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Rescuing Catalina: Law, Storytelling, and Unearthing the Hidden History of Southwestern Slavery

Robert F. Castro†

INTRODUCTION

Like an archeologist at a prehistoric dig, the treasures that reveal themselves to legal historians are few and far between. Once in a great while, excavations unearth important relics that merit further study. This is important, because whether one's trade turns on fossils or legal documents—the hope is that these items will offer new insights into murky pasts and ultimately, provide a better understanding of our current civilization. *Bustamento v. Analla* is one such find worthy of further investigation.

*Bustamento* involves Juana Analla, a plaintiff-mother who petitions a New Mexican court to free her daughter Catalina. Juana argues that the legal wife of Catalina's biological father, Carpio Bustamento, is unlawfully holding the child as a servant. This violated an 1847 contract between Juana Analla and Carpio Bustamento whereby Juana Analla forfeited her parental rights to Catalina on the condition that Catalina be raised and educated as Carpio Bustamento's legitimate child. *Bustamento v. Analla* is unique because it not only provides an informative record of early Southwestern law; it also affords compelling insights into the

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2. *Id.* at 1.

3. *Id.*
complex and often contradictory world that fueled the enslavement of Mestizos and American Indians during the late antebellum period.4

I.

EXCAVATING LEGAL HISTORY WITH NARRATIVE AND STORYTELLING

Stories and storytelling are powerful enterprises. Many of us use “stock” stories as normative points against which we make daily decisions.5 Law and legal analysis are normative stories that help societies regulate and manage daily affairs through institutions like courts of law.6 Storytelling, as a form of intellectual inquiry, has made significant inroads in the legal academy.7 Much of storytelling’s power comes from its ability to demystify the law by asking subtle yet disarming questions about law and legal systems: Whose stories get told in court? Whose stories remain absent? How are stories told? Who are the storytellers? Who listens to the stories?

Such basic yet probing inquiries have created fertile ground for new voices. Members of traditional out groups — women, people of color, the terminally ill, and the elderly — have embraced forms of narrative and storytelling to circumvent the inherently exclusionary nature of legal rules and political processes.8 As a result,

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4. My intent is not to provide an in-depth historical analysis of Indian-Mestizo slavery, but rather to illustrate how storytelling methods can illuminate the dynamics of power and privilege that fueled much of the slave trade in the Southwestern territories. The historical narratives that I present should be thought of as impressionistic snapshots portraying the horrific experiences that Indian-Mestizo servants were forced to endure. For good descriptions: See Elizabeth Ann Harper John, Storms Brewed in Other Men’s Worlds: The Confrontation of Indians, Spanish, and French in the Southwest 1540-1795 (2d ed. 1996); Ramon A. Gutierrez, When Jesus Came, the Corn Mothers Went Away: Marriage, Sexuality, and Power in New Mexico, 1500-1846 (1991); See also David M. Brugge, Navajos in the Catholic Church Records of New Mexico, 1694-1875 (1985); David J. Weber, The Spanish Frontier in North America, (1992) at 127-29, 133, 148, 206, 209. For an empirically well documented, but conceptually short-sighted study of the reciprocal trade in Spanish-Mexican-Indian captives See generally James F. Brooks, This Evil Extends Especially . . . to the Feminine Sex: Negotiating Captivity in the New Mexico Borderlands, FEMINIST STUD., Summer 1996, at 279.

5. See Gerald P. Lopez, Lay Lawyering, in The Latino/A Condition: A Critical Reader 271 (Richard Delgado & Jean Stefancic eds., 1998). Professor Lopez artfully observes that people “see and understand” the world through stock stories. Stock stories are personal narratives that internalize normative sensibilities and help people analyze information to make both routine and important life choices.

6. See Gerald Torres & Kathryn Milun, Translating Yonnindio by Precedent and Evidence: The Mashpee Indian Case, in Critical Race Theory: The Cutting Edge 48 (Richard Delgado ed., 1995). The authors point out that stories — as articulated in courts of law — mirror cultural practices and reflect the way that societies value and adjudicate competing narratives.

7. See e.g., Alison Grey Anderson, Lawyering in the Classroom: An Address to First Year Students, 10 NOVA L. J. 271 (1986).

they have exposed the law’s proclivity towards political bias, its reification of the male centered orientation, and its innate tendency to obscure yet validate aspects of entitlement and privilege. It is through storytelling that historically marginalized peoples have been able to carve safe spaces for themselves from the legal terrain that has traditionally excluded them. Critical engagement – like that encouraged by legal storytelling – is particularly important for cases like Bustamento. Bustamento is not only a collection of facts involving breach of contract; it is also a bundle of historical narratives that, if probed with the appropriate tools, reveals many of the socio-cultural artifacts fueling Southwestern slaving practices in the late antebellum period of American history.

To better evaluate the nature of these imbedded historical clues, I have extracted three core samples from Bustamento’s rich informational mine and placed them into separate domains. The first sample tells a stock legal story about what occurred in Bustamento relying on traditional contract law. It parses the fact pattern, logically evaluates it, and then draws a rational conclusion bases on that analysis. It provides a cogent and logical account of what happened, but is largely barren in exposing the powerful socio-cultural forces that initially propelled the dispute into court. This underscores the unwieldy nature of law and legal analysis. It is like trying to excavate a fragile dig with a giant bulldozer rather than a fine pick and a delicate touch. In Bustamento, the legal process obscured how class-based privilege fueled the exploitation of impoverished Indians and Mestizos in the American Southwest.


11. See STEPHANIE WILDMAN & ADRIENNE DAVIS, Language and Silence: Making Systems of Privilege Visible, in CRITICAL RACE THEORY, supra note 6, at 574.


13. While Bustamento involves litigation during the late antebellum period, the history of Indian-Mestizo slavery spans more than three hundred years within southwestern regions.


15. I use the terms “Indian” and “Mestizo” to describe the general racial dimensions of the slave population in New Mexico. I employ these monikers for purposes of cogency and convenience, but not as comprehensive or complete definitions. “Indian” refers to those people whose race and culture(s) reflect the indigenous make-up of the Southwestern region. Whereas “Mestizo” describes those individuals whose culture and race evince a mixed European-Indian and/or African heritages. To concretely define and describe Indian-Mestizo slaves utilizing today’s rigid ethnic labels belies and obscures the interrelated nature of the diverse communities whose members comprised the bulk of the slave population. Further, while I realize that Indian servants occupied different statuses in Hispanic society; Indios de Rescate (ransomed Indians), Indios Genizaros/Nixoras (detribalized slaves), Hijos de la Iglesia/Criados (Indian child servants baptized and reared in Hispanic households). I use the titles “slave” and “servant” to describe all of them. I do this because my analysis turns on the dynamics of power and privilege that drove the Indian-Mestizo slave trade, rather than the experiences of particular groups. In
The second and third samples are meant to compensate for this shortcoming by exposing and exploring two distinct yet related dimensions of Southwestern slaving practices. First, the powerful class-based privilege(s) that affluent New Mexicans invoked to legitimize their enslavement of Indians-Mestizos. Second, the extreme deprivations that Indian-Mestizo servants were forced to endure as a result of that exploitation.

Analysis of sample two exposes the powerful forces driving much of the Indian-Mestizo slave trade in the Southwestern United States. It reveals a puzzling and obscene world where an individual's honor, status, and social standing were inextricably bound by the degree to which they exploited indigenous labor. Sample two also illustrates how ideas of personal entitlement - based primarily on class - fueled the infliction of horizontal violence between differently situated women and, ultimately, distorted a mother's plea for her daughter's freedom into a contractual dispute involving property and ownership.

Study of sample three reveals the horror, brutality, and dehumanizing affects resulting from the Indian-Mestizo slave trade. Validated through the force of law, a desperate mother sacrificed her children so that a portion of her debt to her master would be forgiven. Aside from underscoring the predatory nature of the slave trade, Bustamento also bespeaks the courage of a mother who - in the face of overwhelming odds - sought to rescue her child.

II.
SAMPLE #1: STOCK LEGAL STORY

Ten years before Juana Analla filed her habeas corpus petition in Santa Fe, N.M. - she negotiated a contract with Carpio Bustamento. The terms of the contract expressly stated that in exchange for partial forgiveness of a one hundred and forty-five truth, the aforementioned labels became conflated and lost much of their meaning over time; often being used interchangeably. See GUTIERREZ, supra note 4, at 155. While dynamic in form, what remained constant were the corporal dimensions regulating the lives of Indian-Mestizo servants. See internal discussion in Sample Two below.

16. The court's analysis distorted and reduced the servant-mother's plea to free her daughter into a contractual dispute; concealing the horrific nature of the Indian-Mestizo slave trade and marginalizing the extraordinary courage exhibited by Juana Analla in contesting her daughter's captivity publicly.

17. Because the practice of slavery was so dependent upon and intertwined with - the exercise of power and privilege - it made sense to organize my analysis in this manner. Professor Wildman notes that there exists an "essential companionship between domination that accompanies subordination and privilege that accompanies discrimination." See WILDMAN & DAVIS, supra note 11, at 577.

18. See GUTIERREZ, supra note 4, at 153, 177, 180.

19. The emotional dependency and economic vertigo created by the Indian-Mestizo slave trade distorted personal choices to the point that it must have seemed reasonable to Juana Analla to forfeit her parental rights if she could be assured that Catalina would be raised and educated as the legitimate child of her daughter's biological father.
four dollar debt\textsuperscript{20} Juana Analla offered to convey her daughter Catalina to Carpio Bustamento, the child’s biological father.\textsuperscript{21} This contract would be valid on the condition that Carpio Bustamento raise and educate Catalina as if she were his legitimate daughter.\textsuperscript{22} Carpio Bustamento accepted Juana Analla’s offer by releasing her from forty-four dollars of a one hundred and forty-four dollar debt and taking possession of Catalina.\textsuperscript{23} The terms of this contractual promise were documented on February 26, 1847 before Justice of the Peace Manuel Armijo accordingly:

\begin{quote}
In the county of Bernalillo, on the twenty-sixth of February, 1847, appeared before me, Manuel Armijo, justice of the peace, Don Carpio Bustamento, and his servant, Juana Analla, both resident of said county, and stated that in consideration of their wish to legalize their accounts they would enter into a trial (juzgado), and I, the present judge, adjusted the account and found that she was owing one hundred and forty-four dollars at the rate of bits, and be an agreement which they had of a leses. Instigated by the mother of Analla, Carpio Bustamento pardoned her for the amount of forty-four dollars, and from that date she only owes one hundred dollars, and on consideration that from the earliest infancy of Catalina and George they have been raised in the house of the master, from this date the mother gives them to Bustamento, that he may maintain and educate them as a legitimate father who will be responsible before God and man; and as the mother summoned him, agitating impertinent demands, from this time forward she is to make no further complaint, nor have any hearing in any future trial. All of which I noted down, and Analla swore to it, and I, the judge, fixed my judicial decree this twenty-sixth February, 1847.\textsuperscript{24}
\end{quote}

Carpio Bustamento later gave Catalina to his legal wife, Marcellina Bustamento, as a gift.\textsuperscript{25} Upon learning of this transaction, Juana Analla filed a writ of habeas corpus – in the first judicial district of Santa Fe, N.M. – to emancipate Catalina.\textsuperscript{26} The district

\begin{footnotes}
\item \textsuperscript{20} Bustamento v. Analla, 1857 WL 2351, 2 (N.M. Terr. 1857); RESTATEMENT (SECOND) OF CONTRACTS, at § 71 [hereinafter CONTRACTS RESTATEMENT] (delineating the requirements for exchange and the types of exchange).
\item \textsuperscript{21} Bustamento, 1857 WL 2351 at 2; CONTRACTS RESTATEMENT, supra note 20, at § 24 (defining an offer). Further, another child named George was referred to in the contract, but no mention was made during the trial concerning his fate or circumstances.
\item \textsuperscript{22} Bustamento, 1857 WL 2351 at 2; CONTRACTS RESTATEMENT, supra note 20, at § 224.
\item \textsuperscript{23} Bustamento, 1857 WL 2351 at 2; CONTRACTS RESTATEMENT, supra note 20, at § 50.
\item \textsuperscript{24} Bustamento, 1857 WL 2351 at 2 (demonstrating that this contract was an express agreement).
\item \textsuperscript{25} Bustamento, 1857 WL 2351 at 1.
\item \textsuperscript{26} Id. While represented by counsel on appeal, it is unclear how Juana Analla originally brought the case to court.
\end{footnotes}
court ruled in favor of Juana Analla and ordered Catalina released into her custody.\textsuperscript{27} Marcellina Bustamento appealed this decision to the New Mexico Territorial Supreme Court who accepted the case for review.

The court found the following facts: the plaintiff-mother filed a valid writ of habeas corpus at the district court level.\textsuperscript{28} The petition properly alleged that the child in question was being illegally detained as a servant by the defendant Marcellina Bustamento.\textsuperscript{29} In response to the plaintiff’s writ, the defendant filed an answer claiming that the child was not being held illegally, but that she remained with the defendant of her own free will.\textsuperscript{30} The defendant further asserted that the plaintiff had consummated a valid contract with the child’s biological father surrendering all of her parental rights to the child in question as documented by the judicial decree dated February 26, 1847.\textsuperscript{31} Moreover, the defendant averred that the biological father properly transferred the child as a gift to the defendant.\textsuperscript{32} The defendant also contended that the plaintiff was an unfit mother of immoral habits.\textsuperscript{33} Finally, at no time did the defendant deny that the child was being held as a servant.\textsuperscript{34}

The court ruled that while the trial judge had discretion in accepting testimony concerning the fitness of the plaintiff as a mother; the judge had properly excluded it because the plaintiff mother’s goal was not solely to recapture her parental rights to the child in question, but to emancipate her from servitude as well.\textsuperscript{35} The court ruled testimony concerning the fitness of parents is permitted only when determining the proper disposition of a child.\textsuperscript{36} Additionally, the court ruled that testimony by the child regarding the nature of her captivity was properly excluded by the trial court because forced public statements — made under the gaze of those holding the child in custody — would not be the product of free will.\textsuperscript{37}

Finally, the biological father had breached the express terms of the contract that he had bargained for with the plaintiff-mother by transferring the child as a gift.

\begin{enumerate}
    \item \textit{Id.}\textsuperscript{27}
    \item \textit{Id.}\textsuperscript{28}
    \item \textit{Id.}\textsuperscript{29}
    \item \textit{Id.}\textsuperscript{30}
    \item \textit{Id.}\textsuperscript{31} at 2.
    \item \textit{Id.}\textsuperscript{32} at 3.
    \item \textit{Id.}\textsuperscript{33}
    \item \textit{Id.}\textsuperscript{34}
    \item \textit{Id.}\textsuperscript{35}
    \item \textit{Id.}\textsuperscript{36}
    \item \textit{Id.}\textsuperscript{37} at 4.
\end{enumerate}
– in the form of a servant – to his legal wife.\textsuperscript{38} This unlawful detention violated the explicit and implicit spirit of the contract. As a result, the plaintiff-mother had a right to petition the court for her child’s freedom and legal precedent obligated the court to order the child’s emancipation from the defendant’s possession.\textsuperscript{39}

III. SAMPLE #2: PRIVILEGE AND POWER

While the New Mexico Territorial Supreme Court ruled in favor or Juana Analla – its analysis missed much in the process. Coursing just beneath the surface of this opinion was a dark world inhabited by ruthless predators and vulnerable prey. The predators took the form of affluent Hispanics whose status and personal honor turned on the collective symbols of wealth and opulence they could outwardly exhibit.\textsuperscript{40} Most prized of these possessions were native servants. Abducted and forced into service, Indiana and Mestizo peasants became the prey caught in the growing riptide of indigenous exploitation.\textsuperscript{41}

Born of religious zeal and a strong sense of racial superiority; Spanish conquistadors had taken to slaving with a vengeance.\textsuperscript{42} The Spanish believed Indians to be inferior because Indians were physically distinct, culturally different, and unaware of Christian doctrine.\textsuperscript{43} In the early 1500’s, Spain’s divine mission was to exercise dominion over native people and Spanish slave traders felt little remorse for their abduction of indigenous people.\textsuperscript{44} Perhaps encouraged by their early religious and martial victories over the great Indian civilizations of Mexico, Spanish military and ecclesiastical authorities pushed ever northward from the interior of New Spain (i.e. Mexico).

By the late Sixteenth Century, colonial exploration and the discovery of rich mineral deposits in Northern New Spain created thriving markets for Indian labor.\textsuperscript{45} This, in turn, accelerated the Indian slave trade.\textsuperscript{46} Appropriated through

\textsuperscript{38} Id. at 3.

\textsuperscript{39} Id.

\textsuperscript{40} WEBER, supra note 4, at 326; GUTIERREZ, supra note 4, at 150; See also RALPH EMERSON TWITCHELL, OLD SANTA FE: THE STORY OF NEW MEXICO’S ANCIENT CAPITAL 162 (1963); JAMES OFFICER, HISPANIC ARIZONA 1536-1856 76 (1987). Initially, the ruling caste were citizen-soldiers, but eventually landed and mercantile elites emerged to form New Mexico’s aristocracy.

\textsuperscript{41} The bulk of the New Mexican slave population was comprised of Indian women and children. See JOHN, supra note 4, at 63. The case was much the same with Indian servants in Arizona. See OFFICER, Id. at 76.

\textsuperscript{42} See WEBER, supra note 4, at 20-21.

\textsuperscript{43} Id.

\textsuperscript{44} Id.

\textsuperscript{45} JOHN, supra note 4, at 12.

\textsuperscript{46} Id.
military might and the cruel enslavement of indigenous souls, Spanish slavers operated in a world of power and privilege. It was out of this informal yet potent ruling caste that Indian-Mestizo slaving became amplified and institutionalized in Southwestern life and culture.

Central to the practice of slaving were interwoven notions of personal and social honor. Honor bred respect and was the corpus of pride, but before pride could be embraced, the honor that sustained it had to be validated by one's community. Honor became manifest when “deference was paid or when preferential access to scarce resources was gained because of it.” In short, honor was the power to make others obey. On a harsh and unforgiving frontier environment, honor translated into the power to press Indians into service and the privilege to enforce that power through corporal means. The ability of Spaniards to exercise this power, as a result of their privileged status, was yet another way for them to differentiate themselves from their Indian servants.

Over the course of two and a half centuries, powerful social boundaries emerged that defined the roles of master and servant. While race helped shape the contours of Spanish aristocracy, it was wealth and privilege that fueled the ascendency of their rule. Being a master meant possessing the capability to cultivate personal and socially recognized forms of honor – an honor that could be gained through the exploitation of indigenous labor. Being a servant, on the other hand, meant a life degraded through the various public and private dishonors one was forced to endure. Thus, the acquisition of honor and the infliction of dishonor, defined and legitimized the social margins separating slave-master from servant.

The extraordinary degradations that Indian-Mestizo slaves suffered were many and frequent. Captured in slaving forays, Indians were pressed into domestic service for affluent Hispanic families. Adult slaves were infantilized and robbed of their capacity to make personal choices. Indian-Mestizo women were raped or forced into concubinage; the offspring of these illicit couplings were often sold to the highest bidder. These same offspring, in turn, would be “baptized” by the

47. Gutierrez, supra note 4, at 177.
48. Id.
49. Id.
50. Id.
51. Id. at 179-80.
52. Id. at 151, 179-80.
53. For example, Indian-Mestizo servants were regularly addressed as children (“tu”) and expected to assume a respectful and deferential disposition when speaking with members of the New Mexican aristocracy. See id. at 183.
54. Id. at 156, 184; Weber, supra note 4, at 127; See also Martha Menchaca, Chicano Indianism: A Historical Account of Racial Repression in the United States, 20 Am. Ethnologist 583, 585 (1993).
55. Gutierrez, supra note 4, at 183.
Catholic Church; their native cultures uprooted and profoundly transformed through hispanization. Indians refusing to submit were punished, marched in chains to be sold in Mexico, or killed. Ultimately, it was in the complete degradation of Indian-Mestizo slaves—exacted through their exercise of power and privilege—that the Spanish gentry created the meaning of their own honor.

In such a world, it was likely that Marcellina Bustamento’s personal and family honor, rather than Catalina’s welfare, is what compelled her to appeal the trial court’s manumission order. Humiliated at the loss and outraged at Juana Analla for challenging her authority publicly, Marcellina sought to exact some measure of justice by reasserting her rights to Catalina. Likely enraged that the fruit of her husband’s infidelity was being displayed so openly, Marcellina channeled her aggression horizontally against Juana rather than at her husband. In the Mid-Nineteenth Century, to publicly chastise Don Carpio would have invited dishonor and shame on the Bustamento family. Rather than suffer this fate, Marcellina, instead chose to punish Juana by her enslavement of Catalina. Perhaps it was in dishonoring Juana—through her appropriation of Catalina—that Marcellina Bustamento found her own tortured sense of honor. It was this same honor that Marcellina Bustamento probably expected the New Mexico Territorial Supreme Court to vindicate by overruling the lower court’s emancipation order.

Ironically, it was Juana Analla the court criticized for Catalina’s illegitimate status not Carpio Bustamento. True to his privileged standing, Don Carpio escaped with his honor and pride relatively intact. While the Bustamentos lost on appeal, the outcome was cloaked in sterile legalese that obscured the dark undercurrent of obscene events.

The ruling was not based on the illicit nature of the original agreement nor did it focus on the relative disparities in bargaining power between Juana Analla and Don Carpio Bustamento. Instead, the court’s decision turned on pure breach of contract. Carpio Bustamento had failed to fulfill a primary condition upon which the contract had been based: to raise and educate Catalina as his legitimate child rather than as a servant. Despite the court’s sympathetic posture, the opinion nonetheless illustrates the law’s proclivity towards fragmenting complex situations and clinically reducing them to arid and lifeless elements. In turn, the court’s analysis transformed and distorted a mother’s plea to free her daughter into a routine contract dispute.

56. Id. at 187.
57. Id. at 188.
58. Id. at 153.
59. Perhaps aware that she was unable to condemn her husband’s infidelity in public, Marcellina Bustamento, instead, chose to direct her emotional aggression at Juana Analla. Professor Paulo Freire describes the process of horizontal violence—where the oppressed attack their kin. See PAULO FREIRE, PEDAGOGY OF THE OPPRESSED (Myra Bergman Ramos trans., 1993).
IV.
SAMPLE #3: SUBORDINATION AND EXPLOITATION

The world that Juana Analla, Catalina, and other Indian-Mestizo servants inhabited was forged over the course of two hundred and fifty years. While it is true native forms of captivity existed before and after Spanish intervention, it was the Spanish aristocracy—acting through their power and privilege—that institutionalized Southwestern slaving practices. Indian-Mestizo slavery was a brutal counterpart to the American slaving practices that engulfed the lives of Black people.

Much like Black slaves, Mestizo and Indian servants lacked bodily integrity (e.g. forced labor, rape, concubinage etc.) and were vulnerable to conveyance as property or were a form of currency. Further, Indians-Mestizo slaves were subjected to extreme deprivations of liberty (e.g. regulation of movement and choice) – all of these conditions being validated in law and custom.

One of the first documented instances of Spanish slave hunting, in the present day United States, took place twenty-nine years before Atlantic Creoles were first sold in Jamestown, Massachusetts (1619). Spanish slavers, however, had been operating in Northwestern Mexico and along what is today the U.S./Mexico border since the Mid-Sixteenth Century. The Spanish Crown officially disapproved of these practices, but could do little to discourage the illicit trade in native servants on a frontier that was distant and displaced.

In the early Seventeenth Century, abducted Navajos and Apaches were being pressed into service in remote New Mexican outposts. Apache men – deemed unfit or too hostile for domestic service – were shipped south in chains to work in the mines of Northern New Spain. As Spanish outposts developed into modest towns slavers began to seize Pueblo children to fill the intense demand for personal servants. Slave hunting was not simply the purview of social bandits but had become a profitable venture for Spanish officials as well. For example, in 1660,

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61. An excellent example lies in the annual slaving fairs occurred in Taos, New Mexico. It was at these yearly auctions that Indian-Mestizo women were bought and sold with other frontier “commodities.” See GUTIERREZ, supra note 4, at 186; TWITCHELL, supra note 40, at 158.

62. The conditions that have been described are all common dimensions of slaving. Weber makes the point that technically Indios de Deposito were not slaves because they could be eventually set free. WEBER, supra note 4, at 127. Permanency of service, however, has never been an absolute condition of slavery. See IRA BERLIN, MANY THOUSANDS GONE: THE FIRST TWO CENTURIES OF SLAVERY IN NORTH AMERICA 278, 281-83 (1998). Berlin describes private acts of manumission, self-purchase, freedom suits, and personal flight as additional avenues of emancipation through which Black slaves could seek freedom.

63. BERLIN, supra note 62, at 29.

64. JOHN, supra note 4, at 12.

65. Id. at 10, 33.

66. GUTIERREZ, supra note 4, at 104.

67. JOHN, supra note 4, at 63, 70.

68. Id. at 80.
New Mexican Governor Bernardo Lopez de Mendizabal transported and sold 12,000 pesos worth of Apaches in Sonora, Mexico. 69

By the 1690's, the Catholic Church began to baptize Indian children into Spanish families. 70 This religious ceremony, however, did little to elevate the status of these children as servants. 71

The mixed offspring of Spanish and Indian unions afforded new opportunities for the Spanish gentry to procure cheap labor without the expense or risk of slaving expeditions. From the earliest days of Spanish rule in New Mexico, Mestizos became entangled within burgeoning systems of forced labor. By 1630, a seven hundred count slave population - comprised of Indians and Mestizos - served a Spanish population of two hundred and fifty in Santa Fe, New Mexico. 72 More Indian looking Mestizos quickly became prey for ruthless slave traders. Drawing little distinction between “full-blood” and “half-breed” Indians - Spanish slavers purchased or captured whichever opportunities first availed themselves.

By the early Eighteenth Century, the trade in Indian-Mestizo servants became an accepted form of currency. 73 It was not unusual for affluent Hispanics to make provisions in their wills for the payment of their personal debts in Indian children; 74 for Indian women to be sold at auction in Taos, New Mexico; 75 or for Indian slaves to exchanged for other commodities like horses. 76 Indian women - servant and free - were particularly vulnerable because they were unable to fend off the sexual advances of determined Spanish men. 77 Little sanctuary was forthcoming for the offspring of these illicit episodes as slave-masters often sold their own Mestizo children to the highest bidder or gave them as gifts to other affluent families. 78

By the early Nineteenth Century, large numbers of detribalized people became partially integrated into the lower strata of Hispanic society. 79 In the late 1820’s, after Mexico won its independence from Spain, slavery would be officially

69. *Id.* at 89-90.

70. GUTIERREZ, supra note 4, at 153, 182; BRUGGE, supra note 4, at 21.

71. GUTIERREZ, supra note 4, at 180, 182.

72. *Id.* at 104.

73. *Id.* at 152.

74. *Id.*

75. *Id.* at 186; TWITCHELL, supra note 40, at 158.

76. JOHN, supra note 4, at 691.

77. GUTIERREZ, supra note 4, at 155-56; WEBER, supra note 4, at 127.

78. GUTIERREZ, supra note 4, at 183.

79. WEBER, supra note 4, at 307-08.
abolished. As a result, debt peonage—which had existed alongside slavery—became more widely used.\(^8\)

Debt peonage is a process whereby a person who has incurred a debt must work that debt off over time through labor. Tragically, peons often became entangled in a permanent state of service as a result of their master's ruthless dishonesty.

The slave trade, however, continued largely undisturbed. In 1846, shocked by the large number of local Indians pressed into service, federal military authorities in San Francisco, CA—issued a general manumission order freeing them.\(^8\) In 1851, the New Mexico territorial legislature codified a master-servant statute to protect the debt peonage system.\(^8\) In 1852, Indian-Mestizo slavery had become so intense and widespread that the Utah territorial legislature enacted laws to limit the slave trade.\(^8\)

On the eve of the civil war, when \textit{Bustamento} was decided, Indian-Mestizo slavery and debt peonage were still very much thriving enterprises.

On its face, \textit{Bustamento} may be just a sobering reminder of a bygone era. Its true value, however, lies beneath the surface of the opinion. Hidden, like precious artifacts under the sands of a remote desert, are the stories...dramatic stories present but unspoken in court that day. For example, was the court's decision to emancipate Catalina a prophetic sign of things to come? Federal authorities, eleven years after \textit{Bustamento} was decided, initiated their manumission activities in New Mexico.\(^8\)

Perhaps the ruling reflects a darker tone within the proceedings. On its face, the decision represents an apparent victory on behalf of servants against slave-owners, but the court never expressly prohibits slaving or peonage; thus, allowing these practices to continue undisturbed. This is particularly startling given that—nine years before—a group of prominent New Mexicans had sent a petition to Congress by leading New Mexicans rejecting black slavery in favor of the native debt peonage system.\(^8\)

It may also be the case that slavery had little to do with the court's published opinion. Rather, the justice may have been using \textit{Bustamento} as a vehicle to further tighten the grasp of American law and politics on New Mexican affairs.

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\(^8\) Gutierrez, supra note 4, at 172. Although peonage is a slave like practice, it is theoretically different in its operation. See 4 Encyclopedia of the American Constitution 1378-79 (Leonard Levy ed., 1986). The popularity of peonage in New Mexico is evidenced by a memorial sent to Congress by leading New Mexicans rejecting black slavery in favor of the native debt peonage system. See Twitchell, supra note 40, at 322.


\(^8\) Law Regulating Contracts Between Masters and Servants, Laws of New Mexico § 1, New Mexico Peonage Statute 1851-1852. See also Twitchell, supra note 40, at 323.


\(^8\) The logical starting point for federal involvement in New Mexico would be with the passage of the 1867 Anti-Peonage Act.

\(^8\) See Robert W. Larson, New Mexico's Quest for Statehood 1846-1912, 15 (1908).
The Hispanic gentry had ruled their desert kingdom for more than two hundred and fifty years, but Anglo American interests were determined to replace affluent Hispanics atop the social hierarchy.⁸⁶ Using American law to compel the submission of the Hispanic elite was a powerful mechanism towards these ends.

The circumstances surrounding the enslavement of Catalina also represents puzzling unknowns. Was Catalina’s service to Marcellina Bustamento driven by fear or affection? What about the other child, George, who was mentioned in the 1847 contract? Was he, like Catalina, a servant as well? Why did the court ignore his personal circumstances? What about the defendant Marcellina Bustamento? Was she simply protecting the property that society indicated was hers? Or was Marcellina’s actions meant to punish Juana for birthing a child sired by Carpio Bustamento? What of Don Carpio and his unbridled conceits?

Perhaps the most amazing story of all, that of Juana Analla herself, is lost in the legal minutiae of the historical moment. For example, the opinion tells little about how the dispute was brought to court. Were there people to help Juana Analla bring the case forward? Did Juana Analla file the initial habeas corpus petition herself? Who was T.D. Wheaton and why did he agree to serve as Juana’s appellate counsel? Tragically, the court’s opinion remains silent to all of these issues.

What seems clear, however, is that Juana Analla exhibited extraordinary courage by challenging a world that turned on slavery. Forged over more than two hundred and fifty years – at the time Bustamento was decided – it was a civilization that regulated her body and devalued her spirit. Nonetheless, Juana Analla placed herself squarely at odds against the power and might of the Spanish elite and successfully challenged their privilege to rescue the daughter that she had named Catalina.

⁸⁶. Professor Laura Gomez makes the point that territorial courts played a key role in facilitating the reorganization of power between European Americans and Hispanics in New Mexico. Focusing on San Miguel County, N.M. 1876-1882, Professor Gomez aptly notes that while there existed a power sharing relationship between Anglos and Hispanics in criminal courts, it was not an equal power sharing relationship. Rather, Anglo-Americans sought to control the most salient decision-making positions in the criminal justice system. See Laura Gomez, Wielding the Master’s Tools: Mexicans and the American Criminal Justice System in San Miguel County: New Mexico, 1876-1882, 34 Law & Society Review (forthcoming Dec. 2000).