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## Revisiting the America's Colonial Status under the Spanish Monarchy

Most historians focused on the Americas have assumed the colonial status of Spanish America. With some exceptions, which will be mentioned throughout this paper, the period between the conquest and independence of Spanish America is described as “colonial” and, thus, included in the long-term history of the phenomenon of colonialism in the world.<sup>1</sup> Within this common framework, there are different interpretations of the nature of this colonial relationship, its degree of continuity with 19th-Century colonial experiences, or the relatively typical character of colonial societies in the Americas between the 16th and 18th Centuries. This is not the place to reconstruct the genealogy of this interpretation of colonial Spanish America, even though there is no doubt about the role that post-colonial discourse has had and continues to have in its consolidation.<sup>2</sup> In post-colonial discourse, the colonial nature is a heuristic tool in the hands of historians, a starting point for a historical study ultimately conceived as the deconstruction of discourses that mask and reproduce dynamics of power and control between European powers and colonized countries.<sup>3</sup>

The starting point in this paper is different. The colonial nature of the relationship between the so-called West Indies and the Crown of Castile is the subject of study, rather than an assumption. Our purpose is to try to offer, from legal history, a new reading of Spanish colonialism that could lead to a more accurate interpretation of Latin American history. To this end, it is worth reflecting on the historiographical categories we are using to define the “political” status of American territories under the Spanish

- 1 A typical example of the assumption of this “colonial paradigm” is the title of the well-documented work by WOSEBER (2003). The author does not explain why she uses the phrase “Colonial Domination” as the title for her work. Its appropriateness is taken for granted.
- 2 For the formation of post-colonialism and its different projections, see YOUNG (2001).
- 3 In this sense the question is revisited. MABEL MORAÑA/JÁUREGUI (2008).

Monarchy and particularly on the preunderstandings and explanatory consequences of the “colonial” interpretation of this historical period.

We will begin by critically rebuilding the debate on the political status of the Indies which Ricardo Levene started in Argentina in 1951 (I). We will deal with the major contributions to the subject, and we will focus on the theses supported by another Argentine in the 1970s, Ricardo Zorraquín Becú, and on the debate on the subject published in the journal *Nuevo Mundo, Mundos Nuevos* in 2004. Next, we will discuss the place occupied by the Indies under the Spanish Monarchy from a diachronic perspective that addresses the changes that both Spanish America and the Court underwent during the Modern Age (II). Finally, we will conclude with some thoughts that hopefully will help shed some light on this historiographical debate (III).

I. From *Las Indias no eran Colonias* [The Indies were not Colonies] to the *Livre noir du colonialisme* [The Black Book of Colonialism]

1. Levene’s proposal: *Las Indias no eran Colonias*

Sixty years have elapsed since Ricardo Levene contested the treatment of colonies which historiography gave – and continues to give – to the Spanish dominions in the Americas during the Modern Age.<sup>4</sup> The publication of the Argentine historian’s theses, condensed into the title of his work *Las Indias no eran Colonias*, gave end to a series of actions promoted by Levene that were favorably received by the Argentine National Academy of History for the first time in 1948. Their aim was to replace the term “colonial” with other terms that evidence the full integration of Spanish America into the Spanish Monarchy as “provinces, kingdoms, dominions, republics (the latter term, in the etymological sense).”<sup>5</sup> Levene’s work addressed the problem

4 LEVENE (1951).

5 LEVENE (1951) 10. On 2 October 1948, the Argentine National Academy of History debated the proposal put forward by its president whereby he “suggested that the authors of works of research, abstracts or texts on history of the Americas and of Argentina, substitute the expression ‘colonial period’ for ‘period of Spanish rule and civilization,’” among others. Finally, the proposal was accepted, with Ravignani’s dissenting opinion, although the expression ‘Hispanic period’ was favored to the one originally put forward. The minutes are transcribed at the end of LEVENE (1951) 153–156.

from a strong legal positivist perspective. In his argument, the Argentine historian attached special significance to the laws promulgated by Castilian Monarchs, in particular to the *Recopilación de Leyes de Indias* [Compilation of the Law of the Indies].<sup>6</sup>

These Argentine pronouncements were echoed in Spain immediately.<sup>7</sup> In 1949, the First Hispanic-American Conference on History agreed to name the colonial period “period of Spanish rule.” In 1954, the *Instituto Gonzalo Fernández de Oviedo*, affiliated to the *Consejo Superior de Investigaciones Científicas* [Higher Council for Scientific Research], organized two work sessions for its members to discuss the issue. The conclusions they reached were somewhat more nuanced than those approved by the Argentine Academy, but both institutions strongly concurred in matters of substance. According to the Institute, the terms used by the Law of the Indies and by “Spanish Constitutional law” to refer to the Spanish American territories had been “kingdoms,” “domains” or “provinces,” equating them to peninsu-

6 Summarizing the arguments that he would develop throughout the book, Levene stated in the preliminary chapter that “The Indies were not colonies, according to express legal provisions, because they were incorporated into the Crown of Castile and Leon, according to Pontifical concession and to the inspirations of the Catholic Monarchs, and they could not be disposed of; because their natives were on a legal par with European Spaniards and the legitimacy of marriage between them was consecrated; because the descendants of European or Creole Spaniards, and in general the worthy of the Indies, had preferential allocation of offices; because the Councils of Castile and of the Indies shared the same high political powers; because the provincial or regional institutions of the Indies exercised legislative authority; because the kingdoms of Castile and Leon and of the Indies belonged to one Crown, and their laws and order of Government had to be as similar as possible; because in all the cases where it was not decided what the laws of the Indies should provide for, those of Castile would be observed according to the order of precedence of the *Leyes de Toro* [Laws of Toro]; because, finally, the term conquest as source of law was removed, and it was replaced by the terms population and pacification.” LEVENE (1951) 10–11.

7 It should be remembered, however, that in 1946 legal historian Alfonso García Gallo had published a lecture on “The political constitution of the Spanish Indies,” where he stated that legally the Indies constituted a “political entity with independent personality.” Yet, this did not mean denying their special bond with Castile to the extent that such close bond – as García Gallo pointed out – “sometimes becomes a true merger and the title of Kingdoms of the Indies has only an honorific value, such as that of the Kingdoms of León, Toledo, Granada, etc., merged into the Crown of Castile.” In addition, he rejected the term colonies to refer to the Indies, recalling that the laws referred to them as kingdoms, provinces or, in the 18th Century, domains. GARCÍA GALLO (1946) 16–17.

lar terms. Therefore, expressions such as “colonialism,” “colonialist,” “colonist” and “coloniage,” deemed harmful to the dignity of those peoples, could not be used to refer to the relationships between both worlds. There was no such problem, however, with the terms “colony,” “colonization,” “colonizer” and “colonial,” as long as they were used in their technical sense.<sup>8</sup> In this regard, the Institute was adamant to clearly state the differences between the Spanish colonization and modern colonialism, which is why it stated that, since the latter had “distorted the pristine meaning” of the above-mentioned terms “colony” or “colonization,” they should be used where it was not possible to employ other expressions conveying more limited meaning, such as “period of Spanish rule,” “Spanish period,” “Hispanic,” “Viceregal,” “Pre-Viceregal,” “Proto-Viceregal” periods, etc. Finally, considering the overall picture of colonization, the Institute stressed the need to highlight the Spanish one due to “the high spiritual and human values that characterized it.”<sup>9</sup>

It is inappropriate to provide here a detailed description of the first moment of historiographical discussion brought about by Levene’s initiative and its continuation until the mid-1970s, since this has already been duly reconstructed by Tau Anzoátegui.<sup>10</sup> However, it is relevant to highlight the

- 8 As stated in the minutes of the sessions, designating the Spanish American territories as kingdoms, provinces or domains in the legal sources did not entail any obstacle for the Institute “to place the Spanish action in the Indies within the multiple colonization processes that have taken place throughout the history of mankind, though, as stated above, valuing its uniqueness, and not diminishing the greatness of the ‘Spanish colonization’ period for receiving such designation nor considering it harmful for those States that owe the base of their current existence as nations to the referred period.” *Acerca del término “colonia”* (1954) 176.
- 9 *Acerca del término “colonia”* (1954) 180. The conclusions of the first session included the assertion that Spain had conducted “a colonization process” in the Americas but it had “not subjected the Spanish American regions under its rule to a regime of exploitation; rather, it gave them a legal personality, and in such legal order the absence of the term colony is evident.” *Ibid.*, 159.
- 10 TAU ANZOÁTEGUI (2000) 80–92. As stated by Tau, there was active participation in the debate by the most prominent specialists of the time – with different political views –, such as Ots Capdequí, Rafael Altamira, Alfonso García Gallo, Mario Góngora, Richard Konetzke or Demetrio Ramos. Even though there was general consensus with the theses supported by the Argentine Academy, there were also dissenting voices. Altamira believed it was correct to speak of colonies, in the classical sense of the term, as a result of the action of populating, even if the territories were denominated provinces, dominions or kingdoms. Ots shared Levene’s proposals, although he rejected equality between Peninsu-

terms in which the debate was held as well as its ideological background because, despite the time elapsed since then, some of these features still describe the treatment of this issue.

The debate about whether it was appropriate to use the word “colony” was not understood then in purely nominal terms. Implicitly, and sometimes also explicitly, for many participants the subject of debate was not so much the place occupied by the Spanish American territories under the Spanish Monarchy but the role played by “Spain” in the Americas. The result of such dispute, which seems related to the one involving other actors in the 18th Century,<sup>11</sup> appeared fraught with political consequences on both sides of the Atlantic. What was at stake in Argentina and in other countries in the Americas was the prominent role that the Hispanic world should play in defining the Nations in the Americas. Levene recognized this clearly in the preface to his work of 1951 by stating that the “history of the Americas begins with that of Spain, our spiritual ascent and whose roots connect us with the remote origins of civilization.”<sup>12</sup> In this regard, the Argentine historian not only excluded from such historical past indigenous cultures, alien to that historical context through which the Americas connected with “civilization” (which could only be European), but also linked the debate about the nature of colonial Spanish domination directly to their present, because ultimately the Americas had their spiritual origin and roots in Spain.

Therefore, it was not a terminological problem. The attempt to remove the term “colonies” from historical vocabulary did not respond to mere academic reasons. In the words of Levene himself, “It is not a mere question of logomachy or discussion where attention is focused solely on the word rather than on the issue itself. [...]. It is about providing evidence, as it is done in this book of historical synthesis, of the legal and political values of Spanish rule – surely not viewed through the glow of the red legend rather

lar and Spanish American inhabitants, without this implying any present political statements. According to Mario Góngora, it was right to use the term colonial when one meant transferring a population nucleus to another territory. However, the relevance of its economic sense required further research. *Ibid.*

11 It is no coincidence that the “colonial issue” was raised precisely in the 18th Century, in an intellectual context marked by European Enlightenment conceptions of Spanish America and their Creole response. See GERBI (1973); and CAÑIZARES-ESGUERRA (2001).

12 LEVENE (1951) 9.

than the black one –, values that provide the foundation for the thesis that the Indies were not colonies.”<sup>13</sup>

In Spain, the debate was also framed in terms of approval or condemnation of the work done in the Americas. Those were the early years of the Francoist State. The political context favored a nationalist reading of the history of the conquest and incorporation of the Indies into the Spanish Monarchy.<sup>14</sup> However, this did not lead – as we have seen – to the outright condemnation of the term “colony.” From an analysis of the different meanings that the term had received throughout history, it seemed reasonable to conclude that it could be used to designate the Spanish American territories provided it was not used pejoratively, i. e., identifying it with the mere economic exploitation of the New World.<sup>15</sup> Hence, it can be stated that the debate started by Levene was basically about the historical and cultural identity of Spanish American Nations and, at the same time, about the historical action of Spain in the Indies. In this sense, the starting point was patriotic essentialism: in Francoist Spain, in the most radical nationalist terms, even though (or perhaps because of it) what they tried to defend was the Old Empire; in Argentina, it was the defense of a Hispanic identity.

On the other hand, though the participants in this first debate were historians, in most cases the approach suffered from a certain lack of attention both to the historicity of the issue raised, as to the proper subject of study. In this regard, the image portrayed of the territorial status of the Indies under the Spanish Monarchy quite resembled a static photo whose detailed observation might resolve the issues raised. Thus, unconsciously, not only was the evolution of the relationship between the Crown and its dominions in the Americas over time dispensed with, but also the historicity of “both subjects.” Spain and the Americas were presented as compact entities with little historical evolution from the 16th to the 18th Century. Accordingly, also the relations between them and their projection in the status of the

13 LEVENE (1951) 10.

14 However, such nationalist reading of the Americas’ history did not start with the new Francoist regime; rather, it was common to political and academic elites of every political party since the late 19th Century. FEROS (2005).

15 *Acerca del término “colonia”* (1954). The only dissenting opinion appearing on a summary of the debates was that of the Ukrainian historian Juan Friede, who defended the existence of a “colonization phenomenon,” understood also as “material exploitation of the indigenous people by the civilizing people.” *Ibid.*, 158.



Indies, whether colonial or not, had to be unique and constant during these three Centuries, which in no way prevented a detailed and precise exposition of the development of the Law of the Indies over time or of the institutional apparatus set up for their government. The “timelessness” of the adopted perspective influenced a deeper level, that of the assumptions underpinning the whole discourse.

Thirdly, it is noteworthy that this academic debate had little significance in both Anglo-Saxon and Latin historiographical production, despite the implications of its proposals. Indeed, it did not lead to the elimination of the concept of colony. At best, it hardly raised awareness of the semantic density of the concept and of the implications of using the term uncritically.

## 2. Zorraquín Becú's contribution

With the emergence of economic history in the analysis of Spanish American reality, brought about by the Annales School, the word “colony” was undisputedly placed at the heart of studies on Spanish America. The debate initiated by Levene was largely set aside. From an economic standpoint, the binomial metropolis-colony offered an interpretive framework that was taken for granted.<sup>16</sup> In the few cases where this was noted, it was to confirm, without any reservation, the relevance of this framework of “colonial” understanding.<sup>17</sup>

Zorraquín Becú made his contribution to the debate in this new historiographical context. He believed that the problem of the “constitutional status” of the New World under the Spanish Monarchy was the most important problem of the Law of the Indies. However, not many authors had looked at

16 TAU ANZOÁTEGUI (2000) 90–91. Tau provides Ruggiero Romano's position as a paradigmatic example, since the latter referred to the term colony and the resulting colonial dependence as a “fact of general economy.” *Ibid.*, 91.

17 Tandeter reopened the debate in economic history, not to refute the colonial assumption of these studies but to evidence the lack of theoretical characterization of colonial dependency for the 16th, 17th and 18th Centuries. The fact that this was a purely colonial relationship was unquestionable. Moreover, Tandeter believed that the debate on the colonial nature of the Indies was a mere continuation of the work of Hispanophile historians trying to offer a positive global view of Spain's action in the Americas. According to this author, “Thus develops the pernicious polemic that denies the nature of colonies to the Indies under the Spanish rule.” TANDETER (1976) 156.

it or, at least, not in depth.<sup>18</sup> Spurred by this conviction, Zorraquín presented a paper on this topic at the Second Venezuelan Conference of History, held in Caracas in 1974, which was published in the collected papers of the Conference<sup>19</sup> and in the journal *Revista de Historia del Derecho*.<sup>20</sup> Subsequently, he included it in his *Estudios de Historia del Derecho*.<sup>21</sup>

According to Zorraquín, the question of the political status of the Indies should be answered by resorting to “facts and laws,” and not to the theories of those who took part in the controversies over the Indies in the 16th Century or to modern views. Thus, from the very beginning, he established the limits within which he would analyze the problem. This did not prevent him, however, from carrying out well-documented work with interpretation proposals which are largely valid today.

The specific issues he intended to resolve were the political status of the Indies in the Monarchy, the nature of their incorporation to Castile and the institutional consequences that followed.<sup>22</sup> With this aim in view, Zorraquín organized his work into four parts, each corresponding to a specific historical period: The first part dealt with the Indies as dominions of the Catholic Monarchs, and covered the period between their discovery and the death of Ferdinand the Catholic (pages 61–79); the second part, entitled “the Indies as decentralized provinces of Castile,” covered from the incorporation of the Indies to the establishment of the Bourbon dynasty (pages 80–133); the third part, “The progressive centralization of the Monarchy,” finished with the abdication of Bayonne and the entry of Napoleonic troops into the Peninsula (pages 134–143); and the fourth part focused on the crisis of the Monarchy (pages 144–161).

As already established by historiography, Zorraquín verified that the Indies had been joined to Castile in the form of an accessory union. In practice, this meant political, legal and economic dependence on the Kingdom of Castile.<sup>23</sup> Thus, there was no equal footing with Castile or integra-

18 ZORRAQUÍN BECÚ (1988) 55.

19 ZORRAQUÍN BECÚ (1975).

20 ZORRAQUÍN BECÚ (1974).

21 ZORRAQUÍN BECÚ (1988) 55–161.

22 *Ibid.* 59–60.

23 Zorraquín summarized the dependence of the Indies on the Kingdom of Castile in eight points: They could not decide on the election, recognition or acceptance of the King; they did not have their own Courts as other kingdoms of the Monarchy; they were not in-

tion into the Spanish Monarchy comparable to that of other kingdoms. Spanish America was subordinated to European politics and not vice versa. Nevertheless, Zorraquín believed that the Indies could not be considered colonies for two main reasons: Firstly, because Spanish American territories were not deprived of their own government and, in addition, a special law was created for them; secondly, because the term “colonies”, understood as “mere dependencies exploited by another State”, was anachronistic with regard to the New World. The meaning given to this term, therefore, was the Roman Classical and, as such, it rarely appeared in the laws of the Indies. On account of the foregoing, Zorraquín considered that the Indies were in an intermediate situation: they were not totally subordinate to Castile, nor did they enjoy perfect autonomy, comparable to that of the kingdoms joined to the Spanish Monarchy. In the absence of a categorization in the language of pre-modern times, Zorraquín spoke of “decentralized entities of the Castilian administration,” in the understanding that it was a territorial and self-regulating decentralization due to the high degree of self-government they attained, despite imposed centralism on the government by the Council of the Indies. To sum up his position, he wrote that “there was self-regulation in the region as a whole with regard to Castile, centralism imposed by the Council on the New World, and decentralization if the existence of each of the major regions into which the Indies were divided was taken into account.”<sup>24</sup>

It follows from the paragraph titles of the Laws of 1681, that the Indies had developed from dominions to acquire the legal status of provinces. Zorraquín formulated his interpretation on the latter concept – deeply rooted in history – emphasizing the contrast between the autonomy achieved by the Spanish American provinces during the 16th and 17th Centuries and the process of “centralization” imposed on them since the

volved in the government of the whole of the Monarchy nor were they incorporated into the common organs of the Empire; decisions regarding international treaties and wars, even if affecting the Americas, were made in Europe; the most significant decisions concerning the Law of the Indies were taken without participation of residents or local authorities; both the King and the most important organs of government of the Indies were located in Castile and were subject to Castilian influence; senior officers, both in the Court and in Spanish America were of peninsular origin; and finally, there was trade monopoly with Castile. ZORRAQUÍN BECÚ (1988) 106.

24 ZORRAQUÍN BECÚ (1988) 107–113.

18th Century. This policy ended with the crisis of the Monarchy and the creation of the new Nations after their independence. Hence, Zorraquín's interpretation seemed to emphasize, without saying so expressly, the tensions that the contemplation of the government system of the Indies as a whole revealed. On the one hand, he noted a clear dependence on Castile together with the existence of some territories vested with a certain political and legal personality. On the other hand, he spoke of centralization being apparent in judicial and governmental institutions in the Court, particularly the Council, along with undeniable autonomy of operation in Spanish America.

In my opinion, one of Zorraquín's greatest achievements was to perceive these contrasts. To this we must add, as Tau has pointed out, the adoption of a dynamic perspective materialized in the division into four historical periods and – following Demetrio Ramos on this –<sup>25</sup> the relevance given to the term "Province" as the historically most appropriate term to refer to the Spanish American territories.<sup>26</sup>

However, and without detracting from Zorraquín's work of historical clarification, his use of Public Law categories coined in the 19th Century for the construction of the modern liberal state, such as centralization or decentralization, led to the concealment of key dimensions of the political structuring of the Indies under the Spanish Monarchy. Unconsciously, Zorraquín's conception of power was essentially vertical, statist and monolithic, fundamentally alien to the legal culture that governed the formation and development of the Old Regime Monarchies. In this regard, but with more elegance, Tau has said that "using modern notions, conceived by political theory for the contemporary State, to refer to the past [...] entails accepting the idea that the State – in this case the Monarchy – is created and organized top down projecting fundamental rules and actions on all levels, even the smallest and most remote."<sup>27</sup> Therefore, Tau understands that this vision must be completed with one that assumes Spanish American diversity derived from geographical, temporal or spatial situation, and the existence of "a plurality of small powers and jurisdictions that operate outside the

25 See RAMOS PÉREZ (1959) 36–39. For this author, the term "Province" in its fundamental meaning, connected with Roman tradition and post-independence history, could be applied to the whole Monarchy, all kingdoms being provinces at the same time.

26 TAU ANZOÁTEGUI (2000) 97, 101–102 and 120.

27 Ibid. 113.

central government.”<sup>28</sup> In the Americas, it was essentially on these “small powers and jurisdictions” that the government system was articulated, so this perspective ought to be the starting point of any interpretation seeking to explain the place occupied by the Indies under the Spanish Monarchy to reconstruct, bottom up, the political order in the Indies as well.

### 3. *Le livre noir du colonialisme* [The Black Book of Colonialism] and the reopening of the debate

The online journal *Nuevo Mundo*, *Mundos Nuevos* took advantage of the publication of *The Black Book of Colonialism* by Marc Ferro in 2003 to reopen the debate on the colonial issue in Latin America.<sup>29</sup> Rather than “reopening a debate”, it would be more appropriate to say opening a new one, since, except for Garavaglia, none of the participants echoed the various viewpoints put forward by legal historiography since the 1950s. And, even in the case of Garavaglia, the reference was aimed exclusively at Levene, and his tone was rather light and contemptuous.

Nonetheless, the debate was not totally alien to the legal historical perspective, even though other approaches prevailed, closer to the new political history or to economic history. Of particular relevance was the participation of Annick Lempérière<sup>30</sup> in this debate and the responses that her work prompted from Carmen Bernand and Juan Carlos Garavaglia.

The question Lempérière asked, and which guided her reflection, was about the ability of the terms “colony” and “colonial” to adequately describe any phenomenon regarding the Spanish dominions in the Americas between the 16th and 19th Centuries. As this historian pointed out, this practice – introduced by exponents of European Enlightenment such as Raynal or Robertson – was broadly welcome in the independence speech. It was used to reject en masse the period of ownership by the Spanish Crown

28 TAU ANZOÁTEGUI (2000) 113.

29 “Para seguir con el debate en torno al colonialismo ...” *Nuevo Mundo Mundos Nuevos*, Debates (2004), <http://nuevomundo.revues.org/430>, posted 08/02/2005. Participants in the debate as follows: SALLMANN (2004); SUBRAHMANYAM (2004); LEMPÉRIÈRE (2004a); BERNAND (2004); GORDILLO (2004); GARAVAGLIA (2004).

30 A corrected version of this paper was later published under the title *El paradigma colonial en la historiografía latinoamericanista*: LEMPÉRIÈRE (2004b). Quotations correspond to this version.

and to lay the ideological foundations of the new Nations. Thus, Creole patriots, once vassals, now became colonized, and the term colony acquired a negative connotation. This tradition of thought joined the anti-colonial critique of the last third of the 19th Century, which brought about a re-interpretation of the period of Spanish rule in the Americas as “first modern imperialism” or caused such period to be set as the starting point of “European colonialism.”

Lempérière believes it is necessary to reconvey the historical sense of concepts in order to avoid anachronistic readings of the past, particularly of the so-called Old Regime societies. From her perspective, it is inappropriate to use the term colonization in a sense other than the traditional one – devoid of negative connotation – when referring to any time prior to the 19th Century. The French historian stresses the need for conceptualizing this period of American history by taking into account the space and time coordinates of the creation of these new political communities. Thus, and based on the social or sociological aspect of the “Kingdoms” of the Indies, it is Lempérière’s belief that it is possible to resolve the dilemma posed by Levene between colonies and kingdoms. For such purpose, it is convenient to interpret from a historical perspective – that is, one open to changes and mutations – a number of concepts from the domain of sociology, such as “reproduction,” “integration” or “social control.”<sup>31</sup> Further on, we will return to this author’s proposals since her thoughts may help us reconsider this debate from new viewpoints.

The thesis Lempérière defended was answered directly by Carmen Bernand and, indirectly, without reference to it, by Juan Carlos Garavaglia. Bernand, who shares Lempérière’s concern to avoid explanations outside their historical context, believes that the terms “colonialism” and “imperialism,” nonetheless, refer to models that are useful to understand Spain’s policy in the New World. To that end, Bernand uses “minimalist” definitions as a starting point so that the terms “empire” and “imperialism” as well as “colonial” or “colonialism” become ideal concepts whose variations may be applied to different historical periods. According to the *Quillet-Flammarion* dictionary, “imperialism” means “*politique par laquelle un grand Etat cherche à étendre sa domination;*” following the model described by Georges Balandier

31 LEMPÉRIÈRE (2004b) 107–120.

in 1955, “colonization” is “the imposition of an external power over subjected populations.”<sup>32</sup> In Bernand’s opinion, both models may be perfectly applied to the Iberian expansion into the New World, without prejudice to specific characteristics of each particular case.<sup>33</sup>

From another perspective, Garavaglia also maintains the existence of a “colonial relationship” in the Americas during the Centuries of Spanish rule, both from the economic and political points of view. On the economic front, Garavaglia studied the constant economic flows from the colonies to the metropolis and the hard-labor jobs implemented to extract riches for the Crown throughout the 16th, 17th and 18th Centuries. On the political front, the Argentine historian highlights the contrast between the rights the King could have in territories such as Naples or Aragon – of a dynastic nature and with limited exercise due to the existence of certain institutions and pre-existent rights – from those he enjoyed in Spanish America as a result of the conquest of non-Christian peoples. This is why, Garavaglia states, it was possible to impose certain rights on Spanish America that would have been unthinkable to impose on other territories owned by the Monarchy. In this unequal context, any negotiation – in the cases where there was one – seemed conditioned by power politics. Not even the feeling of white Spanish American elites nurtured by the sense of belonging to the great Spanish Nation in the 18th Century could evolve from mere feeling, and, as such, was unable to deny the existence of a historical relationship of colonial subordination between the Americas and Spain. The Cadiz Parliament, with their mechanism for calling elections and their debate on the political rights of castes, evidenced once again that equality between both sides of the Atlantic was a chimera.<sup>34</sup>

32 A similarly broad concept of the term “colonial”, although not expressly defined, is the one employed, for example, by BENTON (2002).

33 BERNAND (2004). We cannot stop to consider the thorough development of the arguments put forward by Bernand, for which reason we refer the reader to the original text, and the same stands for Lempérière’s work and for all the other papers we analyze herein. In her paper published in the Black Book of Colonialism, Bernand had argued that even though both the imposition of tributes on the indigenous peoples as well as the transfer of a substantial portion of Brazil and Spanish America’s wealth to the Iberian Peninsula were clear signs of colonial domination, Peru and New Spain were not colonies themselves, but kingdoms joined to the Crown, just as Naples or Navarra. BERNAND (2003) 138.

34 GARAVAGLIA (2004).

#### 4. Some conclusions from an endless debate

Levene published his thought-provoking book sixty years ago. We have focused our attention on some of the most relevant contributions to this debate published since then, but there have been other important reflections on this issue. In this regard, the proposal to distinguish (though up to what extent is still under discussion) Old Regime colonizations<sup>35</sup> from those carried out by European powers throughout the 19th and 20th Centuries should be highlighted.

Among legal historians, there is agreement on the accessory nature of the union between the Indies and the Kingdom of Castile and, accordingly, on their legal status as territories belonging to the referred Crown. Based on this assumption, Garriga states that “the question about the political status of the Indies [...] can only be answered [...] by maintaining that the Indies had no political status per se.” Thus, he tries only to make it clear that, as territories added to the Crown of Castile under an *accessory union*, they lacked a political constitution of their own, different from the Castilian one, at the heart of the plural Catholic Monarchy.<sup>36</sup> In this sense, the colonization of the New World was but a replication of the Castilian legal regime in the Americas. The new lands were regarded as empty spaces (though it was obvious they were not) ready to be legally completed after the Castilian model.<sup>37</sup>

It would be proper, however, to consider the ability of the legal categories of the time and, in particular, the description of the union as accessory, to adequately assess the relationship between Spanish America and Castile and, ultimately, to define the place the former occupied in the Spanish Monarchy. This question, as we will maintain hereinbelow, could help rethink the controversial issue of the legal status of the Indies.

35 The expression references a paper by POLONI-SIMARD (2003).

36 GARRIGA ACOSTA (2006).

37 Part of Garriga’s article is focused on the description of this replication of Castile in the Indies after the territorialization of the new lands, that is, their conversion into spaces endowed with jurisdiction.



## II. An attempt to offer a new reflection on an old question

The first step in renewing a discussion with such opposing positions could be to assert its eminently historiographical nature and, therefore, continue the debate in academia rather than politics, or any other area characterized by ideological struggle. Ever since Levene's explicit formulation, the debate on the political status of the Indies has been followed, in most cases, by an implicit value judgment on the legitimacy and fairness of Spanish action in the Americas.

Denying the colonial nature of Spanish American territories seemed to involve certain approval of, or at least justification for – given the historical context –, the abuse of indigenous peoples by the Spaniards. Definitely, it is utopian (and likely undesirable) to write history deprived of value judgments. However, that does not mean that we can replace historical analysis with ethical judgment or assert the impossibility to distinguish between both areas. In other words, and regarding this issue, it should be possible to deny the colonial nature of Spanish American territories for the sake of a more accurate interpretation in historiographical terms, and in turn recognize, through such historical interpretation, the manifold abuses of native American peoples by Castilians, or Spaniards in general, whether European or Spanish American, as already distinguished in the 18th Century. And vice versa. Thus, the discussion would be relieved of its strong axiological burden and would facilitate readings with greater appeal to experts in the field.

Having explained the epistemological scope of our study, we should now rephrase it in positive terms. Some of the questions could be: Is it historiographically correct to speak of “colonies” and “colonial relationship” in reference to the lands of the New World and their relation with the Castilian Crown between the late 15th Century and the first third of the 19th Century? To what extent was describing the union as accessory useful to classify the relationship between Spanish America and Castile properly? How did this accessory union evolve between the 16th and 18th Centuries?

This issue – as raised – reminds us of another great historical debate in the past decades: the one on the rise of the modern State. Now, as then, we could attempt to solve it in several ways. One of them is to begin by defining the concept under discussion (“colonies,” “State”) as broadly as possible so that it may be applied to the period concerned. This is the option chosen by Benard. It was also the view of most of the historiography focused on the

study of the modern State. According to Jellinek, its definition was based on three core elements: a supreme power, a territory and a population.<sup>38</sup> In such broad terms, the “State” formula was applicable to political formations as heterogeneous as Monarchies in the late Middle Ages, the “absolute” Monarchies of the Modern Age, and the liberal States of the 19th Century. This even led to a heated discussion in Spain on the potential existence of a Visigoth State.<sup>39</sup>

The main problem of such an approach is the lack or loss of semantic density of key concepts of political and legal history. Formulating in very broad terms concepts which are key to our understanding of history, such as “State” or – in our case – “colony”, will severely impair their interpretative potentiality in the long run. Therefore, it is not surprising that they are eventually replaced with other concepts which allow for a more accurate explanation from a historiographical viewpoint.

Another problem of such a discursive strategy is the distortion of the process of historical understanding, which may be caused by the heavy semantic burden acquired by those key concepts in contemporary culture.<sup>40</sup> Indeed, it is just a possibility since, as certain historiography has proven, one may discuss the State under the Old Regime without it getting tainted with contemporary implications, that is, without slipping in anachronisms by projecting into the past categories and ways of thinking that did not exist at that time.<sup>41</sup>

From that point of view, the question Lempérière asked at the beginning of her article on the colonial paradigm makes sense: “Do the terms ‘colony’ and ‘colonial’ account for Hispanic-American history from the 16th Century to their independence and up to the present?”<sup>42</sup> We should add two further issues: What implicit contents fall within the “colony” and “colonial” categories? Are those contents consistent with the place occupied by the Indies under the Spanish Monarchy, with the political system established there after

38 JELLINEK (1943).

39 TORRES LÓPEZ (1926).

40 A good critical explanation of the discussion about the so-called “modern State,” in: GARRIGA ACOSTA (2004) 1–5.

41 I am referring to the work by Paolo Grossi and the Florentine school of legal historians. In this area, the works that stand out, among others, are those by Pietro Costa, Maurizio Fioravanti, Lucca Mannori and Bernardo Sordi.

42 LEMPÉRIÈRE (2004b) 107.

the conquest, and with the type of relationships maintained between the Indies, Castile and the other territories of the Monarchy?

I believe these are the questions that should be asked. It is outside the scope of this paper to answer each of them in detail, as that would mean analyzing from different perspectives the categories at issue – “colony” and “colonial” – and the vast historiography published on the subject during the past decades. However, we should bring forward some resolution proposals that shed new light on this old discussion. Therefore, it is convenient to review the process of integration of the Indies into the Spanish Monarchy during the 16th and 17th Centuries, and the consequences of the establishment of a new dynasty at the beginning of the 18th Century for both the Americas and the other territories of the formerly universal Monarchy. In short, this is about defining the scope of the accessory nature of the union with Castile during these Centuries; the historical evolution of its “contents.”

## 1. The Indies and the House of Austria

It is commonplace in historiography to identify the rise of the Bourbon dynasty to the Spanish throne at the turn of the 18th Century as a substantial change in the conception of the Monarchy. During the 16th and 17th Centuries, the Spanish universal Monarchy had been a model of composite and plural Monarchy – the throne being occupied by kings of the House of Austria – where every kingdom maintained its original rights and liberties. The Indies, a territory conquered and incorporated into the Crown of Castile in the form of an accessory union, was an “essential”<sup>43</sup> part of this conglomerate of kingdoms and crowns united in the public person of the Monarch. Papal Bulls granted dominion over the Indies to the Catholic Monarchs and their “heirs and successors, the Kings of Castile and Leon.”<sup>44</sup>

43 As can be read in the *Recopilación de leyes de Indias*, Charles V had sworn in 1519 that the Indies “would always remain united, and for their greater perpetuity and strength, we prohibit the disposal thereof. And we order that at no time shall they be separated from the Royal Crown of Castile, disunited or divided, in whole or in part, nor shall their cities, villages, or populations for any reason whatsoever, in favor of any person.” He declared null and void any such disposal made by him or by his successors. *Recopilación de leyes de Indias*, Book III, Title I, Law I.

44 On the incorporation of the Indies to Castile see MANZANO MANZANO (1948). More recently, and with special treatment by legal literature on the topic, BARRIENTOS GRANDÓN (1999).

As is well-known, *ius commune* jurists basically distinguished two methods of union between kingdoms: *aeque principaliter* and accessory. In the words of Crespi in the 17th Century, the kingdoms or provinces joined under an *aeque principaliter* union “retain their own nature and keep it separate, as though they were still ruled by the same princes prior to the union, each keeping the same law as if they were to remain separate.”<sup>45</sup> In contrast, where a province was added or joined to a kingdom under an accessory union, they became a single kingdom governed by the law and privileges of the kingdom to which they were united.<sup>46</sup>

As regards Spanish American territories, the accessory nature of their union to the Kingdom of Castile rapidly caught on. The lack of consolidated Christian kingdoms in the New World, such as that of Navarre in the Old World, made it easier to consider those foreign lands a mere extension of the Old World, and especially of Castile. That is why, from the outset, Castilian Law was applied generally in the Americas, together with the old *ius commune*, which was also that of the New World, as well as the new local laws, expressed in a host of written or customary sources. From this standpoint, the order of the sources applicable in Spanish America did not give rise to any particular dispute, as had been the case in other conquered territories, such as Navarre.<sup>47</sup> According to the *Ordenanzas de Audiencias* [Ordinances of *Audiencias*] of 1530, Emperor Charles V had ruled that, were the provisions issued for Spanish America not to apply, the laws of the Kingdom of Castile would apply in accordance with the *Leyes de Toro* [Law of Toro]. This principle was reproduced in the *Recopilación* [Compilation] of 1681, along with another law whereby “such cases as may not be determined by the laws of this *Recopilación* shall be subject to the laws of the *Recopilación y Partidas* [Compilation and Seven-Part Code] of this Kingdom of Castile.”<sup>48</sup>

On the other hand, in the *Ordenanzas del Consejo de Indias* [Ordinances of the Council of the Indies] of 1571, Philip II had mandated that the “States

45 Regarding the Catholic Monarchy, this Catalan jurist stated “Regna Castellae, Aragoniae, Lusitanae, Flandriae, Neapolis et Siciliae, unita esse in Monarchia Hispanica aeque principaliter: Regna vero indiarum occidentalium unita esse accessoriae Regno Castellae, et Indias Orientales regno Lusitaniae.” CRESPI DE VALDAURA (1677) 187.

46 CRESPI DE VALDAURA (1677) 187.

47 See GALÁN LORDA (2012).

48 Book II, Title I, Laws II and I.

(of the Indies) be governed according to the style and regime prevailing in the Kingdoms of Castile and Leon,” as they were part of a single Crown.<sup>49</sup> Thus, the Indies reproduced the institutional and legal regime of Castile, even where the special circumstances of those lands altered the original model from the beginning, which means that there was a process of territorialization of the new dominions, by virtue of which they became political spaces vested with jurisdiction. This process included the division of the Spanish American territory into major provinces, ruled by their respective *Audiencias*, and minor provinces, as well as the foundation of cities.

However, the distinction made by legal scholars between *aeque principaler* and accessory unions was unable to adequately explain the articulation of a universal Monarchy, such as that of Spain, and, in particular, the union of an entire continent to a Crown, such as that of Castile.<sup>50</sup> The fact that Crespí or Solórzano have written that the Indies had joined Castile under an accessory union did not mean that this legal construction properly reflected the institutional and legal reality of the New World under the Catholic Monarchy. In my opinion, putting, for such purpose, the so-called Kingdoms of the Indies and Kingdoms of Grenade or Murcia on the same footing as territories which had joined Castile under an accessory union showed the rigidity of the legal “categories” used, which evidenced the limitations of legal theories conceived at a time when there was only one world: the Old World.

Accordingly, as time went by, the territorial status of the Indies, as provinces which had joined Castile under an accessory union, was gradually overtaken by reality. They shared Castile’s political status, since they were part of it, as if they were a mere extension of its territory. Nevertheless, their

49 Book II, Title II, Law XIII: “and because the kingdoms of Castile and the Indies belong to one Crown, their laws and government system ought therefore to be as alike as possible. The members of the Council shall try, in the laws and institutions which they may establish for those States, to reduce the form and manner of their government to the style and order by which the kingdoms of Castile and Leon are ruled to the extent allowed by the diversity and difference of lands and peoples.” Philip II, Ordinance 14 of the Council of 1571.

50 The limitation of this distinction to explain the complexity of the unions between kingdoms in the Modern Age has been highlighted by Elliott. The English historian cited as an example the union between England and Scotland in 1707, a type of union that does not fit fully into any of these categories. ELLIOT (2009) 15.

exceptional nature under the Spanish Monarchy, characterized, *inter alia*, by their vast territory located thousands of kilometers away from the Peninsula, their abundant natural resources, and, more particularly, the diverse ethnic groups among their inhabitants, was also reflected in the institutional and legal framework.

It was not easy to establish a legal regime to govern that territory by resorting to Castilian Law only, based on the categories of *ius commune*. Both laws were transplanted to Spanish America but they underwent profound transformations. Moreover, that legal regime had to be supplemented with a myriad of provisions issued by both the Court and the different instances of Spanish American governments. But, as Tau has determined, the source of law that better adapted to the new needs was custom.<sup>51</sup> The specific nature of this new law did not reflect only in the well-known *Recopilación de Leyes de Indias* [Compilation of Indies' Law], a compilation promulgated by Charles II in 1681 which had no parallel in the territories that had joined Castile under an accessory union; it found its greatest expression in the customary dimension, both in the so-called Republic of Spaniards and Republic of Indians. In this light, although it is important to realize that there was no legal regime of the Indies as such, different from that of Castile, this conclusion is considerably played down, if not in the context of jurists' discourse – with its mere conceptual distinctions – than in the context of law in action.

The particularity of those lands was not only reflected in the legal sources, but at the institutional level as well. Suffice it to mention, the institutions created *ex novo* or the legal entities under *ius commune* for the government of indigenous peoples, such as *encomiendas* or indigenous villages. In other cases, legal solutions originally conceived for other situations were applied, with a broad use of analogy as a tool to construe and organize these new realities. The most evident case, which most directly affects our topic, is probably giving indigenous peoples the status of “miserable” persons, one given by *ius commune* to “rustics,” “widows,” or “underage orphans.”<sup>52</sup> Thus, indigenous peoples or Indians, who had had their natural freedom and their condition as vassals of the Crown recognized from as early as 1500, became legally incorporated in the corporative regime of the Monarchy, although in

51 TAU ANZOÁTEGUI (2001).

52 See DUVE (2004). See also DUVE (2008).

a situation comparable to the underage, that is, under the Sovereign's tutelage through its officers in the Americas.

This shared legal condition cannot be understood in terms of social homogenization. The "Indians" were in reality a creation of the conquest. Before the Spaniards' arrival, the American continent was populated by highly diverse ethnic communities: the Mayas, Aymaras, Mexicas, Araucanians, etc., but not by "Indians." After the conquest, and under the umbrella term of "*personae miserabiles*," "Indians" kept on forming heterogeneous groups, engaged in different activities, with very diverse rights and obligations which evolved over the years. Hence, these communities, forming the so-called "Republic of Indians" which, in turn, consisted of a plurality of "personal" statutes, did not remain the same over the Centuries either.

The consequences of the military, cultural and legal conquest of the territory among natives in those lands are explained by different factors. A few of them include: the transformation of their old traditions; their acceptance or rejection of the conquerors; their capacity to survive diseases then unknown, or the violence and mistreatment by the Spaniards; and their adaptation to new religious and cultural patterns or to the political mechanisms imposed by the Crown. In some cases, the final result was the mere extinction or the drastic reduction of the American Indian population; in other cases, it was the compulsory or negotiated integration into a new social and political structure, the Spanish Monarchy, in which they would interact with other groups and communities in an ongoing process of identity redefinition. There were also examples of escape to the margins of the system over the Centuries, a prolonged resistance which could still not avoid cultural and economic exchanges with the Spaniards.

Eventually, given this plurality of underlying situations, an Old Regime society was reproduced in the Americas, based on socio-political, rather than economic, criteria. As historiography has often shown, a corporative society was established out of dependency relations articulated in more limited geographical areas, mainly in cities, towns, villages or farms, based on a common religion and united under the Sovereign, of whom everyone was a vassal. As late as 1806, in an inquiry on marriage and access to offices by mulattos, the Council of the Indies stated that

"It is undeniable that the existence of different hierarchies and classes is of the utmost importance for the survival and proper governance of a Monarchy, where gradual and linked dependence and subordination achieve and maintain the lowest

vassal's obedience of and respect for the Sovereign's authority, a system all the more necessary in the Americas, given the greater distance from the throne (...)"<sup>53</sup>

This does not mean that economic criteria were irrelevant; they were simply not recognized for the social and cultural role they would play during the 19th and 20th Centuries. Accordingly, despite the existence of conquerors and conquered, or exploiters and exploited, it is inappropriate to analyze Spanish American social reality solely in these terms, especially after the first conquest period.<sup>54</sup> It would be further inappropriate to represent such social reality by placing a subordinate class, the "Indians," against another, the white, that would appear – by contrast – as "independent" or "dominant." As can be clearly inferred from the words of the Council transcribed above, the entire American society, as well as European societies, consisted of groups or estates that depended on each other, to a greater or lesser extent, despite their different manifestations. However, a phenomenon emerged in the Indies which was unprecedented in the Peninsula: the existence of ethnic subordination criteria that affected particularly the native inhabitants of those lands. These dependence-based relationships were part of a pre-modern political system, ideally based on patterns of inequality, under which they made sense. Nevertheless, this observation entails no justification whatsoever, nor does it in any other pattern of inequality existing in those times.

The level of social integration and stability achieved in the Americas can only be understood from a different social model, that of estate-based structures under the Old Regime. In this regard, as emphasized by Poloni-Simard, integration was possible, among other reasons, because in Spanish colonization, the King's justice – channeled through its officers – was established at the core of social relationships.<sup>55</sup> This should not be construed as supporting any idyllic representation of Old Regime societies, let alone the one created

53 In this same inquiry, the Council judged that equating mulattos with whites in issues which were the subject matter of the inquiry "would bring about disputes, alterations and other consequences which must be avoided in a Monarchy, where the classification of classes contributes to enhanced order, security and good governance, and where opinion prevails over the ideas of equality and confusion." Consulta del Consejo sobre la habilitación de pardos para empleos y matrimonios, Madrid, julio de 1806, in KONETZKE (1962) 825 and 822.

54 In this regard, see PÉREZ HERRERO (2002) 117.

55 For this author, "la justice doit être envisagée comme l'institution centrale de la colonisation espagnole en Amérique entre XVI<sup>e</sup> et XVIII<sup>e</sup> siècle". POLONI-SIMARD (2003) 197–198.



in the Spanish Indies, but merely highlights the shared social, institutional and imaginary mechanisms that allowed for the operation and maintenance of such an unequal political system. Justice, whether secular or ecclesiastical, enjoyed a privileged position in dispute mediation and the preservation of a system deemed pre-established. We should further mention other contributing factors, whose analysis exceeds the scope of this paper.<sup>56</sup>

Likewise, the “Spanish American specificity” translated into the adaptation to the new environment of institutions typically Castilian, such as the *audiencias* and *municipios*, which, without radically altering their original features, adopted their own profiles in the Indies.<sup>57</sup>

The creation in 1524 of a supreme Council, the Council of the Indies, is even more relevant to our subject of analysis.<sup>58</sup> The creation of this supreme court symbolically placed the Indies on an equal footing with the other kingdoms which had been united under an *aeque principaliter* union in the figure of the Monarch. The Councils were the utmost institutional expression of the plurality which characterized the Catholic Monarchy. As Crespí de Valldaura expounded after describing this plural structure, the inability of Sovereigns to administer justice in person in each and every territory called for the constitution of some kind of “common homeland” of the entire Monarchy where every province and its subjects could have justice dispensed. In this “*curia regia*” – as Crespí went on to say – jurisdictions should not overlap, but be fairly divided, as though justice were administered in every province, so that the supreme Council of Castile did not hear cases pertaining to the kingdoms of the Crown of Aragon, which were to be substantiated in the Council of Aragon, just like Italian cases had to be heard by the Council of Italy and Portuguese cases, by the Council of Portugal.<sup>59</sup>

Thus, the “*polisinodial*” regime reflected the “plural” constitution of the Monarchy, serving as a link between the Sovereign and his subjects. As Bermúdez de Pedraza put it,

“The superior government of this Monarchy is admirably divided into twelve Councils, business being divided by kingdom and subject-matter. Each of these Councils

56 For an introduction to the topic for New Spain, see CASTRO GUTIÉRREZ (1996) 19–37.

57 This “Americanization” of *audiencias* is discussed by DIEGO-FERNÁNDEZ (2000). For municipalities in the Americas, see PAZOS PAZOS (1999).

58 SCHÄFER (1935) 44; RAMOS PÉREZ (1969).

59 CRESPI DE VALDAURA (1667) 187–188.

is composed of a mystical body, the head of which is the President, the members of which are the Counselors, and the field of competence of which is the business assigned thereto. The presidents do not usually vote on matters of justice, but are the immediate means of communication between His/Her Majesty and His/Her Kingdoms.”<sup>60</sup>

The Council system was a more or less functional solution to the problems arising from governing a complex framework of territories through the Court. Furthermore, the Councils were also the meeting point between the King, on whose behalf they acted, and the territories subject to his jurisdiction, which they also represented, that is to say, which they caused to appear in spirit before the King. In such regard, Solórzano stated that “the quality and prominence of Councils and Magistrates is observed and regulated by that of the kingdoms and states they rule and represent.”<sup>61</sup> Similarly, in a footnote, this jurist noted that the Councils worked with Ambassadors who were “more or less honoured, and preferred according to the place and status of the Princes or Provinces they sometimes represented.”<sup>62</sup> Hence, *inter alia*, the relevance of conflicts over precedence among Councils was such that, from our viewpoint, alien to the culture prevailing at the time, it is impossible to understand. In this case, and on the basis of these assumptions, Solórzano did not hesitate to assert the prominence of the Council of the Indies over the Council of Flanders in public acts, since the former was in charge of “not only the government of a county or kingdom, but that of an empire which embraces so many kingdoms and such rich and powerful provinces, or, in better words, the broadest and most extended Monarchy the world has ever known, as it actually comprises another world.”<sup>63</sup>

60 BERMÚDEZ DE PEDRAZA (1635) 1–3, cited in: RIVERO RODRÍGUEZ (2004) 507.

61 SOLÓRZANO Y PEREIRA (1776) 177.

62 *Ibid.* (1776) 177.

63 *Ibid.* 178. In another passage of this same memorial, Solórzano states that by virtue of the accessory union it might be understood that the Empire of the Indies, just as its governing Council, is part of that of Castile (p. 188). He also explains that the Council of the Indies came into being as a result of the development of business on those lands, so it is possible to assert that once the administration of these matters was removed from the Council of Castile, “authority [remained] united as a whole.” (p. 189). These statements, which apparently deny the personality of the Council of the Indies as a separate institution from the Council of Castile, ought to be interpreted within the framework in which Solórzano formulated them, i. e., to prove the seniority of the Council of the Indies over that of Flanders. In a different paragraph of this memorial, he argued that the Council of the

As Rivero has pointed out with reference to the Council of Italy, this representative dimension of Councils endowed the different territories subject to their jurisdiction with unity and provided them with organicity, within their corporate jurisdictional structure, just like the other kingdoms and crowns.<sup>64</sup> That is how the Council of the Indies acted in relation to Spanish American land. In spite of its great diversity and the complexity of its jurisdictional structures, linked to the very evolution of the process of conquest and colonization, the existence of a Council of the Indies, gradually distinguished from that of Castile, also led to the endowment of those territories with a certain political status of their own within the Castilian Crown. However, this process was not automatic. As we have already stated, in 1511 there was a Board within the Council of Castile, responsible for hearing issues pertaining to the Indies, while in 1524 it became a separate Council. Under the *Ordenanzas de 1571* [Ordinances of 1571], Philip II prohibited the other Councils and courts from intruding by hearing issues pertaining to the Indies, thus consolidating its position within the system of Councils, as well as that of the Indies within the Castilian Crown.<sup>65</sup> In 1600, just like the Council of Castile, the Council of the Indies was provided with its own Chamber for the allocation of benefits and offices in the Indies.<sup>66</sup> In 1614, Philip III ordered that no mandate served by another council be observed unless it had already been submitted to the Council of the Indies. In 1626, Philip IV mandated that no pragmatic sanction promulgated in the Kingdoms of Castile be enforced in Spanish America, unless a mandate issued by the Council of the Indies ordered that it had to be observed.<sup>67</sup> Ten years later, this same King conferred ecclesiastical powers upon the Council of the Indies, thus inhibiting the Council of Castile.<sup>68</sup>

Indies is truly Supreme, without possible recourse to any other tribunal, as Philip II expressly established in the second ordinance of 1571 (p. 198).

64 RIVERO RODRÍGUEZ (2004) 507.

65 Recopilación de leyes de Indias, Book II, Title II, Law II: “the Council of the Indies shall have supreme jurisdiction over the West Indies, whether already discovered or to be discovered, and the business arising therefrom and depending thereon, and for their good governance and judicial administration it may issue Orders and consult with our Laws, Pragmatic Ordinances, etc.”

66 SCHÄFER (1935) 179.

67 Recopilación de leyes de Indias, Book II, Title I, Law XXXIX.

68 Recopilación de leyes de Indias, Book II, Title II, Law III.

If, within the Court, the foundation of the Council provided an institutional dramatization of the unity of the New World without altering its legal status – that of a territory which had joined the Crown of Castile under an accessory union – in the Indies, the consolidation of a civic culture and the formation of a creole elite enabled the gradual formulation of a self-defining discourse, which, on the basis of its urban location, also referred to the Indies as an entity distinct from Castile within the realm of the Spanish Monarchy. This discourse revolved mainly around the natural obligation of reserving offices for the natives of those lands.<sup>69</sup> Logically, this was aimed at defending local offices from Castilians. The purpose was to turn Spanish America into a perfect community, a separate territory within the common Spanish Monarchy, as was Navarre. Since the late 16th Century, this discourse was accompanied by a remarkable increase in the level of self-government of local powers in the Indies, which was mostly achieved by means of the purchase of most of the offices in Spanish America, in particular, in *audiencias* and *cabildos*.<sup>70</sup>

## 2. The Bourbons and the *Hispanization* of the plural Monarchy

When Charles II died, the Spanish Monarchy had a plural composition where the Indies had gradually acquired some political entity, both on the institutional level and that concerning political discourse. On the basis of these assumptions, the establishment of the Bourbon Dynasty has been traditionally construed as the beginning of a clear change of direction. Thus, the enthronement of Philip V would not have entailed just the extinction of the judicial and executive institutions proper to the territories of the Crown of Aragon and, accordingly, their disappearance as a political entity different from the Crown of Castile, but, in particular, it would have entailed the beginning of a new way of thinking “Spain,” focused on the increasing centralism and authoritarianism of the successive Monarchs. This process would have concluded in the reign of Charles IV with the influence of the almighty Godoy, whose despotism would have led directly to the crisis of the Monarchy and, consequently, to the extinction of the Hispanic Empire, except for some colonies such as Cuba, Puerto Rico and the Philippines.

69 See HERZOG (2004); GARRIGA ACOSTA (2003).

70 See the already classic BURKHOLDER/CHANDLER (1977).

Now is not the time to criticize this reading of 18th-Century Spain, rather consolidated in historiography, or to trace the origins of this constructive paradigm.<sup>71</sup> Clearly, there are many reasons supporting this interpretation. In addition to the Nueva Planta Decrees and the patrimonial understanding of power behind the acts by Philip V,<sup>72</sup> there are many other measures evidencing the Crown's increasing interest in having more expedite and effective mechanisms for decision-making and the enforcement of policies, as well as in recovering positions of power. In this regard, we should mention, by way of example: the creation and development of the Secretariats of State [*Secretarías de Estado y del Despacho*]; the creation of *intendencias*; the professionalization of the army; the (temporary) suppression of internal customs; the rationalization of the tax system; the reform of the system of fleets and galley slaves; and the introduction of the company system in peripheral regions, or the struggle to control the sale of offices.

However, we should not lose sight of the "structural" limitations imposed by the very "constitution" of the Monarchy upon any process of *nacionalization* and standardization of the political territory. Despite these and other measures of great significance adopted by successive Bourbon kings, the Spanish Monarchy maintained its institutional plurality and its jurisdictional structures. The Secretariats of State did not suppress all secular councils. In fact, some of them, such as those in Castile or, to a lesser extent, in Navarre and the Indies, continued playing a key role in the governance of their respective territories.<sup>73</sup> On the other hand, *intendentes* coexisted with *corregidores* and *alcaldes mayores* in the Peninsula and in the Americas, and the *audiencias* maintained their leading role over this period. We should further mention the importance of ecclesiastical jurisdiction and the different special jurisdictions largely dividing public space and limiting any monopolistic claim of political power. This institutional "duplicity," which has led historiography to talk about the conflictive coexistence over this Century of two

71 An explanation for the first half of the Century, based on propaganda by the supporters of the Bourbon dynasty in the succession conflict can be found in STIFFONI (1989).

72 On the patrimonial logic behind the measures adopted by Phillip V, see FERNÁNDEZ ALBALADEJO (1992) 380; GARRIGA ACOSTA (2006) 94–96.

73 SESÉ ALEGRE (1994); GARCÍA PÉREZ (1998). On a more favorable view of the relegation of the Council of the Indies as a consequence of the creation of the Secretariats of State, see BERNARD (1972); CABRERA BOSCH (1993).

parallel or overlapping Monarchies – one “administrative,” the other “jurisdictional” –,<sup>74</sup> explains some of the difficulties in understanding the 18th Century from the perspective of the operation of different power dynamics.

Such diversity of institutional structures and logic of power can be clearly seen at the higher governmental levels of the Monarchy. In this case, the Council of the Indies saw its authority disputed by the creation of a Secretariat of State of the Navy and the Indies. It was established in 1714, together with the Secretariats of War, State and Justice, which reflected not only the implementation of a new form of government in matters related to the New World, but also the consideration of the Indies as a mere branch of “administration,” along with others such as the Navy or War. In a sense, the measure could be construed as a denial of the political status implicitly recognized with the creation and consolidation of a Council of the Indies over the previous two Centuries, coexisting with other councils for other territories of the Monarchy.

In the 18th Century, the Secretariat of State had a checkered evolution.<sup>75</sup> It was removed in 1715, restored in 1720 as Secretariat of War, the Navy and the Indies, only to become the Secretariat of the Navy and the Indies in 1721. In 1754, its structure changed when matters pertaining to the Indies were separated from those pertaining to the Navy, to form two separate Secretariats of State which, nonetheless, were still headed by the same Secretary. In 1787, upon the death of Gálvez and the creation of the *Junta Suprema de Estado* [Supreme Board of State], the Secretariat of the Indies was split into two with a view to expediting the handling of matters in the Americas. In 1790, in line with Floridablanca’s projections to join interests on both sides of the Atlantic, matters concerning the Indies were distributed among the other five Secretariats of State, a solution that had already been contemplated in the instruction reserved for the *Junta de Estado* (No. CXLV). This was aimed not only at streamlining and securing “Treasury and War expenses, resources and assistance” on both hemispheres, but also at “largely deterring hatefulness for such separation of interests, charges and objects,

74 On this regard, see the classic work by HINRICHS (1986). On the difficulty to substitute the jurisdictional power model with one purely “administrative” in the Old Regime, see MANNORI (1990).

75 See GÓMEZ GÓMEZ (1993); ESCUDERO (2001).

which destroys the Spanish Monarchy and divides it into two Empires.”<sup>76</sup> However, as explained below, Floridablanca’s non-colonial idea of governing the Americas was not the only one, and not even the most prevalent in the Court, during the second half of the 18th Century.

The fact that most matters concerning the Americas were handled through the specific channels, that is, through the relevant Secretariat of State, did not downplay the leading role of the secular Council of the Indies. While still being the highest court for Spanish American matters, the Council also experienced a change in composition in the reign of Charles III and became a benchmark for most of the reforms introduced in the Americas during those years.<sup>77</sup> Its continuity over time was, on an institutional level, a clear manifestation of the specific nature of the Spanish American territories within the Crown of Castile. It was also a clear manifestation of the ongoing idea of government linked to the right of justice.

Within the framework of this institutional complexity, merely outlined here for the peak of the Monarchy, the Ministers of Charles III adopted the policies to be implemented after the defeat in the Seven Years’ War along lines that had already been anticipated during the previous two reigns. On the international level, the imperial expansion of foreign powers, mainly England, France and Holland, demanded political action to ensure Spanish dominion over the New World. After the independence of the thirteen colonies in America, it became even more necessary to change a traditional system of government that had allowed a high degree of self-government in those lands.

In this context, we can also gain a better insight into the consolidation of a discourse and politics with colonial features in the Court, as well as the reactions this caused among the elites of the Indies. It was at that moment, in the 18th Century and not before, that the Indies were referred to as colonies for the first time. It should be noted, however, that just as it is not possible to reduce the 18th-Century institutional structure of the Monarchy to a consistent and systematic unit – since it was more the outcome of a historic development marked by a collection of different institutional logics rather than the design of a Cabinet projected over an empty space

<sup>76</sup> ESCUDERO (2001), II, 68.

<sup>77</sup> I have dealt with this matter in GARCÍA PÉREZ (1998). This “rebirth of the Council” was brought to attention by BURKHOLDER (1976).

available to the Sovereign –, neither is it possible to unitize the different policies issued by the Court for the Americas in the 18th Century, or any supporting discourse to legitimize them. Therefore, while focusing on the emergence of a true “colonial” discourse in the 18th Century, we should not overlook its coexistence with other discourse of a different nature, aimed at achieving a better unity of interests between Creole elites and the Crown. We have just seen this when discussing the extinction of the Secretariats of State for the Indies in 1790, with Floridablanca leading the King’s Ministers. Some years earlier, in 1768, the extraordinary Council formed in the Council of Castile had articulated the need to send Spaniards to the Indies to hold “the major offices, Bishoprics and Sinecures, and to have the Creoles hold equivalent offices in Spain.” This would establish stronger ties and lead to a “united Nation.” The goal was to ease tension in the Americas after the expulsion of the Jesuits and to deter any independence movement.<sup>78</sup>

In addition to this unifying discourse, we should mention the persistence of old political conceptions over the whole 18th Century, in line with the prevailing ideas of previous Centuries. In light of this plural background, we may assess the scope of colonial discourse supported by some Ministers and materialized in the adaptation of specific political measures for the Americas during the last decades of the Old Regime.

### 3. Colonial discourse and its institutional incidence

It is not our intent to discuss here in detail the reforms initiated by the Crown since 1763: the policy of appointment of senior officers that privileged the Peninsulars vis-à-vis the Creoles; the extension of the system of *intendencias* to most of the Americas; the creation of new viceroyalties and provincial boundaries; the introduction of significant tax reforms; the formation of a permanent Royal Army, and the implementation of the militia system, etc.<sup>79</sup> While we cannot state – as noted above – that the Court had developed a consistent political program for the Americas, since actors, interests and principles

78 The report is reproduced by NAVARRO GARCÍA (1996). Quotes on page 205.

79 Historiography has given considerable attention to the reforms in Spanish American politics in the 18th Century. For a general vision, with the corresponding bibliographic references, see PÉREZ HERRERO/NARANJO OROVIO/CASANOVAS CODINA (2008); LYNCH (1991); and NAVARRO GARCÍA (1991).



involved in the adoption and execution of such decisions varied to a great extent, we can state that there were some goals behind many of the reforms carried out during the second half of the 18th Century.

On the one hand, as often underlined, “Bourbon reforms” were aimed at securing the defense of Spanish American territories. Financing such an endeavor required a considerable increase in the revenues from the Americas. Though the target of these policies was the Americas, they focused basically on Spain, on the preservation of its Empire in an international setting different from that of previous Centuries. At the same time, within the context of the *Audiencias* – a centerpiece of the American government –, action was taken to restore a justice system that had been shaken over decades by practices such as the sale of Court offices or, more generally, the deep-seated roots of judges in the Indies society.<sup>80</sup>

These reforms were accompanied with the simultaneous publication of projects concerning the government of Spanish America. The presence of enlightened ideals of government among many of the Court’s Ministers, with emphasis on the virtues of trade and economic development towards peoples’ progress, and the exemplary policy promoted by foreign powers for their overseas domains, also led Spain to work on new governmental proposals for the Americas, whereby such lands could emerge from “their state of decadence,” a popular cliché then. In most cases, the proposals were clearly in line with those adopted during the first half of the Century by authors such as Macanaz, Jerónimo de Ustáriz or the author of “*Nuevo sistema de gobierno para la América*” [“New Governmental System for the Americas”], dated 1743 and mistakenly attributed to José del Campillo.<sup>81</sup> Even if it is possible to establish a connection between the theoretical proposals and the institutional reforms, it is always advisable to maintain both areas well differentiated. Both are important from a historical point of view. Both reveal the ideas then prevailing in the Court’s circles about the right position of the Americas within the Spanish Monarchy. However, their practical significance has not been the same.

The terms used by the Ministers and senior Officers of Charles III, in addition to the terms “Kingdoms” and “Provinces,” predominantly used in the political jargon, particularly in the legal area, now included the term

80 See GARRIGA ACOSTA (2002).

81 See NAVARRO GARCÍA (1995a).

“colonies.” Yet, the term was often reserved to refer to colonies of foreign powers, i. e., French, English, Dutch, or Portuguese colonies. While an empirical study should be conducted to assert this unmistakably, any historian acquainted with 18th-Century archive sources would be able to note it.

In other cases, the use of the binomial metropolis-colonies reveals the modernization of a discourse that was still based on traditional guidelines or, at least, that had not yet adopted the patterns of modern colonialism. There are many examples in that regard, but let us focus on the policy pursued by the Crown in the Americas during the reign of Charles III. We refer to the well-known plan of *intendencias* designed by Gálvez after visiting New Spain, and the reports prepared by the Bishops of Puebla and “this metropolis,” i. e., Mexico, as mandated by the Viceroy of New Spain, the Marquis de Croix.<sup>82</sup>

After a careful reading of the project, one can note the coexistence of colonial languages and policies with others consistent with reformist premises of the Old Regime, where the preservation of the political order appears related to the effectiveness of mechanisms ensuring officers’ good behavior and fairness. The reform proposed by Gálvez is intended to “standardize both the government of these great Colonies and the government of the metropolis,” since *intendencias* had already been introduced into the Peninsula fifty years earlier. While Gálvez uses the terms “colonies” and “metropolis,” the standardization of the former and the latter is inconsistent with politics of a colonial nature. Spanish Americans could consider it despotic – rather than colonial – action to the extent it violated acquired rights. The problem lay in the fact that “the huge kingdoms of Spanish America” were in decline because they maintained a government “that imitated the metropolis’ former government.” Therefore, it was logical to apply in those lands “the healthy remedies that had cured the ills of its head.”<sup>83</sup>

According to Gálvez, the problem was that the existing system of government in “this important and extensive Monarchy of New Spain” prevented the Viceroy from “establishing good order and justice.” The fact was that the one hundred and fifty *alcaldes mayores* and *corregidores*, having no salary, did business in such lands to the detriment of the King’s vassals and to the Crown itself, which lost substantial income. The creation of the office of

82 “Informe y plan de intendencias que conviene establecer en este reino de Nueva España”, reproduced in NAVARRO GARCÍA (1995b).

83 NAVARRO GARCÍA (1995b) 112–114.

*intendente* was, in the opinion of Gálvez, the remedy for this “ruinous constitution.”<sup>84</sup>

At the same time, the plan included indications that revealed the subordination of American to Peninsular interests, such as the references to setting up factories “prohibited in the Colonies.” It was not Gálvez’s original idea. From this standpoint, the subordination of manufacturing companies in the Indies to Peninsular interests had been supported some years earlier by the author of *Nuevo Sistema de Gobierno*.<sup>85</sup> However, this was neither the only nor the primary goal of Bourbon reformist policies, aimed rather at regaining control over power structures on both sides of the Atlantic and at securing the integrity of its possessions in the Americas.<sup>86</sup> Likewise, attributing “natural neglect and laziness” to indigenous people was not new either. Nonetheless, the proposal insisted on the need to eradicate a business that caused considerable harm: the distribution of merchandise.<sup>87</sup>

The report prepared by the Bishop of Puebla, strongly in favor of Gálvez’s proposals, focused on the need to standardize government on both sides of the Atlantic; however, neither the language used nor the proposals made allow us to talk about the emergence of a new colonial mindset. Firstly, the Bishop denied the novelty of the project, as it already existed in Spain. Expanding it into the Americas – he explained – would avoid losing many souls and would put an end to the ill-treatment of indigenous people by *alcaldes mayores* and to the damage caused to the Royal Treasury. The plan was justified by its effects and by itself: Since Spain (identified with Castile) and the Americas formed “a single Kingdom,” they should move towards standardized government inasmuch as possible, as vindicated by the history of colonization. The Bishop was not thinking about other foreign powers’ external policy, but that of ancient peoples. Conquering nations transformed conquered nations, basically by reciprocal marriage. Therefore, it was desirable that Spanish and native families be joined in marriage, at least principals’ and *caciques*’ families. A very different consideration was given to plebeian Indians, incapable of governing themselves.<sup>88</sup>

84 Ibid. 112–114.

85 CAMPILLO Y COSÍO (1789); WARD (1779).

86 PEREZ HERRERO/NARANJO OROVIO/CASANOVAS CODINA (2008) 40.

87 Informe y plan de intendencias (n. 82) 123, 125. Gálvez’s plan is dated 15 January 1768.

88 Report of 20 January 1768. NAVARRO GARCÍA (1995b) 128–130.

On the other hand, dependence on Spain was also justified in accordance with traditional reasons. The Indies were members of the Spanish Monarchy, branches of a tree, and, as such, should bear fruit. *Intendencias* would not only put an end to vassal suffering, but also report substantial profits to the Royal Treasury.<sup>89</sup>

The Bishop of Mexico approved the plan proposed by Gálvez too; he considered the abusive behavior of *alcaldes mayores* to be the root of all evil of Spanish American government. *Intendentes* would fill the gap between *alcaldes mayores* and viceroys. They were even more necessary than in Spain, where inhabitants of villages were more rational. Although he did not dwell on more theoretical considerations, he did make reference to the conquest in order to stress the need to accommodate natives' lives to the conquerors' laws and customs.<sup>90</sup>

The goal set by the Crown to regain control over power structures in the Americas, in order to guarantee that justice be served and that all necessary resources to enforce its Atlantic policy be extracted, ended up – as is well known – with Gálvez as Minister of the Indies, in an attempt to exclude Creoles from holding major political and judicial offices.<sup>91</sup> However, it is one thing to have measures adopted in Court, and quite another to implement them in America. In either case, it is clear that both the underlying discourse of most projects as well as the measures implemented in the second half of the 18th Century impaired the rights and interests of many American elites. In both cases, a utilitarian vision of the Americas was gaining momentum, which translated into a divergence between Monarchy and Nation. The Indies were part of the Monarchy's – but not of the Nation's – discourse.<sup>92</sup>

It was a process already under way. The loss of Spanish dominions in Europe after the War of Succession favored the “nationalization” of the Monarchy. Castile increasingly consolidated as its center and, consequently, a periphery started to develop. With the encouragement of the Court and the support of different cultural groups, an interpretation of history inclined to identify Castile with Spain was evolving.<sup>93</sup> However, this process encoun-

89 Ibid., 131.

90 Report of 21 January 1768. Ibid., 131–134.

91 BURKHOLDER/CHANDLER (1977) 103–106.

92 PORTILLO (2000); PORTILLO (2006) 32–34.

93 For the development of Castilian legal history as Spanish legal history, see VALLEJO (2002).

tered resistance in certain territories, such as the Basque Provinces and the Kingdom of Navarre – especially –, which, since ancient times, had had their own laws, governmental and judicial institutions. Here also an alternative discourse of a constitutional nature emerged which, as would be the case in the Americas, tended to emphasize its “separation” from Castile, that is, its essence as a perfect political community, whether as a province, dominion or kingdom.

Yet, the consequences of the establishment of a Spanish Nation partially different from the Monarchy were not the same for Peninsular and oceanic territories. Navarre and the Basque Provinces were still part of both, even though their rights and liberties, particularly in the fiscal and military areas, were increasingly challenged. Conversely, the Indies appeared more and more as areas politically available to serve the interests of the Monarchy’s principal Domain, namely the Nation. In this regard, it is no coincidence that one of the Ministers who, as prosecutor of the Council of Castile, had played a more prominent role in the conflicts between the Kingdom of Navarre and the Court since 1770,<sup>94</sup> Pedro Rodríguez de Campomanes, was also the author of one of the treatises that best featured the subordinate nature of the Indies to the Nation, to which – seemingly – they did not belong. This can be noted by merely reading the acknowledgment at the beginning of his treatise “*Reflexiones sobre el comercio español a Indias* [Reflections on the Spanish Trade to Indias]”<sup>95</sup>

94 I refer to the conflicts over levies and transfer of customs houses. In this context, Navarre was forced to develop an elaborate constitutional discourse in defense of their fiscal and military rights and liberties. Allow me to refer you to GARCÍA PÉREZ (2008) 205–262.

95 To Campomanes, the decadence “of our farmers and craftsmen is that there is no dispatch of the fruit of their work or craft,” which damaged the strength of the Monarchy, based on “its population and its trade.” However, Campomanes wondered “Who will believe, Sir, knowing that Your Majesty dominates the largest and best part of the Americas, where there are many millions of Your Majesty’s vassals, that these goods have no dispatch?” The work he presented was aimed at revealing the cause of this evil which – in the words of the prosecutor of the Council of Castile – could only reside “in the body of the Nation or in the rules hitherto observed on the traffic to and from the Indies.” The problem was, indeed, in the rules. The trade ban imposed “on the Americas ports is far from admirable – he noted – as the Colonies should not have concurrent navigation with the matrix. But it is unprecedented for Spain to suffer this exclusion.” In this context, the Indies were not the Nation, but colonies at its service. CAMPOMANES (1988) 3–4.

The unequal condition of the Indies is similarly noticed in the well-known projects developed by *Intendente* José Ábalos (1780), by the Count of Aranda (1783), and by the almighty Godoy (1804) – which was even known and approved by Charles IV –. All of them agreed on the convenience of dividing the Indies into several Monarchies led by members of the Spanish Royal Family.<sup>96</sup> Regardless of the feasibility of such proposals, the Indies were described as territories politically available to the Monarch. In practice, this was clear during Godoy’s government with the transfer of Santo Domingo to France in 1795, and Louisiana and Trinidad to England in 1800 and 1802, respectively.<sup>97</sup>

However, the key trigger for the creation of a discourse of colonial denunciation was the crisis of the Monarchy after the entry of French troops into Spain and the abdication of the Spanish Monarchs in favor of Napoleon. The ensuing power vacuum and the different solutions then defended provided the perfect framework for the development of an anti-colonial discourse in the Americas. In this new and unforeseen context, the term *colony* became instrumental in the fight between political projects on both sides of the Atlantic: within the Peninsula, in order to gain American support for the constitutional case in Cadiz and, in general, for the war of liberation against Napoleon; in the Americas, in order to support the different projects for an autonomous government at first, and an independent one later on.<sup>98</sup> Thus, the “colonial paradigm,” to quote Lempérière, evolved, a paradigm which has dominated the Latin American historiography so far.

### III. Final Considerations

It is commonplace among historians to assert the need to understand ancient societies from their own interpretive categories. It is not an easy task. Some would consider this an illusive goal as temporal borders would make it impossible to overcome cultural ruptures. While there is no need to engage

96 RAMOS PÉREZ (1968); MUÑOZ ORÁN (1960); RODRÍGUEZ (1976) 54–66; NAVARRO GARCÍA (1997).

97 A paradigmatic expression of Godoy’s declared colonial policy was the Board of Fortifications and Defense of the Indies, as has been pointed out by GARRIGA ACOSTA (2006) 110–120.

98 ORTEGA (2011).

in these theoretical rather than practical debates, no one questions how convenient it is for a historian to avoid projecting into the past categories or concepts coined or re-elaborated in the present time to provide solutions to current world problems.<sup>99</sup>

In the case at hand, it is quite clear from what has been described in these pages that, after their conquest and incorporation into Castile, the Indies became part of the Spanish universal Monarchy. The colonization model on which the Spanish based their conquests was not the one that predominated as from the second half of the 18th Century – and particularly during the 19th and 20th Centuries –, used by the main European powers. Rather, at least ideally, it resembled the Roman model.<sup>100</sup> That is why, until the late 18th Century the words *colony* and *colonize* were understood both in dictionaries and usage as well as in legal texts as synonyms of *population* and *populate*.<sup>101</sup> In the second half of the past Century, the term *colony* acquired the modern sense of *economic exploitation* both in the republic of letters as in the European Courts.<sup>102</sup>

The ideal reference to the ancient colonization model does not preclude me from stating that the colonization of the Indies had particular or specific features: by way of example, and among other factors, religion enjoyed a dominant though not exclusive role. It could not have been otherwise. Historical times were significantly different. In the 15th Century, the conquest and colonization of the Americas also involved joining the Indies to Castile under an accessory union and, consequently, transferring the Castilian legal order to the new lands. However, the different treatment required by the New World over the years resulted in a progressive increase in its

99 GADDIS (2002); WOOD (2008).

100 See PADGEN (2005) chapter 1. Regarding the connection between liberalism and imperialism in the mid nineteenth Century, see PRITS (2006).

101 “*Colony*: a town or parcel of land that has been populated by foreign people taken from the City which owns such territory or from some other place. The word *colonies* also meant the places populated by their ancient inhabitants, who had been granted the privileges corresponding to such peoples by the Romans (...). In Spain, there were many towns that had been Roman colonies.” COVARRUBIAS OROZCO (1674) 154. The definition of the term “colony” in the *Diccionario de Autoridades de 1729*, 419, is practically the same. This ancient meaning of the word colony also appears in *Política Indiana* by SOLÓRZANO PEREIRA, as has been pointed out by TAU ANZOÁTEGUI (2000) 102–103.

102 LEMPÉRIÈRE (2004b) 114–116.

political identity as a territory distinct from Castile, though formally it was an accessory part of the latter. This particular or specific feature was reflected on the institutional level, with the creation of the Council of the Indies and the particular evolution of its *Audiencias* and its *municipios*, of Spaniards and of Indians, as well as in the legal sources, with the leading role of custom and the specificity of the law of the Indies, paradigmatically represented in the *Recopilación* [Compilation] of 1681. In this respect, the accessory nature of the union gradually developed turning the Indies into a territory more similar to Navarre or Aragon than to other kingdoms joined to Castile under an accessory union, such as Granada or Murcia. At the same time, a creole discourse emerged – studied from this perspective by Garriga – that viewed Spanish America as a perfect community separate from Castile. The purpose was to secure that offices to be held in the Indies were reserved for natives of those lands and not for Spaniards.<sup>103</sup>

The Castilian estate-based social order, unevenly constituted, was also transplanted to the New World but with some clear differences. In addition to the kings' policy of limiting jurisdictional dominions as much as possible, the integration of the indigenous peoples into this imported order posed not only theoretical but, mainly, practical problems. Although indigenous peoples were considered “miserable people” legally and, as such, subject to the Crown's protection, the consequences of such status were diverse, depending on the different peoples, places and times. In addition, the degree of assimilation of European culture and of the Catholic religion were also different, as well as the transformations that the native cultures underwent. In any case, and despite the relationship of subordination and dependence that the conquest entailed for indigenous peoples, together with the numerous abuses that, notwithstanding the Crown's protectionist policy, they suffered in these Centuries, the colonial relationship model – understood in its modern sense – does not seem to be the best suited to explain the place occupied by the Indies and their people within the Spanish Monarchy. In this respect, we agree with Tau when he posits the “inappropriateness of the word *colony* to describe generically the political condition of the Indies.” No political entity in the Spanish Monarchy is referred to by that name in legal or political texts, in custom or in practice.<sup>104</sup> Moreover, the emergence of a colonial

103 GARRIGA ACOSTA (2006) 72–93.

104 TAU ANZOÁTEGUI (2000) 121.



political discourse in the 18th Century and the adoption of measures revealing a colonial conception of the Indies did not result in a substantial transformation of the political model of the Spanish Monarchy. Therefore, from a historiographical perspective, it seems more accurate, and possibly more fruitful, to assume the legal categories used at the time to construct the Spanish American space. The Indies were provinces or kingdoms joined to the Crown of Castile under an accessory union. Henceforth, it is the duty of historians to determine the concrete meaning of these categories in each historical period, avoiding the use of schemes that are too rationalist and anachronistic to comprehend a reality which then, just as now, was beyond any simplistic approach to systematization.

On the other hand, adopting perspectives that assume a plurality of concurrent powers and jurisdictions in Spanish America, leaving aside mental structures too bound to state standards, can provide a more realistic approach to the relationships between the Crown and the New World. From this perspective, the leading role that indigenous peoples – with their rights and traditions – played in the creation of the Spanish American legal order should also be acknowledged. Without underestimating the significance of the policies the head of the Monarchy pursued, through the Council of the Indies, *Juntas* [Boards] or the Secretariats of State, the fact that they were focused on the places where the different social actors converged – mainly cities and towns – evidences the inappropriateness of explaining political societies of the Old Regime too flatly or homogeneously.<sup>105</sup> In this area, dominated by the existence of patronage or family networks, or by the interaction of groups having diverse interests which, on many occasions, joined the two sides of the Atlantic, it is not sufficient to apply general binary schemes, such as Peninsular-Creole or Spanish-Indian. Also in this context, the simple opposition colonizer-colonized can leave a substantial part of the human relationships typical of the Old Regime in the Americas outside our attentional focus.

Finally, as is the case with the word “State,” whether it is appropriate to use the term “colony” will ultimately depend on the meanings and conno-

105 On the need to study the history of the Nation in Spain and also of the Americas from this municipal perspective rather than from the history of the kingdoms or of the formation of the State, an author who has attracted attention, among others, is Tamar Herzog. A good example of the possibilities of this approach is HERZOG (2003).

tations the historian gives it. In this respect, it is possible to use the word *colony* or *colonial* while preserving the political logic characteristic of the Spanish Monarchy during the Old Regime. We would be dealing, in any case, with not very “colonial” colonies.

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