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ALIEN BODIES/LEGAL TEXTS: A FORENSIC AND ETHNOGRAPHIC POST-MORTEM ON FEDERAL EMANCIPATION DOCKETS IN NEW MEXICO (1848-1868)

Robert F. Castro*

Legal anthropologist, Sally Engle Merry, has written on the ways that colonial law has served to facilitate both literal and figurative transformations that have advanced imperial regimes. Historically, colonizing officials sought to inscribe civilizing marks, through law and legal institutions, onto the bodies and minds of the “primitive” inhabitants they encountered during their empire-building projects. Over time, government instrumentalities like administrative records became makeshift repositories of legal culture, because these records archived how colonial officials typically utilized the law as a civilizing process. Populations deemed alien and threatening were sometimes removed from annexed territories by “administrative action” rather than risk their incorporation into embryonic state-building projects. A key illustration, laced by trauma and irony, lies in the surviving emancipation dockets left behind by federal liberators operating in the American west during the nineteenth century.

From time immemorial, Indian and mixed blood (e.g., Mexican) populations ritualistically and reciprocally took captives from one another’s societies. At mid-century, American officials first witnessed these age-old captive-taking wars raging across the U.S.-Mexico borderlands. In 1848, the U.S. and

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Mexico signed the Treaty of Guadalupe Hidalgo, which ended the U.S.-Mexican War. This treaty facilitated the overlay of U.S. law and legal institutions onto what is today the American southwest. In New Mexico, newly ratified treaty stipulations, as well as subsequent civil rights law twenty years later, authorized and bound U.S. officials to locate and liberate persons taken prisoner in the aforementioned captive-taking wars. Federal liberators recorded their enforcement actions through makeshift census-like dockets that chronicled the number, type, and geographic scope associated with the captives they liberated. In a larger sense, however, these dockets represented so much more.

Political Scientist Jennifer L. Hochschild writes, "censuses create the official language and taxonomy of race and imbue them with the authority of the state." In the context of this project, emancipation dockets created by federal liberators transformed captive individuals into alien bodies—dark apparitions from unwanted racialized populations that had originated from outside the realm of civilized society and were subject to removal or segregation vis-à-vis administrative action. In material ways, these dockets graphically illustrate the impacts of legal institutions on racialized bodies—making racial ideology "real."

In this article, I discuss the implications that these emancipation dockets held for creating new boundaries of racial exclusion in the west. In Part I, I discuss how, in symbolizing the authority of the American state, federal emancipation dockets also represented a critical legal threshold by delineating categories along binary lines of race and status, structuring them in hierarchal ways: white vs. non-white, citizen vs. non-citizen, Christian vs. pagan, and, consequently, the civilized from the savage. It was the savage and semi-barbaric Indian races that represented an alien threat and were excluded through removal or segregation. In Part II, I analyze the 1848 era emancipation dockets created by U.S. Indian Agent John S. Calhoun (Santa Fe, N.M.). Washington officials appointed Calhoun as a federal liberator to fulfill Article XI in the Treaty of Guadalupe Hidalgo. The information recorded in these registers focused almost exclusively on the status of captured Mexican nationals, who, according to the terms of Article XI, were to be summarily removed from U.S. jurisdictions once liberated. In Part III, I evaluate the emancipation dockets created by U.S. Commissioner William W. Griffin (1868). Griffin’s dockets reveal a distinct shift, in the scope and kind of information that he gathered, from the type of facts that Calhoun collected. Griffin’s 1868 register evinces a defendant-oriented arrest docket, which typified captives in a clinical fashion as "Indians" or "Peons." Griffin’s emancipation dockets were also clearly sanction oriented. In practical terms, many of the Indian captives rescued by Griffin may have been transitioned onto newly established Indian reservations, effectively moving these lost souls from one form of captivity to another.

7. Id.
I. EMANCIPATION DOCKETS AS PIVOTAL THRESHOLDS OF LEGAL CONTROL AND RACIAL EXCLUSION

Ancient captive-taking wars between Indian and mixed-blood populations raged across borderland regions centuries before the U.S. conquered the southwest. Apache, Comanche, and Kiowa Indians followed ancient migration routes into Northern Mexico from what is today the American southwest. Indian cavalries would routinely plunder northern villages and take Mexican captives, along with livestock and other hard scrabble spoils. By 1856, Durango authorities estimated that, over the course of two decades, Indian cavalries had seized 748 captives, depopulated 358 settlements, and killed close to 6,000 people. Pekka Hämäläinen notes that Comanche raiding became so expansive that the war trails that carried Comanche war parties south were transformed into virtual “commercial highways,” as indigenous warriors returned with multitudes of captives, mules, and horses in tow.

Mexican authorities would oftentimes retaliate by initiating raids of their own on Indian rancherias, taking Indian women and children captive, who would in turn become domestic servants in Mexican households. In 1852, Armijo, the Navajo Headman of the Chusca Valley Region, reported to U.S. Indian Agent John Greiner that more than 200 Navajo children had been “carried off” by Mexicans to unknown whereabouts, and that his tribe yearned for their return. The market for captives, however, was by no means limited to reciprocal wars between Indians and Mexicans. Rather, the clandestine borderland economies that exchanged captives were diffuse and far-ranging. Groups like the Navajos, Yaquis, Chiricahua Apache, and Mayos routinely bartered for both Indian and Mexican captives.

Captive-taking became a transnational enforcement issue for the U.S. in 1848, when Mexico and the U.S. signed the Treaty of Guadalupe Hidalgo. Article XI in the treaty obligated the U.S. to rescue and return Mexican nationals, who had been taken captive on Mexican soil by U.S. based Indians and brought across the border into U.S. jurisdictions. Further, to impound those secondary markets trading in captive bodies, Article XI admonished the following:

It shall not be lawful, under any pretext whatever, for any inhabitant of the United States to purchase or acquire any Mexican, or any foreigner residing in Mexico, who may have been captured by Indians inhabiting the territory of either of the two republics;

file with author).

10. BROOKS, supra note 3, at 14.
11. Michael L. Tate, Comanche Captives: People Between Two Worlds, in 72 CHRONS. OF OKLA. 228, 234 (1994); DELAY, supra note 3, at 35, 40–42.
12. BROOKS, supra note 3, at 298.
13. HÄMÄLÄINEN, supra note 3, at 232.
14. VIRGINIA SANCHEZ, FORGOTTEN CUCHAREÑOS OF THE LOWER VALLEY 32 (2010); BROOKS, supra note 3, at 256.
16. BROOKS, supra note 3, at 242.
17. TREATY OF GUADALUPE HIDALGO, supra note 8.
nor to purchase or acquire horses, mules, cattle, or property of any kind, stolen within Mexican territory by such Indians. 18

Twenty years later, the 1866 Civil Rights Act, along with the 1867 Anti-Peonage Act, abolished peonage institutions. 19 The relevant portion of the 1867 Act reads in part, "The holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful, and the same is hereby abolished and forever prohibited in the Territory of New Mexico." 20

Peonage, a practice where a person was conscripted to labor over time until an outstanding debt was paid, was related to captive-taking in that peonage practices also had strong custodial dimensions. In truth, the distinction between peonage and slavery was a rather dubious one to draw, because unscrupulous creditors frequently locked individuals into perpetual bondage. 21

In 1867, Congress concluded that peonage institutions did not align with emerging American ideals like free labor capitalism and universal emancipation. 22 Federal commissioners were subsequently appointed in New Mexico to locate and liberate captive peons, who were typically poor Indians and Mexicans. American officials used the liberation dockets themselves to record and inscribe their emancipation operations. As mentioned earlier, these dockets, like early census registers, represented ways that the expanding American state categorized and codified individuals with the language of race. 23 In 1848, it also meant an enlargement of state power that manifested itself in the liberation of Mexican captives from Indian imprisonment so as to ensure their removal from U.S. soil. In the 1868 context, the control of dangerous groups figured prominently into the liberation of captive Indians under the color of federal authority. In both instances, creating these registers was "an exercise in nation-building and state control..." and in this respect, came at the sharp expense of non-white populations. 24 Led nominally by civilian officials, government interdiction teams acted as enforcement institutions that facilitated the rescue and redemption of non-white captives. In later periods, U.S. officials leveraged parallel mechanisms to transform captive-taking investigations into criminal investigations, using American law as the basis to enforce criminal designations. 25

While U.S. anti-captivity enforcement was quite modest by most measures, the actual enforcement operations were important nonetheless, because they conveyed salient messages to "alien populations" regarding U.S. strength and authority. Enforcing anti-captivity laws signaled the advancement of white civilization into the alien west by promulgating legal institutions, which punished the

18. Id.
21. BROOKS, supra note 3, at 348.
23. Hochschild & Powell, supra note 6, at 62.
24. Id. at 63; GÓMEZ, supra note 5, at 112.
barbarism of pagan rituals like captive-taking. Americans viewed captive-taking as a custom practiced principally by the "savage" and "semi-savage" hordes of Indian and mixed blood persons of Mexican ancestry.26 Americans believed that their institutions would ultimately prevail against such abominations because their institutions were guided by enlightened ideals such as logic, civility, and Anglo-American culture.

The involuntary nature of captive-taking and the need for public safety represented serious enforcement issues for New Mexico officials. Raiding and captive-taking practices grated coarsely against deep-seated western sensibilities of personal liberty, which were themselves fraught with grave inconsistencies. In 1848, few officials in New Mexico or Washington publicly acknowledged the stark incongruity between the government's anti-captivity operations in the southwest and the millions of black persons languishing in bondage in the American south.28

Admittedly, captive-taking enforcement was but a limited means to exercise power over non-white populations. However, the emancipation dockets that I analyze nonetheless instruct on one dimension of America's overarching plan to colonize and transform the Mexican west through the imposition of United States law and legal institutions. It was through the control and exclusion of racialized alien bodies that the American state would reify its authority.

II. 1848 ERA EMANCIPATION DOCKETS—ENFORCEMENT PROTOCOLS (RESCUE AND REMOVAL)

1848 represents a watershed moment in American history, because, as Kevin Bruyneel points out, the U.S. merged immense military state-building with the incorporation of several non-white populations during the annexation of the Mexican west.29 Such expansive change had important consequences for the development of American law and enforcement institutions operating on contested cultural terrain, which pre-dated American occupation by hundreds of years.

At mid-century, the newly minted American government in the west very much resembled what Stephen Skowronek characterized as a "state of courts and parties."30 Embryonic and unstable, American rule in the west had a regionalized focus on government action. In 1848 New Mexico, low grade political tensions percolated, but there was no outright obstructionism or in-fighting amongst American political and legal institutions. Generally speaking, there seemed to be a mission towards securing U.S. conquest of the Mexican west. Local government
apparatuses—military, political, and administrative—were sympathetic to the egalitarian dimension of anti-captivity objectives, but they focused squarely on supplanting Mexican political institutions with American ones.

As territorial governance matured and expanded, Republican officials and Republican-leaning courts aided anti-captivity officials in their work. This aid added an additional, decisive layer of complexity to earlier institutional conflicts over captive-taking practices. Reminiscent of what Orren and Skowronek have coined as "intercurrence," ground level institutions in New Mexico, which had been forged in earlier eras by wholly different cultures, collided with one another in competing systems of authority. For years, New Mexico's Hispanic controlled legislature had promulgated laws to preserve traditional forms of conscripted labor, which had their roots in captive-taking warfare. These enactments circumvented the early work of U.S. enforcement institutions interested in abolishing these systems of labor. American judges, lawyers, and Republican Party officials typically responded to these legislative acts by invalidating them as contrary to standing American law. Unlike civil rights politics in the reconstruction south, territorial courts in New Mexico had a clear line of authority that did not breach traditional boundaries of federalism.

In terms of structure, enforcement institutions comprised modest teams of local officials and ancillary agents. In 1848, small scale enforcement teams consisted of Indian agents, low-grade military officers, and investigators-for-hire (e.g., Mexican traders). Pendant investigators also aided federal anti-captivity operations. These investigators, while not formally deputized by local officials, nonetheless secured the release of captives and brought them back to remote municipalities with the expectation of a reward.

In her work on the evolution of the nineteenth century agricultural welfare state, Kimberley S. Johnson discusses how racial orders can create institutions that reproduce inequalities that become "cumulative in scope." For all practical purposes, enforcement institutions at ground-level produced asymmetric outcomes, which aligned with racial and cultural hierarchies in unpredictable ways. For

32. RICHARD M. VALELLY, THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK ENFRANCHISEMENT 105–70, (2004). Valelly points out that during Reconstruction, the federal government's authority to protect civil rights at the state level was challenged and ultimately diluted in court on questions involving federalism. As Valelly notes, the fact that New Mexico was a federal territory in 1868 and not yet its own state facilitated direct federal action against captive-taking warfare through territorial courts because these institutions were federal in nature. Moreover, the decisive legal question in New Mexico at the time was whether Congress would declare Indians and Mexicans a protected class with actionable citizenship rights under the 1866 Civil Rights Act, or alternatively, the Fourteenth Amendment. Congress disposed of this issue when they passed the 1867 Anti-Peonage Act, which abolished peonage institutions in federal territories like New Mexico, rather than designate Indians and Mexicans—who comprised the majority of captives in the federal territories—as a protected class. Congress invoked its power to create ameliorative legislation under the Thirteenth Amendment and extended that federal power into the western territories via Article 4, Section 3 of the U.S. Constitution. Thus, Congress avoided expressly deciding whether Indians and Mexicans were, in fact, U.S. citizens, ultimately leading to a murky and "hollow" political status for these populations. See GÓMEZ, supra note 5, at 43–45.
33. CHARLES L. KENNER, THE COMANCHEIRO FRONTIER: A HISTORY OF NEW MEXICO-PLAINS INDIAN RELATIONS 93–97 (1993); Tate, supra note 11, at 72, 234, 244–53.
example, the literature suggests that federal liberators may have prioritized the rescue of captured white persons but devalued the rescue of Mexican captives by sub-contracting their rescue to shadowy Comancheros (e.g., Mexican traders) as "agents-for-hire." Comancheros sometimes played the role of liberator, but they also facilitated the captivity trade by creating an opportunistic market for the exchange of captives in clandestine borderland economies.35

On April 7, 1849, John S. Calhoun was appointed Indian Agent for Santa Fe, New Mexico. William Meddill, the federal Commissioner of Indian Affairs, assigned Calhoun the duty of enforcing the anti-captivity stipulations in Article XI of the Treaty of Guadalupe Hidalgo.37 Following his appointment, Calhoun deputized two field investigators, John G. Jones and Encarnacion Garcia, to aid his rescue work. In Calhoun’s appointment letter, Medill sent Calhoun three hundred dollars to fund his enforcement activities, a case assignment, and general instructions outlining his core duties relative to Article XI enforcement. The memo read in part:

After obtaining all the information you can collect with regard to any captives you will report their names, ages, whether they are Mexicans or Americans, the length of time they have been held in captivity, and if they are Mexicans whether they were taken prior to the termination of the war and treaty with Mexico or subsequently.38

In all likelihood, Calhoun’s investigators began to search for captives by gathering information amongst their pre-existing social and professional networks in Santa Fe. From these leads, government agents would expand their investigatory zones until they had exhausted all of the possibilities. Of particular interest to them would have been locating large Indian encampments where Mexican captives were typically held. While seemingly a straightforward objective, the enforcement situation on the ground was fluid and complex. Captive populations were highly ambulatory, and captives were often taken across vast distances and sold to unknown parties.39 Seasonal changes in New Mexico’s environment also affected the ability of authorities to track Indians and investigate captivity incidents. For instance, negotiating the winter ice and snow came at great cost and exertion to regular military troops on patrol in 1849, and the same would have held true for anti-captivity investigators moving through similar areas.40

35. These circumstances were complicated by the fact that groups like Comanche were quite reluctant to liberate or return white women because they were highly prized. BROOKS, supra note 3, at 263.

36. In 1850, federal liberator John S. Calhoun complained of the nefarious trade in captives amongst Mexican and Indian traders. Abel, supra note 4, at 160-61. In the context of my research, exploring these kinds of unstable and often times contradictory outcomes is at the cusp of what modern law and American Political Development methodology should entail. See Pamela Brandwein, Law And American Political Development, 7 ANN. REV. L. & SOC. SCI. 187, 211 (2011).

37. TREATY OF GUADALUPE HIDALGO, supra note 8.

38. Abel, supra note 4, at 4.

39. Id. at 162; Ralph A. Smith, Apache “Ranching” Below the Gila, 1841-1845, 3 ARIZONIANA 1, 2 (1962); Hämäläinen, supra note 3, at 223.

40. On February 3, 1849, J.M. Washington, Brevet Lieutenant Colonel USA Commanding, wrote to Secretary of War W.L. Marcy, “In anticipation of instructions received, as before mentioned, I had, on arriving here, made such arrangements of the troops as was thought best calculated to insure the safety of the settlements. Since then, they have been actively employed at the various stations in pushing
Modestly staffed and resourced, Calhoun and his investigators would bargain for captives and redeem them through trade or purchase.\textsuperscript{41} From Calhoun's notes, there does not appear to have been any organized plan to sanction Indian bands holding Mexican captives. Rather, Calhoun focused principally on enforcing Article XI stipulations by removing captives.\textsuperscript{42} Once liberated, Mexican captives would be taken to Mexican officials in El Paso, Texas by one of Calhoun's agents. Curiously, enforcement measures primarily focused on the aftermath of captive-taking raids, rather than on stopping the raids themselves. Shadowy borderland markets, like that in Socorro, NM, which routinely traded in captive persons, continued to operate in relative freedom.\textsuperscript{43} Yet, it does not appear that Calhoun directly sought the aid of the military to assist his work despite the fact that military authorities regularly performed civilian law enforcement duties.\textsuperscript{44} All told, palliative strategies like redemption found limited success and made little progress towards circumscribing the root causes fueling captive-taking warfare.\textsuperscript{45}

Perhaps imprudent, such enforcement protocols nonetheless related closely to U.S. objectives aimed at subduing New Mexico's non-white populations. In the 1848 context, captive-taking investigations and their attendant liberations were intended to bring New Mexico's Indian populations into compliance with American law by liberating Indians of their highly prized Mexican captives and subsequently removing them from U.S. soil. Hard compliance would make American law paradigmatic. That is, it would make American legal ideals the authoritative reference against which all legal transgressions and disputes would be adjudicated.\textsuperscript{46} The following emancipation dockets are taken from Calhoun's reports submitted to supervising federal officials.

\textit{A. Federal Liberation as a Component of U.S. Military State-Building}

Although typically overlooked by law scholars, the U.S.-Mexican War represents a watershed moment because, as Kevin Bruyneel points out, the U.S. merged immense military state-building along with the incorporation of several non-white populations in the U.S. annexation of the Mexican west.\textsuperscript{47} Such expansive
change holds important consequences for the development of American law and enforcement institutions operating on contested cultural terrain that pre-dated American occupation for hundreds of years.

At mid-century, the newly minted American government in the west very much resembled what Stephen Skowronek would characterize as a “state of courts and parties.” Embryonic and unstable, American rule in the west was organized around a regionalized focus on government action. In 1848 New Mexico, low grade political tensions percolated, but no outright obstructionism or infighting amongst American political and legal institutions predominated. Generally speaking, there seemed to be a convergence of mission-oriented federal institutions working towards securing U.S. conquest of the Mexican west. Local government apparatuses—military, political, and administrative—were sympathetic to the egalitarian dimension of anti-captivity objectives, but were squarely focused on supplanting Mexican political institutions with American ones.

As territorial governance matured and expanded, Republican Party officials and Republican leaning courts aided anti-captivity officials in their work. This aid added an additional but decisive layer of complexity to earlier institutional conflicts over captive-taking practices. Reminiscent of what Orren and Skowronek have coined as “intercurrence,” ground level institutions in New Mexico—whose purposes were forged in earlier eras by wholly different cultures—collided with one another in competing systems of authority. For years, New Mexico’s Hispanic controlled legislature had promulgated laws to preserve traditional forms of conscripted labor rooted in captive-taking warfare. In turn, these enactments circumvented the early work of U.S. enforcement institutions interested in abolishing these systems of labor. American judges, lawyers, and Republican Party officials would typically respond to these legislative acts by invalidating them through territorial courts as being contrary to standing American law. Unlike civil rights politics in the reconstruction south, territorial courts in New Mexico had a clear line of authority that did not breach traditional boundaries of federalism.

In terms of structure, enforcement institutions were comprised principally of modest teams of local officials and ancillary agents. In 1848, small-scale enforcement teams were made up of Indian agents, low-grade military officers, and investigators-for-hire (e.g., Mexican traders). Federal anti-captivity operations were also aided by pendant investigators who—while not formally deputized by local officials—nonetheless secured the release of captives from Indian handlers and brought these captives back to remote municipalities with the expectations for a reward.

In her work on the evolution of the nineteenth century agricultural welfare state, Kimberly Johnson discusses how racial orders can create institutions that reproduce inequalities that become “cumulative in scope.” For all practical purposes, enforcement institutions at ground-level reproduced asymmetric enforcement outcomes aligned with racial and cultural hierarchies in unpredictable ways. For example, the literature suggests that federal liberators may have prioritized

48. See supra note 30.
49. ORREN & SKOWRONEK, supra note 31, at 113.
50. See supra note 32.
51. See supra note 33.
52. See supra note 34.
the rescue of captured white persons while simultaneously devaluing the rescue of Mexican captives by sub-contracting out their rescue to shadowy Comancheros (e.g., Mexican traders) as "agents-for-hire." Comancheros sometimes played the dual role of liberator or facilitator of the captivity trade by creating an opportunistic market for the exchange of captives in clandestine borderland economies.

On April 7, 1849, John S. Calhoun was appointed Indian Agent for Santa Fe, New Mexico. The federal Commissioner of Indian Affairs, William Medill, assigned Calhoun the duty to enforce the anti-captivity stipulations in Article XI of the Treaty of Guadalupe Hidalgo. Subsequent to his appointment, Calhoun deputized two field investigators—John G. Jones and Encarmacion Garcia—to aid his rescue work. In Calhoun's appointment letter, Medill sent Calhoun $300 to fund his enforcement activities, a case assignment, and some general instructions outlining his core duties relative to Article XI enforcement. This memo reads in part:

After obtaining all the information you can collect with regard to any captives you will report their names, ages, whether they are Mexicans or Americans, the length of time they have been held in captivity, and if they are Mexicans whether they were taken prior to the termination of the war and treaty with Mexico or subsequently.

In all likelihood, Calhoun's investigators began to search for captives by gathering information amongst their pre-existing social and professional networks in Santa Fe, New Mexico. From these leads, government agents would expand their investigatory zones outwardly until they exhausted the possibilities. Locating large Indian encampments where Mexican captives were typically held was of particular interest to them. Ostensibly, this may seem to have been a relatively straightforward objective, but the enforcement situation on the ground was fluid and complex. Captive populations were highly ambulatory, and captives were oftentimes taken across vast distances and sold to parties unknown. Seasonal changes in New Mexico's environment also factored into the ability of authorities to track Indians and investigate captivity incidents. For instance, negotiating the winter ice and snow came at great cost and exertion for regular military troops on patrol in 1849. Thus, the same would have held true for anti-captivity investigators moving through similar areas.

Modestly staffed and resourced, Calhoun and his investigators would bargain for captives and redeem them through trade or purchase. From Calhoun's notes, it does not appear that there was any organized plan to sanction Indian bands holding Mexican captives. Rather, Calhoun's principal focus was to enforce Article XI stipulations by removing captives. Once liberated, Mexican captives would be taken to Mexican officials in El Paso, Texas by one of Calhoun's agents. One curious aspect of federal liberation was the fact that enforcement measures almost always seem to have focused on the aftermath of captive-taking raids, rather than on

53. See supra note 35.
54. See supra note 36.
55. See supra note 37.
56. See supra note 38.
57. See supra note 39.
58. See supra note 40.
59. See supra note 41.
60. See supra note 42.
stopping the raids themselves. Shadowy borderland markets—like that in Socorro, New Mexico—which routinely traded in captive persons, continued to operate in relative freedom. Yet, it does not appear that Calhoun directly sought the aid of the military to assist his work despite the fact that military authorities routinely performed civilian law enforcement duties. All told, palliative strategies like redemption were of limited success and made little progress towards circumscribing the root causes fueling captive-taking warfare.

However, as noted earlier, the dockets were also intended to delineate Mexican captives from American society along lines of their race (e.g., non-white) and status (e.g., non-citizen). At mid-century, Mexican captives were being rescued to facilitate their removal from newly minted American soil and to speed their return to Mexico because Mexican captives were considered irreconcilably foreign. The docket entries are constructed to document the alien character of these captives. The following emancipation dockets are taken from Calhoun’s reports submitted to supervising federal officials.

1. John S. Calhoun Docket: October 1, 1849.64
   
   a. Mexican Captives delivered:

   1. Anto Josea about 10 years old, taken from Jemez where his parents now live, by the Navajo, who delivered him. A flock of goats and sheep were stolen at the same time. He says he was well treated.
   
   2. Teodosia Gonzales, twelve years of age, was taken about six years ago, from a corral near the Rio Grande, where he supposes his parents now live. He was stolen while herding goats, but no effort was made to take his goats. He was well treated.
   
   3. Josea Ignacio Anane, became a prisoner seventeen years ago, taken, when quite a boy, by a roving band of Navajoes, at Tuckalotoe. His parents then lived in Santa Fe, where he supposes they now reside. His is the fortunate possessor of two wives, and three children, living at Mecina Gorda (Big Oak) north of Cheille two and a half days travel. He was originally sold to an Indian named Waro, to whom he yet belongs. I do not think he is under many restraints, for he prefers most decidedly to remain with the Navajoes, notwithstanding his peonage.
   
   b. Subsequently at Zunia the Navajoes brought to us

   1. Manuel Lucira taken from Del Mansiña two years since, while herding sheep. The Indians took only such sheep as was needed at the moment. He is about fourteen years of age, and has been sold several times, and badly treated, by flogging &c. His parents are said to be living near the place where he was stolen from. At the same time a brother of Manuel’s was taken: but he was returned last year. These captives except the one so fortunately married have been placed in the hands of the friends and acquaintances of their parents.

61. See supra note 43.
62. See supra note 44.
63. See supra note 45.
64. Abel, supra note 4, at 29–30.
2. John S. Calhoun Docket: March 31, 1850.65

1. Refugio Picaros, about twelve years of age, was taken from a Rancho, called Papascal, near St. Jago, State of Durango, Mexico, two years ago, by the Comanches, who immediately sold him to the Apaches, and with them he lived and roamed, on both sides of the Rio del Norte, until January last, when he was bought by Jose Francisco Lucero, a Mexican residing at the Moro, in this territory. He says, the purchase was made at the Coro Carmel, about two days travel east from the Rio del Norte, and four knives, one plug of tobacco, two fanegas of corn, four blankets, and six yards of red Indian cloth, were paid for him. He has no father or mother alive, but has brothers and sisters.

2. Teodora Martel, ten or twelve years of age, was taken from the service of Jose Alvarado, at La Popes, near Saltillo, Mexico, by Apaches, two years ago, and has remained the greater portion of the time on the west side of the Rio del Norte. He was bought by Powler Sandoval, who also resides at the Moro; from the Apaches at Ague Asule, near the Pecos River, in this territory, in February last. The payment for him was one mare, one rifle, one shirt, one pair of drawers, thirty small packages of powder, some bullets, and one buffalo robe. The boy was claimed by Diego Sandoval, from whom I received him. He knows of no relations.

3. Caudalans Galope, about twelve years of age, was seized by the Apaches, he thinks four years ago, at the Rancho Fernandez, near Santa Cruz, Mexico. He is unable to name the State in which Santa Cruz is situated. Two brothers and sisters of his were taken at the same time, and he supposes they are yet with the Apaches. His father and mother were alive at the time he was captured. He was bought from the Apaches, in January or February last, by Vincente Romero, of the Moro, at a place called Lo Cerro Queso, perhaps “El Cerro del Queso,” east of the Rio del Norte, in this territory. Price paid was some corn and tobacco, on knife, one shirt, one mule, one small package of powder, and a few balls.

4. Rosalie Taveris, about twenty-five years of age, resided in Monclova, and was captured in November last, by a band of Apaches and Comanches, within two days of travel of Monclova. Her husband, Santiago Costellan, and her daughter, four years old, were killed at that time. Her mother, Etuedas Guerris, lives in Monclova. She is known to Don Miguel Corteues, and Don Ramon Moseus, and was bought from the Apaches by Powler Sandoval, of the Moro, at Cerro Queso, in January last, who paid for her two striped blankets, ten yards blue cotton drilling, ten yards calico, ten yards cotton shirting, two handkerchiefs, four plugs of tobacco, one bag of corn, and one knife. She is quite an intelligent woman; says that the band by whom she was captured consisted of about fifty Indians, who seized at the same time either other captives, strangers to her, and all but two, who sickened and died (perhaps killed), were brought from Mexico into this territory with her. She states there are a great number of captives, at and near La Cerro Queso, that all the men who are captured are killed; that parties of Apaches and Comanches are constantly going out and coming in with horses, mules, sheep, goats, cows, goods, money, and captives, and while at La Queso, she saw the clothing of an American man and boy, whom the Apaches said they had killed.

These captives complain of very cruel treatment, the woman especially, who

65. Id. at 181–83.
sends she was spared but one humiliation.


I have five captives taken by the Comanches from the Republic of Mexico
1. Andres Martinez, El Gallo, Durango, age fifteen years—Father’s name, Joaquin Martinez — Mother’s, Catalina Morales. He supposes he has been with the Comanches about seven years. Received him May 29th, 1851.
2. Teodosia Salazar, Rancho of Juan Perez, Durango—supposed to be twelve years old. Ciprano and Petra Talazar, parents. Mother dead. Received him June 15th, 1851.
3. Cleto Martinez, near the City of Durango, Mexico. Anselner and Josefa Martinez, parents—both dead—supposes he has been with the Comanches near six years—We suppose him to be twelve years of age—Received him the 1st day of this month.
4. Antonio Monsial Canatana from near the City of Durango, supposed to be fifteen years of age—Francisco Monsial Canatana, father—and Beringua Quintana, mother. He supposes he has been with the Comanches several years.
5. Felix—he knows of no other name—Parents, dead. Taken captive at the same time with No. 4, and both were received here on the 1st day of this month.

By the first opportunity that presents, these captives will be conveyed to El Paso, and delivered to the Chief Officer of the Government of Mexico at that place, upon his receipting for them.

I have recently liberated two New Mexican captives, and restored them to their parents.

As a matter of first impression, Calhoun’s liberation dockets seem quite mundane. The dockets provide routine personal details regarding redeemed Mexican captives. It is important to note here that the number of captives identified within these dockets did not comprehensively describe the expansive and diverse captive population within the U.S. at the time. In 1848, the captive population, including native born, recent immigrants, and Mexican nationals, likely numbered in the thousands and geographically stretched from California to Texas, reaching up into the Kansas and Oklahoma plains region.

With regard to those captives that Calhoun redeemed, the dockets suggest that male youths from Northern Mexico predominated. Reportedly, adult male captives were oftentimes killed while in Indian custody which is why they infrequently appeared in these dockets. Adult captive, Josea Ignacio Anane, stood as a rare exception to this trend but this may have been because he was abducted as a child and grew into adulthood while in captivity. In parallel fashion, female captives were also scarcely mentioned in Calhoun’s liberation dockets. This may reflect the fact that capturing societies placed a premium on female captives and were unwilling to give them up.
Many of the documented cases involving captive-taking illustrate the many ways that individuals came to be in Indian custody. In some instances, individuals were captured by the deliberate and strategic actions of Indian raiders. In other situations, captive-taking incidents were the byproduct of happenstance: random opportunities where roving Indian bands came across an isolated person herding livestock and took them captive. It seems that these circumstances pre-staged several abductions that took place in both Northern Mexico and in the American Southwest.70

B. The Exiguous Nature of Calhoun’s Emancipation Dockets

What is most striking about Calhoun’s dockets is how far removed they seem from the drama and violence that must surely have accompanied their respective abductions. Estevan Rael-Gálvez has written about the exiguous nature of captivity dockets. In his research, Rael-Gálvez evaluated the captivity dockets written by U.S. Indian Agent Lafayette Head. In July 1865, Head assembled official dockets to record the number of Indian captives held within households located in Conejo County, Colorado Territory. In reviewing Head’s ledgers, Rael-Gálvez noted the grave limitations associated with the information that Head had recorded: “[W]hile the representation of these enslavements go a long way in contextualizing the historical and the social, there is yet so much contextual and physical grounding lost in the recording, so much displaced.”71 Earlier dockets, like those of Calhoun, suffered from many of the same omissions that Rael-Gálvez identified in Lafayette Head’s dockets. On their face, Calhoun’s registers do record important details regarding individual captives, but in doing so, Calhoun also summarily diminished their personhood to skeletal notations in his reports. In a related manner, the identity of Indian captors were reduced to only nominal references—typically, limited to presumed tribal affiliations and the geographic locations where Mexican captives were found in Indian possession or taken captive initially.

In 1848, the point seems to have been that American officials, such as Calhoun, were trying to pacify “rogue” Indian bands by leveraging the enforcement of treaty law against them. In the context of captive-taking, the ability of U.S. officials to successfully extract Mexican prisoners from the custody of Indian bands—through force, trade, or purchase—began to structure the asymmetrical relations of post-conquest power in favor of the American government. In many instances, the fate of the captives themselves seemed somewhat secondary. An important exception seems to have been when white females were taken captive.72 A great deal of urgency and action punctuated these types of abductions and oftentimes high level officials would become personally involved.73 As captivity scholars have noted elsewhere, having Indians in possession of white women was a highly destabilizing event for white males. Ultimately, such events represented a serious threat to not only the control and sexual access to white women that white males typically expected, but also represented a grave challenge to their overall manhood.

71. Rael-Gálvez, supra note 9, at 251.
72. Abel, supra note 4, at 63–66, 68–69.
73. Id. at 72–73.
as well. In the end, however, what seems most true about Calhoun’s federal liberation dockets is that the redeemed captives were themselves represented as an alien caste, especially relative to white captives.

If Indians were the figurative illustration of what white men should not be; Mexicans were the literal embodiment of what could go wrong when different races mixed: mongrelized offspring. Mexicans represented everything that was inconsistent with White Christian identity. As Pekka Hämäläinen has written, Americans considered it their obligation to cleanse the “racially defiled landscape” that had emerged in the Mexican west. Mexicans spoke in foreign tongues, possessed indigenous features (almond shaped eyes, dark skin hues, black coarse hair), practiced idolatry, and originated from primitive ancestries. To many Americans, these ethnic taxonomies bore strong evidence that Mexicans were of an inferior racial stock. The fact that Mexicans had also been taken captive by savage Indian bands indicated to Americans that Mexicans were weak and cowardly, as well. Collectively, Mexican racial morphologies and their lack of success in defending themselves against rogue Indians made Mexicans “alien in the eyes of the nation.”

Taken as a whole, the 1868 emancipation dockets demonstrate a major ideological shift in the way these “alien bodies” were typified and treated.

III. 1868 W.W. Griffin’s Emancipation Dockets (Sanction Orientated)

In 1867-1868, American liberators were hired to abolish the intransigent captive-taking warfare that continued to exist and that Calhoun had dealt with twenty years earlier. The operational difference in the 1868 investigations was that these second-generation liberators were focused on emancipating captive Indians, rather than Indian-held Mexican prisoners. The legal authority under which the 1868 liberators were working was different as well. These federal liberators were duty-bound to investigate captivity incidents under American law: specifically, the 1866 Civil Rights Act and the 1867 Anti-Peonage Act, rather than under international treaty law. Perhaps the most productive of the New Mexico liberators was U.S. Commissioner William W. Griffin who, aided by local officials like Santa Fe County Sheriff Jose D. Sena and U.S. Marshal John Pratt, conducted anti-captivity investigations from March to May 1868 within Santa Fe, Rio Arriba, and Taos counties, New Mexico. The dockets in Appendix C of James Brooks’ Captives & Cousins represent the results of arrest warrants issued by Griffin to over three hundred individuals suspected of breaching newly minted federal anti-slavery law by their holding of Indian captives.

In very literal terms, W.W. Griffin’s emancipation dockets differed substantially from Calhoun’s ledgers in that Griffin’s reports are clearly sanction-oriented. The dockets record the defendant’s name, the offense they were charged with, and the disposition of Griffin’s investigations relative to each offense. Captives, on the other hand, were generically referred to as “peon” or “slave.” All

74. NAMIAS, supra note 27, at 218, 267–69, 272.
75. HÄMÄLÄINEN, supra note 4, at 237.
77. See BROOKS, supra note 3, at 385–401.
personal information identifying them as individuals with personal histories went unrecorded. The absence of information regarding captives is important because it underscores how these individuals were literally and figuratively diminished—sharply excised from the circumstances and experiences that animated their respective lives and captivities.

The change in the tone, type, and scope of information gathered by federal officers on these dockets represented a dramatic shift in how the racialized bodies of captives and their captors were treated by U.S. authorities. As Pamela Brandwein writes, "Racial ideology becomes 'real'—materially manifest and thus empirically tractable—through prohibitions." In this particular case, information was gathered in strategic ways to punish the alien practices of non-white cultures in the newly annexed western territories. When defendant names were recorded on Griffin's dockets, they were overwhelmingly Spanish surnamed defendants. The bulk of the cases (n=288) lay in the heavily Indian and Mexican populated north (Taos County). The remaining cases (n=74) listed were from Santa Fe and Rio Arriba counties. Most defendants were male (95%)—although some females were amongst the defendant class (n=9).

Interestingly, it appears that all the peonage incidents were discharged by federal authorities. In total, there were more cases of slavery alleged (n=292) than peonage (n=70), but it is unclear how Griffin made the determination that individuals were factually being enslaved versus held in debt bondage. In his court testimony during July 1868, Griffin stated that he simply assumed violations of federal anti-slavery laws had occurred by the mere presence of Indian domestics within a given suspect’s household. No surviving testimony speaks to the issue of peonage incidents or their disposition beyond the fact that Griffin’s ledgers note that all peonage cases were discharged. Perhaps part of the reason behind the absence of information in these dockets is explained by the fact that these ledgers were also being kept by liberators so they could submit them to Washington officials to claim salaries for enforcement services rendered. Thus, federal liberators would have been principally interested in documenting only that information upon which they could claim payment.

Complicating matters, the material rights afforded to liberated captives were also dubious. Take for example, an 1868 letter that Griffin sent to U.S. Attorney Daniel Elkins where Griffin explained how he had advised the captured of their rights:

"Upon the examination of each [of the] persons charged as aforesaid and finding the charges true, I at once had the Indians so held as slaves brought before me, and informed them that under the

78. Brandwein, supra note 36, at 204.
79. This was true even though some of the West’s most illustrious figures were directly implicated in the Indian slave trade. See MARÍA E. MONTOYA, TRANSLATING PROPERTY: THE MAXWELL LAND GRANT AND THE CONFLICT OVER LAND IN THE AMERICAN WEST, 1840-1900 62, 69 (2002). Gómez notes, “Kit Carson’s First New Mexico Volunteers conducted campaigns against the Navajos ostensibly to curtail their raids and captive-taking, but Carson then rewarded his Mexican and Pueblo militiamen and Ute scouts with Navajo captives.” See GÓMEZ, supra note 5, at 108.
80. Rael-Gálvez, supra note 9, at 298–319; BROOKS, supra note 3, at 402.
laws of the United States and the holding of the Supreme Court of New Mexico there under, they were strictly and absolutely free to live where and work for whom they desired, and were at perfect liberty to go where and when they pleased and if necessary the power of the Government would be exercised to protect them in that liberty and freedom. That slavery could not exist in the United States and if they should prefer changing their homes, and go to the Navajo country or elsewhere or remain with whom they were living they could do so and in case any of them desired to return to their country I would make application through the military to have them taken.”

Clearly striking sympathetic tones, federal liberators like Griffin nonetheless considered Indian captives an alien presence within American society as well—which is why, in an additional ironic and cruel twist, Navajo captives were sometimes removed from the imprisonment of Mexican handlers and transferred into the “protective custody” of federal authorities and onto segregated Indian reservations like the Bosque Redondo. Ironies would continue to compound themselves because Griffin’s newly liberated captives would be integrated into a reservation population who themselves had twice been subject to captivity: (1) these reservation Indians had already been forced to march at gunpoint by the U.S. military from southeastern Arizona to eastern New Mexico; (2) Navajo stragglers on this march were sometimes captured by New Mexicans and sold off into a life of captivity.

IV. CONCLUSION

What is apparent from Griffin’s docket is that by 1868, American authorities had transitioned away from enforcement protocols grounded in redemption and removal, and moved to a more justice-oriented framework. This change was important because it made the 1868 investigations much more than merely symbolic gestures. Rather, this transition expanded opportunities for federal officials to exercise material power over the racialized bodies of suspect populations. Griffin’s arrest dockets bespeak a larger and more aggressive scale of action against non-white populations engaged in activities the U.S. has deemed unlawful. For example, federal officials took parties into custody and physically deprived them of their liberty under the banner of American authority. The surviving emancipation dockets illustrate the specific kinds of custodial power that federal officers wielded against individual suspects. In compiling these dockets, American investigators decided what information to collect, which information to ignore, the nature of the relationships at hand between detained parties, the degree of culpability

82. Rael-Gálvez, supra note 9, at 292 (Letter from W.W. Griffin to U.S. Attorney Daniel Elkins (Sept. 28, 1868)).
83. Id. at 270; Laura E. Gómez, Off-White in an Age of White Supremacy: Mexican Elites and the Rights of Indians and Blacks in Nineteenth-Century New Mexico, 25 CHICANO-LATINO L. REV. 9, 56 (2005).
85. Brandwein, supra note 36, at 204.
(if any), and the ultimate outcome of the investigation. Those parties designated as captors and as captives were largely ancillary to the enforcement process, merely awaiting the outcome of their custodial investigations.

Indeed, in what criminologist Jonathan Simon has coined “governing through crime,” while typically applied to modern political regimes, is also an apt description of how U.S. officials structured their governing power over New Mexico’s Indian and Mexican populations. From 1848 and 1868, U.S. officials constructed relations between governmental institutions and non-white populations through the use of crime metaphors as a way to describe alien practices like captive-taking were criminalized so U.S. officials could control and exclude those populations deemed exotic and threatening. The change in the type and scope of information 1868 captivity investigators collected for their liberation dockets is illustrative of this newfound governing paradigm.

Laura Gómez’s book, Manifest Destinies, speaks to this issue. According to Gómez, U.S. officials used the territorial court system to synchronously punish and cultivate cooperation amongst the Mexican population. Utilizing U.S. courtrooms as mechanisms to enforce American legal ideals had the potential to pay far-ranging dividends including the right to use American law to punish newly enacted “criminal transgressions.” In the context of the government’s anti-captivity investigations, federal officials used the power of American law to criminalize longstanding borderland practices like captive-taking and exercise immediate sanctioning power over individuals resisting American authority by their participation in the trade.

In 1868, New Mexican defendants were detained and questioned by federal authorities who had the power to charge them with offenses that included not only monetary fines but the possibility of incarceration, as well. In July 1868, the U.S. Attorney’s Office tried to secure indictments against 290 defendants. The movement away from palliative practices like Calhoun’s rescue and removal strategy, and towards punitive sanctions was fueled by hardening racial attitudes and the realization that captive-taking incidents presented legitimate legal dilemmas for American authorities; thus, U.S. officials concluded that these practices had to somehow be impounded.

As noted earlier, the government’s principal objective in sponsoring anti-captivity operations was to consolidate American power and transform the Mexican west. Designating longstanding borderland activities like captive-taking as legal transgressions legitimated the extension of federal power into what had heretofore been clandestine customs and retaliatory forays. Further, criminalizing captive-taking practices had the parallel effect of also providing American officials with the material means to control and subordinate non-white populations. The surviving

87. GÓMEZ, supra note 5, at 40-41.
88. Castro, supra note 25, at 472.
90. See supra note 81.
91. GÓMEZ, supra note 5, at 112.
93. Merry, supra note 1, at 108-09, 112.
legal texts, where the non-white bodies of Mexican and Indian captives were delineated by federal liberators, stand today as historical remnants documenting the ancient wars of those alien races which U.S. officials sought to subdue through legal control and racial exclusion.