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Banking on Slavery in the Antebellum South

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[n.b.: Although I was trained as an economic historian, the nature of the available sources means that my work tends to be more historical than economic, and more qualitative than quantitative in nature.]

Overview of project:

During the economic boom following the War of 1812, Kentucky business partners A. Morehead and Robert Latham increasingly found themselves in debt to the Bank of Kentucky.[1] The pair had been discounting notes at the bank for several years, and by 1817 owed the bank almost $16,000. With so many notes outstanding, the bank required the men to provide some form of collateral to protect it against the risk of continuing to renew these notes. In October of 1817, they mortgaged 20 slaves and several tracts of land to the bank, as collateral for these debts. The mortgage deeds permitted the bank "to sell the mortgaged property, in case of default in payment." Two years later, another man by the name of Vance endorsed a bill of exchange drawn by Morehead and Latham for $4500, which they would be required to pay back in 90 days. Vance, who was also worried about the risk of repayment, accepted a mortgage of 19 slaves as collateral – the same slaves which had been previously mortgaged to the Bank of Kentucky. This mortgage also permitted him to sell the slaves, if the businessmen failed to pay back the debt in time.

[1] Bank of Kentucky v. Vance's Adm'rs, 4 Litt. 168 (1823)

By the fall of 1819, during the height of the economic panic, Morehead and Latham had fallen behind in all of their debt payments. Both the Bank of Kentucky and Vance decided to begin selling the mortgaged slaves in payment. Vance acted first, seizing the slaves and quickly selling one of them. The bank then obtained a court order to take possession of the slaves, immediately selling eleven more of them. Both sides sued the other for possession of the remaining slaves and for the proceeds from the already-completed sales.

This case highlights many of the risks faced by antebellum Americans when dealing with financial transactions: the risks to the creditor, the risks to the debtor, and (in this case) the risks to the slaves who were being used as collateral in these transactions. My main area of research is financial institutions and their complex relationships with their clientele. I focus on understanding why financial institutions emerged, how they were marketed to and received by the public, and what were the reciprocal relations between the institutions and the community at large. In the South, these questions inevitably interacted with slavery. Few, if any, institutions were uninfluenced by the economic and social system that dominated southern life, and financial institutions were no exception. Life insurers had to consider whether or not they would underwrite slave lives. Banks had to consider whether or not they would provide loans for the purchase of slaves or accept slaves as loan collateral. Of course, any institution or even a whole industry could choose to decline direct participation in the slave economy, but this would have to be a conscious, deliberate decision. And as the work of many recent scholars has shown, both northern and southern institutions that avoided any explicit involvement in slavery were often implicated indirectly in the slave system. I am mainly interested in how formal institutions such as insurance companies and banks viewed and dealt with these risks. Thus I am *not* examining the credit system writ large, but much more specifically banking institutions and those bank loans which involved slaves.

As I was researching antebellum banking more generally for other projects, I was surprised to find very little secondary literature discussing the relationship between banking institutions (specifically) and slavery. While numerous scholars have indirectly examined the relationship between southern finance (more generally) and slavery – Joshua Rothman, Edward Baptist, Seth Rockman, John Majewski, Jonathan Levy, Sven Beckert, Gavin Wright,[2] to name a few – only a handful have approached the topic of finance and slavery head on. For example, Caitlin Rosenthal has been studying the accounting practices of southern plantations.[3] Bonnie Martin and Richard Kilbourne have both been investigating the use of slaves in private mortgage contracts.[4] Calvin Schermerhorn examines the short but interesting life of plantation banks in the 1820s and 1830s.[5] My own work has examined the underwriting of slaves by life insurers.[6] While this brief historiographical sketch is in no way complete, the scholarship on southern finance – and particularly on the relationship between finance and slavery – is still quite slim, especially when compared with the much richer literature on all other aspects of slavery. Part of the problem is that financial history itself is a niche field – particularly outside the confines of economics departments and twentieth-century topics. And those that do study 18th and 19th century finance (myself included) tend to focus on northern institutions. On the other hand, Larry Schweikart's volume on southern banking and Howard Boderhorn's work on antebellum

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[2] Sven Beckert, and Seth Rockman, *Slavery's Capitalism: A New History of American Economic Development* (University of Pennsylvania Press, 2016); Gavin Wright, *Slavery and American Economic Development* (Louisiana State University Press, 2006); Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (Basic Books, 2014); Sven Beckert, *Empire of Cotton: A Global History* (Vintage Books, 2015); and John Majewski, *Modernizing a Slave Economy: The Economic Vision of the Confederate Nation* (UNC, 2009).

[3] Caitlin Rosenthal, *From Memory to Mastery: Accounting for Control in America, 1750-1880* (PhD Dissertation, Harvard, 2012).

[4] Richard Kilbourne, Jr., *Debt, Investment, Slaves: Credit Relations in East Feliciana Parish, Louisiana, 1825-1885* (Pickering & Chatto, 1995); and Bonnie Martin "Slavery's Invisible Engine: Mortgaging Human Property," *The Journal of Southern History* (November 2010): 817-866.

[5] Calvin Schermerhorn, *The Business of Slavery and the Rise of American Capitalism, 1815-1860* (Yale, 2015).

[6] Sharon Ann Murphy, *Investing in Life: Insurance in Antebellum America* (The Johns Hopkins University Press, 2010).

banking throughout the United States both still have remarkably little about slavery.[7] This project is an attempt to look more directly at those connections between banking and slavery.

My research demonstrates that commercial banks were willing to accept slaves as collateral for loans and as a part of loans assigned over to them from a third party. Many helped underwrite the sale of slaves, using them as collateral. They were willing to sell slaves as part of foreclosure proceedings on anyone who failed to fulfill a debt contract. Commercial bank involvement with slave property occurred throughout the antebellum period and across the South. Some of the most prominent southern banks as well as the Second Bank of the United States directly issued loans using slaves as collateral. This places southern banking institutions at the heart of the buying and selling of slave property, one of the most reviled aspects of the slave system. This project will result in the first major monograph on the relationship between banking and slavery in the antebellum South.

Chapter 1 sets the scene, describing southern banking, explaining how various mortgage and loan contracts worked, and examining the legal issues regarding contracting, foreclosure, and the breakup of slave families. Chapter 2 examines slave mortgages by southern commercial banks through the 1830s, looking particularly at the role these mortgages played in the speculation leading up to the Panics of 1819 and 1837. Chapter 3 focuses on the involvement of the First and Second Banks of the United States in slave mortgaging, and the role these mortgages played in the failure of the Second Bank in the 1840s. Chapter 4 examines the plantation banks, with a particular emphasis on the Citizens' Bank of Louisiana. Although the Citizens' Bank of Louisiana stopped payment on its bond obligations in 1842, it continued in operation until the early *twentieth* century. During the 1840s, it actively provided mortgages on plantations and slaves without the direct sanction of the state, and by 1852, the bank was able to

[7] Howard Bodenhorn, *State Banking in Early America: A New Economic History* (Oxford, 2003); and Larry Schweikart, *Banking in the American South from the Age of Jackson to Reconstruction* (LSU 1987).

convince the state to revive its charter. It actively underwrote slave mortgages through the Civil War. Chapter 5 returns to the experiences of commercial banks with slave mortgaging during the 1840s and 1850s. In particular, this chapter examines the relationships of banks with slave traders, and the effects of sales on slave families. The final chapter looks at the legal and economic implications of emancipation for these mortgage contracts.

Today's paper provides an overview of several of these issues, with a particular concentration on the plantation banks of Louisiana, especially the Citizens' Bank.

The Risks of Slave Collateral

The court case involving Morehead and Latham is a good example of the central issues involved in slave mortgages. The main risk to the creditors, who in this case were the Bank of Kentucky and Vance, was that the debtor would fail to pay his obligation in a timely fashion. Creditors required debts to be secured with collateral to help mitigate this particular risk. But the quality of the collateral was also an issue. How easily could it be liquidated? Was it actually worth the amount for which it was mortgaged? Could it decline in value over time? Were there any other claims on this collateral? Most states dealt with this latter issue by requiring all mortgages to be registered with the city or county government.[8] This should have enabled Vance to check and see if the slaves offered to him as collateral had a prior claim on them. The Bank of Kentucky had indeed registered the <u>initial</u> mortgage with the proper authorities. However, as Morehead and Latham continued to discount notes with the bank, these additional debts were just added onto the original mortgage using the same collateral. The bank was not required to update the mortgage debt in the official register. Thus Vance knew that the slaves had a prior lien on them from the bank, but didn't know the full value of that lien. As part of his lawsuit

[8] Indeed, extant notarial records in places like New Orleans and Georgia will be a critical source for this project. I have only just begun examining these, but they are already proving to be a goldmine of information on these mortgage contracts.

against the bank, Vance argued that his claims should have priority over the debts that had been added to the original mortgage but not registered. The court, however, disagreed, siding with the bank that debts could be added onto a mortgage without updating the mortgage registry. As long as the bank could prove that these particular debts predated the mortgage to Vance, then their claims took priority.

The quality and liquidity of the collateral was also an issue. In theory, anything with a market value could be used as collateral. Land, crops, merchandise, stock certificates, livestock, even life insurance policies were commonly offered and accepted as debt collateral. Since slaves constituted such a large proportion of southern wealth, it is hardly surprising that debtors offered their slaves as collateral for loans. Slaves had many advantages over land as collateral for the creditor. They were often easier to sell than land. And it was also easier to break up a group of slaves, selling only the portion necessary to meet the claims of the creditor. Thus while the Bank of Kentucky had accepted a mix of land and slaves as collateral, they preferred to settle their claim by selling slaves. In fact, the bank had permitted Latham and Morehead to sell off some of the mortgaged land, leaving the slaves as the main portion of the collateral.

Vance's lawsuit also addressed this issue. While the bank possessed collateral in both land and slaves, Vance's entire collateral was the slaves. Thus, he argued, the bank should be required first to liquidate the land to satisfy their claims, leaving the slaves for Vance. The bank, however, argued that they should be able to liquidate the collateral in any order it chose. The remaining lands, in their opinion, were "in remote places and are of little value." In the bank's view, the slaves were not only more than adequate as collateral, they were the preferred type of collateral.

The court again ruled in the bank's favor. It did not matter whether or not the bank had access to another source of collateral. Since they possessed the first lien on the slaves, they were perfectly within their rights to sell the slaves first. If, upon selling the slaves, the proceeds exceeded the amount owed to the bank, the bank was to pass on the excess in payment of the debt due to Vance. Additionally, once the bank's debt was settled, they were to assign over any remaining real estate from their original mortgage for Vance to use to satisfy the remainder of his claim. This placed Vance in the position of having to deal with the hassle of selling off the less-desirable lands.

Although slaves were desirable as collateral, there was also a downside for creditors to relying on slaves. The market value of both land and slaves could fluctuate – particularly in economic downturns such as the Panic of 1819. Yet slaves could also lose value as individuals due to age, health, or death. Slaves were thus often offered in large groups, as was the case with the Bank of Kentucky, to reduce the risk of any individual slave losing value.

As Vance learned, requiring that mortgaged property be registered with the local authorities did not guarantee to protect creditors from outside claims. Bondspeople who had been part of the property brought into a marriage, or who had been placed in trust for a wife, proved to be particularly problematic for creditors. Some banks – notably those of Louisiana, which was a community property state[9] – required an affidavit from the wife verifying her willingness to use such slaves as collateral. The Union Bank charter, for example, stipulated that "in all the hypothecatory contracts and obligations entered into by any married individual...it shall be lawful for the wife of the said individual to bind and oblige herself jointly and *in solido* with him; and in such case, the property and right of the wife, whether dotal, or of any other description, shall be affected by the said contracts of obligations."[10] Notaries for City of New Orleans required the wife's signature that she had been informed "apart and out of the presence and hearing of her said husband" of her legal rights to the property in question, although it is

[9] Since Louisiana was a community property state, wives had an equal claim to property obtained during the marriage, but were also equally liable for their husband's debts.
[10] *Act to Incorporate the Subscribers of the Union Bank of Louisiana*, section 25 (1832).

unclear how much power and agency these wives actually had in agreeing to (or rejecting) these debt contracts.[11]

Yet most banks outside of Louisiana did not even consider the rights of wives when drawing up contracts. During foreclosure proceedings, wives (especially widows) often claimed ignorance of their husband's financial dealings with banks, and sought to prevent the seizure of enslaved people. While courts almost always viewed this as a clear case of fraud against the bank (putting slaves up for collateral upon whom the debtor did not have full legal title), they often also viewed the wife as an unwilling victim of the husband's misdeeds. Banks thus had to prove not only that the husband had acted fraudulently, but that the wife had knowingly participated in the fraud. Or, they had to prove that the (usually now-deceased) husband had *not* actually acted in bad faith, and that (instead) the wife's assertion of a prior claim on the slaves was what was fraudulent.[12] [The book will contain a much more extended discussion of these spousal issues.]

Debtors could also try to shield property from the claims of creditors through bogus conveyances of the property. While the creditor could always press a legal claim against the new owner, they (again) often needed to demonstrate that the third party was not an innocent bystander to the scheme. In 1819, the Kentucky branch of the Bank of the United States had discounted a $4700 note, payable in 60 days. When the note went unpaid, the bank sued all the endorsers of the note for payment, including a man named Venable who owned a 200 acre tract of land, another of 113 acres, and several slaves. The bank was unable to liquidate the land "for want of proper bidders," while the slaves and a portion of the land had been recently deeded to his brother-in-law, George M'Donald. The Bank alleged that the deeds had been made fraudulently, with the sole intent of placing these assets out of the hands of his creditors. "Here

[11] See, for example, mortgage between the Commercial Bank of New Orleans and Mariano Ribas, May 12, 1842, in Hilary B. Cenas Notary Public vol. 26A, City Archives of New Orleans.

[12] See, for example, Manigault v. Holmes (1829, 1831); Kempe v. Hunt (1832), Bank of the United States v. Lee (1828, 1837, 1839); Bank of the United States, Bank of State of South Carolina, and State Bank of South Carolina v. Brown (1837); Bank of State of South Carolina v. Mitchell (1839); Kenner v. Holliday (1841).

then is the case of a person upon the eve of a decree being rendered against him for a large sum of money, which it is admitted would go far to his ruin, making conveyances of his whole property real and personal to his brother-in-law, for an asserted consideration equal to its full value." Part of the evidence against Venable was the fact that M'Donald could not actually afford to purchase this property for cash. Instead, the land and slaves were deeded to M'Donald partially in exchange for administering the estate as guardian on behalf of Venable's step-children. The land and slaves, however, were "to remain in possession of the former tenant," i.e., Venable. The remainder of the purchase price M'Donald borrowed from a man named Hendley and paid to Venable. The next morning, Mrs. Venable took the money paid by M'Donald and loaned it back to the same M'Donald, who used it to repay his loan from Hendley. Hendley even testified that he had required no collateral of M'Donald, since he expected to (and did) receive the loaned money back almost immediately. As the court concluded, "the borrowing of the money was merely to exhibit before witnesses a formal payment, and that there was no real bona fides in this part of the transaction." As in the former case, the creditor deemed the slaves to be the more liquid collateral security. Yet the ease with which they could be conveyed to another owner also made them a potentially problematic form of collateral.[13]

Not only could slaves be conveyed to another owner or claimed by a wife, but the enslaved could also be physically removed from the claims of creditors – a problem which could not occur with land titles. While this became a particular problem after the Panic of 1837 when many debtors took their families and slaves and fled their creditors by going to the independent republic of Texas, the possibility of fleeing with slave collateral existed throughout the time period. An example of this was the case of a slave named Milly, and the intricacies of her case

[13] Venable v. Bank of U.S., 27 U.S. 107 (1829)

were a preview of the famous Dred Scott a few decades later.[14] In 1826, David Shipman of Kentucky conveyed Milly to the defendant Smith as security for a debt owed to the Commonwealth Bank of Kentucky and endorsed by Smith. As was often the case with mortgage collateral, Shipman retained possession of Milly and the other mortgaged property. Yet Shipman's debts were well beyond what he could repay and "soon after the execution of said mortgage, said Shipman being greatly embarrassed, took the said Milly with several other of his slaves, and secretly ran away with them to Indiana...[and] executed a deed of emancipation to said slaves." Shipman then set himself up on a farm in Illinois with Milly, until 1827 when his creditor Smith found them "and took said Milly secretly away against her consent, and the consent of said Shipman." In these two court cases, Milly was suing for her freedom, based both on the deed of emancipation and her extended residence in free states. But in order to ascertain Milly's freedom, the courts first needed to determine who was her rightful owner: the creditor Smith, due to the mortgage lien, or the debtor Shipman who retained the "right of possession." The mortgage law at the time was unclear on this point. When a property was offered as collateral, did the creditor take legal title to the property (if not possession) until the debt was paid, or did he merely retain a lien on this property – preventing it from being sold or otherwise altered in value without the consent of the creditor? In the first case, the Supreme Court of Missouri decided that "Smith had only a lien on her to secure the payment of debts; which lien Shipman might, at any time, have defeated, by paying those debts," and thus Shipman, the debtor, retained ownership. Yet the court remained sufficiently uncertain as to send the case back to the circuit court for reconsideration. Even if Shipman still owned Milly, did Smith's lien prevent him from emancipating her?

When the case made its way back to the state Supreme Court, the justices were direct in their assessment that Shipman was "a man largely indebted, hiding his property, and in fact

[14] Milly v. Smith, 2 Mo. 36 (1828); Milly v. Smith, 2 Mo. 171 (1829)

destroying it, to prevent his creditors from reaping any benefit there from, and in this case, Shipman has been base enough to emancipate the slave to injure and ruin his security. We feel disposed to view him in a light but little below that of a felon." Yet the court could not find his fraudulent intentions to be illegal. Until Smith actually foreclosed on the mortgage, the slave was not legally his. In fact, the court ruled that – until the creditor foreclosed – the property was Shipman's to do with as he wished, despite the lien. Ignoring Shipman's deed of emancipation, the court instead ruled that "by the act of residence in Illinois," Milly was now free, although her freedom was granted under the condition of being *sub modo* – that is, she was only free until Smith's "lien is enforced by some mode known to the law." He could not kidnap her, as he had done, but he could still foreclose on Shipman's debt and claim her as property. Although the court did not leave this possibility open for perpetuity – at some unnamed future point Smith's claim on Milly would no longer be reasonable – Milly's grant of freedom in the short and even medium terms was extremely tenuous.

Again, this problem of selling, removing, or otherwise altering property used as collateral was not unique to slave property, but the results were unique. In other cases in which property was fraudulently sold to a third party, out of the reach of creditors, the courts ruled that this third party could not be held liable (unless he had knowingly acquired property upon which there was a lien, as in the case of Venable and M'Donald.) The debtor could not just seize property that a third party had purchased with proper intentions. However, Milly was treated differently. Although she had also obtained legal "ownership" of her "property" in herself as an innocent third party, the lien on her remained.

Whereas Milly's case was highly unusual, the risks faced by most slaves used as collateral were both more mundane and more severe. Scholars of slavery are well aware that two of the biggest causes of slave sales were the liquidation of estates after the master's death, and sales to satisfy creditors. Many southern commercial banks, as well as the Second Bank of the

United States, were willing to accept slaves both directly as collateral for loans and indirectly as a part of loans that were assigned over to them from a third party. They were also willing to sell slave property, not only to make good on loans collateralized by slaves, but also as part of foreclosure proceedings on any slaveholder who failed to fulfill a debt contract – regardless of how their loan was initially secured.

For example, between 1796 and 1802, several businessmen of Charleston had secured a number of debts of the late George Galphin and his business using a combination of real estate, a group of twenty-five slaves, and another group of forty-eight slaves.[15] The latter forty-eight slaves were transferred to Charleston in April 1802, for the purpose of selling them to pay off a portion of the debts. The slaves were brought to the State Bank of South Carolina, which agreed to pay off the debts in question, receiving in return the mortgage on the forty-eight slaves. But one of the endorsers of the debt, "becoming uneasy at the great delay of payment, and the insolvency of two of the parties, did warn the bank, that unless they used all due care and proper diligence to collect their debt, he should exert himself to get released from his securityship." The bank took this warning to heart and immediately employed an agent to enforce the mortgage and sell the 48 slaves. The slaveowner obtained an injunction to stop this sale, claiming that the slaves were collateral security for the debts (and not the legal property of the bank), and that there were other "primary" assets – from the original loan of which the bank had no part – that should be liquidated before the slaves. The court, however, disagreed. The bank had agreed to the loan in exchange for the mortgage on the slaves, and "it would be extraordinary and unjust, that the multiplication of securities, which was intended as an inducement to the loan by the Bank, should be converted into a source of delay in the recovery of the debt....It appears obvious that the mortgages were taken as an additional security, and it was intended that the Bank should be at liberty to resort to any of the securities, to enforce payment." Like the Bank of Kentucky,

[15] Goodwyn v. State Bank, 4 Des. 389 (1813)

the State Bank of South Carolina preferred to liquidate the slave property mortgaged to it, and actively engaged in pursuing this sale. They demonstrated little concern with being involved in the slave trade.

As these court cases reveal, southern banks were formal, institutional players in this most-reviled aspect of the slave system. Commercial bank involvement with slave property occurred throughout the antebellum period and across the South. Not surprisingly, many of the cases centered around claims stemming from the Panics of 1819 and 1837/39 and their ensuing depressions. In addition to directly securing loans with slaves, there were numerous cases in which the original creditor on a loan secured with slave property conveyed that loan to a bank, with the bank accepting that assignment without question. There were also many cases of banks foreclosing on delinquent debtors who may or may not have secured their original loan with slaves. The banks in these cases seized all saleable property, including slave property, and liquidated the property to pay off the amount owed.

The early 1840s provides a snapshot of these depression-driven foreclosures. Hilary Breton Cenas, one of the notary publics working in the City and Parish of New Orleans, recorded numerous mortgage transactions listing enslaved people as collateral with the banks of the city including the Mechanics' and Traders' Bank, the City Bank, the Commercial Bank, the Union Bank, the Bank of Louisiana, and the Exchange and Banking Company.[16] With the exception of the Union Bank (which was a plantation bank, described below), all of these banks were traditional commercial banks.

For example, during the speculative land bubble of the 1830s, Nathaniel and James Dick had purchased two pieces of land in the Parish of Rapides. The first was a "cotton plantation" known as Bynum's Lower Plantation, which they purchased from Abner Robinson in 1834. The second was an adjacent piece of land which they purchased directly from the United States

[16] New Orleans Notarial Archives, Hilary B. Cenas Notary Public January-April 1842 vol. 26.

government in 1835. The Dicks financed these purchased with a loan from the Mechanics' and Traders' Bank of New Orleans,[17] using the land and slaves as collateral. But the debtors soon succumbed to the hard times following the panic, and by November of 1840, they had foreclosed on the property. The sheriff put the land and slaves up for public sale, at which point the bank purchased the property. The purchase price was then used to repay all debts owed by the Dicks, including the outstanding loan to the bank itself.[18] Over the next 15 months, the bank likely hired an agent to run the plantation for their benefit while they sought a suitable buyer.[19] In February of 1842, they finally sold the two tracts of land, including "all the buildings and improvements thereon, and all the farming utensils, and stock, consisting of horses, mules, oxen, cattle, &c. wagons, carts, ploughs, provisions, &c.," along with the 103 named slaves "attached to said Plantation" to Horatio Stephenson Sprigg and George Mason for $106,050. The new owners paid $10,000 in cash, financing the remainder with six promissory notes payable at 7% interest over the next six years. The bank required that the pair not only offer the purchased land and slaves as collateral for these notes, but that they also obtain "an additional Mortgage on the Plantation and Slaves of H. S. Sprigg Situated in the Parish of Rapides called Evergreen" to secure the first three promissory notes. As was standard in these mortgage contracts, the buyers "promis[ed] not to sell, alienate, deteriorate, nor encumber the same, to the prejudice of this mortgage."[20]

When multiple creditors were involved, these foreclosure proceedings could become quite complicated. In 1840 D. R. Hopkins fell delinquent on two mortgage notes for $4500 plus 10% interest each, due to the Union Bank of Louisiana. The bank went to court to obtain an order for the seizure and sale of Hopkins' plantation at Lac des Mares in the Parish of

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[17] I'm still combing through the notarial records. I should be able to locate the original mortgage to determine the terms of this agreement at a later date.

[18] While I'm still working out the legal details of these foreclosure proceedings, these seem to be akin to modern judicial foreclosures.

[19] Although I have no direct information (yet) about this plantation, I have found other cases where a bank purchased a foreclosed property and then hired an agent to run it in the interim before finding a new buyer. See the examples below in the section on plantation banks.

[20] New Orleans Notarial Archives, Hilary B. Cenas Notary Public January-April 1842 vol. 26, p. 193.

Natchitoches, along with his 43 slaves. While the Union Bank held the primary mortgage on the property – which included at least 2 additional promissory notes – several other creditors also held secondary claims including Matilda Ann Smith of Adams County, Mississippi, and Joseph Fowler, Jr. (of New Orleans?). The sheriff put the property up for public sale in June 1842, selling it to John F. Gillespie, the trustee for Smith, who paid the Union Bank for the past due notes plus interest and court costs. They also promised to pay off the remaining two promissory notes by January 1843. Yet just one month later, in July 1842, Gillespie resold the land and slaves to the Mechanics' and Traders' Bank of New Orleans, who assumed responsibility for paying off the Union Bank as well as several other remaining creditors. Although the records are not entirely clear on the full nature of this transaction, my current assumption is that Hopkins also owed money to the Mechanics' Bank, who purchased the land in the hopes of recouping the amount of this debt. Once I locate the records of the subsequent sale, I hope to gain a fuller understanding of the nature of the debt obligation.[21]

In these two instances, the land and slaves were bought and sold together, keeping the slave community intact. Yet, as other examples demonstrate, this was not always the case. As I move forward with my research, I am interested in determining whether the existence of a mortgage made it more or less likely for groups of slaves to be kept together, either mitigating or exacerbating the effects of the slave trade. And the answer might depend on geography. Were mortgaged slaves in Upper South states like Virginia or Kentucky more likely than Deep South slaves to be sold and dispersed as a result of foreclosure proceedings? Or did the existence of a mortgage, which bound the slaves to the debt itself, prevent the type of piecemeal sales that were common among southern debtors trying to repay short-term obligations? I am hopeful that further research will shed light on this question.

[21] New Orleans Notarial Archives, Hilary B. Cenas Notary Public May-August 1842 vol. 26A, p. 621.

Plantation Banks: The Citizens' Bank of Louisiana

Louisiana chartered its first commercial bank – the Louisiana Bank – in 1804, with an initial capitalization of $300,000 but permission to increase this to $2 million as needed. The following year, New Orleans received a branch of the First Bank of the United States, but when that bank's charter expired in 1811, the state found itself in need of more robust financial services. In the assessment of one historian of southern banking: "Louisiana's highly diversified economy, fine natural port, and proximity to the Mississippi River created a commercial economy with a tremendous demand for banking services."[22] On the heels of the First Bank's closure, Louisiana chartered two new banks to supplement the services of the Louisiana Bank: the Bank of New Orleans ($500,000) to serve the needs of the commercial city, and the Planters Bank ($600,000) to serve the rural planting class. Additionally, New Orleans received a branch of the Second Bank of the United States when it opened its doors in 1817. To address the continued demands for banking services, the state also chartered the Louisiana State Bank in 1818 as a semi-public bank; the state could purchase up to one-quarter of the bank's $2 million in stock, and select six of the bank's directors. Headquartered in New Orleans the bank had five branches spread throughout the state to provide much-needed financial services.[23] One branch was in the future capital city of Baton Rouge (bordering the sugar and cotton regions), with a second in Shreveport (in Caddo Parish in northwestern Louisiana) [I'm still trying to determine the location of the remaining 3 branches].[24]

While the Bank of New Orleans and the new Louisiana State Bank were able to survive the Panic of 1819, the other two state banks closed their doors in its aftermath. Yet as the state economy recovered from the panic, Louisiana again responded to demands for increased banking

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[22] Larry Schweikart, *Banking in the American South from the Age of Jackson to Reconstruction* (Baton Rouge, LA: Louisiana State University Press, 1987): 134.
[23] Schweikart, 57, 135; George Green, *Finance and Economic Development in the Old South: Louisiana Banking, 1804-1861*, (Stanford, 1972): 22-23.
[24] Corinne L. Saucier, *The History of Avoyelles Parish* (Gretna, LA: Pelican Publishing, 1943): 137.

services. In 1824, it opened a second state-wide semi-public bank. Capitalized at $4 million, the Bank of Louisiana would also be headquartered in New Orleans with five state branches. Three of these branches were located in the cotton-producing parishes of West Feliciana, St. Landry, and Rapides, with the remaining two in Baton Rouge and Ascension, both of which had a mixture of plantation types. None was located in a primarily sugar-producing parish.[25] [See the maps at the end for the main sugar and cotton parishes.] The merchants of New Orleans lobbied the legislature for even more banks, chartering the City Bank of New Orleans in 1831 ($2 million with branches in Baton Rouge and the cotton parish of Natchitoches), the Commercial Bank of New Orleans in 1833 ($3 million), the Exchange and Banking Company in 1835 ($2 million), and the Merchants' Bank of New Orleans in 1836 ($1 million). Complaining that these New Orleans banks had "been converted into political engines" for the benefit of the merchants of the city, their political opponents successfully chartered the Mechanics' and Traders' Bank of New Orleans in 1833 as "a republican institution, got up to rescue the honest mechanic from the grasp of the opposition, and grant him facilities which he can enjoy without the sacrifice of his elective franchise."[26] Capitalized at $2 million, this bank also opened two branches in the cotton parishes of Concordia and St. Landry.[27]

The one major constituency largely ignored in this rapid expansion of Louisiana's commercial banks were the planters, and especially the sugar planters. Although the semi-public Louisiana State Bank and Bank of Louisiana both had branches throughout the state, the majority of their banking capital and lending services centered on the short-term commercial paper of New Orleans merchants. And while the cotton and sugar planters controlled vast wealth in the

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[25] "Letter from the Secretary of the Treasury transmitting Statements showing the condition of certain State Banks, January 4, 1837," *Executive Documents, Twenty-Fourth Congress*: 150.
[26] Letter from V. M. Garesche to Hon. R. B. Taney, Secretary of the Treasury, *Documents of the Congress of the United States, in relation to the Public Lands* (Washington, DC: Gales & Seaton, 1860): 224.
[27] Green, 22-23; "Letter from the Secretary of the Treasury transmitting Statements showing the condition of certain State Banks, January 4, 1837," *Executive Documents, Twenty-Fourth Congress*: 150.

form of land and slaves, this wealth was not liquid, making it difficult to charter a new Planters' Bank. During the 1820s, a series of poor sugar crops, combined with a reduction of the tariff on imported sugar, hit the region hard. The capital-intensive nature of sugar production left the planters with an unmet need for access to banking services, especially long-term loans against their real property. (The estimates I have seen are that sugar planters needed a minimum of $90,000 in assets for buildings, equipment, and slaves, or $2.74 million today. I need both to confirm this assessment, and determine the minimum assets required for a cotton plantation – although this was certainly a much smaller amount.[28]) The result of this growing demand was the formation of the Consolidated Association of the Planters of Louisiana [CAPL], chartered in 1827 with $2 million in capital, as a property bank.[29]

Traditionally, commercial bank charters required a specific amount of paid-in capital from their shareholders in order to begin operations, and would only provide short-term loans – even for mortgages. In contrast, the charters of plantation banks modeled on the CAPL required no paid-in capital to begin operations; the reserves of the bank were based entirely on borrowed money. Investors mortgaged a portion of their land (and later slaves[30]) in return for bank shares. The entirety of the bank's capital stock was based on these mortgages of plantations and slaves. But this still left the bank with no specie reserves for the issuance of bank notes or loans. Initially, plantation banks tried to sell bonds to raise the requisite specie; annual mortgage payments by the stockholders would pay the interest on these bonds. But investors were wary of investing in mortgaged-backed bonds without any further security.

The bank appealed to the state for help. By an act passed in 1828, the state of Louisiana agreed to issue Louisiana state bonds, giving the bonds to the bank in exchange for collateral –

[28] using a simple purchasing price calculator from 1860 to 2017
[29] Green, 112-113.
[30] The initial charter for the CAPL is clear that only *immoveable* property was eligible for mortgage. I have not yet determined when this was revised to include slave property.

the long-term mortgages on those plantations and slaves. The bank would then sell these state bonds to investors in the Northeast or overseas, who paid the bank in gold and silver. The bond purchasers had more confidence in the bonds since they were guaranteed by the state – and ultimately the taxpayers. The state had confidence in the bank's ability to pay the interest and principal on the bonds, since they were backed by the valuable land and slaves of the region's booming cotton and sugar economy. Like public banks, these plantation banks were financed through the sale of state bonds; yet unlike public banks, the shareholders were private citizens who had mortgaged their land and slaves in exchange for shares. This specie would enable the bank to begin issuing bank notes and extending loans on a fractional reserve basis.[31]

This move to provide state backing was not without significant opposition, particularly from the cotton regions of the state, as well as some residents of New Orleans. Charles Maurian, representative to the Louisiana House of Representatives from that port city, publicly expressed his reasons for voting against the bill, including that the legislature had no right to bind the state on behalf of a "certain class or description of citizens, to enable them to borrow money for their exclusive use and benefit, without any corresponding advantage to the public, or adequate security against loss," and that it would "destroy the public credit" of the state and "embarrass it in its necessary pecuniary operations." His supporters in the House felt so strongly, that they insisted this protest be inserted in the official Journal of the Assembly. This protest was signed by thirteen members of the House of Representatives, including four from New Orleans, and seven from the main cotton-producing parishes of Concordia, Rapides, Catahuala, Ouachita, Nachitoches, West Feliciana, and East Baton Rouge. Ten other legislators tried to block this protest from being included in the official record – presumably indicating their strong support for state underwriting of the Consolidated Association bonds. These included two representatives

[31] For an overview of the history of plantation banks, see Calvin Schermerhorn, *The Business of Slavery and the Rise of American Capitalism, 1815-1860* (Yale University Press, 2015): 95-109.

from New Orleans, as well as representatives from the major sugar-producing parishes of St. Bernard, Plaquemines, and St. John the Baptist.[32] It appears that there were significant divisions in the state between the cotton and sugar planters [which I need to explore more], and that the Consolidated Association was an institution most associated with the sugar rather than cotton planters. [Was this because sugar planters had greater capital needs that existing banks – with their limited capital – were unable to meet? Or because the existing banks were, by design, targeting the cotton parishes and ignoring the sugar parishes?]

Although the state's first plantation bank was successful, the limited capitalization of the CAPL still left planters – especially sugar planters – without adequate access to funding. The largest cotton parishes, especially Concordia, were much closer in proximity to Natchez, Mississippi, giving them additional access to banking capital there. The Second Bank of the United States had just opened a branch at Natchez in 1831, and the Bank proved willing to loan to planters on slave collateral [this is discussed in another section of the book]. That same year, the Planters' Bank of Mississippi also opened its doors in Natchez as a plantation bank. Although it initially only accepted stock subscriptions based on real estate (like the CAPL), its charter was later amended [when?] to allow for slave property as well.[33] Thus it appears that by the early 1830s, the cotton planters of Louisiana had access to considerably more financial services than the sugar planters, even as sugar production was more capital-intensive and vitally important to the state.[34]

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[32] "State Legislature," *New Orleans Argus*, February 15, 1828: 2; *Membership in the Louisiana House of Representatives: 1812-2020* (David R. Poynter Legislative Research Library, August 17, 2018).

[33] , Richard Holcombe Kilbourne, Jr., *Slave Agriculture and Financial Markets in Antebellum America. The Bank of the United States in Mississippi, 1831-1852* (London: Pickering & Chatto, 2006): 32.

[34] According to an 1836 report of the Secretary of the U.S. Treasury, the branches of Louisiana banks (Louisiana State Bank, New Orleans Canal and Banking Company, mechanics & Traders' Bank, Bank of Louisiana, Union Bank, and City Bank of New Orleans) were capitalized at just under $3 million in the cotton parishes, those in sugar parishes at just under $1 million, with another $1.15 million in the mixed agriculture parishes. While it is difficult to nail down exact values of the sugar and cotton crops in Louisiana, back-of-the-envelope estimates show that the crops had roughly equivalent valuation during the early 1830s, with cotton jumping in total value due to the price bubble at mid-decade. Sugar did not experience a similar jump in price. "Letter from the Secretary of the Treasury

In 1832 the state chartered the Union Bank of Louisiana, located in New Orleans with eight additional branches and a capital of $7 million – which dwarfed the combined capital of all previous Louisiana banks. These 8 branches were dispersed throughout the state, with four in the cotton parishes of Nachitoches, Avoyelles, East Feliciana, and Lafayette, two in the sugar parishes of Lafourche and St. Tammany, and two in the mixed parishes of Iberville and St. Martin. In designating these eight locations, the charter also listed the parishes which these locations were intended to serve (see map in appendix). Ignored in this list were the main sugar-growing parishes of the state, as well as two important cotton-growing parishes (the latter of which bordered Natchez, MS). While planters in St. James, St. John the Baptist, and St. Charles might easily have accessed the branch in Lafourche, it is telling that the charter did not expressly state this.[35]

Unlike the charter of the Consolidated Association, the Union Bank explicitly permitted mortgages on slave property from its inception, as long as at least two-thirds of each mortgage comprised land.[36] Interest in this bank was immediate and overwhelming, with citizens of the city of New Orleans requesting mortgages in exchange for $12 million of stock, and residents of the remainder of the state subscribing for another $25 million of stock.[37] According to the charter, the directors would need to reduce the subscriptions back down to $8 million if oversubscribed by "deduct[ing] the amount of such excess from, first, the stock for which sufficient security shall not be offered, and then from the largest subscriptions, in such manner

transmitting Statements showing the condition of certain State Banks, January 4, 1837," *Executive Documents, Twenty-Fourth Congress*: 150; "Sugar Statistics," *DeBow's* (1852): 97; James L. Watkins, *King Cotton: A Historical and Statistical Review 1790-1908* (New York, 1908): 194. A bale of cotton was approximately 340 pounds in 1830 ("Statistics of Iron and Cotton 1830-1860," *The Quarterly Journal of Economics* (April 1888): 383). Cotton prices are from Lewis Cecil Gray, *History of Agriculture in the Southern United States to 1860* (1933): 1027[?].

[35] *Act to Incorporate the Subscribers of the Union Bank of Louisiana*, sections 33 (1832).

[36] *Act to Incorporate the Subscribers of the Union Bank of Louisiana*, sections 8 (1832); and "Letter from the Secretary of the Treasury transmitting Statements showing the condition of certain State Banks, January 4, 1837," *Executive Documents, Twenty-Fourth Congress*: 150.

[37] Schermerhorn, 117.

that no subscription shall be reduced in amount while any one remains larger."[38] Without a listing of subscribers, it is impossible to know which sectors of the state this bank primarily served. However, the location of its branches remained outside the main sugar regions.[39]

With so much excess interest in the Union Bank, and so little representation in the sugar parishes, calls for additional banking capital continued. This culminated the following year with the incorporation of the Citizens' Bank of Louisiana. Capitalized at $12 million, this third plantation bank would mainly cater to the sugar planters of the state (see maps in appendix). Like the Union Bank, the Citizens' also permitted the mortgaging of slave property up to one-third of the total value. (I am still compiling bank charters, but so far these are the only two charters from *any* time or place in the nineteenth century US to explicitly discuss slaves in their text.)[40]

According to the act of incorporation, the Citizens' Bank was permitted to subscribe for $14.4 million of stock divided between the city and parish of New Orleans ($8.4 million) and the remaining parishes of the state ($6 million). Three prominent citizens were designated in each parish to receive share subscriptions. This was in stark contrast to the Union charter which limited subscription locations to the eight cities designated as branches.[41] Yet despite this more extensive outreach, the primary interest in this bank came from the sugar planters of the state (see maps in appendix). Subscriptions were concentrated in the parishes of St. Bernard, St. James, St. Charles, Jefferson, Iberville, Plaquemines, West Baton Rouge, St. John the Baptist, and Assumption. By 1833, planters from these nine parishes had subscribed a total of $7.4 million to the bank, accounting for 88% of the non-New Orleans subscriptions. On a per capita basis (white population in 1830), residents of these parishes contributed on average between $1,177 each in St. Bernard to $170 each in Assumption. [I also have the names of the individual

[38] *Act to Incorporate the Subscribers of the Union Bank of Louisiana*, section 2 (1832).
[39] "Letter from the Secretary of the Treasury transmitting Statements showing the condition of certain State Banks, January 4, 1837," *Executive Documents, Twenty-Fourth Congress*: 150.
[40] 1833 Act of Incorporation, p. 177.
[41] 1833 Act of Incorporation, p. 172-174, 193-194.

subscribers, but I'm am still – painfully – trying to match these individuals with the population and slave schedules of the 1850 federal census and other sources and turn this into a usable database.] Based on production recorded in the 1840 census, these were some of the top sugar producing parishes of the state. The other major sugar-producing parishes of Terrebonne, Ascension, Lafourche, and Saint Mary contributed very little to this initial subscription, yet they already contained three bank branches between them (the Union Bank branch in Lafourche, and branches of the New Orleans Canal and Banking Company in Ascension and St. Mary.) On the other hand, the major cotton-producing parishes demonstrated little interest in the new bank, thus the Citizens' Bank would mainly support the sugar growers of Louisiana.

The experience of one sugar planter with the Citizens' Bank of Louisiana provides a good example of how these plantation banks functioned in practice. Jean-Bernard Xavier Philippe de Marigny de Mandeville, more commonly known as Bernard de Marigny, was a member of one of the most important and respected old aristocratic families of French Louisiana. By the 1830s, Marigny owned several large plantations, including a sugarcane plantation and brick yard on the north shore of Lake Pontchartrain in the Parish of St. Tammany, and another south of New Orleans in the Parish of Plaquemines. In 1833, Marigny was one of the original incorporators of the Citizens' Bank of Louisiana.

Like the CAPL, the Citizens' Bank initially failed to sell its mortgage-backed securities in the northeastern and foreign bond markets; by 1836, the state had authorized the sale of up to $12 million in Louisiana state bonds, exchanging the bonds for the mortgage collateral of the bank. That same year, Bernard de Marigny and his wife Anne Mathilde Morales mortgaged their sugar plantation in Plaquemines Parish – including the house, sugar mill, hospital, kitchens, slave cabins, a warehouse, barn, stable, carts, plowing equipment, animals, and 70 slaves – in return for 490 shares of stock in the bank.[42] At $100 per share, Marigny's stake in the bank (from this one mortgage) was worth $49,000; he would later also mortgage his sugar plantation and slaves in St. Tammany in exchange for more stock. Marigny then used these bank shares as collateral for borrowing against the bank, obtaining several loans from the bank totaling more than $100,000 which were backed by these same two plantations and the attached slaves. Marigny was required to pay the annual interest on his mortgage notes (ranging from 6.5%-8%), plus 1/12 of the principal when the notes fell due each May. [These were the same type of mortgage notes which D. R. Hopkins fell delinquent on paying the Union Bank, discussed above.] These proceeds would be used to pay the interest on the bonds. But if Marigny failed to pay this debt, the bank could foreclose on his mortgage, as the Union Bank had done in the case of Hopkins, selling the property and slaves to reimburse the bondholders.

While the state of Louisiana had pioneered the incorporation of plantation banks with the Consolidated Association in 1828, the model was soon duplicated throughout the region: in Alabama, Arkansas, the Florida territory, and Mississippi. In so doing, slaveholders were able to tap into their slave capital in a unique way, allowing for the expansion of the money supply to be linked explicitly to the value of the slave system. These experiments with plantation banks were short-lived however, with *most* failing in the aftermath of the depression from 1837-1842 that decimated the banking system throughout the nation. As land and slave prices plummeted, borrowers defaulted on their loans, leaving the banks holding devalued land and slaves, but no specie with which to pay the bondholders. The Union Bank of Louisiana went into liquidation in 1844, while the CAPL began liquidation in 1843 (although it was not completed until 1883).

[42] "un maison de mâitre, sucrerie et dépendances, hopital, cuisines, cabanes à nègres, magasins, grange, écurie et toute autres dépendances qui existent sur la dite habitation; Ensemble aussi les charrettes, et instrumens aratoires, et les animaux tels que chevaux, mulets, bêtes à cornes et généralement tout ce qui sert à l'exploitation de la orte terre... Soixante-dix esclaves attachés à la dite terre et dont les noms et âges suivent." "Act of mortgage granted by Bernard Marigny and his wife Anne Mathilde Morales to the Citizens' Bank of Louisiana," July 5, 1836, Tulane University.

Many of the state bond repudiations that occurred in the early 1840s were directly related to the failure of these various plantation banks. The Citizens' Bank of Louisiana also went into liquidation in 1842.

As far as the secondary sources are concerned, the brief and geographically-limited excursion into plantation banking during the 1830s seems to be the only direct connection between slavery and commercial banks, and even the plantation bank story ends in the early 1840s. But this was not actually the case. [Whereas most of my book will be addressing the relationship between non-plantation banks and slavery, this section is devoted to a fuller assessment of the Citizens' Bank after 1842.] Although the Citizens' Bank of Louisiana stopped payment on its bond obligations in 1842, it continued in operation until the early *twentieth* century. During the 1840s, it actively provided mortgages on plantations and slaves without the direct sanction of the state, but did attempt to convert these mortgage shares into cash shares.[43] By 1852, the bank was able to convince the state to revive its charter, although Louisiana now required that all the original mortgage shares be converted into cash shares, making the bank a more traditional commercial bank. I have recently begun combing through the records of the Citizens' Bank from its incorporation through the Civil War.[44] This conversion to cash shares occurred slowly and it does not appear that it was ever complete. Bank shares backed by plantations and slaves (but little cash) continued to be bought and sold throughout the region through the Civil War. The experiences of Bernard de Marigny (and others) with the bank exemplify how the bank functioned in this later period.

In order to obtain a mortgage using slave collateral, the borrower needed to supply the bank with a full list of each slave (including name and age) as well as an official appraisal of the values of said slaves – this was true both in the case of plantation banks and traditional

[43] I'm still examining how they went about doing this and to what extent they succeeded.

[44] Citizens' Bank of Louisiana minute books and records, 1833-1868, collections #26 and 539 (Howard-Tilton Memorial Library, Tulane University).

mortgages with commercial banks. For example, just as Marigny had done with his 1836 mortgage, when J. B. Thease [sp?] mortgaged his Lafayette plantation and slaves on September 28, 1837 to the bank in exchange for 45 shares of bank stock, the borrower included a list and an "accompanying certificate of appraisement" on the slaves. Under the terms of the contract, the borrower could not sell any of the land or slaves without receiving a "release" of the mortgage on the property from the bank. Obtaining such a release required that other land or slaves of equivalent value be substituted. These requests for release often occurred when the borrower wished to sell the property in question. For example, on April 24, 1850, "Mrs. Mandeville Marigny [Bernard's wife] applied for a release of mortgage on the slave York whom she intends to sell, he being too weak for the work of her brick yard [in the St. Tammany parish], offering to apply the proceeds of said sale to the purchase of another slave" who would then be encompassed in the original mortgage.[45] Similarly, Albert Fabre requested "a release of mortgage of the mulatto slave Isidore aged 43 years....the mulatto boy Theodore aged 17 ... [and] Cécile aged 16 years, Milly aged 40, Augustine aged 17" because they were "not fit for the work of his plantation" and he wished to sell them. He offered "to transfer the mortgage" from Isidore to "the negro slave Jacques about 40," and from Theodore to "another slave to the satisfaction of the bank." For the remaining three, he requested "a delay of 60 days" so that he could obtain "other slaves to the satisfaction of the bank, to be purchased by him out of the proceeds of said sale & whom he binds himself to mortgage to the bank."[46] Although the bank routinely granted these requests,[47] the extra delay and layer of bureaucracy involved made the slaves less liquid as assets than non-mortgaged slaves. A borrower could not sell a mortgaged slave without substituting another acceptable asset (often another slave) for the value. This likely delayed or

[45] Citizens' Bank of Louisiana minute books and records, 1833-1868, April 24, 1850.
[46] Citizens' Bank of Louisiana minute books and records, 1833-1868, October 15, 1850
[47] For example, see also Citizens' Bank minutes dated March 27, 1849; June 7, 1849; November 7, 1849; January 7, 1850; January 15, 1850; April 9, 1850; November 18, 1850; and January 28, 1851.

even prevented many slave sales, including the break-up of families – although further research is necessary to validate this assertion.[48]

Additionally, groups of slaves were often mortgaged and released in family groups, indicating that the owners were selling whole families rather than selling individual family members separately (although they certainly could have been separated in the final sale.) On March 27, 1849, "Mr Bernard Marigny applied for a release of mortgage in the slave Celina and her two children and to mortgage in their stead the slave Anna aged 30 years and her two children François & Euladich which was granted after due appraisement shall have been made & accepted." On June 7, 1849, "Mr Saml W. Logan of the parish of St Charles applied for a release of the mortgage...on the two slaves Eddy & his daughter Patsey," substituting two others. Jno F. Miller's application on January 28, 1851 to release 16 slaves from his mortgage included a mother and five children, a husband and wife, a set of young siblings, and a mother and son. He proposed to replace them with 16 different slaves, including another husband and wife couple, a set of parents with their three children, and a mother and her four children.[49] These family groupings were partially in compliance with state law. An 1829 Louisiana law forbid the separate sale of children under 10 from their mothers; less stringent laws in other states set the age limit at 5.[50] While historians debate the overall effectiveness of these laws in preventing the separation of young children from their mothers, the Citizens' Bank records indicate that institutions such as banks were careful not to violate these regulations; they also often kept together family members that fell outside the terms of the law – such as spouses, fathers, and children over the age of 10.

[48] I'm currently working on linking the slaves in question to the slave schedule of the federal census, in order to assess the degree to which the bank was (or was not) involved in the break-up of families. However, most of the slaves were not listed by name on the census, making this likely an impossible task.
[49] Citizens' Bank of Louisiana minute books and records, 1833-1868, January 28, 1851.
[50] See Marie Jenkins Schwartz, *Born in Bondage: Growing Up Enslaved in the Antebellum South* (Harvard, 2009): 89.

Other slaves received special treatment. When the bank seized the plantation and slaves of Charles Fagot in 1849 due to his failure to pay notes due on his mortgage, they placed the slaves up for auction "with the exception of the slave Marie." Although no rationale was given, the instructions for the sale made it clear that "After the property & slaves mortgaged shall have been sold, if the Bank is paid in full, the slave Marie shall not be sold....If on the contrary the Bank is not paid in full, then the slave Marie shall be offered for sale...said slave together with her offspring remaining always subject to the mortgage securing the stock."[51] Clearly Fagot sought to protect Marie from sale; perhaps she possessed particularly valuable skills, or perhaps his interest in her was sexual – the record provides little guidance on this. And while the bank was not willing to release her from the mortgage contract, they were willing to honor this special request if it did not harm their financial claims.

In another case from 1852, the bank was willing to pay up to $500 to recover a young slave named Dick. Dick was one of 25 slaves which the bank had purchased to work on the plantation of Felix Garcia. For an unstated reason, the boy had "been arrested & sold at Liberty, Mississippi." While the bank was not disputing the reasons for the arrest and sale, they were willing to pay Fr. Dauncy $50 plus traveling expenses to find and repurchase Dick; he would receive only $25 if he failed to complete the task.[52] At this point I can only speculate as to why they were willing to go to such lengths to retrieve – and repurchase – this particular slave. As one of 25 slaves, his overall importance (on average) should have been minimal. Did he have a particularly valuable skill that made him worth more than the average slave of his age? Was the bank interested in keeping a family unit intact? Did they view the sale as fraudulent and seek his return on principal? While I may never be able to answer this question with any specificity in this case, perhaps other similar cases will emerge from the record as I continue reading –

[51] Citizens' Bank of Louisiana minute books and records, 1833-1868, May 15, 1849
[52] Citizens' Bank of Louisiana minute books and records, 1833-1868, May 20, 1852

shedding greater light on the case. Was this an isolated instance, or was this bank (and others) engaged in singling out individual slaves for special treatment more frequently?

It was not unusual for the Citizens' Bank to own slaves (such as Dick) and plantations (such as Garcia's) outright, although the details of this particular case were somewhat unusual. Felix Garcia's sugar plantation had suffered a great fire in the late 1840s. Whereas the bank normally would have seized and sold the plantation of someone unable to continue paying their loan obligations, they determined that "under existing circumstances, a very heavy loss would be sustained by the Bank." Some board members protested that Garcia was receiving special treatment, yet the board as a whole voted to hire an outside firm to run the plantation, make improvements on the land, and purchase 25 slaves to run it in the short term. This expense would be paid back through the sale of sugar over the next two years, at which point Garcia would (hopefully) resume paying his debt to the bank.[53]

Much more commonly, the bank would seize the plantations and slaves of delinquent borrowers, either immediately placing them up for sale or taking control of the property until a better sale price could be obtained. For example, in 1843 they purchased 5 slaves at a sheriff's sale of the property of a delinquent borrower John Kist[sp?]. From 1845 to 1849, they retained ownership of those slaves, hiring them out for investment income. By April 1849, they agreed to sell the slaves to W. H. Bowman for $2400. Bowman purchased them with $600 cash, financing the remaining $1800 with a mortgage payable in two years.[54]

In May of 1849, the bank seized the plantation of Charles Fagot, another delinquent borrower. They planned to place the land, slaves, and bank shares all up for sheriff's sale in July, but worried that they would not be able to attain a purchase price to cover adequately the entirety of their mortgage investment. The bank's representative was therefore "authorized to

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[53] Citizens' Bank of Louisiana minute books and records, 1833-1868, April 10, 1859; May 1, 1859; May 15, 1849
[54] Citizens' Bank of Louisiana minute books and records, 1833-1868, April 3, 1849.

employ an overseer or keeper, to be put in charge of [the] plantation...at a reasonable salary or compensation, or to take any other measure which he may deem necessary or expedient for the preservation of [the] property" if no bidder offered at least $18,010.50 to cover both the value of the property and the stock loan. As instructed, the bank's agent purchased the property at the sheriff's sale for $11,000 when no bidders offered the minimum that the bank required. The agent immediately sold off the slaves separately, but the bank retained the land until some future point when they could find a more willing buyer.[55] In the fall of 1850 they would similarly purchase the plantation, slaves, and stock shares of delinquent borrower S. Peyman at a sheriff's sale, successfully reselling the whole lot to Albert Fabre.[56]

Even more commonly, the bank mediated and approved of the sale of any mortgaged plantation. In January 1851, Bernard Marigny alerted the bank that he intended to sell his plantation in Plaquemines parish, including its 32 slaves and the 1308 shares of stock attached to it, to Mordecai Powell – a large Mississippi plantation owner. Not only did Powell agree to assume the mortgage debt (totaling about $22,000) but also the debt to covert the stock shares to cash (totaling about $47,000). While the stock debt was fully renewable each year, Marigny had to pay annual interest plus 1/12 the principle of the original debt on the mortgage notes each May. As part of this transaction, Powell also agreed to assume two other mortgage notes owed by Marigny to the bank, which were secured by his plantation in St. Tammany. The bank agreed to shift the collateral security for these notes from Marigny's plantation to 56 slaves owned by Powell. In sum, Powell assumed a debt of just under $100,000 in return for the Plaquemines plantation, 32 slaves, and 1308 shares of bank stock. (It is unclear if any additional cash was to pass between Powell and Marigny.) The principal and interest due on this debt by May 1st would

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[55] Citizens' Bank of Louisiana minute books and records, 1833-1868, May 15, 1849; May 18, 1849; June 20, 1949; July 14, 1849; August 22, 1849.
[56] Citizens' Bank of Louisiana minute books and records, 1833-1868, September 10, 1850.

be about $12,000. Yet Powell applied for (and received) from the bank a one-year extension on this initial payment, at 8% interest.

Unfortunately for Marigny, it appears that this proposed sale fell through. One of the parties may have backed out of the sale during the month of February, or the sale might not have been finalized before a devastating flood (known as the Gardanne Crevasse) destroyed a large portion of Marigny's Plaquemines plantation in mid-March 1851.[57] On April 29, 1851, two days before the deadline for the debt payment, Marigny wrote the bank to request a 90-day extension on these obligations. While the bank granted this extension, they alerted Marigny that they would foreclose on the plantation if he failed to follow through on the promised payments by August 1. By the following year, the bank was liquidating Marigny's property in Plaquemines parish.[58]

Debt and Emancipation

In May of 1857, Jacob Denny of Arkansas and some of his associates together purchased an almost 4000 acre sugar plantation in Louisiana, along with its 120 slaves, for over $270,000 (roughly $7.5 million today). The seller, Sosthene Roman, was part of the plantation elite in St. James parish – his parents and siblings owned several neighboring plantations, and his younger brother Andre had served as governor of Louisiana during the 1830s and 40s, as well as a delegate to the state secession convention. Denny paid Roman $50,000 in cash, obtained a mortgage for $34,000 from the Citizens' Bank of Louisiana – using the land and slaves as collateral security – and financed the remainder through a series of promissory notes and mortgages also secured by the land and slaves. Denny was to pay Roman the balance in six

[57] *Reports Upon Physics & Hydraulics of the Mississippi River* (Washington, 1876); and Carolyn E. De Latte, *Antebellum Louisiana, 1830-60: Life & Labor* (2004). A crevasse is basically a break in a levee on the Mississippi which usually resulted in extensive flooding.

[58] William de Marigny Hyland, "A Reminiscence of Bernard de Marigny, Founder of Mandeville," delivered before a meeting of Mandeville Horizons, Inc., May 26, 1984.

annual installments between 1858 and 1863. When the war broke out in April 1861, Denny had paid approximately $160,000 of the purchase price, with another $31,000 coming due the next month. At that point, Denny became delinquent in his payments (it is unclear exactly why, although the outbreak of war certainly might have been a factor), and Roman filed a lawsuit to seize the property back. Denny immediately filed a stay to stop the seizure. Then, before the issue could be resolved, the activities of the Louisiana court system were suspended by the war until 1865, and the status of the property would remain in limbo until then.

In 1865, Roman renewed his lawsuit, and the property was seized and sold for the much reduced price of $120,000 to pay off the remaining debt. But Denny claimed that this sale price vastly overestimated the current value of the land as well as the value of his remaining debt. In the original contract, Roman had guaranteed that the slaves were "slaves for life," so Denny argued that emancipation cancelled his obligation to pay this portion of the loan. In fact, he accused Roman of actively bringing about this emancipation by his actions in promoting the war. Denny estimated the value of the slaves in the original purchase price to have been $1000 each, or $120,000 (conveniently wiping out the remainder of the debt).

This case was one of many cases litigated in the aftermath of emancipation. While both the Emancipation Proclamation and the 13th Amendment made clear that no slaveholder would be compensated for the loss of their slave property, neither resolved the more complex question of who would suffer the financial loss when the slaves were part of an ongoing debt contract. Did Denny still owe the residual of the $270,000 he originally agreed to pay for the Magnolia Plantation and its 120 now-freed slaves? or would the creditors of Roman have to absorb the loss of the slaves? And what about the bank that had underwritten the mortgage? What role did they play in this whole scenario? Most southern banks failed during the war years, independent of and prior to the implementation of emancipation. So whereas there were many court cases involving debt contract disputes due to emancipation, very few of these involved banks. The

Citizens' Bank of Louisiana, which had been revived by the legislature in 1852, was one of the few southern banks to survive the war and to leave some records of disputes over slavery after emancipation.

In addition to the case between Denny and Roman, the Citizens' Bank was the defendant in an 1871 lawsuit brought by the widow of George Wailes. In 1853, the Bank had sold a sugar plantation with its 51 slaves for $80,000. Like many of these sales, the purchase price was only paid partially in cash, with the remainder financed through a series of promissory notes and mortgage contracts. The property was sold several times, with the remaining debt to the bank passed on to each new owner, until George Wailes purchased the mortgaged property in 1860. At that point, the outstanding amount due to the bank was $21,850. When Wailes failed to pay the balance of the mortgage, the bank foreclosed on the property. Yet by the time the bank was able to act on the foreclosure in 1867, the slaves had been emancipated and the bank could only claim the land. They sold the land and discharged the remaining debt of George Wailes; Wailes agreed to these proceedings.

Yet the following year, after Wailes had died, his wife filed a lawsuit against the bank, claiming that "at the time the order of seizure and sale was executed against said property, the said debt was not valid and obligatory in consequence of the emancipation of slaves." In her view, the value of the slaves was much greater than the value of the land, and certainly more than the remaining debt owed to the bank. Since the slaves in question were no longer slaves, the remaining debt was invalid, making the foreclosure also invalid. The widow demanded that the bank return to her the proceeds of the land sale (which was $30,000).

The widow was actually on relatively solid legal footing in claiming that the debt was invalid. As these disputes over debt contracts involving slaves worked their way through the courts in each state, the courts had to rule on how to treat these contracts; in most cases, the courts ruled based on contract law. In 1866 for example, the Florida Supreme Court ruled in favor of the debtor in a case in which the mortgage security was entirely made up of slaves. Since the creditor could no longer foreclose on a mortgage secured by slaves, the collateral security was now gone, and the creditor could no longer make a claim on the debt.[59]

But in many other cases, the debts involving slaves included other property as part of the collateral. In these cases, contract law was on the side of the creditor. The Alabama Supreme Court ruled in 1867 that when a mortgage contract was signed, the debtor was required to fulfill the terms of the contract regardless of what happened to the property in the interim; it was the debtor who took on the risk of a slave becoming ill or dying (or, in this case, being emancipated). The debtor in this case tried to argue that emancipation meant that the creditor's warranty of the slaves being "slaves for life" had been violated, cancelling the contract. But the court disagreed. As long as the statement had been true when the mortgage was executed, the creditor could not be held liable for the change in status of the slaves. It was no different than a purchased slave dying, or a piece of land getting damaged in a hurricane. The debtor still had to pay the balance of the debt.[60] The Georgia Supreme Court in 1867 agreed, stating that the creditor should not suffer the loss of emancipation; the mortgage debt must be paid regardless of the status of the property mortgaged.[61]

But the Louisiana Supreme Court took a decidedly different view of the question. Whereas the court cases in the other states largely revolved around the question of whether the debtor or creditor should bear the pecuniary loss of emancipation – basic contract law issues – Louisiana ruled based on the law of slavery rather than contracts. They declared that emancipation immediately nullified all contracts involving slavery, because – in their words – "Freedom...was a preexisting right; slavery, a violation of that right." If the court were to rule in favor of either the creditor or debtor, they would be validating the existence of slavery as an

[59] Judge v. Forsyth, 1866, Florida Supreme Court.
[60] Haskill v. Sevier, Dec. 1867, Alabama Supreme Court
[61] Tucker v. Toomer, 1867, Georgia Supreme Court

institution. Although this was effectively a ruling in favor of the debtor – by cancelling their remaining debt – the rationale reflected a natural rights argument, rather than the rights of creditors or debtors.[62]

The following year, the new state constitutions of Arkansas, Florida, Louisiana, South Carolina, and Georgia, all endorsed this latter view, barring the enforcement of any debts involving slave property. Although many people argued that these articles violated the federal Constitution – no state is allowed to impair the obligation of a contract – these debt clauses initially passed and were approved by Congress, mainly under the guise of debtor relief measures.

Thus the widow of George Wailes was on solid ground when she argued that the mortgage had been nullified by emancipation. Unfortunately for her, her husband had permitted the foreclosure to proceed and be finalized before his death. Whereas Wailes could have challenged the foreclosure under Louisiana law, now that the foreclosure was complete, the courts would not allow his widow to undo the completed foreclosure. The Citizens' Bank prevailed in this case.

By 1871, the United States Supreme Court would finally weigh in on this question. In the case of Osburn v. Nicholson, the court ruled that while emancipation ended slavery and all contracts directly related to slavery (such as hiring contracts), it had no effect on debt contracts; debtors were still obligated to fulfill these contracts. In the words of the court:

> Where an article is on sale in the market, and there is no fraud on the part of the seller, and the buyer gets what he intended to buy, he is liable for the purchase price, though the article turns out to be worthless….Whatever we may think of the institution of slavery viewed in the light of religion, morals, humanity, or a sound political economy, -as the obligation here in question was valid when executed, sitting as a court of justice, we have no choice but to give it effect. We cannot regard it as differing in its legal efficacy from any other unexecuted contract to

[62] Wainwright v. Bridges, 1867, Louisiana Supreme Court

> pay money made upon a sufficient consideration at the same time and place….Neither the rights nor the interests of those of the colored race lately in bondage are affected by the conclusions we have reached.[63]

Some of the people involved in this debate over debt obligations focused on the institution of slavery and how the enforcement of debt contracts involving slaves was undermining the intent of emancipation. Most of the Louisiana Supreme Court, freed blacks serving in southern legislatures, and Justice Salmon Chase who wrote a prominent dissent from the Osburn v. Nicholson decision, all argued that enforcing these contracts was tantamount to endorsing slavery as an institution. But most of this debate revolved around the question of who should absorb the pecuniary loss of slaves. And unlike most debtor-creditor debates that pit a wealthy creditor against a much poorer debtor, this was basically a debate amongst wealthy slaveholders who were on both sides of this relationship. Many southerners who initially argued in favor of cancelling all debts did so as a means of sharing the burden of emancipation. The debtor already lost the slave he had purchased; he shouldn't be penalized again by having to finish paying the purchase price. On the other hand, many of those who advocated for enforcing the debts argued that the possibility of emancipation had been baked into the pricing for anyone who had purchased slaves during the war years. Those acquiring slaves were betting on slavery's continued existence. They knew the risks and those risks were factored into the sale price. These late purchasers should thus be forced to fulfill their debt obligations.

Banks could argue that they should not share the burden of emancipation, since they were technically not slaveholders – just the financial intermediary facilitating the economic life of the region. But, in fact, banks were an integral part of the slave system throughout the antebellum

[63] Osburn v. Nicholson, 1871, United States Supreme Court.

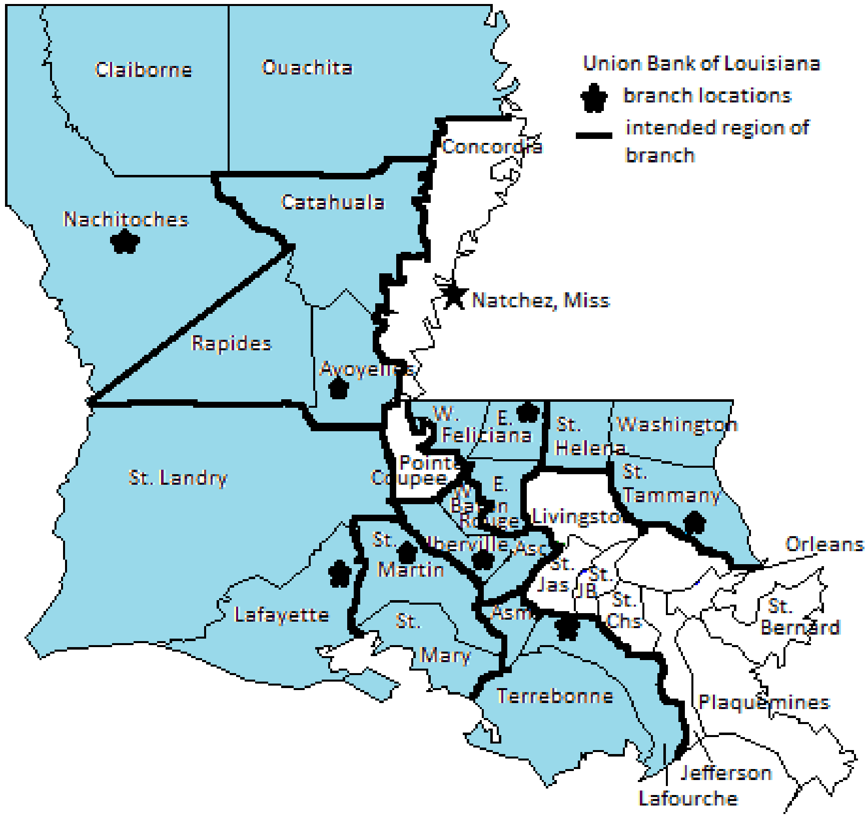
period. If they were not a central part of the debates over debt contracts after emancipation, it was mainly because most had already shut their doors during the war years.

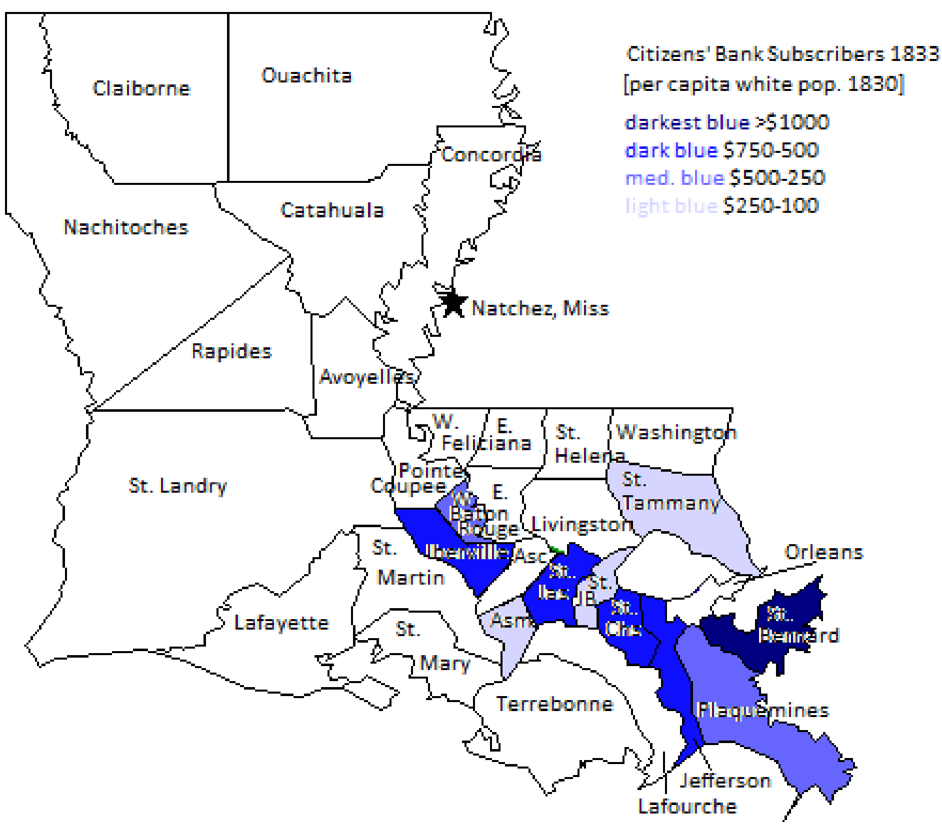
Preliminary Conclusions and Continued Research

This early research into banks and slavery indicates that banks across the South were willing to accept slave property as collateral for loans. The risks associated with these debt contracts were similar to those encountered in any debtor-creditor relationship. However, the use of slave property did make these contracts unique. The slave system meant that a much higher percentage of southern wealth was tied up in personal property than in other regions of the country. This property was an attractive source of collateral due to it being easier to liquidate than real property, although that also made it potentially easier for debtors to evade seizure of this property. The use of slaves as collateral, and the readiness of banks to foreclose on this property, placed southern banking institutions at the heart of the buying and selling of slave property, one of the most reviled aspects of the slave system. But the banking industry was merely a tool of the slave system, not a cause of it. Though less common, bank mortgages could potentially also be used to help prevent the sale of slaves or the breakup of slave families.

I am currently on sabbatical, combing through the thousands of documents I have amassed from various research trips: the minutes and record books of antebellum banks, bankers' correspondence with each other and with the public, notarial records, court documents and legal decisions, articles and editorials from the periodicals of the period, legislative debates and decisions, slave census schedules, and miscellaneous other commentaries on banks and slavery. As I am very much in the middle of this project, I welcome any and all input and suggestions you might have as I move forward. Thank you so much for your time.

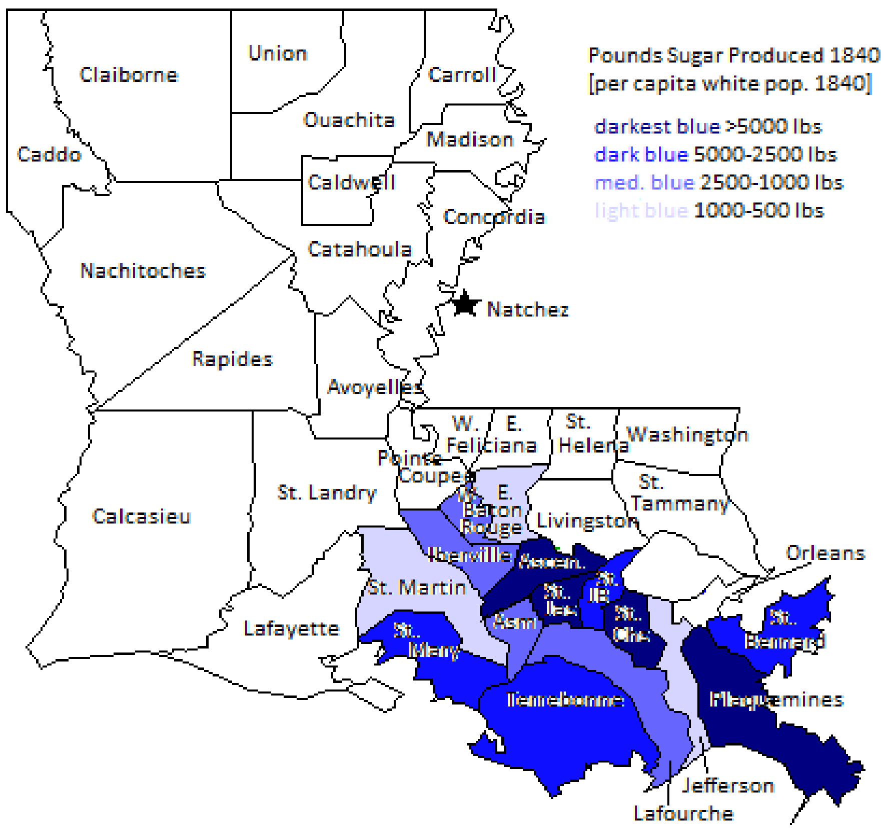
Plantation Bank Spheres of Influence in Louisiana

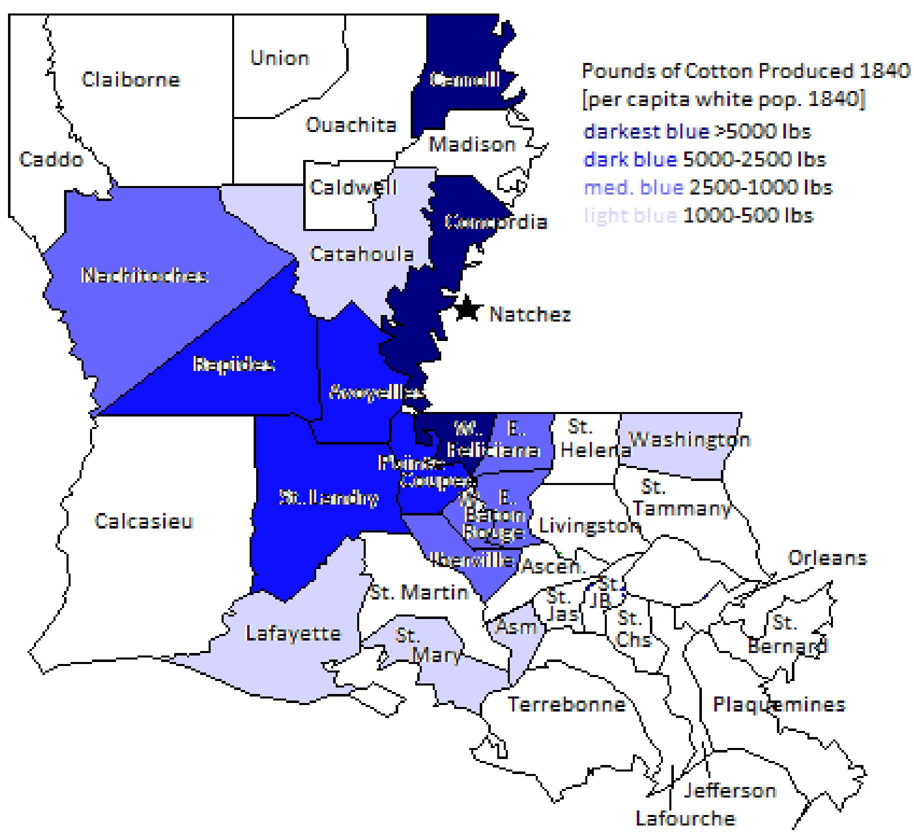




Sources: "*Act to Incorporate the Subscribers of the Union Bank of Louisiana*, sections 33 (1832); "Inventaire des livres Titres et autres objets," Citizens' Bank of Louisiana minute books and records, 1833-1868, collections #26 and 539 (Howard-Tilton Memorial Library, Tulane University): April 9, 1833; Forstall, Richard L. (ed.), *Population of States and Counties of the United States: 1790-1990* (Washington: US Government Printing Office, 1996.

Dominant Cotton- and Sugar-Growing Parishes of Louisiana





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