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## A Law that Would Make Caligula Blush?

NEW MEXICO TERRITORY'S UNIQUE SLAVE CODE, 1859–1861

*Mark J. Stegmaier*

**I**n 1861 Congressman John A. Bingham of Ohio, a leading Republican, who would later draft the most significant parts of the Fourteenth Amendment in 1866, denounced the New Mexico slave code as a law that would have brought “blushes to the cheek of Caligula.”<sup>1</sup> But why would the legislature of the territory of New Mexico—a generally arid and barren region encompassing the present-day states of New Mexico and Arizona, and a territory hardly associated with the plantation slavery of the antebellum South—have enacted such a law in the first place? Was there an actual or even a potential slave population involved? How did this slave code compare and contrast with other slave codes in the country? Did New Mexico’s slavery law impact national politics and congressional action? And, finally, what led New Mexico’s legislature to repeal this law? These are some of the questions that the following article attempts to answer.

The territorial legislature certainly did not enact its slave code of 1859 to legitimize an already thriving economic institution. Since the establishment of New Mexico’s territorial government in 1850, very few black slaves had been brought to the territory. The slave population remained small despite the fact that no official obstacles existed to block an influx of slaves, especially after

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the U.S. Supreme Court's decision in *Dred Scott v. Sandford* in 1857. New Mexico's barren landscape and arid climate were better suited for livestock grazing than plantation agriculture with slave labor. The mining industry could have utilized slaves as a labor force, but mining of any substantial nature also required abundant water resources unavailable in most of the territory.

As a result of New Mexico's Spanish and Mexican cultural foundations, peonage (bondage for debt) diminished the population's desire for a slave-labor system since the population of peons supplied a sufficient workforce for the territory.<sup>2</sup> Unofficially, several hundred Indian slaves, either purchased or captured from various tribes, toiled for their owners. In New Mexico when U.S. government officials and Army officers from the South were appointed to office or ordered to posts they brought black slaves with them to serve as house servants.<sup>3</sup> Theoretically, nothing prevented black slaves from replacing peons and Indian slaves in herding, mining, or any other occupation, but peons were plentiful and cheaper. Thus, there appeared to be no local demand in New Mexico Territory for large-scale black labor.

It is impossible to calculate exactly how many black slaves lived in the territory in 1860. Unlike the Southern states, which listed slaves in a schedule separate from free blacks in the census of 1860, New Mexico had so few slaves that the territory's census did not differentiate between its enslaved and free black populations. Further complicating the subject of New Mexico Territory's enslaved black population is the question of whom to count as black. The Hispanic and Indian population had shown no particular aversion to sexual relations, marital or extramarital, with blacks; mixed race offspring were common in New Mexico.<sup>4</sup> An analysis of the federal census of 1860 for New Mexico Territory shows fifty-three inhabitants as black and eighty-two as mulatto. A contemporary extract from that census numbered ninety persons as "negros" and the latest edition of *Historical Statistics of the United States* gives a figure of eighty-five blacks in New Mexico Territory in 1860.<sup>5</sup> Contemporary estimates on the number of black or mulatto slaves in the territory ranged from less than ten to a high of fifty, with most members of Congress in their speeches estimating the number of slaves in the territory from ten to twenty-five.<sup>6</sup> These figures indicate that most blacks and mulattoes in New Mexico were not slaves but free people of color, even if most of them were probably bound in some form of peonage. The territorial legislature in early 1857 had enacted legislation to severely restrict the residency of free blacks and mulattoes in New Mexico, but the population statistics for 1860 suggest that local authorities were very lax in enforcing this law.<sup>7</sup>

With only a handful of blacks and mulattoes, free or slave, out of a total population of just over ninety thousand, what circumstances induced New

Mexico's territorial legislature to legally protect slave property in 1859? The roots of the law lay in political and economic considerations having little direct relation to slavery itself. During the secession crisis in January 1861, New Mexico's territorial delegate in the U.S. House of Representatives, Miguel A. Otero, a states' rights Democrat, defended the territory's slave code as originating from "a plain, simple sense of justice, not trammled by sectional prejudices, and not influenced by fanaticism."<sup>8</sup> The following day, on 12 January, the *Washington (D.C.) Constitution* published a long letter from Otero which elaborated on that theme: "Recognising [*sic*] the right of the citizens of the different States to take with them into the common domain of the people of the United States every lawful species of property, and there [to] enjoy the same as fully and uninterruptedly as they were accustomed to do in the States from which they respectively came, the people of New Mexico, through their legislature, enacted a code for the protection of slave property."<sup>9</sup>

Otero undoubtedly believed in the justice of recognizing a Southerner's right to bring his slaves with him and have his property legally protected in the national territories. He was certainly influenced by the fact that his wife was a member of the prominent Blackwood family in Charleston, South Carolina, and in constant association with the upper crust of Southern society in Washington, D.C. Even before the territorial legislature passed its slave code, however, Otero had promoted the enactment of such a law for more practical considerations. He realized that New Mexico Territory was not naturally blessed with resources or conditions that would attract large numbers of people to migrate there from the eastern states. The largely arid, infertile, and vast region depended on the federal government both to protect the white and Hispanic populace from attacks by various Indian tribes and to finance the territorial government and regional economic development. As New Mexico's delegate in Congress, an anxious Otero hoped to smooth the way for legislation beneficial to his territory and constituents. In 1858 his Southern colleagues acknowledged that they would support congressional measures to advance New Mexico's interests if the territorial legislature passed a law that recognized slave property. Having just failed in their effort to get Kansas admitted to the Union as a slave state under the controversial Lecompton Constitution, Southerners such as Rep. Reuben Davis, a Democrat from Mississippi, approached Otero about a territorial slave code for New Mexico.<sup>10</sup>

During the summer and fall of 1858, Otero communicated his desire for a slave law to congenial friends and officials in New Mexico. Chief among them were Alexander M. Jackson, proslavery territorial secretary recently

appointed from Mississippi; Charles P. Clever, U.S. marshal for the territory; and James L. Collins, formerly a Missouri trader and now publisher of the *Santa Fe (N.Mex.) Gazette*. Gov. Abraham Rencher, appointed from North Carolina, also favored the adoption of a slave code, although he and Otero quarreled over military policy toward the Indians. In a letter urging Jackson to draft a slave code, Otero wrote, “You will perceive at once the advantage of such a law for our territory, and I expect you will take good care to procure its passage.”<sup>11</sup> In the same letter, he told Jackson that after the legislature approved the law, Jackson should immediately send copies to newspapers in the slave states and also to the *New York Herald*, a leading Democratic, pro-Southern paper in the North. A few days later, Otero wrote to his friend, U.S. Marshal Clever, elaborating on the benefits—however temporary—of a slave law in New Mexico:

I assure you that the passage of such an act will result, in my opinion, advantageous to our Territory. It will not only attract gubernamental [*sic*] & political attention in the States, but will tend to elevate our own class of free laborers, in that Territory. As a temporary expedient I consider it proper—what my opinions may be in the future and under other circumstances I will let time develop [*sic*]. Whether slavery will be practicable or not in our Territory is not the question now. The question in my mind is to do something which will direct political attention to that country.<sup>12</sup>

As justification for the slave code, Otero invoked this reference to the pro-slavery argument that the presence of slaves as the lower class in society promoted the social equality of all the non-slave population. Another factor driving Otero’s push for a territorial slave code was factional politics among the Democrats in New Mexico. In 1857 one Democratic faction had attempted unsuccessfully to unseat Otero as congressional delegate by running Spruce M. Baird against him. The utterly unscrupulous Baird, formerly an agent of the state of Texas, wrote letters to U.S. government officials in Washington insinuating that Collins and the Otero bloc in general were friendly to abolitionism and the Republicans. Thus, Otero’s sponsorship of a slave code for New Mexico could have provided an emphatic refutation of Baird’s accusations.<sup>13</sup>

Few people in the territory outside government officials in Santa Fe even knew of the regulations, much less pressed for the legislature to pass such a measure. Some federal appointees apparently lobbied the Hispanic members of the legislature into believing that the enactment of the slave code would

positively impress the proslavery Democratic administration of Pres. James Buchanan, and bring New Mexico great economic benefits from the federal government.<sup>14</sup> On 22 January 1859, during the eighth legislative assembly of the Territorial House of Representatives, Rep. Pedro Valdez of Taos County introduced a bill to protect slave property. After the bill's first reading Rep. Oliver P. Hovey of Santa Fe, a wealthy merchant and government printer originally from Vermont, sought to rush the bill through its three required readings. He moved to suspend the rule delaying the bill's second reading for a day. Hovey's motion, however, failed to pass and the slave-code bill was not considered again until the next meeting on 24 January. Following the bill's second reading, Valdez pushed to have a quick third reading, but his motion failed by a vote of nine to eleven. Rep. Manuel de Herrera of San Miguel County then requested a select committee of one member from each county to review the bill; this motion carried by a vote of eleven to nine. Valdez, Hovey, and Herrera were among the seven members appointed to this committee. Later that day, the House agreed to a resolution introduced by Hovey for the printing of three hundred copies of the bill—two hundred in Spanish and one hundred in English.<sup>15</sup>

The Committee of Seven, of which Hovey was the sole Anglo member, made its report to the House on 28 January. The Hispanic members demanded that no provision of the slave code apply to the numerous peons in the territory. In the report, the committee inserted a provision explicitly declaring that this law would apply only to black slaves. The House quickly adopted the committee's report, suspended the rules in order to immediately give the engrossed bill a third reading, and passed it. On 29 January 1859, the local *Santa Fe (N.Mex.) Gazette*, in its weekly edition, reported that it was "proud" to announce the passage of the House bill "with but one dissenting voice." Technically, that statement was incorrect, for no roll call vote was recorded on passage and thus no member was able to register a negative vote.<sup>16</sup>

As soon as the upper house, the Legislative Council, received the House bill on 28 January, Henry Connelly of Bernalillo County, originally from Kentucky and a longtime merchant and prominent political leader, motioned to read the bill. After its first reading, Juan José Sanchez of Valencia County successfully moved for a suspension of the rules and the bill received its second reading. Albino Chacon of Taos County then proposed that the bill be referred to a special committee of three, to which the Council agreed. Council President and former Missourian Lafayette Head of Taos County appointed Connelly, Chacon, and Donaciano Vigil of San Miguel County to the committee. Chacon chaired the committee and reported to the council on 31 January that it believed the bill would benefit the territory and recommended

its passage. The council adopted the report, Connelly successfully moved for a suspension of the rules, and after the bill's third reading, the council passed it. Governor Rencher signed *An Act for the Protection of Property in Slaves in this Territory* into law on 3 February 1859.<sup>17</sup>

During this same session the legislature also passed a bill relating to peons. Among the amendments enacted to New Mexico's earlier peonage laws, the legislature made provisions for handling runaway servants; prohibited anyone hiring the servant of another master or patron; and prevented courts from considering cases involving the "correction" that a master might inflict on a negligent or disobedient peon, with the caveat that such punishment should not "be inflicted in a cruel manner with clubs nor stripes."<sup>18</sup>

Territorial Secretary Jackson initially devised a slave law that included thirty sections.<sup>19</sup> In its final form, however, the slave code contained thirty-one sections. In a private letter dated 13 January 1861, Massachusetts congressman Charles Francis Adams, a Republican, expressed his concern that a Southern congressman in Washington had drafted the New Mexico slave law, which Otero transmitted to New Mexico for legislative action.<sup>20</sup> Adams may have based his belief on Otero's well-known letter of 16 December 1858 to Jackson, which had mentioned Representative Davis's request that New Mexico's legislature create a slave code so the territory could gain Southern support in Congress. In March 1861, U.S. Sen. John J. Crittenden of Kentucky publicly assumed that New Mexico's slave code had basically reproduced Mississippi's law.<sup>21</sup> Adams's and Crittenden's conjectures, however, were not the case. Jackson most likely drafted the bill considered by the legislature, as a later correspondent from New Mexico related to the *New York Daily Tribune*. Jackson probably wrote New Mexico's slave code of 1859 based on his general knowledge of case law and statutes from states and other areas that recognized slaves as property.<sup>22</sup> Some of these provisions were similar to those in the Mississippi code of 1857, but others were not, as a comparison of New Mexico's law with statutory provisions elsewhere shows (see Appendix 1). The basic contents of the codes included relations between slaves and free persons (sects. 1–9, 28); runaway slaves (sects. 10–15); an owner's relations with slaves (sects. 16–19); crimes by and restrictions on slaves and free blacks (sects. 20–24, 26); prohibition of emancipation (sect. 25); civil procedure on claims to slaves (sect. 27); terms used in the act (sect. 29); and application of the code solely to slaves of African descent (sect. 30). Each section shared common themes with the established statutes of the Southern states.

The passage of the law explicitly legalizing slavery in New Mexico Territory had no appreciable impact on the institution there. No great influx of slaves into the territory occurred subsequent to the law. The only black slaves

in the territory remained those few domestic servants brought in by army officers and government officials. Although a number of newspapers in the eastern states noted the enactment of the code, the law raised little editorial concern. The *St. Louis Daily Missouri Republican*, the city's Democratic newspaper, published a lengthy summary of the act's sections, which the *Charleston (S.C.) Mercury* reprinted without further comment.<sup>23</sup> The *St. Louis Daily Missouri Democrat*, the city's Republican voice, seemed much more interested in the attempt of the Kansas Territorial Legislature to abolish slavery than in New Mexico's effort to protect the institution. Although the Kansas legislature passed the abolition bill, the territory's Democratic governor refused to sign the measure, in effect vetoing it. In relation to New Mexico's slave code, the *Democrat* sarcastically opined that the territorial legislature had legally protected slavery there as a "testimonial" to an army officer's slave boy recently killed by the Indians. More seriously the same editorial attacked the New Mexico code as a campaign to extend slavery by Democratic Party officials and viewed it as "an invitation to the South to import slaves there to the exclusion of white men." The author of the piece also argued that the slave code was "especially designed to give the slave breeding States an outlet for their negroes in the gold producing regions just developed within that territory."<sup>24</sup>

The concerns raised by the *Democrat* found much more elaborate expression in Horace Greeley's *New York Daily Tribune*, the nation's leading Republican antislavery organ. Since his short sojourn as a member of Congress in the late 1840s, Greeley had taken a profound interest in the issue of slavery's potential for expansion into New Mexico Territory. After receiving news of New Mexico's slave code, the *Tribune* published several editorial comments. Greeley first interpreted the law as a poisoned fruit of the Slave Power Conspiracy that sought to aggressively spread the South's "peculiar institution" into national territories.<sup>25</sup> Second, he saw the law as the product of a do-nothing policy in Congress. Too many members subscribed to the argument propounded by deceased Sen. Daniel Webster of Massachusetts and other powerful politicians to pass the Great Compromise in 1850: plantation slavery would never expand to or survive in the arid climate and rugged topography of the Far Southwest. Greeley's *Tribune* reprinted articles from Texas papers about plans to send expeditions of proslavery settlers to New Mexico and Arizona. In response to a speech by the conservative former New York governor Washington Hunt denying that New Mexico's law had any potential to really establish slavery in the territory, the *Tribune* gave a more sinister evaluation of slavery's potential in New Mexico: "And it will be found a profitable business to hold slaves in New Mexico, if only as

breeding-stock for the plains and swamps of tropical Louisiana and Texas. It is this lucrative business of slave-breeding which keeps Slavery vital and powerful to-day in Maryland, Virginia, and North Carolina; and New Mexico is high and healthy, and is destined to develop on her south-western border a great Mining interest, to which her stock of slaves will be most convenient and acceptable."<sup>26</sup> The realities of slavery in New Mexico never came close to matching Greeley's feverish vision, and no other U.S. newspaper portrayed the situation in the same dark tones as those printed in the *Tribune*.<sup>27</sup>

Not only did nature appear hostile to black slavery in New Mexico Territory, but a sector of the local population arose to declaim against the slave code. Those favoring its repeal believed that the code had been foisted on New Mexico by politicians strictly desirous of building up a favorable opinion among slave-state congressmen in Washington, D.C. They felt that the law in no way reflected a demand by the majority for the recognition of property in black slaves in New Mexico. As one advocate of repeal commented on the passage of the law: "The subject was never discussed, nor even mooted before the people, but was got up near the close of the session and hurried through, when the country did not dream of anything of the kind. And so quietly was it kept, that for a year the very existence of such a law was known to comparatively few persons."<sup>28</sup> Another strong opponent of the code, farmer and former Vermonter Samuel B. Watrous of Barclay's Fort in Mora County, wrote in a similar vein: "If the people want slavery, in God's name let them have it; but when half a dozen servile tools of a corrupt administration, endeavor to produce a false impression abroad with regard to our wishes, it is time to put a stop to it by stating the facts in the case."<sup>29</sup>

Watrous did not limit himself to attacking the slave code in writing. He enlisted the aid of Spkr. of the New Mexico Terr. House Levi J. Keithly, originally a Missourian, from nearby San Miguel County, to bring a repeal bill before the Ninth Assembly in December 1859. Consenting to the proposal, Keithly apparently believed that the repeal measure would easily pass the legislature on its merits and made no effort to drum up support for the slave-code repeal before he offered his proposal. Waiting until the latter part of the legislative session, the House speaker temporarily relinquished his chair to Celso Cuellar Medina of Socorro County and introduced his bill to repeal the act protecting "slave property" on 17 January 1860. It hit the members who had enacted the slave code like a "thunder-clap," wrote Watrous. Immediately after the first reading, F. E. Kavanaugh of Santa Fe County, a proslavery legislator, doctor, and merchant, moved to reject it. Debate followed, with Keithly delivering a speech in favor of his bill, followed by Medina in a long and able speech, and another Hispanic member also

speaking in support. Keithly had resumed the Speaker's chair by this time, and Kavanaugh moved the previous question to produce a vote on his motion to reject the measure. The House agreed to the previous question, but then refused by a vote of nine to twelve to reject Keithly's bill. At that point, the House adjourned until the following day.<sup>30</sup>

The opponents of Keithly's slave-code repeal, suspecting that it probably had enough popular support to pass, needed the adjournment to avoid any further debate and to organize support for its opposition. Keithly's measure posed an ignominious end—in less than a year—to the slave law, whose creators had crafted it in the first place to influence positively Southerners in Congress to aid New Mexico. Government officials and legislators wishing to retain the code realized that they had to work quickly to fend off Keithly's challenge. They hastily spread the word to any House members vulnerable to rational argument and more extraordinary means of suasion that Hovey would be holding an "open house" at his residence that night. Hovey took credit for the code and was determined to block its repeal. He insisted to men like Vicente Trujillo of Rio Arriba County, one of those who had voted earlier that day against rejection of Keithly's bill, that retention of legalized slavery in the territory was crucial to New Mexico's interests in Congress. Hovey and his surrogates also attacked Keithly personally, suggesting to the lawmakers that he must be "an Abolitionist or Black Republican" and that this subversive should be deposed as Speaker of the House. To convert Medina, who had spoken in favor of Keithly's repeal measure, they promised him the speakership in Keithly's stead. Liquor, referred to by Watrous variously as "John Barleycorn" and "O-be-joyful," flowed freely at Hovey's house that night, and the code's supporters freely dispensed bribes in gold coin, or "mint drops" as Watrous called them. Thus the stage was set by these "almost superhuman exertions," as Watrous reported, for an extraordinary session the next day.<sup>31</sup>

Unaware of what had transpired the night before, Keithly arrived at the House chamber on the morning of 18 January to find the conspiracy against him already in progress. The doorkeeper handed him a note signed by a number of the members declaring his repeal bill "anti-Democratic," labeling him "an Abolitionist or Black Republican," and promising to replace him as Speaker. Another likely shock came when Medina, who advocated for Keithly's bill the previous day, immediately moved to declare the House speakership "vacant" and to proceed in electing a new Speaker. Six members were excused from voting; among them were Kavanaugh and four who had favored rejecting Keithly's proposal the day before and one who had been absent during that vote. These men may have been among the group of

Democrats who told Watrous that this proceeding “was the most shameful thing that ever came under their notice.” The remaining members voted eleven to five for Medina’s resolution. Seven of those supporters had reversed their position from the previous meeting, displaying the effectiveness of Hovey’s “open house.” Only one of the nay votes was cast by a prior opponent of the Keithly repeal measure. Following the vote, Keithly relinquished the speaker’s chair, and Medina’s fellow Socorro County representative Candelario Garcia immediately nominated his colleague for Speaker. Medina was elected without opposition.<sup>32</sup>

Shortly after the speakership changed hands that day, Keithly’s repeal bill came up for its second reading. The title of the document was now printed in the official journal as a law to repeal “an act providing for the security of property in certain cases.” The territorial leadership apparently wanted the official record no longer to indicate that Keithly’s bill was intended to repeal the slave law. Upon the proposition’s second reading, the measure was referred to a select committee of five, chaired by Manuel S. Salazar y Vigil of Rio Arriba County. Salazar y Vigil had voted the day before to reject Keithly’s bill and then voted to depose Keithly himself; the other four members on the committee, also native New Mexicans, had all voted against rejecting the bill but had all voted to oust Keithly from the speakership. The committee, not surprisingly, drafted a report unanimously recommending the rejection of Keithly’s repeal. At least the report properly identified the proposal tagged by Keithly as one protecting “property in slaves.” This report presented a four-page defense of slavery under the U.S. Constitution, which, it declared, “distinctly recognises and ratifies the right of holding property in slaves.” The report went on to defend the right to slave property in the national territories, as a matter of justice to those holding such property in the slave states and in accordance with the U.S. Supreme Court’s Dred Scott decision in 1857. The committee’s defense of New Mexico’s slave code as a matter of “constitutional obligation,” directly followed the argument spun by Southern politicians and was probably written by a Southerner, most likely Jackson, who authored the slave code. It certainly had not been drafted by any of the five native members of the committee, all of whom would have lacked the familiarity with the Southern “equal rights” or “common property” doctrine on slavery in the territories. A correspondent for the *New York Tribune* learned from two individuals on the committee that “they knew nothing either about the institution of Slavery or the report attributed to them.” Jackson or one of the other administrative officials from the South apparently handed committee chairman Salazar y Vigil a prepared “report” against the bill.<sup>33</sup>

The following day, on 19 January, Keithly protested his ousting. In this written statement, the San Miguel County representative recounted some of what had transpired the day before and denied that he was an abolitionist just because he had introduced a bill to repeal the slave code. Keithly stated in his defense: "I believe I had the right to do so, as any other would have had in a similar case; and also believing it in nowise prejudicial to the people of New Mexico, but, on the contrary, that it would have redounded to its benefit, I protest most solemnly to the action taken by the House . . . against me, because it was, in my opinion, irregular, and without precedent, and without foundation." The House did not "adopt" Keithly's protest but did print it in the official journal. Later that morning, he requested and was granted a three-day leave of absence. At the beginning of the afternoon session, he tried to offer another written statement, but the House both rejected the request and refused to print it. The disgusted Keithly left the House and went home to San Miguel County.<sup>34</sup>

The Ninth Legislative Assembly was not quite finished with the slave code. In the last days of the session, the two houses decided to amend section 30 of the law in order to legally recognize the enslavement of Indians. The long-standing practice of enslaving Native Americans, such as Navajos, by purchase or capture was common, although not statutorily recognized. To remedy the legal gap, the legislature decided to amend the slave law of 1859 rather than draft and enact an entirely separate measure. Tomas Cabeza de Baca of Santa Ana County introduced this proposal to the Legislative Council on 31 January. Initially the proposal was disguised as "An act to protect all kinds of property in this Territory." It was referred to a special committee consisting of Cabeza de Baca, Merrill Ashurst of Santa Fe County, originally from Georgia, and former Texas agent Baird of Bernalillo County. They quickly reported to the council and recommended passage of an unspecified amendment to section 30 of the slave code, but the council decided to return the business to the special committee and instructed it to draw up a separate act "for the protection of Indian property." Chairman Cabeza de Baca reported the bill the next day, 1 February, as an act to amend section 30 by adding to the last line of the section — "but the word 'slave' shall only apply to the African race" — the phrase "And Indians, male or female, acquired from the Savage Nations." The amendment was adopted on a vote of eleven to one and the act passed ten to one, with Ashurst's as the sole negative vote on both roll calls. The House then took up the bill that day and passed it without a roll call.<sup>35</sup>

Governor Rencher, however, refused to sign the new act as the session ended. Instead, he waited until the beginning of the next legislative assembly in December 1860 to communicate his reasons for disallowing this inclusion

of Indians in the slave code. In his 6 December message, Rencher, himself a slaveholder from North Carolina, proclaimed that Indians acquired from other tribes were not slaves under U.S. law and that the legislature had no legal power to categorize them bondmen. This had been the legal position of the Southern states in court cases involving the issue of Indian slavery. Rencher seemed to argue that, as an institution in law, slavery only applied to blacks. He explained, "The Legislature can neither create nor abolish slavery; it may only regulate it where it already exists, the same as any other species of property." Rencher continued by declaring that the "normal and native condition of our Indian tribes is that of freedom," that they could not be made slaves "by conquest or purchase," and that their status in servitude could only be as "captives or *peons*." In addition Rencher undoubtedly wanted to disallow Indian slavery based on his desire to avoid exacerbating the already very-sensitive and often-hostile relations of the Hispanic and Anglo communities with the southwestern Indian tribes. Rencher opted for the status quo of *de facto* rather than *de jure* Indian slavery.<sup>36</sup>

During the first session of the thirty-sixth Congress, before the Republicans could have learned about Keithly's bill in the New Mexico legislature, they launched their own effort to have Congress strike down New Mexico's slave code. No less repugnant to them was the New Mexico law prohibiting courts from considering any legal action relating to the "correction" that a master might inflict on a disobedient or neglectful peon or servant. Republicans interpreted the latter statute as positive evidence of "white slavery" in the territory. Both measures were included in bill H.R. 64, which Representative Bingham introduced to the House on 16 February 1860. Under Section 7 in the organic law of 1850, which had established New Mexico Territory, Congress had full authority to declare null and void any obnoxious laws passed by the territorial legislature. Despite objections from Democrat Shelton Leake of Virginia, House members read the measure twice and referred it to the Judiciary Committee.<sup>37</sup>

Not until 10 May 1860, in the excited atmosphere just prior to the Republican convention in Chicago to nominate candidates for president and vice president, did the Judiciary Committee report on Bingham's proposal. Bingham, who chaired the committee, delivered the majority report in favor of the measure's passage. Appended to the report were copies of the two odious laws on peon servants and black slaves. Rep. Miles Taylor of Louisiana filed a lengthy minority report opposing passage of Bingham's bill. Taylor had apparently been preparing his document for a long time, possibly since Bingham first introduced his measure. Taylor's minority report, running to over thirty pages in print, constituted one of the most thorough assertions of the South's

Constitutional defense of the right of its citizens to carry their slave property into the national territories and, while there, to expect the legal protection of their slaves as property. Taylor endeavored to demonstrate that Congress had limited powers over the territories and its authority did not extend to the disallowance of laws passed by a territorial legislature establishing and protecting local or municipal institutions. In Taylor's view and other Southerners' opinions, Bingham's bill had less to do with the specific features of the two New Mexico territorial laws in question, than with advancing Republican congressional efforts to exclude slavery from national territories. The bill thus placed slavery, in Abraham Lincoln's words from his famous "House Divided" speech in 1858, "in [the] course of ultimate extinction." Near the end of Taylor's report, the congressman wrote: "It is a hostile movement in the prosecution of the war now waged by a sectional party in the Union against the institutions of the people of another portion of the Union; . . . The attempt to annul the act of New Mexico for the protection of property in slaves is a blow aimed at slavery itself."<sup>38</sup>

Despite efforts by Southerners to delay a vote on the bill, the measure's opponents found themselves without sufficient numbers to hinder it effectively. Some of the Northern Democratic members, who would have opposed the proposal, were attending the Democratic National Convention in Baltimore, Maryland. Republicans successfully moved to impose the parliamentary device known as the "previous question," thus cutting off debate and bringing the bill quickly to a final vote and it passed ninety-seven to ninety. Every Republican except for Eli Thayer of Massachusetts voted in favor of the bill. Thayer, who had been active in the battle over Kansas several years earlier, had moderated to the point where he opposed congressional interference with the local institutions legally established by territorial governments, even if that institution was slavery. From the House, the bill went to the Democratic-controlled Senate where it was referred to the Committee on Territories, chaired by proslavery Democrat James S. Green of Missouri. His committee, as expected, adversely reported on the legislation on 8 June, killing any chance for the proposal in the Senate. Near the end of the session, Radical Republican senator Henry Wilson of Massachusetts attempted to salvage the part of Bingham's measure concerning, as Wilson called it, "white slavery" in New Mexico. Wilson, who had been born into dire poverty and was popularly known as the "Natick (Mass.) Cobbler," was particularly sensitive about labor issues, and on 13 June, he offered an amendment to the legislative-executive-judicial appropriation bill to have the New Mexico law on "correction" of servants from 1859 declared null and void. After Wilson briefly remarked on how this law "dishonor[ed] labor and degrade[d] laboring

men,” the Senate defeated his proposal 30 to 21, with a majority of Democrats and a few American Party members aligned against the Republicans. Some 1,870 miles to the southwest, New Mexican supporters of the slave code held a protest meeting in Santa Fe against Bingham’s bill, labeling Bingham’s legislation as an unjust attempt by “abolitionists” to meddle in their affairs.<sup>39</sup>

Although their effort to annul New Mexico’s slave code had failed in Congress, Republicans used New Mexico’s law as campaign propaganda in the election of 1860. Republicans liked to portray New Mexico’s statutes on servitude—white and black—as logical outcomes of Northern Democratic indifference to the Slave Power Conspiracy of the South to ultimately nationalize their “peculiar institution.” According to later statements by Massachusetts Republican leader Edward L. Pierce, Republicans in the election gained votes in “Egypt,” the Democratic stronghold in southern Illinois, more by portraying the New Mexico slave code as a result of Democratic policy than by any other political stratagem.<sup>40</sup> The Republican Executive Congressional Committee circulated, among its many pamphlets, one entitled “Bill and Report of John A. Bingham,” for Bingham’s attempted repeal of New Mexico’s two laws. This pamphlet may have been part of the party’s campaign effort in Democratic areas such as “Egypt.” Another pamphlet, “Bingham’s Bill and Report on the New Mexican Slave Codes,” appears to have been a Republican endeavor to target Thayer in particular for voting against Bingham’s bill. In 1860 the Massachusetts Ninth Congressional District voted to replace Thayer in the House.<sup>41</sup>

Opponents of the slave code in New Mexico renewed their efforts to repeal the law when the territorial legislature gathered for its Tenth Assembly in December 1860. Two days after Christmas, Dr. John Whitlock, originally from Kentucky and one of Keithly’s two colleagues in the House from San Miguel County, announced his intention to introduce a repeal bill, and on 11 January 1861 he offered his bill. Despite an attempt to reject the bill immediately, Whitlock’s measure received its first reading that day and its second the next. With several members reelected from the previous legislature who had opposed Keithly’s bill, the likelihood of Whitlock’s legislation achieving final passage remained dim. Following the second reading, Miguel E. Pino of Santa Fe County successfully moved to have Whitlock’s measure referred to the Committee of the Whole House. There it remained without further action until the session ended.<sup>42</sup>

Although both Keithly’s and Whitlock’s repeal bills failed, those proposals indicated resistance to the slave code in New Mexico. With Republicans unfriendly to slavery ready to assume the reins of power in Washington in March 1861, following the election of Abraham Lincoln as president in

November 1860, Alexander Jackson viewed the repeal bills as harbingers of bad things to come once Lincoln's administration took control. In a letter to a Mississippi acquaintance on 17 February 1861, Jackson pleaded for the new Confederate government in Montgomery, Alabama, to quickly demand that the U.S. government turn over control of New Mexico to the Confederacy. In his letter, Jackson confessed that the support for slavery in the territory was shallow, especially among the native Hispanic population. Under the influence of Republican patronage, he warned that the New Mexico slave code would not survive the next session of the territorial legislature, unless the Confederacy secured control of the territory by the beginning of the session in December 1861. Jackson declared that repeal of the slave code would clearly identify New Mexico with the Union cause.<sup>43</sup>

New Mexico's retention of its slave code, pro forma though it may have been, led to considerable attention being lavished on the territory by Congress during the second session of the 36th Congress, the momentous Secession Winter session between Lincoln's election in November 1860 and his inauguration on 4 March 1861. As an alternative to drastic compromise which no Republican could support, Upper South Unionists and moderate Republicans willing to entertain some compromise suggested that Congress immediately admit New Mexico to statehood, even if the territory chose to enter the Union as a slave state under its existing code. Rep. Henry Winter Davis, an American Party leader from Maryland, broached this idea in the special Committee of Thirty-three in the House, and Congressman Adams wrote the bill. Admission of New Mexico to statehood would rid Congress and the United States of the long-standing issue of slavery in national territories by transforming all of the remaining federal territory south of the old Missouri Compromise line into a state.<sup>44</sup> The political calculation of this maneuver would prevent Republicans from restating their opposition to slavery's expansion into national territories. In addition, very few Republicans believed that slavery as an institution would ever take hold in New Mexico, with or without a code. The measure, furthermore, would allow Republican supporters to appear willing to make at least this much of a conciliatory gesture regarding slavery to the Southern Unionists, especially those from the vital Border States. Southern Unionists, who were not anxious to secede from the Union, desired some such sign from the Republicans to use as evidence of their good intentions toward the South once Lincoln assumed the presidency.

The New Mexico statehood bill and a constitutional amendment prohibiting congressional interference with slavery in Southern states—the intention of the original Thirteenth Amendment—were the limits of Republican concession making. Southern Unionists, however, wanted stronger concessions,

although they seemed willing to accept the constitutional amendment when it gained a two-thirds vote from both houses of Congress at the end of the session. Sen. William H. Seward of New York, a Radical Republican and President-elect Lincoln's secretary of state-designate, drafted the amendment, but most Republican members opposed even this measure as conciliatory to Southerners threatening to dissolve the Union. Most Republican House members were even less than eager to support passage of Adams's New Mexico statehood bill. In the previous session, these same Republicans had attempted and failed to suppress the territory's slave code, and this bill would admit New Mexico to statehood with that slave law intact. Republicans had not altered their opinions on the inhumanity of some of the code's provisions.

President-elect Lincoln, residing at his home in Springfield, Illinois, until 11 February, shared the revulsion of his fellow Republicans to New Mexico's slave law, and through mid-January, he strongly expressed to those around him his disapproval of the statehood bill and those moderate Republicans who favored it. Lincoln simply did not want New Mexico admitted in the Union as a state unless its slave code was changed. He therefore did not urge Republicans in Congress to vote for the Adams bill. By the beginning of February, however, Lincoln had grudgingly relinquished his opposition to the bill, writing to Seward on 1 February that he cared little about New Mexico as long as any further extension of slavery beyond that area was blocked. Lincoln may have signaled this very reluctant change of mind about the bill in order to allow Republican politicians in Washington some maneuverability to more effectively influence the delicate political situation in crucial border slave states. But Lincoln neither seriously endorsed the Adams bill nor pressed Republicans to vote for it. He merely indicated that he would accept New Mexico statehood, with its slave code, if Congress saw fit to enact the measure to appease Southern Unionists.

Young Henry Adams, son of Charles Francis Adams, in an essay he penned after the session ended, seemed disgusted that Lincoln had not heartily pressured congressional Republicans to support his father's bill. He described the party majority in Washington as awaiting firm guidance from the "final authority" in Springfield, but "the word did not come." Adams may have judged Lincoln too harshly here and portrayed the Republicans in Congress as too undecided, for neither Lincoln nor most congressional Republicans could have enthusiastically supported the Adams bill, given their abhorrence of New Mexico Territory's slave-code provisions. Also dampening Republicans' fervor for the bill was their realization that Southern Unionists vehemently desired concessions on the territorial-slavery issue, not a statehood measure that would allow Republicans to hide from the slavery problem. It was during

the House debates on the New Mexico bill that Bingham condemned both white and black servitude laws in the territory as “two codes, which would bring blushes to the cheek of Caligula.” Subsequently, the Adams bill failed to pass the House.<sup>45</sup>

By the time Lincoln took office on 4 March 1861, seven states had seceded from the Union. In April, after the Lincoln administration had attempted to resupply the U.S. garrison at Ft. Sumter in Charleston, South Carolina, and the Confederates had bombarded the fort into surrender, Lincoln called for volunteers to put down the rebellion. His action led four additional Southern states to declare secession and the Civil War soon began in earnest. Out in New Mexico Territory, slave-state secession and the beginning of war rendered the territory’s slave code useless, even though it had always been just a tactical political maneuver. Most New Mexicans had little interest in the Confederacy, especially after Texas volunteers invaded the territory and occupied southern parts of New Mexico’s Rio Grande Valley in July and August 1861. Texans, “*los tejanos diablos*,” were bitterly disliked by most New Mexicans ever since 1850 when Texas had threatened to conquer New Mexico to enforce that state’s claim to all of the territory east of the Rio Grande.

When New Mexico’s territorial legislature met for its Eleventh Assembly at the beginning of December 1861, its members lost no time in reaffirming New Mexico’s loyalty to the Union cause. By that time, the popular governor Henry Connelly had begun his administration as Lincoln’s appointee. On 4 December, Connelly sent a message to the territorial legislature condemning Southern rebellion as “unholy, unjustifiable, and destructive” and praising the patriotism of the New Mexican population. The legislature quickly followed suit to display its unionism, and the first bill it enacted repealed the slave code. The bill was simple and short, containing only three sections. On 6 December, Facundo Pino of Santa Fe County introduced the measure in the Legislative Council, and he delivered a “lengthy discourse” in its favor. Rules were suspended, bill readings were quickly completed, and the bill was passed the same day by a nine to one vote, with only Francisco Tomas Cabeza de Baca of Santa Ana County opposed. The House repeated this process the following day. Speaker José Manuel Gallegos of Santa Fe County presented the council’s bill and spoke at some length in favor of House concurrence in it. Rule suspension and bill readings proceeded in rapid succession. No amendments were offered. The measure passed on 7 December by twenty-two to zero. A few days later, Governor Connelly signed the bill into law and New Mexico’s experiment with a slave code ended after only two years.<sup>46</sup>

The code had been an interesting sidelight in the developing politics of the sectional crisis, even gaining New Mexico Territory some national

attention from Congress between 1860 and 1861. Its importance, however, should not be overstated. From its inception, the code had largely been a political gimmick concocted by New Mexican politicians anxious to acquire federal favors for their distant, struggling territory. The code itself possessed some unique features, particularly the section that prohibited slave emancipation in the territory; this clause led Republicans to attack the law as the cruellest slave code enacted in the United States. But its presumed cruelty and everything else about this slave code were only for show. Once the code's Southern audience vanished from Congress in the secession crisis and the Civil War began, New Mexico's legislature quickly and easily brought down the curtain on their law recognizing property in slaves, and New Mexicans rallied to the Union cause.

#### Appendix 1—Transcription of New Mexico Slave Code of 1859

The New Mexico code is printed below in its entirety, with original spellings and punctuation retained. References to similar sections in other slave codes are given in the form of abbreviations and page numbers in endnotes following each section of the code. These abbreviations correspond to the information in appendix 2.

An Act to provide for the protection of property in Slaves in this Territory.<sup>1</sup>

Section 1. That every person who shall be convicted of the unlawful killing of a slave or other offence upon the person of a slave within this Territory, whether as principal or accessory, shall suffer the same pains and penalties as if the party upon whose person the offence was committed had been a free person.<sup>2</sup>

Sec. 2. Every person who shall steal any slave with the intent that the owner, or any one having an interest in such slave, present or future, vested or contingent, legal or equitable, shall be deprived of the use or benefit of such slave, shall, upon conviction, suffer imprisonment for a term not more than ten nor less than four years, and be fined in a sum not more than two thousand nor less than five hundred dollars. And every person who shall by violence, seduction, or other means, take and carry or entice away any slave with the like intent, shall be deemed and held, for every purpose whatever, to have stolen such slave within the meaning of this act. And every person who, knowing any slave to have been stolen as aforesaid, shall aid, assist or advise in or about the carrying away of such slave, shall suffer the like penalties as are above prescribed against the person stealing such slave as aforesaid.<sup>3</sup>

Sec. 3. Every person who shall carry or convey, or wilfully assist in carrying or conveying any slave, the property of another, with the intent or for the purpose of aiding or enabling such slave to escape out of this Territory, or within this Territory and beyond the control or recovery of his owner or master, or who shall wilfully secrete or conceal such slave from his owner or master, shall, upon conviction thereof, suffer the same penalties as are prescribed in the foregoing section of this act. And in any indictment preferred against any person for the violation of any of the provisions of this act, the property in the slave shall be well laid, if charged to belong to any person having an interest in such slave, whether such interest be legal or equitable, present or future, joint or several, vested or contingent.<sup>4</sup>

Sec. 4. Every person who shall forge or furnish to any negro, free or slave, any false or fabricated free papers or false evidences in print or writing of the freedom of such negro, shall, upon conviction, suffer imprisonment for a term not more than five years nor less than six months, and be fined in a sum not more than one thousand nor less than one hundred dollars.<sup>5</sup>

Sec. 5. Any person who shall hire, entice, persuade, or in any manner induce any slave to absent himself from the service or custody of his owner or master, or who shall, upon any pretence, harbor or maintain any slave so absenting himself from such service or custody, shall, upon conviction thereof, suffer fine and imprisonment as prescribed in section four of this act, and shall besides be liable to the owner or master in a civil suit for damages.<sup>6</sup>

Sec. 6. Any person who shall endeavor to excite in any slave a spirit of insurrection, conspiracy or rebellion, or who shall advise, countenance, aid, or in any manner abet any slave in resistance against his owner or master, shall, upon conviction, suffer imprisonment not less than three months nor more than three years, and be fined in a sum not less than twenty-five nor more than one thousand dollars.<sup>7</sup>

Sec. 7. Any person who shall sell, lend, hire, give, or in any manner furnish to any slave any sword, dirk, bowie-knife, gun, pistol or other fire arms, or any other kind of deadly weapon of offence, or any ammunition of any kind suitable for fire arms, shall, upon conviction, suffer the penalties prescribed in section six of this act: Provided, that nothing herein contained shall be so construed as to prohibit the owner or master of any slave from temporarily arming such slave with such weapon and ammunition for the purpose of the lawful defence of himself, his family or property.<sup>8</sup>

Sec. 8. All trade or traffic between free persons and slaves in any article of goods, merchandize, provisions, supplies, or other commodity whatever, is hereby prohibited, unless the slave shall have and exhibit the permission of his owner or master in writing, to trade or traffic, which written permission must specifically set forth the articles or commodities which such slave is authorized to sell, buy or barter. And any persons who shall violate the provisions of this section shall, upon conviction, suffer the penalties prescribed in section six of this act. And if any person other than the owner or master of such slave shall furnish to any such slave any fabricated, false or forged permit to trade as aforesaid, he shall suffer the same penalties as are prescribed in the said sixth section of this act.<sup>9</sup>

Sec. 9. Any free person who shall play with any slave at any game of cards, or any other game of skill, chance, hazard or address, either with or without betting thereon, shall be held guilty of a misdemeanor, and be fined in a sum not exceeding one hundred dollars, or imprisoned not exceeding three months, or both, at the discretion of the court.<sup>10</sup>

Sec. 10. Any person may lawfully take up or apprehend any slave who shall have run away, or be absenting himself from the custody or service of his master or owner, and may lawfully use or employ such force as may be necessary to take up or apprehend such slave; and such person upon the delivery of such slave to his master or owner, or at such place as such master or owner may designate, shall be entitled to demand or recover by suit any reward which may have been offered for the apprehension or delivery of such slave. And if no reward has been offered, then such person, so apprehending such slave, shall, upon the delivery of such slave to his master or owner, or to the sheriff of the county in which such slave was apprehended, be entitled to demand and recover from such owner or master the sum of twenty dollars, besides ten cents for each mile of travel to and from the place where such apprehension was made.<sup>11</sup>

Sec. 11. If any sheriff of any county within this Territory shall fail or refuse to receive and keep with proper care any runaway slave so offered to him for safe-keeping by such person apprehending the same, or his agent, such sheriff shall, upon conviction thereof, be fined in a sum not less than five hundred dollars, to the use of the Territory; shall further be liable to the owner of such slave for his value, recoverable by civil suit, and shall be ineligible for re-election to the said office.<sup>12</sup>

Sec. 12. The said sheriff, upon receiving such runaway into his custody as aforesaid, shall forthwith cause to be inserted in some public

newspaper of this Territory a full and particular description of such slave, stating therein the date of his commitment to jail as a runaway, which advertisement he shall cause to be continued for the space of six months, unless such slave shall sooner be delivered up to his owner or master, upon proof of ownership or right of possession and payment of all costs, as hereinafter provided. But if, at the expiration of six months from the date of the first insertion of such advertisement, no owner or master shall appear and reclaim his said slave, then it shall be the duty of the said sheriff to cause to be inserted in such newspaper a further advertisement, setting forth as before a full description of such slave, with the date of his commitment as aforesaid, and a recital of the former advertisement, and giving notice that upon a particular day to be named, not less than six nor more than seven months subsequent to the first insertion of such advertisement, he will, at the door of his jail or of the court-house of his county, sell the said slave to the highest bidder for cash. And on the sale-day so appointed, the said sheriff, or his successor in office, shall, accordingly, between the hours of 12 o'clock P.M. and 2 o'clock P.M., at the place of sale, offer at public venue and sell to the highest bidder for cash, the said slave, and shall execute to the purchaser his bill of sale for such slave, which shall vest in such purchaser a good and indefeasible title against all persons whatever: Provided, however, that if the owner or master shall, at any time before such sale, appear and reclaim the said slave as hereinafter provided, and pay all costs and expenses due to the said sheriff, the taker-up and the newspaper, (for all which the sheriff is authorized to receipt,) then such slave shall be delivered up to such owner or master.<sup>13</sup>

Sec. 13. Before any slave in custody of the sheriff as a runaway shall be delivered up to any claimant, such claimant shall, *First*, prove by the affidavit of some disinterested person taken before some judge, justice of the peace, or notary public, (whose official characters, if officers of another State or Territory, shall be legally authenticated,) that he, the claimant, has lost such a slave as described in the advertisement aforesaid; *Second*, the claimant shall make his own affidavit that the slave in custody is the identical slave so lost, and to which he is entitled as owner or master (or as agent for the owner or master, producing authority as such agent by power of attorney duly acknowledged and authenticated); *Third*, give bond to the said sheriff with security to be approved by him, to indemnify him against the lawful claim or claims of all other persons to such slave; *Fourth*, pay all costs and charges, as follows: the fee for apprehension as aforesaid with mileage, the sheriff's

costs of one dollar for receiving such slave into custody, one dollar for each advertisement made as aforesaid, and ten cents per day for each day the said slave has remained in his custody, and also the costs of the newspaper for the advertisement of such slave.<sup>14</sup>

Sec. 14. If, after delivering up such slave to such claimant, any other person should appear and demand the said slave as his right and property, the said sheriff shall assign and deliver the said bond to such person, who may thereon institute suit in his own name and recover the value of said slave and all damages from the makers of such bond, but the said sheriff shall be thereby fully acquitted of all liability on account of the said slave: Provided, nothing herein shall be construed to prevent the true owner from proceeding against the person in possession of such slave for the specific recovery of such slave, or for any other redress against such person as he may be legally entitled to.<sup>15</sup>

Sec. 15. In case such slave shall be sold as provided in section 12, then it shall be the duty of the said sheriff, after first deducting the costs and charges aforesaid, and the further costs of five per cent upon the proceeds of such sale as his commission thereon, to pay over the surplus of such proceeds to the Territorial Treasurer, taking his receipt therefor, and filing with such Treasurer a statement of all costs and charges retained by him as aforesaid; and the said Treasurer shall duly charge himself with and account for such proceeds as for other public funds.<sup>16</sup>

Sec. 16. If any person shall fail to maintain or properly provide food, lodging and raiment for any slave of which he is the owner, any judge of the district court, probate judge, or justice of the peace, may, and upon sworn information made before him shall cause such person by his warrant to be brought before him, and upon investigation and proof of such facts in a summary manner without appeal, such judge or justice may require such person to enter into bond with sufficient surety payable to the Territory in such sum as he shall require, and conditioned for the support and maintenance of such slave in the future, which bond may at any time thereafter be put in suit upon the affidavit of any person that the same has become forfeited.<sup>17</sup>

Sec. 17. When a slave shall be indicted for felony, the clerk of the court, upon the arrest of such slave or return of such indictment, shall issue a citation to the owner or master named in such indictment, requiring him to appear and defend his said slave; and in case such owner or master shall not so appear, it shall be the duty of the court trying the same to appoint counsel for such slave, who shall be authorized to direct the summons of all witnesses for the defence, and

in all respects to conduct the same; and the court shall allow to such counsel a reasonable fee for his services, and tax the same as other costs, and award execution against the said owner therefor.<sup>18</sup>

Sec. 18. Any owner of a slave indicted and convicted of cruel and inhuman treatment to such slave, shall be punished by imprisonment not more than one year, and fine not more than one thousand dollars.<sup>19</sup>

Sec. 19. Any owner of a slave who shall suffer such slave to hire his own time, or go at large and employ himself as a free man, for more than twenty-four hours at any one time, shall, upon conviction thereof, before any justice of the peace, be fined in a sum not exceeding one hundred dollars, to enure to the county treasury.<sup>20</sup>

Sec. 20. Any slave who shall conduct himself disorderly in a public place, or shall give insolent language, or signs, to any free white person, may be arrested and taken by such person before a justice of the peace, who, upon trial and conviction in a summary manner, shall cause his constable to give such slave any number of stripes upon his bare back, not exceeding thirty-nine.<sup>21</sup>

Sec. 21. When any slave shall be convicted of any crime or misdemeanor for which the penalty assigned by law is in all or in part of a sum of money, the court passing sentence upon him may, in its discretion, substitute for such fine corporal punishment by branding or with stripes.<sup>22</sup>

Sec. 22. No slave, free negro or mulatto shall be permitted to give evidence in any court against a free white person, but against each other they shall be competent witnesses.<sup>23</sup>

Sec. 23. Marriages between white persons and slaves or free negroes or mulattoes are prohibited, and such rites of matrimony are declared void; and any free white person attempting to enter into or procure a marriage with such slave, or free negro or mulatto, upon indictment and conviction shall be punished with imprisonment not exceeding six months, and fine not exceeding three hundred dollars.<sup>24</sup>

Sec. 24. Any slave, free negro or mulatto, who shall commit or attempt to commit a rape upon the person of any white woman, shall, upon conviction thereof, suffer death.<sup>25</sup>

Sec. 25. The emancipation of slaves within this Territory is totally prohibited.<sup>26</sup>

Sec. 26. No slave shall be permitted to go from the premises of his owner or master, after sunset and before sunrise, without a written pass specifying the particular place or places to which such slave is permitted to go; and any white person is authorized to take any slave,

who upon demand shall not exhibit such pass, before any justice of the peace, who, upon summary investigation, shall cause such slave to be whipped with not more than thirty-nine stripes upon his bare back, and to be committed to the jail or custody of a proper officer, to be released the next day on the demand and payment of costs by the owner or master.<sup>27</sup>

Sec. 27. Any person claiming to be entitled to the possession of any slave, which is withheld from him, may either institute his action of replevin therefor, as for other property, or upon his sworn petition directed to the district judge of the district wherein such slave may be, shall be entitled to the writ of *habeas corpus* directed to the person having such slave in possession, upon which such proceedings shall be had as are now had upon such process when instituted for other persons; and if the judge upon hearing such cause shall see fit, he may require the party to whom he adjudges the possession of the slave, to enter into such bond to such amount, and with such security as he shall approve, payable to the adverse party, conditioned for the safe delivery of said slave, to abide the judgment or decree of any court of competent jurisdiction, which may be rendered in any suit to be instituted within six months from the date of such bond; which bond, upon breach thereof, may be prosecuted to judgment against the makers of the same, or any of them, by the payee thereof, his executors or administrators, or assigns. And any court of chancery shall entertain a bill for the specific recovery of any slave without allegation or proof of peculiar value or *pretium affectionis*.<sup>28</sup>

Sec. 28. Any person who shall hold as a slave any negro or mulatto who is entitled to his freedom, shall, upon conviction, suffer imprisonment for a term not exceeding ten nor less than five years, and be fined in a sum not less than five hundred nor more than two thousand dollars.<sup>29</sup>

Sec. 29. When a word in this act is used in the masculine form, it shall include the feminine; where used in the singular, it shall include the plural, and *vice versa*; and the word "master" shall be taken to include any person who, whether as owner, bailee or otherwise, has or is entitled to have the immediate possession or control of the slave.<sup>30</sup>

Sec. 30. That this act shall in no manner apply to relation between masters and contracted servants in this Territory, but the word "slave" shall only apply to the African race.<sup>31</sup>

Sec. 31. That this act shall be in force from and after its passage.

Appendix 2—Law Codes of U.S. States, Territories, and District of  
Columbia Cited in Appendix 1

<i>Code Abbreviation</i>	<i>Code or Statutes Cited</i>
Alabama	<i>The Code of Alabama</i> . Compiled by John J. Ormond, Arthur P. Bagby, and George Goldthwaite. Montgomery, Ala.: Brittan and De Wolf, State Printers, 1852.
Arkansas	<i>A Digest of the Statutes of Arkansas, embracing all laws of a general and permanent character</i> . . . . Compiled by Josiah Gould. Little Rock, Ark.: Johnson & Yerkes, 1858.
Delaware	<i>Revised Statutes of the State of Delaware</i> . . . . Dover, Del.: Samuel Kimmey, 1852.
District of Columbia	<i>The Black Code of the District of Columbia, in Force, September 1st, 1848</i> . Compiled by Worthington G. Snethen. New York: American and Foreign Anti-Slavery Society, 1848. In <i>Slavery, Race, and the American Legal System, 1700–1872</i> . Edited by Paul Finkelman. Series 7, vol. 2: <i>Statutes on Slavery: The Pamphlet Literature</i> . New York: Garland Publishing, Inc., 1988.
Florida	<i>A Manuel or Digest of the Statute Law of the State of Florida, of a General and Public Character</i> . . . . Compiled by Leslie A. Thompson. Boston, Mass.: Little, Brown, 1847.
Georgia	<i>A Compilation of the General and Public Statutes of the State of Georgia</i> . . . . Compiled by Howell Cobb. New York: Edward O. Jenkins, 1859.
Kansas Territory	<i>The Statutes of the Territory of Kansas, Passed at the First Session of the Legislative Assembly, One Thousand Eight Hundred and Fifty-five</i> . Shawnee M. L. School: John T. Brady, 1855. In <i>The Records of the States of the United States of America</i> . Compiled by William S. Jenkins. Washington, D.C.: Library of Congress Photoduplication Service, 1949. Kansas, B.1, roll 1.
Kentucky	<i>The Revised Statutes of Kentucky</i> . . . . Compiled by C. A. Wickliffe and S. S. Nicholas. Frankfort, Ky.: A. G. Hodges, State Printer, 1852.

Louisiana	<i>The Revised Statutes of Louisiana.</i> Compiled by U. B. Phillips. New Orleans, La.: J. Claiborne, 1856.
Maryland	<i>The Maryland Code.</i> Compiled by Otho Scott and Hiram McCullough. Vol. 1. Baltimore, Md.: J. Murphy and Co., 1860.
Mississippi	<i>The Revised Code of the Statute Laws of the State of Mississippi.</i> Jackson, Miss.: E. Barksdale, 1857.
Missouri	<i>The Revised Statutes of the State of Missouri.</i> . . . Compiled by Charles Hardin. Jefferson, Mo.: J. Lusk, 1856.
North Carolina	<i>Revised Code of North Carolina, enacted by the General Assembly at the Session of 1854.</i> . . . Compiled by Bartholomew F. Moore and Asa Biggs. Boston, Mass.: Little, Brown, 1855.
South Carolina	<i>The Statutes at Large of South Carolina.</i> Compiled by Thomas Cooper and David J. McCord. Vol. 7. Columbia, S.C.: A. S. Johnston, 1836–1841.
Tennessee	<i>The Code of Tennessee.</i> Compiled by Return J. Meigs and William F. Cooper. Nashville, Tenn.: E. G. Eastman, 1858.
Texas	<i>A Digest of the General Statute Laws of the State of Texas.</i> . . . Compiled by Williamson S. Oldham and George W. White. Austin, Tex.: John Marshall, 1859.
Utah Territory	<i>Acts, Resolutions and Memorials, Passed at the Several Annual Sessions of the Legislative Assembly of the Territory of Utah.</i> Great Salt Lake City, Utah: Joseph Cain, 1855.
Virginia	<i>The Code of Virginia.</i> . . . Richmond, Va.: W. F. Ritchie, 1849.

## Notes

1. Congressman Bingham, speech in the House of Representatives, on 22 January 1861, *Congressional Globe*, 36th Cong., 2d sess., 1860–1861, Appendix, 83.
2. On peonage in New Mexico, see *Revised Statutes and Laws of the Territory of New Mexico* . . . (St. Louis, Mo.: R. P. Studley, 1865), 542, 544, 546, 548, 550, roll 3, Statutory Law, B.1 (Washington, D.C.: Library of Congress in association with the University of North Carolina, 1949), in *Records of the States of the United States of America: A Microfilm Compilation*, comp. William S. Jenkins [hereafter *Revised Statutes and Laws of the Territory of New Mexico*]; Hubert Howe Bancroft, *History of Arizona and New Mexico, 1530–1888*, The Works of Hubert Howe Bancroft, vol. 17 (San Francisco,

- Calif.: The History Company, 1889), 681–83; Ralph E. Twitchell, *The Leading Facts of New Mexican History*, 5 vols. (Cedar Rapids, Iowa: Torch Press, 1911–1917), 2:324–25; Loomis M. Ganaway, *New Mexico and the Sectional Controversy, 1846–1861*, Publications in History, vol. 12, Historical Society of New Mexico (Albuquerque: University of New Mexico Press, 1944), 9–12, 71–72; and Warren A. Beck, *New Mexico: A History of Four Centuries* (Norman: University of Oklahoma Press, 1962), 145–46. For a defense of the institution of slavery by the territorial delegate Miguel A. Otero, see *Washington (D.C.) Constitution*, 12 January 1861.
3. On Indian slavery in New Mexico, see letter from “Spectator,” 9 April 1861, *St. Louis Daily Missouri Republican*, 24 April 1861; Bancroft, *History of Arizona and New Mexico*, 681; Ganaway, *New Mexico and the Sectional Controversy*, 9, 72–73; Beck, *New Mexico*, 146; and James F. Brooks, *Captives and Cousins: Slavery, Kinship, and Community in the Southwest Borderlands* (Chapel Hill: University of North Carolina Press, 2002), 297–99. For examples of black slavery in the territory, see John S. Watts, testimony to Republican members of U.S. House of Representatives, Committee of Thirty-three, telegraphic dispatch, *New York Times*, 27 December 1860; and Bancroft, *History of Arizona and New Mexico*, 681.
  4. Alvin R. Sunseri, *Seeds of Discord: New Mexico in the Aftermath of the American Conquest, 1846–1861* (Chicago, Ill.: Nelson-Hall, 1979), 116–17.
  5. “Extracto del octavo censo de los estados unidos, tomado en el territorio del nuevo méjico, en el ano de 1860 con arreglo al acto del congress aprobado mayo 23 de 1850,” box 2, folder 80, item no. 239, Ralph E. Twitchell Collection, and box 7, folder 343, Donaciano Vigil Collection, New Mexico State Archives, Santa Fe. A newspaper copy of the same extract is in *Philadelphia Inquirer*, 26 February 1861; and *St. Louis Daily Missouri Republican*, 21 February 1861. See also New Mexico, Federal Census, 1860, r. 712–16, microfilm (Washington, D.C.: National Archives and Record Service, 1867), *Eighth Census of the United States*, microcopy 653, National Archives Microfilm Publications, Records of the Bureau of the Census, Record Group 29, National Archives, Washington, D.C. [hereafter, New Mexico, Federal Census, r. (no.), M653, RG 29, NA]; Susan B. Carter et al., eds., *Historical Statistics of the United States: Earliest Times to the Present*, Millennial Ed. (New York: Cambridge University Press, 2006), 1:303; and U.S. Federal Census of 1860, accessed at <http://search.ancestry.com/search/db.aspx?dbid=7667>.
  6. The lowest estimate was seven, given by Rep. John R. Barret, a Missouri Democrat, in a House speech on 21 February 1861, *Congressional Globe*, 36th Cong., 2d sess., Appendix, 248. The highest estimate of fifty was given by John S. Watts, *New York Times*, 27 December 1860. Gov. Abraham Rencher in April 1861 estimated that no more than two dozen slaves were in New Mexico. Rencher to William H. Seward, 14 April 1861, 2 January 1861–23 December 1864, r. 2, microfilm (Washington, D.C.: National Archives and Record Service, 1954) *State Department Territorial Records, New Mexico, 1851–1872*, microcopy T17, Center for Southwest Research, University Library, University of New Mexico, Albuquerque [hereafter r. (no.), T17, CSWR, UNM].
  7. For more on the law of 1857 which restricted free blacks and mulattoes, see *Revised Statutes and Laws of New Mexico*, 456, 458; and Ganaway, *New Mexico and the Sectional Controversy*, 59.

8. Otero to Sen. George E. Pugh (D-OH), 11 January 1861, *Memphis (Tenn.) Daily Appeal*, 20 January 1861.
9. *Washington (D.C.) Constitution*, 12 January 1861.
10. Terr. Del. Miguel A. Otero to Terr. Sec. Alexander M. Jackson, 16 December 1858, in “Bill and Report of John A. Bingham, and Vote on its Passage: Repealing the Territorial New Mexican Laws Establishing Slavery and Authorizing Employers to Whip ‘White Person’ and Others in Their Employment and Denying Them Redress in the Courts,” (Washington, D.C.: Republican Executive Congressional Committee, 1860), p. 1, Rare Books, William G. Ritch Collection, Henry E. Huntington Library, San Marino, California [hereafter Rare Books, Ritch Collection, Huntington Library]; *New York Daily Tribune*, 28 March 1861; and Ganaway, *New Mexico and the Sectional Controversy*, 68. In his letter to Senator Pugh, 11 January 1861 in *Memphis (Tenn.) Daily Appeal*, 20 January 1861, Otero denied that New Mexico’s slave code had been instigated from Washington, but he had played a significant role in pressing the matter from the nation’s capital.
11. Terr. Del. Miguel A. Otero to Jackson, 16 December 1858, “Bill and Report of John A. Bingham, and Vote on its Passage,” p. 1, Rare Books, Ritch Collection, Huntington Library. On Jackson, see Ganaway, *New Mexico and the Sectional Controversy*, 65; Twitchell, *Leading Facts*, 2:372 n. 295–96; Martin H. Hall, *Sibley’s New Mexico Campaign* (Austin: University of Texas Press, 1960), 14–16; Ray C. Colton, *The Civil War in the Western Territories: Arizona, Colorado, New Mexico, and Utah* (Norman: University of Oklahoma Press, 1959), 22, 68–69, 201; and Donald S. Frazier, *Blood and Treasure: Confederate Empire in the Southwest* (College Station: Texas A&M University Press, 1995), 76, 250–51, 295. Jackson, a Confederate, served as a member of General H. H. Sibley’s staff during the Confederate invasion of New Mexico. On Clever and Collins, see Twitchell, *Leading Facts*, 2:125, 411 n. 337; and Ganaway, *New Mexico and the Sectional Controversy*, 63–64. For details on Rencher, see Ganaway, *New Mexico and the Sectional Controversy*, 66–67.
12. Otero to Charles P. Clever, 24 December 1858, Rare Books, Ritch Collection, Huntington Library; and Ganaway, *New Mexico and the Sectional Controversy*, 66–69.
13. Terr. Del. Miguel A. Otero to U.S.M. Charles P. Clever, 24 December 1858, Rare Books, Ritch Collection, Huntington Library; and Ganaway, *New Mexico and the Sectional Controversy*, 62–64.
14. Letter to the editor from “Sacramento,” *New York Daily Tribune*, 8 March 1861; and “The Slave Code of New Mexico,” *New York Daily Tribune*, 16 April 1861.
15. *Journal of the House of Representatives of the Territory of New Mexico*, session 1858–1859 (Santa Fe, N.Mex.: A. De Marle, 1859), 67, 70, 71, r. 2, Legislative Records, A.1a, in *Records of the States*, comp., Jenkins [hereafter *Journal of the House of Representatives of the Territory of New Mexico*]; and Ganaway, *New Mexico and the Sectional Controversy*, 69–70. On Hovey, see Santa Fe County, New Mexico, Federal Census, r. 714, M653, RG 29, NA.
16. *New Mexico House Journal*, 1858–1859, 79, r. 2, Legislative Records, A.1b in *Records of the States*, comp., Jenkins [hereafter *New Mexico House Journal*]; and *Santa Fe (N.Mex.) Gazette*, 29 January 1859. According to Ganaway, the vote was twenty-three to one, but he seems influenced by the *Gazette*’s statement about one dissent rather than by the actual record, which shows no roll call to divide yeas and nays. Ganaway,

- New Mexico and the Sectional Controversy*, 70. Newspapers farther east took their accounts from the *Gazette*. For example, see *New York Daily Tribune*, 3 and 4 March 1859; and *St. Louis Daily Missouri Republican*, 21 and 25 February 1859.
17. *Journal of the Legislative Council of the Territory of New Mexico*, session 1858–1859 (Santa Fe, N.Mex.: A. De Marle, 1859), 63, 67, r. 3, Legislative Records, A.1a, in *Records of the States*, comp., Jenkins; and *New Mexico House Journal*, 1858–59, 91. On Connelly, see Twitchell, *Leading Facts*, 2:390–91 n. 316. On Head, see Taos County, New Mexico, Federal Census, r. 716, M653, RG 29, NA.
  18. For the peonage law of 1859, see *Revised Statutes and Laws of New Mexico*, 548, 550; and Ganaway, *New Mexico and the Sectional Controversy*, 71.
  19. A printed copy of the original bill is in “An Act to Provide for the Protection of Property in Slaves in This Territory,” r. 10, container 15, John Hay Papers, Manuscripts Division, Library of Congress, Washington, D.C. This version was also printed in the *New York Daily Tribune*, 10 March 1859.
  20. Adams to Rep. Everett C. Banfield, 13 January 1861, Charles Francis Adams’ Letterbooks, microfilm, r. 164 (Boston: Massachusetts Historical Society, 1954–1959), part 2, Adams Papers, Massachusetts Historical Society, Boston.
  21. *Congressional Globe*, 36th Cong., 2d sess., 1312–13.
  22. “Sacramento,” *New York Daily Tribune*, 8 March 1861; and “The Slave Code of New Mexico,” *New York Daily Tribune*, 16 April 1861. For the best overall analysis of slavery in the legal systems of Southern states, see Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: University of North Carolina Press, 1996).
  23. *St. Louis Daily Missouri Republican*, 5 March 1859; and *Charleston (S.C.) Mercury*, 16 March 1859.
  24. Editorial, *St. Louis Daily Missouri Democrat*, 1 March 1859. Mention of the killing of the officer’s slave by Indians is found in two letters from Samuel B. Watrous at Barclay’s Fort. *St. Louis Daily Missouri Democrat*, 6 April and 18 May 1859.
  25. The Slave Power Conspiracy was the Radical Republican notion that a minority of politically powerful slaveholders plotted to use the federal government in order to “make slavery the ruling interest of the republic.” For a more detailed definition of the Slave Power Conspiracy, see Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970), 73.
  26. *New York Daily Tribune*, 3, 10, 18, and 28 March 1859. The extract is found in the 28 March issue. For more on the Slave Power Conspiracy in Antebellum politics, see David Brion Davis, *The Slave Power Conspiracy and the Paranoid Style* (Baton Rouge: Louisiana State University Press, 1970).
  27. The views of contemporaries in New Mexico as to the unsuitability of the territory for black slavery are neatly quoted and summarized in Sunseri, *Seeds of Discord*, 116, 119–21.
  28. “Sacramento,” *New York Daily Tribune*, 8 March 1861; and “The Slave Code of New Mexico,” *New York Daily Tribune*, 16 April 1861.
  29. Samuel B. Watrous, telegraph from 8 March 1860, *St. Louis Daily Missouri Democrat*, 2 May 1860. For more on Watrous, see Robert Julyan, *The Place Names of New Mexico* (Albuquerque: University of New Mexico Press, 1996), 376–77.

30. Watrous, telegraph from 8 March 1860, *St. Louis Daily Missouri Democrat*, 2 May 1860; Watrous to a member of Congress, 10 April 1860, quoted in “Bill and Report of John A. Bingham,” 1–2, Rare Books, Ritch Collection, Huntington Library; “Sacramento,” *New York Daily Tribune*, 8 March 1861; “The Slave Code of New Mexico,” *New York Daily Tribune*, 16 April 1861; and *Journal of the House of Representatives of the Legislative Assembly of New Mexico, 9th Assembly* (Santa Fe, N.Mex.: O. P. Hovey, 1860), 96–97, r. 2, Legislative Records, A.1b in *Records of the States*, comp., Jenkins [hereafter *Journal of the House of Representatives of the Legislative Assembly of New Mexico*]. On Keithly, see San Miguel County, New Mexico, Federal Census, 1860, r. 469, microfilm (Washington, D.C.: National Archives and Record Service, 1867), *Seventh Census of the United States*, microcopy 653, National Archives Microfilm Publications, Records of the Bureau of the Census, Record Group 29, National Archives [hereafter New Mexico, Federal Census, r. (no.) M653, RG 29, NA]; and Robert W. Larsen, *New Mexico’s Quest for Statehood, 1846–1912* (Albuquerque: University of New Mexico Press, 1968), 32. Kavanaugh was almost certainly from a Southern state, but this mysterious character appears in neither the census records of 1850 or 1860. When the Confederates under Gen. Sibley invaded New Mexico during the Civil War, Kavanaugh aided them as much as he could with supplies. Marc Simmons, *The Little Lion of the Southwest: A Life of Manuel Antonio Chaves* (Chicago: Sage Books, 1973), 181, 241, 243.
31. My account of the “open house” is based on Watrous, 8 March 1860, *St. Louis Daily Missouri Democrat*, 2 May 1860, and Watrous to a member of Congress, 10 April 1861, quoted in “Bill and Report of John A. Bingham,” 1–2, Rare Books, Ritch Collection, Huntington Library; Keithly’s statement is in *Journal of the House of Representatives of the Legislative Assembly of New Mexico*, 99; “Sacramento,” 8 March 1861, *New York Daily Tribune*; “The Slave Code of New Mexico,” *New York Daily Tribune*, 16 April 1861; and Ganaway, *New Mexico and the Sectional Controversy*, 74. In the last of these accounts, Rep. Trujillo’s name is given as “Imjillo,” most likely due to a misreading of the handwriting in the original letter by the *Tribune* staff. “Mint drops” was slang for gold coins in the mid-nineteenth-century United States. The expression caught on after Sen. Thomas Hart “Old Bullion” Benton, during a Jacksonian-era speech promoting gold currency, accidentally referred to gold coins as “mint drops.” Naturally enough, the public began referring to gold coins sometimes as “Benton’s mint drops,” for years thereafter. William A. Craigie and James R. Hulbert, eds., *A Dictionary of American English on Historical Principles*, 4 vols. (Chicago: University of Chicago Press, 1942), 3:1528; and J. A. Simpson and E. S. C. Weiner, eds., *The Oxford English Dictionary*, 2d ed., 10 vols. (Oxford: Clarendon Press, 1989), 9:829.
32. *New Mexico House Journal*, 97–98; Watrous to a member of Congress, 10 April 1860, quoted in “Bill and Report of John A. Bingham,” 1–2; and “Sacramento,” *New York Daily Tribune*, 8 March 1861; “The Slave Code of New Mexico,” *New York Daily Tribune*, 16 April 1861.
33. *New Mexico House Journal*, 98; “Sacramento,” *New York Daily Tribune*, 8 March 1861; Watrous, *St. Louis Daily Missouri Democrat*, 21 February 1861; “Report of the Special Committee of the House of Representatives of the Territory of New Mexico Upon the Bill to Repeal the Act of February 3 1859 for the Protection of Property

- in Slaves,” 3 March 1851–8 December 1860, r. 1, T17, CSWR, UNM; and Ganaway, *New Mexico and the Sectional Controversy*, 73–74.
34. *New Mexico House Journal*, 99–102.
  35. *Ibid.*, 127; and *Journal of the Legislative Council of the Territory of New Mexico* (Santa Fe, N.Mex.: O. P. Hovey, 1860), 107–9, r. 3, Legislative Records, A.1a, in *Records of the States*, comp., Jenkins. On Ashurst, see Santa Fe County, New Mexico, Federal Census, r. 714, M653, RG 29, NA; and Twitchell, *Leading Facts*, 2:411 n. 337. Twitchell mistakenly says Ashurst was born in Alabama; the census of 1860 clearly lists his state of birth as Georgia.
  36. Rencher’s message is printed in *Journal of the House of Representatives of the Territory of New Mexico*, 12–13. For cases in Virginia and North Carolina regarding Indian slavery, see Finkelman, *Law of Freedom and Bondage*, 21–24. See also Brooks, *Captives and Cousins*, 329–30.
  37. U.S. Congress, *House Journal*, 36th Cong., 1st sess., 5 June 1859, serial no. 1041, p. 303; and *Congressional Globe*, 36th Cong., 1st Sess., 808. For the principal clauses in the act of 1850 creating New Mexico Territory, see Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (Lexington: University of Kentucky Press, 1964), 201–203. This bill was introduced during the intensely volatile months following John Brown’s raid on the Federal arsenal at Harpers Ferry, Virginia, in October 1859 and his subsequent execution that December.
  38. Both reports are in U.S. House, “Slavery in the Territory of New Mexico,” 36th Cong., 1st sess., 10 May 1860, H. Rep. 508, serial no. 1069. The quotations from Taylor’s minority report are on pp. 34–35. See also Ganaway, *New Mexico and the Sectional Controversy*, 75. On the “House Divided” speech, see Don E. Fehrenbacher, *Prelude to Greatness: Lincoln in the 1850’s* (Stanford, Calif.: Stanford University Press, 1962), 70–95.
  39. For the House and Senate proceedings on Bingham’s bill, see *House Journal*, 36th Cong., 1st sess., 5 June 1859, serial no. 1041, pp. 814–16; U.S. Congress, *Senate Journal*, 36th Cong., 1st sess., 5 December 1859, serial no. 1022, pp. 459–60, 587; *Congressional Globe*, 36th Cong., 1st sess., 2045–46, 2059, 2744. Ganaway discusses the Santa Fe protest in *New Mexico and the Sectional Controversy*, 75–76. For more on Wilson’s actions in the Senate, see *Senate Journal*, 36th Cong., 1st sess., 5 December 1859, serial no. 1022, pp. 649–50; and *Congressional Globe*, 36th Cong., 1st sess., 2932.
  40. Pierce to Charles Sumner, 3 January 1861, r. 21, Papers of Charles Sumner, 1811–1874, Houghton Library, Harvard University, Cambridge, Massachusetts; unsigned article by Edward L. Pierce, *Boston (Mass.) Daily Atlas and Bee*, 9 January 1861; and Mark J. Stegmaier, “‘An Imaginary Negro in an Impossible Place’? The Issue of New Mexico Statehood in the Secession Crisis, 1860–1861,” *New Mexico Historical Review* 84 (spring 2009): 275–76, 288 n. 19–20.
  41. “Bingham’s Bill and Report on the New Mexican Slave Codes,” 1860, pamphlet, Rare Books, Wagner Collection, Huntington Library; and “Bill and Report of John A. Bingham, and Vote on its Passage,” Rare Books, Ritch Collection, Huntington Library.
  42. *Journal of the House of Representatives of the Territory of New Mexico, Tenth Session*, 40, 66–67; and Watrous, letter from 22 January 1861, in *St. Louis Daily Missouri Democrat*, 21 February 1861. On Whitlock, see New Mexico, Federal Census, r. 713, M653, RG 29, NA.

43. Jackson to Orlando Davis, 17 February 1861, in *Sibley's New Mexico Campaign*, Hall, 14–16.
44. Although the Kansas-Nebraska Act of 1854 nullified the Missouri Compromise and eliminated the boundary for the institution of slavery at 36° 30' north, U.S. Congressmen continued to debate slavery's spread north of that line in the national territories.
45. On the struggle over the New Mexico statehood bill, see Stegmaier, "An Imaginary Negro in an Impossible Place," 263–90. For Lincoln's attitude on New Mexico's slave code and the statehood bill, see letters from Springfield correspondent [Henry Villard], 6–12 January 1861, in *New York Herald*, 8, 10, and 17 January 1861; and Abraham Lincoln to Seward, 1 February 1861 in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 8 vols. (New Brunswick, N.J.: Rutgers University Press, 1953–1955), 4:183. Twenty-two-year-old Henry Adams served as private secretary to his father, Rep. Charles Francis Adams, during the winter session of Congress and also as a Washington correspondent for the *Boston (Mass.) Daily Advertiser*. For Henry Adams's comment about Lincoln, see Henry Adams, "The Great Secession Winter of 1860–61" in *The Great Secession Winter of 1860-61 and Other Essays*, ed. George Hochfield (New York: Sagamore Press, 1958), 25. For the reference to Bingham's "Caligula" comment, see his speech in the House of Representatives, 22 January 1861, *Congressional Globe*, 36th Cong., 2d sess., 1860–1861, Appendix, 83.
46. *Journal of the Council of the Legislative Assembly of New Mexico, . . . It Being the Eleventh Legislative Assembly for Said Territory* (Santa Fe, N.Mex.: Putnam O'Brien, Printer, 1862), 5, 10–24, 26, r. 3, Legislative Records, A.1a; *Journal of the House of Representatives of the Legislative Assembly of New Mexico, . . . Being the Eleventh Session of the Legislative Assembly* (Santa Fe, N.Mex.: Putnam O'Brien, Printer, 1862), 11–23, 54–55, r. 3, Legislative Records, A.1b.; and *Laws of the Territory of New Mexico, passed by the Legislative Assembly, Session of 1861–2* (Santa Fe, N.Mex.: Putnam O'Brien, Printer, 1862), 6–7, r. 1, Statutory Law, B.2 in *Records of the States*, comp., Jenkins.

## Notes to Appendix 1

1. *Laws of the Territory of New Mexico, Passed by the Legislative Assembly, Session of 1858–1859* (Santa Fe, N.Mex.: A. De Marle, 1859), 64–80, r. 1, Session Laws, B.2, in *Records of the States*, comp., Jenkins. See also Ganaway, *New Mexico and the Sectional Controversy*, 70–71; and Brooks, *Captives and Cousins*, 328–29.
2. Ala., 591; Ga., 604; S.C., 7:411; Tenn., 512; Tex., 23, 542.
3. Ark., 1035; D.C., 8, 16, 26, 27, 385, 388; Kans. Terr., 717; Ky., 634, 635; La., 54; Mo., 1477, 1486; S.C., 7:426; Tex., 540.
4. Del., 254; Kans. Terr., 717; Ky., 634; La., 54, 55; Md., 1:452; Miss., 240; Tenn., 514; Tex., 541.
5. Ala., 239; D.C., 390; Ga., 619; Ky., 634, 639, 640; La., 52; Md., 1:462; Mo., 1485; N.C., 571; Tenn., 514.
6. Ark., 344; Del., 254; D.C., 17, 19, 49, 390, 391, 395, 405, 406, 408; Ga., 601, 610, 626; Kans. Terr., 717; Ky., 632, 634, 635; La., 52, 54; Md., 1:246; Miss., 240, 241; Mo., 1474, 1475; S.C., 7:407, 424, 460; Tenn., 514, 525; Tex., 540, 541; Va., 460.
7. Ala., 594; Ark., 345; D.C., 55, 56, 406; Fla., 537; Kans. Terr., 715, 716, 717; Ky., 635, 639; La., 50, 53, 54; Md., 1:222, 223; Miss., 248, 254, 255; N.C., 571, 572; S.C., 7:402, 460, 462; Tenn., 509, 510, 517, 518; Tex., 539.
8. Ark., 1033; Del., 259; D.C., 11, 401; Fla., 539, 541; Ga., 594, 599, 625; Kans. Terr., 715; Ky., 633; La., 59; Md., 1:454; Miss., 246; Mo., 1474; N.C., 569, 570; S.C., 7:404, 405, 410, 422; Tenn., 506, 517; Tex., 409.
9. Ark., 1034, 1035, 1051; D.C., 8, 9, 20, 35, 44, 49, 397, 414; Ga., 603; Ky., 631, 632; La., 52, 53; Md., 1:453, 475; Miss., 244, 245; Mo., 1477; N.C., 571; S.C., 7:408, 454, 455, 467, 469; Tenn., 516, 517; Tex., 542; Va., 459, 460.
10. Ark., 1034; La., 51; N.C., 576, 577; S.C., 7:469, 470.
11. Ala., 239; Ark., 1026, 1027, 1029; Del., 254; D.C., 8, 396; Fla., 543; Ga., 599, 600, 632, 633, 635; Ky., 636; La., 59, 61; Md., 1:450, 451, 452; Miss., 238; Mo., 1472, 1480, 1483, 1484, 1485; N.C., 566; S.C., 7:405, 406, 421, 430; Tenn., 504, 505; Tex., 408; Va., 461, 462.
12. D.C., 410; Ga., 601.
13. Ala., 240; Ark., 1027; Del., 254; D.C., 12, 13, 403, 404; Fla., 543; Ga., 600, 601, 602; Ky., 637; La., 61, 62; Md., 1:450, 451; Miss., 239; Mo., 1473, 1481, 1485; N.C., 568; S.C., 7:406, 407; Tenn., 503, 504; Tex., 407; Va., 462, 463.
14. Ala., 240; Ark., 1028, 1029; Del., 254; Fla., 543, 544; Ga., 622; Ky., 637; La., 63; Miss., 239; Mo., 1473, 1481, 1482; Tenn., 504; Va., 461, 463.
15. Fla., 543; Tenn., 504.
16. Ky., 637; Mo., 1481, 1482; Tenn., 504; Tex., 408; Va., 463.
17. Ala., 390, 591; D.C., 9, 399; La., 51; Md., 1:454; Miss., 235; N.C., 570; S.C., 7:411; Tex., 23; Utah Terr., 161.
18. Ala., 596; D.C., 9; Fla., 542; Ky., 641; Miss., 249; Tenn., 510, 511.
19. Ga., 635, 636; La., 51; Md., 1:454; Miss., 235; S.C., 7:399, 411, 412, 413; Tenn., 513; Tex., 23, 542; Utah Terr., 161.
20. Ala., 237; Ark., 1031; D.C., 21, 409; Ga., 605; Ky., 631; Md., 1:455; Miss., 242, 243; Mo., 1472; N.C., 570; S.C., 7:462; Tenn., 518; Tex., 670; Va., 460.
21. Ark., 1033; Del., 259; D.C., 14, 40, 56, 57, 410, 411; Fla., 539, 540; Ky., 632, 633; La., 51; Miss., 246, 247; Mo., 1474, 1475; N.C., 570, 571; Tenn., 508, 509; Tex., 543.

22. Ark., 384; Kans. Terr., 296; Md., 1:250; S.C., 7:401, 468; Tenn., 511.
23. Ala., 634; Ark., 384; D.C., 11; Fla., 542, 752; Ga., 597; Kans. Terr., 290; Ky., 701; La., 58, 65; Md., 1:277; Miss., 249; N.C., 578; S.C., 7:401, 402; Tenn., 687; Tex., 640; Va., 663.
24. Ala., 377; Ark., 760; Del., 236; D.C., 10; Fla., 511; Kans. Terr., 205, 488; Ky., 384; Md., 1:237; Mo., 1062; N.C., 218, 391, 392; Tenn., 481; Va., 740.
25. Ala., 594; Ark., 335; Del., 256, 257, 473; D.C., 18; Fla., 538; Ga., 610, 618; Kans. Terr., 242; Ky., 639; La., 50; Md., 1:244; Miss., 248; Mo., 564; N.C., 570, 571, 573; Tenn., 509; Tex., 819, 823; Va., 753. The Maryland code provided death or long imprisonment for rape, but their law did not specify race; both Kansas Territory and Missouri included castration among the punishments for rape or attempted rape.
26. This section is unique to this code. Every Southern state, the District of Columbia, and the proslavery regime in Kansas Territory provided some statutory provisions for emancipation of slaves. For a discussion of this provision, see Paul Finkelman, *The Law of Freedom and Bondage: A Casebook* (New York: Oceana Publications, 1986), 95–101. The prohibition of emancipation in New Mexico Territory's code probably reflected fear that, given the very few slaves in the territory, an emancipation clause could reduce the slave numbers still further. Missouri, a state where proslavery leaders feared the declining numbers of slaves there, considered a much more comprehensive law than New Mexico's simple provision, a law which would not only have prevented any owner from emancipating slaves, but would have also reenslaved free blacks choosing to remain in the state. The bill passed the Missouri House by a wide margin in March 1859, but the Senate did not pass it before the legislature adjourned its session. *St. Louis Daily Missouri Democrat*, 12 and 16 March 1859. The *Democrat*, which was the Republican newspaper in St. Louis, labeled this proposed measure "The Inhuman Bill."
27. Ala., 238; Ark., 1033; D.C., 13; Fla., 541; Ga., 596, 602; Kans. Terr., 536; Ky., 633; La., 59; Miss., 245, 246, 249; Mo., 1474; N.C., 571; S.C., 7:398, 399, 410; Tenn., 502, 506.
28. This section has no close approximations in other slave codes, although civil court actions for replevin of slave property would have been common elsewhere, especially in those states where slaves had for a long time been recognized as a species of property. In those states there would have been no need for a special replevin section in the slave code itself. Since legal recognition of slave property was not established in New Mexico until the law of 1859, Alexander Jackson apparently believed that he should add this section to the slave code in order to bring slave property under New Mexico Territory's replevin statute of 1847. For the replevin law of 1847, see *Revised Statutes and Laws of New Mexico*, 242, 244. The Latin term *pretium affectionis* in this section refers basically to the sentimental value which an owner might attach to a piece of property; in the case of a slave, this would be an evaluation by an owner based on his personal attachment to or affection for the slave. On the legal term itself, see Henry C. Black, et al., *Black's Law Dictionary*, 6th ed. (St. Paul, Minn.: West Publishing Co., 1990), 1187.
29. Del., 255, 256; D.C., 30, 31; Ga., 595, 596, 625, 626, 628, 629; Md., 1:228; S.C., 7:460; Va., 464, 465.
30. Tex., 670, 672.
31. Del., 259; Ga., 595. This section was drafted to make clear that this law was not intended to apply in any way to peons. The legislature amended the section to the bill prior to its passage.