In the early 1660s, a number of slaves in central Mexico sued for their freedom—and won. In both cases, the slaves pressed their claims following the death of their masters. The transcripts include all procedural wrangling, all court orders, all testimony, the judges’ sentences and, in one case, an appeal. In one form or another, case reports such as these have been the *piece de résistance* of colonial Mexican historiography. And yet, legal cases have rarely been read for themselves. Rather, with cannibalistic intent, historians have feasted on pieces here and pieces there, without bothering to read the record for the intricacies of procedure, the use of language, the burden of proof, the presentation of evidence, or the modes of legal reasoning—the stuff of law in practice.

My goal is to bore deeply into these cases in an effort to unearth something of the always-contested ways people shared beliefs in law and justice in 17th-century Mexico. By “belief,” I mean something along the lines of what Spanish philosopher José Ortega y Gasset did: those “idea-beliefs” which in any given historical period are so much a part of the fabric of lived reality as to strike one as “reality itself” in ways largely unconscious. “Beliefs,” said Ortega, “are the foundations that carry and support everything else. So much as we do and think moves already in the horizon delimited by our beliefs. And the first thing the historian needs to determine, about a man or an epoch, is this system of beliefs.” By now it is clear that Catholicism, in its various guises, became such a belief in colonial Mexico. My contention in the broader project of which this paper is a preliminary exploration is that law and justice may have done so as well, though in very different ways. Because the cases in question deal with *libertad*—a central principle of 17th-century Spanish law—they are an ideal way of beginning to explore the difficult methodological and conceptual problem of trying to get at how participants at all levels of the social hierarchy understood their role in and relationship to the workings of law in 17th-century Mexico.
Introduction

One of the overarching conceptual problems for would-be legal scholars of Latin America has been the Whiggishness of so much scholarly discussion of liberal legal systems. Colonial law’s Thomistic character ill fit the liberal teleology that has dominated historical thinking from the 18th century forward. During the national period following the wars of independence between 1810 and roughly 1830 constitutions and legal systems apparently liberal on paper seemed to defy even the most generous understanding of liberal notions of law. In terms of the canons of legal scholarship law existed in Latin America in name only.²

Recent developments in legal scholarship, especially in the social- and cultural history of law as well as the poststructuralist turn in legal studies, represent an epistemological opening conducive to rethinking law’s role in colonial Latin America. One of the most crucial insights of these critiques has been the recognition that law and legality represent an arena of contestation, a place where common people may voice their concerns and even win out over superiors. The significance of this view is precisely that it evades both a sense of law as a disembodied, formal system of rules and of law as a simple reflection of elite power. By breaking free of teleological notions of law’s development over time and yielding up the idea that law is either an expression of formal rules or simply an expression of naked power, such an approach implies a set of conceptual tools more in keeping with the embrangled, multiform nature of law in Latin America.³

This paper is an effort to employ such tools. In doing so, I will rely on a fresh line of thinking that promises penetrating insights into the meaning and workings of law. It is an approach that accepts the twin propositions that law is an expression of power and that people pursue their interests through law.⁴ Power and interests, however, are the beginning, not the end of the matter. As legal scholar Steven Winter argues, to say that the law is finally an expression of power is to elide the question of what power is and how interests come to be expressed through the law. More bluntly, according to Winter, “‘[P]ower’ cannot work as a foundational account of justice, morality, law, or anything else because at each level and every step of the way, the capacity to exercise power is itself contingent on some complex set of social conventions and understandings.”⁵ The crucial intuition here is that to study the law—or anything else—one must seek to discern the social conventions and understandings that lie behind it. These, in turn, will remain unrevealed if approached through the false choice between representing an act as either entirely free or completely determined. Rather, says Winter, “[c]ontingency
and constraint are one in the same,” for “[o]ur very ability to ‘have’ a world is dependent on the preexisting social practices and conditions that form both the grounds of intelligibility for and the horizons of our world.” And because these practices and conditions are produced at the very level of cognition itself, “there is an important sense in which we unconsciously replicate and maintain our socially constructed contexts.” Law, in other words, is inherently about contest, but also intrinsically about how “those who live together … express themselves through it and with respect to it.” Law cannot be made sense of apart from broader social practices and forms of everyday life—how a community lives, the norms it obeys, the things its members value.

The implications of this view for the historical study of law are profound. In essence, it suggests that Leonor de los Reyes—one of the slaves in question—or anyone else for that matter, cannot be understood as individuals with a will- or decision-making power that meaningfully slips the enabbling constraints that made up the normative universe she inhabited. Leonor was an individual, but one circumstantially situated, like any other person of her time and place, whether fellow slave, master, or the judge hearing her case. What she could think, the ideas she was capable of having, her aspirations in life, were products of that situation, because cognition itself is grounded in constraint and contingency, not in phenomenological autonomy. Leonor was able to pursue her liberty because of what law and libertad meant in colonial Mexico in the 1660s and because, even as a slave, she could draw on shared understandings of those meanings.

In what follows, I seek to bring such understandings into relief and to discuss what it meant for them to be shared—by Leonor, her lawyers, the witnesses who were called to despose, the opposing lawyers, and the judges. This calls for painstaking attention to the procedure, language, and modes of legal reasoning at play in these cases and how they related to legal principle. To discover the similarities and differences from which such a relation can be drawn, the erudition and abstractness of legal treatises must be set alongside the expediencies and concreteness of actual petitions, despositions, arguments, and verdicts. This approach demands a probing sensitivity to the nuances and context of what legal scholar Robert Cover calls the laws’s “expressive range,” and of what it meant for people to involve themselves with the law. This is no straightforward matter. The dominating presence of institutional arrangements in these tightly-choreographed dramas tends to divert attention from the more shadowed precincts of human experience in favor of what is assumed to be more easily knowable. These arrangements tend to occlude the relational side of law, obscuring the idea, as Cover puts it, that “legal
precepts and principles are not only demands made upon us by society ... [but] also signs by which each of us communicate with others.” The apparent regularity and formulaic predictability of procedure, the shrouded conspicuousness of power relations, the stilted and falsely-precise use of language, the assumed fixity of legal precepts muffle the extent to which and how participants understood their roles in such proceedings and how the law could be “a resource in signification” that enables human beings to “submit, rejoice, struggle, pervert, mock, disgrace, humiliate, or dignify.”

Thousands upon thousands of people over nearly three centuries crossed the threshold of the rambling mansion that was derecho indiano in colonial Mexico. We have only a very incomplete sense of how they lived in and moved about the mansion and of how the mansions’ presence in the social landscape influenced collective life more generally. We know even less about what law and justice meant to those who found their way to it. This paper, through a close reading of two cases, is an effort to suggest how we might proceed in thinking these issues through.

The Facts

For Leonor Reyes, variously described as a “mulata” and a “negra,” it had all begun over a decade earlier, in 1650. On April 17 of that year, Melchor Arias Thenorio, owner of the sugar mill at Amanalco outside of Cuernavaca, patron of the Santa Clara Convent in Mexico City, just a day’s ride away, and owner of Leonor herself, put hand to a paper granting Leonor her “liberty so that she may enjoy it so long as she shall live which I give her with all my will so that at no time will anyone be able to interfere with said liberty but rather that she be able to enjoy it…” Eight years later, during which time Leonor claimed she had lived as a free person attached to and laboring at the mill, Francisco Arias Thenorio ratified his brother’s wishes with a document stating that as heir and executor of his brother’s estate, he approved of Leonor’s liberty, “so that as a free person she could enjoy it and go where she cared to, deal and make contracts, make a testament, and appear in court and do everything a free person can do…”

Despite this, Leonor found herself in mid-1658 working at the San Vicente paraje (a kind of inn/supply point for travelers), unable to leave. On May 21 of that year she appeared before Captain Hernando Ponze de Viruez, a lieutenant to the alcalde mayor (governor of a town or province who also exercised judicial functions) in Cuernavaca, to secure legal recognition of her liberty. “With all due solemnity” she submitted the 1650
document signed by her master, now deceased, together with the ratification signed by his brother just a week earlier on May 15, 1658, “so that authorized in a public form and manner that will bear witness the originals may be filed in the registry so that at all times it will be a matter of record.”

Two and a half years later, just five days before Christmas 1660, the matter comes before the Tribunal of the Holy Inquisition in Mexico City, Dr. Mañozca and Lic. Higuera presiding in the morning session. She has been so insistent that she is a free person that the Tribunal orders her to produce witnesses to prove her claim. She asks to be released to do so, but the Tribunal orders her to stay put. Instead, Lic. Andrés Gamero León, the administrator of the estate on which she works, is to find the witnesses she identifies and interview them. Gamero accepts the commission, noting that Leonor “es tan ladina”—so shrewd—that she plans to put up witnesses who are not already on the record. He asks the Tribunal to direct him “in all that is in keeping with justice,” promising his obedience.

By April 1661 Gamero has interviewed four witnesses. Unhappy with the results, Leonor files a series of petitions suggesting she has decided to dig in her heels and fight. On December 9, 1661, she asks the Tribunal to remove her from the paraje where she is working and place her in the home of Lic. Joseph Arias Rio Frio, a clergyman, pending the outcome of her case. On December 23, she advances two further petitions. One claims that because she is “oppressed and without power” she has not been able to seek the most important witnesses for her defense. Accordingly, she requests the Tribunal allow her to call more witnesses. A second motion asks the Tribunal to appoint her a lawyer, “so that I can pursue my claim in light of my impossibility and poverty.” In separate orders, the Tribunal grants all three petitions. Soon thereafter Don Joseph de Cabrera, an attorney of the Real Audiencia and the appointed advocate of the prisoners of the Holy Office, takes up her case.

In April 1662, after much procedural wrangling and many more witnesses, the Tribunal rules against Leonor for failing to prove her claim. She appeals. Over the prosecutor’s objection, the Tribunal accepts the appeal and returns her to the Amanalco mill, as a slave to await a decision. Eight years pass without word on her case. In June 1670, baffled by the delay, she files a petition inquiring after the status of her appeal. Her new lawyer, Nicolás de Amezqueta, explains to the Tribunal that she had been spirited away from jail back to the sugar mill so suddenly in 1662 that the Tribunal’s order accepting her appeal had not reached her. The case had been sent to the Supreme Council of the Inquisition in Madrid, but nothing had happened because she had not
known to take action. Cabrera, a busy man, had fallen down on the job. In August 1670, Amezqueta requests that Leonor’s appeal be renewed. Noting that she is “suffering great work and bad treatment” at Amanalco, he pleads the Tribunal take notice of “the extreme and notorious necessity she suffers and the privilege matters of liberty have at law.” Once word reaches Madrid, the Supreme Council appoints a lawyer to her case. On January 10, 1673, the Council accepts the lawyer’s recommendation and overturns the initial 1662 ruling of the Mexico City Tribunal. Leonor is declared a free person.

At almost the same time Leonor files her first petition with the Tribunal of the Inquisition, a free mulatto called Francisco Camargo appears before the same Tribunal to present a petition concerning the liberty of Juan and Ursula Clemente, “negros,” and their children, Lucia and Maria. On July 16, 1661, fearing that they are about to be “embargoed” as part of the property of their deceased master, Pedro de Soto López, former accountant and alguacil mayor (chief bailiff) of the Tribunal, Juan and Ursula insist that in a deathbed declaration their master had freed them. Because he was in extremis during his last days he had not been able to do so with a properly notarized document, but numerous witnesses, they assure the Tribunal, will attest to the deed. They urge the Tribunal to recognize their status as free people and that while they prove their contention, the executor not be allowed to “dispose of us, nor treat us badly.” Juan’s and Ursula’s petition is joined by two others. One by Clara de Soto, wife of Francisco Camargo, acting “por mi derecho” (by her own right) and on behalf of her minor children Juan Pedro, Thomas, and Joseph de Soto. Another by Sebastian de Soto, also a minor. All claim to have been slaves of the deceased until he manumitted them shortly before his death. Clara for her children and Sebastian on his own behalf, request the Tribunal appoint an advocate ad litem to watch out for the children’s interests. The Tribunal receives the petitions and orders Captain Phelipe de Nabarijo, de Soto’s executor and holder of his goods, be notified of this new matter against the estate.\footnote{17}

Nabarijo’s lawyer, Pedro de Castro, argues in response that the plaintiffs are part of the deceased’s property and thus subject to a probate proceeding. He asks the Tribunal to void its own jurisdiction and turn the matter over to the Real Fisco, the branch of the Holy Office responsible to the royal treasury and charged with settling all financial claims against estates not governed by a properly executed will.\footnote{18} The slaves’ freedom, Castro asserts, prejudices creditors’ claims by diminishing the assets against which to satisfy debts. Plaintiffs
answer that since Pedro de Soto López was a familiar of the Inquisition, serving for many years as its Alguacil Mayor, and Francisco Camargo is the husband of an interested party, the Tribunal is the proper venue for the case. To side with Nabarijo, claimants argue, is to “contravene the express will of the deceased” that these people be granted their liberty, and instead “erase it with subterfuges that can obscure the truth and justice of our petition, which is so favored by all law that none of his vaguely alleged reasons should be attended to….” The Tribunal accepts the plaintiffs’ argument and retains jurisdiction.\footnote{19}

In early August, Clara asks for a court-appointed lawyer for the children. The Tribunal appoints Juan Felix de Galbes, a vecino of the city and a soliciter in the Real Audiencia, to the task. Once he is sworn in by the Tribunal, the children grant him an official power to act on their behalf in all legal proceedings touching on the matter of their liberty. In early September 1661, Juan Clemente, Ursula, and Clara de Soto also file powers of attorney in favor of Galbes. In effect he represents all plaintiffs in the case.\footnote{20}

Galbes immediately sets about making sure his clients are stricken from the inventory lists of the estate. In a petition filed in late October 1661, he notes that Nabarijo “seeks to remove this cause from this Tribunal and take it before ordinary justice.” The procedural battle rages through December, each side trying to press its advantage. Galbes continues to insist that the matter is properly before the Tribunal. Nabarijo and Castro stall, recognizing that any response on their part amounts to a tacit acceptance of the Tribunal’s jurisdiction. Their dilatory tactics earn them repeated citations for contempt, with all fines being charged against the estate itself. In mid-December, the Tribunal appoints Juan de Cabalza to act as the attorney for the heirs of the estate, who live in Seville and have had no hand in the proceedings thus far. At every turn, in addition to more technical points, Galbes argues that liberty is so “favored” a principle in law that it may not be dispensed with to satisfy a few debts.\footnote{21}

In early March 1662, the Tribunal opens the evidentiary phase of the case. Galbes begins by deposing eight witnesses between July and October, meeting resistance from a couple of fairly prominent people. Faced with such contumacy, the Tribunal compels them to cooperate, on pain of contempt and a fine. Cabalza, on behalf of the heirs, presents his own witness list and deposes them in October and November. By December, Galbes is satisfied with his case and asks the Tribunal to close the matter and render a decision. Cabalza objects, insisting that plaintiffs have proven nothing and that if they succeed the creditors will be defrauded. He also
introduces new evidence, alleging that a clause in de Soto’s will flatly contradicts the plaintiffs’ argument regarding de Soto’s intent. After admitting the new evidence, over Galbes’ objection that the evidentiary phase had already closed, the Tribunal proceeds to a decision in March 1663.

In a six-page opinion, the Tribunal rules that Galbes has established de Soto’s intent to free his slaves. There is no fraud against creditors since the estate is sufficiently large to settle all its debts without including plaintiffs in the inventory of property against which such claims are to be settled. Juan Clemente and the others, concludes the Tribunal, “are and have been free of all captivity and subject to no servitude whatever since the death of the said Pedro de Soto López and as free persons they must be held as such and must be protected in all and for all from that time to this without any person having had any right in or dominion over them or in any thing that properly pertains or has pertained to them as free persons from that time up to the present ….”22 Cabalza interposes an appeal and asks for money from the estate to perfect it. The Tribunal grants the request but in the end the appeal languishes and dies in Madrid for lack of action.

**Procedural issues**

A first obvious question leaps from the pages of these cases: How were Leonor and Juan able to think that they could secure their freedom by going to court, and the Tribunal of the Holy Inquisition, at that? They were slaves after all, subject to the whim of their owners.

The beginnings of an answer lie in the variegated nature of slavery in Mexico’s central valley in the 17th century. An individual slave might have rolled the dawn-to-dusk ambsec of cutting came. But he likely knew that in larger cities, it was not unknown for slaves to live alone, keep back some income for themselves, and even attend fiestas as though they were free.21 It is worth recalling in this regard that Juan’s initial petition to the Tribunal had been delivered by Francisco Camargo, a free black man who was the husband of Clara de Soto, a slave with Juan at Pedro de Soto’s hacienda. Some slaves, in other words, enjoyed real, if limited, possibilities for improving their situations, even if it was impossible to predict when an opportunity might present itself. When one did, and in a lifetime there might be only one, taking advantage of it could depend crucially on having been obedient and loyal over long periods, on having acquired skills during service, or on having been a credit to the master’s status. It could also hinge, as Leonor’s case suggests, on ties of affection, or at least obligation, that
transcended the more monotonous instrumentality of most slave-master relationships. Either way, a hope for better could counsel patience, calm in the face of provocation, and the boldness to seize a chance when it came along, knowing all the while that life was finally a crap shoot, at best. In short, there is good reason to believe that many slaves’ sense of their subjection was far more nuanced than that permitted by a simple dichotomy between free and unfree.²⁴

The chance for libertad had come to Juan and Leonor differently. Leonor claimed in her first petition to the Tribunal that she had been living as a free person since at least 1650. She found herself in court in 1660 because Andrés Gamero de León, administrator of the sugar estate at Amanalco, was holding her against her will at the paraje San Vicente, claiming she was a slave along with the others, something, she insisted, everyone else at the hacienda and many others knew not to be true. So long as her master had lived, her status had not been an issue. Now that he had gone, it was. She had come to the Tribunal to protect what, by her lights, she already had. Juan, by contrast, had lived his entire life as a slave, along with Ursula, his wife, their children, and Clara de Soto and her children. We do not know whether they had any inkling that Pedro de Soto López might have been thinking about manumitting them, though such acts were common enough that they likely harbored some hope that he might. But just before dying, they claimed, he had freed them all. They were before the Tribunal to have their recently-granted liberty recognized.

Why the Tribunal of the Inquisition? The most immediate answer is that the Tribunal had original jurisdiction over all disputes involving its own people. Juan Clemente’s deceased master, Pedro de Soto López, had been a public accountant and alguacil mayor of the Tribunal. As a “familiar” of the Inquisition, he and those in his family, including his slaves, fell within the Holy Office’s jurisdiction on most matters. Leonor’s case is almost surely quite similar, given that her master’s estate passed to the Holy Office upon his death in 1658.²⁵ And whether or not Melchor Arias had been a familiar of the Inquisition, Leonor’s presence at Amanalco and San Vizente would have brought her within the Tribunal’s ambit as soon as Gamero claimed her as a slave of the estate.

It would be easy to conclude from this that Leonor and Juan simply accepted the Tribunal’s competence for lack of alternatives. To do so would obscure the extent to which they may have made a deliberate and astute choice. And it would not provide any insight into why Juan Felix Galbes, Juan Clemente’s attorney, fought so
hard to keep the his clients’ case before the Tribunal. As members of their masters’ “families”—which included all dependents, from wives to slaves—and because their masters’ testamentary intent was at the heart of their cases, Leonor and Juan had a strong claim to the Tribunal’s jurisdiction. We cannot know whether they considered other options. In trying to understand their situation, however, it is worth lingering over one of the curious twists of colonial legal history: slaves were among the few who actively sought the Inquisition out.

The Inquisition’s first responsibility was to protect the body social against affronts to the faith. By law, Indians were beyond the Tribunal’s reach, but everyone else, from Spaniards, to blacks, to *castas* (people of mixed race), to slaves could be hauled before the Inquisition if accused of heresy, blasphemy, witchcraft, idolatry, demonic pacts, or apostasy. Despite this seemingly narrow jurisdiction, from at least the late 16th century the Inquisition heard a substantial number of slaves complaining about physical mistreatment. Civil courts had clear jurisdiction to hear such cases, but slaves or others denouncing mistreatment often chose to take the matter to the Holy Office.

Slave cases came to the Tribunal in a variety of ways. If physical mistreatment was at issue, a third party might denounce an abusive master, a slave might file a complaint on his own behalf, or an officer of the Inquisition might pursue the matter ex oficio. Available evidence suggests that for much of the period between mid-16th century and mid-17th century, few of these cases became *procesos*, official judicial proceedings. Another line of cases suggests that the Tribunal tended to look favorably upon slaves who sued to keep their families together against masters who would break them up, or who did so that they might marry over a master’s objection.

While slaves did commonly come before the Tribunal alleging mistreatment, to have family relationships recognized or enforced, or to secure liberty, they may more frequently have been there on charges of heresy, apostasy, blasphemy, or witchcraft. In such cases, they might come to the Holy Office’s attention in ordinary ways, i.e., after being denounced by someone else—often a fellow slave—or because an inquisitor sniffed the odor of misdoing and followed his nose. But not a small number of slaves, as Mexican historian Solanje Alberro has shown, came before the Tribunal by accusing themselves of spiritual crimes. Indeed, blasphemy appears to have been quintessentially a crime of slaves. What would have moved a slave to seek out the Inquisition in this way, something almost everyone else in colonial society would have thought mad, or at least ill advised?
In broad terms, they did so because they had discovered a loose joint in the articulation of religion and social order. Starting sometime late in the 16th century, or early in the 17th, slaves began to renounce Christianity, blaspheme, or accuse themselves of other spiritual misdeeds in order to escape masters’ cruelties. By committing a spiritual crime they came within the Tribunal’s jurisdiction and were liable to arrest and removal to the Holy Office’s own jails. More than anything this may seem a commentary on just how harsh slave life could be under the thumb of a truculent owner, but while awaiting their turn before the Tribunal they were at least beyond the master’s lash and afforded an opportunity to complain to someone about their situation.

Sometimes a slave’s threat to recant was itself enough to stop the abuse. When the only articulated rationale for slavery was the Christianization of heathens, abuses so great as to cause a slave to reject the faith could only reflect darkly on the slave owner himself. In principle, slavery could be seen as a compact between master and slave. To the slave’s promise to serve corresponded the master’s to care for the slave and, in particular, prepare him for life eternal. Only in faithful service to masters good and bad, wrote the Jesuit priest Alonso Sandoval in his 1627 _Un tratado sobre la esclavitud_ (A Treatise on Slavery), could a slave find the grace of God. For their part, masters were not entitled to treat their slaves arbitrarily, for just as God “does not rule as a tyrant, but rather commands his servants with love, gentleness and affability,” so should masters “open their eyes and see the obligation that runs to them, that being masters does not make them absolute lords, without law, or obligation, or King with regard to their slaves.” This sense of reciprocity, despite its towering inequality, left slaves room for maneuver: they could threaten to recant because the theology of the day held that they, like all other human beings, possessed free will. Masters owned slaves’ bodies, or the right to the labor of those bodies, but slaves’ souls remained their own.

The implication, intuited by slaves, was that Christianity could not be forced on them. A threat to abandon the faith, as Alberro argues, represented a means for slaves to draw attention to gross abuses. In doing so, they played discordantly on the tensions of a Christian social order, premised on human free will, in which there was slavery. A master might punish a slave for any other failure of obedience—though as Sandoval noted, he was in conscience and law limited to proportionate measures, which in practice often meant little—but he had no jurisdiction over a slave’s soul and hence could not legitimately punish a slave for threatening to recant, or actually recanting. Only the Inquisition could do so. While barred from executing or mutilating heretics, the
Tribunal did have the power to punish certain misdemeanor, such as recantation, blasphemy, petty witchcraft, or demonic pacts with lashings administered by an officer of the Inquisition. But slaves had to be careful. Recantation was one thing, especially if a slave could show he or she was being abused. Heresy was another, and anyone who stepped over the line was at risk of greater punishment, including the galleys, or relaxation to the secular arm, which could mean death or mutilation.\textsuperscript{34}

Masters, too, had to be cautious, which is what allowed this subterfuge to work. Most Spaniards were probably eager to avoid the Inquisition’s attention, in part because one never knew whether a converso might be lurking somewhere in one’s lineage, but chiefly because the Holy Office itself, tangled up in the contradictions of its own ideology, expressed a certain compassion for slaves who had been ill-used. It was not at all uncommon for the Tribunal to mete out comparatively light punishments for the crimes in question—a hundred or two hundred strokes, administered by a professional who was merely discharging an official duty rather than by an overseer exhorted to greater zeal by an angry master—even for offenses against the faith which under other circumstances might have merited much harsher measures.\textsuperscript{35} Members of the Tribunal, more explicitly than masters, were constrained by their beliefs.\textsuperscript{36}

So, when Leonor asked Andrés Gamero to petition the Tribunal on her behalf and when Clara de Soto enlisted her husband to deliver her petition and Juan’s to the Tribunal’s offices, they appear to have had a clear idea of what they were doing. In all likelihood, they were tapping into central Mexican slaves’ collective experience with the Tribunal, one that seemed to offer as good a chance as any for justice. More concretely, Juan and Clara may have known of two previous manumission cases successfully filed by slaves of Pedro de Soto López.\textsuperscript{37} In any event, there were no guarantees, though they may have had as good a shot at success there as anywhere. For once the Tribunal’s jurisdiction was in play, the power of the court was available to both parties. In Juan’s and Clara’s case, for instance, the Tribunal repeatedly held the lawyer for the estate in contempt for failure to respond in a timely fashion, fined him substantial amounts, compelled reluctant witnesses to be examined, and sent a pregón (crier) to the executor’s house to read out an order fining him 50 pesos and ordering him to appear before the Tribunal.\textsuperscript{38}

No wonder Juan and the other plaintiffs in his case fought tooth and nail against efforts to have the dispute transferred to “ordinary justice.” They knew very well what was at stake. “Ordinary justice,” in their
case, would have meant shifting the case to the Real Fisco of the Inquisition, there to await the conclusion of parallel proceedings before the Tribunal del Consulado, the court of Mexico City’s merchants’ guild, where many heavily-indebted estates ended up. Phelipe Nabarijo, their master’s executor, wanted to settle all of the estate’s debts against its assets, including its slaves. This was why he wanted to make sure their names appeared on the inventory of assets. The slaves’ claim to be free, argued Nabarijo, risked short-changing the creditors, which was why the issue should be overseen by the Real Fisco, rather than the Tribunal. Here was the bone of legal contention, which meant that the substance of the case and the jurisdictional dispute were of the same analytical flesh.

It was up to Juan Felix Galbes, Juan’s and the other plaintiffs’ court-appointed lawyer, to articulate a rationale by which the Tribunal could justify retaining the case. No cake walk, this. Plaintiffs’ claim to liberty, Cabalza argued in his January 12, 1662 petition against the Tribunal’s jurisdiction, required a legally executed—i.e., properly witnessed and notarized—will signed by Pedro de Soto López. Without such a document plaintiffs remained slaves subject to all legal dispositions as property belonging to the estate. Therefore, said Cabalza, the Tribunal should delay ruling on the slaves’ liberty until the Tribunal del Consulado had finished probating the estate and settled all its debts. Moreover, concluded Cabalza, because the Tribunal was not the appropriate venue for such a determination he was under no obligation to respond to plaintiffs’ substantive arguments. Galbes riposted that nuncupative—i.e., oral—testaments were perfectly legal and no basis for the Tribunal to refuse the case. He implied that the Consulado was free to proceed, just without the plaintiffs, whose status was before the Tribunal. Absent a clear showing of an intent to deceive, wrote Galbes, the law held that liberty should not be hobbled. As there had been no such showing and as the estate was plenty large enough to satisfy all creditors, the Tribunal was not barred from hearing the matter. Cabalza should be compelled to respond. Cabalza answered back by merely reiterating his earlier arguments.

The crux of this procedural dispute was that all parties understood their fates to depend crucially on which court judged the case. Juan and Clara, through their lawyer, seemed convinced that they stood the best chance with the Holy Office. Their experience of the Inquisition’s solicitude for slaves, seconded by Galbes’ legal expertise, had almost certainly led them to harbor a greater hope for justice there than before the Consulado, where they would only have figured as property among the other assets of the estate. Cabalza, by contrast,
understood that his client’s interests were best protected in a court concerned first for the creditors. Such was the
Consulado, which oversaw commercial disputes among merchants. Under usual circumstances, the satisfying of
creditors’ claims against the estate of a debtor fell squarely within its jurisdiction. Typically, the Viceroy ruled on
any conflicts of jurisdiction. But this was not an ordinary case: The conflict was not with another branch of
royal justice, but with an ecclesiastical jurisdiction. Here the issue was anything but clear cut, as Galbes and
Cabalza both understood.

On the one hand, the Consulado would have been within its rights to hear the case. According to Cabalza,
all of the estate’s property except for the plaintiffs was being dealt with there anyway. And though Cabalza did
not make the argument explicitly, he, Galbes and the Tribunal surely knew that, as a matter of broad principle, the
Inquisition’s competency ramified from the trunk of royal jurisdiction in all except matters of faith. In other
words, the Consulado might well have insisted on including the slaves among the assets of the estate. And yet,
the simple fact was that Juan and Clara, former slaves of a “familiar” of the Inquisition, had brought their case to
the Tribunal of the Holy Office rather than make their claim before the Consulado, which would probably have
ruled against them. Once filed with the Inquisition, Juan’s and Clara’s petitions may have been seen to trigger a
whole panoply of laws designed to keep secular and ecclesiastical jurisdictions from coming into conflict. While none of these laws was directly on point, and while we do not know whether Cabalza tried to persuade the
Consulado to assert jurisdiction, it may be that their prudential tenor and his awareness of how prickly a dispute
between jurisdictions could become, counseled him to go no further than to ask the Tribunal to transfer the matter
to the Real Fisco of the Inquisition pending the Consulado’s decision. Juan’s and Clara’s decision to go first to
the Tribunal of the Holy Office, however conscious they may have been of finer legal points, was a chief reason
for their ultimate success.

Which is not to take away from Galbes’ legal prowess. Over the course of his procedural squirmishes in
late 1661 and early 1662, Galbes never passed up an opportunity to aver his clients’ claim to liberty. Nor did he
miss a chance to argue the substantive point—that Pedro de Soto López had clearly intended to free his slaves—even though no evidence had yet been submitted. At the same time, Galbes proved himself a deft procedural
infighter. For example, he successfully met Cabalza’s argument that plaintiffs’ claim was procedurally defective
for lack of a proper venia. In Spanish law, one subject to the power of another—a peasant to a lord, say—had to
request permission to take the superior to court. While this requirement appears to have weakened considerably in the more fluid social situation of New Spain, some still thought it applied to master-slave relationships. According to Alonso de Sandoval in his treatise on slavery in the New World, masters were, at least in principle, obliged to grant any reasonable such request by their slaves, implying that slaves were under a duty to request it.\textsuperscript{47} Leonor, in fact, had asked Gamero, the administrator of Amanalco, to take her complaint to the Inquisition, which he had agreed to do.\textsuperscript{48} In Juan’s case, Cabalza argued that because they had not sought \textit{venia} from Phelipe de Nabarijo, the estate’s executor, the plaintiffs were not properly before the court. Galbes’ wily argument was that the right to require \textit{venia} runs to the owner of the property, and as the owner was dead and Nabarijo was merely the executor rather than the owner, \textit{venia} had not been required. And even if it had been, continued Gables, Nabarijo’s response to the first petition without raising the issue estopped him from relying on it later.\textsuperscript{49}

For all his cleverness, it may be that Galbes’ rhetorical strategy carried the day. Even though he and his clients were under a burden to prove their claim, he never failed to refer to them as free persons. At the same time, he harped on the fact that to deny the petition was to negate the express deathbed will of a Spaniard of some prominence. He did not once bow to Cabalza’s opposite, and technically correct position that they remained slaves until the court had ruled on the basis of proper evidence. Beyond this, he hounded Cabalza for his dilatory tactics, several times getting the Tribunal to hold him in contempt and slap him with fines. Nor should we suppose that Gables had it easy because he was preaching to the choir. The Tribunal may have been more inclined than other courts to entertain such claims, but Leonor’s initial loss can only mean that there was no guarantee of success.

\textbf{Substance of the matter}

\textbf{Leonor’s and Juan’s participation}

Leonor had first contacted the Tribunal through Gamero’s good offices in December 1660. During the following nine months, at the Tribunal’s direction, Gamero had examined several witnesses from a list Leonor had provided. In December 1661, she asked to be removed from the paraje where she was working and be placed in the house of a churchman, pending the outcome of her case. The court had granted her request. Later that same month, feeling out of her depth, she filed a motion requesting a court-appointed lawyer. The Tribunal
agreed and indicated Don Joseph de Cabrera to take her case. As an attorney for the Audiencia and the prisoner advocate for the Holy Office, Don Joseph was a busy man. Perhaps too busy. He filed the requisite petitions on Leonor’s behalf, rounded up the witnesses, and drafted an interrogatory through which the Tribunal conducted its examination. But his zeal in doing so seems to have been decidedly tepid. Although he posed the right questions in the interrogatory, he missed crucial opportunities against the procurator for the Real Fisco, who was concerned that the estate’s assets be sufficient to cover debts owed the Inquisition.

From one perspective, the case was more straightforward than Juan’s and Clara’s. Leonor had a document purporting to free her and a subsequent ratification by her master’s brother as heir. If not dispositive because unnotarized, the first of these was nevertheless strong evidence of intent, which Cabrera sought to supplement with testimony from witnesses. But while he called the witnesses, he did not ceaselessly argue, as Galbes did on Juan’s and Clara’s behalf, that the cause of liberty trumped the satisfaction of debts. Nor did he put the procurator on the defensive by insisting that the Real Fisco of the Inquisition submit evidence to prove that the estate was too small to satisfy its debts. Rather he accepted and then failed to meet the burden imposed by the procurator’s statement that Leonor had to show that the granting of liberty was not part of an effort to defraud creditors. Galbes’s argument along these lines—which played on the conceptual looseness in burdens of proof—suggests, at the very least, that Cabrera could have advanced a similar argument: To wit, that the unnotarized will was clear evidence of intent to free Leonor predating any possibility of conceiving a fraud on the creditors. Cabrera’s failure to make this argument more forcefully strongly hints that he did little more than the bare minimum on Leonor’s behalf.

Except toward the end, when he fell down on the job completely. After the Tribunal had pronounced its sentence against Leonor he filed an appeal, most likely at her request. The Tribunal accepted it and required the estate to pay for the expenses of perfecting it and sending it to Madrid, for the Supreme Council of the Inquisition to rule on. But Cabrera, probably dealing with other matters by that time, forgot to check whether Leonor had received notice of the court’s acceptance of her appeal. The record indicates that the attorney for the procurator was notified, but there is no indication that Leonor was, as there had been in previous rulings. Somehow or other she slipped through the cracks, and Cabrera did not catch it. Without any action by her or someone acting
for her, nothing happened. After a couple of years with no word, Leonor may have begun to worry. But eight years passed before she felt certain enough that something had gone wrong to raise the issue again.

To be fair, the case was probably harder than it looked. On close inspection, Leonor’s situation differed from Juan’s in that the opposing party was not the merchant’s guild but the financial branch of the Inquisition itself, charged in this case with collecting on the Holy Office’s own debts. This may well be why the procurator so easily characterized Francisco Arias’ ratification of his brother’s unnotarized document as a fraud on the creditors—the Inquisition was one of the creditors. Given the constellation of interests before him, Cabrera may not have been moved to great zeal, figuring that Leonor’s claim was hopeless. On the other hand, Leonor remained at Amanalco for eight years after the initial ruling against her and apparently was not sold off to help settle the estate’s debts, which hints that a stronger argument from Cabrera regarding the adequacy of the estate to settle its debts without Leonor might have succeeded. These were the sorts of contingencies that could determine the success or failure of a case. For people like Leonor it took luck and a good lawyer to succeed, and even then there was no certainty.

For better or worse, luck took care of itself. But what about lawyers? The two cases are revealing. Because Juan and Leonor had a colorable claim to being “personas miserables”—miserable persons—in the eyes of the law, they had a basis for asserting certain privileges in legal proceedings. By the 17th century, the idea that society’s most defenseless members were due, at a minimum, a court-appointed lawyer, was well enough entrenched that slaves were at times able to benefit from the practice. In this light it is possible to see that Galbes’ reference to his clients as “personas miserables y poco inteligentes destas materias,” was no gratuitous swipe at people he thought inferior to himself—which he simply took for granted as a fact of life—but a legal formulation crucial to protecting their best interests. Having an attorney was no guarantee he would do a good job, as Cabrera’s lawyering suggests. By contrast, Galbes was a procurator of the Audiencia. These sorts of cases were his bread and butter. In Juan’s case, all the formalities were followed. On pain of a 200 peso fine, the court ordered Galbes to accept the commission and compelled him to appear and swear that he would discharge his duties zealously. He did so, pledging his property and assets against his performance. In addition, the court required Galbes to name another lawyer—a fiador—who could vouch for his zeal and probity and post a bond against his performance.
where Leonor was one of Cabrera’s many cases, and where Cabrera’s zeal was backed by no surety save his own conscience, Galbes was under considerable external pressure to perform well.

Given that their petitions were all written and signed by someone else, it is hard to know what role Juan and Leonor and the others played in their own cases. Slaves’ familiarity with the Tribunal makes it plausible to think that plaintiffs were actively involved in broad legal strategizing. Leonor, for instance, appears to have decided that initially it was best to proceed without a lawyer. In Gamero’s first letter contacting the Holy Office on her behalf, she specifically asked the Tribunal not to force her to litigate, “given my poverty.”

There was a logic to this tactic born, perhaps, of necessity. By approaching the Tribunal as a supplicant and emphasizing her diminished status—her “oppression” and “poverty”—she was tapping into the paternal ideology that underlay the idea of *personas miserables*. In this way she may have hoped to avoid the adversariness of litigation which she could not afford to pay for anyway. When at a certain point it became clear she could make no further headway on her own, she asked the court to bear in mind that she was “extremely poor and needy [pobre y necesitada] for which reason I have no lawyer to defend me in this cause and I need one in order to pursue it in light of my impossibility and poverty.”

Hers was the only name to appear on the petition, suggesting that she herself made the decision. Once the court had granted the request, her suppliant tone took on a decidedly more legalistic one and the petitions became more obviously Cabrera’s handiwork.

Juan and Clara, appear to have had more help from the outset. Their initial petition was filed by Bachiller Antonio de Heredia, a secondary-school graduate who in all likelihood worked as a kind of paralegal for people who could not afford a lawyer. Francisco Camargo, Clara’s husband, was a free man and surely had income of his own with which to pay someone like Heredia “a peso or a chicken” to write up a petition, though probably not enough to afford a real lawyer. Juan and Clara seem to have understood, however, that Heredia would not be enough. How best to secure a lawyer? They could ask the Tribunal to appoint someone to their case, as Leonor had done. But the fact was that the right to a court-appointed lawyer was not as firmly established for slaves as for Indians. By requesting an attorney *ad litem* for the children, however, they plucked plangently at the strings of paternal obligation—here were defenseless slave children naked before the powerful executor of a large estate, a situation not so different from the archtypal orphan in which the doctrine of abogados de pobres was rooted. We cannot know whether Juan and Clara proposed this tactic, or whether Heredia did (though given slave
familiarity with the Tribunal, we should not too hastily assume the latter). Either way, it was a brilliant stroke. For as soon as the ink was dry on the order calling Galbes to defend the children, Juan and Clara filed powers of attorney permitting him to act for them in all matters touching their liberty. In effect, they piggy-backed on the children’s vulnerability. The Tribunal does not appear to have seen this as a subterfuge, for it immediately recognized Galbes as representing all of the plaintiffs and when the case ended charged Galbes’ fees against the estate, without distinguishing his work for the children from that for the adults.

Plaintiffs participated in their cases in other ways. Leonor, Juan, and Clara all provided the names of witnesses to bolster their claims. This was no small matter, for oral testimony, was at the very heart of their respective cases. Leonor named four vecinos from the city of Cuernavaca, whom Gamero interviewed to very mixed effect. Asked whether they knew Leonor had been a free person on the hacienda, they provided answers that were equivocal at best. This was the point at which Leonor decided she needed legal help. With Cabrera in charge of the case, she later listed four more witnesses to be examined by the Tribunal, among them a clergyman, a mestiza woman from Amanalco, a black woman, and a free mulato criollo man who lived in Cuernavaca. Juan and Clara also named witnesses, eight in total, as in Leonor’s case. Among them were a two friars, a barber, two clergymen, a secretary of the Holy Office, a free black man who had worked as the deceased’s coachman, and a lawyer for the Real Audiencia and for Real Fisco of the Holy Office.

Compiling such lists was a matter demanding the closest legal attention. Plaintiffs, or at least their lawyers, understood that not all witnesses were presumed equally trustworthy. Except for children and family members testifying on behalf of each other, no class of people was barred from testifying in a court case. Women, castas, Indians, even slaves appear frequently in judicial records as witnesses. Written law provided very little guidance in how such testimony should be weighed. In principle and in practice, status mattered. Spanish men in general, and those more educated and better placed in society, were accorded a rebuttable presumption of truthfulness. By contrast, Indians were thought by some to be less trustworthy, because more prone to prevaricate. Jurist Juan Solórzano y Pereira wrote in the Política Indiana that because Indians “do not sufficiently recognize the burden of an oath, nor the obligation to tell the truth, and generally give testimony as they are instructed or persuaded to, or as they think the judge would want them to,” their testimony was worth one
sixth that of an honest Spaniard. In practical effect, the issue of what weight to give the testimony of others—women, castas, slaves—was left entirely to the judge’s discretion.

The complexities of legal reasoning and decisionmaking

The scope of that discretion was considerable. Judicial decisionmaking in New Spain, as throughout the Spanish empire, was casuistic. Judges were to decide cases in relation to broader moral and legal principles, each case unto itself. This was law without precedent, or at least without a requirement that judges attempt to reconcile their ruling in any given case with previous decisions. But the 17th century it was not the unfettered discretion of ley viva—the judicial officer’s manifestation of the prudent discretion of the prince. In the 1660s, Solórzano y Pereira had enjoined those who sat in judgment “to judge according to written laws and be bound to them,” acting according to “free discretion” only in relatively unimportant cases. Nevertheless, judges retained the power of arbitrio judicial, or judicial discretion, within the natural play of legal language, to decide cases that were in principle always sui generis. As others have noted, this gave Spanish law a suppleness and flexibility that allowed derecho—a word combining the meanings of law, justice, and equity—to appear as an organic entity directed from afar, but responsive to local concerns. It also meant that the application of law was unpredictable from case to case. Proctored thus by the dictates of divine, natural, and positive law, and checked by the rein of conscience, or at least yoked to the dutiful discharge of their office, judges were to rule so as to “give to each his own”—a cada uno lo suyo.

Under this principle, a just ruling was one that hewed as closely as possible to the letter of the law while accommodating competing claims in light of the broader imperative that each person be able to enjoy the rights and freedoms and body forth the responsibilities appropriate to his or her position in a properly-ordered social hierarchy. Legal disputes might involve individuals, but the canons of derecho were as concerned with maintaining balance in the social organism as with vindicating individual claims or producing tightly-reasoned legal opinions. Indeed, judges were not required to produce written justifications on points of law to support their decisions though, as in Leonor’s and Juan’s cases, some did. Technically, all they were required to do was weigh the evidence in light of applicable legal principles and render a sentencia, without citing chapter and verse of the law or citing precedent. This left ample room for disagreement in any given case as to whether justice had been done.
So might the behavior of judges. Like civil judges, inquisitors were expected to be, “above all, men of law.” In their lives and work, they were to embody “honesty, probity … sobriety, modesty, patience, gentleness, diligence, clemency.” They were not to receive money, or even food or drink, on pain of excommunication, ejection from office, and double restitution.68 Few were unimpeachable and many were venal to the core. Yet for all their corruption and ambition, judges, including inquisitors, were men for whom the law was the prism through which their worldview and their personal and professional interests were refracted. Moreover, judges who brought attention to themselves through overweening greed of sheer ineptitude tend to stand out in the record. In any event, those mostly “good bureaucrats representing the existing order” are rarely heard from.69

What guided judges’ decisions and lawyers arguments? Amid the welter of laws that flowed from Spain to the New World, Juan Solórzano y Pereira’s massive systematization of law, the Política Indiana is an indispensable source for getting at the role and nature of legal reasoning in these cases, though Juan’s and Leonor’s litigations make no explicit reference.70

Lawyers’ arguments on behalf of clients and judges’ decisions on the merits of cases are the very heart of law, for it is through legal language and reasoning applied to concrete fact sets that what might otherwise be the easily clotted abstractions of written law are made to circulate through the body politic. From the perspective of 17th-century casuistry, such reasoning was not a matter of strict, disembodied logic aimed at producing a clear and unambiguous “right” answer. Legal reasoning, rather, was directed at providing a plausible or probable answer that could heal the breach of social order implied by the very fact of litigation. This was not inconsistent with the possibility of diverse opinions on the same set of facts, so long as an individual judge could satisfy his conscience that his ruling was not plainly at odds with recognized legal principles.71 At its deepest, this was a cognitive operation rooted in a tacit, socially-situated and culturally-constrained knowledge regarding what could count as a defensible argument in matters of law, justice, and conscience.72

In Leonor’s case, the central question was whether an unnotarized grant of liberty given under questionable circumstances could be the basis for a decision to deprive the estate of an asset that might be needed to settle the estate’s debts with creditors. Fernando de Olivarez y Carmona, the procurator for the Real Fisco, argued that Cabrera’s argument on Leonor’s behalf could not carry the day. Her witnesses testified only that Melchor Arias, her master, and others had treated her as a free person, or that they had heard tell of a written
instrument freeing her, neither of which spoke to Melchor’s intent or proved that she was in fact free. Nor could the testimony of the only witness with anything approaching direct knowledge of the deceased’s intent, his brother Francisco Arias, be trusted. Faced with huge debts, his attempt to ratify an unperfected grant of liberty amounted to a potential fraud on the creditors, including the Real Fisco, “whose right is so privileged that it forbids debtors from granting liberty to their slaves except upon receipt of an amount equal to their value and price.”

In response, Cabrera insisted that Leonor’s witnesses had established to a moral certainty that she had been freed by her master (more an assertion on his part than an argument). The procurator, said Cabrera, had alleged rather than proven cozenage. Absent an intent to sham the estate, he concluded, there can have been no fraud in the freeing of one slave when there were so many others against which to settle creditors’ demands. Moreover, liberty, once granted, could be revoked only if it were demonstrated that the estate was not large enough to satisfy the creditors, patently not the case here.

Ultimately, the dispute boiled down to the question of who would bear the burden of proof. The procurator appears to have been sufficiently confident of his position that he offered no witnesses of his own, relying instead on a purely legal argument regarding the insufficiency of Leonor’s witnesses and a presumption against any grant that might defraud the Real Fisco. Cabrera, on Leonor’s behalf, argued again and again that the procurator had refuted none of her witnesses and had alleged rather than proven a conspiracy to defraud the creditors. In a two-page sentencia, the Tribunal broadly agreed with the procurator’s theory of the case. In light of the outcome in Juan’s and Clara’s case, this could be read as an arbitrary result—a Tribunal looking to its own interests in total disregard for the dictates of law and heedless of the plight of a mere slave—but it would be a mistake to do so. The case was far more complicated.

As testimony makes clear, the document Melchor Arias signed in Leonor’s favor in 1650 was born of suspicious circumstances. According to several witnesses, Leonor was Melchor’s lover from a young age. Not surprisingly, their relationship appears to have been a stormy one. On at least one occasion Leonor fell out with her master, during which time a mulatto cobbler’s assistant from Mexico City called Matheo de Dios sought to woo her. Matheo often visited the hacienda with his master, Garcia Paredes of Cuernavaca, who came to shod Melchor Arias and his wife. Paredes, the first of Leonor’s witnesses, stated that he took her for a slave, but saw
that she did not do slave work and was allowed to wear shoes. He knew what Matheo was up to and knew as well that after a certain point Leonor had asked him to cease making advances and not return to the hacienda. She did so, said Paredes, in order not to raise her master’s ire. This may have been more than just a slave’s ordinary prudence. According to Paredes, Melchor Arias’ wife, Doña Ysabel, suspected Leonor and her husband, “and much desired to get her hands on the said mulata Leonor to punish her.”

Leonor very probably feared that if she angered Melchor, he might leave her to his wife’s mercies. And they likely would not have been tender, for Paredes remembered attending the baptism of a mulatto baby that Leonor said was her master’s. Given the rumor mill at haciendas, it seems unlikely that this could have happened without Doña Ysabel hearing of it. The child, Paredes speculated, may have been the “obligation” that prompted Arias to grant Leonor her freedom.

Perhaps. And while the child would have been illegitimate, at least Arias could be seen to have acted out of a proper sense of paternal obligation. But there is another, sombrous possibility. Though details are sketchy, several witnesses testified that Leonor came under suspicion of having conspired with her master to kill Doña Ysabel. At the very least it is known that Doña Ysabel died under circumstances sufficiently suggestive of foul play that an investigator from the sala de crimen—the criminal investigations office—in Mexico City was sent out to look into the matter. One witness, a “white mulata” from Amanalco called Ana, testified that when Melchor heard the investigator planned to arrest Leonor as an accomplice in the affair, dashed off a document granting her liberty and told her to leave the hacienda and go where she will. This was the instrument on which she relied in trying to persuade the Tribunal to rule in her favor in the early 1660s. Ana testified further that as far as she knew, the document had never been notarized, though three years after Melchor’s death, his brother Francisco had brought a notary to the hacienda and written out his ratification, which he duly notarized.

While Melchor, and thus presumably Leonor, was later cleared of any involvement in Doña Ysabel’s death, the Tribunal had good reason to question the validity of the grant. Hastily made to enable Leonor’s escape, it had not been properly witnessed and notarized. Francisco’s subsequent ratification could not have cured the initial infirmity, since it merely asserted what was to be proved—the validity of the grant. Testimony gave pause on this count. Generally, grants of liberty were framed in terms of charity, conscience, and obligation—the values of a well-ordered hierarchy sustained by reciprocal obligations between unequals. Most commonly someone near death awarded liberty to a favored slave as a final Christian act and in hopes that God would smile upon the soul
of the grantor. Or as one of Leonor’s witnesses portrayed it, as the discharge of a paternal obligation to a mother and child. Expediency of one sort or another was not countenanced, unless it was well disguised. In this case it was not. So while the sentencia did not explicitly mention the story of the document’s origins, it is hard to imagine that it did not weigh on the minds of Medina Rico, Mañozca, Higuera y Amarilla and other inquisitors who sat in judgment on Leonor’s fate. From a strictly logical perspective, of course, these circumstances did not bear on the procurator’s claim that Leonor’s liberty amounted to a fraud on the creditors. But they did cast a long moral shadow across Leonor’s otherwise unobjectionable claim to liberty. Judges in the Spanish empire were supposed to consider the totality of circumstances in rendering justice. Legal principles—and consistency—were a means to an end, not an end in themselves. In the final analysis, the Tribunal appears to have decided that Leonor’s story simply was not compelling enough to override creditors’ interests.

The decision in Juan’s and Clara’s case is a powerful brief for the proposition that Leonor’s outcome was not capricious. The issue was basically the same: whether the testimony of Juan’s and Clara’s witnesses was sufficient to support their claim to liberty against the competing interests of creditors. The facts of the case, however, were quite different. Their claim rested not on a document from years earlier, but on an alleged deathbed declaration by Pedro de Soto López. As plaintiffs, Juan and Clara were under a burden to prove their cause. Testimony from credible witnesses, argued attorney Galbes, established that Soto López had intended to free Juan and Ursula, and Clara and her children and had expressed this intent publicly. Cabalza, the attorney for the estate’s executor, Phelipe de Nabarijo, insisted that Juan’s and Clara’s witnesses proved nothing, for whatever might have been Soto López’s intent at any given point in his extremity, such testimony did not, in the face of contradictory evidence, prove that he had persisted in that intent up to the moment of his death. And even if he had, Cabalza argued, plaintiffs’ witnesses shed no light on whether it was an absolute grant—which given the estate’s debts raised suspicion of fraud—or one conditional on including the slaves’ price in the quinto (the one-fifth part of the estate’s value set aside after all other debts had been settled, to pay for charitable acts to benefit the deceased’s soul). Finally, concluded Cabalza, plaintiffs had offered no evidence that the grant of liberty was not intended to defraud creditors.

In its sentencia, the Tribunal decided that plaintiffs had successfully established Soto López’s intent to free. True, he did so orally. But the Tribunal accepted Galbes’ argument that his pain and discomfort over the
The last few days of life had effectively precluded him from making a formal declaration to a notary. In reaching its conclusion, the Tribunal emphasized testimony tending to show that Soto López, attended by a priest, had wanted to “hacer bien a sus esclavos” (do good to his slaves), and that these slaves, upon hearing of the great benefit he was conferring on them, went to their master, knelt to thank him, kissing his hands, whereupon he affirmed his grant a second and third time, telling them they were free from the day of his death forward. And as he did not revoke his declaration at any later time up to his death, the grant was absolute and not dependent on including the slaves in the quinto. Nor was there any hint of deceit. Contrary to Cabalza’s allegation, insisted Galbes, the estate was in fact quite large and the debts small. Soto López may not have known the estate’s exact worth, but the evidence indicated that he had acted in good faith and without prejudice to creditors. His sons, who lived in Seville, had chosen not to involve themselves in these proceedings, except as creditors, and so they had no more standing to object on substantive grounds to their father’s decision than any other creditor.

Against Gables’ poignant portrait of Soto López’s final days, Cabalza offered a theater of confusion and uncertainty. The drama had unfolded in a room at Soto López’s hacienda, where in his last days he had been attended by a large number of people, priests, friends, slaves, and others. Behind a biombo—a screen—that partitioned the room in two, he lay on his bed, speaking from a mask of pain, alternately lucid and raving. Of plaintiffs’ eight witnesses, five were never at Soto López’s side behind the biombo. As Cabalza pointed out in his final motion, these five—two clergymen, a secretary of the Inquisition, a free black man, and a procurator for the Real Audiencia and the Real Fisco of the Holy Office—did not testify to Soto López’s state of mind or his words, but to what they heard afterwards, or to their sense or opinion of what had happened. As to the free black man who claimed to have heard Soto López grant them liberty, Cabrera argued he should not be trusted because he was probably lying on behalf of his friends. Only three witnesses, two Carmelite monks and a master barber, all from Mexico City, purported to offer any direct evidence of what had happened. And their testimony, insisted Cabalza, was so inconsistent as not to be trustworthy.

His own five witnesses, argued Cabalza, proved that Soto López had not expressed an unequivocal intent to free his slaves. As with the other witnesses, most could not testify to what was said and done behind the biombo. But what they reported hearing was so fundamentally at odds with what Juan’s and Leonor’s witnesses had said that the only possible conclusion was that plaintiffs had not proven their case. Witnesses of no less
calidad (status and character) than plaintiffs’ witnesses testified either that they had heard nothing about a grant of liberty, or that the grant was contingent on there being sufficient assets to include the slaves in the quinto. One witness claimed to have heard Soto López say that his estate was not as extensive as everyone thought and that he was worried about his sons. Another witness said that in the last couple of days a notary came and went several times, so that Soto López had had ample opportunity to make a proper testament to free the slaves, but declined to do so. Pedro de Nabarijo himself, the executor of the estate, also deposed. He complicated the tableau still further, stating that he had done everything he could to persuade his uncle to free the slaves, for the good of his soul. But, he reported, Soto López either worried that the estate might not be big enough to settle all his debts and take care of his sons, or simply retreated behind a stone wall of pain, refusing to answer further questions about the disposition of the slaves.\textsuperscript{78}

From the perspective of strict logic, Cabalza appears to have been right that plaintiffs’ witnesses did not actually establish Soto López’s intent. There certainly was some evidence to support plaintiffs’ claim, but it was hardly uncontradicted. Moreover, two of the most important witnesses for Juan’s and Clara’s case were the Carmelite monks, Fray Juan de San Joseph and Fray Miguel de la Ascención, both of whom had been whisperers at Soto López’s ear throughout his final days. By their own testimony they had done everything possible to sway him to free the slaves and had even asked Phelipe de Nabarijo to intercede with his uncle on the slaves’ behalf. The most cynical interpretation of their testimony might be that they used the cloak of office to accomplish nefariously what they had failed to achieve by priestly persuasion. More charitably, one might suspect that their interest in gaining the slaves’ freedom colored their memory of what happened. Either way, Cabalza’s conclusion that their testimony “deserved neither faith nor credit” does not seem altogether unreasonable.\textsuperscript{79}

Given the outcome, something other than undiluted logic must have governed the Tribunal’s decisionmaking. As in Leonor’s case, the result hinged on who bore the burden of proof. Plaintiffs were obliged to put up witnesses, since there was no legal instrument granting liberty. But the Tribunal appears not to have held them to a standard of clear proof. Had it done so and had the Tribunal proceeded according to rigorous logic, plaintiffs would almost surely have lost. What made this case so different, I believe, is that where Leonor asked the Tribunal to approve a grant of liberty obtained under unsavory circumstances—a master and his slave concubine suspected of murdering the master’s Spanish wife—Gables was able to paint a sympathetic still life of
a properly-ordered patriarchal household bravely facing the death of its master. Where Melchor Arias had dashed off the document granting Leonor her liberty and telling her to run from an investigation, Pedro de Soto López, for all the inconstancy born of suffering, acted for the good of his soul and Christianly accepted the gratitude of slaves who came to him on bended knee—at least that is how Galbes told the story.

The point is not that members of the Tribunal consciously manipulated the evidence to produce an outcome more in keeping with patriarchal values and norms. Rather, I contend with legal scholar Steven Winter that at its most fundamental level—at the level of legal categories, concepts, doctrines, practice, language, and reasoning—law “relies tacitly if not explicitly upon some picture of the forms of human association that are right and realistic in the areas of social life with which it deals.” In other words, law in practice does not live from abstractions so much as from the extent to which it embodies and expresses widely-accepted norms of how human beings ought to deal with one another, norms that exist only in relation to a given historically-located social arrangement. In 17th-century New Spain, those norms were hierarchical, patriarchal, Catholic, leavened by the considerable social fluidity—of racial and ethnic identities, religious practices, and calidad—characteristic of that time and place. Somehow or other, judges had to find a way of accommodating both the dictates of law, such as those set out in Juan Solórzano y Pereira’s Política indiana, and this protean social reality. On this view, Galbes was successful because the circumstances of Juan’s and Clara’s case made it possible for him to be more persuasive. The narrative he presented, largely through the interrogatory and witnesses’ answers to it, more nearly conformed to social expectations of what was right and proper than Leonor’s story did. And as Winter has noted, “law works as ‘law’ because the social processes of persuasion mean that judges will be constrained to replicate the most mainstream values and understandings.” In Leonor’s case, Cabrera was fighting the current of the mainstream in trying to persuade the Tribunal. His lackadaisical performance, among other reasons, may have been the consequence of an intuition that the case was not a winner.

This does not mean we can read judicial outcomes directly off of the surrounding culture. That would leave no room for clever lawyering, differing perspectives among judges, or divergent interests and temperaments among litigants. What it does mean is that in attempting to understand what lawyers, judges, litigants, and witnesses are doing in legal proceedings, abstract logic will only get us so far and may in fact cloud us to profounder insights. Of course, one could choose to see the looseness of burden-of-proof doctrine in these cases
and the Tribunal’s failure to adhere to strict rules of logic as emblems of a flawed legal system. But this would amount to little more than a decision to hold 17th-century Spanish colonial law to a contemporary standard. By refusing this option, we can begin to glimpse the extent to which certain mainstream understandings were shared by personas miserables and gente decente, slaves and masters, lawyers, their clients, and judges.  

Understanding “libertad”

What would such a sharing have meant? This is a large question which I can only hint at through a discussion of the concept at the core of both of these cases—“libertad.”

When Melchor Arias’ brother purported to ratify Leonor’s libertad, the document he drew up affirmed “that as a free person she be able to enjoy it [liberty] and go where she will, make all deals and contracts affecting her person, make her own testament, come before the law, and do all that which can make a person free….”

And when the Tribunal handed down its sentencia in the other case, Juan, Ursula, Clara and the children were declared “free of all captivity and subject to no servitude whatever [such that] no person shall have right or dominion over them or in any of the things befitting their station [que les competen]….”

These statements were libertad at its most rudimentary: freedom of motion and to live where one will, freedom from dominion by others, and freedom to decide for oneself what to do in life, within the constraints of human convivencia at that time and place. This conception of liberty was deeply rooted in scholastic soil. Solórzano y Pereira, tracing the concept back through medieval jurists to Aristotle, recognized libertad as “a natural faculty of a man to do with himself what he will.” In Covarrubias’s 1674 dictionary of Castilian, libertad was defined as that state opposed to servitude or captivity. In the New World, the legal meaning of libertad was worked out in relation to the 16th-century scholastics’ debate over the status of the Indians. Solórzano’s definition appeared in a long section of the Política indiana treating the “liberty, state, and conditions of the Indians.” He, in turn, was building on the 16th century idea of libertad as the summum of political society. For the likes of scholars such as Palacios Rubios, Juan de Sepúlveda, Bartolomé de las Casas, Francisco Vitoria, and Domingo de Soto libertad was a God-given faculty of human beings who had been created with free will and, barring accidents of temporal life—of the sort that accounted for slavery in the here and now—were born free from the dominion of others. These views were themselves rooted in the Siete Partidas, Spain’s medieval legal code, which had conceived of liberty as an essential right of every human being and had insisted that the slave’s
path to achieving it not be unduly impeded. As early as 1540 the law explicitly ordered the Audiencias to hear the cases of those claiming liberty: “We order our Royal Courts that if a Black man or woman or anyone else, held as slaves, proclaim liberty, they be heard and justice be done them and ensure that for doing this they not be mistreated by their masters.”

In other words, except for the heavy bookish gloss, the scholastic and legal understanding of libertad at its most basic was very close to how Juan and Leonor, and slaves everywhere, likely understood the concept. While Amanalco’s administrator Gamero León conveyed Leonor’s complaint in a letter to the Tribunal, he did so at her request and appears to have framed the document largely in her terms. The petition falls into two pieces. The opening section is a first-person plea in which Leonor states that “I am a free person [persona libre] and have been in possession of said freedom for more than twenty years, enjoying my liberty....” The second part is also in the first-person, though now in Gamero’s voice on matters of importance to him. It is possible, of course, that Gamero went to the trouble not only of writing the petition but of framing it in the first person for Leonor. It seems more likely, given the conflict of interest between Leonor and the administrator she alleged was holding her prisoner, that he more or less took down what she told him.

There may be a more fundamental reason why the legal definition of libertad could be shared among actors widely separated by status and learning. At the most basic level, a slave is a human being whose body is denied freedom of motion. Indeed, direct restraint of motion may be the most commonsense way of understanding what separates a slave from a free man. Thus, Francisco Arias’ ratification of his brother’s earlier grant referred to libertad as a thing to be enjoyed that would allow Leonor to “go where she will.” Solórzano y Pereira stressed that one of the gravest affronts to a man’s liberty was to prevent him from leaving a place. Covarrubias’s first definition opposes libertad to “servitude or captivity.” This does not mean that restraint of motion is the end all of slavery. It does suggest, however, that legal and commonsensical notions of liberty were both rooted in metaphors expressing basic aspects of human bodily experience—i.e., LIBERTY IS FREEDOM OF MOTION OR ABILITY TO MOVE and UNFREEDOM IS RESTRAINT OF MOTION. It suggests as well that slaves, lawyers, judges, and scholastics alike, could understand libertad in roughly the same way, because as human beings they shared this bodily experience from which an understanding of libertad was derived. Similarly, libertad appears to have been taken, both in law and in commonsense, as a thing that could be possessed and
enjoyed. To be free, was to “have” (tener) or “possess” (estar en posesión) liberty and to be able to “enjoy” (gozar) it. In point of fact, something so intangible as libertad cannot actually be possessed, particularly if it is understood as freedom of motion, which is a state rather than an attribute. For Leonor’s ratification to speak of libertad as though it could be possessed was to understand it in terms of another metaphor, ATTRIBUTES ARE POSSESSIONS, which likens an intangible attribute to a physical object that can be grasped, held, and enjoyed. All this says is that libertad, like any other abstract concept, cannot be understood apart from fairly elemental metaphors of bodily experience that structure the way human beings apprehend and live in the world, which means that in particular historical contexts it could and can be shared across the dividing lines of human difference.93

Of course, legal understandings of libertad extended beyond this conceptual baseline, for the idea of liberty played a larger role in the broader political ideology of the Spanish empire. Libertad was, as Las Casas wrote, “an inherent right of man, due to his rational nature,” given by God.94 Man, in other words, is free by nature. True liberty, however, was not license. Men were free to pursue their own interests and do what they will, but ultimately liberty was as much a matter of public virtue as of private interest, for men, wrote Las Casas, seek not only their private benefit but also the common good. Liberty, on this view, involved subjection to authority for the sake of wider society, mastery of one’s baser instinct to self-interest in favor of the social whole.95 As Solórzano y Pereira put it in the Política indiana, “the true and most important liberty consists in that we all be servants or slaves of the law. And if just anyone were easily given license to proceed in everything at their free will [libre voluntad, y alvedrio], liberty would perish in liberty, and not only would the Republic founder and sink, but there would no difference between our way of life and government and that of the beasts.”96 The common good, in essence, represented the means by which liberty and authority could be reconciled within the context of a properly-ordered Christian society capable of recognizing the inherently plural nature of human experience.97

It is hard to know whether and to what extent Juan and Leonor shared this understanding of libertad. It was far more abstract a notion than the more basic one and further outside the ken of their daily experience. Even so, I am reluctant to conclude that they knew or sensed nothing of it and loath, if they did, to think that they rejected the idea altogether. They understood that as free persons their rights would be matched by a host of
obligations and restrictions; they might be free, but they would still be black or mulatto and poor, and in Leonor’s and Clara’s cases, women in a hierarchical, patriarchal society ordered according to the principle of separate estates. As plebes they would still have to work and, chafe thought they might at the restrictions, live in a world where people like them tended to defer to those of superior status. They knew what was in store because they were not, as slaves, cut off from that world. Testimony indicates that the comings and goings of priests, doctors, notaries, cobblers, carters, family members, lawyers, and other slaves were an integral part of the comings and goings of hacienda life. Clara de Soto’s husband was a free man who moved about as he pleased, well aware of what life as a black man was like. He would have known that the law required free blacks and mulattoes to pay tribute unless exempted and that, along with mestizos and Spaniards, he was legally barred from living in Indian villages (though he would have known many non-Indians who did so anyway). He would also have known that he could not have an Indian in his personal service and that he was prohibited from carrying weapons. If, moreover, they were like most slaves, Leonor and Juan attended mass periodically and had likely more than once heard a priest exhort them to obedience in this life against the rewards of life hereafter. As favored slaves, they may have internalized this lesson more fully than others, intuiting that patience, humility, and willingness to work toward the greater good could redound to their benefit in myriad practical ways. In short, they were not, for being slaves, a class apart from society at large. Their lives, as much as the lives of inquisitors and lawyers, were conditioned by the institutions, forces, norms, and ideas whose interaction constituted social arrangements in New Spain. We must not forget, of course, that those arrangements reflected colonial society’s “uneasy compromise between its ideals and realities”—law placed no obstacle to freedom, even as practice granted it only grudgingly.

My point is not that Juan and Leonor necessarily embraced this more rarified and less intuitive understanding of liberty, so much as that they could not help living in relation to it. Libertad in early 1660s New Spain was part of what elite criollos and Spaniards believed of themselves: they enjoyed libertad and were capable of recognizing the right to its enjoyment in others. This is one reason the Tribunal did not simply dismiss Juan’s and Leonor’s cases as the pipedreams of slaves who had no place conjuring the revery of freedom. At the same time, libertad existed in tension with the authority necessary to maintain peace and order in a society riven by ethnic, racial, and economic inequalities. Without at least the idea that libertad as subjection to law could check the worst potential excesses of libertad as license—after all, today’s freed slaves could just as easily be
tomorrow’s vagabond or highwayman—it is unlikely the Tribunal could have taken these cases seriously. In short, *libertad* was by mid-17th century an ensconced ideal, constitutive of the way of life the Spanish empire had sought to impose on the New World since the 16th century. As such, it had become part of what people in New Spain, Indians and slaves as well as Spaniards, had to work with in reckoning their stance in Mexican society.

By pursuing their own ends according to a deeply contextualized social logic, people such as Juan de Morga, Juan Clemente, and Leonor de los Reyes participated in the process by which colonial society was constantly made and remade. Slaves and their masters inhabited a normative universe, a meaningful order of right and wrong. The tensions between right and wrong, ideal and real embodied in the institutions of justice in 17th-century Mexican society exerted a profound effect on other bodies in that universe, just as they were affected by those bodies—religion, indigenous custom, the microcosms of kinship-, patron client-, and master-slave/master-servant relationships, the politics of authority. The idea of justice was able to have this effect because the law—its ideals and praxis—represented a field of action and maneuver for all who fell within its ambit, from masters and slaves, to judges, lawyers, notaries, and witnesses, not equally, but in common. All shared the experience of constraint created by law and its practice, which was simultaneously the condition of opportunity it presented to people very differentially situated in the grand scheme of things. In pressing their cases, Juan and Clara and Leonor revealed how closely attuned to and engaged with—dare one say committed to—the colonial legal order they were.

The concluding chapter of Leonor’s amazing story suggests how deep that engagement—and commitment—may have run. We know very little of her situation between the filing of her appeal in 1662 and its being taken up again in 1670. We do know that shortly after the initial ruling against her she was whisked off to the Amanalco sugar mill, where she returned to slave work for eight years. We know as well that in 1670 she suspected something was amiss with her appeal and sought help to determine its status. Somehow or other she contacted Don Juan Ortega y Montañez, who on May 22 of that year wrote a letter to the Tribunal on her behalf, referring to her incessant “prayers and lamentations” from the hacienda where she was serving as a slave. The letter appears to have had the desired effect, for there is a scrawled note on top of it reading, “Have the lawyer for the Real Fisco see it.” The following June 17, Leonor filed a petition—with no lawyer’s signature—officially inquiring about her situation. The Tribunal agreed to reopen the matter and assigned her a new lawyer—Nicolás
de Amezqueta, a procurator of the Mexico City Audiencia—who immediately asked that the Supreme Council of
the Holy Office in Madrid review the Tribunal’s original decision. This is a matter of utmost importance, he
argued, “given that the issue is liberty to which attaches so many privileges.” In 1672 the Council in Madrid
appointed a lawyer to the case. He reviewed the file and concluded that the Real Fisco had not proven that
plaintiff’s claim to liberty was fraudulent, whereas Leonor had provided persuasive evidence of Melchor Arias’
intent to free her. The Council agreed with the tenor of this conclusion and in a curt order issued on January 10,
1673, declared her free.

What explains the fact that Leonor never lost hope, or she all but lost hope what enabled her to renew the
quest for libertad after so much time had passed? One obvious answer is that she was simply pursuing her best
interest. Slaves could not count on freedom during their lives, but manumission was common enough that many
slaves were probably attentive to opportunity. Even through the filters of procedure and a notary’s hand, Leonor
comes across as a no-nonsense woman with immense reserves of fortitude, sticktoitiveness, and a rough cunning
in her own defense. Given the misery she hints at in her 1670 petition, some might say nothing more is needed to
understand her persistence.

But I believe there is more. The narrow appeal to “interest” hides much. While someone lacking
Leonor’s personality might not have been able to accomplish what she did, her energy, will power, and
shrewdness were inseparable from the concrete circumstances under which she lived. Put another way, the
colonial social order, taken as a whole, enabled—and constrained—Leonor’s conduct. Thus, Leonor was able
to pursue her claim but only because it was realistic for her to do so: the downtrodden, including slaves, could
often seek justice because the law spelled out a special preference for miserables; liberty was not limited in
principle or practice to criollos or peninsulares, but stood for a more general ideal of Spanish society that was part
and parcel of everyday life—even for the likes of Leonor. However unlikely it had been that these slaves would
actually succeed in realizing their dream, the fact is that they had clung tenaciously to the liberty, granted them by
law, to struggle for their liberty. The Supreme Council’s decision to overturn the Tribunal’s initial ruling is
proof of the point. Indeed, Leonor’s doggedness nearly ten years after losing her bid for freedom must be
understood in light of the role distant judges could play in such cases: the Council very frequently asked the
Tribunal to moderate the punishments it meted out to slaves who recanted Catholicism in order to escape abusive
masters. Removed as they were in time and place from the immediate and somewhat suspicious circumstances of Leonor’s claim, inquisitors in Madrid may even have been more likely than local inquisitors to recognize the pleas of one of society’s most luckless.

**Conclusion**

We end where we began—with ordinary people who happened to be slaves getting it into their heads that they had a chance at *libertad*. In this they took their cues from the time and place in which they lived. Slavery was slavery, but the rigor and constraint of slave life could and did vary dramatically from individual to individual. Liberty was highly prized, a natural right of all human beings, even slaves. A legal structure enabled aggrieved parties to gain the ear of the powerful and even exert considerable influence over who would hear their pleas. In bringing their cases to the Tribunal, Juan and Leonor and the others were drawing on a long collective memory among central Mexican slaves of relatively successful dealings with the Holy Office. Laws recognizing the inherent inequalities of society provided court-appointed lawyers to those unable to secure one themselves, and often went to great lengths to ensure their zeal. Procedure encouraged, at times compelled witnesses to testify. Legal reasoning was oriented to justice, rather than a strictly logical outcome and, at least in the Inquisition, judges appear to have been somewhat sympathetic to the plight of slaves. An appeal mechanism assured parties that an adverse ruling could by reviewed at a higher level.

It would probably be going to far to argue that for Leonor and Juan the law represented something like predictability. It was too inconstant, too uneven, to much like a crap shoot for that. It seems more likely that for slaves whose lives were organized around the inescapability of a master’s whim, for good or ill, that the law represented an arena of countervailing possibility. Most could not enter that arena, but many did and succeeded in bettering their treatment, securing their families, or gaining *libertad*.

Together with inquisitor-judges, lawyers, notaries, and witnesses, these slaves acted as contingent beings who could not escape the constraints and possibilities of human *convivencia* amidst the diversity of the New World. It makes little sense on this account to think of their actions as representing merely resistance to slavery: their desire for liberty seems at once so much more—an ideal unlikely to be achieved but ardently to be hoped for, a thing to be grasped for dear life when possible—and so much less, for Leonor and Juan sought *libertad* in the way a poor person seeks wealth rather than an end to the system that produces poverty. Nothing in their situation
suggests that they could or should have acted any other way. Nor does it take us very far to conceive of these slaves’ reliance on the Spanish system of justice as “contribut[ing] to the hegemony of the ruling class.”

To the extent that the existence of slavery in colonial Mexico depended on a set of enforced norms constraining a slave to do only what was proper to slaves, this is almost trivially true. It is equally true that a slave society lacking such norms would not long survive.

Too exclusive a focus on this counterfactual, however, loses sight of the idea that power in 17th-century New Spain may perhaps be best understood not as merely a projection from above but as an expression of the dense interactions among individuals at all layers of a community—individuals who mutually constructed and reconstructed their normative universe, within which the law loomed large. Leonor Reyes and Juan Clemente, Medina Rico, Felix Galbes, and Cabalza, brought into relationship by litigation—and the shared norms underlying it—had no choice but to deal with each other as human beings bound to their circumstances. Bound to, not imprisoned in, for as their performances suggest, there was no predetermined outcome in these cases. Slaves by imagining and pursuing their freedom, lawyers by their cleverness and zeal, and judges by their willingness to follow the dictates of conscience, or be obliged by duty could transcend their circumstances—but only by acting from within them. Such an approach may not fictively banish oppression or fix blame. It does hint at how Spanish law, along with Catholicism, helped create and sustain a normative universe within which people contrived to live together in inequality.
Notes

1 José Ortega y Gasset, Obras completas (Madrid: Revista de Occidente, 1946-1983), vol. 5, p. 496.
2 As one recent collection of essays on law in Latin America has noted: “According to standard interpretations, Latin American countries—with only a few partial exceptions—have not been able to establish solid, effective, universal legal systems.” This view, the rule of law has never obtained in most countries of the region and law, such as it is, has remained arbitrary, informal, particularistic, and favorable to rulers. See C. Aguirre, R. Salvatore, G. Joseph, Crime and Punishment in Latin America: Law and Society since Late Colonial Times (Duke University Press, 2001), 14-15.
3 I am pursuing a course between what have been the twin rocks of derecho indiano, and its textual fixation, and the limited revisionism of those who see law as little more than a “mask for colonial power and as an inhibitor of more confrontational (and allegedly more effective) ways of confronting colonial power.” Aguirre, et. al., Crime and Punishment, 7. Part of the broader project of which this paper is a small piece, is to bring these two views into contact with one another. At a more fundamental level, I hold with Woodrow Borah’s desire to explore the law as one response to “the problems … basic to the experience of mankind wherever and whenever two peoples have come into contact for more than very short periods.” Woodrow Borah, Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real (Berkeley: University of California Press, 1983), 1.
4 There is something of an elision here, as I am more or less taking for granted critical legal studies’ undermining of the formalist account of law. See, e.g., Robert Gordon, “Critical Legal Histories,” Stanford Law Review, 36:57 (Jan. 1984), 57-125.
5 Steven Winter, A Clearing in the Forest: Law, Life, and Mind (Chicago: University of Chicago Press, 2001), 345. Winter’s understanding of law is one that challenges any Whiggish account of law’s development. It is the teleology implicit in accounts of the development of liberal legal systems that makes it possible to see only the “(Un)rule of law” in Latin America. Juan Méndez, Guillermo O’Donnell, and Paulo Sergio Pinheiro, eds., The (Un)Rule of Law and the Underprivileged in Latin America (University of Notre Dame Press, 1999). Winter’s approach offers a corrective. On his view, liberal legal systems are neither pure of doctrine nor linear in their development. Like other legal systems, they are historical, that is they develop over time under specific circumstances and within particular cultural contexts. Those circumstances and contexts must be the frame of analysis, rather than some abstracted notion of how legal systems are supposed to develop.
8 Winter, A Clearing in the Forest, 213.
9 In citing a “normative universe,” I am drawing on Cover’s “Foreword.”
10 Cover, “Foreword,” 8.
11 A similar tone has recently been struck with regard to early American legal history. See Christopher Tomlins, “Introduction: The Many Legalities of Colonization—A Manifesto of Destiny for Early American Legal History,” in Christopher Tomlins and Bruce Mann, eds., The Many Legalities of Early America (Chapel Hill: University of North Carolina Press, 2001), 1-20.
12 Testimonio de los autos hechos a pedido de Leonor de los Reyes mulata sobre pretender deber ser declarada libre y no sujeta a cautiverio en virtud de ciertos ynstrumentos que le otorgaron Melchor y Francisco Arias Thenorio sus Amos y Dueños del Ingenio de Amanalco, 1660. AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, p. 4v.
13 AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, p. 5v-r.
14 AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, p. 4.
15 AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, p. 6v-r.
16 AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, p. 16v-18v.
17 Demanda de Juan Clemente y otros esclavos que fueron de Pedro de Soto Lopez, Alguacil maior deste Sancto Oficio, ya difunto contra los bienes de dicho Alguacil mayor sobre su libertad. AGI, AHN/INQUISICIÓN, 1727, no. 2, pp. 1r-3r.
18 See Juan Solórzano y Pereira, Política indiana (Madrid, 1972), lib. 5, cap. 7, no. 36 (vol. IV, p. 111).
19 AGI, AHN/INQUISICIÓN, 1727, no. 2, 4v-9v.
20 AGI, AHN/INQUISICIÓN, 1727, no. 2, 19r.
21 E.g., AGI, AHN/INQUISICIÓN, 1727, no. 2, 68v-70r.
22 AGI, AHN/INQUISICIÓN, 1727, no. 2, 153v-r.
24 See Brígida von Mentz, Trabajo, sujeción y libertad en el centro de la Nueva España (México: CIESA, 1999).
25 This probably happened as part of an arrangement to settle his debts, since by 1659 the estate was owned by the Holy Office. See Solanje Alberro, “Juan de Morga and Gertrudis de Escobar: Rebellious Slaves,” in Struggle & Survival in Colonial America, D. Sweet and G. Nash, eds. (University of California Press, 1981), 185; Solanje Alberro, Inquisición y sociedad en México, 1571-1700 (Fondo de Cultura Económica: México, 1988), 481.
26 Some, doubtless, were summarily dismissed. Others, perhaps most of them, were settled by informal arrangements that never found their way into court records. It is impossible to know much more about these. Indeed, during this period there are only three known mistreatment cases in which the Tribunal followed a proceso to conclusion and took judicial action against a slave owner, though it is worth noting that these three all came between 1640 and 1650, a period when the Holy Office itself was beginning to come under a cloud.
for corruption and indifference to task. See Colin Palmer, *Slaves of the White God: Blacks in Mexico, 1570-1650* (Harvard University Press, 1976), 99-105. It is worth noting in this context that Medina Rico was appointed visitador to the Tribunal in 1654, as part of a response to such charges. At the end of the visita in 1662, Higuera y Amarilla, one of the other inquisitors who sat on Leonor’s case, was sentenced to a fine and suspended from the Tribunal two years for the scandalous situation of having a slave for a concubine with whom he fathered a child. José Toribio Medina, *Historia del Tribunal del Santo Oficio de la Inquisición en México* (México, 1991), 294.


29 Alberro, *Inquisición y sociedad*, 462-79. Most commonly, slaves recanted or blasphemed in order to come before the Tribunal. The number of such cases rose and fell with economic fortunes, political concerns, and inquisitorial zeal in New Spain. Between 1565 and 1630, there were, on average, four a year. From 1631 to 1655 there were almost none. The number rose to about 2 per year during the late 1650s and early 1660s and they tailed off for the remainder of the 17th century. See Alberro, *La actividad del Santo Oficio*.

30 Owners’ religious duty to slaves was not officially recognized by the Crown until 1681. See Leslie Rout, *the African Experience in Spanish America, 1502 to the Present Day* (London: Cambridge University Press, 1976), 80.

31 Alonso de Sandoval, *Un tratado sobre la esclavitud* (1627), 243.

32 Sandoval, *Un tratado sobre la esclavitud*, 380; Silvio Zavala, *Servidumbre natural y libertad cristiana según los tratadistas españoles de los siglos XVI y XVII* (Buenos Aires, 1944), 23. As a careful reading of Sandoval reveals, the liberty of a slaves’ soul, and thus his free will, is rooted in the 16th-century conclusion that Indians were not “natural slaves.” Possessed of free will, they could not be forced into the faith. See Sandoval, *Un tratado sobre la esclavitud*, 608. For a discussion of the Indians’ right to liberty, see Alberto de la Hera, “El derecho de los indios a la libertad y la fe: La bula ‘Sublimis Deus’ y los problemas indios que la motivaron,” *Anuario de Historia del Derecho Español XXVI:1* (Madrid, 1956), 89-181.

33 This is of a piece with the position, arrived at in the mid-16th century, that Christianity could not be imposed on the Indians by force. See generally Zavala, *Servidumbre natural*. On natural slavery in Spanish thought, see Celestino del Arenal, “La teoría de la servidumbre natural en el pensamiento español de los siglos xvii y xviii,” *Historiografía y Bibliografía Americanista*, vol. 19-20 (1976-76), 67-124.


36 As Alberro points out, this does not mean that the Holy Office stood against slavery as such. Its complicity in slavery is clear from the fact that the General Council of the Inquisition in Madrid was constantly suggesting the Tribunal in Mexico City moderate its punishments, that a lashing was inappropriate where a verbal reprimand might do. Alberro, *Inquisición y sociedad*, 484.


38 For the order read out by the crier, see AGI/INQUISICIÓN, Leg. 1727, no. 2, 32v-34r.

39 AGI/INQUISICIÓN, 1727, leg. no. 2, p. 48r-51v.

40 AGI/INQUISICIÓN, 1727, leg. no. 2, pp. 54r-57v.

41 AGI/INQUISICIÓN, 1727, leg. no. 2, pp. 58r-62v.


43 *Recopilación de leyes de los Reynos de las Indias*, tomo IV (Madrid, 1973), lib. 9, tit. 46, ley 40, fol. 140.


46 We do know that royal officials in the New World were wary of stepping on other jurisdictional toes. See John Leddy Phelan, “Authority and Flexibility in the Spanish Imperial Bureaucracy,” *Administrative Science Quarterly* 5:1 (June 1960), 47-65.

47 Sandoval, *Un tratado sobre la esclavitud*, 246. Solórzano y Pereira argued that there should be a presumption of venia for Indians.

48 AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, pp. 16r-19v.

49 Ibid., 54r-55v.

50 AGI, AHN/INQUISICIÓN, 1727, Exp. 6/2, pp. 16r-19v.

51 Ibid., 42r.

52 The doctrine of miserables was rooted in medieval Spanish law, which had thrown a mantle of paternal protection around society’s weakest and most vulnerable members—orphans, who lacked fathers, and widows, who lacked husbands. The broader principle to which the category of miserables answered was the recognition that in a hierarchical social order the least fortunate were in no position to fend for themselves against the powerful, and so required help and protection from the king. See Zavala, *Servidumbre natural*. By the 15th- and 16th centuries, the doctrine had grown so that Spanish law recognized the need for an abogado de pobres—a lawyer for the poor—to provide free legal representation to the poor. In the New World, during the conquest and mass death of the 16th century, this idea was extended to include Indians. See Agustín Bermúdez Aznar, “La abogacia de pobres en Indias,” *Anuario de Historia del Derecho Español* 50 (Madrid, 1980), 1039-54; Paulino Castañeda Delgado, “La condición miserable del indio y sus privilegios,” *Anuario de Estudios Americanos* 28 (1971), 27-91; Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* (University of California Press, 1983), 13-15, 83.

53 Given the Inquisition’s solicitude for slaves, it may be that slaves were more likely to receive court-appointed lawyers there than in other venues, yet another reason for slaves to seek out the Tribunal. We need more research in this area.

54 AGI/INQUISICIÓN, 1727, no. 2, p. 23r.

55 AGI/INQUISICIÓN, 1727, no. 2, pp. 18v-19v.

56 AGI/INQUISICIÓN, 1727, Exp. 6/2, p. 2v.

57 AGI/INQUISICIÓN, 1727, Exp. 6/2, pp. 18v-19r.
maltreated. Ibid., 2.28.22. actional.

in matters of honor. Indians, writes Solórzano, were not without a nobility of their own, so that an injury to their honor by Spaniards was a

Press, 1994), 61. We cannot know what prompted the choice when slaves did do it, but a blood relationship certainly seems a strong

their master's surnames.

in 1656), 49.

except in relation to the idea that they need to be protected, from themselves and from others. In other words, this is not simply a naked

hierarchical and paternalistic vision of the world.

It is worth noting that notwithstanding the presumption of diminished capacity, Indians could bring Spaniards to bar, including in matters of honor. Indians, writes Solórzano, were not without a nobility of their own, so that an injury to their honor by Spaniards was actionable. Politica indiana, 2.28.18. Even slaves, concluded Solórzano, had standing to press an action for injury if they were unjustly maltreated. Ibid., 2.28.22.

Solórzano, Politica indiana, 2.28.37: Any matter to do with witnesses is left to the judge’s discretion.


Solórzano y Pereira, Politica indiana, lib. 5, cap. 16, n. 6.

This was an ancient principle dating back to medieval Spanish law—and so to “enjoy” the same “privileges” all defenseless people did. Thus, they were entitled to speedy process, lenient punishments, and to be excused as often as possible from having to swear an oath, particularly in their own cases, lest they run afoul the law against perjury and risk punishment. Solórzano seemed particularly worried that they would too easily cave to pressure and inducements from powerful others, which would lead to their unjust punishment. Better, therefore, to allow them to testify only in cases where their testimony was indispensable. The view of Indians as diminished, in short, cannot be understood except in relation to the idea that they need to be protected, from themselves and from others. In other words, this is not simply a naked assertion of Indian inferiority so much as an explicit recognition of power differentials in a situation of domination legitimated by a hierarchical and paternalistic vision of the world.

...
The reason for imposing such a burden is obvious: what other control could the Tribunal have over an evidentiary matter so easily played on as the last words of a man in extremis? Often only a priest was present to report the deceased’s intent, and given that priests frequently were pressing master’s to free their slaves, as in Juan’s and Clara’s case, their testimony had to be suspect. The only remedy was to require a broader showing of intent. Certainly, the Tribunal was well aware that in reniego cases it was not uncommon for slaves to fabricate a recantation. Moreover, the possibility of slave guile must be taken into account: a dying master, particularly one not entirely lucid, opened the possibility of fabricating a grant and rolling the dice to see if it could be made to stick. Such a subterfuge would depend on many other circumstances, such as others recognizing that a given slave had not been treated as such, rumors of a master who might be inclined to generosity, or the help of a priest inclined to counsel a dying man to free his slaves.

76 AGI/AHN, INQUISICIÓN, Leg. 1727, no. 2, p. 56v.
77 AGI/AHN, INQUISICIÓN, 1727, Leg. no. 2, pp. 106r-122v.
78 AGI/AHN, INQUISICIÓN, 1727, Leg. no. 2, p. 126r-132r.
79 Winter, A Clearing in the Forest, 331.
80 Winter, A Clearing in the Forest, 331.
81 This is the point at which I seek to build on the work of scholars such as Steve Stern, who long ago argued that we needed to look beyond the crudities of moral bookkeeping to the “social significance of judicial institutions, both as an instrument of colonial rule and exploitation, and as a tool available to the natives in their struggle against oppression.” Steve Stern, “The Social Significance of Judicial Institutions in an Exploitative Society: Huamanga, Peru, 1570-1640,” in G. Collier, et al., eds., The Inca and Aztec States, 1400-1800: Anthropology and History (New York: Academic Press, 1982), 289-320. Though offering what was then a fresh approach to law, Stern’s is a relentlessly instrumental account, almost a rational actor framework, within which Spaniards and Indians jostle to advance their interests. There is no denying that interests were at stake and that people pursued them. My question is another: whether there was something else—a “belief” in law and justice, some sense of shared norms and values that underlie the manner in which people pursued their interests, an approach that speaks to social relations beyond those of interest seeking.

82 AGI/AHN, INQUISICIÓN, 1727, Exp. 6/2, pp. 5r-5v.
83 AGI/AHN, INQUISICIÓN, 1727, Leg. no. 2, p. 154r.
84 Solórzano y Pereira, Política indiana, Lib. 2, cap. 2, no. 2 (vol. 1, p. 142).
85 Sebastián de Covarrubias, Tesoro de la lengua castellana o española (Madrid, 1943, originally published in 1611 and again in 1674), 765.
86 See generally, Zavala, Servidumbre natural y libertad cristiana.
87 Las Siete Partidas del rey Alfonso el sabio, pt. 4, tit. 22, ley 1, 3, 6; pt. 3, tit. 2, ley 8; pt. 4, tit. 16, ley 7.
88 See Recopilación, lib. 7, tit. 5, ley 8 (tomo II, p. 286).
89 See AGI/AHN, INQUISICIÓN, 1727, Exp. 6/2, pp. 2r-3r.
90 Solórzano y Pereira, Política indiana, lib. 2, cap. 4, no. 22 (vol. 1, 156).
91 Covarrubias, for instance, goes on to characterize as having liberty he who does not love, who does not fear, who harms no one, who having a secure hope in the present does not fear the future. He is without liberty, according to Covarrubias, who has surrendered to vice, “wretched and miserable enslavement.” He follows this up with the observation that the hieroglyphic depiction of liberty was two hands free in the air. He concludes the entry by noting that the “[l]iberty sought by the heretics of our times that they call freedom of conscience, is the servitude of the soul and license.” Covarrubias, Tesoro, 765. He defines a free man—libre—as one who is not married, who is without fault, who a judge has judged as free. He notes as well that libre is also someone loose of tongue, who says whatever comes to mind without heed for others. Covarrubias, Tesoro, 764-65.
92 In this analysis I am drawing on the insights of George Lakoff and Mark Johnson, who have argued that metaphor, far from mere linguistic ornament, is constitutive of the way we think about and experience the world and our relation to it. See Winter, A Clearing in the Forest, 55:2 (Apr. 1970), 131-39. Winter’s A Clearing in the Forest extends these insights to the law. Although I cannot pursue the matter here, paying close attention to the way metaphor structures all language and reasoning has enormous implications for our understanding of human behavior, motivation, and cognition.
93 Bartolomé de las Casas, De regia potestate o Derecho de autodeterminación (Madrid, 1969), 17.
94 A more recent treatment of this issue is Yves R. Simon, A General Theory of Authority (University of Notre Dame Press, 1980), 148-56.
95 Solórzano, Política indiana, lib. 2, cap. 6, no. 42 (vol. 1, p. 178).
97 Solórzano y Pereira, Política indiana, lib. 2, cap. 30, no. 41 (vol. 1, p. 448).
100 This raises the sticky issue of how innovation and change are possible. The short answer is that human beings are not entirely determined precisely because concepts such as libertad and justicia are elastic and never entirely closed and because human beings are always capable of combining and recombining what exists in unexpected ways. See Winter, A Clearing in the Forest, 259-94. Which does not mean that they can escape their time and place: in any given historical circumstance, certain things may be possible, because thinkable, and others not. This is the limit point for arguments rooted in some notion of ruling-class hegemony. There is no denying the crucial imbalances of power, both obvious and subtle, to which a hegemony approach points. But when such arguments conclude that hegemony hindered the emergence of a wider, more organized, and more self-conscious opposition to systematic oppression, they often step outside of the process of historical change—eliding what would have to be a whole account of how change happens, how categories gain elasticity
and come to be applied in novel ways in practice, and of the conceptual and cognitive limits defined by those categories, as well as the
penumbra of possibilities those categories present—and instead assume that but for hegemony the oppressed would have acted differently
than they actually did. We end up this way with a history of what did not happen, rather than of what did.
105 This is a paraphrase of a sentence of Carlos Fuentes’ in La frontera de cristal: Una novela en nueve cuentos (Mexico: Alfaguara, 1995),
127.
106 Stern, Peru’s Indian Peoples, 137.
107 The natural-law assumptions of derecho indiano raise prickly questions for liberal legal systems. To what extent can a legal system
openly premised on choices that can only be recognized as arbitrary, because not otherwise grounded, command legitimacy. Legal scholar
Roberto Unger has framed the issue succinctly as follows: “Unless people regain the sense that the practices of society represent some sort
of natural order instead of a set of arbitrary choices, they cannot hope to escape from the dilemma of unjustified power. But how can this
perception of immanent order be achieved in the circumstances of a modern society?” Roberto Mangabeira Unger, Law and Modern
Society: Toward a Criticism of Social Theory (New York: Free Press, 1976), 240. By positing a sense of human relationship to the world
rooted in body and cognition, Lakeoff and Johnson hint at one possible answer to Unger’s question.