

“Off-White in an Age of White Supremacy:
Mexican Elites and the Rights of Indians and Blacks
in Nineteenth-Century New Mexico”

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DRAFT, October 2004
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Introduction

Several scholars have explored mid-twentieth century civil rights litigation involving Chicanos to reach the conclusion that, in this era, Mexican Americans occupied an ambivalent racial niche, being neither black or white.¹ The Supreme Court case Hernandez v. Texas, decided in 1954 during the same term as Brown v. Board of Education, is cited as evidence for that proposition because it reveals tensions among members of the bench and bar involved with the case regarding claims to whiteness, claims to protected status under the Constitution, and the social reality of 1950s Texas for Chicanos, especially working class Chicanos such as Mr. Hernandez.² One of the deep ironies in the case was the reasoning used by the Texas appellate court in 1952 to conclude that Mr. Hernandez's rights had not been violated: "Mexicans are white people ... The grand jury that indicted appellant, and the petit jury that tried him being composed of members of his race, it cannot be said, in the absence of proof of actual discrimination, that appellant has been discriminated against ..."³

While I agree in large part with the analysis of these scholars, I argue that this racial ambivalence has its origins a century earlier, by virtue of the American occupation of Mexico's northern territories in 1846.⁴ In part due to unique demographics, the 60,000

¹ See Martinez 1997, 1994; Haney Lopez 1998; Wilson 2003; Sheridan (2003).

² 347 U.S. 475 (1954). The 24-year-old Hernandez, who picked cotton for a living in Edna, Texas, was convicted of killing another Mexican American man (40 year old Joe Espinosa, a tenant farmer; occurred outside bar on a sat. afternoon) and sentenced to life in prison. His lawyers appealed, arguing that his constitutional rights had been violated because, despite the fact that they were 16% of the population of Jackson County, no Mexican Americans had ever been called for service as a jury commissioner, grand juror, or petit juror.

³ Hernandez v. State of Texas, 251 S.W.2d 531 (1952).

⁴ Although Mexicans did not formally become part of the U.S. until the ratification of the Treaty of Guadalupe Hidalgo that ended the war with Mexico, the U.S. government established military control over New Mexico in 1846 and from that time forward maintained both a military and civil presence there.

Mexicans then living in New Mexico,⁵ existed both as a racially subordinated group within the American racial hierarchy and as a group that at times succeeded in claiming white status (and, thereby, a dominant position relative to other racial minority groups). Armed with this nineteenth-century historical reality, mid-twentieth-century civil rights litigation such as *Hernandez* is easier to comprehend and, in fact, to have predicted.

This article is organized into five remaining sections. The first section provides background about the Spanish-Mexican and Anglo-American racial orders at mid-nineteenth century and introduces the socio-political context of New Mexico, which was a federal territory from 1850 to 1912, when it became a state. In the subsequent three sections of the paper, I examine laws passed by majority-Mexican legislatures that affected the rights of Pueblo Indians, free and enslaved African-Americans, and nomadic Indians (including Navajo, Apache, Comanche, and Ute Indians). In each of those three sections, I argue that Mexican elites acted (and enacted) to reinforce their fragile claim to whiteness, often by acting to subordinate groups lower in the American racial hierarchy.

In the concluding section of the paper, I reflect on the significance of these dynamics for understanding our nation's legacy of racial inequality and the twentieth-century racial order. I argue that Mexican American political agency in nineteenth-century New Mexico functioned simultaneously to challenge white supremacy (with the insistence of the expansion of the white category to include Mexicans under certain conditions) and to buttress white supremacy (with Mexicans themselves functioning as a wedge racial group that reproduced the subordination of Pueblo Indians, Blacks, and nomadic Indians).

⁵ As the northern Mexican region, "New Mexico" included present-day New Mexico, present-day Arizona and part of southern Colorado until 1861, when Congress recognized the separate federal territory of Arizona (after intense lobbying by Euro-American mining interests).

Conflict in New Mexico at Mid-Century

The American military occupation of New Mexico in 1846 and Congress's subsequent designation of the region as a federal territory resulted in an ambiguous political status that evoked both a colonial legacy and the promise of eventual annexation as a state.⁶ Against the backdrop of vigorous congressional and press debate about the propriety of U.S. military aggression against Mexico, it was not at all clear what would become of New Mexico's 60,000 ethnic Mexicans, 60,000 nomadic Indians (including members of the Navajo, Apache, Comanche, Ute, and Kiowa tribes), 15,000 Pueblo Indians, and fewer than 1,000 Euro-Americans.⁷ Despite their differences, the pro-war (mostly Democrats) and anti-war (mostly Whigs) factions in Congress were united in their fears about incorporating New Mexico's population of Mexicans and Indians, which both camps deemed racially inferior and unworthy of citizenship.⁸ This was in sharp contrast with congressional views toward California, which by 1848 had a majority of Anglo-American settlers in the San Francisco region and, it was presumed by all, would quickly be admitted to the Union.

⁶ With 1700 troops following the Santa Fe Trail (and what would become, 30 years later, the route of the Atchison, Topeka, and Santa Fe Railroad), Col. Stephen W. Kearny asserted American control of New Mexico at Las Vegas on Aug. 14, 1846, moving to take the capitol at Santa Fe four days later. Over the next month, Kearny supervised construction of Fort Marcy in Santa Fe, the compilation of a code of laws known as "The Kearny Code" (drawn substantially from the laws of Missouri and Texas), and appointed a civilian government. Kearny was promoted to Brigadier-General for this successful invasion, and then on Sept. 25 led his troops to California. Eventually moving south to fight the war in Mexico's interior, he died in Vera Cruz, Mexico in October 1848. In October 1846, Kearny's troops were replaced by 1800 men under the command of Col. Price. See Bancroft, 408-421; Twitchell, 200 n. 138, 205.

⁷ Add cites for pop; add note about difficulty of pop measurements [include low and high numbers?]

⁸ cites: horsman; md book by merk; others; see disc. And quotes by Smith, 204-209, noting Democratic and Whig anti-Mexican racism and anti-Catholic sentiment in the press and congressional debates about the war with Mexico and TGH. cites to some of most virulent racism; In terms of citizenship, immigration, suffrage, and related legislation and judicial decisions, one scholar has called the 1829-1856 period the apex of "illiberal hierarchies" based on race and gender, noting that both the Democrats and the Whigs "agreed that white Christian male dominance must prevail." Smith, 198.

In many ways, New Mexico was merely an annoying obstacle to reaching the Pacific Coast. As is often the case, however, the law of unintended consequences was at work. Unfolding events in the war and its conclusion in 1848 with the Treaty of Guadalupe Hidalgo, as well as the unique circumstances of the region, made New Mexico more of a problem for the U.S. than had been anticipated. In particular, the U.S., feeling its way as a colonial power for the first time in New Mexico, was unprepared for the relatively unusual dynamics of what I term “double colonization.” The U.S. colonization of the 19th century was grafted onto a previous European colonization of the region – the Spanish colonization of the 17th and 18th centuries. For our purposes, one the most significant features of double colonization was that both American military and civil authorities encountered an entrenched set of political, social and economic institutions, European in origin, that were operated by a largely non-European population consisting of small, widely dispersed mestizo and Pueblo Indian communities.⁹ This was, of course, a new scenario for the Americans, since they had previously encountered Indian communities living under circumstances which, from their European-biased views, did not evoke established societies with institutions.¹⁰

An important dimension of the Spanish colonization of the region was a system of racial inequality grounded in white supremacy. Under this system (that, of course,

⁹ Writing with no small trace of sarcasm, one historian evoked the dilemma of double colonization for the U.S. in more colorful terms: “But Mexico – there was a problem. Eight million human beings, rooted in soil of their own, covered by a veneer of civilization, and professing the Christian religion!” Merk, 34.

¹⁰ Beginning a decade earlier, Americans in the Republic of Texas engaged a similar struggle with respect to communities in south Texas along the Rio Grande. Although Euro-Americans quickly overtook Mexicans in most of Texas, in his epic work, sociologist David Montejano described Anglo Texans’ strategy for dealing “with the defeated enemy” in the Rio Grande Valley: “There usually come first the merchants, who benignly and paternally serve as intermediaries between the natives and the new authorities. They may even intermarry and be seen as trusted protectors by the native people. There may be a period where a “bicultural” or “hybrid” generation exists, where the stamp of the native is still strong and vigorous. Nonetheless, the new rulers, however bicultural, plant the foundation for a complete transformation.” (Montejano, 25)

evolved over the centuries and varied under local conditions), there was a complex racial hierarchy of castes based on racial mixture among Spaniards, Indians, Africans, and the various mestizo combinations resulting from those categories. While specific categorizations were complex, the general hierarchy placed Spaniards at the top, Indian/Spanish mestizos in the middle, and Indians and Blacks at the bottom, with a detailed system of rights and privileges structuring property relations, occupational entry, and family relationships according to position in the hierarchy.¹¹ In Mexico, demographics overwhelmed the system, causing it to collapse of its own weight: in 1646, Mexico's population contained roughly equal numbers of those claiming Spanish descent (most of whom were born in Mexico) and Black descent, but ten times as many mestizos and Indians as either of those groups, so that an inevitable mestizo population resulted in the 18th and 19th centuries.¹²

While it is difficult to document, it appears that the late 18th and early 19th centuries were periods in which the Spanish racial legacy was softening, so that some mestizos were able to successfully claim entitlement to the privileges of whiteness formerly limited to Spaniards. This was a phenomenon well-recognized through the former Spanish colonies, so that in Latin America, white skin, money and other attributes of social mobility were perceived as being able to “whiten” otherwise disadvantaged mestizos.¹³ Moreover, it appears that the Spanish racial order was especially susceptible to challenge (and so was breaking down) in frontier areas, such as New Mexico.¹⁴

¹¹ Menchaca, see generally, 49-66 (chap. 2).

¹² Menchaca, 61

¹³ “It is an open question whether a society that sees every addition of white blood as a step towards purification is more, or less, prejudiced than a society that sees any appreciable trace of Negro blood as a mark of degradation.” David Brion Davis, as quoted in Wade, 1993 (297).

¹⁴ Anthropologist Martha Menchaca asserts that, over the centuries, “Blatant racial disparities became painfully intolerable to the non-White population and generated the conditions for their movement toward

During the end of the Spanish colonial period there was substantial loosening of racial restrictions, which increased with Mexican Independence in 1821 and the formal inclusion of “civilized” Indians as members of the new nation and the abolition of African slavery. The major cause of the breaking away of Texas (by then economically, if not politically, dominated by settlers from the southern U.S.) and formation of the Texas Republic in 1836 was the slavery question, with the central Mexican government insisting that its prohibition of slavery extended to its northeastern frontier.¹⁵

The Anglo-American racial order at mid-century rested on the legacy of European colonialism of North America that was openly and forcefully justified by a doctrine that defined the native Indian people as racially inferior – as both an entirely separate, sub-human category that was undeserving of humane treatment, worthy of extermination, and, for the long-term, incapable of incorporation into the newly formed American polity (so long as they maintained political allegiance and cultural affiliations to their tribes).¹⁶ Another key dimension of the U.S. racial order was the legalized enslavement of African peoples on the basis of race, justified with claims of Blacks’ racial inferiority to whites.¹⁷ Even in those states in which slavery was not legal (and even among most abolitionists), the idea of Black inferiority was unchallenged, whether speaking of slaves or free Blacks.¹⁸ A central feature of the 19th century U.S. racial order was the primacy of science to justify the racial subordination of non-white people; scientific racism was crucial because it “explained why some [races] succeeded while others failed, seemed to

the northern frontier, where the racial order was relaxed and people of color had the opportunity to own land and enter most occupations” (66).

¹⁵ Texas entered the Union as a slave state nine years later.

¹⁶ Add citations.

¹⁷ Add cites.

¹⁸ Add cites. Most abolitionists, at mid-century, favor resettling Blacks, after abolition of slavery, outside the U.S. As the population of free Blacks increased, states in the North and West that prohibited slavery passed additional laws to discourage the migration and settlement of free Blacks.

make clear the reasons for contemporary realities in international relations, and justified the dominance domestically of the few (whites) over the many (colored).”¹⁹ Overall, the American racial hierarchy placed whites at the top (with relevant ethnic distinctions remaining in the 19th century) and Indians and Blacks at the bottom.

Given the encounter of American settlers and traders with Mexican mestizos in the early and, especially, middle 19th century, it was by no means clear where Mexicans would fit within this hierarchy. Contemporary commentaries were split (sometimes seemingly within the mind of the same commentator) between the views that Mexicans were “really Indians” (because they are more Indian than Spanish by blood, as evident from phenotype) or more comparable to Blacks in color, custom, and overall depravity.²⁰ Given that, in either case, the outcome of exclusion from the rights and privileges accorded whites, treating Mexicans as “like Indians” or “like Blacks” in the American context may have been inconsequential. Congressional debate about ratification of the Treaty of Guadalupe Hidalgo reflected racist concerns about incorporating New Mexico’s population that echoed those at the start of the war with Mexico. A major concern during these debates was how to get the most land from Mexico with the smallest number of Mexicans.²¹

Debate over whether and precisely how to incorporate Mexico’s former citizens was not unique for its emphasis on race. The American racial hierarchy (and a patriarchal gender order) heavily shaped American citizenship laws throughout the

¹⁹ Graham, 1990, 2-3; see also Smith, 203-205 (emphasizing the portrayal of scientific racism in the U.S. popular press of the mid and late 19th century).

²⁰ Add cites from 19th century travel lit and press. In particular, southerners were ambivalent about the nation’s expansion to Mexico because they considered “the Mexican race” a suspect, colored race “but little removed above the Negro.” Merk, 38-39, n. 25.

²¹ Merk, quoting editorials in the *Louisville Democrat* (1847) and the *Washington Union* (1848).

nation's history. In his comprehensive study of federal legislation and judicial decisions on citizenship,²² Rogers Smith concludes:

[W]hen restrictions on voting rights, naturalization, and immigration are taken into account, it turns out that for over 80 percent of U.S. history, American laws declared most people in the world legally ineligible to become full U.S. citizens solely because of their race, original nationality, or gender. For at least two-thirds of American history, the majority of the domestic adult population was also ineligible for full citizenship for the same reasons. Those racial, ethnic, and gender restrictions were blatant, not "latent."²³

What we mean by "citizenship," moreover, is not self-evident. Smith notes that the Constitution "did not define or describe citizenship, discuss criteria for inclusion or exclusion, or address the sensitive relationship between state and national citizenship."²⁴

One of the central tensions was how broadly we conceive of "citizenship." In a narrow sense, American citizenship refers to national identity and the right to carry an American passport (for example, every American, native-born or naturalized, adult or child, retains this right). At the other end of the spectrum, we can think of "citizenship" as entailing full political rights, including voting, office-holding, and jury service (many American citizens do not have that full bundle of political rights, including children, for example).²⁵

In between the two, are such rights as the right to sue in federal court, the right to own and alienate property – a bundle of rights seen as economic more than political, but seen as related to being a member of the polity, and hence a citizen. In the remaining sections

²² Smith surveyed all proposed and enacted federal legislation in these areas and more than 2,500 cases between 1798 and 1912 (4).

²³ 15

²⁴ 115. He goes further with respect to the latter: "Issues of state versus national identity and slavery, especially, were so explosive that the framers avoided raising them whenever possible and left them largely unresolved." 116

²⁵ Free Blacks, who numbered around half a million in the U.S. in 1860 (divided almost evenly between the North and the South), likewise, had an ambiguous political status. According to Smith, southern courts "tended to deny [free] black citizenship altogether"; while "[n]orthern courts generally acknowledged [free] black citizenship formally while rejecting democratic notions of the political privileges inherent in that status." 255; 256-258 also

of the paper, one of the major themes is the various combinations of rights that were accorded racially subordinated groups in New Mexico: Mexicans, accorded rights by Congress; Pueblo Indians as accorded such rights by Congress and the Mexican elite; Blacks as accorded rights by Mexican elites and federal actors; and nomadic Indians, as accorded rights by federal actors and the Mexican elite.

In the end Congress compromised on Mexicans, ratifying the Treaty of Guadalupe Hidalgo to achieve two ends: a cession by Mexico of the maximum possible amount of land (more than half its territory at the time), coupled with the barest (and most legally vague) guarantees regarding the American citizenship rights of the former Mexican citizens living in the ceded lands. Art. VIII of the Treaty refers to the rights of Mexican citizens electing to remain in New Mexico and become “citizens of the United States,” but no where specifies the content of the latter phrase, which is mentioned three times in the article.²⁶ In Art. IX, the Senate rejected the citizenship provisions negotiated in Mexico City, substituting language that made it clear that the Mexican citizens residing in New Mexico were not endowed with full rights, since they were not, at the time of ratification or necessarily at any set time in the future, assured of status as citizens of a *state* within the Union.²⁷ Reading the provisions together, we can conclude that the

²⁶Article VIII of the Treaty of Guadalupe Hidalgo contains three references to U.S. citizenship: “... Those who shall prefer to remain in the said territories, may either retain title and rights of Mexican citizens, or acquire those of *citizens of the United States*. ... and those who shall remain in the said territories, after the expiration of that year ... shall be considered to have elected to become *citizens of the United States*. ... The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to *citizens of the United States*.” Griswold, 189-90 (emphasis added).

²⁷Article IX of the Treaty of Guadalupe Hidalgo reads as follows: “The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of religion without restriction.” Griswold Del Castillo, 190.

former Mexican citizens had been accorded *limited* American citizenship. For the purposes of nationality (for example, obtaining a passport) and in terms of relations with nationals of other nation-states, the former Mexican citizens were citizens of the U.S. On the other hand, the second provision made it clear that they were not citizens of any *state* (and would not necessarily become *state* citizens), and, within the context of the meaning of citizenship in the mid-19th century, they therefore had a kind of second-class citizenship.²⁸

Compared to Texas and California, New Mexico's population had two distinguishing features. First, by virtue of the Treaty ending the war, the majority of its population (60,000 Mexicans and 15,000 Pueblo Indians) had at least some claim to citizenship (whether these claims would extend to full citizenship or some kind of second or third class citizenship was not known in 1848, of course). Second, New Mexico's multi-racial demographics were unique among the other former Mexican territories. Neither California or Texas had Indian populations like New Mexico's, which consisted of a very large Indian population that was divided into Indian peoples relatively open to the U.S. occupation (Pueblo Indians) and culturally Hispanicized in many respects, and those Indian communities who would remain hostile to the American presence well into the American period (the various nomadic tribes), just as they had been hostile to the Spanish colonization of the region. A final, key feature of New Mexico's racial demographics was the tiny number of Euro-American settlers in the region at the time of

²⁸ This interpretation is consistent with the Supreme Court's 1828 ruling in *American Insurance Co. v. 356 Bales of Cotton*, concluding that residents of an acquired U.S. territory (whether acquired "by conquest or by treaty") automatically become U.S. citizens, but not state citizens. 26 U.S. 511 (1828) (discussed by Smith at 192). Speaking about the 1829-1856 period, Smith concludes that "at the federal level, the Jacksonian [period] story was one of minimizing the importance of national as opposed to state citizenship, along with yet more explicit recognition of gender and racial restrictions on full civic membership." 220

the American conquest. Due to this multi-racial context, Mexicans could and would position themselves as a wedge racial group between Euro-Americans above them and Indians below them.

Given this unique racial context, I will examine how majority-Mexican legislatures responded to Pueblo Indians, Blacks (free and enslaved), and nomadic Indians during the first 25 years of the American occupation (1846-1870).²⁹ I use the term “Mexican elite” to refer to Mexican men who dominated the political (and, often though not always, economic) sphere in New Mexico at mid-19th century, after the U.S. occupation. During most of the 19th century, New Mexico constitutional conventions and legislatures were conducted in Spanish, and legislative acts were proposed and adopted in Spanish, translated into English, and then officially printed in both Spanish and English. Mexican men were the majority of all legislative bodies and elected political conventions in New Mexico during this time period, ranging from a low of 55% to a high of 95% of the membership of these elected bodies.³⁰ Thus, the laws and other actions and pronouncements of these bodies were the voice and will of elite Mexican men as a group self-defined and defined by others as distinct both from Euro-Americans and the various Indian communities in New Mexico. Treating Mexican elites as agents with a powerful voice and role in creating their own destinies, even after the imposition of U.S. military

²⁹ In this paper, I use the term “Mexican” as an ethno-racial category that is distinct from Euro-American whites, Blacks, Pueblo Indians and other Indians. I include in that category Mexicans regardless of their status as Mexican nationals or U.S. citizens (this is especially important given that in the first 20 years of the American occupation there it was not always clear whether Mexicans had elected to maintain their Mexican citizenship or become U.S. citizens). In the contemporary literature of the period (whether newspapers, court records, government documents, or private papers), “Mexican” (or “mexicano” in Spanish) is almost exclusively the term used to refer to the former Mexican citizens of the region whose ancestry was mestizo (Spanish and Indian). Variants of “Spanish,” “Hispano” and the like did not become widespread in the region until the late 19th and early 20th centuries – partly as a result of some of the racial formation processes I describe in this study.

³⁰ see Bancroft, Larson, Lamar; Erg on first convention, Oct. 1848: shortly after tgh: of 13 men, 10 mex. (thus more than 75% mex; included men who would have been 19 yrs old.)

and civil rule in the region, is a significant departure from past historic scholarship, which has tended to treat Mexican political elites as mere pawns of the small cadre of Euro-American elites who lived in the region or the small numbers of federally appointed officials sent from outside New Mexico.³¹

Despite the significant ways in which Mexican men had bona fide claims to full American citizenship (though these claims rarely went uncontested), there were several respects in which their agency as political actors was circumscribed. The earliest legislatures and conventions (which convened before Congress had formally declared New Mexico a federal territory in 1850) and the later territorial legislatures existed as less than fully autonomous bodies in two respects. First, for at least the first three decades of the U.S. occupation, military rule trumped civilian rule, meaning that power was, first and foremost, in the hands of military commanders rather than either presidentially appointed officials or elected officials. Second, under the federal statutes that created New Mexico and other western territories, Congress had the power to nullify any act of the territorial legislature with which it did not agree.³² This happened with regularity, further revealing the gulf between federal legislators and the majority-Mexican bodies of New Mexico and the extent to which the latter exercised only limited self-determination.³³

In addition to these fundamental constraints, there were three additional ways in which Mexican elites' agency was circumscribed. First, the President appointed (with

³¹ important note: add references to lit; first cat. Will include lamar, larson, slave book from 40s; latter group can include some of the later chicano generation scholars [e.g., Mexican elites were dissed from both the right and the left]

³² In this sense, status as a federal territory was substantially different than status as a state, a member of the Union. This was especially true during the 19th century, when the notion and operation of federalism were much different than they are today.

³³ Insert note: examples of congressional nullification (especially related to religion).

senatorial confirmation) the most powerful positions in civil government for the territory, including governor, secretary and three justices of the Territorial Supreme Court.³⁴ In the first 15 years of territorial status, these appointees were virtually all Euro-Americans and most had never set foot in New Mexico previously. Second, the design and implementation of the Treaty of Guadalupe Hidalgo operated to over-represent the Euro-American population and under-represent the Mexican population. The Treaty gave the 60,000 Mexicans in New Mexico three options.³⁵ First, they could choose to leave their homes to relocate in Mexico, south of the newly established border with the U.S.; an estimated 4,000 persons chose this option, an astounding number given the trauma and cost such moves must have entailed at that time.³⁶ A second option for the former Mexican citizens was to remain in their homes in New Mexico and formally elect Mexican citizenship before a county official (usually a probate judge), which substantial numbers appear to have done.³⁷ The third option was by default: if the former Mexican citizens living in New Mexico remained in their homes and did not formally move to retain their Mexican citizenship, after a year they would be presumed to be U.S. citizens. The first two options functioned to under-represent the Mexican majority that was effectively enfranchised by the third option. A third important way in which the Treaty's

³⁴ The appointment process would be familiar to us, as it is similar to how ambassadors are appointed today, with appointments serving as a patronage system for political favors and those well-connected.

³⁵ see Richard Griswold del Castillo, 62-72.

³⁶ sisneros diss; twitchell; Bancroft; others.

³⁷ Twitchell reports that "a large number" took this option and that that number included "many names of prominent men," but he is not more specific. Griswold estimates 2,000 Mexican men took this route, but does not provide sources for his conclusion (65). Given conflicts during the early 1850s about who was eligible to vote and hold office, it appears that substantial numbers of Mexican elites elected to maintain their Mexican citizenship in the period immediately following treaty ratification; in one instance in 1853, 40 Mexicans were indicted for falsely swearing that they were U.S. citizens in order to vote. When the U.S. Attorney produced record books showing these men had elected to retain their Mexican citizenship, the judge ruled the records unreliable, invalidated the process (in 1849) established by the military commander for so electing, and dismissed all cases.[MORE ON THIS] see twitchell, 291, n. 216 and Davis, 331-332.

grant of citizenship was in some sense hollow was that it granted *federal* citizenship at a time when the most important rights came through *state* citizenship.³⁸

A central aim of this study is to explore race relations in 19th century New Mexico to illustrate broader patterns in the construction, contestation and negotiation of racial categories, racial hierarchies and racial ideologies. It has become uncontroversial (within academic circles, at least) to view race and racial categories as “socially constructed” – as a product of time and place, dynamic and evolving – and yet there still are relatively few studies that examine the macro-level social and political processes involved.³⁹ I seek to do just that by examining in detail the social and political context of the mid-19th century Southwest to uncover the roots of Mexican American racial identity and Mexican Americans’ place as a subordinate racial group within the U.S. racial hierarchy. Following Omi and Winant, I use the concept of “racial formation” to describe the processes of constructing racial categories, racial hierarchies, and racial ideologies, processes that occur at the aggregate, societal level although they are the product of the cumulative and interacting choices of individual and collective agents.

As theorized by Omi and Winant, racial formation has three primary features that I explore in this study. First, racial formation is a political process – it reflects political

³⁸ Federal citizenship, without being accompanied by citizenship in a state of the Union, was tantamount to a second-class citizenship. note on comparison; lots of lit and cases

³⁹The leading work is *Racial Formation in the U.S.* (2nd ed. 1994), by sociologists Michael Omi and Howard Winant. (54-55). An increasing subset of studies explores how groups change status from “white” to “non-white” or from “non-white” to white, and these studies have paid special attention to the ambiguous and dynamic situation of Mexican Americans, e.g., Theodore Allen, *Invention of the White Race*; David Roediger, *Wages of Whiteness*; Jacobson, *Whiteness of a Different Color*; Karen Brodtkin Sacks, *How Jews Became White Folks*; Ruth Frankenberg, *White Women, Race Matters*; Noel Ignatiev, ... Fine, et al., eds, *Off White: Readings on Race, Power, and Society*. For works dealing specifically with Chicanos, see: Neil Foley, *The White Scourge*; George Sanchez, *Becoming Mexican American*; [add legal stuff]. For a review essay on studies in the social construction of race and related topics in the fields of critical race theory and law and society, see Gómez, “A Tale of Two Genres: On the Real and Ideal Links Between Law and Society and Critical Race Theory,” in *The Blackwell Companion to Law and Society* (Austin Sarat, ed.), 2004.

power, political struggle, and both symbolic and material interests. Second, and relatedly, the state and various state institutions are central to racial formation processes.⁴⁰ Third, racial formation will be particularly acute during periods of change and social dislocation, such as the middle-to-late 19th century transition from Mexican to American rule in the Southwest. Whereas Omi and Winant describe racial formation as a 20th century phenomenon, I want to extend their work by applying these concepts to the 19th century. In essence, Omi and Winant focus on the mid-20th century because they see minority groups able to contest, for the first time, the racial status quo at the national level. I would argue that the unique political and demographic conditions of 19th century New Mexico similarly created an environment in which race and racial ideology were contested and negotiated by a variety of groups, including those viewed as subordinate racial groups in the larger national context.⁴¹

Mexican Elites and Pueblo Indians

A central figure in New Mexico politics during the Mexican period and the first decades of American colonization was Father Antonio Jose Martinez, who was born in northern New Mexico in 1804.⁴² As a child, Martinez's family moved from Abiquiu to the Taos Valley, and one historian describes his as one of the three most elite families of the Taos region in the early 19th century, having substantial land holdings.⁴³ As a young

⁴⁰ By no means does this imply, however, that the state is monolithic. Indeed, in Omi and Winant's story of mid-to-late 20th century racial formation in the U.S., one of the fascinating aspects is the extent to which the state is divided and contradictory in its racial politics and ideology.

⁴¹For a more extensive discussion of this point, see Gómez, "Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico," *UCLA Law Rev.* 2002.

⁴² facts on ajm come from ERG, 105- ; Twitchell, 337-338, n.264; and Lamar, 34-36. Lamar gives Martinez birthdate as 1793 and misidentifies his name throughout his work as "Jose Antonio" rather than Antonio Jose Martinez.

⁴³ erg 106; see also Lamar, 35

man, he witnessed and partook in the ideological republican movement that spawned Mexico's independence from Spain.⁴⁴ As a middle-aged man, he both actively resisted the U.S. occupation and later held leadership roles in the American territorial government. After the death of his wife and daughter, Martinez studied for the priesthood in Durango, Mexico, and returned to Taos in 1826 where he served as parish priest for 30 years.⁴⁵ During the last decades of the Spanish colonial period and under Mexican rule, Pueblo Indians were granted formal rights of citizenship.⁴⁶ Martinez played a central role in shaping Mexican elite responses to the questions of Pueblo Indian citizenship under American rule.

In 1846, an estimated 15,000 Pueblo Indians and 60,000 Mexicans of mestizo (Spanish/Indian) origin lived in New Mexico. There was substantial contact between these communities for both historic and contemporary reasons. Historically, the strategy of Spanish colonization in New Mexico had included Catholic missionary work with the Pueblos that resulted in Christianization of Pueblo Indians and the erection of churches at or near Pueblos built by virtually enslaved Pueblo laborers.⁴⁷ In a later phase, when

⁴⁴ In the 1830s, Martinez served on the provincial Mexican legislature in New Mexico. Bancroft 311, n. 3.

⁴⁵ Martinez eventually resigned his position over conflicts with newly appointed Archbishop Lamy, who initiated an overt campaign to replace New Mexico's Mexican priests with French, Italian and Spanish priests. Some time after his resignation as parish priest (and replacement by Spanish-born Damaso Talarid), Lamy formally suspended Martinez, forbidding him to perform church rites under any circumstances. twitchell 337-339. I rely on Twitchell's account with some hesitation, as I believe he had an anti-Martinez and pro-Lamy bias (e.g., he describes Lamy's suspension of Martinez thusly: "No alternative was left to Bisyp Lamy, after all sorts of fatherly advice and admonitions had been unheeded, but to suspent Father Martinez from the exercise of every priestly function" and he describes Martinez as "very crafty" and motivated to oppose the U.S. occupation because it "was a death blow to his power and prestige"). Still, Twichell was the leading historian of New Mexico in the late 19th and early 20th centuries, and his access to documents and people who lived through the occupation period, is irreplaceable.

⁴⁶ While the law on the books granted "civilized Indians" full citizenship rights, the law in practice likely recognized differences between Pueblo Indians, mestizos and other racial groups. Rosen (2003), 21, n. 1. Rael-Galvez argues that these liberal extensions of citizenship to Pueblos were, at base, efforts to more readily disenfranchise the Pueblos of their communal land holdings; once they were full citizens, their land could be freely alienated. [add page cite]

⁴⁷ Pueblo Indians resisted these methods in various ways, culminating in the Pueblo Revolt of 1680, when 21 priests and hundreds of Spanish settlers were killed across New Mexico within a few days in a

settlers were encouraged to establish communities in New Spain, settlement sites adjacent to existing Pueblos were chosen to enhance the odds of survival in a harsh, isolated environment. Pueblo Indians provided military protection from nomadic tribes, subsistence assistance because of their advanced and well-established agricultural enterprises, and assistance in learning the particulars of the environment new to the settlers. Given this relationship, there inevitably were both actual kin (through sexual relationships and marriage) and fictive kin (for example, the Catholic *compadrazgo* or godparent tradition) relationships between mestizo and the various Pueblo communities. After three centuries of Spanish colonialism in New Mexico, mestizo and Pueblo communities shared a great deal (especially relative to other Indian tribes in the region), although they continued to maintain distinct villages and cultural practices.

The U.S. occupation of New Mexico has long been touted as “bloodless” and occurring “without a single gunshot.”⁴⁸ It is true that the Mexican army did not engage American forces, having received advance notice of their arrival and abandoned Santa Fe by that time. There are, however, three ways in which the U.S. conquest of New Mexico is quite appropriately thought of as both “bloody” and essentially violent. First, the U.S. occupation of New Mexico led directly to one of the most violent, brutal assault on the nomadic Indian tribes of the region (between 1850 and 1870).⁴⁹ Second, it makes

coordinated attack. The Spanish colonists returned 12 years later to reestablish control over New Mexico. See Gutierrez, 130-140; Joe Sando (1992); Alfonso Ortiz ...

⁴⁸ This portrayal of the American invasion has withstood the test of time, embraced by chroniclers spanning from Bancroft’s monumental history of New Mexico published in 1888 (“Thus was the capital of New Mexico occupied without the shedding of blood.” [416]), to the official 2004 brochure published by the New Mexico Tourism Department (“Not a single shot was fired [in Las Vegas] and Kearny’s army went on to occupy Santa Fe ...” [26]).

⁴⁹ Conflicts between the American military and Indians led to violence in multiple directions. In a resolution passed by the first Territorial Legislature in 1851, lawmakers declared that “since the entrance of the American army under General Kearny this Territory has been a continual scene of outrage, robbery and violence carried on by the savage nations by which it is surrounded; that citizens daily are massacred, stock

eminent good sense to describe the conquest and subsequent [land takings] from Mexicans in the region as violent and accomplished only with the threat of military action (even when it was not exercised).⁵⁰ A third way in which the American conquest of the region was far from “bloodless” revolves around a series of armed revolts led by coalitions of Mexican and Pueblo Indian men and carried out in several northern communities during the first year of the occupation.⁵¹

Without a Mexican military force in the region, New Mexico’s mestizo and Pueblo Indian communities plotted their resistance over a period of months so that they could coordinate a multi-village attack and assemble the cache of weapons needed. There were a number of armed revolts in late 1846 and early 1847, about six months after the initial American occupation. The most successful and well-coordinated was the January 1847 attack in Taos which resulted in the be-heading of the civil governor and murder of several other American-appointed officials and members of the Bent household.⁵² The attack on the Americans was well-planned and carried out by a

stolen, our wives and daughters violated and our children carried into captivity.” Twitchell, 292. At the same time, some xx (number) of Indians were killed during... (note that, writing in 1912, Twitchell still referred to nomadic tribes as “savages” without any irony or self-consciousness); raid against Jicarilla Apaches in 1854 (resulted in Indian resignation and peace treaty) [twitchell 299, regarding the J. Apaches and the treaty, he says they merely wanted “A large reservation near the settlements, where they could lead an easy, vagabond, drunken life” (300);]; Utes defeated “decisively” in 1855 [twitchell 200]; btwn 1853-57, says there were constant battles with mescalero apachesm with treaty signed in 1855 (301, see note 225 listing u.s. regiments deployment to fight Indians); 1852-53 v. Gila Apaches (302); Mogollon Apaches, campaign in 1857 (302-03); Navajos, “thoroughly subdued” in [year of br] (304);

⁵⁰ Kearny and later military commanders of New Mexico repeatedly warned the native population that they had superior military power and untruthfully said that additional troops were on their way to New Mexico. See K. speech at Las Vegas (“There goes my army! You see but a small portion of it; there are many more behind; resistance is useless.”), twitchell 206; ; Kearny proclamation of Aug. 22, 1846 (SF), Twitchell, 211, n. 148;

⁵¹ cite Torrez too

⁵² Since Kearny had allowed most Mexican-era officials to remain in their posts (if they agreed to swear allegiance to the U.S.), most of those killed were Mexicans, including the probate judge and district attorney. Women and children in the household were spared, but the victims included Bent’s brother-in-law Pablo Jaramillo, a Mexican, and Narciso Beaubien, whose father was Euro-American (Charles Beaubien, whom Kearny had appointed a justice of the supreme court) and whose mother was Mexican. See Twitchell 233-35 (note 170) and Bancroft 432 (n. 27).

coalition of Taos Pueblo men and Mexican men from villages in the Taos area.⁵³ Within a few days, U.S. military forces moving to contain the rebels had encountered an Indian/Mexican force of 1500 men. Within a few weeks, American forces had killed several dozen rebels in skirmishes and 150 who had barricaded themselves in the church at Taos Pueblo. Some fifty survivors of the raid on Taos Pueblo were arrested and several were tried on murder and treason charges; eight Mexican men and seven male members of Taos Pueblo were eventually hanged as a result of the trials.⁵⁴

Although he was not among those killed or prosecuted for their roles in the 1847 Taos revolt against the Americans, Martinez is credited as one of its major organizers. It is likely that he had both a direct leadership role and a major indirect role, the latter via the large network of youths and young adults who were or had been under his tutelage at the only school in the Taos Valley during the Mexican period. Martinez had been an idealistic advocate of Mexican independence and was a strong supporter of Pueblo Indian rights under both the Spanish and Mexican governments. He would have been a natural leader of a Mexican-Pueblo coalition against the Americans. Martinez was involved in the all the early conventions and legislatures, and he frequently held a leadership position. He was elected president of the first constitutional convention (organized in 1850 *before* Congress had officially declared New Mexico a federal territory), in which a majority-Mexican body proposed a state constitution for New Mexico that enfranchised Pueblo, Mexican and Euro-American men over 21 who had lived in New Mexico for at

⁵³ Twitchell reports that “the lower order of Mexicans of the Taos valley [sic] and of the small towns in the vicinity rose en masse and joined with the Pueblo Indians in the work of pillage and murder.” (236) But at other times, he makes much of the central role played by Mexican elites in the revolt, singling out Father Martinez. [cites]

⁵⁴ See Bancroft, 432-436; Twitchell [add pages]; Prince [add pages]; Torrez [pages]. In another chapter, I discuss the Taos rebellion in greater detail and describe the U.S. response in the short-term and long-term, including the trial and eventual hanging of several of the men involved in ...

least six months. In that Constitution, Mexican elites denied the franchise to Blacks and afro-mestizos (“africanos o decendientes de africanos”) and nomadic Indians (“indios barbaros”).⁵⁵

Under the Treaty of Guadalupe Hidalgo, Pueblo Indians arguably had as much claim on U.S. citizenship as Mexicans. The citizenship options of Art. VIII applied to Mexico’s citizens, and Pueblo Indians were recognized as full citizens under Mexican law. But, during these early years under U.S. rule, Mexican elites were inconsistent in their treatment of Pueblo Indians, vacillating on whether or not to treat Pueblo men as equals, to grant them some kind of second class status, or to exclude them from the polity. In 1849, a legislature operating under the military regime (territorial status had not yet been established) that was two-thirds Mexican limited citizenship to “free white male inhabitants,” intending to exclude Pueblo Indians. In 1850, the same year in which Mexican elites vowed to grant citizenship to Pueblo men in the new constitution, Congress restricted voting and office-holding to “free white males” in the legislation that established New Mexico as a federal territory.

During the 1850s and 1860s, American officials, legislators and judges expressed and acted with great ambivalence on the question of Pueblo Indians’s status. One issue was their status under the Treaty of Guadalupe Hidalgo. In an 1854 case, the Supreme Court validated a land sale on the grounds that the Indian seller involved was a Mexican citizen under the Treaty; but in dicta in that case, the Court opined that logical extension of the Treaty to conclude that Pueblo Indians were “full citizens” was ludicrous.⁵⁶ But Mexican elites’ perspective, on the ground and living in communities adjacent to the

⁵⁵ Article VII of the proposed New Mexico State Constitution of 1850.

⁵⁶ U.S. v. Ritchie, 58 U.S. 525 (1854); discussed by Smith, 241-42.

Pueblos, was quite different. Even after Congress and successive legislatures excluded Pueblo men from the franchise, evidence suggests that these laws may have been laxly enforced in elections, with local variation existing such that in some communities Pueblo Indian men voted.⁵⁷

For example, a committee of the New Mexico legislature in 1853 considered an election complaint that claimed that more than 100 Pueblo Indians had voted illegally. The contest was for perhaps the most important elected position in the Territory, for nonvoting delegate to Congress, with the candidates being Father Jose Manuel Gallegos and William Carr Lane, a former territorial governor. The race pitted the native, monolingual Spanish father (literally), against the Missouri politician who, prior to his appointment by President Fillmore, had never set foot in New Mexico.⁵⁸ Gallegos won, but Lane contested the results, alleging that Pueblo men had illegally voted and that, in some precincts, votes for Lane had been destroyed. The territorial legislative committee had to decide whether to follow the 1850 constitutional convention's extension of voting rights to Pueblo men or Congress' 1850 restriction of voting to white males (including Mexicans). Not surprisingly (given that all their acts were subject to congressional nullification), they chose to follow the congressional mandate, which Congress affirmed in the following year. Still, even with the disputed Pueblo votes removed, Gallegos was declared the winner. Up for reelection in 1855, Gallegos faced Miguel Antonio Otero, who was backed by the new French and Italian priests. Gallegos won the election by 99

⁵⁷ In an 1851 judicial opinion, Judge Slough stated that "the pueblo Indians of this territory, without question or interruption, not only voted, but held both civil and military offices. In many localities, they, by their numerical strength, controlled the political destinies of the same." [as quoted on p. 456 of NMSC opinion by Watts]

⁵⁸ Like Father Martinez, Gallegos was among the fiercely nationalist Mexican priests who butted heads with Archbishop Lamy.

votes, but Otero appealed, this time alleging that 1400 Mexicans who had retained their Mexican citizenship had voted illegally. Congress sided with Otero and he was seated as delegate.⁵⁹

Ultimately, Mexicans and Americans had different reasons for wanting to exclude Pueblo Indians from full citizenship. In a series of court cases in the 1850s and 1860s, American interests turned on whether to treat Pueblo Indians like they did other Indians (for example, as falling under the jurisdiction of Trade and Intercourse Act), or recognize them as belonging to a special category of Indians. These cases originated in New Mexico, naturally, where Euro-American judges generally decided them by distinguishing Pueblo Indians as “civilized” and far superior to “savage Indians.”⁶⁰ In 1867, the Supreme Court took the same position, but refused to decide related questions of citizenship for Pueblos.⁶¹ For Mexicans, alliances and resource competitions with Pueblos were tangible, and the citizenship issues were paramount. In addition, the question of racial hierarchy arose. One way for Mexicans to distinguish themselves from Pueblo Indians (with whom they shared so much culturally) was to define themselves as rights-holders by virtue of being “white,” and to exclude Pueblos from the same.

A by-product, for the Americans, was the disruption of the alliance among natives that had proved deadly at Taos. From the vantage point of the American colonizers, this move was a predictable divide-and-conquer strategy: by allowing Mexican men to claim white status (and therefore vote and hold elected office), but denying such opportunity to Pueblo Indian men, they achieved multiple goals. This strategy allowed for the operation of , including the operation of a civilian government (in the dark shadow of military rule)

⁵⁹ twitchell at 309; Ganaway at 61 [citing original congressional report].

⁶⁰ Cite to Ortiz and Lucero cases.

⁶¹ Joseph case, add cite

that could not have operated without natives given the paucity of Euro-Americans and the interruption of the mestizo Mexican/Pueblo Indian coalition that had resisted the American occupation at Taos and elsewhere. Consider the racial positioning that occurred. Vis a vis Mexicans, the Americans positioned themselves as racially generous, allowing the Mexicans a position under the white tent. This occurred against a reality in which American writers, newspapermen, and politicians had denounced Mexicans as racially inferior and unfit to govern themselves or join the Union. Mexicans mobilized their Indo-hispano mestizo heritage in a way that emphasized their European roots (hence, whiteness), despite the fact that their racial stock, overall, was much more indigenous than European. In ways that likely were akin to moves under the Spanish-Mexican racial system, mestizos sought to distance themselves from Pueblo Indians, even as they shared much in common with these communities.

A final analysis of these racial dynamics shows the true brilliance of the American divide-and-conquer strategy. While with one arm the Americans embraced Mexican elites as fellow whites, with the other arm they embraced Pueblo Indians in order to protect them from Mexicans. Euro-American judges, in particular, played the role of racial protectors of the rights of Pueblo Indians, especially in the context of land and water claims, as against the encroachments of Mexicans. In an 1857 land dispute between Mexican and a member of Acoma Pueblo (located just west of Albuquerque), Judge Kirby Benedict admonished Mexicans for what he perceived as their attempts to exploit Pueblo Indians. Benedict called Mexicans “the better-instructed and more civilized race” compared to Pueblo Indians. He touted the superiority of the American judicial system, relative to the Mexican system, where Pueblo Indians could gain a fair

hearing and outcome. “It is gratifying to us to be the judicial agents ... affirming the rights of Pueblo Indians.” With this kind of move, repeated over and over again in various legal contexts, Euro-Americans solidified the division between Mexicans and Pueblos, providing incentives for each group to distrust the other and align with the American colonizers. Pueblo Indians could view the American legal system as a neutral forum where they might vanquish a Mexican opponent; and Mexicans could hold onto racial superiority over Indians, knowing Euro-Americans thought them “more civilized” and, at least to some extent, “white.”

Mexican Elites and Blacks, Free and Enslaved

In 1829, Miguel Antonio Otero was born into a wealthy ranching family in Valencia County, New Mexico.⁶² He would have been 17 years old when the Americans claimed control of the region, and, hence, among the first generation to come of age under American rule. He was fully bilingual in Spanish and English, the latter being rare at that time, even among Mexican elites of Otero’s generation. Otero attended college in St. Louis and New York, studied law in Missouri, and returned to New Mexico in his early twenties. He quickly ascended to a political career, first as a representative of Valencia County in the 1852 and 1853 Territorial Legislatures (where he was among the

⁶² Some reports claim that his parents, Gertrudis Aragon and Vicente Otero, were born in Spain (most notably, Twitchell, 309, n. 234). If this was the case, they would have been among a very elite population indeed. Out of 13,204 people legally married in the region between 1693 (the date of the Spanish reconquest after the Pueblo Revolt of 1680) and 1846, a mere 10 persons listed their parents’ birthplace as Spain. (Gutierrez, 149) More likely is that Otero and his parents claimed “Spanish” heritage in a less strictly ancestral sense, a phenomenon that became popular in New Mexico in the late 19th and early 20th centuries. Twitchell’s often romanticized history of this period, written in 1912, reflects a desire to designate elite Mexicans as “Spanish” that was common among part of the Euro-American population.

youngest legislators) and then as New Mexico's nonvoting delegate to Congress from 1855-1859 (winning election to two consecutive two-year terms).⁶³

He was an outspoken Democrat during his years as delegate, aligning himself politically and socially with southern Democrats. During his third year serving in Washington, D.C., Otero married Mary Blackwood of Charleston, South Carolina, whose father was a slaveholder.⁶⁴ In the years before the Civil War, Otero took a strong pro-slavery stand and used his influence to persuade New Mexico legislators to enact a slave code in 1859. But after secession, Otero did not openly advocate that New Mexico join the fledgling Confederacy. In an 1861 letter written early in the Lincoln administration and published in the Santa Fe Weekly Gazette, Otero seemed genuinely wrought over the question and recommended siding with California and Oregon.

If a dissolution of this country should take place, we of New Mexico will be expected to take sides with one of the two or three or four of the Republics into which it would be divided. What will be the determination of the people of New Mexico if such deplorable consequences should come to pass, I cannot say. My own opinion and my counsel to them would be, in that event, a union with the Pacific free states, west of the great prairies. If California and Oregon declare their independence of this Government I am for joining them.⁶⁵

On the other hand, Otero may simply have been preserving his options with a Republican administration; Lincoln appointed him Secretary of the Territory in 1861.

Whereas Mexicans and Pueblo Indians shared much in common culturally, lived near each other, and regularly clashed over land and water, Mexicans had little interaction or resource competition with Blacks, either free or enslaved. When New

⁶³ See discussion, *infra*.

⁶⁴ Note on sources for MAO bio: autobiography, twitchell (309-310, n. 234; ERG at 192; slavery book. Providing a glimpse into the extent of Euro-American historians' unwillingness to credit even elite Mexicans with agency and self-determination, Loomis Ganaway, writing in 1944, claimed Otero did not have an opinion on slavery until marriage and attributed his pro-slavery acts to his wife's influence (62, 90).

⁶⁵ Ganaway, 90

Mexico became a U.S. territory, the census recorded 22 Blacks living in New Mexico; ten years later, there were 64 Blacks.⁶⁶ The census records didn't distinguish, so we don't know whether New Mexico's Blacks were slaves or free persons, but the tiny numbers relative to the population tell us that laws concerning slavery and the rights of free Blacks fall into the category of symbolic politics. Rather than reflecting competition or interests, or some reflection of interests and symbolism, we must read Mexican elites's legislation regarding Blacks as representative of other struggles and conflicts.

What explains Mexican elites passage of a slave code after repeated repudiations of slavery a decade earlier? What were the symbolic politics of the legislation? The conventional interpretation is to link the shift to efforts to gain statehood, suggesting that both positions reflected the shifting political winds about New Mexico's chances for entry into the Union as a free or a slave state. The argument is rarely made with respect to the majority of legislators and convention delegates who were Mexican, but is instead attributed to Euro-American elites in New Mexico and in Congress. For example, Ganaway claims that anti-Black legislative acts

reflected the growing influence of southerners in territorial politics. During the next three or four years, their control was tightened by the alignment of Miguel Otero, territorial delegate from 1855-1861, with southern political leaders and institutions.⁶⁷

Absent from this conclusion is serious attention to the ways in which Mexican elites constructed their interests, in either symbolic or material terms. Estevan Rael-Galvez corrects this mistake by considering the position and interests of Mexican elites. He argues that Mexican legislators enacted a slave code that legalized Black chattel slavery

⁶⁶ Note on "black" terminology; Note about limitations of census; also that black/indigenous and black/Spanish mestizos might well not have been identified as Negro on the census

⁶⁷ at 59

in order to better protect their real interest in slavery – enslavement of Indians taken captive from nomadic tribes and sold into Mexican households.⁶⁸

Following Rael-Galvez in taking seriously the agency of Mexican elites, an additional line of analysis becomes visible. Specifically, acknowledging the fragility of Mexicans' claim to whiteness, we can view Mexican elites' acts regarding blacks as a dramatic way to distance themselves from Blacks and, so as a more effective purchase on whiteness. Mexicans would have been well-aware of Euro-Americans' presumptions of racial superiority and concomitant Mexican inferiority at the time of the occupation; in the following decade, Mexican elites essentially were allowed to claim white status in the political sphere, while inequality remained entrenched in the social sphere.⁶⁹ The question that plagued Congress and the rest of American at the outset and conclusion of the war with Mexico still remained, where do Mexicans fit, and are they more like Blacks or Indians?

In early actions, majority-Mexican bodies took anti-slavery positions. In the first two legislatures (held after the ratification of the Treaty but before Congress had declared New Mexico a federal territory), majority-Mexican bodies banned African slavery in 1848 and did not mention slavery one way or the other in 1849. In the constitutional conventions of 1848 and 1850, New Mexican delegates drafted state constitutions that included clauses stating that New Mexico would join the Union as a free state. The proposed constitution went to a popular vote in 1850, passing with 6,771 in favor and 39

⁶⁸ 194-198. Rael-Galvez cites a letter written by territorial secretary Alexander Jackson (the likely author of the 1859 Slave Code) in which he says, “we have assured the Mexicans that [passage of a slave code] will protect their own system of peonage” 198. I discuss the issue of Indian slavery in the following section.

⁶⁹ Add cites.

opposed.⁷⁰ This anti-slavery sentiment likely reflected Mexico's historic opposition to African slavery, as well as ongoing hostilities with Texas. Texas joined the Union in 1845 as a slave state (again, having broken from Mexico over Euro-Americans' rights to bring slaves to Texas) and until 1850 actively claimed that its western border extended into eastern New Mexico, even going so far as to claim Santa Fe within its boundaries.⁷¹ Hostilities between New Mexico and Texas remained intense for decades (and persist in some quarters into the present), and some historians have credited animosity toward Texans as fueling volunteer participation in Civil War militias.⁷²

Seen in this historical light, the early anti-slavery positions by the majority-Mexican conventions and legislatures could have been anticipated, but the shift to a pro-slavery position in the late 1850s would not have been. In 1857, the territorial legislature enacted a law severely restricting the rights of free Blacks. Sections 1-2 of the law restricted free Blacks' and Mulattos' presence in New Mexico to 30 days, with a violation subject fine and imprisonment, with the penalty rising to "hard labor" if the free Black refused to leave New Mexico after serving their sentence. Sections 3-4 prohibited Black men and white women, respectively, from marrying or living together, with male violators subject to 2-3 years at hard labor and female violators subject to a fine of \$100-\$200. Section 5 prohibited owners of Black slaves from emancipating their slaves within New Mexico. The final substantive section of the law required free Blacks and mulattos

⁷⁰ Ganaway, 49-52.

⁷¹ Texas did not relinquish its claim on New Mexico until 1850, when Congress paid it \$10 million to drop its claims against New Mexico. As part of the same compromise package, Congress admitted California as a free state; established New Mexico and Utah as federal territories (with the proviso that the slavery issue would be determined in the future by "popular sovereignty" in those territories); abolished the slave trade but kept slavery legal in the District of Columbia; and enacted the Fugitive Slave Act to protect slaveholder's property across state and territory boundaries. See Smith, 262 (referring to the latter as "a horrifically Kafkaesque" act). See also Cover [add cite and ref to fug. Slave act of 1850].

⁷² Bancroft (684, 686)

already in New Mexico to “give bond for their good conduct and behaviour ... with two or more honorable securities ... within two months” of the law’s enactment.⁷³

Two years later, a legislative body composed of 34 Mexicans and three Euro-Americans passed, with only one dissenting voice, “An Act to Provide for the Protection of Property in Slaves in this Territory.” The law imposed stiff criminal penalties for stealing slaves, assisting slaves in escape, or otherwise inducing them to leave their masters (sec 1-5). It also made it illegal to play cards or otherwise gamble with slaves, to sell or give them weapons, and to trade or do business with them (7, 8, 9). Sections 10-15 consisted of provisions for private individuals and public officials to deal with runaway slaves, constituting a mini version of a fugitive slave law within the slave code. The law specified that slaves convicted of crimes could, at the judge’s discretion, be sentenced to branding and/or whipping in lieu of imprisonment (21). It prohibited Blacks, free and slave, from testifying “against a free white person” in any court of law (sec 22). It banned marriage between “white persons” and Blacks, free or slave, without regard to gender (23). It provided for the death penalty for the rape or attempted rape of a “white woman” by a slave or free Black or mulatto (24).

Within a decade, Mexican elites went from supporting abolition to enacting a harsh and comprehensive slave code. They went from little concern for Blacks, one way or the other, to enacting a “Black code” that severely restricted the rights of free Blacks, aiming to lock them out of the Territory. The laws are as harsh as those of the southern states (in the case of the slave code) and “the early old northwest states” (Illinois, Indiana, Ohio), who enacted Black Codes to deal with increases in their free Black

⁷³ “An Act Concerning Free Negroes,” New Mexico Laws, 1857. Add material comparing/contrasting to other black codes... berwanger book.

populations.⁷⁴ The irony here is that while, for example, Illinois enacted a Black Code in reaction to a 258% increase in its population of free Blacks between 1820 and 1830, New Mexico's Black Code arose when there were fewer than 100 Blacks in a geographic area that spanned all of present-day New Mexico and Arizona. Rather than being motivated by fear of being overrun by free Blacks or labor or land competition with free Blacks, something else was at work. The laws reflected the preoccupation with degrading and separating the races; for instance, both contained miscegenation clauses that protected the "white" daughters and sisters of Mexican elites (although the Black Code also punished transgressing "white"/Mexican women). The Slave Code banned Blacks' testimony against "whites" at a time when Mexicans controlled the grand jury and petit juries. In these ways, the laws served to harden the line between Mexicans, as whites, and Blacks.

In 1857 the U.S. Supreme Court issued its infamous Dred Scott opinion, deciding that neither free Negroes or slaves had federal citizenship and, therefore, the right to file suit in federal courts.⁷⁵ At one level, here was another opportunity for Mexicans to distinguish themselves from Blacks, for they were, under the Treaty of Guadalupe Hidalgo, federal citizens.⁷⁶ Miguel Antonio Otero, then New Mexico's congressional delegate and as previously noted a slavery proponent, wrote a series of letters about the Supreme Court's opinion in Dred Scott. In one letter, written to the territorial secretary Alexander Jackson in 1858, Otero writes:

I know that the laws of the United States, the Constitution, and the decision of the Supreme Court in the Dred Scott case, establishes property in slaves in the Territories, but I think something should be done on the part of our Legislature to protect it. You will perceive at once the advantages that will result from the passage of such a law for our Territory, and I expect you will take good care to

⁷⁴ Berwanger, 31-31.

⁷⁵ More on DS; invalidated the Missouri Compromise which had banned slavery in the Louisiana Purchase;

⁷⁶ cite to some fed cases from NM, cal. Etc.

procure its passage. Immediately after its passage, you will dispatch copies to all the principal newspapers in the Southern States for publication, and also a copy to the New York Herald “very quick.”⁷⁷

It is difficult to gauge Mexican elites’ reactions to the case – other than this pointed example from Otero who was in Washington, D.C. at the time the case was decided. My review of surviving newspapers of that time, for instance, did not uncover any mention of the Dred Scott case in the English or Spanish language press of New Mexico.

Otero’s letter provides support for the conventional analysis. A Supreme Court decision widely viewed as pro-South and pro-slavery, indicated the direction of the political winds (and, in many scholars’ opinions, was one of the catalysts for secession and the Civil War). Otero’s letter speaks of benefits to New Mexico, which could be interpreted to mean the potential for Congress’s grant of statehood as a slave state. On the other hand, for those who had been genuinely committed to an anti-slavery position, the Supreme Court’s opinion must have given them great pause. It was a resounding statement of the official exclusion of Blacks (free and slave) from the polity and from all but the minimum sense of citizenship. In this climate, one can imagine Mexican elites wanting to distinguish themselves from this pariah group, and enacting the Slave Code to do just that. In addition, we need not rule out the importance of the link between African slavery and Indian slavery, noted by Rael-Galvez. Very likely, all three things were working together to motivate Mexican elites to switch from an abolitionist to a pro-slavery position.

⁷⁷ Otero’s letter became widely available when an abolition organization (name) reprinted it in a pamphlet that was published in both English and Spanish and widely distributed in Washington and New Mexico... cite to pub. In Bingham pamphlet (black notebook); also to ganaway; erg too.

Mexican Elites and the Nomadic Indian Tribes

The decade of the 1860s witnessed the election of Lincoln, the secession and formation of the Confederacy, the Civil War, and the passage by a largely northern, Republican Congress of the most sweeping civil rights alterations to the Constitution in the form of the Thirteenth, Fourteenth, and Fifteenth Amendments. In 1862, Lincoln issued the Emancipation Proclamation freeing all Black slaves and, three years later, Johnson issued the “Special Proclamation” seeking the same result with respect to Indians in New Mexico. That presidential act and federal legislation in 1867 that made it illegal to hold Indian slaves brought the national preoccupation with slavery to New Mexico. In 1868, more than two hundred New Mexicans were charged with the crime of “holding Indian slaves” and subpoenaed to testify before a federal grand jury.

Among the indicted were several prominent elected officials, including Juan Jose Santistevan. At the time of his indictment, Santistevan was between stints as Probate Judge of Taos County (an elected office); later, he would preside over the Taos County Commission and serve in the Territorial Legislature.⁷⁸ Santistevan testified without shame and, apparently, without fear of prosecution or conviction -- since he implicated his mother as a fellow slaveholder (though she was not one of those charged). About the Indians in his own and his mother’s households, he said:

They are there of their own free will. I don’t know that they are paid especially...I know as long as I can remember that the Indians have been as servants, that campaigns have been made against Indian tribes [Navajos] and the captives brought back and sold into slavery by parties making a campaign. In this way most of the Indians held and now living in the territory were obtained.⁷⁹

⁷⁸ Estevan, 312-313 (n. 597) (citing twitchell)

⁷⁹ Rael-Galvez, 294-95 (quoting from Santistevan’s grand jury testimony). Note that by “Indians,” Santistevan is referring to members of the nomadic tribes, not Pueblo Indians.

Even in this brief excerpt, Santistevan presents the various justifications for Indian slavery. He speaks about the history and mechanics of slavery in a detached way (for example, Indian slaves “were obtained”; he or his ancestors did not purchase them), as if he is not personally implicated, despite the fact that he has been charged with being a slaveholder. He presents the “practice” of holding Indian slaves as a product of military conflict and as historically rooted. And, like southern slaveholders, his justification of the practice (“they are here of their own free will”) is belied by his own description (they were not paid, they were captured and sold into slavery).

In the end, the grand jury refused to return indictments against any of those charged with Indian slavery. This is not surprising, given that the grand jury likely was composed of Mexican men who knew or knew of Santistevan.⁸⁰ If Santistevan’s experience is any guide, there was no lasting stigma in being charged with this crime, in either the community of Mexican elites to which he belonged or among Euro-American colonizers. In the decade following his indictment as a slaveholder, Santistevan played an active role as a layperson in the American court in Taos County.⁸¹ On four occasions, three different Chief Justices of the Territorial Supreme Court appointed Santistevan as one of three lay jury commissioners, whose task was to select grand jury and petit jury venires for the following court session (along with the Chief Justice and the elected county Probate Judge). Chief justices, who also served as presiding judge riding circuit in the first judicial district that included Taos County, named Santistevan interpreter to

⁸⁰ The federal grand jury impaneled to hear these charges in 1868, very likely would have been similar in racial composition to grand jury and petit jury venires in the county-level, territorial district court. In the Taos County District Court in the 1860s and 1870s, grand jury and petit jury venires had no more than three Euro-Americans and many venires in that period had no Euro-Americans.

⁸¹ Only began to have sub. Caseload in 1870s – little activity in 1850s and 1860s; Prior to that time, it is likely that disputes were settled informally or in lower courts such as the justice of the peace courts or the probate court. [ref to smc article here]

the grand jury seven times during the 1870s, a position for which he was paid \$3/day. During the Sept. 1875 term of court, Chief Justice Palen selected Santistevan foreman of the grand jury.⁸² In short, Santistevan was a model citizen – and an elite Mexican who owned Indian slaves.

There is a kind of cognitive dissonance that radiates from all sides of the post-Civil War efforts by American officials to contain Indian slavery in New Mexico. In this section of the paper, my aim is to analyze the multiple, cross-cutting ways in which these efforts shaped relations among the region’s various racial groups. As a point of entry, let me briefly describe the parameters of Indian slavery in the region. Despite the formal prohibition of Indian slavery under Spanish law, enslavement of Indians by Spanish and mestizo settlers in New Mexico occurred throughout the 17th and 18th and well into the 19th centuries. In his groundbreaking work, When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846, Ramon Gutierrez describes slaves captured directly from nomadic tribes and those purchased from middle-man capturers (other nomadic tribes) as crucial to the frontier economy: “Slaves were a medium of exchange and were pieces of movable wealth.”⁸³ Using a quantitative analysis of baptisms in New Mexico of nomadic Indians between 1700 and 1849, Gutierrez shows that the number of Navajo, Apache, Ute and Comanche Indians baptized

⁸² During the 1870s, Santistevan was appointed jury commissioner during the April 1871, Sept. 1874, March 1877, and Sept. 1879 terms of court. He served as grand jury interpreter in the April 1873, April 1875, Sept. 1875, March 1876, Sept. 1876, March 1877, and April 1879 terms. e I have compiled Santistevan’s record of court participation as a layperson from NMSRCA District Court Records, Taos County Record Book AA (1863-1877) and Taos County Record Book (1877-1884).

⁸³ At 152.

correlated strongly with the number of deaths of Spanish/Mexican settlers, revealing the links between slavery and cyclical armed conflict between settlers and nomadic tribes.⁸⁴

This cycle of raiding and trading for slaves continued well into the 19th century, especially in the more remote parts of New Mexico where mestizo settlements were still new and relatively precarious and, hence, more susceptible to mutually instigated contact and conflict between mestizo settlers and members of nomadic tribes. In his important new work, Estevan Rael-Galvez sheds light on these processes as they interacted, after 1846, with American laws and officials. One of the primary effects of the U.S. occupation was to sharply increase hostilities with the nomadic tribes. Using a slave census collected in 1865 by an American government appointed “Indian Agent” in southern Colorado and northern New Mexico, Rael-Galvez reveals that the vast majority of Indian slaves were Navajo (others were Utahs, Utes, Pi-Utes, as described in the document) and that almost three-fifths had been sold to Mexican households by Mexican middle-men, with two-fifths having been sold to Mexican households by members of other nomadic tribes.⁸⁵ For our purposes, perhaps the most striking fact is that conflict with nomadic Indians increased dramatically in the first two decades of the American occupation, likely leading to a correspondingly dramatic increase in the number of Indian slaves held in mestizo households.⁸⁶

To name this practice, which was buttressed by law and culture, as “slavery” is not to say that all systems of slavery were the same. It is important to name the New

⁸⁴ 153-54; see also James Brooks, *Captives and Cousins* (arguing that a regional exchange in people (especially women and children) of different nomadic Indian tribes predated the Spanish conquest).

⁸⁵ 249. I cannot adequately describe here the richness and complexity of Rael-Galvez’s analysis of this document and the conditions of its production; interested readers should consult the full work and especially chap. 5.

⁸⁶ Rael-Galvez’s work is the most comprehensive study of Indian slavery in the American period, but it too suffers from the lack of data; we do not know the full extent of regional variation in the slave trade and practice in territorial New Mexico.

Mexico practice as slavery while, at the same time, making clear the differences between it and the chattel slavery of Africans in the southern U.S. that was contemporary with it. New Mexico's system was different in several respects, including that Indian parents sometimes sold their children into slavery; that Indian slaves sometimes inherited personal and real property from their masters; that slave status was not hereditary (e.g., passed from parent to child). Despite these differences, this was a system of slavery in which Mexican families had a property interest in Indian servants, such that Indians were sometimes exchanged for non-human property and sometimes transferred to heirs. Like slavery in the South, slavery in New Mexico resulted in sexual relations between slave and slaveholder and, hence, a significant population of illegitimate births to Indian women, and so further increased the racial mixture (*mestizaje*) in the population. Similarly, there were important differences among slaveholders in the South and in New Mexico; in the latter, ownership of Indian slaves occurred in both wealthy and economically middling households.⁸⁷ In New Mexico, holding slaves marked one's status but was less directly a marker of wealth and little associated with the ability to produce wealth in, for example, a plantation-like context.

In trying to understand the question of Indian slavery after the Civil War and concurrent with the implementation of Reconstruction in the South, part of the dilemma arises from the fact of ill fit with dominant American paradigms. As Rael-Galvez notes, Americans were used to seeing Indians as a predicament – as in “the Indian problem” or “the Indian question” – usually, as something in the way of obtaining access to land.

⁸⁷ Among 300 persons charged with the crime of holding Indian slaves in northern New Mexico in 1868, Rael-Galvez shows that, while many had property holdings that put them at the top of the economic scale (in New Mexico), a substantial number of those charged self-described farmers with real property holdings of \$500 or less. 309-319

“The Negro problem,” on the other hand, was the problem of servitude and, at least at mid-19th century, the clash of legally sanctioned slavery with ideals of equality and liberty under the Constitution. President Johnson’s “Special Proclamation of 1865” indicated that emancipation was to extend to Indian slaves in the federal territories.⁸⁸ There is little evidence to suggest that change resulted in the condition of many (if any) Indian slaves and, within a decade, a polite silence about the subject reigned among American and Mexican elites.⁸⁹

My concern is with the *politics* of these discussions, even against a backdrop that suggests little change for either slaves or slaveholders. Indian slavery emerges, then, as a site for multiple conflicts among racial groups – between Indian slaves and their Mexican masters, between Mexican and Euro-American elites, and even as a dramatic status difference between Pueblo Indians and other Indians in New Mexico. Americans’ efforts to dislodge Indian slavery can be read in multiple ways. On the one hand, it is consistent with principles of equality and liberty and with the abolition of slavery and eventual Emancipation of enslaved Blacks after the Civil War. At the same time, Euro-Americans’ advocacy of Indian slaves can be read as an effort to further entrench American hegemony against the interests of Mexican elites. Support for the latter includes evidence that Euro-Americans themselves kept Indian slaves.⁹⁰ Lafayette Head, the former New Mexico Territorial legislator and Indian Agent mentioned earlier, held

⁸⁸ Rael-Galvez, 277-279

⁸⁹ at the same time, it is difficult to measure the effect these efforts (civil war, special proclamation, griffin’s indictments) may have had in simply causing the practice of Indian capture and enslavement to gradually end ... even if that end wasn’t imposed from above

⁹⁰ Writing almost contemporaneously and speaking of the Euro-American officials, Bancroft notes that “there were few military or civil officials who did not own captive slaves, and they were found even in the service of the Indian agents” (681). Like the majority of Euro-American and Mexican elites whose history he chronicles, Bancroft conceives of Indian slavery as benign, noting that “in most instances” slavery had improved the living conditions of the slaves (681).

multiple Indian slaves in his southern Colorado household in the mid-1860s, when he was compiling a list of enslaved Indians in the region.⁹¹ Rael-Galvez documents that, although the majority of those prosecuted in 1868 for holding Indian slaves were native New Mexico Mexicans, they included, as well, significant numbers of Euro-Americans.⁹²

For Mexican elites, holding Indian slaves marked them as both economically and racially privileged. Mexican families with Indian servants were not restricted to the very richest native New Mexicans, but they were an indication of wealth and, perhaps *moreso*, past status under the Spanish and Mexican governments. Within the context of American colonization and the intensifying debates over Black slavery, the holding of Indian slaves may have become a different kind of status marker, one which marked white racial privilege in addition to wealth. From this perspective, Mexican elites' defense of the system of Indian slavery constituted resistance to American hegemony. One sees this in the strained dance between three sets of actors in the legal system: Mexican justices of the peace, Mexican legislators, and Euro-American judges (who, it is recalled served both as justices of the territorial supreme court and trial judges riding circuit in one of three judicial districts). Over the course of the first two full decades of the American occupation of New Mexico, these three sets of actors engaged each other in a series of legal battles that reveal the contestation and ultimate negotiation of a new racial order.

Often, these disputes entered the legal system at the level of justice of the peace courts, where Indian slaves complained of unfair or mis-treatment by their Mexican masters or where Mexican slaveholders sought to regain control of an Indian slave who

⁹¹ cite erg

⁹² cite erg; also make this point: When one examines household composition, beyond simply what individual is charged with owing these slaves, it also becomes apparent that many families who held Indians slaves were cross-racial marital unions or included members who were themselves the product of cross-racial unions in an earlier generation. The point is the EA hands weren't clean.

had been stolen or who had run away. Because these forums were not courts of record, we have relatively little data about how these disputes typically proceeded. In what we can assume is a small number of special cases, however, the losing party in the justice of the peace court appealed to the district court, presided over by one of the territorial supreme court justices (appointed, you will recall, by the President); and, in an even smaller number of cases, the loser in this second litigation forum pursued an additional appeal to the territorial supreme court. The pattern in these cases was for justices of the peace – who were overwhelmingly native Mexicans during the 1850s and 1860s – to rule in favor of slaveholders and for Euro-American judges to rule against Mexican slaveholders.

Two additional patterns can be teased out. First, majority-Mexican legislatures continually sought legislative solutions to what they perceived as an activist judiciary. They formalized the ownership of Indian slaves by other names – under the rubric of peonage or master-servant law, drawing heavily on Anglo-American common law traditions.⁹³ Even as this route was increasingly stymied by Euro-American judges, they innovatively turned to county probate courts to use the guardianship system to essentially disguise the master-slave relationship in euphemistic familial language.⁹⁴ Like justices of the peace, probate judges (like Juan Santistevan) were elected officials and in this era were virtually all Mexicans.

⁹³ 1851 leg. Act, master servant law re: contracts [another guise for peonage/slavery]; b 1861, mex. Elites realized they didn't have the muscle to tackle directly: --In 1861 terr leg, failed to pass bill to augment 1859 slave code by adding inclusion of "male or female Indians that should be acquired from barbarous nations" [erg, 202];

⁹⁴ --1860 terr leg. Passed law regulating guardians; erg at 200; euphemism for enslavement of Indian children, in particular; blurring of family/slave bonds [resistance by mex elites – we'll preserve this one way or the other...]

Euro-American judges responded in two ways that substantially curtailed the power of Mexican elites. First, they overturned or narrowly construed master-servant legislation in the interests of litigants who were Indian slaves.⁹⁵ Second, and more comprehensively, they sought over a period of decades to curtail the power of the justice of the peace courts, with the effect of gradually emasculating these largely Mexican-controlled courts of first resort. Eventually, Euro-American elites appealed to higher authority – not in the form of the U.S. Supreme Court, but in the form of the Congress, which, as the reader will recall, had the authority to nullify any act of the territorial legislature. Frustrated by unsuccessful attempts to use general slavery and peonage prohibitions to address Indian slavery in New Mexico, in 1867 Congress directly prohibited Indian slavery and the practice of Indian peonage.

One way to read these actions on the part of Euro-American judges and federal legislators is to view them as champions of civil rights and, in particular, advocates of the extension of recently won Black civil rights to Indians. In order to fully understand these dynamics, however, we must consider the constellation of racial groups, racial ideologies, and the new racial order that was in formation. From the actions of Mexican elites in the first 25 years of American colonization, it is clear that they perceived it in their interest to defend and elaborate the practice of Indian slavery. It also is clear that Euro-Americans, especially judges, were increasingly critical of the practice euphemistically labeled peonage. What were the motivations of each group? What do the debates between Mexican elites and Euro-Americans over Indian slavery reveal about the deeper, highly racialized conflict in this colonial moment?

⁹⁵ [describe cases: *Jaramillo v. Romero*, 1857, J. Benedict

Like their defense of Pueblo Indians in disputes with Mexicans, American judges' anti-peonage decisions in the 1850s and 1860s amounted to a divide-and-conquer strategy. The broader historic context is extremely important because, at this same point in history, the American military was engaged in its most intense "Indian wars" against the nomadic tribes.⁹⁶ The culmination was Kit Carson's forced march of 8,000 Navajo men, women and children over 300 miles from their homeland to the Bosque Redondo Reservation.⁹⁷ Against this context, consider what "choices" a hypothetical Navajo woman enslaved in a Mexican household would have had in 1868, the year of the indictment against Santistevan and the other slaveholders. Had she sought emancipation and return to her people, she would have been forcibly removed to Bosque Redondo. To say this is not to in any way justify Indian slavery, but instead to point out the disingenuousness of American liberation efforts. Instead, I read Americans' actions here as part of a larger project of institution-building for the purpose of extending and preserving American material and ideological interests in this newest colony.

From this perspective, the Mexican-Euro-American conflict over Indian slavery represented both a power struggle between colonizer and native and between dominant (Euro-American) and subordinate (Mexican) racial groups. Mexican elites attempted to resist American hegemony by, literally, holding on to one of their most valuable assets (even as their land holdings plummeted during the 19th century). At another level,

⁹⁶ One result of the American-led Indian wars of the 1860s was the largest number of baptisms of nomadic Indians *ever* recorded in Catholic records (erg, 215). As Rael-Galvez notes, these military campaigns revealed a shift "from the wars against slavery to the wars against Indians" (211). Admittedly, Mexicans, as army volunteers and in other support capacities, supported this assault on Navajos and other nomadic tribes. See Rael-Galvez, citing an 1860 proclamation exhorting Mexican men to join up to "create a force of 1,000 men" to fight the "savage" Navajos (203, n. 387).

⁹⁷ Erg 214 [add other cites too]; Carson was married to – Jaramillo and Rael-Galvez notes that their Taos household contained two Navajo slaves. [add cites] During and after the forced march of Navajos, Carson rewarded his Ute scouts by allowing them to take captured women and children. Erg 214.

Mexican elites sought to maintain their honor and status, which under the Spanish and Mexican periods had been deeply connected to making raids, taking captives, and holding Indian slaves in their households. This tradition surely resonated with the transfer of power to the Americans, who, after all, understood both the traffic in human beings and its justification on the basis of racial inferiority. In the context of American racial hierarchy, then, we must also read Mexican elites' fierce battle to maintain Indian slavery as an effort to legitimize (and, thus, fortify) their ever-tenuous claim to whiteness.

Conclusion

Racism and the ideology of white supremacy were bound up with colonialism in New Mexico. The American colonizers needed a native governing elite, both because they had insufficient numbers of Euro-American settlers in the region and to legitimize the military occupation. The latter was especially important given extensive Whig criticism of the war with Mexico and imperialism more generally. Americans did not want to see themselves as a colonial power.⁹⁸ One of the striking features of American history of the Mexican War and the subsequent annexation of more than half Mexico's territory in the Southwest is the sheer absence of a discussion of colonialism. In the national myth-making that this conventional history constitutes, this encounter of peoples is not presented as one of conquest and colonialism. Instead, the official history of U.S. imperialism begins in 1898, with the end of the Spanish-American War and the acquisition by the U.S. of Puerto Rico, Guam, and the Philippines, and at the same time

⁹⁸ Just as the mythology of northern Mexico being taken "without a single gunshot" perpetuated the notion that Mexicans welcomed their American liberators in 1846, today's rhetoric about "freedom on the march" is designed to make us forget that the U.S. launched a violent invasion of Iraq and established a puppet government there controlled by local elites.

the annexation of Hawaii.⁹⁹ We can better understand the second imperial moment of 1898, by understanding what occurred in the first imperial moment in the Southwest.

Even as American colonizers tapped a native elite to govern in a region with far more Euro-American soldiers than civilians, they also needed to keep Mexicans and Indians in their racial place. For Mexicans incorporated as the native elite in the colony, the distinction between political and social equality was paramount. Euro-American men ceded formal political equality to Mexican men, but this did not translate into social equality between Euro-Americans and Mexicans. An essential element of the colonial strategy hinged on breaking up the military alliance and cultural affinity between Mexicans and Pueblo Indians. The lure of whiteness proved an ideal tool; with it, the American colonizers could, in one move, divide Mexicans and Pueblo Indians and co-opt Mexicans willing to trade on their mestizo, part-European heritage.

Ultimately, the power of racism is ideological, achieving its apex when racially subordinated groups themselves help to reproduce racism. I have shown how this worked by describing situations in which Mexicans gained the upper-hand over non-white groups lower on the racial hierarchy, including Pueblo Indians, free and enslaved Blacks, and nomadic Indians. Despite evidence of ambivalence in both the law on the books and the law in action during the early years of the American occupation, Mexican men disenfranchised their Pueblo brothers to the extent that the latter virtually were excluded from the new, American polity in the region. Acting in symbolic terms because of the tiny numbers of Blacks in the region, Mexican elites sided with pro-slavery and scientific racism to enact a draconian Black Code and Slave Code in the 1850s. Partly in order to

⁹⁹ Reliance on 1898 as the beginning of U.S. imperialism cuts across the political spectrum, with even left-leaning scholars evoking that year as the start of “the New American Empire” (Smith, chap. 12).

affirm their whiteness, Mexican elites actively sought to continue the enslavement of nomadic Indians during the first 25 years of the American occupation.

Mexicans took up the American racial project (white supremacy) by claiming whiteness for themselves and seeking to distance themselves from non-white groups including Pueblo Indians, free and enslaved Blacks, and Indians from the nomadic tribes. But Mexicans paid a price for the legal fiction that they were “white,” and, therefore, that their men were eligible to vote and hold office; they ultimately were co-opted by the American colonizers. By the end of the 19th century, we begin to see shifts in the political system that reflect Euro-Americans’ ascendancy in the region and the end of the period of control or power-sharing by Mexican elites. At the same time, in all of these contexts, the divisions between Mexicans and other subordinated groups gave tremendous power to the American colonizers, increasing divisions among potential allies in an anti-American campaign, legitimizing the American presence as “protector” of Indians, and entrenching the American legal system as a neutral, fair forum for dispute resolution and punishment.

At the same time, colonization was not a totalizing experience. At the edges of a system of co-optation of elite Mexicans, they exercised more self-determination than other non-white racial groups in New Mexico and, perhaps, in the entire nation in the 19th century. Given their control of lower court forums such as the justices of the peace and probate courts, Mexican men exercised considerable control over disputes among themselves, with Euro-American merchants and ranchers, and with members of the various Indian communities. Although these victories were sometimes literally overruled by the higher, Euro-American controlled district courts, Mexicans held the balance of

power even in those forums, where they were the majority of grand jurors checking the power of the Euro-American prosecutor and the majority of petit jurors checking the power of the Euro-American judge. Psychologically, Mexicans may have earned an important wage from this level of participation and self-determination.

Mexicans' status as a middle-man or wedge racial group simultaneously buttressed and challenged white supremacy. Mexicans' sometimes successful claims to whiteness challenged white supremacist ideology by forcing a rupture in categories; what was "whiteness" if it was not a closed category and if it was permeable? Race relations in New Mexico also served, however, to buttress white supremacy. Mexicans' claim to whiteness was fragile because, while they were legally/formally recognized as whites, they were informally/socially treated as non-white, as racially inferior to Euro-Americans. As a result, Mexican elites vigorously sought to distance themselves from non-white groups lower on the racial hierarchy, including Blacks (free and slave) and Pueblo and nomadic Indians. In this way, they played a leading role in the reproduction of the American racial hierarchy in the Southwest.