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Entrada: Slavery, Religion and Reconciliation,

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ENTRADA

SLAVERY, RELIGION AND RECONCILIATION

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Abstract

Santa Fe is a beautiful, culturally rich and diverse city. I am a native Santa Fean, and my mixed Hispanic/Indian/Anglo/African blood reflects the ethnic makeup of the region. Each year the city celebrates a Fiesta. One component, the *Entrada*, celebrates the “peaceful” re-conquest of the Indigenous people by the Spanish colonizers.

Controversy has arisen in recent years as activists challenge the memorialization of a tradition that they feel represents slavery and brutality. Linking their struggle to recent efforts to remove memorials to the Confederacy, they have sought to physically block the re-enactment, leading to arrests, collateral conflict, and the very real threat of future violence.

How do we move forward as a society with the legacy of slavery that built this region and country? This article examines the historical, sociological, legal and religious conflict surrounding the *Entrada*. It creates a model for addressing a reconciliation not only of that conflict, but also the broader controversies regarding memorials, monuments and re-enactments of our complicated inheritance of slavery and conquest.

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Introduction

The sheer physical beauty of Santa Fe, New Mexico is stunning. From a high desert plain, the city's suburban and commercial areas stretch toward the historic downtown area at the base of the foothills of the Sangre de Cristo mountains, where the city then ascends up and into the Santa Fe National Forest. The view from Santa Fe Baldy at over 12,000 feet, looking back on Santa Fe, the Sandia mountains sixty miles to the south and the Jemez mountain range into which the nuclear laboratory at Los Alamos was carved some forty miles to the west, is breathtaking in both a literal and figurative sense.

One of the most striking aspects one observes in Santa Fe is the play of the sunlight creating an ever-changing backdrop. Indeed, the early Spanish explorers named the mountain range "Sangre de Cristo" or "Blood of Christ" because of the way that the rising and setting sun illuminate the hills and mountains in a crimson glow.¹ It is this lighting and dramatic physical beauty of the area that led to the creation of an art colony in Santa Fe in the early part of the 20th century. Artists such as Georgia O'Keefe, Fremont Ellis and others made their homes and did their work in the area.² That art, and the number of movies filmed recently in the State³ provide an opportunity for those who have not traveled to New Mexico to catch a glimpse, in galleries, museums and movie theaters, of the enchanting environment in which Santa Feans live their lives.

Santa Fe's cultural richness adds to this panorama. The Santa Fe Opera draws world-renowned musicians and fans from around the

¹ *Sangre de Cristo Mountains*, ENCYCLOPEDIA BRITANNICA (2018), <https://www.britannica.com/place/Sangre-de-Cristo-Mountains> (last visited Mar. 13, 2018).

² Michael Ettema, *Founding the Santa Fe Art Colony*, CANYON ROAD ARTS (Mar. 9, 2013), <https://www.canyonroadarts.com/founding-the-santa-fe-art-colony>.

³ The number of films is lengthy, and includes, among others, *Hostiles*, *Lone Survivor*, *A Million Ways to Die in the West*, *The Book of Eli*, *All the Pretty Horses*, *No Country for Old Men*, *The Homesman*, *Off the Map*, *The Avengers*, *Crazy Heart*, *The Men Who Stare at Goats*, *Transformers*, *Natural Born Killers*, *Cowboys & Aliens* and *Wild Hogs*.

globe. Art galleries throughout the downtown area and in particular, along Canyon Road reflect the fact that Santa Fe is the second or third largest art market in the United States after New York and perhaps San Francisco.⁴ Numerous museums make their home in the area.

Santa Fe's restaurants offer traditional New Mexican foods—enchiladas, posole—along with Native American dishes including lamb stew and fry bread, and a sophisticated offering of international cuisine not found in other cities of its size. The fragrance of pinon and sage in the air, particularly during the cooler months when fireplaces and kivas heat homes and businesses, add to the lasting sensory impressions of Santa Fe.

Of course, the most attractive aspect of Santa Fe is its cultural diversity. The city reflects a mixture of Indigenous peoples, Spanish and Mexican settlers, and later Anglo arrivals.⁵ Their descendants live alongside people from across the country and globe who now make their home in Santa Fe. The current mixture of people is officially 54% Hispanic, 42% Anglo, 2% Native American, with smaller populations of African-American and Asian residents.⁶ These numbers are not really accurate of course, because nobody, as we note below, falls neatly into one category to the exclusion of others, particularly in Northern New Mexico.⁷ I am fortunate to have been born and raised in Santa Fe. My blood reflects the ethnic mix of the population as a whole. My mother, born in Santa Fe, is Mexican-American/Native American.⁸ My father was also born in Santa Fe,

⁴ Ettema, *supra* note 2.

⁵ *Santa Fe, NM, Profile Data*, CENSUS REPORTER, <https://censusreporter.org/profiles/16000US3570500-santa-fe-nm/> (last visited Mar. 13, 2018).

⁶ *Id.*

⁷ The percentage of Indian blood among those who reside in New Mexico and identify as Hispanic is much higher than the official figures, for the reasons set out below. Those Hispanics who have obtained the recently available DNA testing, this author included, are able to confirm their substantial percentage of Indian blood that is not accounted for in census surveys which make it difficult if not impossible for individuals to report accurately their percentage of Indigenous blood.

⁸ Throughout this article I will use the terms, Indian, Native American and Indigenous People interchangeably without intending offense or lack of sensitivity.

spoke Spanish and was Anglo. My blood reflects that mixture, including the small percentage of African blood that most who trace ancestry to Spain also carry.⁹

The diversity and beauty of Santa Fe is on full display during the annual Santa Fe Fiesta. The event commemorates the bloodless re-taking of Santa Fe from the Indians by the Spanish in 1692. And

The author of one of the leading legal treatises, Stephen L. Pevar explains his use of “Indian”:

Considerable thought was given to using *Native American* rather than *Indian* in this book. *Indian* was chosen for several reasons. For one, many Indians use the terms *Indian* and *Native American* interchangeably, but there seems to be a preference for the word *Indian*. For instance, noted Indian author and scholar Vine Deloria, Jr. uses the word *Indian* in all of his books rather than *Native American*. In addition, most Indian organizations and groups, including the National Congress of American Indians and the Society of American Indian Government Employees use *Indian* in their titles. Moreover, virtually all federal Indian laws (such as the Indian Reorganization Act) and federal agencies (such as the Bureau of Indian Affairs) use *Indian*.

STEPHEN L. PEVAR, *THE RIGHTS OF INDIANS AND TRIBES* 1 (4th ed. 2012).

⁹ In 711 A.D., a Moorish army entered Spain and by 719 A.D., virtually all of Spain was under their control. Christian resistance led to the recapture of Toledo in 1085, and of Zaragoza 1118. By 1232, Granada was the only remaining Spanish area under control of the Moors. The Moorish presence ended in 1492 when the forces of Ferdinand and Isabella expelled the Moors from Granada. Nick Snelling, *What did the Moors do for us? A history of the Moors in Spain*, CULTURE SPAIN: FOR ALL THINGS SPANISH (Mar. 2, 2012), <http://www.culturespain.com/2012/03/02/what-did-the-moors-do-for-us/> (last visited Mar. 19, 2017). During their presence, the Moors brought astronomy, mathematics, agricultural improvements, architectural advances and many other additions to the development of civilization in Spain and throughout Western Europe. *Id.* Undoubtedly during the extended Moorish presence in Spain, children were born to Spanish mothers and Moorish fathers. As a result, the Spanish explorers and priests who eventually came to the New World in the 1500’s brought with them, and shared, this African ancestry. One of the earliest arrivals to New Mexico was an African named Estevan who likely fathered his own children with indigenous women in the 1500s. WARREN A. BECK, *NEW MEXICO: A HISTORY OF FOUR CENTURIES* 39-41 (9th ed. 1982). As a result, it should come as no surprise to New Mexico Hispanics, who, like this author, discover that their blood includes some small percentage of African blood.

therein lies the rub. You see there are some very difficult historical realities associated with the settling of Santa Fe, and indeed, the rest of our country. One of those has to do with the fact that conquest and slavery formed the basis of economic development in what was to become Santa Fe and later, our nation.¹⁰ Slavery has been legally abolished.¹¹ Yet its scars remain in Santa Fe and elsewhere.¹² We see a resurgence of the post-slavery complications with which we must struggle not only in the protest and confrontation associated with the *Entrada* to be discussed in this article, but also in the recent conflict surrounding Confederate monuments, and in the Black Lives Matter movement.¹³

¹⁰ Howard Dodson, *How Slavery Helped Build a World Economy*, NATIONAL GEOGRAPHIC (Feb. 3, 2003), https://news.nationalgeographic.com/news/2003/01/0131_030203_jubilee2_2.html (describing how slavery formed New Mexico's economy).

¹¹ U.S. CONST. amend. XIII.

¹² For an examination of modern day slavery, see CHERYL PAGE & BILL PIATT, *HUMAN TRAFFICKING* (2016).

¹³ See Aaron Cantu, *Entrada Trouble*, SANTA FE REPORTER (Jul. 3, 2017), <https://www.sfreporter.com/news/2017/07/03/entrada-trouble/> (discussing the parallels regarding objection to the *Entrada* and the ongoing national conflict over the destruction or removal of statues to which some object as wrongfully perpetuating the memory of slave owners and conquerors was highlighted in an article discussing the creation of a film, *Veiled Lightning*); see also Adrian Gomez, "Veiled Lightning" aims to start conversations about culture of protest, ALBUQUERQUE J. (May 31, 2017), <https://www.abqjournal.com/1011287/reel-nm-adrian-gomez-2.html> (last visited Mar. 19, 2018) (showing a description of the film, and an explanation of the links its creators see between the current tensions over confederate monuments and celebrations such as the *Entrada*); see also Morgan Lee, *Santa Fe agrees to negotiations in conquistador controversy*, ASSOCIATED PRESS (Oct. 9, 2017), <https://www.usnews.com/news/best-states/new-mexico/articles/2017-10-09/santa-fe-celebrates-indigenous-peoples-day-amid-tensions> (last visited Mar. 19, 2018); see also Adrian Gomez, "Veiled Lightning" aims to start conversations about culture of protest, ALBUQUERQUE J., May 31, 2017, <https://www.abqjournal.com/1011287/reel-nm-adrian-gomez-2.html> (last visited Mar. 19, 2018) (discussing the interrelation of these issues was also noted in an Associated Press article: "From Florida to California, public statues and tributes to early Spanish conquerors are facing mounting criticism tied to the brutal treatment of American Indians centuries ago by Spanish soldiers and missionaries, with activists drawing ethical parallels to the national controversy over Confederate monuments.").

In this struggle there is hope. There is the hope that we might work toward reconciliation and a stronger and more peaceful nation. The beginnings of that reconciliation will only occur when there is a true dialogue. The goal of this article is to offer a template for the beginnings of that dialogue. I will offer an approach to the resurgent conflict resulting from the horrors of Native American slavery that just might prove to be helpful in other settings.

Conflict at the Entrada

The history of virtually any event depends upon who recounts it. While there is much disagreement, most would agree that in 1680, Pueblo Indians under the leadership of an Indian named Po'pay drove the Spanish from what is now Santa Fe to the region that is now El Paso, Texas.¹⁴ In 1692 Spanish General Don Diego de Vargas led a military force to re-take Santa Fe. He carried with him an image of the Virgin Mary, *La Conquistadora*. He prayed for a bloodless re-conquest, and, according to legend, promised to construct a chapel in her honor.¹⁵ Pueblo Indians who met him agreed to return to Spanish rule. No blood was shed, at that time, and the Spanish made their *entrada* (entry) into Santa Fe.¹⁶ An annual celebration and fiesta dating back to 1712 marked the event.¹⁷ While the original ceremonies lapsed around 1760, they were revived at the time of New Mexico statehood in 1912.¹⁸ Over the last decades, a historical re-enactment of the Entrada has occurred. A Santa Fean

¹⁴ BECK, *supra* note 9, at 76-78.

¹⁵ *Id.* at 86-88; Daniel J. Chacon, *On eve of Entrada, director doesn't see what all the fuss is about*, THE SANTA FE NEW MEXICAN (Sep. 7, 2016), http://www.santafenewmexican.com/news/local_news/on-eve-of-entrada-director-doesn-t-see-what-all/article_b8f52143-a1ca-5a49-aead-4581e805095e.html (last visited [hereinafter *Chacon, On eve of Entrada*]).

¹⁶ BECK, *supra* note 9, at 86-88.

¹⁷ Natasha Balwit, *In Santa Fe, Tradition and Identity Clash Over an Annual Festival*, CITYLAB (Sept. 15, 2016), <https://www.citylab.com/equity/2016/09/fiestas-de-santa-fe-faces-protest-from-indigenous-activists/499466/> (last visited Mar. 13, 2018).

¹⁸ *Id.*

selected by the Santa Fe Fiesta Council to play the role of Don Diego de Vargas leads his *cuadrilla* of soldiers to meet with the Pueblo Indian *cacique* (chief) and his people. Promises to live together in peace and prayers are exchanged.

As a child growing up in Santa Fe, for me the *Entrada* was always one of the more boring aspects of the Fiesta. Recitation of poorly-acted lines by people in costumes was not nearly as fun as watching the burning of the 40-foot puppet, *Zozobra* (Old Man Gloom), the often-scandalous pet parade, the candlelight procession up to the Cross of the Martyrs, and the opportunity to run around in downtown Santa Fe for the four-day celebration relatively free of parental restraint. Our parents, of course, were also celebrating. And the freedom was only relative because of our relatives and friends would make sure our parents knew when we had crossed the boundaries of appropriate Fiesta celebration.

The boredom with the *Entrada* changed recently. In oversimplified terms, Native Americans, aware of the slavery their ancestors endured and the loss of life and freedom associated with it have become increasingly opposed to the celebration.¹⁹ Anglos along with some Native Americans have expressed concern that the celebration is an unconstitutional public religious celebration.²⁰ Hispanics, proud of their cultural heritage view the objections as an unconstitutional restraint on their rights to free speech and free exercise of their religion.²¹ Aware of growing concerns, the Santa Fe Fiesta Council convened a meeting in 1992 with then Archbishop Robert Sanchez.²² As a result of the meeting, a Mass of Reconciliation aimed to “heal the wounds between the Indian and Hispanic communities” took place.²³ But tensions remained. In 2000, Native Americans formed a line to block the *Entrada*.²⁴ In 2015, protestors referred to 1693 when De Vargas’ troops and their

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Chacon, *On eve of Entrada*, *supra* note 15.

²³ *Id.*

²⁴ *Id.*

native American allies killed seventy Pueblo warriors.²⁵ In 2016, a peaceful protest involving about fifty demonstrators took place.²⁶ The demonstrators chanted “1680” in an obvious reference to the rebellion of that year. The protest was considered to be an annoyance by some in attendance, but the ceremony was able to conclude with tension but no violence.²⁷

In 2017, word quickly spread that Native American activists would block the *Entrada* from taking place in downtown Santa Fe.²⁸ Santa Fe police established “free speech” zones to keep protesters from blocking the *Entrada*.²⁹ The *Entrada* organizers decided to move the time of the *Entrada* to avoid the conflict.³⁰ However, protestors learned of the plan, rushed to the *Entrada* and physical conflict and confrontation occurred, resulting in the arrest of a protest organizer for assault on a peace officer.³¹ In the process, tensions among those who came to witness and celebrate the *Entrada*, and those who opposed it reached unpleasant levels. The protests continued for two hours, with shouts of “Genocide is not celebration” by protesters met with “Que Viva” by Fiesta supporters.³² Criticism of the way Santa Fe Police Department handled the situation resulted in threats of litigation.³³ The American

²⁵ *Id.*

²⁶ T.S. Last, *Entrada endures loud protest*, ALBUQUERQUE J. (Sept. 9, 2016), <https://www.abqjournal.com/842421/842421.html>.

²⁷ *Id.*

²⁸ Daniel J. Chacon, *Entrada protests last year prompted police to plan early for tensions*, THE SANTA FE NEW MEXICAN (Sept. 12, 2017), http://www.santafenewmexican.com/news/local_news/entrada-protests-last-year-prompted-police-to-plan-early-for/article_808a3016-d197-544a-bccb-64d89ba31426.html (last visited Mar. 13, 2018).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² T.S. Last & Megan Bennett, *Protestors crash Entrada pageant*, ALBUQUERQUE J. (Sept. 8, 2017), <https://www.abqjournal.com/1060543/protests-arrests-take-place-at-entrada-despite-surprise-early-start.html> (last visited Mar. 19, 2018).

³³ Andrew Oxford & Justin Horwath, *Police response to Entrada raises questions about city's handling of protest*, THE SANTA FE NEW MEXICAN (Sept. 8, 2017), http://www.santafenewmexican.com/news/local_news/police-response-to-

Civil Liberties Union of New Mexico threatened litigation against the city of Santa Fe regarding what it called “sweeping restrictions” raising “serious constitutional concerns under the First Amendment.”³⁴

The strife seems to be spreading. Hispanic landowners view with frustration recent efforts of San Ildefonso Pueblo leaders to shut off easements across Indian land to the Hispanic owners’ property.³⁵ Tesuque Pueblo recently announced plans to construct a casino on a hill in full view of the open-air and world-renowned Santa Fe Opera, despite objections that such activity would have a great adverse impact on the Opera.³⁶ Non-Indians were recently expelled from the Boys and Girls club located on the property of another Pueblo.³⁷ Activists demand the removal of monuments they believe reflect poorly on native peoples.³⁸ And threats to shut down *Entrada*, by violence if necessary, permeate the discussion and planning for future Fiestas. In September, 2016, Gil Vigil, former Governor of Tesuque Pueblo explained the Indian perspective, “It would be like Japan asking the United States to come celebrate the bombing of Pearl Harbor.”³⁹

Attempting to bring peace to these issues will first require an understanding of some of the historical forces which have brought us to this point. Volumes have been written. Many more will need to be

[entrada-raises-questions-about-city-s-handling/article_cfba8-d75-5f4e-b330-123a4998904c.html](http://www.santafenewmexican.com/news/local_news/entrada-raises-questions-about-city-s-handling/article_cfba8-d75-5f4e-b330-123a4998904c.html) (last visited Mar. 19, 2018).

³⁴ *Id.*

³⁵ Daniel J. Chacon, *Bad blood at tribal boundaries*, THE SANTA FE NEW MEXICAN (Jan. 27, 2018), http://www.santafenewmexican.com/news/local_news/bad-blood-at-tribal-boundaries/article_fe2569a0-32ad-5cd4-9db8-c8e163d7c1a4.html (last visited Mar. 13, 2018).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Megan Bennett & Mark Oswald, *Santa Fe to review markers, monuments*, ALBUQUERQUE J. (Aug. 18, 2017), <https://www.abqjournal.com/1050358/santa-fe-to-review-monuments-citys-complicated-history.html> (last visited Mar. 13, 2018); Morgan Lee & Felicia Fonseca, *US monuments to Spanish conquest facing mounting criticism*, ASSOCIATED PRESS (Sept. 9, 2017), <https://www.usnews.com/news/us/articles/2017-09-08/us-monuments-to-spanish-conquest-facing-mounting-criticism> (last visited Mar. 13, 2017).

³⁹ Chacon, *On eve of Entrada*, *supra* note 15.

written. In the meantime, we can quickly identify at least some of what has happened in order to construct the framework for reconciliation. In this process we start with the assumption that no group or individual involved in this, or in any other conflict, has a monopoly on virtue or vice. We assume that those who wish to resolve these and related conflicts must be willing to consider some unpleasant truths about the historical realities which have led to the difficulties. They and we must be willing to consider that while we are the product of the past, we have the ability in the present to make important changes for a better future. The alternative will be to doom our children and successors to an endless repetition of strife and even violence.

Slavery and Religion in Colonial New Mexico

Indigenous peoples occupied the areas that are now Santa Fe and its surroundings for many hundreds of years before the arrival of the Spanish. Some of these people had created integrated communities designated by the Spaniards as *pueblos* (towns). Other nomadic tribes roamed through this area.⁴⁰ By the early 1500s Spain pursued a policy of exploration and conquest through what is now Mexico and eventually up into what is now New Mexico.

The motivation for the exploration included the institutional interests of Spain in extending its empire and wealth, and the interest of the Catholic Church in converting indigenous peoples, thereby also expanding its reach. Individual explorers sought wealth and adventure. Younger sons who would never assume the same positions of wealth and power as their older brothers were attracted to the quest, inspired in part by the fantastic tales of wealth circulating back to Spain. The tales of the existence of seven cities of gold somewhere west of Europe extend back to perhaps 1150. In that year Merida, Spain, fell to the Moors.⁴¹ Among the Christians who fled were seven bishops. According to legend, they set sail westward with their congregations founding the Seven Cities of Cibola of

⁴⁰ BECK, *supra* note 9, at 23-38.

⁴¹ *Id.*

incredible wealth.⁴² Rumors that the Seven Cities could be found in the New World inspired the expeditions. Of course, these cities were never found because they did not exist. That did not stop natives responding to Spanish inquiries to tell of cities with streets paved in gold further away. It is very possible that natives told these tales in urging the Spanish invaders to move on and leave them alone.⁴³

It is disputed who was the first European to arrive in what is now New Mexico. It may have been Cabeza de Vaca, an explorer, or it might have been Friar Marcos.⁴⁴ Friar Marcos was a Roman Catholic clergyman who had accompanied Pizarro during his conquest of Peruvian Incas.⁴⁵ Accompanying Marcos was an African by the name of Estevan. It is not clear if Estevan was a slave. He went on ahead leading an advance party into northern New Mexico. Eventually he was captured and killed by Native Americans who resented his claim to be a medicine man, and his taking of “liberties with their women.”⁴⁶

In 1540, Francisco Vasquez Coronado led a command of 336 Spanish soldiers and 100 Indians.⁴⁷ Coronado journeyed north into New Mexico. He then pushed eastward, apparently at the urging of natives who sent him away looking for gold into what is now Kansas. There were no golden cities in Kansas either and Coronado returned to New Mexico.

Other explorations took place including one led by Don Juan de Onate in 1598 to an area north of present day Santa Fe.⁴⁸ Additional explorations and settlements occurred until 1609 when Don Pedro de Peralta, the first royal governor of New Mexico arrived establishing the capital of Santa Fe in the spring of 1610.⁴⁹

Most of the Catholic clergy belonged to the Franciscan order.

⁴² *Id.* at 41 n.2.

⁴³ *Id.* at 39-41.

⁴⁴ *Id.*

⁴⁵ *Marcos De Niza, Spanish Explorer*, ENCYCLOPEDIA BRITANNICA (2018), <https://www.britannica.com/biography/Marcos-de-Niza>.

⁴⁶ BECK, *supra* note 9, at 44.

⁴⁷ *Id.* at 45.

⁴⁸ *Id.* at 52-60.

⁴⁹ *Id.* at 62.

Some arrived with the religious intentions worthy of their vocations. Others mistreated the natives, forcing them to end their native religious practices and often enslaving them in the pursuit of wealth. Franciscans justified their wealth accumulation as an improvement of their ability to tend to the natives.⁵⁰ As a result, to the natives, “the word Christian became synonymous with someone who came to kill and plunder them, seize their women or sell them into slavery.”⁵¹ Eventually the Pueblo Indians became so resentful of the imposition of the Spanish, with its religion and slavery, that rebellion took place in 1680.

A medicine man from San Juan, Po’pay born around 1630 led the rebellion.⁵² Religion was so important to the Pueblo Indians that even though the Spaniards flogged, tortured and even hanged Indians in an attempt to stamp out native religious practices, the practices endured and resistance increased.⁵³ Po’pay was convicted of sorcery along with forty-six other Pueblo Indians in 1675.⁵⁴ He was flogged; others were executed.⁵⁵ Po’pay conducted secret meetings of public chiefs and medicine men ultimately agreeing that a military uprising would occur.⁵⁶ The traditional enemies of the Pueblos, the Apaches, agreed to join.⁵⁷ A knotted cord circulated among the Indians to indicate the time of the attack.⁵⁸ Each knot was to be untied once a day until the agreed upon date of August 13, 1680 arrived.⁵⁹

However, the Spanish learned of the plot and Po’pay ordered

⁵⁰ *Id.* at 68.

⁵¹ *Id.* at 66.

⁵² Architect of the Capitol, *Po’pay*, <https://www.aoc.gov/art/national-statuary-hall-collection/popay> (last visited March 7, 2018) (*stating the statue of Po’pay was given to the National Statuary Hall Collection by New Mexico in 2005*); Jennifer Marley, *Ending Heteropatriarchy in Pueblo Communities*, <https://www.indigenousgoddessgang.com/land-water-dignity-1/2018/2/28/jennifer-marley> (*stating Po’pay was likely of mixed Indian/Spanish descent*).

⁵³ BECK, *supra* note 9, at 76.

⁵⁴ *Id.*

⁵⁵ Architect of the Capitol, *supra* note 52.

⁵⁶ BECK, *supra* note 9, at 76-77.

⁵⁷ *Id.* at 77.

⁵⁸ *Id.*

⁵⁹ *Id.*

that the rebellion begin on August 9.⁶⁰ Approximately four hundred Spanish men women and children including clerics were killed by the Indians, and the Spaniards were driven south to what is now El Paso, Texas.⁶¹ Po'pay's forces killed other Indians loyal to the Spanish, and a contingent of Indians fled south with the Spanish.⁶² However, dissatisfaction arose with some who were subjected to Po'pay. The level of cooperation among the pueblos diminished with the loss of the common foe, the Spaniards. Many of the Pueblo Indians began to believe that their lives might be better under Spanish rule, as even some of Po'pay's followers began to object, determining that "his arbitrary and oppressive rule was even worse than that of the white man."⁶³

The Spanish regrouped and returned north in 1692, with Indian allies, resulting in the *Entrada* noted at the beginning of this article.⁶⁴ In 2005, New Mexico commissioned and then donated a statue of Po'pay as the state's second statue, to the National Statuary Hall Collection where it now stands at the US. Capitol.⁶⁵

Spanish colonialism required labor and the indigenous people provided that source. Some natives worked voluntarily for the clergy while others were enslaved and made to work for Hispano colonialists. But the matter is not as simple as Spaniards enslaving Indians, although that practice was widespread, and was one of the bases for the 1680 rebellion. Plains Indians also had a history of

⁶⁰ *Id.* at 78.

⁶¹ John Jota Leños, *Frontera!*, VIMEO (2014), <https://vimeo.com/75840615>. Dr. Aimee Villarreal served as researcher and producer. The video provides a perspective and an explanation of the events of 1680 to a contemporary audience which might otherwise have not heard of these events.

⁶² BERNARDO GALLEGOS, POSTCOLONIAL INDIGENOUS PERFORMANCES: COYOTE MUSINGS ON GENIZAROS, HYBRIDITY, EDUCATION, AND SLAVERY 111 (2017) (regarding Popay's forces killing other Indians loyal to the Spanish in Santa Fe); see also Malcolm Ebright, *Genizaros*, NEW MEXICO HISTORY.ORG, <http://newmexicohistory.org/people/genizaros> (last visited Mar. 13, 2018) (regarding Indians allies fleeing south with the Spanish).

⁶³ BECK, *supra* note 9, at 86.

⁶⁴ *Id.* at 87.

⁶⁵ Architect of the Capitol, *supra* note 52.

enslaving other Indians⁶⁶ and were eager to sell some of their captives to the Spanish.⁶⁷ Spanish law, the *Recopilación de Leyes de los Reynos de las Indias 1681*, provided religious authority for the purchase of natives—the Christian obligation to ransom captive Indians from non-Christian Indians.⁶⁸ In 1694, the “moral” basis for the purchase of Indian slaves was further justified by a horrible incident involving Pawnee children slaves.⁶⁹ Their Navajo captives attempted to sell these children to the Spanish.⁷⁰ When the Spanish declined, the Navajos beheaded the children.⁷¹ The King of Spain, Charles II, then ordered that in the future captives should be purchased, with royal funds if need be, to prevent further slaughters of native children.⁷² Thus, with the official sanction of the Spanish crown and the Catholic Church behind them, Hispano colonists and Pueblo Indians purchased and enslaved Indians.⁷³

These captives became known as “Genizaros.”⁷⁴ Many Genizaros were not originally captured by the Spanish, but rather, were seized by Plains Indians.⁷⁵ Trade fairs sprung up for the purpose of trafficking of the Genizaros.⁷⁶ Spanish law attempted to distinguish the trafficking of Genizaros from other forms of slavery.⁷⁷ Outright slavery had been outlawed as the results of the efforts of fray Bartolomé de las Casas (1484-1566) who had lead the outcry against earlier Spanish mistreatment of the indigenous peoples.⁷⁸ At least theoretically, at some point the Genizaros could

⁶⁶ Lolita Buckner Inniss, *Cherokee Freedmen and the Color of Belonging*, 5 COLUM. J. RACE & L. 100, 106 (2015).

⁶⁷ See Ebright, *supra* note 62.

⁶⁸ Ebright, *supra* note 62.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Moises Gonzales, *The Genizaro Land Grant Settlement of New Mexico*, J. OF THE SOUTHWEST 56, 4 (Winter 2014) pp. 583-602; Ebright, *supra* note 62.

⁷⁵ Ebright, *supra* note 62.

⁷⁶ *Id.*

⁷⁷ Ebright, *supra* note 62.

⁷⁸ Dani Anthony, *July 2015: Bartolomé de las Casas and 500 Years of Racial*

purchase their freedom or be released by their masters. However, the distinction was without significance—Genizaros were denied status as either Spanish or members of the Pueblos or Tribes, were not free to leave their masters without the consent of the masters, and unless they were fortunate enough to be recruited to serve in the land grant outposts created to ward off attacks by Plains Indians described below, toiled without compensation.⁷⁹ Theoretically, the Genizaros, also called *criados*, (servants), *coyotes*, or by other names were to become free at the end of their servitude.⁸⁰ Genizaros were purchased by Hispanos, by Pueblo Indians, and sometimes even by other Genizaros.⁸¹

While both the early colonists and the Church found the labor of their slaves to be critical in tending their households, fields and churches, the entire communities were constantly at risk of attack by marauding nomadic tribes including the Apache, Comanche, Kiawa, Navajo and Ute.⁸² In order to protect the settlements, early on the Spanish determined to allow groups of genizaros to live together outside of the settlements to serve as the first line of defense.⁸³ The first known defensive settlement of Genizaros was located in the Analco area just south of the Santa Fe River where the San Miguel Church now stands.⁸⁴ The Spanish even allocated Pueblo Indian servants to these Genizaros.⁸⁵ On the first day of the revolt of 1680, jealousy of the treatment afforded these Genizaros lead the Pueblo Indians to nearly wipe out the community.⁸⁶

By the 18th century, the Spanish formalized the practice of creating Genizaro communities as the first line of defense of the

Injustice, ORIGINS, <http://origins.osu.edu/milestones/july-2015-bartolom-de-las-casas-and-500-years-racial-injustice>.

⁷⁹ Ebright, *supra* note 62; Gonzales, *supra* note 72, at 583-602.

⁸⁰ *Id.*

⁸¹ Simon Romero, *New Mexico Latinos finding family ties to native American slavery*, *New York Times*, Jan 28, 2018, p. 1, and *The Santa Fe New Mexican*, Jan. 28, 2018.

⁸² Gonzales, *supra* note 72, at 583-602.

⁸³ *Id.*

⁸⁴ Ebright, *supra* note 62.

⁸⁵ Ebright, *supra* note 62; Gonzales, *supra* note 72, at 583-602.

⁸⁶ Ebright, *supra* note 62.

colonists against attacks by nomadic tribes.⁸⁷ Moises Gonzales describes the history of the creation of these Genizaro Land Grant Settlements in the protection of Santa Fe, as well as Santa Cruz and Albuquerque, noting, “[t]he permanence of these communities would alter the cultural landscape of New Mexico as well as blur the lines of distinction between European Spanish and Amerindian settlements in New Mexico.”⁸⁸ Genizaros agreed to live in the buffer settlements, exposed to attack, as a way of obtaining land, social and economic position, and eventually, freedom.⁸⁹ In the meantime, Genizaros, “away from the direct domination of the church . . . could be semi-autonomous, live among a similar caste group, and practice their native customs.”⁹⁰

The scope of the practice of the purchasing and usage of Genizaro slaves by the Spanish was astounding. By 1776, it was estimated that at least one-third of the population of what is now New Mexico consisted of Genizaros.⁹¹ And yet, Genizaros have never been recognized as a tribe and thus have never received the benefits of tribal enrollment available to members of recognized tribes and Pueblos.⁹²

When the Mexican Republic took form in 1821, the government abolished the term. Genizaros intermarried with Hispanics, Anglos and Indians, leaving large numbers in New

⁸⁷ Gonzales, *supra* note 72, at 583-602.

⁸⁸ *Id.*

⁸⁹ Gonzales, *supra* note 72, at 584.

⁹⁰ *Id.*

⁹¹ Simon Romero, *supra* note 81.

⁹² Generally, to be considered “Indian” for most purposes, a person must be able to demonstrate some determined fraction (usually at least 1/16th) of Indian blood, together with recognition as a member of a tribe. *See United States v. Diaz*, 679 F. 3d 1183, 1187 (10th Cir. 2012). There are currently five hundred sixty-five Indian tribes in this country recognized by the federal government. Two hundred twenty-six of those tribes are located in Alaska, and the remaining three hundred thirty-nine are scattered throughout thirty-four other states. PEVAR, *supra* note 8, at 2. New Mexico is the home of twenty-three federally recognized tribes. *Id.* at 359-360. While many contemporary Genizaros can prove Indian blood of greater than 1/16th through genetic testing, their lack of tribal affiliation precludes them from the legal benefits afforded to those federally recognized as “Indians.”

Mexico and in Santa Fe unaware that slavery was the lot of their ancestors.⁹³ Of course, abolishing the term didn't mean the absolute end to the system, as we will see in the next section. And the practice lead to a profound impact on New Mexico.⁹⁴ House Memorial 40 (2007) of the New Mexico Legislature summarizes:

A MEMORIAL
RECOGNIZING THE ROLE OF GENIZAROS IN
NEW MEXICO HISTORY AND THEIR LEGACY

WHEREAS, indigenous captivity and servitude were common in frontier society that became New Mexico; and

WHEREAS, various indigenous peoples, including Apache, Dine (Navajo), Pawnee, Ute and Comanche, were captured; and

WHEREAS, indigenous people became part of New Mexican communities and households through capture in war, kidnapping, trade fairs, punishment for crimes, adoption, abandonment and the sale of children; and

WHEREAS, baptismal records reveal that at least four thousand six hundred one captive indigenous persons were baptized between the years 1700 and 1880, becoming part of Spanish, Mexican and territorial households; and

WHEREAS, numerous primary source records document the captivity, presence and experience of indigenous people displaced in this way, including marriage records, court cases, wills and censuses;

⁹³ Graham Lee Brewer, *When the victors re-write history*, HIGH COUNTRY NEWS (Feb. 9, 2018), <https://www.hcn.org/articles/indian-country-news-new-mexicos-history-of-native-american-slavery> (last visited Mar. 16, 2018).

⁹⁴ HM 40, 48th Leg., Reg. Sess. (N.M. 2007); SM 59, 48th Leg., Reg. Sess. (N.M. 2007).

and

WHEREAS, the experiences of captives, while varied, included being raised and serving within households, and sometimes remaining in a captor's home for a lifetime; and

WHEREAS, the practice of taking Indian captives lasted through the Mexican and into the American period in New Mexico; and

WHEREAS, there were many terms to describe Indian captivity and servitude in New Mexico, including "cautivos", "criados", "coyotes" and "famulos" but the most common used prior to 1821 and into the Spanish colonial period was the term "genizaro"; and

WHEREAS, the term "genizaro" derives from the Turkish word "yeniceri" or "janissary", terms used to describe Christian captives who, as children, had been forcibly abducted, traded and trained as the nucleus of the Ottoman empire's standing army; and

WHEREAS, genizaro families could be found in various communities throughout the colony, including the major villages of Albuquerque, Santa Cruz de la Canada, Santa Fe and El Paso del Norte; and

WHEREAS, in the mid-eighteenth century, many genizaros were again relocated strategically at the edges of Hispanic communities, thus providing both an initial line of defense against raiders and the foundation for communities such as Abiquiu, Belen, Carnuel, Las Trampas, Ojo Caliente, Ranchos de Taos, San Miguel del Vado and Tome; and

WHEREAS, by 1776, genizaros comprised at least one-third of the entire population of the province; and

WHEREAS, genizaros and their descendants

have participated in all aspects of the social, political, military and economic life of New Mexico during the Spanish, Mexican and American periods; and

WHEREAS, eventually the migration patterns of *cautivos* and *genizaros* paralleled that of all New Mexicans with communities extending southward to El Paso del Norte (Ciudad Juarez) and northern Chihuahua, Mexico, as well as northward in Colorado and beyond; and

WHEREAS, the direct result of the Indian slave trade was the emergence of generations of racial and cultural mixtures often referred to in the colonial period with terms such as *coyotes*, *colores quebrados*, *lobos* and *mestizos*; and

WHEREAS, many New Mexicans can trace their ancestry to these indigenous peoples;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the important role of *genizaros* and their descendants have had in the social, economic, political and cultural milieu of New Mexico and the United States be recognized; and

BE IT FURTHER RESOLVED that the house of representatives recognize the existence and importance of this indigenous group and the presence and importance of its descendants today; and

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the office of the state historian.⁹⁵

⁹⁵ *Genizaro* scholars have begun to draw attention to the experiences of their people. See Gonzales, *supra* note 72; see also GALLEGOS, *supra* note 62 (offering some unique personal perspectives in his book). Gregorio Moises Gonzales, *Otro Cuento del Genizaro Pedro de Urdemalas*, 41 AM. INDIAN CULTURE & RES. J. 139-

Return for a moment to consider the *Entrada* reenactment. Imagine those portraying the Spanish Conquistadores approaching a group of protesters attempting to block the reenactment. If the proceedings could be frozen in place and DNA testing performed on all participants, it is likely, given the history that we have briefly examined, that all parties might possess similar proportions of indigenous DNA. Contemporary reenactors and protesters are all likely the descendants of both slaves and slave masters.⁹⁶ This becomes highly relevant as we discuss the possible attempts at reconciliation, below. And we have yet to add the Anglo role to the mix, a topic to which we now turn.

Enter the Anglo

It would be an overstatement, although not by much, to observe that the Spanish took lands from the Natives, and then the Anglos took the lands from the Spanish. The entire territory moved

143 (2017) (providing some bilingual insights into his approach to his cultural roots); Samuel Sisneros, *Los Genizaros and the Colonial Mission Pueblo of Belen, New Mexico*, 92 NEW MEXICO HISTORICAL REV. (2017). Moises Gonzales and Enrique LaMadrid are co-editors of their forthcoming book, GENIZARO NATION.

⁹⁶ Other articles help provide an understanding of the Genizaro experience. In addition to those cited in previous notes. See, e.g., John Burnett, *Descendants of Native American Slaves in New Mexico Emerge from Obscurity*, NPR (Dec. 29, 2016), <https://www.hcn.org/articles/indian-country-news-new-mexicos-history-of-native-american-slavery> (Mr. Burnett's article was broadcast on NPR). Other media help explain the Genizaro reality. Cynthia Gomez and Samuel Sisneros have produced a trailer for their forthcoming film, see Cynthia Jeannette Gomez, *Without a Tribe 9-13-11*, YOUTUBE (Sept. 13, 2011), <https://www.youtube.com/watch?v=C3eSl6Tt8b8>. See also *Genizaros and New Mexico's Legacy of Slavery*, NPR (Mar. 17, 2017), <http://kunm.org/post/listen-genizaros-and-new-mexicos-legacy-slavery> (a radio broadcast); Genizaro Federation of New Mexico, FACEBOOK (Apr. 14, 2018), <https://www.facebook.com/groups/genizaro.federation.of.New.Mexico/> (a Facebook page with over 1,200 members provides a platform for communication and resource sharing). This author is currently working on a more detailed contemporary legal analysis of the Genizaro situation, including arguments for the protection of Genizaros under a heightened scrutiny standard pursuant to the Equal Protection and Due Process clauses of the Constitution of the United States.

from Indigenous, to Spanish, to Mexican, and finally to American, control.

The Spanish had limited the American trappers and adventurers who began incursions into what is now New Mexico at the beginning of the 1800's. But with Mexico's independence from Spain, Americans more easily penetrated the territory. Trade they brought was welcomed by the inhabitants. As trade grew, the Santa Fe Trail was established. Westbound caravans left Missouri bringing merchandise to Santa Fe for sale there, and distribution south to Chihuahua, Mexico.⁹⁷

New Mexico had been designated a Mexican Province until 1824, when it became a territory.⁹⁸ In 1836 that status was upgraded to that of a department, although with poorly defined boundaries.⁹⁹ Skirmishes between Mexican forces and Texas resulted in what one historian concluded was a "virtual state of war" in 1841-1842.¹⁰⁰ The United States' war with Mexico concluded with the acquisition of New Mexico by the United States in 1848 by virtue of the Treaty of Guadalupe Hidalgo.¹⁰¹ However, until 1850, Texas actually claimed the area of what is now New Mexico, east of the Rio Grande, including Santa Fe, as part of the Republic of Texas.¹⁰²

New Mexico sought and was denied entry as a state in 1848 when it applied for statehood along with California.¹⁰³ One reason was it appeared to the southern slave states that New Mexico would oppose slavery, triggering the opposition of those states to New Mexico's bid for statehood.¹⁰⁴ The irony could not have been greater.

⁹⁷ BECK, *supra* note 9, at 109-118.

⁹⁸ *Id.* at 120.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 127.

¹⁰¹ *Treaty of Guadalupe Hidalgo*, HISTORY CHANNEL (2009), <https://www.history.com/topics/treaty-of-guadalupe-hidalgo>.

¹⁰² Laura Gomez, *Off-White in an age of white supremacy: Mexican elites and the rights of Indians and Blacks in nineteenth century New Mexico*, 25 CHICANO-LATINO L. REV. 9 at n. 128 (2005).

¹⁰³ BECK, *supra* note 9, at 139.

¹⁰⁴ In 1848, a resolution of the first Constitutional convention in New Mexico provided: "We do not desire to have domestic slavery within our borders; and until the time shall arrive for admission into the union of states, we desire to be

While there were no African slaves working plantations in New Mexico (there were no plantations), indigenous slavery was thriving in New Mexico.¹⁰⁵ In 1850, New Mexico was admitted as a territory under the Compromise of 1850 without word as to whether it would be a free, or slavery-permitting territory.¹⁰⁶

As the influence of arrivals increased, the Territorial Legislature began to take a pro-slavery tilt. In 1857, New Mexico adopted “An Act Concerning Free Negroes.”¹⁰⁷ Free blacks were only allowed to remain in the Territory for thirty days.¹⁰⁸ Violations could result in fines, imprisonment and thereafter, hard labor.¹⁰⁹ Two years later, New Mexico enacted a slave code: “An Act to Provide for the Protection of Property of Slaves in this Territory.”¹¹⁰ With the passage of the New Mexico slave code in 1859 which seemed to be aimed only at punishing escaping African slaves, Hispanic members joined with Anglos in the legislature as a means of solidifying the indigenous slavery which by then had become deeply rooted in New Mexico.¹¹¹ The scope of the continuing slavery issue is shocking to those who only learn of it now. Anywhere from 500 to 700 wealthy families in the New Mexico territory held most of the rest of the population of 50,000 to 70,000 in actual slavery, or at a minimum, in a peonage system requiring laborers to work off debt.¹¹² Most peons were unable to ever work off their debt and, in many instances, it was passed along to sons and grandsons.¹¹³

protected by Congress against the introduction of slaves into the Territory.” Cong. Globe, 30th Cong., 2d Sess. (1849), cited in Gomez, *supra* note 102, at n. 125.

¹⁰⁵ See *supra* notes 49-96 (and accompanying text).

¹⁰⁶ BECK, *supra* note 9, at 139.

¹⁰⁷ Gomez, *supra* note 101, at 9 at n. 130.

¹⁰⁸ *Id.* at 43.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 9 n. 135.

¹¹¹ BECK, *supra* note 9, at 146; Gomez, *supra* note 101, at 9 n. 135.

¹¹² BECK, *supra* note 9, at 146.

¹¹³ Marc Simmons, *Trail Dust: Peonage lasted long after being abolished in N.M.*, THE SANTA FE NEW MEXICAN (Jun. 22, 2012), http://www.santafenewmexican.com/news/local_news/trail-dust-peonage-lasting-long-after-being-abolished-in-n/article_de5cbcee-d9ee-5790-9084-6e844fa50f16.html (last visited Mar. 13, 2018).

Nonetheless, because of the enmity toward Texas, New Mexico generally favored the Union during the Civil War. After the Civil War, and even though slavery was made unlawful nationwide by the 13th Amendment to the Constitution of the United States, New Mexico's peonage system endured.¹¹⁴ In many instances, peons faced harsher conditions than slaves in the South.¹¹⁵ Peons theoretically could work off their debt but, in most instances, this was only theoretical.¹¹⁶ Most remained in servitude all their working lives. Peon masters or *patrones* had no obligation to care for the peons, and although the master theoretically could not sell them, they were "as much of an article of trade as horse or sheep."¹¹⁷ Runaway peons could be treated as fugitives from justice subject to arrest.¹¹⁸ One historian notes a case decided in May 1853 by Associate Justice Horace Mower of Socorro where one Dolores Mirabal had fled her *patrón*.¹¹⁹ The judge found her guilty and she was ordered to pay \$29 in court costs plus a fine of \$1.¹²⁰ The Socorro Sheriff was ordered to sell the defendant's labor at auction and when her legal debt had been paid off, she was ordered returned to her *patrón*.¹²¹

The United States government increasingly became concerned about this peonage system. In 1861, it sought to recruit New Mexicans for the Union Army.¹²² However, many were peons whose masters would not allow them to leave.¹²³ A military order put a stop to that practice, as reported by the *New Mexican* on April 2, 1864.¹²⁴ The pay afforded US soldiers greatly exceeded the meager "pay" afforded peons for their labor.¹²⁵ As a result, "[a] large number

¹¹⁴ *Id.*

¹¹⁵ BECK, *supra* note 9, at 146.

¹¹⁶ *Id.*

¹¹⁷ Simmons, *supra* note 113.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Simmons, *supra* note 113.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

of peons have extricated themselves from their thralldom as servants by going into the volunteer regiments.”¹²⁶

Notwithstanding Lincoln’s Emancipation Proclamation of 1862, which did not apply to New Mexico, and notwithstanding the 13th Amendment’s abolishment of slavery, peonage flourished in New Mexico.¹²⁷ In 1867, the United States Congress finally took action directly aimed at it. An Act of March 2, 1867 declared “[t]he system of peonage in the territory of New Mexico and elsewhere is abolished and forever prohibited in the United States.”¹²⁸

However, enacting laws and even constitutional amendments did not completely eliminate the problem. One historian reports a case in April 1967 where a ranch hand sued his employer alleging that he was held in peonage and had not been paid for 33 years.¹²⁹ The attorney for the worker charged that “[h]alf the ranch workers in northern New Mexico are laboring in semi peonage.”¹³⁰ Unfortunately, there are indications that forced labor continues in New Mexico and throughout the United States.¹³¹

The arrival of Anglos also brought the arrival of the Anglo-American legal system, and those who would use it to enrich themselves at the expense of Indians, Hispanos and Genizaros in New Mexico.¹³² The concerted effort of a group of Anglo attorneys and Anglo and Hispano swindlers which became known as the “Santa Fe Ring” defrauded heirs to the Spanish land grants supposedly protected by the Treaty of Guadalupe Hidalgo.¹³³ As

¹²⁶ *Id.*

¹²⁷ BECK, *supra* note 9, at 146.

¹²⁸ Peonage Abolition Act of 1867, 39th Congress, 2nd Sess., Ch. 187, (March 2, 1867). Travelers to New Mexico had observed that, “Negro slavery was far more humane than New Mexican-style peonage.” BECK, *supra*, note 9, at 146.

¹²⁹ Simmons, *supra* note 76.

¹³⁰ Simmons, *supra* note 113.

¹³¹ The tragedy of ongoing labor trafficking is outlined in PAGE & PIATT, *supra* note 10.

¹³² BECK, *supra* note 9, at 174; *see also infra* note 133 (and accompanying text).

¹³³ BECK, *supra* note 9, at 174. For more information on the Santa Fe Ring *see* US House of Representatives History, Art & Archives, *Overview of New Mexico Politics 1848-1898*, <http://history.house.gov/Exhibitions-and->

recently as 1967, an armed rebellion against the alleged infringement on the rights of the original land-grant owners occurred in Rio Arriba County in northern New Mexico.¹³⁴

The arrival of Anglo-American jurisprudence also brought other legal constraints and protections to New Mexico.¹³⁵ The First Amendment prohibition against the establishment of religion, and the protection of the right of people to the free exercise of religion and of speech and assembly is particularly important to the current *Entrada* situation as explained below. The Anglo-American legal system also brought formal recognition to the tribes and Pueblos of New Mexico.¹³⁶ At the same time, however, it excluded the Genizaros from formal tribal recognition.¹³⁷

Present Cultural and Legal Standoff

The complex political, religious and historical forces which led to the *Entrada* celebration and opposition to it is reflected in other attempts to grapple with the after-effects of slavery throughout the country. While it might be true generally that victors write the history, in the context of the Confederate monuments it is obvious that the non-victors also make a claim to preserving the efforts of their ancestors. The legal analysis of the right to make these

Publications/HAIC/Historical-Essays/Continental-Expansion/New-Mexican-Politics/ (last visited Mar. 16, 2018); see also DAVID L. CAFFEY, CHASING THE SANTA FE RING: POWER AND PRIVILEGE IN TERRITORIAL NEW MEXICO (2014).

¹³⁴ *Tierra O Muerte*, NAT'L MUSEUM OF AM. HIST., http://americanhistory.si.edu/collections/search/object/nmah_1142283. It is obvious that tensions still remain. See Daniel J. Chacon, *The New Mexican*, TAOS NEWS (Jun. 8, 2017), <http://www.taosnews.com/stories/still-carrying-that-flag,40963>.

¹³⁵ The area which is now New Mexico was acquired by the U.S. from Mexico in 1848 by the Treaty of Guadalupe Hidalgo. *Treaty of Guadalupe Hidalgo*, HISTORY CHANNEL, <https://www.history.com/topics/treaty-of-guadalupe-hidalgo>. New Mexico became a Territory in 1850. BECK, *supra* note 9, at 139. The laws of the U.S. applied in that area once acquired from Mexico, including those cited in the next paragraph.

¹³⁶ PEVAR, *supra* note 8, at 359-360.

¹³⁷ HM 40, 48th Leg., Reg. Sess. (N.M. 2007); SM 59, 48th Leg., Reg. Sess. (N.M. 2007).

competing claims is relatively straightforward, yet the legal system has not been able effectively to resolve the continuing conflict. It is probably helpful at this point to consider some of the Constitutional law issues before turning to a discussion of the mechanisms that might be employed to bring peace and reconciliation. Perhaps the *Entrada* situation can serve as an example.

The First Amendment to the Constitution of the United States guarantees the rights of free exercise of religion, and freedom of speech and association.¹³⁸ In the context of those who wish to present the Spanish re-conquest version of events, it is clear that they have the right to do so. The First Amendment would protect the rights of the members of the Santa Fe Fiesta Council to organize, to select individuals who would portray Spanish soldiers, and write the script of the reenactment in any fashion they deem appropriate. This is particularly true given the religious nature of the celebration.¹³⁹

¹³⁸ U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

¹³⁹ The Free Exercise of Religion clause of the First Amendment protects the rights of the *Entrada* reenactors to put on a religious-themed event. The First Amendment is not limited to protecting only religious worship ceremonies inside a church. The Supreme Court of the United States has held that, “the exercise of religion involves ‘not only belief and profession but the performance of (or abstention from) physical acts’ that are ‘engaged in for religious reasons’”. *Burwell v. Hobby Lobby Stores Inc.*, 134 S. Ct. 2751, 2770 (2014) (quoting *Employment Division Department of Human Resources of Oregon v. Smith*, 494 US 872, 877 (1990)). In *Burwell*, the protected “exercise of religion” was the determination of an employer that requiring the employer to provide post-conception contraception to its employees was contrary to the religious beliefs of the business owners. The employer’s refusal to provide such was held to be protected. In other cases, the Court has recognized that a broad religious freedom protection extending to those claiming a religious objection to the draft, *Clay v. United States*, 403 U.S. 698 (1971), to those who refuse to send their children to public schools beyond the 8th grade, *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and to those who would practice animal sacrifice as a part of their religious practices. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). There are many other examples, but it is clear that the *Entrada* re-enactment with its foundation on a religious appeal, would be considered to be protected as the free exercise of religion.

The First Amendment is not limited to protecting only those expressions that are verifiably accurate.¹⁴⁰ It does not require that the *Entrada* reenactors provide any explanation of what happened leading up to the re-conquest or the bloody suppression of rebellions thereafter. The reenactors would have the constitutional right to use the public forum of the streets and sidewalks for their reenactment although the city could limit the exercise of these rights subject to time place and manner restrictions.¹⁴¹ If the City of Santa Fe permits this reenactment, even though the *Entrada* has a religious basis, there is no violation of the First Amendment's prohibition against government establishment of religion. In other contexts, use of public property for even more overtly religious ceremonies and celebrations has been held not to be a violation of the Establishment clause.¹⁴²

¹⁴⁰ *Snyder v. Phelps*, 562 U.S. 443 (2011). Westboro Baptist Church's peaceful picketing at the funeral was protected by First Amendment. Protestors conducted their picketing on matters of public concern at a public place adjacent to a public street. First Amendment protects insulting, and even outrageous speech in order to provide adequate "breathing space" to the freedoms protected by the First Amendment. *See also* *New York Times v. Sullivan*, 376 U.S. 254 (1964) (holding inaccurate statements protected under First Amendment).

¹⁴¹ *See generally* *Cox v. New Hampshire*, 312 U.S. 569 (1941); *see also* *Perry Education Ass'n v. Perry Local Educator's Ass'n*, 460 U.S. 37, 45 (1983); *Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (stating there was no First Amendment violation, if city makes performance contingent upon using only the provided sound amplifiers and technicians to regulate noise at concert).

¹⁴² U.S. CONST. amend. I. The First Amendment, contains two expressions of religious freedom: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". The Supreme Court of the United States has been called on repeatedly to interpret the complex interplay between these phrases and has consistently recognized that there is no absolute separation of church and state. In fact, the Court has emphatically stated, "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). The Court has recognized that there is no violation of the Constitution where governmental units pay the bus fares of parochial school pupils, *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947), or lend books to parochial schools, *Lemon v. Kurtzman*, 403 U.S. 602 (1971). The Court has upheld release time programs permitting public school students to leave campus to attend religious classes, *Zorach*, 343 U.S. 306 (1952). It has allowed parents of children in religious schools to deduct tuition, textbook costs and transportation expenses from their state income taxes, *Mueller v. Allen*, 463 U.S. 388 (1983). It has upheld

There is a little greater possibility of a constitutional problem if the reenactors enter public schools and present an overtly religious message to students compelled to attend the presentation. The Supreme Court has ruled that prayer at school events, even those led by students, can constitute an impermissible establishment of religion.¹⁴³ There would be no Establishment Clause violation in these public-school programs, as long as any reference to Catholicism was part of the historical explanation of the motivation of the explorers, and not an attempt to proselytize or pray. The City of Santa Fe is apparently giving \$50,000 to the Fiesta Council each year to promote the Fiesta.¹⁴⁴ The City will need to take care that none of that money is being used to promote the religious aspects of the *Entrada* in the public schools.

What about the rights of those who wish to protest the *Entrada*? They too have the right to voice opposition and to use the public streets and sidewalks to do so. However, the time place and manner of their protest can be limited.¹⁴⁵ Their First Amendment right to express opposition does not give them the right to silence the speech of the *Entrada* reenactors and vice versa. Does this mean that the police could limit their speech to a so-called First Amendment free-speech zone? Courts have upheld such restrictions where

grants of public funds to religious colleges, *Roemer v. Bd. of Public Works*, 426 U.S. 736 (1976), and the provision of publicly funded computers and teaching aids to religious schools, *Mitchell v. Helms*, 530 U.S. 793 (2000). The Court approved a voucher program of public monies allowing children to attend religious schools, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). It has permitted religious displays on public property, including the Ten Commandments on the State Capitol grounds in Austin, *Van Orden v. Perry*, 545 U.S. 677 (2005). The Court has ruled that municipalities and other governmental units may open their meetings with prayer, even overtly Christian prayers, and even if some in the audience might take offense, *Town of Greece v. Galloway*, 569 U.S. 993 (2013). There are many more examples.

¹⁴³ *Engel v. Vitale*, 370 U.S. 421 (1962); *Lee v. Weisman*, 505 U.S. 577 (1992); *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000).

¹⁴⁴ Aaron Cantu, *Under Protest: Opposition to the Entrada pageant grows, but cultural powerbrokers, police and tradition present hurdles to change*, SANTA FE REPORTER (Sept. 12, 2017), <https://www.sfreporter.com/news/coverstories/2017/09/12/under-protest/>.

¹⁴⁵ See *supra* note 86 (and accompanying text).

necessary to prevent violence or disruptions of the activities of other speakers or groups.¹⁴⁶ Such restrictions would probably not be upheld if the counter-demonstrators were barred from carrying signs or were prohibited from engaging in other speech or symbolic speech that did not disrupt the *Entrada*. This would likely be true even if the demonstrators stood outside of “free speech zones” in proximity to the reenactment.¹⁴⁷

What about the issue of monuments? The Santa Fe city Council, like other governmental units, is considering removing statues and monuments which could be deemed offensive. Any governmental unit has the right to place or remove such monuments. In the meantime, individuals have the right to peacefully protest the existence of these monuments and to demand their removal. Whether such removal of all monuments currently deemed offensive is the best course will be discussed below.

¹⁴⁶ Free-Speech zones are just one form of time, place and manner regulations which the courts have upheld. See *Heffron v. Int’l Society for Krishna Consciousness*, 452 U.S. 640 (1981) (upholding a Minnesota State Fair prohibiting sale or distribution of any merchandise, including printed or written material except from booths rented to all applicants in a non-discriminatory manner on a first-come, first-serve basis); see also *Lee v. Katz*, No. CV 00-310-PA, 2004 U.S. Dist. LEXIS 10466 (D. Or. 2004) (upholding free speech zones); *Marcavage v. City of Chicago*, 467 F. Supp. 2d 823, 831 (2006) (“such free speech zone schemes have repeatedly been upheld by the courts”). Many cases have dealt with these issues. See, e.g., *Boos v. Berry*, 485 U.S. 312 (1988) (holding police can disperse demonstrators within 500 feet of embassy); *Hill v. Colorado*, 530 U.S. 703 (2000) (holding space around abortion clinic approved); see also *Snyder v. Phelps*, 562 U.S. 443 (2011) (stating even though the right of the demonstrators to picket a military funeral was upheld, demonstrators were required to stay 1,000 feet from funeral). Free speech zones have been employed in political conventions and other large public gatherings. Recently criticism of their use on college campuses has erupted. See, e.g., Jeremy Bauer-Wolf, *The Death of College Free Speech Zones*, INSIDE HIGHER ED. (Feb. 2, 2018), <https://www.insidehighered.com/news/2018/02/02/experts-states-likely-keep-abolishing-free-speech-zones>.

¹⁴⁷ There is a broad right to use a public forum for peaceful expression. *Carey v. Brown*, 447 U.S. 445 (1980). See also *Smith v. Tarrant County College Dist.*, 694 F. Supp. 2d 6 (Although a majority of the students’ claims challenging the college’s rules and regulations regarding speech were not ripe or were moot, they prevailed on their claim that a prohibition on the symbolic wearing of empty holsters violated the First Amendment as there was no evidence that the restriction actually served to prevent disruption.).

The destruction of New Mexico's monuments relating to the Spanish colonization predates the recent controversy over Confederate monuments. For several years in a row a Cross of the Martyrs monument in Santa Fe, dedicated to the memory of the 21 Franciscan friars who were killed in the 1680 uprising, had been defaced.¹⁴⁸ The New York Times reported in 2017 that it had located the man who now holds the severed foot from the monument to the Spanish explorer Onate.¹⁴⁹ The statue is located north of Santa Fe, and the severance occurred in 1997.¹⁵⁰ The person who cut the foot from the statue refers to the decision by Onate to cut a foot from the Indian defenders of Acoma during his siege of the cliff city.¹⁵¹ As early as 1973 Santa Fe pondered what to do about objection to a monument, which still remains on the Plaza, which referred to "savage" Indians.¹⁵² Ultimately an explanatory plaque was placed nearby but not until someone had chiseled out the word "savage."¹⁵³ Not all Indians objected to the monument.

Interestingly, the five nearby Pueblo Governors were united in keeping the Plaza monument where it was and to let history stand. "This is a reminder of what happened in the past," said Governor Paul Baca of Santa Clara. "We feel much the same way about our history, that it should not be changed to fit the times." And savage might even be accurate, Baca said, because "we didn't give up our lands

¹⁴⁸ *Vandals Paint over memorial to Franciscan friars slain during 1680 Pueblo Revolt*, ALBUQUERQUE J. (Aug. 24, 2010 1:23 PM), <https://www.abqjournal.com/9002/725am-santa-fes-cross-of-the-martyrs-defaced-3rd-year-in-a-row.html> (last visited March 29, 2018).

¹⁴⁹ Simon Romero, *Statue's Stolen Foot Reflects Divisions over Symbols of Conquest*, N.Y. TIMES (Sept. 30, 2017), <https://www.nytimes.com/2017/09/30/us/statue-foot-new-mexico.html> (last visited March 29, 2018).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Time Rider, *1973 - On the Santa Fe Plaza*, SLOUCHING TOWARD SANTA FE BLOG, (Feb. 13, 2012 6:28 AM) <http://santafecenterforappliedresearch.blogspot.com/2012/02/1973-on-santa-fe-plaza.html> (last visited Mar. 29, 2018).

¹⁵³ *Id.*

without a fight.”¹⁵⁴

Reconciliation

Perhaps the first step toward reconciliation in the *Entrada* situation and in the larger concerns regarding Confederate monuments and the like is to recognize that the psychological horror of slavery lasts for centuries. People who have never been slaves but whose ancestors were enslaved often carry a deep concern, discomfort, resentment and even overt anger in reflecting upon what must have happened to their ancestors.¹⁵⁵ Those whose ancestors were not enslaved need to recognize the continuing depth of these feelings. Their lack of empathy could be misinterpreted by the slave descendants as agreement or acceptance of what had happened in the past. It is just not easy to get over this.¹⁵⁶ One of the legal underpinnings in the 1954 U.S. Supreme Court school desegregation case, *Brown v. Board of Education*, was the concern that children could still feel a badge of inferiority by being segregated almost a century after legal slavery had been abolished.¹⁵⁷

At the same time, slave descendants need to reflect on the fact that nobody alive today had any control over the behavior of their ancestors. Further, the vast majority of people living in New Mexico and in the South when slavery existed in those areas were

¹⁵⁴ *Id.*

¹⁵⁵ See *Inheriting Slavery*, THE ATLANTIC ONLINE (Feb. 26, 1998), <https://www.theatlantic.com/past/docs/unbound/bookauth/eballint.htm>; *How Slavery's Legacy Affects the Mental Health of Black Americans*, THE NEW REPUBLIC (Jul 27, 2015), <https://newrepublic.com/article/122378/how-slaverys-legacy-affects-mental-health-black-americans>.

¹⁵⁶ Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Legacy Establishing A Case For International Reparations*, 3 COL. J. RACE & L. 147 (2013) (calling for formal reparations); see also Carla D. Pratt, *Tribes and Tribulations: Beyond Sovereign Immunity and Toward Reparation and Reconciliation for the Estelusti*, 11 WASH. & LEE RACE & ETHICS ANC. L.J. 61 (2005) (calling for micro-reparations).

¹⁵⁷ 347 U.S. 483, 494 (1954).

not slave-owners.¹⁵⁸ So, the majority of those people alive today are not descendants of slave-owners. It might be helpful, if painful, to remember that no ethnic group has a monopoly on virtue or vice. Native Americans enslaved other Native Americans and Africans. Africans participated in assisting in the movement of other Africans into the slave trade. One person of Genizaro descent discovered that he was the descendant of a Native American who had been held in slavery. That ancestor, fortunately was able to buy his way out of slavery. Unfortunately, the ancestor then turned around and “purchased” other slaves.¹⁵⁹

Assuming that all sides want reconciliation, what might that process look like? Initially, it is going to require that members of all groups step out of their defensive comfort zones and consider that the causes of the creation and maintenance of hostility, slavery and peonage are complex. Each group has contributed to the very rich tapestry and culture which has evolved. Each can now seek to minimize confrontation and perpetuation of unrest. Professor Aimee Villarreal observes, “Certainly, we need to move toward decolonization, but this process takes time, healing dialogue and compassion.”¹⁶⁰

¹⁵⁸ Simmons, *supra* note 113; see HM 40, 48th Leg., Reg. Sess. (N.M. 2007); SM 59, 48th Leg., Reg. Sess. (N.M. 2007). By 1776, two-thirds of New Mexico’s population consisted of Genizaro slaves, and by 1859 or so it appears that more than 90% of the population were “peons” (slaves). Thus, the vast majority of New Mexicans were not slave owners. Only one-fifth of Southerners owned slaves. *Slavery in the South. Only one-fifth of Southern families owned slaves, and only a handful of Southerners owned more than 20 slaves. Yet the vast majority of Southern Whites supported the institution of slavery and fought the Civil War to preserve the slave system. Why did a large majority of White Southerners support the institution of slavery, even though fewer than a quarter of them owned slaves?* ENOTES (Nov. 17, 2010), <https://www.enotes.com/homework-help/slavery-south-396317>.

¹⁵⁹ See Romero, *supra* note 81.

¹⁶⁰ Aimee Villarreal, *Coming to terms with Santa Fe’s Entrada pageant*, NMPOLITICS.NET (Aug. 30, 2018), <http://nmpolitics.net/index/2017/08/coming-to-terms-with-santa-fes-entrada-pageant/> (last visited Mar. 29, 2018). (observing that, “The Entrada pageant, like the folk dramas that it references through ritual, is a hybrid performance – a mythic history – that tells a particular story of survival.”). Another author suggests that an approach to resolving broader Indigenous

While all groups would be involved in this process, it is most appropriate to begin with the Catholic Church. The Church brought much good to New Mexico, as present-day Catholics and non-Catholics alike would attest. Ultimately, in addition to the churches themselves, the Catholic Church created schools, hospitals and charitable organizations which have benefited people throughout New Mexico, and the country.¹⁶¹ However, it is also clear that the Church was instrumental in assisting in the colonization of New Mexico and the subjugation of the Indian peoples by the Spanish government. The Church has a very important mechanism in place which might now be of assistance—penance.

New Mexico Hispanic Catholics are very familiar with the sacrament of penance and reconciliation, one of the seven sacraments of the Church. Catholicism is not the only religion with a belief in the need to confess sins in order to receive forgiveness for them. I make no claim to any expertise in the belief system of other religions and apologize in advance if I am about to mischaracterize and oversimplify their perspectives. But it appears that the Quran, the Torah, as well as the Bible all speak the importance of confession of sin in order to obtain forgiveness.¹⁶² The Catholic religion serves as one of the principal reasons that the Spanish sought to enter, and then re-take what is now New Mexico.¹⁶³ It is the faith of those who

grievances could begin with the convening of a “truth commission” regarding the treatment of Native Americans in this country. Rose Weston, *Facing Past, Facing the Future: Applying the Truth Commission Model to the Historic Treatment of Native Americans in the United States*, 18 ARIZ. J. INT’L & COMP. L. (2001).

¹⁶¹ *Seeds of Struggle, Harvest of Faith: Four Hundred Years of Catholicism in New Mexico*, ARCHDIOCESE OF SANTA FE (Jan. 1, 1998), <http://www.archdiocesasantafe.org/ABSsheehan/ABSMessages/98.1.1.400YearNM.html>. On a personal level, this author was born in a Catholic hospital in Santa Fe, educated in grades 2 through 8 at St. Francis Elementary and grades 9 through 12 at St. Michael’s High School, in Santa Fe. Many of my friends and family members had the good fortune to receive education and health care through the works of the Church. The Church also operated in Santa Fe, St. Catherine’s Indian School, a boarding school, and other elementary, junior high, and high schools.

¹⁶² Sue Nowicki, *Confession varies among world’s major religions*, CATHOLIC ONLINE (Jan. 7, 2009), <https://www.catholic.org/news/hf/faith/story.php?id=31425> (last visited Mar. 19, 2018).

¹⁶³ Rick Hendricks, *Franciscan Ritual in Seventeenth-Century in New*

celebrate the *Entrada* re-enactment. For these reasons, we will examine how the Catholic Church might be able to open an opportunity for reconciliation, applying its concepts of confession and forgiveness.

The Catholic sacrament involves true contrition and a plea to God for forgiveness.¹⁶⁴ Of course, the sacrament is intended to operate on an individual basis. The sinner asks God, through a priest, for forgiveness but makes no direct appeal to anyone injured by his or her sin. The priest can require some attempt to make the aggrieved person whole as a condition of penance.

While the Catholic sacrament of penance only applies to the individual, there are historical examples of the Church asking for forgiveness as an institution. In 1999, then Cardinal Ratzinger who went on to become Pope Benedict XVI, delivered a message expressing the remorse of the Vatican regarding the Holocaust.¹⁶⁵

Mexico: Possession of Churches, NEW MEXICO HISTORY.ORG (n.d.), <http://newmexicohistory.org/people/franciscan-ritual-in-seventeenth-century-new-mexico-possession-of-churches>.

¹⁶⁴ *Penance*, USCCB (2018), <http://www.usccb.org/prayer-and-worship/sacraments-and-sacramentals/penance/index.cfm> (last visited Mar. 16, 2018).

¹⁶⁵ Ratzinger wrote:

The Shoah (Hebrew word for the Holocaust) was certainly the result of the pagan ideology that was Nazism, animated by a merciless anti-Semitism that not only despised the faith of the Jewish people, but also denied their very human dignity. Nevertheless, “it may be asked whether the Nazi persecution of the Jews was not made easier by the anti-Jewish prejudices embedded in some Christian minds and hearts... Did Christians give every possible assistance to those being persecuted, and in particular to the persecuted Jews?”

There is no doubt that there were many Christians who risked their lives to save and to help their Jewish neighbors. It seems, however, also true that “alongside such courageous men and women, the spiritual resistance and concrete action of other Christians was not that which might have been expected from Christ’s followers.” This fact constitutes a call to the consciences of Christians today, so as to require “an act of repentance (teshuva),” and to be a stimulus to increase efforts to be “transformed by renewal of your mind” (Rom12:2) as well as to keep a “moral and religious memory” of the injury inflicted on the Jews. BILL PIATT, *CATHOLIC LEGAL PERSPECTIVES* 185 n. 109 (2d ed. 2015); see also *Pope Benedict XVI*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/pope->

On March 12, 2000, Pope John Paul II issued an apology for the role of the Church in the suffering of the Jews, “We are deeply saddened by the behavior of those who in the course of history have caused these children of yours to suffer, and asking your forgiveness we wish to commit ourselves to genuine brotherhood.”¹⁶⁶

On other occasions, the church has apologized for its role in the sexual abuse scandal involving its clergy. In 2017, the Archdiocese of Santa Fe apologized for the role of the Church regarding seventy-four religious leaders about whom it found credible information existed to prove their involvement in sexual abuse.¹⁶⁷

Even more specifically, the Church has already acknowledged, and apologized for being, “unconscious and insensitive to the mistreatment of our Native American brothers and sisters and [we] have at times reflected the racism of the dominant culture of which we have been a part.”¹⁶⁸ This apology was made by the American Catholic Bishops at the time of the 500-year anniversary of the entry by Columbus into the Americas.¹⁶⁹

What might reconciliation look like, then, in the *Entrada* context? Popes Benedict and John Paul, the Archbishop of Santa Fe, and the United States Conference of Catholic Bishops have already provided the template. An apology tracking the language of the Catholic Bishops could be issued by the Church toward Native Americans in New Mexico, “we extend our apology to our native peoples and pledge ourselves to work with them to ensure their rights, their religious freedom, and the preservation of their cultural

benedict-xvi-joseph-alois-ratzinger (discussing Pope Benedict XVI’s biography).

¹⁶⁶ *Id.* at 184 n. 106; NICK SMITH, *I WAS WRONG: THE MEANINGS OF APOLOGIES* (2008).

¹⁶⁷ Olivier Uyttebrouck, *Archbishop identifies 74 clergy accused of child abuse*, ALBUQUERQUE J. (Sept. 12, 2017, 3:37 PM), <https://www.abqjournal.com/1062452/archdiocese-of-sf-releases-names-of-clergy-accused-of-abuse.html> (last visited Mar. 15, 2018).

¹⁶⁸ Ad Hoc Committee on Native American Catholics’ letter, *1992: A Time for Remembering, Reconciling, and Recommitting Ourselves as People*, <http://www.usccb.org/issues-and-action/cultural-diversity/native-american/resources/upload/a-time-for-remembering.pdf>.

¹⁶⁹ *Id.*

heritage.”¹⁷⁰ It could be joined in by people of goodwill in northern New Mexico. This would have to include those who wish to celebrate the *Entrada*. This undoubtedly will be very painful for those whose hold justifiable pride in the courage and resourcefulness of their ancestors who braved the journey to the New World from Spain, and who now genuinely hope for peace and reconciliation.

It will require their recognition that brutality and slavery resulted from these incursions, along with the establishment of the institutions that have evolved into contemporary society. It might be appropriate to issue the apology on multiple occasions so that Native Americans can be convinced of their sincerity and empathy. These apologies are necessary even if there are no individuals currently responsible for the slavery, and not because of any inherited culpability for these horrors, but rather because of the recognition that hurt still lingers. The Catholic Bishops in the United States have eloquently acknowledged “[t]hat the encounter with the Europeans was often a ‘harsh and painful one’ for native peoples, and we lament the diseases, death, destruction, injustices, and disrespect for native ways and traditions which came with it.”¹⁷¹

Once these apologies are made, however, any hope of reconciliation requires that they be accepted. Again, returning to the analogy of the Sacrament of Penance:

Not only does it [the Sacrament of Penance] free us from our sins but it also challenges us to have the same kind of compassion and forgiveness for those who sin against us. We are liberated to be forgivers. We obtain new insight into the words of the Prayer of St. Francis: “It is in pardoning that we are pardoned.”¹⁷²

It undoubtedly will be very difficult and painful for some Native Americans to accept an apology and then demonstrate compassion toward the descendants of those who have sinned against their ancestors. Nobody suggests this will be easy. Maybe, just maybe it

¹⁷⁰ *Id.* at 2; Uyttebrouck, *supra* note 168.

¹⁷¹ Ad Hoc Committee on Native American Catholics’ letter, *supra* note 168.

¹⁷² *Penance*, *supra* note 164.

would be helpful to reconsider the erroneous belief that all slavery is European in origin and enforcement.¹⁷³ Maybe it would help if Native Americans realized that slavery was in practice against Native Americans by other Native Americans when the Spanish arrived. And once Africans were brought to the New World as slaves, Native Americans comprising the so-called five “Civilized Tribes” (Cherokee, Choctaw, Chickasaw, Creek and Seminole) enslaved Blacks.¹⁷⁴

Even following the forced relocation of these tribes in the Trail of Tears, one historian has noted, “The Five Civilized Tribes were deeply committed to slavery, established their own racialized black codes, immediately reestablished slavery when they arrived in Indian territory, rebuilt their nations with slave labor, crushed slave rebellions, and enthusiastically sided with the Confederacy in the Civil War.”¹⁷⁵ Obviously this did not happen in New Mexico. But it serves as a reminder that we are all human. Many societies before us fell into the mistaken belief that human beings have the right to own other human beings. The Spanish were wrong in this belief. Their Anglo successors were wrong. The Native Americans who believed in enslaving other Native Americans were wrong.

It might also be important to consider that, as the Catholic bishops have noted, “the expansion of Christianity into our hemisphere brought to the peoples of this land the gift of the Christian faith with its power of humanization and salvation, dignity and fraternity, justice and love.”¹⁷⁶ In that vein, all would need to

¹⁷³ As one author has observed, “Slavery has coexisted with the human experience since the beginning of recorded history on every continent and among all races. Every major religion has sanctioned it and every civilization has been built upon it.” Augustin Parise, *Slave Law and Labor Activities During the Spanish Colonial Period: A Study of the South American Region of Rio De La Plata* 32 RUTGERS L. REC. 1, 4 (2008) (citations omitted).

¹⁷⁴ Ryan P. Smith, *How Native American Slaveholders Complicate the Trail of Tears Narrative*, SMITHSONIAN.COM (Mar. 6, 2018), <https://www.smithsonianmag.com/smithsonian-institution/how-native-american-slaveholders-complicate-trail-tears-narrative-180968339/> (last visited Mar. 15, 2018); see also Lolita Inness, *Cherokee Freedmen and the Color of Belonging*, 5 COL. J. RACE & L. 100 (2015).

¹⁷⁵ *Id.*

¹⁷⁶ Ad Hoc Committee on Native American Catholics’ letter, *supra* note 168,

recognize and respect the deep religious feelings held by Catholics, and Hispanic Catholics in particular. This recognition and respect would include understanding that the First Amendment protects not just beliefs but also acts and expressions, including public prayers and re-enactments. The right to engage in these public expressions is protected even if some people do not agree or even if some are offended by the messages. Notwithstanding this Constitutional guarantee, threats are being made to involve the legal system to block the *Entrada*. Threats by predominantly Anglo attorneys to prevent Hispanic Catholics from the reenactment of a significant religious event undoubtedly feels reminiscent by some, of the use that Anglo attorneys and the Santa Fe Ring made of the legal system to deprive the ancestors of Hispanic Catholics of their land rights. Of course, those rights were taken from the Indians by the Spanish and Mexican governments in the first place.

Even if the city of Santa Fe is giving at least tacit approval to the message that the entry in 1692 is worthy of celebration, the city has the right to adopt such a position and promote it, without violating the First Amendment, so long as it is not requiring anybody to “pledge allegiance” to that view.¹⁷⁷ Those same protections of course would extend to Native Americans. There will have to be forums created whereby those who disagree with the message of the *Entrada* can object. But it is one thing to object, and another to try to silence contrary viewpoints. There seems to be a growing belief that if someone is offended by a message, that person has the right to stop the speaker from delivering the message.¹⁷⁸ This, of course, is the

at 2.

¹⁷⁷ See *Agency for Int’l Dev. v. Alliance for Open Society Int’l Inc.*, 133 S. Ct. 2321 (2013).

¹⁷⁸ Catherine Rampbell, *Free speech a vague concept among college students*, SAN ANTONIO EXPRESS-NEWS (Sep. 21, 2017), at A 11. Ms. Rampbell discusses a nationwide survey of 1,500 college students conducted by John Villasenor, who serves as a professor at the University of California at Los Angeles and a senior fellow at the Brookings Institution. Students were asked whether hate speech is protected by the First Amendment. Four out of ten incorrectly said “no.” Six in ten students incorrectly believed that the First Amendment required that if a speaker at a public university made offensive statements the University would be obligated to match those statements with a

exact opposite of the intention of the First Amendment. The remedy for offensive speech has traditionally thought to be more speech.

Community leaders and members of each affected group would need to work out an agreement on where and how any dissenting viewpoint can be presented. Perhaps those opposed to the traditional view of the *Entrada* could be given a permit put on their own interpretation of the events. The *Entrada* is one perspective on historical reenactment. Perhaps the Fiesta could include, right after the *Entrada*, a “Native People Respond” reenactment. Both groups would be guaranteed space and time for the presentations. Police would enforce those guarantees. While there will be some who would take offense at either or both presentation, confrontation and drowning out the others’ messages would cease. Perhaps tensions would ease to the point where collateral conflict would be minimized, and the idyllic and worthy goal of multicultural harmony could be achieved even as the struggle to overcome current difficulties continues.

A respectful, inclusive re-enactment is possible. In fact, a similar one took place in May, 2018, as the City of San Antonio, Texas conducted a Tricentennial Celebration of its religious and military founding by the Spanish.¹⁷⁹ The re-enactment began with a “Tricentennial Day of Reflection” on May 1, 2018, in which the American Indians in Texas (AIT) drummed, danced and sang in the Coahuiltecan language.¹⁸⁰ This part of the ceremony recognized the

differing view. More disturbingly, half of the students surveyed believed that it would be appropriate for a student group to disrupt the speech of a “very controversial speaker” who was “known for making offensive and harmful statements.” Finally, and perhaps most disturbing of all was the response of nineteen percent of the college students responding to the survey indicating that it would be acceptable to use violence to prevent the controversial speaker from speaking in the first place. Some universities and institutions now recognize the danger to free speech posed by those who believe that there is some right to stop “offensive” speakers from speaking. See Geoffrey Stone & Will Creeley, *Restoring Free Speech on Campus*, CHICAGO TRIB. <http://www.chicagotribune.com/news/nationworld/ct-free-speech-college-campuses-20150928-story.html> (last visited March 29, 2018).

¹⁷⁹ Elaine Ayala, *Native Americans’ Influence will be felt*, SAN ANTONIO EXPRESS-NEWS, May 1, 2018, at A3.

¹⁸⁰ *Id.*

presence of indigenous people in what was to become San Antonio long before the arrival of the Franciscan friars and colonizers who founded the mission that later became known as the Alamo. It recognized the reality that, “If all the human occupation of Bexar County were condensed to a single 24-hour day, European settlement would occupy only 36 minutes of the last hour.”¹⁸¹

The Archbishop of San Antonio, Gustavo Garcia-Siller, spoke in English and in Spanish, praising the early missionaries, noting that “the firm rock upon which our community life—our past and our future—are founded, is the word of God.”¹⁸² The reenactment included a Native-American blessing, and prayers from other faiths.¹⁸³ There were no disruptions or confrontations. Nobody threatened litigation over the prayers offered in a very public forum. The Franciscans who arrived in what is now Santa Fe were members of the same religious order who later arrived in what is now San Antonio. Peace is possible.

These same lessons and approaches would be applicable in dealing with other post-slavery conflict such as the boundary disputes, and other matters discussed at the beginning of this article. Peace-making mechanisms, such as involvement by the United States Department of Justice Community Relations Service¹⁸⁴ or other entities, might be of help in bringing representatives together for the initial discussions.

But what about the issue regarding monuments, to Spanish explorers or to Confederates or anything else related to slavery? It would certainly be very expensive to locate and remove every monument, street name, city name, gravestone marker, and the like that carries any reminder of slavery. Some monuments may be so imposing and offensive that the cost might justify their removal or relocation. Most might simply be ignored. Former professional basketball player Charles Barkley suggests this approach, stating,

¹⁸¹ *Id.* at A9.

¹⁸² Scott Huddleston, *Alamo City Turns the Big Three-0-0*, SAN ANTONIO EXPRESS-NEWS, May 2, 2018, at A5.

¹⁸³ *Id.*

¹⁸⁴ *Community Relations Service*, US DEP'T OF JUST. (2018), <https://www.justice.gov/crs> (last visited Mar. 16, 2018).

“I’ve never thought about those statues a day in my life”¹⁸⁵ concluding that thinking about them is “wasted energy.”¹⁸⁶ A columnist for the Santa Fe *New Mexican* took the same approach in discussing a situation where some might view as offensive the name of Pancho Villa State Park.¹⁸⁷

But removing or ignoring these monuments may not be the best approach. Some of these images should not be hidden or forgotten, lest the tragedies they represent be repeated. On several occasions I have had the opportunity to view the Dachau prison camp in Germany. Portions of the camp have been preserved, but not as a monument to the Nazis who enslaved people, experimented on them and committed mass murder in one of the most horrific tragedies in the history of human existence. Rather, the site has been preserved with explanations and exhibits detailing the horrors so that they will not be repeated.

Similarly, in 2002, I had the opportunity to attend a conference sponsored by the Touro Law Center in Berlin.¹⁸⁸ The opening session took place on Sunday, July 7th, 2002 at the Wannsee Villa. The Villa is located in a beautiful suburb of Berlin where lake homes dot the countryside. In 1942, a conference at Wannsee was attended by the legal, judicial and political leaders of the Third Reich. The purpose was to resolve the “Jewish Question.” We sat at the actual table where the planning for the annihilation of six million

¹⁸⁵ Steve Kurtz, *Charles Barkley’s common sense on Confederate statues makes him a hero for our time*, FOX NEWS (Aug. 23, 2017), <http://www.foxnews.com/opinion/2017/08/23/charles-barkleys-common-sense-on-confederate-monuments-makes-him-hero-for-our-time.html> (last visited Mar. 13, 2018).

¹⁸⁶ Dan Steinberg, *Charles Barkley: “I’m not going to waste my time worrying about these Confederate statues”*, WASH. POST (Aug. 18, 2017), https://www.washingtonpost.com/news/early-lead/wp/2017/08/18/charles-barkley-im-not-going-to-waste-my-time-worrying-about-these-confederate-statues/?utm_term=.afb77c421340 (last visited Mar. 17, 2018).

¹⁸⁷ Milan Simonich, *Park name strikes sore spot in border town*, SANTA FE NEW MEXICAN (Jul. 13, 2014), http://www.santafenewmexican.com/news/blogs/politics_and_news/park-name-strikes-sore-spot-in-border-town/article_f08d754d-daf5-5f58-996e-87197ec874d7.html (last visited Mar. 16, 2018).

¹⁸⁸ Konferenz in Berlin: Tyranny, Justice in the Law: the Nazis and Beyond, haGalil (Jul. 2002), <http://www.judentum.net/kultur/tyranny.htm>.

Jews took place. The Villa, the table and the explanatory documents are there not to glorify what occurred but to ensure that future generations would understand it, believe that those things took place, and take active steps to prevent something like that from ever happening again.

Consider another monument, obscure in its location, yet highly significant in this discussion. Roswell, New Mexico was the site of a World War II prisoner of war camp, housing up to 4,800 German POW's. Some of the prisoners, whose job it was to repair a stone water channel, built an iron cross into the riverway.¹⁸⁹ When it was discovered, many Roswell citizens were outraged. The cross was cemented over, so as not to be visible. However, as time passed, the cement eroded. The iron cross became visible again, and the initial thought was to destroy it.¹⁹⁰ At this point, however, cooler heads in Roswell prevailed. Rather than obliterate the work, Roswell made the cross the focal point of a park, POW/MIA Park, dedicated to prisoners of war and soldiers missing in action everywhere.¹⁹¹

In deciding to preserve the iron cross, the good people of Roswell obviously did not choose to glorify the cause for which the German POW's fought. Rather, the preservation is a recognition that brave young German men, displaced and forcibly relocated and detained half a globe away, were nonetheless human beings, as are all other POW's in every conflict. Preserving the monument is a reminder of the common plight and the common humanity of those detained fighting in war.

Those looking at this Roswell monument may be encouraged to strive for peace. The monument can represent the hope that no one else will ever face detention and worse as a result of a conflict that the detained individuals did not start, yet who answered the call when their country called upon them to serve. Undoubtedly, someone looking at this monument might sympathize with the cause it originally represented. But those feelings would exist, monument

¹⁸⁹ *POW Iron Cross*, ATLAS OBSCURA (n.d.), <https://www.atlasobscura.com/places/german-pow-iron-cross> (last visited Mar. 16, 2018).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

or no monument. Eliminating the iron cross would not eradicate those sentiments. On the other hand, preserving the stone work causes people to reflect not only on the humanity of those who built it, but now upon the humanity of those who chose to preserve it in an attempt to make a broader statement of human dignity and worth.

Perhaps our journey along a path toward a peaceful resolution of not only the *Entrada* situation, but also the broad concerns regarding the issue of monuments and historical re-enactments, will also be assisted by the consideration that our history is complicated. Our predecessors and their actions don't fall neatly into just a "good-person/bad-person", or "racist/ non-racist" approach. They are both. A dramatic illustration of these points is the exhibition, "Americans" on display at the National Museum of the American Indian. The curator of the museum, Paul Chaat Smith who is Comanche, heads the exhibition. He believes it is the museum's obligation to embrace the ambiguity in our founders and not ignore it. Ryan P. Smith notes curator Smith's perspective.

When you think of the Trail of Tears, you likely imagine a long procession of suffering Cherokee Indians forced westward by a villainous Andrew Jackson. Perhaps you envision unscrupulous white slaveholders, whose interest in growing a plantation economy underlay the decision to expel the Cherokee, flooding in to take their place east of the Mississippi River. What you probably don't picture are Cherokee slaveholders, foremost among them Cherokee chief John Ross. What you probably don't picture are the numerous African-American slaves, Cherokee-owned, who made the brutal march themselves or else were shipped by to what is now Oklahoma aboard cramped boats by their wealthy Indian masters. And what you may not know is that the federal policy of Indian removal, which range far beyond the Trail of Tears and the Cherokee, was not simply the vindictive scheme of Andrew Jackson, but rather a popularly endorsed congressionally sanctioned campaign spanning the

administrations of nine separate presidents.¹⁹²

Curator Smith observed the following:

I don't know why our brains make it so hard to compute that Jackson had a terrible Indian policy and radically expanded American democracy. Or that John Ross was a skillful leader for the Cherokee nation who fought the criminal policy of removal with every ounce of his strength but also a man who deeply believed in and practiced the enslavement of black people.¹⁹³

Similarly, it might be necessary for all to consider that Don Diego de Vargas was a skillful soldier, a patriotic Spaniard, who established alliances with supportive Indians, established Spanish colonies in a hostile environment which have endured to today, *and* he brutalized and subjugated many of the Native Americans he encountered.

The Catholic Church established religious, educational and medical institutions which endure, enriching the lives of the people in the New World, *and* its representatives brutalized and subjugated many of the Native Americans they encountered. The Anglo attorneys, merchants and soldiers who moved into New Mexico helped refine a system of justice based upon English common law system with all of the improvements of American constitutional law, *and* they used some of these mechanisms to deprive Hispanic and Native Americans of their property rights. Contemporary Hispanics and Native Americans want their culture and religion respected by all concerned, and people of goodwill on all sides of the controversy want peace.

These lessons and approaches could be expanded to apply to the Confederate monument issue. It might be necessary to consider that the Confederate armies were made up of conscripts forced into service in the nation's first military draft.¹⁹⁴ There were likely not

¹⁹² See Gomez, *supra* note 107.

¹⁹³ *Id.*

¹⁹⁴ Seth Kaller, *Opposing the Confederate Draft*, Seth Kaller Inc. Historic Documents & Legacy Collections, <https://www.sethkaller.com/item/420-21781-Opposing-the-Confederate-Draft&from=7> (last visited Mar. 29, 2018).

very many slaveholders among them. Wealthy slave holders with more than 20 slaves were exempted from military service.¹⁹⁵ Probably most of these young men were not very politically or ideologically sophisticated. Rather they fought because they were called to do so either by the draft or by a sense of patriotism. Their cause was wrong. They fought to separate from the Union and to protect a system that allowed the enslavement of other human beings. But these young men and their leaders were human beings. Their descendants are not slave-owners and had no choice in who would be their ancestors. We are all citizens now of the same country, we have fought foreign powers to defend it, and together we have made great strides in reducing the continuing reverberations of slavery and its aftermath.

The concerns and sensitivities on all sides of the *Entrada* issue and the related issues of monuments will not be eliminated either by merely eliminating the *Entrada* or destroying the monuments. The challenge will be to remove the most problematic of the monuments and still maintain the reminders of the horrors this country has faced and survived. It will require an incredible amount of forgiveness and compassion for all to agree to allow a few of the monuments to remain with appropriate explanations of the horrors of slavery and the destruction that the attempt to secede from the Union continues to cause in our society. Imagine the strength it must take for the descendants of the Holocaust to know that part of Dachau has been preserved. These descendants undoubtedly are reminded of the horrors their predecessors experienced, yet they understand that it is critical that people understand what occurred so as to minimize the likelihood that it will occur again.

It isn't enough to argue that these monuments should come down because they represent treason or slavery. Logically, even the monument in the Capitol to Po'pay would have to be removed because he too engaged in treason against the Spanish government, instituting what has been called the first war for independence on this continent. We have ancestors who, because they were human, did some very bad things. At the same time, they have left us with a

¹⁹⁵ *Id.*

legacy that makes this country a very desirable place to be. Our challenge should be to remember the failings, correct them, prevent them from recurring, but not try to blot them from memory.

So maybe rather than trying to ignore or remove offending monuments they should become monuments to forgiveness. A plaque nearby could carry an apology from the descendants of slave-owners and any who might have benefited from slavery. The plaque would also contain acceptance of the apology by representatives of the descendants of slaves. It would express a mutual goal of working and living together in peace for the benefit of our children, our families, and ultimately our nation. Re-enactments could acknowledge the complexities and moral ambiguities of the past, while allowing participants to celebrate the good that has resulted. Our country would be filled then with monuments and re-enactments not to slavery or the Confederacy or to only one view of the *Entrada*, but to the desire to respond to the moral and compelling obligation to love one another, and to live together in peace.