. 517 (1851) (narrowly construing a public charter to a bridge company); McLeod v. Savannah, Albany & Gulf R.R. Co., 25 Ga. 449 (1858) (narrowly construing charter to a bridge company against a competing bridge-builder).

South, especially for African-Americans in the South in the years after the Civil War. However, Alabama’s planters have escaped that same level of scrutiny. In looking to Greene County in the 1830s and 1840s, we hope to add additional light to the interaction between legal processes and planters’ ideas and behaviors and to spur further investigation of such questions by suggesting ways that legal doctrine and local records can be used in conjunction to piece together a comprehensive picture of the probate process in the Old South. This study, then, seeks to join social history of the probate process with its legal history and, thus, illuminate the ways that the legal technology of the will was responding to testators’ desires to keep property within their families and carry out their wishes.

This study, then, seeks to answer several sets of related questions. First, basic ones about how wills and trusts were used to transfer wealth between generations and preserve wealth within families. That data, in turn, reveals the centrality of the family but also divisions between testators about the appropriate distribution of property within their families. It exposes the antebellum period as a time of extraordinary wealth and asks questions about the ways of distributing that wealth. How was property distributed? How did trusts function to maintain control and assist family members? How did testators treat children, spouses, siblings, and enslaved people whom they owned? It reveals the ways that the legal system was used to achieve the desires of those with property as well as what those desires were. This is particularly important because in the years leading up to the Civil War, our country was in transition towards a robust market economy.

I. INHERITANCE IN THE ANTEBELLUM MIND

Wills and inherited wealth loomed large in the minds of antebellum Americans. Those ideas appeared in the fictional literature that revolved around conflicts over wills and the fear that Americans felt about losing their inheritance or never receiving one in the first place. They also appeared in the debates Americans had about inheritance and about concentrations of wealth such as the anti-rent movement in upstate New York and the conflict over how courts should treat charitable trusts. Judges’ conflicts about the treatment of trusts to free blacks revealed particularly strong disjunctures in thought about property, inheritance, and the state’s interest in limiting the pernicious use of property.

A. Fictional Literature

Fictional literature, from the leaders of the American Renaissance like Edgar Allan Poe and Nathaniel Hawthorne to obscure figures like Nathaniel Beverley Tucker and Carolyn Hentz, frequently dealt with the conflicts engendered by wills. Catharine Maria Sedgwick’s 1830 novel Clarence, for instance, revolved around an elderly man’s will that left property to his long-lost son. The son’s family spent so much time fighting for the inheritance that one of their children died from neglect.

Edgar Allan Poe’s short story The Domain of Arnheim tells of a beautiful garden in an otherwise barren land. The domain was built by Seabright Ellison using a fortune (of 450 million dollars) left to him by a remote ancestor, who had devised his fortune to his nearest living heir 100 years after his death. Poe noted the efforts that had been made to defeat the devise (and though they were ineffective, the state legislature prevented similar devises by statute). No one could even begin to conceive of how to spend that fortune, which would generate more than a million dollars a month in income. So Ellison set about:

solving what has always seemed to [Poe] an enigma . . . that no such combination of scenery exists in nature as the painter of genius may produce. No such paradies are to be found in reality as have glowed on the canvas of Claude. In the most enchanting of natural landscapes, there will always be found a defect or an excess—many excesses and defects. While the component parts may defy, individually, the highest skill of the artist, the arrangement of these parts will always be susceptible of improvement. In short, no position can be attained on the wide surface of the natural earth, from which an artistical eye, looking steadily, will not find matter of offence in what is termed the “composition” of the landscape.

The domain was made to look like nature, but it was artificial. Poe shows the ways that humans might try to create the sublime, in landscape, as in literature.

What is perhaps most exciting about the Domain of Arnheim is that it is based on the 1799 English case of Thellung vs. Woodford. The testator, Peter Thellung, left a fortune of £600,000 to the eldest male lineal descendant who was alive immediately after the death of all the testator’s issue living at the time of the testator’s death. In essence, the testator wanted to disinherit all of his living relatives and leave the money to a remote descendant—a person he had never met and could not meet. Moreover, “the money was to accumulate while it was waiting for the remote descendant to become eligible to take the estate.” That led to Parliament’s passage in 1800 of the Thellung Act, which limited the accumulations that were permissible. Thus, Poe’s short story was motivated by a case that itself was an important part of the emerging law that limited inherited wealth. A short story about the ways that humans tried to improve upon nature was motivated by a legal controversy that itself was about the struggle to limit inherited wealth.

And in Tuscaloosa, there was Caroline Hentz, who ran the female seminary in town. Her short story in Magnolia Leaves is about the Harrington family, who lost their inheritance. The family was left only the remnants of their estate, which had a huge elm tree in front of it. When the estate was purchased by a newly wealthy merchant, he cut the tree down as a sign of his dominion over the land. Years later, through hard work, the son of the family became a successful lawyer and was elected to Congress. He then married the daughter of the merchant and, in that way,
reclaimed some of his family’s estate. It was a moment of reclamation through work and through family. As Americans struggled in the early national period with the uncertain economy and with carving out an existence from the wilderness, they wondered what their inheritance might be. What was left them as a people by their ancestors and what was left them as individuals by their parents and grandparents?

Such a theme, of maintaining property within the family, appeared in postbellum literature as well. In Henry James’s *Washington Square*, a father desired to protect his family’s property from his daughter’s penniless suitor, in part, through a plan to leave her without an inheritance. And, in fact, he did not leave her much money; the daughter never married. None of the wills in Greene County illustrated the short-sightedness of the father in *Washington Square*, Dr. Austin Sloper. Whether the families were prone to such self-destructive behavior that appeared in literature is a subject worth attention.

Some inheritances were left to the nation as a whole. Justice Joseph Story, speaking to the Harvard Phi Beta Kappa Society in 1826 spoke of the inheritance offered to all Americans:

> What shall we say of this nation, which has in fifty years quadrupled its population, and spread itself from the Atlantic to the Rocky mountains, not by the desolations of successful war, but by the triumphant march of industry and enterprise? She has risen, as it were, from the depths of the ocean, where she had been buried for ages. Her shores no longer murmur with the hoarse surges of her unavenged waters, or echo the jealous footsteps of her armed oppressors. Her forests and her table lands, her mountains and her valleys, gladden with the voices of the free.

She welcomes to her ports the whitening sails of commerce. She feels that the treasures of her mines, the broad expanse of her rivers, the beauty of her lakes, the grandeur of her scenery, the products of her fertile and inexhaustible soil, are no longer the close domain of a distant sovereign, but the free inheritance of her own children.

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30. Id. at 246.
31. Id. at 237 ("We have a property in those trees—they are a part of our inheritance—and we would mourn for the stroke that defaced or maimed them, as a personal injury to ourselves. We felt enriched every time we gazed upon them, and pity the poor being who can pass them without a glowing tribute of praise and admiration.")
32. HENRY JAMES, *WASHINGTON SQUARE* (Harper & Bros. 1901).
33. Id. at 249–50.
34. Joseph Story, Characteristics of the Age: A Discourse at Cambridge, Before the Phi Beta Kappa Society of Harvard University, on the Thirty-First of August 1826, in 2 AMERICAN Eloquence: A Collection of Speeches and Addresses by the Most Eminent Orators of the

More commonly, antebellum Americans thought of inheritances that descended within families. Nathaniel Beverley Tucker’s 1836 novel *George Balcombe* revolved around a lost will and the efforts to reclaim that will and the inheritance that was left to the young Balcombe. It was a case where the reclamation of the family’s inheritance would permit the family’s members to lead a decent life.

For many in antebellum America, inheritance was in tension with equality. It became, in part, a question of vested rights against labor. For whether one acquired money through work was in tension with those who inherited a fortune. That tension appeared in other places as well including James Fenimore Cooper’s trilogy on the New York anti-rent movement. Published in the 1840s, the trilogy—particularly *Redskins*, the culmination of the trilogy—focused on the conflict between inherited wealth and those more numerous crowds who would use legislation, court suits, and ultimately violence to take away an inheritance. In *Redburn*, Herman Mel-
ville described the process of dividing tobacco among sailors as the fairest system that could be imagined. He then recommended it to those dividing an estate:

Their mode of dividing this tobacco was the rather curious one generally adopted by sailors, when the highest possible degree of impartiality is desirable. I will describe it, recommending its earnest consideration to all heirs, who may hereafter divide an inheritance; for if they adopted this nautical method, that universally slanderous aphorism of Lavater would be forever rendered nugatory—"Expect not to understand any man till you have divided with him an inheritance." 38

Melville also used inheritance in the broader political sense in White Jacket:

[W]e Americans are the peculiar, chosen people—the Israel of our time; we bear the ark of the liberties of the world. Seventy years ago we escaped from thrall; and, besides our first birthright—embracing one continent of earth—God has given to us, for a future inheritance, the broad domains of the political pagans, that shall yet come and lie down under the shade of our ark, without bloody hands being lifted. God has predestined mankind expects, great things from our race; and great things we feel in our souls. 39

This was a picture that James Madison predicted around the framing of the Constitution when he warned about the conflict between the factions of the property holders and the propertyless. 40 The fictional literature cast light at oblique angles on Americans' ideas about the probate process.

B. Political Thought on Inheritance

Some of the leading changes in law at the time of the Revolution were the abolition of entail and primogeniture for intestate estates. 41 These changes, so seemingly small to us (particularly in light of the fact that the entail could be docked and primogeniture could be avoided by the use of a will), captured the attention of antebellum Americans. They believed it was the inheritance law that accounted for much of the United States' distinctive character. Daniel Webster's 1820 address at Plymouth provides one example. Through the elimination of the rule of primogeniture for intestate estates and the discouragement of entail, Webster saw our legal system as encouraging wide distribution of property:

The character of their political institutions was determined by the fundamental laws respecting property. The laws rendered estates divisible among sons and daughters. The right of primogeniture, at first limited and curtailed, was afterwards abolished. The property was all freehold. The entailment of estates, long trusts, and the other processes for fettering and tying up inheritances, were not applicable to the condition of society, and seldom made use of. On the contrary, alienation of the land was every way facilitated, even to the subjecting of it to every species of debt. The establishment of public registries, and the simplicity of our forms of conveyance, have greatly facilitated the change of real estate from one proprietor to another. The consequence of all these causes has been a great subdivision of the soil, and a great equality of condition; the true basis, most certainly, of a popular government. 42

Webster saw in the United States' equitable division of property the keys to our country's stability and progress. "If the people," says Harrington, 'hold three parts in four of the territory, it is plain there can neither be any single person nor nobility able to dispute the government with them; in

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38. HERMAN MELVILLE, REDBURN: HIS FIRST VOYAGE 340 (Boston, St. Botolph Soc'y 1924) (1850).
40. James Madison, Property, Nat'l Gazette, Mar. 19, 1792, reprinted in WRITINGS: JAMES MADISON 515, 515 (Jack N. Rakove ed., Library of Am. 1999) ("Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions. Where there is an excess of liberty, the effect is the same, tho' from an opposite cause.").
this case, therefore, except force be interposed, they govern themselves." Webster saw these lessons confirmed in English history:

It has been estimated, if I mistake not, that about the time of Henry the Seventh four fifths of the land in England was held by the great barons and ecclesiastics. The effects of a growing commerce soon afterwards began to break in on this state of things, and before the Revolution, in 1668, a vast change had been wrought. It may be thought probable, that, for the last half-century, the process of subdivision in England has been retarded, if not reversed; that the great weight of taxation has compelled many of the lesser freeholders to dispose of their estates, and to seek employment in the army and navy, in the professions of civil life, in commerce, or in the colonies. The effect of this on the British constitution cannot but be most unfavorable. A few large estates grow larger; but the number of those who have no estates also increases; and there may be danger, lest the inequality of property become so great, that those who possess it may be dispossessed by force; in other words, that the government may be overthrown. 44

Judges were increasingly accommodating of increases in concentration of wealth via trusts. As recently as 1820, Chief Justice Marshall struck down a bequest to the Philadelphia Baptist Association for the establishment of a seminary, on technical grounds that seemed grounded in fear of the concentration of wealth in religious societies. 45 But by 1844 in Vidal v. Girard's Executors, popularly known as the Girard College case, Justice Joseph Story upheld a trust in favor of a school for orphans in the face of precedent that was skeptical of charitable devises. 46 As personal property—particularly in the form of shares of corporations—grew, the use of trusts and the sophistications of trust law also grew.

Indeed, there was frequent invocation of the language of inheritance when speaking of Americans' political rights. Virginia lawyer Jesse Harrison wrote in 1832 in the wake of a debate in the Virginia legislature about what to do about slavery. Though the proslavery side had prevailed, the antislavery Harrison was still struggling against growing proslavery sentiments. The young Harrison, educated at Hampden Sydney College and Harvard Law School, 47 wanted to impress "the exceeding desirableness and the urgent necessity of doing something promptly." For if slavery was not curbed soon, future generations would have to deal with it. He looked forward to the time when the current generation thought it best to do something and when the current generation thought it their "duty to the posterity who are to inherit the "fee simple’ of Virginia" to do something to end slavery. 48

Of course legal literature soundly supported the right of testators to dispose of their property. Nathaniel Chipman’s 1833 treatise, Principles of Government, for instance, found the right of testation was a natural right. 49 Turning now to the evidence from Greene County at the high point of the Old South’s economy allows us to take a picture of the ways that wealth was transmitted and to capture what affluent testators did with their property.

II. PROBATE PROCESS AND GREENE COUNTY, ALABAMA, 1831–1845

While some write about curtailing inherited wealth today, 50 and some did so as well in the nineteenth century, 51 those in the Old South held more positive attitudes towards inherited wealth, for the Old South was a place where family and tradition and wealth mattered, as generations of historians have taught us. 52 The law, unsurprisingly, recognized and respected these traditions. When the North Carolina Supreme Court faced a novel question about distribution of real property to remote kin in 1854 via intestacy, it acknowledged the centrality of feelings of affection for family members. 53 Such feelings of kinship, whether expressed in a state’s intes-

43. Id.
44. Id. at 44. Supreme Court Justice Joseph Story told a similar story in his 1826 address to the Harvard Phi Beta Kappa Society. See Story, supra note 34.
47. Michael O'Brien, All Clever Men, Who Make Their Way: Critical Discourse in...
tacy law or in wills left by individuals, were central to American culture. This is likely particularly true in a place like affluent Greene County, a stronghold for Whig politics, which emphasized commercial interests.55

A. Intestacy and Testacy in Alabama, 1830–1845

One baseline against which we may judge the testamentary devies in Greene County is Alabama’s intestate regime. During the period of this study, 1831 to 1845, Alabama provided a surviving widow with a one-third share of the deceased husband’s estate, if there were surviving children. The remainder of the estate was distributed in equal shares to the surviving children.56

If, however, a decedent left a will, the formalities of execution varied depending on whether the testator gave personal or real property. For personal property, neither witness nor testator signatures were required, rather, the will had to be in the handwriting of the testator if written or “made in the [testator’s] last sickness” if oral, or nuncupative.57 The re-
it is a principle founded on natural feeling, that upon the death of the owner, without making a disposition of it, his estate shall belong to his “next of kin.” It is also a principle, which, although subservient to the former, is likewise founded on natural feeling, that one should not be excluded from a share of the estate of his deceased kinsman, if by represent-
ing an ancestor he can bring himself up to an equality with those who are the “next of kin.” Upon these two general principles the distribution of estates, both real and personal, is based as the “corner stones.”

55. See Thornton, supra note 1, at 41 (drawing upon data in Report of the Commissioner of Public Accounts on the Subject of Taxation 13–21 (Montgomery, McCormick & Walsie, 1830) for evidence of Greene County’s contribution to banks, a key indicator of their commercial orientation); Lawrence F. Kohl, The Politics of Individualism: Parties and the American Character in the Jacksonian Era 63–99 (1989) (discussing Whig ideology).

Additional evidence of Greene County’s slaveholding is also available. See Kimbrell R. Jacobson, Images of America: Greene County and Mesopotamia Cemetery (2007); Clay Lancaster, Buttaw: The Builders and Architecture of an Antebellum Southern Town (1987); Lee Wayne Ralke, Residential Furnishings of Deceased Greene County, Alabama Slave Owners: 1845–1860 (1992) (mining probate inventories for evidence of material lives of Greene County slaveholders); Harold D. Woodman, Slavery and the Southern Economy (1966) (employing tax records from Greene County). Some of the intelle-
tual culture of Greene County appears in various sources as well. See, e.g., Joseph W. Taylor, Henry Clay, His Life, Character and Services: An Oration Delivered Before a Meeting of the Citizens of Greene County, Alabama, At Buttaw, July 31st, 1852 (1852). On point is the 1846 Greene County will of Michael W. Fitzgerald, Extraditional Violence and the Planter Class. The Ku Klux Klan in the Alabama Black Belt During Reconstruction, in Local Matters: Race, Crime, and Justice in the Nineteenth Century South 155 (Christopher Waldrep & Donald G. Nieman eds. 2001).

56. John A. Cuthbert, Compendium of the Law of Executors, Administrators, Guardians and Dower, in Force in Alabama 2–4 (Mobile, Thomas J. Carter & Co. 1850). As to the sickness requirement, it “must have been made at the habitation of the deceased, or where he had resided ten days or more, next preceding the making of the will; unless he was taken sick abroad, and died before his return home.” Id. at 4.

57. Id. at 4.

58. “The Most Solemn Act of My Life” 771

quirements for real property were identical to those in the state’s statute of
frauds, but with a slight difference to the witnesses requirement. While three witnesses were necessary, as required by the statute of frauds, they also had to sign in the testator’s presence.58

Rules of construction were also well developed. Of special importance was the testator’s intent. If necessary, courts were afforded the liberty to “transpose[ ], supple[y], or reject[ ]” “words and limitations.”59 For example, an “or” and an “and” were interchangeable, and an “if” could replace a “when.”60 But as a general rule, mistakes could not be cor-
rected, unless the mistake was clear upon looking at the will alone or the mistake concerned the legatee’s name and “there [was] no reasonable doubt as to the person intended.”61

Lastly, Alabama’s probate laws regarding the property rights of the surviving spouse were unique. Prior to 1847, a widow’s dower right was one-half of her deceased husband’s estate if there were no children or one
child, an equal division if there were two to four children, and one-fifth if there were five or more children.62 This illustrates the property rights—
limited though they might be—that married women retained.63 Exceptions were provided in the case of subsequent marriages. Recognizing the likeli-
hood of blended families and of premartial arrangements regarding prop-
erty, a woman could make a will “in pursuance of an agreement before marriage.”64

B. Wills in Greene County, 1831–1845

The probated wills under study here come from Greene County, Alabama in two periods: 1831 to 1835 and 1841 to 1845. By focusing on these documents, which were executed and probated prior to the Civil War, one can examine the practice of wealth transmission, particularly wealth in humans, from the vantage of the testator. The disposition of such persons was central to a majority of wills. Additionally, testamentary patterns found in these wills illustrate practices that were becoming commonplace.

58. Id.
59. Id. at 8.
60. Id.
61. Id.
62. Id.
1983) (Chaudle’s empirical work on Massachusetts wills, over a longer period of time than studied in Greene County here, shows a dramatic increase in property left to women over the first half of the nineteenth century. See Richard H. Caudle, Married Women’s Property and Inheritance by Widows in Massachusetts: A Study of Wills Probated Between 1800 and 1850, 2 Berkeley Women’s L.J. 42
1966).
64. Cuthbert, supra note 56, at 2.
For example, the declining use of favored distribution\textsuperscript{65} and the creation of trusts to convey and manage property appear among the wills.

1. The Setting: Greene County, Alabama

Bearing the name of Revolutionary War General Nathaniel Greene, Greene County was formed by the first Alabama legislature on December 13, 1819,\textsuperscript{66} more than ten years prior to the earliest will of this study. Its boundaries were wider prior to 1867 than they are now. It was in 1867 that the county was divided and “all of the county lying east of the Black Warrior River” became Hale County.\textsuperscript{67} Such abundant acreage, which then included the booming town of Greensboro, became valuable territory for those first inhabitants. Its early settlers, arriving from Virginia and Connecticut, as well as Nova Scotia, Ireland, and Germany, “all came to make their fortunes.”\textsuperscript{68} Some of the stories about the county’s settlement draw upon romantic imagery associated with the moonlight and magnolia school. University of Alabama English Professor Carl Carmer’s 1934 book *Stars Fell Upon Alabama*, for instance, tells of the settlement of Greene County in the 1820s. In writing about the Greene County plantation Thornhill, Carmer wrote of its history:

James Innis Thornton was the name of the gallant Revolutionary soldier from Fall Hill Plantation in Fredericksburg, Virginia, who, riding through Alabama on the staff of the escort to General Lafayette in 1825, resolved to build a home there. He purchased the land for it when he returned to Alabama, four thousand acres of the fertile valley that lies between the forks of the Tombigbee and Warrior rivers. And he brought with him six other young men, his friends from around Fredericksburg, all with their brides; and every family built a house on a hill—so that each hill of a curving chain was crowned with a Virginia home. They made a long gay caravan, traveling southward from the Old Dominion, the gentlemen riding beside their wives’ carriages, behind them the mounted overseers bringing on the wagon train filled with household goods and farming tools and slaves.\textsuperscript{69}

“The land that attracted them was known as the Case Brake, in Alabama’s Black Belt and bordered roughly on the east and west by the Cahaba and Black Warrior Rivers.”\textsuperscript{70} The “Black Belt” was the name given to that section of Alabama where the rich, black soil led to extensive cultivation during the antebellum period.\textsuperscript{71} It is also, not coincidentally, the section where slavery flourished the most.\textsuperscript{72} The Case Brake was named for the cane (or bamboo) that grew along the rivers and creeks of that area.\textsuperscript{73} The extensive growth of such plants was the result of soil from “the richest part of the Black Belt,” leading many to believe that such was “the best soil in the South, ideally suited for growing cotton.”\textsuperscript{74}

And cotton certainly became central to the Greene County economy during its early years, with its farmers producing approximately 8,000 bales by 1840 and almost 58,000 by 1860.\textsuperscript{75} In fact, Greene had the third or fourth highest production rate in the state during this period.\textsuperscript{76} Cotton, however, was not the only crop bringing riches to the plantation owners. Through enslaved labor, the plush Canebrake region produced 520,000 bushels of corn in 1840, as well as peaches, sweet potatoes, oats, rye, and wheat.\textsuperscript{77} Not surprisingly, Greene had the most “land in production” amongst all the counties of the state and “had nearly as much improved land as unimproved, a percentage exceeded by only two other Alabama counties during the antebellum era.”\textsuperscript{78} The implications of the agricultural industry were also evidenced in a number of the wills sampled. Many testators, mindful of their debts at death, requested their executors to sell their crops after their decease and use the proceeds to pay off creditors, with the remainder benefitting surviving family members.

Also essential to Greene County during this era was its population and coerced labor force. The desire for land and increasing commerce inevitably resulted in a rising population, from 4,500 total residents in 1820 to

\textsuperscript{65} C. CARL CARMER, STARS FELL ON ALABAMA 94 (1934) (others spell Thornton’s middle name “Innis”). Carmer continued: “These young gallants had known General Washington. Thornton, indeed, was the great man’s cousin. They had seen Mount Vernon and Kenmore and the other famous early American houses and they intended to build as well. If Thorn Hill may be a criterion, they succeeded.”
\textsuperscript{66} See Shamma, supra note 9, at 66–67 (noting that the English system of primogeniture, which provided “[p]refential treatment [for] eldest sons and male heirs,” was largely abandoned in America by 1800).
\textsuperscript{67} THOMAS M. OWEN, HISTORY OF ALABAMA AND DICTIONARY OF ALABAMA BIOGRAPHY 669 (1921). Sneedecor’s Map of Greene County, Alabama is available on the Internet at http://alabamamaps.una.edu/historical/maps/counties/greene/greene.html
\textsuperscript{68} G. WARD HUBBS, GUARDING GREENSBORO: A CONFEDERATE COMPANY IN THE MAKING OF SOUTHERN COMMUNITY 7 (2003).
\textsuperscript{69} Id. at 8–9.
\textsuperscript{70} Id. at 13.
\textsuperscript{71} Id. at 8–9.
\textsuperscript{72} Id. at 9–10.
\textsuperscript{73} Id. at 9–10.
\textsuperscript{74} Id. at 9–10.
\textsuperscript{75} Id. at 9–10.
\textsuperscript{76} Id. at 9–10.
\textsuperscript{77} Id. at 9–10.
\textsuperscript{78} Id. at 9–10.
15,000 total residents in 1830, making Greene the “second most populous county” in the state.79 By 1840, the county had grown to approximately 24,000 residents.80 In 1820, the population of African-Americans was 1,693.81 By 1840, however, the African-American population was more than double that of the white population: 16,468 compared to 7,556.82 Such numbers are significant, though not surprising, considering the large number of testators who, at death, offered up their enslaved human property for hire or bequeathed them to surviving family members.

2. The Methodology

Drawing upon the methodology of Lawrence Friedman, Christopher Walker, and Ben Hernandez-Stern in a study of wills in San Bernardino County, California, this study mines wills for data about the probate system.83 We analyze 110 wills from Greene County, which are found at the courthouse in Eutaw.84 Every complete and readable will that appeared in the county will books from two five-year periods—1831 to 1835 and 1841 to 1845—was employed in the study. Because the will books are organized according to when the wills were probated rather than when they were written, we analyzed wills probated from 1831 through 1835 and 1841 through 1845. Thus, a will that was executed in 1836 and probated in 1842 would be included in the study. There are additional probate records, largely inventories of estate, for some of the wills. A small number of the inventories of estate were sampled; however, the primary focus of this study is the expression of testators’ wishes in the probated wills, rather than the probate procedure itself.

After we identified the 110 usable wills probated from 1831 through 1835 and 1841 through 1845, we summarized each will, taking account of several key elements, including the personal and real property that was disposed of, the presence (or lack) of a familial relationship between the testator and each beneficiary, preferences between heirs, the use of trusts, and other peculiar conditions and conveyances. Aggregate census data from both 1830 and 1840 were also employed, primarily to get a general idea of how the testators examined in this study fared with the rest of the general population in terms of wealth, gender, marital status, the number of family members within each household, and the number of persons owned by the testator. The results were tabulated and contrasted with records of probate that may have accompanied the wills and Alabama appellate court opinions that involved those wills. While these additional sources helped to establish the context of each will, what appeared within the four corners of the will was central to this study.

III. PATTERNS OF TESTATION, GREENE COUNTY, ALABAMA, 1831–1845

Those who used the testate process in antebellum Greene County were affluent and they became more so in the period after 1840. They used wills primarily to distribute property to their spouses and children, and some of them used sophisticated trusts to provide for the support and education of their spouses and issue.

A. Who Were the Testators?

Wills, like many other parts of the law, were predominantly the domain of men in the antebellum era. Of the thirty-one testators studied from 1831 to 1835, 83.9% (N=26) were men; the remaining 16.1% (N=5) were women.85 Of the seventy-nine testators studied from 1841 to 1845, 86.1% (N=68) were men; the remaining 13.9% (N=11) were women.86

This gender imbalance is in keeping with other studies of testators around the same time. Carole Shammas reported that 5.6% of the testators were female in Bucks County, Pennsylvania from 1791 to 1801.87 Lawrence Friedman found that female testators comprised 3.3% of the wills in 1850 Essex County, New Jersey, while that figure increased to 21.6% in 1875.88 T.P. Schwartz’s study of Providence, Rhode Island wills revealed that 19% of testators from 1775 to 1790 were women.89

Wills were also the domain of the wealthy. Of the twenty-six male testators from 1831–1835, 92.3% (N=24) included at least one slave in their bequests.90 A majority of female testators in that period (60%, N=3) also

79. Id. at 12.
80. Owen, supra note 66, at 670.
81. Id.
82. Id.
83. Lawrence M. Friedman, et al., The Inheritance Process in San Bernardino County, California, 1964: A Research Note, 43 Hous. L. Rev. 1445 (2007). Jason Kirklin has also recently employed these methods. See Jason C. Kirklin, Measuring the Testator: An Empirical Study of Probate in Jacksonian America, 72 Ohio St. L. Rev. 479 (2011). See also Kristine S. Knaplund, The Revolution of Women’s Rights in Inheritance, 19 Hastings Women’s L.J. 3 (2008). Frances Foster criticizes the focus on family that is so apparent in contemporary intestacy statutes. See Frances Foster, The Family Paradigm of Inheritance Law, 80 N.C. L. Rev. 159 (2001). However, the Greene County wills studied here show an even stronger proclivity towards protection of wealth within blood lines than the intestacy statutes.
84. Prior to 1838, Greene’s county seat was at Erie, a town along the Black Warrior River now abandoned. Hubbs, supra note 68, at 11. The place where Erie was located is now in Hale County, near Greensboro.
85. See infra Table 1.
86. See infra Table 1.
87. Shammas, supra note 9, at 16.
88. Friedman, Patterns of Testation, supra note 12, at 36.
90. See infra Table 2.
included at least one slave in their bequests. Of the sixty-eight male testators from 1841–1845, 75% (N=51) mentioned at least one slave in their bequests; again a majority of females in the period 1841–1845 (72.7%, N=8) mentioned at least one slave in their bequests. Overall, nearly four of five wills (78.1%, N=86) of the complete sample of 110 mentioned at least one slave in their bequests. As one would expect from such a wealthy county, slave-owners predominated among Greene County testators.

One can bring further precision to studying the wealth of the testators by matching them with census records. Of the 110 testators in this study, ninety-two (83.6%) were located in either the 1830 or 1840 census. Obviuously, testators who died in the 1831–1835 period could only appear in the 1830 census. For those who died in the 1841–1845 period, they were searched for first in the 1840 census. If no match could be made for them in the 1840 census, then they were searched for in the 1830 census. Two additional testators were located in this way.

The census records, which record the number of slaves a person owned, help fill out the picture of the wealth of the Greene County testators. Of the thirty-one testators in the 1831–1835 period, twenty-seven were located in the 1830 census. Of those slave-owning testators, twenty-four were men and three were women. Two of those testators—both male—owned at least twenty people. The testators from the second period, 1841–1845, were similarly affluent. Of the seventy-nine testators in the second group, sixty-five were located in the 1840 or 1830 census. Of those sixty-five people, fifty-nine testators (90%) owned at least one person. Among the slave-owners, there was even more human wealth than in the 1831–1835 group. Eight of the fifty-nine testators (13.6%) owned more than twenty people; one of those owners was a woman.

B. What Did Testators Do With Their Wealth?

Those testators chose, by and large, to leave their wealth to their families. This is in keeping with our hypothesis that in the Old South, where

family was particularly important, testators would leave property primarily to their close family members. What seems particularly important—although the exact importance must await comparative studies with testators in northern and western states—is the extent to which married testators limited the power of their widows to control or access property if they remarried.

1. Married Testators

Among those who had spouses, all the testators were male and all except one left at least something to their surviving spouses. In the period 1831–1835, eighteen of the thirty-one testators were married. All were male and all except one (N=17) left at least some of their property to their surviving widows. A large percentage of them also left property to their children (77.7%, N=14) and a smaller percentage chose to leave at least part of their estate to other close relatives (22.2%, N=4). Not one of them left any property to other people. That is, those who died while married kept the property within the family.

In the period 1841–1845, forty-nine of the seventy-nine testators were married (62%). All were male and all left something to their surviving spouse. A significant percentage of them (87.7%, N=43) also left something to their children. A significant minority (24.4%, N=12) left something to other close relatives and an even smaller percentage (18.3%, N=9) left some property to other persons.

For those testators who were married at the time of their death, there is the additional question: how much did they leave to their surviving spouses? Prior to 1847, Alabama law provided for a widow’s dower right of one-half of her deceased husband’s estate if there were no children or one child, an equal division if there were two to four children, and one-fifth if there were five or more children. Over the entire period of this study, of the sixty-seven testators who were married at the time of the execution of their wills, a majority (56.7%, N=38) left more than one-third of their estate to their surviving spouse, either outright or in a life estate, and only 7.3% (N=5) left less than one third of their estate (in one case nothing) to the surviving widow.
Table 9 brings a little more precision to the nature of the distribution to widows. It reports the kind of estates left to the widow: an estate in widowhood (that is until remarriage or for life), life, or a fee simple estate.\textsuperscript{111} Many testators left their entire estate to their surviving wife for life, with instructions to divide the estate upon the widow’s death.\textsuperscript{112} In other cases, wives were left the property with a restriction that if they remarried, they would receive a smaller share (described variously as the legal portion or a child’s share). Thus, William Bell’s will probated in 1834, left all his property to his wife for life, then to Bell’s children upon her death.\textsuperscript{113} Alexander Dobbins, whose will was probated in 1844, left his entire plantation to his wife for life, but stipulated if she remarried, the plantation would go to his son.\textsuperscript{114} The plantation’s livestock was to be equally divided among Dobbins’ children.\textsuperscript{115} Jeremiah Whitworth’s will, probated in 1842, provided for his wife for life “or widowhood.”\textsuperscript{116} If she remarried, she would receive an intestate share and the estate would be sold.\textsuperscript{117} The son would receive half and the three daughters and their issue would share the remaining one-half.\textsuperscript{118} Similarly, William Stevens’ will, probated in 1834, provided that the plantation would be run by his executor and the profit used to educate his children.\textsuperscript{119} Children would receive their “legal proportion” upon reaching age of majority and his wife would receive her “legal proportion” if she remarried.\textsuperscript{120} Samuel Cherry’s will, probated in 1844, provided that his wife would have possession of his estate during her life or widowhood and that if she remarried, she would receive a child’s part (apparently a 1/7 share with Cherry’s six children).\textsuperscript{121}

Other testators left at least a part of the estate outright. Thus, James Martin’s 1834 will left his Greene County property to his wife and his

\textsuperscript{111} See infra Table 9.
\textsuperscript{112} See infra Table 9. See also Powell v. Powell, 10 Ala. 900 (1846) (discussing estate for widowhood in syllabus of the case).
\textsuperscript{113} William Bell’s Will (1834), Greene County Wills Book B, at 153.
\textsuperscript{114} Alexander Dobbins’ Will (1844), Greene County Wills Book B, at 282-83.
\textsuperscript{115} Id. See also James W. Hall’s Will (1834), Greene County Wills Book B, at 150 (providing that wife was to have all property for life, but upon remarriage, property would be divided equally with her three children; upon wife’s death without remarrying, two sons would share the estate); Thomas Wilcox’s Will (1834), Greene County Wills Book B, at 139 (providing for wife for life, then distributing property, including stock in the “Manchester & Petersburg Turnpike” in his grandchildren).
\textsuperscript{116} Jeremiah Whitworth’s Will (1842), Greene County Wills Book C, at unnumbered page.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} William Stevens’ Will (1834), Greene County Wills Book B, at 155-56.
\textsuperscript{120} Id.
\textsuperscript{121} Samuel Cherry’s Will (1844), Greene County Wills Book C, at 63-64. Cherry also provided that one of his sons would receive a college education out of the estate. Id. at 64. See also Daniel Brand’s Will (1841), Greene County Wills Book B, at 301 (“if my wife should prefer to have a child’s share part, that will be set apart to her”).

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Marengo County property to his son.\textsuperscript{122} His wife held the son’s property in trust until the son turned age twenty-one.\textsuperscript{123}

2. Unmarried Testators

When there was no surviving widow, the objects of the bounty were more dispersed. Among the thirteen testators who had no surviving spouses in the 1831–1835 sample, most left some of their property to children (69.2%).\textsuperscript{124} Other close relatives (grandchildren, siblings and parents) also received at least part of the testators’ estates in more than half of the cases. Only about one-third of estates (N=4) left any property to all other people (this includes nieces, nephews, cousins, aunts, uncles, brothers-in-law, sisters-in-law, persons owned, and friends of the testator).\textsuperscript{125} Similarly, among the thirty testators in the 1841–1845 sample who were single or widowed, the majority (60%, N=11) left at least some property to children; even more (70%, N=22) left at least some property to other close relatives and, as with 1831–1835, about one-third (30%, N=9) left at least some property to other people.\textsuperscript{126}

In cases where testators had children and their spouses had predeceased them, testators frequently left a substantial portion of their estate to those children. In other instances, when testators had no spouse and no children, they frequently distributed their estates to siblings and nieces and nephews. For example, Jane B. Page, whose will was probated in 1841, left most of her property to her siblings, but also provided for at least one slave to be put in trust for a niece who was under the age of twenty-one.\textsuperscript{127}

\textsuperscript{122} James Martin’s Will (1834), Greene County Wills Book B, at 149
\textsuperscript{123} Id.
\textsuperscript{124} See infra Table 10.
\textsuperscript{125} See infra Table 10.
\textsuperscript{126} See infra Table 11.
\textsuperscript{127} Jane B. Page’s Will (1841), Greene County Wills Book B, at 280-81. A codicil subsequently revoked the trust and provided for an outright bequest to the niece, perhaps because the niece reached age of majority. Id. at 281. Only six testators throughout both samples died married with no children. All of them provided for their wives, while others provided for other relatives as well. For example, Pency Gordon left all of his property to his wife, but at her death, it was to be equally divided amongst his children (although it appears he did not have any children at the time the will was executed). Pency Gordon’s Will (1831), Greene County Wills Book B, at 60-61. John Carnahan also left all of his property to his spouse but provided that upon her death or remarriage, such property shall be equally divided amongst his brothers and sisters. John Carnahan’s Will (1832), Greene County Wills Book B, at 154-55. James H. Foster bequeathed most of his real and personal property to his wife but only one-third of his cotton crop to her. James H. Foster’s Will (1841), Greene County Wills Book B, at 271-72. He further stated that the proceeds of what may be recovered from a lawsuit against the sheriff of Sumter County shall be divided between his two nephews, his niece shall receive one thousand dollars, and the remainder of his property shall go to his brother and sisters, if they die, to their children per stirpes. Id. Testator Rea’s Edwards also provided for his nephews, stating that they were to receive the potential profits from the sale of a person. Reps Edwards’s Will (1841), Greene County Wills Book B, at 273-75. All of Edwards’s personal and real property was to go to his wife. Id. Joshua C. Bondell provided for his wife only, stating that she was to keep their house, but his real property was to be sold in order to pay his debts, with the remainder going to the wife. Junius C.
3. Slave Owners’ Patterns of Bequest

It is useful to explore further the wealth of those testators who owned slaves. Among the twenty-seven testators who owned at least one person in the first period (1831–1835), it was possible to ascertain the number of slaves bequeathed in the will for fifteen of them. It was unclear how many people the other twelve testators owned. Of those for whom we can gauge the number of slaves bequeathed, 25.9% (N=7) owned five slaves or fewer; 22.2% (N=6) owned between six and twenty slaves; and 7.4% (N=2) owned more than twenty.128

Among the fifty-nine testators in the second period (1841–1845), it was possible to ascertain the number of slaves bequeathed in the will for fifty-two of them. It was unclear how many people the other seven testators owned. Of those for whom we can gauge the number of slaves bequeathed, 42.3% (N=25) owned five slaves or fewer; 32.1% (N=19) owned between six and twenty slaves; and 13.4% (N=8) owned more than twenty slaves.129

This leads to other questions about how those who owned a substantial number of humans (more than twenty) distributed their property in comparison with those who owned fewer people. There were ten testators who owned more than twenty people in the entire sample period;130 60% (N=6) of them left at least part of their estate to their surviving spouse; 70% (N=7) left at least part of their estate to children; and 80% (N=8) left at least part of their estate to other close relatives.131 Two (20%) also left property to other people and two (20%) provided for charities or emancipation of some or all of their slaves.132 Those who owned fewer than twenty people had a similar but more compact set of heirs. More than 60% (61.4%, N=35) left at least part of their estate to their surviving widow; 78.9% (N=45) left at least part of their estate to their children.133 But then a substantially smaller percentage of testators (38.5%, N=22) left property to other close relatives than did those who owned more than twenty slaves.134 About a quarter (24.5%, N=14) of those who owned between one and twenty people left at least some property to other people;

Boswell’s Will (1842), Greene County Wills Book C, at 14. Lastly, Robert G. Hanna bequeathed his land, household belongings, one-half of his slaves, and $2,000 to his wife, Robert G. Hanna’s Will (1842), Greene County Wills Book C, at unnumbered page. The other one-half of his slaves were to go to his brother in law, id. Other various items were left to Hanna’s brother, brothers in law, siblings in law, and nephews, id. 128. See infra Table 3.
129. See infra Table 3.
130. See infra Table 4.
131. See infra Table 5.
132. See infra Table 6.
133. See infra Table 3.
134. See infra Table 4.

C. Equitable Distribution?

Testators with more than one child faced difficult questions about whether they would treat all their children alike or have a favored distribution. Alabama intestate law provided for equal distribution among children.135 In fact, more than four in five testators in the first sample period (1831–1835) who had more than one child employed an equal distribution.136 Among the seventeen men who left more than one child, 82.3% (N=14) left equal distributions to their children; only 17.6% (N=3) left a favored distribution.137 Of the four widows who had more than one child, 73% (N=3) employed an equal distribution.138 Milly Warren, however, divided her land between her two children with one child getting more personal property than the other.139 Her other children only received proceeds arising from another parcel of land.140 Similarly, Honorie Bayol favored his son, who received one-half of the remainder, and his daughters, who each received one-quarter of the remainder of his estate.141

For the second period, 1841–1845, 88% of fifty male testators who left more than one child employed equal distribution (N=44); 12% (N=6) employed an unequal distribution.142 Again, the female testators who had more than one child were more likely than males to use a favored distribution. In fact, of the seven female testators who left more than one child, 57.1% (N=4) employed a favored distribution.143 The remaining 42.9% (N=3) employed an equal distribution.144

Some testators went to great lengths to establish equal distribution among children. For example, Jethro Harrison’s will, probated in 1844, listed the notes and book accounts that were owed to him by each of his children.145 Harrison owned twenty-one people according to the 1840 cen-

135. See infra Table 3.
136. See infra Table 4.
137. See infra Table 4.
138. See infra Table 4.
139. See infra Table 4.
140. Milly Warren’s Will (1835), Greene County Wills Book B, at 164.
141. Id.
142. Honorie Bayol’s Will (1835), Greene County Wills Book B, at 161–62.
143. See infra Table 4.
144. See infra Table 4.
145. See infra Table 4. James Derden devised a majority of his property to his wife for life and the remainder of the property was devised to the testator’s children in equal shares. James Derden’s Will (1841), Greene County Wills Book B, at 289–90. Henry Minor directed that his property be sold and distributed as if he had died intestate. Henry Minor’s Will (1841), Greene County Wills Book B, at 292.
146. Jethro Harrison’s Will (1844), Greene County Wills Book C, at 60–61.
sus. He forgave the children each of their debts to him, and then he used his estate to make sure that they ended up with equal amounts and divided the remainder of the estate among the children. Harrison’s will is a reminder that children frequently received *inter vivos* transfers from their parents, which makes it difficult to rely solely upon probate records to determine the size of transfers from parents to children. Similarly, Charles Barry took into account *inter vivos* transfers to his children in computing their share, as did Peyton Keith. Both men wrote about these as advancements. Barry’s will is particularly evocative, for it gives two of his daughters an interest in a pianoforte. What story might be buried in that bequest has been lost to time; however, it evokes suggestions of a family’s time spent together and a connection between the past and the present, as August Wilson illustrated in his 1990 play that centered around a piano owned by two siblings. One wanted to keep it, for it connected her to her family; the other wanted to sell it to buy land that the family’s ancestors had worked during the days of slavery.

For some testators, the extent to which there has been an equitable distribution is difficult, if not impossible, to determine. For instance, James McCarter’s will, probated in 1844, provided only one dollar each to seven of his daughters, two of his sons, and one daughter-in-law. McCarter’s rationale was that they had “already received their portion [and] as much as I design them to have of my estate.” McCarter also gave his wife an estate for her widowhood (which lasted until she married or died), then left the remainder to one of his other sons and another tract of land to another of his daughters.

It is difficult to know precisely the reasons why some testators had preferred distributions and others were scrupulously equal in their divisions. But in some cases, the will hints at the reasons. Polly Neely’s January 1840 will left her entire estate to her youngest son and noted that she could not provide much for her other children (and their issue) if she divided her estate equally among them. To those children and grandchildren she left: [My best wishes for their future prosperity, believing them all to be above want [and], in situations in life in which they can by frugality [and] care live independent of the small amount of my property which would come to their share if equally divided among them, assuring them in the most solemn act of my life, that it is not from a want of affection to either one of them, that I have concluded to leave them no part of my property but the consideration above made known.]

Neely made clear, moreover, that the youngest son had earned the money: “my youngest son has devoted years of his life to my support [and] in taking care of me, whilst the other of my children were doing for themselves.” While Neely gave preference to one child, she admonished that the favored child had responsibility to take care of her unmarried daughter. She “request[ed]” her son “to maintain my daughter Sarah Samuels as long as she may live single.”

Hamilton Brown gave some children only one dollar. Charlotte Nixon similarly essentially disinherited one of her daughters, Marsa E. Beckham; she gave her five dollars “which I consider a full consideration for the filial affection and regard she entertains for me and it’s my will and desire that she have nothing more of my estate.” Nixon had a substantial estate to give, however, for she left her slaves and property to her daughter Maria Taylor for life, with a remainder to Taylor’s issue.

### D. Trusts

As one might expect from the level of wealth (and thus, presumably, sophistication) of the testators, a significant number employed a trust. We have interpreted some wills as creating trusts even though in some instances they do not employ the word trust. For instance, Alvis Riddle’s will required an executor to manage his estate until either his wife died or his eldest child reached twenty-one years old. This is in keeping with the interpretation that a will may establish a trust even through the word “trust” is not used. The number of trusts increased from 29% (N=9) of

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147. U.S. Census Bureau, Sixth Census of the United States, Greene County, Alabama, 1840, at 135. Available at [http://search.ancestry.com/cgi-bin/ seex.dll?h=1839364&db=1840usfedcen ancestry&kind=try](http://search.ancestry.com/cgi-bin/seex.dll?h=1839364&db=1840usfedcen ancestry&kind=try)

148. Jethro Harrison’s Will (1844), Greene County Wills Book C, at 60.

149. Charles Barry’s Will (1845), Greene County Wills Book C, at 94–95; Peyton Keith’s Will (1844), Greene County Wills Book C, at 67–69.

150. Charles Barry’s Will (1845), Greene County Wills Book C, at 94.


152. James McCarter’s Will (1844), Greene County Wills Book C, at 76.

153. Id.

154. Id.
wills in the 1831 to 1835 period to 41.7% (N=33) in the 1841 to 1845 period.

In the first period, 1831-1835, six of the thirty-one wills (29%) employed trusts; all six provided for support of family members; three also provided for education of family members. In the second period, 1841-1845, trusts were slightly more popular. Of the seventy-nine wills, thirty-three (41.7%) employed trusts. More than three-fourths (78.7%, N=26) provided for support of family members; more than one-third (36.3%, N=12) provided for education of family members. Two also provided for emancipation.

A simple, explicit trust arrangement was made by Elizabeth Herndon’s will probated in 1833 which placed some of her property in trust to her son Thomas for the benefit of her son Edward, then on Edward’s death, distributed Edward’s share to his issue. Similarly, she put other property in trust to her son Thomas for the benefit of her three daughters.

Other more complex arrangements appeared in the later period. Abner Steele’s will, probated in 1842, has a particularly religious opening:

I give and bequeath my soul to almighty God, with full confidence that for the sake of Jesus Christ, his son, my saviour and redeemer, he will accept it, and keep it with him in glory forever. My body I commend to the earth there to be laid in Christian burial to remain until, the trump of the archangel shall summon the dead to rise, and to receive sentence according to the

McKee, a former member of Congress, who had been in the South since the late eighteenth century, as a representative of the federal government working on Indian relations. McKee’s will, probated in 1832, gave all his property to William P. Gould. John McKee’s Will (1833), Greene County Will Book B, at 88. Gould is reported as a kinsman of McKee’s. See William Russell Smith, REMINISCENCES OF A LONG LIFE 88-90 (1889). But maybe the relationship was more of a working one, for others report that William Proctor Gould was a native of Salem, Massachusetts and a secretary to McKee. Gould was to make quarterly payments to McKee’s son (Alexander McKee), who is believed to have been born to a Native American woman. See John McKee, 6 DICTIONARY OF AMERICAN BIOGRAPHY 82-83 (1959). This odd legal relationship seems to establish Gould as a trustee for Alexander McKee and it hints at the possibility of a secret trust, although, obviously from the nature of secret trusts, it is not possible to determine from the will whether there is a secret trust or not. For more on Gould, see the mimeographed Diary of William Proctor Gould of Boligee, Greene County, Alabama, 1829-1864 (1930).

163. See infra Table 15 and accompanying text.
164. See infra Table 16 and accompanying text.
165. See infra Table 15 and accompanying text. For another example of a trust for education, see Amis v. Amis, 29 N.C. 7 (1847).
166. See infra Table 16.
167. See infra Table 17.
168. See infra Table 17.
169. Elizabeth Herndon’s Will (1833), Greene County Will Book B, at 119. Id.
170. Id.
171. Abner A. Steele’s Will (1842), Greene County Will Book C, at 2.
173. Abner A. Steele’s Will (1842), Greene County Will Book C, at 2.
174. Id. at 3.
175. Id.
176. I give devise and bequeath to my [son Eliz R Steele, and] [R G Steele, and] the survivor of them [and his heirs] two half quarter sections of land lying in Kemper County in the name of Mississippi, to the west of the North East quarter of section thirty five, and the west half of the southwest quarter of section thirty six, all in townships four and Range eight, of the lands offered for sale at Columbus Mississippi—Also a negro man slave named Albert, aged about nineteen years, also a Negro girl Dinah aged about ten years[,] also a boy named Tandy aged about six years—also a young sorrel horse called Charley, and twenty head of young cattle ranging about said lands . . . to have and to hold the same, and each and every part thereof, in trust, for the use of my daughter Esther Kimbrough, and for and during her life and at her death to be divided among her children share and share alike—the children of a deceased child to take the share, the parent have taken if living.

177. Id. at 4.
178. In order to equalize all, except Esther Kimbrough [who was the beneficiary of a trust], I direct my executors to appoint not less than three nor more than five disinterested respectable gentlemen who shall assess and value the property bequeathed under this will except that given in trust for the use of my daughter Esther Kimbrough, and what I may have advanced to any of my children for which a receipt was taken . . . and then each of my children (and the children of a deceased child, is herein called a child and are entitled to the share their parents would take if living) shall be made equal—where one has received more property than his or her share, he or she shall pay [back], and when one lacks his or her share shall be made up out of the residue of my estate and will be paid back by those who have received more than their share. They who shall receive under this clause and be equalized are the children of my son Alexander, the children of my daughter Polly Archibald each set one share. Eliz R Steele, R G Steele,[,] Nancy Gillaspie [wife of] James Gillaspie, Betsy Patton wife of William Patton, William Steele[,] the children of my son Abner Steele, Jane Baskin wife of Pringle Baskin[,] and my son James Steele. My daughter Esther Kimbrough is not included in this assessment . . . .

Steele also asked that his slaves not be sold, if they could be divided among his heirs. Id.
The desire to keep property within families appeared also in Absalom Morton's will, probated in 1845. Morton put his property in Greensboro in trust for his sister, Mary Taylor (who married Caleb W. Taylor on May 6, 1840) "for the sole use benefit and profit" of Mary "and the issue of her body." Later, the trustee was ordered to sell the land and use the proceeds to purchase women, "which said negroes with their increase when so purchased I hereby give [and] bequeath to my said Sister and the issue of her body it being my intention that my said Sister [and] her children shall be the sole objects of my benevolence . . . ." He also placed a slave in trust so that the profits from the slave's labor could be used to provide an education for his relative, which is further evidence of the close connections between education and slavery. Such provisions are important for two reasons. First, they illustrate the desire to invest in human beings rather than land; second, they are clear in making the sister and her issue the beneficiaries of Morton's trust and excluding the sister's husband. Some of those who employed testamentary trusts employed sophisticated techniques. For example, they restricted the power of creditors and husbands from reaching the trust assets. In a few cases, they gave beneficiaries power of appointment. Others provided detailed instructions to trustees regarding the education or support of beneficiaries. Some trusts provided for support for several children and even grandchildren and had extensive provisions for the termination of trusts upon beneficiaries reaching the age of majority or upon the death of one of the beneficiaries.

Mary Cashaden left an extensive will with a testamentary trust. She gave away several pieces of property spread across the south from Mobile, St. Stephens, Demopolis, and even North Carolina, to two friends, George Gaines and Thomas McGee, as well as a substantial amount of property—some of which she specified as property inherited from her husband George in trust for her daughter, Eliza Jane Cashaden. Eliza had married Franklin Robinson in 1825, who was a cotton merchant in Mobile in the late 1820s and 1830s. Cashaden took care to establish a trust that would not be attachable by Franklin's creditors, nor used by Franklin or any future husband. Cashaden also put other property in trust for her granddaughter, Mary Robinson. Upon Eliza's death, if Mary were of age of majority, she would get her share outright. Otherwise, the trust would continue until she reached the age of majority. Conversely, if Mary had died, her property would go to Eliza's other surviving children. Cashaden concluded that her "negro woman Betsy shall not be sold at any time but that she shall be kept in the family of my daughter, and that upon the death of my daughter my trustees shall have her kindly taken care of and that she shall remain with my grandchildren." She also requested that her daughter "take care of my old negro man Aaron [and] Sam [and] provide for their comfortable maintenance." Another example of extensive use of trusts comes from Thomas Herndon, who had served as secretary of state in Kentucky and then as a judge in Mississippi before settling in Greene County. His son, educated at the University of Alabama and Harvard Law School, served in the United States House of Representatives after the Civil War. The 1840 census recorded that Herndon owned 115 people in Greene County. Herndon, one suspect, had access to the most sophisticated knowledge of trusts then.

177. Absalom Morton's Will (1845), Greene County Will Book C, at 101.
178. Id.
179. Id. Morton provided:
180. Morton's will, like others that left personal property like stock, illustrate the vigorous spirit of enterprise (to borrow Thomas Doeringfield's phrase from the Revolutionary era, A VIGOROUS SPIRIT OF ENTERPRISE (1986)) and progress that captivated southerners, like all Americans, in the antebellum era. See Peter S. Carmichael, THE LAST GENERATION: YOUNG VIRGINIANS IN PEACE, WAR, AND REUNION 20 (2005) (labeling antebellum southerners as "progressives all").
181. Blasney Brand's will, probated in 1842, provided that his executor was to buy slaves ("tho they be such as shall bring in hire and be more profitable to my heirs."). Those slaves were to be hired out to "such men as can be relied on to treat them well [and] take good care of them." The proceeds paid to his widow and children. Blasney Brand's Will (1842), Greene County Will Book B, at 301.
182. See Mary Cashaden's Will, Greene County Will Book B, at 295 (1835) ("After the death of the said Eliza J. Robinson the said trustees shall dispose of the property thus acquired with the income rents, [and] interest, in such manner and to such persons as she the said Eliza shall have directed by any writing signed by her for that purpose in the nature of a last will.").
available and he provided extensive instructions to the trustee. Moreover, he tried to make sure that the trust corpus was protected against spendthrift habits of his children and their spouses. As the preamble to his will recites, he made the will when he was “sick of body and duly apprehensive of the uncertainty of human life and anxious to make such disposition of my real and personal estate as to me seems most conducive to the future welfare of my family after my death . . . .”  

191. Herndon placed his extensive plantations into trust with his executors and directed that they not be sold and that the enslaved people working on them also be maintained together on those plantations until his youngest child “becomes of age or marries.”  

192. At that point, Herndon’s widow, Emma, had the right to select one of the plantations as residence “during her life if she remains a widow.”  

193. The trustees were to give Emma a “sufficient number of efficient negroes to support and labor for her, as is or may be compatible [sic] with the value of my estate and her condition in life.”  

194. The remainder of estate was then divided equally among the children (“share and share alike”).  

195. If a “fair and beneficial” division of property in kind was not possible, then the property was to be sold and the proceeds divided equally.  

While the property was still in trust, the trustees had the power to manage the plantations, including to sell slaves who “may be of bad character, may be valueless[,] or may in any manner prejudice the interest of my estate.”  

197. They also had the power to purchase others to “supply their places,” for Herndon did not want “the number of negroes on the said farms [to be] diminished.”  

198. Moreover, children who reached age of majority or left home during the course of the trust were entitled to income from the year’s cotton crop.  

Finally, Herndon made several provisions to protect his children’s property. If his wife remarried or “dissent[ed]” to the will, then he wanted her to receive only “that portion of my estate which she can obtain by law and none of the benefits or provisions of this will,” the various promises herein made being intended in lieu and bar of her dower in my real estate and distributive share of my personal property.”  

201. Moreover, he took efforts to protect his daughters against profligate husbands and his sons against their own profligacy. He instructed trustees to maintain control over the property of any daughter who was “married to a husband involved in debt or to such a husband as my executors might suppose would manage the property indiscreetly.”  

202. To protect his sons, he instructed the trustees to maintain control over the property of any son who “should act in such manner as to render it indiscreet and improper to give them . . . . the absolute right and control to their . . . . portion of my estate.”  

203. In that case, the children would have the “possession and usufructuary interest, but not the absolute dominion.”  

204. The trustees were to make sure that such property “not be subjected to reckless and improper expenditure[s] and extravagance[s].”  

205. Herndon was also a partner in a merchant firm in Erle, which had been the county seat of Greene County until 1838. Part of the estate was the capital in that firm; however, in a codicil, Herndon directed that the proceeds from the partnership be used to purchase a plantation instead.  

Trusts were also used to protect property from family members as well as creditors. Sarah Johnson’s will recited that she placed her property in trust for her daughters, to keep it out of reach of their husbands.  

In a paraphrase of Elizabeth Eisenstein’s The Printing Press as an Agent of Change, one is tempted to write of “the trust as instrument of economic development.”  

206. The Greene County wills and particularly the trusts confirm the picture that historians have drawn of the market revolution, where Americans harnessed the technology that was available to promote economic growth.  

207.  

208. See Elizabeth L. Eisenstein, THE PRINTING PRESS AS AN AGENT OF CHANGE: COMMUNICATIONS AND CULTURAL TRANSFORMATIONS IN EARLY-MODERN EUROPE (1979). Though trust laws were employed for sophisticated business and family reasons, Greene County testators had not yet come to appreciate (or desire) the privacy that trusts executed outside the probate process offered.  


211. In What Hath God Wrought? (2008), Daniel Walker Howe depicts, in contrast to Selleck, the growth of middle class values that then turned to the market for their fulfillment. The debate is unlikely to be susceptible of definitive settlement; in part this turns on different emphasis. However, the Greene County wills illustrate the values of antebellum America and how some of our wealthiest citizens turned to all sorts of technology, from steam engines to law, to establish and maintain their world. The trust should be added to the catalog of ways that antebellum law promoted economic
As Guy Hubbs demonstrated in *Guarding Greensboro*, people were drawn to Greensboro by a desire for economic (and perhaps to a lesser extent moral) progress.  

People of European descent arrived in significant numbers in Alabama in the early 1810s and quickly harnessed human, animal, and natural resources to make the land produce extraordinary wealth. In 1831 the local newspaper cheered the many changes, which had brought Greene County in twenty years from a place where natives had wandered, to a place where crops were cultivated and civilization had been established.  

Henry Watson, a lawyer and a recent transplant from Connecticut, noted in his diary that another Connecticut Yankee transplanted to Greensboro—the physician Dr. Withers—"Goes all for making money." Though this should surprise no one, for in another letter home in early 1837, as the Panic of 1837 was beginning Watson observed that everyone in Greensboro spoke of "money! money! money!!" Yet no one seemed to have any. The Panic of 1837 turned out to be tough on Greensboro citizens, but good for Watson's business. He wrote his father in July 1817 that business was so good he had not been to bed before midnight in two weeks and in December he wrote his sister that business was so good, "it has become almost onerous."  

In fact, it was money that drew Watson to Greensboro in the first place. The transition to life as a lawyer in Greensboro was hard. In 1836, he wrote home to Connecticut, begging his father for news and reminding his father that he lived in a wildness, "cut off from all mankind and dependent upon the kindliness of others for information." Later that year, he told his mother he felt like a "stranger in a strange land." In another letter home, he described his humble law office in Greensboro:  

You must consider me as sitting in a little brown framed office, neither lathed or plastered, showing all the joists, clapboarding and shingling, unplanned, unpainted and unpapered and only about 16 feet square. Imagine a latten window shutter and latten door (a front and a back) and wide open and myself sitting at a little yellow-pine unpainted desk with four unpainted homemade chairs standing about, one split-bottomed, two bottomed with husks, and one with rawhide. You will now [illegible] up the likes of the office with musty, dusty, newspapers, old books, and files & bundles of letters and documents, some new, some old & dusty. Be careful not to mar the brownness of the outside of the office with one drop of paint of any color. You have now a fair view of me...  

Watson's time on the frontier paid off for him. He was a successful lawyer and then slaveowner.  

Greene County residents harnessed all sorts of technological innovations as they wrung wealth from their human property and their real estate. They drilled wells hundreds of feet deep and employed the steam engine, as well as another form of technology that we hear less about—the trust. John Langbein has shown that the trust shifted in the nineteenth century from a device for managing real estate to a much more flexible device for managing personal property and businesses. Langbein dates the emergence of the trust as an agent of business and personal property, rather than land management, later in the nineteenth century. Yet, during the boom times of the 1830s and 1840s in the frontier—what Alexander Baldwin referred to in his novel as *Flush Times in Alabama and Mississippi*—residents sought out innovation and embraced it.  

E. Challenging the Will and the Probate System  

In some cases, testators anticipated some conflict in the administration of estates, so they provided (as in the will of Gabriel Long) for the arbitra-
tion of disputes. Long requested that if any disputes arose in the division of his estate that "the contending parties should each chose [sic] a man and they to chose [sic] a third person to settle the difficulty and their decision to be as valid as if settled by the supreme court of the land."\(^{221}\)

At least four of the cases studied here led to lawsuits. One was a challenge to Rachel Wedgworth's will probated in 1844.\(^{222}\) The basis for the challenge—whether the will was "a valid will or not according to the evidence"\(^{223}\)—is not preserved in the scant records available on the case. However, it may have something to do with Wedgworth's statement that she owned no property beyond what she was entitled to as James Wedgworth's widow.\(^{224}\) She then gave bequests of $200 to several children and grandchildren and provided that eighteen months after her death, two men, Stephen Wedgworth and Thomas Edmundson—a son and son-in-law of James Wedgworth—should rent the land that remained in her estate and use the income to pay ongoing annuities to several of Wedgworth's female children.\(^{225}\) Upon the death of one of the beneficiaries, the land was to be sold and divided on an equal basis between the beneficiaries. Stephen Wedgworth and Thomas Edmundson were entitled to whatever else remained.\(^{226}\) They challenged the will; the defendants were the other beneficiaries under the will. Whatever the basis for the challenge, the jury found it insufficient and upheld the will.\(^{227}\)

Three other lawsuits arose from the wills probated in this study; each of them revolved around the probate of the estate, rather than the testator's capacity. The first case, Scott v. Nelson.\(^{228}\) involved the testator William Bell. Bell's brief will, probated in 1834, provided for a life estate in his real property for his widow and then on her death an equal division among his children.\(^{229}\) Moreover, he bequeathed his widow some personal property, including several human beings, and the remainder of his personal property went in equal portions to his children.\(^{230}\) But one of his children had already died, and the question became whether that child's son (Bell's grandson) should take in place of his father.\(^{231}\) Bell was explicit that he wanted an equal division of the property between his children, and he included certain advancements already given to the children in his will—including an advancement to the son who had died by the time of the mak-

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221. Gabriel Long's Will (1843), Greene County Wills Book C, at 40.
222. Rachel Wedgworth's Will (1844), Greene County Wills Book C, at 83.
223. Id. at 84.
224. Id. at 82.
225. See 3 OWN, supra note 66, at 816.
226. 3 OWN, supra note 66, at 816.
228. See Scott, 3 Port. at 454.
229. 3 OWN, supra note 66, at 816.
230. 3 OWN, supra note 66, at 816.
231. See 3 OWN, supra note 66.
232. William Bell's Will (1834), Greene County Wills Book B, at 153; see Scott, 3 Port. at 454.
233. Id. at 82-83.
234. Id. at 83.
235. Id. at 84.
236. 3 Port. 452 (Ala. 1836).
237. William Bell's Will (1834), Greene County Wills Book B, at 153.
238. Id.
239. See Scott, 3 Port. at 454.
use of Bennett's property for the satisfaction of his creditors in Tennessee.\textsuperscript{244}

Another suit arising from probate in Greene County involved the testator George Hays, whose will was probated in 1839.\textsuperscript{245} Hays was a wealthy man; he owned approximately 180 people and three plantations spread across Alabama and Mississippi.\textsuperscript{246} He died between the years studied here, so his will did not appear in our data set. However, the lawsuit, \textit{Hays v. Leachman}, has recently received substantial attention in Loren Schweninger's \textit{The Southern Debate Over Slavery}.\textsuperscript{247} Schweninger begins his book with the complaints by Hays' heirs regarding, first, Hays' estate, and then the mistreatment of slaves by Hays' widow.\textsuperscript{248} The records of the case preserve vivid portraits of the violence that lay at the heart of the institution of slavery. They give a picture of how the human dimension of the slave system was resolved into a ledger, which recorded the losses to Hays' heirs—his children, including his son Charles Hays who served in Congress in the years following the war,\textsuperscript{249} and Hays' widow—because of the brutality of those hired to run the plantation by his executors.\textsuperscript{250} The first suit was filed by Hays' widow, who remarried within a year of his death, to obtain her dowar portion (rather than the annuity of $1,300 per year she would receive under his will). Then the widow, after winning a one-third interest, hired brutal overseers to run the plantation.\textsuperscript{251} The allegations of abuse are extraordinary, including the death of a slave at the hands of an overseer.\textsuperscript{252} The suit reminds us that the probate process was an on-going concern, which involved not just the collection of debts, liquidation of assets, and payment of money. It also involved the running of plantations for an extended period of time. In slaveholding regions, the death of a slaveholder often affected substantial numbers of humans, beyond the slaveholder's immediate family.\textsuperscript{253}

\textbf{2. Testators Who Emancipated Slaves In Greene County}

Testator Thomas Sydenham Witherspoon conveyed twenty-five of his slaves to the president of the American Colonization Society at the time of his death.\textsuperscript{254} Such disposition was the only one in this study that could be classified as both a gift to charity and an emancipation. Witherspoon was born in 1805 in South Carolina, then moved with his family in the early 1820s to Greensboro.\textsuperscript{255} He graduated from Union College in New York in 1828, then returned to Greensboro, where he studied for the Presbyterian ministry.\textsuperscript{256} He ministered in Greensboro for fifteen years and was preparing to occupy a chair in theology at Georgia's Oglethorpe College, when he died.\textsuperscript{257} In addition to his will, we know about Witherspoon's bequest because Witherspoon's executor, Robert McFadden, corresponded with Henry Clay (the president of the American Colonization Society) about how to proceed. The executor suggested that the Society employ Eutaw lawyer Charles Innes Thornton to assure that the slaves were freed.\textsuperscript{258}

\begin{table}[h]
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\hline
Category & Number of Testators \\
\hline
Charity & 254 \\
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Freed Slaves & 255 \\
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\textbf{3. Benefactors and Beneficiaries}

Although the vast majority of Greene County testators bequeathed their slaves to their spouses or other close family members, a few attempted to emancipate their slaves through charity, trust, or the four corners of the will itself. No testator among the 1831–1835 group attempted emancipation, but 8.5% (N=5)\textsuperscript{244} of the 1841–1845 slaveowning testators\textsuperscript{255} provided for emancipation in some fashion.

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Some other testators provided freedom for their slaves, but details regarding what became of the freed people are not known. For example, testator James C. Locke provided for the emancipation of three slaves, stating that he gave “Nancy and her children Elizabeth and Duncan to my brothers John and William Locke to be kept and disposed of by them according to a request made by my sister Margaret[,] which is that they shall be set free if the same can be done according to the laws of this state . . . ”261 The attenuated chain—that two brothers must carry out the wishes of one who is not even the testator if the law allows—made it questionable whether these people would experience liberty until the end of slavery in 1865.

There is something else of interest about Locke’s devise, however. He freed three slaves because of a request of his sister, which illustrates one way that antislavery women might affect slavery. It is an early version of Little Eva’s request in Uncle Tom’s Cabin that Uncle Tom be freed.262 Yet, Locke also left a number of other human beings to his two brothers, and he named the people and their family relationships in stating who would go to which brother.

Another testator, James H. Foster, also created a contingent emancipation plan. Foster provided for the emancipation of all slaves who reached the age of fifty years if “the law of the land” permitted freedom.263 It is plausible that the relatively advanced age required for freedom diminished the significance of the emancipation provision. However, Foster appeared to be serious about emancipation, for he added a disinheritance provision. Anyone “objecting to this [provision] shall receive nothing under this will . . . ”264

James Jones’ will created a trust for freeing his slaves.265 Jones stated that such persons were to be held in trust so they could “be sent to some place where slavery does not exist [and] where they can be free.”266 Jones further supplemented this wish with the suggestion that “the British West India Islands would be the suitable place, or Liberia.”267 Yet, for some reason the slaves seem not to have been freed. A James Jones, perhaps the testator’s son, is listed in the 1860 census at Pleasant Ridge as the owner of ninety-seven slaves.268

261. James C. Locke’s Will (1845), Greene County Wills Book C, at 86.
263. James H. Foster’s Will (1841), Greene County Wills Book B, at 271.
264. Id. See also Alfred L. Brophy, Thomas Ruffin: Of Moral Philosophy and Memorials, 87 N. C. L. Rev. 799, 818-28 (2009) (discussing southern statutes and cases regarding emancipation via will).
265. James Jones’ Will (1845), Greene County Wills Book C, 90.
266. Id. at 89.
267. Id. at 89.


The vast majority of testators provided for the devise of their slaves, rather than their emancipation. In some instances testators gave instructions to hold slaves together, if possible. At other instances, they explicitly authorized the sale of slaves. Thomas Herndon’s will, probated in 1843, for instance, authorized executor to sell slaves of “bad character.”269 Yet others gave detailed instructions on the division of their enslaved property. Such wills provided what one might refer to as “slave distribution charts.” One such detailed instruction was provided by Gabriel Long’s will probated in 1843;270 another is Charles Kennon’s will probated in 1843.271 Social historians are increasingly mining wills as a source of understanding of slave families or for reading slaveholders’ attitudes towards individual enslaved people. One may profitably speculate on the meaning of bequests of particular slaves to their surviving spouse or their children,272 though such important social history purposes are beyond the scope of this article.

2. Vignettes of the Testators who Emancipated Slaves in Marengo County

After the decease of my wife . . . I desire my slaves to be liberated if they prefer it by placing them at the disposal of the American Colonization Society and they are to be furnished with such an amount of money as may be sufficient to support them the first year in Liberia . . . ”273

—James M. Davenport, Marengo County Testator, 1842

A similar picture of limited emancipation arises from Marengo County, another of Alabama’s affluent black counties. Of the large number of Marengo County testators who devised slaves throughout the antebellum period, some provided for emancipation. One testator left his human property to the American Colonization Society.274 Another testator, Asa Bishop, provided that a particular slave “be learnt [sic] to read in the New Testament.”275

269. Thomas Herndon’s Will (1839), Greene County Wills Book C, at 31, 33.
271. Charles Kennon’s Will (1843), Greene County Wills Book C, at 45-46.
272. For instance, James McCarter left particular slaves to his daughter. See James McCarter’s Will (1844), Greene County Wills Book C, at 76.
273. James Davenport’s Will (1842), Marengo County Probate Records.
275. Asa Bishop’s Will (1841), Marengo County Probate Records.
Of wills sampled in Marengo County in 1838–1845 in a smaller study that tested the viability of the empirical study of Greene County probate records, 9.1% of the forty-four testators surveyed established conditions or procedures for the manumission of at least one slave. Polly Glove provided that her slave, Armistead, was to remain under the guardianship of her son “until his freedom can be procured.” If Armistead could not be freed, he was to go to the testator’s grandchildren. Asa Bishop, in addition to the religious instruction, desired that his slave be taught “the [blacksmith]’s trade or the art of making wagons . . . until he arrives at the age of twenty-two,” which Bishop designated as his emancipation year. Lastly, James Davenport—the testator who left his human property to American Colonization Society—gave his slaves the opportunity to choose freedom or to choose their next master. If the slaves chose to remain in servitude, a portion of the proceeds from their sale would serve as a charitable devise. We wonder if the slaves were given to the Episcopalian Church in Demopolis, because Davenport is known as its founder.

Most courts, however, routinely held that such freedom provisions were unenforceable. Many states even had statutes that prohibited emancipation through a will. Several Alabama decisions restricted emancipation. In *Carroll v. Brumby*, the Alabama Supreme Court held that the slaves who were conveyed had no legal capacity to choose their freedom, despite the fact that the testator explicitly granted them the authority to make this decision. Likewise, a slave could not bring an action for his freedom or property conveyed to him via will. The case of *Alston v. Coleman*, however, is of particular relevance to this study because it pertains to the will of Jesse Coleman, one of the Marengo County testators sampled here. Coleman devised an enslaved child to his wife for her life, and directed that the slave be emancipated at his wife’s death. Coleman stated that his executors were to retain $1,500 from a sale of property and apply it to the slave’s needs. Coleman also made a similar bequest to his son, providing that such slave should be set free after twenty years. The probate judge in Marengo County held that the $1,500 conveyance for the slave’s benefit was illegal and directed it into the residuary. The Alabama Supreme Court focused on the emancipation terms, which it found illegal. The court also held that the $1,500 bequest was void, reasoning that any “bequest of goods and chattels” for a slave’s benefit is prohibited by law. Coleman’s attempted emancipation was a failure, as was easily predictable given the state of Alabama statute and case law by the 1840s.

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276. 13 Ala. 102 (1848).

277. See Hooper v. Hooper, 32 Ala. 669, 674–75 (1858).

278. 7 Ala. 795 (1845).

279. Id.; Jesse Coleman’s Will (1839), Marengo County Probate Records.

280. *Alston*, 7 Ala. at 795.

281. Id. at 797.

282. John Pickens’s Will (1844), Greene County Wills Book C, at 73. Pickens, for instance, began his will by noting that he could not find his previous will and because he thought that he might have destroyed it by mistake and he realized that he might die at any moment, he wrote another one: Whereas the uncertainty of this life is such that I deem it necessary to arrange my worldly affairs that should I die at any time my property may be disposed of as I desire, I have made heretofore a memorandum of [my] will which I have searched for to-day but cannot find it. It think it possible that I may have destroyed it [it. 17] have therefore thought fit to make this my last will [will. I revoke?] all others . . .

283. Id. at 72.

284. Id. at 73.

285. Id.

286. Id. Alfred may have been Pickens’s child. We made this speculation because Pickens freed one of his slaves, Caroline, and her daughter, Sarah Ann, and provided an annuity of $300 per year for each of them and also made a provision for any of Caroline’s other children who were born within one month of his death. Id. Thus, it seems probable that Pickens was the father of Sarah Ann and that Pickens thought that she might bear more of his children. Perhaps, given the extraordinary affection shown towards Alfred, Pickens was also his father.

286. See infra Table 5.
while at Hot Springs, Virginia where he was "dangerously ill... but of sound mind [and] memory." 287 Tinker instructed his executors to continue the operation of his plantations "by working my slaves on them as they have been managed heretofore by myself." 288 The proceeds were to be used first for the support of his widow and minor children, then to purchase another 240 acres adjacent to his land in Greene County, then to pay debts. 289 The proceeds from the purchased 240 acres were to provide an outright gift of $20,000 to his son Robert Tinker. 290 He also provided for similarly large outright gifts of $20,000 to each of his children upon reaching age twenty-one. 291 In addition, 700 acres of land was given outright to his son Harris Tinker. 292 When the youngest child reached age twenty-one, the residue of the estate was to be divided between all the children (other than his oldest son), "share [and] share alike." 293 The daughters' share, however, was to be held in trust by Robert Tinker for the sole[,] separate [and] exclusive use of my... daughters respectively during their natural lives, free from any liability to their husbands['] debts or contracts, [and] after their respective deaths convey the share of each equally to her children and [grandchildren], such [grandchildren] however to be the children of a deceased child [and] to take only such share as their parents would have been entitled to, had he or she been living... 294

If Tinker's wife remarried, she would receive $10,000 in lieu of any other rights under the will. 295

CONCLUSIONS

There are two key questions that could not be answered by our methodology. First, how much did Greene County residents transfer title property during life (and to the extent that Greene County residents used inter vivos transfers, how did they compare with their probate transfers in terms of people receiving property)? Second, how did heirs react to the wills? We have discussed three lawsuits that made it to the Alabama Supreme Court.

287. Harris Tinker's Will (1844), Greene County Wills Book C, at 79. That Tinker was vacationing at Hot Springs is itself a story of increasing affluence and modernization. See Rebecca Cawood McIntyre, Promoting the South: Tourism and Southern Identity, 1840–1920 (unpublished Ph.D. dissertation, University of Alabama, 2004) (on file with author).
288. Id.
289. Id.
290. Id. at 80.
291. Id. at 80.
292. Id.
293. Id.
294. Id.
295. Id.

from Greene County. It remains for further research to look to other wills and probate proceedings for evidence of how heirs benefited from and objected to devises. 296

It is, of course, difficult to tease out from these legal documents what went on inside the heads of their authors. As their contemporaries pointed out, people reacted often to a set of simple stimuli—rushed in by their passions or the desire for expediency. 297 Susanna Blumenthal has pointed out that courts had a variety of responses to testators' (sometimes outlandish) devises. 298 Those deviant wills cast light on how antebellum science understood the working of the mind as courts distinguished between eccentricities, moral unsoundness, and depravity. But the wills studied here, and the vast majority of wills in the antebellum era that suspects, illustrate more commonplace concerns. They revolve around issues of protection of dependents, sometimes of preservation of dependents against unscrupulous husbands and creditors and from the dependents' own poor judgment, as well as preservation of wealth within the family.

Our findings suggest that the probate process was vibrant and employed by many to maintain property within the family. In some cases testators employed the flexibility and sophistication of trusts to accomplish even more precise and sophisticated goals. 299 Affluent Alabamians living

297. One engaging article pointed out the difficulty of understanding human motivations:
   A whirl of miscellaneous ideas—germs and atoms of thought, resembling those animalculae which require the powers of the telescope to bring them into distinct vision, and when there, present every imaginable heterogeneity of form, is perpetually going on within every man's brain, savage or sage, and certainly most to the disturbance of the civilized man; even many very clever persons use their minds, like their washers, without examining into their interior mechanism, following only some index on their surface, according as the springs of passion, fashion, or expediency, may direct.
299. Among the questions one might want to address are whether legal innovation in women's property right, such as increasing power of married women, lead to more outright bequests, rather than trusting as trust beneficiaries? For example, in 1848—a period just after that studied here—the Tennessee Supreme Court addressed women's increasing autonomy with property. At first the common law neglected the property rights of married women:
   The common law, which, in its origin, was of rude and harsh bearing upon the relations of life, and formed from the manners and customs of a sterner and less civil era, the rights of married women in no regard in relation to personal estate or to contracts entered into during coverture.
   There, therefore, could possess no personal property independently of their husbands, and make no contract in relation to any subject whatever which would be held obligatory for or against them.
   299 Powell v. Powell, 28 Tenn. 477, 479 (1848). Later, however, married women's property rights increased: but the advancement of civilization and the increase of commerce, which have always gone hand in hand, being productive of their usual results in harmonizing and softening social re-
in Greene County employed the probate process to pass property on to the
next generation. How their practices differed (if at all) from the Greene
County planters’ northern and western counterparts invites further study to
see how much of the legal technology so prevalent in Greene County was
employed elsewhere and how much the extraordinary wealth may have
shaped how testators in Greene County treated their families.300

<table>
<thead>
<tr>
<th></th>
<th>1831–35</th>
<th>1841–45</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MALE</strong></td>
<td>26 (83.9%)</td>
<td>68 (86.1%)</td>
<td>94 (85.5%)</td>
</tr>
<tr>
<td><strong>FEMALE</strong></td>
<td>5 (16.1%)</td>
<td>11 (13.9%)</td>
<td>16 (14.5%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>31</td>
<td>79</td>
<td>110</td>
</tr>
</tbody>
</table>

* Of the thirty-one testators who died between 1831 and 1835, we
found twenty-seven of them in the 1830 Census.

** Of the seventy-nine testators who died between 1841 and 1845, we
found sixty-five of them in either the 1830 or 1840 Census.

<table>
<thead>
<tr>
<th></th>
<th>1831–35</th>
<th>1841–45</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MALE</strong></td>
<td>24 (92.3%)</td>
<td>51 (75.0%)</td>
<td>75 (79.7%)</td>
</tr>
<tr>
<td><strong>FEMALE</strong></td>
<td>3 (60.0%)</td>
<td>8 (72.7%)</td>
<td>11 (68.7%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>27 (87.1%)</td>
<td>59 (74.7%)</td>
<td>86 (78.2%)</td>
</tr>
</tbody>
</table>

* The percentage is the ratio of testators listing slaves to the total
number of testators within each respective category.

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2–5</th>
<th>6–10</th>
<th>11–20</th>
<th>21–30</th>
<th>31+</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Males</strong></td>
<td>24</td>
<td>0.0% (0)</td>
<td>25.0% (6)</td>
<td>16.6% (4)</td>
<td>4.1% (1)</td>
<td>4.1% (1)</td>
<td>4.1% (1)</td>
</tr>
<tr>
<td><strong>Females</strong></td>
<td>3</td>
<td>33.3% (1)</td>
<td>0.0% (0)</td>
<td>33.3% (1)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
<td>33.3% (1)</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>27</td>
<td>3.7% (1)</td>
<td>22.2% (6)</td>
<td>18.5% (5)</td>
<td>3.7% (1)</td>
<td>3.7% (1)</td>
<td>3.7% (1)</td>
</tr>
</tbody>
</table>

* All of the twenty-seven testators found in the 1830 Census owned at
least one slave.

** The “unknown” category denotes those who owned slaves, but had
no number listed.

Id. at 480.
300. See, e.g., Kirklin, supra note 83 (comparing testators in Indiana to Greene County testators and finding dramatically reduced use of trusts and apparently less protection for maintaining property within the family).
### Table 4
**Number of Slaves Owned by Testator, Federal Census (1841-1845)**

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2-5</th>
<th>6-10</th>
<th>11-20</th>
<th>21-30</th>
<th>31+</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Males</strong> (51)</td>
<td>13.7% (1)</td>
<td>25.4% (7)</td>
<td>9.8% (15)</td>
<td>25.4% (13)</td>
<td>7.8% (4)</td>
<td>5.8% (3)</td>
<td>11.7% (6)</td>
</tr>
<tr>
<td><strong>Females</strong> (8)</td>
<td>25.0% (2)</td>
<td>37.5% (3)</td>
<td>12.5% (1)</td>
<td>0.0% (0)</td>
<td>12.5% (1)</td>
<td>0.0% (0)</td>
<td>12.5% (1)</td>
</tr>
<tr>
<td><strong>Totals</strong> (59)</td>
<td>15.2% (9)</td>
<td>27.1% (16)</td>
<td>10.1% (6)</td>
<td>22.0% (13)</td>
<td>8.4% (5)</td>
<td>5.0% (3)</td>
<td>11.8% (7)</td>
</tr>
</tbody>
</table>

* Of the sixty-five total testators we found in either the 1830 or 1840 Census and who died between 1841 and 1845, six owned zero slaves.
** The “unknown” category denotes those who owned slaves, but had no number listed.

### Table 5
**Number of Slaves Owned by Testator, Federal Census (1831-1835 & 1841-1845)**

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2-5</th>
<th>6-10</th>
<th>11-20</th>
<th>21-30</th>
<th>31+</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Males</strong> (75)</td>
<td>9.3% (7)</td>
<td>25.3% (19)</td>
<td>12.0% (9)</td>
<td>18.6% (14)</td>
<td>6.6% (5)</td>
<td>5.3% (4)</td>
<td>22.6% (17)</td>
</tr>
<tr>
<td><strong>Females</strong> (11)</td>
<td>27.2% (3)</td>
<td>27.2% (3)</td>
<td>18.1% (2)</td>
<td>0.0% (0)</td>
<td>9.0% (1)</td>
<td>0.0% (0)</td>
<td>18.1% (2)</td>
</tr>
<tr>
<td><strong>Totals</strong> (86)</td>
<td>11.6% (10)</td>
<td>25.5% (22)</td>
<td>12.7% (11)</td>
<td>16.2% (14)</td>
<td>6.9% (6)</td>
<td>4.6% (4)</td>
<td>22.0% (19)</td>
</tr>
</tbody>
</table>

* We found ninety-two total testators in the 1830 and 1840 censuses, six of which owned zero slaves.
** The “unknown” category includes those who noted slaves, but no number.

### Table 6
**Objects of Bounty of Married Testators, 1831-1835**

<table>
<thead>
<tr>
<th></th>
<th>Spouse</th>
<th>Children</th>
<th>Close Relatives</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Male</strong> (18)</td>
<td>94.4% (17)</td>
<td>77.7% (14)</td>
<td>22.2% (4)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td><strong>Female</strong> (0)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td><strong>Totals</strong> (18)</td>
<td>94.4% (17)</td>
<td>77.7% (14)</td>
<td>22.2% (4)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
</tr>
</tbody>
</table>

* The phrase, “close relatives,” means close relatives other than children. It includes grandchildren, brothers, sisters, and parents.

---

**The phrase, “other persons,” includes nieces, nephews, cousins, aunts, uncles, brothers-in-law, sisters-in-law, persons owned, and friends of the testator.**

### Table 7
**Objects of Bounty, Married Testators, 1841-1845**

<table>
<thead>
<tr>
<th></th>
<th>Spouse</th>
<th>Children</th>
<th>Close Relatives</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Male</strong> (49)</td>
<td>100.0%(49)</td>
<td>87.7%(43)</td>
<td>24.4%(12)</td>
<td>18.3%(9)</td>
<td>2.0%(1)</td>
</tr>
<tr>
<td><strong>Female</strong> (0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
</tr>
<tr>
<td><strong>Totals</strong> (49)</td>
<td>100.0%(49)</td>
<td>87.7%(43)</td>
<td>24.4%(12)</td>
<td>18.3%(9)</td>
<td>2.0%(1)</td>
</tr>
</tbody>
</table>

* The phrase, “close relatives,” means close relative other than children. It includes grandchildren, brothers, sisters, and parents.
** The phrase, “other persons,” includes nieces, nephews, cousins, aunts, uncles, brothers-in-law, sisters-in-law, persons owned, and friends of the testator.

### Table 8
**Objects of Bounty of Married Testators, 1831-1835 & 1841-1845**

<table>
<thead>
<tr>
<th></th>
<th>Spouse</th>
<th>Children</th>
<th>Close Relatives</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Male</strong> (67)</td>
<td>98.5%(66)</td>
<td>85.0%(57)</td>
<td>23.8%(16)</td>
<td>13.4%(9)</td>
<td>1.4%(1)</td>
</tr>
<tr>
<td><strong>Female</strong> (0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
<td>0.0%(0)</td>
</tr>
<tr>
<td><strong>Totals</strong> (67)</td>
<td>98.5%(66)</td>
<td>85.0%(57)</td>
<td>23.8%(16)</td>
<td>13.4%(9)</td>
<td>1.4%(1)</td>
</tr>
</tbody>
</table>

### Table 9
**Estate Conveyed to the Surviving Spouse by a Decedent Husband**

<table>
<thead>
<tr>
<th>Widowed</th>
<th>1831-35</th>
<th>1841-45</th>
<th>Overall</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.7% (3)</td>
<td>42.9% (21)</td>
<td>35.8% (24)</td>
<td></td>
</tr>
</tbody>
</table>
* "Widowhood" means the spouse possesses the property until she dies or remarries.

** Property is classified as "fee simple" when a testator left property to his spouse and did not indicate any condition that would cause the property to revert to the estate or pass to another beneficiary.

*** 3 testators were placed in the fee simple category even though they used their children turning a certain age as a condition for distribution. For two of them, the wife received an equal share amongst her children at that point. For the other, what was to occur at that point was not explained.

**TABLE 10**

OBJECTS OF BOUNTY, OF UNMARRIED TESTATORS, 1831–1835

<table>
<thead>
<tr>
<th></th>
<th>Children</th>
<th>Close Relatives</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males (8)</td>
<td>62.3% (5)</td>
<td>50.0% (4)</td>
<td>37.5% (3)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Females (5)</td>
<td>80.0% (4)</td>
<td>60.0% (3)</td>
<td>20.0% (1)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Totals (13)</td>
<td>69.2% (9)</td>
<td>53.8% (7)</td>
<td>30.7% (4)</td>
<td>0.0% (0)</td>
</tr>
</tbody>
</table>

**TABLE 11**

OBJECTS OF BOUNTY OF UNMARRIED TESTATORS, 1841–1845

<table>
<thead>
<tr>
<th></th>
<th>Children</th>
<th>Close Relatives</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male (19)</td>
<td>47.3% (9)</td>
<td>57.8% (11)</td>
<td>36.8% (7)</td>
<td>21.0% (4)</td>
</tr>
<tr>
<td>Female (11)</td>
<td>81.8% (9)</td>
<td>100.0% (11)</td>
<td>18.1% (2)</td>
<td>9.0% (1)</td>
</tr>
<tr>
<td>Totals (30)</td>
<td>60.0% (18)</td>
<td>73.3% (22)</td>
<td>30.0% (9)</td>
<td>16.6% (5)</td>
</tr>
</tbody>
</table>

**TABLE 12**

OBJECTS OF BOUNTY OF UNMARRIED TESTATORS, 1831–1835 & 1841–1845

<table>
<thead>
<tr>
<th></th>
<th>Children</th>
<th>Close Relatives</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males (27)</td>
<td>51.8% (14)</td>
<td>55.5% (15)</td>
<td>37.0% (10)</td>
<td>14.8% (4)</td>
</tr>
<tr>
<td>Females (16)</td>
<td>81.2% (13)</td>
<td>87.5% (14)</td>
<td>18.7% (3)</td>
<td>6.2% (1)</td>
</tr>
<tr>
<td>Totals (43)</td>
<td>62.7% (27)</td>
<td>67.4% (29)</td>
<td>30.2% (13)</td>
<td>11.6% (5)</td>
</tr>
</tbody>
</table>

**TABLE 13**

PATTERNS OF BEQUEST OF SLAVES BY TESTATORS

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Spouse</th>
<th>Children</th>
<th>Close Relative</th>
<th>Other Persons</th>
<th>Charity and/or Freed Slaves</th>
</tr>
</thead>
<tbody>
<tr>
<td>Twenty Persons or Fewer</td>
<td>57</td>
<td>61.4% (35)</td>
<td>78.9% (45)</td>
<td>38.5% (22)</td>
<td>24.5% (14)</td>
<td>7.0% (4)</td>
</tr>
<tr>
<td>More than Twenty Persons</td>
<td>10</td>
<td>60.0% (6)</td>
<td>70.0% (7)</td>
<td>80.0% (8)</td>
<td>20.0% (2)</td>
<td>20.0% (2)</td>
</tr>
</tbody>
</table>

* There were a total of 57 testators in both the 1831–1835 and 1841–1845 groups who owned 20 persons or fewer. There were a total of 10 testators in both the 1831–1835 and 1841–1845 groups who owned more than 20 persons.

* This table does not distinguish between male and female.

* This table does not take into account whether the testator was single or married.

* This table contrasts distribution patterns amongst those testators who did not own many persons with those testators who did.

* This table does not account for the "unknown" category in the previous slave tables. Therefore, a concrete number of persons owned was a prerequisite to be included in this table.

* As with some of the other tables, it is possible for the testator to be grouped into more than one category.
* The category, “Charity and/or Freed Slaves,” includes those testators who made bequests to charity, as well as those who intended to emancipate their slaves, regardless of whether such persons were placed in trust, given to a specific individual or organization, or simply set free.

**TABLE 14**

**FAVORED v. EQUAL DISTRIBUTION AMONGST MARRIED AND WIDOWED TESTATORS WITH MULTIPLE CHILDREN**

<table>
<thead>
<tr>
<th></th>
<th>1831–1835</th>
<th></th>
<th>1841–1845</th>
<th></th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>Favored</td>
<td>Equal</td>
<td>No.</td>
<td>Favored</td>
</tr>
<tr>
<td>Males</td>
<td>17</td>
<td>17.6%</td>
<td>82.3%</td>
<td>50</td>
<td>12.0%</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>(14)</td>
<td>(44)</td>
<td>(6)</td>
<td>(44)</td>
</tr>
<tr>
<td>Females</td>
<td>4</td>
<td>25.0%</td>
<td>75.0%</td>
<td>7</td>
<td>57.1%</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(3)</td>
<td>(4)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Total</td>
<td>21</td>
<td>19.0%</td>
<td>81.0%</td>
<td>57</td>
<td>17.5%</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>(17)</td>
<td>(47)</td>
<td>(10)</td>
<td>(47)</td>
</tr>
</tbody>
</table>

- There were a total of 31 testators in the 1831–1835 group.
  - Of these 31, 21 testators (67.7%) were either married or widowed with multiple children.
    - 17 males were either married or widowed with multiple children.
    - All 4 females were widowed.
  - There were a total of 79 testators in the 1841–1845 group.
    - Of these 79, 57 testators (72.1%) were either married or widowed with multiple children.
    - 50 males were either married or widowed with multiple children.
    - All 7 females were widowed.
  - There were a total of 110 testators in the entire study.
    - Of these 110, 78 testators (70.9%) were either married or widowed with multiple children.
    - 67 males were either married or widowed with multiple children.
    - All 11 females were widowed.

**TABLE 15**

**PURPOSES OF TESTAMENTARY TRUSTS (1831–1835)**

<table>
<thead>
<tr>
<th></th>
<th>General Support</th>
<th>Educational</th>
<th>Emancipation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males (8)</td>
<td>62.5% (5)</td>
<td>37.5% (3)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Females (1)</td>
<td>100.0% (1)</td>
<td>0.0% (0)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Totals (9)</td>
<td>66.7% (6)</td>
<td>33.3% (3)</td>
<td>0.0% (0)</td>
</tr>
</tbody>
</table>

- There were a total of 31 testators in the 1831–1835 group.
  - Of these 31, 9 testators (29.0%) employed trusts in the terms of their wills.
    - 8 males employed a trust(s) in the terms of their wills.
    - 1 female employed a trust in the terms of her wills.
    - There were 9 trust purposes in this period.
      - This came out evenly—one type of trust for each type of testator (contrast with 1841–1845 group).
  - The phrase, “general support,” includes those trusts that were designated for the benefit of the testator’s wife, children, or minor persons.
  - The term, “educational or special intent” trust, includes those trusts whose proceeds were to be applied toward the educational expenses of a person denoted by the testator.
  - The term, “emancipation” trust, includes those trusts whose sole purpose was to free a person or persons owned by the testator, as well as those provisions providing some sort of monetary support to the person owned.

**TABLE 16**

**PURPOSES OF TESTAMENTARY TRUSTS (1841–1845)**

<table>
<thead>
<tr>
<th></th>
<th>General Support</th>
<th>Educational</th>
<th>Emancipation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males (28)</td>
<td>75.0% (21)</td>
<td>39.2% (11)</td>
<td>7.1% (2)</td>
</tr>
<tr>
<td>Females (5)</td>
<td>100.0% (5)</td>
<td>20.0% (1)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Totals (33)</td>
<td>78.7% (26)</td>
<td>36.3% (12)</td>
<td>6.0% (2)</td>
</tr>
</tbody>
</table>

- There were a total of 79 testators in the 1841–1845 group.
  - Of these 79, 33 testators (41.7%) employed trusts in the terms of their wills.
    - 28 males employed a trust(s) in the terms of their wills.
    - 5 females employed a trust(s) in the terms of their wills.
    - There were 40 trust purposes in this period though (ex: 1 trust that provided for education, as well as family support, would receive a credit under each category).
  - The phrase, “general support,” includes those trusts that were designated for the benefit of the testator’s wife, children, or minor persons.
The term, “educational” trust, includes those trusts whose proceeds were to be applied toward the educational expenses of a person denoted by the testator.

The term, “emancipation” trust, includes those trusts whose sole purpose was to free a person or persons owned by the testator, as well as those provisions providing some sort of monetary support to the person owned.

### Table 17

**Purposes of Testamentary Trusts**  
(1831–1835 & 1841–1845)

<table>
<thead>
<tr>
<th></th>
<th>General Support</th>
<th>Educational</th>
<th>Emancipation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males (36)</td>
<td>72.2% (26)</td>
<td>38.8% (14)</td>
<td>5.5% (2)</td>
</tr>
<tr>
<td>Females (6)</td>
<td>100.0% (6)</td>
<td>16.6% (1)</td>
<td>0.0% (0)</td>
</tr>
<tr>
<td>Totals (42)</td>
<td>76.1% (32)</td>
<td>35.7% (15)</td>
<td>4.7% (2)</td>
</tr>
</tbody>
</table>

There were a total of 110 testators in the entire study.

- Of these 110, 42 testators (38.1%) employed trusts in the terms of their wills.
  - 36 males employed a trust(s) in the terms of their wills.
  - 6 females employed a trust(s) in the terms of their wills.
  - There were 49 trust purposes in this entire period (ex: 1 trust that provided for education, as well as family support, would receive a credit under each category).