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SYMPOSIUM: TWELFTH ANNUAL LATCRIT CONFERENCE CRITICAL LOCALITIES: EPISTEMIC COMMUNITIES, ROOTED COSMOPOLITANS, NEW HEGEMONIES AND KNOWLEDGE PROCESSES: **Language and Domination:** The Word "Indian" ⁿ¹ and its Use in the First Years of the Republic in Colombia

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SUMMARY:

... Thus forming a more historical theoretical concept, which notes the social configurations, the actions from individuals and the relation between them in a given moment and place. ... In other words, it can be said that even though the identity constructed through battles for recognition and honour appear as individual, in everyday life it is evident that this individuality corresponds to shared identities also called collective representations. ... In the analysis of these words, their meanings, values, and interests they encounter, historians can trace the battles for recognition and demands for honour within a given society. ... While the trials against Tejedor, Pacheco, and the group of Indians were criminal cases where the Indian was the accused, the trial against Ramon de Leon, where the Indian was the petitioner, started out as a claim made by one of the town's officers in which he accused Ramon de Leon. ... Conversely, witnesses called by the defence were referred to as "Indians," and not as "citizens" or "neighbours." ... In a trial against Florencio Pacheco, Mayor Rodriguez stated: "I, Manuel Antonio Redriguez, Mayor of Paipa, sent to prison the Indian Florencio Pacheco after he publicly insulted me with not suitable words of disrespect . . . he said I was a fat person that had eaten his knife and that I was a man like him." ... Here, the brief study of primary sources illustrates the tensions experienced in the Colombian post-independence society.

HIGHLIGHT:

The power of words recognized and under control, engenders rhetoric: the use of a specific vocabulary, of formulas and stereotypes, of rules and ways of argumentation. . . . The word, for its power and effects, makes an idea become reality, moreover manipulates this reality and makes it drama. ⁿ²

TEXT:

[*53] I. INTRODUCTION

What is the difference between the conceptions and stereotypes around Native Indian communities in Colombia and those of Mexico or Peru? Why do Colombians praise their natives' defeat over their own struggle? ⁿ³ Since the Constitution's expedition in 1991, the cultural diversity's recognition and exaltation of the Native Indians has become a key element in the reconstruction of our national identity. Today, a significant number of constitutional and legal norms favour the acceptance of diversity and aim to **[*54]** protect the cultural legacy of ethnic minorities. ⁿ⁴ However, the term Indian (in Spanish "indio" or "indigena") is viewed as discriminative, and most often interpreted as an insult. In Colombia, when we refer to someone as an Indian, we are implying his ignorance, ineptness, or lack of decency. An Indian may be someone who drives dangerously or abuses his wife. As a whole, the term Indian generally refers to someone considered socially and culturally inferior. What does the use of this term tell us about the social reality of our country? How does this reflect on our national identity? What role does the law play in these situations? These are significant questions that need be considered.

Investigating historical periods such as the Independence of Nueva Granada exposes new concerns and questions which must be examined and used to reinterpret history. Most historiography on this period has approached the social and cultural composition of Colombia's society after the independence using ideas of unity and homogenization. ⁿ⁵

However, this same concern can be responded from a theoretical perspective that recognizes the role played by subaltern classes in nineteenth-century society.⁶ With the Constitution of 1991, this second approach seems to be the one that should prevail. The recognition of Colombia's multiethnic and multicultural society requires that historical studies advance on identifying the [*55] legal, political, social, and cultural status of subaltern classes, especially that of different ethnic and cultural groups such as the indigenous people.

The Independence of Nueva Granada⁷ was decisive in the conformation of the nation-state and is considered the foundation of Colombia's national identity. Nueva Granada declared its final independence from Spain in 1819. In conjunction with Venezuela's independence, both countries enacted their first constitutions in Angostura.⁸ The citizens responsible for constructing the legal bases for the new nation were not certain if the social differences based on racial features would be a founding rock of the new system, or if on the contrary, the proclamation of a republican state required that those racial differences did not influence or interfere with the social status of the republican citizens.

Social relations within the post-independent society of Colombia entail the conflict of recognizing the "other" and the "us" in the construction of identities.⁹ The agents of this society operated upon a stage in which the words and the ways of naming each other contributed to forming an identity and the identification of the so-called "other." Consequently, these identifications established representations of reality that legitimized and internalized racial categories that determined the creation of the nation-state: a discriminating and heterogenous nation-state.¹⁰

During the first years of their independence, the Nueva Granada suffered legal changes that were reflected in the judicial cases regarding social and racial status of Indians in the new republic.¹¹ In fact in regards to the [*56] Indians' legal status, the new constitution and republican legislation declared that "Indians" were no longer to be called by this discriminatory name and that, from then on, they would be considered equal citizens as the white and "mestizo" population. The first act in this respect abolished the compulsory special tax paid by the Indians in the colonial period, making them pay the same taxes as all the other republican citizens.¹² In this way, the Indians became a formal subject of equal rights and duties as all other colours.¹³ However, this legal change was not enough for Indians to be considered as equals. Social practices illustrated that the word "Indian" continued to be viewed negatively, and the constant struggle to reclassify them as equal citizens (ignoring racial features) did not succeed.

These struggles for recognition of a due racial and social status could be easily noticed amongst the social relations between men that should be considered equal, but were represented as different. For example, a "mestizo" Mayor, whose appearance could characterize him as an Indian, needed to be considered superior from the common people. Bearing this in mind, the trials--in which the local authorities confronted the citizens--resulted in conflicting situations between the individuals that should be considered equal, but were not. In this article, we will study the judicial cases that originated in the relationships between common citizens and their authorities. In particular, we will look at judicial cases involving disrespect, insults, and complaints held during the first years of Republican Bogota and its surroundings.

The purpose of this research is to illustrate that the term Indian, as used in these case studies, and generally in post-independent Colombian [*57] society, was a way of identifying who was and was not a republican citizen, and therefore, which values were going to be influential in the development of national identity. This conclusion is supported with the use of certain concepts that are central in analyzing social interactions and the building of common identities--specifically, the policies of recognition, and the notion of honour that played a crucial role in the articulation of day-to-day discourses and practices. An individual's self-image is created by the relationships he holds with those he acknowledges as his equals, and with those he considers to be different. These ideas allow us to build relationship patterns and identify classifications and associations. Moreover, through the tracing of the connections between recognition and honour claims found in the society, we will be able to find common traits and build what can be considered the national identity of post-independent Colombian society. This paper attempts to use a historical perspective to study practices of day-to-day manners through the analysis of judicial discourse. These goals demonstrate how speaking, feeling, living, and forms of naming people are expressions of how nation-states are formed.

This paper addresses four trials of men labelled as Indians, who complained about the name-calling or disrespected their local authorities. These trials took place between 1823 and 1828 in Bogota, Sutatenza, Paipa, and Tunja.¹⁴ These so-called Indians based their demands on the abuse of power from their superiors. The most important issues to consider are the insults used in these trials and the arguments given by the public prosecutor and the defence. In this sense, the speech within the sources is not viewed as a sole informant, but as a representation of a larger attitude within society. The queries on the forms of language used by the society under analysis become relevant as we approach a cultural his-

tory filled with representations of reality. A history of concepts seems helpful in the analysis of cultural issues that appear in the day-to-day labelling of one another--a phenomenon that could be considered central to any society.

Nonetheless, it is important to make some notes on the limitations of this paper. First, due to the particularities of the primary sources, it should be noted that because they are judicial documents, the language used is formal and technical. Therefore, the terms selected need to be considered carefully and cautiously as to whether they are part of everyday life. The second limitation is that these four trials are a small representation of the many more that are available in the Republic section in the Archivo General de la Nacion in Bogota.

[*58] In order to review the selected primary sources and deal with the object of study of this paper, the text is divided into two parts. The first section addresses the theoretical framework, the place of recognition, honour, and national identity in the history of everyday life. This part also deals with the differentiation between the individual and society, establishing the importance of language, and the methods of naming in the composition of a determinate society. Specifically, the trials narrate common tactics toward various individuals in their daily doings. How were individuals named by others? What did the term Indian represent in the society's daily interaction? As these questions are answered, the following section addresses the problems of the individual, his actions, and collective sayings. Ultimately, we encounter the process of recognition and honour within the tension of the individual and society and establish the importance of the naming process regarding racial and social categories. ⁿ¹⁵ In Section Three, the trials are used as a case study to illustrate the particularities of the naming process that are referred to in each of the files.

II. LANGUAGE AND EVERYDAY LIFE: A THEORETICAL OVERVIEW

Each generation writes its own history, one that reflects the intellectual concerns of each historian's times. Her perspective of the past, depressing or optimistic as it may be, as well as the choice over what topics to address, exemplifies the concerns of her present. Studying and referring to the past does not constitute a formal and stiff task; it consists of the exam of implicit ideologies and values found in a text, its deliberate confrontation with the historian's own prejudice, and the inevitability of her values. ⁿ¹⁶

This explains why history changes with time and why new perspectives and fields of history appear. The job of a historian always has an objective, a reason to legitimate; however, she still has to remain thorough. ⁿ¹⁷ A historian approaches historical events already told and interrogates the facts with new questions that allow her to find new sources and new explanations. Thoroughness does not depend on the conclusions reached, but on the process taken to arrive to such conclusions. As long as the historian is aware of her biases, her study can still be accurate. This bias is measured by the credibility of her sources. The same historical processes can be contradicted from different points of view. Historians discuss and analyze the [*59] sources that reveal the complexity of a given moment in time, not only with the objective of acknowledging the past, but also being conscious that in the construction of written history they are also creating history of the present.

History of everyday life and the history of private life has become part of the new way to approach history in the last quarter of the 20th century. ⁿ¹⁸ Current historians are able to rethink the age-old question, "What is History?" by re-analyzing previously studied historical sources with new outlooks and perspectives, while introducing different kinds of sources, ⁿ¹⁹ and by using an interdisciplinary approach. History is not only political, economic, and social; history also involves many factors such as language and psychology. These fields further involve the history of everyday life and conceptual history. In short, this new approach of recording history awards us a broader perspective on previously told historical events. Chatter noted,

The challenge thrown at the history at the end of the 1980s is inverted from the precedent. Now it is not based on a critique of the discipline's customs due to social innovations, but on the critique of the postulates within social sciences. The intellectual fundamentals of the assault are evident; in one hand the individual's philosophical return rejects the influence of collective determinations and social conditioning, thus trying to restore the theory of action. ⁿ²⁰

This new approach attempts to restore the individual as capable of generating action through the rejection of social conditioning. ⁿ²¹ It empowers the individual with the capability of creating history. ⁿ²² Furthermore, there is a shift not only in history but in the whole of social sciences, by which structuralism and materialism are no longer considered infallible and objective theories. ⁿ²³ Additionally, and in the same sense as the previous argument, the topic of politics as political culture is again considered as a relevant element in the construction of a more complete history. ⁿ²⁴

[*60] III. RECOGNITION, HONOUR, AND EVERYDAY LIFE HISTORY

Individuals live in societies. Within the individual and the society, there are relationships that take different forms as they change in time. These social relations illustrate the existent dialog between individuals and their society. However, these relationships are not the same throughout time; they vary according to the place and the moment in which they develop. The conception that individuals have of their society and their role in it determines the way they live and act towards each other. These collective impressions, contrary to individual representations, even when they are idealized, contradictive or coherent, are part of reality because they are based on the collective conviction that these impressions are grounded in facts.

Due to the correlation between the individual and society, the notion that recognizes these two concepts as opposites should not be considered. On the contrary, the necessity of the individual to construct, continuously affirm, and maintain his place in society by the possibility of his actions prevails. The concept of figuration is helpful in order to explain this relationship.ⁿ²⁵ This concept includes both the study of the individual and society.ⁿ²⁶ It is defined as the ways of relating and belonging of individuals in a net in which they are all dependant to each other.ⁿ²⁷ Individuals can be distinguished but never separated from society. Society exists before them and prevails in time. They are unique and not repeatable. Nonetheless, all humans die. Although society changes slowly and this change cannot be attributed to a particular individual, it can, however, be ascribed to the individuals considered as a whole.ⁿ²⁸ This concept combines Weber's sociology, which defines models and patterns, and Parson's analysis, which focuses on systems.ⁿ²⁹ Thus forming a more historical theoretical concept, which notes the social configurations, the actions from individuals and the relation between them in a given moment and place.ⁿ³⁰

[*61] Consequently, the object of history is no longer the consideration of structures and mechanisms that organize social relationships without the account for individuals' actions, but the reflection upon rationalities and strategies that consider communities, kinship, families, and individuals.ⁿ³¹ The idea is to find a middle point between the objectivity of structures and the subjectivity of representations, where collective representations are not only imposed by powerful groups, but also by the way the groups understand their social identity. The new strategy of recording history is to take these collective representations and social identities and strive to write a more complete and accurate history.

From a figurative approach to the interaction between the individual and society, the best way to take account of this perspective is by considering the study of everyday life. The way in which the individual interacts and relates with others is exposed in his everyday behaviours. Of course, the daily actions are not identical for all individuals, but when grouped as a whole, they create a common pattern in society. It is important to establish that even though each individual's behaviour is unique, he acts on a stage that integrates him with an "us" and differentiates him with "others." Thus, only when accepting the idea that society is a dynamic construction, can the politics of recognition, the demands for honour by an individual, and the social processes be used in writing a more communal and cultural history of a certain period of time.

The concept of recognition as building identities in a given society appeared in the mid-eighteenth-century when the human being was defined as someone that needed others like him.ⁿ³² Sociability, as the definition of the human condition and the consideration of the other as the self's purpose, are both determinant concerns that help construct the concept of recognition.ⁿ³³ Soon after the end of the century, the term recognition is placed within battles of power and dominance.ⁿ³⁴ Recognition is then found in the others' view. In words of Tzevetan Todorov, "[t]he need of being really looked at is not one of human motivation: it is the truth of all others."ⁿ³⁵

These considerations on recognition are used by the Colombian historian, Margarita Garrido, in her study on claims and representations of Nueva Granada's society during the last decades of Spanish rule.ⁿ³⁶ By using this concept, Garrido establishes three types of recognition: recognition **[*62]** within equals, recognition within those that are not equals, and the recognition that comes from authorities.ⁿ³⁷ Gaining these multiple recognitions defines the earning of an individual's symbolic value and thus the same for his family.ⁿ³⁸ This positions the individual and his close ones into a determined place in society.ⁿ³⁹

The everyday interaction in respect to the recognition between equals, non-equals, and authorities constitutes a field of tensions in which a person's place in society is defined and redefined as is his identity. Individuals are social agents that construct ways of identification and thus reproduce a given culture. The people found in the trials under study show the struggle for recognition from others considered equals. They are looking for a way to build respected identities. Within the subjective sphere, the individuals represent themselves within a community from their own conception of their identity.

Within the intimacy of an individual's life, honour is the object of the recognition. A central value of traditional societies, honour is the value of a person for himself, but also for society. It is a valuable structure. It has both a private and public sphere. It is the window that connects the private and the public in a person's life.

In this sense, honour is a link between a society's ideals and the reproduction in an individual through his wish to live them.ⁿ⁴⁰ It can be found where the collective representations are internalized by the individual and at the same time it is maintained by his actions. Even though the content of honour is part of a social group's values, its reproduction depends on the appropriation and practice of each person.

Honour and recognition are both attributes of individuality; the interaction of these two concepts forms the identity. They cannot be ascribed either to individuals or to society and therefore represent an individual identity within a social one. The struggle for recognition and honour are then the core of the construction of shared identities that form an "us" and an "other." In this way, both the seeking for recognition and the language of honour become part of individuality. However, since they are formed through a dialogical process they are also reproduced in group identities. In other words, it can be said that even though the identity constructed through battles for recognition and honour appear as individual, in everyday life it is [*63] evident that this individuality corresponds to shared identities also called collective representations.

During Colombia's independence, the group identity could be referred to as a national identity. The construction of this identity meant obedience to the new regime.ⁿ⁴¹ In fact, living certain values that were supposedly defended by the Republic guaranteed the adherence of the new republicans to the power of the State. This power was set upon what people thought were valid reasons and not on the mere caprice of certain powerful people, which was what they thought the absolutism of Spain represented. The internalization of these reasons by the common people was the assurance for the governing elite against rebellions. The replacing of the "other" by the "us" presumed belonging to a nation and committing to obey. In this sense, the trials on disrespects and complaints exemplified the process of construction of individual and social identity within society. The negotiation and the dialogue between the local authorities and the Indians involved in the trials under study talk about the affirmation of national identity through battles for recognition and honour at an individual level. However, as we have observed, these battles involve a social level as well.

Now, as for the interaction of individuals in a given society, the theoretical analysis of recognition has to be accompanied by the notion of language. Words are the tools that individuals use to communicate. In the analysis of these words, their meanings, values, and interests they encounter, historians can trace the battles for recognition and demands for honour within a given society. The form of language along with what this form actually means explains the way those individuals interact. It also establishes particular values of social groups through which patterns of belonging are constructed.

When language is linked with culture, history develops the necessity to search for institutional meaning as well as the significance of practices, images, expressions, events, and customs of a given human group.ⁿ⁴² In regards to this paper, language will only refer to the ways of calling each other as an establishment of parameters of identity and difference within the members of the early Colombian republican society, in the moment of foliating the nation. The semiotic codes that refer to a particular person, identifying him within a determinate group, question the stereotypes and, in [*64] some cases, even the causes and reasons of the way individuals act, talk, or live.

The historization of the concepts of recognition, honour, and identity is a key approach to the relationship between society and the individual. For this paper, these relationships are between the authorities and the Indians in the first years of the Republican Period. The conceptual history interprets history in a strict sense, through its past concepts, even when the terms are still being used today, and understands the historical sense of concepts, even when their previous use has to be redefined in the present. Thus, the issue of conceptual history is, in a simple but extreme version, a convergence between concept and history, in such a way that history could only be history if it was conceptualized. From the theory of knowledge, nothing would have happened historically if it first would not have been comprehended conceptually.ⁿ⁴³

IV. THE TERM "INDIAN": WAS IT AN INSULT?

Having mentioned the historization of concepts, and in order to understand the place of the recognition and honour battles in the Colombian society at the beginning of the Republican Period, it is necessary to examine the way these battles occurred at the end of colonial times. The elements that constitute the individual's place and role in the colonial society were skin colour, a sense of belonging to a family marked by ethnic conventions, and the access and capability of using economic resources (e.g., assets, people, job positions, and rules). All of these acquired meaning by achieving

certain recognition from others. Without the recognition of others, all of these achievements and all of these symbolic values were without meaning.

In the American colonies, the elite took the notion of honour-privilege and associated it with the purity of blood from any skin colour and the rejection of manual labour. This honour was for the Spanish and their descendants: attitudes such as dominance, superiority, and sometimes loyalty to the king. This social superiority also corresponded to a moral superiority. Nonetheless this internalization of a foreign concept did not impede the development of new and hybrid senses of honour. The different social groups and communities produced different meanings of the word "honour," even when all of them shared certain values. For some, the key for having honour was virtue: their good behaviour as a neighbour and parishioner. For others, freedom seemed to be the key to honour, especially those [*65] that had enslaved relatives. Finally, those that had achieved a more powerful position used honour as a way of distinguishing themselves from their local fellowmen. In all these different forms, the notion of honour as a privilege continued until the final moments of the Spanish reign and, in some cases, was also lived in the Republic. ⁿ⁴⁴

During the nineteenth-century a great deal of the colonial, social, and racial structures continued in spite of the legal changes, by which the citizen concept broadened. ⁿ⁴⁵ The Indians were considered citizens since they no longer had a special tax, even though this did not necessarily imply a change in the way of naming and identifying them. During the Colonial Period the Indians paid a special tax to the crown. With the independence, this tax was abolished and the requirements to vote were limited to variables of age, gender, and economic resources. ⁿ⁴⁶ In this sense, even when race was not established as a discriminative factor to exercise civil rights, it could be stated that the Indian population, being poor in its majority, did not stand a chance as actual citizens.

Within these legal changes, the word "Indian" continued to be used in a discriminative and disrespectful way. The trials analyzed will help establish several things: first, what the twat "Indian" identified; second, when and by whom it was used; and third, what the implications of using the term were in the construction of identity and difference in the individual and society. The four trials are judicial actions that took place in the District of the Centre, in Bogota and its surroundings. They are all known by the Court of Appeals of the same district.

The first trial was "against Ignacio Tejedor neighbour of Sutatenza for disrespects and claims against the judges of the place." ⁿ⁴⁷ Witnesses stated that Tejedor, who was a convict in Guateque's prison, mistreated some of the other prisoners. The judge, who at the same time was the chief of police, asked Tejedor about the attacks. Tejedor answered with a great deal of insults resulting in the judge accusing him of disrespect.

The second trial involved the claim of Ramon de Leon against the Mayor of Bogota, for the Mayor's proceedings and abuse of power. ⁿ⁴⁸ This trial was different from the others because it started with a claim made by an Indian. However, it later becomes apparent that the Mayor had previously [*66] sent De Leon to prison for insulting him. It seems that De Leon was working in a house where an important officer was residing. The Mayor came to the house and asked De Leon to look for the officer. De Leon answered that the officer was not home. The Mayor decided this was an act of resistance to the law, and thus, sent De Leon to prison. De Leon argued that this was unfair.

The third trial was a criminal case against the Indian Florencio Pacheco for disrespecting the judges of Paipa. ⁿ⁴⁹ In this case, the Indian Florencio Pacheco confessed to having insulted one of the judges of Paipa because the judge had not returned Pacheco's borrowed knife. The judge decided to imprison him for disrespecting a superior authority.

The fourth and last trial was another criminal case, this time against Indians from Viracacha, due to their revolts against the mayors. ⁿ⁵⁰ The witnesses found the seven Indians guilty, one of whom was a pregnant woman, and all were condemned for insulting and hitting the mayors. Prior to this, the mayors had decided to advance in the construction of the church, and the Indians supposedly did not agree.

All the trials occurred between 1823 and 1828. In the first two cases, the Court of Appeals ruled in favour of the Indians. However, in the third and the fourth, the Indians were condemned to prison. In the first and second trials, even though the local and first instance courts condemned the Indians, the Court of Appeals absolved them based on the claims of the defence, in which the attorney based his argument on the natural condition of the Indian as a miserable. In the following quote, it is obvious how the defence of Tejedor based its arguments on the natural state of the Indian, thus trying to convince the judge to declare him innocent.

And the scribe wrote in [the] name of the defence. . . "that an Indian was because of his nature incapable, and that if he had acted in a certain way [it] was because he was miserable and drunk as was his usual state. Poor of this creature that cannot be mistreated and on the contrary has to be treated with charity

and the necessary authority that has been given to those of us that govern and are men of honour and opportunities. We should feel pity of them and because of that, not abuse our power."ⁿ⁵¹

On the other hand, in the third and fourth trials, though the same arguments were made regarding the Indians' natural state, the defence did not succeed.

[*67] All of the documents found begin by establishing the racial categories of the accused next to their names. File after file, the name of the person involved is followed by the word "Indian." While the trials against Tejedor, Pacheco, and the group of Indians were criminal cases where the Indian was the accused, the trial against Ramon de Leon, where the Indian was the petitioner, started out as a claim made by one of the town's officers in which he accused Ramon de Leon. Only in this last case was the Indian both a petitioner and an accused. However, in every trial it can be affirmed that the Indian was certainly the accused.

Not only was the term "Indian" written after the name of each of the accused people, but it was also the word used at the beginning of each case to name the file. The heading was given by the Court of Appeals to each case. The only case with a heading that did not refer to the accused as an Indian is the one of Ignacio Tejedor. In the first file of this particular case, the name of Tejedor is preceded by the term "neighbour" and not "Indian." However, in all of the other files of this same case, the name Tejedor is followed by the term "Indian." Hence, out of all the files checked, only one of them did not refer to the accused as an Indian. For this reason, it can be concluded that since the heading of the cases stated the racial condition of the defendants, this was an identifying, determining factor that affected the outcome of the trials.

By the time these trials took place, the tax on Indians was already abolished, and the Constitution of 1821 ordered that the habitants of the Republic of Colombia be named citizens, except for the slaves who were not freed.ⁿ⁵² However, the cited trials show general resistance to recognize Indians as citizens.

Of all those cases, only in the case of Ignacio Tejedor did the judge indicate his intent to characterize the accused Indian man a citizen. In one of the recorded proceedings, the scribe crossed out an entire paragraph because it contained the word "Indian."ⁿ⁵³ The scribe then rewrote the crossed-out paragraph and replaced the word "Indian" with "citizen."ⁿ⁵⁴ However, the judge did not refer to the accused Indian as a "citizen" in any other file.ⁿ⁵⁵

While the defendants were referred to as "Indians," the witnesses called by the prosecution were always referred to as "citizens" or [*68] "neighbours." Conversely, witnesses called by the defence were referred to as "Indians," and not as "citizens" or "neighbours."

For example, in the case of Ignacio Tejedor, when the judge interrogated one of the prosecution witnesses, the scribe wrote:

In the same day I called Salvador Nino from this neighbourhood from whom I received oath in the name of God all mighty and the holy cross in form of law under which he promised to say the truth and nothing but the truth in what he was asked and knew.ⁿ⁵⁶

On the other hand, when the judge called a witness for the defence, the scribe wrote:

I call Manuel Barrera, Indian from this neighbourhood from whom I received oath in the name of God all mighty and the holy cross in form of law, under which he promises to say the truth in whatever he is asked and knows.ⁿ⁵⁷

Although the word "Indian" was used indistinctly in all cases to refer to the particular accused, the word "citizen" was used to refer to witnesses called by the prosecution. Thus, there existed a differentiation in the way the parties were formally treated, even though they were supposed to be equal under the Constitution. The battles for distinction were still present in the Colombian post-independence society. The skin colour, as well as the defendants' ethnicity in these particular cases, was an element that remained important in the construction of personal and social identities. However, the crossed-out paragraph found in Tejedor's case is interesting, because it shows an evolving authority which characterizes a "citizen" as a party who was termed "Indian" throughout the proceedings. It appears that the Tejedor judge acted upon the principles of equality found in the values of the new Republic.

In that context, the distinction and configuration of the word "Indian" was used by the prosecutors, judges, and mayors, to label those who had offended them, or by the prosecution witnesses to label the defendants. In none of the cases did someone refer to himself as "Indian." The prosecutors would commonly use the term "Indian" disparagingly,

and with rage. Moreover, the defence used the word "Indian" with a sense of degradation--although not in a rage, but in the interest of being charitable to those poor people who, due to their nature could not aspire to be something else.

In respect to the attitudes of the first group--mayors and prosecutors who were offended--the declaration of the Mayor of Paipa, Manuel Antonio [*69] Rodriguez, is telling. In a trial against Florencio Pacheco, Mayor Rodriguez stated: "I, Manuel Antonio Redriguez, Mayor of Paipa, sent to prison the Indian Florencio Pacheco after he publicly insulted me with not suitable words of disrespect . . . he said I was a fat person that had eaten his knife and that I was a man like him." ⁿ⁵⁸ Undoubtedly, these words illustrate a typical stage at which the scene of identification and differentiation took place. It turned out that Florencio Pacheco had lent a knife to the Mayor, which the Mayor had failed to return it. Because of this, Pacheco insulted the Mayor at the town's plaza. With indignation, the Mayor, who felt humiliated, sent Pacheco to prison, making a statement of his authority.

Mayor-of-Paipa's words are truly significant in discerning what it meant to be considered an Indian. According to the Mayor, one of the worst insults was the fact that Pacheco referred to him, the mayor, as an equal. His honour was disturbed by Pacheco's words. Under no circumstances could he, a mayor, be considered an "Indian." Even though the racial categorization is not explicit in the text, the Mayor clearly implied that his status as an authority figure made him superior, and therefore someone who could not be likened to an Indian. In this sense, racial categorizations were symbolic of status, and no longer correspond to the skin colour.

In comparison, defence attorneys used racial and social hierarchies differently. They utilized the hierarchies to craft arguments of pity, which they used to advance their defence. Those attorneys degraded the Indian and considered him to be inferior but felt that it was their duty to protect him from his own struggles.

Therefore, the Indians' actions were justified and defensible based on their very nature. How could Indians be blamed for their actions if they were simply being who they were? For example, in his concluding remarks, the defence attorney for Ignacio Tejedor stated that:

No man in his entire and sane judging could be capable of committing such a felony to any judge; and that is how if Tejedor committed any crime it was because of the amount of liquor he had drank. ⁿ⁵⁹

Thereafter, the attorney stated that this population group, the Indians, were disfavoured by natural means and that in the name of republican principles they should be respected in their freedom. ⁿ⁶⁰

[*70] The previous paragraph shows that freedom, as a principal value of citizenship, was in fact practiced by at least one part of the society--the defence attorneys. Similar to Tejedor's case, Pacheco's defence attorney explained that:

In the difficult job of administering justice with righteousness and governing free people, all the power is held by the law and therefore the king has no say in it. ⁿ⁶¹

Such respect for freedom and legality was accompanied by charity. These different men within the Republic, and considered free and equal, were subject to charity. "Good Christians" were confused with "good citizens." What role did charity play here? How did freedom and charity measure up with unity? Within the cited trials, the discussion of the differences is filled with content, and two major focuses can be distinguished. They are both created from the notions of racial and social hierarchies. However, one refers to hate speech, and the other to harmonization.

Determining the true identity of Indians is thus historically a tricky task. Indians did not refer to themselves as "Indians," but were repeatedly accused of this title. When Tejedor attacked the Mayor from Guateque, the Mayor used words such as Indian, almost black, and hairless. In addition, when the so-called Indians used the term "Indian," they used it to reciprocate their abuse. To what part of "us" did those Indians actually belong?

The Indians never indicated that they belonged to a distinct group. When Pacheco identified the Mayor as a man like himself, he was placing himself in the same group as the Mayor. This comparison either brought Pacheco up to the Mayor's level, or brought the Mayor down to Pacheco's racial and social level. Nevertheless, one thing is certain: Pacheco identified himself within the context a social and ethnic hierarchy.

V. FINAL REMARKS

The Independence period has usually been explained in the context of political history of wars and biographies of important characters. However, the Independence period can also be explained by examining the records of everyday life, which underlie the social, cultural, and conceptual matters. Here, the brief study of primary sources illustrates the

tensions experienced in the Colombian post-independence society. A look into social relations, inner to this society, enables us to discover and explain how the collective and individual identities formed, under the regime of the new nation.

[*71] Throughout the final decades of the colonial period, when the process of "mestizaje" was at its peak, the society of Nueva Granada was racially divided. The first years of the Independence show the continuance of these divisions. However, as the new Republic emerged from colonialism, the idea of unity and homogeneity became the premise of the Republic. The four trials analyzed in this article indicate that the so-called and wanted unity was not firmly present in the society. Within the common people, the identification of who should be considered a citizen was not homogenous, and did not correspond to the idea of equality. As seen in this paper, the term "Indian" was still used in a degrading and accusing manner.

Our Indians--Tejedor, Pacheco, Leon, and so many others from the riot--were the principal characters of the four cases. However, the way the "others"--judges, mayors, witnesses, prosecutors, and defenders--acted towards the Indians was a key element in discovering how the society understood the term "Indian." While some groups condemned Indians for disobedience and disrespect, other groups defended them because they felt indignation for the Indians. Nonetheless, both groups alluded to the natural ways of Indians in a degrading sense.

Moreover, Indians did not perceive the term "Indian" any differently than the society at large. Indians did not identify themselves as "Indian," although some used the term to insult their authorities. Evidence shows that the term "Indian" was disparaging--it always referred to the "bad" one, whether it was the accused or the unjust authority. The term "Indian" was used to refer to the defence witnesses and never for the prosecution ones.

In conclusion, this paper invites law researchers to approach social and cultural concerns through an interdisciplinary study. In this case, the study of legal and judicial discourse drew light on the cultural and social struggles of common citizens in Republican Colombia. In this sense, it also helped explain the roots of current discriminative practices. Reinterpreting history through legal and judicial sources enrich our understanding of discriminative language, such as the term "Indian," as well as the practices that result from its use, which are still present today.

Legal Topics:

For related research and practice materials, see the following legal topics:

GovernmentsLocal GovernmentsClaims By & AgainstGovernmentsNative AmericansAuthority & JurisdictionGovernmentsNative AmericansTaxation

FOOTNOTES:

n1 "Indians" were invented by Europeans. As Europeans settlers and explorers roamed the Caribbean and then the American mainland in the years after 1492, they began to classify the inhabitants of this new world as "Indians". In so doing they created a cultural and ethnic category that had not previously been imagined by the continent's original residents. The varied groups that had settled the Americas prior to the arrival of Europeans did not consider themselves members of a single community. On the contrary, some indigenous groups were not aware of the existence of the other societies with whom they were to be linked as fellow "Indians". REBECCA EARLE, *THE RETURN OF THE NATIVE: INDIANS AND MYTH MAKING IN SPANISH AMERICA 1810-1930* 1 (DUKE UNIVERSITY PRESS, DURHAM AND LONDON 2007).

n2 GEORGES BALANDIER, *EL PODER EN ES CENAS: DE LA REPRESENTACION DEL PODER AL PODER DE LA REPRESENTACION* 28 (1992) (translated by the author).

n3 On October and November of 2008, Indian communities from the southeastern region of Colombia, specifically from the Department of Cauca arrived in Bogota to confront the government and ask for the protection of their human rights, especially the respect for their right to an autonomous territory and the respect for their ethnic and cultural differences. Although some students, scholars, and human rights activists supported and sometimes even joined the community's demands, public opinion regarding the riots led by the community of Indians was

very demeaning and representative of the stereotypes regarding these ethnic and cultural minorities. A very interesting analysis of the response given by Colombian society over the community's demands and display was written by Carl Langebaek, dean of the Social Science School of Universidad de los Andes. CARL LANGEBAEK, "LAS MARCHAS INDIGENAS DEL CAUCA: DEL MITO A LA REALIDAD", February 11, 2008, <http://www.razonpublica.org.co/?p=610>.

n4 Multiculturalism was finally adopted by Colombia with the enactment of the Constitution of 1991. *See generally* DANIEL BONILLA MALDONADO, *LA CONSTITUCION MULTICULTURAL* (2006). It is a normative concept that must be incorporated in the whole legal system. In this sense, multiculturalism is seen not as a concept that describes a well-known reality, but as a value according to which the recognition of different cultures must be achieved by the creation of effective public policies. *Id.* On the concept of multiculturalism, see generally CHARLES TAYLOR, *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* (Amy Gutman ed., 1994).

n5 For two examples of this type of historical work, see JESUS MARIA HENAO AND GERARDO ARRUBLA, *HISTORIA DE COLOMBIA PARA A ENSEÑANZA DE SECUNDARIA* (1967); and JOSE MANUEL RESTREPO, *HISTORIA DE LA REVOLUCION DE LA REPUBLICA DE COLOMBIA* (1969). For more recent historical works that have used the idea of homogenization to explain the composition of Colombia's society after independence and have based their analysis in the upper whiter class, see David Bushnell, *Assessing the Legacy of Liberalism*, in *LIBERALS, POLITICS AND POWER: STATE FORMATION IN NINETEENTH-CENTURY LATIN AMERICA* 278, 278-300 (Vincent C. Peloso & Barbara A. Tenenbaum eds., 1996); VICTOR URIBE URAN, *ABOGADOS, PARTIDOS POLITICOS Y ESTADO EN NUEVA GRANADA: 1790-1850* (1992).

n6 For examples of these subaltern studies for the Latin American History and Colombian History, see generally FLORENCIA E. MALLON, *PEASANT AND NATION: THE MAKING OF POSTCOLONIAL MEXICO AND PERU* (1995); MARK THURNER, *FROM TWO REPUBLICS TO ONE DIVIDED: CONTRADICTIONS OF POSTCOLONIAL NATIONMAKING IN ANDEAN PERU* (1997); James S. Sanders, *Belonging to the Great Granadan Family: Partisan Struggle and the Construction of Indigenous Identity and Politics in Southwestern Colombia, 1849-1890*, in *RACE AND NATION IN MODERN LATIN AMERICA* 56 (Nancy P. Appelbaum et al. eds., 2003); Frank Safford, *Race, Integration and Progress: Elite Altitudes and the Indian in Colombia, 1750-1870*, in 71 *THE HISPANIC AMERICAN HISTORICAL REVIEW* 1, 1-33 (1991); SARAH C. CHAMBERS, *FROM SUBJECTS TO CITIZENS: HONOR, GENDER, AND POLITICS IN AREQUIPA, PERU, 1780-1854* (1999).

n7 In colonial times this was the name for Columbia's territory.

n8 After the battle in Boyaca, Bolivar arrived in Bogota on August 10, 1819. *See generally* Jaime Jaramillo Uribe, *Etapas y sentido de la Historia de Colombia*, <http://www.lablaa.org/blaavirtual/historia/colhoy/colo4.htm>. By the end of the same year the leaders of the two territories that had proclaimed their independence, Nueva Granada and Venezuela, met in Angostura, a province located in the frontier of both territories, to enact their first Constitution. *See id.* In this Assembly, the Congress elected its first President, Simon Bolivar, and Vice President, Francisco Antonio Zea. *See id.* Both territories were from then on known as the "Republic of Colombia." *See id.*

n9 *See* NORBERT ELIAS ET AL., *THE SOCIETY OF INDIVIDUALS* (Edmund Jephcott trans., 2001) (discussing the concepts of "us" and the "other").

n10 The ethnic discrimination is also evident in the dispositions of public policies that aim for the distribution of resources. All of the Indians involved in the case-study were poor. They were always defended by the corollary of a public defender.

n11 Next to the legal changes, all the censuses taken in Nueva Granada before 1824 used racial categories. *See generally* HERMES TOVAR PINZON ET AL., CONVOCATORIA AL PODER DEL NUMERO: CENSOS Y ESTADISTICAS DE LA NUEVA GRANADA, 1750-1830 (1994). The category of "free of all colours" included, among others: the "metizos," "mulatos," "terceron," "cuarteron." *See id.* However, the classification was limited, as of 1824, to three categories: citizen/neighbor, Indians, and slaves. *See id.* By the end of the colonial period, the Colombian society was divided in racial and social categories. *See generally* Uribe, *supra* note 8. However, the process of "mestizaje" (the mixing of the races) acted upon the traditional social order, making it harder to maintain those categories. *See id.* The demographic growth of the "mestizo" group, along with their access to the land and their commercial activities, helped break the barriers of race that had kept them from education, bureaucracy, and priesthood. *See id.* The colonial representatives took account of this reality, and informed the Spanish crown of the impossibility of continually enforcing segregation laws. *See id.* However, in spite of the conformation of a more mixed society, the new called republicans still lived in the nineteenth-century most of the racial, social, and cultural differences. *Id.*

n12 After the Constitutional assembly of 1821, which was held in Cucuta, Congress created a number of new laws based on liberal ideas. *See generally* Uribe, *supra* note 8. For example, the new Constitution established free birth for slaves' children and abolished some of the colonial taxes. *See id.* Among others, the taxes on Indians, the alcabala on all assets, and the monopoly of aguardiente, were all abolished. *See id.*

n13 All throughout the first decade of independence 1820-1830, the Republic of Colombia formed by Nueva Granada (today's Colombia), Venezuela and Quito (today's Ecuador) enacted several legal norms in respect to the Indians who were now considered citizens. Besides the Act of October 11, 1821, which established the elimination of the compulsory special tax for Indians, all throughout these first decades, legal norms voted in favor of more schools for Indians, as well as the Catholic preaching for all of those Indians who still had not been converted. However this first, legal promotion of the Indians was not accompanied by the belief in the indigenous capacity for citizenship on the part of the region's elite. In fact, even the legislation wasn't consistent in its dispositions. While some laws were clear on the Indians equal rights and duties, others reminded society that they were different and "uncivilized" and, therefore, had to change and become more "civilized" in order to be actual citizens.

n14 Bogota, Sutatenza, and Paipa y Tunja are towns which are located in the interior of the country, near the Mountains.

n15 *See generally* Margarita Garrido, *La Vida Cotidiana y Publica en las Ciudades Coloniales*, in HISTORIA DE LA VIDA COTIDIANA EN COLOMBIA 47 (Beatriz Castro ed., 1996).

n16 *See* GERMAN COLMENARES, LAS CONVENCIONES CONTRA LA CULTURA: ENSAYOS SOBRE LA HISTORIOGRAFIA HISPANOAMERICANA DEL SIGLO XIX (1997).

n17 *See generally* EDWARD H. CARR, WHAT IS HISTORY? (1964); *see also* JACQUES LE GOFF, PENSAR LA HISTORIA: MODERNIDAD, PRESENTE, PROGRESO (1991).

n18 This is a reference to the appearance of cultural, conceptual, everyday life, and private life history.

n19 Other written sources, such as diaries and memoires, are taken into account in addition to official documents. Current historians also use some unwritten sources, such as images and painting.

n20 *See* ROGER CHARTIER, EL MUNDO COMO REPRESENTACION. HISTORIA CULTURAL: ENTRE PRACTICA Y REPRESENTACION 47 (1995) (translated by the author).

n21 *See id.*

n22 *See id.*

n23 *See id.*

n24 *See id.*

n25 *See generally* MAX WEBER, THE METHODOLOGY OF THE SOCIAL SCIENCES (Edward A. Shils & Henry A. Finch trans., 1968).

n26 *See id.* at 13-19.

n27 *See id.* at 7-19.

n28 *See id.* at 5-45, 170-204. Reality is conformed by collective and individual actions. The individual, through his actions and representations, gives sense to the place he lives. The individual is not exclusively determined by what precedes him, but also by what he himself can change and create. *See* SARA ELENA PEREZ-GIL ROMO & PATRICIA RAVELO BLANCAS, VOCES DISIDENTES: DEBATES CONTEMPORANEOS EN LOS ESTUDIOS DE GENERO EN MEXICO 56 (2004).

n29 *See generally* NORBERT ELIAS, THE COURT SOCIETY (Edmund Jephcott trans., Basil Blackwell 1983) (1969).

n30 [ILLEGIBLE FOOTNOTE]

n31 See ROMO & BLANCAS, *supra* note 28, at 45.

n32 See *id.*

n33 See TZVETAN TODOROV, LA VIDA EN COMUN 42 (2008) (translated by the author)

n34 See *id.*

n35 *Id.* at 37.

n36 See MARGARITA GARRIDO OTOYA, LA VIDA COTIDIANA Y PUBLICA EN LAS CIUDADES COLONIALES 131-58.

n37 See *id.*

n38 See *id.*

n39 See *id.*

n40 See JOHN GEORGE PERISTIANY & JULIAN ALFRED PITT-RIVERS, HONOR AND GRACE IN ANTHROPOLOGY 17 (2d ed. 2005).

n41 See GARRIDO OTOYA, *supra* note 36.

n42 See generally Gabrielle M. Spiegel, *History, Historicism, and the Social Logic of the Text in the Middle Ages*, 65 SPECULUM 59 (1990)(exploring the textual and contextual approaches to history in the postmodernist era); see also CLIFFORD GEERTZ, CONOCIMIENTO LOCAL: ENSAYOS SOBRE LA INTERPRETACION DE LAS CULTURAS 34 (1994).

n43 See REINHART KOSELLECK, THE PRACTICE OF CONCEPTUAL HISTORY: TIMING HISTORY, SPACING CONCEPTS (2002).

n44 See Garrido, *supra* note 15.

n45 The colonial society was divided into racial categories called "castas." These categories alluded to social and cultural hierarchies.

n46 See JAIME JARAMILLO URIBE, ENSAYOS EN HISTORIA SOCIAL (2001).

n47 Archivo General de la Nacion, (Bogota). Seccion: Republica. Fondo: Asuntos Criminales. Numero de Orden 19. Folios: 851-81, *microformed on* Seccion: Republica. Fondo: Asuntos Criminales. Rollo 12 (1990) (translated by the author).

n48 See *id.* at Numero de Orden 4. Folios: 124-31, 847-99, *microformed on* Rollo 34 (1990).

n49 See *id.* at Numero de Orden 002. Folios: 51-67, *microformed on* Rollo 41.

n50 See *id.* at Numero de Orden 24. Folios: 880-959, *microformed on* Rollo 52.

n51 See *id.* at Numero de Orden 4. Folios: 127, *microformed on* Rollo 34 (translated by author).

n52 See Uribe, *supra* note 8.

n53 See Archivo General de la Nacion, *supra* note 47, at Numero de Orden 19. Folios: 868, *microformed on* Rollo 12 ("DOES NOT COUNT. The prosecutor in this cause says that Ignacio Tejedor is an Indian for disobediences and disrespects to justice when he has already been judged and examined.").

n54 See *id.*

n55 *See generally id.*

n56 *See id.* at Numero de Orden 19. Folios: 860, *microformed on* Rollo 12.

n57 *Id.*

n58 *See id.* at Numero dc Orden 002. Folios: 60, *microformed on* Rollo 41.

n59 *See* Archivo General de la Nacion, (Bogota). Seccion: Republica. Fondo: Asuntos Criminales. Numero de Orden 19. Folios: 870, *microformed on* Seccion: Republica. Fondo: Asuntos Criminales. Rollo 12 (1990) (translated by the author).

n60 *See id.*

n61 *See id.* at Numero de Orden 002. Folios: 62, *microformed on* Rollo 41.