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## Can Money Whiten? Exploring Race Practice in Colonial Venezuela and Its Implications for Contemporary Race Discourse

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# CAN MONEY WHITEN? EXPLORING RACE PRACTICE IN COLONIAL VENEZUELA AND ITS IMPLICATIONS FOR CONTEMPORARY RACE DISCOURSE

Estelle T. Lau\*

*The Gracias al Sacar, a fascinating and seemingly inconceivable practice in eighteenth century colonial Venezuela, allowed certain individuals of mixed Black and White ancestry to purchase “Whiteness” from their King. The author exposes the irony of this system, developed in a society obsessed with “natural” ordering that labeled individuals according to their precise racial ancestry. While recognizing that the Gracias al Sacar provided opportunities for advancement and an avenue for material and social struggle, the author argues that it also justified the persistence of racial hierarchy. The Article concludes that the Gracias al Sacar, along with their present-day implications, undermine an essentialist view of race, revealing the negotiability of race status and its dependence on social and material norms.*

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## INTRODUCTION

In Venezuela during the late eighteenth and early nineteenth centuries, the *Gracias al Sacar*<sup>1</sup> served as a curious avenue of legal transformation. Within this system, free persons of part-African descent could purchase and acquire, through direct petition to the Spanish monarchs, the status of Whiteness, thereby gaining the rights and opportunities of this privileged group.

To the modern ear, this procedure sounds odd.<sup>2</sup> How can an individual opt out of one's own race? How can the law exempt us from something we are born with? Can money Whiten? The Spanish colonialists' practice of stratifying their society according to racial categories based on individual genealogy accentuates the peculiarity of the *Gracias al Sacar*. They perceived and explicitly understood race as a product of an individual's biology that, in turn, determined

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1. As the name implies, the *Gracias al Sacar* were manifestations of royal grace (*gracias*) upon receipt or payment (*al sacar*). The *Gracias al Sacar* were literally writs or acts of grace on the part of the King. Thus, an individual received a *Gracia al Sacar* or writ. However, the term *Gracias al Sacar* also connotes an entire transactional process leading up to the granting of a writ; an applicant can be said to participate in the *Gracias al Sacar*. The term therefore describes a complex system that transcends what is literally denoted. It is appropriate and not redundant to discuss the "system" of *Gracias al Sacar*. Accordingly, this Article will speak of the receipt of a *Gracia al Sacar* (singular) or *Gracias al Sacar* (writs). The term will be used interchangeably with phrases such as "the system of the *Gracias al Sacar*" when speaking of the entire process. I am grateful to Miguel Triás for his assistance in confirming the multiple uses of this term in ancient Spanish and to Guyora Binder for help with articulating these differences in English.

This Article relies on the untranslated primary documentation of the *Gracias al Sacar* compiled by Santos Rodolfo Cortes. SANTOS RODOLFO CORTES, EL RÉGIMEN DE "LAS GRACIAS AL SACAR" EN VENEZUELA DURANTE EL PERÍODO HISPÁNICO (1978). Unless otherwise noted, translations of all Spanish texts are my own.

2. The concept of buying White status seems strange despite the fact that the use of a wide range of interchangeable legal identities is accepted in modern daily life. See generally LON L. FULLER, LEGAL FICTIONS (1967); JOHN T. NOONAN, JR., PERSONS AND MASKS OF THE LAW (1976); Aviam Soifer, *Reviewing Legal Fictions*, 20 GA. L. REV. 871 (1986). For example, corporations function as "persons" in our legal system, Soifer, *supra*, at 877, 914 n.160, and sons and daughters over the age of 21 are not considered to be "children" of their parents for certain preferential immigration quota categories, 8 U.S.C. § 1101(b)(1) (1994); 22 C.F.R. § 40.1 (1997). See also Ibrahim Wani, *Truth, Strangers, and Fiction: The Illegitimate Uses of Legal Fiction in Immigration Law*, 11 CARDOZO L. REV. 51 (1989) (discussing uses of legal fictions, including legal identities, in immigration law). More commonly, personal status is defined through the legal terms such as "married," "divorced," or "single." I thank Rick Abel for pointing out the breadth of accepted, legally created, and negotiated identities in the contemporary context that expose our unexplored assumptions about the actual differences between what appears as an odd, anachronistic practice in colonial Venezuela and our taken-for-granted modern world.

one's rights, status, and obligations within colonial Spanish society.<sup>3</sup> In stark contrast to this biological ordering of society based on one's genealogy, the *Gracias al Sacar* permitted individuals to buy out of the perceived natural order through a cash payment to the Crown. The *Gracias al Sacar*, however, did not stand in opposition to colonial society. Instead, they exemplified the inherently changing and, at times, contradictory nature of the racial understandings and practices of that period.

This Article examines the *Gracias al Sacar* in the context of colonial Venezuela during the late eighteenth and early nineteenth centuries. Despite the apparent remoteness of the *Gracias al Sacar* to contemporary American life and law, or maybe precisely because of their apparent remoteness, the *Gracias al Sacar* provide an opportunity to explore the controversies in current academic discussions of race and difference. Because a study of the *Gracias al Sacar* is a historical enterprise, we are reminded that race is a socio-historical product of discernable, if not precisely datable, processes.<sup>4</sup> Thus, by beginning with the acknowledgment that race is a "social construct,"<sup>5</sup> the *Gracias al Sacar* admonish us to repudiate the idea that race is a fixed essence.<sup>6</sup> Nevertheless, the *Gracias al Sacar* also remind us

3. I use the terms "biology," "biological," or "natural" interchangeably to describe a longstanding essentialist perception of race as a fixed and objective part of human essence determined by one's genealogy or heritage and often described as found in one's blood. This perception assumes that race is a fundamental part of a person's real nature that cannot be separated from that person.

Relatedly, essentialist thinking reduces complex ideas to one essential characteristic. Thus, Angela Harris contends that gender essentialism sets forth the "notion that there is a monolithic 'women's experience' that can be described independent of other facets of experience like race, class, and sexual orientation." Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 588. Similarly, she finds that racial essentialism reduces the variety of individual experience into one monolithic racial experience, so that there is a monolithic "Black Experience" or "Chicano Experience." *Id.* at 588. For discussions of feminist and race essentialism, see generally ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988); *ALL THE WOMEN ARE WHITE, ALL BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN'S STUDIES* (Gloria Hull et al. eds., 1982).

4. For a thoughtful commentary on the effect of recognizing the nature of events as contingent upon historical sociology, see William H. Sewell, Jr., *Three Temporalities: Toward an Eventful Sociology*, in *THE HISTORIC TURN IN THE HUMAN SCIENCES* 245 (Terrence McDonald ed., 1996).

5. Theories of social construction of reality have been a longstanding concern for social scientists. See, e.g., PETER BERGER & THOMAS LUCKMAN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* (1966); WILLIAM I. THOMAS, *THE UNADJUSTED GIRL* (1931) (discussing his theory of "the definition of the situation"). For a recent exploration of the social construction of reality in law, see PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW* (forthcoming May 1998) (manuscript at 33-53, on file with author).

6. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960'S TO THE 1990'S* (2d ed. 1994); Barbara Jeanne Fields, *Slavery*,

that race is not an illusion.<sup>7</sup> Although race is the product of human action, it is a real phenomenon with real consequences.<sup>8</sup>

Concomitantly, once we discard an essentialist view of race, the inquiry itself must change.<sup>9</sup> Rather than attempt to determine the correct content of race—the foundations upon which racial distinctions can or should be made—we must understand the processes through which specific racial practices are created, sustained, and manipulated.<sup>10</sup> By making the conditions and processes of social organization the central focus of inquiry, we can expose the ongoing construction of race and its effects.

The *Gracias al Sacar* in colonial Venezuela provide an opportunity to apply these precepts to a particular race practice in its historical context. By building a complex understanding of the *Gracias al Sacar* as both a place of material exchange and of meaning-making, the interactive and constitutive nature of a race practice can be unpacked and analyzed. Then, the hidden restraints and opportunities for change, social redress, and equality can be laid bare.

As I have suggested, the *Gracias al Sacar* functioned as instruments through which groups and individuals exchanged material and social wealth. Examination of the role of the *Gracias al Sacar* in the material struggles within Venezuelan society provides an opportunity to see the ways in which individuals used and resisted the *Gracias al Sacar*. The Crown implemented and sold the *Gracias al Sacar* as exemptions from disfavored racial categories at the moment

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*Race and Ideology in the United States of America*, 181 NEW LEFT REV. 95 (1990). John Calmore provides a recent discussion of the continued need to emphasize the variable and contingent nature of race in *Exploring Michael Omi's "Messy" Real World of Race: An Essay for "Naked People Longing to Swim Free,"* 15 LAW & INEQ. J. 25 (1997).

7. See Ian F. Haney-López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 61–62 (1994).

8. Henry Louis Gates, Jr. warns that “there is a treacherous non sequitur here, from ‘socially constructed’ to essentially unreal.” Henry Louis Gates, Jr., *The Master's Pieces: On Canon Formation and the Afro-American Tradition*, in THE BOUNDS OF RACE: PERSPECTIVES ON HEGEMONY AND RESISTANCE 17, 34 (Dominick LaCapra ed., 1991). It is too easy to slip from “constructed” to “unstable” to “changeable by will” when, in fact, race is neither. *Id.* at 34. As Patricia Ewick concisely described to me, socially constructed does not mean “free-floating” or “anything goes.” Electronic mail from Patricia Ewick to Estelle Lau (July 7, 1997) (on file with author). Rather, empirical evidence demonstrates that (1) history and structure still operate to constrain the social world; and, as a corollary of sorts, (2) power is not an ineluctable force shaping the world, but actually constrains itself from moment to moment. *Id.*

9. See Jayne Chong-Soon Lee, *Navigating the Topology of Race*, 46 STAN. L. REV. 747 (1994) (book review).

10. For a discussion on recent research on the formation of race stratification in the United States, see NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* 178–88 (1995). Ignatiev's book itself provides a complex and poignant discussion of the Irish struggle to secure material and social advantages in the United States by entering White society.

when revolutionary forces were massing and loyalty and authority were central issues within the colonial context. Through these writs, different social groups and the monarchy contested and negotiated the material distribution of goods. The *Gracias al Sacar* simultaneously provided a means for the disadvantaged to gain stature and wealth while reinforcing traditional distribution.

In addition, the *Gracias al Sacar* were an arena in which social meanings and beliefs concerning race could be created and contested. The *Gracias al Sacar* served in a constitutive capacity to challenge, to reinforce, and to alter meaning. Moreover, the analysis of the *Gracias al Sacar* exposes racial understandings as fluctuating, turbulent, and, at times, contradictory. Specifically, in this role, the *Gracias al Sacar* reveal simultaneous tendencies toward racial equality and hierarchy within colonial Venezuelan society that drew from longstanding beliefs. The *Gracias al Sacar*, therefore, were not an anomaly, but derived from conventional practices. Their study highlights the processes through which race was embedded continually—both as practice and as meaning. They reveal the opportunities and restraints that contribute to the simultaneous tendencies toward the reproduction or modification of racial hierarchy and stratification within colonial Venezuelan society.

This analysis of the *Gracias al Sacar* thus illuminates an unexplored tension that could require modern scholars of race and law to reconsider legal strategies of equality and social change. Notably, the *Gracias al Sacar* suggest that the polyvocality of race discourse may generate its very strength and resilience. The ability of racial discourse to encompass contradictory meanings and outcomes allows racial paradigms to remain durable and lasting. Moreover, this polyvocality means that the long term results of any given race practice are difficult to predict.

Unlike other analyses of U.S. race and law, which often hold at odds the construction of legal race and social race and seek to look at the impact and consequences of legal race on social status,<sup>11</sup> my

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11. At first glance, my article appears to resonate with modern legal scholarship, specifically those connecting race and property. See, e.g., Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1710 (1993). Upon closer inspection, my analysis suggests the limitations of Harris' article.

Harris argues that race and property have become conflated so that being White gives you status as property. Whiteness conveys deference and privilege, see *id.* at 1741–44, or a set of expectations consonant with property rights. See *id.* at 1729–31. According to Harris, the persistent interrelatedness of Whiteness and property within the law serves as a barrier to effective social change. *Id.* This argument appears to resound with our sense of the racial inequality in American history. Harris, however, contrasts an understanding of legal conceptions of race that she opposes to a more “natural” or “self-defined” understanding of race. The separation of legal and social conceptions of race is most apparent in her discussion of

analysis begins with the assumption that legal race and social race are not at odds with one another, but the same. Although the law can reify and appear to make ongoing relationships and hierarchies static, they are constantly in the making, being shaped and reinscribed. Furthermore, the *Gracias al Sacar* suggest that using the legal process as a means of defining and negotiating categories and classifications may open, rather than close, potential avenues for change.

## I. THE CONTRADICTION OF RACE IN EIGHTEENTH CENTURY VENEZUELA

### A. Racial Stratification in Colonial Venezuela

The social composition of late eighteenth century colonial Venezuela reflected two centuries of Spanish conquest and slavery. The Spanish immigrated to an area originally populated by scattered Indian tribes and introduced Africans—both free and slave—to the colony at the onset of their conquest.<sup>12</sup> Despite formal antimiscegenation laws and other legal barriers,<sup>13</sup> the general population largely disregarded any efforts to limit the sexual interaction of these groups. Indeed, “racial and cultural mixing affected the inhabitants of Venezuela more than almost any other American society.”<sup>14</sup> Thus, in 1810, approximately 780,000 people lived in Venezuela; twenty-five percent were White, fifteen percent were African, fifteen percent were

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the “property functions of whiteness” in which she speaks of the difficulties in recognizing race as property because it is “inalienable.” *Id.* at 1731–34. Harris thus appears to be assuming an essentialist view of race, despite her nods toward its social construction. Because of this underlying bimodality, her analysis of affirmative action is ultimately unconvincing and utopic as she contends that somehow a re-reading of race from a social rather than legal perspective would imply “broader and more highly developed concepts of identity and property.” *Id.* at 1781.

12. Frederick P. Bowser, *Colonial Spanish America*, in *NEITHER SLAVE NOR FREE: THE FREEDMAN OF AFRICAN DESCENT IN THE SLAVE SOCIETIES OF THE NEW WORLD* 19, 20 (David W. Cohen & Jack P. Greene eds., 1972).

13. Beginning in 1776, the Crown formally proscribed interracial marriage. 1 FEDERICO BRITO FIGUEROA, *HISTORIA ECONOMICA Y SOCIAL DE VENEZUELA* 165 (1966) (discussing the 1776 decree that prohibited unions of *blancos* and *pardos*); ERMILA TRONCONIS DE VERACOECHEA, *DOCUMENTOS PARA EL ESTUDIO DE LOS ESCLAVOS NEGROS EN VENEZUELA* 285 (1969) (describing a royal order, issued in 1785, that disallowed marriage between *indios* and either *negros* or *pardos*). Historians note that these rules were “jealously defended” by elite *blancos* who sought the Crown’s reaffirmation of its “absolute refusal” to permit these unions. 1 BRITO FIGUEROA, *supra*, at 165–66 (1966). Nevertheless, the general population ignored these prohibitions.

14. WINTHROP WRIGHT, *CAFÉ CON LECHE: RACE, CLASS, AND NATIONAL IMAGE IN VENEZUELA* 21 (1990). Modern historians agree that “Venezuela’s economy determined the nature of its society.” *Id.* at 17. Because of impoverished conditions among the general population and a mixed labor system comprised of Black slaves, personal service Indians, and day laborers, “their proximity to each other gave impetus to racial intermingling.” *Id.* at 19.

Indian, and approximately forty-five percent were multiracial.<sup>15</sup> These rough numbers, however, conceal the diversity of formally recognized racial groups. Members of Venezuelan society identified and labeled race in an exact manner based on an individual's precise ancestry. The following list illustrates the general disregard for antimiscegenation laws and the specificity of biologically determined racial categories used to label members of a complex, racially mixed population:<sup>16</sup>

- (1) *blancos* (Whites): persons of Spanish descent
- (2) *negros* (Blacks): persons of African descent
- (3) *indios* (Indians): persons indigenous to the region
- (4) *mestizos*: children of *blancos* and *indios*

The following groups were generally known as *pardos*:<sup>17</sup>

- (5) *mulatos*: children of *negros* and *blancos*
- (6) *zambos*: children of *indios* and *negros*
- (7) *zambos prietos*: children of *negros* and *zambos*
- (8) *tercerones*: children of *mulatos* and *blancos*
- (9) *cuarterones*: children of *tercerones* and *blancos*
- (10) *quinterones*: children of *cuarterones* and *blancos*
- (11) *salto-atras*: children who were "darker" than their mothers<sup>18</sup>

Following these biologically determined racial categories, colonial Spanish society distributed social and material goods according to a rigorously enforced hierarchy. Indeed, complex rules established the rights and obligations of the various social

15. *Id.* at 13–14.

16. See generally ROBERT M. LEVINE, RACE AND ETHNIC RELATIONS IN LATIN AMERICA AND THE CARIBBEAN: AN HISTORICAL DICTIONARY AND BIBLIOGRAPHY (1980) (defining racial categories and terms); MAGNUS MÖRNER, RACE MIXTURE IN THE HISTORY OF LATIN AMERICA (1967) (discussing racial categories in Latin America).

17. The term *pardos* (or sometimes *leopardos*) reflected the mix of colors and means "brownish," "spotted," or "mixed" like a leopard's skin.

The term *pardo* had ambiguous and multiple meanings with little consistent usage, even in legal documents like the *Gracias al Sacar*. At times the term was used expansively to refer to all persons of any mixed racial heritage (including *mestizos* who had no *negro* heritage at all), while at other times it was limited to only those persons with *negro* ancestry. See generally MÖRNER, *supra* note 16 (discussing the racial terminology).

18. *Salto atras* in modern common parlance means to "jump back." During the Spanish colonial period, it referred to a counter-progressive step in a family in the movement toward an "ideal" of complete Whiteness. *Id.* at 53–70. Such a label could have been attached to any generation that demonstrated a movement away from the ideal of Whiteness. *Id.*



groups and stratified this increasingly mixed society according to race.<sup>19</sup>

The colonial practice of racial classification flowed directly from Spanish doctrines developed in the fifteenth century to distinguish and stratify persons based on family lineage. The doctrines of *Limpieza de Sangre* (Cleanliness of Blood) and *Nobleza de Sangre* (Nobility of Blood) were the most well established mechanisms to prove and measure descendance.<sup>20</sup> The doctrine of *Limpieza de Sangre* stratified society according to an individual's direct legitimate descent to White ancestors of the Christian faith.<sup>21</sup> It presupposed that only persons who could demonstrate their *cleanliness* or *purity of blood*, as shown by the length of their Christian ancestry, could enter "honorable" occupations," such as the clergy, medicine, law, or public office.<sup>22</sup> Similarly, *Nobleza de Sangre* further stratified society based on nobility. The unique social function of members who were granted nobility of blood or *hidalguía* to serve the community in its military or as leaders further separated these individuals from the general population.<sup>23</sup>

Because all persons in the Spanish Empire, including colonial Venezuela, were measured in terms of their purity and nobility of blood, the specific racial categories drew from these practices. But Spain modified the application of the doctrines as systems of stratification within the colonial context. In addition to recognizing the "cleanliness of blood" of *blancos* in the colonies, Spain awarded all persons deemed *blancos*—from whatever social class—*Nobleza de Sangre*.<sup>24</sup> Accordingly, those most proximate to *blancos*, whose faith, skin color, and ancestry most closely approximated these Spanish

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19. These rules were complicated and subject to frequent change. For example, laws were passed establishing that children would take the status of their mothers. Bowser, *supra* note 12, at 27. However, this law presented problems when, increasingly, slave mothers had relationships with White Spanish men and their children were born as slaves. *Id.* at 28. As a result, "even the crown was forced to capitulate to social reality," *id.* (citation omitted), and a new law provided that these Spanish fathers would be given a preference to buy the children they had with slaves of other masters if their purpose was to liberate them. *Id.*

20. See Henry William Kirsch, *The Pardo in Venezuelan Society, 1759–1812*, at 9 (1965) (unpublished M.A. thesis, University of Florida) (on file with author). For a detailed history of the doctrine of *Limpieza de Sangre*, see ALBERT A. SICROFF, *LOS ESTATUTOS DE LIMPIEZA DE SANGRE* (1979).

21. SICROFF, *supra* note 20, at 3.

22. Kirsch, *supra* note 20, at 3–5.

23. *Id.* at 4. *Nobleza de Sangre* therefore imparted the legal status of nobility, exempting persons from payments of tributes and imprisonment in cases of debt. See *id.*

24. Thus, in the colonial context, the Crown elevated all persons deemed pure in blood—even members of the common classes in Spain—to the standing held only by a minority of individuals in Spain. Kirsch, *supra* note 20, at 5 (citation omitted).

ideals, were at the top of the social ladder and accorded all material and social benefits; those closer to *negros*, who exclusively formed the slave class, found their economic and social opportunities increasingly restricted.<sup>25</sup>

*Blancos* formed the elite class in colonial Venezuela. Some commentators have noted a separation of *blancos* into two groups: those born in Spain and those born in Venezuela who could trace their ancestry directly to Spain.<sup>26</sup> Persons in this second group were known as *criollo* or Creole, meaning literally of Spanish descent though native born.<sup>27</sup> The relatively smaller group of Spanish-born *blancos* arrived in Venezuela as royal bureaucrats and clergymen, enjoying the greatest prestige.<sup>28</sup> Nevertheless, *criollos* shared much of the same prestige since they owned land and dominated local politics.<sup>29</sup>

At the opposite end of the social spectrum, *negros* as slaves primarily lived as field hands in the coastal valleys and agricultural

25. Only *negros* were slaves, and most *negros* had immigrated through slavery; thus, negative attitudes toward *negros* persisted. Venezuelan elites believed that

the African's [sic] presence in the New World owed to their enslavement. In their eyes, slaves worked. In a slave economy, Blacks did the work that the Whites refused to do. Important as they were to driving the colonial economy, their slave status placed them in the lower echelons of the social hierarchy.

WRIGHT, *supra* note 14, at 5.

The consequences of this complex confluence of race and economic status will not be addressed in this Article. Suffice it to say that it has substantially impacted race understandings in Venezuela. See *infra* note 220 for a brief discussion of this issue.

26. See EDWIN LIEUWEN, VENEZUELA 25–26 (1961); see also GUILLERMO MORÓN, A HISTORY OF VENEZUELA 58–59 (John Street trans., 1964). Even native-born Spaniards were diverse—Native Spaniards had different European and Moorish influences. *Id.* at 58. Indeed, in Spain, one distinction was drawn between mainland Spaniards (*peninsulares*) and those from the Canary Islands (*isleños* or *canarios*). P. MICHAEL MCKINLEY, PRE-REVOLUTIONARY CARACAS 13 (1985). These differences were overlooked within the colonial context. See *id.* at 13–17.

Likewise, several White American scholars have argued that White identity in the United States is constructed in juxtaposition to other racial groups—Blacks, Asians, and, occasionally, Latinos. DAVID R. ROEDIGER, *Whiteness and Ethnicity in the History of 'White Ethnics' in the United States*, in TOWARD THE ABOLITION OF WHITENESS: ESSAYS ON RACE, POLITICS, AND WORKING CLASS HISTORY 181 (1994); Adrienne Davis, *Identity Notes Part One: Playing in the Light*, 45 AM. U. L. REV. 695 (1996). Consequently, White is seen as the unspoken norm against which other groups are compared. Interestingly, the monolithic nature of Whiteness has eradicated notions of ethnic identity for Whites, erasing cultural and historical differences. See *id.* at 701.

27. MORÓN, *supra* note 26, at 60.

28. See LIEWEN, *supra* note 26, at 26; MORÓN, *supra* note 26, at 60.

29. See MORÓN, *supra* note 26, at 61.

regions. Although slaves were never a large part of the overall population of Venezuela, they could be found in every part of colonial Venezuela, including the urban areas, where they provided service as servants, coachmen, or stevedores.<sup>30</sup> In addition, as the *blanco* population disdained all types of manual labor, they taught artisanal skills to their slaves, including mechanics, building techniques, carpentry, and others.<sup>31</sup>

Slaves were not only valued for the work they were forced to perform, they were also markers of status and luxury within *blanco* Venezuelan society:<sup>32</sup>

Upper-class women of the Caracas elite, for example, would parade to and from Mass on Sundays accompanied by all their slave entourage, the well-dressed servants carrying a pillow, missal, and other such accouterments as their mistresses' morning excursion to church required. Status, of course, could be determined by the number and dress of the Black slaves accompanying the women on display.<sup>33</sup>

Manumission practices throughout the Spanish Empire fostered a movement toward freedom that benefited Venezuelan slaves.<sup>34</sup> The Crown made numerous means of manumission available, but most common were various forms of self-purchase upon payment (or promise of future payment) and unconditional release by the slave holder.<sup>35</sup> Procedures became increasingly institutionalized and slaveholders promoted manumission by allowing slaves to set aside a portion of their work product as payment toward their manumission.<sup>36</sup>

30. *Id.* at 45.

31. See Bowser, *supra* note 12, at 50.

32. The approximate cost for a slave in 1784 was 150 *pesos* (600 *reales*). 1 BRITO FIGUEROA, *supra* note 13, at 96. This expense far exceeded the average annual salary of nearly all *pardos* and most *blancos* during this period. See *infra* note 59 and accompanying text (discussing wages).

33. Bowser, *supra* note 12, at 50.

34. In 1787, a partial census counted 147,564 *libres de color* (free Blacks) and 53,055 slaves. *Id.* at 37. The disproportionate number of free Blacks to slaves is indicative of the decrease in value of slave labor in colonial Venezuela by this time period. This decline reflected not only favorable manumission practices, but possibly also the unwillingness and inability of Venezuelans to pay the high price for African slaves. See MORÓN, *supra* note 26, at 53–54.

35. See Bowser, *supra* note 12, at 31–36 (describing manumission practices throughout the Spanish Empire).

36. See *id.* Attitudes toward manumission were not uniform, however. Indeed, during periods of labor shortage, especially during phases of economic prosperity, slaveholders generally frowned upon all forms of manumission. *Id.* at 32. Manumission

Freed *negros* or *pardos* entered Spanish society with significantly better status than slaves but still inferior to that of *blancos*, *mestizos*, or *indios*.<sup>37</sup> Throughout the Spanish Empire,

[v]isible African pigmentation or features saddled the free person of color with the presumption of illegitimacy and inferiority. The former charge was frequently true, and, along with the shadow of slave origin, led colonial authorities and the public to brand the free colored as vile, treacherous, lazy, prone to drunkenness, and, in general, infamous and immoral by his very nature.<sup>38</sup>

Because of the negative characteristics (illegitimacy and moral inferiority) attributed to free *negros* and *pardos*, attitudes toward them vacillated between "contempt and fear."<sup>39</sup> Extensive legislation restricted the movement of free *negros* and *pardos* and differentiated them as separate from and inferior to other free persons.<sup>40</sup> From

of urban slaves was more common, as they had greater opportunities to earn the price for self-purchase. *Id.* at 33. Manumission was also restricted to *negros* or *pardos* who were born in Spanish America or to slaves of African descent who had acquired "a veneer of Spanish ways." *Id.* at 35. For a further discussion of Spanish assimilationist ideology, see *infra* Part II.B.

37. Spanish colonialists initially enslaved *indios*. However, the Crown soon recognized *indios* as vassals and granted them a special legal status that confined them to *encomiendas* under the "guardianship" of *blancos*. Their situation in practice was no better than *negros* as slaves, even though they were afforded a special place in the social hierarchy. See generally WILLIAM F. SHARP, *SLAVERY ON THE SPANISH FRONTIER* (1976) (examining the Spanish Chocó, a rural area within the viceroyalty of New Granada, but providing a general discussion of Indian welfare in colonial Spain).

38. Bowser, *supra* note 12, at 38–39 (citations omitted).

39. *Id.* at 39.

40. See Kirsch, *supra* note 20, at 7–8 (citations omitted). The Town Council of Caracas (*Cabildo de Caracas*) summarized the variety of laws passed to differentiate between *blancos* and *pardos* and *mulatos*:

The laws of the Government of the Indias subject [*pardos* or *mulatos*] to make tributary payments and do not wish that they live without masters even when they are free so as to be able to charge them more readily, and order that they be condemned to work in the mines for crimes they have committed. These same laws prohibit them from bearing arms, distinguish them from Indians, prohibit them from working as scribes or notaries, prohibit them from becoming soldiers, and their women from wearing gold, silk or pearls, from these laws is born the attitude among *blancos* that [*pardos* and *mulatos*] should not be given a seat in their homes nor walk next to them on the streets.

Representación del Cabildo de Caracas al rey suplicando se digne denegarse a la solicitud de los *pardos* y mandar se mantengan éstos en la misma clase que hasta

prohibitions against carrying firearms to sumptuary laws restricting the rights of free *negros* and *pardos* to wear certain types of clothing or use certain luxury items,<sup>41</sup> Spanish legislation attempted to prevent the assimilation—both material and social—of this ever-growing group. Thus, the legal structure bolstered and enhanced the customs which separated *blancos* from free *negros* or *pardos* in their daily social interaction.

Despite prejudice within this biologically determined hierarchy, at least a portion of the *pardo* population attempted to circumvent or ignore their legal disabilities and improve their economic and social lot. While *pardos* could not enter certain professions zealously protected by *blancos* such as medicine, the clergy, or law, they could practice artisanal crafts or work as laborers, shop keepers, and even plantation overseers.<sup>42</sup> Many *pardos* were able to accumulate personal wealth, facilitating somewhat their acceptance by *blanco* society.<sup>43</sup> As they gained more wealth, *pardos* bought additional education and religious training for themselves or their children, thereby further assimilating into Spanish society and rising in the social hierarchy.

Nevertheless, Venezuelan colonial society was highly stratified based on an essentialist perception of race.<sup>44</sup> Ancestry determined both social status and the available legal and economic opportunities. Despite formal and informal practices that increased the number of freed *negros* and encouraged the growth of the *pardo* classes, Venezuelan society remained steeply hierarchical.

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ahora por los perjuicios que se ocasionaría en caso contrario. Caracas, 13 de octubre de 1788, in 2 CORTES, *supra* note 1, at 32, 33.

41. The importance of sumptuary laws in defining and solidifying social stratification has been recognized generally. See ALAN HUNT, GOVERNANCE OF THE CONSUMING PASSIONS: A HISTORY OF SUMPTUARY LAW (1996) (noting, however, that there is a lack of research on Spanish sumptuary laws); cf. MARJORIE GARBER, VESTED INTERESTS: CROSS-DRESSING & CULTURAL ANXIETY 21–40 (1992) (comparing modern dress codes to European sumptuary laws and discussing their relevance to social mobility).

The need for subordinate groups to seize and manipulate these social symbols has also been recognized. See *id.* (reflecting on the role, nature, and significance of cross-dressing). In the context of race relations in the United States, clothing was a vital and integral part of African American slave culture. See Shane White & Graham White, *Slave Clothing and African American Culture in the Eighteenth and Nineteenth Centuries*, 148 PAST AND PRESENT 149–86 (1995); see also Shane White & Graham White, *Slave Hair and African American Culture in the Eighteenth and Nineteenth Centuries*, 61 J. SOC. HIST. 45–76 (1995) (describing how hair style conveyed social messages and contested aesthetic standards of the dominant culture).

42. MCKINLEY, *supra* note 26, at 18–22 (describing occupations held by *pardos*).

43. See MARK A. BURKHOLDER & LYMAN L. JOHNSON, COLONIAL LATIN AMERICA 196 (1990) (discussing the success of mixed Black population in Latin America).

44. See *supra* note 3 and accompanying text (defining and offering citations to discussions of essentialism).

## B. Buying Whiteness: The Gracias al Sacar

The systematic application of the race-based exemptions of the *Gracias al Sacar* continued in Venezuela for approximately fifteen years, from 1795 to 1810.<sup>45</sup> It can be traced to the *Real Cédula de Gracias al Sacar de 10 de febrero de 1795* ("Royal Decree of 1795"),<sup>46</sup> which added exemptions from the qualities of *pardo* and *quinterón*, for the fixed price of 500 and 800 *reales* respectively,<sup>47</sup> to the list of licenses, privileges, and exemptions previously available from the Crown. Moreover, the Royal Decree of 1795 allowed the purchase of the feudal title of *Don* for 1000 *reales*.<sup>48</sup> The combination of these new exemptions under the Royal Decree of 1795 allowed for the possible elevation of a *pardo* from the lower social classes to nobility.<sup>49</sup> The Crown specifically added these exemptions to serve the colonial clientele. Seventy-one categories of exemptions provided opportunities available upon payment of the appropriate fees, ranging from the privilege of founding an entailed estate<sup>50</sup> to a license for a woman to own and run a store "as a young man."<sup>51</sup>

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45. Some petitions began to circulate prior to the official promulgation of the *Gracias al Sacar* as exemptions to race. For example, the exemption was granted to Juan Gabriel Landaeta for his sons from their status as *mulatos* so that they could either marry women who were deemed *blancas* or enter the priesthood. See Expediente de Juan Gabriel de Landaeta, de casta mestizo, vecino de la ciudad de Caracas, sobre que a sus hijos, nietos y ascendientes [sic] no les sirva se impedimento la diferencia de color para entrar en religion, vestir habitos clericales y ascender al sacerdocio. Caracas, 1797. 2 CORTES, *supra* note 1, at 69 [hereinafter Expediente de Juan Gabriel de Landaeta].

46. Real Cédula de Gracias al Sacar de 10 de febrero de 1795, in 2 CORTES, *supra* note 1, at 58.

47. *Id.* at 64. Colonial Venezuelan currency was minted in Spain and followed the Spanish denominations. 1 TOMAS POLANCO MARTINEZ, ESBOZO SOBRE HISTORIA ECONOMICA VENEZOLANA 202 (1950). Although a unitary nomenclature was established for tax and commercial purposes—all based on the *reales*—a colonial *peso* was worth 8 *reales* while a Spanish *peso* was valued at 16 *reales*.

48. Real Cédula de Gracias al Sacar de 10 de febrero de 1795, in 2 CORTES, *supra* note 1, at 63.

49. For example, a *pardo* who was a *cuarterón* could purchase an exemption from this status which would elevate him above all other *pardos* of "higher" status such as a *sexterón* or *quinterón*. Then, by purchasing the title of *Don*, this same person would be, at least in theory, elevated beyond the status of all *blancos* (non-European, poor, non-Catholic) to attain the status of nobility. See Expediente de Don Nicolás Francisco Yañez, Administrador de Correos de la ciudad de Coro, solicitando se dispense su mujer Doña María Nicolasa Garcés y a sus hijos la calidad de pardo con el distintivo de Don, en consideración a los servicios que refiere. 1799–1800, in 2 CORTES, *supra* note 1, at 156, 156–58.

50. Real Cédula de Gracias al Sacar de 10 de febrero de 1795, *supra* note 46, at 58.

51. *Id.* at 60. Insofar as the *Gracias al Sacar* also permitted women to purchase the status of "maleness," a similar analysis concerning the social construction of gender could be made, although it is beyond the scope of this Article.

In 1801, to raise additional revenues by increasing fees, the Crown repeated almost verbatim the text of the Royal Decree of 1795 in the *Real Cédula de 3 de agosto de 1801 de "Gracias al Sacar"* ("Royal Decree of 1801") to raise tariffs.<sup>52</sup> The fee for a racial exemption increased from 500 to 700 *reales* in the case of *pardos* and from 800 to 1100 *reales* for *quinterones*.<sup>53</sup> The Crown made no other substantive changes in the exemptions or *Gracias* available.

This schedule remained in effect throughout the wars of independence in Spanish America. By 1810, however, the *Gracias al Sacar* no longer had practical application in Venezuela.<sup>54</sup> Agitation on the Iberian Peninsula, caused by Napoleon's 1808 invasion of Spain, led to the issuance of another order by the King in 1810 that temporarily suspended the distribution of *Gracias al Sacar*.<sup>55</sup> Because of the growing movement within Venezuela toward independence and the later enfranchisement by the revolutionary government of all free persons—regardless of racial origin—as full citizens, the promulgation of *Gracias al Sacar* never resumed.<sup>56</sup>

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For an intriguing example in the United States of the use of the law to provide exceptions to the customary status of women in relation to ownership and control over property, see MARYLYNN SALMON, *WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA* (1986), which discusses the practices of "feme covert" and "feme sole traders." I thank Diane Avery for introducing me to this book.

52. *Real Cédula de 3 de agosto de 1801 de "Gracias al Sacar,"* in 2 CORTES, *supra* note 1, at 161.

53. *Id.* at 169.

54. In Cuba and Puerto Rico, the practice of the *Gracias al Sacar* continued for a much longer period. In 1827, a royal order to the Intendencia de Habana stated that there should be no changes to the tariffs for *Gracias al Sacar* as ordered in 1801. See James F. King, *The Case of José Ponciano de Ayarza: A Document on Gracias al Sacar*, 32 *HISPANIC AM. HIST. REV.* 640, 643 (1951) (citing 3 *BIBLIOTECA DE LEGISLACIÓN ULTRAMARINA* 389–92 (José María Zamora y Coronado ed., 1844–49)).

55. *Real Decreto a los Secretarios de Despacho por el cual declara el Consejo de Regencia que mientras el enemigo no haya sido arrojado de la Península, no concederá S.M. empleos, grados, honores, pensiones, ni jubilaciones, y aun se abstendrá de proveer las vacantes que ocurran en cualquier ramo de la administración, a menos que su provisión sea absolutamente indispensable, pero hace algunas excepciones si se trata de la defensa de la Patria y que todo español sea considerado en obligación de servir a ella. Isla de Leon, 30 de abril de 1810,* in 2 CORTES, *supra* note 1, at 266, 266–67 (declaring that while the enemy is not forced out of the peninsula, no employment, raises, honors, pensions, or retirements shall be granted and no vacancies filled in the administration except those vital to the defense of the country).

56. Indeed, the obsolescence of the *Gracias al Sacar* at that point in time makes perfect sense. Why pay for something that one could get for free?

## 1. Precedent and Structural Accommodation

The preamble of the Royal Decree of 1795 sets out the royal justifications for promulgating a new set of rules. Interestingly, the reasons were purely fiscal:

My Council of the Indies having . . . pointed out that there was no proper relationship between the pecuniary services imposed on those obtaining concessions of this sort and the value of those grants, I deemed it well to order said tribunal to set the amount hereafter payable for the so-called *Gracias al Sacar* which might be of higher value, according to their nature and circumstances.<sup>57</sup>

On its face, this commentary indicates that the King promulgated the *Gracias al Sacar* as a system of consumer tax levied upon those seeking royal grants and did not mean to curtail the usage of these grants through an increase in the tariffs extracted. Instead, the *Gracias al Sacar* merely corrected an imbalance between the cost and the benefit of grants given.

In accordance with its stated goals, the fee set by the Crown for the *Gracias al Sacar* as a racial exemption (500 *reales* for *pardos* and 800 for *quinterones*<sup>58</sup>) appears to reflect a reasoned pricing strategy. The relative cost to a *pardo* suggests that the exemption, while clearly beyond the economic means of most laborers, would be relatively inexpensive for the elite classes, considering their wages.<sup>59</sup> The pricing strategy placed the exemption out of reach for the average *pardo* yet made it relatively inexpensive for the class of *pardos* at which it was aimed, thereby selectively encouraging its use.

The stated fiscal justification for the promulgation of the *Gracias al Sacar* is consistent with the economic situation of the Spanish Empire at the time. Spain was at war and had extraordinary expenses that resulted from both direct military outlays and

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57. Real Cédula de Gracias al Sacar de 10 de febrero de 1795, *supra* note 46, at 58.

58. *Id.* at 64.

59. The average salary of a wage laborer (most often *pardos*, although some *blancos* were laborers as well) was four to five *pesos* per month, which equalled approximately 32 to 40 *reales* per month or 384 to 480 *reales* per year. Kirsch, *supra* note 20, at 18. The average salary of a high government functionary (restricted to the upper strata of the *blanco* population) ranged as follows: 55,000 *reales* per annum for advisors and presidents of chancery; 20,000 *reales* for auditors and prosecutors; and 15,000 *reales* for judges. ANTONIO DOMÍNGUEZ ORTIZ, SOCIEDAD Y ESTADO EN EL SIGLO XVIII ESPAÑOL 394 (1976). The great discrepancy in wages earned by *pardos* and *blancos* reflected the well-defined Venezuelan racial hierarchy.



indirect economic losses.<sup>60</sup> As traditional sources of revenue for the Crown dried up and remaining sources became increasingly overburdened,<sup>61</sup> the *Gracias al Sacar* provided another means of raising necessary funds.

The sale of writs, titles, and exemptions by the Crown during periods of economic difficulty was a long-established practice.<sup>62</sup> Indeed, the *Gracias al Sacar* had been codified earlier in 1773 under the *Real Cédula de Gracias al Sacar de 3 de junio de 1773* ("Royal Decree of 1773").<sup>63</sup> Those writs were more limited in number and afforded exemptions that applied throughout the entire Spanish Empire.

The *Gracias al Sacar* also accorded with generally settled religious and legal practices. The closest classic ecclesiastic source for the *Gracias al Sacar* is the *rescripto*,<sup>64</sup> which derives its name from the requirement that petitions be in written form. Bishops or the Pope issued *rescriptos* to eligible Catholic petitioners.<sup>65</sup> The Church developed both substantive and procedural rules for distributing these privileges.

60. BURKHOLDER & JOHNSON, *supra* note 43, at 291. Following the execution of the French King Louis XVI in 1793, Spain formed part of a coalition of countries fighting the spread of revolution. *Id.* at 290. The perceived danger of this war and its cost soon led Spain to reconsider its position. *Id.* Thus, three years later, Spain, now in alliance with France, was at war with Britain. *Id.* Unfortunately, this war proved no less costly and a series of naval battles culminated in the destruction of the Spanish fleet at Trafalgar in 1805. *Id.* at 291. Furthermore, not only did Spain have to pay for its war expenditures, but, beginning in 1803, it had to meet the financial subsidies required by France. *Id.*

The expenses of these wars depleted the Spanish coffers more than any typical military expenditure due to their protracted length and the severe losses suffered. *Id.* These military outlays were compounded further by the disruption and consequent loss of trade and regular remittance of gold bullion from its colonies during this period. *Id.* During the war with France, the strength of the famed Spanish Armada and its alliance with Britain enabled Spain to continue to import treasure from its colonies. *Id.* After 1796, however, the British paralyzed Spain's transatlantic trade: in 1796, 171 ships sailed from the colonies to Spain; only nine could make this same journey in 1797 as a result of naval blockades. *Id.* at 291–92.

61. The traditional Spanish tax system proved unable to meet these expenses, and the Crown turned to a number of methods to meet its increasing debt. It borrowed from foreign lenders, government trust funds, and special treasury funds and, once these methods proved too costly, began issuing treasury bills that soon exceeded all normal treasury income from the American colonies between 1792 and 1807. *Id.* at 291.

62. For example, as early as 1557, the monarchy sold titles of nobility. Felipe II sold 1000 *hildaguías* to persons from all classes regardless of any "defect in lineage or other stain." 1 JOSÉ GIL FORTOUL, *HISTORIA CONSTITUCIONAL DE VENEZUELA* 101 (1967).

63. *Real Cédula de Gracias al Sacar de 3 de junio de 1773*, in 2 CORTES, *supra* note 1, at 11.

64. 1 CORTES, *supra* note 1, at 78.

65. *Id.*

*Rescriptos* became even more similar to the *Gracias al Sacar* when the Church set fixed valuation tariffs.<sup>66</sup>

Exemptions were neither new nor surprising. They were considered part and parcel of the absolute power of the Crown and central to the maintenance of a system of government based on each individual's loyalty to the authority figure. The power of the sovereign to dispense acts of grace, as described in the *Ordenanzas Reales de Castilla*, provides a concurrent secular example of the use of exemptions.<sup>67</sup> Moreover, the preamble to the Royal Decree of 1795 explicitly recognized several established sources for the new set of tariffs, including the Royal Decree of 1773 and the common practice of the Council of the Indies.<sup>68</sup>

The use of particularized exemptions also fit the structure of the Spanish legal system, in which the Crown made an effort to take legislation formulated for the peninsula and modify it according to colonial needs.<sup>69</sup> This system of modification and translation was complicated, and it consisted of at least three layers.<sup>70</sup> First, the *Siete Partidas del Rey Alfonso*<sup>71</sup> codified Spanish laws

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66. *Id.* at 79. A second and more remote ecclesiastic antecedent of the *Gracias al Sacar* are the exemptions in Canonical Law church doctrine. Dispensed under papal discretion, the Church doctrinally removed these privileges from the regular orders of the Church and turned them into special privileges exempting recipients from rules promulgated by other church entities. *Id.* at 81.

It is likely that the practice of canonical exemptions grew from the longstanding tradition of church "indulgences," which commuted canonical penance for the performance of some pious work, usually almsgiving or crusading. See generally KENNETH WALTER CAMERON, *THE PARDONER AND HIS PARDONS* (1965) (reprinting copies of indulgences that were distributed in England on the eve of the Reformation); 2 HENRY CHARLES LEA, *A HISTORY OF AURICULAR CONFESSION AND INDULGENCES IN THE LATIN CHURCH* (1968) (providing a comprehensive treatment of the practice of granting indulgences). By the fifteenth century in Spain, the Church was setting prices to bring indulgences within reach of the whole population so as to generate more revenues. 2 LEA, *supra*, at 161.

67. *Ordenanzas Reales de Castilla*, in 7 *LOS CODIGOS ESPAÑOLES CONCORDADOS Y ANOTADOS* at tit. IX (1847-1851).

68. Real Cédula de Gracias al Sacar de 10 de febrero de 1795, *supra* note 46, at 58. The closest system of government exemptions in the colonies was the *Servicios Pecuniarios*, granted by the *Real Audiencia* or other such entities and listed in the *Real Hacienda*. These were not used widely, however. 1 CORTES, *supra* note 418, at 127-28.

69. See Bowser, *supra* note 422, at 21.

70. It has been suggested that the Spanish colonial legal system was really a two-tiered system of Iberian legal codes that were then "translated" to fit colonial practice. While this description fits much of colonial law-making practice, it neglects instances where colonial law-making was taken directly from conceptions of Spanish ideal law. Indeed, many commentators have found it fruitful to explore the crucial influence of the *Siete Partidas*. See J.A. Doerig, *La Situación de los Esclavos a Partir de las Siete Partidas de Alfonso el Sabio*, 40 *FOLIA HUMANISTICA: CIENCIAS, ARTES, LETRAS* 337, 337-41 (1966) (describing the influence on slave practices of the *Siete Partidas* in both

in the thirteenth century.<sup>72</sup> Serving more as a “statement of legal and moral principles than a compilation of specific legislation,”<sup>73</sup> the *Siete Partidas* had little relation to the “living law of Castille.”<sup>74</sup> A second layer of legislation codified in practical terms those ideals embodied within the *Siete Partidas*. The system of legal codification in Spain was arcane. In addition to numerous comprehensive legal codes, the Crown promulgated “laws . . . by means of royal decrees each aimed at a particular case and these laws became common law by force of circumstances and in the light of experience.”<sup>75</sup> Finally, a third layer of translation, the recodification of the laws in the *Recopilación de las Leyes de los Reynos de las Indias de 1680*,<sup>76</sup> further modified those ideal Iberian principles.<sup>77</sup> Within this system, the *Gracias al Sacar* provided yet another means of refining Iberian rules that did not conform to the colonial practice while maintaining the underlying Iberian principles.

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colonial Portugal and Spain). Thus, it seems useful to view the Spanish system as encompassing three distinct layers of legal text.

71. LAS SIETE PARTIDAS DEL REY DON ALFONSO EL SABIO COTEJADOS CON VARIOS CODICES ANTIGUOS POR LA REAL ACADEMIA DE LA HISTORIA (Atlas Books 1972) (1807) [hereinafter LAS SIETE PARTIDAS].

72. *Id.*

73. Bowser, *supra* note 12, at 21.

74. *Id.* (quoting DAVID BRION DAVIS, THE PROBLEM OF SLAVERY IN WESTERN CULTURE 103 (1966)).

75. MORÓN, *supra* note 26, at 79.

76. *Recopilación de leyes de los reynos de las Indias: mandadas imprimir y publicar por la Magestad católica del Rey Don Carlos II* (4th ed., Gráficas Ultra 1943) (1791). Other ordinances had established the relationships between classes and colors in the Spanish Empire prior to the *Recopilación of 1680*. See, e.g., THE LAWS OF BURGOS 1512–1513 (Lesley Byrd Simpson trans., 1960); see generally MÖRNER, *supra* note 16, at 69–125 (discussing the formation of segregation laws from 1650 to 1680). The *Recopilación of 1680*, however, provided a substantial revision and codification of these piecemeal proclamations:

The various laws enacted in Spain for the government of the colonies were first collected and digested by order of Felipe IV. An incomplete compilation was made in 1661 but the first “*Recopilacion de Indias*” did not appear until 1680. A second edition . . . was made in 1756, a third in 1774 and a fourth in 1791. The last . . . appeared in 1841 . . .

THOMAS W. PALMER, JR., GUIDE TO THE LAW AND LEGAL LITERATURE OF SPAIN 136–37 (1915).

77. See Bowser, *supra* note 12, at 21. Legislation for the Americas evolved in response to specific demands and problems with Iberian law. Contradictions therefore developed over time as “conditions in the Americas differed greatly from those in Spain, and many of the established laws were changed, misunderstood or ignored.” SHARP, *supra* note 37, at 127 (providing specific examples of legislation).

## 2. Participants and Procedure

Individuals purchased *Gracias al Sacar* as racial exemptions to achieve practical gains. At times, petitioners sought to exempt themselves from their status for particular reasons—to enter the university,<sup>78</sup> the priesthood,<sup>79</sup> or a professional association.<sup>80</sup> Individuals also petitioned so that persons from different social classes could marry. For example, Doña María del Carmen of the noble and pure family line of Correa sought an exemption to marry Juan José Ximenes, a *pardo*.<sup>81</sup> On other occasions, petitioners sought general exemptions so that they or their children would not carry the “shadow” of non-White heritage.<sup>82</sup> A *blanco* even sought an exemption to dispel any accusation of non-Whiteness.<sup>83</sup> Given the stringency of racially restrictive

78. See, e.g., Real Cédula al Virrey, Gobernador y Capitán General del Nuevo Reino de Granada y Presidente de la Real Audiencia de Santa Fe, dispensando a Pedro Antonio de Ayarza, Natural y Vecino de la Portobelo la calidad de pardo. Aranjuez, 16 de marzo de 1797, in 2 CORTES, *supra* note 1, at 124 (granting Pedro Antonio de Ayarza an exemption so that his son José Ponciano could attend university). Further discussion of this case can be found in King, *supra* note 54, at 640–41.

79. See, e.g., Expediente de Juan Gabriel de Landaeta, *supra* note 45, at 69 (seeking dispensation for his sons to enter the Church, wear religious habits, and enter into the priesthood).

80. See, e.g., Domingo Arévalo, Practicante Mayor del Real Hospital Militar de Caracas, solicitando se le dispense la calidad de pardo y se apreube el Título de Cirujano expedido por aquel Protomedicato. Caracas, 1802–1803, in 2 CORTES, *supra* note 1, at 170 (seeking to be certified as a surgeon and to be admitted into the medical group of surgeons).

81. Expediente de Doña María del Carmen Correa y de Juan José [sic] Ximenes, Naturales de Caracas, solicitando licencia para casarse dispensándose a éste la calidad de pardo. 1804–1806, in 2 CORTES, *supra* note 1, at 235.

82. See, e.g., Don Juan Martín de Aristimuño, procedente de la Provincia de Guipúzcoa y casado en la América, Gobernación de Cumuná, suplica a V.M. la gracia de que se dispense a su mujer, hijos, nietos y descendientes la calidad de su color pardo para que no les sirva de obice a toda carrera, ni al uso, trato, alternativa, vestido y estado con los demás sujetos de vuestras poblaciones y ciudades. 1805–1807, in 2 CORTES, *supra* note 1, at 240 (seeking dispensation for his wife, their children, grandchildren, and other descendants from the status of *pardo* so that it “will not be an obstacle in their profession, their activities, status, dress or standing with other citizens of the population”) [hereinafter Don Juan Martín de Aristimuño].

Despite the apparent breadth of dispensations such as this one exempting all descendants of Juan Martín de Arstimuño, the *Gracias al Sacar* in practice did not serve as general or inheritable exemptions. See *infra* Part II.A (discussing the effective limitations imposed by the conflict generated when these grants were promulgated).

83. Petición de Don Pedro Rodríguez de Argumedo al Rey. Suplica se digne dispensar a su mujer Doña Angela Inés Rodríguez cualquier defecto que pueda tener de la calidad de pardo y que éste si lo hubiere en ningún tiempo pueda perjudicar a sus hijos. Madrid, 6 de octubre de 1796, in 2 CORTES, *supra* note 1, at 114. The Crown granted the dispensation:

[I]n keeping with the records filed, Doña Angela and her parents are esteemed and reputed to be honorable, never engaging in any vile

legislation as outlined above,<sup>84</sup> these exemptions offered real material and social benefits. Thus, some writers have cynically described the fee paid as a means of giving “thanks on getting out of . . . the colored ranks into those of white men.”<sup>85</sup>

The Crown placed no apparent limits as to who could petition: the petitioners included the parties seeking the exemption,<sup>86</sup> their family members,<sup>87</sup> and unrelated third parties.<sup>88</sup> Both men and women,<sup>89</sup> from a range of racial backgrounds, applied—*pardos*, *multos*, *mestizos*<sup>90</sup> and, as mentioned above, even *blancos*.<sup>91</sup> But petitioners

activities, longstanding Christians, of good life and customs, without any mark of mixture, and White persons; notwithstanding, to be rid of any doubt or concern that might offer that vague voice, and to eliminate any possible obstacle that might impede their children from placement in a decent life that corresponds with the virtuous education that has been given to them: I have concluded that the petition is worthy of the Throne to deign to dispense Doña Angela Inés Rodríguez from whatever defect that is attached to the quality of *pardo* . . . .

Real Cédula que dispensa de la calidad de pardo a favor de Doña Angela Inés Rodríguez, mujer de Don Pedro Rodríguez de Argumendo vecinos de la Isla de Trinidad. San Lorenzo, 26 de noviembre de 1796, in 2 CORTES, *supra* note 1, at 116. The fear that her children would be accused of being *pardos* reflects the seriousness of racial distinctions in colonial Venezuelan society. It also shows the difficulty in conclusively ascertaining and proving one's genealogy.

84. See *infra* Part II.A.

85. CHARLES EDWARD CHAPMAN, COLONIAL HISPANIC AMERICA: A HISTORY 118 (1933). Chapman's description can be interpreted as a pun on the phrase *Gracias al Sacar*—the term *Gracias* means both “grace” and “thanks,” and the phrase *al sacar* can mean either “upon receipt” or “on getting out.”

86. See, e.g., Petición de Don Rafael Diego Mérida a V.M. Suplica que en atención a constar todo en los autos seguidos sobre restitución de la Escribanía que desempeñaba e igualmente su esclarecida calidad y la de sus ascendientes, se digne concederle la prerrogativa de firmarse con el distintivo de Don, relevándole de cualquier recurso pecuniario que por ello debiera hacerse y sin perjuicio de aprovecharse, cuando le convenga de la soberana oferta que contiene la expresada Real Orden. Madrid, 21 de enero de 1804, in CORTES, *supra* note 1, at 231 (seeking status as *Don*). It does seem likely, though, that women were unable to petition on their own behalf—all of the petitions seeking exemptions for women were brought by their husbands on their behalf. See, e.g., Don Juan Martín de Aristimuño, *supra* note 82.

87. See Expediente de Juan Gabriel de Landaeta, *supra* note 79 (seeking dispensation for his children and grandchildren).

88. See Los Diputados del Batallón de Pardos pidiendo se excluya de él a Juan Bautista Arias. 1774, in 2 CORTES, *supra* note 1, at 19 (seeking an exemption by the Deputies of the Battalion of *pardos* for one of their members).

89. Only four petitions out of 20 were filed on behalf of women. See generally 2 CORTES, *supra* note 1.

90. As noted previously, persons of part-Indian descent were treated as distinct from the general population and were not included within the system of the *Gracias al Sacar*. See MÖRNER, *supra* note 16, at 28. Nevertheless, Juan Gabriel de Landaeta sought an exemption for his descendants as *mestizos*. Expediente de Juan Gabriel de Landaeta, *supra* note 79.

91. See *supra* note 83 and accompanying text.

were similar in two ways—they possessed unusually high levels of education and substantial wealth.

The evidence suggests that only educated Venezuelans made use of these exemptions. First, applicants had to be aware of the *Gracias al Sacar*, and they needed access to the general announcements of the royal government. Second, applicants had to use the correct language and formalities in their petitions.<sup>92</sup> Even if they did not write their own petitions, they had to have access to a range of legal advisors. It seems reasonable to suggest that petitioners needed a substantial amount of money to afford these exemptions—for paying the fee and for hiring advisors to write the petitions.<sup>93</sup>

In theory, the petitions were submitted directly to the King. In practice, however, the monarch did not receive the petitions until they were reviewed by local government agencies.<sup>94</sup> A certificate from the *Fiscal de su Majestad*<sup>95</sup> (local legal representative of the monarchy) vouched for the accuracy of the information and form of the petition. Also, the *Contaduría General de Cuentas* (office of local government accounting)<sup>96</sup> affirmed the correct payment of the required fee. Because these agencies had to receive notice of the petition, it is probable that a representative of the King, most likely either the *Real Audiencia*<sup>97</sup> or *Consejo de Indias*,<sup>98</sup> received the original petition and then coordinated the passage of the documents to these agencies.<sup>99</sup>

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92. See, e.g., 1 CORTES, *supra* note 1, at 136 (stating that petitions had to be written in a supplicating tone to reflect one's subordination).

93. *Id.*; see also King, *supra* note 54, at 644 (describing the limited number of *pardos* who could afford to petition).

94. 1 CORTES, *supra* note 1, at 135–42 (describing the complicated bureaucratic process). The documents compiled by Cortes contain numerous stamps and signatures verifying information and payment of fees. See generally 2 CORTES, *supra* note 1.

95. During this period, the office of the *Fiscal* encompassed both civil and criminal functions: the *Fiscal* served as State Prosecutor in criminal matters and as the State Attorney in civil and administrative matters. Miguel Trías Sagnier, *Aproximación al estudio de la administración de justicia en la Audiencia de Cataluña bajo el reinado de Felipe V (período 1714–1746)*, at 104 (unpublished Tesis de Licenciatura, Universidad de Barcelona) (1985) (on file with author). In relation to the *Gracias al Sacar*, the *Fiscal* would be serving in its role as State Attorney.

96. 1 CORTES, *supra* note 1, at 277.

97. In the eighteenth century, the *Real Audiencia* was an agency of mixed character encompassing both judicial and executive capacities. Trías Sagnier, *supra* note 95, at 79. In the context of the *Gracias al Sacar*, the agency was performing in its executive capacity.

98. The *Consejo de Indias* was the central governing body for the colonies, out-ranking all other administrative agencies, including the *Real Audiencia* and the *Capitanía-General*. BURKHOLDER & JOHNSON, *supra* note 43, at 72–73. Therefore, the *Consejo* had the power to exert its jurisdiction over any matter filed within a lower administrative body, foreclosing review by the lower agency.

99. Interestingly, the Venezuelan bureaucracy developed gradually because of the slow recognition of the economic potential of non-mining industries within the

Finally, letters of opposition from interested third parties, such as the University of Caracas<sup>100</sup> and the Church,<sup>101</sup> show that other interested parties were notified about the petitions.

Overall, the evidence suggests that the Crown granted few writs as racial exemptions during the fifteen-year period of their official promulgation.<sup>102</sup> The available documents, however, reflect only potentially successful petitions. There must have existed some sort of culling process to eliminate less likely candidates and, thus, present only a limited selection to the the Crown.

The volume and breadth of public response to the petitions, considering how few were ultimately granted, evidences a particular vigilance of certain groups to the use of the *Gracias al Sacar*

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region. Eventually, intricate, active, and steady commercial ties led to the organization of Venezuela both internally and within the Spanish colonial system. JOHN V. LOMBARDI, *VENEZUELA: THE SEARCH FOR ORDER, THE DREAM OF PROGRESS* 93-95 (1982). The growing centralization of economic interests in Caracas was followed by the creation of four Caracas-based institutions, completing the centralization of administrative and military control over the region: in 1776, the *Intendencia de Real Hacienda* (Royal Fiscal and Economic Development Agency); in 1777, *Capitania-General* (Captaincy General), originally the highest military authority in each of the Spanish administrative regions, later assuming administrative and political jurisdiction; in 1786, the *Real Audiencia* (Royal Audience), responsible for governing all legal matters within the country, *supra* note 97; and, in 1796, the *Real Consulado* (Chamber of Commerce), regulating business and presiding over commercial litigation matters. Triás Sagnier, *supra* note 95, at 84; Spanish Administration in Venezuela, 1808-1820, at 16-20, 23-24 (unpublished Ph.D. dissertation, Northwestern University) (on file with author); FERNANDO SANCHEZ CALERO, 1 INSTITUCIONES DE DERECHO MERCANTIL 4 (1997). These four entities unified the administrative, economic, military, and legal power in Caracas for Venezuela. See MORÓN, *supra* note 26, at 167; see also Triás Sagnier, *supra* note 95 (discussing the development of the judicial role of the *Real Audiencia* in Cataluña, but noting the fundamental function of each governing body within the Spanish administration); MERCEDES M. ALVAREZ F., *EL TRIBUNAL DEL REAL CONSULADO DE CARACAS* (1967); C.H. HARING, *LAS INSTITUCIONES COLONIALES DE HISPANOAMERICA* (1969). Although developed and empowered by Spain, these institutions and agencies created in Venezuela were an autonomous administrative and economic unit based in Caracas that would later serve the independent republic as well. See MORÓN, *supra* note 26, at 66-67.

100. See, e.g., Informe de la universidad de Caracas sobre los prejuicios que pueden seguirse de permitir que los hijos de Diego Mexiás y otros se reciban en los Estudios Generales de ella, dispensándole para el efecto la calidad de pardo. Caracas, 6 de octubre de 1803, in 2 CORTES, *supra* note 1, at 188 [hereinafter Informe de la universidad de Caracas sobre los prejuicios].

101. See, e.g., El Obispo de Caracas representa a V.M. los graves inconvenientes que le han deterido en el uso de sus facultades para llevar a efecto la pretensión de obtener Beneficios Eclesiásticos, y ascender al Sacerdocio los hijos y descendientes de los mulatos Diego Mexiás y Domingo Arebalo, y suplica a Vuestra Majestad se digne ordenarle lo que sea de su real agrado. Caracas, 1 de diciembre de 1803, in 2 CORTES, *supra* note 1, at 205 [hereinafter El Obispo de Caracas representa a V.M. los graves inconvenientes].

102. See generally 2 CORTES, *supra* note 1 (finding only 20 petitions that were granted as racial exemptions).

and supports the proposition that secondary mechanisms were at play.<sup>103</sup> For example, in February of 1806, Francisco de la Cruz Márquez petitioned for a dispensation from his status of *pardo* from Cumuná, a province of Venezuela.<sup>104</sup> On May 27, 1806, Don José Caballero petitioned the Governor of the Council of the Indies to review the file and its supporting letter from the Governor of Cumuná of March 16, 1806.<sup>105</sup> Caballero's letter represents the culmination of a complicated concerted effort to push the petition through to the Crown.<sup>106</sup> This letter then triggered a second petition by a representative of Cruz Marquez received by the King in Madrid on September 26, 1807.<sup>107</sup> Given the the unwieldy colonial bureaucracy and the distance, both within the colonies and the Spanish Empire as a whole, this petition received all the necessary documentation and reached the Crown very quickly.

The documents recorded during the fifteen years that the *Gracias al Sacar* were sold in Venezuela reveal the implementation of an elaborate dispensation process that drew from longstanding ecclesiastic and secular precedent. Consistent with the Spanish economic crisis and the Crown's subsequent need for revenue, the documentation

103. Indeed, it seems likely, as Cortes suggests, that opposition to these grants was manifested in the creation and manipulation of the bureaucratic system. See 1 CORTES, *supra* note 1, at 135–42; see also *infra* Part II.A (providing a detailed discussion of the complicated contestation over these grants).

104. Representación de Francisco de la Cruz Márquez al Rey. Suplica que habida consideración a los relatado servicios de mas de 18 años y cualidades que adornan a su familia se digne dispensarle la calidad de pardo en toda su descendencia haciendo el servicio que por esta gracias está señalado en la Real Cédula de Gracias al Sacar de 10 de febrero de 1795. Cumuná, 12 de marzo de 1806, in 2 CORTES, *supra* note 1, at 260.

105. Comunicación de Don José Caballero al S. Gobernador del Consejo de Indias. Para que la Cámara consulte su dictamen le remite, de orden del Rey, la adjunta carta del Gobernador de Cumuná de 16 de marzo de 1806 e instancia que acompaña. Aranjuez, 27 de mayo de 1806, in 2 CORTES, *supra* note 1, at 263.

106. See 1 CORTES, *supra* note 1, at 466–68 (summarizing the history of this petition and discussing the unusual coordination of support for the petition within local government, which Cortes contends contributed to its rapid presentation to the Crown).

107. Petición de Francisco de la Cruz Márquez al Rey. Suplica digne comunicar Real Orden al Consejo de la Cámara de Indias para que sin esperar la substanciación del Expediente General promovido por el Cabildo y Universidad de Caracas sobre abolir generalmente la distinción entre blancos y pardos y con entera separación se dé giro a la representación que dirigió el exponente en 12 de marzo de 1806 con el testimonio que la acompañaba y que pasó todo a consulta del Consejo con Real Orden de 28 de mayo de 1806, por las razones que expresa. Madrid, 26 septiembre de 1807, in 2 CORTES, *supra* note 1, at 263 [hereinafter Petición de Francisco de la Cruz Márquez al Rey].

Note that despite the support for this petition, it was never granted due to the political and military agitation in Spain described above. See *supra* note 60 and accompanying text.



suggests that the *Gracias al Sacar* were tailored to offer wealthy and educated *pardos* various social and material benefits that were otherwise beyond their ascribed status.

## II. TOWARD PROGRESSIVITY AND ENTRENCHMENT

In their historical and social context, the *Gracias al Sacar* confront us with an apparent contradiction. During the late eighteenth and early nineteenth centuries, Venezuelans rigidly stratified their society based on race and explicitly acknowledged racial distinctions derived from individual ancestry. At the same time, a formalized legal mechanism developed which provided individuals with the opportunity to buy out of the “natural” system.

The fiscal demands cited for the promulgation of the *Gracias al Sacar*<sup>108</sup> are inadequate to resolve this issue, because they only partially explain the actual practice of these exemptions. They clarify the Crown’s desire to increase and regulate the amounts received for these grants, they describe the facility with which such expansion could be accommodated within the colonial system, and they account for the institutional opportunities and constraints. They do not, however, fully explain the need to expand the scope of the grants or the relevance of the *Gracias al Sacar* to those who attempted to use, oppose, or modify them. For example, the fact that the *Gracias al Sacar* as a fee system references only three racial groups—recognizing *pardos*, *quinterones* and *blancos*—is incompatible with the highly differentiated system of race classifications of that era. As noted earlier, members of society defined themselves and others through a precise and detailed genealogical hierarchy.<sup>109</sup> Viewing the *Gracias al Sacar* as simply a system of consumer tax does not adequately reconcile the inconsistent use of racial terminology.

Moreover, characterization of the *Gracias al Sacar* as a tax system is contradictory. Surprisingly, the set price for *pardos* to attain the status of Whiteness was lower than that for a *quinterón*, not higher, as would be expected given the racial hierarchy in Venezuela.<sup>110</sup> Since *quinterones* were “closer” in ancestry to *blancos*, being descendants of four successive generations of mixture with *blancos*, than were other *pardos*, one would expect them to have paid less than other *pardos* for the *Gracias al Sacar*. In addition, *quinterones* were more similar to *blancos*, at least physically if not economically, making their inclusion within *blancos* status less abrasive.

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108. See *supra* Part I.A.1.

109. See *supra* text accompanying notes 17–18.

110. See *supra* Part I.A (discussing the system of racial stratification).

Historian James King posits that *quinterones* paid a higher tariff precisely because they were closer in physique and status to *blancos* and, therefore, had more interest in becoming fully assimilated.<sup>111</sup> In other words, because of their greater relative loss of status if they were considered *pardos* instead of *blancos*, they could be expected to pay more. Nonetheless, King is "at a loss to understand why a *pardo* should be required to pay less than a *quinterón*, since a patent of whiteness for the latter obviously did less violence to the biological facts of the case . . . ."<sup>112</sup>

Another explanation for this difference in pricing may be that it was merely a shrewd form of price discrimination that sought to charge each subgroup whatever the market could bear. Such reasoning, if correct, would provide a wholly fiscal justification for the price differential that is consistent with the Crown's stated goal to increase imperial revenues. These fiscal justifications partially explain this odd outcome, at least from the Crown's point of view. They fail, however, to account for the participants' motivations and perceptions.

Indeed, to examine the *Gracias al Sacar* only as a fiscal policy raises more questions than it answers. The relative paucity of the number of exemptions, in contrast to the rapid and abundant contestation of each petition, suggests that struggles over their value and meaning may have been more central than the stated fiscal justification for their promulgation would suggest.<sup>113</sup> The Crown earned little income from these racial exemptions, because few were granted.<sup>114</sup> Moreover, as described earlier, very few petitions even reached the Crown. Considering, then, the infrequent use of these racial exemptions, the significant response of *blancos* and local institutions to these petitions requires further explanation.

It is difficult to tease out inferences from the price for a racial exemption. One can infer that the Crown did attempt to set the fee price in relation to the value of the exemption.<sup>115</sup> Moreover, the fee

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111. King, *supra* note 54, at 642 n.5.

112. *Id.*

113. The petition of Francisco de la Cruz Márquez, *see infra* notes 104, 107, and accompanying text, provides explicit support that these grants were part of a larger contest over the meaning of race and the distribution of material and social goods during this period. The second petition of Cruz Márquez to the Crown requests that the writ be granted without waiting for a disposition on the ongoing debate whether to "generally abolish the distinction between *blancos* and *pardos*." *Petición de Francisco de la Cruz Márquez al Rey, supra* note 107, at 265.

114. *See* 1 CORTES, *supra* note 1.

115. The fee schedule reflects an economically reasoned approach to pricing. For example, the fee for a woman to run a shop as a young man in a provincial capital city is 2640 *reales*, while it is only 2200 *reales* in a smaller town. Real Cédula de *Gracias al Sacar* de 10 de febrero de 1795, in 2 CORTES, *supra* note 1, at 61.

charged for a racial exemption was relatively insignificant.<sup>116</sup> It may be that the Crown priced the exemption at a level where the greatest number of desirable *pardos* could afford the fee.<sup>117</sup> Perhaps it reflects either the relative lack of value of the exemption as it was not inheritable (as compared to the grant of nobility (*hidalguía*) which cost 80,000 *reales*)<sup>118</sup> or the fact that the grants may not have held much practical effect.<sup>119</sup> Finally, the low price may suggest that the racial exemption was not viewed as a significant affront to “moral sensibilities.” If the Crown priced its exemptions with symbolic and value-laden reasoning in mind, this might suggest that the racial exemption was not too difficult to swallow.<sup>120</sup> Given the strict racial hierarchy, however, this seems somewhat implausible. Without an inquiry into how the *Gracias al Sacar* were practiced and understood, the meanings that the *Gracias al Sacar* as racial exemptions had for the participants cannot be adequately resolved and an understanding of the system would remain incomplete.

As the following analysis reveals, the contradiction posed by the existence of a fiscal mechanism that allowed individuals to opt out of the perceived natural order of society can be explained by developing a more complex understanding of colonial Venezuelan race practices. Such an explanation takes into account the actual practices and meanings ascribed to those practices by the participants.<sup>121</sup> Attention to the *Gracias al Sacar* as a formal process of

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116. Comparison to other exemptions demonstrates the relatively low cost of the racial exemption. For example, the fee for each privilege of *hidalguía* (nobility) was 80,000 *reales*. *Id.* at 62.

117. This conclusion is bolstered by an analysis of the relative cost to the *pardo*. See *supra* note 55 and accompanying text.

118. 2 CORTES, *supra* note 1, at 62.

119. See *infra* Part II.A for a more complete discussion of this point.

120. A comparison of the fees charged in other contexts suggests this possibility. For example, the fee charged to legitimate a child of single, unwed parents and enable the child to inherit the privileges of nobility was set at 4000 *reales*. Real Cédula de Gracias al Sacar de 10 de febrero de 1795, *supra* note 46, at 62. In contrast, the fee charged for a child born out of wedlock—whose parents were both married to other people—was set at 24,200 *reales*. *Id.*

One might infer from this great discrepancy that the Crown was indicating the enormity of the request where the parents were married to other individuals—suggesting a pricing strategy based, at least in part, on moral justifications. It may be, however, that the Crown was again acknowledging the inability of unwed (therefore younger or less-established) persons to afford such fees in comparison with married persons. If this latter reasoning controlled, then it would appear that the racial exemption was revenue maximizing.

121. This Article implicitly joins the complex and ongoing theoretical debate within the social sciences concerning the relationship between “social structure” and “individual agency.” For rich discussions, see generally JEAN COMAROFF, *BODY OF POWER, SPIRIT OF RESISTANCE* (1985); ANTHONY GIDDENS, *CENTRAL PROBLEMS IN SOCIAL THEORY* (1984). Explicit discussion of this thorny theoretical issue falls well

material exchange and of meaning-making requires us to see the multiple ways racial practices and understandings became embedded within colonial society. Specifically, attention to the *Gracias al Sacar* as it was practiced and understood by its participants reveals the simultaneous tendencies of the *Gracias al Sacar* to ameliorate and to reinforce racial hierarchies within colonial Venezuelan society.

### A. Conflict Through Exchange

The *Gracias al Sacar* provided an instrument through which material and social goods could be contested and exchanged. The monarchy strengthened its system of particularized loyalties through the sale of racial exemptions. Likewise, both *blancos* and *pardos* used the *Gracias al Sacar* to promote their own positions within colonial Venezuelan society. The *Gracias al Sacar* thus simultaneously provided a means of contesting, modifying, and reinforcing the existing social and material hierarchy. Specifically, because particular exemptions were promulgated during a period of extreme political and social unrest, they permitted unique individuals to gain concrete, valuable, material and social goods, although they also closed off access to these same goods for a large portion of Venezuelan society.

#### 1. Ensuring Loyalty

A system of obligations and rewards that flowed directly between the Crown and its subjects sustained the Spanish Empire. The basic premise of the imperial system relied upon the specific relationship of each individual with the King.<sup>122</sup> The underlying

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outside the intentions of this Article. However, I would like to point out that my emphasis on the processes of local activity and meaning-making as the appropriate locus of inquiry derives from a tacit agreement with the research agenda of what has been termed a "constitutive perspective." See generally Alan Hunt, *Foucault's Expulsion of Law: Toward a Retrieval*, 17 L. & SOC. INQUIRY 1 (1992) (describing this perspective and the possibilities for research flowing from this understanding); Susan S. Silbey, *Making a Place for Cultural Analyses of Law*, 17 L. & SOC. INQUIRY 39 (1992) (same); Jonathan Simon, *In Another Kind of Wood: Michel Foucault and Sociolegal Studies*, 17 L. & SOC. INQUIRY 49 (1992) (same).

122. See Bowser, *supra* note 12, at 21. Commentators have suggested that the desire for control manifested itself in the imposition of a comprehensive legal and social code, which sought to conform all aspects of behavior. See *supra* Part I.B.1 (discussing the Spanish colonial legal system); *supra* Part II.A (discussing Spanish social code); see also Bowser, *supra* note 12, at 21 (quoting MÖRNER, *supra* note 16, at 35) ("Spain, like most nations during this period, desired 'to regulate every part of society by means of legislation,' and in the Spanish case such legislation was both casuistic and particularistic, 'a series of administrative decisions arrived at in certain cases and with regard to local jurisdictions.'").

preoccupation of the Crown was a fear that any administrative hierarchy would interfere with the loyalty of its subjects and its control over them. Intervening structures of jurisdictions and corporate forms throughout the Spanish Empire governed the daily interaction of the citizens, but they did not supersede the primary relationship of authority, patronage, and loyalty between the monarch and each individual.

The reciprocal reliance between the monarchy and various social groups fostered social and economic mobility. Indeed, because of the large population of free *pardos* and their economic success, *pardos* were important to the Crown and encouraged the monarchy to foster the same relationship with them as it had with *blancos*.<sup>123</sup> For example, while prohibitions existed against carrying firearms, the King permitted persons of part-African descent (both *moreno* and *pardo* units) to form militias as they provided the King with an essential core of troops.<sup>124</sup> Enlistment into these troops often provided opportunities for *pardos*, and the *pardos* in return could be counted on to be loyal to the monarchy.<sup>125</sup>

The participants in the *Gracias al Sacar* recognized this relationship of mutual reliance. One *pardo* petitioner responded to the Caracas Town Council's unwillingness to honor certain writs:

If the municipal government had presented its function as an institution, it could represent to His Majesty entreating that, in general, no other similar grants be dispensed; but it cannot reclaim the grants of this petitioner or those of other *pardos* of equal merit—since this is the same as bringing ruin to that public, instead of fostering them as it should—and because a considerable part of Caracas is comprised of *pardos* who would be stripped of all hope of exiting from their state, and *this would take from them consequently the strongest motive that would obligate them to be useful, and to work in benefit for the public good and utility*.<sup>126</sup>

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123. See *supra* Part II.A.

124. See MCKINLEY, *supra* note 26, at 117.

125. See *id.*; see also Kirsch, *supra* note 20, at 20–36 (discussing the centrality of military reforms allowing persons of part-African descent to participate in their social advancement).

126. Petición de Diego Mexías Bejarano al Rey. Suplica se digne mandar que despreciando quanto se haya expuesto en el particular por el Ayuntamiento de Caracas sobre la dispensa de la calidad de pardo concedida el exponente, se expida a su favor la Real Cédula o Sobre Carta que se estime mas conveniente, para que la Audiencia de Caracas de cumplimiento y ponga en ejecución la gracias que le esta

Thus, the *Gracias al Sacar* strengthened the position of the monarchy by directly giving certain individuals benefits otherwise beyond their ascribed status. The system of the *Gracias al Sacar* thereby created a specific method that the King could employ to recognize and to remunerate citizens for their faithful service.

This service, however, was not a selfless endeavor. Language of reciprocity and reward pervades the documents. Considering the stated justifications, it appears that the dispensations were granted, at least in part, as *quid pro quo* exchanges. As one petition states, "The petitioner believes that if Justice demands recompense for merit and virtue, there can be no rational reason why the petitioner should be left to live marked [as a *pardo*], when the petitioner has always conducted himself with the greatest honesty and decency."<sup>127</sup> A person who lived virtuously—conducting oneself honestly and decently—could expect to receive compensation under the Spanish colonial system.

The Crown rewarded moral virtue and pecuniary endeavors with equal merit. For example, as the King noted in the Royal Decree dispensing Julián Valenzuela from the quality of *pardo*:

On the part of Julián Valenzuela, neighbor of the city of Antioquia in the Nuevo Reino de Granada, it has been represented, that his ancestors had been qualified as *pardos*, and that he is also defined as such now, but, nevertheless, his *blanco* pigmentation, his actions, education and good customs that have earned him the good treatment and attention of the best class of people in that city should very well remove this mistake that afflicts him in the extreme. Supplicating that in remuneration for the services that he has done with promptness and the generosity with which he has contributed to the fund raisers carried out by his neighbors of that province during the urgency of the two last wars, and being one of the contributors not to be despised, and in light of the annual interest he pays to the Real Hacienda of 500 pesos of gold each year, I deign to absolve him of the quality of *pardo* . . . .<sup>128</sup>

Petitioners described in great detail the services they had rendered to justify the granting of the *Gracias al Sacar*. For example,

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concedida. Madrid, 22 de junio de 1797, in 2 CORTES, *supra* note 1, at 49, 51 (emphasis added) [hereinafter *Petición de Diego Mexías Bejarano al Rey*].

127. *Id.*

128. Real Cédula que dispensa de la calidad de pardo a favor de Julián Valenzuela. Madrid, 5 de julio de 1796, in 2 CORTES, *supra* note 1, at 113; see *infra* note 196 (discussing the use of term "mistake" in this text).

Nicolás Francisco Yañez, Postal Administrator of the City of Coro, solicited the dispensation from the “quality of *pardo*” for his wife Doña María Nicolasa Garces and children and the title of *Don* for himself.<sup>129</sup> In Yañez’s petition, he provides a lengthy and explicit list of the services his family rendered:

[D]uring the insurrection of Coro, as Don Nicolás was absent, his wife helped with powder, shot, and chips of rock found in the area, putting these items together with her own hands and taking them to the Cuartel General for the defense of the city which lacked such help and offering as well what was necessary to the service of the King and giving three rifles, one bayonet, a sword and a saber to various men who were unarmed . . . .<sup>130</sup>

The detail of his wife’s activities seems almost petty, but such recitations of service were effective; the Crown granted Don Nicolás Yañez and his family their exemptions.<sup>131</sup>

The importance of this service to the King cannot be denied. In granting petitions, for example, the King sometimes completely ignored the issue of ancestry if valued service was proven. Thus, despite Julián Valenzuela’s status as the son of *pardos*, his other qualities—generous contributions, education, and manners<sup>132</sup>—made him a worthy candidate for exemption from his racially ascribed status.<sup>133</sup>

129. Relación de la Cámara Sobre la solicitud de Don Nicolás Francisco Yañez 1799, in 2 CORTES, *supra* note 1, at 156. Note that “Yañez” appears also as “Yáñez” and “Yáñez.” I have chosen “Yañez,” as that is the designated spelling within this petition.

130. *Id.* at 157.

131. *Id.* at 158.

132. Real Cédula que dispensa de la calidad de pardo a favor de Julián Valenzuela. Madrid, 5 de julio de 1796, in 2 CORTES, *supra* note 1, at 113. The mix of ascribed and earned attributes implies an understanding of race that is mutable and not permanent, fixed, or essential [hereinafter Real Cédula a favor de Julián Valenzuela]. See *infra* Part II.B.

133. Real Cédula a favor de Julián Valenzuela, *supra* note 132, at 113. It also true, however, that “his White pigmentation” was noted in the Decree. *Id.* This fact highlights the complicated attitudes toward race and color at the time. Venezuelans believed that physical appearance—of which color was the most obvious—helped identify a person’s racial category and also served as a physical reminder of past or present economic status as a slave within colonial society. At the same time, this reliance on color rather than heritage allowed individuals to attain advantages that would otherwise have been unavailable to them. In other words, Julián Valenzuela’s racial heritage could be ignored because of the way he looked.

The personal problems of and opportunities available to individuals whose physical appearance allows a “choice” in racial identity have been recognized in

Moreover, as Yañez's petition suggests, the constant fear of insurrection among the colonial population and need for their renewed loyalty gave special meaning to the relationships between the Crown and its Venezuelan subjects. The immediate demands upon the monarchy to defend against revolutionaries—in Yañez's case, the city of Coro—and other free *negro* and *pardo* uprisings in the Caribbean heightened the already perceived need to retain control through the establishment of individual relationships.<sup>134</sup> The *pardos* were central to the Crown's efforts to maintain loyalty, a reality that reveals the significance of the *Gracias al Sacar* despite their relatively short period of use from 1795 until 1810. Due to the size and economic strength of the *pardo* class, its allegiance could stabilize the monarchy, or, conversely, destroy it by supporting the burgeoning independence movement.<sup>135</sup>

Indeed, the ultimate success of the insurrection was, in part, due to *pardo* and *negro* allegiance to the liberation movement. By 1810, the growing activities of the patriot revolutionary government in Venezuela made many of the racially restrictive laws obsolete as the revolutionaries recognized their increasing dependence on the goodwill of the *pardo* or free *negro* classes.<sup>136</sup> Eventually, the revolutionary government assumed control of Venezuela, and it rewarded free *negros* and *pardos* for their loyalty by accepting them as full citizens within the newly formed independent nation.<sup>137</sup> Considering

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other contexts. See Judy Scales-Trent, *Commonalities: On Being Black and White, Different and the Same*, 2 YALE J.L. & FEMINISM 305 (1990). Although the ambiguous "borders" of racial morphology permit a "slippage" that may not otherwise be permitted between races, revealing the constructed nature of racial identity, most of the time "passing is not an option." Haney-López, *supra* note 7, at 48; see Adrian Piper, *Passing for White, Passing for Black*, 58 TRANSITION 31 (1992).

134. Among many uprisings, the free Blacks of Grenada led an uprising against the French that lasted two years, from 1795 to 1796. Such uprisings, as well as a growing trend toward granting free Blacks civil rights in the British territories during this time, must have had an impact on the Spanish colonies as well. See generally EDWARD L. COX, *FREE COLOREDS IN THE SLAVE SOCIETIES OF ST. KITTS AND GRENADA, 1763-1833* (1984) (describing French and British attitudes toward free Blacks on these islands during this same time period).

In the Royal Decree granting Julián Valenzuela the exemptions he requested, a reference was also made to local uprisings. Specifically, the King spoke of "the urgency of the two last wars." Real Cédula que dispensa de la calidad de pardo a favor de Julián Valenzuela. Madrid, 5 de julio de 1796, in 2 CORTES, *supra* note 1, at 113.

135. See WRIGHT, *supra* note 14, at 26 ("[Pardos] held the balance of power in the colony.").

136. See Kirsch, *supra* note 20, at 90-98.

137. *Id.* Although the free *negros* and *pardos* classes made significant gains in attaining equality during this period, slavery lingered in Venezuela until 1854, when a formal proclamation freed all slaves. See WRIGHT, *supra* note 14, at 31 (citations omitted). The tardy abolition of slavery reflected persistent *blanco* apprehension toward *negros* despite an ever-increasing population of *pardos*. See *id.*



this political strategy of the revolutionary government, the argument that the monarchy had intentionally used the *Gracias al Sacar* to secure the loyalty of influential *pardos* or *negros* does not seem farfetched.<sup>138</sup>

## 2. Securing Patronage

The King was not the sole beneficiary of the Crown's efforts to maintain the loyalty of its subjects. *Blancos* and *pardos* each needed the Crown's support in their efforts to control social and material goods within Venezuelan society. Individuals could increase their status through the *Gracias al Sacar*. Because the Crown issued these exemptions and could force compliance, the *Gracias al Sacar* also served as an arena in which *blancos* and *pardos* sought royal protection for local struggles. Both groups employed the language of service and reward, and the King weighed the parties' contentions in deciding whether to award the exemptions.

Numerous letters sent to the monarchy after the promulgation of the 1795 and 1801 decrees reflect the general opposition to the *Gracias al Sacar* by *blancos* who recognized the role of the petitions in local struggles. The Governor of the Provincia de Maracaibo, Don Juan Ignacio de Armada, protested the publication of some of the chapters of the Royal Decree of 1795, "particularly those that deal with the dispensation from the quality of *pardo*."<sup>139</sup>

Likewise, a large number of local government officials informed the King that they would not enforce or promulgate the *Gracias al Sacar* insofar as they related to race until further orders were sent.<sup>140</sup> These officials claimed that they were denying enforcement to protect the King, the State, and treasury from "grave prejudices."<sup>141</sup> Not surprisingly, however, the *blanco* writers also

138. Further support for this argument is found in the similar suspension of the restrictions placed on free *pardos* and *negros* that developed in colonial Spanish law. The Spanish sought to conciliate these classes by classifying them as "Spaniards" in the Constitution of 1812, although it denied them full enfranchisement as citizens. See MÖRNER, *supra* note 16, 83–84; see also MCKINLEY, *supra* note 26, at 169–74 (discussing royalist and republican attempts to co-opt *pardos*).

139. El Gobernador de la Provincia de Maracaibo sobre el cumplimiento de la Real Cédula comprensiva del Arancel para las Gracias al Sacar. 1795–1796, in 2 CORTES, *supra* note 1, at 67.

140. Acta de 14 de marzo de 1796, in 2 CORTES, *supra* note 1, at 86.

141. They stated:

[F]earing as one should prudently fear the grave prejudices to the Real Erario [Public Treasury] and the fatal results to the State if [the Royal Decree of 1795] is brought into effect in some of its parts, namely those that deal with the dispensation from the quality of *pardos*, and *quinterones* and the granting of the title of *Don* (insofar as such Titles are granted to those persons named earlier [specifically *pardos* and *quinterones*]) it

noted "that no person should wish to serve against their will,"<sup>142</sup> thereby pointing out their value to the Crown as public servants and rehearsing the language of service and reward. The writers of the Act thus cautioned the King that raising *pardos* and others into positions of privilege and empowering them to compete on equal footing with *blancos* would weaken *blanco* loyalty to the King as their position became less exclusive. According to the proponents of the Act, *blancos* were not "willing to suffer the embarrassment" of serving *pardos* and there would "be nobody to serve in public position."<sup>143</sup>

*Blancos* also understood the significant threat that the *pardo* and *negro* populations posed. The Caracas Town Council's letter in 1788 summarized those fears:

Finally, Sir, the abundance of *pardos* that are in this Province, their pride and haughtiness, the drive in them for equality with the *blancos* demands for the highest political reasons that Vuestra Majestad keeps them always in a position of dependency and subordination to the *blancos* as you have up until now: under any other approach they will be insufferable for their pride and in little time will try to dominate those who at the beginning were their masters.<sup>144</sup>

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seems not only convenient, but also obligatory given the force of love professed by this *Ayuntamiento* to the King, and the country, and the jealousy with which one should look at conserving the *Real Erario*, that such considerations be present for the *Presidente* when making a competent report to *Su Majestad* (may God protect him) in fulfillment of the Royal Laws that are ordered and are obeyed, and not carry out those that might threaten prejudice in their execution since they may not have been dispatched if such thought were in mind, so as to excuse and suspend their publication until the King is informed and resolves the matter according to his royal wishes taking into his judgment *the grave dangers and results that one should fear*, we pass testimony in this act . . . petitioning that *Su Majestad* denies the privilege which certain *pardos* presume—to marry with *blancos*, and to be admitted into the sacred orders . . . .

*Id.* at 86–87 (emphasis added).

The claim of "prejudices to the Public Treasury" can be read on two levels. The Treasury would be "sullied" or prejudiced by acceptance of money from non-*blanco* sources. Alternatively, it might be adversely affected or prejudiced by the loss of *blanco* patronage.

142. *Id.* at 87.

143. *Id.*

144. Representación del Cabildo de Caracas al Rey suplicando se digne denegarse a la solicitud de los pardos y mandar se mantengan estos en la misma clase que hasta ahora por los perjuicios que se ocasionaria en caso contrario. Caracas, 13 de octubre

*Blancos* did not fear equality so much as they feared material and social domination by the numerical majority of the Venezuelan population. Such concerns were not without foundation, given the increasing numbers of free *negros* and *pardos* and their achievement of some material and social wealth despite being under stringent legal control by the Crown. Thus, the importance to *blancos* of successful resistance to the *Gracias al Sacar* must be emphasized, because maintaining their status as racially superior was integral to their ability to maintain social and material domination given their numerical minority.<sup>145</sup>

Beyond these generalized complaints, *blancos* protested grants to individual petitioners as well. Institutions that traditionally admitted only *blancos*, such as the Roman Catholic Church,<sup>146</sup> universities,<sup>147</sup> and local governments,<sup>148</sup> also contested particular grants.

The continued *blanco* campaign of resistance to the *Gracias al Sacar* caused *pardos* to remain dependent upon the Crown. *Pardos* often had to seek enforcement of the dispensations in order to receive the benefits they had purchased. The case of Diego Mexiás Bejarano is a good example of this continued reliance. The King granted Diego Mexiás Bejarano a dispensation from the quality of *pardo* on July 12, 1796.<sup>149</sup> However, over a year later, Bejarano filed a second petition, in which he requested that the King send another decree to the *Audiencia*

de 1788, in 2 CORTES, *supra* note 1, 2 CORTES, *supra* note 1, at at 32, 35 [hereinafter Representación del Cabildo de Caracas al Rey].

145. Only 25% of the population was White. See *supra* text accompanying note 15.

146. The Bishop of Caracas opposed the entrance of the children of Diego Bejarano to the priesthood. El Obispo de Caracas representa a V.M. los graves inconvenientes, *supra* note 101.

147. The University of Caracas wrote many times in opposition to the admission of *pardos* into the university. With regard to the petition of Diego Mexiás Bejarano, the University sent at least two separate letters, first in 1803, Informe de la universidad de Caracas sobre los prejuicios, *supra* note 100, and then again in 1805, Representación de la Universidad de Caracas al Rey, in 2 CORTES, *supra* note 1, at 212.

148. In 1788 the *Cabildo de Caracas* (Caracas Town Council) wrote two letters—one stating general opposition to the granting of *Gracias al Sacar*, Representación del Cabildo de Caracas al Rey, *supra* note 144, at 32, and another specifically protesting the “pretenses of the *pardos* Bejarano,” Representación del Cabildo de Caracas al Rey suplicando se sirva denegarse a las pretensiones de los pardos Bejarano ordenando se mantengan en la clase que hasta ahora sin embargo de cualquier informe que a favor de ellos hubiese hecho la Real Audiencia y mandar que se le comunique al Síndico la vista del expediente para promover las justificaciones y documentos que hagan ver la justicia con que ese concejo se opone a semejante pretensión. Caracas, 8 de junio de 1789, in 2 CORTES, *supra* note 1, at 36.

149. Real Cédula por la cual se dispensa de la calidad de pardo a Diego Mexiás Bejarano vecino de Caracas. Madrid 12 de julio de 1796, in 2 CORTES, *supra* note 1, at 42.

de Caracas to mandate that the *Audiencia* "fulfill and put into execution the *Gracia* that was already conceded."<sup>150</sup>

Moreover, because in practice each exemption was valid only for the particular person for whom they had been granted, and were not transferable or inheritable, family members had no other recourse but to re-petition for new exemptions.<sup>151</sup> Thus, Diego Mexías Bejarano, after struggling to achieve and implement his own exemption, petitioned the Crown again in 1803 for his children, particularly his son Lorenzo, to receive the same exemption to enter the University of Caracas.<sup>152</sup> This struggle to enforce compliance by the University of Caracas,<sup>153</sup> the *Audiencia de Caracas*,<sup>154</sup> and the Archbishop of Caracas lasted over three years.<sup>155</sup>

The *Gracias al Sacar*, therefore, can be understood as an instrument used by different segments of Venezuelan society—*blancos* and *pardos* alike—in their relationships with the monarchy. Each group marshalled its resources and attempted to use or resist the *Gracias al Sacar* according to its own interests. In this sense, the *Gracias al Sacar* were ameliorative. They gave *pardos* access to the benefits of society and, more important, a legitimate and nonviolent way to defend and expand their material and social positions.

At the same time, however, the *Gracias al Sacar* established, legitimized, and reproduced the material inequities they facially sought to alleviate. They reified the material stratification of society, which was based on biologically determined racial categories as the natural

150. Petición de Diego Mexías Bejarano al Rey, *supra* note 126, at 49.

151. Although no formal rule limited the scope of the exemptions, continued *blanco* opposition circumscribed their effect. As discussed previously, *see supra* Part I.A.2, writs were drafted granting exemptions to petitioners and their descendants, but, in practice, were not recognized beyond the petitioner.

152. Expediente sobre la oposición por la Universidad a admitir a cursar Filosofía a Lorenzo Mejías [sic] Bejarano, hijo de Diego, a quien se dispensó la calidad de pardo. Caracas, 1803–1805, in 2 CORTES, *supra* note 1, at 182.

153. A Royal Decree was granted on February 22, 1805 to the University of Caracas to admit Lorenzo Bejarano for the study of philosophy. Real Cédula para que la Universidad de Caracas admita a estudiar Filosofía y demás Facultades a Lorenzo Mexías Bejarano, hijo de Diego, dispensando de la calidad de pardo con la prevención que se expresa. Consejo de 22 de febrero de 1805, in 2 CORTES, *supra* note 1, at 222.

154. A Royal Decree was directed to the *Audiencia de Caracas* informing it of the "Royal will" on February 22, 1805. Real Cédula para la Audiencia de Caracas sobre lo resuelto acerca de no haber admitido aquella Universidad a estudiar Filosofía en ella y demás facultades a Lorenzo Mexías Bejarano, hijo de Diego a quien está dispensada la calidad de pardo. 1805, in 2 CORTES, *supra* note 1, at 219.

155. A Royal Decree to the *Arzobispo de Caracas* sought enforcement of the royal decision in favor of Lorenzo Bejarano. Real Cedula para el Arzobispo de Caracas participándole lo resuelto en favor de Diego Mexías Bejarano y demás, a quienes está dispensada la calidad de pardo y otras gracias, a fin de que por su parte cumpla con estas reales determinaciones. Consejo de 22 de febrero de 1805, in 2 CORTES, *supra* note 1, at 223.

state of affairs. The *Gracias al Sacar* perpetuated the existing racially stratified system by allowing select exemptions instead of abolishing all racial restrictions.<sup>156</sup> Even a cursory glance at the petitions reveals that the *Gracias al Sacar* “advanced to Whiteness” only an insignificant number of *pardos*:

Not only did the overwhelming majority of men of color lack the fees required, but the evidence . . . tends to show a rather careful sifting process by which only individuals who by occupation, social position, or blood had already reached the periphery of *blanco* status were able to take advantage of the system.<sup>157</sup>

In addition to being already numerically insignificant, many *pardos* were already at the periphery of the class they sought to enter. Indeed, by wholly excluding *negros* from participation in the scheme, the *Gracias al Sacar* foreclosed the possibility of advancement for the lowest social classes. By co-opting the *pardo* classes and excluding *negros* from participation, the ruling classes manipulated the subordinated classes through mechanisms such as the *Gracias al Sacar*.<sup>158</sup>

Moreover, the *Gracias al Sacar* had limited potential to effectuate change. The Crown obviously could not grant a biological change nor could the *Gracias* transform social stature, because the

156. A similar critique has been made of affirmative action. Critics charge that affirmative action, as it is currently practiced, “supplements an underlying framework of selection that is implicitly arbitrary and exclusionary. It does not challenge the overall operation of a conventional and static selection process; instead it creates exceptions to that process.” Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 956 (1996).

157. King, *supra* note 54, at 644.

158. Douglas Hay provides a similar example, specifically of the English ruling class’ ability to organize its power in the state. See Douglas Hay, *Property, Authority and the Criminal Law*, in ALBION’S FATAL TREE: CRIME AND SOCIETY IN EIGHTEENTH-CENTURY ENGLAND 17 (Douglas Hay et al. eds., 1975) (discussing the concurrent growth of the use of pardons and passage of death penalty legislation as a means for the ruling class to gain legitimacy and maintain power). My analysis of the *Gracias al Sacar* suggests that Hay’s model, which concludes that the system was merely a sophisticated means for oppression, ultimately may be too simplistic.

For a more complex model explaining contradictory impulses within a given regime, see generally Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 STAN. L. REV. 335 (1989). Pauper exclusions were adopted within constitutions that otherwise established suffrage as “a self-contained scheme of understandings about the proper order of the polity which developed at a particular moment in American history, in response to the deepest dilemmas facing American political culture in the decades after the Revolution.” *Id.* at 337. Thus, the exclusions rested on and accommodated contradictory premises about self-governance and property. The most satisfying analysis of the *Gracias al Sacar* depends upon this type of explanatory model that recognizes the variety of goals that can be manifested within a single practice.

petitioners' new status as *blancos* remained insecure and uninheritable. As such, the *Gracias al Sacar* did not, and could not, sell full entrance into the upper classes—they merely provided a release from one's own class.<sup>159</sup>

Furthermore, it is unlikely that the successful petitioners gained a substantial degree of upward social mobility as a result of their *Gracias*.<sup>160</sup> It has been suggested that, at best, what was being purchased was not movement from the upper strata of the *pardo* class to a commensurate position within the hierarchy, but a movement to the lowest common denominator. Herbert Klein writes that "[e]ven for those who obtained the skills, education and capital needed to rise above the working class, they found that mobility was not as open to them as to the poor Whites."<sup>161</sup>

The gain, therefore, could be perceived as illusory for two reasons. First, the possibility of movement was restricted to the lower classes of *blanco* society. Second, the status and entitlements granted by the *Gracias al Sacar* were already shared by certain *pardos* from the levels of *quinterones* and above. These *pardos* had the outward physical appearance of many *blancos*, and they held sufficient material wealth to have purchased much of the education—both religious and secular—available to the general class of *blancos*. Thus, for practical purposes, they looked and acted the part.<sup>162</sup>

A closer examination of the *Gracias al Sacar* as a political instrument reveals its complexity. At the same time that it provided some relief to certain individuals and became an avenue of advancement for

159. Even the sale of the title of *Don* might have proven to be meaningless. As one French observer in Venezuela noted, "the only difference such a document had made in the lives of one mulatto family was that the ladies now dared to wear a mantilla in church, a privilege which the sumptuary laws reserved for whites." Bowser, *supra* note 12, at 46 (citing 1 FRANCOIS DEPONS, VIAJE A LA PARTE ORIENTAL DE TIERRA FIRME EN LA AMERICA MERIDIONAL, 120–21 (1960)).

160. Drawing definite conclusions concerning the actual extent to which the *Gracias al Sacar* provided tangible relief is beyond the scope of this Article, as it is limited by the available documentation. Writs may have granted petitioners entrance into universities, but no evidence exists regarding their mobility and acceptance within those institutions.

161. HERBERT S. KLEIN, AFRICAN SLAVERY IN LATIN AMERICA AND THE CARIBBEAN 267–68 (1986).

162. Indeed, it might even have been unwise for *pardos* in this situation to draw closer attention to their genealogy by petitioning for *Gracias al Sacar* when they could have simply assumed the roles of *blancos*. Cf. Harris, *supra* note 11, 1710–14 (describing her grandmother's choice to "pass" and the psychological costs associated with that decision). For a discussion of the complications associated with passing, see *supra* note 133 and accompanying text and *infra* notes 210, 211, and accompanying text. Passing solidifies the racial hierarchy by reinforcing that the status passed into is superior and more desirable than that passed out of by the individual. See ROEDIGER, *supra* note 26.

*pardos*,<sup>163</sup> it effectively foreclosed the possibility of further progress by the generalized class of *pardos* and by all *negros*. It must be stressed, then, that the *Gracias al Sacar* were not a uniform and comprehensive system. It would be too simple to view the *Gracias al Sacar* as merely part of an imperial or *blanco* hegemonic plan to remain in control, especially because the *Gracias* were promulgated when the Spanish Empire was crumbling and the Venezuelan revolutionary government was recognizing the centrality of the free *negro* and *pardo* communities to success.<sup>164</sup> Likewise, where the scope and effects of the *Gracias al Sacar* were limited, it would be too simple to argue that the *Gracias al Sacar* provided a completely effective means for social and material advancement for *pardos*. Rather, the intricate relationships, interactions, and machinations of *blancos*, *pardos*, and even the monarchy itself resulted in an ongoing struggle over material and social goods in colonial Venezuela.<sup>165</sup>

### B. Contested Significance of Race

Concomitant with the maneuverings of different social groups within colonial Venezuela for material benefits, there was a similar and related conflict for control over the cultural and social understandings and meanings of race and merit. This section thus recognizes and begins with the ideological function of the *Gracias al*

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163. The case of José Ponseano de Ayarza is a good example because he was, in fact, allowed to attain higher education through the *Gracias al Sacar*. See Duvon Corbitt, *The Case of José Ponseano de Ayarza: A Document on the Negro in Higher Education*, *HISPANIC AM. HIST. REV.* 24 (1944).

164. The struggle to win the loyalty of different social groups was an underlying issue throughout this period. The continued creation of new political and social structures persisted as a central concern for the revolutionary government. See MORÓN, *supra* note 26, at 128. One problem faced by the burgeoning government was that where Spain had centralized governmental functions in Caracas, it had done so under the authority that each locality had ceded to the Imperial government. *Id.* When the strength of Spain was no longer as evident, each locality again believed itself fully capable of choosing its own destiny. *Id.* Not only did the revolutionaries eventually recognize the importance of the free *negro* and *pardo* population to their cause, but the elite intellectual circles of Venezuela also had to coalesce with the interests of the *blanco* middle class. Thus, some commentators have asserted that the war for independence was, at the same time, a civil war in which Venezuelans of all classes participated equally on both sides. See Federico Brito Figueroa, *La Emancipación Nacional y la Guerra de Clases y Castas*, 79 *ACTA HIST.* 45 (1985).

165. In this way the *Gracias al Sacar* also reveal law as a "struggle." A recent anthology of anthropological scholarship focuses on the invocation of the law within the social world, demonstrating individual capacity to rework the content, meaning, and processes of law. *CONTESTED STATES* (Mindie Lazarus-Black & Susan Hirsch eds., 1994) (investigating the ways in which law may serve those who contest its authority as well as those who wield it).

*Sacar*.<sup>166</sup> The capacity to challenge dominant discourses is closely tied to the material and social struggles outlined in the previous section. Not only are material and social resources relevant to one's ability to make ideological challenges, but the struggles over meaning are often a part of, or are reflected in, the processes of material and social struggle.<sup>167</sup> Despite the close interrelatedness of these processes, they are, nevertheless, independent.<sup>168</sup> Just as *blancos*, the monarchy, and *pardos* used the *Gracias al Sacar* to achieve their material goals, they also used the *Gracias al Sacar* as a mechanism through which grievances and issues could be contested, articulated and, thus, either taken into account and legitimized or ignored and rejected.

The ideological discourse in colonial Venezuela reflected the conflicting and sometimes contradictory impulses and attitudes that the Spanish held concerning race relations within their society. Members of colonial society held a deeply rooted and general belief in the overall equality of all citizens and a desire to assimilate different peoples into Spanish society. At the same time, Spanish society was rigidly stratified and viewed the non-Spanish, particularly those with African ancestry, as inferior and subordinate. The language found in the *Gracias al Sacar* reflected these opposing tendencies

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166. I draw from Ewick's and Silbey's use of the term ideological to be any struggle "to the extent in which it 'involves an effort to control the cultural terms in which the world is ordered and within it, power legitimized.'" Patricia Ewick & Susan Silbey, *Subversive Stories/Hegemonic Tales: Toward a Sociology of Narrative*, 29 L. & SOC'Y REV. 197, 212 n.10 (1995) (citing JEAN COMAROFF & JOHN COMAROFF, OF REVELATION AND REVOLUTION 24 (1991)). In other words, the ideological is "that part of the meaning system that does not go without saying." *Id.*

167. See Nancy Leys Stepan & Sander L. Gilman, *Appropriating the Idioms of Science*, in THE BOUNDS OF RACE, *supra* note 8, at 72, 75 (describing minority group responses and resistance to claims of scientific racism in concluding that these strategies were closely tied to the resources and circumstances of each group or individual).

168. The complex debate about the ways that the ideological and material aspects of the social world interact and impact upon each other is outside the scope of this Article. For a discussion of these issues, see generally PIERRE BOURDIEU, *OUTLINE OF A THEORY OF PRACTICE* (1977); ANTHONY GIDDENS, *SOCIOLOGY: A BRIEF BUT CRITICAL INTRODUCTION* (2d ed. 1987); STEVEN LUKES, *POWER: A RADICAL VIEW* (1974). For discussions within the law, see Isaac D. Balbus, *Commodity Form and Legal Form: An Essay on the "Relative Autonomy" of the Law*, 11 LAW & SOC'Y REV. 571 (1977); Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 1 (1984). Two recent analyses illuminate the intertwined and complicated nature of social action, and thus, our descriptions of the phenomena. See Guyora Binder, *What's Left?*, 69 TEX. L. REV. 1985, 2002-08 (1991) (demonstrating that even Marxian conceptions depend on culturally contingent preferences); Patricia Ewick & Susan S. Silbey, *Conformity, Contestation, and Resistance: An Account of Legal Consciousness*, 26 NEW ENG. L. REV. 731 (1992) (describing how legal consciousness is formed within and changed by social action). It is sufficient to say for the purposes of my analysis that I believe the benefits of drawing this analytical distinction outweigh the possible distortion caused by dividing social action into these two components.



and shows the importance of the role of the *Gracias al Sacar* as an ideology—it served both as a forum for the concerns of the disadvantaged and as a faithful protector of the social order of the privileged.

Colonial Spanish society perceived biologically derived racial differences and passed laws to restrict and differentiate between persons solely on the basis of race.<sup>169</sup> At the same time, the Spanish believed in the inherent equality of all persons. As early as the thirteenth century, Alfonso the Wise set out this understanding in his *Siete Partidas*, which, as discussed previously,<sup>170</sup> served as theoretical and ideal guidelines for much of Spanish law, especially Spanish laws concerning slavery.<sup>171</sup> He stated that, given the inherent equality of all persons, slavery must be considered “an agreement”<sup>172</sup> against “natural reason”<sup>173</sup>—a temporary institution that must “lead to freedom.”<sup>174</sup>

The persistence of slavery within the Spanish Empire contradicts such egalitarian principles and suggests that they were not of great importance. The general Spanish tendency toward assimilation, however, supports these egalitarian foundations. The Spanish Empire required all citizens or potential citizens to speak Spanish and receive indoctrination in Christian morals and manners.<sup>175</sup> While such instruction was a method of domination, it nevertheless explicitly provided for the incorporation and assimilation of outsiders into Iberian culture.<sup>176</sup> The implantation of Hispanic culture and control was, as in other parts of Spanish America, part and parcel of Venezuela’s integration within the colonial system.

The language used in some of the petitions sustains this egalitarian world view. For example, Don Juan Germán Roscio wrote a

169. See *supra* Part I.A.

170. See *supra* notes 71–73 and accompanying text.

171. LAS SIETE PARTIDAS, *supra* note 71.

172. 3 *id.* at 116–17.

173. *Id.* at 30.

174. 2 *id.* at 419–20.

175. New arrivals in the Spanish Empire “had to abide by the conquerors’ proposal to have them ‘speaking Spanish within six months.’” José Piedra, *Literary Whiteness and Afro-Hispanic Difference*, in *THE BOUNDS OF RACE*, *supra* note 8, at 278, 283 n.9 (citing 1 COLECCIÓN DE DOCUMENTOS PARA LA HISTORIA DE LA FORMACIÓN SOCIAL DE HISPANOAMERICA, 1493–1810, at 237–40 (Richard Konetzke ed., 1953)).

176. Some analysts of Spain’s process of colonialization have noted that the element of acculturation was central to its program of conquest. “The Spanish Empire used textual participation both as justification and vehicle for its abuses and as enticement for the abused.” *Id.* at 283.

Furthermore, this perspective has led some commentators to suggest that enslavement under the Spanish regime was a harsh form of cultural apprenticeship. “Slaves came to deserve a legitimate place in society as their behavior conformed to certain ‘inherited’ rights as potential citizens.” *Id.* at 282. The right to citizenship—and freedom—was therefore a natural progression within this system of acculturation from the slave period of citizen apprenticeship.

lengthy letter in support of his petition to enter the *Colegio de Abogados* (College of Lawyers).<sup>177</sup> His letter affirmed natural equality:

Men are born *all equal, and are equally noble, since they are made out of the same substance, and made in the image and likeness of God. And even when faced with the necessity of their conservation and they are obliged to live in societies in which they lose something of their primitive liberty, never was their original nobility curtailed or destroyed except by personal vileness and defectiveness, which left a disagreeable impression in the public opinion for the harms they have caused and the degradation of their honor, but always the material and the spirit as it relates to the person remained the same as it was before.*<sup>178</sup>

Roscio further argued that organized social life is premised on ideas of virtue and talent—not race. According to Roscio, society was formed and stratified in three parts:

And when tired of living an irrational and barbarous life they resolved to live in a monarchy or a republic, they chose a government between ones and others *not by who was the most White, nor who was the most beautiful, nor the most dark complexioned, or the most fair, but between those that were most talented and virtuous; indeed, from common sentiment of these nations, and in the honest natural light, it must be said that the esteem and reputation of the men endowed with these characteristics [of virtue and talent] are the most noble and excellent. Then, in second place, came those who by their employment alone were placed, on the basis of their fortune and not their merit, in a situation of respect and honor. And finally, in the third and last place were those who not for their own virtue, nor for their work, but only for having been descendants of those others deserve some consideration or extrinsic denomination.*<sup>179</sup>

Roscio then examined the legal precedents in Spanish law that stood for the idea of “equality and fraternal confederation.”<sup>180</sup> Taking

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177. Representación de Don Juan Germán Roscio a los señores Decano y Oficiales del Ilustre Colegio de Abogados de Caracas sobre a su Limpieza de Sangre para ser incorporado en ese cuerpo. Caracas, 11 de septiembre de 1798, in 2 CORTES, *supra* note 1, at 129 [hereinafter Representación de Don Juan Germán Roscio].

178. *Id.* at 129–30.

179. *Id.* at 130.

180. *Id.* at 131.

examples from the Bible, Roscio further developed the idea that the humility of one's origins should not impede consideration as a valued and esteemed person.<sup>181</sup> By reciting the traditional ideals of equality, writers such as Don Juan Germán Roscio legitimized and strengthened these viewpoints in society, opening avenues of discourse for others in subordinate positions.<sup>182</sup> Indeed, by co-opting the egalitarian rhetoric that was one foundation of Iberian domination, the accounts demanded that elites take their own discourse seriously and provided a particularly pointed rationale for inclusion.<sup>183</sup>

Moreover, the mere fact that *pardos* spoke frankly and explicitly about their desire to gain the rights and opportunities denied to them transformed the *Gracias al Sacar* into an important forum for social equality and advancement of the lower classes. American legal scholars have identified the fundamental importance of silence

181. He details the story of Joseph in Egypt saying, "José was a poor man and a slave; but the Pharaoh was not stopped by this from elevating him to the dignity of becoming the Virrey of Egypt only on the basis of his capacity and utility to the Throne. . . . *This is called knowing truly the merit of man.*" *Id.* at 147-48.

182. Roscio's petition is particularly interesting because he became an important patriot leader in the revolutionary movement in Venezuela. See Kirsch, *supra* note 20, at 82-84. His petition is, therefore, also significant in that it shows that the egalitarian ideology that suffused Venezuelan revolutionary discourse may have drawn upon more traditional or longstanding sources of colonial thought and ideals. This reliance stands in contrast to the dependence on modern enlightenment theories in revolutionary rhetoric elsewhere.

The extent to which egalitarian ideals can be attributed to the Enlightenment is beyond the scope of this Article and is the source of tremendous debate. See THE IBERO-AMERICAN ENLIGHTENMENT (A. Owen Aldridge ed., 1971) (questioning the significance of enlightenment discourse to the political reforms within Latin America); see also Charles C. Griffin, *The Enlightenment and Latin American Independence*, in LATIN AMERICA AND THE ENLIGHTENMENT (Arthur Whitaker ed., 1961) (noting the variety of ways in which the Enlightenment influenced the independence movements, but stressing that its influence could not be stated as an easy causal relationship). It is plausible, however, to hypothesize that Enlightenment ideologies influenced—although they did not singularly cause—the movement toward independence in Venezuela. See *id.*

183. James Scott notes that taking the ruling class discourse seriously and using its basis for legitimation as the starting point for one's critique is a powerful weapon. See JAMES C. SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE* 106 (1990). Scott contends that critiques from "within" the dominant ideology—those that take its own rhetoric seriously—are *per se* legitimate critiques and may influence sincere members of the elite in a way that an attack from outside their values may not. *Id.* Scott therefore concludes that contrary to popular belief, radicalism is less likely to arise where the dominant ideology is *not* taken seriously. *Id.*; see also Alan Hunt, *Rights and Social Movements: Counter-Hegemonic Strategies*, 17 J.L. & SOC'Y 309, 313 (1990).

This study of the *Gracias al Sacar* suggests that one must ask whether Audre Lorde was correct in stating that "*the master's tools will never dismantle the master's house.*" Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in THIS BRIDGE CALLED MY BACK: WRITINGS BY WOMEN OF COLOR 98, 99 (Cherríe Moraga and Gloria Anzaldúa eds., 1981).

in perpetuating discrimination and subordination.<sup>184</sup> As we have seen, *pardos* resisted their material and social subordination by articulating the contours of their predicament as victims of an arbitrary racial hierarchy in which their service and contribution otherwise merited reward.<sup>185</sup>

Further, the sense of empowerment derived from the ability to articulate one's own self-definition should not be underestimated.<sup>186</sup> Sociologists have explained that individual "consciousness of the structures of power and an experience of its openings and lapses may be a necessary, if not sufficient, precursor of political mobilization."<sup>187</sup> The ability, even at an individual level, to see, to define, and to describe a situation as "problematic" is central to creating an opening for the possibility of collective change or action.<sup>188</sup>

The *Gracias al Sacar* also provided a forum wherein *pardos* could challenge directly the foundations and validity of the colonial system of racial stratification. One petitioner outlined the absurdity

184. For example, Stephanie Wildman and Adrienne Davis contend with reason:

Complex, difficult situations that are in reality discrimination cannot be adequately described using ordinary language, because that language masks privilege. Language masks privilege by making bases of subordination themselves appear linguistically neutral, so that the cultural hierarchy implicit in words such as race, gender, and sexual orientation is banished from the language. Once the hierarchy is made visible the problems remain no less complex, but it becomes possible to discuss them in more a revealing and useful fashion.

Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, in *CRITICAL RACE THEORY* 573, 578 (Richard Delgado ed., 1995); cf. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1978) (discussing creation of new disciplinary techniques, such as the use of surveillance and control of bodies, to police social norms).

185. See *supra* Part III.A.

186. See Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 *HARV. C.R.-C.L. L. REV.* 40-44 (1989). Upon defining Black women as a discrete group, Scales-Trent notes:

Naming oneself, defining oneself and thereby taking the power to define out of the hands of those who wield that power over you, is an important act of empowerment. The "first power of the weak" is the "refusal to accept the definition of one that is put forth by the powerful." . . . The act of self-definition thus makes clear our worth and entitlement, and sets forth our view of ourselves as one which will have to be reckoned with.

*Id.* at 43 (citations omitted).

187. EWICK & SILBEY, *supra* note 5, at 253.

188. *Id.*; see also JOSÉPH R. GUSFIELD, *THE CULTURE OF PUBLIC PROBLEMS: DRINKING-DRIVING AND THE SYMBOLIC ORDER* 1-27 (1981) (examining the issue of drinking and how situations become understood as public problems).

of the detailed stratification of *pardos* where all *blancos* were treated equally.<sup>189</sup>

Another thing is that while the Laws talk about *negros*, *zambos*, *mulatos*, they always counterpoise the *blancos*. . . . When the law is applied or written for *blancos* they are understood to be the same whether you speak of *indios* or *mestizos* under this denomination, so long as excluded from this group are *negros*, *mulatos* and other lower castes. . . . Following common estimation, to be White does not consist primarily in having to represent whiteness in all of its perfection or mediocrity, but to be the son or the descendent of Whites.<sup>190</sup>

*Pardos* used the *Gracias al Sacar* to illuminate the inconsistencies and contradictions of Venezuelan race practice, thereby exposing its artificiality and questioning the legitimacy of the system. This technique has become a formidable tool in American scholarship.<sup>191</sup>

Furthermore, as I have described earlier, the *Gracias al Sacar* permitted the development of an alternative line of discourse based on service and reward.<sup>192</sup> By asserting individual merit as the appropriate discourse for social and material advancement, and by the King's acceptance of these arguments, as demonstrated by granting these exemptions and the justifications given, normally subordinate

189. Representación de Don Juan Germán Roscio, *supra* note 177, at 129.

Similarly, with respect to the United States, recent critiques seek to problematize the notion of Whiteness within race discourse. See, e.g., OFF WHITE: READINGS ON RACE, POWER, AND SOCIETY (Michelle Fine et al. eds., 1997); Calmore, *supra* note 7; Haney-López, *supra* note 7, at 61; Christine E. Sleeter, *White Silence, White Solidarity*, in RACE TRAITOR 257 (Noel Ignatiev & John Garvey eds., 1996).

190. Representación de Don Juan Germán Roscio, *supra* note 177, at 137.

191. Much attention has been given to a "critical" agenda in both law and the social sciences that has generated varied and explosive literature. For a selection of social science writing in this vein, see, for example, BRIAN FAY, CRITICAL SOCIAL SCIENCE: LIBERATION AND ITS LIMITS (1987); MAX HORKHEIMER, CRITICAL THEORY: SELECTED ESSAYS (Matthew J. O'Connell et al. trans., 1972) (1968); see also Susan Silbey, *Loyalty and Betrayal: Cotterrell's Discovery and Reproduction of Legal Ideology*, 16 LAW & SOC. INQUIRY 809 (1991) (describing the difficulties in critical scholarship and useful citations to socio-legal literature). For an overview of Critical Legal Studies see, for example, MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987), and CRITICAL LEGAL STUDIES (Peter Fitzpatrick & Alan Hunt eds., 1987). For an introduction to Critical Race Theory, see CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberle Crenshaw et al. eds., 1995) and CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado ed., 1995). Lastly, for an overview of Critical Feminist Theory, see CATHERINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987); FEMINIST STUDIES/CRITICAL STUDIES (Teresa de Lauretis ed., 1986); ELIZABETH SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT (1988).

192. See *supra* Part III.A.

persons could articulate their interests in a new and different way. Within the *Gracias al Sacar*, social status and the concept of race itself became perceived as mutable rather than fixed and essential. The mere fact that a price could be set for the purchase of one's racial category revealed that one could actually purchase race and its related entitlements, thereby undermining the perception of race as an ascribed and immutable trait. Additionally, the discourse developed by petitioners and accepted by the King recognized that one's status was not fixed by one's ancestry, but could be determined by education, wealth, virtue, and civic contributions. *Pardos* therefore were able to reformulate the discourse of the distribution of material and social goods, setting aside, at least to some degree, traditional race-based hierarchies.

While the *Gracias al Sacar* reveal a tendency to incorporate and affirm viewpoints that contradicted the social hierarchy of colonial Venezuela at the time, they also reflect less ameliorative tendencies. Indeed, language in the documents supports a contrary understanding of the *Gracias al Sacar* as an exclusionary mechanism. The *Gracias al Sacar* not only curtailed access to material and social benefits for the majority of *pardos* and for all *negros*, but they also created and reinforced images of these classes as subordinate, thereby reproducing the existing relations of power and inequity. The dual capacity of actions as ideological struggles, on the one hand, to strengthen and reproduce the forms of oppression and, on the other, to subvert, defy, or transform these relationships has been recognized by sociologists in other contexts.<sup>193</sup>

Even a casual glance at the documents of the *Gracias al Sacar* reveals how deeply Venezuelan society believed that divisions between levels of racial mixture necessarily carried a notion of caste and stratification. The King made the following statement in his dispensation to Diego Mexiás Bejarano and his family:

[T]hrough their solicitation [the petitioners have] presented evidence of their piousness and esteem, their virtue, and *their desire that their sad and inferior quality* not be taken as an obstacle to their use, treatment, socialization and dress in a fashion similar to the rest of society, thus concluding by begging me to deign to free them from the quality of their color as *pardos* . . . .<sup>194</sup>

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193. See Ewick & Silbey, *supra* note 166 (outlining a sociology of narrative that specifies instances when narrative can be either a "hegemonic tale" or "subversive story").

194. Real Cédula por la cual se dispensa de la calidad de pardo a Diego Mexiás Bejarano vecino de Caracas. Madrid 12 de julio de 1796, *supra* note 149, at 43.

Though acting in an ameliorative fashion, the King nevertheless reiterated the subordinated position of *pardos* as “sad and inferior,” a status from which one would need to be “free[d].”<sup>195</sup> It is not surprising that individuals understood the status of being a *pardo* as a “mistake that afflicts [the *pardo*] in the extreme.”<sup>196</sup>

Moreover, throughout the *Gracias al Sacar*, accounts of the common understanding of *pardos* and the generalized Spanish experience affirmed taken-for-granted understandings of racial hierarchy.<sup>197</sup> Those who opposed the writs reiterated degrading stereotypes of *pardos* and *negros* against a common backdrop of experience, tradition, and understanding. As one university official stated:

[I]t is well known that among [*pardos*] there are many men of religious integrity and moderate customs, but the generality with which the common masses of *pardos* are corrupted by the many delinquents which produce this disgraceful fecundity marked with the sign of slavery has left a strong impression on the spirit of the Spaniards and has indelibly engraved on their hearts the public opinion of the lowliness of their origin and conduct . . . .<sup>198</sup>

Even the petitioners' use of language legitimized the racial stratification of Venezuelan society in at least three ways. First, petitioners had no choice but to support the stratification system by acquiescing to genealogy as the appropriate means of self-identification. Second, petitioners tried to distance themselves from physical attributes and racial types that were deemed unacceptable by the colonial system, thereby affirming their own degraded and

195. *Id.* This case supports my underlying orientation that treats the material and ideological processes separately. Here, analyses of the material and ideological outcomes lead to contrary conclusions.

196. Informe que el Ayuntamiento de Caracas hace al Rey de España referente a la Real Cédula de 10 de febrero de 1795. Caracas 28 de noviembre de 1796, in 2 CORTES, *supra* note 1, at 103. Interestingly, the use of the word *mistake* can be read in an ameliorative fashion as well. Perhaps rather than interpret the word *mistake* to mean a “mistake of nature” in allowing a person with such attributes to be born as a *pardo*, it signified that the person was erroneously classified as a *pardo* (or category within this scheme) although the person was actually a *blanco*. Such a reading would contradict other mechanisms of the *Gracias al Sacar*. If, in fact, the classification was erroneous, then the correction should apply to his or her descendants. However, racial exemptions of the *Gracias al Sacar* were uninheritable.

197. See, e.g., Informe de la Universidad de Caracas sobre los perjuicios que pueden seguirse de permitir que los hijos de Diego Mexias y otros se reciban en los estudios generales de ella, dispensándole para el efecto la calidad de pardo. Caracas, 6 de octubre de 1803, in CORTES, *supra* note 1, at 188, 190.

198. *Id.* at 190–91.

subordinate position. Finally, through their attempt to distance themselves, petitioners actually elaborated with even more detail the racial stratification and hierarchy.

Obviously, for petitioners to receive an exemption, they were required to define themselves within one group and request an exemption to allow inclusion within another. This self-definition undermined the effectiveness of the *Gracias al Sacar* as an ameliorative mechanism by requiring that petitioners conform a priori to the system.<sup>199</sup> The necessary reference to racial categories and discussion of the appropriateness of the categories to each petitioner assumed that these distinctions could and should be made.

Additionally, petitioners tried to distance themselves from their *negro* heritage. Petitioners spoke of "rehabilitating themselves from the defect of their ancestry"<sup>200</sup> and attempted to make as tenuous as possible their ties to African descent. One supporter of Mexías stated:

[I]n sum, the said Diego Mexías, is of course from free *pardos* with the attendant circumstance that neither him, nor his parents, nor his grandparents were neophytes to this country. Rather those earliest ancestors of his who were of the condition of being negros and slaves, taken from the savagery of the country of their birth and converted to our faith, those ancestors are now removed by more than four generations with respect to Diego Lázaro, who wishes to rehabilitate himself from this defect . . . .<sup>201</sup>

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199. Legal scholars have commented on this aspect of American law that requires a "cultural conformity as the price of legal recognition." Gary Peller, *Race Consciousness*, 1990 DUKE L.J. 758, 759. For legal claims to be heard, they must be spoken first in a manner recognized by the court as relevant. This structural requirement can lead to the mistranslation of claims as well as the silencing of others. See Gerald Torres & Kathryn Milun, *Translating Yonondio by Precedent and Evidence: The Mashpee Indian Case*, 1990 DUKE L.J. 625 (discussing the inability of the Mashpee to translate their claims into legally relevant evidence, thereby stripping away their capacity to be heard by the law and legitimizing society's ignorance of their situation); see also Elizabeth Mertz, *Legal Loci and Places in the Heart: Community and Identity in Sociolegal Studies*, 28 LAW & SOC'Y REV. 971 (1994).

200. Petición de Jacinto Sánchez Tirado a nombre de Diego Mexías Bejarano. Suplica de V.M. se sirva dispensar al poderdante la calidad de pardo para todos cuantos actos, usos y ocasiones pueda serle óbice, para sí, sus hijos, parientes y sucesores, estando pronto a exhibir en la Tesorería General los 500 reales de vellón. Madrid, 18 febrero de 1976, in 2 CORTES, *supra* note 1, at 41 [hereinafter Petición de Jacinto Sánchez Tirado a nombre de Diego Mexías Bejarano].

201. Certificación de Don José Antonio Cornejo, Caballero de la Orden de Santiago, del Consejo de S.M. su Secretario y Oficial Mayor de la Secretaría de la Nueva España, otorgada a Diego Mexías, vecino de Caracas para que acuda al Obispo de aquella Diócesis solicitar dispensa a un hijo suyo llamado Diego Lorenzo el que



This tactic of attenuating one's proximity to *negro* ancestry reinforced the validity of colonial stratification.<sup>202</sup> Similarly, attempts to approximate Whiteness and arguments based on physical similarity to Whiteness would render the same outcome.<sup>203</sup>

Finally, the *Gracias al Sacar* went far, not only in legitimizing racial stratification, but in delineating more clearly the gradations of racial mixture. At the same time that petitioners were motivated by a concern to diminish, at least legally, any "stain" caused by their ancestry, to do so necessitated the detailed recitation of their lineage. Although petitioners attempted at times to falsify their proximity to slavery, the *Gracias al Sacar*, and the petitioners' pleadings in particular, provide a first-hand account of the rise of a small but influential group of persons from slavery and served to explicitly establish the genealogy of the petitioners. For example, Diego Lorazo's petition identifies his parents as *pardos* and specifies that he is four generations removed from his African ancestry.<sup>204</sup> At least on one level, then, petitioners could be said to have been truly buying into the system. The understanding of race became not trimodal—*blanco*, *pardo* and *negro*—but a continuous stratification based upon each ancestral generation.<sup>205</sup>

pueda ascender al Sagrado Orden de Presbítero, con atención a tener Capellanía y lo demás que expresa, sin necesidad de dirigirse a Roma a impetrar una gracia que puede concederle el enunciado prelado. Madrid, 26 agosto de 1793, in 2 CORTES, *supra* note 1, at 39, 40–41. Notice, again, the conflation of race and economic status in Diego Mexías Bejarano's petition. His earliest ancestors were "*negros* and slaves," a singular "defect" from which he wishes exemption.

202. U.S. race scholars have shown a similar privileging of White as "good" and a related understanding of Black as "bad" within U.S. race discourse. Following the reasoning that to be "good" one could therefore not be Black has led non-White racial groups in the United States to attempt to approximate Whiteness. PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 115–16 (1991); Harris, *supra* note 11 (positing that the development of a perception of White racial identity as a property right has barred effective change of U.S. racial stratification).

A particularly pointed example of the consequences of this reasoning can be seen in the United States naturalization cases. Following legislation permitting only White persons to naturalize, the courts adjudicated a series of cases brought by plaintiffs from different countries to determine whether they were, in fact, White. The tortured and changing reasoning of the decisions reflects the absurd results and the seriousness that this arbitrary line drawing created in its contestation. See IAN HANEY-LÓPEZ, *WHITE BY LAW* (1996); Estelle Lau, *Naturalizing Race: An Analysis of U.S. Citizenship Law from 1790–1952* (unpublished manuscript, on file with author).

203. Cf. Ignatiev, *supra* note 10, at 34–62 (arguing that the Irish struggle to define themselves as "White" within the United States reinforced racial animosity against Blacks).

204. Petición de Jacinto Sánchez Tirado a nombre de Diego Mexías Bejarano, *supra* note 200, at 42.

205. The characterization of Asian Americans in the United States as a "model minority" has had a similar effect by appearing to be a compliment, but serving to stratify minorities and to hide oppression of both Asians and other groups. Robert

In summary, the *Gracias al Sacar* provided a forum for persons of part-African descent to articulate their concerns, to explicitly challenge the racial hierarchy, and to offer an alternative discourse for the distribution of material and social goods. The *Gracias al Sacar* simultaneously strengthened the subordinate and degraded position of *pardos*, the total exclusion of *negros* from society, and the existing hierarchy. It also differentiated between racial groups, thereby expanding the stratification of colonial Venezuelan society. The ambiguous feelings that the inhabitants of colonial Venezuela held concerning issues of race were reflected, augmented, and changed in the conflicting and contradictory rhetoric that was used within the *Gracias al Sacar*. An ameliorative or progressive tendency toward assimilation existed side by side with a contradictory impulse toward hierarchy, stratification, and inequality.

### C. Contemporary Implications of the *Gracias al Sacar*

Although the *Gracias al Sacar* were a race practice during the late eighteenth and early nineteenth century in colonial Venezuela, it is possible to tease out some propositions that can be applied to other examples of racial negotiation, including contemporary examples in the United States. First, the history of the *Gracias al Sacar* demonstrates that the apparent rigidity of racial categories masks negotiated reality. Second, the *Gracias al Sacar* show that individual negotiation for advantage both sustains and undermines racial hierarchy. Third, they suggest that racial negotiation is always constrained by history and structure.

The *Gracias al Sacar* expose the fact that the apparent rigidity of racial categories masks negotiated reality. Despite the apparent fixity and closure of racial categories in colonial Venezuela, the *Gracias al Sacar* simultaneously were material and ideological arenas of negotiation. Within these arenas, groups and individuals exchanged wealth and contested meanings. The Crown sought to use the *Gracias al Sacar* to leverage support and funds during a particularly vulnerable period. *Pardos* sought to improve their social situation within Venezuelan society through the purchase of concrete goods such as entrance into the university or the right to enter the priesthood. *Blancos* sought to preserve their privilege and social status by resisting the *Gracias al Sacar*. Moreover, as the *Gracias al Sacar* served in the material struggles, so too they served in a constitutive

capacity, revealing contradictory ideas about individual merit and equality.

The relationship between the material and ideological negotiations was not straightforward. A “win” in one arena did not necessarily carry with it a “win” in the other. An individual *pardo* received dispensation from his racial category and became a *blanco*. But to successfully petition often necessitated the rejection of his heritage and a contention that his original classification was erroneous. Thus, as in this instance, a material gain did not carry with it an ideological victory.

Likewise, the longterm effects of these negotiations do not follow naturally. The movement from *pardo* up to *blanco* may have reinforced the stratification of Venezuelan society. Alternatively, the recitation of personal genealogy needed to gain entry to *blanco* status may have created more levels of racial hierarchy. Not only did the racial categories conceal the vigorous negotiation of their implementation, but they concealed the variety of outcomes possible.<sup>206</sup>

The history of U.S. race practices similarly masks the layers of negotiation within what have appeared to be stable racial categories. The Black-White dichotomy has remained the dominate polarity within race discourse, despite growing studies that deconstruct the categories of Black and White and the repeated and constant reprise of other race groups seeking entrance into the race dialogue.<sup>207</sup> Census classifications within the United States provide a vivid example of the influence of political interests on racial statistics and concomitant shifting of categories over time. Most recently, in the continuing effort to reconcile the rigidity of racial categories and personal understandings of the hybridity and the heterogeneity of race within the United States, the Office of Management and Budget has undertaken to revise once again the standards for race and ethnicity.<sup>208</sup>

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206. Mark Tushnet has described a similar situation within the context of the critique of rights in United States today. Mark Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23 (1993). Tushnet notes that “winning a legal victory in court was less important [to abortion advocates’] goals than winning in the arena of public opinion.” See *id.* at 23. Likewise, he questions the longterm material success of *Brown v. Board of Education*, 347 U.S. 483 (1954), in that school segregation persisted for more than a decade after the case was decided, although he considers it to be an ideological victory. See Tushnet, *supra*, at 24–28. Tushnet therefore concludes that “a legal victory has complicated relations to ideological and material change, in both the short and the long term—similarly with legal defeats.” *Id.* at 34.

207. See *supra* notes 2-10 and accompanying text.

208. See Recommendations from the Interagency Committee for the Review of the Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 36874 (1997); see also Sharon Lee, *Racial Classifications in the US Census: 1890–1990*, 16 ETHNIC & RACIAL STUD. 5 (1993) (describing history of census

The *Gracias al Sacar* also demonstrate that individual negotiation for advantage both sustains and undermines collective racial hierarchy. Individuals used the *Gracias al Sacar* to seek personal gain and status. They mobilized their resources, instrumentally maneuvering within the social structure for their personal benefit. What is not clear, however, are the collective, systemic, or institutional consequences of these personally motivated strategies for self-advancement. At times, individual gains may have helped group advancement. At others, they may have hindered it. For example, it is likely that as individuals attained education and wealth, they, and others like them, might have become more assimilated into Spanish culture. However, individual acceptance would also make it easier to justify the subordination of others who were less assimilated. Thus, individual achievement could serve to eliminate the possibility of social advancement for other members of the group. Moreover, as the analysis has shown, the acceptance of individual *pardos*, made the exclusion of *negros* more acceptable, reinforcing the racial hierarchy. Thus, a gain for one social group may have precipitated a loss for others.

Similar dynamics appear in the United States. The "model minority myth" highlights the possibility of individual co-optation and masking of the general subordination of the group to which that person identifies. It also illuminates the use of one racial group to justify the subordination of others. By including within White society certain Asians—holding them out as harder working, more honest, intelligent, or diligent—these descriptions justify the continued subordination of other Asians, as well as Blacks and Latinos. The acceptance legitimizes the generalized belief that these latter groups are "lesser," although any individual may advance. An antagonism arises between personal advancement and group advancement. The rhetoric of individual merit and achievement require that we applaud the "self-made person." However, these personal "victories" allow legitimized persistence of racialized stratification. Individual success becomes a justification for a generalized system of oppression.

Likewise, these individual achievements mask the need for the claims of others to be heard. Individual achievements too easily persuade us that enough is being done. This critique has been launched against affirmative action and comparable worth. Critics charge that the "truly needy" go unheeded while those already at the fringes of privileged society not only gain entrance, but justify the exclusion of others.<sup>209</sup>

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categories employed in the United States); U.S. IMMIGRATION COMMISSION, REPORTS: DICTIONARY OF THE RACES OF PEOPLES (photo. reprint 1970) (1911).

209. See, e.g., ALPHONSO PIKNEY, THE MYTH OF BLACK PROGRESS (1984); WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND

Passing provides a particularly interesting example of the tensions inherent in self-advancement within a given racial system. Although some writers contend that passing delegitimizes racial hierarchies by exposing the diffuse nature of borders,<sup>210</sup> passing also strengthens the racial hierarchy by reinforcing the attractiveness of the passed into category and the negative aspects of the passed out of category. Moreover, because the apparent fluidity is illusory for most members of the lesser category who are precluded from assimilating into the "superior" group, passing cannot serve as a viable means of escape for the majority of members in a given group. Thus, its subversive value is minimized, while its ability to co-opt those already at the top of a given racial group is heightened.<sup>211</sup>

The *Gracias al Sacar* highlight the fact that racial negotiation is constrained by history and structure. The tools and opportunities available to an individual are not free floating, but are derived from the institutions and structures at a particular historical moment. Differences in an individual's placement within the social structure and the resources available will create and constrain the opportunities available.

Although the Crown promulgated the *Gracias al Sacar* in response to a fiscal shortfall in the empire, it created a program through which race could be purchased. The system permitted certain members of Venezuelan society to gain advantages normally withheld from them. However, the *Gracias al Sacar* did not permit all *pardos* to purchase racial exemptions despite their general availability in colonial Venezuela. Some were precluded by wealth, others by education, and others by skin color. How the *Gracias al Sacar* worked was affected by differences in the personal resources of individuals in conjunction with the rules for the purchase of the *Gracias al Sacar* as well as the rules' interpretation by other members of society.<sup>212</sup>

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PUBLIC POLICY (1987). Dr. Harry Edwards, in an interesting study, *The End of the 'Golden Age' of Black Sports Participation?*, 38 S. TEX. L. REV. 1007 (1997), examines the integration of Black athletes in sports. The emphasis on individual mobility, Edwards argues, veils the continuing underlying racial inequalities and serves as a false incentive for Black youth. Black youths seek to move up and out of the Black community, equating success with leaving Black communities and institutions.

210. Harris, *supra* note 11, at 1779.

211. A further point can be made about passing that is not demonstrated within my analysis of the *Gracias al Sacar*. Passing reveals a tension within a given racial group that can be aroused by the claims that certain individuals are "race traitors" or that someone has "sold out." These internal conflicts can become debilitating to the project of social advancement. See Stephanie Phillips, *Claiming Our Foremothers: The Legend of Sallie Hemmings and the Tasks of Black Feminist Theory*, 8 HASTINGS WOMEN'S L.J. (forthcoming 1998) (exploring Black feminist reactions and narratives about interracial relationships and the opprobrium directed against certain stories).

212. For an interesting historical example, see William Chambliss, *A Sociological Analysis of the Law of Vagrancy*, 12 SOC. PROBS. 67 (1964) (describing the importance of

Individual advantage was created by policies dealing with macro events.

Further, individual complicity in the construction of the social system means that change can be found only over the longterm. C. Wright Mills describes this intimate relationship between history and biography:

[W]e have come to know that every individual lives, from one generation to the next, in some society; that he lives out a biography, and that he lives it out within some historical sequence. By the fact of his living he contributes, however minutely, to the shaping of this society and to the course of its history, even as he is made by society and by its historical push and shove.<sup>213</sup>

Therefore, history and structure constrain us in two ways: they constrain individual ability to act and the ability to analyze the effects of action.

## CONCLUSION

What, then, can the *Gracias al Sacar* teach the American scholar of race and difference about racial practices and the role of scholarship to activism? The study requires us to take seriously the ideas that (1) social practices are simultaneously action and meaning—not just one or the other; (2) social practices are contradictory; and (3) it is difficult to confine outcomes to any single direction—there are always alternative uses to which a given social practice might be put. By recognizing the multidimensional, contingent, and contradictory nature of social phenomena and our descriptions of them, the *Gracias al Sacar* suggest that the relationship of scholarship to

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vested interest groups in the emergence and alteration of English vagrancy statutes during the thirteenth and fourteenth centuries). See also Marc Galanter, *Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95 (1974) (describing how "institutional facilities" constrain the practice of rules within the American legal system). Galanter's work shows that participants in the legal system arrive with different resources depending on the frequency of their interaction with the courts. Given the ways in which the legal system functions, certain parties have strategic advantages over other parties. He demonstrates that this interlocking of personal resources and legal structure limits the possibility for reform.

A cursory glance at race issues in the U.S. legal context supports these propositions. Within the U.S. system of due process, individual resources clearly matter. Thus, one is not the least surprised to find that O.J. Simpson received a very different sort of trial than Willie Horton. See Patricia J. Williams, *America and the Simpson Trial*, NATION, Mar. 13, 1995, at 337, 338 ("[I]f O.J. were 'Willie' Horton he'd fry.").

213. C. WRIGHT MILLS, *THE SOCIOLOGICAL IMAGINATION* 5 (1959).

political activism is necessarily difficult. It also suggests that the relationship may prove to be more intimate than we might expect.

Much of the work in the scholarship of race and difference has attempted to give voice to those who often are silenced or unheard—"looking toward the bottom,"<sup>214</sup> or to the margins and intersections, attending to alternative histories and subjectivities—thereby exposing the singularity of mainstream explanations and theories.<sup>215</sup> Some scholars have hoped that legal and cultural analysis of racial processes will uncover the underlying nature of a practice as racist or just. This determination, in turn, will enable scholars to "effectively intervene" in an effort to "promote racial justice."<sup>216</sup> However, the assertion of alternative viewpoints is significant in that it provides an opening—not for a "better" more "true" perspective, but to demonstrate that an opening always exists; that the social world is malleable and is constantly constructed in a struggle of invention.

Similarly, the *Gracias al Sacar* caution us that carefully analyzing racial practices may not lead us to one clear answer. Perhaps, more precisely, what the *Gracias al Sacar* suggest is that the search for one answer is as inherently flawed as would be the search for a singular, all-encompassing explanation of social action. If we take seriously the variability of our explanations, we must, as well, take seriously the variability of the outcomes suggested.<sup>217</sup> The study of the *Gracias al Sacar* in Venezuela shows that legal analysis is composed of a variety of threads rather than a singular line of explanation. The *Gracias al Sacar* remind us that attention must be paid to the multiple functions of race practices. In addition, the *Gracias al Sacar* caution that race practices may be contradictory—tendencies toward modifying and solidifying social, material, and racial hierarchies may be present simultaneously. The study of the *Gracias al Sacar* suggests that the role of scholarship lies in its ability to specify the variety of ends possible given a particular practice.

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214. Mari Matsuda, *Looking to the Bottom*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

215. See, e.g., Angela Harris, *Race Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); Kenneth L. Karst, *Citizenship, Race, and Marginality*, 30 WM. & MARY L. REV. 1 (1988); Matsuda, *supra* note 214.

216. Lee, *supra* note 9, at 751.

217. Martha Minow describes this challenge in another way:

The point is not to find the new, true perspective; the point is to strive for impartiality by admitting our partiality. The perspective of those who are labeled 'different' may offer an important challenge to those who imposed the label, but it is a corrective lens, another partial view, not the absolute truth. It is the complexity of our reciprocal realities and the conflict between the realities that constitute us which we need to understand.

To this effect, scholarship is liberatory in that it can reveal the constructed nature of social processes and the contradictions that sustain a particular practice.<sup>218</sup> In other words, it can illuminate otherwise hidden constraints and opportunities available at any given time. The relationship of scholarship to political activism therefore becomes more complex, yet more intimate; while scholarship may not be able to point to the right path, it nevertheless describes the different paths and sometimes hidden costs and benefits related to each one. Because social phenomena are constantly being negotiated and reinscribed, the role of scholarship is ongoing as well. We cannot make one analysis and then apply it across different contexts and times.

For example, the *Gracias al Sacar* have shown not only the multiple ways in which race became embedded in colonial Venezuela, but also how current American socio-legal concepts of race furnish an unexamined context from which I have tried to understand this practice. The difficulties of an American socio-legal scholar in explaining race practices in colonial Venezuela provide yet another manner in which the *Gracias al Sacar* demonstrate the unique relationship of scholarship of race and difference to political activism.

Writing this Article, I found that current taken-for-granted schemes about race collided with the historical phenomena. My temptation to use phrases such as "non-White," "persons of color," or "Blacks" to describe the groups referred to in the documents of the *Gracias al Sacar*, however, proves the inadequacy of currently accepted race terminology. The terms "non-White" or "persons of color" were too broad because they could be thought to include *negros* (not to mention *indios*), who were not part of the system of grants. The term "Blacks" seemed completely erroneous, although its use in the United States includes all persons of part-African ancestry.

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218. Social scientists have found that contradictions within social practices sustain rather than weaken those practices:

Because meaning and sense-making is dynamic, internal contradictions, oppositions and gaps are not weaknesses or tears in the ideological cloth. On the contrary, an ideology is sustainable only through such internal contradictions. These contradictions become the bases for the invocations, reworkings, applications, and transpositions through which structures (schema and resources) are enacted in daily life. In short, contradictions and oppositions underwrite everyday ideological engagement, and, thus, ensure an ideology's vitality and potency.

EWICK & SILBEY, *supra* note 5, at 266 (citation omitted). The analysis of the *Gracias al Sacar* lends further support for this theory. Cf. Brinkley Messick, *Kissing Hands and Knees: Hegemony and Hierarchy in Shari'a Discourse*, 22 LAW & SOC'Y REV. 637 (1988) (describing how polyvocality sustains Muslim legality); EUGENE GENOVESE, ROLL, JORDAN, ROLL (1972) (describing how contradictory perceptions of slaves and masters sustained slavery).



What became apparent was that current concepts of race difference are based on a perception of the world as White and non-White. Race discourse relies upon a vision of the world as Black (or alternatively colored) or White. The *Gracias al Sacar*, however, were premised on a world where race was not a bimodal construct, but rather a spectrum where the majority of people fell within the middle and attention was directed to and status was negotiated within this middle ground.

The artificiality of race became salient, illuminating in particular the ways in which terminology restricted conceptions of race issues, practices, and solutions.<sup>219</sup> My study of the *Gracias al Sacar* therefore reveal the scholar's active role in creating meanings. Scholars play a central role in how we view problems and issues, which in turn has implications for the solutions that we seek. The categories we impose upon social interaction, the descriptions we offer, confine the ways that we may come to re-envision our society.<sup>220</sup>

Limiting the scholar's role to that of observer, is, therefore, by no means to relegate her to an armchair in some lost corner.<sup>221</sup> It is to recognize that scholarship itself is a political practice which can create and sustain different visions of the social world and is itself part of the process through which meanings and practices become recreated and embedded.<sup>222</sup> The difficulties encountered in using

219. See F. JAMES DAVIS, WHO IS BLACK? (1991) (summarizing briefly divergent racial definitional schemes employed in various contexts).

220. Research on current racial attitudes in Venezuela argues that Venezuelans consider their country to be a "racial democracy." See, e.g., ANGELINA POLLAK-ELTZ, BLACK CULTURE AND SOCIETY IN VENEZUELA (1994). Critics have charged, however, that this insider perspective fails to take into account that *negros* still form a majority within the lower economic and social classes in Venezuela. WRIGHT, *supra* note 14, at 126-27; see also LIGIA MONTAÑEZ, EL RACISMO OCULTO DE UNA SOCIEDAD NO RACISTA (1993). While I recognize that a degree of racial status consciousness remains evident in Venezuela, much of the criticism, I think, stems from the imposition of our "take" on race. Because we view the world as White and Black, we persist in viewing the real gains of the mixed race (*pardo*) majority and Venezuelan attitudes that consider Venezuela to be a non-racially defined country as self-deluding.

One advantage of comparative scholarship is to reveal alternative contexts. This study has shown the salience of turning a critical eye toward the scholar's complicity in structuring descriptions in local as well as foreign contexts.

221. My comments do not intend to privilege armchair theorizing over more overt forms of political activism. These comments simply point out the relevance of academic scholarship to the progressive agenda as well as its limitations. See Angela Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741 (1994) (providing a thoughtful discussion of the dilemma of race scholarship to remain committed to both the modernist and post-modernist agendas).

222. Race and difference scholars recently have advanced an "interactionist or feedback model" of race relations that requires that we recognize changes in basic social alignments that may occur within a given society opening opportunities for the deconstruction of race. See George M. Fredrickson, *Reflections on the Comparative History and Sociology of Racism*, 3 RACE TRAITOR 83 (1994). Although beyond the scope

American race terminology to describe the *Gracias al Sacar* suggest that attending to our work as scholars may prove more difficult and less clear than we currently believe. It also suggests that it may be more important than we suspect.

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of this Article, I believe such efforts may prove to be the most fruitful in pushing race scholarship toward an understanding of race that truly takes into account its constructed nature by requiring scholars to reconsider the very foundations of their theories including the continued significance and relevance of race itself. Certain scholars may have overstated the declining significance of race within the United States; this perspective nevertheless correctly challenges us to continually rethink the very categories of our thought.